

# National Action Plan on Business and Human Rights (2080/81-2084/85)



Government of Nepal  
**Ministry of Labour, Employment and Social Security**  
Singha Durbar, Kathmandu

मानव अधिकार सम्बन्धी पाँचौं राष्ट्रिय कार्ययोजना (२०७७/७८-२०८१/८२) बमोजिम तयार गरिएको  
व्यवसाय र मानव अधिकार सम्बन्धी राष्ट्रिय कार्ययोजना, २०८०/८१-२०८४/८५  
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## मन्तव्य

मुलुकको आर्थिक विकास र सामाजिक जीवनमा व्यावसायिक क्षेत्रको भूमिका बढाई गाइरहेको सन्दर्भमा व्यवसायीले आफ्ना सबै गतिविधिहरूलाई जिम्मेवारीपूर्वक सञ्चालन गर्नुपर्छ भन्ने धारणाको विकाससंगै व्यावसायिक क्षेत्रमा मानव अधिकार प्रतिको चासो तीव्ररूपमा बढाई गएको छ। नेपालको संविधानले नागरिक स्वतन्त्रता, मौलिक अधिकार, मानव अधिकार, कानूनी राज्यको अवधारणा लगायतका लोकतान्त्रिक मूल्य र मान्यतामा आधारित भई समृद्ध राष्ट्र निर्माणको परिकल्पना गरेको छ। समृद्ध राष्ट्र निर्माणको परिकल्पनालाई व्यवहारमा रूपान्तरणको लागि विभिन्न क्षेत्रमा विद्यमान वर्गीय, जातीय, क्षेत्रीय, भाषिक, धार्मिक, लैंगिक र सबै प्रकारका विभिन्नको अन्त्य गरी आर्थिक समानता, समृद्धि र सामाजिक न्याय सुनिश्चित गर्ने कार्यलाई संविधानले मौलिक हक र राज्यका निर्देशक सिद्धान्त एवं नीतिहरूमा समाहित गरेको छ। संविधानले सुनिश्चित गरेका मौलिक हकका साथै राज्यका निर्देशक सिद्धान्त एवं नीतिहरूको प्रभावकारी कार्यान्वयनका लागि विभिन्न कानूनी, नीतिगत, योजनागत एवं संस्थागत व्यवस्थाहरू गरिएका छन्।

मानव अधिकारको सम्मान, संरक्षण, प्रवर्द्धन र उपचारमा सुनिश्चितता प्रतिको दायित्व तथा अन्तर्राष्ट्रिय मन्त्रमा गरेका प्रतिवद्धतालाई योजनावदू रूपमा कार्यान्वयन गर्न नेपाल सरकारले मानव अधिकार सम्बन्धी राष्ट्रिय कार्ययोजनाको निर्माण र कार्यान्वयन गर्दै आएको छ। हाल, मानव अधिकार सम्बन्धी पाँचौ राष्ट्रिय कार्ययोजना (२०७७/७८-२०८१/८२) कार्यान्वयनमा रहेको र उक्त कार्ययोजनाले उद्योग, व्यवसाय र प्रतिष्ठानमा व्यवसाय र मानव अधिकार सम्बन्धी संयुक्त राष्ट्रसंघीय मार्गदर्शक सिद्धान्तलाई दृष्टिगत गरी छुटै राष्ट्रिय कार्ययोजना बनाई लागू गर्ने व्यवस्था गरी उक्त कार्यको जिम्मेवार निकाय श्रम, रोजगार तथा सामाजिक सुरक्षा मन्त्रालयलाई तोकेको छ। मानव अधिकार सम्बन्धी पाँचौ राष्ट्रिय कार्ययोजनाले तोकेको व्यवस्था बमोजिम श्रम, रोजगार तथा सामाजिक सुरक्षा मन्त्रालयले "व्यवसाय र मानव अधिकार सम्बन्धी राष्ट्रिय कार्ययोजना (२०८०/८१-२०८४/८५)" स्वीकृत गरी कार्यान्वयनको शुरुवात गरेको छ।

व्यवसाय र मानव अधिकार सम्बन्धी संयुक्त राष्ट्रसंघीय मार्गदर्शक सिद्धान्तको कार्यान्वयन कार्ययोजना निर्माण गरिएकोले मार्गदर्शक सिद्धान्तका विषयलाई नै मुख्यरूपमा कार्ययोजनामा समेटिएको छ। विद्यमान संवैधानिक तथा कानूनी व्यवस्था, दीर्घकालीन र आवधिक योजनामा समावेश भएका विषय, नेपालले अनुमोदन गरेका मानव अधिकार सम्बन्धी महासंघिहरू, अन्तर्राष्ट्रिय श्रम संगठनका अभिसन्धीहरू, नेपाल सरकारका राष्ट्रिय र क्षेत्रगत नीतिहरू, मानव अधिकार सम्बन्धी पाँचौ राष्ट्रिय कार्ययोजनामा समावेश भएका

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विषयहरू, दिगो विकास लक्ष्य तथा विकाशसील राष्ट्रमा स्तरोन्नतिसँग सम्बन्धित क्रियाकलापहरू कार्ययोजनामा समावेश भएका छन्। कार्ययोजना तयारीका क्रममा सरोकारवालासँग गरिएको कार्यशाला, गोष्ठी र छलफलमा प्राप्त भएका सुझावहरूलाई समेत समावेश गरी कार्ययोजना तयार गरिएको छ। यसका साथै नेपाल सरकारका विभिन्न मन्त्रालयहरू, नागरिक समाज, निजी क्षेत्र तथा अन्य निकायहरूबाट प्राप्त राय, सल्लाह, सुझाव र परामर्शलाई समेत कार्ययोजना तयारीको क्रममा ध्यान दिईएको छ। व्यवसाय र मानवअधिकार सम्बन्धी संयुक्त राष्ट्रसंघीय मार्गदर्शक सिद्धान्त बमोजिम मानव अधिकारको संरक्षण र सम्मान गर्ने राज्यको दायित्व, मानव अधिकारको सम्मान गर्ने व्यावसायिक क्षेत्रको जिम्मेवारी र मानव अधिकारको हनन भएको अवस्थामा उपचारमा पहुँचसँग सम्बन्धित क्रियाकलापहरू कार्ययोजनामा समावेश गरिएको छ। राष्ट्रिय कार्ययोजनाको प्रभावकारी कार्यान्वयनबाट सबै व्यावसायिक गतिविधिलाई व्यवस्थित र मानव अधिकारमैत्री बनाउन अभिप्रेरित गर्ने, सरकारलाई मानव अधिकारको सम्मान र संरक्षण गर्ने सन्दर्भमा आन्तरिक र बाह्य रूपमा सहयोग गर्ने, व्यवसायीहरूले समाजप्रतिको जिम्मेवारी (Corporate Social Responsibility-CSR) पूरा गर्दै समाजमा सुरक्षा र सम्मानको भावना जागृत गराउने, मानव अधिकारको संरक्षण र सम्मान प्रति जिम्मेवार व्यावसायिक क्रियाकलापबाट वैदेशिक लगानी अभिवृद्धि, रोजगारी सिर्जना, आयआर्जन, गुणस्तरीय वस्तु तथा सेवाको उत्पादन र उपभोगमा सहजता हुनुको साथै मानव जीवनस्तरमा समेत उल्लेखनीय सुधार आउने विद्वास लिएको छु।

अन्त्यमा, कार्ययोजनाको तर्जुमा कार्यमा संलग्न हुनुभएका श्रम, रोजगार तथा सामाजिक सुरक्षा मन्त्रालयका सचिव, सहसचिव तथा कर्मचारी एवं अन्य मन्त्रालय र निकायका कर्मचारीहरूलाई धन्यवाद दिन चाहन्छु।

धन्यवाद।

पुस, २०८०

शरत सिंह भण्डारी  
शरत सिंह भण्डारी  
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नेपाल सरकार  
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मन्त्रव्य

विश्वका झण्डै पाँचदर्जन भन्दा बढी राष्ट्रहरूले जिम्मेवार र जवाफदेही व्यवसाय (Responsible Business) को अवधारणालाई आत्मसात गर्दै संयुक्त राष्ट्रसङ्हीय व्यवसाय र मानव अधिकार सम्बन्धी मार्गदर्शक सिद्धान्तको कार्यान्वयन सम्बन्धी राष्ट्रिय कार्ययोजना (National Action Plan) तर्जुमा गरी कार्यान्वयनमा ल्याएका छन्। नेपालको मानव अधिकार सम्बन्धी पाँचौं राष्ट्रिय कार्ययोजना (२०७७/७८-२०८१/८२) ले पनि उद्योग, व्यवसाय र प्रतिष्ठानमा व्यवसाय र मानव अधिकार सम्बन्धी संयुक्त राष्ट्रसङ्हीय मार्गदर्शक सिद्धान्तलाई दृष्टिगत गरी छुटै राष्ट्रिय कार्ययोजना बनाई लागू गर्ने व्यवस्था गरे बमोजिम अम, रोजगार तथा सामाजिक सुरक्षा मन्त्रालयले व्यवसाय र मानव अधिकार सम्बन्धी राष्ट्रिय कार्ययोजना (२०८०/८१-२०८४/८५) तर्जुमा गरेको छ।

कार्ययोजनामा मानव अधिकारको परिपालना, व्यावसायिक क्रियाकलापले मानव अधिकारमा पार्ने प्रभावको रोकथाम सम्बन्धी क्रियाकलापहरूलाई समेटिएकोछ। राष्ट्रिय कार्ययोजनाको सफल र प्रभावकारी कार्यान्वयनबाट मानव अधिकारको संरक्षण, सम्मान र सम्बर्द्धनमा सहयोग पुर्ने, मानव अधिकारको उल्लङ्घन भएको अवस्थामा न्यायिक र न्यायिक बाहेकका अन्य संयन्त्र मार्फत सहजरूपमा उपचार र क्षतिपूर्ति प्राप्त हुने, व्यवसाय र मानव अधिकार सम्बन्धमा सरकार र नीजिक्षेत्र विच नीतिगत सामज्ज्ञस्यता कायम हुने, व्यावसायिक प्रतिस्पर्धा र दिगोपना कायम हुने, विकास निर्माणका कार्यहरू मानवअधिकारको संरक्षण र सम्मान प्रति जिम्मेवार भई सञ्चालन हुने, दिगो विकास लक्ष्य (Sustainable Development Goals) हासिल गर्न सहयोगी हुने, आर्थिक तथा सामाजिक दृष्टिले पछाडि परेका वर्ग र समुदायको संरक्षण र सशक्तिकरण हुने, नेपालले अन्तर्राष्ट्रियस्तरमा गरेका प्रतिबद्धताको कार्यान्वयन हुने र सार्वजनिक र नीजिक्षेत्र एं समाजका सबै क्षेत्रमा मानव अधिकारको सम्मान गर्ने संस्कृतिको विकास हुने विश्वास लिएको छु।

अन्त्यमा, कार्ययोजना तर्जुमा कार्यमा संलग्न हुनुभएका श्रम, रोजगार तथा सामाजिक सुरक्षा मन्त्रालयका सहसचिव विष्णुराज ढकाल र उपसचिव दिपेन्द्र पौडेल लगायतका कर्मचारीहरू र अन्य मन्त्रालय तथा निकायका कर्मचारीहरूलाई धन्यवाद दिन चाहन्छु। साथै, कार्ययोजनालाई अन्तर्राष्ट्रिय मापदण्ड तथा असल अभ्यासका आधारमा समावेशी र सहभागितात्मक तरिकाले तर्जुमा गर्नको लागि निरन्तर प्राविधिक तथा विशेषज्ञ सहयोग उपलब्ध गराउने संयुक्त राष्ट्रसङ्हीय विकास कार्यक्रम (UNDP) नेपालका पोर्टफोलियो म्यनेजर टेक टमटा लगायतका टिमलाई कार्ययोजनाको प्रभावकारी कार्यान्वयनको लागि सहयोगको अपेक्षा सहित धन्यवाद दिन्छु।

केवल प्रसाद भण्डारी

पुस, २०८०

सचिव



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# CHAPTER-1

## Background, and Rationale

### 1.1 Background

The role of the business sector in the economic development and social life of the country is increasing. Along with the development of the opinion that businesspersons should conduct all of their activities responsibly in 1976 the Organization for Economic Cooperation and Development (OECD) introduced the norm that business conduct and activities should be made accountable, with a focus on the multinational industries. The International Labour Organization (ILO) also introduced the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) following a tripartite discussion between governments, entrepreneurs and workers in 1977. Due to the growing human rights concern in the business sector, in 2000 the United Nations began a campaign relating to accountability of the business sector for respect and fulfillment of human rights. This led to the development of a notion that businesspersons should not be portrayed as human rights violators but should always remain committed to respect and fulfillment of human rights. Amidst these circumstances, the United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights in 2011.

So far, more than five dozen countries around the world have adopted the concept of responsible business and, formulated and implemented a National Action Plan on Business and Human Rights for the enforcement of the UN Guiding Principles on Business and Human Rights. Accordingly, as provided in the 5th national action plan on human rights of Nepal (2077/78-2081/82) to develop and implement a separate national action plan in industries, business and enterprises in view of the UN guiding principles on business and human rights, the Government of Nepal has formulated this National Action Plan.

The private sector have had a positive contribution to the fundamental area of humanitarian needs such as identification of human needs and response, quality education, health, housing, roads, clean drinking water, electricity, communication, clean and healthy environment, nutritious and sufficient food. It is necessary to ensure that activities related to the goods and services produced by industries and enterprises are respecting and fulfilling the human rights of workers, consumers and service recipients. The enterprises related to industry, trade, service and commerce have created notable employment opportunities. International investment, technology and skills transfer has helped develop, expand and diversify partnership the domestic economy.

Considering the international circumstances and practices, it is thus inevitable for business enterprises to move ahead by business enterprise internalizing the matter of fundamental human rights of its staffers, workers and the consumers. The government needs to pay special attention to providing security and protection to the businesses by helping them continue with their business activities during vulnerable situation, in conflict and disorder and difficult times, and to ensure fulfillment of human rights. Businesses should also become more alert, aware, diligent and responsible in relation to their social and legal obligations during such difficult circumstances.

## 1.2 Business

A profession, trade or commercial work that involves the involvement of one or more persons or organizations to produce, manufacture, buy and sell, accumulate, store, exchange or supply any goods or services for the purpose of earning income or profit is considered a business. Business should also be understood as the overall form of service, industry, trade and commerce operated by the government or the private sector. There is direct or indirect involvement of the investor, the employees, workers or labourer, and also of the consumers who consume the services or goods produced. Physical infrastructure development and construction operated under government or private ownership, control and management, formal and informal sector enterprises related to the utilization, extraction, production and sales and distribution of natural resources also fall within a business. The Industrial Enterprises Act, 2073 (2016), Section 17 defines micro enterprises, cottage industry, small industry, medium and large industries and enterprises as business. The business activities are also carried out by the trans-national corporations. The trans-national or international business activities of goods, service, technology, capital and knowledge is regarded as international trade.

## 1.3 Human Rights

Human rights are the rights that are inevitable, received by virtue of birth, natural, indivisible, inherent and undeniable for human life. Human rights encompasses humanitarian norms and values. The National Human Rights Act, 2068, Sector 2 defines human rights as " the rights related to life, liberty, equality and dignity of an individual provided by the Constitution and other prevalent laws, and the term also refers to the rights envisaged by the international human rights treaties and conventions to which Nepal is a party." Human rights includes all the rights that are essential to live a life with dignity.

## 1.4 The linkage between business and human rights

All kinds of business activities have a direct or indirect positive or negative impact on the society. In this context, the concept of Corporate Social Responsibility (CSR) was developed as per the notion that businesses that are run using resources present in the society and that benefits from the contribution of the people living there should be accountable towards interests of the society. However, since fulfillment of this obligation is not binding, there is a tendency of the business enterprises to avoid from fulfilling this responsibility. Along with the development of businesses with large investments it is starting to have direct serious impact on human rights. Hence, the concept of "Business and Human Rights" has been developed to make businesspersons aware of their responsibility towards the human rights of individuals, and to make them sensitive, responsible and accountable for effective enforcement of human rights.

## 1.5 Impact of business activities on human rights

Business activities can have adverse impact on individual life, dignity, freedom, equality, security, and in social, cultural and economic sectors. Business activities related to exploration and use of natural resources are likely to cause serious violation of human rights. This includes the lives of workers falling at risk if the Failure of business houses to create a safe workplace environment may put the lives of workers and users at risk, neglect the agenda of social security, illegally employ women and children in hazardous work, not care about the environmental impact of business operations on the health and life of individual and community, interfere in the rights of indigenous nationalities to use traditional resources, neglect the rights of consumers and produce harmful products and services, and not maintain the quality of services, having a direct impact on the human rights of the general public. Hence commercial enterprises need to carry out their activities in a way to prevent and minimize the serious and negative impact of its business operations on right to life with dignity, right to fair and favorable working conditions, the right to food, water and sanitation, right to education, right to access to information, and right against racial and gender-based discrimination, right to development and rights of workers, rights of economically and socially underprivileged communities including the Dalit, and the rights of indigenous nationalities and minorities.

## 1.6 The United Nations Framework on Business and Human Rights

The United Nations Framework on Business and Human Rights, 2008 points out the need to address the negative impact of undignified business activities on human rights. The framework emphasizes the need to make businesses accountable to respect and protection of the rights of people and communities affected by business activities, by providing them alternatives including remedy. The framework of business and human rights related to respect and protection of human rights, and access to remedy developed by late John Ruggi in 2008 was revised and introduced by the UN Human Rights Council in 2011 as the United Nations Guiding Principles on Business and Human Rights. There are three major pillars of UN Guiding Principles on BHR, which are as follows:

- (a) State Duty to Protect and Respect Human Rights
- (b) Corporate Responsibility to Respect Human Rights
- (c) Access to remedy

# CHAPTER-2

## Issues and activities included in the Action Plan

### 2.1 Issues included in the Action Plan

As the action plan has been developed for the implementation of the United Nations Guiding Principles on Business and Human Rights, basically the subjects of the guiding principles have been included in the action plan. Those included are the prevailing constitutional and legal provisions, issues included in long-term and periodic plans, human rights conventions ratified by Nepal, international labour organization (ILO) conventions, national and sectoral policies of the Government of Nepal, subjects included in the fifth national action plan on human rights, sustainable development goals (SDGs) and activities related to upgrading as a developing country have been included. The action plan has been developed by also including the suggestions and feedback received during the workshops, seminars and discussions held with the stakeholders in course of preparation of the action plan. Activities related to the duty of the state to protect and respect human rights, the responsibility of the business sector to respect human rights and access to remedy in case of human rights violations are included in the action plan.

The action plan includes activities related to the fulfillment of human rights, prevention of the impact of business activities on human rights. Right to an adequate standard of living, fair and favorable working conditions, right to water, hygiene and sanitation, right to education, right to access to information, right to development, labour rights, consumers' rights, rights of women and children, rights of workers in foreign employment, environmental rights, rights of indigenous nationalities, gender equality and rights against racial discrimination and the rights of minorities are also included in the action plan.

#### 2.1.1 Rights of Workers

The Constitution of Nepal establishes right to appropriate labour practices, appropriate remuneration and benefits, and contribution-based social security as fundamental rights. Right to open trade union as per the law, to participate in it and the right to collective bargaining have also been established as fundamental rights. Government and businesses should develop and implement procedures and mechanisms for the full enjoyment, protection, respect of the workers' rights and remedy. Enforcement of the rights of labourers in course of implementation of the UN guiding principles on business and human rights also contribute to the promotion of decent labour.

### **2.1.1.1 Duty of the State to protect and respect the rights of workers**

Essential policy measures should be taken to ensure rights of workers and other human rights before granting operation license to any business. A system should be put into place to monitor the enforcement of labour rights and reporting it to the relevant agencies in a timely manner. When granting license to establish and operate an industry or business enterprise, the rights of women, children and marginalized groups should be ensured along with a provision of compensation or reparation for the damages, and effective provisions for ensuring the rights guaranteed by the prevailing labour laws, and for their institutional mobilization. The Labour Act, 2074, Labour Regulations, 2075, Contribution-based social security Act, 2074, Contribution-based Social Security Regulations, 2075, Trade Union Act, 2049, Trade Union regulations, 2050, Bonus Act, 2030, Right to Employment Act, 2074 and Right to Employment Regulations, 2075 and other laws are in force for the protection and fulfillment of the rights of the workers. Being fully committed to the international treaties and conventions as well as UN reports, protocols and conventions concerning the rights of workers, arrangements should be made for their effective implementation. The UN guiding principles on Business and Human Rights provides for ensuring the rights of workers with the responsibility and participation of the business sector. In case of violation of human rights, the state apparatus and business should coordinate to make the remedy procedure for attainment of rights effective. The workers and the workers' association should also not indulge in any untoward activities or participate in activities that discourage business and investment.

### **2.1.1.2 Responsibility of the business sector in the respect of labour rights**

The business sector should create appropriate environment for the respect of labour rights, and develop mechanisms to minimize or neutralize the consequences of human rights violations. The State and the business sector should work together to build an environment for the workers to enjoy their rights. The business enterprises should recognize labour rights as a basic and fundamental human right and build institutional structures to facilitate enjoyment of those rights in a respectful manner. The business sector should fully enforce the prevailing laws for the respect of labour rights. The government should also provide necessary support to the business sector to protect and respect human rights. The business sector should be responsible for the respect of labour rights. The respectful enjoyment of human rights should be infringed at any pretext even in situation of a pandemic or armed conflict.

### **2.1.1.3 Remedy procedures of violation of labour rights**

In the event of violation of the rights of the workers or labourers in the government or business sector, proper arrangement should be made for its remedy. If the business sector makes an effort to infringe the enjoyment of labour rights in the pretext of a danger or crisis, rights should be ensured through a proper system of remedy. The business sector should institutionalize the provision of remedy of an incident of human rights violation, and develop an easy and efficient system of remedy if rights is violation in any way or activity against human rights is carried out. If the business sector violates

the labour rights established by the UN Universal Declaration of Human Rights (UDHR), various conventions and the International Labour Organization then the provision of remedy for it should be clearly established in the law. A method of reporting to the state agency or business manager about human rights violations through various methods such as complaints, grievance, drawing attention, memorandums, etc. should be ensured. An impartial judicial structure should be established to address the act of violation of human rights. It is also the responsibility of the business sector to provide for judicial remedy by minimizing the negative consequences of violation of labour rights. Both the government and business sector should give special attention to matters such as reviewing the existing procedures, building investment-friendly and labour-friendly environment, establishing structures for monitoring and evaluation of the fulfillment of human rights, the provision of social audit, building formal structure for access to the remedy procedures, and provision of reward and punishment.

#### **a. Access to remedy and provision of judicial mechanism**

In case of violation of workers' rights easy access to remedy must be ensured. The Labour Act, 2074 and Labour Regulations, 2075 have made provisions for labour rights and remedy. Only with the development of a trustworthy judicial system, grievance handling and quick judicial dispensation system can timely restore the labour rights that have been violated and the perpetrators can be punished and held accountable. The remedy provision can bring positive results by ensuring reforms of legal provisions related to the remedy procedures, provision of a grievance hearing authority, development of fair judicial structure and enforcement of the decisions. Business enterprise should work to make the judicial remedy result-oriented through their respective legal structures, judicial dispensation methods and legal procedures.

The business sector should develop a system of remedy as per the law to make the remedy system of human rights effective. In case of violation of human rights, rights can only be restored only through an independent and fair judicial system. If the judicial system is cumbersome, burdensome, expensive, and not transparent then those institutions cannot function effectively. It is the duty and responsibility of all parties to create an environment whereby the judicial bodies established by constitutional and legal arrangement can work independently. In case of violation of the labour rights, the procedure of judicial execution should be made in a way that the victim feels that s/he has received justice in a timely manner. The fundamental norms of law, 'justice delayed is justice denied' should be effectively enforced.

#### **b. Access to remedy and provision of non-judicial mechanisms**

The judicial bodies of the state alone may not always be sufficient for the remedy of human rights that are violated as a result of business activities. Considering the subject area, geography, population, etc., and the important role to be played by mechanisms other than the judicial there should also be a provision for mechanisms other than judicial. A method should be developed to operate the mechanisms other than the judiciary one in a formal and transparent manner. The legality of such bodies other

than the judicial ones should be mentioned in the law or the regulations of the business sector. Powers other than the judicial ones should be delegated to those mechanism so that disputes, problems or complaints are addressed in a transparent and accessible manner. It is with the trust of the party who has suffered human rights violation and impartiality of mechanism other than the judicial ones that increases the effectiveness of such system. Only with the legal provisions that keep these mechanisms, established by the executive or government decisions or constituted by business enterprises, free from undue influence, the disputes to be resolved by these mechanism will be truly proved in the view of real judicial adjudication. Therefore, such remedy mechanisms should be managed without any restrictions or prejudice.

### **2.1.2 Consumer Rights**

A consumer means a person who consumes goods or services. A consumer is a person, a community or an organization, who consumes goods or services for his/her own use and satisfaction and pays a certain amount for it. All the benefits and loss from the use of goods or services has to be borne by the consumer him/herself. As a result, the health and satisfaction of people should not be harmed, damaged or compromised by the combination used in the consumable goods.

After the United Nations General Assembly introduced the guidelines on consumer rights in 1985, consumer rights gained momentum all over the world. Consumer rights are also recognized as a fundamental right in the Constitution of Nepal.

#### **2.1.2.1 State duty to protect and respect consumer rights**

Consumers have the right to easy access to goods or services, the right to choose based on competitive price, and the right to be informed about the price, quantity, purity and quality of goods or services. The consumer is also entitled to the right to get information about the amount, element or percentage of the substance in a product made through mixture, the right to be protected from the sale and distribution of goods or services that harm human life, health and property, the right to appropriate legal remedy against unfair business practices, the right to compensation for damages caused by use of goods or services, the right to receive remedy or a hearing from the agency or body authorized for the protection of the rights of the consumers, and the right to receive formal or informal education about consumable goods. Since producers, distributors, service providers and investors have a role in the protection and respect of consumer rights, the State should carry out coordination, collaboration and monitoring with the business sector. The consumer protection act, 2075 and other laws have made various provisions related to consumer rights. The product or service should provide the expected satisfaction to the consumer and should not harm their health. It is inherent right of the humans to get quality goods or services at a reasonable price. The human rights of the consumer can be ensured only with the responsibility and participation of the business sector. Hence, the producers, importers, transporters, collectors, sellers, service providers, consumer groups, associations, organizations or stakeholders have an important role to protection and respect consumer rights and make businesses human rights friendly.

### **2.1.2.2 Responsibilities of the business sector in respect of consumer rights**

It is the responsibility of the business sector to follow the legal provisions in place for the respect of consumer rights. Businesspersons must fulfill their legal obligations related to protection of consumer rights. Investors, producers, importers, transporters, collectors, sellers and service providers must assume legal and moral responsibilities in respecting the rights of consumers. The producer must produce quality goods and services, determine the label of the goods, do not produce defective products, if it comes to the knowledge that the goods produced by the producer are defective and such goods are in the market, then collect and destroy such goods, provide appropriate compensation if there is any kind of damage to the consumer, not indulge in false or misleading advertising or promotion of goods or services, provide information on the amount, element or percentage of the substances in products made from a mixture of two or more substances and fulfill other conditions prescribed by the law. The importers and distributors must also fulfill their obligations to respect the rights of consumers.

The importers must import in a manner that does not exceed or differ from the retail price, provide details about the imported goods when requested by the relevant agency or authority, not import goods that cannot be imported according to the prevailing laws and standards, , if the goods which has been imported does not include the details to be mentioned on the label of the goods and causes any harm or loss due to the use of such goods, then the importer and distributor will also be responsible for such damages and for that matter compensation should be ensured. Similarly, the transporter must transport within the prescribed period according to the nature of the goods to be transported, not allow the quality of the goods to deteriorate during transportation, fully comply with the safety measures and conditions to be followed during transportation, provide the details of the goods when requested by the relevant agency or official and fulfill others obligations as specified.

The collectors/hoarders should exercise caution in accordance with the nature of the goods when stockpiling or storing them, adopt protective measures as prescribed so as not to reduce the quality of the goods according to the type or nature of the goods, and do not indulge in any kind of act that may reduce the quality or quantity of the goods, not change the label or description of the item as mentioned by the producer, provide details related to the storage of the item when requested by the relevant agency or official, adopt the specified protective measures and fulfill other obligations as specified.

Likewise, the seller also has important responsibility in protecting the rights of consumers. The seller should sell goods to the consumers without discrimination, not create artificial shortages, store the goods in a safe manner so that the quality does not deteriorate according to the type or nature of the goods and sell them in safe manner, maintain the price list of the goods in such a way that the general public can clearly see and understand them, and when requested by the relevant agency or official provide the stock or details of the existing goods, comply with the guarantee or warranty applicable on the goods, sell the goods to the first-come first-served consumer, giving a bill or receipt for the goods that are sold and fulfill other obligations as specified.

In the same way, the service provider business should also provide services to consumers without discrimination, keep a list of the nature of the services that is provided and the price to be paid by the consumers for receiving that service in a place that is clearly understood by the general public, and provide the details related to the services that is provided and related documents when requested by the relevant agencies or authorities, provide services to the consumers on a first-come-first basis, not create artificial shortages, voluntarily give a bill or receipt after charging the consumers for the services provided and fulfill other obligations as specified by the prevailing law. All the actors in the business sector should fulfill their respective individual and institutional responsibility for the protection of the consumer rights.

#### **2.1.2.3 Procedure for Remedy of violation of consumer rights**

The government authorities and business enterprises related with the production and supply of goods need to be responsible for the protection, respect of consumer rights and effectiveness of remedy measures. Although the pricing of goods is based on the proportion of demand and supply businesspersons should work and be responsible to keep price and supply smooth in difficult and special circumstances. Both judicial and non-judicial methods of remedy should be adopted in the protection and respect of consumer rights. For the remedy, grievance hearing, application for apology, financial or non-financial compensation and punitive provisions are appropriate. Punitive provisions also include criminal and administrative actions. The remedy measure must be impartial, corruption-free and should be carried out without influence of any side.

##### **a. Access to remedy and provision of judicial mechanism**

In the case of violation of consumer rights by the business sector, remedies can be obtained according to the provisions of the Consumer Protection Act, 2075. In the event of violation of consumer rights, it must be ensured that the victims have easy access to remedy. Only through the development of a reliable judicial system, complaint handling and speedy justice adjudication system the violator can be alerted or punished to be made accountable. The remedy method must be scientific, simple and convenient. For protection of consumer rights, there is provision of a central market monitoring committee at the federal level to coordinate between the agencies involved in monitoring or supervision of supply system, price, and quality, purity of the goods or services. The provincial and local Legal provisions along with various rights have been established at the province and local levels as well to protect the rights of consumers under their respective jurisdictions.

The Consumer Protection Act, 2075 has provided that any person can inform or file a complaint in writing or verbally or through electronic medium to the Central Market Monitoring Committee, department or inspection officer, along with information or evidence of any act that has been carried out against the consumer or against the Consumer Protect Act and the regulations. In the event of violation of consumer rights, a judicial mechanism has been provided to ensure remedy as per the law. The Director General of the Commerce and Consumer Interest Protection Department has the quasi-

judicial powers to impose fine and award imprisonment up to one year for various crimes as specified in the Act. The Government of Nepal can also constitute consumer court as required on issues related to those specified by the Act. Until the consumer court is constituted, the right to prosecute, hear and adjudicate cases as per the consumer protection act has been entrusted to the District Court.

### **b. Access to remedy and provision of non-judicial mechanism**

The Consumer Protection Act, 2075 provides for various non-judicial mechanisms for the protection of the rights of consumers, including the formation of the consumer protection council. For this, there is provision of Central Market Monitoring Committee and market monitoring committees at the province and local level as well. Various umbrella organisations of the business sector have also provided for different mechanism to provide remedy in case of violation of consumer rights. Awareness-raising materials on consumer rights are also being produced, published and disseminated through various media. The business enterprises have been working through various non-judicial mechanisms for remedy in case of violation of consumer rights.

#### **2.1.3 Rights of Women and Children**

It is the inherent right of women and children to enjoy their human rights in a dignified manner. The responsibility and participation of the business sector helps to ensure the rights of women and children. In case of violation of the rights of women and children through business activities, the remedy procedure should be ensured through formal and institutional arrangements in a coordinated manner by the state mechanism, entrepreneurs, non-government organisations, civil society members and human rights workers.

##### **2.1.3.1 Duty of the State to protect and respect the rights of women and children**

The business enterprises should not engage in discriminatory acts against women in their internal structures or externally. Article 38 and Article 39 of the Constitution of Nepal mentions rights of women and the rights of children respectively as fundamental rights. Various provisions have also been made accordingly in Human Trafficking and Transportation (control), Act, 2064, Human Trafficking and Transportation (control), Regulations, 2065, Civil Code, 2074, Civil Criminal Code, 2074, Domestic Violence (crime and punishment) Act, 2066, Sexual Harassment (prevention) in Workplace, 2071, National Human Rights Commission Act, 2068, National Women's Commission Act, 2074, and National Women's Commission Regulations, 2078.

Article 4 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 requires states to take special measures to achieve equality without discrimination between men and women. Section 11 ensures equal opportunities, the right to freely choose an occupation, the right to promotion, equal wages and equal treatment. Section 14 addresses discrimination against women in rural settings and ensuring them with equal access to economic opportunities in relation to employment and self-employment.

General Recommendation 28 of the Committee on Convention on the Elimination of All Forms of Discrimination against Women mentions the basic obligations of the state under Article 2 of CEDAW and calls for not to discriminate against women by doing or not doing any act and to actively address discriminatory acts against women by the state itself or by the private sector.

Minimum labour standards and equal pay for equal job are also strong points for women's rights. This right also provides women with opportunities for business leadership and entrepreneurship. The International Labour Organization (ILO) Convention No. 111 states that no one can be discriminated against in employment or profession based on gender, caste, race or religion. Convention no. 100 determines equal wage for equal work. International Labour Organization (ILO) Convention No. 156 on Workers with Family Responsibilities, General Recommendations no. 165 and Conventions no. 103 and 183 and General Recommendations no. 191 have also made various provisions to free women from discrimination. The recommendations have emphasized the reproductive role of women and the right to participate in business life. Recommendations No. 189 relating to employment generation in small and medium enterprises guides the way for the promotion of women entrepreneurs.

While conducting business activities, the concerns of children are considered equally important. The Convention on the Rights of the Child has raised with importance that children are not considered stakeholders in business activities .Necessary legal provisions should be made to ensure respect of child rights, remaining committed to supporting the human rights of children, to contribute to the prevention of child labour, to ensure the protection and safety of children in all kinds of business activities, and to ensure that products and services are safe for children. Support should be provided for children's rights through business products and services, carry out marketing and advertising by respecting child rights, respect and support child rights in relation to environmental protection, land acquisition and use, support for the protection of children in crisis or affected by disaster and community and government efforts for protection and enforcement of child rights should be further strengthened The state should make sufficient policy and legal measures for the protect and respect of the rights of women and children.

#### **2.1.3.2 Responsibility of the business sector in respect of women and child rights**

The business sector must fully implement the policies and laws of the state in their respective organizations. To make the activities conducted by the business enterprise women-friendly, mechanism should be set up to ensure the equal participation of women in their business organizations, listen to their grievances and problems, and to take subsequent action. The institutional action plan of the business enterprise should be developed in a women-friendly manner. Business enterprises should have adequate provisions for gender equality in the organization's policies, statutes and regulations. Business organizations should reflect laws of the State in their policies regarding

women's participation, women's presence at the top level of the organization, decision-making process and equal employment opportunities.

Business enterprises should carry out its activities in a way to contribute to maintaining gender equality and mainstreaming sexual minorities and women. Business enterprises need to change the way of looking at women, men and sexual minorities in the workplace. It falls under the responsibility of the business enterprises to ensure equal participation of all including women, men and sexual minorities, to make necessary arrangements to prevent gender-based discrimination in the activities of the business organization, to establish a mechanism to hear complaints if there is any concerns related to gender-based discrimination and to create an environment where there is no gender-based discrimination in perks and benefits including appointment and promotion. In addition, business enterprises should make their physical infrastructure and facilities gender-friendly. Building an atmosphere where the women do not feel unsafe in the workplace, and arrangement of separate office space, toilets and, breastfeeding rooms, etc. respects and promotes women's rights in the business enterprises.

If we can create a comfortable working environment between men and women in business enterprises, it will help to increase the effectiveness and production of the organization. By implementing such strategies the business enterprises can get positive returns in the long run with some initial investment. The business enterprises should consider the health of children in the production of their goods and services, and do it in a way to contribute to their overall development.

#### **2.1.3.3 Method of remedy for violation of women and children's rights**

Remedies against the violation of the rights of women and children, which falls within the scope of the fundamental rights under the Constitution of Nepal, can be obtained by using the jurisdiction of the Supreme Court. There are both judicial and non-judicial methods of remedy and mechanisms for the protection of rights of women and children by the business sector. Such method and mechanism may include grievance hearing and management procedures, application for apology, financial or non-financial compensation and punitive provisions. Punitive provisions could include criminal and administrative actions. The remedy measure must be impartial, corruption-free and the decisions that could be carried out without influence of any side.

##### **a. Access to remedy and provision of the judicial mechanism**

Women and children have poor access to justice due to poverty, illiteracy, inability and social and family reasons. In the current system, it is found that legal advice for access to justice has not been effective. As police, administration and courts have not become fully women and children-friendly, access to justice has become difficult. The situation of getting justice within a business enterprise is further poor. In relation to women's rights, the Human Trafficking and Transportation (Control) Act 2064 and Human Trafficking and Transportation (Control) Regulations 2065, Civil Code 2074, Civil Criminal Code 2074, Domestic Violence (Crime and Punishment) Act 2066, Sexual Harassment in

the Workplace (Prevention) Act 2071, National Human Rights Commission Act 2068, National Women Commission Act 2074 and National Women Commission Regulations 2078 and other laws mention about the judicial procedures to seek remedy in case of violation of the aforementioned rights.

Similarly, the Civil Code, 2074 and the Civil Criminal Code, 2074, Children's Act 2075, Children's Regulations, 2078, Child Labour (Prohibition and Regulation) Act 2056, Act relating to the rights of persons with disabilities, 2074, National Human Rights Commission Act 2068, National Women Commission Act 2074, Social Welfare Act 2049, Substitutes for Mother's Milk (Sale and Distribution Control) Act 2049, Workplace harassment (prevention) Act, 2071 and other various laws and regulations have provided clear measures for the protection of child rights in Nepal.

#### **b. Access to remedy and provision of non-judicial mechanism**

In relation to women's and children's rights although the formal courts under the judicial system are used to a large extent, some provisions are in place to be addressed under the non-judicial mechanisms. It is considered important to arrange necessary mechanisms for ensuring flexibility in women's office hours, for their health check-up, easy work during pregnancy, and for their capacity development. Opportunities for capacity development for women, arrangements for training, assigning of responsibilities, presence of women at decision-making levels, use of gender-friendly words and language, gender sensitivity of heads of organizations, assurance of zero tolerance for gender-based violence, arrangement of supervisors for hearing grievances of women and sexual minority workers and employees and other effort enhances the reputation and productivity of the business enterprise. The business sector should develop and implement clear guidelines for the remedy of violations of women and children's rights and dignity.

##### **2.1.4 Rights of workers in foreign employment**

Statistics show that every day more than 2,100 people leave for foreign employment in the destination countries. The issue of fraud and labour exploitation, hazardous work and life threatening situation during foreign employment is becoming frightening. In order to protect and respect the rights of workers in foreign employment, it is necessary for the government and business sector to be more responsible and to ensure that the remedy is simple and easy in case of violation of rights.

###### **2.1.4.1 Duty of the State to protect and respect the rights of workers in foreign employment**

Articles 33 and 51 of the Constitution of Nepal 2015 mentions about foreign employment. In this regard, the Constitution guarantees every citizen the right to choose employment as a fundamental right. The constitution mentions of a policy to make foreign employment free from exploitation, safe and organized, to guarantee employment of workers, to make regulation and management effective and to encourage using capital, skills, technology and experience gained from foreign employment in the productive sector in the country. The Government of Nepal has implemented the Foreign Employment

Policy, 2068, Foreign Employment Act, 2064, Foreign Employment Regulations, 2064, and other policies and regulations to organize the foreign employment sector. The Local Government Operation Act, 2074 provides that the skills development training, information dissemination, and financial and psychological counselling and other activities to also be provided at the local level. These policies and laws need to be amended in accordance with the spirit of federalism and the federal structure to ensure the rights of Nepalis in foreign employment. Also, it is necessary to ratify United Nations and other international conventions related to labour migration and migrant workers and domesticate and effectively implement the commitments made by Nepal in the international forums.

It is necessary to expand the scope of service delivery by upgrading the institutional capabilities of the Nepali diplomatic mission in the destination countries and the government agencies related to foreign employment within Nepal. The rights of migrant women workers and their families should be duly respected and protected. As the subject of foreign employment is a transnational matter it is necessary to expand labour diplomacy and reached labour agreement/memorandum of understanding with the destination country for foreign employment. The issue of migrant workers' rights should be given high priority in labour agreement/MoUs reached with the destination countries. As the subject of foreign employment involves multi-faceted and multi-stakeholder involvement, it is necessary to coordinate, cooperate and collaborate with relevant stakeholders inside and outside the country to protect and respect the rights of migrant workers. Proper monitoring and evaluation should be carried out for compliance of the migrant workers' rights and the effective enforcement of the bilateral labour agreements reached with the destination countries. The effective regulation of licensed recruitment agencies involved in sending Nepali citizens for foreign employment, the health institution, insurance company, orientation and training provider agencies, skills training provider agencies, financial agencies, remittance company, airlines company etc. is a must.

#### **2.1.4.2 Responsibility of the business sector in respecting the rights of workers in foreign employment**

The business sector has a big role and involvement in the overall process and cycle of foreign employment. The licensed recruitment agencies, health institutions, insurance companies, orientation and training centers, skills training providers, financial institutions, remittance companies, airlines companies, etc. as the major business sectors in the field of foreign employment. The commitment of the licensed agencies towards the fair recruitment practices and the accountability towards the workers are of great importance to ensure the rights of migrant workers. It is necessary for the licensed agencies and other organisations to promote internal good governance and conduct their business considering the interests of the workers. The responsibility of the concerned business sector including the employers is also significant in fulfillment and protection of the rights of migrant workers in the destination countries. Employers and business enterprises must fully comply with the policies and laws of the state

concerning employment, migrant workers' rights and the business. In addition, the international treaties and conventions related to labour migration and migrant workers should be respected and followed. The employers and business enterprises also need to develop and effectively implement rules and structures that are applicable internally so that the rights of migrant workers are protected and respected.

Employers and business persons should formulate their policies and programs in such a way that the rights of migrant workers are addressed and coordinate and collaborate with the relevant agencies in their enforcement. The umbrella organizations of business enterprises also need to develop and implement for the protection and respect of the rights of Nepali workers in foreign employment. Only if the rights of Nepali workers in foreign employment are ensured the law will be respected, the working atmosphere will be facilitated, and there will be positive changes in services and will thereby benefit both workers and employers.

#### **2.1.4.3 Method of Remedy of violation of Workers in foreign employment**

The Foreign Employment Act, 2064 and the Foreign Employment Regulations, 2064 are in force in relation to ensuring the rights of workers in foreign employment. The Ministry of Labour, Employment and Social Security, the Department of Foreign Employment, Foreign Employment Tribunal, Labour and Employment Office, District Administration Office, Foreign Employment Board, Department of Counselor Services and the Nepali Diplomatic Missions in the destination countries are working for the protection, promotion and monitoring of the rights of Nepali workers in foreign employment. The National Human Rights Commission has also been playing the regulatory role in protecting, respect and promoting the rights of Nepali workers in foreign employment. The Local Government Operation Act, 2074 has entrusted the local level with limited powers including to collect data and disseminate information related to foreign employment.

The Foreign Employment Act, 2064 gives the Chief District Officer the power to receive a complaint of fraud related to foreign employment and to facilitate reconciliation. If reconciliation is not possible or if the victim or perpetrator is from a different district or if it appears that reconciliation is not possible by nature (of the case) then it has to authority to refer to the Department of Foreign Employment. And in case of institutional fraud, there is a legal provision whereby the Department of Foreign Employment carries out the investigation and registers a case at the Foreign Employment Tribunal, and the Tribunal gives the verdict. In case of dismemberment and death of Nepali workers in foreign employment, the financial support provided by the Foreign Employment Board to be received by the beneficiaries at the local level itself on the recommendation of the local government can be considered as an important starting point.

##### **a. Access to remedy and provision of the judicial mechanism**

The Foreign Employment Act, 2064 and the Foreign Employment Regulations, 2064 provide for various judicial mechanism for solving the problems of workers in foreign

employment and administering justice. The Department of Foreign Employment, the Foreign Employment Tribunal and the District Administration Office are structures in place for remedy in case of violation of the human rights of the workers going for foreign employment. As the Department of Foreign Employment and the Foreign Employment Tribunal are confined to Kathmandu, the judicial system is centralized. As there is no mechanism for hearing the grievances related to foreign employment at the local level, it is necessary to make a provision for it. As a large number of Nepalis are going abroad for employment, the capacity of the Nepali diplomatic missions abroad needs to be enhanced and services expanded to ensure the protection and respect of their rights. Effective diplomatic measures are needed in order to protect the rights and ensure access to justice for the workers in foreign employment. As labour migration is a trans-border matter and since the United Nations has declared various conventions and provided grievance hearing mechanism in relation to the rights of the migrant workers, these mechanisms need to be utilized for the protection and respect of the rights of the Nepali workers in foreign employment.

#### **b. Access to justice and provision of non-judicial mechanism**

The non-judicial mechanism are found not to be effective for access to remedy in case of violation of the human rights of the workers in foreign employment. Entrepreneurs related to foreign employment, especially the licensed recruitment agencies, health examination centers, insurance companies, and their umbrella organizations, need to develop the necessary mechanisms for protecting the rights of Nepali workers in foreign employment and hearing and redressing their grievances. The local level needs to develop non-judicial mechanism for solving the problems related to the incidents of violation of the human rights concerning foreign employment and for hearing grievances. The associations of individuals who have returned from foreign employment, trade union and non-government organisations should also run facilitation and awareness programmes for the protection of the rights of workers who have gone for foreign employment and for access to justice. The grievance hearing mechanism established in the diplomatic missions abroad for disseminating information and hearing grievances related to foreign employment needs to be made effective.

#### **2.1.5 Environment and Rights of Indigenous Nationalities**

The business sector should pay attention to constitutional arrangements, national laws and international instruments and efforts for the protection, respect and remedy of the environment and the rights of indigenous nationalities. In the international level, the right to environment and the rights of indigenous nationalities are looked at by linking them together. The reason for this is the interdependent relationship between these two sides. The violation of the basic human rights should be addressed by the state through necessary legal arrangements, and provide remedy in a legal and organized manner. The government should develop necessary procedures and mechanism to mitigate the impact on environment by business activities and for the protection and respect of the human rights of the indigenous nationalities.

### **2.1.5.1 Duty of States to protect and respect the environment and the rights of indigenous nationalities**

The activities to be carried out in course of operating a business should be done in a way to have minimum impact on the environment and by ensuring the rights of the indigenous nationalities. A system of effective monitoring of the enforcement of the laws for protection and respect of the rights of indigenous nationalities by the business activities should be developed. When granting permission for business activities the rights of women, children and marginalized groups should be ensured and attention should be paid for arrangement of compensation or reparation for the risks. It is necessary to ensure mobilization of institutional resources for implementation of the prevalent environment protection regulations and the rights of indigenous nationalities, and ensure effective enforcement of the conventions relating to environment, biodiversity, transportation and management of chemicals and waste, which Nepal is a party to. The international treaties and conventions, the United Nations Report, Protocols and Conventions related to the rights of indigenous nationalities, women, children and the minorities should be effectively implemented along with full commitment towards them.

### **2.1.5.2 The responsibility of the business sector in respect of environment and the rights of indigenous nationalities**

Infrastructure including roads, hydropower projects, dams, etc. and various industries have affected the lives of indigenous nationalities. The use of advanced seeds, chemical fertilizers and pesticides and large projects are causing environmental impact on the indigenous nationalities and the local people. Such activities are also affecting the ecology and the established lifestyle of the indigenous nationalities. The indigenous nationalities and local people have been affected by different development projects. Due to large dams, embankments and national parks they are forced to leave their land of origin. The issue of compensation has come into dispute in many instances. Tourism, national parks and wildlife are also affecting the daily life of the indigenous nationalities. The issue of compensation given in the context of operation of business activities has come into dispute in many instances. The issues of language, religion, culture and life of indigenous nationalities and decisions made at the international level need to be implemented at the national level.

Climate change has changed the social and economic conditions of indigenous nationalities and local inhabitants.

The indigenous nationalities have their concerns over their region, land, and resources. Industries or projects should not affect the cultural, spiritual and social identity of the indigenous nationalities, their centers of religious beliefs and traditional knowledge, skills and practices. The business sector should ensure the respect of the human rights of the indigenous nationalities involved in business. The process of remedy in case of violation of the rights of environment and indigenous nationalities should be managed by every business through necessary procedures and institutions. The concerned

business sector should fully adhere to the law to maintain balance between environment and development, minimize the adverse environmental impact on nature, environment and bio-diversity, and address the challenge of climate change.

#### **2.1.5.3 Remedy for violation of the right to environment and of indigenous nationalities**

Remedy can be obtained by using the jurisdiction of the Supreme Court against the violation of the rights of the environment and indigenous nationalities under the fundamental rights guaranteed by the Constitution of Nepal.

The Environment Protection Act, 2076 and Environment Protection Regulations 2077 includes provisions to protect the fundamental right of every citizen to live in a clean and healthy environment, to provide compensation from polluters to the victims of damage caused by environmental pollution or degradation. The laws related to forests and wildlife, national parks, watershed protection, mines and minerals also have various regulatory provisions in this regard. For the implementation of the constitutional provisions related to the rights of indigenous nationalities various laws including the Indigenous Nationalities Commission Act 2074, the National Foundation for Development of Indigenous Nationalities Act 2058, the Language Commission Act 2074, etc., have been formulated. Both judicial and non-judicial remedies should be used for the protection of the rights of the environment and of indigenous nationalities from the business sector.

##### **a. Access to remedy and provision of judicial mechanism**

Under the Environment Protection Act, 2076 it is required to get endorsed a brief environmental study report and for any act carried out without have such a report endorsed or acting against such endorsed report, the concerned authority can impose a fine of up to five hundred thousand rupees. Going against the Environment Protection Act, 2076, if anyone implements the proposal without approving the preliminary environmental assessment, brief environmental study or environmental impact assessment report or implements it against the approved report or carries out or is about to carry out any act contrary to the Act, then a petition may be filed before the relevant authority or official. The Government of Nepal may, by publishing a notice in the Nepal gazette, issue necessary order in relation to the precaution to be observed from the environment protection perspective, and impose a fine up to one million rupees to the individual or organization that violates it. The party not satisfied with the fine imposed under the Environment Protection Act, 2076 can appeal against the fine imposed by the local level at the relevant district court and against the fine imposed by other agencies or officials of the Government of Nepal or the provincial government at the high court within 35 days. Quasi-judicial mechanisms have been provided for in the Forest Act, 2076, Control in International Trade in Endangered Wild Flora and Fauna Act, 2073, Act designed to regulate and control international trade, 2075, National Park and Wildlife Protection Act, 2029, Soil and Watershed Protection Act, 2042, Mines and Minerals Act, 2042 and other Acts. In the context of business and human rights, the associated rights of the indigenous nationalities and environmental rights should be addressed through the medium of specialized quasi-judicial mechanisms. The Indigenous Nationalities

Commission Act, 2076 provides that the Commission can receive complaints against individuals or organizations that violate the rights of the indigenous nationalities and recommend to the relevant agency for inquiry and investigation.

### **b. Access to justice and provision of non-judicial mechanisms**

In relation to the violation of environmental rights and the rights of the indigenous nationalities and other communities, the business enterprises should manage non-judicial mechanism to ensure remedy in a quick and efficient manner. The Constitution of Nepal guarantees the indigenous nationalities and other communities the right to participation in the state bodies on the basis of the principle of proportional inclusion, right to naming and birth registration along with one's identity, right to be recruited in army and police, and prohibition of any kind of abuse or neglect or physical, mental, sexual and any other kind of exploitation or undue use in the name of cultural or religious practices. The children from the indigenous nationalities and other communities who are helpless, orphans, persons with disabilities, conflict victim, displaced and vulnerable have the right to special protection and benefits from the state. Under right to social justice, the indigenous nationalities have the right to participation in state bodies on the principle of inclusion, hence, the business sector should respect it.

#### **2.1.6 Equality and right to non-discrimination**

It is the duty of the government and business sector to end any kind of racial and other discrimination through its policy, programme and intervention. Among the various kinds of discrimination, social harmful practice and ill-traditions existing in the Nepali society, racial discrimination and untouchability is the worst form of discrimination. Prevalence of racial discrimination and untouchability against the political commitment, constitutional and legal provisions and international declarations and commitments is against the establishment of an inclusive, equitable and prosperous society envisioned by the Constitution of Nepal. Discriminatory activities against women, indigenous nationalities, madhesi, Dalit, sexual minorities and various sections and communities of the society does not help increase production and productivity of any business. The business sector should work to ensure respect and protection of human rights by maintaining equality between various sections and communities, and putting an end to discrimination based on race, language, religion, birth, geography, social origin and political faith among others.

##### **2.1.6.1 Duty of the State to protect and respect the right to equality and non-discrimination**

The Constitution of Nepal has established the right to equality as a fundamental right. International human rights instruments have given great importance to the right to equality. Various groups and communities may face direct or indirect discrimination on the basis of ethnicity, language, religion, birth, geography, social origin, political faith etc. This could be intentional and non-intentional. When looking at discrimination, attention should be paid to discrimination in practice, rather than legal discrimination only. Discrimination is inter-sectional and inter-related.

The concept of non-discrimination recognizes that discrimination in the public sector as well as in the private sector, in trade and business, at home and family, and in the society should be prohibited. Without the concept of equality, such discriminations will not end. Equality and non-discrimination are considered key elements of international human rights law. Article 2 of the Universal Declaration of Human Rights (UDHR) provides that everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Convention on Elimination on All kinds of Discrimination against Women (CEDAW) and Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and Article 28 of the International Convention on the Rights of Persons with Disabilities (ICRPD) are considered very important in this regard. The International Labour Organization (ILO) Convention no. 118 (equal treatment, social security) and 157 (Right to Social Security and adherence to the Convention) and recommendation no. 202 has also firmly established the right to non-discrimination. Therefore, by rejecting all kinds of discrimination in law or in practice, directly or indirectly, the government should eliminate such discriminations and fulfill an important responsibility in the development of human rights culture for the respect of human rights.

#### **2.1.6.2 Responsibility of the Business Sector in Protecting the Right to Equality and Non-Discrimination**

There are different types of discrimination taking place in the business sector as well. Currently, the private sector plays a major role in relation to the availability of goods and services. The business sector provides education, employment, efficient and convenient lifestyle and other opportunities to the growing human resource of the country. Most of the industries, factories and public services that were traditionally operated by the public sector have been handed over or outsourced to the private business sector, so the role of the business sector in respecting and protecting human rights is regarded to very important. This also shows that its responsibility towards the society has increased. It is necessary for the business sector to be more responsible for the elimination of discrimination that takes place in the business sector, as acts of discrimination against women, indigenous nationalities, Madhesi, Dalits, sexual minorities and various other groups and communities cannot increase production and productivity of the business enterprise.

#### **2.1.6.3 Remedies for the violation of right to equality and non-discrimination**

Remedy against the violation of the right to equality and non-discrimination guaranteed by the Constitution of Nepal can be achieved as per the constitutional provisions. There are various legal provisions for remedy to the acts against equality and non-discrimination carried out by the business sector. Both judicial and non-judicial methods of remedy should be adopted in protecting the right to equality and non-discrimination.

### **a. Access to remedy and provision of the judicial mechanism**

Majority of the communities facing discrimination have poor access to justice due to poverty, illiteracy, inability and social and family reasons. The situation of seeking justice internally in the business sector is even weaker. The caste-based discrimination and untouchability (crimes and punishment) Act, 2068 is prevalent in Nepal making the acts of untouchability, boycott, ban, expulsion, neglect or any such inhumane discriminatory acts punishable, and provide compensation to the victim of such acts, and consolidate good relations between the people and build an equitable society with national unity. Cases under this Act are those cases where the government is the plaintiff. Likewise, the Act relating to the rights of people with disabilities, 2074 provides for gender equality and ending discrimination against persons with disabilities to respect their civil, political, economic, social and cultural rights and empowering persons with disabilities to participate in policy making and development processes and thereby ensure a self-reliant and dignified living environment. The aforementioned laws provide for various kinds of judicial mechanisms for remedy in relation to the violation of right to equality and non-discrimination.

### **b. Access to remedy and provision of non-judicial mechanisms**

The Caste-based Discrimination and Untouchability (Offense and Punishment) Act, 2068 and the Act relating to the Rights of Persons with Disabilities, 2074 do not provide for non-judicial bodies. , The business sector should adopt human rights due diligence and develop an action plan for elimination of such discriminatory offenses. Recognizing every individual's right and the principle of equality in human dignity, the situation inviting racial or any other social untouchability and discrimination in the name of any custom, tradition, religion, culture, practices or in any other pretext on the basis of ethnicity, race, lineage, community, profession or business or physical condition should be prevented to protect every individual's right to equality, freedom and to live with dignity. The government and the business sector should provide for non-judicial mechanism to promote equality by putting an end to discriminatory practices.

## 2.2 Business and Human Rights Implementation Action Plan

### 1. Protection:

The state must protect against the violation of human rights committed by external parties including the business sector. Appropriate steps should be taken to prevent, investigate, punish and remedy such violations through prevailing policies, laws, regulations and judicial decisions. States should make adequate use of universally acceptable preventive and remedy measures. It is also the responsibility of the state to protect and promote the rule of law by maintaining equality before the law, impartiality in application, adequate accountability and predictability. The United Nations Guiding Principles on Business and Human Rights (numbers 1 to 10) mention the state's obligations to protect against human rights violations caused by business activities, and the following activities will be implemented to fulfill that obligation.

S.No.	Activity	Responsible agency	Partner agency	Timeline	Performance Indicator
1.	To formulate national policy on business and human rights.	Ministry of Labour, Employment and Social Security (MOLESS)	Ministry of Industry, Commerce and Supplies (MOICS)/Ministry of Law, Justice and Parliamentary Affairs (MOLJPA)/ National Planning Commission (NPC)	Third year	Policy to have been formulated
2.	To review the laws related to abolition of forced labour.	MOLESS	Ministry of Law, Justice and Parliamentary Affairs (MOLJPA)/Trade Union/ Umbrella organisations of business sector	Third year	Law reviewed
3.	To gradually mainstream the subject of business and human rights in the national policies.	Concerned ministry	Ministry of Law, Justice and Parliamentary Affairs (MOLJPA)	Continuous	Mainstreaming of business and human rights in national policies

4.	To gradually mainstream the issues of business and human rights in the formulation and review of national laws.	Concerned ministry	Ministry of Law, Justice and Parliamentary Affairs (MOLJPA)/trade union	Continuous	Mainstreaming of business and human rights in national policies
5.	To carry out study on the state of child labour, all kinds of discriminatory practices, and the right to association within the business	Institute of policy studies)	MOLESS Local level/Labour and Employment Office	First year	Study report
6.	To provide basic information to the employees concerned and business proprietors about workers' rights prior to providing business operation license.	MOICS,	Local level/MOLESS	continuous	Company proprietor and concerned employees are informed about labour rights
7.	To carry out a study on the state of complaints, cases and decisions at the labour court or other quasi-judicial bodies	MOLESS	Labour court/business enterprise/trade union	Second year	Study report
8.	To develop national employment management information system (NEMIS) and maintain records of labour force working in the formal and informal sector, and available in the market, and the available job opportunities	MOLESS	MOICS/local level business enterprises, /trade union and workers	Third year	Integrated records prepared
9.	To develop an action plan to ensure the labour rights of the workers in the informal sector.	MOLESS	trade union and workers	Second year	Action plan
10.	To set up human rights desk in the thematic association/federation of the business sector	Thematic association/ federations	Employers/business enterprises/trade union/workers	First year	Human Right Desk established in the federations

11.	To develop and operate a tripartite monitoring mechanism for compliance of labour rights.	MOLESS	Business enterprises trade union and workers	Continous	Tripartite monitoring mechanism developed and mobilized
12.	To conduct awareness programs related to labour rights (prohibition of child labour, prohibition of forced labour, minimum wages/ benefits, holidays, social security, working hours, special rights of women and respect for labour, equal pay for equal work).	Labour and employment offices/ local level/ employers/ trade union	Provincial government, organisations working in the field of human rights, civil society	Continous	Awareness programmes on labour rights implemented in local levels
13.	To enroll all workers in self-employment, and in the formal and informal sectors to the contribution-based social security system.	Social Security Fund	MOLESS/ business enterprise/trade union	Continous from first year	All workers to the social security fund
14.	To effectively implement the national master plan on prohibition of child labour (2075-2085)	MOLESS	MOICS, MOWCSC	Continous from first year	Action plan implemented
15.	To reach bilateral and multilateral labour agreement to ensure that Nepali citizens who are employed abroad receive service and benefits according to international standards	MOLESS	Ministry of Foreign Affairs/ Nepali diplomatic mission/	Continous	Nepali workers in foreign employment receive service and benefits as per international labour law
16.	To monitor if the workers working in multinational companies are getting service and benefits as in the multination companies in the origin countries	MOIC/trade union	MOLESS,	Continous	Monitoring report
17.	To formulate occupational safety and health standards.	Labour and occupational safety department	MOLESS, trade union, human experts	Third year	Standards formulated

18.	Develop and publish informative manual along with the list of activities of consumer rights protection	MOICS/trade union/ consumer rights activists	Business enterprise/ association and federations	First year	List of activities developed
19.	To develop provincial and national report highlighting the state of consumer rights protection	MOICS/concerned provincial ministry	Local level/consumer rights activists	Second year	Provincial and national reports prepared
20.	Develop and enforce national, provincial and local guidelines on consumers' rights protection.	MOICS/province/local level	Business enterprises and thematic associations/ federations	Second year	Guidelines developed
21.	To carry out awareness raising programmes on consumer rights protection	Local level/consumer rights activists	Business enterprises and thematic associations/ federation	Continuous	Awareness raising programmes organised
22.	Develop annual report based on a consumer satisfaction survey	MOICS	stakeholder	Every year	Annual report prepared
23.	To carry out survey on child labour and discriminatory practices within the business sector	MOWCSC	stakeholder,	First year	Study report
24.	To update and implement standards related to breastfeeding room and child care centre in the workplace	MOWCSC	Business enterprises and thematic associations/federations	Continuous	Updated standards of breast feeding room and child care centres
25.	Implement various programmes to bring down the school dropout rate	MOEST/MOWCSC	Educational institutions/ stakeholders	Continuous	Decline in school dropout rate
26.	To carry out study on workplace sexual harassment, abuse and gender-based discrimination	National Women's Commission	Business enterprises	Second year	Study report

27.	To study the state of implementation of the legal provision to give priority to women in employment along with the special privileges provided by the state	MOLESS	MOWCSC/trade union/ business enterprises	Second year	Increased participation of women in employment
28.	Formulate laws to ensure the rights of women workers working in the entertainment sector	MOLESS	MOWCSC/stakeholders	Fourth year	Law formulated
29.	Carry out study on whether the women workers in the formal and informal sector are getting equal pay for equal work	MOWCSC	Province and local level	Second year	Study report
30.	Including business and human rights issues in the bilateral labour agreement and MoUs reached with the destination countries for foreign employment	MOLESS	MoFA/diplomatic mission/ destination countries	Continous	Business and human rights issues included in labour agreements
31.	To effectively implement the legal provision of sending trained workers for foreign employment	MOLESS	Training provider institutions/ foreign employment entrepreneurs/destination countries	Second year	Increase in number of trained workers
32.	Take diplomatic initiative for implementation of the provision of equal pay for equal work for Nepali workers in the destination countries	MoFA/diplomatic mission	MOLESS/foreign employment entrepreneurs	Continous	Equal pay for equal work implemented
33.	Make the preliminary environment assessment, environmental impact assessment and overall impact assessment system to be carried out prior to operation of a business objective and factual in relation to the rights of the community/people living in the environment and affected areas	Ministry of Forest and Environment (MOFE)	Business enterprises/processor	Continous	Objective and factual report

34.	Effective enforcement of the provision related to meaningful participation and free prior and informed consent of the stakeholders including indigenous nationalities, Dalits, women, children, representatives of customary organisations, people with disabilities and senior citizens of the affected zone in preliminary environment assessment, environmental impact assessment and social impact assessment.	MOFE	Business enterprise/pro- poser	Continu- ous	Meaning participation and consultation
35.	To implement the recommendation of the CEDAW committee on rights of women and indigenous nationalities	MOWCSC	Indigenous and nationalities commission	Continu- ous	Regular implementation of recommendations
36.	Include the rights of the indigenous nationalities and other communities guaranteed by national and international laws during formulation of the standards related to environment protection	MOFE/local level	Indigenous and nationalities commission	Continu- ous	Rights of indigenous nationalities and other communities ensured in standards
37.	Include issues of business and human rights while formulating and making timely amendments to existing act, laws and standards related to environment protection	MOFE/provincial government/local level	MOICS/stakeholders	Continu- ous	Formulation and amendment of laws
38.	For effective implementation of existing act, laws and standards related to environment protection carry out survey on institutional structures and infrastructure and make timely reforms	MOFE/provincial government	Business enterprises/pro- poser	Continu- ous	Reforms in necessary infrastructure
39.	To promote public transport and electric vehicles and urban greenery	MOFE/provincial government/local level	MOICS/business sector	Second year	Encouragement and necessary facilitation

40.	To formulate and implement national policy, act and regulations on prevention of water pollution.	MOFE	MOLJPA/stakeholder	Second year	Formulation and implementation of policy, act and regulations
41.	To effectively implement the standards developed for prevention of water pollution and standards and decisions related to waste water disposal	MOFE/province government	Stakeholder	First year	Effective enforcement of standards and decisions
42.	To develop industrial waste processing mechanisms	MOFE/provincial government	Stakeholders	Second year	Development of mechanism
43.	To amend and implement the waste (solid and liquid and hazardous) management national policy, act and regulations	Concerned ministry/ provincial government/ local level	Stakeholder	Second year	Formulation and implementation of policy, act and regulations
44.	Formulation and updating of the law relating to import, sale and distribution and justified use of pesticides	Ministry of Agriculture and Livestock Development (MoALD)/ provincial government/ local level	Private sector and stakeholder	First year	Formulation and updating of law
45.	To formulate and implement laws relating to the use of chemicals in consumable goods and production process, and residue and overall lifecycle management.	MOICS/provincial government/local level	Private sector and stakeholder	Second year	Law and standards formulated
46.	To carry out study on the violation of human rights due to reasons of climate change and implement recommendations for their mitigation.	MOFE/provincial government/local level	Private sector and stakeholder	Continuous	Recommendations implemented

47.	Encourage the development of LGBTIQA++ and disabled friendly workplace in the enterprises.	MOLESS/MOICS	Business enterprises	Continu-ous	Gender-friendly, disabled-friendly and LGBTIQA++ friendly workplace available
48.	To make easy availability of tools and equipment used by the workers/labourers with disability.	MOW/CSC	Business enterprises	Continu-ous	Easy availability of tools and equipment used by people with disability
49.	Put an end to all kinds of discrimination based on gender, geography, race, religion, language and ideology in the business enterprises.	All ministries and com-missions	Business enterprises	Regular	End of discrimination
50.	To run awareness raising so as to guarantee the right to gender equality and non-discrimination.	All ministries and com-missions	Business enterprises	Regular	Programmes organised

## 2. Respect:

Majority of the works related to goods and services traditionally carried out by the government is now being carried out by the business sector. With the state adopting a liberal market policy promoting the private sector, the business sector has an important role in the supply of goods and services. With the business sector starting many of the activities to be carried out by the state, the business sector preventing, mitigating the adverse impact possible in course of its business operations, and in case of violation the concerned business enterprise taking accountability and responsibility of addressing that properly by respecting the human rights standards is the major norms of business and human rights. The UN guiding principles (11 to 24) on business and human rights has mentioned the responsibility of the business sector for the respect of human rights and the following activities shall be carried out to fulfill the responsibility.

S.No.	Activity	Responsible agency	Partner agency	Timeline	Performance Indicator
51.	The enterprises to include human rights issues in their internal policy, operations and regulations.	Employer/business enterprise/thematic association/federation	MOICS/trade union/human rights organisations	Continuous	Enterprises are committed to respecting human rights'
52.	The business sector to implement the standards in relation to the compliance of human rights.	Employer/business enterprise/thematic association/federation	MOICS/trade union/human rights organisations	Second year	Standards developed and implemented
53.	The business enterprise to mandatorily submit labour audit report to the specified agency and make it public.	Business enterprises	Department of Labour and Occupational Safety/ Labour and Employment Office	Every year	Labour audit report made public in all enterprises

54.	To carry out training programmes for the skills development and capacity building of workers and employees working in the business enterprises.	Employer/business enterprise/thematic association/federation	Trade union	Continuous	Skills developed and capacity enhanced of workers and employees working in the enterprises
55.	The party employing in daily wage labour to do so by signing a mandatory contract agreement with the workers.	Employer/business enterprise/thematic association/federation	Trade union	Continuous	Mandatory contract agreement with workers
56.	Business enterprise to fully implement international standards related to occupational safety and health.	Employer/business enterprise/thematic association/federation	Trade union	Continuous	Implementation of international standards related to occupational safety and health
57.	To carry out coordination, cooperation and collaboration in labour inspection activities.	Employer/business enterprise	Trade Union/thematic association, federation	Continuous	Coordination and collaboration
58.	Respect the rights of workers and consumers in the goods and services supply chain.	Employer/business enterprise/thematic association/federation	Trade Union/MOICS	Continuous	Respect of workers and consumer rights
59.	To enforce the service, benefits and rights of the workers even during the event of a national disaster, pandemic and conflict.	Employer/business enterprise/thematic association/federation	Trade union	Continuous	Enforcement of workers' service, benefits and rights
60.	To provide regular health service and psychosocial counselling service in the enterprises.	Employer/business enterprise/thematic association/federation	Trade union	Continuous	health service and psychosocial counselling service available
61.	To develop and implement the Consumer Charter.	Thematic association/ federation	Local level/consumer rights activists	Continuous	Consumer charter

62.	To develop the structures used for business operations in a consumer (disabled/senior citizen/women and children) friendly manner.	Business enterprises	Thematic association/federation/consumer rights activists	Continuous	Consumer-friendly structures
63.	To maintain the price, date of manufacturing and expiry and other details of the goods and service produced and sold in a clearly visible manner.	Business enterprises	Thematic association/federation	Continuous	Details including the price, date of manufacturing and expiry and others in goods and materials
64.	To build discrimination-free, sexual violence-free, abuse-friendly and human rights friendly working environment in the workplace.	Business enterprises/thematic association/federation	Trade union/MOLESS	Continuous	Labour law complied
65.	To establish and mobilize gender equality fund in the enterprises.	Business enterprises/thematic association/federation	Trade union/MOLESS	Continuous	Establishment and mobilization of gender equality fund
66.	To manage mother child-friendly breast feeding room, child care centre and separate gender-friendly toilets in the workplace.	Business enterprises/thematic association/federation	Trade union/MOLESS	Continuous	Provision of mother child-friendly breast feeding room, child care centre and separate gender-friendly toilets
67.	To put an end to sexual exploitation, abuse and gender-based discrimination in the workplace and fully comply with human rights law.	Enterprises and business associations/federation	Trade union/MOLESS	Continuous	Compliance of labour law

68.	The foreign employment entrepreneurs to develop and enforce ethical recruitment policy of the organization as per the prevailing national and international labour laws.	Entrepreneurs/foreign employment entrepreneurs association/federation	Department of foreign employment/Foreign Employment Board	Second year	Development and enforcement of ethical recruitment policy
69.	To increase the awareness and capacity of foreign employment entrepreneurs on business and human rights sensitization and compliance.	Entrepreneurs/foreign employment entrepreneurs association/federation	Department of foreign employment/Foreign Employment Board	Continuous	capacity of foreign employment entrepreneurs increased
70.	To carry out effective coordination with stakeholder agencies and employers in the destination countries for ensuring safety and decent working environment for Nepali workers in the destination countries.	Entrepreneurs/foreign employment entrepreneurs association/federation	MOLESS/Foreign Employment Board/diplomatic missions	Continuous	Safe workplace guaranteed
71.	To coordinate for arrangement of accommodation, food and medical care of the Nepali workers in destination countries.	Entrepreneurs/foreign employment entrepreneurs association/federation	Employers of destination countries/Foreign Employment Board	Continuous	Provision of accommodation, food and medical treatment
72.	The foreign employment entrepreneurs' association/federation to develop and enforce a code of conduct for business operation and protection of human rights.	Entrepreneurs/foreign employment entrepreneurs association/federation	Foreign Employment Entrepreneurs	First year	Code of conduct implemented
73.	To include the participation of indigenous nationalities and the situation of the beneficiaries as indicators while carrying out preliminary environmental assessment and environmental impact assessment.	Business enterprises/thematic association/federation	MOFE	Continuous	Report on measurement of involvement of indigenous nationalities

74.	To establish institutional structures and infrastructure related to environment at the enterprise level.	Business enterprises/ thematic association/ federation	Stakeholder	Continuous	Establishment of institutional structure and infrastructure
75.	To run awareness raising and promotional programmes on environment protection in collaboration with stakeholders.	Business enterprises/ thematic association/ federation	Stakeholder	Continuous	Programme implemented
76.	To implement the national policies, acts, regulation, standards and government decisions related to air pollution control.	Business enterprises/ thematic association/ federation	Department of environment and stakeholders	Continuous	To have been implemented
77.	To implement the national policies, acts, regulation, standards and government decisions related to water pollution control.	Business enterprises/ thematic association/ federation	Department of environment and stakeholders	Continuous	To have been implemented
78.	Develop industrial waste production plant and operate it regularly.	Business enterprises/ thematic association/ federation	Department of environment and stakeholders	Continuous since second year	Development and operation of mechanism
79.	To implement the occupational and domestic waste (solid and liquid and hazardous) management national policy, acts, regulations, and manage it in an environment-friendly manner.	Business enterprises/ thematic association/ federation	Department of environment and stakeholders	Continuous	Occupational and home waste managed
80.	To effective implement the standards related to production, import, storage, sales and disposal of pesticides.	Business enterprises/ thematic association/ federation	Ministry of Agriculture and Livestock development/ stakeholder	Continuous	Implementation of standards
81.	To properly use the chemicals in consumable goods and its production process, and properly manage its residue.	Business enterprises/ thematic association/ federation	Department of environment and stakeholders	Continuous	Proper management of chemicals and residue

82.	To run programmes to protect and promote the traditional vocational skills of the indigenous nationalities.	Business enterprises/ thematic association/ federation		Continuous	Programme implemented
83.	To implement equal pay for equal work provision without any discrimination based on gender, geography, ethnicity, religion, language and ideology in the business enterprise.	Business enterprises/ thematic association/ federation	Labour and Employment Office	Continuous	Provision of equal pay for equal work implemented
84.	To identify and enlist the works that require policy of positive discrimination.	Business enterprises/ thematic association/ federation	Labour and Employment Office	First year	Listing of works
85.	To run orientation and sensitization programme on human rights in the workplace for equality and non-discrimination.	Business enterprises/ thematic association/ federation	Labour and Employment Office	Continuous	Programme implemented
86.	To carry out human rights compliance test in the enterprises and make its report public.	Business enterprises/ thematic association/ federation	Human rights workers	Every year	report
87.	To mobilize the umbrella association/organisations of the entrepreneurs effectively for promotion of equality and non-discrimination.	Business enterprises/ thematic association/ federation	Business enterprises	Continuous	Mechanism run effectively

### 3. Remedy:

In the case of violation of human rights by the business sector, individuals and organizations, provision should be made for access to justice, compensation and reparation for the victims and affected. After the business sector began to carry out many of the tasks performed by the state, it has been recognized that the business sector should take the accountability and responsibility of preventing and minimizing the adverse impact on human rights that may be created while conducting business, and addressing it properly while respecting the standards of human rights. In relation to the remedy of human rights violations that take place during business operations, various judicial and non-judicial mechanisms should be established to ensure remedy. In case of violation of human rights by business activities, the United Nations Guiding Principles on Business and Human Rights (numbers 25 to 31) have mentioned judicial and non-judicial mechanisms for access to remedy and the following activities shall be implemented to fulfill the responsibility.

S.No.	Activity	Responsible agency	Partner agency	Timeline	Performance Indicator
88.	To install charter on human rights and labour rights and duties in the premise of the enterprise and its units	Business enterprises/ thematic association/ federation	MOLESS/trade union/ human rights institutions	First year	Charter related to labour rights and accountability
89.	To establish grievance and complaint hearing mechanism in the enterprises and its units, and make it transparent and accessible.	Business enterprises/ thematic association/ federation	MOLESS/trade union/ human rights association, institutions	First year	Grievance and complaint hearing mechanism developed
90.	To expand the alternative dispute resolution (ADR) procedures related to labour and employment in the province and local level.	MOLESS	Trade Union and business associations/federation	Continuous	Expansion of ADR system in province and local level
91.	To designate the high courts to serve as labour courts in accordance with Labour Act, 2074	Government of Nepal	OPMCM/Judicial Council	Third year	Labour court Service expanded to province and district level

92.	To enhance the capacity of employees in the market monitoring committees at the federal, province and local level.	MOI/CS	Department of commerce, supplies and consumer interest protection/province government/local level	Continuous	Capacity developed
93.	To constitute consumer grievance management mechanism at the local level and bring it into operation.	Local level	Consumer rights activist	First year	Grievance management mechanism constituted
94.	Carry out periodic study of consumer rights, and make the status report public.	MOI/CS	Business enterprises/ thematic association/ federation	Continuous periodically	Report received
95.	To designate focal person or unit for hearing consumer rights violation and grievances in the enterprise.	Business enterprises	Business enterprises/ thematic association/ federation	Second year	Provision of focal person or unit
96.	To carry out monitoring to check whether sufficient compensation and reparation has been provided for violation of consumer rights.	Consumer rights activists	Business enterprises/ thematic association/ federation	Continuous	Monitoring report
97.	Expand and enhance the capacity of the closed bench related to women and child-friendly bench.	Supreme Court	MOWCSC	First year	Provision of closed bench and child-friendly bench
98.	To adopt a policy of zero tolerance towards women and child rights violation.	Nepali Police/courts	MOWCSC/stakeholder	Continuous	Zero tolerance to violation of women and child rights
99.	To establish and mobilize a compensation fund for the victim worker/labourer women and children.	MOWCSC	Business enterprises/ thematic association/ federation	Continuous	Fund established and mobilized

100.	Provide free legal aid and consultation service for women and child rights and easy access to justice	Nepal Bar Association, central legal aid committee/judicial committee/courts/ Office of the Attorney General	MOWCSC/stakeholder	Continuous	Free legal aid and counseling service
101.	To consolidate the mechanism for filing complaints about women and child rights violation in the multi-national companies, and resolving the problem.	Business enterprises/ thematic association/ federation	MOICS	Continuous	Decline in incidents of rights violation in trans-border, international and multi-national companies
102.	Carry out complaint registration and adjudication of cases of violation of women and children's rights in a hassle-free, unconditional and with complete confidential manner.	Business enterprises/ Courts	MOWCSC/stakeholder	Continuous	Decline in incidents of human rights violation
103.	To develop grievance hearing mechanism for racial and other discrimination and abuse that take place in the business sector.	Business enterprises/ thematic association/ federation/National Dalit Commission/ National Women's Commission	Province and local level	Continuous	Grievance hearing mechanism developed
104.	To make access of the workers to judicial and non-judicial mechanism easy and effective in order to guarantee the right of the Nepali workers to selection process, decent sand safe working environment, accommodation, food and unrestricted mobility.	MOLESS/diplomatic missions	Employer/foreign employment association/ federation and entrepreneurs	Continuous	Easy access to remedy

105.	Enhance the capacity and expand the scope of services of agencies including foreign employment board, department of foreign employment and foreign employment tribunal for the access of Nepali workers, who have faced problems and cheated in course of foreign employment, to relief, rescue, compensation and justice.	Foreign employment board, department of foreign employment and foreign employment tribunal	MOLESS	Continuous	Capacity development
106.	To address the problem of undocumented workers, workers in jail and those undergoing treatment in hospital after falling seriously ill in the destination countries through justified measures.	Foreign employment board, department of foreign employment and foreign employment tribunal	MOLESS	Continuous	Problem resolved
107.	Increase the institutional capacity and effectiveness of the existing mechanism for protection of environmental rights violated due to business activities and increase access to justice.	MOFE	Department of Environment/business enterprises	Continuous	Access to justice
108.	Enforce provision of reward and punishment strictly as per the law in the implementation of the recommendations from the environmental monitoring and evaluation reports.	MOFE	Department of Environment/business enterprises	Continuous	Provision of reward and punishment
109.	To effectively mobilize the monitoring mechanism related to management of air pollution, water pollution and waste (solid and liquid).	MOFE	Department of Environment/business enterprises	Continuous	Monitoring report

110.	To carry out regular monitoring of the use of chemical in the production, storage, import and sales of consumable goods and residue management.	MOFE	Department of Environment/business enterprises	Continuous	Monitoring report
111.	Ensure climate justice for mitigation and adaptation of the impact of climate change on daily life.	MOFE	Department of Environment/business enterprises	Continuous	Climate justice ensured
112.	In case of violation of the rights of the indigenous communities through business activities, make provision of alternative measures of dispute settlement or formal judicial mechanism for remedy at the local level	Business enterprises/ business projects	Stakeholders	Continuous	Decline in cases
113.	To make the regulation of the business and human rights action of the multi-national companies effective.	MOICS	Stakeholders	Continuous	Effective regulation
114.	To develop reliable monitoring mechanism in the constitutional commissions and at the federal, provincial and local level to end racial discrimination and un-touchability that takes place in the enterprises.	Concerned agencies/ constitutional commissions	Stakeholders	Continuous	Mechanism run effectively
115.	To make the monitoring by the parliamentary committee and human rights mechanisms of the gender, geography, racial, religious, linguistic and ideology-based discrimination free working environment regular and effective.	Parliamentary Committee/constitutional commissions	Stakeholders	Continuous	Effective monitoring
116.	Provide free legal aid to the people and communities affected by discrimination in the business enterprises.	Courts/Nepal Bar Association	NGOs/organisations	Continuous	Free legal aid

117.	To facilitate compensation and reparation to the individual and communities affected by discrimination in the business enterprises.	Stakeholders	Rights activists	Continuous	Facilitation
118.	Set up 'fast-track' working mechanism for immediate hearing of the violence based on gender, geography, ethnicity, religion, language and ideology that has taken place in the business enterprise.	Business enterprises	MOLESS	Continuous	Fast track mechanism to have been developed
119.	Develop an inclusive list of mediators and mobilize for dispute settlement.	Business enterprises	MOLESS	Continuous	List prepared and mobilized
120.	Manage an Ombudsman for hearing the grievances of gender-based and racial discrimination in the enterprises.	Business enterprise	MOLESS	Continuous	Provision of Ombudsman

# **CHAPTER-3**

## **Implementation, monitoring and evaluation of national action plan**

### **3.1 Implementation of action plan**

For the effective implementation of the action plan, the agency that will have a major role in implementing the determined activities has been designated as the responsible agency. To implement the specified activities, the responsible agency shall take the major responsibility of the overall activities including formulating or amending policies and laws, managing necessary resources, carry out coordination and reporting. During the implementation of the action plan, the agencies that have a supporting role have been designed as collaborating agencies, and such agencies has support the responsible agencies with the provision of essential resources and expert service. As the action plan includes the prevalent constitution and legal provisions, policy, strategy, periodic plan, strategy to upgrade to a developing country, Universal Declaration of Human Rights and the activities related to the international human rights treaties and conventions that Nepal is a state party, the responsible agencies and supporting agencies in the implementation of the activities should implement the activities through their regular budget and programmes.

### **3.2 Responsibility of government and business sector in the implementation of the action plan**

The purpose of the national action plan on business and human rights is to give completion to the campaign of extensively expanding the situation of respect, protection, and enjoyment of human rights. Since the business sector affects every individual on the issues of human rights in one way or the other, the protection and promotion of human rights is difficult without the support, goodwill and collaboration of the business sector. The government expects business activities to always be responsible and sensitive to human rights issues. With the support and cooperation of the business sector the human rights issues can be easily addressed even beyond the national borders. The business sector acting in pursuant to the issues outlined by the prevailing norms and values of human rights, international principles, universal declaration of human rights, international treaties and conventions and the international labour standards, as well as the guiding principles on business and human rights, will allow the presentation of the commitments related to human rights of the nation in international forums with a sense

of pride. As the government represents the business sector as well, it is also the duty of the business sector to fulfill the commitments of the government.

The business sector must adopt policy, program and procedures as per the guiding principles to fulfill their responsibility towards human rights in every business, entrepreneurship and the supply system. The business sector should implement human rights policy for the respect of human rights in all the business enterprises. The business enterprise should identify, prevent, address, audit the human rights violations that take place within or outside the enterprise, and make public the procedures of redress and its outcome. As human rights issues are concerned with human sensitivity, life and dignity, the business sector should address such issues on time, which is called human rights due diligence of the business enterprise. In case of any adverse impact on human rights due to any reasons during the operation of its activities, the business enterprise should always remain alert and active in providing proper compensation, relief or remedy to the affected individual or community, or guide them towards the formal way of receiving such remedy.

### 3.3 Monitoring and evaluation of the national action plan

For implementation of the fundamental issues of human rights and other activities mentioned in the Action Plan, monitoring and evaluation work shall be carried out through the formation of a monitoring and evaluation committee in the federal, province and local level as follows:

#### Monitoring and Evaluation Committee to remain at the Federal Level

Coordinator:	Secretary, Ministry of Labour, Employment and Social Security
Members:	Joint Secretary, Ministry of Industry, Commerce and Supplies, Ministry of Energy, Water Resources and Irrigation, Ministry of Physical Infrastructure and Transport, Ministry of Women, Children and Senior Citizens, Ministry of Health and Population, Ministry of Forest and Environment, Ministry of Law, Justice and Parliamentary Affairs and Ministry of Home Affairs
Member:	Joint Attorney General, Office of the Attorney General
Member:	Deputy Inspector General of Police, Nepal Police
Members:	Federation of Nepalese Chambers of Commerce and Industry, Confederation of Nepalese Industries, Nepal Cottage and Small Industry Federation and Women Entrepreneurs Federation
Member:	Trade Union Federation Representative
Member:	A women Human Rights Activist designated by the Committee
Member:	Representative of National Child Rights Council

Member:	Chairperson, Municipality Association of Nepal
Member:	Chairperson, National Association of Rural Municipalities of Nepal
Member-Secretary:	Joint-Secretary, Ministry of Labour, Employment and Social Security

### Monitoring and Evaluation Committee to remain at the Provincial Level

Coordinator:	Chief Secretary, Office of Chief Minister and Council of Ministers
Member:	Secretary, Province Ministries (all)
Member:	Deputy Attorney General, Office of the Attorney General
Member:	Deputy Superintendence of Police, Nepal Police
Member:	Federation of Nepalese Chambers of Commerce and Industry, Confederation of Nepalese Industries, Nepal Cottage and Small Industry Federation and Women Entrepreneurs Federation Provincial representative
Member:	Province-level Trade Union Representative
Member:	A women Human Rights Activist designated by the Committee
Member:	A consumer Rights Activist designated by the Committee
Member:	A child Rights Activist designated by the Committee
Member-Secretary:	Office of the Chief Minister and Council of Ministers

### Monitoring and Evaluation Committee to remain at the Local Level

Coordinator:	Deputy Mayor or Vice Chair, concerned local level
Member:	Federation of Nepalese Chambers of Commerce and Industry, Confederation of Nepalese Industries, Nepal Cottage and Small Industry Federation and Women Entrepreneurs Federation Local representative
Member:	A Human Rights Activist designated by the Committee
Member:	A labour organization representative designated by the Committee
Member-Secretary:	Chief Administrative Officer or staff designated by him/her

The aforementioned committees shall carry out regular monitoring of the implementation of the action plan on business and human rights, after the action plan is implemented. For effective implementation of the action plan, attention should also need to be paid to the policy, programme, plan and commitments of the government at present and in the future. The government should carry out regular discussion and dialogue with the stakeholders on the national action plan. The feedback received from the discussed should be collected and implemented regularly. The government should encourage the business enterprises to public human rights reports periodically. The business

enterprises should be encouraged by the government to respect and protect human rights. The implementation of the action plan shall also be regularly monitored by the federal MPs and committees, the Office of the Prime Minister and Council of Ministers, National Human Rights Commission, constitutional commission and agencies, provincial assembly and committees, local level assemblies, journalists and the civil society, as well as from various other sections of the society, and feedback shall be received accordingly.

### **3.4 Review of the National Action Plan**

The duration of this action plan will be five years. The action plan will be reviewed after five years of its implementation. A mid-term assessment and review shall also be carried out in relation to its implementation. Industrialists, businesspersons, construction, mining and distribution entrepreneurs, labour representatives, consumer rights workers, human rights workers, professors, lawyers, journalists, financial sector representatives and government representatives should also be active in the implementation of the action plan. The national action plan shall be reviewed annually and a progress report shall be published accordingly.

## CHAPTER-4

# Limitations and Expected Outcome of the Action Plan

## 4.1 Limitations and Scope of the National Action Plan

The business and human rights sector is very broad. The action plan is developed for implementation of the UN guiding principles on Business and Human Rights. The action plan includes constitutional provisions related to human rights, prevalent legal provisions, policy, strategy, periodic plan, sustainable development goals, strategy on upgrading to a developing country, Universal Declaration on Human Rights, international human rights treaties and conventions that Nepal is a state party, international labour organization (ILO) conventions, and human rights thematic and sector action plan in the form of activities.

Attention has been paid to the availability of resources while developing the action plan. To put the activities of the action plan into practice, maximum mobilization of available resources is necessary. The responsibility of arrangement of the resources, legal, policy and institutional measures for implementation of the action plan lies with the responsible agencies and the supporting agencies. As the matter of making the business sector responsible in protection and respect of human rights has been included with priority in the action plan, the business sector has an important role in the implementation of the action plan. As a result, the action plan is believed to encourage the entrepreneurs and business enterprises to work becoming sensitive towards human rights issues.

## 4.2 Expected Outcome

Currently business and human rights is becoming a subject of international concern. This action plan has been developed as it is necessary to formulate a national action plan to address the adverse impact of business activities on human rights and for effective implementation of the legal and policy measures for protection, respect and remedy of the human rights of the affected individual and community. The implementation of the action plan is expected to expand a feeling of coordination and collaboration between the government and the business sector by bringing uniformity in the policy and regulations to be formulated for protection and respect of human rights. The national action plan will minimize the adverse impact on human rights caused directly or indirectly by private or government business enterprises irrespective of their sector, size and structure. The implementation of the action plan is expected to support human rights due diligence by the business sector by identifying, addressing, monitoring and reporting the human

and environmental hazards in the production, distribution and consumption cycle of goods and services. The approval, publication, publicity and effective enforcement of the action plan can make the business sector more concerned and committed to respect of human rights.

The national action plan encourages the government to make all business activities orderly and human right friendly. Business enterprises sensitive towards respect and fulfillment of human rights can maintain and increase their share in the national and international market, and become successful in making their business activities sustainable. The national action plan can help the government internally and externally in promoting and respect and promotion of human rights. If the government agencies, industry, business and private entrepreneurs all can operation through the enforcement of a uniform action plan on business and human rights then it would promote and protect human rights, and minimize business risks by immediately addressing the possible violation of human rights by the business sector. The entrepreneurs can fulfill their corporate social responsibility (CSR) and generate a feeling of security and respect in the society. Business activities responsible to protection and respect of human rights can increase foreign investment, generate employment, income generation, ease production and consumption of quality goods and services, as well as bring notable improvement in human living standard.

The effective implementation of the national action plan on business and human rights is expected to help achieve the following outcome:

- Protect, respect and promotion human rights.
- Provide remedy and compensation easily through judicial and non-judicial mechanism in case of violation of human rights.
- Maintain policy uniformity between government and private sector in relation to business and human rights.
- Development construction activities will be carried out with responsibility towards protection and respect of human rights.
- Help achieve the Sustainable Development Goals.
- Protect and empower the economically and socially underprivileged groups and communities.
- Nepal's international commitments shall be fulfilled.
- A culture shall be developed of respecting human rights in public and private sector, and all other sectors of the society.