



Seeking Reparation for Torture Survivors

REVIEW OF THE IMPLEMENTATION OF RECOMMENDATIONS MADE BY THE SPECIAL RAPPORTEUR ON TORTURE, MANFRED NOWAK, AFTER HIS MISSION TO NEPAL IN 2005

September 2011

Advocacy Forum and REDRESS welcome the opportunity to provide an update on the implementation of recommendations made by then-Special Rapporteur, Professor Manfred Nowak, after his mission to Nepal in 2005.

Our detailed comments on the implementation of each recommendation are included in the table following this brief introduction of a number key points.

The information provided in this submission is based on Advocacy Forum's work in Nepal monitoring places of detention, and (in partnership with REDRESS), its work with victims of torture and other serious human rights abuses to combat impunity and achieve justice through legal proceedings, legislative reform, and advocacy. We would be very happy to discuss any of these issues further with the Special Rapporteur, or to provide any other information required.

Summary of key points

Since the end of the conflict in April 2006, the occurrence of torture by both the security forces and the Communist Party of Nepal (Maoist) (CPN-M) has reduced. Nevertheless, **torture remains habitual and widespread, especially in police custody** in at least a considerable part of the country and in relation to certain categories of detainees such as juveniles and members of certain ethnic groups.

Despite general statements by the government pledging its commitment to the rule of law, good governance and human rights, such as during the Universal Periodic Review in January 2011, there has been **no clear statement affirming the government's commitment to prosecute acts of torture, and torture is still not defined as a crime in domestic law**. Any disciplinary actions taken by police remain rare and disciplinary punishments that are imposed are entirely inadequate.

A number of **bodies set up to investigate** reports of human rights violations (including torture) lack independence and impartiality, and are largely ineffective. The National Human Rights Commission has not prioritised the investigation of torture, and the number of cases it has investigated is very small. Meanwhile, the **Torture Compensation Act** remains in force and its operation as a remedy for victims of torture is highly problematic. Of the 81 cases filed by Advocacy Forum (AF) on behalf of victims since 2003, less than one fourth resulted in compensation being granted, and a paltry 11.2% involved departmental action being ordered against perpetrators.

A general downward trend since 2006 in the incidence of torture in detention now appears to be in reverse. AF carries out a program of monitoring places of detention in Nepal in 20 of the country's 75 districts, in the absence of systematic monitoring by government and other agencies. Worryingly, AF's monitoring shows a pattern of **increase in the incidence of torture in detention** since July 2010.¹ Similarly, AF has been made aware of increased use of **secret detention** and **use of private houses as places of detention** in the past twelve months.

The practice of **denying detainees access to their relatives or lawyers during the first few days after arrest remains common.** Many detainees are allowed visits only after they have been remanded into custody by the court, which is commonly later than the 24-hour period required by law (during 2011, 47.6% of the detainees interviewed by AF were taken before a judge after the 24-hour deadline had expired). It is during this period that most incidents of torture take place. Similarly, problems with the maintenance of custody registers, and denial of access to such registers by lawyers, continue.

The **general observance of some safeguards** – including health check-ups of detainees at the time of being taken into detention – appears to be improving, but in practice these are often conducted simply as a formality (and check-ups at release from detention are often not carried out). Similarly, there has been an increase in the number of detainees interviewed by AF who say they were asked by the Judge about whether they were tortured or otherwise ill-treated, however at a rate of only 19.4% there is still much room for improvement. Safeguards in relation to the **use of confessions** obtained in the absence of a lawyer are not in place, and such confessions are routinely admitted as evidence.

Some **legislative reforms are in process** which have the potential to contribute to the reduction of torture, including bills criminalising and providing punishments for torture and enforced disappearances, and unlawful and secret detention. Non-governmental organisations including AF and REDRESS have proposed certain amendments to these bills to ensure they are compatible with international standards and to address some of the issues raised in this submission, and the bills must be amended and passed as a matter of urgency.

Impunity for serious human rights violations, including torture, remains a grave problem – even in cases where the UN Human Rights Committee has found violations of the prohibition of torture and the right to a remedy and recommended that the government take action. At the UPR in January 2011, the government once again promised to address impunity. However, rather than investigating and prosecuting those responsible for grave human rights violations, consecutive governments have withdrawn cases pending in the courts and tried to grant blanket amnesties, and the new coalition government formed in August 2011 has announced similar plans.

¹ See reports of AF's monitoring for the period July 2010 to June 2011 at: <http://www.advocacyforum.org/downloads/pdf/publications/briefing-jan-to-june-2011.pdf> and <http://www.advocacyforum.org/downloads/pdf/publications/Briefing-July-to-Dec-2010-final.pdf>.

Nepal

Follow-up to the recommendations made by the Special Rapporteur (Manfred Nowak) in the report of his visit to Nepal in September 2005 (E/CN.4/2006/6/Add.5, paras. 33-35)

<i>Recommendation (see E/CN.4/2006/6/Add.5)</i>	<i>Situation during visit (see E/CN.4/2006/6/Add.5)</i>	<i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i>	<i>Information received in the reporting period</i>
<p>a) Highest authorities, particularly those responsible for law enforcement activities, declare unambiguously that the culture of impunity must end and that torture and ill treatment by public officials will not be tolerated and will be prosecuted.</p>	<p>Special Rapporteur was repeatedly told by senior police and military officials that torture was acceptable in some situations.</p>	<p>Government: In 2007 the Interim Constitution prohibiting torture was adopted. However, torture was not criminalized in domestic laws. In August 2008, the “Common Minimum Programme” (CMP) was agreed. The 50-point programme - among other commitments - states that the culture of impunity shall end through consolidating law and order. To render the administration and security organs independent and accountable, a Code of Conduct shall be developed for the peoples’ realization of security. On several occasions, the Home Minister has made statements in which he has promised to address the lack of public security and absence of the rule of law, and encouraged the police to restore law and order at the earliest opportunity. On 7 September 2008, he gave 15 instructions to the Inspector General of Police to do so.</p> <p>Non-governmental sources: officials continue to make public commitments that impunity must end. For instance,</p>	<p>Though the government makes general statements pledging its commitment to the rule of law, good governance and human rights, such as during the UPR in January 2011, there has been no clear statement affirming the government’s commitment to prosecute acts of torture. On the contrary, torture is still not defined as a crime in law and impunity related to it remains widespread and systematic.</p> <p>During the UPR in January 2011, the government once again promised to address impunity. However, rather</p>

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		<p>in his statement to the GA on 26 Sep. 08, then PM "Prachanda" stated that, as a democracy, Nepal is fully committed to protect and promote the human rights of its people under all circumstances with constitutional and legal guarantees and implementation of the international human rights instruments to which Nepal is a party. However, the climate of impunity remains firmly entrenched, evidenced by actions such as the withdrawal of criminal charges in 349 cases and the lack of progress in police investigations into past human rights violations.</p>	<p>than investigating and prosecuting those responsible for grave human rights violations, consecutive governments have withdrawn cases pending in the courts and tried to grant blanket amnesties. The new coalition government of the Maoists and regional parties from the southern Terai region which came to power in late August 2011 formally agreed to withdraw criminal cases against individuals affiliated with the Maoist party, the Madhesi, Janajati, Tharuhat, Dalit, and Pichadabarga movements, and to declare a general amnesty in cases which could include serious crimes and human rights abuses.</p> <p>To date, not a single person alleged to have committed serious human rights violations during the conflict has been brought to justice in a civilian court.</p> <p>The government has further failed to implement the views of the UN Human Rights Committee in the two cases in which it has been held to have violated its obligations in relation to the prohibition of torture and victims' right to a remedy under the Covenant on Civil and Political Rights (<i>Sharma v Nepal</i> (2008) and <i>Giri v Nepal</i> (2011)).</p>

<p>Recommendation (see E/CN.4/2006/6/Add.5)</p>	<p>Situation during visit (see E/CN.4/2006/6/Add.5)</p>	<p>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</p>	<p>Information received in the reporting period</p>
		<p>Government: The draft bill on Witness Protection is almost finalised.</p> <p>Non-governmental sources 2010: The widespread impunity is partly due to the fact that under the law, Chief District Officers (CDOs) enjoy quasi-judicial power.</p> <ul style="list-style-type: none"> - The Armed Police Force and the Forestry Department is reportedly involved in illegal arrests, detention and torture of detainees. - On 6 April 2010, a non-governmental organization filed a petition (Writ No W0043) of Public Interest Litigation to challenge the quasi-judicial power of Chief District Officers (CDOs), arguing that a number of laws granting quasi-judicial powers to CDOs were in breach of article 14 of the International Covenant on Civil and Political Rights (ICCPR). The Case is <i>sub judice</i> before the Supreme Court. - The Police Act provides for disciplinary actions and lenient penalties for police officers involved in torture. - According to the data gathered for 	<ul style="list-style-type: none"> - After 8 postponements of the final hearing in Writ No W0043 challenging the quasi-judicial power of Chief District Officers (CDOs), the Supreme Court on 22 September 2011 ordered the government to review the quasi-judicial powers vested in Chief District Officers and other administrative officers within six months. - Any disciplinary actions taken by police remain rare and disciplinary punishments that are imposed are entirely inadequate. - In the six months July to December

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		<p>the period of 2006-September 2010, there has been a steady decline of around 15 per cent in the alleged cases of tortures of detainees, from around 30 per cent in 2006 to around 15.7 per cent in 2010, though there is a worrying increase over the period from April to June 2010.</p> <p>- In some districts and in relation to some categories of detainees, the percentages are much higher. It has been observed that detainees belonging to certain minority ethnic groups and lower castes face a significantly higher risk of torture than detainees from high castes. It is further consistently reported</p>	<p>2010 there has been an apparent reversal in the trend of gradual decline in reported torture in the 57 places of detention in 20 districts where AF conducts regular visits. Reported torture declined from around 50% in 2001 – 2002 to around 20% in 2009 – 2010. The percentage of torture in detention recorded by AF from January to June 2010 was 15.8%. This increased to 22.5% between July and December 2010. A further increase to 25% was recorded by AF from January to June 2011.</p> <p>- People of Terai origin continue to be found to be more likely to be tortured than hill community people.</p> <p>- Juveniles continue to face a higher risk of torture. The percentage of torture recorded during January to June 2011 is 32.8%, an increase of 6.1 % compared to July to December 2010.</p>
<p>b) The crime of torture is defined as a matter of priority in accordance with article 1 of the Convention against Torture, with penalties commensurate with the gravity of torture.</p>	<p>Torture prohibited in Article 14(4) of Constitution (1990). However, torture was not criminalized in domestic legislation.</p>	<p>Government: In 2007 the Inter-ministerial consultations on the draft torture bill were underway. The Interim Constitution of January 2007 Art. 26 stipulates: “(1) No person who is detained during investigation or for enquiry or for trial or for any other reason shall be subjected to physical</p>	<p>Although the Interim Constitution of 2007 states that any act of torture shall be punishable by law, there is not yet any legal provision that declares torture to be a crime in Nepal.</p> <p>A draft Penal Code, Criminal</p>

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		<p>or mental torture, nor any cruel, inhuman or degrading treatment. (2) Actions pursuant to clause (1) shall be punishable by law and any person so treated shall be compensated in accordance with the decision determined by law.”</p> <p>Army Act 2006 (amendment of Military Act 1959) Section 62 criminalizes torture and provides for investigations by civilian authorities, headed by the Deputy Attorney General. A special court presided by an Appellate Court Judge competent for such crimes. However the law does not contain a definition of torture.</p> <p>Non-governmental sources: The draft bill criminalizing torture which was the subject of consultations in 2007 has yet to be made public, or tabled before the Parliament for approval. The work of the Ministry of Home Affairs and the Ministry of Law and Justice related to the preparation of the torture bill has not been transparent, which has caused frustration for national and international organizations interested in supporting the criminalization process.</p> <p>A draft bill which would set the</p>	<p>Procedure Code and Sentencing Bill were submitted to the parliamentary secretariat in late January 2011. However they have yet to be circulated among the members of parliament. The submission to the secretary puts an end to the public consultation process. Partly as a result of these consultations, a definition of torture was included into the draft Penal Code.</p> <p>No draft bill to criminalize torture has been made public.</p> <p>- The draft bills for the establishment</p>

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		<p>framework for the establishment of a truth and reconciliation commission defines mental and physical torture as a serious human rights violation, and has a provision prohibiting amnesty for acts of torture or degrading treatment. The bill has been the subject of public consultations conducted by the Ministry of Peace and Reconstruction (with the support of OHCHR), but has yet to be presented before Parliament.</p> <p>Despite revisions to the Army Act in 2006, there has yet to be a successful criminal prosecution of Nepal Army personnel involved in conflict-related torture. The Nepal Army continues to maintain that the previous Army Act, in effect during the conflict, prevents them from cooperating fully with police investigations into allegations of torture by its personnel during the conflict.</p> <p>The only legislation to redress torture survivors is the ‘Torture Compensation Act 1996’ of Nepal, which deals only with the compensation of torture. It does not allow for criminal prosecution of the perpetrators involved in torture and other ill-treatment, and contains a limitation clause of 35 days.</p>	<p>of the truth and reconciliation commission (TRC) and the disappearances commission were tabled in parliament, but have been pending before the Legislative Committee since early 2011. The Maoist Party’s Commitments and Proposal to Government, Peace Process and Constitution” of 25 August 2011 promised to establish the TRC and Disappearances Commission within one month.</p> <p>- The Torture Compensation Act 1996 remains in force. Its functioning is highly problematic.</p> <p>Since no centralised documentation of cases filed under the TCA exists, it is difficult to make a comprehensive assessment of these cases. Nevertheless, an analysis of cases filed by AF since 2003 reveals</p>

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		<p>Non-governmental sources 2008: Art. 26(1) of the Interim Constitution requires the Government to criminalize torture, although the provision has not been included in the legislation. The Government has repeatedly stated that it is drafting a bill, but no progress has been reported. Despite repeated requests, no details of the draft have been made available to the public.</p> <p>The CMP provides for the appointment of a high-level security committee to develop a national security policy and, based on the agreement of 23 Dec. 07 signed with the 7 party alliance (SPA), the creation of a National Peace and Rehabilitation Commission, a High Level Truth and Reconciliation Commission (TRC), a High Level Commission for State Restructuring, a Commission on Disappearances, and a Land Reforms Commission. Beyond the reference to the appointment of a TRC and a Commission on Disappearances, the CMP remained silent in relation to accountability for past human rights abuses.</p> <p>Non-governmental sources 2010: The practice of impunity in relation to torture and ill-treatment has exacerbated due to the fact that torture</p>	<p>considerable information about the Act, particularly in terms of judicial decisions reached. AF has filed 98 cases on behalf of victims under the TCA from 2003 till June 2011. Of these 98 cases, 39 (39.7%) were dismissed at final hearing; 27 (27.5%) were granted compensation; six (6.1%) were withdrawn by the plaintiff; 9 (9.1%) were dismissed during earlier stages of the case, on the basis of, for instance, shortcomings in evidence and 17 (17.3%) remain pending in the courts. Around one fourth of cases filed resulted in compensation being granted, and in 11 cases (11.22%) the courts ordered for departmental action against perpetrators. In two cases, the court ordered the department to give advice to the perpetrators involved in torture, a directive short of disciplinary action. This demonstrates the extent to which the TCA can be seen to perpetuate cycles of impunity and deny judicial remedy to the majority of victims.</p> <p>Torture has still not been defined as a crime.</p>

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		<p>is not defined as a crime and no criminal charges can be brought against the perpetrators.</p> <ul style="list-style-type: none"> - Although article 20 of the Interim Constitution of January 2007 requires criminalization of torture, no such actions have been undertaken. - Article 164 of the draft Penal Code, recently brought before the Cabinet, criminalizes torture. However, it fails to provide a clear definition in line with international standards and fails to impose a minimum punishment for the acts of torture. It also provides a maximum time limit of six months within which victims have to file cases. 	<ul style="list-style-type: none"> - The draft Penal Code now provides for five years' imprisonment as the maximum penalty for torture. - However, the draft provision introduces a limitation period for filing claims of 6 months from the day of incident or from the release of victim from detention.
<p>c) Incommunicado detention made illegal, and persons held incommunicado released without delay.</p>	<p>A large number of persons taken involuntarily by security forces were being held incommunicado at unknown locations.</p>	<p>Government: Art. 24 (2) of the Interim Constitution provides for immediate access to legal counsel. Section 24 (3) stipulates that detainees ought to be presented before a judge within 24 hours of their arrest.</p> <p>Non-governmental sources: As per 2009, incommunicado detention has reappeared in the recent past in connection with detained individuals accused of belonging to armed groups. OHCHR has documented numerous cases of illegal detention of suspected members of armed groups. Police regularly deny that suspected armed group members are in police</p>	<p>AF has received complaints regarding the use of private residents as secret places of detention where people are severely tortured in Kathmandu. According to Nepal National Weekly in a special report published on 19 December 2010, police have continued to rent private houses to interrogate and detain suspects - a practice which started during the conflict. Several of these houses have been located: the first one - in Sanepa, Lalitpur - is believed to be the house where the three individuals were detained. The report further states that in the second house, located in Gairidhara, a</p>

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		<p>custody, and have held individuals incommunicado for multiple days before acknowledging that they are in detention or without granting access to organizations such as OHCHR or the National Human Rights Commission. Police continue to keep inaccurate records of detention in which they falsify the date of arrest.</p> <p>Non-governmental sources 2008: Although incommunicado detention is less common now than during the conflict, unacknowledged detention and failure to observe court orders regarding releases, particularly by the Armed Police Force (APF), continue to occur. There are some cases of incommunicado detention for up to 11 days.</p> <p>Government: The police does not possess information about any unacknowledged incommunicado detention. Police produces any arrested person before the judicial authority within 24 hours excluding the time required for the transfer. Any person detained for more than 24 hours can seek legal remedies from the courts.</p> <p>Non-governmental sources: Incommunicado detention is not illegal and many detainees are denied</p>	<p>team of plainclothes policemen operating under the command of Deputy Superintendent of Police (DSP) Gagat Man Shrestha have been detaining and interrogating suspects, information that was later denied by police spokesman Biguan Raj Sharma. The existence of these “safe houses” is being kept under wraps even among police personnel. Sources within the police justify the practice by claiming they are used to avoid leaks and prevent the media from “hampering the investigations”. However, the unlawfulness of these detentions is of serious concern. Suspicions of extortion by the police have been confirmed by individuals detained and forced to pay for their release.</p> <p>The practice of denying detainees access to their relatives or lawyers during the first few days after arrest</p>

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		the right to meet their relatives or lawyers during the first few days of their arrest.	remains common. Many are allowed visits only after they have been remanded into custody by the court.
d) Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention, which should not exceed 48 hours. After this period they should be transferred to a pre-trial facility under a different authority, where no further unsupervised contact with the interrogators or investigators should be permitted.	Legislation (2004 Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) and the 1989 Public Security Act (PSA)) effectively provided the police and the military with sweeping powers to detain suspects for preventive reasons, in some cases for up to 12 months; (Section 15 (2) of the State Cases Act requires that arrested persons be produced before the “appropriate authority” within 24 hours, and prohibits any person from being held for a longer period without orders of such authority).	Government: According to Art. 24 (3) of the Interim Constitution, detainees must be presented before a judge within 24 hours of arrest. Non-governmental sources: Detainees in police custody continue to be held beyond the 24 hours permitted by law. A lack of accurate record keeping in many prisons and police detention facilities makes it difficult to hold police personnel accountable for these violations. In practice, Art. 24 (3) is not respected. There are some significant gaps in constitutional protection, e.g. with regard to the rights of non-citizens, to liberty and security and provisions permitting derogation from rights during a state of emergency. TADO 2006 – under which many detainees were held without charge under the previous Government – expired at the end of Oct. 06 and has not been renewed. Most detainees held under TADO were gradually released after April 2006. Non-governmental sources 2010: Although the Interim Constitution	The practice of keeping detainees in police custody beyond the 24 hours permitted by law remains common. During 2011, 47.6% of the detainees interviewed by AF were taken before a judge after the 24 hour deadline had expired. Only 37.3% were taken to court within the required 24 hours. (Others were released.) During this initial period, access to relatives and lawyers is often also restricted. It is during this period that most incidents of torture take place.

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		requires bringing detainees before court within 24 hours, in practice detainees are held under detention for long hours without having access to lawyers or a doctor.	
e) Maintenance of custody registers be scrupulously ensured, including recording of the time and place of arrest, the identity of the personnel, the actual place of detention, the state of health upon arrival of the person at the detention centre, the time family and a lawyer were contacted and visited the detainee, and information on compulsory medical examinations upon being brought to a detention centre and upon transfer.	Detainee registers were poorly kept, if at all.	<p>Non-governmental sources: According to the Police Act, the police authorities are obliged to maintain a standardized register. However, the practice of using ad-hoc registers and notebooks instead of standardized diaries still remains a problem. The police generally do not record the actual date of arrest and often adjust the arrest date in order to give the impression of compliance with the 24 hour limitation. OHCHR continues to document instances of APF personnel participating in the detention and interrogation of suspects.</p> <p>In March 06 the Office of the Prime Minister and the Council of Ministers opened the Human Rights Central Registry, whose functions included, inter alia, maintaining a list of detainees throughout the country. National Army, Home Office, APF and NP staff were assigned to the office and were starting to develop a detention database, but by the end of 2006, no data had been entered for the over 7,000 detainees and prisoners officially recognized as being held</p>	The multiple issues identified during 2010 (incomplete and inaccurate registers; lack of access to registers for lawyers; not registering detainees who are released after a short period of time, etc) remain common problems during 2011.

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		<p>throughout Nepal. The office never became fully functional and ceased to function shortly after the change of Government in April 06.</p> <p>Detention registers are not systematically updated; the police use two registers: one lists the name of detainees before remand and the other after remand. The lawyers and the public do not have access to registers. As the police are legally entitled to detain a person for 24 hours, they often do not register the names of arrested/detained persons immediately.</p> <p>APF does not have clear legal powers to arrest and detain. However, it has become increasingly involved in arrests related to armed groups, and it does not operate or maintain official detention facilities or detention registers.</p> <p>Non-governmental sources 2010: The registers and detention records are incomplete and often inaccurate, if not deliberately falsified. This shortfall allows for holding detainees for several days without charges.</p> <p>- Lawyers do not have access to police registers. Most commonly, the date of arrest is falsified in an attempt to circumvent the constitutional</p>	<p>AF is aware of cases between January and June 2011 of torture committed by the APF. One involved a clash between a Muslim community and the APF and in the other case two individuals were tortured by APF from Customs Security checkpoint, Krishna Nagar, Kapilvastu District.</p>

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		<p>requirement to bring detainees before a court within 24 hours.</p> <ul style="list-style-type: none"> - In cases where a detainee is released within a couple of hours or in the first few days after the arrest, records of it are not being kept. - In addition, access to relatives and a lawyer is normally granted only when detainees are brought before the court. <p>Government: In every District Office throughout the country there are police officers assigned as “custody management officers” who are responsible to manage custody and records of the detainees. A “Custody Record Form” is used to keep detainee’s records.</p> <p>It is mandatory for all responsible police personnel to carry out a physical and health check up before and after detention or release of any person.</p>	<p>It is found that “custody management officers” are not specifically focussed on their custody work. They are often found engaged in other work and custody work is not carried in a timely manner.</p> <p>A health check-up of detainees at the time of being taken into detention is now fairly well observed, though the manner in which the check-ups are conducted remains problematic. Interviews with detainees suggest that health check-ups are just a formality as police routinely take detainees in groups to see a doctor; and doctors simply ask the detainees whether they have any injuries or internal wounds, but fail to physically examine them. Check-ups at the time of release are often not adhered to.</p>
<p>(f) All detained persons be effectively guaranteed the ability to challenge the lawfulness of their detention, e.g.</p>	<p>The right of habeas corpus was denied by virtue of Article 14(7) of the Constitution to any person who is</p>	<p>Non-governmental sources. The June 07 decision of the Supreme Court has not been implemented. The</p>	<p>- Enforced disappearances have not been criminalized, despite the 2007 Supreme Court order for the</p>

<p><i>Recommendation (see E/CN.4/2006/6/Add.5)</i></p>	<p><i>Situation during visit (see E/CN.4/2006/6/Add.5)</i></p>	<p><i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i></p>	<p><i>Information received in the reporting period</i></p>
<p>through habeas corpus. Such procedures should function effectively and expeditiously.</p>	<p>arrested or detained by any law providing for preventive detention; Whereas safeguards were contained in preventive detention legislation and the right of the Supreme Court to issue habeas corpus writs with respect to preventive detention; the Special Rapporteur observed that these safeguards were not effective.</p>	<p>government has, however, prepared a draft bill to criminalize disappearances and to set up a Commission of Inquiry into Enforced Disappearances. The current draft has been criticized, including by OHCHR, for being inconsistent with international standards in a number of respects.</p> <p>Misrepresentations by police and other state officials, apparently to hide detainees or cover-up the fact that their detention is illegal, continue to present an obstacle to the effective functioning of the habeas corpus remedy. Weak sanctions for perjury and contempt of court are contributing factors in relation to the way in which the authorities respond to habeas corpus petitions. Despite obvious and repeated lies and misinformation from officials in court (including by the Nepal Army during the conflict), no one has ever been prosecuted or otherwise disciplined by the courts for perjury.</p> <p>In June 07, the Supreme Court issued a groundbreaking ruling in relation to disappearances resulting from the conflict, based on the work of its Task Force set up for a group of petitions of habeas corpus.</p> <p>As of Jan. 08, the ruling had yet to be</p>	<p>government to do so.</p> <p>- Problems relating to bringing detainees before a court within the 24 hours required by the constitution remain common. (See also the comments above in relation to recommendation (e) on incommunicado detention).</p> <p>Sanctions for perjury and contempt remain weak. Lack of cooperation with the courts and investigating authorities by the Nepal Army and CPN-M in particular are of grave concern.</p>

<p>Recommendation (see E/CN.4/2006/6/Add.5)</p>	<p>Situation during visit (see E/CN.4/2006/6/Add.5)</p>	<p>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</p>	<p>Information received in the reporting period</p>
		<p>implemented. A credible commission of inquiry had yet to be set up.</p> <p>Non-governmental sources 2008: In 2006 and 2005, 64 and 640 cases of habeas corpus, respectively, were lodged at the Supreme Court. While the denial of detainees' rights to habeas corpus to challenge their detention is not as serious as during the conflict, concerns remain as to delays in bringing detainees before a court within 24 hours as stipulated by the Constitution.</p> <p>Government: The Nepal Police respects the rights of detained persons to challenge the lawfulness of their detention. In some instances detained persons were released by the court order.</p>	<p>In April 2011, the Administration of Justice Act was amended to give the powers to hear <i>habeas corpus</i> petitions at the district court level. Prior to this, only the Supreme Court and Appellate Courts were empowered to hear such petitions. This is a welcome change which will hopefully assist in the prevention of arbitrary arrest and detention especially in more remote areas.</p>
<p>(g) Confessions made by persons in custody without the presence of a lawyer and that are not confirmed before a judge not be admissible as evidence against the persons who made the confession. Serious consideration should be given to video and audio taping of all persons present during proceedings in interrogation rooms.</p>	<p>1974 Evidence Act declares statements made under torture inadmissible; however torture was systematically practiced to extract confessions.</p>	<p>Non-governmental sources: In many cases lawyers are not present when detainees initially make "confessions", which are often extracted after beatings, threats or other forms of pressure. Police openly admit that they rely heavily on confessions for criminal investigations. Reportedly, some members of the police have even implied that if they did not use force they would not be able to obtain a confession. It is common for</p>	<p>Police continue to rely heavily on confessions as the central piece of evidence in most cases. Incidents of beatings and ill-treatment during interrogation are widespread and increasing. In addition, it remains very common for detainees to be forced to sign statements without being able to read them.</p>

<p><i>Recommendation</i> (see E/CN.4/2006/6/Add.5)</p>	<p><i>Situation during visit (see E/CN.4/2006/6/Add.5)</i></p>	<p><i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i></p>	<p><i>Information received in the reporting period</i></p>
		<p>defendants to inform courts at the time of committal hearings that they did not give statements voluntarily, at which point such statements are often ruled out as evidence. However, in many other cases this does not happen, or the victim is afraid to allege torture or other ill- treatment.</p> <p>Judges do not generally restrict the admissibility of evidence obtained during interrogation outside of the presence of a lawyer. Confessions remain the central piece of evidence in most cases. Incidents of beatings and ill-treatment during interrogation are widespread. In addition, it is very common in Nepal for detainees to be forced to sign statements without being able to read them beforehand. Further, although the prosecution carries the burden of ultimately proving a defendant's guilt, each defendant has to "persuade" the court of the "specific fact" that a statement was not freely given. In practice, this means that forced confessions are routinely accepted unless the defendant is able to produce some compelling evidence demonstrating that coercion or torture took place. In other words, Nepali law reverses the burden of proof and expects detainees to prove that they were in fact</p>	<p>In the case of <i>Bahadur Karki v Government of Nepal</i> the Supreme Court ruled that an uncorroborated confession is inadmissible at trial (NKP. 2062, Case: Murder, Decision No. 7555 Pg 74), however the current draft Criminal Procedure Code does not include a provision enshrining this rule in legislation and judges continue to allow the admissibility of evidence obtained during interrogation outside of the presence of a lawyer.</p> <p>There have been no changes in law relating to the burden of proof in cases of torture. Detainees continue to be expected to prove that they were tortured.</p>

<p><i>Recommendation (see E/CN.4/2006/6/Add.5)</i></p>	<p><i>Situation during visit (see E/CN.4/2006/6/Add.5)</i></p>	<p><i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i></p>	<p><i>Information received in the reporting period</i></p>
		<p>tortured.</p> <p>There is no provision made for video and audio-taping of proceedings in Nepal.</p> <p>Non-governmental sources: Although under the TCA and Evidence Act, forced self-incriminatory statements are inadmissible in court proceedings, police continues to use torture to coerce confessions. Judges rarely ask detainees whether their statements were given freely. In addition, according to Section 28 of the State Cases Act, forced confessions are routinely accepted by the court, unless the defendant is able to submit evidence demonstrating that the statement was produced through torture. Moreover, the law is not clear as to the exact procedure used by courts to establish whether or not a confession was extracted under torture.</p> <p>- There have been no changes in the provisions of the law with respect to the use of confessions obtained under coercion. From 2006 to 2007, the District Courts convicted defendants in 72.67 per cent of 4,524 criminal cases, whereas CDOs convicted defendants in 98.27 per cent of 2,516</p>	<p>The video and audio-recording of interrogations has not been provided for.</p> <p>In the fiscal year of 2007-2008 the District Courts decided 3,325 criminal cases and CDOs decided 2,723 criminal cases. The District Courts convicted the defendant in 70.89% of the 3,325 criminal cases. The CDOs convicted in no less than 97.94% of cases.</p>

<p>Recommendation (see E/CN.4/2006/6/Add.5)</p>	<p>Situation during visit (see E/CN.4/2006/6/Add.5)</p>	<p>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</p>	<p>Information received in the reporting period</p>
		<p>cases. - In this regard, between October 2009 and June 2010, 13.9% of those charged under the Public Offences Act (1970) and 34.5% of those charged under the Arms, and Ammunition Act (1963), both providing quasi-judicial powers to CDOs, reported torture.</p> <p>Government: According to the Nepalese law, the accused person gives statement to the public prosecutor in the court. No statement is admissible as evidence, unless confirmed by the person before the court.</p>	<p>In the fiscal year of 2008-2009 the District Courts decided 5119 criminal cases and CDOs decided 3,072 criminal cases. The District Courts convicted the defendant in 72.20% of the 6,255 criminal cases. The CDOs convicted in no less than 95.25% of cases.</p> <p>On 22 September 2011, the Supreme Court ordered the government to review the quasi-judicial functions of CDOs and other administrative bodies within six months.</p>
<p>(h) Judges and prosecutors routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination.</p>	<p>There was a lack of prosecutions in the face of mounting and credible allegations of torture and other acts of ill-treatment by the police, APF and RNA.</p> <p>There was a lack of confidence in the justice system and the rule of law on the part of victims and their families.</p>	<p>Non-governmental sources: Art. 135, 3 (C) of the Interim Constitution gives powers to the Attorney General's Office to investigate allegations of inhumane treatment of any person in custody and gives the necessary directions under the Constitution to the relevant authorities to prevent the recurrence of such a situation. In the context of cases brought under the Torture Compensation Act, detainees are increasingly taken for examination at the time of arrest, although there are concerns regarding</p>	<p>Among the detainees interviewed by AF in the period January – June 2011 who had been taken to court (whether within 24 hours or later), only 379 (19.4%) detainees stated that they were asked by the judges about torture or other ill-treatment whereas 1578 (80.6%) stated that they were not asked by judges about torture or other ill-treatment. This represents an improvement from 5.5% in the previous period, possibly as a result of a number of interactions with judges organized by AF.</p>

<p><i>Recommendation (see E/CN.4/2006/6/Add.5)</i></p>	<p><i>Situation during visit (see E/CN.4/2006/6/Add.5)</i></p>	<p><i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i></p>	<p><i>Information received in the reporting period</i></p>
		<p>the quality of these examinations. Quite commonly doctors underreport injuries as they are concerned for their own security and fear reprisals. Often, junior staff is assigned the task of conducting medical check-ups of detainees brought to the hospital by police. It is also common for the police to insist on staying with the detainee, claiming risk of escape. Detainees are very rarely taken for examination at the time of transfer to the prison or release.</p> <p>OHCHR has been working with the Nepal Police, the National Human Rights Commission and other partners to increase the quality of detainee health examinations and their documentation.</p> <p>Most detainees do not make formal complaints of torture and other ill-treatment when taken before a judge or prosecutor, mostly for fear of reprisals. Although some judges have developed the practice of asking male detainees to remove their shirts and questioning, such practice has not become uniform and in any case is inadequate, particularly with regard to methods which do not leave physical marks, including psychological torture. Judges do not systematically test the voluntary nature of a</p>	

<i>Recommendation (see E/CN.4/2006/6/Add.5)</i>	<i>Situation during visit (see E/CN.4/2006/6/Add.5)</i>	<i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i>	<i>Information received in the reporting period</i>
		<p>confession and many confessions extracted under duress are still admitted as evidence.</p> <p>Non-governmental sources 2010: Although it is not strictly required by the Nepal law, some judges ask whether a detainee has been tortured while in custody.</p> <p>- Throughout October 2009 - June 2010, 9.2 per cent of interviewed detainees indicated that judges asked them whether they were subjected to torture during interrogation. This percentage represents almost 5 per cent increase compared to results compiled in December 2008- November 2009.</p> <p>- Although the percentage of detainees who have a medical check-up when taken into custody has increased, no medical examination is carried out when releasing detainees. Furthermore, check-ups are just a formality as police routinely take a group of detainees to a doctor, who simply asks whether they have any injuries or internal wounds and fails to physically examine them.</p> <p>- Doctors often fail to provide the court with adequate medical descriptions and are threatened by the</p>	

<p><i>Recommendation</i> (see E/CN.4/2006/6/Add.5)</p>	<p><i>Situation during visit (see E/CN.4/2006/6/Add.5)</i></p>	<p><i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i></p>	<p><i>Information received in the reporting period</i></p>
		<p>police and the CDO if they provide an adequate medical report.</p> <p>Government: Upon receiving complaint about torture, the court may order within three days, physical or mental examination of the victim of torture or ill-treatment. Under Section 5 (3) of the CRT Act, the government provides medical treatment upon necessity. The proceedings for these type of request are carried out pursuant to Summary Proceedings Act 1971 (Section 6 of the CRT Act), requiring the court to deliver a judgment within 90 days.</p>	<p>- The Compensation Relating to Torture (CRT) Act provides that: “the Court <i>may</i> order to have the detainee’s physical or mental examination within three days”. There are many problems with these medical examinations (so-called Physical-Mental Check-ups, PMCs; to be distinguished from the routine medical examinations conducted at the time of detention and release). In many cases, the police do not take detainees for PMCs within the stipulated time, arguing there were problems with available transport or other obstacles. AF is aware of several cases where doctors have failed to conduct a proper examination. The doctors also often fail to give adequate description of any wounds in the medical report to be submitted to the court, and to give adequate prescriptions for medicines to treat the victims.</p>
<p>(i) All allegations of torture and ill-treatment be promptly and thoroughly investigated by an independent authority with no connection to that investigating or prosecuting the case against the alleged victim. In the</p>		<p>Government: No criminal investigations into torture allegations were launched in 2007. However, in one case an internal inquiry found four police officers responsible of torture and imposed minor</p>	<p>Though the NHRC has powers to visit places of detention, it is not making any systematic visits. Similarly, it has not prioritized the investigation of complaints of torture.</p>

<i>Recommendation (see E/CN.4/2006/6/Add.5)</i>	<i>Situation during visit (see E/CN.4/2006/6/Add.5)</i>	<i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i>	<i>Information received in the reporting period</i>
<p>opinion of the Special Rapporteur, the NHRC might be entrusted with this task.</p>		<p>disciplinary sanctions. Investigations were launched in one prominent case of a death in custody.</p> <p>The Report of the Rayamajhi Commission set up in 2006 to investigate human rights violations, was made public in August 2007.</p> <p>Non-governmental sources: no visible steps have been taken to hold accountable any individual responsible for serious cases of torture during the conflict.</p> <p>The National Human Rights Commission of Nepal (NHRC) mandated to investigate alleged violations of human rights, rarely sees its recommendations to the Government implemented in practice. In its annual report 2007-08, the NHRC cited this inaction on the part of the Government as one of the major challenges in its work.</p> <p>The “investigations” by the so-called Nepal Police Human Rights Cells, consist of sending a letter detailing the complaint to the relevant District Police Office (DPO), asking it to respond to the allegations. No reports of suspensions of police officers pending the outcome of the</p>	<p>A report entitled “A 10-year analysis of recommendations in cases registered with the NHRC” analysing data between 2000 and 2010 shows that out of a total of 10,507 cases registered during this period, the NHRC made recommendations relating to 386 cases. Only 34 of the 286 recommendations (8.8%) were fully implemented. Among these 34, only one case concerned torture and one illegal detention. 36% of the recommendations have been partially implemented, including 3 torture cases. 55% of recommendations have not been implemented.</p> <p>A number of bodies set up to investigate reports of human rights violations (including torture) lack independence and impartiality and are largely ineffective. These include the Nepal Police Human Rights Unit (NP HR Unit), the Attorney General’s Unit (AG Unit) and the Armed Police</p>

<p><i>Recommendation (see E/CN.4/2006/6/Add.5)</i></p>	<p><i>Situation during visit (see E/CN.4/2006/6/Add.5)</i></p>	<p><i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i></p>	<p><i>Information received in the reporting period</i></p>
		<p>investigations were received. The report of the Rayamajhi Commission recommended the prosecution of 31 members of the Nepalese allegations. No reports of suspensions of police officers pending the outcome of the investigations were received. The report of the Rayamajhi Commission recommended the prosecution of 31 members of the Nepalese Army, Nepal Police and Armed Police Force, largely in connection with killings which had occurred in the context of the protests, but no action has been taken to initiate prosecutions by the authorities. No one has been prosecuted for the many cases of serious beatings which occurred in the context of the protests.</p> <p>There have been no independent investigations into the allegations of systematic torture and disappearances in 2003/2004 by the Bhairabnath Battalion, which were documented in OHCHR's May 2006 report. In December 2007, a site was identified where the body of one of the disappeared may have been cremated. A group of Finnish forensic experts visited the country in January 2008 and assisted local experts in the exhumation of some of the remains.</p>	<p>Force Human Rights Unit (APF HR Unit). Even in those cases where these bodies make recommendations for "further action", disciplinary action or for compensation -- however inadequate -- to be granted, the authorities often do not act on these recommendations.</p>

<p>Recommendation (see E/CN.4/2006/6/Add.5)</p>	<p>Situation during visit (see E/CN.4/2006/6/Add.5)</p>	<p>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</p>	<p>Information received in the reporting period</p>
		<p>Non-governmental sources 2010: There is no nationwide mechanism to monitor places of detention. A number of bodies, including the Nepal Police Human Rights Unit and the Attorney General's Department, that were set up to investigate the allegations of torture, lack independence and impartiality.</p> <p>- An 11-member team of Nepali and Finnish forensic experts led by the NHRC, has started exhumations with regard to cases of disappearance in Dhanusha district.</p> <p>- According to the NHRC's annual report, 667 complaints, including 70 cases of torture by security forces were received during the period of 2008-2009 as compared to 1173 complaints, including 104 cases of torture by security forces received between the period of 2007-2008. Only three out of 70 cases have been investigated and granted compensation. Actions against the perpetrators were recommended only in two cases. The annual report does not provide any information on the remaining 67 cases, nor does it provide the reasons of why one case under investigation was dismissed. Of the 677 cases received in 2008-2009,</p>	<p>In September 2010 amid a continuing lack of action by the police to proceed with investigations into the disappearance of five students in Dhanusha, the NHRC initiated the exhumations of the bodies albeit in a fairly <i>ad hoc</i> manner that fell below international standards of criminal procedure. The procedures in particular lacked respect for the rights of the families of the victims. Four bodies were recovered in September 2010, and a fifth one in February 2011. There has been no further progress since.</p>

<i>Recommendation (see E/CN.4/2006/6/Add.5)</i>	<i>Situation during visit (see E/CN.4/2006/6/Add.5)</i>	<i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i>	<i>Information received in the reporting period</i>
		<p>521 were investigated, four were put on hold and 21 dismissed. Compensation was recommended in 63 cases, and the punishment of perpetrators in 41 cases. By July 2009, the government had implemented none of these recommendations.</p> <p>- In May 2010, in response to concerns raised in relation to the lack of responses for the cases of torture, the Attorney General stated that its department was not entrusted with the investigation of ill-treatment in custody as stated under Section 135 (3) of the Interim Constitution, but rather that it had the power to monitor investigation carried out by police.</p> <p>- The investigations carried out by the Human Rights Unit appear to comprise merely addressing the letter to the relevant DPO and asking to respond to the allegations. Reportedly, there have been no cases in which the Human Rights Unit visited the victims and interviewed them privately to ascertain the veracity of the allegation. There have been serious concerns in relation to the lack of criminal investigation and lack of adequate disciplinary punishment.</p>	

<p><i>Recommendation</i> (see E/CN.4/2006/6/Add.5)</p>	<p><i>Situation during visit (see E/CN.4/2006/6/Add.5)</i></p>	<p><i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i></p>	<p><i>Information received in the reporting period</i></p>
		<p>Government: Courts have full authority to carry out investigation into the allegations of torture. The National Human Rights Commission (NHRC) is empowered to conduct necessary inquiry or investigations into the complaint, received from the victim or his/her representatives and forward recommendations to the concerned authority. The NHRC, in performing its functions, may exercise the same powers as the court in terms of calling any person to appear before the court for recording their statement and information or examining them, receiving and examining evidences, and ordering the production of any physical proof. Upon receiving information about serious human rights violations, the NHRC, without prior notice, may conduct a search of any premises, including governmental ones and seize any document and evidences in relation to human rights violations.</p>	<p>As stated above, though the NHRC has powers to visit places of detention, it is not making any systematic visits. Similarly, it has not prioritized the investigation of complaints of torture.</p> <p>A bill to amend the existing NHRC Act only provides the NHRC with access to prisons. It is essential in the light of the increase of torture in police custody as well as the documented practice of using unofficial places of detention such as army camps and private houses (see above) to detain people that the bill provides the NHRC with access to “any place where people are held captive”. It is also necessary for the wording of this section to make it clear that this also covers “detention facilities” run by non-state actors.</p>
<p>(j) Any public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in torture or ignoring evidence, be immediately suspended</p>	<p>The 1996 Compensation Relating to Torture Act is not in line with the Convention’s requirements for effective remedies.</p>	<p>Government: In the period from 1996-07, police has taken departmental action against 21 police personnel in 11 cases for alleged torture, out of which 6 cases led to</p>	<p>There has been a lack of cooperation with investigative authorities and the courts from both the Nepal Army and the UCPN-M. Rather than handing over suspects to</p>

<p>Recommendation (see E/CN.4/2006/6/Add.5)</p>	<p>Situation during visit (see E/CN.4/2006/6/Add.5)</p>	<p>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</p>	<p>Information received in the reporting period</p>
<p>from duty pending trial, and prosecuted.</p>		<p>prosecutions.</p> <p>Non-governmental sources: the Nepal Army has continued to promote or extend the terms of personnel against whom there are credible allegations. This includes personnel alleged to have been involved directly or by virtue of command responsibility in the violations documented in OHCHR's public reports on disappearances, torture and ill-treatment at the Nepal Army's Maharajgunj Barracks (report published in May 2006) and in Bardiya District (report published in December 2008).</p> <p>In Oct. 08, the CPN-M-led Government recommended the withdrawal of 349 criminal cases (investigations, charges and convictions) of a so-called "political nature". They included cases of gross human rights abuses (murder, attempted murder and rape), the majority from the conflict period. Most cases were against CPN-M members, some of whom were senior members of the Government at the time, raising concerns about ongoing impunity and the de facto provision of amnesties.</p>	<p>the courts, the Nepal Army, Nepal Police and UCPN-M have each promoted officers suspected of serious human rights violations to senior positions. For instance, in May 2011, Agni Sapkota, who is a named as a suspect in the disappearance of Kumar Lama, was appointed Minister in the government of Prime Minister Jalanath Khanal. Similarly, in June 2011, Kuber Singh Rana, one of the people whom the NHRC had identified as among those responsible for the disappearances of the five students in Dhanusha District (see above, recommendation i) was promoted to Assistant Inspector General of Police, a very senior Nepal Police position. In an interim ruling of 13 July 2011, the Supreme Court held that a recommendation by the NHRC for him to be prosecuted is not sufficient basis to order the suspension of his promotion pending the outcome of the investigations.</p>

<p><i>Recommendation (see E/CN.4/2006/6/Add.5)</i></p>	<p><i>Situation during visit (see E/CN.4/2006/6/Add.5)</i></p>	<p><i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i></p>	<p><i>Information received in the reporting period</i></p>
		<p>Non-governmental sources 2010: There is no information as to whether any action has been taken against any authorities indicted for abuse or torture. The civilian judicial system has failed to deliver justice as the state authorities themselves fail to observe the court order.</p> <p>In December 2009, a military officer suspected in the torture and murder of a person in custody, was sent on peacekeeping duties and served until he was repatriated on 12 December 2009, after the United Nations was informed of the fact that murder charges were pending against him in the Nepal courts. As of September 2010, none of the four accused in this case have been questioned let alone arrested by the police.</p> <p>Government: If the court establishes that torture has been inflicted as mentioned in the Act, it may order the concerned person to take action against the governmental employee. As of 2010, judicial actions have been taken against 552 police employees on charges of human rights violations, including torture. An Assistant Sub-Inspector and a Head Constable were immediately suspended from their duties and charged with being</p>	<p>The information provided by the government regarding action taken against state officials involved in torture at Prangbung Police Station and at the Metropolitan Police Circle is incomplete. The alleged perpetrators were ultimately acquitted by the courts in both cases.</p>

<i>Recommendation (see E/CN.4/2006/6/Add.5)</i>	<i>Situation during visit (see E/CN.4/2006/6/Add.5)</i>	<i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i>	<i>Information received in the reporting period</i>
		allegedly involved in torture and death of a person in Police Custody in Prangbung Police Station. In relation to another person who was allegedly subjected to torture in the Metropolitan Police Circle, Kathmandu and subsequently died on 23 May 2010, one Assistant Sub-Inspector and two Police Constables were immediately suspended from their duties and later charged with having committed torture causing death. They are currently in judicial custody.	
k) Victims of torture and ill-treatment receive substantial compensation proportionate to the gravity of the physical and mental harm suffered, and adequate medical treatment and rehabilitation.	Since the 1996 Compensation Relating to Torture Act came into force several decisions to award compensation had been taken. Although, in only one case the compensation had been paid.	Non-governmental sources: In 2007, compensation was awarded in a few cases under the Torture Compensation Act, but was always in a few cases under the Torture Compensation Act, but was always paid to victims or their families, and was not usually accompanied by a proper investigation to establish causes and responsibilities. Compensation packages depend on what the Government can afford. The Government provided Rupees (Rs.) 1,625,000 in financial aid to 12 victims who were recommended by the NHRC. In 2006, compensation awarded by the courts was often not paid out or	The TCA does not function effectively – see comments above in relation to recommendation (b), and note that of the 98 cases filed by AF from 2003 to June 2011, only (27.5%) were granted compensation. The TRC and Disappearances Commission have not been established. Legislation is pending in parliament.

<p><i>Recommendation (see E/CN.4/2006/6/Add.5)</i></p>	<p><i>Situation during visit (see E/CN.4/2006/6/Add.5)</i></p>	<p><i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i></p>	<p><i>Information received in the reporting period</i></p>
		<p>paid out only after prolonged delays. In the 12-year history of the Torture Compensation Act (TCA), over 200 victims of torture or their relatives have filed compensation cases with the courts. However, only 52 cases have been decided in favour of the victims, and in only seven cases was the money actually paid to the victim.</p> <p>As part of the peace process, the Government announced that reparation would be provided to the victims of the conflict, including torture victims. Chief District Officers (CDOs) were registering names of victims or their relatives. However, the criteria for determining who was eligible and how the measures would be implemented were not clear and concerns had been raised about the need for relief to be fairly and impartially distributed, and to respect the principle of non-discrimination.</p> <p>Non-governmental sources 2010: There are a number of statutory frameworks and transitional procedures providing “interim relief” to “conflict victims”.</p> <p>- The Torture Compensation Act, 1996 (TCA) entitles a compensation</p>	

<p>Recommendation (see E/CN.4/2006/6/Add.5)</p>	<p>Situation during visit (see E/CN.4/2006/6/Add.5)</p>	<p>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</p>	<p>Information received in the reporting period</p>
		<p>amount of maximum NRs 100, 000 (US \$ 1, 420) to those who were proved to have been victims of torture. Although the TCA provides that compensation should be handed over within 35 days from the court order, many of these victims have not yet received their compensation or have received a minimum amount of compensation. Reportedly, only one victim has received the maximum amount of compensation from the Government.</p> <p>- There has been considerable delay in putting in place the Disappearances Commission provided for under the CPA, bodies which would normally sexual violence against women and cases of torture of people suffering post-conflict mental trauma, none of these categories of victims were addressed through the interim relief scheme. There are serious concerns about unfair and unequal distribution.</p> <p>- The Ministry of Peace and Reconstruction has put in place the “interim relief” measures as- part of the overall policy set out in the Standards for Economic Assistance and Relief for Conflict Victims, 2008. Despite numerous reports of rape and other forms of be mandated to provide</p>	

<i>Recommendation (see E/CN.4/2006/6/Add.5)</i>	<i>Situation during visit (see E/CN.4/2006/6/Add.5)</i>	<i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i>	<i>Information received in the reporting period</i>
		<p>recommendations on equitable reparation policies.</p> <p>- The recommendations for compensations issued by the NHRC have not been implemented by the Government.</p> <p>Government: Nepal enacted Compensation Relating to Torture (CRT) Act, 1996 which provides compensation for inflicting physical or mental torture upon any person in detention in the course if investigation, inquiry or trial. Under Section 5 of the CRT Act, a victim or his family members or his/her legal counsel may, within 35 days from the date of release from his/her detention, file petition of such detention in the District Court.</p> <p>In addition, the NHRC may order compensation for the victims of human rights violations in accordance with law. According to Section 9(2) of the Act, upon receiving the order for compensation, the Chief District Officer is required to execute the judgment by providing the amount of compensation specified by the court within 35 days. In the court ruling of 10 July 2007 on the case of torture of Manrishi Dhital v. Government of</p>	<p>The number of cases of torture investigated by the NHRC is very limited, and compensation has only been recommended in one case. On 6 May 2003, the NHRC took a decision granting compensation of Rs. 50.000/- (USD 650) to a torture victim from Dhading district. On 18 June 2003, the recommendation letter was sent to the Secretariat of the Council of Ministers to implement the decision. On 5 January 2004, the</p>

<i>Recommendation (see E/CN.4/2006/6/Add.5)</i>	<i>Situation during visit (see E/CN.4/2006/6/Add.5)</i>	<i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i>	<i>Information received in the reporting period</i>
		Nepal, the court decided to provide compensation to the applicant	NHRC was informed that the compensation had been paid to the victim.
(l) The declaration be made with respect to art.22 of the CAT recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the CAT.	No action taken.		The government has not made a declaration to recognise the competence of the Committee Against Torture to receive and consider communications from individuals.
(m) The Optional Protocol to the Convention against Torture be ratified and a truly independent monitoring mechanism established to visit all places where persons are deprived of their liberty.	No ratification.	Non-governmental sources 2010: Civil society is continuously lobbying for the ratification of the Optional Protocol.	The government continues to refuse to ratify the Optional Protocol to the CAT, despite sustained lobbying by civil society.
(n) The appointments to the National Human Rights Commission, in the absence of Parliament, be undertaken through a transparent and broadly consultative process.	A transparent and consultative process in the appointment of commissioners was lacking.	Non-governmental sources: The NHRC remained vacant for 14 months before the Government established the new Commission on Sep. 07. However, as advocated by civil society members and OHCHR, the establishment of the Commission was not based on a transparent and broad consultative process. Although NHRC has been established as a Constitutional body as per the Interim Constitution, the new Human Rights Commission Act is yet to be tabled at the Legislature Parliament.	Concerns remain about the draft NHRC bill, which threatens the independence of the Commission. The provisions on membership and appointment to the Commission as they stand in the bill do not guarantee the independence of the NHRC members and ensure that there are no political appointees. Furthermore, section 30 of the draft bill is extremely concerning as it allows for the powers of the NHRC to be delegated to the government of Nepal or to “any agency or institution or any person”.

<i>Recommendation (see E/CN.4/2006/6/Add.5)</i>	<i>Situation during visit (see E/CN.4/2006/6/Add.5)</i>	<i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i>	<i>Information received in the reporting period</i>
		Non-governmental sources 2010: The draft NHRC Bill raises serious concerns over the independence of the Commission, including the narrow formulation of the NHRC's mandate and procedures for appointment of commissioners.	
(o) The Rome Statute of the International Criminal Court be ratified.	No ratification.	Non-governmental sources: In 2008, the NHRC recommended that the Government ratify the Statute. In Feb. 09, the Min. of Foreign Affairs tabled the issue before the Cabinet, which has yet to consider the proposal. Non-governmental sources 2010: Although civil society has continuously been lobbying and advocating for the ratification, no ratification process has been put forward.	The Rome Statute of the ICC has not been ratified, despite repeated promises by the government to do so. In January 2011, during the UPR review, the government stated that it was drafting enabling legislation which would be required for the ratification of the Rome Statute of the Criminal Court.
(p) Police, the armed police and RNA recruits undergo extensive and thorough training using a curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of policing equipment, and that existing personnel receive continuing education.		Non-governmental sources: The security forces have made commitments to incorporate or expand human rights training as part of their regular training programmes. The Human Rights Cells of each of the security forces have cooperated closely with OHCHR and other international organizations in this regard. OHCHR has been working	For many years, the various security

<p>Recommendation (see E/CN.4/2006/6/Add.5)</p>	<p>Situation during visit (see E/CN.4/2006/6/Add.5)</p>	<p>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</p>	<p>Information received in the reporting period</p>
		<p>closely with the Police and APF on a series of human rights training programmes – including targeted trainings on detention issues such as health examinations for detainees, and the use of force. With the support of OHCHR, the Police produced a ‘Human Rights Standing Order’ and the APF has produced a Human Rights Pocketbook to be distributed to all personnel These documents address issues of torture and ill-treatment. Both police forces have committed to making these documents an essential part of police training and deployment.</p> <p>Other regular training and orientation programmes on various aspects of international human rights and humanitarian law have been conducted in partnership with OHCHR and other international organizations for the Army.</p> <p>Government: In 2006, the Nepal Army (NA) established a Human Rights Directorate mandated to raise human rights awareness among the armed forces. There is human rights division in each Regional Headquarters and human rights sections at the Brigade level. The NA has been incorporating human rights and international humanitarian law</p>	<p>agencies have repeatedly conducted trainings and announced other measures to build the capacity to uphold human rights. However, as demonstrated by the increase in reports of torture over the last year or so, the impact of such measures is questionable.</p>

<i>Recommendation (see E/CN.4/2006/6/Add.5)</i>	<i>Situation during visit (see E/CN.4/2006/6/Add.5)</i>	<i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i>	<i>Information received in the reporting period</i>
		modules in all trainings curricula. A separate training package is also conducted at various Divisions Headquarters and Brigade headquarters periodically.	
(q) Systematic training programmes and awareness-raising campaigns be carried out on the principles of the Convention against Torture for the public at large, security forces personnel, legal professionals and the judiciary.		<p>Non-governmental sources: In 2007 the Ministry of Law, Justice and Parliamentary Affairs, the Min. of Foreign Affairs, INSEC (Informal Sector Service Centre) and CIVIT (Rehabilitation Centre for Victims of Torture Nepal) translated CAT-related documents into Nepali; since then copies have been provided to security officers, lawyers and the general public.</p> <p>Several non-government organizations have also drafted an 'alternative bill' criminalizing torture.</p> <p>Non-governmental sources 2010: Non-state actors provide trainings for judges, lawyers, prosecutors and police.</p> <p>Government: There are special package programs (a one-day orientation, three-day training and five-day trainers" training on human rights and law enforcement) developed and implemented by Nepal Police on Human Rights and Law</p>	<p>Non-governmental organisations have regularly conducted awareness programs for the public regarding torture. This is done through local FM radio programs.</p> <p>Some non-governmental organisations have worked closely with the Judicial Academy to increase knowledge of the judiciary regarding the prevention and investigation of torture.</p> <p>Longstanding discussions between AF and the Nepal Police Academy to review the curriculum and incorporate human rights fully in it have not resulted in an agreement to date. AF</p>

<i>Recommendation (see E/CN.4/2006/6/Add.5)</i>	<i>Situation during visit (see E/CN.4/2006/6/Add.5)</i>	<i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i>	<i>Information received in the reporting period</i>
		Enforcement at central, regional, zonal and district level on a regular basis. Several trainings have been conducted in cooperation with OHCHR, NHRC and ICRC. Police have incorporated relevant provisions of the Convention against Torture in their training programs on human rights and law enforcement.	and REDRESS question the value of the <i>ad hoc</i> programs often organized to increase awareness.
(r) Security forces personnel recommended for United Nations peacekeeping operations be scrupulously vetted for their suitability to serve, and that any concerns raised by OHCHR in respect of individuals or units be taken into consideration.		<p>Non-governmental sources 2010: There is a need to increase the level of cooperation between the OHCHR and the UN Department of Peacekeeping Operations in order to ensure that members of the Nepalese Army, currently participating in United Nations missions, are not implicated in human rights violations. Furthermore, it is recommended that more stringent vetting of secondees is introduced and a policy of refusing secondees from countries where torture is being regularly practiced is implemented.</p> <p>Government: A thorough vetting process is under implementation in police forces during the nomination of their personnel to the United Nations (UN) peacekeeping operations. Since 15 May 2005, the NA has developed and strictly implemented the policy of barring its personnel that was found</p>	<p>In December 2009, major Niranjana Basnet was returned from peacekeeping duties in Chad after the UN was made aware that charges relating to the murder of 15-year-old Maina Sunuwar who was tortured in army custody and whose body was subsequently disposed of illegally were pending against him before the Kavre District. He was immediately taken under control of the Nepal Army upon arrival in the country and was not handed over to the police, despite orders from the then Prime Minister to do so. As of September 2011, he continues to serve in the army and has not been questioned, let alone arrested by the Kavre police.</p> <p>The government's assertion that a thorough vetting is in place to bar anyone found guilty of human rights violations by the courts is an absurd one. In a country with widespread</p>

<i>Recommendation (see E/CN.4/2006/6/Add.5)</i>	<i>Situation during visit (see E/CN.4/2006/6/Add.5)</i>	<i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i>	<i>Information received in the reporting period</i>
		guilty by the court for human rights violations from participating in UN peacekeeping operations.	impunity to have a policy that only bars officers sentenced by a court is tantamount to not barring anyone from being sent on peacekeeping duties.
s) The Special Rapporteur calls on the Maoists to end torture and other cruel, inhuman or degrading treatment or punishment and stop the practice of involuntary recruitment, in particular of women and children.	The Special Rapporteur also received shocking evidence of torture carried out by the Maoists.	Non-governmental sources: Although the number of abductions, assault, ill-treatment and other abuses by CPN-M dropped significantly immediately after the signing of the CPA and further reduced after April 2008, reports of such abuses by the Young Communist League (YCL) and at local level have continued.	Five cases of torture by non-state actors were documented by AF in the period January to June 2011. Two cases were attributed to the Unified CPN-M and YCL (jointly), one to the YCL and ANNFSU (jointly), one to the Youth Force and Yuba Sangh, both sister organizations of the CPN-UML, and one attributed to an unidentified group in the Terai region.
Torture and ill-treatment against women.		<p>Non-governmental sources: Women are continued to be tortured, ill-treated and sexually harassed by the police. For example, during investigations, women report being sexually harassed with abusive language, stripped naked, beaten and threatened with rape. In many cases, male police officers were found to have tortured female detainees. Moreover, during incommunicado detention, women are often sexually abused and then threatened in order not to disclose what happened.</p> <p>Government: A national campaign has been launched, declaring 2010 as</p>	<p>The torture and other ill-treatment of women in detention is on the rise. From January to July 2011, AF lawyers visited a total of 217 female detainees. Of them, 32 (14.7%) claimed that they were subjected to torture or ill-treatment. In comparison to the period from July to December 2010 when only 25 women (13.3%) had claimed they were tortured; this represents an increase by 1.7 %.</p> <p>There remain serious problems with the way complaints of violence</p>

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		<p>the year to End Violence Against Women. A special desk has been established in the Prime Minister's Office.</p> <p>The Nepal Police has established Women and Children Service Directorate. A series of training is being implemented on women and children related issues. Special Security plan 2009 also reflects Nepal's commitment to protect people from acts of torture.</p> <p>Non-governmental sources: According to the data collected, despite some improvement in the treatment of women during investigation and interrogation, women continue to experience torture and/or ill-treatment in detention.</p>	<p>against women are dealt with by the state. A 35 day statute of limitation applies to the filing of complaints to police (so-called First Information Reports, FIRs) to ensure police investigations in cases of rape. In 2008, the Supreme Court of Nepal passed a directive order for the Government to review the law in order to extend the statute of limitation on rape. The draft Criminal Procedure Code currently under consideration includes a longer limitation period of one year, but as currently drafted does not allow discretion to extend that period.</p> <p>Regarding rape and sexual violence in the community, police officers have shown very little commitment to filing reports. In some cases, instead of taking a case to court, the police put pressure on the victim to marry the person who raped her, and then withdraw the charges against him.</p>
Torture and ill-treatment against children.		Non-governmental sources: The widespread practice of arbitrary detention, torture and other ill-treatment of juveniles in police custody is a major concern; 25.5% of juveniles held in police custody in the period from Oct. 08 to June 09	The torture of juveniles in detention is on the increase. During January to July 2011, AF lawyers visited 588 juveniles of which 42 (7.1%) were girls and 546 (92.9%) were boys. Of them, 193 (32.8%) claimed that they were subjected to torture or other ill-

<p><i>Recommendation (see E/CN.4/2006/6/Add.5)</i></p>	<p><i>Situation during visit (see E/CN.4/2006/6/Add.5)</i></p>	<p><i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i></p>	<p><i>Information received in the reporting period</i></p>
		<p>claimed they were tortured or ill-treated – which is higher than for the adult population (18.8%). But this represents a reduction of 3.3% as compared to the period from Jan-Sep. 08. Moreover, the continued detention of juveniles in facilities meant for adults presents grave human rights concerns. Children housed with adult offenders are vulnerable to rape and other abuses.</p> <p>In May 08, the Supreme Court ordered the Government to undertake reforms with regard to the prison system, including improving prison conditions and the situation of children living with prisoners, as well as reforming policies on prison management and administration. The Government states that reform of the prison system is ongoing subject to available resources.</p> <p>Non-governmental sources 2010: Juvenile detainees are subjected to torture more frequently than adults.</p> <p>- In one of its ruling, the Supreme Court decided that the detention of minors in prison was illegal and that child rehabilitation homes should be provided for their stay. These orders</p>	<p>treatment. In comparison, in the period from July to December 2010 the percentage was 26.7%, a 6.1% increase. The percentage of juveniles tortured remains higher than the percentage among the overall population of detainees. In other words, police torture children more frequently than adults, and have consistently done so since AF started to monitor these trends in 2003.</p> <p>In 2011, the government expanded the one existing child correction home at Sanothimi (Bhaktapur). Plans to open another home in Morang district and a third one in Kaski district. The one in Bhaktapur has been extended and has been brought in use whereas the ones in Kaski and Morang have not started yet due to lack of budget. But, the Juvenile Justice Coordination Committee and Ministry of Women and Children are doing working with various organizations to get these homes established.</p>

<p><i>Recommendation</i> <i>(see E/CN.4/2006/6/Add.5)</i></p>	<p><i>Situation during visit (see E/CN.4/2006/6/Add.5)</i></p>	<p><i>Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)</i></p>	<p><i>Information received in the reporting period</i></p>
		<p>have not been implemented partly due to a lack of physical infrastructure and adequate resources. The Government decided to establish three new rehabilitation homes due to the increasing number of juvenile detainees.</p>	