

The Constitution Watch Group

**AN INTERACTION ON
THE INDEPENDENCE, AUTONOMY AND EFFECTIVENESS
OF THE NATIONAL HUMAN RIGHTS COMMISSION OF
NEPAL**

PROCEEDING REPORT

12 July 2019

Hotel Himalaya, Kathmandu



The Constitution Watch Group

Secretariat

Nepal Law Society

Babarmahal, Kathmandu

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The Constitution Watch Group

An Interaction on the Independence, Autonomy and Effectiveness of the National Human Rights Commission of Nepal

Proceeding Report

1. BACKGROUND

National Human Rights Commission (NHRC) is a constitutional body governed by the NHRC Act. The constitution envisages the Commission as the body that is independent, autonomous and accountable to the public for the purpose of protecting the rights of the citizens. The NHRC was made a constitutional body because the constitution gave highest of importance to the issue of human rights protection and in order to ensure that its independence and autonomy will not be compromised. The NHRC Act has laid down specific functions, duties and powers of the NHRC. Its main function includes investigation of cases of abuse of human rights and recommendations to the government for action against the perpetrators. It is also duty-bound to raise awareness on human rights issues through partnership with civil society. The NHRC is also responsible for recommending legal reforms for the enforcement of domestic and international human rights instruments.

Presently, the constitution and the law have given extensive authority to the NHRC. However, it is debatable whether the same applies in reality and practice. There are concerns about financial, human resource and other constraints that have held back the NHRC from effective operation. Equally, there are concerns about the state of its accountability as well as public faith in the institution. In recent times, the executive has registered a new NHRC bill in the parliament. The NHRC has made institutional discontent over some of the provisions in the proposed bill and said that, if passed, the new law could compromise its power. Mainly, the NHRC wishes that its recommendations for actions against perpetrators of human rights violations should be strictly enforced, whereas the proposed bill gives the final say about registering any such case (as per NHRC recommendations) to the Office of the Attorney General.

Amid these challenges, a dialogue was held among the chairperson and members of the NHRC; chairperson and members of the Law, Justice and Human Rights Committee of the federal parliament; Minister for Law, Justice and Parliamentary Affairs; officials of the Law Ministry; senior government officials, MPs, and leaders of civil society organizations. The purpose of the dialogue was to facilitate the interaction among the NHRC, government and the parliament to resolve the current conflicts between the government and the NHRC, and to ensure the effective operation of NHRC.

The dialogue was organized on July 12 at Hotel Himalaya by the Constitution Watch Group.

2. WHAT IS CONSTITUTION WATCH GROUP

The Constitution Watch Group is a group of eminent experts and intellectuals who wish to play the role of neutral observers who can raise their concerns on democracy, freedom, human rights and constitution. At this crucial phase of constitution implementation, there is an urgent need for careful monitoring and evaluation of each and every step by a group of independent and respected members of civil society. The group can not only identify the problem areas but also help the government, the judiciary, the parliament and the national institutions by pointing out the correct

resolution. Their monitoring and recommendations helps the authorities in the proper implementation of constitution.

The Group wishes to be a beacon of hope for the common people who will get to know how appropriately their constitution is being utilized. It provides a platform for research, study and recommendations that are neutral, independent and fact-based.



The Group is a network of five organizations - Nepal Law Society, Niti Foundation, Kathmandu University, Open University and General Elections Observation Committee.

The Constitution Watch Group was formed this year and will be organizing various programs throughout the year. This is the first public program organized by the Group.

3. PROCEEDING REPORT

The program was chaired by Mr. Kalyan Shrestha, former Chief Justice and the coordinator of the Constitution Watch Group.

▪ Welcome Remarks

🗣️ **Professor Dr. Shilu Manandhar Bajracharya, Dean, Faculty of Management and Law, Open University**

She welcomed the participants on behalf of the Group. She explained the importance of holding the program on human rights. She said that there are concerns among the public about the state of affairs in the NHRC and the present conflict with the government over the proposed bill. She said that the program



was held to facilitate the resolution of such disputes. She hoped that the program will help the stakeholders.

Mr. Mohan Das Manandhar, Executive Director of Niti Foundation



He highlighted the objectives of the program. He recalled the vision for human rights protection as enshrined in the constitution and the law. He commented about the proposed bill on the NHRC and its likely impact on the independence and autonomy of the NHRC. He added that the program had to be held in order to hold constructive dialogue on the issues of concerns that have emerged.

Issue Presentation

Dr. Bipin Adhikary, senior advocate and former dean of Faculty of Law, Kathmandu University,

He made a brief presentation about the current issues surrounding the NHRC and the proposed law. The presentation captured the functions and duties of the NHRC as specified in Part 25 of the Constitution. He talked about the Paris Principle 1993 which lays down fundamental concepts about the independent national human rights commissions. The international practice on national human rights commissions were also discussed. He also talked about the state of autonomy and effectiveness of the NHRC in Nepal. His presentation also included the conceptual aspects of the move to make the NHRC as a constitutional body. Likewise, it



included recommendations for making the NHRC effective and helping it to overcome the new and coming challenges. The presentation also highlighted the 5 year strategy of the NHRC, its coordination and relations with other constitutional bodies and the state of implementation of NHRC recommendations. Additionally, the presentation also underscored the precedents set by the Supreme Court regarding the human rights protection. It talked about ways of transforming the operation of NHRC in a federal structure. The presentation had points of recommendations made by the NHRC for legal reforms and how it differs from the current proposed bill.

▪ **Remarks by the Panelists**

🗣️ **Mr. Himalaya Shamsher Rana, chairperson of GEOC**

He expressed happiness about the organization of a program by inviting key stakeholders to discuss the ongoing dispute on the proposed human rights bill. He said that the program would facilitate formal discussion since key officials from all related agencies are present. He said that the Constitution Watch Group (CWG) will continue to hold similar programs in the future that will help the government, the parliament and the stakeholders.



🗣️ **Mr. Krishna Bhakta Pokharel, chairperson of the law, Justice and Human Rights Committee of the parliament**

He welcomed the initiative by the CWG by inviting key stakeholders. He said that the constitution has made progressive provisions about the NHRC as well as the fundamental rights. The NHRC is responsible for promotion and protection of human rights. He said that the committee he heads in the parliament is responsible to look into issues of human rights and NHRC. He said that in course of formulation of any related Act, the committee will study the domestic laws, constitution, as well as international practice. Regarding the proposed bill on NHRC, he said that they will not proceed by using two-third majority. Instead, he said, the committee will try to accommodate all. Hence, he said, the concerns about the bill will be addressed.



Mr. Anup Raj Sharma, Chairperson, National Human Rights Commission



He said that the commission has been working as per the constitution as well as the precedents of the Supreme Court. He said that the NHRC had prepared a draft of a bill to make the commission as per the new constitution. However, he complained that their draft was set aside and a new bill was proposed by the government. The commission was concerned about ensuring financial and administrative independence as well as effective transformation in federal structure. However, the government has proposed changes by adding five sub clauses in the Clause 17 and Clause 17 (a). He said

that these proposed changes would mean that NHRC recommendations would not be mandatorily implemented, and rather would depend on the decision of the Attorney General on whether any case would be moved based on the recommendations. Mr. Sharma expressed pleasure and hope that this program - attended by parliamentary committee chairperson as well as Law Minister himself - would help in resolving these concerns and conflicts.

Mr. Bhanu Bhakta Dhakal, Minister for Law, Justice and Parliamentary Affairs

He said the government appreciates the NHRC. The government, he said, had proposed new bill in order to strengthen the NHRC.



He said that the government was aware about various concerns raised by various stakeholders about some provisions in the proposed bill. He said that the government believes that it is continuing to uphold the independence of the NHRC through the previously set traditions about the functions and powers of the NHRC. Just as constitution was promulgated on consensus, the government believes that the proposed bill, too, will be passed by accommodating concerns of all including the ones that were raised in the program. He said the

proposals made in the bill will be thoroughly discussed, revised and changed by the parliamentary committee.

Mr. Subas Nemwang, Chairperson of Constituent Assembly

He thanked the issue presenter for succinctly and clearly describing the situation in hand. As stated in the presentations, there are challenges facing the NHRC and the government seems to have introduced new bill in order to address some of those challenges, he said. Mr. Nemwang recalled the debates in the Constituent Assembly about the NHRC and its importance. The NHRC, he said, has been working in the spirit of the constitution and the law. Regarding the differences on the proposed bill, he said, that the parliament will now discuss all the concerns and reach to a conclusion that will be acceptable to all.



Feedback from the Participants

Dr. Gopal Shiwakoti, Secretary General, NEOC

He said the issue paper had included all aspects of the current debate. He said that in the program, everyone was providing intellectual inputs. He expressed concerns about the losing trust in the public about the NHRC and the public perception that the government is not helpful to the NHRC. He said the government should stick to the Paris Principles regarding the functioning of national human rights commissions. The government should realize that the NHRC has to work almost like opposition due to the very nature of its job, he said.



🗣️ **Professor Kapil Shrestha, Former member, NHRC**



He said that he has also directly experienced how the government refuses to cooperate with the NHRC. He recalled how the government refuses to abide by NHRC recommendations, and refuses to provide human and financial resources. It is sad, he said, that while the current government leaders had enjoyed the independent work by NHRC when they were in opposition in the past, they have now forgotten it.

🗣️ **Mr. Shambhu Thapa, former president, Nepal Bar Association**

He said that NHRC is a constitutional body that needs to be respected by the government. The constitution does not give any option to the government regarding the implementation of NHRC recommendations. But by adding clause 17 (a) in the proposed bill, the government has attempted to provide power to the Office of Attorney General on whether or not to proceed as per NHRC recommendations. He also



appreciated the formation of CWG and hoped it will work accordingly in the monitoring of the constitution implementation and rule of law.

🗣️ **Mr. Charan Prasai, Senior Human Rights Activists**

He said that the program held for facilitating resolution is very important and would lead to constructive conclusion. He said that the participants are very hopeful since the chairperson of the parliamentary committee as well as the Law Minister had expressed

their commitment to address serious concerns about the proposed bill. He said that they have been active in promotion of human rights since three decades and suggested effective transformation of human rights promotion in the new federal structure.



☛ **Mr. Dev Gurung, Chief Whip, Government Party**

He said that whenever bill is introduced in the parliament, there is a tradition to reach consensus as far as possible. The bill on NHRC has just reached the parliament and there are many processes involved, he said, adding that the concerns can be addressed during the processes. He added that there is no doubt about the need to strengthen NHRC.

☛ **Mr. Laxman Lal Karna, Member, Law, Justice and Human Rights Committee, parliament, Chairperson, Public Hearing Committee, parliament**

He said that as a member of the parliamentary committee on human rights, he benefited from the remarks made by the participants. He talked about the need to ensure human rights for minority communities. That can be ensured only by strengthening NHRC, he said. Mr. Karna said that the committee will consider all these concerns before passing the proposed bill.



☛ **Ms. Sushila Karki, Former Chief Justice of Nepal**

She said that Supreme Court has always stood by the independence of the NHRC. She said that the program has three former chief justices, including herself, and how all of them had worked for the effectiveness of the NHRC. Therefore, she added, that there should not be suspicions alone. She suggested that one should be hopeful about the commitments made by the minister and parliamentary committee members. She added that any move to cut down jurisdiction of NHRC cannot be justified even by those advocating for it.



Dr. Somlal Subedi, Former Chief Secretary Nepal Government



He said that the NHRC in its present shape is central in nature and needs to be transformed into federal structure. The new law, he said, should help the NHRC become fully functional in all seven provinces. Regarding its financial and administrative independence, he said, the NHRC should also include its policies in the 5 year strategy.



Ms. Ila Sharma, Former member, Election Commission of Nepal

She said the program helped her understand better about the NHRC and its situation. She said that while working in the Election Commission she discovered that informal rather than formal challenges are more difficult. She hoped that the discussions in the program will help resolve the current disputes.

Mr. Surendra Mahato, Senior Advocate



He said that unlike his expectations that the program would witness conflicting opinions and war of words, it has led to constructive debates. He said that the law minister and parliamentary chairperson have carefully listened to the concerns and would address them.

🗣️ **Mr. Prakash Mani Sharma, Member Secretary, Pro-public**

He said that there are many questions about the NHRC recommendations and their treatment by the government. The government, he said, should abide by the recommendations fully as per the constitution. On one hand, there is lack of access to NHRC for all, and, on the other hand, even those who have accessed the NHRC are not getting justice.



🗣️ **Mr. Surya Prasad Shrestha, former chief election commissioner, chairperson, NEOC**

He said that the program helped in developing consensus. Such programs are rare, he said. Uniformity in understanding will help the NHRC. Addressing the concerns will help uplift the status of not only NHRC but the Government of Nepal as well in the international arena.

▪ **Remarks from the Chairperson**

🗣️ **Mr. Kalyan Shrestha, Former Chief Justice, Coordinator, Constitution Watch Group**

He said that the objective of forming the CWG was achieved by the manner in which the program proceeded. Instead of passing comments or criticisms, the program was aimed at facilitating resolution, he said. Mr. Shrestha said that NHRC is two decades old and would now need to work as mature institution. It would need law as well as resources for the purpose. He also called for review of the NHRC itself. He appreciated the issue presentation since it included many aspects of NHRC. Regarding the proposed bill on NHRC, he said, the program made adequate discussions.



He hoped that the bill will be revised as per the public expectations. He suggested that while it is good that the government is formulating numerous laws - 225 being formulated currently as the Law Minister said - it should also pay attention to formulating quality laws. He said that while the democracy should have been active, one sees politics alone active in these times. He expressed concern about the institutionalization of constitutional institutions through the upholding of rule of law. If Supreme Court order or NHRC recommendations are not enforced, then that would pose serious challenge to rule of law. Therefore, the CWG was formed to monitor such enforcement on behalf of the people. The CWG will regularly research, document and hold dialogue on such issues. There are five organizations in the CWG currently but more can be welcomed in future, he said. Mr. Shrestha wrapped up the program by thanking all participants and hoping that such dialogue will not have to be held again.

4. OUTCOMES

- ↪ CWG utilized as a common platform for the government, the parliament and the civil society where all key stakeholders could put their case
- ↪ Government and the parliament committed to incorporate concerns about the proposed bill
- ↪ Strengths and weaknesses of NHRC discussed
- ↪ Demands for dialogues on similar issues by inviting key stakeholders increased



Participants

S.N.	Name	Office
1.	Mr. Anup Raj Sharma	Chairperson, NHRC
2.	Mr. Sudip Pathak	Member, NHRC
3.	Ms. Mohna Ansari	Member, NHRC
4.	Mr. Govind Sharma Paudyal	Member, NHRC
5.	Mr. Bed Prasad Bhattarai	Secretary, NHRC
6.	Mr. Tikaram Pokhrel	Director, NHRC
7.	Mr. Lok Nath Bastola	Deputy Director, NHRC
8.	Ms. Maya Devi Sharma	Deputy Director, NHRC
9.	Ms. Kumari Mahara	Human Rights Officer, NHRC
10.	Mr. Subash Chandra Nembwang	Former Chairperson, CA, Member House of Representative
11.	Mr. Laxman Lal Karna	Member, House of Representative
12.	Mr. Ramesh Lekhak	Former Member, House of Representative
13.	Ms. Ranju Thakur	CA Member
14.	Mr. Krishna Bhakta Pokharel	Member, House of Representative
15.	Mr. Dev Prasad Gurung	Member, House of Representative
16.	Mr. Min Bahadur Bishokarma	Member, House of Representative
17.	Mr. Sher Bahadur Tamang	Member, House of Representative
18.	Mr. Bhanu Bhakta Dhakal	Minister, Ministry of Law, Justice and Parliamentary Affairs
19.	Mr. Dinesh Thapaliya	Chief Election Commissioner
20.	Mr. Min Bahadur Shahi	Member, NPC
21.	Dr. Som Lal Subedi	Former Chief Secretary
22.	Ms. Anjana Shakya	Chairperson Himalayan Human Rights Monitors (Him Rights)
23.	Mr. Chandashor Shrestha	Chairperson, Nepal Bar Association
24.	Mr. Sher Bahadru KC	Former Chairperson, Nepal Bar Association
25.	Mr. Prakash Mani Sharma	Pro- Public
26.	Mr. Bishnu Pukar Shrestha	Chairperson CAHURAST
27.	Ms. Indira Shrestha	Chairperson, INSEC
28.	Mr. Rajan Prasad Kuikel	Chairperson, National Executive Committee, AMNESTY INTERNATIONAL NEPAL
29.	Mr. Khem Raj Regmi	President, Transparency International
30.	Ms. Sushila Karki	Former Chief Justice, Supreme Court
31.	Mr. Shambhu Thapa	Senior Advocate
32.	Mr. Mohan Acharya	Constitution Expert
33.	Mr. Surya Prasad Shrestha	Former Chief Election Commissioner
34.	Ms. Ila Sharma	Former Election commissioner
35.	Mr. Hari Bahadur Thapa	Annapurna Post Daily

S.N.	Name	Office
36.	Ms. Valerie Julliard	United Nations Resident Coordinator, Office of the UN Resident Coordinator, UN House
37.	Ms. Deborah Healy	Sr. Country Director, NDI
38.	Ms. Ingerid Huus- Hansen,	SDG Support Officer, UNDP
39.	Ms. Oda Misje Haug ,	SDG Support Officer, UNDP
40.	Dr. Shailendra Sigdel	Managing Director, Foundation for Development Management
41.	Ms. Shobha Basnet	President Community Mediators' Society Nepal
42.	Dr. Gopal Krishna Siwakoti	President, INHURED International National Election Observation Committee (NEOC)
43.	Mr. Narendra Prasad Joshi	Executive Director, SAP Nepal
44.	Mr. Geja Sharma Wagle	Project Coordinator, Nepal Institute for Policy Studies (NIPS)
45.	Mr. Govinda Bandi	Advocate
46.	Mr. Ek Raj Bhandari	Senior Advocate
47.	Mr. Sushil Pakural	Former Member NHRC
48.	Mr. Kapil Shrestha	Former Member NHRC
49.	Mr. Kalyan Shrestha	Former Chief Justice, Supreme Court
50.	Mr. Himalaya Shamsheer Rana	Chairperson, GEOC
51.	Mr. Khim Lal Devkota	Expert
52.	Mr. Mohan Das Manandhar	Niti Foundation
53.	Mr. Shilu Bajracharya	Dean, Open University
54.	Dr. Bipin Adhikari	Dean, Kathmandu University
55.	Mr. Krishna Man Pradhan	Executive Director, Nepal Law Society
56.	Mr. Tirtha Man Sakya	Chairperson
57.	Ms. Pushpa Bhusal	Vice Chairperson
58.	Mr. Sajjan Ram Bhandary	General Secretary
59.	Ms. Usha Malla Pathak	Joint Secretary
60.	Mr. Sudheer Shrestha	Member
61.	Mr. Madhab Poudel	Member
62.	Mr. Khim Lal Devkota	Member
63.	Mr. Surendra Mahato	Member
64.	Mr. Lalit Basnet	Advocate, Constitution Expert
65.	Mr. Parshuram Upadhyaya	Expert
66.	Mr. Shanker Limbu	Expert
67.	Mr. Saroj Ghimire	Advocate, Treasurer, Supreme Court Bar Association
68.	Dr. Chandra Kanta Gyawali	Advocate, Constitution Expert
69.	Dr. Ram Krishna Timilsina	Former Register, Supreme Court
70.	Mr. Nabaraj Silwal	MP
71.	Mr. Sunil Uprety	Advocate

S.N.	Name	Office
72.	Mr. Ganesh Man Pradhan	NLS
73.	Mr. Bhawani Kayastha	NLS
74.	Mr. Naiel Shrestha	NLS

