

# ***Status of ICESCR in Nepal*** ***A Review***

2007



**Rural Reconstruction Nepal (RRN)**

*Coordinator*

Sub-Committee for International Covenant on  
Economic, Social and Cultural Rights  
HRTMCC, Kathmandu, Nepal

**Status of ICESCR in Nepal: A Review**

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# 1. Executive Summary

Nepal has ratified the major international human rights treaties including ICESCR that talks about freedom, rights to self-determination, and right relating to economic, social and cultural advancement, among other. To date, Nepal is a state party of twenty United Nations (UN) and seven International Labour Organisation (ILO) conventions and is entrusted with obligations to provide provisions for these instruments.

According to the Article 33(m) of the Interim Constitution of Nepal, 2007 and Nepal Treaty Act, 1991, international human rights instruments to which Nepal is a party are enforceable as domestic laws in Nepal and the provisions of international instruments prevail over the domestic laws in case of inconsistency between the two. As state party of the ICESCR, Nepal is obliged to implement the economic, social and cultural rights provided by the treaty.

The government and the Maoists have mutually agreed to declare an end to a decade-long violent conflict and vowed for the establishment of sustainable peace and democratic governance, which abide by fundamental human rights principles and the rule of law. The government and the political parties also realised the need of insuring ESC Rights and explained that legal arrangements and institutions are intended to address the previous weaknesses in state governance. Parliament has declared Nepal a secular and an untouchability-free state on 18 May and 5 June 2006 respectively which is incorporated in the Interim Constitution promulgated in 2007.

The Interim Constitution of Nepal, 2007 is fundamental legal instrument of Nepali people achieved from Janaandolan II in 2006. The Constitution has made a preamble respecting the people's mandate expressed in favor of democracy, peace and progress. The Interim Constitution has guaranteed the fundamental rights of the people in Articles 12-32. Article 5 has recognised that all the languages spoken as the mother tongue in Nepal are the national languages and it shall not be deemed to have hindered to use the mother language in local bodies and offices. State shall translate the languages so used to an official working language and maintain record thereon. Article 13 of the IC guarantees the right to freedom. The ground reality however, is quite different. Many of the laws which are discriminatory and prevent Dalit from enjoying full social and cultural rights still exist. Tribal, indigenous and ethnic communities, Dalit and their organisations have started serious protests.

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Article 34 of the Interim Constitution provided the Directive Principles to the state. State shall be the objective to maintain conditions suitable to the enjoyment of the benefits of democracy through maximum Participation of the people in the governance of the country by the means of self-governance tribal, linguistic cultural or regional and to promote general welfare by making provisions for the protection and promotion of human rights, by maintaining tranquility and order in the society. On its Article 35, Constitution stated about the state policies, which incorporated about a policy of raising the standards of living of the general public through the development of infrastructures such as education, health, transportation, housing, and employment of the people of all regions, by equitably distributing investment of economic resources for balanced development of the country. In addition, the provision highlighted about the state policy and explained about the economic development which will help to promote the interest of the marginalised communities and the peasants and laborers living below poverty line, including economically and socially backward indigenous tribes, Madhesis, Dalits, by making reservation for a certain period of time with regard to education, health, housing, food sovereignty and employment.

Supreme court has an extra ordinary jurisdiction provided by the article 107 of the Interim Constitution which provides special Judicial Power for the enforcement of the fundamental rights conferred by this Constitution, for the enforcement of any other legal right for which no other remedy has been provided or for which the remedy even though provided appears to be inadequate or ineffective, or for the settlement of any constitutional or legal question involved in any dispute of public interest or concern, have the extraordinary power to issue necessary and appropriate orders to enforce such rights or settle the dispute.

Several judgments have been made by Supreme Court regarding the non discrimination and economic and social rights. In the case of Meera Dhungana, Supreme Court declared No. 16 of the chapter on partition of the Civil Code was discriminatory to extend that a son has a right to property as birthright whereas in case of an unmarried daughter, it is conditional upon her completing the age of 35. The court gave the directive order to amend the laws which is discriminatory in relation to proprietary right of women. Consequently, The 11th amendment of Civil Code (2059 B.S.) provided the equal property right to the daughter. The Court acknowledged the right to privacy for women, particularly in situations where proof is demanded by the court in the case of Annapurna Rana vs. Gorakh Shamsher JB Rana and others. Similarly, in the case of Rina Bajracharya, the Supreme Court held that the early retirement provisions of women workers of Royal Nepal Airlines Corporation (RNAC) were discriminatory and inconsistent with the Constitution and

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international instruments ratified by Nepal. Highlighting the Section 9 of the Nepal Treaty Act, 1991, the Court said that it provides a higher status for the Conventions to which Nepal is a party than the existing Municipal laws of the land, making their implementation easier and efficient. However, in the case of Madhav Basnet Vs. HMG Nepal, the Supreme Court did not recognise the proper obligation of the state to fulfill the right to food of the people living remote area.

According to Trade Union Act, 1992, Workers of any enterprise are allowed to form trade unions for the protection of their professional interest and at least 50 trade unions or 5,000 workers of enterprises of a similar nature can, by agreement, form a trade union association. Under Section 5, at least 10 trade union associations can, by agreement, form a trade union confederation. Pursuant to Section 8, a trade union is an autonomous and a legal body and is free to function subject to the provision of the Act. Same rights to the civil servant except those employees who are at policy-making levels are also granted. Pursuant to this, Interim Legislative Parliament has amended the Civil Service Act and incorporated the right to form trade union under the civil service job.

Several Acts and Regulations are enacted to implement the rights provided by the Constitution and international instruments. Poverty Alleviation Fund Act 2063 has established Poverty alleviation fund to alleviate the poverty in Nepal. The Cooperative Act, 1992 is also major law which objected to uplift economic and social status and to achieve the cultural, economical and social rights for the farmers, artisans, and poor and low income groups, landless and unemployed, which has been targeted to reduce the poverty among women, Dalits and poor farmers and to improve their social and economic rights.

Government has taken initiatives to provide free primary education. According to the Education Act 2028, the primary education shall be free and books of the primary level education shall be provided freely. The Act also mentioned the admission fee not to be taken repeatedly. The health care of students is to properly consider in school; only qualified teachers are allowed for teaching; proper remuneration is to be provided to the teachers. Property of schools not to be misused and tax exemption for the community based and trust schools. The Ministry of Education and Sports, Curriculum Development Centre, has prepared a Bilingual Transition Education Programme for teaching students other than Nepali speaker in their mother tongue. The course books of grade 1-5 are being translated from Nepali to Maithili, Awadhi, Tharu, Newari, Tamang, Limbu, Magar, Rai Wantawa, Gurung, Sherpa, and Rai Chamling. In the school textbooks, chapter on human rights is included, i.e, child rights, in grade 4 and 5, and human rights in grade 9 and 10.

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National Human Rights commission, National Women's Commission and Dalit Commission have been formed. NHRC is formed under the Human Rights Commission Act 2053 B.S. and now recognised as constitutional body and conferred on the commission the power to monitor and implement human rights, including right to equality, guaranteed by different international conventions. The commissions has power to inquire an investigate cases involving human rights violation and to give necessary recommendations for effective implementation of international human rights instruments. After long demand of women activists, Act to make the Women Commission statutory is enacted and Dalit Commission Act is still in Black Hole.

The issue of land ownership is fundamentally an issue of human rights that directly corresponds with the citizens' social security, justice and dignity. In Nepal, the agenda of land reform is inevitably associated with political, economic, social and cultural development of the poor and marginalised people. Land reform should be taken as a pre-condition for development that would materially contribute to the efforts being made for sustainable peace, reduction of poverty, improvement of living standard, and ultimately for the better cause of human rights. Further more; The Civil Code of Nepal gives some kind of housing rights to the owner and tenants of the house. The Apartment Ownership Act, 1997 deals directly with the housing rights of the apartment owners. The Land Reform Act, 1964 has made land ceiling and tenure ship. The Land (Survey and Measurement) Act, 1962, The Land Acquisition Act, 1978, The Local Self-Governance Act, 1999, The Town Development Act, 1988, The Building Act, 1999, The Electricity Act, 1992, The Environment Protection Act, 1997, and The Building Code, 2003 regulate the right to decent living.

The government has considered the issues of Economic, Social and Cultural Rights including right to Self Determination after the serious agitation of concern stakeholders. However, the government's formal approaches to equality are inappropriate to bring marginalised indigenous, ethnic people, Madhesis and Dalit into the mainstream of political, economic, social and cultural affairs. Proportional representation of the marginalised and disenfranchised groups in all levels and forms of state mechanisms promotes inclusion. An inclusive pattern of state governance has long been a demand by indigenous, ethnic, Madhesis, Dalit and other marginalised and backward communities who have no guarantee that they will be well represented in state mechanisms on policy making, implementation and supervision. There are some legal provisions that can be interpreted in order to ensure the right to self-determination. However, the implementation of such provisions is poor. Right to self-determination is directly associated with access to resources which directly related to the economic, social and cultural right of the concerned communities. Laws



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and government policies are not being implemented because of not being priority issues of the state. Even some judicial pronouncement including the case of Meera Dhungana (relating to property right) had been made by the Supreme Court of Nepal. But the directive order of the Supreme Court is not followed by the government properly. Some Judicial Pronouncement is completely ignoring the state obligation of the Government; Madhav Basnet V. HMG is one of the instant on it.

Even state initiated various positive measures to address the economic, social and culture issues regarding the ESC Rights toward the implementation of ICESCR, practical developments and indicators show very low achievements on it. Following measures are to be taken by the government to make ensure economic, social and cultural rights of the citizen including women, dalit, indigenous nationalities, madhesis etc.

The government should provide special reservation to bring marginalised and backward communities into the mainstream of political, economic, social and cultural affairs.

The state must grant constitutional status to the National Dalit Commission to make autonomous and independent body.

A special monitoring mechanism should be established in every District Administration Office (DAO) to assess and assist the implementation of programs that have been specified for Dalit.

Specific law should be enacted to address domestic as well as other violence and exploitations against women and eliminate all forms of social ill-practices.

The independent and effective role of the NHRC, National Women Commission and National Dalit Commission should be ensured. ESCR must be embodied as fundamental rights without any conditions and restrictions. Therefore, the conditional tags on most provisions directly related with ESCR should be removed from the Constitution, like the provision; "as provided by laws".

The government should formulate and implement the policies to reintegrate the families, who were displaced and victimised during the armed conflict while respecting their cultural, religious rights and values.

The government should extend medical and psychosocial services to displaced persons and other victims of human rights violations during the decade long armed conflict. Truth and Reconciliation Commission should be formatted as per the Comprehensive Peace Accord and Interim Constitution.

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All relevant ILO conventions, including the ILO Convention Nos. 29, 81 and 87 must be ratified. In terms of employment and implementation of labor law and policies, the labor market should be completely free from any kind of discrimination based on caste, race, gender, color, political and religious belief, marital status, and origin, etc.

Balanced and equitable bargaining capacity should be enhanced for workers suffering from social imbalances caused by their inherently weak social status including social, economic, political, and educational factors.

The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group or unit of society, particularly for its establishment and the care and education of dependent children.

Fundamental rights to food securities guaranteed by the Constitution should be implemented through specific legal mechanisms. Strong mechanisms should be established to protect the farmers' rights, including intellectual property rights such as indigenous and traditional knowledge.

Fundamental Right to environment and health ensured by the Constitution should be implemented through legislative measures. Treatment facilities for common diseases and prevention of locally endemic diseases should be guaranteed. The government programmes should be aimed at preventing and treating HIV/AIDS

The higher priority should be given to reducing the rates of maternal and infant mortality and special consideration be given to the need for integrating into the general health care system with mental health services. The right to the highest attainable standard of health including mental and physical should be ensured and the importance of mental health care, particularly the persons affected by the conflict should be given.

The physical and economic access to reproductive health care and contraceptives be given high priority, particularly in rural areas, and that specific measures be taken to enable women to give birth in the care of a trained health care professional.

Effectively implement the commitment on Education for All. The government should develop time-bound policies to provide education for all and devise an effective monitoring mechanism. To check the misuse of facilities and provisions for Dalit and students from backward communities, the government should introduce a strong legal mechanism and bring the wrongdoers to justice to ensure benefits to the target groups.

Schools should be declared as peace zones and all political activities should be completely banned in school premises. Standard and quality of public schools should be ensured for quality education and minimise the

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gap of quality between public school and private school. The schools must have sufficient qualitative teachers, infrastructure and other required measures.

Omnipresent inequality, injustice and discrimination against different native languages should be eliminated according to the Constitutional provision as well as provision of International Human Rights Instruments. Copy rights and industrial property rights should be protected as per the requirement of WIPO and TRIPs agreement of WTO.

## **2. Introduction**

### **2.1 Background**

This is a review report on the implementation of ICESCR in Nepal and the corresponding legal, judicial and institutional mechanisms to address the economic, social and cultural rights in a present context. The information contains in this report is based on the reviewed literatures that include UN conventions and Treaties, Concluding Observations and Recommendations, Interim Constitution of Nepal, Laws, Policy, Judgments; Periodic State Reports and their shadow/alternative reports submitted by Nepal government and non-government sectors to concerned UN bodies. In addition, the government structures and other relevant research materials and publications were also consulted during the preparation of this report.

Nepal became a party to the Covenant on Economic, Social and Cultural Rights, 1966 on 14 May 1991 and has made every effort to fulfill the obligations created by the Covenant. Nepal has submitted its first and second periodic reports to UN committee on Economic, Social and Cultural Rights along with the two shadow/alternative reports by Nepalese civil societies, and series of communications by the concerned stakeholders to the UN bodies thereon. In this context, Rural Reconstruction Nepal (RRN) commissioned a research team to review the implementation of the status of ICESCR in Nepal. This report looks at how these rights are guaranteed and how they are brought into practices.

### **2.2 Objective of the study**

In broader sense, the main objective of this study is to review the existing constitutional, legal and institutional arrangements made to ensure the economic, social and cultural rights of Nepali citizen in general, and the most vulnerable, marginalised, disadvantaged and excluded communities in particular. The research also tries to see the state's policies / programmes to address the economic, social and cultural needs of the citizen. In addition, this study is carried out to understand the realities, how they are implemented in practices. It is expected to offer an informed advocacy tools for concerned stakeholders, particularly the Nepalese civil societies and NGOs working to bring effective changes in laws, policy and practices with regard to ESCR in Nepal.

## **2.3 Methodology**

This study is drawn primarily from secondary source of information reviewing as many as legal literatures, UN conventions, treaties, Constitution, Acts and Regulations, related to economic, social and cultural rights and are applicable in Nepal. Particularly, the study is concentrated to review the legal and institutional arrangements, policy and programmes of Nepal government and the judgments made by the Supreme Court of Nepal, thereby unveil the existing reality for policy change.

### ***2.3.1 Review on legal and institutional arrangements***

The study reviewed the legislative and institutional measures adopted by Nepal Government to protect, promote and fulfill Economic, Social and Cultural Rights in Nepal. They included the Interim Constitution of Nepal, 2007, the Land Reform Act. 1964, and its the fourth amendment 2003, the Bonded Labour (prohibition) Act 2002, the local self Governance Act, 1999. Similarly, the Civil Rights Act, 1954, the legal Aid Act 1998, National Human Rights Commission Act are also reviewed. The Tenth Plan and the initiatives taken by the Ministry of Education and Sports (MOES) and Tribhuvan University (TU) for reservation for Dalits in higher study are the institutional arrangements etc. looked at during the study.

### ***2.3.2 Review on Supreme Court's judgments***

The Judiciary of Nepal is independent and proactive in protecting and preserving human rights of Nepali citizens. The Supreme Court has issued landmark verdicts in more than a dozen cases providing directives to the Government of Nepal to enact necessary legislations and implement the Court orders. In the Case of Bal Krishna Neupane Vs Parliamentary Secretarial, the SC ordered the GON that while making appointments under the Labour Act, 1992, priority shall be given to the Nepalese Citizens. Likewise, the verdicts given by SC in the Case of Man Bahadur Viswokarma Vs HMG, Chendrakanta Gyawali Vs HMG, and Federation of Dalits NGO Vs HMG against the discriminatory provision are notable ones in regard. However, these few cases could not be enough to change the long-rooted discriminatory practices based on caste, class, gender, ethnicity, geography, as well as patriarchal structures against the majority sects of the Nepalese population such as women, Dalit, and Janajati (indigenous nationalities protecting their self-respect, dignity, and identity.

### **2.3.4 General Observation**

It is observed that the Interim Constitution has a several provisions towards the ESC Rights and some of them are included in the Fundamental Rights in Article 12-33. The eleventh amendment of the Civil Code is also directed to abolish inequalities between women and men; however the inequality continued to exist in the society.

GON, however, tried to resolve the tenancy problem by amending the Land Reform Act. 1964, on 8 February 2003 and the fourth amendment of this Act also focused on resolving the tenancy problem by securing the rights of the tenant of the land, however, the issue has been the crucial in the present days agitation.

GON has abolished the Kamaiya System in July, 2000. At that time 18,700 households were freed. The Bonded Labour (prohibition) Act was enacted making Kamaiya system punishable. However, it failed to address the core issues of unemployment, access to and control over resources and proper rehabilitation. Freedom without alternative means of survival and economic empowerment, including the right to work, reverted to a new form of exploitation of the ex-Kamaiyas. They became bonded under a new phenomenon of unemployment and deprivation.

The local self Governance Act, 1999 in the instrument to institutionalise the process of development by enhancing the participation of all people including Dalits. Similarly, the civil Rights Act, 1954, the legal Aid Act 1998 are also notable initiatives in the field of protection and promotion of rights of the people including Dalits. The long-term vision of the tenth plan is to raise the living standards of Dalit communities. The Ministry of Education and Sports (MOES) and Tribhuvan University (TU) have some reservation initiation for Dalits in higher study. The Government had made a policy announcement for the criminalisation of all kinds of discrimination and exploitation in the country.

Despite the abolition of the caste system in Nepal, caste-based discrimination is still widespread. The implementation of laws has not been effective. The state is under obligation to ensure that public authorities act in conformity to the Covenant. But the reality is different and caste-based discriminatory attitudes are found even in government organisations. A few Dalits have had the chance to enter army and police forces but they are not allowed to take food and drink water with their fellow men.<sup>1</sup> In several public schools, Dalit children are bound to sit in separate seats particularly at the last row of the class. The state has not

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1 JUP. 2001. *Dalit in Nepal and Alternative Report for WCAR 2001*. Kathmandu: Jana Utthan Pratishthan. p. 26

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ensured adequate development and equal enjoyment of human rights to Dalit.

NHRC has been undertaking several initiatives for the protection and promotion of all human rights including economic, social and cultural rights. NHRC under the complaint handing monitoring activities inequality discrimination, rights to work right to secure security to adequate standard of living right to IDPS etc. However, the most of the activities of the commission are concentrated to protect and promote Civil and Political rights and they are always found superseding the economic, social and cultural rights in practices. There is even no separate desk at the National Human Rights Commission to deal with human rights issues pertaining to Dalit and other marginalised community and coordinate among stakeholders.

GON has made primary education free for all without discrimination to make primary and basic education compulsory. But due to diversified geographical setting, climate and poverty, illiteracy is a great difficulty to make primary education compulsory for all.

# 3. Article-wise Analysis on the Implementation of ICESCR in Nepal

## Article 1: Right to Self-determination

### *Summary of Article*

1. Right to determine political status and pursue of economic, social and cultural development,
2. Right to dispose of natural wealth and resources without prejudice to any obligations

The government and the Maoists have mutually agreed to declare an end to a decade-long violent conflict and vowed for the establishment of sustainable peace and democratic governance, which abide by fundamental human rights and the rule of law. The government and the political parties also explained that legal arrangements and institutions are intended to address the previous weaknesses in state governance. The reinstated House of Representatives has declared Nepal a secular and an untouchability-free state on 18 May and 5 June 2006 respectively. The Interim Constitution has been promulgated and a Comprehensive Peace Agreement has been reached. There is an Interim Parliament in place and a long awaited Interim Government has also been formed. Nepal is a state party to major international human rights treaties including the ICCPR and ICESCR that talk about freedom and right to self-determination.

### *Legislative Measures*

#### **Constitution**

The Interim Constitution of Nepal, 2063 is fundamental legal instrument of Nepali people achieved from people's movement 2062/63. The constitution has made a preamble respecting the people's mandate expressed in favor of democracy, peace and progress. It has pledged to accomplish the progressive restructuring of the state in order to solve the class related, ethnic, and regional and gender problems previously existed in the country. It expressed the full commitment toward the democracy, peace, prosperity, progressive socio-economic transformation and sovereignty, integrity and independence of the country. Furthermore, the Interim Constitution has guaranteed the fundamental rights of the people in Articles 12-32. These fundamental rights are as; freedom of practice any



profession or carry on any occupation, industry of trade (Article 11(3) (f), right to property (Article 19), right relating to education and cultural (Article 16), right to religion (Article 23), right against exploitation (Article 29), right to constitutional remedy (Article 32), etc. Article 3 of the Interim Constitution defined the nation and described as Having common aspiration of multiethnic, multilingual, multi religious, multi cultural characteristics and having committed and united by a bond of allegiance to national independence, integrity, national interest and prosperity of Nepal, the Nepalese people collectively constitute the nation. Similarly, Article 5 has recognised that all the languages spoken as the mother tongue in Nepal are the national languages and it shall not be deemed to have hindered to use the mother language in local bodies and offices. State shall translate the languages so used to an official working language and maintain record thereon. Article 13 of the IC guarantees the right to freedom.<sup>2</sup> The ground reality however, is quite different. Many of the laws which are discriminatory and prevent Dalit from enjoying full social and cultural rights still exist. Tribal, indigenous and ethnic communities, Dalit and their organisations have started serious protests.

### Acts/Regulations

#### *The Civil Liberties Act, 1954*

This Act protects the right to equality on the basis of religion, caste, race or sex during the recruitment in civil service. It provides the ground for positive discrimination to uplift women, children and backward community. Right to expression and other, Right to religion, No tax without legislation, Protection of the residence, Right to criminal justice, Individual Freedom, Right against unwanted work are also protected under this Act.

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<sup>2</sup> Article 13: Right to Freedom: (1) every person shall have the right to live with dignity, and no law shall be made which provides for capital punishment.

(2) No person shall be deprived of his/her personal liberty saves in accordance with law.

(3) Every citizen shall have the following freedoms:

(a) freedom of opinion and expression;

(b) freedom to assemble peaceably and without arms;

(c) freedom to form political party or organisations;

(d) freedom to form unions and associations;

(e) freedom to move and reside in any part of Nepal; and

(f) Freedom to practice any profession, or to carry on any occupation, industry, or trade.

***The Local Self-governance Act, 1999***

Local self government Act 2055 protects the interest of local people, provides opportunities for the people in governance. It supposed to Village Development Committee to be an Autonomous and Corporate Body. Judicial powers delegated to the Village Development Committee and Municipality and District Development Committee on its section 33, 101 and 215. Similarly the right to levy the taxes it own area are given to the Village development committee and municipality on its area.

***The Election Commission Act, 1990***

The provisions of this Act secure the right to participation of the people in the general and local elections.

***The Members to the Election of House of Representatives Act, 1991***

It ensures the right to participation to election of the members of the national legislative body.

***The National Foundation for the Development of Indigenous Nationalities Act, 2002***

This Act is made to provide for the establishment of national foundation for development of indigenous nationalities and it has a objectives to make overall development of the indigenous nationalities by formulating and implementing the programmes relating to the social, educational, economic and cultural development and enlistment of indigenous nationalities. It has comprehensive provisions for the protection of language, culture, traditional knowledge of different nationalities.

***The Trade Union Act, 1993***

The Trade Union Act permits authority to form a trade union for the protection of professional interest.

***The Political Parties Act, 2002***

This Act provides provisions for forming the political parties and affiliation. It ensures the implementation of right to self-determination in political sector.

***Immovable Property Requisition Act, 2013***

According to this Act, immovable property of the people can be requisited for the public purpose. The Act has comprehensive provision to requisite the land. Although, the act has protected economic and cultural rights of the people, the proviso of article 2 mentioned that the place used for religious or orphanage purpose, School, Hospital, and Public Library can

not be requisited. Similarly, the places used for the residential purpose or residing the family of owner also can not be requisited.

### ***National Human Right Commission Act, 2059***

National Human right commission having independent and autonomous body has been established for protection and promotion of human right guaranteed by the constitution and others laws. The commission shall have the power to investigate to the case registered victim or any person's on behalf of victim, inspect the various government agencies including jails, recommend to the government to reform necessary law and procedure for the protection and promotion of implementation human right.

Similarly, several laws such as Old heritage protection Act 013, Pashupati Area development fund Act 044, Lumbini Development Fund Act 042 are enacted to protestations of ancient Art, culture, Practice etc.

### ***Judicial Pronouncement***

#### **Meera Dhungana Vs. HMG<sup>3</sup>**

In this case, the petitioner had challenged No. 16 of the chapter on partition of the Civil Code, which gives a son the birth-right to share in the father's property whereas the daughter's right in the father's property is conditional upon the girl remaining unmarried until the age of 35. It was argued that this provision was discriminatory and void as being inconsistent Article 1, 11, 17 and 131 of the Constitution of the Nepal 1990. The Supreme Court declared No. 16 of the chapter on partition of the Civil Code was discriminatory to extend that a son has a right to property birthright whereas in case of an unmarried daughter it is conditional upon her completing the age of 35. At the same time it said that taking into consideration the other provisions relating to partition, the provision under No. 16 did not seem discriminatory against the daughter. The court further said that if No. 16 were to be declared unconstitutional, then the daughter would have a right a in the father's as well as the husband's property.

This is a landmark decision which provided the right to self determination regarding the property right to women. The court gave the directive order to amend the laws which is discriminatory in relation to property right of women. Consequently, the 11th amendment of Civil Code (2059 B.S) provided the property right to the daughter.

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<sup>3</sup> NKP 2052 (1995), Vo. 37 p. 462

### ***Gaps and Weaknesses***

The government has recently addressed the right to self determination only after strong struggle of concern stakeholders. Heterogeneous Nepalese society needs proper inclusion. The government's formal equality approaches are inappropriate to bring marginalised indigenous, ethnic people, Madhesis and Dalit into the mainstream of political, economic, social and cultural affairs. An inclusive pattern of state governance has long been a demand by indigenous, ethnic, Madhesis, Dalit and other marginalised and backward communities who have no guarantee that they will be well represented in state mechanisms on policy making, implementation and supervision. There are some legal provisions and constitutional provisions can be interpreted in order to ensure the right to self-determination. However, the implementation of such provisions is poor. Right to self-determination is directly associated with access to resources and its use to benefit of concerned communities. Laws and government policies are not being implemented because of not being priority issues of the state.

### ***Recommendations***

- ? The government must come up with substantial measures to address the genuine concerns and issues related to right to self-determination. The measures should be institutionalised with strong and effective implementation mechanisms and monitoring provisions.
- ? The concept of devolution and decentralisation must be translated into practice. It should be redefined as per the concept of right to self-determination.
- ? State should practice the bottom-up approach to governance to ensure the access of marginalised and disenfranchised groups in the decision-making process in all forms of state mechanism including political levels.
- ? The government should provide special reservation to bring marginalised and backward communities into the mainstream of political, economic, social and cultural affairs.
- ? Constitution should be amended to ensure that indigenous people, Madhesis, Dalit and women enjoy their right to access and benefited from their natural resources. Likewise special measure should be carried out to protect language and culture of the indigenous people.

## Article 2: State Obligation

### *Summary of Article*

State party undertakes to take initiatives individually or through economic and technical support of international community and guarantees the rights enunciated in the Covenant without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

A land of diversities, Nepal has long been a witness to a range of discrimination and exploitation varying from caste, spatial, religious, class, gender and ethnicity, resulting in perpetual social injustice. Caste-based discrimination is the most vicious cycle of dehumanisation. Victims of caste-based discrimination are compelled to live their lives at the lowest rung of political, economic, social and cultural status in society.

The reinstated HoR unanimously declared Nepal as an untouchability-free country on 5 June 2006. In principle, it appears as an extended effort on the part of the government to ensure social justice and bring Dalit and other backward groups into the national mainstream. It conveys a message that tends to correspond with the spirit of ICERD and Article 2 of the ICESCR that are vocal against caste-based discrimination.

Interim Constitution has embodied rights against untouchability and racial discrimination as fundamental rights.<sup>4</sup> However, it does not address

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<sup>4</sup> Article 14 Rights against untouchability and racial discrimination:

(1) No discrimination shall be made against any person on the basis of caste, lineage, community or occupation. Such discriminating act shall be liable to be punished and the victim shall receive the compensation as determined by the law.

(2) No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities or be denied entry into public religious places or be denied to perform any religious ceremony.

(3) Any thing, service or benefit that is produced or distributed, anyone shall not be denied from purchasing or getting those services, benefits or things nor shall those things, services or benefits be sold or distributed to certain special caste or race.

(4) Any caste, race or people of origin or exhibiting status of people's community, who thinks social discrimination on the basis of caste, race is righteous or advocates for caste supremacy and principles based on hatred or encourages any sort of racial discrimination shall be prohibited.

(5) Any contravention of the sub-clause (2) (3) and (4) shall be punishable according to the law.

discrimination in private places. The problem of discrimination is multi-pronged and multi-layered. Discrimination between Dalit and non-Dalit, amongst the Dalit themselves, between indigenous, ethnic people and women is manifest.

## ***Legislative Measures***

### **Constitution**

According to the Article 33 of the Constitution, The State shall have the responsibilities To focus all its attention to conduct a free and impartial election for the members of the Constituent Assembly, adopt a political system which is fully abides by the universally accepted concept of fundamental human rights, multi-party competitive democratic system, sovereign authority inherent in the people and supremacy of the people, constitutional balance and check, rule of law, social justice and equality, independence of judiciary, periodical election, monitoring by the civil society, full independence of press, right to information of the people, transparency and accountability in the activities of political parties, people's participation, neutral, competent and clean administration and to maintain good governance by eliminating corruption and impunity, To carry out an inclusive, democratic and progressive restructuring of the State by eliminating its existing form of centralised and unitary structure in order to address the problems related to women, Dalits, indigenous tribes, Madhesis, oppressed and minority community and other disadvantaged groups, by eliminating class, caste, language, sex, culture, religion and regional discriminations. Similarly this Article provided the responsibilities to the government to formulate a minimum common program for socioeconomic transformation to eliminate all forms of feudalism and implement it gradually and to pursue a policy of adopting scientific land reform programs by gradually ending feudalistic land ownership.

Article 34 of the Interim Constitution provided the Directive Principles to the state. Which has consisted that state shall be the chief objective of the State to promote conditions of welfare on the basis of the principles of an open society, by establishing a just system in all aspect of national life, including social, economic and political life, while at the same time Protecting the lives, property, equality and liberty of the people. Further state shall be the objective of the State to maintain conditions suitable to the enjoyment of the benefits of democracy through maximum Participation of the people in the governance of the country by the means of self-governance tribal, linguistic cultural or regional and to promote general welfare by making provisions for the protection and promotion of human rights, by maintaining tranquility and order in the society. On its

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Article 35, Constitution stated about the state policies, which incorporated about a policy of raising the standards of living of the general public through the development of infrastructures such as education, health, transportation, housing, and employment of the people of all regions, by equitably distributing investment of economic resources for balanced development of the country. In addition, the provision highlighted about the state policy and explained about the economic development which will help to promote the interest of the marginalised communities and the peasants and labourers living below poverty line, including economically and socially backward indigenous tribes, Madhesis, Dalits, by making reservation for a certain period of time with regard to education, health, housing, food sovereignty and employment.

Supreme court has a extra ordinary jurisdiction provided by the article 107 of the Interim Constitution which provides special Judicial Power for the enforcement of the fundamental rights conferred by this Constitution, for the enforcement of any other legal right for which no other remedy has been provided or for which the remedy even though provided appears to be inadequate or ineffective, or for the settlement of any constitutional or legal question involved in any dispute of public interest or concern, have the extraordinary power to issue necessary and appropriate orders to enforce such rights or settle the dispute. For these purposes, the Supreme Court may, with a view to imparting full justice and providing the appropriate remedy, issue appropriate orders and writs including the writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto. Provided that except on the ground of absence of jurisdiction, the Supreme Court shall not interfere, under this clause with the proceedings of the Legislature-Parliament concerning the violation of privileges and penalties imposed there to.

### **Acts/Regulations**

#### ***Poverty Alleviation Fund Act, 2063***

This act has established by the Government to alleviate the poverty. Poverty can be alleviated if the people's level of education and income will be raised. Nepal has entered into negotiations for international assistance, technical cooperation and other arrangements with international organisations, in particular with international financial institutions such as IMF, WB and ADB and Nepal has been provided financial assistance from these institutions in the form of grants, loans, and technical assistance.

***The Cooperative Act, 1992***

The objectives of this act is to uplift economic and social status and to achieve the cultural, economical and social rights for the farmers, artisans, and poor and low income groups, landless and unemployed groups, which target to reduce the poverty among women, Dalits and poor farmers and to improve their social and economic right.

***Treaty Act, 2047***

According to the Nepal Treaty Act, 1991, international human rights instruments to which Nepal is party have the force of domestic law in Nepal and the provisions of international instruments prevail over the domestic laws in case of conflict between the two. Since the Nepal has ratified the ICESCR, the obligation to implement the economic, social and cultural rights provided by the treaty is created as being state party.

***Children Act 053: Children's Act, 2048***

This Act has ensured the right to name of every child to identify the date of birth, right to nourishment and medical treatment, not to discriminate between son and daughter, right against cruel and torture, decriminalise under the age of ten years, reduction of the punishment on crime under the age of 10-16 years; not to provide the rigid punishment, compulsory lawyer service etc.

***Senior Citizen Act, 2063***

The purpose of the Act is to protect and provide the social security of old age citizens. This act also ensure to nourishment and health care of old age; to maintain their dignity; ensuring their property and have right for consumption of their property ;special facilities and exemption of transportation fair for old age; Priority should be give on health care and case hearing; compulsory legal representation of their case with legal aid for conducting old age protection one promotion center; government should provide the old age allowance and their identity; The Act also ensured the protection from any kind of coercion, defamation or forfeiting the property, if so; there will be punishment.

***Poverty Alleviation Act, 2063***

This Act has enacted to establish the poverty alleviation fund with object of poverty alleviation. Poverty can be alleviated if the people's level of education and income will be raised. Nepal has entered into negotiations for international assistance, technical cooperation and other arrangements with international organisations, in particular with international financial institutions such as IMF, WB and ADB and Nepal has been provided



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financial assistance from these institutions in the form of grants, loans, and technical assistance. This is one of the steps of the government toward the state obligation to alleviate poverty.

The Tenth Plan, 2002-2007 has programs for the enlistment of Dalits, neglected communities, indigenous people and ethnic groups. The Tenth Plan has emphasised socio-economic development, empowerment, to modernise traditional skills and increase of social prestige of these groups, strategies and policies. In order to implement these policies; social, educational, health, economic, study and research and institutional arrangement programs have been launched. The NDC and Committee on Enlistment of Dalit, Oppressed and Neglected Communities have been established. The Commission and the Committee are formed from among the representative of Dalits themselves. They have been implanting the programs stipulated in the Tenth Plan. Rs.160,000 million has been allocated to carry out the programs (Tenth Plan, pp. 562-569).

### **Gaps and Weaknesses**

Nepalese laws prohibit making discrimination on the basis of caste but such discrimination can practically be found every where in the country. The implementation of laws has not been effective. But the reality is different and caste-based discriminatory attitudes are found even in government organisations. A few Dalits have had the chance to enter army and police forces but they are not allowed to take food and drink water with their fellow men.<sup>5</sup> In several public schools, Dalit children are bound to sit in separate seats particularly at the last row of the class. However, the practices are contrary. The state is liable to amend and nullify discriminatory laws, but there are several laws, which support caste-based discriminations. For instance, the Preamble of the Civil Code legitimises caste hierarchy. No. 10 of Chapter on Miscellaneous of the Code provokes caste-based discriminations in the name of ritual; Civil Rights Act, 1954 Section 2 (a) protects discrimination in the name of regulation of trust; and Antique Memorial Preservation Act, 1955 prevents entrance in religious places in the name of traditional practices. Dalit have not been able to exercise equal enjoyment of human rights; there is even no separate desk at the National Human Rights Commission to deal with human rights issues pertaining to Dalit and coordinate among stakeholders. The National Dalit Commission should be a constitutional body of the state. It will be able to more effectively address the outstanding issues of Dalit and

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<sup>5</sup> JUP. 2001. *Dalit in Nepal and Alternative Report for WCAR 2001*. Kathmandu: Jana Utthan Pratishthan. p. 26

human rights once it is mandated with an autonomous constitutional status.

### ***Recommendations***

- ? The state must grant constitutional status to the National Dalit Commission to make autonomous and independent to the commission.
- ? Despite restrictions on the practices of ‘untouchability’, government officials are found to have practiced it. Therefore, a provision of additional punishment should be incorporated in the laws for offenders who work in government offices or agencies supported by the government.
- ? There are several laws, which provoke caste-based discriminations. Government should take immediate action to amend and nullify discriminatory laws.
- ? Separate laws should be enacted to deal with caste-based discriminations. Likewise separate legal institutions should be set up to implement the laws throughout the nation. The government should support the economic, social and educational development of Dalit to ensure right to justice.
- ? A special monitoring unit should be established in every District Administration Office (DAO) to assess and assist the implementation of programs that have been specified for Dalit.
- ? Legal arrangement should be formulated to implement the right of the people ensure by the International Conventions and Treaties of which Nepal become the state party.

## Article 3: Non-discrimination

### Summary of Article

Ensure the equal right of men and women to enjoyment of all economic, social and cultural rights set forth in the present covenant.

The claim to equality is the most fundamental right of human beings as it is the starting point of all other liberties.<sup>6</sup> Right to Equality forms the foundation to equally use and exercise all the rights guaranteed by the state irrespective of sex. Discrimination against women exists not only in the social and cultural norms and values but also in the state enacted laws. This has resulted in disparities, putting women in a disadvantaged position and making them more vulnerable to violence. Women comprise 50.1 percent of the total population of Nepal.<sup>7</sup> However, the overall situation remains discriminatory against women and there is a lack of proper policy initiatives to ensure equality between men and women.

Discrimination based on patriarchal structures has often stripped the majority of Nepalese women of their self-respect, dignity and confidence. Women are the most underprivileged from the perspective of ESCR. On 30 May 2006, the HoR passed a resolution that confers 33 percent reservation for women in all state mechanisms and it also allows the government to issue citizenship under the mother's name - a major step to outlaw discriminatory practices against women. Implementation of such resolutions, however, contradicts the spirit and meaning of such efforts. For example, women had to struggle hard to secure their presence in the Interim Constitution Drafting Committee and none of them was a member of the peace-talk teams.

Though the Gender Equality Bill has brought about 56 reformations in various legal provisions, there are still 117 legal provisions that directly discriminate against women. Interim Constitution states that there shall be no discrimination on the basis of sex.<sup>8</sup> However, there is no broad

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<sup>6</sup> Lauterpatcht, Sir Henry Cf. B.G. Ramacharan. 1981. "Equality and Non-discrimination" in Louis Henkin (ed.). *The International Bill of Rights: The Covenant on Civil and Political Rights*. New York: Columbia University Press. p. 247

<sup>7</sup> CBS. 2001. *National Census*. Kathmandu: Central Bureau of Statistics

<sup>8</sup> Article 13 Rights to equality: (1) All citizens shall be equal before the law. No person shall be denied the right to equal protection of the laws.

(2) No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe or ideological conviction or any of these.

definition of discrimination either in the Constitution or in any other law except for the prohibition of discrimination on the basis of sex. Consequently, even today, women continue to be denied and deprived from the use and exercise of their ESC rights. The IC does not establish any substantive provisions in line with the spirit of the HoR Declaration.

### ***Legislative Measures***

#### **Constitution**

Article 13 of the Interim Constitution, 2063 guarantees the right to equality as fundamental rights. All citizen shall be equal before the law, and no person shall be denied the equal protection of the laws. Protecting citizen from the discrimination, this constitution guaranteed the nondiscrimination among the citizens on grounds of religion, race, caste, tribe, sex, origin, language or ideological conviction or any of these. Providing special measures, it has a proviso to be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of women, Dalit, indigenous nationalities, Madhesi, farmers, workers, economically, socially or culturally backward classes or children, the aged and the disabled or those who are physically or mentally incapacitated.

Another great achievement of this Interim Constitution is Right against untouchability and racial discrimination. These rights also recognised as fundamental rights in Article 14 of the Interim Constitution which guaranteed the right of non discrimination against untouchability and subjected to racial decimation in any form on grounds of caste, race, community or profession. Such discrimination shall be punishable and the victim shall be entitled to such compensations as determined by law.

Article 8 of The Interim Constitution 2063 adopted the provision relating to women's nationality rights that allows citizenship through mother's name. According to this article, any person whose father or mother is a citizen of Nepal at his or her birth shall be deemed to be the citizens of Nepal by descent. Next provision of this article also recognised the equal rights of men and women in nationality and said every child who is found within the territory of Nepal and the whereabouts of whose parents are not known shall, until the father or the mother of the child is traced, be deemed to be a citizen of Nepal by descent. These rights play vital role acquiring economic, social and cultural rights.

## **Acts/Regulations**

### ***Civil Code, 2020 (Muliki Ain)***

This Civil Code had amended large extent of existed discriminatory provision between man and women by its eleventh amendment. Daughters are entitled to ancestral property without any reservation after this amendment. Similarly widow is fully entitled to inheritance. The amendment has also removed the condition that a woman must attain 35 years of age and must complete 15 years of marriage before she can live separately from her husband and get her share of property. Even a divorced woman shall be entitled to a share of the family property. It also grants the right to food, clothing, appropriate education and healthcare to daughters as in the case for sons. The children are also entitled to the maintenance (food, clothing, appropriate education and health care) from their father in case of divorce. A divorcee and widow can remarry.

### ***Civil Service Act***

Women are eligible to join government services by the age of 40 whereas for men it is 35. Similarly, the probation period for women is six months as compared to 1 year for men. A pregnant woman obtains 2 months maternity paid leave before and after delivery. Women employees get 15 days obsequies paid leave if her husband cannot get such leave and also if his wife has to perform such obsequies. In addition, MOWCSW has been providing pre-service training to increase capacity and number of female candidates in the examination of public service commission.

### ***Civil Liberties Act***

This Act prohibits discrimination on the basis of religion, caste, race or sex. It provides the ground for positive discrimination to uplift women, children and backward community in all sectors. Right to expression and other, Right to religion, No tax without legislation, Protection of the residence, Right to criminal justice, Individual Freedom, Right against unwanted work are also protected under this Act.

### ***Legal Aid Act, 2054***

People with lower economic status can get free legal under the provision of this Act. If such people are able to achieve the property or economic benefit after getting legal aid, should reimburse of service charge. Lawyer, who has provided free legal aid shall receive the remigration the free legal aid fund. Such fund casuists the amount donated by government or any institution or an assistance made by any one.

### ***Plan/Policy***

In order to increase the enrollment of female students in the higher secondary school the Government has made provision to give Rs.2000 monthly for 2 years in selected poor districts. This bill will enhance the representation of women in public service. The Ministry of General Administration and MOWCSW have been providing special training and coaching courses with the help of UNDP/MGEP to enhance capacity and number of female candidates in the public service examinations. The Nepal Army (NA) has been providing facilities to join NA service to the widow of Nepali Armies since 2004. Female police and army personnel have joined the UN peacekeeping operation. A few numbers of women have been serving as policy and decision-makers.

### ***Judicial Pronouncement***

#### **FWLD (Forum for Women Law and Development) vs. HMG Nepal<sup>9</sup>**

This decision recognised that husbands who compel their wives to have sex can be charged with rape (Marital rape)

The Supreme Court of Nepal has declared that husband who forces their wives to have sex with them can now be charged with rape. The apex court's ruling was made in response to a petition filed by the Forum for Women, Law and Development (FWLD) in July 2001. On May 2, 2002, the Supreme Court of Nepal ruled that marital sex without a wife's consent would be considered rape. FWLD had earlier challenged provision No. 1 of the chapter on rape in Civil Code as discriminatory since it excluded the act of rape by a husband of his own wife. Under the Nepali law , a charge of rape can only be filed against a man who is not the husband, who has had sexual intercourse with a woman under 16 year of age, with or without consent, or one who has forced the act upon a women overage 16. In its verdict, the court reverses this by interpreting that the case of raping one's own wife was equal to the crime of raping another woman, It also directed the Nepali Parliament to amend the present laws relating to rape to reflect this new ruling, but did not set a deadline for its completion. The amendment also has to undergo royal approval. This includes provision No. 8 of the chapter of the National Code which will give women the right to self defense in the case of rape or attempted rape; and provision 10 of the same law to provide compensation to the victim:

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<sup>9</sup> Writ No. 56, 2058 B.S. (2001-2002)

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incase any person commits rape of a woman, half of his property shall be confiscated and given to woman<sup>10</sup>

### **Annapurna Rana vs. Gorakh Shamser JB Rand and Others**<sup>11</sup>

In this judgment, Court Defended and acknowledged the right to privacy for women, particularly in situations where proof is demanded

An application in an alimony lawsuit is ordered to get her vagina and womb tested by the district court and the appellate court on the basis of the demand by the respondents to prove that she is a married lady and is not entitled to any kind of alimony. The Supreme Court thought the writ of certiorari rectifies the straying judgments of the two initial courts. The Supreme Court takes a jurisprudential stance that virginity remaining intact ant being married are two diverse situations. The Supreme Court elaborately dwells on the necessity of such virginity tests, while the analysis and evaluation of the proof of marriage as alleged by the respondents obviously demands priority. The Court defines and acknowledges the right to privacy as is established in accordance with Article 22 of the Constitution of Nepal, 1990 (Now repealed) and holds that court order leading to examination of private parts without the consent of the concerned person would mean depriving her of the right to privacy. The Court takes the prevalent social norms and values into consideration, and observes that the demand in the lawsuit itself to take the test may not be an unacceptable one, but the serious issue involved here is the test of the virginity of women, which in itself is a sensitive subject. This might lead to public concern, and may also affect social status and other considerations of the concerned person. Which is why the court needs to excuse enormous restraint while issuing orders in such sensitive cases? The Court makes it amply clear that the establishment of sexual relations does not bring a definite change in a woman's legal status. Besides, the court highlights that a woman cannot be deprived of her share of property if she had established sexual relations and her virginity is not intact.

### **FWLD vs. HMG Nepal**<sup>12</sup>

The case wad filed in the Supreme Court on July 30, 2001 challenging the constitutionality of discriminatory legal provision of the chapter on rape of the Civil Code, which allows minimal punishment for rape of women who

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<sup>10</sup> Land Judgments on Violence Against Women and Children from South Asia, South Asia Regional Initiative/Equality Support Program (SARI-Q), p. 486, New Delhi, 2005.

<sup>11</sup> N.K.P. 2055 (1998), Vol. 8, p. 476

<sup>12</sup> Writ No. 56, 2058 B.S. (2001-2002)

have engaged in the sex trade. The case asserted that the provision is violation equal protection, the right to life and a host of international human rights instruments reified by Nepal. Where, in the case in May 2, 2002, the Supreme Court declared No. 7 of Chapter on Rape unconstitutional and discriminatory amongst women on basis of their status.

### **Gaps and Weaknesses**

Interim Constitution has been promulgated after the people's movement-II and the new Citizenship Act recognised women as independent in terms of conferring citizenship to their children<sup>13</sup>, it is still discriminatory on the basis of marriage, as it does not allow Nepali women to confer citizenship to their foreigner husband. A woman of foreign nationality who has married a Nepali citizen may acquire naturalised Nepali citizenship.<sup>14</sup> However, this provision does not apply to a male foreigner. Also, a child born out of a Nepali woman married to a foreigner shall acquire naturalised Nepali citizenship on the condition that s/he has permanent residency in Nepal and if s/he has not received the citizenship of the foreign country on the basis of his/her father's citizenship.

There is no definition and legal provision on violence against women either in the Constitution or in any other laws. Consequently, women are compelled to face violence both in the private and public sphere. Various forms of domestic violence, social violence, and cultural violence including Deuki, Badi, Chhaupadi, witchcraft etc. are prevalent in society. Due to lack of proper laws to address these issues, women are in vulnerable situation and are deprived of appropriate legal remedies. The Bill on domestic violence still awaits final presentation in the Ministry of Law.

Though the court's decisions on gender issues are not uniform and implementation of positive verdicts for the betterment of women is considerably poor. Changes in favour of women that have been institutionalised by virtue of court decisions are rare. Sincere efforts to implement the court verdicts are greatly felt. The HoR unanimously adopted a proposal tabled by the government requesting ratification of the Optional Protocol to the Convention on Elimination of All Forms of Discriminations Against Women (OP-CEDAW) 1999 with reservation in

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<sup>13</sup> Article 8 (2), (3) of the Interim Constitution of Nepal, 2007 and Section 3 (1), (3) of the Citizenship Act, 2006.

<sup>14</sup> Article 8 (6) of the Interim Constitution of Nepal, 2007 and Section 5 (1) of the Citizenship Act, 2006.



Articles 8 and 9 of the protocol. On November 27 the government had denied accepting the competency of the Committee on the Elimination of Discrimination Against Women for the purpose of Articles 8 and 9 in accordance with the Article 10(1) of the Optional Protocol.

The Ministry for Women, Children and Social Welfare established the National Women Commission in 2002 to design, execute, monitor and evaluate as well as promote the implementation of the policies related to women. While the HoR passed the National Women Commission Act on 26 December 2006, the act is silent on the role of the Commission to promote the legal, political and social safeguards of women.

### ***Recommendations***

- ? The government should eliminate all discriminations prevailed in the basis of caste, religion, tribes, sex, geographical diversity, ideology along with laws discriminated in the basis of same.
- ? Socio-cultural practices have always been barriers to use and exercise ESC rights for women; therefore effective measure should be arranged to remove such defective value system.
- ? Gender discrimination in the sector of economy and employment should be eliminated; equal opportunities in employment should be created to ensure de facto equality.
- ? Programs and policies should be formulated to alter the stereotyped role of women.
- ? Specific law should be enacted to address domestic as well as other violence and exploitations against women and eliminate all forms of social ill-practices.
- ? The government should be obligated to apply international human rights instruments to ensure gender equality.
- ? Judiciary should be sensitised as regarding gender based approach in their decision-making.
- ? Positive provision regarding equality stipulated in International treaties and conventions, Constitution and prevailing laws should be implemented soon.
- ? Direction of Supreme Court regarding right to equality should be followed.
- ? The government should immediately withdraw the reservation on Articles 8 and 9 of the OP to CEDAW.
- ? The independent and effective role of the NHRC, National Women Commission and National Dalit Commission should be ensured.

## Article 4 & 5: Limitation on Economic, Social and Cultural Rights

### *Summary of Article*

The rights conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law.

The state of emergencies strongly affected the citizens' mobility. Tightened security following a draconian law entitled Terrorist and Disruptive Activities (Control and Punishment) Ordinance, resulted in the unnecessary frisking of passengers at regular security check points. Subsequent harassment made mobility more difficult. It gradually resulted in the decline of mobility of ordinary goods and services to the people. Excessive use of force, arbitrary arrest, torture, inhuman behavior, and extrajudicial killings hammered the people's survival and livelihood options during the emergency. Deaths tolls mounted and adversely affected the people, causing hardships in their daily life.

During the first period of emergency in 2001 and 2002, a total of 992 persons were killed by the state security forces, out of them 59 were children below 18 years. In 2005, though the emergency period was only for three months, at least 333 persons were killed by the security forces, including 13 children.<sup>15</sup> The exodus of people was alarmingly larger during emergency periods. Thousands of civilians had to be displaced with uncertainty about their future. Many of them were internally displaced, moving to other parts of the country while many migrated to nearby Indian localities. Consequently, a huge chunk of economically active youths migrated to other countries in search of employment.

Development and security expenditures ran in opposite directions. The trend of reducing development expenditures and increasing general expenditures began with the escalating armed conflict. The economy also suffered from a decline in development expenditures, which has fallen by a third since 2001. Development expenditures declined at a rate of 4.2 percent during FY2002-04 compared with a growth of 10.4 percent during the 1991-2001 period. Government development expenditures stood at about six percent of the GDP in FY2004, down from nine percent in FY2001 (Figure 1). In contrast, government security expenditures almost doubled from 1.6 percent to three percent of the GDP in the same period.<sup>16</sup>

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<sup>15</sup> Data received from INSEC, 9 March 2007

<sup>16</sup> ADB. 2005. Measuring the Economic Costs of Conflict: The Effect of Declining Development Expenditures (Working Paper Series No. 2). Kathmandu: ADB Nepal Resident Mission. p. 1

Sharp decline in development works including road construction, transportation, and communication, among others, directly affected the employment opportunities and standard of livelihood in an adverse manner.

## ***Legislative Measures***

### **Constitution**

The Interim Constitution Nepal, 2063 has a provision to deal with emergency situation in the state. Article 143 described about the grounds for declaring state of emergency and suspendable and rights during the state of emergency. Fundamental rights may also be suspended derogable under the clause (7) of Article 143 of the Interim Constitution during the state of emergency. Some of derogable rights are directly relevant to the economic, social and cultural rights of the citizenship. Some such as the right to equality, the remedy of habeas corpus, rights regarding criminal justice, cultural and educational rights, the right to practice one's religion, the right against exploitation, and the rights against exile are also unsuspendable even they are not derogated.

### ***Gaps and Weaknesses***

The Interim Constitution of Nepal has mentioned Economic, Social and Culture Rights, but it has not been recognised as a fundamental rights. Rehabilitation of thousands of IDPs is a challenge that requires attention of the state. Many of the IDPs, especially those from rural areas had to give up their profession/occupation and therefore need appropriate compensation. The existing laws, policies and programs are unable to address the issues of agro-based labours and there is no proper law to protect the rights of them.

### ***Recommendations***

- 2 ? ESCR must be embodied as fundamental rights without any conditions and restrictions. Therefore, the conditional tags on most provisions directly related with ESCR should be removed from the Constitution.
- 2 ? Special Policies and programs should enact and implemented in order to rehabilitate the internally displaced people and other victims of armed conflict.
- 2 ? The government should formulate and implement the policies to reintegrate the families, who were displaced and victimised

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during the armed conflict while respecting their cultural, religious rights and values.

- ? The government should extend medical and psychosocial services to displaced persons and other victims of human rights violations during the decade long armed conflict.
- ? Truth and Reconciliation Commission should be formatted as per the Comprehensive Peace Accord and Interim Constitution.

## Article 6: Right to Work

### Summary of Article

1. The right to work including the right to get opportunity to gain living by work that chooses or accepts, to take appropriate steps to safeguard this right.
2. Responsibility of State Party to provide technical and vocational guidance and training programs, policies and safeguard

Employment opportunities have been largely confined to informal sectors. Self employment still accounts for more than 67 percent of livelihoods – and of the total self-employed people, 78 percent are involved in agriculture. Underemployment has widened at an estimate of 32.3 percent. Moreover, 73.3 percent of the non-agricultural labour force works in the informal sector. Thus, results in the informal sector employment are as high as 93.6 percent.<sup>17</sup> Existing laws and policies neglect this large population of the labour force involved in informal sectors.

Rural unemployment, low wages and landlessness are some of the major issues facing poor and excluded groups. They also lack skills needed to benefit from available opportunities. Many are forced to migrate in search for work as manual labourers. The challenge is to help these people to acquire the needed skills, capital and other support to engage in activities that would help them escape from the cycle of deprivation.<sup>18</sup> These are the factors that contribute to the widening of gaps in creating an environment of employment. On the other hand, the government's weak implementation modality, dependency on bureaucratic structures and lack of political will and vision to address the challenges in ensuring right to work are other factors for this situation.

95 percent of employed women are confined to agricultural work compared to 75 percent for men. Less than six percent are engaged in personal and community services, two percent are found in commerce and one percent in manufacturing.<sup>19</sup> Women are rarely engaged in professional and technical jobs. Most are engaged in semi-skilled and low paid jobs. Women lag far behind in the legal field and media service. Only six

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<sup>17</sup> UNDP. 2004. *Nepal Human Development Report 2004*. Kathmandu: United Nations Development Programme. p. 42

<sup>18</sup> NPC. 2006. *An Assessment of the Implementation of the Tenth Plan/PRSP*. Kathmandu: National Planning Commission Secretariat. p. 72

<sup>19</sup> *ibid* p-101-102

percent are found at officer level positions in the civil services.<sup>20</sup> Despite the fact that laws prohibit child labour, 2.6 million children are engaged in different sectors. About 1.7 million children are engaged in economic activity and 1.4 million are involved in unpaid activities. More than four out of ten children work. Child work participation is 41.7 percent. The Rapid Assessment conducted by ILO in 2001 on worst forms of child labour estimates that there are 4,000 rag pickers with 88 percent boys and 12 percent girls. The rag pickers work for an average of six hours and earning NRs. 87 per day. The assessment also showed that there are 55,000 domestic workers and 46,029 child porters.<sup>21</sup>

In July 2000, the government abolished the Kamaiya<sup>22</sup> system. But even after the landmark declaration, many ex-Kamaiya children still became domestic workers in urban areas, more ex-Kamaiya women perform unpaid household chores for local landlords, and many men have reverted to the same labour relations from which they were presumably freed.<sup>23</sup>

## **Legislative Measures**

### **Constitution**

The Interim Constitution 1990 guaranteed the right to work of the citizen. Article 30 of this constitution entitled the Right Regarding Labour and explained "Every employee and worker shall have the right to proper work practice." Sub article (2) on this provision has provided the right to form trade unions, to organise themselves and to perform collective bargaining for the protection of their interest to the worker. Article 18 of the Interim Constitution provides the rights regarding Employment and Social Security to the Women, labourers, the aged, disabled incapacitated and helpless citizens as provided in law. Its Sub article (3) provided the right to food sovereignty. The 2072 IC envisages a welfare state accountable to

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<sup>20</sup> Pandey, Binda. 2005. "Women's movement scenario in Nepal". In Rimal, Bishnu (eds.). *Issues of the World of Work in Nepal*. Kathmandu: General Federation of Nepalese Trade Unions. p. 101

<sup>21</sup> [http://www.cwin.org.np/press\\_room/factsheet/child\\_labour\\_in\\_nepal.htm](http://www.cwin.org.np/press_room/factsheet/child_labour_in_nepal.htm) downloaded on 1 March 2007

<sup>22</sup> A complex farm wage labour system which had engulfed about 20,000 households, most of which were forced to pledge family labour in return for meagre amounts of food crops and, in addition, were bonded by loans they had incurred to ensure their survival.

<sup>23</sup> NLA, 2003. In UNDP. 2004. *Nepal Human Development Report 2004*. Kathmandu: United Nations Development Programme. p. 62

the people. It guarantees rights regarding labour, in particular the right to proper work, right to form trade unions, to organise themselves, and to perform collective bargaining for the protection of their interest in accordance with law.<sup>24</sup> Article 13 (4) of the Constitution ensures right to equality of remuneration and social security between men and women for the same work.<sup>25</sup> Under the provisions for State Policies, Article 35 (7) ensures that the state shall pursue a policy of increasing the participation of the labour force in the management of enterprises by providing employment, ensuring their right to work, and thus protecting their rights and interests.

### **Act/Regulation**

The promulgation of several acts related to labour welfare, particularly the 1992 Labour Act 1992, 1992 Transportation Act, 1992 Child Labour Act, 1994 Working Journalist Act and 1995 Labour Court Regulation Act, are some of the positive sides of the government initiative to ensure the right to work. The current Labour Act annuls the 1959 Nepal Factory and Factory-Workers Act and tries to provide wide-ranging legal protection to workers. The Act prohibits the employment of children under 14 years of age, and minors aged 14 - 18. Women workers are entitled to 45 days maternity leave with full pay. The Act determines the maximum working hours to 48 in a week, with at least one day leave. The other provisions include national minimum wage, minimum level of health and safety, pension funds, and the creation of the Central Labour Advisory Board, Labour Relations Committees, and a Labour Court to settle industrial disputes. Some Acts relating to labour rights are mentioned below with its positive achievements.

#### ***The Civil Liberties Act, 1954***

This Act protects the right to equality on the basis of religion, caste, race or sex during the recruitment in civil service. It provides the ground for positive discrimination to uplift women, children and backward community. Right to expression and other, Right to religion, No tax without legislation, Protection of the residence, Right to criminal justice, Individual Freedom, Right against unwanted work are also protected under this Act.

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<sup>24</sup> Article 30 (1) Every employee and worker shall have the right to proper work practice.

<sup>25</sup> Article 13: Right to Equality : (4) No discrimination in regard to remuneration and social security shall be made between men and women for the same work.

### ***Labour Act, 2048***

The Act has ensure the right to appropriate labour exercise. This Act further mentioned the Nepalese citizens should engage on work. to determine the working hours/maintain standard of agreement. based workers/employee, temporary or permanent staff ensuring minimum wage; increment of salary on the basis of year; to make the proper arrangement of health and security of workers and employee; proper recruiting should be maintained vehicle. Similarly, the Act also ensures the welfare fund, pension, provident fund, medicine and treatment, proper arrangement of employee residence, canteen, insurance etc.

### ***The Bonded Labour (Kamaiya) Prohibition Act, 2002***

Bonded Labour (Prohibition) Act, made the perpetuation of the labour system punishable but failed to address the core issues of unemployment, access to and control over resources and proper rehabilitation. Freedom without alternative means of survival and economic empowerment, including the right to work, reverted to a new form of exploitation of the ex-Kamaiyas. They became bonded under a new phenomenon of unemployment and deprivation.

### ***Foreign Employment Act***

This Act is enacted in 2064 replacing the previous act of 2042 to protect the right of Nepalese migrant worker going overseas. It has a comprehensive provision of safe departure, pre departure training, Insurance, Minimum wage, Skill training, Foreign employment welfare fund, individual migration. Protection of children and nondiscrimination between man and women is one of the significant provision consisted in this Act

### ***Plan/Policy***

Governments envisaged safeguarding the rights, interests and social security of laborers; and consolidating and managing labour market information and produce skilled manpower; create an environment to get employment opportunities in foreign labour markets. Amending labour related provisions in line with the ILO labour standard, promoting harmonious relations between labours and industries, organizing vocational training, ensuring employment through managing information on labour market, and extending loan assistance to low income groups are the strategies to implement the objectives of the Plan. It has devised five policies to achieve the objectives, which includes: effectiveness of labour administration; promotion of harmonious industrial relations; conduction of vocational and skill development training programmes; encouragement to foreign employment; and reform policy. National Steering Committee



on Child Labour has been established under the chair of secretary of Ministry of Labour and Transport Management to develop policies/programmes, inter-sectoral coordination and monitoring activities related to child labour. GON has authorised DDCs to determine the minimum wage of agricultural workers. DDCs are empowered to determine the wage of agricultural workers on the basis of seasons and nature of work. At present, the wage of agricultural workers has been determined Rs.70 per day as minimum wage (MDGs, 2005, p. 90).

The 2006 Labour and Employment Policy replaced the 1999 Labour Policy. Its long-term objective is to create a favourable investment climate by enhancing workforce productivity, generating decent and productive employment opportunities, and ensuring worker rights. The policy also highlights the importance of generating additional jobs by setting up special economic zones and export-oriented industries. The policy also seeks to increase access to employment for women, Dalit, Janajati and people displaced by the conflict, and to eradicate child labour.<sup>26</sup>

### ***Judicial Pronouncement***

#### **Rina Bajracharya and Others vs. HMG**

In Reena Bajracharya's case, the Supreme Court held that the early retirement provisions of women workers of Royal Nepal Airlines Corporation (RNAC) were discriminatory and inconsistent with the Constitution and international instruments ratified by Nepal. Highlighting the Section 9 of the Nepal Treaty Act, 1991, the Court said that it provides a higher status for the Conventions to which Nepal is a party than the existing municipal laws of the land, making their implementation easier and efficient. The Court declared the RNAC regulation inconsistent with the constitution and the international human right instruments, which are incorporated into Nepali law, in particular, the CEDAW and struck down the regulation as ultra virus.<sup>27</sup>

#### **FWLD (Forum for Women Law and Development) vs. HMG Nepal<sup>28</sup>**

A woman who wishes to work abroad must obtain her guardian's consent or government approval if she wishes to go for employment through an employment agency. According to the government, this provision necessary because of the mistreatment and harassment experienced by

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<sup>26</sup> NPC. 2006. *An Assessment of the Implementation of the Tenth Plan/PRSP*. Kathmandu: National Planning Commission Secretariat. p. 17

<sup>27</sup> Rina Bajraacharya and others Vs. HMG/Nepal, NKP 2057 B.S., Vol. 5 p. 376

<sup>28</sup> Writ No. 2784. Decided Sept. 5, 2001 (2058.5.20)

Nepali women working abroad. This paternalistic approach makes women more vulnerable to illegal trafficking and violates their right to work and travel. In 1999, the government promulgated foreign employment rules. These rules do not eliminate the discriminatory and restrictive provisions of 1985 Act and the supreme court quashed a writ petition challenging the constitutionality of this provision where in the case the said prohibited provision which requires woman who wishes to work abroad must obtain her guardian's consent and government approval if she wishes to go for employment through an employment agency.; the court ignored the gender discrimination inherent in the law by arguing the law protects women from sexual exploitation in the case. It shows lack of conceptual understanding of protectionist approach and corrective approach amount the law interpreters.<sup>29</sup>

### ***Gaps and Weaknesses***

No progress has been made to ensure worker's participation in the management of enterprises. There is still a difference in the wages between men and women for the same work. Thus, proper implementation of the constitutional provisions is quite challengeable for establishing the equal right on remuneration.

There is an insufficient flow of economic activities and services from centre level to district level. As a result, no effective contributions have been made to create employment opportunities and extend social services in rural areas. Underemployment, low level of labor incentives and exclusion of poor people from development interventions in rural areas appear to be the prime areas of concern. Similarly, creation of employment opportunities in agricultural as well as non-agricultural sectors, ensuring equal wages, expanding the scale of labor and raising agricultural productivity are major areas that need special attention.

Reducing unemployment and setting up mechanisms for the creation of employment are major challenges to meet the objectives of the plan. Political stability, good governance, and elimination of discriminations against women, Dalit, Madhesis and other disadvantaged groups are equally important to achieve the objectives.

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<sup>29</sup> Effectiveness of Existing Laws and Institutional Mechanism to Combat Trafficking in Women and Children, United Nations Development Fund for Women (UNIFEM) and Forum For Women Law and Development (FWLD), p 49, 2005, Kathmandu

### **Recommendations**

- ? Existing labor laws should be amended to remove the provisions inconsistency with ILO conventions and informal sector should be covered by the law. Kamalari Pratha and domestic servant system be abolished.
- ? All relevant ILO conventions, including the ILO Convention Nos. 29, 81 and 87 must be ratified.
- ? Laws on the minimum wage and a policy of employment should be enacted and enforced. There should be equal pay for equal value of work.
- ? Right to work must be incorporated in the development policies and resource allocation agenda of the state. Subsidies and reservation policies for the people with special attention in all sectors should be designed and implemented with a time-bound approach.
- ? In terms of employment and implementation of labor law and policies, the labor market should be completely free from any kind of discrimination based on caste, race, gender, color, political and religious belief, marital status, and origin, etc.
- ? Exploitative labor practices such as forced labor and child labor should be strictly prohibited in the workplace.
- ? Labor intensive production techniques and skill development programs in the informal sector and creation of alternatives jobs outside agriculture have to be prioritised in government policies and programs.
- ? Effective mechanisms that ensure right to equal opportunity of employment, equal pay for equal value of work and right to social protection and benefits should be guaranteed to every woman and man.
- ? The Labor Court should be fully functioning with a wider mandate and authority to deal with labor and work-related issues and have easier access throughout the country.

## Article 7: The Right to Just and Favorable Conditions of Work

### Summary of Article

Right to enjoyment of just and favorable conditions of work such as fair wages and equal remuneration for equal work without distinction, equal pay for equal work; A decent living with families, Safe and healthy working conditions, Equal opportunity everyone to promote employment, limitation of working hours and periodic holidays.

A few provisions of social security have been included in the 1992 Labour Act. Social security applies to workers with permanent statuses. The Act has made many provisions on occupational safety and health, including sick leave, maternity leave of 45 days, workmen's compensation, and provident fund, gratuity, and old age benefits. Employees are entitled to receive treatment expenses, salary during treatment, disability compensation, compensation in case of death, insurance, and compensation after termination on health grounds, housing fund, welfare fund, pension, retrenchment, and collective bargaining. In government services and some of the public enterprises, there is also a provision of pension. Child Care Centres, canteen and a welfare officer in every enterprise are other provisions. It can be strongly argued that the rate of adult unemployment is increasing mainly due to the use of child labour.<sup>30</sup> Child labour employment is prohibited in health hazardous conditions by the Factory and Factory Workers Act 1959. After the restoration of democracy, Nepal ratified a number of international human rights instruments.

The Convention on the Rights of the Child and the ILO Convention 138 are significant international conventions concerning the rights of the working children. On the basis of these conventions, Nepal adopted the 1992 Labour Act and 1992 Children's Act and has declared that employment of children under the age of 14 is illegal. However, the concerned authorities have neither effectively implemented the law nor formulated any effective plans of action for the welfare and rehabilitation of child labour. The Government of Nepal has fixed the minimum wage and salaries in the industrial and organised sectors without any gender based discrimination. Yet in practice such discriminations are noticed.

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<sup>30</sup> Rimal, Bishnu., 2005. "The Role of Trade Union in Nepal in the 21st century". In Rimal, Bishnu (eds.). *Issues of the World of Work in Nepal*. Kathmandu: General Federation of Nepalese Trade Unions. p. 47

Women in Nepal generally work for longer hours compared to men, and rural women devote much longer hours than urban women.

## ***Legislative Measures***

### **Constitution**

The Interim Constitution 2063 prohibits slavery, serfdom, forced labour, bonded labour or trafficking of human beings in any form.<sup>31</sup> The Constitution has guaranteed social security for women and labours including bonded labourers. Social security issues are dealt with by the Labour Act and the supplementary Rules. The Department of Labour enforces laws against forced labour in the small formal sector. While it is applicable for the entire sector, it is unable to cover informal sectors at large.<sup>32</sup>

### **Act/Regulations**

#### ***The Labour Act, 1992***

Section 76 of allows for strike if the dispute could not be settled pursuant to section 74 of the Act. Section 74 provides procedures to submit written claims to the concerned manager by the representative of the company and the management should resolve the dispute within 21 days through dialogue. If the dispute could not be settled another dialogue should be made in the presence of the Labour Office. If the dispute could not be resolved through dialogue done in the presence of Labour Office, both parties could appoint mediators. If the dispute could not be solved through mediation the GON should form a tripartite committee, which should resolve the dispute within 15 days. The workers then should give notice of 30 days to the management in regard to organise a strike. The notice should also be sent to the Department of Labour, Concerned Labour Office and Local Administration. The Trade Unions are also allowed to organise strike by fulfilling the criteria as mentioned in the Section 76 of the Labour Act. However, the workers or union can not hold strike if the prevailing law has prohibited holding strikes. For example, the person who has been designated on security and who is involved in management can not hold strikes. In such a case, the GON can form a tribunal to resolve the dispute and the decision of the tribunal will be final. Moreover, the

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<sup>31</sup> Article 29 (2) and (3), Interim Constitution of Nepal, 2007

<sup>32</sup> Badal, Ramesh. 2005. "Social Security System in Nepal". In Rimal, Bishnu (eds.). *Issues of the World of Work in Nepal*. Kathmandu: General Federation of Nepalese Trade Unions. p. 163

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employees or workers involved in the essential services as specified by the Essential Services Act, 1955 are also not allowed to organise a strike.

### ***The Children Act, 1992***

This Act has ensured the right to name of every child to identify the date of birth, right to nourishment and medical treatment, not to discriminate between son and daughter, right against cruel and torture, decriminalise under the age of ten years, reduction of the punishment on crime under the age of 10-16 years; not to provide the rigid punishment, compulsory lawyer service etc.

### ***The Foreign Employment Act, 2064***

This Act is enacted in 2064 replacing the previous act of 2042 to protect the right of Nepalese migrant worker going overseas. It has a comprehensive provision Insurance, Minimum wage, Skill training, Foreign employment welfare fund, individual migration. It has defined about the favorable environment of the work in the country of employment.

### ***Policy/Plans***

Initiatives have been taken to send Nepali workers for foreign employment to 107 countries. The Government requires employment agencies, which send Nepalese workers abroad to produce proof of labour demand and category. The Government has prohibited agencies from sending workers where payment is less than US\$125 per month (EIU, 2005 and MDGs, 2005, p. 90). The total migrant workers exceed 1.4 million and majority of them is in India. The workers sent about Rs.46.37 billion as remittance in 2003/04, which is almost four-fold increased since 1995/96 (MDGs, 2005, p. 90).

### ***Judicial Pronouncement***

Rajendra Thapalia vs. General Manages (personnel) T.R. Bhatta, on behalf of the Management of the Royal Casino Royal<sup>33</sup>

This Judgment established sexual harassment at the workplace a crime through the constitution and international instruments, in the absence of a law and asked the government to amend the existing labour laws so as to include sexual harassment.

This is the first case relating to sexual harassment at the work place in Nepal. the learned judge has capably analysed the facts, interpreted the

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<sup>33</sup> Judgement maddy by Labour Court, Kathmandu, Decision date 2059-08016 B.S.

constitution, and applied international instruments on human rights including the CEDAW, to conclude that the appellant had actually harassed his co-worker. He has also pointed out the lacunae in the Labour Act and drawn the attention of the authorities including parliament, to the necessity of an amendment to the Act. The charge was that the perpetrator had stood very close to a woman employee of the casino, looked at her lecherously, used indecent and offensive words, and behaved indecently with her. The management came to the conclusion that the perpetrator and indeed gone close the victim Following an issuance of warning letter to Appellant perpetrator, he challenged the same before the Court. The court held that women generally do not like to come to limelight by bringing such matters into public when someone tries to offend their dignity, unless they are compelled to fight by imposing a penalty on the culprit by taking exemplary action. The court specifically mentioned that 'In our country as attempts have just begun to be made to encourage women to take up outdoor works and as priority is being given to encourage them to economic and professional activities, in order therefore to prevent women being dissuaded due to sexual harassment by colleagues and bosses in work place, it is necessary to be sensitive and sympathetic for providing legal remedies to them against such acts. The court should also look into these types of case with sympathy and sensitivity'. The court further mentioned that 'while by bringing such subject upfront the women trying to fight for justice<sup>3</sup> will be encouraged, court should also need to take into account that attempts can also be made to take undue advantage of such positive sensitivity also.<sup>34</sup>

### ***Sita Aacharya vs. HMG***<sup>35</sup>

In This case, the Supreme Court declared that Section 18 of Nepal Health Service Act, 1997 which requires one-year probation period for newly appointed employees as inapplicable to women employees reasoning that the Civil Service Act, 1992 has special provisions that provides shorter probation period of 6 months for women employees in government service. The Court argued that as Section 18 of the Act does not clearly specify that it applies to both men and women employee, there is no reason to discriminate between women employees under civil service and under health service. While giving its verdict, the Supreme Court had mentioned that being a party to the CEDAW, Nepal has taken up to

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<sup>34</sup> Land Judgments on Violence Against Women and Children from South Asia, South Asia Regional Initiative/Equality Support Program (SARI-Q), p. 352, New Delhi, 2005.

<sup>35</sup> Sita Aacharya and others V.s. Ministry of Health, HMG/Nepal, Writ No. 3975 of year 2056 B.S.

obligation given by it. Article 3,4(1) and 4(2) of the Convention and Proviso of Article 11 (3) of constitution (now repealed) obligate the government to implement temporary special measures to achieve de facto equality between man and women, and therefore, positive discrimination in favor of women is constitutional.<sup>36</sup>

### ***Gaps and Weaknesses***

Existing labour laws are not sufficient to establish and maintain social security of labour. Legal provisions have tried to address the social security to the workers but such provision only based on the remuneration of workers; it should be considered with the age factor of workers. Similarly, present legal provisions treat gratuity and retrenchment compensation as alternatives to one another. There is absence of a comprehensive social security system and also very weak and limited remuneration of labour. Such so called social security system is limited with in the organised sectors. But a large of unorganised workers is not addressed by the provisions. The government has declared minimum wage but it has not been effectively implemented due to the anti-worker and anti-union mentality of various employers. On the other hand the government doesn't have the strong monitoring mechanism to monitor the implementation of existing laws.

Provisions of the Labour Act are not effective and a majority of the people has not been aware about the legal provision. Fringe benefits like residence facility or allowance, Medicare and educational facilities for children, transportation, ration, entertainment, life insurance, credit facilities, etc. are limited to a few establishments and are far from the access of workers of most industries and services. Establishing monitoring mechanisms and their effective functioning is vital in facilitating the implementation of legislations. Strengthened labour administration and effective enforcement mechanism can capacitate, controlling and regulating the labour sector.

### ***Recommendations***

- 7 A social security system is inevitably important. Sound labour law structure in combination with labour-friendly socio-economic policies and measures are essential at present. Revision of labour law should be made in order to establish a system of contributory social security fund and various diverse schemes.

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<sup>36</sup> Special Measures for Women and Their Impact, FWLD, Kathmandu, 2003.



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- ? Unfair labor practices, particularly in relation to women workers, child workers, forced labor and bonded laborers, should be prohibited and punished.
- ? In order to guarantee fundamental rights at work, legal provisions should be compatible with the provisions of all ILO core Conventions No. 87 and 98 (freedom of Association and Collective Bargaining), No. 138 and 182 (Minimum age for work).
- ? An effective social security scheme should be ensured for all informal and formal sectors, geographical regions, registered employees, and employees earning different levels of income.
- ? A minimum wage needs to be fixed for workers, taking into consideration the existing inflation rate. The wage rate should be reviewed periodically and a wage index must be prepared separately for different sectors.
- ? Maternity leave and benefit should be provisioned as per the ILO Convention 183. Maternity protection and old age benefit, facilities related to workplace injury treatment, dependent benefit, sickness benefits, and retrenchment have to be made compatible with the standards of ILO Conventions.
- ? Extended labor inspection mechanism (to ensure minimum wage and labor rights) by sound networking of labor offices of the government should be established.
- ? Incentives through legislation, decentralisation and maximum utilisation of social funds with higher emphasis on the protection of laborers should be ensured.

## Article 8: Right to Form Trade Union

### Summary of Article

The right to form trade unions and join the trade union of own choice, subject to the rules of the organisation concerned, for the promotion and protection of economic and social interests. without restriction of this right other than those prescribed by law interests of national security or public order or for the protection of the rights and freedoms of others; The right to establish national federations or confederations and international trade-union organisations

Trade unions are still developing their administrative structures to organise workers, bargain collectively, and conduct worker education programmes. They have yet to organise the vast majority of agricultural workers and there are no clear legal provisions for them. Since the economy is agro-based, unorganised agricultural labourers have to be brought under the umbrella of the trade union movement for the commercialisation of agriculture.

Following the provisions of the 1992 Trade Union Act, registration of Trade Unions started in 1993. 1993 to 1999 can be called a conducive period while 2000-2002 can be regarded as a dire period for trade union activism.<sup>37</sup> During the Royal regime 2002-2006, the ordinance culture was rampant wherein all the laws and acts were amended and provisioned to curb trade union rights. The previous government's strategy to form fictitious unions is enough to gauge how the government was strategically going to render obsolete the activities of trade unions.<sup>38</sup>

Even after the reinstatement of the HoR in 2006, the government has not initiated any steps in upholding the right to form trade unions and strengthening trade unions in the country.

The HoR allows civil servants to join trade unions and declared all the inconsistent legal arrangements, including the 1990 Constitution, but it stayed silent on the labour ordinance. On May 15, the new Government annulled the Labour ordinance after trade unions issued a 72-hour ultimatum demanding its annulment.

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<sup>37</sup> GEFONT. 2059. *Nepal Trade Unions in Critical Situation (Trade Union Rights 2059)*. Kathmandu: General Federation of Nepalese Trade Unions

<sup>38</sup> GEFONT. 2006. *Nepal: Trade Union Rights in the present political context*. Kathmandu: General Federation of Nepalese Trade Unions

Union participation in the formal sector is significant, but it accounts for only a small portion of the labour force. In 1992, the Parliament passed the Labour Act and the Trade Union Act and formulated enabling regulations. The 1993 Transportation Act, the 1992 Children's Act, the 1995 Working Journalists Act, the 1996 Labour Court Regulation, and the Bonus Act and Industrial Trainee's Training Act are other existing laws to address issues regarding the rights of workers. However, the government has not yet fully implemented them.

## ***Legislative Measures***

### **Constitution**

The 2007 IC ensures freedom of establishing and joining unions and associations<sup>39</sup> and guarantees specific rights for labourers.<sup>40</sup> However, as in the earlier constitution, it permits restriction of unions in case of subversion, sedition, or similar conditions and does not address the trade unions rights to determine its own administration, programmes and activities, to organise, and to form and join a federation nationally and internationally. After the political change in 1990, the period of transition for democratisation paved the way for the realisation of the trade unions rights.

### **Acts/Regulations**

#### ***Trade Union Act, 1992***

Workers of any enterprise are allowed to form trade unions for the protection of their professional interest and at least 50 trade unions or 5,000 workers of enterprises of a similar nature can, by agreement, form a trade union association. Under Section 5, at least 10 trade union associations can, by agreement, form a trade union confederation. Pursuant to Section 8, a trade union is an autonomous and a legal body and is free to function subject to the provision of the Act.

#### ***The Labour Act, 1992***

Section 76 of the Act allows for strike if the dispute could not be settled pursuant to section 74 of the Act. Section 74 provides procedures to submit written claims to the concerned manager by the representative of

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<sup>39</sup> Article 12 (3) (d), (f), Interim Constitution of Nepal, 2007

<sup>40</sup> Article 30 (2), Interim Constitution of Nepal, 2007, Every employee and worker shall have the right to form trade unions, to organise themselves and to perform collective bargaining for the protection of their interest in accordance with law.

the company and the management should resolve the dispute within 21 days through dialogue. If the dispute could not be settled another dialogue should be made in the presence of the Labour Office. If the dispute could not be resolved through dialogue done in the presence of Labour Office, both parties could appoint mediators. If the dispute could not be solved through mediation the GON should form a tripartite committee, which should resolve the dispute within 15 days. The workers then should give notice of 30 days to the management in regard to organise a strike. The notice should also be sent to the Department of Labour, Concerned Labour Office and Local Administration. The Trade Unions are also allowed to organise strike by fulfilling the criteria as mentioned in the Section 76 of the Labour Act. However, the workers or union can not hold strike if the prevailing law has prohibited holding strikes. For example, the person who has been designated on security and who is involved in management can not hold strikes. In such a case, the GON can form a tribunal to resolve the dispute and the decision of the tribunal will be final. Moreover, the employees or workers involved in the essential services as specified by the Essential Services Act, 1955 are also not allowed to organise a strike.

### ***Civil Service, Act***

This Act grants trade union rights to civil servant except those employees who are at policy-making levels. Pursuant to this, GON has been amended the Civil Service Act and incorporated the right to form trade union under the civil service job.

### ***Gaps and Weaknesses***

Union's participation in the formal sector is significant but it represents only a small portion of the labour force. Worker's right provided by the existing laws has not been effectively implemented yet.

The Trade Union Act was amended in 1999 which has ensured the trade unions right. The existing law is unable to address the workers who are working on unorganised. A large numbers of workers, who are working in the in formal sector, are deprived from the trade union rights.

The Labour Act ensured the right to collective bargaining, although it has not been effective due to the lack of such corporate culture. Even though, collective bargaining agreements cover an estimated 20 percent of wage earners in the organised sector.

### ***Recommendations***

- ? Existing labor law should be amended according to ILO conventions and ensure the trade union rights to all the labor working each sector. A separate Industrial Relations Act should be enacted and enforced to sound relation between workers, unions and management.
- ? Introduce a new legislation in order to establish independent authorised single trade union and ensure a conductive atmosphere, and create an "Umbrella Confederation" of fragmented trade unions in order to guarantee the rights of labors.
- ? Trade union participation should be ensured in various structures of the state.
- ? Trade unions should be autonomous from political parties. The government should ensure professional interests of labor. For that legislative measures should be suitable to their wages, social security, working conditions and other facilities.
- ? Balanced and equitable bargaining position should be established for workers suffering from social imbalances caused by their inherently weak social status including social, economic, political, and educational factors.

## Article 9: Right to Social Security Including Social Insurance

### Summary of Article

All citizens have the right to social security, including social insurance.

Unemployment is an index of the poor standard of living in Nepal. The government has yet to create maximum opportunities for employment, neither it has been able to create an atmosphere that encourages self-employment. Agriculture remains in its traditional form as the principal sector for the self-employed. The informal sector receives the major thrust for employment but questions regarding low payment and absence of any social security system have frequently been asked. It is important to note that 73.3 percent of the work force out of the agriculture sector works in the informal sector.<sup>41</sup> Together with agricultural activities, largely unorganised and self-employed in nature, employment in the informal sector has mounted as high as 93.6 percent.<sup>42</sup> The private sector, which is key to generating employment for a number of workers, is almost equivalent to the government sector. However, there is no uniformity with regard to wages, fringe benefits and social security provisions. A small portion of wage and salary earners is under the social security system through legislation. Self-employed, dependents and wage earners are outside social programmes and regular initiatives. Coverage is very small from both the social security system and other types of programmes.<sup>43</sup> In Nepal however, only a limited number of organisations offer social security schemes that are unfortunately limited only to provident funds. Local bodies can be highly influential to work for social security for the needy sections of society. But such influence is limited mainly because there is little awareness on the issue of social protection.

The population of Nepal is considered young as 39 percent of its total population is under 15 years of age and only 4.2 percent are above 65 years of age.<sup>44</sup> The Nepalese society is in a phase of modernisation. The traditional joint family is slowly being replaced by the nuclear family in urban areas. Because of this trend, older members of family are being isolated. Care for the elderly population is a major problem. Modification

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<sup>41</sup> UNDP. 2004. *Nepal Human Development Report 2004*. Kathmandu: United Nations Development Programme. p. 42

<sup>42</sup> *ibid*

<sup>43</sup> *ibid*

<sup>44</sup> CBS. 2001. *National Census*. Kathmandu: National Bureau of Statistics.

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of cultural norms and traditional family support systems for elderly in Nepal has been placed under considerable strain.

The World Health Organisation (WHO) estimates that approximately ten percent of the total world population is people with disabilities (PwDs). According to the latest census of Nepal, PwDs comprise 1.63 percent (0.37 million) of the total population. However, these numbers probably represent the difficulties of obtaining information about disabilities. It is assumed that at least 12 percent of Nepal's citizens have a form of disability.<sup>45</sup>

Top policy makers and planners lack adequate knowledge of disability as well as a commitment to implement policies about the issues. The Disability Act 1982 and other legal provisions are not enough to address the needs of PwDs and include them into the national development agenda. No system has been formed to allocate a part of the national budget to the PwD sector. There is also a lack of information about PwDs and no mechanism has been developed to identify them.

### ***Legislative Measures***

#### **Constitution**

Article 18 of the 2007 Interim Constitution<sup>46</sup> has ensured the right to employment and social security as fundamental rights. The government, as the single largest employer of the country, has been the most significant partner in providing social protection to wage earners and others. The Nepal Government, however, is able to provide jobs to less than 400,000 employees that comprise less than four percent of the total work force.<sup>47</sup>

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<sup>45</sup> *ibid.* p. 64

<sup>46</sup> Right to Employment and Social Security: (1) Every citizen shall have the right to employment according to the provisions made by the law.

(2) Women, labourers, elder citizen, disabled and vulnerable and helpless shall have the right to employment in accordance with the provision made by the law.

(3) Every citizen shall have the right to food sovereignty in according to the provision made by the law.

<sup>47</sup> Upadhyaya, Umesh. "Social protection in Nepal at a glance", [www.labournepal.org/issues/social\\_security](http://www.labournepal.org/issues/social_security) downloaded on 25 February 2007

## **Acts/Regulations**

### ***Disable Protection and Welfare Act, 2039***

This Act shall ensure the interest of disable person, right to equality, education and training, health care and medical treatment, training and employment. The state shall make the tax exemption on the vehicle and enjoyable goods which are used by disable person. this act also ensure to make the reservation sheet on public vehicle, to give the priority on employment, life allowance, unemployment allowance, special allowance as social security of disable person.

### ***Disable Person's Protection and Welfare Regulation, 2051***

The state shall identify and keep the records of disable person. Similarly, there shall be education and training to disable person, medical treatment, priority on employment, exemption on income tax, free legal aid to disable person as economic and social security.

### ***The Labour Act, 1992***

The Labour Act requires worker's insurance so that insurance could cover the compensation to be paid to the family of the deceased. If any personnel or worker is dismissed from his/her post illegally s/he receives the salary of the period. If a person has worked for more than five years s/he shall be entitled to the gratuity on the basis of the years worked by him or her. However, the Labour Act does not apply to the enterprises where there are lesser than 10 employees. If the Act does not apply there is no certainty to get all benefits. There is no clear demarcation of adequacy or inadequacy with regard to the benefits provided by public and private enterprises under the social security schemes. A personnel whose office has been closed down or repealed, gets full salary and allowance in accordance with the laws. An employee or worker, who becomes jobless due to closure of company for a certain period, gets salary and other benefits.

### ***Education Act, 2028***

According to the Act, the primary education shall be fee and books of the primary level education shall provide freely. The Act also mentioned the admission fee not to be taken again and again. The health care of students is to be properly considered in school; only qualified teacher is allowed for teaching; and remuneration. Tax exemption shall be on the community based and trust schools.



***Education Regulation, 2059***

The following legal provision in relation with economic and social aspect can be found to have been mentioned at education regulation 2059 to deposit the prescribed amount for purposed approval to teach the prescribed book Income and expenditure of schools is to be kept in regular and prescribed accounting system the necessary economic sources is to be arranged by school management committee. Similarly, regulation has also mentioned about the salary, allowance, provident funds, pension, Festival allowance, and leave for teachers.

***Civil Service Act***

The Civil Service Act provides sick leave for 12 days per annum. If a person has not utilised the sick leave, s/he gets cash sickness benefits. If any civil servant becomes sick during his/her duty, the GON should bear all treatment costs. If a civil servant dies during his/her duty, his/her family gets compensation and receives certain stipend for the education of the children.

The Social Welfare Act, 1992 and The Local Self-Governance Act 1999 has also the programmes in the sector of protection. According to Self Governance Act, Local body has a right to conduct and facilitate the programme regarding the women, disable, children and senior citizen. Similarly, the consumer protection Act explains about the right to fresh and unmixed food materials.

***Senior Citizens Act, 2063***

The purpose of the Act is to protect and provide the social security of old aged citizens. This act also ensures to nourishment and health care of old age; to maintain their dignity; ensuring their property and have right for consumption of their property; special facilities and exemption of transportation fare for old age; priority should be give on health care and case hearing; compulsory legal representation of their case with legal aid. For the protection of old aged people one protection centre should be established and; government should provide the old age allowance and their identity; The Act also ensured the protection from any kind of coercion, defamation or forfeiting the property, if so; there will be punishment.

***Legal Aid Act, 2054***

People, who have lower economic status, can get free legal aid. If such people are able to achieve the property or economic benefit after getting legal aid, should reimburse of service charge. Lawyer, who has provided legal aid, shall receive the remuneration as needs. There shall be a fund for

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free legal aid and such fund is donated by government and any institution or any kind of assistance made by any one.

### ***Children's Act, 2048***

This Act has ensured the right to name of every child to identify the date of birth, right to nourishment and medical treatment, not to discriminate between son and daughter, right against cruel and torture; decriminalise under the age of ten years; reduction of the punishment on crime under the age of 10-16 years; not to provide the rigid punishment, compulsory lawyer service etc.

### ***Policy/Plans***

Government had established a fund of eight million Rupees for the people with disability in 1981 to educate, train and rehabilitate them. Monthly scholarships of Rs. 100 to 250 are provided to the children with disabilities, various training programmes have been provided to PWDs through this fund. Tenth Plan has formulated strategies, policies and programmes for the implementation of the right to social security especially targeting women, children, disables and senior citizens. In order to achieve the strategy and policy objectives on social security, the GON has been launching several programs toward the protection of disable people. Special classes are being run for them. The Social Welfare Council provides individual loans up to amounts of Rs. 5,000 to 8,000 without guarantees for income generation activities for PWDs (NHRAP, 2004, p. 33). National Coordination Committee has been formed under the Chairmanship of the Minister of MOWCSW. Formulated and enforced a National Plan of Action on Disability, 2003. The Plan of Action covers 12 areas such as; (i) public awareness (ii) education, additional activities (iii) training and employment (iv) amendment of legislation (v) information and access to physical environment (vi) institutional promotion and capacity building (vii) facilities and concession (viii) counseling service (ix) health and distribution of materials (x) community rehabilitation (xi) reservation/quota arrangement (xii) home for the disabled.

Similarly, Government has adopted the Senior Citizens Policy and Working Policy, 2002, and The Guidelines for the Implementation of the Health Service Programme for Senior Citizens, 2004. The Senior Citizens Policy and Working Policy are considered as basic documents to guide programmes and projects relating to serving senior citizens. The policy covers eight aspects, which are: (i) economic (ii) social security (iii) health services (iv) facility and honour (v) participation and engagement (vi) education and entertainment (vii) miscellaneous and (viii) classification. The policy ensures free medical treatment and services and exemption in charges in the means of transportation and communication.

### **Gaps and Weaknesses**

The positive aspect of existing labour laws is favorable to ensure the social security in private sector enterprises. However, the coverage of the number of workers did not increase due mainly to the growing contract-based and piece rate employment pattern. Currently, employers from the private sector have been demanding strong provisions in the 1992 Labour Act that empowers them to hire and fire labourers easily.<sup>48</sup> It is a matter of serious attention that the private sector is gaining more ground in influencing the employment market and simultaneously ignoring trade union rights.

Poor implementation of the 1982 Disabled Protection and Welfare Act, however, has led people to question its effectiveness. Preparation has been made to amend the law but it still awaits materialisation. Change in reality can only be achieved with measures that can spell a paradigm shift from a charity-based approach to a rights-based approach<sup>49</sup>. The existing approach to serve elderly people reflects the government's definition of it as welfare. It is urgently needed to formulate and implement rights-based approaches in favor of elderly people that sufficiently contribute to retain social cohesion and unity as well as ensure returns of their contribution made in the society.

### **Recommendations**

- ? State should withdraw the condition on the right to social security, which states that citizens will be able to enjoy such rights according to enacted laws.
- ? There should be a separate law to define and address the issues of social security in comprehensive and integrated way.
- ? The government should emphasise equitable social life.
- ? The government should adopt a rights-based approach to deal the social security.
- ? The government should immediately adopt legal policy provisions in favor of those persons working in the private sector and do not enjoy social security benefits.

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<sup>48</sup> Upadhyaya, Umesh. "Social protection in Nepal at a glance", [www.labournepal.org/issues/social\\_security](http://www.labournepal.org/issues/social_security) downloaded on 25 February 2007

<sup>49</sup> UNDP. 2004. *Nepal Human Development Report 2004*. Kathmandu: United Nations Development Programme. p. 45

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- ? Local bodies, non-governmental sectors and trade unions should be promoted and encouraged to increasingly work for social security.
- ? Collective efforts of government agencies, NGOs, and trade unions should be required for effective social security.
- ? Political parties should demonstrate their agendas and will for effective social security system.
- ? Social insurance system should be defined as per the Nepalese social and economic conditions.
- ? As a welfare state, state should enacted effective laws and policies to provide social securities without any discrimination in terms of race, sex, cast, geographical origin, political ideology etc.

## Article 10: Protection and Assistance to the Family, Mothers and Children

### *Summary of Article*

Protection and assistance to the family care and education of dependent children, Marriage into the free consent of the intending spouses. Special protection to mothers during a reasonable period before and after childbirth including paid leave of working mothers with adequate social security benefits. Special protection and assistance of all children and young persons without any discrimination for reasons of parentage or other condition, protection of children and young persons from economic and social exploitation and Prohibition of child labor be assured.

Though the constitution has incorporated the right to freedom as a fundamental human right, the right to select a spouse at one's own will is still an alien matter in contemporary Nepalese society. Child and coercive marriage have been issues of serious stumbling blocks in enjoying right to establish family. Similarly, domestic and social violence against those opting for an inter-caste marriage is also another area that has substantially infringed the right to establish a family. Girls and women are the victims in most of the incidents whether in child marriage, coercive marriage or inter-caste marriage. Forced marriage in Nepal is another factor that impedes the right to freedom to establish a family. In such incidents, the girls are the prime victims. Parents, relatives and the society, directly and indirectly, coerce the girl to marry the boy she does not want. She is also forced to marry even when she is not yet ready for it. Young women fall prey to highly conservative and anti-social practices in the country. For instance, young women are abducted and declared wives of certain men in the name of culture and religion. A community in Mustang, a remote district in western Nepal, still practices it.<sup>50</sup>

A comparison of the census data for 1991 and 2001 reveals that child labour between the ages of 10 and 14 increased from 22.9 percent to 28.83 percent.<sup>51</sup> These estimates still do not adequately reflect the worst and most hazardous forms of child labour, the work of bonded children, trafficking of girls and other comparable abuses and atrocities.<sup>52</sup> More recent statistics suggest that the total number of working children between 5 and 14 years is 2.6 million, of which economically active children are

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<sup>50</sup> Nepal Samacharpatra Daily, 12 February 2006

<sup>51</sup> UNDP. 2004. *Nepal Human Development Report 2004*. Kathmandu: United Nations Development Programme. p. 66

<sup>52</sup> *ibid*

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1.7 million. Furthermore, 127,000 children are engaged in the worst forms of child labour.<sup>53</sup>

A huge number of children are involved in domestic services. Children do various domestic tasks including; fetching water, collecting fuels and fodder, caring for younger siblings, working in the kitchen and cleaning. Other tasks include washing the dishes and doing the laundry. Child trafficking is another social evil in Nepal. Each year, an estimated 12,000 girls under 18 are suffering from this crime in Nepal. Children also suffered much from the violence of random as well as premeditated violence perpetrated by individuals or organised groups. A recent report by Human Rights Watch stated that Maoists recruited child soldiers who were enlisted for fatal conflict. Nepali and international observers believe that up to 4,500 Maoist soldiers were below 18 when they were recruited to fight in the decade-long civil war.<sup>54</sup> OHCHR has confirmed<sup>55</sup> the presence of numerous children in the Maoists' various organisations, including the People's Liberation Army (PLA), and prior to the ceasefire had documented the use of children as combatants by the PLA.

### **Legislative Measures**

#### **Constitution**

The right to security to the children is guaranteed in Article 22 of the fundamental right of the Interim Constitution. Explaining the child right, Constitution explained, 'Every child shall have the right to get nurtured, basic health and social security and every child shall have the right against physical, mental or any other form of exploitation. Any such an act of exploitation shall be punishable by law and the child so treated shall be compensated in a manner as determined by law. Similarly, vulnerable and street children shall have the right to get special privileges from the State to their secured future. According to the Article 20, Women are also protected with non discrimination right to reproductive health and other reproductive matters. Regarding the physical, mental or any other form of violence shall not be inflicted to woman, and such an act shall be punishable by law. Property right to their ancestral, the Son and daughter shall have equal.

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<sup>53</sup> CWIN. 2003. *State of the Rights of the Child 2003*. Kathmandu: Child Workers in Nepal Concerned Centre

<sup>54</sup> <http://hrw.org/english/docs/2007/01/31/nepal15236.htm> downloaded on 1 March 2007

<sup>55</sup> OHCHR-Nepal. 2006. "Human rights abuses by the CPN-M: Summary of concerns." Kathmandu: Office of the United Nations High Commissioner for Human Rights in Nepal

## **Acts/Regulations**

### ***The Human Rights Commission Act, 2053***

The Human Rights Commission Act 2053 B.S. conferred on the commission the power to monitor and implement human rights, including right to equality, guaranteed by different international conventions. On May 26, 2000 a five member Human rights commission was formed with one woman member and two human rights activists. The commission has power to inquire and investigate cases involving human rights violation and to give necessary recommendations for effective implementation of international human rights instruments.

### ***National Women's Commission Act, 2063***

The national Women's commission was established in 2002 to fulfill the objectives of international human rights instruments and to develop plans and policies specifically aimed at advancing women. However, it lacks a clear mandate regarding its authority and some of its work duplicated that of MWCSW. It is also more of a political body as the government nominated the commission member on the recommendation of political parties. Now it is identified as statutory body by enacting the National Women's Commission Act, 2063 B.S.

### ***The Child Labour (Prohibition and Regularisation) Act, 1999***

The Child Labour (Prohibition and Regularisation) Act, 1999 has prohibited providing employment in 'hazardous work' for the children under the age of 16. Similarly, the Act has made provisions for inspection, monitoring of the working conditions of child labour and regularises child labour in formal sector. Moreover, the Act has made a provision of creating welfare fund to undertake educational and entertainment programmes and library facilities for the children of working parents.

## **Policy/Plans**

MOWCSW has been conducting rehabilitation centers named A Joint Initiative in the Millennium against Trafficking of Girls and Women (JIT) in Kaski and Nuwakot districts, which were established in 2002 and 2003 respectively. These rehabilitation centers of Nuwakot and Kaski have rehabilitated 65 and 35 women and girls and have spent Rs.907,443.00 and Rs.1,051,347.57 respectively by 2005. GON formulated a National Plan of Action against trafficking in women and children for sexual exploitation. MOWCSW itself coordinates this plan. The Action plan has eight components: (a) policy research and institutional development (b) legislation and enforcement (c) awareness creation, advocacy, networking and social mobilisation (d) health and educational interventions (e) income

and employment generation (f) rescue and reintegration (g) trans border, regional and international issues and (h) monitoring and evaluation.

Government has been trying to prohibit some harmful traditional practices prevalent in the country such as Deuki, Kumari, Jhuma, Kamlari, Chhaupadi. All these practices; Badi is a caste from oppressed and suppressed community residing in the western part of the country that has insisted to practice prostitution as their traditional profession. National Plan of Action for Children (2004/05-2014/15), prepared on the basis of United Nations General Assembly Special Session for Children Declaration 2002. The Plan of Action was prepared from the joint participation of government line agencies, the UN agencies, INGOs, NGOs and children themselves participating in a series of workshop organised up to regional level. The National Plan of Action has covered 6 sectors: (a) health (b) quality education (c) child rights protection (d) combating HIV/AIDs (e) child participation and (f) coordination, monitoring and evaluation. The Child Labour Master Plan, 2001-2010 has adopted a comprehensive and holistic approach to tackle child labour by coordination among all stakeholders to avoid the overlapping and duplication.

### ***Judicial Pronouncement***

The judiciary is also playing very supportive role by interpreting legal provisions on trafficking in a favorable way for the victims of traffickers. In the case of Durga Dhimal Vs HMG, the court ruled, “the statement of the woman who lodged the FIR is reliable and must be taken as evidence in this case” and put the burden of proof on the offender (NLR, 1998, p.332).

Existing legal mechanisms are characterised by many inconsistencies in ensuring the right to establish family and dealing with issues of child marriage, forced, inter-caste marriage, responsibility to maintain family, etc. It is felt that such legal arrangements have failed to regulate the cross-cutting relationship of issues like child marriage and trafficking, forced marriage and domestic violence, inter-caste marriage, and socio-cultural discrimination. The Labour Act covers only a formal sector of employment and labour; it neglects the informal sector and the self-employed, in which most children are concentrated.

The government is also expected to work to modify many cultural practices that sustain discrimination against women and girls, particularly in enjoying their right to establish family. Incidents of child and forced marriage are performed under the veil of so-called cultural practices and inter-caste marriage is forcefully terminated by the society on the cultural



grounds. The role of the state to discourage such practices has been very weak.

### ***Recommendations***

- ? The government should establish legal measures with extensive consultation with concerned stakeholders.
- ? The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group or unit of society, particularly for its establishment and the care and education of dependent children.
- ? Special measures of protection and assistance should be taken on behalf of all children and adolescence without any discrimination
- ? Children and adolescence should be protected from economic and social exploitation. Any activity which is hazardous to life, harmful to morals or health or likely to hamper their development should be punishable by law.
- ? The government should set age limits for paid child labor. Hiring children below the set age limit should be prohibited and made punishable by law.
- ? The government should formulate and implement policies and programs that encourage modification of socio-cultural patterns that are discriminatory and exploitative against women, children, and other marginalised and backward communities.
- ? Free and compulsory education system should be implemented for children. Liability of parents, guardians and state should be defined by law towards children and implemented it in effective manner. Equal opportunity to be provided in technical and higher education.

## Article 11. Right to an Adequate Standard of Living

### **Summary of Article**

Right to an adequate standard of living with family including adequate food, clothing and housing, and to the continuous improvement of living conditions.

Nepal is suffering from a great food crisis. Lack of transportation infrastructure and years of conflict have exacerbated this situation. In total, more than 200,000 people are currently suffering from lack of adequate food supplies. The situation becomes even more serious when drought, floods and extreme price fluctuations happen with regularity. The armed insurgency has added another significant dimension to worsen the ad hoc and non-transparent system of food distribution of the government of Nepal. Conflict has added to the difficulties of food availability of the poor. The vast majority of the rural households, particularly the poor, continue to rely on income from their own production supplemented by local employment in agriculture. The households, who constituted a significant number (perhaps 40 percent) of the rural population, lack food self-sufficiency, combined with low and often sporadic incomes from manual labour, and suffer the worst food insecurity.

Housing right has not been developed as a separate and explicit right in Nepal's context. Most of the legal provisions relating to housing rights do not seem to have been incorporated for the protection of the housing rights of the citizens. Nepal has ratified the International Covenant on ESCR in 1990. The ESCR Committee has identified the contents of the right to housing, which includes; inter alia, legal security of tenure, availability of services, materials, facilities and infrastructures, affordability, habitability, accessibility, location and cultural adequacy.<sup>56</sup> The national housing survey conducted in 1991 reported that about half (50.5 percent) of the total houses in Nepal are of the temporary type and 41.2 percent are semi-permanent. The rest belong to the permanent category.<sup>57</sup>

The issue of land ownership is fundamentally an issue of human rights that directly corresponds with the citizens' social security, justice and dignity. In Nepal, the agenda of land reform is inevitably associated with political, economic, social and cultural development of the poor and marginalised

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<sup>56</sup> Eide, Asbjorn. 2002. "Economic and Social Rights". In Symonides, Janusz (ed.). *Human Rights: Concept and Standard*. New Delhi: UNESCO Publishing. pp. 133-134

<sup>57</sup> NHRC. 2003. *Human Rights in Nepal: A Status Report*. Kathmandu: National Human Rights Commission, Nepal. p.67

people. Land reform should be taken as a pre-condition for development that would materially contribute to the efforts being made for sustainable peace, reduction of poverty, improvement of living standard, and ultimately for the better cause of human rights. Dalit and indigenous people, poverty stricken people and women have considerably minimum and even no access to and ownership of land. A total of 24.1 percent of the total population of Nepal is below the line of absolute poverty.<sup>58</sup> Unequal distribution of land and income and lack of basic facilities and infrastructure are other factors contributing to poverty in the country. Statistics reveal that 70 percent of poor peasants own only around 25 percent of land, 25 percent of middle-class peasants own 45 percent of land and about 5 percent of rich peasants own 30 percent of land.<sup>59</sup> In terms of income distribution, the poorest 40 percent of the population share only 14.2 percent of total income while the top 20 percent share up to 53.4 percent.<sup>60</sup>

## ***Legislative Measures***

### **Acts/Regulations**

#### ***Civil Code, 2020***

This code is comprehensive civil code of Nepal. It has managed the civil laws regarding the economic, social and cultural practice of Nepal. It addressed the different cultural practice of different ethnic people regarding the several cultural rights along with marriage.

#### ***Iodine-salt (Production or Selling and Distribution) Act, 2055***

The purpose of the Act is to restrict the lower quality of salt and create the awareness among the general people about the impact of low quality salt through the information dissemination and publicise the IEC materials relating to use only iodine salt. Such liability shall be on health institution. If any one sells the non-iodine salt, whether has impacted to general people or not there shall be punished.

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<sup>58</sup> UNDP. 2005. *Nepal Millennium Development Goals progress report*. Kathmandu: United Nations Development Programme

<sup>59</sup> Karki, Arjun. 2003. cited in GCAP National Coalition, Nepal. 2005. *WHOSE GOALS? Civil Society Perspectives on MDGs*. Kathmandu: Global Call to Action against Poverty, Nepal.

<sup>60</sup> CBS. 2004. *Nepal Living Standard Survey 2003/2004 (Statistical Report)*. Kathmandu: Central Bureau of Statistics

### ***Animals Slaughter and Meat Inspection Act, 2055***

The purpose of the Act is to establish the animals slough to maintain the health and interest of general people and restrict the mixture of meat things. This act also mentioned that they should get the approval for establishing animals slaughter to uphold the tams and condition for selling meats; manage the meat inspection; inspect of animals before and after slaughtering not to mix the meat. If any one's activities go beyond the legal condition, there shall be punishment.

### ***Prison's Act, 2019***

The Act is no maintaining the personal security of perpetrator who commits crime in the society and also maintains social security from criminals. This act also mentions to protect interest of perpetrator (criminals); to keep the secret on the basis of ratio of crime, their age and gender (men and women); to properly manage their basic need such as: food, cloth; health education. The Act further ensured the right of prisoners to interact with relatives, getting consultation with lawyer and income resources of perpetrators.

### ***Food Act, 2023***

This Act is considered to maintain the standard of food and grains. So the act strictly prohibited to sell and purchase the polluted food and grains. The government has authority to restrict on selling polluted food and grains. If any one is found doing so is punishable.

### ***Cooperative Act, 2048***

The act has provided the authority to the group who are entrusted for economic and social development can formulate cooperative Act institution. The cooperative institution, which has been established under this act, conducts the banking transaction, serving and purchasing. The share of shareholders of the cooperative institution shall not be sold or forfeited on the basis of loan or any liability except the loan or liability of own institution the accounting system of the cooperative institution shall be transparent.

### ***Joint Residence (Housing) Ownership Act, 2054***

Joint resident (Housing) unite shall be purchased or sold having got the full payment of the residence of such payment made on the basis of installment, if they decided to resident jointly. Person who is the owner of residence unite have the right to sell or rent in his interested people, who are living at joint resident shall consume the commodities with out disturbing to others.

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Further more; the Civil Code of Nepal gives some kind of housing rights to the owner and tenants of the house. The Apartment Ownership Act, 1997 deals directly with the housing rights of the apartment owners. The Land Reform Act, 1964 has made land ceiling and tenure ship. The Land (Survey and Measurement) Act, 1962, The Land Acquisition Act, 1978, The Local Self-Governance Act, 1999, The Town Development Act, 1988, The Building Act, 1999, The Electricity Act, 1992, The Environment Protection Act, 1997, and The Building Code, 2003 regulate the right to decent living.

### ***Municipality Development Act, 2045***

This Act mentions that road transportations, electricity, drainage, cleaning, open space are to be arranged on the basis of population density in the segregated land for municipality developments. Similarly if any development plan or project is going to be conducted in municipality areas, 75% local people (landowner and tenancy) shall be involved in project

Municipality Development Fund Act 2083: This Act is commenced with the expansion and development of municipality. Municipality should manage the basic social services; to the people who are living at municipality as foot-path, road, road-lamp, bridge, water and sanitation, collection of wastage thins. Public toilets, public library, schools and various structures for the purpose of public interest are made. This act also mentioned that municipality should maintain environmentally sustainable protect for such public structure

### ***Hydro-Electricity Act, 2049***

If any person, who establish the hydropower, shall have to pay two percent royalty of such selling price since the commercial production till fifteen years. The hydro-power project should manage the provident fund and residence of employer. Such hydro- power shall not be nationalised. No one has the right to enter one's land without authority.

### ***Foreign Employment Act, 2064***

This Act is enacted in 2064 replacing the previous Act of 2042 to protect the right of Nepalese migrant worker going overseas. It has a comprehensive provision of safe departure, pre- departure training, Insurance, Minimum wage, Skill training, Foreign employment welfare fund, individual migration. Protection of children and non-discrimination between man and women is one of the significant provision consisted in this Act

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Regarding the social and economic development, The Urban Development Act, 1988, Environment Protection Act, 1997, Social Welfare Act, Nepal Health Research Council Act 047, Compensation Act 3, Competition Act, National Women Commission Act are enacted with exploring various social and economic activities. To update the social incidents and systematise the marriage activities, the Act relating to registration of birth, death and other personal incident and Marriage Registration Act 028 are existed in the country. Protecting the right to educate standard of life, the Act relating to the materials which replace breast milk and Act relating to Nutrition Food is enacted.

### ***Policy/Plans***

Poverty Reduction Strategy, 2002-2007 has been formulated in order to achieve the targeted objective of poverty reduction, The strategy is built on four pillars: (i) broad based economic growth (ii) social sector development including human development (iii) targeted programmes including social inclusion, in order to bring the poor and marginalised groups into the mainstream of development, together with targeted programmes for the ultra poor, vulnerable and deprived groups (who may not adequately be benefited from the first two pillars) and (iv) good governance.

0-year Agriculture Perspective Plan (APP), 1995 has been providing supportive environment for the implementation of the Tenth Plan. This Plan seeks to commercialise agriculture to promote high value agricultural commodities, open up marketing facilities and processes and provide better support services. These have been under implementation for the last seven years. There has also been demonstrated progress in basic education, primary health, drinking water, green roads, electronic and other communication, and in some other sectors.

GON has also endorsed 'The Millennium Development Goals' (MDGs) in September 2000. The goal has set up baselines and numerical targets and provides a unique opportunity to reflect on Nepal's achievements over the last decade, to identify challenges and opportunities, to indicate in a concise form priority for development assistance, and points out areas for improvement of the monitoring and evaluation systems. It has eight goals: (i) eradicate extreme poverty and hunger (ii) achieve universal primary education (iii) promote gender equality and empower women (iv) reduce child mortality (v) improve maternal health (vi) combat HIV/AIDS, malaria and other diseases (vii) ensure environmental sustainability and (viii) develop a global partnership for development.

### ***Gaps and Weaknesses***

Not much has been done to generate people's awareness on the adequate standard of living as a right that they are entitled to. Activities of the National Human Rights Commission are limited to civil and political rights. The Commission must extend its activities to cover ESCR. Access to natural resources and its equitable distribution among citizens is the prime factor for adequate standard of living. Majority of land cultivators are from the most disadvantaged Dalit and indigenous communities. In such a context, there is an urgent need for policy reform on access to the means of production - land, forest and genetic resources - for agricultural purposes. Farming communities are the ones who can really maximise the potential of the sustainable use of natural resources through their conscious management of protection, utilisation and promotion of it. Modernisation of the farming sector, along with development in technology and scientific management are vital.

Networking and fact based research is important on the part of civil society in securing farmer's rights and rights to food. The government of Nepal, civil society and CBOs must play meaningful roles in networking between themselves to improve the standard of living of citizens. Very small numbers of people hold a large quantity of land and larger numbers of people hold nominal quantity of land. This odd equation must be changed.

### ***Judgment***

In the case of Madhav Kumar Basnet Vs Prime Minister and others, the Supreme Court (SC) of Nepal has recognised that the GON is responsible for supplying food grains to the people and it has been putting every effort to supply food grains in the food deficit districts. The SC repealed the writ petition on the basis of the arrangement made by the GON to supply food grains. The transportation cost up to home was borne by the Nepal Food Corporation (Writ No. 3341, 1993). In this case the writ petitioner had blamed that the GON has not paid serious attention to cope with the food shortage and drought problems in the districts of Humla, Jumla, Mugu, Kalikot, Dolpa, Bajhang, Bajura and Darchula. This is known as negative judgment toward the economic rights of the people living in remote area.

### ***Recommendations***

- ? Prevailing laws and policies regarding unlawful resident and expulsion are vague and inadequate. The government should enact and implement effective laws and policies.

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- ? A policy should be introduced to guarantee a safe and secured resident for land less and affected poor families and ensure their rights to secured housing.
- ? National policies must prevent unnecessary evictions and violations of housing rights, ensure security of tenure to existing squatter settlements and incorporate the provisions of resettlement and adequate compensation to the evicted persons.
- ? Policies on clean drinking water and sanitation facilities for all should be formulated and enforced.
- ? Access to natural resources for indigenous people and disadvantaged sections of society should be preserved through appropriate law.
- ? Fundamental rights to food securities guaranteed by the Constitution should be implemented through specific legal mechanisms. Strong mechanisms should be established to protect the farmers' rights, including intellectual property rights such as indigenous and traditional knowledge.
- ? Knowledge and information on every aspect of adequate standard of living must be developed through documentation and their proper dissemination among state agencies and other stakeholders working in this sector.



## Article 12: Right to Enjoyment of the Highest Attainable Standard of Physical and Mental Health

### Summary of Article

Right to enjoyment of the highest attainable standard of physical and mental health.

Liability of state party to be taken step to achieve the full realisation of this right including following things:

- reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- improvement of all aspects of environmental and industrial hygiene;
- prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- creation of conditions which would assure to all medical service and medical attention in the event of sickness.

The health status of Nepalese people is one of the lowest in the South Asia. This is particularly true in the case of women. Nepal ranks one of the highest in the under-five mortality rate in South Asia. The country witnesses 82 deaths per 1,000 live births. Female infant mortality is slightly high (85 girls per 1,000 female live births) compared to male infant (80 boys per 1,000 live male births).<sup>61</sup> According to MDGs progress report, NPC and UNDP 2005, average life expectancy is 62.2 and infant mortality rate is 61/1000.<sup>62</sup> The maternal mortality rate, 740 per 10,000 live births, ranks among the highest in the world. One out of 24 women is at risk of dying during pregnancy and childbirth. The fact that just over one in 10 births is attended by a trained doctor or paramedic is indicative of the failure of the state to deliver its health promises.<sup>63</sup>

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<sup>61</sup> Bissio, Roberto (ed.), 2005. *Social Watch Report: Roars and Whispers*. Uruguay: Instituto de tercer mundo. p. 215

<sup>62</sup> UNCTAD. 2005. Case study on Nepal (Ad Hoc Expert Meeting in preparation for the Mid-term Review of the Programme of Action for the Least Developed Countries for the Decade 2001-2010), [http://www.unctad.org/en/docs/ldcmisc20063\\_en.pdf](http://www.unctad.org/en/docs/ldcmisc20063_en.pdf) downloaded on 9 March 2007

<sup>63</sup> *ibid*

HIV and AIDS have gradually emerged as a major problem. World Health Organisation (WHO) estimates more than 50,000 cases at a prevalence rate of 0.29 percent.<sup>64</sup> According to the information updated by Nepal's Ministry of Health, till September 2006, a total of 7,894 (5,574 males and 2,320 females) have been infected with HIV and AIDS. The number of AIDS infected persons in the country is 1,171 (850 male and female 321). 231 cases of HIV infection and 19 cases of AIDS were recorded in the month of September 2006 alone.<sup>65</sup>

A rough estimate of 40 percent has been made regarding the availability of essential drugs facilities at remote areas. The main constraints are lack of adequately trained human resource, non-availability of transport and inadequate drug storage facilities. The issue of health has been embodied under state policies,<sup>66</sup> which says that the state shall raise the standards of living of the general public through development of infrastructures such as education, health, transportation, housing, and employment of people in all regions. There are also a number of laws, periodic plans, policies on the part of the government, and provisions from the ICESCR that applies as law. Despite all the arrangements, implementation of the provisions has been very weak, resulting in the poor health status of the Nepali people.

## ***Legislative Measures***

### **Acts/Regulations**

**Foreign Employment:** This Act is enacted in 2064 replacing the previous act of 2042 to protect the right of Nepalese migrant worker going overseas. It has a comprehensive provision of safe departure, pre departure training, Insurance, Minimum wage, Skill training, Foreign employment welfare fund, individual migration. Protection of children and nondiscrimination between man and women is one of the significant provision consisted in this Act.

### ***Iodine-salt (Production or Selling and Distribution) Act, 2055***

The purpose of the act is to restrict the lower quality of salt and create the awareness amount for general people about the impact of low quality salt. Creating awareness among the general people, information dissemination and publicised the IEC materials relating to use only iodine last. such

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<sup>64</sup> [www.searo.who.int/en/section313/section1523\\_6867](http://www.searo.who.int/en/section313/section1523_6867) downloaded on 1 March 2007

<sup>65</sup> *ibid*

<sup>66</sup> Article 35 (1), Interim Constitution, 2007

liability shall be on health instituting. If any one sells the non iodine salt whether has impacted to general people or not there shall be punished.

### ***Policy/Policy***

Government has Established The Medium Term Strategic Plan (MTSP), The Essential Health Care Services, 2005, The National Drug Financial Policy, The Nepal Health Sector Programme, 2004-2009, and The National Human Rights Action Plan, 2004-2007 to ensure the highest attainable standard of physical and mental health of the people. Recently, GON has prepared Immediate Health Plan 2005 and NPC has been reviewing it.

Tenth Plan include: increasing investment to provide essential health service to the poor and the backward communities; developing Ayurved, naturopathy services and traditional healing systems like homeopathy, and Yunani as the supplementary health service by promoting local medicinal herbs and enhancing skills and expertise. Decentralizing the health services according to The Local Self-Governance Act, 1999; enhancing access to essential health services in rural and remote areas through special services such as safe motherhood, reproductive health, child health, nutrition, tuberculosis, kala-zar (typhus), malaria, Japanese encephalitis, and other communicable diseases; providing basic health services from the local and central level institutions, governmental, non-governmental, and private health institutions; managing the human, financial and physical resources by improving the quality of health services provided by the collaboration of the Government, private and non-government sectors; reducing maternal, and child mortality by launching reproductive health programmes and family planning service (Tenth Plan, p. 477).

The Nepal Health Sector Programme (NHSP) 2004-2009 covers reproductive health, child health, and control of communicable and infectious diseases and zoo noses. EHCS is one of the important components of NHSP. EHCS are prioritised public health measures and essential curative services that address the most essential health needs of the population and are highly cost effective.

The National Human Rights Action Plan, 2004-2007 has included several health related human rights programmes, these include: review and amend laws to bring them up to international norms and standards; build additional primary health care facilities and strengthen and better equip existing rural health care centers and expand basic and primary health services at the community level; conduct awareness programmes in rural areas about the human rights to good health and right to reproductive.

### ***Gaps and Weaknesses***

Health services in the country are centrally managed. There is very little participation of local people and communities in policy making, operation and supervision of health services. Quality and fair pricing of services of private sector health institutions need to be regulated and monitored to ensure that their functioning is appropriate to the need and status of service seekers.

The state has neglected issues regarding mental health. Attention has been given only to the physical health sector. The government should formulate special policies concerning health plans, mentally ill persons and the disabled. Steps need to be taken to create access to private hospitals and institutions for disadvantaged groups and extend health services to the remote areas of the country. Health and culture are indispensably interlinked. There are various conservative practices that people follow as tools for health treatment. The inter-linkage has high significance in the societies like Nepal, which mostly operate through non-legal norms, substantiated by religious scriptures.

### ***Recommendations***

- ? Fundamental Right to environment and health ensured by the Constitution should be implemented through legislative measures.
- ? Non-governmental sector should be encouraged, involved and supported in the treatment and rehabilitation of acute and chronic mental patients.
- ? Integration of mental health services within the existing general health service structure and mental health services from the peripheral health service structures should be extended.
- ? Low cost community rehabilitation services should be established for patients of chronic diseases throughout the country.
- ? Physical infrastructure should be extended and the allocation of resources should be increased in health sector.
- ? Health education and timely immunisation should be provided to the public.
- ? Treatment facilities for common diseases and prevention of locally endemic diseases should be guaranteed.

## Article 13 & 14: Right to Education and Compulsory Education

### Summary of Article

States Parties recognise the right of everyone to education. Primary education shall be compulsory and available free to all; Secondary education shall be made generally available and accessible to all. Higher education shall be made equally accessible to all, on the basis of capacity

The literacy rate of Nepal, according to the Population Census in 2001, is 57.74 percent, with female literacy at 42.5 percent and male 65.1 percent.<sup>67</sup> A significant gain is reported in female literacy from a mere 12 percent in 1981 to 43 percent in 2001. The difference between male and female literacy between the periods remains the same vis-à-vis 22 percent.<sup>68</sup> Girls below 14 years seem to be catching up with the boys of the same age. However, the enrolment of girls decreases as they get older, as a result of which boys preponderate in secondary and higher education.

Nepal, as a state party to the ESCR, has committed to recognise the right of everyone to education as a prerequisite to the “full development of the human personality and the sense of its dignity”, and to “strengthen the respect for human rights and fundamental freedoms.” It further commits to make “compulsory” and “free” primary education generally available and accessible to all by all appropriate means, and in particular by the progressive introduction of free education”.<sup>69</sup> Despite such efforts, attainment of education remains dismal. Neither the backward community nor the geographically vulnerable settlements have adequate access to education. The rural and urban gap widens further. Though the primary and secondary education has been declared free, rural people are not benefited from such facilities as they are unable to buy books, pencils, stationery, uniforms and pay examination fees because of their acute poverty.

Education attainment of Dalit remains below the national average. Of the Dalit population (12.9 percent), two third remain illiterate. Many reasons such as acute poverty, lack of access to resources, unemployment, and so on corroborate to this fact, but the most alarming is the state subsidised education provision for Dalit, which benefited the privileged. The

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<sup>67</sup> CBS. 2001. *National Census*. Kathmandu: Central Bureau of Statistics

<sup>68</sup> UNDP. 2004. *Nepal Human Development Report 2004*. Kathmandu: United Nations Development Programme

<sup>69</sup> Article 13, ESCR

government has provisioned 10 percent quota to Dalit students in the MBBS scholarship. Only 41.5 percent (5 Dalit) has gone to Dalit students, the remaining 58.3 percent (7) were given to non-Dalit<sup>70</sup>. Lack of an effective monitoring system and government negligence to take action against the misuse further encouraged the wrongdoers to this end. Literacy attainment among indigenous people also falls below the national average. Of the 352,000 Nepali graduates and post-graduates, only 8.7 percent are indigenous people.<sup>71</sup>

### ***Legislative Measures***

Script, culture, cultural civility and heritage,' the Article consisted.

### **Acts/Regulations**

#### ***Education Act, 2028***

According to the Act, the primary education shall be free and books of the primary level education shall be provided freely. The Act also mentioned the admission fee not to be taken again and again. The health care of students is to properly be considered in school; only qualified teacher is not enough for teaching; proper remuneration is to be provided to the teacher. The property of school's not to be misused and tax exemption shall be on the community based and trust schools.

#### ***Education Regulation, 2059***

The following legal provision in relation with economic and social aspect can be found to have been mentioned at education regulation 2059;

- to deposit the prescribed amount for purposed approval
- to teach the prescribed book

Income and expenditure of schools is to be kept in regular and prescribed accounting system. The necessary economic sources are to be arranged by school management committee. Similarly, regulation has also mentioned about the salary, allowance, provident funds, pension, Festival allowance, and leave for teachers, education allowance insurance, and pension of teachers and code of conduct for the teachers and students.

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<sup>70</sup> The Himalayan Times, 22 December 2003

<sup>71</sup> UNDP. 2004. *Nepal Human Development Report 2004*. Kathmandu: United Nations Development Programme

### ***Plan/Policy***

In Nepal, primary education is free in public schools. There isn't any fee of any kind charged for the primary level students. Textbooks for the primary level students of all over the country are being made available by the Government free of cost. For the effective monitoring of the programmes, flash reports are issued in an interval of 6 months by the Department of Education. The fee charged by the public school is very nominal comparing to the private school. Nepal has adopted a comprehensive National EFA Action Plan, 2015, to make the primary education accessible to all, as anticipated by the Dakar Framework of Action. Moreover, educational programmes of each year are being prepared to response the educational needs of the poorest and most disadvantaged in line with the PRSP and the MDGs.

The Ministry of Education and Sports, Curriculum Development Centre, has prepared a Bilingual Transition Education Programme for teaching students other than Nepali speaker in their mother tongue. The course books of grade 1-5 are being translated from Nepali to Maithili, Awadhi, Tharu, Newar, Tamang, Limbu, Magar, Rai Bantawa, Gurung, Sherpa, and Rai Chamling. In the school textbooks, chapter on human rights is included, i. e, child rights, in grade 4 and 5, and human rights in grade 9 and 10.

### ***Gaps and Weaknesses***

Though the government has adopted education policies over time, policy-gaps loom large where community ownership of schools is systematically excluded. The promise of the government to handover schools to the community has not been effectively materialised. Commitments for achieving universal primary education and the goal of 'Education for All' have been reportedly high, but their implementation are rather slow. Absence of strong mechanisms to implement commitments and check the progress has hampered educational attainment. The quality of education in Nepal is also questionable due to the lack of trained human resources. The burgeoning challenge for the government is to ensure that the subsidised education facilities reach target groups in order to increase the level of attainment in education.

The girls' dropout ratio was reported proportionately high. For example, girls are engaged in household works and have less time to go school. Also, rural people still have the perception that girls are less supposed to go to school. Patriarchal beliefs and customs still rule large to dissuade poor parents from sending their daughters to school. The government has not come up with lucrative provision of education subsidies to promote girl education and change the prevailing perceptions of people. Nor has it

launched any programme to educate and create awareness among parents about the importance of sending their daughters to school. Many rural parents do not send their children to school due to extreme poverty. In many cases, children are compelled to do household chores and to generate some additional income. Many parents feel that the government programme of making primary education free is not enough as they do not have the means to manage other associated costs such as uniforms, books, stationeries and examination fees. Even then, the government has not acted proactively to provide an alternative means of income to poor families.

### **Recommendations**

- ? Effectively implement the commitment on Education for All. The government should develop time-bound policies to provide education for all and devise an effective monitoring mechanism.
- ? To check the misuse of facilities and provisions for Dalit and students from backward communities, the government should introduce a strong legal mechanism and bring the wrongdoers to justice to ensure benefits to the target groups.
- ? The government should make a provision for special education subsidies to promote girls education. An effective program should also be launched to change patriarchal beliefs and customs and encourage poor parents to send their daughters to school.
- ? Considering the fact that lack of income and employment opportunities of poor parents is one of the reasons for dropouts and for parents not to send their children to school, the government should initiate programs aimed at providing income alternatives so that the poor families can manage their children's education.
- ? Schools should be declared as peace zones and all political activities should be completely banned in school premises. Standard and quality of public schools should be ensured for quality education and minimise the gap of quality between public school and private school. The schools must have sufficient quality teachers, infrastructure and other required measures.
- ? Equal opportunity should be provided for higher education and technical and vocational education.



## **Article 15: Right to Cultural Life, Scientific Research and Creativity**

### ***Summary of Article***

Right of everyone to take part in cultural life; to enjoy the benefits of scientific progress and its applications; to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author and indispensable freedom for scientific research and creative activity

e still in practice. There are a number of discriminatory legal provisions, such as section 10 (A) of miscellaneous of the Muluki Ain (Civil Code), that cover a wide range of acts and regulations. Likewise, women also suffer from structural discrimination in various fronts. A study discovered that there are more than one hundred provisions in the legal realm that stand and operate to discriminate women.<sup>72</sup> The right to culture is also not implemented, in connection with minorities, indigenous people, particularly their use of their own language.

### ***Acts/Regulations***

#### **Indigenous Nationalities Development National Foundation Act, 2002**

The Act has established the National Foundation for the Development for the Indigenous/Nationalities, the National Committee for the Development of Nationalities of Nepal. 59 nationalities have been recognised as indigenous nationalities in the country.

#### **The Local Self Governance Act (LSGA), 1999**

This is the legal instrument to institutionalise the process of development by enhancing the participation of all people including Indigenous Nationalities in bringing out social equality through mobilizing and allocating means for the development of their own in the balanced and equal distribution of the fruits of development. To this end, LSGA has the provision to nominate also from among Indigenous Nationalities in the council, board and mediation committee of Local Bodies. Local Bodies require giving priority to the projects that benefit women and children including the marginalised people while formulating development plans according to LSGA.

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<sup>72</sup> FWLD. 2006. An Update of Discriminatory Laws in Nepal and Their Impact on Women. Kathmandu: Forum for Women, Law and Development

### **Patent Right Act, 059**

This act has protected the right of intellectual property of the citizen. Various fundamental and intellectual creations relating to culture, science, art, literature and other are known as Creation according to this Act. This Act provides economic right to the author, inventor, architect or the owner of patent rights.

### **Hydro-Electricity Act, 2049**

If any person, who establish the hydropower, shall have to pay two percent royalty of such selling price since the commercial production till fifteen years. The hydro-power project should manage the provident fund and residence of employer. Such hydro- power shall not be nationalised. No one has the right to enter one's land without authority.

### ***Gaps and Weaknesses***

Laws discriminating against certain sections of social life still exist. For instance, section 10 (a) under the chapter of Miscellaneous of the Muluki Ain (the Civil Code) 1963 substantiates discrimination among people who observe similar culture. Impunity to the perpetrators of violation of cultural rights has been a major strength for them to continue such perpetrations. Absence of specific laws to deal with such socio-cultural malpractices is an area of serious attention.

Enactment of laws and framing policies is not sufficient to make people realise that they can enjoy cultural practice in true sense. An appropriate law with strong implementation mechanisms can only ensure the right to culture. Local bodies can be appropriate mechanisms in dealing with issues at the local level, considering the fact that they are attached with the local people and are more familiar with socio-cultural practices. These institutions can play effective roles even to settle the disputes that have emerged of socio-cultural backgrounds. In contrary to the lengthy and complex administrative and judicial processes, involvement of local bodies can be easier and effective in ensuring the right to culture.

### ***Recommendations***

- 1 ? Promotion and equal treatment of all religions by the government should be ensured. Excessive propaganda of a single religion by different state organs and other agencies while neglecting other religions should be discouraged. Concept of secular state guaranteed by the Constitution should be implemented without any discrimination between religious groups.

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- ? Culture of all indigenous people should be protected as their collective property.
- ? Omnipresent inequality, injustice and discrimination against different native languages should be eliminated according to the Constitutional provision as well as provision of International Human Rights Treaties.
- ? Copy rights and industrial property rights should be protected as per the requirement of WIPO and TRIPs agreement of WTO.
- ? Prevailing laws regarding to intellectual property should be amended as per the WTO requirement.
- ? Government should encourage and provide special protection to the scientific and other intellectual creation.
- ? Government should allocate adequate budget for scientific research.

# Annex

## **International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966**

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966

Entry into force 3 January 1976, in accordance with article 27

### ***Preamble***

The States Parties to the present Covenant, Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Recognizing that these rights derive from the inherent dignity of the human person, Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights, Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms, Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognised in the present Covenant, Agree upon the following articles:

### ***PART I***

#### **Article 1**

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realisation of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## **PART II**

### **Article 2**

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognised in the present Covenant to non-nationals.

### **Article 3**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

### **Article 4**

The States Parties to the present Covenant recognise that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

### **Article 5**

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognised

herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognised or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognise such rights or that it recognises them to a lesser extent.

### **PART III**

#### **Article 6**

1. The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realisation of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

#### **Article 7**

The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant; (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

#### **Article 8**

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organisation concerned, for the

promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organisations; (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorise States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

### **Article 9**

The States Parties to the present Covenant recognise the right of everyone to social security, including social insurance.

### **Article 10**

The States Parties to the present Covenant recognise that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in

work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

### **Article 11**

1. The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

### **Article 12**

1. The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realisation of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

### **Article 13**

1. The States Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and



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shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognise that, with a view to achieving the full realisation of this right: (a) Primary education shall be compulsory and available free to all; (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

### **Article 14**

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

**Article 15**

1. The States Parties to the present Covenant recognise the right of everyone:

(a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realisation of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognise the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

**PART IV**

**Article 16**

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognised herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant; (b) The Secretary-General of the United Nations shall also transmit to the specialised agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialised agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

**Article 17**

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present

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Covenant after consultation with the States Parties and the specialised agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialised agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

### **Article 18**

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialised agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

### **Article 19**

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialised agencies in accordance with article 18.

### **Article 20**

The States Parties to the present Covenant and the specialised agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

### **Article 21**

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialised agencies on the measures taken and the progress made in achieving general observance of the rights recognised in the present Covenant.

**Article 22**

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialised agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

**Article 23**

The States Parties to the present Covenant agree that international action for the achievement of the rights recognised in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organised in conjunction with the Governments concerned.

**Article 24**

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialised agencies which define the respective responsibilities of the various organs of the United Nations and of the specialised agencies in regard to the matters dealt with in the present Covenant.

**Article 25**

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilise fully and freely their natural wealth and resources.

**PART V**

**Article 26**

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialised agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

**Article 27**

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

**Article 28**

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

**Article 29**

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being

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bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

### **Article 30**

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars: (a) Signatures, ratifications and accessions under article 26; (b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

### **Article 31**

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

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