

Universal Periodical Review

Third Cycle

NEPAL



Rights to Life and Peace and Related Human Rights Issues

July 9th 2020

*“From the politics of taking life to the politics of affirming it”
“From the politics of paying for war to the politics of offering peace”*

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***We understand the right to life as being
the full enjoyment of Life,
the right not to be killed,
everyone's responsibility neither to kill nor let die.***

***We understand the right to peace as being
the full enjoyment of Peace,
the right to be free from violence and want,
everyone's responsibility to assure peace to each and all.***

Introduction

Submitting organisations

The Center for Global Nonkilling (CGNK) has a unique mission that is both inspirational for individuals and transformative for societies: *“To promote change toward the measurable goal of a killing-free world by means open to infinite human creativity in reverence for life”*. It was founded in 2008, among others by Glenn Paige (1929-2017), political science Professor and author of the book “Nonkilling Political Science”, widely translated¹. The book is available in Nepali². CGNK is a worldwide congregation of individuals, scholars and others, working at creating societies that do not kill. CGNK has ECOSOC consultative status since 2014.

The purpose of Conscience and Peace Tax International (CPTI) is to forward and sustain an economic transformation from an economy of war to an economy of peace and universal well-being. Until then, it claims that people have a right of conscience to pay their tax money into peace funds instead of into military budgets and acts to obtain full recognition of the right to conscientious objection to paying for armaments, war preparation and war conduct. CPTI was founded in 1994 and has ECOSOC consultative status since 1999.

Human rights

All human rights are universal, of equal importance, indivisible, interlinked and mutually reinforcing. They arise out of our fundamental human nature and are expressed by our knowledge, feelings and values. They grow and remain through awareness, practice and kindness. They are needed to build lasting and prosperous, thriving and humane societies, on a sustainable planet, enabling each and every one to lead a fulfilling life, in solidarity, leaving no one behind. Universal legal basis, fundamental rights form the infrastructure of our civilisation, as needed for it to flourish, in dignity, through present time and in future History. Human rights are supported and implemented by using universal fundamental and peaceful methods such as education and exemplarity, the cultures of peace and non-violence, cooperation and consensus, prevention and precaution, and peaceful settlements of disputes. These fundamental methods are needed for the full respect and the common enjoyment, for the achievement of all human rights as for the existence and continuity of societies and cultures.

The right to life

Compared to other human rights, the right to life has four specific features:

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a. If dignity can be said to be the paramount human right present when each and all human rights are fulfilled, so is the right to life present within all human rights. However, the right to life precedes all other human rights: if life is taken all human rights are cancelled³.

Conversely, joyfully living, thus sharing a solid and happy ground to the existence of life for all, highlights the value of the right to life. Further, life and the quality of life, in equality, are the basis needed for the peaceful progress and proactive fulfillment, for the completion of all human rights.

b. There are no possible restrictions to the right to life: one is either alive or not. Issues pertaining to the beginning and the end of life such as reproductive rights, abortion, suicides and euthanasia, as well as prenatal and genetic engineering should be dealt with in a preventive, human and humane, sustainable manner, for each and all, in full dignity.

c. There is only one way to guarantee respect for life, to protect and ensure that the right to life is fulfilled: full and effective prevention. Once a life is lost, compensation may be due, but there are no possible reparations for a lost life.

d. So forth, the right to life is also the *absolute duty not to kill*. As such, the right to life is a fully reciprocal right, granted to all, to be granted by all, to all, individually as collectively.

The Center for Global Nonkilling encourages all persons and institutions to refuse the recognition of any *right* to kill. Killing is never admissible.

Though not rights, three *powers* to kill have sometimes been legally granted. They are always granted under very strict and exceptional circumstances. We do not approve or condone to these existing powers to kill. They should be considered unwanted remnants of the past.

These three powers are:

1) The use of *legitimate self-defence*. Legally, it requires a proportionate reaction, in response to a direct, severe and imminent threat that cannot be addressed otherwise. The circumstances where self-defence may be needed are always a failure of prevention: failure that should be thoroughly analysed to extract lessons learned and design more accurate policies, best practices for the future. If these circumstances nevertheless occur, using nonviolent means the reaction should never result in killing or maiming. Whatever the ends and means used, the result of legitimate self-defence shall always be reviewed by an independent mechanism.

Because it highly impacts on the rights to life, but also on the rights to personal integrity and security, any *use of force* by officials or by any one shall always be avoided, or highly limited⁴. States have a duty of exemplarity to promote fundamental rights and values, to act ad non-violently as possible, a legal duty regarding full respect and promotion of human rights. Utmost attention shall be given to prevent situations which may result in use of force, or further in loss of lives. Prevention failures shall be thoroughly monitored to extract lessons learned, to instigate experience and changes in policies. Methods used when the use of force is nevertheless needed should be inspired by non-violent techniques: force is not violence as long as it causes no harm. Again, any official use of force should be monitored by a totally independent mechanism.

2) The *Death penalty*, if ever permissible, is however a major and definitive breach of the right to life and of numerous other human rights, including those of other related persons. It is considered an inhumane, cruel and degrading treatment⁵. It is the worst example of non respect for the right to life a State and a nation can give. Preventive effects being undemonstrated, the death penalty is unworthy and lacks the necessary dignity and legitimacy, the moral standards and

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exemplarity required of any authoritative power. The death penalty is not compatible with the Sustainable Development Goals (SDG) as they grant universal development and as its main assertion and goal is to “leave no one behind”; killing someone is not only leaving this person behind, it is depriving them of their share of human destiny and of their right to amend themselves. The SDG’s were unanimously adopted by all Members of the United Nations and thus grant a right to development and to rehabilitation for all. The SDG’s also require “significant reduction of violence and related killings (SDG 16.1)”. This includes killings by the State.

3) *Powers of war* as conceded by humanitarian law may be an exception to the right to life as it permits, under certain circumstances and given certain precautions only, the taking of the life of enemy soldiers. This is morally unacceptable and profoundly backward. Seeing that peace and respect of life prevail – always – and nullifying this exception to the right to life is one of the objectives of the Center for Global Nonkilling.

It shall be a goal for all humanity, for the sake of life in peace.

The right to peace

Peace originates in our human nature, is supported by human feelings and knowledge, continues through prevention and is supported by non-violent institutions and practices, peaceful settlements of disputes.

No life would be possible without a sufficient attainment of peace, and dignity can only be achieved when peace and human rights prevail. Peace is a right, but it is also a universal method needed for the completion of all human rights.

Peace is fully present (if not worded) in article 28 of the Universal Declaration of Human Rights when it states: “*Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized*”. It is only through a peaceful order that such an endeavour can be accomplished: all rights set forth in the Universal Declaration being fully expressed and realized.

The links between *human rights and peace* are being widely developed⁶. We salute with great respect the vote by Nepal in favour of the Declaration on the Right to Peace at the General Assembly in 2016⁷. It is time implement the right to peace and to develop subsequent public peace policies⁸.

Peace and peaceful methods provide means to prevent and solve conflicts without aggravating them (including between competing human rights) and, as may be to the advantage of all concerned persons and parties, in a constructive or reconstructive way. Conflicts solved peacefully alleviate feelings with respect, make it possible to draw lessons learned from difficult situations and favour the design of preventive policies for the future.

Other related human rights

All human rights are needed for the fulfilment of a safe and happy life.

However, some of them may be of more direct or evident importance either for the full realisation of the rights to life and peace, or to avoid their breach.

The *right to participate in the decision making* including of women, youth, persons with disabilities and all vulnerable persons and social groups is highly important as it creates inclusive and humane societies, where responsibilities are equally shared for and towards the well-being of all. The more people participate in the decision making process and the more people work by consensus, the more people will respect the consequences of their decisions and therefore, the easier it will be to achieve SDG 16: safe and inclusive societies.

The right to *accurate standards of living*, including the rights to food, water and sanitation, clothing and housing, the rights to work and to social security deserve full attention, in all circumstances.

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The *right to health* is an essential right for the fulfilment of the right to life and of the subsequent right to longevity. It is needed as well to achieve societies in which *human rights are all equally shared*. The *human right to a sustainable natural environment*, thus sustaining humanity and life on Earth, deserves accurate protection and full attention as well.

The *right to happiness* and fulfilment of life in reverence for life should always be mentioned:

“Happy people breed a happy world”

Universal Periodic Review of Nepal

We wish a happy, constructive and peaceful UPR to the People and the Authorities of Nepal.

Previous participation and proposals herein

CGNK made a submission (its first ever) for the UPR of Nepal during the second cycle (March 2015). We focused mostly on:

The right to life, asking for a lively presence of life in the constitution. We are highly satisfied as the constitution adopted thereafter states (§ 16): “1. Each person shall have the right to live with dignity. 2. No law shall be made for capital punishment”.

The prevention of suicides. (See hereafter). Progress has been made but a lot still has to be done to protect people and specially women from avoidable self-inflicted death.

The promotion and the establishment of an inclusive and lasting peace. Here again, huge progresses have been made, but a much more can still be done to bring Nepal, as any country, to become a beacon of peace and well-being. We make numerous suggestions hereafter in an approach that we may call or soon call “comprehensive public policies”.

Regarding life and peace, enforced disappearances and honorably dealing with the past is still an important issue in Nepal and we would like to see the authorities of the country addressing it in a

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most humane and effective way, especially regarding child soldiers⁹.

We added this time traffic casualties. A prevention need to protect life for which Nepal is clearly lagging behind.

We also added Statelessness.

In our peace establishing section, presented in two parts local and international, we mentioned cooperative governmental policies, peace education, peaceful settlements of disputes (international and local), violence prevention and refrain on the use of force, autonomous control of it and various mechanism intended for the good of all and the progress of peace.

The right to life in the international and national human rights constitutions

The following international legal obligations: the Convention on the prevention and punishment of the crime of *genocide*; the Covenant on *civil and political rights* and its Optional protocol aiming at the *abolition of the death penalty*, and the Convention on *enforced disappearances* are within the human rights constitution, the ones mostly concerned by the application of the right to life. They are the minimum standards needed for any country to internationally recognize – and thus to show full legal respect for life and the right to life.

National constitutions shall similarly reflect this human and legal stand in favor of life.

Beyond legal aspects, it is consciously evident that it is our knowledge of the bounty of life, upheld by ethics and human best practices, by our historical progresses that make for a happy and sustained lasting life. Our heart feelings and our well understood instincts, our sound and profound understandings, all the good will may and shall guide us towards our fulfillment. Further and only, it is when we offer such knowledge and feelings to each other as to humanity that we create the solidarity needed for Life on Earth.

It is when institutions understand this and promote individual and collective life, happy life, when they exemplify progress, in dignity, that we may attain and achieve a sustainable civilization on Earth. However, our institutions may only be guided by our own, brought together commitments to give a future, a meaning and a worth to the lives we all live and lead, leaving no one behind, for ourselves as for our world, now as for future generations.

Illegality of enforced disappearances

To be granted a life is receiving a right to a presence, to a public and private presence before the law and to a private presence and acknowledgeable presence with and for one's kin.

As such enforced disappearances violate numerous human rights, be them in law or in *jus cogens*. Nepal clearly needs to progress on the topic.

They are 480 outstanding cases of enforced disappearances listed by the working group on enforced disappearances, making Nepal the 13th worse State in the world regarding disappearances¹⁰. There is also an unanswered demand for a country visit by the working group¹¹ and serious worries by the working group regarding the mandate and the functioning of the local commission of investigation¹².

We also have direct and recent information mentioning a possible silencing, or at least disengagement and obstacles to the functioning – including unexpected replacement of crucial

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personnel – of the Commission of investigation of enforced disappearances of persons as for the Truth and Reconciliation commission of Nepal¹³.

Despite the work needed locally, the convention on Enforced Disappearances also has universal effects and contains provisions regarding cases beyond the national territory¹⁴.

I. Therefore, we recommend:

a. The urgent ratification of the Enforced Disappearances Convention.

b. To swiftly allow a visit by the Working group on enforced disappearances.

c. To fully cooperate with the Working group.

d. To allow, support, publish and complete, in full and in a fixed delay, the works of the Commission of Investigation on Enforced Disappeared Persons and the works of the Truth and Reconciliation Commission.

e. To provide a progress report on the issue, in annex to its national report, at each UPR session.

II. We also recommend the establishment of a mechanism to prevent further disappearances and all forms of atrocity crimes.

Prevention of homicides

With a homicide rate of 2.3 killings for a 100,000 inhabitants in 2018, much lower than world rate (5.3/100,000) or lower than the Asian rate (3.1/100,000) Nepal clearly shows that life is valued in the country¹⁵. Nevertheless, to achieve SDG 16.1¹⁶ more work to preserve life from violence is needed. As proposed by the World Health Organization, adopting more prevention plans to reduce violence and killings are of the essence¹⁷.

III. We urgently recommend the adoption of more comprehensive homicide prevention programs.

Prevention of suicides

Suicides are a problem in Nepal¹⁸.

With a rate of 11.6/100,000, while the world rate is at 10.5/100,000¹⁹ Nepal can clearly do better.

A good step was taken in 2018 when the new criminal code repelled the prohibition of self-inflicted suicide (article 185). Thus we salute the implementation of the recommendation made by Haiti in the previous cycle of the UPR.

However and as far as we know, there is still no national suicide prevention plan, with a sufficient budget. The existing help-lines are partially dedicated to other problems and they do not have sufficient reach and expertise in all parts of the country²⁰.

The suicide prevention plan shall also include a national data collection mechanism, allowing for better determination of major causes of suicide, thus facilitating specific prevention systems²¹. Moreover, the majority of suicides are committed by females is clearly a problem. Inasmuch, work still needs to be done to fully implement the second recommendation issued by Haiti in the previous cycle.

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IV. We recommend the urgent adoption of a national suicide prevention plan, of a national data collecting mechanism and of a gender specific approach to suicide prevention.

Prevention of traffic injuries

Traffic casualties are high in Nepal 15.9/100,000²², though still lower than World (18.2/100,000) or regional rates. However, pedestrians, youths and vulnerable people make for 72% of the casualties and the numbers of these is rising²³.

We recall that SDG traffic goal is to half traffic casualties before 2020 (SDG Goal 3.6).

V. We recommend doing much more to prevent traffic casualties and we look therefore for fast results in preserving of lives until the next UPR.

The international and national peace constitution

Nepal has known the atrocities of war: it is now time to prepare the *blessings* of peace.

VI. Under SDG 16, peaceful and inclusive societies, we recommend to Nepal the adoption of a national and comprehensive public peace policies plan.

The national peace constitution

Perpetual peace is mentioned in the preamble of the Nepalese constitution as something in need of being fulfilled.

Accordingly, as peace is a transversal matter as are gender and environmental issues, please make peace a recognized value and a tool needed for all public policies.

VII. Enshrine peace in the constitution as a State goal and as an as effective as possible mechanism.

There is a very good example in article 6, of the local of the local constitution of the Canton of Vaud in Switzerland: “In all its activities, it [the State] shall: (...) c) see that justice and peace prevail. It supports conflict prevention”²⁴.

VIII. Institute a cooperative dialogue between the people and all their institutions.

To this end, grant to the people an extensive right of participation, by:

- a. Grant a systematic right of referendum on constitutional changes.**
- b. Grant, if called for by enough citizens, a right of referendum for all adopted laws and treaties.**
- c. Consult all stakeholders before adopting new laws.**
- d. Regularly consult the population regarding planning.**
- e. Consult owners when affected by constructions.**
- f. Establish a prospective and evaluation²⁵ body in the system of government²⁵.**

To give to the people a sentiment of ownership and inclusivity, as well as possibilities to instill progresses of peace, proposed by the General Assembly’s declaration on the right to peace

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endorsed by Nepal:

IX. Inscribe the right to peace in the constitution.

To assure that the progress of peace is made through all generations, existing and upcoming, and through all spheres of society:

X. Teach peace and non-violent methods at all levels and stages of the curricula, as prescribed by SDG 4.7.

To assure prevention and avoid aggravation of conflicts:

XI. Guarantee to all the people a right of access to peaceful settlements of disputes.

XII. Provide widely available training and salary for mediators.

XIII. Create a nationwide and local complete coverage with peace zones and local peaceful settlements of dispute institutions.

XIV. Assure that all decisions taken by these institutions as well as by the judiciary contain recommendations for non-recurrence, addressed to all organs of society and concerned persons.

To prevent violence:

XV. As violence prevention is a State duty, inscribe violence prevention in the constitution (and as seen above, reinforce violence prevention mechanisms).

XVI. Progressively reduce the scale of the military and its budget.

We salute the fact that Nepal is the Fourth country providing the greatest number of peacekeeping personnel to the United Nations peace operations. However, we do hope to see as well, progress there towards more sustaining peace and less armed conflict.

We congratulate Nepal for the presence of human security in the constitution among State Policies (§ 51).

Until we – Humanity! – reach a sufficient degree of peace, use of force must, if ever needed, be refrained (or learn to be) non-violent, non-maiming and most of all nonkilling! If force is used, it must be used in a humane and exemplary way²⁶.

XVII. Train police officers to use non-violent force and equip them with non lethal weapons only.

XVIII. Grant police officers, when brought to circumstance in which they may commit human rights violations, with a right of conscientious objection.

As even in most democratic States, judiciary control over police activities has too often proven insufficient,

XIX. Create an independent body, exerting full control over any official use of force, drawing lessons learned and implementing best practices. This institution shall include victims, citizens and civil society representatives.

To finance peace:

XX. Recognize a right of conscientious objection to paying taxes for the military budget.

XXI. Create a mechanism allowing people who do not want to pay for war, war personnel and war means to reallocate their public contributions to non-violent state

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activities, or

XXII. Create a peace fund exclusively dedicated nonkilling and non-violent, non-aggravating peacebuilding.

The international peace constitution

For the well-being and the safety of its entire people and of the world; for the progress of peace, non-violence and nonkilling worldwide, for the fulfillment of SDG16 and the end of the scourge of war, we recommend to Nepal:

XXIII. Accepting the reciprocal automatic jurisdiction of the International Court of Justice²⁷.

XXIV. We also recommend the ratification of the following peace and disarmament treaties and conventions:

The optional protocols of the 1949 Geneva Conventions.

The Rome Statute of the International Criminal Court and the Kampala amendment.

The three Hague conventions on the protection of cultural property.

The Enmod convention on the prohibition of military or any other hostile use of environmental modification techniques.

The convention on conventional weapons and its protocols.

The Mine and Cluster Munitions Ban conventions.

The arms trade treaty.

The treaty on the Prohibition of Nuclear Weapons.

There is or was in Nepal a “peace and reconciliation ministry”²⁸.

In its voluntary national review of the SDG’s, Nepal wrote: “Though Nepal has made significant efforts towards creating a peaceful, inclusive and just society, it needs to fast track progress in all the areas under Goal 16 as a cross-cutting issue in order to realize the 2030 Agenda”.

We hope we made useful suggestions.

*Welcoming the delegation of Nepal to Geneva,
we wish to them and to all the people of the country
a constructive, enhancing and fulfilling
Universal Periodic Review.*

*May peace bring us happiness,
Sustain our future,
And give full dignity
To our institutions and our civilization,
To the people of the world and of
Nepal.*

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¹ <http://nonkilling.org/center/publications-media/books-translations>

² <https://nonkilling.org/center/book-review/ahinsatmak-rainaitik-vigyan-nepali>

³ The Human Rights Committee, in its general comment 36 on the right to life describes it this way: “It is the supreme right from which no derogation is permitted (...). The right to life has profound importance both for individuals and for society as a whole. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right whose effective protection is the prerequisite for the enjoyment of all other human rights (...)”.

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

⁴ The constitution of the Swiss local State of the Canton of Geneva states it clearly (§ 184.3.): “Conflictive situations are treated in priority so as to rule out, or limit the use of force. Concerned persons have a duty to concur”. Unofficial translation from French.

<https://www.admin.ch/opc/fr/classified-compilation/20132788/index.html#a184>

⁵ See i.e. the 9th meeting of the 34th session of the Human Rights Council.

⁶ See 3rd meeting of the 34th session of the Human Rights Council on mainstreaming human rights on the contribution of human rights to peacebuilding, but also resolutions 2250 on youth and peace of the Security Council, the common resolution of the General Assembly and the Security Council (2282) on Sustaining peace. Or the 13th of June 2016 appeal by Switzerland and 70 States, <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-62152.html>.

And the United Nations General Assembly’s Declaration on the Right to Peace A/RES/71/189, link here after.

⁷ <http://www.undocs.org/A/RES/71/189>

⁸ They are possibilities described here: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/31

We add peaceful settlement of disputes for internal disputes as for international ones.

⁹ <https://wri-irg.org/en/story/2017/nepal-ex-maoist-child-soldiers-padlock-party-office-kathmandu>

¹⁰ https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/42/40, p. 12.

¹¹ Idem, § 31, p. 5.

¹² Idem, § 57, 78-80, p. 15 and 18.

¹³ Personal interview with Bishnu Phatak, former/replaced member of the Commission of investigation on Enforced disappearances in Nepal, 25th March 2020.

¹⁴ A strong measure that will prevent the occurrence of enforced disappearances will be to include in law, in the criminal code or the criminal procedure code a disposition by which any person arrested has the right to make his arrest know, within 48 hours of his arrest, to a person or an institution of his choice or one designed therefore. A public roster of arrested persons shall be available to persons making a legitimate demand and prolongation of the 48 hours delay may only be authorized, for investigative purposes, for a very short time and non-renewable period.

¹⁵ <https://dataunodc.un.org/content/data/homicide/homicide-rate>

¹⁶ Significantly reduce all forms of violence and related death rates everywhere.

¹⁷ <https://apps.who.int/violence-info/country/NP>

¹⁸ https://apps.who.int/iris/bitstream/handle/10665/131056/9789241564878_eng.pdf p.128

¹⁹ https://www.who.int/gho/mental_health/suicide_rates/en/

²⁰ <https://kathmandupost.com/health/2019/08/22/suicide-is-a-big-problem-in-nepal-but-not-many-are-talking-about-mental-health>

²¹ https://www.researchgate.net/publication/316014722_Suicide_burden_and_prevention_in_Nepal_The_need_for_a_national_strategy

²² https://www.who.int/violence_injury_prevention/road_safety_status/2018/Table_A2_Road_Traffic_Deaths.pdf?ua=1

²³ World Bank: “Delivering road safety in Nepal”, 2020:

<https://openknowledge.worldbank.org/bitstream/handle/10986/33340/ROAD%20SAFETY%20IN%20NEPAL.pdf?sequence=1&isAllowed=y>

²⁴ <https://www.admin.ch/opc/fr/classified-compilation/20030172/index.html#a6>. Our translation from French.

²⁵ It his is not in the role of the national planning commission: <https://www.npc.gov.np/en>

²⁶ See foot note 4°.

²⁷ <https://www.icj-cij.org/en/declarations>

²⁸ [https://en.wikipedia.org/wiki/Ministry_of_Peace_and_Reconstruction_\(Nepal\)](https://en.wikipedia.org/wiki/Ministry_of_Peace_and_Reconstruction_(Nepal))