

TORTURE IN THE CONTEXT OF TRANSITIONAL JUSTICE IN NEPAL



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Bikash Basnet

Director

Advocacy Forum-Nepal

CHAPTER I

INTRODUCTION

More than seventeen years have elapsed since Nepal emerged from a protracted period of internal armed conflict that resulted in thousands of victims suffering from torture both at the hands of the State and the then-rebel group, the Nepal Communist Party (Maoist), victims of torture continue to wait for justice.

The Comprehensive Peace Agreement (CPA) signed in 2006 ended the conflict with hope for peace and justice for victims as the CPA incorporated provisions highlighting transitional justice measures to address the legacies of past human rights violations. It entailed the establishment of an (i) ‘National Peace and Rehabilitation Commission for providing redress and rehabilitation to individuals who had been victimized or displaced as a consequence of the armed conflict’¹ and (ii) ‘High-level Truth and Reconciliation Commission (TRC) for conducting investigations into gross human rights violations and crimes against humanity, while concurrently fostering an environment conducive to reconciliation.’² The CPA explicitly

¹ Comprehensive Peace Agreement (21 Novemeber 2006) (hereafter the CPA 2006), clause 5.2.4.

² CPA 2006, clause 5.2.5.

states that impunity would not be tolerated and that parties would ‘ensure the right of victims of conflict and torture and the family of disappeared to obtain relief.’³ It did not particularly specify reparation but focused on providing relief to victims.⁴

The Government also rolled out interim relief programs for conflict victims. However, it excluded victims of torture and sexual and gender-based violence or illegal detention. Such exclusion continues to exist today.

In 2014, the Parliament passed the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act 2014 (hereafter the ‘TRC Act’). Two Commissions - the Commission of Investigation on Enforced Disappeared Persons (CIEDP) and the Truth and Reconciliation Commission (TRC) - were established in 2015. However, these Commissions could not deliver on their mandates as they got into controversies from the day of their establishment.⁵

³ CPA 2006, clause 7.1.3.

⁴ Sarah Fulton and Mandira Sharma, ‘Raahat ki Aahat: Reparation in Post-Conflict Nepal’ in Carla Ferstman and Mariana Goetz (eds), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity. Systems in Place and Systems in the Making* (Brill Nijhoff) 710.

⁵ Advocacy Forum-Nepal, ‘Nepal Transitional Justice at Crossroad’ (2014) Year 4 vol 1, Special brief <<https://www.advocacyforum.org/downloads/pdf/publications/tj/transitional-justice-at-crossroads-2014.pdf>> accessed 25 May 2023; Advocacy Forum-Nepal, ‘The State of Transitional Justice In Nepal’ (February 2019) <<https://www.advocacyforum.org/downloads/pdf/publications/tj/af-briefing-paper-february-2019-english.pdf>> accessed 25 May 2023; Human Rights Watch and Advocacy Forum-Nepal, ‘No Law, No Justice, No State for Victims. The Culture of Impunity in Post-Conflict Nepal’ (November 2020) <https://www.advocacyforum.org/_downloads/no-law-no-justice-no-state-for-victims-20-november-2020-english.pdf> accessed 25 May 2023.

The TRC Act allows the TRC to recommend amnesty⁶ and also to facilitate mediation between perpetrators and victims involved in serious crimes, including torture,⁷ providing no prospect of justice for victims of torture.

In 2018 the Government adopted the National Criminal Code 2017 (also known as the Penal Code), which criminalizes the practice of torture. However, the Penal Code places the provision of a six-month statutory limitation⁸ in reporting a case of torture and prevents retroactive use of the Penal Code,⁹ making it impossible for survivors of torture during the conflict to access any remedies under the Penal Code. The Government argues that all conflict-era cases, including cases of torture, will be addressed by the transitional justice (TJ) mechanisms, i.e., the TRC and CIEDP.

Repeated legal challenges brought in the Supreme Court by victims and civil society organisations have resulted in a number of rulings of the Supreme Court clearly setting out the parameters for TJ mechanisms in the country,¹⁰ making it imperative to enact legislation to amend the TRC Act. The Court makes amnesty impermissible

⁶ Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act 2014, section 26.

⁷ Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act 2014, section 13 (1) (c).

⁸ National Criminal Code 2017 (came into force in 2018), s 170 (2).

⁹ National Criminal Code 2017, s 7.

¹⁰ Advocacy Forum-Nepal, 'The State of Transitional Justice In Nepal' (February 2019) <<https://www.advocacyforum.org/downloads/pdf/publications/tj/af-briefing-paper-february-2019-english.pdf>> accessed 25 May 2023; Advocacy Forum-Nepal, 'Establishing Victims' Right to Truth, Justice and Reparation in Cases Involving Enforced Disappearances in Nepal' (August 2021) <<https://www.advocacyforum.org/downloads/pdf/publications/impunity/establishing-victims-right-on-enforced-disappearances-30-august-2021.pdf>> accessed 25 May 2023.

for gross violations of human rights, prevents mediation in such cases, recognises reparation as victims' rights, and requires the Government to engage in consultations with victims and experts to enact necessary amendments ensuring legislation that provides a comprehensive legal framework in setting up TJ mechanisms. And these mechanisms are required to effectively address the legacies of past human rights violations, including torture.

On 19 March 2023, the Government tabled, for the third time, the Bill¹¹ in the Parliament to amend the TRC Act. At the time of this report, the Bill is under consideration of the Law, Justice, and Human Rights Committee of the Parliament. While the law relating to TJ is under discussion in the Parliament, it is incumbent upon lawmakers and policymakers to develop a thorough understanding of the atrocities committed during the time, including acts of egregious violence and widespread and systematic torture that impacted individuals and communities not only to provide truth, justice, and reparation for victims but also to take measures to ensure non-recurrence, especially in the present context where torture in detention remains a major problem even today. The flawed TRC Act and subsequent amendment Bill (tabled in the Parliament), if executed without amendment, would exacerbate impunity and re-victimization. In simpler terms, these provisions would deny justice to victims and grant immunity to perpetrators, especially for serious crimes such as torture. Therefore, to effectively address torture, it is essential to amend the existing TRC Act. However, to date, the Bill tabled in the Parliament to amend the Act also falls short of tackling both the immediate needs of victims, the physical and psychological

¹¹ A Bill Prepared for the Amendment of the Investigation of Enforced Disappeared Persons, Truth and Reconciliation Commission Act 2014.

consequences they suffer, and the underlying causes of torture that contribute to its persistence.

In this context, this report aims to explore the interplay between torture violations and the ongoing discourse on TJ. By closely examining the nuances of this relationship, it emphasizes the importance for conflict-era torture violations to be recognized and addressed by credible TJ processes, which is crucial for combating impunity and achieving justice and accountability not only for past crimes of torture but also ongoing and future crimes of torture in Nepal.

The report is divided into six chapters. Chapter One provides the context of the armed conflict, while Chapter Two focuses on the practice of torture during that time. The horror of torture during the conflict is exposed in Chapter Three, and Chapter Four discusses the State's obligations to ensure effective remedies for victims of torture. Chapter Five highlights the cases of Torture Victims before the Human Rights Committee. Lastly, Chapter Six examines the TRC Act, the Bill, and the issue of torture.

CHAPTER II

BACKGROUND

The practice of illegal detention and torture was already prevalent before the onset of the internal armed conflict between the Government of Nepal and the Communist Party of Nepal (CPN-Maoist).¹² Nonetheless, during the decade-long armed conflict (1996-2006), these human rights abuses by the State and Non-state actors escalated significantly (see Chapter III). The primary responsibility of confronting the Maoist combatants initially rested with the police force until the Armed Police Force (APF) was formed in January 2001,¹³ and the Government decided to mobilize the then Royal Nepal Army (RNA) and declared a state of emergency on 26 November 2001. Consequently, there was

¹² Advocacy Forum-Nepal, ‘Torture Still Continues. A Brief Report on the Practice of Torture in Nepal 2006-2007’ (June 2007)7 <<http://www.advocacyforum.org/downloads/pdf/publications/26-June-publication.pdf>> accessed 24 May 2023.

¹³ Armed Police Force was first established through an Ordinance in 22 January 2001. APF Nepal headquarters was then established in 5 February 2001. Armed Police Force <<https://www.apf.gov.np/Pages/Development>> accessed 25 May 2023.

a substantial increase in both the intensity of the conflict and the incidents of human rights violations, including torture.¹⁴

The enactment of anti-terrorist legislation in 2001¹⁵ and the granting of wider powers to security forces further contributed to the commission of multiple human rights abuses. It included declaring the Maoists as terrorists and subjecting individuals under suspicion to preventive detention.¹⁶ Despite not having committed any crimes, thousands, including women and children, were detained for extended periods without judicial remedies, subjecting them to torture, ill-treatment, disappearances, sexual abuse, and extrajudicial killings.¹⁷ Various

¹⁴ Human Rights Watch, 'Between a Rock and a Hard Place: Civilians Struggle to Survive in Nepal's Civil War' (October 2004) <<https://www.hrw.org/report/2004/10/06/between-rock-and-hard-place/civilians-struggle-survive-nepals-civil-war>> accessed 25 May 2023.

¹⁵ Government introduced the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) in 2001. In April 2002, the Government replaced the Ordinance with the Terrorist and Disruptive Activities (Punishment and Control) Act 2002 (TADA).

¹⁶ Human Rights Watch, 'Between a Rock and a Hard Place: Civilians Struggle to Survive in Nepal's Civil War' (October 2004) <<https://www.hrw.org/report/2004/10/06/between-rock-and-hard-place/civilians-struggle-survive-nepals-civil-war>> accessed 25 May 2023; Office of the United Nations High Commissioner for Human Rights (OHCHR), 'Nepal Conflict Report. An Analysis of Conflict Related Violations of International Human Rights Law and International Humanitarian Law between February 1996 and 2 November 2006' (October 2012) <https://www.ohchr.org/sites/default/files/Documents/Countries/NP/OHCHR_ExecSumm_Nepal_Conflict_report2012.pdf> accessed 25 May 2023; See also, Advocacy Forum-Nepal, 'Torture Still Continues. A Brief Report on the Practice of Torture in Nepal 2006-2007' (June 2007) 2 <<http://www.advocacyforum.org/downloads/pdf/publications/26-June-publication.pdf>> accessed 28 May 2023.

¹⁷ Office of the United Nations High Commissioner for Human Rights (OHCHR), 'Nepal Conflict Report. An Analysis of Conflict Related Violations of International Human Rights Law and International Humanitarian Law between February 1996 and 2 November 2006' (October

United Nations (UN) bodies found torture and ill-treatment in Nepal were systematically practiced by the police, the AFP, and the RNA.¹⁸

The commonly used methods of torture included electric shocks, rape, and various other forms of sexual abuse, burying people alive, depriving them of basic needs like food, water, and access to bathrooms, severe beatings with iron rods and bamboo sticks on their feet and back, rolling wooden logs on thighs, submerging heads under water, death threats, among others.¹⁹ Many parts of the country were under the Maoists' effective control, where they executed a proper chain of command.²⁰ Maoist insurgents were also responsible for a large number of incidents involving torture, mutilation, and

2012) <https://www.ohchr.org/sites/default/files/Documents/Countries/NP/OHCHR_ExecSumm_Nepal_Conflict_report2012.pdf> accessed 25 May 2023; UNESCO, Commission on Human Rights, 'Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak. Mission to Nepal*' (9 January 2006) UN Doc E/CN.4/2006/6/Add.5.

¹⁸ UNESCO, Commission on Human Rights, 'Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak. Mission to Nepal*' (9 January 2006) UN Doc E/CN.4/2006/6/Add.5; OHCHR, 'Nepal Conflict Report. An Analysis of Conflict Related Violations of International Human Rights Law and International Humanitarian Law between February 1996 and 2 November 2006' (October 2012) <https://www.ohchr.org/sites/default/files/Documents/Countries/NP/OHCHR_ExecSumm_Nepal_Conflict_report2012.pdf> accessed 25 May 2023.

¹⁹ Advocacy Forum-Nepal, 'Torture Still Continues. A Brief Report on the Practice of Torture in Nepal 2006-2007' (June 2007) 2 <<http://www.advocacyforum.org/downloads/pdf/publications/26-June-publication.pdf>> accessed 28 May 2023 ; See also, Advocacy Forum-Nepal, 'Sharing Experiences of Torture Survivors' (2006) 3 <<https://www.advocacyforum.org/downloads/pdf/sharing-experiences-of-torture-survivors.pdf>> accessed 28 May 2023.

²⁰ Deepak Thapa, 'Day of The Maoist' Himal South Asian (1 May 2001) <<https://www.himalmag.com/day-of-the-maoist/>> accessed 24 May 2023.

other forms of cruel, inhuman, or degrading treatment. OHCHR statistics indicate that there were at least 2,500 such incidents.²¹ AF has documented at least 1251 cases of torture perpetrated between 2001 to 2006.²²

The end of the conflict, with the signing of the CPA in 2006,²³ halted the intensity of torture by the combating forces. However, a systematic lack of accountability makes torture continues unabated even today. Torture victims of the conflict era lack adequate means to seek justice and hold perpetrators accountable and are constantly being deprived of effective redresses, such as reparations, acknowledgment, and truth. There are various reports to suggest the failure of the State to address past crimes contributes to creating a conducive environment for torture today, which extends beyond pre-trial and also resulting in deaths in custody.²⁴

²¹ OHCHR, 'Nepal Conflict Report. An Analysis of Conflict Related Violations of International Human Rights Law and International Humanitarian Law between February 1996 and 2 November 2006' (October 2012) 9 <https://www.ohchr.org/sites/default/files/Documents/Countries/NP/OHCHR_ExecSumm_Nepal_Conflict_report2012.pdf> accessed 25 May 2023; Govinda Sharma, James Gellen and Others, 'From Relief To Redress: Reparations In Post-Conflict Nepal' (October 2019) 15.

²² Advocacy Forum-Nepal's internal database.

²³ Comprehensive Peace Agreement (21 November 2006) <https://peacemaker.un.org/sites/peacemaker.un.org/files/NP_061122_Comprehensive%20Peace%20Agreement%20between%20the%20Government%20and%20the%20CPN%20%28Maoist%29.pdf> accessed 28 May 2023.

²⁴ Advocacy Forum-Nepal, 'Countering Impunity In Torture. Need For Independent Investigative Mechanism In Nepal' (26 June 2021) <<https://www.advocacyforum.org/downloads/pdf/publications/torture/countering-impunityin-torture.pdf>> accessed 28 May 2023.

In 2017 the Government enacted the Penal Code,²⁵ which criminalizes the practice of torture. As previously discussed, the Penal Code does not only place the provision of a six-month statutory limitation and prevents retroactive use of the Penal Code, making it impossible for survivors of torture from conflict to access any remedies under the Penal Code, it also makes investigation of ongoing cases of torture challenging. Police are the sole authority authorised to investigate allegations of torture. A number of victims who attempted to file complaints seeking an investigation in cases of torture suffered and faced several challenges as they were forced to go to the police, where they were subjected to torture to demand investigation.²⁶

Since the criminalization of torture in 2018, under the provisions of the Penal Code, no successful prosecutions have been achieved concerning conflict-era torture charges, even after more than five years have passed. The Government continues to argue that all conflict-era cases, including cases of torture, will be addressed by the TJ mechanisms, i.e., the TRC and the jurisdiction of the regular justice system will not be applicable in conflict-era cases of torture, forcing people to wait for such mechanisms to be established to get any remedies.

²⁵ The Penal Code came into effect in 2018.

²⁶ Advocacy Forum-Nepal, 'Countering Impunity In Torture. Need For Independent Investigative Mechanism In Nepal' (26 June 2021) 52 <<https://www.advocacyforum.org/downloads/pdf/publications/torture/countering-impunityin-torture.pdf>> accessed 28 May 2023.

CHAPTER III

HORROR OF TORTURE DURING THE
CONFLICT

Throughout the conflict, both State and non-state actors were involved in torture, including beatings and mutilation of those under their custody. The State actors comprised of Nepal Police, Armed Police Force, and the then Royal Nepal Army. In terms of non-state actors, they included CPN-Maoists and Village Defence Forces, the latter often supported and armed by the state actors.²⁷ This section highlights some of the horrifying experiences of torture that victims of conflict suffered and continue to live within physical and psychological conditions. The objective is to remind the State and relevant stakeholders, once again, of the situation of torture during the conflict so the TJ Bill could also be seen through the lens of these victims.

²⁷ Office of the United Nations High Commissioner for Human Rights (OHCHR), 'Nepal Conflict Report. An Analysis of Conflict Related Violations of International Human Rights Law and International Humanitarian Law between February 1996 and 2 November 2006' (October 2012) <https://www.ohchr.org/sites/default/files/Documents/Countries/NP/OHCHR_ExecSumm_Nepal_Conflict_report2012.pdf> accessed 25 May 2023.

TORTURE BY STATE ACTORS

Initially, the Government insisted that the Maoist insurgency was mainly a problem of maintaining law and order. The prevailing context was such that the Nepal Police was the only force deployed to fight against the Maoists, making it the sole state actor inflicting torture.²⁸ Many studies also exposed that the torture by police aimed at suppressing the political opponents of the parties in Government at the time fueled villagers in remote villages to join the Maoists ‘People’s War.’²⁹ For example, in November 1995, the authorities conducted a police operation codenamed ‘Operation Romeo’ in the Rolpa district, which was considered the stronghold of the Maoist movement. The operation was supposedly aimed at controlling the rise of criminal activities in Rolpa; its primary objective was to eradicate the militant Maoist presence in the area.³⁰ Operation Romeo resulted in severe human rights abuses, including arbitrary arrests and detentions of numerous members affiliated with left-of-center parties as well as instances of rape, execution, torture, and enforced disappearances.³¹

²⁸ Human Rights Watch, ‘Between a Rock and a Hard Place: Civilians Struggle to Survive in Nepal’s Civil War’ (October 2004) <<https://www.hrw.org/report/2004/10/06/between-rock-and-hard-place/civilians-struggle-survive-nepals-civil-war>> accessed 25 May 2023.

²⁹ Kunda Dixit, ‘The Turning Point’ *Nepali Times* (October 2017) <<https://archive.nepalitimes.com/article/nation/The-turning-point-war-nepal,3986>> accessed 24 May 2023; Deepak Thapa, ‘Day of The Maoist’ *Himal South Asian* (1 May 2001) <<https://www.himalmag.com/day-of-the-maoist/>> accessed 24 May 2023.

³⁰ Human Rights Watch, ‘Between a Rock and a Hard Place: Civilians Struggle to Survive in Nepal’s Civil War’ (October 2004) <<https://www.hrw.org/reports/2004/nepal1004/2.htm>> accessed 25 May 2023.

³¹ Human Rights Watch, ‘Between a Rock and a Hard Place: Civilians Struggle to Survive in Nepal’s Civil War’ (October 2004) <<https://www.hrw.org/reports/2004/nepal1004/2.htm>> accessed 25 May 2023.

Furthermore, a similar operation called Kilo-Sierra I, followed by Kilo-Sierra II and Kilo-Sierra III, was launched in the western and mid-western regions in 1998. Operation Kilo Sierra II was implemented by the Nepal Police across 18 districts, lasting for more than a year, exacerbating displacement throughout the country. Additionally, these brutal crackdowns, conducted by the police in clandestine operations such as Operation Romeo and Kilo Sierra I-II-III, further contributed to the alienation of civilians and facilitated recruitment by the Maoists.³²

Between 1996 and 2006, Advocacy Forum-Nepal (AF) documented 1,284 cases of torture.³³ Individuals from various backgrounds, including teachers, farmers, students, and traders, were subjected to extortion, torture, and extrajudicial killing. AF, established in 2001, began systematically recording cases of torture, shedding light on the widespread nature of human rights violations. From 2001 to 2006, AF documented a total of 1,251 torture cases, with the following breakdown: 14 cases committed by APF, 349 cases by RNA, 190 cases by the Maoists, 651 cases by the Nepal Police, and 47 cases by other actors.³⁴

In response to the escalating insurgency, a state of emergency was declared, allowing for the suspension of certain rights and supposedly to ‘counter-terrorism.’ It was further accompanied by the formation of a ‘unified command’ structure of the Nepal Police and APF under the command of the RNA in

³² Kunda Dixit, ‘The Turning Point’, *Nepali Times* (October 2017) <<https://archive.nepalitimes.com/article/nation/The-turning-point-war-nepal,3986>> accessed 24 May 2023.

³³ For a detailed breakdown of the number of torture cases involving both state and non-state actors, please refer to Annex 1.

³⁴ Advocacy Forum-Nepal’s internal database.

November 2002, aimed at effectively combating the mutiny. The unification of forces led to the widespread occurrence of torture.³⁵

Thus, torture was not just limited by the police but also by the APF and the Army.

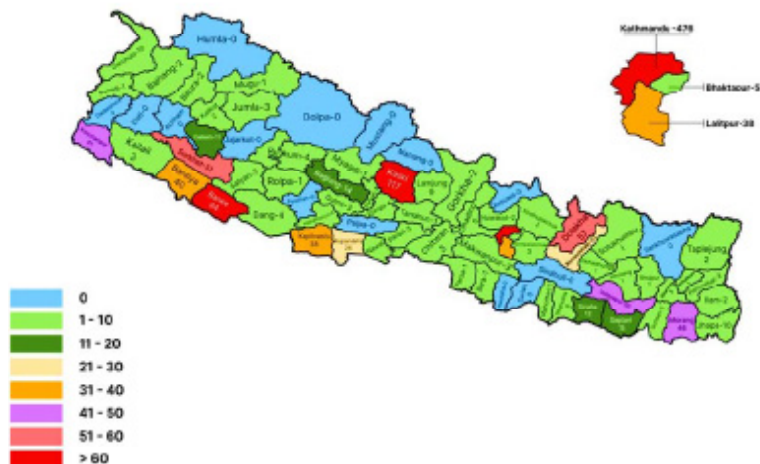


Figure 1: Map of Nepal³⁶ depicting torture cases from 1996 AD to 2006 AD by State and Non-State Actors.

From July 2001 to April 2006, AF documented a total of 2,271 cases of torture committed in the context of conflict. Between March 2005 and April 2006 alone, AF recorded 951 cases of torture and 17

³⁵ UNESC, Commission on Human Rights, 'Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak. Mission to Nepal*' (9 January 2006) UN Doc E/CN.4/2006/6/Add.5.

³⁶ Anyrgb, 'Map of Nepal' (modified version) <<https://www.anyrgb.com/en-clipart-oknsa>> accessed 26 May 2023.

instances of rape in detention. Out of the 951 torture cases, 511 were perpetrated by the police, 371 by the military, and 11 by the APF.³⁷ The analysis of cases that AF documented during conflict (1996-2006) revealed that torture was a common practice, with various methods employed by these various actors to instill pain and fear.

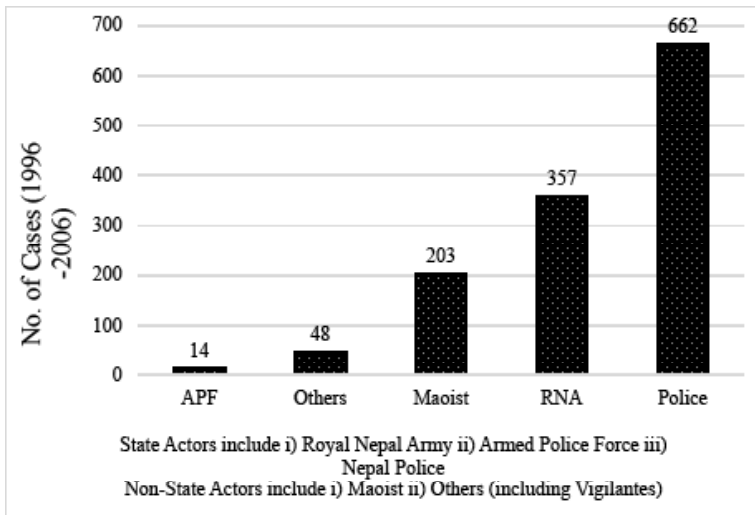


Figure 2: Number of torture cases (from 1996 to 2006) committed by the different actors of the armed conflict.

Between 2001-2006, methods of torture in police detention included beating the soles of feet with plastic pipes, rolling heavy logs over thighs muscles, inflicting random beatings, forcing victims to sit in

³⁷ Advocacy Forum-Nepal, 'Sharing Experiences of Torture Survivors' (2006) 3 <<https://www.advocacyforum.org/downloads/pdf/sharing-experiences-of-torture-survivors.pdf>> accessed 28 May 2023.

abnormal positions,³⁸ use of electric shocks, hanging detainees by their arms, subjecting them to sexual abuse, naked confinement, and threats of rape. Additionally, tactics such as withholding food, water, and access to toilets were used to degrade and dehumanize individuals. Detainees were not allowed to take baths for several weeks and were kept incommunicado.³⁹

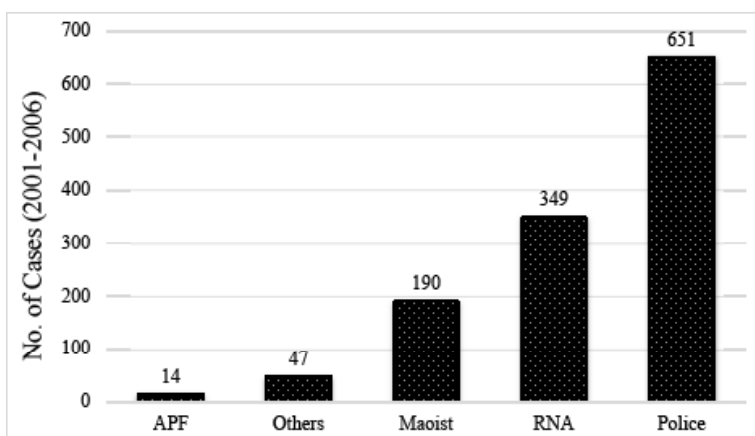


Figure 3: Number of torture cases (from 2001 to 2006) committed by the different actors of the armed conflict.

Torture methods employed within barracks during this time also comprised various forms of abuse, such as prolonged blindfolding

³⁸ Advocacy Forum-Nepal, 'Sharing Experiences of Torture Survivors' (2006) 3 <<https://www.advocacyforum.org/downloads/pdf/sharing-experiences-of-torture-survivors.pdf>> accessed 28 May 2023.

³⁹ Advocacy Forum-Nepal, 'Torture Still Continues. A Brief Report on the Practice of Torture in Nepal 2006-2007' (June 2007) 9 <<http://www.advocacyforum.org/downloads/pdf/publications/26-June-publication.pdf>> accessed 28 May 2023.

(lasting up to 21 months), electric shocks, suffocation through waterboarding, hanging victims upside down, sexual assault and rape, hammering nails into fingers/removal of fingernails, burying alive, subjecting individuals to abnormal positions, tying hands and feet to a stick and swinging the body, inflicting random beatings, simulating executions, and making threats of killing.⁴⁰

Other methods of torture involved spraying the detainees' bodies with pressurized water, adding to their physical and psychological anguish.⁴¹

Torture by APF: Sajan Biswakarma (name changed)

Sajan Biswakarma, 45, a labourer living in Uttarganga-2, Koldada, Surkhet was arrested on 29 January 2002 by around ten APF personnel deputed from Raktakali battalion, Bangesimal, Surkhet under the command of DSP Ram Krishna Shrestha. The victim was suspected of being a Maoist and was arrested in Birendranagar-6, Traffic Chowk, Surkhet. Allegedly, the officers blindfolded him and headed towards Raktakali battalion Bangesimal, Surkhet.

DSP Ram Krishna Shrestha accused him of being a Maoist and threatened to kill him. According to Biswakarma, immediately after reaching the Raktakali battalion camp, they tied his hands together. One officer kicked him from behind and he landed inside a large ditch. His left leg got fractured due to that and he screamed in pain.

⁴⁰ Advocacy Forum-Nepal, 'Sharing Experiences of Torture Survivors' (2006) 3 <<https://www.advocacyforum.org/downloads/pdf/sharing-experiences-of-torture-survivors.pdf>> accessed 28 May 2023.

⁴¹ Advocacy Forum-Nepal, 'Torture Still Continues. A Brief Report on the Practice of Torture in Nepal 2006-2007' (June 2007) 2 <<http://www.advocacyforum.org/downloads/pdf/publications/26-June-publication.pdf>> accessed 28 May 2023.

At that moment an armed policeman struck him with his stick on his back, thigh, legs, and neck about eight times. He threatened to kill Bishwakarma and bury him inside that ditch. He again kicked and punched Bishwakarma on the head, cheek, and chest.

Later he was taken out of the ditch and taken to the custody room. At around midnight some policemen came and assaulted him. They beat him up with their sticks on his back and thigh many times. They kept him there for nine days and tortured him every day, according to Bishwakarma. On the ninth day, a policeman allegedly threatened Bishwakarma that it was going to be his last day if he did not accept that he was a Maoist. For ten minutes he struck Bishwakarma with his boot and sticks all over the body. He told Bishwakarma to lie down and struck him with his stick on the back and thigh about eight times. He also trod on Bishwakarma's fingers with his boot and jumped on his fingers occasionally. Bishwakarma was bleeding badly so he screamed in agony and pain. Later, he fell unconscious. Finally, on 12 February 2002, he was freed from custody.

Bishwakarma sustained multiple injuries due to the alleged torture. He was unable to move his right hand and left leg properly at the time AF lawyers met him. He had recurring problems of backache, dizziness, and semi-consciousness. His fingers were disfigured.

In numerous documented instances, individuals detained by the APF and RNA were kept in barracks where they were subjected to torture, often under the pretext of their alleged association with the Maoists or in an attempt to extract information regarding the

Maoist activities from individuals who were perceived to possess relevant knowledge.⁴²

Torture by Royal Nepal Army : Janak Bahadur Raut

Janak Bahadur Raut, a 33-year-old man from Shivapur VDC-1, Kapilvastu district, was detained and subjected to torture on suspicion of being a Maoist or possessing information related to Maoist activities. He was arrested on 15 April 2005 by a joint security forces teams from the APF Base Camp of Chanauta and the Shivadal Army Barrack of Gorusinghe. After his arrest, he was taken to the APF Base Camp where he endured severe torture. The next day, he was transferred to the Shivadal Army Barrack of Gorusinghe, where he was charged as a Maoist Area Committee Member. Raut was released on 1 May 2005 with warnings to not disclose the details of the torture to anyone.

During his detention at Gorusinghe army barracks, Raut experienced various forms of torture. According to Raut, he was blindfolded and subjected to physical assaults, including being beaten with sticks and the butts of guns. He fell into a ditch while being blindfolded. The security forces mocked and taunted him while he was trapped in the ditch. Raut reported being beaten on his legs, chest, and hands, and an Army Major repeatedly slammed

⁴² Office of the United Nations High Commissioner for Human Rights (OHCHR), 'Nepal Conflict Report. An Analysis of Conflict Related Violations of International Human Rights Law and International Humanitarian Law between February 1996 and 2 November 2006' (October 2012) <https://www.ohchr.org/sites/default/files/Documents/Countries/NP/OHCHR_ExecSumm_Nepal_Conflict_report2012.pdf> accessed 25 May 2023.

his head against a cemented wall. He lost consciousness and later regained it to find his hands covered in blood.

Interrogations about his alleged involvement with Maoists and participation in attacks were accompanied by threats to extract his heart and liver from his body. The alleged torture sessions lasted for hours, and he was subjected to beatings with bamboo sticks and having heavy logs placed on his thighs. Other forms of alleged torture included being deprived of food, given rice mixed with sand, and having salt and chili applied to his wounds. He was released after 17 days on a condition to not provide information of torture to anyone.

Raut sought medical treatment in India after his release, where doctors identified blood clots in his brain, indicating potential mental dysfunctions. He continues to experience pain in his body and right leg. In a case filed under the Torture Compensation Act, the District Court of Kapilvastu ordered the government to provide compensation of NPR 75,000 and take departmental action against the perpetrators. Raut's case was also brought in the UK courts, under universal jurisdiction, against the alleged perpetrator Colonel Kumar Lama. Lama was acquitted after a jury could not reach a verdict. Additionally, Raut has also not received the compensation decided by the district court.

The detainees experienced prolonged torture, which involved the consistent use of blindfolds, hoods, and handcuffs. Wearing a hood was mandatory during interrogation and torture sessions, except when detainees were instructed to identify other suspected individuals. The

brutality of the torture inflicted on the victims was further intensified by the use of sharp weapons and other implements.⁴³

Torture by Royal Nepal Army : Bal Bahadur Sunar (name changed)

Bal Bahadur Sunar, a 27-year-old resident of Lalitpur, Sundhara, and originally from Usleni VDC-7 in Nuwakot district, became a victim of torture on 19 February 2004. He was arrested by a group of 7-8 plain-clothed RNA soldiers from his rented room and taken to the Rajdal Barracks in Lalitpur. During his week-long detention, he was exposed to torture. Sunar, a former cadre of NCP (UML), recalls the frightening experience: “Upon arrival at the barracks, they immediately started assaulting me. They slapped my cheeks and beat my head with a bamboo stick, causing me to lose consciousness. When I regained consciousness, they brutally hit my stomach and chest with rifle butts for at least 15 minutes. One soldier even hammered a nail into my chest, leaving a visible scar. They then forced me to bend over and tied my hands and legs. I was beaten again while in that position. They poured water into my nose, asking about my rank in the Party and the type of weapons we used.

Despite my ignorance, they continued the torture, causing me to lose consciousness again. I was hung up and later confined to a dark room. They provided me with food, but I couldn’t eat due to the pain. On 26 February 2004, they took me out, tied my hands and legs, and left me outside before finally releasing me in the evening.” Sunar shared that he suffered beatings on the soles of his

⁴³ OHCHR, ‘Report of investigation into arbitrary detention, torture and disappearances at Maharajgunj RNA barracks, Kathmandu, in 2003–2004’ (May 2006) <https://nepal.ohchr.org/en/resources/Documents/English/other/Support_Of_Victims_Of_Torture/24.pdf> accessed 23 May 2023.

feet with a cement-filled pipe and being forced to jump upside down for an extended period. Additionally, electric shocks were applied to his eyes, nose, fingers, hands, and knees, according to Sunar.

Detainees were also subjected to a form of torture involving confinement in a container. More often, adjacent to the main buildings in the barracks, a sizable brass container with two handles would be embedded in the ground and filled with filthy water. These containers served both as a means of torture and as an open urinal used by the guards during nighttime.⁴⁴

Torture by Royal Nepal Army : Tshering Sherpa (name changed)
Tshering Sherpa was arrested in Kathmandu on 9 January 2004. Initially held at the Jagdal barracks in Chhauni for 35 days, he was subjected to physical and mental torture. At the barracks, Sherpa was kicked, accused of being a Maoist, forced to sleep on the floor with tied limbs, and repeatedly beaten on the soles of his feet. Electric shocks were administered to his ears at regular intervals, causing immense pain. The mental torture intensified when he was threatened with being buried alive, and he was confined to a container away from the main buildings in the camp⁴⁵ for three days without food. His face and tongue swelled due to the alleged electric shocks. Further interrogation and alleged torture followed, including electric shocks and beatings, lasting for hours. The mental distress included threats of execution and forced expressions of last wishes. After his release, Sherpa was rearrested in February

⁴⁴ OHCHR, 'Report of investigation into arbitrary detention, torture and disappearances at Maharajgunj RNA barracks, Kathmandu, in 2003–2004' (May 2006) <https://nepal.ohchr.org/en/resources/Documents/English/other/Support_Of_Victims_Of_Torture/24.pdf> accessed 23 May 2023.

2004, blindfolded, and taken to the Yuddha Bhairab Battalion (also known as Bhairabnath Battalion) in Maharajgunj. There, he was beaten with a pipe, punched in the chest, and suffocated with a cloth, according to Sherpa. He was kept in a tent with other detainees, isolated, and subjected to mental torment about being buried alive. Transferred to the Sundarijal Investigation and Detention Center, he endured nine more months of detention before his eventual release in September 2005.

Another practice that was prevalent during the conflict period was holding individuals incommunicado within army barracks, isolating them from their families, and legal representation under the Terrorist and Disruptive Activities Act (TADA). The TADA authorized the security forces to arrest individuals without a warrant and detain them for up to sixty days for investigation, and up to ninety days for preventive detention, without presenting them before a court of law. Additionally, the Government also used the Public Security Act (PSA), which permitted preventive detention for up to ninety days, extendable to twelve months for police investigations.⁴⁵ Testimonies collected nationwide indicate that a large number of these detainees were subjected to torture and ill-treatment while being held in army barracks. Low-ranking soldiers committed acts of torture with the involvement, knowledge, and/or consent of commanding officers.⁴⁶

⁴⁵ Human Rights Watch, 'Between a Rock and a Hard Place: Civilians Struggle to Survive in Nepal's Civil War' (October 2004) <<https://www.hrw.org/report/2004/10/06/between-rock-and-hard-place/civilians-struggle-survive-nepals-civil-war>> accessed 4 June 2023.

⁴⁶ Office of the United Nations High Commissioner for Human Rights (OHCHR), 'Nepal Conflict Report. An Analysis of Conflict Related Violations of International Human- Rights Law and International Humanitarian Law between February 1996 and 2 November 2006' (October 2012) 8-10 <<https://www.ohchr.org/sites/default/files/Documents/Countries/>

Torture by Royal Nepal Army : Bablu Tamang

Bablu Tamang, a 22-year-old man from the Janajati ethnic group residing in Bagmati province, Kavre district, was unlawfully detained under the TADA on 10 August 2004. He was arrested by armed and masked plainclothes security forces from his residence in Chandol, Kathmandu, without a clear explanation for the arrest. His family was assured that he would be returned the next day after interrogation, but his whereabouts remained unknown for 71 days until the family were informed he was being held at the Sundarijal Investigating Center.

Bablu reported being subjected to severe torture during his detention,. He was initially held in the Bhairabnath barracks of Maharajgunj, where he was physically assaulted for several hours by soldiers using rifle butts, plastic pipes, and boots. He endured beatings, electric shocks, and waterboarding, causing him to lose consciousness multiple times. After 10-12 days, the frequency of inquiries reduced, but the guards continued to physically abuse the detainees in the tent where Bablu was held.

The accounts of women survivors of torture are no different as they reveal the harrowing details of the types of torture inflicted on them. The torture victims endured physical abuse, such as beatings, slaps, and kicks, with a deliberate targeting of sensitive areas like the hips and thighs. Some were subjected to attacks with objects like plastic pipes, inflicting further pain and injury. Alongside the physical harm, these women have also faced verbal harassment, rape, sexual abuse, and degrading treatment. The physical and verbal abuse was most often perpetrated by officers who were under the influence of

alcohol. Witness testimony also indicated that some women had their clothing removed during interrogation.⁴⁷

Both parties weaponized rape and sexual violence as methods of torture, punishment, and intimidation, albeit with variations in the number.⁴⁸ The psychological consequences women have endured are severe, leaving them in a state of constant fear, trauma, and emotional distress.

Torture by Royal Nepal Army : Purna Maya (name changed)

Purna Maya, who was originally from Dailekh district in mid-west Nepal, now resides in Surkhet. The gruesome incident of torture occurred on 23 November 2004, when a lieutenant in the Royal Nepalese Army entered her house, accusing her of being a Maoist, and forcefully took her to the Bhawani Bakash army barracks for interrogation. She was confined in the barracks, blindfolded, and subjected to physical and sexual violence. A lieutenant in the Royal Nepalese Army hit her with kicks, punches, and struck her with an unknown object, causing severe injuries. He ripped off her clothing and attempted to rape her, leaving her with permanent scars from biting on her nose, cheek, and shoulders. After the lieutenant left, at least three other soldiers entered the room and raped her until she lost consciousness.

⁴⁷ OHCHR, 'Report of investigation into arbitrary detention, torture and disappearances at Maharajgunj RNA barracks, Kathmandu, in 2003–2004' (May 2006) <https://nepal.ohchr.org/en/resources/Documents/English/other/Support_Of_Victims_Of_Torture/24.pdf> accessed 23 May 2023.

⁴⁸ Human Rights Watch, 'Survivors of Nepal's Conflict-Era Sexual Violence' (2014) <<https://www.hrw.org/report/2014/09/23/silenced-and-forgotten/survivors-nepals-conflict-era-sexual-violence>> accessed 25 May 2023.

The impact of this unspeakable torture on Purna Maya was devastating. She endured physical trauma, including bleeding from her uterus, which necessitated multiple hospital visits and eventually a hysterectomy. Unfortunately, the operation resulted in a serious infection, adding insult to her injury. The trauma extended beyond the physical harm, as she grappled with distressing flashbacks and psychological anguish, leading to her husband abandoning her and their daughter. In the aftermath of the incident, Purna Maya had no choice but to relocate with her daughter to a different district, seeking solace and safety.

The torture methods inflicted upon them included brutal beatings, with soldiers repeatedly striking their feet with the butt of their guns. They were also ruthlessly shot in the eye, head, and bust. Additionally, the women endured the brutal ordeal of waterboarding, with their heads being submerged multiple times and subjected to electric shocks. Furthermore, the unimaginable suffering experienced by women also led to their untimely deaths and the clandestine burial of their bodies. There were also reports that the security forces took women to undisclosed locations, where they were subjected to rape and cruel, inhumane, and degrading treatment.

Torture leading to extrajudicial killing by the RNA: Maina Sunuwar

Maina Sunuwar, a 15-year-old girl, was arrested on 17 February 2004, by military personnel including Captain Niranjan Basnet and Captain Sunil Prasad Adhikari, who had been deployed from the Panchkhal Barracks. Her arrest and subsequent events were closely linked to the rape and murder of Reena Rasaili, Maina's

cousin, allegedly committed by Army personnel five days prior to which Maina's mother, Devi Sunuwar, was a witness.

After Maina's arrest, the military and government authorities denied any knowledge of her whereabouts. Eventually, a report from the RNA Court of Inquiry Board revealed details of the torture Maina endured at the Shree Birendra Peacekeeping Training Center in Panchkhal. Several Army personnel, including Lieutenant Colonel Bobby Khatri, Captain Niranjan Basnet, Captain Sunil Prasad Adhikari, Captain Amit Pun, Sergeant Non-Commissioned Officer Khadak Bahadur Khatri, and two soldiers named Dil Bahadur Basnet and Shrikrishna Thapa, witnessed or participated in the torture, resulting in her death.

The Court of Inquiry Board report documented the specific acts of torture, such as submerging Maina's head in water multiple times and administering electric shocks, as ordered by Colonel Bobby Khatri. Maina pleaded her innocence against the charges of being involved in Maoist activities, but the torture continued. Eventually, Maina died in custody. Colonel Bobby Khatri ordered a clandestine burial, and her body was shot at to simulate an attempted escape.

The Kavre District Court, on 16 April 2017, convicted three retired army officers (Colonel Bobby Khatri, Captain Sunil Prasad Adhikari, and Captain Amit Pun) *in absentia* for the murder of Maina (a crime punishable by life imprisonment in Nepal). However, Captain Niranjan Basnet, who was involved in her arrest and present during her torture, was acquitted. The military contested the jurisdiction of civilian courts to hear Maina Sunwar's case at the Supreme Court following its own court martial. Maina Sunuwar's case has been ongoing in the Nepalese courts since 2007.

In the Terai region, torture was also widely practiced. Individuals would be falsely accused of crimes, leading to their illegal detention. To avoid further suffering, they were forced to admit guilt, and if they refused, they would be subjected to more severe torture. This cruel method of extracting forced confessions by inflicting both physical and psychological pain was very prevalent.

AF has focused its work on documenting torture, beating, and mutilation widely practiced during the conflict and has been working with victims to ensure ways to remedy victims.

TORTURE BY THE NON-STATE ACTORS

TORTURE BY MAOISTS

Similar to State actors, the Maoists were also complicit in carrying out acts of comparable gravity amounting to torture. From 1996 to the People's Movement of April 2006, Advocacy Forum-Nepal documented 203 cases of torture committed by the Maoists.⁴⁹

The executions and acts of torture were often conducted openly in front of villagers and family members to spread terror in the village. The Maoists specifically singled out certain individuals, including government workers, local political activists, officials from opposing political parties, and those who resisted their extortion attempts.⁵⁰

Whether through their own established court system, i.e., the "People's Court" or decisions made by local leaders, they would

⁴⁹ For a detailed breakdown of the number of torture cases involving both state and non-state actors, please refer to Annex 1.

⁵⁰ Human Rights Watch, 'Between a Rock and a Hard Place: Civilians Struggle to Survive in Nepal's Civil War' (October 2004) <<https://www.hrw.org/reports/2004/nepal1004/5.htm>> accessed 4 June 2023.

regularly subject people to violent punishments if they were found not following the Maoist rules or actively opposing their movement.⁵¹ If individuals refused to pay the imposed monetary fines such as ‘village levies’ or follow their command, their strikes, or were believed to have spoken against them, they were subjected to brutal acts like mutilation and other cruel, inhuman, and degrading treatment. One significant group targeted by the Maoists was individuals suspected of being spies or informants.

Torture by Maoist: Buddh Ratan Chaudhari (name changed)

Buddh Ratan Chaudhari , a 42 years old man, from Ghorahi in Dang district, was abducted by a group of Maoist cadres on 10 May 2005, from his house at 10pm. They tied his hands with a black plastic rope and blindfolded him, telling him to keep quiet. He was brought to Dhana VDC of Dang after walking for about one and a half hours. The next day they interrogated him about his alleged espionage activities.

When he denied that he had given any information about them to the security forces, they hanged him upside down and thrashed him violently on the lower part of his waist with a bamboo stick that was about one meter in length and was fistful.

They also allegedly rolled a wooden mallet over his both legs from thigh to feet and they trampled over his legs from both sides of the mallet. During this inhumane torture, they kept asking him what he had told the authorities or what clues about the Maoists he had given. Due to their excessive beatings, he had immense pain.

⁵¹ Office of the United Nations High Commissioner for Human Rights (OHCHR), ‘Nepal Conflict Report. An Analysis of Conflict Related Violations of International Human-Rights Law and International Humanitarian Law between February 1996 and 2 November 2006’ (October 2012) 8-10.

He had bruises on his lower waist and started to bleed. The Maoists kept him blindfolded and tied up his hands after the torture. Due to the extreme pain, he could not eat or walk properly for three days.

After five days of this ordeal, the Maoists took him with other captives to different places and asked him to prepare food for them. After a total abduction period of 6 months and 17 days, he was released on 3 December 2006 at Shribari in Dang district.

Budh Ratan experienced various after-effects of torture including burning sensation, walking difficulty, severe anxiety, and loss of concentration.

The Maoists resorted to a range of brutal methods to inflict torture on their victims. These included mercilessly kicking the victims in the face with their boots, prolonged sensory deprivation through blindfolds, tying victims' hands behind their backs, placing victims' legs under heavy logs, and forcefully gripping their heads. They also used axes or other local weapons to cause severe injuries, and in some cases, they even poured acid into the victim's mouth.⁵² They would also sometimes tightly bind the legs of the individuals with a rope, drag them throughout the hills, and tie the individuals to a tree using their individual personal clothing, repeatedly stabbing them in the chest and ultimately shooting them in the head.⁵³

⁵² Cases documented by Advocacy Forum-Nepal.

⁵³ 'How a photo has come to symbolise long wait for justice' The Kathmandu Post (17 January 2020) <<https://kathmandupost.com/politics/2020/01/17/here-is-why-people-are-sharing-this-horrifying-photo-today>> accessed 28 May 2023.

Torture by Maoists: Manohar Yadav (name changed)

On 17 January 2005, Manohar Yadav from Bodwar VDC-7 Tarkulla Tole, Rupandehi district, was abducted from his residence by 11 cadres of the Maoist party. They took him to an unknown place. Accusing him of being a spy, they kicked and punched him violently.

The next day, around 7.30 pm, they took him to Bodwar VDC-7 Majnu Chauraha. When he denied any involvement in espionage activities against the Maoists, they made him lie on the ground, tied up his legs, and smashed them with an axe handle. They further twisted his shattered legs and inflicted severe pain on him. They also fired bullets at his wounded legs while chanting slogans in support of their party. Then they went away from the incident spot. His relatives and family members learned about his condition from passersby and reached the incident spot. They then took him to India, where he spent four months for medical treatment. At the time AF lawyers met him, torture had taken an immense toll on his body.

Furthermore, the Maoists exploited the vulnerable situation of women, who were already marginalized within Nepali society. In certain eastern districts, they dictated what constituted appropriate attire for girls.⁵⁴

This exploitation extended beyond civilians, as nearly half of the Maoist rebel fighters were women, who also experienced frequent sexual exploitation by their fellow Maoist fighters.⁵⁵

⁵⁴ Deepak Thapa, 'Day of The Maoist' Himal South Asian (1 May 2001) <<https://www.himalmag.com/day-of-the-maoist/>> accessed 24 May 2023.

⁵⁵ Advocacy Forum- Nepal, 'Torture of Women Advocacy Forum – Nepal 26 June 2012 Nepal's Duplicity Continues' (26 June 2012) <https://www.advocacyforum.org/_downloads/torture-of-women-report-june-26-2012-english.pdf> accessed 24 May 2023.

TORTURE BY VILLAGE DEFENCE FORCES

On 4 November 2003, an initiative was unveiled by Prime Minister Surya Bahadur Thapa to establish “Rural Volunteer Security Groups and Peace Committees” to confront the Maoist rebels. Ironically, the term “Peace Committees” proved to be ironic as the Government’s plan involved equipping untrained and unaccountable village defence forces, effectively creating new militias to combat the Maoists.⁵⁶

From 1996 to April 2006, AF documented 9 and 39 cases of torture committed by the vigilante and others, respectively.⁵⁷

The RNA provided training to villagers in nearby police stations.⁵⁸ In several places, groups of villagers, always including one of the armed men, were formed to patrol the village at night. The presence of firearms within the community generated apprehension and concerns. The fear stemmed from the belief that the Maoists, perceiving the village defence force as a threat, would target the villagers in retaliation. Moreover, the fact that these village defence groups were trained and equipped with weapons by the security forces further intensified these apprehensions among the villagers.

⁵⁶ John Norris, ‘Don’t back a dirty war in Nepal’, International Crisis Group (12 February 2004) <<https://www.crisisgroup.org/asia/south-asia/nepal/dont-back-dirty-war-nepal>> accessed 28 May 2023; International Crisis Group, ‘Nepal: Dangerous Plans For Village Militias. Asia Briefing. Kathmandu/ Brussels’ (17 February 2004) <https://nepalconflictreport.ohchr.org/files/docs/2004-02-17_report_icg_eng.pdf> accessed 28 May 2023.

⁵⁷ For a detailed breakdown of the number of torture cases involving both state and non-state actors, please refer to Annex 1.

⁵⁸ International Crisis Group, ‘Nepal: Dangerous Plans For Village Militias. Asia Briefing. Kathmandu/ Brussels’ (17 February 2004) <https://nepalconflictreport.ohchr.org/files/docs/2004-02-17_report_icg_eng.pdf> accessed 28 May 2023.

Torture by Vigilante : Chhoki Lama (name changed)

Chhoki Lama, a 36 years old female at the time of the incident, is a resident of Baladpur VDC-4 Jhapatti in Bardiya district. On 15 December 2010 at about 11pm while Chhoki was fast asleep along with her family members, she woke up and heard someone calling her. She got up and went to the door to see who it was. When she reached the door, three or four people allegedly dragged her outside.

Five or six men guarded the door so that her family members could not come out to see what was happening to her. Outside, two men grabbed her hand and she could see 11 or 12 masked men with pistols and sticks. They accused Chhoki of being a Maoist sympathizer. Two men slapped her. Then, they hit her left hand with a one-meter-long stick. When she asked them why they were hitting her, one man put a pistol in her head and ordered her to lie down. After that, they started hitting her hands and legs. She fainted after several beatings. She does not recall how many times and in which body parts they hit her. Later, she learned from family members that the alleged torturers went away after subjecting her to around two hours of torture.

Her hands were bleeding profusely when her family members came out. They brought her inside the house and poured water on her body. Her whole body was covered in blood. After four hours, she regained consciousness.

The next day at 3 pm she was taken to Nepalgunj for treatment at Bheri Zonal Hospital. The doctor told her that her right hand was broken and a nerve in her left hand was cut. An operation on the hand had to be carried out. Her left hand had to be amputated during the surgery. Laxmi stayed at that hospital for treatment for about nine months. The treatment cost around 200,000 Rupees.

Due to the torture, she experienced pains in her legs and back of her body. She has difficulty walking during the winter season. As her hand had to be amputated, she is having trouble carrying out household chores normally.

These groups were reported to engage in coercive recruitment practices, subjecting villagers to physical violence, conducting intrusive searches of their homes, and engaging in sexual harassment of local women. The presence of these vigilante groups had a profound impact on the well-being and security of the villagers, contributing to an atmosphere of intimidation and distress within the affected communities.⁵⁹

⁵⁹ 'Nepal: Vigilante groups still pose threat to civilians', *Reliefweb* (27 October 2006) <<https://reliefweb.int/report/nepal/nepal-vigilante-groups-still-pose-threat-civilians>> accessed 28 May 2023.

CHAPTER IV

STATE'S OBLIGATIONS TO ENSURE EFFECTIVE REMEDIES FOR VICTIMS OF TORTURE

In 1991, Nepal adopted the UN Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhumane, or Degrading Treatment (CAT).

In a follow-up to the treaty obligations arising from these ratifications, Nepal enacted the Torture Compensation Act in 1996 to provide compensation to victims of torture. Specifically, the Act allowed victims to go to Court and claim compensation of up to 100,000 Nepali rupees (around 1,000 USD) for suffering torture at the hand of state officials. The Act also allowed discretionary powers to the Court to order 'departmental action,' i.e., administrative sanction against the perpetrators.

Additionally, the National Human Rights Commission Act (2012) also empowered the NHRC to investigate allegations of human rights violations, including torture, and recommend necessary action.

Between 1996-2006, AF documented 1,284 torture committed by both state and non-state actors. From 2001 to 2006, it assisted 151 victims in filing complaints under the TCA, seeking compensation for victims and departmental action against the perpetrators. However, out of 151 cases, only 41 got compensation, that too ranging from 5,000

NPR (38.14 USD) to 100,000 NPR (762.86 USD). Departmental action was ordered by the Court in 18 cases, but none of those recommendations were observed.

From the beginning, AF highlighted how the Torture Compensation Act failed to meet the requirements outlined in the CAT.⁶⁰ It, for instance, does not provide the possibility for criminal prosecution for those who have inflicted torture. The Act also fails to protect witnesses, making them vulnerable to intimidation and reprisals. Even at the most lenient interpretation of the law, torture is not defined in the Act, thereby leaving victims without a proper legal recourse and exposed to potential torture tactics without appropriate legal remedies.

If a case is filed, victims have to fulfill several conditions, and the Courts look into several factors to determine the compensation amount. These factors include 1) the physical and mental pain and hardship caused to the victim and its gravity, 2) the reduction of earning capacity due to the physical/mental harm, 3) the age of the victim and their family's liabilities in case they have suffered physical or mental damage that cannot be treated, 4) the estimated expenses of treatment following the incident of torture, 5) in case the victim of torture dies, the number of family members dependent on their income and minimum amount necessary for their livelihood, and 6) other proper and appropriate matters from the claim filed by the victim.⁶¹

⁶⁰ Advocacy Forum-Nepal, 'Torture in Nepal in 2019. The Need for New Policies and Legal Reform' (June 2020) <<https://www.advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf>> accessed 24 May 2023.

⁶¹ Advocacy Forum-Nepal, 'Torture in Nepal in 2019. The Need for New Policies and Legal Reform' (June 2020) <<https://www.advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf>> accessed 24 May

In a number of cases that AF represented, the victims were forced to wait several years before the cases were heard. Even when cases were heard, they faced many hurdles along the way, including receiving compensation of just 10,000 Nepali rupees (100 USD) after years of litigation. This compensation for torture and ill-treatment would not be enough for the victim even to cover their transportation expenses while attending Court and following up on their cases. Contrasting this reality with the rights enshrined for victims, such as obtaining a timely legal decision, recognition of the violation, and the right to demand a halt to ongoing violations, exposes the need for significant improvements in the system. Ensuring victims' access to effective remedies, fair compensation, and expeditious justice is essential to uphold their rights and address the severe impact of human rights violations.

Thus, legislation like the Torture Compensation Act does not substantively help victims pursue their cases in Court⁶² and ensure adequate reparations. The right to effective remedies entails the right of victims to obtain recognition of a violation(s), to the cessation of any continuing violation(s), and adequate reparation, including compensation, rehabilitation, restitution, satisfaction, and a guarantee of non-recurrence.

In 2015, the Constitution provided every person the right not to be tortured and made torture a punishable crime. In 2017 the Government enacted the Penal Code (which came into force in 2018), making

2023; Advocacy Forum-Nepal, 'Torture of Juveniles in Nepal. A Continuing Challenge' (June 2020) <<https://www.advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf>> accessed 24 May 2023.

⁶² Advocacy Forum-Nepal, 'Torture in Nepal in 2019. The Need for New Policies and Legal Reform' (June 2020) <<https://www.advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf>> accessed 24 May 2023.

torture a punishable crime, where the perpetrators could get a prison sentence of up to 5 years and a fine of up to fifty thousand rupees or both.⁶³

Since the enactment of the Penal Code, AF has assisted eight victims who attempted to file First Information Reports (FIRs) under the Penal Code provision. These victims have encountered numerous challenges, such as the reluctance exhibited by law enforcement and, in some cases, outright refusal to initiate investigations by filing FIRs into allegations of torture. Furthermore, the police are also found frequently abusing their authority by shielding officers allegedly responsible and intimidating victims and their relatives. The police authorities usually adopt a defensive and protective approach, treating investigations as mere formalities rather than conducting thorough inquiries. Even in cases where a FIR was registered, victims' families have been forced to withdraw their cases.⁶⁴

Although torture is considered to be a serious crime committed against the State, making it obligatory for the State to investigate and having the public prosecutor represent the victims, victims find themselves grappling with legal challenges, lacking adequate legal representation and awareness of their rights. In certain cases, public prosecutors have even declined to appear, leaving the victims without state representation. These challenges are further outlined in AF's report *Countering Impunity In Torture. Need for Independent Investigative Mechanism in Nepal* published in 2021.⁶⁵

⁶³ National Criminal Code 2017, s 167 (2).

⁶⁴ Advocacy Forum-Nepal, 'Countering Impunity In Torture. Need for Independent Investigative Mechanism in Nepal' (2021) 31 <<https://www.advocacyforum.org/downloads/pdf/publications/torture/countering-impunityin-torture.pdf>> accessed 28 May 2023.

⁶⁵ Advocacy Forum-Nepal, 'Countering Impunity In Torture. Need for Independent Investigative Mechanism in Nepal' (2021) 31 <<https://www.advocacyforum.org/downloads/pdf/publications/torture/countering-impunityin-torture.pdf>> accessed 28 May 2023.

To ensure effective remedies, Nepal must amend its laws and be explicit in the definitions of who is entitled to a remedy and who may bring their claim to Court. It should lift all legal, administrative, and procedural barriers to ensure investigation, train its law enforcement officials, and offer compensation and rehabilitation for the harm victims suffer. For example, the limitation of six months in reporting cases and the non-retroactive effect of the Penal Code prevents victims of torture from conflict from accessing any remedies offered by the Penal Code.

The right to remedies for torture victims is a fundamental aspect of international human rights law. According to Article 8 of the Universal Declaration of Human Rights, every right must be accompanied by the availability of an effective remedy. This principle is reiterated in various international human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR) in Article 2(3) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in Article 14. These provisions emphasize the importance of ensuring that victims of torture have access to adequate remedies to address the violations they have endured.

The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted with the consensus of all States by the UN General Assembly in 2005, and applicable to all violations including torture, states that “[t]he obligation to respect, ensure respect for and implement international human rights law and

www.advocacyforum.org/downloads/pdf/publications/torture/countering-impunityin-torture.pdf> accessed 28 May 2023.

international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to: (a) Take appropriate legislative and administrative and other appropriate measures to prevent violations; (b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law; (c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and (d) Provide effective remedies to victims, including reparation...”.⁶⁶ The 2022 US Country Conditions Report on Nepal highlights the credible reports provided by human rights organisations, shedding light on the occurrence of human rights abuses, including arbitrary detention, degrading treatment, and torture, attributed to the Government. Although the Government has initiated investigations into these cases, there is a notable absence of accountability for those responsible for such violations.⁶⁷ The perpetuation of torture and human rights abuses by the Government raises concerns regarding its commitment to upholding human rights standards, and, unfortunately, the existing laws do not effectively address and redress these systemic abuses.

⁶⁶ UNGA, ‘Resolution adopted by the General Assembly on 16 December 2005. 60/147. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, resolution adopted and proclaimed by General Assembly (21 March 2006) UN Doc A/RES/60/147.

⁶⁷ United States Department of State. Bureau of Democracy, Human Rights and Labor, ‘Nepal 2022 Human Rights Report’ (2022) <https://www.state.gov/wp-content/uploads/2023/03/415610_NEPAL-2022-HUMAN-RIGHTS-REPORT.pdf> accessed 14 June 2023.

The right to an effective remedy is, therefore, more than the State's obligation to incorporate an avenue for legal recourse in domestic legislation. It is also fundamental that victims have equal and effective access to justice, particularly to the judicial organs that have jurisdiction to rule and issue legally binding decisions on remedies and reparation.⁶⁸ In the context of Nepal, access to an effective remedy – or the lack thereof – is the thread that ties together every rights issue, whether they be conflict-era cases of torture or ongoing cases of torture.

⁶⁸ UNGA, 'Resolution adopted by the General Assembly on 16 December 2005. 60/147. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, resolution adopted and proclaimed by General Assembly (21 March 2006) UN Doc A/RES/60/147; International Commission of Jurists, 'The Right to a Remedy and Reparation for Gross Human Rights Violations. Practitioners Guide No. 2 (2018) <<https://www.icj.org/wp-content/uploads/2018/11/Universal-Right-to-a-Remedy-Publications-Reports-Practitioners-Guides-2018-ENG.pdf>> accessed 14 June 2023.

CHAPTER V

TORTURE VICTIMS BEFORE THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

Nepal has ratified the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocol allowing individual complaint procedures when remedies are denied at the national level. At least 28 victims had brought a communication before the Committee, of which 26 victims experienced torture, one victim suffered ill-treatment, and five victims suffered both torture and conflict-related sexual violence, including other gross human rights violations.⁶⁹ In all these cases, the Committee has found Nepal violated its treaty obligations and recommended that the Government of Nepal take a number of measures, not only to provide effective remedies for the victims concerned but also to prevent torture from being committed again more generally.

In one of the first cases, *Giri v Nepal*,⁷⁰ the victim was arrested, detained, and subjected to torture by RNA soldiers who believed he was a Maoist supporter. The victim was able to file a writ of

⁶⁹ Real Rights Now <<https://realrightsnow.org/en/>> accessed 10 June 2023.

⁷⁰ *Giri v Nepal* Communication No 1761/2008, UN Doc CCPR/C/101/D/1761/2008 (HRC, 24 March 2011).

habeas corpus in the Appellate Court with the help of AF lawyers, which resulted in his release from military detention after 13 months. Giri attempted to file a complaint of torture with the district police office, but the police refused to accept it, stating that this was not the appropriate agency.⁷¹ No effective remedies were available further for the breach of his human rights, which would result in the identification and punishment of those responsible.⁷²

The Government argued in its response to the Human Rights Committee that the recourse the victim had sought domestically was only for illegal detention, and therefore, the victim did not exhaust the appropriate legal remedies as he did not file the case under the Torture Compensation Act as he should have. Then, the State argued that the Committee should recognize that the complainant abused his rights by failing to go to local sources for remedies and instead went directly to the Human Rights Committee inappropriately.⁷³ The Committee noted, however, that the lower police districts were on notice of the allegations put forth by the victim and refused to properly investigate. The State tried to argue that it has taken measures to ensure individuals the rights guaranteed by the Covenant and adequate remedy. In siding with the victim, the Committee reasoned that compensation must be effective, adequate, and not be unduly delayed. Responding to the State's argument that the victim never filed his compensation claim on time, the Committee also reasoned that there was no possibility for the victim to file the complaint within the 35-day time limit, as it was impossible to do so while

⁷¹ *Giri v Nepal* Communication No 1761/2008, UN Doc CCPR/C/101/D/1761/2008 (HRC, 24 March 2011) para 2.13.

⁷² *Giri v Nepal* Communication No 1761/2008, UN Doc CCPR/C/101/D/1761/2008 (HRC, 24 March 2011) para 2.13.

⁷³ *Giri v Nepal* Communication No 1761/2008, UN Doc CCPR/C/101/D/1761/2008 (HRC, 24 March 2011) para 4.2.

still being detained incommunicado. The Committee also stated that the victim's detention of more than a year without any information being provided to his family violated Article 7⁷⁴ and Article 2⁷⁵ of the Covenant. The Committee also noted its past recommendations, including for compensation which had not been adhered to. The Committee called on the State to submit within 180 days information about the measures the State has taken to follow the guidelines set forth by the Committee.⁷⁶

⁷⁴ No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) (hereafter the ICCPR) 999 UNTS 171 (ICCPR), art 7.

⁷⁵ '(1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (2) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.' ICCPR, art 2.

⁷⁶ *Giri v Nepal* Communication No 1761/2008, UN Doc CCPR/C/101/D/1761/2008 (HRC, 24 March 2011) 10.

Similarly, in *Maharjan v Nepal*,⁷⁷ the victim argued that his rights were violated under Articles 7, 9,⁷⁸ and 10⁷⁹ of the Covenant. In his complaint, he detailed how he was sleeping alongside his family when RNA soldiers broke into their home and began interrogating him about his brother, who had connections with the Maoists. The victim was eventually arrested without proof of an arrest warrant of any kind. During his detention of 10 months, he was held in an

⁷⁷ *Maharjan v Nepal* Communication No 1863/2009, UN Doc CCPR/C/105/D/1863/2009 (HRC, 19 July 2012).

⁷⁸ '(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. (2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. (3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement. (4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. (5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. ICCPR, art 9.

⁷⁹ '(1) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. (2) (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons; (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. (3). The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.' ICCPR, art 10.

overcrowded, lice-infested cell, where he was only given the right to shower three times for the entirety of his detention. For most of his detention, he was forced to wear a blindfold or a hood and subjected to torture. Some of the torture included partial asphyxiation, being kicked in the chest multiple times, and being beaten on his back.⁸⁰ After his sister filed a writ of *habeas corpus* in the Supreme Court, the Court intervened and ordered his release from illegal detention. The victim suffered both physically and psychologically because of the torture that he endured in the barrack.

In its response to the Committee, the State argued that the 1990 Constitution and Torture Compensation Act would ensure compensation and appropriate remedy and noted that the victim did not exhaust these domestic remedies. They argued that the country had been internationally and nationally recognized for being able to provide a remedy to victims of torture, provided that they or a family member files a complaint in an appropriate amount of time. They also claim that the victim was released after a competent court issued an order and that no effort was made to seek a remedy.⁸¹ The victim argued that domestic remedies must be available and effective, and they should not pose a danger to the complainant. He also detailed that both the Constitution and Torture Compensation Act failed to provide effective remedies.

The Committee upheld Maharjan's view and noted that remedies must be both effective and available. In this case, the Committee found a remedy not to be available to Maharjan because his family didn't know about his whereabouts and thus could not have filed a complaint for

⁸⁰ *Maharjan v Nepal* Communication No 1863/2009, UN Doc CCPR/C/105/D/1863/2009 (HRC, 19 July 2012) para 2.4.

⁸¹ *Maharjan v Nepal* Communication No 1863/2009, UN Doc CCPR/C/105/D/1863/2009 (HRC, 19 July 2012) para 4.3.

him. The Committee also notes that while the Constitution prohibits torture and inhumane treatment of detainees, there was nothing in domestic laws that define these crimes or stipulate their penalties.⁸² The Committee, therefore, concluded that Maharjan could not get remedies from the National Court and concluded that the State is obligated to provide the victim and his family an effective remedy, which includes a “thorough and diligent” investigation into the torture the victim suffered, the prosecution of those involved in his torture, providing adequate compensation to the victim and his family and finally, revising legislation that would extend the 35-day statutory limitation on torture claims under the Torture Compensation Act.⁸³

The Committee has also recognized the pain, anguish, and suffering that families of enforced disappearances endure amounts to torture or ill-treatment and has recommended thorough and substantive investigations accompanied by accountability and compensation. For example, in *Tharu v Nepal*⁸⁴, the complaint detailed the eight young victims’ of enforced disappearances and failure to carry out any investigation. The Committee noted that the Optional Protocol requires the State to investigate allegations and, as such, requested Nepal to provide the Committee with the information available to them on the investigation and remedies that victims could avail themselves of. The State has yet to do so as of June 2023. The State also argued that the victim did not submit a petition as required under

⁸² *Maharjan v Nepal* Communication No 1863/2009, UN Doc CCPR/C/105/D/1863/2009 (HRC, 19 July 2012) para 7.3, 2.9 .

⁸³ *Maharjan v Nepal* Communication No 1863/2009, UN Doc CCPR/C/105/D/1863/2009 (HRC, 19 July 2012) para 9.

⁸⁴ *Tharu v Nepal* Communication No 2038/2011, UN Doc CCPR/C/114/D/2038/2011 (HRC, 3 July 2015).

the State Cases Act.⁸⁵ The complainant, on the other hand, argued that a writ of *habeas corpus* was the most appropriate remedy to pursue, yet failed to be effective. In its view, the Committee makes clear that any enforced disappearance is a violation of the law, regardless of the duration of the disappearance. In sum, the “act of causing the person to disappear and to be placed in secret detention outside any legal framework” signifies that the person is no longer entitled to international or domestic law, posing a serious threat to one’s liberty.⁸⁶

The Committee concluded that the State failed its duty to protect the victim and his relatives, as required by Article 6 of the Covenant.⁸⁷

⁸⁵ *Tharu v Nepal* Communication No 2038/2011, UN Doc CCPR/C/114/D/2038/2011 (HRC, 3 July 2015) para 4.2.; The Crimes that are enlisted under Schedule-1 requires the Government of Nepal to be the plaintiff in the cases stipulated. State Cases Act 1992.

⁸⁶ *Tharu v Nepal* Communication No 2038/2011, UN Doc CCPR/C/114/D/2038/2011 (HRC, 3 July 2015) para 5.

⁸⁷ ‘(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. (2) In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court. (3) When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.(4) Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases (5) Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women. (6)Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.’ ICCPR, art 6.

The Committee also found a violation of Article 7, outlawing enforced disappearances. Article 9, pertaining to the detention of the victim's relatives, and Article 16, which concerns the removal of a person from the protection of the law,⁸⁸ were violated. Additionally, Article 2, which mandates the State to provide an effective remedy, was not upheld. The Committee further recommended the Government submit information on the measures taken to implement the Committee's views. The Committee finally recommended Nepal give wide publicity to its Views and disseminate them in Nepali. More generally, it stated the State party to provide an effective remedy, including by: (a) conducting a thorough and effective investigation into the disappearance of their relatives and providing the authors with detailed information about the results of its investigation; (b) if their relatives are dead, locating their remains and handing them over to their families; (c) prosecuting, trying and punishing those responsible for the violations committed and making the results of such measures public; (d) ensuring that any necessary and adequate rehabilitation and treatment are provided to the authors; and (e) providing effective reparation, including adequate compensation and appropriate measures of satisfaction, for the violations suffered.⁸⁹ The State party must take steps to prevent future violations and ensure its legislation enables the criminal prosecution of individuals responsible for severe human rights abuses like torture, extrajudicial execution, and enforced disappearance.⁹⁰

⁸⁸ 'Everyone shall have the right to recognition everywhere as a person before the law.' ICCPR, art 16.

⁸⁹ *Tharu v Nepal* Communication No 2038/2011, UN Doc CCPR/C/114/D/2038/2011 (HRC, 3 July 2015) para 12.

⁹⁰ *Tharu v Nepal* Communication No 2038/2011, UN Doc CCPR/C/114/D/2038/2011 (HRC, 3 July 2015) para 12.

Sexual violence in detention was also a subject of the Committee's scrutiny. For example, in *Maya v Nepal*, the victim suffered rape at the hand of the Army lieutenant and three other soldiers (of Nepal Army) and suffered both physically and psychologically for a long time. When the victim was psychologically ready to call for an investigation into her case, the police refused to register her claim on the basis that she didn't file it within the 35-day statutory period.⁹¹ Worthy to note is that her abusers had warned her that if she did report the incident, they would kill her. For this reason, Purna Maya did not file a complaint for years after the incident. When she did try, the District Police Office of Kanchanpur refused. Challenging the refusal, Purna Maya petitioned the Supreme Court, demanding an order against the police to register the complaint and investigate the case. However, the Supreme Court also stated that victims did not file the complaint within 35 days, and the police's refusal to register the case coming after the statutory limitation expired was not a violation. Ultimately, the Court failed to provide her with minimal compensation and to establish criminal liability, as it did not have the power to do so.

In its response to the Human Rights Committee, the State argued that the victim should have filed a complaint before the Truth and Reconciliation Commission (TRC) to be eligible for compensation. It also argued that Purna Maya failed to exhaust domestic remedies available both in the criminal justice system as well as the transitional justice mechanism, which is the appropriate avenue for truth-seeking for crimes committed during the armed conflict.⁹² Purna Maya,

⁹¹ *Maya v Nepal* Communication No 2245/2013, UN Doc CCPR/C/119/D/2245/2013 (HRC, 17 March 2017) 2.9.

⁹² *Maya v Nepal* Communication No 2245/2013, UN Doc CCPR/C/119/D/2245/2013 (HRC, 17 March 2017) 2.9.

however, submitted that a complaint might not be transferred from the Supreme Court to the TRC. While recognizing that remedies had not been exhausted, the Committee agreed with Purna Maya and noted that Purna Maya filed multiple reports to initiate a criminal investigation, all of which were denied. Multiple avenues of redress were pursued to no avail. Therefore, she filed a compensation claim and filed a writ of *mandamus* before the Supreme Court. The Committee also highlighted

that exhausting avenues before non-judicial bodies is not necessary to meet the requirements of Article 5 (2) (b) of the Optional Protocol,⁹³ and concludes that the TRC Commission would not serve as an effective remedy for the author.⁹⁴

The Committee found that the victim stated her claim sufficiently and allowed her case to proceed. The Committee further found that the 35-day statutory period, given the abuse she suffered, was too short and found it “inconsistent with the gravity of the crime.”⁹⁵ It concluded that the State failed to adopt measures to uphold the victims’ rights, failed to investigate the allegations, and failed to provide protection for someone who was particularly vulnerable to torture and abuse. The Committee also noted that many of the allegations were uncontested. Underscoring the cultural stigma of sexual violence, the Committee recommended that the victim

⁹³ ‘The Committee shall not consider any communication from an individual unless it has ascertained that: The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.’ Optional Protocol, ICCPR, art 5 (2) (b).

⁹⁴ *Maya v Nepal* Communication No 2245/2013, UN Doc CCPR/C/119/D/2245/2013 (HRC, 17 March 2017) 11.4.

⁹⁵ *Maya v Nepal* Communication No 2245/2013, UN Doc CCPR/C/119/D/2245/2013 (HRC, 17 March 2017) 11.6.

is entitled to a remedy and compensation. It also called for the removal of obstacles that impede victims from successfully receiving compensation, particularly victims of sexual violence. It further recommended the State communicate the information about the measures taken to give effect to the Committee's views. Importantly, the Committee cited *Maharajan v Nepal*, in its decision and underscored that the Government has yet to fulfill its obligations from that decision, including criminalizing torture and repealing all laws that grant perpetrators impunity.⁹⁶

In *Nyaya v. Nepal*, a woman was mistaken for her elder sister, who joined the Maoist party and was sexually assaulted by a group of six to seven soldiers. She was taken to an army barracks in Teghari, Kailali where she was blindfolded and interrogated, and subjected to multiple forms of sexual violence, including rape and forced nudity. Nyaya was detained at the army barracks in Teghari from 2 to 11 April 2002. Then she was transferred back to the Bakimalika Battalion of the Armed Police Force in Banbehda, where she was again raped and subjected to other forms of sexual violence. Upon her return to her village, the effects of the abuse she endured never dissipated, both physically and psychologically. She suffered severe physical ailments, including her backbone, which left her at risk for paralysis. She also suffered from nightmares, suicidal thoughts, and serious societal ostracization due to the stigma attached to rape. Her husband, after finding out about the violation that she experienced, made her feel deeply humiliated, and she had to return to her maternal house.⁹⁷

⁹⁶ *Maya v Nepal* Communication No 2245/2013, UN Doc CCPR/C/119/D/2245/2013 (HRC, 17 March 2017) para 16, annex para 2.

⁹⁷ *Nyaya v Nepal* Communication No 2556/2015, UN Doc CCPR/C/125/D/2556/2015 (HRC, 18 March 2019) para 2.8.

The ostracization and humiliation that her husband and society place on the victim is not uncommon in Nepal. This particular complaint was filed in 2014, and the Committee ruled in 2015 that an effective remedy is obligated to be provided by the State party. In putting forth this ruling, the Committee argued that the State should take steps to ensure such abuses don't occur in the future and recommended that the State criminalize torture and provide appropriate sanctions, adapt the definition of rape and other sexual violence in accordance with international standards and guarantee that such cases give rise to a prompt and thorough investigation.⁹⁸ The State argued, as it had done in other cases, that the victim failed to exhaust domestic remedies. The victim argued that she did not consider her pending writ of mandamus to be an effective remedy, as the entire process has been riddled with delays, postponements, and lack of any answer on her case from respondents. The Committee argued similarly and noted that while it is true the victim did not exhaust all remedies, that the first two reports she filed were rejected due to the 35-day statutory limitation, that her claim for compensation was rejected, and that her writ of mandamus for the Supreme Court was still pending.⁹⁹ The Committee was, therefore, of the opinion that the victim was not offered an effective or any other available remedies other than

⁹⁸ *Nyaya v Nepal* Communication No 2556/2015, UN Doc CCPR/C/125/D/2556/2015 (HRC, 18 March 2019) para 9.

⁹⁹ On 11 April 2014, the author filed a writ of mandamus before the Supreme Court of Nepal, which was registered on the same date, requesting the non-application of the 35-day statute of limitations. On 16 November 2015, Nyaya submitted a comment on the State Party's response, indicating that the writ petition was still pending before the Supreme Court. The Committee noted that the mandamus petition filed in 2014 are unduly prolonged, particularly considering the gravity of the crimes alleged. *Nyaya v Nepal* Communication No 2556/2015, UN Doc CCPR/C/125/D/2556/2015 (HRC, 18 March 2019) para 2.14.

those she had already pursued, and the State's argument thus had no basis. It noted that the State was responsible for conducting a thorough investigation, prosecuting those responsible, providing details about the investigation to the victim, ensuring both medical and psychological treatment for the victim as needed free of charge, and providing adequate and effective compensation to her. The Committee also recommended that the State party disseminate its views and publish them along with a report on how the State has thus far implemented the Committee's suggestions.

The State tried to argue that the victim should have gone through the TJ mechanisms, noting that a complaint could have been filed under the TRC. The Committee maintains, however, that the TRC is not an effective remedy because it is "non-judicial" in nature. It also notes that TRC cannot serve to dispense with the criminal prosecution of serious human rights violations and would not constitute an effective remedy.¹⁰⁰

The jurisprudence that the Committee has developed so far requires Nepal to do the following in providing remedies to victims of torture from the conflict period:

- The Government of Nepal must ensure an establishment of laws in line with the framework set out by the Committee;
- An adequate legal framework must ensure the effective, impartial, and thorough investigation of torture-related crimes;
- Investigations must be transparency and the Government must keep the victim/victims' family informed;

¹⁰⁰ *Nyaya v Nepal* Communication No 2556/2015, UN Doc CCPR/C/125/D/2556/2015 (HRC, 18 March 2019) para 6.5.

- Cases or complaints that become entangled in court administration be considered under a feasible but appropriate time limit to ensure victims and their families do not wait for years before receiving closure/conclusive answers;
- Compensation awarded to victims and their families should be appropriate in relation to the crimes committed and in accordance with international human rights standards;
- Investigations initiated by the police department should be carried out to their fullest capacity. If investigations are not being pursued, adequate reason must be given, and the complainant should be given other avenues to seek redress;
- While seeking justice before the TRC should not be discouraged, it should not replace traditional avenues of justice-seeking;
- Priorities must be made towards bolstering a judicial infrastructure which includes following up criminal complaints with thorough investigations and ensuring adequate and effective remedies;
- When evaluating the eligibility of a criminal complaint regarding sexual violence, the Government must factor in that victims of sexual violence often are ostracized and face humiliation from the community and therefore are reluctant to file such complaints, to begin with;
- The Government should also provide legally binding sanctions on sex crimes and solidify its definition of rape to ensure that all victims are given the opportunity for legal remedy;
- The Government must ensure victims of gross human rights violations have an effective remedy.

Advocacy Forum-Nepal is committed to working towards the implementation of these recommendations.

CHAPTER VI

THE TRC ACT, THE BILL AND THE ISSUE
OF TORTUREINSTITUTIONAL DISCRIMINATION AGAINST
VICTIMS OF TORTURE

Although the Comprehensive Peace Accord (CPA) provided a broad definition of victim profiles and categorizations,¹⁰¹ victims of torture and sexual violence were excluded by the Government when it rolled out its interim relief programs. In response to the protests and concerns by victims and civil society on the initial *ad-hoc* distribution of financial relief support to victims of conflict, in June 2007, a Special Task Force was established to collect data on individuals affected by the conflict. The work of the task force led to the adoption of the Standards for Economic Assistance and Relief for Conflict Victims in 2008, the first guideline that regulated the interim relief program in Nepal.¹⁰²

¹⁰¹ CPA 2006, clause 7.1.3.

¹⁰² Advocacy Forum-Nepal, 'Discrimination and Irregularities. The Painful Tale of Interim Relief in Nepal' (June 2010) 2 < https://www.advocacyforum.org/downloads/pdf/publications/Discriminations_and_Irregularities_A_painful_tale_of_Interim_Relief_in_Nepal.pdf > accessed 28 May 2023.

The guideline served as the basis for the “interim relief” scheme, which aimed to assist various categories of victims. The guidelines provided the basis of the interim relief program for two years. Unfortunately, the “interim relief” to “conflict victims” limited the provision of relief to the families of the dead, disappeared, injured, disabled, and the ones whose property was lost during the conflict.¹⁰³ Victims of torture and sexual violence were unjustly excluded from these categories, thereby denying them access to crucial relief measures. Although it was agreed that the guidelines would be updated for those victims who were still in the process of seeking relief after the two years had elapsed, no new guidelines were put in place, leaving many victims without proper support and assistance. Despite receiving hundreds of cases, the National Human Rights Commission (NHRC) recommended investigation, prosecution, and compensation in only 87 cases.¹⁰⁴ This inadequate response highlights the systemic failure to address the needs of torture victims and provide them with the justice and support they deserve.

TRUTH AND RECONCILIATION ACT

In 2014, the Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation (TRC Act) was passed by the parliament. This Act aimed to address and investigate cases of enforced disappearances and other gross violations of human rights that occurred during the armed conflict. The Act in section 2(j) defined “gross violations of human rights” to include various acts such as

¹⁰³ Directives to Provide Economic Assistance to the Families of the Deceased 2009, s 4 (c).

¹⁰⁴ National Human Rights Commission, *Twenty Years of the Commission’s Recommendations and the State of Implementation* (15 October 2020).

murder, abduction, taking of hostages, enforced disappearance, causing mutilation or disability, physical or mental torture, rape and sexual violence, forceful displacement, which were specifically directed against unarmed individuals or civilian populations during armed conflicts. Though the Act included torture victims into the category of gross human rights violations, institutional discrimination against the victim of torture persisted.

The Act made provision for amnesties to be granted for gross human rights violations, including torture¹⁰⁵, and provided the possibility of mediation between victims and perpetrators, even in the cases of torture and rape,¹⁰⁶ which was deeply problematic and was the subject of numerous criticisms.

The Constitution of Nepal 2015 has recognized the right to compensation for victims whose rights have been violated.¹⁰⁷ Interim relief for conflict victims, although not available for victims of torture, does not meet the requirement of the State duty to provide compensation and reparation nor offer even limited relief to victims.

Although the mandates of the two commissions set up under the Act in 2015, i.e. the Commission of Enforced Disappeared Persons and the Truth and Reconciliation Commissions, were tasked with providing reparation to the victim of gross human rights violations,¹⁰⁸ including torture, they could not deliver on their mandates. Many

¹⁰⁵ Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act 2014, s 26.

¹⁰⁶ Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act 2014, s 13 (1) (c).

¹⁰⁷ Constitution of Nepal 2015, art 21.

¹⁰⁸ Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act 2014, s 23.

victims of torture are yet to receive justice, compensation, relief, reparation, or restitution in any manner.

THE TRANSITIONAL JUSTICE BILL

On 19 March 2023, the Government of Nepal tabled a Bill to amend the TRC Act. However, the Bill fails to adequately address the concerns of victims of torture. The following are some of the concerns that persist in the Bill. Without addressing these concerns, the TJ process will continue to fail to address the justice and reparative rights and needs of victims.

CLASSIFICATION OF CRIME

First, the current definition of a “serious violation” in the TRC Bill excludes torture that may amount to gross violations of human rights, war crimes, and crimes against humanity requiring investigation and prosecution under international law.

The Bill, in its prelude in Section 2(4), classifies human rights violations into two categories: (i) serious violations of human rights and (ii) other violations of human rights. The violations of human rights include: murder, sexual violence, physical or mental torture, abduction and hostage-taking, illegal detention, beating, maiming and causing physical disability, forced displacement, vandalism, arson of private property, or other inhumane acts against human rights and humanitarian law. The serious violations of human rights include: murder with cruelty or torture, rape, torture (cruel and inhuman treatment), and enforced disappearance committed in a targeted or planned manner against an unarmed individual or community.

This categorization of violations creates a situation where victims of torture could be deprived of effective remedies as it poses several legal issues. Firstly, human rights violations that are either serious or other only come under the jurisdiction of the TJ mechanisms if they are committed in a “*targeted or planned manner*” and “*against unarmed individual or community*.”¹⁰⁹ Use of the qualifier “targeted or planned manner” excludes the persecution and - worse - any consideration of any kind of torture committed against an individual in a specific manner. This qualifier further sets a higher standard of proof for prosecutors requiring not only proof of a violation falling under one of the four criteria but also evidence that it was carried out in a deliberate and targeted manner against unarmed individuals or communities. If there is an absence of evidence to prove that it was committed in a targeted or planned manner and against unarmed individuals or communities, it could lead to perpetrators escaping punishment and accountability.

Furthermore, the use of the qualifier against “unarmed individuals or communities” would also create absolute immunity for the torture committed against the military and the Maoist combatants who had taken up arms. International humanitarian laws prevent torture even to those who take up arms.

POSSIBILITY OF MEDIATION

The TRC Bill also has provisions to facilitate mediation/reconciliation between the victims and perpetrators. It proposes an amendment to section 22 (1) of the TRC Act stating that “If the perpetrator or

¹⁰⁹ A Bill Prepared for the Amendment of the Investigation of Enforced Disappeared Persons, Truth and Reconciliation Commission Act 2014, number 2 (4) (j).

victim submits an application to the Commission for reconciliation, the Commission may cause, on the free consent of the victim, reconciliation between the victim and perpetrator of human rights violation except in the case of serious violation of human rights.”¹¹⁰ Though this provision looks a step up from the provision in the Act, which suggested reconciliation even in cases of gross human rights violations, which created a premise for reconciliation and mediation for violations such as physical or mental torture, abduction, and hostage-taking, illegal detention, murder, sexual offence raises significant concerns. Seeking reconciliation in serious cases disregards the gravity of the offence committed and undermines the pursuit of justice.

STATUTORY LIMITATION IN THE EXISTING LAW

The Bill provides that the Special Court will impose sanctions on those found guilty as per ‘existing law.’¹¹¹ However, that possibility does not exist unless the existing laws are amended, or some provisions are included in the TJ Bill. Although the Bill does not specify which specific laws, it seems to point toward the Penal Code 2017.

¹¹⁰ “if the perpetrator or victim makes an application to the Commission for reconciliation, the Commission may bring about mutual reconciliation between the perpetrator and victims”.

¹¹¹ “Notwithstanding whatever is written in the prevailing law, the Special Court must determine the sentence with a reduction in the sentence as provided for in the prevailing law to the person involved in the act of serious violation of human rights, taking into account the circumstances under which the incident happened, reasons and principles of transitional justice.” A Bill Prepared for the Amendment of the Investigation of Enforced Disappeared Persons, Truth and Reconciliation Commission Act 2014, number 19.

The Penal Code criminalized torture and enforced disappearances. Section 167 states:

“No authority who is competent under the law in force to investigate or prosecute any offence, implement the law, take anyone into control, or hold anyone in custody or detention in accordance with the law shall subject, or cause to be subjected, anyone to physical or mental torture or to cruel, brutal, inhuman or degrading treatment.”

However, section 7 prohibits the retroactive effect of the Penal Code. Similarly, section 170(2) outlines the statute of limitations with regard to filing complaints of torture. It states that victims and their families have six months from the date of the torture or the victim’s release from detention. Thus, unless the provision relating to the retroactive effect of the law and statutory limitation is amended, no possibility exists for prosecuting a perpetrator involved in torture and ill-treatment from the period before the Penal Code came into force (i.e., 2018), thereby excluding all conflict-related cases.

POSSIBLE DE FACTO IMMUNITY FOR TORTURE COMMITTED BY THE NON-STATE ACTORS

During the conflict, both the State’s security forces and Maoists inflicted severe pain and suffering on people under their custody. OHCHR reports show over 2,500 cases of such alleged ill-treatment over the decade-long insurgency.¹¹² As the TRC Bill stands, using

¹¹² Office of the United Nations High Commissioner for Human Rights (OHCHR), ‘Nepal Conflict Report. An Analysis of Conflict Related Violations of International Human Rights Law and International Humanitarian Law between February 1996 and 2 November 2006’ (October 2012) <<https://www.ohchr.org/sites/default/files/Documents/Countries/NP/>

the Penal Code would mean limiting torture only to acts committed by state authorities, which will dismiss the severe pain and suffering committed by non-state actors, providing *de facto* amnesty for Maoists responsible for torture as the definition of torture in the Penal Code excludes torture committed by non-state actors like Maoists during the conflict.

Section 167 (see above) further explains that the intentional inflicting of physical or mental pain or suffering for the following purpose shall be considered to constitute an act of torture or cruel, brutal, inhuman or degrading treatment or punishment against/to such person:

- a) to get information on any matter,
- b) to extort a confession of any offence,
- c) to punish for any act,
- d) to show fear/intimidation or coercion, or
- e) to do any other act in contravention of the law.

Thus, it is important that torture and pain and suffering of comparable gravity committed by both sides of the conflict be included in the jurisdiction of the Special Court.

INVESTIGATION BY THE TRC AND QUALITY OF EVIDENCE

The Bill proposes that serious violations will be prosecuted based on the Commission's investigation. The prosecutor will have up to a year to decide whether to proceed with prosecution. However, this duration poses a problem as the mandate of the Commission itself

OHCHR_ExecSumm_Nepal_Conflict_report2012.pdf> accessed 25 May 2023.

is only for two years. No possibility of any prosecution decisions exists beyond two years. Another challenge is that the Bill does not envision a special investigation unit within the Commission or the prosecutor's office. This lack of specialized resources and expertise may hinder the effectiveness of the investigation and the quality of evidence collected.

These loopholes in the Bill relating to the TJ mechanisms can create problems, potentially restricting justice for the victims. These limitations can also lead to the exclusion of torture victims from the entire process, thereby hindering their chances of obtaining justice and redress. It can further perpetuate impunity for perpetrators and deny victims their right to truth, justice, and reparations. At the time of this report, the sub-committee was still discussing the Bill. It is crucial for the sub-committee formed to amend the TRC Bill to address these limitations.

Furthermore, the Bill states that the sentencing for these crimes would be "as per the existing law," whereas no such law existed to prosecute those involved in serious violations, including torture.

CONCLUSIONS AND RECOMMENDATIONS

Victims of torture and sexual violence from the conflict period have waited far too long for truth, justice and reparation. The TJ process should be a response to address atrocities they suffered but has been fraught with numerous challenges so far. Beginning with the Government's interim relief scheme, which exclusively centered on the distribution of economic assistance, it fell short of expectations. The distribution of economic assistance lacked uniformity and consistency, giving rise to concerns about its effectiveness. The victims of torture, sexual and gender-based violence, and illegal detention found themselves excluded from this scheme, leaving them without avenues for redress.

The absence of redress and the exhaustion of domestic remedies within Nepal continue to compel victims of torture to explore remedies at the international level. AF has already represented 15 torture victims before the UN Human Rights Committee, submitting cases under the Optional Protocol to the ICCPR. In nine of these cases, the Committee identified clear violations and called upon the State of Nepal to initiate criminal investigations, provide compensation to the victims, and implement preventive measures against future

violations. At the time of writing, the Government has failed also to implement these recommendations of the Committee.

The entry into force of the Penal Code in 2018, criminalizing torture, had offered some hope but a six-month statutory limitation and prevention of retroactive application creates legal obstacles for conflict-era survivors seeking legal remedies under the Penal Code.

The established TJ mechanisms, tasked with facilitating a credible TJ process, have been marred with political interference and a lack of independence, compromising their integrity. The victims of conflict-era torture have experienced a formidable uphill battle as the existing TJ mechanisms, proved to be dysfunctional and incapable to offer them a viable avenue to justice. To them, their right to an effective remedy was elusive and unattainable.

Coming to the present day, the Government once again introduced a new TRC Bill that reveals several notable shortcomings. The existing definition of “serious violations” in the Bill excludes certain forms of torture that amount to gross violations of human rights, war crimes, and crimes against humanity. This categorization deprives torture victims of effective remedies and imposes a higher burden of proof for prosecution, potentially enabling perpetrators to evade punishment. Furthermore, the provisions for mediation and reconciliation between victims and perpetrators, even in cases of physical or mental torture, abduction, hostage-taking, illegal detention, murder, and sexual offences, undermine the gravity of the crimes committed. With more emphasis on State actors and overlooking the severe pain and suffering inflicted by non-state actors, the Bill aims to afford them unwarranted impunity.

In a similar vein, the Bill’s implicit alternative to the Penal Code as the bedrock for establishing the statute of limitations introduces

substantial impediments to the effective prosecution of those responsible for acts of torture and ill-treatment during the conflict era. At the time of writing, the Commission's restricted mandate and the dearth of specialized resources and investigative expertise present significant challenges to securing justice for the victims of torture. From the lens of torture victims, it is evident that the current Bill remains insufficient in addressing their legitimate concerns regarding effective remedies.

In light of the above, AF makes the following recommendations:

RECOMMENDATIONS

- The parliamentary hearing committee and the sub-committee responsible for amending the TRC Bill must thoroughly scrutinize the identified inadequacies in the proposed Bill. The preliminary analysis and recommendation provided by victims and CSOs should serve as the basis for their scrutiny;
- The government must also prioritize the amendment of the TRC Act and the establishment of effective TJ mechanisms following the Supreme Court's ruling and international human rights standards. Meaningful consultations with victims and civil society should guide the amendment process;
- The Government of Nepal must establish a robust and independent legal and institutional framework to ensure independent, impartial, and effective investigations into cases of torture during the conflict period;

- The NHRC should maintain a comprehensive record of the identities of perpetrators involved in human rights violations, including torture, and publish their names;
- The NHRC should actively monitor the implementation of the recommendations it makes in torture-related cases;
- The Government of Nepal should promptly implement the recommendations put forth by the UN Human Rights Committee.

ANNEX - 1

DISTRICT WISE LIST OF TORTURE CASE COMMITTED BY DIFFERENT ACTORS

District	Actors- Police	Actors- RNA	Actors- Maoist	Actors- Others	Actors- APF	Actors- Vigilante	Total Number of Torture cases
Bhojpur			1				1
Dhankuta			2				2
Ilam		2					2
Jhapa	1	1	7	1			10
Khotang		1					1
Morang	38	4	3	1			46
Okhaldhunga	1						1
Panchthar		3					3
Sankhuwasabha							0
Solukhumbu		1					1
Sunsari	3	1	1				5
Taplejung		2					2
Terhathum	1						1
Udayapur	13	21	15	1			50

District	Actors- Police	Actors- RNA	Actors- Maoist	Actors- Others	Actors- APF	Actors- Vigilante	Total Number of Torture cases
Bara		1					1
Dhanusa	3		5	1			9
Mahottari	1	1					2
Parsa	1						1
Rautahat							0
Saptari	1	2	12				15
Sarlahi							0
Siraha		4	7	1			12
Bhaktapur		5					5
Chitwan	1	1	1				3
Dhading		3	1	1			5
Dolakha	7	20	30				57
Kathmandu	416	40	10	8	2		476
Kavrepalanchok	1	1			1		3
Lalitpur	23	15					38
Makwanpur		2				1	3

District	Actors- Police	Actors- RNA	Actors- Maoist	Actors- Others	Actors- APF	Actors- Vigilante	Total Number of Torture cases
Nuwakot	1		1				2
Ramechhap	4	12	6				22
Rasuwa							0
Sindhuli							0
Sindhupalchok			1	1			2
Baglung	4	7	3				14
Gorkha	1	1					2
Kaski	76	31	2	6	2		117
Lamjung	1	4	4				9
Manang							0
Mustang							0
Myagdi		1					1
Nawalparasi	1	2	1			1	5
Parbat		1	6				7
Syangja		3			1		4
Tanahun			1				1

District	Actors- Police	Actors- RNA	Actors- Maoist	Actors- Others	Actors- APF	Actors- Vigilante	Total Number of Torture cases
Arghakhanchi		1					1
Banke	27	39	20	5	3		94
Bardiya	4	21	5	7	2	1	40
Dang		2	2				4
Gulmi		2	1				3
Kapilvastu	4	17	11		1	5	38
Palpa							0
Pyuthan							0
Rolpa		1					1
Rupandehi	6	12	7			1	26
Rukum		4					4
Dailekh		7	3	1			11
Dolpa							0
Humla							0
Jajarkot							0
Jumla		2	1				3

District	Actors- Police	Actors- RNA	Actors- Maoist	Actors- Others	Actors- APF	Actors- Vigilante	Total Number of Torture cases
Kalikot	1	1					2
Mugu		1					1
Salyan		3	1		1		5
Surkhet	4	22	22	2	1		51
Achham							0
Baitadi			1				1
Bajhang		2					2
Bajura		1	1				2
Dadeldhura							0
Darchula		5	5				10
Doti							0
Kailali	1	2					3
Kanchanpur	16	19	3	3			41
Total Torture Cases	662	357	203	39	14	9	1284

This report, entitled 'Torture in the Context of Transitional Justice in Nepal' by Advocacy Forum-Nepal (AF), examines the lack of government response to the needs and demands of torture victims in Nepal. The report emphasizes that despite several years passing since the conflict, victims of torture are still awaiting truth, justice and reparation. The interim relief program established by the Government in 2008 excluded victims of torture and sexual violence, who are the most in need of support. Therefore, AF strongly urges the Government, parliamentarians, and all relevant actors to amend the TJ Bill before its passage, ensuring that victims receive the effective remedies they are entitled to under the Constitution and Nepal's treaty obligations.

AF remains committed to raising awareness of these cases, advocating for justice, and striving for a future where victims can receive the justice they deserve.



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