

## Country File

# NEPAL



Last updated: **December 2008**

<b>Region</b>	Asia and Pacific
<b>Legal system</b>	Common Law
<b>UNCAT Ratification/ Accession (a)/ Succession (d)</b>	14 May 1991 (a)
<b>Relevant Laws</b>	<ul style="list-style-type: none"><li>• Interim Constitution of 2007 (21 November 2006)</li><li>• Compensation Relating to Torture Act of 1996</li></ul>
<b>Relevant Articles</b>	<ul style="list-style-type: none"><li>• <b>Prohibition of Torture:</b><ul style="list-style-type: none"><li>- Article 26 Constitution</li><li>- Article 3 of the Compensation Act</li></ul></li><li>• <b>Definition of Torture:</b> Article 2 of the Compensation Act</li><li>• <b>Penalties:</b></li><li>• <b>Others:</b><ol style="list-style-type: none"><li>1. <b>Compensation and Reparation:</b><ul style="list-style-type: none"><li>- Article 26 of the Constitution</li><li>- Article 4 of the Compensation Act</li></ul></li><li>2. <b>Lawful sanctions:</b> Article 11 of the Compensation Act</li></ol></li></ul>
<b>Languages Available</b>	<ul style="list-style-type: none"><li>• English</li></ul>
<b>Other Relevant Information</b>	See "Hope and Frustration: Assessing the Impact of Nepal's Torture Compensation Act 1996" currently available at: <a href="http://www.advocacyforum.org/pdfcoll/June26_Report_English_2008.pdf">http://www.advocacyforum.org/pdfcoll/June26_Report_English_2008.pdf</a>

## Relevant Articles – NEPAL

### ENGLISH (Translation)

#### Interim Constitution of 2007 (21 November 2006)

##### **Article 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, nor shall be given any cruel, inhuman or degrading treatment.
- (2) Any such an action pursuant to clause (1) shall be punishable by law, and any person so treated shall be compensated in a manner as determined by law.

#### Compensation of Torture Act of 1996

An Act to make arrangements for the compensation to be paid for the person on whom the torture is inflicted under the detention

**Preamble:** Whereas it is expedient to make arrangements as regard to pay the compensation to the person who is under detention for the purpose of investigation, probe or trial, or for any other reason and the physical or mental torture is inflicted on her/him or on whom the cruel, inhuman or degrading treatment is furnished in the custody.

Be it enacted by the Parliament in the Twenty-Fifth Year of the regime of His Majesty the King Birendra Bir Bikram Shaha Dev as follows:

##### **(1) Short Title and Commencement:**

- (a) This Act may be called the “Compensation of Torture Act, 1996 (2053 B.S.).”
- (b) This Act shall come into force with immediate effect.

##### **(2) Definition:**

In this Act, unless the context otherwise requires,

- (a) “Torture” means physical or mental torture inflicted on a person who is apprehended in the course of investigation, probe, or for trial or for any other reason and the term also includes cruel, inhuman or degrading treatment furnished to such person.
- (b) “Victim” means the person on whom the torture is inflicted.

##### **3) Torture Prohibited:**

- (1) Any person, who has been detained for the purpose of investigation, probe or trial, or for any other reason, is not subjected to torture.

**Clarification:** For the purpose of this sub-section, the term 'detained' includes such a state of affairs wherein a person is kept in remand as per the prevalent Nepalese Law.

- (2) To the extent possible, a person who is being detained and released be made to undergo her/his physical check-up, which is to be recorded after and kept accordingly, by the medical practitioner in service of the government and by the concerned person himself who has the authority to detain, if such medical practitioner is unavailable.

**Clarification:** For the purpose of this sub-section, the term 'Medical Practitioner' includes a medical doctor, an ayurvedic doctor (*Kabiraj*), a health assistant, an assistant health worker or any ayurvedic practitioner (*Baidhya*) in service of the government.

- (3) A copy of the report of the physical or mental check-up to be carried out under sub-section (2) shall have to be made available to the concerned District Court.

#### **(4) Compensation Paid:**

A person, if it is proved that s/he has been subjected to torture by any of the official of His Majesty's Government, shall be paid compensation under this Act.

#### **(5) Complaint may be made for the Compensation:**

- (1) Victim may make a complaint of torture claiming the compensation to be paid to her/him within the jurisdiction of the District Court wherein s/he is detained. Such complaint shall have to be made within 35 days from the day the torture is inflicted on her/him or the day s/he has been released from the custody.
- (2) Notwithstanding anything contained in sub-section (1), the complaint to be made of torture may be made by any other person, who has attained the age the law stipulates for the legal capacity to do so, of the victim's family or her/ his legal counsel if the victim is already dead or in a situation wherein the victim is not in a position to make the complaint for one reason or the other.

The complaint to be made on behalf of the victim, however, may only be made upon if the incapacity of the victim to proceed for the complaint is duly satisfied.

- (3) If there is valid reason to believe that the detainee has been inflicted the torture, the relative of the victim who has attained the age the law stipulates for the legal capacity to sue, or the legal counsel of the victim, may initiate the complaint to the concerned District Court. The concerned Court, upon received such complaint, may pass the order for physical or mental check-up of the detainee within three days of such complaint received. While undergoing physical or medical examination if the detainee requires further treatment then such treatment shall have to be provided by His Majesty's Government.
- (4) The complaint to be made under sub-section (1) and (2) shall, to the extent possible, include the following:

- (a) Reason and the duration of the detention
- (b) Particulars of torture inflicted during the period of detention
- (c) Particulars of the harm caused due to torture
- (d) Amount of the compensation claimed
- (e) Matters incidental and auxiliary to prove the compensation claimed

**(6) Trial of Complaint and Compensation:**

- (1) The District Court shall follow the Summary Procedure Act, 2028 B.S. for the trial of the case to be registered under Section (5) and the victim shall be awarded up to Rs. 100,000/- as compensation to be obtained from His Majesty's Government if the claim made under the complaint stands as proved.
- (2) If, on the trial proceeding of the case to be administered as per the subsection (1), the complaint made stands as proved that it has been registered with ill-intention then the person who has initiated such groundless complaint shall be fined up to Rs. 5,000/-.

**(7) Prosecution of the Perpetrator:**

The District Court may pass the order to the concerned authority for taking the institutional action to be initiated in pursuance of the prevalent Nepalese law if any government official is proved to be involved in inflicting the torture against the provisions of this Act.

**(8) Imputation of the Compensation Amount:**

For the purpose of sub-section (1) of the Section (6), the matters worth considering for the imputation of the compensation amount shall be as follows:

- (a) Physical or mental trauma and its intensity that victim faced due to torture,
- (b) Deficiency caused in ability to earn out of the torture inflicted on the victim,
- (c) Age and family accountability of the victim if s/he has sustained the trauma that is untreatable,
- (d) Tentative cost involved in the treatment if the trauma sustained is treatable,
- (e) The number of the dependant family and the minimum cost involved in their livelihood if the victim has already dead due to torture inflicted on him,
- (f) Other things claimed by the victim that is due and appropriate.

**(9) Execution of the Decision:**

- (1) An application for obtaining the compensation shall, once the final decision to that effect is delivered, be filed by the victim, or his relative if the victim is already dead, to the Chief District Officer (CDO) in whose jurisdiction the victim was detained. The copy of the final decision of the concerned District Court with regard to pay the compensation to the victim is

desirable for making the complaint and such complaint has to be made within one year of the notice attained of the final decision delivered.

(2) The Chief District Officer (CDO) shall be obliged to pay the compensation to the applicant within 35 days of the application received under the subsection (1).

(3) No compensation shall lie if the complaint to that effect is not lodged within the deadline provided in sub-section (1).

**(10) Defense by the Public Prosecutor:**

As regard to petition made under section (5), the Public Attorney shall defense the government official, who is alleged to have been involved in inflicting the torture, in the court if request to that effect is made by the head of the concerned government office.

**(11) Protection of Action taken on good faith:**

Notwithstanding the provision this Act otherwise provides for, the hardship that is caused automatically due to the arrest made, which is in good faith done in pursuance of the prevalent Nepalese Law, shall not be considered as torture for the provisions of this Act.

**(12) Protection of the proceeding of the offence under the separate Act:**

No difficulty as such will lie for the proceeding of the trial in other offence that the prevalent Nepalese Law specify as being the offence under the separate Act only by the reason that the case has been initiated for the compensation or the execution to that effect has been done under this Act.

**(13) Power to make Rules:**

His Majesty's Government may make Rules to carry out the purpose of this Act.