

# IMPORTANCE OF CRIME GUN TRACE DATA

Mr. LEVIN. Mr. President, over the past decade, through the gathering and dissemination of crime gun trace data, the need has been highlighted for stronger measures to stem the flow of guns into the illegal market and too often, into the hands of criminals.

One of the responsibilities of the Bureau of Alcohol, Tobacco, Firearms and Explosives, ATF, is to trace firearms recovered by local law enforcement at crime scenes. The gun is traced from its manufacturer to the first purchase using records maintained by firearms manufacturers and sellers. The process begins when law enforcement recovers a gun in the course of a criminal investigation and contacts the ATF with information on the crime being investigated, the name of the gun's manufacturer, the caliber and serial number. The ATF first checks its records of out-of-business dealers and its multiple sales records. If the traced gun is not located in these records, the ATF will then contact the manufacturer for the name of the dealer or distributor to whom the manufacturer first sold the gun. The dealer is then contacted for information on who originally purchased the gun.

This information provides an invaluable investigative tool for law enforcement. Analysis of crime gun traces allows the ATF, as well as State and local law enforcement, to not only investigate specific gun crimes but also to work to identify the sources of guns used in crimes. Crime gun traces can link a suspect to a firearm in a criminal investigation, identify gun traffickers whether they are licensed or unlicensed sellers, and detect both in-state and interstate patterns in the sources and types of crime guns.

It was not until the most recent decade that law enforcement agencies have routinely traced guns recovered in crimes. Initially, crime gun traces amounted to about 100,000 a year. Today, gun tracing has resulted in a database of over 2 million crime guns. The database has become a rich source of information for guiding public policy and the work of law enforcement officers.

The rapid expansion of crime gun tracing and the resulting trace database has produced a great deal of valuable information on how the illegal gun market is supplied. It is this information that helps point the way to policies to keep guns out of the hands of criminals.

Mr. LEAHY. Mr. President, I want to make the Senate aware of a report I recently became aware of by the Advocacy Forum, a respected organization which documents human rights violations in Nepal by both government security forces and the Maoists.

The Forum's latest report, released this week, describes the widespread use of torture on persons in custody. The overwhelming majority of documented cases are attributed to the Nepalese po-

lice, military and armed police. There are also cases attributed to the Maoists.

The descriptions of the use of torture in this report are difficult to read. It is appalling that such barbaric acts of cruelty occur in the 21st century. Unfortunately, we know that this is not unique to Nepal. Torture is routine in dozens of countries.

Nepal today is at a crossroads. Since popular demonstrations forced King Gyanendra to back away from his foolhardy power grab last February 1, there has been progress towards strengthening Nepal's fledgling democratic institutions and beginning a dialog to resolve the conflict. The future is unpredictable, however, and we continue to receive disturbing reports of extortion and abductions by the Maoists, and of resistance by the Nepalese military to much needed reform.

Addressing these issues, and ending the use of torture and other human rights violations, will require new laws to protect the rights of detainees in accordance with international norms, reform of the judiciary so it is fully independent and has the resources to effectively carry out its responsibilities, reform of the military and police so they are placed fully under civilian authority and subject to the rule of law, and prosecutions of those responsible for violations. The international community can and should help support Nepal in taking these difficult, essential steps.

All Senators should be aware of the cases documented by the Advocacy Forum, and I ask unanimous consent that a summary of the report be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

## [Advocacy Forum—Nepal]

### SHARING EXPERIENCES OF TORTURE SURVIVORS—SUMMARY OF DATA

Advocacy Forum is a non-profit making non-governmental organization working to promote the rule of law and human rights in Nepal. Our core activities are documentation of cases of human rights violations, monitoring of detention centres, providing legal aid to the victims of human rights violations and involving advocacy in contesting impunity. As part of our on-going work to address human rights violations and denials of access to justice, through our central, regional and district-based offices, we make daily visits to a number of police detention centres in 9 districts and document and monitor human rights violations. We do not have access to military detention centres, but victims of torture at these centres have contacted us to report their experiences, as have victims of the Maoists. Evidence of human rights' abuse is systematically and thoroughly documented.

Over a period of five years (July 2001 to April 2006) Advocacy Forum documented 5682 cases of human rights violations focusing on extra-judicial killings (198), forced disappearances (335), torture (2,271), rape of women (41); and illegal detention (2,837) committed by the state security forces and the Maoists. During this period we were put under extreme threatening pressure by the State, Maoist and vigilantes in carrying out our ac-

tivities. Similarly we observed the great security risk experienced by victims and witnesses.

Last year Advocacy Forum issued a press statement on 26 June covering the cases that we had documented up to March 2005. Because of the political situation we could not provide details of the torture and experiences of the victims. Between March 2005 to April 2006, we documented 951 cases of torture and 17 cases of rape committed by the State and Maoists. This report sets out some of the experiences of those torture victims who managed to survive and want to share their experiences. Some of the victims' names have been changed to protect their safety.

When Advocacy Forum intensified the challenge against illegal detention, last year alone (March 05-April 06) through habeas corpus, 418 people who had been detained illegally for a prolonged period of time were released from different detention centres. We were shocked to learn that every single person arrested by army soldiers and held in military detention reported that they had been severely tortured. Their torture experiences varied from deprivation of food to electric shock and rape of women. We do not have the capacity to measure the psychological torture and its effect on the victims and their families. Many of the victims reported that they were threatened not to share their experiences with anyone, in particular human rights groups. Many said that they were ordered to report to the barracks regularly. There was a complete absence of any protection for the victims. So, they were forced into silence, and no survivor could dare to challenge these atrocities.

Despite all these difficulties, even putting their lives at risk, some victims who had been released from detention played a significant role in the release of others who were languishing in different detention centres undergoing severe torture for a prolonged period of time. By sharing their experiences as to how other fellow detainees were treated in detention and their conditions, they helped us to coordinate our efforts and publicize the whereabouts of some missing people and to release many others.

From July 2001 to April 2006 Advocacy Forum documented 2271 cases of torture. Last year alone (March 2005-April 2006), we documented 951 cases of torture and 17 rape cases. Out of these 951 torture cases, 511 were committed by the police, 371 by the military and 11 by the armed police. We also documented 12 cases of torture by the state sponsored vigilantes and 46 cases of torture inflicted by the Maoists. Because of the security risk, 177 survivors released from military detention did not want to share the full details of their torture with us. Excluding those cases, we have thoroughly documented the details of torture in 774 cases. Children as young as 14 years old were also arrested and detained. Out of 951 torture survivors 349 (37%) were juveniles (below the age of 18 years old).

It should be borne in mind that, due to the limitations on our access to victims, our records only cover a small proportion of the victims of torture. It is impossible to estimate how many victims of torture there are in total in Nepal, but we would guess that we have recorded only 10% of the current cases.

Analyzing the 774 cases documented last year, we have found that the commonly used methods of torture in barracks include blindfolding for a prolonged period of time (up to 21 months), electric shocks, suffocating the victims by pouring water into the nose and mouth, hanging upside down, rape and sexual abuse, piercing under nails, burying, keeping in an abnormal position, tying hands and feet around a stick and swinging the body

around, random beatings, fake executions and threats of killing.

The commonly practiced methods of torture in police detention centers are beatings on soles by plastic pipes, rolling the muscles of thighs, random beatings and forcing victims to sit in an abnormal position.

We also documented 46 cases of torture inflicted by the Maoists. They have also been practicing torture systematically to punish and to terrorize people. The commonly used methods of the Maoists are breaking the legs and bones of different parts of the body by hitting with heavy objects, wounding and random beatings. They have also put people for a prolonged period of time in "labor camps".

Out of 371 reported cases of torture in the barracks, Bhairabnath Battalion, Maharajgunj Barracks, Kathmandu, Yodha Bhairab Battalion, Maharajgunj Barracks, Kathmandu, Jagadal Battalion, Chauni Barracks, Kathmandu, Mahabirganj Battalion, Chauni Barracks, Kathmandu, Bhimkali Battalion, Chisapani Barracks, Banke, Rajdal Barracks, Lalitpur, Fulbari Barracks, Pokhara, Kaski, Bijaypur Barracks, Kaski, Shivadal Battalion, Gorusinghe Barracks, Kapilvastu, Dhulikhel Barracks in Kavre, Devi Dutta Battalion, Suparitar Barracks in Makawanpur, and Bhawani Box Battalion, Dailekh Barracks in Dailekh are the ones where most of the victims were tortured.

Out of 511 torture cases by the police, Valley Crime Investigation Branch, Hanumandhoka, Gausala Ward Police Station, Boudha Ward Police Stations, Kalimati Ward Police Stations, Balaju Ward Police Stations, District Police Office Morang, District Police Office Banke, District Police Office Kanchanpur, District Police Office Udaypur, District Police Office, Kapilbastu, District Police Office, Kaski are the police stations where most of the victims were tortured. Of those people we interviewed in police detention centres, 35.5% in Nepal, 43.8% in Kathmandu said that they had been tortured. However, Advocacy Forum only has access to those people detained by the police who are then taken to Court for remand. If statistics for people released before being taken to Court were included, we consider the percentage of those who have been tortured by the police may be considerably higher.

Torture is also a result of the failure of the criminal justice system. Though the political context of the country has been changed, the practice of torture has not. Torture is routinely practiced in detention even today. In May 2006 alone we documented 72 cases of torture in 21 different police detention centers. The pattern, ways and techniques of the police remain the same as before. Likewise, the judges and the prosecutors continue with their previous prejudices and practices. Neither the judges nor the public prosecutors are adequately sensitized on the issue.

The existing system forces victims of torture to remain silent. What happens in practice is that if a person is arrested, generally that person will be detained for some days without any custody record, the authority does not even acknowledge the detention of that person, and there is no mechanism that allows inspection or scrutiny of the detention records of the police. During this period the detainee is tortured. When his or her wounds and bruises are healed, the police prepare a paper that shows that the detainee was arrested less than 24 hours previously, 24 hours being the legal limit within which a detainee should be presented to a judge. The detainee is then escorted by the police from the same office to the court. In the presence of the police the judge extends the remand. During this period, detainees are rarely

given access to medical services or lawyers. When a detainee goes to prison or comes out of custody only then does he or she share the incidences of torture with others. If a case for compensation is filed, the victim is likely to lose the case as he or she will be fail to prove evidence of torture. In the absence of medical reports, it is hard to convince a judge!

The whole issue of torture is also related to the issues of an independent and professional police system, independent judiciary and the office of the Attorney Generals. So, it is important that we have a wider discussion about making the criminal justice system more functional and efficient in eliminating torture and for the promotion of rule of law and fair trial.

Since 2001, Advocacy forum has helped 40 torture victims to bring a case challenging their torture and demanding compensation. Out of 40 cases, 11 have been already been quashed as the victims were unable to provide sufficient evidence of torture, in particular any medical report proving the claim. Victims have also lost their cases because they were unable to establish that they were in custody when they were tortured. For example, Mainya Tamang was arrested on 7 November 2004 by the police of Ward Police Station, Bouddha. Following her arrest, she was then taken to the same ward police station where she was detained for two days illegally and for two days she was severely beaten and tortured. On 9 November 2004 she was transferred to Kalimati Women's Cell where she was again beaten. On 11 November 2004 the police prepared a paper showing that she was arrested that day and produced her to the District Court of Kathmandu for remand. On 27 December 2004, Advocacy Forum filed a case on her behalf demanding compensation for the torture inflicted upon her while she was in detention. Her case was quashed both in the District Court and on appeal in the Appellate Court as both Courts said that at the time when she claims that she was tortured, there was no evidence to prove that she was in detention!

Out of the 40 cases that we have represented, only 4 victims of torture by the police have so far been awarded compensation of 10,000 Nepali Rupees (approximately US\$ 135), but they still have not received this compensation. Other cases are still sub-judice of the court.

Advocacy Forum has faced a number of difficulties in bringing cases of torture. In the beginning, the Court would not even let us register a complaint where military were the accused. The Court asks a victim to prove that he or she was tortured rather than the accused having to prove that the victim was not tortured while in their custody. Those people who remained in custody for many weeks and months without any records of their detention, without access to medical services, lawyers or families have very little chance of proving that they were tortured. In addition, the Torture Compensation Act provides that if the complaint is filed with "malafide" intention, the victim will be fined up to 5,000 Nepali Rupees. As it is very difficult to prove the case of torture, many victims are discouraged from doing so as the chances of being found guilty of bringing the case with malafide intention and being fined are very high. Thus, the victims have no protection. In many incidents they reported to us that they were put under pressure to retract their complaint. No witness could dare to testify in their favor as they also have no protection. Thus, the whole system is hostile against the victims and favors the perpetrators.

One of the major problems in the case of torture is the failure of the State to crim-

inalize the act of torture. Since 1996 the UN Committee against Torture has been asking the Government of Nepal to criminalize the act of torture, but the State has failed to do so. Furthermore, the existing Torture Compensation Act does not comply with Nepal's international obligations. To make it compatible with Nepal's international obligations, the Torture Compensation Act of Nepal has to be amended in such a way that criminalizes the act of torture, puts the burden of proof on the custody taking officers, includes provisions for the protection of victims and witnesses, ensures lawyers and families have access to detainees right from the beginning of arrest, makes it mandatory for the list of detainees to be made public and put under public scrutiny, if anyone is found to be detained without record, the officer in-charge is accountable, makes provision that ensures perpetrators of torture from other countries are extradited or prosecuted, and ensures that no-one will be extradited to any country if there is a risk of torture in that country.

In addition, the following changes to the law are necessary:

Mechanisms of transitional justice to deal with past cases of human rights violations including torture;

An increase in the current maximum amount of compensation, which is currently 100,000 Nepali Rupees (approximately US\$ 1,350) plus a change to allow the recovery of medical expenses; and

Changes to the laws of evidence to ensure that evidence produced under torture or duress is inadmissible by making prosecutors provide proof that evidence was voluntary.

In conclusion, the State has the obligation to investigate all past cases of human rights violations including torture and to prevent violations in the future. A functional mechanism has to be set up to address past violations of human rights including torture and to take measures to prevent such occurring in the future. One way to prevent the future occurrence of such violations is to prosecute those responsible for violations committed in the past. It is also urgent to amend the existing Torture Compensation Act to make it compatible with the provisions of the U.N. conventions against torture.

#### MANUFACTURING EXTENSION PARTNERSHIP

Mr. KOHL. Mr. President, since 2001 America has lost 2.5 million manufacturing jobs, eroding an industry that was once the pride of the United States. Manufacturing represents the cornerstone of our economy and the best in American values. It creates the cars we drive to work, the computers our children use to learn, and the household appliances we use each day. I rise today to talk about the Manufacturing Extension Partnership, MEP, one of the few Federal programs that has provided tangible assistance to the manufacturing sector, keeping companies in business and retaining jobs.

MEP is a public-private partnership working with small and medium sized manufacturers, helping them streamline operations, integrate new technologies, shorten production times, and lower costs. MEP clients surveyed in fiscal year 2004 reported 43,600 jobs created or retained and \$1.889 billion in additional sales.

In Wisconsin, where manufacturing employs 512,000 people and contributes