

NHRC-Nepal

Information Booklet

(July 15, 2010 - July 14, 2011)

National Human Rights Commission of Nepal

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- Hon. Gauri Pradhan
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Published by:

National Human Rights Commission

Harihar Bhawan, Lalitpur, Nepal

P.O. Box : 107, Kathmandu, Nepal

Printing supported by: SCNHRC Project

Date of Publication: 2011

First edition: 3,000 copies

Publication No: 79/129/2068 (K.KA.) (Central Office)

Printed at: Apex Printing Press Pvt. Ltd.

Email: press_apex@yahoo.com

Preface

This booklet contains brief information about major activities of NHRC from July 15, 2010-July 14, 2011 (Fiscal year 2067/68 under Nepali calendar). This publication has been made public with a view to provide information on the recent activities of NHRC-Nepal.

We expect that this booklet would be useful to those who want to have key information of NHRC's endeavors and achievements during the year. We welcome your invaluable inputs that would help us make forthcoming issues more informative and useful.

NHRC-Nepal

Acronym

CEDAW	:	Convention on the Elimination of Discrimination against Women
CERD	:	Convention on the Elimination of Racial Discrimination
CPA	:	Comprehensive Peace Accord / Agreement
CPN -M	:	Communist Party of Nepal - Marxist
CRC	:	Convention on the Rights of Child
CSO	:	Civil Society Organization
ESC	:	Economic Social and Cultural Rights
GoN	:	Government of Nepal
HR	:	Human Rights
ICC	:	International Coordination Committee
ICCPR	:	International Convention on Civil and Political Rights
IDPs	:	Internally Displaced Persons
ILO	:	International Labour Organization
MOU	:	Memorandum of Understanding
NDC	:	National Dalit Commission
NGO	:	Non-Governmental Organization
NHRC	:	National Human Rights Commission
NHRI	:	National Human Rights Institution
NIs,	:	National Institutions
NWC	:	National Women's Commission
OHCHR	:	Office of the High Commissioner for Human Rights
SCNHRC	:	Strengthening Capacity of National Human Rights Commission
TRC	:	Truth and Reconciliation Commission
UN	:	United Nations
UNDP	:	United Nations Development Programme
UPR	:	Universal Periodic Report

NHRC Annual Round-Up at a Glance

(July 15, 2010-14 July, 2011)

SN	Subjects	Number/ Events	Themes/Areas
1	HR Protection Related		
1.1	Complaints Received	355	Killing, abduction, disappearance, threats, torture, displacement, ESC rights, bomb blasts, property seizure, legal remedies etc.
1.2	Monitoring Missions	169	Over all human rights situation, child rights, women's rights, displacement, rights of prisoners, human rights situations during the <i>bandhs</i> and strikes organized by various groups, rights of freed <i>Haliyas</i> etc.
1.3	Investigation of complaints	311	Killing, explosion related deaths, disappearance, displacement, torture, threats, property seizure, rights of prisoners, children, women and minorities etc.
1.4	Dismissal /Pending / Revoking	579	Killing, disappearance, displacement, torture, threats, property seizure, rights of prisoners, children, women, minorities ESC rights etc.
1.5	Recommendations (for compensation, prosecution, departmental action or interim relief)	148	Compensation/ interim relief and prosecution and departmental action against human rights violators

SN	Subjects	Number/ Events	Themes/Areas
1.6	Policy Recommendations	82	Finance and management, guidelines, legal and policy reforms, abolition of harmful traditional practices etc
1.7	Collaboration with NGO, NIs, UN, OHCHR, Government, Expertise Service and Key-note and guest speakers/Meeting/ Interaction/ Discussion	566 plus	Social inclusion, gender, child rights, legal reforms, human rights education, impunity, empowerment etc. Provided in the form of lectures, inputs and key note by the commissioners/ senior officers, and as trainer/ facilitators by officers mainly to security agencies and CSO sponsored programmes on various themes Human rights situation, law and order situations, <i>bandh</i> , strikes, supplies. etc.
2	HR Promotion		
2.1	HR Advocacy (training, workshop, press conference, public hearing/debate, exhibition, rallies, demonstration, pamphlets and poster campaigns)	277	Child rights, women's rights, rights of <i>dalits</i> , human rights defender' training, exhumation related training, displacement, disappearance,
2.2.	Dialogues		
2.2.1	Dialogues with the Government at different levels	51	Safety, security, right to food, health and education, supplies and rights to live in dignity

SN	Subjects	Number/ Events	Themes/Areas
2.2.2	Dialogues with the Civil Society	15	Constitution making, UPR process, Impunity and Transitional Justice,
2.2.3	Constitutions Assembly (CA committee and Sub committees) and Political Parties	17	Constitution making, women's rights, General human rights situation,. NHRC Bill
2.2.4.	OHCHR and International agencies (Meeting at different levels)	93	NHRC Bills, Transitional Justice, Impunity and Capacity building
2.2.5	Groups Working on Rights and Interest of Victims	11	Bonded laborers, rights of Dalits, Rights of Indigenous Minorities, Rights of Dalit and Disadvantages women, rights of child
2.3	Press Release	40	On various HR Issues
2.4	Press Conference	8	On various HR Issues
3	Publications		
3.1	Regular Publications	23	NHRC annual report, Guidelines, Human Rights Post (Vernacular) NHRC Newsletter (NHRC monthly newsletter)
3.2	Periodic Reports	19	Disappearance, child rights, torture, implementation of NHRC recommendations, pictorial book etc.
3.3	Regional Office Publication	4	Annual Activity Report

SN	Subjects	Number/ Events	Themes/Areas
4	Legal/Policy Support		
4.1	Advisory to Nepal Government on International Instruments	5	On the optional protocol to the CRC, on the involvement of children in armed conflict, ICCPR, UPR report submission by NHRIs namely NHRC, National Women Commission and National <i>Dalit</i> Commission, Tribal peoples convention 1989 (No.169), CERD
4.2	Recommendations for Ratification of International Conventions	1	Ottawa Agreement on the abolition of the use, storage, manufacturing and the distribution of Anti-Personnel mines and their stockpile destruction
4.3	Draft Bills/Policies	5	Draft on Child Rights (amendment) Bill, Penal Code, Child Protection Policy in School, National Child Protection Policy, Tribhuvan University Management Regulations,
5	Human Rights Resource Center at HQ	414 books primarily on HR added in HR resource centre	
6	Human Resource		
6.1	Chairperson	1	
6.2	Commissioners	4	
6.3	Staff	123	



Introduction

The National Human Rights Commission (NHRC) was established on May 26, 2000 under the Human Rights Commission Act of 1997. The NHRC was elevated to a constitutional body by the Interim Constitution of Nepal - 2007. The Constitution has provided wide range of mandates to NHRC for the promotion and protection of human rights. The NHRC has been accredited with “A” status by the International Coordination Committee of the National Human Rights Institutions since its establishment.



11th Anniversary Day of NHRC-Nepal on 27th May, 2011

The NHRC is constituted under the Article 131 of the Constitution. The Commission comprises of the Chairperson and four commissioners. They are appointed by the Head of the State (President) for six years at the recommendation of Constitutional Council upon the confirmation by the parliamentary hearing committee. The Article 132 stipulates about the mandates of the Commission. The NHRC is constitutionally liable to submit its annual report to the President. The president refers the annual

report to the Parliament through the Prime Minister for parliamentary debates.

Along with the recent political development Nepal has been declared a Republican form of state. The Election of the Constituent Assembly was held in 2008. The efforts have made to settle the settlement of issues relating to PLA. The Special Committee headed by the Prime Minister was formed toward this end. In addition, interim relief was provided to the victims of conflicts.

Over the years, Nepal has been passing through transition to peace and democracy after the signing of CPA in 2006. The long term transition has added serious human rights problems followed by weak law and order situation, fragile political situation and unstable governments. Consequently, the state of impunity, deteriorating law and order situation, extra-judicial execution, abduction, torture, trafficking in persons and internal displacement are found serious issues of human rights in the country.

The Mandates, Functions and Powers

The NHRC has very wide constitutional mandates. Under the broad framework of its mandates, NHRC performs the following for the protection and promotion of human rights



NHRC Chairperson and the Officials with the President of Nepal during the Annual Report submission on 28th January, 2011

- Receives complaints, conducts inquiry and investigation upon them
- Recommends for reparation for victims or their kin
- Recommends for prosecution, departmental action to perpetrators
- Conducts rescue, search and seizure operations at suspicious places, if so require
- Recommends for filing court cases against perpetrators
- Carries out monitoring of international human rights treaties and human rights situation
- Reviews law/policies relating to human rights and recommends for reforms
- Works with NGOs, CSOs etc for the promotion of human rights
- Makes the name of human rights violators public, if so require
- Enjoys equal power as that of the court of law on procedural matters
- Would enter into any official house/premises without prior information, if so require

Status of Complaints and Investigation

The investigation of human rights violation is the core function of NHRC. Since the establishment in 2000, over ten thousand complaints were filed at NHRC. This year 355 complaints were filed at various offices. Major among the complaints includes abductions for ransom, killing, rights of women, rights of the child, torture and mine explosion.

During investigation NHRC may enjoy power as equal to the court. The law allows NHRC to enter into any official premises for investigation purpose without prior information. The exhumation of human remains is a serious type of investigation. The NHRC has carried out 11 incidents of exhumation in its lifetime. Major among them was the *Godar* exhumation of 2010 in which remains of five youths who were arrested, killed and buried by security staffs in 2005, were recovered from a site located at *Godar* village of *Dhanusha* district.

Status of theme based complaints- Record shows that out of total 355 cases filed around 40 percent of complaints were filed on civil and political rights theme. Around 22 percent were filed on torture followed by 7 percent each on ESC rights and women's rights, and 4 percent on child rights. A few complaints filed on the rights of migrant workers, persons with disability and racial discrimination, among others. The killing, torture, abduction and disappearance issues were given high priority for investigation. In average 200 investigation missions each year comprised of minimum 2 officials are deployed from various NHRC offices for 1-7 days per mission.

Settling upon Complaints

After the completion of investigation upon the complaints, the Commission resolves them in the following processes.

1. Recommending for:
 - Compensation to victims or kin of victims,
 - Prosecution to perpetrators,
 - Departmental action against HR violators
2. Dismissal or pending of complaints (on legal and jurisdictional errors)

3. Making public the name of perpetrators (vetting)

This year NHRC made 148 recommendations for remedies against the violation of human rights. The number appears more than 33 percent of recommendations made in earlier ten years. In between 2000-2010 NHRC made total of 439 recommendations and some of them are implemented, some partially implemented and majority non-implemented.

Monitoring

The human rights monitoring is a core function, and NHRC carries out the following nature of monitoring activities.

Treaty monitoring - The monitoring aims to support the state to enhance respect of human rights by working to fulfill treaty obligations. This is a regular work performed throughout NHRC planning and programming cycles. This year NHRC, along with NWC and NDC, prepared and submitted UPR report to the Human Rights Council of UN. In addition, NHRC reviewed upon the country reports on ICCPR, CRC, CEDAW and ILO 169. In addition NHRC has taken initiative on the monitoring of the status of implementation of the National Human Rights Action Plan of the GoN.

HR Situation Monitoring -The NHRC monitors the situation of respect on various rights. The reports are frequently received about the use of excessive force at different offices, road blockades, strikes etc. The NHRC quickly responds to these incidents by monitoring through rapid response teams. In addition of monitoring of thematic areas such as child care centers, the NHRC monitors the situation of healthcare and supplies etc in some circumstances. Around 169 monitoring missions are deployed each year with minimum 2 officials each mission from various NHRC offices.

Comprehensive Peace Accord (CPA) monitoring- The CPA of 2007 has entrusted NHRC to monitor the compliance of its human rights provisions. The NHRC has conducted monitoring and prepared, published and disseminated reports periodically on the issue as well. The reports show that both government and CPN -M need to reinforce their efforts to comply with CPA provisions.

The clause 5.2.3 of CPA reads that parties would “...*prepare the details of the disappeared persons or those killed in the conflict with their name, surname and residential address and publicize it within 60 days from the day of signing this agreement and inform the family members of concerned persons.*” But both the parties did not disclose whereabouts of disappeared persons within specified time. The 970 persons disappeared during the conflict, 671 persons by state and 299 by CPN-M, are unknown. As stated in CPA, TRC mechanism is not formed yet.

The clause 5.1.4 of CPA reads that “*both parties shall inform each other about the demarcation and storage of ambush or mines planted during the war period within 30 days and help each other to diffuse or dispose them off within 60 days*”. None of the parties have complied with this provision within specified period. After signing of the CPA, NHRC has documented 27 casualties and some others on physical harms caused due to landmine explosions. Despite the CPA commitment, thousands of IDPs are reluctant to return home due to fear of harm on their life and property. The properties seized by CPN-M cadres are not returned to the rightful owners. Many IDPs are awaiting rehabilitation services.

Dialogue and Advocacy

The NHRC frequently holds dialogue and advocacy programmes. The dialogues are held mainly on remedial, legal and policy issues with the Government, Parliament, Nepal Army, Nepal Police etc. As for examples,



Member/Spokesperson Gauri Pradhan addressing at the programme ‘Cases Withdrawals of Serious Crimes: High Level Panel& Public Forum’ held on 5th August, 2011

recently NHRC held dialogues with the legislators on NHRC Bill and Citizenship (amendment) Bill; with the Government, Nepal Army and Nepal Police on the implementation of NHRC recommendations; with GoN-Curriculum Development Centre on mainstreaming human rights in secondary school curricula.

The advocacy programmes are primarily held for the promotion of human rights. Advocacy programmes are directed to increasing knowledge, creating awareness and sensitising on different issues of human rights. The NHRC Regional and Sub-regional offices are actively involved in various advocacy programmes. These are organised in the form of conference, seminar, workshop, public hearing, campaigning, focussed group meetings, sport, debate, declamation and interaction etc.

Training and Capacity Building

The capacity building programmes are mainly targeted to aspiring human rights defenders. Recently, NHRC has developed a structured course of instruction for field based human rights defenders dedicated to work on different themes such as rights of the child, women, minorities, expression etc. In addition, NHRC has developed training manual on the rights based approach to development targeting to the defenders dedicated in the field of rights based approach.

This year, specialized training were organized on human rights based approach, exhumation process and detention monitoring, trafficking in persons for NHRC, GoN and police staff followed by lawyers, prosecutors and CSO representatives. The senior officials of NHRC facilitated various training sessions on human rights to the Nepal Army, Nepal Police, Armed Police Force, CSO and GoN staff across the country.

Law and Policy Reform

The government has to obtain NHRC opinion on all human rights related laws and policies. The NHRC therefore provides its advisory opinions upon the Bills and state policies aiming to ensure that they precisely contain human rights values standards. This is an opportunity for NHRC to fairly influence the state at policy as well as decision levels.

This year, NHRC provided opinion on the Children (amendment) Bill, Criminal Code, Criminal Procedure Code, Sentencing Bill, Child Protection Policy (in schools), National Child Protection Policy and Tribhuvan University Management Regulations. Also, this year NHRC adopted Detention Monitoring Guidelines and Consumer's

Rights Monitoring Guidelines. Some other guidelines including Complaint Handling Guidelines and human rights audit guidelines are in pipeline.

Partnership and Collaboration

The civil society and media are the major collaborating agencies. This year, NHRC worked in collaboration with OHCHR, CSO, NGOs, professional organizations and media in over 566 events on diverse issues. This year the UPR report was prepared in collaboration with NWC and NDC and submitted to the Human Rights Council. The collaboration with NWC and NDC was also made for the monitoring of selected cases of rights of women and *dalit* people.



National level consultation meeting on UPR held on 23rd June, 2011

The Strengthening Capacity of National Human Rights Commission(SCNHRC) /UNDP is the imbedded project that extends support for a number of significant activities of NHRC that include capacity building both institutional and staff, collaboration, developing guidelines, publication among others. The ESC rights indicators were developed in partnership with OHCHR-Nepal. In addition NHRC worked in collaboration with OHCHR on the issues of passage of NHRC Bill in

compliance with the Paris Principles, enforced disappearance, rights revoked- withdrawal of cases by GON among others. This year, NHRC –Nepal and NHRC-Korea concluded the MOU for the promotion and protection of the rights of migrant workers.

Lobbying and Campaigning

The NHRC sometimes involves in lobbying activities. This year, four events of lobbying with the legislators were held for the passage of NHRC Bill in compliance with the Paris Principles. The NHRC also involved in various campaigning activities along with CSO, NGO and professional organizations. The NHRC mainly involved in campaigning for the end of racial discrimination, discrimination against persons with disability, trafficking in persons, violence against women and children and so on. In addition, Regional and Sub-regional offices were involved in various campaigning activities under their respective jurisdictions.

Publication and Dissemination

The NHRC regularly prepares, publishes and disseminates monitoring and research related reports. The reports are made public via print and electronic media including NHRC website and Radio programme. They are disseminated through various NHRC offices and networking agencies to increase their access to grass roots level. During the year, 23 reports were published in the form of books and booklets. Major among them includes NHRC Activities in Pictures and Report on Trafficking in Persons. The reports are widely used as advocacy tools.

Major Deliveries

Major deliveries during the year are as follows:

- The NHRC conducted historic exhumation of five bodies at Godar village of Dhanusha district. The security staff had captured,

killed and buried five youths in 2005. The NHRC worked with the government, OHCHR- Nepal, CSO, national and international experts through a team of 18 members. After three week long effort (2 weeks in Aug 2010 and one week in Feb 2011) remains of five male human persons were recovered and sent for scientific test in the country and abroad. The experts have submitted the medical and forensic anthropological report to the Police recently for further steps.



Exhumation team at the excavated burial site at the bank of Kamala River, Godar VDC-3, Dhanusha, Janakpur on 6th September, 2010

- The NHRC monitored the incident of excessive use of force by security staff in Dudhejhari jungle of Kailali district where security agencies applied force to evacuate thousands of people encroaching over forest area to settle down in the area. In two week long operation, security officials used force to evacuate the squatters and some huts were set on fire. Consequently, three people died and many more were injured. The NHRC investigation found that there was excessive use of force and

therefore recommended for appropriate actions against human rights violators.

- This year, Commission made 148 recommendations upon complaints, more than 33 percentage of all the recommendations (439) made in the past ten years
- The NHRC along with NWC and NDC prepared and submitted UPR report to Human Rights Council of UN and currently actively involved in follow up process for the implementation of the activities agreed by GoN.
- The NHRC prepared and adopted the Prisons and Detention Monitoring Guidelines and the Consumers Rights Guidelines
- The Commission produced, published and disseminated 23 reports and promotional materials this year. Some of them such as *NHRC in a Decade* (in pictures) and *NHRC Recommendations of a Decade* Presently they are widely used as advocacy tools.
- The NHRC developed structured course of instruction for human rights defenders working on various themes such as rights of child, women, minorities, expression etc. The NHRC also prepared the training manual on the rights based approach to development.
- The NHRC provided trainings for the HRD in the field on various themes of human rights including HRBA
- Held various advocacy programmes with CSO, development actors, professional organizations, state agents through seminar, workshop, and interaction etc.

- Participated in several programmes organized by the government, security agencies, CSO and international organizations in the capacity of expert, keynote speaker, trainer and participant.

Major Challenges

The NHRC performed significant works despite serious challenges. Major among them are as follows:

- *Delays in making NHRC Act-* NHRC Bill have not been enacted into law for four years. This has affected smooth functioning of NHRC. This issue was raised at international level as well mainly during NHRC-Nepal accreditation processes at ICC of NHRIs. It raised questions on NHRC credibility as NHRC is functioning, according to law made before it was elevated to a constitutional body.
- *Staff management-*The staff management is an unresolved issue since the inception of NHRC. The problem seriously emerged after NHRC was raised to a constitutional body. The government intends NHRC to follow staff recruitment procedure similar to that of the civil staff of government. NHRC perceives that such a procedure would not comply with the Paris Principles for the operational independence of NHRIs. At the moment, there is absence of credible law for the recruitment as recruitment process initiated under prevailing NHRC rules were impeded by the Supreme Court ruling. Staff turnover has been increased and therefore NHRC has been working with only 33 percentages of human resources which clearly indicates serious impediment to NHRC functions in fulfilling its mandates.
- *Non implementation of recommendations-* The large number of NHRC recommendations is not implemented and victims are waiting for justice for years. As a part of implementation, compensation has been paid to the victims and their kin in a number of cases. Hardly has any recommendation been implemented yet towards the prosecution and departmental action taken against the

perpetrators. This trend would erode the value of NHRC and public confidence in it would decline. The worth of NHRC justice delivery system would be in question, and human rights protection system would be in jeopardy and eventually turn out to be non-credible.

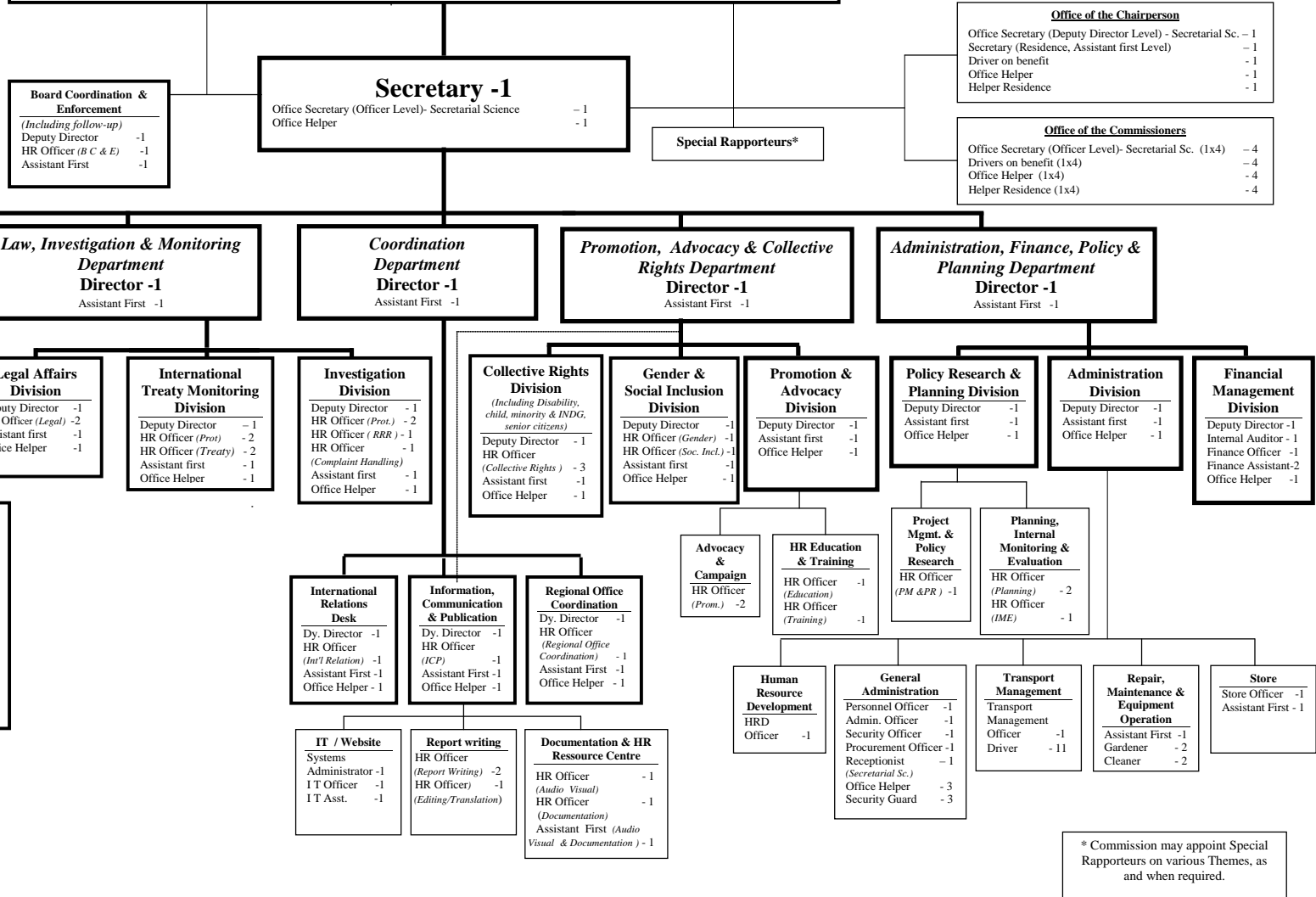
- The Bills on the Truth and Reconciliation Commission and Disappearance Commission have not been passed yet and , as a result, the formation of TRC and Commission on Disappearance have long been lingering and transitional justice delayed
- The registration and rehabilitation of the combatants have not been materialized.
- The work of making of the Constitution has not been accomplished and the prolongation of the state in transition still persists.
- In recent years, the law and order situation has not been satisfactorily maintained.
- Prevailing incident of killings, abduction for ransom, strikes and bandha in various parts of Madhes and eastern hill districts.
- Prevailing state of impunity
- Threat to safety and security due to abduction, killing and extortion
- Failure to make public the status of persons disappeared during the conflict
- Failure to return public/private properties seized by the CPN-M
- Less convincing atmosphere for IDPs to return home
- Delays in the formation of transitional justice mechanisms

- The End -



National Human Rights Commission

Chairperson - 1
Commissioners - 4



Notes:

- Prot. = Protection
- Prom. = Promotion
- Soc. Incl. = Social Inclusion
- HR = Human Rights
- IT = Information Technology
- PM & PR = Project Management & Policy Research
- HRD = Human Resource Development
- IME = Internal Monitoring & Evaluation
- BC&E = Board Coordination & Enforcement
- RRR = Rapid Response/Rescue
- Admin. = Administration
- INDG = Indigenous
- ICP = Information, Communication & Publication
- Int'l Relation = International Relation
- Secretarial Sc = Secretarial Science

* Commission may appoint Special Rapporteurs on various Themes, as and when required.