

Stakeholder Report for the Universal Periodic Review of Nepal

3rd Cycle of the Universal Periodic Review

Submission by

Transcultural Psychosocial Organization Nepal (TPO Nepal)

International Alert

The Forum for Women, Law and Development (FWLD)

With the technical support of the International Rehabilitation Council for Torture Victims (IRCT)



About TPO Nepal

Transcultural Psychosocial Organization Nepal (TPO Nepal) is one of Nepal's leading psychosocial organization established in 2005 with the aim of promoting psychosocial well-being and mental health of children and families in conflict affected and other vulnerable communities. TPO Nepal is a knowledge-driven, innovative organization working in areas disrupted by violence and poverty. We strive to develop local psychosocial, mental health and conflict resolution capacity and systems that promote community resilience, quality of life and self-reliance through education, research, service delivery and advocacy. TPO Nepal is a member center of International Rehabilitation Council for Victims of Tortures (IRCT) More details at: <https://tponepal.org>

About FWLD

Forum for Women, Law and Development (FWLD) is an autonomous, non-profit, non-governmental organization established on May 29, 1995 to work for the protection, promotion and enjoyment human rights. In order to eliminate all forms of discrimination, FWLD uses law as an instrument to ensure the rights of women, children, minorities, conflict victims and all other marginalized groups. FWLD has been involved in filing noteworthy Public Interest Litigations (PILs), a tool used for the reform and for the effective enforcement of laws. Through PILs, FWLD has been successful in criminalizing marital rape, in ensuring confidentiality to victims and witnesses in many cases of gender-based violence including cases of transitional justice. More details at www.fwld.org

About International Alert

International Alert is an international non-profit peace building organization that has worked for over 30 years to lay the foundations for sustainable development. Working in over 25 countries, we aim to support governments own development efforts and help build skills and capacity through strengthening government service delivery system, promoting community voice and resilience to gender-based violence, and support inclusive development initiatives. International Alert has been working actively and closely together with Nepalese civil society organizations including women's and youth organizations, private sectors, and justice sectors for over a decade, assisting them to enhance access to justice and security services for sustainable peace and development in Nepal. More details at: www.international-alert.org

About the IRCT

As a network of over 150 torture rehabilitation centres in 75 countries, the International Rehabilitation Council for Torture Victims (IRCT) is the world's largest membership-based civil society organisation specialised in the field of torture rehabilitation. The work of the IRCT provides context to health-based rehabilitation within all pillars of the global fight against torture: prevention, accountability and reparation. Our key distinctive feature is a holistic health-based approach to torture rehabilitation. In addition, we define ourselves as private, non-partisan, and not-for-profit, as well as being governed by democratic structures. More details at www.irct.org

Introduction

Torture, ill-treatment, extrajudicial killings, and enforced disappearances occurred systematically during Nepal's civil war, which ended in 2006 while, victims from that period have not received justice or redress for the violations they suffered. In the post-civil war era, torture and ill-treatment continue to be practiced in Nepal in a criminal justice context.

The following report is based on information collected and documented by social workers, lawyers, and health professionals, and advocates at Transcultural Psychosocial Organization (TPO) Nepal, International Alert and the Forum for Women, Law and Development (FWLD).

The report focuses on three major issues to fight against impunity and prevent torture and ill-treatment in Nepal.

- I. Torture and ill-treatment
- II. Detention conditions
- III. Transitional Justice

I. Torture and Ill-treatment

Previous UPR Recommendations:

1. In the previous cycle, Nepal received and accepted recommendations to criminalize torture and punish perpetrators (121.3; 121.4), effectively investigate allegations of torture (121.3; 121.26) to provide redress and reparations to victims (121.3), and to prevent torture (122.26).
2. In the previous cycle, Nepal received and noted recommendations to ratify and accede to the Optional Protocol to the Convention against Torture (123.3; 123.4; 123.5; 123.6)

Current Situation:

3. Torture is still used frequently in Nepal as a tool for collecting evidence in criminal investigations, suppression of dissent in society and ostensibly to maintain social order. Perpetrators of torture are mostly law enforcement and military personnel and whereas torture mostly takes place in places of detention, there are also increasing reports of torture occurring in unofficial places of detention, including in vehicles on the road or in the victim's home.
4. Evidence shows that most torture victims continue to suffer from psychological problems. However, mental health service and psychosocial support has not been sufficiently prioritized by the government. The government of Nepal does not have a clear vision to offer rehabilitation services to torture victims in accordance with the UN Convention against Torture. Although the Nepal Disability Rights Act 2017 states that every person should receive basic mental health and psychosocial services from government health facilities, this has not been implemented effectively. Community mental health services are not available and only few areas have access to mental health and psychosocial services. According to studies, around 90% of the people with mental health problems have not received proper treatment in Nepal¹.

¹ Luitel, N. P., Jordans, M. J. D., Kohrt, B. A., Rathod, S. D., & Komproe, I. H. (2017). Treatment gap and barriers for mental health care: A cross-sectional community survey in Nepal. *PLoS ONE*, 12(8), Article e0183223. <https://doi.org/10.1371/journal.pone.0183223>

5. Despite having ratified several international treaties and having enacted legislation, the government of Nepal has not been able to provide adequate support to survivors of torture. On 14 May 1991, Nepal ratified the UN Convention against Torture and in 1996, the government adopted the Torture Compensation Act, which provides compensation of up to 100,000 Nepali Rupees to victims as well as limited disciplinary sanctions for the perpetrator. The 2015 Constitution of Nepal defines torture as an illegal act and contains a constitutional guarantee to criminalize torture as a punishable act and provide compensation to victims. A Torture Act has been tabled in the parliament and is currently pending.
6. The Torture Compensation Act 1996 failed to criminalize torture and provide adequate reparations to victims. There is a 35-day statute of limitation for claimants, perpetrators only face disciplinary action and the compensation is limited to 100,000 Nepali Rupees (approximately \$1000 USD). Judicial processes do not take into consideration the specific vulnerabilities or trauma of the victim and victims are not provided with any rehabilitation support throughout the procedure. The Act is therefore highly restrictive: setting a 35-day limit for making claims, requires that torture occurs in a place of detention, requires that government employees be involved, limits the amount of compensation that can be granted, and only indirectly links compensation for victims to punishment of perpetrators. In practice this means that compensation is rarely granted as victims need to be aware of their rights, and be in a position to quickly mobilise resources to file their complaints.
7. An Anti-Torture Bill was introduced and tabled in the Nepali parliament in 2014 and is a welcome step forward in the fight against torture. However, there is a need for the parliament to consult widely with relevant civil society actors to ensure that the law complies with international obligations. The Bill is intended to supersede and replace the Torture Compensation Act 1996 and enables a court to order compensation of up to 500,000 Nepali rupees to victims (approximately \$5000), which is still inadequate. Redress in the Bill is limited to reparation and compensation and does not include restitution, rehabilitation, or guarantees of non-repetition as is required in international law. The inclusion of all these elements are essential to ensuring that the Bill complies with international obligations on redress.

Recommendations

- Ratify the Optional Protocol to the Convention against Torture
- Ensure that the proposed Anti-Torture Act complies with international standards
- Establish an effective independent mechanism to investigate all allegations of torture and ill-treatment
- Ensure that all victims of torture have access to holistic rehabilitation services
- Develop joint monitoring mechanism and include civil society organizations and lawyers to monitor places of detention
- Promote systematic research on torture to identify the impact of torture on social, emotional and economic wellbeing
- Establish strong coordination mechanism among different layers of government, civil society organizations and political leader to protect and promote human rights of torture victims

- Ensure that the National Women Commission, National Dalit Commission and the National Human Rights Commission work together with civil society to implement and adopt relevant anti-torture policies in line with international standards

II. Detention conditions:

Previous UPR Recommendations:

8. During the previous cycle, Nepal received and accepted recommendations to ensure the safety of prisoners (121.23)

Current Situation:

9. In Nepal, prison and detention centre conditions, especially for those in pretrial detention, are poor and do not meet international standards. The Office of the Attorney General reported in its survey of 31 prisons, that facilities designed to hold 4,308 inmates held over 7,900 convicted prisoners. Due to a lack of adequate juvenile detention facilities, authorities sometimes incarcerated pretrial detainee children with adults or allowed children to remain in jails with their incarcerated parents.
10. The Office of the Attorney General reported that prisoners and detainees in the 31 detention centres it monitored had been deprived of regular medical check-up and treatment. Human rights organization reported that most prisons lacked separate facilities for women, children, and persons with disabilities. Likewise, medical examinations for detainees generally were perfunctory and reported medical care was poor for detainees with serious conditions.
11. Many detainees sleep on the floor due to lack of beds and only have access to unfiltered and dirty water and inadequate food. Many detention centres are poorly lit, ventilated, heated and bedded.
12. Prisoners and detainees are generally allowed visits by the Office of the Attorney General, the National Human Rights Commission, the National Women Commission and the National Dalit Commission as well as by their lawyers. Civil society organizations, however, are often prevented from meeting with detainees or accessing detention facilities, although some independent human rights observers, including the United Nations and international organizations, were given such access. NGO access to places of detention is critical because it is these organisations that provides psychosocial support and basic needs in the absence of public programs. In contexts of poor detention facilities, it is vital for NGOs to have effective access to the places of detention.

Recommendations

- Upgrade infrastructure of prisons and detention centres as per international standards
- Enhance capacity of staff in prison and detention centres on basic communication skills and provision of psychosocial support.
- Develop and implement gender sensitive approaches to address the special needs of female, male and LGBTIQ prisoners.

III. Transitional Justice:

Previous UPR Recommendations:

13. During the previous cycle, Nepal received and accepted recommendations to ensure that the TRC and CIEPD effectively function in accordance with international standards (121.28; 122.5; 122.61; 122.64; 123.28) implement the Supreme Court decision of 26 February 2015 (122.4; and to ensure the effective participation of women (122.65).

Current Situation:

14. Nepal underwent a gruelling civil war from 1996 to 2006 when the Communist Party of Nepal (Maoists), CPN (M), launched an armed uprising against the country's monarchy. Over 13,000 were killed and 1,300 went missing² while torture, ill-treatment, extrajudicial killings, sexual violence, long-term arbitrary detention and enforced disappearances were widespread, endemic and systematic practices³. The war officially ended in November 2006 when the government and the CPN (M) signed a Comprehensive Peace Agreement, which called for a transitional justice process to address the human rights violations committed during the conflict. The Comprehensive Peace Accord (CPA) bound Government of Nepal and the then CPN (Maoist) to commit in establishing the truth about conduct of the war and ensuring the victims of the conflict receive both justice and reparations.⁴
15. The peace agreement brought back democracy to Nepal, introduced an interim constitution and led to the adoption of Nepal's current constitution in 2015. Two transitional justice mechanisms were formed in 2015 – The Truth and Reconciliation Commission (TRC) and the Commission on Investigation of Disappeared Persons (CIEPD) with a mandate of two years and possibility of one-year extension, which has already been extended three times. One out of five commissioners in both commissions are female but there are no representatives of the LGBTI community.
16. Unfortunately, both commissions have failed to effectively address the complaints brought to them by victims and their families and have yet to publicize their findings despite having received over 60,000 complaints.
17. One of the key problems with the commissions is their ability to grant amnesty to perpetrators of human rights violations. In 2014, the Supreme Court of Nepal found these powers to be unconstitutional and struck them down. Despite this, the government has still not amended the law to remove these powers from the commissions.
18. Another issue has been the lack of a gender-sensitive approach for collecting information and receiving complaints. Victims, especially women and persons from LGBTI groups, have felt neglected and alienated from the process. There were no consultations with relevant victims groups and civil society at the time of drafting the TRC Act and in the formation in the appointment of commissioners.
19. When the commissions called on victims to provide information and file complaints, they formed local peace committees, which comprised almost entirely of men with little experience or knowledge in handling sensitive issues like rape and sexual violence. However, the commissions did not take proper measures to ensure proper participation which resulted into few complaints

² OHCHR, *Nepal Conflict Report 2012*. https://www.ohchr.org/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf (Accessed on 22 June, 2020). Web.

³IBID

⁴ Comprehensive Peace Accord 2006, Articles 5, 2.4, 5.3.5 and 7.1.3

of sexual violence.⁵ There has been lack of appropriate mechanisms to ensure confidentiality as well as a lack of female personnel to investigate cases of rape and sexual violence, which has led to a fear of stigmatization and potential re-victimization, despite clear provisions in the Truth and Reconciliation Commission Complaint Investigation Procedure⁶. This has meant that many victims of rape and sexual violence did not report their complaints, such that only 300 of the over 60,000 complaints received were of sexual violence.

20. The Supreme Court in *Suman Adhikari et al vs Government of Nepal* found that a number of sections of the Act have violated the Supreme Court's previous decisions, Constitution of Nepal and international obligations as well.⁷ Civil society organizations and the UN, called Government of Nepal to amend the law. The OHCHR wrote to the government of Nepal to amend the Act so that it is fully consistent with Nepal's obligation under international law.⁸ The Minister of Foreign Affairs has stated that the government is preparing for the amendment of the laws in consultation with and participation of the victims.⁹ However, the government has not yet amended the Act. The Government developed a UPR Action Plan Matrix for the implementation of UPR recommendations which was uploaded in the Ministry's website on March 11, 2018.¹⁰ One of the points in the UPR Action Plan Matrix states that the Government will prepare a bill to amend the Act establishing the TRC and the CIEDP as per the decision of the Supreme Court, prepare a bill to implement the Geneva Convention and present it to the parliament and prepare a legal framework to protect victims and witnesses and present it in the parliament.¹¹ It also committed to investigate grave violations of human rights, prioritize the transitional justice process and mobilise international support, ensuring unhindered access to a rehabilitation package for all child soldiers and provide free legal assistance to victims as part of the reparation package for victims of human rights violation.¹²
21. There have been some positive aspects in the context of transitional justice. The Supreme Court has provided legal backing for faster verdicts in cases filed against the government, and struck down the powers of the commissions to offer amnesty to perpetrators.
22. Finally, the composition of the members of these commissions has also been a highly contentious issue in Nepal, with appointees often selected on the basis of political affiliation, rather than competence. This lack of independence has further eroded trust in these processes, making it less likely that victims receive justice.

⁵ Press releases of the TRC and CIEDP

⁶ Number 4, Special Provisions relating to rape and sexual violence cases, the Truth and Reconciliation Commission Complaint Investigation Procedure, 2016

⁷ *Suman Adhikari et al v Prime Minister and cabinet of ministers et. al.*, Decision of 2013 A.D. Writ no. 070-WS-0050.

⁸ OHCHR, *Technical Note on The Nepal Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2071 (2014) – as Gazetted 21 May 2014*, https://www.ohchr.org/Documents/Countries/NP/OHCHRTechnical_Note_Nepal_CIDP_TRC_Act2014.pdf (Accessed on 22 June, 2020). Web

⁹ Ministry of Foreign Affairs, *Statement by Honorable Mr. Pradeep Kumar Gyawali Minister for Foreign Affairs at the High level Segment of the 40th Session of Human Rights Council February 26, 2019*, <https://mofa.gov.np/tatement-by-honourable-mr-pradeep-kumar-gyawali-minister-for-foreign-affairs-of-nepal-and-head-of-delegation-to-the-high-level-segment-of-the-40th-session-of-human-rights-council/> (Accessed on June 22, 2020). Web

¹⁰ Office of the Prime Minister & Council Of Ministers, *UPR Action Plan 2016-2011 Matrix Nepal*, https://opmcm.gov.np/wp-content/uploads/2018/03/UPR-Action-Plan-2016-2011_Matrix_Nepali.pdf (Accessed on June 22, 2020)

¹¹ IBID

¹² IBID

Proposed Recommendations

- Implement the decision of the Supreme Court of 26 February 2015 (with regard to the incompatibility of the Truth and Reconciliation Commission and the Commission on Disappearances with Nepal's international obligations), as soon as possible along with amendment of TRC Act to bring it in line with rulings of Supreme Court of Nepal
- Immediately provide interim relief packages to victims of the conflict including medical support, psychological and psychosocial government run workshops
- Take appropriate measures to ensure the independence of the Commissions and allocation of resources for the operation in the two commissions.
- Ensure impartiality in providing justice towards the issues of conflict victims by disregarding any political agenda within the Commissions and ensure no prevention in judicial proceedings to either investigation or prosecution of conflict victim perpetrators