

UNDP and the National Human Rights Commission of Nepal

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The National Human Rights Commission (NHRC) of Nepal was established on 26 May 2000 under the Human Rights Commission Act of 1997. The Interim Constitution of Nepal, 2007, elevated the status of the NHRC to a constitutional body and broadened its mandates relating to the protection, promotion and respect of human rights. The 2006 Comprehensive Peace Accord (CPA) and the twenty-three-point agreement and other consensual engagements between the Government of Nepal and the Maoist Communist Party Nepal (CPN-Maoist) provided NHRC with the responsibility of monitoring compliance with those accords from the human rights perspective. Article 132 of the 2007 Interim Constitution vests on NHRC the primary responsibility to protect and promote the human rights of the people in Nepal. It also provides that the NHRC may review constitutional provisions and those of other laws for the enforcement of human rights; and submit necessary recommendations for the effective implementation of such provisions. This responsibility encompasses review of international treaties and instruments on human rights and recommendations to the government on effective measures to implement them. Similarly, the NHRC can work jointly and in a coordinated manner with civil society to enhance awareness on human rights.

UNDP Intervention

Recognizing the need for capacity-building in the newly established NHRC, the United Nations Development Programme (UNDP) Nepal Office launched the first phase of the Capacity Development of the National Human Rights Commission (CDNHRC) in 2002. The first phase aimed at enhancing the capacity of the NHRC to fulfil its mandates and protect as well as promote the rights of the people in Nepal.

The implementation of the project resulted in the following output:

1. NHRC capacity developed in the areas of management and administration, infrastructure, human rights promotion and advocacy, and building alliance with civil society:

Operational capacity strengthened: Despite the problems, constraints and hurdles brought by the changing political scenario in the country, most of the NHRC staff remained highly committed to their work. The Project extended logistic support to the NHRC in order to make the work of the staff easier.

Organizational capacity strengthened: The project developed various guidelines, procedures, and manuals for the NHRC staff. These guidelines, procedures, and manuals cover tasks such as conducting investigations, reporting, and visiting detention centers. The NHRC has been applying the procedures such as the complaint handling manual and detention center monitoring. The NHRC has revisited its organizational structure based on the recommendations of a study conducted by the project. The project also developed policies, procedures and guidelines relating to personnel, leadership, and management and administration issues. The key policies, guidelines and procedures are listed in Annex A.

Management and Administration Systems strengthened: The project assisted the NHRC in developing its administrative, leadership and management capacity through external trainings, a research study, and on-the-job support from CDNHRC professional staff. As a result, the NHRC now has five divisions: protection, promotion, planning, legislative review and operations. The project also supported the establishment of NHRC special units and focal points to look after issues regarding children and women. Financial rules and regulations were also developed by the project.

The project introduced a computerized network system, which is currently being used effectively.

The project supported the opening of Regional Offices that have helped increase people's access to the NHRC. The Regional Offices are now able to receive complaints of human rights violations more promptly and effectively.

The project supported the NHRC in carrying out a Review of its Organizational and Management Structure, and a study for its Human Resource Development. The support of the project covered the implementation of the recommendations of the reviews.

Office of the National Rapporteur on Human Trafficking established and strengthened: The project supported the establishment of the Office of the National Rapporteur on Trafficking (ONRT) in the NHRC and the publication of annual reports on the overall situation of human trafficking. The annual reports for 2006 and 2007 were produced and disseminated to human rights

organizations. These reports draw the attention of policymakers and non-governmental (NGOs) working in the areas of human trafficking.

2. NHRC capacity developed to monitor the human rights situation, investigate serious violations of human rights, and take all the necessary actions within its power against human rights violations:

Investigation and Monitoring: The project strengthened the NHRC's capacity to receive complaints and monitor the human rights situation in the country. The project supported the NHRC in the tasks of investigating human rights violations, monitoring the human rights situation, case follow-up, litigation, and training. More than eight thousand cases have been received and more than two thousand cases were investigated during the 2002-2008 period. With the project support, out of the two thousand cases, the NHRC submitted two hundred twenty-five recommendations to the concerned government agencies. The project also supported the NHRC in carrying out follow-up interventions for the implementation of the NHRC recommendations. More importantly, the project supported the NHRC in investigating the Shivapuri case, which involved the suspected death of forty-nine detainees from the Bhairabnath Gan (army detention camp) and the cremation of their bodies by the army in Shivapuri National Park. The project also provided national and international human rights technical expertise that enabled the NHRC to execute its core protection functions with greater efficiency and effectiveness. In addition, the project developed several policies, guidelines and manuals on the following:

1. Complaint Handling System and Procedures Guidelines
2. NHRC Trainers' Manual on Monitoring & Investigation
3. Human Resources & Development, Gender, Internship Policy and Complaint Handling Manual
4. Revised Monitoring and Investigation Rules, and
5. Guidelines for Detention Centre Monitoring (DCM).

Monitoring of the Comprehensive Peace Accord: With NHRC mandate to monitor the implementation of the Comprehensive Peace Accord (CPA) from the human rights perspective, the project supported the NHRC in monitoring the implementation status of the accord at local and national levels and publishing periodic reports. The project also organized a series of interactions and seminars on this issue with the concerned government agencies

such as the Home Ministry, Ministry of Local Development and Ministry of Women, Children and Social Welfare.

Monitoring of the Constituent Assembly (CA) Election: The project organized a series of trainings for the NHRC staff on election monitoring from the human rights perspective. A checklist was developed by the project for the NHRC. The project supported the NHRC financially and technically to be able to monitor the CA election in sixty-nine districts out of seventy-five districts, with a focus on the access of the people to the poll.

Capacity-building of the NHRC Staff: With the technical support of the Office of the United Nations High Commissioner for Human Rights in Nepal (OHCHR-Nepal), the project organized several trainings for the staff of the NHRC and government, and human rights activists. The trainings mainly dwelt on basic human rights, international human rights standards, investigation, monitoring, documentation and reporting, socio-economic rights, treaty monitoring, and legislative drafting. It also included international exposure and study tours.

Building Partnership with NGOs: NHRC, with substantial support and advice from the project, has started to repair frayed relationships with NGOs. Outreach efforts including training, workshops, and joint seminars have helped NHRC win back the trust from NGOs that is essential to the NHRC's overall success. The NHRC Regional Offices have recently created effective networks of NGOs, especially in the Terai region. The Biratnagar Office, for example, has brought NGOs representing Madhesis and Dalits Janjatis together for joint workshops and conferences to help defuse tensions before they erupt into violence. The Regional Protection and Promotion Officers have worked together to try to build confidence across ethnic and caste divides so that people can claim their rights peacefully.

Legal Assistance and Review of Laws: The Project supported the NHRC's review of laws relating to security. NHRC reviewed the laws about the military, public security, and local administration, and submitted recommendations to the government. NHRC also reviewed the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) and recommended its repeal. TADO was subsequently repealed based on the recommendation of the NHRC. The project provided technical assistance on the second draft Ceasefire Agreement between the CPN-Maoist and Government of Nepal (GON), which was later signed by both parties in November 2006. NHRC also

reviewed the Public Security Act and some of the contradictory provisions were amended as per its recommendation in 2006.

The project supported the NHRC Legal Assistance Division to organize the following programs:

1. Drafting the Human Rights Commission bill. While the NHRC has already submitted a draft bill of Human Rights Act 2007 for enactment, the OHCHR-Nepal provided technical advice and assistance in finalizing the Human Rights Commission bill.

2. Interaction on the implementation of the General Recommendation of the Committee on the Elimination of the Racial Discrimination.

3. Interaction on report on rights to life, liberty and equality and the response of the Supreme Court in light of international human rights instruments.

As mandated by the NHRC, the project also supported its review of a dozen laws and the making of recommendations on pertinent cases of human rights violations. Some laws were amended and repealed as per the recommendations of the NHRC. See Annex B for details.

Human Rights Promotion: The project supported the organizing of a series of seminars and workshops to facilitate the human rights education and advocacy role of the NHRC. The workshops mainly focused on the overall human rights situation, the role of human rights and peace education, the role of the law enforcement agencies in the enforcement of human rights, the role of political parties in the constitution-making process, the need for the ratification of the Indigenous and Tribal Peoples Convention, 1989 (ILO 169) of the International Labour Organization, the need for the ratification of the International Convention on the Rights of Persons with Disability and the International Criminal Court Statute, and the role of human rights defenders.

The project extended support to the NHRC to spread human rights education at the national level through audio, visual and print media on important issues such as social discrimination, witchcraft, and human trafficking. The project also supported the establishment of a “Human Rights Resource and Documentation Center” for human rights study and research, supported a study on “Secondary Level Education Curricula and Knowledge Attitude and Practices (KAP) study” for schoolteachers, helped develop a human

Rights Promotion and Advocacy Strategy and a Communication Strategy. To increase knowledge about human rights, the project also supported the publication of reports on the People's Demonstration (April 2006), on the NHRC's achievements and challenges over a six-year period (2006), on ceasefire monitoring (in Nepali and in English, 2006), on the human rights situation during the Emergency (2006), and on the human rights situation during the ceasefire 2006-2007. The project also supported preparation of brochures for the Human Rights Resource and Documentation Center.

To train students on human rights, the project supported the establishment of a human rights internship program in the NHRC. Eight degree-level students from marginalized communities were given training as human rights interns. They are now working with different human rights organizations.

The regional offices of NHRC in five regions of Nepal have very limited functions in terms of mandate. They are limited to monitoring the human rights situation, receiving complaints, investigating the complaints, and forwarding investigation reports to the central office for further action. The regional offices are not yet authorized to send recommendations directly to the concerned agencies of the government. However, the regional offices have a huge role in human rights promotion activities. They basically do the human rights promotion activities in coordination with the local civil society organizations.

The central office in Kathmandu develops the overall strategic plan of the NHRC in consultation with the regional offices. The central office also develops the policies, guidelines and procedures, while the regional offices have the responsibility of implementing them. Though the administration system is centralized, the regional offices have been very effective in facilitating human rights empowerment at the local level and in building the coordination system with human rights organizations.

NHRC plans to establish Human Rights Resource and Documentation Centers in the regional offices. UNDP has been requested by the NHRC to collect ideas and prepare an overall concept on it. At the moment, UNDP sees the need to establish the resource centers at the regional offices in order to provide information on human rights, provide online services on human rights issues, and also provide counseling service.

3 The Strategic Plan formulated in line with the additional mandates of the NHRC

The first crucial Strategic Plan of NHRC 2002-2004 was developed with the support of the project. As a newly established institution at that time, the NHRC Strategic Plan mainly focused on the internal capacity enhancement of the NHRC itself. The project supported the revision of this Strategic Plan in line with the emerging human rights situation and development of the new Strategic Plan 2004-2008. The new Strategic Plan has a focused response to the conflict situation in the country. After the promulgation of the 2007 Interim Constitution and the CPA, the project again supported the NHRC in developing the new Strategic Plan 2008-2010, taking the changing political scenario of the country into consideration.

Second Phase of the Project

The first phase project was completed in 2008. As a joint initiative with the Office of the High Commissioner for Human Rights (OHCHR-Nepal), the second phase of the project was launched in 2009, known as Strengthening the Capacity of the National Human Rights Commission (SCNHRC) Project, and covers six strategic interventions that draw on the 'Strategic Plan' of NHRC (2008-2010) as well as on the 'Functions, Duties and Power of the National Human Rights Commission' of the 2007 Interim Constitution:

- Formulation of strategies and human rights audit plan to ensure the respect of human rights by state actors
- Monitoring and comprehensive analysis of treaty obligations
- Ensuring Human Rights Friendly Constitution
- Promotion and protection of civil, political, social, economic and cultural rights
- Enabling NHRC to collaborate with civil society, including human rights NGOs
- Review of discriminatory laws.

Since the first phase of the project focused on providing institutional support to the newly established NHRC, the second phase of the project was developed using a programmatic approach. The second phase of the project focuses on developing substantive policies by scrutinizing the whole

government, its policies and programs from the human rights perspective. Likewise, the project has been focusing on the monitoring of the human rights obligations as one of the major interventions. Further, to assist the monitoring of economic, social and cultural rights, the second phase of the project has separately included the component to support the NHRC in this regard.

The project has been supporting the NHRC in monitoring the human rights situation through human rights treaty division. In addition, the project has been supporting the NHRC in developing the policies and guidelines on socio-economic rights. A training manual on human rights-based approach to development has also been developed to mainstream the issues of participation and non-discrimination.

Conclusion

The first phase of the project was implemented during a challenging period in Nepal's history, beginning in 2002 at the height of the conflict, supporting a fledgling NHRC to address a wide range of human rights issues. The project continued to work during the absence of Commissioners, supported the development of policies and guidelines, and facilitated the capacity development of the NHRC staff. The mid-term evaluation coincided with the appointment of new Commissioners in September 2007, and the project was able to provide further support, for example, through the funding of a Senior Human Rights Advisor, and regional human rights advisors.

With the changing situation and mandates of the NHRC through the 2007 Interim Constitution and CPA, the project revised the CDNHRC document (and renamed Strengthening the Capacity of the National Human Rights Commission) to support the undertaking of the NHRC's additional mandates. The project also supported the NHRC's work for the promotion of the human rights. As for legislative interventions, the project supported the NHRC's review of some laws from the human rights perspective. The project also supported the NHRC's review of the domestication status of international human rights instruments.

The NHRC needs further support, now more than ever, to fulfill its expanded responsibilities as a constitutional body, and further support the respect, protection, and promotion of human rights in post-conflict Nepal. The first phase of the CDNHRC focused on certain aspects of individual and

operational capacity development; the next phase should emphasize further institutional capacity development to strengthen the NHRC's ability to monitor human rights treaties, mainstream human rights in the upcoming Constitution, support legal reform and human rights education for law enforcement actors, collaborate with civil society and human rights institutions including the Women's Commission and the Dalit Commission, and protect and promote economic, social and cultural rights.

Human rights violations cannot be addressed by the NHRC alone. The NHRC is part of a broad array of institutions that must forge a coherent approach to the challenge of improving respect for and protection of human rights. Future support should help form and strengthen networks with other national and international institutions, and with civil society.

Annex A

- Human Rights Policy and Guideline, 2006
- Human Rights Commission Rules/Regulations (financial and organization management), 2002
- Detention Center Monitoring Guideline, 2003
- Complaints Receiving Policy, 2003
- Complaint Handling Guideline, 2004
- Do No Harm Policy, 2005
- Confidentiality Guideline, 2005
- Gender Policy, 2006
- Social Inclusion Policy, 2009
- Guideline on IDPs (Internally Displaced Peoples), 2005
- Guideline on Monitoring of Economic, Social and Cultural Rights, 2005
- Monitoring Guideline Against Unlawful Monitoring, 2004
- Human rights Monitoring Guideline for Elections, 2008
- Personal Security Guideline, 2004
- Promotion Strategy, 2007
- Communication Strategy, 2007
- Guideline on the Ceasefire Monitoring Mission, 2006

Annex B

- Civil Code, 1963 (2009-2010)
- Public Security Act, (2006)
- Public Crime Prevention and Punishment Act, 2006
- Civil Service Act, 2009
- Terrorist and Destructive Activities Control and Prevention Ordinance (repealed in 2006)
- Media Law (repealed in 2006)
- NGO Regulation Law, 2006