

Introduction

In September 2015 Nepal had adopted a democratic and inclusive Constitution, which guaranteed a comprehensive set of rights specifically referring to persons with disabilities and had set out special provisions to ensure their access to education, social justice and proportional representation at local bodies. The Disability Rights Act of 2017, which replaced the Disabled Persons Welfare Act of 1982, had made significant departure from the welfare-based approach to the rights-based approach to disability. The Act fully recognized the principles on which the Convention was founded, and it had widened the definition of persons with disabilities in line with the Convention, recognizing the intersectionality within disability, eliminating derogatory narratives and criminalizing the use of such narratives. The National Penal Code of 2017 criminalized discrimination based on disability with heavy penalty.¹

To ensure protection, promotion and effectiveness of individuals' human rights and for sustaining life like other people in the society, the rights provided to the persons with disability by the Universal Declaration of Human Rights 1948, Convention on the Rights of Persons with Disabilities -2006, the Constitution of Nepal - (2015), Act relating to the Rights of Persons with Disabilities -2017, and other acts and laws is the obligation of the state. 1.94% disable persons within the total population in accordance with the National Census 2068, are left behind despite mainstreaming, deprived from enjoying the social, economic, cultural, political rights and physical and environmental barriers. They are also tainted by the negative thinking, discriminatory practice and the tendency to view with pity and discard. But to realize dignity, equality and inalienable rights in accordance with the universal and effective principles of human rights and fundamental freedom is essential for them to establish the human rights friendly system.

Very few Person with Disability (PWDs) know what their rights are and the facilities the government is providing for them. There is deeply rooted stereo-typed concept in the society towards person with disability

that they are disabled for sin they committed in their previous life. This has also contributed in discriminatory practice towards PWDs. The society including political leaders and senior government officials uses derogative language unknowingly or unknowingly to PWDs. Even there are certain laws with derogatory legal terminology. There is misconception within Government Authorities that PWDs are neither rights holder, nor stakeholders for them. This is the reason most of the government service centre are inaccessible for PWDs. Therefore, coordinated efforts between government agencies, National Institutions, NGOs, CBOs and even donor agency can play pivotal role in creating awareness as well as imparting skills/knowledge in the area of disability.²

These recommendations are addresses the issues raised in the conferences held in the National and provincial level concluded in all the seven provinces. The Kathmandu Declaration was also proclaimed in the presence of the Chief guest Hon. Chairperson of NHRCN Anup Raj Sharma, and Hon. Members of the Commission organized by the National Human Rights Commission, brought together around 200 participants from seven provinces. The participants discussed wide-ranging issues and problems faced by the persons with disabilities and suggested ways to address them on protection, promotion and effective implementation of the rights of persons with disability.

National Human Rights Commission, Nepal

Upon recommendation from the Constitutional Council, the President of Nepal appoints Chairperson and four members in the Commission for six years. On the recommendation of the Commission, the Council of Ministers appoints Secretary in the NHRC as focal person for the administration. In addition, the NHRC, after consultation with Public Service Commission, has power to appoint employees as may be required to carry out its functions. In case the Commission requests any government office for assistance in the performance of its functions, the office so requested must provide the required assistance. The Government of Nepal provides

necessary budget to the Commission. But the Commission may obtain such means and resources from different agencies as grants as required for the performance of its functions. The account of the Commission is to be audited by the Auditor General of Nepal.

Article 149 of the Constitution of Nepal (2015) vests primary responsibility in the Commission to protect, promote and ensure effective implementation of human rights within the country. In order to perform this responsibility, the Commission can conduct inquiries and investigations, on its own or upon a petition or complaints filed to it on violation of human rights, abetment thereon, carelessness and negligence in the prevention of violations of the human rights by any government authority. It can also inquire into a matter with the permission of the court in respect of any claim on violations of human rights, which is sub-judice in the court. The Commission can visit and observe any authority, jail or any organization under the Government of Nepal and recommend accordingly for the necessary reform.

The Commission may review prevailing legal provisions so as to ensure that these provisions are in line with international human rights standards and submit necessary recommendations for its effective implementation. The power encompasses the study of international human rights treaties and instruments and submits necessary and appropriate recommendations to the Government for effective implementation. As such, it can also make necessary recommendations to Government of Nepal regarding reports to be furnished by Nepal pursuant to provisions of different international human rights treaties. The Nepal Government is legally obligated to seek and incorporate NHRC's opinion prior to submitting reports to the treaty bodies under international human rights treaties.

Rights of the Persons with Disability

Although there is separate National Disability Coordination Committee headed by Minister for Women, Children and Social Welfare, The Government of Nepal (GoN) has envisages NHRC as independent monitoring mechanism pursuant to article 33 of the Convention of the Rights of Person with Disability³.

³ Nepal's State Report submitted to Committee on the Rights of Persons with

The central and regional offices of the NHRC monitor the human rights situation, register the cases of human rights violations and take necessary actions. In addition, Community Based Rehabilitation Monitoring Committee (CBRMC) has also been formed in district level. The CBRMC ensures that the CBR implemented under the government funding is implemented as per the plan. Apart from this, the Government of Nepal has nominated a first class officer (Joint Secretary) as a focal person to deal with the issues of disability in each Ministry. The focal person ensures that the provisions of the CRPD are implemented by the Ministry. Realizing its broad mandate, NHRC has initiated submitting Independent Report to Treaty Committee.

A joint comprehensive study report on disability produced by Ministry of Women, Children and Social welfare and the National Disability Federation shows a minimal numbers of the peoples with disabilities have access to the basic services; education, physical structure, travels, legal service, health, assistances, nutrition, information and communication⁴.

Recommendations Related to the Rights of the Persons with Disability

With reference to the subject, in accordance with the mandate provided by the Article 249 (1) of the Constitution and the section 4(1) (c) and (f) of the National Human Rights Commission Act 2012, the Commission after completion of the 6 provincial and 1 national conference on the situation of human rights of the persons with disability has also made public its report entitled "the National Report on the situation of human rights of the Persons with disability" on the basis of the raised issues by the persons with disability and the declarations proclaimed. From the conferences conducted by the Commission shows the need to act prioritizing for the protection and promotion of human rights of the persons with disability by Federal, Provincial and Local level government, therefore as per decision made by the Commission meeting held on 22

⁴ Disabilities pursuant to article 35 of the Convention, received on 29 August 2014, pp. 56-57 http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=NPL&Lang=EN

⁴ wLiving Condition Survey among people with disabilities in Nepal-2015, www.nfdn.org.np

June 2018, recommends to move forward the essential act and inform the Commission as well in accordance with the section 17 of the NHRC act 2012.

The Commission recommends to the Government of Nepal for the protection and promotion of human rights as followings:

For the protection and promotion of human rights of all the persons with disability

1. For the effective implementation of the Act relating to the Rights of Persons with Disabilities -2017, and to promulgate the regulation related to this act by the Government of Nepal. To form the Direction and Co-ordination Committee in the Central, Provincial and Local level in accordance with the act.
2. To implement and cause to implement effectively the Accessible Physical Structure and Communication Service Directive for People with Disabilities 2013. To pursue the principle of Universal Design in the reconstruction and renovation.
3. To ensure the meaningful participation of the persons with disability in the public agencies in accordance with the principle of inclusion and the spirit of the Constitution,
4. To transform the existing public vehicles into disability-friendly design and strongly implement the provision of reserved seats in such transportation,
5. To ensure and cause to ensure the services like free health treatment and medicines' provided by the Government of Nepal that are adaptable to all kinds of disability including to the Psycho-social, Autism, Down syndrome, Intellectual disability, and Spinal cord injury.
6. To manage the social security allowances to the complete and sever persons with disability in a timely manner. To provide the monthly allowances 3,000 to 5,000 as a minimum of life sustaining allowance as per the mandamus issued by the Supreme Court of Nepal.
7. For achieving the goals and specially in accordance with message of the spirit of 'leave no one behind', and for ensuring the economic, educational, social, cultural and political rights of the persons with

¹ <https://reliefweb.int/report/nepal/committee-rights-persons-disabilities-reviews-report-nepal>

² NHRI independent report 2017 submitted on behalf of NHRC Nepal to the UN Committee on the Rights of the Persons with Disability.

disability, the Government of Nepal and other donor agencies should mandatorily manage to act in accordance with the principle of 'demands of persons with disability in development'.

8. To distribute all kinds of assistive devices used by the persons with disability free of cost. The assistive devices that cannot be distributed free of cost should be distributed in easy manner and subsidized costs and to evade all kinds of tax imposed in such devices.
9. By addressing the diversities within the disability, prioritize the severe types of disability and the special needs of Dalits, Indigenous People, Muslim, Madhesi and Women within the disability. In the forthcoming National Census 2021, compute the disaggregated data of persons with disability in the Dalit, Indigenous People, Muslim and Madhesi community and manage to collect the data compulsorily in accordance with the types of disability.
10. To establish and cause to establish the rehabilitation centers at least in the each province to rehabilitate the persons with complete and sever disability, orphan and intellectual disability and mental or psycho – social disability.
11. To collect the integrated and disaggregated data in accordance with the diversity of persons with disability throughout the nation by the Central Bureau of Statistics. To manage the record of persons with disability by the all the local levels and to update and cause to update it every year.
12. To review the distributed disability related identity cards.
13. To empower local government in the disability issue.
14. To highly prioritize the rights of the persons with disability by the provincial government.
15. To include the disability friendly provisions in the laws by the Federal, Provincial and Local governments and to amend the existing laws accordingly.

For the protection and promotion of human rights of persons with multiple disability

16. To manage the assistant to the persons with complete and sever disability as they need assistance.
17. To manage treatment free of cost.

For the protection and promotion of human rights of persons with autism and related disability

18. To manage the assistance,
19. To establish rehabilitation center for care and education.

For the protection and promotion of human rights of persons suffering from hemophilia and related disability

20. To manage treatment free of cost.

For the protection and promotion of human rights of persons with intellectual disability

21. To operate Public Care Center and Trust Fund for the comprehensive welfare, rights and empowerment of the persons with intellectual disability.

For the protection and promotion of rights of persons with mental and psycho – social disability

22. To manage day care services and manage self-dignity and comfortable social security including the individual supporter to the persons with complete and sever disability,
23. To repeal the laws that discriminates on the basis of mental disability.

For the protection and promotion of rights of persons with voice and speech related disability

24. To manage the speech therapy services easily available and accessible

For the protection and promotion of rights of persons with hearing impairment and vision related disability

25. To promote the textile communication.
26. To manage the supporter.
27. To provide services keeping them in the rehabilitation centers.

For the protection and promotion of rights of persons with hearing impairments

28. To manage the sign language interpreter in the offices where the public relation is high.
29. To manage the trainers and training for the

- production of the interpreters.
30. To manage the use of sign language in the broadcasting media.
31. To establish training center to study and research the sign language.
32. Include the low hearing disability into the definition of disability.
33. To manage including note taker, hearing aid to ensure the access of low hearing individuals.

For the protection and promotion of rights of persons with vision related disability

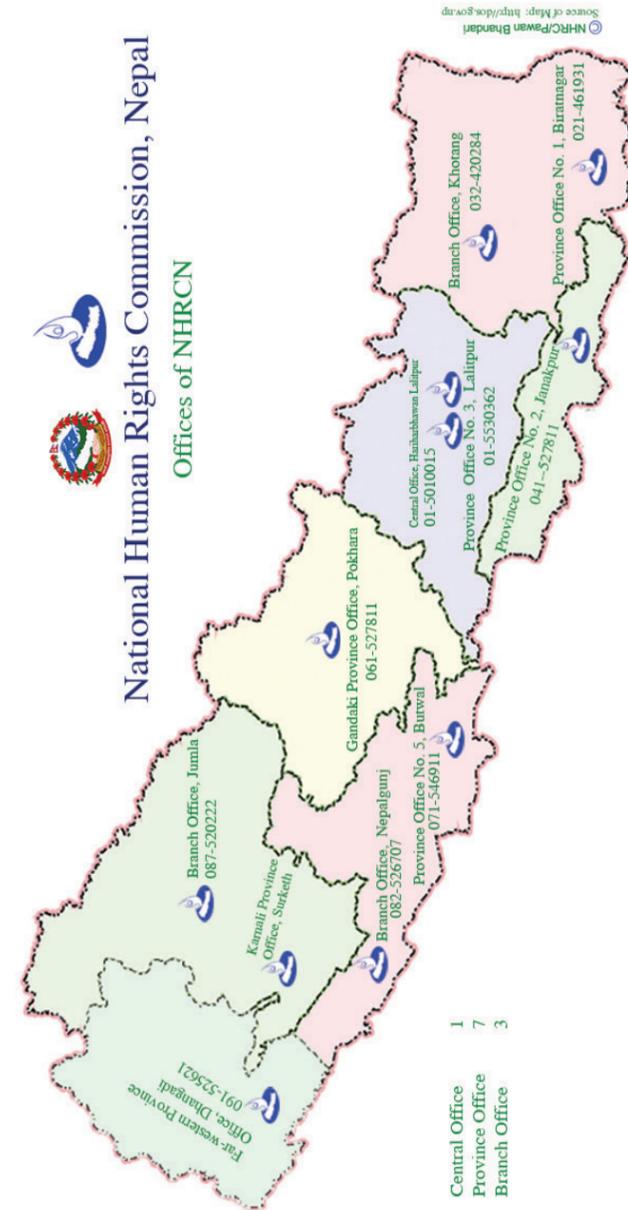
34. To distribute preparing the educational materials in Braille.
35. To distribute preparing the educational materials in audio record.
36. To manage the assistive devices like white sticks easily accessible.
37. To ratify the Marrakech Treaty, 2013 for promoting the access to communication to the visually impaired persons.
38. To manage the use of innovative modern technology to provide access to the visually impaired persons.

For the protection and promotion of rights of persons with physical disability

39. To develop disability friendly physical infrastructure.
40. To make the assistive devices easily accessible.

Way Forward

- Continued awareness and sensitization activities at province and local level including locally elected bodies,
- Policy level intervention at central level,
- Study research on situation of mentally disabled persons in Nepal to set a baseline,
- National Mental Health Survey to identify gravity of problem,
- Joint monitoring missions to monitor the human rights situation of mentally disabled persons.



“All human beings are born free and equal in dignity and rights” -Universal Declaration of Human Rights

Leading the Voice of Voiceless People
My Voice for Dignified Life

The Rights of the Persons with Disability



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