

Alternative (NGO) report to the Committee of the United Nations' Convention on the Elimination of All
Forms of Discrimination against Women (CEDAW)

Nepal

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Section A: Introduction to the Report

This alternative report was compiled and submitted by UNPO on the occasion of the 71st session of the CEDAW (henceforth, “the Convention”). UNPO is an international membership organisation devoted to the promotion of democracy, non-violence, human rights, tolerance and environmental protection among indigenous peoples, oppressed communities and minority groups worldwide.

This report evaluates the compliance by Nepal with the Convention and the implementation of the provisions of the Convention, with specific regard to the case of the Madheshi community.

During the UN periodic review concerning the International Convention on the Elimination of All Forms of Racial Discrimination, which took place in May 2018, Nepal was under review. The Committee on the Elimination of Racial Discrimination (CERD) raised concern about minority women, in particular the Madheshis, and the necessity for the Nepali government to put in place necessary implementation mechanisms to follow the constitutional amendments that have been made in order to better protect them and address their issues.¹

Following a brief introduction to the Madheshi community, this report will address specific provisions of the Convention, commenting on their implementation by the government and on the effect that the lack of implementation has on Madheshi women. The final section of the report summarises these allegations through recommendations for the Nepali Government on how to rectify and prevent further discrimination, in order to offer a synthesis that can be useful during the discussions between the Committee and the delegation of Nepal at the 71st Session.

Section B: Introduction to Madhesh²

The Madheshis are the inhabitants of the Terai region of the south of Nepal, at the foothills of the Himalayas on the border to India. The region distinguishes itself from the rest of the country by its plain terrain with a subtropical climate, in contrast to the high mountain lands inhabited by the hill people of Nepal³.

The estimated number of the Madheshi population is 13.3 million. The region is inhabited by 50.3 percent of Nepal’s total population⁴ of different ethnicities, many of which share cultural, linguistic and social similarities with Northern Indians rather than with Nepalis. Those indigenous groups speaking Maithili, Bajjika, Bhojpur, Awadhi or closely related dialects and lived in the region long before it became an agricultural centre, mainly refer to themselves as the Madheshi people and make up the majority of the region’s population. The Terai also attracted migrants from the mountainous region, Pahadis, that now make up almost a third of the Madheshi population.

However, groups indigenous to the Madhesh still make up a large part of the population of the Terai; for example, the Madheshi population in the current federal structure’s Province 2 (possibly to be renamed as “Madhesh”) is still 87 percent⁵. The largest indigenous group are the Tharus who make up 12.5 percent of the Terai population⁶. Hindi is the lingua franca of the region and it is the language that was traditionally used in both administration and education prior to the forceful imposition of the Nepali language in the 1950s.

¹ CERD Report: Nepal, 29 May 2018: Paragraph 36

² Also written Madhes or Madhesh; for further information, UNPO has published a profile brochure on Madhesh, available at: <http://unpo.org/members/20426>.

³ Miklian, Jason, “Nepal’s Terai: Constructing an Ethnic Conflict”, PRIO Paper, 20 July 2008

⁴ National Population and Housing Census 2011, Central Bureau of Statistics, Government of Nepal, available at: <https://unstats.un.org/unsd/demographic-social/census/documents/Nepal/Nepal-Census-2011-Vol1.pdf>, 2012

⁵ Miklian, Jason, “Nepal’s Terai: Constructing an Ethnic Conflict”, *ibid*

⁶ National Population and Housing Census 2011, *ibid*

The Terai region was given to Nepal by the East India Company in two parts, Eastern Terai in 1816 and Western Terai in 1860. Ever since, the region has faced discrimination by the Nepali government and there has been an increased call for more autonomy in the Terai. It has historically been seen as a distinct region for centuries and distances itself from Nepal in many ways. The region has fought against injustice by the Nepali government for quite a long time. Persecution of the Madheshi people stems from historic enmity between the Nepali and the British, when the East India Company reserved a high level of control in the region up until the latter half of the 20th century. While under the control of the East India Company, the Madheshi people were forced to fight against the Nepali. Ever since, the Madheshi women in particular have been the victims of severe gender, caste, language, cultural and regional discrimination for being Madheshi⁷.

Section C: Compliance with the Convention on the Elimination of all Forms of Discrimination Against Women

Although the Nepali government has passed official legislation protecting the rights of minorities, minors and women, successful implementation and compliance in line with the following Articles of the Convention has yet to be achieved.

Chhaupadi

- Article 3: “A law exists but not all the measure to enforce it.”
- Article 5 (a): “State Parties shall take all appropriate measures [t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”
- Article 12.1: “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”
- Article 14.2 (h): “To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”

The traditional Hindu-rooted practice of *chhaupadi*⁸, although Nepal’s supreme court ruled it illegal in 2005, remains prevalent in the Surkhet, Achham and Terai areas of Nepal. *Chhaupadi* is the practice of segregating women from their families during and throughout their menstrual cycles. The word “chhaupadi”, meaning “menstruation”, has a negative connotation which conveys the uncleanliness of a woman when she is bleeding⁹.

During this time of the month, menstruating women are forced to sleep outside of their family house. Most times this means that women go to live in specifically designated huts that have been built for them to stay in. According to various sources, such huts can be shared by a number of families and often lack proper furnishings including beds, bedding and heating. As noted by the BBC, during this time, women are so isolated from the rest of society that they are not allowed to cook, eat the same nutritious food, defecate in public toilets and even bathe or drink in the village’s water source¹⁰. But the isolation does not stop here. In addition, they are forbidden from touching cattle, men and plants. After the fourth day in the *chhaupadi* hut, women must go to a nearby stream to bathe and are then “purified” in cow urine before they return to society. There are a

⁷ Bhattachan, Krishna B., Tej B. Sunar & Yasso Kanti Bhattachan (Gauchan), “Caste-based Discrimination in Nepal”, Indian Institute of Dalit Studies, available at: http://idsn.org/wp-content/uploads/user_folder/pdf/New_files/Nepal/Caste-based_Discrimination_in_Nepal.pdf, 2009, p. 36, 38

⁸ Variations in orthograph include “chauppadi” or “chaupadi”

⁹ BBC, “Banished for Bleeding”, available at: https://www.bbc.co.uk/news/resources/idt-sh/banished_for_bleeding; Time, “The ‘Untouchables’: The Tradition of Chhaupadi in Nepal”, available at: <http://time.com/3811181/chhaupadi-ritual-nepal/>

¹⁰ BBC, “Banished for Bleeding”, *ibid*

number of cases in the past two decades where women have died during their period of isolation due to various causes, such as snake bites¹¹, smoke inhalation¹² and even the cold.

Although the Nepali supreme court outlawed the *chhaupadi* practice over one decade ago, it remains common in regions such as Terai, that are most secluded from main roadways. *Chhaupadi* is used as a power dynamic against younger generations of women. Among men in Nepali society, there is still belief that the practice is a necessity. Some believe that if their menstruating wives or relatives touched them during their period this would make them sick. Others believe that menstruation itself is unclean and, therefore, in banishing women from sharing the village common resources, the environment will be kept clean and retain health and safety within households. However, it ought to be noted that mother-in-laws also play a vital role in upholding the “tradition”, as they use it to show their superiority and dominance over their daughters-in-law.

In August 2017, the Nepali government introduced a new law that criminalizes *chhaupadi*. The punishment for a family member forcing a menstruating woman into isolation can be a jail sentence of three months and/or a fine of 3,000 rupees (30 USD). The declaration comes after the death of multiple women who were forced into the traditional practice. Even though such national legislation exists, in the case of Nepali, proper implementation remains quite limited, especially in isolated regions such as the Terai. For example, under article 38 (2) of the Nepali Constitution, “Every woman shall have the right to safe motherhood and reproductive health”. In 2017, a survey conducted by local NGOs, Action Works Nepal and Bheri Environmental Excellence, regarding the ban of the *chhaupadi* practice, showed that just under 60 percent of the population were not aware of the government’s criminalisation of *chhaupadi* in Section 15 of the Nepali Civil Code and Section 168 (3) of the Penal Code¹³.

- Article 12.2: “(...) States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”

By exiling women during their menstrual cycles, the *chhaupadi* practice and any member of society enforcing it, is allowing for menstruating women to be left out of the scope of having proper access to health care. Such is the case, as menstruating women do not have access to communal services (including access to communal latrines, water sources or food amongst others), therefore meaning that during this time of the month, women are discriminated against in *chhaupadi*-practicing communities. It is not only menstruating women that are subject to temporal banishment, but also women in postpartum following the birth of their child. This therefore excludes such women the right to proper access of appropriate post-natal services including adequate nutrition.

Child marriage & education

- Article 10 (h): “States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.”

¹¹ NPR, “Banished to a Menstrual Shed”, available at:

<https://www.npr.org/sections/goatsandsoda/2017/07/10/536483652/banished-to-a-menstrual-shed-a-teen-in-nepal-is-bitten-by-a-snake-and-dies>

¹² NPR, “15-Year-Old Girl Found Dead in a Menstrual Hut in Nepal”, available at:

<https://www.npr.org/sections/goatsandsoda/2016/12/20/506306964/15-year-old-girl-found-dead-in-a-menstrual-hut-in-nepal>

¹³ Section 15 of the Civil Code—does not recognize any traditions and customs that are against the law, at the time of judicial trial. Section 168 (3) of the Penal Code criminalises the practice of *chhaupadi* during the period of menstruation or during the postnatal period and no similar discrimination of untouchability of inhuman behaviour.

On another note the national average of women who experience trouble when accessing health services is 72 percent, while the figure for Dalit women is higher by five percent (79%) and the Hill and Terai/Madheshi Dalit women is higher still at 85 percent¹⁴.

One of the main pillars of Nepali society is marriage, as it is considered as one of the vital foundations of the family unit. Therefore, it is not surprising how common child marriage is. Arranged marriages have cultural prevalence in Nepal, especially in more rural and isolated regions, even if the “modernity” in areas, such as Kathmandu, has led to an important decrease in the practice. Child marriage is a common practice in rural and isolated regions, and is also considered to be a way of protecting a girl from sexual predators. Ironically, girls involved in child marriage often face many mental and health issues—ranging from psychological to sexual assault and domestic violence from their spouse to loss of prospect of education. Other reasons for the widespread practice of child marriage include ensuring the virginity of girls and the lower price of a dowry due to being a younger bride.

Child marriage affects 37 percent of the Nepali population. One in three girls under the age of 18 are married, despite the fact that the Nepali government deemed child marriage illegal in legislation introduced in 1963¹⁵. Within the Dalit community, child marriage and early pregnancies are at even higher statistics. Girls who are married before the age of fifteen sits at a staggering 62 percent among the Dalit population¹⁶. Further legislation, as written in the 2015 Nepali Constitution in Article 38 (3-5)¹⁷ states that all women shall not be subject to any and all kinds of violence on part of being women, including due to religious, social and cultural traditions. Although the Article 38 in particular includes the rights of women, implementation of such legislation has been slow and not been made enough of a priority by the Nepali government.

Considering the *chhaupadi* practice, child marriage, bonded labour and trafficking, it is obvious that such problems very obviously impede girls and women the possibility to equal opportunity of education in accordance not only in line with the CEDAW Convention but also within the legal framework of the Nepali Constitution¹⁸. According to multiple sources the rate of literacy of girls and women of the Terai/Madheshi Dalits is 34.5 percent (national average of 65.9%), and the rate of Terai/Madheshi Dalit girls and women to complete 8th grade is 11.8 percent (national average of 41.7%)¹⁹. However, these statistics on literacy amongst Dalit women range as high as 45.5 percent according to other sources²⁰.

¹⁴ Nepal Demographic Health Survey 2011, Population Division Ministry of Health and Population, Government of Nepal, March 2012, available at: [https://dhsprogram.com/pubs/pdf/FR257/FR257\[13April2012\].pdf](https://dhsprogram.com/pubs/pdf/FR257/FR257[13April2012].pdf)

¹⁵ According to the 2015 Constitution of Nepal, available at: <http://www.lawcommission.gov.np/en/archives/981>

¹⁶ NMSII

¹⁷ Ibid. “(3) No woman shall be subjected to physical, mental, sexual, psychological or other form of violence or exploitation on grounds of religion, social, cultural tradition, practice or on any other grounds. Such act shall be punishable by law, and the victim shall have the right to obtain compensation in accordance with law. (4) Women shall have the right to participate in all bodies of the State on the basis of the principle of proportional inclusion. (5) Women shall have the right to obtain special opportunity in education, health, employment and social security, on the basis of positive discrimination.”

¹⁸ Article 38 (5): “Women shall have the right to obtain special opportunity in education, health, employment and social security, on the basis of positive discrimination.”; Article 39 (2-3) “Every child shall have the right to education, maintenance, proper care, sports, entertainment and overall personality development from the families and the State...Every child shall have the right to elementary child development and child participation.”

¹⁹ Nepal Social Inclusion Survey (NSIS), Central Department of Sociology/Anthropology, Tribhuvan University, Nepal, 2012

²⁰ Human Rights Situation of Dalit Community In Nepal - Submission to the United Nations Universal Periodic Review of the Federal Democratic Republic of Nepal for Second Cycle Twenty Third Session of the UPR Human Rights Council 2-13 November 2015, Dalit Civil Society Organizations' Coalition for UPR, Nepal and International Dalit Solidarity Network (IDSN), 2015, available at: <https://idsn.org/wp-content/uploads/2015/11/Nepal-UPR-2015-Dalit-Coalition-and-IDSN-report.pdf>.

In turn, it can be no surprise that, with such low educational and literacy rates, that such a reality then negatively affects the socio-economic independence of the Madhesh/Terai community.

Citizenship

- Article 3: “States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them and the exercise and employment of human rights and fundamental freedoms on a basis of equality with men.”

Despite many advances that were made in the adoption of a new Nepali Constitution in 2015, Article 11 (7) of still does not allow for the child of a Nepali mother (and a foreign father) the full rights of citizenship passed on by birth. This restriction on a woman’s right to independently pass on citizenship to her children is in effect discriminatory and therefore leaves them as second-class citizens²¹ to the rest of the Nepali population.

As naturalised citizens, these children are unable to obtain higher posts within the Nepali administration and security forces, a clear deprivation of the fundamental rights that ought to be extended to these children. Being that the Madheshi population is situated so close to the Nepali-Indian border, the law itself is clearly discriminatory. As a majority Hindu minority, Madeshi women very commonly practise cross-border marriage, as they are more likely to find partners who share a similar socio-cultural orientation.

Not only does the 2015 Constitution leave the children of these marriages in jeopardy, but it also negatively affects the already marginalised Badi²² women. Traditionally, these women had the occupation of sex workers. Although the majority of the Badi women no longer continue this work, many have nonetheless bore children from such relations. The children of these sex workers are viewed as illegitimate and deprived of their birth and citizenship certificates²³. This effectively leaves such children as stateless, being further marginalised on top of already being part of the untouchable caste. Furthermore, it is proven that children who are not able to produce a birth certificate are often deprived of education.

Women in Government

Article 7 (b): “States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right...[t]o participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government.”

Representation of women in government positions is limited across the board, however, minority women especially are the most underrepresented in government bodies. As Minority Rights Group International mentions²⁴ the recent Constituent Assembly (CA) elections resulted in negligible representation of the Dalit

²¹ Desouza, Nicola, “Nepal: The Struggle for Equal Citizenship Rights for Women”, Open Democracy, available at: <https://www.opendemocracy.net/5050/nicoal-desouza/nepal-struggle-for-equal-citizenship-rights-for-women>

²² The Badi belong to the untouchable (*pani na chalne*) rank of the caste system, also a part of the Madhesh Terai and Hill people.

²³ Shrestha, Anita, “Badi Women Continue to Be Deprived of Citizenship”, available at: <https://thehimalayantimes.com/kathmandu/badi-women-continue-to-be-deprived-of-citizenship/>

²⁴ Minority Rights Group International, “State of the World’s Minorities and Indigenous Peoples 2014 – Nepal”, available at: <http://www.refworld.org/docid/53ba8ddd.html>

minority²⁵, although it is clear that such problematic lack of representation does not only apply to Dalit women but minority women as a whole²⁶. It is also clear that, without mechanisms to enforce equal representation amongst women and men and minorities, implementation of such legislation will never be fully realised. Furthermore, historically and despite the fact of the Nepali Supreme Court directive order to improve indigenous representation, some indigenous political parties have been barred from participation in political participation on the claims that they pose a threat to social harmony.

- Article 24: “State parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention”

Given the facts above (including recent reports and articles from reliable news sources) it can easily be concluded that the Nepali government, although it has adopted the principles of the CEDAW Convention, does not focus enough of its attention on honouring its own legal framework nor that of international institutional treaties of which it is a signatory.

Section D: Conclusion

In recent years, Nepali national laws and policies have been created and are viewed as positive steps in the direction of progressing in gender equality. However, on a national scale and even more so in secluded regions, such as that of Terai, such legislation lacks proper implementation. There has been little concrete action of the government to encourage and support localised organisations, programs and trainings that focus on educating civil society on gender-based equality and the dangers of harmful traditions such as *chhaupadi* or child marriage. Minority women In Nepal also continue to suffer from a lack of access to education and representation in leadership.

As the Madheshi community is already a marginalised and poor society, the further discrimination of Madheshi women deprives them of societal progression and equality within society and even within their own ethno-cultural community.

In general, the women of the Madheshi community are heavily discriminated against, especially due to the *chhaupadi* practice (in which they are seen as unclean and thought to bring indigence); lack proper rights to equal opportunity of education and work as they are often-times subject to child marriage; and their children are often denied Nepali citizenship if they have no father or their father is a foreigner.

Members of the community still face casual discrimination in their daily life, being considered by many fellow citizens as dirty, backwards and unintelligent. Our conclusion is therefore that Madheshi women face four-fold the discrimination of minorities alone face. In addition to the disadvantages faced by fellow Madheshi men, they also have to face the difficulties of being a woman in a society that, albeit improved, still struggles to achieve gender equality and uniform possibilities for men and women.

Section E: Recommendations

1. UNPO urges for the Nepali government to recognise the multi-faceted discrimination that the women of the Madheshi community continue to face due to lingering ethnic, cultural, socio-economic and religious discrimination, as well as to the gender-based discrimination they face for simply being women.

²⁵ A sub-caste within the Madhesh community, which represents 7 percent of the population of Nepal, and 7 percent of the Madhesh population.

²⁶ Spotlight Nepal, “Constitution Under Fire”, available at: <https://www.spotlightnepal.com/2016/09/15/constitution-under-fire/>

2. UNPO calls upon the Nepali government to address the problems that are specific to the Madheshi community and give better opportunities especially to Madheshi women, for them to be able to leave the vicious circle of socio-economic hardship, discrimination, gender-based violence and exclusion.
3. UNPO urges the State party to take special measures to encourage and promote the participation of women of the Madheshi community in local and national political and public life through awareness-raising campaigns and trainings for members of the Madheshi community at a grassroots level.
4. UNPO recommends a Nepali programme focused on closing disparities in access to female reproductive health care services based on geography, ethnicity and socio-economic status, particularly targeted to include members of the Madheshi community.
5. UNPO recommends that sexual education and contraceptive distribution programmes be rearranged when targeting the Madheshi community.