

# PARLIAMENT WATCH – NEPAL

**NOVEMBER 2011**



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The Legislature-Parliament handled the ongoing business of the Tenth Session in November, 2011. 09 meetings<sup>1</sup> altogether were convened during the month of November. The major highlight of the month is as follows:

The deliberations of the seventy-third meeting<sup>2</sup> of the Legislature-Parliament is worth mentioning because this meeting primarily discussed one of the pertinent issues of the rule of law weakening this time due to the act of Prime Minister himself who actually afforded the political protection to a convicted Constituent Assembly (CA) member, Mr. Bala Krishna Dhungel.<sup>3</sup> Mr. Dhungel was declared guilty in a murder case last year by the Supreme Court of Nepal.<sup>4</sup>

As soon as the meeting commenced, Hon'ble Kamala Thapa,<sup>5</sup> having secured the permission from the Speaker, not only heavily criticized on Prime Minister's decision to grant amnesty to Mr. Dhungel but also demanded the immediate withdrawal of the Council of Minister's<sup>6</sup> recommendation,<sup>7</sup> which actually sought Presidential Pardon in the case, before being executed by the President through Presidential decree. Similarly, Hon'ble Agni Kharel<sup>8</sup> raised a question as to what happens to the situation of rule of law in the country if we keep on abiding by the court verdicts only at times that is favorable to any particular party. He further opined that if laws are not applicable to 601 CA members, then every citizen of the country will demand same sort of treatment tomorrow.<sup>9</sup> Besides, there were other political actors outside the parliament who expressed serious concern over this cabinet decision which they said could give rise to impunity in the country.<sup>10</sup>

Apart from the aforesaid issue, another major decision the parliament took during the reporting period relates to the eleventh amendment of the Interim Constitution of Nepal, 2007

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<sup>1</sup> The first meeting, which is actually the seventieth meeting of the Tenth Session, of the month was convened on 3<sup>rd</sup> whereas the last meeting, i.e. the seventy-eighth meeting, of the month was held on the 30<sup>th</sup> of November.

<sup>2</sup> The meeting was held on 12 November 2011, Saturday at 13:10 hours in the parliament.

<sup>3</sup> Mr. Dhungel is from the United Communist Party of Nepal (Maoist) [UCPN (M)] of which Prime Minister Mr. Babu Ram Bhattarai is one of the Vice-Chairmen.

<sup>4</sup> For further information on the case, please refer to the Nepali Times Blog, <http://www.nepalitimes.com/blogs/thebrief/2011/11/08/amnesty-for-dhungel/>, last accessed on 10 November 2011.

<sup>5</sup> Ms. Thapa represents Nepali Congress in the Legislature-Parliament.

<sup>6</sup> The Council of Ministers is headed by the Prime Minister.

<sup>7</sup> The government with the backing of PM Babu Ram Bhattarai had recommended that President Ram Baran Yadav give CA member Bala Krishna Dhungel an amnesty in a murder case. Dhungel's case is well known, given that it is one of the few conflict-era cases which had actually had a verdict. It was a murder case for which Dhungel had been convicted in both the Okhaldhunga District Court and the Supreme Court. And the government's rationale in asking for an amnesty was that the case was 'political'. For further information, please refer to the op-ed article, 'In Cold Blood' in the Kathmandu Post, available in the Ekantipur online at, <http://www.ekantipur.com/the-kathmandu-post/2011/11/09/oped/in-cold-blood/228036.html>, posted on 2011-11-10, last accessed on 13 November 2011.

<sup>8</sup> Lawmaker Kharel represents the Communist Party of Nepal (United Marxist-Leninist) in the parliament.

<sup>9</sup> Based on the information supplied under the flyer, which they call it a Bulletin, of Parliament Secretariat, 12 November 2011.

<sup>10</sup> See the Nepalnews story, "NC, UML demand withdrawal of government decision to grant amnesty to Dhungel", posted on 14 November 2011, available at, <http://www.nepalnews.com/home/index.php/news/1/14562-nc-uml-demand-withdrawal-of-govt-decision-to-grant-amnesty-to-dhungel.html>, last accessed on 15 November 2011.

which passed the fourth extension of CA.<sup>11</sup> The CA term was extended by six months.<sup>12</sup> A total of 508 members took part in the voting. 505 CA members<sup>13</sup> voted in favor of term extension while only 03 CA members voted against.<sup>14</sup>

These two major happenings notwithstanding, the Public Accounts Committee (PAC) of the Legislature-Parliament remained as vigilant as usual so far as maintaining governance is concerned. The PAC ordered the closing down of the casinos operating without paying royalty to the government. The PAC meeting on 23 November issued directives to close down the casinos within the next fifteen days. The meeting also directed the Ministry of Finance (MoF), Tourism (MoT) and Home Affairs (MoHA) to scrap the licenses of nine casinos which were operating without paying royalty to the government.<sup>15</sup>

## **Human Rights Concern and Governance Issues**

The human rights concern and the governance issue raised during the reporting period is the following:

As mentioned in the foregoing paragraph, the cabinet decision on granting amnesty to the lawmaker, Bala Krishna Dhungel, not only invited strong criticisms from the Nepalese civil society organizations<sup>16</sup> but also drew the attention of some international actors. Asian Human Rights Commission (AHRC) is one amongst them. Issuing a press release on 10 November, AHRC strongly condemned the cabinet decision "to recommend that the President grants amnesty to Bala Krishna Dhungel" and added its voice "to that of Nepalese civil society and the victim's family to denounce the additional attempt by the government to shield human rights violators from justice and thereby entrench impunity in the country."<sup>17</sup>

The Updated Set of principles for the protection and promotion of human rights through action to combat impunity, according to AHRC, specifically reminds the States of their obligation to "adopt and enforce safeguards against any abuse of rules such as those pertaining to prescription, amnesty, (...) non bis in idem, due obedience, official immunities, (...) that fosters or contributes to impunity." The statement further reads, "By granting amnesty to a convicted murderer, Nepal would fail to abide by its international obligations. The commitment that Nepal took before the international community during its Universal Periodic Review at the beginning of the year not to condone impunity would be blatantly trampled", hence urged the government "to acknowledge its prime responsibility to protect"

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<sup>11</sup> The seventy-seventh meeting, convened on 29 November 2011 at 15:20 hours in the parliament, had passed the eleventh amendment of the Constitution.

<sup>12</sup> With this extension, the CA has been extended four times in the Nepalese history. The CA term was first extended for a year on 28 May 2010; for three months on 28 May 2011 and by three months again on 29 August 2011. For further details, please see our monthly report of May and August 2011.

<sup>13</sup> 505 is the two-third majority in the parliament. The Constitution requires two-third majority to pass any constitutional amendments.

<sup>14</sup> Three lawmakers from the Rastriya Prajatantra Party-Nepal (RPP-N), who stood against the proposal, were: (1) Hon'ble Chandra Bahadur Gurung, (2) Hon'ble Babina Moktan Lawoti and (3) Hon'ble Ram Narayan Singh.

<sup>15</sup> For further details, please refer to the Nepali Times Blog, <http://www.nepalitimes.com/blogs/thebrief/2011/11/23/pac-to-shut-down-nine-casinos/>, last accessed on 25 November 2011.

<sup>16</sup> See different media reports during November.

<sup>17</sup> Asian Human Rights Commission, "Amnesty from Human Rights Violations is Unacceptable in Democracy", Press Release, 10 November 2011, available at, <http://reliefweb.int/node/458266>, last accessed on 15 November 2011.

the unalienable rights of victims of human rights violations and their families" and to "withdraw its decision encroaching upon them in violation of its international and national legal obligations."