

Proposal regarding Amendments in the Bill Providing for the Act of Disappearing a Person

Title	Provision in the Bill	Amendment Proposed	Reason for the Amendment
Definition	In Section 2(a) of the proposed bill, only ‘act of disappearance by force’ is defined.	<p>In the Section 2(b), after 2 (a) of the proposed bill, definition of the ‘enforced disappearance as crime against humanity’ is to be included in the following manner:</p> <p>In case the acts pursuant to Section 2 (a)(1) and (2) is part of the widespread or systematic attack targeted against civilian population, it shall denote ‘enforced disappearance crime against humanity’</p>	Under international law, specific legal condition is necessary for any act to become crime against humanity which equally applies in Nepal also. Therefore it is necessary to define ‘Enforced Disappearance Crime against Humanity’ along with ‘enforced disappearance’
Punishment	<p>Section 6(1) of the proposed bill:</p> <p>(1) The person, who commits the offence pursuant to this Act, shall be subjected to the following punishment:</p> <p>(a) If anyone, disappears a person; the principal offender shall be subjected, taking into consideration the period and condition of disappearance, to an</p>	<p>Section 6(1) of the proposed bill has to amended in the following manner:</p> <p>The person, who commits the offence pursuant to this Act, shall be subjected to the following punishment:</p> <p>(a) If anyone, disappears a person; the principal offender shall be subjected, taking into consideration the period and condition of disappearance, to an</p>	It is an essential element of the justice system based on rule of law that the punishment for the offence should be proportional. When disappearance is carried out under systematic policy, it becomes heinous crime. Therefore Section (7) of the Convention against Enforced Disappearance has provided that the punishment should address the ‘extreme

	imprisonment of up to seven years and a fine of up to half a million rupees.	imprisonment of <u>three to fifteen years</u> and a fine of up to <u>a million rupees</u> . Person committing a crime against humanity shall be liable for life-imprisonment.	seriousness of the enforced disappearance’.
<i>Limitation</i>	<p>Section 26 of the proposed bill is to be amended</p> <p>(1) The complaints shall have to be lodged within six months from the date a person is known to have disappeared, or the disappeared person becomes public.</p> <p>(2) Notwithstanding anything contained in Sub-Clause (1), the complaints shall have to be lodged within six months of promulgation of this Act for those disappeared persons who were made disappeared before the commencement of this Act.</p> <p>(3) Notwithstanding anything contained in Sub-Clause (2), the statute of limitation for</p>	<p>Section 26 of the proposed bill has to be amended in the following manner</p> <p>“There shall be no limitation for the offence of disappearance. Provided that, regarding the lodging of complaint in the Commission, complaint or information may be submitted to the commission under the procedure prescribed by the commission until the commission functions.”</p>	<p>It is inherent characteristic of the act of enforced disappearance that the violation continues until the fate of the victim or the case of the disappearance is unresolved.</p> <p>Section (8) of the Convention against enforced disappearance clearly stated the continuous nature of the offence of disappearance. In its decision of 1 June 2008 the Supreme Court has stated that ‘provision on continuous search of the disappeared person is necessary until the fate of such person is resolved’. Nonetheless the fate of the disappeared is resolved, Section (8)(1)(a) of the convention states that the limitation is to be of long duration and proportionate to the extreme</p>

	bringing the complaints for the matters relating to the investigation to be carried out by the Commission shall be as prescribed by the Commission.		seriousness of this offence.
<i>Regarding the Constitution of Disappearance Commission</i>			
Process of Constitution of the Commission	The Recommendation Committee pursuant to Section 10(4)(3) shall, while recommending for the appointment of the Chairperson and Members of the Commission, make recommendations from among human rights activists, psychologists, legal experts, forensic experts, experts on conflict issues, sociologists or persons involved in peace process having the experience of at least ten years and thereby have gained recognized competence in the related field, including at least one woman.	New provision Sub-Section 5 has to be included in the following manner after Section 10(4) Prior to the recommendation pursuant to Sub-section (4), Recommendation committee shall have to determine the public selection process for the members of the Commission.	Section 10 of the proposed bill has provided for the basis of selection of commissioners but not the process. According to the international principles and practices the process of selection of the members of the commission is to be public and transparent. In South Africa, the ‘Selection Committee’ called on public to recommend names for the members of the commission and selected 40 members from hundreds of recommendations interviewing through public television. In East Timor, consultation was carried out in the coordination of the representative ‘Selection

			Committee' comprising civil society and victims to select the members of the commission
Resources and Expenditure of the Commission	<p>Section 14 of the Proposed Bill</p> <p>The Government of Nepal shall make arrangements for infrastructural resources, means and expenses required for the Commission.</p>	<p>Following provision should be added after Section 14 providing 'the government of Nepal shall make arrangement'.</p> <p>“The government shall provide prescribed resources within three months of the establishment of the Commission. The Commission may obtain financial, material, intellectual and technical support from different donors as per its necessity and the Commission shall have to submit its financial report along with annual report to the parliament.”</p>	Resources are necessary to carry out the functions mandated to the commission on time. In addition, parliamentary monitoring plays important role for the financial transparency also.
Relation between Disappearance Commission and Truth and Reconciliation Commission	<p>Section 38(2) of the proposed Bill</p> <p>No Commission shall be formed again later for carrying out the investigations on the matters relating to disappearances once such Commission is formed.</p>	<p>Following provision should be added after the provision of Section 38 (2) that no commission shall be formed again latter.</p> <p>“Provided that this provision shall not deemed to obstruct exchange of cooperation by exchanging information and factual documentation in the context of investigation</p>	Coordination between both commissions is essential as both the commissions are constituted in the context of conflict transformation in the Nepal to forward the peace process to a conclusion.

		<p>of violation of human rights and humanitarian laws between Disappearance Commission constituted pursuant to prevailing laws and Commission constituted pursuant to Truth and Reconciliation Commission Act.”</p>	<p>During the conflict, often same person or victim family likely to suffer more than one incidents of violation. Therefore, this provision is necessary to ensure that in future same person is not compelled to face two different commissions and, to make the transitional justice victim-oriented.</p>
<i>Function, duty and right of the commission</i>			
	<p>Section 17 (5) of the proposed bill is to be amended and extended If the Commission is convinced to the fact that a disappeared person has already been killed and the dead body has been buried in a particular place, the Commission may ascertain the reality by carrying out the exhumation of such places,</p>	<p>Section 17(5) is to be amended by replacing ‘may ascertain the reality’ with ‘shall ascertain the reality’, and following provision to be added.</p> <p>“The Commission shall make necessary arrangement for finding out burial places of disappeared persons, carrying out systematic exhumation and investigation thereof. During this process, approval of the victim shall have to be obtained prior the exhumation, during the exhumation, as well as after the exhumation.”</p>	<p>Exhumation is one of the important tasks of the Commission which contributes to find out the truth. Provision regarding systematic exhumation is necessary as the dead body itself is an important evidence and its protection is necessary and to find out the identification of dead body as well. Further, right of the relatives of the disappeared person over the dead body is to be considered.</p>

<p>Protection of the witnesses and other persons</p>	<p>Sub-section is to be introduced in the Section 19 of the Proposed Bill</p>	<p>Sub-section (7) is to included in the Section 19</p> <p>Following provision to be included:</p> <p>The Commission shall make special provision for witness protection to support and protect every person and witness inquired by the commission in the context of matters within the scope of the commission.</p>	<p>It is essential to generate trust in witnesses that the commission is able to fully ensure the protection of witnesses and victims to create environment where victims can provide their statements and that the Commission can protect against the probable harms likely to cause by those statements.</p> <p>Enactment of separate witness protection law can be the most appropriate approach. However even the Disappearance Commission Act can authenticate the witness protection program. There are examples of different other countries where laws providing for Truth and Reconciliation Commission included the witness protection program. For Example, there was no witness protection program in South Africa when Truth and Reconciliation Commission law enacted. However, Truth and Reconciliation Commission law</p>
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Regarding recommendation for reparation	<p>In addition to what has been mentioned in the Section 2(c) and Section 22 (1), the Commission, if it deems appropriate, shall recommend to the Government of Nepal for providing the following facilities or concessions, as the case may be, in lieu of reparations to the victim or any member of his/her family:</p> <p>(a) Free education and medical treatment, (b) Skill-oriented trainings, (c) Loan facilities free of interests or with subsidized interests, (d) Arrangements for Restitution and rehabilitation , (e) Employment facilities, (f) Other concessions as deemed appropriate by the Commission.</p>	<p>Definition of the ‘reparation’ under 2(c) of the Definition Section has to be amended:</p> <p>“Reparation refers to the programs and initiatives of sponsored by the state in the form of rights of the victims realizing the physical, mental and other injuries to the victims due to the incidents of violation in the past. It includes restitution, <i>compensation, rehabilitation, satisfaction and guarantees of non-repetition.</i>”</p> <p>Section 22(2) has to be amended omitting the list</p> <p>:Analyzing the needs of the victims, the Commission shall recommend the Nepal Government to provide the right to reparation of the victims”</p>	<p>Reparation is to be defined under the United Nations Guideline on reparation and basic elements of reparation including restitution, return of the seized property etc.</p> <p>Pursuant to Article 18 of the Guideline; pursuant to national and international laws and considering the individual situation, full and effective reparation as provided under the article 19 to 23 of the Guideline to the victims of gross violation of the international human rights law and serious violation of international humanitarian law, considering the seriousness of violation and in the manner appropriate and proportional to the situation of each case, is to be provided.</p> <p>Provided list of reparation without</p>

			consultation with the victims cannot embrace the intent of the Guideline.
<i>Implementation of the recommendation of the Commission</i>			
Report to be submitted to the Nepal Government {	Sub- Section (3) of Section 24 of the proposed bill is to be amended and extended (3) The Government of Nepal shall present the report it received pursuant to Sub-Clause (1) before the Constituent Assembly.	Section 24(3) may be amended in the following manner: The Government of Nepal shall present the report it received pursuant to Sub-Clause (1) before the Constituent Assembly or to the national legislature, in the absence of Constituent Assembly within one month and shall make the report public.	Right to information of the citizens and sovereign parliament to know the truth is to be ensured.