



Views of NHRCN on the Amendment Bill 2022 of the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2014 drafted for the proper dispensation of transitional justice

Background

The Preamble of the Act relating to the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2014 states that the act was enacted accommodating the object and spirit of the Article 33 of the Interim Constitution of Nepal 2007 and the Article 5.2.5 of the Comprehensive Peace Accord 2006. The definition section elucidates that the act is enacted to achieve the following objectives:

- a) To seek the truth behind the Commission of grievous violation of human rights, crime against humanity and identify the perpetrators involved in such incidents during the armed conflict;
- b) To create environment of reconciliation foregrounding the actual facts before the public;
- c) To arrange reparation for the victims;
- d) To recommend legal proceedings against the perpetrators of grievous violation of human rights;

The National Human Rights Commission opines that the transitional justice should be concluded fulfilling the aforementioned objectives as the Transitional Justice Act and the Amendment Bill have been formulated to accomplish these objectives. The Commission offers the following suggestions to the Federal Parliament, including the concerned all, as the provisions of the Amendment Bill tabled by the government of Nepal need to be revised to amicably conclude the transitional justice.

- (1) Clearly define the “violation of human rights”, and “grievous violation of human rights” classifying them objectively and with reason, as the definition provided in the definition section are not in compliance with international human rights and humanitarian laws, and the international standards of human rights.
- (2) Define the following issues in compliance with the international humanitarian laws:
 - a) Crime against humanity
 - b) War crime
 - c) Armed personnel
 - d) Personnel without armed
 - e) Child soldiers
 - f) Sexual violence/Rape
- (3) Allocate adequate time and resources for effectiveness of the functioning of the Commission.

- (4) Assign responsibility ‘to seek and conclude the truth seeking on the crime against humanity and use of child soldiers’ in accordance with the principles of transitional justice under the Section 13 powers and functions of the Commission.
- (5) The Amendment Bill uses the term “vetting”. But, meaning, necessity and rational is not established anywhere. The Supreme Court has also provided instruction for separate legal arrangements on vetting, but the Bill only uses the term vetting without addressing this, so it is essential for creating clear legal framework on this.
- (6) It is a positive aspect that the proposed Amendment Bill proposes a separate fund to provide compensation and reparation to address the transitional justice. To end the present context of victims running around to reach the various agencies to get relief and reparation, it is essential to arrange a mechanism for the disbursement from the Commission itself.
- (7) It is positive that the bill envisages the Special Court. There is no dispute that the Commission should be free to exercise its power independently as provided by the act. But, to ensure the victims’ fair trial rights and rights to appeal, amendment of the provision mentioned in Section 29 (a) is needed as ‘the decision of the Special Court is final’.
- (8) The issue of transferring the cases sub judice at the regular courts to the special court is incompatible; therefore, the provision of Section 29 (b) also has to be amended.
- (9) There may be the lack of direct and physical evidences regarding the conflict era cases for prosecution. Considering this fact, circumstantial evidences as the evidence has to be legally permissible.
- (10) The prevailing provisions on statute of limitation including others in the existed law during conflict era 'the Civil Code (2020)' and the current Criminal Code do not corroborate with the principles of transitional justice. The potential perpetrators escape legal proceedings. The current bill tabled in the parliament also does not address this. Therefore, there is a need to arrange legal provision ensuring prosecution of the perpetrators of grievous violation of human rights and crime against humanity.
- (11) Arrangement has to be made for providing equal treatment without any discrimination in accordance with the principles of transitional justice to the armed forces of the then conflicting rebellious group and the then security forces of the state.
- (12) Promising has to be made for realization of justice providing relief and reparation to the citizens who did not take part in the hostility, but were adversely affected from both the rebellious group and the state.

The new Commission to be formed should therefore be independent, well capacitated and resourced, strong and victim friendly. In addition to this, the Commission should also address the victims and their suffering families seeking truth by means of peace, social harmony and mediation. Moreover, the Commission should visibly act with full commitment to the international values of human rights and principles of transitional justice and help bring perpetrators to legal proceedings and dispense justice to the victims, ensure non recurrence of such conflict and restore faith in international community and the people of Nepal.

Thank You!