

# Bill Relating to Torture, 2065

## Citizen's Draft



**FOHRID**

HUMAN मातव अधिकार तथा प्रजातान्त्रिक मञ्च  
RIGHTS AND DEMOCRATIC FORUM

# Bill Relating to Torture, 2065

## Citizen's Draft

2065 Asoj, Kathmandu

**FOHRID Publication No: 15**

**Published by:**



**FOHRID** HUMAN मानव अधिकार तथा प्रजातान्त्रिक मञ्च  
RIGHTS AND DEMOCRATIC FORUM

196/14, Radhe Marga, Dillibazar, Kathmandu  
Postal Address: P.O. Box 19186, Kathmandu, Nepal  
Tel: +977-1-44 23 125, Fax: +977-1-44 38 812

E-mail: [fohrid@wlink.com.np](mailto:fohrid@wlink.com.np)  
Website: [www.fohrid.org.np](http://www.fohrid.org.np),  
[www.fohridnetwork.org](http://www.fohridnetwork.org)

**Supported by:**



**European Union**

---

<b>First edition</b>	:	2065 Asoj
<b>Published copies</b>	:	1200
<b>ISBN</b>	:	978-9937-8063-3-6
<b>Drafting &amp; Publication</b>	:	Human Rights and Democratic Forum (FOHRID)
<b>Publication Support</b>	:	European Union
<b>Printed at</b>	:	Lumbini Offset Press
<b>Computer Layout</b>	:	Pratik Computer Process

*This publication has been produced with the assistance of the European Union. The contents of this publication is the sole responsibility of Human Rights and Democratic Forum (FOHRID) and can in no way be taken to reflect the views of the European Union.*

# Preface

Following the restoration of democracy in 1990, Nepal ratified Convention against Torture (CAT) on 14 May 1991. The constitution of 1990 prohibited torture. Torture Compensation Act, 2053 was introduced ignoring most of the provisions of the CAT. This Act could neither criminalize torture nor discourage those involved in inflicting torture. Consequently, torture continued in Nepal.

The issue of changing Nepalese law relating to torture has been raised in the national and international level for a long time in the past due to increasing incidents of torture with impunity and incomplete Act. It is high time to change the law according to the provisions of the CAT, comments of the UN Committee Against Torture on the periodical reports submitted by Nepal, change in constitutional provisions in Nepal and relevant domestic experiences of the past 12 years.

Jana Andolan 2062-63 gave the mandate to recognize torture as a criminal offence and the Interim Constitution of Nepal, 2063 made statutory provision to make torture a punishable offence. The Torture Compensation Act, 2053 has become inadequate in the context of the need to address the obligations created by the status of Nepal as a state party to the CAT and to establish state mechanism to implement the interim constitution. A new law relating to torture is required immediately to implement provisions of the interim constitution. But the government is not willing to do so. To bring the incidents of torture with impunity to the legal and judicial responsibility is the prerequisite for protection and promotion of human rights. For this purpose, the government should ensure appropriate legal provision immediately by considering voice of the civil society. The government cannot escape from complying with this responsibility. Likewise, the human rights community and civil society should also continue to exert pressure to the government in this regard.

Human Rights and Democratic Forum (FOHRID) has been forwarding campaign against impunity and torture with a long term strategy. At one hand, FOHRID wishes to create

awareness and sensitization in the community on impunity and torture; and, at the other hand, it wishes to adopt international system of criminalizing torture in the Nepalese legal system. Major motive behind this is to ensure that the future generation will not have to face the tragedy of torture in the Nepalese land and torture will be prevented strongly.

With the above mentioned two tier implication, FOHRID initiated process to draft civil society version of the law to prohibit torture in Nepal. This process was started to assist government to formulate effective law to prohibit torture. Preliminary draft was prepared by an experienced lawyer. The draft was subject to discussion and consultation with the victims of torture, legal experts, human rights activists, security officials, government officers working in the field of law, judges, academicians and other national and international experts and institutions having concerns over this subject for revision in different phases. Hence, this civil society draft of Bill Relating to Torture, 2065 was prepared as a common perspective of many.

Major objective of those contributing in the draft process is to help government to introduce an effective new law to replace the existing Torture Compensation Act, 2053. We expect that the Nepalese law should be exemplary for the world community and the mentality to inflict torture should be discouraged. Therefore, we wish that the study and consideration of this material should assist the Members of the Constituent Assembly to formulate an effective law. On behalf of the whole human rights community and civil society, FOHRID makes special request to the government to immediately present this Bill Relating to Torture, 2065 in the legislative parliament officially as a public bill.

# Content

Preface	i-ii
---------	------

## Part- I

Why citizens draft Bill Relating to Torture 2065 as an alternate to Torture Compensation Act 2053?	1-13
--	------

## Part-II

Bill Relating to Torture, 2065	14-23
--------------------------------	-------

## Part-III

Process of the draft bill and stakeholders	24-36
--	-------

## Process

Stakeholders Involved in Drafting	26-36
-----------------------------------	-------

1. Organizations and individuals who have provided written comments and suggestions on the draft bill	26
A. Government Agencies	26
B. Human Rights Organizations	26
C. International Organizations	26
D. Individuals	26
2. Organizations and individuals involved in drafting process	27
A. Central Level	27
B. Participants of Regional Level Consultation Meeting	30
C. National Consultation Program	35

## ***Part- I***

### **Why Citizen's draft Bill Relating to Torture 2065 as an alternate to Torture Compensation Act 2053?**

#### **Introduction**

We, the Nepalese people, are going through the process of state restructuring, reform in governance system and humanization. Our recent past is full of fresh wounds of armed conflict, impunity, torture and cruel treatments, disappearance and murder. Victims of the incidents of violation of human rights and humanitarian law are expecting compensation and wiping of their tears by the government molded in a new framework. All the Nepalese people expect that the torture related acts should not repeat in the country and the perpetrators involved in the violation of human rights and those involved in inflicting torture should be prosecuted in the court.

Torture Compensation Act 2053 could not address the need of the hour. It could not criminalize torture or discourage tortures. Consequently, torture continued in Nepal. The people's movement 2062-63, therefore, mandated to term torture as a punishable offence. As a result, the Interim Constitution of Nepal 2063 made constitutional provision of torture as a punishable offence. Torture Compensation Act 2053 is obviously insufficient as it cannot address the obligations of state party to the CAT and need of state mechanism to implement Interim Constitution.

Immediately after enforcement of the Interim Constitution, it was required to introduce a new torture related law complying with the constitution. This is still left untouched, as the nation focused on the election to the constituent assembly, declaration of republic and formation of government. Now, there is legislative structure in place for formulation of new constitution and law. Now, the government and constituent assembly should not delay in formulating necessary law to determine and materialize the subject matters to be incorporated in the new constitution.

Legal mechanism against torture and impunity should be determined to functionalize state's commitments in this regard. For this, the government should listen to the civil society and go hand in hand with them. Human Rights and Democratic Forum (FOHRID) has been forwarding sensitization and awareness on torture and impunity in collaboration with civil society, other organizations and institutions. FOHRID, at one hand, wishes to forward campaign against torture and impunity with the long term strategy; and, at the other hand, wishes to adopt international system of criminalizing torture and impunity in the Nepalese legal system. Major motive behind this is to ensure that no one faces tragic torture in the Nepalese territory in the future and to prevent such act strongly.

On the above two grounds, FOHRID took initiatives to prepare civil society draft of law to prohibit torture in collaboration with civil society and other institutions. This process was started to assist government to formulate effective law to prohibit torture. A preliminary draft was prepared by an experienced lawyer. The draft was subject to several rounds of discussion and revision in collaboration with victims of torture, lawyers, human rights activists, security officers, legal officers, judiciary, academicians and national and international experts and institutions having concern with the subject. This citizen's draft Bill Relating to Torture 2065 has been brought to the final shape giving due impetus to the diverse perspectives of large size of stakeholders.

#### **Background**

Nepal has remained a country opposing torture formally since 1990. The people's movement of that time gave mandate to guarantee political freedom with basic human rights. Accordingly, it was recognized that torture and other cruel treatment should be prohibited in the context of state sovereignty, political interest and crime investigation. In this ground, the then constitution accepted prohibition of torture as right to criminal justice.

Nepal, having political freedom, expressed commitments before the world community that torture shall not be inflicted even in the name of state of emergency or other circumstances. Nepal also adopted CAT with the promise to recognize torture as a serious criminal offence.

However, these government commitments were not materialized in reality during the last 15 years. Torture traditionally occurring at the police custody was extended upto the army barracks. Nepali security

force learnt and applied the types of torture including the use of *Belana*, applied by Bhutanese security forces to persecute Lhotsampa. At the time of armed conflict both the state and non-state actors used torture and cruel, inhuman and degrading punishment and treatment as strategic tactic. The security forces and insurgent combatants became source of cruelty rather than support for the people to ensure security and fearlessness.

### **Context**

State system of Nepal is at a crossroad between abandonment of old system and establishment of new system. In the context of transition in the governing system, the issues of human rights and justice are, and should be, of prime importance. It is important at this stage that the bad tradition of impunity should not continue and it is more important to ensure that the human rights violation and atrocity will not exist in the future.

To ensure non-recurrence of human rights violation in the future, we have to expressly determine that human rights violation is a criminal offence. We can discourage human rights violation with the burden of proof on the perpetrator. Hence, the government should prioritize formulation of law for the future with clear, effective and certainty of implementation rather than the game for election to power or power sharing.

Torture is regarded as the source of all the human rights violation. The participants of the second workshop of UN Convention Against Torture held by the Asian Human Rights Council in November 2000 in Bangkok have noted, "Violation of all human rights whether they are civil or political or economic, social and cultural starts from the use of torture and degrading treatment or punishment" (Setunga and Cheeseman 2001:7). Torture is one of the major concerns among many concerns of human rights.

We must be able to prevent torture and degrading treatment if we want to promote protection of human rights. State mechanism and society must be ready to ensure congenial environment for torture prevention. Necessary legal tools and treatments should be in the right place. The state and the society must bear solid concept, target and program.

### **Spirit and standards determined by international law relating to torture**

The world community has emphasized to promote prohibition of torture through international law. Many international instruments have been formulated and made effective to search and arrange measures to prohibit torture and guarantee fair treatment. This sequence has been started with the prohibition of physical punishment.

Number of instruments of international law has determined provisions to prohibit and prevent torture, guarantee justice for the victims of torture and dragging the perpetrator to the justice. Major instruments in this regard include Universal Declaration of Human Rights, Standard Minimum Rules for the Treatment of Prisoners, International Covenant on Civil and Political rights, Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Convention Against Torture, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Declaration of Basic Principles Regarding Justice to the Victims of Crime and Abuse of Power and Rome Statute of International Criminal Court. These instruments have mainly declared following spirit and determined standards of the world community against torture:

- Torture should be regarded as a serious criminal offence at the national level and proportional and proper sanction should be determined according to its nature and quantity;
- To make legislative, administrative and legal arrangements necessary to end the tradition of torture;
- To prosecute the perpetrator accused of inflicting torture by taking into custody or through any other process;
- To exchange mutual cooperation to ensure prohibition of torture;
- To incorporate prohibition of torture in the curricula of different levels of education and to create awareness in the society in a sustainable way, to sensitize and train manpower relating to security and custody in this regard;
- To review in a regular basis national provisions regarding implementation and management of arrest, custody, imprisonment and to humanize and update them to guarantee fairer treatment;
- To ensure that the complaints of torture are investigated and prosecuted as required immediately from capable authority;
- To make effective arrangement for protection of the person making complaint and the witnesses;

- To provide proper and effective rescue, redress, reparation, compensation including full rehabilitation and to establish this as a right;
- To ensure that the statement obtained with torture shall not be accepted as evidence in the legal proceedings;
- To take necessary measures to prohibit other cruel, inhuman and degrading treatment and punishment apart from torture; and
- To regard torture as international criminal offence in accordance with the crime against humanity and to use international criminal jurisdiction.

### **Commitments of Nepal against torture and ground reality**

Nepal acceded to the CAT 16 years ago and formulated Torture Compensation Act 13 years ago. To count whole age of Nepal's commitment against torture, it has already crossed 34 years. Nepal had extended support when Sweden proposed a resolution against torture in the third committee of the UN General Assembly in 1973. In this perspective, Nepal is one of the first 7 countries of the world that expressed commitment against torture.

Cruel, inhuman or degrading punishment was legally prohibited in Nepal since BS 2020. By arranging Chapter on arbitrary detention (*berit sanga thunneko*) in the New Muluki Ain, torture in the process of investigation or in any form was punishable considering its quantity. Arbitrary detention was regarded as a criminal offence and it was directed that tying, beating or depriving from food and water should not be used. However, the Article 5 has the provision that says, "If taken into detention with good intention according to law during prosecution of case, the concerned official shall not be punished according to this Chapter even if decided later that the detention was not necessary." KKBS, 2061:200). This very provision became an escape route to those inflicting torture.

Victims of torture felt that they cannot get justice through this. This provision of pledging complaint as a civil case to establish right was not implemented properly till now. Despite clear provision for not allowing torture, torture remained widely used in Nepal for political revenge, to discriminate on various grounds and to conduct crime investigation easily as there is safeguard for government officials inflicting torture. Torture continued. The provision of no torture for crime investigation, and punishment if inflicted torture was not applied.

Despite this, we had to wait till 1990 to prohibit torture through statutory provision. And we had to wait till BS 2053 for a law relating to torture compensation. Though the parliament formulated law after pressure from various corners, it ignored important provisions of CAT. We have three laws - the constitution, the law and the convention; but the victims have not been able to receive appropriate treatment till now.

The trend to inflict torture remained intact in Nepal despite formulation and implementation of Torture Compensation Act. The tradition of inflicting torture has not discontinued in Nepal till now due to lack of will power, legislative capacity and traditional concept in the rulers and the security agencies for crime investigation. Factor supporting use of torture is the trend of creating rather than collecting evidence to fulfill formality of investigation or for prosecution against the opponent political groups or to persecute the suspects. Lack of proper perspective and conscience has helped flourish the trend of accepting torture as natural.

Centre for Victims of Torture (CVICT) has recorded approximately 30,000 incidents of torture from 1999 to 2007 (CVICT, 2008). Likewise Informal Sector Service centre (INSEC) has recorded 15,821 incidents of arrest and torture during January 2002 to December 2007 (INSEC, 2008). Advocacy Forum has recorded 5342 such cases from July 2001 to April 2008 (AFN, 2006: 2). Based on these figures, we can say that the incidents of torture have been occurring in a significant number even after Nepal became state party to the Convention. It points to the fact that there is large number of conflict victims in Nepal. Very few cases of action against those inflicting torture and justice including compensation to the victims have been publicized. Only 208 cases of torture compensation have been filed in the court in the past 12 years of enforcement of Torture Compensation Act. Out of that, decision was made to provide compensation of Rs. 1000 to Rs. 1,00,000 to victims and their dependents in 52 cases. CVICT lodged 145 cases, out of which victims have received compensation in only 7 cases till now, and the perpetrators were brought to justice system in none of them. Cases were filed at individual level in 6 cases. The court decided to provide compensation only in one case (CVICT). In this way, there is lack of effective remedy and the perpetrators are protected by the culture of impunity. Inadequacy of the Torture Compensation Act is the major

cause to promote this situation. Backed by this situation, torture continues to be used as a means of investigation in Nepal.

### **Legal system unsuccessful to address the problem of torture**

Efforts of Nepal to implement International Covenant on Civil and Political Rights, Convention on the Rights of Child and CAT have remained inadequate, though Nepal is already party to these instruments. There is lack of sufficient law to regulate international prohibition of torture at the domestic level. Its implementation status is fragile and there is weaker situation of monitoring in the custody and independent investigation of the accusation of torture. Besides, Nepalese law does not permit adequate opportunity for victims of torture to receive legal treatment and hold perpetrators responsible for their deeds.

Interim constitution and Torture Compensation Act are the major instruments to regulate prohibition of torture. Interim constitution has regarded torture as a crime, but in a limited sense. It covers torture inflicted in the government custody or detention centre only as crime. But the CAT has set the obligation of state party to consider the incident of torture inflicted or caused by any officer within the jurisdiction of the state party. Many provisions of Torture Compensation Act are contradictory to the CAT and other international standards. For example, the perpetrator inflicting torture is not regarded as offender and state defense mechanism is activated on behalf of the perpetrator. Incomplete provision of health check up, lengthy and boring process of case prosecution, provision of separate process for compensation to the victims are unfavourable to justice and victim's rights.

### **Pessimistic trend of judiciary**

The judiciary in Nepal has not been able to interpret concept against torture to raise hope for justice. In the case of Purna Bahadur Chhantel demanding compensation in BS 2048, the Supreme Court escaped saying that as the law relating to compensation has not been formulated, compensation will be applicable only after formulation of such a law. In a case with the claim that punishment to the police with sufferings and physical harm according to Police Act is against constitution and convention, a judge known as human rights activist gave verdict supporting torture saying that such punishment is

necessary in the institution of police. In a case claiming to increase compensation, the interpretation that came attempted to misinterpret provisions of the Convention itself. In this way, existing Nepalese judiciary did not want to play a favourable role in the campaign against torture. This created a situation discouraging victims from raising their voice against torture in the court. Therefore, very limited cases reached the court demanding compensation for torture.

### **Weaknesses in protection against torture and expectation of reform**

Commitments of Nepal against torture have developed just as an attempt to smear the eyes of world community with the false hope of having something happen. In fact, the conviction of the state and security agencies is just artificial. Compensation related provisions in the torture Act and provision to term torture as crime in the proposed criminal code are just ornamental show piece. Torture related laws are weak, incomplete and ineffective.

Neither new law has been formulated nor have provisions in the existing laws been amended to materialize the provision of interim constitution to view torture as a punishable offence. In this backdrop, it is necessary to assess the existing legal provisions and amend, revise or make necessary arrangements. There are some fundamental obstacles to hinder effective implementation of protection against torture and making legal arrangements. The obstacles are as follows:

**a. Lack of clarity in vision:** Nepal government and government authority are not clear on the concept of torture. Very few of the officials believe that criminal investigation can be carried out without torture. Most of them take torture as a means to find out crime. They take voice against torture as ignorable. Due to this, there is lack of political will power to ensure protection against torture.

This is exactly reflected in the general community also. In the traditional concept, inflicting torture is regarded as a culture. Social behaviour and practices are based on revenge rather than human conscience. Therefore, there is lack of adequate pressure for protection against torture.

**b. Trend of impunity:** Trend of impunity is the factor that always makes protection against torture in Nepal uncertain. The authority violating human rights do not have fear of punishment. There is a

trend to award or promote the perpetrators after change of government. There is anarchy in the security sector due to concept that those in power do not have to fear legal action for anything. This has of course posed obstacle in making effective the protection against torture.

**c. Indifference towards victims:** Firstly, the government does not protect the witness of the victim, and the witness has to bear threat of violent attack in the future. Secondly, the victim may not have the knowledge of legal treatment. Likewise, to obtain consultation with law practitioner and claim compensation may be difficult due to geographical remoteness. Thirdly, the statutory limitation of 35 days to claim compensation for torture after receiving torture or being freed from the custody does not allow adequate opportunity for legal treatment against injustice. Fourthly, the interim constitution and Torture Compensation Act are silent regarding need of rehabilitation to the victims. Fifthly, the assistance provided under torture related law does not suffice to meet the needs of the victims of human rights violation. Apart from all these weaknesses, provision of fine for those filing petition for compensation in case of torture without adequate ground discourages potential victims from seeking compensation.

Instead of restitution, Nepalese judiciary is based on the framework of revenge. All the other dimensions of justice to the victims of crime are shut. The physical or mental sufferings borne by the suspect or accused are the only satisfaction for the victims of crime. Till now, Nepalese judiciary has not developed concept on how to ensure justice for the victims. As a result, the state mechanism is increasing number of victims by persecuting the suspects through torture.

Due to these conceptual and social factors, we can suspect successful implementation even if the lack of law is fulfilled. Despite this, protection against torture cannot be effective in absence of effective law. Considering the concluding observations and suggestions of the CAT Committee of the UN on the report submitted by Nepal and the provision of interim constitution of Nepal to make torture as punishable offence, following legal protection is required for effective protection against torture:

#### **Clear action plan against torture**

The agency responsible for internal security arrangements should develop concept to prepare human resources well equipped with

scientific technology, instruments, resources and means for crime investigation to guarantee protection against torture to the Nepalese citizens. Crime investigation should be developed through the aspect of forensic science. Crime investigation should be specialized. We have to end the trend to initiate case on the basis of the statement of suspect. Crime investigation and custody and detention management should be conducted by the human resource that has developed mentality to conduct crime investigation without torture. Regular inspection and supervision should be arranged. For this, we need to prepare and implement clear action plan against torture. We need to allocate required source and means for this.

#### **Amendment in the concerned law**

Torture Compensation Act brought with the external motivation and pressure without internal will power of the state cannot represent the need to protect against torture. For example, checking health before and after detention is a natural trend and provision of criminal justice system. In this ground, such a provision should have been incorporated in the Act relating to the public case. Torture Compensation Act was introduced just in the name of arranging compensation. No amendment was made in other related laws.

Provision to prohibit torture should be incorporated in the Act relating to public case as a general principle. Likewise, chapter on arbitrary detention should have been amended in accordance with the convention. With this the authority for investigation of the public case against government authority responsible for arbitrary detention should have been determined. It did not happen so the protection against torture became ineffective. Hence, amendment to the Torture Compensation Act does not suffice. Now, we have to identify relevant laws and revise them suitably.

#### **Arrangement for appropriate sanction**

Constitution and the CAT have made torture a punishable offence. Therefore, we have to revise existing laws and determine punishment for perpetrator involved in torture. We have to arrange punishment, investigation officer, prosecution officer and court for filing case by establishing torture as punishable offence in the legal provisions including Act Relating to Public Case, Muluki Ain, Torture Compensation Act, Police Act and Prison Act.

## **Guarantee of justice for victims**

Present legal provision has made the right to compensation as a matter to resolve by determining right. The aspects such as compensation, rescue and reparation for the victims have been ignored. There is almost no provision for protection of victims and witnesses. Hence, we have to make necessary arrangements so that the victims can feel justice. For this, we need to formulate law after intensive study.

## **Why alternate to Torture Compensation Act?**

Torture is widespread in Nepal. There are several incidents of torture. Implementation status of CAT is deplorable. There are number of reports concerning "torture in the army camp and police custody for involvement in the Maoists and criminal activities" (OHCHR: 2005). Complaints about torture have been submitted to the OHCHR-Nepal also. There are instances of most of the victims beaten continuously and mercilessly. There are proofs that some of the victims have been tortured by using current or beating at the foot palms.

Existing law has failed to determine adequate legal standard to combat torture. Similarly, it has not been able to define torture as a crime. Provision to hold concerned police responsible for illegal detention, misbehaviour to the detainee or violation of human rights of person in the police custody have not been incorporated.

Law has not covered the concept of justified reparation for victims. Therefore, this draft Bill has been prepared as an alternate to the existing Torture Compensation Act, 2053 on behalf of civil society to create environment for timely justice to the victims by registering torture as a criminal offence, arranging investigation and prosecution for torture, arranging relief, rescue and reparation and establishing criminal justice system responsible towards people and citizens.

## **Major foundations adopted during preparation of draft**

This proposed final draft is the outcome of intensive consultation and response, feedback and suggestions from crime investigators, security personnel, experts on criminal justice system, expert lawyers, public prosecutors, judges, physicians, forensic scientists, psychiatrists, human rights activists who are directly related to security and justice system. The suggestions of all have not been

incorporated. The standards, policies and practical grounds adopted to finalize this draft are as follows:

- This draft is based on the CAT and the central concerns of the observations made by CAT Committee on the country report of Nepal. Provisions of the Interim Constitution of Nepal have also been considered.
- The provisions on investigation, prosecution and punishment are based on the general principles on criminal offence and justice accepted universally.
- Efforts are made to prepare provisions on punishment relative and proportional to the existing legal provisions of Nepal and international trend has also been considered.
- This draft focuses to ensure prevention of torture and justice to the victims. According to the method of reparation, this is not limited to compensation rather efforts are made to cover other components of reparation.
- The draft is based on the substantive justice and efforts are made to minimize procedural hassles.
- During discussions, views were expressed to eliminate or limit provision of limitation; however, provision of limitation has been made practical considering medical aspect of torture and provisions and practices followed in other countries.
- Provisions of convention have been brought in the form of law being away from the legislation of traditional Nepal laws.
- Though state restructuring and federalism are the major issues in debate in Nepal, the existing state structure and court practice has been followed as an alternate framework has not been finalized.
- On the basis of the discipline and conduct of the public officials, torture is an abuse of authority; in this context, investigation of such incidents falls under the jurisdiction of the Commission for the Investigation of Abuse of Authority (CIAA). Besides, torture is a serious criminal offence, so its investigation should be carried out with the general principles of the investigation of criminal offence. As it is an issue of human rights violation, its investigation should be conducted by the NHRC. On these logical grounds, the investigation and prosecution of torture should be subject to investigation by the CIAA, public prosecutor and NHRC. But as CIAA has limited its area of activity only to financial corruption, this draft has been prepared with the concept of involving Office of the Attorney General for investigation of the criminal cases.
- The drafting process was flexible so that the government accepts this proposal favourably, criminalizes torture and

arranges compensation by rectifying weaknesses of the existing Torture Compensation Act. Therefore, despite taking in view the spirit and importance of the convention, some compromise has been made to obtain government's consent in the draft.

### **What are the expectations of civil society?**

Major objective of the draft team is that this material should assist government to formulate relevant law. We expect that the Nepalese law should become exemplary to the world community and the mentality to inflict torture shall be discouraged gradually. We wish that the study and understanding of this material will be an aid to the CA members for formulation of an appropriate law. The civil society makes special request to the government to consider this and to immediately submit it to the legislative parliament as a public Bill.

### **Reference:**

#### **Unpublished working papers:**

1. Rabindra Bhattarai, Torture Compensation Act: Need of improvement, challenges and expectations.
2. Rabindra Bhattarai, Torture Compensation Act: Its alternate, (2064), FOHRID.
3. Bhimarjun Acharya, Need of a law to end impunity: Brief background paper (2006), FOHRID.
4. R.K. Siwakoti, Draft law relating to impunity: Discussion paper (2006), FOHRID.
5. Dr. Shankar Kumar Shrestha, Two facets of Torture related law: Commitments and expectations of implementation

#### **Books and publications**

6. AFN (2006), Sharing experiences of torture survivors, Kathmandu: Advocacy Forum.
7. LBMC (2063), Interim Constitution of Nepal-2063, Kathmandu, LBMC, M/o Law, Justice and Parliamentary affairs, Government of Nepal
8. Rabindra Bhattarai (2054), Right against Torture in Criminal Justice, Kathmandu: CVICT Nepal
9. NHRC (2003); Draft Report on Human Rights in Nepal, Lalitpur, NHRC Nepal.
10. CVICT (2001), Study on Torture and Disability due to Insurgency, Kathmandu: CVICT Nepal

11. Setunga, Philip and Nick Cheeseman ed. (2002), Torture: Mother of all Human Rights Violations, Hong Kong: Asian Human Rights Commission.
12. International Instruments Developed against Impunity (2064), FOHRID, Kathmandu.
13. ICC-1998, Rome Statute of International Criminal Court -1998.
14. UN Economic and Social Council, Updated set of principles for the protection and promotion of human rights through action to combat impunity (2005), GE0510900 (E) 210205.
15. FOHRID, Final Project Execution Report and Action Plan (2006), FOHRID, Kathmandu
16. Brussels Group for International Justice, Combating against Impunity: Risks and perspectives (2002) Brussels, March 11-13, 2002.
17. FOHRID, FOHRID Human Rights Monitor No. 12-17, 2006-07, FOHRID, Kathmandu.
18. William A. Schabas, International Criminal Court: An Introduction, (2004), Cambridge University Press, 2004.
19. International Center for Human Rights and Democratic Development, Campaign against the impunity: Portrait and Plan of Action, (1997) ICHRDD, 63, rue de Brussels, Montreal, Canada, H2Y IV7.
20. Report of OHCHR dated 16 September 2005 regarding human rights situation in Nepal and its activities and technical cooperation.
21. INSEC, CAT and its implementation status, INSEC, Kathmandu.

□ □ □

## ***Part-II***

### **Bill Relating to Torture, 2065 (2008)**

**Preamble:** Whereas, it is expedient to prescribe punishment by defining torture as criminal offence, to arrange protection of victims and witnesses by making contextual revision of the provisions of torture compensation, and to make legal provisions relating to torture integrated for effective implementation of the United Nations International Convention against Torture

Be it enacted by the Legislative-parliament.

#### ***Chapter 1***

##### **Preliminary**

1. **Short title and commencement:** (1) This Act shall be called as "Act Relating to Torture 2008."

(2) This Act shall come into force immediately.

2. **Definitions:** In this Act, unless the subject or the context otherwise requires;

(a) "Torture" shall denote the act or treatment, except suffering felt naturally by a person kept in detention or control as a result of lawful deprivation of liberty, of inflicting physical or mental or both pain or suffering, to a person under any form of control by the public authority or a person working in a public capacity or by any other person with his/her instigation, acquiescence or consent having purpose of obtaining confession or information from him or a third person or punishing him for an offence or a mistake committed or is suspected of having committed by him or by a third person, or intimidating or coercing him or a third person for any other reason based on discrimination. The term includes cruel, inhuman and degrading treatment imposed upon the person.

(b) "Victim" shall denote the person subjected to torture or cruel, inhuman or degrading treatment. In case of death of the person subjected to torture or if s/he is physically disabled, the term includes his/her family members or the dependents.

(c) "Public authority" shall denote authority or official in public service who may exercise authority or has an obligation of fulfilling certain duty or responsibility under Constitution,

other laws or decision or order of an agency or authority. The term specifically includes the authority or staff of the Nepal Army, Nepal Police, Armed Police Force, Forest Guards, and authority working for wildlife preservation, etc., incumbent or former if retired.

(d) "Reparation" shall denote rescue, redress and compensation to be provided to the victim by the state; the restitution caused to be provided by the offender to victim in a form of cash, material or service; rehabilitation; satisfaction and guarantees of non-repetition.

(e) "Prescribed or as prescribed" shall denote prescribed or as prescribed in this Act or the Rules framed under this Act.

#### ***Chapter 2***

##### **Prohibition of torture and record of health check**

3. **Torture not to be inflicted to anyone:** (1) No one should inflict torture, instigate for inflicting torture or attempt or cause to do so against anyone.

(2) Conduct of any public authority who orders, instigates or agrees to inflict torture, or does not report to the superior authority having knowledge of torture inflicted, or being in a superior position allows torture to occur when it is known to him/her, or does not provide information or hides it knowing the occurrence of torture, shall be regarded as offence of torture and shall be sentenced in accordance with this Act.

(3) Any situation including war or threat of war or situation of terror or internal political instability or armed conflict, riot or any other type of public emergencies or order of superior authority may not be admitted as a defense of torture.

4. **Record of health check up should be maintained:** (1) Notwithstanding anything mentioned elsewhere in Nepal laws, while taking someone under control or keeping in custody after arrest or releasing according to law, physical and mental health check up, if possible, by a public physician and, if such physician is not available, by other certified physician should be carried out and the report should be closed and sealed by the physician and preserved.

(2) After the person is brought for health check up according to sub-Section (1), the concerned physician should maintain clear record of the physical and mental health. And, one copy of the record should be preserved in the office in a confidential manner and should be produced promptly whenever required by the court.

(3) When a suspect is produced to the court requesting for his remand after lawful arrest, the court should receive and preserve the sealed envelop of health report according to sub-Section (2) and it should be attached to the dossier of the case after the charge-sheet is lodged. If such health check up of the person, requested for remand, is not performed, the person should be immediately sent for health check up and a report should be received and attached to the dossier.

(4) If it is suspected that torture is inflicted to the person in custody, the family member or his/her lawyer may submit petition to the concerned district court for health check up. If such petition is submitted, the court may order immediate health check up of the person in custody. While giving such order, the physician should be instructed to carry out health check up without being influenced by the security personnel and submit report to the court and dispatch a copy to the National Human Rights Commission.

(5) In case of reasonable ground to believe that the physician carrying out health check up according to this Section has conducted it under coercion, or allured or with bad intention to make evidence and impact of torture unclear or hidden, the Investigation Officer or the person protecting right of the victim can apply in the court. In case such application is submitted, the court may order for a second health check up if the situation is suspicious.

**Clarification:** For the purpose of this Section, physician means a physician certified by Nepal Medical Council or medical practitioner certified by Health Professionals' Council. Health check up means check up of physical and mental health.

(6) If a person under control or kept in custody suffers death or mutilation or physical injury or problem in mental

health, the authority or personnel managing such control or custody shall justify with proof that it was not caused due to torture.

### **Chapter 3**

#### **Investigation, prosecution and punishment**

5. **Anyone, knowing torture shall inform:** Any person who knows about torture inflicted to someone by public authority should inform, by mentioning facts whatever known, to the office of the district government attorney.
6. **Provisions on investigation and prosecution:** (1) District government attorney shall carry out investigation of the offence of torture.

But if the district government attorney reports to the Attorney General that it is not appropriate to carry out investigation from him/her because the alleged case of torture has occurred during criminal investigation or prosecution that of which he is carrying out the prosecution, another Investigation Officer designated by the Attorney General shall carry out such investigation.

(2) While conducting investigation and prosecution of torture, the district government attorney may obtain necessary and proper information from, among others, the victim, any other person who knows about the incident, National Human Rights Commission, other organizations working in the field of human rights and justice.

(3) The district government attorney may take assistance from experts for investigation and prosecution as required. Conditions for such assistance from the experts shall be as designated.

(4) For the purpose of investigation, the government attorney or Investigation Officer shall enjoy all the rights similar to that of a police as set forth in Nepal law.

(5) After completion of investigation, the district government attorney shall prepare charge sheet and file public criminal case on behalf of Nepal government as plaintiff in the court and also defend it.

But, after completion of investigation by Investigation Officer, if the Attorney General decides that the case cannot be prosecuted as a public case according to this Act or other

Nepal law, the government attorney shall, within 5 days, inform this to the informant or victim or his/her relative or family member or guardian or lawyer.

(6) In case the government attorney informs, according to the proviso of sub-Section 5 that the case cannot be filed as a public case, the victim or for him/her the informant or relative or family member or guardian or lawyer can file a case as plaintiff on behalf of the victim in the district court.

(7) If a case is filed according to sub-Section 6, the district court shall designate the person who files the case as plaintiff and prosecute and finalize the case as private plaintiff criminal case.

(8) Conversion of the case as private plaintiff criminal case according to sub-Section 7 shall not affect other legal procedure of the case and its result.

(9) For the purpose of investigation and prosecution of the torture related offence according to this Act, the Investigation Officer, members of investigation team, government attorney, victim's lawyer and officer or staff having court order shall have the authority to inspect or monitor any prison or custody throughout Nepal. Consent from the higher authority of security agency is not necessary for such inspection or monitoring and public officer or public servants must assist investigation.

(10) Other arrangements relating to investigation, prosecution and proceedings of the case shall be as designated.

**7. Penalties:** (1) Public authority inflicting torture shall be sentenced as follows:

- (a) Punishment according to National Code (Muluki Ain) Chapter "Of life" and 5 years additional imprisonment will be sentenced if any person has died due to torture.
- (b) Punishment according to Nepal law and upto 3 years additional imprisonment will be sentenced if the victim has been mutilated due to torture.
- (c) The person inflicting torture shall be sentenced upto 5 years imprisonment if the victim has received physical, mental or psycho-physical

health problem requiring long term treatment due to torture.

- (d) From 2 to 3 years imprisonment or from Rs. 50,000 to Rs. 300,000 fine if the victim has developed physical or mental health problem due to torture in which immediate treatment is enough.
- (e) If the public authority knowing the incident of torture denies providing information or hides, s/he shall be sentenced upto 1 year imprisonment or Rs. 100,000 fine.
- (f) Upto 1 month imprisonment or upto Rs. 10,000 fine to the person not helping or creating obstacle in the investigation according to Section 6, sub-Section 9.

(2) Sentence according to sub-Section (1) if encouraged torture, half of sub-Section (1) if agreed or solicited in inflicting torture and one forth of sub-Section (1) if effort of torture is made.

(3) Half of the punishment shall be sentenced, if a person other than public authority is involved in the offence to be sentenced according to this Act.

## **Chapter 4**

### **Reparation and protection of victims**

**8. Provisions of rescue, treatment, compensation and rehabilitation:** (1) The victim inflicted by torture from public authority shall receive rescue, treatment, compensation and rehabilitation as set forth in this Act.

(2) If diagnosis or treatment of physical or mental health is required due to torture, treatment shall be provided at the expenses of Nepal government. Financial assistance shall also be provided to the dependents or family members if immediate relief is required due to treatment of the victim.

(3) A person determined as victim according to this Act shall receive compensation as determined by the court. The amount of compensation to be determined in such a way shall not be less than Rs. 100,000 at any circumstances.

(4) A rehabilitation centre with necessary medical and care facility shall be established to take care of those who are mutilated or have sustained physical or mental problem

requiring long term treatment and care and Nepal government shall bear the cost of its operation.

(5) Other arrangements of reparations including rescue, treatment, rehabilitation and guarantees of non-repetition shall be as prescribed.

**9. Procedures to apply for reparation:** (1) The victim of torture, after sustaining torture or being free from control, may apply with details of torture or cruel, inhuman or degrading treatment or punishment demanding reparation including compensation to the District Court of the district where torture was inflicted or s/he was kept under control.

(2) Whatsoever written in sub-Section (1), in case of victim's death or inability to apply himself or herself, his/her relative or family member or guardian or lawyer may apply to the District Court demanding reparation including compensation.

(3) Other procedures relating to reparation including compensation shall be as designated.

**10. Compensation Fund:** (1) There shall be a Compensation Fund for the purpose of providing compensation to the victims according to 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

(3) Annual allocation by the government, donation amount from the national and international donor agencies or individuals, and the amount fined under this Act shall be collected in the Fund.

(4) All the expenses to be incurred according to Section 8 and the compensation to the victim of torture will be written expenses under the Fund.

(5) Other provisions regarding Compensation Fund will be as designated.

**11. Determination of reparation including compensation:** (1) The Investigation Officer should immediately consider

situation of the victim, determine amount of assistance relating to rescue and recommend to the Chief District Officer of the district of victim to provide the amount.

(2) The Chief District Officer should provide the relief amount to the victim or his/her guardian after receiving letter according to sub-Section (1).

(3) While determining the amount of compensation to the victim according to this Act, the court should, among other, consider following things:

- a. Scale and gravity of physical or mental suffering borne by the victim;
- b. Decrease in the humanitarian capacity of the victim and its potential impact in income generation and livelihood;
- c. Age, family responsibility and condition of dependents of the victim;
- d. Expenses made or likely to be made in treatment; and
- e. Duration and necessary means and resources for the rehabilitation of the victim.

(4) Determination of rehabilitation of the victim shall be as designated.

**12. Method of providing amount of compensation:** (1) An application demanding compensation should be submitted to the district court after decision that the victim shall receive compensation.

(2) After submission of application according to sub-Section (1), a letter alongwith a copy of case verdict should be sent to the Compensation Fund Management Committee and the Fund shall release compensation amount accordingly within 15 days.

(3) After receipt of released amount according to sub-Section (2), the district court shall inform the victim to receive the amount. After receiving information, the victim shall receive amount of compensation from the court.

**13. Additional provisions relating to restitutions:** (1) If the court, having considered the effect on victim and severity of torture, decides that it is expedient to provide restitution to the victim from the personal property of the convicted person, it may order in writing the concerned Land Revenue Office, bank or property security or registration authority to transfer

the ownership by maintaining records to victim upto half of the total property of the convict.

(2) Notwithstanding anything written elsewhere in Nepal law, in case of decision of the court according to sub-Section (1), the concerned authority should maintain the ownership and possession of the decided part of property of the convicted person in the name of the victim and provide a proof thereto for its use.

Clarification: For the purpose of this Section "property" shall denote all types of movable and immovable property possessed by or in possession of the individual according to law.

14. **Proceedings to determine offence shall not affect compensation:** Decision of the initial jurisdiction court shall be final in the context of compensation in a case under this Act except appealed by the victim against the decision due to his/her dissatisfaction on the determined amount of compensation; and appeal by the plaintiff or defendant relating to offence of torture and non finalization of proceedings of such a case shall not affect providing compensation to the victim.

## **Chapter 5**

### **Miscellaneous**

15. **Nepal government to be the plaintiff:** (1) Unless the case proceeds as private plaintiff criminal case according to Section 6, sub-Section (6) and (7), Nepal government shall be the plaintiff of the torture related case lodged under this Act.
- (2) For effective justice, victim of torture or his/her guardian himself/herself or through a lawyer can handle trial of the case as plaintiff at any stage of the case.
16. **Protection of the witness:** (1) The victim shall be termed as witness of the plaintiff in the proceedings of the cases of offence under this Act.
- (2) Victims and the witnesses related to the offence shall be protected as prescribed.
17. **Automatic suspension:** Any sitting public authority shall be automatically suspended from his/her position, after commencement of investigation in the accusation of offence under this Act till the final proceedings of the case.

18. **Prohibition of torture to be incorporated in the curriculum:** (1) Prohibition of torture shall be incorporated in all the curriculum and relevant text books of competitive examinations and training for entry into public service.

(2) The manpower working in the agencies related to criminal law shall be trained on the basis of common curriculum prohibiting torture.

(3) Nepal government shall make proper arrangements to incorporate this subject in the school and university level curriculum.

19. **No extradition, repatriation or expulsion in case of possibility of torture:** Whatsoever written elsewhere in Nepal law, Nepal government shall not extradite, repatriate or expel any foreign citizen residing in Nepal if there is ample ground to believe that the person may be inflicted torture in other country.
20. **Consent of victim necessary to grant amnesty of the punishment:** Whatsoever written elsewhere in Nepal law, the punishment imposed under this Act shall not be reduced or granted amnesty without obtaining consent from the victim.
21. **Limitation:** Limitation for prosecution of case in the offence under this Act will be 3 years from the date of torture or release from control or, if treated in hospital, after release from the hospital or the date of decision according to the proviso of Section 6(5).
- But, there shall be no limitation to file complaint demanding compensation and treatment; if the physician or expert, conducting health check up, diagnoses that the symptoms of the health problem on victim are of the nature that appears only long time after infliction of torture.
22. **Framing of Rules:** Nepal Government shall frame necessary Rules for implementation of this Act.
23. **Repeal:** (1) Torture Compensation Act 2053 has been repealed.
- (2) The proceedings performed according to the Torture Compensation Act, 2053 shall be regarded performed according to this Act and the cases being prosecuted under that Act shall proceed as the cases under Section 6 (7) of this Act.

### Part-III

## Process of Bill drafting and stakeholders

### Process

The process to draft Bill Relating to Torture, 2065 to replace existing Torture Compensation Act, 2053 started from January 2007. There was a significant participation of the representatives of government, human rights and civil society, victims and experts in the drafting process. Consultation meetings, revision of draft and closed meetings with the experts were held in different phases to accomplish this process.

In the beginning, an alternative draft was prepared by assessing the weaknesses of the Torture Compensation Act, 2053. Consultation meetings were held in three phases at the central level and the draft was revised in all the three phases. The draft was revised for the fourth time by gathering written suggestions from the government agencies, NGOs, international agencies and individual levels.

After that consultations and collection of suggestions on the draft were held at the regional level. Suggestions were collected by organizing eastern regional level consultation meeting jointly by National Human Rights Commission (NHRC) and FOHRID in Biratnagar on 17 September 2007. Likewise, suggestions were collected by organizing regional level consultation meetings in mid-western region in Nepalganj, far-western region in Dhangadhi and western region in Pokhara in collaboration with regional offices of INSEC and other national and local human rights organizations. The draft was revised for the fifth time on the basis of the suggestions gathered from these regional level consultations. After that, closed meetings were held with experts in three phases. The first closed meeting was held with the representatives of the government agencies. The second was held with the representatives of international community, OHCHR Nepal, International Commission of Jurist. The third meeting was held with the organizations working in the area of torture. Final draft was prepared on the basis of the suggestions obtained from all these three closed meetings.

Then a national level consultation was organized to finalize the Bill Relating to Torture, 2065 in Kathmandu on 15 September 2008 on behalf of human rights and civil society. The phases of consultations and closed meetings as mentioned above are presented in a table below:

#	Level	Date and venue	No. of participants
1*	National	15 September 2008, Hotel Himalaya, Kupondol	69
2	Meeting with experts	19 February 2008, Hoten Pension Vasana, Kathmandu	13
3	Meeting with experts	4 March 2008, FOHRID Meeting Hall, Kathmandu	20
4	Meeting with experts	29 April 2008, FOHRID Meeting Hall, Kathmandu	10
5	Meeting with experts	12 May 2008, FOHRID Meeting Hall, Kathmandu	8
6	Regional	22 May 2008, Hotel Hungary, Nepalganj, Banke	41
7	Regional	25 May 2008, Hotel Sathi, Dhangadhi	40
8	Regional	19 June 2008, Hotel Tulsi, Pokhara	38
9	central	7 May 2007, Hotel Orchid, Kathmandu	87
10	Central	25 June 2007, Gautam Buddha Hall, Kathmandu	51
11	Central	3 September 2007, Hotel Ashoka, Kathmandu	35
12	Regional	17 September 2007, Hotel Ratna, Biratnagar	89

\* This program was jointly organized by FOHRID, Convener of Citizen's Task Force to Combat Impunity and CVICT, Torture Sub-Committee of Human Rights Treaty Monitoring Coordination Committee.

After a long process, the draft Bill was prepared as a common document of the human rights and civil society. **Advocate Rabindra Bhattarai** contributed as Convener from the very beginning to the final stage in the draft process of this Bill. Likewise, legal experts, lawyers, government representatives, human rights activists, representatives of political parties, journalists and representatives of national and international organizations and institutions actively participated to complete the process. In this way, this Bill Relating to Torture, 2065 was completed with active involvement, consultation and written suggestions of the general stakeholders. In fact, this proposed Bill is the result of continuous collaboration, involvement, ownership and continuous contribution of those involved in its drafting process.

Intensive consultation and continuous efforts of the key stakeholders and concerned groups to make torture free new Nepal will be meaningful only when the alternative draft Bill is passed and enforced by the parliament. FOHRID expects continuous cooperation, collaboration and solidarity of all concerned and key stakeholders to make this effort meaningful and to ensure zero tolerance to torture in Nepal. Therefore, we request all the human rights community to forward this alternate draft as a common document. List of names of organizations and individuals involved in the drafting process is given below.

## **Stakeholders Involved in Drafting**

### **1. Organizations and individuals who have provided written comments and suggestions on the Draft Bill**

#### **A. Government Agencies**

1. Office of the Attorney General
2. Administrative Court
3. Office of the Attorney General of Appellate Court, Lalitpur
4. Tribhuvan University, Teaching Hospital
5. Ministry of Law
6. Office of Prime minister and Council of Ministers
7. National Human Rights Commission
8. Law Reform Commission

#### **B. Human Rights Organizations**

1. Citizen's Task Force to Combat Impunity
2. Informal Sector Service Center (INSEC)
3. Human Rights Treaty Monitoring Coordination Committee (HRTMCC)
4. Center for Victims of Torture (CVICT)
5. Access to Justice and Advocacy Rights (AJAR Nepal)
6. Forum for Women, Law and Development (FWLD)
7. Supreme Court Bar Association
8. INHURED International
9. Dalit Human Rights Organization (DHRO)
10. National Human Rights Foundation (HURFON)
11. Human Rights and Democratic Forum (FOHRID)
12. Legal Aid and Consultancy Center (LACC)
13. Forum for Protection of Human Rights (FOPHUR)
14. Campaign for Human Rights and Humanitarian Law (CHRHL)
15. Centre for Legal Studies (CLS)

16. Blue Diamond Society (BDS)
17. Platform for Social Justice (SOJUP)
18. Collective Campaign for Peace
19. Advocacy Forum (AF) Nepal
20. Environment and Justice Society (ENJUS)
21. Women Foundation
22. Institute of Human Rights Communication Nepal (IHRICON)
23. Human Development and Peace Campaign (HUDEP) Nepal

#### **C. International Organizations**

1. Office of the High Commissioner for Human Rights (OHCHR), Nepal
2. International Commission of Jurists (ICJ)

#### **D. Individuals**

1. Advocate Rabindra Bhattarai, Draftperson and Convener, Drafting Group
2. Former Deputy Attorney General Narendra Pathak
3. Joint Deputy Attorney General, Yubraj Subesi
4. Honorable Justice, Kashi Raj Dahal
5. Joint Attorney General, Murari Prasad Paudel
6. Forensic Expert Dr. Harihar Osti
7. Forensic Expert, Dr. Bidur Osti
8. Prof. Rajitbhakta Pradhananga
9. Section Officer Tikaram Pandey
10. Under Secretary, Keshab Bastola
11. Advocate Mira Dhungana
12. Advocate Tika Ram Pokhrel
13. Advocate Ram Krishna Kafle
14. Advocate Bishnu Luintel
15. Dal Bahadur B.K.
16. Advocate Kamal Pokhrel
17. Advocate Tirtha Basyaula
18. Advocate Hari Bahadur Karki
19. John Stompon, International Legal Advisor, OHCHR Nepal
20. Advocate Govinda Sharma Bandi
21. Advocate Raju Chapagain, OHCHR Nepal
22. Advocate Kamdev Khanal
23. Advocate Raj Kumar Siwakoti

### **2. Organizations and individuals involved in Drafting Process**

#### **A. Central Level**

1. Samjhana Dhungel, Avenues TV
2. Advocate Krishna Devkota

3. Kiran Neupane
4. Trilochan Gautam
5. Advocate Shyam Babu Kafle, Protection Officer, NHRC
6. Ghanashyam Sigdel, Journalist
7. Prem Shankar Baral, Journalist
8. Bishnu Nepal, Rastriya Samachar Samiti
9. Amar Kumar Pradhan, Ministry of Water Resources
10. Arjum Timilsina, Nepal Police
11. Advocate Binod Parajuli, Everest Law Firm
12. Bishnu Pukar Shrestha, President, CAHURAST
13. S.P. Dhungel, Hindu Weekly
14. Purushottam B.K., NDC
15. Chandra Adhikari, Secretary General, Amnesty International Nepal
16. Advocate Tirtha Basyaula, Nepal Bar Association
17. Bidur Adhikari
18. Rudra Sitaula, Under Secretary, Ministry of Foreign Affair
19. Janga Bahadur Aire, Appellate Bar Association
20. Harka Rawal, Appellate Bar Association
21. Binod Kumar B.K., NDFN
22. Dipak Gaire
23. Kamal Raj Thapa, Bhaktapur Bar Association
24. Rima Shrestha, Lalitpur Bar Association
25. Bhawani Prasad Kharel, Secretary General, HURFON
26. Ramesh Prasain, HURFON
27. Advocate Shanta Thapaliya, President, LACC
28. Mitra Raj
29. Rameshwor Nepal, Director, AI Nepal
30. Bishwokanta Mainali, President, NBA
31. Ashok Sharma
32. Keshab Prasad Bastola, Under Secretary, Office of Prime Minister and Council of Ministers
33. Bimal Sangraula
34. Binod Bhattarai
35. Tulasi Bahadur Karki, FOHRID
36. Dirghalal Giri
37. Dr. Suman Karmacharya, Tamakoshi Sewa Samiti, Ramechhap
38. Ganesh Adhikari, Maoist Victim Association
39. Sudip K.C. Journalist
40. Bal Krishna, Avenues Television
41. Madhukar Khadka, Rastriya Path Weekly
42. Ritu Limbu, ICJ
43. Advocate Punya Prasad Khatiwada, COS Nepal
44. Saroj Kharel, Institute for Law and Development
45. Advocate Tika Ram Pokhrel, CVICT
46. Ranjan Khatri
47. Advocate Sarmila Dhakal, Blue Diamond Society
48. Narendra Thapa
49. Hom Kumar Lawati, Captain, Nepal Army
50. Advocate Mukunda Paudel
51. Rebina Mulmi, Student
52. Deepak Rijal, Nepal Samachar Patra
53. K.R. Dahal, Nepal Law Society
54. Prakash Kumar Adhikari, Ministry of Women, Children and Social Welfare
55. Senior Advocate Sindhunath Pyakurel
56. Prof. Bharat Bahadur Karki, Nepal Law Campus
57. Pradeep Pokharel, President, HUDEP Nepal
58. Binda Sitaula
59. Advocate Chandra Kanta Gyanwali, Nepal Bar Association
60. Gopal Krishna Siwakoti, Executive Director, INHURED International
61. Kumar Acharya, CeLRRD
62. Yadav Sharma
63. Lieutenant Colonel Rajeshwor Bhattarai, Nepal Army
64. Shanta Thapa
65. Dr. Shankar Kumar Shrestha, Nepal Law Campus
66. Dinesh Thapa, Journalist, Jana Astha
67. Ashok Kumar Chhetri, Nepal Law Campus
68. Arun Thapa, Armed Police Force
69. Rudra Prasad Bhatta, Ministry of Defense
70. Anjala Adhikari
71. Gokul Burlakoti, Ministry of Peace and Reconstruction
72. Bikram Singh, Journalist
73. Smita Koirala
74. Narendra Aryal, Nepal Army
75. Khem Raj Regmi, NDC Nepal
76. Ishwori Khanal, The Himalayan Times
77. Shesh Narayan Paudel, Ministry of Home
78. Hom Bahadur Thapa
79. Ram Bahadur Tamang, Nepal Law Campus
80. Dilli Prasad Sitaula, Ministry of Water Resources
81. Ananta Kumar B.K., NDC Nepal
82. Advocate Reshma Thapa
83. Advocate Binod Nepal

84. Ram Kumar Shrestha, Nepali Congress
85. Advocate Bijaya Singh
86. Advocate Ram Prasad Bhattarai
87. Advocate Keshab Bhattarai
88. Advocate Hari Prasad Subedi
89. Ramesh Raj Pradhan, Associate Professor, Nepal Law Campus
90. Bhupendra Paudel, Ministry of Defense
91. Raj Kumar Ranjeet, Legal Section, Nepal Army
92. Krishna Prasad Adhikari, Police Headquarters, Naxal
93. Advocate Bhimarjun Acharya
94. Advocate Birendra Prasad Thapaliya, FOHRID
95. Senior Human Rights Activist Nutan Thapaliya, Chairperson, FOHRID
96. Yagya Adhikari, NHRC
97. Krishna Prasad Aryal, FOHRID
98. Advocate Sindhu Sapkota, FOHRID
99. Rajuram Bhandari, Advocate
100. Laxmi Sharma, FOHRID
101. Narayan Siwakoti, ENJUS
102. Deependra Thapaliya
103. Sanjeet Raj Pandey

## **B. Participants of Regional Level Consultation Meeting**

### **Biratnagar**

1. Honorable Bhimendra Bahadur Karki, Chief Justice, Appellate Court
2. Honorable Nawaraj Upadhaya, District Judge
3. Deputy Attorney General Ramesh Pokharel
4. Rabindra Prasad Sharma, Deputy Superintendent of Police
5. Shrawan Kumar Raya, Janamorcha Nepal
6. Bichari Gurung, Janamorcha Nepal
7. Mahendra Prasad Mehta
8. Najam Ansari
9. Nabin Upadhaya
10. Kamala Rai, WOREC Nepal
11. Ram Bahadur Lohani
12. Saugat Sharma, Samajbadi Awaj
13. Shankar Thapa, NGO Federation
14. Nitu Gartaula, Protection Officer, NHRC
15. Kailash Kumar Siwakoti, Protection Officer, NHRC
16. Advocate Khagendra Bahadur Shrestha

17. Advocate Prakashnath Upreti, Pro-Public
18. Mohan Manandhar, Nepal Television
19. Lila Ballav Ghimire, Kantipur Daily
20. Bishnu Pokharel, Naya Patrika
21. Siwani Verma, UN OHCHR
22. Nanda Kumar Siwakoti, CPN, Morang
23. Ambika Bhandari, Nepal Samacharpatra
24. Debendra, NHRC
25. Dilli Pariyar, Armed Police Force
26. Rajkumar Yansaro, Armed Police Force
27. Bijaya Kumar Yadav, Nepal Sadhbhawana Party
28. Kamala Pathak, Nepal Teacher's Association
29. Manju Khatiwada, Nepal Teacher's Association
30. Shibahari Raut, Nepal Army
31. Ganga Dalil
32. Saraswoti Gurung, Victim
33. Kedar Pandey, Victim
34. Sangram Santhal
35. Sunita Karki, Maiti Nepal
36. Bimal Raj Sharma, Nepal Army
37. Khila Nath Niraula, FAREN
38. Man Bahadur Thapa, Nepal Bar Council
39. Dilli Bahadur Karki, Morang District Bar Unit
40. Chirinjibi Parajuli, Office of District Government Attorney
41. Ganesh Khadka, Nepali Congress, Morang
42. Narayan Prasad Dahal, Appellate Court Bar Unit
43. Shaligram Raut, Nepal Peasants and Workers Party
44. Arjun Niraula, Nepali Congress (Democratic)
45. Ganesh Lamsal, Journalist
46. Gokul Parajuli, Sapta Koshi F.M.
47. Binod Dhungel, Journalist
48. Binod Ghimire, Nepal Television
49. Deputy Superintendent of Police, Him Bahadur Lama, Regional Police Office
50. Deputy Superintendent of Armed Police Rajesh Upreti, Baraha Battalion
51. SP Bharat Kumar Silwal, National Bureau of Investigation
52. Debendra Ghatani, DSF
53. Uttam Siwakoti, Federation of Disabled
54. Rajendra Dhakal
55. Madhav Khatiwada, PABSON
56. Raj Kumar Trikhatri, Action Aid
57. Mohan Kumar Baral, District Forest Officer

58. Jagat Thapa, Jagaran Nepal
59. Ganesh Luintel, CPN-UML
60. Hari Prasad Phuyal, CAHURAST
61. Dilli Dahal, Human Rights Foundation
62. Chandra Mani Neupane
63. Mina Giri, CeLRRD Centre for Legal
64. Advocate Yamuna Singh
65. Arjun Subedi, Biratnagar FM
66. Kalyani Koirala, Nari Bikash Sangh
67. Chandra Mani Guragain, Socialist Voice
68. Dip Kumar Karna, Nepal Sadbhawana Party
69. Suresh Karki, Samyukta Bam Morcha
70. Ananta Raj Neupane, Nepal Samacharpatra
71. Bishnu Sharma, ABC Nepal
72. Manju Lohani, Mahila Bikash Karyalaya
73. Kedar Nath Sitaula, Victim
74. Advocate Deepak Niraula, Advocacy Forum
75. Advocate Rajesh Niraula, Nepal Bar Association
76. Advocate Bishwaram Bhattarai, Appellate Court
77. Amrit Kumar Mahato
78. Raj Kumar Karki, Social Worker
79. Raj Kumar Siwakoti, FOHRID

#### **Nepalganj**

1. Devraj Air, CPN-UML
2. Prem Bhushal, CPN-UML
3. Ekraj Chaudhari, NMC
4. Bhim Bahadur Karki, Advocacy Forum
5. Lok Bahadur Shah, Appellate Court Bar Association
6. Ishwari Prasad Gyawali, District Court Bar Association
7. Rabindra Kumar Karna
8. Ganesh Regmi, HURON
9. Rajendra Kumar BK, Madhesi Janadhikar Forum
10. Jhabindra Paudel, CeLRRD
11. Loknath Kharel
12. Bed Prasad Bhattarai, NHRC
13. Advocate Shalik Ram Sapkota
14. Bholu Mahat, Mid-western Convener, INSEC
15. Dr. Arun Kandel, Nepali Congress
16. C.P. Singh, Force Nepal
17. Raj Kumar Sapkota, Human Rights Alliance
18. Bishal Rana Magar, Himrights
19. Madhur Pathak, Appellate Court Bar Association

20. Rajendra Dahal, INSEC
21. Sushil Chaudhari, INSEC
22. Umakanta Paudel, Office of the District Government Prosecutor
23. Madhav Budhathoki, District Police Office
24. Janak Nepal, Kantipur daily
25. Tirtha Raj Gyawali, CPN-Maoists
26. Thakur Singh Tharu, Naya Patrika
27. Govinda Sharma, Radio Bheri
28. Jhalak Sharma, Journalist
29. Santoshi Singh, HUDEC Nepal
30. Chandra Prasad Timilsina, District Administration Office
31. Mohammad Alam, Muslim Samaj
32. Rabindra Chaudhari, Ekata Manch
33. Saroja Singh, Advocate
34. Radha Tharu, Tharu Samaj
35. Sabina Thakuri, Women Forum
36. Hikmat Majhi
37. Chandra Shahi, INSEC
38. Bam Bahadur Kathiyat, District Administration Office
39. Krishna Prasad Aryal, FOHRID

#### **Dhangadhi**

1. Balaram Bhattarai, CST Kailali
2. Dipendra Singh, NHRC
3. Devi Prasad Khanal, NFN, Far Western
4. Mohan Od
5. Chitra paneru, BBC
6. Prem Chand
7. Bir Bahadur Jethara, Kailali Bar
8. Khagaraj Bhattarai
9. Prayag Datta Bhatta, Kailali Bar
10. Kulananda Upadhyaya, Dhangadhi Bar
11. Devendra Prasad Adhikari, Convener, Far Western Region, INSEC
12. Krishna Bahadur B.K., INSEC
13. Charumati Devi
14. Bhakta Dev Sharma
15. Mani Kumar Karna
16. Deepak Joshi
17. Ratan Bhandari
18. Prem Chaudhari, Farwest Time daily
19. Mekesh Tomra, Seti News daily

20. Tej Prabhat Bhatta, Rastriya Sandarbha daily
21. Mohan Shahi, Khaptad FM
22. Lokendra Bishta, Dinesh FM
23. Shrawan Deuba, Naya Patrika
24. Kosh Raj Neupane, NHRC
25. Khadga Raj Joshi, INSEC
26. Raj Kumar Chaudhari, INSEC
27. Shivaraj Khatri, Sudur Sandesh daily
28. Ram Bahadur Tharu, INSEC
29. Dipendra Chaudhari
30. Hem Bahdur Shahi
31. Niru Kanel, Baitadi Mahila Manch
32. Ekraj K.C.
33. Rajendra Bhandari
34. Manchan Timilsina
35. Prabin Dhakal
36. Roshani Karki
37. Ranjib Shahi
38. Gaurishankar Bhat
39. Raj Kumar Siwakoti, FOHRID

#### **Pokhara**

1. Rhishi Raj Joshi, Chief Justice, Appellate Court
2. Baliram Prasad Singh, Chief District Officer
3. Juna Kumari Gurung, Advocate
4. Bishnu Prasad Parajuli, Appellate Bar Association
5. Fanindra Koirala, Appellate Bar Association
6. Bishnu Prakash Acharya
7. Punya Prasad Paudel, CPN-UML
8. Surendra Thapa, Transparency International
9. Rhishi Baral, Annapurna Post
10. Purneshwor Subedi, District Forest Office
11. Kamal Paudel, Hotline daily
12. Yagya Bahadur Thapa, Nepali Congress
13. Advocate Sarala Kumari Pande
14. Santa Bahadur Ghising, Janamorcha Nepal
15. Dil Bahadur Nepali, DNF
16. Dudh Raj Adhikari, Victim
17. Bharat Khanal, District Government Attorney
18. Nabadatta Dhungana, Manab Adhikar Samrakshan Manch
19. Shyam Kunwar, FNJ
20. Ram Prasad Ghimire, Advocacy Forum
21. Prem Bahadur Thapa, NHRC

22. Bhesh Raj Acharya, Adarsha Samaj
23. Raman Giri, Taranga Patrika
24. Bhoj Raj Ojha, District Police Office
25. Teknath Baral, Civil Society Alliance
26. Tanka Khanal, INSEC
27. Ganesh Shrestha, INSEC
28. Advocate Asmita Shrestha
29. Badri Binod Pratik, Himdatta weekly
30. Madhu Panthi, INSEC
31. Saraswati Sunar
32. Kamala Gahatraj, Naulo Bindu Jagaran Manch
33. Narayan Siwakoti, ENJUS
34. Ramesh Paudel, Radio Barahi
35. Kopila Basnet, Advocate
36. Advocate Sindhu Sapkota, FOHRID
37. Advocate Birendra Prasad Thapaliya, FOHRID
38. Tulsi Bahadur Karki, FOHRID

#### **National Consultation Program, Kathmandu**

1. Subodh Raj Pyakurel, INSEC
2. Bidhya Chapagain, INSEC
3. Jamuna Paudel, CVICT
4. Dr. Trilochan Upreti, Secretary, Ministry of Law, Justice and Constituent Assembly Affairs
5. Keshav Bastola, Under Secretary, Office of the Prime Minister and Council of Ministers
6. Narendra Dhakal, Defense Ministry
7. Madhabji Shrestha, Nepal Council of World Affairs
8. Hon'ble Justice Kashi Raj Dahal, Administrative Court
9. Ekraj Bhandari, CA Member, CPN-Maoists
10. Chandra Bahadur Thapa (Sagar), CA Member, CPN-Maoist
11. Lal Babu Pandit, CA Member, CPN-UML
12. Krishna K.C., Victim of Torture
13. Baburam Kharel, The Kathmandu Post
14. Mohan Kumar Rajbanshi, CPN
15. Murari Prasad Paudel, Deputy Attorney General
16. Natali De Olilena, OHCHR-Nepal
17. Sharad Chandra Aryal, The Weekly Mirror
18. Babu Soren, CPN
19. Ganesh Khatiwada, Global Action Nepal
20. Pariksha Rana, ICJ
21. Suman Dahal, ICJ
22. Elan Sharma

23. Laxman Prasad Timilsina, victim
24. Bishnu Prasad Paudel, Department of Prison Management
25. Shanta Aryal, Sagarmatha Television
26. Roshan Mahato, Blue Diamond Society
27. John Stompo, OHCHR-Nepal
28. Raju Chapagain, OHCHR-Nepal
29. Jhanak Soren, Pro-Public
30. Bhim Prakash Oli, NHRC
31. Satish Sharma, Journalist
32. Binsa Rijal, Image Channel
33. Ram Krishna Bhandari, ABC Television
34. Bijaya Kanta Mainali, Nepal Bar Association
35. Ramesh Sharma, ENJUS
36. Prakash Sharma
37. Narayan Pathak, Student
38. Rama Sharma, Social worker
39. Sabitra Basnet, Victim
40. Prarambha Dahal, Student
41. Laxmi Sharma, Human Rights Activist
42. Yamuna Aryal, Student
43. Gyanendra Adhikari
44. Ramesh Ganagain, CPN
45. Prabindra Shakya, ICH
46. Saurabh Manandhar, Image Channel
47. Dev Ananda, ABC Television
48. Bimal Chandra Sharma, INSEC
49. Advocate Tirtha Basyaula
50. Advocate Krishna Devkota
51. Advocate Rabindra Bhattarai
52. Advocate Govinda Sharma Bandi
53. Advocate Raj Kumar Siwakoti
54. Advocate Punya Prasad Khatiwada
55. Pradeep Pokharel, HUDEP
56. Narendra Pathak, Former Deputy Attorney General
57. Yagya Murti Banjade, Former Attorney General
58. Nutan Thapaliya, Senior Human Rights Activist
59. Bhawani Prasad Kharel, General Secretary, HURFON
60. Tulasi Bahadur Karki, FOHRID
61. Charan Prasain, Joint Forum for Human Rights
62. Prof Kapil Shrestha
63. Advocate Birendra Prasad Thapaliya, President, FOHRID
64. Advocate Sindhu Sapkota, FOHRID

65. Advocate Kamal Pokharel, CLS
66. Krishna Prasad Adhikari, Nepal Police Headquarters
67. Krishna Prasad Aryal, FOHRID
68. Sanjit Raj Pande

### Acknowledgement

FOHRID extends gratitude to all above **stakeholders** for his contribution from the beginning to end of the process of draft Bill Relating to Torture, 2065, and other organizations that provided written suggestions and organizations and individuals who provided direct and indirect assistance. FOHRID team begs pardon if the designation and organization of the persons involved is left and for other errors in the presentation of the list.

□□□