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Torture Redress mechanism in Nepal and Bangladesh: a comparative perspective

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Abstract
This article focuses on redress for torture victims in Nepal and Bangladesh. Drawing on fieldwork in Nepal and Bangladesh, we show that seeking redress is not a straightforward process of detection, documentation and advocacy but is conditioned by a relation between legal provisions, the practice of human rights work and political mobilisation. In both countries, despite the active work of human rights organisations to document widespread torture, accountability is limited. Nepal and Bangladesh have taken two very different paths towards accountability. Nepal stresses on civil compensation whereas Bangladesh focuses on criminal liability. Comparing the two approaches to accountability enables us to reflect on the potentials and limitations of both approaches.

While there has been increased activities, networks and documentation by human rights organisations in the two countries, our findings suggest that the poor and the marginalised, those particularly vulnerable to torture and ill-treatment, may not report incidents of violence and abuse, due to their precarious situation, fear of repercussions and lack of resources that are necessary to report cases and seek justice. Hence, we suggest a third approach that places protection alongside accountability. We argue that human rights work must consider protection concerns of the victims to ensure adequate and relevant legal assistance and political advocacy for accountability.

Introduction
Reports from human rights organisations suggest that torture by police and armed forces is systematically practiced in Nepal and Bangladesh (Ramakrishnan 2013).1 Over the last two decades, there has been a surge in the number, activities and influences of human rights organisations and other civil society organisations in the two countries. These organisations draw on the language, networks, institutions and norms of human rights law and often rely on international funding, in hostile political contexts. Both Nepal and Bangladesh have ratified the UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) and have put forward constitutional and domestic legal provisions to address torture.

While Nepal’s Compensation Relating to Torture Act (CRTA) 1996 has come under intense criticisms by human rights activists for failing to criminalise torture (Advocacy

1 Also, see: https://www.hrw.org/news/2014/06/26/hrw-torture-expanding-scourge-asia (Last retrieved: 6 September 2016)
Forum 2008), there have been hundreds of cases brought to domestic courts under this Act on a scale that is rare on the international human rights scene. Following decade long lobbying by human rights activists and an order from the Supreme Court of Nepal on 22 May 2009, a new bill (known as the Torture or Cruel, Inhuman or Degrading Treatment [Control] Bill) that sets out criminal liability is pending in the Nepalese parliament.

Bangladesh, on the other hand, has already implemented the Torture and Custodial Death (Prevention) Act 2013 that makes torture by law enforcement or government officials a criminal offense. Interestingly, there have been very few cases brought into the domestic courts under this law in Bangladesh (the exact number is unknown but according to local human rights organisations and independent lawyers, it is below ten) and so far, no one has been convicted.

In this paper, we compare Nepal and Bangladesh and draw lessons for redress for torture victims and examine the prospects of accountability. On a point of departure in the legal provisions and the infrastructure of documentation, we ask how it is possible for survivors of torture to bring forward cases to the courts in Nepal and why similar cases fail to proceed to courts in Bangladesh, despite having a punitive law. In other words, we inspect the processes and practices of redress and accountability.

In this endeavour, we draw on two influential notions within the field of human rights critique and analysis, namely Sally Engle Merry’s; ‘vernacularization’ (Merry 2006), and Felstiner, Abel and Sarat’s; ‘naming-blaming-claiming’ (Felstiner et al. 1980-81). Both concepts have had a great impact on human rights thinking and practice.

We side with Sally Engle Merry when she focuses on the 'social processes of human rights implementation and resistance’. Instead of asking ‘if human rights are a good idea’, she advocates for a perspective that explores what difference they make (Merry, 2006). In other words, this article is not about how human rights ideas become adopted in culturally distinct communities or how ideas move from one sociocultural setting to another, it is about the appropriation and unfolding – vernacularization – of rights vocabularies in two distinct political, institutional and legal contexts (Merry, 2006: 39-41). It focuses on the key role of human rights organisations who ‘translate the discourses and practices from the arena of international law and legal institutions to specific situations of suffering and violation’ (Merry, 2006: 39). It is about situating global discourses in local practices – the relationship between legal provisions and the infrastructure of documentation – as an exploration of human rights work from the perspective of practice under the specific political, institutional and legal contextual conditions in Nepal and Bangladesh.

We employ Felstiner, Abel and Sarat’s notion of naming-blaming-claiming (and/or shaming), to shed light on the links between political and legal conditions and the opportunities and limitations for redress and accountability in Nepal and Bangladesh. This approach allows us to consider the emergence and transformation of human rights violations and ‘the way in which experiences become grievances, grievances become disputes, and disputes take various shapes, follow particular dispute processing paths, and lead to new forms of understanding’ (Felstiner et. al, 1980-81: 632). ‘It means studying the conditions under which injuries are perceived or go unnoticed and how people respond to the experience of injustice and conflict’ (Felstiner et. al, 1980-81: 632). In other words, it allows us to explore how individuals and organisations deal with experiences of torture and ill treatment in particular contexts.

In human rights work, the detection and documentation of violations is vital to transform injurious experiences into acknowledged (legal) claims. Following the above notion, once an injurious experience is perceived, responsibility attributed, the decision on whether or not to make a claim and ask for remedy is made. This choice to seek for redress and accountability is conditioned by the legal provisions and the infrastructure of documentation and assistance. This decision is made against a background of economic, political and social inequality that disadvantages the poor and the marginal populations to come forward and claim their rights, via courts or media.

Drawing on fieldwork in Nepal and Bangladesh, we show that human rights documentation for redress and accountability is not a straightforward process of situating global discourses in local practices, such as, naming-blaming-claiming of rights. While there has been increased activities, networks and documentation by human rights organisations in the two countries, our findings suggest that the poor and the marginalised, those particularly vulnerable to torture and ill-treatment, may not report incidents of violence and abuse, due to their precarious situation, fear of repercussions and lack of resources that are necessary to come forward and seek justice.

We argue that human rights organisations and activists have to consider protection to warrant the participation of the survivors and their families. To do this, human rights organisations will need to find ways, on one hand, to identify cases of torture and ill-treatment that may never reach their attention, for example when violent abuses takes place on the street or in the homes of the victims, not in detention or during arrest. On the other hand, to find ways to ensure real prospects of achieving redress and accountability which begins with the safety and security of the victim claimants and their families. This spatial and institutional bias, not just challenges access to justice but also question the probability of accountability.

3 The preferred strategy of many international human rights NGO’s, embarrassing regimes to change laws, policies and practices.
Legal prohibition of torture in Nepal

In 1990, multiparty democracy was restored in Nepal and fundamental rights were guaranteed in the new constitution of 1991. Article 14 (4) of the 1991 Constitution outlawed torture and gave the right of compensation to torture victims. Nepal’s most recent constitution of 2015 prohibits torture, treats it as a criminal offence, and recognises a right of compensation.

In 1991, Nepal ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). In its attempt to meet its constitutional commitments, as well as its obligations under CAT, the Nepali government passed the Compensation Relating to Torture Act (CRTA) 1996, the same year as the Maoist insurgency (1996-2005) broke out. CRTA provides formal redress for victims of torture in the course of inquiry, investigation or hearing, or for any other reason. It also contains provision for departmental action against the employees of the government who inflict torture on others.

The definition of torture in the CRTA limits compensation to victims who are detained in a government facility. The victim’s relative or a lawyer can file case in the court within the 35 days from the date of torture or release from detention for lodging a complaint. The law requires that police facilitate a medical examination of detainees before detaining them and also upon their release. It grants a victim of custodial torture the right to compensation, for a maximum of NRs 100,000 (approximately US$1,000).

The CRTA allows officials accused of torture to be defended in the proceedings by the public prosecutor at public expense. To file a case under CRTA, the victim needs to provide information on: i) reason for detention and the period of time spent in detention; ii) details of torture inflicted while in detention; iii) losses caused by such torture; iv) amount of compensation claimed and any other details that help in proving the case. While determining the compensation amount, the court considers the followings:

- a) the physical or mental pain or hardship caused to the victim, and their gravity;
- b) decline in income-earning capacity of the victim resulting from physical or mental harm;
- c) age of the victim and his family liabilities in case he has suffered physical or mental damage, which cannot be treated;
- d) the estimated expenses of treatment following the incident of torture;
- e) in case the victim of torture dies, the number of members of his family dependent on his income, and the minimum amount necessary for their livelihood;
- f) other proper and appropriate matters from among those contained in the claim filed by the victim.

Of all cases of torture and ill treatment, only a minority of cases make it to court under CRTA. Not only is there 35 day limit on filing a case, human rights lawyers interviewed said that torture survivors often do not want to carry on with legal battle due to lengthily court processes and ubiquitous intimidation that comes with it. Even if the
victim is willing to file the case, obtaining and gathering the paperwork (such as arrest papers, detention release notes etc) and evidence (such as medical reports, photographs, witness report etc) can be very resource intensive and daunting task. In particular, getting medical evidence, which is considered by human rights lawyers to be a key element of evidence in court’s decision-making, is challenging. If a survivor is in custody and a medical report is not available, the lawyers can make use of the legal provision in CRTA that allows them to write to the court for permission to take the survivor for medical documentation. Often, the medical evidence produced by police from government hospitals is of relatively poor quality. Human rights lawyers interviewed said that the most common reason for loosing a torture case filed at the court is lack of medical evidence. Systematic data is not available on cases under the CRTA. However, we can begin to pull together a general picture from the information that does exist. In 2013/14, there were 91 active cases in Nepali courts under the CRTA (Supreme Court of Nepal 2014). In 2006, a Nepali NGO Centre for Victims of Torture (CVICT) published a compilation of court verdicts that granted compensation to victims (CVICT 2006). The CVICT report states that out of a total of 109 cases filed by them, 21 cases were decided in favour of the survivor, out of which 8 cases ended in a ‘compromise’ (meaning, they were settled outside of the court, although there is no provision in CRTA for this. A report published by Advocacy Forum in 2008 states that it was able to document 5,342 cases of torture between 1996 and 2008 (Advocacy Forum 2008). Of this, 208 victims or their decedents have filed cases under CRTA, and only 52 cases have been decided in favour of the victims. A more recent 2014 publication from Advocacy reported that they filed a total of 146 cases under CRTA since 2003, with the following outcomes: 31 cases (21%) were granted compensation, 48 cases (32.9%) were dismissed, 61 cases (41.8%) were awaiting decision and 6 cases (4.1%) cases were withdrawn (Advocacy Forum 2014). Even when compensation is ordered, survivors and human rights organisations report that it can take many months to be processed. Many survivors spend far more money, time and hardship during the process than any compensation that they receive. According to the 2006 CVICT report, the compensation claimed by the victim or their legal representative ranged from NRs 10,000 to NRs 100,000. However, the actual compensation awarded have ranged only from NRs 1,000 to NRs 50,000 with only one instance where the court awarded NRs 100,000 (CVICT 2006). Similarly, the report published by Advocacy Forum covering the period of 1996-2008 states that out of the 52 victims who had been awarded compensation only 7 victims had been able to receive compensation in 2008 (Advocacy Forum: 2008).

CRTA also gives courts the power to order departmental action against individual perpetrators. Importantly, according to the 2006 CVICT report, departmental action was recommended against the perpetrator only in just over half of successful cases. In two cases, the perpetrator was let off with just a warning (CVICT 2006). Similarly, the Advocacy Forum report of 2008 states that none of the perpetrators named in the CRTA cases had actually been brought to justice (Advocacy Forum 2008). Human rights
workers interviewed said that this has not to changed in recent years and no one has been prosecuted for torture.

The new bill on torture (known as Torture and Cruel, Inhuman or Degrading Treatment [Control] Bill 2014) sets out criminal liability. In its current form, the Bill has a provision for five-year jail and upto NRs 50,000 fine for a person inflicting torture and those encouraging it, and a provision for three-year jail and up to NRs 30,000 fine for attempting or assisting to torture. It seeks to increase the compensation available to victims to up to NRs 500,000. The Bill also has a 90-day limitation on filing a case, which is an increase from 35-day limit in the current legislation. However, just like the CRTA, the Bill in its current form defines torture as taking place in detention. There is no mechanism in the Bill for reporting or filing a complaint against an act of torture committed to a person who is not under detention. Human rights organisations have raised criticism of this bill in its current form for failing to meet international standards (ICJ 2016).

**Legal prohibition of torture in Bangladesh**

In Bangladesh, consecutive governments use of draconian laws, such as the Special Powers Act of 1974 (SPA) and paramilitary forces such as Rapid Action Battalion (RAB), originally established to combat organised crime, has increased in efforts to suppress the political opposition, since the early 2000’s.

The SPA grants wide-ranging discretionary powers to law enforcement agencies (ICG 2016). The act allows for preventive detention initially for one month and thereafter a court may prolong it by six months at a time. The use of the SPA is closely connected to the use of Section 54 and 197 of the Code of Criminal Procedure. Section 54 gives the police authority to arbitrarily arrest anyone, anywhere at any time without a court order or warrant (see e.g. BLAST 2015). Section 197 prohibits prosecutions against public officials without the government’s prior sanction if the offence is committed in an official capacity. Section 197 ensures that public authorities are protected from accusations and criminal proceedings in the discharge of their official duties. The law has been debated in the run up to every election but consecutive governments have kept the act as a tool to motivate, control and direct law enforcement agencies.

RAB has been used as the main tool to enforce government authority. The force recruits from all sections of the military and the police. It is under the direct authority of the Ministry of Home Affairs and is therefore under direct political supervision and control of the party in government. The force was established in 2004 by the BNP, to

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Section 197 of the Code of Criminal Procedure states: ‘(1) When any person who is a Judge within the meaning of section 19 of the Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act, in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the Government; (2) The Government may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and my specify the Court before which the trial is to be held’
combat organised crime. It was established in the aftermath of two major security drives known as Clean Heart and Spiderweb in Khulna division at the western borderlands to India, where military units were deployed to undertake policing. It attracted popular support, eradicating criminal networks and groups that ordinary police were unable to fight, reclaiming state authority in the targeted areas. However, over time, the battalion earned a reputation as a death squad, known to execute people in so-called “crossfires” and “encounters” including opponents of the regime. Recently, the incidents of crossfires have decreased and enforced disappearances have become a new reality. Little is known why people disappear but it includes high level opposition politicians and political opponents.

Additional laws have given the government and law enforcement agencies extensive discretion in the exercise of authority. The vague definition of ‘terrorists activities’ under the Anti-Terrorism Act (ATA) 2009 is prone to abuse and is incompatible with the principle of legality requiring that criminal liability and punishment be limited to clear and precise provisions. In addition, an amendment of the Information and Communication Technology (ICT) Act (Amendment) 2013 introduced severe punishment if any person deliberately publishes any material in electronic form that causes to deteriorate law and order, prejudice the image of the State or person or causes to hurt religious belief. Furthermore, a Broadcasting policy was introduced in 2014, and aims to regulate the media and freedom of speech, and national media outlets have been closed down. Likewise, the Foreign Donations (Voluntary Activities) Regulations Act 2016 could be used to curb dissent and the activities of human rights NGOs. Together, these legislations in effect shrink the public political space for criticism of state authorities’ practices.

Before 2013, ‘torture’ was not defined in domestic laws. The Constitution of the People’s Republic of Bangladesh, in Article 35 states: "No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment." If this is the case, then acts of cruel, degrading and inhuman treatment by law enforcement agencies can be taken to court as being in contravention with Constitutional guarantees. The Penal Code 1860 provides punishment for crimes such as ‘hurt’, ‘grievous hurt’, ‘grievous hurt’ to obtain information regarding the commission of a crime or for information as to the whereabouts of stolen goods, physical assault, criminal intimidation and wrongful confinement – all of which may also be construed as part of the act of ‘torture’. However, due to the fact that there were no laws actually dealing with ‘torture’ as defined in the Convention against torture, it was easy for the government to declare that ‘torture’ did not exists in Bangladesh (Khan 2016).

In 2003, the Torture and Custodial Death (Prevention) Act 2013 was approved in the parliament.5 The definition of ‘torture’ is similar to the UN Convention against Torture.6 ‘Custodial death’ is defined as ‘the death of a person in the custody of a

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5 It was tabled in the Parliament as a Private Member’s Bill by Member of Parliament Saber Hossain Chowdhury in 2009 and passed by Parliament as the Torture and Custodial Death (Prohibition) Act in 2013.
public officer; more over any death of a person during an illegal detention, at the time of arrest by any law enforcing agent shall imply as ‘custodial death’; and death occurring whilst a person is being arrested or taken into detention; being questioned, irrespective of the fact that whether the person is a witness in a case or not.’

The law stipulates that torture by a law enforcement officer, is punishable with at least 5 years’ imprisonment and a BDT 25,000 fine, and that custodial death due to torture, is punishable with life imprisonment and a BDT 100,000 fine.

The Act applies to all law enforcement agencies. It defines ‘Law enforcement agencies’ as ‘uniformed and disciplined forces like the Police, Rapid Action Battalion, Border Guards of Bangladesh, Customs, Immigration, Criminal Investigation Department (CID), Special Branch, Intelligence Agencies, Ansar VDP, Coast Guard and any other state agencies engaged in enforcement and implementation of law in the country.’

It renders inadmissible various excuses for the use of torture such as superior’s orders, political interference or need for confessions.

The Act provides for monetary compensation to victims, specifically, BDT 25,000 and BDT 200,000 respectively for the offences of torture and death as a result of torture, to be paid by the convicted person.

This Act states that any victim or aggrieved person can turn to the court if they suspect the police cannot carry out proper investigations. In that situation, the court can instruct for a judicial inquiry into the allegations. This is an important clause because previously victims of police abuse, for instance, had to file a complaint at the police station they had been victimized. The Officer-in-Charge is responsible for forming an investigative team of police officers of the same station to investigate the complaint against a colleague. This conflation of authority and interests have been counterproductive for filing of cases and fair investigations. However, the act does not address section 197 of the Criminal Code.

According to the three human rights organisations, none of the cases they have filed have gone through the entire legal process. Two cases that BLAST filed in 2014 is pending at the courts and no one knows when they will be heard. The backlog of cases at the courts have further delayed and complicated human rights cases. Even in incidents of abject innocence, such as the Limon case where a young boy was shot in the leg by Rapid Action Battalion that later was amputated, he was freed of the criminal charges against him, after 42 months of legal battle and public debate, justice is not achieved and the cases against the known and named perpetrators are pending.

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7 Ibid. Section 3 (vii).
8 Ibid. Section 3 (iv).
9 Ibid. Section 15.
10 Ibid. Section 5.
11 Limon became a well-known public figure when media and human rights organisations picked up his case. Limon was mistakenly shot by the Rapid Action Battalion (RAB) on suspicion of being a criminal. Though, the RAB quickly realized he was not a criminal but a school student. He was
Despite the intention of the Act, one could fear it will be utilized by the government and politicians to control law enforcement agencies and ensure obedience and compliance, instead of achieving justice and redress for victims. The cases filed and tried at the courts continue to be limited and restricted to severe cases of torture including death of the victim. Several interconnected reasons could be behind this low appearance.

- The law is new and the awareness of it and the rights it grants to victims are not widely known.
- People, especially poor and resourceless, do not trust the police or the courts, as an instrument to achieve justice and redress.
- Victims and victims’ families are threatened with violent repercussions and/or being implicated in criminal cases, if they complaint.
- Courts and judges are threatened with violent repercussions and/or political interference, if they accept complaints as cases.
- Violence, abuse and oppression is expected as a condition of life for many poor people. Violations by authorities does not constitute a reason to complain. On the contrary, complaining increases the risk of damaging health and livelihood, for themselves and their family, which do not stand in proportion to the possible gains. Staying out of public purview is a safeguard, despite the physical and economic suffering, pains and humiliation.

The infrastructure of human rights documentation in Nepal
Torture by police and armed forces has been an endemic phenomenon in Nepal. While torture has been practiced by the ruling government for large periods of the last fifty years of Nepal’s modern history, human rights organisations report that torture by the police and armed forced was particularly widespread during the Maoist insurgency in the period of 1996-2006, reflecting widespread impunity in the country (UN-OHCHR 2012). Throughout the insurgency and more specifically after the mobilisation of the Army after the declaration of the State of Emergency in 2001, there were widespread human rights violations in different parts of the country. UN-OHCHR reported that there were over 2,500 cases of alleged ill treatment over the decade long insurgency (UN-OHCHR 2012). CVICT, a human rights organization that focuses explicitly on torture, claims that as many as 30,000 people were tortured during the 10-year insurgency. THRD Alliance, another human rights NGO, writes that cases of torture are widespread in Nepal’s southern Terai region, since the Madhesh uprising\(^{12}\) of 2007 (THRD Alliance 2014). Following the insurgency, human rights organisations

\(^{16}\) at the time of the incident) they nonetheless implicated him in two cases of possession of arms obstructing on-duty law enforcers, attempted murder and injuring RAB personnel.

\(^{12}\) It refers to an ethno-regional movement in Nepal's Terai region bordering with India that challenged the Nepali state to its very core. Not only has this ongoing movement put federalism in the political agenda in Nepal, it has resulted in significant loss of life, injuries, damage of properties and disruption of communal harmony. The uprising has historical roots in the particular process of state formation and nationalism in Nepal.
report that the police have continued to inflict torture and ill treatment, particularly as a method to secure ‘confession’.

In Nepal, history of human rights work is closely linked to restoration of multiparty democracy in 1990 and protracted political transition following the Maoist insurgency. Against the background of the expansion of public sphere and use of ‘rights’ language, international funding, through bilateral donors, UN agencies, international organisations and private foundations began to make it through to Nepal supporting the growth of human rights organisations. This led to the development of an infrastructure of documentation, with its organisational structures and professional incentives.

Since 1993 INSEC (Informal Sector Service Centre) has been publishing Human Rights Year Book based on its human rights monitoring work on an annual basis. CVICT was the first organisation established in 1990 that worked explicitly on torture. Much of its earlier work focussed on the State violence during pro-democracy protests in 1990 and later expanded to include torture amongst Bhutanese refugees as well as Maoist insurgency in Nepal. Advocacy Forum was established in 2001, largely as a response to Nepal’s conflict related torture, illegal detention, enforced disappearance, and extrajudicial killings. Established in 2002, PPR-Nepal (Forum for Protection of People’s Rights, Nepal) has been engaged in documentation of torture and ill treatment and other human rights violations when the Maoist insurgency and State’s response to it escalated in early 2000. THRD Alliance was established informally in 2008 and formally registered in 2011, as a direct response to political movement in Nepal’s lowland Terai region bordering with India. THRD Alliance is engaged in public advocacy as well as filing cases in Nepali courts.

A mapping of human rights organisations conducted in 2014 showed that there are 17 human rights organisations involved in the documentation of human rights including torture and ill treatment. Four of these organisations focus explicitly on the documentation of torture and ill treatment. This is in addition to regular media reports and a number of international organisations such as Human Rights Watch, Amnesty International and Asian Human Rights Commission among others that occasionally bring out reports on human rights violations more generally and torture and ill treatment more specifically. This number does not include other organisations who broadly consider human rights as their mandate but do not document cases although they may refer cases of human rights violations to organisations who document torture and ill-treatment. Only two human rights NGOs (Advocacy Forum and THRD Alliance) involved in torture documentation had staff in their branch offices outside of Kathmandu. INSEC has District Representatives in all of the 75 districts of Nepal and these representatives are paid a small regular stipend and they receive an incentive/reward for each case of human rights violations they identify and report.

The social networks of these organisations and their staff or representatives in NGOs, media, government offices, police, lawyers, and health facilities, are key to the monitoring, identification and documentation of torture and ill treatment. Human rights have a greatest organizational presence in urban areas and the Kathmandu
valley.

The infrastructure of human rights documentation in Bangladesh
In Bangladesh Torture, custodial death, extra judicial killings known as “cross fires” and enforced disappearances are widespread (ASK 2015; HRW 2016a; ICG 2016, Odhikar 2014). For decades, the party in government has ruled with a firm hand utilizing law, law making and law enforcement agencies to suppress opponents (Islam 2013). All governments have blatantly used the parliament to benefit themselves and their allies. The two parties have continuously utilised, amended and ignored the legal system for their own ends, which has created a society based on the rule through law, not rule of law. Members of parliament use state resources, such as contracts, jobs and promotions to build support bases and secure vote banks. It is a practice that ensures party control of the state and establishes an opportunity structure for the exchange of favours, distribution of benefits, and allocation of rewards and nomination of positions (Andersen 2016).

Today, violence, torture and ill-treatment is a product of three processes. The first is harassment, extortion and interrogation by police offices. The second is on-going political tensions between supporters of the Awami League government and its opponents, mainly in the Bangladesh National Party and the Jamaat-e- Islami. The third, is the rise of political terrorism in the country by people aligned to fundamental and extreme reading of Islam. Increasing securitization of society, in an attempt to pre-empt further attacks, already has and could in the future challenge basic rights and liberties stipulated in the constitution and in international law.

This follows a trend of increasing extra judicial killings and enforced disappearances that commenced with the re-election of Awami League in government for a second consecutive term for the first time in the political history of Bangladesh (HRW 2016b). This came after the cancelling of the caretaker system, the change of election laws that prevented Jamaat -e-Islami from participating and the boycott of the major opposition party, the Bangladesh National Party, which resulted in an election where 154 seats of 300 were won uncontested.

There are hundreds of organisations that work on human rights issues. Many are registered and some not. The majority are either not active or work as a façade for political actors on either side of the political spectrum. The majority of human rights organisations were established around the time when democracy was reinstated in 1991, after 16 years of succeeding military regimes.

Three organisations have a reputation and track record for actively documenting and publishing on human rights issues, in particular on torture and ill-treatment. This is in addition to regular media reports and a number of international organisations such as Human Rights Watch, Amnesty International and Asian Human Rights Commission among others that occasionally bring out reports on human rights violations more

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generally and torture and ill-treatment specifically. This does not include other organisations who broadly consider human rights as their mandate but do not document cases although they may refer cases of human rights violations to organisations who document torture and ill-treatment.

At the time of the research, the three organizations involved in the actual documentation of torture and ill-treatment were; Ain o Salish Kendra (ASK) Odhikar and Bangladesh Legal Aid and Services Trust (BLAST). ASK was founded in 1986. It provides legal aid, and undertakes documentation of human rights violations and advocates for the rights of victims and the poor. ASK operates in just under a third of Bangladesh’s 64 districts.\(^\text{14}\) BLAST acts as a legal services organization, specializing in women’s and constitutional issues, and operates in under a third of the country’s districts.\(^\text{15}\) Blast was founded in 1993. Odhikar was founded in 1994. It specializes in the documentation of torture and extra-judicial killings and has a network of supporters in two thirds of Bangladesh’s districts. Since 10 August 2013, Odhikar has come under increasing political and economic pressure from the Bangladesh government.\(^\text{16}\)

Both ASK and Odhikar monitors human rights violations in the country. According to ASK, 113 were killed between January and July 2016 by law enforcement agents. In all of 2015, 192 individuals were allegedly killed by law enforcement agents and 48 individuals disappeared (6 dead bodies were recovered and 4 people were recovered after abduction).\(^\text{17}\) According to Odhikar, January to June 2016, 74 persons were allegedly killed and 6 were tortured to death by law enforcement agents. 48 persons was disappeared after being picked up allegedly by men claiming to be members of law enforcement agencies. Among them, six were found dead and 22 were later produced before the Court or surfaced alive. The whereabouts of 20 persons are still unknown.

With the exception of BLAST, the organizations do not have branch offices, and rely on referrals by third parties and volunteer members of local human rights networks. Human rights workers are usually either lawyers or journalists. Clinicians for medico-legal reports are recruited on consultancy or voluntary basis. However, it is often difficult to persuade doctors to take up such work.

The modalities of work including national and local coverage and documentation practices, is constrained by the fact that less than 30 people work professionally with the documentation of human rights violations of torture and ill-treatment, even including the not well respected and inactive Human Rights Commission. This in a country of more than 150 million citizens, 12 million alone in Dhaka. Constraints on


\(^{16}\)Written statement submitted by ODHIKAR - Coalition for Human Rights, Twenty-seventh session, Agenda item 4: Human rights situations that require the Council’s attention, 25 August 2014.

resources, be they, financial, logistical or human, do not match the depth and extent of the problem.

Similarly, to the experiences in Nepal, the social networks of the organisations and their staff, be they, NGOs, media, government officers, police, lawyers, or health workers, are key to the identification and documentation of torture and ill-treatment. Human rights have a greatest organizational presence in urban areas and especially in the capitol of Dhaka.

**Commonalities of Challenges**
Almost all human rights organisations that work on torture in Nepal and Bangladesh draw on the language, institutions and norms of international human right law and have focussed on legal accountability.

Not only are they mainly run by legal professionals with limited medical or psychosocial expertise, their work is mostly shaped by an orientation towards advocacy of institutional and legal reform i.e. ‘naming and shaming’. The focus on issuing urgent appeals, taking cases to the UN Human Rights Committee, litigation and public advocacy are strategies employed by human rights organisations that often prioritize legal accountability above protection of the survivors. This strategy has important consequences as the survivors of torture may not want to be a ‘legal’, ‘political’ or ‘media’ case and may prioritize silence over reporting. Thus, while ‘naming and shaming’ remains a preferred strategy adopted by human rights organisations, it may discourage survivors from coming forward to report their injurious experiences out of fear for repercussions.

All human rights organisations in Nepal and Bangladesh publish reports. Though the targets of the human rights reports might be the national intellectual class, often in the urban centres, and the global community of informed human rights actors, changes in specific country contexts are pursued through law and institutional reform efforts. However, when the prospects of change on the ground are not positive or conducive for public campaigning and advocacy, international dissemination becomes a viable tool. This is based in the hope that external attention and potential action will bring about changes in the actions of law enforcement agencies, limiting violations and ensuring accountability.

The organisations rely on international funding and transnational networks, often on a project basis, to carry through documentation and fact-finding activities. When projects come to an end, organisations often resort to re-active forms of identification and only follow up on the cases that are not too costly to pursue in logistical, financial and human resource terms or which contains prospects of political agenda setting, nationally and especially internationally.

Nonetheless, time bound and fluctuating, it is the dependence on international sources of funding that keeps the organisations alive and active, given the lack of alternative resources within national political hostile environments. This positions the human rights organisations in the middle space between population and government
as well as in-between the international and the national community of human rights professionals and activists. This is a precarious position. Critiques point out that the dependency on international funding makes them more accountable to the donors than to the survivors. This is substantiated by the fact that reports are mainly written and published in English. More recently, human rights organisations working in Nepal have come under some criticism by victim groups and other commentators for elitist and donor-serving human rights work in Nepal.

This is a serious challenge to the human rights community, which reaches beyond Nepal and Bangladesh, to further vernacularize and popularise their work and be legitimate and accountable to the populations, especially the poor and marginalised at risk of violent exposure. Human rights organisations do not just need to improve detection and documentation but to ensure adequate and relevant assistance including protection.

**Concluding discussion**

The case of Nepal and Bangladesh shows the limitations and potentials in focusing human rights work on criminalisation and financial redress as a viable response to acts of torture to ensure accountability.

Nepal’s CRTA shows that despite its limitations scores of survivors have been granted compensation since the Act came into force. This in itself can be seen as a considerable success. Although there are hurdles that the survivors have to go through to receive compensation and many of those awarded compensation by the court do not receive it. The Bangladesh situation contrasts to that of Nepal. Hardly a handful of cases have made it to the courts under the Torture and Custodial Death (Prevention) Act 2013.

Nepal has a relatively well-developed infrastructure of documentation, partly as a legacy of the expansion of civic sphere in the post-1990 era and the 10-year long Maoist insurgency (1996-2005), that allows for the naming, blaming and claiming of torture cases. This network of organisations and activists is crucial to the relative success of the CRTA. Indeed, the existence of the CRTA has also shaped much documentation work done by the human rights organisations. It also means that documentation is at the same time made possible and limited by already existing infrastructures, legal provisions and priorities of human rights organisations.

There are limitations within the documentation practices that foregrounds compensation to individual victims. Nepal’s CRTA produces unequal forms of access to the courts and fails to prioritize wider political accountability. Nepal’s lesson shows political and legal action against perpetrators of torture could make compensation for individual survivors more difficult. Speaking more broadly, the criminalisation of torture can have an important role in prevention, as well as being crucial to the ending of impunity. However, the criminalisation of torture could in fact shrink the space available for individual compensation. Human rights organisations have to make that potential and open up avenues for justice, redress and compensation.
The Torture and Custodial Death (Prevention) Act 2013 in Bangladesh criminalises torture and requires that a police officer is suspended whilst an investigation is carried out. In the absence of a working victim protection mechanisms though, the result is not higher levels of criminal accountability. Rather it is higher levels of intimidation, as police officers pressure survivors to withdraw cases. The Bangladesh case shows that though the Torture and Custodial Death (Prevention) Act 2013 is a very progressive act, the scope for practical applicability is very limited.

There are two lessons why the act so far has had limited effect. The first relate to the legal framework that plays a decisive role in the potential success in the use of the act. The history of draconian laws that grants complete immunity for law enforcement agents actions, has been in place for decades. The Special Powers Act and special acts in connection with large scale security drives have undermined the possibilities of applying the Torture and Custodial Death (Prevention) Act 2013 in general and also weakened access to justice and the whole concept of rule of law. Accountability is not a practical reality and naming is hardly a realistic option, especially for the poor, marginalised and resourceless.

The second relate to the political system and the practice of politics and politicking. The historical antagonistic relationship and competition between the Awami League and Bangladesh National Party over control of state institutions and state resources through elections, inherently obstructs and obscures any prospects of actual implementation of progressive laws which grants opportunities of justice to all citizens, including political opponents. For instance, the Special Powers Act has been debated in the run up to most elections but never cancelled by any of the two parties when in government. Furthermore, like in many other countries in the world today, human rights as well as the wider civil and political rights, such as the freedom of expression and assembly, is under pressure. This threatens not just the existence of vocal and critical voices within media and civil society but also hampers the access to justice and legal redress including the naming of injuries, when law enforces have greater discretion, new means and wider legal boundaries for investigation and control.

These are the challenges today. The political conditions within both countries do not indicate positive pro-poor changes in current practices of justice and redress or progressive changes in the legal framework. With the current practices of documentation, it is very likely that the suffering of poor and the marginalised may not be perceived and named as such. Not only are poor highly vulnerable to violence due to their precarious situation but they lack resources and support that are necessary to report cases and seek justice.

Consequently, to identify violent exposure and name injurious experiences, to make claims of accountability, human rights work has to go beyond documentation for legal accountability and political advocacy. It needs to consider protection concerns of the victims as a key priority. Assistance, protection and prospects of accountability is vital for documentation.
To do this, human rights organisations on the one hand should continue to test the legal framework for justice, redress and compensation, under national and international law and legal obligations. On the other hand, the organisations should further engage in solidarity with the organisations of the poor and the marginalised that will help identify cases of torture and ill-treatment that otherwise may never reach their attention. In addition, this also offers a possibility for relevant assistance and protection, while cases are documented, injuries named and advocacy advanced.

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