

Democracy Support through the United Nations

Report 10/2010 - Evaluation

Nepal Case Report

COUNTRY CASE STUDY REPORTS

This country case study is one of several such reports that are part of an assessment of Norwegian support to democratic development through the United Nations system.

These case reports are not independent evaluations of the programmes or projects discussed, but rather studies of both the decisions taken by Norway and the UN to support the particular democratic development process, and the key factors that may explain the results. These studies should thus be seen as working documents for the general evaluation of the Norwegian support.

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Abbreviations and Acronyms

CDNHRC	Project “Capacity Building for the National Human Rights Commission”
CPA	Comprehensive Peace Agreement of November 2006
CPN/M	Communist Party of Nepal – Maoist
GoN	Government of Nepal
HR	Human Rights
MFA	Royal Norwegian Ministry of Foreign Affairs
MoF	Ministry of Finance, Nepal
NHRC	National Human Rights Commission, Nepal
OHCHR	Office of the High Commissioner for Human Rights
SCNHRC	Project “Strengthening the Capacity of the National Human Rights Commission”

1 Background and Introduction

Scanteam, in partnership with the Overseas Development Institute of the UK, the Stockholm Policy Group of Sweden, and Nord/Sør Konsulentene of Norway, were contracted by Norad's Evaluation Department to carry out the "Evaluation of Norwegian Support to Democratic Development through the United Nations", covering the period 1999-2009. This country case report is one of the foreseen results of this task.

Norway has provided about NOK 2 billion through the United Nations to the areas covered by the concept of Democratic Development. This is to be understood largely in terms of the UN usage: *increased possibilities to participate in the society and in decision-making processes that have impacts on citizens' lives*. The *Objectives* are:

1. **Document the results** of Norwegian multi-bilateral contributions to democratic development;
2. **Undertake an analysis** of how support to different types of activities (elections/ media, etc) has worked in different contexts (i.e. institutional set-up, socio-political context, degree of conflict and level of economic development);
3. **Assess how decisions are made** in relation to allocations and disbursements through the multi-bilateral channel and how this influences development results;
4. **Assess strengths and weaknesses** of different UN organisations and programmes in different contexts; and
5. Provide **recommendations** for future programming for democracy support and for Norwegian positions in relation to the relevant multilateral organisations.

1.1 The Nepal Case Report

In Nepal, the team reviewed the funding to two democratisation efforts during the period 2000-2009:

- *"Capacity Development for the National Human Rights Commission (CDNHRC)"* is a capacity-developing project delivered by the UNDP. It has run since 2002. Norway was a major funder during the first three years, but not since 2005.
- *"OHCHR Office in Nepal"* is a civilian conflict-monitoring mission and the first large mission of its kind channelled through this UN organisation. Norway has been a significant funder from the start-up in 2005 and until today.

These projects were selected for review because they represent the largest democratic development projects Norway has funded through the UN in Nepal, and because they represent important dimensions of democratic development.

2 Country Context

Nepal is a landlocked, least-developed country (LLCD), with a GDP/capita of USD 1,205 in 2009. It is a multi-ethnic polity. Nepal's 30 million people have one official language (Nepali) and 11 recognised regional languages plus some 100 different vernaculars. Society is stratified by wealth, education and ethnicity but and in addition comes the religious-cultural concept of caste, which poses a particular challenge to human-rights efforts.

2.1 Caste and Human Rights

The population is 70% Hindu and the culture is influenced by the Hindu concept of *castes* and *untouchability*. Caste is a ranking of human beings. A person's caste determines a person's name, marriage eligibility, allowed profession, and many other things.

Some 20% of Nepal's Hindus are born noble ("upper" castes, *Brahmin* and *Chhatri*). They are born to lead in spiritual and temporal matters. Nepal's elite – including the top strata in *all* factions – are high-caste persons. By stark contrast some 20% of the Hindus are considered born unclean (the *Dalits*, formerly called "untouchables"). High-caste persons will traditionally refuse to take food or water from a Dalit, let alone touch one. Dalits perform traditionally unclean tasks and form a bottom of the social pecking order. A majority 60% of the Hindus belong to merchant and peasant casts, neither noble nor unclean.

Caste is strictly hereditary. There is essentially no upward mobility: one is born a particular class of human, and will die the same rank. No temporal laws can change this, in the eyes of many believers. This belief is fundamentally in contradiction to the principle that all human beings are equal in worth and dignity.

2.2 Parliamentary Democracy, Maoist Insurgency, Peace Agreement

Nepal is going through a societal transition on a massive scale. Multiparty democracy was introduced for the first time in 1990. Since then, the country has gone through weak and unstable governments, disillusionment with democracy, civil war, a massacre of the royal family, state of emergency, a monarchical *coup d'état*, restoration of unstable democracy, a recent (fragile) peace, a highly partisan and uneasy coalition government of former combatants, a deadlocked constitutional assembly, extralegal use of force, lawlessness and introduction of republic. There is widespread angst, polarisation and bitter political power struggle.

Popular disillusionment with democracy contributed to fuelling a communist (Maoist) insurgency from 1996. For the next decade, 1996-2006, the conflict between the government's army and police, on the one side, and guerrillas of the Communist Party of Nepal (Maoist) – or CPN-M – on the other, saw some 13,000 people killed, several thousand missing or tortured, and hundreds of thousands displaced.

In the beginning, the Government of Nepal did not consider the insurgency a serious threat, and the task of fighting it off was largely given to the police. In the following years the conflict became increasingly bloody, on both sides. From around 2000, the insurgency was increasingly becoming a challenge to the royal government, and the army led the efforts to stomp it out. The fighting, killings and disappearances, mass displacements, torturous

interrogations, abductions and physical violations that followed make up for the bulk of human-rights complaints to this day, and has traumatised the population of Nepal.

In late 2006 the fighting between Maoists and the government ended in a Comprehensive Peace Agreement (CPA). There followed *elections* for a constituent assembly where no party got a majority, but with the communists on the biggest bench. An interim government – an uneasy coalition of the antagonists – and an interim constitution rich in human-rights guarantees were introduced and remain in place to this day. Although the elections were by most accounts marred by rigging and intimidation, most observers believe that the resulting assembly is reasonably representative – that its composition mirrors the population.

Box 2.1: Corruption and Impunity in Nepal

Corruption is endemic and serious. Nepal scores 2.2 on Transparency International's *Corruption Perceptions Index 2010*, which means only 25 countries score worse among the 178 rated.

Global Integrity's 2009 report gives a similar picture. Nepal scores 67 out of 100 on the overall index, which is rated as "*Weak*". Legal Framework scores a high 84 but actual Implementation only 50, giving Nepal a "*Very Large*" implementation gap of 34.

With regard to the *executive branch* of state, all persons interviewed see the coalition government as fragile and corrupt. The government has used its powers to put friends on the civil service, which is therefore also seen as corrupt, with low capacity and delivering poor services to the public.

The police is considered corrupt and deeply distrusted, as well as unable to maintain law or order. Parallel to the police, and without any basis in law, a "youth wing" of the Maoist party fields gangs who take it upon themselves to perform policing functions as they see fit and allegedly also involved in extorting money and running criminal enterprises. The army enjoys a certain political influence though it is careful with overt meddling because it does not know who the next political masters will be. Parallel to the army, Maoist guerrilla commanders are backed by still-armed brigades. They, too, are believed to wield political influence backed up by the force of arms.

No side is eager to denounce its own people for atrocities committed during the 1996-2006 conflict. Perversely, this has led to both sides agreeing tacitly to impunity, to "not rock the boat" and unleash prosecutions on those who gave, and also those who obeyed, orders that violated human rights, for fear of destabilising the fragile absence of armed conflict.

With regard to the *judiciary*, it is clogged with a huge backlog of untreated cases, and also considered corrupt and not capable of upholding basic notions of justice. The prosecution service is likewise seen as corrupt and inefficient.

To most observers, there is therefore a severe problem with regards to (the lack of) rule of law in Nepal, and most believe this is a key factor holding back the country's healing and development processes.

There is currently no proper *parliament* in place, in the ordinary sense of the word. Since 2007, the 600-strong constitutional assembly – which acts as the country's legislature – has remained deadlocked over a new constitution, with "democratic" and "Maoist" parties arguing for incompatible constitutional designs.

Two elements of the governance system, both in the non-state sector, seem to be in good health. First, Nepal has a large and vibrant *civil society*, with a myriad of non-governmental organisations complementing public-service delivery and advocating for a host of interests across the country, including minority causes and human rights. Moreover, there is a *free press and a lot of media* that cater for, and serve, different groups of the population. A rich variety of different views, angles and opinions are voiced in the public space. A frequently voiced view is that there is strong demand for good governance.

A widespread analysis is that *the failing lies on the supply-side*: that the state is too weak to

deliver, and there is no credible accountability mechanism to force changes. In particular, there is little confidence in Nepal moving quickly to a situation of rule of law. This would necessitate sweeping justice-sector reforms, including major personnel changes in the courts, prosecution and police with discredited incumbents being successfully replaced by abler, and cleaner, office-holders. Nobody seems to believe this is feasible at present.

Against this backdrop, many persons interviewed say they see *little hope that democracy will work in the foreseeable future*, in the sense that there will be representative, clean and efficient state apparatus to facilitate sustainable economic growth and human development.

3 Project Background and Description

As noted above, Norway has funded two projects in the field of human rights promotion in Nepal. The first one is a capacity development project for the National Human Rights Commission (CDNHRC) while the second is a civilian conflict-monitoring mission managed by the OHCHR.

3.1 Capacity Development for the National Human Rights Commission

The project “Capacity Development of the National Human Rights Commission (CD-NHRC)” is a classic *capacity-building project* run by UNDP in three phases over eight years, starting 2002, predominantly under so-called National Execution (NEX) modality.

The *essential purpose* has always been to boost the capacity of Nepal’s *National Human Rights Commission*, so that this institution can impact positively on the overall human rights situation in Nepal.

The effort has amounted to a sequenced provision of advisers, infrastructure and equipment, in order to build from scratch and further develop the institution’s capacity. The substantive tilt has been toward human-rights monitoring and investigation. The project was to provide the main channel for foreign support to the new institution.

The project budget stands at approximately USD 10 million for the period 2001 to 2009. Apart from in the start-up phase, Norway is a relatively minor donor here. Its single donation came in November 2001 when the embassy signed up for a *NOK 3 million* – then about USD 330,000 – contribution to be paid to UNDP in three tranches of NOK 1 million each, in November 2001, March 2002 and March 2003. Implementation began in April 2002.

The project, since its inception, has gone through three phases in step with changing developments in the country:

Phase 1 (USD 1.5 million, 2001-2004): The project was designed, agreed and funded. The essential purpose was to help set up the National Human Rights Commission in Nepal and build leadership, management, administrative and technical capacities from virtually nothing. The focus was on protection and promotion of civil and political rights. The GoN was to pay salaries of all staff. The donors, through UNDP, would fund other expenses. The project renovated premises, procured vehicles and computers, and flew in advisers to design systems and processes and train staff.

Phase 2 (USD 6.4 million, 2004-2007): The project was revised for the first time. As a matter of urgency, the project budget was increased to allow hands-on conflict monitoring. In parallel it continued with capacity building as before.

Phase 3 (USD 2.5 million, 2007-2009): The project was revised for a second time, for a new role in post-conflict Nepal. The capacity-building and monitoring activities were to continue. It now monitored the observance of the Comprehensive Peace Agreement (Nov 2009). It also broadened its thematic emphasis onto economic, social and cultural rights.

Project Background

In the 1990s influential *NGOs and activists in Nepal* demanded that the royal government set up an impartial, independent institution to monitor and investigate the use of *imprisonment of political activists*. The commission has been called a rule-of-law equivalent of a „cardiac bypass operation“: the idea was to bypass obstacles in the police, prosecution and judiciary. Eventually, in 1997, these milieus won through.

In 1997 an *Act of Parliament* established the *National Human Rights Commission (NHRC)*. It had the multiple roles of ombudsman, investigator and lobbyist. It was equipped with authority to, among other things, monitor abuse of human rights, name and shame culprits, investigate individual cases, make recommendations of prosecution and compensation to the government and prosecution service, and to advice the government on human-rights issues.

Institutionally, the new commission would be a totally independent body. There would be five commissioners, appointed by Parliament in a personal capacity among trusted and respected people, so as to give the institution, which had only recommending powers, the respect required that its recommendations would be followed in practice by other organs and the people at large.

It took more than three years, until May 2000, before the *first five commissioners were appointed*. As it turned out, none of them were unquestionably above the political fray. All five were to some degree – right or wrong – associated with different political groupings. This would later come to undermine faith in their impartiality. With strong personalities it would also impact negatively on the working relations between them. There would be spectacular public displays of conflicts within the college. Moreover, only one of the commissioners had any legal expertise. This would come to undermine faith in the commission’s capacity to uphold the law.

Nevertheless, in 2001 there was an urgent need to establish an impartial human-rights watchdog, hopes for the new commission were high and the donor community – including Norway – strongly welcomed the new commission. The institution recruited 22 key staff. Later, the institution expanded significantly in two rounds. In 2001 it doubled to 46 staff, and it then carried out a new round of recruitment in 2004 as the NHRC established five district offices and five district-based contact offices.

In 2001 UNDP set about to mobilise support for a much-needed capacity-building project. The Norwegian embassy was an active supporter and agreed to a NOK 3 million funding.

In 2005 came the *royal coup d’état*. The first NHRC’s term ended shortly after, and the king *handpicked* a new five-member commission under the previous chairman (second National Human Rights Commission). Donors now lost faith in the institution and shied away from the NHRC. The commission also lost whatever credibility it had among Nepalese organisations and activists. By most account, it still suffers from this damage to its reputation.

When the king was ousted a year later, the king’s human-rights commissioners resigned in July 2006. There followed a fifteen-month period July 2006 – September 2007 where there were no commissioners at all. The ensuing state of limbo in NHRC contributed to stagnating capacity-development and further weakening of the institution’s authority.

The third and present commission took its seats in September 2007. Like its predecessors, it is perceived as weak. Observers claim the five commissioners are *partisan, divided and lacking in the proper legal qualifications* for a commissioner, so the NHRC fails to impress or impose, and contributes to undermining the institution.

In this setting the technical staff easily become partisan, or need to spend a lot of time on activities to try *not* to be. Because of the particular status of the Commission, many staff also worry about their status as civil servants – in other words, worry that they might lose their jobs. This is having a negative impact on staff morale and productivity.

The NHRC is part of a what is in fact a network of dysfunctional governance institutions. The *legislature* is deadlocked in constitutional negotiations, and the *government* is too divided internally to rule properly. As earlier noted the *judiciary, prosecution and police* are all considered to be deeply corrupt.

The NHRC is furthermore just one of *eleven commissions* that have already been created or are being suggested, that are to deal with various aspects of human rights. Many of the major interest groups in Nepal will have a commission. The boundaries between jurisdictions are likely to become contentious. A frequently used case is which commission should take the lead and responsibility in a case of torture of a *Dalit* woman: the National Human Rights Commission, the Dalit Commission, or the Women's Commission? The jurisdictional lack of clarity is recognised, but few practical solutions are offered. A proposal to merge everything under the NHRC seems unrealistic today.

Not all actors dismiss a possible future relevancy of the NHRC. It is, after all, a constitutional body and by all accounts likely to remain so. So it will remain in place for a long time. Basic capacity is in place both at central level and in regional offices. The institution does monitor and document human-rights abuses. Some believe the commission is about to start “naming and shaming” and publicise its (dismal but understandable) record in complaints processing, as well as publishing the government's blatant ignoring of its recommendations. But most of the persons interviewed by the evaluation team express the view that it will take a very long time for the NHRC to be able to live up to its mandate.

CDNHRC Project Objectives

The CDNHRC project objectives have developed over time as follows:

1st Project Document (2001) – Initial Objectives

Initially, the stated objectives were both exuberant in their optimism and yet cautious.

The core objective was twofold: to build and improve NHRC's *administrative capacity*, and to build its *expertise in the substantive areas* of human-rights protection (monitoring, investigating, reporting) and promotion (education and lobbying). UNDP would provide technical advisers and procure equipment. As the security situation in the country deteriorated, the clear first priority became developing *monitoring capacity*.

The expected result in the first project document of 2001, covering late 2001 through late 2004, is expressed as follows (section “A.6 Expected End of Project Situation”):

“At the end of the project the NHRC will be a fully self-sustaining institution – functioning in accordance with its mandate and with broad-based support from all sectors of Nepalese society. The NHRC's education and information team will be effective

human rights educators and trainers and the information and documentation centre will have become the central point for the production and dissemination of human rights information. The NHRC will have developed its capacity to provide high-quality human rights policy advice to the government and to analyse legislation for human rights implications. It will also be able to assist the government with its reports to the international treaty bodies.

The NHRC will also have an effective complaints process. It will have established procedures, capacity to investigate complaints promptly and to resolve those complaints it sustains. For those complaints for which it is not able to provide redress, the NHRC will offer an efficient referral to more appropriate services.

As a result of the work of the NHRC during the period of the project, a pool of expertise will have developed in the NGO community and within the bureaucracy, to sustain and consolidate the work of the NHRC.

As an indirect outcome of the project, the State will have an enhanced capacity and credibility in dealing with the human rights issues facing the country. Participatory governance will have been promoted through increased public awareness of rights and duties. A lessening in the judiciary's workload could also result from the operation of an effective alternative grievance mechanism in the NHRC. Greater empowerment of the Nepalese people can also be expected through the promotion of programmes for the enjoyment of economic, social and cultural rights. The administration will be better able to fulfil its reporting obligations under the international treaties on human rights which have been ratified by Nepal." (Our bold)

The 2001 project document also takes care to point out the responsibilities of Nepalese counterparts in order to achieve this vision, and it contains a crisp section on risks. Section E.1 "Project Assumptions and Risks, and Risk Management Strategies" cautions as follows:

"The success of the project depends, to a great extent, on the capabilities and vision of leadership of the NHRC – the Chairperson, Members and Secretary. The NHRC's capacity to implement the project depends on successful recruitment of capable staff for the Commission. The project has been formulated as enabling, rather than prescriptive – to develop a programme that is sufficiently flexible to enable the NHRC to set its own priorities and determine its own agenda. The magnitude of the responsibilities facing the NHRC ought not to be underestimated and the project envisages a number of support structures, detailed below, to assist the NHRC in its tasks. In particular, the recruitment of a senior national institutions practitioner is designed to support the NHRC in the early months of its existence as members become familiar with their role.

There is however considerable weakness in the national infrastructure to support the work of the NHRC. Shortcomings in the judiciary, the law-making process and policy-development in the executive mean that the NHRC will have to take the initiative in developing partnerships and alliances across the official and civil sectors if it is to make a substantial impact. The success of allied projects in the good governance and human rights sectors of a number of participating donors will also contribute to a more stable environment for the NHRC operations. For this reason the project gives some emphasis to human rights capacity development beyond the NHRC.

However, government commitment to human rights generally and to the work of the NHRC remains the most crucial factor to the success of the project. A change in government policy on human rights or, more importantly, the failure of the government to support the work of the NHRC both financially and at a policy level, would impact adversely on implementation of the

project at all levels. Also, further violations of human rights due to escalation of the on-going conflict would affect the success of the project."

Thus, *all the main problems* that would come to haunt the CDNHRC project were *foreseen*, and the risks accepted, by all actors and donors from the outset.

The 2001 CDNHRC project document proceeds to set out a logical framework of objectives, indicators, means of verification, risks and constraints, and risk-management measures. The desired societal impact is set as follows:

"Development Objective: The National Human Rights Commission (NHRC) contributes to the promotion and protection of the human rights of all people in Nepal."

The desired effects on the counterpart institution, the NHRC, are formulated in four Outcome statements:

"C.1 Immediate Objective One: Corporate Development, administration and management

To resource NHRC to develop a strong institution with a strategic approach to its responsibilities, clear objectives and an effective organisational and staffing structure. (...)"

"C.2 Immediate Objective Two: Monitoring, Complaints and Investigation

To assist the NHRC to develop and implement an efficient and effective process for monitoring human rights situations, complaint handling (including information gathering, investigations) conflict resolution, peace building and the conduct of public inquiries, including into economic, social and cultural rights, which is responsive to the needs of NHRC's clients. (...)"

"C.3 Immediate Objective Three: Advocacy, Research and Policy

To assist the NHRC to develop the capacity to conduct high quality, human rights-oriented analysis of legislative proposals, draft laws and existing legislation, in particular with regard to Nepal's international human rights obligations, and to provide high quality policy advice to HMG/N on human rights matters. (...)"

"C.4 Immediate Objective Four: Education and Information

To assist the NHRC to both develop and implement a comprehensive education and information strategy:

- (i) To promote awareness and understanding of human rights issues;*
- (ii) To promote public awareness of the existence and functions of the NHRC; and*
- (iii) To liaise, co-ordinate and support the on-going efforts of civil society organisations working in the field. (...)"*

2nd (Revised) Project Document (2004) – Revised Objectives (I)

By 2004 the security situation in Nepal was deteriorating fast, whereas the NHRC was expanding. In this situation it was decided to review the project, and to formulate a new project document.

In practice, the revision resulted in a capacity-development effort like before, but with a much heavier emphasis and involvement in *hands-on human-rights monitoring* related to the conflict.

The overarching mission statement in the logical framework included in the revised project document of 2004 is as follows:

“Intended Outcome as stated in the Country Results Framework: Justice and human rights promotion and protection mechanisms strengthened

Outcome Indicator as stated in the Country Programme Results and Resources Framework, including baseline and target: NHRC’s capacity strengthened in the areas of complaints handling, monitoring, investigation and advocacy, including administrative and management as well as national networks developed for advocacy and public awareness”

The document proceeds to set out the following two “outputs”, each with a detailed set of output targets, timeframes, activities and budgets:

“Output 1: NHRC capacity built to carry out its core functions in accordance with the Strategic Plan 2004-2008 as well as in relation to its institutional development”

“Output 2: Developed NHRC capacity to monitor on-going conflict related human rights situation in a larger geographical area covering several key human rights issues and to respond effectively to the issues.”

3rd (Reviewed) Project Document (2006) – Revised Objectives (II)

With the Comprehensive Peace Agreement (CPA) in late 2006 the project again adapted to the political developments. The agreement in reality provided for OHCHR to assume some functions that in normal circumstances would be exercised by the NHRC. This necessitated a re-think of the project and its role in a UNMIN-OHCHR-UNDP triangle. In practice the project came to concentrate on two objectives: (1) peace monitoring and (2) promotion of economic, social and cultural rights.

The goal statement in the logical framework included in the revised project document of 2007 is as follows:

“Intended Outcome as stated in the Country Results Framework: Access to Justice enhanced and mechanisms for promotion and protection of human rights strengthened

Outcome Indicator as stated in the Country Programme Results and Resources Framework, including baseline and target: NHRC’s capacity strengthened in the areas of complaints handling, monitoring, investigation and advocacy, including administrative and management as well as national networks developed for advocacy and public awareness. The NHRC able to investigate 175 cases of human rights violation and 80 cases are referred for action to Government of Nepal as necessary”

The document sets out the following two “outputs”, each with a detailed set of sub-outputs, targets and indicators, timeframes, concrete activities, responsible actors and cost inputs:

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

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

The project was subsequently extended till the end of 2008, without the formulation of a new project document or objectives framework.

3.2 OHCHR Monitoring Mission

The OHCHR conflict-monitoring mission in Nepal was set up in 2005 at a time when all agreed something must be done to help diffuse the conflict and improve the human-rights situation in Nepal. The OHCHR presented an attractive alternative to an armed mission. Since the start-up in 2005 the effort has cost almost USD 54 million. Norway – through the embassy and over separate budget lines administered in Oslo – has apparently contributed NOK 13.5 million from the outset to this day.

OHCHR Mission Background

The OHCHR Office in Nepal is *a conflict-monitoring mission* overseen by the United Nations High Commissioner for Human Rights, running roughly in three phases over four years starting 2005. All disbursements are done by OHCHR (unlike the NEX modality of CD-NHRC).

The *essential purpose* of this effort has been to help diffuse conflicts in Nepal by being there and watching, investigating and reporting, and by advocating and supporting local capacities on the demand and supply sides. It is explicitly mandated to support Nepal's *National Human Rights Commission* and human-rights NGOs, and has increasingly engaged in capacity-development activities. But it differs from the UNDP effort in that it has never been *primarily* an institution-building effort.

OHCHR Mission Objectives

The effort is constituted as a mission, not a project, and is not anchored in any project document with a LogFrame.

The main task of the OHCHR Office in Nepal is set out in a GoN-OHCHR agreement from 2005, renewed semi-annually until 2009. It gives the OHCHR wide-ranging general mandate:

“Article IV. Mandate, general objectives and standards for operation of the Office

- 1. In accordance with its mandate set out in General Assembly Resolution 48/141 of 20 December 1993 and this Agreement, the Office shall monitor the observance of human rights and international humanitarian law, bearing in mind the climate of violence and the internal armed conflict in the country, with a view to advising the authorities of Nepal on the formulation and implementation of policies, programmes and measures for the promotion and protection of human rights in Nepal, and the submission by the High Commissioner of analytic reports to the Commission on Human Rights, the General Assembly, and the Secretary-General. The Office shall provide advisory services and support in the areas of its competence to representatives of civil society, human rights non-governmental organizations and individuals.”*

A string of subsequent clauses give OHCHR Nepal extensive liberties and the government corresponding duties. The end result is a mission with *considerable authority and discretion*, as illustrated by the following extracts:

“Article V. Functions of the Office

- 1. The Office shall have the following functions, as prescribed by its mandate, which shall be exercised under the authority of the High Commissioner:*
 - (a) Monitor the situation of human rights and observance of international humanitarian law, bearing in mind the climate of violence and the internal armed conflict in the country,*

including **investigation and verification through the deployment of international human rights officers throughout the country** as required;

- (b) Engage all relevant actors, including non-state actors, for the purpose of ensuring the observance of international human rights and humanitarian law;
- (c) Inform the competent authorities on human rights violations and other abuses in cases where it believes that domestic legal procedures applied by the competent national authorities are not consistent with those set forth in international instruments, and/or in cases where no or insufficient action has been taken and formulate recommendations with a view to possible preventive or remedial action by national authorities where the Office deems that circumstances so require. To this end, the Office shall receive information from any source, be it particular, private, public or official on these matters, which it could find relevant; the identity of the authors of the information may be kept confidential. The Office may also recommend and promote measures to protect the authors of the information it receives, the victims and witnesses to the facts alleged therein. The Office shall counsel and encourage persons submitting information to it to bring any charges before the competent authorities as expeditiously as possible;
- (d) Without prejudice to the autonomy of the Office to establish such contacts as it considers necessary to carry out its activities, the Office shall maintain constant communication with all competent government agencies, both civil and military, and with civil society organisations for the promotion and defence of human rights (...).
- (e) Advise the executive branch on the overall definition and in particular the implementation of human rights policies. Advice will also be provided to the legislative and judicial branches of His Majesty's Government with a view to ensuring that all human rights legislation and judicial decisions are consistent with the relevant international instruments and commitments;
- (f) Advise representatives of civil society and individuals on all matters related to the promotion and protection of human rights, including the use of national and international protection mechanisms;
- (g) Advise and assist the National Human Rights Commission in the discharge of its statutory mandate, including promotion, protection and reporting, as per the Human Rights Act of 1997 and His Majesty's Human Rights Commitment of 26 March 2004,
- (h) Advise State and non-governmental entities on human rights education programmes and appropriate professional training programmes; ...
- (i) Ensure that the recommendations and decisions of the human rights bodies of the United Nations and other international organizations are taken into account by those government entities which have authority and responsibilities in that area, and advise them on the adoption of specific measures for their implementation;....

6. His Majesty's Government shall make every effort to ensure that government institutions, including the National Human Rights Commission, receiving cooperation and advisory services from the Office are provided with sufficient resources to implement their mandate and the recommendations formulated by the Office. In this respect, the independence and integrity of the National Human Rights Commission will be safeguarded, in conformity with the Paris Principles adopted by the General Assembly in 1993... (Our bold)

The agreement proceeds to allow the OHCHR to establish a presence across the country and deploy human rights officers, where and in numbers, as it sees fit:

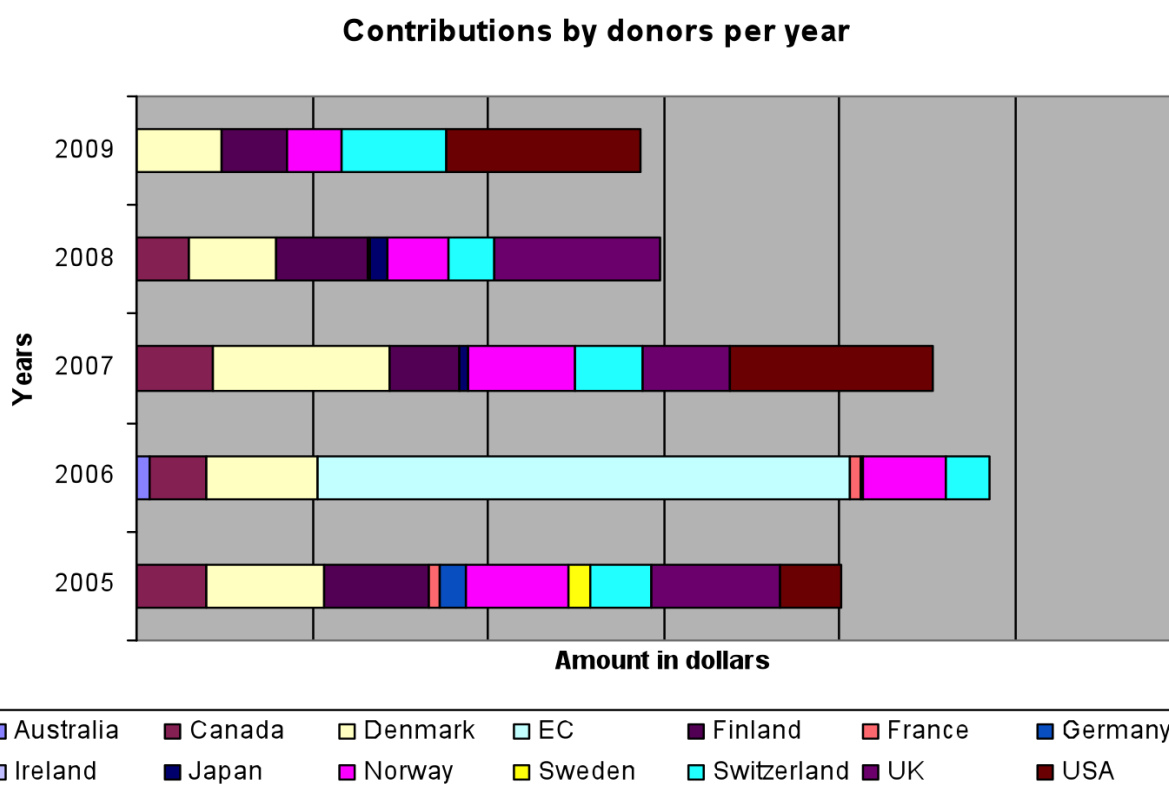
“Article VI. Status of the Office

1. The headquarters of the Office shall be located in Kathmandu, with Sub-offices to be established in other locations in Nepal. The **size of the Office and its staffing levels, in terms of international and national staff, shall be at the discretion of the High Commissioner for Human Rights, bearing in mind the views of His Majesty’s Government.**“(Our bold)

Table 3.1: OHCHR Office in Nepal: Annual budgets and staffing

Year	Budget (USD)	Staff
2005	7.5 million	5
2006	9.2 million	116
2007	11.1 million	150
2008	10.9 million	147
2009	7.9 million	103
2010	7.1 million	108
2011	6.2 – 6.3 million (approx)	89 (expected)

Table 3.2: Donor contributions to OHCHR Nepal 2005-2010



As can be seen from the table, some donors have contributed substantial support but often in “spurts”. The US contributed some in 2005, made a major contribution in 2007 and another large one in 2009, but nothing in the intervening years. The UK has exhibited a similar

pattern: it was the largest funder in 2005 and again in 2008, provided some funding in 2007 but nothing in the two other years. The EU is the most extreme by providing the single largest contribution ever, in 2006, and then not putting up any funds in any of the other years.

On the other hand, Denmark, Switzerland and Norway have been quite reliable funders throughout the five year period, providing fairly similar amounts each year (Canada was also a steady funder the first four years).

As seen from the Norwegian perspective, Norway's funding for human rights in Nepal has been fairly consistent, with Norway providing NOK 1 million per year to the NHRC during the years 2001-2003, and then as of 2005 providing annual contributions during the following five years to the OHCHR Monitoring Mission.

4 Project Results

This chapter highlights the main achievements and shortcomings of the UNDP CDNHRC project and the OHCHR Office in Nepal.

4.1 Capacity Development for the National Human Rights Commission

Over the years the project has produced many reports and two reviews that set out what the project considers to be its main achievements. This section summarises the claimed results through the three phases of the effort.

Results 2002-2004, according to revised project document 2004-2007

By 2004 the CDNHRC was in need of realignment to changing circumstances and in December 2004 a new project document was formulated for the period 2004-2007. It provides the following snapshot of the main activities and results in the first two years:

“The CDNHRC (“the Project”) has contributed to the development of NHRC as an institution as well as to its substantive outputs through the delivery of technical assistance, in-kind contributions and expert advisory services. Despite the many challenges faced by the institution over the first few years of its existence, such as the ongoing armed conflict, the lack of institutional stability, increasing demands and expectations as well as inadequate staff capacity both in number and skills, and inadequate funding from the HMG, the Project has been able to support the NHRC to achieve considerable success.

*The Project has been supporting the efforts of the Commission to developing increased **administrative, leadership and management capacity**. The Project has assisted in the development of the NHRC’s Strategic and Program Plan 2004-2008. A computerized networks system is in place and effectively operating..., the financial rules have also been put in place.*

*The Project has also assisted the NHRC in terms of **strengthening its capacity to receive complaints and monitor the human rights situation in the country**. Support in the areas of human rights investigation, monitoring, case follow-up, litigation and training by providing national and international technical expertise has enabled the NHRC to execute its core functions. Notably, a human rights Case Management Software has been installed and is currently being piloted for full fledged implementation in early 2005.*

In 2003, the NHRC contributed to upholding the second ceasefire between CPN-Maoists and HMG by proposing a draft Ceasefire Agreement and advocating for its signing. In addition, the Commission has organized seminars and interactions with various key stakeholders on the ways and means of transforming the conflict into lasting peace. In this context, the Project has been regularly supporting the Commission in its efforts to publish a compendium of papers of various national and international scholars and supported the NHRC in developing its recommendations to the conflicting parties. In addition, to help HMG effectively implement the 26 March 2004 reaffirmation of HMG’s commitment to human rights, the Commission has prepared, with the support of the Project, and submitted a set of practical recommendations. Lately, the technical assistance provided by OHCHR is facilitating the process of reviewing a future Human Rights Accord.

Furthermore, the Project has contributed to the **development of advocacy, research and policy formulation capacity** such as finalizing the first process of its legislative review work. Relevant staff of HMG and NGOs have acquired skills to prepare reports to the UN treaty bodies as per the treaty body requirements. Similarly, the NHRC's capacity in setting up and managing a human rights documentation and information centre for human rights related study and research is being developed.

Finally, the Project has supported the NHRC and enabled it to inform and spread human rights education through audio/visual media on issues such as witchcraft and social discrimination and through print media on the issue of social discrimination and trafficking. The creation of NHRC's official website and regular dissemination of information by electronic media as well as the annual report being published in English, Maithali and Nepali are also achievements worth bringing to the fore."

Results 2002-2006, according to review of CDNHR project, February 2006

The CDNHR project underwent a mid-term review in late 2005, finalised in early 2006. This revision was *not an evaluation* – of either CDNHR or NHRC: it makes clear that *"While the effectiveness of the NHRC is almost inextricably intertwined with the effectiveness of the CDNHR project (since it is this project which has been the largest contributor to the NHRC's capacity to carry out its mandate), this report attempts to focus only on the effectiveness of the CDNHR and not on the effectiveness of NHRC as a whole."*

The purpose of the 2005/2006 review was to help update the project to changing circumstances. It was essentially a future-oriented exercise leading up to a new project document.

The backdrop was a radically changing situation, both in the country and internally in the NHRC. In February 2005 the king took power, suspended parliament and introduced emergency rule. The conflict escalated seriously. The term of the first five human-rights commissioners expired, and the king handpicked and appointed a new commission without parliamentary oversight. There were widespread concerns among international stakeholders and Nepalese NGOs about the independence, credibility and autonomy of the NHRC. Moreover, in April that year, the OHCHR Office in Nepal was established by agreement with the royal government, and the agreement specifically states that the OHCHR mission will advise and assist the NHRC (see section 3.2.2 above).

The 2005/2006 review soberly notes as an *overall* achievement of the project that

*"Almost all of those interviewed point out that (...) **without the project, the NHRC would have had practically no capacity** to fulfil its mandate. And almost all of those interviewed felt that the capacity of the staff to carry out their functions had increased. To this extent, then, the project can be said to have has **some positive effect** and, at the **simplest level** at least, to have been effective in that it has positively contributed to increased staff levels, equipment (such as computers and vehicles), regional outreach and better trained staff to undertake the work of the Commission."* (Our bold)

With regard to overall shortcomings, the review proceeds to observe that

"Despite these positive findings, the capacity of the Commission to influence positive change in the human rights situation of the country has not been sufficiently demonstrated, at least at this point in time. This can, of course, not be seen in isolation – the NHRC is operating in an extremely

difficult situation which, while comprehensively documented elsewhere, can be summarised as a breakdown of democracy (including a denial and substantial violations of most civil and political rights), the seizure of state power by the King on 1 February 2005 and the ongoing and increasingly more violent conflict between the security forces and the Maoist insurrection. While this undoubtedly contributes to perceptions of slow delivery on the part of the Commission, weaknesses within the Commission also contribute to the problem (as dealt with in the more detailed findings below). At the same time, the Review Team would like to acknowledge that the NHRC has had many successes, which are noted in the text that follows. The team also acknowledges that a variety of factors beyond the control of the NHRC contributed to the slow and sometimes absent achievement of expected outputs and results.”

In short, the document gives CDNHRC credit for building basic capacity. But it notes poor performance by the NHRC in all areas: in leadership, management and administration; and in protection, promotion and advocacy, where results are modest, dependency on international assistance has been developed, and where skills-transfer has been disappointing overall.

Results 2002-2007, according to revised project document 2006-2007

Following the mid-term review in late 2005, finalised in early 2006, the new project document was formulated for 2006 and 2007. As with the first revised project document (2004-2007), it contains a summary of the main results so far, much of which has been cut-and-paste from the previous project document:

“The CDNHRC (“the Project”) has contributed to the development of NHRC as an institution as well as to its substantive outputs through the delivery of technical assistance, in-kind contributions and expert advisory services. Despite the many challenges faced by the institution over the first few years of its existence, such as the ongoing armed conflict, the lack of institutional stability, increasing demands and expectations as well as inadequate staff capacity both in number and skills, and inadequate funding from the HMG, the Project has been able to support the NHRC to achieve considerable success.

*The Project has been supporting the efforts of the Commission to developing increased **administrative, leadership and management capacity**. The Project has assisted in the development of the NHRC’s Strategic and Program Plan 2004-2008. A computerized networks system is in place and effectively operating. In addition, the financial rules have also been put in place.*

*The Project has also assisted the NHRC in terms of **strengthening its capacity to receive complaints and monitor the human rights situation in the country**. Support in the areas of human rights investigation, monitoring, case follow-up, litigation and training by providing national and international technical expertise has enabled the NHRC to execute its core functions.*

In 2003, the NHRC contributed to upholding the second ceasefire between CPN-Maoists and HMG by proposing a draft Ceasefire Agreement and advocating for its signing. In addition, the Commission has organized seminars and interactions with various key stakeholders on the ways and means of transforming the conflict into lasting peace. In this context, the Project has been regularly supporting the Commission in its efforts to publish a compendium of papers of various national and international scholars and supported the NHRC in developing its recommendations to the conflicting parties. In addition, to help Government of Nepal effectively implement the 26 March 2004 reaffirmation of its commitment to human rights, the Commission has prepared, with

the support of the Project, and submitted a set of practical recommendations. Lately, the technical assistance provided by OHCHR is facilitating the process of reviewing a future Human Rights Accord.

*Furthermore, the Project has contributed to the **development of advocacy, research and policy formulation capacity** such as finalizing the first process of its legislative review work. Relevant staff of HMG and NGOs have acquired skills to prepare reports to the UN treaty bodies as per the treaty body requirements. Similarly, the NHRC's capacity in setting up and managing a human rights documentation and information centre for human rights related study and research is being developed.*

*The Commission carried out **large scale monitoring** which resulted in the NHRC documenting a number of situations and cases of gross human rights violations committed by both sides of the conflict. The Commission made a number of recommendations to deal with issues it had documented.*

*The Commission was more **effective in completing the investigation of complaints**, and in taking decisions related to them in the period after January 2005 than it had been in previous years. In part this is attributable to the training and other capacity development, including the attachment of regional advisors, that the CDNHRC provided. The opening of Regional Offices brought the Commission's services closer to the people and resulted in the Commission receiving a large number of new complaints.*

*The Commission has also **reviewed laws** on witchcraft and trafficking and made recommendations to HMG on both.*

The Project has supported the NHRC and enabled it to inform and spread human rights education through audio/visual media on issues such as witchcraft and social discrimination and through print media on the issue of social discrimination and trafficking. The creation of NHRC's official website and regular dissemination of information by electronic media as well as the annual report being published in English, Maithali and Nepali are also achievements worth bringing to the fore."

Results 2002-2007, according to review of CDNHRC project, October 2007

The CDNHRC project underwent another internal review in mid-and-late 2007. As in 2005/2006 the revision was *not an evaluation* but intended to realign the project to changing circumstances. The document clarifies up front that *"This study is primarily future-oriented, identifying several recommendations on how best to support the NHRC in the turbulent and unpredictable times that lie ahead in Nepal"*.

The backdrop was, again, major upheavals in Nepal. Since the last review in 2005/2006, the king had relinquished government, a peace agreement was entered into and the king's commissioners had been forced to resign after one year, followed by a 15-month period without commissioners at all, until a new commission was appointed in September 2007. All this necessitated a rethink about the next steps for the project.

In an overall summary statement the 2007 review document holds that

*"The Project's support to the NHRC **has been indispensable**, especially in the past two years when the Commission suffered serious handicaps, including having no commissioners."*(Our bold)

The 2007 review document has chapters that elaborate key achievements of the project and shortcomings of the NHRC in some detail. To refer them in entirety would lead to far for the purpose of the present report, but below is a brief summary.

The main achievements (Outputs and Outcomes) claimed in the 2007 review document are:

1. NHRC staff are brave and highly committed to their work
2. NHRC staff rely on various guidelines, procedures and manuals prepared by the Project in their work.
3. NHRC, with substantial support from the project, is starting to repair frayed relationships with NGOs.
4. NHRC staff are being assisted and trained in complaints-handling, monitoring, investigation and reporting on human-rights violations. It has also helped the Commission produce some key reports.
5. Project has created one format for all NHRC offices to use in reporting to the HQ. This has helped ease efforts to compare time periods, violations across regions and the ability to identify trends.
6. NHRC staff have been offered a lot of (some say too much) necessary training arranged by the project.
7. NHRC staff capacity-building methodologies are showing signs of improvement.
8. CDNHR is collaborating closely with the OHCHR Office in Nepal in delivering training, and the collaboration has been steady and effective.
9. Improved reporting to the donors by UNDP and the project

The main concerns or shortcomings pointed out in the 2007 review document are:

1. Most of the training offered to NHRC staff has unclear impact. Participation in seminars, with attached benefits, is too often perceived as a perk.
2. Relations with NGOs remain problematic, especially in Kathmandu.
3. The NHRC human-rights promotion work has not yielded measurable results or created a discernible impact on human-rights knowledge or awareness, despite great efforts by the project. Return on these investments are unsatisfactory by every measure.
4. Human rights reporting lacks analysis and rigour.
5. The NHRC, and by implication the project, lack an effective strategy to address large case backlogs.
6. Poor case-intake quality control means that many cases enter the NHRC system that should not, because they are outside NHRC's mandate.
7. NHRC staff do not reflect the diversity of the population; low-caste, minority or female staff are very under-represented.
8. NHRC does not receive adequate funding over Nepal's state budget and is dependent on international support. 90% of its budget comes through foreign assistance, mostly through the CDNHR project. 27 of the NHRC's 41 protection officers are contracted by the CDNHR project. Differences in contractual status, obligations and benefits undermines staff morale.

9. NHRC remains inaccessible to large segments of Nepal's people.
10. NHRC needs to adjust its focus. While it was understandable that the commission concentrated on conflict-related cases during the conflict, the focus now needs to include economic, social and cultural rights – to address the discrimination, exclusion and marginalisation that affect a majority of the population.
11. NHRC has been introverted and not forged particularly strong relationships with other key institutions, such as the Dalit Commission and the Commission on Women.
12. NHRC is over-dependent on the CDNHRC project.

Among the conclusions of the 2007 review report is the following statement:

“Human rights violations cannot be addressed by the NHRC alone. Rather, the Commission is part of a broad array of institutions that must forge a coherent approach to the challenge of improving respect for and protection of human rights. NHRC can only be effective if the courts, police, prisons, and key ministries affecting economic, social and cultural rights function properly. This, sadly, is not the case now in Nepal which poses additional challenges to the Commission.”

Results 2002 – end-2008, according to “Project Completion Report”, April 2009

The project ended ultimo 2008. A UNDP *Project Completion Report* of April 2009 summarised the achievements of the CDNHRC project in the period April 2002–December 2008. The achievements are largely identical to those reported earlier, grouped under the headings of NHRC (i) capacity development in the areas of management and administration, infrastructure, human rights promotion and advocacy, and building alliance with civil society, (ii) capacity to monitor the human rights situation, investigate serious violations of human rights, and take actions within its power against human rights violations, and (iii) have the Strategic Plan formulated in line with the additional mandates of the NHRC.

There are then detailed annexes that list (a) the rules, policies and guidelines developed by the project for NHRC, (b) Major activities undertaken year by year from 2002 up to and including 2008, (c) Training conducted for NHRC, NGOs and government staff, (d) Laws reviewed with support of the project.

The 2007 report provides a more analytical overview of results and weaknesses, however, so should be seen as providing the better insight into actual project achievements.

Main successes, CDNHRC project

Interviews with stakeholders leave an overall impression that the achievements claimed in the project documents, reviews and reports referred to above give a good picture of the project's success.

From the outset, the project provided donors with a common channel to build up the commission. It has since the outset been subject to a number of dramatic changes in the political environment that have caused disruptions to the continued work of the project. Among these are two complete shifts in the commissioners, which clearly has affected the orientation and zeal of the office and its staff.

The main achievements of the CDNHRC project during these seven years are at the Output and to a much lesser degree at the Outcome level.

The project has built and developed an essential *core of basic capacity*, in both managerial/administrative and technical matters, at the NHRC in its earliest formative years.

Basic leadership, planning and managerial tools have been introduced, and staff have been trained in financial and human-resources systems. In the substantive/technical fields, the project has helped introduce and operationalize systems and skills in protection and promotion of human rights – from monitoring and investigation, to outreach and advocacy. It advised and assisted the Nepalese counterparts to set up its main office in Kathmandu and later in the districts.

While the NHRC commissioners and staff were paid for over the state budget, UNDP provided for pretty much the rest. It renovated facilities, equipped the offices with computers and vehicles. It has remained the main international support effort for NHRC to this day and looks likely to remain so in the foreseeable future. Over the years, the project has flown in advisers to help design and introduce appropriate structures and processes, and to train staff in management, planning, budgeting and all relevant forms of administration. The project arranged and paid for human-rights training as well as in the NHRC working areas of promotion and protection of such rights.

The NHRC looks likely to exist for a long time, because it is mandated in the Constitution. This is presently only an interim constitution, from 2007, but analysts expect this to remain a permanent feature of any new Constitution. The basic capacities resulting from the project, then, will form foundations on which the institution will continue to develop. The NHRC has produced a number of analyses and collected a multitude of data that document events and may form the basis of action and accountability for human-rights violations later.

The NHRC in Nepal has become linked up with sister institutions globally, and commissioners and senior staff have travelled and exchanged experiences with peers in other countries. Ties have been established between the NHRC and Nepalese human-rights NGOs and activists through troublesome times, though perhaps not to an optimal degree.

Main shortcomings, CDNHRC project

The most commonly voiced criticism against the CDNHRC project is that the National Human Rights Commission has failed to rise to its mandate to protect and promote human rights. The reasons are multiple and complex. The institution is weak in leadership, under-resourced, and its recommendations are ignored by the government and prosecution service. Such factors are, however, beyond the project's control and therefore strictly not shortcomings *of the project*.

But the NHRC also remains weak in administration and technical capacities, which are within the province of the project. Everybody admits that skills remain low and that the NHRC is inefficient. Backlogs are massive, progress is slow and NHRC products are ostensibly often of mixed quality.

UNDP can perhaps be criticised for formulating its initial project document in too rosy language in certain places, particularly when it came to describing the end vision after the first phase of the project (2001-2004). This raised expectations and now leaves an impression of failure. However, at the time of the original project design, the conditions for progress were more positive than some of the subsequent phases.

At the same time, however, a number of informants believe that the CDNHRC project has under-utilised the resources of human-rights NGOs – of which there are many and assertive

potential allies. There are furthermore criticisms that some of the advisers provided by UNDP were unsuitable or arrived at the wrong time.

Some informants were more critical, claiming that the project has been harmful to the NHRC and to the human-rights situation in Nepal. The argument is that the NHRC is a “*fig leaf*” for a government to hide behind: that a fragile government in need of maintaining impunity for the sake of stability is creating a Commission for the purpose of pretending to take human-rights-violations accountability seriously, and thereby keep internal and external human-rights critics at bay. And the NHRC apparatus has become “project dependent”, which allows the government to starve the institution and not have to take it seriously. The concern with the project is that UNDP and associated donor countries are “legitimising” this façade, and that it by extension could undermine the broader public faith in not only the national government and international actors, but also of the concept of human rights.

While such concerns need to be taken seriously, there was no metric provided that could allow for verifying if these negative effects were occurring or were likely to occur.

4.2 OHCHR Monitoring Mission

The results of the OHCHR Office in the period 2005-2009 are to a larger extent based on interviews with stakeholder groups in the field, in part because this was so much more an operational and on-the-ground program that touched the lives of many directly.

Main successes, OHCHR Office in Nepal

The OHCHR Office in Nepal has provided donor countries with a *joint approach* to human-rights monitoring in Nepal. This has given the mission a degree of independence from, and clout vis-à-vis, the government of Nepal and the main political factions.

The OHCHR Mission in Nepal is held by virtually all informants to have satisfactorily acquitted itself with regard to its role under the Comprehensive Peace Agreement of 2006.

The mission has by all accounts used its donor-representing clout to *advocate for rule of law and respect for human rights* with more force than other multilateral or bilateral human-rights efforts, including the CDNHR project. By some accounts the advocacy has been seen by some government officials as pushy or intrusive, but overall the feedback is very positive.

According to informants in a number of different districts, the presence of UN monitorers has on many occasions helped *prevent frictions spilling over* into violence in many places. It is said to have helped *stabilise* Nepal from the Comprehensive Peace Agreement (CPA) in 2006 to this day. A number of informants also believed that the presence of the mission and its detention monitoring may have contributed to a reduction in investigative torture in Nepal.

The OHCHR Office in Nepal seems to have been efficient in the sense that it set up and branched out quickly. It established excellent connections with – and boosted the confidence and activities of – *human-rights NGOs* in Nepal. By many accounts the mission “installed a sense of hope”. Mission staff have provided Nepalese human-rights activists physical protection at certain times in certain hot-spots. The OHCHR mission built some basic monitoring and investigative capacity of a number of human-rights groups, in addition to reinforcing the courage to operate in times of great fear, which in turn have contributed positively to maintaining a critical mass of human-rights demand in the country.

Like the NHRC, the OHCHR Office in Nepal has collected data and documentation pertaining to human-rights violations before and after the CPA. And it has supported NHRC and CDNHR activities, though the commission may on occasion have availed itself of capacity-development offers less than it could have. The OHCHR Office in Nepal has, in particular, supported the NHRC in monitoring and investigation efforts – both hands-on and in the form of offering various forms of necessary training.

The OHCHR mission is also said to have been a leading proponent for organising conflict victims with some success, especially in south-western Nepal. In the same region of the country, OHCHR staff claim to have secured a string of what they term “good judgements” in local courts that may help to move the struggle for human rights forward.

The clear, consistent, overall impression is that the mission has delivered as hoped for.

Main shortcomings, OHCHR Office in Nepal

The main disappointment among the interviewed persons seems to be that the whole effort’s impact is *quick-impact, fragile*, and that the mission is *being squeezed out* by a Nepalese government that is less than keen on addressing impunity and too weak to uphold the rule of law. Another criticism is that it has been calling for but failed to build attention to *minorities*, and their *economic, social and cultural rights*.

However, the OHCHR civilian peace-monitoring operation requires an agreement with the Government of Nepal to operate, and these are entered into for only six months at a time. The greater challenge, of course, is that the OHCHR mission is monitoring conflicts whose protagonists are key actors in Parliament and Government. The mission is not mandated to and cannot intervene directly into the dynamics that drive the confrontations and thus is left with a frustrating observer role – which leaves it open to considerable dissatisfaction.

Some OHCHR staff lament that it has been difficult to get NHRC – some commissioners and staff – as an ally. Apparently there have been perceptions by some in the NHRC that the OHCHR mission failed to maintain impartiality and got to be seen as Maoist-leaning on too many issues. And by many accounts elements in the NHRC have seen the OHCHR mission as somewhat of a foreign-imposed rival.

The mission has succeeded in building good relationships with human-rights NGOs in many districts of Nepal. But it has reportedly been less successful in building local capacities. Some OHCHR staff wish that the mission had more success in getting the elite NGOs in Nepal to adopt a wider human-rights focus than civil and political rights.

The OHCHR mission in Nepal did not manage to secure a relationship of close co-operation with some important Nepalese drivers, such as the Nepalese army. In some instances the military has probably wanted OHCHR’s field observers “out of the way”.

Some in OHCHR regret that none of the cases of suspected human-rights abuses they have disclosed and reported to NHRC have resulted in a prosecution. However, this is not a matter over which OHCHR – analogously with UNDP on the CDNHR – had had any control.

5 Findings and Conclusions

This chapter assesses the efforts looked at in Nepal according to OECD DAC criteria.

5.1 Capacity Development for National Human Rights Commission

Relevance

The project has clearly been *anchored in the policies* of the Government of Nepal, and policies of Norway, UNDP and OHCHR. It was initially championed by leading NGO activists in Nepal as a mechanism against political imprisonment. Donors joined in, and eventually a new Nepalese government made it an official priority. Norway has long considered human rights a matter of democratic governance. The project was thus highly *relevant*.

Efficiency

For donors wanting to engage in a comprehensive capacity-building effort for the NHRC there was no real alternative to the CDNHRC project. Most interviews with UNDP staff, Nepalese officials, donor representatives and other sources leave an overall perception that the CDNHRC project was seen as cost-and-time efficient as anyone could expect in the context of Nepal. However, there were the observations that some of the technical assistance provided was not successful. There is also the question about the inconsistent quality of the reports provided, which are considered important Outputs of a project that otherwise did not have many external Outputs to point to. Clearly the ability to deliver on some of the expected Outputs has varied with the framework conditions under which the project worked. Some of these were internal in the sense that the total changes to commissioners happened inside the project, but were not under project management responsibility and thus cannot be ascribed to the project as such. The Output production has thus been quite variable, so the project as a whole should be seen as *not very efficient*.

Effectiveness

The outputs that were produced have not led to the originally hoped-for Outcomes. While the NHRC has collected data, completed some investigations and made a number of recommendations to prosecute conflict-related human-rights violation, these have not been followed up by the legal system. While internal capacity has been built and applied to human rights violations situations, neither the Commission as an agency for human rights nor the particular cases it wanted to pursue have led to changes in the human rights situation in the country, perceived or real. *Effectiveness* of the project has thus been *poor*.

Impact

By almost every account the NHRC has had no noticeable effect on Nepalese society to date. The human-rights situation in Nepal is driven by other actors. While one cannot exclude the

possibility that things may change in future, the consensus is that there is *low, if any, impact*.

Sustainability

The NHRC is seen to be a sustainable institution, however, due to its constitutional mandate. To the extent it continues to exist and work on the basis of systems and skills introduced through the CDNHR, the project will leave a legacy beyond its lifetime. Paradoxically, then, though it shows no clear impact to date, the project achievements – largely the internal capacity building – are likely to be *sustainable*.

5.2 OHCHR Monitoring Mission

Since the OHCHR mission is a field operation, not an aid project, the DAC criteria can only be applied analogously.

Relevance

The OHCHR's field mission in Nepal has been *consistent with the policies* of the Government of Nepal, and policies of Norway, UNDP and OHCHR.

By 2005 there was a full-scale insurgency and ethnic tensions with a worsening human-rights situation in the country. Both the international community and the Government of Nepal were increasingly concerned. Nepal's state apparatus – police, courts, the National Human Rights commission, even the army – failed to address human-rights abuses.

By 2005, donors and OHCHR wanted an international monitoring mission in place. Norway – with long ties to Nepal and human-rights strengthening as a priority of aid – was among the donors to pledge support.

In April 2005 an agreement was signed by Nepal and the UN Commissioner for Human Rights, underwritten by a consortium of donors, including Norway. It mandated OHCHR to establish a major field operation with considerable soft power in the country. This agreement has since been renewed in six-month intervals, reiterating the commitment by all actors. These agreements show that the OHCHR field mission in Nepal has been in line with priorities of Norway and other donor countries, as well as successive governments in Nepal throughout the period 1999-2009.

A new agreement of June 2010 has replaced the 2005 agreement, by which Nepal and the international stakeholders agree to continue the work. This shows that the mission still remains relevant to all concerned. Some worry, though, that the Government of Nepal in the 2009 agreement has forced the mission to close down its field offices and concentrate in the capital, Kathmandu, thus abandoning continuous international monitoring.

In conclusion, the OHCHR field mission in Nepal was, is and will be clearly *relevant*.

Efficiency

The perception among people interviewed – diplomats, officials, UN staff, NGOs and activists – is that there were few realistic alternatives to OHCHR mission in the period looked at. Armed peace-keeping missions – the most logical alternative – would have been several times more expensive. Virtually all informants agree that the OHCHR mission set up

operations and began delivering very quickly, and that it has been a very efficient way to help prevent further deterioration. To this day, the mission has delivered competent international monitoring, investigative assistance, advice and analysis to the people of Nepal and institutions. Activity levels have been high. There is also a strong consistency in interviews about the mission's effect on relevant counterparts. In the capital, the OHCHR HQ maintained close contact with central Nepalese counterparts – the government, legislators, justice-system officials, parties, media and civil society – and the international community. The evaluation team sees no reason to disagree with this overall perception and deems the effort *efficient*.

Effectiveness

The OHCHR Nepal field operations was competently established and managed from the outset in 2005. The first task in 2005 was to set up HQ and field offices across Nepal and become operational swiftly. By late 2005 the organisation was firmly in place, covering large parts of the country, delivering monitoring, advocacy and capacity-building.. It has proceeded to build basic administrative and technical capacities.

In the provinces, OHCHR monitors repeatedly helped reduce violence. Interviewed persons give numerous accounts of tense incidents where the presence of OHCHR monitors prevented escalation and bloodshed. Moreover, the presence of OHCHR mission has helped numerous Nepalese NGOs and activists, who had feared for their lives. The OHCHR mission made them feel protected. The mission has by all accounts led to more stability, more space for public discourse on human rights, protected “space” for those who wish to raise issues about and defend human rights. In conclusion, the OHCHR Office in Nepal has been *effective*.

Impact

By all accounts, OHCHR Nepal has helped to diffuse tensions at critical points, it has strengthened some capacity of local NGOs, and assisted the NHRC in case-processing and capacity-building. Many interviewed persons praise the mission for contributing significantly to achieving and maintaining Nepal's fragile stability. By and large, all sources of information suggest that the mission has had a very positive impact. But as long as the underlying tensions remain unresolved, the *quick impacts* are *fragile* too.

Sustainability

The common belief is that the lasting effects of OHCHR impacts are fragile. The authorities of Nepal are still weak and unstable. Presently, the OHCHR is required by the government of Nepal to cut back on its monitoring in the field, in a situation where there is no mechanism in place that can fill the role so far played by the OHCHR. The longer-term effect of the effort will depend on developments in Nepal in the years to come. In conclusion, sustainability is *highly uncertain*.

Table 5.1: Summary of Project Results

	UNDP: Capacity Development for NHRC	OHCHR : Conflict-monitoring mission
Practical results (outcomes)	<ol style="list-style-type: none"> 1. Built basic capacity (managerial, technical) of NHRC in the institution's earliest, formative years 2. Built up information base on human rights violations, but weak in pursuing cases 3. NHRC overall fails to live up to its mandate, to a large extent for political reasons 	<ol style="list-style-type: none"> 1. Helped diffuse on tensions in Nepal and prevent riots or atrocities on a number of occasions 2. Built confidence and capacity among NGOs and HR activists, as well as supported the work of the NHRC 3. Acted as international human-rights advocate vis-à-vis actors in Nepal 4. Supported the UNDP CDNHRC project's efforts
DAC judgement (overall)	<p>Relevance: Very high; believed urgent in 2001</p> <p>Efficiency: Acceptable/unclear</p> <p>Effectiveness: Low</p> <p>Impact: Insignificant</p> <p>Sustainability: High; constitutional body</p>	<p>Relevance: Very high, urgent conflict-prevention</p> <p>Efficiency: Probably high; alternative of armed intervention much costlier</p> <p>Effectiveness: High by all accounts</p> <p>Impact: Swift and considerable</p> <p>Sustainability: Uncertain; very fragile</p>

5.3 UN as Channel

Both UN organs – UNDP and OHCHR – have been the most logical channels for support to the human rights situation in the country. There have been no realistic alternatives to the roles played by the UN actors, though one might speculate about whether performance would have been different if either or the agencies had taken on the other agency's project. But that would also seem to be the only options that might have been available.

In terms of performance, the OHCHR is seen in a more favourable light than the UNDP. To some extent this may be attributed to the differences in the projects themselves. The monitoring mission, by its mandate and organisation, was a pure observer operation for which OHCHR had full operational responsibilities, and thus was able to run fairly much as it wanted. UNDP was much more constrained in terms of supporting a project that was largely implemented by national bodies, in a highly sensitive field and where national stakeholders therefore were heavily involved and carefully watched what was being done. It is not clear that any other agency would have been able to do much more than UNDP in fact did.

For whatever shortcomings there may have been, especially on the CD-NHRC project, the UN was and remains the logical channel, because despite the various misgivings provided by some informants, no other channel/actor had the mandate, legitimacy and on-the-ground capability to carry out the project responsibilities.

5.4 Norway as Partner

Norway's Embassy has clearly been closely involved in the discussions around the human rights situation in Nepal, and tracked the various options and programs closely.

Norway's decisions have been grounded in its general and stated policies for assistance in the field of human rights. The projects supported have therefore been fully aligned with these general approaches, and with full support from the Ministry in Oslo.

The Embassy has been well-informed and active throughout the period. It was among the first donors to fund both efforts. In the case of UNDP's project, Norway stopped further funding when it saw that the National Human Rights Commission was becoming deeply discredited in 2005, and instead shifted its human-rights support to the OHCHR conflict-monitoring mission. This shows a degree of analytical and political decision making independence as well as confidence in own insight that must be seen as very positive, and reflects a willingness on Norway's side to also play a critical role in terms of assessing UN agencies' performance.

5.5 Key Factors Explaining Results

The team has been asked to identify the key factors – external and internal, positive and inhibiting – that can explain project results.

CDNHRC project-internal factors

The project has by all accounts benefited from stability in project management on the side of UNDP over the seven years looked at. This has been particularly important considering the dramatic and frequent changes on the counterpart side, in the NHRC.

Though the project started out in 2001/2002 with high hopes that the NHRC would be a fully functional institution within just three years, the actors soon learned to take a more realistic, long-term view, and to adapt to changing circumstances in 2004, 2006, 2007 and lately in 2009. Despite the changes, it seems that the project management has remained clear and focused on the essential, long-term objectives. And the project has sequenced its priorities carefully. Initially it focused on building core capacities at NHRC headquarters, and later it expanded geographically and thematically.

In the eyes of the NHRC the project managed to deliver outputs well. But the flip side is that the institution has become overly dependent on the project. And the evaluation team has heard complaints that in some cases advisers provided through the project failed to leave a legacy for failure to understand Nepalese culture – a complaint often voiced against capacity-development efforts around the world.

CDNHRC project-external factors

There was *no clear alternative* to the CDNHRC project for stakeholders committed to building the NHRC, a fact which strengthened the project's relevance to donors. Given the nature of the project – its highly political nature – there was no bilateral option, and among the international actors, UNDP has relevant expertise and quickly manoeuvred in position in 2001 to become the Nepalese government's partner of choice.

At the outset in 2001 the project enjoyed *solid backing* from donors, Nepalese human-rights activists and (seemingly) the government of Nepal. This support waned after the 2005 royal coup d'état, however.

As noted, there have been many external factors that constrained the project's achievements. As with any effort to promote and protect human rights in Nepal, the CDNHRC has come

up against deeply rooted beliefs in caste and ethnic identities. Complex problems in the courts, prosecution and police go unaddressed. Otherwise, the most important inhibiting factors lie in the dimensions of contemporary Nepalese politics. The NHRC was launched in the midst of an armed conflict; this provides for a very difficult setting for this kind of project. Public trust in institutions is very low. Corruption is institutionalised. All state organs are politicised, and there is no institutional independence. Most institutions with which a human-rights commission needs to interact are corrupt and/or weak. Many interviewed persons criticise the donor community for lacking a clear, appropriate, unified rule-of-law strategy in response, though this ignores the basic fact that these changes must be grounded in local actors.

UNDP's corporate *modus operandi* is to work *with* a country's government; this limits the extent to which it can criticise overtly or otherwise "irritate" counterparts. Since at least mid 2002 it seems to have been little genuine will on the side of Nepal's government, legislature, security forces, judiciary and extralegal armed factions to pursue acts of human-rights violations during the 1996-2006 conflict. All factions protect their own and tacitly agree on impunity for conflict-related violations in return for stability in the present.

Views that the NHRC – and by extension, the project – serve as a human-rights "fig leaf" for the authorities cannot be totally dismissed. While the institution has a wide and ambitious mandate, the NHRC is kept on starvation budgets. The prosecution service routinely ignores NHRC recommendations to prosecute individual conflict-related human-rights violations, and neither the government nor parliament do anything about this. Moreover, there will soon be no less than 11 commissions (for women, Dalits, ethnic minorities, etc) to compete for attention and jurisdiction.

The composition of the commission has been outside the project's control. The five commissioners are considered to be political appointees. Few of the commissioners since 2001 have had any legal expertise. All three commissions to date have been paralysed with internal conflict. The ensuing partisanship and inertia have severely undermined the NHRC's status and – by implication – the success of the project.

The royal coup d'état in 2005 and the following hand-picked commission and one-and-a-half-year vacancy hurt the institution's legitimacy and severely damaged its relations with Nepal's human-rights NGO community.

There have been issues relating to NHRC staffing beyond the project's control. Though the NHRC staff has come a long way in terms of systems and processes, skills and knowledge and attitudes and motivation, there are also divisions and problems in the area of human resources. This has to do with differences in civil-service contractual status and (by some accounts) of loyalties to particular commissioners or their political factions. This is reportedly having an adverse effect on NHRC efficiency and project progress.

Table 5.2: Key Factors Explaining Project Results - CDNHRC

	Positive	Constraints
Project internal	<ul style="list-style-type: none"> • Maintained competent staff • Flexible management; realigned to shifting circumstances in 2004, 2006, 2007 and 2009 • Focused focus on the long term • Managed to deliver outputs well in eyes of stakeholders • Sequenced wisely; built core capacities first, extensions later 	<ul style="list-style-type: none"> • Project cannot control Outcome level; Nepalese politicking decisive • Started out with far too high expectations; unrealistic objectives in 2001 • High UNDP turnover, except project managers • Donor dependency created • Slow results partly because many advisers failed for poor understanding of Nepalese culture
External to project	<ul style="list-style-type: none"> • UN blue flag needed • Within UN, UNDP was the clear choice of agency for this sort of capacity-development • UNDP modus operandi is to work with the governments • When project was launched in 2001, there was solid donor backing 	<ul style="list-style-type: none"> • Caste and ethnic divisions • Institutionalised corruption • Dysfunctional governance system – including elections and parliament, government, judiciary, prosecution, police and army • NHRC mandate very ambitious • NHRC commissioners associated with political factions • Commissioners seen as politicised, divided, lacking experience in human-rights law • NHRC as fig leaf: all rivalling govt factions tacitly agree to impunity to not “rock the boat” • 11 commissions being set up; unclear jurisdictions; dilutes impact of NHRC

OHCHR Office in Nepal: internal factors

The OHCHR monitoring mission in Nepal has enjoyed strong donor backing. This allowed the mission to deploy quickly and fan out across the country. By all accounts the mission has been well managed and staffed, and benefited from close links with the UNMIN mission and, albeit to a lesser extent, to the CDNHR project.

On the constraining side the mission has reportedly struggled at times to maintain an image of strict impartiality. Some say it has worked with milieus in Nepal that are associated with the Maoists, and thereby exposed itself to allegations of supporting the Maoists. This may in turn have harmed its relations to other political factions, and to the army and security apparatus. To what extent it has been avoidable in contemporary Nepal to become exposed to any accusation of side-taking is unclear.

Although the mission has made serious efforts to build local capacities in human-rights protection and promotion, the results appear to be mixed for a variety of reasons. Apparently the mission has never quite managed to overcome a degree of reluctance on the side of the NHRC to engage wholeheartedly, and some local NGOs have complained that training-of-trainers efforts offered by OHCHR have been unpaid, and therefore unattractive to elements in the NGO sector.

OHCHR Office in Nepal: external factors

The external factors influencing the results of the OHCHR mission in Nepal are to a large extent the same as those influencing the CDNHR project: the OHCHR mission has come up against deeply rooted beliefs in caste and ethnic identities. But traditional attitudes have also benefited this effort. The evaluation team has several times heard said things like “Nepalese people shy away from perpetrating human-rights abuses in front of foreigners”. This is used as a partial explanation as to why the presence of unarmed OHCHR observers has prevented tensions from escalating into violence.

The weakness of Nepal’s rule-of-law apparatus – including police, prosecution, judiciary and human-rights commission – has made the OHCHR mission all the more relevant. The mission seeks to protect and promote human rights in a bypass of a governance apparatus characterised by corruption, low capacity and vested elite interests. It has sought to boost its influence through close co-operation with the NHRC and UNMIN, but these efforts, too, are faced with many of the same external challenges as the OHCHR mission itself.

By all accounts the OHCHR Office in Nepal is being squeezed out by the country’s government too early, and this is reportedly likely to have an adverse effect on its achievements. The need to boost the NHRC is sometimes used as a justification for no longer requiring the OHCHR monitoring mission.

Table 5.3: Key Factors Explaining Project Results – OHCHR Office

	Positive	Constraints
Project internal	<ul style="list-style-type: none"> Well-staffed, at HQ and field levels Competent management, close personnel bridges UNMIN-OHCHR; maintained donors’ trust Quick deployment in 2006 to cover main hot-spots in Nepal 	<ul style="list-style-type: none"> Paradoxically, the weakness of NHRC has made the OHCHR mission more relevant Acquired an image of partiality; said to have legitimised some NGOs not working with them Failed to establish good relations with the Nepalese army Capacity-development (ToT) of local NGOs had limited effect (unpaid) Some in NHRC saw OHCHR as a rival
External to project	<ul style="list-style-type: none"> UN blue flag needed Independence from the Nepalese government Solid donor backing from outset 	<ul style="list-style-type: none"> Caste and ethnic divisions Institutionalised corruption Dysfunctional governance system – including elections and parliament, government, judiciary, prosecution, police and army India and China believed to want internationals out of the way UNMIN weak; suffers from many of the same problems that OHCHR and UNDP do Being squeezed out too soon by the Government of Nepal

Attachment A: Persons Interviewed

Government Officials

Mr. Madhu Ghimiri, Office of the Prime Minister

Dr. Jagadish C. Pokharel, Vice-Chairman; National Planning Commission

National Human Rights Commissioners and Staff

Ms. Indira Rana, fmr. Commissioner, National Human Rights Commission (NHRC)

Mr. Sushil Pyakurel, fmr. Commissioner, NHRC

Mr. Gauri Pradhan, Commissioner, NHRC

Mr. Hari Fuyan, Attorney-at-Law; NHRC

Mr. Bishal Khanal, Secretary of the NHRC

Mr. Bhim Prakash Oli, Human Rights Officer, Investigations; Focal Point, Torture

Mr. Bhanu Bhakta Acharya, Communication Officer, NHRC

Mr. Mohan Dev Toshi, Human Rights Officer, NHRC Regional Office Nepalgunj

Mr. Hari Prasad Gnawali, Human Rights Officer, NHRC Regional Office Nepalgunj

Mr. Bhanu Bhakta Acharya, Communication Officer, NHRC

Women's Commission

Ms. Mohna Ansari, Commissioner; Women's Commission, Nepal

Ms. Dhana Kumari Sunar, Commissioner; Women's Commission, Nepal

Ms. Manju Kumari Yadav, Commissioner; Women's Commission, Nepal

Ms. Amuda Shrestha, Commissioner; Women's Commission, Nepal

Mr. Rituraj Bhandari, Secretary of the Commission; Women's Commission, Nepal

UN and Donor Officials

Mr. Robert Piper, UN Resident and Humanitarian Coordinator, UNDP Resident Representative, Nepal

Ms. Anne-Isabelle Degryse-Blateau, Country Director, UNDP Nepal

Ms. Anne Helene Marsøe, Consultant; fmr. Programme Officer, UNDP Nepal

Mr. Tek Tamata, Programme Analyst (Justice and Human Rights), UNDP Nepal

Mr. Sharad Neupane, Assistant Country Director, UNDP Nepal

Ms. Morgan Murray, Consultant, UNDP Nepal (observer)

Mr. Hemang Sharma, National Project Manager, SCNHR Project; UNDP Nepal

Mr. Richard Bennett, OHCHR Representative, Nepal

Ms. Patricia Okello, Human Rights Officer, OHCHR Nepalgunj

Mr. Ram Prasad Gautam, Human Rights Officer, OHCHR Nepalgunj

Mr. Vibhu Mishra, Mational Interpreter/Translator, OHCHR

Mr. Richard F Ragan, WFP Resident Representative

Mr. Shiv Vishnakarma, Deputy Head, WFP Sub-Office Nepalgunj

Ms. Gillian Mellsop, UNICEF Representative

Mr. Surendra S. Rana, Chief , Mid & Far Eastern Zone Office, UNICEF

Ms. Anita Dahal, Programme Officer, Decentralisation and Governance, Mid & Far Eastern Zone Office, UNICEF

Mr. Einar Rystad, Minister Counsellor – Deputy Head of Mission, Norwegian Embassy

Ms. Camilla Røssaak, Counsellor, Norwegian Embassy

Mr. Jarle Fjelde, Norwegian Embassy

Mr. Lill Vaksdal, Norwegian Embassy

Other Informants

Mr. Basanta Aautom, Senior Legal Officer, Advocacy Forum

Mr. Chandrashivar P. Singh, President, Forum for Community Empowerment (FORCE)

Mr. Bhajan Ram Cherdhari, Senior Officer, INSEC

Ms. Maimoona Siddiqui, Fatima Foundation

Mr. Chhavilai Tamang, President, Sayatra

Mr. A. Varma, member, Sayatra

Mr. Kishnawar Bahadur, Dalits Welfare Organisation

Mr. H..., Dalits' Welfare Organisation (several representatives whose names not recorded)

Ms. Elizabeth Ordonio, Management Adviser (VSO), Dalits' Welfare Organisation

Mr. Alex Arter, Managing Director, Entec Consulting & Engineering, Switzerland

Attachment B: Documents Consulted

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Attachment C: Results Frameworks

This chart was prepared by the Norwegian Embassy on the basis of the Programme Support Document.

Goal: Promote a sustainable process of democratization and human rights in Malawi

