



Response of the Government of Nepal to the Working Group on Enforced or Involuntary Disappearance

1. Whether the facts reported in the allegation are accurate. If not, what are the true facts ?

National Civil Code, 2017

The National Civil Code, 2017 has a provision on the status of disappeared persons. Section 40 of the Code provides that, if a person disappears without any notice for a period of consecutive twelve years or if a person for whom it is natural to have information about such disappeared person has not received any information about him or her for the last twelve years, such a person shall, except in cases where an evidence establishing that he or she is alive is received, be deemed to be dead.

In the following circumstance, such a person is deemed to have died after the completion of the following period:

- (1) In the case of a person having attained eighty years of age, after five years,
- (2) In the case of a soldier deputed to war-field, four years after the cessation of the war;
- (3) In the case of a person traveling by aircraft, ship or other vehicles that met with an accident, three years after the date of such accident.

According to Section 40 Subsection (4), if the concerned person files a petition stating that any person has disappeared without notice or died due to a disaster or accident and requests for a judicial declaration on such person's death, disclosing therewith the date, place, cause of death and basis thereof, the court may, after examining the evidence, make an order of judicial declaration on the death of such a person. However, if a person already declared dead comes back alive and files a petition in person to get the judicial declaration made earlier to be annulled or if his or her successor files a petition for an amendment to the previous judicial declaration on death for the reason that the date of death of such deceased happened to be different than the date referred to in the judicial declaration, the court shall, having examined into this matter, annul or amend the judicial declaration made.

Section 32 of the Evidence Act, 1974

The Evidence (Second Amendment) Act, 2020 has amended Section 32 of the Evidence Act, 1974, according to which, when the question whether a person is alive or dead, it is proved that such person has not been heard of after the expiration of the presumption period of death as provided in the law by those who would naturally have heard of him/her if he/she had been alive, the burden of proving that he/she is alive is shifted to the person who affirms it.

Transitional Justice

The Government of Nepal (GoN) would like to reiterate its principled position that the GoN is committed to resolving the issues of the transitional justice (TJ) based on the Constitution of Nepal, victims' concerns, the Supreme Court's Directive Order of 2015; and obligation of Nepal emanating from various international instruments to which Nepal is a party. To translate its full commitment towards ensuring transitional justice in the society in a post-conflict scenario, the GoN constituted two independent statutory commissions, namely, the Commission on Investigation of Enforced Disappeared Persons (CIEDP) and Truth and Reconciliation Commission (TRC) on 10 February 2015. The tenure of commissioners was two years and an additional one year was extended. The GoN has reappointed the commissioners of both the Commissions according to the recommendation of the Recommendation Committee constituted on 23 January 2020 as per the sub-section (3) of Section 3 of the Commissions for Investigation of Enforced Disappeared Persons, and Truth and Reconciliation Act, 2014, based on the inclusive principle.

The TRC has collected a total of 63,718 complaints and made preliminary investigations, verified the registered complaints for their authenticity, and consolidated the cases for further detailed investigation. So far, the decision has been made to carry out a detailed investigation in 200 cases. The CIEDP received a total of 3,223 complaints, out of which it verified a list of 2,514 after preliminary investigation. The CIEDP has been carrying out a detailed investigation of 2,097 cases in 65 districts. The TRC has been implementing the Guidelines on reparation. Both the Commissions have adopted the Procedure for Providing Identity Card to the Victims.

Therefore, these two independent transitional justice mechanisms are working as per their respective mandates to investigate the allegations of human rights violations alleged to be committed during the conflict era (1996-2006) and provide justice to the victims.

2. What are the measures that your Excellency's Government has taken, or intends to take, to bring Nepal's legislation in conformity with international norms and standards, in particular in relation to the amendments to the TRC act?

Nepal's transitional justice process is guided by the Constitution, Comprehensive Peace Accord, the directives of the Supreme Court, relevant international commitments, concerns of the victims, and the ground realities. Regarding amendment to the Truth and Reconciliation Commission Act, 2014 (TRC Act), the



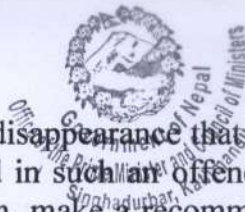
Ministry of Law Justice and Parliamentary Affairs (MoLJPA) is preparing an amendment Bill in consultation with the victims of the conflict and other stakeholders. The MOLJPA has prepared a consolidated report for the GoN, compiling all the issues discussed and suggestions given after rigorous consultation with the victims of the conflicts and concerned stakeholders.

Based on the report of the consultation, demands submitted by the victim's representative organizations at different times and suggestions and feedback received from the international community including the relevant UN bodies, the GoN is preparing the Amendment Bill. Consultation at the higher political level is also underway to bring consensus on the issues to be incorporated in the Amendment Bill so that it could be implemented effectively. However, this process has been considerably affected by the outbreak of the COVID 19 pandemic.

3. Please indicate if and how the provisions of the National Penal code criminalizing enforced disappearances recognize the continuous nature of the crime , allowing the prosecution of perpetrators who committed enforced disappearances during the conflict ?

The National Penal Code explicitly criminalizes the act of enforced disappearance in compliance with the relevant international instruments. Sub Section (2) of Section 206 of the Penal Code defines enforced disappearance as the arrest, detention or any other form of control of a person by a person or security personnel having authority by law to make arrest, investigation or enforcement of the law, followed by a failure to produce such person before the case trying authority within twenty-four hours of the date of such arrest or deprivation of liberty, excluding the time required for the journey, or a refusal to allow the concerned person to meet such person, and/or by concealment of information as to where, how and in what condition such person has been so held; the abduction, custody, control or any other form of deprivation of liberty of a person by any person, organization or group, whether organized or not, followed by concealment of information to the concerned person as to the reason for such deprivation and where, how and in what condition such person has been so held. The principal offender of enforced disappearance may be liable to a sentence of imprisonment for a term not exceeding fifteen years and a fine not exceeding five hundred thousand rupees, having regard to the duration and circumstances of such enforced disappearance. The provisions of the Penal Code are prospective in effect.

The GoN is steadfast that there would be no blanket amnesty in cases of serious violation of human rights. However, as already mentioned above, the Enforced Disappearance Inquiry Commission is mandated to make enquiry and investigate



the facts about enforced disappearance that occurred during the conflict period, of those who were involved in such an offence, bring about reconciliation between the perpetrator and victim, make a recommendation on reparation to be provided to the victims or their families, and make a recommendation for legal action against those involved as per the TRC Act, 2014. If the Commission through investigation finds the involvement of any person in the offence, may make a recommendation to the GoN to take action against that person. Moreover, the TRC Act clearly provides that the Commission may not make a recommendation for amnesty in the case of the perpetrator who was involved in an offence of grave nature. Therefore, all the matters related to enforced disappearance during the conflict will be settled as per the TRC Act, 2014 and are not guided by the National Penal Code.

4. What are the measures that your Excellency's Government has taken or intends to take to enhance the effectiveness and implementation of the mandate and functions of the TRC and CIEDP commissions ?

The GoN is committed to ensuring the independence of the transitional justice commissions. The members of the Commissions were appointed with the recommendation of an independent and inclusive recommendation committee constituted under the TRC Act. Similarly, sufficient budgetary resources have been ensured to fulfill their mandates effectively and independently.

5. Please provide information on any measures that your Excellency's government has taken , of intends to take, to ensure the effective participation of victims in the design and implementation of transitional justice process?

The GoN is in constant contact with the representatives of the victims of the conflict and other stakeholders through different ways like meetings at different times at the MOLJPA, public discussions and consultation programs in different places. The MOLJPA initiated a broad-based consultation process with the victims of the conflict and other stakeholders regarding the amendment of the Truth and Reconciliation Commission Act, 2014. In consultation with victims' representative organizations, the MOLJPA conducted provincial level consultations and collected suggestions and feedback in this regard. Moreover, the high level leaders of all political parties had also participated in the consultation process.