



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Second periodic reports of States parties due in 1996**

**Addendum\***

**NEPAL**

[5 May 2004]

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\* For the initial report, see CAT/C/16/Add.3; for its consideration, see CAT/C/SR.179, 180 and 181/Add.1 and Add.2 and Official Records of the General Assembly, Forty-ninth Session, Supplement No. 44 (A/49/44), paras. 138-147.

The present report is the compilation of the second, third and fourth periodic reports covering the period from 1996 to 2004.

The annexes to the present report submitted by the Government of Nepal can be consulted at the Secretariat.

### **List of acronyms**

A/SI	Assistant Sub-Inspector of Police
APF	Armed Police Force
ARC-Nepal	Alternative Development and Research Centre, Nepal
CDO	Chief District Officer
CeLRRD	Centre for Legal Research and Resource Development
CRT	Compensation Relating to Torture Act, 1996
CVICT	Centre for Victims of Torture, Nepal
CWIN	Centre for Child Workers in Nepal
DDC	District Development Committee
DFID	Department for International Development (United Kingdom)
DIG	Divisional Inspector General (of Police)
HMG/N	His Majesty's Government of Nepal
HRC	Human Rights Commission Act, 1997
ICRC	International Committee of the Red Cross
INSEC	Informal Sector Service Centre
NHRC	National Human Rights Commission
NID	National Investigation Department
PRI	Prison Reform International
RNA	Royal Nepalese Army
SI	Sub-Inspector of Police
SP	Superintendent of Police
SSP	Senior Superintendent of Police
UNHCR	Office of the United Nations High Commission for Refugees
VDC	Village Development Committee
WFP	World Food Programme

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## **I. GENERAL INFORMATION**

### **Introduction**

1. Nepal was the first country in South Asia to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention), in the year 1991. Pursuant to the provision of article 19 (1) of the Convention, Nepal submitted its initial report in 1993. While the two periodic reports could not be submitted in due time, mainly due to a dearth of adequate expertise and resources, this is the second, third and fourth combined periodic reports covering the years since the initial report. While preparing the report, an attempt has been made to address the comments by the Committee on Nepal's earlier report. The guidelines on human rights reporting have also been followed.

### **Historical perspective**

2. The issue of torture as a method of punishment and action against torture has had a place in the legal literature since the early period of documented history of Nepal. During the Lichhibi (from the third century to the ninth century AD) and Malla (from the ninth to the eighteenth century) era, torture was prohibited. The Country Code of 1853 AD, which was formulated in the period of the Rana oligarchy (later replaced by the Country Code of 1963), has a provision for compensating victims who are subjected to extrajudicial detention.

3. The people's revolution of 1951 paved the way for the establishment of democratic institutions in the Kingdom. As a result, Nepal became a member of the United Nations in 1955. The Civil Rights Act of 1955 included major human rights components contained in the Universal Declaration of Human Rights, 1948 and has provision for prohibiting inhuman treatment. Civil rights were protected by the Constitutions of 1959 and 1962, promulgated by the King. Under these Constitutions, the sovereignty of the State was vested with the Crown and all the legislative, administrative and judicial powers emanated from it. Despite the fact that only a few rights were given to the people, protected by the Supreme Court, basic human rights and the fundamental freedoms were not part of those Constitutions in a true sense.

4. Furthermore, before the enactment of the State Cases Act, 1961, the criminal justice system of Nepal was based on the inquisitorial system. The State Cases Act, 1961 was not completely based on the adversarial system; however, it tried to establish such a system. The courts had in some cases power to order a reinvestigation of the offence. The accused had no right to be silent. The statement made to the police by the accused was taken as reliable evidence unless it was proved that the statement was obtained by coercion, use of force or threat or torture and a confession by the accused was considered as a prerequisite for filing any charge in the court. The Constitution of the Kingdom of Nepal, 1990 is the first constitution that ensures the right to be silent and prohibits torture and other cruel, inhuman or degrading treatment and ensures compensation.

### **General legislative framework**

5. In 1990, multiparty democracy was reinstated in the Kingdom. The Constitution of the Kingdom of Nepal 1990 has guaranteed parliamentary democracy. The parliament consists of His Majesty the King and two Houses of Parliament, the House of Representatives and the

National Assembly. The House of Representatives has 205 members elected from as many constituencies on the basis of a one-person-one-vote system through secret ballot by Nepali citizens who have attained the age of 18. The term of members of the House of Representatives is five years. The National Assembly consists of 60 members, 10 of them nominated by His Majesty the King from among persons of high reputation; 35, including 3 women, are elected by the House of Representatives on the basis of proportional representation by means of a single transferable vote, and 15 are elected from 5 development regions on the basis of a single transferable vote system by an electoral college consisting of the chairman and deputy chairman of Village Development Committees (VDCs), mayors and deputy mayors of municipalities and the chairmen, deputy chairmen and members of the District Development Committees (DDC) of each region. The National Assembly is a permanent house. The term of one third of its members expires every two years.

6. The Parliament is empowered to enact laws. A bill passed by one House of Parliament is transmitted to the other House as soon as possible and as the receiving House passes such bill, it goes to His Majesty the King for the royal assent. A bill becomes an act immediately after His Majesty the King puts the royal seal to it in accordance with the Constitution. The Government is empowered to enact rules or regulations under delegated legislative power vested under an Act of Parliament. The executive, legislative and judicial powers are well defined and separated by the Constitution.

7. The House of Representatives has nine committees. One of them is the Foreign Relations and Human Rights Committee. The Committee is mainly entrusted to formulate policy, provide directives and monitor human rights situations.

### **Judicial framework**

8. The Constitution of Nepal has made the judiciary of the country an independent organ. The power relating to justice in the Kingdom is exercised by the courts and other judicial tribunals in accordance with the provisions of the Constitution, the laws and universally recognized principles of justice. Nepal has a three-tier court system. Each of Nepal's 75 districts has a district court. There are 16 appellate courts and 1 Supreme Court. The Chief Justice of the Supreme Court is appointed by His Majesty the King on the recommendation of the Constitutional Council, a constitutional body composed of the Prime Minister, the Chief Justice, the Speaker of the House of Representatives, the Chairman of the National Assembly and the Leader of the Opposition in the House of Representatives. For this purpose, the Constitutional Council shall include among its members the Minister of Justice and a judge of the Supreme Court. His Majesty the King appoints the judges of the Supreme Court, the Appellate Court and the district courts on the recommendation of the Judicial Council. In Nepal, judges are not part of the civil service and the terms and condition of their service are determined by the Constitution. In addition to the above-mentioned courts, there is also a provision for the establishment of special types of courts and tribunals for the purpose of hearing special types of cases. However, no special court or tribunal may be constituted for the purpose of hearing a particular case.

9. The Constitution provides for effective remedies and enforcement of rights conferred by part 3, articles 11-23. The basic principle of modern jurisprudence that only an effective and independent judiciary can protect and enforce the fundamental rights of citizens has also been

recognized by the Constitution. The Supreme Court is empowered under its extraordinary jurisdiction to protect such rights by issuing various forms of writs including habeas corpus, mandamus, certiorari, prohibition and quo warranto.

10. The Constitution is the fundamental law of the land and all laws inconsistent with it are void. These provisions further guarantee the fundamental rights conferred by the Constitution. If any law is inconsistent with the Constitution because it imposes an unreasonable restriction on the enjoyment of the fundamental rights conferred in the Constitution or on any other ground, the Supreme Court, in exercise of its extraordinary jurisdiction under article 88 (1) of the Constitution, may declare a law as void either *ab initio* or from the date of its decision (judicial review). After the promulgation of the Constitution, there have been occasions when the Supreme Court has declared some laws void on the ground of inconsistency with the Constitution. Besides, the Constitution, article 88 (2), contains provisions for public *locus standi* or, as modern jurisprudence terms it, public interest litigation, empowering the Supreme Court to issue various kinds of writs as required for a legal question involved in any dispute of public interest or concern.

### **The executive**

11. The executive power of the country, with the responsibility of issuing general directive and controlling and regulating the administration of the Kingdom, is vested in His Majesty the King and the Council of Ministers, the Cabinet. His Majesty the King as the Head of State appoints the leader of the party that commands a majority in the House of Representatives as Prime Minister and constitutes the Council of Ministers on his recommendation and under his chairmanship. The Prime Minister and other ministers are collectively responsible to the House of Representatives, and the other ministers are individually responsible for the business of their respective ministries to the House of Representatives as well as to the Prime Minister.

### **Information of a general nature**

12. The Constitution has guaranteed the fundamental rights of people, including the right to justice before the courts. Article 14 of the Constitution stipulates that no person shall be punished for an act which was not punishable by law when the act was committed, nor shall any person be subjected to a punishment greater than that prescribed by the law in force at the time of the commission of the offence. No person shall be prosecuted or punished for the same offence in a court of law more than once. No person accused of any offence shall be compelled to be a witness against himself/herself. No person who is detained during investigation or for trial or for any other reason shall be subjected to physical or mental torture and cruel, inhuman or degrading treatment. Any person so treated shall be compensated in a manner as determined by law. No person who is arrested shall be detained in custody without being informed as soon as may be of the grounds for such arrest, nor shall he/she be denied the right to consult and be defended by a legal practitioner of choice. Every person who is arrested and detained in custody shall be produced before a judicial authority within a period of 24 hours after such arrest, excluding the time necessary for the journey from the place of arrest to such authority, and no such person shall be detained in custody beyond the said period except on the order of such authority.

13. As a member of the United Nations and other international as well as regional organizations, Nepal is party to a large number of international legal instruments concerning human rights. Nepal is party to 16 international human rights instruments. The most important among them are the International Covenant on Civil and Political Rights and its first and second Optional Protocols; the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. To implement the provisions incorporated in the Constitution, and to fulfil the commitments made to the core international human rights conventions, various acts have been enacted and implemented. The most important are the Nepal Treaty Act, 1991, the Compensation Relating to Torture Act (CRT), 1996 and the Human Rights Commission Act, 1997.

14. According to section 9 of the Nepal Treaty Act, 1991, if any domestic law is found to be inconsistent with a convention to which Nepal is a party, the convention prevails. Upon a petition by any Nepali citizen, the Supreme Court may declare a law as void either *ab inito* or from the date of its decision, if it appears that the law in question is inconsistent with a convention. The Supreme Court can exercise its extraordinary jurisdiction in this matter.

15. According to article 84 of the Constitution, power relating to justice in the Kingdom of Nepal shall be exercised by the courts and other judicial institutions, in accordance with the provisions of the laws and the recognized principles of justice. As per section 5 of CRT, the concerned district court shall have jurisdiction over the cases of torture. Similarly, the Human Right Commission Act, 1997 authorizes the National Human Rights Commission (NHRC) to investigate, inquire into and take necessary action on issues of human rights violation, including torture. The Military Act, 1959 and the Police Act, 1955 also provide for actions to be taken in protecting human rights, including protection from torture.

16. CRT has made provision for financial compensation of persons who have been subjected to torture or other cruel, inhuman or degrading treatment or punishment. The Act has also made provision for free medical treatment of the person who is injured or physically tortured while appropriate action is taken against the offender.

17. For the last eight years, Nepal has been suffering from the unabated terror of Maoist insurgency. As a result, incidents of torture committed by non-State actors are increasing (torture committed by non-State actors is considered a crime). During this period, Maoists have deliberately killed thousands of civilians including teachers, students, political leaders, journalists, employees, off-duty security personnel, children, the elderly and others. They have resorted to such cruel and inhuman forms of violence as killing people by beating them with clubs, rifle butts and spears. They have mutilated the victims and left them paralysed to prolong their suffering, make them useless, and to remind others that they should not oppose the Maoists. Reports of torture and cruel and inhuman treatment of the general public by Maoists have become a regular phenomenon. The armed insurgency is costing unbearable losses in terms of human casualties and in damage to the development infrastructure. More than 1,100 civilians were brutally killed and another 2,000 people were mercilessly wounded, tortured or disabled by Maoists from 1996 to December 2003. Moreover, more than 1,200 policemen and 350 soldiers have lost their lives and about 2,000 sustained serious injury. The insurgency is also creating

fear, mistrust, insecurity, civil strife, gross violations of human rights and political instability, threatening new democracy in Nepal and forcing the country into chaos and anarchy. A few vivid examples of Maoist cruelty and atrocities are given below:

(a) On 13 September 2002 in Rukum, Maoists chopped Birendra Kumar Shah, 35, a teacher of Athbiskot VDC, Dandagaon, with a saw. Unable to bear the torture, the victim requested the Maoists to shoot him to death. He also promised them to pay for the bullets used to kill him. After killing him, the Maoists went to his wife and claimed Nrs 175 per bullet from her. She paid Nrs 525 for the three bullets used to kill her husband;

(b) Maoists stabbed a 14-year-old boy, Raju Tharu, of Bhimbapur VDC, Bardiya, to death with a sharp weapon on 8 November 2002. They accused him of talking (informing) to the security forces;

(c) On 25 April 2002, Shyam Koirala, 20, of Narayan municipality, Dailekh, had his hands tied behind his back, his ears and tongue cut and was shot dead by a gun stuck into his buttocks;

(d) Gyanendra Khadka, a teacher and journalist from Sindhupalchok, was kidnapped from his school. Later, on 7 September, 2003 his body was found with his throat cut, his hands were behind his back;

(e) On 1 September 2003, Relimai Moktan, 45, a female village health worker, was kidnapped from her home by the Maoists. They tortured her mercilessly, and the next day she was found dead;

(f) A young couple of Bhojpor (Arjun Rai, 22, and his wife Shubha Laxmi Rai, 19) threw their first infant into a river in September 2003, and surrendered to the District Police Office in Sankhuwasabha. They did so in order to go to prison, where they thought they would be safe from the Maoists. The husband (an unskilled labourer) was particularly targeted by Maoists.

18. There are a number of cases of mutilation atrocities with no precedent in Nepali history involving the breaking of every bone in the victim's bodies, cutting out their tongues, gouging out their eyes, hammering the teeth out of their mouths and then cutting them in half, or burning them to death, in few cases all in front of the victims' children.

19. To counter the Maoist insurgency, His Majesty the King declared a state of emergency throughout the Kingdom on 26 November 2001. It lasted till 28 August 2002. The Government was forced to declare the Maoists as terrorists and the security forces were mobilized for the security of the people and the maintenance of law and order in the country. The Parliament enacted the Terrorist and Disruptive (Prevention and Punishment) Act on 6 April 2002. This is a sunset law, which lasts only for two years from the date of its enactment.

20. In the meantime, on the recommendation of the then Prime Minister, His Majesty the King dissolved the House of Representatives on 22 May 2002 and announced a fresh election

on 13 November 2002. Because the election could not be held on the scheduled date, His Majesty the King dismissed the Prime Minister on 4 October 2002 and appointed the new Prime Minister on an individual basis.

21. A solution to the Maoist problem through peaceful means has been the top priority of the Government. However, two rounds of formal peace negotiations with them broke down, owing to their untenable demands outside the framework of the present Constitution and their refusal to lay down arms and to come into the political mainstream. In the aftermath of the breakdown of dialogue in August 2003, they have further intensified their terrorist atrocities, intimidating and killing innocent civilians by the degrading and inhuman nature of their violence. In response to the increased and intensified terrorist activities, the Government has been compelled to take appropriate measures to curb the menace of terrorism, through legal means.

## **II. SPECIFIC INFORMATION RELATING TO THE IMPLEMENTATION OF ARTICLES 1-16 OF THE CONVENTION**

### **Article 1**

22. Clause (a) of section 2 of CRT defines torture as “any act which causes torture, whether physical or mental, inflicted upon a person who is in detention for investigation, awaiting trial or for any other reason and this term includes cruel, inhuman or degrading treatment that person is subjected to”. This definition is not as wide as that required by article 1 of the Convention, in the sense that it only includes the cases of torture while in custody or in detention. However, as mentioned earlier, the Nepal Treaty Act, 1991 has clearly stated that international conventions to which Nepal is a party prevail over the domestic law, if the domestic law is inconsistent with the conventions.

### **Article 2**

#### **Legislative measures**

23. The Constitution makes the infliction of torture an infringement of the fundamental rights. Article 14 (4) states that “No person who is detained during investigation or for trial or for any other reason shall be subjected 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”. The fundamental right to protection from torture is non-derogable and may not be abridged or restricted under any circumstances.

24. In line with the spirit of the Constitution, many acts and subsequent rules have been enacted and prevailing acts reformed to honour human rights and prohibit torture in particular. The main acts enacted and/or reformed by the legislature are listed below. An unofficial translation of relevant sections of the acts is enclosed in the annex.

Compensation Relating to Torture Act, 1996

Human Rights Commission Act, 1997

The Police Act, 1955 (sects. 15, 33, 34)

Public Security Act, 1989 (sects. 5, 12, 13)

Military Act, 1959 (sect. 42)

Prison Act, 1963

Civil Rights Act, 1955 (sects. 4, 6, 7, 11, 15, 16)

Nepal Treaty Act, 1991 (sect. 9)

The Evidence Act, 1974 (sects. 8, 9)

Extradition Act, 1988 (sects. 2, 3, 8, 9)

State Cases Act, 1993 (sects. 9, 14, 15)

Terrorist and Disruptive (Prevention and Punishment) Act, 2002

The Children's Act, 1992 (sect. 7)

Some Public (Crime and Punishment) Act, 1970 (sect. 3)

Summary Proceedings Act, 1972. (sects. 3, 4, 5, 8, 10)

### **Institutional measures**

25. His Majesty's Government of Nepal (HMG/N) has taken many steps in order to safeguard human rights of citizens in recent years. Some of them are listed below.

### **Establishment of the National Human Rights Commission**

26. As per the Human Rights Commission (HRC) Act, 1997, the National Human Rights Commission (NHRC) was constituted on 26 May 2000. NHRC is an independent body and it is in line with the Paris Principles. The Chairperson of the Commission must be a retired Chief Justice or justice of the Supreme Court, as envisaged by section 3 of the Act. NHRC has five members, including the Chairperson.

27. Section 9 (1) of HRC states that the main responsibility of NHRC is the protection and promotion of human rights. NHRC conducts inquiries and investigations on the basis of any kind of information it has received about human rights violations or about negligence from any concerned individual, institution or agency regarding the prevention of human rights violations. Such investigations can be undertaken by NHRC itself, or it can assign the responsibility to an individual or an agency. NHRC, after receiving the report of the investigation, decides upon the case.

28. While taking action on the complaints, requests and reports within its jurisdiction, NHRC has rights similar to those of a law court to act under the prevailing laws. In addition, NHRC has

the right to investigate cases sub judice, with the court's permission, evaluate the prevailing human rights situation in the country and give suggestions to the Government regarding the promotion of human rights, among others.

29. So far NHRC has received 148 complaints directly related to torture. Of these, NHRC has rejected 14, repealed [sic] 31 and decided 1 in favour of the victim; the remaining cases are under investigation.

30. NHRC has drawn the attention of the Government as well as other actors to the need to safeguard human rights, including prevention of torture. NHRC has also inspected the prisons and has suggested ways to solve some of the pressing problems.

### **Establishment of the Human Rights Promotion Centre**

31. HMG/N has set up a Human Rights Promotion Centre (the Centre) under the Prime Minister's and the Council of Minister's Office. The Centre will inform the general public about work carried out by HMG/N regarding human rights and maintain coordination between various entities, including NHRC, in connection with the responsibilities to be borne as per international human rights instruments to which Nepal is a party.

32. There is a provision under which the Centre will, besides publicizing the efforts undertaken and programmes implemented by HMG/N regarding protection and promotion of human rights, run special programmes and get such programmes implemented for the effective protection and promotion of human rights by maintaining contact and coordination with international agencies and organizations.

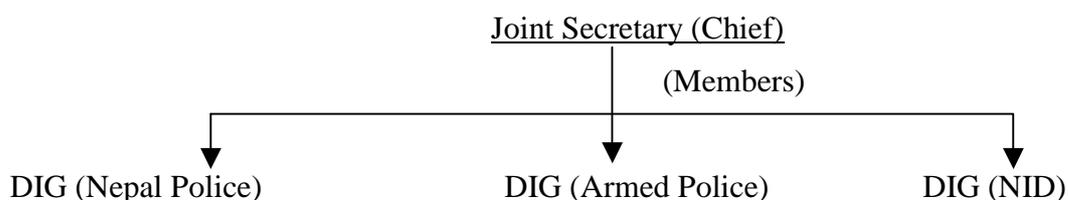
33. A nine-member steering committee has been constituted under the Chairmanship of the Chief Secretary of HMG/N for providing necessary guidelines to the Centre.

### **Establishment of human rights cells**

34. Human rights cells have been established in security-related agencies.

#### *Human Rights Cell in the Home Ministry*

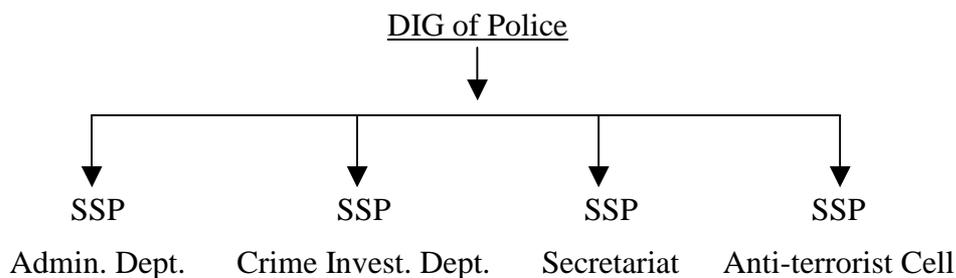
35. A Human Rights Cell has been established in the Home Ministry. The Cell monitors any violation of human rights within its organs, including the Nepal Police, the Armed Police Force and National Investigation Department (NID). It also instructs other cells established in the security agencies in order to protect human rights and shares information with them. The composition of the Cell is as follows:



The Cell holds regular meetings, reviews human rights situations and instructs its organs to protect human rights.

*Human Rights Cell in Police Headquarters*

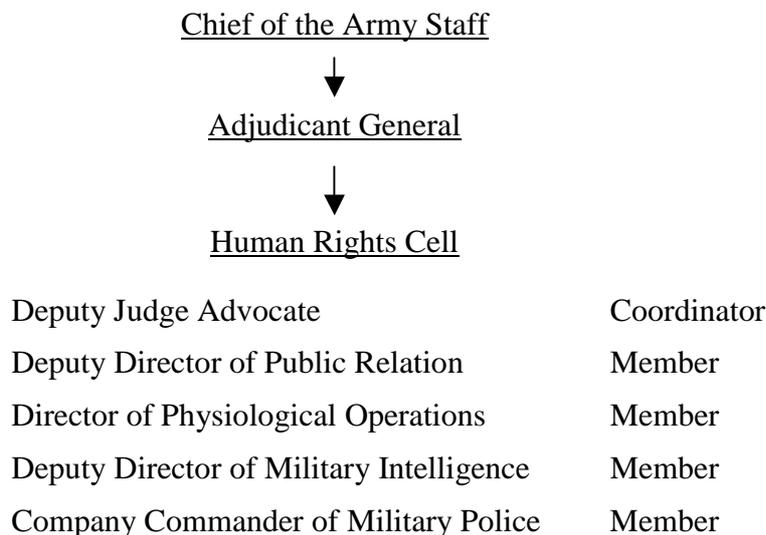
36. A Human Rights Cell was established in Nepal Police Headquarters on 16 January 2003. The Cell mainly provides training to police personnel on human right issues, investigates complaints of human rights violations committed by police personnel and creates awareness among police staff about human rights and cooperates with other agencies, including NHRC and International Committee of the Red Cross (ICRC). The structure of the Cell is presented below:



37. The complaints received by the Cell against police are checked carefully and reported to the chief of the Cell daily. The complaints are verified through different means and both the victims and the accused are interviewed. A thorough investigation of complaints received is carried out.

*Human Rights Cell in the Royal Nepalese Army*

38. The Royal Nepalese Army (RNA) established a Human Rights Cell at its headquarters on 8 July 2002. This Cell mainly investigates the violation of human rights committed by RNA personnel. This Cell also imparts training to RNA officers on human rights, humanitarian law and the law of war. The structure of the Cell is as follows:



39. Since its inception, the Cell has conducted several investigations regarding allegations of human rights violations committed by its soldiers.

*Human Rights Cell of the Armed Police Force*

40. Similarly, a Human Rights Cell has also been established in the Armed Police Force (APF). A DIG chairs the Cell. It is mainly entrusted with investigating any violation of human rights by its personnel, organizing training for its staff on human rights issues and alerting all subordinate units to abuses.

**Actions taken by security agencies to prevent torture and punish the guilty**

41. Security agencies have carried out a number of investigations into alleged violation of human rights, including torture. Some cases of investigation carried out by law enforcement agencies are given below.

*Action taken by the Home Ministry*

42. In Banke Jail, in January 2001, a prisoners' riot broke out. While dealing with the riot, two prisoners were killed by police. The Home Ministry took the incident seriously and constituted a probe committee under the chairmanship of the Director-General of the Department of Prison Management. The committee, after visiting the prison, submitted its report to the Ministry. The Home Ministry paid compensation to the families of the victims.

*Actions taken by RNA*

43. On 15 March 2002 in Tokha, Kathmandu, Kaanchha Kaji Dangol was being escorted. When the prisoner tried to escape, soldiers opened fire and shot him dead. After investigation, the Military Court found that his human rights had been violated and those responsible were sentenced to three months of imprisonment. The commander of the escort patrol was dismissed from the RNA service.

44. The Chisapani (Bardiya) incident. There was a serious allegation of rape and torture of two civilian girls inside the barracks, brought against the captain of the company at Chisapani on 14 April 2003. In the course of investigations, the girls denied that they had been raped. However, the captain was found guilty of unlawful arrest and detention of innocent girls. He was penalized as per the RNA regulation.

45. The Manpur Tapara (Bardiya) case. An army soldier, Gyan B. Thapa, shot dead two persons in the area of Manpur Tapara, Bardiya on 17 January 2003. The RNA investigation team found that the victims were innocent and the soldier had acted on a personal grudge. The General Court Martial sentenced the accused to seven years of imprisonment and a non-commissioned officer was demoted.

46. The Kaule (Nuwakot) incident. On the night of 28 November 2002, the army in Nuwakot was on high alert because a Maoist attack was anticipated. The soldiers saw some people approaching their area carrying torches. The soldiers asked them to halt, but instead they threw the torches and tried to flee. The security force fired at them, and discovered that they had killed five boys. The military investigation team found that the deceased persons were innocent. The RNA recommended that Government pay compensation to the victims' families, which was done.

47. Since 2002, more than 14 cases of allegations of violation of human rights, including torture and inhuman treatment, committed by RNA personnel have been investigated. Thirteen of the cases were decided in favour of the victims and those found guilty were punished. One case was dismissed on the ground that no evidence was found to support the allegation.

48. The above cases show that the RNA is committed to protecting human rights and that it respects the international norms and values of humanitarian law. The Military Act contains a provision for a Court Martial which has the authority to initiate proceedings and impose punishments in all the cases, including torture. Furthermore, the Act has provision for punishment for illegal arrest and detention, and for failure to submit the charge sheet then and there, or within 48 hours at the latest, to the appropriate authority.

#### *Actions taken by the Nepal Police*

49. Since 1996, the Nepal Police have lodged cases in the respective courts against 13 police personnel (including officers) who have been accused, in separate incidents, of committing torture. All of them have been suspended from their jobs and are awaiting the decision of the court. Moreover, departmental action has also been taken against seven police officers who were found guilty of committing torture and inhuman treatment in separate incidents in the same period.

50. Some examples of action taken against police personnel guilty of torture are given below:

(a) Police Inspector Dhiraj P. Singh and seven other police personnel were accused of committing torture against a 21-year-old bus cleaner, Shuk B. Lama, of Dolkha in August 1999. As a result, he died in a hospital in Nawalparasi. After investigation, the case was lodged in the court through an attorney and all of them have been suspended;

(b) Police Inspector Yubraj Thapa and a junior officer have been suspended and a compensation case against them was lodged in August 2003 in the court. They are accused of physically torturing Mr. Ramdev Nadur of Dhanusha;

(c) District Superintendent of Police Pralhad P. Gajurel was cautioned by Police Headquarters for committing torture against Mr. Purushottam Sharma of Morang while he was in detention;

(d) Police Sub-Inspector Haridas Shrestha was suspended on the charge of committing torture against Mr. Bishnu Tamang, 23, of Nuwakot, who was in detention. After investigation, Police Headquarters demoted him by two grades in December 2001.

#### **Judicial measures**

51. The Supreme Court is vested with exclusive and extraordinary power to hear and determine any question relating to the infringement by executive or administrative action of any right recognized by the Constitution. According to the Constitution, even in the state of emergency period article 14, which deals with rights regarding the criminal justice system and the provision of habeas corpus (art. 88), shall not be suspended, among others.

52. The judiciary is playing a vital role in protecting human rights. During the emergency period, the Supreme Court and the appellate courts issued many orders about habeas corpus. In the state of emergency, the Supreme Court issued 66 writs about habeas corpus (out of 201 lodged with the Supreme Court). The concerned courts have also decided in favour of victims for compensation in cases of torture. According to section 5 of CRT, concerned district courts have jurisdiction over the cases of torture.

53. Despite the constitutional guarantee, legal provisions, administrative measures and judicial remedies, cases of torture are still reported in Nepal. A survey conducted by NHRC in 2001/02 has revealed a high prevalence of torture in areas most affected by the Maoist insurgency. Out of 594 cases of torture listed in the survey, the majority of them were reportedly committed by security personnel. However, this might be due to fear of reprisal by Maoists, as the interview was held in public and victims are very much afraid of Maoist cruelties.

54. Similarly, Human Right Year Book 2003, compiled and published by an NGO called the Informal Sector Service Centre, cited 795 victims of torture. But that is a misunderstanding because many people are categorized as victim on the ground that they were held in detention. Any suffering inherently caused by detention pursuant to the existing law cannot be regarded as an act of torture. Furthermore, as the report has itself admitted, some cases have been counted under two or more human rights instruments.

55. HMG/N is aware of the allegations concerning acts of torture reportedly committed by members of the security forces in the context of counter-terrorist activities. Also, the police, in combating crime, are alleged to have used excessive force in handling suspected criminals. These transgressions are not the outcome of a deliberate policy but isolated acts carried out by some individuals. Although the Kingdom is in exceptional circumstances of intense armed conflict, every effort is being made from the government side to eliminate the occurrence of such excesses.

56. All the relevant domestic laws have prohibited issuing illegal orders, especially those relating to the armed forces. All superior officers and public authorities are obliged to issue legal orders only. Those who receive an illegal order from a superior officer are not compelled to follow it.

### **Article 3**

57. Nepal has given asylum to more than 100,000 refugees from Bhutan. These refugees are given shelter and their care and maintenance are also being provided with the help of the Office of the United Nations High Commission for Refugees (UNHCR), the World Food Programme (WFP) and other agencies. Nepal is also doing its best for their dignified and voluntary repatriation.

58. Similarly, about 20,000 Tibetan refugees have been provided shelter in the Kingdom for many years. Although Nepal is not a party to the Convention relating to the Status of Refugees, and therefore is not bound by international obligations as such, it has given shelter to those refugees on humanitarian grounds. Nepal is also providing safe passage to those who are found to be asylum-seekers. In this process UNHCR/Nepal is allowed to verify and establish the status

of people seeking asylum. HMG/N allows the processing of such persons of concern by UNHCR for resettlement to any third country. In this process, since 1990 nearly 29,000 Tibetan asylum-seekers, among others, were given safe passage to go to a third country.

59. HMG/N has pursued the policy that it will not expel, return or extradite any person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.

60. As per article 21 of the Constitution, no citizen shall be exiled. Similarly, according to the Extradition Act, 1988 no person shall be extradited on political grounds.

#### Article 4

61. In accordance with article 14 (4) of the Constitution, no person who is detained during investigation or for trial or for any other reason shall be subjected to physical or mental torture and any person so subjected shall be compensated in the manner determined by law.

62. In accordance with section 6 of CRT, the concerned district court may, by its decision, cause HMG/N to compensate the victims up to 100,000 rupees. Section 7 of the Act further stipulates that the concerned district court shall, by its decision, issue an order to the concerned authority to take departmental action against the public official responsible for torture. However, the Act only ensures compensation to the victim; it does not make these offences punishable by appropriate penalties.

63. As per HRC, NHRC shall write to the organization or authority concerned to take necessary action against the guilty person. Similarly as per the rule of NHRC (Complaints, Action and Compensation) Regulation 2000, NHRC shall determine the compensation up to Nrs 100,000 to be paid to the victims based on the gravity of torture committed by the perpetrator.

64. Section 7 of the Children's Act, 1992, states that no child shall be subjected to torture or cruel treatment.

65. Section 9 of the Nepal Treaty Act, 1991, states that the international treaties to which Nepal is a party, upon ratification, accession, approval or acceptance by the Parliament shall prevail over the prevailing laws, if any provision of such law is inconsistent with the treaty.

66. However, acts of torture are not offences under the criminal law of the Kingdom of Nepal. Therefore, a draft Criminal Code, which explicitly makes torture punishable, has been prepared. The Code is waiting for the Parliament to resume. Some of the texts of the proposed draft read as follows:

(a) **Clause 180: Prohibition of torture.** Any person in public authority, who commits physical or mental torture or practises cruel, inhuman or degrading treatment to any person, shall be punished with an imprisonment for three years or a fine or both. The punishment will be based on the gravity of torture or such practices;

(b) **Clause 181: Prohibition of Inhuman Treatment.** If any person commits such acts as to accuse anyone of practising witchcraft or banish such person from a village or boycott

him/her socially or commit any inhuman or degrading treatment on such accusation or if any person banishes anyone suffering from any disease by rejecting him/her socially despite the fact that such person shall not be rejected by virtue of such disease, shall be punished with imprisonment up to one year or with a fine up to Nrs 10,000 or both. If a civil servant commits the offences mentioned in this section he/she shall be punished with an additional three months' imprisonment;

(c) Similarly, **clause 182** provides for a time limit of three months (from the occurrence of any offence, mentioned herein) for a complaint to be lodged.

#### **Article 5**

67. As mentioned earlier, the concerned district court has jurisdiction over the cases of torture within the Kingdom of Nepal. Similarly HRC provides jurisdiction to NHRC over all the issues of human rights, including torture, in Nepal.

68. Although there are a number of acts having extraterritorial application, the torture-related acts and regulations have jurisdiction within the Kingdom. However, the proposed draft of the Criminal Code, which includes torture as a criminal offence, has the provision of extraterritorial application. In the draft it is proposed that when the punishable offences are committed outside the country or on board a ship or aircraft registered in Nepal, those offences are considered as committed within the territory of the Kingdom of Nepal.

#### **Article 6**

69. Any person suspected of having committed a criminal offence is liable to be arrested under the criminal law of Nepal. As per section 14 (6) of the Constitution, every person who is arrested and detained in custody shall be produced before a judicial authority within a period of 24 hours after such arrest, excluding the time necessary for the journey from the place of arrest to such authority, and no such person shall be detained in custody beyond the said period except on the order of such authority. This constitutional provision is further stipulated in the State Cases Act, 1993, and in the Some Public (Crime and Punishment) Act, 1970. The procedures established by the Summary Proceeding Act, 1972 are followed in the cases of compensation of torture.

70. As stated earlier, torture has not been incorporated in the country's penal code. However, bail, remand and the institution of criminal proceedings consequent to such persons being taken into custody will be in accordance with the general penal law of the Kingdom.

#### **Article 7**

71. The Constitution guarantees that all persons charged with an offence are entitled to due process of the law. Article 14 (5) of the Constitution states that no person shall be denied the right to consult and be defended by a legal practitioner of his/her choice. Principles such as complete knowledge of the charge, facilities for the preparation of defence, right to legal assistance, right to examine witnesses, etc. are well established in the law.

72. The accused is given adequate opportunity to defend (*audi alteram partem*) the case and section 10 of CRT provides that the Government Attorney shall, if so requested by the concerned office in charge, appear in the court on behalf of a government employee and defend him/her on the complaint filed.

73. Moreover, the Supreme Court, in the *Rabindra Bhattarai v. Cabinet Secretariat of HMG/N* case (2054/12/6 B.S.), held that section 10 of CRT is not contrary to articles 14, 110 and 116 (1) of the Constitution and article 14 of the Convention and further upheld the spirit of fair trial.

74. Following the implementation of article 5 of the Convention, namely universal jurisdiction, it becomes imperative that the accused be prosecuted locally in the absence of extradition to a State party.

### **Articles 8 and 9**

75. The Extradition Act, 1988 allows the Government to extradite a person who has committed an offence as stipulated in the extradition treaty with any foreign country, with the exception of political offences. Nepal has an Extradition Treaty (1953) only with India. In the Extradition Treaty of 1953, 17 offences are listed as offences for which extradition is to be granted. Although torture is not included in the list, the offences of murder or attempt or conspiracy to murder, and grievous hurt are among the offences covered by the treaty. Bilateral discussions are in progress with India to replace the Extradition Treaty, 1953 with a new one.

76. Nepal has no mutual judicial or legal assistance treaty with another country. However, as a member of the international community, HMG/N extends its cooperation to other States in connection with criminal proceedings on a case-by-case basis and on assurance of reciprocity.

### **Article 10**

#### **Domestic legal provisions**

77. There are sufficient provisions in the domestic legislations to educate the law enforcement officials in compliance with article 10 of the Convention. The Nepal Police Regulations 1992 (as amended) have incorporated in chapter 8 a code of conduct to educate police personnel about human rights. HRC has also stipulated the need for human rights training and education for law enforcement officials for the better protection of human rights by avoiding all kinds of torture.

78. The Nepal Medical Council Act, 1963 has also incorporated the provision of penalizing medical professionals who do not work to preserve the rights of patients, including victims of torture. The code of conduct for medical professionals had made it mandatory to work impartially to protect the rights of victims of torture in imparting justice. Medical professionals working contrary to the spirit of the Medical Code of Ethics would face severe punishment as per the gravity of the acts so done. CRT has given full responsibility to medical professionals to determine that a person has been tortured and assist him/her to receive justice if they were tortured by law enforcement officials. A code of conduct for the public prosecutor has also been put into effect to ensure the fairness of prosecution of offences, including torture.

## **Education and training programmes**

79. As a matter of policy, HMG/N is committed to ensuring that all security personnel are properly instructed and trained to respect and observe standards of human rights and humanitarian law, so that their powers are not used arbitrarily or excessively and that weapons are not used indiscriminately.

80. Human rights education forms part of the training of all law enforcement officers including members of the army, police, armed police and prison staff. This training includes lectures on the fundamental rights guaranteed by the Constitution, international human rights norms, other laws, the rights of citizens and the duties and obligations of law enforcement officers. The lectures are reinforced by demonstrations and visual aids. Seminars and discussions are held during various stages of the officer's service. In this context, the law of war and humanitarian law have been part of the education and training of RNA.

81. Human rights cells established in security agencies are doing a lot of work in ensuring that there is no torture of any kind in detention. They have generated a sense of awareness among the personnel working in these institutions on the avoidance of torture during investigations and trial. Punishment of those responsible and compensation to the victims will help to minimize cases of torture, as there is a system of circulating the action taken by each cell to all the members of the organization so lessons can be learned.

82. A new curriculum has been designed for police training by the National Police Academy and other regional training institutes with a special emphasis on human rights. Experts are invited to conduct classes in these institutes for better lessons on the topic. The National Police Academy conducts the basic and advanced training of the senior and junior officers and there is a set lesson on human rights at each training faculty. Likewise, the regional police training centres at all five development regions of the country conduct basic, advanced and refresher training to the junior officers and the constables and human rights classes are included in each of the training programmes. APF has also made arrangements to educate their professionals by introducing classes on human rights and torture in their basic and on-the-job training programmes. However, the lower ranks of the police still lack knowledge and skills. The lack of scientific equipment and lack of expertise in carrying out autopsies and forensic investigations obstruct the investigation processes.

83. Prison officials are also being trained. Concerned prison officials and police personnel assigned to the prisons are being trained by NGOs as well. An NGO called Nepal Alternative Development and Research Centre (ARC-Nepal) is providing training on human rights issues in six big prisons of the Kingdom.

84. The Ministry of Health has been organizing regular medico-legal training for medical officials working at various hospitals. Three sessions are about victims of torture and reporting torture. Courses relating to torture are in the process of being included in the medical curriculum in order to educate aspiring doctors about the provisions against torture and its implications and the national commitment to the international community in that regard. Similarly, the Guidelines for Medical Doctors Concerning Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment in Relation to Detention and Imprisonment, adopted by the World Medical Association, have also been incorporated in the Code of Ethics for members of the Nepal Medical Council.

85. The Government has also benefited from the assistance received from international NGOs in conducting human rights awareness programmes for different law enforcement officials. In this regard, Amnesty International is working with the Nepal Police to conduct courses in human rights. A team of instructors from the Nepal Police and Amnesty International visit the districts and zones to conduct human rights training, apart from the regular training being held in the training institutes. NHRC also conducts education and training programmes for the law enforcement officials. RNA, Nepal Police, APF and prison officials are given such training from time to time.

86. ICRC has recently signed an agreement with the Nepal Police to conduct human rights and humanitarian law classes in the future. Two such programmes have already been held in Kathmandu.

87. CVICT (Centre for Victims of Torture, Nepal), an NGO, is involved in counselling and other therapeutic activities and sponsoring the education costs of the children of victims of torture and abuse. CVICT is also helping medical professionals to get trained in aspects of human rights by conducting medico-legal orientation training. The Informal Sector Service Centre (INSEC) has been producing a programme for Radio Nepal on human rights since 1995. INSEC produces a Human Rights Year Book, in which statistics of human rights violations are presented by district. There are many other NGOs working in the field of human rights.

#### **Article 11**

88. HMG/N is systematically reviewing its interrogation rules, instructions, methods and practices, including enactment of a new State Cases Act, 1993 repealing the State Cases Act, 1961, the tenth and eleventh amendments to the Country Code, and new State Cases Rules, 1998 and Rules Regarding the Government Attorney, 1998, Police Regulation, 1992 (with amendments), Supreme Court Act, 1991 and Rules, 1992, Appeal Court Rules 1992 (with six amendments) and District Court Rules 1995 (with four amendments).

89. Likewise, formation on 17 August 2000 of a working committee to study and make recommendations on the criminal justice administration and the submission of a draft Penal Code and Criminal Procedure Code by that committee on 8 August 2001, as well as formation of a preparatory committee for the implementation of the draft Penal Code and Criminal Procedure Code on 19 August 2001 under the Chairmanship of the Attorney-General of the Kingdom of Nepal are also remarkable achievements in this regard.

90. With regard to prison and custody reform and supervision, there are 73 prisons in the Kingdom, where about 6,700 prisoners are living. These prisons officially have a capacity of about 7,300 inmates. They are managed by the Department of Prison Management. The jailers who administer the individual prisons are answerable to the concerned Chief District Officers (CDO). Prison security is provided by the concerned district police offices. The prisoners

themselves provide the internal management of prisons. The Prison Act, 1963 and the Prison Rules, 1964 provide various rights and facilities of the prisoners and deal with various prison management aspects.

91. The Chief District Officer or his assistant inspects the jail every six months, or any time as may be needed. A prisoner may lodge a complaint to CDO at any time, directly or through the jailer or through his relatives, about any illegal activities or punishment, including torture, within the prison.

92. There is a legal provision that the judges of Appellate Court should visit and inspect the jails at least once a year. They submit a report to the Supreme Court and a copy is given to the Government for the necessary action.

93. Competent officials of NHRC also visit and inspect the jails and detention centres, as mandated by HRC. A team under a member of NHRC undertook an inspection of various men's and women's prisons in three districts of Nepal in 2000. As per the report, the common problems observed by the team during its visit and the suggestions and recommendations have been sent to the Home Ministry.

94. The jailers are responsible for protecting the detainees from any sort of abuse of their human rights inside the jail, as stated in the Prison Act, 1963. ICRC is given full and free access to jails and detention centres and hears complaints in confidence. Complaints received by ICRC are forwarded to an appropriate authority for further action.

95. NGOs are given access to visit prisons in Nepal. A CVICT team visited every prison between 1994 and 1997 and its findings are about to be published. CVICT has produced a set of guidelines to direct the monitoring of prison conditions and the treatment of prisoners.

96. Another NGO called CeLRRD (Centre for Legal Research and Resource Development) has produced an information booklet that has been distributed to prisoners to inform them about their rights. The Prisoner Assistance Mission provides literacy programmes, educational materials and scholarships to prisoners. The Centre for Child Workers Nepal (CWIN) is working for the better treatment of child prisoners and provides them with education and counselling. The Nepal Alternative Development and Research Centre, an NGO, runs human rights awareness training programmes in Nepalese prisons. It aims to make prison staff and prisoners aware about human rights and to reduce torture. In 1998, a Nepali version of an international handbook on good prison practice was produced by CVICT and PRI (Prison Reform International) to satisfy demands for guidelines on international prison management standards. Other NGOs such as Advocacy Forum, the Society for Human Rights and Peace and so on are also providing help in educating prisoners.

97. The Foreign and Human Rights Committee of the House of Representatives also inspects the prisons and detention centres and submits a report to the House for necessary instructions to be given to the Government.

98. Similarly, the relatives of detainees are allowed to visit the prisons twice a week and their feedback is taken into consideration by the authority if there is any correction to be made or any action to be taken for the preservation of the human rights of the detainees.

99. Public officials who are suspected of having tortured detainees are tried in the public court whenever there is a complaint filed against him/her by the victim or others on behalf of him/her. There is a unit within the Nepal Police called “abuse of authority investigation” at the office of the Chief of Police, which conducts impartial investigations of the police personnel suspected of having tortured detainees.

100. However, the management of Nepal’s prisons suffers from a lack of resources, poor physical infrastructure, lack of trained staff, frequent transfer of staff, crowding and inadequate facilities in the prisons.

101. HMG/N instituted various committees, commissions and task forces from 1948 to 2000 to report on the state of Nepal’s prisons and make recommendations for reform. The State Affairs Committee in the House of Representatives has also reported on the condition of Nepal’s prisons, in 1998 and in 2000. The reports drew attention to the poor implementation of past decisions. They made a number of recommendations for immediate action and for long-term reform. In cooperation with DFID, the Department of Prison Management is implementing a prison management reform programme.

### **Articles 12 and 13**

102. Nepalese criminal justice is based on an adversarial system, placing the court in a neutral position. The Government Attorneys file charge sheets in the competent court on the basis of the investigation jointly made and evidence collected by police and government lawyers. The accused has the right to consult a legal practitioner and be defended. The Constitution made introducing legal aid for the poor and needy a State policy (art. 26 (14)). If a person is not able to hire a legal practitioner, he/she may ask for legal aid paid by the Government under the Legal Aid Act, 1997. The Bar Association of Nepal runs the government scheme.

103. As per article 14 (6) and (7), of the Constitution, every person who is arrested and detained in custody shall be produced before a judicial authority within a period of 24 hours after such arrest, except the person who is arrested or detained under any law providing for preventive detention. This constitutional provision is further stipulated in the State Cases Act, 1993 (sect. 15) and in the Some Public (Crime and Punishment) Act, 1970. However, long delays in holding trials owing to a number of legal and procedural pitfalls are common in Nepal.

104. As per section (5) of CRT, an adult member of the victim’s family or his/her legal practitioner may file a petition with the district court if the adult member or legal practitioner deems that the detainee has been subjected to torture while in detention. When such a petition has been submitted, the court may order a medical examination of the victim within three days. If the victim is to be treated for injuries caused by torture, such treatment shall be done at the expense of HMG/N.

105. There is no legal provision for protection of the victim of and witness to torture by the State. Witnesses are therefore often afraid to come forward and report crimes and participate in the hearings. Nepalese law does not even make provision for compensating witnesses for any costs incurred in reporting. This is discouraging to the victims who wish to take up their cases with the authority, and this may be one of the reasons why few cases of torture are reported in the government agencies. According to CRT, the burden of proof lies with the victim

himself/herself and the public prosecutor pleads on behalf of the offender; which also obstructs the process of justice for the victims of torture. The amount of compensation paid by the State to the victims is also minimal. This is an area where amendment is needed to make it compatible with the spirit of the Convention.

106. As per article 12 of HRC and rules 3 to 7 of the NHRC (Complaints, Action and Compensation) Regulation 2001, the victims or any person on their behalf can file a complaint with NHRC. After the complaints are received, they are investigated initially under the guidance of the concerned member and afterwards assigned to the concerned official. After completing the investigation, the official puts forward the case with suggestion for a decision by NHRC. Information about the investigation of cases of torture by NHRC is discussed under article 4.

107. The police are duty bound to carry out a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture has been committed or when a complaint is made alleging that a person has been subjected to or is being subjected to torture. Complaints against police officers, including complaints of alleged torture, can be made to the human rights cells established at Police Headquarters. The complaints are verified through correspondence and field visit. Both the victim and the accused are interviewed. A thorough investigation of all complaints is carried out. Similarly, the complaints can be made to the human rights cell in the Home Ministry, or to regional police offices and to the concerned senior officer. Though the fairness of such investigation is questioned by NGOs, there is a system of appealing to the Appellate Court, which is obviously impartial.

#### **Article 14**

108. As discussed earlier, article 14 (4) of the Constitution guarantees compensation for victims who are tortured in detention.

109. Section 4 of CRT states that if it is found that any employee of HMG/N has inflicted torture on any person, the victim shall be provided compensation in accordance with the Act. Similarly, section 6 of the Act states if HMG officials commit torture, the victim is compensated up to Nrs 100,000 by the State. In case of the death of the victim, the nearest kin has to present the copy of the decision made by the court for the compensation along with an application to the CDO of that district and where the victim was kept in detention, and the CDO has to compensate the relative within 35 days. The court can also order departmental action against the perpetrator.

110. It is worthwhile to mention here that a petition lodged by two lawyers (Madhav Basnet and Jay Prasad Poudel) with the Supreme Court, which claimed that section 6 of CRT, was inconsistent with article 14 (1) of the Convention. The Supreme Court in September 2003 ruled that there was no such inconsistency.

111. The first compensation awarded to a victim of torture inflicted by a government official under CRT only happened in January 2001, nearly five years after the Act came into force. According to CVICT, the lack of application of this provision has been largely due to loopholes in the law or to the lack of awareness among the people about this Act. However, as of 30 October 2003 the respective courts had decided 16 cases of compensation in favour of the victims on the basis of CRT. Some of them are:

(a) SP Madan B. Khadka and A/SI Jaman S. Ranabhat of the Nepal Police were ordered to pay Nrs 3,000 as compensation to the victim of torture Durga Gupta on 27 February 2001 by Chitwan District Court. SP Khadka was cautioned by the court and A/SI Ranabhat was referred for departmental action. The Appellate Court upheld the verdict of the district court on 21 November 2001;

(b) SI Gambhir P. Saha (and others) of the Nepal Police were ordered to pay Nrs 50,000 to the victim of torture Mr. Amar Narayan Lohiya by the Nawalparasi District Court in January 2001. The court has also given order for departmental action to be taken against him;

(c) The Lalitpur District Court decided in favour of the victim Ashwin K. Dahal on 9 June 2003. SP Ramchandra Khanal was ordered to pay Nrs 5,000 to the victim, and he was also warned by the court;

(d) The Morang District Court has ordered Mr. Chandeshwor Pokhrel (and others), jailor of Morang jail, to pay Nrs 50,000 as compensation to Mr. Laxmi P. Poudel, the victim of torture;

(e) The Kathmandu District Court on 11 September 2003 decided in favour of Mr. Thamser Rai, the victim of torture. The perpetrator in this case was the Ward Police Station of Singh Durbar, Kathmandu. The perpetrator was ordered to pay Nrs 100,000 to the victim.

112. Thirteen cases of torture compensation were dismissed by different courts on the lack of evidence.

113. The NHRC (Complaints, Action and Compensation) Regulation, 2000 has a provision for the payment of compensation of up to Nrs 100,000 to the victims of torture by the State and/or torturer, as the case may be. The amount for the compensation is assessed in accordance with the gravity of the torture.

114. As per rule 18 (1) of the NHRC (Complaints, Action and Compensation) Regulation, 2001, on the complaint of the victim of torture Mr. Rabindra Silwal against Inspector of Police Prabha Sharma and others, NHRC has decided that Nrs 50,000 should be provided to the victim as compensation. He was detained in District Police Office, Kathmandu, for one week. NHRC has already asked the Cabinet Secretariat to implement the decision. The decision is being implemented through the Home Ministry.

115. In the Banke Prison incident mentioned under article 2, NHRC has decided that the death had occurred owing to the lack of sensitivity and vigilance on the part of the CDO, Police Inspector and police personnel regarding the right to life of the prisoners. NHRC decided to write to HMG/N to provide compensation to the families of the dead in an amount of Nrs 100,000 each. The decision is implemented by HMG/N.

116. Article 115 (10) of the Constitution states that if, during the continuance of a proclamation or order of a state of emergency, any damage is inflicted upon any person by an act of any official which was done in contravention of law or in bad faith, the affected person may within three months from the date of termination of the proclamation or order file a petition for compensation for the said damage and if the court finds the claim valid, it shall cause

compensation to be delivered. However, as the state of emergency lasted until August 2002, only two cases have been lodged in district courts seeking compensation against the torture they sustained. This indicates that security personnel did not commit torture in the time of the emergency.

117. Section 8.6 of the Country Code states that if a detainee is detained illegally with food, the person responsible has to compensate one third of the compensation, and if detained without food, two thirds of the compensation has to be paid by the person responsible. Section 5 (3) of CRT has provisions for the medical examination of the victims on the order of the court if a member of the victim's family files a complaint with the court that the detainee had been subjected to torture. Should the fact be established, HMG/N provides the medical treatment.

118. According to the Public Security Act, 1989, if any person is detained illegally, the victim may go to the concerned district court to seek compensation against the local official who has ordered such detention.

119. There are a number of NGOs that provide integrated medical and counselling services to the victims of torture. Some NGOs, in particular CVICT, have specifically focused on assistance to and rehabilitation of victims of torture and their families. Medical clinics are also conducted at the grass-roots level.

#### **Article 15**

120. According to section 9 of the Evidence Act, 1974, a statement obtained by any inducement, threat, torture, or attempt to torture, or against the consent of the accused shall not be treated as evidence by the court. Any statement given by the accused outside the court confessing the crime shall not be taken as evidence unless other independent evidence has proved otherwise. The Act also details the procedures for the cross-examination of witnesses and says that the burden of proof shall be on the prosecution.

121. Similarly, article 14 (3) of the Constitution states that no person accused of any offence shall be compelled to be a witness against himself/herself.

#### **Article 16**

122. In accordance with article 14 (4) of the Constitution, no person who is detained during investigation or for trial or for any other reason shall be given any cruel, inhuman or degrading treatment. Any person so treated shall be compensated in a manner determined by law. The relevant law, namely CRT, includes cruel, inhuman or degrading treatment within the definition of torture and deals with it accordingly. All the provisions in domestic laws and programmes, as mentioned above with regard to articles 2, 10, 11, 12, 13 and 14 on torture are, in practice, also equally applied to prevent acts of cruel, inhuman or degrading treatment or punishment.

### **III. COMPLIANCE WITH THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS**

123. Most of the concerns shown by the Committee on the initial report submitted by Nepal have been discussed under the respective articles in the present text. In the absence of the Parliament, legislation incorporating torture as a crime into domestic law is yet to be enacted. However, a draft has been prepared by HMG/N.

124. Several cases of maltreatment of prisoners, detainees and others by security personnel have been discussed under the respective articles. Those found guilty have been prosecuted and punished. As recommended by the Committee, as compensation legislation, the Compensation Relating to Torture Act, 1996 has been enacted, which also incorporates the definition of torture. Various programmes of education on human rights for law enforcement officials, including the police, armed police, Royal Nepalese Army and prison officials, have been undertaken. The topic is discussed in detail under article 10.

### **IV. CONCLUSION**

125. Nepal is passing through a very difficult time, mainly because of the prevalence of unprecedented armed conflict. The Maoists have committed flagrant violations of the provisions enshrined in the Constitution and universally accepted principles of human rights. Security personnel, including the Royal Nepalese Army, have been mobilized to quell the insurgency. Even in the difficult situation, anyone who is found guilty of committing torture or violating human rights is prosecuted, and those who suffer have been compensated.

126. During the reporting period, many pieces of legislation have been enacted. Most important are the Compensation Relating to Torture Act, 1996; the Human Rights Commission Act, 1997; and the State Cases Act, 1993. To honour human rights, to safeguard the rights of the victims and to prevent torture, these acts are considered as milestones. Similarly, in line with the Constitution, many acts have been amended.

127. Following HRC the National Human Rights Commission, an independent body, was constituted. A Human Rights Promotion Centre has been established under the Office of the Prime Minister and the Council of Ministers. Similarly, human rights cells have been established in the Home Ministry, the Nepal Police, the Armed Police Force and the Royal Nepalese Army. These agencies have taken measures to prevent torture and punish offenders.

128. The judiciary is playing a vital role in protecting human rights, particularly in safeguarding the rights of victims. In the state of emergency period, the Supreme Court issued many writs of habeas corpus. The concerned courts have also decided in favour of victims in compensation cases involving torture.

129. Nepal has given asylum to more than 100,000 Bhutanese refugees and about 20,000 Tibetan refugees. HMG/N has pursued a policy of non-refoulement of asylum-seekers.

130. Although torture has not been incorporated in domestic law as a crime, HMG/N is working for this. There are other legal provisions as well which help to prevent torture. There are legal provisions for proceedings, prosecution and fair trial.

131. There are systematic training programmes for law enforcement officials on human rights and the prohibition of torture. These programmes, run by HMG/N and the non-governmental sector, are discussed under article 10. Moreover, the interrogation rules have been reviewed and the rights of prisoners have been protected. Legal provisions have guaranteed investigation and the right to complaint.

132. Compensation for victims of torture while in detention or prison is being provided by the Government, following CRT and HRC. Several cases of compensation are cited under article 14.

133. Various provisions in domestic laws and programmes concerning torture, as mentioned under the respective articles, are also applied to prevent acts of cruel, inhuman or degrading treatment or punishment.

134. HMG/N is aware of allegations concerning acts of torture committed by law enforcement officials, as reported elsewhere. These allegations sometimes bear some truth. However, these are not the outcome of a deliberate State policy, but are rather isolated acts carried out by individuals. The Government is committed to prosecuting the offenders and providing justice to the victims. Although the Kingdom is in exceptional circumstances of intense armed conflict, the Committee is assured that every effort is being made by HMG/N to prevent torture and other acts of cruel, inhuman or degrading treatment or punishment.

**List of annexes**

- I. Compensation Relating to Torture Act, 1996
- II. Public Security Act, 1989 (relevant sections only)
- III. Civil Rights Act, 1955 (relevant sections only)
- IV. The Police Act, 1955 (relevant sections only)
- V. Military Act, 1959 (relevant sections only)
- VI. Nepal Treaty Act, 1991 (relevant sections only)
- VII. The Evidence Act, 1974 (relevant sections only)
- VIII. State Cases Act, 1993 (relevant sections only)
- IX. The Children's Act, 1992 (relevant sections only)
- X. Some Public (Crime and Punishment) Act, 1970 (relevant sections only)
- XI. Extradition Act, 1988 (relevant sections only)
- XII. Summary Proceeding Act, 1972 (relevant sections only)
- XIII. The Constitution of the Kingdom of Nepal, 1990
- XIV. Human Rights Commission Act, 1997
- XV. The Prison Act, 1963
- XVI. Terrorist and Disruptive (Prevention and Punishment) Act, 2002
- XVII. Drafting Committee of the Report

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