



**SUBMISSION
for the**

**REPORT OF THE SPECIAL RAPPORTEUR ON EXTRAJUDICIAL,
SUMMARY OR ARBITRARY EXECUTIONS ON THE STATE OF
MEDICO-LEGAL DEATH INVESTIGATION SYSTEMS AROUND THE
WORLD WITH SPECIAL REFERENCE TO THE KNOWLEDGE AND
IMPLEMENTATION OF THE UNITED NATIONS *MANUAL ON THE
EFFECTIVE PREVENTION AND INVESTIGATION OF EXTRA-LEGAL,
ARBITRARY AND SUMMARY EXECUTIONS (THE MINNESOTA
PROTOCOL)***

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Submitted by

**Human Rights and Justice Centre
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A. Introduction

1. The Special Rapporteur on extrajudicial, summary or arbitrary executions (hereinafter, “Special Rapporteur”) called for inputs to inform his forthcoming report on the state of medico-legal death investigation systems around the world. The report will make special reference to the knowledge and implementation of the **United Nations *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*** (hereinafter, the *Minnesota Protocol*).

2. To that end, the Special Rapporteur invited different stakeholders from all countries, including civil society actors, to send responses to a questionnaire. Based on their expertise, the Human Rights and Justice Centre (hereinafter, “HRJC”) and TRIAL International are submitting their answers to the questionnaire below. The submission deals with the first four questions (1 to 4) contained in the call for inputs and concerning awareness of the Minnesota Protocol and focusses on the situation in Nepal, as the country where the two organisations concerned work.

3. In August 2000, the Special Rapporteur released her report¹ on the visit of Nepal (conducted between 5 to 14 February 2000). In the report, the Special Rapporteur concluded that there is an urgent need to put in place strong, independent and credible mechanisms to investigate and prosecute alleged human rights abuses, including extrajudicial executions and disappearances, attributed to the police and other State agents.² She further recommended the government of Nepal to study the international Principles and consider the establishment of an independent commission or procedure to investigate past and present alleged extrajudicial executions attributed to the police and other State agents.³

4. Unfortunately, at the time of writing this submission, those recommendations have not been implemented and the situation is exacerbated by an especially poor and flawed medico-legal death investigation system in the country.

5. Additionally, the request of the Special Rapporteur to visit anew Nepal has been pending before the government of Nepal since 2004. It is here contended that, indeed, a country visit would offer a prime opportunity for the Special Rapporteur to assess the state of the medico-legal death investigation system in Nepal, formulate recommendations and raise further awareness on the contents of the Minnesota Protocol and its application.

B. Background

6. Nepal witnessed an internal armed conflict for ten years (1996 to 2006).⁴ During the conflict, gross human rights violations, including extra-judicial killings, were committed on a

¹ Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report on the Mission to Nepal*, UN Doc. E/CN.4/2001/9/Add.2 of 9 August 2000, para. 24, available at <https://undocs.org/E/CN.4/2001/9/Add.2>.

² *Ibid.*, para. 60.

³ *Ibid.*

⁴ Although attempts of ceasefire were made in 2001, 2003, 2005 and 2006, it was formally ended in 2006. See Office of the United Nations High Commissioner for Human Rights (OHCHR), *Nepal Conflict Report*, 2012, pp.

widespread scale.⁵ The conflict ended in 2006 with the signing of a Comprehensive Peace Accord (hereinafter, “CPA”). The CPA envisaged the promulgation of an inclusive and representative Constitution with modifications of the political structure of the country.⁶ However, when all concerns of the oppressed population of the southern plains (also referred to as Terai or Madhesh) were not reflected in the Constitution, this led to mass protests and the creation of a movement against the government.

7. Protests were quelled with force by the government, deploying the security officers from the Nepal Police, (hereinafter “NP”) and the Armed Police Force (hereinafter, “APF⁷”). In its report on cases of extra-judicial killings perpetrated between 2008 and 2010, the Office of the High Commissioner for Human Rights (OHCHR) found that credible allegations of unlawful killings had continued to surface after the armed conflict, and most of them have not been investigated, so that those responsible have not been prosecuted and punished.⁸ Between February and October 2009, 12 alleged extra-judicial killings were recorded in the Terai.⁹

8. As per the report of an NGO, a total of 15 people were killed and 8 injured in these incidents, which were all labelled by authorities as “encounters” between the security forces and alleged members of armed groups. No members of the NP or the APF were killed or injured in the alleged encounters.¹⁰ Another Nepali NGO held that, between April 2008 and May 2011, 281 extra-judicial killings were reported in the Terai, with most of the perpetrators (in around 132 cases) identified as members of the security forces.¹¹ Similarly, during the protests between August and September 2015, around 45 people were reportedly killed.¹² Reports indicate that 56% of the fatalities were the result of indiscriminate shooting by the NP into crowds in market

48-49, available at https://www.ohchr.org/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf (hereinafter, “Nepal Conflict Report”).

⁵ OHCHR, *Nepal Conflict Report*, op. cit., p. 36; Special Rapporteur on extra-judicial, summary or arbitrary executions, *Report on the Mission to Nepal*, op. cit., para. 10.

⁶ Comprehensive Peace Accord, available at:

https://peacemaker.un.org/sites/peacemaker.un.org/files/NP_061122_Comprehensive%20Peace%20Agreement%20between%20the%20Government%20and%20the%20CPN%20%28Maoist%29.pdf, preamble and Point 3.5.

⁷ Armed Police Force (APF) is a paramilitary land force tasked with counter-insurgency operations in Nepal. It functions as a semi-military wing, and occupies a sort of dual role as both military and law enforcement.

⁸ OHCHR, *Investigating Allegations of Extra-Judicial Killings in the Terai, Nepal- Summary of Concerns*, p. 4, available at: <https://nepal.ohchr.org/en/resources/publications/Investigating%20Allegations%20of%20Extra-Judicial%20Killings%20in%20the%20Terai.pdf>

⁹ *Ibid.* It included Banke, Dhanusha, Siraha, Saptari and Rupandehi districts.

¹⁰ *Ibid.*

¹¹ Democratic Freedom and Human Rights Institute (DFHRI), ‘*Extra-judicial Killings in Terai*’, *Periodic Report*, May 2011, p. 5 as cited in Terai Human Rights Defenders Alliance (THRDA), *Continuing Extrajudicial Killings in Terai*, February 2014, p. 10.

¹² Human Rights Watch (HRW), *Like We are not Nepali*, 16 October 2015, available at: <https://www.hrw.org/report/2015/10/16/we-are-not-nepali/protest-and-police-crackdown-terai-region-nepal>.

places.¹³ There was arbitrary and disproportionate use of force and extrajudicial killings by the NP against protesters and bystanders.¹⁴

9. Extra-judicial killings continue being committed in Nepal. In 2019 alone, at least five people were extra-judicially killed by the Nepalese security forces, mostly the NP, across the country.¹⁵ Apart from the data presented above, a study revealed that, between June 2015 and June 2020, there were 18 instances of deaths in custody in Nepal, mostly labelled as “suicide”.¹⁶ Even in November 2020, when the inhabitants of Mahottari district were protesting against the killing of a minor, the NP opened fire to the crowd of protestors, injuring three people.¹⁷ In October 2021, four people were arbitrarily killed by the NP after a group of protestors opposed the construction of an industrial area.¹⁸

10. None of the unlawful deaths mentioned in the previous paragraphs has been subjected to a thorough, independent, impartial and effective investigation,¹⁹ thus fostering impunity and worsening the suffering and sense of injustice felt by the victims and their relatives. Dr. Harihar Wosti, a well known forensic expert of Nepal state that about 90% of criminal investigations are extremely flawed.²⁰ Notably, the medico-legal death investigation system has been especially flawed – or non-existent – contributing to the rampant impunity.

¹³ Mandates of the Special Rapporteur on extra-judicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on minority issues, 7 June 2017, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23097>, p. 2.

¹⁴ HRW, *Like we are not Nepali*, op. cit., p. 2.

¹⁵ THRDA, *Human Rights Situation of Nepal in 2019: Review by THRDA*, 31 December 2019, available at: <http://www.thrda.org/situation-update/human-rights-situation-of-nepal-in-2019-review-by-thrda/>.

¹⁶ Abha Lal and Peter, 'Nepal's Police Custodial Deaths: Patterns of Negligence, Alleged Abuse and Impunity', published 22 June 2020, available at: <https://thewire.in/south-asia/deaths-in-custody-impunity-nepal-police>.

¹⁷ Republica, 'Three injured as police open fire on locals protesting against murder of minor in Mahottari', published 24 November 2020, available at: <https://myrepublica.nagariknetwork.com/news/three-injured-as-police-open-fire-on-locals-protesting-against-murder-of-minor-in-mahottari/>.

¹⁸ The Kathmandu Post, 'Four people killed in clash with police in Rupandehi', published 11 October 2021, available at <https://kathmandupost.com/province-no-5/2021/10/11/four-people-killed-in-clash-with-police-in-rupandehi>

¹⁹ The Kathmandu Post, 'Extrajudicial Killings and the Wait for Justice', published on 1 January 2022, available at <https://kathmandupost.com/national/2022/01/01/extrajudicial-killings-and-the-wait-for-justice?fbclid=IwAR0WXWc74CUr0o-ytfY6SUy64EsU4RQ5zyHAJtJtCzW3eCbCCIXCJ2DY8Ig> ; The Kathmandu Post, Nepal has not seen a single conviction for torture and custodial deaths in the past three years, published 27 June 2021, available at <https://kathmandupost.com/national/2021/06/27/nepal-has-not-seen-a-single-conviction-for-torture-and-custodial-deaths-in-the-past-three-years>; The Kathmandu Post, Four deaths in Rupandehi put spotlight on Nepal's trigger-happy cops, published on 12 October 2021, available at <https://kathmandupost.com/national/2021/10/12/four-deaths-in-rupandehi-put-spotlight-on-nepal-s-trigger-happy-cops>.

²⁰ The Record Nepal, 'How Nepal's forensics infrastructure lets perpetrators get away with crimes', 16 May 2019, available at <https://www.recordnepal.com/how-nepals-forensics-infrastructure-lets-perpetrators-get-away-with-crimes>

C. Questionnaire

Awareness

1. What is the level of awareness of the *Minnesota Protocol* in your country, particularly within the professional communities concerned with its use (i.e. legislators, judges, prosecutors, lawyers, forensic doctors and other specialists, law enforcement officials and others)?

11. The level of awareness of the Minnesota Protocol in Nepal is considerably low among the concerned communities. As presented in the answers below, it is not included in the education curricula or training for the professionals (law enforcement and medical officers). Notably, attempts to raise awareness on the Minnesota Protocol and disseminate its contents are usually undertaken by civil society organisations and not by the State authorities.

12. In 2018, the International Commission of Jurists (hereinafter, “ICJ”) Nepal conducted twice a two-day workshop on the Minnesota Protocol.²¹ The workshop first targeted 20 human rights lawyers and then 18 public prosecutors. However, it was not followed by any further training and thus reached a limited number of beneficiaries.

13. ICJ Nepal also translated the Protocol in Nepali language. However, the scope of the distribution of the translated version is unknown.

2. Is any teaching of the Minnesota Protocol provided for in the education curricula, including at the undergraduate level, and training of the above-mentioned professionals? Please describe the extent to which this occurs.

14. The education curricula of studies in Nepal do not include dedicated training or teaching on the Minnesota Protocol. Currently, four universities (i.e. the Far-western University, the Tribhuvan University, the Kathmandu University and the Purbanchal University) have programs in law at undergraduate level. The course at Purbanchal University includes subjects on international human rights law and humanitarian law, and criminal law, among others.²² However, no lecture is dedicated to unlawful, arbitrary or extrajudicial killings in its curricula. There is no mention of the Minnesota Protocol in the reading materials recommended by the University either.²³ The courses at Tribhuvan University,²⁴ Kathmandu University²⁵ and Far-Western University follow a similar trend and do not have classes or courses on international

²¹ ICJ Nepal, available at <https://www.icj.org/2nd-two-day-workshop-on-minnesota-protocol-for-public-prosecutors-in-nepal/>.

²² Syllabus of BA LLB (Bachelors in Law), available at <https://ksl.edu.np/assets/uploads/04096-b.a.-ll.-b-syllabus-final-for-press-9-august-2019.pdf>.

²³ *Ibid.*

²⁴ Syllabus of BA LLB (Bachelors in Law), available at <https://www.nlc.edu.np/programmes/curriculum/ballb>.

²⁵ Syllabus of BBM LLB (Bachelors in Law), available at https://cdn.ku.edu.np/OOZ-YY_O_Pbhefr_Fgehpgher1640079411.cqs/1.

Protocols, including the Minnesota one. The undergraduate curriculum of medical sciences in Nepal too do not have Minnesota Protocol in their course or as a reading material.²⁶

15. The National Judicial Academy,²⁷ as an autonomous governmental body, conducts trainings to the judges, government attorneys, government legal officers, judicial officers, private law practitioners, and others who are directly involved in the administration of justice in Nepal. The sessions to newly appointed [District Court Judges](#), [High Court Judges](#), [legal officers](#) include the subject of “forensic science and autopsy”. However, the sessions are limited to theoretical aspects²⁸ and do not cover international practical tools as the Minnesota Protocol. In the absence of standard reference materials, it is doubtful if the Protocol is discussed during any of such sessions.

16. The Human Rights Section of the NP maintains that officials are trained on the subjects of human rights and use of force, among others. However, the contents of such trainings are not publicly available. Similarly, in 2018, the APF, in joint efforts with the Danish Institute for Human Rights; the National Human Rights Commission (hereinafter, “NHRC”) of Nepal and the Kathmandu School of Law, has developed a “Training Manual on Human Rights, Guidelines for Armed Police Force, Nepal Personnel”. The document refers to international treaties, Declarations and Principles, which, however, are only concisely referred to, thus resulting inadequate to address the real scenarios of extrajudicial killings. Moreover, the Training Manual does not mention anywhere the Minnesota Protocol.

3. What are the main challenges in your country to a better awareness of the Minnesota Protocol (not available in national/local languages; lack of promotion; not considered relevant, etc.) and what is currently being or could be done in future to overcome them.

17. The main challenges of awareness of the Minnesota Protocol in the country are as follows:

18. Lack of promotion: A handful of lawyers, legal professionals, law enforcement officials, medical practitioners are aware about the existence of the Minnesota Protocol. Dr. Harihar Wosti, told to the HRJC that not all investigations are carried out following the Minnesota Protocol. Only a few cases that are handled by the experts are conducted following the indications and standards set forth in the Protocol.

19. In the above-mentioned report on the country visit to Nepal, the Special Rapporteur highlighted as a matter of concern the conduction of autopsies by non-trained professionals with ill-equipped facilities.²⁹ Twenty-two years later, the situation has not changed much.

²⁶ Note: The graduate studies (Doctor of Medicine) curricula of Tribhuvan University and Kathmandu University include Minnesota Protocol.

²⁷ National Judicial Academy website at <http://www.njanepal.org.np/page/about-us>.

²⁸ The sessions to District Court Judges include topics as: Definition of Death, Death Declaration, Death Certification, Cause of Death, Mechanism of Death, Modes of Death and Manner of Death; Session to Legal Officers include topics as: Examination of a dead body, procedure to collect evidences of a dead body, issues to be incorporated in death body examination report, vocabulary used in the death body examination report and their meaning, causes of death. The sessions to High Court Judges include topics as: Use of Forensic Science in criminal justice system and autopsy and other physical injuries.

²⁹ Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report on the Mission to Nepal*, op. cit., para. 24.

Although the facilities have advanced and autopsies are conducted by medical officers, the number of experts or officers duly trained in the application of the Minnesota Protocol is extremely low.

20. Furthermore, there is also a general belief among government attorneys that an international standard-setting instrument, such as the Minnesota Protocol, is not required when Nepal already has laws on investigation and evidence collection. However, this perspective fails to see that the Nepali legislation is not as comprehensive and detailed as the Minnesota Protocol and hence cannot serve the purpose of independent and effective investigations of alleged extrajudicial killings.

21. Lack of national rule/legislation: As a matter of fact, the Nepali legislation does not require an expert to conduct the autopsy in case of an alleged extrajudicial killings. Section 20 (3) of the Criminal Procedure Code states that, “the concerned investigating authority shall, upon examining the corpse send the corpse to a government medical doctor or an expert designated in that behalf by the Government of Nepal or a licensed medical doctor for postmortem....”³⁰ Only a few cases are handled by experts. In most of the cases, especially the ones that occur outside the capital of the country, autopsies are carried out by medical officers, who, most of the times, are not expert³¹ and do not have knowledge of the Minnesota Protocol and the standards set forth therein. There have been reports where the contents of the post mortem examinations conducted by pathologists in the districts were disputed by the families of the victims as inaccurate or incomplete.³²

22. Lack of regular trainings: Nepal with population of around 30 million has only around 50 people properly trained in forensics.³³ More importantly, there does not seem to be an official programme of regular trainings on the Minnesota Protocol offered to law enforcement personnel, public servants and medical personnel.

4. The Minnesota Protocol is officially available in English French, Spanish, Russian, Arabic and Chinese. Is the Protocol available in any other language(s) used in your country? If yes, and if available online, please share a link.

23. The Minnesota Protocol was translated into Nepali language by ICJ n. A copy of the translated version is attached (as a separate document) and submitted with the questionnaire. The Nepali version can be uploaded on the Special Rapporteur’s website.

³⁰ Sec 20 (3) Criminal Procedure Code 2018

³¹ The Record Nepal, ‘How Nepal’s forensics infrastructure lets perpetrators get away with crimes’, op. cit.

³² The Kathmandu Post, *In-custody death of a Musahar man sparks protests in Janakpur*, available at <https://kathmandupost.com/province-no-2/2020/06/14/in-custody-death-of-a-musahar-man-sparks-protests-in-janakpur>.

³³ The Record Nepal, ‘How Nepal’s forensics infrastructure lets perpetrators get away with crimes’, op. cit.

Human Rights and Justice Centre (HRJC)

The **HRJC** is an NGO established in 2017, based in Kathmandu. It aims at improving access to justice for victims of human rights violations in Nepal such as torture, enforced disappearances, extrajudicial executions and sexual violence.

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TRIAL International is a Geneva-based NGO established in 2002 and with consultative statute to the UN Economic and Social Council (ECOSOC). Its aim is fighting impunity for international crimes and supporting victims in their quest for justice. The organization provides legal assistance, litigates cases, develops local capacity and pushes the human rights agenda forward.

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