

DIGNITY, EQUALITY AND JUSTICE FOR ALL



National Human Rights Commission
ANNUAL REPORT 2000 - 2001

National Human Rights Commission

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Foreword

According to Section 14 of the Human Rights Commission Act, 2053, the Commission has to present its Annual Report to His Majesty the King. As such the Commission has presented the Annual Report of its activities comprising of fiscal year 2057/058.

The Commission has to present the report on an annual basis. The Commission was constituted in the month of Jestha 2057. Hence the report of the remaining period of 2056, from Jestha onward that is the last month of fiscal year 2056-2057, has been included in the report of 2057/058. This is the first annual report prepared by the Commission.

The Constitution of the Kingdom of Nepal, 2047, has ensured the fundamental rights of every citizen. The National Human Rights Commission has been formed with a view to having an independent and autonomous organization for effective implementation, protection and promotion of human rights in order to translate into action the will expressed in the basic structure of the Constitution and the provisions incorporated in the current laws and regulations. With the formation of such a national organization relating to human rights, all sectors of the society naturally expect that the protection and promotion of human rights will be ensured.

It is definite that the Human Rights Commission Act, 2053 has some deficiencies and lacunae as it was presented as a private member bill. National Human Rights Commission, Nepal, being a neonate organization, is still in a state of institutional growth. In the period of the report, the Commission had to face many legal, financial and physical challenges and bottlenecks. It took almost nine months to receive the suggestions of His Majesty's Government (HMG) on the rules and regulations framed by the Commission. As the suggestions could not be received in due time, the rules could not be operative and it caused various difficulties to the commission. The Commission continued to face difficulties because HMG was not good enough to allocate financial as well as human resources.

Even in such an awkward situation, the Commission has always endeavored to fulfill its responsibilities, considering the trust and faith of the general public as its innate source of energy. In its short period of life, the Commission has succeeded in building its infrastructure, capacity of investigating and taking action on the complaints received, launching on research and monitoring activities concerning human rights and maintaining harmonious and cordial relations nationally and internationally. The newly constituted commission has come to establish itself as an important organization in the Nepalese society and a focal point of trust and faith of all human rights lovers.

The Commission extends its sincere thanks to HMG, Foreign Affairs and Human Rights Committee of the House of Representative, Political Parties, Media, Non-Governmental Organizations, Elite Groups, United Nations Development Program (UNDP) including International Institutions and Diplomatic Missions for assisting the Commission and giving boost in its initial stages.

In the end, I would like to thank all the members and the staff of the commission for helping in their own way to prepare this report.

Nayan Bahadur Khatri
Chairman

Summary

- a) The Human Rights Commission Act came into existence in 1997. After a long intermission, the National Human Rights Commission (NHRC) was formed on 26 May 2000. As per the Act, His Majesty the King formed the Commission as follows:
- | | |
|-------------------------------|---------------|
| i. Mr. Nayan Bahadur Khatri | - Chairperson |
| ii. Dr. Gauri Shankar Lal Das | - Member |
| iii. Mr. Kapil Shrestha | - Member |
| iv. Mr. Sushil Pyakurel | - Member |
| v. Ms. Indira Rana | - Member |
- b) Organization chart: There are at present 27 personnel including the Chairperson, Members and staff working in the Commission. Considering the workload of the Commission, an organizational structure of a minimum of 46 personnel has been proposed.
- c) The regular meetings of the Commission are held every Tuesday. During the period of the report, 41 such meetings were held. Besides the regular meetings emergency meetings are held as needed.
- d) The necessary regulations to be prepared and brought forth by the Commission pertaining to such issues as the salaries and facilities of the Chairperson and Members of the Commission, National Human Rights (complaint, action and compensation) regulation and NHRC (financial management) regulation were forwarded by the Commission to the Government for consideration. The three above mentioned regulations have become operative after consideration of HMG's reactions.
- e) The division of labour among the Chairperson and Members of the Commission has been carried out in order to expedite the activities of the Commission.
- f) Altogether 528 complaints were registered during the period of this report. Of them, 255 are related to civil and political rights, 15 to economic, social and cultural rights, 26 to the rights of special categories, 7 to service of employees and 81 to various other areas. The remaining 121 complaints have been of a recurrent nature.
- g) The Government has not assisted the Commission as expected in connection with addressing the complaints received. Erroneous or incomplete information were received regarding unlawful arrests. In several cases the Commission, on the basis of non-compliance with the feeling that there had been activities contrary to human rights standards, had requested the Government to seek to undertake measures to put a stop to such activities. However, the Government's responsible authorities, by twisting, perverting, and imputing wrong meanings to such requests, even attempted to make the Commission a subject of public criticism thereby tarnishing its image to some extent.
- h) A final draft of NHRC Capacity Building Project has been prepared to strengthen the Commission in coordination with the United Nations Development Programme (UNDP) and the assistance of donor countries. A promotional program against racial discrimination is to be launched with the assistance of the Office of the United Nations High Commissioner for Human Rights. Assistance has been received from the British Embassy to study the cases of victims of torture in Maoist-affected areas. Also, a study related to the situation of human rights in some of the Maoist-affected districts is in its final stage.

- i) A committee was formed during the period of this report with the assistance of non-government organizations to help finalize the bill concerning women's inheritance rights to parental property taking into consideration women's interests. The necessary initiatives and activities under the committee regarding the issue are continuing. In addition, taking into account the necessity of an adequate budget to make effective the government's women related programs envisaged in the 10th plan, suggestions were provided to the National Planning Commission following interaction with all the concerned organizations.
- j) An inspection tour of prisons in the Kathmandu Valley and neighboring districts was undertaken for necessary suggestions regarding prison reforms and the condition of inmates. Following the identification of the areas of reforms and the types of reforms to be carried out, preparations are underway to put forth to the Government recommendations regarding the matter.
- k) Since the protection and promotion of human rights is possible only with the concrete assistance of Government and non-governmental organizations, interactions with representatives of such organizations on various human rights related issues have been carried out. Deliberations and interaction programs have also been undertaken with intellectuals and scholars active in various areas. These deliberations and interactions have, on the one hand, provided directions in formulating the short-term and long-term policies, plans and programs of the Commission. On the other, they have extended the areas of cooperation and coordination between the Commission and such organizations and individuals.
- l) In order to bring about awareness among concerned officials and the general public for human rights protection, efforts have been initiated to provide information on international human rights standards, the commitment of His Majesty's Government regarding such standards, the legal, social and political obstacles to human rights protection and the initiatives regarding such matters. In this connection, activities like the publication of brochures and periodic bulletins, establishment of a documentation center, informing the public through the media about the Commission's decisions, and the celebrating of national and international days that assist in human rights protection have taken place.
- m) Following its formation, the Commission had started work from a one room chamber with two personnel and a budget of Rs. 800,000 provided by His Majesty's Government. At present, the Commission has 22 staff, including a Secretary, six persons deputed from the Government and 15 other persons recruited by the Commission on a temporary basis. Due to the increase in its personnel and work load, the government has allocated to the Commission the first floor of the building that used to house the Ministry of Supplies. His Majesty's Government allocated a budget of Rs. 1,300,000 for the fiscal year 1999-2000 and a budget of Rs. 5,664,000 for the fiscal year 2000-2001. For the fiscal year 2001-2002, it has allocated a budget of Rs. 5,000,000 only.
- n) The Commission, within the short period of its formation, has acquired Membership of the Asia-Pacific Forum of Human Rights Institutions. Various dignitaries like Princess Anne of the United Kingdom, the then Nepalese Prime Minister Girija Prasad Koirala and the heads of diplomatic missions in Kathmandu as well as the representative of donor agencies visited the office of the Commission during the period of this report. The visits have opened possibilities of assistance for strengthening the Commission.
- o) The overall evaluation of the year completed shows that the Commission, despite various difficulties, has moved ahead with its activities. During the year, in order to facilitate the work

of the Commission, a task force was formed to prepare an outline of the physical resources, budget, necessary personnel and the regulations to be formed by the Commission in order to facilitate the work of the Commission. The task force completed its work within the allocated period and submitted it to the Commission. After doing the necessary homework on the concerned regulations, the Commission sent it to the government for suggestions. The regulations were returned only after a gap of almost nine months. Consequently, the Commission had to face various difficulties in carrying out its functions smoothly. This had an impact on the general public.

The amount allocated by the government to the Commission for year 2001/2002, as mentioned in section (m) above, does not appear sufficient to run the office and pay for the salaries and other facilities of the present post holders and staff. As a result, this will negatively impact the implementation of the project to enable to Commission, a project that is being coordinated by the United Nations Development Programme and which is in its final stage.

The assistance of His Majesty's Government is crucial for the activities of the Commission. However, the government and the bodies under it have not always been helpful as they have not provided the facts asked for by the Commission on time and have resorted to unlawful arrests even in the presence of the Commission's representatives. The day to day activities of the Commission have been hampered as the government did not provide it with a sufficient quantity of vehicles and physical facilities.

Despite difficulties, the Commission has succeeded in becoming a member of the Asia Pacific Forum for National Human Rights Institutions. Also, the contacts developed with foreign diplomats and donors have prepared a basis for initiating project for capacity building of the Commission in the near future.

As regards the inquiry and investigations on the basis of the complaints received by the Commission, the commission reached its decision on various cases, thus succeeding to some extent in providing compensation to the victim. It also succeeded in making the government more vigilant. The honorable members of the Commission undertook visits of various prisons as well as of Maoist-affected districts. Another significant activity during the period of this report was bringing forward to the concerned bodies the issue of women's rights by undertaking programs in coordination with various non-governmental organizations.

- p) Among the various challenges faced by the Commission, the institutional strengthening and capacity building of the Commission is the most significant. For this purpose, there is the necessity of adequate trained human resources, building and other necessary physical facilities, and a documentation centre. The delay by the government in responding to the regulations framed by the Commission created various obstacles. As the Human Rights Commission Act, 1997 was not presented in parliament as a finance bill, the government could not be committed to provide to the Commission the fund required by it. Another significant challenge is the lack of development of an environment of a process of understanding, coordination and institutional cooperation between the commission and His Majesty's Government. There is also the necessity of making the government sensitive to and responsible for the protection and promotion and the effective implementation of human rights and of taking the human rights education program to the people working in various agencies and sectors as well as to the masses. Making the Commission accessible to the people of remote areas outside the capitals is also necessary.
- q) As the budget allocated to the Commission by the government is extremely small, there is an urgent necessity to provide adequate financial assistance to pay for the gratuity, medical

allowance, leave allowance, etc. for the office bearers and staff and to provide for the activities of the Commission.

The Commission has proposed an organizational structure of 46 personnel. As per this structure, His Majesty's Government has to depute to the Commission 4 first class and 9 second class officers.

As the Commission by itself is not capable of providing to its staff various professional, administrative and human rights related training, the government has to assist the Commission in this regard.

The Commission expects active cooperation from the government, given that the latter has an extremely important role to play in the protection, promotion and the effective implementation of human rights.

Chapter-1

INTRODUCTION

1.1 Preamble

Human rights are the natural rights of human beings. No scholar, thinker or religion till now has defined or explained human rights in a way acceptable to all. However, contrary to what its critics say, it is certainly not some kind of imaginary right or abstract longing. It is also not a panacea or a solution to the problems and the follies prevalent in society. Human rights is another name for the inalienable rights that humans are born with and can utilize without any hindrance. From embryo to birth and from birth to death, a human being has the right to enjoy fundamental rights without any obstructions and without any fear or threat from anyone: this is the premise of "human rights." These natural and inalienable rights, acquired by humans on the very basis of their birth on this earth, can be broader and more extensive than the constitutional limits of a country. Hence, human rights are taken as rights that are universal, indivisible and inalienable and bound up with human existence.

The concept of human rights is not the outcome of any one particular age. It is a compendium of natural, civil, political, economic, social and cultural rights, that are the creation of the human mind and are the embodiment of the history of human civilizations. There is no doubt that there is no artificial division between all these rights and that they are complementary to each other. New dimensions have been added to the concepts of human rights with the development of human civilization, and with every stage of civilization the feelings towards these rights have extended and undergone changes. Human rights are universally applicable to human beings all over the world.

Looking at the definition of human rights in national laws, they have been taken as a group of rights mentioned in a particular document. The Human Rights Commission Act of 1997 has defined human rights as "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution and other prevailing laws as well as the rights embodied in international treaties related to human rights to which Nepal is a State party."

Although the prevalent concept of human rights seems to be highly influenced by the religious, social, political and intellectual traditions of western countries, it is nonetheless not an outcome of a particular period, society, culture, religion, territory and political value and system. There are plenty of references to human rights in oriental mythologies. In ancient times the political system and all other matters were governed by religion. Since religion also included the law, human rights and issues related to duty were guided by religion. Although human rights may be defined in various ways, one has to say that human rights in essence means that, keeping human values and human dignity as its centre point, it is the right necessary for living in accordance with such dignity. The history of the development process of human rights is a compendium of the experiences of the ages, contributions of various scholars, and national and international efforts in this regard. The history of continuous resistance, rebellion and movement against injustice, cruelty, repression and exploitation from ancient times is also the history of the human rights movement.

Even before World War I, universal, inborn, essential, indivisible and inalienable human rights had been developing with such historical incidences as the Magna Carta, the Bill of rights, the American Independence movement, the French Revolution and the Russian Bolshevik revolution. Following the massacres of World War II, the United Nations, for the cause of world peace and to protect human rights permanently, enshrined human rights in the Charter of the United Nations. Three years later, the Universal Declaration of Human Rights (1948) was issued. After the promulgation of the Declaration, the world community has taken special initiatives for the effective protection and promotion of human rights and fundamental freedoms keeping in view the fundamental values and principles of the Declaration. In this context, the Declaration has been a milestone in the area of human rights.

For the purpose of implementing the principles enshrined in the United Nations Charter and the Universal Declaration in all the countries of the world and for making the countries accountable, separate international conventions with special emphases on human rights related to various aspects such as political, economic, social and cultural rights, children's rights, and women's rights have been created. As countries are responsible for ratifying the international conventions and implementing them within their boundaries, a country cannot absolve itself from the responsibility of protecting and promoting human rights and implementing its provision in totality. For this, the government or the State has to give maximum attention to not only the making of policies and laws but also has to undertake effective measures regarding their implementation. Also, the government has to undertake appropriate changes in its working style for the creation of human rights culture.

The first written document in the legal history of Nepal is the National Legal Code of 1854. The National Legal Code of the time, however, gave legal protection to the prevailing ethnic/caste based attitudes and did not give due consideration to human rights. The first constitutional document in the history of the country is the Government of Nepal Constitution Act (1948). The Act, taking into account the worldwide emphasis on human rights, had made provisions for some fundamental freedoms of citizens. The Act was followed by the Act related to Organization and Assembly (1949), Press and Publications Act (1949), Act related to Individual Liberty (1950) and the Civil Rights Act (1955). All these Acts made some legal provisions related to human rights. Afterwards, the Constitution of the Kingdom of Nepal (1959) and the Constitution of Nepal (1962) also continued with this tradition. Despite all this, the practical aspects related to human rights were not satisfactory in the country at the time.

The popular Movement of 1990 is an important chapter in the history of human rights in Nepal. The movement, leading to the restoration of multiparty democracy in the country, led to the promulgation of the Constitution of the Kingdom of Nepal (1990). The constitution has come to guarantee political freedom along with other various human rights of the citizens. The constitution has provided for citizens various fundamental freedoms in accordance with the Universal Declaration of Human Rights (1948), including effective remedial measures. In addition, Nepal has shown its commitment to human rights at the national and international level by being signatory to various international conventions and optional protocols, as well as by the enactment of the Human Rights Commission Act (1997) and with the formation of the Human Rights Committee in parliament. The list of human rights related international instruments to which Nepal has been a State party following the restoration of democracy is provided in the Annex 1. The Annex also provides the date on which the instrument was ratified/acceded to by Nepal. Part 3 of the 1990 Constitution provides for fundamental

freedoms, while Part 4 of the Constitution under the guiding principles of the State provides directions to the State to work for the upliftment and welfare of women, children, indigenous populations and other exploited classes.

1.1.1 The Situation of Human Rights in Nepal

The value of human rights and its area of work has been continuously expanding and becoming more and more dynamic. In order to transform the human rights standards into national laws and make all the countries of the world accountable regarding the protection, promotion and implementation of human rights, international human rights standards have been created by framing various conventions and covenants. As per these international standards, the United Nations carries out regular monitoring of the human rights situation in a country. The United Nations also regularly monitors whether the instruments ratified by the member countries have been implemented or not according to international legal commitments.

In this context, Nepal has become a signatory to 18 conventions and covenants, and it has ratified/acceded to 16 of them. After ratifying and becoming a party to international law, the countries have the responsibility of incorporating these legal provisions in national laws and implementing them in totality. They also have to send periodic reports to the concerned committees of the United Nations regarding the state of implementation. The international human rights conventions and covenants to which Nepal is a State party are included in **Annex 1**.

While talking about the human rights situation in Nepal, the implementation aspect of international instruments to which the country has shown its commitment and for protecting and promoting the rights of the people becomes an important concern. In addition, there is the necessity of holding extensive discussions and deliberations at the national level and ratifying various international instruments that can be of assistance in increasing the dignity of the democratic system adopted by Nepal and in fulfilling the present necessities of the country in the context of the ongoing trend of globalization. There is also the necessity of sending to the United Nations Committees the periodic reports necessary in accordance with the various instruments ratified by the government. The Nepalese government, however, has not fulfilled these obligations totally. Thus, there is the necessity of giving special attention to the matter.

All the international instruments to which Nepal is a State party are equally important. However, in the context of Nepal, foremost among them are the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Right of the Child, the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment and the Convention on the Elimination of All Forms of Discrimination Against Women.

The attempts at incorporating in the domestic laws the provision of international human rights standards to which Nepal has pledged its commitment have only been partially successful. The fundamental rights guaranteed by the Constitution of the Kingdom of Nepal (1990) have succeeded to a large extent in incorporating the provisions of the International Covenant on Civil and Political Rights. In case of infringement on the fundamental rights embodied in the constitution of Kingdom of Nepal (1990), there is a provision of reinstating the rights according to Article 23 by adopting the procedures according to Article 88. On the other hand, the

provisions of the international instrument related to economic, social and cultural rights have not been incorporated as fundamental rights in totality but have been included under the guiding principles and policies of the State. This means that the state has to make provisions for the progressive implementation of these rights, as has been mentioned in Article 2 of the international instrument. Given that in a country like ours, economically backward and where the majority of the population are deprived of educational and health services and suffer from massive unemployment, the economic and social rights of the citizen have not been clearly guaranteed in the constitution, there is the necessity on the part of the government of implementing the provisions of the instrument by making progressive laws.

Also, even though there are provisions in the constitution and also in some Acts for special social security measures for the children, aged and the disabled, they have not been implemented effectively and in a proper manner as of the present. This is an indication of laxation on the part of the government in fulfilling its responsibility. Another issue is related to the Acts and laws that discriminate against women. Although voices have today been raised from all quarters calling for immediate amendments to such discriminatory laws, the traditional discriminatory laws remain as obstacles in establishing equal rights for women. The traditional societal malpractices like Deuki, Jhuma, Badi as well as untouchability are still deeply rooted in the society as social evils. As regards the rights of children, no effective work plan has been prepared to raise the living standard of the children and provide them with free education. The untimely death of people due to the lack of basic health services is also an area of equal concern. From the perspective of various human development indicators, the living standard of the Nepalese appears very low compared to other countries. Hence, an evaluation of the overall situation of the Nepalese people in the context of human rights does not provide much ground for satisfaction.

The fundamental rights guaranteed by the law have also been violated to a considerable extent due to the lack of practical commitment on the part of the government. Unlawful arrests, inhuman torture in custody, deaths in police firings, and incidences of abductions and disappearances have come to appear as the normal course of events as of today. The total number of complaints by aggrieved parties at the National Human Rights Commission during the period of this report was 407. Taking into account the fact that the Commission has its office only in Kathmandu, along with the low awareness regarding human rights among the public and the economic, social and geographical structure of the country, one can assume that the number of complaints filed at the Commission is not a true indication of human rights abuses in the country. It is only a small fraction of such human rights abuses.

The passivity and unhelpful attitude of the police and other concerned government agencies during the course of the activities of the commission such as study, research, observation, action and investigation of complaints has unnecessarily delayed the Commission's activities and hindered its effectiveness.

1.1.2 Human Rights Commission for Human Rights Protection

In order to form an independent and autonomous National Human Rights Commission for the effective implementation and protection and promotion of human rights as provided by the constitution and the prevailing laws, the parliament enacted the Human Rights Commission Act (1997). The parliament, the government, opposition political parties and the civil society had a

significant role to play in the passage of the Act. After the restoration of democracy, the demand of non-governmental organizations had been raised by parliamentarians in the Upper House in 2049 B. S. The government had the Law Reform Commission prepare a draft of the Human Rights Act in 2051 B. S. However, the bill was later presented in the Upper House of the parliament as a private bill. The bill was finally enacted in 1997. As this is the first Act passed as a private bill in parliament, the Human Rights Commission Act (1997) has special significance in the parliamentary history of the country.

Due to political and various other reasons, the Commission could not be formed for a long time. Under demands from various political parties, human rights activities and the civil society, the National Human Rights Commission was formed as per the above mentioned Act on 26 May 2000.

Even before the formation of the Commission, so as to facilitate the initial activities of the Commission, the cabinet had formed a task force to prepare an outline of the organizational structure of the Commission, necessary physical resources and personnel, and the rules and regulations required for budget and the functioning of the Commission. The suggestions provided by the task force have helped the Commission in deciding upon its organizational structure and in framing the various rules and regulations.

The details related to the task force along with its suggestions are provided in **Annex 2**.

Chapter-2

COMMISSION

2.1 Formation of the Commission :

Article 3 of the Human Rights Commission Act 1997 provides for the founding and formation of the National Human Rights Commission with a Chairperson and Members as given below.

- (a) A retired Chief Justice or Justice of the Supreme court - Chairperson
- (b) From among the individuals who have made a significant contribution in the area of law, human rights, social service or media and journalism, with as far as possible, representation of all these sectors - Member (3 persons)
- (c) From among the persons retired after serving in a constitutional body or special class post of His Majesty's Government - Member (1 person)

As per the provisions, former Chief Justice Mr. Nayan Bahadur Khatri was appointed as the Chairperson of the Commission on Jetha 13, 2057 B. S. The other members of the Commission appointed on the same date were former member of the Public Service Commission Dr. Gauri Shankar Lal Das, former chairperson of Human Rights Organization of Nepal and human rights activist Prof. Kapil Shrestha, former chairperson of Informal Sector Services Centre and human rights activist Mr Sushil Pyakurel, and former secretary of the Judicial Council Ms. Indira Rana.

As per Articles 17 of the Human Rights Commission Act 1997, Mr. Jogendra Keshari Ghimere was appointed as secretary of the Commission on Ashoj 2, 2057 B. S. Brief bio-data of the Chairperson, Members and Secretary is provided in **Annex 3**.

2.2. Oath of Office

Before embarking upon their duties, the Chairperson has to take the oath of office in the presence of His Majesty the King, while the Members have to do so in the presence of the chairperson.

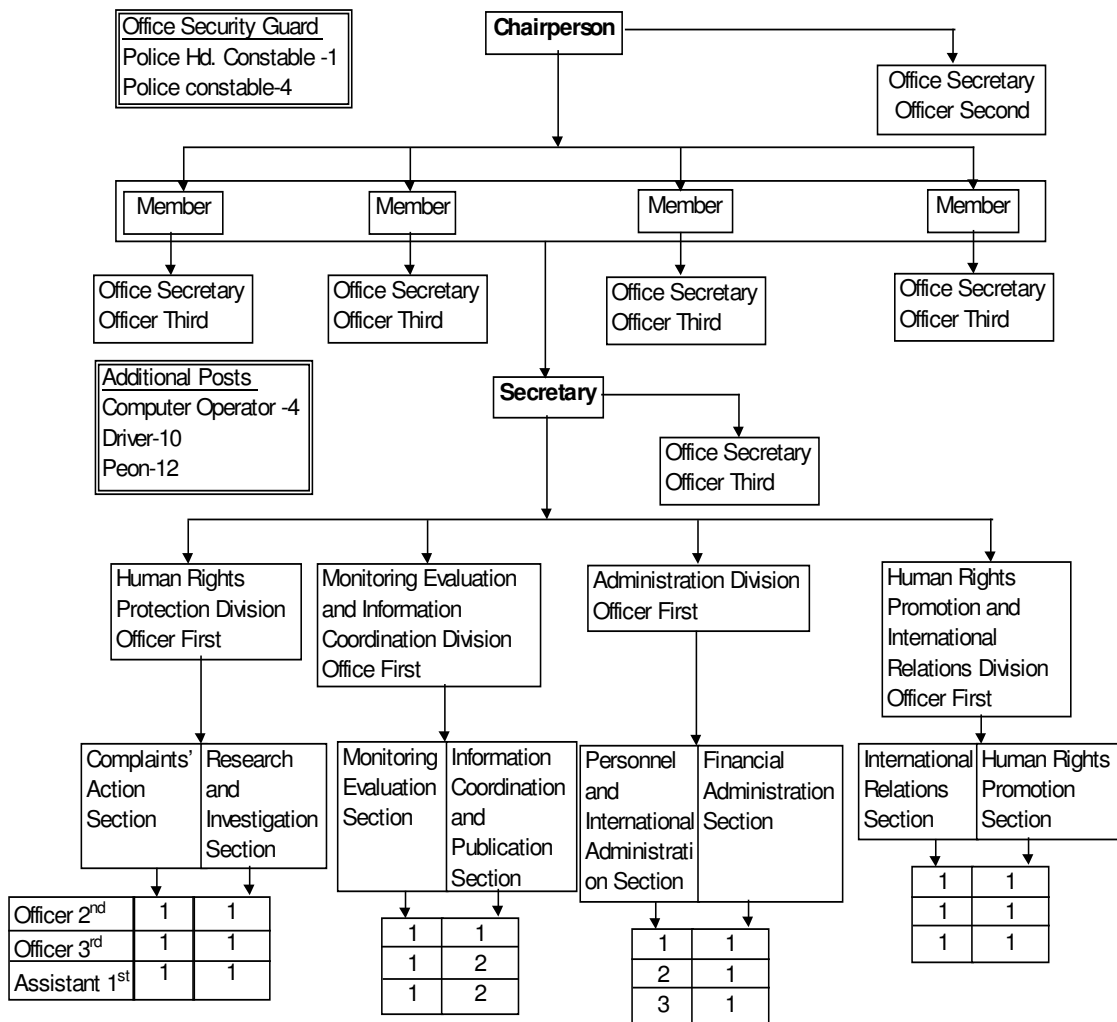
The Chairperson of the Commission, Mr. Nayan Bahadur Khatri, was administered the oath of office in the presence of the King in a ceremony at the Royal Palace by Chief Justice Keshav Prasad Upadhyay on Jetha 17, 2057 B. S. Later, on Jetha 23, 2057, B. S. the Chairperson administered the oath of office at the Commission's office to Members Dr. Gauri Shankar Lal Das, Prof. Kapil Shrestha, Mr. Sushil Pyakurel and Ms. Indira Rana. The Chairperson administered the oath of office and secrecy to Secretary Mr. Jogendra Keshari Ghimire at the Commission's office on Ashoj 3, 2057 B. S.

2.3. Structure of the Commission

2.3.1. Organization chart :

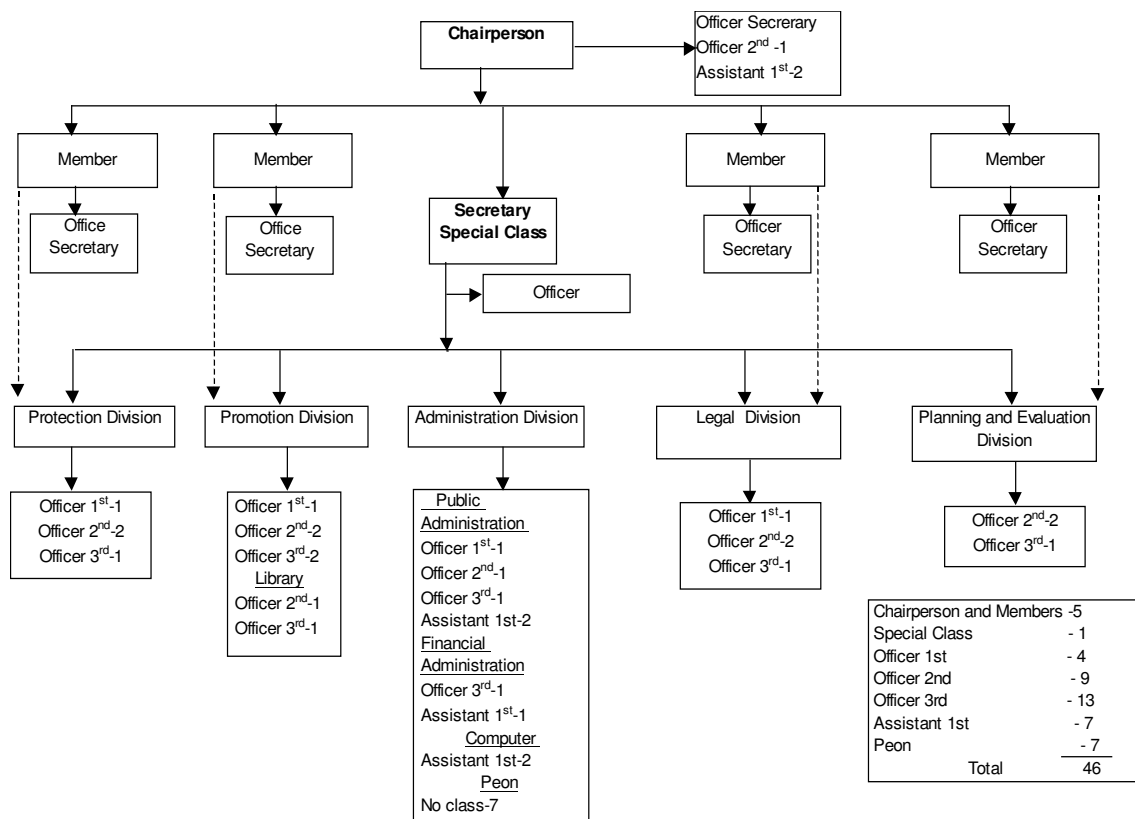
The task force formed by His Majesty's Government had proposed an organizational structure of 78 personnel. The Commission itself had proposed a similar structure of a total of 76 personnel and forwarded to the government for approval of the budget required for the purpose. However, the actual amount of only Rs. 5,000,000 allocated by the government for the year 2001/2002 created severe difficulties in carrying out the activities of the Commission. Consequently, the Commission proposed a personnel structure of 46 persons, the minimum it requires as of the present to carry out its activities. The personnel structure is as follows:

Organization Structure NATIONAL HUMAN RIGHTS COMMISSION 2001



Note : Chart showing the 76 personnel initially proposed by the Commission.

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2.3.2 Division of Work

For the purpose of fulfilling the responsibilities protecting and promoting human rights as mentioned in the Human Rights Commission Act (1997), the work has been divided into protection, promotion, legislature and prison reform, and planning and evaluation. The responsibilities of the office bearers have been divided accordingly.

The work division among the office bearers is as follows:

- (a) Administration (including International Relations) - Chairperson Mr. Nayan Bahadur Khatri
- (b) Planning and Evaluation - Dr. Gauri Shankar Lal Das
- (c) Promotion - Prof. Kapil Shrestha
- (d) Protection - Mr. Sushil Pyakurel
- (e) Legislature Issues and Prison Reform - Ms. Indira Rana

The work of the various divisions is as follows:

- (1) Administration Division: The daily administrative activities of the Commission, personnel management, international relations and activities related to financial administration fall under the Administration Division.
- (2) Planning and Evaluation Division: The duties of this division include the making of outlines for plans to be carried out by the Commission, coordination and evaluation of the plans and preparing of annual reports to be submitted to His Majesty the King as per the Human Rights Commission Act (1997).
- (3) Promotion Division: Article 9, sub-clause (1) of the Human Rights Commission Act (1997) states that the main duty of the Commission is the protection and promotion of human rights. Accordingly, sub-clause (2) sections (i) and (j) of the same Article state the responsibility of the Promotion Division to inform the various sections of the society about human rights education through seminars, conferences, workshops, public gatherings, media and publications and to make the public aware of the prevailing legal guarantees related to the protection of human rights. The Promotion division is also assigned the responsibility of encouraging the activities and efforts of human rights organizations working in the non-governmental sector.
- (4) Protection Division: As per the Human Rights Commission Act (1997) and the National Human rights Commission (Complaints, Action and Compensation) Regulation (2057 BS), the Protection Divisions is assigned the primary responsibility of inquiring and investigating into the complaints received by the Commission. Collecting the facts, recording complaints of the aggrieved, taking action on the complaints and having the decisions of the Commission implemented are the responsibilities of the Protection Division.
- (5) Legislation and Prison Reform Division: The responsibilities mentioned in Article 9, sub-clause (2) (e), (f), (g), (k) and sub-clause (3) are important

responsibilities of the Commission. The providing of necessary suggestions to the government regarding prison reform, effective implementation of international treaties and conventions related to human rights, and submission of reports are the duties falling under this Division.

2.3.3. Duties, Responsibilities and Rights of the Commission

Article 9 (1) of the Human Rights Commission Act states that the main responsibility of the Commission is the protection and promotion of human rights. The Commission undertakes its inquiries and investigations on the basis of any kind of information it has received about human rights violations or about negligence from any concerned individual, institution or agency regarding the preventing of human rights violations. Such investigations can be undertaken by the Commission itself, or it can assign the responsibility to an individual or an agency. The Commission, after receiving the report of the investigation, decides upon the case. If considered necessary by the Commission, it also carries out public hearings of the cases.

While taking action upon the complaints, requests and reports within its jurisdiction, Article 11 (1) has given the Commission rights similar to those of a law court to act under the prevailing laws. The Commission, among other things, may summon any person to appear before the Commission, listen to witnesses, order the presentation of documents, ask from any government or public office or court for any document for its copy, receive evidence, carry out or cause to be carried out on the spot observations, ask for the presentation of evidence and carry out or cause to be carried out searches when necessary.

In addition, the Commission has the right to investigate into cases sub-judice in the court with the latter's permission, encourage the activities and efforts of human rights organizations in the non-governmental sector, evaluate the prevailing human rights situation in the country, give suggestions to the government regarding the reports to be sent by the country in accordance with the international human rights instruments, and to engage in any other activities it deems necessary or appropriate for the propagation, promotion and protection of human rights.

The Commission also has the right to give necessary suggestions to the government regarding the reforms to be carried out in the functioning, physical facilities, etc. of the various institutions of the government following visits, observations of the institutions concerned, give necessary recommendations for effective implementation of measures related to human rights protection following their re-evaluation, carry out studies of international human rights instruments and give necessary and appropriate recommendations for the effective implementation of measures concerned, carry out and cause to be carried out researches into the various areas of human rights and to increase public awareness by the propagation of human rights education through seminars, conferences, workshops, meetings, media and publications.

2.3.4 Matters outside the Jurisdiction of the Commission

Article 10 of the Human Rights Commission Act (1997) states that the following subjects remain outside the jurisdiction of the Commission and the Commission cannot enquire into or carry out any other activities regarding such subjects.

- (a) Matters under the Jurisdiction of the Military Act.

However, this does not infringe upon the right of the Commission to undertake activities into matters falling under the jurisdiction of the law courts under the constitution or the prevailing laws.

- (b) Treaties, agreements between His Majesty's Government and foreign governments or international or inter-governmental institutions and matters negatively impacting upon the security of the country as attested by the government's Chief Secretary.
- (c) Matters attested by the Attorney General as impacting negatively on activities related to the inquiry of crimes under the prevailing laws and the investigation into crimes and criminals.

2.3.5 Office of the Commission and Physical Facilities

(a) Office:

The office of the Commission is situated at Harihar Bhawan in Lalitpur sub-metropolis. Although lacking the modern facilities required by an institution as the National Human Rights Commission, the Commission at present is carrying out its activities from the rooms on the first floor of the building provided by the government. The rooms have become insufficient for the increasing work load and personnel of the Commission. The rooms of the dilapidated building have been repaired and painted to meet immediate requirements. Extensive repair work is required in the building for the long term functioning of the Commission.

(b) Other physical Facilities

The building housing the Commission's office has not been handed over in totality by the government. As the rooms on the first floor have become insufficient for the functioning of the Commission, a process to make available the rooms on the ground floor to the Commission is underway. Although the Commission began its work with some furniture made available by the Ministry of Supplies, they were not sufficient for all the office bearers and staff. The budget allocated to the Commission was utilized to buy the necessary furniture for the office. However, not enough furniture is available for the meeting hall, library, waiting room, guest room etc as yet.

As computers and telephones are vital for an office, the Commission has acquired four computers, one printer, one fax machine and six telephone lines. Due to the budget constraint, however, the Commission has not been able to carry out telephone and computer networking.

As for the six vehicles to be made available to the Chairperson, Members and the Secretary, only two have been provided till now, which has hindered the providing of necessary services. As the nature of the work of the Commission entails programs to be conducted in districts outside the capital, there is a necessity of renting vehicles for a specific period, which greatly increases the expenses of the Commission.

2.3.6 Regulations of the Commission

As per Article 23 of the Human Rights Commission Act (1997) which states that the Commission can make necessary regulations to fulfill the objectives of the Act and, while doing so, can ask for suggestions from the government, the Commission, with suggestions from the government, framed the following regulations for the proper management of its activities.

- (a) Regulation concerning terms of office, service and facilities of the Chairperson and Members of National Human Rights Commission, 2058 B. S.
- (b) Regulation concerning terms of office, service and facilities of the employees of National Human Rights Commission, 2058 B. S.
- (c) National Human Rights Commission (Complaints, Action and Compensation) Regulation, 2057 B. S.
- (d) Regulation concerning meeting of National Human Rights Commission (Work Procedure), 2057 B. S.
- (e) National Human Rights Commission (Financial Management) Regulation, 2057 B.S.

Chapter-3

ACTIVITIES AND PROGRESS

3.1 Meetings of the Commission

The Commission generally meets twice a month on the date and place set by the Chairperson. Presence of Three members constitute the quorum of the meeting. The meeting is chaired by the Chairperson, and in his absence the meeting is chaired by the most senior member. The Commission arrives at a decision by a majority vote among its members. In case of a tie, the Chairperson casts the deciding vote. The activities of the Commission are not invalidated just by a vacancy among its members. The Commission itself decides on the other work procedures concerning its meeting. The regular meetings of the Commission are held every Tuesday, with other emergency meetings when required. The Commission met 41 times during the period of this report. The regulation concerning meetings of the National Human Rights Commission (Work Procedure), 2057 B. S. has already been implemented.

3.1.1 Some Significant Decisions

- (a) As division of work is necessary among the Chairperson and Members for facilitating the activities of the Commission, work division has been carried out among the office bearers and they have been assigned specific areas of work.
- (b) A complaint had been filed at the Commission regarding the death of two prisoners by police firing in Banke Jail on Magh 1, 2057 BS. The Commission, on Jetha 2, 2058 BS, decided that the deaths had occurred due to the lack of sensitivity and vigilance on the part of the Chief District Officer, Police Inspector and the police regarding the rights to life of the prisoners. The Commission thus decided to write to the government to provide as compensation to the families of the dead an amount of Rs. 1 lakh each, of which 5 and 2.5 percent had to be borne respectively by the Chief District officer and the Police Inspector.
- (c) As regards the complaint of the unlawful arrest of Tara Prasad Bhushal from the compound of the Appellate Court, Butwal, necessary investigations were undertaken. The Commission in its meeting of Jetha 2, 2058 B.S. decided to write to the Home Ministry cautioning it against such human rights abuses in the coming days by any of the bodies underneath it.
- (d) The Commission has decided to implement its proposed regulations, viz. the National Human Rights Commission (Complaints, Action and Compensation) Regulation, 2057 BS, Regulation concerning terms of office, service and facilities of the Chairperson and Members of National Human Rights Commission, 2057 BS, and Regulation concerning terms of office, service and facilities of the employees of National Human Rights Commission, 2057 B. S. incorporating the suggestions of the government. All of the three mentioned regulations have already come into effect.
- (e) At a meeting of the Commission held on Ashar 19, 2057 BS, the Commission decided to acquire membership in the Asia Pacific Forum for National Human Rights Institutions.

3.2 Administration

3.2.1 Personnel Management

- (a) Deputation from His Majesty's Government: As per the provisions of the Human Rights Commission Act (1997) and until the Commission can manage its own staff, the government can depute some of its staff to the Commission. As of now, the government has deputed from its various branches a total of six staff to the Commission. They are Under Secretary-1 Section Officer-3, Accountant-1 and Computer Operator-1.
- (b) Recruitment on a Temporary Basis: The Commission has recruited some urgently required officers and assistant staff on its own budget and on a temporary basis. Those recruited on a temporary basis are officer Third-7, Assistant-3 and classless -5.
- (c) Proposed Personnel Management: In order to make the Commission institutionally strong, the task force formed by the government had suggested a total of 78 personnel for the Commission. As of the present, taking into account its work load and resources, the Commission has proposed to the concerned bodies of the government a total of 46 urgently required personnel.

3.2.2 Financial Administration

As per the Human Rights Commission Act (1997), the budget provided by the government to the Commission is provided in the form of a grant. However, the amount of Rs. 5,00,000 allocated for the fiscal year 2000/2001 was not in the form of a grant, but was provided to the Commission under the heading decided upon by the Finance Ministry. This hindered the autonomy of the Commission. Also, as the amount was insufficient for salaries and for office management, an additional amount of Rs. 664,000 had to be provided. The lack of finances meant that the Commission could not carry out other promotional programs.

Following the formation of the Commission, an amount of Rs. 1,300,000 was provided by the government for the last two months of the fiscal year 1999/2000 in two installments. As the Commission received the second installment only in the final week of 1999/2000, it could not spend the entire amount, although the Commission was in need of the money. An account was opened at the Himalayan Bank in the name of the Commission and the unspent amount of Rs. 584,416.44 was deposited therein, given that the money received by the Commission is in the form of a grant as stipulated by Article 15 (1) of the Human Rights Commission Act (1997). But when the government released the money for the fiscal year 2000/2001, it only released an amount of Rs. 4,415,583.36, subtracting the amount saved in the bank by the Commission. As the government added the saving of the previous year to the budget of 2000/2001 to make the amount to Rs. 5,000,000 as required, the Commission also has not shown the saving for the year but has included the amount in the fiscal year 200/2001.

As the budget for 2000/2001 was insufficient for running the office and for the salaries of the Chairperson, Member and the 19 staff whose salaries have to be paid by the Commission, the Commission had to ask for an additional amount of Rs. 644,000. The total amount of Rs. 5,664,000 was spent under different headings as follows: Salary- Rs. 2,394,000 (allocated

amount Rs. 1,800,000); Electricity, Telephone, etc. - Rs. 492,991; Vehicle - Rs. 390,365; Vehicle fuel Rs. 459,765 and under various other headings Rs. 1,589,899. As the final installment of the total amount of Rs. 5,000,000 was released only in the last week of the fiscal year 2000/2001, even though the Commission was in need of the money, it could not spend the entire amount. This led to the freezing of Rs. 337,119. The details of expenditure, along with the report of the Attorney General for 2000/2001 are provided in **Annex 4**.

As the amount for 2000/2001 was insufficient for all the expenses of the Commission, including paying the salaries of Chairperson, Members and 19 staff dependent on the Commission, and was well below its requirements, the Commission could not undertake effectively other programs of human rights protection and promotion.

The total amount allocated for the fiscal year 2001/2002 is also Rs. 5,000,000. Taking into account the increasing work load, the Commission for the time being requires 46 personnel, including the Chairperson and Members. Also, there is the necessity of establishing a fund to pay for gratuity, medical allowance, insurance, leave etc as provided for by the regulations concerning the terms of office, salaries and facilities of the chairperson, Members and staff. Given the situation where no money has been provided for additional personnel and for the establishment of the above mentioned fund and that the infrastructure of the Commission is yet to be built, the allocation for 2001/2002 of an amount less than the previous year has created financial quandaries for the Commission.

3.3 Planning and Study and Research Activities

3.3.1 Planning

After the formation of the National Human Rights Commission, the Planning and Evaluation division, as per the duties and responsibilities prescribed by Article 9 of the Human Rights Commission Act (1997), brought out a calendar of operations in coordination with other divisions, and the different divisions of the Commission undertook their activities accordingly. Their activities have been described in the relevant sections of this report.

Following the formation of the Commission, various ambassadors interested in human rights and high ranking officials of the specialized agencies of the United Nations and the United Nations Development Programme visited the Commission and assured it of their cooperation. Accordingly, with the aim of strengthening the Commission, the Commission in July 2000 carried out deliberations with Mr. Brian Berdkin, Special Advisor of the United Nations High Commission for Human Rights, Mr. Kiren Fitzepatrik, Director of the Asia Pacific Forum of Human Rights Institutions, and Mr. Clearnce J. Dias, Chairman of the International Centre for Law in Development, New York. The Commission, following the deliberations, prepared an "Outline of Proposals for Coordinated Assistance to National Human Rights Commission". The outline has divided the activities of the Commission into five groups:

1. Promotion, Outreach, Education and Training
2. Complaints and Investigation
3. Monitoring and Administration
4. Management, Advocacy and Policy
5. Program Management

Under the five groups, the goal and purpose were also set forth. A Program Advisory Group was also proposed in the above mentioned outline. The Advisory Groups, to be chaired by the Commission, included among its members the various agencies of the United Nations (The United Nations High Commission for Human Rights, United Nation Development Programme and United Nations Children's Fund), the Asia Pacific Forum and a representative each from donors assisting in the programs of the Commission.

Under the sponsorship of the United Nations Development Programme, Mr. Peter Houskin, Advisor of the United Nations Office of the High Commission for Human Rights, and Mr. R. V. Pillai, Member of the United Nations Racial Prevention Committee and former General Secretary of the Indian Human Rights Commission, arrived at the Commission in September 2000 as Advisors. With their assistance the Commission, taking as its basis the outline prepared previously, prepared an outline of a project to strengthen the Commission. The outline set forth the immediate aims objectives, goals and activities of the Commission.

When Mr. Peter Houskin once again came to the Commission as Advisor on December 8, 2000 the Commission, with his assistance, prepared a strategic plan. And when Mr. R. V. Pillai revisited the Commission as Advisor in April 2001, the Commission extensively delineated the steps in the implementation of its program.

The duration of the project to strengthen the Commission, to be coordinated by the United Nations Development Programme is of three years, from 2001 to 2003. The total budget for the project is Rs. 11,000,000. As of now, the project document is being sent by the United Nations Development Programme to the government for approval.

3.3.2. Study-Research

(a) Study Related to status of Human Rights in Maoist-Affected Areas :

The Commission has received Rs. 500,000 from the Norwegian and Danish embassies for this study. The study aims to look into the human rights situation of the four districts most affected by Maoist violence, namely Rolpa, Salyan, Rukum and Jajarkot. Accordingly, Member of the Commission Prof. Kapil Shrestha toured Rolpa and Salyan districts and prepared a report of the human rights situation therein. Two other members, Mr. Sushil Pyakurel and Dr. Gauri Shankar Lal Das, undertook a tour of Rukum district. The Members were accompanied by Section Officers of the Commission Mr. Bimal Prasad Baral and Mr. Man Bahadur Karki as well as Mr. Arjun Karki, an expert. The Commission is to undertake a visit to the Jajarkot district in the near future.

(b) Study Related to Torture in Maoist-Affected Areas :

The Commission received Rs. 1,996,000 from the British embassy for this study. To carry out the study, the Commission has included as technical collaborator the Centre for Victims of Torture (CVICT), a non-governmental organization working in the area of torture and victims of torture.

(c) **Activities Related to the Elimination of Racial Discrimination:**

The Commission had submitted a concept paper to the Office of the High Commission for Human Rights (OHCHR) for carrying out awareness raising activities related to the Dalit (depressed classes) prior to the World Conference Against Racism to be held in Durban, South Africa on 29 August-7 September 2001. The concept-paper was accepted and the Commission received an amount of Rs. 1,800,000. The Commission under its Promotion Division is to carry out the related activities in the immediate future. For this purpose, an interaction program was held at the Commission, in which organizations related to the dalit, journalists, playwrights and others participated. According to the suggestions of the participants in the program, future programs have been decided upon.

(d) Apart from the above mentioned activities, the Protection Division is studying the situation of legal remedies against caste based discriminations in various districts of the country.

(e) The Protection Division is also studying the way the money allocated by the government for Janajati and dalit students have been utilized.

3.4. Promotional Activities

The following activities were undertaken during the period of this report for the promotion of human rights.

3.4.1 Interaction Program

(a) **Interaction between Human Rights Commission and the House of Representatives Foreign Affairs and Human Rights Committee :**

A discussion was held on Bhadra 19, 2057 BS between the Chairperson and Members of the House of Representatives Foreign Affairs and Human Rights Committee with a view to undertaking coordination for the protection and promotion of human rights. On the occasion discussions were held about the areas of cooperation between the Commission and the Committee, ways to make the parliament and the government accountable for human rights violations, empowering of the people, about the way laws had been implemented following their enactment and various other issues. On these and other issues, emphasis was put on the necessity of a joint action by the Commission, the committee and human rights organizations, regular sharing of information between the Commission and the committee, joint observation of incidences of human rights violations and on making concerned bodies timely aware about framing laws protective of human rights.

(b) **Interaction between National Human Rights Commission and Media Persons:**

A discussion was held on Ashoj 4, 2057 BS on the role of the government media in the protection and promotion of human rights. The meeting stressed the necessity of making short term and long term programs at the policy level. The participants in the discussion program emphasized the necessity of human rights education and awareness raising

programs for the protection and promotion of human rights. They also called for regular interaction between the National Human Rights Commission and media persons and stated that media persons could be of more help if there was a clear policy direction regarding the message to be taken before the public.

(c) Discussion between National Human Rights Commission and Non Governmental Organizations:

The Commission on Mangsir 29, 2057 BS undertook extensive discussions with non-governmental organizations working in the area of human rights about the short-term and long-term plans and strategies to be adopted by the Commission. The participants suggested the steps to be taken for the capacity building of the Commission and stated that the Commission should work for the protection and promotion of human rights following prioritization of the issues concerned.

(d) Discussion between National Human Rights Commission and His Majesty's Government's Officials:

The Commission on Ashar 28, 2057 BS held a discussion program with high ranking officials of the various bodies of the government with the aim of informing them about the Commission and developing necessary coordination and cooperation between the Commission and government bodies. The participants, during the discussion program, expressed their commitment to assist the Commission and gave suggestions regarding the policies and programs to be adopted by the Commission in the future.

(e) Interaction between National Human Rights Commission and high ranking officials of His Majesty's Government:

An interaction program was held on Mangsir 8, 2057 BS with the Secretaries and other high ranking officials of the government. The participants called for the extensive expansion of human rights education programs and stressed the necessity of developing cordial relations between the Commission and the ministries and the various sectors of the government for the protection of human rights.

3.4.2. Special Day Programs

(a) **Human Rights Day:**

Human Rights Day was celebrated on 10 December 2001 by organizing various programs. The programs were coordinated by the Commission.

Experts related to various aspects of human rights participated in a talk program held on the day. The experts stressed the necessity of the supremacy of law for the protection of human rights and of government assistance in the activities of the Commission. The experts opined that, as the basis of civil and political rights is economic and social rights, the right to life and livelihood, the right to work and the right to justice should be guaranteed, and the Commission should decide upon priorities in this regard. The experts called for a quick and effective end to discrimination against women. Given that

discrimination against the aboriginal populations has been increasing, the experts exhorted the Commission to take heed of the economic and social situation of the aboriginal populations and to focus its attention on those particular areas.

On the occasion of Human Rights Day, an exhibition and sale of awareness raising materials was also organized by governmental and non-governmental organizations, along with the showing of an awareness raising documentary.

(b) Day for the Victims of Torture

The Fifth United Nations Day for the Victims of Torture was jointly organized by the Commission and the Centre for Victims of Torture at the Commission's premises on 26 June 2001. On the occasion, Secretary of the Commission, Mr. Jogendra Keshari Ghimire and lawyer Mr. Rabindra Bhattarai presented a joint paper on "Torture-less Criminal Investigation: Problems and Commitment". The paper emphasized on the sincerity to be shown by all the organs of the criminal justice system during criminal investigations, concentration on physical evidence rather than reliance on witnesses during investigations, giving of human rights education to the investigation officer to make the investigative government agencies sensitive, ending of the tendency among investigating officials to think of themselves as the masters of the people, providing the right to legal counsel, and the commitment among the government agencies to work for the service of the people.

3.4.3 Publication, Distribution and Compilation

After its formation, the Commission has brought out as its publications the Human Rights Commission Act (1997) (in English as well as Nepali), an introductory brochure about the Commission and a quarterly bulletin about its affairs. These publications have been distributed to those visiting the Commission and to the participants of the programs organized by the Commission. They have also been sent to the District Administration Offices, District Development Committee offices, Nepali police and various libraries. Copies of the Commission's decision arrived at in accordance with the National Human Rights Commission (Complaints, Action, Compensation) Regulation 2057 BS, concerning the death of prisoners in Nepalgunj jail by police firing and the unlawful arrest of Tara Prasad Bhushal by the police from premises of Butwal Appellate Court alongwith copies of the National Human Rights Commission (Complaints, Action, Compensation) Regulation, 2057 BS have been sent to all the District police offices, district administration offices and all the 73 prisons around the country.

A documentation centre has been established at the Commission for the collection and orderly arrangement of books, magazines, reports, etc received by the Commission. Efforts are underway for the proper arrangement of all the received materials. Correspondence is being held with various ministries, national and international non-governmental organizations, government agencies, embassies, libraries, etc. for the collection of additional materials and to make the documentation centre more effective. The centre had been receiving books, magazines and reports from offices of organizations with whom it has corresponded.

3.5 Protection Activities

3.5.1. System Related to Complaints and Action

After the complaints received by the Commission are registered at the Registration Section, they are forwarded to the Protection Division. The complaints are then investigated initially under the guidance of the concerned Member and are afterwards assigned to the concerned official. The official, while looking into the complaint, collects the necessary evidence, carries out on the spot visits, hears witnesses, and carries out or causes to be carried out investigations through other agencies or officials. Thus begins the process of arriving at a decision. The concerned document is presented to the Commission with the suggestions of the Protection Division, following which the Commission takes its decision. As per Article 13 (4) of the Human Rights Commission Act (1997) and Rule 14 of the National Human Rights Commission (complaints, Action and Compensation) Regulation, 2057 BS, the decision of the Commission has to be implemented by the government. The responsibility of implementing the decision or instruction of the Commission lies with His Majesty's Government.

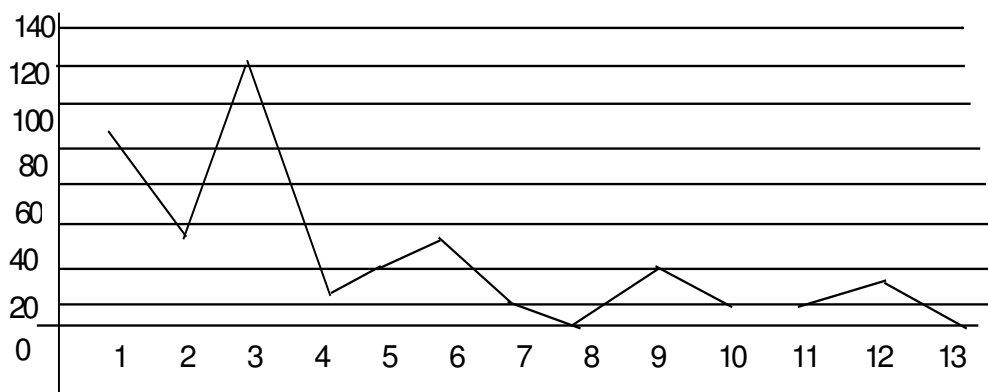
3.5.2. Description of Complaints received by the Commission:

(a) **The monthly breakdown of complaints registered at the Commission is as follows:**

Year	Month	No. of complaints
2057 BS	Jetha, Ashad	83
„	Shrawan	59
„	Bhadra	123
„	Ashoj	28
„	Kartik	37
„	Mansir	42
„	Poush	22
„	Magh	14
„	Fagun	34
„	Chaitra	19
2058 BS	Baisakh	19
„	Jetha	29
„	Ashad	19
Total		528

Note : Although the total number of complaints is 528, 121 complaints have been duplicated.

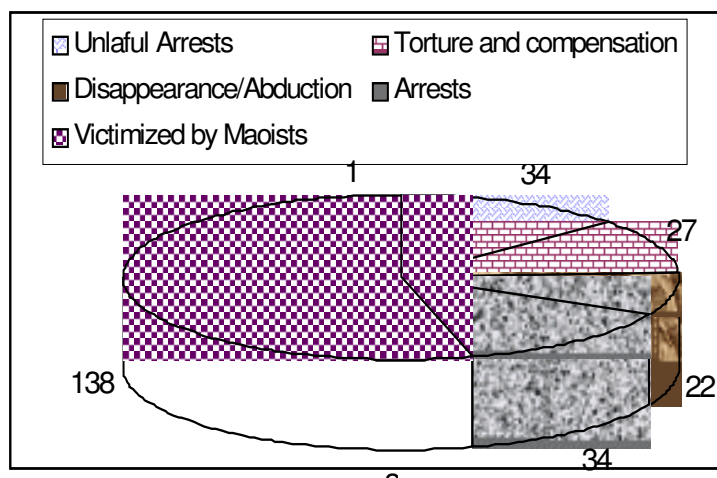
Two or more complaints have been registered for the same incident. Hence, the total number of complaints is actually 407.



(b) Complaints Related to Civil and Political Rights:

Classification	No. of complaints Registered	No. of complaints Investigated	No. of complaints Decided upon	No. of Complaints in the Process of Action
Unlawful Arrests	34	27	5	29
Torture and Compensation	27	14	-	27
Disappearance/Abduction	22	10	-	22
Arrests	34	26	2	32
Victimized by Maoists	138	-	-	138
Total	255	77	7	248

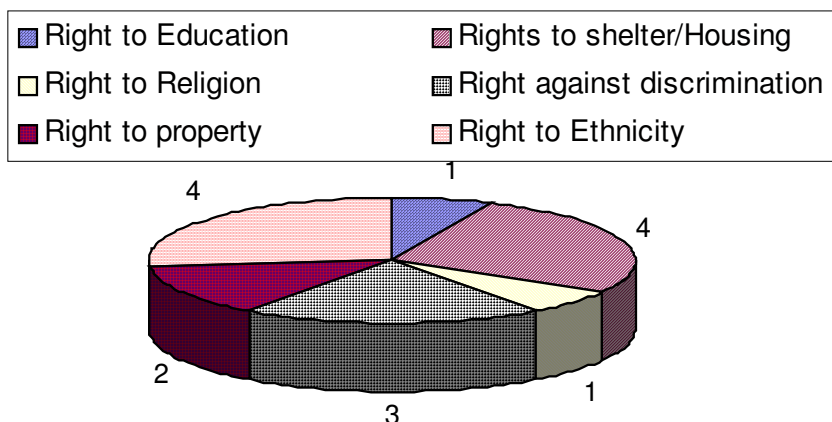
Complaints Related to Civil and Political Rights



(c) Complaints Related to Economic, social and cultural rights

Classification	Total Registered	Investigated	Decided upon	In the Process of Action
Right to Education	1	-	-	1
Right to Shelter/Housing	4	4	1	3
Right to Religion	1	1	-	1
Right against Discrimination	3	2	-	3
Right to property	2	-	-	2
Right to Ethnicity	4	2	-	4
Total	15	9	1	14

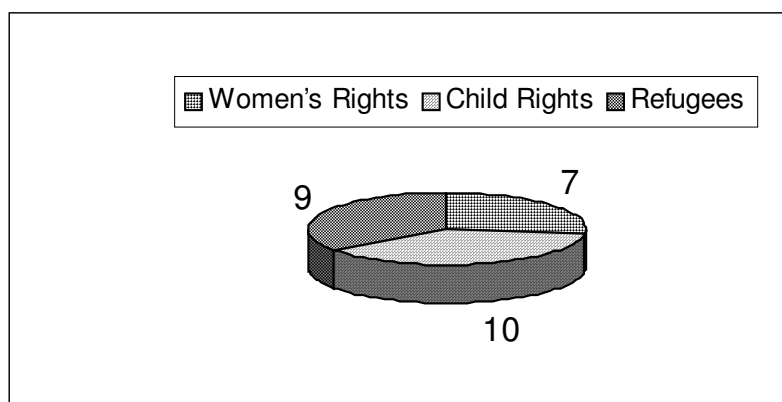
Complaints Related to Economic, Social and Political Rights



(d) Number of Complaints Related to the Rights of Special Classes:

Classification	Total Registered	Investigated	Decided upon	In the Process of Action	Remarks
Women's Rights	7	4	-	7	
Child Rights	10	9	-	10	
Refugees	9	5	-	9	
Total	26	18	-	26	

Number of complaints related to the rights of special classes.



(e) Number of complaints Related to Miscellaneous Issues:

Classification	Total Registered	Investigated	Decided Upon	In the Process of Action	Remarks
Miscellaneous	81	10	4	77	
Total	81	10	4	77	

(f) Number of Complains Related to Employment/Services :

Classification	Total Registered	Investigated	Decided Upon	In the Process of Action	Remarks
Employees/Service	7	6	-	7	
Total	7	6	-	7	

(g) Total Number of Complaints and State of Action Regarding Them

Classification	Total Complaints Registered	Complaints Investigated	Answers Received	Answers not Received	Commission's Final Taken	In the Process of Action	Remarks
Civil and Political Rights	255	77	48	29	7	248	
Social, Economic and Cultural Rights	15	9	3	6	1	14	
Rights Related to special Classes or Groups	25	18	9	9	-	25	
Related to Miscellaneous Issues	81	10	4	6	4	77	
Employee/Service	9	6	4	2	-	9	
Total	385	120	68	52	12	373	

The breakdown of the decisions by the Commission till Ashad 2058 BS on the complaints received, according to the types of complaints.

Civil and Political Rights	Economic, social and Cultural Rights	Rights Related to Special classes or Groups	Related to Miscellaneous Issue	Employees/Service
7	1	-	4	-

3.5.3 Interaction Program:

- (a) A discussion program was held with legal professionals in Kathmandu in Chaita 2057 B.S. on the ways to make the National Human Rights Commission (Complaints, Action and Compensation) Regulation 2057 B.S. compatible with the objectives of the National Human Rights Commission Act (1997). The suggestions received from the program and also from the government were taken into consideration while framing the Regulation.
- (b) A discussion program was held in Jetha 2058 B.S. regarding the implementation of the National Human Rights Commission (Complaints, Action and Compensation) Regulation, 2057 B.S. with medical professionals, legal professionals and intellectuals of the concerned areas. The Commission received significant suggestions regarding the criteria for compensating those injured, families of the dead and disabled persons from human rights violations in accordance with the Regulation.

- (c) A discussion program was held in Ashad 2058 B.S. with labourers, legal professionals, representatives of hotel management and people from various sectors on the topic of Essential Services Act, 2014 B.S. and labour strike. The legality of the government's imposition prohibiting strikes, aims and objectives of the Essential Services Act, 2014 BS, and the role of the Commission were discussed during the program.

3.5.4 Other Important Activities:

- (a) **Field visit of Siraha (Lahan) and Saptari (Hariharpur and Kochawakhari VDC.)**

The Commission undertook a visit of Lahan, Siraha and Hariharpur and Kochawakhari VDC, Saptari in Chaita, 2056 B.S. and Shrawan, 2057 B.S. respectively with a view to studying the case of the boycott of the Chamar, who had refused to dispose off the carcasses of dead animals. During the course of the study, the Commission held discussions with the victims as well as the aggressors, office bearers of local political parties, intellectuals and representatives of various organizations and institutions. The Commission found that the victims in the case had not got any relief, nor had the aggressors been given any punishment. The Commission's study group concluded that continuation of traditional prejudices in the name of social and cultural practices had been the cause of the incident. It suggested to the Commission the necessity of ending caste based discrimination and of carrying out promotional activities for the protection of human rights.

- (b) **Activities by the Commission for the Restoration of Human Rights of Ex-Kamaiyas or Bonded Labourers:**

As regards the ex-kamaiyas or bonded labourers, the Commission following its establishment had received several complaints. In Shrawan 2057 BS, Member Mr. Sushil Pyakurel and the Commission's officials undertook a visit of Dang, Banke, Bardiya and Kailali districts to study the situation of the ex-Kamaiyas. The study team felt that the government had made the declaration regarding the emancipation of the kamaiyas without any adequate preparation. The Commission in Bhadra 2057 BS asked from the "Coordination and Monitoring Committee for the Identification and Rehabilitation of persons freed from Bonded Labour," information related to the assistance required for solving the specific problems of ex-kamaiyas. In the meantime, the common forum of the major human rights organizations of the country, the "Human Rights and Social Justice Forum-Nepal", pointing to the very vulnerable condition of the ex-kamaiyas, brought to the Commission's notice the various aspects of the ex-kamaiyas in Poush 2057 B.S. Although the Commission in Poush 2057 B.S had asked the above mentioned coordination and monitoring committee for detailed information regarding the matter, no information was available till Ashad 2058 B.S. The Under-secretary of the Commission, Mr. Umakant Parajuli, visited the four above mentioned districts in Push 2057 B.S. to get information about the situation of the ex-kamaiyas and the government initiatives on their behalf. The Commission has not, till now, received the information it had asked for from the Ministry of Land Reform and Management or its departments regarding the latter's activities on behalf of the ex-kamaiyas. In this context, the Commission had also asked for information from the now dissolved

Commission for the Solution of the Problem of Squatters and the Rural Infrastructure Development Program of the Ministry of Local Development.

3.5.5 Public Hearing:

- (a) A Public hearing was held in the presence of the Member of the Commission, Mr. Sushil Pyakurel, about the police firing in Nepalgunj prison in Banke district on Magh 1, 2057 BS.
- (b) A public hearing at the initiative of the Commission was held on Jetha 10, 2058 BS about incidences of caste based discriminations in Nuwakot district.

3.6 Legislation and Prison Reform Activities:

3.6.1 Activities Related to Legislation:

The duties and responsibilities under the Human Rights Commission Act (1997) Article 9 Sub-clause (2), Sections (e), (f), (g) and (k) and Article 9, Sub-clause (3) are being performed by the Legislation and Prison Reform Division.

As Article 11, Sub-clause (6) of the Act provides for the formation of a committee or sub-committee when required, a "Women's Human Rights protection and Promotion Committee" has been formed under the convenorship of Ms. Indira Rana for the protection and promotion of women and children. The committee, comprised of Ms. Durga Ghimire, Dr. Shanta Thapaliya, Ms. Tula Rana, Mr. Anupraj Sharma, Mr. Gopal Krishna Siwakoti, Ms. Bharati Silwal Giri, Ms. Sapana Pradhan Malla, Mr. Satish Krishna Kharel, Ms. Indu Pant Ghimire and Mr. Ram Kumar Kamat, has been carrying out the necessary activities.

3.6.2 On Conventions:

Article 9, Sub-clause (2), section (1) calls for the Commission to provide suggestions to the government vis-a-vis the reports the country has to send in accordance with international treaty obligations. And Article 9, Sub-clause (3) states that the government has to send the reports, as per international treaty obligations, after taking suggestions from the Commission. As per these provisions, the Commission has corresponded with the Home Ministry, Ministry of Labour and Transport, Ministry of Women, Children and Social Welfare, Ministry of Foreign Affairs and the Ministry of Law and Justice requesting them to provide the reports prepared by concerned ministries, sent or in the process of being sent as per international treaty obligations. The Commission has also asked the cabinet secretariat for necessary guidance and coordination regarding the matter.

3.6.3 On the Convention on the Right of the Child:

The Commission has received for suggestions the first period report prepared by the Ministry of Women, Children and Social Welfare on behalf of the government. The report is to be sent to the United Nations Child Rights Committee. The Commission has drawn attention to the unnecessary remarks in the report (p.10) concerning the Commission and its Commissioners. The unnecessary and irrelevant attempt to defame and derogate the Commission in a report to

be sent by the government to an international agency is objectionable and unbecoming. The Commission has therefore requested an amendment in the report. The report is at present under consideration in the Commission.

3.6.4 Review of Conventions and Nepalese Legal Instruments:

Despite its limited resources, the Legislation and Prison Reform Division has reviewed the international instruments Nepal is a State party to. The Division is studying the provisions in Nepalese laws concerning the international instruments, the measures adopted by the government for implementing the international instruments and the prevailing discriminatory laws in the country.

3.6.5 Bills Received by the Commission for Suggestions:

(a) **Bill to regularize and manage private investment in the development of public infrastructure, 2057 B.S.**

The proposed "Bill to regularize and manage private investment in the development of public infrastructure, 2057 BS." was received by the Commission from the Ministry of Physical Planning and Works. The Commission, after studying the impact of the bill's provisions on economic, social and cultural sectors and on the right of individuals, has returned the bill with its suggestions to the concerned ministry.

(b) **Public Security Regulation, 2058 B.S.:**

The Public Security Regulation, 2058 B.S. was issued by the government on 22 Jetha, 2058 B.S. The Commission has received complaints which state that the regulation violates the constitutionally guaranteed rights of the people. Those filing the complaints have asked the Commission to take necessary action regarding the matter. The complaints are being investigated by the Commission.

3.6.6 Interaction Program:

(a) **Discussion Program on Nepalese Law Related to Human Rights and Women:**

The Commission organized a discussion program on Nepalese Law related to Human Rights and women on Magh 1, 2057 B.S. The program deliberated on various issues, including the amendment and reform necessary in the women's rights bill to be presented in the Parliament. Representatives of various ministries of the government, non-governmental organizations, and individuals concerned with the rights of women and journalists took part in the deliberations. The participants at the program suggested the formation of a committee for the protection and promotion of women's rights and for the finalization following discussions of laws related to the equal status of women.

(b) A Decade of Restoration of Democracy and Women's Human Rights:

On the occasion of the 91st International Women's Day, the Women's Human Rights protection and promotion committee of the Commission and the Mainstreaming Gender Equity Program jointly organized on Fagun 24, 2057 BS a discussion program and an exhibition of photographs, books, bulletins and various other publications on children's and women's rights. The discussion program "A Decade of Restoration of Democracy and Women's Human Rights" focused on the economic, social and political situation of Nepalese women following the restoration of democracy, discriminatory laws prevailing in the country and the commitments expressed in the international instruments ratified/acceded to by Nepal. The program, inaugurated by the chief guest Chief Justice of the Supreme Court Mr. Keshav Prasad Upadhyay, was presided over by the Chairperson of the Commission Mr. Nayan Bhadur Khatri. Member of the Commission Ms. Indira Rana, during her welcome speech, highlighted the aims and objectives of the program. The program was addressed by Ms. Kamala Pant, Minister of State for Women, Children and Social Welfare, Mr. Binaya Dhoj Chand, the then Chief Whip of the Nepali congress, Narahari Acharya, the then spokesperson of the Nepali congress, Ms. Sahana Pradhan Chairperson of the CPN (ML), Ms. Vidya Devi Bhandari, parliamentarian of the CPN (UML), Roshen Karki of (RPP), Ms. Urmila Shrestha, Secretary of the Ministry of Women, Children and Social Welfare, Dr. Shanta Thapaliya, Dr. Meena Acharya, Ms. Bharati Silwal Giri, and Advocate Ms. Sapana Pradhan Malla.

(c) The Forthcoming Budget and Gender Sensitivity:

A discussion program on "The Forthcoming Budgets Gender Sensitivity" was jointly organized on Chaita 16 2057 B.S. by the Women's Human Rights Protection and Promotion Committee of the Commission and the Mainstreaming Gender Equality Program. The program had the aim of making the forthcoming budget gender sensitive, at a time when the government budget for the year 2001/2002 was being prepared. The program, presided over by the Member of the Commission Dr. Gaurishankar Lal Das, had as its chief guest the Vice-chair person of the National Planning Commission Mr. Prithivi Raj Ligal. Member of the Commission Ms. Indira Rana, during her welcome speech, highlighted the aims and objectives of the programs. Presenting a paper at the program, economists Dr. Bal Gopal Vaidya and Dr. Chandra Bhadra reviewed the women development program and the government budget of the previous year, Ms. Sahana Pradhan, Chairperson of the CPN (ML), Dr. Pushpa Shrestha, Dr. Lila Pathak, Dr. Bina Pradhan, Mr. Gyanendra Shrestha, Ms. Sangita Thapa, Ms. Durga Ghimire, Dr. Pushpalal Joshi, Ms. Padma Mathema, Ms. Bharati Silwal Giri and Ms. Indu Pant Ghimire commented on the paper. The chief guest of the Program Mr. Prithivi Raj Ligal and Mr. Nirmal Pande, a Member of the National Planning Commission, stressed the necessity of studies evaluating the impact of the various programs of previous years on women with regard to issues such as gender equity, women's empowerment and mainstreaming, etc. They also confirmed that gender sensitivity would be accorded priority in the budget and programs of the forth coming year.

A task force including members of the Women's Human Rights Protection and Promotion Committee and economists Dr. Bal Gopal Vaidya and Dr. Chandra Bhadra

was formed to continue activities related to gender sensitization. The Commission undertook positive deliberations with the Vice-Chairperson of the National Planning Commission vis-a-vis the suggestions it had presented to the National Planning Commission on Baisakh 3, 2058 B.S. about making the 10th five-year Plan and the budget for the coming fiscal year more gender sensitive.

3.6.7 Prison Inspection:

A team under the Member of the Commission Ms. Indira Rana undertook an inspection of various men's and women's prisons in Kathmandu, Lalitpur and Kavre districts to identify the various problems found in prisons. The team obtained information about the number and condition of prisoners, including women prisoners and mentally deficient prisoners, details of prison sentences, and the education, health condition, etc. of the prisoners and their dependant children. The team also obtained information about physical facilities such as sleeping quarters, toilets, school, library, health centre, electricity-lighting, water supply, sports and entertainment facilities and about such issues as the employment industry and skill generation of the prisoners.

Although over a decade has elapsed since the restoration of democracy in Nepal, no amendment has been carried out in the Acts and Laws related to prisons in the country. There has been no expectation for change in the physical facilities in prisons, no increase in the rations of the prisoners and no appropriate provision of employment, skill generation and capacity building in prisons. All the above mentioned and other problems remain prevalent in prisons, as a result of which they have yet to develop reformatories. Due to limited resources and the absence of training and motivation, those who have to work in the dreary environment of prisons have not been able to perform as expected.

The prison study team of the Commission during its visit, received complaints and suggestion from prisoners, leaders of prisoners, guards, security personnel, staff of the Prison Management Department, Jailers and other staff of the prison. The study team has compiled all these complaints and suggestions, along with its own observations about various issues during the visit, into a report. As per the report, the common problems observed by the study team during its visit and the suggestions and recommendations have been sent to the Home Ministry of His Majesty's Government.

3.6.8 Efforts by the Commission to Solve the Problems of Prisons:

- (a) The Commission was informed through the Kantipur daily and other media sources about the dilapidated condition of the women's prison in Biratnagar, Morang district and the problems caused to women prisoners therein by the seepage of water during the rainy season. A Member of the Commission undertook a visit of the prison and also observed the extremely dilapidated condition of the prison. In this regard, Commission has sent a letter to the Home Ministry calling for immediate renovation works to be undertaken before the onset of monsoon.
- (b) During discussion with the concerned administrative officials at the time of the observation visit of Birgunj Jail in Parsa district, the Commission was informed of the leakage of water in the building and of the necessity of repair and maintenance and cleanliness and sanitation, along with the immediate release of a budget for rations, medicine, clothing, etc. The Commission has corresponded with the Prison Management Department informing them about the issues concerned.

Chapter 4

THE COMMISSION AND NATIONAL AND INTERNATIONAL RELATIONS

4.1 National Relations:

4.1.1 Relation with the Parliament:

Following the restoration of democracy, parliamentarians had been demanding the bringing forth of the Human Rights Commission Act and the formation of the National Human Rights Commission in accordance with the Act for the protection, promotion and the full implementation of human rights. Taking these demands positively, the parliament passed the Human Rights Commission Act in 1997. As a further indication of the gravity accorded to the issue of human rights by the parliament can be taken the formation, during the making of parliamentary committees, of two separate committees, namely the Foreign Affairs and Human Rights Committee in the House of Representatives and the Social and Judicial Committee in the National Assembly.

After the formation of the Commission, there have been discussions and interactions between the Commission and the above mentioned parliamentary Committees, which have taken positively the views put forth by the Commission during the discussions and interactions. This has acted as an encouragement to the Commission. The Commission believes that the policies formed by the parliament and the directives issued to the government in the area of human rights will contribute to the full guarantee and protection and promotion of human rights.

4.1.2 Relation with the Civil Society:

The Commission has a close and intimate relationship with the civil society. The non-government organizations have had an important role to play since the issuance of the Human Rights Commission Act and the formation of the Commission. The Commission has from time to time carried out deliberations and discussion programs with various non-government organizations, journalists and media persons, women and dalit society, statesmen, etc. The Commission, while preparing its strategy, received important suggestions from the non-governmental sector. Whether it is the issue of celebrating the Human Rights Day or the passing of a bill in parliament related to women's right to parental property, committees have been formed with the participation of the non-governmental sector and activities have been undertaken jointly by the Commission and the non governmental sector. Similarly, joint programs have been launched with some non-governmental organizations, through which the Commission has received valuable assistance.

4.1.3 His Majesty's Government:

(a) The Commission and the Government:

The National Human Rights Commission has been formed as a result of the commitment of the government to human rights. The success of the Commission lies in

translating this commitment into practice. The government has an important role to play in preventing human rights violations and in creating, in case of violations, conditions necessary for action upon the perpetrators. The Commission expects from the government its practical commitment on issues such as transparency in the activities of the government, legal provision and implementation according to international human rights standards, mutual cooperation in investigation, and capacity building of the Commission. The Commission also expects that all classes and individuals of the society will be alert about activities that negate the principle of the rule of law.

There were several meetings and interactions at various levels between the Commission and the government during the first year of the Commission's formation. The views expressed, the commitment shown and the interactions by the officials of all levels of the government during these meetings are common. Nonetheless, it is felt that the government still has to take considerable steps for concrete achievements at the implementations level in the area of the protection of human rights. Since the Commission is still in the stage of infrastructure development, the necessity of effective assistance from the government in this regard is also felt.

The police stand at the forefront of the issue of human rights. The commitment, awareness or indifference of the police towards human rights is an indication whether human rights are being protected or being violated. As the responsibility of maintaining law and order and helping in investigations in cases of human rights violations falls upon the police, the Commission has time and again carried out interaction activities with high ranking officials of the police. The awareness and positive attitude expressed by the police towards human rights has, to some extent, been reassuring to the Commission. However, such activities as unlawful arrests even in the presence of the Members of the Commission and the lack of active assistance during the course of investigations are a cause of concern. There is the urgent necessity of assisting the Commission by making available at the earliest objective and factual replies asked for by the Commission.

In addition, as all agencies of the government have appeared indifferent in the course of assisting the Commission with its work, the Commission expects the government to clarify the role of the Commission along with the government's commitment to human rights and give directions to all its agencies accordingly.

(b) The conduct of government on the queries of the Commission:

- (1) On the basis of news published in various newspapers regarding the interference and hindrance by the police in the medical treatment of Ranjan K.C. and Sirjana Phuyal, two individuals injured in cross fire between the CPN (Maoist) and the police at Majhuwa Dovan in Sindhuli district on Bhadra 7, 2057 BS. and admitted for treatment at the Miteree Hospital in Bagbazar, Kathmandu, the Commission began its investigations and inquired about the matter with the Police Headquarters. The concerned office, however, replied with such irrelevant and objectionable questions as, "In which law is there provision for the necessity of asking for permission from the Commission to arrest, during the course of investigations, those accused of such criminal cases as the killing of

police personnel on duty, or to transfer the accused to a more appropriate place? What counsel do the police have to take from the Commission while arresting those accused of such serious criminal offences as murder?" This is an indication of the irresponsible attitude of the Nepali police towards human rights issues.

- (2) When the Commission inquired about the reason behind the arrest of Ishwari Dahal, who was said to have been arrested from Tahachal in Kathmandu and made to disappear, the police Headquarters replied that the individual concerned had not been arrested. But given that the person's name appeared some time later in the list made public by the police of individuals arrested on the charge of being Maoists, the reply by the police does not appear objective.
- (3) When the Commission corresponded with the District Police Office, Kathmandu, referring to the death of singer Pravin Gurung, about whether action according to the law had been taken against the culprit or not, it received the irresponsible reply like "have proper correspondence with higher authorities".

4.2 International Relations:

The Commission, right from its inception, has taken the policy of expanding its relations at the international level. During the short period of its existence, it succeeded in becoming the eighth member of the Asia Pacific Forum for National Human Rights Institutions. The Commission is also contacting the national human rights organizations formed in the member countries of the South Asian Association for Regional Cooperation (SAARC) and exploring the possibilities of cooperation with them.

Also, as a result of visits to the Commission by the heads of diplomatic missions in Kathmandu and by the representatives of donor agencies of various countries and the commitment of assistance shown by them, the Commission has already initiated studies and research related to human rights. A draft for capacity building project of the Commission is in final stage. The UNDP is going to coordinate their funding by various donors so as to carry out the programme in an integrated way.

Chapter 5

PARTICIPATION AND ARRIVALS OF VERY IMPORTANT PERSONS

5.1 Visits and Participation of Members and Staff

The Members and staff of the Commission participated in various seminars, meetings, conferences, workshops and training programming during the period of this report. All these activities during the initial stage of the formation of the Commission have been very helpful to the Commission. The details of the activities are given in Annex 5.

5.2 Observation and Visits of Distinguished Persons at the Commission:

- (a) At a special ceremony organized on the occasion of the Commission reaching its first one hundred days, the prime Minister, Mr. Girija Prasad Koirala, visited the Commission and inquired about its activities. Prime Minister Koirala, on the occasion, expressed his commitment to human rights and stated that the government was ready to help the Commission in whatever ways it could.
- (b) Soon after the formation of the Commission, the Advisor of the United Nations Office of the High Commissioner for Human Rights, Mr. Brian Burdekin, visited the Commission with a view to finding the necessary areas of cooperation for strengthening the Commission. On the occasion, extensive discussions were held with representatives of the donor organizations wanting to help the Commission to identify the areas of cooperation.
- (c) Taking a special interest in the role of the Commission, the main opposition leader of the House of Representatives, other senior leaders, the spokesperson of the Nepali congress, General Secretary of Rastriya Prajatantra party and the chairperson of the Nepal Majdoor Kisan Party visited the Commission and inquired about its activities. Also, during the visit by the Commission to Maoist-affected areas, the suggestions given by the leaders of various political parties who came to the Commission were very helpful to the Commission.
- (d) On 28 November 2000, Princess Anne of Britain visited the Commission and inquired about the various activities of the Commission. Her Royal Highness signed the guest register kept at the Commission. The Commission feels that it has received great encouragement at the international level by the visit of the Princess.

Chapter 6

EVALUATION AND CHALLENGE

6.1 Evaluation of the last Year

The formation of the National Human Rights Commission on 26 May 2000 was an important event in the history of human rights in the country. It was natural that people had high expectations from the Commission formed after the passage of the Human Rights Commission Act (1997) and lot of pressure put on the government by the people and the civil society. Although the Commission following its formation has received assistance from all sectors, there have also however been unsuccessful attempts to tarnish its image. Despite this, there has not been any significant impact on the activities of the Commission.

Even before the formation of the Commission, the government had formed a task force with a view to facilitating the initial activities of the Commission. The task force had given suggestions about the physical resources, budget and personnel and about the regulations to be brought forth by the Commission. The details of this are given in Annex 2. The report by the task force paved the way for preparing a basic structure of the Commission. And as the task force had recommended with considerable perspicacity the physical resources and budget required by the Commission in its initial stage, the Commission was greatly encouraged about being able to undertake its activities without any hindrances.

The Commission carried out necessary deliberations on the regulations prepared by the task force (except for the regulation related to the meeting of the Commission (Work procedure) and sent them to the government for suggestions. The Commission, however, had to wait for nine months to receive the suggestions of the government. Consequently, the Commission during the period had to carry out its activities based on decisions on an ad-hoc basis. Given the absence of regulation related to complaints and compensation, the Commission could not take its decisions on complaints, investigation and compensation, and was unable to provide relief to the aggrieved in time.

Although the task force in its report had recommended a budget of Rs. 16,035,000 for the Commission in its first year, the government provided about Rs. 1,300,000 in the first stage. And for the fiscal year 2000/2001 the government released an amount of only Rs. 5,000,000. As the amount was not given in the form of a grant, as provided for by the human rights Commission Act (1997), but was given to the Commission under the budget heading set forth by the Finance Ministry, the Commission could not take its decisions independently and had to face considerable obstacles in its work. Also, as the amount was not sufficient even for running the office and for salaries, the Commission had to make great efforts for the release from the government of an additional amount of Rs. 664,000 to pay the salaries of the staff. This, consequently, hindered the Commission in its responsibility of carrying out activities related to the study, research, protection and promotion of human rights.

As the Commission felt that the lack of finances was a hindrance to its work according to its vision and the people's sentiments, it prepared a budget of Rs. 29,576,000 for the fiscal year 2001/2002 and presented it to the Finance Ministry. However, the Commission has learnt that the government has once again allocated and presented to parliament only Rs. 5,000,000, an amount that is not even sufficient to pay for the salaries of the 22 staff at the Commission.

The task force in its report had recommended 78 personnel for the Commission. However, even though the Commission has already extended and expanded its activities, the Commission, due to the lack of finances, has to work with 22 staff and five office bearers. In this context, the Commission, feeling the need of at least 46 personnel for the time being, had asked for the release of a budget from the government accordingly. The release of only Rs. 5,000,000, however, means that the Commission will face difficulties in paying the salaries of even its current staff. This will consequently impact the proposed project to strengthen the Commission being coordinated by the United Nations Development programme, a project that will not be effective in the absence of required personnel.

After its formation, the Commission met with heads of diplomatic missions in Kathmandu and representatives of donor agencies at its office. In this context, areas of cooperation to enable the Commission were identified following joint discussions with Brian Burdekin, Special Advisor of the United National Office of the high Commissioner for Human Rights, and representations of several donor countries. Accordingly, the draft of the project to strengthen the National Human Rights Commission being coordinated by the United Nations Development programme is in its final stage. The Commission is greatly encouraged by the interest shown by the international community in assisting the Commission. However, the inability of the Commission to provide for the required number of personnel to run the programmes is a matter of concern.

The main responsibility of the Commission is to inquire and investigate into complaints of human rights violations. The cooperation of His Majesty's Government, especially the Home Ministry and agencies underneath it, is essential for objective investigations into incidences of human rights violations. The Commission has, however, felt the absence of cooperation in its activities, since it has not during its inquiry and investigations been given factual details or has been given false information regarding several incidences. There have been plenty of cases when the government, following unlawful arrests in the presence of a representative of the Commission itself, has come out with false denials that no arrest had taken place. This is something not appropriate for a democratic government. Similarly, the request by the Commission, after being informed about the incident, to protect the right to treatment for those admitted at the Miteree Hospital was distorted deliberately and responsible authorities reacted by publicly criticizing the Commission in an unbecoming way.

When the Commission began its work, it was provided with only one room of the building housing the then Ministry of Supplies. The Commission, bereft of physical resources at the time, was greatly helped by the Ministry of Supplies, as the latter provided it with furniture, office room, office equipment, as well as necessary personnel. With the increase in the activities of the Commission, the Commission was also provided with several other rooms of the building.

As the building provided to the Commission is dilapidated and inadequate and lacks a toilet, waiting room, library and meeting hall, the Commission has had severe problems. And though the regulation concerning the terms of service and facilities of the Chairperson, Member and Secretary provides for a vehicle each along with a driver, the government has till now provided only two vehicles and one driver. This has hindered the work-efficiency of the Commission. Since the Commission, as per its nature of work, has to engage in activities like investigation, inquiry and monitoring, the absence of urgently needed vehicles for such activities has obstructed the daily activities of the Commission. Also, vehicles have to be hired while going outside Kathmandu, which has created an additional financial burden for the Commission.

Despite all the shortages and problems, one has to take satisfaction in the activities accomplished by the Commission during the period of this report. The Commission, in the short period of its existence, has succeeded in becoming the eighth member of the Asia Pacific Forum of National Human Rights Institutions. The Commission, within three months of starting its activities, had finalized the regulations to be brought forth by the Commission and sent it to the government for suggestions, thus preparing the legal basis for its activities. In addition, the Commission established contacts with foreign diplomats and donor agencies and identified areas of cooperation to enhance the capability of the Commission. The Commission, as an outcome of this, has prepared the basis for initiating in the near future a project to strengthen the Commission.

During the period of this report, the Commission, with regard to complaints and compensation, recommended to the government to give compensation Rs. 100,000 each to the families of the persons killed in the police firing in Nepalgunj prison. The Commission also cautioned the government, thus discouraging numerous cases of unlawful arrests.

The Commission, during the course of its inquiry and investigations, looked into the incidences of the deaths of Khusilal Yadav by firing at Netachok in Rajbiraj and of Gauri Sapkota by police firing in Bharatpur, Chitwan. The Commission, following necessary investigations, has reached the final stage of its decision with regard to the two cases.

In order to take necessary initiatives for human rights, Members of the Commission Dr. Gaurishankar Lal Das, Prof. Kapil Shrestha and Mr. Sushil Pyakurel visited the Maoist-affected districts of the mid-western region to observe the human rights situation therein. The visits have helped the Commission to arrive at a clear picture regarding the human rights situation of the Maoist-affected areas. The observation visits are continuing. The Commission also took necessary steps under the initiative of Member Ms. Indira Rana and by coordinating with non-government organizations in finalizing, in the interests of women, the bill related to women's right to parental property under consideration in parliament.

Another initiative on behalf of women was the organizing of a discussion program to bring to the attention of all concerned the issue of incorporating in the budget presented in parliament of effective programs in the interests of women. All the participants in the discussion program took the issue very positively.

With a view to increasing cooperation between the Commission and human rights related non-governmental organizations as well as encouraging such organizations, the office bearers of the Commission have undertaken observation visits of the organizations. There have also been

discussion programs about various issues related to human rights. There are also plans to implement various programs through the non-governmental organizations. With a view to receiving cooperation and counsel from all concerned, the Commission has undertaken discussions and deliberations with government bodies, journalists, lawyers, university teachers, the dalit community and office bearers and scholars of various areas. The Commission has adopted a policy of working together with such individuals on the issue of human rights.

6.2 Challenges:

6.2.1 Enabling and Capacity Building of the Commission:

As the Commission is in its initial stage, the Commission is facing various challenges in its institutional development. As the Commission received only after a gap of nine months the regulations it had framed and sent to the government for suggestions, it is still preparing to recruit the personnel it needs on a permanent basis. However, as the budget provided by the government is absolutely insufficient, it is next to impossible for the Commission to recruit the required personnel. If the Commission does not get the required budget, this may lead to a situation where the Commission cannot discharge its duties and responsibilities efficiently. The indifference shown by the government towards the Commission in this context is having an extremely negative impact on the institutional development of the Commission.

As the Human Rights Commission Act (1997) was presented in parliament as a private bill, the financial provision in the bill is not binding. If the government does not provide the required amount of money, it is clear that there will arise obstacles in the activities of the Commission. Without the development of necessary coordination, understanding and institutional cooperation between the Commission and the government, the Commission will be unable to work in accordance with the feelings, expectations and challenges of the masses. This can have a negative impact on its image. The Commission, even if it were provided with the number of personnel it requires, lacks needed research and physical resources. The present physical facilities are especially inadequate considering the necessity of a documentation centre, a court room and a hall for seminars and interactions for the Commission. Given the increase in the activities of the Commission, which can only extend and expand in the future, there is a need for its own building.

6.2.2 Protection of Human Rights:

A democratic system is considered essential to guarantee human rights. Democracy and human rights are complementary to each other. However, the expected change in the area of human rights in Nepal has not happened, even though twelve years have elapsed following the restoration of democracy in the country. The State has not appeared sufficiently sensitive and responsible towards human rights. There have, time and again, been incidences of human rights violations by the State. The State and its institutions have not appeared committed to a great extent to the principle of the rule of law. There has been no change in the situation of the absence of punishment for those violating human rights. Also, since the beginning of the Maoist problem six years ago, the incidences of human rights violations arising out of the activities of the State and the Maoists have been increasing rapidly. Everyone has to take heed of the fact that such shortcomings in the adherence to human rights standards will have serious effects on the quality of democracy itself. In this context, there is a challenge to make the State and its

institutions, political parties, the society and individuals sensitive and committed to human rights.

6.2.3 Human Rights Education:

A main reason behind the violation of human rights by various sectors in Nepal is the lack of knowledge and awareness regarding human rights. To inform the police, especially those working at the lower levels, government officials and the masses about human rights, an extensive campaign program on human rights education is urgently required. There is a challenge before the Commission of making and implementing a program of human rights education that is effective and extensive as well as participatory.

The majority of those living in remote areas outside the capital and who suffer from human rights violations face problems in bringing forth their complaints before the Commission. Thus, there is the necessity of creating solutions and alternatives in order to increase the access of the Commission to the vast populations.

Chapter 7

RECOMMENDATIONS

7.1 Urgently Required Funding:

Taking into account the necessity of the establishment of an independent and autonomous national mechanism for the protection and promotion and the effective implementation of human rights in a country, the meeting of national institutions in Paris in 1991 at the initiative of the United Nations undertook the preparation of a detailed principle. Among the important points of the Paris Principle is the provision that the concerned government should make available the necessary infrastructure, especially adequate financial assistance, to the national institutions established under the principle for the efficient functioning of the institution. The principle states that there should be adequate financial assistance to the institution to provide for necessary personnel and physical facilities required. His Majesty's Government, keeping in view these provisions, has been providing to the Commission a specific amount. However, the amount is insufficient. It is understood that the amount allocated for the fiscal year 2001/2002 is only Rs. 5,000,000. The amount of Rs. 5,000,000 released for the year 2000/2001 had been insufficient to pay for salaries. Only when an additional amount of Rs. 664,000 had been released were the Members and staff of the Commission able to get their salary of three months. In this context, the release of only Rs. 5,000,000 for the forthcoming year will no doubt create substantial problems. It will be difficult to pay for the staff, who are minimal in number.

In this context, the Commission has requested from the Prime Minister a budget release of Rs. 14,515,000 for the 46 personnel it requires as of the present. It should be remembered that donor agencies only assist in the development programs, and the core funding as per the Paris Principle has to be provided by the government.

Also, as per the provisions of the regulations concerning the terms of office and facilities of the Chairperson, Members and staff, the gratuity, medical allowance, leave allowance, insurance, etc. is payable in the future, there is the necessity of establishing a fund for the purpose. For this, the government has to provide the necessary amount in the form of a grant on a regular basis.

7.2 Personnel Management:

For the efficient conducting of the activities of the Commission, especially for the implementation of the capacity building project of the Commission, being coordinated by the United Nations Development Programme, an adequate number of personnel at the Commission is essential. The Commission for the time being has proposed 46 personnel as being necessary to carry out its activities. Also, it is essential that the government should depute, along with paying for their salaries, 4 officers (first class) and 9 officers (second class) to the Commission.

7.3 Training:

The Human Rights Commission Act (1997) has given the authority to the Commission to recruit its staff. The staff recruited has to be provided with training on various issues, such as

personnel administration, investigation and research and the running of human rights awareness programs. As the Commission itself cannot manage this training, necessary arrangements in this regard should be made by the government.

7.4 Expected Assistance from the Government:

The government has the main role to play in protecting human rights. Along with the prevention of human rights violations by the State and, in case of violations, the undertaking of investigations and taking of action against the guilty, the government is also responsible for stopping such violations from the non-State sector and the maintaining of law and order by protecting life and property. Given the important role of the government, assistance in legal provisions according to human rights standards, creating awareness regarding human rights and active assistance in the inquiry and investigation of the Commission is expected of His Majesty's Government.

Annex 1

(Related to 1.1.1)

International Human Rights Convention/ Covenants Nepal is a State Party to

S. N.	Name of Convention/Covenant	Date Passed On	Date of Nepal's Ratification. Accession
1	Slavery Convention of 1926	25 September 1926	7 January (1963) (A)
2	Slavery Convention of 1926 as Amended	23 September 1953	7 January (1963) (A)
3	Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery	7 September 1956	7 January (1963) (A)
4.	Convention on the Political Rights of Women	20 December 1952	20 April 1966 (A)
5.	Convention on the Prevention and Punishment of the crime of Genocide	9 December 1948	17 January 1971 (A)
6.	International Convention on Elimination of all Forms of Racial Discrimination	21 December 1965	30 January 1971 (A)
7.	International Convention on the Suppression and Punishment of the Crime of Apartheid	30 November 1973	12 July 1977 (A)
8.	International Convention against Apartheid in Sports	10 December 1985	1 March 1989 (R)
9.	Convention on the Right of the Child	20 November 1989	14 September 1990(R)
10	Convention on the Elimination of All Forms of Discrimination Against Women	18 December 1979	22 April 1991 (R)
11	International Covenant on Economic, Social and Cultural Rights	16 December 1966	14 May 1991(A)
12.	International Convention on Civil and Political Rights	16 December 1966	14 May 1991 (A)
13.	Optional Protocol to International Covenant on civil and Political Right	16 December 1966	14 may 1991 (A)
14.	Convention Against Torture and Other Cruel, In human and Degrading Treatment or Punishment	10 December 1984	14 May (A) 1991
15.	Convention on the Suppression of Trafficking of Women and Exploitation of Others by Prostitution	2 December 1949	27 December (A) 1995
16.	Second Optional Protocol to the International Covenant on Civil and Political Rights with Provision for the Elimination of Capital Punishment	15 December 1989	4 June 1998 (A)

Annex 2

(Related to 1.1.2)

Details related to Commission Formation and Recommendation

1. Task Force Formation

Mr. Bishwaraj Regmi, Secretary, Cabinet Secretariat	-	Coordinator
Mr. Madhav Prasad Poudel, Deputy Secretary, Ministry of Law Justice	-	Member
Mr. Pramod Kumar Karki, Deputy Secretary, Ministry of Finance	-	Member
Mr. Bharatmani Risal, Deputy Secretary, Ministry of Public Administration	-	Member
Mr. Nanda Bahadur Subedi, Deputy Attorney, Office of the SAttorney General	-	Member
Mr. Hari Prasad Neupane, Deputy Secretary, Cabinet Secretariat	-	Secretary Member

2. Personnel List

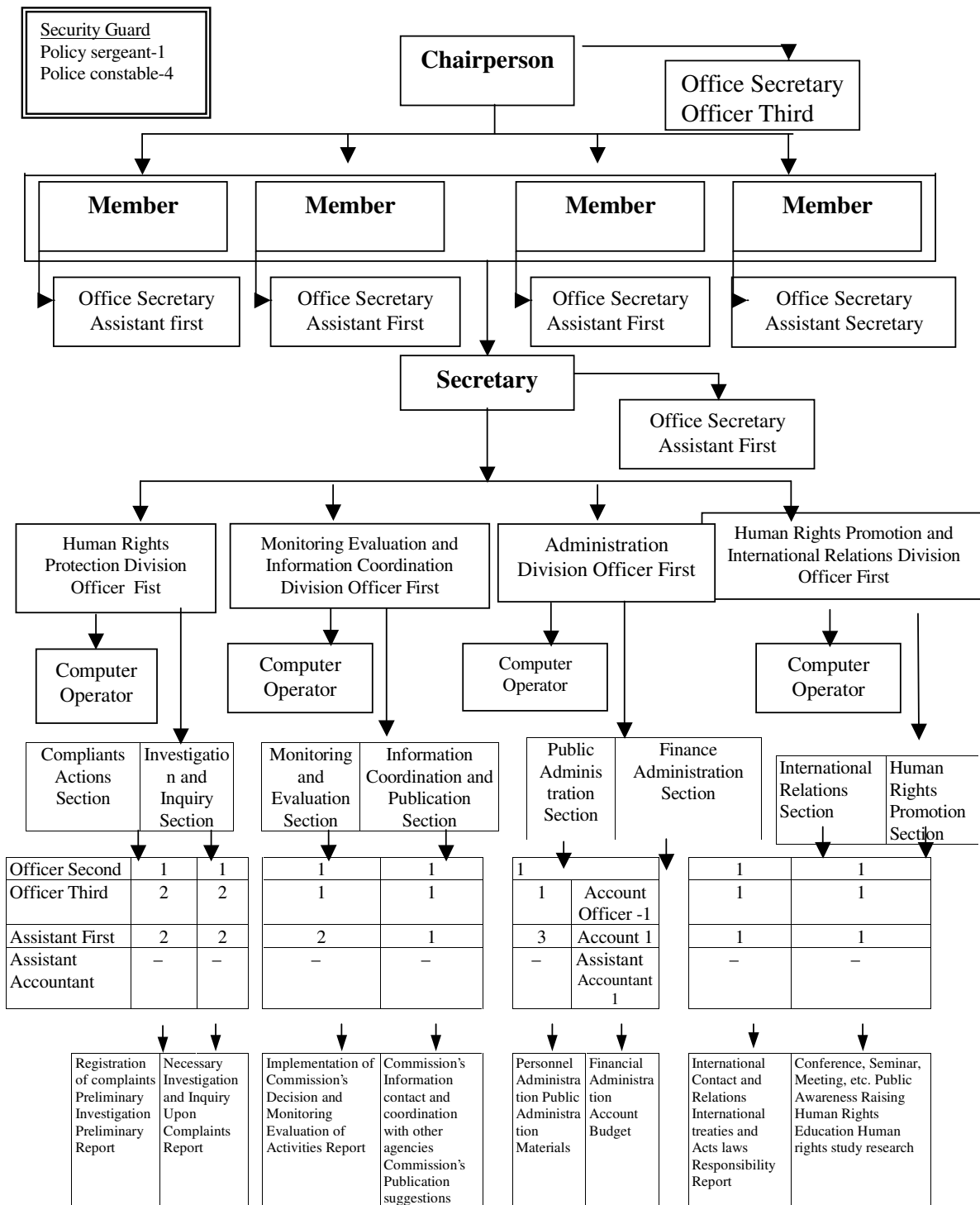
1	Chairperson	-	1
2.	Member	-	4
3.	Secretary (Special Class)	-	1
4.	Officer First Class	-	4
5.	Officer Second Class	-	7
6.	Officer Third Class	-	11
7.	Assistant First Class	-	18
9.	Computer Operator (Assistant First Class)	-	-4
10.	Light Venice Driver (No Class)	-	10
11.	Peen (No Class)	-	12
			<hr/>
Total			73

Security Guards

1.	Police Head constable	-	1
2.	Police constable	-	4

Budget	
For First Year	
Salary	Rs. 4,300,000
Allowance	Rs. 300,000
Telephone /Trunk	Rs. 400,000
Other Services	Rs. 100,000
Rent	Rs. 2,000,000
Maintenance/Repair	Rs. 100,000
Office Equipment	Rs. 550,000
Other Office Equipment	Rs. 600,000
Printing	Rs. 100,000
Newspaper/Magazine	Rs. 250,000
Vehicle Fuel	Rs. 600,000
Fuel Other Purpose	Rs. 35,000
Miscellaneous	Rs. 200,000
Furniture	Rs. 450,000
Vehicle	Rs. 5,000,000
Machinery Equipment	Rs. 550,000
Total	16,035,000
(b) For Second Year Total	Rs. 9,800,000
4. Building	
All Small and Big	- 40 rooms
5. Vehicle -12	

National Human Rights Commission, 2001



Annex 3

(Related to 2.1)

Brief Bio-data of the Chairperson, Members and Secretary

(a) Mr. Nayan Bahadur Khatri, Chairperson:

The Chairperson of the National Human Rights Commission, Justice Nayan Bahadur Khatri, is also a Rt. Honourable member of the Royal Council. He was born in 1929. With an M. A. and L. L. B. from the Lucknow University in India, Mr. Khatri was the Chief Justice of the Supreme Court from early 1976 to late 1985. After retiring as Chief Justice from the Supreme Court, Mr. Khatri also served as the Royal Nepalese Ambassador to China and North Korea. Mr. Khatri, who entered the civil service as an Officer of Civil office Legal Department, also worked as a lawyer in Lhasa, Tibet. He was also an Under-Secretary and Secretary of the Law Ministry. Appointed in 1959 as a Permanent Justice of the Supreme Court by His Majesty the King at the recommendation of the then elected government, Mr. Khatri was the Chairperson of the Law Reform Commission three times. Mr. Khatri was also the Chairperson of the Judicial Committee from 1972 to 1976.

(b) Dr. Gauri Shankar Lal Das, Member:

Born in Siraha in 1925, Dr. Gauri Shankar Lal Das represents the social sector in the National Human Rights Commission. He is also a Member of the Royal Council. Dr. Das, who was the Medical Superintendent of Tokha Sana forum, Central chest clinic and the Director of the Department of Health Service, is a senior chest physician. As the first health planner of Nepal, Dr. Das contributed to the Long-term Health Plan 1976. As a consultant to the World Health Organization for a brief period, he also made significant contributions to the First Health Plan of the Maldives. Dr. Das has worked on a voluntary basis at the leadership level of various social organizations like the Nepal Red Cross Society, Nepal Leprosy Relief Association, Nepal Tuberculosis Association, Nepal Blind Welfare Society, Ex-civil Servants Service Council, Senior Citizens' Welfare Society, Nepal B. P. Eye Foundation, Chitragupta Foundation, Sirahali Service Society, Nepal Medical Association and Nepal Family Planning Association. He is also the founder of many of the above-mentioned organizations.

(c) Professor Kapil Shrestha, Member:

Professor Kapil Shrestha was born in 1955. With an M. A. in political science from Tribhuvan University, Kathmandu, Professor Shrestha has also undertaken courses in international relations, human rights and other subjects at famous universities in the United States, the Philippines, the Netherlands, and India. A former president of the Human Rights Organization of Nepal, he is a member of the Ganeshman Singh Foundation and the Ganeshman Study Foundation. Professor Shrestha, who has been a Member, General Secretary and the President of the Nepal Professors Association, is regarded as one of the foremost political analysts of Nepal. He has visited various national and regional institutions related to human rights and observed elections in Nepal as well as in foreign countries. Professor Shrestha was

the Associate Coordinator of the National Election Observation Committee (NEOC).

(d) Mr. Sushil Pyakurel:

Mr. Sushil Pyakurel represents the human rights activists in the Commission. Born in 1951, Mr. Pyakurel entered journalism with the "Samay" daily and "Prachi", a literary publication, in 1972, thus beginning his affiliation with the social sector almost three decades ago. Mr. Pyakurel is among the founders of the Nepal National Teachers Organization established in 1979. A founder of the oldest human rights organization in the country, the Human Rights Protection Forum, Mr. Pyakurel is also the founder chairperson of the Informal Sector Service Centre established in 1989. He was a central member of the United Left Front prior to the popular mass movement of 1990. A founder General Secretary of the South Asian Human Rights Forum, Mr. Pyakurel is a former Board Member of the Bangkok based Asia Pacific regional human rights organization called Forum Asia. Mr. Pyakurel, who served as the General Secretary of the National Election Observation Committee (NEOC), is the Vice-chairperson of the organization related to election observation, the Asian Network for Free Election (ANFREL). Mr. Pyakurel has since 1986 participated in various human rights related seminars and conferences held in more than 30 countries of the world.

(e) Ms. Indira Rana, Member:

Ms. Indira Rana is a former Secretary of the Government. She has an M. Phil. in Population and Law from Harvard University of the United States and a B. L. and M. A. in Political Science from the Tribhuvan University, Kathmandu. Ms. Rana, after serving for many years in various posts as judge, registrar in courts, Ministry of Law and Justice and other judicial bodies of the government, retired as Secretary of the Judicial Council Secretariat and the Judicial Service Commission.

Ms. Rana is the first woman in the history of Nepal to perform the last cremation and other rites following the death of her mother. As coordinator of the International Women's Year Law Committee, 1975, she made significant contributions for the equal rights of women during the sixth amendment of the National civil code of Nepal. Ms. Indira Rana has served as a leader, founder and volunteer of various national and international organizations, such as the Nepal Red Cross Society-Kathmandu Branch, Nepal Cancer Relief society, Nepal Family Planning Association, Nepal Anti Tuberculosis Prevention Association, Nepal Children's Organization, Senior Citizen Welfare Association, SAARC Law Nepal, Nepal Law Society, International Commission on Jurists, International Law Association, International Federation of Women Lawyers Association America, Rotary Club Kathmandu, Lions Club Kathmandu, United Nations Women Association, Business and Professional Women Club, National Election Observation Committee and Harvard Alumni Association Nepal. Decorated with various national awards such as the Prakhyat Trishakti Patt, Suprabal Gorkha Dakshin Bahu, etc. and international awards such as the Nafis Sadik Award, the Paul Harris Fellowship and Woman of the Year 2001, Ms. Rana has written books on law and numerous research papers on women's rights and other topics.

Apart from representing Nepal in the United Nations General Assembly, Ms. Rana

has participated in the Fourth World Conference on Women Beijing, International Election Observation (the Presidential election in Sri Lanka in 1999) and in various international conferences and seminars on law, women and human rights held in countries around the world. Active against injustice, exploitation and unequal practices against women, Ms. Rana has been especially involved in social activities of various types.

(f) **Mr. Kedar Prasad Poudyal, Acting Secretary**

Mr. Poudyal has been working at the Commission as an Acting Secretary since August 2002. Poudyal has done his M.A. in Political Science and Diploma in Law from the Tribhuvan University School and completed Master of Laws degree from the National Law School of Bangalore, India. He has also pursued short - term development law course from Italy and a similar Crime Prevention studies from Japan. He worked with the Office of the Attorney General of Nepal for Seventeen years in the capacity of the government attorney in all major areas of public prosecutions. As a keen human rights analyst, Kedar has given several seminars on the current human rights issues in recent years.