

Torture & ill-treatment in Nepal

Introduction

Torture, ill-treatment, extrajudicial killings, and enforced disappearances occurred systematically during Nepal's civil war, which ended in 2006. This left large parts of the population traumatised and marginalised and without any perspective of justice or reparation for the wrongs done to them.

Since then, torture has continued in the criminal justice context and remains one of the most frequent human rights violations in Nepal. Torture disproportionately targets the most vulnerable members of society, which means that it not only causes physical and psychological trauma but also large scale marginalisation socio-economic consequences for victims, their families and communities.

The Government has taken a number of initiatives to prevent torture and provide reparation to those that have already been victimised. However, so far most have fallen short of international standards in their design and seen very limited implementation in practice.

The report focuses on three major issues in the fight against torture, ill-treatment and related violations in Nepal and proposes forward looking recommendations that the authors believe can significantly support our national work to better protect against and provide reparation for torture.

1. Torture and ill-treatment
2. Detention conditions
3. Transitional Justice

The information in this report is collected and documented by social workers, lawyers, and health professionals, and advocates at Transcultural Psychosocial Organization (TPO) Nepal, International Alert and the Forum for Women, Law and Development (FWLD). Most of this information is compiled and analysed in TPO Nepal's Anti-Torture Database in order to make sure that the analysis and recommendations we propose are evidence based.

1. Criminalisation of torture

Past UPR recommendations

In the previous cycle, Nepal accepted recommendations to criminalize torture and punish perpetrators (121.3; 121.4), effectively investigate allegations of torture (121.3; 121.26) to provide redress and reparations to victims (121.3), and to prevent torture (122.26).

Current state of Implementation

In Nepal, torture is still frequently used as a tool for collecting evidence in criminal investigations, suppressing dissent in society and ostensibly to maintain social order. Perpetrators of torture are mostly law enforcement and military personnel and whereas torture mostly takes place in places of detention, there are increasing reports of torture occurring in unofficial places of detention, including in vehicles on the road or in the victim's home.

TPO Nepal's data shows that most torture victims belong to vulnerable and marginalised populations and that the severe physical and psychological torture trauma causes further stigmatisation and vulnerability. Torture is not only a human rights problem but also a social and public health problem. Unfortunately, the Government has not put in place any rehabilitation programme for torture victims and the regular mental health services are not accessible to large parts of the population. According to studies, around 90% of persons with mental health problems in Nepal have not received proper treatment in Nepal.

In 1996, Nepal adopted the Torture Compensation Act and the 2015 Constitution includes a prohibition against torture. Unfortunately, the Torture Compensation Act does not provide a framework for investigating and prosecuting perpetrators and the system for victims to seek reparation does not comply with international standards. It is particularly concerning that there is a 35-day deadline for filing complaints, compensation is the only form of reparation being offered and the maximum amount is 100,000 Rupees (approximately 850USD).

In 2014, a new Anti-Torture Bill was introduced in Parliament and at the time of writing it is still not adopted. While the new bill addresses some of the protection gaps, there are still significant short-

comings, which should be addressed before its final adoption.

Recommendations

A. Ensure that the new Anti-Torture Act complies fully with the international standards in the UN Convention against Torture including by providing for all five forms of reparation.

B. Establish an effective and independent mechanism to investigate all allegations of torture and ill-treatment.

C. Ensure that all victims of torture have access to holistic rehabilitation services.

2. Detention conditions

Previous UPR recommendations:

In the previous UPR cycle, Nepal:

- Accepted recommendations to ensure the safety of prisoners (121.23) and Implement special detention and internment centres for boys and girls (122.66)
- noted recommendations to ratify and accede to the Optional Protocol to the Convention against Torture (123.3; 123.4; 123.5; 123.6)

Current state of Implementation

In Nepal, prison and detention centre conditions, especially for those for pretrial detention, are poor and do not meet international standards. The Office of the Attorney General reported in its survey of 31 prisons, that facilities designed to hold 4,308 inmates held over 7,900 convicted prisoners. Due to a lack of adequate juvenile detention facilities, authorities sometimes incarcerated pretrial detainee children with adults.

Most detainees have very limited access to health care. The Office of the Attorney General reported that prisoners and detainees in the 31 detention centres

it monitored had been deprived of regular medical check-up and treatment. This lack of access to care extends to detainees with serious health conditions.

In general conditions in most facilities are very concerning. Most facilities lack separate spaces for women, children, and persons with disabilities. Most facilities are poorly lit, ventilated, heated and detainees sleep on the floor due to lack of beds and only have access to unfiltered and dirty water and inadequate food.

Prisoners and detainees are generally allowed visits by the Office of the Attorney General, the National Human Rights Commission, the National Women Commission and the National Dalit Commission as well as by their lawyers. Civil society organizations, however, are often prevented from meeting with detainees or accessing detention facilities. This access is crucial to conduct human rights monitoring and to provide detainees with the basic services that the government is failing to provide.

The lack of transparency and monitoring of places of detention is one of the main reasons why improvements to the living conditions are not prioritised by the Government. Unfortunately, the Government has not ratified the Optional Protocol to the Convention against Torture (OPCAT) and civil society organisations are not allowed to conduct any meaningful or systematic monitoring of places of detention.

Recommendations:

A. Ratify the Optional Protocol to the Convention against Torture (OPCAT)

B. Upgrade infrastructure of prisons and detention centres as per international standards and enhance capacity of prison and detention centres staff on victims' rights and provision of psychosocial support.

C. Develop and implement gender sensitive approaches to address the special needs of female, male and LGBTIQ prisoners.

D. Ensure that civil society organizations and lawyers have unhindered access to monitor places of detention and provide support to detainees.

E. Ensure that the National Women Commission, National Dalit Commission and the National Human Rights Commission work together with civil society to implement and adopt relevant anti-torture policies in line with international standards.

3. Transitional justice

Previous UPR recommendations:

During the previous cycle, Nepal accepted recommendations to ensure that the TRC and CIEPD effectively function in accordance with international standards (121.28; 122.5; 122.61; 122.64; 123.28) implement the Supreme Court decision of 26 February 2015 (122.4; and to ensure the effective participation of women (122.65).

Current state of Implementation

Nepal underwent a gruelling civil war from 1996 to 2006, which saw 13,000 were killed and 1,300 disappeared while torture, ill-treatment, extrajudicial killings, sexual violence, long-term arbitrary detention and enforced disappearances were widespread and systematic. The war officially ended in November 2006 when the government and the CPN (M) signed a Comprehensive Peace Agreement, which called for a transitional justice process to address the human rights violations committed during the conflict.

Two transitional justice mechanisms were formed in 2015 - The Truth and Reconciliation Commission (TRC) and the Commission on Investigation of Disappeared Persons (CIEPD) with a mandate of two years, which has already been extended three times. The Commissions have received more than 60,000 complaints but so far has failed to effectively address the complaints and publicise their findings. This means that victims have now waited more than 14 years for recognition and reparation for terrible violations they have suffered.

In addition to the severe delays, the Commissions have a number of concerning shortcomings in design and execution. It is particularly concerning that women and LGBTI+ victims have not been meaningfully consulted in the process and are not meaningfully represented among the Commissioners. As a result, the Commissions and their subsidiary organs and implementation mechanisms have given limited attention to identifying gender specific violations and putting in place gender-sensitive procedures to enable victims to come forward. Among the 60.000 complaints received only 300 relate to sexual violence.

As a consequence, many victims of sexual and gender-based violence during the conflict are not recognised or given the opportunity to seek reparation.

Recommendations:

- A. Take immediate action to ensure the independence of the Commissions and allocation of resources for the operation of the two commissions and awards of reparations.
- B. Immediately provide interim relief packages to victims of the conflict including medical support, psychological and psychosocial support.
- C. Ensure that the Commissions include representatives from all main victim groups and that there is effective outreach and consultations with all victim groups including women and LGBTI+ persons.

About TPO Nepal

TPO Nepal is a non-governmental organization established in 2005. TPO works for the mental health and psychosocial well-being of people in chronic crises and for their access to justice. We work with refugees, populations affected by political violence, victims of torture, victims of gross violation of human rights including holistic care of populations affected by disasters and emergencies, victims of gender-based violence including human trafficking, and with other vulnerable and marginalized groups as well as general communities requiring mental health and psychosocial services.

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About the International Rehabilitation Council for Torture Victims (IRCT)

The IRCT strives to achieve a World Without Torture. As a network of 158 torture rehabilitation centres across 75 countries, we are the world's largest membership-based civil society organisation providing rehabilitation to victims, preventing torture, increasing access to justice and fighting impunity. We believe that everyone has the right and obligation to stand up against torture. Together, we are a movement working in solidarity to advocate for the rights of victims, to shine a light on torture wherever it occurs and to end it.

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