



THE STATE OF HUMAN RIGHTS IN NEPAL - 2008

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1. INTRODUCTION

The year 2008 will be marked as a historic year for the people of Nepal and their success with democracy and democratic values. After the election for a Constituent Assembly (CA) was successfully held on April 10, 2008, Nepal was declared a Secular, Federal Democratic Republic by the CA on May 28, 2008. This abolished a 240 year old monarchy. About three months later, Maoist Chief, Pushpa Kamal Dahal was elected first Prime Minister of the Federal Democratic Republic of Nepal on August 15. A coalition government led by the Communist Party of Nepal-Maoist (CPN-M) was sworn in on August 22.

Another development that the government of Nepal unveiled was the long-awaited draft bill on Enforced Disappearances (Charge and Punishment) Act 2065 B.S. in November 2008. This bill contains a provision to retroactively charge those behind disappearances which occurred during the conflict period. In total, 1,619 disappearances were reported in Nepal during the armed conflict, including 1,234 by the government security forces and 331 by the CPN-M. At the writing of this report the bill has not yet been approved by parliament.

While welcoming these remarkable achievements, the AHRC is deeply concerned that the government has failed to take any tangible action to rejuvenate justice mechanisms and eliminate undemocratic and feudal practices in state organs that have existed for a long time and which further deepened during the conflict period.

As a result, as described in our 2007 report, violations, including arbitrary/illegal arrest and detention, torture and killings, continued this year and impunity remained deeply entrenched for the perpetrators of these acts. Instead of combating impunity, Prime Minister Puspa Kamal Dahal made a remark that he would not take action against senior figures in the Nepalese army concerning war crimes and human rights abuses during the conflict period. It should be noted that none of the numerous cases of human rights abuses during the 10-year conflict have led to a proper prosecution of the accused to date.

The report published by the National Human Rights Commission of Nepal in the middle of 2008 also shows the lack of government action. Among 147 recommendations that the Commission issued from 2000 to April 2007, only 16 recommendations were fully implemented. Most of the commission's recommendations are connected with taking action against guilty persons and providing relief to the families of the victims.

In particular, the case examples in the following report illustrate how systematically the victims of past and on-going human rights violations are blocked from accessing justice. This is due to the lack of witness protection mechanisms, the deliberate refusal of the police to register and investigate complaints, the non-existence of an independent investigating body as well as the lack of proper domestic laws dealing with these violations.

Another major violation that occurred this year was the Nepali government's constant and arbitrary arrest and ill-treatment of the Tibetan protesters. They have been demonstrating peacefully against the violence in Lhasa in front of the Chinese Embassy building in Kathmandu since March 10. According to the Amnesty International's report on April 22, more than 2,000 protesters were arbitrarily detained by the Nepali police since March 10. The government of Nepal has further taken the drastic step to deport all Tibetans, without valid refugee certificates, to India in September 2008. This will destroy the livelihood of many of over 20,000 Tibetans currently living in Nepal.



Besides, unrest in different parts of the Terai region that we reported in 2007 continued on into the beginning of 2008. In February, a newly formed alliance of three Madhesi political parties, the United Democratic Madhesi Front (UDMF) and other groups launched a general strike in the Terai region to support the Madhesi demands to the government. This included the establishment of an autonomous Madhesi state within a federal democratic republic and the fair representation of Madhesis in all organs of the state, including the army. The general strike ended only after an agreement with the UDMF was reached on February 28, 2008.

On top of the global food crisis, the people living in Sunsari and Saptari districts suffered severely from flooding, when the Koshi River, one of the largest river basins in Asia, breached its eastern embankment on August 18, 2008. In addition to the disaster in eastern Nepal, heavy rainfall in the mid-western and far-western regions in September resulted in more flooding and landslides in nine districts. The number of people displaced by heavy flooding in western Nepal reached almost 180,000 according to OCHA.

Meanwhile, rehabilitation of internally displaced persons during the armed insurgency is proceeding at a very slow pace. This is despite the Peace Accord mentioning the return of IDPs to their homes or the settling in any other location of their choice. The number of IDPs due to the conflict has been estimated to be between 100,000 and up to a few hundred thousand. Reintegration and rehabilitation of the IDPs was viewed as a key issue during the peace talks. Besides, the political parties, taking into account only their self-interests, have not shown any progressive action to speed up the integration of the Maoist People's Liberation Army (PLA) into the Nepal army.

Nepal's transition into a federal democratic republic is a remarkable milestone in its history. Furthermore, the Maoist party's winning of the CA election shows the people's great desire for real changes toward democracy, peace, human rights and a better life. However, overall, 2008 can only be viewed as a year in which the people's hope and trust were betrayed due to the little progress made into ongoing violations of human rights, impunity and the failure of the rule of law.

2. KEY EVENTS IN 2008

2.1. THE CONSTITUENT ASSEMBLY ELECTION AND THE FORMATION OF A NEW SECULAR, FEDERAL DEMOCRATIC REPUBLIC

The historic event of the election for a Constituent Assembly (CA) was held in Nepal on April 10, 2008. This election materialized after being postponed from earlier dates in June and November 2007. It will be in place for a term of two years and it will have the responsibility to draft a new constitution.

Aiming at inclusiveness, the Interim Constitution of 2007 stipulated that the political parties had to ensure proportional representation of women, Dalit [Untouchables in the Hindu societies] oppressed tribes/indigenous tribes, backward tribes, Madhesi [the native people of Nepal who reside in the southern, plains region of the nation known as the Tarai] and other groups. It further stated that women should



constitute at least one third of the candidates nominated to the CA. (Interim Constitution 2007, para. 63 (4) and (5)).¹

During the election campaign, supporters of all major parties clashed almost daily. On April 6, 2008, the United Nations Mission in Nepal (UNMIN) reported that, “While campaigning was peaceful in many constituencies, incidents of election-related violence and intimidation by party workers continued, with frequent and sometimes severe clashes between political parties in many districts.”² On April 7, 2008, even as campaigning drew to a close, 12 people were injured in bomb attacks and on April 8, 2008, unknown assailants shot dead Rishi Prasad Sharma, a candidate for the Communist Party of Nepal (United Marxist-Leninist). Similarly, another National United Front's candidate for CA Election Mr. Kamal Adhikari of Banke district was gunned down by Janatantrik Terai Mukti Morcha - Jwala Singh Group at his own home on March 18, 2008.

However, despite clashes during the campaign, the election day itself was peaceful, with a voter turn-out of about 60 percent.

The official and final list of members elected was released on May 8, 2008. The Communist Party of Nepal (Maoist) became the largest party in the CA with 220 out of 575 elected seats. It was followed by the Nepali Congress with 110 seats and the Communist Party of Nepal (Unified Marxist-Leninist) with 103 seats. Altogether, there are 601 members in the CA, of which 240 members were elected through the “first past the post” system, 335 through the proportional representation (PR) system and 26 nominated by the government.³ In the FPTP-system, in which candidates were elected individually, only 30 out of 240 are women. However, it was within the framework of the PR system, where people voted for parties rather than individuals, the aim of inclusiveness being most important. According to the Election Act of 2007, the parties winning more than one seat under the (PR) system are required to allot half their seats to women candidates. Furthermore, the parties are required to have 37.8 per cent indigenous communities, 31.2 per cent Madhesis, 13 per cent Dalits and four per cent other backward groups on their list. The remaining 30.2 per cent of seats can be allotted to other persons (The Election Act of 2007, para. 7 (3) and schedule-1).⁴



Maoist supporter's celebration in

The legal provisions on inclusiveness means that Nepal's CA, to a larger extent is representative, regarding balance both in gender and in minority groups, than what it would have been without these provisions. However, a critique was raised that there was no guarantee of “inclusive proportional representation” of Dalits and women in the geographical constituency elections (FPTP-system). This even though the parties were supposed to observe the “principle of inclusiveness” while selecting candidates.⁵ Moreover, a critique

1 *The Interim Constitution of Nepal, 2063 (2007), As amended by 1st, 2nd and 3rd amendments*, <http://www.unmin.org.np/downloads/keydocs/Interim.Constitution.Bilingual.UNDP.pdf>

2 UNMIN election report No. 3, 6 April 2008, <http://www.unmin.org.np/downloads/publications/2008-04-06-UNMIN.Election.Report.3.ENG.pdf>

3 Election Commission, Nepal, <http://www.election.gov.np/EN/>

4 Election to Members of the Constituent Assembly Act, http://www.election.gov.np/EN/pdf/CAE_Election_Act_2064_english.pdf

5 Bharat Nepali, “Dalits and Women in Constituent Assembly in the Context of Creating New Nepal”, <http://nepaldalitinfor.net/2008/04/02/422/>



was raised from the Dalit community. Although the Central Bureau of Statistics (CBS) data indicates that the Dalit population is 13 percent of the whole population, Dalit organisations and research studies show that Dalits occupy more than 20 percent of the entire population. They should therefore have a larger representation in the CA.

The first session of the CA on May 28, 2008 voted to declare Nepal a federal democratic republic, thereby abolishing a 240 year old monarchy. The republican declaration states that Nepal will become "an independent, indivisible, sovereign, secular and inclusive democratic republic." Having adopted a republican order of governance for the first time in its history has a special meaning. The old structures, where the country was ruled by political and social elites, marginalizing the majority, have been done away with, and the way is open for a democratic process.

Dr. Ram Baran Yadav (Nepali Congress) became the first president of the Federal Democratic Republic of Nepal on July 22, 2008. Madhesi Janadhikar Forum candidate Parmananda Jha was elected vice president.

Due to an internal power struggle, difficulties arose during the three months in which they were forming a new government. The Nepali Congress and the Communist Party of Nepal-Unified Marxists and Leninists (CPN-UML) demanded adjustments and rehabilitation of the combatants through a proper modality before the CPN-Maoist formed the new government. Finally, almost three months after the first session of the CA, Maoist Chief, Pushpa Kamal Dahal alias Prachanda, was elected the first Prime Minister of the Federal Democratic Republic of Nepal on 15 of August 2008. He was sworn in on August 18, 2008. A coalition government led by the Communist Party of Nepal-Maoist (CPN-M) was sworn in on August 22, 2008. The CPN-M's coalition partners are the Communist Party of Nepal-Unified Marxist Leninist (CPN-UML) and the ethnic-based Madhesi Peoples Right Forum (MPRF).

The implications of this political change are that doors have now opened for a radical social and economic transformation in Nepal, in accordance with the aims of the Maoist groups.

2.2. THE TERAI PROTESTS IN FEBRUARY 2008

In 2007 there was unrest in different parts of the Terai region, which was triggered by the adoption of the Interim Constitution.⁶ The key demands were for a federal structure of government with autonomy and a proportional election system based on density of caste and ethnicity. These demands were made because of the political, socio-cultural and economic marginalization of the Madhes, who were the original inhabitants living in the southern Terai region, bordering India. The problem has been surfacing from time to time due to non-confidence in and discrimination and exploitation by the State, political parties and power elites. The core issues relate to recruitment to State security forces, language, culture and citizenship.

The unrest in the Terai region continued in the beginning of 2008. On February 8, 2008 a newly formed alliance of three Madhesi political parties, the United Democratic Madhesi Front (UDMF), announced that it would launch a general strike in the Terai region from February 13, 2008. Strikes were also called by the Federal Democratic National Forum (FDNF), a coalition of indigenous groups, and the Federal Republican

⁶ Chapter on Nepal of 2007 AHRC Annual Human Rights Report, "The State of Human Rights in Eleven Asian Nations – 2007", www.ahrchk.net



National Front (FRNF). The reasons for striking were to support the Madhesi demands made to the government. The demands were twofold which included the establishment of an autonomous Madhesi state within a federal democratic republic and the fair representation of Madhesi in all organs of the state, including the army. The reason for these demands stemmed from, like in earlier uprisings, the marginalized state of the Madhesi people.

From February 13, 2008, the strike paralyzed daily life and public transport throughout the Terai region. Protestors staged rallies in different Terai cities and there were violent confrontations between strike supporters and both the Nepal Police and Armed Police Force (APF). The restrictions on daily life were also compounded by the imposition of curfews in a number of districts. Nepal's National Human Rights Commission (NHRC) expressed concern regarding the human rights situation in the Terai plains and it said that continuing strikes and demonstrations had worsened the human rights situation.

Agreement with the UDMF was reached on February 28, 2008, thus ending their general strike. The agreement also included a provision on increasing the proportion of seats reserved for the Madhesi minority from 20% to 30%. As a result of signing the agreement, the UDMF agreed to participate in the Constituent Assembly election. Similar agreements were signed between the government and the other Madhesi groups in March 1, 2008. The agreement thus granted somewhat higher representation for Madhesi people in the CA, making it more representative of the Nepali people. This implies that the rights of the so-far marginalized Madhesi people can be strengthened.

In March 2007, the Interim Parliament altered the constitution to change the country from a unitary state into a federal state.⁷ This move came as a response to the protests from the Madhesi people. There was however no serious discussion before on how the federal system would be constituted in the Nepali context. The Interim Constitution states that the CA shall decide on questions relating to the structure of the state and the federal system. A problem regarding a federal Madhesi state could be the ethnic diversity. It is of the utmost importance that the human rights of everyone in such a federal state would be guaranteed. There is also a large proportion of Pahade people who have migrated to the Madhes/Terai plains from the more mountainous parts of Nepal. They, too, have to be granted the right not to be discriminated against in a federal Madhes state.

In the OHCHR's Terai report⁸, human rights that were violated during the protests include the right to life. According to the report, six civilians died during the protests as a result of confrontations with police, five as a result of bullet wounds and one as a result of injuries sustained when he was hit by wooden sticks. In addition, hundreds were injured; many had head injuries as a result of being beaten over the head with wooden sticks. An APF officer was also killed and numerous other police officers were injured in connection with demonstrations, mostly by stones and rocks thrown by protestors. In the cases of death by police fire, OHCHR reached an initial conclusion that in most cases the use of lethal force was not justified. Apart from the five persons killed by police fire, at least thirty civilians were treated in hospitals for bullet wounds sustained as a result of police fire. Most bullet injuries were sustained above the knee. Direct live fire was rarely preceded by a clear warning, as required by international standards and domestic law, and other methods of crowd control had not been exhausted. Furthermore, in most cases there did not appear to be an imminent or grave threat to life or serious injury. Of the five persons who died as a result of police fire, three were found not to have been actively participating in the protests and could not have presented any kind of threat to life. Other rights violated during the protests include the right to physical integrity, the

⁷ BBC News, "Nepal changes into federal state", 9 March 2007, http://news.bbc.co.uk/2/hi/south_asia/6435901.stm

⁸ OHCHR-Nepal, "Summary of human rights concerns arising from the Terai protests of 13 – 29 February 2008", 27 March 2008



freedom from arbitrary arrest and detention, the freedom of assembly and the freedom from torture and ill-treatment in detention.

2.3. SUSPENSION OF THE PRESIDENT OF THE NEPAL BAR ASSOCIATION AND JUDICIAL REFORM

Judges in Nepal have been notorious for accepting bribes in return for favorable verdicts. In the present context of the development of democracy in Nepal, following the overthrow of the monarchy and the re-establishment of Parliament, there is an intense debate in civil society about the need for radical changes within the judicial system in Nepal.

In August 2008, Nepal's newly appointed attorney general, Raghav Lal Baidhya, emphasized the need for restructuring the country's judiciary and recruiting competent judges. Earlier in July, the Nepal Bar Association (NBA) also decided to analyze controversial judgments to fight against judicial corruption. The judges, however, instead of seeking to weed corruption out of the judicial system, have remained critical of the NBA's decision. For example, the chief justice of Nepal described the NBA's decision as an attack on judicial independence.

During an emergency five-hour hearing of the full court on September 19, the Supreme Court, decided to ban Mr. Bishwa Kant Mainali, the president of NBA, from practicing for six months. This happened after he had referred to the job of a judge as a license to practice corruption in a conference in Kathmandu. It is the first Supreme Court's decision in the history of Nepal against the president of the NBA.

In fact, this decision was apparently the result of a two-hour strike by judges of two appellate courts as well as three district courts in Kathmandu valley to stop working on September 19 to pressurize the Supreme Court to take action against him. The Supreme Court denied Mr. Mainali his inherit right to be heard and given a fair chance to defend himself in the legal proceedings against him.

The AHRC criticized the Supreme Court's decision as an attempt by the judiciary to obstruct an emerging debate on judicial corruption in Nepal.⁹ The judiciary of Nepal seemed to continue to hold to the conservative mindset that they are above and beyond the rule of law and that they are not accountable to law.

After the Supreme Court's decision, thousands of lawyers across the country launched a boycott of the courts from September 21 to 23, protesting against the Supreme Court's decision. The protesting lawyers demanded that the Full Court unconditionally revoke the ban on the NBA president.

Finally the Supreme Court retracted its earlier decision and lifted the ban on Mr. Mainali on September 23. The agreement between the Supreme Court and NBA also allowed for the setting up a committee by the NBA to review controversial verdicts.

During the conflict period, the judiciary had been deliberately undermined by the government. In the year 2005, the AHRC reported a number of cases where released detainees were rearrested by the security

⁹ AHRC statement numbered AHRC-STM-245-2008, NEPAL: Supreme Court punishes the messenger and ignores the message, September 19, 2008



forces, including within the court's premises, making a mockery of the justice dispensation system in the country.¹⁰ Subsequently, the people of Nepal have lost faith in the justice system in Nepal.

An immediate and overwhelming reaction by the lawyers on the Supreme Court's ban reflects the great desire of the Nepali people for an accountability and transparency on the part of the judiciary, as well as a strong resistance against it under the new republic government. In Nepal, a serious debate on judicial reform is already too late and this reform is a precondition for democracy. Similar struggles between the people and the state are only expected to intensify in the future. To improve democratic governance and liberties, the government should take deliberate and affirmative action to rejuvenate the judiciary and make other public institutions transparent at the same time that is structuring the state.

2.4. FLOODS AND LANDSLIDES IN SUNSARI AND SAPTARI DISTRICTS

Flooding occurred in eastern Nepal, in the Sunsari and Saptari districts, where the Koshi River, one of the largest river basins in Asia, breached its eastern embankment on August 18, 2008. According to the Nepal Red Cross Society's figures, around 60,000 persons were displaced.¹¹ In addition to the disaster in eastern Nepal, heavy rainfall in the mid-western and far-western regions between 19 and 21 September 2008 resulted in more flooding and landslides in nine districts. More than 30 deaths have been confirmed. Kanchanpur and Kailali districts in the far western region have been particularly hard-hit. The number of people displaced by heavy flooding in western Nepal reached almost 180,000 according to OCHA.¹²

Those affected by the floods in eastern Nepal have been living in temporary camps set up in different parts of the district. Many displaced families are living along the embankment wall of the Koshi river and in neighbouring VDCs of Saptari district, which were not flooded. The UN and its humanitarian partners issued an [appeal](#) on September 25, 2008 in response to the flooding and the appeal seeks \$15.5 million to cover the needs of at least 70,000 people over the next six months.¹³ More than 72% of the displaced people were receiving humanitarian assistance at the beginning of October 2008.¹⁴ Humanitarian aid was at this time focused mainly on people based in established camps, whereas only 15% of the displaced who lived with host families were being assisted, forcing those living outside camps to find additional coping strategies. The UN World Food Programme provided flood-affected communities with mixed-commodity relief supplies: rice, lentils, vegetable oil and salt. Daily cooked fortified food is also being given to vulnerable adults and children under five. WHO completed a measles and polio vaccination campaign in Sunsari and Saptari districts. Other difficulties were encountered. Food distributions were delayed due to slow delivery from local suppliers. Alternate shelter sites were still not identified in October 2008, causing over-crowding in current shelter sites and poor service provision.¹⁵

¹⁰ AHRC, *The State of Human Rights in Ten Asian Nations-2005, the chapter on Nepal*

¹¹ Nepal Red Cross Society, "Koshi Disaster update" No. 23, 26 September 2008, http://www.nrcs.org/documents/Koshi_Flood_situation_26_September_2008.pdf

¹² Mid and Far West Floods and Landslides OCHA Report No. 4, October 6, 2008

¹³ Nepal Common Appeal for Transition Support, Supplement: Floods Humanitarian Response Plan

¹⁴ Koshi River Floods in Sunsari and Saptari, OCHA Situation Report No. 10, 3 October 2008, <http://www.un.org.np/ocha-situation-updates/2008/2008-10-06-OCHA-situation-report-10.pdf>

¹⁵ Nepal Common Appeal for Transition Support, Supplement: Floods Humanitarian Response Plan



The floods increase the hardship of already poor and vulnerable indigenous groups in the Mid-West and Far-West regions. These two regions in Nepal are considered the most impoverished and least developed. Among the most affected are the Kamaiyas, former bonded labourers of the Tharu community, who have been in a government rehabilitation programme since 1996. They needed special protection in the aftermath of the disaster. A large number of the affected population was displaced in the immediate aftermath of the flash floods. The flood waters receded quickly in most areas, enabling many families to return to their place of origin prior to the floods. However, they found their homes, food supplies/rice stores, gardens and crops, property and livelihoods damaged or washed away. The distribution of food has been difficult and slow because of the size of the affected area and because flood-affected areas are located in a hilly region, where roads have been washed away by landslides.

In the wake of the flood disaster, aid workers were calling for stronger child protection measures.¹⁶ Nearly 30 children went missing after they were separated from their parents while fleeing the flooded areas. Although humanitarian assistance has addressed child protection, more needed to be done on key issues such as tracing missing and separated children, providing psycho-social care for traumatized children, preventing social discrimination, and creating a child-friendly environment.

Due to the natural disasters in eastern and western Nepal, more than 240 000 persons were considered to be “food insecure”, which infringe on their right to food. On September 25, 2008, the Supreme Court of Nepal issued an interim order according to which the Government of Nepal has to supply food immediately to 32 food-short districts.¹⁷ The Court found immediate action necessary because over three million people were suffering from food scarcity in the country. The Government has consequently increased its budget allocated to the Nepal Food Corporation, which is a national body mandated to supply food to districts most in need.

2.5. INTERNAL DISPLACEMENT OF PERSONS DUE TO THE INTERNAL CONFLICT

The internal displacement of persons in Nepal is closely linked with the country’s Maoist insurgency and the government’s response to this. According to the Peace Accord, both sides of the conflict “express the commitment to respect the right of the people displaced by the conflict and their families to return back to their homes or to settle in any other location of their choice.” The number of IDPs due to the conflict has been estimated between 100,000 up to a few hundred thousands. The reintegration and rehabilitation of the IDPs was viewed as a key issue during the peace talks.

The Representative of the Secretary-General on the human rights of internally displaced persons visited Nepal from April 13 to 22, 2005, and in his report, he concluded that some of the main problems and needs faced by IDPs are security and protection; discrimination; food, shelter and health; access to education for children; documentation; sexual abuse and increased domestic violence; and risk of increased female

¹⁶ IRIN, “NEPAL: Stronger child protection needed for flood-displaced”, 16 November 2008, <http://www.irinnews.org/Report.aspx?ReportId=80462>

¹⁷ Food and Agriculture Organisation of the United Nations, “A victory for the Hungry in the Supreme Court of Nepal”, 09 October 2008, http://www.fao.org/righttofood/news22_en.htm



prostitution and child labour.¹⁸ Furthermore, the Representative of the SG concluded that the government only had been focusing on financial compensation and support, and thus largely neglected other forms of assistance and protection needs of IDPs. The following key recommendations to the Nepali government were made: to adopt a national IDP policy and to adopt necessary legislation in line with such a policy; to ensure that school admissions, access to health care and other services is granted on a needs basis and does not depend on registration; to create conditions conducive to the return in safety and with dignity of the IDPs; and to recognize the right of IDPs to choose freely between returning to their homes and resettling in another part of the country.

Since this report was written, there has unfortunately not been much progress made on the issue of IDPs. However, in February 2007, the Government of Nepal endorsed the 'National Policy on Internally Displaced Persons¹⁹' to address issues of displacement in Nepal. According to the latest updates, the National Policy on IDPs has been partially implemented in a few districts in coordination with local peace committees. The peace committee has not yet been formed in several districts. This causes difficulty to set up systematic and comprehensive data describing the actual situation of IDPs in Nepal. However, it is clear that thousands of people who were displaced during the Maoist conflict are still, two years after the signing of the peace agreement, awaiting help to safely return to their former homes or to resettle. The Nepali government bases its estimates of IDPs on the number that has been registered as IDPs. Since a lot of IDPs do not register, the government's estimates are somewhat misleading. NGOs and international agencies put their actual numbers at between 50,000 and 70,000.

UN Office for the Coordination of Humanitarian Affairs (OCHA) in Nepal stated in its Thematic Report on Internally Displaced Persons of June 2008, that since the previous report in July 2007, many IDPs have returned to their place of origin, the majority on their own, and some with the assistance of NGOs.²⁰ There is however still uncertainty connected to the actual number of returns, as there is to the absolute number of people displaced due to the conflict. Aside from providing travel expenses for their return, little has been done on behalf of the government to facilitate the overall process. So far, the government has failed to make any provision to protect the IDPs, nor has it provided a support package to re-establish IDPs' livelihoods and income opportunities. In addition, a large number of the IDPs were unable to acquire civil documents, compensation and other rights, as stated in the government's 2007 IDP policy. An obvious obstacle to help those IDPs in need of assistance and protection, is the lack of a mechanism to monitor, evaluate and document cases of forced displacement.

Many IDPs are now thought to be living in urban areas and district headquarters throughout Nepal, including Kathmandu, Biratnagar, Nepalgunj, Bhairahawa and Pokhara. Numerous IDPs still live in fear of violence and insecurity. While Nepalese IDPs live in very varied conditions, many IDPs' children are facing particularly difficult conditions. Many young children have moved to urban or semi-urban areas, unhygienic conditions and hostile environments, where their families cannot afford to send them to school. Some live on the street, denied an education and exposed to a variety of threats, including sexual exploitation and other forms of child labour. Some IDPs live with family members, but others have few resources and no one to help them. The latter group often rent small rooms with other IDPs. Displaced persons living with their relatives in rural areas may also face particular hardship, overstressing their relative's resources where malnutrition rates are already at 20 percent. Many of the wealthier IDPs,

¹⁸ "Mass Exodus and Displaced Persons", Report of the Representative of the Secretary-General on the human rights of displaced persons, E/CN.4/2006/71/Add.2, 7 January 2006

¹⁹ The full text of English version can be found at <http://www.peace.gov.np/admin/doc/IDP%20Policy-2063.pdf>

²⁰ UN Office for the Coordination of Humanitarian Affairs, OHCHR-Nepal: Internally Displaced Persons (IDPs): Current Status, http://www.un.org.np/reports/OCHA/2008/idp_thematic_report_2008/OCHA_IDP_Thematic_Report_July_2008.pdf



however, have been able to find shelter in cities and expect to return to their homes when conditions improve. Most of them were specifically targeted as they were seen as affiliates of the central government. A large majority of this IDP group sought refuge in district headquarters and main cities; they are not thought to experience major problems in their daily survival.

2.6. DISARMAMENT OF THE MAOISTS' ARMY AND INTEGRATION INTO THE NEPAL ARMY

As a result of its internal conflict, Nepal has two parallel armies; the state army and the Maoist People's Liberation Army (PLA). An important part of the Peace Accords was to make provisions in order to monitor and manage the arms and armies in the country. According to the Peace Accord, Maoist combatants should be placed in certain named cantonments, where all the arms and ammunition shall be securely stored. The Accord further states: "The Interim Council of Ministers shall form a special committee in order to inspect, integrate and rehabilitate the Maoist combatants."²¹ The Peace Accord and the Agreement on Monitoring the Management of Arms and Armies²² say nothing about integrating the PLA combatants into the Nepal army. As stated in both agreements, it is important to manage arms and armies in Nepal in order to hold elections for the CA in a free and fair manner. It is also imperative for any long-lasting peace in the country not to have two parallel armies, as well as to make sure that the state army is democratized.

UNMIN's mandate provides that it shall monitor the compliance of the Nepal Army and the Maoist army with the Agreement on Monitoring the Management of Arms and Armies and the provisions of the Peace Agreement. The stage of registration and verification of Maoists' army combatants was completed in December 2007, and a total of 19,692 persons have been identified as Maoist combatants. The amount of Maoist army weapons registered and stored has reached 3,475.²³ However, the Maoists' army has not been entirely demobilized or disarmed, since there is a considerable gap between the number of arms and cadres registered with the UNMIN.

The Maoist approach to demobilizing and integrating the PLA is that it should be integrated into the Nepali national army. In the beginning of September 2008, the Deputy Commander of the CPN-Maoist's PLA Nanda Kishore Pun said that the process of integrating the PLA into the national army would start in three months and will be completed in six months. He stated that "the integration of the PLA and the Nepal Army is compulsory to bring the peace process to a logical end". Pun warned that conflict will be induced if the Maoist combatants are not incorporated and transformed into the national army. The issue has provoked a major controversy in Nepal since January 2008. Nepali Congress' leader opposes the prospect of Maoist combatants joining the Nepal army and he has warned of taking steps if the PLA is merged with the national army. Madheshi People's Rights Forum's (MPRF) leader has also threatened that his party will launch a serious movement if the Maoists try

²¹ Paragraph 4.4 of the Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal (Maoist)

²² Agreement on Monitoring of the Management of Arms and Armies, 28 November 2006, <http://www.satp.org/satporgtp/countries/nepal/document/papers/28nov2006.htm>

²³ <http://www.unmin.org.np/?d=activities&p=arms>



to integrate their combatants into the Nepal army.²⁴ General Rukmangud Katuwal, the Chief of the national army, has also opposed the integration proposal.

Those who oppose integrating the PLA into the national army, argue that the integration of an ideological army into the national army means that it could create structural incompatibilities. This problem could surface when a number of recruits, with a proven political association, gets into the army, which is supposed to function without any political partiality. The difference in opinion regarding the issue of integration of the PLA could be an obstacle to the progress of the peace process as well as an obstacle for a functioning coalition government.

On June 25, 2008 an agreement was signed by the leaders of the Seven-Party Alliance, in which they agreed to reconstitute a committee to supervise, rehabilitate and integrate the Maoist combatants within six months. As a response to this agreement UNMIN's mandate in Nepal was extended until the 23 of January 2009. The policies and program statement presented by President Dr. Ram Baran Yadav is the first official document of the government that categorically says the Maoist combatants will be integrated into the Nepal Army.

On October 28, 2008, the Nepal government formed a five-member special committee to look after the integration of the Maoists combatants into the Nepal Army under the chairmanship of Deputy Prime Minister and Minister for Home Affairs, Bamdev Gautam. The Defence Minister Ram Bahadur Thapa, Madhesi Peoples Rights Forum leader Mohammad Habibullah, and Minister for Peace Janardan Sharma are members of the committee. However, the opposition party Nepali Congress has not yet joined the committee stating that the Maoist-led government has constituted the Special Committee on a unilateral basis. The integration process has become uncertain for now as NC refused to join the Special Committee.

Apart from the issue of disarming the PLA army, there have been problems with continued violence from a group called the Young Communist League (YCL), which is the Maoists' ex-militia. Since emerging in the beginning of 2007, the YCL has been constantly accused acts of violence, especially during the election campaign. The Maoist party has directed YCL to end its paramilitary structure in Nepal, in order to secure the peace process.²⁵

3. HUMAN RIGHTS VIOLATIONS DURING 2008

3.1. ILLEGAL DETENTION AND ABUSE OF THE REMAND APPLICATION BY POLICE AFTER TORTURE

In 2001, the government imposed the Terrorist and Disruptive Activities (Prevention and Control) Ordinance 2001--2058. With the expiry of the Terrorist and Disruptive Activities (Punishment and Control)

²⁴ Kantipur Report, "Integration of Maoist combatants into NA unacceptable to MPRF", 25 September 2008, <http://www.kantipuronline.com/kolnews.php?nid=161892>

²⁵ ANI, "Maoist directs YCL to end paramilitary structure in Nepal", 01 January 2008, <http://www.newstrackindia.com/newsdetails/10342>



Act -- 2058 on 12 October 2004, the government introduced a more severe and draconian version of the same law in its stead: the Terrorist and Disruptive Activities (Control and Punishment) Ordinance -- 2061. This law allowed that any persons being suspected members/supporters of Maoists can be subject to preventive detention for up to one year and police custody for up to 60 days for investigative purposes. Under this law, the security forces engaged in a large number of arbitrary arrests and detentions. Many disappeared or were killed after arrest and detention. However, Terrorist and Disruptive Activities (Control and Punishment) Ordinance – 2061 has already been nullified.²⁶

To prevent arbitrary arrest and detention, Article 24(3) of Interim Constitution, 2007 stipulated that the detainees are taken before a judicial authority within 24 hours (it was previously within 48 hours) and have immediate access to legal counsel.²⁷ However, Special Rapporteur Manfred Nowak reported that in practice, detainees in police custody are often held beyond the stipulated 24 hours without appearing before a judge or the relevant authorities and the OHCHR documented many cases where detainees have not been provided with letters of arrest/detention.²⁸ The Special Rapporteur further reported that in practice many detainees do not have immediate access to lawyers.

The OHCHR further raised its concern that certain practices common during the conflict occasionally reappeared such as unacknowledged detention, beatings and release in return for “surrender” (the detainee undertaking not to rejoin the armed group), mostly in connection with detained individuals accused of belonging to armed groups.²⁹

Besides, the cases that the AHRC documented in the year 2008, shows that the police often abuse the remand application in the court. It is done to secure more time to extract a forced confession from torture victims or to detain the victims until their wounds sustained by torture have subsided. This common practice continues, without any difficulties, as the courts simply grant the police’s remand application without properly examining it. Besides, the police often illegally detain the torture victims until their wounds are healed, putting the victims in a difficult position to prove torture occurred.

In the case of **Ms. Sumitra Khawas**, after failing to get a forced confession from her despite torture, Belbari area police brought her to the Morang district court for further interrogation for the first remand that was granted by the court. On September 18, Sumitra was again brought to the Morang District Court by the APO of Belbari for the second time on remand. The district court approved the police's application and remanded her for another 4 days to the APO of Belbari. As a result she was detained in the police station where she was tortured for over 10 days. The AHRC repeatedly appealed to the government to transfer her to other detention facilities fearing further torture or threats by the police. On September 22, Sumitra was again brought to the court for the third time on remand. This time, the court ordered her to be remanded for an additional 10 days to Morang DPO. On the same day, she was transferred to a woman’s cell in Morang DPO where she remains detained. On October 19, 2008, Sumitra was sent to Moring district jail for a further trial. The case is still pending in the courts.

In the case of **Umesh Lama**, after his arrest and torture on April 1, 2008, he was illegally detained at the Hanumandhoka Metropolitan Police Range (MPR), Kathmandu, without receiving medical treatment until

²⁶ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, 18 February 2008, A/HRC/7/3/Add.2

²⁷ Ibid.

²⁸ Ibid.

²⁹ Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation in Nepal, 18 February 2008, A/HRC/7/68



April 9. He was taken to the hospital on April 9 due to his family's repeated requests to the police. The Hanumandhoka Metropolitan Police further illegally detained him until April 15 without producing him before the courts. His family filed a habeas corpus writ petition to the Appellate Court in Patan. On the same day the police made an application for Umesh's remand, indicating that they would not be able to produce him in court due to his poor health. The district court in Kathmandu granted his remand in absentia. He was only produced in court by the police on April 30. He was released on bail, after his elder sister withdrew a case filed in the court for torture compensation. The police also attempted to fabricate the date of arrest in their records from April 1 to April 6 to cover up their torture.

In case of **four men including Deepak Kumar Senapati**, who were arrested on March 22 and 23, 2008 and tortured at the Katari APO, the police illegally detained them for 11 days until April 3. They were produced before Udayapur District Court for the first remand on April 3, with a charge of attempted murder. The police brought them to the health post on the same day for a first time medical check-up. According to the victims, the doctor ignored their claims of being tortured by the police and did not properly examine them. They were again remanded by the district court on April 19 and detained at the same APO until April 28. The APO transferred them to the Udayapur DPO on April 28 and a charge sheet of attempted murder was filed against them. On April 29, the court ordered them to be remanded at Udayapur district prison to await trial. They are being detained in this prison to date.

Another serious concern raised by the OHCHR is the increasing involvement of the Armed Police Force (APF) in arrests related to armed groups. For instance, some detainees were illegally held and interrogated by the APF after special task forces, including police and the APF personnel, were deployed to combat the activities of armed groups and criminal gangs in the Terai districts of the central and eastern regions, although the APF do not have power to detain or interrogate.³⁰ The APF do not have detention facilities or registers, either. The OHCHR reported that it received around 100 allegations of ill-treatment, as well as torture, during its regular visits to police stations and from other sources.

To prevent arbitrary detention, ill-treatment, or possible disappearances of detainees the Working Group on Enforced or Involuntary Disappearances recommended the government and security forces to ensure that accessible, complete, accurate and fully up-to-date lists of detainees in both formal and informal detention facilities are kept, and shared with families of the detainees and with civilian authorities, including the National Human Rights Commission. The Working Group also recommended that the lists should be held locally, with a national registry created to bring together the names and locations of all detainees.³¹ However, this recommendation has not been implemented by the government so far.

3.2. STRUGGLE OF THE FAMILIES OF THE ENFORCED DISAPPEARED AND EXTRAJUDICIAL KILLINGS

During the armed conflict between the government and Maoists, large numbers of people were extrajudicially killed or disappeared. According to Informal Sector Service Centre (INSEC), some 13,256 Nepali people were killed in the conflict and among them, killings of over 8,000 civilians were recorded after

³⁰ *Ibid.*

³¹ Report of the Working Group on Enforced or Involuntary Disappearances, Mission to Nepal, 28 January 2005, E/CN.4/2005/65/Add.1



November 2001 when the government declared the state of emergency and deployed the army to the conflict areas.

After the government put the police and the armed police force under the unified command of the army in November 2003, the number of the disappearances rapidly increased. The NHRC has informed that it received 1,619 cases of disappearances; 1,234 cases attributed to the security forces, 331 attributed to the Maoists and 54 where the responsible persons are unidentified.³² In January 2005, the Working Group on Enforced and Involuntary Disappearances also reported that during the year of 2004, it transmitted 510 cases of disappearance to the government.³³ The Working Group says that 320 cases remained outstanding as of January 2008.³⁴ Besides, some 647 and 640 cases of habeas corpus petitions were lodged at the Supreme Court in 2006 and 2005, respectively.³⁵

Transitional Justice, including accountability for past crimes, has become part a key issue of the firm commitment towards peace, human rights and democracy in the new democratic republic of Nepal. However, although the monarchy has been abolished and the new democratic republic government has been established, the government has failed to set up a Truth and Reconciliation Commission (TRC) so far. It has also failed to implement any of the Supreme Court's directive orders to deal with disappearances from the past one and a half years.

On June 1, 2007, the Supreme Court of Nepal ordered to the government to:

- enact a legislation criminalising enforced disappearances;
- consider ratifying the new International Convention for the Protection of all Persons from Enforced Disappearance (ICPPED);
- establish a Commission of Inquiry into Disappearances in compliance with international human rights standards;
- provide interim relief to the families of the victims of the "disappeared," which is to be provided without any effect on the final outcome of these cases.

The AHRC is also concerned by Prime Minister Puspa Kamal Dahal's remark in this year that he would not take action against senior figures in the Nepalese army concerning war crimes and human rights abuses during the conflict period. His statement sends a clear message that the government will not seriously tackle the culture of impunity. It is therefore unsurprising that none of the numerous cases of human rights abuses during the 10-year conflict have led to proper prosecution of the accused.

Non-implementation of the NHRC's recommendations and impunity

The Interim Constitution empowered the National Human Rights Commission of Nepal (NHRC) as a constitutional body. The Interim Constitution also enlarged the mandate of the Commission such as the power to recommend departmental action against the violators, to file the cases in the court and to publicise the name of government officials who do not respect the commission's orders/direction. The NHRC has also established a special unit to focus upon disappearances. However, the government's

³² *Ibid.*

³³ *Ibid.*

³⁴ *Report of the Working Group on Enforced or Involuntary Disappearances, 10 January 2008, A/HRC/7/2/*

³⁵ *Ibid* (n 27)



inaction in implementing the NHRC's recommendations on the complaints relating to extra-judicial killings, disappearances and torture is serious.

In the report published in Jestha 2065 (May/June 2008), the NHRC informed that among 147 recommendations that the Commission issued from its establishment to the year of 2063 (April 2007), only 16 recommendations were fully implemented, while 20 were partially implemented and 111 are not implemented at all.³⁶ This means 75% of its recommendations have not been implemented by the government at all. Most of the commission's recommendations are connected with taking action against guilty persons and providing relief to the families of the victims. The NHRC also reported that there are large numbers of disappearance cases among 6,509 complaints filed, from its establishment in 2000 until April 2007.

Out of these recommendations, the Commission issued 48 recommendations regarding extrajudicial killings by security forces. But only 2 were fully implemented and 14 were partially implemented, while the government has not taken any legal action relating to 32 recommendations. Major incidents in which the Commission's recommendations have not been implemented are the Nagarkot incident, Kotwada incident of Kalikot and Dang incident.

The Commission also made 13 recommendations relating to killings by the CPN-M but only two recommendations have been partially implemented. The related incidents include Pili incident of Kalikot district, Thankot incident, Dadhikot and Janakpur incident. Regarding the complaints relating to disappearances and torture by the security personnel, the Commission gave 11 recommendations. But only two were partially implemented, while it has not received any information of actions taken against the guilty personnel from the government in the remaining 9 recommendations. Regarding the deaths given by the Maoist retaliation committee, the NHRC gave a recommendation regarding killings of about 46 people in Kapilvastu district as well as killings of seven persons in Makawanpur district. But the government has failed to take an action against the guilty personnel. The families of the victims have not received any compensation, either.

According to the NHRC's data, from 2064 Ashoj to Baisakh 2065 (September 2007-May 2008), the Commission has made 20 recommendations regarding extrajudicial killings committed by the state actors, two recommendations relating to deaths in army custody, one recommendation on death in prison and two recommendations regarding killings by CPN-M personnel. But most of its recommendations have not been implemented at all. The NHRC clearly pointed out that the major reasons for the non-implementation of its recommendations are the lack of the government's willingness and cooperation.

The Working Group on Enforced or Involuntary Disappearance has previously recommended the government to make every effort to strengthen the role of the NHRC and facilitate its work.³⁷ However, the government seems to work in the opposite direction. The government's apparent failure in implementing the NHRC's recommendations will be seen as an attempt by the government to undermine the role and function of the Commission. Since most of the recommendations relate to taking serious action against errant state actors, these officers are likely to see the government's inaction as an expression that the government will not carry out the recommended measures. The errant officers and others who may in the future engage in similar activities may find encouragement in this and thus discipline within the police is likely to be further undermined due to these comments. The encouragement of errant police officers and

³⁶ National Human Rights Commission of Nepal, "Recommendation of National Human Rights Commission and Status of its Implementation", 2065 Jestha, Pra.no 41/92/065

³⁷ *Ibid* (n 32)



the discouragement of the NHRC by the government will only spread impunity and demoralisation in the country.

No domestic law criminalizing enforced disappearances

After making a visit to Nepal on 6-14 December 2004, the Working Group on Enforced or Involuntary Disappearances made several recommendations to the government of Nepal. Among them, the Working Group recommended that as soon as possible, Nepalese criminal law be amended to create a specific crime of enforced or involuntary disappearance.

On 27 November 2007, the Parliamentary Committee on Law and Justice instructed the government to withdraw the amendment proposal to the National Code of Nepal (Mulki Ain) regarding disappearances and to draft a new law on enforced disappearances that is in line with the ICPPED and the 1 June judgment of the Supreme Court. However, the chapters of "abduction" and "hostage taking" of the Civil Code of Nepal went into force from 30 November 2007.

There is heavy criticism that the new provisions in the Code do not provide any specific provision for enforced disappearances which have taken place whilst the victim is in custody, that is, with State involvement.

The government on November 15, 2008 unveiled the much-awaited draft bill on Enforced Disappearances (Charge and Punishment) Act 2065 B.S. with a provision to retroactively charge those behind disappearances during the decade-long Maoist conflict. The bill unveiled by the Ministry of Peace and Reconstruction (MoPR) has proposed to cover cases of disappearances between February 13, 1996 and November 21, 2006, the date the Maoist and the then Seven Party Alliance government signed the Comprehensive Peace Agreement (CPA).

The bill has made a provision to form a five-member high level independent commission to probe incidents of disappearances during the conflict period. A committee consisted of Constituent Assembly Chairman and two incumbent ministers will recommend human rights activists, psychologists, lawyers, conflict experts and sociologists with at least 10 years of professional experience as five members of the commission. The bill proposes five-year jail term and up to Rs 500,000 [about USD 6,300] fine to the main convicted in a disappearance case. The accomplice of the convicts will be subjected to half of the jail term and fine amount of the main convict. Those involved in disappearing children and women will have to face an additional two-year jail term.

The ministerial cabinet meeting on November 20 approved the disappearance bill for formation of a Commission to probe Enforced Disappearances and decided to present it at the upcoming meeting of the Legislature-Parliament. However, the bill has not been presented to the Legislature-Parliament yet.

Delay of establishing TRC and Commission of Inquiry on enforced disappearances

The institutionalisation of TRC was mentioned in the Interim Constitution of Nepal 2007. On 23 December 2007, the Government of Nepal also signed a 23 point agreement with the Communist Party of Nepal (Maoist) that required the Government to form a TRC within one month of the agreement. However, without having proper public consultation, the high-level political task force under the coordination of



Ministry of Peace and Reconciliation made a decision on January 28 to recommend the government to establish TRC and a Commission of Inquiry into Disappearances via two separate ordinances.³⁸ After facing serious criticisms from the civil society and international community, including OHCHR-Nepal, the government withdrew this decision.

The three governing political parties, the Communist Party of Nepal-Maoists (CPN-M), the Communist Party of Nepal-Unified Marxists and Leninists (CPN-UML) and the Madeshi Janadhikar Forum (MJF), affirmed their commitment to establish TRC and Commission of Inquiry into Disappearances in a joint document, the Common Minimum Program, announced on 21 August 2008.

However, as mentioned above, the draft bill of the TRC currently remains in limbo and has done for almost one year, and it is uncertain how long it will take until the Commission's establishment. As a result, there are currently no specific avenues through which victims or their families can exercise their right to seek legal remedy and redress with regard to enforced disappearances, torture or killings (among other things).

Besides, the mere setting up of high level commissions of inquiry or investigative commissions cannot be a solution for human rights abuses. A recent joint report published by Human Rights Watch and Advocacy Forum-Nepal noted that since 1990, various governments in Nepal have set up commissions of inquiry or investigative commissions on human rights abuses, but all such bodies have had inadequate power to secure evidence and the cooperation of security forces and their recommendations have not been acted upon.³⁹ Lessons from the past commissions of inquiry should be seriously considered to ensure the appropriate mandate and power to the TRC and Commission of Inquiry into Disappearances to deal with deeply rooted impunity in the country.

Deliberate police refusal to register the complaints of past crimes and no proper investigation

As of present, the possible avenues victims or their families can approach for redress are the police and the court. However, it is most likely impossible for them to get effective legal remedies from these institutions, with the existing dysfunctional investigating institution - the police - in Nepal.

The families of the victims of enforced disappearances and extrajudicial killings face great difficulties from the initial stage of pursuing their cases: the filing of their complaints at the police stations. The police escape from their responsibility to investigate allegations of human rights abuses by simply refusing to file a complaint lodged by the families of the past human rights abuses. Purnamaya Lama's experience with the police is a good example. For details, see the below.

³⁸ AHRC forwarded statement numbered AHRC-FST-013-2008: NEPAL: Government must consult public before establishing two commissions for transitional justice, 4 February 2008

³⁹ Human Rights Watch and Advocacy Forum, "Waiting for Justice: Unpunished Crimes from Nepal's Armed Conflict", September 2008; <http://hrw.org/reports/2008/nepal0908/>



[Table 1: Purnamaya Lama's case⁴⁰]

Complainant: Ms. Purnamaya Lama, the widow of Mr. Arjun Bohadur Lama, resident of Chhatrebas VDC-5, Kavre district

Date and place the FIR registered: On 11 August 2008 at the Kavrepalanchowk District Police Office

Case concerned: An alleged disappearance of Arjun Bohadur Lama by the Maoists in April 2005

Case status: No proper police investigation upon the FIR

In July 2007, the Kavrepalanchowk District Police Office (DPO) refused to register a First Information Report (FIR) filed by Purnamaya Lama concerning an alleged disappearance of her husband Arjun Bohadur Lama by the Maoists in April 2005. At that time, the police excuse was that they had no jurisdiction over this case as it fell under the jurisdiction of Truth and Reconciliation Commission (TRC), which has not been established to date.

Purnamaya Lama then filed a writ of mandamus with the Supreme Court. The Supreme Court directed the Kavrepalanchowk DPO to register an FIR in relation to the case of Arjun Bohadur Lama on 3 March 2008 and issued the writ on March 10. In the writ, the Supreme Court said, "Unless upon the enactment of law in this regard that makes clear what sorts of crimes fall under the jurisdiction of TRC, it cannot be disputed that it is the duty of the concerned police office to receive the information, file a FIR and conduct an investigation according to law on all criminal cases."

In another occasion on May 2, 2008 one AHRC's staff along with local human rights lawyers, accompanied a widow who wanted to file a First Information Report (FIR) against the army commanders at the Banke DPO office regarding the killing of her husband Kamal Dahal, who was allegedly killed by the army personnel on January 1, 2002. One representative of the OHCHR-Nepal regional office based on Nepalgunj visited the Banke DPO. However, despite the repeated requests, the Banke DPO refused to register the FIR of the widow. The police first gave an excuse that the case would be investigated by a TRC when it is established and the police were not obliged to investigate past human rights abuses. When this argument was challenged that the police are obliged to register any complaint from any source according to Rule 3 of State Cases Regulations, the police then gave an excuse that they had to get permission from the superior officer – Superintendent of Police (SP) of the Banke DPO, who was absent for a meeting at that time, to register the FIR, which is also illegal practice by law. Furthermore, the AHRC was informed that Mr. Sushil Kumar Lakhe, who accompanied the widow to the Banke DPO was subjected to an attempt on her life and an illegal police search. For details, please see Table 2.

In this year's report to the United Nations Human Rights Council, the High Commissioner for Human Rights highlighted that the police rejected many FIRs filed by victims and their relatives, concerning past and ongoing human rights violations by security forces and abuses by CPN(M).⁴¹ The report also said that

⁴⁰ Urgent Appeal numbered AHRC-UAU-055-2008NEPAL: A proper investigation is required on Arjun Bohadur Lama's disappearance, 12 September 2008; www.ahrchk.net/ua/

⁴¹ Ibid (n 30)



“when complaints were filed, they did not lead to full criminal investigations and not one member of the security forces or CPN(M) has been convicted as a result of a FIR”.⁴²

The Working Group on Enforced or Involuntary Disappearances after its visit to Nepal recommended to the government that the Army Act be amended to security forces personnel accused of enforced or involuntary disappearance in relation to civilians being tried only in civilian courts. However, one of few cases where the perpetrators have been prosecuted in a civilian court is the high profile case of Maina Sunwar⁴³. Maina was 15 years old when she was allegedly tortured and killed in February 2004 while in the custody of the Nepalese Army. In 2005, the Kavre DPO refused to accept the FIR filed by her mother that violates the police's official duty to investigate crimes. Because of a huge campaign by several prominent local human rights organisations and the UN OHCHR office in Nepal, the Supreme Court directed the police to conduct an investigation into Maina's case in September 2007. On January 31, 2008, the District Government Attorney's Office submitted a charge sheet to the Kavre district court naming four accused. The Court subsequently issued summons for the accused to appear before it. It should be noted that it took about 4 years until the charge sheet was filed against the guilty military personnel after Maina was killed. It is uncertain how long it will further take until the accused are convicted by the court and Mina's family will finally get justice.

Considering that the police were alone incapable of carrying out an impartial, independent and effective investigation as per the Court's directives, the local groups demanded the formation of a special investigation team under the aegis of National Human Rights Commission (NHRC) and the Office of High Commissioner for Human Rights in Nepal (OHCHR-Nepal) to forward the procedures of investigation.⁴⁴

Thousands of other families of those extra-judicially killed and disappeared, who were not lucky enough to get public attention like Maina's family, have been constantly denied justice for their loss and sufferings. In its report after the mission to Nepal in 2004, the Working Group on Enforced or Involuntary Disappearances recommended the army release full and complete details, including any written judgments, of all court-martial proceedings undertaken in the last two years, and in the future. However, the OHCHR-Nepal and NHRC are complaining that the army has failed to share this information despite their requests. Also, the Working Group recommended that the Judge Advocate General undertake more aggressive prosecution of army personnel under the existing law of kidnapping and torturing civilians. However, as mentioned above, the army personnel have been prosecuted in few cases.

A joint report published report by Human Rights Watch and Advocacy Forum-Nepal in September 2008 vividly examined the urgency of this investigating mechanism by examining the fate of 62 cases documented in 49 FIRs filed with the police in 16 districts of Nepal since June 2006.⁴⁵ The report found that in most of the 62 cases examined here, police failed to initiate any investigations and in a few cases, the courts rejected the appeals of the families to get the FIR to be filed. It also revealed that “in nearly all cases where families of victims succeeded in registering complaints, police have failed to take even the most basic first steps in criminal investigation, such as to visit the scene, interview witnesses, and arrest alleged perpetrators”⁴⁶.

⁴² *Ibid* (n 30)

⁴³ AHRC urgent appeal numbered UP-136-2005

⁴⁴ AHRC forwarded statement numbered AHRC-FST-004-2008, NEPAL: Condemnations over the lackluster police investigations vis-à-vis the murder case of Mina Sunuwar, 4 January 2008

⁴⁵ *Ibid* (n 40)

⁴⁶ *Ibid* (n 40)



One of the major reasons for inadequate police investigation into these cases is that the police feel powerless to investigate army personnel involving the cases of disappearances or killings. It is because the army personnel were their superiors as they operated under the unified command of the army between November 2003 and April 2006. Therefore, it is the most important first step to determine the transparent, effective and independent investigative body so that the courts can provide effective legal remedies to the families of the victims.

Threats against the families of the victims and human rights defenders

Many families of the victims are still afraid of taking any action to seek justice, fearing reprisals from the army or Maoists. It is also common that the families face intimidation and threats when they try to pursue their cases. The joint report published by Human Rights Watch and Advocacy Forum-Nepal also confirmed that “the families of at least 6 victims in the cases documented threatened by security forces or Maoists”⁴⁷. Human rights defenders assisting the families of those killed and tortured are not spared the threats. For example, the AHRC reported through its Urgent Appeals programme about the severe threats on Mr. Sushil Kumar Lakhe, a human rights lawyer as well as the regional coordinator of the Nepalgunj office of Advocacy Forum-Nepal in Banke district.⁴⁸ Mr. Lakhe was helping a widow who wanted to file a FIR against the army commanders at the Banke DPO office regarding the killing of her husband Kamal Dahal. For details of the case, please see the below.

⁴⁷ *Ibid* (n 40)

⁴⁸ AHRC Urgent Appeal numbered AHRC-UAC-100-2008, NEPAL: Police illegally searched a human rights lawyer’s house in Banke district, 15 May 2008



[Table 2: An illegal police search and an attempt of life of Mr. Sushil Kumar Lakhe]

An illegal police search

At around 6:20pm on 11 May 2008, about 10 policemen, including a police head constable Nar Bahadur Baigwar and a police constable Dubar Yadav from the temporary Police Post of Fultekra in Banke district came to the house of Mr. Sushil Kumar Lakhe. Mr. Lakhe's wife and son were at home at the time.

According to Mr. Lakhe's family, the policemen scattered in front of their house for a while. The police head constable Nar Bahadur Baigwar and the police constable Dubar Yadav then entered Mr. Lakhe's house and searched his room. They opened a drawer of Mr. Lakhe's desk and looked at all the documents. Mr. Lakhe's son asked the police for the reason of the house search but the police did not reply. According to the family, the police neither produced a search warrant nor gave them a reason for the house search.

Upon learning of the incident, Mr. Lakhe called to the Superintendent of Police [SP] Mr. Ghanashyam Bhatta of the Banke District Police Office (DPO) as well as Sub Inspector of Police Govinda Rokka of the temporary Police Post in Fultekra to make inquiries. They denied that the police had been to his house.

An attempt of life

On the afternoon of May 2, Mr. Lakhe accompanied a widow who wanted to file a FIR against the army commanders at the Banke DPO office regarding the killing of her husband Kamal Dahal. Despite the repeated requests made by Mr. Lakhe, the Banke DPO refused to register the FIR of the widow on that day.

At around 9:40pm of the same day, two unidentified persons riding a red motorbike followed Mr. Lakhe from near the Laliguras Hotel of New Road in Nepalgunj municipality, when he was returning home on his bike. When he reached Dewafulbari of Nepalgunj, he heard them saying, "this man says himself as a human rights defender and we have to finish him". He was able to escape from them by taking a different route. He stayed in a safe place overnight and went home on the following day.

Meanwhile, the FIR concerning Kamal Dahal's killing was finally registered at the Kohalpur APO in Banke district on May 4. To briefly explain about Kamal Dahal's killing, on 1 January 2002, Kamal Dahal, who was a teacher at that time, was picked up from the school premises by army personnel led by Major Ajit Thapa and Captain Ramesh Swar from the Bhimkali Battalion in Banke district. On the following day, a local radio station announced that he had been killed by the army during an encounter. However, his family members have not received any detailed information about his death and the location of his body. The progress of the police investigation into this case remains unknown.



In light of the above, the AHRC therefore appeals to the government of Nepal to:

- criminalise enforced disappearance by law and ensure that the cases of enforced disappearance are dealt by civilian courts;
- establish a TRC through public consultations that does not grant blank amnesty to the perpetrators, without further delay;
- establish the Commission of Inquiry into Disappearance in compliance with the international human rights standards;
- set up a special unit of senior level investigators, under the oversight of the Attorney General's office, to investigate the serious human rights abuses committed during the conflict;
- instruct the police to register the complaints filed by the families of the victims according to their mandate and take strong action against police officers who refused to register such complaint or deliberately avoided conducting a proper investigation into it;
- implement the directive orders given by the Supreme Court on 1 June 2007;
- enact Witness Protection Act and establish the relevant enforcement measures for witness protection, as the complainants are vulnerable to threats and intimidation;
- Suspend all those responsible security personnel named in complaints filed by the families of those extra-judicially killed or disappeared, while the investigations are ongoing, when there is sufficient evidence against them;
- take aggressive actions to reform the criminal justice system – the policing, the prosecution and the judiciary.

3.3. CONTINUANCE OF ENDEMIC TORTURE

In Nepal, torture is a major concern with regard to the rehabilitation of victims of past crimes. In a survey conducted by the International Center for Transitional Justice and the Advocacy Forum-Nepal, the most common type of violation reported was torture (51 percent), followed by disappearance (23 percent) and extrajudicial killings (20 percent).⁴⁹ The survey also showed that 66 and 65 percent of the respondents respectively did not trust the police or the army. It should be noted with serious concern that endemic torture continues in the country even after the end of armed conflict between the government and Maoists in late 2006. According to one leading local human rights organisation, Advocacy Forum-Nepal, it has alone documented 2,271 cases of torture committed by the law enforcement officers and Maoists over a five year period from July 2001 to April 2006.⁵⁰ The same human rights group again documented 1,313 new cases of torture during a period of one year up to June 2007.⁵¹

Practice of torture is still ongoing at the police stations in Nepal to date, while the perpetrators of torture enjoy impunity without facing any punishment by law. In February 2008, the Special Rapporteur on torture Manfred Nowak raised his concern that not one member of the armed forces or the CPN-M cadres has been brought to criminal justice for acts of torture committed during the conflict.⁵²

⁴⁹ International Center for Transitional Justice and the Advocacy Forum, "Nepali Voices: Perceptions of Truth, Justice, Reconciliation, Reparations and The Transition in Nepal", March 2008

⁵⁰ Advocacy Forum, "Sharing Experiences of Torture Survivors", 26 June 2006, www.advocacyforum.org

⁵¹ Advocacy Forum, "Torture Still Continues – A brief report on the practice of torture in Nepal", 25 June 2007

⁵² Ibid (n 27)



In its 2007 Annual Human Rights report, the AHRC explained in detail that the torture has been used as the main method of investigation and highlighted series of torture incidents in Morang district police office. The report also highlighted how the complaints of torture incidents were silenced in a way that the torture victims face further abuses after filing complaints against police officers, and how torture is operated by the police on the request of the rich and powerful.⁵³

In this year’s report, we highlighted a common type of “bone beating” torture and also highlighted the urgent need for the witness protection mechanism, independent investigating body as well as the transparent and effective sanction mechanisms against security forces to deal with torture in Nepal.

Bone beating

Through the documented torture cases, the AHRC recognises a certain common pattern of torture by the police – called "bone beating" in Nepal. The police often beat the joints of a person's hands and legs with a bamboo stick or a plastic pipe that causes severe pain to the person.

As mentioned in the above, after the torture the police often illegally detain the victim without producing the person before the court and also do not allow the family members or lawyers to access the victim for a while. Therefore, when the family members or lawyers finally meet the person, it is often difficult to identify signs of visible injuries. The local human rights groups say that these circumstances cause great difficulties for the victim when they pursue their cases as this effectively prevents them from having considerable evidence of torture, particularly the marks and traces of tortures, as they seek legal redress. Some incidents of “bone beatings” documented by the AHRC as follows:

a. Case of Mr. Shekhar Gurung⁵⁴: Mr. Shekhar Gurung, 35 years old, is a permanent resident of ward no. 32, Maitidevi sub-metropolitan city in Kathmandu. On 31 May 2008, Shekhar was arrested on the charge of allegedly being a hooligan and for creating violence by a team of policemen from the Singhadarbar Metropolitan Police Sector (Singhadarbar MPS), Kathmandu.

At the Singhadarbar MPS, Shekhar was allegedly subjected to severe torture. The five policemen (one sub-inspector, one assistant sub-inspector and three police constables) beat him on both the soles of his feet, ankles, back of knees and both thighs with a bamboo stick. They had him beaten continuously and indiscriminately one after another for about 25 to 30 times. At the meantime, one of the policemen also beat him on the right side of his stomach with the bamboo stick.

On June 1, Shekhar was transferred from the Singhadarbar MPS to the Kathmandu Metropolitan Police Range where he was remanded in judicial custody on the charge of public offence. Upon the court order, he was given a medical checkup at the Bir Hospital in Kathmandu on June 10. But the police instead kept the results of the findings of the medical report to themselves and did not inform it to the victim. On June 19, the District Court issued an order that the victim could be release on bail amounting to Rupees 7,000 (about USD



Photo: Shekhar Grung

⁵³ Ibid (n 6)

⁵⁴ AHRC Urgent Appeal numbered AHRC UAC-166-2008: NEPAL: Police tortures a young man in Kathmandu, 24 July 2008



102). No action has been taken against the alleged perpetrators.

b. Case of two sisters Sima and Mina⁵⁵: At around 10:30am on 14 May 2008, one local man Mr. Aashik Kurisi, handed over 19-year-old Sima, her 13-year-old sister Mina and another 13-year-old girl named Ms. Gita [name of the victims changed to safeguard their identity] to the Surkhet District Police Office (DPO), with the accusation that the two sisters stole some money from his home located in Birendranagar Municipality -6, Surkhet district.

On the same night, Deputy Superintendent of Police (DSP) Mr. Govinda Shah along with one male officer and one female officer allegedly tortured Sima. She reported that the police beat her with a plastic pipe and sticks on her back, hands, and legs for about 30 minutes. They also tied her legs and put them on the chair and “beat the soles of her feet” for about 10 minutes. The police further implemented a brutal type of torture on Sima. They allegedly hammered a pin on the nails of her big toes. Due to pain she accepted the accusation of the theft. Even after that, the police allegedly electrocuted her on her right hand and then started beating her again.

After failing to find anything from Sima’s house, the DSP Mr. Govinda Shah and ASI Ms. Gyanumaya Thapa again tortured her in the evening. They hit her hard with a plastic pipe on her head, soles of her feet, and back about 15-20 times. The police also assaulted her for about 10 minutes with their fist, a pipe, and a stick. After seizing 30,000 rupees [about USD 440] from her pocket, the police released her on the same day night without any charges.

ASI Ms. Gyanumaya Thapa also tortured 13 year-old girl Mina. Ms. Thapa slapped her face and beat her with a stick for a while and also hammered nails into her toes. The DSP Mr. Govinda Shah had slapped Gita during the interrogation. The police released Mina and Gita at about 6pm on the same day without any charges.

Sima had registered a complaint at the Midwestern Regional Police Office, Birendranagar in Surkhet district, against the police officers responsible for her torture on 18 June 2008. The regional police authority then formed a three member investigating team but the progress of the investigation remains unknown. All three victims belong to the Dalit [Untouchable] community in the country.

c. Case of Four men tortured by the Udayapur district police⁵⁶: On March 22 and 23, 2008, four young men, Deepak Kumar Senapati (18), Durga Magar (23), Raju Magar (24) and Raj Kumar BK (20), were caught by locals and handed over to the Area Police Office (APO) of Katari in Udayapur district, on suspicion of assaulting a driver named Uttam.

While in custody on March 23, the Khoksa police beat Deepak on the soles of his feet, legs, knees, chest and back with bamboo stick. He was then transferred to the APO area police office Katari on the same day. On March 26, Inspector Hari Ojha of the APO of Katari again tortured him. The Inspector kicked him and punched him indiscriminately on his chest, back, shoulder and knees. He also beat the soles of Deepak’s feet

⁵⁵ AHRC Urgent Appeal numbered AHRC-UAC-150-2008: NEPAL: Alleged cruel form of torture imposed on two sisters by the Surkhet district police, 9 July 2008

⁵⁶ AHRC Urgent Appeal numbered AHRC-UAC-096-2008: NEPAL: Four men tortured by the Udayapur district police while in illegal detention, 13 May 2008



for about 30 minutes. On March 23, Durga Magar was also assaulted by Inspector Hari Ojha of the Katari APO on various parts of his body for about 10 minutes. On March 26, Inspector Hari Ojha also kicked and punched Raj Kumar BK on his chest, back, shoulder, legs, soles of feet and thighs for about 30 minutes.

The police illegally detained them for about 11 days at the APO of Katari until April 3, although the Interim Constitution of Nepal as well as the State Cases Act mentions that any person arrested should be produced before court within 24 hours since his or her arrest. The victims were produced before Udayapur District Court for the first remand only on 3 April 2008, with a charge of attempted murder. All the four men were again remanded by the Udayapur District Court on April 19 and detained in the APO of Katari until April 28. On April 28, the police transferred them to the Udayapur District Police Office (DPO). Meanwhile, a charge sheet of an attempted murder case was filed against them. The police then produced all of them before the Udayapur District Court on April 29 and the court ordered them to be remanded at Udayapur district prison for awaiting a trial. They are being detained at the prison to date.

In the year of 2007, the AHRC also documented several “bone beating” torture cases. For instance, in the case of Mr. Kalam Miya that took place in July 2007, the Morang district police made him to lie on the floor, while two policemen held his legs and chest, and beat him with a stick on his feet, ankles, legs and fingers, in particular on the joints of his hands and legs.⁵⁷ Five minors and two adults were also allegedly tortured in a similar manner by the police in Banke district in March 2007. The police made them lie down on the floor with their feet up and hit the sole of their feet with wooden sticks.⁵⁸ In another torture case of Mohammed Pappu Miya that took place in September 2007, the Morang district police ordered him to place his legs up on a bench and then beat him on his feet and ankles with a wooden stick. He was later again tortured by the police on the calves of his legs.⁵⁹

Serious threats and harassment of torture victims and no witness protection mechanism

The cases below that the AHRC documented in this year show an urgent need for the introduction of a Witness Protection Act and the establishment of effective witness protection mechanisms, so that the torture victims can seek justice without fearing any intimidation and threats. Most detainees also do not make formal complaints of ill-treatment or torture when taken before a judge or prosecutor, mostly though fear of reprisals.⁶⁰

a. Case of Umesh Lama⁶¹: Umesh Lama (28) was illegally arrested at Kamalpokhari in Kathmandu district by five officers in civilian clothes from the Hanumandhoka Metropolitan Police Range (MPR) on 1 April 2008. At the Hanumandhoka MPR, Kathmandu, the police allegedly tortured him in a brutal manner

⁵⁷ AHRC Urgent Appeal numbered UA-253-2007: NEPAL: Man threatened with death and tortured into making false confession by police, 14 August 2007

⁵⁸ AHRC Urgent Appeal numbered UA-126-2007: NEPAL: Five minors and two adults severely tortured by the police after their illegal arrest and detention, 13 April 2007

⁵⁹ AHRC Urgent Appeal numbered UA-304-2007: NEPAL: Three members of the Morang police engaged in serial torture, 24 October 2007

⁶⁰ Ibid (n 27)

⁶¹ AHRC UAC-078-2008: NEPAL: Alleged brutal torture of a man by Kathmandu police; AHRC-UAU-027-2008: NEPAL: Torture victim under pressure to withdraw the case and AHRC-UAU-028-2008: NEPAL: Umesh Lama withdrew his case due to alleged serious threats by police



for about 5 hours until he fell unconscious. The police interrogated him relating to two criminal cases, of kidnapping and robbery and pressured him to confess. Only on April 8, a police officer of the Hanumandhoka MPR informed Umesh Lama's family that he was being detained at the Budhanilkantha Police Sector in Kathmandu.



Photo: Umesh Lama at Bir Hosnital

Due to media coverage on the case, an investigating committee headed by DSP Kanchan Thapa was formed within the Hanumandhoka MPR where Umesh had been tortured. Umesh's two sisters, Ms. Lalumaya Jimba Bal and Ms. Samjhana Lama, met DSP Mr. Kanchan Thapa at the said MPR on 27 April 2008, following repeated instructions from the police to meet the superior officer. Then the DSP reportedly threatened the two sisters "now, do not go to the media and any other human rights organisations anymore to inform the development of the case. We will provide you the expenses that you have spent for his (Umesh's) medical treatment. We will give you 100,000 Nepali Rupees (USD 1,600) for

this purpose. We will also withdraw all the charges against him. But first you have to say to the media and to other people that local people beat Umesh when he was trying to escape from the police at the time of arrest and the police did not torture him. If you would not say so, we will implicate him with other serious charges and send him directly to jail from the hospital. He will then have to spend six to seven years in jail." On the same day evening, the DSP visited Bir Hospital where Umesh has been hospitalised since April 9 and offered 10,000 Nepali Rupees (USD 160) for immediate medical support but the family refused to accept it.

On April 25 some unidentified policemen from Hanumandhoka MPR offered around 50,000 Nepali Rupees (USD 790) to the family but the family again refused to receive it. On April 27, the Umesh's family was instructed to come to the said MPR where the police threatened them that unless they withdraw the case Umesh would be implicated in other cases, which would result in Umesh's detention for six to seven years in custody.

Finally on April 28, Umesh Lama's elder sister Ms. Lalumaya Jimba Bal filed a case under the Torture Compensation Act (TCA) at the Kathmandu District Court. Soon after filing the case in the court, the police of the Hanumandhoka MPR again began pressurising them to withdraw the case. In the evening of April 28, DSP Kanchan Thapa called the victim's wife on her mobile phone and told Umesh, "Why did your sister lodge a case against the police? As your sister has filed the case, you are not going to be released!" On April 29, Inspector Laxman Giri of the Hanumandhoka MPR also called on Umesh at the hospital and told him that the police would not 'help' him because his sister had lodged the case against the police to the court. Fearing that the police would send Umesh to prison soon, Umesh's sister came to the office of human rights organisation on the same day in the afternoon and asked the lawyers to withdraw her case from the court. She said, "My brother Umesh says he will die if he has to go back to the police (cell) again. He is having a nightmare (for days). He suddenly wakes up at night and screams, 'police! police!'" When the victim's sister was having a meeting with the lawyers, she again received a phone call from the DSP Kanchan Thapa, who again asked her to withdraw the case if she wanted her brother to be released.

Again on the morning of April 30, the police inspector Laxman Giri visited Umesh and his family members at the hospital and pressurised them to withdraw the case against police officers in the court. On the same day, Umesh's elder sister finally withdrew the case filed under the TCA. In the court, the police released Umesh on bail by the order of Kathmandu District Court, relating to the charges against him on the same day as an exchange for withdrawing his case against police officers. The police also gave Umesh 100,000



Nepali rupees (about USD 1,600) for his medical treatment cost. As a result, none of the police officers involved in Umesh's torture have been arrested or punished by law. The AHRC appealed several times to the government for an urgent protection to be given to Umesh and an independent and proper investigation into the case but they all went in vain.

b. Case of Noorjan Khatun⁶²: Noorjan Khatun, is a 37-year-old widow and permanent resident of Jamtoki, Muslim Tole, in Kathari VDC -2 in Morang District, a victim of torture who had been illegally arrested on September 5, 2007, detained and brutally tortured by officers from District Police Office (DPO), Morang. At the time of release on September 10, she was not charged with any crimes and was not provided with any arrest and detention letters. She then filed a torture compensation case with the Morang District Court on 11 October 2007.

On December 3, two unidentified police personnel approached her on motor bikes and scolded her for filing her case against the police officers. She was also ordered to bring her son Mo Anabarul to the police station, and she was warned that her son would be arrested and charged with various crimes if she would not withdraw her case from court.

Again on 3 March 2008, Ms. Khatun received a threat from ASI Mr. Balram, when she was returning from court with her sister-in-law. Mr. Balram approached her and insisted that she withdraw her case from court. He further told her he would provide her with money to support her daily living expenses if she dropped the case. She quotes him as saying: "how will you manage your daily living expenses? I will give you money for your daily expenses including food, clothes, etc". However Ms. Khatun refused the offer. At the time of this threat by the police, the AHRC was informed that ASI Mr. Balram, one of the alleged torture perpetrators, was still working at the DPO in Morang, and that he continued to abuse the power of his position to threaten her.

When an AHRC member of staff interviewed her at Biratnagar in Morgan district in mid April 2008, she reported that she would go to India soon to stay there some days fearing possible threats from the police as the next court hearing was about to be held two weeks later. She reported that the police constantly threatened her to withdraw the case in the court otherwise her two nephews Mohammed Pappu Miya and Mohammad Rajjabul Hussain Miya, who were also torture victims and remained in detention at the time of the interview, would serve long jail terms.⁶³ The importance of attention to this case for the welfare of this victim is highlighted by the fact that the same group of policemen, including ASI Balram, have also been linked to incidents of torturing her two nephews in September 2007.

Noorjan and her two nephews belong to the poor Muslim community. When interviewed by the AHRC staff in April, a human rights lawyer of Advocacy Forum-Nepal assisting Noorjan's case said that among torture cases his office documented for the last one year, 80 percent of the victims are Muslims. He further said that the police often victimise poor and uneducated Muslims accusing them of being suspected of crimes



Photo: Noorjan Khatun

⁶² AHRC UP-141-2007: NEPAL: Another two cases of torture perpetrated by the same members of the Morang Police and AHRC-UAU-013-2008: NEPAL: Morang district police have allegedly threaten a victim of torture to withdraw her case from court

⁶³ AHRC UA-304-2007: NEPAL: Three members of the Morang police engaged in serial torture and UP-141-2007: NEPAL: Another two cases of torture perpetrated by the same members of the Morang Police



“to solve the case”, as they are marginalised in Hindu society in Nepal. The police then implicate torture on these people to extract forced confession from them.

c. Case of Surendra Thapa⁶⁴: Mr. Surendra Thapa, is a 22 year-old police constable at the District Police Office (DPO), Surkhet in Nepal. On 15 October 2007, he was severely assaulted by his senior officer, Assistant Sub Inspector (ASI) Jay Bahadur Thapa and police Sub inspector (SI) Mr. Deependra Khatri, on the petty reason that he did not wear his uniform in a proper way. The victim was again beaten inside the room of Deputy Superintendent of Police (DSP) Mr. Bahadurjung Malla, who did not object to this brutal beating. He finally fell unconsciousness. After the incident, Surendra was kept for 8 days inside DPO along with other police trainees by the order of SI Mr. Khatri. He was also warned not to disclose the incident to human rights activists and journalists.

Surendra then visited senior police officers seeking justice. He met the Superintendent of Police (SP) Mr. Ram Kumar Khanal at Surkhet DPO and then the Deputy Inspector General of police (DIG), Mr. Bharat G.C. of the regional police office of Surkhet district. However, no action has yet been taken against the police officers involved in the incident. Finally, seeking justice, Surendra met a journalist and disclosed the entire incident which was published in the local newspaper on 23 December 2007. However, since then he has received threats.

The senior officers of the police deliberately created obstacles when Surendra tried to discuss the incident with those concerned. Despite his poor health, he was compelled to attend the training at Midwestern Regional Police Training Center in Nepalgunj in December 2007. However, he once vomited blood on 4 January 2008 and was sent to a hospital. Surprisingly, Surendra was sent back to DPO Surkhet on the next day with a letter by Midwestern Regional Police Training Center, stating that he was not sincere at the training. The letter addressed to the Surkhet DPO, was sent to take necessary action against Surendra.

He also received a threat of dismissal from his job from DSP Bahadurjung. Also The DPO authorities listened to his statement on 18 November 2007, but on November 29, he was called in a second time and was told that he had given a false statement on November 18.

Meanwhile, in its reply dated February 5, the Police Human Rights Cell (PHRC) of the National Nepal Police sent a reply to the AHRC stating that Surendra was not subjected to torture but was simply awarded with a formal written warning in conformity with provisions of Police Regulation 2049. However, the PHRC's finding was based on the information provided by the Surkhet DPO, where the torture perpetrators worked as senior officers. The AHRC was informed that the three senior officers involved in torture were simply transferred to another police post without facing any departmental or legal action.

In April 2008, one AHRC staff met representatives of the regional office of OHCHR-Nepal in Nepalgunj covering Surkhet district. The UN staff said that upon receiving the AHRC's appeal letter, they made a visit to the Surkhet DPO to inquire about the incident. They also said that they failed to collect a statement from eye witnesses (Surendra's colleagues) in favour of Surendra and all of the officers they interviewed simply repeated the same version that was given by the PHRC. According to the UN staff, the police officers looked to being instructed to give the same version and therefore they could not intervene into the case.

⁶⁴ AHRC-UAC-006-2008: NEPAL: Assault and threat of a policeman by senior police officers at District Police Office in Surkhet and AHRC-UAU-010-2008 and NEPAL: Police Human Rights Cell fails to provide any justice to torture victim



d. Case of Kamal Pun⁶⁵: Mr. Kamal Pun, a 34-year-old permanent resident of Pakhapani Village Development Committee (VDC) no. 1 in Myagdi district, was arrested by five policemen of Beni Parbat Temporary Police Post (TPP) at a restaurant located in Majphat VDC in Beni city in Myagdi district on 15 July 2008 for a petty offence. At the Beni Parbat TPP, he was tortured with a bamboo stick and an iron chair for some time until he fell unconscious. His left hand was fractured as a result of torture. On the next day morning, he was released without any charges.

On July 24, Mr. Kamal Pun went along with his friends to the Myagdi DPO to file a complaint against the responsible police officers regarding this torture. Instead of registering his complaint, DSP Mr. Ram Kripal Shah asked him to go to the Parbat DPO to file his complaint, as he had been arrested by the policemen from the Beni Parbat TPP in Parbat district. The Majphat VDC is located in the border area between Myagdi district and Parbat district. On August 1, Mr. Kamal Pun directly filed a case for torture compensation under the Torture Compensation Act against 6 police officers at the Parbat District Court.

Since then, Mr. Kamal Pun has received constant threats and intimidation from the police. On August 12, some unidentified policemen from the Parbat Beni TPP allegedly threatened him to withdraw his case at the court. Similarly on August 15, the same group of unidentified policemen threatened him to withdraw his case again while he was returning from the local market. They intimidated him with abusive language saying that they would arrest him and charge him with various crimes if he would not withdraw his case. On August 23, ASI Nava Raj Poudel of the Beni Parbat TPP called to the victim and told him, "Why did you file the case against me? Please withdraw the case."

e. Case of Ms. Sumitra Khawas⁶⁶: Ms. Sumitra Khawas (38) of Pacham of Haraicha VDC-8 in Morang was arrested by the police from Haraicha APO on 9 September 2008, on suspicion of murdering her husband who had died on the same day under unclear circumstances. She was then handed over to the Belbari APO where she was allegedly subjected to torture. Three police officers including Inspector Mr. Tanka Prasad Bhattarai, undressed her and forced her to lie on the floor and beat her on her back and buttocks with a 'tire belt'. Despite the torture, she denied the accusation.

On September 11, the Belbari area police produced Sumitra before the Morang district court where she was interviewed by local human rights lawyers. While human rights lawyers interviewed her at the Belbari APO on September 14, one unidentified local man along with about 8 local people approached them and threatened them not to provide any assistance to Sumitra. The police did nothing to stop this man and threatened the human rights defenders saying that the police would not be able to provide any protection to them.

Sumitra reported that on September 16, Police Inspector Mr. Tanka Prasad Bhattarai threatened her not to disclose her torture incident to any human rights groups. She further said that the Police Inspector told her, "I will peel off your skin if you speak about the incident". On September 22, Sumitra was transferred to the Morang DPO by court order and is awaiting trial.

⁶⁵ AHRC-UAC-195-2008: NEPAL: A torture victim allegedly receives constant threats from the police in Myagdi district, 29 August 2008

⁶⁶ AHRC-UAC-205-2008: NEPAL: A woman torture victim is at risk of further ill-treatment and torture in Morang district; AHRC-UAU-056-2008: NEPAL: A woman torture victim faces threats by police after disclosing her torture incident and AHRC-UAU-058-2008: NEPAL: Torture victim Sumitra is transferred to Morang District Police Office



The urgent need for the Witness Protection Act

As mentioned above in detail, as well as in Section 3.2 and Section 3.5 (below), the level of threats on victims, including torture victims, as well as human rights defenders is quite severe. The victims and the human rights defenders often face beatings, intimidations, life threats, disappearances and even murder.

In terms of the threats on human rights defenders, in its press release on November 3, 2008, Informal Sector Service Centre (INSEC) informed that 64 human rights defenders in 34 incidents were at risk from state and non-state actors during the period of 16 July to 16 October, 2008.⁶⁷ According to INSEC, one teacher was murdered by an unidentified group and one teacher was disappeared, while three teachers were beaten and four teachers faced death threats. Among 41 journalists who were victimised in 16 incidents, 12 journalists were beaten, seven received life threats and 16 journalists were arrested, while one journalist abducted and another disappeared. Besides, one lawyer was abducted and two lawyers received death threats, while one lawyer was deprived of his right to continue his profession. One health worker was also beaten and another was abducted during the period. According to INSEC's data, the CPN-M, police personnel, the government officials, unidentified group and judicial authorities were mainly involved in violations of rights of the human rights defenders.

Concerning this matter, in 2007, the United Nations Committee against Torture also recommended the government to consider adopting legislative and administrative measures for witness protection and ensure that all persons who report acts of torture or ill-treatment are adequately protected.⁶⁸ In 2005, the Working Group on Enforced or Involuntary Disappearances also recommended the government and the security forces to ensure that human rights defenders are protected from persecution for their work.⁶⁹ The government drafted the witness protection act in 2005. However, there has been no progress to enact this law since then.

The absence of the witness protection act and the relevant witness protection mechanisms in the country has become one of the major obstacles preventing the victims of the human rights abuses from getting effective remedies. There will be most likely no remedies for the victims of the human rights abuses during the conflict period unless the government of Nepal takes strong steps to enact this law. The introduction of the witness protection act as well as the establishment of the effectively functioning witness protection institution will be one of the key factors that will define the success of the government on fighting the on-going human rights abuses as well as the past crimes.

The AHRC therefore recommends the government of Nepal to introduce the witness protection act and establish a well equipped and effective witness protection institution under the Ministry of Justice as early as possible. In the meantime until the law is enacted, the government should also make appropriate witness protection mechanisms so that the complainants of the human rights abuses as well as the human rights defenders can freely seek justice without fear.

⁶⁷ AHRC Forwarded Press Release numbered AHRC-FPR-023-2008, NEPAL: Ensure Security of Human Rights Defenders

⁶⁸ Committee Against Torture, *Conclusions and recommendations of the Committee against Torture, Nepal, para. 17, 13 April 2007, CAT/C/NPL/CO/2*

⁶⁹ *Ibid* (n 32)



Lack of departmental sanctions against erratic officers

Much of the ill-treatment and torture appeared to be related to the extraction of confessions during interrogation. No criminal investigations have been launched, although there are examples of minor disciplinary sanctions being imposed in a few cases.⁷⁰ It is reported that since 1996, the Nepalese police has only taken departmental action against 21 police personnel in 11 cases of alleged torture, out of which only 6 cases were prosecuted in the court of law.⁷¹

As a mean to combat such impunity, the Committee against Torture has already recommended the government that the accused should be subject to suspension or reassignment “during the investigation”, in connection with prima facie cases of torture.⁷² The Special Rapporteur on torture Manfred Nowak also recommended to the government that any public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in torture or ignoring evidence, be immediately suspended from duty pending trial, and prosecuted.⁷³

However in practice, a simple transfer of the accused police officers to the other police stations are often used as a departmental sanction by the National Nepal Police, when they face considerable pressure from the media and human rights groups. The above cases also show that strong departmental sanction against the accused police officers is necessary when the investigation is ongoing and the accused are prosecuted, as they use their position to threaten the torture victims.

Inaction of the Human Rights Cells and the need for an independent investigating body

Another major reason for impunity in terms of torture incidents is that there is lack of an independent body which is able to conduct investigations into acts of torture and ill-treatment committed by law enforcement personnel. The police mostly fail to collect sufficient evidence in cases the law enforcement officers are involved. As seen in the case of Umesh Lama, the investigating officers often pressurise the victims to settle the matters with the guilty outside the court.

Besides, existing internal investigation procedures the army and police has failed to conduct a transparent and proper investigation. After facing huge criticism of their act of crimes, all three bodies of security forces, the Nepal police, the APF and the Nepalese Army, have established so-called human rights cells as internal bodies to investigate complaints about human rights violations. However, these bodies failed to properly investigate the allegations of crimes committed by law enforcement officers as well as to prosecute the guilty officers, although disciplinary action was taken against some guilty officers in a few cases. As a result, these bodies have failed to provide effective justice to a victim of human rights abuses including torture.

Talking about the Police Human Rights Cell (PHRC), during the meeting with one AHRC staff in May 2008, inspector Manoj K.C of the Police Human Rights Cell said that a central level investigation team could be

⁷⁰ *Ibid* (n 32)

⁷¹ *Ibid* (n 27)

⁷² *Ibid* (n 69)

⁷³ Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Nepal, 9 January 2006, E/CN.4/2006/Add.5



formed to investigate any gross human rights abuse cases if there is sufficient details of the case such as medical report, etc and if the local police's investigation is believed to be conducted in a improper manner. However, the cases documented by the AHRC for the last two years below shows that the PHRC's role is most likely to forward a complaint to the relevant police office. The PHRC does not have any independent monitoring or investigation function on the concerned cases.

a. Case of Surendra Thapa⁷⁴: Surendra is a 22 year-old police constable attached to the District Police Office (DPO), Surkhet in Nepal. On 15 October 2007, he was severely assaulted by his senior officer, Assistant Sub Inspector (ASI) Jay Bahadur Thapa and police Sub inspector (SI) Mr. Deependra Khatri, on the petty reason that he did not wear his uniform in a proper way. The victim was again beaten inside the room of Deputy Superintendent of Police (DSP) Mr. Bahadurjung Malla, who did not object to this brutal beating. Later in December, Surendra was sent to a training program despite his poor health, at Midwestern Regional Police Training Center, Nepalgunj. Surendra also received a threat of dismissal from his job.

On 18 January 2008, the PHRC replied to the AHRC concerning this case and assuring that "necessary measures will be taken" after receiving the details of the incident. However, the PHRC sent another e-mail reply to the AHRC on February 5 and attempted to hush up the case based on the information provided by the DPO, Surkhet, where the torture perpetrators worked as senior officers. In the reply, the PHRC stated:

"In response to your recent mail, District Police Office, Surkhet has provided the following information.

1. Regarding the case of Constable Surendra Thapa, on dated 14 Dec 2007, he was failed to report on time in duty but eventually appeared 30 minutes later with no proper uniform. He was asked to submit clarification for his act of improper conduct which is the breach of the Police Code. He couldn't come up with justifiable reasons. Therefore, he was awarded with the formal written warning in conformity with provisions of Police Regulation 2049.

2. And on 29 Dec 2007, he was selected and sent for the professional training in Regional Police Training centre Nepalgunj as he qualified the criteria set up for the course. Later, He was found expelled even from the training for not being sincere and showing gross negligence as that could hint the negative signal to the other trainees. He reported back on 5 Jan 2008 to the office."

However, the AHRC collected two statements of the victim's two colleagues who were present during the torture incident, which challenged the PHRC's reply. The reply also did not contain any information on whether the Human Rights Cell had conducted an impartial inquiry about the incident or what measures were taken against the torture perpetrators.

In the year of 2007, the AHRC has also documented several cases showing the inaction of the PHRC. In a case of **Jitman Basnet**, a human rights defender who received a threatening phone call from an unidentified person on 21 May 2007,⁷⁵ on June 3, the Police Human Rights Cell wrote, "Metropolitan office has been instructed to carry out a thorough investigation to track down the culprit... and report of the development on the said case in the earliest." However, the AHRC was informed that Jitman only received a

⁷⁴ AHRC-UAC-006-2008: NEPAL: Assault and threat of a policeman by senior police officers at District Police Office in Surkhet, 15 January 2008

⁷⁵ UA-171-2007: NEPAL: Human rights defender threatened for publishing book on violations by the military, 29 May 2007



few phone calls from the police from Metropolitan Police Circle, Kamalpokhari in Kathmandu, inquiring about the threat against him. After that he was not contacted any more by any police authority. On August 7 and August 11, 2007, Jitman again received threatening calls. He registered a complaint at Tinkune Police Station, Kathmandu on August 13 but has not received any responses from the police so far. As police failed to investigate the threats and provide security to Jitman, he continuously received threats in the following days. Eventually, he had to leave the country for his safety for a while.

In another case of **Kalpna Bhandari**⁷⁶, who was brutally tortured and sexually molested by the policemen from the Gausala Metropolitan Police Sector and from New Baneshwar Metropolitan Police Circle on 17 May 2007, on June 7, the PHRC sent a reply to the HAHRC saying that "the prohibition of torture; general requirements on human treatment; and specific requirements concerning women and juveniles are the basis of police investigation" and "all the police official has to abide by this provision of human rights instrument at all times." It further said that "Allegations of human rights violations are to be subjected to an investigation." However, the AHRC was informed that neither any investigation has been carried out on her case nor has any police authority contacted her so far. The perpetrators walk free as a result. The victim registered a case in Kathmandu District Court for torture compensation on June 11, 2007. She received a threat by a police inspector for filing this case in the court. On June 15, 2008, Supreme Court found that she had been tortured by the police personnel and awarded her with 60,000 Nepali rupees as compensation.

The PHRC has also showed its inaction on other cases including the case of **Prakash Thakuri**⁷⁷, who was abducted by members of the Maoist-affiliated Young Communist League (YCL) on 5 July 2007, the case of Sarita⁷⁸, a 13-year-old school girl of Baglung district (name changed to safeguard the victim's identity) and who was severely threatened by Maoists along with her mother in March and April 2007 and the Case of **Kalam Miya**⁷⁹, a 27-year-old manual worker who was arrested and tortured in July 2007. Particularly in the case of Kalam Miya, the PHRC claimed that "he sustained injuries while trying to flee" and "no torture of any kind has been inflicted against him in custody". As far as confirmed, no action has yet been taken against those alleged torture perpetrators. The AHRC was informed that soon after he filed a torture compensation case at the District Court, Morang on September 2, 2007 ([reference no. 27-064/0013](#)); the police broke his house door and took two small knives and some of his personal documents from his house on September 11. Since he was repeatedly threatened and his house searched by police, he left his home for India to avoid risks and threats from the police.

According to the information provided by the government, the Human Rights Cell at the army headquarters has been upgraded to a Human Rights Directorate and each Division and Brigade Headquarters of the Army now contains a Human Rights Division and a Human Rights Cell respectively as an integral element of its architecture.⁸⁰ The government also reported that Human Rights Cells are being established in Battalions as well as at Company level and a comprehensive human rights directive has been issued down to the platoon level structure of the Army with a view to ensure respect of human rights.

⁷⁶ UA-177-2007: NEPAL: Alleged brutal torture and attempted rape of a woman by Police and UP-094-2007: NEPAL: Torture and sexual molestation victim receives threats from the police for registering a case in court

⁷⁷ UA-219-2007: NEPAL: Man forcibly disappeared and another severely tortured by the Young Communist League affiliated to the Maoists, 13 July 2007

⁷⁸ UA-134-2007: NEPAL: Four cases of alleged human rights abuse by Maoists, 19 April 2007

⁷⁹ UA-253-2007: NEPAL: Man threatened with death and tortured into making false confession by police, 14 August 2007

⁸⁰ Ibid (n 27)



However, the report by Human Rights Watch and Advocacy Forum states that in practice, the army has failed to cooperate with police investigating allegations of crimes committed by its personnel and the army human rights cell only conducted an investigation into a few cases.⁸¹ The report further said that the high profile court martial sentence of two years imprisonment to one army officer on the conviction of failing to control his troops relating to the execution of 19 suspected Maoist insurgents, near Doramba village in Ramechhap district in 2005, is the only imprisonment sentence given to a senior army officer so far.⁸²

In 2007, the Committee against Torture has recommended the government the establishment of an independent investigating body on torture and ill-treatment committed by the law enforcement officials.⁸³ However, there is no independent body which has full mandate to investigate the abuses by the law enforcement officers and prosecute the accused in Nepal. The above mentioned cases confirms the urgent need for reform on the police investigation practice as well as the need for the establishment of an independent and independent complaint and investigating body working on serious human rights abuse cases including torture in Nepal.

No law criminalising torture and denial of criminal justice

There are no adequate domestic laws combating torture in Nepal although it has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1991. The government has failed to introduce a specific law that defines torture as a crime to date, despite repeated recommendations given by various UN human rights bodies as well as local and international human rights groups. No progress has been made in the process of drafting such a bill and the government has provided a copy of the draft torture bill to the OHCHR on the grounds that it is not yet public.⁸⁴

As the result, the only recourse available now to the torture victims is to the "assault" section of the National Code of Nepal (Mulki Ain), which provides for very light fines or punishment according to the nature of the "physical" wound.

To explain in detail, the maximum punishment for an offence of "general assault" under the Chapter on Assault of the National Code is up to 6 months imprisonment and fine of 2,000 Nepali rupees (about USD 30). The offence of "general assault" means causing pain and wounds on a person's body. For the offence of the "maiming assault", the maximum punishment is up to 8 years imprisonment and fine of 10,000 Nepali rupees (about USD 160). However, this offence is very narrowly applicable to gross physical assault, for example, loosing a one eyesight or dysfunction of any particular organ of a person's body.

Most torture cases in Nepal fall under the category of "general assault." This discourages torture victims from filing criminal cases with the courts. Almost all torture victims do not file a criminal case against the accused police officers using this "assault" section of the National Code, because it is waste of time for them to bear all the difficulties such as intimidation, threats and long court delays only to see the guilty parties imprisoned for six months. As far as confirmed, none of the victims in the torture cases reported by the AHRC in this year has filed a criminal case against the accused law enforcement officials. In April and May 2008, the AHRC staff met several human rights lawyers dealing with torture cases in Nepal. All of them mentioned that when a torture victim agrees, they only consider filing a case for compensation in a court

81 Ibid (n 40)

82 Ibid (n 40)

83 Ibid (n 69)

84 Ibid (n 27)



under the Torture Compensation Act-1996 under the present legal set-up. Consequently, very few lawyers use this clause in court and torture victims are deprived of their rights to seek an effective legal remedy and the torture perpetrators continue to enjoy impunity without facing any criminal punishment.

Even more important is the fact that even this 'assault' section of the National Code does not provide any specific provision for assault which has taken place whilst the victim is in custody, that is, with State involvement. The Code does not make any provision for the psychological effects of torture. Besides, torture is defined very narrowly in Nepal, and torture by state officers outside custody appears to be totally exempt.

Inadequate Torture Compensation Act

While being blocked from getting criminal justice due to the limited remedies given by the National Code, the torture victims also face great difficulties to get any remedies due to the inadequate Torture Compensation Act (TCA), 1996. TCA neither criminalises torture nor obligates the government to take action against a perpetrator of torture. In the TCA, compensation may be awarded to torture victims, but the perpetrators are not punished because, as stated, in law they have not committed a crime. Besides this, the Act is also only recognises claims filed by torture victims within 35 days of the alleged act of torture, or within 35 days of the victim's release from detention. For example, in the torture case of Sima (for details, please refer the above), she could not file a case in a court under the TCA because she sought legal aid from the human rights lawyers 35 days after the torture incident. Furthermore, according to the legal system in Nepal, the burden of proof is placed on the complainant (the victim), who is often incapable of giving sufficient evidence to support his claim.

According to the assessment report by Advocacy Forum, in the 12-year history of the TCA, only 208 cases of torture compensation have been filed, only 52 victims have been awarded compensation under the TCA, and of those awarded compensation, only 7 victims have thus far actually received their compensation money.⁸⁵

The Committee against Torture recommended the government to amend the TCA to bring it into compliance with all the elements of the definition of torture provided in the Convention.⁸⁶ However, the government has failed to implement this recommendation to date.

3.4. CONSTANT AND ARBITRARY ARREST OF TIBETAN PROTESTERS AND THE GOVERNMENT'S PLAN TO DEPORT ALL TIBETANS WITHOUT A PROPER DOCUMENT

Since March 10 of this year, Tibetan protesters, who have been demonstrating against the violence in Lhasa peacefully as possible in front of the Chinese Embassy building in Kathmandu, have been subjected to the constant and arbitrary arrest and ill-treatment by the police as of writing this report.

⁸⁵ Advocacy Forum, *Hope and Frustration: Assessing the Impact of Nepal's Torture Compensation Act-1996*, 26 June 2008

⁸⁶ *Ibid* (n 69)



According to Amnesty International’s report on April 22, over 2,000 protesters were arbitrarily detained by the Nepali police since March 10.⁸⁷ The AHRC also reported that the arrest and detention of at least 89 Tibetan protesters on March 28, the arrest and detention of at least 113 protesters, including about 80 monks, on March 29 and the arrest and detention of at least 210 protesters on March 31.⁸⁸ The actual number of the arrestees would be much higher as the protests have been held on almost a daily basis in Kathmandu until very recently. Many of the Tibetan protesters have been arrested several times; some of them over 10 times.

The arrested Tibetan protesters include women, children and Buddhist monks. The police failed to promptly release the arrested peaceful minor protesters whom they should have not arrested and detained in accordance with the international human rights standards.



Photo: Tibetan protesters in Kathmandu on April 18

The alleged human rights against Tibetan protesters by the Nepali police during the custody included the beatings at the time of arrest, threats of re-arrest or deportation to China, sexual harassment on female arrestees.

For example, when one AHRC staff interviewed the Tibetan detainees at the Armed Police Force Training Centre, 3 Number Bridage in Kathmandu on March 28, Miss Kalpana (name changed for security reasons), one 18-year-old student of Lalitpur district, reported that the male policemen sexually harassed her when she was arrested on March 24 and 28. She reported that one policeman even touched her breast and lower part of her body and tried to tear her clothes off.⁸⁹ The AHRC staff

could also document several police beatings during the interview.⁹⁰

The Nepali police also deliberately took preventive measures blocking the protests, in violation of the freedom of assembly and the right to freedom of peaceful assembly. The AHRC documented that the police stopped the vehicles from various monasteries to Kathmandu, and illegally arrested any Tibetans they suspected, regardless of the purpose of their travel. Many monks had to wear civilian clothes, so as not to be recognised by the police when they travelled.⁹¹

Furthermore, the AHRC is also gravely concerned about the government of Nepal’s plan to deport all Tibetans, who live without valid refugee certificates in the country, to India, as it is confirmed by the spokesman of the Ministry of Home Affairs to the media on September 11.⁹² This new drastic plan has been quickly adopted concerning the relationship with the Chinese government, after the newly elected Prime Minister Mr. Pushpa Kamal Dahal made a visit to China in late August. Before then the police had usually

⁸⁷ Amnesty International, “Nepal threatens Olympic protesters”, April 22, 2008; <http://www.amnesty.org/en/news-and-updates/news/nepal-threatens-olympic-protesters-20080422>

⁸⁸ AHRC Urgent Appeal numbered AHRC-UAC-066-2008: NEPAL: Constant and arbitrary arrest of Tibetan protesters by police, 1 April 2008; <http://www.ahrchk.net/ua/mainfile.php/2008/2802/>

⁸⁹ Ibid

⁹⁰ Ibid

⁹¹ Ibid

⁹² AHRC Statement numbered AHRC-STM-241-2008: NEPAL: The Government should stop its plan to deport Tibetans without valid refugee certificates to India, September 17, 2008



released the arrested protesters within one day after arresting them in front of the Chinese Embassy building in Kathmandu.

The government's plan is arbitrary as it targets all Tibetans without valid refugee certificates. This will most likely destroy the livelihood of many Tibetan exiles, who had lived peacefully even under the now-abolished monarchy with de facto protection. It is estimated that more than 20,000 Tibetans currently live in Nepal. Many Tibetan refugees are expected to be victimised by the government plan because the government has stopped issuing the refugee identify cards to Tibetan refugees for more than 10 years. The government has already announced that it began to screen over 100 Tibetan protesters who had been detained and would deport those without valid documents. As of writing this report, no Tibetan exiles have been deported to India so far.

The government of Nepal's constant crackdown on Tibetan protesters violates Article 9 (right to liberty and security), Article 19 (the right to freedom of expression and opinion) and Article 21 (the right to freedom of peaceful assembly) of the ICCPR, to which Nepal is a state party.

Besides, an excessive use of force by the Nepali police at the time of the arrest is against the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officers. Article 3 of the Code states that law enforcement officials may use force "only when strictly necessary" and to the extent required for the performance of their duty". Section 4 of Basic Principles also states that law enforcement officials should carry out their duty "applying non-violent means", before resorting to the use of force and firearms.

In fact, in its concluding observations in 2007, the United Nations Committee against Torture raised its concern that the government of Nepal has not acceding the 1951 Convention relating to the Status of Refugees and other related international legal instruments and there is the absence of domestic legislation stipulating the rights of refugees and asylum-seeking persons.⁹³ In particular, the Committee is concerned about the allegations received concerning cases of refoulement of Tibetan asylum-seekers, given the absolute nature of the prohibition against refoulement under Article 3 of the Convention. It further recommended the government of Nepal to consider acceding to the Convention relating to the Status of Refugees and other related international legal instruments, to enact legislation aimed at prohibiting refoulement of persons without an appropriate legal procedure and to provide the Committee information on number of cases of extradition, removal, deportation, forced return and expulsion that have occurred since 1994, as well as information on cases in which deportation was not effected for fear of torture.

In its concluding observations in 2004, the United Nations Committee on the Elimination of Racial Discrimination also urged the government to make legislative protection for refugees and asylum-seekers and to work together with the Office of the United Nations High Commissioner for Refugees in this regard.⁹⁴

In light of the above, the AHRC urges the government of Nepal to:

- refrain from arresting Tibetan protesters peacefully holding protests and stop harsh treatment on them and guarantee their right to hold peaceful assembly in line with ICCPR;
- ensure that its law enforcement officers adopt non-violent means and that they are subject to strict regulations regarding the use of force on Tibetan protesters in accordance with UN Code of Conduct

⁹³ *Ibid* (n 69)

⁹⁴ *Concluding observations of the Committee on the Elimination of Racial Discrimination, Nepal, 28 April 2004, CERD/C/64/CO/5*



for Law Enforcement Officials and the UN Basic Principles on the Use of Force by Law Enforcement Officers;

- inquire about the alleged arbitrary/illegal arrest, ill-treatment and human rights abuses of Tibetan protesters during the police custody and hold those responsible officers accountable;
- withdraw its plan to deport Tibetans without valid refugee certificates to India and allow those who wish to stay, remain in the country;
- accede to the Convention relating to the Status of Refugees and other related international legal instruments;
- enact legislation aimed at prohibiting refoulement of persons without an appropriate legal procedure.

3.5. DOMESTIC VIOLENCE AND THE DELAY OF INTRODUCING ANTI-DOMESTIC VIOLENCE ACT FOR OVER A DECADE

In Nepal, women actively took part in a historic democratic movement in 1990 and 2006. However, many women are subjected to domestic violence at home in the country, despite the fact that Nepal has ratified the CEDAW in 1991. In a conference in Kathmandu, Dhana Kumari Sunar, a member of the National Women's Commission (NWC), had reported that every year tens of thousands of women in Nepal experience violence and that in about 80% of such cases it is domestic violence. The women's cell of the Nepal's police headquarters has recorded 1,100 cases of domestic violence against women between July 2006 and June 2007.⁹⁵ It includes beatings by husbands, dowry-related murders, and physical and psychological harassment by in-laws. However, the law enforcement agencies are reluctant to take actions on these cases; instead they try to settle disputes without pressing charges against the perpetrators.

An alleged killing of Ms. Laxmi Bohara by her husband illustrates the actual level of domestic violence against women in the country [See the below Table].⁹⁶ This case in fact became a symbol of the women human rights defenders movement in this year.

⁹⁵ U.S. Department of State, 2007 Country Reports on Human Rights Practices on Nepal, <http://www.state.gov/g/drl/rls/hrrpt/2007/100618.htm>

⁹⁶ AHRC-UAC-138-2008 and AHRC-UAU-040-2008



[Table 3: Ms. Laxmi Bohara's case]

Name of victim: Ms. Laxmi Bohara, aged 28, married with 3 children, a member of the Women's Human Rights Defender Network (WHRDN) in Kanchanpur district, Nepal

Address of victim: Champapur, Ward No. 8, Daji VDC in Kanchanpur district, Nepal

Alleged perpetrator: Mr. Tek Raj Bohara, the husband of the victim

Date and place of incident: 6 June 2008 at the victim's house in Daji VDC

Ms. Laxmi Bohara (aka Laxmi) died in the Mahakali Zone Hospital on 6 June 2008, after her husband Mr. Tek Raj Bohara allegedly beat and then poisoned her. The husband fled from the hospital, upon hearing of the victim's death.

There was a history of domestic violence in the case before the victim's death. Her in-laws accused her of talking with men outside, which is against Hindu culture, and suspected that she might be engaged in sexual enticement of men while doing social work. Ten days before her death, the husband threw Laxmi out of the house and she went back home after the husband agreed not to beat her again.

On June 6, her father went to the Kanchanpur District Police Office (DPO) to lodge a First Information Report (FIR) against his son-in-law regarding his daughter's death. However, the police refused to do so. The police then unaccustomedly registered the FIR under the name of one family member of the husband, causing a huge risk of improper investigation. The post mortem conducted on the victim's body was also reportedly conducted by a doctor, who is a cousin of the victim's husband. Despite repeated demands by the women's rights groups, both the Superintendent of Police at the DPO as well as the Chief District Officer refused to take a proper action on these problems.

Laxmi's father again went to the Kanchanpur DPO to register the FIR on June 10 and 11 but the police again refused to do so. The State Cases Act clearly mentions that the police should register any complaint lodged by a citizen of Nepal and initiate an investigation. Laxmi's father could only register the FIR on June 16, due to huge pressure from the women rights groups. For the same reason, the husband surrendered to the Kanchanpur district police on June 27 and was detained at the prison in the district. However, he was later released on bail, after his family paid bail sum.

Kanchanpur district is known to have the highest number of cases of violence against women in Nepal, particularly domestic violence involving their dowries. For example, in this area, there still exists the practice of Chaupadi, a long-standing practice which prohibits women from staying in the house when they have their period.



Photo: Female defenders' protest in Kathmandu on July 13

On 13 July, 2008, over 500 members of the National Alliance of Women Human Rights Defenders (NAWHRD) held a huge, peaceful rally in Kathmandu as a part of the 4th activity of the Movement of the Struggle Committee to end violence against women. The participants were from areas as varied as the far western and mid-western regions of Nepal. Women human rights defenders in different districts also organised the rallies, carrying the same demands on the same day. Their main demands to the government were the formation of an independent investigative committee, the conduct of an impartial and proper investigation into the case of Laxmi, the formation of a high level committee dealing with all forms of violence against women, and the end of all forms of violence against women human rights defenders to ensure their safety. The rally ended opposite the Constituent

Assembly building. After that, some NAWHRD members went on a hunger strike in Kathmandu from July 13 to August 4 until the government would fulfil their demands.

Due to the women's group's movement, the Ministry of State for Law, Justice and Parliamentary Affairs finally tabled the Domestic Violence (Crime and Punishment) Bill 2008 in the legislative session of the Constituent Assembly (House). The government formed a high level task force committee of 9 members led by Mrs. Bindra Hada, the secretary to the Prime Minister's office, to formulate laws against domestic violence.

However, it is too early to guarantee that this Bill will be passed in the parliament and go into force, because the similar previous bills on domestic violence have been lingering in the parliament for over a decade.

Another major problem to tackle domestic violence is the serious threats and attacks on women rights defenders assisting the victims and their families. One good example is the constant threats and attacks on the female activists of Mahendranagar Municipality, Kanchanpur district, who have been actively working on Laxmi's case.



[Table 4: Threats to women rights defenders concerning Laxmi Bohara's case]

1. Threatening phone calls including a death threat

On 17 June 2008, Ms. Bharati Singh twice received phone calls threatening her life from unknown persons. The caller said that she should not push Laxmi's case lest she face bad consequences. Meanwhile, Ms. Sharda Chand has also received more than a dozen threatening phone calls from unknown persons on her cell phone. The caller threatened her life and pressured her not to intervene into Laxmi's case anymore. Once, the caller said, "If the members of the NAWHRD do not stop working on Laxmi's case, they would be killed within seven days."

2. Motorcycle attacks

At around 7am on June 27, two men, who covered their faces and were riding a black motorbike, suddenly stopped Ms. Sharda Chand's motorcycle when she was on the way to her office. The two men then threatened her and tried to assault her. Ms. Sharda Chand barely escaped from the scene. At around 1:30pm on the same day, two social workers, Ms. Naru Singh and Ms. Kalsa Mahara, were riding on one motorcycle. According to their report, one man, riding a motorbike, suddenly stopped his vehicle in front of them with the intention to cause an accident. Fortunately, the two women managed to control the bike and avoided the crash. The men then increased the speed of their bike and quickly fled.

3. Mob mobilisations by family members of the victim's husband

On the morning of July 1, the brother of Mr. Tek Raj Bohara (the husband) and twenty to thirty other men came to the district office of the NAWHRD in Mahendranagar Municipality in Kanchanpur district. They then shouted slogans against Ms. Sharda Chand and commanded that she come out of the office, shouting "Burn her!" and "Throw her out!"

On the same afternoon, the sister-in-law of Mr. Tek Raj Bohara came with a group of women and surrounded Ms. Sharda Chand's office. They then threatened her, shouting that her office should be set on fire and that she should be killed. Some people even entered her office and attempted to drag her out. Ms. Sharda Chand sought help from the police, who were dispatched at that time, but the mob of women did not flee even after seeing the officers. Ms. Sharda Chand reported that rather than taking action against the crowd, the police waited for about thirty minutes until the mob dispersed. She also reported that the mob once surrounded her house and threatened her.

On June 27, Ms. Sharda Chand, Ms. Kalsa Mahara and Ms. Bharati Singh filed a joint-complaint at the Kanchanpur DPO regarding the incident mentioned above and requested protection from the police. In addition, Ms. Sharda separately filed three complaints at the same DPO regarding the attacks on her and her staff. It remains unknown about the progress of the police investigation into these complaints.



The AHRC therefore appeals to the Government of Nepal to:

- introduce the bill on domestic violence against women without further delay;
- train the law enforcement agencies for a proper and speedy investigation on the cases of domestic violence against women;
- prosecute those responsible for domestic violence and punish them by law;
- appoint female domestic violence prevention officers in every district;
- set up a family court in every district to look after the cases of domestic violence against women;
- set up effective protection mechanism for the complainants of the domestic violence and people assisting the victims and their families;
- take all possible measures to raise public awareness about domestic violence against women as well as the equality between men and women.

Urgent action required:

Aimed at encouraging the international campaign on this matter, the AHRC presents you the contact information of the high level task force committee as well as that of members below.

Mrs. Bindra Hada

Chairperson

High level task force committee on the investigation for the violence against women

Singh Durbar, Kathmandu, Nepal

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E-mail: hadaopmcm@yahoo.com

4. CONCLUSIONS

The regrettable conclusion that can be made concerning 2008 is that the government has made many rhetoric promises while deliberately avoiding taking tangible action to reform the law enforcement mechanisms and judicial systems to implement them.

One good example can be the new government's enthusiasm on drafting a new constitution, while leaving the country in a vacuum without launching any genuine actions to work on important social and human rights issues. However, several bitter examples in Asia proves that rhetoric promises without genuine reforms cannot promote democracy and human rights. The history of Thailand's 1997 Constitution can serve as a good reference to the government of Nepal. The 1997 Constitution of Thailand was the crystallization of 67 years of Thai democracy. Unlike most of the previous Constitutions, the 1997 document was called for and initiated by the citizens and the majority of Thai people were involved from the very beginning of its drafting. The whole process was unprecedented in the history of modern Thai politics. However, the democratic process of writing a new Constitution did not result in progressive reforms on the justice mechanisms and government institutions, necessary for the development of human rights and the rule of law. The 1997 Constitution was later replaced by the military junta, which introduced a new Constitution gravely hampering the rights of Thai citizens in 2007.



The post-Marcos era in the Philippines as well as the post-Suharto in Indonesia also shows that Nepal will take the same fate of these countries if the government does not immediately address human rights problems in a serious manner and develop a political system and institutions of the rule of law that are better able to promote and respect human rights, prevent violations and combat impunity. Otherwise, Nepal may remain as a country, where inequality is the norm, with feudalism and caste based discrimination literally segregating the people into non-combinable socio-political veins like before.