



Press Note

On the Occasion of International Day in Support of Victims of Torture (26 June 2019)

25 June 2019, Kathmandu: On the occasion of the International Day in Support of Victims of Torture, Advocacy Forum (AF) is publishing a report detailing the increase in use of torture seen in Nepal over the last year.

For the past nineteen years, AF has been visiting police detention centers in Nepal and providing legal assistance to the detainees. The Constitution of Nepal guarantees detainees the right to access legal counsel. However, in the absence of any legal or policy framework, only detainees with wealth or powerful political contacts have access to lawyers.

The past year proved that torture in Nepal is not an issue on the verge of disappearing. With the reported torture rate rising 5% over the past three years, torture remains a systemic issue facing Nepal. AF conducted 1,165 interviews with detainees over 2018.

The key findings from AF's monitoring efforts are as follows:

- 22.2% of all those interviewed reported torture going against the general downward trend observed in the reported torture rate since 2011
- 23.5% of juveniles interviewed reported torture
- Lack of compliance with procedural safeguards highlighted consistent inadequacies and failures, in particular with the administration of required detainee health examinations
- Detention centres and Child Correction Homes remained a distinct point of failure. Correction homes were reported to be housing juveniles nearing double their capacity. A total of 200 juveniles were found being housed in the Bhaktapur Child Correction Home with an official capacity of only 110 juveniles, contributing to ongoing illegal detention of juveniles with adults in police stations, a longstanding concern.

Constitutional safeguards such as the right to access legal representation, the right of presumed innocence, and rights against self-incrimination are important to ensure fair trial for anyone accused of committing a crime. Over almost two decades, AF has demonstrated that these safeguards not only ensure fair trials but also work to reduce torture and ill-treatment in detention.

Ensuring that the appropriate constitutional and procedural safeguards are implemented is of first priority for AF. However, a main concern is the increasingly controversial positions of the Government in some key aspects of human rights work as reflected in a number of contentiously proposed draft bills that may threaten safeguards. In particular the Nepal Media Council Bill, Bill on Mass Communications, National Security Council Bill, and proposed amendments to constrain the powers of the NHRC are seen as decidedly anti-human rights and threaten the fair implementation of constitutional and procedural safeguards.

AF has long advocating for proper legal framework that criminalizes torture and lays down provisions for preventing torture and providing remedies for victims. After years of advocacy, a



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new Penal Code came into force in August 2018 which at long last designates the use of torture as a criminal offence.

AF welcomes this development and applauds the government for including torture provisions in the new Penal Code.

However, the Penal Code falls short in some key areas in regard to the prevention, prosecution, and victim compensation aspects of torture. One of the key issues is the unacceptably low maximum sentence of five years imprisonment and fine of a mere Rs. fifty-thousand (\$445 USD) and appropriate compensation, despite the 1996 Torture Compensation Act (TCA) setting the max fine at Rs. one-hundred-thousand, which in itself is very low, taking into account the cost for medical treatment that victims often bear for years. There is also a lack of legal framework to provide compensation for survivors who are moreover restricted by a short six months' statute of limitations to report instances of torture that can inflict profoundly debilitating physical and psychological harm onto survivors, limiting their ability to come forward and report instances of torture.

Nepal ratified the UN Convention Against Torture and the International Covenant on Civil and Political Rights in 1991. However, even after 28 years, torture continues to be practiced with a sense of impunity, AF is hopeful the new Penal Code will help end Nepal's culture of impunity. However, AF believes there is a strong need for a distinct and comprehensive anti-torture law which can address the shortcomings in the new Penal Code and provide a framework not only for effective remedies but also for prevention.

Prevention of torture requires genuine effort from all stakeholders in the criminal justice system. To foster coordination among actors, for the past seventeen years AF has regularly convened stakeholder forums where it presents its experiences from regular visits to detention centres. AF is confident that key actors in the criminal justice system are made aware of routine violations of detainees' rights through these forums and act in coordination to counter the systemic problem of torture in the criminal justice system.

On the occasion of the International Day in Support of Victims of Torture, AF would like to reiterate its commitment to stand with all those victims who have suffered torture and continues to support them in their quest for justice and to advocate to prevent torture in Nepal.

While many of AF's requests remain constant over years of stalled improvement, AF continue to urges national and international authorities to consider and implement the following recommendations:

- Ensure unhindered access to detainees from lawyers and institutions providing legal aid,
- The tabled 2014 anti-torture bill be revisited and revived with the necessary crucial improvements outlined in AF's report so that Nepal has a standalone anti-torture bill that comprehensively covers all concerns relating to the prevention, documentation, prosecution, and compensation aspects connected with torture,
- Equip police with updated operational manuals for best practices on respecting the human rights of detainees and preventing torture to ensure proper compliance with the new Penal and Criminal Procedure Code,



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- Support for existing survivors of torture is treated as importantly as prevention. A Basket Fund should be established and implemented to ensure that survivors are rightfully compensated for their hardship,
- Expand on old and construct new Child Correction Homes to end overcapacity,
- Modernize medico-legal training and documentation so that medico-legal evidence can be done more professionally and provide funding to improve the administration and quality of medico-legal documents,
- Ratify the Optional Protocol of the Convention Against Torture as recommended during the Universal Periodic Review so that an official national body can facilitate independent monitoring and reporting of torture.

Moving forward, all stakeholders must come together to formulate best holistic interventions in order to try and address often complex issues. AF looks to continue the fight against the use of torture so that this 5% increase reported in 2018 can be reversed and continue its downward trajectory towards a day where torture is virtually rid from Nepal.