

ACHR Asks UN to Examine Torture Cases in Nepal

Kathmandu, November 3:

After 11 years, the United Nations Committee Against Torture (CAT) is scheduled to examine the second periodic report of Nepal during its 35th Session from 7 to 25 November 2005, reports said on Wednesday.

Asian Centre for Human Rights(ACHR) has submitted an alternate report titled, Torture in Nepal: A Case for Investigation by CAT. ACHR provided information on the prevailing situation and specific recommendations for possible inclusion in the Final Concluding Observations.

Since the examination of the initial report in May 1994 by CAT, Nepal has been caught in serious internal armed conflicts with the Maoists. Over 12,000 persons have been killed and gross human rights violations including torture have been perpetrated both by the security forces and the Maoists.

The definition of torture under the Compensation Relating to Torture Act of 1996 does not conform to Article 1 of the Convention Against Torture. Torture is not defined as a "criminal offence" under any domestic law. Although the government of Nepal urged that under the Nepal Treaty Act of 1991 international treaties ratified by Nepal prevail over the domestic laws, in practice, there is little awareness on international treaties among the judges! Since the Torture Compensation Act came into force in 1996, according to Special Rapporteur on Torture, Manfred Nowak, compensation has actually been paid out only in one case to date, despite several decisions by the courts to award compensation.

The Terrorist and Disruptive Activities Ordinance (TADO) imposed in October 2004 and the Public Security Act provide the police and the army sweeping powers to detain suspects for preventive reasons for prolong period. Detainees are subjected to brutal torture in detention, and the lack of adequate guarantees of the rights of persons deprived of liberty including, inter alia, to notify a close relative or third party, to have access to medical assistance, not to be subjected to torture or incriminate oneself are further jeopardised by the immunity granted to the officials under Section 20 of TADO for any activity carried out or attempted to be carried out in good faith.

The government has been muzzling the press and made human rights defenders defenseless by introducing respectively the "Ordinance Amending Some Nepal Acts related to Media" of 2005 and the Code of Conduct for NGOs. These measures have further increased the risk of torture and other human rights violations given the restrictions under which media and NGOs are constrained to operate.

In its second periodic report, the government of Nepal appears to have adopted "diplomacy of acceptance" by acknowledging occurrence of human rights violations in its territory to beguile the Committee Against Torture. As UN Special Rapporteur, Manfred Nowak stated on 16 September 2005 after a field visit to the country, torture "is systematically practiced in Nepal by the police, armed police and the RNA in order to extract confessions and to obtain intelligence, among other things". Nepal is a fit case for investigation by the Committee Against Torture.