

**Mandates of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on violence against women and girls, its causes and consequences**

Ref.: AL NPL 1/2023  
(Please use this reference in your reply)

9 June 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on violence against women and girls, its causes and consequences, pursuant to Human Rights Council resolutions 45/10, 45/3, 44/5 and 50/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning the Bill for the Amendment of the Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation 2071 (2014), submitted to Parliament on 19 March 2023, which appears to be inconsistent with Nepal's obligations to investigate the human rights violations committed during the 1996-2006 internal armed conflict.**

We would like to recall previous communications from Special Procedures concerning the Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation 2071 (2014), its implementation and related issues. In particular, we would like to recall AL NPL 1/2020, of 16 March 2020, concerning the reported lack of effective consultation with victims regarding the amendment of the Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation 2071 (2014). In addition, we would like to recall OL NPL 1/2019, of 12 April 2019, concerning the reported lack of impartiality and transparency in the procedure for the appointment of the members of the Truth and Reconciliation Commission (TRC) and the Commission on the Investigation of Enforced Disappearance (CIEDP); the reported lack of progress in the work undertaken by both commissions; and the possible amendment of the Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation 2071 (2014). We would further like to recall OL NPL 4/2017 of 27 July 2017, which expressed concern about the shortcomings of the Nepal Act on the Commission on Investigation of Disappeared Persons (CIEPD), Truth and Reconciliation 2071 (2014), and the lack of significant progress in the work of the TRC and the CIEDP. In addition, we would like to recall JAL NPL 2/2014, of 3 July 2014, which called on the Government to amend several provisions of the Act to put it in conformity with international standards, in particular those relating to the Truth and Reconciliation Commission's competence to recommend amnesties for perpetrators including for gross violations of human rights and serious violations of international humanitarian law.

We thank your Excellency's Government for the replies of 15 June 2020, 7 June 2019, and 12 December 2014 and encourage you to respond substantially to the remaining communication.

According to the new information received:

On 15 July 2022, the Government of Nepal registered a Bill to amend the Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation 2071 (2014). Although the Government carried out consultations with victims and civil society during the drafting process, these stakeholders questioned the lack of inclusion of some of their views in the Bill presented to Parliament. In September 2022, the Parliament was dissolved ahead of elections and the Bill therefore expired.

On 19 March 2023, the Government registered a new draft amendment Bill in Parliament which retained similarities with the one registered in 2022 and reportedly did not sufficiently include some of the views of victims and civil society that had been articulated in 2022. A consultation with victims and civil society is reportedly being planned by the Government.

The amendment Bill introduces some positive elements to the Act, as it mandates the Truth and Reconciliation Commission (TRC) to undertake its functions “transparently in a victim-centric, gender-friendly and disabled-friendly manner”, to study the root causes and impact of the conflict, and to recommend institutional reforms to prevent the recurrence of violations. In addition, it guarantees victims’ right to reparation, psychosocial counselling, interim relief, compensation and rehabilitation, and makes this non-contingent to the identification of the perpetrator, the attainment of reconciliation, or the recommendation of pardon or prosecution of the perpetrator. Furthermore, it guarantees the right of the families of disappeared persons to their relative’s property; it prioritizes victims of rape, sexual violence and torture in access to reparation; and allows appeals against decisions of the Special Court.

However, many elements of the amendment have raised the concern of victims and civil society and appear to be incompatible with international standards, as detailed below.

#### *Categorization of serious human rights violations*

The Bill introduces a two-pronged categorization of violations of human rights to be considered by the transitional justice mechanisms, which appears to be inconsistent with the classification of such violations under international standards: According to article 2 (4) of the Bill, “human rights violations” comprise the following crimes: murder; sexual violence; physical or psychosocial torture; abduction or hostage taking; unlawful detention; assault, dismembering or making disabled; looting, seizing vandalizing or arson of private or public property; forceful eviction or displacement; and other inhumane acts against human rights and humanitarian law committed against unarmed civilians or the communities in a widespread and targeted manner. Many of the crimes included in this category would constitute serious human rights violations under international law.

According to article 2 (5) of the Bill, “serious human rights violations” comprise the following crimes: murder with cruelty or torture or inhuman conduct; rape; enforced disappearance; and inhuman or cruel torture committed against unarmed civilians or the communities in a widespread and

targeted manner. This list does not encompass all serious human rights violations defined in international law.

#### *Crimes against humanity*

The Bill removes “crimes against humanity” from the list of serious human rights violation formerly contained in article 2(j)(9) of the 2014 Act, although acts committed during the conflict may amount to this category of crimes. The Bill does not include crimes against humanity under the jurisdiction of the TRC or the Special Court. These crimes are not codified under the applicable Nepalese criminal legislation either.

#### *Amnesty provisions and reduction of sentences*

According to the Bill, crimes that fall under the category of “human rights violations” can be subject of amnesty, while crimes comprised in the category of “serious human rights violations” cannot be subject of amnesties. Serious human rights violations under international law which are listed as “human rights violations” in the amendment Bill would therefore be subject of amnesty. Article 15 (5a), grants mandate to the TRC to recommend amnesties. Articles 18 and 19 (1) of the Bill establish that alleged perpetrators of serious human rights violations will be prosecuted by the public prosecutors of the Attorney General's Office on the recommendation of the TRC and tried in the Special Court.

Articles 15 (4) (5) (7) and 29 (c) of the Bill require those receiving amnesty to fulfill certain conditions such as disclosure of truth, requiring perpetrators to apologize to victims, making perpetrators pay compensation to victims, etc. In addition, article 15(5) establishes that “the Commission (...) shall make a recommendation for amnesty on victim's free consent and also considering the harm suffered by the victim as well as the statement made by the perpetrator in the Commission”. However, the Bill does not clarify what happens when victims do not give consent for amnesty or when perpetrators fail to fulfill the aforementioned conditions for the granting of amnesties, as there are no legal provisions to prosecute human rights violations which were not amnestied. This gap in the legislation could lead to the non-prosecution of such cases, and therefore to de facto amnesties. The Bill does not foresee a recourse for victims to appeal against an amnesty recommendation or decision by the TRC.

The Bill mandates that the Special Court “should” mitigate sentences by considering the context of violations, the context of transitional justice, and other conditions such as the disclosure of truth. The language used in the Bill, in particular the wording “should”, appears to limit the Special Court’s discretion on the matter and to oblige it to mitigate sentences.

#### *Retroactive applicability of the law and statutes of limitations*

The Bill states that the sentencing will be done as per “existing law”. However, the Bill fails to clarify which existing law would be used to prosecute those involved in serious human rights violations in a context where the Penal Code that came into force in 2018 prevents retroactive applicability of its provisions and includes time limitations for the reporting of crimes of

rape, torture and enforced disappearances. For the crime of rape, time limitation is established at 2 years for an adult and 3 years for a minor.

*Time frame, mandate and independence of transitional justice institutions*

Under the current Bill, the TRC and the Commission of Investigation on Enforced Disappeared Persons (CIEDP) will have two years to complete their work, including collecting evidence of “serious violations of human rights” that must be tried in the Special Court. The two commissions, which were established in 2015, have received over 60,000 complaints concerning human rights violations and violations of international humanitarian law, but have failed to complete any investigation. The time frame for the completion of the work of the commissions appears to be short for the volume of work required.

In addition, the Bill fails to afford special investigative capacities or resources to the Commission to enable it to undertake specialized investigations and gather evidence for future criminal accountability, and fails to provide mandate to Attorney General’s Office to conduct additional investigations to that received from the TRC if needed.

Article 19 of the Bill empowers the Government to appoint High Court judges to the Special Court, “in consultation” with the Judicial Council. This contrasts with the requirements of Nepal’s Constitution that High Court judges be appointed by the Chief Justice on the recommendation of the Judicial Council.<sup>1</sup> The Bill also establishes a three-member special bench in the Supreme Court to hear appeals against the Special Court’s decision.

While we do not wish to prejudge the accuracy of these allegations, we take note of the efforts made by the Government to amend the Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation 2071 (2014) through a new bill submitted to Parliament on 19 March 2023. While we welcome some positive aspects introduced by the Bill, such as mandating the TRC to examine the root causes of the conflict and recommending institutional reform, as well as guaranteeing victims’ right to reparation and the rights of families of disappeared persons to their relatives’ property, we express serious concern that in its current form the Bill prevents the criminal investigation and punishment of human rights violations related to the 1996-2006 internal armed conflict, including certain crimes which constitute serious human rights violations under international law.

In this connection, we note with alarm that the Bill excludes from its current definition of “serious human rights violations” many acts that may amount to gross violations of human rights, war crimes and crimes against humanity and would therefore not be examined by the TRC or subject to prosecution by the Special Court. Moreover, the framing of serious human rights violations as having to have been committed “in a targeted or planned manner against an unarmed person or community” excludes from consideration by the Commission a range of human rights violations which constitute crimes under international law regardless of whether they were carried out in the aforementioned manner (such as murder, torture, rape and enforced disappearance). The Bill also excludes from the categorization of victims of

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<sup>1</sup> Constitution of Nepal, Article 140 (1).

rape, individuals that are members of armed entities, including those have been forcefully recruited into such groups, and who may have been subjected to rape or other forms of sexual violence.

In addition, by reducing the scope of crimes considered as “serious human rights violations” to only four, the Bill enlarges the list of violations susceptible to amnesties, including numerous crimes that are not subject to amnesty under international law. Indeed, the bill in its current form provides amnesties for murder; sexual violence not amounting to rape; beating and mutilation; abduction; arson; forced displacement; illegal detention; and “any inhuman acts that are against international human rights and humanitarian law”. As a result, perpetrators of serious human rights violations contained in this category would enjoy *de jure* amnesty from prosecution. We note with concern that by introducing a new categorization preventing investigation and adjudication of some crimes that amount to serious human rights violations, the Bill would place Nepal in contravention of its international human rights obligation to investigate and punish serious human rights violations, as well as the ruling of the Supreme Court of Nepal of 2015. We recall that in this decision, the Court struck down several articles of the 2014 law, in particular because they empowered the TRC and the CIEDP to grant amnesties to perpetrators of serious crimes under international law.

We express further concern that the Bill does not include crimes against humanity under the jurisdiction of the TRC or the Special Court and that many violations listed in the Bill as “human rights violations” may indeed amount to crimes against humanity. This could therefore lead to a concerning impunity gap for the most serious crimes committed during the conflict.

Moreover, we note with concern that the Bill provides for the possibility of reducing the sentence of perpetrators of serious human rights violations and appears to mandate the Special Court to mitigate sentences, rather than granting it discretion to decide on the matter, in what would amount to an impairment of the independence of the Court. We recall that international law establishes the obligation to guarantee the independence and impartiality of the judiciary and imposes limits on the use of benefits such as commutation of sentences in respect of serious human rights violations, as they are incompatible with the obligation to prosecute crimes under international law.

Furthermore, we note with concern that the Bill fails to clarify the non-applicability of statutory limitations to crimes under international law and gross human rights violations. Considering the provisions of the Penal Code, which prevent its retroactive application, including *vis-à-vis* continuous crimes such as enforced disappearance, the silence of the Bill could lead to contraventions of international law, which requires that certain serious human rights violations, such as torture and enforced disappearance, are prosecuted irrespective of whether they were crimes under domestic law when they were committed. In addition, considering the very short statutory limitation foreseen under the Code for the crime of rape (2 years for an adult and 3 years for a minor), such silence could have the practical consequence of preventing any victims to come forward and does not facilitate the prosecution of crimes, including those of sexual violence, to effectively take place, furthering the feeling that wide impunity for such acts exist.

We are further concerned at the apparent lack of recourse available to victims to appeal against an amnesty decision by the TRC. We recall in this regard that the Supreme Court of Nepal has ruled in 2015 that there can never be any amnesty without the consent of the victim.

In addition, we restate our concern at the reported lack of consultation up until this point with victims and civil society concerning the content of the Bill currently before Parliament, and at the failure to introduce some of the views articulated by them in July 2022 therein. In this connection, we recall the requirements under international law to meaningfully consult victims and affected communities on decisions that affect them and to ensure their effective participation in the design and implementation of transitional justice measures. We take note of the Government's reported plan to consult with victims and civil society and hope that the Parliamentary process will provide an opportunity to take their remaining views duly into consideration.

We welcome the adoption of appeal mechanisms against decisions of the Special Court, however we express concern that the prerogatives granted to the Government in the process of appointment of Special Court judges appear to curtail the guarantees of independence and impartiality necessary in the appointment of members of the judiciary. We note in this regard that the new procedure appears to contravene international standards on independence of the judiciary as well as the Constitution of Nepal which requires that members of High Court are appointed by the Chief Justice on the recommendation of the Judicial Council. In addition, we note with concern the limited investigative mandates granted to the Attorney General's Office to investigate cases of serious human rights violations received from the TRC and the insufficient investigative resources and capacities afforded to the TRC to conduct specialized investigations for future criminal prosecution. We recall that international human rights standards requires that transitional justice mechanisms are established through procedures that guarantee their independence, impartiality and competence.

We underscore that the shortcomings of the Bill should be addressed prior to approval by Parliament and entry into force. We regret that the amendments of the Bill, seemingly at odds with international standards, were introduced against the backdrop of a high number of outstanding cases registered by the Working Group on Enforced or Involuntary Disappearances, totalling 480 cases (including 60 females) at the time of writing. We recall that States have an obligation to investigate and punish serious human rights violations and that impunity for such violations can be an important element contributing to the recurrence of violations.

Within the framework of our respective mandates as independent experts of the UN Human Rights Council, we take this opportunity to express our readiness to provide technical assistance to the relevant authorities in Nepal to help ensure that the text of the Bill is fully in compliance with international human rights obligations. We offer our observations herewith in the spirit of cooperation towards that aim.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the information provided.
2. Please indicate how the TRC Act Amendment Bill introduced in Parliament on 19 March 2023 complies with international norms and standards in the field of truth, justice, reparation and guarantees of non-recurrence, as described in this letter.
3. Please provide information about the measures taken to ensure a transparent and inclusive consultative process with victims and civil society at all stages of the design and implementation of transitional justice measure, and in particular during the drafting of the amendment Bill presented to Parliament in March 2023. Please provide information on how the views received from victims and civil in July 2022 were given due consideration and included in the current Bill.
4. Please inform which measures were adopted to ensure that the full range of human rights violations and abuses committed in the context of the armed conflict can be examined by the transitional justice mechanisms and how the categorization of human rights violations and of serious human rights violations in the Bill are in line with international standards on the matter. Please further inform how the categorization of human rights violations susceptible to amnesties is in line with international standards on the subject.
5. Please provide information about the measures taken to ensure the independence, impartiality and competence of the mechanisms involved in the process of transitional justice including the TRC, the CIEDP, the Special Court, and the Attorney General's Office, in compliance with international standards on the matter.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

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## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, and without prejudice to the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards.

We would like to recall article 2 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Nepal on 14 May 1991, according to which States must ensure that any person whose rights were violated shall have an effective remedy, and that the competent authorities enforce such remedies when granted.

In this regard, we would like to refer to the obligation to investigate and punish human rights violations and to combat impunity for such crimes, pursuant to article 2 of the ICCPR. In its general comment No. 31 (on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant), the Human Rights Committee ruled that, pursuant to article 2, States have an obligation to investigate and bring to justice perpetrators of serious human rights violations that constitute international crimes, including summary or arbitrary killings, torture and other cruel, inhuman or degrading treatment, and enforced disappearances. It also established that failure to investigate and to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the ICCPR (paragraph 18). In this regard, the crimes at stake, including extra-judicial killings, torture, rape, and enforced disappearance, entail potential violations of articles 6, 7, 9, 10 and 16, read alone and in conjunction with article 2.3, of the ICCPR. In this context, in its general comment No. 36 on the right to life, the Committee noted that the extreme forms of arbitrary detention that are themselves life threatening, in particular enforced disappearances, violate the right to personal liberty and personal security and are incompatible with the right to life. Moreover, enforced disappearance constitute an integrated series of acts and omissions representing a grave threat to life. The deprivation of liberty, followed by a refusal to acknowledge that deprivation of liberty or by concealment of the fate of the disappeared person, in effect removes that person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable (CCPR/C/GC/36 paras. 57-58).

In addition, the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, urges States to “undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and to ensure that those responsible for serious crimes under international law are prosecuted, tried and duly punished” (principle 19). Likewise, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by General Assembly resolution 60/147 establish that “in cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him (principle 4).

Moreover, the 1992 United Nations Declaration on the Protection of All Persons from Enforced Disappearances<sup>2</sup> which establishes that “all acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness (article 4), no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance (article 6). Furthermore, no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7), and the right to a prompt and effective judicial remedy must be guaranteed as a means of determining the whereabouts or state of health of persons deprived of their liberty and identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances (article 9).

The Declaration further sets out the necessary protection relating to the rights to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons (articles 10 and 12). It further stipulates that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority (article 13). The Declaration also establishes that States should take any lawful and appropriate action to bring to justice persons presumed to be responsible for acts of enforced disappearance (article 14), and that the persons responsible for these acts shall be tried only by ordinary courts and not by other special tribunal, notably military courts (article 16); not benefit from any amnesty law (article 18); and the victims or family relatives have the right to obtain redress, including adequate compensation (article 19).

In addition, in its study on standards and public policies for an effective investigation of enforced disappearances (A/HRC/39/46), the Working Group further reiterated that the 1992 Declaration prohibits amnesties or similar measures that might benefit persons who have or are alleged to have committed enforced disappearances (para. 59). In this regard, investigations related to enforced disappearance should be carried out until the fate of the disappeared is clarified and that this should be done within a reasonable time frame (para. 61). It also highlighted the importance for enforced disappearances to be criminalized as an autonomous crime as it allows the investigative authorities to understand the specific nature of the crime and the different investigative skills required, which are different from other crimes usually associated with enforced disappearances (para. 68).

Regarding the amnesty provisions under the amended Bill, we would like to recall that international law sets limits to the adoption of amnesties insofar as they foster impunity and prevent States from complying with their international obligations to investigate and prosecute those responsible for human rights violations. Amnesties are particularly incompatible with crimes that represent serious human rights violations. International law impedes the use of amnesties for offences that reach the threshold of crimes against humanity, as well as for crimes under international law and gross human rights violations even if owing to their scale and context they do not

<sup>2</sup> [Declaration on the Protection of all Persons from Enforced Disappearance](#)

amount to crimes against humanity. In this regard, in its general comment No. 31 the Human Rights Committee established that in cases where violations such as torture, summary and arbitrary deprivations of life and enforced disappearances have been committed by a public official or State agent, the States concerned may not exempt the perpetrators from their personal legal responsibility through amnesties and prior legal immunities and indemnities (paragraph 18). In general comment No. 36, the Committee held that “Immunities and amnesties provided to perpetrators of intentional killings and to their superiors, and comparable measures leading to *de facto* or *de jure* impunity, are, as a rule, incompatible with the duty to respect and ensure the right to life, and to provide victims with an effective remedy” (paragraph 27). In its 2011 follow-up report to its official visit to Nepal, the Working Group on Enforced or Involuntary Disappearances regretted that the legislation in place allowed for the application of general amnesties for perpetrators of serious violations of international human rights and humanitarian law, including enforced disappearances. The Working Group also lamented that the measures undertaken by the authorities of Nepal to bring justice for victims had been inadequate (A/HRC/19/58/Add.4 p. 96).

With regard to measures of leniency provided in the Bill, we recall that the reduction of sentences based on common criminal law principles and procedural rules ignores the special gravity of crimes against humanity and international crimes. The international community recognizes the need to restrict the use of certain rules of law, such as procedural benefits, in order to combat impunity and prevent these rules from becoming an obstacle to justice for such violations (E/CN.4/Sub.2/1997/20/Rev.1). The Updated Set of Principles reaffirms the obligation of States to take appropriate measures in respect of perpetrators of human rights violations (principle 1) and sets out restrictions on clemency measures and amnesties (principle 24). The provision of such benefits could involve hidden forms of impunity that contravene international human rights obligations. The Committee against Torture has also considered that the imposition of less severe penalties is incompatible with States' obligations. (CAT/C/34/D/212/2002 (2005), párr. 6.7). The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence has noted that dispensations or reduction of sentence (including sentence reductions, conditional release and early release) for persons convicted of crimes against humanity should never, under any circumstance, be greater than those granted to persons convicted of ordinary offences and should be in accordance with the criteria established in the Rome Statute for the reduction of sentences for the offences specified therein (A/HRC/48/60, paragraph 97.e). We recall that the Rome Statute establishes a standard according to which a sentence may be reduced if the convicted person continuously cooperates with the investigation, provided that a certain proportion of the sentence has been served, which on average is two thirds of the sentence or 25 years of imprisonment in the case of life imprisonment (art. 110). We further regret that the commitment by the Nepalese authorities during the Universal Periodic Review process to lay the legal and institutional groundwork for the ratification of the Rome Statute, the two 1979 Additional Protocols supplementing the Geneva Conventions of 1949 and the International Convention for the Protection of All Persons Against Enforced Disappearance (ICPPED) remain unfulfilled (A/HRC/47/10/Add.1 paras. 14-16).

Moreover, we recall that the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law determine that

“statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.” (principle 6).

Furthermore, we recall that the Guiding Principles for the Search for the Disappeared<sup>3</sup> of the Committee on Enforced Disappearances establish that the search for the disappeared should be undertaken with the assumption that the person is alive (principle 1); should respect the right to participation of the family of the disappeared (principle 5); and the search should be considered a continuing obligation (principle 7). In addition to the international human rights and humanitarian obligations set out in common article 3 of the 1949 Geneva Conventions, its two Additional Protocols require parties to the armed conflict to conduct search operations for the disappeared from the opposing side. Similarly, the 1992 United Nations Declaration for the Protection of All Persons Against Enforced Disappearances requires official investigations to continue until the fate and whereabouts of the disappeared person are established (article 13.6).

We further recall that in its Concluding Observations on Nepal (CEDAW/C/NPL/CO/6) of 1998, the CEDAW Committee expressed its concern about the increasing rates of violence against women, the delay in the national strategy and action plan and the lack of concrete measures to prevent sexual violence, including rape. Furthermore, the UN Special Rapporteur on violence against women, in her report on rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls and its prevention (A/HRC/47/26) reminds States of their primary responsibility to effectively and with due diligence prevent, criminalize and prosecute rape in accordance with international legal standards which are applicable both in peacetime and during conflict. She recommended States to incorporate international human rights standards on rape into their national laws on the criminalization and prosecution of rape. In particular, she noted that prosecution should be pursued ex-officio, and statutes of limitation should be abolished for rape in times of peace or conflict.

Concerning the need to ensure effective participation of victims, we would like to recall that the Updated Set of Principles for the protection and promotion of human rights through action to combat impunity emphasize the meaningful role of victims and other sectors of civil society in transitional justice processes and the importance of undertaking wide public consultations with them (principles 6, 32 and 35). Human Rights Council resolution 12/11 stresses the importance of a comprehensive process of national consultation, particularly with those affected by human rights violations, in contributing to a holistic transitional justice strategy that takes into account the particular circumstances of every situation and is in conformity with human rights (operative paragraphs 5 and 12).

Furthermore, we would like to recall the right of victims of human rights violations to receive full reparation for the harm suffered. The Updated Set of Principles (articles 31-34) recall the duty of States to make reparation to victims. Similarly, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law establish the right of victims to receive adequate, effective and prompt reparation for the harm suffered, and to have access to relevant information on reparation mechanisms. Reparation should be

<sup>3</sup> [Guiding principles for the search for disappeared persons | OHCHR](#)

proportional to the gravity of the violations and the harm suffered. Victims should be provided with full and effective reparation, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (paragraphs 10, 11, 15, and 18).