

PARLIAMENT WATCH – NEPAL

DECEMBER 2011



Conceptualised, implemented and funded by South Asians for Human Rights; Research carried out and assistance provided by Transparency International, Nepal. Researcher Advocate Kamal Pokhrel

The Tenth session of the Legislature-Parliament continued, and as many as 05 meetings¹ were convened, during the month of December. The major highlight of the month is as follows:

The first meeting in December, which was convened on the 6th at 13:15 hours in the parliament, witnessed obstruction by the main opposition over the issue of brutal assault by the prison inmates to the members of its sister organization, including the District President, Tarun Dal, Hiva Paudel.² One of the influential young leaders of Nepali Congress (NC) Party, Gagan Thapa, condemned the attack as sheer violation of rule of law and proclaimed that no session would be allowed unless the government assures the actual investigation of the case so as to bring the guilty to book. Responding to the concern expressed by the opposition, Deputy Prime Minister and Home Minister Honourable Bijaya Kumar Gachhadar informed the parliament that a team of doctors, including a renowned neurosurgeon Dr. Upendra Devkota, has been sent to Chitwan for attending the injured as they could not be lifted to the centre due to some technical difficulties. The Deputy Prime Minister also notified that an inquiry committee of four members, headed by the Joint Secretary of Home Ministry, Shankar Koirala, has already been formed to look into the matter, and identify the culprits and bring them to justice. The meeting resumed following the commitment expressed by the Deputy Prime Minister.

Similarly, the *eighty-first*³ and *eighty-second*⁴ meeting raised the human rights concern regarding the murder of a person named Mana Bahadur Sunuwar, who was brutally killed by a group of people in a

¹ The seventy-ninth to eighty-third meetings were convened during 06 to 29 December, 2011.

² Mr. Paudel was on a custodial remand for his alleged involvement in the death of a person called Sanjay Lama, purportedly a supporter of the Communist Party of Nepal [United Marxist-Leninist] (UML)'s youth wing, Youth Association Nepal (YAN). Others who sustained a daring attack in the incident were (a) Pradip Bhatta, (b) Madan Pariyar, (c) Hari Gurung and (d) Badri Dhungana – all belonging to the NC's sister wing, Tarun Dal. A group of UML-affiliated YAN cadres, who were kept at the same jail, had brutally assaulted Paudel and others. The attackers bludgeoned the sleeping victims with water pump handles, steel pipes, axe handles and other kitchen implements. The inmates involved in the attack shared a nasty rivalry with Paudel, and to avert violent confrontation between the two sides they were kept in separate blocks. Paudel later succumbed to the injury on 17 December while undergoing treatment in Kathmandu. For further information, please refer to a news story, "Inmates attack Tarun Dal leader in Chitwan prison" in the Kathmandu Post, dated 07 December 2011; and a Nepalnews story, "Chitwan prison assault: Tarun Dal district president Paudel succumbs to injuries; NC cadres shut down Chitwan", available at <http://www.nepalnews.com/home/index.php/news/1/15334-chitwan-prison-assault-tarun-dal-district-president-poudel-succumbs-to-injuries-nc-cadres-shut-down-chitwan.html>, posted on 17 December 2011 and last accessed on 19 December 2011.

³ The eighty-first meeting was convened on 16 December 2011, Friday at 13:40 hours in the parliament.

⁴ The eighty-second meeting was convened on 22 December 2011, Thursday at 14:25 hours in the parliament. The entire proceeding of the house was obstructed that day with the backing of main opposition, the Nepali Congress, over the issue of an alleged murder case.

remote Kalikot district for entering the kitchen of a so called upper cast.⁵ "Despite the Nepal abolishing untouchability, and the parliament passing the Ethnic Disparity and Untouchability (Crime and Punishment) Bill,⁶ violence still continues as far as the oppressed are concerned", some of the lawmakers lamented.⁷ In addition, the *eighty-first* meeting unanimously ratified the "SAARC Agreement on Trade in Services (SATIS)" as well as the "Copenhagen Amendment, 1992"; the Montreal Amendment, 1997; and the "Beijing Amendment, 1997" of the "Montreal Protocol on Substances that Deplete the Ozone Layer, 1987", which was presented by the Minister of State on Environmental Issues, Hon'ble Durga Devi Mahato (Dhanuk).

Another landmark offer of the *eighty-first* meeting was the "Report of the Legislative Committee on National Human Rights Commission (NHRC), 2011", which was presented in the house by the Legislative Committee Chair, Hon'ble Yashoda Gurung (Subedi). The report proposed some major amendments in the Human Rights Commission Bill, 2011 which culminated into the promulgation of a comprehensive legislation that has the following salient features:⁸

The Act has three broad chapters and 35 sections, and is basically promulgated "to make legal provisions with regard to the functions, duties, powers and procedures of the National Human Rights Commission to ensure the respect, protection and promotion as well as effective implementation of human rights".⁹

⁵ December media reports.

⁶ For more details, please refer to the Monthly Report of May 2011.

⁷ These lawmakers were: (1) Hon'ble Bishwendra Paswan, (2) Hon'ble Shambhu Hajara Dusadh, and (3) Hon'ble Puran Singh Dayal. Based on the information supplied under the flyer, which they call it a Bulletin, of Parliament Secretariat, 16 December 2011.

⁸ The date of publication of the NHRC Act is 21 January 2012.

⁹ Preamble of the NHRC Act, 2012.

The major functions, duties and powers of the Commission are enshrined as under:¹⁰

In addition to the functions, duties and powers as returned to in Article 132 of the Constitution, other functions, duties and powers of the Commission shall be as follows:

- (a) To conduct or to cause to conduct inspections and monitoring of prisons, other agencies of the Government of Nepal, public institutions or private institutions or any other place for the protection of human rights, and to provide necessary suggestions or directives to the agency concerned with regard to the improvement to be made in such agency, institution or place for the protection of human rights,
- (b) To conduct investigations with the permission of the court concerned in any sub-judice case in which claims involving human rights violation have been made,
- (c) To monitor the implementation status of the prevailing laws regarding human rights and recommend to the Government of Nepal for effective implementation thereof,
- (d) To undertake study and research into various aspects of protection, promotion, enhancement and implementation of human rights,
- (e) To recommend to concerned institution for including human rights education oriented subject matter related into the syllabus of school and university,
- (f) To review the existing state of human rights and make public reports to that effect,
- (g) To carry out or cause to be carried out other activities as may be deemed necessary and appropriate for the protection and promotion, enhancement of human rights.

The Commission shall be independent and autonomous in fulfilling the work of ensuring respect, protection and promotion of human rights.

Some of others features include:

May Draw Attention:

- (1) The Commission may draw attention of any agency or official, as may be necessary to any matter related to the protection and promotion of human rights.
- (2) In case attention is drawn pursuant to Sub-section (1) by the Commission, the agency or official concerned shall have to take necessary action accordingly and inform the same to the Commission.

¹⁰ The language to this point forward is not of the author but extracted from the unofficial translation supplied by the Nepal Law Commission, available at www.lawcommission.gov.np.

Commission May Provide Opinion or Consultations:

- (1) The Government of Nepal, regarding the matters in which it is obliged to submit a report to the concerned authority under the International Treaty related to Human Rights, shall have to write to the Commission for Opinion before forwarding the report.
- (2) If the request for Opinion in writing is received pursuant to Sub-section (1), the Commission shall have to provide Opinion to the Government of Nepal on the matter as soon as possible.
- (3) If the Government of Nepal seeks consultations from the Commission regarding the formulation of any legislation or the amendment of any existing legislation regarding Human Rights, the Commission may provide Opinion to the Government of Nepal on the matter.
- (4) The Commission may make recommendations to the Government of Nepal to formulate new legislations or to make amendments in any existing legislation or to become a party to any International or Regional Convention regarding Human Rights.
- (5) If the Government of Nepal seeks consultations from the Commission regarding becoming a party to any International or Regional Treaty (convention) related to Human Rights, the Commission may provide Opinion to the Government of Nepal on the matter.

To Make Names Public and Keep Their Record:

- (1) The Commission may make public names of officials, persons or agencies that do not knowingly implement or observe the recommendations or orders or directives made by the Commission with regard to violations of human rights as Human Rights Violators.
- (2) Prior to making public the names pursuant to Sub-section (1), the Commission shall have to write to officials, persons or agencies stating that they did not observe or

implement the Commission's recommendations, orders or directives, giving a Fifteen-days timeline to such officials, persons or agencies to submit clarifications.

- (3) In case such officials, persons or agencies do not submit clarifications within the stipulated timeline after receiving in writing pursuant to Sub-section (2) or in case the clarifications do not seem to be reasonable, the Commission may make public the names of such officials, persons or agencies as referred to in Subsection (1).
- (4) The Commission shall keep the records of the names of such officials, persons or agencies whose names have been made public pursuant to Sub-section (1).
- (5) While recommending a person whose name has been made public pursuant to Sub-section (1) for appointment, promotion and career development in any public post, the concerned agency may take the records maintained pursuant to Sub-section (4) as a basis.
- (6) While assigning new responsibility to an official whose name has been made public pursuant to Sub-section (1), the concerned agency may take the records maintained pursuant to Subsection (4) as a basis in relation to his/her capability (competence).