

## Summary

# SPECIAL REVIEW OF THE NEPAL HUMAN RIGHTS COMMISSION TO THE INTERNATIONAL COORDINATING COMMITTEE OF NATIONAL HUMAN RIGHTS INSTITUTIONS - November 2009 -

## BACKGROUND

The Nepal Human Rights Commission (NHRC) was established in 2000 under the Human Rights Commission Act of 1997. In 2001, the Nepal Human Rights Commission (NHRC) applied to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) for 'A' status accreditation. The NHRC was granted A(R) status by the Sub-Committee on Accreditation (SCA) because the Institution submitted neither an annual report nor budget information with its application.

In 2002, the ICC lifted the reservation and the institution was accredited with 'A' status. The NHRC's 'A' status was placed under review in April 2006, following the ICC Chairman's concerns about the appointment process related to the Secretary. This review period was reiterated in the ICC October session in 2006 and extended at the session in March 2007. At the following meeting in October 2007, the Sub-Committee requested documentation regarding progress on the appointment process and actual appointment of Commissioners to the Commission and progress on the amendment of the Human Rights Act as required by the new Interim Constitution.

In its October 2007 report, the Subcommittee on Accreditation (SCA) recommended, while granting the NHRC status 'A', the following:

- 1) It refers to the General Observation on "Adequate funding", in particular sub-paragraphs b) and c) and that financial systems should be such that the NHRI has complete financial autonomy.
- 2) It refers to the General Observation on "Selection and appointment of the governing body", in particular sub-paragraphs a), b) and d).
- 3) It encourages the NHRI to strengthen its interaction with civil society organizations.
- 4) It refers to the General Observation on "Interaction with the International Human Rights System", in particular with regard to engagement with the United Nations Human Rights Treaty Bodies, the Human Rights Council and the ICC.

During this process, in 2007 the NHRC was modified to a constitutional body under the Interim Constitution of Nepal 2007. As a consequence thereof this Constitution provides a wider mandate to the Commission on the promotion and protection of human rights; broader investigative and complaint-handling powers; ratification of human rights related treaty and to monitor its implementation; greater powers to follow up on NHRC recommendations, including noting names of those who have failed to observe or implement them; the authority to enter into any place and undertake any necessary measure to elucidate human rights abuses.

At its November 2008 session, the SCA confirmed the status 'A' accreditation of the NHRC. In the meantime, it noted the following:

*"The Sub-Committee acknowledges NHRC's response to the concerns it raised in October 2007, particularly with regard to the issue of financial autonomy. Having completed its review, it also reiterates the comments it made in its October 2007 report regarding adequate funding and selection and appointment of the governing body."*

*In the course of the review, the Sub-Committee noted that the NHRC legislation has not yet been adopted by the Parliament and therefore it encourages the NHRC to promote the development of legislation in full compliance with the Paris Principles.*

*The Sub-Committee encourages the NHRC to increase its cooperation with statutory institutions for the promotion and protection of human rights as well as civil society organizations. It refers to General Observation 1.5 "Cooperation with other human rights institutions".*

Eventually, the Sub-Committee proposed to consider these issues at its October/November 2009 session.

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The NHRC responded to the concerns raised by the Sub-Committee on Accreditation in a letter dated 17 August 2009 (as indicated in the section below).

## DOCUMENTATION PROVIDED BY THE NHRI FOR THE SPECIAL REVIEW

To permit the ICC to make a determination as to its continuing compliance with the Paris Principles, the NHRC submitted the following documentation in support of its application:

- “A NHRC-Nepal Report on NHRC Legislation in Full Compliance with the Paris Principles and Cooperation with the Statutory Institutions and Civil Society Organizations that work on the Protection and Promotion of Human Rights” (17 August 2009) (hereinafter referred to as the “Report”)

On 17 August 2009 the Asian NGOs Network on National Human Rights Institutions (ANNI) shared with the SCA a report on the Compliance of the Paris Principles of the National Human Rights Commission of Nepal (hereafter: “the NGO Parallel Report<sup>1</sup>”). The NGO Parallel Report was shared with the NHRC by the SCA Secretariat.

The information contained in the afore-mentioned documents is summarized below for the consideration of the ICC Sub-Committee on Accreditation.

## ISSUES RAISED BY THE SCA AND NHRI’S RESPONSE

**Main issues:**

- Financial Autonomy and Adequate Funding
- Selection and appointment of the governing body
- Cooperation with statutory bodies and CSO’s
- Adoption of NHRC legislation by the Parliament

### 1. Financial Autonomy and Adequate Funding

In the *Report* (p. 3) the NHRC refers to the *2007 Interim Constitution of 2007*, Article 92 (b) (7), which stipulates that “the salary and benefits of the commissioners of NHRC shall be charged to the consolidated Fund of the State. In addition, Article 92 (c) provides that the administrative and logistic costs [...] shall also be charged to the Consolidated Fund<sup>2</sup>”. With regard to the government as the major financial and technical contributing agency for NHRC activities, the NHRC states in its *Report* (p. 3) that only the Parliament is authorized to govern the Consolidated Fund; therefore it is a matter of “administrative and program cost of NHRC [which is] directly allocated by the Parliament in order to avoid potential control and interference of government through funding or financial arrangements.” Hereby the financial independence of NHRC is as equal as to the yonder of the Supreme Court of Nepal. Additively sections 15 (6) and 23 of the *Human Rights Commission Act 1997* (p. 2-3) can be consulted, whereupon the NHRC has been authorized to make financial and operational rules, regulations and guidelines with a view to effective functioning of the NHRC.

The NGO Parallel Report argues that the Interim Constitution does not guarantee the adequate funding for the NHRC (page 4). It adds that despite an increase of the budget allocated for the NHRC in 2008/09, “this is still insufficient to cover the needs in monitoring and investigating human rights violations” of the NHRC. According to the NGOs, this would be a reflection “of the government lack’ of interest in turning the NHRC into an effective mechanism “. The Parallel report also argues that in “in the memorandum submitted to the Prime Minister by the NHRC, it demands building, financial, technical support and sufficient human rights resources to make the NHRC more effective and to develop its capacity”. The NHRC would have not suggested any provision to ensure financial autonomy through the legislation (page 5).

On 18 September 2009, the NHRC also noted that “in order to increase fund for its smooth functioning, NHRC has recently signed an agreement with the UNDP and OHCHR for a project entitled Strengthening the Capacity of NHRC with the commitment by various donors for 2.3 million US dollars for next three years. In addition NHRC and OHCHR have recently concluded a grant agreement of USD 50000.00 in

<sup>1</sup> In its reaction on the summary (received on 18 September 09), the NHRC notes that the report has been prepared “primarily prepared by INSEC”.

<sup>2</sup> Consolidated Fund: a national coffer; only the Parliament is authorized to allocate and disburse this fund.

order to develop detention guidelines and to launch training and advocacy programs on the issue. Similarly NHRC and the Save the Children have another agreement worth USD 30,000 a year for support to various initiatives on the rights of the child.

## **2. SELECTION AND APPOINTMENT OF THE GOVERNING BODY:**

The NHRC states in its *Report* that the commissioners are appointed by the head of the state under the recommendation of the Constitutional Council and afterwards confirmed by the parliamentary hearing for six years of tenure. The conditions of service are equal to the judges of the Supreme Court. In addition currently, the Commission adopted [an] open and transparent selection process for the appointment of the Secretary” (until now the Secretary has been selected through competitive process):

The name of the Chief Commissioner and Commissioner are recommended by the Constitutional Council formed under Article 149 of the Interim Constitution, and comprised with the Prime Minister as the Chair and the Chief Justice of the Supreme Court, Chair of the House (presently the Constituent Assembly), and three Ministers each representing different political parties (of coalition government) nominated by the Prime Minister and the leader of the opposition party as members. The names recommended by the Council would be referred to the Parliamentary Committee for its hearing on the proposed names. Upon the approval by the Parliamentary Committee hearing the names are referred to the Head of the State (currently President of Nepal but at the time of the appointment of the present Commissioners the King was suspended and the Premier was enjoying the power of Head of the State for this purpose as well) for confirmation.

The NHRC holds (*Report*, p. 7), that the Nepali Constitution includes diversity and pluralism in the composition of the Commission, which is composed of:

- a. *One person from amongst the retired Chief Justice or Judges of the Supreme Court who have rendered outstanding contribution to the protection and promotion of human rights or the prominent person who have been active in and rendered an outstanding contribution to the protection and promotion of human rights or in the field of social services - Chairperson;*
- b. *Four persons from among prominent ones who have been active and rendered an outstanding contribution to the protection and promotion of human rights or in the field of social services - Members.*

The Interim Constitution also includes that women must be involved in the process of appointing the Chairperson and the members of the Commission. Currently the NHRC's membership includes: Chairperson is Hon Kedar Nath Upadhyay; members are: Ram Nagina Singh (Madhesh from the southern region); former judge of the supreme Court): Mr. Gauri Pradhan (comes from the minority ethnic population; human rights activist), Dr. Leela Pathak (woman member; agro-economist and retired senior government officer who served as treasurer and Secretary General of Transparency International Nepal Chapter for six years after her retirement is a woman member of the Commission. Dr Pathak was also associated with a number of voluntary institutions dedicated to gender issues in Nepal before she joined the Commission, Dr. K.B. Rokaya (western hilly region, belief in minority religion; human rights defender).

The NGO Parallel Report reads that this the selection of the current set of commissioners reflects also political representation. Based on an opinion expressed via one **media house** by the woman Commissioner the report also refers that female commissioner and staff would have suffered discrimination within the Commission.

## **3. COOPERATION WITH STATUTORY BODIES AND CSOS:**

In its *Report* (p. 5-7, 10), the NHRC states that NGOs and CSOs have played a significant role in establishing the NHRC, without further details. The NHRC acknowledges the importance to join and interact with CSOs in the sphere of human rights, especially against the background that partnership and engagement with NGOs is a main objective of the NHRC's strategy in recent years. This cooperation is sought on policy issues, planning processes, monitoring of treaty obligations, legal reforms, human rights monitoring, all promotional activities, human rights training, capacity building, selected human rights investigation related activities and dialogue and advocacy (*Report*, page 4 – 6).

The NHRC states that in 2008-2009 various NHRC HQ and regional offices performed 151 major activities together with NGOs and CSOs (for more detailed information: see chart in the *Report*, p. 6-7). Additionally

NHRC participated in over 100 programs organized by NGOs and CSOs (*Report*, p.10)-no further information is provided.

With regard to statutory bodies, the NHRC (*Report*, p. 4-5) mentions to have engaged with several institutions. In cooperation with the Women Commission and Central Child Welfare Board, the NHRC has often undertaken joint monitoring and participated in the preparation of the Bill on Domestic Violence. Also, the NHRC Secretary has provided advisory services for the preparation of the strategic planning document of the Women' Commission. In addition the NHRC and Women Commission participate in each other's programs. The NHRC also worked with the Central Child Welfare Board and worked together in some promotional activities followed by providing rehabilitative nature of services to the children in distress. Consultative meetings have been organized with the Women Commission, Dalit Commission and Foundation for Indigenous Minorities.

The NHRC also mentioned (*Report*, page. 10) to have increased its relationship with international organizations and human rights institutions around the world, and participated in the annual meeting of the Asia Pacific Forum and the ICC.

The NGO Parallel Report, however, notes that collaboration between the Commission and NGOs is limited. In particular, the report mentions that NHRC has not been very proactive in supporting civil society initiatives, such as campaigning for the government to respond positively to the pending report of the UN SR on Human Rights Defenders, who would have made 3 requests to visit the country and the NHRC would have not yet followed up on this issue with the government<sup>3</sup>.

*(The Secretariat notes that the Parallel report also mentions certain tension between NHRC and OHCHR Nepal. NHRC would have advocated against the OHCHR 's presence in the country on the ground that it would conflict with the constitutional human right protection/promotion mandate of the NHRC. This attitude seems to have been received with criticism from the human rights community in Nepal that according to the Parallel Report, would have not been consulted in advance on the negative stance by the NHRC on the presence of OHCHR in Nepal.)*

In September 2009, in its reaction to the summary, the NHRC stated the following: "NHRC had dialogues with the OHCHR at different levels on the issue of its mandate under the Interim Constitution as the highest law in the country, and raised the issue to comply OHCHR mandate with the constitution. Both NHRC and OHCHR, after series of dialogues agreed on the issue and consequently signed the guidelines of cooperation between NHRC and OHCHR in March 2009. In addition after series of discussions both the organizations recently agreed on referral procedures of complaints received by OHCHR Nepal, and that will be communicated to all the Regional Offices of NHRC and OHCHR within couple of days. In the meantime both the organizations signed a project commonly called as 'detention project' in which NHRC and OHCHR agreed to work together utilizing OHCHR fund. Please note that NHRC has never advocated against the OHCHR presence in Nepal. In the meantime NHRC Commissioners and Secretary met the Prime Minister for three times in the recent months and handover its three memorandums but no recommendation was made against OHCHR presence in Nepal. NHRC considers that OHCHR and NHRC has good working relation at all levels and wish to continue good relations in the future as well"..

#### **4. ADOPTION OF NHRC LEGISLATION BY THE PARLIAMENT**

Currently the country is engaged in drafting a new Constitution. Hereby the NHRC states in its Report that it "supports the Constituent Assembly in making a human-rights friendly Constitution." For this purpose advocacy programs are held in various regions of the country (24 workshops and interaction programs).

As per the new HRC legislation, the NHRC refers to a new Bill which is in the "pipeline for parliamentary process" (p.4). In the past months the Cabinet had created a Subcommittee including representatives of different authorities charged to revise the law. Due consideration to the Paris Principles would have been given during the process. The new Bill was expected to refer in the May-June 2009 session of the Parliament. Yet, because of the "changing political scenario in the country the Bill could not be referred for parliamentary proceedings" the NHRC expects this to be enacted in the next 3-4 months.

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<sup>3</sup> In its reaction on the summary in September 2009, the NHRC noted that NHRC never received any CSOs' request (at the level of Secretary and above) regarding the visit of Special Rapporteur. NHRC informed that it will take necessary initiative on this issue shortly.

In its reaction on the summary in September 2009, the NHRC noted that the Chairperson has recently sent a written communication to the Chairperson of Constituent Assembly (House) to incorporate provisions relating to the financial and operational independence of the Commission in line with the Paris Principles. He also communicated him to work with the legislator to ensure the same in the forthcoming NHRC legislation.

The NGO Report noted that, although the Constitution makes the NHRC a constitutional body, the NHRC, until now, is still functioning under the 1997 National Human Rights Commission Act and the government has not “implemented its commitment to strengthen the NHRC by passing vital amendments to its enabling law, which is ending “ at the Prime Minister Office.