



वकालत मञ्च-नेपाल
ADVOCACY FORUM- NEPAL
Lawyers forum for human rights and rule of law

Press Release

25 June 2022

Kathmandu: In its year's Annual Report (2021), "Custodial Deaths in Nepal: Towards the Framework of Investigation and Prevention", Advocacy Forum draws public attention to the systemic failures leading to dozens of deaths in detention suspected to have been caused by torture, ill-treatment and inadequate medical care. State authorities are neither making efforts to conduct transparent and impartial investigations of these cases nor taking initiatives or issuing state directives to prevent further cases in the future. Ultimately, these deaths in the custody of police, army or prison authorities reflect a failure by Nepal's government to implement accountability mechanisms. Despite international guidelines, the law enforcement authorities have routinely fail to conduct investigation into these allegations and bring those responsible to justice.

AF has documented 39 cases of death in custody since the Penal Code come into force in August 2018 in the country. Out of which 21 deaths took place in prison, 16 in police custody, one at the hands of an army officer, and one at a Child Correction Home (CCH).

There are three major causes of death in custody covered in the report: torture, suicide and late and insufficient medical care. AF's analysis of these cases reveals violations of Nepal's constitutional and legal framework and international treaty obligations and other generally accepted international standards for treating detainees. Some of the cases described in the report have attracted the international community's attention due to the lack of an independent investigation and the repeated identification of people from marginalised groups as the victims.

Nine out of 10 documented suicides were committed in the police custody, which is a worrying indicator of the lack of due care for detainees by the Nepal Police. Moreover, AF has found in some cases the official narrative about a suicide by hanging was a cover-up for torture or other cruel, inhuman or degrading treatment. Often, no autopsy was performed in cases of suicide. In Morang prison, no less than 18 suspicious deaths were left without any attempts to investigate the causes of deaths.

In some custodial death cases, torture has been proven, but to date no one has been convicted, despite the fact that torture was criminalised in Nepal in 2018.

The report also describes two suspicious deaths of minors, including one involving a 17-year-old teenager serving a long prison sentence instead of another person. In the other, the body of the juvenile who died during treatment for an unspecified disease was not even sent for an autopsy. AF highlights the urgent need for reform in the existing detention management and criminal justice system, taking into account the special needs and characteristics of more vulnerable population groups, including juveniles. Every state has a special duty of care for detainees and is fully accountable for all avoidable impairments caused by insufficient health care or unsatisfactory detention conditions with regard to hygiene, nutrition, access to clean water, sufficient space, heating, lighting, ventilation, physical activity and social contacts. Moreover, States are under obligation to investigate deaths in custody. Such investigation has to be impartial and independent regardless of the suspected cause of death, which may be natural or accidental, because it may also have been an

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Provincial/District Offices :

Morang (Province -1), Dhanusha Dham (Province -2), Pokhara (Gandaki Province), Bhairahawa and Nepalgunj (Lumbini Province), Surkhet (Karnali Province) and Mahendranagar (Sudurpaschim Province)



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unlawful killing as well as the result of inhumane treatment or deficient conditions of confinement. It means that every death in custody should be considered suspicious, requiring immediate, transparent, and effective investigation to establish the real cause of death and prevent identical cases in the future in order to guarantee the safety and security of other detainees and reassure the public of the detention authorities' responsibility to fulfil their obligations.

Fundamentally, an effective prevention mechanism for unnatural custodial deaths must be built on effective detention management, a proper independent monitoring mechanism, and a comprehensive legislative framework compatible with international standards and norms. Many deaths in custody could be avoided if the detention conditions were improved to create a healthy environment that meets detainees' basic needs, as required by human rights law and conventions ratified by Nepal.

The organisation makes numerous recommendations for the proper investigation of custodial deaths and a prevention strategy, stressing the importance of the equal right to health of detainees, and special attention to the needs of juveniles.

The state should adopt sustainable measures to prevent custodial deaths while addressing possible root causes such as poor detention conditions, inadequate access to health care, lack of contacts with the family, deficient safeguards against suicide, arbitrary deprivation of life, torture and other forms of ill-treatment. Moreover, there should be specialised training for law enforcement agencies and medical personnel, and raising awareness in society that detainees retain all human rights other than their freedom and that their fundamental right to life and health is in no way diminished by the fact of their detention.

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