

NEPAL

CAT Article 20 Examinations Re: Systematic Torture

CAT, CAT/C/37/2 (2006)

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

1. At the 36th in May 2006 the Committee against Torture requested that the Secretariat provide it with a note on the experience to date of article 20 inquires as well as elements for possible inquiry in several countries: Colombia, Guatemala, Nepal, Togo and Uzbekistan. The present conference room paper seeks to respond to that request.

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27. The Committee against torture examined at its 35th session (7-25 November 2005), during the consideration of the second periodic report of Nepal (CAT/C/33/Add.6), under Article 19 of the Convention. The information below recapitulates references to torture as a common or systematic practice in Nepal in documents which were before the Committee at its 35th session

28. UN DOCUMENTS WHERE REFERENCES ARE MADE TO THE WIDESPREAD PRACTICE OF TORTURE IN NEPAL

a) CAT

The Committee, in its Concluding Observations, was "gravely concerned about the exceedingly large number of consistent and reliable reports concerning the widespread use of torture and ill-treatment by law enforcement personnel, and in particular the Royal Nepalese Army, the Armed Police Force and the Police, and the absence of measures to ensure the effective protection of all members of society (arts. 2 and 11)".

CAT/C/NPL/CO/2, para 13, 15 December 2005

b) Human Rights Committee

The Human Rights Committee, in its Concluding Observations, was "deeply concerned with the cases of summary and arbitrary executions, enforced or involuntary disappearances, torture and arbitrary or unlawful detention committed by members of the army, security or other forces during the period under review which have been brought to its attention. "

CCPR/C/79/Add.42, para. 10, 10 November 1994

c) Special Rapporteur of the Commission on Human Rights on Torture

"On the basis of his interviews with current and former detainees, with the support of forensic medical evidence, and interviews with government and military officials, lawyers and Representatives of non-governmental organizations, the Special Rapporteur concludes that torture and ill-treatment are systematically practised in Nepal by the police, the armed police and the Royal Nepalese Army."

E/CN.4/2006/6/Add.5, page 2

172 Communications were submitted to the SR on Torture between 1 December 2004 and 15 December 2005.

E/CN.4/2006/6/Add.1, 21 March 2006

29. OFFICIAL SUBMISSIONS BY NON-GOVERNMENTAL ORGANIZATIONS WHERE REFERENCES ARE MADE TO THE WIDESPREAD PRACTICE OF TORTURE IN NEPAL:

a) Amnesty International

"Amnesty International has received reports of hundreds of "disappearances", thousands of arbitrary arrests, the widespread use of torture and other ill-treatment, including incidents of rape by Nepal's security forces."

AI Index: ASA 31/079/2005, page 1

"Reports that torture remains widespread in Nepal indicate that the government plainly has failed to take effective measures to end torture and other ill-treatment by the security forces."

AI Index: ASA 31/079/2005, page 3

b) Human Rights Treaty Monitoring and Coordination Committee

"The trend of human rights violation and infliction of torture is widespread and in inclination to the severity. So called armed rebel became a pretend for systematic practice of torture by state authorities."

HRTMCC, CAT Alternative Report 2004, page 10

"A comprehensive study on the criminal justice system released in 1999, "Analysis and Reforms of the Criminal Justice System in Nepal", reports incidents of torture to be widespread: 67% of respondents complained various kinds of torture during the police custody."

HRTMCC, CAT Alternative Report 2004, page 10

"A major cause of the persistence of widespread torture in the countries like Nepal is the failure or unwillingness of leading government officials and representatives to acknowledge that torture even exists, let alone that it needs to be vigorously tackled."

HRTMCC, CAT Alternative Report 2004, page 11

"Torture and other forms of ill treatment were widespread method of obtaining confession."

HRTMCC, CAT Alternative Report 2004, page 38

This report reflects the trend of existing continuous, routine and systematic practice of torture and weaknesses of the government in combating it properly.

HRTMCC, CAT Alternative Report 2004, page 53

c) Asian Legal Resource Center

"While torture is systematically used by the armed forces, impunity for those actions is consciously enabled through a system of collusion with the police".

Written statement by the organisation's representative at the meeting with CAT, faxed on 16 November 2005, page 4.

30. BACKGROUND DOCUMENTS BROUGHT TO THE ATTENTION OF THE COMMITTEE AT THE 35TH SESSION WHERE REFERENCES ARE MADE TO THE WIDESPREAD PRACTICE OF TORTURE IN NEPAL:

a) Forum Asia and Asian Center for HR, Nepal Monthly HR Briefing Paper, Page 7, 1 November 2005

b) Amnesty International, AI Index: ASA 31/002/2001, para 5, 1 March 2001

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CAT, CAT/C/SR.835/Add.1 (2008)

COMMITTEE AGAINST TORTURE

Fortieth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 835th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 16 May 2008, at 4.20 p.m.

CONSIDERATION OF INFORMATION UNDER ARTICLE 20 OF THE CONVENTION

1. Ms. SVEAASS said it was regrettable that discussion of the agenda item had been postponed until the end of the session.
2. Ms. MORALES (Secretary of the Committee), in response to a question by Mr. WANG Xuexian, said that there was no new documentation on issues arising under article 20 of the Convention. Since the Committee's last discussion of the item in 2006, notes verbales had been sent to the Governments of Nepal and Togo, both of which had informed the Committee that the information had been conveyed to the competent national authorities. In addition, the Government of Togo had sent a list of names, at first glance of no particular substance, which was awaiting translation. It was now up to the Committee to decide whether it wished to send a further communication to the respective Governments requesting information and mentioning the possibility of visiting the countries to conduct inquiries.
3. Mr. KOVALEV said that the Committee should write to the Governments concerned requesting further information.
4. Mr. WANG Xuexian said that the situation in both countries warranted further action by the Committee. However, given the recent elections in Nepal it might be better to wait until the political dust had settled before making any approaches to the new Government.
5. Mr. GALLEGOS CHIRIBOGA said that even if the Committee had not received satisfactory responses, it must be consistent and follow through with its decision. He nonetheless endorsed Mr. Wang Xuexian's suggestion with regard to Nepal.
6. Ms. GAER said that the most recent information received by the Committee from Nepal dated from July 2007. It merely gave details of developments in the area of legislation and not of any practical measures to ensure the prevention of and protection against torture. She recalled that the country rapporteur for Nepal had referred to the situation there as the most serious he had witnessed in his 30 years as a human rights expert. All that pointed to the need to launch an inquiry under article 20 without further delay, at least by making initial approaches to the Government.
7. Ms. SVEAASS asked whether the Committee should accord priority to one of the two countries concerned.

8. Ms. MORALES (Secretary of the Committee) said that whatever the Committee decided to do, it would take several months to start any inquiry. Moreover, the agreement of the Governments concerned would be needed for visits by Committee members.

9. Following further comments by Mr. WANG Xuexian and Mr. GALLEGOS CHIRIBOGA, Ms. GAER recalled that there was nothing to prevent the Committee from initiating two or more inquiries if the situation so warranted. Furthermore, although in the past it had been the Committee's practice to wait to receive a formal complaint of torture from a State party before initiating an inquiry under article 20, there was no such requirement in the Convention. Urging the Committee to take a decision on the matter, she proposed that it should discuss the agenda item at the beginning of the forty-first session with a view to contacting the Governments of Nepal and Togo, and possibly making arrangements for visits to the countries before the closure of that session.

10. After further discussion, the CHAIRPERSON said she took it that the Committee agreed to Ms. Gaer's proposal.

11. Ms. MORALES (Secretary of the Committee) said that notes verbales would be sent to the Governments of Nepal and Togo informing them of the Committee's decision and requesting further information. The Committee would review the information at the beginning of its forty first session and subsequently identify the Committee members who would visit the two countries to conduct the inquiries.

12. It was so decided.

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