

Mandates of the 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

REFERENCE:
OL NPL 2/2019

15 July 2019

Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 36/6, 35/15, 32/32, 34/5, 35/11 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning an **amendment bill to revise the existing act of the National Human Rights Commission (NHRC) Act-2012, potentially severely undermining the NHRC's authority, effectiveness and independence and limiting the Nepali people's ability to access justice.**

According to the information received, the Government of Nepal prepared a draft bill to amend the NHRC Act-2012, which was proposed by the Government in April 2019. The proposed changes include amendments to:

-Article 17 (a)

Changes to this article appear to confer discretionary power to the Attorney General over NHRC recommendations for prosecution of individuals implicated in human rights violations. Article 17 (a) of the draft bill requires the NHRC to submit its recommendations for prosecution to the Attorney General, in order to file a case in court for prosecution against an individual or organisation allegedly involved in human rights violations. The Attorney General, who is appointed by the Government, would consider the merit of the case and, if "deemed necessary", decide to file a case against the individuals or organisations concerned. This raises concerns over the independence of the NHRC and its ability to address and take action on cases of human rights violations, without undue interference of the executive power through the Attorney General. Overall, this may negatively impact the ability of the NHRC to protect and promote human rights in Nepal.

The new article 17 (a) does not seem to provide criteria to guide the decision of the Attorney General on whether or not to file a case in court, nor a process for appealing such decision, in particular in the event that the Attorney General decides not to file the case in court. We are concerned that this article may grant discretionary decision-making powers to the Attorney General, and may

undermine the transparency of the process by which allegations of human rights violations are pursued in court.

In this connection, we would furthermore like to remind you of General Comment No. 31 on the nature of the general legal obligations imposed on States Parties to the International Covenant on Civil and Political Rights, ratified by Nepal on 14 May 1991. In this General Comment, the Human Rights Committee emphasised the obligation of State Parties to investigate allegations of violations promptly, thoroughly and effectively and to bring to justice the perpetrators of human rights violations. Further, it states that: “As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of violations recognised as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment (article 7), summary and arbitrary killing (article 6) and enforced disappearance (articles 7 and 9 and, frequently, 6)”. We are concerned that the amendment of article 17 (a) could unduly restrict access to justice in Nepal.

-Article 18 (a)

The amended article 18 (a) states that the NHRC is obliged to obtain the consent of the Government and Ministry of Finance when it seeks to receive extra budgetary funds from other donors for the purpose of carrying out human rights related programmes. We are concerned that these increased procedural and financial restrictions would in practice enable the Ministry of Finance to control the work of the NHRC, and would ultimately limit the independence and efficiency of the NHRC’s programmes.

This appears to directly contravene Principle 2 of the ‘Composition and guarantees of independence and pluralism’ section of the Paris Principles: “The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.”

-Article 26 (2)

The draft bill deletes former article 26 (2) in its entirety. Article 26 (2) enabled the NHRC to establish its regional, sub-regional or liaison offices. The NHRC currently maintains ten regional and sub-regional offices, which are essential to ensure access to the services of the NHRC for people in rural areas of Nepal. We are concerned that the deletion of said article may lead to the closure of these ten regional, sub-regional and liaison offices.

We would like to emphasise that the existing Nepalese NHRC Act of 2012 stipulates in article 4 (2) that the NHRC “shall be independent and autonomous in fulfilling the work of ensuring respect, protection and promotion of human rights”. We are deeply concerned that the above mentioned amendments appear to be in direct contravention of this principle. In particular taking into account the extremely low rate of

implementation of human rights related recommendations of the NHRC, we are concerned that the new requirements may negatively affect the ability of victims of human rights violations, their families, and human rights defenders to access justice in Nepal.

We wish to also draw your Excellency's Government's attention to article 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Nepal on 14 May 1991, which guarantees the right to freedom of association and which states that no restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

We would like to recall that according to the Paris Principles, National Human Rights Institutions are established by States for the specific purpose of advancing and defending human rights at the national level, and are acknowledged to be one of the most important means by which States bridge the implementation gap between their international human rights obligations and actual enjoyment of human rights on the ground. The Sub-Committee on Accreditation states in its General Observations of the Paris Principles, adopted on 21 February 2018, that "the establishment and strengthening of National Human Rights Institutions pursuant to the Paris Principles falls within the set of international human rights commitments made by States." Therefore, it is the responsibility of the State to ensure that its National Human Rights Institution is compliant with the Paris Principles.

Furthermore, we would like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Right Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

In relation with the amendments to Article 17(a), we would like to remind your Excellency's Government of the duty to investigate, prosecute, and punish all violations of the right to life. We urge your Excellency's Government in line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Prevention and Investigation Principles), in particular principle 9, that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. This principle was reiterated by the Human Rights Council in Resolution 35/5 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4). The Council added that this includes the obligation "to identify and bring to justice those responsible (...) to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions."

In this context, we would like to draw the attention of your Excellency's Government to article 12 of the Convention Against Torture and other cruel, inhuman and degrading treatment or punishment (CAT) (ratified by Nepal on 14 May 1991),

which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of CAT, which requires State parties to prosecute suspected perpetrators of torture.

We would also like to draw your Excellency's Government's attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture."

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful to receive information on the measures taken or that are going to be taken to ensure that these observations are duly taken into account in the legislative process.

While awaiting a reply, we urge relevant authorities in Nepal to take all necessary measures to ensure the full compliance of domestic legislation with international human rights norms and standards, in particular considering the legislative provisions and other measures that impose undue limitations to the independence and autonomy of the NHRC.

Finally, we would like to take this opportunity to express our interest and availability to discuss the draft legislation in more detail with your Excellency's Government at your convenience and provide further assessment towards its revision.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge your Excellency's Government to continue its cooperation with the mandates of the Special Procedures of the Human Rights Council, to take into account the concerns raised, and to avail of any technical assistance that Special Procedures may be able to provide in order to ensure the full promotion and protection of human rights in Nepal.

Please accept, Excellency, the assurances of our highest consideration.

Bernard Duhaime
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment