

Prevention of Torture

Progress Paper on the Role of NHRIs

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ASIA PACIFIC HUMAN RIGHTS NETWORK

**Secretariat: South Asia Human Rights Documentation Centre
B-6/6, Safdarjung Enclave Extension, New Delhi - 110029, India
Tel/Fax: +91-11-2619 2717, 2619 2706, 2619 1120**

Email: secretariat@aphrn.org

Home Page: <http://www.aphrn.org>

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Introduction

The Optional Protocol to the Convention against Torture ('OP-CAT') is a useful addition to the international agreements and mechanisms that combat the problem of torture and other cruel, inhuman or degrading treatment. But it is not enough for states to speak in glowing terms about international agreements. Those states whose national human rights institutions ('NHRIs') are members of the Asia Pacific Forum ('APF') generally have poor track records on the issue of torture. If states are serious about dealing with the problem of torture and other cruel, inhuman or degrading treatment, they will ensure ratification of the Convention against Torture, proper implementation of the Convention in domestic legislation and proper compliance with UN reporting requirements. NHRIs must pressure governments to these ends.

Background

The Optional Protocol to the Convention against Torture was established and opened for signature, ratification and accession on 4 February 2003. The purpose of the Optional Protocol is to establish a system of regular visits to places of detention, so as to better prevent torture and other cruel, inhuman or degrading treatment or punishment (Article 1). Specifically, the Protocol establishes a 'Subcommittee on Prevention' (Article 2) which may visit any place of detention in any State Party, with a view to strengthening the prevention of torture (Article 4). State Parties to the Optional Protocol further commit to designating one or more national bodies to carry out similar visits (Articles 3 and 4). The Subcommittee on Prevention must communicate its recommendations to the State Party and (if relevant) to the designated national bodies (Article 16(1)). The Subcommittee may publish its report publicly if the State Party requests it to do so, or if the State Party makes part of the report public, or if the Subcommittee decides that the State Party is refusing to cooperate with it (Article 16).

The Optional Protocol will enter into force on the 30th day after receiving its twentieth ratification or accession (Article 28(1)). At the time of writing, 23 states have signed the Optional Protocol, of which two have also ratified. One further state (Albania) has acceded to the Protocol. Of the states whose NHRIs are members of the APF, only New Zealand has signed the Optional Protocol.

Importantly, the Optional Protocol may only be signed by states that have signed the Convention against Torture, and may be ratified or acceded to only by states that have ratified or acceded to the Convention (OP-CAT Article 27). Of the twelve states whose NHRIs are members of the APF, only eight have ratified or acceded to the Convention. Of the remaining four states, India has signed the Convention but not yet ratified, while Fiji, Malaysia and Thailand are yet even to sign.

APHRN believes that the Protocol is an important and innovative mechanism for combating the problem of torture and other cruel, inhuman or degrading treatment. Visits to places of detention by independent bodies reduce the prospect of torture by bringing accountability to places that are often isolated from proper oversight. They serve to illuminate incidences of torture and to deter prospective torturers. APHRN believes that the member institutions of the APF should support the implementation of the Optional Protocol.

However, the Optional Protocol is one part of a wider framework for the prevention of torture. Central to that framework is the ratification and implementation of the Convention against Torture, including compliance with UN reporting requirements. APHRN stresses that no state can honestly claim a commitment to the eradication of torture without complying fully with the requirements of the Convention. This is illustrated specifically by considering the cases of the states whose NHRIs are member institutions of the APF.

Australia

Australia signed the Convention against Torture on 10 December 1985 and ratified on 8 August 1989. Australia made its most recent submission to the Committee against Torture on 15 May 2000.¹ The submission was very late: it claimed to combine Australia's second and third periodic reports, which were due in 1994 and 1998 respectively.

Among other points, the Committee's subsequent concluding observations expressed concern about the "apparent lack of appropriate review mechanisms for ministerial decisions" on returning people to states where they face the risk of torture and the use of intimidation, excessive force and unnecessary instruments of physical restraint by prison authorities.²

The Human Rights and Equal Opportunities Commission ('HREOC') has been proactive in responding to widespread allegations of cruel, inhuman or degrading treatment, particularly concerning the conditions of detained asylum seekers. For example, the Human Rights Commissioner (Dr Sev Ozdowski OAM) has recently visited a number of detention facilities and has made a number of submissions to federal Parliament on the

¹ UN Document CAT/C/25/Add.11.

² UN Document A/56/44, paragraphs 47-53, at paragraph 52. 21 November 2000.

issue.³ HREOC itself has recently sought and obtained leave to intervene in a landmark legal challenge to the constitutional validity of the administrative detention of children.⁴

Given HREOC's activities in this regard – and given further that Australia has signed and ratified the Convention against Torture – it is disappointing that HREOC has apparently not formally lobbied the Government to sign and ratify the Optional Protocol. APHRN urges HREOC to lobby the Government to this end, just as HREOC has lobbied for Australia to become a party to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women.

Fiji

Fiji is yet to sign the Convention against Torture (nor, for that matter, the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights). Fiji must sign and ratify this Convention without delay. This would formally indicate Fiji's commitment to ending the practice of torture, and bring necessary transparency and accountability by way of the Committee against Torture and its reporting processes.

Fiji has not shown that it is committed to ending torture. In particular, Fiji continues to provide impunity for soldiers accused of torture in the wake of the May 2000 coup. Specifically, four prisoners held for mutiny died and at least six others were hospitalised following severe beatings at the hands of the soldiers detaining them.⁵ According to *Amnesty International*, Fiji police had gathered adequate evidence to lay murder charges by May 2001, but the military has prevented both the interview and prosecution of the suspects.⁶

Police have been involved in further acts of ill-treatment. For example, in November 2002, “three Indo-Fijians complained that they were beaten and subjected to racial slurs and extortion by police officers in civilian clothes.”⁷ Further, there remain serious concerns that prison conditions amount to inhuman and degrading treatment. Fiji's prisons are seriously underfunded, and subsequently cannot adequately deliver basic services (including food and sanitation).⁸

India

India signed the Convention against Torture on 14 October 1997, and stated at the time:

³ *Human Rights and Equal Opportunity Commission Annual Report 2002-2003*, Chapter Six. URL: http://www.humanrights.gov.au/annrep02_03/chap6.html

⁴ See *Submissions of the Human Rights and Equal Opportunity Commission, Seeking leave to intervene*. 28 January 2004. URL: <http://www.humanrights.gov.au/legal/intervention/sakhi.html>

⁵ *Fiji: Impunity unacceptable*. 16 May 2003. *Amnesty International Press Release*. URL: <http://web.amnesty.org/library/Index/ENGASA180012003?open&of=ENG-FJI>

⁶ *Ibid.*

⁷ *US State Department 2002 Country Reports on Human Rights Practices: Fiji*. 31 March 2003. Bureau of Democracy, Human Rights, and Labor. URL: <http://www.state.gov/g/drl/rls/hrrpt/2002/18244.htm>

⁸ *Ibid.*

“The Convention corresponds to the ethos of Indian democracy, rule of law, individual freedom, personal liberty and security enshrined in Indian polity...Ratification of the Convention is to follow.”⁹

Over six years later, ratification has not followed. India has not taken seriously the problem of torture or the need for its elimination. India must ratify the Convention against Torture without delay. Until it does so, the National Human Rights Commission (under statutory obligation¹⁰) must campaign and lobby proactively for ratification. Further, India must withdraw the reservations that it has expressed to Convention Article 20 (relating to inquiry by the Committee against Torture), Article 21 (relating to state complaints) and Article 22 (relating to individual complaints).¹¹ These Articles provide important and necessary mechanisms for scrutiny and accountability. Similarly, India has provided inadequate cooperation with the Special Rapporteur on the question of torture, Mr Theo van Boven. In his 2003 report, the Special Rapporteur noted that India has left numerous individual cases unaddressed since 1997. Additionally, the Special Rapporteur has, since 1993, sought an invitation to visit India. No invitation has been provided.¹² It is inconsistent for India to support the ideals of the Convention – and to promise its ratification – while eschewing scrutiny and accountability in this way.

Indian law is inadequate in dealing with the problems of torture. The Supreme Court of India has interpreted Article 21 of the Constitution (relating to the right to life and personal liberty) as proscribing torture¹³ and as supporting awards of compensation for the practice.¹⁴ However, this provides insufficient mechanisms to prevent torture. Punitive measures are inadequate. The Indian Penal Code does not proscribe torture *per se* (though some offences could be used to punish torturers).¹⁵ Indeed, the Indian Evidence Act and Criminal Procedure Code do not directly prohibit torture as a means of obtaining evidence.¹⁶ Further, because torture is not specifically proscribed, legislative sanctions for many acts of torture are grossly inadequate. For example, offences of assault or use of criminal force may incur a penalty of up to three months’ imprisonment and/or a fine.¹⁷

These problems are compounded by extensive immunities for torturers, particularly in the armed forces. Section 197(2) of the *Criminal Procedure Code* requires a Court have the “previous sanction of the Central Government” before acting upon “any offence alleged to have been committed by any member of the Armed Forces of the Union while acting

⁹ *Impunity and World Torture Day*. 26 June 1999. South Asia Human Rights Documentation Centre. URL: <http://www.hrdc.net/sahrdc/hrfeatures/HRF02.htm>

¹⁰ *Protection of Human Rights Act 1993*, s.12(f).

¹¹ *Impunity and World Torture Day*. 26 June 1999. South Asia Human Rights Documentation Centre. URL: <http://www.hrdc.net/sahrdc/hrfeatures/HRF02.htm>

¹² *Report of the Special Rapporteur on the question of torture*. 27 February 2003. UN document E/CN.4/2003/68/Add.1. See paragraph 644.

¹³ For example, see *Mullin v Union Territory of Delhi* AIR 1981 SC 746.

¹⁴ For example, see *Rudul Shah v State of Bihar* (1983) 4 SC 141.

¹⁵ *India*. May 2003. Redress Country Study. URL: <http://www.redress.org/publications/Audit/India.pdf>. See p.7.

¹⁶ *Ibid.*

¹⁷ *Ibid.* See p.8.

or purporting to act in the discharge of his official duty.”¹⁸ Further, section 6 of the *Armed Forces Special Powers Act* requires the prior consent of the Central Government before *any* proceedings (including prosecution) may be instituted in respect of “anything done or purported to be done” under the Act. Similarly, section 19 of the *Protection of Human Rights Act* prevents the National Human Rights Commission from undertaking its own investigation into the armed forces. The Government has consistently ignored the Commission’s own recommendation that the definition of ‘armed forces’ should exclude paramilitaries and its recommendation that armed forces should report deaths and rape in custody to the NHRC within 24 hours.¹⁹

In sum, the Indian Government and legal system continue to tolerate the widespread existence of torture. Claims of torture and other forms of ill-treatment at the hands of state authorities remain breathtakingly numerous. For example, *Redress* reports that, during 1999, 74 322 complaints were lodged against the police, of which “a considerable number” are believed to concern torture and other ill-treatment.²⁰ In 1999-2000, the National Human Rights Commission registered 50 634 complaints, most of which related to ill-treatment (including torture).²¹

Over a decade ago, in its 1992 report *Torture, Rape and Deaths in Custody*, Amnesty International wrote of India:

“...torture is pervasive and a daily routine in every one of India’s 25 states, irrespective of whether arrests are made by the police, the paramilitary forces or the army. It happens regardless of the political persuasion of the party in power. Many hundreds if not thousands have died because of torture in the past decade.”²²

It is difficult to see what has changed.

Indonesia

Indonesia signed the Convention against Torture on 23 October 1985 and ratified on 28 October 1998. Indonesia submitted its initial report to the Committee against Torture on 16 July 2001.²³ The Committee criticised the report for being more than a year late and for primarily addressing legal provisions without “detailed information on the implementation of the Convention against Torture in practice”.²⁴ In its subsequent report, the Committee identified a number of aspects of Indonesia’s deeply concerning record on torture.

¹⁸ *Impunity and World Torture Day*. 26 June 1999. South Asia Human Rights Documentation Centre. URL: <http://www.hrdc.net/sahrdc/hrfeatures/HRF02.htm>

¹⁹ “Government Rejects NHRC Plea on Army”, *The Hindu*, 9 July 1998.

²⁰ *India*. May 2003. Redress Country Study. URL: <http://www.redress.org/publications/Audit/India.pdf> .

See p.15.

²¹ *Ibid*.

²² *India: Torture, Rape and Deaths in Custody*. (1992). Amnesty International, New York.

²³ UN document CAT/C/47/Add.3.

²⁴ UN document CAT/C/XXVII/Concl.3 at paragraph 2. 22 November 2001.

Indonesia has ratified the Convention against Torture, but not adequately implemented its provisions in domestic law. The relevant legislation (Law 2000/26) defines torture more narrowly than Article 1 of the Convention, with the effect that (as the Committee against Torture concluded), “torture is not punishable by appropriate penalties in the criminal code”.²⁵ There are serious procedural problems, too. Specifically, only Komnas HAM may initially inquire into allegations of gross human rights violations (including torture).²⁶ However, Komnas HAM’s reports on initial investigations are not fully published, and the Attorney General has sole discretion whether or not to proceed with an investigation and prosecution. Komnas HAM cannot challenge that decision.²⁷ The Committee against Torture concluded that this produces an “insufficient level of guarantees of the independence and impartiality of [Komnas HAM] which hinders it from fully carrying out its mandate...”.²⁸ Indeed, in nearly half of the cases put forward by Komnas HAM concerning human rights violations in East Timor in 1999, the Attorney General has declined to prosecute.²⁹

In practice, torture remains widespread. The Committee against Torture noted that this includes widespread incidences of torture and ill-treatment by police, army and paramilitary groups, particularly in areas of armed conflict (for example, Aceh, Papua and Maluku).³⁰ Indeed, *Redress* reports that “in late 2001, the President told troops to do everything “to hold the country” together and not to worry about violating human rights.”³¹ Such abuses are encouraged by a culture of impunity which includes minimal progress in trying perpetrators³², as well as the “intimidation of victims, their families, witnesses and human rights defenders” to encourage their silence.³³

Indonesia has provided fundamentally inadequate cooperation with the Special Rapporteur on the question of torture, Mr Theo van Boven. In his 2003 report, the Special Rapporteur cited numerous individual cases that have been raised with the Indonesian Government but which have remained unaddressed since 1998. Further, Indonesia is yet to invite the Special Rapporteur to visit, despite a request for such a visit having initially been made in 1993.³⁴

²⁵ UN document CAT/C/XXVII/Concl.3 at paragraph 9(a). 22 November 2001. See also *Indonesia*. May 2003. *Redress Country Study*. URL: <http://www.redress.org/publications/Audit/Indonesia.pdf> at p.8.

²⁶ *Indonesia*. May 2003. *Redress Country Study*. URL: <http://www.redress.org/publications/Audit/Indonesia.pdf> See p.13.

²⁷ UN document CAT/C/XXVII/Concl.3 at paragraph 8(c). 22 November 2001. See also *Indonesia*. May 2003. *Redress Country Study*. URL: <http://www.redress.org/publications/Audit/Indonesia.pdf> at pp.13-14.

²⁸ UN document CAT/C/XXVII/Concl.3 at paragraph 8(c). 22 November 2001.

²⁹ *Indonesia*. May 2003. *Redress Country Study*. URL: <http://www.redress.org/publications/Audit/Indonesia.pdf> . See p.17.

³⁰ UN document CAT/C/XXVII/Concl.3 at paragraph 7(a). 22 November 2001.

³¹ *Indonesia*. May 2003. *Redress Country Study*. URL: <http://www.redress.org/publications/Audit/Indonesia.pdf> See p.6.

³² UN document CAT/C/XXVII/Concl.3 at paragraph 8(a). 22 November 2001.

³³ *Indonesia*. May 2003. *Redress Country Study*. URL: <http://www.redress.org/publications/Audit/Indonesia.pdf> . See p.14.

³⁴ *Report of the Special Rapporteur on the question of torture*. 27 February 2003. UN document E/CN.4/2003/68/Add.1. See paragraph 676.

Malaysia

Malaysia is yet to sign the Convention against Torture (nor, for that matter, the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights). Disturbingly, this means that Malaysia is yet to formally indicate its intention to end torture and other cruel, inhuman or degrading treatment or punishment.

Torture and other cruel, inhuman or degrading treatment continue in Malaysia, primarily in the context of detention (including under the draconian *Internal Security Act* ('ISA')). Detainees are often held in incommunicado detention and in solitary confinement. For example, ten activists detained under the ISA in April 2001 were held incommunicado for most of the first 60 days of their detention; even Suhakam Commissioners were denied the visitation rights they have under the *Human Rights Commission of Malaysia Act 1999*.³⁵ As the motivating principle for Optional Protocol to the Convention against Torture recognises, this creates special risks of ill-treatment.

Credible reports show that former ISA detainees have been subject to numerous forms of ill-treatment. This includes “physical assault, forced nudity, sleep deprivation, around-the-clock interrogation, death threats, threats of bodily harm to family members, including threats of rape and bodily harm to their children.”³⁶ Investigations deliberately involved the use of low temperatures and prevalent cigarette smoke which, over the course of repeated interrogation, caused at least one detainee (Saari bin Sungib) to develop a serious coughing condition.³⁷ Further, prolonged solitary confinement often occurs in small dark cells.³⁸

Such ill-treatment is no accident – it is a standard tool of investigation. According to *Human Rights Watch*, in the first trial of former Deputy Prime Minister Anwar Ibrahim, “police admitted to the courts that the process of ‘extracting confessions’ under duress was standard practice.”³⁹ This is consistent with the August 2001 affidavits of five released ISA detainees, who stated that prolonged questioning under duress was used to extract desired confessions.⁴⁰

Cruel, inhuman and degrading treatment is not limited to interrogation practices. Caning is used as an additional punishment for more than 40 crimes in Malaysia, including mandatory whipping under the *Immigration Act* for foreigners who are in Malaysia

³⁵ *Malaysia Human Rights Report 2001*. Suara Rakyat Malaysia (SUARAM). URL: http://www.suaram.org/Malaysian_HR_Report_2001.pdf. See p.45.

³⁶ *Malaysia's Internal Security Act and Suppression of Political Dissent*. 13 May 2002. Human Rights Watch Background Briefing. URL: <http://hrw.org/backgrounder/asia/malaysia-bck-0513.htm>

³⁷ *Malaysia Human Rights Report 2001*. Suara Rakyat Malaysia (SUARAM). URL: http://www.suaram.org/Malaysian_HR_Report_2001.pdf. See p.49.

³⁸ *Malaysia's Internal Security Act and Suppression of Political Dissent*. 13 May 2002. Human Rights Watch Background Briefing. URL: <http://hrw.org/backgrounder/asia/malaysia-bck-0513.htm>

³⁹ *Ibid.*

⁴⁰ *Malaysia Human Rights Report 2001*. Suara Rakyat Malaysia (SUARAM). URL: http://www.suaram.org/Malaysian_HR_Report_2001.pdf. See p.46 and subsequent.

illegally.⁴¹ This is a degrading treatment that derogates starkly from international standards.

Mongolia

Mongolia acceded to the Convention against Torture on 24 January 2002. This is an important step in Mongolia's transition to the democratic respect for human rights. However, Mongolia must go substantially further if its commitment to eradicating torture is to be taken seriously. Specifically, implementation of the Convention is limited, both in law and in practice.

According to the National Human Rights Commission, Mongolia is yet to proscribe torture *per se*. It is true that Article 251 of the Criminal Law prevents the specific case of “extracting information by means of threat to use force, degrading treatment, deceit or other illegal methods” – but this does not amount to an adequate or general prohibition on torture. Further, neither the Criminal Proceedings Law nor other legislation precludes the use as evidence of information obtained under torture. Government training programs for law enforcement personnel do not include references to torture, and torture is not used as a performance indicator for such officers.⁴² Mongolia is already over a year late in the submission of its Initial Report to the Committee against Torture.⁴³

Torture and other cruel, inhuman or degrading treatment remain serious problems in Mongolia. Police are reported to beat prisoners and detainees and to use unnecessary force in arrest.⁴⁴ Four detainees accused of murder claimed to have been subjected to severe abuse in detention in 2000 and 2001, while a fifth co-accused died of tuberculosis.⁴⁵ The National Human Rights Commission asserts that police often misuse laws against public drunkenness. Police assert that people are drunk in order to detain them in detoxification facilities (whose standard of hygiene is characterised as “intolerable beyond description”). The Commission reports that police then often confiscate property and use undue physical force (including force causing serious physical injuries).⁴⁶

There is further evidence that torture is used to punish detainees and to attempt to extract confessions. *Amnesty International* raises the specific illustrative case of Enkhbat Damiran. *Amnesty* reports that on 15 May 2003, Mongolian intelligence officers “allegedly detained him illegally, drugged him, kicked his abdomen, pulled out his hair,

⁴¹ *Malaysia: Caning should be abolished*. 12 August 2002. Amnesty International Press Release. URL: <http://web.amnesty.org/library/Index/ENGASA280032002?open&of=ENG-MYS> .

⁴² *Human Rights and Freedoms in Mongolia: Status Report* (2003). National Human Rights Commission of Mongolia. URL: <http://www.nhrc-mn.org/doclinks.asp?group=reports> . See p.41.

⁴³ See Article 19, Convention against Torture.

⁴⁴ *US State Department 2002 Country Reports on Human Rights Practices: Mongolia*. 31 March 2003. Bureau of Democracy, Human Rights, and Labor. URL: <http://www.state.gov/g/drl/rls/hrrpt/2002/18255.htm>

⁴⁵ *Ibid.*

⁴⁶ *Human Rights and Freedoms in Mongolia: Status Report* (2003). National Human Rights Commission of Mongolia. URL: <http://www.nhrc-mn.org/doclinks.asp?group=reports> . See pp.29-30.

and beat him with electric batons...”. He was held incommunicado for several days, during which intelligence officers allegedly “shone bright lights in his eyes and forced him to listen to the cocking and firing of a handgun in an unsuccessful attempt to coerce him into confessing [to a particular murder].” In December, Damiran was apparently being denied medical treatment for a damaged liver and pancreas, despite his condition being potentially life threatening.⁴⁷

Nepal

Nepal acceded to the Convention against Torture on 14 May 1991. However, it is difficult to see any substantive evidence of a commitment on the part of the Government of Nepal to ending the widespread and systematic torture that exists in the country. This is despite the express prohibition of torture in the Constitution of Nepal (Article 14(4)).

Torture is widespread in Nepal. It often involves rape, electric shocks, beatings or boxing on the ears.⁴⁸ In its 2003 report, the National Human Rights Commission (‘NHRC’) cited the following statistics from the Informal Sector Service Centre (‘INSEC’) showing reported incidences of custodial torture.⁴⁹ They show an alarming recent increase.

<i>Year</i>	<i>Number of people arrested and tortured by State authorities</i>
1997	1 568
1998	2 665
1999	1 139
2000	1 035
2001	2 195
2002	3 430

Torturers enjoy almost complete impunity in Nepal. Contrary to the requirement of the Convention against Torture (Article 4), Nepalese law does not comprehensively proscribe torture (though the Civil Code does outlaw some torturous acts).⁵⁰ In 1996, Nepal passed the *Torture Compensation Act*. Notionally, this Act was to respond to the problem of torture. In truth, it is almost entirely ineffective. There are a number of reasons for this:

- The Act’s definition of torture is narrower than that in the Convention against Torture, as it relates only to torture inflicted when a person is taken into custody.⁵¹

⁴⁷ *Denial of medical care / fear of torture or ill-treatment / legal concern*. 5 December 2003. Amnesty International Urgent Action. URL:

<http://web.amnesty.org/library/Index/ENGASA300022003?open&of=ENG-MNG>

⁴⁸ ‘Nepal: Make torture a crime’ (1 March 2001). *Amnesty International Report*. URL:

<http://web.amnesty.org/library/Index/ENGASA310022001?open&of=ENG-NPL>

⁴⁹ ‘Human Rights in Nepal: A Status Report: 2003’. (June 2003). National Human Rights Commission of Nepal, Kathmandu. See also ‘Human Rights Yearbook 2003’. (April 2003). Informal Sector Service Centre (INSEC), Kathmandu.

⁵⁰ ‘Nepal: Make torture a crime’ (1 March 2001). *Amnesty International Report*. URL:

<http://web.amnesty.org/library/Index/ENGASA310022001?open&of=ENG-NPL>

⁵¹ ‘Human Rights in Nepal: A Status Report: 2003’. (June 2003). National Human Rights Commission of Nepal, Kathmandu at p.38.

- Complaints under the Act are of a civil nature, so it is entirely at the discretion of a victim whether or not to proceed.⁵² This contravenes the principle that torture is a criminal act – sufficiently serious to attract the sanctions and the prosecution of the state.
- There are reports of victims being arrested for having lodged complaints under the Act.⁵³ Indeed, there exists no provision for the protection of victims or witnesses.⁵⁴
- The Act allows a Court to direct a relevant government authority to take *disciplinary* action against a torturer, but the Court cannot impose any direct penalty itself. There is no requirement or formal mechanism for any government authority to report back as to whether that action has been taken.⁵⁵
- Awards of compensation are rare and minimal.⁵⁶
- Even if compensation is awarded, the liability is owed by the State, not by the torturer in person.⁵⁷ In effect, the State indemnifies officers for the acts of torture that they commit.

Nepalese law does not merely turn a blind eye to the problem of torture – its operation provides strong incentives for the practice to exist. The *Evidence Act 1974* provides that confessions obtained by force should be inadmissible. However, it is estimated that 60% of convictions are obtained on the basis of a confession alone – and that about half of such statements are made against the detainee’s free will.⁵⁸

The Government has proven stubbornly uncooperative in its international torture reporting obligations.⁵⁹ Nepal submitted its first report to the Committee against Torture in 1993.⁶⁰ The Committee described the report as “scant on detail”⁶¹ and requested further information within 12 months. Nepal did not provide that information, and is yet to submit its second report (which was due in 1996). This is despite the NHRC reporting that it has provided training in aspects of the reporting mechanism to relevant officials,

⁵² ‘Nepal: Make torture a crime’ (1 March 2001). *Amnesty International Report*. URL: <http://web.amnesty.org/library/Index/ENGASA310022001?open&of=ENG-NPL>

⁵³ Ibid.

⁵⁴ ‘Human Rights in Nepal: A Status Report: 2003’. (June 2003). National Human Rights Commission of Nepal, Kathmandu.

⁵⁵ ‘Nepal: Make torture a crime’ (1 March 2001). *Amnesty International Report*. URL: <http://web.amnesty.org/library/Index/ENGASA310022001?open&of=ENG-NPL>

⁵⁶ Ibid.

⁵⁷ ‘Human Rights in Nepal: A Status Report: 2003’. (June 2003). National Human Rights Commission of Nepal, Kathmandu.

⁵⁸ ‘Human Rights and Administration of Justice: Obligations Unfulfilled’. (June 2003). *International Commission of Jurists, Centre for the Independence of Judges and Lawyers* (Fact-Finding Mission to Nepal). URL: http://www.icj.org/news.php3?id_article=2950&lang=en.

⁵⁹ See the Convention Against Torture, Article 19.

⁶⁰ ‘Human Rights in Nepal: A Status Report: 2003’. (June 2003). National Human Rights Commission of Nepal, Kathmandu.

⁶¹ Concluding observations of the Committee against Torture: Nepal, 12/06/94. UN document A/49/44, paras. 138-147.

and having played a “prominent role in persuading the government to fulfil its reporting obligations...”⁶².

New Zealand

New Zealand signed the Convention against Torture on 14 January 1986 and ratified on 10 December 1989. New Zealand’s compliance with the Convention against Torture is excellent. In its most recent report on New Zealand (in 1998), the Committee against Torture noted only one subject of concern: a specific allegation of violence against prisoners.⁶³ In its most recent periodic report to the Committee against Torture, New Zealand reported the completion of investigation and settlement of claims in that case.⁶⁴

New Zealand maintains a stated reservation to Article 14 of the Convention against Torture. Article 14 requires every State Party to ensure that any victim of torture “has an enforceable right to fair and adequate compensation...”. However, New Zealand “reserves the right to award compensation to torture victims...only at the discretion of the Attorney-General of New Zealand”.⁶⁵ It appears that incidences of torture in New Zealand are rare; indeed, New Zealand’s most recent periodic report to the Committee against Torture claims that in the period 1 January 1995 to 1 January 2001 there have been no charges or convictions for the practice.⁶⁶ However, it is nonetheless the case that New Zealand’s reservation to Article 14 falls short of international best practice, as required by the Convention. APHRN urges the Government of New Zealand to remove its reservation and to allow compensation as an enforceable right.

Of those countries whose NHRIs are members of the APF, only New Zealand has signed the Optional Protocol to the Convention against Torture. It did so on 23 September 2003, following the support of the Human Rights Commission.⁶⁷ APHRN believes that the Government of New Zealand should ratify the Optional Protocol, and urges the Human Rights Commission to lobby the Government to that end.

Philippines

The Philippines acceded to the Convention against Torture on 18 June 1986, though it has not accepted the competence of the Committee against Torture under either Article 21 (relating to State Party complaints) or Article 22 (relating to individual complaints) of the Convention.

⁶² ‘Human Rights in Nepal: A Status Report: 2003’. (June 2003). National Human Rights Commission of Nepal, Kathmandu at p.39.

⁶³ UN document A/53/44, paragraphs 167-178 at paragraph 175. 8 May 1998.

⁶⁴ UN document CAT/C/49/Add.3 at paragraph 33. 9 August 2002.

⁶⁵ See New Zealand’s formal reservation statement.

⁶⁶ UN document CAT/C/49/Add.3 at paragraph 6. 9 August 2002.

⁶⁷ *Annual Report of the Human Rights Commission*. (2003). URL: <http://www.hrc.co.nz/hrc/pdfdocs/Annual%20Report%202002.pdf> . See page 13.

Torture is prohibited by the Constitution (Article 12(2) and Article 19). The Philippines has not expressly defined or proscribed torture in statute, though the Convention against Torture itself may apply with the force of domestic law.⁶⁸

In practice, there remain many cases of torture in the Philippines. In particular, there is substantial evidence showing that torture is used by police forces to extract information and/or confessions.⁶⁹ Torture is apparently used by the army “as part of anti-insurgency operations and directed mainly against members of the New People’s Army and the Muslim Moro Islamic Liberation Front”.⁷⁰

In his 2003 report, the Special Rapporteur on the question of torture reported a number of cases of unlawful detention and ill treatment. He noted that there remain a number of cases that have been raised with the Government since 1998, but which have received no response.⁷¹

Republic of Korea

The Republic of Korea acceded to the Convention against Torture on 9 January 1995.

Torture and other forms of cruel, inhuman and degrading treatment continue in the Republic of Korea (‘South Korea’) in the context of police detention. Of most recent prominence was the death of murder suspect Cho Cheun-hun, who died eight hours after collapsing from physical beating in police custody. Four government officials (the prosecutor in charge of questioning, two investigators and one policeman) were tried and convicted for the incident.⁷²

Numerous other cases of police abuse of detainees have been reported. Police are accused of physical abuse, beatings, threats and sexual intimidation during arrest and interrogation.⁷³ For example, in June 2002, a suspect alleged that during police questioning he was subject to beating and ‘water torture’.⁷⁴ There continue to be reports

⁶⁸ *Philippines*. May 2003. Redress Country Study. URL: <http://www.redress.org/publications/Audit/Philippines.pdf>. See pp. 2 and 5.

⁶⁹ See generally *Philippines*. May 2003. Redress Country Study. URL: <http://www.redress.org/publications/Audit/Philippines.pdf> and “Philippines: Torture persists: Appearance and reality within the criminal justice system”. *Amnesty International Report*. 24 January 2003. URL: <http://web.amnesty.org/library/Index/engASA350012003?OpenDocument&of=COUNTRIES\PHILIPPINES>

⁷⁰ *Philippines*. May 2003. Redress Country Study. URL: <http://www.redress.org/publications/Audit/Philippines.pdf>. See p.3.

⁷¹ *Report of the Special Rapporteur on the question of torture*. 27 February 2003. UN document E/CN.4/2003/68/Add.1. See paragraph 1127.

⁷² *US State Department 2002 Country Reports on Human Rights Practices: Republic of Korea*. 31 March 2003. Bureau of Democracy, Human Rights, and Labor. URL: <http://www.state.gov/drl/rls/hrrpt/2002/18250.htm>

⁷³ *Ibid.*

⁷⁴ “There is reason to suspect beating, water torture took place during questioning”. 30 October 2003. National Human Rights Commission Press Release. URL: http://www.humanrights.go.kr/eng/about/news/NeComitNewsView.jsp?seqid=177&page_num=1&search=torture&choice=content

of police questioning suspects through the night, despite the Supreme Court having ruled that confessions obtained from the sleep-deprived are inadmissible as evidence.⁷⁵

In June 2003, the National Human Rights Commission reported the results of a six-month survey conducted by the Korean Institute of Criminology of 720 detainees in 12 detention centres. The survey produced worrying indications of inhuman or degrading treatment. Of 615 detainees surveyed on the question of physical abuse, 74 said that they were “subject to physical violence from police”. Of the total survey respondents, 19.5% claimed that they were “forced to give a false confession through use of threats, physical violence, torture or sexual violence.”⁷⁶

The use of restraining devices may also constitute torture or other cruel, inhuman or degrading treatment. For example, in March 2001, the National Human Rights Commission presented a written opinion to the Constitutional Court criticising the ongoing restraint of an inmate (Jeong). The man had been bound in restraining devices (metal handcuffs and sometimes leather ropes) for 466 days continuously.⁷⁷

Sri Lanka

Sri Lanka acceded to the Convention against Torture on 3 January 1994. It submitted its initial report to the Committee against Torture on 21 November 1997, more than two years late.⁷⁸ Sri Lanka does not recognise the competence of the Committee under Article 21 (relating to state complaints) or Article 22 (relating to individual complaints) of the Convention.⁷⁹

Sri Lanka enjoys a number of legal mechanisms against torture. The Constitution (Article 11) proscribes torture or other cruel, inhuman or degrading treatment. Sri Lanka enacted the Torture Act No. 22 of 1994 to implement the Convention against Torture. The Act specifically proscribes torture (section 2), and clarifies that neither a public emergency nor the orders of a superior officer may form a defence to a charge of torture (section 3). Provisions of the Prevention of Terrorism Act (PTA) and the Emergency Regulations

⁷⁵ *US State Department 2002 Country Reports on Human Rights Practices: Republic of Korea*. 31 March 2003. Bureau of Democracy, Human Rights, and Labor. URL:

<http://www.state.gov/g/drl/rls/hrrpt/2002/18250.htm>

⁷⁶ *Six-month survey of 720 Detainees in 12 Detention Centres And 360 Police Officers Across the Nation*. 3 June 2003. URL:

http://www.humanrights.go.kr/eng/about/news/NeComitNewsView.jsp?seqid=114&page_num=1&search=torture&choice=content

⁷⁷ *Resorting to Use of Restraining Devices is an Extreme Measure and Should be Minimized*. 16 June 2003. URL:

http://www.humanrights.go.kr/eng/about/news/NeComitNewsView.jsp?seqid=120&page_num=1&search=torture&choice=content

⁷⁸ UN document CAT/C/28/Add.3. 21 November 1997.

⁷⁹ See *Concluding observations of the Committee against Torture: Sri Lanka*. 19 May 1998. UN document A/53/44 paragraphs 243-257 at paragraph 244.

protect officers from prosecution for acts done in the enforcement of those laws – but the protection does not extend to acts of torture.⁸⁰

However, these legal provisions are false promises, for they are barely implemented at all. Torture remains a serious and widespread problem in Sri Lanka. In its summary report, *Redress* claimed that there had been no convictions under the Torture Act. Similarly, in his 2003 report, the Special Rapporteur on the question of torture (Mr Theo van Boven) cited reports that “so far no one has been found guilty by a court of law in relation to charges of torture, or for rape in custody...”.⁸¹ This is despite numerous reports of “extra-judicial killings, “disappearances” and torture on a wide scale” by government forces, particularly against Tamil detainees.⁸² *Redress* asserts that, in the north-east of the country, torture has been “routinely committed following an arrest under the Emergency Regulations (ER) or the Prevention of Terrorism Act (PTA), often in unauthorised places of detention.”⁸³ There appears to have been a significant recent rise in the number of cases of rape in custody.⁸⁴

In April 1999, the Committee against Torture concluded that there existed “well-founded indications that torture was being systematically practiced in the territory of Sri Lanka”, and took the extraordinary step of launching an inquiry under Article 20 of the Convention against Torture.⁸⁵ The Committee ultimately concluded that torture was not ‘systematic’ in Sri Lanka (within the meaning of Article 20 of the Convention), but reported that “[t]orture is frequently resorted to” by police, army and paramilitary forces.⁸⁶

In his 2003 report, the Special Rapporteur drew attention to these findings of the Committee. He also expressed concern that Sri Lanka has not responded to a number of cases brought to the Government’s attention since 1998.⁸⁷

Thailand

Thailand is yet to sign the Convention against Torture. Signature and ratification of this Convention is a necessary step for Thailand to formally commit to ending torture and

⁸⁰ *Sri Lanka*. May 2003. Redress Country Study. URL:

<http://www.redress.org/publications/Audit/SriLanka.pdf>. See p.7.

⁸¹ *Report of the Special Rapporteur on the question of torture*. 27 February 2003. UN document E/CN.4/2003/68/Add.1. See paragraph 1486.

⁸² *Sri Lanka*. May 2003. Redress Country Study. URL:

<http://www.redress.org/publications/Audit/SriLanka.pdf>. See p.2.

⁸³ *Ibid.* See p.3.

⁸⁴ *Sri Lanka*. May 2003. Redress Country Study. URL:

<http://www.redress.org/publications/Audit/SriLanka.pdf>. See p.3. Also, see *Report of the Special Rapporteur on the question of torture*. 27 February 2003. UN document E/CN.4/2003/68/Add.1 at paragraph 1486.

⁸⁵ *Report of the Committee against Torture: 27th session and 28th session*. (2002). UN document A/57/44 at paragraphs 126 and 127.

⁸⁶ *Ibid.* See paragraphs 176, 181 and 182.

⁸⁷ *Report of the Special Rapporteur on the question of torture*. 27 February 2003. UN document E/CN.4/2003/68/Add.1. See paragraph 1696.

other cruel, inhuman or degrading treatment, as well as to allowing the important oversight of the Committee against Torture. Thailand should sign and ratify the Convention without delay, and the National Human Rights Commission of Thailand must lobby proactively for this goal. Indeed, the Thai Government must do more on a number of fronts to end torture.

Torture and other forms of ill-treatment are prevalent in Thai detention centres. Police and army officers are reported to use torture and other forms of ill-treatment (including beatings), both to obtain confessions and for purposes of punishment or humiliation.⁸⁸ Police have been investigated and prosecuted for raping and extorting sex from female detainees.⁸⁹ Credible reports assert that prisoners captured in escape attempts are severely beaten.⁹⁰ Further, prisoners – particularly prisoners on death row – are routinely shackled in heavy leg irons. This is an unnecessary and demeaning treatment that is not permitted under Thai law.⁹¹ Indeed, Thai prison conditions generally are inhuman and degrading – extreme overcrowding and general neglect prevent adequate provision of food, health care and sanitation.⁹²

Thailand's refugee policy falls well short of international standards against torture. Specifically, Thailand has traditionally understood refugees as “persons fleeing armed conflict” – a definition that is substantially narrower than that provided by international law. This means that Thailand may return those fleeing persecution (including torture) into the hands of their persecutors. This breaches the fundamental principle in international law of *non-refoulement*.⁹³ For example, in November 2003, the Thai judiciary granted the request of Cambodian authorities to deport Sok Yoeun to Cambodia – despite the man being recognised as a refugee by the United Nations High Commission for Refugees (UNHCR).⁹⁴

It is a matter of good fortune, rather than state policy, that the Cambodian authorities subsequently dropped their request on 15 January 2004 and the Thai Government allowed Sok Yoeun to rejoin his family in Finland.⁹⁵

⁸⁸ *Thailand: Widespread use of torture – from policing to prisons*. 11 June 2002. Amnesty International Press Release. URL: <http://web.amnesty.org/library/Index/ENGASA390052002?open&of=ENG-THA> .

⁸⁹ *US State Department 2002 Country Reports on Human Rights Practices: Thailand*. 31 March 2003. Bureau of Democracy, Human Rights, and Labor. URL: <http://www.state.gov/g/drl/rls/hrrpt/2002/18265.htm>

⁹⁰ *Ibid.*

⁹¹ *Thailand: Widespread use of torture – from policing to prisons*. 11 June 2002. Amnesty International Press Release. URL: <http://web.amnesty.org/library/Index/ENGASA390052002?open&of=ENG-THA> .

⁹² *Ibid.*

⁹³ Zia-Zarifi S, *Thailand: Harsh Policy Towards Burmese Refugees*. 27 January 2004. Human Rights Watch Commentary. URL: <http://hrw.org/english/docs/2004/01/27/thaila7075.htm> .

⁹⁴ *Thailand/Cambodia: Shocking extradition decision by Thai judiciary*. 28 November 2003. Amnesty International Press Release. URL: <http://web.amnesty.org/library/Index/ENGASA390132003?open&of=ENG-THA> .

⁹⁵ *Thailand/Cambodia: Good news – Sok Yoeun will be released*. 19 January 2004. Amnesty International Press Release. URL: <http://web.amnesty.org/library/Index/ENGASA390022004?open&of=ENG-THA> .