

**Introduction to the NHRCN**

The National Human Rights Commission, established as an independent statutory body in 2000, has now been elevated to a powerful constitutional body with a commensurate mandate, competence and independence. The NHRCN was elevated to a constitutional body by the Article 131 of the Interim Constitution of Nepal, 2007 and by Article 248 of the present Constitution of Nepal (2015). NHRC Nepal has a separate sphere of responsibilities as mandated in the Constitution of Nepal. These responsibilities complement the normal machinery of the Supreme Court, Office of the Attorney General, and other existing judicial and quasi-judicial bodies of Nepal. NHRCN submits its annual report of its functioning to the President, and the President causes that report to be laid through the Prime Minister before the Federal Parliament. The NHRCN motto, ‘Human rights for all, at every household: basis of peace and development’ has set a new goal to take human rights consciousness in every household.

The NHRCN was created in response to 1991 UN-sponsored meeting of the representatives of national institutions held in Paris. The meeting laid down Paris Principles, a detailed set of principles on the status of national institutions. These principles, subsequently endorsed by the UN Commission on Human Rights (Resolution 1992/54 of 3 March 1992) and the UN General Assembly (Resolution 48/134 of 20 December 1993) have become the foundation and reference point for the establishment and operation of the National Human Rights Commission of Nepal as well. 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. This status of the Commission and an embodiment of Nepal's concern for the promotion, protection and respect of human rights paved way to Nepal to be elected as a member of United Nations Human Rights Council

**Definition of Human Rights**

Section 2 (f) of the NHRCN Act 2012 defines "Human Rights" to mean rights related to life, liberty, equality and dignity of a person provided by the Constitution and other prevailing laws and this term also includes the rights contained in the international treaties regarding human rights to which Nepal is a party.

**The Constitutional Provisions on Human Rights**

The Constitution of Nepal, promulgated by the elected 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. It further aims to create an egalitarian society on the basis of the principles of proportional inclusion and participation to ensure equitable economic opportunities, shared prosperity and social justice by ending discrimination on the basis of class, ethnicity, region, language, religion and gender. To that end, the mixed electoral system, inclusive representation of marginalized and disadvantaged communities in all State organs, positive discrimination and special provisions with regard to the rights of women, Dalits, Madhesi, indigenous people, Tharus, Muslims, persons with disabilities and minorities are guaranteed by the Constitution.

**Composition of the NHRCN**

The Paris Principle stresses that the composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights.

Article 248 and 292 of Constitution of Nepal Provides that members of the Constitutional Bodies (including the NHRCN) are appointed on the recommendation of the Constitutional Council pursuant to Parliamentary hearing conducted for their appointments.

The selection and appointment process is as follows:

The Constitutional Council proposes the candidates on the basis of prerequisite as specified in the article 248 clause 6 (a) to (f) that details the minimum qualification and experience. Article 248 (6) provides a person shall be eligible to be appointed as the Chairperson or a member of the National Human Rights Commission if he or she possesses the following qualification:

- The Chairperson of NHRCN if he/she:
- is a retired Chief Justice or retired Judge of the Supreme Court
- having rendered outstanding contribution to the protection and promotion of human rights or
- being a renowned person having been active for at least twenty years in and rendered outstanding contribution to the protection and promotion of human rights or to various fields of national life,
- is a person being involved in the field of the protection and promotion of human rights or rights and interests of the child or
- is a renowned person having been active for at least twenty years in and rendered outstanding contribution to various fields of national life,
- holding a bachelor's degree from a recognized university,
- having attained the age of forty five years,
- not being a member of any political party at the time of appointment,

- being of high moral character.

The Constitution has laid down the high qualifications that the members are required to have, to be eligible to be appointed to the Commission. Article 248 of the Constitution of Nepal, has provisioned the following:

- National Human Rights Commission, Nepal, consists of a Chairperson and four full time remunerated members.
- The President on the recommendation of the Constitutional Council appoints the Chairperson and members.
- The term of the office of the Chairperson and members of the NHRCN is six years from the date of appointment.
- The Chairperson and members appointed are not eligible for reappointment.

As of January 2019, the NHRCN members include:

- Two members - former justices from the Supreme Court.
- One member - woman and also from the Muslim minority community.
- One member – leader of non-governmental organization.
- Onemember–Academician from the University professional.

**The Secretariat of the NHRCN**

Article 248 of the Constitution provides that NHRCN consists of a Chairperson and four other members. Similarly, the section 27 of the NHRCN Act provides that the Government of Nepal, on the recommendation of the Commission, approves the organizational structure of the Commission and posts. The Chief Executive Officer of the NHRCN is the Secretary, an officer of the rank of Secretary to the Government of Nepal and has the office of the Secretary who performs the following major functions:

- To undertake administrative and management work,
- To prepare annual budgets, programs and plans and submit them to the Commission,
- To take care of and maintain movable and immovable properties of the Commission,
- To make necessary arrangements for smooth operation of the Commission's work and proceedings,
- To implement or cause to implement effectively the policies, programs and decisions of the Commission.

The NHRCN has central office at Hariharbhawan Lalitpur, seven provincial offices (one yet to be established) and four branch offices. The central office is organized into the following departments: Law, Investigation & Monitoring Department, Coordination Department, Promotion, Advocacy & Collective Rights Department, Administration, Finance, Policy and Planning Department.

The NHRC is also empowered to, and does appoint its own staffs. Section 32 of the NHRCN Act provides the Commission power to frame rules, procedures and directives: to formulate and implement necessary procedures or directives to carry out

its functions in a well-organized way. The Commission can hire and appoint its staffs permanently in accordance with the NHRCN staffs Regulation.

The vacant posts are filled up through open and internal competitive examination. This shall be filled up through competition who has obtained minimum educational qualification and minimum experience period and who can obtain the highest marks is eligible for appointment. In order to maintain diversity or pluralism the service, forty-five percent posts of the posts to be fulfilled by open competition shall be set aside and be filled up by having separate competition between Women, Adiwasi/Janjati , Madhesi, Dalit, Disabled (differently able and Backward Area. The NHRCN has an approved and funded staff number of 309 but as of January 2019 the NHRCN has around 215 staffs.

**Constitutional Mandate of the NHRCN**

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. The establishment of the Commission complies with the standards set out in the 'Paris Principles'. To name a few, independence is guaranteed by the Constitution and an act; a broad mandate based on universal human rights standards. Apart from these powers, the Constitution has also envisaged that the Commission may review the provisions on safeguards provided by the Constitution and other prevailing law for the enforcement of human rights and submit necessary recommendations for the effective implementation of such provisions.

The Commission propagates human rights education at different levels of society through various seminars, symposia, conferences and also builds consciousness and awareness for the protection of human rights. The Commission encourages the functioning and efforts of institutions working in the non-governmental sector. In addition, there is a general power to carry out such activities, as the Commission may deem necessary and appropriate for the enforcement, promotion and protection 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.

**Accessibility to NHRC, Nepal**

The procedures and mechanisms of the NHRCN are broadly accessible to populations exposed to human rights violations. Section 10 (3) of NHRCN Act states that information on a human rights violation or abetment thereof received through verbal or any other means, shall be registered by the NHRCN in the registration book. The victim in person or any other person on his/her behalf can register the complaint in the Commission. Accordingly, the NHRCN receives complaints submitted in person in writing, or sent through the post or courier services, wire (telegraph, fax, telex) or any other means of communication. There is also a provision for oral complaint information from the complaining person present, or received through telephone, which needs to be formalized. No charges are to be paid for the complaints. Newspaper or other social Medias, from human rights activists whoever finds the notice of human rights violation can give information to the NHRCN. Further, the NHRCN has the power pursuant to section 15 of the NHRCN Act initiated action at NHRCN's own discretion (Suo-moto complaints) registration. The NHRCN can also register complaints while site visits.

The Strategic Plan states that the NHRCN will:

- be active in providing easy access to the public, especially deprived and vulnerable people to the services provided by the NHRCN.
- show its presence in monitoring and investigating as many incidents of human rights violations as possible.
- work for the public's access to its human rights services and information on the basis of proximity and cost effectiveness.
- put special emphasis on the backward groups.

**An overview of the procedures adopted to handle complaints**  
**Complaints Process:** In case of violation of human rights or abetment thereof, the victim himself or herself or anyone on behalf of him or her, may lodge a complaint in the central,

regional, or sub regional offices. The NHRCN provides a receipt of the registration to the complainant after registering such complaint in the registration book. In case information on human rights violation or abetment thereof is received through verbal means or through any other means, such information is registered in the registration book.

- **Preliminary proceedings on the complaint:** The NHRCN initiates preliminary proceedings immediately as soon as a complaint regarding the incidents of human rights violation or abetment is received or if the NHRCN deems it appropriate to investigate into the matter on its own discretion. While taking an action, the NHRCN finds prima facie that the human rights of any individual is being violated or abetted, it may issue appropriate orders in the name of concerned agency or official to immediately stop such act.
- **Inquiry and Investigation into Complaints:** If there seems, a situation where human rights of any individual has been or may be violated or abetted, from the preliminary proceedings the NHRCN may itself or after appointing investigation team or investigation officer pursuant to necessity conduct or cause to conduct inquiry or investigation as prescribed. After completing inquiry and investigation the investigation team or investigation officer submits a report thereof to the NHRCN. After receiving the report, the NHRCN may seek services of the expert, collect further evidence or summon witnesses or conduct public hearings.
- **Complaint may be Repealed or Put on Hold:** If the complaint or information received to the NHRCN or the matters investigated by the NHRCN on its own discretion seems baseless or does not seem to fall under the jurisdiction of the NHRCN, the Commission may dismiss or (tameli) such complaint, information or matter with reasons thereof at any time. In case of the complaint is dismissed or put on hold, the NHRCN informs the concerned individual of the same within fifteen days.
- **Provisions Relating to Reconciliation:** if the concerned parties lodge a joint petition for reconciliation in respect of any complaint that is under consideration in the Commission, the NHRCN may have them reconciled as prescribed. Provided that, regarding the matters which are considered as serious violation of human rights and humanitarian law under the international laws or regarding the matters in which reconciliation (milapatra) cannot take place in accordance with the prevailing laws, no reconciliation takes place. The duty of the parties concerned is to abide by the reconciliation reached. Once the reconciliation is reached regarding any complaint, proceedings thereof is considered to have ended and complaints cannot be lodged again on such matters.
- **Decisions to be made:** The NHRCN on the basis of the evidences acquired through inquiry and investigation with regard to the complaint or information received by the Commission or the matter on which it initiated action at its own discretion, makes decisions, generally within six

months from the date of complaint citing the grounds and reasons of whether or not human rights violation or its abetment has taken place.

**Collaboration and Coordination**

**National Level:** The Commission has given endurance to collaboration and coordination, including with the Law, Justice and Human Rights Committee of the Legislature-Parliament, the Government and other governmental bodies. The NHRC has been working with a focus on thematic issues of human rights in collaboration with the former office-bearers of the Commission, civil society representatives, NGOs and human rights workers. National Human Rights Commission's prime responsibility is to protect and promote human rights. It also performs its duty in coordination with the other stakeholders. The Commission since its establishment has been undertaking its works based on its coordination and collaboration with national, regional and international entities/ organizations and donor agencies. The Human Rights Commission Act 2012 provides the Commission with the capacity to establish formal relationships with civil society. It has developed formal relationships with civil society that result in engagement via regular or institutionalized meetings and engagement with CSOs on thematic issues and in conducting inquiries.

**International Level:** At the international level, the NHRCN has executed its work professionally with the UN Agencies. NHRCN also engages the work of the United Nations human rights mechanisms, including the treaty bodies established to monitor State Parties' compliance with the core international human rights treaties and the Special Procedures of the Human Rights Council. NHRCN has also built partnerships with NHRIs umbrella organization 'the Global Alliance for National Human Rights Institutions (GANHRI), Asia Pacific Forum of National Human Rights Institutions (APF) and other agencies in order to tackle some of the most serious and complex human rights challenges facing.

**NHRCN Good Practices**

- NHRCN carries out periodic reviews of the relevant laws relating to human rights and make recommendation to the Government of Nepal for necessary improvements in and amendments to such laws.
- NHRCN addresses and covers all human rights: civil, cultural, economic, political, and social and also addresses the human rights that are ensured by the international treaties to which Nepal is party.
- NHRCN conducts or to cause to conduct inspections and monitoring of prisons, other agencies of the Government of Nepal, public institutions or private institutions or any other place for the protection of human rights.
- NHRCN has a trend to response immediately the victim submitted memorandum on different human rights issues at the National Human Rights Commission.
- NHRCN conducts investigations with the permission of the court concerned in any sub justice case in which claims

involving human rights violation have been made.

- NHRCN has conducted the investigation with exhumation of the dead bodies a tool of investigating the atrocities caused by the either by security forces or rebellion groups, seeking assistance from the national and international forensic experts from the foreign universities to advance the exhumation of the dead bodies.
- NHRCN undertakes study and research into various aspects of protection, promotion, enhancement and implementation of human rights.
- NHRCN exercises its mandate in practice through coordination, cooperation, networking and partnership, communication and information system, reconciliation, monitoring, investigative programs, trainings, drawing attention, suggestions, recommendations, dialogue, advocacy and interaction, reviewing the laws and policies.
- NHRCN conducts consultation meetings with relevant stakeholders including parliamentarians and provides suggestions, advice, and recommendations regarding the drafted Constitution of Nepal (2015), bills and legislation.
- NHRCN investigated and monitored activities during the transitional period prioritizing the killings, disappearance, internal displacement, extrajudicial detention, torture, etc.
- NHRCN does regular monitoring of the National Human Rights Action Plan implementation status and make recommendations to the government.
- NHRCN has published small booklet "Things One Should Know" containing information on the Constitution of Nepal, the NHRC Act, international human rights treaties, National Human Rights Action Plan and the Universal Periodic Review. It has been published in six different indigenous languages: Maithili, Bhojpuri, Tamang, Nepal Bhasa, Tharu and Nepali.
- NHRCN has also concluded International Conference on Migration Rights in 2012 in participation with National Human Rights Institutions of Asia Pacific Region, Non-governmental organizations, International Development Partners, the specialized agencies of the United Nations with the aim of inter coordination with the National Human Rights Institutions.
- NHRCN organized a South Asian regional conference in Kathmandu to facilitate a regional dialogue, 'Identifying Challenges, Assessing Progress: Moving Forward: Addressing Impunity and Realizing Human Rights in South Asia' aimed to bring together NHRIs, government bodies, civil society members, lawyers and human rights activists to discuss human rights challenges in the region and to identify common approaches and joint initiatives.
- NHRCN has concluded Memorandum of Understanding with regard to the protection of the rights of the migrant workers with NHRIs of Qatar and Korea.
- NHRCN conducts National Inquiry into systemic violation of human rights and conducted NI into a serious problem and practice of "Chhaupadi" (expelling women and girls from their homes during menstruation and sometimes following childbirth, including forcing women and girls to reside in cattle sheds).
- NHRCN monitored the elections at the federal, provincial

and local levels for creation of favourable environment and to institutionalize the federal democratic system of governance as envisaged in the Constitution and the recommendations by NHRCN were also implemented by the government.

- NHRCN has been participating actively in global initiatives and discussions on the implementation of the interests and aspirations of all segments of society, giving particular attention to the pledge to leave no one behind, as reflected in the 2030 Agenda for Sustainable Development;
- NHRCN has continuously cooperated and constructively engaged with the special procedures and mechanisms of the Human Rights Council.
- NHRCN engages in strengthening capacity-building and training programmes in the field of human rights to law enforcement officials, public prosecutors, lawyers, journalists, and the media.
- NHRCN has engaged in protecting the rights of the displaced millions of individuals in the 2015 earthquake and its aftershocks and monitored the reconstruction and rebuilding activities for early recovery.
- NHRCN has engaged in mental health promotion and prevention in achieving health and well-being of the people.
- NHRCN cooperates with all relevant stakeholders to promote and protect human rights, inter alia, through dialogue, exchange of expertise, technical cooperation and advice, proceeding from the indivisibility and interrelatedness of all human rights, including the right to development and right to environment.
- NHRCN has recommended the Government of Nepal to do the needful so that senior citizens living in elderly homes can live a dignified life, establish a separate hospital for senior citizens; ensure free medical treatment for needy patients suffering from Alzheimer's, dementia, cancer and paralysis; make arrangements of separate ward for mentally unsound persons; set up geriatric ward in every hospital; and make arrangement of health workers and medicines in elderly homes, among others.

**Way Forward**

A civilized society and nation cannot be imagined in the absence of protection, promotion and fulfillment of human rights and without development of a culture of human rights. To materialize this, the Commission has been working within the parameters of the Constitution and the concerned Act. Basically, the Commission has been working forward based on the strategic plan (2015-2020) that has been developed in this regard.

As in the past, the Commission will work in the days to come towards achieving the goals set in the strategic plan. For this, the Commission has make its collaboration and coordination with the parliament, government, constitutional bodies, political parties, civil society, NGOs and stakeholders (citizens) more effective. Also, the coordination and collaboration with the national, regional and international organizations/donor agencies concerned with human rights will be consolidated.



# National Human Rights Commission, Nepal

