



वकालत मञ्च-नेपाल ADVOCACY FORUM- NEPAL

Lawyers forum for human rights and rule of law

**Press Note
26 June 2017**

On the Occasion of International Day in Support of Victims of Torture

Kathmandu: In the aftermath of two landmark cases of torture and transitional justice in Nepal – Kumar Lama and Maina Sunuwar – the prevention and criminalization of torture remains a priority for Advocacy Forum (AF).

For the last 16 years AF has been visiting police detention centers in Nepal, providing legal assistance to the detainees. The Constitution of Nepal guarantees detainee's right to access legal counsel. However, in the absence of any legal and policy framework, only detainees with wealth or powerful political contacts have access to lawyers.

The constitutional safeguards such as right to access to lawyers, right to be presumed innocent until proven guilty, rights against self-incrimination are important to ensure fair trial for anyone accused of committing crimes. Over the years, we have documented that these safeguards not only contribute in ensuring fair trial but also to reducing torture and ill-treatment in detention.

However, this year, AF encountered restriction on access to pre-trial detention in a number of places, thus hindering its ability to provide legal assistance to detainees. Allegations have been made that AF's monitoring work has resulted in negative vetting of police officials who were hoping to qualify for UN peacekeeping missions and other career opportunities.

Nepal ratified the UN Convention Against Torture and the International Covenant on Civil and Political Rights in 1991. Even after 26 years, torture continues to be practiced with complete impunity in Nepal. In the absence of national legislation criminalizing torture, both the international commitments and the constitutional guarantee remain ineffective.

Throughout the last 16 years, AF has been advocating for the legal framework that criminalises torture and lays the grounds for preventing torture and providing remedies to the victims. The current Torture Compensation Act falls far short of required international standards for ensuring accountability for torture and remedy for victims. Nepal has promised both nationally and internationally to bring about such a legal framework and it is a long due.

In the absence of any accountability for those who commit torture, AF advocates for the vetting of those officials alleged to have been involved in torture. The UN has a policy to screen security officials for their peacekeeping missions for their alleged human rights violations. Furthermore, the US Leahy law prevents the US from providing assistance or training to members of a unit of any nation's security forces that has perpetuated a gross violation of human rights, including torture, with impunity. AF believes these are some of the measures that have contributed significantly to improve the behaviour of individual police officers and reduces the practice of torture in Nepalese detention. AF has documented the steady decline in torture since it started to advocate for vetting and the UN and the US embassy started implementing their policies.

Head Office: Lamintang Marga -4, Baluwatar, Kathmandu, P.O. Box: 21798 Tel: 977-1-4425561/4432309 Fax: 4432309
email: info@advocacyforum.org.np, advocacyforumnepal@gmail.com, URL: <http://advocacyforum.org/contact-us/index.php>

Regional & Branch Offices

Biratnagar Tel: 977-21-530666 email: advbiratnagar@yahoo.com
Pokhara Tel : 977-61-5524342 email: advpokhara@yahoo.com
Udayapur Tel: 977-35-420451 email: advudayapur@yahoo.com
Surkhet Tel: 977-83-521122 email: advsurkhet@yahoo.com
Rupandehi Tel :071-522402

Nepalgunj Tel: 977-81-526278 email: advnepalgunj@yahoo.com
Kanchanpur Tel: 977-99-525399 email: advkanchanpur@yahoo.com
Kapilbastu Tel: 977-76-560235 email: advkapilbastu@yahoo.com
Dhanusha Tel: 977-41-522365, advdhanusha@yahoo.com
Baglung Tel: 068-520562
Bardia Tel: 084-420691



वकालत मञ्च-नेपाल ADVOCACY FORUM- NEPAL

Lawyers forum for human rights and rule of law

As prevention of torture is a priority for the international community as a whole, AF calls on all the relevant embassies to consider vetting as a contribution to the prevention of torture in Nepal. This will also mitigate the risk of subsequent legal proceedings that triggered once the alleged perpetrator is found in their territory as required under the CAT.

Prevention of torture also requires efforts of all the actors of criminal justice system at national level. To foster coordination among the actors, for the last 16 years AF has regularly convened stakeholder forums where it presents its experiences of regular visits to detention. We believe the actors of the criminal justice system are made aware of routine violations of detainees' rights through our regular stakeholders' forums. We are satisfied that there is a significant progress made in terms of having medical examination of detainees as a result of court not extending remand unless the file contains a medical report.

For the last few years, AF has been concentrating on monitoring the observance of detainees' right to remain silent and to not be coerced to provide self-incriminatory evidence. Over the years, AF has found that torture is being commonly used to extract information or confession. Among the 261 cases that AF monitored closely as detainees were forced to confess, 137 were convicted and 30 were partial convicted. In an in-depth analysis of the use of forced confessions in court proceedings in Nepal, AF has found that reliance on confessions as the most important evidence for a conviction has a huge impact on the ongoing practice of torture. Therefore, the exclusion of forced confessions in evidence is essential. A forthcoming report of AF will concentrate on this issue. It urges other actors of the criminal justice such as prosecutors and judges not to accept such evidence so the police has to lead a more evidence-based investigation, rather than a confession-based investigation.

On the occasion of the Intentional 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.

We urge the Nepal authorities to:

- Ensure AF, and other organizations that offer lawyers, have prompt access to detainees
- Immediately enact legislation to criminalise torture
- Provide resources and training for the police in investigation techniques without torture
- Provide resources and training for prosecutors and judges on how they monitor and scrutinize confessions presented as evidence
- Ratify optional protocol to CAT and designate national preventive mechanism

AF is also making the following recommendations to the international community:

- Press for ensuring that the constitutional rights of detainees such as access to lawyers are respected in Nepal
- Advocate for a system of independent monitoring of places of detention by the NHRC and other organizations
- The embassies of those countries that have ratified CAT should consider visa vetting to prevent possible cases of Universal Jurisdiction.

Head Office: Lamintang Marga -4, Baluwatar, Kathmandu, P.O. Box: 21798 Tel: 977-1-4425561/4432309 Fax: 4432309
email: info@advocacyforum.org.np, advocacyforumnepal@gmail.com, URL: <http://advocacyforum.org/contact-us/index.php>

Regional & Branch Offices

Biratnagar Tel: 977-21-530666 email: advbiratnagar@yahoo.com
Pokhara Tel : 977-61-5524342 email: advpokhara@yahoo.com
Udayapur Tel: 977-35-420451 email: advudayapur@yahoo.com
Surkhet Tel: 977-83-521122 email: advsurkhet@yahoo.com
Rupandehi Tel :071-522402

Nepalgunj Tel: 977-81-526278 email: advnepalgunj@yahoo.com
Kanchanpur Tel: 977-99-525399 email: advkanchanpur@yahoo.com
Kapilbastu Tel: 977-76-560235 email: advkapilbastu@yahoo.com
Dhanusha Tel: 977-41-522365, advdhanusha@yahoo.com
Baglung Tel: 068-520562
Bardia Tel: 084-420691