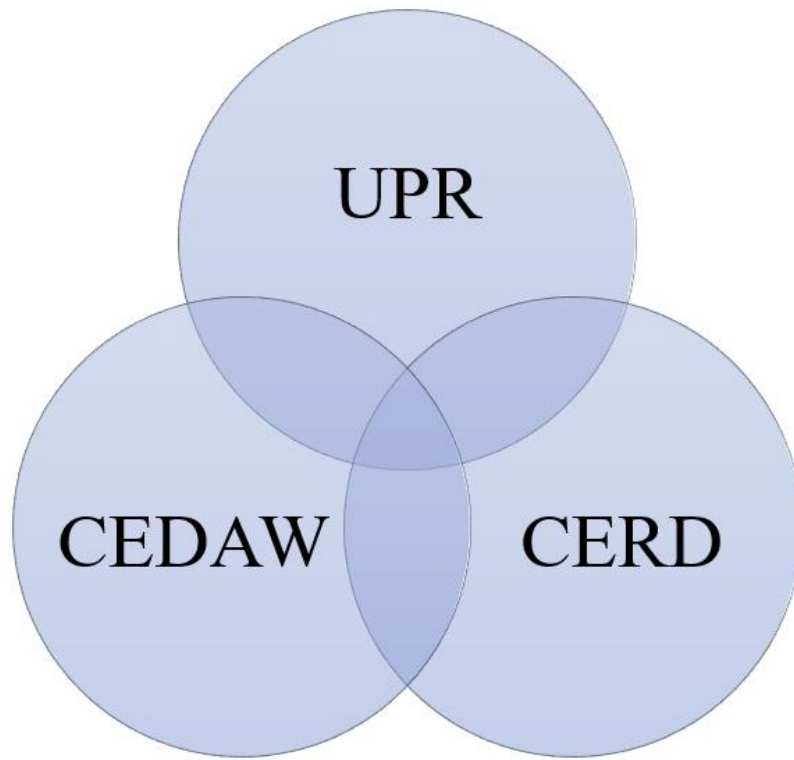


A study Report

On

Dalit Women Specific Recommendations Received from the UPR,
CEDAW and CERD, and their Implementation Status



Study on Dalit Women Specific Recommendations Received from the UPR, CEDAW and CERD, and their Implementation Status

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Foreword

The National Human Rights Act, 2068 has defined human rights as an individual's right to live life with freedom, equality, and dignity. Nepal has also followed national and international human rights law while formulating constitution and other legal frameworks. It is the responsibility of the state to follow international human rights mechanisms and make sure that they are reflected in the national legal provisions too. Nepal has signed treaties against the racial and gender discrimination and therefore Nepal is obliged to submit report to the United Nations in relations to the laws and their implementation in the country. The international community has also provided a host of recommendations after having discussion on those reports. FEDO has conducted this study to review the recommendations received from Universal Periodic Review (UPR), Committee on the Elimination of Discrimination against Women (CEDAW) and Committee on the Elimination of Racial Discrimination (CERD) from Dalit women's perspective and explore their implementation gap. It is expected that the result and conclusion accrued from this study serve as the advocacy tool to establish Dalit women's rights. Dalit community has been experiencing caste discrimination and violence for a long time in Nepal. The government has addressed these issues in the constitution. It has also formulated a Caste Discrimination and Untouchability (Offence and Punishment) Act 2011. Despite these efforts, discrimination and violence against Dalit community continue to rise at an alarming rate. The state also failed to implement the commitments made at the international forum to this end. It has failed to acknowledge the problem itself.

Dalit women are not only discriminated based on class and gender, but they are also discriminated on the linguistic-cultural, regional, and other forms of discrimination. Therefore, the problems faced by the Dalit women in Madhes and Karnali differ than that of the general Dalit women. These problems deserve focus and attention to that respect.

The stakeholders are not aware of the international treaties directly related to the Dalit women. No discussion has been taken place at the national and local level, neither the study has conducted to explore the implementation gap of these recommendations. Therefore, this study intends to document, analyze, and see the implementation status of the recommendations received from the UPR, CERD and CEDAW. This study also focuses on the general introduction, analysis of the recommendations and implementation gap of the recommendations received from the UPR, CEDAW and CERD.

On the one hand, this helps the policy makers to understand Dalit women's international context. On the other hand, the study outcome serves as the advocacy tool for the CSOs working in this field. Most importantly, this document also helps the National Dalit Commission to prepare effective monitoring and evaluation mechanism to this end.

The recommendations received from this international mechanism are also related the implementation of the constitution and available national legal framework. Therefore, this study also holds the law implementing agencies accountable. The state of impunity is rampant and so does the cases of caste discrimination and violence. The National Dalit Commission has not been able to work effectively to this effect.

We are grateful to Danish Church Aid (DCA) to providing financial support to conduct study on such an important issue on Dalit women. A thanks also goes to the writer, Rup Sunar, for conducting a thorough study to prepare this report. We also take this opportunity to thank locally elected Dalit women gathered in the provincial discussions held in Butwal and Dhangadhi. At last, but not the least, our staff colleagues deserve a big pat on their back for their thorough involvement in the publication of this report.

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1. Introduction

Dalit community in Nepal has been experiencing structural discrimination for a long time. They are politically excluded as possess abysmal access to justice. A simple cursory analysis of the available data also indicates wide disparity between Dalit and other dominant caste groups. This discrimination is deeply embedded in the social and legal fabric of the country. Dalit women are facing caste and gender discrimination. They are the victims of domestic and gender violence too.

Dalit communities have received some constitutional rights and legal protection after the long struggle. The constitution of Nepal has acknowledged UN Declaration of Human Rights and other treaty bodies as the universal values of the human rights as the fundamental rights. The constitution of Nepal 2015 has regarded caste discrimination and untouchability as a serious social crime. Article 24 of the constitution has protected Dalit rights against caste discrimination and untouchability. Similarly, article 40 of the constitution has protected Dalit rights as the fundamental rights. Likewise, the caste-based discrimination and untouchability (offence and punishment) act 2011 has prohibited caste discrimination and untouchability in any public or private place against a person. The act also has the provision for punishment to the person who commits crime.

Nepal is required to give equal legal protection to everyone without any discrimination because it is a party to various international human rights institutions. Nepal has ratified many international agreements, including 7 significant ones. Nepal's third Universal Period Review (UPR), which was completed in January 2021, resulted in several recommendations for the preservation and advancement of human rights.

Likewise, the 6th periodic review of the Committee on the Elimination of all forms of Discrimination against Women held in 2018 has also spoken up against the discrimination and violence against the Dalit women. In the same manner, the Committee on the Elimination of all forms of Racial Discrimination has also raise its voice against the discrimination and violence against women and holds the state accountable.

In Nepal, Dalit women have been the victim of the caste discrimination and violence. Therefore, this study focuses on the recommendations received from the UPR, CERD and CEDAW from Dalit women's perspective and explores their implementation gap. Based on this study, an appropriate strategy will be formed, and outcome will be used as a tool to advocate Dalit women's issues locally and globally.

2. Objective of the study

The main purpose of this study is to analyze the recommendations received from UN Human rights mechanisms (UPR, CERD and CEDAW) from Dalit women's perspective and explore their implementation gap. This study also focuses on providing strategic directions towards the national and international advocacy efforts. The specific objectives of the study are as follows:

- To analyze the recommendations received from UPR, CERD and CEDAW from Dalit women's perspective
- To study the implementation gap of the recommendations received
- To provide strategic advice to the state to make it more accountable

3. Report preparation methodology

Following methodologies have been applied for this study:

3.1 Literature review

For this study, literatures related to the UN human rights mechanisms have been reviewed. In addition, the reports submitted by the government as well as the non-governmental organizations were studied as well as the concluding observations prepared by the United Nations. To understand the implementation status of the recommendations, the government reports were also thoroughly reviewed. An attempt was also made how these recommendations are reflected in the policy, programs, and budgetary allocation of all three levels of the government.

3.2 Group Discussion

Two provincial dialogues (Butwal and Dhangadhi) were held to map the understanding and opinion of the stakeholders. One, interaction was conducted with the representatives of the non-government organizations as they critically engage in submitting shadow reports, discussions and monitoring and evaluation process. Two, several meetings were conducted with lawyers, Member of Parliament, journalists, and the representatives of the non-Dalit organization to this end.

3.3 Interview

To make this study more effective and result oriented, an interview was conducted with the 5 experts in this sector. Such people represent constituencies such as judiciary, parliamentary committee, law enforcement agencies and the representative of the government agencies.

4. United Nations Human Rights mechanisms

Nepal has ratified 7 among the 9¹ major international human rights mechanisms and it's a party to 39 other human rights mechanism. The human rights instruments of the United Nations are divided into charter and treaty based. The charter-based instruments are Human Rights Council, Universal Periodic Review, and special procedures. Similarly, treaty-based instruments are Human Rights Council, Economic, Political and Social Rights Committee; Committee on the Elimination of Racial Discrimination; Committee on the Elimination of all forms of Discriminations against Women; Committee against the torture; Committee on the Rights of the Child; Committee on the rights of immigrants; Committee on the rights of persons with disability; and the committee for the protection of all persons from enforced disappearance.

General human rights mechanisms treat minorities as the other members of the group. However, the treaty-based human rights mechanisms put more emphasize on minority groups. For an example, article 27 of the International Covenant on Civil and Political Rights (ICCPR) reads- In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

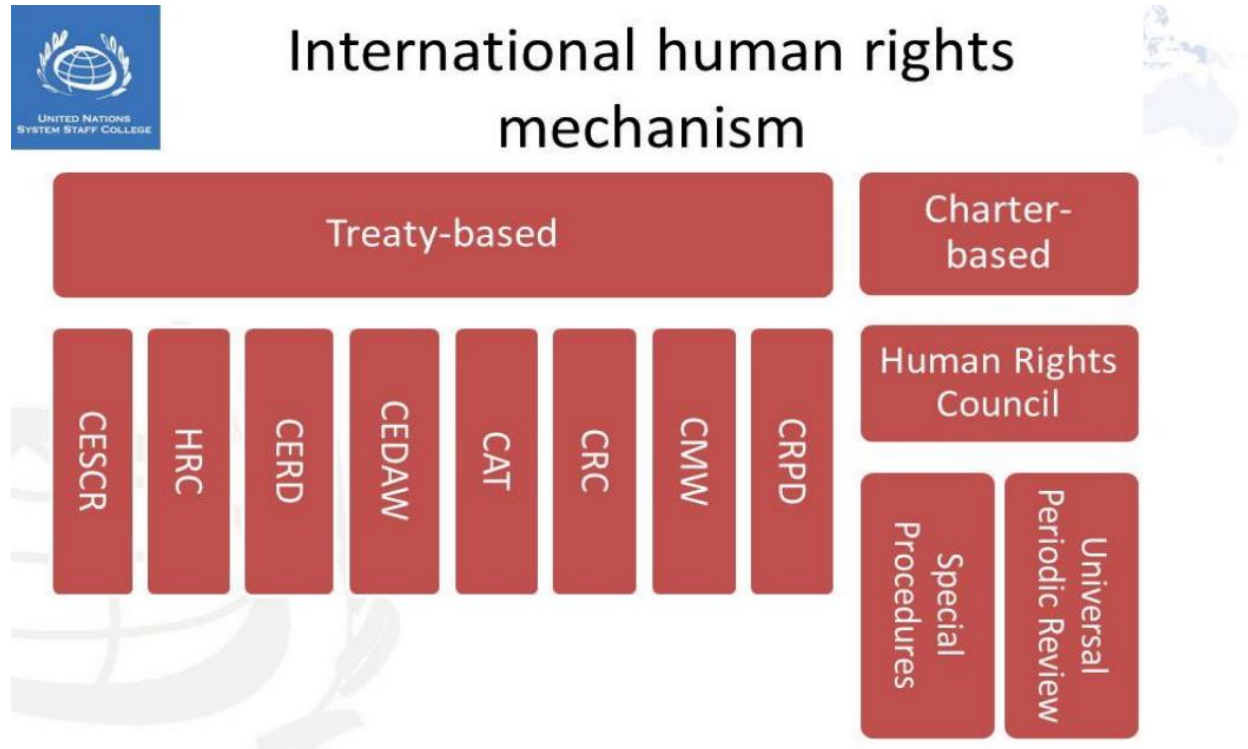
There are several human rights mechanisms within the United Nations, among them the treaties are considered important. Different committees have been formed under these treaties, which is a group of independent experts. The main function of this committee is to monitor and evaluate implementation of the treaty provisions in the signatory states. This task is based on the periodic reports submitted by the signatory

¹ Human Rights Council; Economic, Political and Social Rights Committee; Committee on the Elimination of Racial Discrimination; Committee on the Elimination of Discrimination against Women; Committee against Torture; Committee on the Prevention of Torture; Committee on the Rights of the Children; Committee on the Rights of the Migrants and Committee on the Rights of the Persons with Disability

states; some committees also accept individual and institutional complaints. Some committees have the right to make a country visit to study human rights violation cases.

The major 9 international human rights mechanisms hold the signatory states accountable to protect and promote human rights. Therefore, the committees formed under these human rights treaties play an important role in strengthening human rights situation in any country. The jurisdiction of all human rights mechanism is limited just to ensure the implementation of treaty provisions.

Core Human Rights Treaties



There are some optional protocols available for some treaties, for which the state party can endorse. These optional protocols provided additional rights or means of evaluation for the state party. Such seven optional protocols have been developed for the international human rights treaties.

The committees formed to implement treaties consist of 10-25 independent human rights expert. The state parties appoint and elect them for the period of four years. Despite their nomination or election from the state party, they are independent in nature and serves as an expert. Their tenure can be renewed for maximum 2 years period.

All these treaties are mobilized by the human rights treaty department placed at the office of the United Nations High Commission for Human Rights (OHCHR). It receives the reports submitted by the state party, communicate with the committee, prepare reports, conduct study, provide technical support as well as provide needful guidance and suggestions to the state party.

The meetings of the committees take place either in Geneva or New York. The OHCHR provides needful meeting rooms, documents, and technology assistance. This also makes the engagement of the experts, government representatives and CSOs convenient and effective.

How the treaty body's function?



It is the responsibility of the state party to implement the provisions embedded in the treaties. In addition, the state party should also submit the report towards the progress made. Such report consists of the progress made in the law, administrative, judiciary and other sectors. Thus submitted reports are reviewed by the appropriate committees in presence of the state party. The committee also considers and takes note of the reports received from the UN agencies, National Human Rights Institutions, Civil Society Organizations, and other academic institutions. These reports are not limited to hold the state party accountable but also review the real human rights situation in the ground.

The committee takes the ownership of the report in the form of concluding observations. This report must include the positive development in relation to the implementation of the recommendation received by the state party. It also identifies the areas to make further improvement. To this end, the committee review the report submitted by the state party as well as the individual/institutional complaints.

This discussion provides state party an opportunity to identifies issues, seek solutions, know best practices, and empower to execute them efficiently. Some committees have also hold discussion live broadcast via online.

4.1 Universal Periodic Review (UPR)

4.1.1 Introduction

The Universal Periodic Review (UPR) is a human rights mechanism that conducts periodic review of human rights situation of the UN member states regarding the human rights situation and progress made. This is a charter-based human rights mechanism created by the 60/251 resolutions of the General Assembly. It come into existence since 2008. The review takes place three times a year and each state are reviewed every four and half years. The review includes the implementation status of the human rights obligations and commitment.

The UPR's primary goal is to regularly assess the human rights status in each of the 192 member states. Based on the state party's human rights commitments and duties, the UN charter, the Universal Declaration of Human Rights, treaties it has ratified, and other optional protocols, it examines the human rights situations in all the member states. UPR recommends that the state party's human rights be protected and promoted through this evaluation. The UPR is an equally applicable worldwide tool for human rights and development, much as the SDGs. This is a human rights mechanism in which every member state has consistently participated is this one.

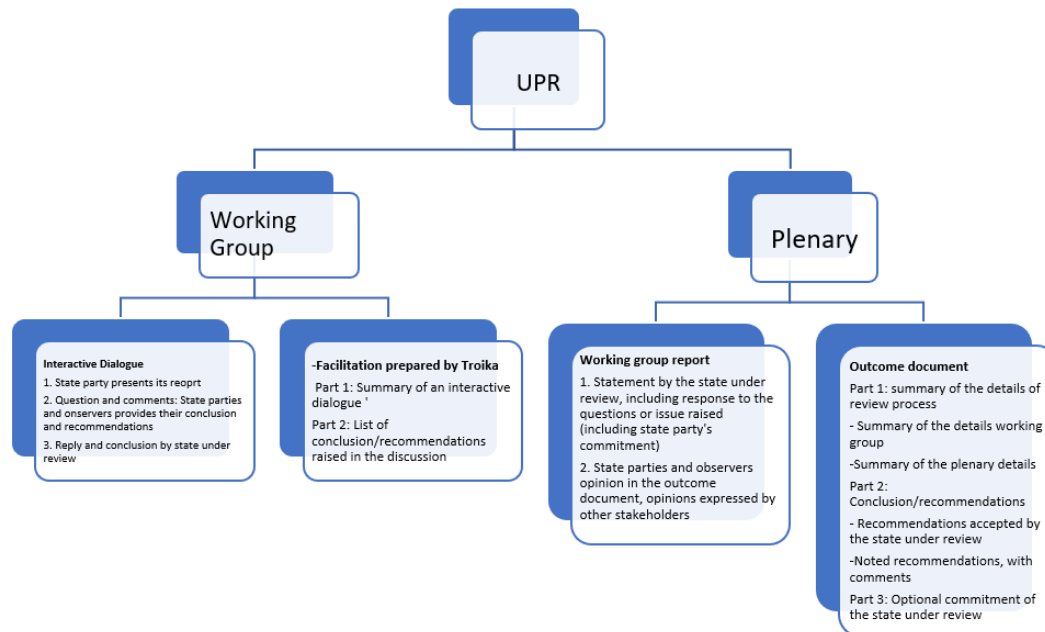
Under this process, human rights record of each UN Member State is examined every 4.5 years. 42 States are reviewed each year during three Working Group sessions dedicated to 14 States each. All member states actively take part in reviewing the human rights situation of all and provide recommendations to further improvement. Each member state is allocated 3.5 hour for the peer-review of their human rights situation. The first UPR cycle was conducted in 2008-2011 and second in 2012-2016. And the third cycle started in 2017 and will be completed in 2022. Nepal's first UPR review took place in 2011, second in 2015 and third in 2021.

The review takes place through an interactive dialogue between state party and the UN member states. This also complements the objective of the international human rights treaties. There are three main stages in the Universal Periodic Review (UPR). First: preparation of the report. Second: review of the human rights situation. Third: monitoring and evaluation. The beauty of the UPR is that the civil society organizations can also take part in all these three stages. This chapter includes the introduction of UPR, process and the recommendations received. It also covers the execution of the recommendations from the Dalit women's perspective.

4.1.2 Review of the human rights under UPR

All member states are obliged to review their human rights in every 4.5 years. This review is based in three reports. At First, National Report written by the state under review with the broad national consultation. Then after, compilation of the information by the OHCHR, treaty bodies, special procedures, and UN Agencies. Lastly, summary of the reports written by national human rights institutions, human rights defenders, academic institutions, research institutions, regional mechanisms, and CSOs/NGOs.

The UPR review takes place within a working group and the working group is composed of the 47 of the human rights council. The Human Rights Council selects three members as the rapporteurs, who are known as Troika. This working group owns the final report. Under the UPR, Nepal's first review was conducted in 2011, second in 2015 and third in 2021.



4.1.3 Analysis of the recommendations

Nepal's universal periodic review took place on 21 January 2021 for the third time. Altogether Nepal received 233 recommendations. Of them, the government of Nepal accepted 196 and noted 37 recommendations. 15 recommendations are Dalit specific and more than 30 are also relatable to Dalits. Some recommendations are also directly related to the Dalit women. The Human Rights Council's meeting held in July 2021 owned the report of the working group. The Dalit specific recommendations received the third cycles are as follows:

- Conduct public awareness campaigns to eliminate discrimination based on racial or caste-based hierarchies and ensure that educational curriculum do not propagate these hierarchies (Bahamas)
- Investigate effectively and prosecute caste-based discrimination and violence (Croatia)
- Effectively apply national legislation towards the elimination of all practices based on a caste system, including in the light of the relevant human rights instruments (El Salvador)
- Develop effective mechanisms to implement the Caste-based Discrimination and Untouchability (Offence and Punishment) Act (Germany)
- Continue the efforts to combat caste-based discrimination and segregation (Italy)

- Continue efforts to combat discrimination based on caste and gender (Lebanon)
- Continue to strengthen its efforts to prevent and eliminate discrimination based on caste, including through the full and effective implementation of the Caste-based Discrimination and Untouchability (Offence and Punishment) Act (Republic of Korea)
- Conduct public awareness campaigns to eliminate caste-based hierarchies (State of Palestine)
- Intensify public awareness campaigns to eliminate the notion of racial or caste-based hierarchies (Sudan)
- Take all necessary measures to ensure full inclusion and improve learning results for all children belonging to the Dalit community, underrepresented castes, and indigenous peoples, including children with disabilities, at all levels of education, and to ensure the representation of these groups, especially women, in teaching positions (Finland)
- Step up efforts to end gender-based violence and caste-based discrimination and ensure access to justice for survivors, including by bringing rape laws in line with international standards (Australia)
- Step up efforts in the fight against segregation and discrimination of indigenous peoples and ethnic and caste minorities, including Dalits and Tibetans (Czechia)
- Take the necessary measures to advance in the fight against discrimination in all its forms, racial and caste discrimination (Argentina)

These suggestions pertain to creating laws that protect the rights of women who experience both direct and indirect discrimination, enhancing the educational outcomes of Dalit girls by ensuring their full access to education, hiring Dalit women as teachers, adopting laws that protect the rights of marginalized women and improve their access to justice, and working effectively to end all forms of discrimination against women from marginalized groups.

There were 9 Dalit specific recommendations in the second UPR review of Nepal held in 2015. They include allocate adequate budget to the National Dalit Commission, formulate law against the caste discrimination and untouchability, ensure Dalit's access to quality education, create employment opportunities, and build an action plan to implement the land act.

56 percent of the suggestions received in the second cycle have not been executed, according to the UPR report presented by the Dalit NGO Federation for the third cycle. Only 44% of the suggestions have been fully implemented. Most of the suggestions from the three cycles have been used again. For instance, Germany has suggested the Caste-based Discrimination and Untouchability (Offence and Punishment) Act be put into effect both in 2015 and 2021. In line with this, Finland has advised taking all necessary steps to ensure full inclusion of all children from the Dalit community, underrepresented castes, and indigenous peoples, including those who have disabilities, at all levels of education and to ensure that these groups, particularly women, are represented in teaching positions.

Most of the Dalit specific recommendations are related to the implementation of the existing laws. This also proves that there is constitutional, legal and policy measures in place but not implemented.

During the third UPR cycle, there were altogether 75 women related recommendation and out of them, 5 were Dalit women centric. Such recommendations include increasing access to justice, education, reproductive right, formulation of new laws and providing other laws.

- Adopt comprehensive anti-discrimination legislation that includes a definition of discrimination against women encompassing direct and indirect discrimination and multiple and intersecting forms of discrimination
- Implement the commitment made at the Nairobi Summit on the twenty-fifth anniversary of the International Conference on Population and Development to ensure that marginalized groups can exercise their reproductive rights through universal access to quality family planning services, the up scaling of adolescent-friendly health services and the full integration of comprehensive sexuality education, consistent with the evolving capacities and needs of youth
- Take all necessary measures to ensure full inclusion and improve learning results for all children belonging to the Dalit community, underrepresented castes, and indigenous peoples, including children with disabilities, at all levels of education, and to ensure the representation of these groups, especially women, in teaching positions
- Adopt policies to protect and provide justice for women and girls, especially those from minority communities
- Continue to work to ensure the rights of the women and children of the marginalized communities as well as end the discrimination against women and girls.

4.1.4 Implementation status of the recommendations

There is positive progress made in terms of formulation of the laws and policy in relation to the protection of women rights. However, the violence against women continues to exist even today. It's positive that women representation is being increased due to the system of proportional inclusion, however, Dalit women are still behind politically, economically, socially, and culturally in comparison with the women of the dominant caste groups. Nepal's first UPR was conducted from 24 January to 4 February 2011. Nepal received 135 recommendations during the first cycle. Of them, Nepal had accepted 96 recommendations. 29 recommendations were related to the women rights. Similarly, Nepal's second UPR was conducted in November 2015, and it received 195 recommendations. Of them, 46 recommendations were related to women rights.

Nepal has, comparatively, given the human rights sector priority. Normative frameworks have been presented as the success of Nepal. It has been challenging to put ideas into practice, though. To guarantee the execution of the recommendations obtained from various human rights bodies, the government has also created a National Human Rights Action Plan (NHRAP). Since 2005/06 Nepal has been developing and carrying out a national human rights action plan. The fifth human rights action plan is now being implemented, and the first four have previously been done so. These action plans commit to enacting the human rights declaration, international human rights agreements to which Nepal is a signatory, and constitutionally protected basic rights.

The action plan seeks to increase awareness and takes a human rights perspective on government programs, policies, and spending. However, the execution is quite weak. It is unclear what must be done and who

oversees implementing the human rights action plan. However, the government cannot complete this work on its own. Therefore, the government must make sure that all relevant parties are involved in the action plan's implementation for it to be successful. Additionally, the usual follow-up has not yet happened. This necessitates a different structure². A framework that can link all the government's mechanisms together, provide consistent monitoring and follow-up, complement one another's efforts, and deliver results in a coordinated way.

Most government officials perceive gender violence as the violence based on gender. This is a half-truth. There exists other caste, geography, sexual orientation-based discrimination in Nepal as described in the international human rights treaties. These problems need to be looked at from the intersectionality lens. This leads us towards the multiplicities of the problem. Otherwise, it won't be possible to implement the provisions made for women empowerment and rights.

The federal, provincial, and municipal levels each have their own jurisdiction in a federal system. The committee established at the provincial and local levels cannot be ordered by the Ministry of Federal Affairs and General Administration to carry out the recommendations made by the international human rights mechanism. In this situation, constitutional institutions with responsibility over such committees at the local level include the National Dalit Commission and the National Women Commission. Unfortunately, there are efforts to diminish their influence. Prior to being constitutional, the National Dalit Commission was established by statute.

The third UPR couldn't take place on stipulated time due to the corona pandemic and therefore the recommendations received from the 3rd cycle were not incorporated into the 5th human rights action plan. The government has developed a separate action plan, but it is yet to be finalized for implementation.

The role of law enforcement agencies, especially the police is very crucial in relation to the caste discrimination and untouchability. In many cases, police refuse to lodge complaints and conduct weak investigation under political clout. The Parliamentary Committee on the Law, Justice and Human Rights had to ask the government to establish "Dalit desk" in all police offices of the 77 districts. The police also agreed to this in principle and the police had also agreed to it theoretically³. This was followed by government's ruling for all public bodies and institutions to establish a Dalit desk to ensure the members of the Dalit community receive their service with easily and with respect. This includes the district administration office, district police office and all units of the police. This must be implemented immediately without fail.

Nepal's third UPR, conducted recently and therefore it takes some time to see its implementation status. The implementation status of the previous recommendations is given as below:

UPR recommendations	Implementation status
<ul style="list-style-type: none"> Adopt comprehensive anti-discrimination legislation that includes a definition of discrimination against women encompassing direct and indirect discrimination and multiple and intersecting forms of discrimination 	There is no specific law available that define discrimination against women. This has created a problem to establish their rights in practice. Women in the marginalized groups have been facing multiple forms of discrimination and this also needs to be defined clearly. No 10 of the Civil Code 2017 prohibits the state from discriminating

² Based on the talk with Mr. Tek Tamrakar (legal and constitutional expert) held in Kathmandu on 14 September 2021

³ Based on the talk with Mr. Meen Bishwakarma, member of the parliamentary committee on law, justice, and human rights; held on 30 August 2021 in Kathmandu

	<p>any citizens on ground of any religion, race, sex, place of birth or any of them.</p>
<ul style="list-style-type: none"> • Implement the commitment made at the Nairobi Summit on the twenty-fifth anniversary of the International Conference on Population and Development to ensure that marginalized groups can exercise their reproductive rights through universal access to quality family planning services, the upscaling of adolescent-friendly health services and the full integration of comprehensive sexuality education, consistent with the evolving capacities and needs of youth 	<p>This recommendation can be analyzed in four different sub-topics:</p> <ul style="list-style-type: none"> • Access to education <p>The seven-year-long School Sector Development Program (SSDP) has formulated strategies to ensure the equity and social inclusion by increasing access to education and strengthening quality. It also includes the lesson on sex and reproductive health.</p> <ul style="list-style-type: none"> • Educational materials <p>There have not been changes in the education system in Nepal. Emphasize has been put up for the revision and availability of the educational materials. Dalit students continue to struggle to get educational materials on time in most of the districts. They are also facing caste discrimination in the society. There are changes in people’s mindset, but gender discrimination still exists in curriculum⁴. This discrimination is also reflected in the school and society.</p> <ul style="list-style-type: none"> • Sexual education and reproductive health rights <p>Women’s right to health and reproductive health has been enshrined in the constitution as the fundamental rights. It is promised that no physical, mental, and other discrimination against women will be tolerated, and such acts would be punishable under the prevailing law. However, this has not been translated into action. This has a huge implication on Dalit women from penalty and punishment perspective.</p>
<ul style="list-style-type: none"> • Take all necessary measures to ensure full inclusion and improve learning results for all children belonging to the Dalit community, underrepresented castes, and indigenous peoples, including children 	<ul style="list-style-type: none"> • The learning achievement of the students at the primary level is very weak, Dalit children have been found weaker. There are some scholarship provisions there,

⁴ Based on the talk with Mr. Meen Bishwakarma, member of the parliamentary committee on law, justice, and human rights; held on 30 August 2021 in Kathmandu

<p>with disabilities, at all levels of education, and to ensure the representation of these groups, especially women, in teaching positions</p>	<p>however, it failed to yield the positive result.</p> <ul style="list-style-type: none"> • According to one study conducted by the Education Quality Control Center, the learning outcome of the average Nepali students of class 3 in Nepali and Mathematic is 52 and 45 respectively. The average of Dalit is 47 and 45 respectively. The national average of Nepali, mathematics and English in class 5 is 46,48 and 47, whereas Dalit's have 44, 40 and 43 respectively. • Caste discrimination and untouchability will continue to exist in Nepalese society until the education system plays an important role to eliminate it. • Dalit women's inclusion in the teaching profession is abysmal.
<ul style="list-style-type: none"> • Adopt policies to protect and provide justice for women and girls, especially those from minority communities 	<ul style="list-style-type: none"> • Legal awareness and literacy make citizen aware of their rights. The government has been raising legal awareness among the traditionally marginalized communities to help them raise their voices to increase their access to justice. However, marginalized women and girl's access to justice is difficult due to the inequitable access to education, geographical remoteness, gender, economic, social and caste discrimination. • Constitution is women friendly; however, Dalit women have not been able to enjoy their constitutionally guaranteed rights.
<ul style="list-style-type: none"> • Continue to work to ensure the rights of the women and children of the marginalized communities as well as end the discrimination against women and girls. 	<ul style="list-style-type: none"> • There is not a dearth of policy in relation to the women and girl's rights. There are laws in place such as the Sexual Harassment at Workplace Prevention Act, 2015 and Human Trafficking and Transportation (Control) Act 2064. Similarly Article 37 of the constitution also has the provision of children's rights. In addition, the children's act 2075 also has the provision of different rights of the children. However, implementation remains a main challenge.

4.1.5 Recommendations for improvement

Since 2005/06, the Government of Nepal has been implementing the National Human Rights Action Plan (NHRAP) to make sure that the recommendations from the UPR are carried out. To put the articles of the Universal Declaration of Human Rights, international human rights treaties to which Nepal is a party, and constitutionally guaranteed basic rights into effect, this has developed an action plan. Due to ineffective monitoring and evaluation systems, it has not been effectively implemented. Additionally, the created human rights division's organization or process is more directive than functional in character and is housed in the office of the prime minister and council of ministers. This is not working; an alternative is required. Here are some suggestions for future development:

- The involvement of both government and CSOs in the entire UPR process looks like ritual. Their work is limited to just submit the report. Both must increase their engagement.
- Recommendations must be translated into the annual policy, program, and budgetary allocation of the federal, provincial, and local level government. The CSOs must also raise awareness on the Dalit women specific recommendations, conduct effective monitoring and evaluation, lobby, and coordinate with the government.
- The human rights division at the office of the prime minister and council of ministers is coordinating about the international treaties that Nepal is a party to. Majority of the time of this division is spent in report submission and writing clarification⁵. Therefore, the government must establish a permanent and functional secretariat to this end. Such secretariat must also monitor and document the progress as well as coordinate among the different agencies for needful data.
- Constitutional and legal provisions are means, not ends themselves. The government has been presenting legal provisions as the achievement in the three UPR cycles. There is no system available to measure the progress made, neither the data are available to that end. Therefore, the government must emphasize to produce disaggregated data and rope in the universities, research institutions to this effect.
- The office of the prime minister and council of minister has been coordinating the recommendations received from the UPR. Similarly the concerned ministries are coordinating the recommendations received from the different committees of the treaties. Most of the recommendations are not implemented due to the lack of coordination among the government bodies. There is a need of system that also document the progress made. All recommendations are similar in nature. Therefore, the government must establish a permanent structure that facilitates continued coordination, conduct monitor of the work among the government agencies.
- The role of NHRIs is important in UPR. Among the many mandates of the National Dalit Commission, formulating policies and reviewing and monitoring the work is vital. Instead of submitting reports, the commission must focus on the implementation of the recommendations and ensure regular monitoring and evaluation, develop indicators, and play a facilitating role with the other commissions to implement recommendations. For this to happen, the NDC needs adequate budget and must be capacitated. The NDC can submit a separate report, and it must establish a

⁵ Based on an interaction with the Koshal Chandra Subedi, Head of the Human Rights and International Treaty Agreement at the Office of the Prime Minister and Council of Minister

separate desk within the commission to look after international treaties/agreements and human rights.

- The ministry of foreign affairs has been serving as the contact ministry of the international human rights treaties and agreement. It has failed to do the needful coordination with the CSOs. There is no specific framework for the implementation of the UPR recommendations. Therefore, Dalit CSOs must establish a dedicated common platform to monitor human rights issues. Its leadership and secretariat can serve on rotational basis.
- The National Dalit Commission must raise awareness about the international laws related to Dalit, hold caste-related orientation at the university level.
- Caste-based Discrimination and Untouchability (Offence and Punishment) Act 2011 is incomplete in terms of penalty and punishment. Dalit community has been experiencing impunity due to the loopholes in the existing law. Therefore, a law is required to increase penalty and gives no bail option in relation to the caste-related cases.

4.2 Committee on the Elimination of Discrimination against Women (CEDAW)

4.2.1 Introduction

The group of impartial specialists known as the Committee on the Elimination of Discrimination Against Women (CEDAW) oversees the application of the Convention on the Elimination of All Forms of Discrimination Against Women. This treaty places a strong emphasis on the need to defend women's rights on civil, political, economic, and cultural fronts. The International Bill of Rights for Women is another name for this agreement. The fundamental goals of this treaty are to guarantee gender equality and end discrimination against women. The UN General Assembly endorsed this treaty on December 18, 1979, and it went into force on September 3, 1981. The United Nations has also issued a separate optional protocol to widen its scope for effective implementation. This allows the committee to entertain the complaints received from these alternative protocols as well as they are entitled to make field visits in the serious human rights violation cases of the women.

The committee on the elimination of discrimination against women was created under the article 17 of the treaty. The main purpose of this committee is to ensure whether the state party has fulfilled its obligations accrued from the treaty by reviewing the reports submitted by the state party. The committee reviews the state party's reports for the same.

Nepal endorsed CEDAW treaty on 22 April 1991 and optional protocol on 15 June 2007. After endorsing the treaty, Nepal submitted its preliminary report to the CEDAW committee in 1997. Similarly, the second and third periodic reports were submitted in 2002 and fourth and fifth periodic reports jointly submitted in 2009.

Nepal submitted its 6th periodic report in 2018 and this chapter discusses about the recommendations and their implementation.

It is the responsibility of the state party to protect women rights in the national laws, discard discriminatory provisions in the existing laws, formulate new laws to ensure women rights and establish a national mechanism to ensure women rights. Until 2018, 189 countries had already ratified this treaty. The CEDAW Committee consists of 23 experts on women's rights from around the world and is mandated to review the implementation of this treaty.

This committee advocates for equality between man and women. It also advocates against social malpractices and their equal access in the field of politics, economy, society, culture, education, health, and employment.

This committee provides a comprehensive framework to promote and protect women's human rights. This holds the state accountable by eliminate all discriminations against women as well as formulating laws to that effect. This treaty talks about equality between man and women not only in normative framework but also in results.

This treaty is based in three principles: equality, non-discrimination, and state responsibility. The state party must submit a periodic report on how they are implementing the rights embedded in the treaty. The committee reviews the reports submitted by the state party and addresses the legitimate concerns of the state, which is known as concluding observations.

According to the optional protocol of this treaty, this committee has the following mandates: a) to receive the human rights violation report submitted by an individual or group b) To inquiry on the submitted report and weighs the gravity of the human rights violation. This provision is available only subject to the agreement of the state party due to its optional nature. This optional protocol has the provision that the women, both as an individual or group, can submit complaints on their human rights violation or the committee can further investigate on the serious human rights violation cases.

4.2.2 CEDAW review process

The Committee on the Elimination of Discrimination against Women (CEDAW) is the body of 23 independent experts that monitors implementation of the provision embedded in the Convention on the Elimination of All Forms of Discrimination against Women. The state party is obliged to submit regular reports to the committee on how the rights of the conventions are implemented.

The convention obliges state parties to submit a report on the legislative, judicial, administrative, or other measures that they have adopted to implement the Convention within a year after its entry into force and then at least every four years thereafter or whenever the Committee on the Elimination of Discrimination against Women (CEDAW) so requests. These reports, which may indicate factors and difficulties in implementation, are forwarded to the CEDAW for its consideration.

The initial report is intended to be a detailed and comprehensive description of the position of women in that country at the time of submission; it is meant to provide a benchmark against which subsequent progress can be measured. Second and subsequent national reports are intended to

update the previous report, detailing significant developments that have occurred over the last four years, noting key trends, and identifying obstacles to the full achievement of the Convention.

Initial reports are considered by the Committee in the presence of a representative of the reporting country, who may make a supplementary presentation. Individual members are free to ask for clarification or elaboration of any issue related to the report, the presentation, or to CEDAW's goals. The country representative responds to those questions; answers or supporting material are often presented in writing. Subsequent reports have been reviewed by a pre-session working group of five Committee members. The working group draws up questions to guide the full Committee's examination of the report. These questions are submitted to the country's representative in advance. The representative then meets with the Committee to respond to these questions and any others that members may wish to ask.

Following consideration of each State Party report, the CEDAW Committee formulates concluding comments which outline factors and difficulties affecting the implementation of the Convention for those State party, positive aspects, principal subjects of concern and suggestions and recommendations to enhance implementation of the Convention.

4.2.3 Analysis of the CEDAW recommendations

Most of the recommendations received from the CEDAW committee are related to the implementation than the available policy framework. These recommendations are owned by the ministry of women, children, and senior citizens and therefore it also supposed to assume leadership for their implementation. The latest report was also submitted on time.

The Committee on the Elimination of all forms of Discrimination against Women has released its concluding observations, after the sixth periodic review of Nepal on 14 November 2018. Under this CEDAW concluding observations, the chapter 11(b), 24(a), 25(a), 28(B), 38(d) and 41(c) are more related to the Dalit and other women who have been facing multiple forms of discriminations. Such recommendations are economic and legal assistance, restriction in the foreign employment, prevention of human trafficking and transportation, end discrimination by the health workers, and disaster vulnerable women's access to health, education, and clean drinking water, food, shelter, loan, and income. The recommendations received from the CEDAW are as follows:

- Provide targeted financial support and legal aid in commonly spoken languages for women facing intersecting and multiple forms of discrimination, such as Dalit women, indigenous women, including Madhesi and Tharu women, women belonging to religious minority groups, women with disabilities, women living in remote areas, lesbian, bisexual and transgender women, intersex persons and displaced and migrant women
- Include the standards provided for in the National Labour Act, including those for domestic work, in all bilateral agreements and enhance gender-sensitive pre-departure and post-arrival orientation services, to include legal awareness about foreign employment, the rights of migrant women in the country of destination and under the Foreign Employment Act and information on how to claim those rights
- Guarantee all women equal access to employment within and outside the State party, including by repealing discriminatory restrictions imposed on women endeavoring to work abroad and by expediting the ongoing revision of the guidelines on women migrant domestic workers

- The insufficient enforcement of electoral quotas and of the constitutional provisions on proportional inclusion, regarding Dalit women.
- End discrimination by health-care providers against Dalit women, indigenous women, women with disabilities, lesbian, bisexual and transgender women, intersex persons, and women in prostitution, by raising awareness among providers, with the support of female community health volunteers, of the rights of those groups and encouraging reporting
- Adopt temporary special measures with clear timelines, in line with the constitutional provisions on “special opportunities”, to enhance access for women facing intersecting and multiple forms of discrimination, including indigenous, Dalit women, rural women, women with disabilities and widows in the Hindu community, as well as women affected by conflict and natural disasters, to health services, education, safe water and sanitation services, food, fertile land, natural resources, housing, credit and income-generating opportunities, including through the presidential programme to uplift women

On 14 November 2018, the CEDAW committee has provided concluding observations with appropriate recommendations on the sixth periodic report submitted by the Government of Nepal. The committee has provided recommendations in different 17 thematic areas to promote gender equality and end all discriminations against women. Such recommendations include repealing the discriminatory restrictions and formulate new laws based on equality, allocate gender friendly budget, increase access to justice, and ensure women empowerment. It also includes the special provisions for the women representing marginalized communities. Most importantly, the recommendation also demands their meaningful inclusion in the policy and decision making.

Dalit women’s issues have been adequately addressed in the CEDAW committee report in comparison to other human rights mechanism. The evidence-based shadow reports played an important role in this effect. According to the CEDAW committee member Bandana Rana, more than 40 shadow reports were submitted to the CEDAW committee from Nepal. She agrees to the fact that there are laws, implement is sluggish, and discrimination continues.

As per the report of National Women Commission on the implementation status of the concluding observations received from the sixth periodic review of the CEDAW committee, most of the recommendations are in progress. Their monitoring and evaluation have not been taken place yet. This report must speak about the provincial and local level implementation of these recommendations.

4.2.4 Implementation status of CEDAW recommendations

The concluding observation accrued from the sixth periodic report of the CEDAW committee has addressed the article 1 to 16 in the CEDAW treaty and provided suggestions in the thematic areas in 21 chapters. The implementation status of the Dalit specific recommendations are as follows:

Recommendations	Implementation status
<ul style="list-style-type: none"> • Provide targeted financial support and legal aid in commonly spoken languages for women facing intersecting and multiple forms of discrimination, such as Dalit women, indigenous women, including Madhesi and Tharu women, women belonging to religious minority groups, 	<p>The information about the economic and legal support is not available their local languages.</p>

<p>women with disabilities, women living in remote areas, lesbian, bisexual and transgender women, intersex persons and displaced and migrant women</p>	
<ul style="list-style-type: none"> • Include the standards provided for in the National Labour Act, including those for domestic work, in all bilateral agreements and enhance gender-sensitive predeparture and post-arrival orientation services, to include legal awareness about foreign employment, the rights of migrant women in the country of destination and under the Foreign Employment Act and information on how to claim those rights 	<p>The government has formulated the Foreign Employment Act for Labor Migrants 2007 (third amendment). To this end, in collaboration with the different social organizations, the government has been providing needful information about the potential threat and criminal activities during the time of acquiring passport and first-time migrants. The government has restricted foreign domestic work in certain countries. However, several have taken this as the serious breach of the human rights of the migrants. As a result, there is a growing trend among the migrants to illegally route them via third country and become victims.</p> <p>The government is determined not to send women as the domestic worker. The government has alleged that such women are vulnerable to sexual violence, exploitation, and torture.</p>
<ul style="list-style-type: none"> • Guarantee all women equal access to employment within and outside the State party, including by repealing discriminatory restrictions imposed on women endeavoring to work abroad and by expediting the ongoing revision of the guidelines on women migrant domestic workers 	<p>In collaboration with the government, different organizations are providing orientation to the migrants beginning from the time to acquire passport, in the community level and pre-departure orientation to the first-time migrants.</p> <p>In such orientations, they are advised not to hide their actual age in citizenship/passport, use the Nepali airport, confirm the labor accreditation, and take some skills with them. Despite these provisions, the brokers force them to travel via third country at the last minute⁶. No one seems responsible in maintaining privacy and security of the women. The returnee migrants are also provided a counseling service; however, its scope is very limited.</p>
<ul style="list-style-type: none"> • The insufficient enforcement of electoral quotas and of the constitutional provisions on proportional inclusion, regarding Dalit women. 	<p>The local level Election Act -2017 has made it mandatory that of the five persons elected in each ward, one must be a Dalit woman. As a result, 6,767 Dalit women have been elected in the local level. However, similar representation of the Dalit women at the federal and province level has not been possible due to the lack of act/laws to enact constitutional commitments. Political parties also</p>

⁶ Based on the interaction with Janak Singh Ukheda, Head of the Labour and Employment Office in Dhangadhi

	<p>didn't heed to it as it was not mandatory. Dalit women's representation in the direct election is abysmal due to the indifference of the political parties and their discriminatory system. This subsequently leads to the failure of their meaningful representation in the state mechanism.</p>
<ul style="list-style-type: none"> • End discrimination by health-care providers against Dalit women, indigenous women, women with disabilities, lesbian, bisexual and transgender women, intersex persons, and women in prostitution, by raising awareness among providers, with the support of female community health volunteers, of the rights of those groups and encouraging reporting 	<p>Media reports confirm that this discrimination exist in the Janakpur and SudurPashchim province. One report⁷ reveals that 79% Dalit women in Hill and 85% Dalit women in Terai experience discrimination by the health care worker.</p> <p>When the victims go to the police, there are the tendencies to settle it down in reconciliation. Therefore, many women prefer to go to the court instead of police and judicial committee on the matter of gender violence⁸.</p>
<ul style="list-style-type: none"> • Adopt temporary special measures with clear timelines, in line with the constitutional provisions on "special opportunities", to enhance access for women facing intersecting and multiple forms of discrimination, including indigenous, Dalit women, rural women, women with disabilities and widows in the Hindu community, as well as women affected by conflict and natural disasters, to health services, education, safe water and sanitation services, food, fertile land, natural resources, housing, credit and income-generating opportunities, including through the presidential programme to uplift women 	<p>Several skill-based trainings have been provided. However, no appropriate monitoring and evaluation is conducted.</p> <p>The president's program for women's upliftment has contributed towards economic empowerment, social transformation against ill-practices and conduct rescue/protection of the women. This also includes other skill-based work such as stitching, livestock herding, goat herding. However, Dalit women have not been benefited from this program much.</p>

Due to the trend of projecting normative frameworks as the achievement has caused trouble to the government⁹. During the sixth review of the CEDAW committee, the government of Nepal presented the Sexual Harassment Act 2071 at the workplace as the achievement. The CEDAW committee wanted to know how many cases were registered or how many victims have received justice after this act came into effect that silenced the government delegates. During the seven years' time, only 2 cases were reported.

⁷ A Study on the Status of Social Inclusion in Nepal, conducted by the Central Department of Anthropology, TU (2017)

⁸ Based on the talk with Advocate Kunjani Pariyar held in Pokhara on 1 September 2021

⁹ Based on the talk with Sabin Shrestha, executive director of the Women, Law and Development Forum held in Kathmandu on 19 September 2021

Dalit women's access to justice is abysmal. On the one hand, they are not aware of legal procedure. On the other hand, there is tendency of tolerating injustice or avoid seeking justice due to the low level of awareness among the people. Dalit women are also not able to access justice due to the negligence of the law enforcement agencies.

4.2.5 Recommendations for further improvement

The treaties and the committees formed under those treaties have become ineffective after the launch of the UPR. However, the importance of treaty on the elimination of discrimination against women and its committee has not diminished. This has immensely contributed to establishing women rights. There are no expected developments observed in some of the socio-economic and political spectrums. Following recommendations are advised for further improvement:

- The concerned ministry must translate recommendations received from the CEDAW committee and disseminate them widely. Training and awareness campaigns are required to educate the large masses.
- Unlike federal government, the provincial and local governments are unaware of the recommendations received from the CEDAW committee. Therefore, the representatives of the provincial and local governments must be trained on it. This will enable them to address recommendations into the annual policy, programs, and budgetary allocations. The federal government must initiate a dialogue with the sub-national governments for the implementation and seek accountability to that end.
- There is a lack of effective monitoring and evaluation mechanism. There is no clarity as to who is responsible for monitoring and evaluation and how to improve on the issues identified there. There is no mechanism available to monitor and evaluate the implementation of the recommendations. A separate mechanism must be established where a National Dalit Commission and National Women Commission can work jointly to monitor the implementation in this regard. The CSOs can also play coordinating role to this effect.
- The concerned ministry must develop a separate action plan to implement the recommendations. Several training programs and awareness raising campaigns will be organized to make the state machineries aware of these developments. The CSOs can play a bridging role to this end.
- Majority of the recommendations received from the CEDAW committee are related to the implementation of the existing laws than their formulation. However, majority of the Member of Parliament both at the federal and provincial level are unaware of the international human rights mechanisms. Therefore, the Member of Parliament must be sensitized on these international human rights mechanisms for the effective law making and their implementation. The CSOs must interact with the parliamentary committee on the law, justice, and human rights on the regular basis.
- There is a need of inter-provincial alliance for the sharing of information and exchange of ideas to learn from each other.
- For the implementation of the recommendations, regular exchange of information, coordination and support is needed among the three layers of the government.

- The international organizations also failed to work in the entire cycle of the CEDAW process and their increased engagement is essential.
- Government's documentation mechanism is also very weak, some of the accomplishments have not been documented and archived.
- The government must take initiation to raise awareness in the community level and plan accordingly to meet the local needs.

4.2 Committee on the Elimination of All form of Racial Discrimination (CERD)

4.1.3 Introduction

The Committee on the Elimination of Racial Discrimination (CERD) is one of the most important treaties of the United Nations that advocates ending racial¹⁰/caste-based discrimination. It calls for all state members to declare such discriminations illegal and encourage positive intervention to maintain harmony in the society. This is the oldest treaty among the seven treaties. The United Nations endorsed this treaty in 1965 and came into effective since 1969. 168 states have already ratified this treaty so far and Nepal is a state party to this treaty.

This treaty was established to address the racial discrimination and violence taking place during the 1960s. All countries who ratify this treaty commit to end all kinds of racial discrimination. The state party completely prohibits the discrimination and behavior based on race. Racial superiority is scientifically false, morally condemnable, and socially unjust and dangerous and must be rejected.

Race and caste are two different approaches. However, there is no dedicated treaty to deal with the caste issues within the UN mechanism. Since the nature of discrimination both in the caste and race resemble, caste is also considered within the broader framework of the racial discrimination. The United Nations has not officially accepted the term Dalit yet, it has coined another term to address caste discrimination-discrimination based on work and descent.

The Committee on the Elimination of Racial Discrimination (CERD) is the body of independent experts that monitors implementation of the convention on the elimination of all forms of racial discrimination by state parties. All state parties must submit a report to the CERD committee explaining how the provisions of the conventions are being implemented in the respective countries.

State parties must report initially one year after acceding to the Convention and then every two years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations". The latest review of Nepal took place during the 95th committee session in May 2018. Several concerns related to the Dalit were surfaced during that review.

4.3.2 Review process

State parties are required to submit an initial report within one year after acceding to the ICERD. Then the state parties are required to submit regular periodic reports on how rights are being implemented every two

¹⁰ Racial discrimination is any discrimination against any individual based on their skin color, or racial or ethnic origin

years. Since the two years' time is very short, the practice is also there to submit report in four years. This report is submitted to the CERD secretariat at the Office of the UN High Commission for Human Rights. This report is relatively long and based on facts and evidence.

After the submission of the report, 18 members of the CERD committee review the report and ask policy related questions to the representatives of the state party. Among them, one person is elected as the country reporter, and he/she reads report minutely and takes lead in presenting question. This is also an opportunity to oversee the progress made in earlier criticism and recommendations.

The Committee then engages in a private discussion following the constructive dialogue and issue recommendations in the form of **concluding observations**. Firstly, it lists all positive initiatives, followed by the questions and then concrete recommendations that need to be addressed by the government. Thus prepared report is submitted to both government in the form of question and UN General Assembly as the committee's annual report. The final report is updated in the OHCHR's website as a public document.

The concluding observations of the CERD committee are not legally binding and therefore the committee can't enforce state party to implement them. For the above activity, committee cannot punish the state party. Therefore, implementation of these recommendations is solely an ethical matter of the state party. Having said that, no state in the world wants to be labeled as racial in the international forums or turned completely indifferent to it. Therefore, most of its recommendations have been found to be implemented.

If the state party has ratified individual inquiry/complaints, an individual or group can also submit report of their human rights violations. The CSOs also have been submitting shadow reports.

4.3.3 Analysis of CERD recommendations

Following Dalit specific concluding observations have been received from the periodic review of the report submitted by the Government of Nepal in 2018. The specific recommendations are as follows:

- Monitor, investigate, prosecute, and sanction incidents of violence linked to inter-caste marriage and caste-based segregation, and offer protection and remedies to victims
- Conduct country-wide public awareness and education campaigns designed to eliminate the notion of racial or caste-based hierarchies, end social segregation practices and prevent inter-caste violence
- Ensure that educational curricula and textbooks condemn caste-based discrimination and untouchability, contain positive representations of the culture and contributions of all castes, and omit derogatory or otherwise discriminatory language against any caste
- Ensure that racial and caste-based hatred constitute an aggravating circumstance when they serve as the motivation for an offence, both in law and in practice
- Conduct civic sensitization programs and dialogues throughout the country to eliminate caste-based and racial hatred and bias at the community level
- Strengthen special measures to achieve full inclusion of all children belonging to indigenous peoples, Dalits, and underrepresented castes, especially women, at all levels of education and in teaching positions, including by providing necessary human, technical and financial resources

- Implement targeted programs in schools, accompanied by increased funding, to improve literacy rates and combat caste-based discrimination by students and teachers, especially in areas inhabited by indigenous peoples, Dalits and other marginalized castes or ethnic groups
- Ensure proportional representation of marginalized castes and ethnic groups in all national educational agencies, councils, and committees
- The Committee recommends that the State party take all necessary measures, including through the implementation of relevant laws, to eliminate patterns of land distribution that represent de facto discrimination against Dalits and other marginalized castes or ethnic groups
- The Committee recommends that the State party implement measures to ensure and promote occupational mobility for marginalized castes, including through hiring incentives, vocational training and community-based awareness and empowerment programs.
- Reduce poverty among Dalits, including by providing income-generating skills and training to Dalit youths
- Increase access of Dalit women to skilled birth attendants and proper ante-natal care and nutrition
- Increase the level of political participation of Dalit women

In addition to this, the committee also recommended the state party:

- Intensify its efforts to eradicate violence against women, including by conducting awareness campaigns, encouraging reporting, investigating all reported cases, prosecuting, and sanctioning the perpetrators, and providing protection and remedies to victims
- Effectively operationalize its strategy to end child marriage by 2030, including by establishing related activities, targets, timelines, budgets, and data collection methods
- Enforce compulsory, free and quality primary education throughout the country
- Raise awareness in affected communities about the legal prohibition on child marriage, and about the value of girls, their education, and their ability to pursue economic independence

In the concluding observations received in 2004, it was noted that the law enforcement agencies misbehave Dalit and reluctant to give equal legal protection. It had indicated for an impartial investigation to wipe out discriminatory thought and practice.

In addition to this, the committee had also asked the government to report the situation of the marginalized women facing multiple discrimination and Badi women that are forced to prostitution in the subsequent periodic review.

4.3.4 Implementation status

Nepal had first submitted this report in 2004. After that Nepal failed to submit this report for the period of 12 years. This shows government's indifference and negligence. The last review of Nepal took place in May 2018 during the 95th session of the General Assembly and their implementation status is as follows:

CERD recommendations	Implementation status
<ul style="list-style-type: none"> Monitor, investigate, prosecute, and sanction incidents of violence linked to inter-caste marriage and caste-based segregation, and offer protection and remedies to victims 	<p><i>Civil Code Act, 2017</i> and <i>Criminal Code Act 2017</i> came into effect from 17 August 2018 to deal with the civil and criminal cases. However, their implementation is weak. The law enforcement agencies discourage to file complaint, rather force victims to go for reconciliation. Therefore, most of the cases were taken to the court, instead of police and judicial committee during the pandemic time.</p> <p>On the one hand, people hardly go to the police station to register complaints due to the low level of legal awareness. On the other hand, police also refuse to lodge complaints. On top of that, the role of police is not free from political clout. Rupa Sunar's case is an example. Police registered complaint six hours after the incident took place. The then education minister interfered directly to secure the release of the alleged perpetrator. This also shows the involvement of political parties and police in relation to the caste discrimination cases. Similar cases were filed by Karuna Bishwakarma (Dolakha) and Deepa Nepali (Kailali) and the court gave clean cheat to the perpetrators. This also shows Dalit women's struggle to access justice.</p> <p>The Act related to the police terms and condition also had the provision of punishment for discrepancies in executing responsibilities, but it is not implemented. Victim's privacy is also not respected.</p>
<ul style="list-style-type: none"> Effectively operationalize its strategy to end child marriage by 2030, including by establishing related activities, targets, timelines, budgets, and data collection methods 	<p>Nepal has expressed its commitment to end child marriage by 2030. Nepal has declared child marriage illegal, but hardly the state has intervened or punished the culprits. There is a national strategy in place, but there is no clarity in its implementation (activities, budget, and timeline). This has not been effectively implemented.</p>

<ul style="list-style-type: none"> • Implement compulsory, free and quality primary education across the country 	<p>The school enrollment campaigns are started with the start of academic calendar; however, these campaigns are not adequate. Such campaigns must be directed not only enrollment but also retention and learning outcomes. The scholarship being given to Dalit students is very low, it must be updated as per the need of the time.</p>
<ul style="list-style-type: none"> • Raise awareness in affected communities about the legal prohibition on child marriage, and about the value of girls, their education, and their ability to pursue economic independence 	<p>Some awareness raising activities have taken place, but no capacity building works are documented.</p> <p>The existing law prohibit marriage before 20 years of age, but not strictly implemented in practice. Child marriage is one of the most complex and difficult problems in Nepal.</p> <p>It is found that Dalit youth are often charged with false cases in the inter-caste marriages. The existing law provides 2-year punishment in child marriage and 10-14 years’ imprisonment in kidnapping, rape and human trafficking and transportation. In most of the cases, Dalit youth are often charged with the false cases of rape, kidnapping, and trafficking allegations. This also deprived women from owning the property.</p> <p>For an example, Malati Rawal (18) and Prakash Bishwakarma (19) of Kailali had to face mental and physical violence for their inter-caste marriage. They had to flee and hide in some forest for weeks owing to the life threat. Once they returned, a group of 25-30 people reached to Prakash’s home, beat him, and took Malati away. They threatened to repeat the Rukum massacre case. Then they were forced to live separately. Their attempt to apply false charges in this case failed due to the continued pressure from the media and civil society groups.</p>
<ul style="list-style-type: none"> • Reduce poverty among Dalits, including by providing income-generating skills and training to Dalit youths 	<p>The government has the provision to provide concessional loan to Dalit youth to modernize their traditional occupations. Under this scheme, a Dalit youth can receive the amount from 50,000 to 1 crore of the period of 1 year to 5 years’ time. It’s very tough to acquire this loan in actual practice.</p>

<ul style="list-style-type: none"> • Increase access of Dalit women to skilled birth attendants and proper ante-natal care and nutrition 	<p>60.5% Dalits in Hill and 36.1% Dalit's in Madhes have access to health services.</p> <p>Nepal has made significant progress in the field of malnutrition. However, more work needs to be done in the case of the Dalits. 3.7% Nepalese use 2/3 of their income in food, whereas 17% Dalit in Madhesh and 6.3% ¹¹Dalit in Hill spend 2/3 of their income in food. They spend large portion of their income in food, and therefore leave with no money to cover other needful expenses.</p> <p>One of the reports reveals that 65% Dalit women experience food insecurity. Dalit women are weaker than the other women from Muslism, Brahman/Kshetri, Indigenous etc. This also shows that Dalit women's access to nutrition is very low.</p>
<ul style="list-style-type: none"> • Increase the level of political participation of Dalit women 	<p>Under the article 38 of the constitution, women's right to proportional inclusion in the state mechanisms is ensured. Due to the mandatory provision in the Local Level Election Act 2017, Dalit women have increased representation in the local level. However, there is an abysmal representation at the federal and province level. There is need to formulate new law to enact constitutional commitments to this effect.</p>

4.3.5 Recommendations for further improvement

The Nepali government has touted its constitutional and legislative protections as a victory in the fight against untouchability and caste prejudice. It has been silent over the implementation, though. Despite these protections, socio-cultural superstitions and a culture of impunity contribute to caste prejudice and untouchability in Nepalese society.

More than 3 dozen of Dalits have been killed since the implementation of the Caste-based Discrimination and Untouchability (Offense and punishment) Act in 2011. 50% of the perpetrators still go unpunished. The perpetrators are not brought under the jurisdiction of law. During the pandemic time, more than 1200 women got raped. Of them, 260 were Dalit women. 7 Dalit women were killed after the rape. Following suggestions have been made to ensure the effective implementation of the recommendation received from the CERD committee.

¹¹ Nepal Social Inclusion Survey 2018 by the Central Department of Anthropology, TU.

- Political parties and law enforcement (police, government attorneys, and judges) play a discriminating role in the violence against Dalits. The law enforcement authorities should be shielded from political interference, and political parties must embrace a zero-tolerance attitude. The Nepali police should establish a distinct Dalit cell. It is essential to increase police capacity. The police and community need to communicate often. The Nepal police should also create a distinct action plan to put the advice from various international human rights institutions into practice.
- Dalit rights are safeguarded under Nepal's constitution under the category of fundamental rights. Similar in type are the recommendations Nepal has received from the international human rights treaties to which it is a party. There hasn't been any systematic observation or assessment yet. The National Dalit Commission must thus create a data bank and continuously check the promises made at international forums. Additionally, it holds the three tiers of government responsible. The project entails changes to the current law, implementing organizations, a monitoring body, a budget, and reporting.
- Dalit community has played a significant role in the history and civilization of Nepal. However, the discriminatory governance system underscored their historical contribution and continues the discrimination. There is a consistency in the narrative from the school to university. Therefore, there is a need to revamp the existing curriculum by deconstructing state narrative and offering alternative history and narrative.
- Allocate budget to provide one-women-one-skill-one employment scheme to the poor Dalit families
- Allocate adequate budget to provide free education with scholarship for Dalits to increase their access to quality education and improve Dalit women's literacy, provide incentive scholarships to the Dalit girls who are struggling to come to the school or forced to drop out due to the family circumstances. Every municipality or rural municipality must allocate a budget sufficient to cover the expenses of at least one nurse from Dalit community. This includes the scholarship along with residential support.
 - To improve Dalit women's access to justice, there should be a policy framework backed by financial allocation to create a legal assistance desk, referral desk, and support desk led by elected Dalit women. Such a desk needs to offer legal assistance and present educational sessions on legal awareness. A minimal level of assistance (transportation, food, and lodging) should be provided by the state to Dalit women who travel to seek redress.
- A system should be developed to track the progress in relation to the development and empowerment of the Dalit women by producing disaggregated data, setting up effective monitoring and evaluation mechanism and seeking accountability.
- A special social security and relief package should be established for Dalit women affected by the earthquake, flood, and pandemic.

5. Comparative study

The recommendations made by the UPR, CEDAW, and CERD have one feature in common. The majority of the suggestions concern how to put current legislation into practice. It demonstrates that there are several policy frameworks for women's rights in existence, but there are numerous issues with how they are carried out. Five suggestions from the third UPR cycle, which took place in 2021, focused on Dalit women. They have to do with the creation of new laws, women's rights, access to justice, and the application of laws governing education and law enforcement. The efficient monitoring and assessment do not adhere to these guidelines. In the lack of base and disaggregated data, the monitoring system has not been very successful. Altogether there were 7 Dalit women specific recommendations received from the CERD committee review took place in 2018. Of them, 4 recommendations are related to the execution of the available legal provisions, 2 are related to raise awareness and one is related to the capacity building.

Seven Dalit women specific recommendations were received from the sixth periodic assessment of the CEDAW committee. Two of them have to do with enforcing the law, two with spreading awareness, two with creating new laws or acts, and one with health. This demonstrates that there are plenty of normative frameworks available to address the caste-based prejudice and untouchability experienced by the Dalit women. As a result, a significant number of the proposals are specifically connected to the application of existing legislation. It is also clear that these suggestions are unknown to the community, government organizations, and other stakeholders. They must be made more sensitive. In a federal governance structure, the provincial and local governments also have a role to play and therefore they also need to be well informed about these recommendations. It has gained more prominence in the federal governance system. The government must keep its documentation model systematic and easy to access. This has also failed to document an excellent works already carried out by the government. The government is failing to present the good works it has carried to this effect.

6. Conclusion

There are several UN human rights mechanisms in operation. The recommendations made to the government of Nepal by the UPR, CEDAW, and CERD are instead covered in this chapter. The implementation gap is also investigated in this study.

The bulk of the suggestions are connected to the application of constitutional and legislative laws, according to an analysis of the UPR 3rd cycle proposals from the perspective of Dalit women. As a result, all three tiers of government must include these suggestions into their yearly financial, program, and policy planning.

The recommendations received from the CEDAW committee can contribute immensely to the implementation of the SDGs-5. “Leave No One Behind” is the main crux of the SDGs and Dalit women are one of the most backward groups in Nepal. A simple analysis of the HDI, Dalit women are lagging in the political, social, and economic areas. Therefore, the culmination of human rights mechanism and SDGs is important.

The CEDAW committee assures that there is no discrimination in the application of the law as well as when discussing the absence of prejudice in the legal provision. The numerous Goal -5 indicators also recognize this aspect. One of the key resources for monitoring discrimination against Dalit women is the CEDAW committee. It might be crucial in assessing the progress achieved in achieving goals 5.1.1 (current laws have enhanced women's rights or perpetuate discrimination and inequality) and 5.1 (stop all kinds of discrimination against women) in terms of upholding national and international human rights obligations.

The recommendations received from the CERD committee are also more related to the implementation of the available laws. Some are also related to raising awareness about the available measures. This indicates that there is a huge gap between the law enforcement agencies and other stakeholders towards the use of available legal remedies. Dalit women are facing multiple forms of discrimination, and this must be ended.

The Nepalese government is in charge of carrying out the recommendations obtained from various human rights bodies. The implementation of these policies is equally the responsibility of other parties, including CSOs, the National Dalit Commission, the National Women Commission, national institutions for human rights, and UN agencies. The National Dalit Commission's primary responsibility is to properly oversee the application of the recommendations made by the various human rights institutions. The commission should offer the Nepalese government the necessary recommendations. All three tiers of government are required to have separate jurisdictions under the federal governance arrangement. Nobody has the right to challenge another jurisdiction. Additionally, the municipal level of government cannot be directed by federal ministries. In this context, the National Dalit Commission must increase its role in conducting appropriate research and collecting/analyzing data.

The corresponding ministries are aware of the Dalit women specific recommendations received from all three human rights mechanisms. However, other ministries and agencies are not aware of these recommendations. The local level government also hardly knows these recommendations. Therefore, there is a need to establish a mechanism that translate all recommendations and disseminate it to all agencies and stakeholders and hold robust discussions and ensure that the local level prepares action plan accordingly. All government must make sure that these recommendations are addressed in the annual policy, programs, and budgetary allocations.

The National Dalit Commission should own the recommendations received from the CERD committee as National Women Commission does for CEDAW recommendations. The commission should also develop an action plan to ensure the implementation of these recommendations.

It is clear that the CSOs are critical of the government and its institutions. However, they must also take initiative to improve their participation and role. By translating recommendations into Nepali, facilitating policy discussions between stakeholders, doing research, creating base data, and other technical support to the commission, CSOs may make the commission more efficient and goal oriented. The Commission's function may be reinforced even more by creating a strong monitoring and assessment system. Finally, if the government and CSOs participate in the process during the full cycle of the review as well as during the report submission, it is feasible to obtain the desired results.

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