

# Role of the National Human Rights Commission Of Nepal in Monitoring National Security Legislation

-Subodh Raj Pyakurel  
INSEC

## Background

The National Human Rights Commission (NHRC) was established on 26 May 2000 in accordance with the Human Rights Commission Act, 1997. Established as an independent and autonomous institution for the effective enforcement as well as protection and promotion of Human Rights conferred by the Constitution and other prevailing laws,<sup>1</sup> it has undergone financial constraints and other grievances. Four years en route to its mission, NHRC has witnessed severe violations of human rights, the daily incidence in the land. Recognizing the competence and responsibilities of the National Institutions for Protection and Promotion of Human Rights as defined in the Paris Principles (adopted in 1993 by the General Assembly), the NHRC has set its mission as “to develop a culture of human rights in the country by taking a leading role as an independent and impartial national institution for the protection and promotion of human rights in accordance with universally recognized human rights principles”.<sup>2</sup> However, a limited number of staff and inadequate budget for its effective operation have been two major obstacles.<sup>3</sup>

Despite these constraints, NHRC, comparing to other two commissions (commissions on Dalits and women) in the country, is success (?) in its operation. It has introduced Complaint Handling and Compensation Determination Regulation 2000. Some significant works that have been initiated by NHRC are monitoring human rights situation in conflict hit districts; proposing a draft code of conduct to both conflicting parties; advocating for signing human rights accord by the conflicting parties, establishing the office of the National Rapporteur on Trafficking in Women and Children; inspecting several prisons to assess the legality of detention, fact finding investigation and publishing the severe human rights violated cases and publishing the report of the cases and conducting various trainings and programmes relating to Human Rights. In the area where NHRC has reached and worked, 57% of the stakeholders found that the performance and operation of NHRC is satisfactory.<sup>4</sup> Monitoring of human

---

<sup>1</sup> Preamble of Human Rights Commission Act, 1997

<sup>2</sup> NHRC, Strategy 2004-2008, P. 1

<sup>3</sup> NHRC, Strategy 2004-2008, p.2

<sup>4</sup> Ibid p. 5

rights situation in the conflict-hit zones is the major achievements that have been carried out by the NHRC. These are not all for NHRC to reach onto. Still there are rooms and spaces i.e. making complaint handling process more result oriented, making Human Rights Commission Act compatible with the Paris Principles and many other areas that NHRC come up unfailingly.

### **Human Rights Commission Act and Its Jurisdiction**

Human Rights Commission Act, 1997 of National Human Rights Commission on Chapter 3 provisioned the mandates or duties of the Commission that the primary responsibility of the commission is the protection and promotion of human rights<sup>5</sup> through inquiries and investigations based on the petition or complaint presented to the commission by the victim himself/herself or any person on his/her behalf or upon information received from any source or on its own initiative.<sup>6</sup> These complaints should be based on the violation of human rights and abetment<sup>7</sup> and carelessness or negligence in the prevention of violations of the human rights by any person, organization or authority concerned.<sup>8</sup> Likewise, the NHRC is authorized to visit, inspect and observe any authority, jail any organization under His Majesty's Government and to submit necessary recommendations to HMG on the reform to be made on the functions, procedures and physical facilities which may be necessary for such an organization for the protection of human rights.<sup>9</sup> For the effective implementation of human rights provisions enshrined in the legislations, NHRC can review the provisions on safeguards provided by the Constitution and other prevailing law for the enforcement of human rights and submit necessary for the effective implementation of such provisions.<sup>10</sup>

In order to implement the international human rights standards norms in the country, NHRC is authoritative to study international treaties and instruments on human rights and submit the necessary and appropriate recommendations to HMG<sup>11</sup> and evaluate the existing human rights situation of the country.<sup>12</sup> But NHRC has no jurisdiction over the following matters:

- Any matter within the jurisdiction of the Military Act<sup>13</sup>
- Any matter certified by the Chief Secretary of HMG that it may have adverse effect in the treaty concluded between HMG and any foreign

---

<sup>5</sup> Article 9(1) of the Human Rights Commission Act, 1997

<sup>6</sup> Article 9(2)(a) of the Act

<sup>7</sup> Article 9(2)(a)(1) of the Act

<sup>8</sup> Article 9(2) (a) (2) of the Act

<sup>9</sup> Article 9(2) (e) of the Act

<sup>10</sup> Article 9(2) (f) of the Act

<sup>11</sup> Article 9 (2) (g) of the Act

<sup>12</sup> Article 9 (2) (k) of the Act

<sup>13</sup> Article 10(a) of the Act

- government or international or intergovernmental organization or on the Kingdom of Nepal.<sup>14</sup>
- Any matter certified by the Attorney General that it may have adverse effect on the conduct of an inquiry and investigation being carried out in accordance with the law for the purpose of identifying the crime of the criminal.<sup>15</sup>

### **Monitoring Human Rights Situation**

Since the inception of armed insurgency in Nepal, violations of HR have been daily occurrence. Measures adopted to quell the insurgency proved failure one after another. The failure of first phase of talks in 2001 resulted in the imposition of State of Emergency. Situation, then probably in the Nepali history, further escalated witnessing the massive violation of human rights. Persons, most of them defenseless, were killed in cold blood, 'encounter', suspicion and 'spying'. Even in the crucial period, NHRC undertook monitoring the situation of human rights in 35 districts during the State of Emergency. It has monitored conflict prone zones on the perspective of humanitarian laws and come up with many reports on the violation of humanitarian laws and human rights law. In the State of Emergency, it has identified 125 killings, 6 rapes, 84 torture cases, 105 illegal detention, 7 disappearances, 69 displaced, 40 beatings and threat cases.<sup>16</sup> These data are collected from 35 districts monitored during the State of Emergency.

NHRC has recommended the government to compensate the family of victims who are killed in the name of 'encounter'. Like in the case of Doramba and Kahule, NHRC has monitored the case and recommended the government to comply with the Geneva Conventions particularly the Article 3 during the armed operation and encounter.

### **Monitoring the Security Laws**

There are about 23 laws in Nepal relating to the security.<sup>17</sup> There are 10 provisions in the Civil Code and 20 Acts are relating to the security.<sup>18</sup> Beside these, Terrorist and Disruptive Activities (Control and Punishment) Act (TADA), 2002, Military Act, 2016; Police Act, 2012; Crime against State and Punishment Act, 2046; Government Cases Act, 1992, Arms and Ammunitions Act, 2019; Explosive Material Act, 2018; Public Security Act, 2046; Some Public (Offence and Punishment) Act, 2027 and Offence Relating to Illegal detention, Homicide on Civil Code and Evidence Act 2031 are the major, important and most specific security related laws in the country. As per mandate and jurisdiction provisioned

---

<sup>14</sup> Article 10(b) of the Act

<sup>15</sup> Article 10(c) of the Act

<sup>16</sup> NHRC, Human Rights Monitoring Report, 2003, p. 9

<sup>17</sup> Unpublished Research Report

<sup>18</sup> Ibid

in the Human Rights Commission Act, 1997, the Commission is involved in the monitoring based on the humanitarian laws applicable in conflict situation.

After the promulgation of TADA in the country, the NHRC felt to monitor the human rights situation because the Act was introduced through ordinance it includes the wide definition of 'terrorist acts' and there are more chances of the violations of human rights. It has observed that "TADA" aids and abets those who, under the guise of maintaining " law and order" or "security concerns" continue to violate the human rights of the citizens of Nepal."<sup>19</sup> The NHRC has also identified that the monitoring committee, for the complaint either by the concerned party on behalf of him, on the effect of the actions constitutes a retired judge of Supreme Court as a Chairperson of the committee, secretary of Ministry of Defense, Home, Law and Justice and Attorney General<sup>20</sup> is not formed yet.

### **Bleak scenario**

Security legislations are meant for specific purposes. Generalization of such legislation against the acts those not to be exercised within the jurisdiction of such laws is rampant.

The state has fallen short to observe the provisions of the security legislation as they have been supposed to. In pretension of security measures, the concerned authorities have abused their power to target wrong people. In recent days, the security legislation has been misused as tools to reprisals and prejudices and even to curtail democratic rights of the people.

Civil society, specially the human rights community, opposed the TADA/O fearing that it would 'provoke' the security personnel to (mis)use it against innocent people and further worsen the situation of human rights in the country, and the fear has come to a bitter reality. The state has brutally abused its authority- disappearance, extra-judicial killing (even in custody)- have been rules of the day.

Common public are being provided arms with training on its applications, no any security law permits the government to do so.

Unfettered atrocities on the part of the security personnel reached to the common public by resorting on security issues and impunity blanket over the perpetrators have desperately injected a worse culture of non-accountability in our ruling class; it has undermined the rule of law and the fundamental principles of human rights accepted universally and provisioned in our own constitution.

---

<sup>19</sup> SAHRDC, Human Rights Features, 20 January 2004.

<sup>20</sup> Section 13.1 of TADA

It is, to some extent in a way, human rights community has been monitoring the security legislation on the course of human rights monitoring. However, we even lack monitoring of security legislation in its proper sense.

### **Steps to be taken by NHRC**

There is no separate and specific working area of NHRC on the monitoring of National Security Laws. So, it only monitors the situation of human rights and monitored cases in compliance with international human rights and humanitarian laws. Though TADA was introduced for two years, NHRC should initiate to monitor and analyze every provision enshrined in the Act that is easily construed into diverse meanings and remain the space of misuse. Section 5(a) of TADA grants special power to authorities to arrest persons without warrant suspected of involvement in terrorist and disruptive acts, allowing for the arbitrary, capricious and prejudicial application. The grant of 'special power' to authorities has more possibility of the violation on the protection and promotion of human rights in the country. The NHRC should take effective measures and steps to aware concerned authorities not to misuse the provisions enshrined in the TADA.

Since the country is heading towards militarisation and there is wide possibility of violation of human rights in the country, the role of NHRC is extended. Mobilization of security forces in the name of 'unified command' the vulnerability of human rights violation and misuses are rising. In this case, the NHRC should take following steps:

- Compilation and study of security related laws in the country.
- Establishment of a separate section or unit to monitor the National Security laws.
- Exertion of pressure to the government to apply the human rights and humanitarian norms in the country.
- NHRC should have an access to look into the laws enacted. Its access should have guaranteed in its Act.

### Reference:

1. NHRC, State of Emergency and Human Rights, 2003
2. NHRC, Yearly Progress Report, 2002-2003
3. NHRC, Report of Situation of Human Rights, 2004
4. NHRC, Strategy Plan 2004-2008, 2003
5. Human Rights Commission Act, 1997
6. Nepal Human Rights Violation by State, INSEC, 2004.
7. SAHRDC, Human Rights Features, January 2004
8. Terrorist or Disruptive (Control and Punishment) Act, 2002