



HUMAN RIGHTS AND JUSTICE CENTRE

FACT-SHEET

A. Definition of Torture

An international treaty named 'Convention Against Torture' defines torture as:

- Act of intentionally inflicting severe, physical or mental pain or suffering;

Note that: Beating, kicking, applying electric shocks, pouring of water into the nose can be few examples of torture. But, the list is not exhaustive and would include any other act which causes severe pain to the person, either mentally or physically. Under international law, acts of sexual violence such as rape, sexual abuse, stripping detainees naked and causing harm to reproductive organs are also considered torture.

- For such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind;

Note that: The perpetrator must have acted with one of the above intentions. The list is not exhaustive (for example, the perpetrator can inflict torture to intimidate the victim or as a preventive measure). Nevertheless, torture is always intentional.

- Inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Note that: The perpetrator of torture is a State agent (for example, a member of the police, of the army or other law enforcement agencies) or any other person who acts with the support, tolerance, acquiescence of a State agent. Victims of torture find themselves in a situation of complete dependency and are therefore especially vulnerable to abuses. Torture is predominantly inflicted on persons deprived of their liberty, but it is not only used inside detention centres or prisons.

B. Relevant Nepalese Legislation on Torture

The following are the laws of Nepal that deal with torture:

B.1. Constitution of Nepal, 2072 (2015)

The Constitution is considered as the supreme law of a country. The Constitution of Nepal prohibits torture and provides that in case of infliction of torture, the victim can seek for legal remedies. In other words, the victim can take legal actions against the perpetrator and claim for compensation if he/she has gone through torture. According to the Constitution, the victim has right to justice, right to social rehabilitation and right to compensation. The rights provided in the Constitution are implemented in accordance with the following Acts.

B.2. Compensation Relating to Torture Act, 2053 (1996)

The Act considers torture as a civil offence and imposes only administrative action (such as the removal of the perpetrator from his/her job for a certain period of time or depriving the perpetrator of certain benefits in his or her job) against the perpetrator. No criminal punishment (such as imprisonment for a certain period) is envisaged.

The Act provides compensation for the victims, to be determined on the basis of certain factors such as gravity of the physical or mental suffering inflicted on the victim; impact occurred in income-earning capacity of the victim as a consequence of torture (for example, a tailor whose hands were harmed because of the wounds or pain caused by torture and who cannot work as before, which will ultimately impact the earning of such person) nature of the injury; age of the victim; victim's family obligations, among others.

Pursuant to this law, a complaint must be lodged within 35 days from having suffered torture.

B.3. Criminal Code Act and Criminal Procedure Code Act, 2075 (2017)

The Acts came into force since 17 August 2018. Therefore, they are applicable to crimes perpetrated after this date. The Criminal Code Act defines torture, provides for punishment of the perpetrator and compensation in favour of the victim, while the Criminal Procedure Code Act details the process to complain against acts of torture. The Criminal Code Act considers torture as a grave crime. The perpetrator(s) will be punished with imprisonment as well as made liable to pay compensation.

According to the Criminal Code, if anyone commits torture or orders or supports the person involved in the crime of torture, he/she would be liable for imprisonment for a term not exceeding 5 years or a fine not exceeding 50,000 rupees or both penalties according to the gravity of the offence. If a victim dies as a result of the torture inflicted on him/her, the perpetrator would be liable to life imprisonment. Furthermore, if torture is

committed by two or more persons, all members of the group will be punished with same sanction.

The perpetrator cannot defend himself or herself stating that torture was committed as per the order by a superior authority. Therefore, the perpetrator(s) would be punished according to law even if he/she inflicts torture pursuant to an order or an instruction of a superior or a senior.

If a complaint is brought to Court pursuant to the Criminal Code, the Court may order the accused to pay for the interim relief or support for medical treatment or provide compensation to the victim and his or her family in case it finds it necessary. If the accused cannot pay for the amount, the government of Nepal should provide the interim relief from a "victims' relief fund". However, if the accused is found innocent by the Court, such money should be returned.

Furthermore, some other provisions in the law are as follows:

- If any wound or marks of infliction of torture is found on a person's body who is kept in custody for the investigation of a crime, such person or his/her representative can submit an application to the Court to direct for the examination of such wounds by a government doctor or medical personnel.
- In case any victim or witness feels threatened before/after providing the testimony to the court, he/she can submit application to the Court seeking security measures. In such cases, the Court will direct the related organization (Nepal Police) to provide security.
- Once the Court's proceedings begin, the witnesses of the case would be provided with transportation costs to travel to the Court to give their testimony.

Torture Perpetrated during the Conflict

In Nepal, there was an armed conflict from 1996 to 2006. During this period, many gross human rights violations such as arbitrary killings, torture, enforced disappearance and sexual violence were committed. In 2014, a law called 'The Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2071 (2014)' entered into force. This law is relevant for crimes committed during the conflict. On the basis of this law, two Commissions were formed. They are the Truth and Reconciliation Commission and the Commission of Investigation on Enforced Disappeared Persons. These Commissions have power to investigate human rights violations that occurred during the conflict, find the victims and perpetrators and recommend the adoption of measures of reparation for the victims and their families. Between 2015 and 2017, both Commissions registered 63,000 complaints of violations from all over the country. The Commissions will further continue their work until Falgun 2076 (February 2020). As of today, the Commissions do not accept any new complaint.

The Commissions do not act like a court of law and do not have power to judge and punish perpetrators or to directly award compensation or other measures of reparation on their own. They can recommend other bodies of the government (such as the Office of the Prime Minister and the Council of Ministers, Ministry of Law, Justice and Parliamentary Affairs, or Office of the Attorney General) to do so.

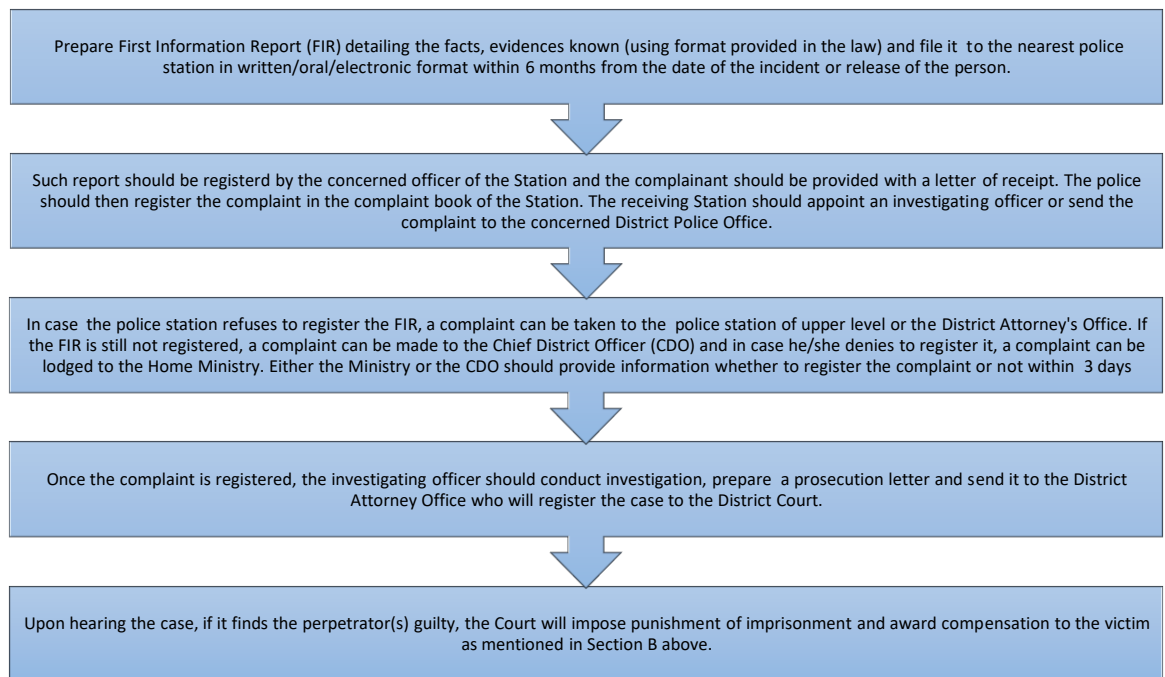
If a person who suffered torture during the conflict did not lodge a complaint with the Truth and Reconciliation Commission prior to 2017, he or she cannot register any new complaint. However, they may try to seek compensation pursuant to the Compensation relating to Torture Act, challenging the 35-day statute of limitations, because it is too short and at odds with international law.

If the victim does not obtain justice or redress in Nepal, he or she can consider lodging a complaint before one of the international mechanisms discussed below in Section D.

C. Where and How to File a Case of Torture in Nepal?

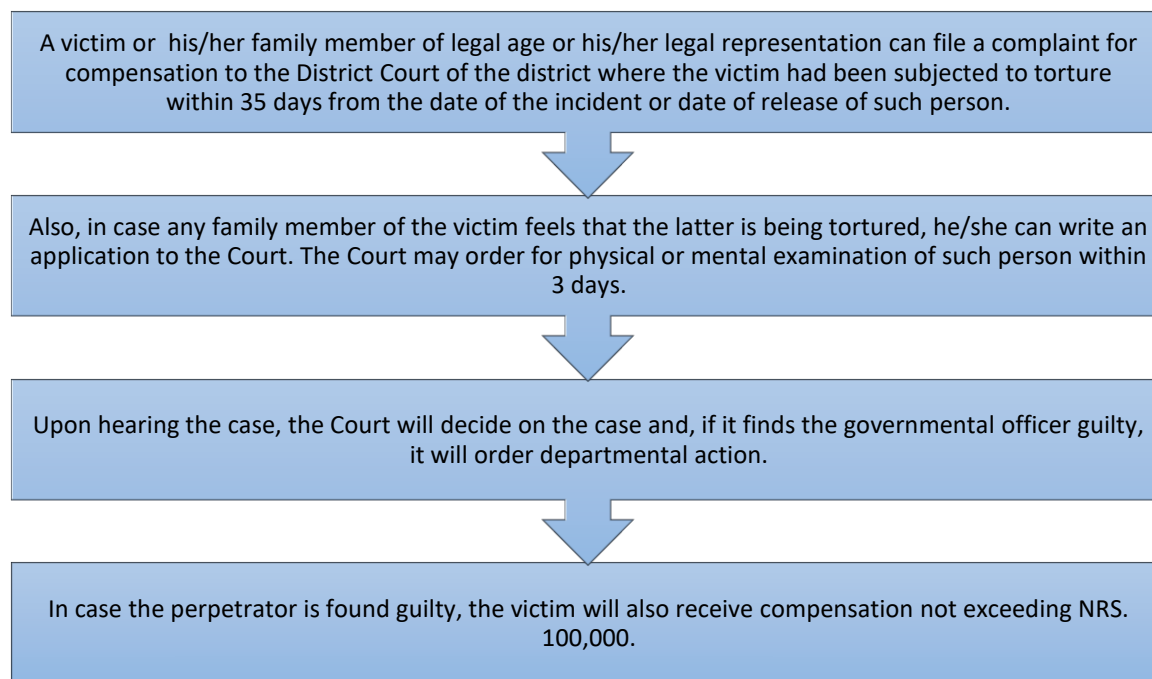
In Nepal, complaints against torture can be submitted in two ways, as shown in the pictorial illustration below:

a) Registering a First Information Report as per the Criminal Code (Act) and Criminal Procedure Act 2017:



The investigating officer must inform the complainant in case the government Attorney decides not to take forward the complaint after studying the case file and examining the evidence.

b) Filing a Complaint to the Court as per the Compensation Relating to Torture Act



There are certain differences regarding the application of these laws which are as follows:

Compensation Relating to Torture Act	Criminal Code Act and Criminal Procedure Act
The law is applied to the incidents of torture that occurred after 3 Poush 2053 (18 December 1996). Therefore, acts of torture occurred during the conflict of Nepal should be submitted according to this law. However, the time limitation to file a complaint according to this law is 35 days from when the victim suffered torture so if the victim goes to the file the case after 35 days, the authority will not	The law is applied to the incidents of torture that occurred after 1 Bhadra2075 (17 August 2018). Therefore, torture occurred after 17 August 2018 (today or days after today) should be made according to this law until a new law is in place. However, the complaints of torture committed during the conflict cannot be submitted according to this law.

accept to register the case, which means the legal proceedings cannot be exercised thereupon.	
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There are other differences in these two Acts stated below:

On the basis of	Compensation Relating to Torture Act	Criminal Code Act and Criminal Procedure Act
Definition of torture	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 include any cruel, inhuman or degrading treatment given to him/her.	Torture is an act of intentional inflicting of physical or mental pain or suffering upon any person who is arrested, taken into control, held in custody, detention, imprisonment or under preventive detention or security or any other person interested in such person, for the purpose of getting information on any matter, extorting a confession of any offence, punishing for any act, showing fear/intimidation or coercion, or doing any other act in contravention of law.
Punishment of the perpetrator(s)	Administrative action against the perpetrator. No imprisonment is imposed upon the perpetrator(s).	Imprisonment for a term not exceeding 5 years or a fine not exceeding 50,000 rupees or both penalties to the perpetrator according to the gravity of the offence.
Compensation	The compensation would be provided after assessing factors as gravity of the crime, age of the victim among others. However, the amount	If a case is registered in Court, the latter may order the accused to pay for the interim relief or support for medical treatment or provide compensation to the victim and family in case it finds it necessary.

	will not exceed 100,000 rupees.	
Procedure to complain before national authorities	The complaint (application) should be lodged before the District Court of the district where he/she has been detained.	The complaint (First Information Report) should be lodged to the nearest police station.
Time Limitation to file the case	35 days from the date of the incident or release of detention.	6 months from the date of the incident.

Complaint to National Human Rights Commission

Additionally the victim or anyone on his/her behalf can also bring their case of torture before the National Human Rights Commission (NHRC) within 6 months from the date of the incident or release of the person according to a law called 'National Human Rights Commission Act, 2068 (2012)'. The complaints can be provided either in written or verbal form. The NHRC can further recommend the concerned official or agency to immediately stop such act of violation.

In case the NHRC finds a situation where human rights of any individual has been or may be violated, the Commission may conduct or cause to conduct inquiry and investigation. If the NHRC finds it is necessary to provide compensation to the victim from the inquiry and investigation, the Commission shall make decision stating to provide compensation in their recommendation. However, in case the victim has already received compensation or is in the process of receiving, the Commission will not make such recommendation. The Commission may prescribe a maximum of 3,00,000 depending on the condition of the victim.

D. International Standards on Torture Applicable in Nepal: What and Why?

Various international documents (Declarations/Conventions/Covenants) prohibit torture. Certain treaties spell out the duties of State not to torture people and to take actions against torture. Certain treaties also establish complaints' mechanisms called 'committees', which examine the complaints sent by victims against the State and render decisions called 'views'. It is important to note that the country has to ratify the relevant treaty and also accept the competence of the mechanism as provided under the treaty to be able to lodge the complaints. There are various other criteria for the admissibility of a case before each committee, which should be assessed before lodging a complaint. The main requirement is that, before lodging a complaint at the international level, the victim must first attempt to seek justice and reparation before domestic authorities.

The list below details the main international human rights treaties that Nepal has ratified and the complaints' mechanisms it has accepted:

Treaty	Ratification Date	Complaint mechanism accepted by Nepal/Date
Convention Against Torture, 1984	14 May 1991(31 Baishak 2048)	No
International Covenant on Civil and Political Rights, 1966	14 May 1991(31 Baishak 2048)	Yes/14 May 1991(31 Baishak 2048)
Convention on the Elimination of All forms of Discrimination Against Women,1979	22 April 1991(31 Baishak 2048)	Yes/15 June 2007 (1 Ashad 2064)
Convention on the rights of persons with disabilities, 2006	7 May 2010 (24 Baishak 2067)	Yes/ 7 May 2010 (24 Baishak 2067)
Convention on the rights of the Children, 1989	14 September 1990 (29 Bhadra 2047)	No

Torture is also prohibited under other international treaties such as the Rome Statute of the International Criminal Court and the Four Geneva Conventions of 1949. However, none of these treaties establishes a complaints' mechanism that can be activated by a victim of torture.

Complaints of torture can actually be submitted also to other UN mechanisms called 'Special Procedures'. When people are unable to obtain justice within Nepal, forums like these can be utilized to bring the case at an international level and put some pressure on the government to respect the rights of the victims and provide redress.

E. Where to Go if Torture Occurs?

As mentioned above, if torture is inflicted upon a person, legal remedies can and should be sought first in Nepal and, under certain circumstances, before international human rights mechanisms. The victim can appoint lawyers to represent his or her case and file a complaint to the competent authorities. However, not every victim/survivor can afford the lawyers' professional fees. There are certain organizations that help such victims in obtaining free legal aid to litigate their cases. The Human Rights and Justice Centre is one of such organizations.

F. Information about the Human Rights and Justice Centre (HRJC)

In the past, the HRJC has been helping victims of torture by appointing lawyers to work on their cases. The HRJC is a non-profit organization that facilitates access to justice for victims of gross human rights violations in Nepal such as torture, enforced disappearance, extrajudicial executions and sexual violence.

The HRJC provides free legal support to victims regardless of their background, religious or political affiliation. The HRJC has established a network of trusted Nepalese lawyers who will litigate cases domestically and internationally. The HRJC aims at ending impunity and enforcing the rule of law.

G. Contact Details of the HRJC:

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Email: contact@hrjc.org.np