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Nepal: Government must fulfil its promise and end the use of torture and other ill-treatment

Three decades after the United Nations Convention Against Torture (UNCAT) was acceded by Nepal, the government continues to betray its commitment to stamp out torture and other ill-treatment, as impunity for the crime persists. On the International Day in Support of Victims of Torture and beyond, the Government of Nepal (GoN) must take concrete steps to prevent torture and end impunity in the country. Amnesty International and Advocacy Forum-Nepal call on the GoN to put an end to the use of torture as a tool of law enforcement and ensure justice, truth and reparations for victims.

Over three decades ago, on 14 May 1991, Nepal acceded to the UNCAT and the International Covenant on Civil and Political Rights (ICCPR).¹ In doing so, the GoN undertook the legal obligation to absolutely prohibit the use of torture and other ill-treatment. But it would take the country 27 years to make torture criminal under national law.

In 1996, Nepal enacted the Compensation Relating to Torture Act. Even though UNCAT criminalises all forms of torture, the 1996 Act avoided any criminal liability and provided the torture victims with limited avenues for obtaining monetary compensation and initiating administrative action against the perpetrators, which in many cases involved merely transferring suspected officers from one police station to another. In 2015, Nepal promulgated a new Constitution that prohibited torture.² However, the constitutional guarantee was not translated into any kind of actionable protection until the National Penal (Code) Act, 2017 (also known as the Penal Code) came into force in August 2018. The Code finally criminalised torture and provided up to five years of imprisonment for the perpetrators, in addition to compensation for the victims.³ But not a single conviction has taken place in cases of torture under the law yet, demonstrating entrenched impunity for the crime in the country and an absence of political will to bring in accountability.

While many cases of torture go unreported, Advocacy Forum-Nepal, a non-governmental organisation based in Nepal, has documented at least 109 cases of torture and custodial deaths in various places of detention between 2018 and 2023. Despite measures taken by the GoN to criminalize torture, the lack of effective and independent mechanisms to monitor and investigate allegations of torture and custodial deaths has fostered impunity allowing the crime to fester in government detention facilities.

Lack of effective, independent investigations and refusal by police to register complaints

Even though Nepal's National Criminal Procedure Code (Act), 2017 carries specific provisions against refusal of registering the First Information Report (FIR),⁴ victims often face the daunting task of reporting their cases to the same police station where they were tortured. Consequently, the police at these stations typically fail to initiate any investigation, instead choosing to coerce victims into retracting their statements. As a result, human rights activists and civil society organisations have consistently raised concerns regarding lack of independent investigative mechanisms into cases of torture perpetrated by police officials. Towards this, in January 2020, Nepal's Supreme Court ordered the government to establish an independent mechanism to investigate allegations of gross human rights violations perpetrated by security forces.⁵

Amnesty International and Advocacy Forum-Nepal have documented dozens of cases of torture in police pre-trial detention facilities. The findings suggest that torture festers in every kind of detention facility in Nepal

¹ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx

² Article 22(1), "No person in detention shall be subjected to physical or mental torture, or be treated in a cruel, inhuman or degrading manner."

³ Section 167 (2)

⁴ Sections 4 and 5 of the Criminal Procedure Code, 2017

⁵ Mandamus & Others (Writ no. 057-WO-1043)

including prisons, police lockups and juvenile reforms homes and many deaths in custody are allegedly the result of torture and lack of proper management of such facilities.

To illustrate, Nisha* (name changed to protect identity), a 16-year-old girl in Nepal, was arrested by the police in May 2022, alleged for causing the death of a person who had allegedly tried to sexually assault her.⁶ Two days after the arrest, police officers took her to the interrogation room where the male police officers grabbed her legs tightly and a female officer hit her feet repeatedly with a black plastic pipe for several hours. The torture would continue for two hours next day as well. While in custody, she was handcuffed for a whole night in the detention cell. In June 2022, the District court sent her to judicial custody at a Juvenile Reform Home. Later, she was released under parental custody by the order of the High Court. The victim's family has been intimidated by the police to such an extent that they are reluctant to file an FIR against the police officers suspected of torturing her.

Refusal by police to register FIRs in torture cases is a common barrier faced by torture victims in Nepal. The provision in the Penal Code requiring the victims to file an FIR at the nearest police stations further acts as a deterrent to justice because, often, it is the same police facility where an act of torture is committed.⁷ This creates serious conflicts of interest and jeopardizes the safety of the victims. Combined with a restrictive six-month statute of limitations on torture cases, victims are left scavenging for opportunities to secure a fair trial.⁸ The short statute of limitation also hinders victim's access to compensation under the law. Jurisprudence of the Committee against Torture, international tribunals and other international legal instruments have confirmed that no statute of limitations or other time limits may be applied to acts of torture.⁹

In an emblematic case, in 2020, Shambhu Sada Musahar, a 23-year-old Dalit tractor driver died in police custody in Dhanusha District of Nepal.¹⁰ Sada had surrendered himself to the police for causing death of a woman after accidentally hitting her with the tractor. Even though the police reported the cause of his death as suicide, Sada's family has maintained that he was physically and mentally tortured by the police.¹¹ Sada's mother told Advocacy Forum-Nepal that when she reached the police station, his body was still hung up in the bathroom with black rags stuffed in his mouth.¹² She also alleged that Sada was tortured and killed by the police to absolve the owner of the tractor of any financial and criminal liability.¹³

Sada's family attempted to register an FIR with the District Police Office in Dhanusha, but the police officials repeatedly refused, denying any police involvement in his death.¹⁴ Eventually, Sada's mother filed a writ petition in the court demanding the registration of an FIR.¹⁵ After a positive order from the court, an FIR was finally filed at the Public Prosecutor's office in June 2020 and the family was provided NPR 500,000 (USD 3,745) as compensation. However, the police did not proceed with the investigation leading to Sada's mother filing a petition with the Janakpur High Court seeking an order for the police to carry out prompt investigation. On 24 May 2022, due to the absence of Sada's mother on the date of the hearing, the court put the case on hold. Till today, the family continues to seek justice and accountability of the police officials.¹⁶ In response to a joint communication dated 18 November 2020 sent by various UN special rapporteurs to the GoN regarding Sada's custodial death, the GoN said that the Investigation Committee formed to probe into Sada's death concluded that he had died by suicide and that an "internal disciplinary action" was taken against the three police officials of the Area Police Office Sabaila for their "negligence and not performing the duty responsibly".¹⁷

In another emblematic case, in August 2023, 19-year-old Binod Tolangi, and 28-year-old Akash Balami were beaten to death by eight police officials along with other inmates at Sankhuwasabha prison.¹⁸ According to

⁶ Interview in person, May 2023

⁷ Section 4

⁸ Section 170(2), Penal Code

⁹ See Concluding Observations of CAT: Andorra, UN Doc. CAT/C/AND/CO/1 (2013) §7; Latvia, UN Doc. CAT/C/LVA/CO/3 (2013) §8; Guatemala, UN Doc. CAT/C/GTM/CO/5-6 (2013) §8; Japan, UN Doc. CAT/C/JPN/CO/2 (2013) §8. See also Prosecutor v Furundzija, Yugoslavia Tribunal (1998) §157; Principle 23 of the Updated Impunity Principles; Basic Principles on Reparation, §6; Article 29 of the Rome Statute

¹⁰ <https://thewire.in/rights/deaths-in-custody-impunity-nepal-police>

¹¹ <https://www.state.gov/wp-content/uploads/2021/03/NEPAL-2020-HUMAN-RIGHTS-REPORT.pdf>

¹² <https://advocacyforum.org/downloads/pdf/publications/torture/countering-impunityin-torture.pdf>, 41

¹³ <https://advocacyforum.org/downloads/pdf/publications/torture/countering-impunityin-torture.pdf>, 41

¹⁴ <https://advocacyforum.org/downloads/pdf/publications/torture/countering-impunityin-torture.pdf>, 41

¹⁵ <https://advocacyforum.org/downloads/pdf/publications/torture/countering-impunityin-torture.pdf>, 41

¹⁶ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25644>

¹⁷ <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=35958>

¹⁸ <https://thehimalayantimes.com/nepal/two-inmates-tortured-to-death-probe-report>

media reports, the two inmates were allegedly planning to escape from the prison when they were caught by the security personnel deployed at the jail. The prison officials first beat them up and then handed them over to other prison inmates who continued with the beatings.¹⁹ Despite Nepal's National Human Rights Commission (NHRC) and civil society organisations recommending strict action against the suspected officials after their own independent investigation in the case, a parallel investigation team formed by the head of the Prison department in Sankhuwasabha merely recommended administrative action for "dereliction of duty".²⁰ The Sankhuwasabha District Court later remanded seven policemen and eight prisoners in the prison while they were on trial for offences relating to the two prisoners' deaths. In February 2024, the District Court issued an order to summon the witnesses and the police authorities who prepared the incident report. The case remains pending to date.

The last visit undertaken by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to Nepal was in 2005. The then-Special Rapporteur Manfred Nowak had unequivocally concluded "that torture and ill-treatment is systematically practiced in Nepal by the police, armed police and the RNA [Royal Nepalese Army] in order to extract confessions and to obtain intelligence, among other things."²¹ Despite his meetings with the Government, police and military officials who gave reference of adequate due process safeguards, he found them to be "largely illusory in practice".²² Preliminarily, he recommended the GoN to publicly denounce the culture of impunity in cases of torture or other forms of cruel, inhuman or degrading punishment; enactment of a legislation to conform to the requirements of CAT; imposition of appropriate criminal sanctions, initiating prompt and impartial investigations and ensuring that due process safeguards including access to lawyers, families, doctors, production before a judge, medical checks and independent monitoring of places of detention are put in place. Since then, the GoN has enacted a law criminalizing torture but the other issues continue to linger and Nowak's recommendations remain largely unaddressed.

Lack of adequate and timely reparations

Nepal's current legal framework allows reparations in the form of limited compensation and imprisonment of perpetrators. In accordance with international law, reparations must also include restitution, rehabilitation, satisfaction and guarantees of non-repetition.²³ Under the Penal Code, compensation is reliant on the perpetrator's criminal conviction and the victim's economic status. In addition, the Penal Code states that compensation must be "reasonable", providing no scale or structure in place for the judges to decide on the amount of the compensation.²⁴ The failure of the Torture Compensation Act to provide appropriate reparations due to an inadequate definition of torture, a 35-day limitation for filing a complaint, a narrow definition of 'custody', reversal of burden of proof, and a low ceiling on the maximum amount of compensation a victim could receive means victims face series of hurdles to claim and access compensation. As a result, the amount of compensation awarded is mostly arbitrary and varies drastically among similar cases, and remains grossly insufficient as reported by many victims and their families.

International human rights law is clear: states must ensure that victims are provided with an effective remedy, including full and effective reparation to address the harm they have suffered.²⁵ The Committee against Torture has confirmed that Article 14 applies not only to torture but also to other forms of ill-treatment.²⁶

Nepal's National Human Rights Commission (NHRC) has a mandate to monitor, investigate and recommend action including compensation in cases of human rights violations. However, in some cases, Amnesty International found that despite the NHRC's investigation finding police officers guilty of human rights violations, the authorities promoted the suspected police officials instead.²⁷ This clear lack of implementation of NHRC's recommendations by the GoN has further emboldened the police officials to commit torture with impunity and left the victims devastated and without a remedy. In other cases where NHRC has recommended compensation, victims often have to wait for prolonged periods without getting compensation from the authorities, despite the

¹⁹ <https://thehimalayantimes.com/nepal/two-inmates-tortured-to-death-probe-report>

²⁰ <https://thehimalayantimes.com/nepal/two-inmates-tortured-to-death-probe-report>

²¹ <https://www.ohchr.org/en/press-releases/2009/10/practice-torture-systematic-nepal>

²² <https://www.ohchr.org/en/press-releases/2009/10/practice-torture-systematic-nepal>

²³ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Adopted by UN General Assembly, resolution 60/147 (16/12/2005)

²⁴ Section 169, Penal Code

²⁵ Article 14, UNCAT

²⁶ CAT General Comment 3, §1. See also Article 11 of the Declaration against Torture.

²⁷ <https://kathmandupost.com/national/2021/06/27/nepal-has-not-seen-a-single-conviction-for-torture-and-custodial-deaths-in-the-past-three-years>

Supreme Court's order to create a basket fund for compensating victims of torture.²⁸

Marginalized communities disproportionately affected

In the past few years, the majority of the victims of custodial deaths have been people from historically marginalized communities, such as Dalits and Indigenous Peoples, including Madhesi and Tharu communities.

In an emblematic case, 19-year-old Dalit man Bijay Mahara was beaten up with heavy boots, metal rods and sticks and electrocuted by the police officials, while being held for allegedly murdering his neighbour and relative, at the Area Police Office in Garuda town of Rautahat District in August 2020.²⁹ He was one of the eight men who were arrested by the police on the case. Despite his deteriorating health, the police officials allegedly delayed providing him medical attention leading to his death ten days after the arrest. Before his death, Mahara described the extreme torture he suffered at the hands of the police on a video. His mother and family have alleged that Bijay was targeted due to his caste and poor financial standing in the community. The victim's family received Rs. 1.6 million rupees from three tiers of government, but the village elders asked them to pay a cut to them. They have also excluded the victim's family from social rites until the family pays a cut. Despite an arrest warrant being issued, the accused officers have not been arrested yet as police claims the alleged perpetrators are absconding; however, victim's family allege that the police have been reluctant to arrest while the accused "roam freely in the village".

Recommendations

While measures to criminalise torture in national legislation have indicated some progress towards Nepal's commitment to its obligations under the Convention against Torture, more urgent and comprehensive steps need to be taken to end torture and deliver truth, justice and reparations to the victims and their families. Amnesty International and Advocacy Forum-Nepal call on the Government of Nepal to:

1. Amend the Penal Code to bring it in line with international human rights law and standards, including the removal of existing statute of limitation on complaint duration.
2. Establish an independent mechanism to monitor and investigate allegations of torture and custodial deaths.
3. Investigate all allegations of torture and cruel, inhuman or degrading treatment under international law, both past and present, and where there is sufficient admissible evidence, prosecute those suspected of committing the crimes before competent, independent and impartial civilian courts, in accordance with international standards.
4. Ensure regular and independent monitoring of all places of detention by official actors and civil society representatives.
5. Ensure the recommendations from the National Human Rights Commission including on cases of torture are promptly and seriously implemented. Immediately implement the pending orders of the National Human Rights Commission calling for action against suspected police officers, prison and other government officials in cases of torture or other cruel, inhuman or degrading treatment and on granting compensation to victims.
6. Promptly implement the Supreme Court's order to create a basket fund to compensate victims of torture.
7. Collate and publish annual disaggregated statistics on the incidence of deaths in custody, with the status of investigation in each case.
8. Accede to the Optional Protocol to the Convention against Torture (OPCAT).
9. Facilitate visits of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment to Nepal.

²⁸ <https://advocacyforum.org/downloads/pdf/publications/torture/countering-impunityin-torture.pdf>

²⁹ <https://advocacyforum.org/downloads/pdf/publications/torture/countering-impunityin-torture.pdf>