

**A JOINT COLLECTIVE TO THE UNITED NATION COMMITTEE ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN NEPAL**

CIVIL SOCIETY REPORT

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1.Introduction

The Government of Nepal ratified International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1991. This Covenant is scheduled to be reviewed on November 2014. Though the report has been submitted by the state, we as civil society organisations have felt that many of the economic, social and cultural rights are still violated and state has not provided justice to the victims and survivors. The government which is responsible to protect human rights and resolve various other problems of the country seemed apathetic towards its responsibilities. As a result even the international communities criticised the government expressing their concerns over the possible crisis Nepal could face in the future due to the apathy. Several decisions made by the government challenged human rights instead of containing the state of impunity. The government whose legitimacy was called into question decided to withdraw sub-justice cases including the criminal ones. However the judiciary invalidated the decisions. The competence of the Apex Court was questioned as only one fourth of total number of judges remained in their posts by the end of the reporting year. However the courts did make several important and remarkable verdicts that year (INSEC year book, 2013).

The civil society organisations have also felt that the report has not considered the concern of the people at the grassroots level and women's perspective. Women, children and senior citizens became more vulnerable .Human rights defenders were targeted by both the state and the non-state actors this year. A judge of the Apex Court was shot dead in Lalitpur in broad daylight but his mysterious murder remained unsolved until the end of the year. There was no remarkable contribution towards protection and promotion of human rights as per the commitments made by the country and to the treaties to which Nepal is a state party. Similarly the roles from the national mechanisms to protect and promote human rights were seen as unsatisfactory and ineffective. The government did not show any willingness in implementing the NHRC recommendations (INSEC year book, 2013).

A group of more than 40 civil society organisations identified the need of writing the parallel report to include women's perspective. Hence, a workshop was organised in which diverse groups and individual experts working on different rights participated. Based on different consultations arising from the workshop meetings, the group of organisations provided their feedback on the report. The report is focused on Right to Work (Article 6), Right at Work (Article 7), Right to Social Security (Article 9), Right to Health, Sexual and Reproductive Rights (Article 12), Right to Food and Right to Land (Article 1 and 11), Right to Housing (Article 11) and Non-discrimination and Equality (Article 2.2 and 3).

2. Articles 2.2 and 3: Caste Based Discrimination and Inequality

Caste Based Discrimination and "Untouchability"

- Nepali Dalit women (the lowest social caste) live at the intersection of powerful negative social forces - forces beyond their control. They are subject to harsh conditions in one of the world's poorest countries. They suffer as members of the rural poor; the low status of women combined with the social exclusion of Dalits magnify the effect of their poverty. For each girl and woman, this means a life of discrimination, suffering and often violence - with little or no access to justice, education, or livelihood.
- The social function of the "untouchable" refers to caste, work, and descent-based discrimination. The dominant social orders of the "touchables" are violating the most basic goal of society to guarantee security and happiness for people known as Dalit. The lack of access to education is a problem for the Dalit community. Many Dalit families living in rural areas are unable to send their children to school because of geographical and/or financial constraints. In addition, women are often married young and thus unable to continue their education, resulting in high illiteracy rates and inability to be self-sufficient and financially contribute to the family. Dalit women suffer from triple discrimination as oppressed by the so-called high caste people (which equally affects both male and female Dalits), oppressed by the design of the Hindu patriarchal system and oppressed by Dalit males. 90 percent of Dalit women in Nepal live below the poverty line and 80 percent of Dalit women are illiterate. These women are also vulnerable to serious health issues, sex trafficking, domestic violence, and suffer from social, political, and economic powerlessness. Terai Dalits are subject to even harsher discrimination tactics and thus suffer from deeper poverty and lack of social and economic opportunities. Poverty, lack of sanitation, the issue of landlessness, early child marriage, lack of education, and lack of alternative economic opportunities all pose insurmountable barriers for the community to successfully provide for itself and create a viable future for its children.
- Dalits are still treated as socially "untouchable" and their issues remain unaddressed. Such discrimination can be observed even around Kathmandu valley. In the rural areas, the problem is more severe. After the political change in 2007, the situation of women has certainly changed but not to the extent that it should have. The fact is that Dalit women consist of one-fourth of the total women population in Nepal (Bishwakarma, 2004). All women are victims of gender discrimination in the society. In comparison to other high caste women, the Dalit women have been forced to live in the most vulnerable conditions. They constitute the major workforce doing hard manual labour and engage in agricultural operations. Dalit women are thrice alienated on the basis of class, caste and gender. High caste people/women perpetrate caste based discrimination and "untouchability" against Dalit women. The reality of the Dalit community is that the whole family has to depend at least partly on their income. Regarding the Dalit craftsmen, artists and labourers, women participate in productive activities and thus become part of the economic chain. So, in certain caste groups like Chamar, Badi, Pode, there is some respect for women in comparison to higher caste women (Bishwakarma, 2004).

- Mostly, Dalit women have been the victims of intra-caste and inter-caste marriages. The upper caste people engage in fake love with Dalit girls and then right after pregnancy or marriage, they give them up just on ground of caste. A great number of Dalit girls are found facing hardship of one kind or the other. Due to Nepal government's provision of stipends, Dalit women have been turned into severe victims of inter-caste marriage.

Questions

1. The Untouchability Act has not been properly implemented till date. What is the government's plan for its proper implementation?
2. It's been nine years of establishment of National Dalit Commission but why could it could not be an autonomous body?

Economic Backwardness

- At the national level, 17 percent of households report to have "inadequate" clothing for their family members, while 82 percent report to have it "just adequate." About a third and a fourth of the households in the mid west and the far west development regions respectively report to have "less than adequate" clothing for their family. Overall, 18 percent of households perceive their healthcare to be "less than adequate." In Nepal, 16 percent of households think that schooling for their children is less than adequate, 70 percent think it to be "just adequate". Overall, about 8 percent of households in the country report shortage of food or money to buy food in the last 30 days; this proportion is double for rural areas than for urban areas. Among the households which experience food shortage, the highest proportion (about 43 percent) faces the shortage for 3 to 5 days and about one-fourth of them face 1 to 2 days of such scarcity. There seems to be no significant difference between urban and rural areas regarding the proportion of households reporting food shortage for 5 days or less (Nepal Living Standards Survey 2010/11). In Nepal, the situation of Dalit women is worst in comparison to other ethnic or caste groups. They face absolute poverty.
- On the basis of caste, Dalit women face lack of employment opportunities. They cannot earn from shop keeping. They face sexual exploitation and compulsion for prostitution just because of being women of Dalit caste (http://idsn.org/fileadmin/user_folder/pdf/New_files/Key_Issues/Dalit_Women/DALIT_WOMEN_-_IDSN_briefing_paper.pdf). Chamars and Doms are supposed to clean villages and towns and are even expected to throw away dead animals. They have to do such work free of charge. They can earn a little by selling the hides and skins, and bones of the dead animals. Dalit women from these caste groups help their men in doing such work in the name of religion and tradition. Dalit women from Dom, Bade, Damai, Gaine, Hudke sub-caste groups are supposed to entertain high caste people with folk songs and dances. In return, they get nominal tips as the mercy from high caste people.
- Dalit women get lesser wages in comparison to their male counterparts. Generally, Dalit women work as daily labourers to transplant seedlings, thresh paddy/wheat or work even in road or building construction. In the village of Tarai, Chamar women accomplish the women's delivery job. The irony is that these women are permitted to enter the houses at the time of childbirth but as soon as the job is over they are again reverted to the "untouchable" status. Though they provide most valuable services, these women get nominal fees in the form of 5-10 kgs of food grains (Biswakarma, 2004).

Questions

1. Discrimination for Dalit and Dalit children is rampant. Only a few have access to these social schemes and for those who get access, these schemes are not sufficient. For example, scholarship is available for Dalit students, but many do not get it, and for those who get it, the amount is not sufficient for their support (NRs. 500 per year). This raises the question: What is the government's plan to promote children's education and to improve their parent's economic status?

Harmful Traditional Practices

- Forced and early marriages are one of the harmful traditional practices which have affected Dalit women and girls. The practice of forcing girls between 11 and 13 to marry and begin producing children is prevalent. Child marriage robs young girls of their childhood and forces them into dependent and subordinate positions within the husband's family. A child bride is at increased risk of serious or fatal complications for both herself and her children arising from giving birth before having fully developed.
- In places where conflict is prevalent, rape and forced impregnation are often employed as a strategy to suppress ethnic or religious communities, making women highly vulnerable. Dalit women are mostly affected by these suppressive acts in Nepal. The abuse of women in armed conflict is rooted in a culture of discrimination that denies Dalit women equal status to other women and men from their community. Social, political, and religious norms identify women as the property of men, condone women's chastity with family honour, and legitimise violence against women. Women's economic dependence, subordinate social status, and a lack of legal support render them vulnerable to continued abuse.
- Dalit women face multiple discriminations, are often accused of boxi (witchcraft), and are extremely vulnerable to sexual exploitation. Witch-hunting and burning is a practice that has been going on in many parts of the country for centuries. People often attribute unexplained illnesses and deaths to sorcery, and evidence shows that Dalit women are disproportionately suspected and accused of the practice.
- The Deuki tradition involves families offering young girls to temples to act as dancers in ceremonies. These girls, however, often experience sexual exploitation and enter sex work to earn a living. Similarly, the Jhuma are Sherpa, who traditionally send their second-born daughters to monasteries as an offering to ensure the wellbeing of the girls' family..
- Physical assault, verbal abuse, sexual harassment and assault, rape, sexual exploitation, forced prostitution, kidnapping and forced incarceration primarily by male members of the dominant castes are common experiences of Dalit women and girls. Certain kinds of violence seem to be reserved for Dalit women - extreme filthy verbal abuse and sexual epithets, naked parading, dismemberment, forcing to drink urine and faeces, tying to a pole and beating, branding, pulling out teeth/tongue/nails. Forced prostitution is reserved for Dalit women as is the fact that majority of manual scavengers are Dalit women. Dalit women face considerable violence on the domestic front. Alcoholism and demands of money from men is very often associated with family violence. Other causes also are inability to bear children, not bearing male children, suspected extra-marital relationship, being good-looking in some cases or ugly in others, denying sex to husband, demanding property, demanding freedom or asserting her space and rights. Patriarchal values are very evident in the violence where women are expected to be obedient, pure and keep to their place in life. The study conducted in South Asia revealed that 60 percent of trafficked girls are Dalit (Bishunkhe, 2007).

Questions

1. What is the government's plan to reduce traditional harmful practices based on "untouchability"?
2. What is the government planning to improve upon discriminatory laws and policies?

Recommendations

- There is an urgent need of creating a new constitution in which there should be guarantee of reservation system in all sectors for Dalit women and of adequate provision to eradicate discrimination and "untouchability" based on caste and gender. Special legal provisions should be made to safeguard Dalit women from all sorts of violence. In addition, effective measures should be adopted to provide liberation and dignity to Dalit women and girls. The new constitution should ensure dignified representation of Dalit women at all state mechanisms.
- The UN should recognise Dalit rights as human rights and address issues faced by the Dalit community, paying special attention to Dalit women.
- The concerned bodies should focus on the socio-economic upliftment of Dalit women particularly in terms of equal rights to land, property, job, wages and other access to national resources.
- Economic enhancement programmes should be launched for Dalit women's income generation and self-reliance.
- Dalit women employment opportunity should be ensured.
- The discriminatory laws, traditional practices and dogmatism happening against Dalit women should be abolished by providing them the social security for their rehabilitation.
- The international legal obligations and instruments related to Dalit and Dalit women should be put to practice with effective implementation, monitoring and evaluation processes.
- With focus on transitional period, appropriate compensation should be provided to the victims of trafficking, rape, sexual exploitation, displaced Dalit, with due consideration to Dalit women.

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3. Article 6: Right to Work

Summary of the Situation in Informal and Entertainment Sector

A Feminist Participatory Action Research (FPAR) was conducted by WOFOWON among 200 women working in entertainment sector in Kathmandu, Lalitpur and Bhaktapur districts. 65 percent of them were in the age group 18 to 25. The study also found that 7 percent of girls were below the age of 18. Only 1 percent of the respondents was above the age of 40; 5 percent were between the age of 30 and 40. 69 percent of respondents were from indigenous ethnic groups.

Women's contribution to the national economy through their engagement in atypical/ informal sector is significant but overlooked by the state. According to the Ministry of Women, Children and Social Welfare (MWCSW), approximately 40,000 women¹ were working in the entertainment sector in Kathmandu valley (in and around the capital city). Women Forum for Women in Nepal (WOFOWON)¹ estimated the current number of women workers in the entertainment sector in Kathmandu valley alone to be more than 50,000. However, still no scientific and representative study has been conducted to measure the accurate number of women working in the sector. But the currently available statistics are already significant to warrant for appropriate policy and programmatic action by the government, and the number of such women workers is continuously increasing. However, the government seems to blindfold the existence and future possibilities of employment in this sector for cultural and economic prosperity. During armed conflict and economic crisis, informal and entertainment sectors provided shade to displaced workers, especially women.

The benefits of such employment are not sufficient to lead a standard life, because such employment rarely comes with social protection, good working condition and adequate wages. Its major role is in employment creation, production, service delivery and income generation, but the government has not recognised and valued them.

As work in this sector is considered bad work for women, women working in these sectors are stigmatized. They are forced to hide their identities and tolerate all kinds of abuses. This is in spite of the Supreme Court's 5 year action plan from 2012 to 2016 to regulate the work to ensure human rights of women. Till now the government has not come up with any tangible programme. Hence, women working in this sector are facing vastly more exploitation, discrimination, domination and suppression compared to men. They have no fixed salary or duty hours, get very low wages with discriminatory work division, suffer from sexual harassment (physical and mental), and face arbitrary arrest from the police.

In 2009, the Supreme Court of Nepal promulgated a directive² in relation to giving protection to women and girls working in the entertainment sector against sexual exploitation at work place and issued an order to the government of Nepal to formulate a law to address these problems and challenges. But it has been 6 years, and the directive has not been effectively implemented nor is a new law formulated.

¹Women Forum for Women in Nepal (WOFOWON) is a non-governmental organisation established and run by women working in the informal and entertainment sectors such as dance bars and massage parlors.

Lack of investment to generate employment has also been a major challenge, and compliance with labour rights and legislation is unsatisfactory. Employers are generally hesitant to comply with labour laws while employees are unhappy with the deteriorating economic, technical and social dimensions of their work. Therefore the need for reform in the existing laws is felt by both trade unions and employers.

Ongoing Impact of Illegalized but Prevailing Bonded Labour System

Although the traditional *Kamaiya*, *Haliya* and *Kamalari* (bonded labour) systems have been formally eradicated, it is still a problem in the western part of the Nepal, particularly in the agricultural sector.⁴ Lack of skills and unemployment has made it difficult for ex-kamaiya and ex-haliya, leading them to go back to work as bonded labourers.

Therefore, efforts at rescuing *Kamaiya*, *Haliya* and *Kamalari* have not proved effective. *Kamalari* (female bonded labourers) are still compelled to work with little or no pay and are often exploited.

Women in Foreign Employment

Migrant workers are often less protected than other workers. Their livelihood and security are linked directly to policies and practices concerning employment, equitable treatment, and social protection in the destination country.

Article 8 under the Foreign Employment Act 2064, and Foreign Employment Regulation 2064 of Nepal suggests there should be no discrimination on foreign employment on the basis of sex. The government's move to fix an age criteria only for female worker going to Gulf countries is in direct contradiction to the employment provisions. Despite putting efforts in making foreign employment safe for women, government restricted women's right to work in foreign countries in the name of providing security against violence. This is a serious form of violation perpetuated by the state on women's right to work in foreign employment and women's right to mobility.

Women Commercial Sex Workers

Although the Nepal government has not legalised commercial sex work, a significant number of women and girls are involved in this. Although the economic gain from sex work is not enough to lead a life with dignity, due to state's inability to create employment, and extreme poverty, women and girls are compelled to choose sex work for livelihood. There has not been any systematic research on the status of sex work in Nepal by the government. However, anecdotal data show that girls and women from 12 to 60 years (WOFOWN's experience) are involved in commercial sex work. Due to stigma attached to the work, there is no environment where sex workers can be open about their work. Sex workers feel stigmatized and marginalized and this prevents them from seeking legal redress against discrimination and demanding for safer working environments.

²Verdict and procedural guidelines issued by the Supreme Court for the prevention of sexual harassment against working women at workplaces like dance restaurants, dance bars, etc (2008)

³A civil society report on ESCR, 2013, Nepal

⁴A civil society report on ESCR, 2013, Nepal

Sex work has not been legalised but a significant proportion of girls and women are involved in it for their livelihood. Government has not recognised this reality and not been able to systematize it or provide alternative options for livelihood. There is a high level of unemployment leading to sex work with very low and variable pay in the range of Rs. 50 to 1000.

The police are arbitrarily arresting women and girls, just for carrying condoms in their bags. Lack of space where they can speak up, and laws for and services to these women sex workers and their children have further complicated the environment of commercial sex work. Not only sex workers, their children are also abused, stigmatised and denied various rights including right to education, employment and health care services.

Questions

- What measures are taken by the Government against sexual exploitation in the entertainment sector?
- How can government ensure the implementation of labour and employment policy to protect the rights of women working in the informal sector, especially those in sex work and bonded labour?
- How can government stop the migration of women working in the informal sector, sex work and bonded labour?

RECOMMENDATIONS

- Government should formulate a law to give protection to women and girls working in the entertainment sector against sexual exploitation according to the directive of the Supreme Court 2009.
- Government should amend the Labor Act and Rules to include women and men working in the informal sector, especially in the entertainment sector, along with implementation of existing laws.
- Reservation and subsidy policies for marginalised, and poor communities - including women - should be prepared, implemented, and regulated with time limits and proper indicators of monitoring.
- Government needs to establish and promote proper legal system to regulate foreign recruitment processes. The system should work towards eliminating malpractices through legal and valid contracts, regulation and accreditation system. Besides, currently a large amount of remittance goes to meet household needs that can be planned to be properly used in the activities of women's reintegration in the family and community.
- Government needs to give due respect to women working as sex workers and working in the entertainment and informal sectors.

4. ARTICLE 7- Right to Work

SUMMARY OF THE PRIORITY ISSUES

The Interim constitution of Nepal 2007 ensures the right to work,⁵ right to equality, right to freedom, right to employment and social security, and right to form and engage in trade unions⁶ as fundamental rights of every citizen. However, due to lack of enough judiciary, legislative and executive mechanisms, and lack of proper monitoring, a large number of workers is deprived of these rights at work places. The informal sector workers suffer the most, and in all sectors women suffer from double discrimination and marginalisation, and face challenges of insecurity and uncertainty.

The government has established a minimum wage of NRs. 8,100.⁷ However, it has not been able to implement the minimum standard wage or to keep wages competitive with inflation and maintain parity of payment between women and men⁸. Government has not been able to implement its commitment to establish child care centre, regulation of the provision of maternity leave, sick leave, trade union formation and collective bargaining rights of labour, pension, old age benefits and gratuity.⁹

The government of Nepal has expressed commitment in its policy to End Gender Based Violence and Gender Empowerment Strategy and Work Plan (2069/70 – 2073/74)¹⁰ to implement the verdict and guideline passed by the Supreme Court against sexual violence against women at workplaces in the entertainment sector such as dance bars and massage parlors. But the government has not identified and delegated authority and responsibility to any institution to implement the verdict.

The private sector is playing the major role in employment generation for women and men in Nepal by providing all kind of services including entertainment and basic services such as health and education. The government has not been able to monitor and regulate wages and services offered by the private sector. As a result, women are obliged to work in low pay and undesirable working conditions, face sexual harassment, lack of paid maternity leave, and discrimination during recruitment processes.

Nepali women working in foreign employment are facing various forms of violence, especially sexual violence and threat to life. The government has not been able to negotiate with the host countries for safe working environment for its citizens.

Questions

- What is the government's initiation to ensure equal wages of men and women working in entertainment and informal sectors?
- How has the government of Nepal ensured job security and facilities for people working in entertainment and informal sectors?

RECOMMENDATIONS

- The government should provide job security to the people working in entertainment and informal sectors.
- The basic facilities and allowances should be provided to the people working in entertainment and informal sectors.

⁵Article 7, Interim Constitution of Nepal 2007

⁶Part 3 : Fundamental Rights, Interim Constitution of Nepal 2007

⁷Notice of Nepal government on the fixation of minimum wage in Nepal Gazette, June 11, 2013

⁸A civil society report on ESCR, 2013

⁹1992 Labour Act

¹⁰End of Gender Based Violence and Gender Empowerment Strategy and Work Plan (2069/70 – 2073/74)

6. Article 9 Social Security

Background of the Study

The provision under Article 13(2) of the Interim Constitution of Nepal, 2007 adapts to the principle of affirmative action and ensures making a special law for the advancement and empowerment of women under the right to equality. Similarly, Article 13(4) ensures for equal remuneration and social security payments between men and women for the same work.

According to The International Social Security Association, social security can be defined as any programme of social protection established by legislation or any other mandatory arrangement that provides an individual with a degree of income security when faced with income contingencies of senior citizenship, survivorship, incapacity, disability, unemployment and rearing children. The development of social security is being supported by various international conventions and instruments. The recognition of social security as a basic human right was enshrined in the 1948 Universal Declaration of Human Rights. Today, most countries in the world have some type of social security system. Worldwide, the most common form of social security programme is the old age, disability and survivors' pension.

The government of Nepal has initiated a number of measures over the last few years to protect the chronically poor, children, senior citizens, workers, people with disabilities, endangered ethnicities, conflict-affected people, single women (widows) who are rendered vulnerable for one or the other reason. The Interim Plan and the successive Three-Year Plan have tried to address this issue through various programmes and policies.

As part of its social security arrangement, the government introduced the Social Security Program in the fiscal year 1994/95. This is a *non-contributory benefit* of an income maintenance type of social security programme where the government provides cash transfers to eligible beneficiaries. The scheme covers the disabled; widows aged 60 plus and elderly people who have completed 75 years of age. The age threshold was later revised to 60 plus in the case of senior citizens (Dalit) and 70 plus for others. Considering the life expectancy of the people living in the Karnali zone, the age threshold in the area was also fixed at 60 years. The programme provides cash transfers as allowance to elderly citizens, widows, disabled people and endangered ethnicities of Rs. 2,400, 1,800 and 2,400 per annum respectively. Considering the sharp rise in prices in the past few years, social security support has been raised to Rs. 500 per month. In 2010/11, the government disbursed Rs. 7.6 billion Rs. under the scheme.

Social Security System in Nepal

The history of social security began with pensions paid to retired and old persons. A pension is a lump sum given to service holders after their retirement from service. There is no documentary evidence about when the pension was first paid in Nepal, but it is found that a system to provide annual lump sums to wounded soldiers returning from the British Army was practiced during World War I. In 1991., a Military Money Fund was established, and then Prime Minister Juddha Shumsher announced one fifth of the salary as pension for retired soldiers in 1998. In civil service, one sixth of the salary was provided to civil servants who had served 25 years as pension. Later the pension system was initiated for community school teachers as well. In 1993, a Labour Code required private sector employers to pay 50 percent of wage for sick workers and for leave of up to 15 days each year. Also, the employers were required to employ at least one year continuously. The Civil Servant Act was established to provide maternity leave of 60 days to women before or after birth for up to two children.

The universal flat pension of NRs. 100 to all the elderly above 75 years was first announced in Nepal by the then Prime Minister of Nepal, Mr. Manmohan Adhikari (who led the Communist Party of Nepal- Unified Marxists and Leninists) on December 26, 1994. Five districts from the five development regions of Nepal were selected to pilot the scheme, and the first disbursement of the Old Age Allowance Programme (OAP) was made on 2 July, 1995 for a six-month period from January to June. The implementation of the pilot project in five districts was carried out by the Ministry of Education and Sports and distributed at the grass-roots level by the Village Development Committees. During the fiscal year, 1995-96, the OAP was extended to the entire country and was implemented by the Home Ministry. During 1995-96, NRs. 280 crore was released for the implementation of the programme. Since 1996-97, the Ministry of Local Development has been administrating the OAP, and the allowances were distributed by the ward offices in the urban areas and VDCs in the rural areas. When the Nepali Congress came to power, through a verdict of the electorate in 1996-97, it introduced two additional social security programmes, namely the helpless widows allowance for widows above 60 years of age and the disabled pension of Rs. 100 per month. During the International Year of Elderly Persons (1999), the ruling Nepali Congress raised the old age allowance from Rs.100 to 150. Eligibility criteria: All Nepalese, men and women, who had completed 75 years of age and above were eligible for the pension. According to the directives issued by the Ministry of Local Development, the age mentioned in the Nepalese Citizenship Certificate is the basis for accessing the old age allowance.

Some Achievements

A national plan of action has been prepared with significant provisions for the rights of women and children. Nepali Law Amendment Bill is in place for social security and gender equality.

The Supreme Court issued a directive to ensure the right to citizenship through mothers and also an order to the government to strategise and plan out policies that will address the discrimination, exploitation and injustice faced by rural women and incorporates the provisions mentioned in CEDAW with regard to rural women.

The court also gave an order to the government to provide monthly allowances to single women regardless of age as per social security.

The government has also established emergency funds for widows and has mainstreamed the widow empowerment plan into a three year interim plan.

Challenges

There is no citizenship right yet for the children of women married to a foreign man. Additionally, there are still a lot of traditional, harmful practices that have been making women more vulnerable, but there is no punishment system for whoever continues with such practices.

There is no proper preparation and reintegration programme for conflict-affected women. Laws are not properly implemented, and there is no proper monitoring mechanism in place.

Women's meaningful participation at all levels has not been achieved. The number of female police is low, so there are no proper services to women who are faced with violence.

Issues to be Raised

The issues to be raised are i) migrant women's social security, ii) widows' property rights and rights to live with dignity, iii) harmful practices, and iv) domestic women workers' security.

Questions

- What is the government's plan to address the issues of food security and sustainable livelihoods of single women?
- How can government ensure the employment opportunities to secure the livelihoods of single women?

Recommendations

- The government should formulate and implement a policy that allows women to receive health allowance, services and be food secure.
- The government of Nepal should increase the allowance, considering the inflation rate for basic items.
- The current coverage gap of contributory schemes catering only to the formal sector workers needs to be closed. There should be provision of basic level income security for all eligible female and male senior citizens.
- There should be proper arrangements to provide both residential and non-residential geriatric age care services along with free health care to those who are deserted and abandoned by their families and relatives.
- There should be special attention to address social protection needs of people with disabilities through non-discriminatory and inclusive policies and programmes. This includes income security, health care access, social inclusion and realisation of productive capital. There should be a provision of equal employment opportunity for those who are capable of working.

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5. Article 1 and 11: Right to Adequate Food and Land

The **National Agricultural Policy 2004** aims to increase women's participation in the operation of agricultural programmes to 50 percents. The policy ensures that agricultural inputs are easy and accessible for women, e.g. credit facilities, extension services, information, appropriate technology, skills development, and agriculture production inputs.

The **Draft Land Use Policy 2010** has the provision of land distribution to landless and deprived communities; however, there is no specific focus on women landless farmers.

Women's situation in Nepal is very critical and vulnerable. The dominant patriarchal ideology with its set of beliefs and customs legitimises male power and authority over women. This means that food insecurity among women is not only a matter of access to resources by the marginalised section of population, but also a reflection of the rigid socio-cultural norms and practices inherent in Nepal's patriarchal society.

Around 31 percent people in the country live below the poverty line. Around 49.3 percentage of children under five are chronically malnourished. Globally, Nepal ranks 144th out of 182 countries in terms of its Human Development Index (UNDP, 2009).

Annual population growth of the country is 2.2 percent. It is estimated that the country's population in 2025 will reach 40.5 million with anticipated difficulties in fulfilling the needs and requirements (Nutrition Profile, 1998 and FAOSTAT, 2006).

According to Nepal Demographic and Health Survey (NDHS) 2006, around 84 percent of people who reside in the rural areas have little education, occupational skills and opportunities for non-agricultural employment (GON, NEW ERA, et.al, 2007).

Due to widespread poverty, food insecurity and hunger remain pervasive in Nepal, not only in food deficit districts but also in the food surplus districts among the marginalized communities. Food and financial crises are gradually increasing, with instances of chronic food insecurity since 1990 in the hills of western Nepal (Adhikari and Bhole, 1999). The number of food insecure people is 6.9 million (OCHA, 2008).

Besides, feudalism and the labour system also are the causes of food insecurity. The consequences of food insecurity: Poor people exhaust their savings to buy food or sell their property. School dropout increases.

Since 1990, at national level, the overall food production is deficit and Nepal has been a net cereal importer for most years during the last two decades (FAO, 2008).

Food price in Nepal rises by around 10 percent on an average every year, according to the analysis about poverty in South Asia. This is raising poverty by around 2 - 2.5 percent every year. But the government claims that absolute poverty in Nepal was just 23.8 percent in 2012. It was 42% percent in 1996. Food price had risen across the world after the food exporting countries banned export of food in 2008. Sri Lanka, Bhutan, Bangladesh, Maldives and India have managed to control the rise in food price to some extent, though it remains a problem for economies in the region (The Kathmandu Post, 2013).

The effects of climate change are felt more intensely. The food insecurity in Nepal is expected to become more acute. Already disaster prone and the 30th country most at risk of flooding, Nepal has experienced steady rise in the occurrence of floods, droughts and landslides. Between 1998 and 2002, floods and landslides affected 24,264 people annually and left over half million people food insecure in 2007 alone. Heavy reliance on rainfed farming, limited irrigation facilities and significant lack of water conservation and harvesting practices can prove disastrous for agricultural output. Furthermore, rising temperature will have significant impact on the moisture and nutrient levels of soil through rapid evapo-transpiration, soil erosion and landslides. The development and spread of crop diseases, pests and weeds will also have adverse impact on agriculture, human health and the environment. Several pathogens, such as rust and foliar blight have already adapted to the hills and mid-hills. Mosquitoes that once only populated the Terai region are now able to survive in the mid and high hills (Mercy Corps, 2012).

The 2006 National Demographic Health Survey reported that 24 percent of the Nepalese women between 15 - 49 were malnourished, 9 percent were overweight or obese. Women's nutritional health improved only slightly over the years: 36 percent of² women aged 15 - 49 were anaemic, 29 percent were mildly anaemic, 6 percent moderately anaemic and less than 1 percent severely anaemic (NDHS, 2006).

Nepal is a land-scarce country. Of the total area of the country only 21 percent is cultivable. Of the agricultural land, 6.8 percent, 40.4 percent and 2.9 percent are located at the mountain, hill and Terai regions respectively. Of the 23.1 million population, 7.3 percent, 44.3 percent and 48.4 percent live in these ecological belts respectively. An average land holding size is 0.96 hectare and 32.1 percent of people are landless. About 1.4 percent of the landowners own 14 percent of arable land and out of the total cultivable land, about 9 percent is under tenancy system (CSRC, 2005).

Specific Issues Relating to Women's Right to Food in Nepal

Property Rights and Land Ownership by Women

Despite women's high contribution to the agrarian production in Nepal, in most cases they do not possess their own land. Traditional practices and some legal regulations still in force, e.g. laws related to inheritance, impede equal access of women to food producing resources. In addition, rural women, who are part of the poor and indigenous communities, often are victims of multiple discriminations.

A report of the National Women's Commission (NWC) revealed startling discrimination against women in terms of ownership of assets and properties. Out of the 68 districts (75 districts in total in Nepal), only 0.78 percent of the houses were legally owned by women. Similarly, only 5.25 percent of women had land ownership certificates in their names. Likewise, only 5.45 percent of women owned livestock and only about 17 percent women had some kind of assets in their name.

Access to Income Generating Opportunities

Most Nepalese women are engaged in the agricultural sector, however, their work and contributions are taken for granted and perceived as natural part parallel to their reproductive functions in the society, i.e., family and household management. Rural women have traditionally less rights and fewer income generating opportunities compared to men. Many women are land-based wage labourers but do not own land, and they are generally excluded from the decision-making process in the rural parts of the country. As a result, only 45.2 percent of women, as compared to 68 percent of men, are economically active.

Questions

- How has the government viewed the issues of land rights in the name of women?
- How has the government addressed the issues of food insecurity for farmers as the majority of people are undertaking agriculture as the major occupation to sustain their livelihood?
- What measures have been taken by the government to reduce the problem of malnutrition?

Recommendations

- Strengthen agriculture development programmes through capacity building on scientific technologies, providing subsidies, crop and livestock insurance.
- Promote household food security, nutrition and livelihood interventions through increased production under technical guidance of government stakeholders.
- Promote off-farm activities by providing employment in industry and business sectors.
- Develop land-use planning and improvement of agricultural practices.
- Improve the monitoring and evaluation of nutrition situation by conducting household surveys.
- Strengthen the disaster risk reduction to cope up with the adverse effect of climate change.

¹²Terai region: A belt of marshy grasslands, savannas, and forests located south of the outer foothills of the Himalaya, the Siwalik Hills, and north of the Indo-Gangetic Plain of the Ganges, Brahmaputra and their tributaries

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6. Article 11: Right to Housing

Issue: Land, Housing and Ownership

In the context of Nepal, housing management and building construction are taken as an important issue. With urban population increasing at the rate of 3.35 per year,¹ sustainable urban development, housing and secure buildings have been gaining their essentiality. Further, according to the National Census 2011, the population growth rate of Kathmandu alone is 61.23¹ percent

To achieve improvement of the living standard, the issue of secure housing rights of the unmanaged communities has always been in the discussion. There have been discussions and some work as well on the issue of housing rights, but this issue has never been discussed in their affinity or nexus with land rights. In 2014, the government of Nepal constructed 2,272 houses for pro-poor and marginalised communities in the districts Saptari, Siraha and Kapilbastu under its Safe House Access Programme.

Evidences for Verification

The government declared that every citizen is entitled to have a right and access to housing under fundamental rights. However, in course of defining the right, in second line, it limits the right to those having ownership. Under fundamental rights, it has been written to ensure the rights of housing, 'but under the memo, it has been limited to those having ownership. This allows only those having ownership to use and feel the sense of possession; but there have been programmes developed to enhance the livelihood standard of poorly managed communities through the usage of land of those having ownership. This makes the whole programme to be limited only to papers.

Questions

- Does the right to housing get ensured only by providing houses to unmanaged and poor communities/settlements?
- What programmes will be designed to ensure the right to housing for poor and unmanaged urban settlements?

Recommendation

- Secure housing right can only be ensured if both housing right and land right are ensured at once.
- Special programmes have to be developed for urban unmanaged and poor settlements. These programmes could give an example that anyone can enjoy housing rights in the capital of the country.
- Every state has to be encouraged to implement the promises made in MDG.

Forced Eviction of Unmanaged Community in an Inhumane Way

In Nepal, the problems of slum dwellers and unmanaged communities are taken very lightly. The government has established a commission and has been working in 72 out of 75 districts to address the issue, but slum dwellers and unmanaged communities in the three districts of Kathmandu valley, Kathmandu, Bhaktapur and Lalitpur, have not been taken into consideration seriously. This has been evidenced by the governments' move on May 8th, 2012 when around 2000 security personnel entered into 248 houses¹ and a school to evict the slum communities dwelling around the Thapathali area in a very inhumane way, not even letting the communities to collect their belongings and valuables. This made a total of 994 persons including 401 children removed out of the settlement they had been with for the last six years. Further, 11 more houses in the Kuriya village had been evicted at the same time. After the move, the community is still struggling for better options and living in tents. According to International Human Rights Standard, "the forced eviction of individuals, families or communities from the houses or lands they have occupied, against their wish without any relevant legal or other protection is permanent or temporary eviction."¹ According to the UN Guidelines against Forced Evictions, no one can be forcefully evicted once s/he is allowed to settle on a given place. The government has also worked to design and implement a programme for resettling the evicted population at Sundarighat, Kathmandu. While implementing the programme, the government tried constructing small houses for temporary settlement, which faced protests from locals. As a result, the government has not been able to build houses for the same evicted people. Furthermore, National Human Rights Commission (NHRC) has also corresponded (Ref. No.1591, Investigation 874) to the Office of Prime Minister and Cabinet of Ministers regarding the issue of eviction of settlement on the banks of Bagmati River. This issue is still undecided.

Questions

- What are the government's immediate and long-term plans towards the management of evicted communities?
- Is the government ready to manage the issue involving the communities directly? If yes, what could be the process?
- When will the government start managing the urban sector?

Recommendations

- The government has to come up with immediate and long-term plans before eviction of people. The (affected) communities have to be involved.
- Furthermore, the government has to focus on the issues of slum dwellers and unmanaged settlements of urban areas. Plans and programmes need to be developed accordingly.

➤ 6. Article 12 Right to Health

Low Awareness Impedes Access to Safe Abortion

Only one in three women in Nepal is aware that abortion is legal¹³ and only one in two women knows where the service is available.¹¹ A 2010 study, conducted by Tulachan, H. on the level of awareness about legalisation of abortion in Nepal among 200 women of reproductive age (15-49 years) by visiting obstetricians and gynecologists in Nepal Medical Teaching Hospital, revealed that approximately 67 percent of women were aware of the law legalizing abortion. The study also found that most women had heard about the law and availability of services from the media. Unfortunately, little investment was made to popularise the significant legislation and its benefits for women and girls. The law can be effective only when women are aware of it.

Ignorance Proves Fatal

When Anita, 32, a mother of four children, learned she was pregnant again, she decided to have an abortion.. Ignorance of the law legalising abortion led her to a village sudeni, an untrained traditional birth attendant. The sudeni pricked Anita's uterus by a long stick for several times. Soon after the procedure, Anita experienced heavy bleeding. She was first taken to the nearest Health Centre where the health personnel was on study leave, then was taken to a District Hospital. She died on the way.

¹³Ministry of Health and Population (MOHP) Nepal, New ERA, & Macro International Inc. (2007). Nepal Demographic and Health Survey 2006 (p. 152-153). Kathmandu, Nepal: Ministry of Health and Population, New ERA, & Macro International Inc.

¹⁴Tulachan, H., & Risal, A., Level of awareness about legalization of abortion in Nepal: A study at Nepal Medical College Teaching Hospital, Nepal Medical College Journal, 2010; 12(2): 76-80, http://www.nmcth.edu/images/gallery/Editorial/TKR0Oh_tuladhar.pdf

¹⁵Nepal: Legal abortion helps lower maternal mortality rate (2011)
<http://www.choiceireland.org/content/nepal-legal-abortion-helps-lower-maternal-mortality-rate>

¹⁶Annual report, Department of Health Services (2012/13)

Unsafe Abortion Continues Despite Law

Despite the law, many women continue to have unsafe abortions. Approximately five percent of maternal deaths are caused by abortion complications and antepartum hemorrhage. Legalising abortion alone is not enough to utilise the abortion services efficiently. One of the main reasons behind continuation of unsafe abortion is inaccessibility of safe abortion services. In 2012/13, a total of 195 service providers were trained in Comprehensive Abortion Care (CAC). There were 574 certified CAC sites and currently there are 179 MA listed sites. But it is less than required and a cut in government funds to train health personnel conducting abortions has not helped either. With service providers preferring to be posted in urban areas, public facilities in the rural areas have suffered. Moreover, long waiting hours, lack of privacy and insufficient time given to patients in public CACs have discouraged its use.

Paying a Heavy Price for Unwanted Pregnancy

Mankumari Ghalan, 27, was happily married with two sons. When she became pregnant again, Mankumari and her husband decided to have an abortion. But the nearest health facility was two hours away from their home. So she sought the help of an untrained traditional birth attendant. Two days after the abortion, Mankumari was taken to the district hospital after complaining of severe pain in her lower abdomen. Here, she underwent two operations. Three weeks later she died.

Had the woman had access to safe abortion service provided by the government, she would have been alive and in good health.

Stigma and Discrimination Closes Doors

Social and cultural attitudes still remain significant barriers for women seeking abortion. The stigma associated with abortion leads women to seek the service secretly, causing unsafe abortion procedure that threaten life of women. Women who go in for abortion are considered promiscuous and irresponsible and are stigmatised by the community. Perceptions of service providers of women seeking abortion lead to greater access of over-the-counter medication to terminate pregnancies.

The Nepal Demographic Health Survey, 2011 found that

- 8 percent of pregnancies in the five preceding years ended in abortion, more likely amongst 35–49 year olds, as the number of pregnancies increased, in urban areas, and among better-off women.
- 38 percent of 15–49 years women believed abortion was illegal.
- The proportion of women not knowing the circumstances for legal abortion was higher in the Tarai (43 percent) than in the hill areas (32 percent), and amongst women with no education (54 percent), and was inverse in proportion to wealth.
- Nearly half of women who had had an abortion in the previous five years said that they had paid more than 1,500 Nepalese rupees (NPR) for it.

¹⁷Ipas, 2012. „A better place for women: Abortion care in Nepal a decade after law reform.
<http://www.ipas.org/~media/Files/Ipaspercentageage20Publications/NepalAnnivRevE12.ashx>

¹⁸Unnecessary Burden: Gender Discrimination and Uterine Prolapse in Nepal, Amnesty International 2014.

¹⁹National Medical Standard for Reproductive Health, Volume II: Other Reproductive Health Issues, Family Health Division, 2003, part 6 on genital prolapse

Gender Discrimination Cause and Consequences of Uterine Prolapse¹⁸

In Nepal, women are more likely to develop uterine prolapse at a younger age because of the discrimination they experience in their daily lives, which prevents them from exercising control over key factors influencing their reproductive health. The accepted risk factors for uterine prolapse include adolescent pregnancy, lack of rest during and immediately after pregnancy - including improper birthing practices used by unskilled birth attendants, inadequate nutrition, carrying heavy loads, multiple pregnancies and pregnancies close together due to lack of access to contraception. Gender discrimination against women and girls and the violation of economic, social and cultural rights lie at the root of many of these risk factors.

The Prakash Mani Sharma vs. Government of Nepal (2008) judgment has ordered the Office of the Prime Minister and Council of Ministers to hold a consultation with experts and civil society and draft a bill on reproductive health to submit to parliament. It also directed the Ministry of Women, Children and Social Welfare and the Ministry of Health and Population to “provide free consultation, treatment, health services and facilities” to women suffering from uterine prolapse, and to “initiate effective prevention programmes with the aim of raising public awareness on problems relating to reproductive health of women and the problem of uterus prolapse”.²⁰ Government along with civil society organizations had drafted multisectoral strategies for the prevention and management of uterine prolapse in 2008 which still has not been endorsed and is not in force.

Questions:

1. What steps have been taken by the government to raise awareness about safe and legal abortion at community level?
2. What steps have been taken by the government to increase access to safe abortion services at all level?
3. What steps have been taken to reduce stigma and discrimination that prevents access to safe, confidential and quality abortion services at all level?
4. What steps have been undertaken to raise awareness on the causes, risk factors and prevention of uterine prolapse in the light of the Prakash Mani judgement in 2008.
5. What happened to the multi-sector plan draft?

Recommendations

- Raise awareness about the legal provision and availability of safe abortion services at all levels, especially among hard to reach people and adolescents.
- Increase the perceived value of girls and empower women.
- Develop a separate policy to address safe abortion, Comprehensive Abortion Care (CAC) and Post Abortion Care (PAC) services, information and skills as per the community demand.
- Train service providers and develop family planning/contraceptive services to provide client-oriented counseling to counter repeat abortion.
- Strengthen monitoring of sex determination testing and restrict access to information on the sex of fetuses.
- The government of Nepal should develop, adopt and implement a comprehensive strategy to prevent uterine prolapse. The strategy must include steps to ensure that women and girls know and understand their rights. It should also address the underlying gender discrimination to ensure women and girls can take control over their lives.

²⁰Prakash Mani Sharma and Others v GON, Office of Prime Minister and Council of Ministers and Others, Written Petition 064, June 2008

The Ministry of Health and Population and the Ministry of Women, Children and Social Welfare should develop and implement education programmes for men, parents-in-laws, and other family members to generate awareness around the negative health impacts for women and girls of carrying heavy loads before, during and after pregnancy. They should encourage a more equitable share of work among family members and raise awareness on the laws related to women's rights.

Annex: Members of the collective organisation and individuals endorsing this report

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2. Abhiram Roy
3. Ama Milan Kendra (AMK)
4. Centre for Agro Ecology and Developmet-Women's Reproductive Right Programme (CAED-WRRP)
5. CHAUKATH
6. Children
7. Women in Social Service and Human Rights (CWISH)
8. Community SelfReliance Centre (CSRC)
9. Consortium for Land Research and Policy Dialogue (COLARP)
10. Feminist Dalit Organisation (FEDO)
11. Food-first Information and Action Network **(FIAN) Nepal**
12. Forum for Women, Law and Development (FWLD) Human Right and Democratic Forum (FOHRIDA)
13. Institute of Human Rights Commission Nepal (IHRICON)
14. INWOLAG
15. Jagaran Nepal
16. Mitini Nepal
17. National Alliance for Women Human Rights Defenders (NAWHRD)
18. Nepal Disabled Women Association(NDWA)
19. National Forum for Women Right Concern in Nepal (NFOWRC)
20. National Inter-religious Network Nepal on Violence Against Women (NIRN Nepal)
21. Nepal Dalit Mahila Sangh Phect Nepal
22. Shakti Samuha
23. Nispakshya Nepal
24. Progressive Nepal-SAFA
25. Programme on Women's Economic, Social and Cultural Rights (PWESCR)
26. Sewa Nepal
27. South Asian Feminist Alliance (SAFA Nepal)
28. Tewa
29. WAVE
30. Women's Rehabilitation Centre (WOREC)
31. Women for Human Rights (WHR)
32. Women's Forum for Women in Nepal
33. Youth Action

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