

# Evaluation Report

## **UNDP Nepal: Evaluation of Strengthening the Capacity of the National Human Rights Commission (SCNHRC) Project**

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*Empowered lives.  
Resilient nations.*



## **Acknowledgments**

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## Map of Nepal



## Acronyms

ANIJ	Association of Nepalese Indigenous Nationalities Journalist
APF	Asia Pacific Forum
AR	Activity Result
CA	Constituent Assembly
CDO	Chief District Officer
CERD	Convention on the Elimination of Racial Discrimination
CPA	Comprehensive Peace Agreement
DDC	District Development Committee
DNA	Deoxyribonucleic Acid
ESCR	Economic, Social and Cultural Rights
GoN	Government of Nepal
HIV/AIDS	Human Immunodeficiency Virus/ Acquired Immune Deficiency Syndrome
HRBA	Human Rights Based Approach
ICC	International Coordination Committee
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
IDPs	Internally Displaced Persons
INSEC	Informal Sector Service Center
IT	Information Technology
NDC	National Dalits' Commission
NEFDIN	Nepal Foundation for the Development of Indigenous Nationalities
NEFIN	Nepal Federation of Indigenous Nationalities
NGOs	Non-Governmental Organizations
NHRC	National Human Rights Commission
NHRIs	National Human Rights Institutions
NTV	Nepal Television
NWC	National Women's Commission
OAG	Office of the Attorney General
OPM COM	Office of the Prime Minister Council of Ministers
OHCHR	Office of the High Commissioner for Human Rights
PIU	Project Implementation Unit
QUARA	Quality Assurance and Review Advisor
RRF	Results and Resources Framework
SCNHRC	Strengthening the Capacity of National Human Rights Commission Project ("the Project")
SDC	Swiss Agency for Development and Cooperation
SLC	School Leaving Certificate
ToT	Training of Trainers
UCPN	Unified Communist Party of Nepal
UPR	Universal Periodic Review
UK	United Kingdom
UNDP	United Nations Development Programme
UNMIN	United Nations Mission in Nepal

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## Executive Summary

This report represents the Evaluation's findings and conclusions relating to progress made under the UNDP "Strengthening the Capacity of the NHRC" (SCNHRC) Project (2009 to 2012, and its extension to mid-2014) as of end-March 2014. The report also makes recommendations and sets priorities for the last year of the Project's implementation, as well as support beyond 2014.

### ***Background and Context***

The situation of human rights in Nepal has improved from 2009 to 2014. This period in Nepal's development represents a transition from a conflict to post-conflict environment. Conflict-related tensions and human rights violations have drastically declined, but the overall situation of human rights in Nepal remains critical. After the cessation of hostilities, new violence, particularly in the Terai region caused by the Terai/Madhesh movement, resulted in a number of human rights violations including torture, extra-judicial killings, arbitrary arrests and detention, etc. at levels similar to those seen during the civil conflict. Meanwhile, violence against women, caste-based discrimination, targeted abuse of ethnic minorities, the concept of "untouchability" directed against Dalits and other groups persist. Other human rights issues have also gained attention recently including discrimination against LGBT, abuses of migrant workers, the mentally ill and bonded laborers. As Nepal has transitioned to peace, Economic, Social and Cultural rights are increasingly demanded by its population.

### ***The National Human Rights Commission of Nepal and the SCNHRC Project***

The National Human Rights Commission (NHRC) was established in 2000 under the Human Rights Commission Act, 1997. The Interim Constitution of Nepal, 2007, recognized the importance of the NHRC and elevated it to a constitutional body with a broad mandate to protect and promote human rights. The NHRC, despite a reduction of its power by the enactment of the National Human Rights Commission Act, 2012, has continued to exercise its Constitutional mandate and remain visible to the public at national, regional and sub-regional levels.

In 2002, a consortium of donors agreed to support the NHRC through a Capacity Development Project (CDNHRC) implemented through UNDP from 2002 to 2008. From September 2009, NHRC, UNDP and OHCHR (Geneva) jointly initiated a new project entitled 'Strengthening the Capacity of National Human Rights Commission' ('SCNHRC Project') as a continuation of the previous project. In 2013 it was jointly decided to extend the project until mid-2014:

The SCNHRC Project had the following Outputs and six Activity Results (ARs) during 2009-2012:

#### **SCNHRC Project Outputs and Activity Results (2009-2012)**

##### **Output 1. NHRC capacity strengthened in monitoring, investigation, documentation and reporting of human rights violations.**

Activity Result 1: Formulation of the strategies and human rights audit and compliance plan.

Activity Result 2: Strengthening the NHRC's capacity for the monitoring of HR treaty obligations.

Activity Result 3: Incorporating Human Rights in the Constitution.

Activity Result 4: Strengthening the NHRC's capacities to act for the promotion and

protection of Civil and Political and Economic, Social and Cultural Rights.  
Activity Result 5: Strengthening the NHRC'S capacity and enhancing the collaboration with civil society and HR NGOs.

**Output 2. Selected laws reviewed and amendments recommended for new legislations as required by international treaty obligations**

Activity Result 6: Initiate for amendments of the discriminatory laws and submit to the legislature for reformation.

Several developments occurred during first half of 2012 that were significant for the NHRC: 1) The suspension of the Constitution making process when the CA failed to complete its mandate by 27 May 2012; 2) delay in enactment of the Human Rights Service Bill that continued to prevent the NHRC from hiring permanent staff; 3) the enactment by Parliament of the National Human Rights Commission Act in January 2012; and 4) the closure of the OHCHR office in Nepal with the funding by OHCHR of a team of consultants and an attempt by the Office of the UN Resident Coordinator to increase cooperation with the NHRC.

The SCNHRC Project was scheduled to end on 31 December 2011, but was extended by several subsequent cost-extensions. The most recent cost extension was an opportunity to reconfigure the Project's outputs, given low performance to date in some Activity Results. The new Log-Frame for the Cost Extension period (2013- through June 2014) reveals a changed structure. There is now only a single Outcome for 2013- 2014 with the following Activity Results:

**2013-2014 Cost Extension Output and Activity Results**

**Output 1. NHRC's capacity to ensure the respect, protection, promotion and effective implementation of human rights is increased.**

Activity Result 1. Strengthened capacity of the NHRC to support, advise and monitor the Government of Nepal in relation to its implementation of the NHRAP, the UPR and international treaty obligations.

Activity Result 2. NHRC is capable of effective monitoring and reporting of human rights violations and of developing a credible action plan for a medium-term response to such violations.

Activity Result 3. Increased capacity of the NHRC to deal with existing case backlog.

Activity Result 4. NHRC's institutional capacity and structures strengthened and mainstreamed.

***Purpose of the Evaluation and its Methodology***

The purpose of this Evaluation is two-fold: firstly, to assess the SCNHRC Project's achievements, particularly as measured against the expectations of the original project design, the Results Framework and the Quality Assurance Review Advisor's bi-annual review recommendations; and, secondly, to assess the political and legal context of NHRC, management arrangements and the current modality of implementation, in order to make recommendations to UNDP and development partners for priorities for the last year of project implementation as well as support beyond 2014.

The Evaluation Team followed the basic methodology of its Terms of Reference. This consisted of a Meta-analysis of all available documentation, followed by Stakeholder interviews held in Kathmandu, Pokhara and Dhanghadi (Far Western Region). Upon conclusion of the Evaluation, the Evaluation Team debriefed UNDP CO and prepared an Evaluation Report containing Findings, Conclusions, Recommendations and Lessons Learned for submission to UNDP Nepal for comment. The principal limitations of the Evaluation

were: lack of time (only 19 total work days and 14 work days in-country were allotted) and some gaps in documentation and weaknesses in the Project's institutional memory.

### ***The Evaluation's Assessment of the SCNHRC Project's Impact and Effectiveness***

The Evaluation found that Results and impact have been achieved across each of the SCNHRC Outputs and all six Activity Results since 2009, but to varying degrees.

*Output 1. NHRC capacity strengthened in monitoring, investigation, documentation and reporting of human rights violations.*

*Activity Result 1. Formulation of the strategies and human rights audit and compliance plan.*

Throughout 2009-2014, the SCNHRC Project effectively supported the implementation of the National Human Rights Action Plan of the GoN in the form of technical advice and drafting and the development of an M&E monitoring framework. On the whole, the Project delivered relevant and effective technical expertise to NHRC to develop a Human Rights Based Approach (HRBA) training platform for GoN at the national and district levels. Despite numerous meetings held with GoN, the Project was not able to secure endorsement for a human rights audit plan.

A criticism of the NHRC's approach to HRBA trainings is that NHRC did not approach the National Planning Commission, MoF, MoLD and other key GoN development agencies at the ministerial level. The implementation of HRBA administrative procedures within Nepal and support to HRBA across all GoN Ministries and agencies should continue to be a focus of the Project; with the development of HRBA administrative "tool kits" and guidelines customized to each sector (i.e. health care; education; social services; etc.).

Additional major contributions of the Project were its support to the drafting of the National Human Rights Commission Act (passed by Parliament in 2012) and a Human Rights Service Bill (pending introduction to the Parliament as of 2014). The National Human Rights Act has significantly increased the NHRC's legitimacy and authority. The Human Rights Service Bill, once enacted into law, will strengthen the NHRC's authority to hire staff. The Evaluation has recommended that Donors, UNDP and NHRC urgently focus their efforts on passage of the Human Rights Service Bill. As of 2014, the NHRC is set for the first time in its history to be able to become fully staffed.

*Activity Result 2: Strengthening the NHRC's capacity for the monitoring of HR treaty obligations.*

SCNHRC Project support during 2009-2014 was instrumental in improving NHRC's abilities to monitor Nepal's compliance with its international treaty obligations. The Project supported high-level and urgent monitoring missions at the regional level on right to education, prisoner's rights, labor rights and the right to food. The Project was also instrumental in facilitating cooperation between the NHRC and the National Women's Commission and National Dalit Commission to generate a report for Nepal's UPR submission; and to advise the GoN on its reports under the ICCPR and ICESR. In addition, the Project supported NHRC to engage Special Rapporteurs on ESCR, CERD, and child rights, women's rights and human rights defenders.

By mid-2011, largely as a result of the crucial assistance of the Project, Nepal had regained its "A" accreditation status by the ICC and made successful submissions regarding the UPR. Additionally, a "UPR Road Map" prepared with project support outlined the way forward for GoN implementation of the UPR Recommendations. The Project also supported NHRC's 2013 Mid-Term Report on implementation of the UPR Recommendations.

Other deliverables of the Project included its support to NHRC to prepare Nepal's "National Status Report on Trafficking in Persons" and to assemble an expert group of UN agencies,



INGOs, NGOs and GoN institutions to discuss. In 2013, the Project supported a high-level visit to Malaysia and South Korea for the NHRC Chairperson and the Commissioners to explore the de facto situation of Nepalese migrant workers in these countries. This directly led to a recommendation for action being submitted by NHRC to the GoN on the plight of Nepalese migrant workers and the protection of their human rights. This is an important and emerging issue that merits further Donor and UNDP support.

While the Project clearly contributed to strengthening of NHRC's capacity to monitor Nepal's human rights treaty obligations, many of these activities could have come from the NHRC's budget instead of using Project funds. Going forward, it will be important for Donors, UNDP and NHRC to continue to support the NHRC's engagement with other "A" status NIHS, particularly in the Asian region. NHRC must continue to monitor implementation of the UPR Recommendations. Additionally, NHRC and GoN have not adhered to the Paris Principals as closely as they could have—particularly with regard to the appointment of NHRC Commissioners and levels of staffing at NHRC.

*Activity Result 3: Incorporating Human Rights in the Constitution.*

The NHRC used Project support to help educate members of the Constituent Assembly (CA) on human rights and to promote the drafting of a "Human Rights Friendly" Constitution. Numerous workshops and interactions, as well as television and radio programmes were supported by the Project in this regard.

In 2013, there was an urgent need for the entire GoN and the international community to support the CA elections. Thus, the Project shifted its resources to supporting NHRC to monitor the CA Elections for human rights violations. This was a relevant and effective use of Project funds, given the paramount importance of having a well-monitored CA election. Project support is perceived to have resulted in a greater level of participation of persons with disabilities, women and the elderly in the electoral process.

Going forward, NHRC will need to work on other issues such as the structure of the state, federalism, fundamental rights included in the Constitution, the GoN delivery of Economic, Social and Cultural rights to citizens.

*Activity Result 4: Strengthening the NHRC's capacities to act for the promotion and protection of Civil and Political and Economic, Social and Cultural Rights.*

The Project supported a variety of broad human rights trainings for NHRC, GoN Stakeholders and civil society in the period 2010-2013. NHRC staff reported a high level of satisfaction with all trainings offered under the Project. In only a few instances, however, were such trainings focused upon NHRC's *core administrative functions* such as finance, communications and human resources. In addition, the departure of OHCHR from Nepal in March 2012 and chronic low staffing levels at NHRC during the life of the Project hindered the Project's abilities to build capacity at NHRC.

Many capacity "gaps" remain at NHRC as of 2014. These run across all NHRC departments, but are felt most crucially in the Finance Division and Human Resources Division. Most all departments at the NHRC central office remain understaffed and suffer from lack of clear procedural guidelines and inter-office procedures. There is currently no Communications Division at NHRC to enable it to effectively communicate with the GoN, public and press. Meanwhile, NHRC's Regional Offices remain understaffed and resource-challenged and have virtually no autonomy to act independently of NHRC's central office. The Evaluation has recommended that Donors and UNDP continue to focus on NHRC's core administrative capacities going forward and support trainings for NHRC staff on new and emerging human rights issues.

Despite a challenging and politically charged environment, the Project also made extremely valuable contributions to NHRC's Protection Mandate during 2009-2014. The Project's support to exhumations of human remains undertaken in 2010 and 2011 in Godar VDC, and the overall improvement in NHRC's forensic capacity is one of the greatest successes of the Project. These activities and a detailed report on the exhumations supported by the Project, substantially enhanced NHRC's legitimacy and visibility in Nepal.

In addition, the Project supported NHRC to reduce the number of conflict-related backlog cases by 75% and to bolster its abilities to process and investigate citizens' on-going complaints of human right violations. The Project drafted seven internal guidelines for NHRC in 2012 designed to provide guidance on NHRC communications, handling of complaints, investigations and monitoring and exhumations. In 2013, with the support of the Project, NHRC established a separate division on Gender and Social inclusion with the mandate to initiate programmes on gender equality sensitization among staff members and policy makers in Nepal. OHCHR's departure from Nepal, however, impacted negatively upon the Project's overall support.

A key deliverable of Project support was the 2010 NHRC publication of a decade of NHRC Recommendations that highlighted the GoN's failure to implement many of them. Many subsequent interactions were organized with Project funds during 2009-2013 between NHRC, GoN Stakeholders and civil society, which lead the GoN to prepare its own status report on the implementation of NHRC recommendations. In addition, the Project supported numerous other publications that were both informational (i.e. the texts of international human rights conventions) and analytical (i.e. the status of Nepal's compliance with UPR Recommendations).

As of 2014, there is still little in the way of follow-up by NHRC with citizens about their complaints to provide information and updates. The process of NHRC complaint and investigation is in some instances taking as long or longer than filing a case in the civil courts. Going forward, NHRC needs to streamline the complaints process, ensure its confidentiality. There is an especially urgent need for NHRC to mobilize the demand side of justice to file complaints related to conditions of pre-trial detention and custody. The conditions of detention in Nepal—especially in police custody rooms remain shocking and far below international standards.

The rate of GoN implementation of NHRC recommendations is today much the same as it was in 2010 at the outset of the SCNHRC Project. The OPM COM is still not taking up the majority of recommendations of the NHRC. A contributing factor is the NHRC's practice of transmitting to OPM COM only a one-page summary of its recommendation and findings. This is simply not sufficient in many cases for the OPM COM to determine the underlying facts of the allegations, whether or not a human rights violation did in fact occur or, for that matter, whether the NHRC's recommendation is based upon a full investigation or sufficient evidence.

*Activity Result 5: Strengthening the NHRC'S capacity and enhancing the collaboration with civil society and HR NGOs.*

Project support was instrumental in improving NHRC's relations with civil society organizations in Nepal. The Project provided crucial support to the NHRC central office in Kathmandu to cooperate with civil society organizations to monitor demonstrations that occurred on 30 April 2010 caused by UCPN (Maoists). The Project also facilitated a series of meetings between NHRC and the Nepal's NGO Federation for developing an advocacy strategy incorporating human rights in development projects and programmes. The Project further prepared a comprehensive Human Right's Defenders Training Curriculum was prepared in mid-2011.

Yet, it appears that despite the efforts of the Project, the cooperation between NHRC and civil society was never able to become as institutionalized as the Project had hoped. The Evaluation's interviews with CSOs in Kathmandu, Pokhara and the Far Western Region reveal that as of 2014, NHRC's relations with CSOs in Nepal are not perceived as comprehensive/strategic. NHRC has been effective at partnering for awareness-raising, but less so for complaints and investigations. There is currently a need for enhanced cooperation with civil society. Going forward, much of this could be undertaken by NHRC using its own resources.

The Project also supported the establishment of Human Rights Resource Centres in five (5) Regional offices and one (1) Sub-regional office in 2012. This was an innovative attempt on the part of NHRC to increase service delivery to citizens, civil society and the media with Project support. As of 2014, however, the Evaluation found that use of the NHRC Human Rights Resource Centres by civil society is mixed.

Project support additionally enabled NHRC to undertake training programmes for the Judiciary, Army and Police. NHRC and the Judiciary were pleased with the results of a workshop held on use of the writ jurisdiction in Nepal organized jointly by the Judges Society of Nepal and NHRC in 2013. This is an example of the type of joint programming that can maximize NHRC's available resources.

*Output 2. Selected laws reviewed and amendments recommended for new legislations as required by international treaty obligations*

*Activity Result 6: Initiate for amendments of the discriminatory laws and submit to the legislature for reformation.*

By law, the NHRC has a mandate to scrutinize legislation, but as of 2014 still lacks the capacity to undertake large-scale legislative analysis and review. During the life of the SCNHRC Project, NHRC conducted limited research into legislative gaps on implementation of international human rights treaties. For example, such initiatives included the review of 10 laws containing discriminatory provisions in 2010 and a review of the Penal Code, Criminal Procedure Code and the Sentencing Bill. The Project supported other research into human trafficking and the law on disability. It was anticipated that the Project would also support NHRC to review the past recommendations of the NHRC and prepare a status report on needed legislative reform. Yet, the target was not met.

The Evaluation Team was surprised at the relative little progress achieved by 2014 on reform of certain discriminatory legislation in Nepal or, for that matter, deficits in legislation that continue to impede the Prosecution's willingness to prosecute on the basis of NHRC Recommendations (i.e. the Government Cases Act). There is a question in the mind of the Evaluation as to whether UNDP and SCNHRC could've done a better job at advocating for legislative reform and guiding NHRC in this respect. At the Cost Extension of the project, a decision was undertaken by the PAC to fold AR 6 into other Project ARs due to the lack of progress. The Evaluation recommends that any future Project support the capacity of the NHRC Legal Division to review legislation and propose reforms.

### ***Project Design, Oversight and Management Arrangements***

The SCNHRC Project exists within a "universe" surrounded by NHRC, the Commissioners, its Secretary—who serves as the SCNHRC Project's National Project Director (NPD)—and NHRC staff, the Project Advisory Committee (PAC), UNDP, OHCHR and Donors. Each of these entities makes its own set of demands upon the SCNHRC Project and the National Project Manager (NPM).

The NHRC is extremely satisfied with UNDP as an implementer and has a clear preference for continuing to use UNDP as its implementer of choice for any future project. The Evaluation believes that UNDP must, however, ensure that improved management

mechanisms are put in place going forward in any new Project. These should include: a) more customized indicators; b) realistic and appropriately scaled and sequenced RRFs and AWP; c) more demanding results-based M&E and reporting that actually responds in an objective manner to the Project document and the AWP for a given year; d) proactive management from UNDP's side; e) a willingness to "advocate" both with NHRC and the GoN for change within NHRC; and f) mechanisms to ensure that Project funds are used in a highly-strategic manner, rather than responding to ad hoc requests from the NHRC Secretariat.

The Evaluation's review of Project AWP for years 2010 to 2014 reveals that the Project was often overly ambitious in its goals; attempting to programme on nearly every single aspect of the NHRC's mandate with an ever-expanding array of promotional activities, rather than focusing in a strategic way on key elements of NHRC's mission and its capacity to monitor and protect. Many activities could not be completed within the time frame allotted during any given year in the Project's life. Another criticism of the Project is that its resources were at times used not to build capacity, but to substitute for NHRC capacity.

It must also be noted that OHCHR was a major partner in the Project; and had the primary technical advisory role regarding most core capacity building activities, *not* UNDP. When OHCHR was forced to close its office in Kathmandu in March 2012, following UNMIN's withdrawal from Nepal, it could no longer fulfil its original role under the project. OHCHR supplied several consultants to the Project to provide technical direct in-country support, but these were no substitute for the sustained and direct mentoring of OHCHR. Going forward, OHCHR is not expected to provide any funding or technical advice to a future project. The Evaluation has therefore recommended that Donors, UNDP and NHRC look to "A" accredited National Human Rights Institutions (NIHs) that could fulfil a mentoring and capacity building function with NHRC.

The Project achieved even rates of delivery throughout. Yet, it must be noted that the NHRC is currently returning a portion of its budgetary resources each year to the GoN. While in pure dollar terms, the amount of the NHRC GoN budget returned to the Government in any calendar year is small when compared to the budget of the SCNHRC Project, the fact cannot be escaped that the Project is supporting an institution that itself is not using all of its GoN resources to maximum effect.

The Project's modality of execution to date has been NEX (National Execution Modality). The U.N. recently took the decision to utilize a different modality NIM (National Implementation Modality) for NEX projects going forward. This will require NHRC to have the capacity to handle Donor funds and manage its budget. The focus of continued international support should be on building the NHRC's core capacities to execute GoN funds effectively, to build its organizational management, budget and technical capacities and to interact with other GoN entities to advocate for human rights and implement its recommendations.

The ready availability and unconditional use of *Project funds* for NHRC activities is a "double edged sword" from a sustainability perspective. In other words, when the NHRC utilizes Project funds instead of GoN funding, it avoids having to answer questions as to its own capacity or build the capacity of its Finance Division to routinely negotiate GoN "red tape" or challenge those processes and procedures. Similarly, when the NHRC uses Project funds to carry out activities that would otherwise be challenged by the GoN on political grounds, it avoids carving out political space for itself within Nepal and fully implementing its Constitutional mandate.

The Evaluation believes that the NHRC certainly merits continued international support and may need it for many years to come; but such support, if provided, should come with a clear

exit strategy for a phased withdrawal or reduction of donor support and transitioning the NHRC to full GoN funding eventually.

As of 2014, NHRC continues to face many political and legal issues. These include principally, appointing the 4<sup>th</sup> Commission of the NHRC and passing the National Human Rights Service Bill in order to finally and definitively put NHRC in a position to hire new staff on full time contracts. One option is for NHRC to proceed with hiring non-permanent staff as soon as a new Commission is appointed and then convert such staff to permanent contracts with full GoN benefits once the Human Rights Service Bill is enacted into law.

As mentioned above, rates of implementation of NHRC recommendations by the GoN remain low as of 2014. There has been much lip service paid to this issue over the years, but little progress. Part of the problem is that NHRC does not adhere to any single format for its recommendations and submissions to the OPM COM. In most instances, the OPM COM receives only a one-page transmittal from NHRC requesting the GoN to take action based upon the NHRC's findings and recommendation. This has simply not proved sufficient in many cases for the OPM COM to determine whether a human rights violation has in fact occurred or, for that matter, the evidentiary basis underlying the NHRC's recommendation. The Evaluation has recommended to NHRC that it reach an agreed-upon format for transmittals to the OPM COM and evidence required.

A recent decision of the Supreme Court of Nepal enables the NHRC to insist that its recommendations are prosecuted by the OAG. As a result, NHRC now has a responsibility to use this power and work together with the OPM COM and the OAG to follow through with prosecutions based upon NHRC recommendations per the provisions of the Interim National Constitution Article 132(c). The Evaluation has recommended that NHRC use its powers of "Blacklisting" and "Departmental Action" going forward. Donors and UNDP should support the further development of NHRC's powers of enforcement.

NHRC has a clear mandate as Nepal's national human rights institution to promote and protect women's rights, despite the existence of the National Women's Commission. Upon reviewing the SCNHRC Project AWP and its activities to date, it is evident that the Project has worked on issues pertaining to women and vulnerable groups. The Evaluation finds, however, that the Project support could have been more targeted to women's empowerment and how women can actually claim rights.

There are many other issues facing the NHRC going forward including its role in the Transitional Justice Process in Nepal and the TRC and CoD. The U.N., Donors and UNDP should also support NHRC to interact with the new Human Rights Committee of the Parliament.

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The Evaluation Report's overall finding and conclusion is that the SCNHRC Project, despite significant challenges, has contributed to the capacity, outputs and visibility of the NHRC during 2009-2014. Many activities and interventions of the NHRC and the fulfillment of its mandate in Nepal would not have been possible without the technical assistance and support of the Project. Yet, the SCNHRC project has not managed to build a sustainable core capacity of the NHRC to protect and promote human rights to the extent that one could have reasonably expected from a project of such duration and magnitude; and based upon the stated goals of the original Project Document.

While the Evaluation's overall and strong recommendation is that UNDP and Donors should continue to support the NHRC, the Evaluation is recommending a number of conditions and considerations for the remaining months of the SCNHRC Project and any future project. These include 1) the selection of new Commissioners in-line with Paris Principles; 2)

Parliament's enactment of the Human Rights Service Bill; and 3) NHRC commencing hiring of new staff on full contracts according to its strategic needs. An option may be for NHRC to begin to hire staff immediately and then convert their contracts to permanent contracts once the National Human Rights Bill is passed. The Evaluation further submits that UNDP and Donors should in the interim consider a six month to one year "Bridging phase" for any new project during which UNDP would support the NHRC on the achieving the above conditions, as well as investigating the remaining back-log of conflict related cases, investigating existing and new complaints and meeting NHRC's international reporting obligations.

The Evaluation contains many other recommendations for programming and a future project. These can be found in detail in Section 8 of the Evaluation Report.

## 1. Introduction

This report presents the Evaluation Team’s findings and conclusions of progress and impact made under UNDP’s “Strengthening the Capacity of the National Human Rights Commission” (SCNHRC) Project (2009 to 2012, and its extension to mid-2014) as of end-March 2014.<sup>1</sup> The report also makes recommendations and sets priorities for the last year of project implementation as well as support beyond 2014.

## 2. Background and Situational Analysis

As of 2014<sup>2</sup>, the general human rights situation of Nepal has improved in comparison to 2009<sup>3</sup>. Post-conflict related turmoil has significantly dropped throughout the country, but violations of human rights continue to be reported at disturbing rates. Following the Comprehensive Peace Agreement, the GoN began to address conflict-era human rights violations<sup>4</sup>, but the Terai/Madhesh movement committed a number of new violations<sup>5</sup>; particularly arbitrary arrest and detention, excessive use of force, torture and extra-judicial killings.<sup>6</sup> Such violations were occurring in Nepal’s *Terai* region with similar patterns and rates as in the period of armed conflict. In addition, a number of “low profile” human rights violations such as illegal arrest and detention<sup>7</sup> continue in Nepal.

The reports of a number of human rights NGOs and CSOs working on different thematic areas further highlight continuing violations of human rights in Nepal. Violence and discrimination against women, including SGBV, are widely reported<sup>8</sup>. In addition, reported

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<sup>1</sup> This Evaluation Report does not discuss UNDP’s predecessor project “Capacity Development of the NHRC” (CDNHRC)(2002-2008). Both CDNHRC and the early years of the SCDNHRC projects were evaluated in 2010 as part of a comprehensive “Outcome Evaluation of the UNDP Rule of Law and Human Rights Programme”. Interested parties are encouraged to consult that earlier report for additional background information on the CDNHRC project and early years (i.e. 2009 and 2010) of the SCNHRC Project. In addition, the 2010 Outcome Evaluation contains extensive information on the UNDP Rule of Law Programmes support to legislative and judicial reform in Nepal. Limited portions of the 2010 Outcome Evaluation are restated in the instant report by way of background.

<sup>2</sup> See INSEC’s Annual Human Rights Report, 2014 which describe general human rights situation of 2013 and contains indicators of decline situation of human rights violation in Nepal at <http://www.inseconline.org/pics/publication/1392819038.pdf>

<sup>3</sup> See Nepal Time Line Annually and general situation of Nepal at 2009 at <http://www.satp.org/satporgrp/countries/nepal/timeline/2009.htm>

<sup>4</sup> The Government of Nepal is working to address the past human rights violations through TRC and CoD and during this evaluation mission, the government formed an expert group to prepare a draft legislation and its report is submitted in 4 April 2014.

<sup>5</sup> See OHCHR-Nepal Report on Extra-judicial killings in Terai, 2010 at <http://nepal.ohchr.org/en/resources/publications/Investigating%20Allegations%20of%20Extra-Judicial%20Killings%20in%20the%20Terai.pdf>

<sup>6</sup> See a report on human rights violations in Terai by Third Alliance, a human rights organisation that works on Madhesh human rights issues, 2013 at [file:///Users/icj/Downloads/4\\_Arbitrary%20Detention%20and%20Torture%20in%20the%20Terai.pdf](file:///Users/icj/Downloads/4_Arbitrary%20Detention%20and%20Torture%20in%20the%20Terai.pdf)

<sup>7</sup> The Advocacy Forum, Nepal, which visits detention centres and detainees, reports that up 24% of detainees suffer torture and ill treatment at detention and their legality of detention questionable (2012) see at <http://www.humanrights.asia/countries/nepal/news/alrc-news/human-rights-council/hrc19/ALRC-CWS-19-07-2012>

<sup>8</sup> INSEC, the largest human rights organisation in Nepal, reports in its Year Book 2014 that the number of incidences of violence against women in 2012 was 910 where as it is in 2013 increased to 2348 see news on it at <http://www.nepalnews.com/index.php/society-archive/31261-violence-against-women-vaw-saw-marked-increase-in-2013-insec>

incidences of violations of the rights of such populations as migrant workers<sup>9</sup> and sexual minorities/LGBT<sup>10</sup> are increasing. The human rights of indigenous communities, consumer rights and consumer protection and Economic, Social and Cultural Rights (ESCR) have recently emerged as new areas of human rights violations in Nepal.

The National Human Rights Commission (NHRC), despite a reduction of its power by the enactment of the National Human Rights Commission Act, 2012, has continued to exercise its Constitutional mandate and remain visible to the public<sup>11</sup>. NHRC's Regional Offices at Biratnagar, Janakpur, Pokhara, Butwal, Nepalgunj and Dhangadi have continued working to address these issues, given existing circumstances, limited available resources and lack of direction and incentives from the NHRC. The continuing large volume of human rights abuses and violations of due process, continue to pose a challenge to the resources of the NHRC and other human rights organizations working in Nepal.

Nepal's deficits in human rights protection have not escaped the attention of the international human rights community and the United Nations. During the course of this Evaluation, the UN Human Rights Committee (HRC) meeting in Geneva on 28 March 2014, made a number of concluding observations on Nepal's UPR Report. The HRC stated that dealing with the gross human rights violations of the past; frequent political intervention in the criminal justice system to block criminal investigation of such cases; denial of effective remedies to the victims and the lack of any vetting system for Commissioners of the NHRC are all outstanding human rights issues in Nepal. HRC recommended that the GoN take measures to criminalize the offences of enforced disappearance and torture and, in addition, to address the above stated human rights issues and procedural gaps.

The HRC also raised issues of child marriage, the dowry system, "son preference", witchcraft accusations and *chaupadi* as gender related human rights violations. The HRC noted that the GoN had recently introduced the Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011; however, the Committee expressed its concerns on the GoN's ineffective implementation of the Act. HRC also noted its concern at reports of unlawful killings in the Terai region, deaths while in police custody and the use of torture and ill-treatment in places of police custody and detention. The HRC further expressed its concerns on arbitrary arrest and overcrowding in Nepal's prisons and jails, unsanitary conditions of detention, and inadequate provision of basic services and facilities, including medical care and adequate facilities for confidential meetings with lawyers. HRC also expressed its concerns on violence against women of various kinds and the ineffective implementation of laws and denial of access to justice to the victims of such offences. Corporal punishment, fair

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<sup>9</sup> Data suggests 56 % of households receive remittances. Nepal has not ratified the Migrant Workers Convention and is increasingly attempting to develop its capacity to address the migrant workers' concerns at the national and international level. The dominance of the employment agencies causes difficulties in managing the migrant workers movements. See a report on how the migrant work is linked to the violence against Data suggests 56 % of household receives remittance. Nepal has not ratified the MWC and is increasingly attempting to develop its capacity to address the migrant workers concerns at the national and international level. The dominance of the contract employment agencies causes difficulties in managing the migrant workers movements. Migrant worker abuse is also linked to SGBV. See, for example: <http://fepb.gov.np/newdolrm/uploads/userfiles/files/Final%20Report%20-%20Submitted%20on%2028%20January%202013-1.pdf>.

<sup>10</sup> After the Supreme Court decision *Sunil Babu Panta vs. the Government of Nepal, 2007*, the government amended Citizenship Regulation and Passport Regulation to ensure identity of sexual minority and a number of laws are reviewed to reform and are in the process of amendments. The government established Committee is due to submit its report on same sex marriage. However, the sexual minority are not yet mainstreamed and discrimination remain critical.

<sup>11</sup> See concern expressed by the Human Rights Committee on NHRC, Nepal, Adopted by the Committee at its 110<sup>th</sup> session (10-28 March 2014), Observation no 7



trials, juvenile justice, trafficking and bonded labour, freedom of expression and denial of birth registration and nationality are other s human rights issues where the HRC has recommended the Government of Nepal to act<sup>12</sup>.

### **3. Overview of the UNDP SCNHRC Project and its Cost-Extension**

The National Human Rights Commission (NHRC) was established in 2000 under the Human Rights Commission Act, 1997. During the autocratic rule of Nepal's former King from 2005 to 2007, the NHRC was unable to perform effectively. Absences of Commissioners for as much as 14 months at a time and significant staff turnover only made it more difficult for the institution to confront the challenges of human rights monitoring in a conflict situation. The Interim Constitution of Nepal, 2007, recognized the importance of the NHRC and elevated it to a constitutional body with a broad mandate to protect and promote human rights. A new group of Commissioners and Secretary were appointed to the NHRC in 2008. Since then the Commission has been striving to fulfill its constitutional mandate, including its responsibility to role to provide opinion on Government report to be submitted under international human rights treaties.

In 2002, a consortium of Donors agreed to support the NHRC through a Capacity Development Project (CDNHRC) implemented through UNDP from 2002 to 2008. From September 2009, NHRC, UNDP and OHCHR (Geneva) jointly initiated a new project entitled 'Strengthening the Capacity of National Human Rights Commission' ('SCNHRC Project') as a continuation of the previous project. In 2013 it was jointly decided to extend the project until mid-2014. It is this latter project that is subject to review under this Evaluation.

The overall objective of the SCNHRC Project is to strengthen the institutional and human capacity of the NHRC to enable it to fulfill its constitutional mandate. In order to achieve this, the project covers different areas of strategic focus drawn from the 'Strategic Plan' of the NHRC (2011-2014) as well as from the 'Functions, Duties and Power of the National Human Rights Commission' as set out in the Interim Constitution. It must also be mentioned that the Project was formulated at a time when the United Nations Mission in Nepal (UNMIN) was active and significantly engaged in Nepal.

The SCNHRC Project had the following Outputs and six strategic Activity Results during 2009-2012 as stated in the original project document:

#### **SCNHRC Project Outputs and Activity Results (2009-2012)**

##### **Output 1. NHRC capacity strengthened in monitoring, investigation, documentation and reporting of human rights violations.**

Activity Result 1: Formulation of the strategies and human rights audit and compliance plan.

Activity Result 2: Strengthening the NHRC's capacity for the monitoring of HR treaty obligations.

Activity Result 3: Incorporating Human Rights in the Constitution.

Activity Result 4: Strengthening the NHRC's capacities to act for the promotion and

<sup>12</sup> Adopted by the Committee at its 110<sup>th</sup> session (10-28 March 2014)

protection of Civil and Political and Economic, Social and Cultural Rights.

Activity Result 5: Strengthening the NHRC'S capacity and enhancing the collaboration with civil society and HR NGOs.

**Output 2. Selected laws reviewed and amendments recommended for new legislations as required by international treaty obligations**

Activity Result 6: Initiate for amendments of the discriminatory laws and submit to the legislature for reformation.

The above Outputs and Activity results were modified at the time of the Project's Cost Extension for 2013-2014 as discussed below.

Although the project was signed on 4 August 2009, the National Project Manager was not recruited until December 2009 and the Project Team was only completed with the arrival of the Project Officer on 8 February 2010. According to the reports of the project's Quality Assurance and Review Advisor (QUARA), this meant that considerable work needed to be carried out on refining the Work Plan attached to the project document, and the preparation of the related annual and quarterly work plan of activities under the project in a relatively short period of time. The QUARA further reported that as of mid-2012 there was "...little doubt that the Project has performed very well...[the] Project has continued to maintain a steady rate of delivery". NHRC is recognized as the national human rights institution of Nepal and, with the departure of OHCHR, NHRC became the principal protector of human rights in Nepal.

Several developments occurred during first half of 2012 that were significant for the NHRC: 1. The suspension of the Constitution making process when the CA failed to complete its mandate by 27 May 2012; 2) delay in enactment of the Human Rights Service Bill that continued to prevent the NHRC from hiring permanent staff; 3) the enactment by Parliament of the National Human Rights Commission Act in January 2012; 4) the closure of the OHCHR office in Nepal and the funding by OHCHR of a team of consultants and an attempt by the Office of the UN Resident Coordinator to increase cooperation with the NHRC.

The project was scheduled to end on 31 December 2011, and subsequently further extended on a no-cost basis to 31 December 2012, and extended again on a no-cost basis for 9 months and was scheduled to end September 2013. Thereafter, the Donors approved a Cost-Extension for the SCNHRC Project for the years 2013 and 2014. The Cost Extension was an opportunity to reconfigure the Project's outputs, given low performance to date in some Activity Results (i.e. Activity Result 6 of the original project document) and to meet urgent specialized needs of the NHRC during the most recent elections.

The new Log-Frame for the Cost Extension period (2013- through June 2014) reveals this changed structure. There is now only a single Outcome for 2013- 2014 with the following Activity Results:

**2013-2014 Cost Extension Output and Activity Results**

**Output 1. NHRC's capacity to ensure the respect, protection, promotion and effective implementation of human rights is increased.**

Activity Result 1. Strengthened capacity of the NHRC to support, advise and monitor the Government of Nepal in relation to its implementation of the NHRAP, the UPR and international treaty obligations.

Activity Result 2. NHRC is capable of effective monitoring and reporting of human rights violations and of developing a credible action plan for a medium-term response to such violations.

Activity Result 3. Increased capacity of the NHRC to deal with existing case backlog.

Activity Result 4. NHRC's institutional capacity and structures strengthened and mainstreamed.

As of 2014, the SCNHRC Project has achieved some important successes. It has supported NHRC to develop guidelines and policies on monitoring and investigation, reduce the backlog of conflict-related complaints and investigations, establish field offices, increase the staff capacity through training, and to publish and disseminate reports on human rights violations. Since the Project's implementation, the NHRC has been recognized as Nepal's preeminent independent national human rights institution. The INC, CPA and the National Human Rights Act (2012) give NHRC an autonomous mandate to end impunity and discrimination; build capacity of human rights defenders through development of a human rights training manual and guidelines; educate State officials on human rights based approach; protect and promote economic social and cultural rights through developing indicators and checklists for monitoring; promote minority/collective rights through facilitating and encouraging the local organizations to work on this issue; and protect human rights through continued monitoring and investigation of civil and political, economic, social and cultural rights violations.

During the life of the Project the NHRC has, however, also faced numerous challenges both from within the Commission itself and from the political culture and current situation in Nepal. These challenges include, lack of enabling normative frameworks, lack of adequate staff, high turnover of staff, lack of sufficient field presence, an overwhelming backlog of cases and low levels of implementation of NHRC recommendations by the Government. To exacerbate these existing challenges, the current Commissioners' term ended in September 2013 just before the Constituent Assembly Election in November. Despite the political forces surrounding the NHRC and the persistent problems with appointing Commissioners and a full staff, the Project has steadily built the capacity of a core group of staff within the NHRC Secretariat and bolstered NHRC's abilities to fulfil its mandate since 2009.

Also, as discussed more fully in Section B of this report, OHCHR was a major partner in the project, responsible for delivering significant technical advice and mentoring. OHCHR made key contributions during the life of the Project in the form of technical advice (i.e., including its support to joint efforts on the issue of impunity, high-profile exhumations and investigations, staff trainings, the drafting of the National Human Rights Commission Act and support of the Commission's participation in the UPR and the ICC proceedings). Yet, the SCNHRC Project Document contained no contingency for the end of UNMIN's mandate in Nepal that occurred in January 2011. The subsequent closure of OHCHR's office in Nepal in March 2012, significantly curtailed its ability to render further technical support to the Project. While UNDP, OHCHR and Donors have attempted to adapt to this changed circumstance via the use of consultants, this has not risen to the level of direct OHCHR support, as originally contemplated.

## **4. Scope and Objectives of the Evaluation**

The purpose of the evaluation is two-fold: firstly, to assess the achievements made by the SCNHRC Project, particularly as measured against the expectations of the original project

design, the Results Framework and the Quality Assurance Review Advisor's bi-annual review recommendations; and, secondly, to assess the political and legal context of NHRC, management arrangements and the current modality of implementation, in order to make recommendations to UNDP and development partners for priorities for the last year of project implementation as well as support beyond 2014.

The evaluation focuses on the period during which the Project has been implementing its activities, that is beginning from 2009 and throughout 2013.

## 5. Methodology

The Evaluation addresses the Key Evaluation Questions and adheres to the basic Methodology as set forth in the Terms of Reference for this mission (See pp. 3-5 of Draft ToR). The initial task was to conduct an extensive review of all documentation and data pertaining to UNDP's SCNHRC Project and NHRC, keeping in mind the successes and challenges of the project to date.

Following the document review, the Evaluation Team conducted interviews in Kathmandu and field locations with UNDP staff, NHRC commissioners and staff, other stakeholders and beneficiaries. The principal goal of the interviews was to identify lessons learned and best practices to inform the development of a log frame for the extension of the project and to better tailor the Project's activities. The six strategic interventions of the National Human Rights Commission (NHRC) as defined by the Interim Constitution and the NHRC Strategic Plan shaped the outline of the Evaluation.

In addition to the Evaluation Questions stated in the ToR and based upon its review of documentation the Evaluation Team formulated additional questions by which to measure progress to date under the Project.

The Evaluation Team reviewed all AWP's of the project and selected several activities from each Activity Result to examine with greater scrutiny. The Evaluation Team scheduled a dedicated meeting with the current NHRC Secretary in order to obtain his thoughts on how NHRC should prioritize project versus GoN budgetary resources according to activity result.

Upon conclusion of the Evaluation, the Evaluation Team debriefed UNDP CO on its principal findings, conclusions, recommendations and lessons learned. Under the direction of the Team Leader, the Evaluation Team prepared a Draft Evaluation Report containing Findings, Conclusions, Recommendations and Lessons Learned for submission to UNDP Nepal for comment. Following the receipt of comments by UNDP Nepal, the Evaluation Team Leader finalized the Final Report of the Evaluation and submitted the report to UNDP Nepal.

Representative documents reviewed by the Evaluation Team included the following:

- John Dwyer's Report (2006)
- Report NHRC (October 2007)
- ProDoc signed July 2009
- National Human Rights Commission Act
- Draft CPA (Final)
- Donor Progress Reports (2010-2013)
- QUARA Reports (1<sup>st</sup>-7<sup>th</sup> QUARA visits)(2010-2013)
- AWPs for years 2010-2014
- Final Outcome Evaluation Report UNDP Access to Justice (2010)
- Human Rights Auditing Guidelines (2011)

NHRC Strategic Plan (2011-2014)  
SC-NHRC Cost Extension Proposal (final)  
New AWP 2013-2014  
SC-NHRC Log-frame (for cost extension)(final)  
UNDAF 2013-2017  
Revised and signed UNDP ROLHR Prodoc (2013-2017)  
NHRC Mid-Term Report on the Implementation Status of UPR Nepal (Sept. 2013)  
HRBA Manual (SCNHRC Project)  
Indicators for Economic, Social and Cultural Rights  
Various Supreme Court of Nepal Decisions concerning NHRC  
Training Needs Assessment

In particular, the comprehensive Final Outcome Evaluation Report (2010) was reviewed for its continued validity and heavily relied upon by the Evaluation Team.

Based upon the Evaluation Team's review of the documentation it determined that the areas listed below were key areas to be explored. These issues are addressed in parallel with the questions posed in the Terms of Reference.

### ***Key Areas of Inquiry of the Evaluation Team***

- 1. Has the project achieved as much impact as it should have to date across the Outputs and Activity Results, taking into account fully the political circumstances impacting the NHRC and low levels of NHRC staff? Have the project activities been relevant and properly scaled? What are the priorities going forward for the NHRC and the SCNHRC Project?*
- 2. Has the support of the Project resulted in any identifiable core-administrative system or process change at NHRC that has been fully taken up and owned by NHRC in a sustainable way?*
- 3. How have UNDP and the Project acted upon the recommendations of previous evaluations, donor reports and quality assessment reports during the life of the Project 2009-2012?*
- 4. How has the Project contributed to building the capacity of NHRC to hire staff? What have been the main obstacles to NHRC achieving full staffing to date? What is the current situation?*
- 5. How has the Project contributed to NHRC capacity to protect human rights, using such mechanisms as: 1) departmental action; 2) recommendations for prosecution and 3) "blacklisting" of human rights violators?*
- 6. How effective has NHRC been in working with other national human rights institutions (i.e. National Women's Commission and the National Dalit Commission)?*
- 7. How the Project has built NHRC capacity on its promotional activities such as: 1) trainings, publications and media campaigns? Should the Project continue similar activities going forward?*
- 8. Is the Project contributing to cost-efficiencies at NHRC and its capacity to adequately manage finances and its budget? How is the Project budget implementation process linked or harmonized to the NHRC core budget? On what basis has NHRC made decisions to use Project funds for programming vs. GoN budgetary funds and why?*
- 9. Is the current Project implementing modality (i.e. NEX) appropriate? What are its advantages and disadvantages to date? Should a different implementing modality be*

stipulated by UNDP and Donors for any future project? If so, what would be the conditions of the modality? Beyond this, what should be the GoN's co-funding requirement?

10. Is the current project management structure optimal? How should this be modified, if at all, in a future project?

11. What is the capacity of the NHRC Regional Offices compared to the NHRC Central Office? How has the Project built NHRC's regional capacity? What regions have the most acute incidence of SGBV? Has SCNHRC been geographically sensitive in its approach?

12. Has Project support resulted in a greater rate of enforcement of NHRC recommendations year-on-year? What are the main obstacles (procedurally or otherwise), which continue to hinder this process? How has SCNHRC support been directed at this issue?

13. Why was a decision taken at the Cost Extension of the SCNHRC Project to divert project resources away from legislative analysis and review (i.e. former Output 2, Activity Result 6)?

14. How has the Project supported the NHRC's abilities to fulfil Nepal's international human rights reporting obligations?

15. What conditions, if any, should attach to a future project? What are its probable entry points? In contrast to the current project, what should be downscaled? Up-scaled?

## 6. Limitations and Opportunities

The principal limitation of this Evaluation was one of time. The Terms of Reference provide only 15 workdays within which to accomplish all tasks and deliverables. This was later expanded to 19 workdays as follows:

Original Terms of Reference		
S.N.	Activities	Duration
1.	Desk review and preparation of evaluation design (home based)	2 days
2.	Briefing of evaluation team	1 days
3.	Finalizing evaluation design, methods	1 day
4.	Stakeholder meetings, interviews, field visits (Pokhara)	6 days
5.	Preparation of draft report; presentation of draft findings to the Evaluation Management Team	2 days
6.	Stakeholder meeting to present draft findings	1 day
7.	<i>Finalize and submit report</i> (home based) and evaluation brief	2 days
	Total	15 days
Extension of Mission		
4-A	Stakeholder meetings: Additional meetings in Kathmandu and Field trip to Far Western Region	3 additional days
7-A	<i>Finalize and submit report</i> (home based) and evaluation brief	1 additional day
	Total of all days (Original ToR + Extension)	19 days

At the mid-point of the Evaluation the Team had visited only one NHRC field office—the “Western Region Office in Pokhara” In order to enhance the Evaluation, UNDP approved a cost-extension of the Terms of Reference and added a field trip to the NHRC “Far Western”

Region Office (Dhangadhi). An additional day of meetings was also provided in Kathmandu at NHRC and an additional day granted for finalization of the report.

The Evaluation Team has tried to respect its Terms of Reference and write a report within the time period allotted for this purpose.

An additional limitation to the Evaluation was the fact that project documentation, annual Project Progress Reports, QUARA reports and AWP's were not delivered to the Evaluation Team in a comprehensive manner, but piecemeal. The Evaluation Team leader had to make repeated requests for documents from UNDP and the SCNHRC Project, which were delivered at the mid-point of the Evaluation when the Evaluation Team was well into its stakeholder interviews.

It must also be observed that the quality of the annual progress reports generated by the Project did not follow any single format. Furthermore, the reports seemed to report only on *what was accomplished* within the reporting period, rather than reporting results against the Project Document's RRF, AWP's and M&E framework. This meant that for purposes of this Evaluation, the Evaluation Team Leader had to engage in a painstaking comparison of AWP's, Annual Project Progress Reports and reports of the QUARA in order to gain an idea of what was accomplished year-by-year for each Activity Result, as well as the evolution of the project over time. The QUARA reports offer a much more objective assessment of progress than do the annual Project Progress Reports. Had more results-based M&E been conducted by UNDP during the life of the Project and more detailed reports prepared, this job would have been much easier.

## **7. Evaluation Findings: Results and Effectiveness**

### **A. Analysis of Achievements and Impact Across the SCNHRC Project Outputs**

The purpose of this Evaluation is not to provide a catalogue of each and every activity undertaken by the SCNHRC Project during 2009 to present. These are comprehensively listed in the various QUARA reports and Donor Reports filed during the life of the Project. Due to the short time frame of this Evaluation, we have conducted a "meta analysis" of these reports and verified selected actions as reported with the Project's staff. We review below some of the Project's most successful activities, as well as shortcomings during 2009-2014, as a means of informing our recommendations for the remainder of the Project (approximately 3 months remain as of the drafting of this report) and suggestions for a future project and its modality. Where sufficient information is available we have assessed these actions for their relevance and effectiveness. Also, it is important to note that during the course of its interviews in Nepal, the Evaluation Team *independently* reached many of the same findings and conclusions as had been previously reported by the QUARA.<sup>13</sup>

Results and impact have been achieved across each of the SCNHRC Project's Outputs and all six Activity Results since 2009, but to varying degrees. As noted above, the configuration of SCNHRC Outputs and Activity Results changed at the time of the Cost Extension.

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<sup>13</sup> The QUARA (Quality Assurance and Review Advisor), John Pace had formerly served as the Human Rights Chief for the United Nations Assistance Mission in Iraq. He has worked at the United Nations since 1966 and is the former Secretary to the United Nations Commission on Human Rights.



## **Output 1. NHRC capacity strengthened in monitoring, investigation, documentation and reporting of human rights violations.**

### **Activity Result 1. Formulation of the strategies and human rights audit and compliance plan.**

#### Support to strategic planning of NHRC: the NHRC Strategic Plan 2011-2014 and National Human Rights Action Plans (2010-2013) and (2014-2017)

The implementation of the National Human Rights Action Plan is a main objective of the NHRC. The SCNHRC Project assisted NHRC from 2011 to 2013 to interact with the GoN to implement the three-year National Human Rights Action Plan (NHRAP) for 2010-2013 via collaboration with the OPM COM, GoN as a whole and CSOs. This process is perceived by Stakeholders to have been a success with the Project playing a key-facilitating role.

In 2010 the SCNHRC Project provided crucial support to NHRC in the drafting of the NHRC Strategic Plan 2011-2014. Seven Project staff were present at an in-house consultation on the Strategic Plan held at NHRC Central Office on November 3, 2010. The Project support to strategic planning continued in 2011 and an M&E results-based monitoring framework for the NHRC was established. With project support, the NHRC also began work on a human rights audit plan beginning in 2010.

The NHRC informed the Evaluation that support to the Strategic Plan was one of the most important aspects of the SCNHRC Project. As of early-2014, the Project was continuing to support NHRC to contribute to the process of drafting a new NHRAP for 2014-2017. NHRC with project support facilitated numerous communications with key stakeholders and CSOs. The Project was not able, however, to achieve the endorsement of the GoN for a Human Rights Audit--a principal deliverable in the Project RRF and AWP. Although, a set of Human Rights Audit guidelines were prepared in draft form.

#### Human Rights Based Approach (HRBA) Streamlined Across the GoN

Another objective of the SCNHRC Project that simultaneously built capacity at NHRC was the development and implementation of a Human Rights Based Approach to training across GoN ministries and key agencies. As of mid-2011 the Project, with OHCHR technical input, had finalized a Training of Trainers (ToT) manual on Human Rights Based Approach (HRBA). In 2013, the Project continued to support NHRC to conduct trainings on HRBA and the implementation of the NHRAP at the district level. A total of 1245 persons (419 female and 826 male) participated in trainings led by NHRC Regional and sub-regional staff during 2013. These were perceived by the NHRC to have increased awareness of Economic, Social and Cultural rights in Nepal.

A criticism of the NHRC's approach to HRBA trainings is that NHRC did not approach the National Planning Commission, MoF, MoLD and other key GoN development agencies at the ministerial level. The implementation of HRBA administrative procedures within Nepal and support to HRBA across all GoN Ministries and agencies should continue to be a focus of the Project. On the whole, the Project delivered effective technical expertise to NHRC to develop HRBA Manuals and curricula. Going forward, the Evaluation recommends that the Project focus on the development of HRBA administrative "tool kits" and guidelines customized to each sector (i.e. health care; education; social services; etc.).

#### The National Human Rights Commission Act and Human Rights Service Bill

A major activity of the Project was its provision of technical assistance to NHRC on the drafting of a National Human Rights Commission Bill and advocating for its enactment into law. For example, NHRC and OHCHR jointly reviewed the draft NHRC Bill 2009 and



produced a technical paper on its passage in an Open Dialogue. NHRC with Project support also coordinated with the Joint Forum (a network of Human Rights NGOs in Nepal) to lobby CA members for passage of the NHRC Bill. Donors also played an active role in lobbying for the passage of the National Human Rights Bill at the political level. All of these efforts resulted in successful passage of Nepal's National Human Rights Act in December 2012.

Meanwhile, as of 2013-14 the Project was actively supporting NHRC's drafting of a "Human Rights Service Bill". As discussed elsewhere in this Evaluation Report, the NHRC has suffered from a severe shortage of staff since its inception. Delays in the appointment of Commissioners, lack of leadership, political opposition and a court challenge to the NHRC's hiring procedures have been the main challenges to NHRC's staffing situation. Despite the fact that the NHRC's mandate derives from the Interim Constitution and the Comprehensive Peace Agreement of 2005, the GoN has continued to maintain the position that dedicated legislation would be required to permit the NHRC to hire permanent staff. Although, by virtue of its Constitutional mandate and a recent Supreme Court decision, the NHRC can hire staff of its own accord, the GoN (i.e. OPM COM) are of the opinion that such hires could only be temporary in nature. The NHRC also wishes to insulate itself from any future challenges to its hiring process.

Therefore, by 2013 it had become the near unanimous view of all Stakeholders in Nepal, including the NHRC itself, that further implementing legislation would be desirable regarding NHRC's abilities and processes for hiring staff. Thus, NHRC took the decision to draft a "Human Rights Service Bill" with the technical assistance of the Project. The provisions of the Bill will conform to Nepal's Public Service Act and permit the NHRC to hire staff on permanent contracts with full government benefits, insurance and pensions. As of March 2014, the OPM COM had given expressions of its intent to table the Bill. The Project is continuing to support NHRC to lobby for passage of the Bill; which is one of the most urgent areas of Project assistance.

#### M&E results based monitoring framework

Another key aspect of SCNHRC Project support under Activity Result (AR) 1 was the development of an M&E results-based monitoring framework at NHRC. The Donors in late 2009, decided to create the position of Quality Assurance and Review Advisor (QUARA). The QUARA visited the Project every six months through end-2012, to monitor implementation, cost-effectiveness, and "to provide continuity and external expertise to the regular review of progress". During 2010, with the in-put of the QUARA, the Project supported NHRC on the finalization of an M&E framework.

### **Activity Result 2: Strengthening the NHRC's capacity for the monitoring of HR treaty obligations.**

#### Treaty Monitoring

SCNHRC Project support played a key role in enabling the NHRC to monitor Nepal's compliance with its international treaty obligations. The Project supported the procurement of IT and office equipment for the Treaty Monitoring Division at NHRC's central office and many monitoring missions. During 2010, NHRC with the participation of Regional Offices completed monitoring missions on right to education, prisoner's rights, labour rights and the right to food. After consultations at the regional and central level, NHRC, Women's Commission (NWC) and the National Dalit Commission (NDC) generated a report jointly. This was sent to the UPR mechanism of the Human Rights Committee in Geneva in July 2010. The Project was also instrumental in supporting NHRC to advise the GoN on its draft periodic reports (2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup>) under the ICCPR. The Project, using OHCHR staff, facilitated consultations between NHRC and the Nepal Bar Association, as well as members

of the media about the draft periodic reports. The Project supported the NHRC at the ICC annual meeting in 2010.

By mid-2011, the Project (OHCHR) was effectively supporting the development of the overall concept and terms of reference for the position of Special Rapporteurs on ESCR, CERD, and child rights, women's rights and human rights defenders. The Project also supported NHRC to prepare Nepal's "National Status Report on Trafficking in Persons" and to assemble an expert group of UN agencies, INGOs, NGOs and GoN institutions to discuss. The Project supported NHRC to review the GoN report on ILO Convention No: 169 and to prepare a comprehensive report on the implementation status of the Convention. These were submitted to the GoN. NHRC continued to improve with project support in interacting with international human rights bodies. The Project supported NHRC's submission of reports under the ICCPR and ICESR in 2011. The Project also assisted NHRC to prepare for the coming into force of the International Convention on Persons with Disabilities in May 2010.

In 2012, the Project (specifically OHCHR) supplied NHRC with several Special Rapporteurs to report on Nepal's progress with compliance under several international human rights treaties, including ICERD, ICRC and ICESR. However, the QUARA was critical of Project funds being utilized for such activity stating that the Donors needed "...to ensure that project funding remains dedicated to the realisation of the project's objectives. Project funds should not be applied to support activities that are normally covered by the regular budget of the Commission. The recruitment of three "Special Rapporteurs respectively on Child Rights, CERD and ECSR produced no noticeable capacity strengthening...." The QUARA strongly recommended that any future engagement of such expertise, if at all needed might be best supplied from the regular budget of the NHRC. In his opinion, the terms of reference of the Consultants were far too ambitious for only 4-month assignments.

The QUARA further warned, "The project should at all times ensure that its role remains that of capacity strengthening; in so doing there is sometimes a fine line between supporting the strengthening of the institution and directly undertaking the on-going operations of the NHRC. It is an important principle for technical support to focus on "support" and not to "complete" or "complement" the work of the Commission. The deployment of Special Rapporteurs directly under the project and under the administrative responsibility of the NPM of the SCNHRC Project is not consistent with the objective of the project and project support should be limited to the activities listed in SCNHRC Project staff ToRs." [Source: 6<sup>th</sup> QUARA Report].

The QUARA further recommended that Project focus to strengthen NHRC on its bi-lateral relations with other NHIs. The QUARA suggested that at the international level the Project should support NHRC to partner with such NHIs as the National Human Rights Committee of Qatar; the Human Rights Commission of Malaysia; the Jordanian National Center for Human Rights and the Asia-Pacific Forum for Human Rights.

The Evaluation strongly supports the recommendations of the QUARA—especially in light of OHCHR's departure from Nepal and, additionally, suggests that the NHRC may wish to look to the other NHIs that have faced similar issues as Nepal. For example, the National Human Rights Commission of Mexico may be one such possibility for technical advice and information.

#### UPR and UPR Road Map

The SCNHRC Project (specifically, OHCHR support) is perceived as having played a crucial role of providing technical assistance to NHRC in regard to the UPR and the NHRC's accreditation. By 2011, largely as a result of the technical assistance of the Project, Nepal had regained its "A" accreditation status by the ICC and made successful submissions

regarding the UPR. The overall visibility and legitimacy of the NHRC was enhanced as a result. Support to the UPR process continued in 2011. Project funds were utilized to support a high-level delegation comprising NHRC, NWC and NDC to attend and participate in the HRC's review of UPR mechanisms in Geneva on 27 January 2011. A total of 135 recommendations were made during the review in Geneva. Out of these, the GoN accepted 56 recommendations, accepted 28 as already implemented or in the process of implementation, 36 were given further consideration by the GoN and a response filed in June 2011 and 15 recommendations were rejected.

Furthermore, in mid-2011, the Project (OHCHR) and NHRC jointly prepared a "UPR Road Map" for implementation of the UPR recommendations. The Road Map listed concrete actions to be taken by each state actor in Nepal to fulfil the UPR recommendations. The Road Map was submitted by OHCHR and NHRC to the OPM COM in April 2011. The UN Human Rights Council conducted the UPR review in Nepal in February and June 2011. Consultations between OHCHR and NHRC were engaged in with a view to coordinating a systematic implementation of the recommendations of the UN Human Rights Council. QUARA recommended that the Project concentrate its efforts on *implementation* of the UPR.

The Project continued in 2012 to support NHRC to follow-up to the UPR recommendations made by the UN Human Rights Council, and accepted by the Government. Yet, unfortunately, political will was lacking on the part of GoN to fully implement the UPR recommendations and the Constitution-making process in Nepal was stalling. While, the QUARA praised NHRC's creation of an internal working group to follow up on the "road map" drawn up with OHCHR in 2011, it was felt that NHRC would need a more pro-active approach in partnership with civil society to achieve implementation of the UPR recommendations. On the whole, however, Project support had substantially contributed to NHRC's ability to maintain its "A" accreditation status in 2012 under the International Coordinating Committee of the National Human Rights Institutions (ICC NHRIs).

The Evaluation finds that Project support was crucial in supporting NHRC to support the UPR process in Nepal and the GoN's representations in Geneva. [See NHRC mid-term Report on UPR Sept. 2013]. According to the Mid-Term Report submitted by NHRC at the ICC meeting in Geneva, there were 155 recommendations received from 55 countries. Out of these 92 recommendations were received; 15 were totally rejected by the GoN and 28 recommendations were kept under recommendations.

The Mid-term report of Sept 2013 is basically representative of the current situation as it stands in March 2014. There has not been much more progress. GoN has formed a new committee for the Second Cycle of the UPR in 2015. Along with this report is a recommendation of the GoN and NHRC to cooperate with the National Women's Commission and National Dalit Commission. NHRC is in the process of determining whether to include the other commissions in the next UPR reporting.

The Evaluation recommends that going forward, the Project should continue to support NHRC to monitor progress with implementing UPR Recommendations, including the Inclusion of Minorities in the Constitutional Drafting Process. Also, as of 2014, it appears to the Evaluation that several aspects of NHRC's existence still do not conform to the Paris Principals. These are principally, the process by which Commissioners are appointed in Nepal to the NHRC, as well as on-going issues with the NHRC's status.

As stated by the Evaluation Team leader at a debriefing held at the NHRC on 31 March 2014, it is the Evaluation's belief that the NHRC risks losing its "A" accreditation unless these issues are addressed. Adherence to the Paris Principles must be the overriding objective of the NHRC and the GoN. As discussed elsewhere in this report, the Evaluation is unable to recommend further full international support until a competent Commission is appointed and

NHRC is able to hire staff on permanent contracts in conformity with Nepal's Public Service Act.

#### Migrant Workers (High Level Mission to Malaysia)

The Project proved its abilities to adapt to a changing human rights environment in Nepal during 2009-2013, including supporting NHRC to take-on new areas of monitoring, investigation and outreach. The plight of Nepal's migrant workers resident in other Asian countries gained prominence in 2011 and 2012. The Gulf States and Malaysia are destination countries for hundreds of thousands of Nepal's citizens each year. There have been numerous cases of abuse of these workers—especially women. In August 2012, the GoN banned young women under 30 years old from travelling to Gulf countries for work.<sup>14</sup>

In 2013, the Project supported a high-level visit to Malaysia and South Korea for the NHRC Chairperson and the Commissioners to explore the de facto situation of Nepalese migrant workers in these countries. This directly led to a recommendation for action being submitted by NHRC to the GoN on the plight of Nepalese migrant workers and the protection of their human rights. Following this, the GoN sent a high-level mission to study and address the issues of migrant workers. Going forward the Evaluation recommends that the Project continue to focus on the plight of Nepal's migrant workers.

### **Activity Result 3: Incorporating Human Rights in the Constitution.**

#### Supporting a “Human Rights Friendly” Constitution

The NHRC has a duty to support the CA on having a human rights friendly Constitution. Early on, in 2008, even though NHRC had no Commissioners, it formed a committee to support the CA and NHRC supported much information awareness-raising at the grass-roots level. This entailed a large cooperation with civil society. NHRC with the support of Donors also worked to draw the attention of the CA Members to educate them on human rights and the need to include marginalized persons in the constitution-making process.

In 2010 the Project assisted NHRC to organize a workshop on the autonomy and independence of NHRC within the Constitution. The workshop was attended by 5 CA members and 30 human rights defenders. In addition to this, the SCNHRC Project supported numerous other workshops and interactions on achieving a “human rights friendly” Constitution (reaching an estimated 99 participants for 2010, including 23 CA members), TV ads, radio jingles, etc. In 2011 alone, seven thematic papers were sent to the CA with Project support. It is not clear, however, that the Project or NHRC ever reached out directly to Nepal's political parties.

Going forward, NHRC will need to work on other issues such as the structure of the state, federalism, fundamental rights included in the Constitution, the GoN delivery of Economic, Social and Cultural rights to citizens. NHRC advocates for CA members to include such provisions in the new Constitution. [Note: According to its AWP for 2013, the Project had planned to conduct a National Conference on Human Rights and the Constitution in 2013, but this was not possible, due to the Election priority].

#### Elections (2013)

The SCNHRC Project was instrumental in supporting the NHRC during the 2013 CA Elections. NHRC was able to effectively monitor the elections for human rights violations in 75 districts in Nepal during pre-election, election and post-election. This included interactions with CSOs on election monitoring; development of election monitoring

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<sup>14</sup> Human Rights Watch World Report 2013: Nepal.

checklists; dialogues with election observers and publication of IEC (International Elections Commission) materials on the IEC Election Monitoring Code of Conduct. The Project assisted NHRC with publishing a report on its election activities on the NHRC website.

While Election monitoring was not a specific focus of the original project document, the Project Advisory Committee (PAC) agreed in 2013 to shift project resources to focus on the urgent need to monitor the 2013 CA Elections for human rights violations. The Evaluation believes that this was both a relevant and effective use of Project resources, given the paramount importance of supporting free elections in Nepal. The Project's efforts and those of the NHRC were widely viewed as successful by Stakeholders interviewed by the Evaluation team. NHRC's involvement, information and awareness-raising is also perceived to have resulted in higher levels of participation of persons with disabilities, women and senior citizens in voting.

#### **Activity Result 4: Strengthening the NHRC's capacities to act for the promotion and protection of Civil and Political and Economic, Social and Cultural Rights.**

Most of the SCNHRC Project's activities during 2009-2014 have taken place under AR 4 and AR5. In fact, these two ARs overlapped to a large extent.

##### IT and Construction of National Human Rights database

The Project built upon earlier support of UNDP and Donors with a plan to construct a National Human Rights Information Database. A Task force was formed for this purpose. Yet, it is not clear to the Evaluation that the new database for (pre-emptive) monitoring of developments improving processing of complaints was ever achieved. In 2012, additional IT infrastructure, motorcycles, etc. were procured with Project support for both the NHRC central and regional offices. NHRC staff informed the Evaluation that this improved their work, but that much more is needed in the way of transportation assets in the field to enable them to effectively perform outreach and investigations.

##### AWPs

The SCNHRC Project had bi-annual reviews and developed AWP's for years 2010-2014 that were drafted to align with the Project Document's RRF and NHRC's strategic goals. A reading of the AWP's for years 2009-2014, however, makes clear that the Project was overly ambitious. It attempted to programme on nearly every single aspect of the NHRC's mandate with an ever-expanding array of promotional activities, rather than focusing in a strategic way on key elements of NHRC's mission and its capacity to monitor and protect. Many activities could not be completed within the time frame allotted during any given year in the Project's life.

Furthermore, the original project document and AWP's have many targets and planned activities that overlap with more than one output or activity result. This is particularly seen between Activity Results 4 and 5. As a result, there appears to have been a lack of clarity within the project and some activities were counted as "capacity building" activities, which were in fact not directed at building the core capacity of the NHRC itself, but the capacities of CSOs, police, etc. Such activities focused the attention of the project's resources "outside" of the NHRC, rather than building NHRC's *internal capacity*.

The Evaluation also notes that the Project at various times completed activities for the NHRC Secretariat that the NHRC could have completed for itself. [Note: this was also observed in several reports of the QUARA][See, 6<sup>th</sup> QUARA report]. Going forward clearer distinctions must be made by UNDP and Donors as to when and under what circumstances Project resources can be used by NHRC. Project resources should be utilized *predominantly* to build

NHRC's core capacities at the national and regional offices in a well-coordinated and strategic manner. The emphasis of the project should be building NHRC's internal capacity to manage funds and human resources and to conduct monitoring and investigation.

#### Publications and Interaction Programmes

A landmark output of SCNHRC Project support was the 2010 Publication of Recommendations of the NHRC over a 10 year period and documenting the GoN's relatively poor rate of implementation of NHRC recommendations. In addition, OHCHR and NHRC together produced a legal opinion paper on "Remedies and Rights Revoked: Case Withdrawals for Serious Crimes in Nepal," published on June 23, 2011.

The Project also supported NHRC in 2010 to strengthen its outreach to stakeholders with interventions involving Government agencies, other National Institutions and civil society organisations. These interactions, along with policy papers and support to the UPR were perceived as having strengthened the NHRC's capacity. Approximately 1/5 of the interventions involved NGOs. As of end-2010, NHRC had not communications or distribution strategy for its publications. The Project QUARA recommended the preparation of a Strategic diffusion and distribution policy.

In mid-2011, the Project supported NHRC to conduct several interaction programmes to build pressure on the GoN to implement NHRC's recommendations. For example, a program entitled, "The Role of Stakeholders in Ending Impunity in Nepal" was organized in conjunction with civil society and several papers were presented focusing on some of the challenges to implementation of NHRC recommendations. The programme had wide participation from the GoN, including the OPM COM. This led the OPM COM to prepare its own status report on the implementation of NHRC recommendations and contributed to a much higher incidence of implementation of NHRC recommendations in 2011, as compared to 2010. [See Project Progress Report Jan-June 2011, Table 3].

The Project also produced 35 publications during 2012 [See, Annex 2, Project Progress Report 2012]. The Evaluation Team reviewed many of these publications and, while they are of high quality, it is not clear to the Evaluation that NHRC's capacities to produce reports *on its own* was built in the process.

There is a significant question in the mind of the Evaluation whether in 2012 the project began to "drift" and focus too much on activities that should've been completed by NHRC with GoN funding (i.e. publications), while in addition searching for ever-expanding categories of human rights violations to address. While supporting publications is certainly an appropriate role for UNDP to play, UNDP should ensure that its resources are only used for high-level/policy analysis. For example, in 2012 through 2014, the Project was particularly active in publications. Going forward, for some publications a much better approach may be for NHRC to enlist partnerships between NHRC and leading CSOs in Nepal to complete research on specific categories of human rights violations. Also, most of the publications were published in print form. In the future, all NHRC publications should be made available on the NHRC website or on the UNDP CO website.

#### Trainings and Capacity building activities

The SCNHRC Project undertook a number of activities labelled "capacity building" throughout 2010 to 2013. Yet, due to chronic low staff levels at NHRC, the Project relied upon consultants to effect trainings and content that should have properly been done by NHRC staff. Upon reviewing the AWP's of the Project it appears that the Activities/actions labelled "capacity building" were in many instances very broad trainings on human rights

with only a few capacity building being done for individual departments at NHRC (i.e. Finance).

While the Project support to NHRC's forensic capacity and exhumations was one of the greatest successes of the Project, which substantially enhanced the NHRC's legitimacy and visibility in Nepal, the other activities under Activity Results 4 and 5 were mostly broad trainings on human rights. In only a few instances during the life of the Project has it supported activities on NHRC's core administrative functions such as finance, communications and human resources.

In fairness to the Project and UNDP, however, there were two factors that significantly hindered the Project's ability to build capacity at NHRC. These were the departure of OHCHR from Nepal in March 2012 and chronic low staffing levels at NHRC during the life of the Project.

OHCHR's departure from Nepal significantly curtailed its ability to render technical support to the Project. The Project's design assumed that OHCHR would have a presence in Nepal throughout the life of the project. There was no "contingency" plan built into the project in the event that UNMIN's mandate would not be renewed. Arguably, there should have been a project "re-design" at the point of departure of OHCHR from Nepal. Ultimately, neither OHCHR acting "remotely" (via the use of consultants), nor, for that matter, UNDP could fill the gap in "hands on" technical expertise and mentoring represented by OHCHR's departure from Nepal. This compromised the Project's intended support to capacity building, as well as its support to NHRC monitoring (as discussed below).

As noted in numerous reports of the QUARA, chronic low staffing levels at NHRC were the major obstacle to the capacity building activities and knowledge transfer during 2009-2012. The failure of recruitment processes to get underway in a timely manner as envisioned and further delays to the recruitment process (i.e. a Supreme Court stay issued, pending resolution of a court case filed against NHRC challenging its recruitment process), as well as delays in the appointment of successive Commissions resulted in low staff moral and delayed the process of developing new internal guidelines and policies for NHRC. These had an adverse impact upon the efforts and continuity of the Project from a capacity development perspective.

As noted by the QUARA, "[b]ecause of the shortage of staff, the Project resorted to consultants to provide input that under normal circumstances, should have been produced by NHRC staff. Some 14 consultants were engaged for various durations in 2010, for specific inputs. As a consequence, NHRC capacity strengthening had to be sacrificed in some cases...." Low staffing levels also prevented NHRC from addressing citizens' complaints in a timely manner and working-down the existing backlog of cases dating from the Conflict period.

For example, in 2011, NHRC was supposed to have 309 posts fully staffed, but had only 138 (36 women and 102 men). These levels generally continued in 2012 to 2013. As of 2014, the NHRC was supposed to have a total of 309 staff (all inclusive of the Central and Regional offices and including support staff (i.e. drivers/helpers, etc.), but has only 154 total staff, of which only 40 are thematic officers. It is anticipated that with the appointment of the 4<sup>th</sup> Commission and in light of a recent Supreme Court verdict and the anticipated passage of a National Human Rights Service Bill, the NHRC will finally be able to move forward with the appointment of new staff as of 2014-2015.

Despite the above challenges, the Project was able to involve NHRC in a number of capacity building activities and trainings that are perceived to have built NHRC's internal capacity and visibility in Nepal. For example, 13 capacity building activities occurred in 2010 alone,

despite low staff levels. In 2011 and 2012, the project supported efforts at NHRC to hold focus groups to strengthen the NHRC organizational and management structure, communication and coordination between offices in line with the provisions of the NHRC Act (2012).

The year 2012 represented one of the few instances during the life of the Project when it supported need-based and targeted capacity building training at NHRC. The Project supported financial management training for 27 NHRC senior officials and administrative and finance staff. In the view of the Evaluation, such trainings should've been made much more extensive during the life of the project and completed for *all* departments and regional offices.

The most significant development during 2012 according to the QUARA was the Project's support to the NHRC's drafting of seven guidelines:

- a. Regulations under the NHRC Act, designed to provide guidance on procedures to be conducted in handling complaints and other activities as required by the act. Among other elements, it envisions public inquiries by the NHRC.
- b. Complaints Handling Guidelines, designed to serve as a hand book for staff in handling complaints.
- c. Communication guidelines.
- d. Guidelines on human rights defenders.
- e. Guidelines for cooperation with human rights partners—working with State and non-State institutions
- f. Guidelines on monitoring prisons and places of detention
- g. Guidelines on Monitoring Protection of Consumer Rights
- h. Guidelines on Exhumations.

The QUARA anticipated that the adoption of these guidelines would accelerate preparation of a consolidated manual of procedures. The Project supported the finalization and publication of Exhumation Guidelines in May 2012.

In 2013, with the support of the Project, NHRC established a separate division on Gender and Social inclusion with the mandate to initiate programmes on gender equality sensitization among staff members and policy makers in Nepal. This was expected to significantly institutionalize the gender and equality sensitivity previously supported under the Project. In addition, the Project supported NHRC to develop a Gender Policy. A new Staff Performance and Evaluation System was developed by NHRC with project support, as well as a new M&E framework requiring reporting with disaggregated results for gender.

NHRC and Regional office staff informed the Evaluation that through the project they received much training on human rights, but the situation on human rights in Nepal has now changed. As of 2014, NHRC staff requires additional and specific thematic trainings on administration of justice, how to make complaints to international treaty bodies, etc., as well as how to prepare reports. There is a need to conduct trainings on new categories of human rights violations (i.e. LGBT rights, etc.). Trainings should continue, but in a much more strategic way, based upon specific departmental needs and the requirements of each NHRC Regional office (and the communities within which the regional offices sit).



It is the overall finding of the Evaluation that despite significant challenges (staffing levels; delays in the Commission, etc) the project has contributed to an increase in capacity in many aspects of the NHRC and helped it to become more visible during 2009-2014. Yet, the Project has not been able to build capacity to the extent expected in the core inter-office, policy and procedures operations of the NHRC.

#### On-going capacity “gaps” at NHRC as of 2014

Capacity building: In 2013, the SCNHRC Project supported the NHRC to conduct a self-assessment of the NHRC’s capacities. This was carried out in partnership with the Asia Pacific Forum (AFP) and UNDP’s Regional Centre for Asia Pacific. This assessment identified gaps within the NHRC’s human resources and staffing. The NHRC ultimately could not endorse the results of the self-assessment, however, as the tenure of the Commissioners expired. It was not made public. While the key recommendations of the assessment were made widely known to the international donor community and GoN informally, those recommendations were not officially transmitted to the GoN. This is important as the recommendations address such issues as human resource management, institutional capacity building needs of NHRC, the roles and responsibilities of the Secretariat and coordination with CSOs and human rights defenders. Many of these recommendations have budgetary implications—even legislative implications.

As of 2014, NHRC human resources capacity remains low. Many positions at NHRC Central-level remain unfilled. While many departments listed on the NHRC organogram, as well as the NHRC Regional Offices, remain understaffed SCNHRC Project supported trainings, study visits, workshops and materials have increased the capacity and permitted NHRC to achieve a much higher degree of independence from the Government of Nepal, then would have been possible without Project support.

Many Divisions at NHRC still lack inter-office procedures. There are also areas of overlapping work between the NHRC Divisions (i.e. Collective Rights and Investigations)(i.e. Investigations Divisions (CEDAW) and Gender and Inclusion Division). As of 2014, NHRC requires better internal procedures and guidelines to determine when the Investigations Department should investigate and/or not investigate. At the moment each Division views its mission differently. Also, standardizing NHRC Human Resources remains an issue.

The Evaluation recommends that a future project be based upon a thorough and highly detailed mapping of the capacity gaps and needs of each NHRC Division and Regional offices. The current work of the SCNHRC Project’s Organizational Development Advisor (Consultant) can inform this process.

*Investigations Division.* This is viewed by the NHRC as the division within NHRC having the most urgent capacity needs. The Investigations Department is charged with the duty to protect the citizens of Nepal and this needs special capacities. Standards and procedures for Investigations are currently lacking at NHRC and there is a need for new guidelines on evidence/ chain of custody, etc. Overall, the quality of reports generated from the Investigation Division could be improved. In addition to chronic low staff levels during the life of the Project, an issue that has continued to hinder field monitoring and investigations missions has been the relatively low rates of DSA paid by the GoN, as well as a 7-day “cap” on the number of days which NHRC staff operating on GoN budgets can remain in the field. Many of the locations where Regional Offices must travel are remote and inaccessible and the limitations on DSA and its duration, currently constrains the abilities of the Regional offices to conduct monitoring and investigations. Going forward, the Project should assist NHRC in advocating with the GoN for an exception for NHRC staff that allows payment of a higher DSA rate and greater number of days.

*Treaty Monitoring Division.* The Treaty Monitoring Division's main challenges are staffing gaps and the need to hire and train new staff; lack of capacity and knowledge on international treaty mechanisms (note: training was provided years ago, but more is required); increasing inter-office coordination among the NHRC's various divisions. There is sometimes confusion on who is supposed to work on which issues. At the moment, the various divisions communicate with each other and resolve such overlaps on an *ad hoc* basis. Going forward, coordination with GoN through the OPM COM; coordination and communication with CSOs for treaty monitoring; and conducting consultations to the GoN on its reporting obligations will be priorities. The Treaty Monitoring Division needs additional training, especially on the UPR.

*Finance Division.* The Finance Division was one of the few NHRC divisions to receive targeted training on its inter-office procedures under the Project. Yet, the Finance Division is in need of continual trainings to keep abreast of updates in computer software programmes and procedures. Its capacity needs to be developed to request further budget resources from the government and obtain necessary approvals to facilitate NHRC work from the concerned government bodies. The NHRC Finance Division must have its capacity to spend the budget it receives from the Government.

*Human Resources Division.* The NHRC Human Resources Division expects to be faced in 2014-15 with a monumental task of hiring and training new staff in compliance with the National Human Rights Service Bill (once enacted into law) and the Public Service Commission of Nepal. The Human Resources Division must be capacitated to manage the on-going day-to-day human resources needs of the NHRC. Currently, there is no efficient policy for regular review and rotation of NHRC staff to and from Regional Offices to the NHRC or between Regional Offices. Some NHRC staff has lingered at the same regional office for many years without promotion or transfer or time at the NHRC central office in Kathmandu.

*Legal Division.* The Legal Division currently lacks full capacity to review legislation from a HRBA perspective and to fulfil all of the day-to-day legal needs of the NHRC. The Government rarely implements NHRC recommendations. Going forward any project must capacitate the Legal Division to review legislation and review draft recommendations of NHRC for their accuracy, quality and thoroughness.

*NHRC Promotion Division and need for a Communications Division.*

NHRC currently lacks a Communications Division and any mechanism for communicating effectively with the public. NHRC has a Right to Information Strategy, but has no spokesperson full time at NHRC. This is a major gap within the organization.<sup>15</sup>

NHRC needs a good external communications strategy and standards for publishing its work. The SCNHRC Project has supplied a consultant to the NHRC to act as a Communications Officer, but his duties are largely limited to preparing press releases. None of the NHRC departments are currently involved in the process or contribute to drafting such press releases—not even the NHRC Legal Department. The Project is currently preparing a guideline for NHRC for social media (twitter, etc.) and recommending that NHRC adopt a policy for social media. This is a possible area of Project support going forward.

At present, there is no capacity within NHRC to maintain the quality of its relationship with the OPM COM. The relationship with OPM COM has occasionally been problematic; and

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<sup>15</sup> The NHRC Promotion Division is currently not operating as communications division, but focuses on human rights education. Meanwhile, the NHRC Information Tech. Division is really just about IT solutions/hardware.

NHRC works with the OPM COM, because it is mandated to. The OPM COM acts upon relatively few NHRC recommendations. There should be a separate capacity built within NHRC to follow-up on recommendations and a standardized procedure going forward. Yet, this would require additional human resources at NHRC. This is also a very political situation where individual personalities play a role. Both institutions must, therefore, work to identify real collaborating points going forward.

Increasingly, NHRC is also called upon to cooperate with other justice sector actors (i.e. the courts and the police). This cooperation has proved very fruitful to NHRC and the institutions themselves. Thus, there is currently much talk about strengthening such links and inter-organizational cooperation. This could also facilitate the implementation of NHRC recommendations.

#### Coordination among the different NHRC Divisions.

The NHRC “Coordination Division” needs to be strengthened and inter-divisional coordination improved at NHRC comprehensively. Coordination currently exists only between the Secretariat and the Commissioners. This is not viewed by NHRC as a management/administrative function, but a link mostly between the Investigations Department and the Commissioners. The 5<sup>th</sup> Report of the QUARA recommended that the project support the NHRC to establish a “Board of Coordination and Enforcement Unit” (envisioned in the Commission’s organizational chart). The QUARA also recommended project support to develop a “Manual on Terms of Reference and Related Procedures”. The QUARA in its 6<sup>th</sup> report recommended that the Project focus on building the management functions of NHRC as a priority going forward into end-2012 and beyond. The Evaluation finds that this should have been viewed as an opportunity for the Project to realign itself to capacity building goals, but as stated elsewhere in this report inter-divisional coordination is still lacking as of 2014. Certainly, low staff levels have contributed to this situation.

#### Regional Offices

The SCNHRC Project was able to enhance its outreach to the Regional Offices between 2010 and 2014. This included supporting the establishment of Human Rights Resource Centres in the Regional Offices. The Evaluation finds, however, that at the same time, the Project could have focused even more than it did on the Regional level capacities.

As of 2011, the QUARA found that reporting from the Regional offices remained inconsistent and therefore, the Commission could “not at any one time dispose of systematic up to date information on the human rights situation in the regions”. It was also noted by the QUARA in 2012 that the NHRC Regional Offices were suffering from staff shortages. “Regional offices have urgent needs that the Project must do a better job of addressing: communication between headquarters and the regional offices and regular reporting and feedback between Kathmandu and the regional offices.”

As of 2014, the Regional offices and sub-regional offices report directly to the central NHRC office in Kathmandu, therefore, there is no institutional mechanism for developing the institutional capacity of the Regional and sub-regional offices. The Evaluation confirmed that Regional offices remain understaffed and focused predominantly upon awareness raising. The Evaluation Team explored the capacity working relationships and lines of communication between NHRC and its various field offices (i.e. Nepalgunj; Biratnagar; Pokarha; Dhangadhi) and contact offices (i.e. Jumla; Rolpa; Butwal; Jankapur and Khotang). A key issue continues to be how the Regional NHRC offices feed data back to NHRC central office in Kathmandu (i.e. statistics, SGBV incidences, etc.). At the moment, it is questionable whether there is a viable functioning system of information flow.

While some NHRC Regional Offices are in fact operating at a higher capacity than the central NHRC Office, indications are that most NHRC Regional offices remain severely understaffed and challenged. Due to low staff levels at both the National and Regional offices, there has been a large backlog of cases before the Commission during the life of the SCNHRC project. There is a need to increase complaint handling, monitoring and investigations by the Regional Offices. The Regional offices also currently lack procedures. And, as stated elsewhere in this Evaluation Report, the 7-day “cap” on GoN DSA prevents field missions of long duration.

The Evaluation was informed that in theory, there are no restrictions on Regional offices investigating, *sua moto*, and collecting evidence if they suspect that a human rights violation has occurred. Regional offices have the ability to question local government agencies and request information about violations. In practice, some Regional offices do issue clarification letters and attempt low-level mediations of their own accord; and even issue a letter to the perpetrator containing the regional office’s own findings. Yet, currently the Regional Offices have no legal authority to issue formal warnings. Once an investigation reaches the point of issuing a *recommendation*, the file must be submitted to the National NHRC. The Constitution gives the mandate for issuing recommendations only to the Commissioners of the NHRC and this is technically the reason why these functions could not be devolved to the NHRC regional offices. The fact that the full sitting Commission of the NHRC in Kathmandu must review each and every case contributes to lengthy processing times for citizens’ complaints and a backlog of cases.

The Evaluation highly recommends that going forward, the Project support NHRC to focus on the *autonomy of Regional Offices*. If the local offices could have some formal device (i.e. a warning) to violators and give them 60 days to respond or face referral to the NHRC HQ with a full investigation, then this would empower the local offices and cut down on the backlog. The Evaluation recommends that UNDP and NHRC look into the new Federal structure of the government and make adjustments to the structure of NHRC accordingly.<sup>16</sup> NHRC’s regional officers need to spend extended time in the field and should not be expected to rely on CSOs and NGOs to accomplish NHRC’s hard fieldwork. The Evaluation recommends that going forward, NHRC consider developing *Mobile NHRC units* as an alternative to sub-regional offices and/or to supplement them.

### Internships

The Project supported NHRC to implement an internship programme in Kathmandu and the Regions, which was widely perceived as a success both by the NHRC and the students participating in the internship programme. Interns were engaged for 6 months and out of each “batch” of 16 interns, 10 were assigned at Kathmandu and 6 at the Regional offices at any given time. In 2013, the fourth batch of NHRC interns completed its six-month internship with project support. The Evaluation was able to interview a number of interns currently completing service at the Pokhara Regional Office and Far Western Regional Office. All agreed that the internship programme had met their personal goals for learning. The Evaluation confirmed that the NHRC internship programme had included the requisite numbers of minority groups and women in-line with the original concept developed with Project support.

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<sup>16</sup> The Committee to define the Structure of the Constitutional Bodies of the Previous Constituent Assembly, pp 19-23 states that there will be a federal NHRC and Provincial NHRCs. However, the final text of the draft Constitution of Nepal published in the Constituent Assembly Mirror, CA Secretariat Kathmandu, 2013 July, p 393 only mentions the Provincial Offices of the NHRC. Even in this context, the Provincial Offices of the NHRC are believed to have wider autonomy in a Federal Nepal.

### The NHRC's Protection Mandate": Monitoring and Investigations

The QUARA noted that at beginning of 2010 there was an imbalance in the SCNHRC Project. There was too much focus on promotion and not enough on protection. The Project attempted to address this at end-2010 in the form of trainings devoted to protection. The Interim Constitution also added additional preventative monitoring duties for the NHRC that increased its workload.

As of 2011, the NHRC had noticed also an increased incidence of human rights complaints arising from violations of consumer's rights. The Project therefore supported NHRC to develop a "Consumer Rights Monitoring Guideline". In light of the importance of ESCR in Nepal, the Project supported a "Working Group on ESCR Indicators."

OHCHR's departure exposed weaknesses within NHRC and its abilities to carry out effective monitoring. NHRC was ill equipped to fill the void left by the departure of OHCHR in pro-active monitoring of human rights violations. It was felt that NHRC should deepen its work on discrimination issues (women, race and caste...migrant workers and families). The QUARA reported in 2012, "A large number of those interviewed felt that the Commission had not yet transited from the traditional "reactive" (complaint driven) approach to the systematic, pro-active monitoring required by NHRC's mandate under the Interim Constitution and NHRC Act. The QUARA recommended that NHRC begin to train its staff to conduct systematic, sector oriented monitoring on a regular basis, while keeping the Commissioners up to date on their findings. It is not clear to the Evaluation if this recommendation was ever fully taken on board by NHRC.

### *Exhumations*

The year 2010 was especially important in terms of SCNHRC Project support to NHRC investigations. The Project supported NHRC forensic capabilities and, in particular, enabled the NHRC to respond quickly to the need for exhumations of human remains relating to the October 2003 killings of 5 male students in Godar VDC, Dhanusha District. In February 2011, a second phase of the high-level exhumation mission was conducted at the suspected burial site of the 5 students in Godar VDC. The first mission in 2010 had recovered four bodies, and the second mission recovered the fifth body.

Thereafter, the Project supported NHRC to publish a comprehensive report on the exhumation for follow-up by GoN. As stated in the 2011 Project Progress Report, "NHRC's role in dealing with this emblematic case from the armed conflict period is crucial in terms of providing justice to the victims, prosecuting the perpetrators, and supporting the impending transitional justice system. As a member of the exhumation team OHCHR continued to provide advice and support during the second phase of the exhumation process as well. The OHCHR team monitored the exhumation and shared its observations with NHRC." The Project's support to Exhumations substantially increased the visibility and image of NHRC in Nepal.

### *Reduction of Backlog Cases*

During the first six months of 2011, the SCNHRC Project supported NHRC to reach a final decision in 100 conflict related backlog cases and 30 cases of human rights were investigated. These cases included violations such as extra-judicial killings, violations of the rights of IDPs, SGBV, torture, violations of the rights of children, disappearances and violations of property rights. The QUARA reported in 2012 that the processing of large numbers of backlog cases was having a negative impact upon the human resources of the NHRC. The QUARA recommended that these be addressed in an *ad hoc* procedure in order to free local NHRC staff to focus on new investigations and monitoring.

In 2013, the Project supported the NHRC to reduce its backlog of cases by 75%. This was achieved by NHRC's 34 monitoring missions carried out in 2013. According to the 2013 Project Progress Report, "The NHRC central office deployed special investigation missions, comprised of senior human rights officers from central, regional and sub-regional offices in Siraha, Saptari, Janakpur, Changadi, Kaski, Morgang, and Butwal to investigate the backlog of cases and recommend points of actions. A total of 25 investigation missions were carried out and more than 300 cases were investigated...." As of end-2013, 1200 conflict related cases were currently pending investigation and resolution. [Source: NHRC Annual Report 2013].

It is clear to the Evaluation as of 2014, that NHRC must refocus its efforts on reduction of the backlog cases dating from the conflict era. This has formed part of the Evaluation's recommendation for any new project and a "bridging" phase. UNDP and NHRC should explore new approaches for reduction of back-log cases including (as earlier suggested by the QUARA) some type of *ad hoc* procedure.

#### *Investigation of Citizen's complaints*

It must be noted, that the Project's abilities to impact upon the total numbers of cases received, investigated and referred for recommendation by the full Commission is limited. While it is not the Project's mandate to investigate cases, but to build the capacity of NHRC to conduct investigations, the direct support of OHCHR and the capacity building and outreach activities of UNDP substantially contributed to the NHRC's ability to investigate citizens' complaints of human rights violations during 2009-2014. Figures for cases heard in any given year were supplied by NHRC and reported in the various Project Progress Reports and reports of the QUARA. The Evaluation has relied on these sources.

The Project supported NHRC to monitor and investigate 142 cases of human rights violations during 2010 and to hold various stakeholder workshops, trainings and consultations on human rights in Kathmandu and the regions. In 2012, the NHRC with project support was able to update the registry of complaints in all its offices and for the first time be able to provide precise figures for numbers of individual complaints filed with NHRC over the last four year period of time. As of 14 January 2012, there was a total of 5,500 complaints under investigation. The Nepalgunj office reported the highest figure with 1,427 cases, followed by Biratnagar (1055) and Kathmandu (890). As regards content, the highest number of cases concerned violations of ICCPR (1,721), Disappearances/Abductions (1,380), ICESCR (1005) and Torture (928).

As of the first half of 2012, NHRC had processed 4950 complaints since its establishment (May 2000 to end-Q2 2012). Of these, 3500 complaints were settled between August 2007 and July 2012. The investigations of some of these complaints were supported with SCNHRC project funds. NHRC with project support was also able to establish an Archives Unit, providing secure storage for all complaint files in fireproof boxes. With project support, NHRC initiated indexing of all hard copies and began to make electronic copies of files.

The Project reported in 2012 that the current staffing situation at NHRC made it virtually impossible to effectively follow up these cases. The Project supported NHRC to investigate complaints from citizens alleging human rights violations during the remainder of 2012 and 2013. In total, 276 violations were investigated in 2012; 212 monitoring missions were undertaken pursuant to the expanded mandate of the Commission under the National Human Rights Act (2012). The NHRC issued 394 recommendations in 2012 as a result of SCNHRC supported investigations. In 2013, the Project continued to support NHRC in its engagement with CSOs and GoN agencies through interactions and awareness raising and the monitoring and investigation of cases at the regional level. NHRC received 219

complaints in 2013, representing an estimated 20% increase over the number of complaints received in 2012.

As reported by the Project, the types of cases received continued to represent a “shift” from conflict to post-conflict environment in Nepal with a large number of complaints on SGBV, consumer rights, violation of Economic Social and Cultural rights and migrant workers rights. [Source NHRC Annual Report 2013]. Yet, overall, despite a slight increase between 2012 and 2013, the levels of complaints have been decreasing year by year since 2009.

The Evaluation finds that the Project could have done a better job of supporting NHRC to work on the demand side of human rights justice at the local levels. As referenced above and as noted by the Project’s QUARA, the resources of the Project were utilized predominately for “promotional” activities, rather than “protection” activities. It was suggested by the QUARA as early as 2012, that the project shift its priorities and “rebalance” its activities to become more “protection” driven. While it is clear that the Project did support NHRC investigations in a number of instances (even urgent and high-profile investigations such as the exhumations undertaken with Project resources and technical expertise), the Evaluation Mission highly recommends that going forward, the Project place its focus primarily upon NHRC’s protection mandate, along with NHRC’s promotion mandate.

As of 2014, there is still little in the way of follow-up by NHRC with citizens about their complaints to provide information and updates. The process of NHRC complaint and investigation is in some instances taking as long or longer than filing a case in the civil courts. Going forward, NHRC needs to streamline the complaints process, ensure its confidentiality. NHRC needs a dedicated staff person at NHRC to provide information to complainants about the status of their case.

Also, as of 2014, victims’ rights and witness protection for citizens who file complaints with NHRC or provide testimony are absolutely lacking. NHRC is mainly concerned with whether the Police have or have not registered the case. The Evaluation recommends that NHRC begin to develop in pilot stage victims’ protection services. This may ultimately entail a revision to the NHRC Act to include victim services. Enhancing NHRC’s ability to support victims and witnesses (i.e. funding the costs of their transportation to and from their village to report or appear before the NHRC) should be a focus of any future project.

#### *The Urgent Need to Address Conditions of Pre-trial Detention and Police Custody in Nepal*

There is an especially urgent need for NHRC to mobilize the demand side of justice to file complaints related to conditions of pre-trial detention and custody. The conditions of detention in Nepal—especially in police custody rooms remains far below international standards. Arbitrary arrest and detention—and illegal detention, especially of adolescents as a substitute for drug treatment at the behest of their parents persist. The SCNHRC project should urgently support the NHRC’s capacity to monitor and investigate conditions of police custody and pre-trial detention.

Linked to this is the use of quasi-judicial authority in Nepal, whereby, CDOs can convict and incarcerate individuals. It is recommended SCNHRC Project support NHRC to conduct a comprehensive monitoring report covering all police custody units in Nepal and a separate report monitoring Nepal’s prisons. UNDP should coordinate with other U.N. agencies in this respect at the level of the Secretariat who hold a monitoring mandate, including OHCHR and UNODC. SCNHRC should further support NHRC to educate civil society on these issues and facilitate the filing of complaints from the demand-side on such violations.

Support to NHRC relations with the OPM COM/GoN (lobbying for implementation of NHRC recommendations)

Upon the conclusion of investigation of citizens' complaints, the NHRC must determine whether such complaints are well founded, have a human rights violation at issue and are supported by evidence (whether forensic or testimonial). The NHRC Secretariat and staff at both the National and Regional levels must supply the NHRC Commissioners with enough information to reach a qualified determination as to whether a violation has occurred and to issue an appropriate recommendation to the GoN for action and resolution of the issue.

Throughout, 2009-2014, the SCNHRC Project supported various aspects of the investigative and forensic capacities of the NHRC. The Project (and Donors at a political level) further undertook a number of measures of support to lobby GoN to implement NHRC recommendations. This occurred in the form of publications, interventions and meetings.

As reported by the Project, as of the beginning of 2011, NHRC had taken a more proactive stance in a number of key human rights issues, notably those aimed at ensuring follow-up to its recommendations by the Government authorities concerned, and human rights concerns arising from the political transition. The visit by the Commissioners to the three main political parties on the issue of impunity for human rights violations committed during the conflict was found to be indicative of this trend. Similarly, the role played by the Commission activities taking part in various regions, by ensuring that their physical presence sent the message of the NHRC's concern for the protection of human rights.

The Project also supported NHRC during 2010-2013 to strengthen its relations with government bodies, notably the Office of the Prime Minister/Council of Ministers (OPM COM), to ensure coordination and follow up on a number of human rights issues. For example, a bilateral group was established to monitor the implementation by the government, of a number of undertakings, such as the implementation of the recommendations from the UPR, and the NHRPA. The NHRC publication of a decade of NHRC recommendations also served to shed light on the lack of up-take by the GoN of NHRC recommendations.

As of 2014, however, the majority of recommendations of the NHRC are still not being taken up by the OPM COM at an acceptable rate due the fact that the NHRC releases only a one page summary of its recommendation and findings which is not sufficient in many cases for the OPM COM to determine the underlying facts of the allegations, whether or not a human rights violation did in fact occur or, for that matter, whether the NHRC's recommendation is based upon a full investigation or complete evidence. It is perceived by a variety of stakeholders that the quality and format of NHRC recommendations remains poor. There is no uniform practice at NHRC on writing judgments and recommendations. Some decisions are written like a court decision; others a one page summary and sometimes just few sentences.<sup>17</sup>

Going forward, the project should seriously address this deficit. The Evaluation recommends that a standardized minimum format for NHRC recommendations be agreed upon with the OPM COM. NHRC also needs to focus on the rate of response to complaints. At present, a NHRC complaint takes as long as a court case in Nepal. The NHRC complaints process must be streamlined and capacities built within NHRC to proactively follow-up on complaints and provide information to citizens about progress on their cases.

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<sup>17</sup> Note: An Outcome level Evaluation commissioned by UNDP in 2010 of its entire Rule of Law and Human Rights programming detailed the NHRC recommendations process and the political and procedural barriers to implementation of NHRC recommendations by GoN. Yet, it does not appear to the Evaluation that the findings and conclusions of the 2010 Outcome Evaluation were sufficiently addressed by the NHRC.



### **Activity Result 5: Strengthening the NHRC'S capacity and enhancing the collaboration with civil society and HR NGOs.**

As noted above, AR4 and AR5 overlap to some extent and were often discussed interchangeably in the SCNHRC Project Progress reports and AWP for years 2009-2014 sometimes placed activities under AR5 that should have been under AR4. Most activities undertaken in 2012 related to Activity result 5(strengthening the NHRC's capacity to interact with civil society).

#### Establishing NHRC's links with Civil Society and training Human Rights Defenders

Numerous Stakeholders informed the Evaluation that in their opinion at its beginning and as of the SCNHRC Project's mid-point, the NHRC had achieved good relations with civil society, but that recently the NHRC's functional relationship with civil society has deteriorated. Civil society organizations interviewed attributed this to a lack of strategic direction on NHRC's part, as well as other factors such as the lack of staff and a sitting Commission.

In 2012, the Project provided crucial support to the NHRC central office in Kathmandu to cooperate with civil society organizations to monitor demonstrations that occurred on 30 April 2010 caused by UCPN (Maoists). Over 60 persons from the NHRC and CSOs participated in this monitoring mission. According the Project Progress Report for 2010, there were a number of other examples of successful interventions undertaken by NHRC in 2010 with project support under AR 5. For example, based on a recommendation of civil society the Project supported a coordination meeting on 12 August 2010 with the MoPR, MoHA, human rights cells of the Army, Police and Armed Police regarding human rights and the development of a Human Rights Training Manual, as well as the implementation of NHRC decisions. The Project furthermore trained a number of human rights defenders in 2010 and held a two-day workshop on the plight of IDPs in Nepal. The Project also published a range of materials in 2010 on human rights issues. A report prepared by the leading Nepali CSO INSEC on the performance of the NHRC in 2010 gave a cautiously optimistic view of NHRC's work.

As of mid-2011, according to the reports of the QUARA, the NHRC's standing with CSOs had further strengthened, as seen from CSOs involvement and participation in activities of NHRC, with the support of the Project. As stated by the QUARA, "although there remain differences, there is an unprecedented level of common ground on the major human rights issues and in particular on the impunity concerns." The Project facilitated a series of meetings between NHRC and the Nepal's NGO Federation for developing an advocacy strategy incorporating human rights in development projects and programmes. A comprehensive Human Right's Defenders Training Curriculum was prepared in mid-2011 by the Project (OHCHR experts), NHRC and with the in-put of the Project's QUARA (himself a highly qualified U.N. human rights expert). Further consultations were held by the Project and NHRC to conceptualize a human rights training manual for the Nepal Police.

In 2012, the Project continued to play a role in developing and establishing NHRC's links with civil society, the donor community and UN agencies. With Project support, NHRC developed a course of instruction for human rights defenders and other stakeholders. Separate approaches for capacity building were undertaken for human rights defenders (NGO, CSO, media and professional organizations) and GoN agencies. [Note: the extension of human rights training by NHRC to GoN agencies is in compliance with Art. 1 of the Vienna Declaration]. The NHRC with OHCHR and civil society also worked to put pressure on the GoN to implement NHRC recommendations.

Yet, it appears that despite the efforts of the Project, the cooperation between NHRC and civil society was never able to become as institutionalized as the Project had hoped. The Evaluation's interviews with CSOs in Kathmandu, Pokhara and the Far Western Region reveal that as of 2014, NHRC's relations with CSOs in Nepal are perceived as not comprehensive/strategic. NHRC has been effective at partnering for awareness raising, but less so for complaints and investigations. There is currently a need for enhanced cooperation with civil society. The Evaluation recommends that UNDP support NHRC to maintain registers of "pre-approved" civil society organizations who have been evaluated to possess the capacity to assist NHRC in its functions when necessary. (it appears that the NHRC often has a stronger working relationship with the civil society at the Regional level and this needs to be duplicated by NHRC's central office in Kathmandu).

#### Human Rights Promotion and Awareness-Raising Activities

With SCNHRC Project support, the NHRC was able to undertake many human rights promotion activities in 2011, to make people more aware of their human rights. These included a weekly radio programme on human rights *Sachetana* on eleven radio network stations across Nepal during 2010-2011; Public Service Announcements on human rights issues; a series of consultations on implementation of the CPA 2005; the NHRC's annual celebrations of "human rights days" on CERD, Day Against Torture and "Anti-Untouchability Day".

This continued during the life of the Project. During 2013, NHRC hosted 10 interactions on a broad range of human rights issues: including caste-based discrimination, the Truth and Reconciliation Commission and Transitional Justice, SGBV, indigenous persons, climate change and human rights, fair trial and rights of due process. While such trainings on broad human rights activities may have been successful, the Evaluation notes that the central focus of the SCNHRC should have been to ensure that the NHRC Promotions Division had such trainings first, before supporting trainings to a wider group of participants on broad human rights themes.

The Evaluation, feels, however that such activities could have been fulfilled *by the NHRC acting alone with its own budgetary resources* and did not necessarily necessitate Project involvement. It has often appeared to the Evaluation that the Project was trying to service every area of the NHRC mandate with an ever-expanding list of activities, rather than focusing in a strategic manner on key areas of NHRC's core capacities and making sure that the Project delivered sustained technical advice and mentoring. The Evaluation notes that the QUARA made a similar observation in 2012 stating, "the project should assist the Commission in determining which of those activities carried out with the support of the project, should be absorbed by NHRC and incorporated as part of its regular programme under its regular budget. For example, this would apply to the preparation and diffusion of certain materials including manuals, such as the HRBA Manual...organization of international conferences (i.e. the one organized by NHRC in November 2012...publication of a newsletter." [Source: 7<sup>th</sup> QUARA Report].

#### Human Rights Resource Centres

The Project supported the establishment of Human Rights Resource Centres in five (5) Regional offices and one (1) Sub-regional office in 2012. This was an innovative attempt on the part of NHRC to increase service delivery to citizens, civil society and the media with Project support. As of 2014, however, the Evaluation found that use of the NHRC Human Rights Resource Centres by civil society is mixed. Most books are out-dated and there is no apparent "core collection" of titles. There is a need for an acquisitions strategy for books, periodicals and web access for civil society and students at the Resource Centres. In addition,

during 2013, the Project assisted the NHRC to establish a media centre. The centre is designed to assist journalists and media representatives to access accurate information about the NHRC and to report that information to the public. Journalists interviewed by the Evaluation were familiar with the media centre. The Evaluation was not able to confirm rates of use of the Human Rights Resource Centres or the Media Centre (i.e. number of visits per month, etc.).

#### Cooperation with Judiciary, Police and Army

One output of SCNHRC Project support that the NHRC considers to be particularly successful was its interactions with the Judiciary in 2013 on human rights training. This culminated in a two-day workshop on the “Effective use of writ Jurisdiction in the Protection of Human Rights” organized jointly by the Judges Society of Nepal and the NHRC in April 2013 in Biratnagar. The workshop was attended by 60 participants including all judges from the District and Appellate courts of the Eastern Region and senior Justices of the Supreme Court of Nepal. Members of the judiciary interviewed by the Evaluation Team viewed the cooperation with NHRC as particularly valuable to their work

In addition, the Project supported NHRC to explore enhanced means of communication with the Police and other GoN agencies regarding the investigation of complaints. During 2009-2012, NHRC developed a training package for the police and army, but there needs to be a much more frequent engagement and monitoring of the Police and Armed Police.

The Evaluation also notes the crucial role that Project support played in supporting the NHRC to promote HRBA, the implementation of NHRC recommendations and human rights in general with the Judiciary, Police and Army in Nepal during the life of the Project. Going forward, there is a need for the project to continue to support such interactions. The rights of detained persons and prison inmates; freedom from discrimination and torture; rights of LGBT and victims of SGBV; reform of procedures that violate due process and, in general, linking access to justices to the delivery of human rights in Nepal are all key areas for future cooperation between the NHRC and elements of the judiciary, criminal justice actors and the military.

#### Supporting NHRC to focus on Economic Social and Cultural Rights in Nepal

The Evaluation finds that the Project appropriately began to increase focus on Economic, Social and Cultural Rights (ESCR) at its mid-point. Going forward, it is recommended that UNDP support NHRC capacity to check the capacities of the respective ministries on the ESCR (i.e. whether they follow the obligations imposed by the ESCR Convention) and facilitate the justiciable remedies for violation of ESCR.

#### Gender and Social Inclusion at NHRC: Women, Dalits and Other vulnerable groups

During the life of the Project, NHRC occasionally partnered with the National Women’s Commission and National Dalit Commission on UPR reports and included these commissions in interventions, roundtables and awareness raising activities. Yet, this cooperation has never been formalized. Going forward, the Evaluation encourages the Project and NHRC to deepen its cooperation with the National Women’s Commission and the National Dalit Commission. The Terai region and mountain regions still experiences a high SGBV rate, witchcraft trials, etc. Meanwhile, untouchability in the Far West Region is particularly high. The NHRC regional offices should be supported to work with local justice sector actors (police, etc.) on women’s right and rights of ethnic minorities, untouchables, the mentally handicapped and other vulnerable groups, including, LGBT.

## **Output 2. Selected laws reviewed and amendments recommended for new legislations as required by international treaty obligations**

### **Activity Result 6: Initiate for amendments of the discriminatory laws and submit to the legislature for reformation.**

By law, the NHRC has a mandate to scrutinize legislation, but as of 2014 still lacks the capacity to undertake large-scale legislative analysis and review. The Evaluation Team was surprised at the relative little progress achieved by 2014 on reform of certain discriminatory legislation in Nepal or, for that matter, deficits in legislation that continue to impede the Prosecution's willingness to prosecute on the basis of NHRC Recommendations (i.e. the Government Cases Act). There is a question in the mind of the Evaluation as to whether UNDP and SCNHRC could've done a better job at advocating for legislative reform and guiding NHRC in this respect.

The Evaluation notes that both the NHRC Strategic Plan for 2011-2014 and the UNDAF for 2013-2017 put legislative reform at the forefront of development in Nepal. During the life of the SCNHRC Project, NHRC conducted limited research into legislative gaps on implementation of international human rights treaties. Yet, NHRC never pursued this comprehensively or strategically during the life of the Project.

For example, NHRC with Project support reviewed a number of laws and performed one-off *ad hoc* research (i.e. human trafficking), but never fully followed-through on results of such analysis or recommendations for legislative reform.

With Project support, in 2010 the NHRC was able to review 10 laws that contained provisions discriminatory of persons with disabilities. Furthermore, in 2011, the Project supported NHRC to review the Penal Code, Criminal Procedure Code and the Sentencing Bill. These draft Bills were tabled in the legislature, in line with international human rights standards. A consultation meeting was held with representatives from OHCHR, INGOs, staff, human rights activists and civil society organizations, lawyers, Nepal Police, Nepal Army, Nepal Armed Police. But little seems to have occurred by way of follow-up in subsequent years of the Project.

The AWP for 2012, provided for the Project to support NHRC in a review of existing discriminatory legal provisions relating to caste, ethnicity and publish the report and submit to the GoN. According to the 2012 Progress Report, "*The project supported NHRC process to review laws and Government policies in the areas of education, health, access to natural resources, food and agriculture, family laws, employment and social security, all within the framework of right to equality and non-discrimination as guaranteed by international instruments*". The Evaluation, however, was not able, to confirm progress by the NHRC Legal Division for all these categories of legislative review.

Rather, during 2012, the Project's interaction with the NHRC Legal Division appears to have consisted mostly of supporting the Legal Division's drafting of the new NHRC "Complaint Handling Procedures" and "Compensation Determination Regulation" (2012) as per the NHRC Act. In addition, the Project engaged a consultant to prepare and review the NHRC's reports on "Trafficking in Persons and the Transportation Control Act." The Project did support a meeting in July 2012 between NHRC, representatives from the Ministries, GoN offices and the AGO and lawyers to discuss major areas of intervention regarding legal review and law reform.

As of the beginning of 2013, Project support had not resulted in any strategic approach to legislative review by NHRC. The NHRC Legal Division reviewed the Senior Citizens Act and its bylaws and the NHRC Commission sent recommendations to the GoN about the

Senior Citizens Act identifying gap in the law. Other laws reviewed were the Law on Disability. These activities were completed out of the NHRC’s GoN budget and the SCNHRC Project was not consulted or utilized for this purpose. It was also anticipated that the Project would support NHRC to review the past recommendations of the NHRC and prepare a status report on needed legislative reform. Yet, the target was not met.

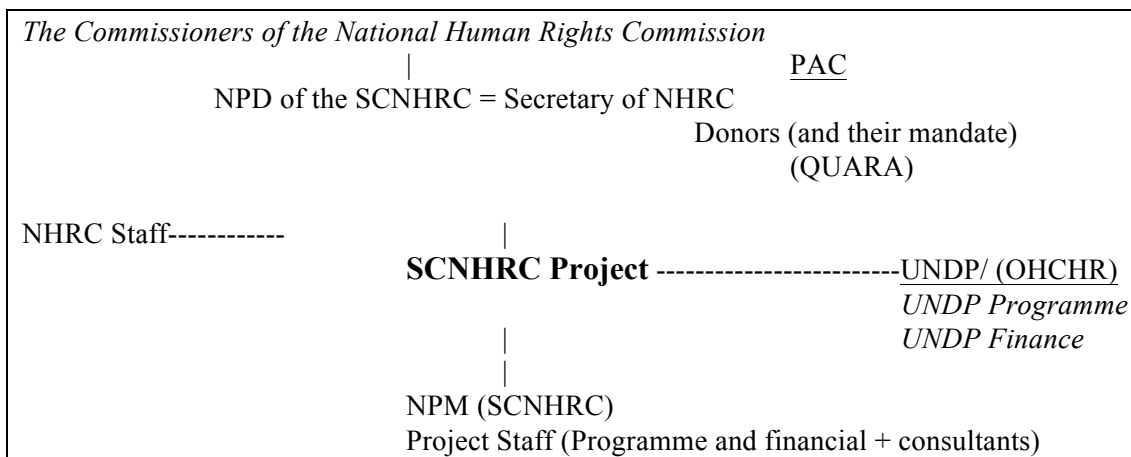
At the Cost Extension of the project, a decision was undertaken by the PAC to fold AR 6 into other Project ARss due to the lack of progress. The reason stated was “shifting priorities” at NHRC.

Without NHRC’s sustained engagement in the legislative process, legislative review and reform of discriminatory laws from a human rights perspective cannot hope to be achieved in Nepal. The Evaluation strongly recommends that any future project support the Legal Division at NHRC and legislative analysis from a human rights perspective.

## B. Project Design, Oversight and Management Arrangements and National Ownership

### Project Design

The original SCNHRC Project document and AWP had many targets and planned activities that overlapped with more than one output or activity result. This is particularly seen between Activity Results 4 and 5. As a result, there appears to have been a lack of clarity within the project and some activities were counted as “capacity building” activities during the life of the project, which were indeed not directed at building the core capacity of the NHRC itself, but the capacities of CSOs, police, etc. Such activities focused the attention of the project’s resources “outside” of the NHRC, rather than building NHRC’s internal capacity.



### Project Oversight and Management

The Project exists within a “universe” surrounded by NHRC, the Commissioners, its Secretary –who serves as the SCNHRC Project’s National Project Director (NPD)— and NHRC staff, the Project Advisory Committee (PAC), UNDP, OHCHR and Donors. Each of these entities makes its own sets of demands upon the SCNHRC Project and the National Project Manager (NPM).

The Project has lacked an official mechanism to report to the Commission independently and directly. Currently, it is even difficult for the NPM to meet with Commissioners without the

NPD's permission. NPD's in the past have sometimes treated the NPM as one of his staff members; the current NPD is more open to advise from the NPM. It is very important for the Project to be independent from any influence of one the institutions involved with it on a day-to-day basis.

The Project ideally should be viewed as a team of experts. In the present scenario, however, UNDP has tended to take on an oversight role and the NPD has enjoyed wide latitude to instruct the SCNHRC Project on its day-to-day activities, priorities and interventions. The Project has in fact had the lowest rank and least space to make institutional changes, despite the fact that the Project's staff is comprised of experts in their respective fields.

#### Role of UNDP as the SCNHRC Project's Implementer

According to the reports of the QUARA, although the project was signed on 4 August 2009, the National Project Manager was not recruited until December 2009 and the Project Team was only completed with the arrival of the Project Officer on 8 February 2010, i.e. after the end of the mission which this report covers. Given the small size of the Team (4 staff), the absence of the Project Officer contributed to further delay in the launching of the activities of implementation. The QUARA praised the National Project Manager and staff for being able to launch project activities as early as 5 February 2010. The NPM and UNDP devoted extensive time to refining the Work Plan attached to the project document, and the preparation of the related annual and quarterly work plan of activities under the project. UNDP thereafter fulfilled the role as project implementer, responsible for overall programme and finance and, in partnership with OHCHR, the delivery of technical advisory services.

NHRC has expressed to the Evaluation Team its overall high-level of satisfaction with UNDP and has a clear preference to continue to utilize UNDP as its implementer of choice. NHRC is familiar with UNDP guidelines and procedures and, furthermore, considers UNDP in a superior position to mobilize international technical expertise. The Evaluation supports this view and recommends that UNDP continue to be the implementer of a future project.

Yet, UNDP should ensure that improved management mechanisms are put in place going forward in any new Project. These should include: a) more customized indicators; b) realistic and appropriately scaled and sequenced RRFs and AWP; c) more demanding results-based M&E and reporting that actually responds in an objective manner to the Project document and the AWP for a given year; d) proactive management from UNDP's side; e) a willingness to "advocate" both with NHRC and the GoN for change within NHRC; and f) mechanisms to ensure that Project funds are used in a highly-strategic manner, rather than responding to ad hoc requests from the NHRC Secretariat. Any new Project must make clear to NHRC that there will be clearly defined limits going forward and that NHRC for its part will be required to make full disclosure whenever requested of its finances and budgets and report for each activities what % of GoN funds were used and what % of project funds were used. UNDP for its part needs to put in place a system for preserving the institutional memory of the Project over time.

The Evaluation has conducted a detailed line-by-line review of all AWP, Progress Reports and QUARA reports generated during the life of the Project. The Evaluation seconds the QUARA's finding that the AWP were overly ambitious, contained overly broad indicators of success and were not realistically scaled. As drafted, the AWP contain far too many activities to be implemented completely within the time frames given.

It is also the opinion of the Evaluation that UNDP has not been as *self-critical* in its evaluations of its own performance as it should have been. The annual Project Progress Reports for years 2010 to 2014 did not follow any particular format. It is extremely difficult to ascertain from the reports which activities mentioned in the corresponding AWP for that

year were actually completed on time. There is little discussion of activity results that were not completed. Going forward, the Evaluation recommends that Project Progress Reports provide a much more detailed picture of what was accomplished, what was not and the challenges faced by the Project. There needs to be evidence that UNDP has taken to account the critical comments raised by donors during the life of the project.

#### The Role of OHCHR

OHCHR was a major partner in the project, responsible for delivering significant technical advice and mentoring. In fact, when one examines the SCNHRC Project Document and subsequent AWP, it is clear that OHCHR had the primary technical advisory role regarding most core capacity building activities, *not* UNDP.

During the life of the Project, OHCHR delivered key technical advice including its support to joint efforts on the issue of impunity, high-profile exhumations and investigations, staff trainings, the drafting of the National Human Rights Commission Act and support of the Commission's participation in the UPR and the ICC proceedings. The SCNHRC Project was perceived by the QUARA to have played a key role in facilitating an improved level of cooperation between OHCHR and NHRC under difficult political circumstances.<sup>18</sup>

Yet, the way that the SCNHRC Project was designed, assumed *direct in-country* OHCHR support for the entire duration of the project and there was no provision in the original project document for UNMIN's exit from Nepal that occurred in January 2011. When OHCHR was subsequently forced to close its Kathmandu office in March 2012, it was informally agreed that UNDP would take over most of its work. The SCNHRC PAC and OHCHR attempted to minimize the resulting impact upon the implementation of some project activities by hiring three consultants sent by OHCHR to provide support to NHRC in the areas of migrant workers, child rights and human rights of women. According to the QUARA, however, the use of consultants by OHCHR fell short of the expected support role of OHCHR under the Project. Arguably, there should have been a complete Project re-design at the end of UNMIN's mandate in Nepal.

Going forward, OHCHR (in the absence of funding from the Member States at the level of the U.N. Secretariat) is not expected to be in a position to serve as a partner in any future project. OHCHR Geneva now communicates with UNDP and SCNHRC project remotely for the most part; and, for broader human rights issues in Nepal, OHCHR Geneva has *separate communications* with human rights advisers embedded within the Office of the U.N. Resident Coordinator in Nepal.

Yet, NHRC is in need of on-going and direct technical expertise, both for its own internal capacity building and to effectively fulfil its international treaty monitoring obligations. The Evaluation recommends that UNDP and the Donors explore other partnerships to supplement OHCHR capacity. Partnerships with other "A"-status accredited NHIs (particularly from the Asian region) or South-South cooperation should be explored. Different NHIs have different modalities (i.e. some are more focused upon protection than others). The Key will be to select partners for NHRC that meet its own capacity building needs and considering the development context of Nepal.

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<sup>18</sup> It is well known in Nepal that the relationship between OHCHR and NHRC during UNMIN's mandate was a competitive one. NHRC tended to view OHCHR as competing with its Constitutional authority, but at the same time it was dependent upon OHCHR to supply much needed forensic and technical expertise. Meanwhile, OHCHR, was focused on fulfilling its own mandate from the U.N. Secretariat, with a duty to monitor and document human rights violations that was viewed by various political actors in Nepal as undermining NHRC's authority.

The Evaluation notes that the Project QUARA had suggested possible partners for NHRC as the National Human Rights Committee of Qatar; the Human Rights Commission of Malaysia; the Jordanian National Center for Human Rights and the Asia-Pacific Forum for Human Rights. The Evaluation suggests that the NHRC might also wish to look to the National Human Rights Commission of Mexico<sup>19</sup> as a possible partner or source of information. Mexico currently struggles with a host of human rights violations similar to those encountered by Nepal (i.e. ongoing patterns of disappearances, torture, arbitrary detentions as well as routine attacks on men and women defending human rights, journalists and migrants). Mexico's National Human Rights Commission is well respected internationally, and Mexico as a State-party has significant leadership experience on the U.N. Human Rights Council.

#### NHRC's Role and Responsibilities for the Project

The Evaluation noted a lack of coherence within NHRC as to whether the SCNHRC Project is external or internal. Staff at the NHRC central office and Regional offices are knowledgeable about the Project and aware that project resources are available. But for the NHRC, "leadership" has tended to mean only the Commissioners when sitting and making decisions. The relationship towards the Project has largely been to "task" the Project with completing certain deliverables, rather than looking to the Project for mentoring. Also, the Commissioners and GoN have tended to view anything done by the NHRC Secretariat during times in which there is no sitting Commission as subject to scrutiny.

In general, the NHRC and GoN have avoided focusing on full compliance with the Paris Principles-especially with regard to the method by which the Commissioners are appointed. The Commissioners are not recruited on the basis of the Paris Principles, but along the lines of the political parties in Nepal. This has resulted in the appointment of Commissioners who lack the qualifications and background relevant to the NHRC and human rights. In fact, during the last Commission, two of the Commissioners never showed up, but collected the perks of their office.

#### Cost Efficiencies: use of GoN budgetary funds vs. Project funds

According to the reports of the QUARA, the Project achieved even rates of delivery throughout. Yet, it must be noted that the NHRC is currently returning a portion of its budgetary resources each year to the GoN. While in pure dollar terms, the amount of the NHRC GoN budget returned to the Government in any calendar year is small when compared to the budget of the SCNHRC Project, the fact cannot be escaped that the Project is supporting an institution that itself is not using all of its GoN resources to maximum effect. Furthermore, from a sustainability perspective, the Project should have been focusing on supporting NHRC to obtain more GoN funds and spend those funds effectively.

The NHRC received a GoN budget allocation in 2011-2012 of nrs 5.2 million for capital improvement, procurement and maintenance out of which 2.6 million was returned to the Government. For the same year, NHRC received 80.6 million as current budget, out of which 20.7 million was returned. A portion of the current budget (i.e. 7.5 million) was allocated for NHRC's programme work, of which 1.5 million was returned. One million was allocated for NHRC's training programmes, of which 250,000 was returned to GoN. The total budget allocated for staff for 2011-2012 was 40.7 million, out of which 10.7 million was returned to the government.

Similarly, for the year 2012-2013 the NHRC's total current budget was 90.5 million, of which 30.6 million was returned to the government. The budget allocated for program in 2012-2013 was 7.5 million, of which 1.8 million was returned. The amount allocated for training was one

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<sup>19</sup> See, <http://www.cndh.org.mx>



million and 500,000 was returned to the government. The current expenses for the staff for 2012-2013 were budgeted at 50.3 million, of which 20.6 million was returned to the Government.

The Finance Division of the NHRC estimates that it is likely to return an even higher proportion of its budget to GoN in the fiscal year 2013-2014, due to the fact that the Government staff ratio at NHRC is reduced and so are the NHRC's programs. [Source Government of Nepal Red Books 2011/12, 2012/13, Annual Reports 2011/12, 2012/13 of the NHRC and Interviews].

The Evaluation's interview with the Finance Division of the NHRC revealed that NHRC staff at the National and regional levels prefer to spend Project funds, rather than GoN funds for most activities whenever available. Project funds come with less red tape, are more quickly mobilized and generally available in greater amounts than GoN budgetary funds at NHRC. Other factors have also driven NHRC staff towards using Project vs. GoN funding. For example, the DSA paid for field visits financed with GoN/NHRC budgetary funds is nrs 900 per day, whereas it is 1800 per day under the Project. NHRC staff must also present hotel receipts when using GoN/ NHRC funds, but there is no need to produce such receipts under the Project. As stated above, however, in relative terms the total amount of GoN funding is still relatively small in comparison to the Project budget. The NHRC Finance Division states that, with current levels of GoN funding, it would be difficult for NHRC to implement substantive programs and technical aspects on new and emerging issues without Project resources.

The Evaluation has strongly recommended that UNDP and Donors inject some measure of financial conditionality for any further project. NHRC must be required to show how much is spent from government funds vs. project funds and have an obligation to supply such information to the Donors.

#### Modality of Project Execution: The Continued viability of "NEX"

Another key issue is what should be the appropriate modality of execution for a future project. While the NHRC Secretariat is highly satisfied with "NEX", the Evaluation Team received opinion from various Stakeholders that a different execution modality should be considered.

As noted elsewhere in this Evaluation, the QUARA questioned whether the SCNHRC Project has in the past at times substituted capacity, rather than built capacity. Several Stakeholders interviewed by the Evaluation stated that if NEX is continued, then it should truly be NEX and not circumvented by the Project hiring consultants to fulfil tasks that should be being completed by the NHRC itself (even if under the direction of a short-term consultant who can act as a "mentor").

Yet, discussion of the NEX modality may very shortly become "moot" as UNDP has recently amended its Financial Regulations and Rules (FRR) in line with a request from the U.N. General Assembly to provide more effective support at the country level for the execution of NEX projects and to decentralize implementing activities at the country level. Thus, NEX is now called "NIM" (National Implementation Modality).

NIM, however, requires that the national authorities have "the technical and administrative capacity to assume the responsibility for mobilizing and applying effectively the required inputs in order to reach the expected outputs." NIM is at the same time, expected to build the capacities of the national implementing partner to execute project funds.<sup>20</sup> It is not clear

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<sup>20</sup> More information about NIM may be found at:

<<https://info.undp.org/global/popp/frm/pages/national-implementation-nim-Finances.aspx>>

to the Evaluation that the NHRC Finance Division yet has such capacities. Going forward, it will be absolutely crucial that UNDP and Donors focus on the NHRC Finance and Human Resources Divisions to ensure that capacity exists to handle the NIM execution modality.

### PAC

Throughout the SCNHRC Project's life, the Project Advisory Committee (PAC) has had regular meetings. The PAC effectively fulfilled its role to exercise regular supervision of the Project. The notes of these meetings were transmitted to the NHRC. The Donors were at times particularly critical of UNDP's management and implementation of the Project—especially of UNDP's *results-based* reporting. [Note: As noted by the Evaluation elsewhere in this report, there was no format for the annual Project Progress Reports and it is not always clear from reading them what was left *undone* at year's end when compared to the AWP for that same year. This may have contributed to the Project seeking activities of “least resistance”, rather than maintaining focus on NHRC's core capacities]. The PAC made a decision in 2013 to shift some of the Project's resources away from supporting a “Human Rights Friendly” Constitution and towards supporting monitoring of the elections for human rights violations. This decision of the PAC appears to have been well founded. The PAC further made adjustments to the Project's design in 2013 to refocus the Project on building NHRC's core administrative capacities for the year 2013 to June 2014 in line with earlier recommendations made by the QUARA. This Evaluation Report further discusses the impact of UNDP results-based reporting upon Donor relations in Section E, *infra*.

## C. Sustainability

While the SCNHRC Project has fulfilled a crucial role in the establishment of the NHRC and resulted in many significant outputs to date (as outlined above), the ready availability and unconditional use of *Project funds* for NHRC activities is, however, a “double edged sword” from a sustainability perspective. In other words, when the NHRC utilizes Project funds instead of GoN funding, it avoids having to answer questions as to its own capacity or build the capacity of its Finance Division to routinely negotiate GoN “red tape” or challenge those processes and procedures. Similarly, when the NHRC uses Project funds to carry out activities that would otherwise be challenged by the GoN on political grounds, it avoids carving out political space for itself within Nepal and fully implementing its Constitutional mandate.

The NHRC, with donor support, has survived difficult challenges to its existence and authority since its inception. The Project has acted in when NHRC couldn't operate quickly enough or flexibly enough or lacked staff to achieve urgent results (i.e. exhumations). It has emerged from a conflict to a post-conflict era in Nepal. Yet, on a day-to-day basis, the Project has not fulfilled a true mentoring role within NHRC. Going forward, it will be up to UNDP and Donors to ensure that the NHRC uses the Project in a different way that can ultimately promote and build NHRC capacities, rather than serve as a substitute for them.

The issue of dependence of NHRC on the project funds raises a need for clear guidelines on when and under what circumstance the Project funds will be utilized. For example, the current Project is fulfilling essential management and administrative functions (i.e. booking hotels, hiring consultants, sending out invitations, etc.) that could be done by NHRC. Meanwhile, the Project's Communications Officer (a consultant) was recently used to directly *substitute capacity* that NHRC itself was perceived as lacking (i.e. preparation of the special reports on child rights, women's rights, all of which were “supplied” by the Project to the NHRC). This was a substitution of capacity, not capacity building.

Also, as noted above, NHRC returns on average 50% of its GoN funded programme budget to the GoN annually. This obviously has implications for cost-efficiency, programming and sustainability. NHRC has historically relied upon Project funds instead of GoN budgetary allocations for a variety of reasons including: a) Project funds are more expeditious and can be mobilized quickly thereby circumventing the GoN's bureaucratic and financial processes; b) the Project has been able to fund significant human rights investigations, such as exhumations, that would otherwise likely be impossible using GoN funding due to delay and political opposition; and c) the project has historically paid a higher DSA rate for trips into the field, than the GoN, thus, driving NHRC to use project funds for field missions.

As of 2014, the NHRC is set for the first time in its history to be able to become fully staffed. The institution certainly merits continued international support and may need it for many years to come; but such support, if provided, should come with a clear exit strategy for a phased withdrawal or reduction of donor support and transitioning the NHRC to full GoN funding eventually. Going forward, the focus of continued international support should be on building the NHRC's core capacities to execute those funds effectively, to build its organizational management, budget and technical capacities and to interact with other GoN entities to advocate for human rights and implement its recommendations.

#### **D. Gender and Equality Sensitivity and Inclusion (GESI)**

NHRC has a clear mandate as Nepal's national human rights institution to promote and protect women's rights, despite the existence of the National Women's Commission. Upon reviewing the SCNHRC Project AWP and its activities to date, it is evident that the Project has worked on issues pertaining to women and vulnerable groups. For example, the Project completed trainings for the staff of the NHRC on gender sensitivity. The Project also worked with Nepal Police to raise awareness on SGBV issues. Furthermore, the NHRC Strategic Plan (formulated with the technical assistance of the Project) includes provision for effective implementation of advocacy with a long-term focus to develop anti-discrimination best practices directly related to women and vulnerable groups.

The Evaluation finds, however, that the Project support could have been more targeted to women's empowerment and how women can actually claim rights. For all the Project support, Gender remains the weakest point in the NHRC's work to date. There is very little evidence of the NHRC acting as a human rights commission in response to female victims rights and SGBV. [note: about 75% of complaints against the police are SGBV, but NHRC is not addressing this trend globally and in a very public way].

A question also exists as to the current capacity of the NHRC regional offices to work with local justice sector actors (i.e. police, etc.) on women's rights. Nepal's rural and remote regions continue to experience high incidences of gender and caste-based discrimination. In the Terai and mountainous regions SGBV, including witchcraft trials persist. The practice of "*chhaupadi*" has never ended, despite its being outlawed by the Supreme Court of Nepal in 2005. Caste-based discrimination based upon "Untouchability" in the Far West Region is particularly high. A key issue is how Regional NHRC offices can better feed data back to NHRC central (i.e. statistics, SGBV incidences, etc.).

Going forward, it will be important to link the NHRC mandate under the Constitution on Social, Economic Rights and Cultural rights with women and ethnic minorities in Nepal.

From a UNDP perspective, the UNDP Rule of Law and Human Rights Strengthening Programme can compliment the SCNHRC Project's activities in this regard and those of any future project. Citizens of Nepal on the entire territory must feel that their rights are protected by NHRC. NHRC public advocacy and media campaigns need to reach rural and inaccessible areas. Any future support to NHRC should link with the Women's Commission, Dalit Commission and local CSOs with a focus on changing the behaviours of local communities so that the vulnerable groups can access their rights.

Any future project should include activities on reviewing legislation from a women's rights perspective and ensuring HRBA in all Ministries, but especially the Ministry of Health. As recommended elsewhere in this Evaluation Report, NHRC should cooperate with the National Women's Commission and civil society to monitor compliance with international treaties and to protect women.

Finally, the passage of the Human Rights Bill in 2012 has opened up new categories of persons (i.e. sexual minorities) that NHRC should focus upon. The NHRC's mid-term review of UPR Recommendation implementation (September 2013) also provides an opportunity for the NHRC to strengthen its ability to reach such vulnerable groups.

## **E. Donor Relations**

The principal Donors interviewed by the Evaluation were uniform in their opinion that while the SCNHRC Project had performed extremely well on certain key deliverables (i.e. HRBA, exhumations, UPR advice and review, etc.), overall, the project had not met expectations for building the core administrative functions of the NHRC. During the life of the Project, the Donors instituted the QUARA to monitor progress and results achieved to date. As a result of the QUARA's findings, the Donors and UNDP agree to fine-tune the project outputs and activities as of the Cost Extension for 2013. Donors worked quite closely with UNDP and the Project to strengthen the project's log-frame at Cost Extension.

As of 2014, Donors continued to express concerns regarding the NHRC's continuing inability to perform core administrative functions and to fully implement its mandate. There is an impression, which was largely confirmed by the Evaluation, that the Project over-relied upon Consultants to prepare deliverables and hand them to NHRC, but that NHRC capacity was not built in the process.

Beyond this it is perceived that UNDP has not been self-critical in its evaluations of its own performance and contribution to the Project. The Evaluation found that the Project Progress Report for 2012 and 2013 were not written according to the Outputs and Results Activities. And in fact, in general, the Project Progress Reports have not adhered to a specific format or tracked progress against the AWP, but in fact report only on activities that were accomplished or partially accomplished. Upon review of all AWP, it became clear to the Evaluation Team that the AWP were overly ambitious and contained many activities and sub-activities that were not able to be implemented within the time period given. There are several incidents of the same activities being repeated in subsequent year reports. The Evaluation found the QUARA's reports to be much more professionally written and provide a more objective assessment of what was accomplished in any given year and what was not.

The Donors have a Human Rights Core Group (chaired by the Danish ambassador). The Evaluation finds that it is imperative that Donors use the Group as a vehicle to put pressure on the GoN at a political level to appoint NHRC Commissioner in line with the Paris Principles. Donors should also make clear that appointment of competent Commissioners and the

passage of the Human Rights Service Bill will be a preconditions to full funding of any future Project.

## **F. The Current political and legal context of NHRC**

This Section of the Evaluation Report sets forth some of the main political and legal issues facing the NHRC as of 2014.

### Appointing the 4<sup>th</sup> Commission of the NHRC

While on paper, the normative procedures and frameworks set by the GoN for the appointment of NHRC Commissioners fall in-line with international standards, in practice this appointments process has never fully complied with the Paris Principles. Political patronage and lack of an objective “vetting” process have hindered the GoN’s ability to appoint competent and responsible Commissioners.

Under the Interim Constitution of Nepal, the Constitutional Council<sup>21</sup> is responsible for appointment of the Chairperson and Commissioners of the NHRC. The appointment of the first Commission in 1998 was based on a consensus with the existing political forces, but after only a short time a conflict among the sitting Commissioners arose that damaged the NHRC’s public image and internal capacity to perform its mandate. The second Commission was directly appointed in 2004 by the King and was effectively “boycotted” by civil society in Nepal in protest.

The Third Commission was appointed in 2007 by the Constitutional Council, but over the objection of some CSOs, which cited a flawed process of appointment. These CSOs objected that the human rights community did not know the names of some candidates for NHRC Commissioners. An ensuing internal conflict among the commissioners—once they had been appointed— further damaged the institutional reputation of the Commission.

In fact, every Commission appointed thus far in Nepal has been subject to the criticism that they are subject to political “capture” and no Commission has yet been successful in maintaining its internal unity once seated due to their political affiliations and/or personal interests

After the elections of the 2<sup>nd</sup> Constituent Assembly (CA) in 2014, the Constitutional Council (CC) is due to appoint a new Chief Justice, NHRC Commissioners and Commissioners of the other constitutional bodies. The “Constitutional Council (Functions, Duties, Power and Procedures) Act”, 2010 that governs the appointment of the constitutional bodies does not provide any mechanism for pre-appointment vetting of candidates. Hence, the candidate for NHRC Chairperson is normally a person who is generally known to the Constitutional Council members who are quickly able to reach a consensus on the appointment. This person is usually the retired Chief Justice. The other Commissioners are appointed, based upon the recommendations of the political parties through the members of the Constitutional Council.

The Evaluation recommends that in order to more fully comply with the Paris Principles, the Constitutional Council should advertise for the posts of NHRC Commissioners, have a process for vetting and short-listing prospective candidates and ask them to submit their views on the NHRC and the duties inherent in the office. Only then should the Constitutional Council make selections for appointment, based objectively upon candidates’ performance

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<sup>21</sup> See Article 149 of the Interim Constitution of Nepal, 2007. The Prime Minister heads the Constitutional Council and its members are the Chief Justice, Speaker of the Legislative-Parliament, three ministers from different political parties and leader of the opposition in Legislative-Parliament.

and records. Selections would then be sent to the Parliament for parliamentary hearing.

The Parliamentary hearing process is currently so weak that there has to be a two-thirds majority to disapprove any appointment in the post of the Constitutional bodies. Further, some Commissioners come from the segment of Nepalese civil society that has historically been devoted solely to supporting the political parties in Nepal. Therefore, the Constitutional Council must be encouraged to make the appointment process more legitimate, through a pre-appointment scrutinizing process. As stated elsewhere in this report, the Evaluation believes that the Donors should raise their views at a political level in favor of a pre-appointment vetting process free of the undue influence of Nepal's political parties.

#### The Situation of NHRC Staffing and the importance of the Human Rights Service Bill

As outlined above, the NHRC has suffered from a chronic shortage of staff that has significantly impeded its work and the ability of the SCNHRC Project and predecessor projects to build capacity within the institution in a sustainable way.

The Supreme Court of Nepal recently issued a ruling in the case (*Rammaya Lamichane vs the NHRC*, writ no. 067-WS-0060, Supreme Court of Nepal, 2013) involving a challenge to NHRC by-laws/regulations concerning recruitment/reappointment and hiring of new staff. The underlying facts at issue involved NHRC's advertisements for the recruitment of staff wherein NHRC had positively discriminated in favor of existing NHRC staff by amending the Service Regulation of the NHRC. A group of candidates who were not hired challenged the NHRC regulation and recruitment process, alleging that it violated their rights to equality and equal opportunity. Highlighting the autonomous nature of NHRC, the Court ruled in NHRC's favor holding that the NHRC's Constitutional and statutory powers empowered it to recruit its staff according to its own regulations, which included the ability positively discriminate in favor of persons who had previously served as NHRC staff members. The Court's decision now opens the way for NHRC to continue the recruitment and hiring process that was stayed by order of the Supreme Court previously pending a decision in the case. Alternatively, NHRC is free to start a fresh recruitment process to hire new staff according to its own internal by-laws/regulations. Thus, the Court's decision effectively removes what had been a major impediment to the exercise of the NHRC's mandate, full staffing and functioning.

While the NHRC is now free to hire staff based upon its own internal regulations, it also would prefer to do so under legislative authority. Thus, the NHRC has submitted a "Human Rights Service Bill" to the GoN for consideration. The Bill would regulate the recruitment, hiring and tenure of NHRC staff members. As of March 2014, the GoN had given assurances before the U.N. Human Rights Committee in Geneva that it intends to table the Bill in Parliament.

Most stakeholders interviewed (including former Commissioners and a former Chief Justice of Nepal) agree that the recent Supreme Court decision affirming NHRC's autonomy to hire based upon its own internal by-laws or regulations would empower NHRC to hire on its own if it so chooses. The OPM COM, however, clarified this, stating that it is the strong view of the OPM COM that such hires could only be temporary in nature as they would not fully come under the Civil Service scheme. However, in the view of the OPM COM, hires under a Human Rights Service Bill would be able to be permanent staff. Taking this into account (and given the prior litigation and challenges that were raised previously when NHRC attempted to hire staff), all parties interviewed by the Evaluation including the NHRC Secretariat, strongly believe that it is in the NHRC's interest to seek passage of a Human Rights Service Bill. The GoN has indicated that it intends to table the Bill in Parliament. This was affirmed by the OPM COM that states that it cannot envision any substantial opposition to the Bill being tabled.

Thus, there remains speculation and uncertainty surrounding NHRC staffing. NHRC Staff currently has no security, because they are not appointed under the Public Service Act. They need the Human Rights Service Act to be passed. The Evaluation has strongly recommended that this be a precondition to further Donor support. In fact, the failure of the GoN to pass such legislation within the next six months may place NHRC's "A" accreditation status at risk.

If UNDP and Donors "back down" from insisting on passage of the Human Rights Service Act as a condition to their support of NHRC, they run the risk of continuing to fund capacity building at an institution that is either not fully staffed or staffed by employees on temporary contracts without full GoN benefits. The Evaluation respectfully submits that UNDP and Donors have built upon shifting sands at NHRC for far too long. It is time for a change in the rules of the game.

#### The Implementation and Enforcement of NHRC Recommendations

As of 2014, the relationship between NHRC and the OPM COM does not appear to be as formalized as it could be. OPM COM continues to decline to act on a number of NHRC recommendations; and NHRC continues to supply only one-page summaries of its recommendations in letter format on the grounds that providing more detailed information could compromise the confidential nature of the complaint.

It is the qualified opinion of this Evaluation that one page summaries are insufficient for purposes of permitting the OPM COM to determine how to act on NHRC recommendations. Going forward, SCNHRC should support NHRC to develop better reporting procedures and guidelines pertaining to confidentiality. All entities involved in the investigative, remedial or prosecutorial "chain" (i.e. NHRC, OPM COM and OAG) should coordinate to ensure that policies and procedures for the reporting and custody of confidential information are in place.

The Supreme Court in March 2013 recently gave a landmark decision (*Om Prakash Aryal vs. the Government of Nepal*, writ no. 068-WS-0063, Supreme Court of Nepal, 2013) on the status of the NHRC. Along with many other issues discussed in the case, the Court directed that the Office of the Attorney General (OAG) must prosecute based upon NHRC recommendations. The Court held that the discretionary power of the OAG (on whether or not to prosecute a particular case) applies only in *state cases*; and, further, that the OAG must respect Article 132.2(c) of the Interim National Constitution, which mandates the NHRC to recommend prosecution on human rights violations cases. In reaching its holding, the Court further found that the mandate of one article of the Constitution cannot be diminished by any other article of the same constitution; therefore, Article 135(2) of the constitution cannot be used to defeat the provisions of Article 132.2(c).

The Court's decision enables the NHRC to insist that its recommendations are prosecuted by the OAG. As a result, NHRC now has a responsibility to use this power and work together with the OPM COM and the OAG to follow through with prosecutions based upon NHRC recommendations per the provisions of the Interim National Constitution Article 132(c).

#### NHRC's lack of "Blacklisting" and "Departmental Action" 2009-2014

As of 2014, despite SCNHRC Project support NHRC had never fully availed itself of all the "tools" of protection and enforcement at its disposal. For example, NHRC has the power to "Blacklist" human rights violators. This is a power that the NHRC has at its disposal per Section 7, National Human Rights Commission Act. NHRC is not dependent upon the approval of the OPM COM, AOG or any other ministries of government in order to deploy this powerful tool of enforcement. Yet, to date NHRC has not once utilized this power. The principal reason that NHRC has failed to blacklist individuals is that it has no clear

internal guidelines on when and under what circumstances blacklisting would be appropriate. Thus, every time this idea has been raised, different Commissioners have objected for various reasons.

The Evaluation recommends that UNDP and donors explore ways to support NHRC to develop the criteria and, if required, guidelines to implement Section 7 whenever appropriate. In order to be able to exercise the Blacklist power, the NHRC must be able to properly investigate the cases and make full well reasoned and documented recommendations. Importantly, OPM COM does not seem to have any objection to NHRC exercising its “Blacklisting” power.

So called, “Departmental Action” is another tool of enforcement that NHRC has at its disposal, whereby, NHRC can independently request any GoN agency to take action against one of its staff who is determined by NHRC to have committed a human rights violation. To date, NHRC has not fully availed itself of “Departmental Action.”

With the recent Supreme Court decision finding that the AOG can prosecute on the basis of NHRC Recommendations (see discussion above), the Project and any future project should strengthen NHRC’s core protection mandate (i.e. NHRC findings and recommendations for “Departmental Action” and recommendations for Prosecution). Yet, all of the above core protection mandates rest upon and require that NHRC investigations adhere to evidentiary rules and standards. The Evaluation recommends that going forward, the project support NHRC to more fully develop its guidelines relating to investigation, evidence and reporting to the OPM COM.

Protection is the paramount duty of NHRC. Any future support to NHRC should be predominantly directed to strengthening its core protection mandate. It is recommended that NHRC hold a conference/workshop with wide participation of Stakeholders to talk about the recent decisions and their implementation.

#### Other Human Rights Issues on the Horizon: Truth and Reconciliation Commission and Commission on Disappearance

Transitional justice is an outstanding component of the Comprehensive Peace Agreement. Since 2006, issues concerning Transitional Justice, the Truth and Reconciliation Commission and Commission on Disappearances have been heavily debated in Nepal and reported frequently in the media.

The Government tabled two different bills on the TRC and COD in the previous Legislative-Parliament in 2011 and discussions were held at the Legislative Committee of the Legislative-Parliament. Thereafter, a Task Force formed by the Legislative Committee submitted its report to the High Level Political Committee of the Constituent Assembly.

Some contentious issues arose (especially concerning provisions in the Bills that defined certain categories of offences as exempt from GoN amnesty). These issues were unable to be resolved at the political level. Due to its failure in drafting a new constitution, the CA was dissolved on May 28, 2012 after its original and extended total tenure of 4 years. At the time of the dissolution of the CA, the Government withdrew the two Bills and combined them into one “Ordinance”; which was submitted to the President for promulgation.

Due to mounting national and international pressures, the President returned the Ordinance to the Government with his comments. But, the Government, as part of a political deal among and with other political parties, submitted the revised Ordinance to the President to promulgate only in 2013. This caused nearly a year’s delay. The victims of the conflict challenged the Ordinance and the Supreme Court granted stay order not to implement it due



to its controversial amnesty provisions. The Supreme Court after extensive hearings issued a final judgment in 2014, citing the constitutional and international obligations of Government to provide justice to the victims and *not to grant amnesty* in certain serious and international offences. The government has tabled the Bill on TRC and CoD to the Legislative-Parliament, but the Bill has been criticized as not following the decision of the Supreme Court. The Ordinance that was struck down by the Supreme Court in 2014 contained a provision mandating GoN to follow up on the implementation of recommendations of the TRC and CoD.<sup>22</sup>

NHRC formerly worked in this area, but is not discussing these issues currently. For example, NHRC prepared an annotated report on the TRC that was relied upon by the Supreme Court and this increased NHRC's reputation in the mind of civil society organizations. The Evaluation finds that since NHRC was directly involved in investigation and documentation of the conflict related cases, there must be a provision in the enabling legislation to establish TRC ad CoD to obtain NHRC support in finding truth and to receive any complaints after the expiry of such commissions. The Evaluation recommends that any future support to the NHRC must also be directed to develop its capacity to work with the TRC and CoD and to deal with the request of such commissions and implement their recommendations.

#### Human Rights Committee of the Parliament

UN DPA is currently pushing for the establishment of a Human Rights Committee in the Parliament (this would be the first time that the Parliament of Nepal would have such an entity). One function of this new committee would be to monitor how the GoN is following-up on UPR recommendations. The new committee will have all the powers of Parliament at its disposal. It is expected to be operational in 2014. This could be an area of future UNDP and Donor support under a new project.

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<sup>22</sup> Note: The Nepal Bar Association has advocated for a victim's rights sensitive TRC and is playing a role on commenting on legislation. In its most recent meeting the Bar Association passed a resolution that Certain offenses: rape, murder, torture and disappearance are generally considered as international human rights violations and will not be granted amnesty. The opinion of the Bar Association is well respected in Nepal.

## 8. Conclusions and Recommendations for a Future Project

### 1. Principal Findings and Recommendations

1. Despite significant challenges (staffing levels; delays in the Commission, etc.) the project has contributed to many exemplary outputs and activities of the NHRC and helped it to become more visible during 2009-2014. For example, IT and office support to the NHRC Strategic Plan; support to certain key investigations and exhumations; the formulation of HRBA training manuals; support to the UPR process and other international reporting; crucial monitoring of the elections from a human rights perspective and numerous focus groups, trainings and workshops on human rights and publications were all highlights of the 2009-2014 period. Yet, the SCNHRC project has not managed to build *a sustainable core capacity* of the NHRC to protect and promote human rights to the extent that one could have reasonably expected from a project of such duration and magnitude; and based upon the stated goals of the original Project Document. While the Evaluation's overall and strong recommendation is that UNDP and Donors should continue to support the NHRC, the Evaluation is recommending a number of conditions and considerations for the remaining months of SCNHRC and any future project.
2. Low NHRC staffing levels and attrition significantly hindered the Project from being able to transfer knowledge and capacity to NHRC to the extent that might have been possible within a fully staffed organization. The Evaluation strongly recommends that Donors and UNDP condition further full international support to NHRC on several factors: 1) the selection of new Commissioners in-line with Paris Principles; 2) Parliament's enactment of the Human Rights Service Bill; and 3) NHRC commencing hiring of new staff on full contracts according to its strategic needs. An option may be for NHRC to begin to hire staff immediately and then convert their contracts to permanent contracts once the National Human Rights Bill is passed. The Evaluation further submits that UNDP and Donors should in the interim consider a six months to one year "Bridging phase" for any new project during which UNDP would support the NHRC on the achieving the above conditions, as well as investigating the remaining back-log of conflict related cases, investigating existing and new complaints and meeting NHRC's international reporting obligations. Project activities for training, capacity development, publications and outreach activities would be "suspended" until such time as the fundamental conditions are in place for hiring permanent staff.
3. The effectiveness of the NHRC ultimately depends entirely on whether or not competent Commissioners are appointed within a reasonable period of time in line with the Paris Principles. Prior Commissions were not recruited on the basis of the Paris Principles, but along the lines of the political parties and patronage in Nepal. Furthermore, it appears that in the last Commission two of the Commissioners never showed up in meetings of the NHRC, but still received their salary and perks. The GoN has tended to view anything done by the NHRC Secretariat during times in which there is no Commission as not being valid. There needs to be an understanding/regulation/by-law empowering the NHRC Secretariat to act with legitimacy for some administrative functions in the absence of Commissioners. The Evaluation recommends that UNDP and Donors create the space for further support to NHRC, by making it publicly known that further support to NHRC is dependent upon a transparent, non-

partisan process of appointing Commissioners who meet certain minimum qualifications and criteria.

4. OHCHR's departure from Nepal has curtailed its ability to render technical support to the SCNHRC Project. It is not clear to the Evaluation that UNDP was able to fill the "gap" left in project activities following OHCHR's departure from Nepal. Going forward, OHCHR is not expected to be in a position to serve as a partner in any future project. The Evaluation recommends that UNDP, Donors and NHRC explore other partnerships to supplement and/or replace OHCHR's formal role in the Project. Partnerships with other "A"-status accredited NHIs (particularly from the Asian region) or South-South cooperation should be explored. Different NHIs have different modalities (i.e. some are more focused upon protection than others). The Key will be to select partners for NHRC that meet its own capacity building needs and considering the development context of Nepal.
5. A reading of the AWP for years 2009-2014 makes clear that the Project was overly ambitious in its goals and scope. It attempted to programme on nearly every single aspect of the NHRC's mandate with an ever-expanding array of promotional activities, rather than focusing in a strategic way on key elements of NHRC's mission. Many activities could not be completed within the time frame allotted during any given year in the Project's life. Furthermore, the original project document and AWP have many targets and planned activities that overlap with more than one output or activity result. This is particularly seen between Activity Results 4 and 5. As a result, there appears to have been a lack of clarity within the project and some activities were counted as "capacity building" activities during the life of the project, which were in fact not directed at building the core capacity of the NHRC itself, but the capacities of CSOs, police, etc. Such activities focused the attention of the project's resources "outside" of the NHRC, rather than building NHRC's *internal capacity*. During the life of the Project, it has also at various times completed activities for the NHRC Secretariat that the NHRC could have completed for itself. [Note: this was observed in several reports of the QUARA][See, 6<sup>th</sup> QUARA report]. The Evaluation Recommends that UNDP and Donors make clear when and under what circumstances Project resources can be used by NHRC. Project resources should be utilized *predominantly* to build NHRC's core capacities at the national and regional offices in a well-coordinated and strategic manner. The emphasis of the project should be building NHRC's internal capacity to manage funds and human resources and to conduct monitoring and investigation.
6. As referenced above and as noted by the Project's QUARA, the resources of the Project were utilized predominately for "promotional" activities, rather than "protection" activities. It was suggested by the QUARA as early as 2012, that the project shift its priorities and "rebalance" its activities to become more "protection" driven. While it is clear that the Project did support NHRC investigations in a number of instances (even urgent and high-profile investigations such as the exhumations undertaken with Project resources and technical expertise), the Evaluation Mission highly recommends that going forward, UNDP and Donors continue to place the Project's focus primarily upon NHRC's protection mandate, along with NHRC's promotion mandate.
7. The NHRC has expressed to the Evaluation Team its clear preference to continue to utilize UNDP as its implementer of choice. NHRC is familiar with UNDP guidelines and procedures and, furthermore, considers UNDP in a superior position to mobilize international technical expertise. The Evaluation

supports this view and recommends that Donors and the NHRC continue to use UNDP as an implementer. Yet, UNDP should ensure that improved management mechanisms are put in place going forward in any new Project. These should include: a) more customized indicators; b) realistic and appropriately scaled and sequenced RRFs and AWP; c) more demanding results-based M&E and reporting that actually responds in an objective manner to the Project document and the AWP for a given year; d) proactive management from UNDP's side; e) a willingness to "advocate" both with NHRC and the GoN for change within NHRC; and f) mechanisms to ensure that Project funds are used in a highly-strategic manner, rather than responding to *ad hoc* requests from the NHRC Secretariat. Any new Project must make clear to NHRC that there will be clearly defined limits going forward and that NHRC for its part will be required to make full disclosure whenever requested of its finances and budgets and report for each activities what % of GoN funds were used and what % of project funds were used. UNDP for its part needs to put in place a system for preserving the institutional memory of the Project over time.

8. Upon reviewing the AWP of the Project it appears that the Activities/actions labelled capacity building were in most instances very broad trainings on human rights with only a few capacity building being done for individual departments at NHRC (i.e. Finance). As of 2014, many Divisions at NHRC still lack inter-office procedures. There are also areas of overlapping work between the NHRC Divisions (i.e. Collective Rights and Investigations)(i.e. Investigations Divisions (CEDAW) and Gender and Inclusion Division). As of 2014, NHRC still requires better internal procedures and guidelines to determine when the Investigations Department should investigate and/or not investigate. At the moment each Division views its mission differently. Also standardizing the NHRC capacity for Human Resources and how to update their knowledge regularly on new areas of engagement remains an issue. The Evaluation recommends that UNDP, Donors and NHRC base a future project upon a thorough and highly detailed mapping of the capacity gaps and needs of each NHRC Division and Regional offices. The current work of the SCNHR Organizational Development Advisor (Consultant) can inform this process.
9. As of 2014, the majority of recommendations of the NHRC are not being taken up by the OPM COM at an acceptable rate due the fact that the NHRC releases only a one page summary of its recommendation and findings which is not sufficient in many cases for the OPM COM to determine the underlying facts of the allegations, whether or not a human rights violation did in fact occur or, for that matter, whether the NHRC's recommendation is based upon a full investigation or only hearsay. It is perceived by a variety of stakeholders that the quality and format of NHRC recommendations remains poor. There is no uniform practice at NHRC on writing judgments and recommendations. Some decisions are written like a court decision; others a one page summary and sometimes just few sentences. And no agreed upon modality of recommendation. Going forward, the project should seriously address this deficit. The Evaluation recommends that NHRC and the OPM COM agree upon a standardized minimum format for NHRC recommendations and submissions to OPM COM.
10. With the recent Supreme Court decision finding that OAG can prosecute on the basis of NHRC Recommendations, the Project and any future project should strengthen NHRC's core protection mandate (i.e. NHRC findings and recommendations for "Departmental Action" and recommendations for

Prosecution). Yet, all of the above core protection mandates rest upon and require that NHRC investigations adhere to evidentiary rules and standards. The Evaluation recommends that going forward, UNDP and Donors should support NHRC to more fully develop its guidelines relating to investigation, evidence and reporting to the OPM COM. Protection is the paramount duty of NHRC. Any future support to NHRC should be predominantly directed to strengthening its core protection mandate. It is recommended that NHRC hold a conference/workshop with wide participation of Stakeholders to talk about the recent decisions and their implementation.

11. To date, NHRC has not availed itself of all the “tools” of protection at its disposal. For example, “Blacklisting” is a power that the NHRC has always had at its disposal per Section 7, National Human Rights Commission Act. NHRC is not dependent upon the approval of the OPM COM, AOG or any other ministries of government in order to deploy this powerful tool of enforcement. Yet, to date NHRC has not once utilized this power. The Evaluation recommends that UNDP and donors explore ways to support NHRC to develop the criteria and, if required, guidelines to implement Section 7 whenever appropriate.
12. The Evaluation finds that the SCNHRC project appropriately began to increase focus on Economic, Social and Cultural Rights during the life of the Project. Going forward, it is recommended that UNDP and Donors support NHRC capacity to check the capacities of the respective ministries on the ESCR (i.e. whether they follow the obligations imposed by the ESCR Convention) and facilitate the justiciable remedies for violation of ESCR.
13. The Evaluation finds that Project support was crucial in supporting NHRC to support the UPR process in Nepal and the GoN’s representations in Geneva. [See NHRC mid-term Report on UPR Sept. 2013] Going forward, UNDP and Donors should continue to support NHRC to monitor progress with implementing UPR Recommendations, including the Inclusion of Minorities in the Constitutional Drafting Process.
14. Since 2006, issues concerning Transitional Justice, the Truth and Reconciliation Commission and Commission on Disappearances have been heavily debated in Nepal and reported frequently in the media. Yet, NHRC is not discussing these issues currently. NHRC formerly was working in this area. For example, NHRC prepared an annotated report on the TRC that was relied upon by the Supreme Court and this increased NHRC’s reputation in the mind of civil society organizations. The Evaluation finds that since NHRC was directly involved in investigation and documentation of the conflict related cases, there must be a provision in the enabling legislation to establish TRC ad CoD to obtain NHRC support in finding truth and to receive any complaints after the expiry of such commissions. The Evaluation recommends that UNDP and Donors support the NHRC to develop its capacity to work with the TRC and CoD and to deal with the request of such commissions and implement their recommendations.
15. The Evaluation has conducted a detailed line-by-line review of all AWP, Progress Reports and QUARA reports generated during the life of the Project. It is the opinion of the Evaluation that UNDP has not been as *self-critical* in its evaluations of its own performance as it should have been. The annual Project Progress Reports for years 2010 to 2014 did not follow any particular format. It is extremely difficult to ascertain from the reports which activities mentioned in

the corresponding AWP for that year were actually completed on time. There is little discussion of activity results that were not completed. Going forward, the Evaluation recommends that UNDP's Project Progress Reports provide a much more detailed picture of what was accomplished, what was not and the challenges faced by the Project. UNDP should provide evidence that the critical comments raised by the PAC during the life of the project have been taken into account.

## **2. Additional Recommendations and Findings (for NHRC Divisions and Regions)**

The Evaluation is recommending that going forward UNDP and Donors' support to NHRC address the specific needs of several key NHRC Divisions and Regional offices as follows:

- 16. Finance Division.** The Finance Division was one of the few NHRC divisions to receive targeted training on its inter-office procedures under the SCNHRC Project. Yet, the Finance Division is in need of continual trainings to keep abreast of updates in computer software programmes and procedures. Its capacity needs to be developed to request further budget resources from the government, necessary approvals to facilitate NHRC work from the concerned government bodies and the NHRC Finance Division must have its capacity to spend the budget it receives from the Government.
- 17. Human Resources Division.** The NHRC Human Resources Division will be faced in 2014-15 with a monumental task of hiring and training new staff in compliance with the National Human Rights Service Bill (once enacted into law) and the Public Service Commission of Nepal. The Human Resources Division must be capacitated to manage the on-going day-to-day human resources needs of the NHRC. Currently, there is no efficient policy for regular review and rotation of NHRC staff to and from Regional Offices to the NHRC or between Regional Offices. Some NHRC staff have lingered at the same regional office for many years without promotion or transfer or time at the NHRC central office in Kathmandu.
- 18. Investigations Division.** Standards and procedures for Investigations are currently lacking at NHRC and there is a need for new guidelines on evidence/chain of custody/ etc. Overall, the quality of reports generated from the Investigation Division could be improved. In addition to chronic low staff levels during the life of the Project, an issue that has continued to hinder field monitoring and investigations missions has been the relatively low rates of DSA paid by the GoN, as well as a 7-day "cap" on the number of days which NHRC staff operating on GoN budgets can remain in the field. Many of the locations where Regional Offices must travel are remote and inaccessible and the limitations on DSA and its duration, currently constrains the abilities of the Regional offices to conduct monitoring and investigations. Going forward, UNDP should assist NHRC in advocating with the GoN for an exception for NHRC staff that allows payment of a higher DSA rate and greater number of days.
- 19. Legal Division.** The Legal Division currently lacks full capacity to review legislation from a HRBA perspective and to fulfil all of the day-to-day legal needs of the NHRC. The Government rarely implements NHRC

recommendations. Going forward any future UNDP project must capacitate the Legal Division to review legislation and review draft recommendations of NHRC for their accuracy, quality and thoroughness.

20. **NHRC Promotion Division and need for a Communications Division.** NHRC currently lacks a *Communications Division* and any mechanism for communicating effectively with the public. NHRC has only a Right to Information Strategy, but has no spokesperson full time at NHRC. NHRC also has relatively poor media relations and no media strategy/press officer. Not having a true Communications Strategy prevents the Commission from conveying its role to the public. This is a major gap within the organization.
21. **Coordination among the different NHRC Divisions.** Coordination currently exists only between the Secretariat and the Commissioners. This is not viewed by NHRC as a management/administrative function, but a link mostly between the Investigations Department and the Commissioners. The NHRC “Coordination Division” needs to be strengthened and inter-divisional coordination improved at NHRC comprehensively.
22. **Trainings.** NHRC and Regional office staff informed the Evaluation that through the project, they received many trainings on human rights, but now the situation on human rights has changed. NHRC staff requires additional and specific thematic trainings on administration of justice, how to make complaints to international treaty bodies, etc., as well as how to prepare reports. The Evaluation recommends that trainings be made much more strategic; based upon specific departmental needs and the requirements of each NHRC Regional office (and the communities within which the regional offices sit). There is a need to conduct trainings on new thematic areas within NHRC and new categories of human rights violations (i.e. LGBT rights, etc.).
23. **Regional Offices.** Regional offices remain understaffed and focused predominantly upon awareness raising. There is a need to increase complaint handling, monitoring and investigations by the Regional Offices. The Regional offices also currently lack procedures. The Evaluation highly recommends that going forward, UNDP and Donors support NHRC to focus on the *autonomy of Regional Offices*. If the local offices could have some formal device (i.e. a warning) to violators and give them 60 days to respond or face referral to the NHRC HQ with a full investigation, then this would empower the local offices and cut down on the backlog. It is recommended that NHRC look into the new Federal structure of the government and make adjustments to the structure of NHRC accordingly. NHRC needs to get out in the field. *Mobile NHRC units* may be considered as an alternative to District Offices and/or to supplement them.
24. **NHRC’s work on the demand-side of human rights at the local level.** The Evaluation finds that NHRC is not working enough on the demand side at the local levels. Going forward, NHRC needs to streamline the complaints process, ensure its confidentiality and begin to develop in pilot stage victims’ protection services. There is currently little follow-up with citizens after they file a complaint and the process of NHRC complaint and investigation is in some instances taking as long or longer than filing a case in the civil courts. NHRC needs to hire a dedicated staff person at NHRC to provide information to complainants about the status of their case.

- 25. Conditions of pre-trial detention/custody and incarceration in Nepal.** There is an especially urgent need for NHRC to mobilize the demand side to file complaints related to conditions of pre-trial detention and custody. The conditions of detention in Nepal—especially in police custody rooms remains far below international standards. Arbitrary arrest and detention—and illegal detention, especially of adolescents as a substitute for drug treatment at the behest of their parents persist. UNDP and Donors should urgently support the NHRC’s capacity to monitor and investigate conditions of police custody and pre-trial detention. Linked to this is the use of quasi-judicial authority in Nepal, whereby, CDOs can convict and incarcerate individuals. It is recommended that UNDP and Donors support NHRC to conduct a comprehensive monitoring report covering all police custody units in Nepal and a separate report monitoring Nepal’s prisons. UNDP should coordinate with other U.N. agencies in this respect at the level of the Secretariat who hold a monitoring mandate, including OHCHR and UNODC. UNDP should further support NHRC to educate civil society on these issues and facilitate the filing of complaints from the demand-side on such violations.
- 26. Victims rights/Witness Protection, Rehabilitation and Remuneration.** Victims rights and witness protection are absolutely lacking at the moment at NHRC. The Evaluation recommends that UNDP and Donors work to enhance NHRC’s ability to support victims.
- 27. NHRC relations with civil society.** NHRC’s relations with CSOs in Nepal are perceived as not comprehensive/strategic. NHRC has been effective at partnering for awareness raising, less so for complaints and investigations. There is currently a need for enhanced cooperation with civil society. The Evaluation recommends that UNDP support NHRC to maintain registers of “pre-approved” civil society organizations who have been evaluated to possess the capacity to assist NHRC in its functions when necessary. (it appears that the NHRC often has a stronger working relationship with the civil society at the Regional level and this needs to be duplicated by NHRC’s central office in Kathmandu).
- 28. Human Rights Resource Centres at Regional Offices.** The Evaluation found that use of the NHRC Human Rights Resource Centres by civil society is mixed. Most books are out-dated and there is no apparent “core collection” of titles. NHRC needs an acquisitions strategy for books, periodicals and web access for civil society and students at the Resource Centres.
- 29. Dalit, Women and Vulnerable Groups, Indigenous communities, Mental Health, LGBT, etc.** During the life of the SCNHR Project NHRC occasionally partnered with the National Women’s Commission and National Dalit Commission on UPR reports and included these commissions in interventions, roundtables and awareness raising activities. Yet, this cooperation has never been formalized. Going forward, the Evaluation encourages NHRC to deepen its cooperation with the National Women’s Commission and the National Dalit Commission. The Terai region and mountain regions still experiences a high SGBV rate, witchcraft trials. etc. Meanwhile, untouchability in the Far West Region is particularly high. The NHRC regional offices should be supported to work with local justice sector actors (police, etc.) on women’s right and rights of ethnic minorities, untouchables, the mentally handicapped and other vulnerable groups, including, LGBT.



30. **Implementation of HRBA administrative procedures within Nepal and Support to HRBA across all GoN Ministries and agencies.** The Project did an effective job of supporting NHRC to develop HRBA Manuals and curricula. Going forward, the Evaluation recommends that UNDP assist NHRC to develop administrative “tool kits” and guidelines customized to each sector (i.e. health care; education; social services; etc.). The Evaluation further recommends that UNDP and U.N. support the NHRC to liaise with the new Human Rights Committee of the Parliament.
31. **Cooperation with Judiciary, Police and Army.** The Evaluation notes the crucial role that Project support played in supporting the NHRC to promote HRBA, the implementation of NHRC recommendations and human rights in general with the Judiciary, Police and Army in Nepal during the life of the Project. Going forward, there is a need for UNDP and Donors to continue to support such interactions. The rights of detained persons and prison inmates; freedom from discrimination and torture; rights of LGBT and victims of SGBV; reform of procedures that violate due process and, in general, linking access to justice to the delivery of human rights in Nepal are all key areas for future cooperation between the NHRC and elements of the judiciary, criminal justice actors and the military.
32. **Legislative gaps/legislative reform.** By law, NHRC has the mandate to scrutinize legislation, but currently lacks full capacity that would enable it to undertake large-scale legislative analysis and review. During the life of the project, NHRC conducted limited research into legislative gaps on implementation of international human rights treaties. Yet, NHRC never pursued this comprehensively during the life of the Project. For example, NHRC had one-off ad hoc research (i.e. human trafficking), but never followed-through on implementation or legislative reform. Without NHRC engagement in the legislative process, legislative review and reform of discriminatory laws was not achieved. The Evaluation strongly recommends that any future project support the Legal Division at NHRC and legislative analysis from a human rights perspective.

### **3. Additional Recommendations for a New Project Document**

Many of the above Findings and Recommendations can inform the drafting of a new Project Document. In addition, the Evaluation makes the following recommendations to UNDP, Donors and the NHRC:

33. Any new project document should have several separate Activity Results (ARs) for building NHRC core capacity. There should be separate ARs for the central NHRC office in Kathmandu and the Regional Offices and sub-regional offices.
34. Any new project document should be grounded in an updated situational analysis. In advance of drafting a new project document, UNDP should map-out and articulate a capacity development plan for the NHRC Secretariat on a Division-by-Division basis and for each of the individual regional offices. Each entity on the NHRC Organogram should be addressed. UNDP should consider options for “piloting” new office procedures, policies and forms at one or more regional offices and then “rolling-out” these policies to additional regions.

- 35. The implementation “modality” of the current SCNHRC Project is “NEX” (National Execution). The Evaluation recommends that UNDP explore potential new modalities, including “NIM” (i.e. UNDP’s National Implementation Mechanism”).**
- 36. Any new project document should clearly prioritize what NHRC Divisions will be prioritized and in what order. It is absolutely crucial that the NHRC Finance Division and Human Resources Division be given special priority. These divisions must be strong enough to ultimately run the organization, accept and manage donor resources and manage the NHRC’s human resources needs.**
- 37. The SCNHRC Project Document and subsequent extensions, did not articulate an “Exit Strategy” to any degree. The Evaluation Recommends that going forward, any future project document contain a clear exit or partial-exit strategy—transitioning the NHRC to full GoN funding eventually.**
- 38. Any new Project document should certainly continue to support the NHRC on development of its strategies, international human rights reporting obligations, relationships with other NHIs and international human rights bodies, monitoring and investigation capacities, public awareness and outreach capacities, cooperation with civil society and legislative reform. Yet, a new Project Document must clearly articulate which of these NHRC functions will be undertaken primarily by the NHRC Secretariat and which undertaken with Project Funding. The Evaluation recommends that UNDP and Donors consider “scaling-down” the use of Project funds for training of NGOs, HRBA approach, and interactions with civil society/training of CSOs, public awareness campaigns and publications. The Evaluation recommends that UNDP and the Donors simultaneously consider prioritizing and “scaling-up” support on NHRC core capacity; NHRC’s monitoring and investigation, reporting and protection mechanisms (including utilization of “Blacklisting” and “Departmental Action”); increasing the quality of NHRC transmitted to the OPM COM; mobilizing the demand side of human rights at the regional and sub-regional levels; finally resolving and archiving any conflict-related backlog cases and reviewing legislation from a human rights perspective.**

## 9. Lessons Learned

1. Unless the GoN puts measures in place to assure that Commissioners are appointed in-line with the Paris Principles, it is highly unlikely that the NHRC can continue to survive in its present form.
2. Until NHRC and GoN take the necessary steps to create a stable legislative environment for NHRC to hire staff on permanent contracts (i.e. specifically the enactment of the Human Rights Service Act), it is highly unlikely that further Donor funding will result in any greater capacity of NHRC than has been achieved to date.
3. As a general rule, supporting NHRC's human rights promotion activities should never be given priority over supporting NHRC's duties to monitor and protect Nepal's citizens.
4. Project RRFs and AWP's should be properly scaled, realistic and capable of being completed within the time frame allotted. Indicators must be carefully crafted, based upon detailed situational analysis and customized to Nepal and the NHRC's mandate. Capacity building goals must be based on a department-by-department, region-by-region analysis and plan. Broad themed trainings on human rights and the adoption of internal guidelines should not be considered as a substitute for hands-on mentoring.
5. Project reporting should be made truly results-based and report to all activities of an AWP for any given year, not simply those activities that were achieved.
6. When "capacity building" activities targeted to NHRC are placed under the same activity result as human rights promotion activities and "interventions" with GoN and civil society, there is a risk that the Project's focus will "drift" towards activities outside the NHRC, rather than within the NHRC. Such promotion activities are relatively easy to organize, compared to the day-to-day "hands on" job of building capacity within individual departments at NHRC.
7. The ready availability of Project funding is a "double edged sword". While it has the potential to build NHRC's capacities if used strategically, it can also undermine NHRC's capacities and sustainability by allowing NHRC operate without making the GoN fulfil its obligations to the institution or NHRC carving out its own political space. A fine line exists between capacity building and capacity substitution.
8. The existing Project probably should have been totally redesigned at the point of departure of UNMIN and OHCHR from Nepal.
9. NHRC cannot blame the lack of implementation of NHRC recommendations solely on lack of political will by the GoN. The lack of quality and form of NHRC recommendations as transmitted to the OPM COM is also a factor.
10. NHRC does not yet appear to possess the capacity to handle GoN and Project funds and truly implement on a "NEX" modality.

## **ANNEXES**

**A. Terms of Reference**

**B. Schedule of the Evaluation**

ANNEX 1

**Terms of Reference  
Evaluation of Strengthening the Capacity of  
National Human Rights Commission (SCNHRC)**

Introduction and Context:

The National Human Rights Commission (NHRC) was established in 2000 under the Human Rights Commission Act, 1997. During Nepal's former King's autocratic rule from 2005 to 2007, the NHRC was unable to perform effectively. Absence of Commissioners for 14 months at a time and significant staff turnover only made it harder for the institution to confront the challenges of human rights monitoring in a conflict situation. The Interim Constitution of Nepal, 2007, recognized the importance of the NHRC and elevated it to a constitutional body with a broad mandate to protect and promote human rights. The new Commissioners and Secretary were appointed to the NHRC in 2008. Since then the Commission has been striving to fulfil its constitutional mandate, including its responsibility to provide opinion on Government report to be submitted under international human rights treaties.

In 2002 a consortium of donors agreed to support the NHRC through a Capacity Development Project (CDNHRC) implemented through UNDP from 2002 to 2008. From September 2009, NHRC, UNDP and OHCHR (Geneva) jointly initiated a new project entitled 'Strengthening the Capacity of National Human Rights Commission' ('SCNHRC Project') as a continuation of the previous project. In 2013 it was jointly decided to extend the project until mid-2014. It is this latter project that is subject to review under this ToR.

The overall objective of the SCNHRC Project is to strengthen the institutional and human capacity of the NHRC to enable it to fulfil its constitutional mandate. In order to achieve this, the project covers different areas of strategic focus drawn from the 'Strategic Plan' of the NHRC (2011-2014) as well as from the 'Functions, Duties and Power of the National Human Rights Commission' as set out in the Interim Constitution. The project focuses mainly on the following six strategic interventions:

- \_Formulation of strategies and a human rights audit plan to ensure the respect of human rights by state actors (assist the NHRC to develop its capacity to support voluntary human rights compliance by state actors);
- \_Comprehensive analysis of treaty obligations (assist the NHRC to analyse Nepal's human rights obligations arising from current and contemplated international commitments and practices);
- \_Ensuring a human rights friendly Constitution (assist the NHRC to participate in the constitution-making process in order to better secure the protection of human rights under the new Constitution);
- \_Promotion and protection of civil, political and socio-economic rights (as per the Strategic Plan of NHRC 2011- 2014 developing benchmarks on economic, social and cultural rights in Nepal is a priority);
- \_Enhancing NHRC's institutional capacity and its capacity to collaborate with civil society, including human rights NGOs (assisting the NHRC to build its own capacity by providing training and exposure to international forums such as Asia Pacific Forum, International Coordinating Committee of NHRI and other relevant events); and
- \_Review of discriminatory laws (support the NHRC to review the laws in line with the

international human rights standards).

The SCNHRC Project has achieved some important successes over its years of operation. It has supported NHRC's to develop guidelines and policies on monitoring and investigation, settle the backlog cases, establish field offices, increase the staff capacity through training, and publish and disseminate reports on human rights violations. Since the Project's implementation, the NHRC has been recognized as an independent institution and given an autonomous mandate to: end impunity and discrimination; build capacity of human rights defenders through development of a human rights training manual and guidelines; educate State officials on human rights based approach; protect and promote economic social and cultural rights through developing indicators and checklists for monitoring; promote minority/collective rights through facilitating and encouraging the local organizations to work on this issue; and protect human rights through continued monitoring and investigation of civil and political, economic, social and cultural rights violations.

During the SCNHRC Project the NHRC has, however, also faced numerous challenges both from within the Commission itself and from the political culture and current situation in Nepal. These challenges include, lack of enabling normative frameworks, lack of adequate staff, high turnover of staff, lack of sufficient field presence, an overwhelming backlog of cases and low levels of implementation of NHRC recommendations by the Government. To exacerbate these existing challenges, the current Commissioners' term ended in September 2013 just before the Constituent Assembly Election in November.

Considering the successes achieved weighed against the persisting challenges and the fact that the year 2013/14 is the final year of the Project, UNDP, development partners and NHRC have decided to commission an evaluation of the performance of the SCNHRC Project. In the given context, an evaluation by external evaluators is needed to identify lessons learned and best practices, and inform the development of a log frame for the extension period of the Project in order to tailor activities to strengthen the operational and programmatic capacity of the NHRC to best address the identified pertinent challenges during the remaining phase of the Project.

#### 1. Purpose and Scope:

The purpose of this evaluation is two-fold: firstly, to assess the achievements made by the SCNHRC Project, particularly as measured against the expectations of the original project design, the Results Framework and the Quality Assurance Review Advisor's bi-annual review recommendations; and, secondly, to assess the political and legal context of NHRC, management arrangements and the current modality of implementation, in order to make recommendations to UNDP and development partners for priorities for the last year of project implementation as well as support beyond 2014.

The evaluation will focus on the period during which the SCNHRC Project has been implementing its activities, that is beginning from 2009 and throughout 2013. When relevant, the changes in the political environment will be analyzed with respect to their impact on the NHRC and Project.

#### 2. Objective of the Evaluation

- \_To assess the impact and results achieved by the SCNHRC Project in view of its AWP, QPR, QWP and Results Framework as amended as part of the 2013 cost-extension of the Project.

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- \_To assess the relevance, efficiency, effectiveness, cost-effectiveness and sustainability of the Project.
- \_To assess the extent to which GESI and accountability have been mainstreamed in

the organization and in the Project's implementation.

- \_To analyze the priorities and activities of the SCNHRC Project in view of the changing context in Nepal (the analysis will be problem-oriented and will also distinguish between external and internal factors affecting the implementation of the activities).
- \_To assess the progress achieved by the SCNHRC Project in terms of capacity development in following areas:

- a) Institutional development, including internal and external accountability mechanisms;
- b) Enhancing the coordination and collaboration with other national institutions and human rights organizations; and
- c) Capacity building of NHRC staff-members.

- \_To assess and evaluate efforts made to achieve joint action with other civil society organizations on key advocacy issues, both at the national and local level, where relevant.
- \_To analyze strengths, weaknesses, challenges and opportunities of SCNHRC.
- \_To assess and make recommendations on priorities for the last year of the Project's implementation and on support to NHRC after the closure of the current Project

### 3. Methodology:

The evaluation will be conducted through:

- \_A thorough desk review of relevant documents, including but not limited to the project documents, budget revisions, quarterly and annual progress reports, the QUARA reports, the Capacity Self-Assessment conducted in 2013 with support from APF and APRC and Norms and Standard for Evaluation in the UN System;
- \_Review of latest data for all indicators;
- \_Interviews and consultations with the NHRC, representatives of the Nepal human rights community, associated human rights agencies, the Government of Nepal, and other Government bodies;
- \_Consultations with UNDP staff at the Country Office; and the SC-NHRC Project Team;
- \_Interviews with development partners (including Denmark, UK, Switzerland, Finland and Norway);
- \_Interviews with key INGOS and NGOs active in the areas of human rights;
- \_Focused group discussions with the concerned stakeholders at national and field level; and
- \_Visits and interactions in at least one Regional Office and one Sub-Regional Office.

Time-frame for the evaluation process: S.N.	Activities	Duration
1.	Desk review and preparation of evaluation design (home based)	2 days
2.	Briefing of evaluation team	1 days
3.	Finalizing evaluation design, methods	1 day
4.	Stakeholder meetings,	6 days

	interviews, field visits	
5.	Preparation of draft report; presentation of draft findings to the Evaluation Management Team	2 days



**B. Schedule of the Evaluation**

**PROGRAMME SCHEDULE FOR THE FINAL EVALUATION  
MISSION OF SCNHRC PROJECT  
17 – 31 March 2014**

<b>Time</b>	<b>Visiting Persons and Organizations</b>	<b>Venue</b>	<b>Remarks</b>
<b>Saturday 15 March</b>			
19.40	Arriving at KTM		
<b>Sunday, 16 March</b>			
<b>Monday, 17 March</b>			
10.00-11.00	Meeting with Programme Analyst	UNDP	done
11.30-12.30	Meeting with the Project..Document hand over	SC-NHRC	done
15.00-16.00	Meeting with ACD, Programme Analyst and Programme Officer	UNDP	done
<b>Tuesday, 18 March</b>			
10.00-11.30	Meeting with -SCNHRC	UNDP	done
11.30-13.00	Meeting with NHRC Division Heads	NHRC	done
13.00-14.00	Lunch time, Meeting contd....with NHRC Division Heads		
14.30-17.00	Meeting with the project team, SCNHRC		done
<b>Wednesday, 19 March</b>			
9.00-10.00			
11.30-12.30	Meeting with the Gender and Social Inclusion Specialist Ms. Binda Magar	UNDP	done
12.30-13.30	Lunch		
14.00-15.00	SCNHRC team meeting	SCNHRC	done
<b>Thursday, 20 March</b>			
9.00-10.00	Meeting with 'Anine Hagemann, first secretary, Danish Embassy,	Denmark Embassy	done
10.30-11.30	Meeting with former Chairman of the NHRC Mr. Kedar Nath Upadhaya	Babarmahal Bawarachi Restaurent	done

**Monday, 24 March**

12.00-13.00	Meeting with former NHRC commissioners (Gauri Pradhan, Kapil Shrestha and Sushil Pyakurel)	Babarmahal Revisited – Bawarachi Restaurent	done
13.00-14.00	Lunch time		
14.30-15.30	Meeting with the representatives of human rights organizations and defenders. Sharmila Karki(NGO Federation), Subodh Pyakurel(INSEC), Charan Prasai (Civil society), <i>Nagendra</i> Kumal (Adibasi Janjati Mahasang), Baldev Prasad Shah (Madesh Human Rights Eyes )	NHRC	done
16.00-17.00	Meeting with Hon'orable Judge, Rishi Wagle, Judges Society Nepal	National Judicial Academy	done
<b>Friday, 21 March</b>			
9.30-10.30	Security briefing	UNDP	done
11.00-12.00	Meeting with Mr. Dan Bahadur Biswkarma, Acting Chair, National Dalit Commission, 98 48422723	National Dalit Commission, Jawalakhel	done
12.00-13.30	Lunch		
2:00-3:00	Matrika Devkota –Chairperson Koshish Nepal	Bakery cafe	done
<b>Saturday, 22 March (Filed Office)</b>			
	Proceeding to airport Proceeding to airport	Domestic airport	done
	Departure to Field Office Pokhara		done
	Arrival		
<b>Sunday, 23 March</b>			
8.00-10.00	Meeting with the Civil Society members at NHRC (20 persons)		done
10.00-12.30	Jail visit and meeting with Zonal Police chief (SSP Mr. Bhandari)		done
13.00-15.30	Lunch meeting with NHRC regional director and team (Director Yagya Adhikary and other 7 staff)		done
15.30	Departure to the airport		
	Arrival in Kathmandu		

10.00-11.00	Meeting with Lignell Pia EDA LGP and Rajesh Hamal, SDC, Ekantkuna		done
11.30-12.30	Meeting with NPD-SCNHRC		
12.30-14.00	Lunch		
14.00-15.00	Meeting with Massimo Diana	UNDP	done
15.00-16.00	Meeting with LUHARNP (NGO Partner) Shanti K Rai-Chairperson and Bhakta Rai	4770710/9843386109 Anamnagar	done
<b>Tuesday, 25 March</b>			
9.00-10.00	Skype call to Hemang Sharma (Former NPM) <a href="mailto:hemang07@gmail.com">hemang07@gmail.com</a> /and hemangsharma12		done
10:00-11:00	Sujeeta Ji (M and E Specialist, UNDP) Prabina Bajracharya RC Office	UNDP	
11.00-12.00	British Embassy	British Embassy	done
13.00-14.00	Lunch		
<b>Wednesday, 26 March</b>			
	<b>Additional meetings NHRC</b>		done
	Investigations Department- Durga Khanda -Dy. Director 11:00-11:45 am /nhrc hall-Richard Langan		
	Treaty Monitoring. Shyam Babu Kafle /10:30-11:15 Richard Langan		
	Janardan Prasad Badal Finance Division and LAD -Hari Phuyal		
4:00	PM Office, Ramesh Dhakal, Joint Secretary		
<b>Thursday, 27 March</b>	Depart to Dungadhi (Meeting with Tikaram Sharma and other 5 staff and NHRC Regional Office)		done
<b>Friday 28th March</b>	- Meeting with the Civil society some 20 participants - Meeting with CDO - Meeting with District Police Office (SP) and detention visit Departure to Kathmandu		done
<b>28th March</b>	Sabina Lauber OHCHR Geneva (phone call)		done
<b>29th March</b>	Draft Report Preparation		
<b>30th March</b>	Preparation of Recommendation for the PAC meeting		
<b>31st March</b>	PAC meeting	NHRC	done
<b>1 April</b>	Shoko Noda	UNDP	done

**END OF REPORT**