

Contrasting Commitments and Implementation

More than seven decades after the end of the Rana regime, Nepal is currently in its most progressive period of history from a constitutional, legal, and governance system vantage point. Nepal's Constitution has not only secured civil and political rights but has gone a step further with securing social justice ideals like economic, social, and cultural rights as fundamental rights. There are specialist constitutional bodies along with the National Human Rights Commission (NHRC) to hold the government accountable in its protection, preservation, and fulfilment of human rights. There has been a structured delegation of responsibilities to the federal, state, and local governments to effectively respect, protect and fulfill human rights. However, the public hasn't felt the positive effects of these fundamental rights mandated by the constitution and subsequent legislation.

The improvement of Nepal's political and civil rights status compared to the past isn't unanticipated. This is exemplified by statistics over violations to the right of life since the end of the armed conflict and the adoption of the new state structure. However, this inclusion of economic, social, and cultural rights as fundamental constitutional rights, following the country's political and social shifts, haven't been followed by a conceptual, honest, and legitimate attempt to implement these rights. Therefore, the primary goal of Nepal's human rights mission today is to honestly and expertly examine the government's conduct and hold the policies of government bodies to account.

The conviction that there would be effective decentralization and a healthy competition between provinces following Nepal's transition from a centralized governance model to federalism, is gradually diminishing. In accordance with advancing federal governance, there have been 59 pieces of legislation in Koshi, 58 in Madhesh, 56 in Bagmati, 78 in Lumbini, 64 in Gandaki, 53 in Karnali, and 66 in Sudurpaschim province. These include significant legislation adopted to tackle violence against women and caste-based discrimination, and legislation driven towards child welfare. There are three to nine pieces of legislation, among all provinces, which directly relate to human rights. However, provinces have been unable to demonstrate the preparedness needed to implement legislation. For example, the implementation of the "Dalit Empowerment Act 2019", adopted by the Madhesh province remains extremely inept even after over three years of its passage. The Dalit Empowerment Act 2020, adopted by the Sudurpaschim Provincial Assembly has an equally weak implementation record. It is clear that the implementation of these pieces of legislation, adopted without adequate consultation with stakeholders and homework, has further weakened because of government indolence.

Nepal has been drafting timely Action Plans to meet its commitments as relating to human rights benchmarks set by the United Nations and international treaties to respect, protect and fulfill human rights. Accordingly, the Fifth National Action Plan, drafted two years ago, is expiring in about a year and a half. However, there is yet to be effective implementation of these Action Plan's directives or a midway revision to revisit its provisions.

The Fifth National Human Rights Action Plan provisions for coordination committees for effective implementation at the state, district, and local levels. The Action Plan has envisioned such a committee as an effective mechanism to ensure implementation. These committees, as designed on paper, are intended to advise state governments on policy and analyze their human rights situation, in addition to coordinating the Action

Plan's implementation. However, these committees are inactive in almost all provinces. For example, although the Sudurpaschim province has a provincial coordination committee, this hasn't been followed up with subsequent committees at the district and local level. All provinces, except for Gandaki, are in a similar situation. Lumbini and Madhesh province are yet to even form provincial committees to implement the Fifth National Action Plan. The government's indolence over the Action Plan drafted to implement recommendations from the Universal Periodic Review (UPR), and 32 fundamental constitutional rights from the local level indicates the government's priorities. The absence of seriousness in all three arms of government and political parties on human rights has given a platform to attempts aiming to undermine past civil and political achievements.

It has been around a decade since human rights was established as one of the guiding principles of the state. However, the executive, legislature, and judiciary do not seem to be driven to put this into practice. This has meant that the Executive and bodies under it directed for the implementation of legislation, need to be placed under constant scrutiny by the media, independent intellectual groups, human rights organizations, and civil society. These organizations have played a remarkable role in raising Nepal's civil and political awareness and establishing public concerns over issues of social justice. During the democratic struggle, it wasn't surprising for their agenda to align with political parties protesting for political rights. However, as the role of political parties has shifted following political reform, civil society groups need to undertake new roles. This includes maintaining checks and balances on all three bodies of government, especially the executive. In the new socio-political framework after the 2006/07 political reform, Nepal's civil society and human rights organizations have been unable to efficiently fulfill their responsibilities.

Violence against women continues to be a major challenge in Nepal. As documented incidents in the Yearbook show, in 2023 alone, 109 women were killed by their husbands. Madhesh Province, which has a provincial gender equality policy, saw 45 women victimized in dowry related incidents, of which seven lost their lives. All seven provinces have examples of negligence and duplicity in enforcement of their policies and legislation.

This year marks the 75th anniversary of the Universal Declaration of Human Rights (UDHR). Adopted two years before the end of the Rana regime in Nepal, the timeless essence of this declaration continues to persist. The document's preamble, which urges people to refrain from thinking that revolution is the final recourse against tyranny and oppression, is especially relevant in the context of Nepal today. A state of revolution "as a last resort against tyranny and oppression" can be prevented when "human rights should be protected by the rule of law". The family of Aarati Shah had to protest in the nation's capital itself, voicing that Shah had been killed by her in-laws for dowry. Their experience of discrimination in the primary investigation and the justice process is a reminder of the preamble's harsh declaration. A widow's protest in the nation's capital to revoke the pardon given to her husband's murderer also highlights the uneasy status of criminal investigation and the judicial process. In another instance, let's evaluate Nepal's detention and prison system. The current socio-political ruling elite, most of whom came from enduring jail and prison conditions in the past, do not seem to be concerned over it now. The suspicious deaths of prison inmates, or the murder of inmates by police brutality failed to even become a topic of discussion at the federal or provincial legislatures.

The questions of human rights need to be extended in today's day and age, when there isn't an ongoing armed conflict, and people do not need to protest for civil and political rights. Today's concerns aren't around the right to life, but rather the right to a respectful and prosperous life. Today's government bodies need to be held accountable on their commitments to sustainable development pillars which encompass environment

and human development, peace, and cooperation. The question of environmental protection is inextricably linked with human rights and justice. Human rights defenders need to play an active role in cautioning environment offenders and protecting the public from the socio-economic impact of their actions.

Institutions established after decades of socio-political upheaval to preserve civil rights have had declining efficiency. In line with the country's needs and international practices, the revolution of 1990 had led to the creation of the National Human Rights Commission, Women's Commission, and the Dalit Commission, and the 2007 revolution had led to the creation of Indigenous, Madesh, and Muslim commissions, among others. However, most commissions seem to be unclear over their jurisdiction and are falling short of their responsibilities. The National Human Rights Commission (NHRC), designed to coordinate other commissions, seems to limit this responsibility on paper. The indolence of the NHRC on issues of transitional justice, closely monitored by the international community, isn't in line with the NHRC's history of standing up for fundamental human rights even during intense conflict in difficult circumstances. The commission, known for continually investigating violence on both sides during the conflict, needed to stand up post-conflict, nudging the government, legislature, and political parties to not draw up legislation that wouldn't take the concerns of conflict victims and stakeholders into account.

There cannot be disagreement that an accurate illustration of the country's human rights situation will help all three tiers of governments and their bodies to improve their standing and move forward with transparency. Human rights organizations should serve as honest partners to elected governments in their effort to preserve, protect, and defend human rights. This includes human rights groups holding governments to account when they fail to fulfil these obligations. This Yearbook, along with illustrating the current situation of human rights, also serves to propel further cooperation, accountability, and understanding.

The 32nd edition of the Human Rights Yearbook, published together in Nepali and English, has not only held up tradition, but also presented examples of acclimatization and dynamism. A Human Rights Violation Index has been presented this year, to better understand the comparative state of all seven provinces. We intend to continue our pursuit to make the yearbook further objective, compact, and useful, and work towards its longevity. We are aware of the national and international attention received by the Yearbook for its continuity and the accurate representation it has provided. This attention drives us to maintain a high standard in our data collection, drafting and editing, and publication and distribution. We hope for continued support and assistance in making the Nepal Human Rights Yearbook further effective and ensuring its longevity long into the future.

Finally, I would like to extend my sincere gratitude to INSEC's district representatives, statisticians and other experts, all of INSEC's staff, members of the Board, the Royal Norwegian embassy for their economic support in the investigation, drafting, editing, and publication of this book, Bread for the World, and DanChurchAid. I would also like to thank the different bodies of the Nepal government, political parties, provincial governments, local government bodies and constitutional bodies and social organizations involved in human rights for providing information and their views on the Yearbook.

Let us all work together to contribute for the protection and preservation of human rights,

Dr. Kundan Aryal
Chairperson