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COMMEMORATIVE ISSUE  
HUMAN RIGHTS IN MOTION



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HUMAN RIGHTS

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# INTRODUCTION



## HUMAN RIGHTS IN MOTION: A MAP TO A MOVEMENT'S FUTURE

Lucia Nader (Executive Director, Conectas)  
Juana Kweitel (Program Director, Conectas)  
Marcos Fuchs (Associate Director, Conectas)

**Sur Journal** was created ten years ago as a vehicle to deepen and strengthen bonds between academics and activists from the Global South concerned with human rights, in order to magnify their voices and their participation before international organizations and academia. Our main motivation was the fact that, particularly in the Southern hemisphere, academics were working alone and there was very little exchange between researchers from different countries. The journal's aim has been to provide individuals and organizations working to defend human rights with research, analyses and case studies that combine academic rigor and practical interest. In many ways, these lofty ambitions have been met with success: in the past decade, we have published articles from dozens of countries on issues as diverse as health and access to treatment, transitional justice, regional mechanisms and information and human rights, to name a few. Published in three languages and available online and in print for free, our project also remains unique in terms of geographical reach, critical perspective and its Southern 'accent'. In honour of the founding editor of this journal, **Pedro Paulo Poppovic**, the 20<sup>th</sup> issue opens with a biography (by João Paulo Charleaux) of this sociologist who has been one of the main contributors to this publication's success.

This past decade has also been, in many ways, a successful one for the human rights movement as a whole. The Universal Declaration of Human Rights has recently turned 60, new international treaties have been adopted and the old but good global and regional monitoring systems are in full operation, despite criticisms regarding their effectiveness and attempts by States to curb their authority. From a strategic perspective, we continue to use, with more or less success, advocacy, litigation and naming-and-shaming as our main tools for change. In addition, we continue to nurture partnerships between what we categorize as local, national and international organizations within our movement.

Nevertheless, the **political and geographic coordinates** under which the global human

rights movement has operated have undergone profound changes. Over the past decade, we have witnessed hundreds of thousands of people take to the streets to protest against social and political injustices. We have also seen emerging powers from the South play an increasingly influential role in the definition of the global human rights agenda. Additionally, the past ten years have seen the rapid growth of social networks as a tool of mobilization and as a privileged forum for sharing political information between users. In other words, the journal is publishing its 20<sup>th</sup> issue against a backdrop that is very different from that of ten years ago. The protests that recently filled the streets of many countries around the globe, for example, were not organized by traditional social movements nor by unions or human rights NGOs, and people's grievances, more often than not, were expressed in terms of social justice and not as rights. Does this mean that human rights are no longer seen as an effective language for producing social change? Or that human rights organizations have lost some of their ability to represent wronged citizens? Emerging powers themselves, despite their newly-acquired international influence, have hardly been able – or willing – to assume stances departing greatly from those of “traditional” powers. How and where can human rights organizations advocate for change? Are Southern-based NGOs in a privileged position to do this? Are NGOs from emerging powers also gaining influence in international forums?

It was precisely to reflect upon these and other pressing issues that, for this 20<sup>th</sup> issue, SUR's editors decided to enlist the help of over 50 leading human rights activists and academics from 18 countries, from Ecuador to Nepal, from China to the US. We asked them to ponder on what we saw as some of the most urgent and relevant questions facing the global human rights movement today: 1. Who do we represent? 2. How do we combine urgent issues with long-term impacts? 3. Are human rights still an effective language for producing social change? 4. How have new information and communication technologies influenced activism? 5. What are the challenges of working internationally from the South?

The result, which you now hold in your hands, is a **roadmap for the global human rights movement** in the 21<sup>st</sup> century – it offers a vantage point from which it is possible to observe where the movement stands today and where it is heading. The first stop is a reflection on these issues by the founding directors of Conectas Human Rights, **Oscar Vilhena Vieira** and **Malak El-Chichini Poppovic**. The roadmap then goes on to include **interviews** and **articles**, both providing in-depth analyses of human rights issues, as well as **notes from the field**, more personalized accounts of experiences working with human rights, which we have organized into **six categories**, although most of them could arguably be allocated to more than one category:

**Language.** In this section, we have included articles that ponder the question of whether human rights – as a utopia, as norms and as institutions – are still effective for producing social change. Here, the contributions range from analyses on human rights as a language for change (**Stephen Hoggood** and **Paulo Sérgio Pinheiro**), empirical research on the use of the language of human rights for articulating grievances in recent mass protests (**Sara Burke**), to reflections on the standard-setting role and effectiveness of international human rights institutions (**Raquel Rolnik**, **Vinodh Jaichand** and **Emílio**

**Álvarez Icaza**). It also includes studies on the movement's global trends (**David Petrusek**), challenges to the movement's emphasis on protecting the rule of law (**Kumi Naidoo**), and strategic proposals to better ensure a compromise between utopianism and realism in relation to human rights (**Samuel Moyn**).

**Themes.** Here we have included contributions that address specific human rights topics from an original and critical standpoint. Four themes were analysed: economic power and corporate accountability for human rights violations (**Phil Bloomer, Janet Love and Gonzalo Berrón**); sexual politics and LGBTI rights (**Sonia Corrêa, Gloria Careaga Pérez and Arvind Narrain**); migration (**Diego Lorente Pérez de Eulate**); and, finally, transitional justice (**Clara Sandoval**).

**Perspectives.** This section encompasses country-specific accounts, mostly field notes from human rights activists on the ground. Those contributions come from places as diverse as Angola (**Maria Lúcia da Silveira**), Brazil (**Ana Valéria Araújo**), Cuba (**María-Ileana Faguaga Iglesias**), Indonesia (**Haris Azhar**), Mozambique (**Salvador Nkamate**) and Nepal (**Mandira Sharma**). But they all share a critical perspective on human rights, including for instance a sceptical perspective on the relation between litigation and public opinion in Southern Africa (**Nicole Fritz**), a provocative view of the democratic future of China and its relation to labour rights (**Han Dongfang**), and a thoughtful analysis of the North-South duality from Northern Ireland (**Maggie Beirne**).

**Voices.** Here the articles go to the core of the question of whom the global human rights movement represents. **Adrian Gurza Lavalle** and **Juana Kweitel** take note of the pluralisation of representation and innovative forms of accountability adopted by human rights NGOs. Others study the pressure for more representation or a louder voice in international human rights mechanisms (such as in the Inter-American system, as reported by **Mario Melo**) and in representative institutions such as national legislatures (as analysed by **Pedro Abramovay and Heloisa Griggs**). Finally, **Chris Grove**, as well as **James Ron, David Crow and Shannon Golden** emphasize, in their contributions, the need for a link between human rights NGOs and grassroots groups, including economically disadvantaged populations. As a counter-argument, **Fateh Azzam** questions the need of human rights activists to represent anyone, taking issue with the critique of NGOs as being overly dependent on donors. Finally, **Mary Lawlor and Andrew Anderson** provide an account of a Northern organization's efforts to attend to the needs of local human rights defenders as they, and only they, define them.

**Tools.** In this section, the editors included contributions that focus on the instruments used by the global human rights movement to do its work. This includes a debate on the role of technology in promoting change (**Mallika Dutt and Nadia Rasul**, as well as **Sopheap Chak and Miguel Pulido Jiménez**) and perspectives on the challenges of human rights campaigning, analysed provocatively by **Martin Kirk** and **Fernand Alphen** in their respective contributions. Other articles point to the need of organizations to be more grounded in local contexts, as noted by **Ana Paula Hernández** in relation to Mexico, by **Louis Bickford** in what he sees as a convergence towards the global middle, and finally by **Rochelle Jones, Sarah Rosenhek and Anna Turley** in their movement-support model. In addition, it is noted by **Mary Kaldor** that NGOs are not the same as civil society,



properly understood. Furthermore, litigation and international work are cast in a critical light by **Sandra Carvalho and Eduardo Baker** in relation to the dilemma between long and short term strategies in the Inter-American system. Finally, **Gastón Chillier and Pétalla Brandão Timo** analyse South-South cooperation from the viewpoint of a national human rights NGO in Argentina.

**Multipolarity.** Here, the articles challenge our ways of thinking about power in the multipolar world we currently live in, with contributions from the heads of some of the world's largest international human rights organizations based in the North (**Kenneth Roth** and **Salil Shetty**) and in the South (**Lucia Nader, César Rodríguez-Garavito, Dhananjayan Sriskandarajah** and **Mandeep Tiwana**). This section also debates what multipolarity means in relation to States (**Emilie M. Hafner-Burton**), international organizations and civil society (**Louise Arbour**) and businesses (**Mark Malloch-Brown**).

Conectas hopes this issue will foster debate on the future of the global human rights movement in the 21<sup>st</sup> century, enabling it to reinvent itself as necessary to offer better protection of human rights on the ground.

Finally, we would like to emphasize that this issue of Sur Journal was made possible by the support of the Ford Foundation, Open Society Foundations, the Oak Foundation, the Sigrid Rausing Trust, the International Development Research Centre (IDRC) and the Swedish International Development Cooperation Agency (SIDA). Additionally, Conectas Human Rights is especially grateful for the collaboration of the authors and the hard work of the Journal's editorial team. We are also extremely thankful for the work of Maria Brant and Manoela Miklos for conceiving this Issue and for conducting most of the interviews, and for Thiago Amparo for joining the editorial team and making this Issue possible. We are also tremendously thankful for Luz González's tireless work with editing the contributions received, and for Ana Cernov for coordinating the overall editorial process.



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## Human Rights in Motion

# Perspectives

**NICOLE FRITZ**

Human Rights Litigation in Southern Africa: Not Easily Able to Discount Prevailing Public Opinion

**MANDIRA SHARMA**

Making Laws Work:

Advocacy Forum's Experiences in Prevention of Torture in Nepal

**MARIA LÚCIA DA SILVEIRA**

Human Rights and Social Change in Angola

**SALVADOR NKAMATE**

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Are We Throwing Out the Baby with the Bathwater?:

The North-South Dynamic from the Perspective of Human Rights Work  
in Northern Ireland

**INTERVIEW WITH MARÍA-I. FAGUAGA IGLESIAS**

"The Particularities in Cuba Are Not Always Identified nor Understood  
by Human Rights Activists from Other Countries"



MANDIRA SHARMA

Mandira Sharma, leading human rights activist from Nepal, is the founder of Advocacy Forum –Nepal. She has worked more than 20 years in human rights field. She has experience in monitoring and documentation of cases torture, extra-judicial killings, disappearances and sexual violence. She is well known for her work against impunity in Nepal. She is also a co-founder of Accountability Watch Committee and serves as an advisor to Alliance for Social Dialogue, Nepal. She has done LL.M in international human rights law from University of Essex.

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## ABSTRACT

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The present article reconstructs Advocacy Forum’s trajectory in combating torture in Nepal as an example of the human rights language’s capability to produce social change. As the article shows, Advocacy Forum’s strategy, called “Integrated Intervention Strategy” (IIS) and developed during the conflict and in the post-conflict period, has been effective in reducing the practice of torture in Nepal. The organization’s approach is holistic, based on a three tier-intervention – local, national and international. Furthermore, in addition to promoting legislative change as well as filing writs of habeas corpus and torture compensation cases, AF’s strategy encompasses attitudinal and practical transformations as well as institutional reforms in order to promote change on the ground. Advocacy Forum, the article argues, believes that the strategy developed by the organization can be applied in other contexts as well, because of its holistic nature and effectiveness.

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## KEYWORDS

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Torture – Litigation – Nepal – Strategy – Institutional Reform



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## MAKING LAWS WORK: ADVOCACY FORUM'S EXPERIENCES IN PREVENTION OF TORTURE IN NEPAL

Mandira Sharma

The question of whether human rights are an effective language for producing social change is a critical and contemporary one. The present article uses the experience of the Advocacy Forum (AF) in combating torture in Nepal as an example of the human rights language's capability to produce social change. AF's experience also provides significant evidence that, to uphold this capability, the human rights movement should determinedly seek for holistic ways of realising human rights, such as constructively engaging with stakeholders and struggling for attitudinal and practical changes as well as institutional reforms.

### 1 Background

Advocacy Forum (AF), set up by a group of lawyers in 2001, has since then been championing prevention of torture and of other human rights violations in Nepal. Considering the problem of routine and widespread practice of torture in pre-trial detention facilities, it started paying systematic visits to government detention facilities and monitoring and documenting the status of the detainees. The findings of the detention visits were shared and discussed with the stakeholders of criminal justice system to seek out ways to end the practice of torture in detention and provide justice and redress to victims. Also, these findings were reported to various national and international human rights organisations and bodies to garner support for the torture prevention work in Nepal and make people aware of the extent of the problem.

Nepal lived a decade of armed conflict between 1996 and 2006, initiated by the ultra-left party known as the Communist Party of Nepal (CPNM). In this period, Nepal experienced extra-judicial killings, enforced disappearances, torture, sexual abuse, abduction, extortion etc. perpetrated by both sides of the conflict. The warring parties (the government and the Maoists) both used torture for various purposes. The conflict reached a peak in 2001, when the government

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*Notes to this text start on page 211.*

declared state of emergency, branded the Maoists as terrorists, and introduced the Terrorist and Disruptive Activities Ordinance (TADO). The ordinance provided sweeping powers to security forces to keep suspected members of rebel groups under preventive detention for up to 6 months without judicial scrutiny.<sup>1</sup> It was then that AF started its work. Though AF focuses on monitoring and documenting five categories of violations — torture, extra-judicial killings, enforced disappearances, sexual violence, use of children in armed forces —, this article focuses on AF experiences in dealing with the cases of torture.

Amid a situation where arbitrary arrests and detentions were considered normal, state of emergency was imposed, access to government detention facilities was almost impossible. Generally pre-trial detentions were closed for outside world in Nepal. Determined to prevent torture, ill-treatment and illegal detention and to put constitutional rights of detainees into practice, AF was able to negotiate the access to police detention centres, using the law.

Torture in Nepal has been used as a criminal investigation tool to coerce detainees into confessing the crime, to destroy the personality of individuals and to impose authority on the victims, among others. Historically, it has also been used as a form of punishment. Despite having signed international commitments for absolute prohibition of torture in its territory by ratifying international instruments such as the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), and the International Covenant on Civil and Political Rights (ICCPR), Nepal's domestic implementation of this promise has been either inchoate or poor. The domestic laws are not on a par with the international prohibitions of torture. This discrepancy is further aggravated by the non-existence of independent monitoring mechanisms in the realm of preventive detention and by the virtual lack of impartial investigations into allegations of torture. Moreover, the existing legal system in Nepal is inadequate to provide justice and reparation to the victims and hold the perpetrators accountable for torture and other human rights violations (ADVOCACY FORUM; REDRESS, 2001). Although the 2007 Interim Constitution of Nepal<sup>2</sup> establishes torture as a criminal offence and the Supreme Court of Nepal (NEPAL, *Ghimire & Dahal v. the Government of Nepal*, 2007) has issued directives to pass a legislation criminalising torture, no legislation has been passed that specifically recognizes torture as a criminal offense and provides legal framework to bring those perpetrators to justice. This culture of impunity and lack of an accountability system is severely affecting the rule of law, respect for human rights, sustainable peace and development and efforts to strengthen democracy.

Against this backdrop, AF is doing its best to reduce and prevent the practice of torture, illegal detention and ill-treatment in places of detention by developing an innovative strategy called “Integrated Intervention Strategy” that focuses on holistic action addressing various gaps and inadequacies that overtly or subtly contribute to the institutionalisation of torture. The present article discusses AF's experience in combating torture in Nepal, by describing the evolution of the aforesaid strategy, the challenges AF encountered and how law and advocacy measures can be coordinated and strategically used to achieve concrete and positive results in reducing the practice of torture in detention.

## 2 Integrated Intervention Strategy

As mentioned above, the experience of AF in combating torture during the conflict and in the post-conflict era led to a gradual development of a strategy, which has been named as “Integrated Intervention Strategy” (IIS). ISS is a pragmatic framework that is built upon and reinforced by the lessons learnt during regular interventions to prevent torture. It includes all possible means of sensitising and collaborating with allies and potential allies, as well as strategies to co-opt and neutralise adversarial stakeholders, guided by evidence-based advocacy. It focuses on documentation and advocacy, filing suits for medical intervention, legal challenges to illegal detention, and collecting evidence for wider policy reform.

The strategy is a synthesis of previously defined conceptual paradigms and best practices internationally employed to prevent torture, on the one hand, and direct first-hand experience of AF attorneys in their daily engagement with torture survivors and dealings with Nepal’s criminal justice system. AF’s experience has shown that influencing justice system stakeholders, through evidence-based advocacy and daily responsible participation in the justice system, is the basis for sustainable change. Legislative change without practical implementation is of little comfort to those suffering injustices within the Nepal criminal justice system, thus the need of an integrated approach that brings out necessary attitudinal and practical changes as well as institutional reforms.

The strategy is implemented in three levels – local, national and international. Implementation is basically guided by four principles: 1) indivisibility (all strategic interventions must be harmonised and implemented simultaneously); 2) prevention (torture prevention is key to all strategic interventions); 3) immediacy (rapid response and proactive action); 4) legitimacy (interventions are carried out within the parameters of existing national and international laws, keeping the consistency and accuracy of the information collected).

Since torture and ill-treatment usually occur in places of detention that are inaccessible to any form of public scrutiny, monitoring detention centres is an integral part of any strategy aimed at protecting persons who are deprived of their liberty. This monitoring must be more rigorous than occasional visits by independent bodies to places of detention, followed by reports and recommendations. Visits must be regular and unannounced. Based on the very idea that such visits are one of the most effective ways to prevent torture, AF has been visiting detention centres on a daily basis in the districts in which it operates. Currently, AF visits 57 detention centres in 20 different districts across the country, though the organization’s reach was limited during the conflict era. AF lawyers visit custody centres every day to observe the situation of detainees, interview them and document their cases. Moreover, AF has developed a detailed questionnaire to record important information on a person’s detention, to support and defend the individual’s case as well as to challenge any illegal practices by the authorities. However, as AF lawyers face serious limitations (such as lack of separate and confidential place for the interview, denial of access to some cells, only one third of the detention being monitored) the organization’s current data can only provide a glimpse into the full extent of the practice of torture and ill-treatment in places of detention in Nepal. The data, however, provides consistent and clear evidence as to its existence.

Furthermore, AF, recognizing the importance and positive consequences of transnational advocacy networks in fighting impunity, has been continuously seeking to establish effective working partnerships with the international and domestic human rights community. As detailed later below, AF has contributed to increased involvement with the UN treaty and charter-based mechanisms on Nepal, which has helped to reduce the practices of torture in detention facilities.

Political interference in policing practices by powerful individuals and groups means that the most socially, politically and economically weak members of society are most vulnerable to abuses, including torture and ill-treatment. As presented later below, one way AF has fought against it is by pressuring the UN in its peacekeeping operations,<sup>3</sup> as well as the US in its training activities, to take into consideration the record of alleged perpetrators. Moreover, in line with AF's experience that, unless represented by a strong legal aid service, the courts, public prosecutors and police frequently fail to adequately ensure that detainees' rights are respected, the organisation provides legal assistance to all victims of torture wanting to claim compensation through the courts. It also helps victims to file petitions for medical examination and medico-legal documentation, or *habeas corpus* if the detention is illegal. By providing free legal aid, from prosecution to adjudication, to the detainees and torture victims who are unable to afford an attorney due to poverty, illiteracy and other disadvantages, AF finds victims to be more encouraged to fight for their rights.

Past experiences of AF have shown that health professionals also take part in torture either by act or by omission, falsifying medical reports or failing to give appropriate treatment or medical report. As the Nepalese courts give greater weight to medical evidence, it is crucial to have proper medical examination and medical documents in allegations of torture or ill-treatment. While increasingly torture is carried out without leaving signs or with signs resolving within days, leaving no permanent traces, experienced doctors can nevertheless evaluate testimony, accounts of post-trauma symptoms and physical and mental *sequelae* and draw conclusions from these. It is vital that health professionals are able to promptly and impartially document and assess injuries. In some instances, medical health professionals are unable to do this due to fear, threats and intimidation by law enforcement officials. In other cases, doctors might have a vested interest in hiding evidence of torture and ill-treatment. Medical officers who carry out examinations of detainees are effectively subordinate to the police and subject to influence exerted by the police, especially within the precinct. Often police are present during medical examinations or post-mortems.

To address the problem of medical evidence and effective medico-legal documentation, AF has contributed to develop expertise at the national level in providing training for medico-legal professionals. It has been regularly providing training for doctors at the national and regional levels in line with the 1999 Istanbul Protocol (UNITED NATIONS, 2004), which provides detailed medical and legal guidelines for the assessment of individual complaints of torture and ill-treatment as well as for the reporting of such investigations to the judiciary and other bodies.

Moreover, AF has felt the need to constructively engage with stakeholders of criminal justice system such as police, public prosecutors, judges and defence

lawyers. AF's experience shows that the practice of torture in custody can be reduced if the actors such as the courts, prosecutors and defence lawyers start scrutinizing the treatment of detainees in places of detention. Capacity-building, training and technical support to relevant stakeholders is crucial to sensitise them. By organising a regular stakeholders' forum, AF provides opportunities for these to discuss the challenges, and to find ways in a collective manner to address them.

In addition, AF believes that sustained advocacy initiatives around key laws and regulations relating to torture can result in tangible changes in law and practices. The relevant laws and policies need to be reviewed and the organisation intends to persistently advocate for amendments that ensure that the legislation complies with international human rights standards. For the purpose of advocacy and lobbying, it is of utmost importance to work in tandem with local media.

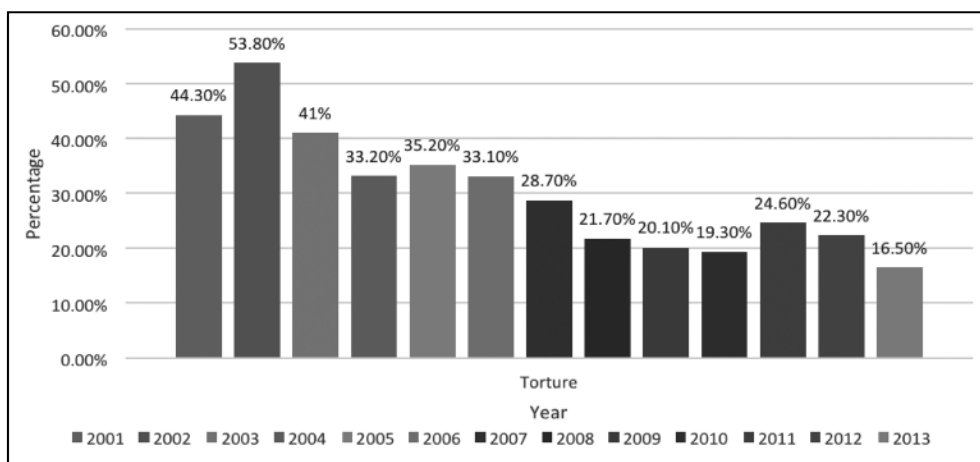
### 3 Results

Advocacy Forum (AF) has seen encouraging results in preventing torture in Nepal with the implementation of the above strategy. At the local level, there are clear indicators that the existing laws are being implemented and there have been promising results in their compliance by stakeholders within the criminal justice system.

AF efforts have contributed significantly to reduce the frequency of torture and ill-treatment in government detention facilities. According to Advocacy Forum (2004), in the last 13 years, torture was reduced from 44.5 % (2001) to 16.7 % (2013) in government detention facilities in districts where AF is present (Graph 1). In 13 years, AF has visited 34,421 detainees. There have also been clear improvements in some crucial trends, such as illegal detention (Graph 2) and physical and mental check-up examination of detainees (Graph 3), which have contributed to a gradual reduction of torture and ill-treatment.

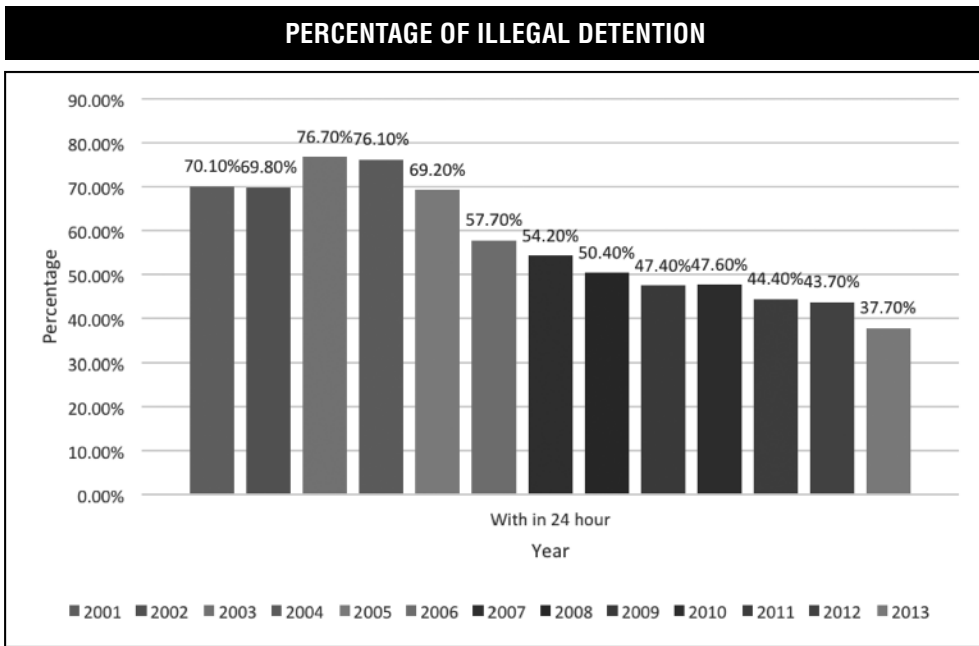
**GRAPH 1**

#### PERCENTAGE OF TORTURE IN GOVERNMENT DETENTION FACILITIES IN DISTRICTS WHERE AF IS PRESENT

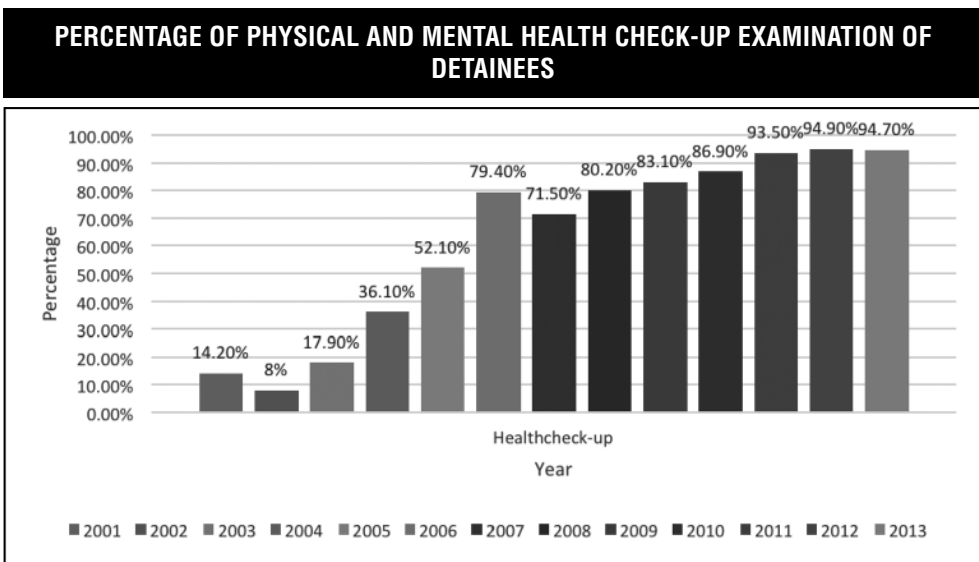




**GRAPH 2**



**GRAPH 3**



In addition, stakeholders in the criminal justice system are more sensitised about their legal obligations, which is reflected in their everyday work. During consultations, they have come forward, chaired the proceedings and even presented papers discussing different ideas to prevent torture. They have also asked AF lawyers for materials and other deliverables relating to international practices on prevention of torture. Our pressure to include human rights in general and prohibition of torture in particular as part of the curriculum in the training of the different actors in the criminal judicial system has led to the inclusion, in the training courses for

judges provided by the National Judicial Academy, of issues such as the international standards against torture and the role of judges in the prevention of torture. This has resulted in judges not allowing hearings of criminal cases in the absence of defence lawyers, not extending the remand of detainees if medical reports are not incorporated and so on.

A general consensus on the need to pass comprehensive legislation criminalising torture has been built up, and the government has unveiled a draft bill in this regard. Engagement with local media and awareness-raising efforts (including placing billboards in the premises of the police stations outlining the rights of detainees) also have had positive implications in sensitising both police and civilians about detainees' rights. The police have started to feel the pressure and to realise that they are not above the law and can be held responsible for the crime of torture they commit.

One of the outstanding transformations brought by AF efforts at the national level is the successful challenge of unconstitutional legal provisions that granted judicial powers to quasi-judicial authorities, including the Chief District Officer (CDO). On September 22, 2011 the Supreme Court issued a directive in order to review the quasi-judicial power granted to the CDO by various laws including the Public Security Act 1970, Arms and Ammunition Act 1962, and many more acts that gave CDO immense power; under such laws, the CDO was authorized to hear criminal cases. Challenging this jurisdiction of the CDO, Advocacy Forum (AF) had filed a writ on December 31st, 2009. In its ruling, the special Bench issued an order to review the provision and also issued a mandamus order for its immediate implementation. We had challenged the jurisdiction of CDO for sentencing people without a fair trial. We were concerned with the immense power vested in administrative authorities like the CDO, who could sentence a convicted detainee to up to seven years of imprisonment in certain cases, while a judicial authority gives punishments of up to six months of imprisonment in petty theft cases. This is in clear violation of right to equality of the accused. Furthermore, the CDOs do not possess theoretical or practical knowledge of the law, yet they were arbiters of justice.

After hearing AF's arguments, the Apex Court found that granting powers to the CDOs had indeed violated the right to fair trial. The Court, however, refrained from declaring such provisions unconstitutional as requested by AF, stating that it would create a legal vacuum in the absence of other alternative bodies to undertake the said jurisdiction. In its directives the SC has ordered the government to form a research committee comprising legal and administrative experts to amend the existing laws providing the aforesaid power, and submit its report within six months. Following the order of the Supreme Court, the government of Nepal has initiated its task. It has formed a committee under the Office of the Prime Minister and has held consultation meetings for reviewing the powers of the CDO in 2012. This has resulted in the proposal of the government to amend a number of pieces of legislation and to provide three months of intensive legal training to administrative authorities, including the CDO.

AF also took the initiative to draft model anti-torture laws, leading a

coalition of a number of civil society organisations. This draft was prepared after a series of reviews and consultations with victims, as well as national and international experts; the model legislation was made public on June 26, 2009, along with a report on torture titled “Criminalize Torture” (ADVOCACY FORUM, 2009). Besides, this initiative has played a significant role in triggering a debate on the urgent need to adopt anti-torture legislation and other legislation on transitional justice mechanisms. The annual analysis of the information gathered from detention centres and its presentation provides basic knowledge on the issue of torture in Nepal.

Involvement with the UN treaty and charter-based mechanisms has increased in Nepal. Even after a decade of ratification of the first Optional Protocol to the ICCPR, there was no skill and know-how to bring communications before the Human Rights Committee. AF has therefore been assisting torture survivors to submit individual communications to the United Nations Human Rights Committee (UNHRC).<sup>4</sup> Furthermore, AF has played a significant role in the recent confidential inquiry of the CAT Committee (UNITED NATIONS, 2012); it makes regular submissions to the CAT Committee<sup>5</sup> and the UN Special Rapporteur on Torture.<sup>6</sup> Also, AF has been successful in lobbying the diplomatic missions for implementing visa vetting – in which the host country denies giving visa to perpetrators of human rights violations (including torture) who intend to attend training, conferences, meetings or for personal visits (ADVOCACY FORUM; HUMAN RIGHTS WATCH, 2010, p. 10). Likewise, AF has been able to repatriate Nepali security officers implicated in human rights abuses from the UN Peacekeeping Mission. Leveraged by such international interventions, AF's initiative has been able to lay ground for and open new possibilities in reducing the practice of torture in detention facilities.

#### 4 Challenges

AF has faced numerous hurdles and obstacles in its crusade against torture in Nepal. Both practical and institutional challenges have caused repeated interferences in its work. Foremost, the challenge AF is currently facing is the security of its lawyers/defenders. With the political transition still intact and continual deterioration of law and order situation amid the prevailing state of impunity, there is an emerging pattern of threats to lawyers. Regularly subjected to intimidation, AF lawyers are taking up cases of torture against police officers and advocating against impunity by building case dossiers against individual perpetrators. AF faced instances of infiltration in the organisation and stealing of case files, of a staff member being lured to spread dirt against leadership of the organisation and to make complains of irregularities in the organisation so the government might intimidate and harass it.

AF believes that detainees' access to legal representation in the pre-trial phase is important to ensure fair trials and prevent human rights violations in detention, since police personnel may coerce detainees into signing doctored confessions by employing various methods of torture as well as threats of reprisal. Furthermore, the right to consult an attorney is also enshrined as a fundamental right in the

Interim Constitution. But as AF lawyers provide legal aid to detainees from the pre-trial stage, they are more vulnerable to physical assaults and intimidation. AF constantly receives reports of our lawyers being denied access to detention centres. This happens mostly when cases of torture and illegal detentions are challenged. Regular attempts by police authorities to deny AF attorneys' access to detention centres constitute a persisting problem. In other instances, AF lawyers and torture survivors have been threatened to refrain from registering the First Information Report (FIR) that demands criminal investigation in the cases of human rights violations and the writ of mandamus that victims file in challenging lack of investigation in their cases. Also the victims withdraw cases because of intimidations and threats of reprisal.

Another challenge that AF has been facing is the overwhelming nature of the work performed by its staff - such as representing victims in courts, listening to their scary stories, being constantly involved in advocacy and lobbying and facing regular threats from state agents and other groups – and the detrimental impact that this has on their mental health. AF provides lawyers and other staff regular psychosocial counselling.

Political instability has also been an issue of concern. There is increasing frustration among victims and defenders alike, as impunity remains unfettered and unchallenged in relation to the crimes, including torture, committed during Nepal's conflict. Despite concerted attempts by victims and civil society, the proposed transitional justice mechanisms have yet to materialize.

Most importantly, AF has been regularly harassed by the Social Welfare Council (SWC), a government body responsible for regulating non-governmental organisations. This Council has harassed AF either by not approving AF projects or by creating obstacles in the yearly renewal of the organisation's legal status, which is a mandatory legal requirement for all NGOs in Nepal.

But the most serious challenge faced by AF is to keep up the momentum of its work on torture. To carry out such holistic work, AF needs to have adequate resources and receive continuous support, on a long-term, strategic basis. Vagaries in donor funding have negatively impacted AF's work. A project-based approach can sometimes cause harm, by losing the momentum in projects like the one on prevention of torture. As our efforts are intended to bring systemic changes, they will necessarily take years to produce concrete results.

The lack of understanding of the political nature of human rights work and the risks involved in it among some funding partners also create problems. When funding partners change their priorities, they often force NGOs to shift their priority too. Funding partners often forget that their funding is for addressing the human rights deficit in Nepal through us and that NGOs are drivers of change. Non-recognition of the years of experiences and knowledge of activism in this field and giving too much weight to 'expert' 'consultants' can undermine the sustained impact of the NGOs' work. Funding partners also have to be mindful that dragging activists and movements into the bureaucratic framework that have been created in developed countries and trying to impose it on local organisations impact negatively on preventing torture and other human rights violations.

## 5 Conclusion

When AF started its work, the country was immersed in the maelstrom of conflict, and torture by the security forces was widespread. Though the National Human Rights Commission (NHRC) had been established then, it lacked teeth and was practically and resource-wise not ready to deal with the overwhelming frequency of human rights violations. Other civil society organisations were busy reporting violations, but the issue of torture was left on the back burner. In such a scenario, AF took the responsibility of monitoring detention facilities to prevent torture. Overcoming the fear of being branded as rebels by the security forces for helping suspected Maoist terrorists, AF attorneys continued to challenge illegal detention and torture by filing writs of *habeas corpus* and torture compensation cases.

AF's strategy, developed during the conflict and in the post-conflict period, played a significant role in reducing the practice of torture. Further, AF's three tier-intervention – local, national and international – has widened the scope of human rights work in Nepal. AF believes that the strategy developed by the organisation can be applied in other contexts as well, due to the holistic nature of its interventions and to its effectiveness.

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## NOTES

1. Section 9 of TADO read:

If there is reasonable ground for believing that any person has to be prevented from committing any acts that could result in terrorist and disruptive acts, the Security official may issue an order to detain such a person in any particular place for a period not exceeding ninety days.

If it appears to detain any person for a period of time in excess of the period referred to in subsection (1), the Security Official may, with the approval of His Majesty's Government, Ministry of Home Affairs, detain such person for another period of time not exceeding ninety days.

2. Article 27 of the 2007 Interim Constitution of Nepal provides:

Right against Torture: (1) No person who is detained during investigation, or for trial or for any other reason shall be subject to physical or mental

torture, nor shall be given any cruel, inhuman or degrading treatment. (2) Any such an action pursuant to clause (1) shall be punishable by law, and any person so treated shall be compensated in a manner as determined by law.

3. Quantitatively, "Nepal is the sixth in rank among the highly contributing nations to UN peace missions in the world", according to *The Himalayan*, 19 March 2013. Available at <<http://www.thehimalayantimes.com/fullNews.php?headline=Nepal+Police+in+UN+Peace+Keeping+Operations&NewsID=369951>>. Last accessed on: 25 July 2014.

4. Available at <<http://advocacyforum.org/hrc-cases/index.php>>. Last accessed on: June 2014.

5. Available at <<http://advocacyforum.org/publications/un-submissions.php>>. Last accessed on: June 2014.

6. Ibid.

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