



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

Note No. OHCHR.SP.201.19

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 High Commissioner for Human Rights (OHCHR), and with reference to OL NPL 1/2019 Joint Communication from Special Procedures dated 12 April 2019, has the honour to state the following:

The Government of Nepal acknowledges the receipt of the Joint Communication of 12 April 2019 from the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions; the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence and the Special Rapporteur on Violence Against Women, its Causes and Consequences (the Mandate holders) bringing attention of the Government of Nepal on the question of impartiality, independence and transparency in the existing procedure for the appointment of the members of the Truth and Reconciliation Commission (TRC) and Commission on the Investigation of Enforced Disappeared Persons (CIEDP) (jointly referred to as the Commissions).

The Government of Nepal has taken note with interest of the content of the communication. The Mandate holders are well aware that Nepal has successfully traversed through an arduous journey of peace process with strong resolve and commitment of Nepali political leadership, unwavering support of Nepali people, and the continuous goodwill and understanding of the international community, including the Special Procedures Mandate holders of the UN Human Rights Council to this unique, home grown and nationally led and owned peace process. Nepal has reaffirmed in every appropriate occasion that transitional justice process will be guided by the Comprehensive Peace Accord, the Constitution, directives of the Supreme Court, relevant international commitments, concerns of the victims and the ground realities.

Despite the pains and losses of the past internal conflict, the nationally led peace process that followed was able to bring fundamental democratic transformation in political, social and human rights realm of the country. Those achievements have now been firmly institutionalized in the Constitution of Nepal promulgated by popularly elected Constituent



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Assembly with the widest possible support of our people. Sustaining peace has been the earnest desire of Nepali people and this becomes critically important for the consolidation of hard earned political achievements.

Going through the content of the communication, the information reported to the Special Procedures Mandate holders appears to be premature that tries to prejudge the outcome of the mandatory legal procedure. The legal framework in this respect is very explicit and does not leave room for conjecture. Pursuant to Section 3 of the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2014 (TRC Act) the Government of Nepal, upon notification published in the Nepal Gazette, constitutes separate independent, impartial, accountable and high level Enforced Disappearances Enquiry Commission and Truth and Reconciliation Commission for such acts as to bring the facts out to the general public by making enquiry and investigation into the truth about the incidents of the gross violations of human rights in the course of the armed conflict and about those who were involved in those incidents; bring about reconciliation between the perpetrator and victim; and make recommendation for legal action against those who were involved in grave offences relating to those incidents including arrangement for reparation to the victims. The Commissions shall consist of five members including at least one woman member and the Chairperson.

The TRC Act explicitly provisions about the eligibility for the appointment of the Chairperson and Members of the Commissions including qualification, tenure, remuneration and other benefits. The following person shall be eligible for appointment of the Chairperson and Members:

- (a) He/she has held a bachelor's degree from a recognized academic institution,
- (b) He/she is not a member of any political party at the time of appointment,
- (c) He/she is of high moral character,
- (d) He/she has worked in the field of human rights, peace, law, conflict management or sociology,
- (e) He/she has attained the age of thirty-five years,
- (f) He/she has worked as a justice of the Supreme Court or Chief Judge of the Appellate Court, worked at the post of special class of the Nepal Judicial Service or possesses the qualification for the justice of the Supreme Court in the case of the Chairperson.



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Similarly, the Act spells out the grounds for disqualification of the chairperson and Members. The following person shall be deemed to be disqualified for the post of chairperson and Member:

- (a) He/she is a non-Nepalese citizen,
- (b) He/she is convicted of a criminal offence involving moral turpitude,
- (c) He/she is punished for the offence of gross violation of human rights,
- (d) He/she is involved in the armed conflict,
- (e) He/she has been recommended by the National Human Rights Commission for legal actions for the offense relating to the violation of human rights.

The sub-Section (3) of Section 3 of the Act provisions for constitution of a recommendation committee for the appointment of the chairperson and Members of the commission consisting as follows:

- (a) A person designated by the Government of Nepal from amongst the former Chief Justices - Chairperson,
- (b) Chairperson of the National Human Rights Commission or a member of the Commission designated by the Chairperson - Member,
- (c) Three persons including at least one women nominated by the Government of Nepal from amongst the human rights activist, psychologist, legal expert, forensic expert, conflict expert, sociologist, women rights activist or persons involved in the peace process - Member.

Pursuant to this provision, a five-member Recommendation Committee consisting of a former Chief Justice of Nepal, a Member of the National Human Rights Commission designated by its chairperson, and other three eminent persons consisting of one woman human rights activist and two Senior Advocates of the Supreme Court was appointed by decision of the Council of Ministers of the Government of Nepal on 25 March 2019. The Chairperson and Members of the Committee have high moral character and recognized competence in their respective field. They have no conflict of interest with the process.

The Committee, as empowered by the TRC Act, on 7 April 2019 adopted "Selection Procedures for the Recommendation of the TRC and CIEDP Chairpersons and Members, 2019" (the Procedures), which ensures the transparency and broad-based consultation on the selection process. The Procedures is published publicly by the committee available in



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website www.moljpa.gov.np. Pursuant to Section 6 and 7 of the Procedures, the Committee published a public notice on 8 April 2019 for submission of application by the interested candidates by 15 April 2019. To allow additional time and attract interests from the highly qualified and independent persons to the responsibility, the Committee extended the deadline for submission of application until 25 April 2019 and in case of institutional recommendation until 30 April 2019. Pursuant to Section 8 of the Procedures, the Committee is screening the applications received for preparation of eligible candidates. Pursuant to Section 10 of the Procedures, the Committee will publish the name lists of the eligible candidates. Pursuant to Section 11 of the Procedures, any person may submit his/her feedbacks about the candidates so enlisted.

According to the procedures before making recommendation, the Committee has power to consult with the victims' community human rights activists or any other person or representatives of any organization about the enlisted persons. Therefore, the selection process is transparent, consultative and meticulously follows the due process defined by the law.

The Government of Nepal is confident that the Committee will select and recommend the most qualified persons for the appointment as the Chairperson and Members of the Commissions. It may be reiterated that the Committee functions in total independence without any external influence or biasness. The Government of Nepal remains fully committed not to allow any form of influence from any quarter on the recommendation process.

The Amendment of TRC Act on 6 February 2019 was a kind of technical amendment to extend the tenure of the Commissioners and the Commissions to allow continuity of the Commissions as legal entity so that the unfinished job of the Commissions can be legitimately handed over to the new Commissions as soon as they are constituted. The Ministry of Law, Justice and Parliamentary Affairs has constituted a committee to facilitate broad based consultation process between the representative organizations of the victims and other stakeholders and submit a draft proposal for amendment of the Act. The Committee is in the process of analyzing the comments and suggestions received from the victims and other stakeholders on the preliminary draft amendment bill to the Act, on which the technical notes were received from OHCHR, with a view to incorporating them in the final draft. The proposed amendment of the Act will contain a number of elements including main components of the transitional justice process: truth seeking, inquiry, accountability,



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reconciliation, reparations and measures for non-recurrence. The Government of Nepal reiterates that the perpetrators of serious violations of human rights will not go unpunished.

Furthermore, we would like to underline that the independence and impartiality of the Commissions will be guaranteed and adequate resources including budgetary, human and technical will be ensured by the Government of Nepal.

As a country that steered through the uniquely successful peace process, Nepal is confident that we have the capacity and necessary political will to conclude the transitional justice process in equally unique and satisfactory way. In this process, Nepal looks forward to continued goodwill of the Special Procedures Mandate holders to the success of the process.

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

Geneva, 7 June 2019

Special Procedures Branch
Office of the High Commissioner for Human Rights (OHCHR)
Geneva, Switzerland

