



association pour la prévention de la torture
asociación para la prevención de la tortura
association for the prevention of torture

Country File NEPAL

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Region	Asia and Pacific
Legal System	Common Law
UNCAT Ratification, Accession (a), or Succession (d)	14 May 1991 (a)
Relevant Laws ▪ Stand-Alone Torture Bill (Y/N)	- The Interim Constitution of Nepal, 2063 (2007) - Compensation Relating to Torture Act, 2053 (1996) - Evidence Act, 2031 (1974) No
Relevant Articles	
Definition of Torture (General), (Article 1)	- No general definition, however torture is defined in §2(a) of the Compensation Relating to Torture Act for use in that Act.
Prohibition on Torture (Article 1)	- Article 26 of the Interim Constitution - §3 of the Compensation Relating to Torture Act
Crime of Torture (Article 4) ▪ Definition ▪ Statute of Limitations ▪ Penalties ▪ Other	None.
Universal Jurisdiction & Cooperation, (Articles 5, 9)	
Investigations, (Articles 12, 13)	

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Remedies and Reparations, (Article 14)	<p>- Compensation Relating to Torture Act (entire). This act contains a 35 day statute of limitations. The CAT Committee has issued a recommendation to Nepal stating that that redress should not be subject to prescription (see “Comments” below).</p> <p>- Article 26(2) of the Interim Constitution</p>
Exclusion of Evidence (Article 15)	<p>- Section 9(2)(a)(2) of the Evidence Act</p>
Legal and Procedural Safeguards (Articles 2, 11, 16)	<p>Article 24 of the Interim Constitution (access to a lawyer)</p>
Non-Refoulement (Article 3)	
Other	
Comments	<p>In 2011, the Committee Against Torture conducted a confidential inquiry on Nepal in accordance with Article 20 of UNCAT the result of which is published in an annual report (see UN Doc. Report of the Committee against Torture, UN Doc. A/67/44, 2012, Annex XIII, p. 273 et seq. http://www2.ohchr.org/english/bodies/cat/).</p> <p>“The Committee reminds the Government that the Convention against Torture places an obligation on States parties to ensure its implementation in domestic law and to strictly observe its provisions in practice. The information before the Committee does not enable it to conclude that Nepal has established and maintained governmental policies sufficiently effective to prevent torture and to end endemic impunity in Nepal for perpetrators of acts of torture”. (§107, p. 301)</p> <p>“The Committee concludes that torture is being systematically practiced in the territory of Nepal, according to its longstanding definition, mainly in police custody.” (§108, p. 301-302)</p> <p>The Committee also recommends the following:</p> <p>“The State party should adopt domestic legislation which ensures that acts of torture, including the acts of attempt, complicity and participation, are criminal offences punishable in a manner proportionate to the gravity of the crimes committed, and consider steps to amend the Compensation Relating to Torture Act of 1996 to bring it into compliance with all the elements of the definition of torture provided in the Convention;” (§109(b), p. 302)</p> <p>“Complaints alleging torture by public officials should be promptly, effectively and impartially investigated and offenders should be prosecuted and, if found guilty, convicted with penalties appropriate to the gravity of</p>

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	<p>their acts;" (§110(b), p. 302)</p> <p>"The State party should take immediate effective measures to ensure that all detainees are afforded, in practice, all fundamental legal safeguards from the very outset of their detention; these include, in particular, the rights to have prompt access to a lawyer and an independent medical examination, to notify a relative, and to be informed of their rights at the time of detention, including about the charges laid against them, as well as to appear before a judge within the 24-hour time limit. The State party should also ensure that all detainees are included in a central register and should monitor the performance of officials in maintaining this register accurately;" (§110(d), p. 302-303)</p> <p>"Where a detainee alleged that a confession was extracted under torture, the prosecution should carry the burden of proof that the confession was made freely;" (§110(g), p. 303)</p> <p>"The State party should provide all victims of torture with redress, including fair and adequate compensation, full rehabilitation, and other forms of redress as appropriate without further delay. A victim's ability to file claims for redress should not be subject to statutes of limitations. The State party should ensure that all individuals receive awarded redress promptly. Furthermore, the State party should ensure the establishment adequate reparation programmes, including for medical treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, and allocate adequate resources to ensure the effective functioning of such programmes;" (§110(i), p. 303)</p>
Languages Available	English
Links & Sources	<ul style="list-style-type: none"> - The Interim Constitution of Nepal, 2063 (2007) <i>available at</i> In English and Nepalese http://www.lawcommission.gov.np/en/documents/prevailing-laws/constitution.html - Compensation Relating to Torture Act, 2053 (1996) <i>available at:</i> http://www.lawcommission.gov.np/en/prevailing-laws/prevailing-acts/func-startdown/423/ - Evidence Act, 2031 (1974) <i>available at:</i> http://www.lawcommission.gov.np/en/documents/Prevailing-Laws/Statutes--Acts/English/Evidence-Act-2031-%281974%29/

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Relevant Articles – NEPAL

➤ The Interim Constitution of Nepal, 2063 (2007)

PART 3- FUNDAMENTAL RIGHTS

24. Right relating to justice:

(1) No person who is arrested shall be detained in custody without informing him or her of the reasons for such arrest.

(2) Every person who is arrested shall have the right to consult a legal practitioner of his or her choice at the time of such arrest. Any consultation made by such person with his or her legal practitioner and advice given by such practitioner shall be secret; and such person shall not be deprived of the right to be defended by his or her legal practitioner.

26. Right against torture:

(1) No person who is detained during investigation or for trial or for any other reason shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment.

(2) Any act referred to in Clause (1) shall be punishable by law, and any person so treated shall be provided with such compensation as may be determined by law.

➤ Compensation Relating to Torture Act, 2053 (1996)

An Act made to Provide for Compensation to the Person subjected to Torture while in Detention.

Preamble : Whereas, it is expedient to make provisions on compensation for inflicting physical or mental torture upon any person in detention in the course of investigation, inquiry or trial or for any other reason or for giving cruel, inhuman or degrading treatment to such a person;

Now, therefore, be it enacted by the Parliament in the 25th year of reign of His Majesty King Birendra Bir Bikram Shah Dev.

1. Short Title and Commencement:

(1) This Act may be called as "Compensation Relating to Torture Act, 2053 (1996)."

(2) It shall come into force immediately.

2. Definitions: Unless the subject or the context otherwise requires, in this Act,-

(a) "Torture" means physical or mental torture inflicted upon a person in detention in the course of investigation, inquiry or trial or for any other reason and includes any cruel, inhuman or degrading treatment given to him/her.

(b) "Victim" means any person upon whom torture is inflicted.

3. Prohibition on Torture:

(1) No person in detention in the course of investigation, inquiry or trial or for any other reason shall be subjected to torture.

Explanation: For the purposes of this Sub-section, the words "in detention" shall include the situation of being taken into custody in accordance with the prevailing law.

(2) In detaining and releasing any person, the concerned official shall get such person examined physically by a medical practitioner engaged in the governmental service as far as possible and him/herself examine such person in cases where no such medical practitioner is available, and maintain records thereof.

Explanation: For the purposes of this sub-section, "medical practitioner" shall include a Doctor, *Kabiraj* (Senior Ayurvedic Practitioner), health assistant, assistant health worker or *Vaidhaya* (Junior Ayurvedic Practitioner).

(3) One copy of the report on examination of physical or mental situation referred to in Sub-section (2) has to be sent to the concerned District Court.

4. Provision of Compensation: If any employee of Government of Nepal is held to have inflicted torture upon any person, the victim shall be provided with compensation as referred to in this Act.

5. Filing of Complaint:

(1) A victim may, within 35 days from the date of inflicting torture upon him/her or of his/her release from detention, file with the District Court of the District, where he/she has been detained, a complaint making a claim for compensation.

(2) Notwithstanding anything contained in Sub-section (1), in the event of death of a victim or failure of the victim for any other reason to file a complaint in person, any one of his/her family members having attained the required age or his/her legal practitioner may, setting out reasons therefor, file a complaint under Sub-section (1).

(3) Any one of the detainee's family members having attained the required age or his/her legal practitioner may, if he/she thinks that torture has been inflicted on the detainee, file a petition with the concerned District Court. If such application is filed, the court may order for physical or mental examination of the person in detention within three days. If, upon such examination, it appears that his/her medical treatment is to be done, his/her treatment shall be done on behalf of Government of Nepal.

(4) Any complaint to be filed under Sub-section (1) or (2) shall also contain the following matters, as far as possible:-

(a) Reason for detention and period of time spent in detention.

(b) Description of torture inflicted while in detention.

(c) Description of loss resulted from torture.

(d) Amount of compensation claimed.

(e) Any other details which may be ancillary to substantiate the claim.

6. Proceedings on Complaint and Compensation:

(1) The District Court shall proceed with a complaint filed under Section 5 by following the procedures referred to in the Summary Procedures Act, 2028 (1972), and if the contents of such complaint are found to be true and correct, make a decision requiring Government of Nepal to pay compensation in a sum not exceeding One Hundred Thousand Rupees to the victim.

(2) If, in the course of the proceedings under Sub-section (1), a complaint is held to have been made with *mala fide* intention, the complainant may be punished with a fine not exceeding Five Thousand Rupees.

7. Action against the Person Involved in the Commission of Torture: If it is held that torture has been inflicted as mentioned in this Act, the District Court may order the concerned body to take departmental action against the governmental employee who has inflicted such torture, in accordance with the prevailing law.

8. Fixation of Amount of Compensation: In fixing amount of compensation for purposes of Sub-section (1) of Section 6, it has to be fixed taking into account of the following matters :-

- (a) Physical or mental pain or suffering inflicted on the victim and its gravity.
- (b) Depreciation occurred in income-earning capacity of the victim as a consequence of physical or mental injury.
- (c) In the case of physical or mental injury of incurable nature, the age of the victim and his/her family obligation.
- (d) In the case of an injury of curable nature, estimated expenditure for its treatment.
- (e) In the event of the death of the victim as a result of torture, number of his/her family members dependent on his/her income and minimum expenditure required for their livelihood.
- (c) The matters deemed proper and just, out of the matters claimed by the victim.

9. Execution of the Decision:

(1) After the final decision on provision of compensation to a victim, the victim or his/her nearest heir, in the event of his/her death, has to make an application, accompanied by a copy of the decision made by the District Court on provision of compensation, to the Chief District Officer of the District where the victim has been detained, for having amount of compensation within one year from the date of receipt of a notice of such decision.

(2) The Chief District Officer has to provide the amount of compensation to the applicant within thirty five days of receipt of the application referred to in Sub-section (1).

(3) No amount of compensation shall be provided if any application is not made within the time-limit referred to in Sub-section (1).

10. Defense by Government Attorney: The Government Attorney shall, if so requested by the concerned Office In-charge, appear in the Court on behalf of such employee and defend him/her on the complaint filed under Section 5.

11. Not to Be Deemed Torture : Notwithstanding anything contained elsewhere in this Act, any pain or suffering arising naturally from being detained in accordance with the prevailing law shall not be deemed to be an act of torture for the purposes of this Act.

12. No Restriction on Taking Action under Prevailing Law: Nothing shall be deemed to prevent the taking of separate action in such matter as may be deemed to be an offence under the prevailing law only by virtue of the fact that action has been taken under this Act for compensation for torture or that compensation has been received.

13. Power To Frame Rules: Government of Nepal may frame necessary Rules in order to carry out the objectives of this Act.

➤ Evidence Act, 2031 (1974)

9. Facts expressed by the party:

(2) Notwithstanding anything contained in Sub- section (1),

(a) The fact expressed by the accused of a criminal case, in a place other than the court regarding the charge made against him/her, may be taken as evidence, when the court finds it as following-

[....]

(2) The fact was not expressed putting pressure on him/her or with torture to him/her or with a threat to torture to him/her or any other person or putting him/her in a condition to express the fact against his / her will.