



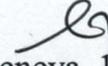
संयुक्त राष्ट्र संघका लागि नेपालको स्थायी नियोग
PERMANENT MISSION OF NEPAL
TO THE UNITED NATIONS
GENEVA

No. G/ OHCHR/447

The Permanent Mission of Nepal to the United Nations Office and other International Organizations in Geneva presents its compliments to the Special Procedures Branch, Office of the United Nations High Commissioner for Human Rights (OHCHR) and, with reference to the urgent appeal from the Special Rapporteur on the independence of judges and lawyers, reference: UA NPL 2/2017 dated 5 May 2017, regarding the impeachment motion filed against the Chief Justice of Nepal, has the honour to enclose herewith the comments of the Government of Nepal on the abovementioned communication.

The Permanent Mission of Nepal to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Special Procedures Branch, Office of the United Nations High Commissioner for Human Rights (OHCHR), the assurances of its highest consideration.

Geneva, 19 May 2017



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**Comments of the Government of Nepal on the communication of the UN
Special Rapporteur on Independence of Judges and Lawyers,
Mr. Diego García-Sayán**

Ref: UA NPL 2/2017 dated 5 May 2017

1. The Government of Nepal carefully studied the content of the urgent appeal dated 5 May 2017 issued by the Special Rapporteur on Independence of Judges and Lawyers. Information contained in the appeal regarding the impeachment motion registered in the Legislature-Parliament of Nepal against the Chief Justice does not reflect the real facts and therefore demonstrates lack of knowledge of the relevant constitutional provision of Nepal. The communication comes without allowing sufficient time to evolve the constitutional process and sounds hastily judgmental based on insufficient and inaccurate information supplied to the SR by unverified sources. It is regrettable that those supplying the inaccurate facts and information to the SR intend to influence the legitimate constitutional process going on in a democratic nation.
2. Two hundred and forty-nine Members of the Legislature-Parliament filed the motion of impeachment against the Chief Justice Sushila Karki pursuant to Clause (2) of Article 101¹ of the Constitution. The grounds cited in the impeachment motion are: serious violation of the constitution and law; failure to discharge the duties of the office honestly; incompetence; and serious violation of the code of conduct of the judges citing the concrete reasons thereof. The reasons cited thereof include *inter alia* interference in the

¹ Article 101. Impeachment: (1) One fourth of the total number of the then members of the House of Representatives may move a motion of impeachment against the President or Vice-President on the ground of serious violation of this Constitution and the Federal law. If the motion is passed by at least two thirds majority of the total number of the then members of both Houses of the Federal Parliament, he or she shall relive of his or her office.

(2) One fourth of the total number of the then members of the House of Representatives may move a motion of impeachment against the Chief Justice of Nepal or a Judge of the Supreme Court, member of the Judicial Council, chief or official of a Constitutional Body on the ground of his or her failure to fulfill his or her duties of office because of serious violation of this Constitution and law, incompetence or misconduct or failure to discharge the duties of office honestly or serious violation of the code of conduct. If the motion is passed by at least two thirds majority of the total number of the then members of the House of Representatives, the concerned person shall relive of his or her office.

(3) There shall be an impeachment recommendation committee in the House of Representatives for the purpose of making recommendation after inquiring into whether there exist the ground and reason for moving a motion of impeachment against any person under clause (2).

(4) The committee under clause (3) shall consist of eleven members of the House of Representatives.

(5) If at least three members of the House of Representatives certify and submit a petition that the received information, notice or petition is admissible on the ground of serious violation of the Constitution or incompetence or misconduct or failure to discharge the duties of office honestly or serious violation of the code of conduct by the person relieving of office on impeachment under clause (2), and the committee under clause (3), upon inquiring into such petition in accordance with Federal law, makes recommendation to the House of Representatives for impeachment proceedings, a motion of impeachment under clause (2) may be moved.

(6) After the commencement of impeachment proceedings under clause (2), the Chief Justice of Nepal or Judge of the Supreme Court, member of the Judicial Council, chief or official of the Constitutional Body shall not be allowed to discharge the duties of his or her office pending the settlement of such proceedings.

(7) A person who is charged with impeachment under clause (1) or (2) shall be provided with a reasonable opportunity to defend himself or herself.

(8) Nothing shall bar the taking of action under the Federal law in relation to the offence, if any, committed while in office by the President or Vice-President, Chief Justice of Nepal or a Judge of the Supreme Court of Nepal, member of the Judicial Council, chief or official of a Constitutional Body who is relieved of office upon the passage of a motion of impeachment under this Article.

(9) A person who is relieved of office on the passage of a motion of impeachment under clause (1) or (2) shall not be entitled to obtain any facility accruing from such office and to be appointed or nominated to any public office in the future.

(10) Other matters relating to impeachment shall be as provided for in the Federal law.

exclusive jurisdiction of the executive by quoting non-existing provision in Rule 41 of the Police Regulations (2071); manipulation of performance evaluation marks secured by police officials by false representation of undisputed facts to give basis for the judicial decision; promoting groupism and unequal treatment among the judges in the Supreme Court; selecting specific judges only to adjudicate specific cases and directing them to dispose the cases according to her wish; violation of the principle of separation of power; flouting the dignity, independence and impartiality of the judiciary; failure to deliver justice independently and inability to create environment to independently deliver justice by exercising undue intervention and pressure on judges; and failure to comply with the mandatory requirement of the relevant procedural law. Therefore, impeachment motion registered by the members of the Legislature-Parliament against the Chief Justice is neither unconstitutional nor extra-constitutional. As it has been registered according to the provisions of the Constitution, it should be allowed to be resolved in the manner prescribed by the constitution alone.

3. According to the provisions of the Constitution and the Rules of the Legislature-Parliament, 2016, the motion of the impeachment came under the exclusive jurisdiction of the Legislature-Parliament, and it scheduled the date for the discussion on the motion in the Legislature-Parliament on May 5, 2017. However, the business of the Legislature-Parliament adjourned until 18 May 2017. In the mean time, public interest litigation was filed in the Supreme Court. Hearing upon the case, the Supreme Court on 5 May 2017 issued stay order to put on hold the entire process of the impeachment until the final verdict of the Court. Following the stay order, the Chief Justice no longer remains suspended. She has resumed her office. At present, the impeachment motion remains under consideration of the Legislature-Parliament and the case in the Supreme Court remains as *sub judice*.
4. It is now incumbent upon the Legislature-Parliament and the Supreme Court to dispose these cases within their respective constitutional jurisdiction in line with the principle of separation of power. Since the case has now become the internal business of the competent constitutional organs of the State to be considered within their constitutional limit, no other national institution or individual has power to enter into the merit and substantive soundness of the motion in the Legislature-Parliament and the case in the Supreme Court. Such a matter cannot become a subject of comment by any individual or office bearer of the United Nations or pass judgment that undermines the sanctity of the constitutional process. The matters remain within the internal and exclusive jurisdiction of a sovereign State. Constitutional organs must be allowed to function and any issue that has come up within their domain as outlined by the constitution should be allowed to be disposed according to the constitutional process.

5. As regard to the allegation that the impeachment motion was filed immediately after the Supreme Court revoked the appointment of the Inspector General of Police (IGP), despite the appointment being a prerogative of the Executive branch of the State which has to appoint the Chief of Police Force, the Government of Nepal complied with the Court's verdict in its letter and spirit and appointed the IGP on 10 April 2017 from among the eligible candidates who secured highest marks in performance evaluation as well as on the basis of other criteria according to the Police Regulations (2071).
6. It must be underlined that the impeachment motion filed by the members of the Legislature-Parliament is against the incumbent Chief Justice Sushila Karki but not against the judiciary *per se*. Nepal's commitment to the democratic values, independence of judiciary, rule of law, separation of power, and to our obligation emanating from international instruments that we are a State party is total. The democratic values and principles of separation of power enshrined in the Constitution of Nepal were attained through long and arduous struggle to which we hold dear. We have no intention other than further strengthening and nurturing of those values and consolidating rule of law in the country where all organs of the State function independently within their respective constitutional limits adhering to the check and balance set by the constitution. The Supreme Court has constitutional mandate to examine the constitutionality and legality of the administrative, executive and legislative functions within the parameters defined by the constitution.
7. The Government notes with serious exception the unsubstantiated allegation of "threats to the judges from political leaders." This is unfounded and does not align with the reality. This also reflects that the allegation has been framed on the basis of inaccurate information. Judiciary in Nepal is independent and all institutions and office bearers in the country are committed to safeguard independence of judiciary guaranteed by the constitution. There is no such issue of 'threat' to the judges in whatsoever manner.
8. The information quoted by the Special Rapporteur appears to have been drawn from unverified sources. The story in the 'information' of the communication does not tally with the course of events taken place in the ground. It was entirely a normal constitutional process which has been wrongly vilified by certain quarters of society for some ulterior motives. It is incomprehensible how the Special Rapporteur relied on the falsified information. The verdict of the Supreme Court of Nepal on the 'Sudan Corruption case' was delivered by the Supreme Court after the impeachment motion was registered in the Legislature-Parliament and not before. Neither there is any connection of the issue of the disqualification of the then Chief of the Commission for Investigation of Abuse of Authority. The links labeled with the functioning of the court vis-a-vis the transitional justice and conflict related cases is both unfair and irrelevant. The transitional justice mechanisms in Nepal have been functioning according to the mandate given to

them by the relevant laws and there is no link at all with the present issue of impeachment of the Chief Justice.

9. Based on the above explanation, the Government of Nepal requests the Special Rapporteur to review and reconsider his opinion contained in the communication. Opinions made on the insufficient and inaccurate information risks the credibility of statements. It is also requested that before framing any idea on the constitutional process, Special Rapporteur may consult the Permanent Representative of Nepal in Geneva for necessary clarification and to understand the matter in proper perspective.