

## **Executive Summary of the Report**

### **"Implementation status of recommendations by National Human Rights Commission and Impunity" organized jointly by NHRC and FOHRID**

19 April 2007, Kathmandu

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#### **Brief Report of workshop on**

### **"Implementation status of recommendations by National Human Rights Commission and Impunity" organized jointly by NHRC and FOHRID**

19 April 2007, Kathmandu

#### **1. Background**

Impunity is deeply rooted as culture in Nepal. It has left its impact in all the sectors of society including political, economic, social sectors. State is rampantly allowing impunity to the violators in the incidents of rights violations. Senior officers of the security forces are almost never punished, though some non-significant actions are taken to the junior soldiers. Senior government officials are never brought into justice system. Several commissions of inquiry have been formed to investigate the incidents of human rights violation in the past whether during the Panchayat regime or after that. But the reports of such commissions, for instance, the reports on the disappearance of the people before and after 1990, are never implemented. The report of the Mallik Commission was not implemented on the basis of the opinion of the then Attorney General. Report of the Rayamajhi Commission formed to investigate the atrocity during the Jana Andolan II is even not publicized, let alone its implementation. No action has been taken to ensure punishment to the perpetrators and justice and compensation to the victims in the cases of widespread unlawful killings, genocide, rape, abduction, disappearance, and displacement during the decade long armed conflict.

We have to take immediate initiative to create pressure for immediate ratification of the international instruments such as Rome Statute of the International Criminal Court (ICC) , Optional Protocol of CAT, Disappearance Convention 2006 and Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes Against Humanity is necessary. The eight party alliances, while promulgating Interim Constitution, replaced the provision to take action by enforcing retroactive law (Article 25 (4) and right to legal remedy in the incidents of impunity and crimes against humanity (Article 25(5), which was recommended by the Drafting Committee. It shows that the government is not committed to work honestly against impunity.

Government has not taken action on most of the recommendations by the National Human Rights Commission (NHRC). The negligence of the government to the national institution established under Parish Principle has added suspicion on its intention. Request of the High Commissioner for Human Rights and her representative in Nepal to take action on the violation of human rights and humanitarian law is not taken seriously.

The widespread impunity in Nepal is related to the violation of human rights and humanitarian law. Likewise, there are chances of starting genocide also in the name of ethnic movement. Rautahat incident occurred recently being encouraged by the attitude of the government to protect the incidents of human rights violations. Such incidents may recur in the future also if an effective environment is not created to take action on such cases. This can obstruct the protection and promotion of human rights, peace process, rule of law and democracy. New Nepal will remain a mere dream without curbing impunity. This is ultimately leading Nepal towards a failed state.

Efforts of GOs and NGOs including NHRC seeking action to the violators and justice and compensation to the perpetrators have not been able to yield significant positive results. Therefore, this program was jointly organized by NHRC and FOHRID with the objective to evaluate the challenges in the fight against impunity and to find out strategy for the NHRC, NGOs and civil society in this regard. Funding for the program was arranged by Capacity Development Project of NHRC and "Unlawful killings and Impunity Project" being run by FOHRID with the funding from the EU.

## **2. Context and issues of concern**

The issue of concern for this workshop was to initiate debate on the weak implementation of the recommendations from the NHRC and to find out solutions against the challenges posed by this situation. Likewise, it aimed to identify strategy for effective implementation of the recommendations of the NHRC and end to the culture of impunity.

Out of 147 recommendations from NHRC during 2057-2063, the government has completely implemented 16, partially implemented 35 and left untouched the rest. Status of the implementation of the recommendations made by NHRC on various dates is given in the table below annex 1. This clearly shows that the government is not only indifferent to comply with the recommendations of the national institution formed in accordance with the Parish Principles, but it ultimately promotes impunity. In this backdrop, to strengthen NHRC is the need of the hour.

New effective legislation against impunity is urgently required. To bring the violators of unlawful killings into justice system is equally important. The cases of the violations of human rights and humanitarian law, whether committed by the State or the insurgents need to be brought in the limelight as PIL. The government should be compelled to take action according to the recommendation of NHRC. This should be regarded as the point of departure for fight against impunity.

NHRC should play strong and effective lead role to demand a legislation with retroactive effect in dealing with the incidents of impunity. In the context of recognition of NHRC as a Constitutional body by the Interim Constitution 2063, we can expect its role and responsibility to be more vital.

#### **Issues discussed by the workshop:**

- What did we learn from the international experience of fight against impunity and what more can be learnt?
- What are our successes, failures and weaknesses in controlling impunity in Nepal?
- How is the working solidarity between government agencies, NGOs and international community possible in the fight against impunity in Nepal?
- How can we publicize the implementation status of the recommendations of NHRC and how to create pressure in this regard?
- How can NHRC play a strong lead role to end impunity and prepare law on impunity with retrospective effect?
- What might be the chain of strategy for ending impunity? What can be the short and long term strategies? How can we develop coordination among GOs, NGOs and international community?

#### **3. Objectives**

Objectives of the workshop were as follows:

- a. To create pressure to bring the violators of human rights into justice system and for implementation of the recommendations of NHRC.
- b. To create civic pressure against State for ending impunity.
- c. To identify level of impunity at various State mechanisms and to acquire State commitment to end impunity.
- d. To determine effective future strategies to end impunity by exploring its current situation.

#### **4. Expected outcome**

- a. Government and NGOs will be aware of the implementation status of the recommendations by NHRC.
- b. Government and the State agencies will express commitment for ending impunity.
- c. Effective future strategy will be determined to fight against impunity.

#### **5. Program proceeding methodology**

The workshop was divided into three sessions. First panel discussion was held on the "Implementation Status of the recommendations of NHRC" in the first session. Yagya Prasad Adhikari, Deputy Director of NHRC presented paper to the panel chaired by former justice Laxman Prasad Aryal and attended by Durga Sob, Nutan Thapaliya, Bishwakanta Mainali and Baman Prasad Neupane.

Second session was held on "Human rights situation and impunity". Advocate Hari Chandra Bhattarai presented paper entitled "Impunity and the question of ending it". Sushil Pyakurel, former member of NHRC was Chairman and Madhav Prasad Paudel, Dr. Shanta Thapaliya, Gita Pathak, Padhma Mathema and Shiva Gaule were the members in the panel of this session.

Conclusion and recommendation of the workshop was made public through a press conference in the third session. Sriram Adhikari, Protection Officer of NHRC presented brief report of the conclusion before the journalists and other participants. Justice Kalyan Shrestha, Deputy Resident Representative of UNDP Nepal Sarad Chandra Neupane and Acting Secretary of NHRC Dhruba Nepal discussed about the conclusion and relevance of the program.

## **6. Program conclusion**

In a general sense, impunity is a situation when a person or authority involved in violation is not punished and victim is not provided with appropriate compensation. In a specific sense, impunity stands for a situation where there is failure to take any action against natural or legal person involved in the serious violation of human rights and gross violation of humanitarian law. From this standpoint, impunity is related to the serious crimes such as genocide, crime against humanity and war crimes. Disregarding where happened, these crimes are the issues of international concern. Indifference to take action against those involved in the violations recorded in number of reports such as the disappearances during 1960 to 1990 and the recommendation of the NHRC prove that impunity is being protected in Nepal.

This program was organized to evaluate the implementation status of the recommendations made by NHRC and to identify measures to improve the situation. Given below is the summary of the conclusion reached after reviewing the papers presented in the program and comments of the participants.

### **6.1 Identification of the problems seen in the campaign against impunity**

#### **A. Causes of impunity**

- Political interest and indifference;
- Political instability;
- Ambition of power and weapon;
- Lack of responsibility and accountability;
- Weak and inadequate legal mechanism;
- Lack of international jurisdiction;
- Slow, weak and corrupt judiciary;
- Economic, social and cultural factors;
- Psychosocial cause;
- Nepotism, belief in fate;
- Lack of public awareness;
- Existence of double standard in political parties.

#### **B. Sectors affected by Impunity in Nepal**

- Political sector
- Legislative sector
- Judicial sector

- Security sector
- Justice mechanism sector

### **C. Problems seen in the campaign against impunity**

- Lack of effective State mechanism;
- Lack of full abidance to the international humanitarian law;
- Non-ratification of the Rome Statute of International Criminal Court (ICC);
- International human rights conventions are not implemented;
- Armed conflict;
- Democratic system at stake;
- Legal framework heading towards impunity and inadequate;
- Crisis in the norms of fair and independent judiciary;
- Government's attitude to conceal and ignore the reality;
- Lack of political stability;
- Lust for power in the leadership;
- Whereabouts of the disappeared is not disclosed publicly.

## **6.2 Recommendations:**

### **A. Current strategies of the stakeholders for ending impunity**

- Though impunity in Nepal is focused on crime against humanity and war crimes, it should also incorporate the crimes pertaining to the issues of class, ethnicity, region and economy.
- Despite various efforts at the international level for ending impunity, such efforts are negligible in the Nepalese context.
- It is necessary to introduce additional effective, strong and planned action against impunity for protection and promotion of human rights according to the international norms and standard.
- Nepal should be State party to the Rome Statute 1998 of the ICC and Disappearance Convention, 2006 and promulgate laws complying with them.
- Existing laws that support impunity should be amended immediately.
- Retroactive law should be promulgated to end crimes against humanity and impunity.
- Truth and Reconciliation Commission should be formed immediately.
- Recommendations of NHRC should be implemented effectively and its role should be made stronger and more effective as the role of the Commission is important for protection and promotion of human rights and ending impunity.
- Political commitment is necessary to end political criminalization and impunity.
- Concerted effort of NHRC and NGOs is necessary for protection of human rights and ending impunity.

### **B. Law reform and preparation**

- Role of State, civil society and international community for ending impunity
- Ratification of Rome Statute to adopt international jurisprudence;
- Separate domestic law to end impunity;
- Reform and amendment in the existing law;
- Retroactive constitutional provision;
- Provision of parliamentary committee on impunity.

### **C. Strategies of the government sector against impunity**

- Developing democratic norms and values in the government and political parties;
- Developing political will power;
- Establishment of accountable and responsible state mechanism;
- Implementation of the commitments of the law enforcing authority for rule of law;
- Accountability from the insurgents;
- Immediate establishment of the Truth and Reconciliation Commission;
- Checking the misuse of amnesty;
- Social and political boycott to the persons promoting impunity;
- Formation of special court / arrangement of special bench;
- Implementation of the recommendations by NHRC.

### **D. Role of non-government sector**

- Establishment and mobilization of citizen's mechanism;
- Stopping participation in the peace-keeping mission and other similar status;
- Launching pressure programs;
- Publicize national international trends and updates;
- Formation of citizen's truth commission;
- Organize and empower additional public pressure;
- Awareness creation;
- Increasing foreign cooperation and sympathy;
- Filing cases for justice to the victims;
- Developing effective working unity;
- Creating pressure to adopt international jurisdiction for ending impunity;
- Drafting law against impunity and recommendation to the concerned authority.

**Annex: 1**

Status of the implementation of the recommendations made by NHRC on various dates is shown in the table below:

(From 2057 B.S.- 2063 B.S. Last of Chaitra)

<b>S. no.</b>	<b>Subject of recommendation</b>	<b>#of recommendation</b>	<b>Implemented</b>	<b>Partially implemented</b>	<b>Not implemented</b>
1	Policy recommendations	29	1		28
2	Recommendations regarding witchcraft	13	13		0
3	Death caused by security forces	48	2	29	32
4	Death caused by Maoists	13		2	11
5	Disappearance, torture by security forces	11		2	9
6	Ambush explosion by Maoists	2		2	0
7	Repeated arrest	2			2
8	Unidentified explosion	2			2
9	Unidentified killing	1			1
10	Death of civilian in crossfire	1			1
11	Injured by security forces	1			1
12	Death by Vigilante Committees	2			2
13	Misc. recommendations	22			22
	<b>Total</b>	<b>147</b>	<b>16</b>	<b>35</b>	<b>111</b>