

# The Limits of Human Rights Oversight: Evaluating National Human Rights Commission (NHRC) Jurisdiction in Nepal

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## To cite this article:

Chaudhary, N. (2025). The Limits of Human Rights Oversight: Evaluating National Human Rights Commission (NHRC) Jurisdiction in Nepal. *Sambahak: Human Rights Journal*, 25(1), 126–145. <https://doi.org/10.3126/sambahak.v25i1.83924>

## Keywords:

Constitutional Jurisdiction, Human Rights, Transitional Justice, Implementation Gap, Extraterritorial Jurisdiction

## Abstract

*This article undertakes a comprehensive examination of the jurisdiction of Human Rights Commissions of Nepal, with a particular focus on the National Human Rights Commission (NHRC) as established under the Constitution of Nepal 2015. The research explores the evolving legal framework governing human rights protection in Nepal, tracing its development from the Human Rights Commission Act of 1997 through constitutional changes and post-conflict transitional justice mechanisms. Through doctrinal analysis of constitutional provisions, legislative frameworks, case law, and comparative jurisdictional models, this study critically evaluates the scope, limitations, and effectiveness of the Commission's mandate. Particular attention is given to jurisdictional challenges including territorial and subject-matter limitations, overlap with other constitutional commissions, implementation gaps between legal authority and practical enforcement, and the interplay between national jurisdiction and international human rights obligations. The findings reveal a complex institutional architecture with progressive formal powers but significant operational constraints. This article argues that while Nepal has established an advanced constitutional foundation for human rights protection, jurisdictional ambiguities, resource limitations, and political interference continue to impede the Commission's effectiveness. Recommendations include legislative clarification of overlapping mandates, enhanced enforcement mechanisms, greater institutional independence, and the harmonization of domestic jurisdiction with international obligations to strengthen Nepal's human rights protection framework.*

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**Introduction**

The establishment and operation of national human rights institutions represent a critical component of the institutional architecture for rights protection in modern democracies. In Nepal, the National Human Rights Commission (NHRC)—constitutionally established under the 2015 Constitution—operates within a complex legal and political landscape shaped by democratic transitions, post-conflict reconciliation, and the growing influence of international human rights law. Over time, Nepal has also created several specialized constitutional bodies with human rights-related mandates (such as the Women, Dalit, and Indigenous Nationalities Commissions), which are distinct from but occasionally overlapping with the NHRC. While Nepal's Constitution provides for multiple constitutional bodies with human rights-related mandates—such as the National Women Commission, National Dalit Commission, and National Inclusion Commission—it is important to distinguish these from the National Human Rights Commission (NHRC). The NHRC serves as Nepal's designated National Human Rights Institution (NHRI) under the Paris Principles and is directly mandated to oversee the promotion, protection, and monitoring of human rights in a comprehensive sense. The other thematic commissions focus on the rights and welfare of specific groups and communities, and although they operate within the broader human rights architecture, they are not considered NHRI-equivalent bodies. This article, therefore, treats the NHRC as the central rights-monitoring body and refers to other commissions as specialized or auxiliary constitutional entities with sectoral mandates.

This article investigates the extent to which the NHRC's formal jurisdiction aligns with its operational capacity. It critically examines how legal ambiguities, jurisdictional overlaps, and political constraints affect the NHRC's effectiveness in protecting human rights. The analysis also explores the NHRC's interaction with specialized commissions, the judiciary, and international human rights obligations. The central research questions guiding this article are:

- (1) To what extent does the NHRC's formal jurisdiction align with its practical enforcement capacity?
- (2) How do constitutional overlaps, political interference, and operational limitations affect the Commission's effectiveness?
- (3) What institutional reforms are necessary to enhance its jurisdictional clarity and independence?

**Research Methodology:**

This research employs a doctrinal methodology to examine the jurisdiction of Human Rights Commissions in Nepal. The doctrinal approach, fundamental to legal scholarship, involves

systematic analysis of legal texts and authoritative interpretations to determine the current state of the law and identify conceptual frameworks that govern legal principles and practices.

### **Historical Development of Human Rights Commissions in Nepal:**

The evolution of Human Rights Commissions in Nepal reflects the country's complex political trajectory and gradual institutionalization of rights protection mechanisms. Understanding this historical development provides essential context for analyzing current jurisdictional frameworks and challenges. The establishment of these commissions represents not merely administrative reform but a fundamental reconfiguration of state-citizen relationships and accountability mechanisms in post-authoritarian and post-conflict Nepal. The National Human Rights Commission, an independent constitutional authority, is responsible for the preservation and promotion of human rights in Nepal. The concept of an independent human rights body in Nepal first gained traction during the democratic opening following the People's Movement of 1990, which ended the Panchayat system and established a constitutional monarchy with multiparty democracy. This political transition created space for civil society advocacy around institutional human rights protection, influenced by international developments including the 1993 Paris Principles on National Human Rights Institutions. However, concrete legislative action came only in 1997 with the enactment of the Human Rights Commission Act. The 1997 Act established the National Human Rights Commission (NHRC) as a statutory body with a mandate to promote and protect human rights. This initial legislative foundation granted the Commission powers of investigation, monitoring, and recommendation, though its statutory status limited its independence and authority. The Commission's jurisdiction under this framework was primarily reactive rather than proactive, focusing on individual complaints rather than systematic violations. Additionally, its enforcement capability was severely constrained, with recommendations frequently ignored by government authorities. The Commission's development faced significant challenges during the Maoist insurgency (1996-2006),<sup>2</sup> when human rights violations escalated dramatically. The conflict period severely tested the nascent institution's capacity and highlighted jurisdictional limitations in addressing state and non-state violations during armed conflict. Nevertheless, this period also demonstrated the crucial necessity of independent human rights monitoring, as the Commission documented abuses and maintained pressure for accountability despite operational constraints.

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<sup>2</sup> During the Maoist insurgency in Nepal from 1996 to 2006, the development of the Commission faced significant challenges due to widespread human rights violations and the breakdown of law and order. The conflict was marked by serious abuses committed by both the Maoist insurgents and government security forces, which severely undermined the functioning and effectiveness of any justice or human rights institutions.

**Comparison of NHRC Mandates: Legal Milestones (1997–2015):**

**Table 1:**

*Comparison of NHRC Mandates: Legal Milestones (1997–2015)*

Legal Instrument	Key Mandate	Strengths
Human Rights Commission Act, 1997	<ul style="list-style-type: none"> <li>– Established NHRC as a statutory body</li> <li>– Mandate: receive complaints, investigate, recommend</li> </ul>	<ul style="list-style-type: none"> <li>• First national institution for human rights oversight</li> <li>• Reactive complaints mechanism</li> </ul>
Interim Constitution, 2007	<ul style="list-style-type: none"> <li>– Elevated NHRC to constitutional status</li> <li>– Added suo moto inquiry powers</li> </ul>	<ul style="list-style-type: none"> <li>• Guaranteed institutional independence</li> <li>• Broader inquiry authority</li> </ul>
NHRC Act, 2012 (2068 BS)	<ul style="list-style-type: none"> <li>– Operationalized constitutional status</li> <li>– Introduced CMRS, summons powers, witness protection</li> </ul>	<ul style="list-style-type: none"> <li>• Detailed procedural framework</li> <li>• Recognized international treaties as part of mandate</li> </ul>
Constitution of Nepal, 2015	<ul style="list-style-type: none"> <li>– Entrenched NHRC under Arts 248–249</li> <li>– Defined broad powers: investigate, recommend, publish names</li> </ul>	<ul style="list-style-type: none"> <li>• Full constitutional autonomy</li> <li>• Expanded to federal structure</li> <li>• Explicit treaty-monitoring role</li> </ul>

A transformative moment came with the Comprehensive Peace Agreement of 2006<sup>3</sup> and subsequent Interim Constitution of 2007, which elevated the NHRC to constitutional status. Article 131 of the Interim Constitution significantly expanded the Commission's jurisdiction,

<sup>3</sup> The Comprehensive Peace Accord (CPA) of 2006 was signed on November 21, 2006, between the Government of Nepal and the Communist Party of Nepal (Maoist Centre), officially ending the decade-long Nepalese Civil War that began in 1996.

granting it authority to conduct inquiries and investigations upon petition or *sua sponte*<sup>4</sup> into human rights abuses, negligence in preventing violations, and recommend departmental actions against violators. This constitutional foundation substantially strengthened the Commission's formal independence and authority, reflecting recognition of its importance in post-conflict transition. The post-conflict transitional period highlighted complex jurisdictional questions regarding the relationship between the Commission and other transitional justice mechanisms, particularly the Truth and Reconciliation Commission (TRC)<sup>5</sup> and Commission of Investigation on Enforced Disappeared Persons (CIEDP)<sup>6</sup> established under the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act 2014<sup>7</sup>. These mechanisms created parallel investigative structures for conflict-era violations, raising questions about jurisdictional boundaries and coordination that continue to affect human rights protection in Nepal. *The coexistence of the NHRC with transitional justice bodies such as the TRC and CIEDP has created significant coordination challenges. While both TRC and CIEDP are tasked with investigating conflict-era human rights abuses, the NHRC also received numerous complaints related to the same period. The absence of a formal coordination mechanism or legal clarity on the division of responsibilities has led to parallel investigations, duplicative findings, and in some cases, complainants being referred back and forth between bodies. This has undermined victim confidence and slowed the accountability process. Clarifying the NHRC's supplementary or residual role in cases where transitional justice bodies are inactive or delayed is essential for coherent human rights redress.* The Constitution of Nepal 2015 represents the most recent and comprehensive framework governing human rights commissions. It not only maintained the NHRC's constitutional status but expanded the institutional architecture by establishing additional thematic commissions focused on women, Dalits, indigenous peoples, Madhesi, Tharus, and Muslims. This proliferation of commissions reflects recognition of differentiated protection needs among marginalized communities but also creates potential jurisdictional overlaps and coordination challenges. The Constitution of Nepal (2015, Art 249), defines

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<sup>4</sup> Suo moto – In its own motion

<sup>5</sup> The Truth and Reconciliation Commission (TRC) of Nepal was established on February 10, 2015, as part of the peace process following the end of the Maoist insurgency and the signing of the Comprehensive Peace Accord (CPA) in 2006

<sup>6</sup> The Commission of Investigation on Enforced Disappeared Persons (CIEDP) in Nepal was established on February 10, 2015, as an independent and impartial body tasked with investigating cases of enforced disappearances that occurred during the armed conflict between the Government of Nepal and the Maoist insurgents from February 13, 1996, to November 26, 2006

<sup>7</sup> The Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2014 is a key piece of legislation in Nepal that established two transitional justice bodies: the Truth and Reconciliation Commission (TRC) and the Commission of Investigation on Enforced Disappeared Persons (CIEDP). The Act was enacted to address gross human rights violations, including enforced disappearances, committed during the armed conflict between 1996 and 2006.

NHRC jurisdiction, with broad authority to "respect, protect and promote human rights and ensure effective enforcement thereof." The constitutional mandate includes powers to conduct inquiries and investigations, recommend departmental actions against violators, recommend compensation for victims, and publish names of human rights violators. These provisions represent the most extensive formal jurisdiction in the Commission's history, though implementation remains problematic.

### **Constitutional and Legislative Framework:**

The jurisdiction of Human Rights Commissions in Nepal derives primarily from constitutional provisions and implementing legislation that define their mandate, powers, composition, and operational procedures. The Constitution of Nepal (2015) provides the foundational framework, with subsequent legislation and regulations elaborating specific jurisdictional parameters. This section analyzes these interlocking legal instruments to establish the formal scope and limitations of commission jurisdiction. According to the NHRC's Annual Report (FY 2021–22), 414 recommendations were issued during the year, including six policy-level suggestions. However, the report clearly notes that "the implementation status of the recommendations made by the NHRCN to the Government of Nepal is not encouraging," indicating a persistent lack of enforcement despite constitutional guarantees (National Human Rights Commission of Nepal, 2022).

#### **Constitutional Provisions:**

The Constitution of Nepal (2015) significantly expanded the institutional architecture for human rights protection by establishing multiple commissions with constitutionally defined mandates. The Constitution of Nepal, (2015 Part 25) addresses National Human Rights Commission (Articles 248-249), while Articles 252-256 establish thematic commissions including the National Women Commission, National Dalit Commission, National Inclusion Commission, Indigenous Nationalities Commission, Madhesi Commission, Tharu Commission, and Muslim Commission.

NHRC is an independent and autonomous constitutional body comprising a Chairperson and four other members appointed for six-year terms (The Constitution of Nepal, 2015, Art. 248). Constitutional status provides critical protection against arbitrary dissolution or modification of the Commission's structure, requiring constitutional amendment rather than ordinary legislation to alter its fundamental character. This represents a significant jurisdictional safeguard compared to the Commission's earlier statutory status.

Article 249 defines the NHRC's duties, functions, and powers, establishing its core jurisdiction. The constitutional mandate encompasses comprehensive responsibilities including:

1. Conducting independent and autonomous inquiries and investigations into human rights violations or abetment thereof, negligence in prevention of violations, or carelessness in fulfilling this duty (The Constitution of Nepal, 2015, Art. 249 (2)(a));
2. Recommending departmental action against public officials who fail to fulfill their duty of preventing violations (The Constitution of Nepal, 2015, Art. 249 (2)(b));
3. Recommending filing of court cases against persons responsible for violations (The Constitution of Nepal, 2015, Art. 249 (2)(c));
4. Promoting human rights education and awareness (The Constitution of Nepal, 2015, Art. 249 (2)(d));
5. Reviewing laws related to human rights and recommending reforms (The Constitution of Nepal, 2015, Art. 249 (2)(f));
6. Monitoring implementation of international human rights treaties to which Nepal is a party (The Constitution of Nepal, 2015, Art. 249 (2)(g));
7. Publishing names of human rights violators who have not implemented its recommendations (The Constitution of Nepal, 2015, Art. 249 (2) (h)).

This constitutional jurisdiction grants the NHRC broad investigative authority but primarily recommendatory powers regarding enforcement—a crucial limitation that affects its practical effectiveness. The Constitution requires that government bodies "extend cooperation" in the Commission's work and implement its recommendations, but lacks specific enforcement mechanisms beyond reputational sanctions through public naming of non-compliant entities. For the thematic commissions, the Constitution establishes differentiated mandates focused on specific marginalized communities. These commissions have investigative and recommendatory powers within their thematic domains, creating potential jurisdictional overlap with the NHRC regarding rights violations affecting their constituent communities. The Constitution does not explicitly delineate coordination mechanisms between these commissions, leaving significant ambiguity regarding jurisdictional boundaries.

### **Legislative Framework**

The National Human Rights Commission Act (2012, Preamble, Section 4, 17, 18), as subsequently amended, operationalizes the constitutional mandate by establishing detailed procedures, jurisdictional parameters, and implementation mechanisms. This legislation substantially influences how constitutional jurisdiction translates into practical authority (The National Human Rights Commission Act, 2012, Section 4(1)(a–g)). The Act elaborates investigation procedures, complaint mechanisms, powers of summoning witnesses and

documents, protection measures for complainants and witnesses, and procedures for issuing recommendations (The National Human Rights Commission Act, 2012, Section 4(1)(a–g), Section 10-13). Section 4 reiterates and expands the Commission's investigative jurisdiction, authorizing it to conduct inquiries with powers equivalent to a court in summoning witnesses, ordering document production, and gathering evidence (The National Human Rights Commission Act, 2012, Section 4(1)(a–b).

Regarding territorial jurisdiction, Section 6 establishes the Commission's authority throughout Nepal's territory, with provision for establishing regional and local offices (The National Human Rights Commission Act, 2012, Section 6—a provision that has gained increased significance under the federal structure established by the 2015 Constitution. The Act also addresses temporal jurisdiction, authorizing investigations into both ongoing and past violations with no explicit time limitation, though practical constraints affect investigation of historical abuses (The National Human Rights Commission Act, 2012, Section 13.

Jurisdictional limitations appear in several provisions. Section 13 establishes a six-month limitation period for filing complaints after alleged violations, though the Commission retains discretion to investigate older cases under certain circumstances. Section 11 restricts jurisdiction over matters pending before courts, aligning with constitutional separation of powers but potentially limiting intervention in ongoing judicial processes where rights violations may occur.

The relationship between the NHRC and other human rights commissions is addressed in Section 20, which requires consultation and coordination but does not clearly delineate jurisdictional boundaries or establish hierarchy among commissions. This legislative gap contributes to practical confusion and potential jurisdictional conflicts.

### **Scope of Jurisdiction of the National Human Rights Commission**

The jurisdiction of Nepal's National Human Rights Commission encompasses multiple dimensions including subject-matter jurisdiction, territorial reach, temporal limitations, personal jurisdiction over perpetrators and victims, and remedial authority. This multidimensional jurisdiction defines the Commission's operational space and shapes its effectiveness as a rights protection mechanism. Given its limited institutional capacity, the NHRC has prioritized civil and political rights (e.g., custodial deaths, election monitoring, illegal detention), often at the expense of more systemic socioeconomic rights issues. In FY 2021–22, the NHRC conducted 221 monitoring activities, with extensive coverage of electoral events and detention conditions, but comparatively less targeted inquiry into healthcare access, land disputes, or education inequalities (National Human Rights Commission of Nepal, 2022). The NHRC's subject-matter jurisdiction extends to all internationally recognized human rights as referenced in Article



249(1) of the Constitution, which mandates the Commission to "respect, protect and promote human rights and ensure effective enforcement thereof." This broad formulation avoids restricting jurisdiction to specific rights categories or generations, enabling comprehensive coverage across civil, political, economic, social, and cultural rights domains. The Constitution thus adopts an integrated approach to human rights protection, reflecting international trends toward rights indivisibility. This expansive subject-matter jurisdiction is further elaborated in the NHRC Act, which defines "human rights" as "rights relating to life, liberty, equality and dignity of individual provided by Constitution and other prevailing laws and the rights established as human rights under international treaties relating to human rights to which Nepal is a party." This definition incorporates both domestic constitutional rights and international human rights obligations, creating a dual foundation for Commission jurisdiction. An important jurisdictional question concerns the relationship between the NHRC's general human rights mandate and the specialized jurisdiction of thematic commissions established under Articles 252-256. While these commissions have domain-specific mandates—focusing on women, Dalits, indigenous peoples, and other marginalized communities—their jurisdictional relationship with the NHRC remains incompletely defined. The constitutional framework suggests concurrent rather than exclusive jurisdiction, allowing both general and specialized commissions to address rights violations affecting marginalized communities, though coordination mechanisms remain underdeveloped. Personal jurisdiction encompasses authority over both perpetrators and victims of human rights violations. Regarding alleged perpetrators, the NHRC's jurisdiction extends to both state and non-state actors, though with differentiated powers. For state actors, the Commission can directly recommend departmental action or prosecution, while jurisdiction over private entities operates primarily through recommending government intervention to address private violations. This differentiated approach reflects the traditional conceptualization of human rights as primarily regulating state conduct, though it arguably creates jurisdictional gaps regarding corporate human rights abuses, community practices violating individual rights, and other non-state violations. The Commission has occasionally addressed private sector violations through recommending regulatory action by government authorities, but this indirect approach limits effectiveness against powerful non-state actors. Due to resource constraints, the NHRC tends to prioritize violations of civil and political rights such as torture, extrajudicial killings, and arbitrary detention. One illustrative example of the NHRC's action can be found in its 2020 investigation into the custodial death of Dilip Mahato (Republica, 2020), a young environmental activist who was allegedly murdered for protesting illegal sand mining. The NHRC conducted an on-site investigation, documented witness testimonies, and recommended departmental action against security personnel and local officials for negligence in protecting Mahato's rights. Despite public outcry and clear findings, the implementation of NHRC's recommendations remained partial and delayed. This case

reflects both the Commission's proactive investigative function and the recurring challenge of weak enforcement in politically sensitive matters. In contrast, systemic violations of economic and social rights, including access to education and healthcare, often receive less attention, reflecting both strategic prioritization and donor influence.

### **The Collective Impact of Human Rights Conventions on NHRC Jurisdiction:**

Nepal's ratification of a wide array of international human rights conventions collectively establishes a broad and encompassing jurisdiction for the National Human Rights Commission (NHRC). Each convention, focusing on specific categories of rights or vulnerable groups, contributes to the overall mandate of the NHRC to protect and promote human rights within Nepal. These conventions act as an internationally recognized framework that defines the scope of human rights that the NHRC is empowered to safeguard. For instance, conventions like the International Covenant on Civil and Political Rights [ICCPR], (1966) and the International Covenant on Economic, Social and Cultural Rights [ICESCR], 1966 lay the foundational principles for a wide spectrum of rights, including the right to life, liberty, security of person, freedom of expression, right to work, right to education, and the right to an adequate standard of living. When issues arise concerning violations of these fundamental rights, the NHRC's jurisdiction to investigate, mediate, and recommend remedies is directly supported by Nepal's obligations under these overarching covenants. Similarly, specific conventions targeting vulnerable groups or particular forms of violations further delineate the NHRC's responsibilities. The Convention on the Rights of the Child (CRC) mandates the protection of children's rights, giving the NHRC a clear mandate to address issues like child labor, child marriage, and the rights of children in conflict with the law. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) obligates Nepal to eliminate discrimination against women, thus empowering the NHRC to address issues of gender-based violence, discrimination in employment, and unequal access to opportunities. The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) provides the basis for the NHRC to address issues of racial discrimination and promote equality. As we discussed earlier, the Convention against Torture [CAT], (1984) specifically grants the NHRC jurisdiction over cases of torture and ill-treatment. Furthermore, conventions related to the rights of persons with disabilities, migrant workers, and other specific groups all contribute to the NHRC's comprehensive mandate.

When any issue arises alleging a violation of a human right protected under these ratified conventions, the NHRC's role is to act as a guardian of these rights within the national context.

*Its jurisdiction allows it to:*

- **Receive and investigate complaints:** Individuals or groups alleging human rights violations, as defined by these conventions, can lodge complaints with the NHRC.
- **Conduct inquiries and fact-finding:** The NHRC has the authority to conduct independent inquiries to ascertain the facts of alleged violations, often drawing upon the standards set by the relevant international conventions.
- **Mediate and conciliate:** In many cases, the NHRC can facilitate dialogue and mediation between the affected parties to find amicable solutions that respect human rights principles enshrined in the conventions.
- **Recommend action to government authorities:** Based on its investigations, the NHRC can recommend specific actions to government agencies, including policy changes, legal reforms, and disciplinary or prosecutorial measures, to ensure compliance with Nepal's international human rights obligations.
- **Monitor and report:** The NHRC plays a crucial role in monitoring the human rights situation in Nepal and reporting on the implementation of international human rights conventions to both national and international bodies.

In essence, Nepal's commitment to a wide range of international human rights conventions provides the NHRC with a broad and robust jurisdictional foundation. These conventions define the internationally recognized human rights standards that the NHRC is mandated to protect and promote within Nepal. When human rights issues arise, the NHRC acts as a crucial link between Nepal's international obligations and the realization of these rights at the national level, utilizing the principles and provisions of these conventions to guide its actions and recommendations.

### **Jurisdictional Challenges and Limitations:**

Despite extensive formal jurisdiction established in constitutional and legislative frameworks, Human Rights Commissions in Nepal face numerous challenges that limit effective jurisdictional exercise. These constraints arise from legal ambiguities, institutional factors, political context, and resource limitations that collectively impede translation of formal mandate into practical authority.

#### *a. Jurisdictional Overlap and Institutional Fragmentation*

A significant challenge emerges from Nepal's complex institutional architecture for rights protection, which creates jurisdictional overlaps without clear coordination mechanisms. The proliferation of specialized commissions under the 2015 Constitution—including Women, Dalit, Indigenous Nationalities, Madhesi, Tharu, and Muslim Commissions—establishes multiple bodies with overlapping mandates regarding rights violations affecting particular communities.

When violations target women from indigenous communities or Dalits, for example, jurisdictional boundaries between commissions remain unclear. This institutional fragmentation potentially undermines cohesive rights protection by dispersing resources, creating forum-shopping opportunities, and generating inconsistent approaches to similar violations. While Section 20 of the NHRC Act requires consultation and coordination among commissions, it does not establish clear hierarchical relationships or jurisdictional priority rules. The overlapping jurisdiction between the NHRC and specialized bodies can enable forum shopping, where complainants approach whichever body they perceive as more favorable. For instance, in cases involving caste-based violence against women, both the National Dalit Commission and Women's Commission may receive complaints, sometimes leading to conflicting recommendations or fragmented follow-up.

*b. Resource Constraints and Operational Capacity*

Effective jurisdictional exercise requires adequate resources and operational capacity, areas where Nepal's human rights commissions face severe constraints. Despite constitutional status and formal independence, commissions receive limited budgetary allocations that restrict staffing, infrastructure development, investigative activities, and outreach programs. These resource limitations inevitably narrow the practical scope of jurisdiction by forcing prioritization among potential investigation areas and geographic coverage. The NHRC's physical presence remains concentrated in urban centers, with provincial offices inadequately resourced to cover remote regions. This creates accessibility barriers for rural populations and impedes timely investigation of violations in peripheral locations. Similarly, specialized expertise for investigating complex violations—including forensic capabilities, technological surveillance expertise, and specialized knowledge regarding vulnerable populations—remains underdeveloped due to resource constraints. These operational limitations particularly affect the Commission's capacity to exercise preventive jurisdiction through monitoring systemic conditions and intervening before violations occur. Resource constraints inevitably prioritize reactive response to reported violations over proactive monitoring and prevention efforts, narrowing practical jurisdictional exercise despite comprehensive formal authority.

*c. Political Interference and Institutional Independence*

Effective jurisdictional exercise requires genuine independence from political interference—a condition imperfectly realized in Nepal's context. While the 2015 Constitution establishes formal independence for human rights commissions, practical autonomy faces continuing challenges from political actors seeking to influence commission operations or limit effectiveness regarding politically sensitive violations. Appointment processes represent a key vulnerability despite constitutional safeguards. Commissioners are appointed on

recommendation of the Constitutional Council—a body dominated by political leadership—creating potential for political considerations to influence selection. This appointment mechanism potentially compromises institutional independence when investigating violations implicating political authorities or security forces under political control. Political interference also manifests through budgetary control, with resource allocations determined by government authorities potentially implicated in violations under commission investigation. This creates implicit pressure through resource dependency, potentially influencing commission willingness to pursue sensitive investigations or publish findings implicating powerful political actors.

*d. National Implementation of International Standards*

Nepal has ratified numerous international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR)<sup>8</sup>, International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>9</sup>, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>10</sup>, Convention Against Torture (CAT)<sup>11</sup>, Convention on the Rights of the Child (CRC)<sup>12</sup>, and Convention on the Rights of Persons with Disabilities (CRPD)<sup>13</sup>. This monitoring mandate creates a crucial intermediary role for the Commission between international obligations and domestic implementation. The Commission's definition of "human rights" under Section 2(f) of the NHRC Act incorporates "rights established as human rights under international treaties relating to human rights to which Nepal is a party," explicitly extending jurisdiction to treaty-based rights even when not fully domesticated through national legislation. This approach aligns with Section 9 of the Nepal Treaty Act, which establishes that ratified treaties have force equivalent to national law. The Commission has utilized this jurisdiction to assess legislative compliance with treaty obligations, evaluate policy implementation against international standards, and recommend reforms addressing identified gaps. This function provides crucial domestic oversight of international commitments that might otherwise lack effective implementation mechanisms. However, the Commission's recommendatory powers limit enforcement capability regarding treaty compliance, creating potential implementation gaps between international obligations and domestic practice.

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<sup>8</sup> Nepal ratified the International Covenant on Civil and Political Rights (ICCPR) on May 14, 1991

<sup>9</sup> Nepal ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on August 14, 1991.

<sup>10</sup> Nepal ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on April 22, 1991.

<sup>11</sup> Nepal ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on June 13, 1991.

<sup>12</sup> Nepal ratified the Convention on the Rights of the Child (CRC) on September 14, 1990.

<sup>13</sup> Nepal ratified the Convention on the Rights of Persons with Disabilities (CRPD) on May 3, 2010.

*e. Paris Principles Compliance*

The Paris Principles on National Human Rights Institutions (1993), adopted by UN General Assembly Resolution 48/134 (1993),<sup>14</sup> establish international standards for independent human rights institutions including requirements regarding mandate, composition, resources, and operational independence. These principles significantly influence expectations regarding appropriate jurisdiction for national institutions like Nepal's NHRC. Nepal's constitutional and legislative framework largely aligns with Paris Principles requirements regarding formal jurisdiction, granting the Commission broad authority to promote and protect human rights through investigation, monitoring, education, and recommendation functions. The Constitution establishes institutional independence, diverse membership requirements, and formal authority to address all human rights within national territory—key requirements under international standards. The financial autonomy of the NHRCN is yet to be ensured in accordance with the Paris Principles." — NHRC Annual Report FY 2021/22 (National Human Rights Commission of Nepal, 2022)

The *Global Alliance of National Human Rights Institutions* (GANHRI<sup>15</sup>), which assesses compliance with Paris Principles, has accredited Nepal's NHRC with "A" status, recognizing substantial alignment with international standards. However, periodic reviews have identified jurisdictional concerns including implementation gaps and resource limitations that affect operational effectiveness. This international recognition coupled with identified shortcomings reflects the mixed reality of the Commission's jurisdictional exercise—formally adequate but operationally constrained.

**Constitutional Recognition of International Standards:**

The 2015 Constitution incorporates international human rights principles throughout its provisions, which establishes state policy "to implement international treaties, agreements to which Nepal is a party (The Constitution of Nepal, 2015, Art, 51 (b)(3))." This constitutional

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<sup>14</sup> The Paris Principles, adopted by the UN General Assembly in Resolution 48/134 (1993), establish the minimum standards for National Human Rights Institutions (NHRIs) to be credible and effective. They emphasize key pillars such as independence, pluralism, and effectiveness. The Principles require NHRIs to have a broad mandate to promote and protect all human rights, independence from government, adequate powers and resources, and the ability to cooperate with state and civil society actors as well as international bodies. They also outline responsibilities including advising governments, monitoring human rights, educating the public, and engaging internationally. Compliance with the Paris Principles is essential for NHRI accreditation and participation in UN human rights mechanisms.

<sup>15</sup> The Global Alliance of National Human Rights Institutions (GANHRI) is an international network that promotes and strengthens National Human Rights Institutions (NHRIs) worldwide to ensure their compliance with the Paris Principles, which set the minimum standards for independence, pluralism, broad mandate, adequate resources, and effectiveness in human rights protection and promotion

recognition creates a framework for interpreting commission jurisdiction in alignment with international standards rather than solely through domestic legal traditions. The Commission has utilized this constitutional internationalism to expand effective jurisdiction beyond explicitly domesticated rights, addressing emerging human rights concerns including environmental justice, business impacts on human rights, and digital rights. This approach demonstrates how international standards can productively expand commission jurisdiction to address evolving rights concepts and protection needs.

### **Extraterritorial Jurisdiction and Diplomatic Engagement:**

International human rights law increasingly acknowledges extraterritorial obligations, impacting the Commission's jurisdiction over Nepalese citizens abroad and foreign entities in Nepal. The Commission has cautiously approached these extraterritorial issues, mainly concerning abuses faced by Nepalese migrant workers. Challenges include limited investigative capacity, diplomatic sensitivities, and enforcement difficulties. The Commission addresses these via diplomatic engagement, coordination with destination countries, and advocating for bilateral agreements. While theoretical jurisdiction exists over foreign entities operating domestically, practical investigation and enforcement are challenging. The Commission is now addressing business and human rights, aligning with international principles like the UN Guiding Principles, though jurisdictional limits are still evolving. The relationship between domestic commission jurisdiction and international obligations is both reinforcing and constraining. International standards bolster the Commission's authority through global norms and institutional models, but also expose gaps in implementing rights protection. This dynamic will likely evolve as Nepal integrates international standards into its domestic practices and adapts global models to its national and federal context. NHRC Nepal has engaged in regional collaboration through joint events with the Human Rights Commission of Malaysia, particularly concerning migrant worker protections. Furthermore, it has maintained dialogue with India's NHRC on border-area human rights issues, although these engagements lack formalized monitoring structures (National Human Rights Commission of Nepal, 2022).

### **Enhancing the Effectiveness of Human Rights Commissions in Nepal:**

Addressing jurisdictional challenges facing Nepal's human rights commissions requires multidimensional reform encompassing constitutional clarification, legislative refinement, institutional strengthening, and operational enhancement. Drawing from analysis of existing frameworks and comparative models, this section proposes reform pathways that could strengthen commission effectiveness while maintaining constitutional coherence and respecting Nepal's distinctive context.

#### ***a. Legislative Clarification of Jurisdictional Boundaries***

A primary enhancement priority involves legislative clarification of jurisdictional relationships between multiple human rights institutions established under the 2015 Constitution. While constitutional provisions establish these commissions with overlapping mandates, implementing legislation could delineate clearer operational boundaries and coordination mechanisms without requiring constitutional amendment. Comprehensive legislation addressing inter-commission relationships could establish several jurisdictional clarifications: primary jurisdiction rules determining which commission holds initial responsibility for particular violation categories; referral mechanisms facilitating case transfer between commissions based on specialized expertise; joint investigation protocols for violations involving multiple commission mandates; and information-sharing requirements ensuring cohesive response across institutional boundaries. Such legislation would maintain constitutional plurality while reducing fragmentation effects.

*b. Enhanced Implementation Mechanisms*

Addressing the implementation gap between investigation and remedy requires enhanced enforcement mechanisms that respect constitutional separation of powers while strengthening practical jurisdiction. Several mechanisms could enhance implementation without requiring fundamental constitutional restructuring:

**First**, legislation could establish consequences for non-implementation beyond current naming provisions, including budget implications for non-compliant agencies, mandatory parliamentary review of implementation patterns, and requirements for written explanation of non-implementation subject to judicial review for reasonableness. These mechanisms would maintain the recommendatory nature of commission authority while creating stronger incentives for implementation. *For instance, India's NHRC has the power to directly approach the Supreme Court or High Courts in cases of serious human rights violations under Section 18(b) of the Protection of Human Rights Act, 1993. This judicial access mechanism has enabled the Indian NHRC to escalate non-implemented recommendations into enforceable court orders. Similarly, South Africa's Human Rights Commission can conduct public hearings and issue subpoenas, giving it quasi-judicial authority. These comparative models offer potential pathways for enhancing the enforcement capacity of Nepal's NHRC through statutory reform without undermining constitutional separation of powers.*

**Second**, strategic litigation authority could enable commissions to petition courts directly when recommendations face non-implementation, creating judicial enforcement pathway for particularly significant violations. This approach, successfully implemented in comparative systems including India and South Africa, would maintain separation between investigation and enforcement while providing recourse when political resistance blocks implementation.



*Third*, mandatory periodic parliamentary review of implementation patterns could enhance accountability through legislative oversight. Regular reporting requirements coupled with dedicated parliamentary committee review would create political costs for systematic non-implementation while engaging legislative authority in rights protection. This approach has proven effective in comparative systems including Australia and Canada for enhancing implementation without direct enforcement authority.

*c. Institutional Independence Strengthening*

Enhancing effective jurisdiction requires strengthening institutional independence protections against political interference that constrains operational authority despite formal constitutional status. Several mechanisms could enhance independence without constitutional amendment:

*First*, legislative refinement of appointment processes could establish more transparent and pluralistic selection procedures while respecting constitutional appointment authority. Enhanced requirements for public hearings, civil society consultation, transparent criteria application, and diversity requirements would strengthen commissioner selection independence while maintaining constitutional appointment structures.

*Second*, financial independence protections could establish dedicated funding mechanisms less vulnerable to political manipulation, including fixed budget percentages, multi-year allocations, or independent endowment structures. These mechanisms, successfully implemented in comparative systems including South Africa and Australia, would enhance operational independence through resource security without requiring constitutional restructuring.

**Conclusion:**

The examination of human rights commissions in Nepal, particularly the National Human Rights Commission (NHRC) established under the 2015 Constitution, reveals a complex institutional landscape. While the NHRC possesses progressive formal powers, it encounters significant operational constraints. Nepal's journey from a statutory body to constitutional entrenchment reflects its democratic evolution, with human rights institutions gaining increasing formal authority through constitutional recognition and mandate expansion. The 2015 Constitution, in particular, represents the most advanced formal framework to date, establishing multiple commissions with comprehensive investigative jurisdiction and recommendatory powers across diverse rights domains. A key finding is the jurisdictional complexity introduced by the proliferation of specialized commissions under the 2015 Constitution. While this reflects a laudable recognition of the differentiated protection needs among marginalized communities, it has created challenges due to inadequate coordination mechanisms. This institutional fragmentation potentially undermines cohesive protection by dispersing resources, creating

overlapping mandates, and leading to coordination gaps. Similarly, Nepal's federal restructuring has added another layer of jurisdictional complexity regarding the relationships between national commissions and subnational authorities. Despite concurrent protection responsibilities, coordination mechanisms in this area remain underdeveloped. In conclusion, while Nepal has established a strong constitutional foundation for human rights protection, the effectiveness of the NHRC's jurisdiction is significantly impeded by practical limitations. To bridge the gap between formal powers and actual impact, addressing these challenges through improved coordination, enhanced enforcement mechanisms, and strengthened institutional independence remains crucial for realizing comprehensive human rights protection in Nepal.

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