



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



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The Permanent Mission of Nepal to the United Nations 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 2/2019 Joint Communication dated 15 July 2019 sent from the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights of freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, has the honour to enclose herewith response of the Government of Nepal on the points raised in the Joint 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 Special Procedures Branch, Office of the High Commissioner for Human Rights (OHCHR), the assurances of its highest consideration.


PERMANENT MISSION OF NEPAL
TO THE UNITED NATIONS
Geneva

Geneva, 17 January 2020

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

**RESPONSE OF THE GOVERNMENT OF NEPAL TO THE JOINT
COMMUNICATION FROM THE MANDATE HOLDERS DATED 15 JULY 2019**

The Government of Nepal (GoN) transmits the following response to the Joint Communication of 15 July 2019 from the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions; the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association; the Special Rapporteur on the Situation of Human Rights Defenders; the Special Rapporteur on the Independence of Judges and Lawyers, and the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as 'the Mandate holders') regarding the 1st amendment Bill on the National Human Rights Commission Act submitted by the GoN in the Federal Parliament on 23rd April 2019:

1. The GoN has taken note of the contents of the Communication. The GoN reiterates Nepal's total and unequivocal commitment to the promotion and protection of human rights and fundamental freedoms for all without any discrimination. The Constitution of Nepal has incorporated all the provisions of, inter alia, the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights, as the fundamental rights. These rights are fully protected by the Constitution with effective constitutional and judicial remedies in case of infringement. The Judiciary of Nepal, which is the guardian of these rights, is independent, impartial and competent. The National Human Rights Commission (NHRC) and seven other human rights related thematic commissions have been operationalized as independent constitutional bodies with a mandate to monitor and ensure the promotion and protection of human rights in the respective areas of their mandate.
2. Articles 248 and 249 of the Constitution ensure that the status of the NHRC is fully in compliance with the Paris Principles. The status of the NHRC as provided in the Constitution in terms of competence and responsibilities, composition and methods of function guarantee its independence and competence. As a quasi-judicial body, it has been maintaining status "A" as evaluated by GANHRI. The proposed "Bill to Amend NHRC Act, 2012" intends to make the NHRC more effective by removing the procedural gaps existing in the course of implementation of its recommendations.
3. The intention of the amendment is in no case to curtail or otherwise minimize the independence of the NHRC but to empower it further so that its recommendations are implemented with required investigation and they find sound legal and procedural base during the judicial process and to ensure that the victims are better protected. The concern expressed in the Communication seems to have been originated either due to insufficient information or lack of clarity of Nepali constitutional and legal provisions. The following paragraphs intend to clarify the matter.

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4. Clause (c) of paragraph (2) of Article 249 of the Constitution provides that 'while accomplishing its duty, the NHRC, if it is required to institute a case against any person or organization who has violated human rights, may make recommendation to file a case in the court in accordance with law.' The NHRC does not have power to institute case in the court. It recommends, if it deems necessary after the investigation of the case, to the government to file a case in the court of law. This recommendation then has to be taken up by the public prosecutor to give an effect. The public prosecutor in Nepal is the Attorney General and the government attorneys subordinate to him/her.
5. As per the Constitution (paragraph (2) of Article 158), "the Attorney General or government attorneys subordinate to him or her shall represent the GoN in lawsuits wherein the rights, interests or concerns of the GoN are involved. Except as provided otherwise in the Constitution, the Attorney General has the power to make a final decision as to whether to institute any case on behalf of the GoN in any court, judicial body or authority".
6. The power of Attorney General whether to institute a case in respect of violations recognized as criminal offence under existing Nepalese law is provided by the Constitution itself.
7. Criminal cases are considered as state cases and such cases are prosecuted only by the Attorney General or his or her subordinate government attorneys.
8. Therefore, the objective of the proposed amendment in Section 17A of the NHRC Act is to clarify the procedures relating to prosecution of the case on violations of human rights and fundamental freedoms as recommended by the NHRC.
9. The proposed Amendment Bill, which is the property of the Federal Parliament, clearly specifies in Section 17A that NHRC sends its investigation report and evidences of human rights violations to the Attorney General to institute the case. It further states that the Attorney General after studying the recommendation and evidences must institute the case in the concerned court or judicial body. If the Attorney General deems it necessary to conduct further investigation or to collect more evidences to institute the case, he or she may request the NHRC. Upon such request, the NHRC should conduct further investigation and collect more evidences and send the same to the Attorney General.
10. After receiving the investigation report and evidences from the NHRC, the Attorney General is to decide to institute the case. Therefore, the intention of the amendment is to implement the recommendations of the NHRC by instituting cases in the court of law with strong legal and evidential base and with sufficient investigation. This is intended to ensure that the cases thus instituted stand strong legally and procedurally during the court proceeding. There is no issue of controlling or undermining the roles and responsibilities of the NHRC by the Attorney General. The two constitutional bodies may communicate to each other directly in discharging of their constitutional responsibilities and that cannot be construed as undermining each other's role.

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11. The proposed amendment in Section 18A. provides that the NHRC has full authority to spend the budget allocated to it from the Federal Consolidated Fund in compliance with the prevailing financial administration laws. If the budget so allocated is inadequate, the NHRC may mobilize resources from other sources or may obtain assistance with the consent of the Ministry of Finance. The assistance so received should be included in the annual budget of the NHRC and expended accordingly. This well-meaning provision is contemplated as a duty of the government to ensure adequate funds to the NHRC for it to discharge its mandate and maintain financial transparency.
12. NHRC, being a constitutional body, has power to decide its organization and management structure. Pursuant to Section 27 of the Act, the GoN approves the Organization and Management Structure of NHRC on the Recommendation of the NHRC. The proposed amendment has no provision to change the existing structure of the NHRC, which is intact. The proposal for removal of sub-section (2) of Section 26 of the existing NHRC Act is just to maintain consistency with the provision of Section 27 of the Act and with the provisions of other constitutional bodies. Section 27 and sub-section (2) of Section 26 are overlapping. Organization and Management means the organizational structure of the NHRC (its offices across the country and positions or number, rank, qualification of the position, etc.). Proposal for removal of sub-section (2) of the Act does not in any manner constraint and limit the power of the NHRC.
13. It is for the aforementioned reasons, the GoN clarifies that the Bill under consideration of the House of Representatives of the Federal Parliament is not in contravention with the Paris Principles. It is rather intended to make the NHRC more effective by removing procedural gaps in the course of implementation of its recommendations.

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