



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

Distr.
GENERAL

CAT/C/NPL/CO/2
15 December 2005

Original: ENGLISH

COMMITTEE AGAINST TORTURE
Thirty-fifth session
7-25 November 2005

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

Conclusions and recommendations of the Committee against Torture

NEPAL

1. The Committee considered the second periodic report of Nepal (CAT/C/33/Add.6) at its 669th and 672nd meetings (CAT/C/SR.669 and 672), held on 9 and 10 November 2005, and adopted, at its 687th meeting held on 22 November 2005, the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the submission of the report and the opportunity it afforded to resume the dialogue with the State party. While appreciating the constructive dialogue established with the delegation of the State party, the Committee notes that the report does not fully conform to the Committee's guidelines for the preparation of periodic reports and lacks information on practical aspects of the implementation of the Convention.

3. The Committee welcomes the additional information provided to the list of issues (CAT/C/35/NPL) by the State party in writing, by the delegation in its introductory remarks and in the answers to the questions raised.

B. Positive aspects

4. The Committee welcomes the adoption of the Compensation Relating to Torture Act, 1996 and the Human Rights Commission Act, 1997, aimed at enhancing the implementation of the Convention.

5. The Committee notes the establishment of a number of human rights coordination and monitoring mechanisms, such as the National Human Rights Commission, the National Commission on Women and the National Dalit Commission, the Human Rights Protection Committee and the National Coordination Committee, and the human rights cells in the Police, the Armed Police Force and the Royal Nepalese Army.

6. The Committee also welcomes the agreement entered into by the State party with the Office of the High Commissioner for Human Rights (OHCHR) on 11 April 2005, which led to the establishment of an OHCHR Office in Nepal. The Committee welcomes the continued cooperation of the State party with the OHCHR Office in Nepal.

7. The Committee notes that the State party received visits from the following special procedures of the Commission on Human Rights:

- (a) Working Group on Arbitrary Detention, in 1996;
- (b) Special Rapporteur on extrajudicial, summary or arbitrary executions, in 2000;
- (c) Working Group on Enforced or Involuntary Disappearances, in 2004;
- (d) Representative of the Secretary-General on the human rights of internally displaced persons, in 2005; and
- (e) Special Rapporteur on the question of torture in 2005.

8. The Committee commends the generosity of the State party in hosting more than 100,000 Bhutanese and 20,000 Tibetan refugees.

9. The Committee further welcomes the signature by the State party, on 8 September 2000, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

C. Factors and difficulties impeding the implementation of the Convention

10. The Committee acknowledges the difficult situation of internal armed conflict faced by the State party, and is alarmed by the high incidence of atrocities committed by the Communist Party of Nepal (CPN) - Maoist. However, it points out that no exceptional circumstances whatsoever may be invoked as a justification of torture.

11. The Committee regrets the adverse impact of the absence of the Parliament since May 2002 on the capacity of the State party to implement the Convention, and in particular in respect of the enactment or amendment of legislation, as well as the ratification of international conventions.

D. Concerns and recommendations

Definition

12. The Committee notes with concern that the definition of torture in article 2 (a) of the Compensation Relating to Torture Act of 1996, the lack of a legal provision in current domestic law to make torture a criminal offence and the draft Criminal Code are not in line with the definition of article 1 of the Convention against Torture (articles 1 and 4 of the Convention).

The State party should adopt domestic legislation which ensures that acts of torture, including the acts of attempt, complicity and participation, are criminal offences punishable in a manner proportionate to the gravity of the crimes committed, and consider steps to amend the Compensation Relating to Torture Act of 1996 to bring it into compliance with all the elements of the definition of torture provided in the Convention. The State party should provide information to the Committee on domestic jurisprudence referring to the definition of torture as per article 1 of the Convention.

Widespread use of torture

13. The Committee is 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).

The State party should publicly condemn the practice of torture and take effective measures to prevent acts of torture in any territory under its jurisdiction. The State party should also take all measures, as appropriate, to protect all members of society from acts of torture.

Detention

14. The Committee is also concerned about:

(a) The number of detainees in prolonged detention without trial under the Public Security Act and the Terrorist and Disruptive (Control and Punishment) Ordinance (TADO) of 2004;

(b) The extensive resort to pretrial detention lasting up to 15 months and the lack of fundamental guarantees under the Terrorist and Disruptive (Control and Punishment) Ordinance 2005 of the rights of persons deprived of liberty, including the right to challenge arrest, resulting in numerous alleged cases of incommunicado detention.

The State party should bring the practice of pretrial detention into line with international human rights norms and ensure that the fundamental rights of persons deprived of liberty are guaranteed, including the right to habeas corpus, the

right to inform a relative, and the right of access to a lawyer and a doctor of one's choice. The State party should ensure that any measure taken to combat terrorism is in accordance with Security Council resolutions 1373 (2001) and 1566 (2004), which require that anti-terrorist measures be carried out with full respect for, inter alia, international human rights law, including the Convention. The State party should provide to the Committee information on the number of people still in pretrial detention.

National Human Rights Commission

15. While acknowledging the important role of the National Human Rights Commission in the promotion and protection of human rights in Nepal, the Committee is concerned about the frequent failure by the State party to implement the Commission's recommendations.

The State party should take the necessary measures to support the work of the National Human Rights Commission, ensuring its recommendations are fully implemented.

Independence of the judiciary

16. The Committee expresses concern about the marked weakening of the independence and effectiveness of the judiciary in the State party and the contemptuous non-compliance with court orders by members of security forces, reportedly including re-arrests, including on the premises of the Supreme Court.

The State party should make every effort to guarantee the independence of the judiciary, including ensuring that security forces comply with court orders. The State party should provide to the Committee information on the composition, mandate, methods of work and investigations of the Royal Commission for Corruption Control, including whether it exercises jurisdiction over constitutional matters in full conformity with the requirements of the Convention and whether its rulings are subject to judicial review. The State party is requested to provide the same information concerning the Justice Sector Coordination Committees.

Non-refoulement

17. The Committee regrets the absence of domestic legislation in the State party that stipulates the rights of refugees and asylum-seeking persons, and notes with concern that the State party has not acceded to the 1951 Convention relating to the Status of Refugees and other related international legal instruments. The Committee is also concerned about 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 (art. 3).

The Committee recommends that the State party consider acceding to the Convention relating to the Status of Refugees and other related international legal instruments. In addition, the Committee recommends that the State party enact

legislation aimed at prohibiting refoulement of persons without an appropriate legal procedure. The State party should provide to the Committee information on the 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.

Universal jurisdiction

18. The Committee regrets the absence of universal jurisdiction in domestic legislation for acts of torture, as well as the fact that certain provisions of the draft Criminal Code are not in line with articles 5 to 9 of the Convention.

The State party should take the necessary measures to ensure that acts of torture are made subject to universal jurisdiction under the draft Criminal Code, in accordance with article 5 of the Convention. The State party should also make every effort to ensure compliance with articles 6 to 9 of the Convention.

Education on the prohibition against torture

19. While welcoming the State party's efforts in educating and informing State officials about the prohibition against torture, the Committee regrets the lack of information on the impact of such education and training efforts. The Committee is also concerned about reports that the length of training provided to Royal Nepalese Army officers and new recruits has been shortened (art.10).

The State party should intensify its education and training efforts relating to the prohibition against torture, and introduce evaluation and monitoring mechanisms to assess their impact.

Interrogation and detention

20. The Committee is deeply disturbed by the continuing reliable allegations concerning the frequent use of interrogation methods by security forces that are prohibited by the Convention (art. 11).

The State party must ensure that no recourse is made, under any circumstances, by law enforcement personnel to interrogation methods prohibited by the Convention. In addition, the State party should provide to the Committee information, including examples, on measures adopted to review interrogation rules, instructions, methods and practices applicable to law enforcement officials.

21. The Committee is concerned about:

- (a) The number of prisoners on remand in places of detention;
- (b) The systematic use of army barracks for detainees awaiting trial or in preventive detention;

(c) The lack of systematic and official records regarding the arrest and detention of persons;

(d) A provision in the Compensation Relating to Torture Act of 1996 empowering the concerned officer at places of detention to medically examine a detainee, at the time of arrest and upon release, in the event a doctor is not available. In particular, the Committee is concerned about reports that medical examinations at the time of arrest and upon release are not performed regularly;

(e) Serious allegations of continued use of incommunicado detention and the lack of information on the exact numbers of detention places and other detention facilities;

(f) Allegations of non-compliance with writs of habeas corpus issued by courts;

(g) The lack of a well-functioning juvenile justice system in the country, with children often being subjected to the same procedures, laws and violations as adults. In particular, the Committee is concerned about allegations of children being held under TADO for prolonged periods.

Therefore, the State party should:

(a) Adopt the necessary measures to reduce pretrial detention wherever possible;

(b) Immediately transfer all detainees to legally designated places of detention that conform to international minimum standards;

(c) Take immediate steps to ensure that all arrests and detentions are systematically documented, in particular of juveniles. The State party should consider creating a central register for persons deprived of liberty, to be made accessible to national and international monitors;

(d) The State party should consider amending the relevant section of the Compensation Relating to Torture Act of 1996, to ensure that all detainees have access to a proper medical examination at the time of arrest and upon release;

(e) Prohibit the use of incommunicado detention. The Committee recommends that persons held incommunicado should be released, or charged and tried under due process. The State party should provide to the Committee information on the exact number and location of detention places and other detention facilities used by the Royal Nepalese Army, the Armed Police Force and the Police, and the number of persons deprived of liberty;

(f) The State party should take measures to ensure compliance by security forces of all orders of the courts, including habeas corpus;

(g) The State party should take the necessary steps to protect juveniles from breaches of the Convention, and ensure proper functioning of a juvenile justice system in compliance with international standards, differentiating treatment according to age.

Systematic review of all places of detention

22. The Committee is concerned about the lack of an effective systematic review of all places of detention, including regular and unannounced visits to such places by national and international monitors.

The State party should consider setting up a national system to review all places of detention, and react to findings of the systematic review.

23. The Committee is also concerned that in a number of instances, national and international monitors were not granted either access to places of detention or sufficient cooperation in their fact-finding visits. The Committee is further concerned about the adoption of the new Code of Conduct for Non-Governmental Organizations, which will, inter alia, severely limit the monitoring capacity of NGOs.

The Committee recommends that the State party consider amending the Code of Conduct for Non-Governmental Organizations so that it is in line with international human rights standards on the protection of human rights defenders. The State party should ensure that national and international monitors are granted permission to carry out regular, independent, unannounced and unrestricted visits to all places of detention. The State party should facilitate visits by, for example, the International Committee of the Red Cross, OHCHR, the National Human Rights Commission, and national and international NGOs.

Impunity

24. The Committee is concerned about the prevailing climate of impunity for acts of torture and ill-treatment and the continued allegations of arrests without warrants, extrajudicial killings, deaths in custody and disappearances (art. 12).

The State party should send a clear and unambiguous message condemning torture and ill-treatment to all persons and groups under its jurisdiction. The State party should take effective legislative, administrative and judicial measures to ensure that all allegations of arrest without warrants, extrajudicial killings, deaths in custody and disappearances are promptly investigated, prosecuted and the perpetrators punished. In connection with prima facie cases of torture, the accused should be subject to suspension or reassignment during the investigation.

25. While acknowledging the establishment of human rights cells in the security forces, the Committee is concerned about the lack of an independent body able to conduct investigations into acts of torture and ill-treatment committed by law enforcement personnel.

The State party should establish an independent body to investigate acts of torture and ill-treatment committed by law enforcement personnel. The State party should provide to the Committee information on the mandate, role, composition and jurisprudence of the special police courts.

Marginalized and disadvantaged groups or castes

26. Despite the State party's acknowledgment that caste discrimination exists in the country and the creation of the National Dalit Commission, the Committee is gravely concerned about the continued deeply rooted discriminatory practices committed on a large scale against marginalized and disadvantaged groups or castes such as the Dalits. The Committee is also concerned that the long-standing pattern of caste discrimination is being further entrenched by the current conflict in the country.

The Committee reaffirms that it is the duty of the State party to protect all members of society, in particular citizens belonging to marginalized and disadvantaged groups or castes, such as the Dalits. The State party should take specific steps to safeguard their physical integrity, ensure that accountability mechanisms are in place guaranteeing that caste is not used as a basis for abuses, unlawful detention and torture, and take steps to ensure more diverse caste and ethnic representation in its police and security forces. The State party should include information on caste discrimination in its next periodic report.

Gender-based violence

27. The Committee is concerned about continued allegations of gender-based violence and abuse against women and children in custody, including acts of sexual violence by law enforcement personnel.

The State party should ensure that procedures are in place to monitor the behaviour of law enforcement officials, and should promptly and impartially investigate all allegations of torture and ill-treatment, including sexual violence, with a view to prosecuting those responsible. The State party should provide to the Committee a list of cases of gender-based violence and abuse against women and children in custody that have been investigated and prosecuted, and the perpetrators punished.

Right to complaint

28. The Committee is concerned about:

(a) The fact that the burden of proof is on the victims of acts of torture, under rules provided for in the Compensation Relating to Torture Act of 1996, and that the statute of limitation for complaining about acts of torture and instituting proceedings for compensation under TADO is 35 days;

(b) Alleged reprisals against and intimidation of persons reporting acts of torture, in the forms of re-arrests and threats, and the lack of witness protection legislation and mechanisms (art. 13).

Therefore, the State party should:

(a) Make available to victims of torture the conclusions of any independent inquiry in order to assist them in pursuing compensation claims. The State party should amend its current and planned legislation so that there is no statute of limitation for registering complaints against acts of torture and that actions for compensation can be brought within two years from the date that the conclusions of inquiries become available;

(b) Consider adopting legislative and administrative measures for witness protection, ensuring that all persons who report acts of torture or ill-treatment are adequately protected.

Compensation to torture victims

29. While acknowledging that the judiciary has issued a number of decisions to award compensation, the Committee regrets that to date in only one case has compensation been paid. In addition, the Committee is concerned about undue delays in the awarding of compensation ordered by the courts or the National Human Rights Commission (art. 14).

The State party should ensure that compensation awarded by the courts or decided upon by the National Human Rights Commission is paid in a timely manner. The State party should provide to the Committee information on the total amount paid in compensations to victims of torture.

Use of statements made as a result of torture

30. The Committee is concerned about allegations of statements obtained as a result of torture being used as evidence in legal proceedings (art. 15).

The State party should provide to the Committee information on both legislation and jurisprudence that exclude statements obtained as a result of torture being admitted as evidence.

Ill-treatment

31. The Committee is concerned about allegations of poor conditions of detention, in particular overcrowding, poor sanitation, staffing shortages and lack of medical attention for detainees (art. 16).

The Committee recommends that the State party take all necessary measures to improve conditions of detention.

Trafficking

32. The Committee is concerned about persistent reports of trafficking in women and children and the alleged involvement of officials in acts of trafficking.

The State party should reinforce international cooperation mechanisms to fight trafficking in persons, prosecute perpetrators, and provide protection and redress to all victims.

Child soldiers

33. The Committee is concerned about allegations of children being used by security forces as spies and messengers. The Committee is also concerned about reports of recruitment and abduction of children by CPN-Maoist (art. 16).

The State party should take effective measures to prevent security forces using children as spies and messengers. The State party should also take the necessary steps, as a matter of urgency and in a comprehensive manner, to prevent the abduction of children by CPN-Maoist and to facilitate the reintegration of former child soldiers into society. The State party should also consider ratifying the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

34. The Committee further recommends that the State party:

- (a) Consider making the declaration under articles 21 and 22 of the Convention;
- (b) Consider becoming party to the Optional Protocol to the Convention;
- (c) Consider becoming party to the Rome Statute of the International Criminal Court;
- (d) Consider becoming party to Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

35. The State party should provide to the Committee information on the composition, mandate and methods of work of and the investigations and results obtained by the Human Rights Protection Committee, the National Coordination Committee for the Protection and Promotion of Human Rights, as well as the human rights cells established within the Police, the Royal Nepalese Army and the Armed Police Force.

36. The Committee requests the State party to provide in its next periodic report detailed statistical data regarding cases of torture and other forms of cruel, inhuman or degrading treatment or punishment reported to administrative authorities and the related investigations, prosecutions and penal and disciplinary sentences, including details of courts martial, disaggregated by, inter alia, gender, ethnic group, caste, geographical region, and type and location of place of deprivation of liberty, where it occurred, paying particular attention to juveniles in detention. In addition, information is also requested on any compensation and rehabilitation provided to victims.

37. The State party is encouraged to disseminate widely its second periodic report and the conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

38. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 14, 15, 22 (b), 22 (c), 22 (e), 26, 28 and 30 above.

39. The State party is invited to submit its next periodic report, which will be considered as the combined third, fourth and fifth report, by 12 June 2008, the due date of the fifth periodic report.
