

Journal of
APF Command and Staff College

Role of Armed Police Force, Nepal to Protect and Promotion of Human Rights

Surya Prasad Timilsena
Deputy Superintendent of APF Nepal
srmlsn3@gmail.com

Abstract

Article History

Received September 28, 2020

Accepted November 10, 2020

Keywords APF Nepal,
Human Rights, protection,
promotion, IHRL, violation

The present article reveals the role and policy of Armed Police Force Nepal in safeguarding human rights. One of the primary missions of the APF Nepal is to protect the citizens from criminal activity and criminal elements and to maintain public order. This duty includes protecting the rights of every citizen. Armed forces have the duty to protect the individual human rights of every person they encounter. This is an affirmative duty, meaning the police services cannot knowingly ignore or intentionally fail to act when a human rights violation is observed. The Armed Police Force has mandated tasks related to protection, promotion, respect and fulfillment of human rights from various aspects. The research has reached in conclusion: Human rights are moral principles or norms that describe certain standards of human behavior and are regularly protected as a legal right in municipal and international law. They are commonly understood as inalienable, universal and indivisible fundamental rights to which a person is inherently entitled simply because she or he is a human being. To achieve this objective APF Nepal has adopted zero tolerance in Human Rights violations and following national and international human rights instrument that have been adopted by Nepal.

Corresponding Editor

Ramesh Raj Kunwar
kunwar.dr@gmail.com

Copyright@2021 Author

Published by: APF Command and Staff College, Kathmandu, Nepal

ISSN 2616-0242

Introduction

It is universally accepted that every individual is entitled to certain rights, which cannot be taken away under any circumstances, and these rights together are termed as Human Rights. By definition, Human Rights are “Inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being.”(Magdalena,2004). This means they are inherent in every human being, regardless of race, color, sex, language, religion, political or another opinion, national or social origin, property, birth or another status. Human rights mainly concern relationships between individuals and the state. They control and regulate the exercise of state power over individuals, grant freedoms to individuals in relation to the state, and require states to satisfy the basic human needs of people within their jurisdiction. They are best understood as those rights expressed in international texts (or instruments) which have been agreed by states and which set out human rights standards. The most famous of these is the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations in 1948 (Phuyal & Rai, 2010).

After World War II human rights theory and practice evolved every other decade, so it seems fit to speak of “generations” of rights. At first human rights were considered to claim for non-intervention by governments in the lives of citizens to prevent the abuse of state power. This first generation of rights came to be known as civil and political rights. Examples include the right to life; the right to freedom from torture and ill-treatment; the right to liberty; the right to freedom of thought, conscience and religion; and the right to freedom of peaceful assembly. This second generation of rights came to be known as economic, social and cultural rights. These include the right to social security; the right to work; the right to education; and the right to participate in the life of the community (Sangraula, 2005).

This is where the third generation of human rights comes in. They are commonly known as “collective rights” and, as with all developments in this field. The right to live in a clean environment is known as the fourth generation of Human Rights. The history of human rights can be traced Magna Carta (1215), the petition of Rights (1628), the English Bill of Rights (1689), the French Declaration (1789), the Bill of Rights in the United States Constitution (1791), the first Geneva Convention (1864), UNO, UDHR, (Robertson, 1972).

International Human Rights Laws (IHRL) are the body of international law designed to promote and protect human rights at international, regional and domestic levels. As a form of international law, international human rights law is primarily made up of treaties, agreements between states intended to have binding legal effect between the parties that have agreed to them; and customary international law, rules of law derived from the consistent conduct of states acting out of the belief that the law required them to act that way. Other international human rights instruments contribute to the implementation, understanding and development of international human rights law and have been recognized as a source of political obligation. International human rights law is a specific classification of public international law; it is composed of a series of international hu

man rights treaties, customary international law, general principle and other treaties that emerged since 1945 conferring legal form on inherent human rights. It is also called post-war law, which emerged in the middle of the 20th century as a response to the atrocities and horrors committed under Nazism during the Second World War (Amnesty International, 1998).

Security forces and human rights

Security is related to the protection of life, liberty and property of citizens and protection of the country's sovereignty as well as territorial integrity from external and internal threats. After the end of Cold War, the trend of conflict in the world has changed from inter-state to intra-state. (Fukuyama (2018) stated that the obligation to respect universal human rights has been voluntarily undertaken by most countries around the world, and rightly so. But all liberal democracies are built on top of states, whose jurisdiction is limited by their territorial reach. No state can take on an unlimited obligation to protect people outside its jurisdiction, and it is far from clear that the world would be better off if all states tried to do so. Democracy means that the people are sovereign, but if there is no way of delimiting who the people are, they cannot exercise democratic choice.

Armed Forces with the duty to conduct different operations should also be empowered with human rights knowledge for them to be able to adhere to human rights principles while conducting their missions or operation. Government power is implemented on behalf of its people and the government agencies such as the armed forces are obligated by the constitution with the responsibility of exercising their power within the confine of the law and seek to ensure during performance of their duties they implement the constitutional principles and values. The implementation of human rights attributes to growth of a country's democracy and development. The right to liberty and security is non-derogable and enshrined in numerous regional and international systems of protection of human rights. Human rights and security are meant to be complementary, hence inseparable. In the absence of human rights in any society, then insecurity is inevitable.

The United Nations General Assembly adopted a resolution on December 17, 1979 that all security personnel shall respect and protect human dignity and uphold the human rights of all persons as well it applies to the armed forces, they have to abide by the international conventions against torture and other cruel punishments, principles of international cooperation in the detention, arrest, extraditions and punishment against humanity. There also must ensure that the members of the Armed Forces enjoy the basic human rights and fundamental freedoms in the context of their service. A soldier whose human rights are protected by the State is likely to be more disciplined and operationally effective, and also less likely to violate the human rights of others.

Literature Review

Human rights are rights inherent to all human beings. They define relationships between individuals and power structures, especially the State. Human rights delimit State power

and, at the same time, require States to take positive measures ensuring an environment that enables all people to enjoy their human rights. History in the past 250 years has been shaped by the struggle to create such an environment(ohchr.org, 2018).

The constitution prohibits torture and the newly enacted criminal code criminalizes torture and enumerates punishment for torture. The Torture Compensation Act provides for compensation for victims of torture. According to human rights activists and legal experts, police resorted to severe abuse, primarily beatings, to force confessions. Local human rights NGO Advocacy Forum (AF) reported no evidence of major changes in police abuse trends across the country, but AF stated that police increasingly complied with the courts' demand for preliminary medical checks of detainees (U.S. Embassy Nepal, 2018).

When violations of HRs are involved, dispassionate inquiries are ordered and in cases in which persons are found guilty, strong penal action is taken. To monitor HRs observance and expedite the investigations in HRs violations, a Human Rights Cell was created in 1992, i.e., even before the establishment of the NHRC. The nodal officer of the Cell at the Force HRs attends to all correspondence with the NHRC and NGOs and furnish factual position to all concerned. He maintains close liaison with state nodal officers to collect information regularly about cases against the force personnel (Singh, 2003).

The new cycle of protests has opened up new political spaces for human rights based resistance by indigenous and peasant communities, social-environmental activists and social movements. These groups are at the forefront of the forces of resistance against resource extraction in Latin America and are increasingly looking towards human rights institutions, discourses and practices to provide a means to contest the unjust capitalist structures that are causing the social ecological destruction of the planet (Raftopoulos, 2017).

While individuals do not lose their human rights when they enter the armed forces, states can limit their enjoyment of human rights due to requirements related to the characteristics of military life. The particularities of military life that are used to justify restrictions on the exercise of human rights in the barracks are often related to preserving order and discipline in the military; establishing the political neutrality of the armed forces; maintaining operational effectiveness; protecting classified information; orders; and maintaining the hierarchical structure of the organization (OSCE/ODIHR, 2008).

A complex relationship exists between the repression of defenders and their defence of human rights; in some cases, repression triggers new forms of mobilisation and activism. The tactics and strategies that defenders use to manage their own security and to respond to risk are diverse, creative and highly adapted to local contexts. As some have observed, there is sometimes a gap between what defenders do and how transnational actors understand and support them, which can lead to ineffective protection and support measures (Bennetta, Ingletonb, , Nahc, & Savage, 2015).

Technological innovations do not only benefit law enforcement. They also enhance the visibility of police misconduct that hitherto has been difficult, if not impossible, to establish. Police stations are subject to monitoring, both inside and outside interview rooms. There is also increasing CCTV monitoring in urban inner city precincts that inevitably capture video evidence of police going about their work. In 2010, a Queensland Police officer was sentenced to nine months imprisonment after a violent assault on three people in his custody was recorded (Calligeros, 2010).

Methodology

The study follows a qualitative approach. The study analysis is based on a review and examination of information gathered from a variety of primary and secondary sources. For the primary data, the Human Rights section of APF, Nepal Headquarter was consulted to understand the focus on human rights specific training being conducted in APF Nepal. The APF Human Rights Booklet, 2019, Armed Police Act and Regulation, the Journal published by Human Rights Commission, ICRC and UN documents have been taken as major sources of secondary data. Data collected from various sources have been presented, described and interpreted.

Armed Police Force Nepal and Human rights

The Government of Nepal established Armed Police Force, Nepal under Ministry of Home Affairs as a paramilitary security agency during the Maoist insurgency. After the agreement between Government and the Maoist, APF focused on public order management along with its other mandated task.

The fundamental ethos of the Armed Police Force Nepal is Peace, Security and Commitment. Some of the human rights related mandates of APF are the following (Armed police Act, 2001).

- a) Control any ongoing or would be armed conflict within the country,
- b) Control any ongoing or would be armed rebellion or separatist activities within the country,
- c) Control any ongoing or would be terrorist activities within the country,
- d) Control any ongoing or would be riot within the country,
- e) Assist in rendering relief to natural calamity or epidemic victims,
- f) Rescue any citizen or else from hostage captivity or in the event of occurrence of heinous and serious crimes or unrest of grave nature or of anticipation,

In the initial phase of the Maoist insurgency in Nepal, the lack of knowledge and deteriorated security situation of country led security forces to commit of human rights violation. The values of human rights were not established and not publicized among all members of the security force at that time. Due to those reasons some activities occurred. But after the realization the importance of human rights and obligation, the human right situation improved hereinafter.

APF, Nepal continuous to contribute soldiers in peacekeeping efforts under the coveted blue flag of the United Nations for global peace and security as a whole. It has been constantly involved in various peacekeeping missions since 2002 as a member of the FPU contingent (Armed Police Force Nepal, 2020). APF, Nepal taking part in some of the most difficult operations on several occasions and suffered casualties in the service of the UN. Likewise professional excellence of the APF, Nepal troops have won universal appraisal.

APF, Nepal is a law enforcement agency of Nepal, so it has the prime responsibility of protection and promotion of human rights. Since its inception APF is following the norms and values of international human rights. For adopting the norms and values of human right, for making the APF member trained, aware and responsible towards the human rights and for monitoring evaluating, mentoring, guiding and punishing the culprit of human rights, APF, Nepal has established a Human Rights Cell in headquarter. The Central Human Rights Cell in APF headquarters has been active since 2003 (APF Human rights Manual, 2018).

There is a central Human Right Cell in Headquarters and Provincial Human Right Cell in Regional Brigade established in 2003. For the protection and promotion of the human rights of women, there are central and regional gender cells in headquarter and Provincial Brigade of APF Nepal. All the members of APF are formally or informally trained on the fundamental principle of human rights. They are aware of role and responsibility in regard to the promotion and protection of human rights. APF used forces in disadvantaged they have to follow the standard of human rights law and international humanitarian law. For making them aware APF Nepal Human Rights Cell is performing its activities as a mentor, monitor, evaluator and corrector there are Seven Human Rights Cells in the Brigade level respectively.

Promotion and protection of Human Rights is a multidimensional task. Only an agency can't perform a complete task regarding human rights which is achieved through a joint effort. For the successful accomplishment multiple stakeholders together should work for such a task. APF Nepal does cooperate and coordinate with various agencies for betterment of human rights in Nepal. The following are the function of Human Rights Cell in APF.

1. Information sharing and strategic advice to IGP on the matter of human rights.
2. Circulation of policy, guideline and directives to subordinate units.
3. Departmental punishment to APF personnel who were convicted as Human Rights violators.
4. Coordinate with all national and international stakeholders working in the field of human rights.
5. Guide, monitor and support the Human Rights Cell of APF Brigade level in each Province.
6. Monitor, investigate and respond upon human rights issues within organization.
7. Conduction of human rights related training and orientation classes.
8. Response to the allegation against APF Nepal during the performance of its man dated task.

APF, Nepal protection and promotion of human rights

Nepal ratified approximately two dozen international treaties concerning human rights. However, it is still difficult to know whether international human rights treaties are directly applied in domestic law. Human rights are an issue of universal concern (Timilsena, 2015). Nepal is proceeding ahead with a plan for the sake of protection and respect of Human Rights. Planning, policy and guideline are prepared and implemented strictly in personnel, professional and operational activities for respect of human rights. APF's policies for protection of human rights are listed below:

1. Conduct of human rights training and awareness program to APF members
2. Respect, protect, promote and fulfill the standard of human rights
3. Publish of human rights booklet for APF Personnel.
4. Provide regular guidelines and directives to the APF personnel.
5. Includes of human rights curriculum in all basic and advanced APF training.
6. Adopt Zero tolerance policy against human rights violators of APF members.
7. Includes human rights related question for FPU selection exam to ensure the knowledge of human rights.
8. Provide awareness program to local people about human rights principle
9. Implication of international human rights standard, value and principle
10. Train officials on HR Cell and upgrade the physical infrastructure of the cell.
11. Conduct advance training related to IHL/IHRL
12. Focus on promotion and protection of human rights in personal and professional.
13. Sensitize officials on crowd behavior, conflict resolution, stress management,
14. Enlighten. all APF Nepal's personnel on gender discrimination issue .
15. Control crime and gender violence in society.
16. Respect and protect the rights of detainees.
17. Follow the due process while using force and while arresting the suspect.

Role of APF Nepal to respect, protect and fulfillment of human rights

During the unrest if Nepal Police could not control the situation, then APF Nepal is mobilized by the District Security Committee to maintain the peace and order. The situation may require arrest to use of force. During operationalization mandated task following sensitive and human rights related activities may conduct by APF, Nepal.

(a) Arrest: Article 8 of UDHR, 1948 guaranteed that “No one shall be subjected to arbitrary arrest, detention or exile” likewise ICCPR, 1966 also followed the same spirit against arbitrary arrest. Article 20 Constitution of Nepal clearly mentioned that “no person shall be detained without being informed of the ground for such an arrest”. It is the act of apprehending a person for the alleged commission of an offence or by the action of an authority. Suspicious person shall be arrested only on reasonable grounds after issuing the warrant paper and he should be submitted as soon as possible to responsible authority. According to section 24(2) of APF Act , 2058 incorporated that if any suspected person may be in a house, land, place or vehicle the responsible Armed Police Officer may search

and arrest and submit to the local police as soon as possible. The APF Nepal has legal authority to make arrest but does not have power to detain or interrogate. Rule 163 of APF Rule clearly mentioned the Arrest notice to suspect or offender. So all members of APF are trained and aware about existing law and human rights of suspects or offenders during arrest.

(b) Use of Force: The local administration Act, 2028 has explained about the use of force and firearms in riot control and other emergency situations to maintain peace and order. Section 6(2) of Local Administration Act 2028 mentioned that if the Chief District Officer (CDO) reveals that any serious disorder has been occurred or to be occurred, and he/ she thinks that it is not possible to control it only with the assistance of the police in such place under his/her jurisdiction, he/she may request to local or nearest Armed Police Force Nepal or Nepal Army as per the situation demand. Minimal force shall be used as a last resort. The proper rule of use of force shall be adopted while managing riot or mob. Armed police Force Nepal follows the rule mentioned in section 1 of Local Administration Act, 2028 if crowd or mob may take violent or destructive activity and there is a possibility of disorder from such activities and if it goes beyond the control the security forces first persuade to maintain peace and if peace could not be maintained may cause to use baton (Lathi charge), tear gas, water cannon, blank fire as per necessity based on the situation, to maintain peace and order. If it is not possible to maintain peace it deems necessary to open fire to issue a warning to the crowd with all clarity before opening the fire; if the mob is not dispersed after such warning it becomes necessary to give order to open fire below the knee as a last resort. APF Nepal follows the principle of proportionality, legality, accountability, necessity to maintain peace and order.

(c) Search: While searching any person, vehicle, place or house, due process of informing, no harm, search in presence of the responsible person shall be followed. Due respect to elders, children and women shall be followed. Ladies officers shall be employed for searching women. Civil Criminal Procedure Code, 2074 clearly mentioned about search procedure.

(d) Punishment, Torture and Inhuman Treatment: Unlawful punishment, torture and inhuman treatment to any suspects are completely prohibited while performing duty of controlling and investigating any crime. All APF Nepal members are directed not to commit physical and mental torture at any cost. APF follow the article 5 of UDHR which mentioned that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

(e) Detention: APF Nepal has legal authority to make arrests but does not have powers to detain or interrogate. Arrested persons should be handed over to responsible authorities as soon as possible and they should not be detained in APF custody. Rule 163 of APF Rule 2072 clearly mentioned about the handover of the arrested person to the local police. APF Nepal respects the right of life, liberty, and security of person which is mentioned in the international human rights instrument and municipal law.

(f) Other: APF members have to respect the human right on a personal level. In their personal activities, all members are sensitive and dutiful to respect human rights. As social beings in individual capacity and incapacity of APF personnel they have to follow the standard of the international human rights law. APF, Nepal should mainly focus on respect, protecting, fulfilling and promoting the human rights of people. People have their own right which should not be violated or waived out by the security force. Rights of women, children, minorities, migrated and disabilities should be respected and protected.

Conclusion

APF Nepal is one of the vital security agencies of Nepal which has shown its competency during the armed conflict in Nepal by adopting the principle of use of force. It is performing its mandated task with a human rights friendly environment. Human rights are moral principles or norms that describe certain standards of human behavior and are regularly protected as legal rights in municipal and international law. They are commonly understood as inalienable, universal and indivisible fundamental rights to which a person is inherently entitled simply because she or he is a human being. Human rights are inherent in all human beings regardless of their nation, location, language, religion, ethnic origin or other status. They are applicable everywhere and at every time in the sense of being universal and they are egalitarian in the sense of being the same for everyone. They require empathy and the rule of law and impose an obligation on persons to respect the human rights of others. So the armed force Nepal is sensitive to protect, promote, respect and fulfillment of human rights while performing its duties. Recourse to force in performing internal security missions must be commensurate with the needs for enforcement. The armed forces will take due care to avoid injury to civilians or their property. The use of the armed forces should be on the basis of proportionality, legitimacy, accountability and necessity.

The government also must ensure that the members of the Armed Forces enjoy the basic human rights and fundamental freedoms in the context of their service. A soldier whose human rights are protected by the State is likely to be more disciplined and operationally effective, and also less likely to violate the human rights of others.

References

- Amnesty International, (December 1998). Basic human rights standards for good conduct by law enforcement officials, POL 30/04/98, London.
- Armed Police Act, (2001). <http://lawcommission.gov.np/en/wp-content/uploads/2020/armed-police-force-act-2058-2001.pdf>.
- Armed Police Force Nepal (2020). <https://www.apf.gov.np/pages/background>.
- Armed Police Force, Nepal and Youth for Human Rights International (2019). *Human Rights Booklet*, APF, Nepal
- Bennetta, K., Danna I. D., Nahc, A.M & Savage, J. (2015) Critical perspectives on the security and protection of human rights defenders, *International Journal of Human Rights* . <http://dx.doi.org/10.1080/13642987.2015.1075301>.
- Calligeros, M. “Cop bashing video released,” Brisbane Times, Oct. 12, 2010 http://www.brisbanetimes.com.au/queensland/cop-bashingvideo-released-20101012-16_gyh.html.
- Civil Criminal Procedure Code 2074*, GON, Law, justice and parliamentary affairs Law Books Management Committee, Kathmandu.
- Constitution of Nepal*, (2015), GON, Law, justice and parliamentary affairs Law Books Management Committee, Kathmandu.
- Fukuyama, F. (2018 October). *Why National Identity Matters*. Journal of Democracy, 29, (4). Published by Johns Hopkins University Press. DOI: <https://doi.org/10.1353/jod.2018.0058>. <https://www.ohchr.org/documents/publications/handbookparliamentarians,2016.pdf>.
- Local Administration Act, 2028*, GON, Law, justice and parliamentary affairs Law Books Management Committee, Kathmandu.
- Magdalena, S. (2004). *Human Rights Reference Hand Book*, (3rd ed.), University for Peace.
- OSCE/ODIHR(Organization for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights), (2008) “*Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel*” Al. Ujazdowskie 1900-557 Warsaw Poland ISBN 978-83-60190-53-1 <https://www.osce.org/odihr>
- Phuyal H. & Rai, P. (2010). *Human rights jurisprudence developed by the court of Nepal: An overview*, NJA Law Journal.
- Raftopoulos, M. (2017) ‘Contemporary debates on social-environmental conflictsts, extractivism and human rights in Latin America’, *The International Journal of Human Rights*, 21 (4): 387–404.

- Robertson, G.R. (1972). *Human Rights in the World*, Manchester University Press.
- Sangroula, Y. (2005). *Concepts and Evolution of Human Rights: Nepalese Perspective*, Kathmandu school of law (KSL).
- Singh M. M. (2003). "*Human rights and the security forces a functional study of the legal regime with special reference to India*". Department of Law, Panjab University <http://hdl.handle.net/10603/88060>
- Timilsena, S.P. (2015). "*Role of Judiciary to internalize international human rights instrument in Nepal*", an unpublished LLM thesis Submitted to the Tribhuvan University, Nepal.
- Training Manual on Human Rights (2018). *Guidelines for Armed Police Force, Nepal Personnel*. Published by APF Nepal and Kathmandu School of Law.
- U.S. Embassy Nepal (2018). *Human Rights Report Country Reports on Human Rights Practices for 2018* United States Department of State, Bureau of Human Rights and Labor <https://np.usembassy.gov/wp-content/uploads/sites/79/Country-Reports-on-Human-Rights-Practices-pdf>.