

Nepal



# CIVIL SOCIETY'S SHADOW REPORT FOR PRE-SESSION OF 6<sup>TH</sup> PERIODIC REPORT ON CEDAW CONVENTION 2018

CEDAW Shadow Report Preparation Committee (SRPC)



Co-ordinated by



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## **Executive Summary**

This report has been prepared in a participatory manner involving different organizations working on women's rights with Forum for Women, Law and Development (FWLD) as the Coordinator. The preparation of this report was supported by UN Women and Government of Denmark. The list of the organizations under the CEDAW Shadow Report Preparation Committee (SRPC), Nepal has been listed under Annex I. Similarly, the writers of the specific article from those organizations have been listed under Annex II. This report includes information on the status and implementation of women's right as categorized in Articles 1-16 of CEDAW Convention. This report, while documenting positive implementation also points out the gaps in relation to women's right in Nepal. It also makes concrete recommendations that must be addressed in future in Nepal to comply with CEDAW and its general recommendations.

## **Non-Discrimination**

### **Prevalence of the Problem**

The societal structure in Nepal that is deeply rooted with the patriarchal values, norms and mindset, has hindered Nepali women and girls to live free of gender-based discrimination.

### **Critical Areas of Concern**

- Lack of comprehensive definition of discrimination in keeping with international principles of CEDAW, CERD or CRPD.
- The indirect forms of discrimination has not been addressed by the law
- Irrespective of enactment of specific laws, failure to extend protection against discrimination by Non-State Actors.

### **Implementation of Concluding Observations**

The new Constitution has, to some extent, expanded the scope of non-discrimination thereby recognising physical conditions, disability, health condition, marital status, pregnancy and economic condition as grounds of discrimination.<sup>3</sup>

### **Gaps and Weaknesses**

- The Constitution fails to acknowledge multiple discrimination on the basis of cross-sectional identities and has not looked into intersectionality within the group.
- The Constitution fails to acknowledge discrimination by non-State actors or the distinction in forms of discrimination experienced by women in private and public spheres.

### **Recommendations**

- Adopt a comprehensive definition of discrimination in the Constitution to encompass both de jure and de facto discrimination, direct and indirect discrimination in line with CEDAW, CERD, CRPD
- Acts of discrimination should be made punishable under law and the affected party should be entitled to receive compensation.

## Obligation to Eliminate Discrimination

### Prevalence of the Problem

Nepal has not ensured complete implementation of provisions of the CEDAW Convention within the national jurisdiction at one hand and on the other; there are still many laws that contain discriminatory provisions against Nepalese women.<sup>1</sup>

In Nepal, gender equality is often limited to policy papers and is frequently not translated into real equality for women.<sup>2</sup>

### Critical Areas of Concern

- Several laws, which explicitly discriminate against women on the basis of sex, are still in existence. Discriminatory wordings are still used in various legislations. There are some words which is used to address male but is used to female as well for the purpose of addressing.

### Implementation of Concluding Observations

- Enactment of the Act of 2015 to amend some acts on gender equality and ending of gender violence (the Act of 2015) repealed various provisions of 31 Acts. The Act has made some notable improvements by repealing discriminatory provisions.

### Gaps and Weaknesses

- Various Acts and Regulations tending to discriminate women. Thus, several laws continue to discriminate against women.
- The law reform process is very slow. Also there is no clear provision of conducting gender auditing during law enactment process in order to ensure equal and non-discriminatory laws.

### Recommendations

- Set up a time line for amendment of all the remaining discriminatory provisions of the Nepalese laws.
- Ensure gender legislative auditing during law enactment process.

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<sup>1</sup> According to FWLD's 2009 study report on "Discriminatory laws against Women, Dalit, Ethnic, Community, Religious Minority and Persons with Disabilities", in 2009, there were 103 provisions and 92 schedules to various Acts and Regulations tending to discrimination against women. In 2015, the Act of 2072 to amend some acts on gender equality and ending of gender violence amended 31 Acts.

<sup>2</sup> UN Women, Mapping Progress on Women's Rights in Nepal, December 2014, p.4.

## **Advancement of Women through Institutions**

### **Prevalence of the Problem**

The government of Nepal has taken few steps to strengthen national machineries including for instance establishing gender focal point in all Ministries, establishing Women and Children Directorate in the Nepal Police and Women and Children Cells in all the districts and appointment of protection officer to address domestic violence.<sup>3</sup> However, the lack of centralised and regular monitoring mechanisms on gender equality and women empowerment goals as well as gender responsive budget at all federal, provincial and local level makes hard to see whether such steps have produced any visible effect on the overall status of women.

Despite constitutional recognition of right to information as a fundamental rights since more than two decades and enactment of the Right to Information Act 2006, women have not been able to exercise this right to the fullest extent and lack access to information creating a huge gap between information rich and information poor and further being marginalised due to their condition as information poor.<sup>4</sup>

### **Critical Area of Concern**

- The federal, provincial and local level of government and judiciary in relation to its cases are yet to develop gender disaggregated database.
- There is no gender disaggregated data of impact of disaster and post-earthquake response.

### **Implementation of Concluding Observations**

- Establishment of National Women Commission as a Constitutional Body: The National Women's Commission has been upgraded as a constitutional body with the promulgation of the new Constitution.<sup>5</sup>
- Since the year 2002, the gender responsive budget initiative has been implemented. Gender auditing system is also in. A sum of NRs. 135.57 billion i.e. 21.93% of the total budget was allocated for the programmes directly benefitting the women in the year 2014 - 2015. Similarly for the year 2015 – 2016, NRs. 182.51 billion i.e. 22.27% budget has been allocated for women.

### **Gaps and Weakness**

- Though the law of the commission has recently been enacted but the appointments of the commission is yet to take place.
- Gender Budgeting is limited only to the federal level and is yet to be reflected at provincial and local level. The monitoring of such budget is still lacking.

### **Recommendations**

- Develop a gender disaggregated database by sex, marital status, age as well as with adequately gender responsive indicators in all governmental agencies and if possible by other non-governmental agencies
- Develop a gender disaggregated database of impact of disaster and post-earthquake response.

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<sup>3</sup> FWLD, CEDAW Sub Committee and HRTMCC, Shadow Report on the 4th and 5th Periodic Report by the government of Nepal on CEDAW, 2011, pp.6-9.

<sup>4</sup> Article 19, Country Report: The Right to Information in Nepal, 2007.

<sup>5</sup> Article 252, the Constitution of Nepal 2015.

- Equip institutions like National Women Commission with adequate budget and human resources.
- Allocate gender budgeting in both provincial and local level as well.
- Launch mass media campaign to sensitise women to visit and ask information from public bodies not only relating to themselves but people at large that help in empowering them thereby bridging the gap between information poor and information rich.

## **Special Measures for Substantive Equality**

### **Prevalence of the Problem**

Nepal ranked in 115th position in the global scenario in 2015, compared to the rank of 108th in 2014 according to the Gender Inequality Index that indicates the loss in human development due to inequality between female and male achievements in the three dimensions - reproductive health, empowerment and economic activity.<sup>6</sup> This implies that Nepal has not performed well in ensuring equality between men and women substantively.

In order to uplift the position of women in the society vis-à-vis ensure equality, there is a need for strategic interventions by taking temporary special measures that guarantee the de facto equality of women.

### **Critical Areas of Concern**

- Lack of conceptual clarity related to the principle of equality amongst judiciary and lawmakers has created confusion on understanding substantive equality, which further limits women's fundamental rights and freedom.
- The government focuses on reservation and quota as special measures and has not considered other forms of special measures.
- The Gender Development Indicator (GDI) shows that Nepal falls under the category of low human development ranking 145th position in the world and also has the lowest GDI amongst South Asian Countries.<sup>7</sup> It can be attributed to the fact that special provisions for women are inadequate to address the needs of women.

### **Implementation of Concluding Observations**

The new Constitution provides that women shall have the right to participate in all bodies of the State on the basis of the principle of proportional inclusion as well as the right to obtain special opportunity in education, health, employment and social security, on the basis of positive discrimination.<sup>8</sup> The Constitution in equality clause states that special provisions by law can be made for the protection, empowerment or development of socially or culturally backward women.<sup>9</sup>

### **Gaps and Weaknesses**

- The new Constitution has even further limited the provision by adding the condition of 'lagging behind socially and culturally' which indicates that the positive discrimination may not extend to all women but only those who are proven to fulfill the condition.
- Women from marginalised group such as women from Dalit, Madhesi, and indigenous communities, from the religious minorities, women from geographically disadvantaged locations and women with disability have been lesser representations in all sectors. Intersection among women has not taken into consideration in special measures.

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<sup>6</sup> UNDP, The Human Development Index 2015, pp.224-227 and The Human Development Index 2014.

<sup>7</sup> UNDP, The Human Development Index 2015, pp.222-224.

<sup>8</sup> Article 38(4), (5), The Constitution of Nepal (2015).

<sup>9</sup> Proviso of Article 18(3), the Constitution of Nepal (2015).

- A study conducted by FWLD shows that excluding a few positive exceptions, the special measures are only on paper and have not made any difference to the lives of women<sup>10</sup> which is a result of no proper implementation or monitoring enactment by government of these legal provisions.

### **Recommendations**

- Train judges, law enforcers and legislators on the issues of substantive equality and bring conceptual clarity thereof.
- Introduce target-based and time-bound temporary special measures in favor of women together with phase out policy where applicable.
- Acknowledge the diversity of women within the framework of special measures in order to advance the situation of women in disadvantaged groups.

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<sup>10</sup> FWLD, Special measures for women and Their impact, 2004 and updated report special measures for Women and its impact, 2014.

## Sex Role and Stereotyping

### Prevalence of the Problem

Patriarchal social norms and stereotyping continue to hinder Nepalese women's progress in a way that legitimize discrimination and violence against women.<sup>11</sup> In various parts of Nepal, women are subjected to discriminatory practices such as Chhaupadi, Deuki, Jhooma, kumara, boksi (witch) and polygamy that assign the stereotyping roles.

Though some discriminatory cultural practices for instance Chhaupadi, boksi(witch) and caste and gender based discrimination has been abolished, the practice in the society still prevails and women are forced to comply with those practices.

### Critical Areas of Concern

- In spite of legal provisions which aim to eliminate discriminatory practices, the changes are yet to occur.
- Women are still delegated stereotypical roles and responsibilities such as household chores, looking after children and caring for the elderly.
- The patriarchal value does not allow women especially married women to have access to economic opportunity and control over the resources in the family and community.
- Implication of dowry leads to violence against the bride, including bride burning and death.

### Implementation of Concluding Observations

- The Legislature Parliament has already passed Anti-Witchcraft Act (Crime and Punishment) 2015 to book the perpetrators who subject violence against women in the allegation of being witch.

### Gaps and Weakness

- Although the Constitution provides a right to seek compensation against any acts of violence or any kind of oppression against women as a result of religious, social or cultural tradition but there is no clear law under which the compensation can be claimed. Additionally, the State has put limitation on implementation of the fundamental rights which require legal provisions/laws stating that it will enact necessary laws within three years of the commencement of the Constitution.<sup>12</sup>
- Existence of discriminatory cultural practices like witchcraft still prevails despite of its prohibition by law.

### Recommendations

- Amend laws, adopt policy and generating awareness through involvement of civil societies/ NGOs and the mass media in order to change the mindset of people and society at large.
- Enact specific laws to criminalize discriminatory practices and also provide victim with speedy justice and appropriate remedies.

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<sup>11</sup> Sahavagi, Didibahini and FEDO, Progress of Women in Nepal (1995-2015) Substantive Equality: Non-negotiable, 2015, p.85.

<sup>12</sup> Article 47, the Constitution of Nepal (2015).

## Trafficking and Exploitation of Prostitution

### Prevalence of the Problem

Nepalese women/girls are subjected to trafficking mainly in three areas; cross border trafficking to India; beyond India in countries like the Middle East countries, other Asian nations and the sub-Saharan Africa<sup>13</sup>; and internal trafficking especially in entertainment establishments, brick kilns, *Jari*(embroidering) industries, and streets.<sup>14</sup>

Gender based violence against women including trafficking has been hugely increasing every year which can be evidenced by the data of years available by the Nepal Police:

Fiscal Year	Rape	Attempt to Rape	Trafficking	Child Marriage	Domestic Violence
2015/2016	1089	452	212	20	9398

Source: <https://cid.nepalpolice.gov.np/indes.phd/cid-wings/women-children-service-directorate>

### Critical Areas of Concern

- It's been almost a decade that the Supreme Court of Nepal has issued order to the government for enacting a separate law to regulate the entertainment sector however the government has not enacted any law till date. Similarly, the Guideline issued by the Supreme Court of Nepal to control sexual exploitation of women/girls in the sector has not been properly implemented.
- Lack of effective coordination at international, regional and bilateral to prevent trafficking of Nepalese women and children in foreign lands.
- Lack of proper victim protection mechanism to protect victims of gender based violence and trafficking. Victims frequently retracted their witness statements following alleged threats by traffickers and social stigma.<sup>15</sup>
- The 6 month time limitation for reporting is not adequate to prosecute conflict related sexual violence.

### Implementation of Concluding Observations

- The Human Trafficking and Transportation (Control) Act 2007 has been amended which now brought provision of establishment of the Rehabilitation Fund for operation of rehabilitation center and to pay compensation to the victims if the perpetrator is unable to pay the compensation.<sup>16</sup> Likewise, there is provision of paying daily and travel allowances to the witness.<sup>17</sup>
- The Ministry of Women, Children, and Social Welfare continued to partially fund rehabilitation homes and emergency shelters for female victims of gender-based violence and trafficking. The Standard Operating Procedures for the Shelter Homes have been adopted by the Ministry.

<sup>13</sup> 2015 Trafficking in Person Report, available at <http://nepal.usembassy.gov/2015-trafficking-in-persons-report.html> <access 24 April 2016>.

<sup>14</sup> National Human Rights Commission, Trafficking in Persons Especially on Women and Children in Nepal (National Report 2011), December 2012, p.ii.

<sup>15</sup> 2015 Trafficking in Person Report, available at <http://nepal.usembassy.gov/2015-trafficking-in-persons-report.html> <access 24 April 2016>.

<sup>16</sup> Amended Section 5, Human Trafficking and Transportation (Control) Act 2007.

<sup>17</sup> Id, Section 24(a).

### **Gaps and Weaknesses**

- The Anti - Human Trafficking law fails to include labor exploitation, and the law makers as well as law enforcer continue to employ a narrow definition of human trafficking.
- The victims and witnesses protection provisions related to GBV and trafficking are not strong enough to provide security and protection.
- The number of the Government funded shelter homes is not sufficient( 8 shelter home for Trafficking victims and 17 shelter for Domestic Violence victims) as well as the duration of accommodation is very short to rehabilitate the victims/survivors socially and psychologically.

### **Recommendations**

- Definition of human trafficking in law should be made comprehensive and labor exploitation should also be included in definition.
- Anti trafficking laws shall be amended as per new federal system to ensure the local, district, province and federal level mechanism to control human trafficking.
- Formulate Act to regulate the entertainment sector.
- Establish shelter homes at local level as well as make them easily accessible for victims
- Ensure effective coordination at international, regional and bilateral levels
- Ratify the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and incorporate it into the domestic laws to in line with international standards.
- Remove the time limitation to file the case of conflict related sexual violence.

## Political and Public Life

### Prevalence of the Problem

The electoral quota in the Constitution calls for ensuring 33% women's representation in the central and federal parliament, and 40% in the local government.<sup>18</sup> Nepal has a mixed electoral system with a combination of First-Past-the-Post (FPTP), and Proportional Representation (PR) systems. The political parties have implemented this electoral quota in a way where mostly women are given seats under the Proportional Representation system. The data shows that out of 1945 FPTP candidates only 136 were women.<sup>19</sup> Such practices of political parties has limited women's electoral field in directly contesting elections. Importantly, such practice undermines women's capacity and leadership as they lose opportunity to exercise their political rights, and directly represent the electorates. The number of elected women in local level is as follows:

Mayor	7
Deputy-Mayor	276
Chairperson	11
Vice-Chairperson	424
ward -chair	62
ward-member	6742
Dalit women member	6567
open	264
Total	14353

Similarly, there are 2 women judges among 19 judges in the Supreme Court; 13 women judges among 138 judges in high courts and only 1 judge among 199 in district courts.

### Critical Areas of Concern

- Women do not hold key positions in the political parties and there is not enough measures to increase the capacity of women representatives.
- Less exercise of voting rights by women as there are no special arrangements made for catering the needs of aged, pregnant and physically weak women to cast their votes easily.

<sup>18</sup> Article 91 (2), the Constitution of Nepal (2015).

<sup>19</sup> Social Structure and Social Change: Whither "Misogyny"?, Chandra Bhadra, Ph.D, Gender Studies and Women's Studies, Tribhuvan University, Nepal, International Conference on Social Structures and Social Change, 21-22 November, Organised by Nepal Sociological Association Kathmandu, in Pokhara, Nepal

### **Implementation of Concluding Observations**

- The Constitution of Nepal (2015) has guaranteed right of women to participate proportionately in all state bodies as fundamental right; to have 33% women's representation in central and federal parliament and 40% in local government with equal representation of women in upper house of parliament.<sup>20</sup> The Constitution has also provisioned that the appointment of the President and the Vice President has to be made in a manner to have representation of different sex or community.<sup>21</sup> Likewise, the Constitution has provisioned to have one woman either as chair or vice chair in parliament in both upper or lower house.<sup>22</sup> Under the Directive Principles, the Constitution guides the state to have full respect and implement the international human rights conventions, to adopt social justice and inclusiveness along with mandatory parliamentary reporting on the progress.<sup>23</sup>

### **Gaps and Weaknesses**

- There is limited space and less attraction for young women to join political organizations and leadership owing to various reasons including economic control and dependency of women on men.

### **Recommendations**

- Adopt legal measures to increase women's representation and remove the socio-economic and cultural barriers against women's participation in public life.
- Develop and implement Standard of Procedures for women's reservation in key position as well as committees of political parties, public institution and government agencies confirming women friendly and safer provisions as well as ensuring women's proportional representation.
- Reform the electoral quota in the laws to include specific quotas for women in both the electoral systems – the FPTP, and the PR, ensuring women the opportunity to contest elections, and represent their constituents.

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<sup>20</sup> Article 38(4), 84(8), 86, 295 (4), 216(4), the Constitution of Nepal (2015).

<sup>21</sup> Article 70, the Constitution of Nepal (2015).

<sup>22</sup> Article 91(2), the Constitution of Nepal (2015).

<sup>23</sup> The Constitution of Nepal Article 51 (b), 51 (j), 53.

## Women's International Representation

### Prevalence of the Problem

Nepal has been appointing its officials in different capacities internationally as Ambassadors, Permanent Mission Members to UN, Labour Attaches and Consulates General. The government also nominates names for various international bodies. In addition, Nepal government represents at various international forums such as for reporting under ratified international instruments, as well as global and regional conferences.

Nepal has been appointing its ambassadors since late 1940s, however, only in 1988 a woman was appointed as an Ambassador for the first time.<sup>24</sup> It took nearly 50 years for Nepal to appoint its first woman ambassador. Although, the trend of appointing women is in increase, however, more needs to be done to ensure that at-least a minimum of 33 percent is ensured among ambassadors as targeted by the government at all levels of public life. On 19 April 2016 the government recommended names of Ambassadors for 21 countries<sup>25</sup> among the recommended only three are women.<sup>26</sup>

Since 1955 Nepal has been sending its mission to the UN. However, only after 70 years, in 2003 a woman for the first time was appointed as the Deputy Permanent Representative to the UN in New York. The same year another woman was appointed as the Second Secretary to the UN Permanent Mission-New York.

The government appoints Labour Attaches in some of the labour destinations with higher number of Nepalese workers. In January 2016, the Ministry of Labor and Foreign Employment (MoLFE) appointed two female officers to UAE.<sup>27</sup>

Ms. Sapana Pradhan Malla was appointed to the Committee Against Torture (CAT) in 2015.<sup>28</sup> It was the first time that a woman was appointed as a committee member of an international treaty body. Ms. Renu Raj Bhandari, as one of the four prestigious members of the Board of Trustees of the UN Voluntary Fund on Contemporary Forms of Slavery.

Although there is an absence of consolidated data on women's representation in international forums from the side of civil society by observation it is clear that more women are representing from civil society. Similarly, there is no monitoring and assessment of such representation. There are criticisms within the women's organizations that representation is often limited to women who have access and resources.

### Critical Areas of Concern

- Currently, the percentage of women in government service is only 12 %, among them mostly those on foreign services are eligible for international appointments. Although, there are political appointments, opportunities for women are rare. The government is yet to nominate names of women to be included in the UN Roaster as provided by UNSCR 1325.

<sup>24</sup> <https://www.mofa.gov.np/consulates-general-of-nepal/>-14 January 2016.

<sup>25</sup> Mahendra Bahadur Pandey – China, Dr. Niranjana Thapa – Russia, Lucky, Sherpa – Australia, Durga Bahadur Subedi – UK, Dr. Khadga KC – Japan, Lok Bahadur Thapa – Belgium, Sewa Lamsal Adhikari – Pakistan, Yuvnath, Lamsal – Denmark, Prakash Subedi – Austria, Yuvraj Karki – South Korea, Bharat Bahadur Rayamajhi – UAE, Mahendra Singh – Qatar, Khagendra Basnet – Bangladesh, Narad Bhardwaj – Sri Lanka, Tara Prasad Pokhrel – Brazil, Padam Sundas – Bahrain, Ramesh Prasad Khanal – Germany, Ali Akhtar Mikarani – Saudi Arabia, Dr. Shiva Maya Tumbahamphe – Israel

<sup>26</sup> <http://www.nepalmountainnews.com/cms/2016/04/19/list-of-recommended-ambassadors-for-21-countries/>, date 19 April 2016.

<sup>27</sup> <https://thehimalayantimes.com/business/govt-sending-additional-labour-attaches/> 20 January 2016.

<sup>28</sup> <http://www.gjhr.org/cat.html>, 13 January 2016.

- When reporting under CEDAW, both the government report and the shadow report have been presenting a merged version of Article 7 and 8, which often focuses on Article 7 and the issues of Article 8 has remained in shadow. It's important to highlight Article 8 as well to ensure that issues of women's international representation receives adequate attention. No institution is responsible for data generation/consolidation and progress tracking.
- In terms of women's participation in international forums such as conferences and seminars, many women are yet to fully contribute and participate primarily due to language barrier, and adequate orientation or training on the procedures and issues in question.
- In addition, there is significant lack of political will to provide women the opportunity and space for constructive participation. Nepal government can do more in adopting special measures in civil service vacancies to allow more women to take up the governmental positions.

### **Implementation of Concluding Observations**

The Committee recommended Nepal to utilize general recommendation No. 23 and adopt temporary special measures to accelerate full and equal participation of women in public and political life including diplomatic services. However, only two women are appointed for an ambassador out of 21 ambassadors in the recent decision made by the Government of Nepal on April 20, 2016.

### **Recommendations**

- Develop a system to generate/consolidate and share periodic gender data on women's international representation both from the government and the civil society.
- Ensure coordination between the Ministry of Foreign Affairs and National Women Commission to initiate data generations/consolidation and sharing. Develop a policy guideline to share gender composition of all Embassies and Consulates Generals, UN Mission and Labour Attaches on respective websites, and periodic publications.
- Ensure proportional representation of women by setting a minimum target for women's representation at international level (at least 33 percent)
- The government to come up with 10 year or 15 year strategy for addressing the problem of low level of women in civil service by increasing the quota for women in civil service.

## Nationality

### Prevalence of the Problem

Right to Identity holds a dominant role to recognize any individuals' independent status. A person without identity i.e. citizenship certificate is not able to exercise other economic, social cultural and political rights. Despite the fact that the new constitution is progressive compared to the Interim Constitution of 2006, there remains overt discrimination based on the parents' gender with direct implications for children's access to nationality as well as other issues, including ambiguity, lack of clarity and internal contradictions within the Constitution.<sup>29</sup>

Nepal is one of the 27 countries around the world that continues to discriminate women to confer their nationality on their children on an equal basis with men.<sup>30</sup>

### Critical Areas of Concern

- Article 11(5) has impaired the independent identity of women undermining them to confer the citizenship to their children when the father of the children remains unidentified. Terms such as "father not traced", would only bestow the concerned authority with sole discretion to interpret such statement on the basis of their prejudice.
- Article 11 (7) - Children born from a Nepali mother and a foreign father and who has permanently resided in Nepal and who has not acquired the citizenship of a foreign country can only acquire the naturalized citizenship which is discriminatory. Also such naturalized citizenship is not issued by the Home Ministry.<sup>31</sup>
- Nepali women who marry foreigners before obtaining their citizenship certificates of Nepal are barred from doing so.<sup>32</sup> This is a direct violation of Article 11(2) of the Constitution and amounts to an arbitrary deprivation of nationality.
- While Nepalese men can convey their nationality to foreign spouses and their children, Nepalese women are barred from doing so. The only path to Nepalese citizenship for foreign male spouses is through the residence based naturalization process.

### Recommendations

- Take immediate steps to amend/repeal all discriminatory provisions that prevent women from acquiring, retaining and transferring citizenship on an equal basis with men in the Constitution particularly Article 11(5) 11(7), Citizenship Act (Section 8 (a)) and Rules and ensure the effective implementation of the law.
- Take immediate steps to amend the clause "Father AND Mother" mentioned in Article 11 (3) and replace it by "Father OR Mother"
- Ensure the equal spousal right to transfer the citizenship on equal terms.

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<sup>29</sup> The Committee on the Rights of the Child, 72<sup>nd</sup> Session, Nepal, Additional Information for the consideration of the committee in relation to the right of every child to acquire a nationality under Article 7 CRC, 15<sup>th</sup> April, 2016.

<sup>30</sup> UNHCR, Background Note on Gender Equality, Nationality Laws and Statelessness 2015, 6 March 2015, available at: <http://www.refworld.org/docid/54f8369b4.html>.

<sup>31</sup> Nepal Civil Society Network of Citizenship Rights, The Global Campaign for Equal Nationality Rights and the Institute on Statelessness and Inclusion, Joint Submission to the Human Rights Council at the 23<sup>rd</sup> Session of the Universal Periodic Review, Nepal, 2015.

<sup>32</sup> Section 8(1) (a) of the Citizenship Act 2006.

- Recognise the independent right of each parent to provide citizenship based on lineal descent to their children.
- Recognise that right to nationality is not subject to the unfettered discretion of administrative authorities, but instead should be protected by the state, which has an obligation to implement court decisions in this regard.
- Recognise the universal concept of Birth Registration irrespective of the status of the parents.
- Ratify the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

## **Women and Education**

### **Prevalence of the Problem**

Gender parity in the Net Enrollment Ratio (NER) has been more or less equal since 2011 and the gender parity in gross enrolment rate exceeds more than one indicating enrolment of more girls than boys in primary education.<sup>33</sup> However, the ratio of women to men remains at 0.91 for higher-secondary level and 0.71 at the tertiary level indicating as education level increases, so does the gender gap.<sup>34</sup>

Girl student's retention in the primary level and irregular in the class are apparently a serious problem. This is caused by various factors including distance between school and home, burden of household chores and child marriage. The data shows that 22.1% of children have never attended the school because they had to help at home. Lack of scholarship provision and less willingness of families to invest in girl's education in the patriarchal society results into the school dropout of girls.

### **Critical Areas of Concern**

- The government's scholarship program for girls, Dalit, children of remote and deprived areas and those with disability has not been sufficient to meet all their needs including indirect costs.
- Schools lack gender friendly environments such as separate toilets for girl students and boy students, sanitation. Girl students with disability lack access in public schools including accessibility in terms of infrastructure such as access to classroom, library and toilets.

### **Implementation of Concluding Observations**

- The government has formulated standard for Priority Minimum Enabling Conditions (PMECs) that must include a separate girl's toilet with water and sanitations, textbooks and a separate book corner in every class.
- Currently 45% of all teacher positions are reserved by policy for under-represented groups, out of which 33 % are reserved for female teachers only. Additionally schools management committees need to have a representation of at least one female teacher. According to the Flash Report of 2071 produced by Department of Education, the presence of female teachers in all types of schools includes 41.9% at primary level, 27.6% at lower secondary level and 17.4% at secondary level in 2013/2014.

### **Gaps and Weaknesses**

- Due to the earthquake 2015 many students are running in temporary learning shelters. Therefore, majority schools do not fulfill PMECs.
- No proper measures have been taken to ensure retention of girls in the school. No public awareness campaign has been launched that encourages parents to send and keep their girl children in the school.
- Although, there is mandatory provision of female teachers in schools, the numbers is still not adequate.

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<sup>33</sup> Department of Education, 2016.

<sup>34</sup> Id.

**Recommendations**

- Reconstruct and operate schools with PMECs as well as female student friendly vis-à-vis disability friendly infrastructures.
- Introduce an effective scholarship programs with special attention to girl student with disability that meet all the needs including indirect cost.
- Launch public gender sensitization programs to raise awareness among parents and community.
- Recruit female teachers offering more trainings and capacity building opportunities.

## **Women and Employment**

### **Prevalence of the Problem**

Women in Nepal continue to face considerable barriers in employment sector as they remain in subsistence agriculture, the informal non-agricultural sector.<sup>35</sup> Women also continue to experience problems accessing adequate credit and other support services for successful entrepreneurship.<sup>36</sup>

In recent times, women migration for foreign employment has risen significantly but the government has restricted women going certain countries for employment for domestic work citing it as necessary for protection of women. The government allowed Nepalese women aged 24 and above to go in foreign employment.<sup>37</sup>

### **Critical Areas of Concern**

- Women under age of 24 are not allowed to work as housemaid or domestic workers in foreign countries whereas it does not apply for men.

### **Implementation of Concluding Observations**

- The Constitution has guaranteed women's right to obtain special opportunity in employment and social security, on the basis of positive discrimination. Likewise, the Constitution has taken a policy to evaluate economically the work and contribution such as maintenance of children and care of families.
- The Sexual Harassment at Workplace (Elimination) Act 2014 has been enacted. However, even after the enforcement, there is no reporting of cases under the act.

### **Gaps and Weaknesses**

- It took 11 years to formulate the Act against workplace sexual harassment. Additionally, the government has not formulated the Regulation against workplace sexual harassment in order to ensure effective implementation of the Act.
- It is yet to see the implementation of evaluation of domestic work contribution of women in family. Additionally, the wage discrimination among male and female remain intact in the society, especially in informal sectors.

### **Recommendations**

- Provide income generation training and high skill training to women in order to enhance their capacity.
- Create mechanism to monitor and punish the practice of wage discrimination
- Remove the age bar of 24 and the bar forbidding the lactating mother up to 2 years from going in foreign employment.

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<sup>35</sup> Sahavagi, Didibahini and FEDO, Progress of Women in Nepal (1995-2015) Substantive Equality: Non-negotiable, 2015, pp.10-13.

<sup>36</sup> Id.

<sup>37</sup> <http://kathmandupost.ekantipur.com/news/2015-04-24/govt-set-to-revise-restrictions-on-age.html> <access 24 April 2016>.

- Ensure effective implementation of work place harassment laws.
- Ratify the ILO Convention concerning Decent Work for Domestic Workers (Convention No. 189) and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their families.

## Health

### Prevalence of the Problem

Due to a gender stereotypical role in the society as child bearers, early and excessive childbearing weakens women, many of whom die or are chronically disabled as a result of complications of pregnancy. On the other hand, there is risk of sex selective abortion, discrimination in nutrition and post natal care among girl and boy children. Additionally, the family, school or community at many cases is not well equipped to support a girl child transiting to adolescence with offering her information or services on many pertinent topics like adolescence, menstrual hygiene, sexual and reproductive health. This may attribute to the dropout rate among young girls which is 22% according to Nepal Adolescent And Youth Survey 2012.<sup>38</sup>

### Critical Areas of Concern

- Women have less say on use of contraceptive due to cultural barriers as a result of which unwanted pregnancies continue to be high also due to the unavailability of contraceptives.
- Menstrual hygiene is neglected and imposition of tax in sanitary kits makes it difficult for poor women and girls to avail of it.
- There is no separate reproductive health law despite of various efforts to enact the law.

### Implementation of Concluding Observations

- The new Constitution ensures women's right to health stating that 'every woman shall have the right to safe motherhood and reproductive health.'<sup>39</sup>
- The government has also introduced health insurance scheme.
- The government has recognised around 245 abortion sites till today and through its annual budget of 2015/2016 made all abortion services free.<sup>40</sup>
- Chhaupadi has been criminalized by new criminal code.

### Gaps and Weaknesses

- People in rural areas especially pregnant women need to depend upon community health volunteers or auxiliary nurse midwives.

### Recommendations

- Inform women and young girls about abortion and increase women's access to contraception and family planning.
- State should ensure and make availability of women and adolescent friendly health services including the information regarding SRHR at every health institutions by ensuring the confidentiality of adolescent's girls.
- Immediately enact reproductive health law and effective implementation of other health policies.

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<sup>38</sup> Ministry of Health and Population, Nepal Adolescent And Youth Survey, March 2012.

<sup>39</sup> Article 38(2), the Constitution of Nepal (2015).

<sup>40</sup> Budget Speech Fiscal Year 2015/2016, government of Nepal, July 14, 2015.

- Provide quality health care facilities free of charge or with minimum charge for poor women.
- Make sanitary kits easily available and tax free.

## Economic and Social Benefits

### Prevalence of the Problem

The new Constitution guarantees economic and social rights of women but Nepalese women at large are not still fully aware of their rights. Additionally, those who have information about their rights are still not been able to realise it due to the prevailing patriarchal norms and social structure. It should be noted that Nepalese women still have less access to and control over resources including land, even if it is inherited property.<sup>41</sup>

The Constitution has adopted a policy to provide certain allowances to socially and culturally backward women, senior citizens or helpless single women. However, Nepal does not have proper social security system. Some employee working for the private organisations or the government receive better benefits such as maternity leave, pension whereas majority of women who work in the informal sector do not have access to such benefits.

### Critical Areas of Concern

- Inadequate support and allowances provided to women facing the multiple forms of discrimination such as Dalit, indigenous women, single women and women with disabilities. And there is age bar for providing social security system to single women which devoid single women of young age from having such facility.
- Lack of uniform maternity benefits for women in Nepal.

### Recommendations

- Amend laws to make uniform maternity benefits for women in Nepal in line with the ILO Maternity Protection Convention 2000 (Convention No. 183)
- Introduce a concrete social security system that benefits and supports women facing the multiple forms of discrimination such as Dalit, indigenous women, single women and women with disabilities.
- Remove age bar for providing social security system to single women.

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<sup>41</sup> FWLD, CEDAW Sub Committee and HRTMCC, Shadow Report on the 4th and 5th Periodic Report by the government of Nepal on CEDAW, 2011, pp.49-52.

## **Rural Women**

### **Prevalence of the Problem**

Rural women and girls are in high risk of sexual and gender based violence. They are not confident enough to report and take legal action due to the power politics, social norms and traditional taboos. Health services in rural Nepal are inadequate and insufficient and are thus reflected in the low health status of rural women compared to urban women. Likewise, rural single women including widow, divorcee and unmarried women face various discriminations.

### **Critical Areas of Concern**

- Lack of awareness and low self confidence in rural women
- Lack of access to various opportunities including education, health, employment, foreign employment as well as justice and security.
- Lack of availability of tools of contraception leading to unwanted pregnancies.

### **Recommendations**

- Develop capacity building programs and trainings to rural women so that they would be able to combat discriminatory culture and demonstrate effective leadership in local bodies.
- Focus on awareness raising regarding use of contraceptive and human rights enabling them to make informed decision and choices regarding their body and health.

## Equality Before the Law

### Prevalence of the Problem

Despite equality provisions in the Constitution, the status of women is not equal to men in certain areas. The name of the mother/grandmother/wife is not required while filling forms in almost all areas. There is only column for writing the name of father, grandfather and husband. Similarly, during the earthquake relief process, the Victim Identity Card was issued to mostly male member of the affected family.

### Critical Areas of Concern

- Women's name is not required while filling forms
- For the victims of the earthquake to receive relief measures, the government made provisions for the issuance of Victim Identity Card for each affected family. Men were prioritized while issuing the ID card and only in those households where men were absent, women were provided with the ID card.

### Implementation of Concluding Observations

- Article 38(1) of the Constitution states that women have equal lineage rights without any gender discrimination which did not exist in the previous constitutions of Nepal.

### Gaps and Weaknesses

- Reconstruction benefits were only available to men as most of the houses that were destroyed during the earthquake in Nepal were registered in name of male members of the family. Hence, old aged women, single women were not taken into consideration as beneficiaries.

### Recommendations

- Inclusion of the name of mother/grandmother/wife while filling out forms.
- Ensure that women and men are equally prioritized while receiving reconstruction benefits post disaster.

## **Marriage and Family Life**

### **Prevalence of the Problem**

Nepal being highly influenced by religion and social norms, has put many limitations on women in relation to marriage and family life. Generally, women and girl are not in a position to choose their partner. The girl child is forced to get married at an early age.

### **Critical Areas of Concern**

- Child marriage has been declared unlawful pursuant to No. 2 of the Chapter on Marriage in the Country Code, 1963. There are numerous offences of child marriage being committed in the country especially in the Terai Region and Far Western Regions.
- Existing Laws on Social Practices Reform Act and Domestic Violence Act has not been able to prohibit dowry practices in Nepal.

### **Implementation of Concluding Observations**

- National Criminal Code has declared void both bigamy and child marriage.

### **Gaps and Weaknesses**

- Weak implementation of laws relating to prohibition on child marriage and non-enforcement of law against dowry system.

### **Recommendations**

- Address the problem of child marriage comprehensively along with initiating a massive awareness campaign in coordination with NGOs, INGOs for creating awareness to general public.
- Adopt a separate and specific law to deal with the ill practice of dowry along with a proper mechanism to implement it effectively.