



Monitoring Report on Execution of Judgement

Major Findings from Quantitative Studies



Working for non-discrimination and equality



MONITORING REPORT ON EXECUTION OF JUDGEMENT

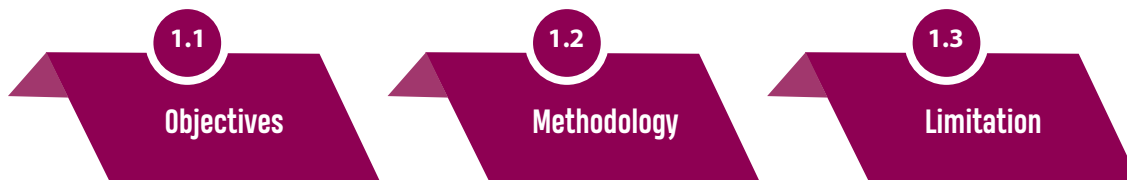
Major Findings from Quantitative Studies



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1. INTRODUCTION



- ✦ To compare and analyse the situation of execution of civil and criminal cases in province 2 and province 5 of Nepal.
- ✦ To compare and analyse the situation of execution of civil and criminal cases by respective district courts and local bodies.

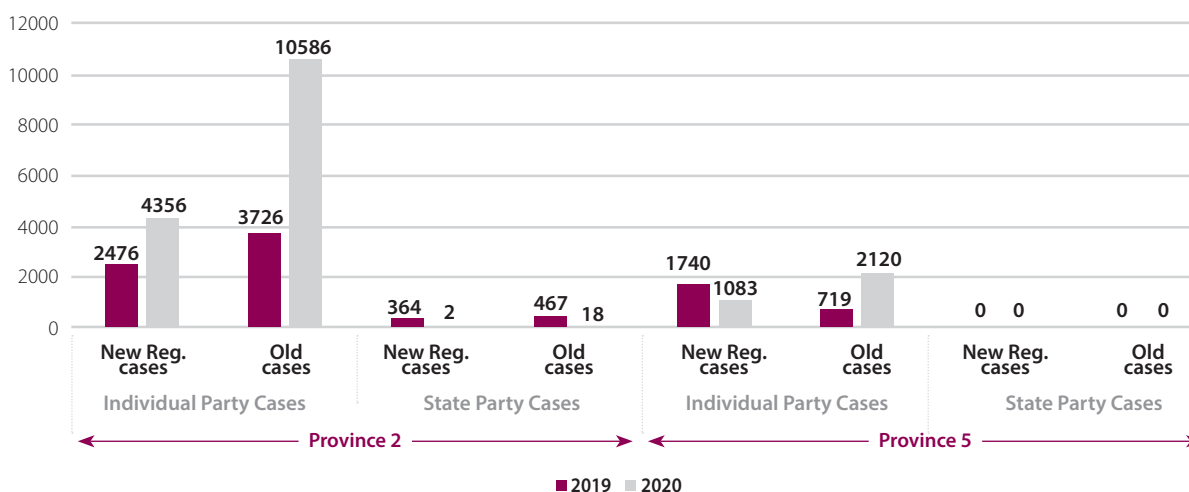
- ✦ Collection of quantitative data from 20 districts and their local bodies (January- December 2019).

- ✦ This project doesn't include statistic of every district of mentioned provinces. It doesn't include statistics of all local judicial committee of Province 2 and 5. The quantitative data included hereby is limited to the period of January –December 2019.

2. KEY FINDINGS FROM QUANTITATIVE SURVEY

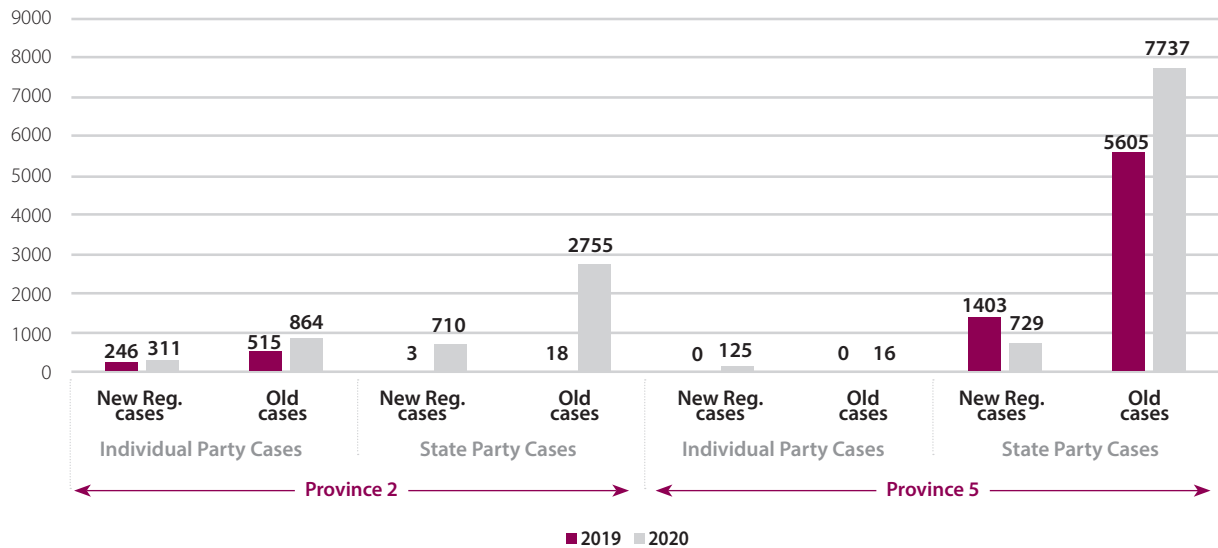
2.1 Reported Cases in District Court

Civil Cases								
	Province 2				Province 5			
	Individual Party Cases		State Party Cases		Individual Party Cases		State Party Cases	
Year	2019	2020	2019	2020	2019	2020	2019	2020
New Registered Cases	2476	4356	364	2	1740	1083	0	0
Old Cases	3726	10586	467	18	719	2120	0	0
Total Cases	6202	14942	831	20	2459	3203	0	0



Criminal Cases								
Year	Province 2				Province 5			
	Individual Party Cases		State Party Cases		Individual Party Cases		State Party Cases	
	2019	2020	2019	2020	2019	2020	2019	2020
New Registered Cases	246	311	3	710	0	125	1403	729
Old Cases	515	864	18	2755	0	16	5605	7737
Total Cases	761	1175	21	3465	0	141	7008	8466

(Data of number of reported cases in district court of Province 2 and 5 in 2019 and 2020)



Article 127 of Constitution of Nepal 2072 includes provision of three tiers of court in Nepal i.e. Supreme Court, High Court and District Court. They are formal means of resolving disputes which requires due process of law in all stages. According to Article 148 of Constitution of Nepal 2072, Province 2 has 8 district courts and Province 5 has 12 district courts. Number of district court hence depends upon number of districts. District court is the first court to have jurisdiction in first emerged disputes. Also, it looks after both civil and criminal issues referred by local level.

Above mentioned table includes data of number of reported cases in district court of Province 2 and 5 in 2019.

In Province 2 both civil and criminal nature of cases was registered in district court. Out of 6202 individual party civil cases, 2476 were newly registered cases, whereas 3726 cases were old cases yet to be decided. In contrast, in Province 5, out of 2459 Individual party civil case, 1740 were newly registered cases, whereas 719 cases were old cases still running into the court. This shows that old undecided individual party civil case in Province 2 is 30% higher than that of Province 5. There is high rate of civil dispute in Province 2 than that of Province 5.

Individual party civil cases should follow alternative dispute resolution method which helps to lighten burden of court as well as parties to case can have easy access to justice. There must be required human resources in court as well as bench to hear disputes must be increased.

In a similar way, Out of 831 state party civil cases, 364 were newly registered cases, whereas 467 cases were old cases yet to be decided. In contrast, there was no registered state party civil cases in Province 5. Individuals and government both can bring civil suits in court. The data shows that in Province 5 either the people are unaware about state party civil cases or there was no any violation of rights. The people of province 2 are more aware regarding state party civil cases.

In Province 2, out of 761 individual party criminal case, 246 cases were newly registered and 515 cases were undecided in 2018. In contrast, in Province 5 there was no registration of individual party criminal cases. This shows people of Province 5 might be unaware about individual party criminal cases. Also, there is high rate of reporting of individual party criminal cases in Province 2 than that of Province 5. But, in Province 2 there is high number of old undecided case than that of newly registered case.

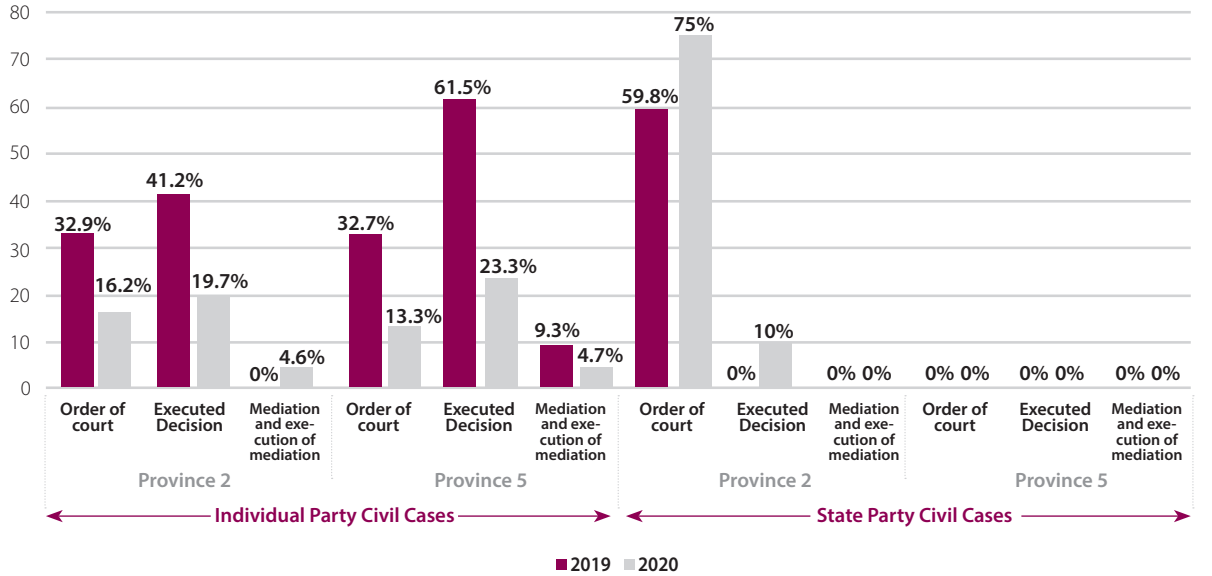
In similar way, in Province 2 out of 21 state party criminal cases 3 cases were newly registered and 18 cases were yet to be decided in 2019. But, in Province 5, out of 7008 state party criminal cases 1403 cases were newly registered and 5605 cases were undecided in 2018. It shows that Province 5 has high rate of crime than that of Province 2. So, government should look after the measures to decrease crime rate as well as increase bench and number of judges in district court.

- Conclusion:**
1. Need to increase number of judges in district court.
 2. Need to make people aware about individual and state party criminal and civil cases and procedure to file the case.
 3. Must focus on alternative dispute resolution method in regard to civil cases.

2.2 Civil Nature of Cases

Year	Individual Party Civil Cases				State Party Civil Cases			
	Province 2		Province 5		Province 2		Province 5	
	2019	2020	2019	2020	2019	2020	2019	2020
Order of Court	32.9%	16.2%	32.7%	13.3%	59.08%	75%	0	0
Executed Decision	41.2%	19.7%	61.5%	23.2%	0	10%	0	0
Mediation and Execution of Mediation	0	4.6%	9.3%	4.7%	0	0	0	0

(Data of decided civil cases in district court of Province 2 and 5 in 2019 and 2020)



2.2.1 Status of Order of Court

Order of Court is an official proclamation by judge which instructs parties to either do something or not to do something. Parties to case must follow what the judge has decided. There is also particular way to enforce what judge has ordered and parties itself executes the order of court. The data shows that order of court in course of resolving civil dispute in Province 2 in individual party civil cases is 0.2% higher than that of Province 5. Then again order of court in state party civil cases in Province 2 is 59.09% higher than that of Province 5. Generally court either gives order of dismissal of case or gives order to submit list of property, to take statement from parties and so on. Court dismisses the case if case doesn't fall under its jurisdiction or if limitation to file case

exceeds or if there is no locus standi. If the data is analysed under dismissal ground the people of Province 2 seems aware than that of Province 5 and if data is analysed under other grounds there is speed proceeding of cases in Province 2 than that of Province 5.

The people should be made aware about limitation, locus standi and jurisdictional aspects of case. This can be done through interaction with lawyers. Otherwise once the case is dismissed same case can't be filed again in same court according to principle of *res judicata*.

2.2.2 Status of Judgment Execution

Final judgment ends the proceedings of court. Different countries have own decision enforcement procedures. In context to Nepal, decisions are enforced even if all appeals are not heard. District court once decides the case executes the case itself. Civil nature of disputes are solved after restoring rights of party to case. Property law and family law falls within domain of civil law. Section 229 -253 of National Civil Procedure Code 2074 includes provision of execution of judgment in civil cases. The rate of execution of decision in individual party civil cases in Province 5 is higher by 20.29% than that of Province 2. Rate of execution of decision in Province 5 shows speedy recovery of rights of victim. The data is null in regard to enforcement of decision in state party civil cases in both of provinces. So this only requires increment in human resources and state resources in judicial and quasi- judicial institution. Judgment execution is feeling of justice, feeling of protection of rights, and feeling of trust towards justice as it needs to be speedy.

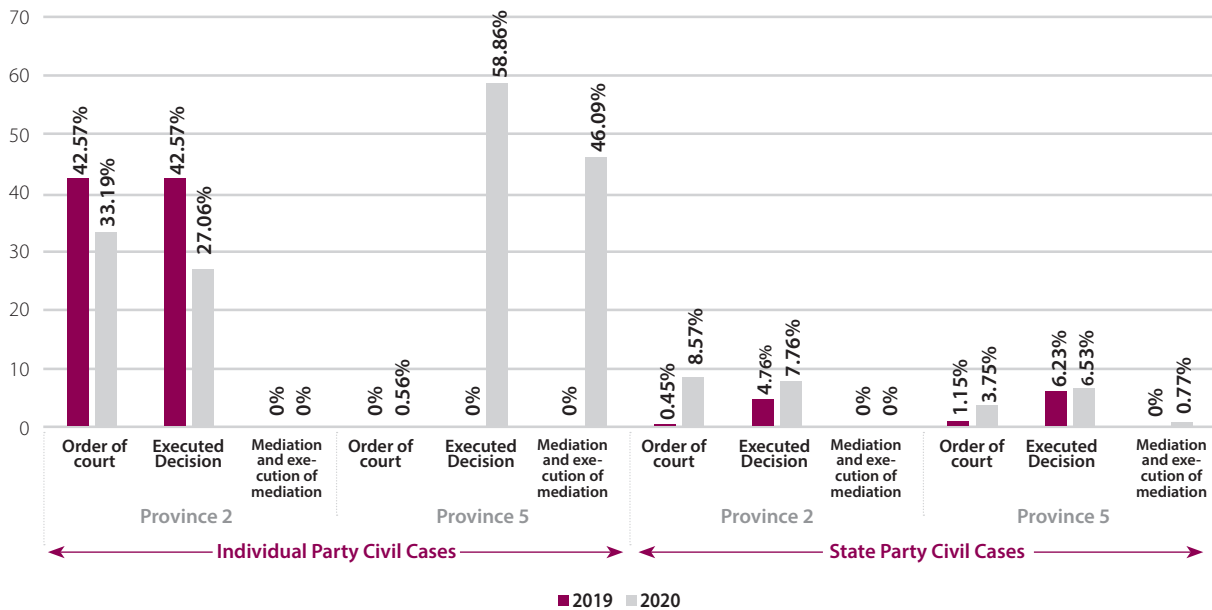
2.2.3 Status of Mediation and Execution of Mediation

Mediation is alternative dispute resolution method. It is also referred as informal method of resolving disputes. Referring to mediation in civil cases helps quick access to justice and relieves burden of court. There is list of mediators in all district court along with a different chamber. In course of proceeding district court also refers parties for mediation because civil cases unlike criminal cases focuses in establishing and protecting relationship between people. Directive Principles and Policies of state has also included provision that disputes must be resolved through alternative dispute resolving method. The data shows that execution of mediation in individual party civil case in Province 5 is higher by 9.31% than that of Province 2. Disputes are not resolved by mediation in all nature of civil cases in Province 2. Having done it could have helped in lessening loads of cases in court. Also the parties to case are benefitted as they themselves can choose the procedures as well as save their time. Mediator guides parties in disputes to establish good relationship once again. Focus in mediation is must in Province 2. There must be mediation center and group of mediators instigating parties to dispute to resolve dispute by mediation because through this reliable information regarding the case can be gathered along with just and amicable settlement of dispute.

2.3 Criminal Nature of Cases

	Individual Party Criminal Cases				State Party Criminal Cases			
	Province 2		Province 5		Province 2		Province 5	
Year	2019	2020	2019	2020	2019	2020	2019	2020
Order of Court	42.57%	33.19%	0	0.56%	0.45%	8.57%	1.15%	3.75%
Executed Decision	42.57%	27.06%	0	58.86%	4.76%	7.67%	6.23%	6.53%
Mediation and Execution of Mediation	0	0	0	46.09%	0	0	0	0.77%

(Data of decided criminal cases in district court of Province 2 and 5 in 2019 and 2020)



2.3.1 Status of Order of Court

In context to criminal cases, the court can give order of dismissal of case which depicts end of proceeding. As well as court gives order to resume proceedings of court by instructing party to investigate further, to take statements, to check evidences, to examine witness and so on. According to above mentioned table, order of court in individual party and state party criminal cases is more in Province 2 than that of Province 5. Literacy rate plays important role in making people know right jurisdiction, right limitation and right locus standi of case. These three criteria seems rightly checked by parties before filing case whereas knowledge of basic procedural aspects must be provided to people of Province 2.

Criminal case is associated with individual's liberty. So procedural aspect is basic but should be perfectly and properly followed by parties. Otherwise, doctrine of double jeopardy prohibits prosecution of individual more than once in same level of court when the decision is given. Repetition in filing same case having same parties, same jurisdiction and a decision affects process of administration of justice. Hence parties should be aware about different facets of case and consultation with lawyer is must.

2.3.2 Status of Judgment Execution

Until the judgment or order of the court is executed victim cannot get access to justice. Execution of judgment falls under the scope of Executive. Still the procedure differs according to nature of case. In Writs specified person or departments are liable to execute decision themselves. Generally district court executes the final judgment for which it consist separate body. Supreme Court Regulation includes directorate of judgment execution. Under which it regulates and follow up execution of judgment. In serious criminal cases judgments are executed on the spot. The provision of execution of decision in criminal cases is included in Section 151-168 of National Criminal Procedure Coe, 2074. The enforcement of decision in individual party criminal case is high in Province 2 compared to Province 5. But in state party criminal case rate of enforcement of decision is more in Province 5 than that of Province 2. Speedy, effective and fair execution of decision stores public trust in justice which is more in Province 2 in individual party criminal case and more in Province 5 in state party criminal cases. Province 5 has focused in speedy execution of state party criminal cases and Province 2 has focused in execution of decision of individual party criminal cases. Concerned departments must focus in quick execution of decision for this infrastructures must be made available along with number of human resources.

2.3.3 Status of Mediation and Execution of Mediation

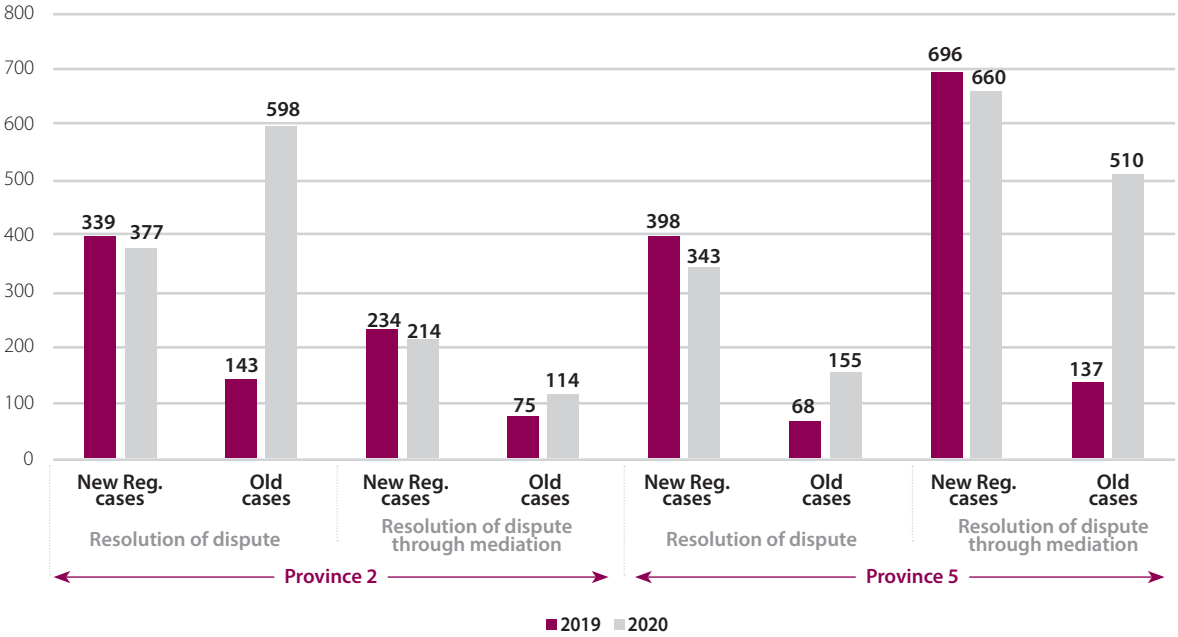
The common core of criminal case is that it affects liberty of individual. In both individual party and state party criminal cases gravity of crime varies with each other. Hence, in serious nature of criminal cases mediation cannot replace punishment. Conflicts, crimes are apprehensive feelings but it also tells importance of peace

in society. In both the provinces registered criminal cases are high in number and it has been difficult for a district court to deal with all cases. Delay in decision, pending case, expensive litigation gives rise to mental as well as physical suffering to party. Having importance of Alternative Dispute Resolution Method application of mediation is still doubtful in criminal cases as it wouldn't prescribe punishment of imprisonment to guilty. But also there are practices like victim offender panels, Victim assistance Programs, Community Crime Prevention Program, Family Group Conferencing alike mediation which is not in practice in both of provinces.

2.4 Reported Cases in Local Judicial Committee

	Province 2				Province 5			
	Resolution of Dispute		Resolution of Dispute Through Mediation		Resolution of Dispute		Resolution of Dispute Through Mediation	
Year	2019	2020	2019	2020	2019	2020	2019	2020
New Registered Cases	399	377	234	214	398	343	696	660
Old Cases	143	598	75	114	68	155	137	510
Total Cases	542	853	309	328	466	498	833	1170

(Data of reported cases in judicial committee of Province 2 and 5 in 2019 and 2020)



Constitution provides judicial power to resolve disputes to Local Level Government. Schedule 8 of Constitution of Nepal 2015 has provided power to local bodies on subject of dispute settlement and mediation. Nowadays, dispute resolution has been inalienable function of local level government. It has made quick, accessible, fair, cost-effective administration of justice in short duration of time and has lightened burden of cases in court. Article 217 of Constitution of Nepal 2072 has provisioned about judicial committee. Section 47.1 of Local Government Operation Act, 2074 includes certain nature of disputes that can be resolved by local judicial committee. In similar way, Section 47.2 includes certain nature of disputes that are to be resolved by alternative dispute resolution method. In those listed cases judicial committee has right to resolve dispute through mediation. So, local level government provides space for local people to engage in discussion and contestation to minimize disputes.

There were 399 cases to be resolved before judicial committee in Province 2 whereas there were 398 cases to be resolved before judicial committee in Province 5. In Province 2 there is increment in new cases by 47% and in Province 5 there is increment in registering case by 71%. So in one hand local people of Province 5 started trusting resolution of dispute by local judicial committee whereas in other hand Province 5 witnessed serious

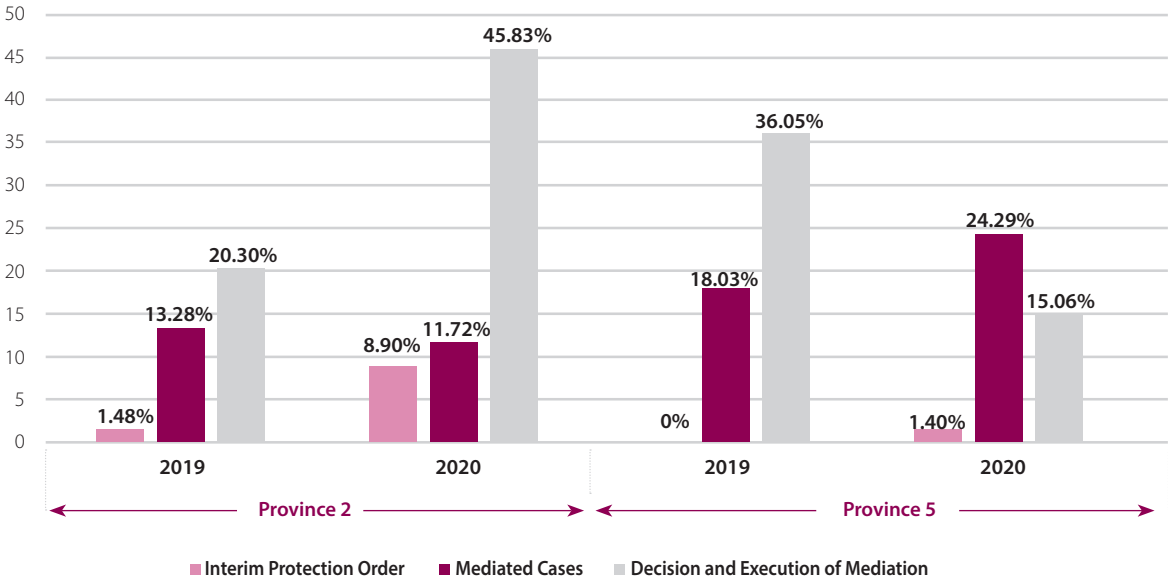
increment in registering cases which means the disputes between people has increased in Province 5. Also disputes are settled through mediation in local level. In Province 2, cases for resolution of disputes through mediation has increased by 51.5% whereas in Province 5 cases for resolution of disputes through mediation has increased by 67.01%.

It also shows that parties are aware about judicial function of local level and are approaching judicial committee for settling minor disputes. Local people are relieved of hassle of attending court. Local judicial committee seems very positive to make society peaceful and just as it has been supporting fast and accessible justice. Still there is lack of human resource to dictate all local people about cases solved by local level. A proper infrastructure in local level is required with skilled dispute settler as current situation has overshadowed Judicial Committee.

2.5 Resolving Disputes Through Local Judicial Committee

Resolution of Dispute				
	Province 2		Province 5	
	2019	2020	2019	2020
Interim Protection Order	1.48%	8.90%	0	1.40%
Mediated Cases	13.28%	11.72%	18.03%	24.29%
Decision and Execution of Mediation	20.30%	45.83%	36.05%	15.06%

(Data of resolved cases through judicial committee in local level of Province 2 and 5 in 2019 and 2020)



2.5.1 Status of Interim Protection Order

Among the cases listed in Section 47.1 of Local Government Operation Act, 2074 judicial committee is authorized to resolve the cases applying procedure mentioned in law. In certain disputes judicial committee are authorized to give interim protection order which would facilitate victim. Victims are provided with immediate protection until final decision of case. This is to protect party from suffering further harm. Often judicial committee provides interim protection order in the dispute with old aged people, workers, wife and children. The table depicts that judicial committee has provided interim protection order in Province 2 but data is null in Province 5. This shows in Province 2, disputes exists within family. Within family old aged people, women and children are vulnerable groups because of different factors. Perfectly and humanely, judicial committee in Province 2 has provided interim protection order in the cases which made victim easy to access justice and live in peace. This also depicts guarantee of time to let disputing parties re-establish their relationship with realisation of duty.

2.5.2 Status of Mediated Cases

Every disputes that comes within scope of judicial committee are first tried to resolve through mediation. If disputing parties wants to resolve dispute through mediation then in appropriate stage they are sent for mediation. Above table demonstrates that Province 5 is more oriented towards settling dispute through mediation in comparison to Province 2. It shows the solution given during mediation has been acceptable to parties and are satisfying to the extent of their interest and desires. Nevertheless, focus should be given on impartial mediator with specialized communication skill and mediating techniques because mediators are facilitators who do not impose decision. Public should trust mediators and should let mediator facilitate them because all this process requires explanation of dispute and claim of party. Public should have feelings that the information are confidential and techniques of mediation are taking them towards positive result.

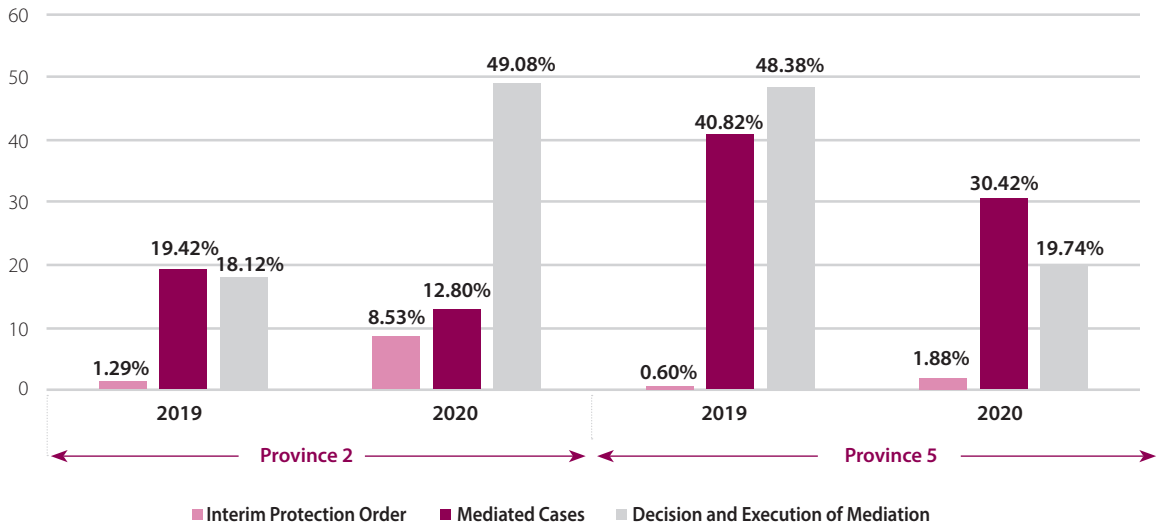
2.5.3 Status of Decision and Execution of Mediation

Local levels are quasi- judicial bodies. The decision of judicial committee is binding to the parties. Decisions are executed by judicial committee as well as district court. The rate of decision and execution of decision is comparatively high in Province 5 to that of Province 2. Execution of decision restores rights of victim and builds trust of local people. In cases where disputes are resolved through judicial committee it takes some time for execution of decision unlike cases solved through mediation. In Province 2 government should focus in prompt execution of decision that has to be backed by skilled human resources. Quick and fair decision in cases reduces suffering of victim. Different natures of cases registered in judicial committee might sometimes be complicated to give prompt decision and to execute promptly. Government should focus in this part as well.

2.6 Resolving Disputes Through Mediation

Resolution of Dispute Through Mediation				
	Province 2		Province 5	
	2019	2020	2019	2020
Interim Protection Order	1.29%	8.53%	0.60%	1.88%
Mediated Cases	19.42%	12.80%	40.82%	30.42%
Decision and Execution of Mediation	18.12%	49.08%	48.38%	19.74%

(Data of resolved cases through mediation in local level of Province 2 and 5 in 2019 and 2020)



2.6.1 Status of Interim Protection Order

Interim Protection Order is given by Judicial Committee even while using mediation to resolve the dispute. The aim of interim Protection Order is to reestablish relationship between parties and not letting victim to suffer physical or mental harm again. Above mentioned table reflects that Province 2 has relatively more interim protection order in cases. It is seen that Interim Protection order has been effective in resolving dispute through mediation as party receives time to give one more chance backed by peaceful environment.

2.6.2 Status of Mediated Cases

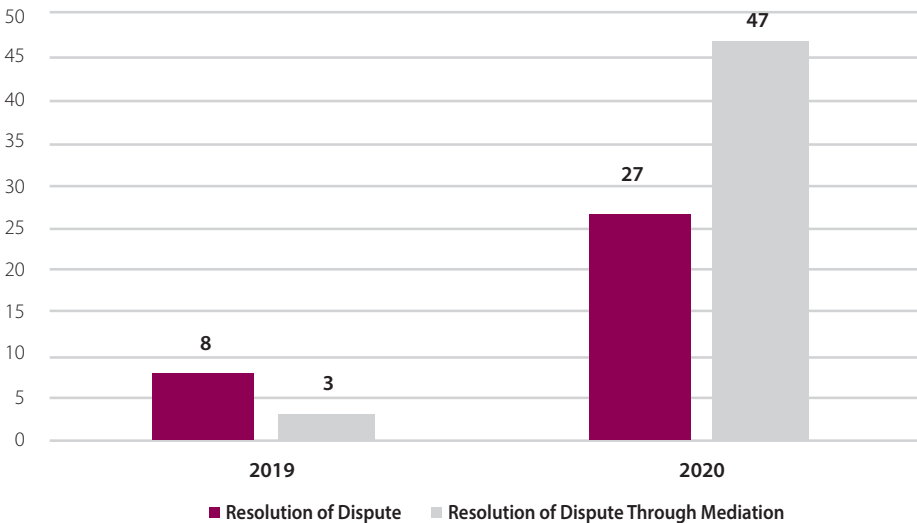
The disputes registered in judicial committee are supposed to be resolved through mediation if it falls under list of disputes listed in Section 47.2 of Local Government Operation Act, 2074. There are lists of mediators in local level who are trained and are certified to mediate. The rate of dispute resolution through mediation is high in Province 5 in contrast to Province 2. It shows that Province 5 has focused in alternative dispute resolution mechanism to solve the cases. The mediators are skilled to reestablish relationship between people as well as to restore rights of people. In similar way, Province 2 need to focus in mediation for which it needs more instigating and skilled list of mediators. In both of the provinces government should focus in providing timely training to mediators as well as infrastructures should be developed for carrying out mediation procedure.

2.6.3 Status of Decision and Execution of Mediation

Mediation can be successful in simple nature of dispute if the mediators are trained enough. There is comparatively high rate of execution of mediation in Province 5 than that of Province 2. Mediated agreements are honored in Province 5 than that of Province 2. This positive result has boosted credibility of mediation in dispute resolution mechanism. The settlement agreement is enforceable as the parties' consents to the content of mediation. It shows quick settlement and execution of dispute in comparison to court. So Province 2 must focus in alternative dispute resolution method in contrast to Province 5.

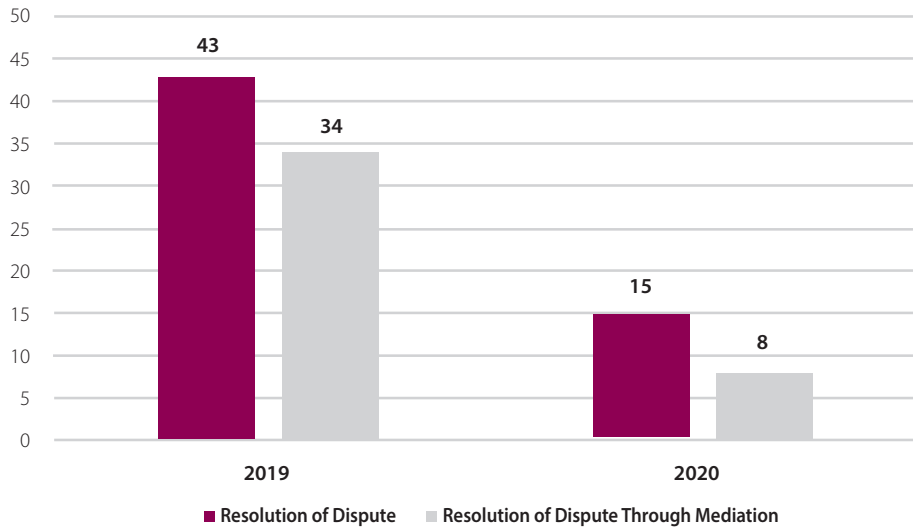
2.7 Referred Cases to District Court

Province 2				
Year	Resolution of Dispute		Resolution of Dispute Through Mediation	
	2019	2020	2019	2020
Referred Cases to District court	8	27	3	47



Province 5				
Year	Resolution of Dispute		Resolution of Dispute Through Mediation	
	2019	2020	2019	2020
Referred Cases to District court	43	15	34	8

(Data of referred cases to district court of Province 2 and 5 in 2019 and 2020)



Local Government Operation Act, 2074 states that local judicial committee can refer the case to concerned institution if it doesn't fall under its jurisdiction. Above mentioned table demonstrates Province 2 has referred less number of cases to district court in contrast to Province 5. It shows that judicial committee are responsible in resolving cases that falls only under their jurisdiction. There must be general awareness campaign to let people know jurisdiction of local level which can be done through consultation with lawyers or concerned officers.



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