



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

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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE 669th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 9 November 2005, at 10 a.m.

Chairperson: Mr. MARIÑO MENÉNDEZ

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Second periodic report of Nepal (CAT/C/33/Add.6; CAT/C/35/L/NPL;
HRI/CORE/1/Add.42)

1. At the invitation of the Chairperson, the members of the delegation of Nepal took places at the Committee table.
2. Mr. ACHARYA (Nepal), introducing Nepal's second periodic report, which also comprised the third and fourth periodic reports (CAT/C/33/Add.6), said that his Government took all allegations of torture seriously and strove to bring those guilty of such acts to justice. Despite the protracted armed conflict in his country, the Government remained committed to promoting and protecting human rights and abiding by its treaty obligations. Nonetheless, the current context should be taken into account when considering the report, particularly since many Maoist atrocities had involved torture.
3. The Government had established several institutions to strengthen implementation of the Convention, such as the National Human Rights Commission (NHRC). That body routinely conducted supervision and observation missions in various parts of the country, the findings of which were published, and it monitored the conditions of detainees. It had unhindered access to all places of detention without prior notice, including army barracks, as did the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the International Committee of the Red Cross (ICRC). The NHRC conducted awareness-raising campaigns, provided training on the promotion and protection of human rights, and made recommendations to the Government. Four regional offices had been established, and additional offices would open in future. The Commission was funded by the Government and had received technical and financial support from OHCHR, the United Nations Development Programme (UNDP) and other donor agencies.
4. The Office of the Attorney-General provided legal advice to the Government and represented it in court in cases concerning its rights or interests. The principal mission of the Office was to safeguard constitutional values and to protect basic human rights, particularly the right to criminal justice, victims' rights and the right to a fair trial.
5. The National Judicial Academy provided training for judges and other judicial staff on international human rights instruments and their application at the domestic level. The Judicial Council made recommendations on the appointment, transfer and removal of judges, and conducted workshops, seminars and conferences to update judges on developments in international law and justice.
6. The National Coordination Committee for the Protection and Promotion of Human Rights incorporated all the existing committees working under Government agencies to ensure an effective approach to human rights protection. Headed by the Minister for Foreign Affairs, it included the Chief of the Army Staff, the Attorney-General, the Chief Secretary and secretaries of different ministries. It included subcommittees that monitored the human rights

situation, reported on violations and recommended action to be taken by the Government. Since 2004, the Ministry of Law, Justice and Parliamentary Affairs had been responsible for implementing legislative reform under the Government's human rights action plan. The Ministry also provided human rights training to law enforcement officials, public prosecutors and adjudicators under that plan. Human rights units had been established in the Royal Nepalese Army, the Armed Police Force and the Nepal Police. They provided updated information on their activities through the mass media and websites.

7. The Nepal OHCHR office, opened following an agreement signed in April 2005, advised and assisted the Government, and had prepared a report on the human rights situation in the country. That document had been considered at the previous session of the United Nations General Assembly.

8. The draft Penal Code included a provision stating that a person committing an act of torture would be punished by up to three years' imprisonment or a fine, or both, depending on the gravity of the offence. The Government was determined to criminalize torture in its domestic legislation at the earliest opportunity. The willingness to engage with the United Nations system had been reflected by the Government's level of cooperation during several visits, including those of the Special Rapporteur on the question of torture in September 2005, the Chairman of the Working Group on Arbitrary Detention, and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

9. As follow-up to the visit of the Special Rapporteur on the question of torture, the Ministry of Home Affairs had issued guidelines to the Nepal Police and the Armed Police Force. They included the need to ensure detainees' access to legal aid, family members, medical care and a prompt court hearing; to guarantee that physical or mental torture or inhuman treatment was not inflicted in the course of investigations; to discourage torture and introduce scientific reforms into methods of inquiry; and to punish perpetrators of illegal acts and publicize those punishments. Implementation of those guidelines was monitored regularly. The Royal Nepalese Army had taken steps to ensure that troops were clearly identified and that there was a clear distinction between military targets and civilian objects. It strove to avoid military operations in areas populated by civilians, and no longer used civilian transport to carry military personnel.

10. All law enforcement officers, including members of the army, the police, the armed police, chief district officers, prison officials and immigration officials, received human rights education as an increasingly important part of their training. Medics were also trained to recognize signs of torture.

11. Steps had been taken in the Royal Nepalese Army and the Nepal Police to investigate all alleged cases of torture and to punish those found guilty of such acts. All persons detained by the Nepal Police received a medical examination as soon as they were taken into custody, and another if they were sent to prison. Any signs of torture were investigated and the perpetrators punished accordingly. The Government had provided compensation to three torture victims in 2005, and a number of other cases were pending.

12. Mr. RASMUSSEN (Country Rapporteur) asked how the State party had managed to prepare the periodic report in spite of the lack of expertise and resources.

13. The situation in the reporting State was of deep concern to the Committee. The United Nations Rapporteur on the question of torture had found clear evidence of widespread and systematic use of torture and ill-treatment by the police, the armed police and the Royal Nepalese Army. The Convention was a legally binding instrument for all States parties, and article 2 clearly stated that no exceptional circumstances justified the use of torture. It was therefore incumbent on the Government to take stringent measures to eliminate the culture of violence and torture that appeared to pervade in the reporting State.

14. According to the OHCHR report on human rights assistance to Nepal (E/CN.4/2005/114), allegations of serious and systematic human rights violations by the security forces had increased throughout 2004, particularly in regard to disappearance, torture, arbitrary detention and summary execution. Persistent allegations of widespread impunity, extrajudicial killings, arbitrary arrests and incommunicado detention in army barracks were of great concern.

15. Mr. EL MASRY said that both the Government and the Maoist insurgents were committing grave human rights violations. He expressed concern about reports of widespread disappearances, arbitrary detention, and the use of torture and enjoyment of impunity by the police and the army. In response to the request of the Special Rapporteur on the question of torture that the Government should issue a strong public statement against impunity and torture, the Nepalese Ministry of Home Affairs had issued a directive which merely discouraged the police from resorting to torture. He stressed the need for such a statement to contain a clear prohibition of torture.

16. The consistent disregard of the security forces for the rule of law was of great concern. There were reports of detainees being repeatedly arrested after having been released by the court. For example, on 19 September 2000, 11 detainees had been arrested immediately after having been released by the Kanchanpur District Court in the town of Mahendranagar. That was the third time security forces had rearrested the group, despite repeated court orders for their release. The individuals were believed to be at risk of torture. Furthermore, on 20 September 2005, representatives of the OHCHR Field Office in Nepal had expressed serious concern about the use by the police of tear-gas guns in the vicinity of hospitals and schools, and aerial bombings of Maoist hideouts, which had caused immense collateral damage to civilians.

17. The establishment of the Royal Commission on Corruption Control, which was considered unconstitutional by most legal authorities, and was mandated to investigate, prosecute and issue judgements, had undermined the independence of the judiciary. The Commission's decisions could not be subjected to a judicial review.

18. Under the current legislation, torture was not considered a criminal offence. Victims who filed a complaint but failed to prove their allegations were penalized. There had been reports of victims being arrested and tortured until they agreed to withdraw their complaint. He asked the delegation to comment on that information, in particular on the case of farmer Keshav Thapa, who, according to Amnesty International, had been arrested three times, tortured, released, and then arrested and tortured again after filing a complaint. In addition, sanctions imposed on perpetrators of torture were very light. For example, the three army officers who had been found guilty of torturing and murdering the 15-year-old girl, Maina Sunuwar, had been sentenced to six months' imprisonment in army barracks.

19. Referring to paragraph 22 of the periodic report, he said that the definition of torture under the Compensation Relating to Torture Act was limited to acts of torture committed in places of detention. According to the same paragraph, in cases of conflict between a domestic law and an international convention to which Nepal was a party, the latter prevailed. However, that provision was unlikely to be implemented in practice. He requested information about specific cases in which the Convention had been invoked in court.
20. He expressed concern that the maximum sentence provided for under the new draft Penal Code for resorting to torture was a mere three years' imprisonment, and that the period within which victims of torture could file a complaint had been limited to three months. Further information on the new Penal Code should be provided.
21. He believed that the maximum period for which an individual could be held in preventive detention, namely 15 months, was too long. Another matter of concern was the fact that individuals could be arrested without a warrant, and detained for over a year without access to a lawyer, doctor or family members, or possibility of challenging the legality of their detention. He wished to know whether the new Penal Code would address that problem. Lastly, he recalled that, in March 2004, the Government had promised, inter alia, that individuals would be detained only in officially recognized places of detention. He asked what the situation was in that regard and requested data on the number of individuals still in preventive detention, disaggregated by gender, age, caste and place of detention.
22. Mr. RASMUSSEN (Country Rapporteur) said that, according to the Government's report, the NHRC, the ICRC and NGOs had full access to places of detention. However, according to a number of sources, NHRC staff had been repeatedly prevented from visiting detainees. He asked the delegation to clarify the situation. He would also be interested to know whether the numerous new committees that had been set up to promote and protect human rights had been mandated to take measures against individuals who violated the Convention.
23. In its replies to the list of issues, the Government claimed that allegations of incommunicado detention were unfounded. However, there were numerous reports of people being placed in such detention. There seemed to be a lack of control over the security forces, which, in turn, led to their impunity. In that regard, it would be useful to know what measures would be introduced to improve the situation. Referring to article 2, paragraph 3, of the Convention, he stressed the need to ensure that not only the superior officer who had given the order to resort to torture would be held responsible, but also all other authorities involved, regardless of their rank.
24. The Committee had received alarming reports that in some cases persons who had been released following a court order had been rearrested. Such contempt of court illustrated the unchecked power exercised by the police and the security forces, and measures must be taken to address that situation. The delegation should comment on the cases of 28 persons who had reportedly been rearrested after their release.

25. The Convention against Torture stipulated that the burden of proof in cases involving torture lay with the authorities and not, as in Nepal, with the victim. The State party must take action to bring its legislation in line with the Convention. Reports suggested that acts of torture were carried out with total impunity, and urgent measures must be taken to rectify that situation. The establishment of an effective victim and witness protection system should be a priority.

26. He asked the delegation to comment on allegations that no autopsies were performed on persons who had died in custody, although doctors were specially trained for that purpose. Pursuant to Nepalese legislation, a medical report must be sent to the district court seized of the case, and he wished to learn of measures taken to implement that provision.

27. The delegation should also comment on allegations that torture victims received no compensation and that, even in cases where the courts had ordered payment of compensation, the victims had never received the money.

28. It appeared that confessions were frequently used in court proceedings in the State party. He asked what safeguards were in place to ensure that confessions obtained under duress were not used. The delegation should provide examples of cases where the courts had rejected evidence elicited under duress.

29. The comparatively high number of persons in pretrial detention in the State party suggested that judicial proceedings were slow, and it would be useful to know what steps had been taken to remedy that situation. Although general prison conditions appeared to be acceptable, the State party had acknowledged problems relating to overcrowding and staffing and he asked whether those difficulties were related to budgetary constraints.

30. He commended the State party on taking measures to implement the recommendations by the Special Rapporteur on the question of torture. The OHCHR Field Office in Nepal had recommended that the State party should grant the NHRC of Nepal full and unimpeded access without prior notice to places of detention, which would help prevent disappearances, executions, arbitrary arrests and torture.

31. He further commended the State party on being host to a large number of refugees. Unfortunately, the current situation in the country had prompted a reversal of refugee flows.

32. In its written replies, the State party made a distinction between prisoners and detainees, and he asked for clarification on the exact meaning of the term “detainee” in that context. There was an obvious discrepancy between the number of detainees held in detention centres and army barracks and the total number of detainees indicated in the written replies; he asked the delegation to explain the reasons for that inconsistency. The written replies also referred to the release of a large number of persons held in pretrial detention; the delegation should specify the period over which those detainees had been released.

33. Mr. GROSSMAN expressed concern that the definition of torture applied exclusively to persons in detention; acts of torture could also take place elsewhere. The current definition of torture in State party legislation contained no language regarding the complicity of persons acting in an official capacity who instigated, consented to or acquiesced in torture and was thus narrower than the definition established in the Convention. While the State party had stated that

the courts were free to expand the definition of torture in individual cases, according to traditional rules of criminal procedure punishment could only be imposed for statutory offences. Pursuant to the Nepal Treaty Act of 1991, international conventions to which Nepal was a party took precedence over domestic legislation. Consequently, the wider definition of torture contained in the Convention should be applied directly. He requested examples of situations where the Convention had been invoked directly in domestic court proceedings.

34. The Committee had received reports that the Royal Nepalese Army and the police routinely ignored court orders. He asked whether the courts had the power to enforce such orders and requested examples of punitive action taken in cases where police officers or members of the armed forces had disobeyed judicial orders.

35. He wished to know what follow-up was given to recommendations made by the NHRC in respect of prison conditions.

36. In January 2005, Nepal had closed down the Tibetan refugee welfare office, and he asked whether the Government planned to reopen the office in the future.

37. Punishment for acts of torture committed by public officials in Nepal was not commensurate with the gravity of the offence. Given that the Rome Statute of the International Criminal Court codified torture as a crime against humanity, it was unacceptable that sentences ranged from short-term imprisonment to a fine. The statute of limitations for torture cases applicable in the State party contradicted the jurisprudence of the Committee and should be abolished.

38. The delegation should provide a list of NGOs involved in training activities for law enforcement officials.

39. The 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 (A/60/359) had indicated that the persons detained under the Terrorist and Disruptive Activities (Control and Punishment) Ordinance 2004 apparently included children. He asked what measures had been taken to address the problem.

40. He wished to know whether it was true that ICRC was denied full and unimpeded access to detention centres and, if so, what measures had been taken to remedy that situation.

41. In the light of recent reports that the Nepalese army was responsible for the highest number of enforced disappearances in the world, he asked whether there were any plans to make enforced disappearance a criminal offence. He also enquired whether the investigation centres set up in response to national and local concerns about detention conditions were functioning properly. Reports had been received of violent attacks against, and enforced disappearance of, human rights defenders and lawyers involved in torture cases. What effective measures were being taken to ensure their protection?

42. He would welcome information on the total amount of compensation paid to the victims of torture thus far by the State party.

43. In response to the question in paragraph 24 of the list of issues, the State party had asserted that in criminal cases the burden of proof lay with the prosecution “except in some criminal offences such as drugs, trafficking, corruption, etc.” What exactly was meant by “etc.”? Did it cover crimes against the State such as terrorism? He would stress that under international law the burden of proof should always lie with the prosecution, irrespective of the nature of the offence.

44. It was his understanding that amendments to legislation could be passed by Royal ordinance. He expressed concern about the implications of such a procedure.

45. Ms. GAER said that the State party had failed to provide information on the investigation, prosecution and punishment of the perpetrators of gender-based breaches of the Convention, as requested in paragraph 9 of the list of issues. It was difficult for the Committee to assess the situation solely on the basis of cases registered. Data on the age of the victims concerned was also necessary. NGO sources had also alleged that caste was one of the grounds for ill-treatment, and she would welcome more information in that regard.

46. She asked whether the list of torture-related cases provided by the State party in response to paragraph 17 of the list of issues was exhaustive or illustrative. Referring to the findings in the Sunsari Case, she drew attention to the comment that military law did not deal with rape cases and enquired whether there were any plans to address that serious legal gap. In a country in the throes of insurgency and extensive allegations of human rights violations by the military forces, military law and its enforcement were of particular significance.

47. The State party’s comments in response to paragraphs 18 and 19 of the list of issues that allegations of the rape and sexual assault of detainees were unfounded was not convincing. More information was required given the serious discrepancy between the positions of NGOs and the State party. Did the NHRC or any other body have the authority to investigate such allegations? What was meant by the statement that the Government would do its utmost to continue to treat those allegations with the utmost sensitivity and act upon them with the utmost priority?

48. With regard to article 3 of the Convention, she asked whether the State party had any specific procedures for determining whether persons returned to another State were in danger of being subjected to torture - a casual declaration would not suffice. Paragraph 8 of the Committee’s general comment No. 1 (1996) on implementation of article 3 of the Convention in the context of article 22 (Refoulement and communications) contained pertinent information in that connection.

49. She sought information on the status of the human rights accord drafted by the NHRC to be signed by the Government and rebel forces. Had it influenced the Government’s view of the Commission? Had the Commission been given the authority to conduct inspections of detention centres without notice as a result?

50. Referring to a report on the issue of trafficking by the former Special Rapporteur on violence against women, its causes and consequences, following her mission to Nepal several years previously (E/CN.4/2001/73/Add.2), she asked whether there was any mechanism for monitoring trafficking and the treatment of persons involved in such activities. Was there any information available on convictions or other specific measures to punish border guards, customs officials and police officers allegedly implicated in the extensive trafficking from Nepal to other countries in the region?

51. Mr. MAVROMMATIS said that the number of cases of torture in the State party brought to the Committee's attention was alarmingly high. The purpose of the dialogue was for the Committee to help the State party to comply with its obligations under the Convention. Perhaps it should try to identify the problems to be resolved since clearly the national institutions were unable to do so.

52. It appeared that the Dalit (untouchables) were a particular target for human rights violations. What was being done to remedy the situation aside from the implementation of relevant legislation?

53. As for the definition of torture contained in the Compensation Relating to Torture Act, 1996, the fact that "it was not contrary to the spirit of the definition" provided in the Convention, would not suffice; it must be brought fully into line so as to preclude any exceptions.

54. The CHAIRPERSON, speaking in a personal capacity, and echoing the concerns expressed by other members regarding the State party's compliance with article 3, enquired to which third country the 29,000 Tibetan asylum-seekers referred to in paragraph 58 of the report had been returned. Did the State party have any relevant guidelines or legislation on the subject?

55. He asked what progress had been made with the plans to draft legislation relating to the protection of witnesses in trials of torture cases. He would also welcome further details on the special police courts and whether they tried police officers for cases of torture.

56. In the introductory statement mention had been made of guidelines on torture being prepared for the police and armed forces. Would those guidelines have legal force and could they give rise to criminal proceedings?

57. How were members of the NHRC appointed and to whom were they accountable - the Parliament? It seemed that the latter no longer monitored respect for human rights, yet some body must be responsible for such matters.

58. In conclusion, in relation to the definition of torture, he asked whether article 1 of the Convention could be invoked directly in the courts.

59. Mr. ACHARYA (Nepal) said that due note had been taken of the questions raised and clarifications sought on torture and other related issues. His delegation would do its best to provide as much information as possible for its next meeting with the Committee.

The meeting rose at 12.45 p.m.