Chapter 2

2.2 State and Human Rights Executive
Background

Nepal began moving towards Federalism in 2015. Nepal has 761 executive units under the federal arrangement – one federal executive, seven provincial executives and 753 local governments. Four years of the federalization process has pointed out issues related to effective coordination, and lack of a uniform understanding of the authorities of the three tiers of government as specified by the Constitution. There were also misunderstandings related to sharing of resources between the three levels of government.

The Provincial Governments have begun undertaking executive functions, most importantly annual budgeting. The disbursements in the budget in the first year of local rule was around one-fourth. Their budgets for FY 2019/20 focus on economic development and social justice. The Constitution grants all levels of government authority to exercise executive powers through the Council of Ministers (Federal), provincial council of Ministers, and through executives at the municipal levels. By extension, all of these governments are also responsible for protection of Human Rights.

All three levels of government were unable to fulfil the general expectations of stability-supported development and prosperity, that was the election platform of the parties in power (the former Maoist Center and the Communist Party of Nepal Unified Marxist Leninist that merged forming the Communist Party of Nepal after the election). In July 2019, the Prime Minister introduced performance targets for ministers, who then entered similar agreements with their secretaries at the ministries, but there were no marked changes in government performance in the first four months. None of the ministries met their performance targets in the first trimester.

Election to vacant positions in the House of Representatives, Province and Local Legislatures and Councils were held on 30 November 2019. The elections were largely peaceful. The elections returned representatives from the Communist Party of Nepal (CPN, the ruling party) and Nepali Congress (NC, main opposition). The government did not begin the process of amending the Constitution, as agreed with some plains-based parties that had supported it. It has not also publicized a report on the incidents in the Terai-Madhesh (plains) in 2017 by a high-level investigation commission headed by former Justice Girish Chandra Lal. This was also a demand of political parties based in the plains. Further, even though the National Human Rights Commission (NHRC) did make a report on the Madhesh incident in Saptari District in 2017. It was done by an investigation team led by Tahir Ali Ansari, former justice. The provincial government of Province 2 had formed its own investigation committee accusing that the NHRC report was not factual and had failed to bring those guilty under the purview of law.

In 2019, the federal government imposed a ban on the Nepal Communist Party led by Netra Bikram Chand or the CPN (Biplav). Supporters of NCP had set off explosives near the Ncell (private telecom service provider) at Nakkhu, Lalitpur district, and in many parts of the country. The NHRC has called on the NCP (Biplav) not to organize strikes as they affect citizens’ rights to movement, education, health and other basic rights.

2. Dr. Khimlal Devkota, Atmanirbhar banne parikshya, Kantipur, 16 Ashwin 2076
3. Kantipur, Karyasampadanka char mahina, 13 Mangsir 2076
5. Government of Nepal, Council of Ministers, decision of 28 Falgun 2075.
The government enacted some laws to ensure the fundamental rights of citizens but delays in formulating the regulations and directives continued to prevent people from fully exercising their rights. The government faced opposition by stakeholders to some of the draft laws related to Media and the Information Technology Bill. The stakeholders said the laws reflected attempts to constrict the Right to Freedom of expression granted by the Constitution. Stakeholders have also criticized the government of authoritarian tendencies following its attempt to introduce a new National Human Rights Commission (NHRC) Act, which they said attempted to further constrict the autonomy and authorities.

**National Human Rights Action Plan**

The Human Rights Action Plan of the Government of Nepal for (2015-2020), ended in July this year. However, there was no monitoring and evaluation of the plan, which, however, was done by the NHRC. The action plan period ended without making any changes in the federal arrangement vis-à-vis its authorities during the planned period. There has also been no consultations with stakeholders on the plan for the period after FY 2019/20 and a new plan was not put in place six months after end of the planned period. However, there has been discussions of the 79-page draft that was issued by the Office of the Prime Minister and Council of Ministers (OPMPC). It incorporated 20 areas related to Human Rights, including education, health, human development areas, Child Rights, protection of targeted populations, empowerment and development, Human Rights education, labor, employment and improvement of jails, transitional justice, and institutional reforms, among others. It attempted to convey the message that Nepal has fulfilled both national and international Human Rights responsibilities and that Nepal is serious about its commitments. However, failed to accommodate the recommendations made by the Treaty Committee at its Universal Periodic Review (UPR). The requirements for fulfilling the Sustainable Development Goals (SDGs) such as poverty and hunger, food security, quality education for all, end of gender-based discrimination, clean water and sanitation, safe human settlements, climate change and establishment of effective, accountable and inclusive institutions for access to justice have not been incorporated. The NHRC organized a consultation on the document and submitted a 46-point recommendation.

The Human Rights situation in Nepal can be improved only through coordination of the SDGs and the National Human Rights Action Plan, and effective implementation. The inability to combine the development plan with Human Rights, not holding regular meetings of the monitoring committee, and not discussing the plan with stakeholders remained as major challenges to implementing the plan.

**Right to Life**

The right to life is the most important right of human beings. Even though the right to a dignified life is included in the Fundamental Rights, its implementation is not evident. In 2019, 185 people (female 74) lost their lives in floods, heavy rain and snowfall. Similarly, another 39 (female 19) were killed in windstorms in Bara and Parsa districts. According to Nepal Police data, there were 5,754 suicides in 2019/20, an increase over 5,316.

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7. NHRC decision dted 29 Mangsir 2076.
8. Constitution of Nepal 2015, Article 16
in the preceding year\textsuperscript{9}. An environment of fear and terror caused by blasts set off by the CPN (led by Netra Bikram Chand or Biplov) also infringed the rights of people live. Nepal has about 10,000 vehicular accidents every year that kills about 2,000 people annually; this annual statistic is alarming and even higher than the lives of people lost in Nepal’s 10-year conflict\textsuperscript{10}.

The Global Burden of Disease report lists road accidents as the 7\textsuperscript{th} major cause of deaths in Nepal. According to the United Nations Economic and Social Council (2018), in 2013 Nepal lost 0.8 per cent of GDP or Rs 14 billion which is 0.8 per cent of the total GDP. More than 25 per cent road traffic accidents occur due to the recklessness of the drivers, 30 per cent due to mechanical problems and, fast driving, narrow and curves on roads, old vehicles and overloading are other major causes of road traffic accidents. The data of the Nepal Police for fiscal years 2013/14 said 1787 lives were lost and 11,395 were injured. Similarly, in FY 2015/16 the deaths were 2006 and injuries 12,440. Data for FY 2018/19 said 2541 people lost their lives and 12,391 were injured.

**Transitional Justice**

Nepal’s 10-year conflict ended with the Comprehensive Peace Accord (CPA) between the Government of Nepal and the then Communist Party of Nepal (Maoist) on 21 November 2006. The CPA has addressed Human Rights Violations during the conflicts and International Humanitarian Law. Even though two commissions were formed for addressing conflict-era events, both the Commission on Truth and Reconciliation and Commission on Persons Disappeared during the conflict were unable to function effectively even after four years of formation. Thereafter the law was amended to ensure that the commissions remained functional while the terms of the officials changed\textsuperscript{11}. A committee for recommending new officials to the commissions was formed headed by former Justice Om Prakash Mishra following the end of the term\textsuperscript{12}. Fifty-seven candidates had applied for the vacant positions, but the committee failed to make recommendations in 2019.

Establishing truth, justice and reconciliation of the victims of Human Rights Violations during the conflict should have been addressed as a priority for concluding the peace process. However, the leadership was not serious about this and failed to keep the victims in the center of the peace process. As a result, the victims have been unable to find peace or get justice even after 13 years of the CPA.

As a result, four international Human Rights organizations – Amnesty International, International Commission of Jurists, Human Rights Watch and Trial International had concluded that Nepal had failed to fulfil its commitment to ensure justice to violations of Human Rights during the conflict. Their concerns are largely related to the delays in forming the TRC and the non-transparent mechanism for appointing the commissioners\textsuperscript{13}. Organizations representing the conflict-affected people have been demanding the formation of a commission that is independent, autonomous and meets international standards in accordance with the order of the Supreme Court of Nepal and recommendations of the NHRC\textsuperscript{14}.

In a sense, it is already late to address issues related to sustainable peace

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\textsuperscript{9} NHRC Annual Report 2075/76, page 12
\textsuperscript{10} Secretariat of the Council of Ministers, Decision dated 14 Magh 2075
\textsuperscript{11} Secretariat of the Council of Ministers, Decision dated 14 Magh 2075
\textsuperscript{12} Kantipur daily, 12 Chait 2075
\textsuperscript{13} The Kathmandu Post, 30 July 2019
\textsuperscript{14} Sajha Chautari, Press Release 5 Ashoj 2076
and justice in Nepal. On 27 February 2019, Nepal’s Foreign Minister Pradeep Gyawali had said that the victims’ issues would be addressed through a transitional justice mechanism, consultations with victims and by formulating a law in accordance with the court order in an address in Geneva. But the grievances remained unaddressed in 2019.

Rule of Law

Human Rights and Rule of Law are intertwined. No one is above the law and the law provides equal protection to one and all. Impunity, politicization of crime and political protection of criminals have been major challenges in ensuring Rule of Law in Nepal over the years. This year police arrested some politically associated individuals on various charges. For the first time in Nepal’s history, the speaker of the Lower House of Parliament was arrested for sexually abusing an employee of the parliament secretariat.

The District Court in Kathmandu was reviewing the case. The NHRC has formed a high-level team the fairness of the trial proceeding. Police also arrested a member of parliament and a central committee member of the Nepali Congress Party on alleged involvement in a 2007 blast in Rautahat District a day before the Constituent Assembly election. The case is under review at the District Court in Rautahat. Similarly, the Kathmandu District Court issued a warrant against Parbat Gurung, a member of parliament of the ruling Nepal Communist Party in a case involving murder. The case was under review at the court. These representative events suggest some improvement in Rule of Law. However, there were challenges in delivery of transitional justice caused by the vacant positions at the commissions and inability for appoint replacements, in terms of the implementation of the recommendations of NHRC, refusal to register first information report (FIR), and failure to bring violators of Human Rights to justice.

The state is responsible for ensuring law abidance. The actions of police to threaten the security guard at the office of NHRC in Province 5, surrounding the office and pressurizing the head of office after dark, are actions that are against Human Rights and Rule of Law. Additionally, the failure to arrest those involved in the murder of Nirmala Pant of Kanchanpur even after two years and the extrajudicial killing of Kumar Paudel of the banned CPN (Biplov) exemplify the challenges in Rule of Law. There were also repeat arrests of cadres of the CPN (Biplov) after court orders on habeas corpus writs by police. These re-arrests of individuals after the writs – sometimes from the court grounds – and in contravention of court orders are some telling examples of the state of Rule of Law.

The Rule of Law situation can improve only after resolution of transitional-period cases and guaranteeing justice to victims and implementation of recommendations made by Committees of the United Nations Treaty Bodies and that of the UPR reviews by the UN Human Rights Council, the NHRC, and decisions of the courts.

Rights against Torture and the Situation of Inmates/Detainees

Nepal’s Constitution guarantees against torture as a Fundamental Right. Nepal is party to the UN Convention against Torture (CAT) 1984 and this

15. NHRC Annual Report 2075/2076, page 16
16. Kantipur, 4 Kartik 2076
17. NHRC, Press release, 17 Ashoj 2076
18. NHRC, Press release, 3 Kartik 2076
19. Constitution of Nepal 2015,
mandates it to institutionalize effective legal mechanisms to end torture. Nepal has the courts and the NHRC to review complaints of torture. The jails and detention centers are regularly monitored by NHRC, the Office of the Attorney General (AG) and Human Rights organizations. However, Nepal has yet to put in place a monitoring mechanism as required by the UN Convention.

The office of the AG monitored 37 jails in 2019 and said that inmates and detainees were kept at the same place and had almost double the number of people compared to capacity. It had monitored the jails using a set of indicators including structure, capacity, air circulation, quality of roofing, sanitation and cleanliness and security arrangements. It found that there were 7,243 inmates in the jails monitored whose total capacity was 3,860. It also said that the distance of jails from courts had made it difficult to make inmates available for hearings, meetings with lawyers. This had also added difficulties for family visits.

The monitoring of 37 detention centers at 52 police offices and at the Kasara in the Chitwan National Park found the ventilation and lighting satisfactory, inadequate bathrooms and toilets and lack of beds. It also found that lack of vehicles had made it difficult to transport inmates to hospitals and courts. Further, the report said that the placement of health workers at jails and medicine supply were inadequate.

Further, the lack of visiting rooms had infringed privacy in meetings of inmates with family and lawyers, and many jails had no facilities for skills training, educational activities. There was also lack of clarity of the law on senior citizens particularly on decision making to release them in accordance with the law. The staff at the jails lacked motivation and were inadequate in numbers for meeting their legal obligations towards inmates.

Even though there has been a decline in torture, the NHRC still receives complaints of torture by police. The Banke District court had even issued an order to police barring them from physical and mental torture of Dan Bahadur Fathera and family after his release on bail. Other challenges include the lack of independent monitoring mechanism to prevent torture, inadequate security arrangements for victims and witnesses and the inability of submitting timely reports to the CAT committee and non-implementation of its recommendations. Further, health check-ups at arrest and upon release also remain to be enforced at the jails.

**Right to Food**

Right to Food can be assured when production, storage and supply arrangements are sound, and the citizens have capacity to procure good quality food. It is the state’s responsibility to ensure that the citizens have access to nutritious food as required for maintaining health and wellbeing. According to the World Health Organization (WHO), every individual requires three meals a day. Similarly, according to the UN Food and Agriculture Organization (FAO), food intake of less than 1800 calories per day is a situation of hunger.

According to a report of a non-governmental organization, Nepal ranked 73<sup>rd</sup> out of 117 countries in terms of hun-

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20. NHRC Press release, 4 Kartik 2076
21. Annapurna Post, 22 Kartik 2076
22. NHRC, Press release, 9 Baisakh 2076
23. NHRC, Annual Report, 2075/076, page 16
ger. Global indicators classify hunger in five categories and Nepal with 20.8 points is categorized as a country with ‘serious’ hunger. One reason that has placed Nepal in this category are the effects of climate change on food production. Increasing population combined with different human and environmental factors resulting from climate change reduced food production making food security a major challenge\textsuperscript{24}. Nepal’s Food Security Act 2075 had provided for regularly updating records on individuals, families, communities and regions facing starvation or risk of starvation, and making arrangements of food for reducing the risk, and its distribution. However, the law remains to be effectively implemented.

About seven per cent of people in high mountain regions of the Karnali Province face high food security risk\textsuperscript{25}. Similarly, another 28 face risks of obtaining adequate food, according to the report of the Karnali Province. Likewise, the Musahar communities of the eastern plains face high food insecurity.

Food insecurity affects marginalized communities such as poor farmers in general and people from the Chepang, Raute, Dalit, Badi, Haliya, and Bote social groups. However, the state took no initiative to address this risk through specific policies, plans or the budget in 2019.

About 60 per cent of the people of Nepal are directly or indirectly dependent on agriculture. FAO says that a food crisis is most challenging among the impacts that climate change has caused. The major challenges of ensuring adequate food supply are declining production of indigenous species, lower soil productivity owing to excessive use of chemical fertilizers, and gradual replacement of local seed varieties.

Right to Education

Nepal has enacted laws to ensure the constitutional Right to Education. It has also made education a responsibility of all three tiers of governments\textsuperscript{26}. The government continued with the annual school enrolment campaign in 2019, and also issued the National Education Policy\textsuperscript{27}. In 2019/20 Province 3, introduced a program of placing one nurse at 119 of 221 schools in its jurisdiction\textsuperscript{28}. Similarly, the government initiated a program to provide sanitary pads free of cost at all schools as a measure to increase enrolment of girls. However, despite the public investment in education there is still a wide gap in education quality at private and public schools, low improvement in education quality at public schools, and there still are reports of corporal punishment at school.

Even though education up to Grade-10 level is free, many schools in Nepal continue to collect payments from guardians under one pretext or another including for teaching in the English language at community schools. Higher education in the sciences is still very expensive and in 2019, students at medical colleges spent a larger part of the year protesting high fees that were charged by colleges in contravention of the government ceiling.

Lack of effective monitoring at community schools and low accountability of public officials are some reasons for deteriorating quality of public schools. In effect, two categories of citizens are being produced – public and private school graduates – that gives continuity to the inequalities because good quality education still remains beyond the reach of children from marginalized families, conflict

\textsuperscript{24} Himal Khabarpatrika, Poush 2076
\textsuperscript{25} Kantipur, 16 Poush 2076
\textsuperscript{26} Constitution of Nepal 2015
\textsuperscript{27} Government of Nepal. Education Policy, approved by decision dated 18 Kartik 2076
\textsuperscript{28} Gorkhapatra, 32 Shrawn 2076
victims, differently abled children, and street children, among others.

Right to Health
The Government of Nepal has adopted the National Health Policy 2075, and the National Health Strategy, 2076\textsuperscript{29}. The government gave continuity to its policy of supporting treatment of people with severe ailments like cancer, kidney diseases and Alzheimer’s, and continued programs on awareness building on nutrition, distribution of vitamin A, and polio drops to reduce mortality rates of infants and mothers. However, it was unable to effectively manage an outbreak of Dengue that was reported in 54 districts. The government has also declared Nepal as an Open Defecation Free (ODF)\textsuperscript{30} nation, the effects of which was limited in a country that lacks adequate drinking water and sanitation. So far, about 5.9 million toilets have been built under the ODF campaign that began in 2068.

Right to Housing
Housing is a right related to security, health and privacy of all individuals and has been incorporated as a fundamental right of all citizens\textsuperscript{31}. However, the government policy of providing Dalits without shelter a place to stay was not implemented in 2019.

Nepal has a large number of people who do not own land and they are ones who do not have proper housing. This year 10,385 households were displaced by landslides, floods and inundation\textsuperscript{32}. The government gave responsibility of building shelters for the affected to the Nepal Army. The government also provided relief to people affected by windstorms on 6 June 2019\textsuperscript{33}. However, the implementation of the program to provide two-room houses to those without shelter in Province 2 was largely ineffective\textsuperscript{34}. The Karnali Province has prepared a directive for building integrated settlements. The purpose is to assess risk of scattered houses and build integrated settlements to house the population.

Rights of Migrant Workers
A large number of Nepali citizens live and work in many South East Asian and Persian Gulf countries, but the country is not a party to the international Convention (1990) on the protection of rights of migrant workers and their families. The government encourages and facilitates migration, and Nepal has benefitted from the knowledge and skills of returning workers, and remittances they send back. However, the government has not made adequate efforts to ensure rights of migrant workers and their families. As result, migrant workers are continuously cheated by agencies sending them abroad and also by the companies at destination countries. The NHRC signed an agreement on the protection of rights of migrant workers with the Human Rights Commission in Malaysia\textsuperscript{35}, a major destination country. It has also made a 26-point recommendation to the Government of Nepal on protecting the rights of migrant workers\textsuperscript{36}.

\textsuperscript{29} Government of Nepal, Decision of 15 Poush 2076
\textsuperscript{30} Gorkhapatra, 13 Asoj 2076
\textsuperscript{31} Constitution of Nepal 2015, Article 37 (1)
\textsuperscript{32} Government of Nepal, Council of Ministers, Decision 29 Ashad 2076
\textsuperscript{33} Government of Nepal, Council of Ministers, Decision 29 Jesth 2076
\textsuperscript{34} BBC Nepali Service on Hamro Patro 17 Poush 2075
\textsuperscript{35} NHRC, Press release 28 Kartik 2076
\textsuperscript{36} NHRC, Annual Report 2076/076, page 393
Child Rights

Nepal provides constitutional protection of Child Rights. However, despite sound laws and policies, the rights of children have not been realized for lapses in implementation. Access to education remains difficult owing to poverty, remoteness and inadequate efforts of schools to retain students. The situation of girl children from marginalized communities is worse compared to male children. And as this report shows, there has been an increase in sexual violence of children.

One province has made a special effort to support the education of girls. In Province 2 the government has launched a directive for educating and protecting girls under which it plans to support them with insurance, bicycles and by making community schools more girl-child friendly. Similarly, Karnali Province has launched a program on the security of girls, under which it will open bank accounts for all girls born after July 2019 and support them by working to end discrimination against daughters and to assure them of higher education by depositing Rs.5000 in their accounts every year.

Rejecting female babies in the womb and discrimination of daughters even within many families makes it difficult to grow up as a daughter in Nepal. The main reasons for this are patriarchal social and cultural values, poverty and illiteracy. Despite this, according to the United Nations Children’s Fund (UNICEF), Nepal has made remarkable progress in mother and child health, and succeeded in reducing infant mortality. However, challenges such as violence against children, particularly sexual violence against girls, child marriage, and menstrual taboos like having to live in a secluded hut (Chhaupadi), and leaving children to wander the streets still remain. The children from marginalized, Dalit and poor families are at higher risk. Another challenge in child rights is corporal punishment that is still reported at schools. In 2019, the government handed over assets, responsibilities and staff of the Central Child Welfare Committee and district committees to local child welfare committees.

Women Rights

Nepal’s Constitution and laws do not discriminate against women, but women do not have equal access to property, health, education, political representation and employment opportunities. The situation is worse for women in rural areas, even though they make major contributions to the household economy through agriculture, animal husbandry, and as household workers and managers of food and other supplies. They also work as caregivers in families with small children, the elderly and the sick. Their involvement in development activities has also expanded following the government policy requiring mandatory representation of women in user groups.

There has been increasing representation of women in different state organs, but the representation does not reflect their numbers in the population. Further, the same ~33 per cent – representation does not reflect in the ranks of political parties, and women have yet to...
be appointed or elected to leadership positions within. The Constitution guarantees 33 per cent representation of women, and this has resulted in having women make up a third of the membership in federal and provincial legislatures. Further, 41 per cent of elected representatives at the local level are women. However, the representation of women in the Council of Ministers and some other state organs falls far short. The access of women is low in positions where there are no mandatory provisions requiring women’s representation. There are requirements of ensuring inclusive representation in different executive committees of political parties. There is also a legal provision requiring one-third women’s representation in all political party committees. In 2019, the central committees of major political parties CPN, Nepali Congress, Samajbadi Party and Rashtriya Janata Party has 17 per cent, 20 per cent, 20 per cent, 12 per cent and 16.3 per cent representation of women, respectively.

Despite some improvement in the status of women in Nepal, there has also been an increasing trend in violence against women. There were 1131 reported incidents of violence against women in 2016/17, 1480 in 2017/18 and 2,232 in 2018/19. This is an indication that many have decided to report incidents irrespective of social considerations that prevented them from doing so in the past. This is also evident in INSEC’s Human Rights Yearbook 2019. Nepal’s women continue to suffer discrimination, exploitation and injustice and have also been victimized by many traditional social practices.

Dowry, child marriage, beatings, domestic violence and sexual violence are some regularly reported acts of violence against women. In 2019 the government introduced a directive for a new program, the President’s program on Women Empowerment and Livelihood.

**Right against Racial Discrimination**

Nepal’s Constitution bars caste-based discrimination and untouchability and has made it punishable by law. But caste-based discrimination has continued in villages and urban centers and even in foreign countries with sizeable Nepali diaspora. Even members of parliament and local government councils have had to endure caste-based discrimination and untouchability. The NHRC report records various types of discrimination faced by Dalits ranging from inability to rent living space to denial of access to Hindu temples and even offensive comments on social media platforms.

**Natural Disasters**

Heavy rains, landslides and flooding caused the deaths of 51 people in Nepal in 2019. The whereabouts of another 31 remained unknown, 28 were injured and 10385 households were displaced. The government responded with humanitarian support, including relief and emergency medical treatment, among others, and coordinated rescue and relief operations with the provincial and local governments. However, as in earlier years, it was unable to provide warm blankets and clothes to people in the plains before the cold waves. The government gave

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43. Constitution of Nepal 2015, Article 269
44. Political Party Act 2073, Section 15 (4)
45. Kantipur, Editorial 3 Mangsir 2076
46. Kantipur, 1 Bhadra 2076
47. NHRC, Annual Report, 2075/076, page 25
49. NHRC, Jatiya Bhedbhav tatha Chuwachut Biruddha Adhikarko abastha Anugaman Pratibedan 2076, (monitoring report), page 49
50. Government of Nepal, Council of Ministers, Decision of 29 Ashad 2076
51. Nagarik Dainik, Editorial, 3 Poush 2076
the Nepal Army responsibility for building houses for people whose homes were damaged by the windstorm of 31 March 2019 in Bara and Parsa districts52.

Earthquake Reconstruction and Recovery

The 2015 earthquake in Nepal had caused 8790 deaths and injured 22300 people. The earthquake affected about eight of Nepal’s 30 million people53. The National Reconstruction Authority (NRA) had identified 810690 recipients for support for rebuilding houses and of them it had concluded agreements with 722,10154. The NRA reviewed 42,742 grievances and increased the number of housing support recipients by 4,644. It has also identified 2609 recipients for retrofitting support and has identified two locations for developing integrated settlements in Rasuwa and Makawanpur districts. According to the NRA, out of 762,307 housing grant recipients, 612,935 were in different stages of reconstruction of which, 50 per cent had completed the construction of their houses in 2019.

Rights of Senior Citizens

The Constitution guarantees rights to dignified life and social security to senior citizens55. In 2019, the government decided to provide all senior citizens a monthly allowance of Rs. 3,000 as social security allowance and to provide them health insurance of Rs.100,000 free of cost56. The NHRC has prepared a situation report on senior citizens and had submitted 77-recommendations to the government on the bill on senior citizens and for improving their situation.

Rights of People with Disability

There are 513,000 persons with disability in Nepal, which according to the 2011 Census is about two per cent of the population. People with disability say this number is underreported because people tend to hide disability. Their numbers according to WHO data is almost five times this number. Because of the problem with records, it is likely that a large number of disabled people are underserved in terms of support services57.

Even when the Constitution guarantees the rights of the disabled the implementation is weak. According to UNICEF, one third children between 5-12 years of age remain out of school for lack of disabled-friendly infrastructure and proper targeting of scholarships.

Further, only about half of the people in government records have received their disability Identity Cards. So far, only 127744 people with disabilities have received the support of Rs.100,000 from the government. Also, only one out of eight people with disabilities have received support materials. From 2019, the government began giving Rs. 3,000 to people with full disability, and Rs. 1600 to people with serious disability58. The NHRC recommendations submitted to the government on wellbeing of people with disabled persons remained unimplemented.

The Proposed Bill on Media and Information Technology

Stakeholders have objected the provisions in the Information and Technology Management Bill tabled in the parliament by the government saying
that it curtails the fundamental rights ensured by the Constitution. The government has prescribed a fine up to Rs. 1.5 million or five years imprisonment or both for individuals who post online contents to sexually harass, bully or defame others. NHRC has also revealed its concern as the Bill saying that it may curtail the freedom of opinion and expression.

The provisions of the government’s proposed bills -- Information and Technology Management Bill, Media Council Bill and the NHRC related Bill – seek not only to curtail the freedom of expression but even suggest forming a judicial body to hear complaints in disregard to the established principles of the independence of judiciary. The idea of forming a judicial body to hear Information and Technology related complaints by persons nominated by the executive has led to fear that the agency will but be just a shadow of the executive.

**Control of Corruption and Good Governance**

The corruption control and good governance are directly related with Human Rights. Nepal was in 122\textsuperscript{nd} place in 2017 and in 124\textsuperscript{th} place in 2018 in Transparency International’s corruption perception index. Nepal obtained 31 of the minimum 50 points and this score is considered an indication of the prevalence of corruption.

Nepal’s anti-corruption body, the Commission for Investigation of Abuse of Authority (CIAA). It had registered 5000 thousand complaints in FY 2018/19. Policy corruption at the political level has not improved and situation of accountability, transparency and integrity remain unsatisfactory. Accessing public services still remains a major hurdle for citizens. Further, corruption at the local level has been on the rise. The act related to the facilities of the officials and the members of the local bodies did not provision for secretaries, assistants and press advisors for the people’s representatives, but the representatives have been appointing them and providing them facilities. Often the appointees have been their own relatives or cadres of the political parties.

**The Plight of the Sugarcane Farmers**

The sugarcane farmers who were not paid by the sugar mills for the cane supplied organized a protest at the end of this year demanding government intervention. The government responded by concluding a written agreement with sugar mills for clearing the dues. Sugarcane farmers switched to this crop because it promised higher incomes compared to other crops and non-payment of dues on time had made their lives difficult. The companies began making payments after a directive from the Ministry of Home Affairs.

The business sector has responsibility to respect and protect Human Rights and provide remedy as stated by the UN Principles of Business and Human Rights 2011. This had prompted the NHRC to monitor the situation and issue a press release on the problem.

**Effectiveness of Mechanisms Working on Human Rights**

The NHRC is an independent and self-governing constitution-mandated body that receives complaints, undertakes investigations and monitors Human Rights violations. In early 2019 the President appointed chairpersons bodies formed for supporting inclusion such as the National Inclusion Commission, Madhesi Commission, Tharu Commission and Muslim Commission but officials of the National Women’s Commission, National Dalit Commission and the Indigenous Peoples’ Commission were not appointed\textsuperscript{59}. The members of these commissions

\textsuperscript{59} The Kathmandu Post, 6 Magh 2075
were not appointed in end-2019. The retention of these commissions is to be reviewed by the federal parliament after 2025 but they were not constituted in December 2019. The Constitution specifies the role and responsibilities of only three commissions – women, Dalit and inclusion while that of other commissions is to be determined by law. The commissions were expected to monitor the exercise of rights by people belonging to marginalized and excluded communities by monitoring the situation and making recommendations to concerned government agencies.

National Human Rights Commission

The NHRC is an A-category National Human Rights Institution (NHRI). The constitutional body, in its Annual Report in 2018/19, it said impunity remained in the country as a result of the government’s failure to implement its recommendations. It said that the overall Human Rights situation was not satisfactory, and that there had been no progress towards the government’s commitment to conclude the transitional justice process. Other problems mentioned in the report were inability to secure expected support from government and the inadequacy of laws.

On 20 March 2019, the Council of Ministers approved the draft bill for amending the National Human Rights Commission Act. The NHRC has expressed displeasure with the draft saying that infringes on its independence and autonomy, limits its work to the center, and gives discretionary powers to the Attorney General to take any case forward, among others.

The NHRC report says people from different social groups, women, Dalits, marginalized communities, indigenous peoples, sexual minorities, senior citizens and those affected by natural calamities were unable to enjoy their Human Rights owing to inadequate government attention. It also points to the unclear jurisdictions of other constitutionally mandated commissions and the NHRC. A NHRC proposal on its organizational structure in the federal polity was submitted to the Office of the Prime Minister and Council of Ministers for approval on 22 June 2017. It had not been approved in 2019.

In 2019, NHRC registered 232 complaints. It investigated 600 complaints (including those on file) and decided upon 825. Its central office that was damaged by the 2015 earthquake remains to be reconstructed. Among 810 major recommendations made by the NHRC to date, 12.5 per cent have been fully implemented, 48.3 per cent partially implemented, and 39.2 per cent remain under consideration. In 2018, NHRC began work to create a record of officials who had not implemented its recommendations to make the names public, which was not finalized in 2019.

National Women’s Commission

The government did not make appointments to the National Women’s Commission in 2019 and this affected the ability of the institution to make recommendations, and on policies on protecting women’s rights. The institution has an important role in ending violence against women and its 24-hour hotline (No. 1145) had been effective way for women at risk to seek assistance. INSEC’s data for 2019 shows an increasing trend in violence against women and the government’s inability to appoint the commissioners contradicts its commitments to ending gender-based violence and promoting equality.

60. Constitution of Nepal 2015, Article 265
61. NHRC, Annual Report 2075/076, page 78
National Dalit Commission

The Constitution grants the National Dalit Commission the status of a constitutional body. However, the government had not constituted the commission in 2019, even after four years of the promulgation of the Constitution. The Constitutional Council had advertised the positions to the commission a year ago but did not make appointments in 2019. It is an irony that the commission whose continuity is to be reviewed in 10 years after the promulgation of the Constitution was not constituted earlier. This also contradicts the commitment of the ruling party to ending discrimination and ending untouchability.

National Muslim Commission

The President appointed the chairperson of this commission in 21 March 2019. However, its activities have been limited to recommending Muslim candidates to the Public Service Commission because the government had not appointed all commissioners and had not provided it with adequate staff and budget for carrying out other activities under its mandate.

Madhesi Commission

The President appointed the chairperson of the commission on 21 March 2019 at the recommendation of the Constitutional Council, but other commissioners were not appointed. Its work has been limited for lack of both resources and staffs.

Tharu Commission

The chairperson of the commission was appointed by the President on 21 March 2019. However, other commissioners were not appointed. Its work has been limited by lack of resources and staffs.

National Inclusion Commission

The President appointed the chairperson of this commission, but the remaining members remained to be appointed, limiting its effectiveness. This is another commission that comes up for a review 10 years after the promulgation of the Constitution.

Conclusions

The executive has largely been unable to deliver its election commitments and its performance in the by-elections in 2019 underscore the poor performance62. Even though it won the largest number of seats, its performance did not compare to the results of the election in 2017/18. Federalization has remained a major challenge of the government, particularly ironing out the jurisdictional issues and assigning staff at different levels of government.

The government was unable to enact and prepare laws and regulations for fulfilling the fundamental rights of citizens63. The NHRC had recommended 20-changes in a draft law on fundamental rights. Further, the implementation of the Human Rights Action Plan that was to have been initiated in July 2019, had not been announced in end-2019. While there was some progress in bringing some political leaders under the preview of the judicial process, the NHRC has noted that impunity remains to be effectively addressed. The Commission also expressed concern over repeated re-arrests of cadres of the banned CPN (Biplav) that has been carrying out violent activities across the country after courts ordered their release following habeas corpus writs.

Constitutionally mandated commissions on inclusion, women, Dalits, Muslims, Madhesis, Tharu and inclusion remained largely ineffective owing to the

62. Nagarik Dainik, 21 Mangsir 2076
63. NHRC, Press release, 3 Poush 2076
executive’s inability to appoint all office holders. This is a major lapse, given that continuity of some of these commissions were to be reviewed in 10 years.

The federalization process has remained slow. Even though the constitution has separated authorities of different levels of government, staffing and clarification of jurisdictional boundaries remained unresolved in 2019. This had severely affected the effectiveness of local governments that have responsibilities for ensuring many basic rights including welfare of women, Dalits, senior citizens, people with disabilities, among others.

There was no evaluation of the government’s Human Rights action plan after it completed its five years. The NHRC had recommended 46-suggestions to the new plan but it had not come into effect in end 2019. Further, the executive lagged behind in terms of the implementation of orders of the Supreme Court and the recommendations of the NHRC.

The government has drafted a number of laws that relate to space for civil society work – including those governing media freedoms, information technology, NHRC Act, the law relating to NGO registration, among others – which have met with opposition from stakeholders. All of these bills if enacted as drafted, which is not unlikely given the majority of the ruling party in parliament, can severely curtail the space for media, Human Rights defenders and civil society organizations.

The overall situation of Human Rights in Nepal in 2019 was not satisfactory as it was marked by increasing tendencies towards control as suggested by some new laws and draft bills.

**Recommendations**

- Enact laws and prepare regulations and directives for ensuring fundamental rights of citizens in consultation with stakeholders.
- Prepare a strategic plan for ensuring fundamental rights of citizens and ensure adequate policies and budget for the implementation of its annual action plan.
- Increase awareness of Human Rights and fundamental rights.
- Form mechanisms for effectively managing transitional justice by amending the law in compliance with the order of the Supreme Court, recommendations of the NHRC and international standards.
- Ensure effective implementation of recommendations of the Universal Periodic Review and Treaty Committees.
- Form a mechanism for effective implementation of NHRC recommendations as non-implementation raises questions of the accountability of the state both nationally and internationally.
- Reform criminal investigation practices to make it more scientific for strengthening Rule of Law.
- Enhance the physical infrastructure of jails across the country.
- Ensure justice for victims of gender violence, caste-based discrimination and those subject to torture by punishing those found guilty.
- Build disabled-friendly infrastructure for ensuring easy access for people with disabilities at the local, provincial and federal levels.

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64. NHRC, Decision 29 Mangsir 2076