

**International
Day in Support
of Victims of
Torture**

**June 26
2016**

THRDA's analytical study of documented torture based on interviews with detainees at the detention centers across the Terai region of Nepal over the last four months, shows an increasing trend of torture or other cruel, inhuman or degrading treatment of detainees this year.

**Torture
in the Terai**



Summary

THRDA's analytical study of documented torture based on interviews with detainees at the detention centers across the Terai region of Nepal over the last four months, shows an increasing trend of torture or other cruel, inhuman or degrading treatment of detainees this year.

Although the overall torture trend in Nepal has significantly decreased in recent years, it, however, remains the same or has increased in the Terai districts. Out of a total of 152 detainees interviewed in 19 districts -- Jhapa, Morang, Sunsari, Saptari, Siraha, Dhanusha, Mahottari, Sarlahi, Rautahat, Bara, Parsa, Rupandehi, Nawalparasi, Kapilvastu, Bardiya, Banke, Dang, Kailali and Kanchanpur -- of Terai region over the last four months (from March to June 2016), 27% (41) reported being subjected to torture or other ill-treatment in detention centres – an increase from 16.7% in 2015. The records show that police in some particular districts in the Terai region -- Rupandehi, Dang, Nepalgunj, and Dhanusha especially -- have continued to subject detainees to torture to extract confessions.

THRDA also analysed whether or not police followed a number of legal procedures during arrest and after detaining somebody as provisioned in the Constitution of Nepal 2015 and relevant acts.

Conclusion and Recommendations

Article 22, which ensures Right against Torture in the Constitution of Nepal, 2015 stipulates:

- (1) No person who is arrested or detained shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment.
- (2) Any mentioned act in clause (1) shall be punishable by law, and any person who is the victim of such treatment shall have the right to obtain compensation in accordance with law.

However, THRDA found that the detainees are still subjected to physical or mental torture an/or to cruel, inhuman or degrading treatment. An end to impunity is necessary to protect human rights. Once police personnel involved in torturing people are punished, the unabated trend of torture will be brought under control. Police should be able to conduct more professional investigations so that they do not feel they have to torture detainees to extract confessions. Only after torture has been criminalized, the problem will come to an end.

Most importantly, passing the proposed Torture or Cruel, Inhuman or Degrading Treatment (Offence and Punishment) Bill tabled in Parliament in August 2014 should be a priority with making some amendments as recommended by human rights institutions. If enacted, it will strengthen legal protections for victims of torture and facilitate in fulfilling Nepal's international human rights obligations.

Trend and Patterns of torture in Nepal with Special focus on Terai

- **Rates of torture by year, 2001-2015; torture in Terai over last 4 months**

Compared to past trends over last fifteen years (see the trend below), there is a significant decrease in rates of reported torture and other ill-treatment inflicted by police to detainees. This is a positive sign that shows police's accountability in fulfilling its obligations towards the protection of human rights.

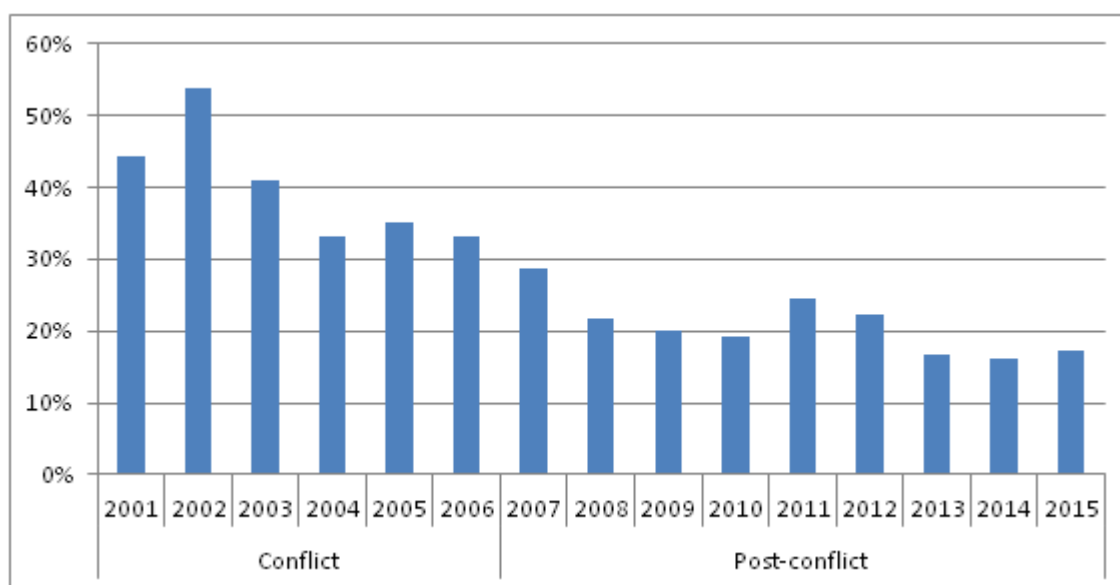


Figure 1 - Rates of torture by year, 2001-2015, Source- Advocacy Forum

Although the overall torture trend in Nepal has significantly decreased, it remains the same or has increased in Terai districts.

Out of total 152 detainees interviewed in 19 districts of Terai region over the last four months (from March to June 2016), 27% (41) reported being subjected to torture or other ill-treatment in detention – an alarming increase from 16.7% in 2015.¹

Especially in the case of Terai, police personnel mostly from hill community have become antagonized on the issue of Madhes, in the wake of political protests from August 2015 to February 2016.

¹ Advocacy Forum's Report: Continuing torture during 2015

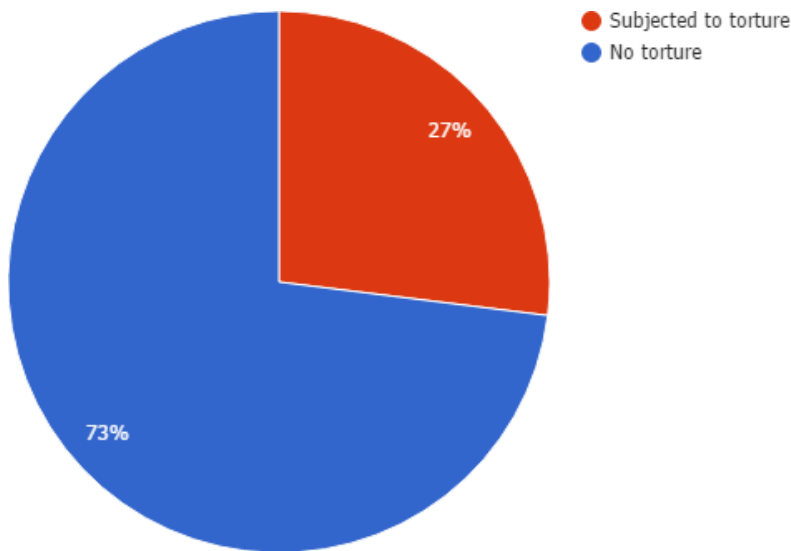


Figure 2 Detainees Subjected to torture or not

- **Methods of torture**

The analysis of recorded cases of torture shows that large numbers of detainees have received ill-treatment, verbal abuse and racial slurs among other different forms of torture. Fifty five per cent (22) of the detainees who were interviewed by THRDA lawyers reported of being subjected to physical torture.

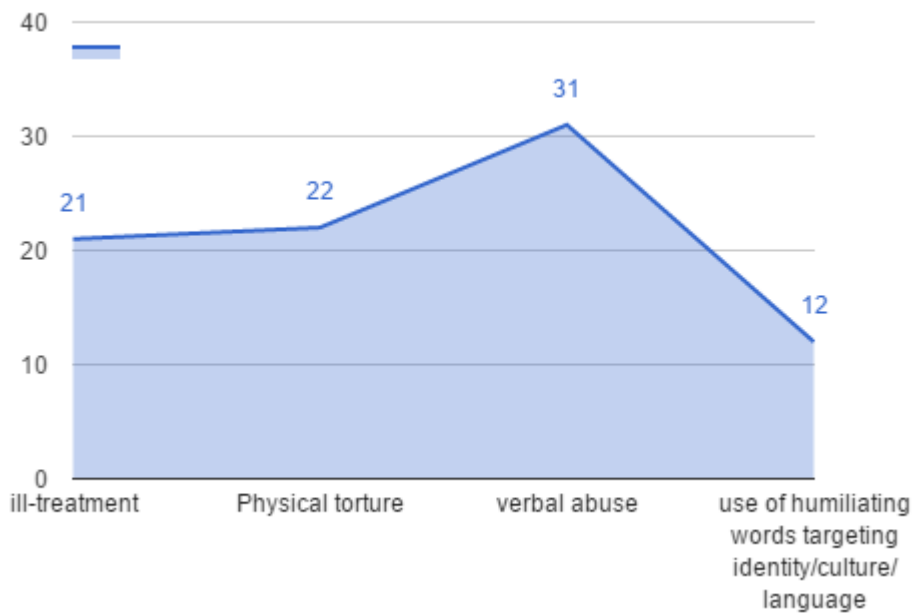


Figure 3 Methods of torture

- **Torture rate by district**

Forty-one detainees from nine out of 19 districts where THRDA lawyers visited detention centers and interviewed 152 detainees said they were subjected to torture. The average rate of torture across these districts is 27%.

The records show that police in particular districts -- Rupandehi, Dhanusha, Bardiya, Banke and Dang, -- of Terai region have continued to torture the detainees without having any regard for their human rights. The rate of reported torture in Rupandehi (31.7%) and Dhanusha (29.3%) are particularly high. Those detained in Banke and Bardiya reported a similar level of torture, i.e. 9.8%. The districts of Dang, Kailali and Sunsari showed rates of torture lower than 7.3%.

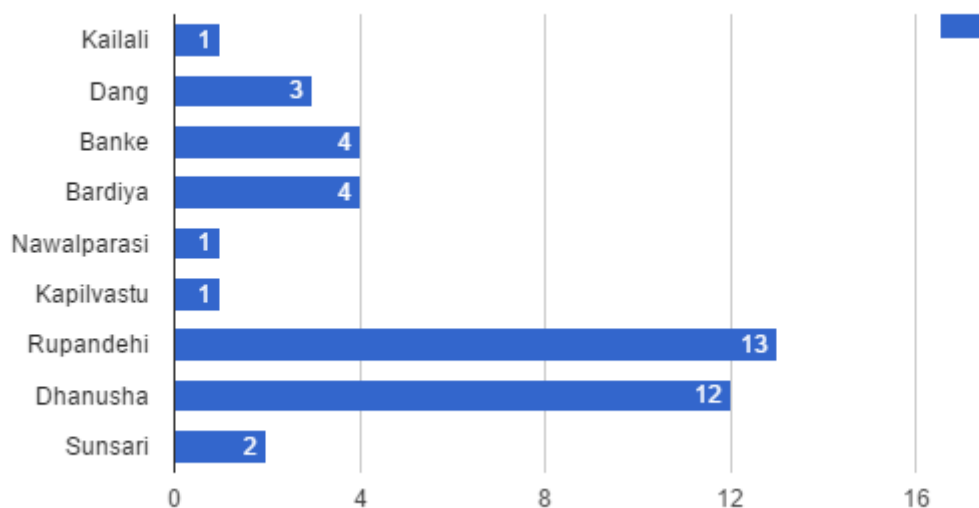


Figure 4 - Torture rate by district

- **Torture by charge**

Those who were detained for inquiry (43.9%) reported the highest rates of torture. THRDA lawyers interviewed 22 people, who were detained without charge but for inquiry. Out of 22 detainees who were not charged with any criminal charges, 18 (43.9%) reported torture. Police usually torture the detainees with a view to extract confessions.

The other group of detainees who were subjected to torture was those charged with public offence (19.5%), and road accident (9.8%), drug offence (9.8%) and rape (9.8%). It can be concluded that the rate of torture varies on the basis of criminal charges and that those not charged are most likely to be tortured.

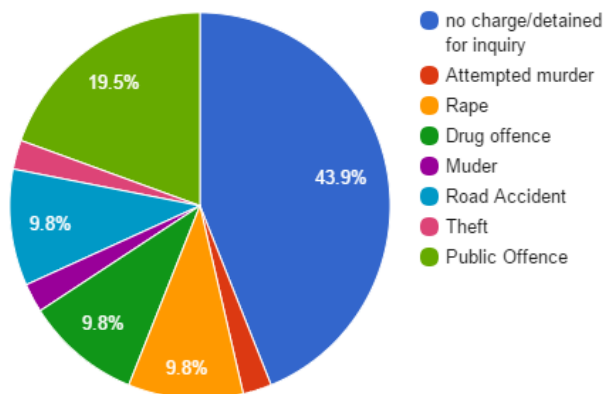


Figure 5 - Torture by charge

- **Percentage torture victim by ethnicity**

The torture data can further be analyzed from ethnicity perspective to find out whether the rate of torture varies on certain social and ethnic groups. It shows that particular social and ethnic groups may be more vulnerable to torture in detention centres.

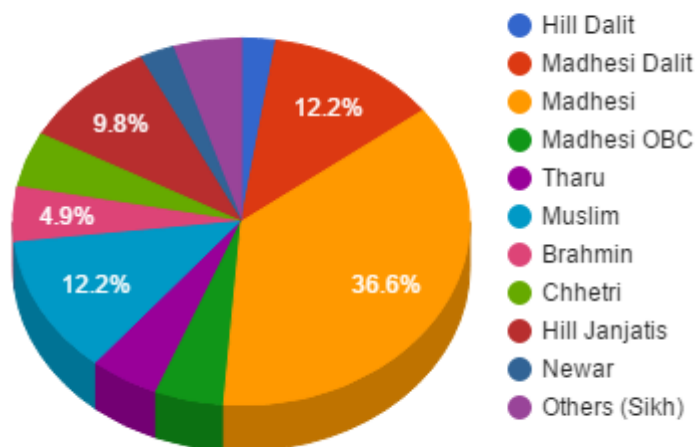


Figure 6 - Torture by ethnicity

The highest number of detainees reported torture or other cruel, inhuman or degrading treatment over the last four months belonged to Madhesi ethnic groups (36.6%), followed by Muslims (12.2%) and Madhesi Dalits (12.2%). Similarly, 9.8% of Hill Janjatis were also subjected to torture. However, this THRDA data, whose sample size is smaller, cannot be sufficient evidence for determining detainees receiving torture on the ground of ethnicity.

Police Compliance with Procedural Safeguards

Besides data analysis on torture, THRDA also carried out an assessment on police compliance with legal standards for detention as enshrined in the Constitution of Nepal, 2015 and the Torture Compensation Act (1996).

Here are key findings:

1. Reason of Arrest

Article 20, Right to Justice, of Constitution of Nepal, 2015 stipulates:

20. **Right to Justice:** (1) No person shall be detained without being informed of the ground for such an arrest.

It means detainees should receive an arrest warrant at the moment of their detention, with charge of their arrest. However, of the 152 detainees interviewed by THRDA over last four months, only 15 (9.9%) had received arrest warrants containing the reasons for their detention while majority of detainees (130, 85.5%) were given the reasons for their arrest only after they were detained. And, 7 (4.6%) said they never received arrest warrants at all.

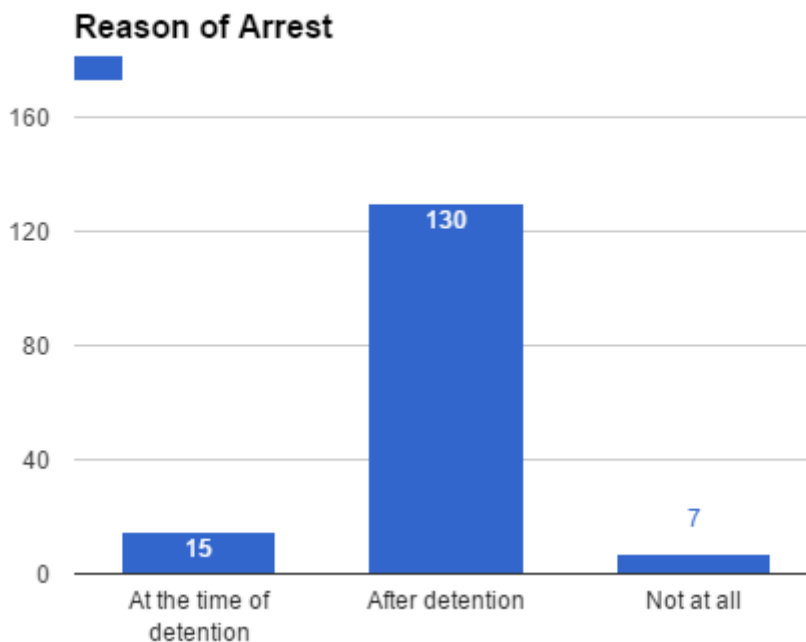


Figure 7 Reason of Arrest

2. To be produced before a judicial authority within 24 hours

Article 20, Right to Justice, Constitution of Nepal, 2015 states:

- (3) Every person who is arrested shall be produced before a judicial authority within a period of twenty-four hours after such arrest, excluding the time necessary for the journey from the time and place of arrest to such authority, and the arrested person shall not be detained in custody beyond the said period except on the order of such authority.

Only 68.4% of detainees were produced to the court with 24 hours, as per the information recorded by THRDA lawyers. A total of 31.6% of detainees, in their interviews, said that they were not taken to a judicial officer within 24 hours.

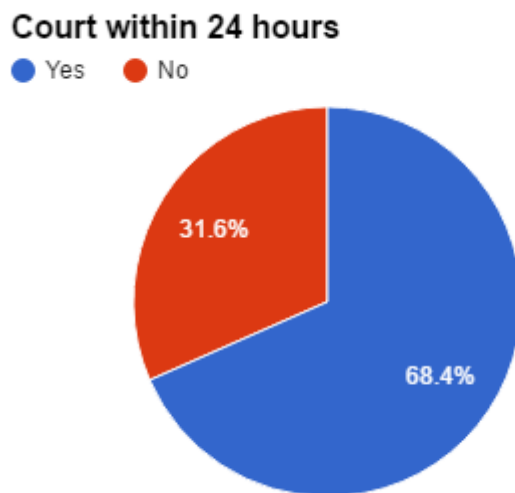


Figure 8 Detainees brought to court within 24 hours

3. Health checkup within 24 hours

In THRDA's interviews with detainees from 19 districts across the Terai region, almost half of the detainees said that they have undergone medical check-ups. According to them, health check-ups were not adequate and instead of examining injuries, doctors usually asked them if they were intoxicated and drunk. Such a practice does not help prevent detainees from torture.

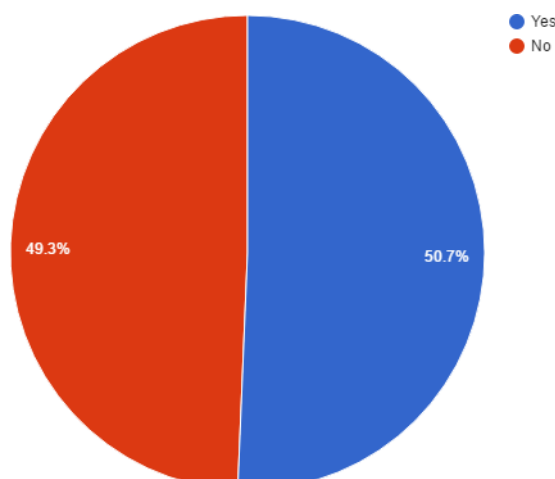


Figure 9 Detainees receiving health check-up within 24 hours