

Introduction

The National Human Rights Commission, established as an independent statutory body in 2000, has been elevated to a powerful constitutional body with a commensurate mandate, competence and independence. The Commission is fully compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) and has been accredited with “A” status by the Global Alliance of National Human Rights Institutions. The Commission is mandated to ensure the respect, promotion and protection of human rights, is competent to launch inquiries and investigations into alleged human rights violations, and can recommend legal or departmental action against human rights violators. It monitors the overall human rights situation in the country and can recommend remedial measures if so required. The National Human Rights Commission Act of 2012 provides a legal foundation for the Commission to function as a powerful protector of human rights.

Functions of the NHRCN

The Commission has a broad mandate including civil and political rights, economic, social and cultural rights, and rights of the other groups. Article 249 of the Constitution of Nepal, 2015 lays down that the Commission shall perform the following functions, namely:

- To respect, protect and promote human rights and ensure effective enforcement thereof.
- Inquire on its own initiative or on petition or complaint lodged in or sent to the Commission and investigate complaints about the violations of human rights of an individual or group or abetment thereof, and make recommendation for action against the perpetrators.
- Recommend to the concerned authority to take departmental action against any official, who fails to fulfill or perform his or her responsibility or duty or shows reluctance in preventing violations of human rights.

- Recommend to file a case in the court in accordance with law against any person or organization who has violated human rights.
- Coordinate and collaborate with the civil society in order to enhance awareness on human rights.
- Carry out periodic reviews of the relevant laws relating to human rights and make recommendation to the Government of Nepal for necessary improvements and amendments to such laws.
- Recommend Government of Nepal for the implementation of any international treaty or agreement on human rights, to which Nepal is a party.
- Publish, in accordance with law, the names of the officials, persons or bodies who have failed to observe or implement any recommendations or directives made or given by the Commission in relation to the violations of human rights, and record them as violators of human rights.

Constitutional provisions on Right to Environment.

The new Constitution of Nepal, promulgated by the elected and inclusive Constituent Assembly, provides for a comprehensive set of civil and political rights as well as economic, social and cultural rights. By upholding universal democratic norms, values and principles, the Constitution guarantees civil liberties and fundamental freedoms. It ensures inclusive democracy, pluralism, the rule of law, an independent judiciary, and the democratic values of good governance, representative and accountable government, social and economic justice and universally accepted human rights. The Constitution of Nepal safeguards the rights of every person, group and community, embracing the country’s multi-ethnic, multilingual, multicultural and diverse geographical specificities.

Article 30 of the Constitution of Nepal (2015) ensures **the Right to clean environment**. It provides that every citizen shall have the right to live in a clean

and healthy environment. The victim shall have the right to obtain compensation, in accordance with law, for any injury caused from environmental pollution or degradation. This Article shall not be deemed to prevent the making of necessary legal provisions for a proper balance between the environment and development, in development works of the nation.

Recommendations Regarding the Right to Environment

National Human Rights Commission has recommended to the government regarding the complaints on right to environment as a collective rights issue prioritizing the investigation and monitoring. Due to development and construction actions mitigate the adverse impacts of environmental pollution on public health and non-implementation of the earlier verdicts of the Supreme Court to ensure that the citizen’s right to live in a clean environment that amplified the environmental pollution in Kathmandu valley as the complaint was lodged in the Commission for monitoring and necessary actions. The decision made by the Commission comprise including the management of development and construction, regular monitoring and awareness raising, development of accountable system, management of vehicles, implementation of standards and law, Initial Environmental Examination (IEE) and Environmental Impact Assessment (EIA), collection and management of garbage, dumping site, air pollution data collection and analysis.

A complaint registered at the NHRC regarding the ‘right to clean environment’ from valley denizens’ after monitoring and investigation the Commission delivered a set of recommendations to the government of Nepal to uphold the fundamental rights of citizens and respect the earlier orders of the Supreme Court. Unplanned digging of roads, poor implementation of development projects, unsafe disposal of hospital and industrial wastes, air pollution due to dust and smoke emitted by brick kilns, vehicular emission, irregular collection and disposal of household wastes, delay in blacktopping roads and haphazard dumping of construction materials, among others, were responsible

for increasing environmental pollution in the valley. The Commission recommends as followings:

1. Related to Construction and Developmental Action

To conduct complete analysis of the project pursuing the human rights based approach to development and develop a schedule comprising the date of commencement and completion of construction work before implementing development activities and monitor whether the full implementation has been adopted or not by the concerned agencies before concluding the construction and development.

- (a) To conclude the construction work within the timeframe and cause the contractor to abide by pollution control measures as set forth in the laws and to conclude the work on time abiding human rights friendly environment and to monitor regularly. Manage to cause to be fully abided by the related laws.
- (b) To operate the integrated development system managing it to operate the integrated construction work.
- (c) To develop optimal level of coordination with the concerned locals and concerned stakeholder agencies affected from the projects before the date of commencement of the construction work.

2. Vehicle Management, the Implementation of the Standards and Laws

- (a) To monitor effectively the implementation status whether they are followed up or not by the monitoring agencies and take legal action too as the standards implemented by the government of Nepal are mandatory to all.
- (b) To formulate a law this empowers the concerned authorities to impose on-the-spot fine on vehicles not meeting the existing emission standards while monitoring as determined by the Nepal Vehicle Emission Standards - 2012, Air Pollution Quality Control Standard - 2012 and Vehicles and

Transportation Management Act - 1992.

- (c) To set up vehicular emission testing facilities of public, private and government's vehicles in entry points of the valley and make the green sticker mandatory for vehicles throughout Kathmandu valley and implement after effective monitoring of this.
- (d) To set up regular vehicular emission testing facilities to the two wheelers operated throughout Kathmandu valley.
- (e) Make the vehicle testing function effective coordinating between the Department of Environment, Department of Metropolitan Traffic Police and the Department of Transport Management besides increasing the number of vehicular emission testing facilities from the existing three for the reduction of the air pollution.
- (f) It is found that the regular exhausted emissions from the vehicles, plastic and brick kiln Carbon Dioxide and Black Carbon is being produced. Carbon Dioxide and Black Carbon have the long term grievous effect upon human health and has negative impact, therefore, to implement and cause to implement the essential technology to control and prevent the production of Carbon Dioxide and Black Carbon.

3. Related to Initial Environmental Examination (IEE) and Environmental Impact Assessment (EIA)

- a. While analyzing the ways to reduce the environmental negative effects while developing infrastructure, industries including the physical construction and implementation and analysis of the other alternatives, Initial Environmental Examination (IEE) and Environmental Impact Assessment (EIA) are essential processes but they are not properly implemented so, implement and cause to implement the effective IEE and EIA providing direction to the concerned agencies.

4. Related to the Waste Collection and Management

- a. While managing the waste, to segregate perishable and non-perishable wastes in sources, collect them separately by the separate vehicles and dispose of waste in landfill site accordingly,
- b. Determine time schedule for collection of waste in every areas and follow this schedule while collecting the waste and manage for the immediate disposal,
- c. Rid the valley from visual pollution caused by posters and pamphlets pasted on utility poles collecting them simultaneously with the garbage by the collectors,
- d. In the absence of regular collection of the waste in the street, the locals fire the waste for disposing it and it produces Carbon that causes the air pollution. Therefore, manage collecting the waste regularly and prevent its disposal by fire,

5. Related to the Landfill Sites

- a. It has been seen that the slurry created from the heap of the disposed waste in the landfill site Okarpauwa is directed towards the stream so that the toxic and chemically added slurry may cause health hazard to the human beings and other animals, so manage to direct the purified water using treatment plant.
- b. Relocate the directly affected locals in the currently operating land field site Okarpauwa immediately and provide them adequate compensation too,
- c. Due to the operation of unorganized and open land field site, it is found that the locals around Okharpouwa have negative impact on health day by day, make a provision of regular health check-up of the locals and the garbage collecting labours and manage to prevent the negative impact,
- d. The roads in the land field sites are being damaged rapidly due to the waste carrying vehicles so that there is production of dusts or smokes and are

not repaired timely repair/maintain the road from Balaju to Okharpauwa where the landfill site is situated.

- e. Due to the lack of stable and scientific well managed landfill sites, time and again there is a problem of no collection of waste in the Kathmandu valley so that the heap of waste is piled in the roads, and this generates toxic gas and makes the air polluted so that this can impact on the human health, therefore to manage the landfill sites stably and scientifically.

6. Related to the Management of Chemically Infected and Normal Waste

- a. Manage regular monitoring whether the chemical wastes produced by hospitals, industries and factories have disposed the waste with caution as there is a provision in law that the wastes produced by such institution/agency itself should dispose.

7. Related to Brick Kilns

- a. Implement and cause to implement the effective measures adopting to prevent the pollution and making it scientific and also create the brick kilns environment friendly as there are numerous brick kilns in unsuitable locations operated inside Kathmandu valley which produce dusts and smokes that causes air pollution and has seriously impact upon human health.
- b. Enforce the emission standards set for brick kilns and monitor it effectively centering on the issues of impact on health of dwellers around the brick kilns and the whole pollution of the environment.
- c. Make a provision of regular health check-up of persons and children working in brick kilns as there is direct impact upon health seen on them.

8. Expansion and Analysis of the Air Quality Monitoring Devices

- a. Set the Air Quality Meter the technology in the main entrance of the Valley and monitor and analyze regularly the data as the Department of

Environment has set air quality monitoring devices (Air Quality Meter) in Kathmandu valley and has implemented as the right to information displaying the information online.

- b. Make public the date related to the air pollution collecting regularly and inform the concerned agencies mandated to prevent the air pollution, provide direction to the Department of Environment to implement all types' of measures identifying the preventive efforts by the concerned offices.

9. Cleanliness of the Footpaths and Management of Greenery

- a. Clean roads and footpaths by 6:00am every day as mismanagement of the wastes in the footpaths and inadequate maintenance of the plants in the footpaths support increasing the environmental pollution, manage the immediate disposal of the collected wastes and to plant near by the streets and implement the protection action plan of the plants.

10. Related to Regular Monitoring, Public Awareness Program and Compensation

- a. Establish the mechanism for the necessary direction, suggestion and action after regular monitoring effectively in accordance with the existing acts, laws and the policy of the government of Nepal as the monitoring mechanism and personnel under the Department of Environment have not seen effective.
- b. Monitor regularly during the project period of all the development and construction projects whether the progress has been in accordance with the law or not and manage the documentation of that.
- c. Conduct awareness programs on the implementation of the development and construction project to the locals and the representatives of the local government together.
- d. Manage immediately free health facility to the

victims affected from environmental pollution and formulate necessary laws which required the concerned polluters to pay compensation to the victim as per the Article 30 (2) of the Constitution.



NHRC Nepal's Recommendations on Right to Environment



National Human Rights Commission, Nepal

National Human Rights Commission
 Central Office, Harihar Bhawan, Lalitpur, Contact: 01-5010015,
 Hotline Number: 5010000, Fax: 01-5547973, Po. Box No.: 9182
 Email: nhrc@nhrcnepal.org

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