

NATIONAL HUMAN RIGHTS COMMISSION'S KEY CONCERNS AND URGENT APPEAL REGARDING HUMANITARIAN CRISIS AND ITS IMPACT ON HUMAN RIGHTS IN NEPAL

1. Introduction

The new Constitution was promulgated in Nepal on 20 September 2015 through the Constituent Assembly elected by the people in November 2013. The National Human Rights Commission of Nepal (NHRC-Nepal) is deeply concerned with the ongoing obstruction in the border points between Nepal and India amidst final phase of constitution drafting process which was eventually promulgated in Nepal on 20 September 2015 through the Constituent Assembly. The shortage of petroleum products including fuel, cooking gas, medicine, food and essential goods has crippled life in the country as businesses, hospitals, schools remain virtually shut. The reason for these prevailing circumstances is the protracted protests in the Tarai. International communities including EU, UN OCHA, UNICEF and the US Embassy in Kathmandu have already warned of an impending humanitarian crisis in Nepal.

The NHRC-Nepal had met the then Prime Minister and recommended him to reach out to the disgruntled parties and address their concerns on time from human rights perspectives in order to avoid any untoward situation. Furthermore, the NHRC-Nepal has time and again urged the government and all concerned parties to demonstrate high seriousness towards the deteriorating human rights situation of the country through its statements, press release and press conference on various occasions. Despite the formation of dialogue team by both parties and holding some rounds of discussion the result is yet to be seen till the date. The NHRC-Nepal has visited 24 districts from Jhapa to Kanchanpur to monitor the situation on the ground and NHRC-Nepal has already publicized its findings of the situation of Terai Madhesh. The humanitarian crisis of Nepal has been reflected in recently completed hearing of Universal Periodic Review (UPR) of Nepal in the deliberation of State delegate and recommendations from more than 70 countries. NHRC has also expressed its grave concern towards the deteriorating situation of the victims and affected population from the devastating earthquake of 25th April 2015 as the relief and construction work has been halted due to ongoing crisis.

NHRC-Nepal, as a national constitutional body has already expressed its serious attention towards the deteriorating human rights condition and troubled daily life of the citizens due to obstruction in the regular supplies including the petroleum products. However, this unofficial, but very obvious obstruction on fuel and other goods in the border points between Nepal and India has already pushed the country to the brink of a massive humanitarian crisis. Ironically, the victims of the impending crisis are likely to be the Madhesi people as well as everyone else in Nepal. The NHRC-Nepal has urged all stakeholders to solve the problem through talks and dialogues as the ongoing situation has already negatively impacted in the civil, political, economic, social and cultural rights of the common people as the fundamental rights including education, health, employment, food and shelter and people's free movement respectively .

2. SITUATION ON THE GROUND

Right to Life

The new Constitution of Nepal provides wider safeguard for the protection of right to life. However, ongoing situation of humanitarian crisis has badly affected in the realization of the rights guaranteed in the Constitution and the International Covenant on Civil and Political Rights (ICCPR), to which Nepal is a state party which specifically urge the state that no one shall be arbitrarily deprived of his or her life¹. Among 50 persons killed during the agitation from Tera- Madhesh parties including 32 persons by security force by the security forces and 9 police personnel by agitating parties. There have been many deaths from traffic accidents caused by dangerously overcrowded public transport, with passengers including women, children and the elderly forced to travel precariously on rooftops of buses. A number of serious bus accidents have already been linked with the effects of the blockade. There were two bus accidents only this week resulting in the deaths of dozens of passengers.

Economic, Social and Cultural Rights

The new Constitution of Nepal has incorporated economic, social and cultural rights in the new Constitution reflecting many of the guarantees enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR)², to which Nepal is a state party. However the ongoing humanitarian crisis has further deteriorated the situation of economic, social and cultural rights from bad to worse. The European Union last week urged India to ensure essential supplies get through to Nepal, saying the blockade only hurts Nepal which is still recovering from the April-May earthquakes. Key impact in the economic, social and cultural rights due to ongoing agitation and obstruction in the border side has been highlighted as follows:

Right to Education

Despite the overwhelming commitment from Government and political parties, the commitment for making “Children as Zone of Peace” has been adversely impacted by present crisis. UNICEF estimates that more than 1.6 million children have been deprived of schooling over the past two months. According to the press statement issued by UNICEF, in Parsa district schools functioned only for 5 days out of 122 and 160,000 students have been deprived from the right to education³.

Child Rights

The UN Convention on the Rights of the Child (CRC)⁴ to which Nepal is a state party. The article should also include the principle that the best interest of the child shall be the primary

¹ “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life,” article 6(1), International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

² International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

³ NHRC Monitoring Report of Monitoring Report on the Situation of Human Rights Regarding the Agitation

After and Before the Declaration of the Constitution of Nepal, 1 November 2015 available at: http://www.nhrcnepal.org/nhrc_activities_details-127.html.

⁴ Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

¹² UN Human Rights Committee (HRC), CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, CCPR/C/21/Rev.1/Add.11

consideration in all actions, laws and policies concerning children. However, ongoing humanitarian crisis have pushed the children and their vulnerabilities.

Right to Work

The ICCPR and other core human rights instruments has called the member statue to guarantee the right of everyone to the enjoyment of just and favourable conditions of work, in particular the right to safe working conditions. However, ongoing humanitarian crisis has adversely affected the employment sector of Nepal followed by closing of the existing industries and employment creating business. Employment prospects have diminished nationally, forcing hundreds of thousands more to consider job migration to India, the Gulf and Malaysia.

Right to Health

The biggest victim of the current crisis is public health. Essential supplies including medicines remain severely impacted by the blockade. Doctors are beginning to complain of an acute scarcity of life-saving medicines as well as inadequate supply of oxygen cylinders. The humanitarian crisis has adverse impact on realization of rights including right to health, life saving medicines, essential goods as well as vital social services have been disrupted, hospitals have run out of essential drugs and supplies. Therefore, state and concerned parties should be responsible towards core human rights of the larger population that's why essential goods, such as food and medicines, should not be used as tools for political coercion.

Right to Food

The fuel crisis caused by the blockade has cut the food supply chain, causing shortages in all parts of the country. The right to food as laid out in article 36 would benefit from explicit references to the quality of food, nutrition and food security, as per international standards. NHRC strongly believes that essential goods, such as food and medicines, should not be used as tools for political coercion and that under no circumstances should people be deprived of their own means of subsistence and development.

Right to Housing

Article 37 of the Constitution of Nepal provides the right to housing .However, the present crisis is contributing to further deterioration of vulnerable situation of the people of Nepal including victim of the devastating earthquake of 25th April this year. The reconstruction of damaged house and infrastructures haven't started yet and winter is approaching soon which will adversely affect in transportation of construction materials and humanitarian organizations working in Nepal have already warned the potential worse situation due to ongoing blockade amidst the protest in Terai- Madhesh area of Nepal.

Women's Rights

The women have to spend so many days in the line of petrol and cooking gas with vain hope as disruption in the regular supply for more than two months have pushed the situation of women into more vulnerable situation. The limited access of women to over-crowded public

transports to go and return for their work is adversely affected. It will have long term impact in general health and reproductive health of Nepali women.

Cultural Rights

Shortage of fuel has deprived the cultural rights of the large number of population due to disrupted transportation at the height of Nepal's national festival season, preventing millions from travelling to ancestral homes.

Development

Industries, whatever Nepal has or had, are another casualty of this stupefying fuel saga. They have been forced to shut down their operations because they have failed to receive raw materials which traditionally come via or from India. Or, they are shutting down because there is simply no fuel to run the machines. This situation has stalled industrial activities causing further reduction in the production of essential goods as well as loss of employment. Blockade of trucks carrying containers from India and other third countries has caused Nepalese businesses incur millions of dollars in delay and holding fees alone, severely straining the business community.

3. HUMANITARIAN CRISIS AND ITS IMPACT ON HUMAN RIGHTS

Nepal has been reviewed by the UPR Committee where Government of Nepal presented its report highlighting Nepal's efforts towards fulfilling its international obligations and commitments on the issues of human rights, update the status of implementation of the recommendations including the update after first UPR cycle, achievements, and challenges. During the recent UPR session, High Level Government Delegation from Nepal had also highlighted the situation arising in Nepal from the obstruction of essential supplies at the border points between Nepal and India.

Nepal and India have ratified core human rights treaties including the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). Similarly, both countries have contributed in the adoption of number of Declarations, Principles and Resolutions for the protection and promotion of human rights. For instance, India has voted in favour of a crucial UN Resolution adopted by the Human Rights Council 27/21 on *Human rights and unilateral coercive measures*⁵ which express strong concern at the negative impact of unilateral coercive measures on human rights, development, international relations, trade, investment and cooperation.

Key points incorporated in the Resolution includes:

- Under no circumstances should people be deprived of their basic means of survival

5 A/HRC/RES/27/21 adopted by UN General Assembly on 26 September 2014.

- Necessity of examining the wide range of impacts of unilateral coercive measures on international humanitarian and human rights law, as well as on the economy, peace, security and social fabric of States,
- Condemns the continued unilateral application and enforcement by certain powers of such measures as tools of political or economic pressure against any country, particularly against developing countries, with a view to preventing these countries from exercising their right to decide, of their own free will, their own political, economic and social systems
- Highlighting the need to monitor human rights violations associated with unilateral coercive measures and to promote accountability
- Establishing a special procedure, within the context of the Human Rights Council, on the impact of the application of unilateral coercive measures on the enjoyment of all human rights,
- Recalling Human Rights Council resolutions 5/1, on the institution-building of the Council, and 5/2, on the Code of Conduct for Special Procedures Mandate Holders of the Council, of 18 June 2007, and stressing that the mandate holder shall discharge his/her duties in accordance with those resolutions and the annexes thereto,
- Recalling also article 1, paragraph 2, common to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which provides that, inter alia, in no case may a people be deprived of its own means of subsistence,

Similarly, the report of the Office of the High Commissioner on Human Rights (OHCHR)⁶ and the report of the Secretary-General submitted to the General Assembly on human rights and unilateral coercive measures⁷ have also reiterated these points very explicitly.

Furthermore, the Conference of the Government of Non-Aligned Countries have vehemently opposed and condemned coercive measures or laws, including unilateral; economic sanctions and other intimidating measures⁸ and request States applying these measures or laws to revoke them fully and immediately.

In sum, most of the documents including UN Charter, international law, international human rights law, International humanitarian law reaffirm that a coercive nature of extraterritorial effects obstruct the efforts of state towards creating an environment for the enjoyment of all human rights, including civil and political rights; social, cultural and economic rights; and the right to development.

⁶ A/HRC/27/32.

⁷ A/68/211.

⁸ For instance, final document of the sixteenth Conference of Heads of State or Government of Non-Aligned Countries, held in Tehran from 26 to 31 August 2012,¹ and the final document of the seventeenth Ministerial Conference of the Non-Aligned Movement, held in Algiers on 28 and 29 May 2014, and those adopted at previous summits and conferences, in which States members of the Movement decided to refrain from recognizing, adopting or implementing extraterritorial or unilateral coercive measures or laws, including unilateral economic sanctions, other intimidating measures and arbitrary travel restrictions, that seek to exert pressure on non-aligned countries – threatening their sovereignty and independence, and their freedom of trade and investment – and to prevent them from exercising their right to decide, by their own free will, their own political, economic and social systems, where such measures or laws constitute flagrant violations of the Charter, international law, the multilateral trading system as well as the norms and principles governing friendly relations among States.

States Duty on Human Rights beyond the Border

States have the duty to avoid causing foreseeable human rights harm in other countries. States have an unambiguous baseline legal obligation, in other words, to respect and not undermine human rights beyond their borders⁹.

4. Appeal of the NHRC-Nepal

1. NHRC-Nepal calls upon the international community to take all necessary measures to end the humanitarian crisis that Nepal and its people are facing.
2. NHRC-Nepal calls upon relevant parties to have constructive dialogue and negotiation with aim to stop adopting, maintaining or implementing unilateral coercive measures not in accordance with international law, international humanitarian law, the Charter of the United Nations and the norms and principles governing peaceful relations among States.
3. NHRC-Nepal strongly recommends that there should be respect and strict adherence of principles of international law, the Charter, the declarations of the United Nations and world conferences and relevant resolutions, and to commit themselves to their obligations and responsibilities arising from relevant provisions of the international law and human rights instruments to which they are parties.
4. NHRC-Nepal requests all mandate holders to conduct monitoring and documentation of the adverse impact associated with the present humanitarian crisis of Nepal in the context of ensuring the accountability of those responsible for the human rights violations.
5. NHRC-Nepal requests the United Nations High Commissioner for Human Rights, in discharging his functions in relation to the promotion and protection of human rights, to pay due attention and give urgent consideration to the present humanitarian crisis and its impact on human rights in Nepal.
6. NHRC-Nepal calls upon Government of Nepal to cooperate with and assist the Special Rapporteur in the performance of his or her tasks, and to provide all necessary information requested by him or her.
7. NHRC Calls the Terai- Madhesh based protesting parties to transform the method of their ongoing protest respecting civil, political, economic, social and cultural rights of the larger population of Nepal and resolves the problems through constructive and meaningful dialogue with the Government of Nepal so that there wouldn't be any reverse impact from the severe humanitarian crisis in Nepal.

⁹ ETO Principle 13, "States must desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially. The responsibility of States is engaged where such nullification or impairment is a foreseeable result of their conduct. Uncertainty about potential impacts does not constitute justification for such conduct." This principle is supported by the International Commission of Jurists' (ICJ) Advisory Opinion, "Legality of the Threat or Use of Nuclear Weapons", Advisory Opinion, 1996 I.C.J. 226, para. 29 (8 July) which restated "the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control."