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Nepal: Draft Army Act flawed - Parliament should start broad consultations and bring provisions into line with human rights law

The International Commission of Jurists (ICJ) today called on the Nepali Government and the House of Representatives to ensure broad and transparent consultations before the draft Army Act is adopted, and to amend the legislation to bring it into line with Nepal's obligations under international human rights law.

"This draft Army Act is of national importance. But it has serious flaws and is being rushed through parliament with little transparency and without broad and democratic consultations", said Nicholas Howen, ICJ Secretary-General.

In a letter to the Speaker of the House of Representatives, Mr Subash Nemwang, dated 23 August, the ICJ urged the Parliament to ensure the draft Army Act is not adopted in its current form and that there is time for a considered revision to bring it into line with international human rights standards.

"I am very concerned that the draft Act contains provisions that could perpetuate impunity within the Nepal Army for serious human rights violations. The systemic failure in Nepal to bring to justice those responsible for human rights violations has fuelled cycles of human rights violations in times of peace as well as conflict", said Nicholas Howen.

Article 21 of the draft Act appears to provide blanket immunity from legal proceedings for all acts performed by a member of the Nepal Army "in the course of discharging his duties" that result in death or other loss. In its letter to the Speaker of the House of Representatives, the ICJ said: "Such a clause would only serve to further entrench impunity in Nepal, exacerbate political and social tensions and contribute to continued cycles of violence".

The jurisdiction of military courts should be limited to crimes that are strictly of a military nature. Crimes that amount to human rights violations, such as torture, extrajudicial executions and enforced disappearances, should always be tried by ordinary civilian courts using normal civilian trial procedures. However, the effect of Articles 58, 55 and 61 of the draft Act is that such human rights crimes can be tried in a military, not civilian court. The exclusive use of the military justice system when soldiers commit human rights violations has helped to entrench impunity in Nepal.

Chapter six, which sets out a number of offences under the draft Act, should at least incorporate into its terms crimes defined as such in the four Geneva Conventions of 1949, which Nepal has ratified, as well as crimes established in customary international humanitarian law.

The ICJ is an international non-governmental organisation comprising sixty of the world's most eminent jurists and has a worldwide network of national sections and affiliated organisations

Where a soldier is tried by a Court Martial, the accused should benefit from international fair trial standards and principles on the independence of the judiciary. Article 71(2) of the draft Act provides that all Courts Martial will be heard in closed session. This is in breach of Article 14 of the International Covenant on Civil and Political Rights, ratified by Nepal, which ensures the right to a public hearing. Open hearings are an important guarantor of fairness and justice. Article 110 of the draft Army Act does not give soldiers convicted by Court Martial the right to appeal to a higher judicial authority.

The risk of severe human rights violations is significantly increased when detainees are held in locations that are not recognised places of detention, without recognised procedures and safeguards to protect detainees. The ICJ would urge that Article 127 of the draft Army Act be revised to ensure that all detainees are held in registered and acknowledged place of detention using regular detention procedures.

“Reform in the security sector is clearly essential as Nepal moves towards a sustainable peace. This will not involve reform of legislation, but also significant changes in policy and practice and a process to ensure accountability for past human rights violations”, concluded Nicholas Howen.

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