



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 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 AL NPL 1/2023 Joint Communication dated 9 June 2023 sent by 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, has the honour to enclose herewith response of the Government of Nepal on the matters concerning the Bill for the Amendment of the Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation 2071 (2014) 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.

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

  
PERMANENT MISSION OF NEPAL  
TO THE UNITED NATIONS  
Geneva  
Geneva, 7 August, 2023

**Comments on the Joint Communication from 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**

(Dispatched by the United Nations Human Rights, Office of the High Commissioner to the Minister for Foreign Affairs on 9 June 2023)

**1 General Information:**

- 1.1 Article 2 of the Constitution of Nepal promulgated in 2015 (the Constitution) states that the sovereignty and State power of Nepal shall be vested in the Nepali people. The very Constitution was promulgated through the Constituent Assembly in 2015 by recalling the glorious history of historic people's movements, armed struggle, dedication and sacrifice of Nepali people carried out, from time to time, for the sake of the interests of the nation, democracy and progressive changes, and respecting for the martyrs, disappeared persons and victimized citizens. Nepal is being committed to socialism based on democratic norms and values including the people's competitive multiparty democratic system of governance.
- 1.2 The Government of Nepal (GoN) would like to reiterate its commitment to resolve the transitional justice based on the Supreme Court's Directive Order of 2015; commitment of Nepal arising under various international instruments to which Nepal is a party; the Constitution and the concerns of victims.
- 1.3 Nepal has incorporated several human rights provisioned under the International Human Rights Instruments to which Nepal is a Party in Part 3 of the Constitution as a fundamental right and is committed to execute such human rights provision.
- 1.4 The Constitution has adopted the Separation of Power and Check and Balance Principles. The role and power of the three organs of the State have been clearly defined by the Constitution based on the democratic norms and the preamble of the Constitution and the enactment of law is vested on the Nepali people's representative institution Federal Parliament.

- 1.5 The Government of Nepal (Allocation of Business) Regulation 2017, has conferred the Power to the Ministry of Law, Justice and Parliamentary Affairs (MOLJPA) for drafting bills and providing consent on such bill. By virtue of the same Regulation, MOLJPA serves as the Liaison to the Truth and Reconciliation Commission and the Commission of Investigation on the Enforced Disappeared Persons.
- 1.6 The Constituent Assembly as a capacity of the Legislature of Parliament had enacted the Investigation of Enforced Disappeared Persons, Truth and Reconciliation Commission Act, 2071 (2014) (TRC Act).
- 1.7 The preamble of the TRC Act mentions that as “proclaimed in **clause 5.2.5 of the Comprehensive Peace Accord** to constitute, with mutual understanding, a high-level truth and reconciliation commission for finding out the truth about those who committed the gross violation of human rights and were involved in the crime against humanity in the course of armed conflict and for creating an environment of reconciliation in the society.”
- 1.8 The main objective of the TRC Act is to bring the real facts to the public about those people who were involved in serious violation of human rights during the armed conflict by investigating the truth; to create an environment of sustainable peace and reconciliation in society by promoting the feelings of mutual harmony and tolerance; provide identity card and compensation to the victims of the armed conflict and recommend for legal sanction against the persons involved in such serious activities.
- 1.9 Under the provision of this Act, two Commissions; namely; the Truth and Reconciliation Commission and the Commission of Investigation on Enforced Disappeared Persons (the Commissions) are formed and brought into operation.

## 2 **Amendment Bill Making Process and Basic Features of the Bill:**

- 2.1 Both the Commissions are competent statutory entities and responsible to carry out the functions related to transitional justice as specified in the Act.
- 2.2 As per the provisions of the Act, the Commissions have conducted several consultative programs with stakeholders and carried out the study for gap analysis on the provisions

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and mandate conferred to the Commissions under the Act. After the gap analysis, the Commissions provided to MOLJPA their concern for the amendment of the Act.

- 2.3 By exercising the power as provided by the Government of Nepal (Allocation of Business) Regulation 2017, MOLJPA initiated a draft Amendment TRC Bill. While formulating the draft Amendment TRC Bill, MOLJPA has conducted several consultations through a participatory and collaborative approach with civil society organizations, representatives of victims' organization and their leaders along with its own in-house discussions. The consultative process was carried out in seven Provinces with various stakeholders, including victims, former child combatants, and members of the armed forces. In addition, a separate consultation was held with the conflict victims of sexual violence and rape. Each consultation program was divided into two sessions i.e., the first session consultation was exclusively with the victims and their representative organizations, while the second was with the victims, their representative organizations and other stakeholders including political parties, security forces and government officials, journalists, and civil society organizations including human rights organizations and representatives of the various chapters of Nepal Bar Association. Altogether there were 463 participants in these consultations.
- 2.4 During the consultations, the major concerns raised were: rejection of amnesty, strengthening the Commissions, immediate and long-term reparation, retaliation of seized property, informed and independent consent for reconciliation, observance of victim centric proceedings and accountability for the heinous crime. Thus, a transparent and inclusive consultative process with victims and civil society throughout the design and implementation of transitional justice measures and during the drafting of the Amendment TRC Bill tabled in the parliament in March 2023 was ensured. The views received from victims and civil society are duly considered and incorporated in the current Bill.
- 2.5 In principle, the Amendment TRC Bill ensures the independence, impartiality, and competence of the mechanisms involved in the process of transitional justice which is in compliance with the international standards. It clearly provides a procedure to be followed by the respective mechanisms involved in the transitional justice process. Some salient features and provisions of this Amendment TRC bill are as follows:

- (i) Establishment of a **special court** to deal with cases related to transitional justice.
- (ii) Amendment to Section 13 of the main Act provides for determining the process of investigating human rights violations and serious violations of human rights, ensuring a **comprehensive examination of the truth**.
- (iii) Amendment in Section 22(1) of the main Act, allows the Commission, upon receiving an application from the perpetrator or victim, to facilitate **reconciliation** between perpetrators and victims of human rights violations, except for serious violations of human rights, with the free consent of the victim.
- (iv) The Amendment Bill has added Section 22A after Section 22 of the main Act which ensures victims right to **reparation**. The victim's right to reparation is not adversely affected by factors such as the non-identification of the perpetrator, reconciliation between the victim and perpetrator, or whether the perpetrator is recommended to be pardoned or prosecuted.
- (v) Amendment to Section 23 of the main Act provides that the Commission may recommend the GoN for provision of psycho-social counseling, interim relief, relief and compensation, rehabilitation, or other appropriate **arrangements to the victims** as soon as possible after completion of the initial investigation.
- (vi) **No Amnesty** for Serious Violations of human rights: Amendment to Section 26 explicitly provides that the Commission shall not recommend amnesty to persons involved in serious violations of human rights.
- (vii) Amendment to Section 26 of the main Act provides that the Commission must recommend the GoN to provide **compensation** to a victim if the perpetrator is unable to provide compensation due to poor economic condition. The GoN is responsible for providing such compensation within three months of receiving the recommendation from the Commission.
- (viii) Amendment to Section 29 of the main Act provides that the Commission must recommend the Attorney General to file a lawsuit against the person involved in the serious violation of human rights together with the circumstances of the

incident, reasons, investigation report, and evidence. The Attorney General or the government attorney having delegated authority must make a decision whether to prosecute or not the alleged perpetrator within one year from the date of receiving the recommendation, and if approved, the case must be filed in the **Special Court**.

- (ix) The Amendment TRC Bill has added Section 40(A) in the main Act which provides for the **transfer of property**. The provision is that if the name is included in the list of persons disappeared during the armed conflict in the records of the Commission of Investigation on Enforced Disappeared Persons, and the status of the person is not known until the commencement of this Section, the rightful person may apply to the relevant office or body to divide the remaining property according to the law and distribute it among the parties. It further provides that upon receiving an application the relevant office or agency shall conduct necessary inquiries to determine whether the applicant is the rightful owner of the disappeared person's property or not, and whether there are other rightful owners in addition to the applicant. If found during the investigation that the petitioner is the only rightful person, a part of the property of the disappeared person shall be retained in the petitioner's name, and the remaining property shall be transferred to the petitioner's name. In case there are other rightful persons, the property of the disappeared person shall be divided among the disappeared person, the petitioner, and the other rightful persons accordingly.

### **3 General response to Joint Communication**

- 3.1 GoN and its concerned agencies would like to reiterate its principled position that the GoN is committed to resolve the transitional justice based on the Supreme Court's ruling; commitment of Nepal arising out under various international instruments to which Nepal is a party; the Constitution of Nepal and the concerns of victims. This commitment is replicated in the Amendment TRC Bill as well.
- 3.2 The GoN has conducted nationwide consultation with the victims, victims' organizations, civil society and organizations working in the field of transitional justice on the draft bill. Based on these consultations, the Amendment TRC Bill was tabled in the Federal

25/10/2015

Parliament on July 2022. Because of the expiry of the tenure of the parliament, the bill could not get through. After the Federal election of November 2022, new parliament was formed. Subsequently, newly formed government again tabled the Bill in the Federal Parliament which is under its consideration.

- 3.3 The Federal Parliament under Article 296 of the Constitution of Nepal is the supreme authority to enact the legislation. On 9 March 2023, the Council of Ministers made a decision to register the Amendment TRC Bill in the parliament. The MOLJPA introduced the Amendment TRC Bill in the Federal Parliament on the same day. The Amendment TRC Bill is publicly available on the website of the Federal Parliament of Nepal.
- 3.4 The Amendment TRC Bill may, subject to the Constitution, be introduced in any House of the Federal Parliament. The Amendment TRC Bill, which is in the jurisdiction of the House of Representatives, is currently being discussed in the Law, Justice and Human Right Committee (LJHRC) of the House of Representatives (Lower House of the bicameral legislature) to conduct a legal and professional scrutiny. A special sub-committee is formed under LJHRC to make necessary arrangements and hold consultations with different stakeholders and National Human Rights Institutions (NHRIs).
- 3.5 The Committee and the sub-Committee formed thereunder have representation of all the major political parties which shows their commitment to transitional justice mechanism.
- 3.6 The Committee and the sub-Committee have mandates to further evaluate and appraise the Amendment TRC Bill on the basis of international norms and values, recognized principles and best practices, wisdom and desires of Nepali people, social value and cultural recognition, constitutional arrangements, and other necessary established principles. There is a scope for further amendment.
- 3.7 From the information received from the Parliament Secretariat, the sub-Committee so far has held twelve intense discussions and consultations with various stakeholders including victims.
- 3.8 The Amendment TRC Bill is still under some procedural compliance where the member of the parliament, i.e., members of the House of Representatives and the National Assembly need to have a thorough section-wise discussion and proceed with some substantial amendment remarks on the subject matter until the bill is finally approved by

the parliament. Once it is passed by the House of Representatives, the approved bill will be forwarded to the National Assembly (Upper House of the Federal Parliament), and upon approval from both Houses, it will be submitted to the President of Nepal for authentication. Only after authentication and publication in the Nepal Gazette it shall be enforced as law.

#### 4. Conclusion

As the Amendment TRC Bill introduced by the GoN to the Parliament is under the consideration of the Federal Parliament, the GoN believes and be certain of that the Amendment TRC Bill will be endorsed by the parliament based on the principles of truth seeking, justice, reparation, guarantee of non-recurrence by complying with the international norms which are proven on transitional justice and the Supreme Court's ruling in this matter. Further, the GoN is committed to execute the legislation by complying the provisions of such legislation and the intentions of the parliament. The GoN has kept the logical conclusion of the transitional issue as its highest priority and is committed to implement the result with its intense effort and necessary resources.

