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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 May 2017]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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NEPAL: Parliament is not above the principles of the rule of law

1. The Asian Legal Resource Centre (ALRC) wishes to draw the attention of the UN Human Rights Council on the impeachment motion filed against the Chief Justice of Nepal on 30 April 2017 by two ruling parties - the Nepali Congress and the Communist Party of Nepal (Maoist Centre). The motion to impeach the CJ was signed by 249 legislators from the NC and the CPN (Maoist Centre).
2. According to the government of Nepal, the CJ has breached Article 75 of the constitution, which outlines the government's executive powers. The Supreme Court overturned the government's choice for appointment of Mr. Jaya Bahadur Chand as the Chief of Police in April.
3. The decision of the ruling parties to file a motion to impeach CJ Justice Ms. Sushila Karki is widely criticized in Nepal and abroad already.
4. Releasing a statement, the UN High Commissioner for Human Rights Mr. Zeid Ra'ad Al Hussein has condemned moves to impeach the CJ, warning that such actions suggest a concerted attempt by the Government to undermine the independence of the judiciary.
5. The High Commissioner urged the government to respect the independence of the judiciary, to withdraw what appears to be a politically motivated impeachment motion and to commit to the processes of transitional justice and accountability that are so important if Nepal is to overcome the tragic legacy of its decade of conflict.
6. The Supreme Court's interim order ordered legislation on 5 May 2017 to withhold the impeachment motion and to allow the suspended CJ to resume her office is of some relief. The Supreme Court directed the Parliament to put on hold the impeachment motion filed against CJ and allow her to return to work from 5 May itself. A single bench of Justice Mr. Cholendra Shumsher JBR issued the order stating that the impeachment move was against the spirit of Nepal's Constitution responding to a writ petition against the motion to impeach the CJ.
7. The Judiciary, the Legislature and the Executive are the three branches that keep democracy alive. They should not interfere with each other. If the political parties are allowed to do what they please, then Nepal is heading once again towards tyranny.
8. On the other hand, this is for the first time that an impeachment motion against the Chief Justice has been registered in Parliament in the history of Nepal. Motivated by ill will and malice, the motion of a direct infringement to the sovereignty of the court, and an attempt to gain political control over the judiciary. It has undermined the independence of the judiciary and trampled the rule of law in the country.
9. It must be noted that removal of a judge can only be considered on two grounds- incapacity and misconduct. In addition, it must be followed by a standard procedure in the Parliament. A fair and independent investigation into alleged misconduct or incapacity has to be conducted by a competent mechanism. Any impeachment procedure that falls short of these standards is against the rule of law and the independence of the judiciary.
10. In the current case, no such procedures were followed which speaks out loud and clear that the motion was politically motivated and targeted mostly to stop the CJ from carrying out her duty.
11. The ruling parties were in a hurry to suspend the CJ and remove hindrances to the appointment of the Deputy Inspector General of Police, Mr. Prakash Aryal to the post of the Inspector General of Police (IGP). There is also a belief in the country that the incumbent government has fallen apart with the CJ since the CJ has been open in her approach against corruption, and human rights abuses that occurred during the decade-long conflict in Nepal. In order to

whitewash their crimes committed during the conflict and put their strong hold concerning the appointment of the IGP Mr. Prakash Aryal, the ruling political parties made a hasty decision, and without enough homework.

12. There was no other need for the ruling parties to register an impeachment motion at the Parliament Secretariat as the CJ is retiring this June when she turns 65.

13. What this whole process also explains is that the political parties in Nepal think that they are above the law, and they can undermine any person and any institution, even if it is the Supreme Court. The politicians have resorted to the impeachment process against the CJ exploiting the flaws in Nepal's constitution, which reads for automatic suspension of the judge after the filing of an impeachment motion. It is clearly the misuse of power.

14. The ALRC respectfully requests the HRC to urge the government of Nepal to stop interfering in the functioning and independence of the judiciary. The impeachment motion is a serious step towards the destruction of the most basic of democratic values. Judiciary must be allowed to function independently; and the political parties must realize that disturbing the balance of power between the judiciary, legislature and executive bodies of government only complicates the time-tested theory of separation of powers.
