



Press Statement

Reparation for victims of torture is a must!!!

On the occasion of International Day in Support of Victims of Torture.

26 June 2020, Kathmandu: In order to commemorate the International Day in Support of Victims of Torture-2020, Advocacy Forum-Nepal (AF) has published a report on torture/ill-treatment of detainees in police custody presenting an analysis of data collected from detainees in police custody and Child Correction Homes (CCHs) in 2019. This year, AF also analysed data on compensation to assess the effectiveness of the laws, policies and practices in place to provide compensation and reparation for victims of torture.

Since its inception in 2001, AF has been continuously monitoring detention centres to deter use of torture/ill-treatment on those whose safety and wellbeing depends on the arresting authority. Despite the right against torture guaranteed as a fundamental right under Article 22 of the Constitution of Nepal, AF has found a continuing prevalence of ill-treatment/torture of detainees at the hands of the police. Nevertheless, the degree of forms and severity of torture has changed and decreased since the end of the conflict, though has not yet been eliminated as the Constitution envisions. Hence, torture and ill-treatment is not an issue that ended with the conflict but rather remains a prevalent crime at present.

Through an extensive collection and analysis of data, the major findings of the report are:

- 19.8% of the detainees interviewed (1,005 detainees) reported torture or other ill-treatment, a decrease from 23.5% in the 2018 report. Similarly, 24.5% juveniles (out of 269 juveniles) reported being subjected to torture/ill-treatment.
- Despite the compensation ceiling being Nrs. 1,00,000, courts often award only Nrs. 10,000 to Nrs. 25,000.
- Only 15.22% survivors have received compensation following court order, the remaining decisions of the courts have not been implemented.
- Lack of a legal mechanism for the protection of victims of torture and the witnesses exposes them to threats.
- The domain of reparation is very narrow with only monetary compensation as the mere element. The legal framework has avoided rehabilitation, satisfaction, restitution and guarantee of non-repetition, the crucial aspects of reparation.
- There a gender variable in the trend of torture with women being subjected to torture/ill-treatment more than men. 26.32% of women (in contrast to 19.8 for male detainees) reported being subjected to some forms of torture/ill-treatment.
- The number of juveniles in CCHs exceeds the maximum capacity of such homes, increasing the risk that children are exposed to COVID-19.

Torture is a serious human rights violation which causes lifelong physical and mental trauma to the victim. Often times, the victims are unable to rise from the trauma and thus continue to live a life in pain and sufferings. Thus, torture continues in the victim's life rather than ending with the incident. This makes the prevention of torture very important in protecting a cluster of human rights, including the right to fair trial.



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The prevalence of torture in fact provides a bleak picture of a country's human rights commitments and reputation. While AF applauds the positive step of the Government in criminalization of torture through the Penal Code, which came into force in 2018, it has observed legal loopholes because of which detainees are still subjected to some forms of torture/ill-treatment at the hands of the arresting authorities. AF reiterates that the prevalence of torture and the subsequent lack of accountability on such cases is a violation of constitutionally guaranteed rights and mockery of rule of law which fosters the prevailing culture of impunity.

One of the fundamental responsibilities of a State is to ensure that no rights are violated and where they do, that victims are entitled to truth, justice and adequate reparation. However, the notion of reparation in Nepal is very narrow and that narrow lens does more injustice to the victims than justice. It is therefore an immediate need that the notions of reparation be widened as per international standards in order to provide true justice to the victims as envisioned by the Constitution and existing laws.

In light of our findings, we recommend that:

- Effective remedies for victims of torture should be ensured,
- Organizations providing free legal aid such as AF should have unhindered access to government detention facilities,
- Provisions of compensation and reparation in the existing laws should be amended as per international standards,
- The police should register FIRs in all allegation of torture, and carry out investigation with due diligence,
- The law related to torture should be amended to remove statutory limitation for torture, introducing reparation for victims and making punishment proportionate to the gravity of crimes,
- Medico-legal education should be made a part of medical education,

Human rights violations such as torture/ill-treatment attacks on the dignity of a person. Finally, AF appeals all the concerned stakeholders to have a common view on prohibition and accountability on torture and ill treatment.