

# SHADOW REPORT



on the Fourth and Fifth Periodic  
Report of the Government of  
Nepal on CEDAW

2011



**Shadow Report on  
the 4<sup>th</sup> & 5<sup>th</sup> Periodic Report by  
The Government of Nepal  
on CEDAW**

**2011**

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**Co-ordinated by: Forum for Woman, Law and Development (FWLD)**

**CEDAW Sub-Committee, HRTMCC**

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Special thanks to The Ford Foundation, UNICEF/Nepal, UN WOMEN/Nepal, UNFPA/Nepal, Care Nepal and IWRAW-AP for contributing in the process.

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# EXECUTIVE SUMMARY

## Background

This report makes reference to the 4<sup>th</sup> and 5<sup>th</sup> periodic reports of the government of Nepal on CEDAW and the Concluding Comments of the Committee on the Elimination of Discrimination Against Women. This report acknowledges the measures that the Government of Nepal has taken to advance and improve the status of women. It also acknowledges the efforts of the many non-governmental organizations working to improve the lives and advance the status of women in Nepal. In many cases the NGOs have been partners of government; in others they have been the conscience of government, making the government aware of what still needs to be done to improve the status and lives of women. Where necessary NGOs have been critics, in instances where government has failed to address women's rights and advance their interests. This report, while documenting also points out the gaps that remain and even some of the regressive steps that have been taken in relation to women's rights in Nepal. It makes several concrete recommendations that must be addressed in the immediate future if Nepal is to be in compliance with CEDAW and its General Recommendations.

The report stresses that Nepal is at a very critical juncture. After a decade of armed conflict in the country peace accord has been signed by the government of Nepal and NCP Maoist on 21<sup>st</sup> November 2006. Nepal is still in conflict transformation and peace building process. Nepal is restructuring the State with the institutional reform. And institutional reform is taking place with the enactment of new constitution. For this Constituent Assembly has been formed through election and is in the process of drafting a new constitution . Reintegration of combatant is taking place through the Special Committee formed with the representative of major political parties and Government. Nepal is still in transition.

New constitution is under the finalization process by Constitutional Committee of Constituent Assembly – the first to ever be elected to draft a constitution in Nepal. The discussions in the Constituent Assembly as well as the final document will have a great impact on Nepal and especially so for women and other marginalized communities – whose status the Constituent Assembly has pledged to improve. Focus of constitution making is on republic system, for democratic values, secular system and for the federal structure. Socio economic transformation is a priority agenda . Constituent Assembly has two functioning, one as a member of parliament, another as a member of constituent assembly. Fourteen committees are formed to make the Constitution, out of which 3 committees are process committee. All the subject committees have completed their report (concept and proposed language) and Constitutional Committee which is functioning as a subject Committee and also responsible for the finalization of first draft of constitution and also settle the disputed issues. A subcommittee has been formed in Constitutional Committee to settle the differences on the reports of different committee. This process has given an opportunity to ensure comprehensive women's right in upcoming constitution and translating principle of CEDAW. Therefore concluding comments of the CEDAW Committee

will be quite useful in this juncture as shadow report has already been linked with the constitutional development.

### **The Report writing process**

The Government Periodical Report on CEDAW was due in 2008 but it was delayed because of the political changes in the country. The 4<sup>th</sup> & 5<sup>th</sup> Periodic Report has been formally submitted to the CEDAW Committee by the Government of Nepal in December 2009. However, the process to prepare a shadow Report was initiated within the civil society in mid-July 2008 on the basis of preliminary report prepared by the government. Initial meeting for shadow report preparation held between members of CEDAW sub-committee of the Human Rights Treaty Monitoring Coordination Committee (HRTMCC) formed in Nepal to coordinate and monitor the implementation status of ratified convention among the civil society. CEDAW Monitoring Committee (CMC) formed under HRTMCC had decided that FWLD would undertake the role of coordinating the Shadow Report Writing process and interested organizations working in women's rights were invited to join the process. Public notifications by publishing advertisements were published in English and Nepali national dailies calling for interested organizations to join the Shadow Report preparation process. With overwhelming response from civil society actors, the "CEDAW Shadow Report Preparation Committee" was formed with 45 organizations<sup>i</sup> in the umbrella network. Organizations responsible for coordination at the regional levels were also identified, which are as follows: Eastern region- Jagaran Nepal, Mid region- WOREC, Western region- Sancharika Samuha, Mid Western region- NGO Federation, and Far Western region- LACC.

CEDAW Shadow Report Preparation Committee identified issues for shadow report and formed of writing committee of each issue representing various organizations working in the specific issue. Outline of shadow report was developed and orientation was organized with writing committee' members on writing the structure of shadow report. Public notifications in the national as well as local news paper were published inviting individual(s)/NGOs to give their concern and recommendation on the report. Regional consultative meetings in five development regions were held in following dates and places: Western regional consultation on December 30, 2008 at Pokhara, Eastern regional consultation on January 5, 2009 at Biratnagar, Far-western regional consultation on January 18, 2009 at Mahendranagar, Mid-western regional consultation on January 28, 2009 at Nepalganj and Central regional consultation on February 26, 2009 at Janakpur. The National Consultation on draft shadow report was held on the 25<sup>th</sup> and 26<sup>th</sup> of December 2009

Critical Issues identified by National Consultation on Girl Child that includes sexual abuse, harassment and exploitation, disability, child marriage, discrimination, education, armed conflict, kamlari practices have also been incorporated in this report<sup>ii</sup>. The participation of girl children in all the five regions and national consultation ensured for collecting the agenda of girls from them. There were girls from child clubs, child development centers, girls who belong to marginalized group, girl child labour and girls with physical and mental disabilities. A separate session on girl-children was also arranged during the national and regional consultations. The facilitation of girl-child session and group work was done by child friendly facilitators. In keeping with the aim of adopting a life-cycle approach in the Shadow Report, representation of women of all age-groups were ensured during shadow report preparation process.

During the writing of this report the Convention, its general recommendation, its concluding observation for Nepal and 4<sup>th</sup> and 5<sup>th</sup> periodical report of government of Nepal have been the basis for analysis.

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- i. Aawaaj, ABC Nepal, Beyond Beijing Committee, CWAD, DidiBahini, FEDO, Gramin Mahila Uthan Kendra, HANDS, IHRICON, INSEC, Interreligious Council, INWOLAG, Jagaran Nepal, Jagriti Mahila Sangh, LACC, Loktantrik Newa Misa Sangharsh Guthi, Madhesi Mahila Samaj, Mahila Buddha Samuha; Maiti Nepal, Maiti Nepal, Mitini Nepal, Muslim Mahila Kalyan Samaj, National Network of Indigenous Women, Nepal Mahila Ekata Samaj, NDWA, NFWLHA, N.B.A.W.E.C, Non-Smokers' Rights Association of Nepal, NTWA, Nari Chetana Kendra, POURAKHI, Pro Public, SAATHI, Samrakshan Nepal, Sancharika Samuha, Shtrii Shakti, STEP Nepal, Swarnim Sanstha, Tharu Women Society, SAP International, Women's Studies Program, T.U., WEAN Cooperative, WHR Single Women's Group, WOREC, WORLD Action Group and FWLD as a coordinator
  - ii. Conference on "Hamro Kura", *Girl child: national Consultation, 4-7 September*, Kathmandu Nepal jointly organized by Action Aid, Him rights, Plan, Save the Children, Unicef, Unifem and UNFPA.

## Positive Initiatives

Interim constitution has recognized various rights of women including right to reproductive functioning and health. It has also recognized equal right to property. In 2006 Parliament passed an special resolution to ensure 33% women's participation in all state restructure and concept of proportional representation is also incorporated in the interim constitution. For the first time proportional election system has been introduced along with the first past the post system and as a result 33% women from different caste, ethnicity, geography and religion are represented in the Parliament/Constituent Assembly of Nepal. Government has already implemented some reservation polices in administrative and security sector as a result participation of women in security sector has reached to 3% in army and 7% in police.

Nepal has indeed passed and amended many legislations and provision of laws to improve the status of women that includes Gender Equality Act 2006, Human Trafficking and Transportation Control Act 2007, 12<sup>th</sup> amendment of Country Code that criminalizes witchcraft and recognizes it as a crime against state, Domestic Violence Control Act 2008. Two major code that is Criminal Code and Civil Code bills have been registered by the government that substitutes Country Code 1963. Similarly bill to establish Truth and Reconciliation Commission and Disappearance Commission is on the process of finalization.

The courts have been active in responding to public interest litigation and also ensuring justice. Some of the land mark judgment includes citizenship through mother without asking the identification of father<sup>iii</sup>, recognition of marital rape as a crime as a result Gender equality amendment Act has created punishment on marital rape<sup>iv</sup> with further directives in another case<sup>v</sup> for increasing the punishment as some accused were released on bail due to low punishment. Court has even questioned the power of Attorney General that was exercised unreasonably in releasing the accused and asked government to register the case against them even in the absence of time limitation to file the rape case<sup>vi</sup>. Court has also issued writ of mandamus for ensuring safe and affordable abortion services along with the order to respect privacy and awareness against prejudice and for the promotion of law. Other cases from Supreme Court includes guideline to maintain confidentiality of victim in access to justice process<sup>vii</sup> and guideline to protect exploitation in dance bar in the absence of law<sup>viii</sup>. Supreme Court has also recognized uterus prolapse<sup>ix</sup> Propublic vs Government of Nepal , writ No 064/0230, decided on 04/06/2008 as a serious reproductive right issue and issued directives for enactment of law as a matter of priority and also directives have been issued to the ministry of health to provide free health checkup services and treatment.

## Government Periodic report and UPR

The government of Nepal submitted its 4<sup>th</sup> and 5<sup>th</sup> Periodic report and it is encouraging to note that the government report mentions single women issue, elderly and disabled women issue, detainee and prisoner women issue, exploitation of girls working in dance and cabin restaurants. However nothing is mentioned on elderly women issue. Dependent children's accommodation with their mothers has been raised as an issue but no mechanism for care and support for the children and their education have been mentioned in the report. Though the report mentions directive order that has been issued by the Supreme Court to protect girls working in dance and cabin restaurant from exploitation has been mentioned but no further initiative has been mentioned to enforce the guidelines from the court.

During the Universal periodical reporting process, HRTMCC coordinated for combined NGO report where CEDAW sub committee/FWLD also contributed in gender chapter in UPR. The review of Nepal was held at

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- iii. Sabina Damai vs Ministry of Home, Writ no 0703, of 7.02.2011
  - iv. Advocate Meera Dhungana Vs Government of Nepal writ No 55 of 2001
  - v. Jeet Kumari Pagani Vs Government of Nepal Prime Writ no: 064-0035 Decision date 10th July 2008
  - vi. Indera Basnet Vs Government of Nepal Writ No. 0402 of 2008
  - vii. Advocate Sapana Pradhan Malla Vs Government of Nepal , Prime Minister's Office writ no: 3561 of 2006
  - viii. Advocate Prakash Mani Sharma Vs Women ,Children and social welfare Ministry Writ no: 2822 of 2005.
  - ix. Propublic vs Government of Nepal , writ No 064/0230, decided on 04/06/2008



the third meeting on 25<sup>th</sup> January 2011. Nepal was recommended to introduce comprehensive legislation and more stringent enforcement of existing laws in the areas of domestic violence towards women and human trafficking. Make further efforts to overcome the difficult issue of discrimination on the grounds of religion, gender, race or otherwise; continue its efforts to end discrimination on the grounds of religion, race or gender in law and practice. Continue its efforts to overcome discrimination and social exclusion on the basis of gender, caste, class, ethnic group, disability or geographic situation, in order to ensure the respect of civil, political, economic, social and cultural rights. It was further recommended that Nepal continue its efforts to ensure gender equality, continue its efforts for the promotion and protection of human rights and to continue to promote the role of women in society in order to guarantee quality life for its citizens as planned on viability, development, protection and participation.

## **Critical areas of Concern and Recommendations**

### **■ Non –Discrimination**

Though commitment has been made to prohibit discrimination against women after the adoption of CEDAW, no law has defined discrimination against women. Constituent Assembly has proposed broader ground of non discrimination that includes non discrimination on the basis gender-, sexual orientation, physical condition, disability, health condition, marital status, pregnancy however the definition has not been able to link with effect in result therefore the need to enact laws that clearly defines discrimination and prohibits discrimination. Though existing law and proposed language also prohibits discrimination but no sanction and compensation for the act of discrimination is provided.

### **■ Obligation to eliminate discrimination**

Many discriminatory laws have been reformed but still 103 provisions of different laws including the constitution discriminates against women\*. It is mainly on citizenship, inheritance, marriage and family life. Rights of women are created on the basis of marital status. The prohibition of discrimination only applies to the public sphere but not to the private sphere. For example anti sexual harassment law is yet to be passed. Hence the need for prohibition of discrimination in private sector including workplace, community and family.

Supreme Court has declared many discriminatory laws *ultra vires* and given directive order for amendment of laws and also for enforcement of laws based on CEDAW. But many of such judgments are yet to be executed by the government and the implementation is still to be seen. Such as number 7 of chapter of women exclusive property in the country code providing that if a woman makes a transaction with a person and later on if she gets married with the same person, the transaction shall be invalid, the Supreme Court declared this provision *ultra vires* on 23<sup>th</sup> November 2006 however until now (March 2011), provision exist under the law. Similarly many progressive decisions from government has not been seen enforced yet. Though committee has been formed under the chair of Chief Secretary for the monitoring and enforcement of judgment as decided by the Supreme Court in case but yet to see mechanism functioning effectively<sup>xi</sup>.

### **■ Advancement of women through institutions**

Women are still limited in stereotyped role inside the house and traditional profession. Enabling environment needs to be created to have women in non stereotyped role. Women contribution at home should be counted as gross domestic product. State should create enabling policy measures for sharing the responsibility, inside the house and in taking care of child. Mind set needs to be changed with massive awareness program.

Gender budgeting, establishment of women commission as a statutory body, establishment of women cell in all 75 districts; local peace committee with 33 percent of women participation are positive initiatives. However, the initiative of gender budgeting is confined to ministry level programs and not extended with target to local level beneficiaries. The Women Commission has been established as a legislative body but still it is under

x. An update study on Discriminatory laws by FWLD 2007

xi. Meera Dhunga for FWLD vs Government of Nepal, writ no 064 WO 1074, decision made on 17.07.2009

control of the Ministry of Women, Children and Social Welfare by law itself. Women commission needs to be an independent and autonomous Constitutional Body to have same power and authority as Human Right Commission.

### ■ **Special measures for substantive equality**

Lack of conceptual clarity related to the principle of equality amongst the judiciary and lawmakers has created confusion on understanding substantive equality, which further limits women's fundamental rights and freedom. In one of recent judgment, the Supreme Court stated that special measures can only introduce in substantive issue and therefore declared special measure for women in procedure as discriminatory provisions against men.<sup>xii</sup> Intersection among women has not taken into consideration in special measures. Women from marginalized 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. There is an urgent need for conceptual clarity amongst judiciary, legislators and the bureaucracy on substantive equality. Recent judicial pronouncement on substantive equality which restricts special measure in procedure need to be reversed. Target-based and time-bound new special measures in favour of women should be introduced together with phase out policy

### ■ **Sex Role and Stereotyping**

Women are considered the weaker sex hence from their childhood to old age, she is dependent on the male member of her family. A girl child is considered a liability since her birth. Despite the efforts to improve and reform the law, the anticipated social changes and transformation in the lives of women have not been realized. Changing the mindset of people is necessary which can be ensured by the effective use of media as and civil societies/ Ngos.

### ■ **Trafficking and violence against women and girl children**

Non recognition of various forms of social cultural violence as a crime (such as *chaupadi*, *deuki*), lack of comprehensive research and data on VAW, lack of co-ordination among government agencies to effectively combat violence against women, weak domestic violence law and laws on marital rape, ineffective implementation of human trafficking act, child marriage law and witchcraft are barriers in combating trafficking and violence against women.

Government of Nepal declaring 2010 as year against Gender Based Violence Against Women is praiseworthy. Inter ministerial Steering Committee formed in Prime Minister's office to combat VAW needs to be continued until effective institutional mechanism and law and policy is created. Gender Based Violence monitoring Cell in Prime Minister Office needs to be institutionalized and continued to deal with impunity and make all government agencies equally accountable to combat Violence against women along with Ministry of Women, Children and Social Welfare. Laws to deal with VAW need to be reviewed and improved. Serious forms of domestic violence needs to be recognized as a crime against state and police should have power to detain for investigation in domestic violence cases. Protection officer needs to be appointed for prevention and protection of victim of domestic violence. Definition of rape needs to be broadened. Punishment on Marital rape needs to be increased. Time line to file the case on rape needs to be increased.

### ■ **Women's participation in political and public life and women's international Representation**

There is no specific policy and legislation to ensure women participation political and public life. Though affirmative measures have been taken in the election of Constituent Assembly, women are still invisible in overall political decision making structure. Proportional representation of women in all the state structure (judiciary, executive and legislature) including political parties especially in decision making positions should be ensured with specific mention in relevant laws. Nepali women are invisible in international organization and in participation of international delegation therefore women participation needs to be ensured in international organization and international delegation.

xii. Keshav Aryal vs Legislative Parliament, Writ no. 018/066-67, decided on April 1, 2010.

## ■ **Nationality**

Even after providing concluding comments to amend article 9 of the then constitution (Constitution of Nepal 1990), Interim Constitution and proposed draft Constitution has not been able to ensure equality in conferring citizenship to the spouse and children. The new Constitution must recognize the independent right of each parent to provide citizenship based on lineal descent to their children, and the right of both women and men to confer citizenship to their foreign spouse on the basis of equality. Universal birth registration should be respected and implemented. Prejudice based on the patriarchy by administrative agencies should be made accountable.

## ■ **Women and Education**

There is absence of gender friendly educational environment, curriculum of school is stereo typed , access in education is difficult for marginalized girls. There is still lack of realization of importance of girl child education. Therefore free and compulsory education specially targeted to young girls should be institutionalized. Public awareness on the importance of girl education is necessary. Educational institutions have to be responsive to address the needs of girls especially for girls from socially excluded group. Need to revise and introduce curriculum which is gender sensitive and capable of demolishing gender stereotypes. Access to government scholarship to be ensured to the girls and girls of marginalized group's upto 50%.

## ■ **Employment**

Women employment is still quite low in public and private sector. Women employment is limited to subordinate and stereotyped positions. Due to lack of employment opportunity in the country women are forced to go for foreign employment and because of their low literacy and lack of adequate skill most of them are working in domestic work and are in exploitative situation. Lack of safe and friendly environment, there is wage discrimination. Women are mostly in unpaid agricultural workers. Anti sexual harassment laws needs to be enacted as a matter of priority. Tax deduction and other incentive should be provided for employers for employing women. Child care facility in workplace should not be based on the number of women rather should be based total number of employees. Mechanism to monitor and punish practice of wage discrimination should be created.

## ■ **Health including reproductive health**

No access to health care, high maternal mortality rate, inadequate attention to adolescent health, gender discrimination, malnutrition, mental health of women , health of internally displaced person , cultural barrier in making independent decision on contraception, stigma and discrimination in HIV and AIDS, gender discrimination in health care system are some of the critical concern on women and health. Women constitute half of the total population of the country. Basic health right has already been recognized as fundamental right, for this quality health care facilities is critical. Therefore state needs to invest on special needs of women's health. Abortion should be safe, accessible and affordable with the establishment of abortion service fund for providing free services for poor women. A separate laws to be enacted for safe abortion as even today it is dealt under the chapter of Homicide in the Country Code. The Reproductive Health program should include health programs for women of menopausal and post menopausal age . Reproductive health issues of women and adolescents girls should be addressed and implemented in practice with sexual and reproductive right education. Reproductive health issues of women and adolescents girls should be addressed and implemented in practice.

## ■ **Economic and Social rights**

Though the government has initiated few specific programs for women's economic and social rights, there are still low levels of access and distribution of benefits of those initiatives among women. The system of allowances and its distribution is still not sufficient and effective. As a result women do not receive their allowances on time. The measures for social economic right is limited with welfare approach, the measures need to be empowering and should aim at making women independent. The lower tax in woman owned

property has increased women owning property but still not more than 15% have property in their name, therefore women from rural areas to be empowered to be more economic independent.

#### ■ **Rural women**

The life of the rural woman remains untouched by the advancements made by science and technology. For the last 10 years the government has been allocating money to each Village Development Committee (VDC) of which 15% should go towards women but there is little evidence that this money is actually reaching women in the VDCs. Furthermore, women have very little say on how this money is used. Budget allocated for women at the VDC level and its expenditure should be made transparent for all women in the villages, and monitoring mechanisms should be established to prevent appropriation of said budgeted amount for general activities of the VDCs.

#### ■ **Marriage and family life**

Bigamy is punishable offence by law but not voidable; as the subsequent marriage and the spouse gets legal recognition and enjoys the same rights. Bigamy should be declared null and void. Legal provision of bigamy that allows men to remarry in certain cases and such conditions that promotes bigamy should be removed. Child marriage has been declared punishable by the law. However, child marriage is prevalent in a large numbers; therefore, government should launch program to raise social awareness on child marriage and its ill effects. The existing law of Nepal does not recognize *de facto* union as such and women living in such relationship and children are more insecure than others in terms of getting legal protection of their relationship and property they earn in common. Though the Civil Code Bill does have a provision that conclusion of marriage will be deemed if a child is born from physical contact between a man and a woman; however, the proposed provision is silent as to the status of the *de facto* union as such. The right of choosing family name by the married women has to be respected by law and government agencies.

#### ■ **Dalit women**

*Dalit* women suffer dual discrimination firstly for being a *dalit* and secondly for being a women. To address this multiple discrimination, *dalit* women needs special attention. Promotion and opportunities for *dalit* women must be raised. The trends suggest that is a higher rate of marriage break down and abandonment of *dalit* women entering into a inter caste marriage. Effective measure to prevent this adverse trend is required. Untouchability in public and private sphere need to criminalized and compensated.

#### ■ **Migrant women workers**

There is a increased vulnerability as regular/formal processes are still inaccessible for Nepali women migrant workers as the government has ambiguous policies towards Nepali women for foreign employment. Therefore women depend on the brokers/agents to go for foreign employment further exposing them to abuse and exploitation. Ban on women workers migrant workers (in the gulf) should be reviewed. There is a tendency amongst the agents and brokers to send women for foreign employment using a second or third country airport. This often results in human smuggling and trafficking. Women have limited access to capital as formal finance and banking sectors are out of reach to the WMWs as they do not own sufficient assets or property. This leads to a larger dependence of Nepali women on traditional moneylenders who charge high interest rates and trap these women into debt bondage. The a lack of value attributed to the work and contributions of remittances by WMWs by the state and society, their subordinate position in society and the cases of abuse of women dominating the media coverage are some of the factors that encourage and entrench the stigma and discrimination towards WMWs, which has become an enduring feature in Nepali society. A policy for promotion of migrant workers is needed. Need to effectively implement general recommendation 26 of CEDAW by member state. International Convention on Protection of the Rights of All Migrant Workers and Members of their Families, UN Convention 1990 should be ratified by Nepal.

#### ■ **Religion, culture and women**

In Nepal, religion and customs plays an vital role in the life of people and it often determines the status of

people especially women. The laws of Nepal should be reviewed and religion and customs should not be allowed to be used as a shield to treat women differently. Research to challenge the restrictive understanding of religion needs to be undertaken by the government. Religious events and lectures should be made gender friendly and the government should promote participation of women in the executive posts in religious organizations. Discriminatory traditional practices such as "*Chaupadi*", "*Talaq*", "*Deuki*" is practiced in the name of religion and culture should be strongly dealt with. Discriminatory and exploitive religious and cultural practices should be restricted by law itself.

#### ■ **Single women**

Single women in Nepal face various obstacles which prevents their empowerment. Especially in the rural areas, most of the single women are uneducated and have very little income-generating skills. There is a lack of authentic data collected by the government or by other organizations related to single women. This data is necessary for the formulation and implementation of development program. Policies should be amended to remove the age restriction in receiving widow allowances provided by state.

#### ■ **Women and sexuality**

Nepali society has enforced behavioral norms for women, which emphasize suppressing sexuality and prescribing codes for keeping their bodies "pure". This limits women's control over their sexuality. Different standard are used to determine sexuality of men and women. Sexuality is found to be associated more with women's character than men's character. As a result, they take less interest about their health and sexuality which affect them physically and mentally. Awareness raising to sexuality through public education and introducing new message about sexuality in the school curriculum The laws have yet to recognize that a person may be lesbian, gay, bisexual, transgender, intersexes (LGBTI). Due to lack of proper law for the protection of Sex Workers (SW), they are being socially discriminated and victimized both by law enforcement officials as well as society. Lack of proper understanding of sexuality and bias mind set up of service providers denies public services to sexual minorities and SW's. The government should enact comprehensive laws for regularization of sex work and securing human rights of SW's and their clients. Employment opportunities for Sex Workers willing to change their profession must be provided with proper education, working environment and social security by the government.

#### ■ **Women and Media**

Women have limitation in access to information and communication due to illiteracy and poverty. There is lack of coordinated effort aimed at improving and changing the status of women within the media. Laws to address cyber and electronic media related offences are inadequate. Women participation in decision making is limited and negative or stereo type portrayal of women in media is commonly prevalent. Therefore it is necessary to increase the participation and access of women in decision-making at all levels of the media industry. The positive role played by women in all segments of the society in local and national levels need to be given prominent coverage by both print and electronic media. Laws addressing misuse of electronic media and the internet must be strengthened and proper provisions must be put in place to protect privacy and dignity of people particularly girls and women.

#### ■ **Women peace and security**

Women and children were victimized in the conflict period by both state and non state actors. Women participated in armed conflict in the various forms but their issues at the time of Peace and Reconstruction are not addressed. There is no participation of women in any of the peace process including any dialogue team as well in the reintegration process. Immediate establishment of the Truth and Reconciliation Commission and Disappearance Commission with the passing of laws with no amnesty on sexual violence. Ensure women's participation in the post conflict processes and mechanisms to deal with transitional justice and in reintegration process. Mechanism to monitor effective implementation of UN Security Council Resolutions 1325 and 1820 , including adequate budget allocation from government and UN system and donor is critical. International standards such as Rome Statute should be ratified.

## ■ Women with Disabilities

According to the National Census of 2001, which is a study conducted once in every 10 years, only 0.45 % of the population was stated to be PWDs with 54.56% amongst them being women.<sup>xiii</sup> However, a study conducted simultaneously by New Era under the aegis of National Planning Commission Secretariat and Social Welfare Council and supported by UNICEF stated that 1.63% of the entire population in the country were PWDs with 46.4% amongst them being women.<sup>xiv</sup> Prevailing gender stereotypes in the society compound discrimination against WWDs. A woman's beauty is considered to be vital to her and her prospects for marriage but it is considered to be tarnished when she is disabled. Their own families regard them as asexual. In comparison to 60% of men with disabilities who were married, only 20% of WWD's were found to be married. Amongst the few WWDs who forge marital relationships particularly with able-bodied men, large numbers experience domestic violence and eventual desertion by their partners.<sup>xv</sup> Mandate through the forthcoming Constitution, a percentage for the representation of women with disabilities within the total percentage of representation for women in the Parliament. The Chapter on Fundamental Rights in the forthcoming constitution must include language to protect and advance the rights of the disabled in respect to education, health, social security and employment and specifically the rights of the WWDs.

## ■ Violence Against women in politics In Nepal

In Nepal, the power and authority linked to politics is associated with masculine characteristics, thus privileging men and excluding women from the opportunity to hold positions of power in politics. They are marginalized from the competitive process, with the violence that pervades politics further discouraging them from actively participating. Violence against women in politics (VAWIP) is emerging as an issue of concern. There is a general legal framework to address VAW but specific laws to address VAWIP is necessary. Furthermore, the legal provision to ensure women's participation in local government and the Constituent Assembly is not enough, these provisions need to be structured in overall political life with numerical goals and a timeframe. The Election commission needs to take many steps. Firstly, it should ensure a safe environment in which women can participate in elections. Then it should provide gender sensitive voter education in different parts of the country. It should also set up schemes to provide security for women candidates at all times, but especially when they are campaigning. Parties should encourage women candidates and develop their leadership potential by training them and then placing them in positions of responsibility within their parties. There should be special recruitment drives targeting qualified and visionary women to enlist them into politics.

## ■ Indigenous Women

Lack of clarity in defining "indigenous population" under the legal framework, or recognition of the differences in language, livelihood patterns etc. that separate one indigenous community from another. Lack of such recognition also aids in ignoring differences of experiences faced by women of differing indigenous communities, thereby creating barriers in effective implementation of development programmes or access to basic rights as citizens. Government should adopt a comprehensive definition and understanding of indigenous population in line with relevant international instruments. Ensure inclusion of rights of the indigenous women in the new constitution. Acknowledge the contribution of the indigenous women and recognize their identity in the constitution and in all the legal documents.

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xiii. *Population Census 2001: National Report*, His Majesty's Government of Nepal, National Planning Commission Secretariat, Central Bureau of Statistics, in collaboration with UNFPA Nepal, June 2002

xiv. *Situational Analysis on Disability in Nepal*, New Era, National Planning Commission Secretariat & UNICEF, 2002

xv. *A Study On Status Of Social Inclusion, Livelihood And Violence Against Disabled Women Of Nepal*, Neeti Aryal, Nepal Disabled Women Association, 2007

# PART I

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## ARTICLES OF CEDAW

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## NON-DISCRIMINATION

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### A. Prevalence of the problem

The subjective meaning and consequences of perceived discrimination depend on the position of one's group in the social structure. In Nepal, due to the societal structure that has been established and nourished since centuries, women continue to face social, economic, cultural, political and even legal discrimination in both the public and private spheres irrespective of the several achievements made in ensuring elimination of apparent discrimination under law, whether through judgements issued by the court, civilian activism or political interventions. Nepalese women are discriminated on social, economic, political, gender, and legal basis.

Social discrimination is witnessed due to patriarchal values and domination in the society. Status quo in traditional behavior has been maintained till date resulting in male dominated family structure. Existing customary practices have also created barriers for equality with women, e.g. practices such as dowry, *Tilak*, *Chhoupadi*, *Deuki*, *Jhooma*, polygamy etc.

Economic discrimination is witnessed in the areas of less participation of women in income generating activities, non-recognition of women's contribution in household or their right of property ownership and right of inheritance to property. It is also seen in inequality in income and wages and the exclusion of women in income generating programmes of the government.

Political discrimination is seen where women are denied proportional representation within political parties. Even after the reinstatement of a democratic government representation of women in decision making levels is very low and that of and different gender almost nil. Development programmes by the government also show lesser number of female involvements.

Discrimination on legal grounds are found in the areas of married daughters being excluded from inheritance of parental property, and the continued existence of discriminatory provisions under some laws.

Discrimination on gender basis are further found in the forms of violence against women which is still prevalent, gender biased terms and conditions in personnel rules and regulation of government and semi-governmental agencies and lack proper implementation of gender audit mechanisms. Concept of Gender Budget is not implemented in entirety, uniformly and effectively.

It may be noted that none of the constitutions adopted within Nepal so far have succeeded in the formulation of a comprehensive definition of non-discrimination reflecting the elements of distinction, exclusion or restriction. The negative impacts of such lacunae in law could be witnessed during the past years of conflict that had ensued within the country, during which had disproportionately negative impact on women resulting in further gender disparities. Women suffered displacement, and were victims of attacks not just by state actors but by non-state actors such as armed militant groups.

In addition, conflict has radicalized many women with the promise of a new socio-economic and political agenda. The end of the conflict promised a federal democratic, republican state, committed to fostering equality and social inclusion. However this has not translated into meaningful changes for women.

### B. Critical areas of concern

- Lack of a comprehensive definition of non-discrimination in keeping with international principles such as CEDAW, CERD or CRPD.

- Failure of current guarantees of equality under Article 13 of the Interim Constitution, to establish linkages with discrimination in result or acknowledge discrimination in opportunities.
- The failure to extend protection against discrimination by non-state actors or within private spheres as fundamental rights have rendered women vulnerable to gender based violence irrespective of the enactment of specific laws.

### C. Concluding observations

Article 13 of the Interim Constitution of Nepal, 2007 ensures non discrimination based on sex and guarantees equality *before the law and provides equal protection of the laws.* **Article 20 on Right of Women, Interim Constitution 2007 has a new provision that says** *No one shall be discriminated in any form merely for being a woman.*" It thereafter states that sons and daughters shall have equal rights to their paternal property<sup>1</sup>, that every woman shall have the right to reproductive health and other reproductive rights<sup>2</sup>, and that women shall be protected from the infliction of physical, mental or other forms of violence<sup>3</sup>.'

#### Proposed language under the forthcoming Constitution

1. No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, gender, sexual orientation, caste, tribe, physical condition, disability, health conditions, origin, language or region, ideological conviction or any other condition.
2. The state shall not discriminate against any person on the grounds of religion, race, caste, tribe, gender, sexual orientation, physical condition, disability, health conditions, marital status, pregnancy, origin, language or region, ideological conviction or any other condition.
3. No discrimination in regard to remuneration and social security shall be made between men and women for the same work."
4. All children shall be equally entitled to rights over ancestral property without any discrimination on the basis of gender.

### D. Gaps and weaknesses

- The Interim Constitution fails to guarantee protection against discrimination in the general application of laws on the basis of gender.
- Both the Interim Constitution and the proposed language for the forthcoming constitution fail to acknowledge multiple discrimination on the basis of cross-sectional identities but not been able to look into intersectionality within the group. Though proposed language has prohibited discrimination but not linked with the discrimination in result that can be brought by gender neutral provision and special provision.
- Both the Interim Constitution and the proposed language for the forthcoming constitution fail to acknowledge discrimination by non-state actors or the distinction in forms of discrimination experienced by women in private and public spheres. This lacunae has also lead to the absence of any guarantees against such forms of discrimination.
- Neither the Interim Constitution nor the proposed language for the forthcoming constitution have stated discrimination on the basis of gender to be punishable under law.

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1. Id, Article 20 (4)  
 2. Id, Article 20 (2)  
 3. Id, Article 20 (3)

- Neither the Interim Constitution nor the proposed language for the forthcoming constitution has guaranteed equality in results.

## E. Recommendations

- Adoption of a comprehensive definition of discrimination in keeping with CEDAW, CERD, CRPD linking with not only *de jure* but *de facto*, discrimination in result.. Acknowledgement of multiple discrimination on the basis of cross-sectional and cross-cutting identities. Actions resulting in discrimination by non-state actors should be acknowledged and prohibited under the definition of non-discrimination. Discrimination against women should be prohibited in both private and public spheres. Acts of discrimination should be made punishable under law.
- Inclusion of guarantee of equality in opportunity , access and control and control over resources and equality in results.



## ARTICLE 2

### OBLIGATION TO ELIMINATE DISCRIMINATION

#### A. Prevalence of the Problem

Despite having ratified the CEDAW in 1991, Nepal has yet to ensure the complete implementation of provisions of the Convention within the national jurisdiction. The Interim Constitution of Nepal provides one of the obligations of the state to effectively implement the international treaties to which the State is a party. Furthermore, the Constitution also obliges the State to abolish all discriminatory laws. The Nepal Treaty Act of 1990 states that conventions and treaties to which Nepal is a signatory are accorded the force of a binding law<sup>4</sup> within the country. Based on this provision, the Supreme Court has issued a plethora of judgments citing principles of CEDAW even in the absence of domestic laws dealing with a particular issue. The Constituent Assembly has, in the preliminary draft of the upcoming constitution, proposed that international instruments once ratified will be implemented as domestic law.

A large number of law reform initiatives are also heavily relied on the principles enshrined in the Convention. However, the biggest challenge continues to lie in state compliance and implementation of the newly reformed laws. Additionally, the lack of implementation of constitutional principles and guarantees has resulted in wide gender disparities. Women have very little access, opportunity or participation in various key fields such as employment, education, services relating to health or decision making bodies.<sup>5</sup> This situation has escalated during the past years of conflict in which women had been disproportionately affected and their rights were violated.

#### B. Critical areas of concern

**Existence of discriminatory laws and provisions:** Several laws, which explicitly discriminate against women on the basis of sex, are still in existence. There are still 103 provisions and 92 schedules to various

4. Sec. 9 of the Treaty Act of 1991

5. Human Development Report – Nepal, UNDP, 2009

Acts and Regulations tending to discrimination against women.<sup>6</sup> These discriminatory provisions mainly relate to issues such as citizenship, discrimination in inheritance on the basis of marital status, discrimination against women on the basis of disabilities, discrimination in employment, discrimination in access to health services thereby affecting reproductive and sexual health of women. Moreover, there are 536 discriminatory or gender biased words used in the Constitution, laws, regulations and annex of the laws and regulations. Discriminatory wordings like Chairman (sabhapati), Elder Oldman (*jethabudha*), Donation of Girl (*kanayadan*), father's obsequies not mothers (*Pitrikarya*), degrading word for women like *Aimai*, Vice-chancellor (*Upkulpati*), Chancellor (*Kulpati*), Industrialist (*Udhyogpati*), Chief of Army (*Pradhansenapati*), Brigadier General (*bahinipati*), President (*Rastrapati*), Vice-President (*Uprastrapati*) are still used in various legislations, though some of them seems to be gender-neutral in case of women. These terminologies do reflect the mindset of the law-maker that no woman would ever be qualified to assume such offices.

**Discrimination leading from non-acknowledgement and non-enactment of laws and provisions:**

Several forms of violence against women have failed to receive acknowledgement under the law and therefore lack legal protections for women. In instances where studies have shown disproportionate impacts of violence or emerging forms of violence against women such as acid burning and female foeticide, there have been no initiatives to enact laws either. Even if initiatives are taken in some of the areas where women will be victims in most of the cases, such as sexual harassment, the law reform process seems to be rather slow.

**No jurisdiction to address discrimination in private sphere:** Constitutional and legal provision to restrict discrimination is only apply to state and state made law, however it fails to cover discrimination in private sphere including workplace, community and house, where practice of gender discrimination is prevalent most.

**No Sanction and compensation for discrimination:** Though law has restricted act of discrimination, it does not criminalize discrimination as such. As there is no sanction for committing a discriminatory act and no compensation for the victim, legal provision to restrict discrimination is more declarative rather than remedial.

### C. Concluding observations

**Enactment of Gender Equality Act:** The Gender Equality Act was passed on 28 September 2006 and came in effect from 3 November 2006. The Act has been proved as an important step towards the movement on eliminating discrimination against women. The passed Act has repealed and amended 56 discriminatory provisions of the various Acts and also has incorporated some new provisions to ensure women's rights.

**Ratification of Optional Protocol to CEDAW:** The Government of Nepal ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW) on June 15, 2006. This is important as in the event where any of the rights conferred under CEDAW are violated, the OP-CEDAW provides the victim with an access to justice at international level.

**Recognition of women's right to non-discrimination as fundamental right:** The Interim Constitution, 2007 recognizes women's right as a specific fundamental right. Under this right, the Constitution states that no one shall be discriminated in any form merely for being a woman.

**Judicial decisions to enhance women's human right:** The Supreme Court of Nepal has found various legal provisions as discriminatory against women and declared them as *ultra vires* the Constitution. The followings are the major decisions in this respect:-

- In *Punyabati Pathak and others v. Government of Nepal*<sup>7</sup>, the Supreme Court decided that the form of application for obtaining a passport that requires approval of guardian in the case of woman applicants

6. A study on "Discriminatory laws against Women, Dalit, Ethnic Community, Religious Minority and Persons with Disabilities, 2009.  
7. NKP 2062 (2005) Vol. 8, P-1025, Writ No. 3355/2060 D.D. 28/11/2005 (2062/8/3)

is discriminatory against women and declared it is null and void.

- In *Lily Thapa v. Government of Nepal*<sup>8</sup>, the Supreme Court decided that the provision restricting women to exercise her exclusive property is discriminatory against women and declared it *ultra vires* the Constitution.
- In *Meera Dhungana for FWLD v. Government of Nepal*<sup>9</sup>, the petitioner challenged a provision in No. 7 of the Chapter on Women's Exclusive Property in the Country Code providing that if a woman makes a transaction with a person and later on if she gets married with the same person, the transaction shall be invalid. The Supreme Court held that the law is discriminatory against women and is *ultra vires* the Constitution.
- In another *Meera Dhungana for FWLD v. Government of Nepal*<sup>10</sup>, the Supreme Court interpreted that marital rape is an offence and that the definition of rape contained in No. 1 of Chapter on Rape, the Country Code, does not exclude it.
- In yet another *Meera Dhungana for FWLD v. Government of Nepal*<sup>11</sup>, the petitioner challenged the law (No. 1 of the Chapter on Husband and Wife, the Country Code) providing that not bearing a child by woman would be a ground for divorcing the marital relationship. The court declared the law invalid for being discriminatory against women.
- In *Tek Tamrakar for Pro-Public v. Government of Nepal*<sup>12</sup>, the petitioner challenged Section 4(1)(a) of Birth, Death and Other Personal Event Act, 1975 restricting birth registration by the mother. The court declared this provision invalid for being discriminatory against women.
- Rule 10 of Regulation for Royal Nepal Army stated that after marriage, women (daughter) are not entitled to allowances while a son continued to get allowance till he gets employment. This provision was challenged for being inconsistent with Article 11 of the Constitution of the Kingdom of Nepal 1990. Article 11 (3) and its explanation allows for special legal measures for women for their protection and development. The above mentioned rule as declared void as it is inconsistent with the constitution as it deprives women on grounds of marriage from their rights to receive their allowance.<sup>13</sup>

In addition to the above, the Supreme Court has in following cases issued directive orders to the government to enact appropriate laws to ensure women's human rights:-

- In *Meera Dhungana (FWLD) v. Government of Nepal*<sup>14</sup>, Supreme Court issued a directive order to amend provisions in line with principle of equality for punishing the act of accepting dowry and *tilak* under 4(3), 4(4), 4(1) and 4(2) of the Social Practices Reform Act, 1976.
- In *Sapana Pradhan Malla and others v. Government of Nepal*<sup>15</sup>, the court issued directive order to the government for effective implementation of laws related to child marriage with massive awareness for preventive measures.

### **Formation of Committee to Review Discriminatory Laws and Recommend Amendment**

**Provisions:** The government constituted a Committee comprising of representatives of Ministry of Law and Justice, MWCSW and civil society to review discriminatory laws against women and to prepare a draft to

8. NKP (2005), Vol. 9, P-1054, Writ No. 34/2061

9. NKP (2004), Vol. 8, P-979, Writ No. 114/2062

10. Publication of Decisions relating to human rights, 2003 special issue, pg - 129, Writ No. 55/2002

11. NKP (2006), Vol. 1, P-6, Writ No. 64/2061

12. NKP (2006), Vol. 6, P-680, Writ No. 121/060 Decision made on 2062/5/30

13. Adv Meera Dhungana Vs The office of Prime Minister and council of ministers. Writ no 75 26<sup>th</sup> July 2006. date of decision June 26<sup>th</sup> 2007.

14. NKP (2006), Vol. 8, P-972, Writ No. 131, D.D. 14/12/2006 (2063/8/28)

15. NKP (2006), Vol. 3, P-287, Writ No. 98/2062, D.D. 2063/3/29

amend the discriminatory provisions of the laws. The government constituted this committee to eliminate discriminatory laws against women as guaranteed by the Constitution of Nepal and the CEDAW. This Committee has already submitted proposed amendments to the government.

#### **D. Gaps and weaknesses**

- Lack of proper implementation of the constitutional provisions and judgments of the Supreme Court initiating law reform to eliminate provisions that are directly discriminatory against women and girl child.
- Lacking awareness and prevalence of a sense of ambiguity even within the agencies of the government in the understanding of the state obligations under international treaties and conventions ratified by Nepal. This is one of the major factors leading to shortfall in the state compliance.

#### **E. Recommendations**

- Set up a time-line for amendment to all the remaining discriminatory provisions in the laws of Nepal as



## **ARTICLE 3**

### **ADVANCEMENT OF WOMEN THROUGH INSTITUTIONS**

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#### **A. Prevalence of the problem**

Despite the government's obligation to ensure the full development and advancement of women in all fields, in particular in the civil, political, social, economic and cultural fields, by way of all appropriate measures, including legislation; the overall status of women in Nepal remains bleak. The government's measures are far less in this aspect. The measures that have been taken have not been implemented in the full swing. Most of the government interventions are structural in nature and have little or no impact on the overall advancement of women. The patriarchal attitude of accepting women as subordinates to men throughout their life remains unchanged. This stereotyping of the gender role does not seem to be changed in governmental and non-governmental measures.

#### **B. Critical area of concern**

- **Ineffective gender focal points:** Government of Nepal has established gender focal points in all the ministries. However, ministries have not appointed senior officers for the positions. In places where they have been appointed, it is more a ceremonial position than a position with authority and responsibilities. In addition, departments and other agencies of the government do not have separate gender units.
- **Lack of effective gender disaggregated data:** Although the government has initiated to keep data with gender disaggregation, but this has yet to be fully implemented. Those data which have been gender disaggregated, are only disaggregated by sex and not by marital status, age, and profession.

- **Low priority on the issue:** Government institutions have not been adequately pro active as regards to the advancement of women in Nepal. Generally, these institutions focus on their primary responsibility and do not pay attention from gender perspectives.
- **Lack of women in decision-making positions:** Even after the declaration of the then House of Representatives has declared the reservation of 33% seats for women in all spheres of public life. As a result there has been significant presence of women in all public sector. However, the impact sought to be made with this historic move for gender inclusion is not satisfactory, as women could not participate and secure their strong position in decision-making. The roles of women seem to be ritual and ceremonial rather than impact-creating.

### C. Concluding observations

- **Establishment of National Women's Commission as a statutory body:** The National Women's Commission has been established as a statutory body with the enactment of the National Women's Commission Act, 2007. Earlier, the commission was established through an executive order of the government. This new initiative has guaranteed wider functional autonomy to the commission. But performance of the commission in monitoring the compliance of international human rights instruments for protection and promotion of women's rights is not effective as it had been expected.

In a related development, the Committee for Determination of Constitutional Organs, one of the committees of the Constituent Assembly which is engaged in making a new constitution for the country, has made a recommendation for upgrading the National Women's Commission as one of the constitutional bodies.

- **Establishment of Women and Children Directorate in Nepal Police:** Women and Children Directorate in the Nepal Police and Women and Children Cells at all 75 districts have been established. The government has adopted the National Plan of Action on Resolution Nos. 1325 and 1820 of the United Nations Security Council. Under the plan of actions, one of the important programs proposed in establishment of Women and Children Cells at all 75 districts of the country under the command of woman police inspector.
- **Legislature-Parliament Committee on Women and Children and Women Caucus:** In order to examine the government actions on women and children to provide for necessary policy directives, the Parliament has formed a separate committee on women and children and social welfare.<sup>16</sup> One of the important bodies for women politicians is the Women Caucus, which was formed in 2009 after the establishment of the CA. In the Women Caucus, women parliamentarians across different political parties have come together beyond political line to take a stand on women's issues.
- **Gender budgeting and gender auditing:** Since the year 2002, the gender responsive budget initiative has been implemented. Gender auditing system is also in place<sup>17</sup> and 64 programs are running at present. A sum of NRs. 60.61 billion i.e. 17.9% of the total budget has been allocated for the programs directly benefitting the women.
- **Adoption of National Plan of Action on Gender Based Violence:** Government of Nepal declared the year 2010 as the "Year against Gender-based Violence" with a view to address gender-based violence in Nepal. In the same year, the government established a cell equipped with hotline for complaint reporting purpose at the Office of Prime Minister and Council of Ministers (OPM&CM) dedicated to fighting against gender violence. The National Plan of Action adopts strategic interventions

16. Rule 110 of the Constituent Assembly (Conduct of Business of Legislature-Parliament) Rules, 2008

17. Ministry of Finance, Government of Nepal, 2011.

which will be implemented using multi-cultural and multi-dimensional approaches.<sup>18</sup>

- **Establishment of service centers and community service center:** The government of Nepal in coordination with the NGO's has established service centres in 15 districts.<sup>19</sup> Service centers established as a shelter for victim of domestic violence are established in implementation of Domestic Violence Act, 2009 also provides shelter to victims of other sexual and gender based violence. Also eighty four Community Service Centers are established as sub centers of these 15 service centers.<sup>20</sup>
- **Concept Paper of Three-Year Plan:** The Concept Paper of three years periodic plan provides, *inter alia*, that the existing legal, policy and institutional arrangements will be reformed to ensure the presence of at least 33% representation of women in the state affairs. The diversity among women will be taken into consideration to make women's participation proportional.<sup>21</sup> The concept paper sets the target of 33% women's participation in overall state machinery. Under the Women Development Program, women have been united against domestic violence and human trafficking, and involved in entrepreneurship and skill development income generation related activities by means of revolving fund operation.
- **Establishment of Rescue Fund for children including girl child:** The Emergency Children Rescue Fund (Operation) Rules, 2011 is one of the recent initiatives taken by the Government to provide immediate rescue and relief to the child who has been trafficked or sexually exploited; street children or involved in a risky job or found unattended and so on. Since a large number of girls are trafficked to, and rescued from, India every year, mobilizing funds for their rescue and relief and restoration in society is very important and relevant.
- **Protection Officers to address domestic violence:** One of the serious plights that the women in Nepal suffer is domestic violence. Voices have been raised from time to time to make adequate law in this regard. As a consequence, in order to tackle this problem, the government has come up with the idea of a protection officer to be appointed in all districts. Until a protection officer can be appointed, the women children officer shall carry out the work of the protection officer. The protection officer shall be the focal point for the district and is vested with adequate power and responsibilities.<sup>22</sup>
- **Establishment of Gender Based Violence Prevention Fund:** The government of Nepal has established a separate fund for gender based violence<sup>23</sup> for continuation of the programs initiated under the special campaign on year against gender based violence. The Rules defines gender-based violence as sexual harassment at workplace and other gender-based violence including social menace with gender motivation. The Rules also provides options to the victims for filing complaint either at local body, local police or court wherever the victim finds comfortable to do so.<sup>24</sup>

#### **D. Gaps and weakness**

- There have been considerable program intervention by the government in the advancement of women in Nepal. However, the implementation status of these institutional arrangements and programs is weak and the real target groups have not benefitted fully.

18. *National Plan of Action for "Year against Gender Based Violence, 2010"* Government of Nepal, Office of the Prime Minister and Council of Ministers, 2010; p 11.

19. Pachthar, Sunsari, Solukhumbu, Saptari, Sarlahi, Makwanpur, Kavre, Nawalparasi, Tanahu, Banglung, Danusa, Bardia, Doti, Kanchanpur, and Jumla

20. Ministry of Women, Children and Social Welfare 2011.

21. The Concept Paper of the Three-year Plan, 2011-2013, NPC/GoN, 2011; p 156.

22. Rule 12 of Domestic Violence (Offence and Punishment) Regulation, 2010.

23. Gender Violence Prevention Fund (Operation) Rules, 2011

24. Ibid.



- Like the earlier three-year interim plan, the upcoming three year plan is also likely to be marred by failure to achieve its targets at the backdrop of political uncertainty.
- Women Commission has been formed under the law. It is under the Ministry of Women, Children and Social Welfare due to the institutional arrangements made by law. The appointment to the Commission is made by the government<sup>25</sup> hence limiting the autonomy of the Commission and separation of powers. The Commission does not have the power to register cases. Even the staff of the commission is appointed by the government. The power to implement its directions and actions is not adequately provided. The Supreme Court issued directive order to guarantee more autonomy to National Women Commission in line with the Paris principles.<sup>26</sup>
- Women and child service center of police lacks adequate infrastructure, capacity and power to investigate cases.
- Gender Budgeting is limited only to the ministry and is yet to be reflected at local bodies.
- Women protection officer to deal with domestic violence is yet to be appointed in all districts. Similarly service centers have been established only in 15 districts.

## **E. Recommendations**

- In addition to the structural mechanism for advancement of women, measures must be taken to provide adequate authority and responsibilities to those mechanisms.
- National Women Commission needs to be strengthened with adequate power and independent budget. It should be established as a constitutional body. The appointment process of the members of the commission should be done by an independent body rather than the government.
- Institutions created for advancement of women must be equipped with adequate budget and human resources. Staff of the institutions should be trained to be gender responsive in their working.
- Protection officer to be hired in all the district. The protection officers should be trained and vested with power and authority to fulfill their responsibility.
- Presently 17.9% of the budget is allocated for women empowerment. A greater portion of the budget should be allocated for this purpose. Gender focal point and gender assessment of all institutions and departments of government should be done. An in-depth study of the government institutions should be done from a gender perspective.
- All government agencies should maintain gender disaggregated data including by sex, marital status, age, profession.

25. Section 5 of National Women Commission Act 2007.

26. FWLD vs. Government of Nepal, Meera Dhungana (FWLD) vs. Govt. of Nepal, et. al, writ No. 1002, 2064 (2007), Decision date : 2066/5/3 (August 1, 2009).

## ARTICLE 4

### SPECIAL MEASURES FOR SUBSTANTIVE EQUALITY

#### A. Prevalence of the problem

Gender equality has been one of the key commitments of a democracy. Though women had played an important role in the history of the democratic struggle, the issue of gender equality remained only on the periphery of the political agenda. Women in Nepal have been disadvantaged and oppressed resulting in limited access to education, health, employment, and income generation as well as political and legal rights. Therefore, in order to uplift the position of women in the society, there is a need for strategic interventions by taking temporary special measures that guarantee the *de facto* equality of women. The Interim Constitution of Nepal says that "special provisions can be made by the law for the protection, empowerment, or advancement of women"<sup>27</sup>. Likewise, Interim Constitution of Nepal has emphasized on the principle of social inclusion and has ensured the rights of proportional representation under the fundamental right of social justice.<sup>28</sup> This allows the State to enact special provisions irrespective of the law guaranteeing equality and equal protection to men and women alike. Therefore, women can be provided with positive discrimination. The continuous advocacy by the gender and women's rights advocates has been able to institutionalize some positive changes. The reinstated Parliament, after people's movement II, has endorsed commitment to ensure 33% representation of women at all level of state mechanisms.<sup>29</sup> The government has taken few initiatives to accelerate equality between men and women. The Government Report lists these initiatives, however fails to provide information on the effects of these special measures on the lives of women and the remaining challenges in providing these measures to women from different walks of life. Despite the commitments in the Interim Constitution of Nepal, the commitment from the Parliament, and the political commitments of various political parties, temporary special measures taken for accelerating access of women in the areas of education, employment, economic still remains unsatisfactory.

#### B. Critical areas of concern

- **Lack of conceptual clarity:** 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. In one of recent judgment, where women can directly file a case in district court for divorce as oppose to man who need to go through local body to court for filing a case in divorce, the Supreme Court stated that special measures can only introduce in substantive issue and therefore declared special measure for women in procedure as discriminatory provisions against men.<sup>30</sup>
- **Limited Areas of special measures:** There are limited areas of special measures as most of special measures are for ensuring minimum participation of women in different sector.<sup>31</sup> However, these measures only ensure quantitative participation of women, their participation in the decision making positions is very limited. As most of the special measures are for their participation, there are few special measures regarding education, employment health and economic empowerment.

27. Proviso to Article 13(3) of the Interim Constitution of Nepal., 2007.

28. Article 21 of the Interim Constitution of Nepal, 2007.

29. Resolution adopted by the then reinstated House of Representatives on May 14, 2006.

30. Keshav Aryal vs Legislative Parliament, Writ no. 018/066-67, decided on April 1, 2010.

31. Out of 446 special measures for women, 129 are in the field of political and public participation of women.

- **Limited nature of special measures:** General assumption is that special measures mean reservation. Because of this, other types of special measures such as enabling environment, capacity building etc are lacking. This leads towards a lack of gender-friendly environment and women's empowerment. The peace committees at the local level include 33% of women but due to lack of orientation, it lacks meaningful participation of women. Though reservation has definitely increased the volume of women's participation, it has not contributed in ensuring women's meaningful participation.
- **Special measures unable to reduce gender gap:** The Gender Development Indicator (GDI) shows that Nepal falls not only under the category of one of the lowest GDI in the world, but also has the lowest GDI amongst South Asian Countries.<sup>32</sup> Although Nepal has several special provisions, most of these measures are inadequate to address the needs of women. This is due to the lack of a target based and time-bound special measures which fail to reduce the gender gap.

### C. Concluding observations

The CEDAW Committee recommended that the State Party intensify its efforts to encourage women to take up leadership positions through temporary special measures, including timetables and numerical targets, in accordance with article 4, paragraph 1, of the Convention. The Committee also recommended that the State Party undertake awareness-raising campaigns on the importance of women's participation in decision making.<sup>33</sup> Recent legal mapping shows that 446 special provisions for women in the field of political and public participation, education, employment, health, marriage and family relation, gender justice and so on.<sup>34</sup> However, in the transitional period, out of the 330 members of the interim legislative parliament, 57 (17%) were women members.<sup>35</sup> In the Current Constituent Assembly, out of the 601 CA members, 197 (33%) are women.<sup>36</sup> Today though women represent 33% of the CA, it cannot be the only indicator of women's participation in the state restructuring process. Women's participation in other areas such as executive and judiciary and at the decision making structures remains negligible.

### D. Gaps and weaknesses

- **Weakness in implementation:** There is a lack of political will, in Nepal, to implement the existing special measures. Although the government has taken a number of special measures, there are several gaps in such measures. Therefore, the responsible agencies entrusted to implement the measures are able to bypass the laws and as a result, women are not getting the desired benefits.
- **No reservation in the special measures for women from marginalized group:** In women are not homogenous group. There multiple discrimination among women not only on basis of sex but also on the basis of their identity. Intersection among women has not taken into consideration in special measures. Women from marginalized 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. More significantly the engagement of limited women in various sectors has not been able to yield effective results.
- **Inadequate and ineffective special measures:** There are limited measures quantitatively as well as qualitatively for accelerating gender equality. For example, there are few special measures regarding health and safety of women at work place and the requirement of employers to make provisions for maternity. While most of these measures are not fully adequate in creating women-friendly work

32. Human Development Report of Nepal, UNDP, 2010.

33. Paragraph 37 of Concluding Comments on Second and Third Periodic Report (combined) on CEDAW Convention

34. Legal Mapping of Special Measures for Women, FWLD, 2010.

35. Interim Constitution of Nepal, 2007.

36. Election Commission, 2007.

environment it is also a fact that whatever measures exist have not been properly implemented. For instance, the law provides breast-feeding breaks for nursing mothers, but in reality women are not able to benefit from this provision. This is because only enterprises in which more than fifty workers are employed are required to provide child-care facilities within the enterprises; and most enterprises generally do not employ fifty workers or more because they want to avoid the facility of child care as it is considered as extra liability.<sup>37</sup>

- **Unable to benefit women of all categories equally:** Another reality is that in practice, existing special measures benefit only a small number of women. It has been observed that although on paper there are special measures for women, in reality, as there is disparity among women of different class, caste, ethnicity and economic status and all women are not able to benefit from the available special measures. However, existing special measures generalize all women in a single category and do not take into consideration the intersections of class, religion and socio-economic situations amongst women.
- **Limited areas and limited natures of special measures:** Only a few areas, such as politics, employment and health have been considered by the State as those that require special measures in favour of women.<sup>38</sup> This parameter is insufficient and has limited the State's accountability, as gender gap exists in every sector. Most of the special measures are based on reservation policy (quota system).
- **Lack of monitoring mechanism of implementation:** Besides enacting these legal provisions, the government has not taken any initiative to implement them or monitor their actual implementation. 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>39</sup> Therefore, there is a need for a greater effort from the government for proper and strategic implementation with regular monitoring to ensure committed and effective implementation.

In one hand there is need to enhance the capacity of women and empower them and at the same time opportunities have to be created to enhance the quantitative as well as qualitative representation of women at all level of state structure and every step of the peace processes.

## E. Recommendations

- There is an urgent need for conceptual clarity amongst judiciary, legislators and the bureaucracy on substantive equality. Recent judicial pronouncement on substantive equality which restricts special measure in procedure need to be reversed.
- Training to judges, law enforcers and legislators on the issues of substantive equality and difference between corrective approach and protectionist approach to increase awareness and provide clarity is a necessity.
- Target-based and time-bound new special measures in favour of women should be introduced together with phase out policy.
- Special attention should be given within special measures to advance the situation of women in disadvantaged groups such as indigenous women, rural women, *dalit* women, disabled women and women from minority communities.
- Additional special measures with phase-out policy should be introduced not only in education, health, political participation, and civil service but also in social, cultural and economic areas. There is also a need to introduce affirmative measures such as special measures for creating enabling environment and capacity building of women.

37. Gender Friendly Environment in Workplace, FWLD and TAF, 2005.

38. Out of 446 special measures for women, 129 in political and public participation, 73 in health and 56 in employment.

39. Special Measures for Women and Their Impact, FWLD, 2004.

- It is recommended that adequate allocation of budgetary resources for effective implementation of programs relating to temporary special measures for the advancement of women be made.
- Monitoring mechanism to monitor the implementation of special measures should be established through legislation with representation from civil society along with different governmental agencies.



## ARTICLE 5

### SEX ROLE AND STEREOTYPING

#### A. Prevalence of problem

Patriarchy value system remains deeply entrenched in the social, cultural, religious, economic, political institutions and structures of the Nepali society. Religious and cultural practices are the basis of assigning the stereotyping role to woman. Domestic violence, sexual violence, cultural violence still exist because of women's subordinate position in the family, community and society in general. Women are considered the weaker sex hence from their childhood to old age, she is dependent on the male member of her family. Religious scripts enforces that a woman should not stay alone any time in her life and should be guarded by her father, husband and son at the old age.

The Interim constitution 2006 has the provision to guarantee against caste and gender-based discrimination. However, the practice in the society still prevails. Despite the efforts to improve and reform the law, the anticipated social changes and transformation in the lives of women have not been realized.

#### B. Critical areas of concern

Discrimination and violence against women is still rampant, both in urban and rural areas. It is more marked in the latter, and among the more conservative ethnic groups where customary practices and prejudices continue to reign supreme. Many women are unaware of their economic, social and cultural rights, and are unaware that many of the practices that discriminate against them are illegal. There are also cases where among those who are aware of their legal rights, they are unable to voice their opinions and protest.

Women were victimized because of cultural practice of *Deuki*<sup>40</sup> (however this practice does not exist now), and continue to be victims of practices such as *Badi*<sup>41</sup>, *Jhuma*,<sup>42</sup> *Chhaupadi*,<sup>43</sup> domestic, sexual and other forms of violence. In spite of legal provisions which aim to eliminate some of these practices, the changes are yet to occur.

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40. *Deuki*, is an ancient custom where a young girl is offered to the local Hindu temple to fulfill an earlier made promise to gain religious merit. The girl is supposed to offer service to the god or goddess of the temple but owing to their age and lack of skills, often end up as prostitutes for the temples.
  41. The *Badi* were originally an entertainment caste - singers, dancers and musicians. Political, cultural and economic changes have contributed to and produced the development and practice of prostitution as a strategy of survival for many in the Badi community. Subsequently, it has been said that prostitution is the "traditional caste occupation" of the Badi and it has often been defined thus as a part of the caste system
  42. *Jhuma*, is a practice whereby a daughter is separated from her family and putting her in the service of a Buddhist monastery. These children are sent to the monastery before menses, their heads shaved and dressed in red ochre colored robes
  43. *Chhaupadi* is a practice where girls/women are not allowed to enter inside the house and touch water and milk for 4 to 7 days during their menstruation period. They must live, sleep and stay in a hut outside identified as a *Chhaupadi's* house or in a *Chhaupadi* goth. *Chhaupadi* goth means a small hut made of mud, straw and wood which is barely 2-3 feet high and 2-3 feet wide.

- Women are still delegated stereotypical roles and responsibilities such as household chores, looking after children and caring for the elderly. Breaking down these barriers by enabling women to take on decision-making roles, positions of power and fighting age old discriminatory practices face enormous obstacles.
- The patriarchal value does not allow women to have access to economic opportunity and control over the resources. Though women play multiple role as bread winners her informal work is not recognized. As a result the long hours of women's daily labor within the home and outside is not regarded as an economic contribution to the society.
- A girl child is considered a liability since her birth. When she becomes an adult, her parents are eager to marry her off as she is considered as an object. Girls are supposed to do household work and serve the family hence are not given more importance within the family.
- Dowry as a harmful traditional practice has a very negative impact on the lives of woman and girls. Implication of dowry leads to violence against bride, including bride burning and death.
- Allegation against a woman as a witch is prevalent in our society which is a violation of human rights of woman.

### **C. Concluding observations**

- The recent Domestic Violence Act, 2009 is a landmark and a major success after a decade long effort of the women's movement. This will play a critical role in the elimination of domestic violence which has for long been regarded as the right of the husband to "discipline" his wife or vent his anger.
- The Supreme Court has given landmark judgments to eliminate discriminatory practices such as *Chhaupadi*. The government has even declared *Chhaupadi* as the "most degrading and inhuman defective practice". The government and non governmental organizations have actively worked towards raising awareness and eradicating this practice.
- Witchcraft has also become criminalized. Witchcraft can now be prosecuted under the State Cases Act.<sup>44</sup>

### **D. Recommendations**

- Changing the mindset of people is necessary which can be ensured through amending laws, adopting policy and generating awareness through involvement of civil societies/ NGOs and the mass media
- The media must be strategically utilized to change cultural paradigms. This includes changing cultural notions that:
- Men should not be involved in household activities as well as in the rearing and caring of children and support women folk during the pre-natal period, delivery and post-natal care.
- The support of men is not relevant for promoting the health of the mother and baby as well as the over-all well-being of the family and community as a whole.
- Enact specific laws to criminalize discriminatory practices such as *Badi*, and *Jhuma*, among others. Measures need to be taken to make people aware that these practices are illegal, and carry criminal penalties. It is important that the victims of these practices must be provided speedy justice and appropriate remedies.

44. Resma Thapa v. HMG, Secretariat of Ministry et al, Ne. Ka. Pa. 2062, Vol.2, pp 205, Decision no. 7498, writ no. 2891, 2058.

## ARTICLE 6

# TRAFFICKING AND VIOLENCE AGAINST WOMEN AND GIRL CHILDREN

### A. Prevalence of problems

Violence against women and girls has been a serious concern in Nepal since decades. Existing patriarchal value system have continued to reinforce discriminatory social attitude and behavior towards women denying women equal rights and status in the society, rendering them vulnerable to violence. In addition, armed conflict and natural calamities have exacerbated women's situation enhancing their vulnerability towards serious sexual and gender based violence.

The different forms of violence that women in Nepal face includes human trafficking, domestic violence, sexual harassment at workplace and in public place, rape including marital rape, forced prostitution, various forms of cultural violence such as *Deuki*, *Badi*, *chheupadi* witch-hunting and *Jhuma*, dowry related violence, and violence during festivals in particular the festival of colour or "*Holi*". According to the Population Health Survey of 2006, 23% of women and 20 % of men reported having experienced violence.<sup>45</sup> Domestic violence has often been found to be interrelated and the epicenter of other forms of violence. Women experiencing domestic violence were often seen to have sought foreign employment through unorganized or unmonitored outsourcing agencies and means, resulting in trafficking mostly to the neighboring countries or to countries in the Gulf.

In 2009 the Government has acknowledged that 5,000 to 12,000 girls between the age group of 10 to 20 years are trafficked outside the country for the purpose of forced prostitution and in exploitative conditions.<sup>46</sup> The 2005 Integrated Institute of Development Studies (IIDS) and UNIFEM study states that amongst the 82,720 women who were reportedly away from their homes, almost 33,620, i.e. more than 40 percent of the women's whereabouts were not known. These women whose whereabouts are not known could raise a question if these women were trafficked.<sup>47</sup> There have been several instances of the media reporting that the armed conflict has forced many displaced women and girls into trafficking. Also, many of them are forced to work in exploitative conditions as dancers and sex workers in dance bars and restaurants, rendering them vulnerable to HIV and AIDS. According to Nepal Police there are currently about 20,000 – 25,000 girls and women engaged in commercial sex work illegally in about 500 dance bars, cabin restaurants and massag parlors in Kathmandu Valley alone.<sup>48</sup> Children are trafficked within the country and across the border to India and the Middle East for commercial sexual exploitation or forced marriage, involuntary servitude as domestic servants, circus entertainers, factory workers, or beggars. Most alarmingly, Nepal seems to be attracting an increasing number of foreign child-sex tourists.

#### Ten years data on reported trafficking cases in Police

2001/ 2002	2002/ 2003	2003/ 2004	2004/ 2005	2005/ 2006	2006/ 2007	2007/ 2008	2008/ 2009	2009/ 2010	2010/ 2011(Feb.)
40	55	56	72	97	112	123	139	161	57

Source: Women and Children Directorate, Police Headquarters, Kathmandu February 8, 2011.

45. Government of Nepal 2009 National Plan of Action on Gender Based Violence for 2010.

46. Government of Nepal 2009 National Plan of Action on Gender Based Violence for 2010.

47. Integrated Institute of Development Studies (IIDS) and UNIFEM 2005 'Status and Dimension of Trafficking within the Nepalese Context.

48. Trafficking in Persons Especially on Women and Children in Nepal, National Report 2008– 2009, Office of the Special Rapporteur on Trafficking in Women and Children (OSRT), NHRC

Data of human trafficking cases reported at police show increase in reported cases every year since the last ten years. There is yet to be a study to examine whether the increase in reporting is due to the increase in the crime or due to improved access to police services.

Yearly 200 to 300 cases in total are considered by the courts at different level. A new trend seen in the crime of trafficking is the growing involvement of women among traffickers. The table below shows significant number of female accused. And many of these women accused are also the victims who later become traffickers themselves.

<b>Accused of Human Trafficking</b>	<b>2009/2010</b>	<b>2-10/2011</b>
Number of Accused	43	88
Number of Accused Male	27	54
Number of Accused Female	16	20

**Source:** Kathmandu District Court, March 2011 (Please note that the total number of accused does not match with the total male and female breakdown because in some cases sex of the accused were not mentioned in the information shared by the court).

In the recent past, the trend of unsafe and illegal migration has increased trafficking of women and girls. Women who go via individual agents instead of authorized recruiting agencies often fall victims. The 2008/09 data shows that out of the 217, 000 Nepali people recruited for employment abroad nearly 21% went on individual basis out of which 64% were female workers. Janjatis, dalits and other marginalized categories are seen to be most vulnerable to such forms of unregulated employment.<sup>49</sup> There have been many instances where Nepali women have faced violence particularly sexual violence in their employment abroad.

In Nepal, rape and other forms of sexual violations committed by security officials during operations, in custody and at check-points were often reported during the armed conflict. Also, sexual violence was also reported to have been used as a tool by rebel groups for reprimanding women belonging to communities that did not support their cause or activities.<sup>50</sup> However, these issues are yet to receive any attention or priority in the ongoing peace process.

Domestic violence is the most widespread violence in Nepal. A Situation Analysis of Gender Based Violence in two districts<sup>51</sup> in Nepal revealed that over 80 percent of women reported experiencing domestic violence by their husbands and 9 percent of women reported incidents of non consensual sex and incidents of all types of sexual violence that are most frequently perpetuated by neighbors or community members within the survivors' own home and immediate social circle. Also, three fourths of women recognize domestic violence a serious health concern in their community.<sup>52</sup> The reported cases on domestic violence in police were 968 in the FY 2008/2009 and 983 in the FY 2009/2010.<sup>53</sup>

Another form of violence that is often not recognized as socio-cultural violence are acts justified on the pretext of celebrating 'Holi<sup>54</sup>' - the colour festival.' Among others, women and girls in particular are harassed through throwing of water balloons and water much before the actual festival. While women and girls face

49. Trafficking in Persons Especially on Women and Children in Nepal, National Report 2008 – 2009, Office of the Special Rapporteur on Trafficking in Women and Children (OSRT), NHRC.  
 50. IHIRICON Sexual Violence in the People's War –The impact of armed conflict on women and girls in Nepal.  
 51. In Daang and Surkhet –Districts of Mid Western Region of Nepal.  
 52. UNFPA, IRC, Saathi Nepal, WHR, 2008, A Situational Analysis of Gender Based Violence in Daang and Surkhet.  
 53. Women and children service center, Nepal Police  
 54. Holi is a festival of colours celebrated all over Nepal in the month of March.



humiliation and embarrassment in public for being targeted in this manner, such humiliation is largely considered a part of the merriment by the society. Fear of humiliation confines women to their houses for several days before and after the festival. Violence perpetuated in this manner is yet to be given legal recognition in the country forcing women to endure breach of their dignity.

Sexual harassment in the workplace is yet another issue that women face and are forced to endure in the absence of any concrete mechanism to address it. An ILO/FWLD study in 2004 has indicated that 48.4 percent women employees/workers said that they faced sexual harassment in the workplace.<sup>55</sup> Even while sexual harassment in the workplace has received some attention there has been virtually no concern towards sexual harassment that women face everyday in public. Women face this problem in their daily life traveling from home to work inside public vehicles or while walking on the streets, among other public places. Except, sporadic initiatives to create awareness amongst the public, there has not been any constructive or sustained effort either from the government or civil society in addressing such forms of violence, thereby promoting a culture of impunity and abuse in the society.

Despite demonstrated social, health, and economic consequences, violence against women in the form of physical, mental, emotional, sexual and economic violence is still prevalent at pandemic proportions.

## **B. Critical areas of concern**

- **Increase in impunity, low reporting on VAW and lack of action:** Despite the existence of legal provisions and compared to the magnitude of violence in all aspects of women's lives be it home, public place or work place, the number of incidents officially reported are very low. This has mainly been seen to be resultant of lack of trust in the law enforcement mechanism. In instances where victims report incidents of violence, the relevant law enforcement authorities have often failed to register such complaints. Political protection to alleged perpetrators is common giving rise to situations of impunity.<sup>56</sup> Victims are often offered monetary benefits for abstaining from taking action, while in majority of the reported cases it was found that real investigations were not undertaken.<sup>57</sup> Corruption and lack of political will amongst the law enforcement mechanisms and lower levels of the judiciary have reduced the impact of existing legal protections.<sup>58</sup>
- **Lack of effective implementation of legislation on trafficking:** The Human Trafficking Act 1986 was replaced by the new Human Trafficking and Transportation (Control) Act 2007 that was reformed from human rights and gender perspective. The Act includes concrete procedures on arrest and investigation, rehabilitation measures in accordance with the consent of the victims, compensation for victims of trafficking, confidentiality and in-camera proceedings. The law is yet to be effectively implemented in relation to providing adequate compensation to the victims.
- **Gaps in the Domestic Violence Act and lack of measures to implement the law:** The Domestic Violence (Offence and Punishment) Act of 2009 though acknowledges a range of abuses inflicted within domestic relations as acts of crime for the first time in Nepal, the law remains symbolic due to the absence of effective measures on prosecution where complaints are filed directly to the court by the complainant, the lack of powers of the police to detain the perpetrator till the issuance of interim order, or the lack of prescribed measures for coordinating actions of various agencies in support of the victim.

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55. International Labour Organisations and Forum for Women, Law and Development 2004. Sexual Harassment in the Workplace.

56. Government of Nepal 2009 Action Plan on Gender Based Violence for 2010.

57. IHIRICON Sexual Violence in the People's War –The impact of armed conflict on women and girls in Nepal.

58. Global Corruption Report 2007, Transparency International.

- **The Bill on Sexual Harassment in the Workplace yet to be enacted:** Pursuant to the directive order issued by the Supreme Court in *Sharmila Parajuli vs. HMG Nepal*<sup>59</sup> for the formulation of adequate laws relating to sexual harassment, the Draft Bill on Sexual Harassment has been prepared and registered for discussion and approval of the Parliament. A provision in the Bill allow for complaints to be filed with the Chief District Officer (CDO) directly without establishing any form of accountability or vicarious liability for employers. Neither does the bill create liability for employers in formulation, adoption and implementation of adequate policies relating to sexual harassment at workplace.
- **Inadequate definition of rape, and time limitation:** The definition of rape<sup>60</sup> fails to acknowledge and incorporate aspects beyond the traditional understandings of vaginal penetration not including other forms of penetration. Rape crimes has time limitation for reporting which is only 35 days causing victims hindrances who may could report only after 35 days.
- **Inadequate punishment on marital rape:** After the Supreme Court issued directive to criminalize marital rape,<sup>61</sup> forced intercourse by husband upon his wife shall attract punishment of 3 months to 6 months<sup>62</sup> where as rape of a woman shall attract punishment of 5 yrs to 7 yrs of imprisonment. Though the Supreme Court in one of it's judgments<sup>63</sup> has issued directive orders to the Government for amendment of the provision in favour of increasing the prescribed punishment for rape by husbands, the same is yet to be enforced.
- **Existing customary practices with negative impacts on women are yet to be identified and abolished:** Beyond the much known practices of Deuki, Badi and Juma, other practices such as "Dhan- Khaane" existent amongst communities in remote hilly regions in which parents receive money for solemnization of marriage of their children at an early age, are yet to be acknowledged for their negative impact on society and women. Girl children are found to be the most significant victims of the system increasing their vulnerability to further acts of violence such as domestic violence, trafficking etc.

### C. Concluding observations

The CEDAW Committee in its concluding observations had urged the government to adopt immediately measures on passing of Citizenship Act ensuring women's rights on citizenship, domestic violence and to provide progress report on the draft bill on domestic violence.

- Since the last reporting by the government of Nepal in 2004 some significant legislations have been enacted that includes the Gender Equality Act 2006, Human Trafficking and Transportation (Control) Act 2007 and Regulation 2008, Domestic Violence (Control and Punishment) Act 2009 and regulation 2010, and the Foreign Employment Act 2007 and Regulation 2008. The Bill on Sexual Harassment in the workplace has been formulated and been registered for discussions with the Legislative Committee of the Parliament. The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution was ratified by Nepal in 2007.
- The 2007 Interim Constitution of Nepal provides an explicit guarantee against 'violence against women' and provided that 'No physical, mental or other form of violence shall be inflicted on any woman, and such an act shall be punishable by law.'<sup>64</sup>

59. *Sharmila Parajuli vs HMG Nepal*, Writ No.: 3434 of 2060, N.K.P. 2062, Vol.10, page 1312, Decision No.: 7449.

60. Sec 1 of Chapter 14 on Rape, The Country Code 2020 (1963).

61. *Meera dhungana for FWLD vs Government of Nepal* 2004 Writ No. 55/2002.

62. Sec 3 ( 6) of Chapter 14 on Rape, The Country Code 2020 (1963).

63. NKP 2065, Decision No.: 7973, Date of decision: 2065/3/26/5; Supreme Court Subject wise Precedents Compilation, 2066, Vol.3, Human Rights and Gender Justice, page 314.

64. Article 20 of the Interim Constitution of Nepal 2007.

- Government of Nepal has adopted a 13 point national policy to combat trafficking, all discriminatory and exploitative practices directed towards women, uplift their socio-economic status and to prevent and protect victims of sexual exploitation. The "National Policy" has been substantiated and made operational by formulating 'National plan of action against trafficking in children and women for sexual and labor exploitation'.
- Government has submitted Criminal Code, Criminal Procedure Code and Civil Code before the parliament for approval on 1 February 2011.
- The Supreme Court of Nepal has issued a directive order to the government to take necessary steps to prepare a separate law in order to address the victim witness protection and assistance programme. Further the court issued a mandamus in the name of Ministry of Finance and Police Headquarter to provide travelling allowance to government witness upon their claim. Court also issued a directive order in the name of Ministry of Home Affairs and Police Headquarter to establish a taskforce to prepare the work plan and to execute it for the protection of victim witness until the enactment of law. The Court also ordered to appoint witness protection officer, establish witness protection and assistance branch on police headquarter, establish witness protection and assistance committee in every district under the coordination of head of district police office.<sup>65</sup>
- Nepal declaring the year 2010 as a year against Gender Based Violence (GBV) and launching Plan on action to combat GBV with the formation of Inter Ministerial Steering committee and also establishment of a Gender Based Violence Monitoring Cell in Prime Minister's Office has shown political commitment to combat violence against women.<sup>66</sup>
- Women cell increased to 38 districts with a plan to establish women cell for victims of violence in all 75 districts of Nepal.
- The Supreme Court of Nepal has given a Procedural Guideline on Working Women in Cabin Restaurants and Dance bars.<sup>67</sup> The Supreme Court has issued a directive order to the Office of the Prime Minister and Council of Ministers to enact a law in order to keep the confidentiality of women victims, children, HIV/AIDS affected people so that their confidentiality could be maintained from the time of filing or registering of the cases to the time of final adjudication. The Court further ordered that the procedural guidelines should be followed in matters of special types of case proceeding to keep their confidentiality.<sup>68</sup>
- On November 4, 2009 the Supreme Court of Nepal issued a directive order to the government of Nepal to develop a new law on victim/witness protection. The Order includes that until the enactment of the new law, victims are to ensure protection for the interim period by developing a work plan including measures to (i) establish a victim protection and support section at the Police Headquarters, (ii) formation of a committee on victim/witness protection within the district police office in districts, (iii) Appointing victim protection officers, and iv) provide necessary services to victims. The work plan is to be prepared by a Working Group to be formed under the coordination of Joint Secretary of the

65. Adv. Meera Dhungana, Adv. Lokhari Bashyal for FWLD vs. Government of Nepal, Writ No. 0043 of 2065 B.S., Date of Decision: 4 November, 2009.

66. The Prime Minister of Nepal has declared the year 2010 as Violence against Women free air and has already come up with a joint plan involving various line ministries, UN System in Nepal and I/ NGOs and other concerned stakeholders. On his address the PM also urged all men and boys to join hands to work towards ending VAW&G. To address the issues and concerns of the affected there will be provision of complaint desk and at the office of the Prime Minister, there is also a provision of 24 hours hotline telephone service, in addition there are provision for providing legal assistance, psychosocial counseling, health are some of the noteworthy provisions that have been included in the work plan that came out from the office of the prime Minister for addressing GBV.

67. Propublic. 2008. Verdict and Procedural Guideline from Supreme Court on Sexual Harassment against Working Women in Dance Bars and Dance Restaurants.

68. Adv. Sapana Pradhan Malla vs. Government of Nepal Writ No. 3561 of 2063 B.S., Date of Decision: 2064/9/10

Ministry of Home Affairs, with representatives from the Office of Government Attorney and the Police Headquarters.<sup>69</sup>

- On August 12, 2009 the Supreme Court issued a directive order to the government to establish a Fast Track Court to execute criminal cases where women are victims of domestic violence and other forms of sexual and gender based violence. In relation to this, the directive provides for formation of a four member committee from the Ministry of Home Affairs, MWCSW, and the Ministry of Law and Justice to carry out a study to examine necessary human resource, budget and physical infrastructure among others for the court. The directive order includes that the Fast Track Court should be established from four months to the submission of the four member committee's report.<sup>70</sup> Following the decision a committee has been formed and a study has been undertaken for the establishment of the Fast Track Court, the report is envisaged to be completed this month-February.<sup>71</sup>
- National Day against Trafficking Declared and Celebrated since September 2007 calling for greater commitment from all sectors to address trafficking against women. Curriculum of Masters in Gender Studies includes Men Engage Component to address VAW since 2009.
- The Supreme Court has drawn attention for the establishment of Fast Track Court in order to reduce domestic violence against women. Further the Court directed on having a women lawyer and women police for the prosecution and investigation of the case respectively.<sup>72</sup>
- The National Plan of Action on Human Trafficking is currently being reviewed to examine gaps and necessary amendments to make it relevant to the changing context in relation to human trafficking. Two one day consultations were conducted in 2010 in Jhapa and Rupendehi where 88 district level stakeholders participated. The NPA review is expected to be completed and ready for adoption by the end of March 2011. More stakeholders' consultations are planned before the finalization of the NPA.<sup>73</sup>
- In 2010 the government in coordination with the NGOs has established rehabilitation homes in five districts namely Jhapa, Chitwan, Parsa, Bhairawa and Banke districts, in addition to three rehabilitation homes established in 2009 in Sindhupalchowk, Kailali and Kathmandu. The rehabilitation homes are established to provide services exclusively to trafficking victims, however, as per the need, the homes also provide services to women who are victims of other sexual and gender based violence. The rehabilitation homes are established in implementation of the existing Human Trafficking Act 2007 that includes a legal provision to establish rehabilitation homes to provide services to victims of trafficking.<sup>74</sup>

#### **D. Gaps and weaknesses on initiatives**

- **Lack of comprehensive research and data on VAW:** There is a lack of comprehensive research on VAW. There are sporadic and small researches and studies conducted on VAW failing to create concrete and comprehensive data to inform research and new initiatives. There is no initiative to centralize or consolidate data generated by different organizations/stakeholders.

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69. Meera Dhungana vs. Government of Nepal, Prime Minister and Council of Minister's Office, writ no. 0043, November 4, 2009, Supreme Court, Kathmandu, Nepal.

70. Advocate Jyoti Poudel vs. Government of Nepal, Prime Minister and Council of Minister's Office, writ no. WO-0424, August 12, 2009, Supreme Court, Kathmandu, Nepal.

71. Mr. Sherchen Koirala, Legal Officer, Ministry of Women, Children and Social Welfare, February 7, 2011.

72. In order to clarify the legal position concerning the attack with the use of acid, by a husband on his wife, a writ petition was filed by an advocate Jyoti Poudel and advocate Tanka Prasad Dulal. Writ No. 8282 of 2066 B.S., Date of Decision: August 12, 2009.

73. Mr. Gaju Bahadur Rana, Under Secretary, and Mr. Mohan Niraula, Section Officer, Ministry of Women, Children and Social Welfare, Singha Darbar, Kathmandu, February 2 and 6, 2011.

74. Source: Mr. Gaju Bahadur Rana, Under Secretary, and Mr. Mohan Niraula, Section Officer, Ministry of Women, Children and Social Welfare, Singha Darbar, Kathmandu, February 2 and 6, 2011.

- **Lack in proper implementation and coordinated compliance of general laws resulting in ineffectiveness of laws on trafficking:** Despite the enactment of several new laws to counter VAW, unsafe migration in foreign employment, trafficking etc, the implementation level of these laws have largely been witnessed to be inadequate due to low levels of state compliance and provisions relating to monitoring, investigation and prosecution, particularly with regard to the Foreign Employment Act 2007 and Human Trafficking and Transportation (Control) Act 2007. A Report by NHRC indicates that the Department of Foreign Employment Promotion (DoFEP) having received 505 complaints filed on individual basis and 506 on institutional bases in 2007/2008 failed to forward any of the cases registered against institutions to the courts despite being vested with the powers to do so under the Foreign Employment Act, 2007.<sup>75</sup>
- **Lacunae in Domestic Violence (Control and Punishment) Act 2009:** The Domestic Violence (Control and Punishment) Act 2009 contains several lacunae some of which are as below:
  - **Sec 4 (4)** on filing of complaint or petition states:
 

If the complaint is lodged in the Police Station, excluding the time of travel, the perpetrator shall be produced in the Police Office within 24 hours of the lodging of the complaint for the recording of his statement and if he disobeys to be brought, force may be applied for his arrest.

Sec 4 (5) similarly allows for application of force for the arrest of the perpetrator for the purpose of being produced before the local bodies where a complaint may have been filed.

None of the provisions however allow for the detention of the perpetrator either in police or judicial custody until a settlement is reached, or an interim order is issued by the court. This lacunae threatens the very basis of access to justice for women who may be rendered further vulnerable to violence upon having lodged a complaint and to go back home to the perpetrator.
  - **Sec 5 states: Court shall take action:** (1) Upon the receipt of a complaint as per sub-section (11) of section 4, the Court shall prosecute and decide the case as per this Act, on the basis of such complaint.
 

(2) Notwithstanding anything contained in sub-section (1), the aggrieved person may directly file his complaint with the Court.

However the law contains no additional provision for the facilitation of filing a direct complaint with the court or the procedure to be followed in evidence collection, and prosecution of the perpetrator. In the absence of any existing legal provision, rule or guideline for the same, women shall continue to be unable to have direct access to the court thereby defeating the very purpose of providing protection from domestic violence.
- **Lack of co-ordination between initiatives for implementation of laws, policies and programmes on VAW:** Initiatives by the government and those of the civil society to address VAW are often found to be inconsistent and seriously lacking in strong follow up and monitoring. Committees created to monitor, coordinate work and report on actions against VAW are yet to show substantial impacts.
- **Lack of implementation of guidelines on in-camera hearing:** Guidelines for in-camera hearing for certain categories of cases relating to VAW have been implemented in different courts, in police station but yet to make it more scientific and implement in all the institutions responsible for ensuring justice and a legislation is required to be enacted in this matter. The guidelines on Dance Bar are not implemented yet.

75. Trafficking in Persons Especially on Women and Children in Nepal, National Report 2008 – 2009, Office of the Special Rapporteur on Trafficking in Women and Children (OSRT), NHRC.

- **Lack of implementation of "Zero Tolerance Policy" and the SAARC Convention on Trafficking:** The zero tolerance policy formulated by the Ministry of women, children and social welfare is only in the principle and its effective implementation is yet to be realized. Likewise the SAARC Convention on Trafficking although ratified is not implemented nor is it improved to address the gaps in the Convention.
- **Trafficking cases filed under Migration Act:** New trend also shows that victims and witnesses file human trafficking cases under migration Act, the reasons is immediate compensation paid to the victims under the migration Act. This however lets the perpetrator escape adequate punishment.

## **E. Recommendations**

- Conduct comprehensive research against VAW including human trafficking, promote a centralized data system and ensure its access to policymakers, researchers, academicians and advocates among others. The forthcoming census should make an effort to include the issue of VAW and trafficking for acquiring authentic data.
- Strengthen law enforcement mechanism through capacity building efforts to effectively respond to victims of violence in keeping with provisions of state compliance under the new laws adopted, as well as the laws reformed. Create relevant mechanisms to implement the new laws adopted by the Government and inform the law enforcers and judiciary on the same including the prescribed actions required for effective support to victims.
- Adopt a comprehensive approach to address the interrelations between each of the various forms of VAW, particularly that of domestic violence or other forms of cultural violence leading to vulnerabilities in foreign employment and trafficking.
- Expand the existing eight helter homes in other districts to provide shelter to victims of violence. Ensure that the shelter homes provide holistic care and support including medical, legal, psychosocial support, and training for livelihood.
- Government and Parliament to give priority in enacting laws on various other forms of violence which is yet to be addressed through legislations such as sexual harassment in the workplace, sexual harassment in the public places including during festivals such as "Holi," to respect a person's choice to be part of the festival or not, and witch-hunting among others.
- Promotion of violence against women campaign and bring non traditional partners like men and boys, interfaith leaders, private sectors, media including popular culture and alternative media on board to address the issue in an effective manner.
- Promotion of gender sensitive journalism and media advocacy and awareness involving media from popular culture and alternative media.
- Work towards preparing a road map for effective implementation of the SAARC Convention and ratification of UN Protocol on Trafficking. Ministry of Women, Children & Social welfare should functionalize the Zero Tolerance Policy for VAW and ensure its effective implementation.
- Guarantee of the security of the activists and social workers, human right defenders working against VAW.
- Media persons, for law enforcement officials should be legally penalized for failing to maintain confidentiality on victim's identities and information they acquire about the cases relating to VAW, such as to avoid re-victimisation of complainants.
- Inter ministerial Steering committee to combat VAW needs to be continued until effective institutional mechanism and law and policy is created. GBV monitoring Cell in Prime Minister's Office needs to be

institutionalized and continued to deal with impunity and make all government agencies equally accountable to combat Violence against women along with Ministry of Women, children and social welfare.

- Serious forms of domestic violence needs to be recognized as a crime against state and police should have power to detain for investigation in Domestic violence cases. Definition of rape needs to be broadened. Punishment on Marital rape needs to be increased. Time limitation for reporting rape needs to be extended from the current 35 days in the existing rape law.
- Need to ensure that the Foreign Employment Tribunal sends trafficking cases to the court instead of considering the cases in the Tribunal.



## ARTICLE 7 & 8

# WOMEN'S PARTICIPATION IN POLITICAL AND PUBLIC LIFE AND WOMEN'S INTERNATIONAL REPRESENTATION

### A. Prevalence of the problem

Until the recent Constituent Assembly election held in 2008, few women participated in Nepal's national legislature. Women were represented in the parliamentary elections held in 1991, 1994 and 1999 but never gained more than 6% of the seats in parliament. Women's representation in state organs and political parties is equally dismal. In the last local election held in 1997, women's representation as members of VDCs and Municipalities increased in 1997 due to the royal decentralization ordinance, setting a 20% reservation of seats for women. The percentage of women's representation in the Cabinets formed following the elections in 1991, 1994, 1999, and 2008 is 8.6%, 9.1%, 23%, and 17.4% respectively.(WDN and RSN 2009). Women's representation in Civil Service is only 11%, and even lower in key decision-making positions. Women's participation in the judicial and legal sector is also low, standing at 9.09%, 1.28% and 1.50% in the Supreme Court, Appellate Court and District Court respectively. Women's representation in Constitutional bodies is very low. So far no woman has ever headed a constitutional body. There is only one woman member in the National Human Rights Commission and in Civil Service Commission.<sup>76</sup> Trade unions are important institutions which could help raise women's status in the labour movement through advocacy and by promoting women to leadership positions within the unions. In Nepal, three trade union confederations have been registered so far.<sup>77</sup> In all Confederations women occupy only 12.6% of leadership posts and 11.95% of leadership posts in national affiliates.<sup>78</sup>

76. Renaissance Society Nepal, Women Democratic Network and UNIFEM, 2009. 'Women's Political Participation, Empowerment and Inclusion,' Survey Report and Strategic Action Plan.

77. They are- General Federation of Nepalese Trade Unions (GEFONT), Nepal Trade Union Congress (NTUC) and Democratic Confederation of Nepalese Trade Unions (DECONT).

78. Confederations differ in views on the participation of women in trade union movement. The policy of GEFONT is not mere representation but equal participation. NTUC is placing emphasis on the quantitative participation of women advocating for at least 30 percent quota for women in every committee. Under GEFONT, the Central Women Workers Department (CWWD) was established to enhance the capacity of women. Following its establishment, it has been carrying out various programs for the enhancement of women's participation and leadership development on a regular basis. It is also contributing as much as possible to the national women's movement. Source: An article on "Women Participation in Present Trade Union Movement, GEFONT, 2005.

Women have participated in all the people's movement to support democracy, coming out in large number during the 1990 democratic movement, the 2006 people's movement, and the insurgency - of which women constituted 40%. However, women have been sidelined with the ebbing of street activism. For example, no women participated in the talks that led to the peace agreement in November 2006 made between the CPN (Maoist) and the Seven Parties Alliance, marking the end of the decade long conflict in Nepal. As a result, the peace agreement failed to address the different needs and aspirations of women affected by conflict as raised by UNSCR 1325 and 1820. The team to draft the Interim Constitution was initially composed only of men until women's protests forced the parties to include 3 women. Even today women's participation in the central committees is low on average as well as in the district level of political parties (6% and 9% respectively)<sup>79</sup>. Thus in the major political decision making process women are excluded.

In the international arena, women's representation is again dismally low. As the appointment of representatives to international posts is a political decision, only one woman so far has been appointed as ambassador. Women work in international organisations, but even here they are limited to junior positions. Women are well represented in national women rights organizations, which have nearly 80% of women's representation as activists and employees. However, in other developmental and human rights oriented NGOs, though women candidates are encouraged to apply, key posts are still held by men. This is the case in international organizations operating in Nepal as well as in the majority of national NGOS.

## **B. Critical areas of concern**

- **Women are still invisible in the political structure** : Unless women hold key posts in the party structure, they are not likely to be placed high up on the proportional representation lists or put up to contest winnable seats. Although women have a 33% representation in the Constituent Assembly, they are not represented as highly in other decision making committees within the constituent assembly and government bodies such as the cabinet where male and female representation as ministers stands at 84% and 16% (2009) respectively<sup>80</sup>. Data shows that women occupy only 6- 9 % of the positions in central level executive bodies of political parties.
- **Not enough measures to increase the capacity of women representatives** : The efforts to increase the number of women in decision making bodies should be teamed with capacity building initiatives to strengthen women representatives in both national interests and women's interests more effectively.
- **Prevalence of socio-economic and cultural obstacles to women's political participation:** Most women have not had access to the education and training required. Many women are confined to household roles and even those who venture out do not have independent financial resources or the family support to go into politics, a domain which is still seen to require masculine characteristics. Threats of violence and sexual harassment also make politics less attractive to women.
- **Election environment that is not sensitive to the challenges of women voters** : Neither the election Commission nor the political parties have adopted special measures to cater to the needs of women voters. Except for arrangements for a separate queue on Election Day no other efforts have been made to provide security to women. As there is violence and intimidation during the elections, many women choose not to vote. Special arrangements have not been made for the aged, pregnant, and physically weak women to cast their vote easily leading to low participation and low women voter turnout.

79. Jagaran Nepal, 2007. 'Status of Women in Political Parties- A Research Report'.

80. Data Related to Women in Politics and Others, Jagaran Nepal (2009).



- **Less exercise of voting right by women:** Electoral democracy calls for equal participation of all groups including men and women in the electoral processes. In the last Constituent Assembly election in 2008, the percentage of women who voted were 49 while the percentage of men who voted were 51. The figure needs to be seen in light with high male migration which further shows that women take less part in voting than men. Although some progress is made to promote women's participation among electoral administrative staff as well as among electoral candidates, currently participation of women in these two areas is not satisfactory. It is clear that a national and institutional policy along with legal measures will be instrumental in ensuring gender equality in the field of elections.

### C. Concluding observations

- Women have secured a historically high percentage of seats in the CA (33%), a significant improvement from the 17.5 % of seats held by women in the Interim Parliament 2006. The increase in women's representation in CA by such large numbers was possible due to adoption of a 50% candidacy quota for women within each marginalized group through the proportional election system but not on first past the post.
- The Interim Constitution, 2007<sup>81</sup> promotes proportional representation of women as a fundamental right (Article 23). This provision, however, has not been further interpreted or implemented to effectively promote women's representation in the many bodies and institutions formed following the adoption of the Interim Constitution. The Interim Plan (2008-2011)<sup>82</sup> aims to increase women's representation in decision making bodies to 33% (as a baseline) through other strategies, such as women's empowerment schemes. It is also committed to ensure the proportional participation in national life of indigenous nationalities, *Madhesi*, dalits, oppressed, poor, persons with disabilities, and persons from backward regions by providing these groups access to positive discrimination measures.<sup>83</sup> Resolutions were passed by the Interim Parliament on May 30, 2006 on achieving 33% representation of women in all state organs, and at all levels.

### D. Gaps and weakness

- There is little political will to push measures to increase women's participation in public life. The measures to increase women's representation in decision making remain heavily dependent on the activism of women's group and civil society.
- Internal policies of political parties are not supportive of increasing women's representation within the political system and this has an adverse impact on women's access to decision making positions of the country at large. Not even a single party has been able to ensure proportional representation in political parties except their agreement for inclusion.
- Efforts to increase women's representation in numbers are not equally supported by measures to promote women's meaningful participation.
- Education is the key to preparing women to participate in public life. Although several strategies such as affirmative action have been adopted by the government to address the low level of participation of women and girls in education, the overall outcome remains poor.
- There are very few effective economic empowerment programme for women.

81. Government of Nepal, 2007. The Interim Constitution of Nepal 2007.

82. Government of Nepal, Three Year Interim Plan (2008-2011)

83. Government of Nepal, Three Year Interim Plan (2008-2011).

## E. Recommendations

- **Legal measures to increase women's representation :** Like the quota adopted for women's representations in the CA, there must be a national policy ensuring at least 33% participation in result for women in all decision making bodies and this must be reflected in the forthcoming Constitution as well. Also, policies relating to political parties must be reformed to include provisions to increase women's representation within party structures and on party electoral lists - a quota of 50% women's representation at the local level, and at least 50% in the national legislature. Such provisions should be phased out after the desired targets have been reached or when the political playing field is level. It is further recommended that providing reservations for women should not close the door for women to contest in non-reserved seats. A 33% baseline representation of women needs to be ensured in the cabinet, constitutional bodies and post conflict transitional justice mechanisms.

Electoral systems are instrumental in promoting representation of marginalized groups including women therefore electoral system should be adopted taking into account representation from different marginalized groups.

Legal measures need to be adopted in the new constitution that calls for political parties to take quota measures to promote women's participation within the political parties.

- **Increase women's representation in international platform:** Women's representation in diplomatic missions to be increased, special measures need to be taken in this regard. To increase women's representation in the United Nations, the government should send names of qualified women to be included in the central roster of United Nations as required by the UNSCR 1325.<sup>84</sup> Candidacy under treaty monitoring body should be prioritized for women with adequate support system.
- **Focusing beyond numbers to promote meaningful participation of women:** Efforts to increase numbers should be teamed with efforts to train and empower women to participate effectively in politics. To ensure that women can confront and rise above these obstacles, it is necessary to invest in women and train them on the basis of carefully designed needs assessments to make them a credible force in politics.
- **Address the socio- economic and cultural barriers against women's participation in public life:** Efforts should focus on changing social biases against women and promoting support for their participation in public life. The support of society and the family must be canvassed through public awareness campaigns. Women are tied to the home through the multiple domestic tasks they must perform as they receive no support from their male family members. Interventions are needed to ensure that men cooperate and participate in domestic tasks too. Interventions should also focus on strengthening the socio-economic status of women through skill training, employment and education programs. Strong advocacy is needed to ensure the implementation of laws promoting women's rights. These include rights to property, right to a violence-free life, and equal citizenship.
- **Promote gender sensitive election environment:** Efforts must be made to promote a gender sensitive environment for women voters. This calls for a proactive role by the Election Commission to ensure a violence- free election and to ensure that special measures, including security measures are taken to support pregnant, elderly, disabled and ill voters. It also calls for voter's education targeted at women.

Develop a gender and election strategy to mainstream gender into the work of elections incorporating strategies to promote women's participation among voters, among electoral administration, and among

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84. United Nations, UNSCR 1325 (Paragraph 32), October 2000.

candidates. Ensure a legal provisions particularly to promote participation of women among commissioners in the election commission.

- **Develop a legal framework to address violence against women:** A code of conduct needs to be adopted by political parties to address the violence that women face within the political process. All laws relating to the different forms of violence against women should be consistent and must be implemented effectively.



## ARTICLE 9

### NATIONALITY

#### A. Prevalence of the problem

In Nepal, provisions relating to transfer of citizenship continue to remain discriminatory towards women. Women are yet to enjoy the right of citizenship fully and independently. Though the Interim Constitution of Nepal, 2007 recognizes equal rights in transfer of citizenship to children, a woman does not have equal right to confer citizenship to her children and spouse of foreign nationality as well as children born to them. The Committee on Fundamental Rights and Directive Principles of the Constituent Assembly (CA Committee hereinafter) also responsible for drafting of the citizenship provisions could not come to a consensus on issues relating to recognition of equal rights of women to transfer citizenship to their children and spouses holding foreigner nationality. The provisions were therefore referred to High Level Task Force (HLTF hereinafter) that has been established to resolve the contentious issues. At the time of writing this report the provisions as approved by HLTF continue to remain discriminatory towards women.

#### B. Critical area of concern

- **Women or men independently unable to transfer citizenship based on kinship:** As mentioned earlier, though the Interim Constitution of Nepal recognizes equal rights of Nepali men and women in transferring citizenship to children, in reality many women are unable to transfer citizenship to their children as a matter of right. Lack of clarity in administrative procedures as well as the patriarchal mindset of the government officials, transfer of citizenship remains a matter of discretion of the authorities. Though the Supreme Court which has set precedents recognizing equal rights of women including establishing the rights of *Badi* women to transfer citizenship to their children as well as recognizing right of single women to transfer citizenship to children,<sup>85</sup> women continue to face discrimination.

The proposal of the CA Committee recognizes the equal rights of parents to transfer citizenship to children by descent. The proposal of the Committee reads “An individual whose parents were Nepalese citizens during his or her birth”. However, members of the CA Committee supporting equal rights of women proposed “if either of the parent was Nepalese citizen, the child be given citizenship by descent”. This being one of the contentious issues was submitted to the High Level Task Force (HLTF) for discussion. The HLTF now requires parents, both father and mother to be citizen of Nepal (at the time

85 *Ranjeet Thapa v Government of Nepal*, and *Nakkalie Maharjan v Government of Nepal*, Writ No. 0089 , April 17, 2007

of birth of the children) for transferring citizenship to their children. This provision may complicate the process of transferring citizenship for both men and women but more for women in particular. This is evident from the practices mentioned above where women had to approach the court for the implementation of their rights.<sup>86</sup>

In relation to cases where the a child is born to a Nepali mother whose father is not identified, the proposed provisions of HLTF state that such children may be given citizenship by descent in cases where the child is born and residing in Nepal. However, the citizenship would be changed automatically to naturalized citizenship in cases where the father of such child is identified as a foreigner. This discriminatory provision not only fails to recognize the independent identity of mother but also may result in stigmatizing both mother and child in genuine cases of unknown paternity involving incidents of rape, sex-work, trafficking, migrant women workers, extra-marital relationship.<sup>87</sup>

- **Women unable to transfer of citizenship to spouse of foreign nationality:** The proposed provisions by the CA which guaranteed equal rights of men and women in transferring citizenship to spouses of foreign nationality,<sup>88</sup> the HLTF proposal allows Nepali men to convey citizenship to their wives of foreign origin after they initiate proceedings to renounce their previous nationality. However, in cases of Nepali women married to foreigner, husband can only apply for naturalized citizenship after 15 years of residence in Nepal including the discretion to the government to accept or deny such application. Moreover, no special privileges in relation to visa, employment or business opportunities are available to a foreigner husband.<sup>89</sup> As a result of such stringent provisions, women are left with little choice and either join their husbands or compromise their family life.
- **Women unable to transfer citizenship to children born to couple where husband holds a foreign nationality:** In relation to children born to couple where one of the spouse has foreign nationality, the provisions proposed of CA Committee require both parents to be have obtained Nepali citizenship before the children obtain Nepali citizenship (apply for citizenship).<sup>90</sup> However, reading this provision with the proposed provision relating to acquiring citizenship by marriage,<sup>91</sup> children born to Nepali mothers are not guaranteed right to citizenship even through naturalization. A foreigner father not only requires 15 years of residential requirement but is a matter of discretion of the government to grant him citizenship. In contrast, where the foreigner mother starts process of renunciation of her previous nationality without any residential requirement/pre-requisite, the child can obtain citizenship. This provision also fails to take into consideration the issues of children of Nepali women who separate from their foreigner husbands including in cases of domestic violence.
- **Discrimination in relation to naturalized citizens holding public posts:** As decided by the HLTF, naturalized citizens except for Nepali woman married to foreigner men are eligible to hold public posts except the post of President, Vice-President, Prime Minister, Head of the Federal Legislature and Head of the Federal Judiciary, Head of Security Forces, Head or Deputy Head of Federal State either by election or nomination. This discriminates against Nepalese women married to foreigner as well as children born to these couples.

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86. See footnote 1

87. Review of High Level Taskforce Proposal on Citizenship by UNHCR, unpublished, at page 6

88. The proposal of the CA Committee related to citizenship by marriage, proposes the condition of 15 years of residence clause for both foreigner husband and wife.

89. Except in cases of Indian nationals where the Section 7 of Peace and Friendship Treaty of 1950 between Nepal and India is applicable which allows agree to grant, on reciprocal basis, to the nationals of one country in the territory of the other, the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement and privileges of similar nature.

90. Proposed Article 3(1b) by the CA Committee

## C. Concluding observations

In comment no. 21, the Committee urged the State party to repeal or amend Article 9 of the Constitution 1990, which discriminates against women in the area of citizenship.

### Constitutional Amendment

In line with the Concluding Comment, the government amended the citizenship provisions in relation to transfer of citizenship by descent to children of Nepali mothers. Article 8(2b) of the Interim Constitution of 2007 now states that anyone “whose father *or mother* is a citizen of Nepal at the birth of such person” is eligible for a Nepali citizenship, thus an individual is able to obtain citizenship in the name of his/her mother.

However, according to Article 8(7) of the Interim Constitution, 2007 and Section 5(2), (3) of Nepal Citizenship Act, 2007, children of women who are married to foreign nationals can acquire a naturalized citizenship if “such person is *born in Nepal*, has *permanently resided in Nepal* and *has not acquired the citizenship of a foreign country* on the basis of the citizenship of his or her father.” Thus the Interim Constitution made some limited changes on this issue. The Citizenship application forms and Citizenship certificates now mention both parents’ names as opposed to mentioning father’s name in the past.

Similarly, a number of positive precedents have been laid down by the Supreme Court of Nepal in recognizing equal rights of women in acquiring and transferring citizenship to children in line with the provisions of the Interim Constitution.<sup>92</sup> Recently in a case where the father of a child was unidentified, the SC quoting the Interim Constitution and the Citizenship Act issued an order of Mandamus to District Administration Office asking them to grant Nepali citizenship by descent to the plaintiff as her mother holds a Nepali citizenship.<sup>93</sup> Moreover, the condition requiring a woman below the age of 35 to take consent of a father, husband or guardian to obtain a passport has now been repealed through a Court verdict.<sup>94</sup>

## D. Gaps and weaknesses

- **Non recognition of women’s equal right to transfer citizenship:** The geo-political situation, the open border with India, the size of the country and its population in relation to India are used as justifications for continuing discrimination against women by creating disincentives against their marrying foreigners. However, there is a lack of recognition of women’s equal right to acquire, transfer and retain citizenship. Such discrimination continues to violate women’s rights including to right equality and non-discrimination, right to choice of residence, right to transfer immovable property, right to family life, right to movement, right to choose or continue a profession or business.<sup>95</sup> Three main impacts of discriminatory citizenship laws are: the creation of second-class citizens, the statelessness of women and their children, and psychological and other day to day hardships people face when citizenship is denied.<sup>96</sup>

91. As approved by the HLTf

92. In *Forum for Protection of Public Interests v. HMG Nepal* (2005), the discriminatory birth registration and denial of citizenship for the children of *Badi* women in the Birth, Death and Other Personal Events (Registration) Act, 1977, was challenged. The Supreme Court of Nepal declared the words “male member” of the family appearing in section 4(1) of the Act *ultra vires*. In this case the order of *mandamus* was issued in the name of the government not to deny registration of the birth of the *Badi* children and to make necessary arrangements for conferring them with the citizenship certificate pursuant to Article 9(2) of the 1990 Constitution and Section 3(4) of the Citizenship Act, 1963. In *Ranjeet Thapa v. Government of Nepal*, unpublished, Writ no. 0035, decided on June 26, 2009, the Supreme Court issued a mandamus for issuing citizenship from the mother’s name. In *Nakkile Maharjan v. Government of Nepal*, decision 2064/1/4 Writ no. 0089 of 2063 BS, it was held that a married woman can obtain citizenship from her mother’s name.

93. *Sabina Damai and FWLD v. Government of Nepal*, Writ no. 06/0703 of 27 January 2011, decided on February 27, 2011

94. *Lily Thapa v. Government of Nepal*, Writ no. 34 of 2061 B.S, decided on 2062-8-30 B.S. (December 15, 2005), N.K.P. 2062, vol. 9, p. 1054, decision no.7588.

95. An Update of the *Discriminatory Laws and Their Impact on Women: A Review of the Current Situation and Proposal for Change* FWLD, Kathmandu, 2006; pp. 43-48.

96. Impact of existing Discriminatory Citizenship laws on women and children in Nepal, UNIFEM/FWLD, 2007 And An Update of the *Discriminatory Laws and Their Impact on Women: A Review of the Current Situation and Proposal for Change*, FWLD, Kathmandu, 2006; p. 43

- **Socio-cultural bias:** A deeply rooted patriarchal mind set of the political leaders and the prevalent socio-cultural bias towards woman is also responsible for the continuing discrimination of women in the area of citizenship. The understanding that women once married they go away to the husbands house, wife and children take up the family name and nationality of their husband/father still prevails in Nepal which fails to recognize the independent identity of women and the equal rights guaranteed to women.
- **Complication on birth registration:** Though laws on birth registration is a universal right, in Nepal child with single mother, or mother married to foreigner, refugee or stateless are denied registration as a result their identity is in crisis.

## E. Recommendations

1. The state must recognize through its Constitution that citizenship is a basic right of every human being and not a matter of discretion. In line with its obligations under the CEDAW, Government of Nepal must take immediate steps to amend/repeal all discriminatory provisions against women in acquiring, retaining and transferring citizenship in constitution and citizenship law and ensure implementation of its rights.
2. The new Constitution must recognize the independent right of each parent to provide citizenship based on lineal decent to their children, and the right of both women and men to confer citizenship to their foreign spouse on the basis of equality.
3. Government should respect the decision of the Supreme Court and should implement without prejudices.
4. Birth registration of each child, including child of refugee, foreigner and child of statelessness and child of single mother, or married, should be respected.



## ARTICLE 10

### WOMEN AND EDUCATION

#### A. Prevalence of the problem

Despite several efforts made by both the government and non-government organizations to bridge the gender gap in education, surveys continue to show that women achieve less out of the education system in Nepal. The percent of literate women above the age of 15 years is 33.8 as opposed to 64.5% men.<sup>97</sup> The school drop-out rate of girls of Grade Eight is 20.6 % as against 6.5% of the boys.<sup>98</sup> The major cause for this sudden rise in the rate of drop out among girls is attributed to their start of puberty and lack of friendly atmosphere in the schools. Out of 195,689 students who passed the SLC (School Leaving Certificate examination in Nepal), only 58.78% girls as against 67.91% of boys, passed the examination. To examine age wise, out of women above the age of 15 years, only 32.6% have had an opportunity to be admitted to schools.<sup>99</sup> The scenario is far more alarming in higher education. Out of total 171,593 students in different

97. Nepal Living Standard Survey II, 2005 CBS/GoN, p. 65.

98. The Flash I Report, 2008 Department of Education, 2008; p 34.

99. Gender Disaggregated Statistics, 2010, National Women's Commission, p.28.

institutions under Tribhuvan University, the largest public sector institution of higher education in Nepal, only 34.70% are girls.<sup>100</sup>

The causes that have contributed to the continuation of the gender disparity in education are categorized as follows:-

- **Patriarchal and conservative mindsets:** Discriminatory values and norms against girls and women are deeply rooted in the Nepali culture and society. This is reflected in treatment to girls and women within and outside the families. Daughters are valued less than sons and fewer resources are spent on them. Hence, they receive less by way of education and nutrition and the support that is required to develop their capabilities.
- **Poverty and Economic problems:** About 32 % of the population is estimated to be living in absolute poverty.<sup>101</sup> The incidence of poverty is acute in rural areas where the majority of people live. Poverty prevents families from sending their children to school. In addition Nepal's economy is characterized by 'feminization of agriculture'. Agricultural activities are predominately carried out through traditional means and are labor intensive, casting a heavy load of work on women. When mothers are overworked, daughters are expected to assist their mothers and the contribution of the young girls in the family increases their age.

Although primary education is officially free, in reality, only a nominal amount of tuition fee is waived off. As a result, a certain amount of annual fee needs to be paid. There are other incidental and indirect costs such as admission fees, readmission fees, cost of text books, cost of school uniforms, and exam fees and the total of this is difficult for a poor family to bear. In addition, the opportunity costs of schooling are higher because poor families are not able to manage their subsistence living without the involvement of their children (mainly girls) in agricultural production, non-formal economic activities and household activities. These factors contribute towards undermining the need of education especially among girl children.

- **Absence of a gender friendly environment:** Most of the schools are not gender friendly in terms of physical facilities available. As the children grow up, it is essential to have a separate toilet for girls but most schools in Nepal do not provide separate toilet facilities for girls. Among students, only 47% of boys and 31% girls have access to toilets and it has resulted in the high drop out among girls during their puberty.<sup>102</sup> Only 33.9% of schools have separate toilet facilities for girls.<sup>103</sup> In many instances even where toilets are built, there is no running water. The studies also suggest that the majority of girls, especially at the secondary school level, do not attend school during menstruation if there are no segregated toilet facilities with running water available at schools. This hinders education for adolescent girls. In many schools, there is dearth of space for the students to have adequate space to sit in the classroom where female students feel uncomfortable to sit with male students, especially as they turn into adolescent ages.

Also the number of female teachers is much lower than the number of male teachers. Parents do not feel safe and comfortable to send their daughters to schools where there are only male teachers. The overall percentage of female teachers in all types of schools is 33.2% of which 38.6% teach at the primary level, 24.7% at the lower secondary level and 15.9% at secondary level.<sup>104</sup>

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100. Tribhuvan University, 2008.

101. NLSS-2003/4

102. *Hygiene and Sanitation Master Plan*, Steering Committee for National Sanitation Action, Kathmandu, GoN, September 2010 p.5

103. *School Level Educational Statistics of Nepal, 2008*, Department of Education/MOE/GoN; P.66 available at [www.doe.gov.np](http://www.doe.gov.np)

104. The Flash Report, 2008 Department of Education, GoN, 2008; p 38

- **Uneven geographical distribution of schools :** Schools in Nepal are not distributed evenly across the country. The topography of the country makes it difficult for schools to be accessible to all people. In some places, there are no schools at all; while in other places there are more than one school for a fewer number of children. The distance and the lack of safety also discourage parents to send their daughters to schools.
- **Absence of inclusive school environment:** The differently-abled populations and children living with HIV/AIDS face many deprivations and disadvantages in the school system. Although the Net Enrolment Ratio (NER) has reached 89.1 % in the year in 2007/08, the participation of marginalized girls, *Janjatis*, *Dalits* and children with disabilities is still very low. About 11% of the population in the primary school going age (5-9) are still out-of-school.<sup>105</sup> The percentage of girls, *Janjatis*, *Dalits* and children with disability is the highest amongst the out-of-school population. Several studies have shown that the out-of-school children are a hard-to reach target group.
- **Loss of opportunity to attend school due to the decade old armed conflict:** The decade old armed conflict in Nepal between mid-1990s to mid-2000s also resulted in scores of girls losing the opportunity for education due to internal displacement, loss of livelihood resulting in poverty, sexual violence, target of recruitment by rebels, the destruction of school infrastructure and sheer absence of safety and security for attending schools.

## B. Critical areas of concern

- **Regressive attitudes leading to the gender disparity in education:** Nepal has a patriarchal society where people continue to believe that educating a son is an investment and increases his ability to look after his aging parents while educating a daughter is considered an investment with no return. Therefore, these beliefs and the cash costs of education hold parents back from investing in their daughters and prevent the daughters from gaining formal education. Thirty percent of women stated they never attended a school in their life. Among this group, 38.4% didn't go to school because their parents didn't want them to go to school and 22.2% couldn't go because they had to help in their house.<sup>106</sup>
- **Education for the marginalized girls :** The Government of Nepal is yet to focus on the education of marginalized communities, specially the girls belonging to such communities. Last census done in 2001 indicates that a high percentage of people deprived of education in the country mainly belong to these groups. One such marginalized group is the *Deuki* community living in the far western part of Nepal. Initially, *Deuki* stayed in the temples to keep the temple clean and tidy but it eventually became a form of servitude. Their children are not sent to school due to socio-economic reasons. *Kamlari* girls are another category of girls greatly deprived of access to education. In keeping with tradition, girls from this community mainly become house servants, and therefore, there is no incentive for their families to send them to the schools. Similarly, the *Badi* community who live in the mid and far western regions of Nepal, do not send their children to school and consider it to be a deplorable act for girl children to gain education. As a result, no facilities are provided for the education of *Badi* children.
- Another major group that faces social discrimination is the *Dalits* who are considered to be untouchables and hence not welcomed by other castes in public places and particularly at schools. *Dalit* girls face double jeopardy and are discriminated against in educational institutions on the basis of caste and gender.

105. Flash Report, Ministry of Education, 2007.

106. Nepal living standard survey 2003-04.



- **Scholarship for Girls :** As part of the country's major social, political and economic transformation after the abolition of the monarchy and elections in 2008, around 5% to 7% of the education budget goes towards paying scholarships for women at universities.<sup>107</sup> Although government has adopted a policy of providing NRs. 350/- per annum as scholarship to half the population of 'poor girls' in schools, many schools claimed that they were unable to identify girls belonging to financially poor categories. These schools therefore distributed the available scholarship funds equally to all girls resulting in the allocation of only NRs. 175/- per girl child as opposed to the actual allocated amount of Rs. 350/- per child. As this amount was lesser than what is required to support a girl in school, it discouraged parents from sending their girl children to school.

### C. Concluding observations

In the recent years, the government has stated that education is to be made a national priority. Government has even put forward the slogan: '*Education is a universal fundamental right*' and recognizes it as the basis for forming "new Nepal". The education budget has been increased by nearly 45% in the current financial year. Its targets include achieving 96% girls' net enrolment rate, 66% female literacy rate and 50% female teachers in the schools by 2009. Primary education for all girls and 75% female literacy rate is envisaged by 2015. Among other initiatives, 50% girls are to be selected for scholarships on the basis of poverty, additional grants are to be awarded to the schools that enroll 45% girls and retain them until the end of the school year and also to those schools that recruit up to 50% female teachers.

Many of these strategic programs are new and while they are geared to increase the overall female literacy rate in the country. It can be said that the government strategies and programs still appear to be target oriented rather than output oriented. Improvement in enrolment of the girl child does not mean majority of them would complete their schooling. This is the crux of the problem. There is no mechanism to address the fundamental problem of retaining girl students and making sure that they complete their schooling.

Another weakness of the government report is that it adopts a blanket approach for the education of all the females in the country without recognizing that their ethnic, geographic, economic, socio-cultural contexts differ and that these differences impact on the prospects of them accessing and making the most of their education.

Low enrolment and high dropout rates are specific to certain groups of people in the society, particularly the poor, especially landless people, *Mukta Kamaiyas/Haliyas*, and large section of the society displaced due to conflict. All of these groups lie below an income level of less than \$1 per day and are the groups that need special attention to receive improved access to education but they are not specifically targeted. *Dalits* and *Janjatis* have been covered in the government report, but the other groups mentioned above, have not received equal attention. The government report does not suggest any specific plans to address the fundamental problems associated with extreme poverty that are ultimately responsible for low enrolment and high dropout rates.

There are no educational programs targeted to widows, disable women, single women, women in rural areas and women from socially excluded groups and the state needs to address this as a priority.

### D. Gaps and weaknesses

- **No free and compulsory education :** Despite being a party to a host of international instruments that ensure free and compulsory primary education,<sup>108</sup> the country fails to ensure free and compulsory

107. <http://www.universityworldnews.com/article.php?story=20110122085657708>; visited on Feb 9, 2011.

108. These instruments include ICESCR (Article 13 (1)) and CRC (Article 28(1)).

education to all. The so called free education is not free entirely as the community schools that are supposed to provide free education up to Grade 8 charges the parents with different fees in some or other names. Neither is education compulsory in Nepal. Though parents are liable under law to provide education to their children,<sup>109</sup> there is no policy of compulsory education as such.

- **Inadequate vocational education:** There is a component for vocational education in secondary schools. However, the curricular weighting allocated to the vocational education component is only 14 percent, and this is inadequate to develop skills among school graduates. Despite of obligation under the CEDAW to ensure equal opportunity to women and men in technical education,<sup>110</sup> only 21.12% of girls as against 78.88% of boys have had an opportunity to technical education of higher level.<sup>111</sup> The continuing high dropout rates and low completion rates at secondary school level indicates the need to make the education more relevant to the lives of children. This requires the provision of a separate stream in the schools, focusing on skill and livelihood training. The increasing demand for skilled workers in the local market, for example, carpenters, masons, electricians, plumbers are currently met by the Indian and Bangladeshi technicians.
- **Poor infrastructure in schools:** The government schools of Nepal have poor infrastructure. Most schools in the villages are below the standards. Some of the schools don't even have roofs. Beside inadequate buildings, schools also lack basic requirements such as chalk, and blackboards. About 32% of the schools still lack toilets, which is of prime importance for the hygiene of the students especially that of girl students.
- **Negligence in implementing educational policies for girls and women with disabilities:** The government does not focus on the education for differently-abled women and girls, and does not focus on the vocational education, which women of Nepal, especially the differently-abled women and girls are in serious need.
- **Insufficient proportion of women teachers :** Despite the *Education for All* target of at least 50% of female teachers by 2009, the share of female teacher in community schools is 30.6% in 2006 that increased to 33.2% in 2008, whereas in institutional schools, it was 59.9% in 2006 which has come down to 55.4% in 2008.<sup>112</sup> The percentage of teachers from marginalized social groups (Janjati and Dalit) is in general very low and female teachers from these social groups are lower still.
- **Needs to focus more on Early Childhood Education and Development (ECED):** Currently, there are 24,773 ECED (early childhood education and development) centers in operation including 3,413 centers in institutional schools, catering to 823,106 children. But ECED expansion has largely been limited to the more affluent areas and urban centers.<sup>113</sup> There is a need to concentrate on poverty pockets and provide them with targeted interventions in ECED. In addition the access to early childhood education and development centers will also free girls from their child-care duties at home and free them to attend school.

## E. Recommendations

- Free and compulsory basic education should be provided to all with special efforts to ensure the access to the target groups, i.e. young girls, to education. Free basic education should also mean: no admission fees, no tuition fees, no examination fees, no school uniforms or the free availability of school uniforms and access to textbooks at no cost.

109. Section 4 of the Children's Act, 1991.

110. Article 10(a) of the CEDAW.

111. *Gender Disaggregated Statistics*; National Women's Commission, 2010; p. 25.

112. *School Level Educational Statistics of Nepal, 2008*, Department of Education/MOE/GoN; P.49. available at [www.doe.gov.np](http://www.doe.gov.np)

113. Flash Report, 2008; Ministry of Education, GoN

- Strong public awareness program is to be launched regarding the importance of girls and women's education in Nepal. There should be a concerted gender sensitization campaign.
- Advocacy and support programs for the promotion of compulsory education should be in place to encourage local governments to adopt the policy of free education.
- Steps must be taken to make schools responsive to the needs of girls, especially from the socially excluded groups. The government should take the lead role in creating a supportive environment for girls and other children facing multiple exclusions, such as the *Dalits*, to attend school. Special attention should be paid to provide protection to girls by providing sanitary facilities, ensuring their personal safety by taking measures to curb harassment and bullying practices. All schools should have basic sanitary facilities including toilets, water and changing-room for girls.
- Alternative educational programs and condensed courses should be provided free to allow girls who cannot attend formal schools to keep pace with their peers and to complete the education cycle.
- The different social groups participate and succeed in education at differential rates. To address this issue the government should give special attention to girls and women, and children from educationally deprived groups and differently-abled children so that they can participate effectively and attain good results. Also, considering the richness of indigenous cultures, schools too must place emphasis on indigenous knowledge in their curricula and utilize local resources, including human resources for teaching, in schools.
- The Government should build alliance with local communities, agencies to secure a space for children in their curricula and pedagogical processes.
- In order to increase the female participation in education, government should focus more on providing more scholarship scheme for females; increase per capita scholarship amount, increase the number of scholarship recipients adhering to the socially excluded groups and ensure that the scholarship reaches the targeted groups/individuals
- Schools should be located in areas where they can be easily accessed by the target community. Set norms in terms of distance, time to-n-fro school, in terms of safety and security of girl students while commuting to school, etc.
- More financial resource should be allocated to the education sector as this is the greatest investment the country makes towards a better future. Allocated budget should be monitored for its appropriate use.
- There should be regular assessments of the achievements by the above-mentioned institutions in improving girls' education with a focus on identifying the factors that may be hindering their success.
- Curriculum and textbooks that promote gender equality, mutual understanding and collaboration between men and women should be adopted at all educational institutions in the country.

## ARTICLE 11

### EMPLOYMENT

#### A. Prevalence problems

It has been well established that economic empowerment of women contribute to the health and productivity of whole families and communities and to improved prospects for the next generation. However in Nepal, women's earned income has been noted to be only half that of men with very little change since 2005: i.e. 1309 for men and 794 for women ( see below chart). Women lag behind men in terms of wages as well.

#### Income and wages (1995/96-2003/4)

Indicators\years	1996	2004-7
<b>Per capita purchasing power parity US\$</b>		
Men	Na	1309 (2007)
Women	Na	794 (2007)
<b>Agricultural wages (Current Prices)</b>		
Male	44	85
Female	35	65
<b>Non-Agricultural Wages in NRs (Current Prices)</b>		
Male	76	137
Female	57	101
<b>Female/Male wage ratio</b>		
Agriculture	0.80	0.76
Non-agriculture	0.75	0.74

Sources: UNDP(HDR) 1995, 2004 and 2009(<http://hdrstats.undp.org/en/indicators/123.htm>), CBS/NPC/NLSS, 2003/4 for wage rates.

Women in Nepal are largely found to be employed in the agricultural sector due to predominance of subsistence agriculture and male migration from the hills, poverty and the cultural composition of the population. Women constitute 48 per cent of the agricultural and 34 per cent of the non-agricultural labour force.<sup>114</sup>

#### Women Involvement in Agriculture and non- Agriculture Sector

Sector	Male	Female	Total
Agriculture	28.5	63.7	
Non-Agriculture	71.5	36.3	
<b>Total</b>	<b>100.00</b>	<b>100.00</b>	

Source: CBS, Nepal National Life standard Survey 2005 P. 60

114. Gender Equality and Empowerment of Women in Nepal, UNFPA, 2007

This data is still widen due to huge migration of male population are continuing going foreign country for work.

The Interim Constitution of Nepal 2007, Article 13 (4) including previous Constitutions, guaranteed equal remuneration for male and female. However it is not been practicing specifically on informal sector where women are working on large number. While the subsistence sector is becoming more feminized it is not favourable from a gender perspective, as it suggests further segregation of women to low paying activities. In non-agricultural sector, also informal, women are concentrated at low paying and less productive, low capital-intensive jobs.<sup>115</sup> Most labour regulations are avoided by employing women at piece rates.<sup>116</sup> According to government data. Only 4 percent employees are working on formal sector which guaranteed at least certain types of social security's and remain 96.01 work forces are working on informal sector. Regarding formal sectors also, there is not well protection which is stated or demanded for favourable environment like well protecting anti sexual harassment laws, equal and sufficient maternity leaves and other required supportive measure like only one law, Act to provide Service Terms, Remuneration and other Facilities for Judges of Appeal Court, 2003 provide 96 days maternity leave while other laws provide 46 to 60 days.

Overall, women earn about three quarters of what men earn both in agricultural and non-agricultural sectors. The ratios in both sectors have declined from 1995/6. Detailed studies show appalling conditions in some industries and industrial units, particularly in carpets and garments, the major exports and main spheres of women's manufacturing employment.<sup>117</sup>

Women's employment in formal sectors is also found to be low. Given below are a comparative percentage of women in some of the key government services:

<b>Data of Law Practice (Advocate)</b>			
	<b>Male</b>	<b>Female</b>	<b>Total</b>
Senior Adv	100	3	103
Adv	12035	1080	13115
Pleader	9039	693	9732
Agent	1088	5	1093

Source: Nepal Bar Association, 2011, April

<b>Data of Civil Service</b>				
<b>S.N.</b>	<b>Level</b>	<b>Number/Percentage</b>		<b>Total</b>
		<b>Male</b>	<b>Female</b>	
<b>1</b>	<b>Gazette Officer</b>			
	Special Class	80/95.24	4/4.76	84
	First Class	488/96.63	17/3.37	505
	Second Class	2686/95.93	114/4.07	2800
	Third Class	8638/91.72	780/8.28	6601

115. Central Bureau of Statistics/NLFS, 1999

116. Acharya, 2005; GDS\FES, 1997; GEFONT, 2003

117. Gender Equality and Empowerment of Women in Nepal, UNFPA, 2007

<b>2 Non-Gazette Officer</b>			
First Class	13527/87.07	2009/12.93	15536
Second Class	15575/82.52	3300/17.48	18875
Third Class	4646/63.7	2648/36.3	7294
Fourth Class	779/96.64	25/3.36	744
Classless	20458/93.02	1536/6.98	21994
<b>Total</b>	<b>66817/86.49</b>	<b>10433/13.51</b>	<b>77250</b>

Source: Public Information Service (PIS), Harihar Bhawan, Nepal, Data up to April 2011

#### Public Attorneys

S.N	Post	Number/Percentage		Total
		Female	Male	
1	Attorney- General	-	1/100%	1
2	Special Class	-	4/100%	4
3	First-class Nyayadhibakta	-	27/100%	27
4	Second-class Nyayadhibakta	-	92/100%	92
5	Third-class Nyayadhibakta	7/5.52%	120/94.48%	127
	<b>Total</b>	<b>7/ 2.8%</b>	<b>243/ 97.20%</b>	<b>250</b>

Source: Office of Attorney General, Kathmandu 2067

#### Judicial Services

S.N	Post	Number/Percentage		Total
		Female	Male	
1	Special Class	-	2/100%	2
2	First-class	-	21/100%	21
3	Second-class	1/0.9 %	110/ 99.1%	111
4	Third-class	13 /7.35%	164/ 92. 65%	177

Source: Annual Report, Supreme Court of Nepal, 2067

#### Law Services

S.N	Post	Number/Percentage		Total
		Female	Male	
1	Special Class	-	4/100%	4
2	First-class	-	15/100%	15
3	Second-class	2/ 3.4 %	58/96.6%	60
4	Third-class	6/ 10.9%	49/ 89.1%	55

Source: Annual Report, Supreme Court of Nepal, 2067

After Parliament's proclamation and adoption of Interim Constitution, there were few legal changes in Nepal Civil Service Laws and Nepal Police Force which provide special measures in the recruitment process. Under this, 45 % seats are reserved for women, indigenous, ethnic communities, *Madhesis*, *Dalits candidates*, disabilities and marginalized groups. Out of this, 20% seat is reserved for women who counted in the total percentage of women employment. In Nepalese Army there are total of 1070 female all ranks which make 1.2% of the total army strength. Nepal Army aims to maintain 5% female work force of the total strength of the army. Among total officers of Nepalese Army female officers occupy 6.44%. (<http://www.nepalarmy.mil.np/wia.php> as of August 09, 2010 AD). In Nepal Police, there is 3106 (i.e. 5.5% of 56064 police personnel). (Source: Police Head Office, Naksaal, 2064)

In recent time, women migration for foreign employment has risen significantly. An official data shows 8712 women went for foreign employment in the year of FY 2008/09 comparison to 208,452 male. Since 2004 to June 2010, 23,725 women compare to 943,918 male are gone overseas for foreign employment which is 2.5 % of total migrants.<sup>118</sup> There is a restriction on women going to Arab countries for employment for domestic work<sup>119</sup>, however women often emigrated via India or other third country. An unofficial data shows that almost 140,500 women are working in foreign countries including 63,000 at Saudi Arabia.<sup>120</sup> Women as migrant workers have however often been found to be exploited and trafficked for sex work.

Lastly, household maintenance and childcare as work that is often not considered employment or economically accounted for; seem to fall primarily under women's responsibilities. Not much change is visible in allocation of household responsibility, irrespective of whether women are economically active or not. Women contributed 86 per cent of the total household care time in rural areas in 1984/5 (NRB, 1988). Similar estimates from the Nepal Labour Force Survey (1999) show that women contributed 84 per cent of such time (Annex 2.3) on a national level. Even urban working women accounted for most of the time spent on such activities.

## **B. Critical areas of concern**

**Women are still in traditional and stereotypical role:** Majority of women employed in public sector are not at decision making levels. In civil service, 449 out of 8764 women are of officer level and remaining 95% are as clerk and classless level. In private sectors and informal sectors women are largely assigned lower paid and unskilled jobs. The employee percentage of women in every sector including teaching, tourism, sports and technology is very low. Additionally women are known to spend much more time than men in subsistence activities and domestic work. They spend about 13–14 hrs per day as unpaid family workers. Due to lack of technical/ vocational skill training, most women are involved in clerical roles.

- **Lack of safe and healthy working environment:** Sexual harassment at the workplace is a deterrent for women seeking employment and severely curbs their economic rights. There is new provision incorporated in Country Code to address the issue of sexual harassment but it is very weak as complain has to be made in the court, and there is a discretionary power in punishment as a result not even a single case has been registered in any court <sup>121</sup>. A new Bill is at present under the purview of the legislation committee in the parliament; however the Bill in its current form continues to fail in creating accountability for employers or laying strict regulations relating to adoption of guidelines and safeguards at workplace. These factors continue to pose as threat to women's access to redressal services and create additional vulnerabilities while seeking justice.

118. Progress Report of Foreign Employment Department of Foreign Employment, 2067 (2010)

119. Government Circular

120. NHRC's National Report on Trafficking in Persons especially on Women and Children In Nepal 2008-2009. NHRC, Nepal, June 2010. P. 36

121. No. 1 of the Chapter on Attempt of Rape provides punishment up to one year and up to NRs 10,000/- fine. Court may also order to compensate victim by perpetrator as it's discretionary.

- **Foreign Employment and Involvement of Women:** After two decade regressive legal provision, the Foreign Employment law is reformed and replaced by the New Foreign Employment Act, 2007. The new Act contains certain provisions regarding protection of women from being trafficked in the name of migration. The Act prohibits sending or going for foreign employment through unlicensed agents and if women are sent through such agents, there will be a penalty in cash and stringent punishment will be enforced.<sup>122</sup> It requires that the workers going for foreign employment should use the national airport and in case they have to use another country's airport, they have to get the approval of the Department of Foreign Employment.<sup>123</sup> Further, Government banned foreign employment on domestic work for women on Middle East Countries; however unofficial data shows more than 90% women are working in these countries. Similarly the Foreign Employment Regulation, 2007 requires Female Labour Attaches to be deployed among qualified female officers to those countries where more than thousand or above women migrant workers are sent.<sup>124</sup> However, not a single female attaché are deployed till to date. The Report of the Special Rapporteur on Trafficking under the National Human Rights Commission indicates that implementation of the law is extremely low and state compliance regarding reporting and monitoring almost nil<sup>125</sup>.

### C. Concluding observations

- **Wage discrimination:** The Committee is concerned about the gender disparity in wages and the unequal income distribution<sup>126</sup>, is addressed by the Constitution itself and further guaranteed equal social security between men and women for the same work.<sup>127</sup> In *Ramsakhi's case*<sup>128</sup>, the Supreme Court of Nepal further protected equal wage between men and women for the same work and discrimination of wage is against human rights principles and workers have a right to voice against such discrimination. However, there is still huge gap in wage in informal sector which is about 96% of total employment sector. Women's domestic work is still not accounted and many other works are still unpaid.
- **Continuation of credit programmes:** Committee's concern regarding to develop special credit facilities for women to enable them to establish small enterprises and that it introduce special measures to encourage women to participate in all sectors of employment<sup>129</sup>, also addressed by the Government and it continued its activities thorough Production Credit for Rural Women (PCRW) which now covers 1843 VDCs and 32 municipalities of all 75 districts of the country<sup>130</sup>. This program particular care has been given to the landless, female-headed households, destitute and disadvantaged women and their families. The main objectives of the programme are to improve the economic and social status of women in society, to facilitate the integration of women into a regular service delivery system for credit training, technology and technical services, Department of Women Development is coordinating to obtain collateral-free loan through participating banks.
- **Women's Development Program:** Department of Women Development also initiated women's development program aiming to economic and social development of poor women through making

122. Section 10 and 46 of the Foreign Employment Act, 2007.

123. Section 22 of the Foreign Employment Act, 2007.

124. Rule 43 of the Foreign Employment Regulation, 2007.

125. Trafficking in Persons Especially on Women and Children in Nepal, National Report 2008 – 2009, Office of the Special Rapporteur on Trafficking in Women and Children (OSRT), NHRC

126. Concluding Comment No. 39 of the CEDAW on initial report of Nepal, (CEDAW/C/NPL/1), July 15 and 18, 2000.

127. Article 13(4) of the Interim Constitution of Nepal, 2007.

128. *Ramsakhi Kumari Mahto v. Small Agriculture Cooperative Ltd., Naktajhing, Dhanusha* Writ No. 3469 of 2060 B.S. (decided on 2065-03-01 B.S.).

129. Concluding Comment No. 40 of the CEDAW on initial report of Nepal, (CEDAW/C/NPL/1), July 15 and 18, 2000.

130. Source Department of Women Development, Lalitpur, Nepal, 2066.



women's groups and make savings along with women awareness and income generation programme (Jagrity) from FY 2005/06, and reached on 15,058 wards of 1901 VDCs and 32 municipalities covering all 75 districts of the country till FY 2008/009. Under this program, till date 54,350 women's groups have been formed in which 3,43,249 women (dalit 13%, Janjati 34%, and others 53%) are affiliated. Out of such groups, 752 groups are registered as cooperatives and 442 groups are in the process of registration. DWD also conducted various trainings and workshops on gender related issues to empower women from these groups<sup>131</sup>.

- **Special Measures:** The Interim Constitution of Nepal, 2007 provides that the state shall make special provisions by law for the protection, empowerment or advancement of women.<sup>132</sup> Furthermore, under its state policies, it requires state to pursue a policy of encouraging maximum participation of women in national development by making special provision for their education, health and employment.<sup>133</sup> As a result, out of constitutional provision, 601 elected/nominated members of the Constituent Assembly (CA), 197 are women (32.77%). Moreover, inclusion of women in different levels of Executive Committees of the political parties is one of the pre-conditions for the political parties to get recognition as a political party from the Election Commission.<sup>134</sup> Further Legislative Parliament also issued a proclamation to ensure 33 percent women participation in each state mechanism. There are few institutions already amended their employment policy increasing employment percentage. However, there is still a big gap in such amended laws and many other laws still not complied with such proclamation.
- **Support mechanism for advancement in Civil Services :** Ministry of Women, Children and Social Welfare arranged special preparation session to women candidates for joining civil services on a yearly basis since 2059 B.S. Similarly, the Department of Women Development (DWD) also providing special classes to the women's development officers and staffs (in total 643) of all the 75 districts for the examination for making their job permanent.

#### D. Gaps and weaknesses

- 33% reservation at all structure is still not properly implemented even in governmental organization
- Effective implementation and monitoring system to implement constitutional rights and also rights provided by rights assured by national labour law for equal remuneration.
- Adequate laws of equal payment of equal work between men and women in informal sectors to, which is a major reason for women are discriminated.
- Due to lack of de facto ownership in property of women, there is still low women involvement of women in employment sector.
- Women friendly working environment is another lapse. Due to this women are distracting from organized or formal sector including child care room, supporting provision for women with child.

#### E. Recommendations

- Ensure women's participation in every sector by ensuring 50% reservation raising current 33%.
- Ensure legal provision that create women friendly working environment.

131. Source Department of Women Development, Lalitpur, Nepal, 2066

132. Article 13 (3) of the Interim Constitution of Nepal, 2007.

133. Article 35(8) of the Interim Constitution of Nepal, 2007.

134. Article 142(3) (c) of the Interim Constitution of Nepal, 2007.

- Enact and implement of Anti Sexual Harassment law at Workplace.
- Create mechanism to monitor and punish the practice of wage discrimination on the basis of gender especially in informal sectors.
- State should create the supportive environment including tax exemption and subsidy/discount on women created goods and services.
- Government should organize income generate training for the women that would be helpful to the women empowerment.
- Small scale women entrepreneurs should be given trainings of new technologies so that they can raise their productivity.
- State should encourage commercial banks to provide loan to certain sector including women as priority area/ their corporate social responsibility..
- Mandatory provision for industries those with large scale investment to create facility of child care center and other supporting measure in the office area should be provided to the women worker.
- Adequate utilization of local source and instruments and create peaceful environment for work to the women.



## ARTICLE 12

### HEALTH INCLUDING REPRODUCTIVE HEALTH

#### **A. Prevalence of the problems**

Despite efforts made by the government to make health services people-friendly and reliable, the services are still very poor. The health system is badly managed, lacks financial resources, availability of trained staff and a proper supply of medicines and equipments. The armed conflict destroyed many facilities in the rural areas and no investments were made in the health service during that period. Health care is increasingly commercialized and out of reach for people in the rural areas. Furthermore, the delivery of health care is not designed to meet the needs and circumstances of women. Information on available health services is limited and people are unable to access even the minimal services provided.

In Nepal, almost two third of all the Disability Adjusted Life Year (DALYs) losses are caused by infectious diseases and maternal, pre-natal and nutritional problems.<sup>135</sup> An additional medical condition incapacitating adult women is the prolapsed uterine which triggers higher levels of morbidity. Higher incidence of prolapsed uterus and fistula occur in women who deliver their babies at home with the help of untrained birth attendants.

Data collected from outpatient services of tertiary level hospitals adds to the available information, but Nepal only has a rough picture of gynecological diseases suffered by women. A hospital based study from the Maternity Hospital in Kathmandu reports that out of the total 1147 gynecological patients visiting the hospital,

135. National Health Sector Programme – Implementation Plan, 2004

9.6% were found to suffer from prolapsed uterine (UP)<sup>136</sup>. These are medical conditions that can be avoided if proper gynecological facilities are available to women during their reproductive cycles.

Nepal stands out in the South East Asian region as a country threatened by the tobacco epidemic with high smoking rates prevailing among adults (27.1%). The prevalence of smoking among women (22.6%) is the highest reported of all South-East Asian countries<sup>137</sup>. Smoking "we ha", a more harmful form of tobacco, is common amongst the women in Nepal. Women smokers in Nepal spend at least 15% of their income for cigarette smoking. Due to the habit of smoking or inhaling second hand smoke, women suffer from cancer, heart diseases, chronic obstructive pulmonary diseases, respiratory diseases and lung diseases.

## **B. Critical areas of concern**

- **Access to health care facilities:** The Government is committed to establishing a strong primary health care system and to providing free medical and free maternity services. However, a proper mechanism of putting this in place is lacking. There are no organizations and no management system of offering of the health service which are gender sensitive and can be accessible by all. Also the geographical and demographic realities of Nepal have not been considered during the design phase of the necessary health services. On top of that the monitoring and evaluation mechanisms are very poor and negligible.

The lack of trained health care personnel is a major challenge for the country. There is one doctor for 10,439 people and one nurse for 4987 people. There are approximately 837 traditional health care providers, 54,000 Female Community Health Volunteers and 14,951 Trained Traditional Birth Attendants<sup>138</sup>.

In some remote areas, like the far west and the Karnali Zone the ratio of doctors to patients is one for 100,000 patients.

- **Maternal Mortality and Morbidity:** In spite of all the challenges and civil war in Nepal, with a strong effort from the Government and private organizations, maternal mortality has been reduced to 281 for every 100,000 from 539 for every 100,000 live births<sup>139</sup>, yet these figures are still considered to be among the highest around the world. Only 19% births are administered by trained birth attendants and the majority of babies are delivered in the homes and under very unhygienic conditions. In areas like the Karnali region and far western regions of Nepal, The maternal mortality rate is much higher than the national average due to the poor health care services.

Severe malnutrition; Early marriage (the average marriage age for girls being 17yrs); Frequent pregnancies; Heavy work load during pregnancy; Unsafe child delivery processes; Poor access to health care services; Low awareness of nutrition; Family planning and health issues; Preference of son in the society and general discrimination against women have contributed to high female morbidity and mortality. The same factors are also responsible for high neonatal mortality rate (33/1000 live births), infant mortality rate (48/1000 live births), and under five mortality rate (61%). Prolapsed uterus (7% in 2006) is a major health hazard.

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136. Ranabhat. R, Study in risk factors belief, and care practices of women with utero-vaginal prolapse, TUTH, 1996

137. World Health Organisation (WHO), 2008

138. Revitalizing Primary Health Care, Country Experiences, Nepal

139. Nepal Family Health Survey, 1996

## Adolescent Health

Adolescents population aged 10-19 constitutes 23 percent of Nepalese population (Source: Central Bureau of Statistics, Population Monograph, Nepal, 2003). Early marriage, early pregnancies, anaemia are other problems faced by this groups of population. Adolescents maternal mortality contributes about 20 percent of maternal age and half of them occurring as results of unsafe abortion (Source: Family Health Division, Ministry of Health, 2006, Nepal Demographic Health Survey, NDHS, 2006). Among HIV positive registered (10-19 years), 53% are girls, although generally the house wives are at more risk. (Source: Comprehensive Sexuality Education to Promote Young Women's Health in Nepal - Upama Malla, May 27, 2009).

- **Gender discrimination and malnutrition:** Malnutrition is one of the major problems faced by women in Nepal. Of the babies born, 14.3 % babies are underweight<sup>140</sup> and this in turn leads to development of many problems. Girls and women are discriminated by being given less food than their male counterparts. As a result the nutrition they receive at home is not enough compared to the large amount of workload they are assigned. This causes nutritional stunting, delays in menstruation (reported by 49% of girls), low body mass index and anemia (reported to be prevalent amongst 36% of the girls between the age group of 15 – 49 yrs).<sup>141</sup>

- **Impact of gender based violence on the health of women**

### Domestic violence

Domestic violence against women, including beatings by husbands, dowry-related murders, and physical and psychological harassment by families is rampant in Nepal.

The most common causes of domestic violence include: violence in the name of culture and tradition, economic abuse, dowry-related hostilities, resistance to the husband's second marriage, assaults on women accused of being witches, and disputes involving properties..<sup>142</sup> Cases of acid burning are also reported.

Cultural practice of keeping women in cowshed or out of home in a hut called "*choupaadi* " (during menstruation and after delivery of a child ) still exists in Far Western region of Nepal. This has impacted the Reproductive health of both adolescents girls and women negatively.

Because of such cultural practices and poor health of women, maternal morbidity specially prolapsed uterus among women in the rural areas is very high. Women have been neglected and get further victimized to domestic violence because of this.

### Physical disabilities

Many women suffer from post conflict trauma as well as physical disabilities due to the violence they suffered during the conflict<sup>143</sup>.

### Mental health problems face by women

As women all over the world, women in Nepal do suffer from depression, anxiety, suicidal attempt but in comparison to men less women seek help from the mental health specialists.

140. NDHS, 2006

141. NDHS, 2006

142. Nepalese Women Under the Shadow of Domestic Violence, Sanjaya Dhakal, Global Sisterhood Network, 2008.

143. Fact Finding Report on Women's Human Rights Violations in Conflict Areas, WOREC, 2002.

Suicide has emerged as one of the cause of death among women in Nepal aged 15-49, outranking other causes such as accidents and disease, according to a government study. According to the report entitled "Maternal Mortality and Morbidity Study, Ministry of Health and Population, 2008-09.

In some parts of Nepal, women are tortured if they "do not produce a son' and another reason of VAW is excessive alcohol consumed by men.

### **Internally displaced (IDP), refugee women and health**

Due to the armed conflict, many families are internally displaced persons (IDPs) or become refugees in foreign countries. These moves affected women disproportionately as they became vulnerable to further abuses such as trafficking and sexual abuse.

IDP and refugee women were known to be victimized in many ways. They were abused verbally, sexually, physically and mentally within the camps. The absence of male family members in several families increased the vulnerability of the women, leaving them to provide the income for their families as well as ensure security in an unstable political and social environment. Many women were found to have suffered from various mental health problems such as neurosis, stress related and somatoform disorders (47%) and mood [affective] disorders (26%).

### **Challenges on family planning**

The ongoing family planning programs are on-going and supported by the Government of Nepal, and the INGOs. There is an increasing trend of contraceptive use. The rate of contraceptive use in 2001 was 39.3 percent rising to 44 per cent in 2006. However, 25 percent needs of the married women at present are not met and this poses significant challenges to the effectiveness of the program.

The unwanted pregnancies continue to be high due to the unavailability of contraceptives and low awareness about their use especially in the remote areas. These are the major obstacles to the use of contraceptives resulting in unwanted pregnancies. Women are reluctant to use the health posts set up in rural areas because most of them lack proper counseling systems with female health workers

Besides these, there are cultural barriers against the free movement of women and their ability of making independent decisions on contraception.

Permanent methods of family planning are mostly used by women. These exists a perception that if men are to use the family planning methods, it will result in sterilizing their libido and their sexual potency will decrease making them physically weak and will not be able to do hard work .This wrong perception has hindered the achievement of good results of family planning.

### ■ **HIV/AIDS**

The prevalence of HIV/AIDS is precariously high amongst certain population groups such as: female sex workers (2.3%), men who have sex with men (3.2%), migrant Workers (1.4%), housewives of migrants (3.4%) and injecting drug users (34%). Research is not comprehensive but according to UNAIDS in 2009 estimates 63,500 people are infected with HIV. The prospect of the infection multiplying is the biggest threat factor but there are limited resources to treat the patients and to spread awareness and understanding of its causes and consequences. The low awareness about the disease is a major challenge. However, due to the stigma and discrimination related to HIV/AIDS, persons living with HIV/AIDS (PLWHAs) are deprived from accessing the minimal services currently available. Besides being a health issue, different social factors, such as stigma, discrimination, inclusion, empowerment have also factored in the increase of HIV and AIDS infection.

## ■ Gender Discrimination in Health Care system

Gender Discrimination in health care and its access because low priority is given to women well being and health. In Bir Hospital, the largest referral hospital in Nepal, 94 % men and only 6 women are admitted for kidney transplantation (KT) though both men and women suffer from the problem in equal number. In Teaching hospital 75% men were admitted for Kidney transplant and only 25% women.

## C. Concluding observations

- **Interim Constitution guarantee right to health of women:** The Interim Constitution of Nepal guarantees the right to health as a fundamental right. It states that every citizen shall have the right to receive basic health services free of cost from the State as provided for in the law.<sup>144</sup> Furthermore, the Interim Constitution contains a separate article that recognizes women's rights, as fundamental rights, including the right to reproductive health and reproductive rights.<sup>145</sup>
- **Free health care services to be provided to poor women:** To achieve the objectives of providing health development to all, the Three Year Plan (2064/65 – 2066/67) adopts a strategy to expand and strengthen the free health care services for poor, socially disadvantaged women and indigenous people.<sup>146</sup> The Plan envisions expanding basic emergency obstetric care facilities up to the PHC (Primary Health Center) level and in additional hospitals as well. The Maternity Incentive Scheme applies to institutions in both the private and NGO sectors. Other activities under the Plan, which aim at reducing the maternal mortality rate, includes among other initiatives, the utilization of trained health care workers for delivery, the expansion of abortion services to all 75 districts of the country,<sup>147</sup> and raising awareness of the norm that small families are desirable. In addition advocacy campaign are conducted in local languages on the importance of female education, the use of family planning methods, the desirability of late marriage and of prolonged breast feeding, and on nutrition and other reproductive health issues.<sup>148</sup>

The Plan also focuses on: increasing access to contraceptives in places where family planning services have not reached, reducing unmet contraceptive needs and ensuring that an appropriate balance and mix of contraceptive methods are adopted. To achieve these ends, family planning services are recognized as an integral component of safe motherhood and safe abortion services are to be included as an integral component of hospital services. An active partnership with NGOs and the private sectors is developed to further achieve these ends.<sup>149</sup>

Another focus of the Plan is on Adolescent Reproductive Health, which emphasizes safe sex behavior and discourages adolescent pregnancies.<sup>150</sup> It also commits to health research and to mobilizing resources so that at least 1% of the health budget will be allocated to health research.<sup>151</sup>

- **Judicial interventions to make abortion services accessible”** In May 2009, the Supreme Court of Nepal ruled that the country’s government should make abortion accessible by setting up a fund for poor and rural women and investing resources to meet the demand for safe abortion services.

144. Article 16 (2) of the Interim Constitution of Nepal, 2007.

145. Article 20 (2) of the Interim Constitution of Nepal, 2007.

146. No. 6 and 8 of the Three Year Plan (2064/65 – 2066/67), Ministry of Health and Population, Government of Nepal, 2064.

147. No. 9.2.1 of the Three Year Plan (2064/65 – 2066/67), Ministry of Health and Population, Government of Nepal, 2064.

148. No. 9.10.1 of the Three Year Plan (2064/65 – 2066/67), Ministry of Health and Population, Government of Nepal, 2064.

149. No. 9.2.1.3 of the Three Year Plan (2064/65 – 2066/67), Ministry of Health and Population, Government of Nepal, 2064.

150. No. 9.2.1.2 of the Three Year Plan (2064/65 – 2066/67), Ministry of Health and Population, Government of Nepal, 2064.

151. No. 9.8.1 of the Three Year Plan (2064/65 – 2066/67), Ministry of Health and Population, Government of Nepal, 2064.

In addition, the Court also directed the government to ensure that all women are well aware that abortion is no longer an offence and that there are safe services available to them.<sup>152</sup>

Similarly, in response to the writ petition challenging the existing abortion laws as discriminatory against men because it allows a woman to terminate pregnancy without the consent of a spouse, the Supreme Court upheld a woman's right to abortion by dismissing the case.<sup>153</sup> Given that unsafe abortions are a cause for high maternal mortality rate in Nepal, both decisions of the Supreme Court are progressive and important. They reiterate to women that abortion laws have changed, abortions are legal and accessible to poor and rural women as well.<sup>154</sup>

- **Health survey provides sex disaggregated data:** The National Demographic Health Survey (NDHS) conducted in 2006 by the Ministry of Health and Population provides sex-disaggregated data in terms of women's health status and their access to health care services. Further, it also provides information about the health status of rural women. According to the NDHS, the life expectancy of Nepali women has increased to 63.7 years, and is comparatively higher than Nepali men. Also, the maternal mortality rate and fertility rate is reduced to 281 per 1,00,000 women and 3.1 percent respectively. The infant mortality rate in 2006 was 48 per 1000 live births.<sup>155</sup>
- **Safe abortion and Maternal death:** Since 2004, abortion services have been provided by the government of Nepal in collaboration with other INGO's, more than 300,000 safe abortions have been performed in Nepal and the data shows that many women from the villages and semi urban areas are also taking the services it has impacted positively in their RH.
- **Training on Gender-Friendly Reproductive Health:** Department of Women's Development conducts gender-friendly district-level training on reproductive health for the members of women's groups. The training covers a wide range of issues including, reproductive rights; prolapsed uterus and measures to control it; and HIV and AIDS, its modes of transmission, and measures to control it. Under the program, a reproductive health fund which can be mobilized by the women's groups has also been established.
- **Role of Media to create awareness on Women health and Reproductive Health:** For the last five years media has shown great interest and has been reporting with special focus on RH and sexual health. There is a special organization of Health Journalists and it has given training to 200 journalists from all over Nepal on health issues and Reproductive health issues. In comparison to other South Asia countries, Nepal has shown progress in this sector.

#### **D. Gaps and weaknesses**

- **Poor access to health care systems:** Most of the health posts and hospitals in the rural areas are located far from various settlements. Therefore people have to walk for a day or more to reach the place where health services are accessible. The health centers have low capacity and cannot cater to the needs of those seeking services especially the women.

Most health posts located in the remote areas are poorly equipped and do not provide good services. Therefore local people have a concept that it is not worthwhile to visit such centres.

Lack of female health workers is another barrier to women accessing health care facilities. The culture makes it a social taboo for women to be examined by male health care providers.

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152. Laxmi Dhikta and others v. GoV., writ filed on year 2008, decided on May 2009.

153. Achyut Prasad Kharel v. GoV., Writ no. 3352 of year 2061 B.S. (decided on 2065-4-20 B.S.).

154. The maternal mortality rate of women has been reduced to 281 per 1,00,000 women

155. National Demographic Health Survey (NDHS), MOHP, 2006.

- **Poor health care facilities:** Most of the health posts and hospitals in rural areas have very poor health facilities. They lack proper infrastructure such as beds, clinical laboratories and medicines, or doctors, nurses and other health workers

Despite the Government policy to provide free and safe delivery services to women, it has not allocated a budget to make this a reality. Women do not have the resources to travel to the Government hospitals for their delivery and stay the number of days that are required before and after delivery.

The government does not monitor and supervise the health system adequately. The supply of medicine is poor and medicines that require cold storage are not properly maintained due to the power cuts..

- **Unavailability of health insurance schemes:** Few people have health insurance as they find it expensive. Private health centers operate as commercial ventures and are not affordable to the majority of population. Unless the government sets up a social security system the poor, poor women and girls will not have access to health. Health is a vital issue to the prosperity and development of the nation.
- **Limited care facilities for patients with HIV / AIDS:** There is a shortage of trained personnel to treat HIV and AIDS patients. The very limited number of care treatment centers and facilities for HIV/AIDS patients that exists are in the capital and major cities. There are only 15 PMTCT (Prevention from Mother to Child Transmission) centers which are not sufficient to meet the national needs.
- **Alternative methods of health care are neglected:** Women's health issues are mostly seen from point of view of western medicine. The indigenous practices and other ways to promote wellness and treat ailments and prevent disease are neglected and not addressed though government policy. A larger chunk of rural population still use herbal medicines and traditional medicine and many of these are cheap and easily administered. No research is conducted to document their benefits and how and when they may be safely used
- **No laws relating to the control of tobacco usage:** A law on tobacco control is yet to be adopted by the Parliament on the basis of Nepal's obligation as a party to the Tobacco Convention. A bill has already been drafted and finalized and adopted by the Legislative Committee in the Parliament but is yet to be formally adopted by the full house of the parliament due to political instability. However a guideline on tobacco control and regulation in September 29, 2010 has been issued by the government to control tobacco usage.
- **Women with disabilities and Reproductive Health:** This issue is reflected in policy but in practical side none of the health centers have special program neither the health workers are trained to provide services to the women with disabilities
- **Poor monitoring and evaluation of the health posts and hospitals:** Lack of monitoring and evaluation of the health posts and hospitals have greatly jeopardized the public health system and health professionals and middle level health staff do not stay at the duty posts specially in rural and remote areas

## **E. Recommendations**

- Provide quality health care facilities free of charge or with minimum charge for poor women since basic health right is recognized as a fundamental right.
- Make abortion safe, accessible and affordable so that it enables women to avoid unwanted pregnancies. At the same time information should be provided to women that abortion should not be used as family planning methods and they should be made aware of the alternative methods of contraception. Mass media should be utilized to disseminate the information and for changing social mindset.



- Prioritize adolescent focused health programs including reproductive health awareness through mass media. The Reproductive Health program should include health programs for women of menopausal and post menopausal age (after 45-50). On an average age life expectancy for women in Nepal has increased, they need to live a healthy life in the many years after menopause as well. Need to develop close and effective monitoring and evaluation mechanism.
- Reproductive health issues of women and adolescents girls with disabilities also should be addressed and implemented in practice.
- Issue of non communicable diseases should be addressed as it is already a burden for the hospitals. Life style and food habit changes, anti smoking campaign should be the part of the health program.
- The health programs, strategies and plans to improve the health and quality of life of HIV/AIDS people should be created on the basis of respect for the principles of GIPA (Greater Involvement of People Living with HIV/AIDS).
- Pass anti tobacco bill as a matter of priority.



## ARTICLE 13

### ECONOMIC AND SOCIAL RIGHTS

#### A. Prevalence of the problem

The Constitution of Nepal guarantees equal inheritance rights for women as their male counterpart<sup>156</sup>. However, Nepali women still have less access to or control over resources including land, even if it is inherited property. Women are still not fully aware of their rights. Those who have information about rights are still not been able to realize it due to the prevailing patriarchal norm and social structure. The last decade in Nepal was a historical era for Nepali women as they were entitled to get equal inheritance rights as per the directive issued by the Supreme Court of Nepal to the government to frame new legislation providing equal inheritance rights to all citizens of the country. Now, after a decade long conflict, a Comprehensive Peace Accord (CPA)<sup>157</sup> has been formulated which respects the individual's economic and social rights especially that of women and children. All the major parties have also committed to guarantee equal economic and social rights of women and other disadvantage groups, in their party manifestos<sup>158</sup> The Interim Constitution of Nepal 2007<sup>159</sup> also guarantees various rights including social justice for women and also has directive/state policy<sup>160</sup>. Currently the proposed draft Constitution proposes to guarantee various economic and social rights of women.

The Interim Constitution of Nepal has adopted a policy to provide certain allowances to incapacitated women together with senior citizens and other unemployed<sup>161</sup> people. The Government of Nepal has initiated various

156. The Interim Constitution of Nepal, 2007, Article 20 (4).

157. The Comprehensive Peace Accord, Point 7(5), signed on 2063/8/5 BS

158. Party Manifestos of Nepali Congress, CPN (UM), CPN (UML), CPN (M), NDP,

159. The Interim Constitution of Nepal, 2007, Article 21.

160. The Interim Constitution of Nepal, 2007, Article 33(e), (k); 34 (8),(9)

161. The Interim Constitution of Nepal, 2007, Article 35(17).

measures to secure economic and social rights of women. The government is providing support and nominal allowances on the basis of classifications for particular social groups, e.g. minority groups such as *dalits*, widows and inhabitants of *Karnali* (underprivileged zone) to receive NRs 500 per month, all persons including women above the age of 70 to receive an allowances of NRs 500 per month, and persons with disabilities to receive between NRs 300 and NRs 1000 per month depending on the levels of disabilities.<sup>162</sup>

Government also provides facilities of 10% income tax rebate to women since the Fiscal Year(FY) 2006/007. Similarly there is also a provision of providing certain percent revenue rebate on purchase of any land/ house property in women's name since FY 2006/07. This policy has encouraged the increase of women having property in their name by 30% in Rural area and 25% percent in urban area by FY 2010/011,

Having stated all the provisions above, it must be stated here that in practice, reality of women's access to economic and social rights is completely different. Women still do not get equal opportunity and are discriminated from getting various rights related to economic and social area. Nepal still does not have a well established social security system. Some employees working for the private organizations or the government receive some benefits such as maternity leave, pensions, etc., however majority of the women who work in the informal sector do not have access to such benefits.

Gender Responsive Budget's concept has been introduced during FY 2007/2008. The national budget of FY 2009/2010 allocated 17.3% direct budget and 36.4% indirect budget from gender-responsive measure<sup>163</sup>.

Another challenge in Nepal is women's work is often unpaid and not recognized in the national economic. Women still work on household activities which are still not counted in the GDP. Moreover they have had to look for alternative ways to make cash money. While this provides them with valuable sources of income it also adds to their already heavy work burden. An enabling work environment is another key factor to boost up social and economic status of women. However, there is very less initiative taken in this area. The Supreme Court of Nepal already issued directive order for anti-sexual harassment law, but still proper implementation is lacking. Women's ownership of houses is still very low (only around 11%). It has also been found that this system leads to discrimination against girl children in food distribution, and the provision of clothing, health-care, education, and entertainment. This is because the female child is viewed as having no lasting value to the family<sup>164</sup>.

## **B. Critical areas of concern**

The Concluding Observations expresses its particular concern at the situation of widows. They are often marginalized and vulnerable to violence and economic deprivation as a result of cultural, traditional and religious mindsets<sup>165</sup>.

The Committee urges to intensify its efforts to eliminate discriminatory cultural practices and stereotypes. It urges the State party to encourage men to share family responsibilities and direct its awareness raising programmes to men as well as women. This is aimed at changing the stereotypical attitudes and perceptions as to men's and women's roles and responsibilities<sup>166</sup>.

The Committee raised concern on the lack of women's access to land. It has asked the government to take appropriate measures to eliminate all forms of discrimination against women with respect to access to land.<sup>167</sup>

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162. Budget Speeches of Government of Nepal, 2006/07, 2007/008, 2008/09/

163. [www.gender-budgets.org/index.php/gender-responsive-budget-the-nepalese-experience](http://www.gender-budgets.org/index.php/gender-responsive-budget-the-nepalese-experience)

164. An Update of Discriminatory laws in Nepal and their Impact on Women, Forum for Women, Law and Development, 2006

165. Para 28 of Concluding comments, CEDAW/C/2004/I/CRP.3/Rev.1

166. Para 29 of Concluding comments, CEDAW/C/2004/I/CRP.3/Rev.1

167. Para 38 & 39 of Concluding comments, CEDAW/C/2004/I/CRP.3/Rev.1

## C. Concluding observations

- **Social security and family benefits:** The government has taken positive steps to improve the social and economic status of women by prioritizing health and education. Allowances were increased in 2008<sup>168</sup>.

The system of allowances is still not sufficient. The distribution mechanism is inefficient resulting in women not receiving their allowances on time. In addition, the allowances are dependent on the government continuing to receive foreign aid. In the absence of family benefits many women depend on remittances.

The government recently announced the introduction of free maternity services in all district hospitals, primary health care centres, health posts and sub health posts. However, the vast majority of women do not have access to health services. The fact that women's health is not just about childbirth should also be addressed.

- **Continuation of credit program:** Committee's concern regarding the development of special credit facilities for women to enable them to establish small enterprises and encourage women to participate in all sectors of employment<sup>169</sup>, has also been addressed by the Government. It has introduced a series of microfinance (MF) activities for women. Government initiatives like the Production Credit for Rural Women (PCRW), Micro Credit Project for Women (MCPW), and establishment of Women only Small Farmers Cooperatives have been spread all over the 75 districts of the country<sup>170</sup>. In These programs, particular care has been given to the landless, female-headed households, destitute and disadvantaged women and their families. The main objectives of the programs are to improve the economic and social status of women in their society, to facilitate the integration of women into a regular service delivery system for credit training, technology and technical services, Department of Women Development is coordinating to obtain collateral-free loan through participating banks<sup>171</sup>. Because of the government initiative to provide credit to the rural poor, many private sector Commercial Banks, Development Banks, and Non Government Organisations (NGOs) are providing micro finance services to the poor particularly poor women. However, even though the microfinance industry has become very big in the country and more than 90% women are poor women, the industry is owned and controlled by men and often the needs of the women are marginalised.

- **Women's Development Program:** The Department of Women Development (DWD) has initiated women's development program aiming at strengthening the economic and social development of poor women through making women's groups. This focuses on savings along with women awareness and income generation activities the *Jagriti* program since FY 2005/06. The coverage is 15,058 wards of 1901 VDCs and 32 municipalities covering all 75 districts of the country till FY 2008/009. Under this program, till date 54,350 women's groups have been formed in which 3,43,249 women (dalit 13%, Janjajti 34%, and others 53%) are affiliated. Out of such groups, 752 groups are registered as cooperatives and 442 groups are in the process of being registered. DWD also conducted various trainings and workshops on gender related issues to empower women from these groups<sup>172</sup>.

In the previous Concluding Observations of the CEDAW Committee meeting the government was urged to develop special credit facilities for women to enable them to establish small enterprises and to encourage women's employment in all areas. The government has taken steps to address this but the initiatives taken forward have only reached a small number of women. There are still few women working in the formal sector; according to the 2001 Census only 43.8% of women participate in the labour force.

168. Annual Budget, Government of Nepal, 2008/2009

169. Concluding Comment No. 40 of the CEDAW on initial report of Nepal, (CEDAW/C/NPL/1), July 15 and 18, 2000.

170. Source: Department of Women Development, Lalitpur, Nepal, 2066.

171. Ibid

172. Ibid

- **Access to bank loans, mortgages and other forms of financial credit:** Women have little access to social and economic facilities. Alternatives such as small savings and loans can have a significant impact on women, their families and their communities. Peer based group activities including microfinance and social support helps in strengthening women's role in the community and households and should be conducted all over the country.

Women in both urban and rural areas still have difficulty accessing credit, for different reasons. During the conflict many government banks in rural areas were closed and still have not reopened. Following the adoption of a liberalised economic policy the government has been encouraging the establishment of many development banks. They work in rural areas, and with women's groups, but as they are driven by profit they do not develop women friendly policies and procedures. Nor do they play a role in institutionalizing women's groups. Therefore, although the women are the clients, this microfinance industry has been predominantly owned and controlled by men.

Women entrepreneurs struggle to compete with other organizations. They lack access to credit and training, and therefore remain small scale businesses.

The reforms, being developed, look good on paper but their implementation is far from complete. Furthermore, while these programs are important steps in the right direction the government is not working closely enough with women's organizations to implement them.

#### **D. Gaps and weaknesses**

- Although the government has initiated various steps there are still low levels of female participation in social, educational, economic and political spheres.
- To improve women's position in the society, women's organizations have been advocating for change and amendments of the discriminatory laws. However, lack of basic social and economic facilities often prevent these changes from having a real impact on women's lives. Women in rural areas are not benefiting from government reforms. Many women still do not have access to economic opportunities or to basic education and health care. Urban poor women's needs are not addressed at all.
- The system of allowances and its distribution is still not sufficient and efficient. As a result women do not receive their allowances on time. These allowances are dependent on the government continuing to receive foreign aid so is uncertain. In the absence of family benefits, many women depend on remittances.
- In Nepal, plans and policies look good on paper but in reality they are not being implemented and thus have little impact. The government must focus on effective implementation of reforms. Reforms should be responsive to each country's needs; in the case of Nepal this means working in villages and rural areas. There is a huge gap between urban and rural areas; therefore government and donors should extend its work to empower rural women, work at a community level and should adopt a holistic approach rather than working in isolation.

#### **E. Recommendations**

- Gender budgeting should be done in all budget allocation made by the government particularly the development budget.
- The Microfinance Industry providing microfinance services to poor women should be owned and controlled by women. A massive women friendly rural and urban financial services benefitting women should be developed and offered in a national level. This should be designed supervised and monitored by women.

- There is currently nominal support to women's grassroots initiatives in the area of social and economic empowerment. Also, the needs of urban poor women are not addressed at all. In rural areas, with little help from the government or NGOs, women have been organizing themselves into savings groups and cooperatives and bringing about their own revolution in economic empowerment. They could be even more effective with support from government agencies and donors in the initial stages. The government should focus on strengthening women's groups together with providing allowances leading toward economic and social empowerment.
- The government has been welcoming the remittance received by women and men going to earn abroad without considering the difficult situation faced by workers in foreign countries. Instead of their focus should be to create more economic opportunities in the country and strengthening the existing initiatives.
- The government must ensure its drive towards GRB is implemented effectively.
- For the last 10 years the government has been allocating money to each Village Development Committee (VDC) of which 15% should go towards women of 'low castes' and those with disabilities but there is little evidence that this money is actually reaching women in the VDCs. Furthermore, women have very little say on how this money is used. One important task should be to advocate for the effective implementation of the budget.
- Women are often denied access to services due to their remote residence and the lack of easy access to offices. They often have difficulty in accessing official documents such as citizenship certificate or homeland certificates. It is therefore recommended that the Government adopts measures such as mobile units or reservation of one day in a week to serve women citizens only.
- Budget allocated for women at the VDC level and its expenditure should be made transparent for all women in the villages, and monitoring mechanisms should be established to prevent appropriation of said budgeted amount for general activities of the VDCs.



## ARTICLE 14

### RURAL WOMEN

#### **A. Prevalence of the problem**

Nepal is one of the poorest countries in the world where 25.4% of the people live below the poverty line<sup>173</sup> and 86% of the people in the country live in villages. It is primarily an agricultural country in which big chunk of the population depend upon farming and 33.5% of the Gross Domestic Production (GDP) is from the agricultural sector<sup>174</sup>.

Agriculture in Nepal is characterized by the 'feminization of agriculture' due to the fact that the male population migrated for foreign employment and there was exodus of male from the villages due to armed conflict. The 'feminized agriculture' is further marked by human energy intensive traditional technology having a low

173. Concept Paper for three year plan 2011-2014 AD) P 4, National Planning Commission, 2067 (2011).

174. Ibid

subsisting productivity. In rural areas of Nepal, energy needs at the household level are directly related to women's workloads and their time. For instance, women in rural mountain areas still spend five to six hours in collecting firewood and two to four hours in processing grains (Mahat, 2004).<sup>175</sup>

The average working hours of Nepalese rural women was 11 to 14 hours per day which is more than working hours of men that extend from 8-10 hrs per day. Over the past 30 years of this research, nothing much has changed in terms of the workload and drudgery of rural women. In the total expenditure of the family from the total agricultural income, women contribute 54% while men contribute only 46%.<sup>176</sup>. Despite the contribution of women in terms of time-use for work in the family and/or contribution to family income, almost always fall behind on access to and control over productive resources such as land, credit, etc. because of patriarchal social structure. Excessive workload and the lack of control over income create disproportionate burdens for women. Data collected by the National Planning Commission in 2007-2009 regarding the involvement in work related activities by men and women show the following:

S.No.	Indicators	Unit	Male	Female
<b>Labour contribution</b>				
1	Economic activities outside house	Hour per week	42.6	36.3
2	Economic activities inside house	Hour per week	46.5	42.5
3	Household works (unpaid)	Hour per week	9.7	25.1
4	Entire (economic and unpaid household works)	Hour per week	98.8	103.9

**Source:** Three Year Interim Plan (2007/2009), Kathmandu National Planning Commission

Poverty has been the main pushing factor for rural women to seek foreign employment opportunities. However, women are often unable to exercise the choice of seeking foreign employment. While the table below shows an increase in foreign employment amongst women in the past years, the total percentage remains less than men.

In addition to the depictions in the tables above, a greater number of women opt for migration through non-licensed foreign employment agencies; which often increase their vulnerability to exploitation.

## **B. Critical areas of concern**

- **Access of rural women in micro-credit program:** Many micro-credit and finance initiatives have been witnessed to have assisted in women gaining economic independence, but they have also caused an increase of burden upon women. Women are seen to be taking additional workload in order to repay the loans incurred under the micro credit systems while their male counterparts in the families are witnessed to be backing off from their responsibilities. In addition income earned by women is mostly used in entirety within the family as living expenses. The microfinance industry is totally owned and controlled by men although the clients of the industry constitute more than 90% women.
- **Access of women to family planning mechanisms:** According to the Review of the work plan on Beijing Platform for Action 70% of women use family planning options. However amongst these women the knowledge of advantages and disadvantages of using individual options of family planning

175. World Renewable Energy Congress VII WREC – 2004

176. Meena Acharya and Basnet L. 1981, Rural Women of Nepal and Agriculture Analysis and Summary of 8 Village Studies (CCEDA), Kathmandu, Nepal

is nominal. They are therefore often unable to make informed choices regarding their own body and health.

- **Access of women in foreign employment:** Foreign employment is often viewed as a lucrative option by rural women. However due to lack of proper orientation, dissemination of information on their rights and the lack of proper training they fall prey to exploitative situations. Women seeking employment through individual means often find themselves cheated, victims of fraudulent activities and trafficked for the purposes of sex work. The official initiatives are not adequate to inform rural women or adequate to orient and equip rural women for foreign employment.
- **Right of women in natural resources:** Use of modern means of livelihood are very rare in rural areas, therefore dependency of rural women on natural resources is very high. However rural women are often lacking in access to and control over natural resources like forestry, water, common or private land, etc.
- **Lack of access to justice and security:** Rural women often do not have access to VDCs or district courts to file her complaints due to physical accessibility and/or social accessibility. In addition political protection extended to perpetrators of violence often denies women accessing justice as victims of violence or for violation of other rights.

## C. Concluding observations

### Constitutional Guarantee:

- Citizens of rural area were never given priority in any of the past constitutions of Nepal. However, the Interim Constitution of 2007 in the course of protecting rights of the local citizens has included the rights of rural citizens, e.g. under the Directives Principle, special reformative issues of health and education for integration of women in national mainstream. Issues of education, health, shelter, food security and employment for marginalized groups and poor people are been included in the Interim Constitution. Interim Constitution has guaranteed the reproductive health rights of all women under fundamental rights.
- Women elected and nominated in the Constitutional Assembly get Ten lakhs, i. e., one million rupees each, which they can invest in the activities for the advancement of rural women from their constituencies. With this support, women have collected experiences of policy making in local level community jungle project, which will be benefited for them to impact the national level policy making.

### Micro-credit for rural women:

- Women Development Program and Small Farmer Development Program (WDP/SFDP) have formed 48 thousand groups with 431,000 women in 2005. Rs 231,000,000 had been disbursed as a loan. Presently, the programs are running in 36 different districts. 59% male and 40.6% females have taken loan under the programs till 2007 AD<sup>177</sup>. In 2007, loan was provided by Women Development Department to women in 75 districts. In this process 53,136 groups are formed involving 343,249 women among which 13.1% are Dalits and 33.53 % are Janajatis (Indigenous).

### Participation of rural women in public life:

**Interim Plan, 2063 (2008-2011):** The Interim Plan is provisioned for the long term objectives for Social rehabilitation of conflict-affected and displaced women and to ensure the active participation of women in the peace process. The plan addresses the issues such as protection and rehabilitation of

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177. World Renewable Energy Congress VII WREC – 2004

women affected by the conflict; rights of conflict victims and internally displaced women, rehabilitation of displaced women; participation of women in conflict resolution and peace building. It states that measures will be taken to ensure 33 percent representation of women at national level and 50 percent representation at local level in the peace councils and peace committees respectively.<sup>178</sup>

The Comprehensive Peace Agreement (CPA) states that conflicting parties would fully oblige to the international human rights instruments committed for the eradication of discrimination against women. Clause 7.6 of the CPA has explicitly mentioned that they would provide special protection to the rights of women and take immediate actions to prevent violence against women.

A Ministry of Peace and Reconstruction has enacted Policies, Guidelines and Criteria's for relief and relief distribution for conflict affected victims and their family. The government has also adopted Terms of Reference (ToR) of Local Peace Committee, 2065 (2008 A.D.). Number 3.2 of the ToR has provisioned for 33% women's representation in local peace committees.<sup>179</sup>

## D. Gaps and weaknesses

- **Participation in the peace process:** In the process of peace building 33% representation of women was ensured in the local peace committees but it is yet to be implemented in several districts. The government has introduced several policy measures to address the concluding comments of the CEDAW Committee. However implementation of these policies especially in areas of women's participation in peace building remains much to be desired. The continuing culture of impunity has created the main obstacle in ensuring women's security and protection from conflict related violence and transitional justice.
- **Women's right to health:** While the Interim Constitution has guaranteed reproductive health right of women as a fundamental right, no corresponding legislation has been enacted in reflection or implementation of the broad framework of rights under the Constitution. Almost 80% of women continue to be unaware of their reproductive health rights and many of them particularly belonging to rural communities are compelled to live with terminal illness and health problems such as uterine prolapse. Due the lack of access to health services or access to trained health personnel, female mortality is witnessed to be very high in rural areas.
- **Gender Budgeting at local levels:** Although 20% of the budget of Village Development Committees has been allocated for women from the financial year 2008 – 2009; misuse of funds by local leaders of political parties has denied women from actual benefits. UNIFEM's advocacy for gender auditing has encouraged the government to initiate a process of reviewing all its services through a gender-sensitive approach, however a lot is yet to be achieved in ensuring transparency in usage of local funds.
- **Special programmes for women in local areas:** Due to lack of clear policy targeting rural women by the Government, rural women are mostly deprived from all services. With 80% of women in the country living in rural areas, it is important to formulate special programmes for them to ensure gender equality and the empowerment of rural women.

## E. Recommendations

- Addressing violence against women particularly in rural areas: There is an acute need to ensure adequate support services for women in rural areas in combating violence against women.

178. Page 90-96, Interim Plan, 2063 B. S., National Planning Commission

179. Terms of Reference (ToR) of Local Peace Committee, 2065 B. S., Ministry of Peace and Reconstructions



- Awareness creation regarding protection of human rights: The formulation of laws has proved not to be enough in tackling violation of women's rights in rural areas. Such rights are more often than not violated by members of the family. It is therefore necessary to conduct awareness creation programs to empower women in accessing services that may assist in protecting their rights.
- Substantive arrangements for free and compulsory education for all girls: Special provisions for educational arrangements of girls/women keeping in context the specific cultural, religious and geographical requirements need to be implemented. Such educational services should be free and compulsory till the secondary level of schooling.
- Awareness creation regarding family planning mechanisms: Initiating programs for creation of awareness relating to family planning is very important in order to allow women in making informed choices regarding their body and health.
- Decentralize the Gender Responsive Budgeting (GRB) and ensure participation of rural women in all development program formulation, prioritization, implementation, monitoring and evaluation.

## ARTICLE 15

### EQUALITY BEFORE THE LAW

#### A. Prevalence of the problem

Despite guarantee of equality before law and equal protection of law by the Interim Constitution of Nepal, 2007<sup>180</sup>, there are still various constitutional and legal provisions discriminatory towards the status of women. The provision related to right to manage the property by married women as her exclusive property<sup>181</sup> does not disregard the identity of women. The court proceeding is itself is import to get legal remedy. The principle of rule of law is based on justice for the establishment of a just society. However women's names are not required in legal documents such as: petition, reply, or appeal submitted in the court. The format of the summons, notice issued by the court only require the names of fathers or husbands of the people to whom such order is issued. However, there is a recent practice to mention the mother's name in legal documents.

#### B. Critical areas of concern

Ensuring women with equal rights at par with their men counterparts and implementation of the same is the foremost critical area of concern in Nepal. The concern is not only those women have been denied equal status as per men but the concern is that they are not getting what they have been promised to be given.

- **Women's name not mentioned in registration of transaction:** According to the prevalent law relating to registration, father's and grandfather's name are required for the registration of transaction whereas mother's name is not required thereby discriminating against women by denying their identity.<sup>182</sup>

180. Article 13 (1) No person shall be denied the equal protection of the laws and all citizens shall be equal before the law.

181. No. 5 of the Chapter on Husbands and Wife , the Country Code, 1963 stated that husband may use her exclusive property with the consent of copartners aged above 16 years having the legal deed , if fails to follow the procedure she will be unable to demand her property .

182. No. 31 of the Chapter on Registration, the Country Code, 1963

- **Recognition through the father/husband only:** The model prescribed by law for interrogation of the witness states that name of the father/husband should be asked. Moreover, only the name of father and husband is mentioned in the formats prescribed for statement of claims and statement of defense.<sup>183</sup> Similarly, the Registrar of an Appellate Court is required to maintain a record of clients and regular users of the court stating their personal detail including the name of the father.<sup>184</sup> This provision is discriminatory as only the father is recognized as the identify of a person.<sup>185</sup>
- **Discrimination in naming a child:** The father has the first priority to naming a child according to one's own religion, custom or practice and the mother has the right to naming a child only if there is no father.<sup>186</sup>
- **Discrimination in dress:** The Revenue Tribunal Rules, 1974 specify the dress for males only. Hence, the law reaffirms the assumption that there cannot be female members in the Tribunal.<sup>187</sup>

### C. Concluding observations

- **Constitutional Provisions:** The Interim Constitution realizes the gender problems exist in the country.<sup>188</sup> The Constitution reinforces and guaranteed the right to equality, Right to freedom, non discrimination and right of women under fundamental rights, which enable women to enjoy their rights.
- **Enactment of Gender Equality Act 2006:** The Gender Equality Act, 2006 was enacted to amend some Nepal Act, to maintain Gender Equality between women and men in the existing legal system. Daughters are also recognized to be adopted as son by the amendment.<sup>189</sup> Unmarried daughters are also included as a family member.<sup>190</sup> The consent of unmarried daughter is also made mandatory in the deposition of more than 50% property by the son.<sup>191</sup> Women are defined as a closest successor of the deceased by the amendment.
- **Judicial initiatives:** The Supreme Court has declared the Provision of Chapter 12 on Husband and Wife as violation of Article 11 (1) (2) (3) of the Constitution thus declared as *ultra virus* which ensured the equality before the laws.<sup>192</sup> Similarly, the Supreme Court had recognized the independent personality of women by removing a provision<sup>193</sup> in the Birth, Death and Other Personal Events Registration Act, 1976. The identity of daughter was recognized by the issuance of directive orders to

183. Nos 76 and 128 of the Chapter on Court Proceedings, the Country Code, 1963.

184. Rule 107 of the Appellate Court Rules, 1991.

185. No. 152 of the Chapter on Court Proceedings provide that while taking statement of the witness, firstly name of their father should be asked. Similarly in the model questions prescribed in number 161 of the same chapter, the name of the father of the party or witness of the case should be asked while taking the statement.

186. Section 3(1) of the Children's Act, 1991.

187. Rule 31 of the Revenue Tribunals Rule, 1974.

188. Preamble to the Interim Constitution 2007

189. Chapter 15 on Adoption of son Title Biased title of the chapter on Adoption the Title has been amended as "Chapter on Adopted Son, Adopted Daughter".

190. Land Act, 2021 (1964) 2(c) Unmarried daughters above the age of 16 and married daughters not included in the definition of family after the amendment daughters included in the definition of family, and Working Journalists Act, 2051 (1995) 2(h) Married daughters including married adopted daughters not included in the definition of family The term "unmarried" is removed., Nepal Interpretation of Statute Act, 2010 (1953) **2(y)** Defines only son but does not define "daughter" The Act also defines "daughter". 2 (y1)

191. The Country Code, 2020 (1963) Chapter 13 on Partition 19 (1) If an unmarried son wanted to dispose off more than 50% of the property, he would need to gain consent from his father and mother if they were living also inserted the need for gaining consent of.

192. Amended to add the terms "if it is certified from the medical Board recognized by Government of Nepal that no child has born within ten years of Meera Dhungana for FWLD Vs HMG Writ No. 64/2061 the said provisions was. It was also stated to be violative of UDHR, ICCPR, CEDAW Beijing + 5. It therefore prayed for the declaration of the provision. The court declared the provision as *ultra virus*

193. Birth, Death and other Personal Events Registration Act, 2033 (1975) 4(1)(a)The terms "senior among the male members" have been removed.

the GoN.<sup>194</sup> Woman was made capable to exercise the right on Women's Exclusive Property by declaring the discriminatory provision in the country Code which reinforces the equal protection of laws.<sup>195</sup>

#### **D. Gaps and weaknesses**

- Formal model of equality and discriminatory provisions enshrined in the Constitution and the laws are insufficient to respect equality of personal dignity, identity and status of woman.
- Non implementation of judicial orders in order to ensure equal status of women.

#### **E. Recommendations**

- Ensure the prompt repeal, amend or draft of the adequate and required laws to guarantee the equal status of women
- Effectively and promptly implement the “directive orders” of the Supreme Court regarding the status of women.



## **ARTICLE 16**

### **MARRIAGE AND FAMILY**

#### **A. Prevalence of the problems**

A patriarchal value reflects on the Laws relating to the right to marriage. The influence of religion is one of the factors denying women a host of basic rights including the right to marriage. As per the law, both man and woman should attain the age of 20 years for marriage without the consent of guardians and 18 years for marriage with consent from guardians.<sup>196</sup> However, in reality, girl child is forced to get married at an early age. About 47% of the population and 55% of the women in Nepal get married between 15-19 years age groups.<sup>197</sup> Both girls and boys are seen to get married before 17. Most of the study also divulges that the age difference between most of the married couples is significantly wide.<sup>198</sup> In addition, they are often not allowed to exercise the right to choose the time, number and spacing of children they have. Beyond being stripped of decision making powers with a family structure, women are forced to beget a son.

There are legal provisions allowing women the right to live separately claiming her share of husband's property. There are also legal provisions allowing single women such as widows and divorcees the right to their husband's property. However, in reality, women continue to face hurdles in accessing these rights due to institutional biases and socially discriminatory practices.

194. To formulate necessary laws and present it in the parliament within 1 yr of this judgment after holding consultations with women's organizations, sociologists, The Country Code, 2020 (1963) Chapter 13 on Partition legal luminaries and conducting a study of laws from other countries around the world. Meera Dhungana on behalf of FWLD vs. HMG, Ministry of Law and Justice, Writ No. 3392, 2052 Decision No. 6013 of 2059, NKP 2059 Vol. 6, Page 462

195. No.2 of the Chapter on Women's Exclusive Property declared ultra virus. Lily Thapa vs. HMG/Nepal., Writ No. 34/2061. Meera Dhungana for FWLD vs. HMG/Nepal, Writ No 114/2062.

196. No. 1 of the Chapter on Marriage, the Country Code, 1963.

197. National Census Report prepared by the Central Bureau of Statistics of Nepal (CBS), 2001

198. *Child Marriage: Legal Responses UNIFEM and Forum for Women, Law and Development (FWLD)* July, 2007.

## B. Critical areas of concern

- **Contradictory legal provisions relating to polygamy:** Number. 10 of the Chapter on Marriage, in the Country Code, 1963 criminalizes bigamy. However, bigamous marriage is considered lawful once the offender is penalized with a meager punishment of an imprisonment from 1 year to 3 years and a fine of Rs. 5000 to Rs. 25000. The wives of all subsequent marriages are thereafter granted rights similar to that of the first wife. Such contradictions in law not only negates every attempt to abolish bigamy and polygamy, it also recognize unlawfulness.
- **Continuation of practices of child marriage:** 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. Major factors leading to child marriages are religious norms and values, cultural traditions, poverty, illiteracy, economic cause and family pressure.<sup>199</sup> Lack of awareness on impacts of child marriage is one of the main reasons.
- **Non-implementation of provisions relating to marital rape:** Marital rape has already been declared as an offence through a judgment rendered by the Supreme Court of Nepal<sup>200</sup> and subsequent amendment to the law through the Gender Equality Act of 2007. However, the number of cases to be filed under this law is very low because the minimum punishment to be imposed is imprisonment for 3 to 6 months.<sup>201</sup> The court in *Jeet Kumari Pangei et. all Vs. GoN*<sup>202</sup> issued directive order to the government for increase of the said punishment. However, none of the above judgments have been implemented as yet.
- **Lack of provisions relating to dowry system:** On January 25, 2009, the then Prime Minister of Nepal expressed commitment to abolish dowry system to establish women's human rights and to empower women. Further, he said to establish a complaint center in every VDC within a month and to punish those who give or took dowry but the commitment has not been materialized yet. The dowry system still exists especially in the *Terai* region, and incidents of dowry are on alarming rate.

Government has failed to enact relevant laws and adopt the policies with the necessary programs. The active participation of civil society and Non-Governmental organizations are prime factor in combating dowry and other malpractices in many districts of Nepal. In one of such example, the women from Dokhu VDC in Taplejung have declared their VDC a dowry prohibited VDC. They have been launching campaigns against the dowry by punishing the parties involved in the 'dowry exchange by rejecting them socially. The campaign has become successful in the VDC. However, existing Laws on Social Practices Reform Act, 1976, is unable to prohibit such practices In Nepal.

## C. Concluding observations

- **Enactment of Gender Equality Act, 2007:** Gender Equality Act, 2007 was enacted to amend discriminatory provisions under a plethora of laws. However, a Study on Discriminatory Laws conducted by Forum for Women Law and Development<sup>203</sup> identifies that there are 32 discriminatory provisions under 19 legislations still continuing in Nepal.

199. *Child Marriage: Legal Responses UNIFEM and Forum for Women, Law and Development (FWLD) July, 2007; p.III (Executive Summary).*

200. Meera Dhungana on behalf of FWLD vs. HMG, Ministry of Parliamentary Affairs, Council of Ministers, Ministry of Law and Justice, Parliament, Writ No.: 55 of 2058

201. No. 3 of Chapter on Rape of Country Code, 1963.

202. Writ no:0035 of 2064

203. A Study on Discriminatory Laws Against Women, *Dalit*, Ethnic Community, Religious Minority and Persons with Disabilities, Forum for Women Law and Development, 2009

- **Judicial intervention to enforce law prohibiting child marriage:** Child marriage is prohibited under the Nepali law. The law punishes the priest, matchmaker and other persons knowingly involved in commission of offences of child marriages.<sup>204</sup> In case the marriage has been solemnized between a boy and girl not attaining the age of eighteen years and no child is born to them, such man or woman may complain to end the marriage, if he or she does not accept the marriage after attaining the age of eighteen years. In such a case the marriage will be void.<sup>205</sup>

In this context, there is contradiction in legal provisions in relation to age of marriage contained in No. 2 of the Chapter on Marriage of the Country Code, 1963 and Section 4(3) of the Marriage Registration Act, 2028 B.S.<sup>206</sup> and the age of attaining maturity to give consent for marriage contained in No. 2 and No. 2(9) of the Chapter on Marriage of the Country Code were challenged,<sup>207</sup> in addition to amending the law for maintaining uniformity, in both the cases the Supreme Court has issued directive orders to the GoN to stop child marriages by effectively enforcing the laws relating to child marriage.

- **Draft Penal Code proposes increase of punishment for marital rape:** The Bill recently introduced by GoN to Legislature-Parliament for bringing sweeping reforms in the penal system of the country contains provisions for punishment with imprisonment up to five years in case of marital rape.<sup>208</sup> The proposed reform has been introduced at the backdrop of widespread criticism of the current punishment for marital rape being too low. Moreover, the Civil Code Bill has proposed that commission of marital rape to be a ground for the wife to seek divorce from the husband.<sup>209</sup>
- **Judicial intervention in reviewing law relating to bigamy:** The Nepali law allows bigamy under certain circumstances. The Chapter on Marriage of the Country Code permits a man to enter into second marriage without divorcing his first wife.<sup>210</sup> When the said provision was challenged as discriminatory against women, in *Chandrakanta Gywali v. GoN*,<sup>211</sup> the Supreme Court has acknowledged it as discriminatory between men and women and has issued directive order to the government to enact appropriate law in this regard. In yet another decision, the Supreme Court has issued a directive order to GoN to amend and review legal provisions related to bigamy which shall not discriminate or create discrimination between husband and wife.<sup>212</sup>

#### D. Gaps and weaknesses

- **Traditional mind-set :** Women are deprived from utilizing their rights because of traditional social mind-set prevailing in society. People take rights of marriage as responsibility and status of the family in a society and interpret marriage connecting it only with sexuality. This traditional and conservative thinking deprives women from taking decision regarding marriage.
- **Traditional and Cultural practice:** In most of the cases, girls are taken away from their parent's home after marriage and are under the dominance of their in-laws including the change of the family name/surname after the marriage.

204. Nos. 2 (5), (6), (7) and (8) of the Chapter on Marriage of the Country Code, 2020 (1963).

205. No. 2 (9) of the Chapter on Marriage of the Country Code, 2020 (1963).

206. Sapana Pradhan Malla and others v. GoV, Writ no. 98 of 2062 B.S. decided on 2006-3-29 B.S. (July 13, 2006).

207. Rama Panta Kharel and others v. GoN, Writ no. WS 128 of 2006 B.S. decided on 2006-10-11 B.S.

208. Section 220 (4) of the Penal Code Bill, 2011.

209. Section 82 (c) of the Civil Code Bill, 2011.

210. *No. 9 of the Chapter on Marriage of the Country Code, 2020 (1963) allows bigamy on the following circumstances: If the first wife becomes infected by incurable sexually transmitted disease; If his wife has become incurably insane; If his wife has become lame and unable to walk; If his wife has become blind of both eyes; and If his wife has lived separately after obtaining her partition share under No. 10 of the Chapter on Partition.*

211. Writ no. 37 of 2061 B.S, decided on 2061-11-2 B.S.

212. Sapana Pradhan Malla for FWLD v. GoN, writ no. 064-0011 (decided on 2065-5-26 B.S.)

- **Lack of awareness:** Women are often not aware of their rights on marriage and family recognized under the national laws, personal laws, and international human rights laws, therefore, they are not capable of taking decision of marriage.
- **Bigamy and Polygamy is not illegal:** Bigamy is punishable but not illegal. Therefore, there is always risk in the relationship after marriage. Law gives legal recognition for the polygamy and also equal rights for the second wife as well. These provisions have ignored rights of first wife; therefore, they are not justifiable in the context of Nepalese society where most of the women are depended on their husbands.  
However, in order to respond to this concern, the recently Civil Code Bill does not only criminalize bigamy and polygamy, but also provides that such a marriage is not legally recognized.<sup>213</sup>
- **Non-recognition of *de facto* union:** The existing law of Nepal does not recognize *de facto* union as such and women living in such relationship are far more insecure than others in terms of getting legal protection of their relationship and property they earn in common. Though the Civil Code does have a provision that conclusion of marriage will be deemed if a child is born from physical contact between a man and a woman;<sup>214</sup> however, this provision is silent as to the status of the *de facto* union as such.
- **Weak implementation of law relating to child marriage:** Child marriage has been declared punishable by the law. However, there is the prevalence of child marriage in large numbers. Therefore, the government needs to be more serious about this issue and also needs to create awareness among the people via mass communication.
- **Non-enforcement of law against dowry system:** Law prohibits dowry and other types of giving and taking of property for marriage. However, due to the non-enforcement of this law, the problem of dowry and dowry-related violence are on the rise.

## E. Recommendations

- Repeal and amend the remaining discriminatory laws against women with regard to marriage and family relation. This includes practices like: discrimination amongst daughters on the basis of marital status, provision of bigamy (second marriage without divorcing the first wife), division of property equally amongst all the wives
- Legal provision of bigamy should not be conditional on the basis of any grounds and needs to be reformed.
- Declare bigamy/polygamy null and void. It is essential to do so as if the second marriage is considered legal after the payment of fine and completion of punishment, it in a way legalizes the second marriage and does not end the continuing discrimination faced by the women.
- The government needs to address the problem of child marriage comprehensively. Only increment in punishment is not enough to address this problem. There needs to be massive awareness campaigns in coordination with NGOs for relaying to the general public.
- Judgments of courts needs to be honored and executed
- There is a need to promulgate separate and specific law to deal with the ill practice of dowry and needs to be implemented strictly.
- The right of choosing family name by the married women has to be respected by law and government agencies.

213. Section 177 of the Penal Code Bill, 2011.

214. Section 74(1) of the Civil Code Bill, 2011.

# PART II

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## CRITICAL ISSUES

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## DALIT WOMEN

**A. Prevalence of the problem**

*Dalits*, make up more than 13 percent of the country's population and are placed at the bottom of the Hindu Caste hierarchy categorized as "untouchables". This is due to the association with particular occupations: which have been viewed traditionally as occupations which are ritually seen as dirty and unacceptable for higher casts. Such occupation includes blacksmithing, leather working and the clearing of waste/scavenging. As a result they are the most deprived large group of population in Nepal with low levels of human development, low incomes, limited literacy and poor health. The Interim Constitution 2007 prohibits the practice of untouchability and the Country Code of Nepal 1963 makes it illegal and punishable,<sup>215</sup> however, the practice continues and perpetrators are very rarely punished.<sup>216</sup>

*Dalit* women rank at the bottom of the composite empowerment and inclusion Index in a World Bank/DFID study, i.e. 0.21 against 0.34 of the average national female index.<sup>217</sup> The literacy rate of *Dalit* women is 24.2% compared to a national literacy rate of 43% and the life expectancy is 50.8 years for *Dalit* women compared to a national female average of 58,9 years.<sup>218</sup> This is illustrated by the low school attendance rates of *Dalit* girls, which have led to only about 23.5% of *Dalit* women being literate, compared to Nepal's average female literacy rate of 42.5%. Caste based differences are very apparent in access to health care too. The 2001 NDHS found that access to and use of a range of health and family planning services was the lowest amongst *Dalit* women. It is reflected in the lower levels of contraceptive use among *Dalits*. It is reported that over 80% of all girls trafficked to India for prostitution are from *Dalit* families.<sup>219</sup>

*Dalit* women have limited representation in state and civil society decision making forums. However, resulting from adoption of the proportional representation system in the Constituent Assembly election, representation of *Dalit* women is significant in Constituent Assembly. The percentage of women *Dalit* Constituent Assembly member is Four percent among 8.15% of total *Dalit* Constituent Assembly members and 12.69% of the women Constituent Assembly members.<sup>220</sup>

**B. Critical areas of concern**

- **Continuing discrimination and violence against *Dalit* women**

*Dalit* women face double discrimination and more vulnerable to violence. There is a general traditional belief that women practicing witchcraft are from the *Dalit* community. *Dalit* women continue to be discriminated in accessing justice. When they attempt to register a formal complaint with the police, they are often encouraged, and in many cases coerced, to reach a settlement outside the formal justice system, even in cases of serious crime, in the name of maintaining community harmony.

Women from the *Badi*<sup>221</sup> community share that they are often met with an attitude from police that insinuates that the women themselves bear responsibility for sexual assaults. They refrain from filing

215. *Muluki Ain*, Country Code of Nepal, Miscellaneous Chapter, Section 10 A

216. Caste Based Discrimination in Asia: Situation Overview, Response and Ways Forward, 2009, International Dalit Solidarity Network

217. Ibid.

218. Ibid.

219. United Nations Development Programme, 2009. Nepal Human Development Report, State Transformation and Human Development.

220. Government of Nepal, Parliament Secretariat (2009).

221. The *Badi* community, found mostly in the Western, Mid Western and Far Western regions, are the most marginalized group amongst Dalits. This community in the past was known for living on prostitution of women and is looked down upon as sex workers. However, it must be noted that many/most of them are not involved in prostitution in recent times.

complaints because of the degrading questions they are asked by police officials. The provisions discriminating against sex workers have been erased from the legislation dealing with rape. However, the discriminatory attitudes of many officials involved in the administration of justice are yet to change. From the gender perspective the situation of *Dalit* women is more vulnerable and miserable. The data shows that out of the total cases of caste discrimination filed in the courts, only 25% are filed by women themselves.<sup>222</sup>

It must be noted that a Memorandum of Understanding between the Ministry of Peace and Reconstruction and the *Badi* Community was signed in 2007, which guarantees *Badi* community's different rights including right to citizenship with the surname of their choice, an end to the forced use of derogatory surnames; and free schooling for children of *Badi* community. However, the recent report of the sub-committee formed under the Parliamentary Committee on Women, Children and Social Welfare revealed the lack of implementation and the continuing discrimination against *Badi* women.

#### ■ **Violence resulting from inter-caste marriage**

Irrespective of the level of education and occupation, there is little acceptance of inter-caste marriage between *Dalits* and non-*dalits*. The couples of inter-caste marriages face violence and intimidation, in many cases leading to displacement of families and physical assaults.<sup>223</sup>

As a result of non-acceptance girl/women face additional violence in the family after their marriage which results in violation of their rights. In many cases due to family and societal pressure their non-*dalit* husbands abandon them and their children. In such instances, obtaining citizenship for women themselves as well as their children and right in family property further discriminates women/girls in exercise of their rights. It has also been found that in many cases where such couples who are in need of protection register complaints with the police authorities, they are either not entertained or "mediated" outside of the formal justice system.

#### ■ **Lack of representation of *Dalit* women in formal employment sector**

Resulting from historical discrimination and lower education, *Dalit* women continue to be lowly represented in administrative and law enforcement mechanisms. Out of the total gazette level employees of the Public Service Commission, only 0.9 % are *Dalits*.<sup>224</sup> Taking into consideration the disparity of education between *Dalit* men and women, it can be concluded that *Dalit* women's participation in Public Service Commission would be lower than that of men, who as also under-represented in the formal employment or government employment. For example, there is only one *Dalit* male judge in country's whole judiciary.<sup>225</sup> *Dalit* women continue to remain restricted in informal sectors of employment including traditional occupations, like *baalighare*,<sup>226</sup> where they do not get justifiable wages for their labor. Lack of modern technology skills, education and financial resources prevent *Dalit* women from being employed in new industries or trade in the market.

### **C. Concluding observations**

- The concluding comment urges the government to take efforts to achieve equality in education particularly among disadvantaged castes.

222. District, Appellate and Supreme Court's Judgments on Caste Discrimination Related Cases, 2009, a report by Ratna Bagchand

223. Bhattachan, Dr. Krishna and et al (2008), *Caste-based Discrimination in Nepal*, published by Dalit NGO Federation (DNF), Nepal National Dalit Social Welfare Organisation (NNDSWO), Indian Institute for Dalit Studies (IIDS) and International Dalit Solidarity Network (IDSN), Annapurna Offset Press, Kathmandu, Kansakar, Kesari and Ghimire, Sita (2010), *Intricacies of Inter-Caste Marriage between Dalits and Non-Dalits in Nepal Couples' Perspectives*

224. *Nijamati Kitabkhana*, 2063

225. Annual Report of Judicial Council, 2010

226. *Balighare* is a form of forced labour in which Dalits provide occupational serviced to so-called high caste in exchange for food grains.

- Despite the various measures undertaken by the government, it has been indicated in reports that share of *Dalit* children in total school enrolment decreases as level increases, particularly among *Dalit* girls.<sup>227</sup>
- An incentive of Nrs one hundred thousand (\$1270) is given by the Government to couples for encouraging and supporting inter cast marriage. The couples receive such grant within 30 days of marriage registration at district administration.

## **D. Gaps and weaknesses**

### ■ **Continuing social structure**

Though untouchability is illegal and punishable in Nepal, the social structures of caste system continue to discriminate against *Dalit* even today. As a result offences of untouchability are even dealt with seriously. The prevailing constitution and law does not prohibit and punish discrimination based on untouchability practiced in the private sphere. Similarly the case of violence against *Dalit* women continues to exist. Though there are strong commitments by the government and political parties on paper, lack of clear legal standards of what constitutes “untouchability” has resulted in its continuation. There is a Bill “*Caste-based Discrimination and Untouchability Crime Elimination and Punishment Act*” pending before the Legislature Parliament, since 2009 that looks into the offences related of untouchability which needs to be reviewed to bring it in line with Nepal’s international human rights obligations.<sup>228</sup>

### ■ **Weak monitoring and evaluation body**

There are many initiatives on the part of the government to ensure education for *Dalit* girls and opportunities of employment for *Dalit* women, in reality, the general lack of awareness as well as lack of a monitoring mechanism to ensure implementation of these policies and programs deprives *Dalit* girls and women of their human rights. Though both the National *Dalit* Commission and the National Women’s Commission are mandated and are working to promote and protect the rights of *Dalit* and protection and promotion of *Dalit* women’s rights, respectively, systematic regular monitoring and reporting is required from both these institutions.

## **E. Recommendations**

- Amend the existing discriminatory laws against *Dalits* and implement the policies and commitment’s made by the government to protect the rights of *Dalit* women, including the MOU signed between Government and *Badi* community.
- Review and passage of the “*Caste-based Discrimination and Untouchability Crime Elimination and Punishment Act*” in line with Nepal’s international human rights commitments and need to prohibit discrimination in the private sphere.
- Amending existing laws to ensure equal participation of *Dalit* women in the decision-making levels of public, government and non government sectors.
- Clear directives and procedural guidelines for government officials to take action in cases of violence in relation to inter-caste marriage and put an end to impunity for VAW faced by *Dalit* women.

227. Government of Nepal, Nepal Millennium Development Goal, Progress Report, 2010

228. National Dalit Commission and OHCHR-Nepal, Observations on the Untouchability Bill, “Speak up...Stop Discrimination” Open Dialogue Series 1, December 2010

## WOMEN MIGRANT WORKER

### A. Prevalence of the problem

Recent data from the Department of Labour shows that every day approximately 1000 Nepali workers leave for foreign employment (excluding those who go to India). Some research estimates that there are two million migrant workers outside Nepal.<sup>229</sup> There has been a significant increase in the number of Nepali workers entering the foreign labour market during the decade-long armed insurgency in Nepal. Women's migration for work has also drastically increased in recent years. The reasons behind women's migration include lack of visible employment opportunities in the country, the need to become self reliant and to support family financially including to provide towards children's education, health etc., and in some cases for personal security (from the violence and abuse during the insurgency and other times).

In response to widespread exploitation experienced by the workers in domestic work sector the Nepal government has a practice of discouraging Women Migrant Workers (WMWs) migrating for work to the Gulf countries - especially as domestic workers. Though legally government has not restricted WMWs but government provides permission only in those cases, where Nepali embassy of destination country approves because of this the WMWs have been using informal channels and illegal agents/brokers to leave the country. According to the data from the Ministry of Labour and Transport Management 90% of the workers are undocumented. This also means that women miss the mandatory pre-departure training provided by the government for those who go through government's mechanism. Therefore, illegal migration has increased for women risk for labour and sexual exploitation from the employees, and limited their access to seek support from formal protection mechanisms within the country as well as in the the country of employment. Illegal migration also leads to inadequate estimates about the number of women who are in foreign employment.

Due to lack of financial resource, and lack of land and/or house in the name of women, women borrow money from money lenders for their labour/employment migration related expenses. The money lenders often charge very high interest rates; in many cases women accept the interest rates sometimes due to inability to understand and calculate the high interest rates and many times out of desperate need for the money. The burden of such debts forces women to accept work unconditionally and in compromised situations. Large number of Nepali WMWs are concentrated in unregulated sectors such as domestic work and care giving. Nepali women are also vulnerable to exploitation in the country of transit. India has been used by the illegal agents to channel the undocumented workers, and many times women are stranded in such processes and are sold to brothels in India. Women also get arrested by authorities in transit country for illegal migration, whereas the illegal agents manage to flee.

In the country of destination some of the issues women face are extended working hours, no provision for leave, under-payment or no payment of salaries, abuse, and exploitation by the employers. Women workers work in a restricted work environment confined within the house of employer with limited access to outside world. Work place and residence being the same, most of the domestic workers have no place for refuge if their work is terminated in advance. In case of early termination, many WMWs are not allowed to return to Nepal by their agents as they have not earned enough to pay back the advances they owe to the agents. These dire conditions exacerbate the environment of exploitation and abuse. Not many WMW are aware of their rights, and many are working in countries with limited practice of human rights and democratic values. Hence, there are no provisions for unions and associations and in many destination countries, national

229. UNIFEM and People Forum (2008). Effectiveness of Laws and Institutional Mechanism to Promote Safe Foreign Employment for Women

labour laws do not include provisions for domestic work, thus they are unable to seek legal remedies. Furthermore, the global economic crisis has affected some Nepali WMWs, as they have felt the brunt of job cuts, cuts in salary, cuts in paid hours, burden of work etc so as to continue in their job in any condition to retain their documented status.

Remittance sent by migrant workers constitutes the largest capital flow at 11% of the National GDP in Nepal. The contribution of remittance from women migrants is 11% of the total remittance sent by the migrant workers.<sup>230</sup> Women migrant's economic contribution to the GDP in Nepal have supported in establishing the fact that women could be economic contributors, this fact also helped in breaking the stereotype for women as 'beneficiaries' and dependants. Those who benefited from their labour migration influence decisions at home and own property and assets. Their remittances are used for the education of their children - including their daughters - and also for the health and nutrition of their family. However, there are no alternative opportunities to domestically invest their earnings from foreign employment, so many are trapped in the cycle of remigration. Foreign labor migration has higher costs for women than men, and issues of rehabilitation and reintegration of WMWs remain a challenge.

## **B. Critical areas of concern**

### ■ **Inadequate efforts to regulate labour migration**

Despite the contribution of the remittance to the national GDP which is 11%, the government has not undertaken measures to create appropriate infrastructure with adequate human resource and budget allocation as well as efforts to implement the relevant laws and policies to regulate labour migration.

### ■ **Lack of awareness and dissemination of information**

Women lack awareness and access to information on foreign labour migration, i.e. information on the process, the country of employment, the type of work, existing provisions and services in place, labour and worker's rights etc. An indicator of this is the fact that 89% of migrant workers are not aware of free legal assistance provided by the Government.<sup>231</sup> Women are leaving the country without the pre-departure training and language training.

### ■ **Increased vulnerability due to government policies**

Regular/formal processes are still inaccessible for Nepali WMWs as the government has ambiguous policies towards foreign employment of Nepali women and a lack of willingness to formally send workers abroad. Therefore women depend on the brokers/agents for foreign employment further exposing them to abuse and exploitation. There is a tendency amongst the agents and brokers to send women for foreign employment using a second or third country airport. This often results in human smuggling and trafficking. As a result recruiters and employment agencies go unpunished.

### ■ **Women lack access to capital**

Formal finance and banking sectors are out of reach to the WMWs as Nepali women often do not have their own sufficient assets or property. This leads to a larger dependence of Nepali women on traditional moneylenders who charge high interest rates and trap these women into debt bondage.

### ■ **Lack of proactive diplomacy**

Nepal still lacks proactive diplomacy with labour-receiving countries. It also lacks effective implementation of the existing bilateral agreements, which calls for dialogue and cooperation to ensure the rights of migrant workers conforming to international human rights and labour rights standards, as well as cooperation to regulate the recruitment and employment processes that result in human rights violation

230. The Nepal Living Standard Survey, 2005

231 Effectiveness of Laws and Law Enforcement Mechanisms for the Safe Foreign Employment of Women, 2008

of the migrant workers. The lack of bilateral mechanisms and accountability has led to the impunity of those engaged in violating the rights of the migrant workers in this extended chain of bilateral and multilateral recruitment and employment processes. All these aspects lead to WMWs facing gender-based discrimination and exploitation at every stage of the migration cycle. Accountability of country of employment and transit to protect the fundamental rights of migrants is lacking. Inter-ministerial cooperation and coordination among ministries involved remains a challenge to regulate this sector.

#### ■ **Lack of legal protection**

Most of the Nepali WMWs lack access to legal protection and remedies as they are often employed in informal and unregulated sectors such as domestic work, which are not covered under the labour laws and policies of both country of employment as well as country of origin. Furthermore, the informal processes also mean that there are no binding contracts to specify terms and conditions of work thus exposing WMWs to various forms of exploitation, abuse, violation of international labour standards and human rights violations. The recruitment agencies not accountable for the protection of migrant workers and their rights. The countries considered safe to women e.g. Hong Kong and Israel have placed restrictions on employment of women migrant workers from Nepal.

#### ■ **Lack of gender responsive programs**

WMWs have no alternative investment opportunities to sustain the benefit of migration. There is also a lack of gender-responsive reintegration and rehabilitation packages for WMWs once they return to their country of origin. Therefore, they are trapped in the cycle of remigration.

#### ■ **Stigmatization**

The a lack of value attributed to the work and contributions of remittances by WMWs by the state and society, their subordinate position in society and the cases of abuse of women dominating the media coverage are some of the factors that encourage and entrench the stigma and discrimination towards WMWs, which has become an enduring feature in Nepali society.

#### ■ **Inadequate support system in embassies in foreign countries**

Nepal has 29 embassies and 3 consulates around the world. However, these agencies and offices are inadequate in providing support to the women migrant workers in situations of abuse, exploitation, breach of employment contract, or fraudulent contracts etc.

#### ■ **Mandatory HIV and AIDS testing**

There is a mandatory check-up of HIV & AIDs of MWs before their departure and/or during work tenure. In many cases, WMWs are not consulted and their test results are shared either with their recruiters or their employer. They face forced termination of their employment and/or deportation from the country of employment because of their HIV status. However, there are limited interventions to provide alternative employment opportunity for those tested positive. There are no policies to address the issues of confidentiality, compensation, stigma and discrimination related to WMWs and HIV/AIDS.

### **C. Concluding observations**

The CEDAW Committee in its Concluding Observations (mention the session and on which report by the Government of Nepal) urged the government to immediately adopt measures on women migrant workers. In response to this, the Government of Nepal has enacted the following laws and policies:

- **New Foreign Employment Act (2007) and The Foreign Employment Rules (2008)** adopted with gender and human rights perspective. These also include positive efforts to encourage women to undergo formal mechanisms such as:

- Reimbursement of pre-departure orientation fee of WMWs under the Foreign Employment Rules, Chapter 7 - Provisions Related to Funds, 26(c): So far 43 women have been compensated.
- Welfare fund established which will be mobilized for education, health of the families of WMWs, and returnees. This is under the Foreign Employment Rules, Chapter 7 - Provisions Related to Funds, 26(a, b): A welfare fund has been established and has been used to compensate the families of the deceased, disabled migrant workers and those that have been sent back due to economic crisis.
- 5 lakh of Insurance covering all causes of Death Act Chapter 4 - Provisions related to Prior Approval and Selection of Workers, 26 - This is enforced on all Nepali migrant workers going through regular channels.
- 1 lakh of immediate compensation for the workers in case of injury and disability or to the family of the deceased migrant workers. Under regulation Chapter 7 Provisions Related to Funds, 28.(2) - This is being implemented.

■ **In the Three-Year Interim Plan, the government plans to<sup>232</sup>**

- Increase the number of training programmes, focusing on women and youth in marginalised groups (Dalits, Adibasi Janajatis, Madhesis, Muslims, the conflict-affected and deprived) for domestic as well as foreign employment.
- Bring in flexible acts and regulations which account for social security.
- Enter into bilateral or and/multilateral labour agreements with foreign countries for the protection of Nepali workers.
- Undertake measures to provide for accident and life insurance for those going for foreign employment.

■ **Creation of safe home and establishment of Labour Attaches**

Government of Nepal has established safe homes in four countries through fast track system in Saudi Arabia, Qatar, Kuwait and UAE. The safe homes were established following the directive order from the Supreme Court to implement the legal provision for establishing safe homes under the Foreign Employment Act 2008. The safe homes have provided space to those trafficked or smuggled women who were suffering from human slavery like situation. Government of Nepal has sent labour attaches in four countries namely Saudi Arabia, Malaysia, Qatar and UAE.

- The National Network on Safe Migration is working with involvement of key stakeholders of foreign labour migration.
- The International Organisation for Migration (IOM) in Nepal has been established.
- Investigation committee to facilitate the cases of undocumented workers has been established at Department of Foreign employment to address the severe gap in access to justice of women migrant workers facing exploitation in recruitment processes but its functioning is a challenge due to the resistance from the recruiting agencies.
- The Ministry of Labour and Transportation Management is in the process of development of a strategy and a National Plan of Action to support safe migration.
- A Directive on mobilising local government to enhance their accountability is also in the process.
- A study and strategy to explore and assess safe labour markets for women is also being undertaken by the Ministry of Labour and Transportation Management.

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232. Nepal Interim Plan 2007/08-2009/2010, Chapter 17

## **D. Gap and weakness**

- There is a lack of effective enforcement and monitoring of the provisions to protect rights of workers as per the new Foreign Employment Act and Regulation.
- There is a lack of effective enforcement and monitoring of pre- departure orientation and skill training to the migrant workers and the decentralization of this process to the grassroots level.
- Both the government and regulated bureaucratic bodies (the Department of Foreign Employment and The Foreign Employment Promotion Board) lack direct engagement with the workers. There is a lack of sufficient human and other resources for prompt responses and effective functioning of this sector.
- There is no mechanism or institution to disseminate comprehensive information on foreign labour migration at the grass-root level.
- There is a lack of loan schemes targeted to WMWs to address their pre-departure financial concerns.
- There is a lack of alternative saving and investment schemes targeting WMWs, thus encouraging the cycle of remigration.
- There is limited inter-ministerial coordination in the country of employment, needed to develop a holistic response to protect the rights of workers especially that of WMWs.
- Relevant private sectors like recruiting agencies, money transfer agencies, bank, financial institutions, air travel, insurance companies, medical institutions and hotels have limited commitments to promote safe migration and have not integrated it in their plans and policies as corporate social responsibilities.
- There is a lack of programmes and policies to mitigate the social cost of migration especially that of WMWs.
- There is a severe delay in developing and enforcing mechanisms to monitor the movement of Nepali workers to various countries of employment via second and/or third country.
- Despite the commitments by the state to end all forms of discrimination against women in foreign labour migration, there are ambiguous and unclear policies for women going as domestic workers and care givers; these make women vulnerable to smuggling and trafficking.
- There is a weak mechanism and lack of response structure in the countries of employment.
- Bilateral and multilateral cooperation to secure the rights of the workers is absent, and in countries with which they exist, the agreements are gender blind.
- There are no existing agreements or contracts with the countries of employment to protect the rights of domestic workers and care givers, both falling in the most vulnerable informal sector of the economy.
- There are no comprehensive policies and redress mechanisms to address the issues related to violence against WMWs such as sexual harassment, sexual, physical and mental assault by the recruiters, employment agents and employers.
- There is a lack of access to formal judicial mechanisms and remedies. In cases of domestic workers and caregivers their documented status may be at peril if they are to lodge a complaint. Furthermore, informal sectors are in many cases not under the purview of the national employment and labour laws. WMWs mostly lack legal awareness and orientation, their mobility is constrained and they have limited access to outside world etc.
- There is a lack of sex disaggregated data both in the country of origin and country of employment. Many WMWs are going through irregular channels and are concentrated in the informal sector, thus they are invisible in the data especially in the country of origin.



## **E. Recommendations**

- Lifting of ban against women migrant workers to work in the Middle East to prevent illegal migration of women. Promote safe and enabling work environment for workers in these countries. Foster bilateral arrangements with foreign governments for equal opportunity of women in foreign employment safeguarding their vulnerabilities.
- Undertake measures to effectively implement General Recommendation 26 of the CEDAW Committee on women migrant workers by member state.
- Ratify the International Convention on Protection of the Rights of All Migrant Workers and Members of their Families, 1990.
- Enforce standardized and comprehensive pre-departure orientation and skill training with monitoring. Decentralize the orientation and skill services to reach the grassroots.
- Ensure decentralized and transparent recruitment and employment processes with effective enforcement and monitoring and wide scale dissemination of information through a unified system regarding the authentic licensed agencies and the jobs available abroad.
- Reservation and quota specified for women in the Foreign Employment Act should be ensured.
- Promote interventions with private sector (e.g corporate social responsibility) for promoting WMWs access to private sector services and contribution. .
- Bilateral agreements should be promoted between country of employment and country of origin with adequate provisions to ensure security and mechanisms to deal with VAW during employment. There should be special MOU and/or contracts to ensure protection and security of WMWs working in informal sectors.
- Mobilise diplomatic missions to secure safe labour opportunities for WMWs as well as prompt support services for the protecting rights of WMWs.
- Compile research and data on both documented and undocumented migrant workers as well as the cost and benefit of foreign labour migration to facilitate situational analysis and to identify needs of WMWs to formulate programmes and policies to address concerns.
- The issues of WMWs should be mainstreamed focusing on thematic areas such as HIV/ AIDS, economic empowerment, banking system, violence against women, poverty alleviation, education and training. Promote special contract for women migrant workers working in domestic work sector which addresses their specialized needs and context in supplement to the bilateral agreements.
- Government is not recruiting people under JITCO and EPS to have special quota for women to divert the flow from domestic work. If women do not have the necessary skills and knowledge government should invest in their training.
- Transit country should monitor and report on the movement of Nepali workers using the airport of the transit country.
- Initiate talks with the government of Hong Kong and Israel to relax the restriction imposed on Nepali migrant workers especially for WMWs.

## RELIGION, CULTURE AND WOMEN

**A. Prevalence of the problem**

Nepal which was the only Hindu kingdom in the world<sup>233</sup> is now a secular state<sup>234</sup> with religious diversity.<sup>235</sup> The understanding of the word "secular" means equal respect to all religions is still being explored and is evolving with time. However, secularism does not in any way inhibit the inherent right of any individual to practice religion. Though religious scriptures and texts remain to be reviewed in detail from a gender perspective, across the religious diversity, the majority of communities are patriarchal. The religious value that gives high priority to son instead of daughters including deeply-rooted patriarchal attitudes based upon the assumed superiority of men and the perception that women are weak and vulnerable who require protection and support undermine women's social status. The law enacted earlier that has been influenced by the religion, still keeps women as subordinate position. Under no religion in the world, violence is promoted as a tool for spreading or continuing the existence of a religion. This understanding needs to also be applied in cases of women, where religion cannot be used as an excuse for any form of violence or to discrimination..

Culture and religion are different as culture is dynamic where religion is seen as static<sup>236</sup>. Culture also has the potential of influencing the religions. For instance, in Nepal, the practice of "mehr" has now been replaced by the practice of "dowry" which is not a part of Muslim religion. Women are considered the prime custodians of cultural values and tradition in society. Resulting from this understanding, some of the key challenges posed by traditional and cultural values to the enjoyment of human rights by women remain to the non-recognition of women's work in the private sphere and of their right to work in public sphere; their right to marry and choose partners in marriage, child marriage, right to ancestral, parental or even their own independent property; limited access to education and the right to health as well as housing. Amongst some caste groups in parts of Nepal women and girls are subjected to the harmful traditional practice of *Chaupadi*<sup>237</sup> or isolated confinement during menstruation.

**B. Critical areas of concerns**

- **Son preference because of religious and cultural values:** The religious and cultural values in Nepal encourage the preference of son. The final rituals "Saradha" can be performed only by male members of the family, moreover a son and his performance of the rituals is considered as the only means to reach heaven. Parents often invest a lot on the son as he is considered as their support during their old age while a daughter is neglected as they are looked down upon as a liability. The practice of dowry worsens the situation. Even in marriage the culture of "Kanya Dan" considers women to be some form of object that can be donated from the father to the son-in-law.

233. Article 4 of the Constitution of the Kingdom of Nepal 1990 Nepal is a multiethnic, multilingual, democratic, independent, indivisible, sovereign, Hindu and Constitutional Monarchical Kingdom.

234. Article 4(1) of The Interim Constitution 2006, Nepal is an independent, indivisible, sovereign, secular, inclusive and fully democratic State.

235. Article 3 of Interim Constitution 2006, Having common aspiration and united by ...multireligious and multicultural characteristics.

236. Sapana Pradhan Malla, Cultural Violence and Human Right Discourse, The Kathmandu Post, December 24, 2006.

237. The isolation or seclusion of women during their menstruation period, to a small shed (*Suundh*) built away from the house, or even out of the village, is still observed to differing degrees in Nepal's rural regions, particularly in the Mid-West and Far-Western regions. Women are considered impure during this period and are barred from entering the home and from participating in normal family activities, although they are usually compelled to continue hard labour in the fields, collecting firewood and washing clothes. This traditional practice (which is linked to Hindu notions regarding pollution and impurity), it appears to be an affront to human dignity and women's rights, including the right to housing, health and food. It is reported that these huts are often cold and unsanitary, and women are barred from consuming milk, yoghurt and other nutritious food, confined to dry foods and rice.

- **Discriminatory cultural practices based on religion and culture:** There are many cultural practices which are discriminatory against women in Nepal. Women are treated as untouchable during their menstrual period bears its roots in the Hindu understanding of "purity" which has led to violence against women. Women are considered impure during this period and are barred from entering the home and from participating in normal family activities, although they are usually compelled to continue hard labour in the fields, collecting firewood and washing clothes. Their movement and access in the households is greatly restricted during that period. They are not allowed to enter the kitchen, touch food and in many cases they are prohibited to touch other male members of the family. Menstrual period is a natural part of a women's life but the cultural practice in Nepal subjects women to unsympathetic treatment during their time of pain. Another adverse cultural practice called "Teej" where a wife fasts all day for her husband's long life and well being but there is no cultural practice wherein the husband fasts or for that matter does anything for the betterment of his wife.
- **Discriminatory harmful traditional practice of "Chaupadi":** The practice of *Chaupadi*, though recognized as a harmful traditional practice, this traditional practice (which is linked to Hindu notions regarding pollution and impurity) is still exist especially in western and far western region of Nepal. It appears to be an affront to human dignity and women's rights, including the right to housing, health and food. It is reported that these huts are often cold and unsanitary, and women are barred from consuming milk, yoghurt and other nutritious food, confined to dry foods and rice. In extreme cases they have died due to the cold and often victims of sexual violence. Even today, during their first menstruation girls are kept in dark rooms and not allowed to go to schools. Ministry of Women, Children and Social Welfare took some steps according to the Supreme Court's decision to address the health and other problems arising from this practice. This continuing practice violates women's right including right to sexual and reproductive health, women's right to live with dignity, women and girls right to education.
- **Traditional practices curtail women's rights:** "Jhuma", "Dauki" and "Kumari" are examples of religious cultural practices which affect women life. "Jhuma" is a practice where the second daughter is donated to the monastery. "Dauki" is another practice of donating children to temples this is still prevalent in many part of far western Nepal. "Kumari" is considered a living god in Nepal. A girl child often aged between 4 to 7 is selected as Kumari and once her menstrual cycle begins another Kumari is chosen. In the practice of Kumari it is noted that girl child's rights and childhood has not been adequately considered. The rights of a kumari once she is replaced have not been adequately protected.
- **Manipulation of law and religion:** Law and religion are repeatedly manipulated to discriminate against women. Both law and religion are used as shields to suppress the rights of women. An example of this is when the law of Nepal didn't not provide a daughter with a share in the family property then Nepali Muslim daughter did not get anything and now when the law in Nepal provides for equal share for daughters in the family property now the Muslim community refers to their practice of giving the daughter a share that is half of the sons share.
- **Practice of "Talaq" that continues to be promoted though not recognized by law:** The practice of "Talaq" (an oral form of divorce) though not recognized by law is still practiced. The Muslim marriage can be broken by the husband only on the pronouncement of the word "talaq" three times. Family law in Nepal does not recognize this form divorce and promotes women and men's equal right in marriage and divorce. However, Muslim community in Nepal continues to follow this practice of talaq and women continue to live in fear and hence their rights restricted and compromised. Achievements in repealing the gender discriminatory marriage and divorce laws in Nepal are thus not equally applicable to Muslim women and remain to be one of the critical areas of concern.

## C. Concluding observations

- **Declaration of secular state:** Interim Constitution of Nepal declared Nepal as a religious secular state. The Constitution also guaranteed that no person shall be exploited in the name of custom, tradition and practice.<sup>238</sup>
- **Criminal Code Bill on Discriminatory and Degrading Treatment:** The Criminal Code Bill has a separate chapter criminalizing discriminatory and degrading treatment based on religion, race, gender, caste or tribe.<sup>239</sup> Similarly, the Code criminalizes inhuman and degrading treatment such as witchcraft, social discrimination, exclusion and other forms of violence.
- **Criminalization of torture for accusation of witch:** In a case relating to witchcraft, the Supreme Court issued a writ petition including directive orders for GoN to adopt adequate laws and other appropriate preventive and promotional measures to eliminate witchcraft practice.<sup>240</sup> GoN has already taken it seriously by denouncing the act of humiliating anyone in the name of witchcraft as a serious crime to be prosecuted under State Case Act, with the provision of imprisonment.
- **Proposed constitutional body for Muslim and other minority:** The committee on the determination of constitutional bodies of Constituent Assembly has proposed a separate constitutional commission for advancement and empowerment of Muslims and other minorities.
- **Formation of Inter religious counsel:** A counsel consisting of leaders, high priest and representatives of various religious groups has been formed for combating violence against women and promoting women's rights.

## D. Gaps and weakness

- Though the Interim Constitution of Nepal declared Nepal as religious secular county, laws in Nepal still influenced by the religion. For example the preamble of Country Code still reads that it is influenced by the religion.

## E. Recommendations

- The Country Code of Nepal, which also includes family law, needs to be reviewed to ensure that these are in conformity with international human rights law and are not based on any restrictive understanding of religion.
- Awareness raising programs which continue to inform men and women, that discrimination and violence against women, under the garb of religion is not acceptable. Involvement of religious leaders at such events is of prime importance.
- Research to challenge the restrictive understanding of religion needs to be undertaken by the government.
- Religious events and lectures should make women friendly and the government should promote participation of women in the executive posts in religious organizations.
- Drafting a White Paper on representation and participation of women in the affairs and working of religious organizations, including women's role in policy making pertaining to the matters related to religion.
- The legislative policy making process or law should not be influenced by any religion rather it should be based on humanitarian law and human right values, in particular applying the principles recognized in the CEDAW Convention of non-discrimination and substantive equality.
- State made secular law should be implemented strongly and women's rights should not be curtailed in name of religion.

238. Article 29 of the Interim Constitution of Nepal, 2006.

239. Section 162 of the Penal Code Bill, 2011.

240. Law related to women rights and Supreme Court judgment on women, issue 98, WCSW/ UNIFEM/ FWLD

# SINGLE WOMEN

### A. Prevalence of the problem

Women in a largely patriarchal society like Nepal are mistreated on the sole basis of their gender by their families, community, and in the public arena. Additionally women are discriminated based on their marital status by linking their identity and existence as a dependent of men. While marriage is expected in every woman's life, she is looked down upon as soon as she is widowed. A widow is treated as a curse to the family and blamed as a cause for her husband's death. She is treated as an outcast and is socially marginalized. According to religious and traditional beliefs she is subjected to various sufferings. This is very detrimental to her mental and physical health. Single women (widows) are denied adequate access to nutrition, health resources, social security and freedom of mobility. It is for these reasons that single women and their dependants fall under the category of the most marginalized, poorest of the poor, with their voices unheard and their needs - immediate and long-term - unmet.

Single women in Nepal face various obstacles which prevents their empowerment. Especially in the rural areas, most of the single women are uneducated and have very little income-generating skills. Furthermore, single women are unaware of their legal rights due to lack of education and awareness. Therefore they are more vulnerable to exploitation, deception and are often deprived of their rights. Thus there is a vicious cycle of violence and poverty that traps them and their children. Often they are dependent on other male members of their family for day to day survival, so can fall victim to abuse. This dependency pushes them towards dire human rights violations, trafficking, sexual, physical and mental harassment. It also forces them to seek means of survival outside of their rural communities.

In the last decade, there has been an unprecedented rise in the number of widows in Nepal. This is mainly due to proliferation of armed conflict, the spread of HIV-AIDS, absolute poverty and the persistence of harmful traditional practices. A recent baseline study conducted by WHR showed that more than 40% of women get married before the age of 20, around 67% of them being under 20-35 years of age and having on average 3-4 children. Amongst these women, 29% of them are illiterate, with only 2% of them having gained some sort of college education. 10% of single women were forced to migrate and were displaced due to the conflict in their community. All single women faced problems related to extra work burden, exploitation, domestic violence and a sense of loneliness and insecurity. It was also found that most of their children had dropped out of school due to a lack of financial sources.<sup>241</sup>

Increase of young single women to urban areas in search of better opportunities, is increasing due to the above mentioned reasons and the present conflict situation in the country lead to. However, due to the lack of education and skills these girls and women are denied of proper employment opportunities and are subjected towards being the most marginalized and poorest migrants in urban settings.. Therefore all over Nepal, single women and their dependants are the most vulnerable members of the society.

### B. Critical areas of concern

- Single women face harassment that includes mental, sexual and physical violence at home and/or the workplace. Many of them are forbidden from religious practices and are banned from public and ceremonial functions. illiterate and less educated single women are more prone to enter informal occupation like massage centers, brothels and stone-breaking which are exploitative.

241. "Problems and Challenges Faced by Single Women," Women for Human Rights, Nepal, 2004.

- Single women's mobility is restricted and they face barriers from proper employment. There is a significant increase in displacement of single women due to conflict in the country.
- Women, who lost her husbands in conflict or due to other reasons, are made to undergo a long waiting period before they can access the property they are entitled to inherit. Such delays make women economically dependant on other members of their family, which increases their vulnerability.
- No special policy and legal measures to end discrimination against single women have been started.

### **C. Concluding observations**

- Article 35(9) of the constitution states that "*the state shall pursue a policy of making special provisions of social security for the protection and welfare of single women, orphans, children, helpless, the aged, disabled, incapacitated persons and the disguising tribes.*" Interim Plan, 2007/08 - 2009/2010: In Chapter 7, titled 'Peace, Reconstruction, Rehabilitation and Reintegration', the plan states that one of its quantitative targets is "*relief distribution to all the widows and single women affected by the conflict*". In the same chapter, under 'Policies and Working Policies', the plan states that "*special measures will be taken to socially and economically empower single women*" and that "*rehabilitation centers' will be launched for the protection of the rights of ... single women*".
- The social security arrangements that have been made effective from 17 September 2008 provides a monthly allowance of Rs. 500 for single women above 60 years.
  - Number 2 of the chapter on *Shritidhan* (women's exclusive property) which prevented single women from fully utilizing her property according to her free will, was struck down by the Supreme Court.<sup>242</sup>
  - In fiscal year 2010- 2011, the government decided to provide Rs. 50,000 as incentive for single to remarry. However, single women refused to take this incentive, criticizing that they are not a commodity and such incentives instead come as provisions of employment, healthcare and education for their children. After a writ filed by the Women for Human Rights - Single Women's Group, the Supreme Court deemed the government plan as being like a state-sponsored dowry and therefore being detrimental to a woman's independence. The Supreme Court thus issued a directive not to implement this kind of program rather asked government to introduce other social and economic empowerment programs.<sup>243</sup>

### **D. Gaps and weakness**

- There is a lack of authentic data collected by the government or by other organisations related to single women. This data is necessary for the formulation and implementation of development programmes For single women
- Laws have failed to acknowledge that the early marriage of daughters is still common resulting in early widowhood. Subsequently substantive recognition of their rights as widows has also been neglected.
- There are very few social security schemes for single women (widows) and those that exist focus only on specific criteria. There is also the aforementioned age discrimination between the single women in monthly allowance.
- Not adequate initiative to address social cultural biasness from the government.

242. Lilly Thapa and others V. HMG NKP 2062 decision date 15th December 2005 Writ No 34 of 2061 Bs (2004 AD)

243. Writ no 0301, interim order of 2066, decision no. FN 0145

## **E. Recommendations**

- *Dejure* and *defacto* discrimination based on social construction and single status to be prohibited and made punishable.
- Education and empowerment of women should be priority instead of marriage. For this, massive advocacy program needs to be initiated from the State to change the mindset.
- Policies should be amended to remove the age restriction in receiving widow allowances.
- Single women should be allowed special consideration in health services and education of their children.
- To encourage widow remarriage, the government should respect the choices of single women and provide healthcare, economic empowerment for women and educational benefits for their children instead cash benefit to the couple.
- Single women are facing multiple forms of discrimination in the society. Necessary social security schemes for single women (widows) needs to be launched.



## **CHAPTER 5**

### **WOMEN AND SEXUALITY**

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#### **A. Prevalence of the problem**

Sexuality has varying connotations which results in broad differences in the freedoms and rights enjoyed by men and women in different regions. Female sexuality has been perceived in all patriarchal cultures worldwide as threatening to social norms and order. This is one of the areas chosen by patriarchy for intense surveillance and regulation. Cultural norms and practices regarding gender and sexuality are deeply entrenched at every level of society and frequently influence the legislations, policies and programs of state. In patriarchal society, women's body and sexuality are treated essentially as commodities and women's primary duty is pleasing her husband and bearing children, mainly sons.

Women's subordinate position in the household had adversely affected their subjective identity. As a result, they take less interest about their health and sexuality which affect them physically and mentally.

#### **B. Critical areas of concern**

Women have no control over their sexuality: The issue of female sexuality, their right to take decision on matters related to their sexuality, coercive nature of sexual relations, discrimination and violence is yet to be recognized by the state and society as a critical area of concern. Sexuality and sexual behavior are not just biological and physical issues but also social constructs. Nepalese society has enforced behavioral norms for women, which emphasize suppressing sexuality and prescribing codes for keeping their bodies "pure".

Different standard to determine sexuality of men and women: Sexuality is found to be associated more with women's character than men's character. Women violating such norms, for example women breaking these social norms cause their families, in-laws and kin dishonor, embarrassment and shame, however, it is an essence of so called masculinity.

No recognition of identity of sexual minorities: Gender identity and sexual orientation is a crucial element of an individual's sexuality. In Nepal the laws classify a human being either as a male or as a female. The laws have yet to recognize that a person may be lesbian, gay, bisexual, transgender, intersexes (LGBTI).

■ **Stigma attached with sexuality increases vulnerabilities of women:**

Stigma is attached to sexuality and this has resulted in further targeting the vulnerable group of sex workers who are underprivileged mostly women. Due to lack of proper law for the protection of Sex Workers (SW) and their clients they are being socially discriminated and victimized both by law enforcement officials as well as society.

■ **Bias mindset of service providers:**

Sex workers and sexual minorities face discrimination in accessing services resulting from biased mentality of the service providers. For instance, when a sex worker or a person from sexual minority approaches the health worker, they are first screened for HIV even in cases of minor physical ailment.

### C. Concluding observations

Sexuality is included as ground of non-discrimination: In Nepal homosexuality is not recognized on par with heterosexual. Committee on Fundamental Rights and Directive Principles of Constituent Assembly has proposed sexuality as one of the ground for non-discrimination.<sup>244</sup>

Judicial initiative to recognize sexual minorities: In the writ petition demanding protection of identity of sexual minorities, the Supreme Court issued directive order to government to recognize identity of LGBTI and amend discriminatory provisions against LGBTI.<sup>245</sup>

Advances sexuality right of women: The Supreme Court struck down legal provision which stated "any women who transfers her property to any person and if she gets married to same person who receives such property, such transaction shall be void and lawful claimant shall be entitled to get such property returned" as it discriminates women on the basis of her sexuality.<sup>246</sup>

Privacy and confidentiality is fundamental right: Sexuality is closely linked to privacy and confidentiality of a person which is essential for enjoyment of the right to sexuality. The Interim Constitution of Nepal makes privacy and confidentiality as a fundamental right.<sup>247</sup> Upholding this right, the Supreme Court issued a directive order in the name of the government to enact appropriate law to protect confidentiality of women and children victim especially of sexual violence.<sup>248</sup>

Criminalization of obscenity of women in electronic transaction: Electronic Transaction Act, 2006 prohibits publication or exhibition in the electronic media of any material that is against public moral or decency and depicting sexual matters is considered unacceptable.<sup>249</sup> The Supreme Court also issued an order of mandamus to government to develop standard guidelines for preventing use of women in advertisement as a sexual object and commodity.<sup>250</sup>

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244. Concept Note and Preliminary Draft of Fundamental Rights and Directive Principle Committee of Constituent Assembly.

245. BDS vs. Government of Nepal

246. Meera Dhungana for FWLD vs. Government of Nepal, Nepal Kanoon Patrika, 2006, Vol. 8, pg. 979.

247. Article 28 of the Interim Constitution of Nepal, 2007.

248. Sapana Pradhan Malla on Behalf of FWLD vs. GoN, Supreme Court Bulletin, 2007, Magh Special Issue.

249. Section 47 of the Electronic Transaction Act, 2006.

250. Raju Chapagain v Government of Nepal, NKP 2065, Vol. 6, p823



## **D. Gap and weakness**

- Discriminatory law against persons with different sexual orientation and the laws criminalizes homosexual activity. The law does not recognize same sex marriage.
- Absence of proper law for regularizing SW's and their clients.
- Lack of proper understanding of sexuality and bias mind set up of service providers denies public services to sexual minorities and SW's.

## **E. Recommendation**

- Enact comprehensive laws for regularization of sex work and securing human rights of SW's and their clients.
- Awareness raising to change discriminatory cultural norms and stereotypes relating to sexuality through public education and introducing new message about sexuality in the school curriculum.
- The laws relating to court procedures and judicial interpretation of the court should secured the right to privacy and confidentiality in the cases relating to sexual offences.
- Employment opportunities for SW's wanting to change their profession must be provided with proper education, working environment and social security by the government.



## **CHAPTER 6**

### **WOMEN IN THE MEDIA**

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#### **A. Prevalence of the problem**

The advances made in the communication sector in Nepal has benefited as well as caused disadvantages for women. There has been an increase in the number of women who work in the communications sector. However, this has not translated into increased access to power and decision-making in the media industry for women. Due to this fact they are still not able to influence the policies related to media.

The convergence of new technologies in media and the increase of private institutions working in the information and communication sector in recent years have increased the number of women working in both print and electronic media. However, women have not gained parity with men in terms of participation and decision-making. Top management and editorial board is still entirely male-dominated and patriarchal with only a negligible number of women holding senior positions. Although, women have become more visible particularly in television and radio as presenters, announcers and reporters, the gender division of labour is highly pronounced in production, management, editorial board, creative work and technical departments, which are male dominated. The presence of women is also largely absent in official commissions, boards or committees constituted for formulating policies and monitoring of the overall media sector.

Information Communication Technologies (ICTs) that provide opportunities to share information and resources, and link several networks with each other more efficiently, have emerged in the last few years. However, women's presence in ICTs is negligible. This new age ICT is very rarely accessible to women in poorer and less

urbanised areas where electronic and print infrastructures are poor and unaffordable. Lack of skills, training and language accessibility also serves as major obstacles. The under representation of women in media affects public policy organizations where decisions regarding women and development and governance, in general are made.

There is a continuous stereotyped portrayal of women in the media. There is a notable increase of women in mass media educational institutions leading to increase of women staff in electronic and print media.

## B. Critical areas of concern

- **Limitation due to Poverty and illiteracy:** Poverty and illiteracy prevents women from having access to new information and communication technologies. This leads to women lacking the information to raise issues related to them.
- **Lack of networking:** There is a lack of coordinated effort aimed at improving and changing the status of women within the media, information and communications industries. Women continue to experience barriers not only in accessing new information and communication technologies but also hindrances in participating in technology development and policy making. This hampers their development.
- **Lack of effective laws :** The laws concerning cyber and electronic media related offences are not satisfactory. Women are often harassed by the misuse of internet. Obscenity and harassment of women through email and internet are on the rise. The issue has been partially addressed in the Electronic Transaction Act,2008 . The need for stringent laws and international co-operation persists.
- **Limited participation in decision making:** While there is a notable increase of women's presence in both the electronic and print media industry, they continue to have limited participation and access to decision-making in the sector and in governing bodies that influence media policy. As a result women are still unable to shape programme content and ensure coverage of women's priority issues and concerns. Out of the 13 Board Members, in the Press Council, only one is a woman

### Women participation in the Management Board of different organizations affiliated with media

S.No.	Organization	Total	Female	Male
1.	Press Council Nepal	13	1	12
2.	Federation of Nepali Journalist(Central Committee)	27	2	25
3.	Radio Nepal	5	0	5
4.	Nepal Television	5	0	5
5.	Gorkhapatra	6	1	5
6.	R.S.S.	5	1	4
7.	Information Commission	3	1	2
8.	Committee to fix the minimum remuneration	13	2	11

- **Stereotyped representation and commoditization of women:** Negative and stereotyped representations of women in the media continue while the projection of the cultural diversity and varying realities of women's lives remains absent. Women from marginalised sectors of society are further invisible as their ethnic, racial, and class groups, religion or sexual orientation are minimally or

never represented in the larger sectors of media. Media codes of conduct at national level have not been effective in ensuring positive portrayals of women in the media. On the other hand, gender coding operates as many women media practitioners still tend to be assigned to "soft" issues such as culture, arts and lifestyle while men are assigned to "more important" issues like politics and the economy. The patriarchal culture of societies is very much reflected in the various media reports and presentations. Women are still predominantly portrayed in roles within the home, performing domestic chores or as sex objects. They are more likely to be portrayed as being victim, subservient, dependent, nurturing, selfless, sacrificing mother and wife or as a busy secretary, glamorous model and scheming mistresses

Women's visibility in the news is still dominated by sensational stories of glamour, sex, domestic violence and other forms of violence. Stories like women coping with adversity or building their lives are largely missing. Issues affecting women, their vast experiences and their lives, barely find their way into the mainstream media

- **Dominance of male perspective:** Most journalists including female journalists tend to think that only the perception of men is important when dealing with issues such as governance, politics, decision-making in civil services, etc. Women have made significant strides in many areas but the media has been slow to recognize and document these gains. It does not recognize women in new roles.

### **C. Concluding observations**

- Government has formulated media monitoring mechanism in district level where there is a provision for including at least one woman journalist in the committee.
- There is a provision of approximately 10% reservation for women journalist in recruitment policy of government media organizations.
- The first amendment of Working Journalist Act 2051 was done in the year 2064 BS
- The trend of portrayal has changed to some extent and women's issues have also started getting priority as anchors, editorial material and main news as compared to the past.
- There have been improvements in the allocation, sensitivity and the style of writing on women's issues.
- Journalism has been included in the course of study of schools and colleges.
- Participation of women journalists has increased.

### **D. Gaps and weaknesses**

- Lack of a Media Council similar to Press Council.
- Lack of specific media policies and code of conduct for the rights of women working in media.
- Lack of women in management and editorial board of various organizations in the media industry.
- Lack of gender-friendly working environment in the media industry.
- Lack of security for women journalists
- Lack of job security and irregular remuneration.
- Lack of sexual harassment policy in the media industry (both government and private organizations )
- Lack of training and skill enhancing programs.
- Lack of implementation of affirmative action of special provision for women in Government owned media.

- Although, Working Journalist Act 2051 has been amended, it is not implemented yet.
- Patriarchal societies and its ill effects still reflected in news coverage.
- Lack of gender perspective on various issues leading to gender bias
- Lack of women's access to ICTs and gender biases in the development of ICTs
- Lack of women's full participation in media processes
- Lack of effective media policies.

## **E. Recommendations**

- Establish a Media Council similar to Press Council.
- Increase the participation and access of women in decision-making at all levels of the media industry to achieve gender balance. The positive role played by women in all segments of the society in local and national levels need to be given prominent coverage by both print and electronic media.
- Adopt or develop further codes of conduct, professional guidelines and other self-regulatory guidelines to remove gender stereotypes and promote balanced portrayals of women and men.
- Develop programmes that support women's ability to create, access and promote networking, in particular through the use of new Information and Communications Technologies.
- Develop policies and programmes to change stereotypical attitude and behaviours concerning gender roles and responsibilities that are promoted via the media.
- Need to strengthen gender-awareness campaigns and gender equality training among journalists and media industry tycoons to eliminate the persistence of harmful stereotypes that are portrayed by the media.
- Laws addressing misuse of electronic media and the internet must be strengthened and proper provisions must be put in place to protect privacy of people particularly girls and women.



## **CHAPTER 7**

# **WOMEN, PEACE AND SECURITY**

## **A. Prevalence of the problem**

A decade long armed conflict in Nepal resulted in 13,236 deaths with 785 people being disabled and 1006 people disappeared. Among the total number of those killed, disabled and disappeared (15,027), eleven percent (1,665) were women.<sup>251</sup> Nepal ranked the topmost in the list of the most disappearance cases in 2004.<sup>252</sup> During the conflict period, 78,689 families or persons were displaced.<sup>253</sup> Women and children's situation was exacerbated by conflict due to lack of access to health services, absence of security, and an

251. Conflict Victims' Profile, INSEC, 2010

252. Report of the UN Committee on Enforced disappearance 204.

253. Source: Ministry of Peace and Reconstruction/ GoN, 2010

unprecedented damage to the educational facilities. Sexual violence especially rape was reported in the media, as well as by human rights organizations.

On one hand women's situation was exacerbated by the armed conflict, on the other hand they had to bear extra responsibilities in holding the families and communities together in the time of crisis. The security situation forced men out of villages putting women in the centre to take on different challenges such as caring for their families and communities, earning and investing. Women plough fields, care for old, young and sick, and handle the challenges of feeding the Maoist armies as well as the security force. Ironically, the end of conflict has pushed women back to their traditional stereo-type roles as men returned and assumed with their specific roles. The skills that women developed in establishing themselves as a group that can take on any responsibility has now been minimized in the post conflict situation where the processes have not provided enough attention to different roles women can play.

Transitional Justice is a concept to address human rights abuses during conflict in the period of transition from an authoritarian to a democratic regime or from armed conflict to peace. This is to prevent repetition of the atrocities and to build a peaceful future and reconciliation process. The violent conflict in Nepal for more than ten years claimed more than 16,000 lives and caused thousands of disappearances. Many were abducted or killed and are still missing from their families. Thousands suffered torture. Mass killings, illegal detentions, rapes and murders of civilians were rampant during conflict situation.

Also women participated as combatants in the Maoist army. Women constituted 40% of the total Maoist rebel forces. However, during the UN's first verification process, they were on an average 20-25% women Maoist combatants. In the second round of verification, it was reported that the women in the Maoist cantonments comprised of approximately 10.5 % only.<sup>254</sup>

Nepali women comprised of a large mass in the people's movement demanding absolute democracy. However, during the peace negotiations and adoption of peace agreement, women were virtually absent. The peace processes completely failed to take women's representation as well as their concerns and issues into account. The peace agreement made in November 2006 between the Nepal government and Maoist failed to acknowledge different impact of conflict on women and any specific measures to address it.<sup>255</sup>

Women's representation in the Constituent Assembly has been historical as 33% (197 members out of 601 members of Constituent Assembly) of women occupy the Assembly. However, there is no guarantee that this trend will be reflected in other post conflict decision-making positions. There is no initiative from the government to prosecute the perpetrators of the offenses relating to sexual and gender based violence. The transitional justice mechanism is taking a long time to be established to redress the victims and/or make any advancement to prosecute criminals.

With the increasing number of armed groups in the country<sup>256</sup> and the ongoing political crisis between the government and the Maoist, it would further create greater vulnerability of women and girls. The lack of any concrete action from the government to address the issues of conflict victims has created an atmosphere of mistrust. The increasing impunity has contributed to the increase criminal activities and gangs mortality.

## **B. Critical areas of concern**

- **Participation of women in peace processes is completely neglected:** Women who have been extremely active during the people movement and conflict are pushed back into their traditional gender roles. There is no attention towards challenging the stereo-type gender roles and ensuring women a place to participate in public activities. Several negotiations have been held with different

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254. Women in Nepal Army and the Police Forces comprise of 3% and 27% respectively.

255. Comprehensive Peace Accord 2006, Peace Committee, Peace Secretariat, Singhdurbar.

256. (According to security forces of Nepal, at the moment there are 103 different armed groups are active in various part of Nepal)

groups and the government. However, not only have these groups failed to include women in the negotiation process, including the integration process, none of them even raised the serious concerns about the plights that women have been facing. The government too has not been sensitized to raise and address these issues. There have been no instances where consultations have been held with different interest groups including women before conducting such negotiations.

- **Absence of Transitional Justice Mechanisms:** Despite the provision to establish a truth finding mechanism in the Peace Agreement of 2006 and Interim Constitution of Nepal, the process is lingering since last four years. Bill on Truth and Reconciliation Commission was registered in the Parliament. However, Parliament has yet to pass the Bill and there are some serious differences between interest groups on some of the underlying principles of the Bill. This has resulted in increasing the moral of criminals. There is a growing discontent and disappointment among the victims as they consistently lose trust on the government and state machineries in addressing the atrocities they suffered. There seems to be lack of genuine effort from and political will in the government, parliament and political parties to promote victims' right to justice. Such delays pose a threat to fabricating evidence and witnesses in a vast number of cases relating to violation of human rights especially violence against women.
- **No compensation for Sexual Violence:** The government has adopted guidelines for providing compensation to victims of conflict. However, government is providing compensation only to the victims or family members in case of death, disappearance, disability or displacement. There is no provision of compensation for victims of rape or other sexual violence committed during the conflict. The compensation provided for victims is adhoc and one off, monitory compensation. This is not much help in sustaining the lives of the victims. The reparation still needs to take account of employment opportunities, and other options based on what women want or can do.
- **Non-recognition of gender perspectives for reintegration and rehabilitation:**

Women, in general, face socio-economic and cultural challenges where they are discriminated at home and at workplaces. At the same time, the socio-economic challenges being faced by the women in Maoist army are critical. Though there is yet to be a decision in regard to reintegration of the Maoist army, the reintegration and rehabilitation process should ensure that women receive a gender sensitive response and sustainable reintegration and rehabilitation support. The beginning of the reintegration of disqualified Maoist army has posed questions as to how the disqualified women would be reintegrated, and whether the needs of women among the disqualified would be critically examined and responded to.
- **No Psychological Support:** Women and girls who suffered sexual and gender based violence need psychological support, however, there have been very less efforts towards this. There is a huge gap in attempting to understand this need and providing services. Psychological problems create barrier groups to make any progress or advancement in their lives. However, negligible attention has been made in this critical area.

### **C. Concluding observations**

- In terms of women's representation, the Interim Constitution under fundamental rights incorporates a provision to ensure proportional representation of women.<sup>257</sup> The issue of women's representation is being consistently raised by women's rights organisations with a demand to incorporation a provision for quota for women in decision making positions.

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257. Article 21, Fundamental Rights, Interim Constitution of Nepal 2007.

- Adoption of the National Plan of Action on UNSCRs 1325 and 1820 on women, peace and security. A High Level Committee on Women, Peace and Security is established<sup>258</sup> and led by Minister of Foreign Affairs (MOFA).
- A Truth and Reconciliation Commission Bill 2010, and Bill on Disappearance Commission 2010 are submitted in Parliament
- There are reparation guidelines in place with provisions to provide relief to victims of conflict.
- Out of 75 districts, 68 local peace committees (LPC)<sup>259</sup> have already been formed ensuring at least 33 percent representations of women in the LPCs.
- National level networks on women, peace and security namely ‘Shantimalika’<sup>260</sup> and ‘WAPPDCA’<sup>261</sup> are established for carrying out coordination works around the three issues.
- Several IEC materials have been developed on women, peace and security including training manual for policy makers. Training for security sector on the issues is undertaken by various civil society organizations and the UN in Nepal.
- Research initiatives to examine the situation of women and girls in conflict time especially to explore gender based violence are undertaken.<sup>262</sup>

#### **D. Gaps and weaknesses**

- The peace process is full of several challenges. Nepal’s post conflict situation is characterized by the political instability, impunity and rise in criminal activity leading to insecurity. There is still no situation for sexual violence victims to come openly to seek justice. The major concern about it is that the perpetrator who are directly or indirectly involved in the human rights abuses are still in power. The former rebel groups, the Maoist, are now in parliament and they have already formed the government. This makes the Transitional Justice process particular in the level of prosecution a big challenge. Broadly speaking, there will be no much action to push the Transitional Justice process forward because the perpetrators are still in the policy-making positions. There is also fear of continuation of impunity. This is reflected in the amnesty clause of the TRC-Bill.
- Addressing the needs of the victims of gender based violence is also a major concern. Women voices get less heard and many women are not able to understand the transitional justice process due to the illiteracy and low education. The important question is how gender-based-violence can be visible without the stigmatization of women who are raising their voices. If the transitional justice process fails to address the needs of victims, it can put a lot of tension and frustration to the victims and might cause the new conflicts or arouse old conflicts again.

258. The HLC was formed on 20 September, 2009 with a role to develop policy, implement and report on the resolutions to UN.

259. TOR of Local Peace Committee 2008.

260. Shantimalika is a network of women’s organizations on women and peace, established in March 2003. The organizations in the Shantimalika network are Nagarik Aawaj, IHRICON, Jagaran Nepal, ABC Nepal, FWLD, Didi Bahini, CWIN, INSEC, Sancharika Samuha , CAC Nepal, Women Society Pressure Group, SAP Nepal, Saathi, Samanata, Dr. Aruna Upreti, Ms. Sujata Thapa, Ms. Stella Tamang (representing Indigenous group), Ms. Durga Sob (representing Dalit community), and Ms. Mohini Maharjan. Source: UNIFEM, August 2006. ‘A Rapid Scan- Organization Working on Women and Peace in Nepal.’

261. WAPPDCA is a network of organizations working on women, peace, democracy and CA formed in December 2006. The organizations in the WAPPDCA network are Samanata, Nagarik Aawaj, Women’s Human Rights, NCARD, NDWA, FEDO, CFWP, and Fatima Foundation-Nepal, and NIWN. Source: WAPPDCA. The full form for WAPPDCA is Women’s Alliance for Peace, Power, Democracy and the Constituent Assembly.

262. IHRICON. 2007. Sexual Violence in the “People’s War”- The impact of armed conflict on women and girls in Nepal. Gender Based Violence in Conflict, UNFPA, IRC, Saathi Nepal 2009. Sexual and Gender Based Violence in Conflict and Post Conflict Situation in Nepal, UNIFEM, Saathi Nepal 2009 (Report unpublished).

- Political crisis has overshadowed the peace process and have also hindered the formation of transitional justice mechanisms such as the TRC and Disappearance Commission denying victims the right to justice. Strong victim, witness support in the truth seeking process yet to be incorporated in the Bills of the TRC and Disappearance Commission.
- The Constituent Assembly and political parties are not giving adequate attention to the constitution drafting process which may delay the completion of constitution making process and dragging the country further in transition.
- Several different armed groups have launched movement against the government demanding various rights, and wider availability of arms and weapons have further created a conflict like situation putting women and girls in more risk to sexual and gender based violence.
- No comprehensive and reliable profile of the victims and investigation of sexual and gender based violence during the conflict has been maintained.

## **E. Recommendations**

- Immediately establishment of the Truth and Reconciliation Commission and Disappearance Commission with the passing of law with no amnesty on sexual violence . Investigate cases of violence suffered by women during conflict to promote women's access to justice, and punish the perpetrators addressing existing impunity in the country.
- Ensure women's participation in the post conflict processes and mechanisms. Such mechanisms also includes TRC Disappearance Commission, special committee on reintegration and in it's secretariat,.
- While truth seeking has been much explored from gender perspective, other aspects of transitional justice is yet to be examined from human rights perspectives including gender such as reparation, reconstruction, reintegration, prosecution and land mine action. Therefore, in addition to consultations on these aspects, a gender checklist is to be developed to address women's different needs within these initiatives.
- Reparation should ensure sustainable support to the victim and should not be one off monetary compensation. Reparation policies should be women friendly and based on special needs and necessity of women. Reintegration packages to be provided for conflict victims should be needs-based, especially women's different reintegration needs based on their profile and socio-economic and cultural context is to be provided sufficient attention.
- Wider sensitization on UN Security Council Resolutions particularly Resolutions Nos. 1325 and 1820, on women, peace and security and train government and security sector on the SCRs for the effective implementation of the SCRs.
- International standards such as Rome Statute to be ratified as a matter of priority.



## WOMEN WITH DISABILITIES

**A. Prevalence of the problem**

In Nepal, besides congenital forms of disabilities, 13 long years of armed conflict has resulted in acquired disabilities, thereby increasing significantly the numbers of PWDs (people with disabilities) within the country. Unfortunately to date there is no conclusive data or statistics that can identify the total number of PWDs within the country. According to the National Census of 2001, which is a study conducted once in every 10 years, only 0.45 % of the population was stated to be PWDs with 54.56% amongst them being women.<sup>263</sup> However, a study conducted simultaneously by New Era under the aegis of National Planning Commission Secretariat and Social Welfare Council and supported by UNICEF stated that 1.63% of the entire population in the country were PWDs with 46.4% amongst them being women.<sup>264</sup>

Comparative analysis of the prevalence of disability in studies that were conducted previous to the above studies, reveal that though the incidence of disability among men is higher than that of women, the percentage of women with disabilities (WWDs) are increasing gradually.<sup>265</sup> According to New Era, *"Disabilities were seen more prevalent among males than female. The result of sex differentiation reduces the chance of survival among females. The reason for the lower prevalence of disabilities in women could be because their disabilities were not identified. Girls and women are often able to perform certain activities, albeit at enormous personal cost (pain and/or effort), to hide their disabilities."*<sup>266</sup>

WWDs face multiple discriminations in Nepal both under the law as well as in society from their birth. Multiple discriminations are based on the two primary identities of gender and disabilities. Societal discrimination against women remains largely unquestioned. There are no appropriate legal sanctions to prevent discrimination against WWD and no proactive measures to minimize the impact of disabilities on women. Disabled women are not visible in society and public life, and consequently from all decision making mechanisms, including those that affect their lives both directly and indirectly. Despite the emergence and rise of the disability movement in Nepal during the 1990s, women with disabilities have rarely organized and been represented as a constituency. Mobilizing women with disabilities remain a challenge even to this day.

**B. Critical areas of concern**

- **Cultural and societal prejudices:** Disability continues to be considered a curse on a person for sins committed in previous birth. Prevailing gender stereotypes in the society compound discrimination against WWDs. A woman's beauty is considered to be vital to her and her prospects for marriage but it is considered to be tarnished when she is disabled. Their own families regard them as asexual. In comparison to 60% of men with disabilities who were married, only 20% of WWD's were found to be married. Amongst the few WWDs who forge marital relationships particularly with able-bodied men, large numbers experience domestic violence and eventual desertion by their partners.<sup>267</sup>

263. *Population Census 2001: National Report*, His Majesty's Government of Nepal, National Planning Commission Secretariat, Central Bureau of Statistics, in collaboration with UNFPA Nepal, June 2002

264. *Situational Analysis on Disability in Nepal*, New Era, National Planning Commission Secretariat & UNICEF, 2002

265. The incidence of disability amongst men were reported to be 62.6%, 60.0% and 53.6% in 1980, 1998 and 1999 respectively whereas the incidence of disability amongst women was 37.7%, 40.0% and 46.4% in 1980, 1998 and 1999 respectively.

266. Ibid.

267. *A Study On Status Of Social Inclusion, Livelihood And Violence Against Disabled Women Of Nepal*, Neeti Aryal, Nepal Disabled Women Association, 2007

- **Low reporting of disabilities** : Several studies have concluded that the low prevalence rate of disabilities amongst females witnessed through available statistics could be a result of low reportage.<sup>268</sup> Under reporting and the low public visibility of WWDs has left their needs unaddressed.
- **Denial of reproductive health rights** : Health has been one of the most neglected aspects in the lives of WWDs. Women with mental disabilities who were found to be living in unhygienic conditions, due to lack of proper care. Only 20 % disabled women could go to hospital for check-ups as they do not have people to accompany them and also experience financial constraints.<sup>269</sup>

Studies reveal that. 45 % of WWDs were found to be facing a variety of reproductive health problems. 15 % of WWDs had not received any information about menstruation and how to take care of themselves and be clean during their menstruation period.<sup>270</sup> 40% of WWDs did not have any information about contraceptives, and this included married women with disabilities too.<sup>271</sup>

- **Restriction in movement and access to services and resources** : Women with disabilities are further restricted in their movement. Their increased vulnerability raises fears of sexual assault and harassment, and there are no measures to give them additional protection. As a result of this seclusion, WWDs fall behind in many indicators such as education, employment, access to health services, and participation in decision-making bodies. Studies indicate that against 3.8% of men with disabilities receive special aid form government and non-governmental agencies, whereas only 2.4% of WWDs receive the same type of assistance. <sup>272</sup> Parents often do not apply for citizenship for children with disabilities to avoid giving them rights within the family to inherit property.

The literacy rate was considerably lower for females than males, with 77.7% of the females and 59.6% of the males having no education.<sup>273</sup> The report on the Implementation Status of Existing Laws, Acts, Rule and Facilities made for the Development, Promotion and Protection of People with Disabilities by the National Human Rights Commission resulting from a study conducted between 2005 – 2007 states that 46.61% of persons with disabilities are girls. 41.72% of the total numbers of students with disabilities at primary level of education were reported to be girls. However, out of the total number of scholarships provided to children with disabilities only 13% has been awarded to girl children. There are few policies directed towards improving the lives of persons with disabilities, the poor dissemination of information on existing programmes are some of the root causes for the low access to resources.

Women with disabilities are further restricted in their movement due to increased vulnerability raises fears of sexual assault and harassment, and there are no measures to give them additional protection. As a result of this seclusion, WWDs fall behind in many indicators such as education, employment, access to health services, and participation in decision-making bodies. Studies indicate that against 3.8% of men with disabilities receive special aid form government and non-governmental agencies, whereas only 2.4% of WWDs receive the same type of assistance. <sup>274</sup>

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268. Ibid Note 8; *Prevalence of Childhood and Adolescent Disabilities in Rural Nepal*, S. Sauvey, D. Osrin, D.S. Manandhar, A.M. Costello and S. Wirz, December 20, 2004

269. *A Study On Status Of Social Inclusion, Livelihood And Violence Against Disabled Women Of Nepal*, Neeti Aryal, Nepal Disabled Women Association, 2007

270. Ibid

271. *Human Rights in Nepal: A Status Report 2003*, NHRC

272. *Situational Analysis on Disability in Nepal*, New Era, National Planning Commission Secretariat & UNICEF, 2002

273. Ibid

274. Ibid

## C. Concluding observations

- **Ratification to the CRPD** : Nepal ratified CRPD and its Optional Protocol on December 28, 2009.
- **Interim Constitution** : Article 33 vests responsibilities in the state amongst others requires the State to "to enable Madhesi, Dalits, indigenous ethnic groups[Adivasi Janajati], women, labourers, farmers, the physically impaired, disadvantaged classes and disadvantaged regions to participate in all organs of the State structure on the basis of proportional inclusion".

Article 35 on State Policies, Clause 9 requires the State to pursue a policy of making special provisions for the protection and welfare of .....disabled and incapacitated persons. Clause 14 provides for positive discrimination in policy making for the benefit of persons with disabilities amongst other groups mentioned in Clause 9. Finally Clause 17 requires the State to undertake legislative reform, making allowances for the benefit of incapacitated women amongst others such as aged and unemployed.

- **Protection under different laws** : The Disabled Persons (Protection and Welfare) Act, 1982 and Rules, 1994 provides for equality in all matters and rights to live with dignity<sup>275</sup>

There are approximately 42 legislations that contain provisions impacting on persons with disabilities in one form or the other. However only the Country Code 1963 specifically mentions women with disabilities:

Sec 3 (a) of Chapter 14 amended in 2002 and 2006 on Rape provides enhanced punishment by 5 yrs to persons convicted of raping women who are "*pregnant, incapacitated and/or with disabilities*".

**Local Self Governance Act, 1999** : Section 28 (k), Section 96 (j) and Section 189 (f) requires the Village Development Committee, Municipality and District Development Committees to prepare and maintain data and statistics on persons with disabilities amongst other groups. It also requires them to work for the protection of orphaned children, incapacitated women, aged persons, persons with disabilities and removal of discriminatory cultural practices from society.

**Disabled Service National Policy 1996 (2053)**: Under this policy the state conducts disability prevention programmes such as safe motherhood, nutrition, imposition of proper rules to stop or minimize road traffic accidents.

- **Budgetary provisions** : The annual budget presented by the Finance Minister on 13<sup>th</sup> July 2009 announced the execution of special programmes for education, health, employment and empowerment of several marginalized groups including persons with disability, as a high priority. <sup>276</sup> With the expansion of Child Development Centres to increase access to education for marginalized children, special programmes were scheduled to be launched for persons with disabilities along with other marginalized groups.<sup>277</sup>
- **Plan** : Chapter 8 on Gender mainstreaming and Inclusivity of Interim Plan also covers in considerable detail the programmes available for persons with disabilities which proposes the removal of discriminatory provisions, creation of disabled friendly infrastructure, co-ordination and establishment of co-operation between governmental and non-governmental agencies at all level of the state towards empowerment of disabled persons, adoption of a policy for mainstreaming rights and interests of persons with disabilities.<sup>278</sup>

A Disability Service National Coordination Committee has been set up with the adoption of the National Policy and Action Plan, 2007.

275. Sec 5, Disabled Persons (Protection and Welfare) Act, 1982

276. Poverty Alleviation and Inclusive Programme, Budget 2009 – 2010, Government of Nepal

277. Education and Fundamental Right of People, Budget 2009 – 2010, Government of Nepal

278. 3 Years Interim Plan 2064/ 65 – 2066/67, Government of Nepal.

- **Intervention from the Court :** Supreme Court of Nepal has issued directives to organise special program for guaranteeing reproductive health right for people living with disabilities including beds for women with disabilities and special health treatment.<sup>279</sup>

#### **D. Gaps and weaknesses**

- **Law instead of protecting right to equality rather discriminates against the people with disabilities:** Constitution and law does not explicitly prescribe disability as a ground for non-discrimination nor does it specifically state that persons with disabilities (and specifically women with disabilities) are entitled to affirmative action.

Most of the legal provisions allowing for special services or judgments establishing implementation mechanisms for legal provisions consider persons with disabilities as a homogenous group . They do not recognize the different types of disabilities and the specific responses that each type of disability requires. Neither do they recognize that the different sexes require different types of support. They also do not recognize that even among the disabled people, women are more disadvantaged by their lack of knowledge of available resources and cannot access the minimal support provided. As a result it is recognized that special measures are needed to support WWDs.

Weak language is cited as the reason for non-implementation of provisions under the law. In the Chapter on Marriage, Section 4 and 5 states that in instances where physical disabilities, seeing disabilities, hearing disabilities, speaking disabilities, mental disabilities are not disclosed at the time of marriage such marriages can be voided on the above grounds by the opposite party with the imposition of Rs. 500 as penalty on the person accused of perpetrating the fraud. These provisions apply for men and women.

Section 9 of the Chapter on marriage of Muluki Aini entitles a man to enter into a second marriage if his wife has been rendered blind, physically or mentally disabled although this provision does not apply to women whose husband's become disabled in these ways.

- **No basic reliable data relating to persons with disabilities and no disaggregated data:** Despite provisions under the Disabled Persons (Protection and Welfare) Act, and the Local Self Government Act, requiring bodies such as Village and District Development Committees (VDCs) to maintain statistics none are readily available. Neither are they available with the Ministry of Local Development or the Ministry of Women, Children and Social Welfare which serve as line ministries (nodal agencies) for the VDCs and the issue of disabilities respectively. The National Census of 2001 was first time when issues relating to persons with disabilities were addressed and is often cited for authentic statistics. However it has been rejected by the community of PWDs as it has failed to include persons with moderate or mild disabilities.
- **Failure to address discrimination on the basis of cultural and traditional practices:** The existing laws and legal provisions relating to rights of PWDs fail to address discrimination on the basis of cultural and traditional practices and prejudices. Since such practices and prejudices are most often biased against women in Nepalese society, WWDs are disproportionately affected.
- **No legal measures to prevent indirect discrimination:** While there are no laws denying persons with disabilities the right to marriage neither are there provisions that provide additional support for disabled persons who wish to marry and raise a family. There are also no specific provisions relating to

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279. FWLD and Disabled Women Association, supreme court of Nepal decision dated 28 July 2010

guardianship or care of children with disabilities in instances of divorce or separation of parents under the law. The general provision allowing custody of children below 16 yrs to all mothers<sup>280</sup> apply in instances of children with disabilities as well, placing a disproportionate physical as well as economical burden on women which may also affect the child's well-being.

- **No effective institutional mechanisms to promote or protect rights of persons with disabilities:** There exists no specific body or mechanism that is responsible for issues relating to persons with disabilities. The Ministry of Women, Children and Social Welfare is considered to be the line ministry responsible for all legislation and management of issues relating to the PWDs. The National Women's Commission which is a statutory body does not concern itself specifically with issues relating to women with disabilities. The parent statute for this body, The National Women's Commission Act, also does not mention women with disabilities within its mandate. Both the NWC and the Ministry are allocated funds through the annual budget under gender and social empowerment to consider issues relating to gender. However none of them are allocated any budget to specifically address issues of women with disabilities.
- **No representation of WWDs in decision-making bodies:** Representation of Women with Disabilities in decision-making bodies is rare and is not mandated by law. Currently two members of the Constituent Assembly are persons with disabilities, one of whom is a woman with disability. However their representation was ensured on the basis of their prior involvement with political parties and not on the basis of an express stipulation in the Interim Constitution that the disabled should be represented. The Interim Constitution allows for proportional representation from "other categories" which may or may not include persons with disabilities. Neither the constitution nor any other law mandates minimum participation of men and women with disabilities in any decision making body. Though the National Disabled Co-ordination Committee set up by the Ministry of Women, Children and Social Welfare both at the national and district levels allow for women with disabilities to be present as members, it is not statutorily mandated and does not stipulate minimum representation for WWDs.

## **E. Recommendations**

- Collect, update and disaggregate data and statistics on women with disabilities.
- Implement in substance and spirit, the existing laws, regulations and policies relating to persons with disabilities throughout the country and adopt a gender sensitive approach to the implementation of these laws.
- Mandate through the forthcoming Constitution, a percentage for the representation of women with disabilities within the total percentage of representation for women in the Parliament. The Chapter on Fundamental Rights in the forthcoming constitution must include language to protect and advance the rights of the disabled in respect to education, health, social security and employment and specifically the rights of the WWDs.
- Mandate the representation of women with disabilities in high level decision making bodies including permanent and temporary committees established to review and implement laws and policies relating to the disabled as well as other issues within the country.
- Enact laws to:
  - 1) Punish the harassment and suppression of women with disabilities by members of their family;

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280. No. 3(1) "Chapter of Husband and Wife", Country Code

- 2) Substantially increase penalties for crimes against women with disabilities such as rape, harassment and torture, to ensure that it will be a deterrent against such crimes in the future,
  - 3) Provide victims of such crimes compensation that will be sufficient to rehabilitate them as well as address the physiological and physical harm they have experienced,
  - 4) Penalize the use of derogatory words, phrases and mocking gestures of persons with disability.
  - 5) Establish mechanisms at all level of governance to monitor and evaluate implementation of existing laws, regulations and policies relating to persons with disabilities.
  - 6) Amend discriminatory laws.
- Provide for the distribution of disability allowances keeping in consideration gender requirements and the need to ensure substantive equality.
  - Provide reservations in employment and create specific employment opportunities for women with disabilities.
  - Provide facilities for protecting and promoting the reproductive health rights of women with disabilities as decided by the Supreme Court .For example, ensure that there are special delivery beds, cabins and ramps in both government and private hospitals and nursing homes, and in addition there should be services such as sign language interpreters.
  - Ensure that the infrastructure at all government establishments are disabled friendly and efforts should be made to require the same facilities in private owned establishments such as hospitals, banks, established for public usage e.g. etc.
  - Implement programmes relating to employment, vocational training and training on life skills at all levels for the empowerment and self sufficiency of women with disabilities,.
  - Especial programmes must be designed for persons with mental disabilities. In addition to benefits extended to persons with disabilities, parents of children with disabilities should be provided support mechanisms to ensure that they can provide adequate care and nurturing. Training and capacity building programmes targeted at disabled persons should also include their care givers.



## CHAPTER 9

# VIOLENCE AGAINST WOMEN IN POLITICS IN NEPAL

### **A. Prevalence of the problem**

In Nepal, the power and authority linked to politics is associated with masculine characteristics, thus privileging men and excluding women from the opportunity to hold positions of power in politics. They are marginalized from the competitive process, with the violence that pervades politics further discouraging them from actively participating. Violence against women in politics (VAWIP) is emerging as an issue of concern. Almost all forms of gender based violence - physical, psychological, social intimidation, harassment, and force - are used as

weapons for harming women who want to engage in the political process. In addition to women campaigning to hold public office, this violence also affects those who campaign for other women competing for office and those who want to register their political views as voters.

Violence has been identified as one of the many causes for lower participation of women in political governance, thus leaving it a male preserve and diminishing the representative nature of a flourishing democracy. The political culture of the country is insensitive to the fact that VAWIP has increased and must be addressed as a matter of urgency. During the armed conflict many women joined the People’s Liberation Army, suffering rape and sexual abuse during the conflict and when captured. Many women remain in the cantonments awaiting a final settlement on integration issues. They consider themselves and their fate to be a part of the political issues that must be determined through a political process. The manner in which they are treated, both within and outside the cantonments, will contribute to the saga of how women fare in Nepali politics.

Increased women’s political participation calls for sharing power with men and being partners in the political process. However this is viewed negatively by men who see it as women encroaching on power that is supposed to be theirs. Furthermore, it is not easy for a woman to become a politician in Nepal, because she has to accommodate the expectations of her family as well as those of the community. Politicians are expected to be accessible to their constituency at all times and have little time for a personal life. Male politicians leave it to their wives to handle domestic chores and responsibilities, but women politicians are expected to be wives and mothers first. The political system does not make provision for accommodating the life style differences between men and women. Thus women lag far behind men in their struggle for political recognition and opportunities for participation. Unless they are presented in the political arena they will not be able to bring about the policy changes that can make a difference in their lives.

Research (SAP I) was carried out on violence against women during the CA election. It used the reports of women political leaders and the various acts of violence endured by women politicians and their families and supporters. These acts of violence include character assassination, harassment and sexual abuse, life threats, murder, rape, abductions, kidnapping, beatings, intimidation and torture. The consequence of violence leads to post-traumatic stress disorder. VAWIP cases are rarely highlighted in the media and therefore there is little popular outrage against it. There is a need for research in this area to further understand the triggers for and prevalence of VAWIP and its impact on the individual women and society in general.

**Table 1: Landscape of violence and perpetrators**

Types of violence	Places of its occurrence	Types of victims	Types of perpetrators
<b>Physical</b>	Grassroots level - Community, Local politics, Family	Influential women, leaders, women activists, candidate for election,	Family opposition Own party members
<b>Sexual</b>	Political and Law enforcement level- Armed conflict	Activist women, candidates for election	Security forces, male politicians and bureaucracy
<b>Psychological</b>	Political level-Electoral process / parliament, Family level-controlling from entering politics	Young women aspiring to a political career, active women leaders and family, established women politician	Opposition parties, or members of own parties , male superior
<b>Threats and coercion</b>	Political level- parliament/party organizations/committee, state level- police station	Established female politicians, male relatives, women exercising political authority, members of local bodies, leaders at grassroots level	Party men, policemen, subordinate staff, male colleagues, family members

**Source:** SAP International, 2007: Unfolding the reality: Silenced voices of women in Politics

The research on the CA election was conducted in 46 constituencies of 31 districts of the country and covered all the 5 development regions including Kathmandu. It showed that violence was at its peak before the election, and especially during the campaigning process. The major perpetrators of violence were the cadres of political parties, security officials and other men. The women candidates stated that the formal mechanisms were the best means to address the violence but they were not affordable and accessible to the women candidates, thus emphasizing the need for their improvement.<sup>281</sup> Neither the Election Code of Conduct nor the Election (Offence and Punishment) Act 2007 has addressed the issue of VAWIP.

**Table 2: Nature of violence and perpetrators**

Nature of Violence	Perpetrators					
	Total	Family	Political parties	State & security	Men in society	Media
Physical	14	1	8	2	3	
Psychological	13	2	6	2	3	
Threats and coercion	21	1	16	1	3	1
<b>Total</b>	<b>48</b>	<b>4</b>	<b>30</b>	<b>5</b>	<b>9</b>	<b>1</b>
<b>Total</b>	<b>100%</b>	<b>8%</b>	<b>63%</b>	<b>10%</b>	<b>19%</b>	<b>2%</b>

**Source:** Analysis of the Elections from the perspective of representation and violence against women, 2008, SAP International

Breaking the culture of silence and speaking out against VAWIP has proved to be a major challenge. The state and political parties need to respond to this violence. VAWIP seems to be a new issue as discussion of the problem has only begun recently. However the problem has existed for a long time. Today, more and more women are boldly stepping into the political arena and are ready to confront this issue. However, their courage to speak openly is not free of repercussions; they may face sanctions, threats and reprisal from their respective political parties and this often affects their political career. They are also targets of other political parties.

## **B. Critical areas of concern**

### ■ **No legal provisions to protect women in politics from violence**

There are no legal provisions to deal with VAWIP. It is only covered through general protections against VAW. There are no provisions in the electoral law that addresses VAWIP and the Election Commission does not have the tools to address this issue. The political leaders do not address the many forms of VAWIP and there is no code of conduct and any other mechanisms for controlling VAWIP.

### ■ **No public understanding of the degree and impact of violence faced by women in politics**

There is relatively low level of awareness and understanding of the negative effect of VAWIP. This has not been discussed in the public domain sufficiently and there has been no in depth research carried out on this issue.

281. SAP International, 2008(a): **Analysis of the Elections from the perspective of representation and violence against women** (Unpublished), a research report.



- **No sanctions against the perpetrators**

There is very little reporting against VAWIP, even in reported cases there is a culture of impunity protecting the perpetrators of violence against women in politics.

- **Political parties manifestos do not address this problem**

Most of the political parties' manifestos have addressed women's issues in terms of representation in politics, however the major political parties do not have a code of conduct or specific policy guidelines which guarantee the safety of women politicians.

## **C. Concluding observations**

- **Interim Constitution 2007**

The Interim Constitution prohibits discrimination against women.<sup>282</sup> Furthermore, the Constitution provides women the right to proportional representation in the state structures.<sup>283</sup> The Interim Constitution has provided the right to freedom as a fundamental right.<sup>284</sup>

- **Country Code 1963**

The Country Code is one of the main laws that address VAW. Acts of violence include: battery, rape, intention to rape, human trafficking and forced marriage. The chapter on Husband and Wife and the chapter on Homicide are relevant to the issue of violence against women. The passing of the Eleventh Amendment of the Country Code in 2002 was a historical step towards gender equality as it increased the punishment for rape from 5 to 7 years and increased the punishment of those aid and abet rapists to 3 years in the case of a woman above 16, included a provision for in-camera hearings in rape cases, and legalized abortion, among several other things. The Gender Equality Act of 2006 has also addressed several discriminatory laws against women in the area of VAW, women's right to property, and rights in marriage and divorce.

- **Legislations addressing VAW**

In addition to the Rape Law, there are laws which address different forms of violence such as the Gender Equality Act (2006), Domestic Violence Act (2009), and Human Trafficking Act (2007) and Regulation (2008). A Bill on Sexual Harassment in the Workplace (2009) is pending debate in the Parliament.

## **D. Gaps and weakness**

- **No strategies to combat the masculine culture of politics that excludes women**

There is a masculine culture in the politics of Nepal. The majority of political actors are men, they make the rules and they negotiate the most important decisions among themselves in ways that are most comfortable to themselves. In this political culture, the needs and concerns of women, including women politicians, are not considered.<sup>285</sup>

- **Absence of appropriate laws to address the issues of VAWIP**

National legal provisions have incorporated provision to address VAW in the private sphere but there is no such provision for addressing this issue at a political level or by state actors. None of the national

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282. Article 20 (1) of the Interim Constitution of Nepal 2007.

283. Article 21 of the Interim Constitution of Nepal 2007

284. Article 12 of the Interim Constitution of Nepal, 2007.

285. SAP International, 2008 (b): Invisible faces of violence on women in politics: Breaking the silence, Kathmandu, Nepal

laws, including the code of ethics for political parties, election manifestos or the national plan of action have made any provision for addressing the issue of VAWIP.<sup>286</sup>

#### ■ **Media attitude towards women politicians**

Women politicians are rarely covered by the media as not many of them are in positions of power. When the media does cover a woman politician, it is to focus on her personal stories and her attire rather than on her contributions to the politics.<sup>287</sup> The media in Nepal is trained to sensationalize reports rather than report on issues with sensitivity. The media code of conduct is not implemented and as a result there are no constraints on unfettered media discretion on how reports are presented in media.

#### ■ **Combating the Culture of Silence**

VAWIP is common but is ignored due to the 'culture of silence' prevalent among women. Women tend to suffer in silence and in some cases, accommodate the various forms of violence to which they are subject. There are various reasons for this silence. Some remain silent as they do not want to be the victim of more retaliatory violence; others are silent due to the influence of cultural norms which do not favor the airing of personal troubles, or for fear of losing their positions and embarrassing themselves and their families.<sup>288</sup>

### **E. Recommendation**

#### ■ **Strengthen gender sensitive legal provisions**

There is a general legal framework to address VAW but specific laws to address VAWIP is necessary. Furthermore, the legal provision to ensure women's participation in local government and the Constituent Assembly is not enough, these provisions need to be structured in overall political life with numerical goals and a timeframe.

#### ■ **Create an environment which allows for women's participation in politics**

To do this, the Election commission needs to take many steps. Firstly, it should ensure a safe environment in which women can participate in elections. Then it should provide gender sensitive voter education in different parts of the country. It should also set up schemes to provide security for women candidates at all times, but especially when they are campaigning. To alleviate the burden of the cost of election, it should set a ceiling on election expenditure. Finally, it should strictly and speedily enforce the implementation of the elections Code of Conduct.

Civil society and the State should work together to train security personnel including police, election officers, media and state authorities to be gender sensitive during elections.

#### ■ **Political parties to be gender sensitive and take special measure to encourage women's participation in politics**

Parties should install effective monitoring mechanisms that are regularly followed to facilitate the participation of women, both within the parties and in the wider political process. The commitment to combat VAWIP should be reflected in political manifestos of the parties and through concrete measures such as an anti-sexual harassment policy their code of conduct or with the formation of a special committee.

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286. SAP International, 2008 (b): Invisible faces of violence on women in politics: Breaking the silence, Kathmandu, Nepal

287. Ibid

288. Ibid

Parties should encourage women candidates and develop their leadership potential by training them and then placing them in positions of responsibility within their parties. There should be special recruitment drives targeting qualified and visionary women to enlist them into politics

The political parties must play an effective role in reducing the cost of campaigning and should campaign for state support for election campaigning with free air time for candidates. This will reduce the economic burden for all candidates, especially for women contesting elections as they have the most limited access to independent funds.

#### ■ **Mass Awareness and Education on the Rising Culture of violence in politics**

Civil society organizations together with the state and media should organize awareness camps on the negative impact of the various forms of political violence, including harassment and psychological violence and sensitize the public, political party members, security personnel, and state authorities to be alert and prevent it. Donors should support this by investing resources in these campaigns. The media should support women candidates by focusing on their strengths and what they bring to the political process rather than reinforcing negative stereo types about women. The heightened awareness will promote social acceptance of women as leaders.

#### ■ **Networking efforts to support Women in Politics**

There should be increased solidarity among likeminded organizations, institutions and individuals working for promoting women's effective representation in politics and combating violence against women. Investment needs to be made in the Women Caucus and inter-party women alliances.



## CHAPTER 10

### INDIGENOUS WOMEN

#### **A. Prevalence of problem**

The rights of the indigenous peoples have come to the forefront in Nepal since last few years and are hotly debated, particularly in the context of writing of the new Constitution. There is considerable ethnic diversity within the population of Nepal with more than a third of the population belonging to indigenous peoples. Indigenous women constitute more than 37 % of the total population of the Nepali women.<sup>289</sup> The indigenous people are generally divided into five groups in terms of development stage based on landownership, income, literacy and education (endangered,<sup>290</sup> highly marginalized,<sup>291</sup> marginalized,<sup>292</sup> disadvantaged<sup>293</sup> and advanced group<sup>294</sup>). There is a history of exclusion and marginalization, and there exist the socio-economic differences among various ethnic groups. Further the status of indigenous women belonging to these groups is not only different in the society, they also become victim of gender discrimination, ethnic, linguistic, cultural and religious discrimination.

289. Population Census, 2001; Central Bureau of Statistics, Nepal.

290. Kusunda, Bankariya, Rautae, Surel, Hayu, Raji, Kisan, Lepcha, Meche and Kusbadiay.

291. Majhi, Siyar, Lohmi, Thudam, Dhanuk, Chepang, Satar, Ghagad, Thami, Bote, Danuwar and Baramu.

292. Sunuwar, Tharu, Tamang, Bhujel, Kumal, Rajbansi, Gangai, Dhimal, Bhote, Darai, Tajpuriya, Pahari, Topkegole, Dolpo, Free, Mugal, Larke, Lohpa, Dura and Walung.

293. Chhaintan, Tangbe, Tinganule Thakali, Bargaule, Marphali Thakali, Gurung, Magar, Rai, Limbu, Sherpa, Yakkha, Chhantyal, Jirel, Byansi and Hyolmo.

294. Newar and Thakali.

The indigenous women are the conductor, carrier of almost all the traditional knowledge, skills, innovations of indigenous peoples, and they have been continuing them. They are contributing to maintain the familial and social order of the indigenous peoples with continuing practice of language and their culture. Further, they also perform the role of the peace promoter within the family and the society.

- Indigenous women possess distinct culture, tradition, language and customs but are not recognized as distinct groups of women having different identity and needs.
- The government policies and programs are not implemented with the perspective of equality and equity with regards to indigenous women.
- Indigenous women are historically marginalized and discriminated on the basis of sex, race, ethnicity and caste. On the other hand, their awareness level of social and legal rights is very low. In this context, it is not easy for them to overcome boundaries which are biased socially, culturally, economically and politically in the present situation.
- The indigenous customs and customary laws do not discriminate between men and women but these are not recognized by the Constitution or by prevailing laws.
- Indigenous women are more victimized in all forms of human trafficking.<sup>295</sup> Data of reported case of FY 2007/08<sup>296</sup> based on data obtained from WCSD Kathmandu also established this fact, which is as below.

**Number of trafficking survivors in the FY 2007/2008**

S.No.	Characteristics	Female	Male	Total	%
1	Brahman	8	3	11	7.6 %
2	Chhetri	13	6	19	13.1 %
3	Others	87	14	101	69.7 %
4	Dalits	12	2	14	9.7 %
<b>Total</b>		<b>120 (82.8%)</b>	<b>25 (17.2%)</b>		

- The flow of indigenous women seeking for foreign employment is very high. However, due to the lack of government policy to safeguard their rights in the receiving country they become the victims of sexual exploitation and harassment and they are even deprived of standard basic salary.
- The Interim Constitution of Nepal, 2007 has provided equal rights to receive education in their mother tongue, religion, non-discrimination and proportional representation on the basis of population<sup>297</sup> but is not implemented effectively.
- Nepal Government ratified ILO Convention on Indigenous and Tribal Peoples (Convention No.169) in September 2007 that covers a wide range of issues, including land rights, access to natural resources, health, education, vocational trainings, conditions of employment etc which have direct impact of women's life. However, there is no mechanism established or policy drafted to carry out or implement provisions of the Convention.

295. Nepal Trafficking in Girls with Special Reference to Prostitution; Rapid Assessment, ILO, Int'l Programme on the Elimination of Child Labor, November 2001, Geneva.

296. Trafficking in Persons Especially on Women and Children in Nepal, National Report 2008 – 2009, P 14 (Table 2.6) Office of the Special Rapporteur on Trafficking in Women and Children (OSRT), NHRC.

297. Articles 17(1), 13, 21 and 23, Interim Constitution of Nepal 2007.

## **B. Critical areas of concern**

- Lack of clarity in defining "indigenous population" under the legal framework, or recognition of the differences in language, livelihood patterns etc. that separate one indigenous community from another. Lack of such recognition also aids in ignoring differences of experiences faced by women of differing indigenous communities, thereby creating barriers in effective implementation of development programmes or access to basic rights as citizens.
- Non recognition of indigenous women's contributions and their needs.
- Lack of participation of Indigenous women at political , economic and social sector.
- Lack of authentic data and proper research of women from different ethnic groups.
- Non recognition of traditional skills, no specific programmes for its preservation and promotion of traditional skills of indigenous women.
- Indigenous women are among the least included in decision making bodies, and the State still do not have a concrete polity to ensure proportional representation at all levels based on caste/ethnicity.
- Lack of effective programmes to increase the literacy rate of indigenous women.
- Lack of awareness amongst indigenous women creating vulnerabilities for various forms of exploitation and gender based violence, the main being trafficking.

## **C. Concluding observations**

- The government program "Education for All by 2015" has not reached the highly marginalized indigenous and endangered communities (Rautae, Raji, Kisan, Meche, Bankariya etc). The enrolment of the students from ethnic communities in remote districts such as Kalikot and Bajura is less than 10 percent at the primary level. If we only see the Janjatis women who had completed secondary level education is very low; Hill Janjati (3.8%), Tarai Janjati (1.1%), other Janjatis excluding Newar (2.8%) and Newar (9.7%).<sup>298</sup>
- The proportion of indigenous female teachers in the teaching profession as well as in school administration is significantly low.<sup>299</sup>
- Women's access to decision making positions is very low. Only 2.4 percent women represent in special class as civil servants.<sup>300</sup> In the 2008 established Constituent Assembly there were 70 indigenous women out of 601 Constituent Assembly members.
- Indigenous women are not provided adequate welfare support. The government has a programme of social security arrangement of providing mere Rs. 500 per month for all age groups of endangered ethnicities.<sup>301</sup>
- Indigenous women were highly affected during the course of armed conflict but their participation in conflict resolution and peace-building process is not assured.
- Comprehensive and authentic data regarding indigenous women is not available.
- No efforts were made by the authorities to translate the concluding comments in the mother tongue of indigenous peoples and as a result of which the majority of the indigenous communities including the indigenous women are deprived from the access to information.

298. Nepal Human Development Report 2009, State Transformation and Human Development, UNDP, p. 169.

299. Nepal Living Standard Survey, 2003/04.

300. Ibid, p.164.

301. Budget of Nepal, 2009/2010.

## **D. Gaps and weaknesses**

- National laws regarding indigenous population or group are not in line according to the international human rights standard and Interim Constitution of Nepal, 2007.
- The Supreme Court of Nepal had already declared section 7 (3) of the National Foundation for the Development of Indigenous Nationalities Act, 2002 as unconstitutional and declared null and void on the ground that the provision is discriminatory towards women.<sup>302</sup> The section 7 (3) was discriminatory as the provisions provided for 2 years term for women members while for men it was four years, the provision also provided that male can be reappointed but female cannot be reappointed.
- Further the Gender Equality Act 2006 also removed the said provision. However, the government had not initiated any action for its implementation.

## **E. Recommendations**

- Government should adopt a comprehensive definition and understanding of indigenous population in line with relevant international instruments. Ensure inclusion of rights of the indigenous women in the new constitution. Acknowledge the contribution of the indigenous women and recognize their identity in the constitution and in all the legal documents.
- Enact or reform existing legal and policy framework by adoption and in particular acknowledging role of indigenous contribution on development of Country.
- Adopt special programs, enact laws and policies to up-lift indigenous women socially and economically.
- Ensure proportional representation of indigenous women in all the decision making bodies at national and local level. Ensure indigenous women participants in public and private employment by providing special measure.
- Preserve and promote the traditional indigenous knowledge, skills and technology to uplift the indigenous women socially and economically.
- Adopt programs for the promotion and empowerment of indigenous people in their mother tongue as per the necessity.
- Create awareness targeting indigenous women in order to make them aware of their social and legal rights.
- Generate disaggregated data by indigenous group and by indigenous women and conduct in-depth research studies focusing indigenous women.
- Preserve and promote indigenous language, script, culture, literature, arts and history. Implement multi-lingual education policy.
- Take immediate action for the implementation of the decision made by the Supreme Court on section 7 (3) of the National Foundation for the Development of Indigenous Nationalities Act 2002 and appoint women members in line with Supreme Court's decision.

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302. Basundhara Thapa vs. HMG: NKP 2060, Vol. 5/6, p. 389.



