

Summary Report of
**NHRC Recommendations upon
Complaints in a Decade**
(2000-2010)



National Human Rights Commission
Harihar Bhawan, Lalitpur, Nepal

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Foreword

The National Human Rights Commission was established under the Human Rights Commission Act of 1997. The Interim Constitution of Nepal of 2007 has mandated the Commission with wider responsibilities to receive the complaints against human rights and carry out necessary monitoring and investigation. The Commission, thereafter, forwards recommendations to the Government for necessary actions to the perpetrators and compensation or reparation to the victims or their families.

The Commission has carried out significant works on the promotion and protection of human rights. This report, however, aims to cover particularly human rights related activities, legal counseling or policy related recommendations made over the period of ten years. During the past ten years, the Commission passed through the insurgency period and primary attention was focused on the incidents of killing, violence, abduction, disappearance, displacement and property seizure etc. The Commission, however, has been making various recommendations consistently on the protection and promotion of economic, social and cultural rights as well.

Aftermath scenario of the conflict period exhausted with the chronic political instability in the country. Subsequently, apart from human rights awareness oriented programs, necessary accomplishments on the promotion of human rights could hardly be undertaken. Human rights are indispensable component for the development of economic, social and cultural development for raising qualitative life standard of the people and the foremost responsibility of this rests upon the Government of Nepal.

As the saying goes, "Data speaks for itself", this report contains NHRC recommendations based on data. Recommendations were referred to the GoN on the total of 386 complaints relating to 1482 people. Out of these, 34 were implemented, 138 of them have been partially implemented and 214 of the recommendations still await implementation. Hon. Prime Minister Madhav Kumar Nepal, addressing the NHRC concerns on the occasion of

the 10th anniversary of the Commission, has commended on the work of the Commission and expressed his commitments for the implementation of the recommendations. This is truly appreciable.

Inadequate efforts in taking action against human rights violators, withdrawal of the cases filed at the court of law have given path to develop the culture of impunity. Such state of affairs is indeed disappointing and this has to end anyway. The Nepali proverb “Jasko Pap – Usko Gardan”(those commit crime would be subjected to slain by hacking the neck) is a symbolic norm of the Nepali judicial system. No one is above the law and therefore ministers can be held as accountable provided they become imprudent in such situation.

Lastly, I express my special thanks to all the NHRC staff members for their work in publishing this book.



Kedar Nath Upadhyaya

Chairperson
NHRC-Nepal

Decision Making: Experience of Lifetime

Established on May 26, 2000, the National Human Rights Commission of Nepal has marked its 10th anniversary recently. The Commission has been playing a significant role in conducting investigation and monitoring on the complaints on the violation of human rights or on the basis of suo moto. Keeping in mind the nature of complaints, circumstances, human resources the Commission routinely forms high level teams comprised with the Chairperson, Commissioners and officer level team in order to conduct monitoring and investigations. The Commission forwards its recommendations to the government for implementation. The recommendations as such include departmental action or prosecution against the perpetrators and the compensation and other necessary arrangement to the victims. In addition a number of policy recommendations are made from time to time.

Established after the remarkable effort amidst armed conflict, the Commission has undergone challenging periods since the beginning, and this situation still exists. Initial days of the Commission were full of perplexity with regard to whether or not to receive the complaints due to the lack of regulations, lack of working experience, limited work force and other resources. The Commission endeavors then gained gradually after the regulations came into enforcement along with the growth in the work experience, necessary human and other recourses and materials. Thus, there have been significant decisions made on the complaints during the first and second phase of the Commission.

The present office bearers were sworn in on September 19, 2007. Ever since, I was inquisitively suffering from a kind of worry as to how I could advance the work of the Commission. Soon after the oath taken, an unprecedented and extremely shocking incident of communal clash erupted in Kapilvastu, the birth place of the peace ambassador Lord Buddha. The incident remains as a black-spot in the minds of Nepalese people. As I had witnessed this incident closely, the agonies of the incident still remain fresh. The incidents were investigated and the reports were published. Recommendations were forwarded to the Government of Nepal to take legal action against the accused and to deliver justice to the victims. Unfortunately, the GoN has neither implemented the recommendations nor publicized the Mallik Commission report that would sufficiently pave the way for the investigation on the incident.

Earlier the Commission could not pick up momentum on the resolution of complaints as expected. There have been still a number of complaints under investigation. Keeping this in mind, the Commission offered that one member Commissioner shoulder up this responsibility to settle down the pending complaints and the complaints waiting for dismissal. Thus, I was delegated to carry out this work.

After I took my office, most of my time has been spent in decision making. When I appear as a decision maker, I remember the faces of the victims and perpetrators. I even remember the faces of our staff members deployed to discharge their duties in the fields. I can't help but remember the plight of those hardworking and daring workers who often risk their lives under very critical circumstances without food and water while giving their service in every nook and corner of the country. I even remember the investment incurred for investigation and monitoring. Possibly, this is because I have been involved personally in many of the investigations. Thereafter, I keep in mind the entire processes that entail the complaints registration, details of the incident, monitoring and investigation processes, nature of the incident, facts, evidences, analysis, and the conclusion reached by the team and so on so forth. At times, I have been intensely touched by the trauma of the victims while involved in the incidents in the sub regional, regional and central offices. A few of those incidents comprise alleged rape of a female constable perpetrated by her own colleagues, the killing of three women including a child by the bullet shots of the army personnel in Bardiya National Park and the loss of hundreds of people caused due to the endemic diarrhea that broke out in western districts in Nepal. There are hundreds of such incidents. I feel quite downhearted when recommendations on such incidents remain unimplemented and it is truly painful to imagine the plight of the victims.

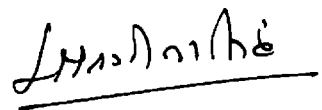
Indeed, the works of the Commission have advanced once I was delegated to discharge the responsibility to reach decisions subsequently over the complaints upon conducting monitoring and investigation. So far the Commission has dispensed more than 61% decisions and I have taken this as a very significant achievement.

Speculations were made that the adequate cooperation from both the government and the CPN Maoist towards the complaints leveled against them could be obtained to the decent extent but all in vein. On the part of the

state player, no adequate support is extended with regard to the complaints leveled against the security personnel. Consequently, few complaints have been still waiting for decisions to be dispensed. Contrarily, it is heard that the NHRC recommendations do not bear implementation liabilities as per the office of the Attorney General. The notion as such apparently serves as an obstacle to the implementation and thus the doubt looms.

The implementation status of recommendations of a national institution such as NHRC is in a very dismal state. The reason behind this is that the culture of impunity often goes safe-sheltered. Crime in politics and vice versa has been crossing its height alarmingly. If the prevalent propensity of piling up the recommendations to rot away continues, the government itself will turn out to be counter-productive in the end. As a result, serious questions are being raised now as the victims are further stigmatized with the recommendations being unimplemented. The single effort of the Commission, therefore, is not adequate enough. The concerted effort from political parties, civil society, human rights workers, media sector, and various professionals is the need of the hour in order to have the NHRC recommendations implemented.

Lastly, I firmly believe that this publication will be an eye-opener as it throws light on the activities and the perspective of the state towards the NHRC recommendations. I thank all those involved in this endeavour.



Ram Nagina Singh

Member
NHRC- Nepal

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1. Introductory

The National Human Rights Commission of Nepal was established on May 26, 2000. As stated in the preamble of the Human Rights Commission Act of 1997 the objective of constituting the Commission was to “establish an independent and autonomous National Human Rights Commission with regard to have effective enforcement as well as protection and promotion of the Human Rights conferred by the Constitution and the prevailing laws”. The Commission celebrated its 10th year anniversary in May 2010. The Human rights Commission Act 1997 has mandated the Commission with major responsibilities of the protection and promotion of human rights. The Commission had been functioning as an autonomous and independent statutory body since 2000 till 2006 as per this Act. The Interim Constitution of Nepal, 2007 has elevated NHRC as a constitutional body giving wide range of mandates relating to the protection and promotion of human rights and ever since the Commission has been fulfilling its responsibilities as per the Constitution and the Act.

In order to fulfill those responsibilities the Commission has been mandated with the right to receive and take necessary actions upon those complaints of human rights violation. As provisioned by this Act, the NHRC (Complaint, Action and Determination of Compensation) Rules, 2001 was made. The Commission basically performs its work on the basis of these rules.

The Human Rights Commission Act also deals with the procedure and mechanisms for the implementation of the NHRC recommendations. The Commission after the complete investigation and monitoring upon the complaints would forward appropriate recommendations to the Government of Nepal. The law stipulates that the GoN or responsible agency for the implementation of recommendations has to report the progress of the implementation within three months to NHRC. The Commission can initiate the investigation and monitoring of the case on the basis of ***sou moto*** once no complaints filed on certain issue of human rights violation.

After the Commission was elevated to the status of a constitutional body, it has been proactively moving ahead with broader responsibilities. The Commission is now competent to file the case against the persons involved in the violation of human rights if deemed necessary, among others.

The Commission now has the power to enter into the office premises, residence of the concerned person, and other places in order to conduct search and rescue activities without prior information. However such activities are carried out at a time when immediate action is needed in any human rights violation.

The Constitution has given the power to publicize the name list of the official, person or the authority failing to comply with or enforce the recommendations made by the Commission. The NHRC would maintain the documentation of such name lists as vetting list of human rights violators. Until now no person is labeled and put on vetting list in the absence of clear law and procedure on vetting.

Over the years, the Commission under its mandate has been carrying out investigation, monitoring and passing recommendations to the GoN. Such recommendation include the complaints received on the basis of suo moto. In addition the Commission has made policy related recommendations on various human rights issues.

This report primarily contains the picture of issues recommended on, their implementation status and the role of the national and international organizations for their implementation. In addition brief information of the recommendation with regard to the compensation, interim relief, prosecution and other legal actions and their present implementation status has been presented herein. The facts presented in this report will provide information to general public, victims and or their families and other stakeholders to know about the NHRC's major work on the protection of human rights during the last decade.

2. A Fact-Sheet of NHRC Recommendations

This chapter contains the status recommendations referred to the GoN in the past ten years. The status of their implementation based on thematic issues is also presented below.

2.1 Number of recommendations referred to GoN in different years

S.N.	Year of submission of Recommendation	Extra-judicial killing								Disappearance	Abduction	Torture	Violence against women	Child rights	Displacement	Economic, Social & Cultural Rights			Illegal detention	Right of prisoners	Administrative justice / Fair Trial	Right to fair trial	Total	
		Security Forces	Custody	Maoist	Retaliation	Bomb Explosion	Unidentified	Clash	After Disappearance							After Abduction	Labor rights	Property Seizure						Right to health
	2001	3								2													5	
	2002														1	1								2
	2003	3		3							1	13					1							21
	2004	11	1	2	1					1	1													17
	2005	32	1	8	1	2	1			2	3	1		1								1		53
	2006	29		5			4			5	4	1		1							1	1		52
	2007	13	4	4			1				1			4							1			28
	2008	30	1	13	3	1	8			18	1	4			18						2			101
	2009	32	1	13	4		3			20	2	16	1	4	7						1	1		107
Total		153	8	48	2	9	2	8	8	48	3	30	16	8	28	1	3	2	1	3	3	3	1	386

S.N.	Implementation status	The year of recommendation	Extra-judicial killing										ESC Rights				Total									
			Security Forces	Custody	dfc/fj/fbLa6	Maoist	Retaliation	ctta6	Bomb Explosion	Unidentified	Clash	After Disappearance	After Abduction	Disappearance	Abduction	Torture		Child rights	Displacement	Labor rights	Property Seizure	Right to health	Right of prisoners	Administrative justice / Fair Trial	Right to fair trial	
	Total		78	2	19	0	2	1	2	1	2	3	0	24	1	3	0	1	1	0	0	0	0	0	1	138
3	Non-implemented	2001												1											1	
		2002																1							2	
		2003																	1						0	
		2004	0	1	1	1																			12	
		2005	3	1	4											3	1	1							13	
		2006	10		2						3			1		4	1	1			1			1	25	
		2007		2	1													3							7	
		2008	9	1	6		3	1		4				4		3		17				2			52	
		2009	31	1	12		4			3	1	1	17	2	16	1	4	7			1			1	102	
Total			62	6	26	1	7	1	6	4	1	22	2	26	3	7	27	1	3	2	0	3	3	1	214	

2.3. Thematic base recommendations and their implementation status

S.N.	Issues of Human Rights Violations	Full Implementation	Partial Implementation	Non Implemented	Total Recommendation
1.	Extra-Judicial Killing	18	107	114	239
2.	Disappearance	1	24	22	47
3.	Abduction	0	1	2	3
4.	Torture	1	3	26	30
5.	Violence against Women	13	0	3	16
6.	Child rights	0	1	7	8
7.	Displacement	0	1	27	28
8.	ESC rights	0	0	6	6
9.	Illegal detention	1	0	0	1
10.	Right to prisoners	0	0	3	3
11.	Administration of Justice / Fair trial	0	0	3	3
12.	Right to information	0	1	1	2
	Total	34	138	214	386

The data presented here suggests that most recommendations on the complaints of extra-judicial killing have been sent to the GoN for compensation and other legal actions after necessary investigation. Following this, the recommendations on the disappearance, torture, displacement and violence against women are on the rise. As we have a glance over full implementation status, violence against women appears in the row after extra judicial killing.

2.4 Implementation status of the recommendations

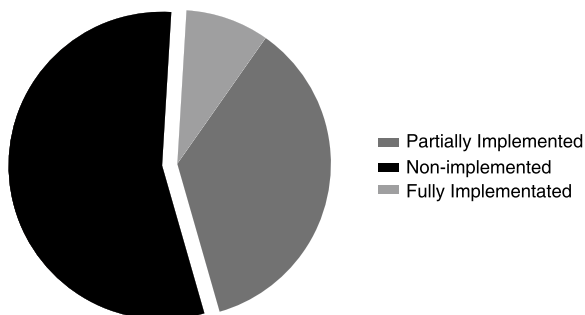
In terms of the level of implementation of the recommendations made by the Commission have been divided into three different parts as fully implemented, partially implemented and non- implemented. Data indicating the level of implementation are given in the table and the chart below.

Of the total 386 recommendations sent to the Government, 262 complaints are with regard to the incidents of human rights violations committed by the state and 88 are related to the incidents of human rights abuses of CPN (Maoists). These apart, 36 other complaints are related to the incidents with retaliation, unidentified groups, vigilante, explosion, and cross fire.

Implementation Status of the Recommendations

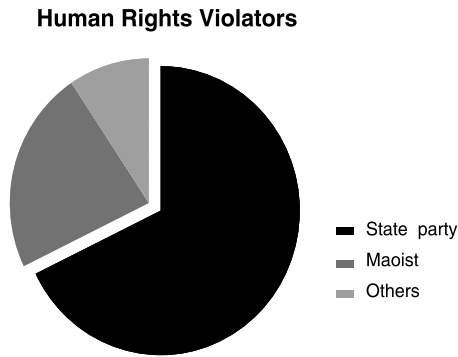
S.N.	Implementation Status	Total Number	Percentage
1.	Fully implemented	34	8.8
2.	Partially implemented	138	35.8
3.	Non-implemented	214	55.4
Total Recommendations		386	100

Implementation Status of the Recommendations



2.5 Recommendations on HR violations by various parties

S.N.	Parties violating HR	Number	Percentage
1.	State party	262	67.8
2.	CPN Maoist	88	22.8
3.	Others	36	9.4
Total		386	100



2.6 Complaints registered over ten years and their settlement status

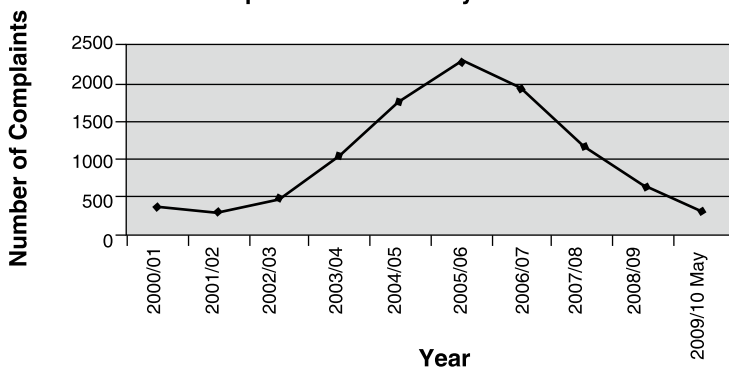
During ten years, a total of 10,507 complaints were registered in various offices of NHRC across the country. Investigation have been carried out on significant number of those complaints. A total of 2,872 complaints have been settled untill May, 2010. The rest 7,635 complaints are under different stages of investigation. A number of them are in the process of decision making, some are in the process of further investigation and a good number of them are awaiting investigation.

The complaints were filed in the Central, Regional and Contact Offices of the Commission. The complaints were received from the victims, their family members, NGOs, international organizations etc through various ways. Majority of complaints were received during insurgency period, people's

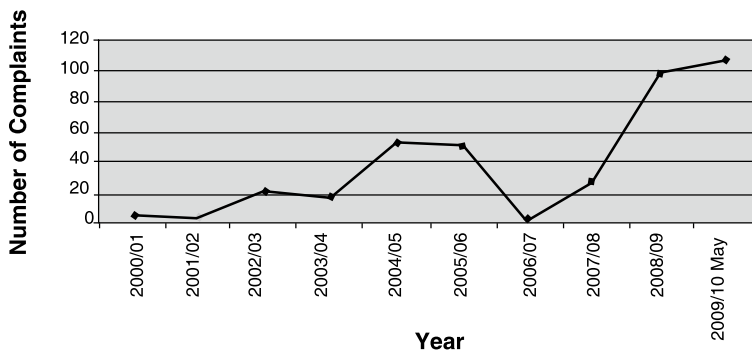
NHRC Recommendations upon Complaints in a Decade

S.N.	Year	Complaints received and <i>sou moto</i>	Settled		Total Settled Complaints
			Recommendations	Pending, Dismissal etc	
1.	2000/2001	385	5	7	12
2.	2001/2002	302	2	71	73
3.	2002/2003	483	21	89	110
4.	2003/2004	1083	17	54	71
5.	2004/2005	1782	53	240	293
6.	2005/2006	2331	52	621	673
7.	2006/2007	1948	0	0	0
8.	2007/2008	1173	28	465	403
9.	2008/2009	677	101	558	659
10.	2009/2010 May	343	107	381	488
Total		10,507	386	2,486	2,872

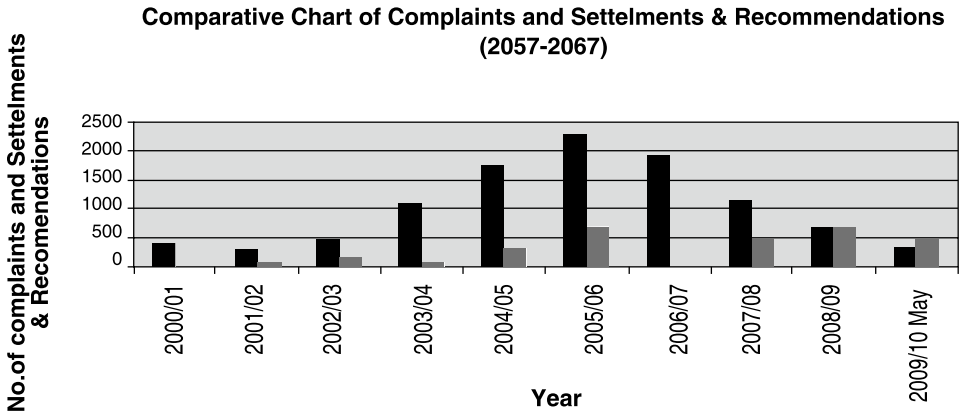
Complaints received by the Commission



Recommendations forwarded by the Commission

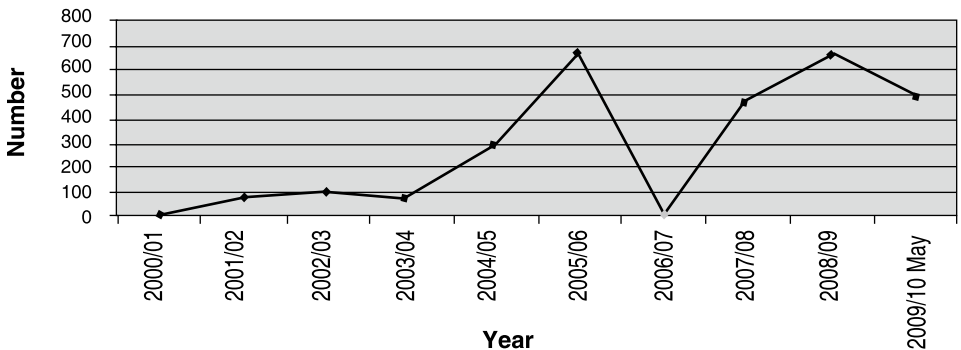


movement II, Constituent Assmebly Election, and in the period of transition to democracy. Out of total complaints received in a decade the status of disposal of complaints in annual basis is given in the bar diagram below:



The statistics and diagram show that the number of settlement and recommendations by NHRC is equal or higher than the number of complaints received at NHRC Offices in the the last two years of the decade.

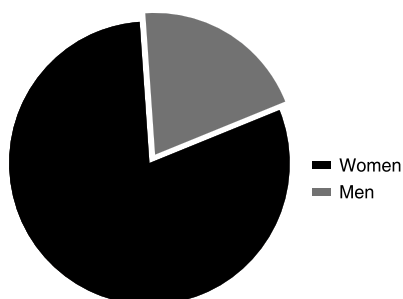
The Complaints settled from the Commission



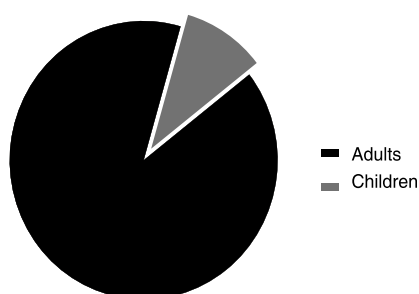
2.7 Number of victims from gender and age perspective

The Commission has requested GoN for appropriate remedies to 1,482 victims/their family members through 386 recommendations. Out of total victims 296 were female and rest 1,186 were the male. Among them 188 were child victims. The victims classified from gender and age perspective are given in the following charts.

Number of victims from gender and age perspective



Child and Adult Victims



Out of total 386 recommendations 34 were fully implemented. In terms of percentage only 8.8% of recommendations were implemented, 36% were partially implemented and 55 % were non-implemented. The cases of implemented and partially implemented consist of extra-judicial killing by the security forces, killing by the CPN Maoist, killing after disappearance, disappearance, torture, unlawful detention, custodial deaths, abduction, displacement, rights of the child and violence against women.

In terms of implementation on thematic basis only 8% of the total 239 recommendations on killing have been fully implemented whereas 45% of the recommendations have been partially implemented. The rest 47 % of the recommendations on cases of killing is yet to be implemented. Likewise only 2% of the total 47 recommendations on disappearance were implemented followed by partial implementation of 51% of recommendations and 46% have yet to be unimplemented. The data shows that 86% of the total recommendations on torture were not implemented. Out of 28 recommendations on displacement, 27 are awaiting for implementation. Over

2.8 The year and number of recommendations implemented

S.N.	Implementation status	The year of implementation	Killing								Disappearance	Abduction	Torture	Violence against women	Child rights	Displacement	Illegal detention	Right to information	Total
			Security Force	Custodial Death	Maoist	Retaliation	Bomb Explosion	Unidentified group	Cross Firing	Killing after disappearance									
1	Full implementation	2001	1								1								2
		2002																	0
		2003			1								1	13				1	16
		2004																	0
		2005				1													1
		2006	1																1
		2007																	0
		2008	3																3
		2009-/10/MAY	8	2									1						11
Total			13	0	3	1	0	0	0	1	1	0	13	0	0	1	0	34	
2	Partial implementation	2001	1																1
		2002																	0
		2003	2		2														4
		2004	2		1						1				1				5
		2004	3				1											1	5
		2005	4	3		1			1										9
		2006	2									6							8
		2007		2											1				3
		2009/10 MAY	68		13						1	3	14	1	1		1		103
Total			82	5	16	1	1	1	2	1	3	21	1	3	0	1	0	138	

all, the status is such that the recommendations related to economic, social, and cultural rights; rights of prisoners and administrative justice have been hardly implemented.

In the year 2009 GoN had taken an initiative to pay compensation to the victims of human rights violation as recommended by NHRC. GoN released the sum of approximately NRs 70 million for this purpose. Very few recommendations on the complaints on economic, social and cultural rights have been implemented.

In recent years, GoN has appeared relatively less sensitive towards implementing NHRC recommendations. More efforts are expected to prove its perseverance towards human rights in order to ensure the rights of the people and to maintain its image at national and international levels.

3. NHRC efforts for the implementation of recommendations

The Constitution, Human Rights Commission Act and the rule have the provision that GoN has to implement NHRC recommendations in a three months period. In case of inability, the agencies concerned have to provide written information to NHRC within specified period. But in practice this legal provision has not been properly followed. It is therefore NHRC has shown concern time and again for the need of implementation of NHRC recommendations. In addition, NHRC holds dialogue and advocacy programs at different levels of government and stakeholders aiming to ensure remedies to the victims of human rights violation by implementing NHRC recommendations in time. Major activities that NHRC carried out in the past are as follows.

3.1 Submission of report to the President of Nepal

As per the Interim Constitution, NHRC has to submit its annual report to the President of Nepal. In addition the NHRC submits other important reports. The President through the Prime Minister refers the report to the Parliament for its consideration. This mechanism of expression of accountability of NHRC to the Parliament via the President is a unique practice in Nepal. In addition NHRC submits other important reports to the President and bring to his notice the human rights situation of the country among others.

3.2. Dialogues with the Parliament

The NHRC frequently holds dialogues and exchanges information on the situation of human rights with the Parliamentary Committee on International Relations and Human Rights. The Commission informs the Committee about the works accomplished on the incidents of human rights violations. In addition, dialogues are held on the low level of implementation recommendations of NHRC and need of further efforts of the GoN for their implementation. The NHRC recently held dialogues with the legislators on the NHRC Bill tabled in the Parliament with a view to strengthening of independence and autonomy of NHRC. Besides, this NHRC performs interactions with the Speaker, Deputy Speaker and Members of the Constituent Assembly on contemporary human rights issues.

3.3 Dialogues with the Prime Minister and Senior Officials of the PM's Office

The NHRC held dialogues with the Prime Minister and has submitted a letter of memorandum on pertinent issues of human rights. In the past, the Commission had submitted the memorandums to the former Prime Minister late Girija Prasad Koirala, ex Prime Minister Pushpakamal Dahal and Prime Minister Madhav Kumar Nepal. The NHRC via memorandums urged the Prime Ministers to support and pay attention on the problems that NHRC has been facing. Major issues raised before the Prime Ministers include reinforce the efforts for the implementation of NHRC recommendations in order to ensure remedies for the victims of human rights violations, passage of NHRC Bill, NHRC staffing issue and NHRC office accommodation etc. Those issues were discussed with the Deputy Prime Minister and Ministers as well during their visit to the Commission.

3.4. Dialogue with the Heads of Security Agencies and Administration in the Center

The NHRC held a number of dialogues with the Chief Secretary and Secretaries of the GoN and heads and senior staffs of security agencies. During the dialogues NHRC raises the issues of human rights concerns such as deteriorating human rights situation in some parts of the country, provision of remedies to the victims of human rights violations through implementation

of NHRC recommendations, mitigating the culture of impunity, reinforcing government efforts for the protection and promotion of human rights. In addition NHRC showed concern on the non implementation of NHRC recommendations on the issues of larger public concerns such as killing of laborers at Kotwada of Kalikot, killing of 5 people including Sanjeev Karn in Janakpur and killing of NHRC staff Dayaram Pariyar in Janakpur. The NHRC has also shown concerns to the GoN on the issue of giving promotion to the security staff involved on the violation of human rights. Likewise NHRC has suggested the government to file the cases against military staff at civilian court for committing murder.

In October 2009 discussion was held with the Chief of Nepal Army in which NHRC requested the Nepal army to extend support for investigation in human rights related cases and implementation of NHRC recommendations. The army Chief expressed his commitment to help implement the NHRC recommendations.

At the local level, the Regional Offices of NHRC and NHRC missions from the center holds periodic dialogues with the regional administrators, chief district officers and regional heads of the security agencies on pertinent issues of human rights.

3.5 Work with International Community

The NHRC is frequently involved in the dialogues with members of international community on a number of issues relating to the promotion and protection of human rights. In March 2009 NHRC held a dialogue with UN High Commissioner for Human Rights Navnitam Pillai on the issues of mutual concerns for the promotion and protection of human rights in Nepal. Similar discussions were held with the Chairperson of NHRC Maldives and former Chairperson J S Verma of NHRC India. In addition, on different occasions discussions were held with UN thematic special rapporterus, senior UN staff, prominent human rights experts and defenders representing various international human rights organizations. The NHRC also held discussions with the Foreign Experts, Ambassadors and Heads of Diplomatic Missions in Nepal on the pertinent issues of human rights in Nepal.

The NHRC frequently holds discussions with the OHCHR-Nepal on diverse issues of human rights in the country including the non implementation of

NHRC recommendations. Such discussions are also frequently held between NHRC and OHCHR regional offices in Nepal.

Apart from above, NHRC has been raising its voice in various international forums with regard to ineffective implementation of the recommendations. Based on the above discussion with NHRC, a number of human rights defenders and the representatives of the diplomatic missions in Nepal have drawn the attention of the GoN from time to time to the state of impunity thereby stressing on the implementation of the NHRC recommendations.

3.6 Collaboration with the National Institutions, NGOs and CSOs

The National Institutions, CSOs and NGOs dedicated to the mission of human rights are the major partnering institutions of NHRC. The NIs, CSOs and NGOs have been supportive and active on the issue of implementation of NHRC recommendations. They frequently raise voice and lobby with the government agencies thereby cultivating pressure on the GoN towards the implementation of recommendations.

The NHRC works together with NIs, CSOs and NGOs on diverse issues of human rights. The leaders of women and dalit's rights movement held an interaction with NHRC in April 2010 and appreciated NHRC work and recommendations on the incident of killing of three women including a girl by Nepal Army staff at Banspani of Bardiya National Park in March, 2010. The team urged NHRC to initiate for the immediate implementation of the recommendations. The voices have been widely raised at both central and local levels by human rights defenders, civil society, media personnel, and professional organizations in order to put special pressure for implementing NHRC recommendations with a view to end the culture of impunity.

On the implementation status of the NHRC recommendations and impunity, a collaborated workshop was jointly organized by the NHRC and Human Rights and Democratic Forum in April, 2007. The workshop resolved to further pressurize the GoN for the implementation of NHRC recommendations. A civil society task force had declared a month long programs for cultivating pressure against impunity and implementation of NHRC recommendations in 2007.

3.7 Consultation and coordination with various commissions and academia

The NHRC also works in collaboration with the representatives of the National Women Commission, National Dalit Commission and National Foundation of Development of Indigenous Nationalities. The protection of human rights is the equal responsibility of those commissions to that of NHRC. In addition as a part of collective efforts NHRC works with academia, government and other stakeholders as well. The need of the hour is that the collective efforts should be directed towards creating pressures for the implementation of the recommendations in order to provide compensation and relief for the victims and punishing the violators.

In addition joint effort is required to mitigate dalits related discriminatory issues, and the issues relating to the indigenous people. The monitoring of the CA elections, 2007 was observed upon holding discussions for the collaboration with the central and regional level election commissions, security officials and poll officers in order to ensure political rights of voters, political parties and candidates during the electoral process. The Commission conducted monitoring of CA elections during and after the election in 68 districts of the country. A comprehensive report in this regards was made public. With regard to ESC rights, the Commission recommended to the Commission for Investigation of Abuse of Authority (CIAA) for proper investigation on the issues of corruption related issues pertaining to food supply, customs and CDO office etc. The CIAA positively responded to the recommendations of NHRC.

3.8 NHRC Consultation and concerns with the political parties and others

The Commission seldom holds consultation with the political parties in view of improving human rights situations in the country. At the local level NHRC regional and sub-regional offices hold dialogues and advocacy related programs with political parties, parliamentarians and CA members, security bodies, administration, civil society, journalists and other stakeholders for their coordination, cooperation and support to improve human rights situation.

During the dialogue, NHRC draws attention of concerned on the issues of killing, violence, bomb explosion, clashes, elections, good governance, and issues relating to the administrative justice.

4. Response from the Government of Nepal

The Government of Nepal has the major responsibility for the enforcement of NHRC recommendations. NHRC time and again sends the recommendations to the government urging to expedite the work with a view to provide remedies to the victims and their families. However the responses received from the government ministries responsible for the enforcement of recommendations indicates that support of the government in this regard is not encouraging. Although in recent years the Government has taken a decision to provide the compensation to the victims and their families, the recommendations relating to the prosecution or departmental actions to the human rights violators are hardly enforced.

The GON response generally indicates that Government has taken initiative for the enforcement of recommendations. With reference to the letter dated May 2, 2004 issued by the Office of the Prime Minister, NHRC was informed about the progress of the implementation of recommendations of 20 incidents including the Doramba incident of Ramechhap district and Kotwada of Kalikot in which 21 and 37 people were killed by security forces in each incident respectively.

5. Legal Initiatives

The Supreme Court has delivered significant decisions in relation to the NHRC in the past decade. Once the Human Rights Commission Act was issued in 1997, the NHRC could not be constituted for over 3 years. The Supreme Court issued the writ of mandamus to compose the Commission in a public interest petition filed by three lawyers. Subsequently, NHRC was established on May 26, 2000. By that time, the Commission had started to monitor and investigate on the complaints received against human rights violation cases. The recommendations were, thus, sent for remedies for the victims of human rights violations.

In another case a lawyer filed a public interest petition on the issue of state negligence on the implementation of NHRC recommendations. As a defendant NHRC also complied with the view of the writ petitioner. The Supreme Court issued a “show cause” notice on January 27, 2006 to the office of the Prime Minister and the Council of Ministers. Likewise an NGO named LANCAU filed the petition urging the enforcement of NHRC recommendation on the incident of the killing of Dayaram Pariyar a NHRC staff, by Nepal Police personnel. The Supreme Court issued a writ of mandamus to the GoN on June 8, 2007 for the implementation of the recommendation. However the recommendation hasn't been implemented yet.

In another case, relating to the disclosure of whereabouts of disappeared persons, the Supremes Court issued a writ of mandamus to the Government of Nepal to disclose the status of those who were made disappeared by security forces. The three officers of NHRC namely Basudev Bajagai, Om Prakash Aryal and Shyambabu Kafle pleaded in the case as amicus curiae on behalf of NHRC. However the recommendation hasn't been implemented yet. In addition to the Supreme Court a number of cases are filed at other courts demanding for the implementation NHRC recommendations as in the district courts of Kavrepalanchok, Dhanusha and Dhading.

6. Analysis

The average number of the complaints and the settled cases covering a period of three years of the Commission after its establishment appears almost in the same range. In five years, the flow of the complaints has increased by 3 to 4 times. During the year 2005/06 and 2006/07 the Commission received large number of complaints. No recommendation was made during the year 2006/2007 in the absence of Commissioners as no Commissioners were appointed after the resignation submitted by the earlier Commissioners.

In the year 2005/06, NHRC received the largest number of complaints. Once the outreach program was expanded by establishing various regional offices in Nepalgunj in December 9, 2004 following the establishment of the other regional offices in Biratnagar, Pokhara and Dhangadi as well as the contact offices in Khotang, Janakpur, Butwal and Rolpa respectively The complaints with regard to killing, disappearance, torture, illegal detention and abduction increased alarmingly during the emergency period. Gradually, the flow of

complaints has been decreasing with the end of armed conflicts with signing the Comprehensive Peace Agreement (CPA) between the GoN and CPN (Maoist). The major reasons behind the decrease of complaints are the delay in investigation and disposal of complaints filed at NHRC, implementation of low number of recommendations, delay in receiving remedies through NHRC process, lessening the number of serious violation of human rights with the end of decade old armed conflict.

Approximately 25 recommendations a year in average were referred to the Government in the first six years of NHRC. In the last two years, 95 recommendations were referred to the Government of Nepal each year. Out of them 34 for compensation has been fully implemented and 138 of them have been partially implemented. The rest 214 recommendations have not been implemented as yet. Mainly the recommendations to take legal action against the human rights violators associated with the security forces and those affiliated to various political parties have not been implemented.

7. Major Challenges

The initial days of NHRC remained very challenging in various forms. In the early days NHRC activities were focused more on human rights protection as it was constituted during armed conflict. The Government didn't pay proper attention towards the implementation of the NHRC recommendations. The major political parties did not properly demonstrate their commitments to human rights.

The serious issues were raised on the autonomy and independence of the Commission in line with the Paris Principles. The National Human Rights Commission Act that tabled in the Parliament has been lacking provision in order to ensure independence and autonomy to the Commission. The Commission therefore has frequently shown concerns on the issue.

The shortage of staff in every NHRC office has caused for low delivery of services on human rights issues. In terms of staff recruitment, NHRC remained in limbo once NHRC was elevated to a constitutional body.

8. Conclusion and recommendations

The less seriousness in the implementation of recommendations since its inception has been a problem. During the armed conflict, the Commission had appealed to the then rebelling parties to cease the violation of human rights and to discourage such acts. Such recommendations were also not implemented in full phase. Total of 12 complaints were settled in the first year of establishment of the Commission in 2000. But no recommendations were found to have been forwarded to the Government for their implementation.

The recommendations that were referred to the government for implementation include extra judicial killing, disappearance, torture, displacement and illegal detention. In addition, the recommendations on the issues of civil and political rights, NHRC in recent times have made recommendations on economic, social and cultural rights such as the right to education, right to health and right to food. The trend of the recommendations shows that during the conflict period the government focused on civil and political rights and in the post conflict era attention is paid towards economic and social rights as well. In the context of right to life and right to healthcare among others, NHRC last year recommended for necessary action to those responsible for supplying contaminated food items that claimed some 400 lives followed by 65000 people falling ill due to the endemic dysentery in 18 districts of mid and far western regions including Jajarkot district. Likewise the Commission had time to time recommended to the government by drawing the attention to work for the respect of the rights of bonded laborers, Haliya (bonded tiller peasants for landlords) Raute, Kamalari, persons with disabilities, prisoners, detainees, children and squatters.

The Commission has made recommendations to the Government on transitional justice issues as well. It recommended for the ratification of the International Criminal Court (Rome Statute) and promulgation of Truth and Reconciliation Commission and Disappearance Commission. Also the Commission has recommended the GoN for the rehabilitation, social reintegration, and reunification including education, training and employment arrangement to the child combatants living in the Maoist camps.

Non-implementation of the NHRC recommendations and court cases would impliedly help increase the state of impunity in the country. As the Constitution has widened the mandate of the Commission the responsibility of the government is also increased to implement the Commission recommendation both in terms of providing remedies to the victims of human rights violation and mitigating the culture of impunity.

The level of government efforts on the implementation of recommendations would reveal the level of government's commitment on the protection and promotion of human rights. The need of the hour is that the government should pay adequate attention to implement the recommendations of the Commission. Also support is expected from the CSOs, professional organizations, media, human rights defenders, and members of academia among others in order to continue advocacy for the implementation of NHRC recommendations.

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