

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on freedom of religion or belief**

REFERENCE:  
OL NPL 1/2018

11 July 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 34/18, 32/32, 34/5 and 31/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **National Integrity and Ethics Policy 2074 (Policy)**. The Policy emanates from the Prime Minister and Council of Ministers and is pending final approval by the Council of Ministers Cabinet by the end July 2018. From the information received we understand that if the policy is adopted in its current form, it may have serious negative effects on the activities of organizations and of civil society in general as it would severely impinge on the exercise of the rights to freedom of expression and freedom of association which are guaranteed under international human rights law, in particular under article 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Nepal on 14 May 1991.

According to the information received:

The National Integrity Policy was one of the first decisions of the then-prime minister Sher Bahadur Deuba after he assumed office on 8 June 2017. In addition to policies relating to the diplomatic community, constitutional bodies, academia, private sector and cooperatives, the Policy has 13 point policies on non-governmental organizations (NGOs) and 25 matters concerning International non-governmental organizations (INGOs).

**1. Definitions and reporting requirements policies**

- *Reporting requirements for NGOs and INGOs*

According to provision 9.2.3 (1): “NGOs are classified into two main categories: those receiving foreign assistance and those not receiving foreign assistance, and within these categories they are further classified based on their nature of work”. Article 9.2.3 (2) and article 9.2.3 (4) impose heavier reporting requirements for NGOs receiving foreign assistance.

Section 9.2.4 relates to the conduct of “foreign national or INGOs”, imposing additionally burdensome requirements for non-national NGOs, such as “*a copy of any report or bill or other information relating to INGOs, if prepared, shall be submitted to the relevant authority*” (9.2.3 (6)), the annual budget and programme need to be approved by the Ministry of Finance (9.2.4 (1)), taxable expenses made by the organization should be brought under the tax remit (9.2.4 (3)), audited financial reports should be submitted (9.2.4 (4)).

The listed reporting and procedural requirements are highly burdensome for organizations, especially for small organizations that do not have the same financial capacities and resources. Indeed, the need to dedicate more time and resources to administrative requirements could be highly detrimental to their activities, as they are particularly time-consuming, and similarly have a negative impact on their budget. Moreover, the provisions regarding INGOs impose an increased regime of reporting and procedural requirements for INGOs. We are worried that the distinction between NGOs not receiving foreign assistance, NGOs receiving foreign assistance and INGOs provide grounds for discriminatory treatments aiming at negatively impacting the work of NGOs on the basis of their source of funding or of their origin.

We recall that Human Rights Council Resolution 22/6 provides that States need to ensure that the reporting requirements “do not inhibit functional autonomy” of associations. The Special Rapporteur on the rights to freedom of association and peaceful assembly has considered that the use of “onerous and bureaucratic reporting requirements” can eventually “obstruct the legitimate work carried out by association” (A/HRC/23/39, para 38).

- *Registration, re-registration and termination*

Provision 9.2.3(3), places additional registration requirements as they need to inform the “local level” about their work and submit recommendations from this local authority to the “registering unit”. Provision 9.2.3(8) provides the need for NGOs and INGOs to re-register and “*termination is effectuated after the expiry of the three-month period from the renewal date*”. Article 9.2.4 (21) provides that “*affiliation or registration of those who work against Nepal’s interest and violate the law shall be cancelled*”. Finally, INGOs can also be dissolved if found engaged in indirect proselytization (9.2.4(24)).

We would like to underline that the right to freedom of association equally protects associations that are not registered (A/HRC/20/27, para. 56). We underline that the exercise of fundamental freedoms should not be subject to previous authorization by the authorities and that a notification procedure rather than a prior authorization procedure requesting the approval of the authorities to establish an association as a legal entity complies better with international law (A/HRC/20/27, para. 58). In addition, the suspension and involuntary dissolution of an association are the severest types of restrictions to freedom of association (A/HRC/20/27, para. 75).

- *Human resources and other restrictions*

A number of provisions limit INGO's ability to recruit foreign nationals. Provision 9.2.4 (13) stresses that the "*number of foreign nationals allowed to work should be fixed*", provision 9.2.4 (18) prevents a foreign national working in INGOs to work in such capacity for more than three years and provision 9.2.4 (23) stresses that "*work permits shall only be granted to foreign nationals who come to work for INGOs based on their track record*".

Other provisions further limit NGOs and INGOs' ability to seek, receive and use human resources. Provision 9.2.3 (11) prevents any individual "*holding a public post*" from belonging to an NGO, provision 9.2.4 (17) prevents certain former Government employees from receiving previously earned benefits, and 9.2.4 (21): "*affiliation or registration of those who work as assistants for embassies or foreign religious institutions, or for their narrative, shall be cancelled*".

Finally, several provisions also impose additional restrictions, such as the prohibition for NGOs to apply for Government contracts (9.2.3 (5)), no administrative expenses beyond a certain percentage are permitted (9.2.3 (7)), "*no more than one person from one family in one organization may serve at the executive level*" (9.2.3 (9)), the same person may not serve as an executive post for more than two terms (9.2.3 (10)) and, for INGOs, "*no expenses can be made on administration, consultants, foreign travel, and hotel bills exceeding a certain percentage*" (9.2.4 (12)).

We are concerned about these unclear and vaguely worded restrictions which do not seem to have a legitimate objective. Regarding the restrictions to employment of foreign nationals, as well as former officials, we are concerned the authorities may attempt to control and interfere in the composition of associations and limit their independence and their diversity, and therefore the quality and efficiency of their work. By limiting the possibility of foreigners or any other individual to be a member or founder of an association, the Policy is violating one of the most fundamental principles of the right to freedom of association constituted by the ability for associations to freely choose their members and to decide themselves if they are open to any membership (A/HRC/20/27, para. 55).

## **2. Restrictions of the scope of activities**

Numerous provisions impose restrictions on the scope of activities of NGOs, in particular 9.2.3 (12) "*No lobbying can be made in favor of INGOs engaged in inappropriate allegations against Nepal, feeling of hate or ill-will, or provide help in preparation of such materials*", 9.2.3 (13) "*If information is received about a foreign national or foreign organization working against Nepal, Nepal's civilization, and goodwill between the Nepalese, the relevant authorities should be notified immediately*".

With regards to INGOs, the restrictions are more severe: article 9.2.4 (6), "*They may not lobby, create pressure, or influence in relation to matters such as law- and*

*policymaking in Nepal” 9.2.4 (7) “INGOs may not influence and put pressure in an organized way”, 9.2.4 (8) “Inappropriate allegations or feeling of hate or spread of ill-will against Nepal, or materials prepared to this effect, should not be sent to their countries or should not be put into publicity” 9.2.4 (10) “No direct implementation of projects by the INGO itself”, 9.2.4 (11) “No report can be sent directly to their country without permission from the Government of Nepal”, 9.2.4 (14) “No work should be carried out against Nepal’s civilization, culture, social relations, and goodwill”, 9.2.4 (15) “They may not implement their country’s religious, social, and other agenda or encourage inclination towards such agenda”, 9.2.4 (24) “As proselytization is punishable by law, a foreign national or organization should submit a signed pledge-paper stating that they shall not engage, or cause to engage, directly or indirectly in proselytization”.*

The abovementioned restrictions are overbroad, do not appear to pursue a legitimate objective under international human rights standards and therefore represent worrying restrictions on the scope of activities NGOs and INGOs are able to undertake and on their ability to operate. We are concerned that these provisions underline an intended policy aimed at hindering civil society’s ability to operate, especially NGOs and INGOs that are advocating for the promotion of ideas that are not shared by the Government. The Policy could therefore have a devastating impact on organizations promoting human rights whose advocacy and work often imply presenting alternative voices to the authorities’ views and policies. We are finally worried these provisions constitute unacceptable impediments to the rights to freedom of expression and association and may cause self-censorship among NGOs and INGOs.

We highlight that the right to freedom of association, as set forth in article 22 of the ICCPR implies a wide range of positive and negative obligations for the State to ensure its enjoyment as it foresees 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”.*

The above-mentioned provisions impose severe restrictions to the right to freedom of expression, intrinsically linked to the right to freedom of association, and do not meet the high threshold established by article 19(3) of the ICCPR for restrictions:

*“The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals”.*

We recall that members of associations should be free to determine their statutes, structure and activities and make decisions without State interference (A/HRC/20/27, para 64). Associations pursuing objectives and employing means in accordance with international human rights law should benefit from international legal protection. They should enjoy, inter alia, the rights to express opinion, disseminate information, engage with the public and advocate before Governments and international bodies for human rights (A/HRC/20/27, para 64).

We moreover refer to resolution 2005/38 of the Commission on Human Rights, highlighting that the right to peaceful assembly and association and the right to take part in the conduct of public affairs, are intrinsically linked to the right to freedom of opinion and expression. In this context, states are to take all necessary measures to create conditions for the promotion of these rights. The promotion of civil society is fundamental to ensure stability and economic growth, and states should take all measures to promote civil society, including through legislation that is in compliance with international human rights law.

### **3. Access to funding**

Provisions 9.2.3 (2) and 9.2.3 (4) require associations to obtain prior approval before receiving funding from foreign sources and to associations who do receive foreign funding to provide the “*details of foreign assistance received as approved by the Ministry of Finance should be given to the Ministry of Finance and the Local Administration within seven days of the receipt of such assistance*”. For INGOs, access to resources is even more limited as “*no amount can be raised within Nepal for any purpose*” (9.2.4 (5)).

We are concerned that these abovementioned provisions would severely hinder the access of funding for associations as the authorization to access funding entirely relies on the State’s discretion.

We recall that the ability for associations to access funding and resources is an integral and vital part of the right to freedom of association (A/HRC/20/27, para 67). We highlight that any association, both registered or unregistered, should have the right to seek and secure funding and resources from domestic, foreign, and international entities, including individuals, businesses, civil society organizations, Governments and international organizations (A/HRC/20/27, para. 68). It is also considered as a best practice, that legislation does not prescribe the approval of the authorities before receiving domestic and foreign funding, regardless of the goals of the concerned organizations.

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 for your observations on the abovementioned matters.

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 reversing or revoking the legislative provisions and other measures that impose undue limitations to the rights to freedom of association and to freedom of expression. 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.

Finally, we would like to inform your Excellency's Government that this communication, as a comment on pending or recently adopted legislation, regulations or policies, will be made available to the public and posted on the website page for the mandate of the Special Rapporteur on the right to freedom of expression: <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/LegislationAndPolicy.aspx>.

Your Excellency's Government's response will be made available on the same page as well as in a report to be presented to the Human Rights Council for its consideration.

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

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