



**Welcome Remarks by Jyoti Sanghera,
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**Delivered at the Panel Discussion to mark
International Day in Support of Victims of Torture (26 June)
OHCHR-Nepal, Kathmandu, 3 July 2008**

Thank you for coming here today. As you may know, this programme was originally scheduled for the 26th of June, but was cancelled because of a bandh. As you also might know, June 26th, marked the 21st anniversary of the coming into force of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Commemorated as the UN International Day in Support of Victims of Torture, this day is an opportunity to raise awareness that torture is still widely practiced, to focus on the plight of those who have survived its horrors, and to underscore their right to a remedy and reparation. It is also appropriate on this day to remind the Government of the State's obligation to make torture a criminal offence, to encourage investigation and prosecution of acts of torture, and to continue our campaign for an end to its use.

I would like to thank the International Commission of Jurists and Advocacy Forum for helping to organize today's panel discussion. OHCHR-Nepal very much appreciates the opportunity to partner with these organizations in this important initiative. I would also like to thank all the panelists for generously contributing their time.

Torture and other forms of cruel, inhuman or degrading treatment or punishment are among the most serious human rights violations. Human dignity is at the heart of human rights, and there is no greater affront to human dignity than torture. We all know that ill-treatment and torture were systematically applied by the parties to the conflict, but it would be wrong for us to think that ill-treatment and torture no longer exist in Nepal now that the conflict has ended. In many parts of the country, these violations of human rights continue to be committed in places of detention. Acts of ill-treatment and torture have also been committed by non-state actors, often under the guise of parallel 'law enforcement' activities. Thus, ending ill-treatment and torture remains as important today as it was before.

OHCHR-Nepal's own work to address torture includes monitoring and documenting systematic ill-treatment and torture, and regular visits to police stations to monitor police custody cells. In 2007, OHCHR-Nepal documented more than 250 incidents of alleged ill-treatment and torture in police custody, and in the first quarter of 2008, the office documented 64 such incidents.

The National Human Rights Commission (NHRC) receives complaints from victims on various human rights violations/abuses. It also has the power to take action on its own initiative in relation to violations. From March 2006 to March 2007, the Commission received 272 complaints related to torture/ill-treatment committed by the State, the Communist Party of Nepal-Maoist (CPN-M), and others. A main challenge in relation to these complaints is the implementation of the NHRC's recommendations on torture cases.

In addition to seeking a remedy through the NHRC, victims of torture have the opportunity to seek relief under the Torture Compensation Act (TCA); however the general consensus is that the Act has proven to be ineffective. By its terms, the Act focuses on financial compensation to the exclusion of other forms of reparation – such as restitution, rehabilitation, satisfaction and guarantees of non-repetition – yet in practice it has rarely resulted in payment to victims. The Government has been reluctant to provide compensation to victims of torture because in so doing it would be acknowledging such acts. Additionally, the Government offers no protection for victims or witnesses of torture who may face additional threats as a result of their seeking relief.

Prosecution of acts of torture or ill-treatment has also rarely taken place. Despite Nepal's obligation under the Convention Against Torture to make torture a criminal offence, and the requirement of the Interim Constitution that torture and ill-treatment shall be punishable by law, neither act has been effectively criminalized. This constitutes a very serious obstacle to the prosecution of the perpetrators of such conduct.

The Government has stated that it is drafting a Torture Act, but no draft has been made public. OHCHR-Nepal again encourages the Government to make a draft available for public scrutiny and to avail itself of the expertise of its Office and other national and international experts before the Act is finalized.

Moreover, any such legislation should fully implement Nepal's obligations under the Convention Against Torture. In line with international standards, legislation should particularly ensure that prosecution for torture can be carried out by civilian courts and that the Army Act of 2006, which requires that Nepalese Army personnel responsible for torture be tried by a special court martial, is amended.

Pending the enactment of such legislation, existing criminal laws should be used to prosecute at least some of the conduct that constitutes torture and ill-treatment. Criminal investigations and prosecutions should be undertaken, where appropriate, for assault and battery, mutilation, rape and attempted murder.

Concerted action and political will is needed to ensure that appropriate measures are taken to stop ill-treatment and torture, and to dismantle the culture of impunity that still exists in Nepal. The recommendations of the NHRC in relation to torture should be implemented. Existing mechanisms such as the Torture Compensation Act should be improved and made to function effectively. Further important steps should also be taken, including incorporating the provisions of the Convention against Torture into domestic law, ratifying the Convention's Optional Protocol, defining torture as a crime in national criminal law, and prosecuting those responsible. Each of these efforts will be important steps forward in the country's transition from conflict to peace. In this regard, OHCHR stands ready to support all initiatives to help end torture in Nepal.

Thank you.