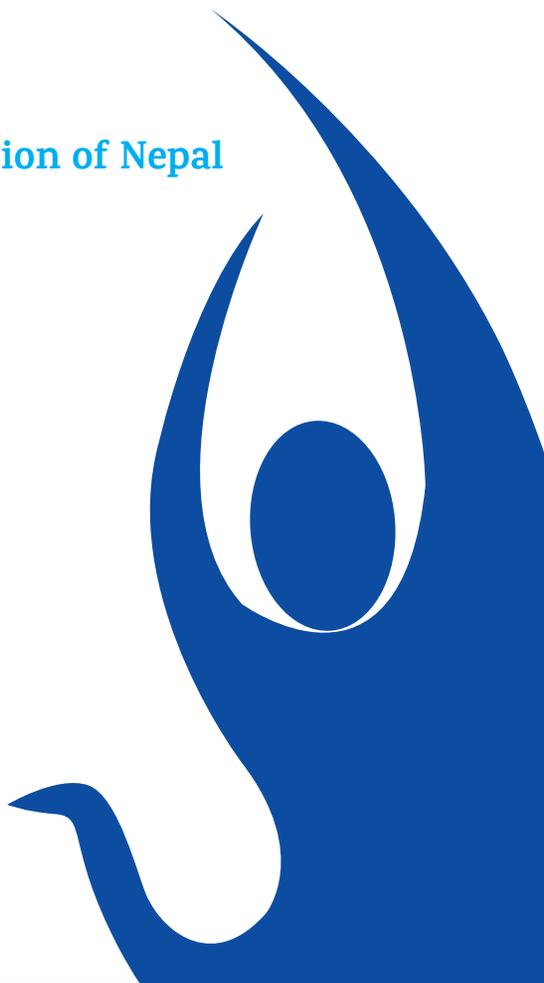


National Human Rights Commission of Nepal

ANNUAL REPORT 2020



National Human Rights Commission of Nepal

Harihar Bhawan, Lalitpur

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FY 2019-2020



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Remarks

The National Human Rights Commission of Nepal (NHRCN) is a constitutional body established for the protection, promotion and fulfillment of human rights. It has, since its establishment, working actively for the respect, protection and promotion of human rights, and in developing human rights culture. The NHRCN has been performing its activities by acting within the parameters of the fundamental law of the land, the Constitution, relevant Act and regulations, and its strategic plan. Articles 248 and 249 of the Constitution provide the National Human Rights Commission of Nepal. Article 249 of the Constitution and the section 4 including others of the National Human Rights Commission Act, 2012 outline the power and functions of the Commission.

The state which adopts the rule of law, the norms and principles of human rights can be considered as a democratic state. In every country, the State is regarded as patron and guardian in the perspective of human rights. Nepal is also a member state and a state party to various international instruments related to human rights. In addition to this, currently, it is also a reelected member of the Human Right Council, a UN agency. Nepal is also a state which has adopted a governance system operated by the government elected by the people. In this sense, there is no ambiguity that primarily, the state and the government have an obligation to respect, promote and fulfill human rights. Thus, the state obligation on the human rights is also be seen from global and regional perspective. In this connection when the State fails to fulfill its obligation of fulfillment of human rights in its daily activities, it is the duty of other state agency to hold it accountable. Constitutionally, in Nepal, this duty falls under the responsibility of the National Human Rights Commission of Nepal. Accordingly, the NHRCN has been active towards its duty since its establishment. In this fiscal year too, the commission has fulfilled its duty from various aspects.

Article 294 (1) of the Constitution of Nepal obliges all the constitutional bodies to submit their annual activities through an annual report to the President. This brief report basically comprises the complaints registered before the Commission, the prob and investigation carried out over it, details of the investigation and recommendations made to the government, among others. In addition to this, there is also a provision to include details related to the reforms that needs to be made in the future for protection and promotion of human rights. Accordingly, the annual report of this fiscal year 2019/2020 also makes an effort to include the activities carried out.

Like in the previous years, in this fiscal year too, the NHRCN has been engaged actively for

the protection, promotion and effective implementation of human rights. Especially, receiving complaints, monitoring the situation of human rights, and investigation on the complaints have been carried out under human rights protection. On the basis of the facts received from monitoring and investigation, the Commission has been recommending to the government and the concerned agencies for taking legal action and providing compensation. Promotional activities like conference, training, workshop, interaction and discussion also continued. The Commission has also been playing its role for the formulation of human rights friendly laws, review or amendment of the human rights laws and regulations. Various thematic reports, booklets and journals have been published while concerns have been expressed on various issues of human rights through press note and press statements. Similarly, activities like making the Commission's view public through the media, publication and disseminating message giving materials on human rights of public concern got continuity.

Based on the need and rationale, the NHRCN also conducted various activities in collaboration and coordination with stakeholders at the national and international level for the respect, protection and fulfilment of human rights and development of human rights culture. Such types of activities have been specially concluded at local, provincial, national and international level. Specially, the collaboration with the local, provincial and federal level governments, constitutional bodies, political parties, civil society, and NGOs, and national human rights institutions continuous unabated. Coordination and collaboration with the Global Alliance of National Human Rights Institutions, Asia Pacific Forum, and National Human Rights Institutions, human rights institutions working at the international level and donor agencies is continued.

Currently, the country is running as per the federal structure of governance. The Constitution is being implemented. The legislations for the implementation of the fundamental rights have been enacted. Though partial, some office-bearers have been appointed on thematic commissions related to human rights. The government has been implementing the 5th human rights national action plan based on discussion with the stakeholders. Considering all these aforementioned aspects, there is ground for satisfaction.

Despite these positive efforts many challenges have been seen in the field of protection of human rights. Even though the laws related to fundamental rights have been formulated, the implementation seems challenging as the regulations are yet to be formulated. While the government's commitment to conclude the peace process (transitional justice) is yet to take any concrete form. It is unfortunate that the victims have not been able to get justice even 14 years elapsed since the Comprehensive Accord. The laws concerning the constitutionally guaranteed concurrent jurisdiction between the three levels of government are yet to be formulated so that

the functions of the governments have not been concluded as per the aspiration of the people.

The organizational structure concluded by the NHRCN as per the federal structures remain shelved at the Office of the Prime Minister and Council of Ministers for around 3 years. The proposed Bill introduced to amend the National Human Rights Commission Act, 2012 in compliance with independence and autonomy is not yet passed by the parliament. The implementation of overall human rights situation including civil and political rights, economic, social and cultural rights has not seemed satisfactory. The continuity of racial discrimination in the society, challenge in the right to life, violation of the consumer rights, and lack of universal access to health and education services shows that the atmosphere conducive for enjoyment of constitutionally guaranteed rights is yet to be developed. Daily life continues to face adversities due to labour exploitation of those going for foreign employment and increasing rate of violence to women and children. The state has not been able to give special attention towards protecting the rights of the marginalized community, indigenous people, and persons with disabilities, the Dalit, women, minorities and senior citizens. As a result, the rights of these class and communities have not been secured. The world itself is severely affected by the COVID-19 pandemic. From this, especially the health sector has been adversely impacted. People have been troubled and traumatized by this pandemic. Thus, not only the health, security, employment including other sectors has also been adversely affected.

During this fiscal year, the Commission has gained various achievements through human rights protection and promotional actions and activities. A total of 132 complaints of alleged human rights violation were registered. Investigation concluded on 795 complaints including the previously registered and new ones. A total of 128 monitoring of the human rights situation and others have been concluded. A total of 112 promotional activities were carried out including 56 in collaboration and coordination with a special priority on human rights promotion in order to realize the slogan "*Human rights for all at every household: foundation of peace and development.*" Similarly, the NHRCN participated in 279 programmes as guest and participants including in 41 programmes as resource person and subject expert. Similarly, in the all 7 provinces the radio jingle has been broadcasted through the radio in 14 different languages on the rights and duties of the citizens during lockdown period. The human rights app has been developed and is in use. Similarly, with the participation of 140 representatives from 28 countries; the NHRCN has successfully concluded the international conference on the rights of the migrant workers and their family in this fiscal year.

During the period, the NHRCN brought out 26 publications, 69 press statements and press notes. In addition to this, to help the government and stakeholders with the drafting of the law, the NHRCN review laws from the perspective of human rights and sent to the concerned agency

for implementation. Employees' management work has also gained speed in the Commission. From this the security of their service has been ensured.

Despite the aforementioned achievements, challenges continue to exist. The recommendations made by the NHRCN have not been fully implemented while support as per the expectation has not been received from the government. The implementation of the commission's recommendation for legal action to the more than 280 human rights violators recommended in accordance with the investigation and decision of the Commission is also appalling. Few of the Commission listed human rights violators have been awarded rather than the legal action. Reconstruction of the central office building of the Commission damaged in the earthquake is not still started. Other provincial offices operating from rented office space has also created difficulties in their functioning. Instead of these hardships, the Commission has been smoothly functioning to conclude its activities to fulfill its mandate.

The NHRCN has been drawing the attention of the government and stakeholders in addressing these challenges. Amidst these achievements and challenges, the NHRCN has been moving ahead with a focus on the Constitution, Act and strategic plan and learning from the past to carry out its activities as per the need of time.

Finally, I would like to express my gratitude to the Office of the President, the office of the Vice-president, the Parliament, the government of Nepal, political parties, civil society, the human rights community, media, professionals and businesses for their support and good wishes to the NHRCN. Similarly, I would also like to thank the international organisations, the entire diplomatic mission and the donor agencies. I am also grateful to the recently outgoing Chairpersons and Members and all the staffs of NHRCN. The Human Rights Officers Mr. Kailash Kumar Siwakoti and Mrs. Kalpana Nepal Acharya who were involved in writing this report are also thankful. I also look forward to with confidence in receiving continued support from all sides in the days to come.

Thank You!

December, 2020

Bed Bhattarai
Secretary

Abbreviation

APF	Asia Pacific Forum
BCG	Bacille Calmette-Guérin
CPA	Comprehensive Peace Accord
CEDAW	Convention on the Elimination of All Kinds of Discrimination against Women
CIEDP	Commission of Investigation on Enforced Disappeared Persons
CPN	Communist Party of Nepal
CZOP	Children as Zone of Peace
GANHRI	Global Alliance of National Human Rights Institutions
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Convention
INGOs	International Non-governmental Organizations
LGBTIQ	Lesbian, Gay, Bisexual, Transsexual, Intersex, Queer
MoU	Memorandum of Understanding
NGO	Non-government Organisation
NHRIs	National Human Rights Institutions
NHRCN	National Human Rights Commission of Nepal
NIDS	National Institute for Development Studies
NWC	National Women Commission
PWDs	Persons with Disabilities
SAARC	South Asian Association for Regional Cooperation
SDGs	Sustainable Development Goals
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNICEF	United Nations Children's Fund
UPR	Universal Periodic Review
WOREC	Women's Rehabilitation Centre

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NHRCN's Annual Function: An Overview

S. No.	Nature of Function	Number	Theme	Remarks
1. Protection of Human Rights				
1.1	Complaint	132	<ul style="list-style-type: none"> Civil and Political rights Economic, Social and Cultural Rights Right against Torture Women's Rights Child Rights Right against racial discrimination Right against the act of disappearance Rights of migrant workers and their families Others: Rights of the senior citizens, rights of refugees, right against human trafficking, environmental rights, etc. 	
1.2	Monitoring	128	<ul style="list-style-type: none"> Civil and political rights: Overall human rights situation, human rights, rights of prisoners, judicial administration etc. Economic, social and culture rights: right to health, human rights of the people living in the bordering region, environmental rights; consumer rights, rights of internally displaced persons by natural disaster (floods/landslides). COVID-19 and the effects upon the human rights, Rights of the senior citizens, women, children, indigenous nationalities, minorities/marginalized communities, persons with disabilities, rights of migrant workers, situation of human trafficking etc. 	Of the total 108 monitoring, 20 was held in collaboration and coordination with various divisions of central office

S. No.	Nature of Function	Number	Theme	Remarks
1.3	Investigation	795	<ul style="list-style-type: none"> Civil and political rights, Torture, disappearance, rape etc. Economic, social and cultural rights Rehabilitation of the internally displaced persons, compensation for the looted property etc. Women's rights, child rights etc. 	
1.4	Decision/recommendation	610	Civil and political rights, administration of justice, kidnapping, internal displacement, economic, social and cultural rights, torture, racial discrimination, women's rights etc.	
1.5	Counselling upon complaints	445	Upon the complaints of the other agencies of the state;	
2. Human rights promotion				
2.1	Training, interaction, discussion, seminar, workshop, sensitization, morning procession, exhibition, etc.	112	Peace and security, rights of the enforced disappeared persons, transitional justice, right to food, dispute resolution at the local level, civil and political rights, economic, social and cultural rights, child rights, women's right, rights of persons with disabilities, right to health, rights of the senior citizens, rights of minorities, business and human rights, consumer's rights, rights of migrant workers, collective rights, report writing etc.	
2.2	Awareness raising programme broadcasted in 14 different languages		Radio jingle for the promotion of awareness with regard to citizens' rights and duties during lockdown	Broadcasted in including Magar, Chhamling, Sherpa, Awadhi, Bhojpuri, Maithali, Tharu, Dotel, Achhami and Newari languages in the seven provinces;

S. No.	Nature of Function	Number	Theme	Remarks
2.3	Promotional programmes based on coordination and collaboration	56	Legal action, women's rights, child rights, right to education, right to food, psychosocial health, transitional justice, right against human trafficking, right against racial discrimination, human rights, development and good governance, human rights and social justice, rights of migrant workers, role of local level in dispute resolution, school as a zone of peace, UPR implementation status, rights of senior citizens, rights of the senior citizens, consumer rights, and right to water etc.	Total of 56 programmes held in collaboration and coordination
2.4	Expert service (resource person) provided	30	Programme organized by the government and other organisations working in the field of human rights	
2.5	Participation as guest/in other programmes	49/230	Programme organized by government and organisations working in the human rights sector	
2.6	Internal programme of the NHRCN	56	Training, seminar, discussion, assessment	
2.7	International Conference		Human rights situation of the migrant workers and their family members	With the participation of 140 representatives from 28 countries;
3.	Law review	2	Rights of the senior citizens and right to environment;	In collaboration with the concerned divisions
4. Publication				
4.1	Regular report	1/2	Annual report	Comprehensive and summary (Nepali/English)

S. No.	Nature of Function	Number	Theme	Remarks
4.2	Thematic report/ booklets	18	The human rights situation of the Nepali citizens residing at the border side, SDGs and Human Rights in Nepali context, Study report on Sexual and gender minorities (LGBTIQ persons) etc.	
4.3	Journal/bulletin	1/1	Human Rights <i>Sambhok</i> /human rights Bulletin	Total four issues
4.4	Brochure	4	A short introduction to the NHRC Nepal	
4.5	Press statement and press note	69	Various issues of human rights	
4.6	Press meets	4	Comprehensive Peace Accord and situation of human rights, and International conference on human rights	
5. Human Resource				
5.1	Chairperson/ members	1/4		
5.2	Staff	229	Working in all offices of the Commission	

Chapter-One

Organisational Structure Power and Functions of the Commission

Introduction to the Commission

Even though the development of modern human rights took place following the Second World War, its development at the national and regional level is regarded to have taken place before that. In Nepal, issues of human rights have been raised one way or the other from the remote past. But constitutionally human rights issues were considered for the first time in the Nepal the Legimate Law of the Government 2004 BS. The Constitution of the Kingdom of Nepal, 2015 BS and the Constitution of Nepal, 2019 BS included some fundamental but limited provisions of human rights. The people's elected 2/3 majority government was dissolved in 2017 BS and monarchy-based Panchayati governance system was enforced as a result the issues of human rights were put in shadow. People's political rights were also restricted in this governance. The Constitution enacted in 2019 BS provisioned the fundamental rights but the freedom of political party was not put into place. Even during this adverse period, the judicial bodies made some special decisions related to protection and promotion of human rights those decisions somehow contributed for protection and promotion of human rights. In the mean time, some of the efforts were made on behalf of the political parties and professional organizations for democracy, freedom of political party and the human rights.

The term human rights was for the first time used in the preamble of the Constitution of the Kingdom of Nepal, 1990 promulgated after the people's movement of 1989 that in fact overthron the Panchayati system. Following this, the Interim Constitution of Nepal, 2007 and the present Constitution have given continuity to the use of the term. The fundamental rights section of the Constitution of Nepal has included with priority economic, social and cultural rights in addition to the political rights that were mentioned by the other previous Constitutions. In case of any hindrance in the enjoyment of human rights, the Constitution provides clear provisions of judicial remedy through extraordinary jurisdiction of the Court.

The discussions were held even at the Economic and Social Council of the United Nations for the necessity of the National Human Rights Institutions from 1946. Finally, the comprehensive international conference on human rights organized by the United Nations concluded at Paris in 1993 concretized this concept. The conference appealed to all the UN member states to establish one independent and autonomous national human rights institution. This also included the provisions for such institutions that the nature of the institutions should be independent, autonomous, pluralism in the appointment among others. The principle is also called as the Paris Principle. National Human Rights Commission of Nepal an autonomous and independent institution established on the basis of this principle.

However, after the restoration of multiparty democracy human rights was the issue of concern but national human rights institution could not be established in Nepal from the state mechanism. As result, demanding the establishment of such institution, human rights defenders, legal practitioners, media, civil society, intellectual community and professional organisations started advocacy, discussion and organizing pressure-exerting programmes. The private bill introduced by the then member of the House of Representatives took the form of an Act and led to the introduction of the Human Rights Act, 1997. The institution could not be established even around four years after the Act was commenced. Peaceful movement, concern by the international community and alerting by the media continued. Demanding establishment of a commission, a writ was filed at the respected Supreme Court, the hearing of which led to a mandamus order in the name of the defendants. Finally, after a long wait, the National Human Rights Commission of Nepal was established on 25 May, 2000. The Commission has completed 20 years of its establishment.

The Commission established in accordance with the Act was elevated as a constitutional body by the Interim Constitution of Nepal - 2007. This provision is even continued by the existing Constitution. Article 248 and 249 of the Constitution of Nepal provide the mandate of the National Human Rights Commission of Nepal. As per the mandate and based on Article 294, the Commission is required to submit an annual report including its year-long activities to the Rt. Hon. President of Nepal.

This report prepared basing it on the Constitution, Act, Strategic Plan and the annual program is divided into 7 chapters and 12 annexes. The report basically includes the human rights situation, complaints received at the commission, investigation over the complaints, monitoring, study, promotional activities, the decisions taken by the Commission and recommendations etc. In addition to this, it also discusses the achievements, challenges and the future course of action of the Commission.

Organisational Structure

Article 283 of the Constitution of Nepal mentions that appointments to offices of Constitutional Organs and Bodies shall be made in accordance with the inclusive principle. Similarly, the Article 248 provides that there shall be a National Human Rights Commission of Nepal consisting of a Chairperson and four other members. Under the Commission 1 central office 5 regional offices and 3 sub regional offices were existed. The NHRCN on June, 2018 prepared the organizational structure as per the federal structure and sent it to the Office of the Prime Minister and Council of Ministers for approval but due to indifference of the government the organizational structure is not executed.¹ The Commission has position for a total of 309 staffs in all its offices, and currently the number of staffs is 229.

Power and Functions of the NHRCN

The Constitution mentions that 'It shall be the duty of the National Human Rights Commission of Nepal to respect, protect and promote human rights, and ensure its effective fulfillment'.² Protection and promotion of human rights is regarded as the primary duty of the State. In case the State does not fulfill this duty in a satisfactory manner in accordance with the mandate provided by the Constitution and Act, the NHRCN has to make an effort to make alert the State and hold it accountable. The NHRCN has been carrying out its activities as per its mandate such as human rights protection, receiving complaints, investigating the complaints, and making recommendations for action and prosecution against those found guilty of human rights violation. In regards of promotion of human rights, the Commission has been working to raise awareness, organize training and workshop, seminar and conferences,

1 The meeting of the NHRCN on June 22, 2018 changed the organizational structure of the Commission into a federal structure and sent it to the Office of the Prime Minister and Council of Ministers for approval. The organogram that also includes the 7 provincial office and 3 provincial branch offices but is not yet approved by the Government of Nepal.

2 Article 249 of the Constitution of Nepal

advocacy programme and coordination and collaboration with the civil society, including making publications. In addition to this, the Commission has also been making recommendations to the government to formulate and amend laws related to human rights, and to ratify international conventions and treaties.

National and Int'l Obligation of the State

The Human Rights Situation

As human rights is a global issue, Nepal cannot go beyond this. The obligation of law amendment, formulation and implementation rest upon the state/government as a member state of United Nations, state party to the various human rights instruments, the elected member of UN Human Rights Council and a federal democratic country. Thus, the obligation to respect, protection and fulfilment of human rights is both national and international obligation. Generally, the obligation to respect, protection and fulfilment of human rights of a state/government is at national, regional and international level. In this context, this section mentions the national and international obligation.

The National Obligation

The state is regarded as the guardian of the citizens, caretaker of human rights and should fulfill the human rights promises. Thus, in the democratic system, it is the obligation of the state to respect, protect, promote and fulfill human rights. Currently, though there is the government elected by the people's voting it seems to have failed its own commitment in some cases for the protection and promotion of human rights. People raised their voices that some bills introduced in the previous year on behalf of the government have raised questions over the intent of the government. Even in this year, the Bill designed to amend and integrate laws relating to the Media Council and the National Human Rights Commission bills are not endorsed by the parliament. Similarly, the news reports have been published that the Parliamentary Development and Technology Committee has passed the Media Council Bill recently curtailing the freedom of expression. The NHRCN also requested to be sensitive towards this as freedom of expression is restricted contrary to established principles, it goes against the norms of human rights.

NHRCN opinion regarding the Information Technology Bill¹

The freedom of expression is recognised as a fundamental human right by the various international human rights laws. Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights guaranteed people's right to express their opinion without any restrictions. The Commission reminds that interpreting these articles the UN Human Rights Committee in General Comment No. 34 provides that since freedom of opinion and expression is imperative for overall development of individuals and the basic foundation for the establishment of democratic society and such rights cannot be restricted even during the state of emergency. The freedom of opinion and expression are constitutionally guaranteed fundamental rights. Similarly, the Commission also reminds the Supreme Court's verdict issued on 19 April 2017 that to restrict the freedom of expression there must be rational correlations between the action of restriction and the intended objectives of such action.

These bills introduced without discussion with the stakeholders may be endorsed following the due process of the parliament, but why has the government introduced such bills in relation to the media sector and the National Human Rights Commission? This question is still unanswered. Instead of playing the role for passing these and such kind of other bills in a democratic manner capturing the spirit of freedom of press, human rights and rule of law, democracy shutting down the only legitimate floor the Parliament has been creating the distrust.

Nepal is a member of United Nations Human Rights Council since 2018 to till now. On the occasion of presenting the nomination by addressing on behalf of Nepal, Hon. Foreign minister had informed the international community that the situation of human rights in Nepal is encouraging. He added that the National Human Rights Commission of Nepal has been accredited with 'A' status since its establishment as an example. He also mentioned that constitutional commissions have been formed for the welfare of Women, Dalit, Indigenous nationalities, Muslim and Tharu communities. He said that the cases of victims are being addressed through transitional justice, in consultation with the victims while preparation is being for amending the related Act as per the directive of the Supreme Court. This has been informed during the election period of this year too that Nepal's human rights situation is better and the government is fully

1 The press release issued by the Commission on January 1, 2020

committed to the protection and promotion of human rights. But some instances show that the commitments are not fully transformed into practice.

The wrong message has been circulated because of the non implementation of the aforementioned commitments made in front of the international community and not addressing the issues like creating sustainable peace and end of impunity. The bill of National Human Rights Commission of Nepal is not geared up as efforts had to make in accordance with the spirit of independence, autonomy and the federal structure. From this it shows that the government seems to make an effort to limit the NHRCN in the central level, restrict functional independence and autonomy that would make the NHRCN recommendation to prosecute a case on the discretion of the Attorney General provisioning in the National Human Rights Commission Bill. These provisions are against the Constitution, Act and the verdict of the court. Instead of the government avoiding it by saying that it falls under the jurisdiction of the parliament, it should rather withdraw the Bill and introduce a new one following extensive debate and discussion among the stakeholders. Similarly, withholding the organizational structure prepared by the NHRCN based on the federal structure at the Office of the Prime Minister and Council of Ministers has created difficulties for the Commission to carry on with its activities in a regular, organized and effective manner. Not showing interest to implement the provisions of the Constitution related to human rights is itself an irony only if the Commission's activities are not in favour of the government. Until and unless the government responds positively through practice, it is natural for questions to be raised for the government's commitment to human rights.

Implementation Status of the Constitution

Fundamental Rights

The state is not only the guardian of the citizens, caretaker of human rights and but also the executor of the human rights promises. Fundamental rights are the basis of measurement how much the government is generous to its citizen and it also reflects the governance system of the nation. Normally, the reflection of the fundamental rights seems to be in favour of the citizens and against the government. It is the obligation of the state or government to enforce the fundamental rights, in case of breach of the fundamental rights the judiciary has the right to provide directive order for remedy.

From the perspective of human rights, there are plenty of basis to consider the

Constitution of Nepal, 2015 to affirm it a human rights friendly Constitution. The Constitution provides that 'Recognizing the multi-ethnic, multi-lingual, multi-religious, multi-cultural and diverse regional characteristics, resolving to build an egalitarian society founded on the proportional inclusive and participatory principles in order to ensure economic equality, prosperity and social justice, by eliminating discrimination based on class, caste, region, language, religion and gender and all forms of caste-based untouchability.² Similarly, it states of 'being committed to socialism based on democratic norms and values including the people's competitive multiparty democratic system of governance, civil liberties, fundamental rights, human rights, adult franchise, periodic elections, full freedom of the press, and independent, impartial and competent judiciary and concept of the rule of law, and build a prosperous nation.³ It also mentions that the aspirations for sustainable peace, good governance, development and prosperity would be realized through the federal, democratic, republican system of governance. Article 16 to 46 of the Constitution provides the fundamental rights. The article 47 mentions about the implementation of the Constitution and article 48 duties of the citizens. The present Constitution is a step ahead from the previous Constitutions as the present Constitution includes economic and social rights as fundamental rights.

Recommendations

1. Initiate amending the existing errors in the legislations enacted for the implementation of the fundamental rights in line with international standard ensuring participation of the NHRC and other related stakeholders;
2. Formulate rules and directives for full implementation of the fundamental rights related laws enacted by the government with the participation of the rights body and other stakeholder agencies;
3. Ensure effective implementation of some fundamental rights adequate resources are necessary, implement effectively allocating budget and making the plan on priority basis through five-years' periodic plan, annual action plan and strategic plan;
4. Conduct massive awareness campaign through the federal, provincial and local governments to disseminate information about fundamental rights, as a lot of confusion is still existed in the concerned levels on the fundamental

2. The preamble of the Constitution

3. Ibid

4. The press note entitled 'Recommendation to the Government of Nepal for the implementation of fundamental rights' included in points no. 1-4 and 10 issued on December 24, 2019.

rights;

5. Implement the recommendations by Universal Periodic Review, United Nations Special Rapporteur and the Treaty Committees formulating short-term and long-term plans;

Though there are positive provisions the implementation status is not that much satisfactory. The fundamental rights are considered as the rights enforceable immediately but the Constitution provisions that the laws for enforcement of fundamental rights would be formulated within three years. Though the laws related to fundamental rights have been formulated within the specified period they are not complete for practice. Even the acts have not clearly provided direction for implementation. Even the Acts formulated include terms like "...may carry...may specify...may be asked to...shall be as specified"⁴, demands the formulation of the thematic regulations. Fundamental rights such as protection of crime victims, persons with disabilities, consumers' rights, right to housing which would be effective through the provisions of regulations itself creates dilemma.

The issue of Citizenship

Fundamental right is normally a right that is applicable to the citizen of the concerned country. The bill designed to amend the Citizenship Act 2007 is yet to take the shape of an Act. The bill that was tabled on 7 August, 2018 is passed by the majority votes at the State Affairs and Good Governance Committee. Instead of playing effective role to conclude such a sensitive issue at logical end by the government, the legitimate floor the Parliament has been shut down. As a result, the citizens' right to get citizenship certificate has been violated and they have been deprived from enjoying the fundamental rights.

The Status of Constitutional Commissions

Various thematic human rights Commissions have been provisioned from Article 252 to 264 of the Constitution of Nepal. Acts have also been formulated for the operation of those Commissions. There is a provision to have Chairperson and four other Members in the Commissions for a six-year term. Out of total 13 constitutional commissions, most of them have remains waiting for their completion of the members. The National Women's Commission and the National Dalit Commission, upgraded to the constitutional Commission are without office-bearers. The National Women

4. Environment Protection (first amendment) Act, 2075 (2018), Clause 10 and 11

Commission remains vacant since the day the NWC Act, 2017 was introduced on 15 October, 2017. Likewise, the National Dalit Commission remains without any office-bearers since the past four years.

Even though the Inclusive Commission, Muslim Commission and the Madhesi Commission were formed, they have not yet got full shape (of office-bearers). The Madhesi Commission and the Muslim Commission have got only Chairpersons. Only one member is existed in the Inclusive Commission. The office of the Indigenous Nationalities Commission has been established but office-bearers have not been appointed. The Language Commission provided under Article 287 of the Constitution has a Chairperson and only one member so far. Though the National Human Rights Commission got full shape (of office bearers) during this reporting time, this shall be vacant from October 18.

One the one hand the jurisdiction of the Commissions has been curtailed before their formation. The provision to provide direction to the government by the Dalit, Indigenous Nationalities, Madhesi, Muslim, and Tharu including other Commissions has been amended as per some Nepal acts (amending acts). ‘Recommendations or suggestions’ have been put in the place of directive order and it also mentions that the provision of Specialized Class Secretary is amended to Joint Secretary. The Constitution of Nepal mentions the provision to review these Commissions.⁵ The question of review of the Commission is serious as they are not formed in a timely manner. There is not clearly mentioned jurisdiction of these Commissions to be expanded up to the provincial level and the National Human Rights Commission of Nepal, so moving forward in a collaborative manner is seen.

The Jurisdiction of Federal and Provincial and Local Level

Part-20 of the Constitution of Nepal provisions interrelations between Federation, Province and Local Level. Article 231 outlines legislative interrelations between Federation and Province and the Article 232 (1) mentions the relations between the Federation, Province, and Local level shall be based on the principles of cooperation, coexistence and coordination. Article 233 relations between Provinces and the Article 234 provides 3 tires of Inter-Province Council to settle political

5 Article 265 of the Constitution of Nepal Review of Commissions: The Federal Parliament shall, after ten years of the commencement of this Constitution, review the Commissions formed under this Part.

disputes arising between the Federation and a Province and between Provinces chairpersonship of Prime Minister, Minister for Home Affairs of the Government of Nepal, Minister for Finance of the Government of Nepal, Chief Ministers of the concerned Province. Article 235 provides the coordination between Federation, Province and Local Level. This Article also provides that the Federal Parliament shall make necessary laws in order to maintain coordination between the Federation, Province and Local level.

The Constitution under Schedule-5 Federal Power, Schedule-6 Provincial power, Schedule 8 outlines the Local Level power and Schedule-7 outlines the concurrent powers of the Federation and the Province (Relating to clause (3) of Articles 57, Article 109, clause (4) of Article 162, and Article 197). This includes 25 areas including criminal and civil procedures, and evidence and oaths (legal recognition, public acts and records, and judicial proceedings), utilization of forests, mountains, forest conservation areas and waters stretching in inter-Province form. Similarly, Schedule 9 (Relating to Article 57 (5), Article 109, clause (4) of Article 162, Article 197, Article 214 (2), clause (2) of Article 221 (2), and Article 226 (1)) include the list of Concurrent Powers of Federation, State and Local Level. This includes 15 areas including among others Cooperatives, Education, health, Agriculture, electricity, water supply, irrigation and natural resources.

So far, legislation has not been formulated on concurrent jurisdiction related issues among Federation, Province and Federation, Province and Local level. Due to lack of coordination among Provinces, and province and local level various problems have been seen. The dispute over the natural resources between is seen in the surface and some of the disputes have to resolve even by the courts. The dispute is centred at around the movable and immovable property, water, borders, peace and security, collection of revenue etc. The implementation of the Constitution is not easy because of the culture of using laws to one's advantage, innovative use of the federalism, centralized mindset, lack of coordination for the management of personnel, dual tax collection, lack of clear jurisdiction, lack of laws and unclarity, lack of visionary leadership etc. Considering the overall situation, it is clear that complexities will arise in the formulation and implementation of laws as per the Constitution. Though there are various gaps and obstacles, all the 3 layers of governments have been active in their own pace for the implementation for the Constitution.

International Obligation of the State

Under the state obligation for the protection and promotion of human rights, state should fulfill the national, regional and international obligation. Nepal is a state party to various conventions and optional protocols. Nepal has so far become a state party to 59 international and regional conventions and treaties directly concerned with human rights and humanitarian law. This includes 22 related to human rights (17 conventions including 7 of the 9 major conventions and 5 optional protocols), 7 related to humanitarian law, 14 concerning environment, 12 related to labour and four at the regional level (SAARC) concerning children, human trafficking and transportation, food and environment.⁶

Nepal became a member-state of the United Nations in 1955. Nepal is also a state party to the aforementioned conventions and treaties. Now Nepal is also an elected member of the UN Human Rights Council. It means fulfilling the human rights obligations fall on the government.

The reporting status of Nepal				
S.No.	Treaty Committee	Preliminary report	Periodic report	Status of reports submitted by Nepal
1.	Committee on Elimination of Racial Discrimination	One year	Two years	1972 (first), 1974 (second), 1978 (third), 1982 (fourth and fifth), 1987 (sixth-eighth), 1998 (ninth-thirteenth), 2000 (fourteenth), 2004 (fifteenth and sixteenth) and 2018 (seventeenth-twenty-third)
2.	Human Rights Committee	One year	Four years (As per need of the Committee, Article 41)	1994 and 2013
3.	Committee on the Elimination of Discrimination Against Women	One year	Four years	1999 (first), 2004 (second and third), 2011 (fourth and fifth), 2018 (sixth)
4.	Committee against Torture	One year	Four years	1994 and 2005

6 List of Multilateral Treaties to which Nepal is a party and a signatory; the Government of Nepal, Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs; July 2014.

The reporting status of Nepal				
S.No.	Treaty Committee	Preliminary report	Periodic report	Status of reports submitted by Nepal
5.	Committee on the Economic, Social and Culture Rights	Two years	Five years	2001, 2007 and 2014
6.	Child Rights Committee	Two years	Five years	1996, 2005 and 2016 (third-fifth)
7.	Committee on Rights of Persons with disabilities	Two years	Four years	2017
8.	Optional Protocols	-	Five years	Two optional protocol related to children (a) Child Prostitution and Child Pronography 2012 (b) Optional Protocol on the involvement of children in armed conflict 2016 Related to death penalty: Not available

Nepal has been developing domestic laws, policy, and action plan and implementation mechanisms for the implementation of the provisions of the United Nations covenants/conventions/optional protocols Nepal has ratified. Though Nepal is ahead in terms of formulation of human rights-friendly law, the implementation aspect is not satisfactory. The reports to be submitted after ratification of the conventions to the concerned committees are not regularly submitted. In addition to this, the tendency of submitting a pile of reports has not improved.

Status of Civil and Political Rights

1. Right to Life

Among the various human rights, the right to life is regarded as primary and the most important one. Respectful and dignified life is the inherent right of every individual. If the right to life is secured, then only enjoyment of the other rights is possible. This

right has also been mentioned with priority in international instruments related to human rights and the national law of the land. Article 3 of the Universal Declaration of Human Rights, 1948 and Article 6 of Covenant on Civil and Political Rights, 1966 mention about the right to life. These instruments by ensuring every individual's right to life prohibit arbitrary deprivation of the right to life. The second optional protocol, 1989 of the Convention includes a provision for abolition of death penalty. Article 16 of the existing Constitution of Nepal, 2015 ensures the right to life with dignity. The right to life has been recognized as a fundamental right by prohibiting the provision of death penalty.

Though the right to life has been regarded as a primary right fully in principle, a lot of people have been losing their lives in practice. Right to dignified life has been affected one way or the other in this year to. Specially, the causes of losing lives are floods and landslides under natural disaster, road accident, suicide, and murder after rape, lack of health treatment and medicine, diarrhea, and the COVID-19 pandemic etc. Due to lack of maternity delivery services persons in a timely manner, huge number of mother and children lost their lives. Not only in the domestic level but also in the foreign lands the foreign employers and the non resident Nepali lost their lives.

The Nepali people residing within the country and in the foreign lands have lost their lives due to COVID – 19 in this fiscal year. One confirmed case was a Nepali student, studying in Wuhan, with symptom-onset and the infected 32-year-old male had returned from Wuhan to Nepal. From this pandemic one child bearing mother residing at Sindhupalchowk was died in April 2020, which is considered as the first death from COVID in Nepal. The number of deaths has been increased then. Till the last of this fiscal year, though the number of the infected persons was 18, 241 and 43 persons (though the death was said to from corona virus, in fact those people who died were affected from cancer, heart problem, high blood pressure, pneumonia, sugar including others) lost their lives.

Specially, the pregnant women and child bearing mothers and other sick people have lost their lives due to COVID – 19. A total of 68 pregnant women and child bearing mothers lost their lives only from March to last of June n this yaar due to lockdown because they could not reach at the hospitals on time for their treatment. Among them 60% of the persons lost their lives within the 24 hours when they reached at the hospitals

according to the Family Welfare Division of the Department of Health Services. A huge number of Nepali people in the various countries in the world have been infected from corona virus. Untill July 6, 2020 according to the Ministry of Foreign Affairs 4,436 Nepali people have been infected from corona virus and 134 Nepali people lost their lives due to COVID.⁷

According to traffic police this year 153 persons lost their lives on road accidents. Similarly, a lot of people lost their lives by the floods, landslides and arson. Similarly, the annual number of suicides is around 6 thousand. According to Nepal Police, during lockdown (March 24, 2020 to July 19, 2020) 2 thousand 2 hundred and 28 person committed suicide. On October 30, 2019 when the Local Administration had imposed curfew after the dispute lead to the clash among the two groups in the issue of procession of Goddess Lakshmi for idol immersion after Lakshmi Puja in the incident of a person was shot dead at Krishna Nagar, Kapilvastu. Kumar Paudel residing in the Bagmati municipality – 2, Sarlahi district and Sarlahi In-charge of Netra Bikram Chand-led Communist Party of Nepal, was killed in Lalbandi municipality – 1, nearby the Lakhendevi forest's graveled road under the bamboo bush at Sarlahi in police action on June 20, 2019.

The aforementioned scenario clearly shows that people lost their lives due to political, economic, social, lack of health treatment, recklessness, arson, floods and landslides including other causes. The corona pandemic made the situation much worse. Considering these aspects, it is necessary that state or the government and the stakeholders should be sensitive towards this.

2. Rights of the Detainees and Prisoners

To punish in the criminal offence as specified by law is one aspect and to protect, respect and fulfill their rights is another aspect of life of the prisoners. No one should be behaved arbitrarily as they are detainees, arrested persons, prisoners or the criminals. They do possess rights and to make them deprived from enjoying their rights is beyond the norms and principles of human rights. This has been provided by the United Nations Basic Principles for the Treatment of Prisoners 1990. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. There shall be no discrimination on the grounds of race, colour, sex, language,

⁷ Rights of Migrant Workers in the Clutches of COVID-19 Pandemic; Study Report 2020, National Human Rights Commission of Nepal, page.19.

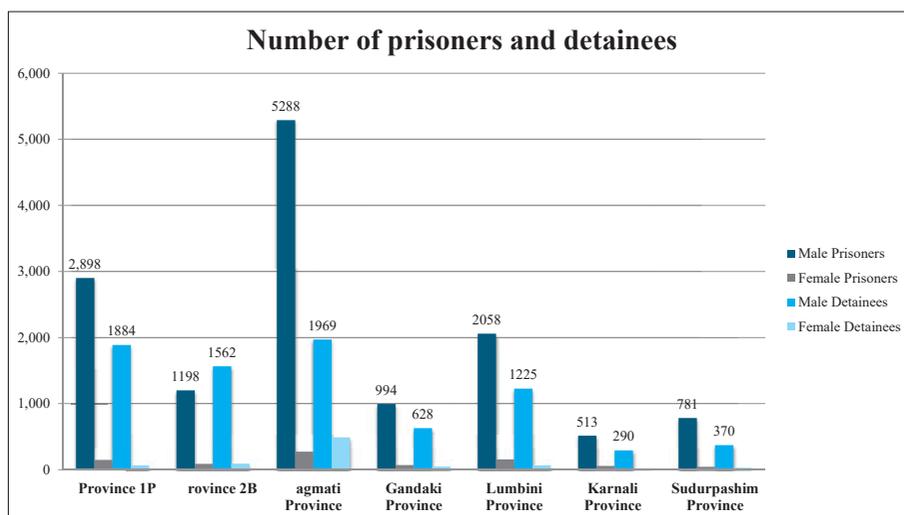
religion, political or other opinion, national or social origin, property, birth or other status. It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require. Universal Declaration of Human Rights 1948 ensures right against torture. This provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment and no one shall be subjected to arbitrary arrest, detention or exile.

The existing Constitution of Nepal ensures right to freedom, equality, right relating to justice and right against torture. Article 17 mentions that no person shall be deprived of her/his personal liberty except in accordance with law. Similarly, Article 20 mentions that no person shall be detained in custody without informing him/hre of the ground for his or her arrest. Any person who is arrested shall have the right to consult a legal practitioner of her/his choice and be defended from the time of arrest. The consultations made by such person with and the advice given by his or her legal practitioner shall be confidential. Article 22 mentions that no person in detention shall be subjected to physical or mental torture, or be treated in a cruel, inhuman or degrading manner. Similarly, the Police Act 1955, Torture compensation act 1996, Criminal code 2017 including others also provides their rights as well as treatment with the respect due to their inherent dignity and value as human beings. Similarly, the Supreme Court of Nepal has provided various directive orders and decisions time and again in which the implementation of the aforementioned aspects has been focused.

Prison Act 1963 mentions that the males and females shall be separated and kept in separate houses to the extent available and where they are to be kept in one house since a separate house is not available, they shall be kept in different parts of the house in such a manner as to prevent their meeting or conversing. Where there is an arrangement to keep the Detainees and the Prisoners in one Prison, the Detainees and the Prisoners shall be separated and kept in separate parts as far as possible if the Prisoners or the Detainees under Twenty-One years and those above Twenty-One years shall be separated and kept in different parts as far as possible. Similarly, the civil case and criminal case Prisoners shall be separated and kept in different parts and Sick Detainees or Prisoners shall be separated and kept in different parts, Detainees or Prisoners having psychosocial problems shall be separated and kept in different parts as far as possible and the convicted Prisoner may be kept alone in a separate room as per necessity.

If we analyse the history of prison in Nepal Kathmandu Jaganath Deval Prison (Central **Jail**) was established in 1971 BS. This prison is also called as central jail nowadays. To regulate the prison system Prison act in 1963 and Prison Regulation in 1964 were enacted and have been being implemented up to now. Recently, the norms to transform the prison as a reformation centers rather than a punishment center is also developed.⁸

Province	Prisoners		Detainees	
	Male	Female	Male	Female
Province 1	2,898	147	1884	64
Province 2	1198	86	1562	89
Bagmati Province	5288	270	1969	486
Gandaki Province	994	69	628	45
Lumbini Province	2058	153	1225	63
Karnali Province	513	54	290	16
Sudurpashim Province	781	43	370	27
Total	13730	822	7928	790



Child reform home	Male Child	Female Child
Bhaktapur	127	23
Morang	142	-
Kaski	67	-
Banke	101	-

8 https://www.nhrcnepal.org/nhrc_new/doc/newsletter/Karagar_Hirasat_Anguman_Report_Kartik_2074_Compressed.pdf.

Makawanpur	25	-
Doti	32	-
Parsa	34	-
Rupandehi	78	-
Total	606	23

Most of the problems in the prison and the police detention identified previously by the Commission still exist during the monitoring of the Commission this year. In addition to the central Jail, the Commission has monitored Kaski, Makawanpur, Nawalparasi including other district prisons and detention centers. Shiva Raj Damai (Pariyar) one of the detainees at the district prison Nawalparasi was dead due to jaundice. The monitoring shows that in the central Jail the capacity of the prison is for 1,250 but there are 3,164 inmates so that Commission finds that the problems of drinking water, toilets and sanitation as well as social distancing. There are 72 prisons throughout the country and most of the prisons are in dilapidated conditions, inmates are more than the capacity, in case the infection is transmitted to anyone, the situation would be deplorable.⁹ To reduce the infection in the prisons 385 prisoners have been released by the government of Nepal as per the Supreme Court’s verdict. Those persons include 168 persons from various prisons and 217 persons from child reform homes. As per the information provided those persons do not have COVID infection.¹⁰

The prison and detention monitoring report of the office of the Attorney General, 2018 analyses the facts received from monitoring the detention centers and prisons. Among the 24 prisons monitored in the 37 districts under the physical situation the size of the prison rooms, capacity of the prison, number of inmates, the air flow condition, the condition of leakage in the roofs, whether the women, men and children are separated or not, toilets, bathrooms in the prison, arrangement of sanitation and security have been monitored in accordance with the specific checklist. In the 24 prisons monitored, the capacity of the prisons is 3,860 inmates and there are 7, 243 inmates this is two times in comparison to the capacity of the prisons. The report mentions that in those prisons, among the total inmates 6,826 are men, 417 women and 32 dependent children. There were more inmates than that of their capacity in the prisons of Banke, Bardiya, Nawalparasi, Chitwan, Kanchanpur, Puthan and Rupandehi districts. There is not the prison in Nawalparasi (East of Bardaghat Susta) and the prison is underconstruction in

9 COVID – 19 and the human rights situation during lockdown, preliminary monitoring report 2020, page 24-25

10 Ibid, page 25.

Sarlahi district, thus, the detainees and prisoners are sent either to Saptari or Jhumka Sunsari prisons. The detainees or the prisoners are kept very far from the courts and tribunals it would be difficult in the time of their fair and public hearing in front of the courts or the competent agencies or the authority, and meeting with the family members or the law practitioners.¹¹

The detention monitoring report has been received monitoring the 53 detention centers including 52 police offices and the Chitwan National Park in the 37 districts. There were 897 detainees in the detention centers on the date of monitoring where the accused persons arrested during the investigation of crime are kept. Out of the total detainees 815 male and 82 were female detainees. Out of them 22 persons were the dependent children of the detainees. While analysing the physical aspects of the detention centers, rooms of various sizes, the normal status of sun, air flow and the light and in the most of the detentions tiny windows like ventilation were found. The toilets and bathrooms were inadequate in the most of the detention centers. There was the normal status of the sanitation/cleanliness and the security status in the most of the detention centers. The arrangement of detention centers in recently constructed police building was good in comparison to the police office buildings constructed in the past.¹²

While analysing the aforementioned facts, though efforts have made for the improvements the problems still existed. In the most of the prisons the condition of physical infrastructure is appalling. The prisons are in dilapidated condition and they are running with the very narrow space and inadequate physical construction. The extra detainees and prisoners than that of the capacity of prison, lack of daily used water and toilets as per necessity, obligation of the prisoners to sleep on the floor due to lack of beds are the existing problems. Not only these, the prisons are in dilapidated condition due to old buildings, and because of unsafe and leakage of water in the prisons the security personnel face problems in the rainy seasons. Similarly, the right to privacy has been violated due to lack of separate rooms to meet with the relatives, visitors and the law practitioners. There is lack of vehicles for taking the detainees and prisoners to the hospital for treatment and for legal proceeding to the courts. Though the detainees and prisoners, adults, children third gender, senior citizens, sick persons etc have to be separately arranged their rooms but it is not implemented. The persons involved in the serious crimes and minor crimes, those convicted by the courts and those under trial hearing in the court are also kept together

11 The monitoring report of detention and prisons, 2019, Office of Attorney General Nepal, page 3-4.

12 The monitoring report of detention and prisons, 2019, Office of Attorney General Nepal, page 3-4.

in the same place. Because of the unfulfilled vacancy of post of the health worker, lack of medicine, lack of arrangement of the adequate budget for health treatment necessary and regular health check up could not be conducted and, in some instances, even the lives have been lost. There is lack of health workers in accordance with the existing posts. Some of the offices are run by the office healpers and assistants only. Similarly, adequate arrangement is not made for the skill development of the prisoners and the detainees and the existing skill is not used adequately. Another irony even now that the prisoners in the prisons are obliged to sustain their lives with daily 700 gm. rice and Rs. 60. Ignorance of legal provisions on personnels and lack of timely information with regard to the court'd decision, the prisoners are facing the difficulties.

The aforementioned problems have been pointed out even by the reports submitted by the NHRC, courts, Office of the Attorney General, various committees formed on timely basis. Specially, the Commission has been making recommendations as per the necessity to the government on the basis of its monitoring. The Commission's recommendations included the aforementioned aspects with priority. Specially, the Commission focuses on the reconstruction of the priosns in dilapidated condition and construction of new buildings, to identify and prevent the problems through monitoring in a timely basis by the responsible agencies. It has stressed on the arrangement of drainage and adequate drinking water in the prisons, regular health checkup, medication and treatment, arrangement of the personnels including the health workers. The Commission has also focused to make proper arrangement for the clean environment inside the prison, conduct trial hearing with priority of the cases of the persons in detention for trial. Focus on the skill-oriented training, arrange documentation with photographs. The Commission has been drawing attention to arrange the suggestion or complaints box and display the code of conduct in plain language for the prisoners in the appropriate place where all persons can see. Thus, the government can not be distracted from its obligation to protect the rights of the prisoners and to develop prison as a reform home.

3. Transitional Justice

The armed conflict that began on 13 February, 1996 formally came to an end following an agreement between the government and the then CPN (Maoist) on 21 November 2006. The comprehensive peace accord mentioned that the incidents of human rights violation and crimes against humanity committed during the armed conflict will be addressed with special attention. A provision also included stating that the people

in one another's custody would be made public and released within 15 days¹³ and both sides agree to make public the real name, surname and address of the people disappeared from both sides and those killed during the conflict within 60 days.¹⁴ In order to address the incidents, the point no. 5.2.5 of the CPA and Article 33 (d) of the Interim Constitution of Nepal, 2007 noted that a high-level Truth and Reconciliation Commission would be formed.¹⁵ Due to political party's manipulation and own understanding on the transitional justice formation of the commission was very distance even the act could not be enacted for a long time. Specially, due to the different opinion on the provisions of the acts among the stakeholders, interest of the victims as well as the national and international concern, change in the government including others made the issue complex. The agony of the victims was not seen through the lens of justice. Manipulation got continued.

The Act relating to Commission on the Investigation of the Disappeared persons, Truth and Reconciliation, 2014 was introduced on 4 May, 2014 with the long efforts. The act was not out of criticism on the discretionary power of the Attorney General, penalty and amnesty etc. issues relating to the human rights violation of grave nature. Based on the Act, two commissions with a chair and five members each were constituted on 10 February, 2015. Clause 38 of the Act pointed out that the term of the Commission would be of two years from the date of formation, and that the term could be extended by one year in special circumstances when the task is not completed. However, the task could not be completed even in the term extended as per this provision. Ultimately, the Ministry of Law, Justice and Parliamentary Affairs registered a bill at the National Assembly Secretariat for the continuity of both Commissions but without office-bearers. Though the bill endorsed with the suspension of the rule of 72 hours for amendment took the form of an Act. The recommendation committee to recommend the office-bearers to the Transitional Justice Mechanisms on was formed in the convenership of the former Chief Justice on the basis of the act. Finally, the recommendation committee recommended the names of the office-bearers of the commissions in February 2020 and the office bearers have been appointed in the both commissions and have been receiving the facts and investigating upon the complaints.

13 Comprehensive Peace Agreement, 2063 (2006), point no. 5.2.2

14 CPA, point no. 5. 2.3

15 To constitute high-level Truth and Reconciliation Commission to explore the truth about those involved in serious human rights violation and crime against humanity during the armed conflict, and building an atmosphere of reconciliation in the society.

In the aftermath of the Comprehensive Peace Accord, some of the positive actions have been concluded in the transitional justice sector. The act of neutralizing the landmines was held but children have been dying in the explosion of bomb. During this period in April 2020 4 children lost their lives due to the explosion of the bomb in Rolpa district. Similarly, the internally displaced persons have been rehabilitated and majority of the house and land seized during the armed conflict has been returned. Reconstruction of the public structures damaged during the armed conflict has also moved ahead significantly.

According to the Commission received 58,052 complaints in the first phase between 17 April 2016 and May 19, 2016. Another 1,263 complaints were added during the collection of complaints that were left out from 8 June, 2017 to 8 August. Hence, a total of 61,615 complaints were registered in the two phases.

Source: A press-statement issued by the Truth and Reconciliation Commission, Nepal on 9 February, 2018

The progress report of the Commission on Enforced Disappearance¹⁶

S.N.	Description	Number
1.	Total complaints registered at the Commission;	3197
2.	The Complaints sent to the Truth and Reconciliation Commission;	277
3.	The complaints decided for pending;	289
4.	Removed from the record merging into one the double registered complaints claiming the same persons' as enforced disappearance;	125
5.	The complaints decided for detailed investigate;	2506
6.	The number of cases appointed the investigation officers under the first phase of the detailed investigation for taking statements from the complainants and witnesses, filling the anti mortuum and reparation forms;	2169
7.	The number of cases submitted concluding under the first phase of the detailed investigation taking statements from the complainants and witnesses, filling the anti mortuum and reparation forms;	2008
8.	The number of cases not completing its function due not to contact the complainants mentioned though the investigation officers has been specified;	161

16 Truth Seeking (Satyako Khoji), year 1, Volumn 1, June 2020

S.N.	Description	Number
9.	The number of disclosed enforced disappeared persons as per the complaints;	2558
10.	The total number of districts CIEDP has conducted field investigation for detailed investigation;	64
11.	The persons in contact during investigation;	24

Police stations have been rehabilitated. Most of the conflict victims have received interim relief and the family members of the deceased have received 1 hundred thousands relief amount. The Truth and Reconciliation Commission and the Commission for the Investigation of the Enforced Disappeared Persons have concluded public hearing, complaints receiving, putting complaints in pending, recommendations for compensation etc.

Status of the disappeared persons in terms of age

S.N.	Age Group	Number of disappeared persons	Percentage (%)
1.	15 - 30 years	1215	48.25
2.	30 - 40 years	514	20.41
3.	Unspecified age group	278	11.04
4.	40 – 50 years	254	10.09
5.	50 – 60 years	117	4.65
6.	15 years or below 15	102	4.05
7.	60 above	38	1.51
8.	Total	2,518	100

Status of the disappeared persons in terms of profession

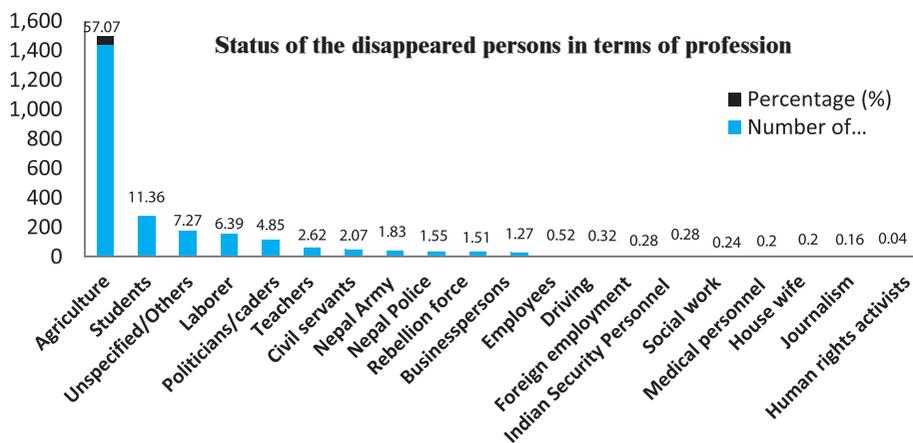
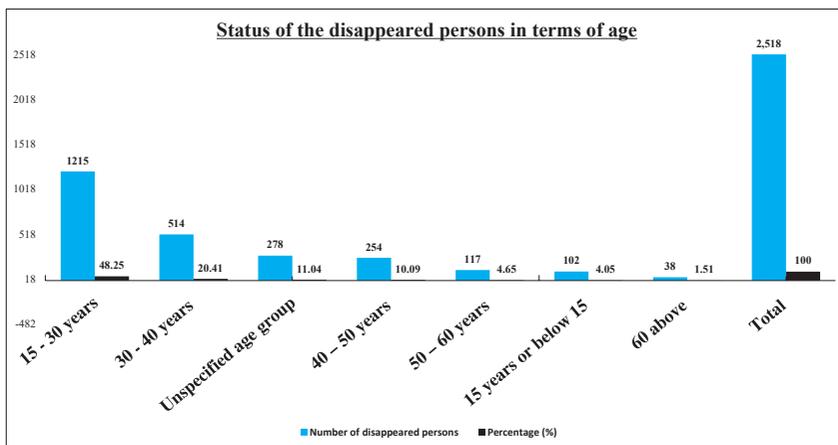
S.N.	Profession	Number of disappeared persons	Percentage (%)
1.	Agriculture	1,437	57.07
2.	Students	286	11.36
3.	Unspecified/Others	183	7.27
4.	Laborer	161	6.39
5.	Politicians/caders	122	4.85
6.	Teachers	66	2.62
7.	Civil servants	52	2.07
8.	Nepal Army	46	1.83
9.	Nepal Police	39	1.55
10.	Rebellion force	38	1.51
11.	Businesspersons	32	1.27
12.	Employees	13	0.52
13.	Driving	8	0.32

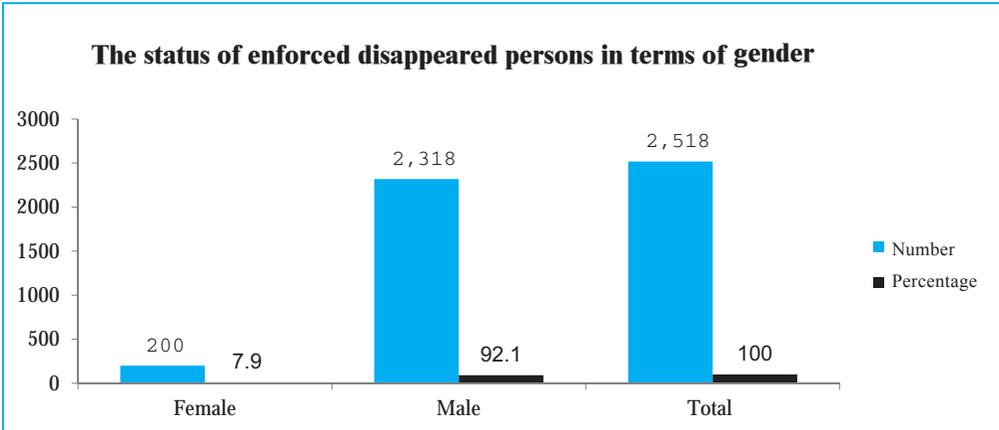
14.	Foreign employment	7	0.28
15.	Indian Security Personnel	7	0.28
16.	Social work	6	0.24
17.	Medical personnel	5	0.20
18.	House wife	5	0.20
19.	Journalism	4	0.16
20.	Human rights activists	1	0.04
	Total	2,518	100

The status of enforced disappeared persons in terms of gender

S.N.	Description	Number	Percentage (%)
1.	Female	200	7.9
2.	Male	2,318	92.1
	Total	2,518	100

Source: Third interim report 2019, Commission for the Investigation of the Enforced Disappeared Persons, page. 13-15.





In addition to these positive steps, the process is yet to be concluded. The victims are unable to get justice as expected as the unfinished process of bringing to book the perpetrator involved in the violation of human rights and providing reparation to the victims and their family victimized from the state party and the then rebellion force during conflict era.¹⁷ The demands of the people who were murdered, dismembered, forcefully disappeared, kidnapped, torture and physically assaulted, subjected to sexual violence and seizing and damaging of property and forceful displacement have not yet been addressed. Specially, the rights to know the truth, action against those involved in serious crime and ensuring non-repetition of such incidents have not been guaranteed. Questions were raised at the national and international level over some of the provisions of the Act relating to Commission on investigation of the Disappeared persons, Truth and Reconciliation, 2014. The Supreme Court as well as National Human Rights Commission of Nepal had issued direction and order to amend the Acts in compliance with the international standards, the national and international commitments made by the government, demands of the victims, interest and concern of the international arena are not addressed. The reparation and socio-economic rehabilitation of the victims has not yet gained momentum. The concerns of the individual soldiers disqualified as minors have also not been addressed.

¹⁷ The press note issued by the National Human Rights Commission on November 20, 2019 entitled thirteen years of Comprehensive Peace Accord: Still Challenges in the Implementation.

The Commission concluded an interaction program realizing the victim's agony with the presence of victims and perpetrators. In the interaction major political parties Nepal Communist Party (NKP), Nepali Congress and the victims were presented. Nepal Communist Party's Chairperson Puspa Kamal Dahal, Senior leader Madhav Kumar Nepal, the President of Nepali Congress Sher Bd. Deuba addressing the program committed to make an effort for the conclusion of the transitional justice process. On behalf of the victims, the heads of the victim related organizations and the victims themselves made the political leaders alert that in case the transitional justice is ignored, consequence would not be cheerful.

It is clear from the aforementioned data and undergoing activities that: the possibility of the victims getting justice is very low. Why the 1st Commissions whose tenure was extended could not succeed to functions had to be reviewed. The existing Commissions' office bearers are also recommended and appointed ignoring this factor. The government and the Commissions have not made adequate efforts to take victims' confidence. It is very ironic that not to address for such a long-time the issues transitional justice. As this issue is not only the national concern but the international concern, so it should be addressed as soon as possible. The acts such as mediation between the victims and the perpetrators, penalization to the crime of grave nature, the guarantee of non repetition and publicly apologized by the perpetrators, reparation to the victims etc have even been delayed. For this, the reviews of the non action of the past and the amendment of the act as per the recommendations of the NHRCN and verdict of the respected Supreme Court have to be concluded. In addition to this, it would be better to move a head taking victims' confidence in accordance to the spirit of the transitional justice. Thus, it would be beneficial to seek the solution of this issue resolving immediately at the national level. Right to get justice is the right of each individual so to delay may be detrimental.

4. Right against Racial Discrimination

The negation, exclusion and discriminatory acts carried out on the basis of a particular race/caste is racial/caste-based discrimination. As people are born free and equal, discrimination on the basis of race, ethnicity, origin, religion, colour, gender, profession-business, nationality or any other basis is not acceptable. Any kind of such act committed on whatsoever basis is regarded to be morally, socially and legal unforgivable and serious crime.

Article 1 of the Universal Declaration of Human Rights provides every person is born free and equal in rights and dignity. It also states that there cannot be any kind of discrimination on the basis of ethnicity, race, gender, language, religion, political or other faith, nationality or social origin, property, birth or any other status. Article 2 of the Covenant on Civil and Political rights, Article 2 of the Covenant of Economic, Social and Cultural Rights have also guaranteed the same rights. Likewise, the Convention on Elimination of All Kinds of Racial Discrimination, 1965 and Article 2 of the Convention on Elimination of All kinds of Discrimination against Women, 1979 also capture the essence of equality and non-discrimination.

Similarly, Article 18 (1) under fundamental rights in the Constitution of Nepal, 2015 states that all citizens shall be equal before the law and nobody shall be deprived of equal protection of the law. Similarly, Article 18 (2) states that the State shall not discriminate among the citizens on the basis of caste/ethnicity. Article 24 on Right against untouchability and discrimination states that no person shall be subjected to any form of untouchability or discrimination on grounds of his or her origin, caste, tribe, community, profession, occupation or physical condition, any act of untouchability and discrimination in any form shall be punishable by law, and the victim of such act shall have the right to obtain compensation in accordance with law. No person shall be deprived on the basis of his/her caste/ethnicity from the use of public services or public space or from entering public religious site or from carrying out religious activity. Article 40 of the Constitution provides the rights of the Dalit. The National Dalit Commission which had a legal status was elevated to a constitutional commission by the Constitution of Nepal (Article 255). The Act has also been formulated as per the Constitution. The Civil and Criminal Codes, 2017 (enforced from 17 August, 2018) and the Racial Discrimination and Untouchability (crime and punishment) Act, 2018 (first amendment) have established racial discrimination as a punishable offence, and also specified punishment for the same. The federal parliament has declared the nation as caste-based discrimination and untouchability free country on June 4, 2006.

The state agencies have not uniformity how many castes of the dalit community are there in Nepal. The Public Service Commission has listed 22 Dalit caste groups while the National Dalit Commission enlists 26 caste in the Schedule related to Dalit Caste.¹⁸ According to National Census of 2011, the total population of Dalit in Nepal is 4

18 Monitoring report on the situation of the rights against caste-based untouchability, 2019, National Human Rights Commission, p. 7

million 124 thousand and 39. Of them, 1million 979 thousand 6 hundred and 96 are men and 2 milliion 144 thousand 3 hundred and 43 are women, which is 13.8 per cent of the total population of the country. In the context of Nepalese increased life expectancy, increased health facilities and decreased birthrate, population experts project that the population of 2011 may be increased by 3 to 3.5 per cent. On this basis, the population of Dalits in Nepal is estimated to be 4 million 268 thousand 3 hundred and 80.¹⁹ We analyse it on the basis of provinces, this number in Province no. 1, 2, Bagmati, Gandaki, Lumbini, Karnali and Sudurpashim is respectively 10.1, 17.2, 5.84, 17.4, 15.1, 23.3 and 17.3 per cent.

The aforementioned provisions show that effective constitutional, legal and policy measures have been established against caste-based untouchability. Various mechanisms are also in effect for implementation of those provisions. The situation of untouchability is still existed in practice. The society is still divided into so-called high caste and low caste. Untouchability is also practiced among the people of the so-called low caste. Mostly, the dalit community people are landless and homeless. They are deprived from poverty, education, awareness and are despised. As a result, some of the children do not have access to education. They are not able to go to school regularly and even if they go to school they drop out from the school. The problem of child marriage also exists. Furthermore, the cases of caste-based untouchability would not come out, trend to keep it secret, if comes out no filing of the complaints against incidents of caste-based discrimination, and resolves in negotiation like problems are mocking the so-called civilized society.

For the death rituals of Sambar Bd. Sunar who was died during his foreign employment permant resident of Pokhara metropolitan city – 16, Kaski the community building was needed in the same place. The local Kshetri people claimed that the building could be used only by Kshetri people so that dispute arose. The complaints lunched at the police office for making efforts to get justice as they feel caste-based discrimination was not registered due to political pressure. The Commission receiving information of this incident made an effort to register the complaint and was succeeded on May 1, 2020 and the investigation was initiated.

There is not easy access for this community to earn money. They are not able to sell cattle and dairy products. Some people follow superstition that says that if the Dalits

19 Ibid, p. 8

sell milk then the cows and buffaloes will start climbing trees. Dalits also face various hurdles in purchasing such products. Sporadically, there are instances where a different kettle is used to serve them tea or it is washed after serving the tea and sometimes denies them milk tea. The practice of not inviting them to Non-dalit's home for pooja, marriage, sacred threads ceremony, and if invited making a separate arrangement for eating is not fully abolished. There is also a practice where people do not go to attend a funeral ceremony or cremation in the Dalit community and use separate location for cremation. Problems like stopping from the using well water and entering into a temple continues unabated. Inter-caste marriage is not recognized, they find it difficult to get a room for rent and if they get then face a lot of hassles. The Balighare custom continues to exist in some of the hilly districts of the Karnali and the Sudurpaschim provinces. Not only creating obstracle in the inter caste marriage, hurt, banishment from the village but also murder incident happen. The untouchability, violence and abuse incidents are still existed upon dalit people. Easy access to law is not seen. The problem in getting apartment for rent is also existed.

The incidents related to caste-based discrimination have been made public in this year too. The incidents have been made public through the NHRCN monitoring report on the human rights situation of the Dalit community 2019/2020, various media, Nepal police, and parliamentary committees. The following are the representative incidents:

- The compulsion to carry glass and plates from their own home by the Dom community for getting tea and lunch in the local hotels residing in Jagarnath village municipality – 2, Parsa.
- Nabaraj BK (21 years) and five of his friends from Veri municipality Ranagaun, Jajarkot were brutally murdered on may 23, 2020 in Chaurjahari municipality-8, Rukum West after BK, a Dalit man, allegedly wanted to marry his an upper-caste girlfriend.
- Purnaman Shrestha of Bagnaskali village municipality, Chitungghat was deprived from religious rituals of his mother's death due to his marriage with a dalit girl before 14 years.
- Ganesh Kumar Chadara and Jyoti Shaha residing at Junichande Village municipality – 5, Garkhakot, Jajarkot have beed displaced to Khalanga bazar since 2015 due to their intercaste marriage.

- Beatings and insult naming him as Dom and Komara to Dala Bd. Bishwokarma ward Chairperson of Harinath village municipality – 7, Kalikot by the technical staff Dala Bd. Budha.

The representation of Dalits community in the federal parliament						
House of Representatives (Directly elected)	House of Representatives (On the basis of proportional representation)	Directly elected from the Dalit community	Proportional representation	National Assembly	Representation from Dalit community	Representation in the cabinet
165	110	3	16	59	7	1

The representation of the Dalit community in the political and decision-making level is relatively low. The representation of dalit community in the federal council of ministers 1, National Assembly member 7, House of Representatives 19 (13 women and 3 men proportionally represented and 3 directly elected), Provincial Assembly total 32 persons (directly elected 3 and proportionally representation 29) is existed. Similarly, in the local level, municipal heads 6, deputy heads 11, village municipal Chairperson 4, Vice Chairperson 16, Ward Chairperson 197, Ward members 797 and Dalit women members' 6,567 persons are there. In overall, in proportion to the population, this representation is not even the half except the representation of elected women member. The representation of dalit people in the civil service is 2%, Nepal police 9%, Nepal Army 8%, Judiciary 1%. In proportion to the population this per centage is very low. This disparity should reasonably be addressed by the state in a timely manner.

There are more than 60 incidents of human rights violation over the dalit community during the period of COVID – 19 pandemic and lockdown. They are caste-based discrimination 31 per cent at the top, beatings and assult 20 per cent, murder 15 per cent, hunger, 12 percent and discrimination related to COVID - 19 12 percent. Similarly, there occurred the rape incidents over the dalit women and children 15 per cent and discrimination through the social media 3 percent. The incidents of such kinds right to life, right to dignified and respectful life, right to food, and the right to live with dignity and right against untouchability and discrimination have been violated.²⁰

Considering the low presence of the Dalit community in the education sector, the government has provided free education up to Grade 10, scholarship in higher secondary education and reservation in employment. Various mechanisms have been

²⁰ The human rights situation of the Dalit community (FY 2019/20), page. 55.

established at the national level for the enforcement of the provisions against caste based discrimination and for the upliftment and advancement of the Dalit community. Article 255 of the Constitution provides for the National Dalit Commission. Similarly, the oppressed, underprivileged and Dalit community upliftment and development committee, Badi community upliftment and development committee, and other mechanisms for promotion of the rights of the Dalit have been working effectively.

Despite these problems the society is moving forward in comparison to the past. The elderly people are not taking this change easily. The new generation is rising above the discriminatory mindset. The society can be appreciated as respectively changing. The cases against caste-based discrimination are being the cases of the nation. The capacity of the dalit community is being developed. The custom of untouchability, holy water spreading tradition, touching the fire, Balighre tradition²¹ have been almost ended. These issues have got priority in the media. The legal remedy seeking tradition has been increased. The provision of reservation in the political and public service has been established. Thus, to address the other various aspects state and the stakeholder agencies should be additionally active.

5. Rights of Women

The rights concerning the personality development of women are regarded as women's rights. The rights of women have been mentioned in the various instruments. Article 1 of the Universal Declaration of Human Rights, 1948 states that all people are born free and equal in dignity and rights. Article 2 of the UDHR provides that all rights shall be enjoyed equally and without gender-based discrimination. The International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights, 1966, article 2 and 3 provides directives to the state parties to respect and guarantee the rights established in the Covenants without any discrimination on the ground of gender. The Convention on Elimination of All kinds of Discrimination against women, 1978 obliges the state parties to protect rights of women in the national legislations, dissolve the discriminatory provisions in the national legislations, formulate new legislation for the protection of the rights of women, and develop national mechanism for effective protection of women's rights so as to end the discrimination against women. Article 2 of the Convention on the Political Rights of Women, 1953 provides the political rights to women as enjoyed by

²¹ Balighre is a very traditional system of paying wages not in cash but get only minimal payment (mostly in kind/grains) for their works

men guarantees the women's right to vote, to be elected, to hold public position and other rights.

The Constitution of Nepal, under rights of women, states that women cannot be discriminated just for being a woman and provides right to safe motherhood and reproductive health as fundamental rights of women. It also states that women shall not be subjected to any kind of physical and mental violence, and such acts shall be punishable by the law, and sons and daughters shall have equal right to parental property. Similarly, under right to social justice, women shall have the right to participate in the state bodies on the basis of the principle of proportional inclusion. The Domestic Violence (crime and punishment) Act, 2009, Human Trafficking and Transportation (control) Act, 2007, and its regulations 2008 have also incorporates provisions related to women's rights directly or indirectly. Along with the government mechanisms for the implementation of the provisions related to women's rights, the National Human Rights Commission, National Women's Commission, National Dalit Commission and other structures have also been established. National Women Commission is recognized as a constitutional body by the Constitution of Nepal.

The national census of 2011 shows that a total of 23 million 926 thousand 5 hundred and 41 individuals or 65.9 per cent population 5 years or above are literate. Among this age group a total of 75.1 per cent men and 57.4 per cent women are literate. Similarly, it shows that in the 6 years or above age group 66.5 per cent individuals among the total population and 75.9 and 57.7 men and women respectively literate. In the national census 2001, in the 6 years or above age group 54.1 percent individuals among the total population and 65.5 percent men and 42.8 per cent women were literate.²²

The increasing of women in the state agencies adopting the policy of inclusion is considered as a positive step. Women's participation in the state agencies has been increasing gradually. In the election for the member of the House of Representatives concluded in 2017 the number of women voters was 7 million 651 thousand 1 hundred and 43 voters. After country adopted federalism and the election of the three tiers has been concluded. The election increased the women's participation and representation. At the local level, a total of 14,352 women have been elected in various posts. In the Provincial Assembly, 17 women were elected through the first past the post electoral system while 172 were elected through the proportional electoral system. In the House

²² [http://cbs.gov.np/image/data/Population/Summary/%20\(Nepali\)/Summary-Nepali.pdf](http://cbs.gov.np/image/data/Population/Summary/%20(Nepali)/Summary-Nepali.pdf)

of Representatives through the first past the post electoral system 6 were elected and 84 were elected through proportional electoral system. Similarly, 21 women have been representing the National Assembly. The prestigious post of the President is presently assumed by a woman. Under the Federal Parliament the Vice Chairperson is represented by a woman in the National Assembly. For the first time in the history of Nepal, 60 per cent women's leadership (six chairs out of 10 committees) has been established. Similarly, in the Committee under the Convention on Elimination of All Kinds of Discrimination against Women, Nepal has been represented by a woman member.

The constitutionally envisaged 33 per cent standard however has not been enforced in the Council of Ministers and the party leadership. Similarly, the Deputy Speaker in the House of Representative is vacant for a long time. In the National Women Commission established for the protection of the rights of women, the office bearers are not appointed for a long time.

Though political participation of women is increasing, the situation is not satisfactory in the socio-economic sector. Financial dependence on men continues. Women have suffered more as a result of harmful social practices, discrimination, exploitation, injustice and exclusion in practice. This has affected in the political, economic, social, cultural and educational sectors so that women have been victimized. Even the Jhuma²³, deuki²⁴ and Chhaupadi²⁵ traditions have been still existed.

The practice of dowry, child marriage and marriage without consent is prevalent and women are obliged to accept the allegation of witchcraft. Physical assault and beating from the family members due not to carry dowery, setting ablaze, banishing from home and killing are also prevalent in one form or the other. Incidents of domestic violence have been increased due to COVID – 19 pandemics. There is change in the forms and nature of discrimination, and violence against women with the time as well as development. The trend to abortion is still existed identifying the sex of the foetus through video x-ray. Women have been victimized by rape, sexual abuses, acid attacks like incidents.

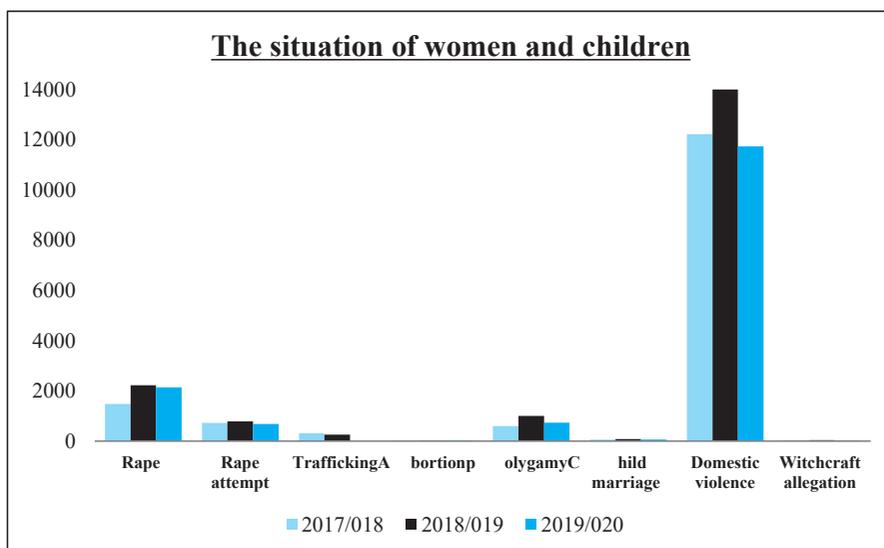
23 unique tradition of offering girl children to the god

24 Deuki is an ancient custom practiced in the far western regions of Nepal where a young girl is offered to the local temple.

25 Banishing a woman into a hut during menstruation

The situation of women and children²⁶

FY	Rape	Rape attempt	Trafficking	Abortion	polygamy	Child marriage	Domestic violence	Witchcraft allegation
2017/018	1480	727	308	18	602	59	12225	48
2018/019	2230	786	258	27	1001	86	14774	46
2019/020	2144	687	-	29	734	64	11738	34



Though the promotion of women's rights is increasing positively in law and policy, practically the gender-based violence is still not ended. The trend of not recognizing household labor as a labour has not improved. Women have suffered discrimination, exploitation, injustice and exclusion in practice due to social norms and values as a result this has affected in the political, economic, social, cultural and educational sectors so that women could not have successful in the various sector of national life in comparison to the men. Harmful practices like Jhuma, Deuki and Chhaupadi have not been completely ended. Women in the Nepali society are victimized from the discrimination like physical assault on witchcraft accusation and beating by the family members, child marriage, marriage without consent, violence and even killing for not carrying dowry.

The whole human life was affected from COVID – 19 but the impact of this was more upon the women. Ganga Karki (32) recently child bearing mother residing at

²⁶ <https://cid.nepalpolice.gov.np/index.php/cid-wings/women-children-service-directorate>

Khadbari – 6, Patha, Sangkhuwa was taken to Kathmandu at the 5.30 PM on May 22, 2020 from Sanghuwasabha by Helicopter but lost her life due to lack of ventilator at the hospital. Due to lockdown, child bearing and pregnant women's health has been seriously affected because of their inaccessibility to the hospital in side the valley and outside.²⁷ The number of women going to the hospital for child birth during lockdown is also reduced as per the data made public.

According to Nepal Police, the cases registered from March 24, 2020 to May 9, 2020 highest number of cases are suicide 310, domestic violence 210, rape 155. Necessary actions have been taken upon these cases.²⁸ On the one hand inconvenience of the means of transportation, lack of effective air services and deprivation from the air services in the districts where road network is connected, due to this a large number of pregnant and child bearing mothers and children have lost their lives. In addition to this, the hospitals did not take admission to the patients fearing the COVID infection. Taking to the hospital almost at the final stage due to excessive bleeding, problem of uterine rupture, and the lack of medicine and equipment death of an individual has become normal. Due to lack and inaccessibility to the vitamin, calcium and the nutritious foods for the child bearing mothers, the health of the children and mothers have been impacted. In this fiscal year only the news of death of 135 (July to February) and 38 during lockdown (March to last of June) pregnant/ child bearing mothers has been published. During the lockdown period, in the Gaur hospital Rautahat, helping hands Saptari, Kalaiya hospital Bara, Teachning hospital Kalikot, Mehalkuna hospital Surkhet, Panchthar hospital, Paropakar Maternity and Women's Hospital, Thapathali, Kathmandu, Dhulikhel hospital, Chitwan medical College 1/1 in each hospital pregnant and child bearing mothers lost their lives. Similarly, 2 pregnant and child bearing mothers at the Kapilbastu hospital, 3 at the Universal Medical College, Rupandehi 4 at the BP Koirala Institute of Health Sciences, and 4 at Kohalpur Medical College lost their lives.²⁹

Constitution and laws are women friendly relatively women rights have not been implemented in practice. Thus, the state and stakeholders should be focused on the aspects like the effective implementation of law, awareness raising and the employment.

27 A preliminary report of the human rights situation during COVID – 19 and the lockdown, 2020, page 16

28 Ibid

29 BBC Nepali News, May 29, 2020.

6. Child Rights

The Convention on the Rights of Child, 1989 recognizes people below 18 years as children. However, in the national level this shall be as specified by the concerned country's domestic legislation. The UN Conventions related to human rights, optional protocol and the national legislations have mentioned about child rights. The CRC and other instruments categorize right to child protection, child development and child participation considering the various aspects of children. Article 39 of the Constitution of Nepal, 2015 provides for the rights of every child. It gives special emphasis to rights to identity and name, right to upbringing, basic health and social security, and against physical, mental or any other kind of exploitation. Similarly, it provides that the state shall provide special facility to the helpless, orphan, mentally retarded, conflict victim and displaced, and vulnerable and street children. It also prohibits employment of children in factories, mine and similar hazardous work or in army, police or conflict. The Act Relating to children 2018 also establishes various rights for children. Similarly, Child Labor (Prohibition and Regulation) Act, 2000, Bonded Labour (Prohibition) Act, 2002, The Act to Amend Some Nepal Acts for Maintaining Gender Equality, 2006, Foreign Employment related Act and Regulation, 2007, Domestic Violence (Offence and Punishment) Act, 2009 also mention the child rights related provisions. The Sexual Harassment at Workplace Prevention Act, 2015, and regulations, Juvenile Justice Procedures Rules, 2006, Domestic Violence (Offence and Punishment) Regulation, 2010, Gender Based Violence Prevention Fund (Operation) Regulations-2019, Emergency Child Mitigation Fund (Operation) Rules, 2010 etc have addressed the various aspects of children. The thematic ministries including others, central and district child welfare committees, agencies under police are functioning for the implementation of the child rights.

According to national census 2011, the total population of the country is 26 million 494 thousand 5 hundred and 4 (12 million 849 thousand and 41 men i.e., 48.5 per cent and 13 million 645 thousand 4 hundred and 63 i.e., 51.5 per cent). Of them the number of children below 18 yaers is 11 million 84 thousand 3 hundred and 11, which is 41.83 per cent of the total population. Similarly, children below 16 are 37.37 per cent and those below 14 years are 32.35 per cent. The current population growth rate is 1.35 per cent.

Some positive developments have been held in the children sector. According to

UNICEF, due to the improvement in the primary health sector the mortality rate below 5 years children has reduced. Nepal has made notable progress in women and children's health. The declaration of polio-free country, commitment to improve and progress made in maternal health and minimization of child mortality has been successful. The child mortality rate is 21 in every 1,000 live birth. The neonatal mortality (death within 28 days of birth) is every high in Nepal. In addition to this, the mortality rate of children below five years is 39 in every 1,000 children. The neonatal mortality rate in the poor communities is almost double in compared with the rich groups, while the rate is high among underage mothers.

The notable progress has made in the education sector. The enrollment rate in the primary level has increased as 97 per cent but challenges are still existed. The low quality and inequal access in the education, geographical difficulties, gender, and economic, social and political variations are the existing problems. The children can not enroll and regularly attend the schools due to poverty, social exclusion, disability, migration, child labour, social norms and values and gender-based discrimination including other reasons. If we base the data of UNICEF still 770 thousand children are out of school. Only 50 per cent students can pass the Nepali and Mathematics in grade 3, 5 and 8. If we analyse the disparity in the education sector 65 per cent children from rich family and 12 per cent from poor family are literate. There are very low number of child friendly schools and only 11 per cent schools are earth quake resisting.

This fiscal year especially for children from the perspective of right to education could not be fruitful. On the one hand, in the normal situation too the state could not jump qualitatively in the education sector. On the other, COVID -19 which brought terror to the human life has affected the education sector very severely. Especially, students' psychology has been impacted negatively as the SEE examination was suspended at the last stage due to COVID – 19 pandemics. The confusion in the resuming the schools and examination on the students, use of schools as quarantine, sitting only at rooms/homes for a long time due to these reasons the students have been deprived from right to education. The limitation of the resources, geographical difficulties, economic deprivation, unclarity in the policy, lack of decision making including other reasons alternative education system was not moved forward.

During lockdown the incidents of rape of girl child have been reported through

the preliminary report on the human rights situation 2020 during COVID – 19 and lockdown. This include the 13 years old girl child being raped (become pregnant) by four persons at Dhankuta municipality, 14 years old girl at Miklangjung – 1, Morang, 14 years girl at Kohalpur Banke, 14 and 15 years old respectively at Gauriganga and Bhajani municipality, Kailali, 15 years old at Sainamaina, Rupandehi, 17 years old girl as Biratnagar – 4, Morang. According to the data provided by Nepal Police 64 child marriage incidents occurred in this fiscal year. From the health perspectives this year became more disgraceful for children. Especially, due to lockdown, the necessary and regular vaccines including BCG were not in the access of children. Form this immunity power of the children will definitely be decreased.

Despite various lapses and problems, various activities have been occurred in this area and the there are also various fuctions to be carried out. Thus, it is necessary to make meaningful initiatives for the effective implementation of the provisions related to child rights developed in the international, regional and national level.

7. Rights of the Senior Citizens

Senior citizens mean the elderly or the people who have crossed the average age. Generally, this age is physically and mentally less active or inactive condition. The senior citizens are full of experience and knowledge. They are the guide to the family, society and nation. The rights of the senior citizens have been established in various international and national instruments of human rights. The Universal Declaration of Human Rights states that all people are entitled to rights without any discrimination. Article 25 (1) of the Declaration ensures the right to social security for livelihood in the old age. Article 10 of the International Covenant on Economic, Social and Cultural Rights, 1966 provides that the State should recognize the right of every individual to social security. Article 6 of the International Covenant on Civil and Political Rights, 1966 establishes that every individual has inherent right to life and the right to live. Nobody shall be arbitrarily deprived of life and the right to live shall be protected by the law. Article 11 (1) I of the Convention on Elimination of All kinds of Discrimination against Women provides that senior women citizens shall not be discriminated in the right to social security. The Convention on the Rights of Persons with Disabilities, 2006, Article 25 (b) states that health services should be provided to the senior citizens in order to minimize or prevent additional disability. Article 28 (b) of the same Convention talks about ensuring senior citizens with disabilities' access to

social security programmes and poverty alleviation initiatives. Similarly, the Vienna International Plan of Action on Ageing, 1982, and the UN principles on the Ageing passed by the UNGA on 16 December 1991, the Macau Action Plan for Ageing for the Asia Pacific region 1998 mentions various aspects of the rights of the senior citizens.

The Constitution of Nepal (2015) under Right to Equality Article 18 (3) proviso statement states that special provisions could be made for the protection, empowerment or development of the citizens including children, senior citizens, gender and sexual minorities, persons with disabilities, incapacitated or helpless. Women, workers, elderly and incapacitated and helpless citizens shall have the right to social security as provided in the law, while under directive principles, the State shall adopt a policy of making special provisions of social security for the helpless, elderly etc. Article 41 of the Constitution provides that the senior citizens shall have the right to special protection and social security from the state. Senior Citizens Act, 2006 provides for the formation of the Central Senior Citizens Welfare Committee and Senior Citizens Welfare Trust for the care and social security of the senior citizens. Similarly, the Civil Code, 2017 provides for positive discrimination in Clause 19, duty of children towards parents in Clause 122 and provision of social security allowance in the Social Security Act, 2017.

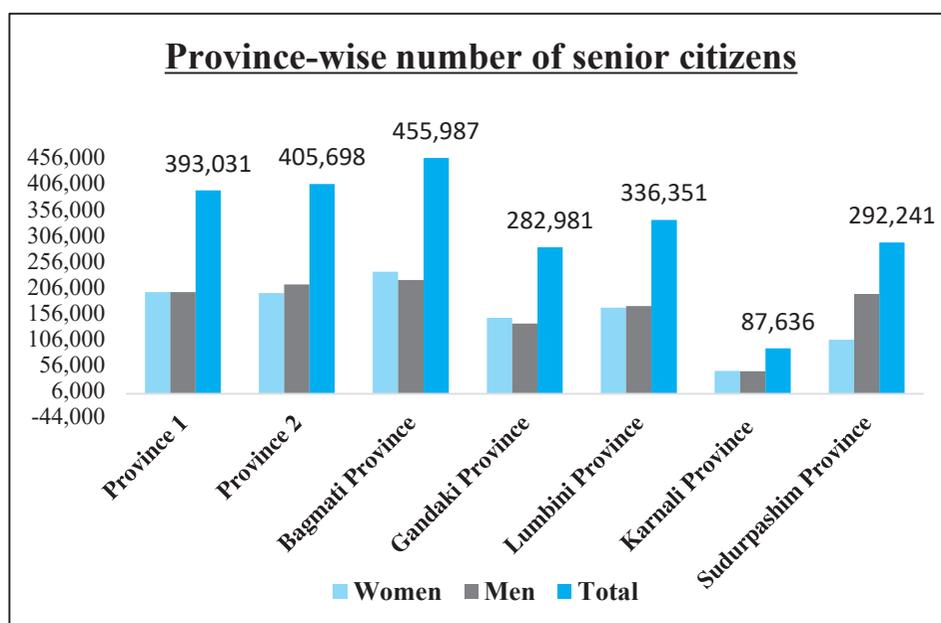
According to the 2011 census, the total population of Nepal was 26,494,504 and of them 21,54,003 (8.13%) including 1,089,511 women and 10,64,939 men were senior citizens. The number is found to be increasing due to basic nutrition, food, hygiene and health services.

The number of old age homes in 45 districts of the country is 87 while 22 old age homes are under-construction. Old age homes are operating in 11 districts in province no. 1, five districts in province no. 2, seven districts in province no. 3, eight districts in Gandaki province, eight districts in province no. 5, two in Karnali and four in Sudur Paschim province. There more than one old age homes in some districts.³⁰ The number of day service centres in the country is 119. There are a total of 1,577 including 965 women and 612 men living in old age homes across the country.³¹

30 http://www.nhrcnepal.org/nhrc_new/doc/newsletter/Mid_Term_Report_on_Senior_Citizen_Home_monitoring_Ashoj_14_2075.pdf

31 Ibid

Province-wise number of senior citizens			
	Women	Men	Total
Province 1	196,513	196,518	393,031
Province 2	194,515	211,183	405,698
Bagmati Province	235,920	220,067	455,987
Gandaki Province	147,042	135,939	282,981
Lumbini Province	166,677	169,674	336,351
Karnali Province	44,369	43,267	87,636
Sudurpashim Province	104,475	192,766	292,241
Total	10,89,511	10,64,939	2,154,003



According to the concept of social security, the government has been providing as social security allowance three thousand rupees a month to citizens of 70 years and above. The government has taken up a policy to encourage service providers to provide special concession to the senior citizens in the entertainment and other specified sectors. Likewise, the respect Supreme Court has issued a mandamus order in the name of the government to provide 50 per cent discount in public and other services as per the Act. The government has adopted a policy of providing 50 per cent discount in public transportation, including reservation of seats for the senior citizens. Despite

these special provisions, the situation of senior citizens is not satisfactory.

Senior citizens are forced to take refuge in old age home due to lack of love and care, and respect from their family. After becoming financially, physically and mentally weak, the trend of family taking them as a burden and putting them in old age homes is increasing. Due to increased influence of modernization and western culture, the dismantling of ancient tradition and culture is giving way to anomalies. In addition to this, the generation gap is increasing. As the Nepali society moves from joint family to nuclear family, the impact has been on the senior citizens. They are forced to spend a segregated life, insulted for lack of property, abuse and finally expelled from own home. The disintegration of the family is increasing rapidly due to increased influence of western culture, migration and foreign employment, among others. Senior citizens are the most affected by this. With poor mental and physical condition due to old age, serious problems are seen in their care. As a result, it has already been late to draw their attention by the stakeholders to address the human rights of the senior citizens.

During this fiscal year, the NHRCN concluded various programmes in relation to the rights of the senior citizens. The monitoring/ interaction including other activities have been concluded on the right situation of the senior citizens including in Khotang, Dhankuta, Sunsari, Dhanusa, Syanga, Kathmandu, Sindhuli. Among the senior citizens, the NHRCN has been carrying out study and monitoring with a focus on the rights of those living in old age home and day care centres. The monitoring showed that senior citizens are being left at old age homes due to family dispute and disintegration, decline in moral education in the society, lack of awareness, lack of sense of responsibility, inter-generation conflict, seeking solitude and religious sites, and voluntary choice. Majority of the senior citizens in the old age homes are suffering from one or other family, psychological and social problem, and physical disease. Other problems facing the senior citizens in the old age homes are ageing-related weakness, lack of proper food, health related problems, lack of family and human behavior, absence of love, some deprived of citizenship certificate, and compulsion to leave a solitude life without a society. The reasons to live in an old age home are absence of a family and deprivation of family love and respect even for those with a family, no member of the family has time to spend with the senior citizens, widowhood, economically weak etc.

Increase in the number of old age home and care centres means the senior citizens

are neglected by their families. Based on the facts collected by the NHRCN, the government decision of providing concession in public transport and health sector has not been implemented. They are still suffering from socio-economic, health and family hardships. The investment of the government has not reached at the target group (senior citizens). There are no effective and concrete policies and programmes towards this end. The grant provided by the government is not transparent, as a result of which the investment made in day care centres has not been utilized. The recommendations made by the NHRCN to make timely changes to the Senior Citizens Act, and criminalizing the act of abandoning the senior citizens, among others have not been implemented.

Some positive initiatives have been being taken for the rights of the senior citizens at the one hand, while on the other there many challenges as well. Today's necessity is to move forward considering the spirit of '*Mother is same as Goddess and father is same as Gods*'. The value that senior citizens are the sources of experiences should be transformed into practice. In addition to this, if the obligation towards parents is implemented in practice by the kith and kins as a family, it is possible to respect, protect and promotion of senior citizens' rights.

8. Rights of the Persons with Disabilities

Disability is caused by birth, due to accidents, natural disaster, disease etc. Persons with disabilities are those persons who face obstruction to full and effective participation in par with a normal person in the society due to interaction with various obstructions created as a result of physical, mental, intellectual and cognitive long-term incapacity.³² The Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Rights, 1966 and its two optional protocols, Convention against Torture and other Cruel, Inhumane and Degrading Punishment, 1984 have given special emphasis on the fact that nobody should be discriminated against on the basis of physical condition. Similarly, the Convention on Elimination of All Kinds of Discrimination Against Women, 1979, Convention on the Rights of Child, 1989, Geneva Conventions, 1949 (applicable only during war or armed conflict) and other instruments have fully prohibited discrimination on the basis of physical condition, and also established special rights/reservation for them. In addition to this, these instruments emphasize that equality before the law, equal protection of law and the right against discrimination. The International Convention on the Rights of Persons with Disabilities, 2006 and

32 Convention on the Rights of People with Disabilities, 2006, Article 1

Optional Protocol 2006 guarantee the rights of persons with disabilities, and have also introduced some general principles relating to such rights.

The Constitution of Nepal, (2015) has adopted the principle of equality and non-discrimination, according to which nobody has been discriminated on any basis. Special provision has been made under fundamental rights in relation to the rights of persons with disabilities, while provisions related to the protection and welfare of persons with disabilities have been made in various acts and regulations.

The aforementioned Constitution, legislations and regulations emphasize on the right against discrimination, right of community life, right of protection, right of political participation, right of participation in policy making etc. Similarly, the right to open organisation, right to participate in cultural life, right to access to service, facility and justice, right to social security, right to information, right to movement etc. have also been mentioned. In addition to this, other supplementary and special rights have been mentioned for persons with disabilities, women and children. According to the 2011 census by the Central Bureau of Statistics, the population of persons with disabilities in Nepal is 513 thousand 3 hundred and 21 (1.94 per cent). This includes 233 thousand 2 hundred and 35 women and 280 thousand and 86 men.

The rights of persons with disabilities have been well-known in international human rights instruments, Constitution and the law. Various mechanisms have been developed for their implementation, while programmes are being implemented. Free education including special education and scholarship have been managed for the hearing impairment, vision related disability and persons with mental disabilities. According to the Civil Service Act, five per cent seats are reserved for persons with disabilities, while skills-oriented training, radio and TV programmes on disability, and concession in customs duty on essential support materials have been provided. People who suffer disability during service in Nepal Police are entitled to disability allowance, children allowance, educational allowance and financial support. Persons with disabilities working in television are entitled to scholarship, employment for PWD in Nepal Telecom and Education Service, and five percent reservation in appointment of community school teachers and staffers and in permanent service of Radio Nepal.

Through its budget statement, the government has announced the schools as disability and child friendly. It states that development and research of Nepali sign language,

interpreters training and professional development would be encouraged. Emphasis has been laid on operation of residential schools with special education in the provinces so as to increase the access of children with disabilities to education. The Supreme Court has also made some significant decisions for the protection and promotion of the rights of persons with disabilities. Some of which are access of persons with disabilities to public physical structures, prohibiting the detention of people with mental disabilities, free education for persons with disabilities and minimum subsistence allowance for highly incapacitated PWDs (three to five thousand per month) etc.

Despite these various affirmative provisions at the national and international level, relatively respect and protection of the rights of the persons with disability is not satisfactory. In the normal situation too the incidents of discrimination and disrespect have been occurring. This situation is also reflected by the complaints registered at the Commission. At the Commission Provincial offices Pokhara and Janakpur registered the complaints of rejecting the admission to the visually impaired and persons with disability at the schools showing various reasons. Barring some exceptions, the public physical structures are not disability-friendly. The persons with disabilities cannot use the public transportation; the drivers do not stop for them, and take it as a hassle to put them in the vehicle. The Government offices, schools, private offices, roads etc. are not developed in a disability -friendly manner.

The human rights situation report of the persons with disability (FY 2019/2020) shows that the total number of personnel through proportional representation and open competition in civil service and other various services is 88 thousands 5 hundred and 78 while total number of persons with disability is 9 hundred and 96 which is around 1.12 per cent. While seeing the representation in the political arena there is not any provision except the obligatory special arrangement in the higher level. In the federal parliament, at the House of Representatives 2 and at the National Assembly 13 persons have been representing. In the Judiciary, there is only one person's representation. This clearly shows the very low representation in the political level which is the mainstream of the state. Due to the insusceptibility of the state and the stakeholders, there is not development of environment to understand their psychology, participating in the policy making and moving forward formulating the activities.

The situation of Lockdown became harder and painful for the persons with disabilities.

There is difficulty in life of persons with disability in normal situation but in such a difficult situation is how much painful the life is only the sufferers know. The persons with disability having physical and psychosocial problems have faced abnormal situation due to COVID – 19. Especially, for those persons who needs others' support due to lack of daily used goods and the long term consuming regular medicine, their life became more complex. Due to fear of the COVID – 19 and the unnecessary rumors spread has impacted negatively on their psychology. Because of fear and terror showing irregular, abnormal and aggressive behaviours (weeping, crying, and shouting), defecating on the beds like uncomfortable activities have increased. As a result, parents and families have taken them as burden so that they have to experience scold, abuse and violence.

As a result, persons with disabilities have yet to get access to basic needs like employment, health and education. Problems like schools being far away due to geographical remoteness and lack of teachers who understand their psychology based on the classification of disability continues. As far as possible students with disabilities are not enrolled in schools, and if the parents enroll them under special education they are still ignored. Continuity of education is affected after primary education as opportunity for higher education is not available in the locality and there is no situation or environment to move elsewhere for the students with disabilities. Severe violence against women and children shatter them mentally, and hence the tendency of long-term mental disability is on the rise.

Hence, the population as per the currently available official data is 513 thousand 3 hundred and 21 (1.94 per cent). However, the study by the World Health Organisation and other institutions show that the population of persons with disabilities is usually around 10 per cent. Hence, in Nepal too, the population of persons with disabilities could be more than that shown by the CBS. A difference in the data of 2011 and present is very obvious. Due to the socio-cultural reason, there is a tendency in our society to not bring persons with disabilities in the public. The National Disabled Federation and other stakeholders claim that the population of persons with disabilities in Nepal should be more than 1.94 per cent due to this reason³³

Though the aforementioned legal aspect is positive, in practice the overall situation of

33 Report of Provincial and National Conference on situation of human rights of people with disabilities published by the NHRC, 2075, p. 5

the persons with disabilities is not satisfactory. The necessity of changing the notion to look at them with sympathy has to be fully wiped out and looking at the issue of PWDs from the rights-based approach rather than welfare approach should be developed. To respect and protect their rights is possible through the end of social malpractice, superstition, illiteracy, negligence, and abuse and change in human behavior as well as the full implementation of the Constitution, legislation and policies.

Chapter – Three

Protection Related Activities

For the protection of human rights receiving complaints, monitoring, investigating and making recommendations are the significant functions of the Commission. In this fiscal year too, the Commission has concluded these functions with priority. The following functions have been concluded:

Function related to Complaints

For the protection and promotion of human rights, the NHRCN has been receiving suo motto complaints and through other medium on the incidents of human rights violation as prescribed in the constitution, laws and rules. Such complaints are received from the victims, their families, organizations, individuals or on the basis of news published in the media. After monitoring, investigation and study of such complaints, the NHRCN has been making recommendations to the government or concerned stakeholder agency for compensation and necessary legal action.

This year, a total of 132 complaints have been registered at NHRCN, including at its central, provincial and provincial branch offices. The complaints received by the NHRCN are related to political and civil rights, economic, social and cultural rights, and right against torture. Similarly, the complaints on women's rights, child rights, rights of persons with disability, rights against racial or caste-based discrimination, right of the senior citizens etc. have been registered.

Province-wise registered Complaints

In this fiscal year, a total of 132 complaints were registered, out of which the highest number of complaints were received at Bagmati Province office Sanepa, which was 68, Province no. 5 branch office Nepaljung 24, Province no. 2 office Janakpur 13, Province no. 5 Office Butwal 11 and Gandaki Province office Pokhara 7. Similarly, Province office Dhangadi 3, Central office Lalitpur and Branch office Khotang 2/2 and province no. 1 office Biratnagar and Karnali Province branch office Jumla 1/1 have been registered.

Complaints Related to Conventions

Analysing the nature of complaints filed at the NHRCN in current fiscal year, there are 74 complaints related to violation of civil and political rights, 17 complaints on rights against torture and 15 complaints related to economic, social and cultural rights. Complaints related to violation of women's rights 7, Child rights 6, right against forceful disappearance 5, right against discrimination 4, violation of the rights of persons with disability 3 and violation of rights of migrant workers and their families 1 have been registered.

Theme-wise Complaints

This year, the highest number of complaints registered were 41 concerning administration of justice, 11 concerning violation of right to life, 10 concerning misconduct by the police, 7/7 in each concerning right against physical and mental torture and threat. Similarly, other complaints filed were, 5/5 in each concerning illegal detention, enforced disappearance and right to property, 4/4 in each concerning right against caste-based discrimination, women's rights, right to employment and 3/3 in each complaint concerning child rights, right to health, murder, hurt, and disability. There are 2/2 in each complaint have been registered on right to housing and civil and political rights. There are 1/1 complaint filed each in women's right, corporeal punishment, child sexual abuse, female child trafficking, domestic violence, violence against women, rape, rights of migrant workers, cultural rights and right to compensation.

In the incidences of human rights violations, NHRCN has been providing counselling to the concerned individuals or the representing individual, group or organization on behalf of the concerned party or individuals. The complaints beyond its mandate are forwarded to the concerned bodies/agencies for necessary actions. In the meantime, the complaintants are being provided with counselling and advice. In this fiscal year, NHRCN provided counselling service 527 times.

Human Rights Monitoring

For the protection of human rights, NHRCN has been conducting monitoring by itself or in coordination and collaboration of other stakeholders. The Monitoring Division of NHRCN monitors the direct and relevant incidents of human rights. Apart from this, the thematic divisions, sections and units also conduct monitoring by themselves

or in coordination and collaboration with others. These monitoring are carried out considering the implementation of international conventions and treaties related to human rights, rights provided by national legal frameworks, policies and directives of the state, national human rights action plan, etc. Regular and ad-hoc monitoring has been conducted as per necessity, situation, and gravity of the issue. NHRCN has established a Rapid Response Team for speedy monitoring and investigation of gross violations of human rights in the country and to make the truths and facts public. The team is led by the Director of Law, Investigation and Monitoring Division and it monitors the issues concerning gross violation of human rights all over the country and submits the report to NHRCN immediately. As per the seriousness of the issue and necessity monitoring function has been conducting even by the subject expert team.

In this fiscal year, NHRCN monitored cases related to civil and political rights, economic, social and cultural rights, women and children's rights. Similarly, right against torture, rights of migrant workers and their families, disappearance of persons, elimination of all kinds of racial discrimination, rights of the persons with disabilities and senior citizens were also monitored. The monitoring on civil and political rights is related to overall status of human rights, administration of justice and right to life. Unknown status, rights of detainees and prisoners, status of jails and prisons, illegal detention, physical assault, right to information, right to confidentiality and right to free movement were also included in the monitoring.

There are issues related to economic, social and cultural rights, right to housing, property rights, right to health, consumer rights, right of internally displaced persons from natural disaster (flood, landslide/earthquake). Similarly, monitoring was conducted on issues related to senior citizens, women, children, indigenous people, minority/marginalized community, persons with disability rights of migrant workers and human trafficking. Apart from these, NHRCN has continuously monitoring human rights of inhabitants in border area with special priority.

This fiscal year, NHRCN conducted monitoring 128 times in different human rights related issues. Out of these monitoring, 21 were carried out by Province No. 5 branch office Nepaljung (including in collaboration with Central office 4 and Karnali Province branch office 4), 20 Province No. 2 office Janakpur, 19 by Bagmati Province office Sanepa and 14 by Province No.1 office Biratnagar. Karnali Province branch office

Jumla 11 monitoring activities and Far Western Province office Dhangadi 9 monitoring (including 4 jointly with central office) were also carried out. Similarly, 5/5 times each monitoring activities were conducted by Gandaki Province office Pokhara, Province No. 5 office in Butwal. Province No. 1 branch office Khotang has conducted monitoring 4 times. Additionally, different Divisions of central office have conducted monitoring 20 times, out of which Gender Equality and Social Inclusion Division and Collective Rights Division conducted 5/5 times, 4 times by the Office of the Special Rapporteur on Trafficking, 3 times by the Report Writing Unit, 2 times by the Treaty Monitoring Division, and 1 time by the Policy, Planning and Monitoring Division.

Human Rights Investigation

NHRCN has been taking forward the investigations within the framework of constitution, laws and rules with priority in the cases related to human rights violation and abuse. During this period, investigations were carried out on complaints received in the past years, suo motto complaints and received in this fiscal year. A total of 795 new and back log cases/complaints have been investigated in this fiscal year.

In this fiscal year, 194 cases have been investigated in 24 times by Province No. 5 branch office Nepaljung, 156 cases in 28 times by Bagmati Province office Sanepa, 102 cases in 21 times by Province No. 5 office Butwal. Similarly, 91 cases in 8 times by Far Western Province office Dhangadi, 89 cases in 16 times by Province no. 2 Office Janakpur, 77 cases in 8 times by Province no. 1 office Biratnagar, 39 cases in 7 times by Province no. 1 branch office Khotang have been concluded investigation. Similarly, 34 cases in 6 times by the Karnali Province branch office and 13 cases in 5 times by the Gandaki Province office Pokhara have been investigated. These investigated cases were related to complaints filed during armed conflict and after that. Most of the cases were concerning right to life, torture and disappearance under the civil and political rights. Similarly, the cases were related to internal displacement, theft of property, compensation, rights of the women and children under the economic, social and cultural rights. Out of the investigated cases in this fiscal year, 795 complaint files have been forwarded to the Commission (central office) for decision.

Resolved Complaints and Recommendation

In this fiscal year, decision was made upon 610 cases that were investigated by NHRCN. A total of 426 cases have been resolved (including 412 pending and 14 dismissed) and

44 cases have been decided for resubmission after completing all the procedure.

Recommendations made were upon 43 cases related to complaints from Province no. 5 branch office Nepalgunj, 28 cases related to complaints and 1 related to policy from Far Western Province office Dhangadi, 22 cases related to complaints and 2 related to policy from Province no. 1 office Biratnagar, 13 cases related to complaints and 1 related to policy from Province no. 2 office Janakpur, 21 cases related to complaints from Bagmati Province office Sanepa, 8 cases related to complaints and 1 related to policy from Gandaki Province office Pokhara. Recommendations were made upon 4/4 each related to complaints and policy from the central office and 2 complaints related recommendations from Province No.1 branch office Khotang. Among pending, dismissal and resubmission, there are 123 from Biratnagar, 114 from Nepalgunj, 62 from Sanepa, 58 from Janakpur, 29 from Gandaki provinces. Similarly, the number is 21 from Dhangadi, Central office Lalitpur 20, and 17 from Khotang.

Chapter - Four

Promotional Activities

The promotional activities have a special role in enhancing human rights education and awareness, as well as advocacy for human rights and dissemination of information. The NHRCN has been carrying out such activities under its constitutional and legal mandate. NHRCN has also formulated and implemented the Human Rights Collaboration and Coordination Guidelines, 2009 in order to conduct the promotional activities more organized and an effective manner.

During the fiscal year too, the NHRCN worked with a priority for the realization of its slogan 'human rights for all at every households, foundation for peace and development'. In order to realize the slogan of the NHRCN, the promotion division, thematic division, branches, units under the central office and the provincial offices and branch offices carried out various activities unilaterally and in coordination and collaboration. The activities include interaction, discussion, meetings, seminar and trainings etc.

During the fiscal year, a total of 56 (41+15) promotional activities were held. In numerical terms, province no. 2 office Janakpur organized 17 (2 in collaboration with central office), province no. 1 office, Biratnagar organized 10 (4 in collaboration with central office), the central office promotion division organized 8 (2 in collaboration with Province office Dhangadi). Similarly, Province no. 5 branch office in Nepalgunj hosted 6 (including 3 in collaboration with central office and 1 jointly with the women and children office), Sudur Paschim Provincial Office, Dhangadi organized 5 (2 in collaboration with central office), province no. 5 office Butwal organized 4 (1 in collaboration with central office and CEZOP). Province no. 1 branch office, Khotang organized 3 activities, Gandaki provincial office, Pokhara 2, Karnali provincial branch office, Jumla 1. Of the programmes held, 15 were held in coordination and collaboration. Participation was also made (30 as resource person/expert and 275 as chief guest/guest and participant) in the human rights related programmes organized by human rights and professional institutions.

During the fiscal year, 112 programmes were held internally including training, seminar, discussion, workshop and meetings. Reports, booklets, brochures etc. have been published to support for the promotion of human rights. The NHRCN offices have been broadcasting awareness-oriented programmes, interview and jingles in Nepali and local languages through FM radio stations.

It has also been disseminating information through press statement, press note, website, twitter and facebook.

The honourables have also been attending many of the programmes concluded by the Commission. Promotional activities have also been held in collaboration and coordination with the stakeholders. The collaborating and coordinating agencies include the governmental agencies, local bodies, non-governmental organisations, and professional organisations. Interaction and discussion have been held on judicial action with various municipalities and rural municipalities of all the seven provinces, including with Kathmandu and Lalitpur Metropolitan cities. The Central Office collaborated with former Judges Society, NGO Federation, National Disabled Federation, Consumers' Forum Nepal, Dalit federation, Federation of Senior Citizens, Consumer Welfare Protection Nepal. Similarly, the programs have been concluded in collaboration with Ageing Nepal, CZOP Nepal, Human Rights Organisation of Nepal, and Forum for Women, Law and Development, Feminist Dalit Organisation. Collaboration with international INGOs included United Nations Food and Agriculture Organisation, Lutheran World Service and Save the Children. Similarly, at the regional level, coordination and collaboration was reached on thematic issues with the Red Cross, women and children office and women's day main celebration committee. The NGOs that the Commission collaborated included human rights defender's council, INSEC, Freed Bonded Labour Elimination Society, CWIN Nepal, National Campaign as Children as Zone of Peace, Dalit Social Development Organization. Other organizations include Tarai Human Rights Defenders, Advocacy Forum, Blue Diamond Society, WOREC Nepal, Conflict Victims Common Platform, Kailali district food rights network, NIDS Nepal etc. Similarly, the child clubs' network, 16-day campaign against violence against women, chamber of commerce and industry and hotel entrepreneur's association also collaboration with the NHRCN in this fiscal year.

Co-ordination between NHRCN and Other Stakeholders

NHRCN and Office of the President/Vice President

Constitutionally, the NHRCN is required to submit its annual report of its activities of every fiscal year to the President. The President in turn presents the report, through the Prime Minister, for discussion at the federal parliament. A team led by the Hon. Chairperson and including members, secretary and staffs submitted the NHRCN's annual report to the President on 8 December, 2019. On this occasion, the NHRCN Hon. Chairperson shed light in brief the activities carried out by the Commission, the challenges it faced and various other aspects of human rights. The President thanked the NHRCN for successfully carrying out its role despite various challenges. She emphasized that the NHRCN should move ahead with more vigor, along with the commitment to take the initiative from her side for the development human rights culture.

National Human Rights Commission of Nepal organized an International Conference on Protection of Rights of the Migrant Worker from 12 to 14 November, 2019. The Conference was inaugurated by the Rt. Hon. Vice President of Nepal Nanda Bahadur Pun. On this occasion, he stated that migrant workers have been victimized from the exploitation of labour and sexual exploitation. Requesting to the concerned states to formulate the workers friendly policy and ensuring its implementation, he stressed on the necessity of collaboration among the country of origin and country of destination for the protection of their rights.

The Commission and the Government of Nepal

The respect, protection, promotion and fulfillment of human rights are basically the obligation of the government. Even though the NHRCN is a constitutional, independent and autonomous body it is directly concerned with the government in terms of its activities and financial matter. On this matter, the NHRCN has been holding meetings, discussion, deliberations and consultation with the government

agencies based on need, seriousness of the matter and issue and rationale. The NHRCN has been inviting Prime Minister, Ministers and high-ranking or concerned officials from the Government of Nepal to its various programmes. Similarly, the Commission also attends the programmes and provides the institutional opinion organized by the government agencies. The discussion and interactions have been concluded with the government agencies on the matters relating to the human rights situation of the country, implementation status of the NHRCN recommendations, transitional justice, peace and security, rights of the migrant workers and their families, the burning issues of human rights, etc. Along with providing necessary support to the government for protection and promotion of human rights, the NHRCN has been giving advice as well as necessary directives to the government based on the case.

The NHRCN has been holding meetings, discussion as well as collaboration and coordination with the federal, provincial and local government on thematic issues. Collaboration as well as alerting the government is taking place with a focus on issues related to human rights. In an International Conference on Protection of Rights of the Migrant Worker organized by National Human Rights Commission of Nepal from 12 to 14 November, 2019 the Minister for Foreign Affairs Mr. Pradeep Kumar Gnwali, Minister for Labour, Employment and Social Security Mr. Gokarna Bista provided their opinions on behalf of the government. The activities concluded in collaboration, coordination and participation with the government of Nepal and the Commission have been mentioned under the heading protection and promotion related activities concluded from the various divisions.

NHRCN and Political Parties, Civil Society/NGO/Professional Organisations

It has been mentioned in the Constitution and the Act that the NHRCN shall carry out human rights protection and promotion works in collaboration and coordination with the stakeholders. In order to make this function more organized and effective, the NHRCN has been working on the basis of its collaboration guideline. These activities are especially carried out with political parties, civil society, organisations working in the human rights sector, NGOs and professional organisations. In this fiscal year, the NHRCN carried out 56 monitoring events in collaboration with the stakeholders on various issues of human rights. The Commission this year has concluded a public inquiry in participation with the major political party such as the Communist Party of

Nepal (NKP), Nepali Congress and the victim party together on the same platform. The activities concluded are mentioned under the heading under the heading of monitoring and promotion activities.

NHRCN and International Community

The NHRCN has been collaborating and coordinating with the international organisations too. Such institutions include especially the Asian Pacific Forum (APF) and Global Alliance of the National Human Rights Institutions (GANHRI). Similarly, it includes the national human rights institutions of the concerned countries, the UN, international institutions related to human rights, and the diplomatic mission etc.

In this fiscal year, National Human Rights Commission of Nepal organized an International Conference on Protection of Rights of the Migrant Worker. The chairperson of the Global Alliance of National Human Rights Institutions, the Chairpersons and the representatives of the National Human Rights Institutions have participated the conference. The conference also adopted the Kathmandu Declaration. The Commission has also been submitting reports on various issues to the Human Rights Council as per the demand. In addition to this, collaboration and coordination based on needs is also taking place at the international level with NHRIs, INGOs, donor agencies, and foreign embassies as per the necessity and rational. The NHRCN and these institutions are carrying out exposure visit to share human rights situation, study visit and exchanging mutual cooperation and experience on the situation of human rights. The NHRCN continued these activities in this fiscal year as well.

Projects

The NHRCN has been organizing human rights programmes with support and coordination of projects. The projects include **Strategic Plan Support Project (SPSP)** and the Enhancing the Capacity of National Human Rights Commission Project (ECNHRCP) by the European Commission Delegation to Nepal. These projects have been supporting the NHRCN in training, workshop, orientation and publication works etc.

Strategic Plan Support Project (SPSP)

The Commission has been organizing different activities in support with the UNDP. This project specially provides financial support for human rights related training,

monitoring, investigation, workshops, and orientation including publications.

Training and workshops

- The Province level training on the issue human rights and journalism for 91 journalists and media personnel (at Bhairahawa, Pokhara, Dhulikhel);
- The Province level workshop on the human rights situation of consumers (Dhangadi);
- Support for the International Conference on Protection of Rights of the Migrant Workers;
- Workshop for the capacity enhancement of the persons with psychosocial disability;
- Workshop on the role of the parliament and the National Human Rights Institutions for the implementation of human rights; and
- Workshop and review on the current strategic plan of the National Human Rights Commission of Nepal.

Research study and the human rights promotion

- The research study on the human rights situation of the airtaxi consumers at rural area;
- The review of laws enacted by the Bagmati provincial assembly from human rights perspectives;
- the role and relationship between the parliament and the National Human Rights Commission for the implementation of human rights;
- The production and broadcasting of the awareness raising song regarding to the rights of Dalit people;
- The development and broadcasting of appeal of the National Human Rights Commission from the 34 radio stations of the various districts of country in 14 languages for the respect and promotion of human rights in the COVID – 19 situations;
- Development of mobile apps; and the development of virtual and digital communication system such as zoom for the coordination meeting of the Commission with the stakeholders;
- Regular interactions with the civil society and the media;
- The human rights situation monitoring during COVID – 19 pandemics in the 12 districts; formulation of the checklist for the monitoring of the global

COVID – 19 pandemic and the formulation of the guidelines for the monitoring networks.

Publications

- The annual report synopsis translation and publication (Nepali and English);
- The matters to know in human rights;
- The human rights situation of the migrant workers: the research report on the recruitment practice and access to justice (English).

Enhancing the Capacity of National Human Rights Commission Project (ECNHRCP)

The Commission has been conducting different activities related to the capacity development of the governmental and non governmental organizations working in the field of human rights with support of this project. The monitoring of the implementation status of Universal Periodic Report, and the coordination and collaboration programs with the NGOs and human rights defenders have been concluding. The Commission is active with the slogan 'human rights for all at every household, foundation for peace and development'.

Achievements, Challenges, Possible Solutions and Way Forward

Achievements

Like in the previous year, the NHRCN carried out activities related to protection and promotion of human rights with priority. The COVID – 19 has adversely affected the functions and activities of the Commission this year. Before COVID the regular functions like monitoring of human rights situation, investigation of the incidents of human rights violation, providing opinion and suggestions for the formulation of human rights friendly laws have been concluded. During COVID – 19 pandemic the functions for the protection and promotion of human rights have been continued. Various functions have been concluded such as promotion of human rights, publication, issuing press statements, coordination with the concerned stakeholders and the international relations. The NHRCN also carried out these activities with a focus on its slogan of 'human rights for all at every household: foundation for peace and development.' Based on the tasks accomplished, various achievements have been made, which can be outlined as follows:

COVID – 19 and the NHRCN

The Commission has accelerated its activities visualizing the necessity, situation and gravity of the cases in the critical situation of COVID – 19 coronavirus pandemics. To monitor the human rights situation during lockdown, the Commission has formed monitoring network in collaboration among the National Human Rights Commission, Nepal Bar Association, Federation of Nepalese Journalists and NGO Federation of Nepal specially to monitor the human rights situation of this complex state created due to the global COVID-19 coronavirus pandemic. For the uniformity and to regulate the function of the different level of networks, the working procedure for the monitoring networks - 2020 has been formulated and implemented. Similarly, the human rights situation monitoring checklist has been prepared for the quality monitoring and uniform report.

In this fiscal year, National Human Rights Commission of Nepal organized an International Conference on Protection of Rights of the Migrant Worker on 12-14 November, 2019. In the conference 140 representatives from 28 countries participated. On this occasion to make the protection and promotion of rights of the migrant workers and their family members more effective and regularized, MoU has been concluded among the National Human Rights Commission of Nepal and National Human Rights Commission Malaysia.

Receiving Complaints, Monitoring and Investigation

During this fiscal year, 132 complaints were registered. Altogether, 128 monitoring events were held on matters related to human rights. The NHRCN offices concluded investigation on the complaints and sent 610 complaint files for decision to the Central office. The NHRCN concluded investigation on 795 back log and new complaints.

Complaint Response and Recommendation

During the fiscal year, the NRHC finalized 610 complaints following investigation over them. In this 131 including 140 complaint-based and 9 policy-based recommendations were made. Likewise, 412 of the complaints were put under consideration (pending) while 14 were dissolved.

Human Rights Promotion

Various achievements have been made towards promotion of human rights. In this fiscal year, the NHRCN organized 56 promotional activities. The NHRCN is playing a supportive role in making the local level efficient and effective in judicial dispute resolution. For this, the NHRCN has been organizing trainings, seminars and discussion programs.

After the country adopted federalism and the three tier governments were formed, the NHRCN has been working with all the three tires of government. It has held discussion on the situation of human rights in the Province with the speaker, Chief Minister, Minister, secretaries and the Chief Attorney General of the concerned Province. On the occasion, ways to move ahead in collaboration and cooperation on protection, promotion and fulfillment of human rights were put in the priority. The programs in coordination and collaboration with the Provincial and Local Level were also get continuity with regard to the formulation of human rights friendly laws and

service delivery of the government. In addition to this, the NHRCN has given special emphasis to the formulation of human rights friendly laws, with a focus on the local level governments in all the seven provinces. By considering the power and functions of the local judicial committee, the programs have been continuously concluded in participation with the local government chief and deputy, judicial committee office-bearers, ward chair and members.

The Commission has also been producing radio programmes with a focus on various issues of human rights, and broadcasted through various FM radio stations inside and outside Kathmandu valley. By considering the the COVID – 19 coronavirus pandemic development and broadcasting of appeal of the National Human Rights Commission has been concluded from the 34 radio stations of the various districts of country in 14 languages. In addition to this, the awareness raising song and radio jingle which is against caste-based discrimination has been being broadcasted through the 10 FM radios in all the provinces.

Publications

During this period, a total of 18 publications were released including reports, journal (Human Rights Journal: SAMBAHAK) and brochures including the annual as well as thematic reports. The publications covered issues related to the rights of migrant workers, Trafficking in Persons National Report, the role of the legislature and the executive for the implementation of fundamental rights, Human rights and sustainable development goals in Nepali context, the human rights situation of the Nepali citizens residing at the borders, the selected decisions relayed to human rights, the issues to know on human rights etc.

Press Statement/Press Note

During this fiscal year, 41 press statements and 28 press notes were released on contemporary issues of human rights. Similarly, 4 press conferences were held.

Human Resource Management

During this fiscal year, the NHRCN continued with the work of human resource management. The NHRCN recruited 70 permanent positions that were temporary and contract basis for a long time. This included 36 office helpers, 18 drivers, 16 security guards.

Collaboration and Coordination

National Level

The NHRCN continued working on the basis of collaboration and coordination in this fiscal year as well. Accordingly, 56 programmes were held in collaboration and coordination with government, non-government and professional organisations. The NHRCN also participated (30 as resource person/expert and 279 as chief guest/guest and participant) in the human rights related programmes organized by human rights and professional institutions.

International Level

The NHRCN continues its collaboration internationally to carry out the human rights related functions with UN agencies, Global Alliance of National Human Rights Institutions, Asia Pacific Forum of NHRI, including donor agencies and embassies. The Hon. Chairperson, members and staffs have made international visits for discussion, exchange of experience and trainings. During this fiscal year, the NHRCN made a total of 25 visits that includes the Chairperson\members attended 9 international programs while the Secretary/ other staffs attended 16 events.

Challenges

The NHRCN has been moving ahead amidst internal and external challenges since its inception. It is but natural for the challenges to change in its form and number along with the time and circumstance. Some of the challenges remain the same since the past. During the fiscal year too, the NHRCN could not be out of challenges, which are as follows:

Internal challenges

During this fiscal year too, the NHRCN could not be out of internal challenges. Specially, it could not be possible as the quality, quantity and the effectiveness in the functioning of the Commission had to be. The international coordination for the commission's functioning was also not done as it had to be. The allocation of budget was not as per the necessity and rational instead the trend to allocate on the mutual consensus among the members of the Commission was developed. Though the work division among the members was accomplished it was not institutionalized. Some of the programs became the program of the individual rather than the programs of the

Commission or institution. In some of the activities the bad trend has been established as the programs have been implemented without information or notice to the proper authority such as departments or the divisions. The one door policy for publication was not implemented. As a result, instead of quality, number and the individual concerns were prioritized in the publication. As the positive thinking towards the staffs had to be on the members, it became problematic in the few of the honorables. The cases concluded investigation could be decided by the three members (simple majority) but for the administrative matters it was compulsory to be all the members so that the administrative functions became the issue of worry and concern. Non presence in the Commission meeting being presence at the Commission and exit during the Commission meeting could not be fully abolished. When the Commission makes its opinion public that the public reaction provided in an individual capacity by the member on the nonconcerning issues is not the Commission's opinion, Commission's activities were also affected due to the dissatisfaction towards this. The trend to publish and broadcast the decisions of the Commission through media before making public the decisions by the Commission is not stopped.

External challenges

Lack of Physical Infrastructure

In terms of physical resources, the NHRCN has been experiencing an adverse situation since its establishment. The situation has not improved much at the present as per the expectation. The NHRCN has still been functioning with difficulty or lack of necessary resources. Lack of sufficient infrastructure and resources in proportion to the human resource has created obstacle to the functioning of the NHRCN.

The central office building damaged in the 2015 earthquake is yet to be reconstructed. This has not even initiated this year too. The NHRCN is currently functioning from a prefab building constructed on the open space in front of the old building. Leakage inside the office during rainfall has created obstruction in functioning and also damaged physical asset. Leakage in the human resource centre (library) is making protection of books and other goods difficult. The NHRCN provincial office and provincial branch offices are still functioning from rented buildings. Though the land for the Province branch office Khotang and the Provincial office Dhangadi has been received but for the construction of buildings necessary efforts have yet to be made. This is increasing the financial burden to the Commission, while there is problem of shifting the offices that

cause damaging the physical asset.

Lack of Anticipated Support from the Government

The state/government is regarded as the guardian of human rights. The role of the government is very important in the respect, protection and fulfillment of human rights, and development of human rights culture. It is the obligation of the government to provide necessary support to the national human rights institutions. Though there is support from the government agencies it is not adequate for some instance. Even though constitutionally the country has adopted a federal system, the NHRCN functioning has not been effective due to non-cooperation of the government. On 22 June 2017, the NHRCN made some timely changes its organizational structure and sent it to the government for its approval. But despite repeated attention drawn by the NHRCN, the government has not showed any interest in it. As a result, the province office at Surket to be established is not implemented yet. Even in the transformed context, the NHRCN is forced to function as per the National Human Rights Commission Act, 2012 as it is not amended yet. The cabinet had taken a decision to table a bill in the parliament to amend this Act. Even though the bill is passed by the parliamentary procedure, some of the provisions included in the Bill raise a question over the government's non-generosity towards the NHRCN. Specially, going against the Supreme Court's verdict, the bill provides the power to prosecute a case on the Attorney General. It also includes a provision that requires the NHRCN the government's approval to open provincial branch offices. These and other similar provisions are definite to take away the independence and autonomy of the NHRCN. This function of the government shows that it is trying to restrict the activities of the NHRCN.

Failure of Implementation of NHRCN Recommendations

Under human rights protection, the NHRCN has been monitoring the situation of human rights, and investigating over the complaints of human rights violation/abuses and based on the facts from such investigation, it has been making recommendations for necessary action to the government or concerned agency. Though the recommendation, decision or order of the commission is binding, the implementation status is very deplorable.

A task force had been formed to study the complexities seen in the enforcement of the recommendations made for prosecution on incidents of human rights violation.

The task force included the Office of the Prime Minister and Council of Ministers, the Attorney General and the representative from the Commission. However, the task force has remained stranded after the responsibility of the members of the task force has been changed.

The implementation status of the recommendations made by the NHRCN to the government is very poor. The state of implementation of the recommendations made between 2000 to 2020 is very minimal. The number of complaints registered during this period is 12 thousand 8 hundred and 25 and the resolved complaints are 6,617 and the the number of recommendations for legal action to the perpetrators and compensation to the victims are 1,195. Of the total recommendations, 13.64 per cent are fully implemented, 37.23 per cent partially implemented and 50 per cent are put under consideration.

The recommendations that are implemented are related only with compensation. The recommendations made for legal action against those involved in human rights violation and to investigate the incident and initiate legal action have not been implemented. Adversely, those public officials who are recommended for taking legal action have been even getting promotion.

Failure to Address Conflict-era Cases

The armed conflict announced by the then CPN (Maoist) began on 13 February, 1996 and ended formally on 21 November 2006. The government and the Maoist leadership had agreed to address the transitional justice issues related with the armed conflict. Even though the complex issue of army integration was concluded, the tireless efforts have not yet been addressed the issues of the conflict victims. The Truth and Reconciliation Commission and Commission on Investigation of the Disappeared Persons were formed. The term of the commissions and office-bearers were extended twice but no solution has been made. The new office bearers of both the Commissions are appointed with the amendment of the legislation provisioning the existence of the Commissions though were vacant for sometimes have resumed their functioning.

There is possibility that the status of the current Commissions can also be similar to that of the previous Commissions. The issues like amendment of the the concerned Act as per the Supreme Court decision and the NHRCN recommendation, lack of skilled and required human resource, and other necessary resources, internal dispute, political

interests etc are not addressed yet. The majority of the NHRCN recommendations are related with the armed conflict. Out of the 1,195 recommendations made by the Commission 940 are related with armed conflict and the recommendations are not implemented yet except the recommendations related to compensation. The negligence to implement the recommendations of NHRCN on one hand, and failure of the transitional mechanisms to address the cases has directly affected the victims. As a result, the functioning of the NHRCN has been also affected.

Ambiguity on the Jurisdiction among NHRCN and other Thematic Commissions

In addition to the National Human Rights Commission of Nepal, the existing Constitution provides seven other thematic Commissions related to human rights. These include National Inclusion Commission, National Dalit Commission, National Women Commission, Indigenous Nationalities Commission, Madhesi Commission, Tharu Commission and Muslim Commission. There is no clarity on the jurisdiction and nature of work among the NHRCN and these Commissions. No discussion or debate is held on this matter. Even though the Constitution, the related Acts and the strategic plan mention about the functions to be carried out by the Commissions, duplication is likely and there could be different reports on the same issue. In such a situation, more complexities shall be seen in the implementation and the relations between the Commissions may not be decent. And this may create the situation that victims may not get justice.

Lack of Mutual Coordination in the Functions

There seems to be the lack of coordination and collaboration among the stakeholder agencies in the issues of protection and promotion of human rights. This problem is apparent more in government to government, government to non-government and among the non-government organisations. This is leading to a situation where the reports are more than the work done, and duplication of the work. The mentality of taking credit for the good result, and staying away or putting the blame on other in case of a negative result is existed. The area where dozen of organisations functioning, there are more problems existed.

Very limited developmental functions start on time and the tendency of delaying the development construction works, and working overnight in the final stage for fear of freezing the budget is not improved. Accomplishing the task on the predetermined

duration becomes the matter of surprise. This also leads to expenditure of the budget without the expected outcome and the increase in the estimated costs as result citizens are deprived from right to development.

Inadequacy of the Implementation of the UPR and Treaty Bodies' Recommendations

Nepal makes commitment in front of the international arena for the protection, promotion and fulfilment of human rights. Similarly, time and again, Nepal has been receiving various recommendations from the UN Charter based mechanisms and the treaty based mechanisms. Nepal has been accepting and making commitment for the implementation of those recommendations provide by the UN mechanisms. The insufficient implementation of the expressed commitments, challenges is seen for the protection and promotion of human rights.

Lack of timely Formulation of the National Human Rights Action Plan

The duration of the fourth National Human Rights Action Plan has been already over. Various discussions were held with the stakeholders regarding the fifth National Plan but it is not implemented after its adoption. As a result, not being able to formulate on time in accordance with the federal structure and delay in the implementation the various human rights issues have been shadowed.

Stereotypical Thought and Traditionalist Attitude

A large section of the Nepali society is still carrying a traditional mentality. No matter how much we talk about rights, freedom and equality, the society has not been able to be freed from racial discrimination and harmful practices like witchcraft accusation, (menstrual taboo) Chhaupadi and dowry practice. Women have to be suffered more from this. Based on caste, people are still classified as high and low, touchable and untouchable. The disgusting acts like women feeding with human excreta, forced to shave their hair, beaten up and even killed in the accusation of witchcraft are not still eliminated. Women are physically assaulted and burnt alive for carrying less or not carrying dowry in marriage. Women are even losing their life after being banish to huts (a tradition to banish women at the menstrual hut during menstruation) outside their home during their menstruation. Political leadership too is connected in such acts in one way or the other. Even in the incident rape like grave nature criminal incidents, conciliation and decision by the gathering is critical. As a result, this is having a direct impact upon the protection and promotion of human rights.

Lack of Transparency in the Function and Expenditure of National and Int'l Organisations

Questions are now being raised from various angles over the transparency of national and international organisations working for the protection and promotion of human rights. Due to failure of making their expenses and activities transparent, the common people too don't have positive image about them. This has affected the organisations who are working honestly as per their mandate. The organisations show that the goals have been achieved in their reports but the problem has not changed in practice. The tendency of providing allowance like facility for people participated in a programme has developed a habit of people not attending programmes without allowance or facility, and of depending on others.

COVID – 19 Coronavirus Pandemics

The NHRCN functions and activities have been directly affected due to the impact of COVID – 19 coronavirus pandemics since March 2020. Especially the Commission's initiatives of the 'investigation year campaign' are not speed up as per the expectation. The examination and investigation upon the back log and the new cases of human rights violation and abuses going to the field or the spot of the incident was not practically possible due to COVID – 19. In addition to this the annual programs such as monitoring, promotional activities were not speed up per the expectation and planning. As a result, the annual target of the Commission is affected.

Possible Measures to Resolve the Challenges

The stakeholders need to carry out the following tasks in order to address the aforementioned challenges:

The Government of Nepal

- a. Make an effort for the formulation of the remaining legislations as per specified in the Constitution by the Federal, Provincial and Local governments;
- b. Build appropriate environment for the implementation of Constitution, act and regulations,
- c. Consider the human rights norms and standards in the formulation of Act, regulations,
- d. Building a working environment (amendment of Act, availability of essential

- resources and skilled human resources) for the transitional justice mechanisms (Commission on the Investigation of the Disappeared Persons and Truth and Reconciliation Commission),
- e. Bring those involved in illegal activities or found guilty by court to justice,
 - f. Respect rule of law and human rights, and make the measures taken against impunity more effective,
 - g. Effectively implement the recommendations of the Commission,
 - h. Provide essential financial and physical resources, including office buildings for the Commission,
 - i. Build an environment of giving continuity to submission and discussion of the Commission's annual report in the federal parliament,
 - j. Ensure amendment of the Act to maintain the independence and autonomy of the National Human Rights Commission of Nepal, and pass the Human Rights Service Bill from the parliament immediately,
 - k. Approve the organizational structure of the Commission immediately,
 - l. Formulate and implement the national human rights action plan as per the federal structure, and
 - m. Work in coordination and collaboration on issues related to human rights or the Commission.

The Political parties

- a. Make necessary efforts for the implementation of the Constitution,
- b. Not encourage impunity, respect and protect the rule of law and human rights,
- c. Provide special support to the government for respect and protection of human rights, and in development and construction related functions, and
- d. Establish special mechanism to oversee human rights related issues and coordinate and collaborate on issues related to human rights, and the Commission through this mechanism.

Others:

All the stakeholders (civil society, organisations working in the field of human rights, professional organisations, citizens etc.) should collaborate, coordinate as well as alert

the government and the Commission as required on human rights issues.

Way Forward

As a national human rights institution, the NHRCN has been working for the protection, promotion and fulfillment of human rights and for development of human rights culture. It has been functioning especially in accordance with the Constitution, act, regulations, and directives. The Commission should go ahead making an effort for the amendment of the act and formulating its new strategic plan.

The NHRCN needs to move ahead on the basis of addressing the human rights norms and values enshrined in the Constitution and the Act discussing on the further area of improvements, opportunities and challenges. It would also be appropriate to determine the future strategy by discussing whether expected outcome was achieved through the collaboration and coordination between the NHRCN and victims, the NHRCN and NGOs/civil society, professional organisations, stakeholders, the NHRCN and the government and international human rights institutions and donors etc.

The country has adopted the federal system of governance. Governments have been formed and are functioning at all three levels. Enjoyment of human rights depends upon especially the proactiveness of the NHRCN and the government's commitment and implementation. For this, coordination and collaboration should be necessary with the local, provincial and federal governments. The collaboration and coordination with the parliament, government, constitutional bodies, political parties, civil society, NGOs and other stakeholders (citizens) should be taken to larger height. In addition to this, there is a need of making the relations with the national, regional and international human rights institutions and donor agencies timely according to the changed context, relevant and strong.

Considering the aforementioned issues, the NHRCN has both opportunities and challenges in front of it. For this, the NHRCN needs to take the following measures:

- a. Take additional steps for timely reforms in the National Human Rights Commission Act, other acts, regulations related to human rights.
- b. Provide expert service in the formulation of human rights-friendly laws at the provincial and local level.

- c. Make efforts for the formation of a mechanism for effective implementation of the NHRCN recommendations.
- d. Support developing an environment where the state obligations to be fulfilled as Nepal being a party to various conventions and treaties are fulfilled.
- e. Move ahead with planned activities in order to address the issues specified as priority to address challenges of human rights.
- f. Move ahead by developing a strategy that the NHRCN needs to adopt in the situation where the transitional mechanism has not been able to show activeness as expected.
- g. Develop relations with national, regional and international stakeholders as per the changed context.

It is the obligation of the NHRCN to make the slogan of 'human rights for all at every household, foundation of peace and development' meaningful. There is no boundry in the human rights for all at all times without any discrimination irrespective of religion, ethnicity, race, colour, financial condition and nationality. Equality, justice and human dignity cannot be imagined without fundamental or established norms and values of human rights. Thus, in its capacity as the national or caretaker institution, the NHRCN should move ahead from its past experience with a focus on the changed context making its activities relevant in accordance with the Constitution, Act and its strategic plan.

Annex 1

The written remarks submitted to Rt. Hon. President of Nepal Mrs. Bidhya Devi Bhandari by the Secretary of the National Human Rights Commission of Nepal Bed Bhattarai with regard to the submission of the annual report of the fiscal year 2019/2020

The Rt. Hon. President;

The National Human Rights Commission of Nepal (NHRCN) is a constitutional body established for the protection, promotion and fulfillment of human rights. It has, since its establishment, working actively for the respect, protection and promotion of human rights, and in developing human rights culture. The NHRCN has been performing its activities by acting within the parameters of the fundamental law of the land, the Constitution, relevant Act and regulations, and its strategic plan. Articles 248 and 249 of the Constitution provisions the National Human Rights Commission of Nepal. Article 249 of the Constitution and the section 4 including others of the National Human Rights Commission Act, 2012 outline the power and functions of the Commission.

The state which adopts the rule of law, the norms and principles of human rights can be considered as a democratic state. In every country, the State is regarded as patron and guardian in the perspective of human rights. Nepal is also a member state and a state party to various international instruments related to human rights. In addition to this, currently, it is also a reelected member of the Human Right Council, a UN agency. Nepal is also a state which has adopted a governance system operated by the government elected by the people. In this sense, there is no ambiguity that primarily, the state and the government have an obligation to respect, promote and fulfill human rights. Thus, the state obligation on the human rights is also be seen from global and regional perspective. In this connection when the State fails to fulfill its obligation of fulfilment of human rights in its daily activities, it is the duty of other state agency to hold it accountable. Constitutionally, in Nepal, this duty falls under the responsibility of the National Human Rights Commission of Nepal. Accordingly, the NHRCN has been active towards its duty since its establishment. In this fiscal year too, the commission has fulfilled its duty from various aspects.

The Rt. Hon. President;

Article 294 (1) of the Constitution of Nepal obliges all the constitutional bodies to

submit their annual activities through an annual report to the President. The report basically comprises the complaints registered before the Commission, the prob and investigation carried out over it, details of the investigation and recommendations made to the government, among others. In addition to this, there is also a provision to include details related to the reforms that needs to be made in the future for protection and promotion of human rights. Accordingly, the annual report of this fiscal year 2019/2020 also makes an effort to include the activities carried out.

Like in the previous years, in this fiscal year too, the NHRCN has been engaged actively for the protection, promotion and effective implementation of human rights. Especially, receiving complaints, monitoring the situation of human rights, and investigation on the complaints have been carried out under human rights protection. On the basis of the facts received from monitoring and investigation, the Commission has been recommending to the government and the concerned agencies for taking legal action and providing compensation. Promotional activities like conference, training, workshop, interaction and discussion also continued. The Commission has also been playing its role for the formulation of human rights friendly laws, review or amendment of the human rights laws and regulations. Various thematic reports, booklets and journals have been published while concerns have been expressed on various issues of human rights through press note and press statements. Similarly, activities like making the Commission's view public through the media, publication and disseminating message giving materials on human rights of public concern got continuity.

Based on the need and rationale, the NHRCN also conducted various activities in collaboration and coordination with stakeholders at the national and international level for the respect, protection and fulfilment of human rights and development of human rights culture. Such types of activities have been specially concluded at local, provincial, national and international level. Specially, the collaboration with the local, provincial and federal level governments, constitutional bodies, political parties, civil society, and NGOs, and national human rights institutions continuous unabated. Coordination and collaboration with the Global Alliance of National Human Rights Institutions, Asia Pacific Forum, National Human Rights Institutions, human rights institutions working at the international level and donor agencies is continued.

Currently, the country is running as per the federal structure of governance. The Constitution is being implemented. The legislations for the implementation of the fundamental rights have been enacted. Though partial, some office-bearers have been appointed on thematic commissions related to human rights. The government has been implementing the 5th human rights national action plan based on discussion with the stakeholders. Considering all these aforementioned aspects, there is ground for satisfaction.

Despite these positive efforts many challenges have been seen in the field of protection of human rights. Even though the laws related to fundamental rights have been formulated, the implementation seems challenging as the regulations are yet to be formulated. While the government's commitment to conclude the peace process (transitional justice) is yet to take any concrete form. It is unfortunate that the victims have not been able to get justice even 14 years elapsed since the Comprehensive Accord. The laws concerning the constitutionally guaranteed concurrent jurisdiction between the three levels of government are yet to be formulated so that the functions of the governments have not been concluded as per the aspiration of the people.

The Rt. Hon. President;

The organizational structure concluded by the NHRCN as per the federal structures remain shelved at the Office of the Prime Minister and Council of Ministers for around 3 years. The proposed Bill introduced to amend the National Human Rights Commission Act, 2012 in compliance with independence and autonomy is not yet passed by the parliament. The implementation of overall human rights situation including civil and political rights, economic, social and cultural rights has not seemed satisfactory. The continuity of racial discrimination in the society, challenge in the right to life, violation of the consumer rights, and lack of universal access to health and education services show that the atmosphere conducive for enjoyment of constitutionally guaranteed rights is yet to be developed. Daily life continues to face adversities due to labour exploitation of those going for foreign employment and increasing rate of violence to women and children. The state has not been able to give special attention towards protecting the rights of the marginalized community, indigenous people, and persons with disabilities, the Dalit, women, minorities and elderly citizens. As a result, the rights of these class and communities have not been secured. The world itself is severely affected by the COVID-19 pandemic. From this, especially the health sector has been

adversely impacted. People have been troubled and traumatized by this pandemic. Thus, not only the health, security, employment including other sectors has also been adversely affected.

During this fiscal year, the Commission has gained various achievements through human rights protection and promotional actions and activities. A total of 132 complaints of alleged human rights violation were registered. Investigation concluded on 795 complaints including the previously registered and new ones. A total of 128 monitoring of the human rights situation and others have been concluded. A total of 112 promotional activities were carried out including 56 in collaboration and coordination with a special priority on human rights promotion in order to realize the slogan "*Human rights for all at every household: foundation of peace and development.*" Similarly, the NHRCN participated in 279 programmes as guest and participants including in 41 programmes as resource person and subject expert. Similarly, in the all 7 provinces the radio jingle has been broadcasted through the radio in 14 different languages on the rights and duties of the citizens during lockdown period. The human rights app has been developed and is in use. Similarly, with the participation of 140 representatives from 28 countries; the NHRCN has successfully concluded the international conference on the rights of the migrant workers and their family in this fiscal year.

During the period, the NHRCN brought out 26 publications, 69 press statements and press notes. In addition to this, to help the government and stakeholders with the drafting of the law, the NHRCN review laws from the perspective of human rights and sent to the concerned agency for implementation. Employees' management work has also gained speed in the Commission. From this the security of their service has been ensured.

The Rt. Hon. President;

Despite the aforementioned achievements, challenges continue to exist. The recommendations made by the NHRCN have not been fully implemented while support as per the expectation has not been received from the government. The implementation of the commission's recommendation for legal action to the more than 280 human rights violators recommended in accordance with the investigation and decision of the Commission is also appalling. Few of the Commission listed human rights violators have been awarded rather than the legal action. Reconstruction of

the central office building of the Commission damaged in the earthquake is not still started. Other provincial offices operating from rented office space has also created difficulties in their functioning. Instead of these hardships, the Commission has been smoothly functioning to conclude its activities to fulfill its mandate.

I would like to express my gratitude to the Office of the President, the office of the Vice-president, the Parliament, the government of Nepal, political parties, civil society, the human rights community, media, professionals and businesses for their support and good wishes to the NHRCN even in the critical situation created due to COVID – 19 pandemics. Similarly, I would also like to thank the international organizations, the entire diplomatic mission and the donor agencies. I am also grateful to the recently outgoing Chairperson and members and all the staffs of NHRCN. I also look forward to with confidence in receiving continued support from all sides in the days to come.

Finally, the prospect of presenting in person the report before Rt. Hon. could not be possible due to COVID – 19 pandemics. I would like to express thanks to the Office of the President and the Rt. Hon. on behalf of the Commission for the concern, support and good wishes for the implementation of the recommendations and the suggestions provided through the previous reports. I hope, we will get special support from the Rt. Hon. for addressing the aforementioned issues in the days to come.

Thank You!

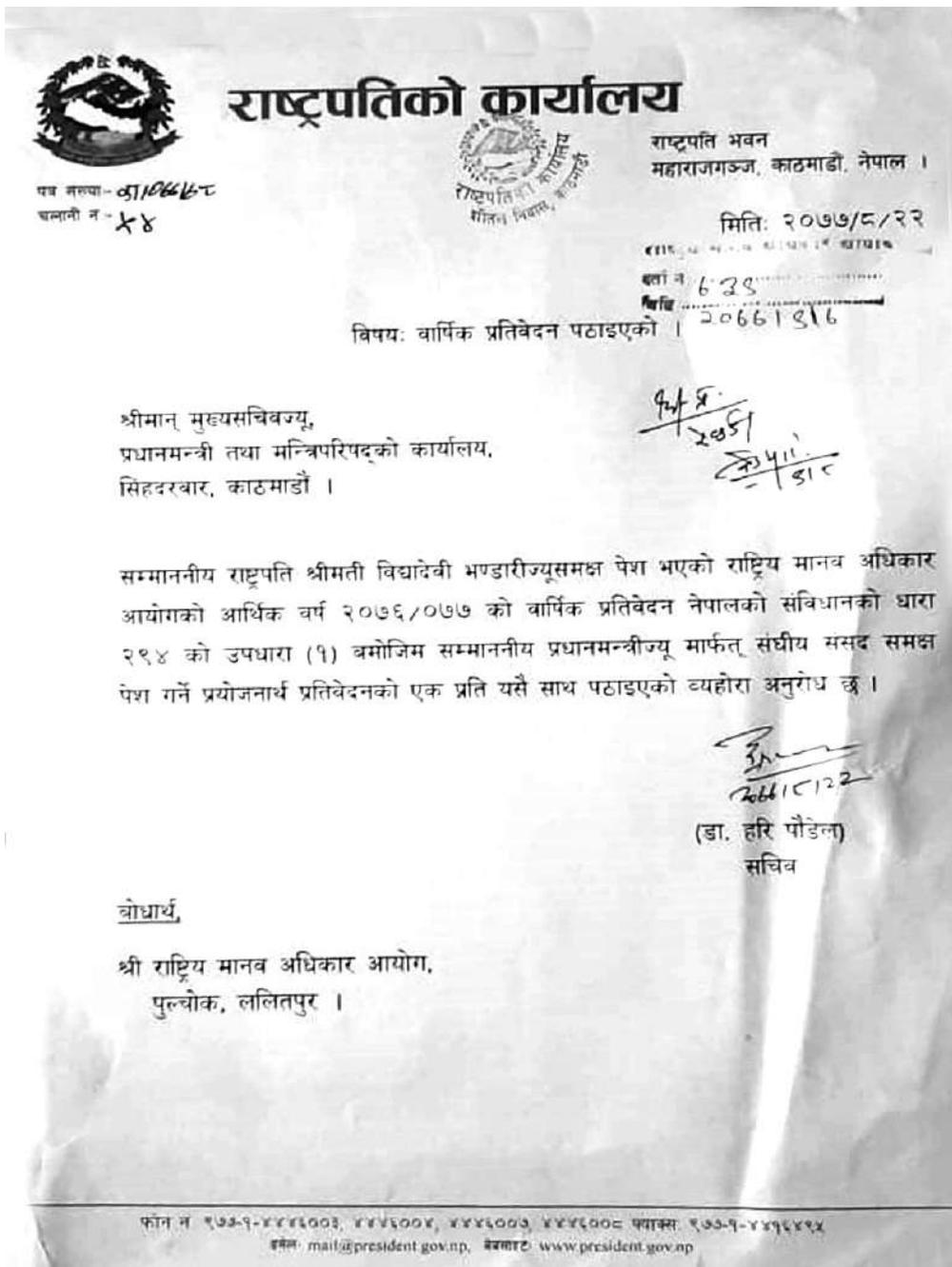
Bed Bhattarai

Secretary

December 7, 2020

Annex 2

Letter received from the Office of the President



(English version of the Letter)

**Office of the President
Presidential building
Maharajgunj, Kathmandu, Nepal**

R.N. Ka/077/078

D.N. 54

Date: December 7, 2020

Subject: With regard to the Annual Report;

To,

The Chief Secretary,

Office of the Prime Minister and the Council of Ministers

Singhdurbar, Kathmandu,

The annual report of the Fiscal Year 2019/2020 of the National Human Rights Commission of Nepal submitted to the Rt. Hon. President of Nepal Mrs. Bidhya Devi Bhandari has been forwarded in accordance with the Article 294 (1) to be presented at the federal Parliament, through the Prime Minister.

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Dr. Hari Poudel

Secretary

CC: National Human Rights Commission of Nepal

Harihar Bhawan, Pulchowk, Lalitpur

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