

APPENDIX-A

BILL ON THE PROHIBITION OF TORTURE, 2009 (2066)

PREAMBLE

Considering that the dignity of the human being is the highest value of human society,

Taking into account the United Nations (UN) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ratified by Nepal on 14th May 1991 and thus forming part of the law of Nepal,

Considering that it is the fundamental duty and responsibility of each State Party to the UN Convention

Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to implement effective legislative, administrative, judicial and other measures to prevent all acts of torture and other forms of cruel, inhuman and degrading treatment or punishment and to ensure accountability and redress for all acts of torture,

Recognizing the fundamental importance of securing a society free from torture, and that, for this to occur, the cooperation of all citizens and public officials is necessary,

Noting the vital importance of ensuring that victims of torture are treated with dignity and respect and that their interests in safety, security and participation are ensured throughout the legal process.

Be it enacted by the parliament.

§1. SHORT TITLE AND COMMENCEMENT

- (1) This Act shall be called “Act on the Prohibition of Torture, 2009 (2066).”
- (2) This Act shall come into force immediately on signature of the President.

§2. DEFINITIONS

In this Act, unless the subject or the context otherwise requires:

- (1) “Detainee” shall denote a person who is deprived of personal liberty.
- (2) “Detention” shall denote the condition of a detainee as defined in Section 2(1).
- (3) “Detention facility” shall denote any location where any person as defined in Section 2(7) is kept as a “detainee” as defined in Section 2(1), or subjected to interrogation.
- (4) “Domestic partner” of the victim shall denote a person (not necessarily a spouse) with whom he/she cohabits and shares a long-term intimate relationship.
- (5) “Health check- up” shall denote a full examination of a detainee’s physical and mental health.
- (6) “Physician” shall denote a physician certified by the Nepal Medical Council or a medical practitioner certified by the Health Professionals’ Council.
- (7) “Person” means every human being, regardless of his/ her religion, caste, ethnicity, gender, sexual orientation, political affiliation or citizenship.
- (8) “Prescribed” or “as prescribed” shall denote procedures prescribed or as prescribed in this Act or the Rules framed under this Act.
- (9) “Public official” shall denote an official in public service who may exercise authority or has an obligation to fulfill certain duties or responsibilities under

the Constitution, other laws or decisions, or under an order of an agency of the Nepali government. The term specifically includes, but is not limited to, the officials or staff of the Nepal Army, Nepal Police, Armed Police Force, Forest Guards, and other authorities working for wildlife preservation, incumbent or retired, as well as any other person acting in an official capacity.

(10) “Reparation” shall denote restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition to be provided to the victim by the state and the offender.

(11) “Torture” shall denote any act through which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person detained or controlled in any way by a public official or officials, or by any other person acting in an official capacity or a person with whom a public official knowingly collaborates or acquiesces, with the purpose of obtaining a confession or information from the victim or a third person, punishing the victim for an act committed or suspected of having been committed by the victim or a third person, or intimidating or coercing the victim or a third person for any reason based on discrimination of any kind.

(12) “Cruel, inhuman or degrading treatment or punishment” shall include:

(a) Any of the acts set out in §2(13) or 2(14) below, irrespective of whether the said acts were perpetrated for any of the purposes listed in §2(11); or

(b) Any act causing pain or suffering of significant gravity irrespective of whether the said act amounts to “severe pain or suffering” as per §2(11).

(13) Acts of physical torture shall include acts such as, but not limited to, the following:

(a) Systematic beating, headbanging, punching, kicking striking with truncheons, rifle butts, or jumping or walking on a person’s body;

- (b) Deprivation of food or water, or forced feeding with spoiled food or drink, animal or human excrement, wine or other noxious substances;
 - (c) Electric shocks;
 - (d) Cigarette burning, burning by electrically heated rods, hot oil, or acid;
 - (e) Water treatment or the submersion of the head in water until, or almost to, the point of suffocation;
 - (f) Tying-up, hanging or forcing to assume fixed and stressful bodily positions;
 - (g) Rape, including the insertion of foreign objects into the sex organ or rectum, or electrocution of the genitals, nipple, breast or rectum, and all other forms of sexual abuse;
 - (h) The amputation of any body part;
 - (i) Forced extraction of teeth;
 - (j) Harmful exposure to elements such as extreme heat or cold, animals or insects; or
 - (k) Suffocation, including using plastic bags or other implements placed over the head to deprive air almost or up to the point of asphyxiation.
- (14) Acts of mental torture shall include acts such as, but not limited to, the following:
- (a) Prolonged blindfolding;
 - (b) Threatening a detainee or a detainee's family member or friend with death, rape, abuse, or other severe harm;
 - (c) Arbitrary and extended confinement in solitary cells;

- (d) Extremely prolonged interrogation;
 - (e) Unscheduled or arbitrary transfers from one place to another so as to create a reasonable belief of execution;
 - (f) Demeaning a person's dignity by, for example, forcing him or her to strip or to engage in acts reprehensible to his or her religion or belief system;
- (15) "Victim" shall denote a person subjected to torture or other cruel, inhuman or degrading treatment. The term "victim" shall also denote the immediate family, dependants or domestic partner of the direct victim insofar as they have suffered harm or distress directly or indirectly caused by the unlawful treatment of the victim. Additionally, the term shall denote other persons who have suffered harm while intervening to assist victims in distress or to prevent victimization.

§3. PROHIBITION OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- (1) No one shall inflict torture or cruel, inhuman or degrading treatment or punishment. Torture and cruel, inhuman or degrading treatment or punishment constitute crimes punishable in accordance with this Act.
- (2) A person shall be criminally responsible and individually liable for punishment of the offences of torture or cruel, inhuman or degrading treatment or punishment if that person:
 - (a) inflicts torture or cruel, inhuman or degrading treatment or punishment; or
 - (b) attempts to inflict torture or cruel, inhuman or degrading treatment or punishment; or
 - (c) inflicts or attempts to inflict torture or cruel, inhuman or degrading treatment or punishment jointly with another party; or

- (d) inflicts or attempts to inflict torture or cruel, inhuman or degrading treatment or punishment through another party, regardless of whether that other person is also criminally responsible; or
 - (e) orders, incites, instigates, participates in or is otherwise complicit in the inflicting of torture or cruel, inhuman or degrading treatment or punishment, or an attempt to do so by another party; or
 - (f) acts on the instruction, supervision, order or will of a public official or other person acting in an official capacity in inflicting or attempting to inflict torture or cruel, inhuman or degrading treatment or punishment.
- (3) No circumstances whatsoever may be invoked as a justification of torture or cruel, inhuman or degrading treatment or punishment including, for example, war, or threat of war, national emergency threatening the life of the nation, terrorism, internal political instability or armed conflict, riots or any other type of public emergencies. Such circumstances will never give rise to a valid legal defense against the offence of torture or cruel, inhuman or degrading treatment or punishment.
- (a) An order from a superior officer or a public authority may not be invoked as a justification of torture or cruel, inhuman or degrading treatment or punishment.
- (4) No person, as a result of their position, capacity or for any other reason, shall be immune from investigation or prosecution for torture or cruel, inhuman or degrading treatment or punishment.

§4. RECORD OF HEALTH CHECK-UP

- (1) While a person is detained, health check-ups shall be administered in accordance with this Act.
- (2) All health check-ups shall clearly record the physical and mental condition of the detainee and especially all possible evidence of torture and be

administered in accordance with any standards set by the Nepal Medical Council and the Health Professionals' Council and in keeping with international standards such as the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the " Istanbul Protocol") and the Principles of Medical Ethics adopted by UN General Assembly resolution 37/194..

- (3) A health check-up of a person shall be administered by a physician as promptly as possible after the person is arrested. Thereafter, health check-ups, medical care and treatment shall be provided at regular intervals and whenever necessary. Sick detainees, those who complain of illness, injury or ill treatment, and any detainee to whom a physician's attention is specially directed shall be seen regularly by a physician. A health check-up shall be administered to each detainee upon his/her transfer to another place of detention and/or upon release from detention. The health check-ups, care and treatment provided for by this Act shall be provided free of charge.
- (4) A detainee or his or her counsel shall have the right to request and appoint a second physician to provide a medical examination or opinion. Additionally, the competent court may order an independent medical examination or opinion, in which case the examination or opinion shall be provided free of charge.
- (5) All examinations shall be carried out in private, unless an examination within sight (but not within hearing) of public officials is expressly requested by the detainee or physician. The detaining officials and all other public officials shall fully respect doctor-patient confidentiality.
- (6) The fact that a detainee received a health check up, the name of the physician, any other persons present at the check-up and the results of such an examination shall be duly recorded. Upon request of the detainee or his/her counsel, a copy of the aforementioned medical record shall be produced by the competent public official.
- (7) When a detainee is produced in court, the court shall receive and preserve the sealed envelopes containing health records as defined

by§4(6), and they shall be attached to the dossier of the case after the charge-sheet is lodged.

- (8) If there is any reason to believe that torture has been inflicted on a detainee, the detainee, his or her immediate family members or domestic partner, guardian, authorized representative or counsel, may petition the competent district court to order an immediate additional health check-up. The competent district court may, when making such an order, require the physician to provide the examination findings directly to the court and, when appropriate, to the National Human Rights Commission (NHRC) as well.
- (9) If a public official responsible for the detention of the detainee intentionally fails to guarantee health check-ups in accordance with this Act, he/she shall be punished in accordance with §6(6) of this Act. Intentional failure to conform to the aforementioned health check-up provisions of this Act shall be assumed, unless an honest failure to conform to said provisions can be proven by the public official.

§5. INVESTIGATION AND PROCEDURE

- (1) An investigation into an allegation of torture or cruel, inhuman or degrading treatment or punishment shall be initiated by the filing of a complaint by the victim or some other person or institution acting on his or her behalf, or on the own motion of the district government attorney or competent judge.
- (2) The Nepalese Government has the duty to investigate and prosecute those responsible for acts of torture and cruel, inhuman or degrading treatment or punishment whenever there is reasonable grounds to believe that such offences have taken place.
- (3) The Nepalese Government shall take such measures as may be necessary to establish its jurisdiction over any act of torture or cruel, inhuman or degrading treatment or punishment when the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered to Nepal, when

the alleged offender is a national of Nepal or when the victim is a national of Nepal. In addition, in cases of torture, the Nepalese Government shall also take such measures as may be necessary to establish its jurisdiction in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him to any other State.

- (4) If a district government attorney receives information of a possible offence or has otherwise reasonable ground that an offence under this act may have been committed, he must start an investigation ex officio.
- (5) All detainees, while being processed for detention, shall be informed of their right to file a torture complaint and the procedure for filing complaints.
- (6) Complaints may be filed orally or in writing with the official in charge of the place of detention, another body carrying out independent monitoring of places of detention, the National Human Rights Commission, the competent judge reviewing the legality of detention, or directly with the district government attorney.
- (7) All complaints filed shall, immediately on receipt, be forwarded to the district government attorney. A central log of all complaints received by the district government attorney shall be kept, and shall include the date on which the complaint was made, the nature of the complaint, and the follow up. Annual statistics of the central log shall be produced by the Attorney General and publicly disseminated.
- (8) If a detainee dies in detention, suffers mutilation, or there is other evidence or information to suggest that torture or other cruel, inhuman or degrading treatment or punishment may have taken place, the detaining public officials are immediately required to inform the district government attorney and the National Human Rights Commission.
- (9) Upon receiving information of a possible offence or upon otherwise having reasonable ground to suspect that torture or other cruel, inhuman or degrading treatment or punishment may have been committed, an investigation shall be immediately opened by the district government attorney. The district

government attorney shall have the obligation to carry out the investigation promptly, thoroughly and impartially.

- (10) The district government attorney shall keep the Attorney General regularly informed of all torture and cruel, inhuman or degrading treatment or punishment investigations. The district government attorney shall immediately advise the Attorney General of any real or perceived conflicts of interest which may affect the impartiality of the investigation. In cases of conflicts of interest, the Attorney General shall immediately designate another investigative officer to carry out the investigation.
- (11) While conducting investigations and prosecutions of torture and cruel, inhuman or degrading treatment or punishment cases, the district government attorney or other competent authority shall conduct a full and thorough investigation of the facts surrounding the incident, with regard to all potential witnesses of the incident, and any documentary or other evidence obtainable from all possible sources,
- (12) The district government attorney can request and receive assistance from experts for investigation and prosecution, as is necessary to conduct a full investigation and prosecution.
- (13) For the purpose of investigations, the district government attorney or other competent investigation officer shall enjoy all the rights similar to that of a police officer as set forth in Nepal law including: access to custody records, permission to interrogate and compel witnesses and full access to all material and information relevant to the investigation.
- (14) The burden of proof shall be on the detaining officials to demonstrate that the death or injury of the detainee was not caused as a result of torture or other cruel, inhuman or degrading treatment or punishment.
- (15) After completion of an investigation, the district government attorney shall, where the evidence discloses the commission of a crime, prepare a charge sheet and file a public criminal case on behalf of Nepal government as plaintiff in the court and also prosecute it.

- (16) If, after completion of an investigation, the evidence does not disclose the commission of a crime, the Attorney General may decide that the case cannot be prosecuted as a public case according to this Act or other Nepal law. In this event, the Attorney General shall issue a motivated decision and the district government attorney shall, within 5 days of the issuance of the decision, inform the victim or, in case of the victim's death or incapacity, the victim's immediate family members or domestic partner, guardian, authorized representative or dependents, and his counsel.
- (17) The victim or, in case of the victim's death or incapacity, the victim's immediate family members or domestic partner, guardian, authorized representative or dependents, may file an appeal against the decision of the Attorney General not to pursue the prosecution as a public case. The request for appeal shall be filed within 60 days from the notification of the decision of the Attorney General.
- (18) In case the Attorney General decides, according to the provisions of §5(16), that a case cannot be filed as a public case, the victim or, in case of the victim's death or incapacity, the victim's immediate family members or domestic partner, guardian, authorized representative or dependents may file a case as plaintiff on behalf of the victim in the district court.
- (a) The conversion of a torture or cruel, inhuman or degrading treatment or punishment case into a private plaintiff criminal case under this subsection shall not otherwise affect the prescribed legal procedures governing the case.
- (19) Legal aid shall be provided as prescribed in the Nepalese Legal Aid act 1997.
- (20) Unless a case is brought as a private plaintiff criminal case according to §5(18), the Nepalese government shall be the plaintiff in all torture and cruel, inhuman or degrading treatment or punishment cases brought under this Act.
- (a) If a victim of torture believes that the government is not adequately representing his/her interests while acting as plaintiff, the victim may

step in as the plaintiff at any stage in the case, in which event the proceedings will continue as a private plaintiff criminal case in accordance with §5(18).

(21) For the purpose of facilitating the investigation and prosecution of torture and cruel, inhuman or degrading treatment or punishment under this Act, the district government attorney, Investigation Officer, members of the investigation team, defense lawyers, plaintiff's lawyers, and any persons authorized by the competent court shall each have the authority to inspect all detention facilities throughout Nepal.

(a) Consent from the public official or officials responsible for detention facility shall not be required in order for the aforementioned inspection and monitoring activities.

(b) Public officials who prevent authorized persons from inspecting or monitoring detention facility shall be subject to penalties as prescribed by §6(7) of this Act.

(22) The victim, the victim's lawyer or, in case of death or incapacity, the victim's immediate family members or domestic partner, guardian, authorized representative or dependents must regularly be kept informed of the progress of the investigation. A written report about the progress of the investigation shall be sent to the victim or the victim's lawyer at least every 30 days.

(23) Protection of the witness.

(a) Victims shall be considered to be witnesses of the plaintiff in the adjudication of claims under this Act.

(b) Victims of torture and other cruel, inhuman or degrading treatment or punishment and witnesses of the offence shall be protected as prescribed in Section 23, Subsection (c).

(c) The office of the Attorney General is entitled and obliged to take all appropriate measures to guarantee the personal security and safety of

the victim, all witnesses, and the victim's lawyer, relatives of those and any other endangered as a result of any proceedings under this Act before, during and after the investigation and until such time as protection measures are no longer necessary. The victim or any other person endangered as a result of any such proceedings may apply to the Court for a protective order when necessary if such order has not otherwise been provided by the attorney general.

(24) Automatic suspension and disciplinary sanctions. Upon commencement of an investigation for an offence under this Act,

(a) Any incumbent public official shall be automatically suspended from his/her position upon commencement of an investigation into accusations against him/her of an offence under this Act. Such suspension shall remain in effect until the final adjudication of the case.

(b) Any public official indicted for an offence under this Act shall be immediately suspended from duty pending trial and duly prosecuted.

(25) No Statute of Limitations for Prosecution or Reparation.

(a) There shall be no statute of limitations for the investigation or prosecution of cases under this Act.

(b) There shall be no statute of limitations to file complaints and claims under this Act, including initial complaints of torture and other cruel, inhuman or degrading treatment or punishment and claims for interim relief.

(c) Nothing in this Act shall affect any right of victims of torture and other cruel, inhuman or degrading treatment or punishment or any other persons to receive reparation which they are otherwise entitled to under Nepalese law.

- (26) All other procedures governing the investigation, prosecution and proceedings of claims under this act shall be as prescribed by Nepalese law.

§6. PENALTIES

- (1) The following provisions shall serve as guidelines governing the sentencing of public officials convicted under this Act.
- (2) Public officials guilty of torture as defined by §2(11) of this Act shall be sentenced to:
- (a) 20 years imprisonment, if the victim of said torture dies as a result;
 - (b) A minimum of 10 and a maximum of 20 years imprisonment, if the victim of said torture is permanently disabled or severely disfigured;
 - (c) A minimum of 10 and a maximum of 20 years imprisonment, if the victim of said torture is raped or sexually assaulted;
 - (d) A minimum of 3 and a maximum of 20 years imprisonment in all other cases.
- (3) When sentencing public officials under §6(2)(d) of this Act, judges shall impose punishment proportional to the harm inflicted in each individual case, taking into account:
- (a) the method, duration, and cruelty of the torture or other cruel, inhuman or degrading treatment;
 - (b) the duration and severity of the pain or suffering, both mental and physical, suffered by the victim ;
 - (c) whether the offender actually inflicted the torture or merely encouraged the commission of the crime; and

- (d) any other circumstances or factors relevant to the relative culpability of each individual offender.
- (4) Public officials guilty of cruel, inhuman or degrading treatment or punishment as defined by §2(12) of this Act shall be sentenced to:
- (a) A minimum of 6 months and a maximum of ten years imprisonment proportional to the harm inflicted in each individual case.
- (5) When sentencing public officials under §6(4)(a) of this Act, judges shall impose punishment proportional to the harm inflicted in each individual case, taking into account:
- (a) the method, duration, and cruelty of the treatment or punishment;
 - (b) the duration and severity of the pain or suffering, both mental and physical, suffered by the victim ;
 - (c) whether the offender actually inflicted the torture or merely encouraged the commission of the crime; and
 - (d) any other circumstances or factors relevant to the relative culpability of each individual offender.
- (6) Public officials guilty of the intentional failure to provide health check-ups in accordance with §4(9) of this Act shall be punishable by a minimum of permanent dismissal from their positions with the government and automatic disqualification from any future government service and a maximum of 1 year imprisonment.
- (7) Public officials guilty of refusing authorized persons access to detention facilities in accordance with §5(21) and §13 of this Act shall be punishable by a minimum of permanent dismissal from their positions with the government and automatic disqualification from any future government service and a maximum of 1 year imprisonment.

§7. RIGHT TO APPEAL

- (1) The victim and, in case of death or incapacity, the victim's immediate family members or domestic partner, guardian, authorized representative or dependants, and the defendant shall each have the right to appeal the District Court's decision, in relation to whether the offence of torture was committed, whether an appropriate penalty was imposed and regarding the amount and form of compensation awarded.
- (2) Other rules and procedures governing appeals under this Act shall be as prescribed by Nepalese law.

§8. COMPENSATION FUND

- (1) The Nepalese government shall create and sustain a Compensation Fund for the purpose of providing compensation to victims of torture and other cruel, inhuman or degrading treatment or punishment under this Act.
- (2) A Compensation Fund Management Committee comprised of the following shall be formed to manage the Compensation Fund:
 - (a) Law Secretary - Convener
 - (b) Assistant Registrar designated by Registrar of the Supreme Court - Member
 - (c) Assistant Secretary designated by Secretary of the Finance Ministry - Member
 - (d) A member of civil society, working in the area of human rights, appointed by the Human Rights Committee of the parliament
- (3) Annual allocations by the government, donations from national and international donor agencies or individuals, and fines collected from individual offenders under this Act shall be collected in the Fund.

- (4) All expenses incurred related to reparation awarded to victims of torture and other cruel, inhuman or degrading treatment or punishment, as prescribed by §9 and §10 of this Act, will be written expenses under the Fund.
- (5) The compensation fund must never be exhausted.
 - (a) insufficient funds within the Compensation Fund shall not prevent the prompt payment of reparation to any victim.
 - (b) in case the compensation fund is exhausted, the Nepalese Government must immediately provide reparation from other sources.
- (6) Other provisions regarding the Compensation Fund will be as prescribed by the Rules promulgated under this Act.

§9. INTERIM RELIEF

- (1) If a victim has been rendered unable to support his or her family or domestic partner due to injuries allegedly suffered as a result of torture or other cruel, inhuman or degrading treatment or punishment, requires funds to pay for urgent medical care required to treat injuries allegedly suffered as a result of torture or other cruel, inhuman or degrading treatment or punishment, or is otherwise in dire need of financial assistance due to any circumstances brought about by alleged crime, the Investigation Officer, the victim, the victim's counsel, or the victim's immediate family or domestic partner may petition the competent court for interim relief.
- (2) If the competent judge determines that interim relief is required, he or she shall issue an order to the Chief District Officer of the district of the alleged victim to provide relief out of the Compensation Fund.
 - (a) The Chief District Officer must promptly provide the determined amount of relief to the alleged victim after receiving such an order.

- (3) In determining the amount of interim relief necessary to sustain an alleged victim under this Act, the judge should, among other factors, consider the following:
- (a) The scale and gravity of physical or mental torture or other cruel, inhuman or degrading treatment or punishment alleged to be suffered by the victim;
 - (b) The age, familial responsibility and condition of the alleged victim's dependents;
 - (c) Expenses incurred or likely to be incurred during treatment of the alleged torture-related injuries;
 - (d) Duration and necessary means and resources for the rehabilitation of the victim.
 - (e) Urgent funds for medical treatment and financial supply of the victim's family, domestic partner or other dependants.
- (4) All further procedures governing awards of interim relief shall be as prescribed by the Rules promulgated under this Act.

§10. PROVISIONS AND PROCEDURES OF REPARATION

- (1) The Nepalese Government shall pay and/or provide the full cost and service of reparations to victims of torture and other cruel, inhuman or degrading treatment or punishment promptly after the amount and form of reparations has been determined. Such payment and/or provision shall, in no event, be awarded more than one month after sentencing.
- (2) A victim of torture or other cruel, inhuman or degrading treatment or punishment shall promptly receive adequate, substantial and effective reparation as set forth in this Act. Reparation shall be granted in the form of restitution, compensation, rehabilitation, satisfaction, guarantees of non-

repetition or other measures which are adequate to secure the victim's health, property and security.

(3) The Nepalese government has the right to recourse from an individual offender for all costs incurred as a result of his/her unlawful actions.

(a) Such recourse shall be limited in cases wherein forcing an individual offender to repay the full amount of reparation would subject any member of the offender's immediate family, dependents and/or domestic partner to a substantial risk of danger to their health or life due to said financial burden.

(b) The immediate family, dependents and/ or domestic partner shall have the right to apply to the district court rendering judgment if they believe they will be subjected to a substantial risk of danger to their health or life due to the financial burden imposed upon the offender.

(i) The court, in considering such applications, shall evaluate the applicants' financial situation and, if it is found that the mandated recourse would expose the applicants to a substantial risk of danger to their health or life, reduce the amount of recourse accordingly.

(ii) There shall be no right for the offender's immediate family or domestic partner to protect or restore their usual living standard, as before the recourse.

(4) In the case that multiple offenders are found guilty of torturing or otherwise committing cruel, inhuman or degrading treatment or punishment to a single victim, the aforementioned costs shall be shared by all offenders sentenced under this Act. These costs shall be divided relative to each offender's guilt and responsibility for the committed offence. The court shall decide each offender's guilt and responsibility during sentencing. That an offender held a position of command or significant responsibility, in the police, army, or another security institution, shall be considered an indicator of substantial responsibility.

- (5) If a person requires diagnosis or treatment for physical or mental health problems suffered due to torture at the hands of public officials, treatment shall be provided at the expense of the Nepal government. Financial assistance shall also be provided to the dependents or family members if immediate relief is required to sustain such persons in the event of the torture-related death or incapacitation of a victim.
- (6) A person determined to be a victim under this Act shall receive reparations as determined by the court.
- (7) Reparation must include all pecuniary and non-pecuniary damages suffered due to torture and other cruel, inhuman or degrading treatment or punishment, insofar as they are not covered by the immediate relief granted by the investigation officer. Reparation, at the least, must include:
- (a) adequate compensation for all non-pecuniary damages, including pain, anguish, fear and any other emotional distress suffered by the victim;
 - (b) all costs of necessary medical treatment and all material losses suffered by the victim due to torture-related harms. Material losses shall include, but are not limited to, loss of income, loss of economic opportunities, expenses incurred in procuring legal or expert assistance, insofar as these costs are not covered by the free legal aid or interim relief; and
 - (c) compensation for all non-pecuniary damages suffered by a victim.
- (8) Each court, when awarding reparation, must clearly indicate the amount of the total sum to be used for each of the categories outlined in §10(7)(a-c). Each court shall give a reasonable explanation for this allocation.
- (9) Considering international compensation standards, the reparation shall be proportional to the gravity of the acts of torture or other cruel, inhuman or degrading treatment, and to the harm suffered. The reparation will be limited by the actual damages caused by torture or other cruel, inhuman or degrading treatment and further punitive damages shall not be awarded to victims.

(10) Procedures for Reparation

- (a) When a case under this Act proceeds with the Nepalese government as plaintiff, the district government attorney must include a claim for reparation according to the guidelines set forth in §10(7)(a-c).
 - (b) When a case under this Act proceeds as a private plaintiff criminal case, the victim's attorney must include a claim for reparation according to the guidelines set forth in §10(7)(a-c).
 - (c) A victim can apply independently to the District Court demanding reparation related to emotional distress suffered due to torture or other cruel, inhuman or degrading treatment of the victim.
 - (d) After a court decides to award reparation to a victim under this Act, a letter along with a copy of the amount and form of reparation shall be sent to the Compensation Fund Management Committee.
 - (e) Upon receipt of a letter detailing reparation as outlined in §10(10)(d), the Compensation Fund shall disburse the ordered compensation to the victim within one month.
- (11) A rehabilitation centre with adequate medical and rehabilitation facilities shall be established to take care of those who are mutilated or have sustained physical or mental injuries requiring treatment and care. The Nepal government shall bear the cost of its operation.

§11. TRAINING OF PUBLIC OFFICIALS

- (1) The Nepal Government shall take effective legislative, administrative, judicial or other measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment contained in this Act shall be incorporated into all the curriculum and relevant textbooks for competitive examinations and training for entry into public service and shall

include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

- (2) Those working in civil or military law enforcement, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of detention shall be trained on the basis of a common curriculum stressing all relevant duties and obligations under this Act.
- (3) The training of concerned medical personnel shall specifically emphasize the rules established in the Principles of Medical Ethics relevant to the Role of Health Personnel. Particularly, physicians shall be trained in the protection of detainees and prisoners against torture, and other cruel, inhuman or degrading treatment or punishment.
- (4) Incumbent personnel and future recruits of the police, armed police and Royal Nepalese Army shall undergo extensive and thorough training including human rights education, training in effective interrogation techniques and the proper use of policing equipment.
- (5) The Nepalese government shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture and other cruel, inhuman or degrading treatment or punishment.
- (6) The Nepalese government shall incorporate the prohibition on torture and other related human rights issues into the primary, secondary and university level curriculum within 5 years of the passage of this Act.
- (7) To promote the rule of law in Nepal, the government shall organize regular and at least once per year human rights awareness campaigns to raise awareness of the general public on the importance of human rights protections and the rights of citizens. The government may seek advice and

assistance from the NHRC, human rights NGOs and civil society in the conceptualization and/or implementation of such programs.

§12. NON-REFOULEMENT

(1) No one at risk of torture or other cruel, inhuman or degrading treatment or punishment shall be extradited, returned or expelled from Nepal.

(a) Whatsoever written elsewhere in Nepalese law, the Nepalese government shall not expel, return (“refouler”) or extradite a person to another state when there are substantial grounds for believing that he/she would be in danger of being subjected to torture or cruel, inhuman or degrading treatment or punishment.

(b) For the purpose of determining whether such circumstances exist, the competent authorities shall take into account all relevant considerations including, where applicable, a consistent pattern of gross, flagrant or mass violations of human rights in the state concerned.

§13. MONITORING SYSTEM

(1) Under this Act, the National Human Rights Commission (NHRC) is mandated to monitor all detention facilities and other places where individuals are detained throughout the country. The condition of such places of detention, as well as any human rights abuses, breaches or other compliance issues under this Act shall be recorded in the Annual Reports of the NHRC.

(a) Competent civil society organizations may apply to the NHRC to receive monitoring rights and, if approved, will be entitled to rights equivalent to those guaranteed to the NHRC under this Section.

(2) To facilitate the monitoring process, unrestricted access to all places of detention shall be granted to officials of the NHRC and all organizations approved under §13(1)(a) of this Act.

- (3) The NHRC and all organizations approved under §13(1)(a) of this Act shall be entitled to visit all detention facilities unannounced, immediately and at any time. The NHRC shall have access to all existent data, detention facilities, detainees, and available personnel.
- (4) The monitoring shall be carried out impartially, independently and with all necessary care.
- (5) In the event that the NHRC or any organization approved under §13(1)(a) of this Act finds evidence of the possibility of torture, they must immediately inform the Attorney General and advise that an investigation be launched.
- (6) Public officials who prevent authorized or approved persons, organizations, or institutions from inspecting or monitoring detention facilities shall be subject to penalties as prescribed by §6(7) of this Act.

§14. NO USE OF EVIDENCE OBTAINED THROUGH TORTURE

- (1) No information or any other evidence obtained through torture or other cruel, inhuman or degrading treatment can be used in any proceedings in accordance with the Evidence Act of 1974 except in proceedings against a person accused of torture as evidence that the statement was made..
- (2) A court shall regard such information or any other evidence as nonexistent. In the event that a court or other adjudicating body receives notice, during or after proceedings, that any information has been obtained through torture, the proceeding shall be declared a mistrial and a new trial, under a new judge, shall be ordered.
- (3) Upon notice that any information has been obtained through torture, the competent judge shall order the opening of a criminal investigation for torture under this Act, in accordance with §5 of this Act.

§15. FRAMING OF RULES

- (1) The Nepalese Government shall promptly frame Rules necessary for implementation of this Act.

§16. REPEAL

- (1) The Torture Compensation Act of 2053 (1996) has been repealed.
- (2) Past cases tried under the Torture Compensation Act of 2053 (1995) shall be regarded as having been tried under this Act and pending torture cases, at the time of this Act's passage, shall proceed in accordance with this Act.
- (3) Past cases of torture and other cruel, inhuman or degrading treatment or punishment which took place after Nepal ratified the Convention against Torture can be investigated, prosecuted and tried under this Act.