



OMCT
SOS-Torture Network



**HUMAN RIGHTS
AND JUSTICE CENTRE**



19th of January 2023

Honorable Dinmani Pokhrel
Attorney General
Office of the Attorney General
Kathmandu, Nepal

Sub: Request to investigate and prosecute custodial torture and provide protection from torture and other forms of ill-treatment at all times, including public emergencies

Dear Honorable Mr. Pokhrel,

Allow us to congratulate you on your appointment as the Attorney General of Nepal and we express our hope and trust that commitment to and enforcement of human rights standards will be the driving force behind your time in public service.

We write to respectfully seek urgent intervention of your good office to ensure that the constitutional guarantees to be free from torture are fully implemented in Nepal. Torture is a crime under the Penal Code. It is considered to be an international crime triggering universal jurisdiction under international law. However, torture is still routinely practiced in places of detention in Nepal, although we have observed a decreasing trend. Women and children also remain vulnerable in detention.¹ Advocacy Forum (AF) has documented 39 cases of death in custody since the Penal Code 2018 came into force. In many of these cases such deaths are alleged to have been the result of torture in detention.² However, out of 39 cases, not a single case has been thoroughly investigated and prosecuted as required by the national and international law.³ Alarming, the

¹ AF's report on children and women available at: advocacyforum.org

² See AF's report, "Custodial Deaths in Nepal: Towards a Framework for Investigation and Prevention," Available at: june-26-2022-report-custodial-deaths-in-nepal.pdf (advocacyforum.org)

³ See AF's report, "Custodial Deaths in Nepal: Towards a Framework for Investigation and Prevention," Available at: june-26-2022-report-custodial-deaths-in-nepal.pdf (advocacyforum.org)

police has also started to prevent lawyers from accessing detention facilities stating that they have orders from the 'top' not to allow anyone to visit detainees except the National Human Rights Commission (NHRC). The NHRC neither provides free legal assistance nor have a capacity to visit detention places to scrutinize the routine practice of illegal detention, torture and ill-treatment.

AF has been providing free legal assistance to detainees in police custody for the last 20 years. Throughout, AF has also publicly highlighted the practice of torture and ill-treatment and how lawyers' access during pre-trial detention could help reduce such illegal and criminal practices. At the height of the COVID-19 pandemic, restrictions on visits including access to lawyers and other support services impacted detainees at unprecedented levels. AF, in partnership with the OMCT, extended legal and psychosocial support to children in conflict with the law detained at Child Correction Homes (CCH). To address the children's limited means to communicate with the outside world, their families, and legal practitioners, communications equipment were also provided and installed in selected CCH. It cannot also be discounted, as detailed in OMCT's Guidance Note "*Breaking the walls of isolation: Ensuring contact with families for persons deprived of liberty in a world with Covid-19*", that restrictions on visits have had a major impact on the mental health and emotional well-being of detainees and their families.

Crucially, we also respectfully call the attention of the Office of the Attorney General to the decisions on custodial torture rendered by the UN Human Rights Committee (HRC), a monitoring body of the International Covenant on Civil and Political Rights-to which Nepal is a party. Among others, in the cases of *Yubraj Giri vs. Nepal*, *Dev Maharjan vs. Nepal*, *Prashant Pandey v Nepal*, *Aang Dorje Sherpa v Nepal*, *Lakpa Tamang v Nepal* and *Hom Bahadur Bagaley v Nepal*, *Bholi Pharaka v Nepal*, the HRC has specifically called out the government of Nepal to conduct a prompt, effective, thorough investigate, identify the perpetrator, prosecute and punish him/her, among others.⁴ The decision also recommends making amendments to the laws of torture. Albeit the National Penal Code 2017 codifies the autonomous offenses of torture, the definition of the crime enshrined therein and the corresponding regulation – concerning, for instance, statutes of limitation and compensation – remains at odds with international law. In the past, the Applicants of the cases and their legal representing organization, Human Rights and Justice Centre (HRJC), have sent letters to the Office of the AG to initiate actions and take necessary measures for the implementation of these decisions but no further information was received from the Office.

Thus, we would like to respectfully request your Honorable Office to urgently consider the following actions:

1. Ensure detainees' access to legal counsel. This can be done by initiating reforms in the legal aid system to ensure detainees have access to lawyers from the moment they are taken

⁴ Available at: <https://realrightsnow.org/en/category/cases/>

- into custody. Until the new legal aid system comes into place, making sure that AF and similar organisations willing to provide free legal assistance have access to detention;
2. Direct impartial investigations into cases involving deaths in custody and prosecute those responsible for negligence and torture leading to the death of detainees in custody;
 3. Institutionalize a system of regular monitoring of places of detention to ensure that torture and ill-treatment are prevented;
 4. Conduct timely and proper investigation and prosecution of allegations of torture and ill-treatment in detention,
 5. Ensure that children are not detained in police custody as required by national and international law and take measures to improve conditions in Child Correctional Homes.
 6. Initiate policies on public emergencies that will address the challenges of the Covid-19 pandemic in detention settings and provide protection and prevent torture and ill-treatment during any other natural or man-made disaster or emergency response.
 7. Take necessary measures to initiate actions for the investigation on the cases of custodial torture decided by the UN Human Rights Committee on Nepal.

We remain steadfast in our mission to continue advocating with the government of Nepal for better, safer and improved situation of women and children, and detention conditions for all persons deprived of liberty. We also remain committed to assist you in fulfilling your mandates and obligations in this regard.

Signatories:

1. Accountability Watch Committee (AWC), based in Kathmandu, Nepal,
Contact: Charan Prasai, Coordinator, cprasai@gmail.com
2. Advocacy Forum (AF-Nepal), based in Kathmandu, Nepal,
Contact: Om Prakash Sen Thakuri, ED, omthakuri@advocacyforum.org
3. Human Rights and Justice Center (HRJC), based in Kathmandu, Nepal,
Contact: Salina Kafle, ED, kafle.sali@gmail.com s.kafle@hrjc.org.np
4. Terai Human Rights Alliance (THRD Alliance), based in Kathmandu, Nepal,
Contact: Praveen Yadav, Coordinator, iprav33n@gmail.com
5. World Organisation against Torture (OMCT), based in Geneva, Switzerland.
Contact: Cristina Sevilla, Regional Human Rights Officer for Asia, cse@omct.org

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