

*This manuscript was received 13 April 2004, i.e. before the latest development in the government in Nepal and the subsequently changes in the democratic constitution.*

## Nepal make torture a crime

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By ratifying the UN Convention Against Torture, Nepal is obliged to submit progress reports periodically to the UN Committee Against Torture, constituted under Article 17 of the UN Convention Against Torture.

All acts of torture are to be made "punishable by appropriate penalties".

Nepal's initial report to the UN Committee Against Torture dates from 30 September 1993. In April 1994 Nepal appeared for the first time before the UN Committee Against Torture, the international body of experts monitoring the implementation of the UN Convention Against Torture. The government's initial two-page report of September 1993 on the implementation of the Committee was "scant on detail." It was supplemented at the time of the meeting by a six-page statement and a ten-page background note. The Committee recommended that a supplementary report be submitted within twelve months. The second periodic report was due on 12 June 1996 and the third was due on 12 June 2000. Neither of these has been submitted as of yet.

The recognition of the rights against torture is also a feature of the new 1990 Constitution. The Constitution prohibits the practice of torture. According to Article 14, Section 4, it states: "no person who is detained during investigation or trial or for any other reason shall be subject to physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment. Any person so treated shall be compensated in a manner as determined by law."

Unfortunately, torture is a common phenomenon in Nepal.

In Nepal torture is exercised through different physical and psychological methods used separately or in combination. Generally, public officials use systematic beating, which, also called falanga, is the most popular method in Nepal. In addition, electrical shock, burning, chepawa, and suffocation are commonly applied as tools of torture.

Other forms of torture specifically applied to destroy the victim psychologically include threats and deprivation techniques: social deprivation (isolation, confiscation of personal belongings), sensory deprivation (prolonged blindfolding, prolonged isolation in a small, dark and silent room), deprivation of basic needs (deprivation of food, water, toilet privileges and sleep) (Tables 1 and 2).

During the Maoists insurgency, the

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Maoists were responsible for several incidents of physical and psychological assaults. Since the UN Convention Against Torture limits the definition of torture to covering severe physical and psychological suffering inflicted only by public officials or those working in official capacities, debate continues on whether or not the atrocities, including the infliction of severe physical and psychological suffering, committed by the Maoists, can be defined as torture.

The 1996 Torture Compensation Act has defined the term “torture” as physical or mental torture inflicted on a person who is in detention for investigation or waiting for any other reason, and this term includes cruel, inhuman or degrading treatment that person is subjected to.

The government has also failed in its duty under Articles 2 and 10 of the UN

Convention Against Torture to take “effective legislative, administrative, judicial or other measures to prevent acts of torture” and “ensure education and information regarding the prohibition of torture are fully included in the training of law enforcement personnel, medical personnel, public officials ...”

Civil societies are particularly unaware of the provisions of the 1996 Torture Compensation Act, which states: the concerned officer, at the time of detention and release of any person shall have the person’s physical condition examined, as far as possible by a doctor, if not available by himself, and shall keep and maintain records thereof. One copy of the report concerning the examination of the physical or mental condition shall be submitted to the concerned district court.

Year	Male	Female	Unidentified	Juveniles	Total
1996	295	22	72	3	392
1997	877	68	623	N.A.	1568
1998	1665	417	583	N.A.	2665
1999	1037	102	–	N.A.	1139
2000	934	101	–	N.A.	1035
2001	2017	178	–	N.A.	2195
2002	2893	252	285	N.A.	3430

N.A.: Not available

Source: National Human Rights Commission. Human rights in Nepal: a status report 2003.

**Table 1.** People arrested/tortured by state authorities.

Perpetrator	1998	1999	2000	2001	2002
Police	260	247	714	335	678
Army	–	101	26	5	201
Maoist	–	32	23	37	180
Prison guard	5	7	2	3	31
Forest guard	1	8	55	20	9
Others*	14	12	61	12	192
Total	277	407	881	412	1291

\*) 2002 figures under “others” include the number of victims who were tortured by more than one party: police, army and Maoist).

Source: National Human Rights Commission. Human rights in Nepal: a status report 2003

**Table 2.** Categorise of perpetrators as reported by the torture survivors.

Unfortunately, this provision is not adhered to. The police do not request doctors to examine prisoners at the time they are admitted into custody; judges do not ask for copies of the medical report when prisoners are produced before them. If this provision were to be fully implemented, it would serve as a significant measure to prevent torture from occurring, and would also serve as a significant piece of evidence in the event, prisoners later made allegations of torture during their trial or fielded complaints under the Torture Compensation Act.

Article 4 of the UN Convention Against Torture requires state parties to make torture an offence under criminal law, punishable by “appropriate penalties, which take into account their grave nature.” However, under Nepalese law at present, torture is not defined as a special criminal offence. On occasion, Nepali government officials have commented that because the Treaty Act of 1990 provides that the provisions of international treaties prevail even if they contradict the provisions of national law, to the extent of such contradiction, the UN Convention Against Torture provisions are fully in force in Nepal.

The Torture Compensation Act enables victims of torture to obtain compensation of up to 100,000 Nepalese rupee. According to section 8 of the Torture Compensation Act, this amount is supposed to include any loss of earnings or, in the event of death due to torture, the expenses required for the livelihood of the dependents of the victim. It is clear that this ceiling is too low. The responsibility for paying the compensation should be shared by those involved in the crime. It should not rest with the government alone.

### Conclusions

Hope for eradication of torture was highly expected when democracy was restored in

Nepal in 1990. Several leading members of the political parties had been victims of torture under the “Phanchayat” system and had pledged their commitment to uphold human rights when they came to power in 1990. There are many factors that have contributed to the Constitution regarding torture. We know that our Constitution abolished death penalties and also provided rights to criminal justice. Nepal also has a tradition of torture and humiliation of criminals by police and local authorities.

Despite the political changes over the past years and the general prohibition of torture in the 1990 Constitution, torture has so far not been defined as a crime and it is still widely perceived as acceptable. So we can say that implementation and practice of the Constitution is very poor. Nepal ratified the UN Convention Against Torture on May 14, 1991. It entered no reservations to the treaty. However, many provisions of the Convention still wait for implementation. □