



**SUBMISSION**  
for the  
**THIRD CYCLE OF THE UNIVERSAL PERIODIC REVIEW**  
**NEPAL**

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**Submitted by**

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\* Information on the main activities of the submitting organisations, as well as contact details, are provided in an annex.

## Background

Given the expertise of the organisations submitting this document, the latter focuses on **enforced disappearance, extra-judicial killings** and strictly related issues, such as **impunity** and the **transitional justice process**. The submission provides an assessment of the level of implementation of the pertinent recommendations issued during the second cycle of the Universal Periodic Review (UPR) conducted in 2015; and it addresses the developments of the human rights situation in Nepal on the subjects at stake.

### I. Level of Implementation of Relevant Recommendations from the Second Cycle of the UPR

1. During the second UPR cycle, Nepal received 195 recommendations, accepting 152 and taking note of 43 of them. Out of these, 30 are directly relevant for matters relating to enforced disappearance, extra-judicial killings, the struggle against impunity and the flaws of the transitional justice process. This submission focusses on the said 30 recommendations and, hereinafter, the numbers and the recommending country indicated refer to UN Doc. A/HRC/31/9 of 23 December 2015.
2. Despite the formal acceptance by Nepal of several recommendations, **the majority** of those concerning enforced disappearance, extra-judicial killings, impunity and transitional justice, **remain unimplemented**. This is especially troublesome, bearing in mind that many of those recommendations had already been formulated in an almost identical form in the first UPR cycle, thus showing an **ongoing failure by Nepal to fulfil its commitments**. Moreover, many of such recommendations concern crimes and gross human rights violations perpetrated during the internal armed conflict (1996-2006). This means that, **more than 14 years after the end of the war, the relatives of thousands of victims of enforced disappearance and extra-judicial killings are subjected to ongoing violations of their rights to justice, truth and reparation**.
3. In the following paragraphs, the level of implementation of recommendations issued during the second UPR cycle on the said subjects is analysed, highlighting the few cases where progress was made and pointing out the outstanding flaws and obstacles. Actions that remain to be taken for full implementation are put forward in the form of recommendations. Sections II and III of this document illustrate relevant developments (or their lack thereof) since the last review and other human rights issues considered of relevance with regard to the struggle against impunity for enforced disappearance and extra-judicial killings. Also in this case concrete recommendations are formulated, spelling out the actions and measures that Nepal must undertake to abide by its international obligations.

#### I.A) Criminalisation of Enforced Disappearance and other Crimes under International Law (Recommendation 121.4-Norway)

4. During the second UPR cycle, it was emphasised that the **Nepalese criminal legislative framework is at odds with international standards**, especially with regard to crimes under international law, such as **torture and enforced disappearance**. In particular, Norway recommended to Nepal to explicitly prohibit enforced disappearances as criminal offences

under Nepali law. This recommendation had been formulated also during the first UPR cycle and had been made also by the Human Rights Committee (HRC), both in its concluding observations and in its Views on individual communications; the Committee against Torture (CAT) and the Working Group on Enforced or Involuntary Disappearances (WGEID).

5. The criminalisation of enforced disappearance as an autonomous offence under domestic legislation, punishable by appropriate penalties which shall take into account its extreme seriousness, is an international obligation of the State and it is crucial to hold perpetrators of this heinous crime accountable and to prevent the commission of similar offences in the future.
6. On 9 August 2017, the Nepalese Parliament endorsed a **new Criminal Code**, which was approved by the President on 16 October 2017, and entered into force on 17 August 2018.
7. Chapter 16 of the new Criminal Code codifies enforced disappearance as a separate autonomous crime. However, the rules contained therein **are not fully consistent with international standards** and it has already been pointed out that the **new provisions** will not be applied retrospectively and therefore **will not encompass the enforced disappearances committed during the conflict**. This interpretation **disregards the continuing nature of the offence of enforced disappearance** and is at odds with Nepal's international obligations and the existing domestic and international jurisprudence.
8. Sec. 206 of the Criminal Code contains a **definition of enforced disappearance that does not reflect that accepted under international law** and followed by the Nepalese Supreme Court in its jurisprudence. In particular, the expression used in Nepali (i.e. *bepatta*) generally refers to persons reported "missing" and not necessarily subjected to "enforced disappearance", hence somewhat diluting the criminal scope of the provision. Second, while pursuant to international law the crime of enforced disappearance has three constitutive elements and one inherent consequence, the definition used in the Nepalese Criminal Code departs from this scheme.
9. Pursuant to international law, the first constitutive element of an enforced disappearance is the deprivation of liberty of the victim against his or her will, in any form it takes place (e.g. abduction, arrest, kidnapping). An enforced disappearance is perpetrated by State agents or persons or groups of persons acting with the tolerance, acquiescence or support of the State. The initial deprivation of liberty of the victim is followed by the refusal to acknowledge that such deprivation of liberty took place or the concealment of the fate and whereabouts of the disappeared person. These three constitutive elements are cumulative. As a consequence, the victim is placed outside the protection of the law.
10. Sec. 206(2)(a) of the Criminal Code unduly restricts the potential perpetrators to "persons of security personnel having authority by law to make arrest, investigation or enforcement of law", thus leaving out several State agents that may formally have different attributions, as well as persons or groups of persons acting with the tolerance, support or acquiescence of State agents. This flaw is not addressed by Sec. 206(2)(b) either, which contemplates the possibility for "any person, organisation or group, whether organised or not" to perpetrate an

enforced disappearance. This wording departs from international law and uses an extremely vague formula that dilutes the State's responsibility.

11. Moreover, the constitutive element of denial that the deprivation of liberty took place or concealment of the fate and whereabouts of the disappeared is ambiguously phrased as being alternative instead of cumulative (“*or* a refusal to let the person deprived of liberty to meet a judicial authority”).
12. Sec. 207(5) of the Criminal Code regulates **superior command responsibility** in cases of enforced disappearance. However, the provision is **not consistent with international standards**, as in the current wording, it does not encompass the following: (a) instances where a superior “knew, or consciously disregarded” information which clearly indicated that subordinates under his or her effective authority and control were committing or about to commit an enforced disappearance (in the Nepalese provision “disregard” is foreseen as cumulative and not alternative); (b) instances where the superior exercised effective responsibility for and control over, activities which were concerned with an enforced disappearance; and (c) instances where “a superior failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution”.
13. The sanction envisaged for enforced disappearance pursuant to Sec. 206(7) is deprivation of liberty for a maximum of 15 years and a fine up to 500'000 Nepalese Rupees (approximately 4'500 US\$). If the victim of the enforced disappearance is a child or a woman, the sentence could be increased to 17 years in jail. Besides failing to clearly establish a minimum sentence for perpetrators, **these penalties are hardly proportionate to the gravity of the crime** and do not meet international standards on the matter.
14. **Sec. 208 of the Criminal Code unduly restricts the notion of reparation for victims of enforced disappearance**, by providing that the disappeared person is entitled **solely to pecuniary compensation from the perpetrator**, and **only if he or she surfaces alive**. **“Heirs” of the disappeared are entitled to pecuniary compensation if the disappeared person “is already dead”**. This requirement implies that the fate and whereabouts of the disappeared are actually known, while enforced disappearance is characterised precisely by the lack of such knowledge. This provision departs from international law also because it disregards the fact that, pursuant to international law and jurisprudence, **“victims of enforced disappearance” are not only the disappeared persons but also any other individual who suffers direct harm as a consequence of the disappearance**. The failure to recognise relatives of the disappeared person as victims in their own right, may lead to their arbitrary exclusion from programmes of reparation or psycho-social support.
15. Furthermore, Sec. 208 of the Criminal Code **does not clarify which criteria would be applied to calculate the compensation to be awarded**, being the expression “reasonable compensation” extremely vague and indeterminate. This is problematic as it undermines legal certainty. Moreover, Nepal has a history of awarding very low amounts as

compensation to victims of gross human rights violations that are not commensurate to the gravity of the crimes at stake.

16. Moreover, **reparation for gross human rights violations cannot be limited to pecuniary compensation** (even less if made conditional upon the fact that the perpetrator is identified, sentenced, and able to pay such compensation), but must encompass restitution, rehabilitation, satisfaction and guarantees of non-repetition. Furthermore, for the reasons pointed out above, access to reparation cannot be made conditional upon the fact that the victim is actually dead.
17. Even more troubling is Sec. 210 of the Criminal Code, concerning the **statute of limitations** for criminal proceedings on enforced disappearance, which establishes that “**no complaint shall be entertained after the expiry of 6 months from the date of having knowledge of commission of the offence** or from the date of the disappeared person getting or being made public”. In its current wording, this provision is at odds with international law and conducive to impunity. The crime of enforced disappearance is of a continuous nature and it shall not be subjected to any statute of limitations. Pursuant to international law, if a statute of limitations is to be applied, it shall nevertheless be of long duration and proportionate to the extreme seriousness of the offence and it shall commence from the moment when the offence ceases. Hence, the 6 months provided for by Sec. 210 of the Criminal Code are not enough and they should not start counting from the moment when the commission of the offence is known, but only after the fate and whereabouts of the disappeared persons are established with certainty.
18. Pursuant to international law, enforced disappearances committed in the context of a widespread or systematic attack against any civilian population, with the knowledge of such attack, constitute crimes against humanity and shall attract the consequences provided for under applicable international law. The **Criminal Code fails to codify enforced disappearance as a crime against humanity**, thus leaving a considerable loophole and favouring impunity.
19. Finally, although the following goes somewhat beyond the subjects covered in the present document, but bearing in mind that the issues underlying are strictly related, it must be pointed out that **also the provisions of the Criminal Code concerning torture and rape and other forms of sexual violence are at odds with international standards**, especially with regard to the low sanctions envisaged and the extremely short statute of limitations. Moreover, the **Criminal Code does not enshrine an autonomous definition of arbitrary and extra-judicial killings, nor does it codify war crimes and crimes against humanity**.

## Recommendations

- ❖ **Amend the provisions on enforced disappearance in the Criminal Code, making them consistent with international law.** In particular, ensure that:
  - the **definition** of the offence reproduces that enshrined in Art. 2 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED);
  - **superior command responsibility** is regulated pursuant to Art. 6 of the ICPED;
  - the **sanctions** envisaged are **commensurate to the extreme seriousness** of the offence;
  - the notion of “**victim**” **encompasses the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance**;
  - victims are entitled to **receive prompt, fair and adequate compensation covering material and moral damages**, and other measures of reparation that encompass: **restitution, rehabilitation, satisfaction, including restoration of dignity and reputation; and guarantees of non-repetition**; and
  - the offence of enforced disappearance is **not subjected to any statute of limitations**.
- ❖ **Amend the Criminal Code**, recognising that **enforced disappearances** committed as part of a widespread or systematic attack against any civilian population, with the knowledge of such attack, constitute a **crime against humanity**.
- ❖ Bearing in mind the **continuous nature** of the offence of **enforced disappearance**, acknowledge that the application of the provisions of the new Criminal Code to crimes that are ongoing does not violate the principle of non-retroactivity.
- ❖ **Amend the Criminal Code ensuring its full consistency with international standards**, with regard to the following:
  - Ensure that the provisions concerning **torture, rape and other forms of sexual violence** are in compliance with international law, especially with regard to the statute of limitations and the penalties foreseen;
  - **Codify war crimes and crimes against humanity**; and
  - Introduce an autonomous definition of **arbitrary executions and extra-judicial killings**.

### I.B) Accession to the International Convention for the Protection of All Persons from Enforced Disappearance (Recommendations 123.10-Argentina-Sierra Leone-France-Japan-Ghana, 123.11-Paraguay) and to the Statute of the International Criminal Court (123.13-Switzerland-Portugal-Germany-Ghana, 123.14-Paraguay, 123.15-Estonia, 123.16-Costa Rica, 123.17-Hungary, 123.18-Czech Republic, 123.20-Latvia, 123.21-Cyprus) and to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (123.19-Uruguay)

20. During the first and second UPR cycles, Nepal received several recommendations concerning its accession to international treaties, including the ICPED; the Rome Statute of the International Criminal Court; and the Convention on the Non-Applicability of the Statutory Limitations to War Crimes and Crimes against Humanity.

21. Nepal examined and took note of these recommendations, but **no concrete action has been undertaken to follow-up and implement any of them, nor to recognise the competence of the Committee on Enforced Disappearances** pursuant to Arts. 31 and 32 of the ICPED.
22. With regard to recommendations related to the ratification of additional international treaties, Nepal declared, before taking up additional treaty obligations, it would first develop requisite policy, legal and institutional infrastructures, and build and strengthen the implementation capacity. It is noteworthy that **not only Nepal has not ratified the above-mentioned treaties, but, over the past 5 years, it has not strengthened its implementation capacity either.**
23. The formal undertaking of new international obligations and the reinforcement of the domestic institutional and legal framework are equally important and can – and should – be pursued at the same time, without postponing either of them any longer. **Becoming a State party to the three above-mentioned treaties, among others, is crucial in the struggle against impunity; conducive to a significant strengthening of the domestic legislative and institutional framework; and instrumental to the prevention** of crimes under international law, including enforced disappearance and extra-judicial killings.

#### Recommendations

- ❖ **Accede to the International Convention for the Protection of All Persons from Enforced Disappearance and recognise the competence of the Committee on Enforced Disappearances pursuant to Art. 31 and 32 of such treaty.**
- ❖ **Accede to the Rome Statute of the International Criminal Court, the Agreement on Privileges and Immunities of the Court and the Kampala Amendments. Fully align national legislation with all the obligations under the Rome Statute.**
- ❖ **Accede to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.**

#### I.C) **Ensuring that the Transitional Justice Process Upholds to International Standards and Guarantees Victims' Rights to Truth, Justice and Reparation (Recommendations 121.28-Canada, 122.4-Switzerland, 122.5-Belgium, 122.61-New Zealand, 122.63-Czech Republic, 122.64-India, 123.28-Denmark)**

24. During the second UPR cycle, Nepal received several recommendations concerning the transitional justice process that has been ongoing in the country since the end of the armed conflict in 2006. These recommendations reflected those formulated by numerous UN Treaty Bodies and Special Procedures, as well as by the Supreme Court of Nepal, in the sense that the legal framework regulating the work of the transitional justice mechanisms established in 2015 is at odds with international standards; the process has been plagued

by lulls; and, instead of being victim-centred, it has perpetuated marginalisation. Of particular concern for the States that formulated the recommendations is the fact that the Nepalese transitional justice process seems to overlook – if not openly hinder – the imperative to hold the perpetrators of crimes under international law and gross human rights violations during the conflict accountable.

25. Nepal formally supported these recommendations and declared its full commitment towards ensuring transitional justice, affirming that it would take actions as necessary and appropriate, including the revision of the Act on Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2014 (“the TRC Act”).
26. Five years after the second UPR cycle, **the TRC Act has not been amended** and the **transitional justice mechanisms have not delivered** upon their respective mandate. **The process is stalling** and there does not seem to be any serious prospect of effectively overcoming this impasse, **until the legal foundations remain flawed**. In the meantime, victims continue suffering a violation of their rights to truth, justice and reparation.
27. Pursuant to the TRC Act, in February 2015, two transitional justice bodies were eventually established, namely the Truth and Reconciliation Commission (TRC) and the Commission on Investigation of Enforced Disappearance of Persons (CIEDP). Each commission was entrusted with a **two-year mandate, which has been extended already multiple times**.
28. In February 2015, **the Supreme Court** issued a decision whereby it **declared several provisions of the TRC Act unconstitutional and at odds with Nepal’s international obligations**. **The Supreme Court directed the government to amend and make them consistent with its international undertakings**. In subsequent rulings, the Supreme Court reaffirmed the existence of serious loopholes in the legislative framework on transitional justice. Among others, the provisions that **would allow amnesties for crimes under international law** and gross human rights violations were the source of special concern, together with the **lack of adequate guarantees of the independence and impartiality of the two commissions**.
29. Despite the Supreme Court’s clear orders, the **legislative framework regulating the functioning of the two commissions has not been amended** and they carried out a significant part of their work based on such flawed mandate. The TRC registered more than 60,000 complaints of gross human rights violations and the CIEDP received more than 3,000 complaints of enforced disappearance. The registration of complaints was conducted in the absence of an adequate witness protection programme and lacking technical knowledge and expertise. The commissions only launched some preliminary investigations, but their mandate expired before they could come up with any meaningful findings, publish a report, formulate any recommendation, or grant redress to victims.
30. In February 2019, the mandate of the two commissions was extended a third time (i.e. until February 2020). However, **throughout the entire year 2019, Nepal failed to amend the underlying legislative framework and to appoint new commissioners, de facto paralysing the transitional justice process**.



31. After a whole year of inactivity, in the proximity of a further expiry of the mandate, in January 2020, the government announced **its intention to appoint new commissioners at the end of a rushed and secretive process**, thus causing outrage among victims' groups, who consider that the **provincial consultations convened for such purpose on 13 January 2020 and lasted only 3 hours are a mockery** in the face of their suffering.
32. Despite the flawed process, on 27 January 2020, the Cabinet of Ministers decided to extend **the mandate of the two commissions for one more year (i.e. until February 2021)**. Notwithstanding the formal renewal of the mandate, this is **unlikely to produce any meaningful results**, until the **legislative framework regulating their mandate remains at odds with international law**; the **process of selection and appointment** of the commissioners is not **transparent and consultative**; and the commissions are provided with **adequate technical expertise and resources**.

## Recommendations

- ❖ **Amend the TRC Act pursuant to the rulings of the Supreme Court of Nepal**, ensuring its **consistency with international standards**. The amendment must **reflect the demands of the victims and their representative organisations**. In particular, it must guarantee that:
  - ❑ **neither of the commissions has the power to recommend amnesties** for persons accused of crimes under international law and gross human rights violations;
  - ❑ **governmental authorities have no margin of discretion to decide criminal prosecution** of those accused of crimes under international law and gross human rights violations;
  - ❑ **war crimes and crimes against humanity**, as well as arbitrary deprivations of liberty, child recruitment and use in hostilities, forced labour, and physical or mental harm that does not necessarily cause mutilation or leads to disability must be included within the mandate of the TRC;
  - ❑ the **definition of enforced disappearance, torture and sexual violence** in the TRC Act is consistent with international law, as well as that of the notions of “**victim**” and “**harm**”;
  - ❑ if a process of **reconciliation** between the perpetrator and victims is undertaken, this is done only with the **free, genuine and informed consent of the victim**;
  - ❑ a comprehensive programme of **witness protection** is set up and **adequate resources** are allocated for such purpose;
  - ❑ the TRC Act adequately **distinguishes between interim relief and reparation** and the latter encompasses compensation, restitution, rehabilitation, satisfaction, and guarantees of non-repetition.
- ❖ The amended transitional justice legislation specifies the **composition and precise competence of the Special Court**, as well as its relationship with other domestic courts and the Office of the Attorney General. Cases already *sub-judice* shall not be attracted by the Special Court.
- ❖ Ensure that the **selection and appointment process of the commissioners is fully transparent and consultative**.
- ❖ **Independence and impartiality** of the commissioners must be ensured. Commissions must be guaranteed enough **financial, technical, and human resources** to carry out their respective mandate in the long term and must be enabled to self-regulate their resources, without being made dependent on the decisions of political actors.

**I.D) Investigation, Prosecution and Sanction of Those Responsible for Crimes under International Law, in particular Enforced Disappearance and Extra-judicial Killings (Recommendations 121.26, 121.27, 122.53-Netherlands, 122.54-France, 122.62-Uruguay, 124.15-United Kingdom)**

33. During the second UPR cycle, Nepal received numerous recommendations concerning the necessity to make all the efforts to investigate crimes under international law or gross human rights violations, including enforced disappearance and extra-judicial killings, protecting victims of such violations and guaranteeing them access to justice and full and effective reparations.
34. UN Treaty Bodies and Special Procedures formulated similar recommendations. In particular, the HRC expressed deep concern at the **prevailing culture of impunity** for gross violations of international human rights law and serious violations of international humanitarian law committed during the internal conflict, including extra-judicial killings and enforced disappearance. Among the main problems identified there are the **lack of investigation and prosecution of perpetrators**, exacerbated by **political interference** in the criminal justice system and the **refusal by the police to register First Information Reports (FIR)**; and **extensive withdrawal of charges against persons accused of human rights violations**.
35. Nepal formally supported the recommendations received. However, **no concrete action has been undertaken to implement them** and, as of today, the above-mentioned problems remain and **less than a handful of cases of enforced disappearance or extra-judicial killing perpetrated during the conflict has been successfully prosecuted through the criminal justice system**.

**Recommendations**

- ❖ **Ensure that perpetrators of crimes under international law and gross human rights violations**, including enforced disappearance and extra-judicial killings committed **during the conflict, are prosecuted and, where appropriate, sanctioned with penalties** that are **commensurate** to the gravity of the crimes at stake. In particular, guarantee that:
  - **The Police register FIRs and launch without delay a prompt, thorough, impartial, independent and effective investigation;** and
  - **No form of political interference in the criminal justice system is exercised.**

**I.E) Failure to Accept the Request of Visits by the Working Group on Enforced or Involuntary Disappearances and Other Special Procedures, in particular of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of non-recurrence (Recommendations 121.15-Ukraine, 123.26-Hungary, 123.27-Uruguay)**

36. During the second UPR cycle, Nepal received several recommendations concerning the need to promote further cooperation with Human Rights Council Special Procedures,

including by facilitating the visit of mandate holders to the country and issuing a standing invitation in this regard. In particular, reference was made to the need to accept the request of a visit by the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees or Non-recurrence and of the WGEID.

37. While Nepal accepted the more general recommendation to enhance its cooperation with Special Procedures, it only took note of the one concerning the invitations to be extended respectively to the WGEID and the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees or Non-recurrence. In fact, **no progress has been made in the implementation of these recommendations since 2015.**
38. The **WGEID issued a request to visit Nepal on 12 May 2006** and, since, it has sent several reminders. However, **the government has not responded to these numerous requests**, showing a worrying ongoing lack of cooperation.
39. With regard to the **Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees or Non-recurrence, since 2012**, he has been requesting the authorities of Nepal for a country visit, but despite multiple reminders, he has **not received a reply**. This blatant failure to cooperate is all the more troublesome, bearing in mind the loopholes and the overall impasse of the transitional justice process, illustrated above in Section I.C.

#### **Recommendations**

- ❖ **Accept** without any further delay the **requests of visits** by the **Working Group on Enforced or Involuntary Disappearances** (pending since 2006) and the **Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence** (pending since 2012).
- ❖ Nepal must **cooperate fully with the mandate holders** and provide them **all the facilities needed** for the successful completion of the respective visits.

## **II. The Failure to Implement the Views of the United Nations Human Rights Committee on Cases of Enforced Disappearance and Extra-judicial Killings**

40. Between 2008 and February 2020, the **HRC rendered its Views on 25 individual communications** against Nepal concerning cases of gross human rights violations, including enforced disappearance and extra-judicial killings. In all these decisions, the HRC held Nepal internationally responsible for breaching its obligations and indicated **several measures of reparations in favour of the victims**, including searching and establishing the fate and whereabouts of disappeared persons; carrying out effective investigations that allow to identify the perpetrators of the crimes concerned, prosecute and sanction them; provide adequate compensation and the necessary and adequate psychological rehabilitation and medical treatment for the victims; and adopting measures of satisfaction and guarantees of non-repetition. **None of the 25 decisions has been fully implemented.**

41. Non implementation of international decisions on gross human rights violations not only perpetuates injustice and re-victimises people, but also undermines the international legal order and the rule of law, conveying the dangerous message that a State can breach its international undertakings without consequences.
42. In this regard, it is noteworthy that during the second UPR cycle, Nepal was recommended to **study the possibility of creating a national system for the follow-up of international recommendations** or to consider establishing a permanent inter-ministerial committee for such purpose (recommendations 122.27-Paraguay and 122.28-Portugal). **None of these recommendations has been implemented by Nepal.** While the recommendations concerned are of a general nature, they are relevant also for the views of the HRC and are worth reiterating.

### Recommendations

- ❖ Nepal must **implement without delay the Views of the Human Rights Committee on individual communications.** In particular, Nepal must:
  - initiate a **dialogue on the subject of implementation with victims and their representatives and with the Human Rights Committee;**
  - **indicate the specific domestic authorities that are in charge, as well as a tentative time-line for the implementation** of each measure of reparation;
  - **implement as a matter of first priority the measures concerning medical treatment and psychological rehabilitation;** and
  - study the possibility to establish a **permanent national mechanism** in charge of **monitoring and facilitating the implementation of, among others, the views of the Human Rights Committee.**

### III. Extra-judicial Killings across the Country

43. Over the past years, several **extra-judicial killings attributed to law enforcement personnel, especially in the region of the Terai,** were recorded. However, the corresponding **allegations were not registered by the Police neither thoroughly investigated, and those responsible have not been prosecuted and sanctioned,** thus nourishing a climate of impunity.
44. In 2019 alone, at **least five people have been extra-judicially killed by Nepalese security forces, mostly the Police.** In general, the latter alleged that the victims opened fire first, but this version **is not corroborated by testimonies and none of these cases has been subjected to a thorough, impartial, independent and effective investigation.**
45. Most recent cases include the extra-judicial killings of Mr. Kedar Sahani, Mr. Dipendra Chaudhary and Mr. Kumar Poudel, perpetrated respectively on 14 and 23 January 2019 and 20 June 2019 in the region of the Terai. The victims were charged with committing criminal acts or allegedly associated with criminal groups and the Police claimed that they opened fire first and were shot dead in retaliation.

46. With regard to the extra-judicial killing of Mr. Kumar Poudel, on 24 June 2019, the Minister of Home Affairs provided this account of the events also to the state of affairs and good governance committee within the Nepalese parliament. However, upon carrying out an investigation, the National Human Rights Commission (NHRC) rejected this version and it found that Mr. Poudel was killed after being taken in custody. The NHRC also found that the Police committed mistakes while collecting information from the crime scene and examining the body from medico-legal perspective. On 21 October 2019, the **NHRC recommended the government to suspend the three officials involved in the incident and to conduct a fresh, thorough, independent and impartial investigation.** At the time of writing, the **full report of the NHRC's investigation has not been made public and its recommendations have not been implemented, while the three officials concerned are actively serving in the Nepal Police.** On 4 February 2020, the Ministry of Home Affairs prompted the Nepal police to take action on the case and two days later, Mr. Poudel's mother lodged a new FIR against 10 alleged perpetrators before the District Police Office, Sarlahi. However, Mr. Poudel's family contends that the FIR has not been registered yet.
47. Nepalese security forces have also used lethal weapons to **open fire on peaceful protestors.** Mr. Saroj Narayan Singh and Mr. Suraj Kumar Pandey were arbitrarily killed in two different incidents in 2019 when the Police opened fire on the protestors in the districts of Sarlahi and Kapilvastu. In both cases, the **Police have not registered an FIR** and rather **tried to settle through extra-judicial agreements signed with the protestors and the families of the victims.** These agreements do not guarantee the carrying out of an effective investigation or the prosecution of those responsible.
48. The **government of Nepal also has failed to publish the report of the Commission formed under the chairmanship of former Supreme Court Justice Girish Chandra Lal** on 18 September 2016 to probe the incidents that took place during the Madhes movement in 2015, where 10 policemen were killed by the protestors as well as many protestors and bystanders were killed when the Police fired indiscriminately and without justification. The Commission submitted its report to the government in December 2017.
49. The **report has not been made public,** despite the ongoing demand by civil society organisations of the victims' families. The latter turned to the Information Commission and the Supreme Court eventually. On 17 October 2019, the Supreme Court directed the Information Commission to respond to the victims' application. Despite the direction of the Supreme Court, the **report has not been made public yet.**

## Recommendations

- ❖ Ensure that **all cases of alleged excessive use of the force by security forces and the Police resulting in the death of a person** are subjected **ex officio** to a **prompt, independent, impartial and thorough investigation**.
- ❖ Ensure the integration in the investigation of cases of alleged excessive use of the force by security officers and extra-judicial killings of **the Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment** (Istanbul Protocol); and the **Protocol on the Investigation of Potentially Unlawful Death** (2016 Minnesota Protocol).
- ❖ Ensure that **persons suspected of having committed an extra-judicial killing are not in a position to influence the progress of the investigation**.
- ❖ Ensure that alleged **perpetrators of extra-judicial killings are prosecuted** and, where appropriate, **sanctioned** taking into account the extreme seriousness of the offence.
- ❖ Ensure that the **families of victims of extra-judicial killings** obtain **effective remedies, including appropriate compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition**.
- ❖ Ensure that **law enforcement personnel, civil or military, medical personnel, public officials and the judiciary receive adequate training**, including on the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169); the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1989); the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990); the Istanbul Protocol; and the 2016 Minnesota Protocol.
- ❖ **Ensure that all incidents** occurred in the context of **protests, including killings of participants in the said manifestations**, are duly **investigated** and those **responsible are prosecuted and sanction**, notwithstanding any **extra-judicial agreement** reached with the families of the victims.
- ❖ **Make public** without further delay the **report of the Inquiry Commission on the 2015 incidents during the Madhes movement**, as well as the **full report on the investigation of the NHRC on the extra-judicial killing of Mr. Kumar Poudel**.