

# **Economic, Social and Cultural Rights in Nepal**

## **A Civil Society Parallel Report**

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The Human Rights Treaty Monitoring Coordination Centre (HRTMCC) is a coalition of 63 human rights organizations, functioning as a joint forum for all human rights NGOs in Nepal. It monitors and disseminates information on the status of state obligations to the UN human rights treaties in the form of parallel reports as well as other publications. HRTMCC is also active in domestic lobbying for the protection and promotion of human rights. HRTMCC has previously submitted parallel reports to the UN treaty bodies monitoring CERD, CAT, ICESCR, CEDAW as well as the ICCPR.

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## **FOREWORD**

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Nepal continues to undergo a prolonged transition period. It is currently preparing for elections to its legislature, the Constituent Assembly (CA), and to adopt a new constitution that is expected to complete the socio-political changes that have occurred since the end of the conflict in 2006. Earlier attempts by the CA between 2008 and 2012 failed and triggered widespread political instability, as well as economic and social disruption. Despite these challenges, the people of Nepal still have hope. National politics are expected to stabilize and provide for economic growth and social cohesion. As such, the 2007-2013 period is now marked as a special time in Nepal's history.

As a coalition of Nepal's civil society organisations, the Human Rights Treaty Monitoring Coordination Centre (HRTMCC) has been consistently monitoring the situation of human rights throughout Nepal. Eight Committees within the HRTMCC monitor the realization of the rights codified in all the major UN conventions and covenants to which Nepal is a state party.

This report presents the status and trends of economic, social and cultural rights (ESCR) in Nepal in the April 2007 through July 2013 period. It analyses the ESCR-related state legislation, policies, programmes, and institutional mechanisms, as well as their implementation. This is the third time HRTMCC has provided supplementary and parallel information to the UN Committee on Economic, Social and Cultural Rights (CESCR). The HRTMCC submitted an assessment report to the Pre-Sessional Working Group in 2006, and a parallel report to CESCR in 2007.

The report is the outcome of the collective efforts of a range of organisations and individuals. We would like to thank all members of the HRTMCC ESCR Committee for preparing the report. Our sincere thanks are given to the participants of consultative meetings who provided us with firsthand information as well as insights on the realization of ESCR in Nepal. Thanks are due to everyone who joined the focus group discussions, individual interviews, and discussions throughout the country. We are also thankful to all the organisations and individuals who helped us by sharing their information, insights, and analyses that feed into this report.

Our special thanks go to the members of the writing committee, special contributors and the seasoned insightful guidance from Subodh Raj Pyakurel from HRTMCC secretariat to enrich the quality of the report is highly appreciated. We also thank all the staff members of the HRTMCC Secretariat/INSEC, CSRC and RRN for their tireless efforts in producing the report. We would like to extend our thanks to Ms Elisabeth Wickeri, Executive Director of Leitner Centre, for providing her editorial inputs and to the the Australian Agency for International Development (AusAID), the Lutheran World Federation (LWF) and International Land Coalition, for their kind cooperation and support to prepare this report.

HRTMCC hopes that the report will be useful for the UN CESCR and other relevant agencies to understand and act on behalf of the international community to help improve the situation of ESCR in Nepal.

Thank you.

ESCR Committee  
HRTMCC

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## ACRONYMS

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CA	Constituent Assembly
CESCR	UN Committee on Economic, Social and Cultural Rights
CPA	Comprehensive Peace Agreement
CSO	Civil society organization
CSRC	Community Self Reliance Centre
CTEVT	Council for Technical Education and Vocational Training
DoFE	Department of Foreign Employment
ESCR	Economic, Social and Cultural Rights
FIR	First information report
GECU	Gender Empowerment and Coordination Unit
GoN	Government of Nepal
HABITAT	Human Settlements Programme
HDI	Human Development Index
HRTMCC	Human Rights Treaty Monitoring Coordination Centre
IC	Interim Constitution of Nepal
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
INGO	International Non-Governmental Organization
INSEC	Informal Sector Service Centre
JED	Judgment Execution Directorate
MDG	Millennium Development Goal
MoHPP	Ministry of Health and Population
MoLRM	Ministry of Land Reform and Management
MoLTM	Ministry of Labour and Transportation Management
MoPPW	Ministry of Planning and Physical Works
MoWCSW	Ministry of Women, Children and Social Welfare
MPI	Multidimensional poverty Index
NDC	National Dalit Commission
NGO	Non-Governmental Organization
NHRC	National Human Rights Commission
NHRI	National Human Rights Institutions
NLFS	Nepal Labour Force Survey
NMC	National Muslim Commission
NWC	National Women Commission
PIL	Public Interest Litigation
PMO	Prime Minister's Office
PWD	Person with disabilities
RRN	Rural Reconstruction Nepal
TRC	Truth and Reconciliation Commission
UN	United Nations
UNDRIP	UN Declaration of the Rights of Indigenous Peoples
UNFPA	United Nations Population Fund
UPR	Universal Periodic Review
VDC	Village Development Committee
WFP	World Food Programme

## **EXECUTIVE SUMMARY**

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This is a Parallel Report to Nepal's Third Periodic State Report prepared by Civil Society groups and submitted to the UN Committee on Economic, Social and Cultural Rights (CESCR). Information contained in this report covers the period between April 2007 and July 2013. This report has been prepared on behalf of the Human Rights Treaty Monitoring Coordination Centre (HRTMCC), a coalition of 63 Nepali human rights non-governmental organizations (NGOs), previously known as Human Rights Treaty Monitoring Coordination Committee.

The report is divided into three parts: a general introduction, information on specific articles of the covenant, and special recommendations. The NGO report covers steps to be taken by the government in the future in order to improve the protection and promotion of ESCR in Nepal.

The objective of this Parallel Report is to highlight the situation and issues related to the International Covenant on Economic, Social and Cultural Rights (ICESCR) in Nepal. It analyzes the report submitted by the Government of Nepal (GoN) and serves as a source for the CESCR in considering the State Report. The report reviews and analyses state policies, legislation, programs, and institutional arrangements, as well as their implementation.

A diverse group has been engaged in the preparation of the report. It is prepared in consultation with members of the HRTMCC ESCR Committee as well as other Committees. In addition to desk-based and field research, a wide range of stakeholders, including grassroots people and policy makers were consulted through intensive regional- and national-level workshops and meetings, the results of which were fed into the findings, and helped to identify key areas of concern and recommendations.

Overall, the implementation of the ICESCR in Nepal is very weak. Despite legal and policy provisions made by the state, the realisation of the Covenant in practice remains a distant hope for most Nepali people. Many policies are not translated into practice due to issues ranging from lack of political will, weak capacity, and limited resources. In many cases legal provisions and policies discriminate against women and also minority groups, such as Dalits, persons with disabilities, gender and sexual minorities, and people living with HIV AIDS.

Based on the overall analysis, the report provides following key recommendations to the state:

### **General Recommendations**

- Ensure ESCR as fundamental rights under the new constitution and make specific provisions that ensure ESCR are not restricted under general conditions or widely restricted under states of emergency.
- Take effective steps to implement existing legal and policy provisions as well as the decisions of national courts related to ESCR.
- Fully incorporate international law obligations into Nepali laws by adopting a national human rights action plan.

- Take legal, institutional, and practical measures to ensure equality and non-discrimination in the enjoyment of ESCR rights.
- Ensure the independence and autonomy of national institutions as guaranteed by the constitution and related legislation, and strengthen their capacity by allocating adequate resources.
- Implement recommendations made by the national human rights institutions.
- Review the concluding observations of the CESCR and create inter-ministerial and inter-departmental working groups within the government to implement its recommendations.
- Implement ESCR-related recommendations provided to the government of Nepal by the UN universal periodic review (UPR) process.
- Ratify and implement the Optional Protocol to the ICESCR.

## **Article-Specific Recommendations**

### ***Article 1***

- Ensure the right to self-determination in the new constitution by providing for strong rights for marginalized and excluded peoples, and an inclusive state structure on the basis of equality.
- Amend legal provisions that obstruct equality and inclusion of women, poor, Dalit, Janajati, Madheshi, and other marginalized people in economic, social and cultural affairs.

### ***Article 2***

- Ensure that all discriminatory laws, regulations, rules, directives, policies, and programs are repealed and new legal and policy frameworks are developed to ensure equality for all people.
- Ensure administrative and institutional measures for effective implementation of all international and national obligations, policies, programmes, and agreements that promote the rights of people from different communities and groups.
- Ensure the proportionate representation of Dalits, Janajatis, Madheshi, gender and sexual minorities, Muslims, and people with disabilities at all levels and in all sectors of the state.

### ***Article 3***

- Enact a comprehensive law that combats gender-based violence by covering all issues and forms of violence and ensures the effective implementation of the existing National Strategy and Action Plan against gender-based violence.
- Take effective measures for the investigation and prosecution of violence against women including conflict-era violence. Develop specific programmes by targeting women affected by the conflict.
- Ensure the speedy and accessible delivery of justice for women victims of violence.
- Increase budgetary allocations that directly benefit women. Put in place mechanisms to ensure the effective and proper use of resources to improve government service delivery.
- Ensures women's economic rights especially on land.

#### **Article 4**

- Take necessary measures to strengthen law enforcement agencies, particularly the Nepal Police, with adequate resources and training as well as accountability mechanisms.
- Take effective measures to address the demands of people from various groups towards more inclusive state policies, programmes and structures.

#### **Article 6**

- Take appropriate measures to establish legal and institutional provisions for the effective regulation of foreign employment. Address gender equality in national labour policies related to foreign employment.
- Make specific provisions in the existing labour laws to improve protections in the informal sector and ensure social security. Put in place effective monitoring mechanisms.
- Ratify all relevant ILO conventions, including ILO Conventions No. 81 and 87.
- Take legal, administrative, and other steps towards fulfilling Nepal's international obligations. In particular, amend existing laws once the new constitution has been adopted.
- Make provisions in the law to ensure job security and high standards in the labour force.
- Incorporate the right to work in development policies and the State's resource allocation agenda.

#### **Article 7**

- Ensure the effective enforcement of legal arrangements to reduce the exploitation of workers.
- Take legal and institutional measures to end sexual and other forms of violence against women at the workplace, as well as in foreign employment.
- Take appropriate legal and institutional steps to eliminating all forms of child labour by, among other things, providing adequate resources.
- Minimize unfair labour practices, particularly in relation to women workers, child workers, and bonded labourers.
- Develop and implement social security programmes for all informal and formal sectors, geographical regions, and employees at various levels.
- Take effective steps towards ensuring social protection incentives for workers with respect to maternity leave, old age benefits, workplace injury treatment and compensation, and sickness and dependency benefits, among others.

#### **Article 8**

- Ensure the effective implementation of existing laws and programmes in coordination with various stakeholders including trade unions and human rights organizations.
- Develop legal and institutional frameworks to organize unorganized workers.
- Take specific measures to ensure that trade unions coordinate and collaborate with each other, and engage in substantive issues with employees and employers rather than mere vested political interests.

- Develop effective policies and mechanisms to systematize collective bargaining by involving the government as a facilitator, which could ensure timely implementation of agreements reached between trade unions and businesses.

#### ***Article 9***

- Take measures to introduce adequate social security allowances for unemployed people, people with disabilities, single women, and elderly people to support their livelihoods.
- Promulgate a separate law to define and address issues of social security in a comprehensive and integrated way.
- Give emphasis to equitable social life by adopting a rights-based approach to development and by including the private sector to ensure social security in both the formal and informal sectors.

#### ***Article 10***

- Adopt comprehensive legal measures to ensure the right to establish a family and deal with issues of child marriage, forced marriage, and inter-cast marriage.
- Create protection and assistance mechanisms, particularly for the care and education of dependent children, elderly people, and people with disabilities.
- Formulate and implement policies and programmes to encourage the modification of socio-cultural norms and values that are discriminatory and exploitative against women, children, and other marginalized communities.

#### ***Article 11***

- Enact legal provisions clarifying the distinction between rights in the fundamental rights and directive principles chapters of the constitution.
- Adopt a national policy and legislative framework for the eradication of hunger and realization of the right to food. Create effective monitoring and evaluation mechanisms on land reform and food rights.
- Develop and enforce clear procedures for reporting and facilitating access to effective remedies, either judicial or administrative, for violations of right to food, land, and housing.
- Take measures to ensure equal opportunities for all, particularly for the benefit of homeless and landless people, so-called “backward classes,” and vulnerable groups.

#### ***Article 12***

- Formulate special policies related to health plans for people living with psycho-social disabilities as well as people living with other disabilities.
- Take steps to create access to private hospitals and institutions for poor and disadvantaged groups, and extend health services to the remote areas of the country.
- Recognize right to health, including mental and physical health, as fundamental rights in the new constitution and in other legislative provisions.
- Address the reproductive health needs of women and adolescents girls through comprehensive awareness programmes and make provisions for adequate health service facilities both in the urban and rural areas.

### ***Article 13 and 14***

- Develop appropriate strategies to meet international and national targets for education, including by amending existing legal and policy provisions.
- Develop appropriate plans and programmes and implement them to increase female enrolment throughout primary, secondary, and tertiary education.
- Take necessary measures to allocate adequate resources to effectively implement education sector programmes.
- Provide incentive packages and affirmative action for access to education by poor and disadvantaged families.
- Make education sector infrastructures gender-friendly and suitable to the needs of people with disabilities.
- Ensure coordination among all stakeholders involved in the education sector, including state agencies, national and international organizations, and training institutions by putting in place stronger monitoring mechanisms at the local levels.
- Adopt inclusive and gender-friendly policies to ensure that the education sector is free of discrimination against women and people from various caste/ethnic groups, and geographical locations.
- Take special measures to combat gender-based violence in the education sector.

### ***Article 15***

- Review legal provisions from a cultural rights perspective and amend all discriminatory legal provisions.
- Take measures to streamline all laws and policies in line with the spirit and substantive provisions of the constitution and parliamentary declaration defining Nepal as a secular state.
- Recognize cultural rights as fundamental rights in the new constitution.
- Take effective measures to provide for primary education in the mother tongue of all people, and ensure the appointment of local language speakers or translation services in local government bodies, as well as health, administration, and justice agencies in all districts.

# **Part I**

## **General Information**

## INTRODUCTION

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This is a Parallel Report to the Third Periodic State Report of Nepal (hereinafter referred to as the State Report) prepared by civil society groups and submitted to the UN Committee on Economic, Social and Cultural Rights (CESCR). Information contained in this report covers the period between April 2007 and July 2013. This report has been prepared on behalf of the Human Rights Treaty Monitoring Coordination Centre (HRTMCC), a coalition of 63 Nepali human rights NGOs, previously known as the Human Rights Treaty Monitoring Coordination Committee, with its Committee on ESCR coordinated by Rural Reconstruction Nepal (RRN) and the writing process coordinated by Community Self-Reliance Centre (CSRC).<sup>1</sup>

This report provides comments on the strengths and gaps contained in the Nepal State Report, in order to help the CESCR with factual information as well as to increase state responsiveness in the context of the State's obligations to protect and promote the economic, social and cultural rights of the Nepali people. The report is divided into three parts: general introduction, information on specific articles of the covenant, and specific recommendations. The NGO report covers the recommended steps for the government to take in order to improve the situation of ESCR in Nepal.

### **1.1 Background**

The Preamble of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes, *inter alia*, that economic, social and cultural rights derive from the "inherent dignity of the human person" and that "the ideal of free human beings enjoying freedom of fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as civil and political rights." Furthermore, the Covenant was formulated on the principle of equality and non-discrimination in regard to the enjoyment of all the rights set forth in therein. The Covenant further obligates States to take steps towards the full realization of these rights, and the CESCR has itself stated that these must be "deliberate, concrete and targeted as clearly as possible towards meeting the obligations."

The Government of Nepal (GoN) acceded to the ICESCR in 1991 and submitted its initial report in 1998, six years later than it was due, and presented the second periodic report in 2006. The HRTMCC coordinated and prepared a parallel report in coordination with a group of NGOs and submitted it to the CESCR, and also participated in constructive dialogue process in May 2008. Subsequent to the second periodic report, the GoN submitted the third periodic report to the CESCR on the measures taken to give effect to the ICESCR in June 2011. The report outlines the progress made during the period since the second periodic report submitted in June 2006 and subsequent Concluding Observations made by the CESCR.

### **1.2 Objectives**

The objective of this Parallel Report is to highlight the situation and issues related to ESCR that need to be addressed in Nepal. The report references the report submitted by the GoN. It not only provides information but also forms a working document with

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<sup>1</sup> See Annex 1

information on actual implementation of the ICESCR in the national context. NGOs working on these issues can also use this report as an advocacy document. It will also be useful to monitor the GoN's actions in the future, in view of its commitments and obligations through the recommendations and concluding remarks. The report aims to review and analyse state policies, legislation, programs, and institutional arrangements, as well as information about actual implementation.

Likewise, the report aims at further strengthening the solidarity and joint initiatives of Nepali human rights organizations at national as well as international forums, for better protection, promotion and fulfilment of ESCR in Nepal.

### ***1.3 Process and participation***

A diverse group has been engaged in preparation of this report. As a preparation process within the civil society, a preliminary meeting of HRTMCC decided that CSRC, one of the active members of HRTMCC and ESCR Committee, would undertake the role of coordinating the report writing process.

The report was prepared in consultation with the members of the HRTMCC ESCR Committee and other Committees. A wide range of stakeholders, including grassroots peoples and policy makers were consulted through intensive regional and national level workshops and meetings. Five regional workshops were held in the Eastern, Mid, Western, Far-western and Mid-western regions on 9 June, 12 June, 17 June, 22 June, and 29 June respectively.<sup>2</sup> The workshops hosted intense discussions on the implementation status of the Covenant, challenges faced and action to be taken for effective implementation and improvement in the situation.

Based on the suggestions of the regional workshops, a national-level consultative meeting was convened in Kathmandu on 26 July 2013. The national level meeting studied the issues presented by the regional meetings and forward the necessary comments and suggestions included in the Parallel Report. The Committee held a series of regular meetings among the committee members, report writers, and concerned stakeholders in order to prepare the Report. A core team formed to prepare the Report systematized the writing process in coordination with the HRTMCC Secretariat.

On behalf of coalition, INSEC and CSRC visited several districts to gather first hand information from the communities and vulnerable peoples. The fact-finding missions collected information about the situation through observation, individual interviews, and focus group discussions with community people and other stakeholders at the local level. The major findings of this process, including the national consultation, have been incorporated. Various studies, reports, and information from governmental bodies and international and national nongovernmental organizations were also used in preparing the report.

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<sup>2</sup> See Annex 2

## **STATUS OF ESCR**

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This section provides an overview of the status of ESCR in Nepal in the following major areas: (i) ESCR in the 2007 Interim Constitution (IC); (ii) incorporation of ESCR in the thematic committees of the Constituent Assembly (CA); (iii) ESCR and transitional justice; (iv) the existing normative framework; (v) the role of the judiciary; (vi) the role of national human rights institutions; and (vii) the status of international obligations.

### ***2.1 ESCR in the 2007 Interim Constitution***

During the reporting period Nepal was in a crucial stage of drafting a new constitution for the country. The existing IC from 2007 enshrines a range of economic, social and cultural rights as fundamental rights, which is an important step towards the realization of ESCR. These rights include rights regarding the environment and health (Article 16), the right to education (Article 17), the right of communities to protect and promote their own language, script, culture, cultural civilization and heritage and to receive education in their own languages (Article 17), the right to employment as provided for in the law (Article 18), the right to social security for specified vulnerable groups (Article 18), the right to food sovereignty as provided for in the law (Article 18), the right to property (Article 19), the right to social justice for specified vulnerable groups (Article 21), the protection of the minors from use in the hazardous works and army, police, or conflict (Article 22), the rights of disabled children to special assistance (Article 22), rights against exploitation (Article 29), labour rights, including the right to proper work practices, and the right to form trade unions, organize, and engage in collective bargaining in accordance with law (Article 30).

As noted above, each of the rights are restricted by the addition of the phrase “in accordance with law.” This limitation runs counter to the jurisprudence of fundamental rights and constitutionalism. International practice and jurisprudence demands that fundamental rights cannot be limited by domestic standards. Citizens must be able to benefit from their fundamental rights, and the State cannot constrain that ability by turning to domestic standards. However, the major political parties, including the United Community Party of Nepal (Maoist), Nepali Congress and the Communist Party of Nepal (Unified Marxist Leninist), as well as the then-government included this restrictive phrase, therefore limiting the application of fundamental rights.

### ***2.2 ESCR in thematic reports of CA***

Nepal’s 2007 IC laid out plans for a new constitution through the election of a CA in April 2008. Though dissolved in May 2012 without completing the new constitution, various thematic committees of the CA had prepared and submitted their preliminary drafts and concept papers for the new constitution.

The Fundamental Rights and Directive Principles Committee of the CA delivered its draft texts in 2009. The chapter on fundamental rights contains proposed rights provisions including a variety of articles that are directly related economic, social and

cultural rights.<sup>3</sup> The committee produced draft text in the area of ESCR and equality. A broad range of ESCR was included and the equality rights of many disadvantaged groups were recognized. However, the draft concept paper was not entirely in line with international human rights law. The texts restrict judicial review regarding substance and the effect of legislation and government action. Whereas the courts should be able to look at the historical causes of discrimination against disadvantage groups, the drafts restrict it by examining only formal distinctions in legislation.<sup>4</sup>

The draft included range of ESC rights for marginalized, disadvantaged and vulnerable groups and the provisions guaranteed “special opportunities” for those people with respect to education, health, employment, and social security. However, these benefits are jeopardized by the uncertainty in the wording of the articles themselves, which may make them subject to being prescribed by subsequent law. This restricts the full enjoyment of ESC rights. Further, the draft does not also contain any clear provisions on remedy and reparations. Remedies for human rights violations are unique, specialized, and need specific provisions. Reliance on a generic remedy provision imported from elsewhere in civil law cannot provide full range of remedies which human rights violations may require.<sup>5</sup>

The supremacy clause proposed in Article 1 in the concept paper of the CA Constitutional Committee makes clear that the fundamental rights provisions are paramount to legislative provisions.<sup>6</sup> However, this wording fails to make clear that a violation can also result when the state fails to discharge its constitutionally imposed obligations.<sup>7</sup>

### **2.3 ESCR and Transitional Justice**

Nepal's April 2008 CA election was a climactic end to a 12-year conflict. As the country transitions to peace, efforts are underway to ensure that perpetrators of killings, abductions and torture are held accountable. While these goals are valid and necessary, transitional justice mechanisms must not continue to neglect economic and social justice issues, which are also compelling needs in the post-conflict setting. Economic and social injustices are both a cause and consequence of Nepal's conflict, as the deep commitment reflected in Nepal's peace agreement to addressing this injustice demonstrates. This is juxtaposed with international and local transitional justice efforts that concentrate overwhelmingly on civil and political rights.<sup>8</sup> Yet both the government and Maoists committed violations of ESCR under international human rights and humanitarian law during the time of the conflict. These included the destruction of social and physical infrastructure, restriction of food supplies in the poorest regions, arbitrary taxes and the requisitioning of accommodation and food, targeting of Dalits and women by Maoists and government reprisals for cooperation, and economic exploitation of child soldiers and kidnapping of teachers and students by the Maoists.<sup>9</sup>

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<sup>3</sup> ICJ. 2010. *Nepal's Fundamental Rights Committee's Draft Provisions Regarding Equality Rights and Economic, Social and Cultural Rights: An Assessment and Some Recommended Changes*. Geneva: International Commission of Jurists. p. 2

<sup>4</sup> Ibid

<sup>5</sup> Ibid. p.11

<sup>6</sup> All laws inconsistent with this constitution shall, to the extent of such inconsistency, be void.

<sup>7</sup> ICJ. 2010. Op. cit. 3. p.12

<sup>8</sup> Pasipanodya, Tafadzwa. 2008. *A Deeper Justice: Economic and Social Justice as Transitional Justice in Nepal*. In, *International Journal of Transitional Justice*. UK: Oxford. pp. 378-397

<sup>9</sup> Bhattarai, Anand Mohan. *Constitutional Rights and Social Exclusion in Nepal*. In, *International Journal on Minority and Group Rights*. [www.jus.uio.no/smr/english/people/aca/malcolml/nepal-langford-and-bhattarai.pdf](http://www.jus.uio.no/smr/english/people/aca/malcolml/nepal-langford-and-bhattarai.pdf)

The 2006 Comprehensive Peace Agreement (CPA) that ended the armed conflict in November 2006 is exceptional for its emphasis on ensuring social and economic justice. The text not only calls for “political, economic and social transformation,” but also demands the end of discrimination, introduction of land reform, recognition of ESCR and positive action to support “economically backward classes”. Further information about civil and political rights in Nepal can be found in a report submitted in May 2013 by the HRTMCC to the Human Rights Committee on the implementation of the ICCPR.<sup>10</sup>

#### ***2.4 Existing Normative Framework***

Long-standing discrimination and inequality remain deeply rooted in Nepal and have been recognized as key to the root causes of Nepal’s armed conflict. Addressing the economic and social disparities flowing from discrimination and resulting in a lack of enjoyment of ESCR is crucial for a successful transition from conflict to peace and democratization in Nepal. Both the 2007 IC and the 2006 CPA signed between the GoN and the then-opposing political parties acknowledge the significance of non-discrimination and equality as foundational principles for sustainable peace in Nepal. Enormous disparities in access to land, food, health, shelter, water, and other basic needs were among the root causes of the conflict, and continue to be major issues in the post-conflict era since the signing of the CPA. The CPA contains a range of provisions committing the parties to fulfilling ESCR, but do not indicate mechanisms and policies to do so. The focus on the political process leading up to the CA elections, security, and other issues diverted attention from addressing issues affecting ESC rights over the long term. Neither the CA, formed in 2008, nor the failed constitution-making process could ensure the ESC rights of Nepalis.

Several international human rights mechanisms have reiterated the need for more effective implementation of international obligations in Nepal. Major concerns include extreme poverty, especially in rural areas, continuing gender inequalities in spite of legislative guarantees, human trafficking, high unemployment, domestic violence, and child labour. Concerns also note the lack of a national housing policy, caste-based discrimination, lack of access to justice, and primary education as well as poor health services.

##### ***a. Constitutional Provisions***

The 2007 IC has set up a very bold framework of enforceable rights that incorporates many ESCR elements. Compared to its predecessors, the 2007 constitution is progressive in incorporating ESCR as fundamental rights. Some of these are the right to equality and non-discrimination, the right to a healthy environment and free basic healthcare, the right to education and culture, the right to employment and social security, the right against forced labour, slavery, servitude and trafficking, the right to food sovereignty, the right to proper work practices, and the right to form trade unions and to engage in collective bargaining.

The recognition of these rights as fundamental is an important milestone towards enhancing the justiciability of ESCR in Nepal. The constitution gives the Supreme Court with the power to issue appropriate orders or writs for the enforcement of fundamental rights.

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<sup>10</sup> [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/HRTMCC\\_Nepal\\_HRC108.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/HRTMCC_Nepal_HRC108.pdf)

In addition to fundamental rights, the constitution has also inscribed directive principles of state policies that are generally considered as programmatic rights, to be implemented through executive decisions or legislations in phases subject to the availability of resources.<sup>11</sup> These include provisions on the adoption of policies to eliminate discrimination based on class, caste, language, gender, culture, religion, and region while restructuring the state; to increase opportunities for employment and income generation; to eliminate economic and social inequalities; to raise the standards of living of the general public through development of infrastructure for education, health, housing and employment for the population of all regions; to adopt special provisions on health, education, employment and social security for women, children, Dalits, the elderly, persons with disabilities, and tribes on the verge of extinction; and to pursue a policy of making special provisions on the basis of positive discrimination for minorities, landless people, squatters, bonded labourers, persons with disabilities, “backward” communities and sections, and victims of the conflict, including women, Dalits, indigenous peoples, Madheshi, and Muslims.

Elections to the CA were held in May 2008 and a mandate was given to draft a new constitution. Between that time and the May 2012 deadline, unstable politics and frequent changes of the Prime Minister overshadowed substantive issues of the CA, as well as popular aspirations. The frequent reshuffling and formation of government extended political stalemates. The term of the CA was extended four times after its formation in May 2008, through May 2012.<sup>12</sup> The initial two-year span of the CA was extended to four years; that period witnessed at least five governments formed in leadership of various political parties, but failed to adopt a new constitution.

The leaders of the political parties engaged in aggressive politics while the constitution-making process was given a low priority. The issues that were sensitive from the point of view of constitution-writing were sidelined until the last moments. The CA did identify the difficult issues in the process; however, it could not make any headway during its tenure. Due to intentional delay in the writing process, the CA was extended time and again.

In March 2013, a caretaker government headed by the Chief Justice of the Supreme Court was formed with a mandate to hold new CA elections. The government has set the date for 19 November 2013; however, timely drafting of the constitution has been given a low priority by the political parties and uncertainty looms large.

### ***b. Legislative Framework***

Although a comprehensive framework law concerning the full recognition and implementation of ESCR guaranteed by the IC as fundamental rights is still needed, a number of existing laws related to food, health, education, housing and employment implicitly or explicitly substantiate the recognition of ESCR in Nepal.

Some key pieces of legislation related to food, health, housing, employment and education are currently in place. The 1963 Country Code affirms several rights such as right to family, marriage, property and culture. The 1991 Treaty Act states that in cases

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<sup>11</sup> Bhattarai, Ananda Mohan. 2012. *Access of the poor to justice: the trails and tribunals of ESC rights adjudication in South Asia*. In, NJA Journal, Special focus on access to justice for the poor and marginalized groups in Nepal. Kathmandu: National Judicial Academy. p.7

<sup>12</sup> The CA term was extended by one year on 28 May 2010. It was extended by another three months, and again on 31 August 2011 by a further three months. The fourth and final six month term extension of the CA was made on 25 November 2011, which expired on 27 May 2012.

where domestic legal provisions are inconsistent with the provisions of an international treaty that Nepal is party to, the provisions of the treaty prevail over the inconsistent laws.

There is still no effective national mechanism for remedies of ESCR violations as the state identifies ESCR as subject to progressive realization. This “progressive realization,” cannot be misunderstood as justifying inaction or action that renders the state's obligation meaningless. Rather, as stated by the CESCR, it refers to the need for flexibility, “reflecting the realities of the real world and the difficulties involved for any country.” The *raison d'être* of the Covenant remains to establish clear obligations for states parties in respect of the full realization of the rights in question.<sup>13</sup>

## 2.5 Role of Judiciary

The Nepali judiciary has played a proactive role in building significant jurisprudence concerning ESCR. Through its decisions the Court has instructed the executive and legislative bodies of the state to formulate laws and policies; constitute committees to study and report on these matters; and in appropriate cases, has issued orders on the basis of such reports and recommendations.<sup>14</sup> The Supreme Court has also continued to issue a number of decisions that work towards strengthening a broad range of rights, for example, gender equality and gender justice, economic and cultural rights, health rights, right to employment, and the right to food, among others. The court further elaborated that fundamental rights create direct and immediate obligations on the state. These rights are not subject to the availability of resources or the will of state institutions to implement them.<sup>15</sup> This has provided guidance to the government and the parliament to constitute laws and policies in ensure full enjoyment of ESCR.

The judiciary has been implementing a five-year strategic plan to strengthen stakeholder communication, improve access justice and public trust, and ensure the execution of judgments. These interventions support the overarching vision of the court to establish a system of justice “worthy of public trust” and of “providing increased accessibility of the people including the disempowered, minorities, minorities and indigents to judicial services at the most local level.”<sup>16</sup> The judiciary has also established the Justice Sector Coordination Committee to provide accessible justice to vulnerable and marginalized peoples. To execute and monitor the decisions of the courts, a Judgment Execution Directorate (JED) has also been established. Despite these positive developments, however, implementation of policies as well as judicial decisions remains a major problem. According to the JED, only 40% of the decisions of district courts have been implemented.

Non-implementation of court verdicts remains a major challenge for the judiciary, especially where the courts are themselves reluctant to implement their rulings. This in turn obstructs the provisions for speedy and accessible justice to the citizens.

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<sup>13</sup> Speech by Richard Bennett, OHCHR Representative, at the NGO Federation of Nepal's Interaction Programme on Community and Economic, Social and Cultural Rights, 17 June, 2009, Kathmandu, [http://nepal.ohchr.org/en/resources/Documents/English/statements/HCR/Year2009/Jun\\_09/2009\\_06\\_17\\_ESCR\\_Community\\_Rights\\_E.pdf](http://nepal.ohchr.org/en/resources/Documents/English/statements/HCR/Year2009/Jun_09/2009_06_17_ESCR_Community_Rights_E.pdf)

<sup>14</sup> Bhattarai, Ananda Mohan. 2012. Op. cit. 11. p. 9

<sup>15</sup> OHCHR Nepal. 2011. *Indicators for Monitoring Economic, Social and Cultural Rights in Nepal: A User's Guide*. Kathmandu: Office of the High Commissioner for Human Rights. p. 21

<sup>16</sup> SC. 2009. *Second Five-year Strategic Plan of Nepali Judiciary 2009/10-2013/2014*. Kathmandu: Supreme Court of Nepal, p.11

## **2.6 Role of National Human Rights Institutions**

The National Human Rights Commission (NHRC) was established in 2000 through legislation and was elevated to a constitutional body in 2007. While much delayed due to political stalemate, the CA enacted the NHRC Bill in its capacity as Legislature-Parliament pursuant to Article 83 of the IC, and was finally passed in January 2012. However, many provisions in the NHRC Act run contrary to the spirit of the Constitution and in some cases directly constrains constitutionally-guaranteed freedoms of the Commission. The NHRC's independence and autonomy are not guaranteed under the Act and already looks to be under threat. Financial control of the Commission is in the hands of the government: the government must approve all expenses, the government issues all checks, and the NHRC cannot alter budget headings without government approval. The biggest procedural flaw that threatens to significantly undermine the protection of human rights in Nepal is the Act's provision that requires all cases to be filed within six months. In addition to the time it takes to gather information needed for such a submission, it is also widely recognized that it takes time before victims of human rights violations are psychologically capable of moving forward to file complaints and provide accounts of violation.<sup>17</sup>

The recent amendment in the Act relating to the NHRC has resulted in lack of independence of the watchdog body since several components of the Paris Principles have been compromised, including financial autonomy.

The NHRC issues a large number of recommendations but these are generally not implemented and victims await justice for years. In some cases, compensation is ordered victims and their families. Very few recommendations are actually implemented, particularly those that recommend prosecution and departmental action against perpetrators. Out of all cases handled and recommended for action by the NHRC in May 2011, 55% have been partially implemented; 28% fully implemented, and 17% rejected.<sup>18</sup> This trend erodes the value of the NHRC and public confidence in it could decline.

The National Women Commission (NWC) was established by an executive order in 2002 for the protection and promotion of the women's human rights. The Commission was elevated to a statutory body by the NWC Act in 2007 with a wider mandate to work on those critical issues. Similarly, the government formed the National Dalit Commission (NDC) in March 2000 under an executive directive with major responsibilities to promote and protect the rights of Dalit people by eliminating caste-based discrimination against them. In May 2012, the government formed a National Muslim Commission (NMC) to contribute to strengthening human rights protection of Muslim people. Despite the formation of these institutions, however, the government has failed to ensure the independence, transparency, and autonomy of the commissions. Although the NHRC, NWC, NDC, and NMC are established as NHRIs the State has not ensured the equal status of those commissions. As human rights institutions, all the NHRIs should be given equal legal status in order to comply with the Paris Principles. Yet this internationally recognized standard has been ignored in practice.

Frequent changes in the government, political intervention, and an ongoing political stalemate have weakened the national institutions. Similarly, the relationship between

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<sup>17</sup> New Act a Blow to Human Rights in Nepal, March 14, 2012, <http://asiafoundation.org/in-asia/2012/03/14/new-act-a-blow-to-human-rights-in-nepal/>

<sup>18</sup> NHRC. May 2011, Human Rights Bulletin, Kathmandu: National Human Rights Commission

NHRIs and civil society organizations (CSOs) has also weakened in recent years, though the Paris Principles recognize that relationships with civil society can strengthen the independence and pluralism of NHRIs. A good relationship between the two can also strengthen both by deepening public legitimacy, ensuring that they reflect public concerns and priorities, and giving them access to expertise and valuable social networks.

## ***2.7 Status of International Obligations***

Nepal is Party to most major international human rights instruments. It was the first country in the South Asian region to accede to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at Abolition of the Death Penalty. As State Party to these international instruments, Nepal has, at least on paper, shown full commitment towards its international obligations for the protection and promotion of human rights. To date, Nepal has become a party to 20<sup>19</sup> major international human rights instruments.

Nepal ratified the ICESCR on 14 May 1991. As State Party, Nepal has the obligation to respect, protect, and fulfill all human rights enumerated in the treaty. It shall take executive, legislative, judicial, and other measures for effective implementation of the ICESCR.

However, contradictory legal and constitutional provisions sometimes create obstacles for effective enforcement. On the one hand, Nepal's 1991 Treaty Act explicitly provides for the enforcement of a Convention or treaty to which Nepal is a party notwithstanding contravening domestic legal standards.<sup>20</sup> However, Article 1 of the Constitution stipulates the supremacy of the Constitution and declares that all other laws inconsistent with it are void to the extent of such inconsistency.

The reporting obligation of the State is also unsatisfactory. Most reports submitted to the UN treaty bodies are submitted late. In this sense, Nepal has a weak record on timely submission of periodic reports on the status and progress made in respect of various UN human rights conventions. Similarly, implementation of the recommendations provided by various treaty bodies and by the Universal Periodic Review (UPR) is also lacking.

### **a. CESCRC Concluding Observations**

Nepal became party to the ICESCR without any reservation. The initial report was submitted in 1998, after six years of accession, which was overdue by five years. The second periodic report of the GoN was submitted amidst historic changes in Nepal in June 2006. The second report yielded interesting remarks and recommendations in the Concluding Observations by the CESCRC. The concluding comments made on 16 May 2007 for example, provide specific remarks on the positive aspects of the GoN report, raises several concerns, and offers recommendations to the State Party. The Committee

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<sup>19</sup> Nepal and United Nations: 1955-2012, <http://www.mofa.gov.np/en/nepal-and-the-united-nations-1955-2012-117.html>

<sup>20</sup> Section 9 of the Act provides that “in case any provision of a treaty to which the Nepal has become a party following its ratification, accession, acceptance or approval by the parliament, contradicts with the provisions of current laws, the latter shall be held invalid to the extent of such contradiction for the purpose of that treaty, and the provisions of the treaty shall be applicable in that connection as law of Nepal”. The Act also provides for domesticating the provisions of international instruments into national situation.

expressed its satisfaction for the submission of the report in timely manner and replies to the committee's questions. The Committee, however, also regretted that the information provided was, in some cases, not sufficiently detailed to advance its understanding of the level of enjoyment of the rights provided for in the Covenant.

An overview on the implementation of the CESCR concluding comments is annexed to this report.<sup>21</sup>

## **b. Universal Periodic Review Recommendations**

On 25 January 2011, Nepal's human rights record was reviewed for the first time under the UPR mechanism. On that occasion, peer countries raised concerns about ongoing human rights challenges and formulated recommendations to improve Nepal's human rights framework. Recommendations notably concerned ongoing reports of torture and violence by law enforcement agencies, the persistence of gender-based violence, continuous caste-based discrimination, insecurity for human rights defenders in the context of overreaching impunity for past and present human rights abuses and in light of a failing police and judicial systems in the country.<sup>22</sup>

Nepal received a total of 135 recommendations, out of which 56 recommendations were accepted, 28 recommendations were already implemented or in the process of implementation, and for 36 recommendations, the GoN took time to review and responded that remarks would be submitted at the 17th session of the Human Rights Council. Nepal subsequently rejected 15 recommendations and submitted its response at the 17th Session on 1 June 2011. The Nepali State has the primary responsibility to implement the recommendations it accepted as part of the review as the UPR ensures that all countries are accountable for their progress or failure in implementing these recommendations.

In April 2011 the GoN developed a "National Action Plan on Implementation of UPR Recommendations" listing activities to be undertaken to concretize the various recommendations and the government bodies in charge of the implementation. Although that initiative could be seen as a welcome move to comprehensively and in a coordinated manner address the recommendations, the vague language and lack of concrete commitments in the plan ensured its ineffectiveness. It does not specify any timeframe for implementation other than "due course of time" or "on-going," nor does it provide measurable indicators of results. Civil society organizations were not consulted at the time of the formulation of the plan and were merely "informed" of its content, in clear contradiction of Nepal's assertion that it "remains committed to engage the civil society and stakeholders in the promotion and protection of human rights."

The recommendations have not yet been fulfilled. The GoN has failed to take appropriate steps in good faith and within an appropriate timeframe to translate most of the recommendations into concrete progress human rights in Nepal. In the 2011-2012 period, hindrance of peace and the constitution-making process, as well as reluctance to introduce accountability for conflict-related human rights violations, contributed to human rights concerns falling low on the agenda of government priorities.

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<sup>21</sup> See Annex 3

<sup>22</sup> Nepal: Delays in the Implementation of UPR Recommendations, Asian Human Rights Commission, 3 February 2012, <http://www.scoop.co.nz/stories/WO1202/S00073/nepal-delays-in-the-implementation-of-upr-recommendations.htm>

This failure to improve Nepal's human rights record not only underlines government negligence toward the protection of human rights but more importantly points at larger institutional failures. All recommendations, if they are to be implemented meaningfully, require institutional changes to foster the development of a strong and independent State capable of reaching out to all the citizens, throughout the country.

An overview on the implementation of ESCR-related UPR recommendations is annexed to this report.<sup>23</sup>

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<sup>23</sup> See Annex 4

## **Part II**

# **Specific Information Relating to the Implementation of Articles 1-4 and 6-15 of the Covenant**

## **ARTICLE 1 - RIGHT TO SELF-DETERMINATION**

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### **Situation**

The 2007 Nepal IC provides for progressive restructuring as well as decentralization and devolution of state power and resources.<sup>24</sup> It calls for the country to be restructured along federal lines with the aim to better ensure access to resources, improved equality amongst citizens, and inclusion of excluded and marginalized people in the mainstream economic, social and cultural affairs, among other goals.

The right to self-determination remains a highly debated concept in recent years.<sup>25</sup> It is linked to restructuring of the State where it was one of the most controversial issues in the CA discussions.<sup>26</sup> Different groups and people in Nepal have different interpretations of the right, including that it is a means to achieve a more inclusive and responsive state, to ensure better access to resources for poor and excluded peoples, to have efficient mechanisms for the economic development at the local level, and to increase dignity of human persons by achieving better space for enjoying ESCR. Some suggest that the debate around the right to self-determination was one of the factors dividing the CA and contributing to its failures. Members had diverse views, both in terms of understanding the definition and in terms of exploring how to institutionalize it.

The CA thematic committees, in their concept papers and draft reports, proposed some specific provisions to ensure right to self-determination.<sup>27</sup> However, the CA dissolution dismissed any chance for those proposals to come to any formal declaration. There was also a great deal of inconsistency in the provisions proposed by different thematic committees. For example, whereas the State Restructuring Committee stated that the right to self-determination would be taken up in the fundamental rights section of the constitution, the Fundamental Rights and Directive Principles Committee failed to take the issue up clearly. Lack of coordination among the CA committees was also one of the major causes triggering contention vis-à-vis right to self-determination.

Nepal has made some progress on the promotion of the right to self-determination by, for example, ratifying ILO Convention No. 169, constitutional provisions for proportional representation in the CA for people from different caste and ethnic communities, and the declaration of a secular and republic nation. This is how the right to self-determination has been interpreted in the national political context.

Yet another area of ensuring right to self-determination in practice is access to resources. The 1999 Local Self-Governance Act foresees a system of self-governance at

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<sup>24</sup> Article 138 and 139, Interim Constitution of Nepal, 2007

<sup>25</sup> The Himalayan Times, 5 May 2013

<sup>26</sup> Centre for Constitutional Dialogue, <http://www.ccd.org.np/index.php?action=news&conid=540>

<sup>27</sup> For example, the CA thematic committee on State Restructuring proposed a provision (Article 12) that indigenous people, indigenous nationalities and Madheshi should have right to self determination as a form of rights relating to political life, culture, religion, language, education, information, communication, health, housing, employment, social security, economic activities, trade, land, resource mobilization and environment at the local level. The Committee stressed that these rights would be ensured by promulgating certain laws and integrated into fundamental rights. Similarly, the Committee on Fundamental Rights and Directive Principles came up with a provision on right to Social Justice (Article 27) which proposes to ensure equality for indigenous nationalities, minority communities, Madheshi and disadvantaged groups.

the local level. However, access to resources by poor, vulnerable, and marginalized people has always been difficult. As a state party to major international human rights treaties including the ICCPR and ICESCR that have provisions for right to self-determination, the state has obligations to ensure it. However, given the current context, there is a little hope of its realization.

People also remain concerned about the right to self-determination and lack of seriousness on the part of the State to address public demands for better dignity and rights.<sup>28</sup> Organizations of indigenous peoples have been demanding that state restructuring should be guaranteed through federalism that takes into account the notion of self-determination.<sup>29</sup>

The right to self-determination is also linked to the issue of representation and inclusion of diverse people in the state systems, such as political parties, parliamentary mechanisms, and civil service. According to the latest population figures, Dalits and ethnic minority peoples in Nepal comprise over 40% – Dalits comprise approximately 12% and ethnic people comprise approximately 32% of total population.<sup>30</sup> Though they have some moderate representation in the CA, representation in the civil service and in other sectors is nominal.

#### **Indigenous peoples clamour for identity**

Demand self-determination, natural resources rights

KATHMANDU: Speakers at a programme today asked indigenous people to fight for their identity and urged the government to ensure their rights while drafting the new constitution.

Prithvi Subba Gurung, President of Indigenous Caucus said the indigenous Constituent Assembly (CA) members are demanding rights on the basis of secularism, multi-lingual policy, proportionate inclusive representation, ethnic autonomous regions along with the right to self-determination and pre-emptive rights on natural resources.

There are 218 indigenous CA members.

Addressing a programme organized by Lawyers' Association for Human Rights for Nepalese Indigenous People (LAHURNIP) and Inclusive Media Foundation, he said there should be meaningful proportional and inclusive representation of indigenous people in every sector. He demanded an end to discrimination against them and asked the government to provide them the right to use their mother language as official language.

Gurung further informed that they were preparing a paper on the rights of indigenous people to be incorporated in the new constitution, and added that they were working to give national identity to every indigenous language.

“We are working to increase access to education in mother tongue for indigenous groups for their holistic development,” said the president, adding, “We are also working for individual and group rights for their social, economic, political and religious development.”

Shankar Limbu, Secretary of LAHURNIP said the indigenous people should fight for their identity and ideology. The rights of indigenous people should be based on International Labour Convention 169 and United Nations Declaration on the Rights of Indigenous People, added Limbu.

*Source: The Himalayan Times, 27 February 2011*

<sup>28</sup> The Kathmandu Post, 16 December 2011

<sup>29</sup> For example demands by Nepal Federation of Indigenous Nationalities (NEFIN), [www.nefin.org.np](http://www.nefin.org.np)

<sup>30</sup> CBS and NPC. 2011. *National Population and Housing Census 2011(National Report)*. Kathmandu: Central Bureau of Statistics and National Planning Commission

## **Critical areas of concern**

**Understanding:** The right to self-determination has not been well-understood by a wide range of people as an ESC right. It has instead been used to gain political power by political parties. Advocates of the right to self-determination have not been able to promote the notion beyond their vested interests.

**People first:** People have to be the centre of development, politics, and social and cultural affairs. They must have access within their own country and be able to enjoy their own languages, religion and culture. However, the GoN has failed in appropriately implementing the right to self-determination in this regard.

**Lasting solutions:** The current approach to addressing the right to self-determination has been purely reactive. The demands of various groups are addressed through dialogue only when the situation reaches an extreme, including through violence. Lack of constitutional provisions, the failure of the CA, and the absence of government mechanisms to seek ways to ensure long-term solutions to the problems facing the people have hindered implementation of the right to self-determination.

**Equality and inclusion:** The right to self-determination is taken as a fundamental for various groups who seek equality and inclusion in access to resources and representation in state affairs and in the political arena. Formal approaches to equality fail to bring excluded groups into the mainstream system of economic, social and cultural affairs. Local diversity has not been taken seriously while promoting inclusion, which has left large number of the complaints of excluded groups unheard.

**Planning and implementation:** Proper planning for quality representation, services and benefits to the people are not systematically addressed by the GoN. Lack of information or dissemination about this right and the interpretation of the right on the basis of political affiliation alone has increased dissatisfaction.

## **Recommendations**

- The government should take measures to increase the common understanding of the right to self-determination and to address the “politicization” of the right. These measures should be institutionalized with an effective implementation mechanism, as well as monitoring and adaptation to address emerging concerns of people at all levels of society.
- Legal provisions, substantive government programmes, and greater political will at the central and local levels must be enacted to ensure the participation and leadership by people in all economic, social, and cultural affairs.
- Ad-hoc solutions to peoples’ concerns do not have long-lasting results. Therefore, the GoN must practice a bottom-up approach to governance, address public grievances through effective mechanisms and by promoting peaceful means. The GoN should also ensure access to resources for poor and marginalized peoples, their representation in decision-making processes and the development of leadership capacity.

- The GoN must take special steps to ensure the equality of people by bringing excluded groups into all sectors and by reducing discrimination and inequality based on gender, caste, ethnicity, religious belief, and geographical origin.
- The GoN should amend legal provisions that obstruct equality and inclusion of women, poor, Dalit, Janajati, Madheshi, and other marginalized people in political, economic, social and cultural affairs.
- The GoN should create targeted programmes on the rights of women, poor, Dalit, Janajati, Madheshi, and other marginalized people to development.
- The government should explicitly ensure right to self-determination in the new constitution by adequately dealing with the rights of marginalized and excluded people and state structuring on the basis of people's choice for equality and inclusion.

## ARTICLE 2 - EQUALITY OF RIGHTS AND PROTECTION OF RIGHTS

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### Situation

Social exclusion and discrimination remains a prominent part of Nepalese history and has deep roots in cultural traditions. Discrimination against Dalits, women, Madheshi, indigenous people, persons with disabilities, Muslims, and sexual and gender minorities is significant. Grounds for discrimination include caste, religion, ethnicity, gender, and geographical region. Furthermore these groups continue to be severely underrepresented in most of the public sectors including decision-making bodies, civil services, the judiciary, law enforcement agencies, and local authorities.<sup>31</sup>

### *Caste-based discrimination*

The caste system is characterized by denial, discrimination, deprivation, and domination. Under the caste structure, those in the lowest category—Dalits—are regarded as “untouchable.” This form of discrimination denotes a rigid system of social stratification that is descent-based and hereditary in nature. It is typically associated with notions of “purity” and “pollution” that are deeply embedded in societal norms and practices. Caste divisions are maintained through marriage, social interaction, housing and employment, and are often coercively reinforced through the practice of social ostracism, boycotts, and violence.<sup>32</sup>

According to the 2011 Nepal Census, Dalits comprise of approximately 13% of the total population. According to the 2011 Nepal Living Standards Survey, almost half of the country’s Dalits population live in poverty, while the average for the whole country is 31%. The average life expectancy for Dalits is far lower than the national average of 66.16, with males and females living just 51 and 58 years, respectively.<sup>33</sup>

Though the Civil Code of Nepal (*Muluki Ain*), adopted in 1963, declared the practice of untouchability to be illegal, the Code was unclear about penalties for people who nonetheless discriminate. The 2007 IC explicitly prohibits the practice of untouchability and criminalized the practice.

The Legislature-Parliament adopted a separate law entitled “Caste Discrimination and Untouchability (Offence and Punishment) Act” in 2011, which is considered a legislative milestone not only for Nepal, but also for the entire sub-region. It marks a positive step in promoting equal access to justice to marginalised groups, especially among the Dalit population.

Although the new law criminalises caste-based discrimination and untouchability practices, increases penalties for public officials found to be responsible for discrimination, and requires compensation to victims, several challenges remain to make the law effective. The text of the legislation itself has weaknesses, lacking clear

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<sup>31</sup> Nepal NGO Coalition for UPR. 2010. *Report of non-government organizations on Universal Periodic Review* submitted to the Human Rights Council

<sup>32</sup> JURI. 2012. *Report of the interaction Program on “One year of Anti-Untouchability law”*. Kathmandu: Justice and Rights Institute Nepal

<sup>33</sup> [www.indexmundi.com/nepal/life\\_expectancy\\_at\\_birth.html](http://www.indexmundi.com/nepal/life_expectancy_at_birth.html)

definitions of “untouchability” and “caste-based discrimination.”<sup>34</sup> Further, there is underreporting of cases of caste-based discrimination. Many incidents are settled through mediation or not addressed at all. A big challenge is to bring everyone within the formal justice system. To have real impact, the new Act must be accompanied by systematic reforms that address the deeply entrenched prejudices and structural failures that make the justice system inaccessible to the majority of Nepali people, and especially for those from the Dalit community. Finally, there still remain many discriminatory provisions in other laws that are incompatible with international human rights instruments and these equality provisions.

#### Problems in renting rooms

Binod Ghimire

KATHMANDU, FEB 11 - Suresh Sunar, a goldsmith, rented a flat in the Boudha area for two years in August 2012. It had hardly been a week since he took up the residence when his landlord began to put pressure on his family to move out as Sunar’s caste, Dalit, had been disclosed.

Sunar refused to leave the house and sought the help of the National Dalit Commission (NDC). After the Commission’s directives, Sunar’s family was allowed to stay on for two years as per the contract.

Similarly, Gopal Nepali, hailing from the Badi community in western Nepal, has been living under a pseudonym for the past decade, afraid that his landlord will expel him upon discovery that he is a Dalit.

Though the caste system was constitutionally abolished in the country half a century ago in 1962, most Dalits residing in the Capital face situations similar to those of Sunar and Nepali. “We estimate that over 80 percent Dalits have negative experiences as tenants in the Valley,” said Udaya Ojha, chief of the Human Rights Desk at the NDC. According to Ojha, even the Commission officials are victims of caste-based discrimination. She revealed that former Legal Officer Prakash Nepali and helper Bishnu Damai (name changed) had been faking their surname as Thapa.

“Although there has been a great political transformation in the country, people’s mentality has not changed,” said Sushila Sirpaili, NDC chairperson.

The lack of proper mechanisms to take legal action against discriminating landlords and the Dalit community suppressing itself from making complaints to the concerned authorities are the two major reasons for the existing disparities, according to NDC officials. The Caste Based Discrimination and Untouchability Offence and Punishment Act envisions one month to three years imprisonment and fines ranging from Rs 500 to Rs 25,000 for perpetrators of caste-based discrimination. “The only solution to this problem is for the Dalit community to march forward and demand their rights and justice,” said Ojha.

According to the census report (2011), Dalits constitute some 13 percent of the total population.

Source: *The Kathmandu Post*, 12 February 2013

#### *Discrimination against indigenous peoples*

Nepal’s population is ethnically very diverse, with more than a third of the population belonging to indigenous peoples. According to the 2011 Census, indigenous peoples comprise approximately 37% of the total population. The majority of indigenous nationalities lag considerably behind the national average in terms of economic advancement and other human development indicators. Estimates show that over half the population of indigenous nationalities lives below the poverty line. Structural discrimination, manifesting in low levels of political representation, lack of access to

<sup>34</sup> NDC and OHCHR Nepal. 2010. *Speak Up, Stop Discrimination: NDC and OHCHR-Nepal Observations on the Untouchability Bill*. Kathmandu: National Dalit Commission and Office of the High Commissioner for Human Rights in Nepal. p.4

education, training, and employment opportunities have perpetuated and deepened the poverty of indigenous peoples.<sup>35</sup>

The 2007 IC includes greater protections for indigenous peoples and guarantees a right to social justice, which gives indigenous nationalities and others the right to participate in state structures on the basis of principles of proportional inclusion.<sup>36</sup> However, there has been no legislation specific to indigenous peoples implementing these rights.

The main challenges to overcoming the poverty of indigenous peoples include: eliminating the centralization of power and authority; reducing the control of social, political, and economic power by specific caste groups; mainstreaming gender, linguistic, cultural, religious, and regional diversity; targeting specific programmes for the development of indigenous peoples; and implementing ILO Convention No. 169 and UN Declaration of the Rights of Indigenous Peoples (UNDRIP).<sup>37</sup>

#### **Loss of Lands**

A recent case in point is that of indigenous Bote community in Palpa district of southwestern Nepal that has been affected after Kali Gandaki Hydroelectric Project dried up the river in Yamghaa village. This has left sixteen Bote families living off the river through their traditional livelihoods of fishing and ferrying in dire conditions. Consequently, the families have not been able to afford education for their children and that has encouraged migration of males for foreign employment and child marriage of girls. Botes of surrounding villages are also struggling to make a living due to loss of traditional occupations.

*Source: National Coalition against Racial Discrimination, 2011*

#### *Discrimination against gender and sexual minorities*

Sexual and gender minorities in Nepal are discriminated against and experience a wide range of human rights violations. These vulnerable groups have limited legal protections. However, for the first time in the history of Nepal, the 2011 national census included a third option in the gender categories that citizens can select, opening the way for stronger recognition of sexual and gender minority rights. The impact of this in practice was limited, however, because the census failed to record third gender citizens along with other meaningful data sets, and there were widespread reports of discrimination during the enumeration. Stronger official protection of the rights of sexual and gender minorities' rights follows a landmark 2007 Supreme Court decision which also resulted in improving other rights, including greater access a range of health and legal services.<sup>38</sup> During the UPR process, the GoN accepted number of recommendations relating to sexual and gender minorities and the implementation of the Supreme Court decision. The judgment remains largely unimplemented due to a lack of awareness among authorities and the failure of the Ministry of Home affairs to issue clear directives on its interpretation.<sup>39</sup>

<sup>35</sup> CCD. 2009. *Rights of Indigenous Peoples: Nepal Participatory Constitution Building Book Series No. 6*. Kathmandu: Centre for Constitutional Dialogue. p.4

<sup>36</sup> Article 33 (d1), 35 (10 and 14), 144 (4A)

<sup>37</sup> <http://www.ifad.org/english/indigenous/pub/documents/tnotes/nepal.pdf>

<sup>38</sup> Nepal census recognizes third gender for the first time ([http://www.undp.org/content/undp/en/home/ourwork/hiv-aids/successstories/Nepal\\_third\\_gender\\_census\\_recognition/](http://www.undp.org/content/undp/en/home/ourwork/hiv-aids/successstories/Nepal_third_gender_census_recognition/))

<sup>39</sup> A/HRC/19/21/Add.4

### **Third gender applicant denied passport**

Although Nepal's political and administrative systems have recognized the rights of citizenship for a "third gender," an official here has denied a passport to a proclaimed third gender applicant.

Dilu Bhujuda, 45, of the Myagdi district, applied for a passport more than a month ago, submitting a citizenship certificate that recognized her as "third gender." She needed the passport to go aboard for a job.

Bhujuda was the first proclaimed third gender to apply for the MRP since it came into effect in Nepal in December.

When Bhujuda contacted the Ministry of Foreign Affairs Sunday afternoon about the status of her passport application, officials there told her there was no provision to issue the passport because the current Machine Readable Passport system in use internationally recognizes only male or female under the "sex" category. "In existing facility, our system only recognize either male or female. We need to change the MRP's software to issue the passport to the third gender," Acting Chief of the Central Passport Office, Tapas Adhikari, told All Headlines News.

Bhujuda immediately called on Sunil Babu Panta, a proclaimed third gender campaigner and lawmaker, and Bhakti Shah, a woman who was sacked by the Nepal Army owing to her sexual orientation, to talk with senior MoFA officials.

The trio met with Foreign Secretary Madan Kumar Bhattarai. Panta is a champion for LGBT causes in Nepal to host gay and same-sex marriages, gay tourism and parades in Nepal on various occasions.

"I advised the fellow friends that we will consult with the Home Ministry in this respect as many legal and administrative hiccups needed to be sorted out," said Bhattarai.

It will take some time to make the necessary changes to the MRP system, said Bhattarai.

Panta and Bhujuda sought intervention from Nepal's Supreme Court on Monday.

*Source: Nepal Awaz, July 2011*

### *Discrimination against the Muslim community*

Muslims have been historically marginalized and excluded in Nepal, and their representation in politics and government at the decision-making levels is consequently poor. The state has failed to recognize Muslims as a religious minority because of its tendency to define Muslims as "Islamists" rather than as a religious community. As a result, Muslim people have been excluded from the public sector and they continuously suffer from various forms of discrimination with regard to participation and economic, social and cultural rights.

According to the 2011 census, Muslims constitute 4.4% of the total population of 27 million people in Nepal. However, the Muslim community believes that the figure is much higher than what is reflected in the census.<sup>40</sup> Muslims are the poorest community in Nepal. The human poverty index of the Muslim community is 0.239 against the National Index of 0.325. Similarly, along the Human Development Index (HDI), Muslims are one of the poorest groups at 0.40 against the national HDI of 0.509.<sup>41</sup>

The IC incorporated provisions for supporting marginalised communities, including Muslims, by adopting an inclusive policy in the state mechanism. The GoN has been

<sup>40</sup> Sunuwar, Dev Kumar. *Muslims' rights are a far cry in Nepal*. Republica. 15 March 2015

<sup>41</sup> Parwez, H.M. *Identity Crisis of Muslims: A Religious Minority in Nepal*. Kathmandu: Research Centre for Educational Innovation and Development

formulating a number of programs for deprived and disadvantaged peoples but the Muslim community remains ignored. The Muslim community had hope that the new constitution developed through the CA would guarantee their rights, and recognize their distinct identity. This hope was dashed after the constitution drafting process failed in 2012.

### *Discrimination against people in Tarai-Madhesh*

Despite the fact that the Tarai (the low-lying region along Nepal's border with India) has the largest portion of Nepal's population, people with that geographic background lack proportional representation in the government and experience discrimination.<sup>42</sup> The Madheshi community within the Tarai is discriminated against on the basis of colour, region, language, and socio-cultural identity. This community is multi-ethnic, multi-caste, multi-lingual, and multi-cultural.

### *Discrimination against persons with disabilities*

Persons with disabilities (PWDs) are among those historically most excluded from the mainstream socio-political and economic sphere and face multiple discriminations. The post conflict socio-political transformation process in Nepal has put social inclusion and human rights at the top of the political and development agenda.<sup>43</sup> However, disability is not yet part of that discourse.

Data regarding PWDs are extremely limited and often inconsistent. Estimates of the size of the PWD population in Nepal vary from 1.6 to 16%. According to organizations advocating for the rights of PWDs, the number include 450,000 persons with visual impairments, including blind and low vision; 60,000 persons with hearing disabilities; and 30,000 persons with intellectual disabilities. In addition, there are 150,000 people listed in other categories, such as “deaf-blind,” “stutterers,” and “haemophilic.”<sup>44</sup>

The participation of PWDs in the constitution-making process and in the public sector is yet to be realized. *De facto* discrimination against PWDs still occurs in the field of education, employment, health, housing, among many other areas. For example, estimates are that 68% of PWDs have no education (59.6% of male and 77.7% of females).<sup>45</sup> The rights of PWDs to participate fully in society have not been implemented by the state. In terms of health, accessibility, education, economy, and employment opportunities, PWDs are still treated as second-class citizens.

## **Critical Areas of Concern**

**Deep rooted caste system and cultural beliefs:** Nepali society views untouchability as a problem for the Dalit community rather than an issue that should be dealt with at the national level. Incidences of caste-based discrimination and untouchability are accepted as a social problems rather than criminal incidents. There is discrimination at all levels of government, and people in government, community, and judicial levels all lack

<sup>42</sup> [www.ccd.org.np/index.php?action=news&conid=637](http://www.ccd.org.np/index.php?action=news&conid=637)

<sup>43</sup> NORAD. 2012. *Mainstreaming Disability in the New Development Paradigm: Evaluation of Norwegian Support to Promote the Rights of Persons with Disabilities - Nepal Country Report*. Norway: Norwegian Agency for Development Cooperation, pp. x-xii

<sup>44</sup> Promoting the rights of Persons with Disabilities, Plan Nepal's Experience in the Social Inclusion and Non-discrimination Project, Paper presented at Conference on Disability-Inclusive MDGs and Aid Effectiveness, UNESCAP and LCD, 15-16 March 2012, Bangkok, Thailand

<sup>45</sup> Nepal NGO Coalition for UPR. 2010. Op. cit. 31. Annex 1

awareness about the anti-untouchability law. There are some Dalit people in the army and police forces but they continue to be treated unequally and are discriminated against. Dalits are poorly represented in State affairs in general. Women, PWDs, Muslims, and gender and sexual minorities are viewed as people from the lower strata of society. These cultural norms and values deny their identity and existence, thus promoting discrimination and exploitation at the family, societal, and national political level.

**Effectiveness of Untouchability Act:** The Untouchability Act remains woefully unimplemented for a wide range of reasons. These include: lack of due diligence among rule-makers and other judicial actors; lack of an effective legal aid and assistance system; procedural hindrances and lack of speedy justice; reluctance among the Police in filing the first information report (FIR) and investigating crimes of untouchability and caste discrimination; lack of victim and witness protection; less priority in evidence collection and verification; lack of professional and impartial investigation; and biased social attitudes, among others.

**Discriminatory laws and practices:** Lack of consistent amendments to existing laws has resulted in a large number of discriminatory laws that remain, including those discriminating against women, Dalits, gender and sexual minorities, PWDs, and others. This is one of the key areas of concern and the state must take steps to amend those laws.

**Inclusion in state policies:** There are no special provisions made to include gender and sexual minorities, PWDs, Muslims, and other peoples in state structures. It is notable that gender and sexual minorities are discriminated against in the Nepal Army and police in relation to employment, both with regard to recruitment and to their treatment if they are identified as gender and sexual minorities when serving. PWDs face similar barriers in joining public office and there is no mechanism for them to bring attention to these issues. At a broader level, there is no proportional representation of Dalits, indigenous peoples, Tarai-Madhesh people, Muslims, and other marginalized and excluded groups in practice.

**Citizenship:** The issue of citizenship remains a major concern for Muslims, Dalits, Tarai-Madhesh people, PWDs, gender and sexual minorities, and indigenous peoples. People from marginalized and excluded groups, including women, often encounter administrative and other hurdles while applying for citizenship certificates. In many cases, local officials demanded proof of land ownership before granting citizenship, and proof of citizenship before granting land titles, which has effectively prevented landless people from obtaining either formal citizenship or land.

## **Recommendations**

- All discriminatory laws, regulations, rules, directives, policies, and programs should be repealed and new legal and policy frameworks should be developed to ensure equality amongst all peoples.
- Administrative and institutional measures should be adopted for the effective implementation of all international and national obligations, policies, programmes, and agreements that promote rights of the people from different communities and groups.

- Though the laws restrict the practices of “untouchability,” government officials are themselves found to have practiced it. Therefore, penalties should be incorporated into the laws for offenders who work in government offices or agencies supported by the government.
- Existing commissions, such as the NDC, NWC, and NMC must be conferred with constitutional status, and other mechanisms such as NFDIN also need to be elevated to constitutional bodies. Specific mechanisms should be established for the promotion and protection of the rights of PWDs and gender and sexual minorities.
- Proportionate representation of Dalits, indigenous peoples, Madheshi, gender and sexual minorities, Muslims, and PWDs should be ensured at every level and sector of the state, including at decision-making levels.

## **ARTICLE 3 - EQUALITY OF RIGHTS BETWEEN MEN AND WOMEN**

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### **Situation**

Women comprise 51.5% of Nepal's population<sup>46</sup> but continue to be discriminated against in every aspect of society. The status of women is still impacted by a deep-rooted patriarchal social system and cultural values that have often stripped the majority of Nepalese women of their self-respect, dignity, and confidence. The situation of women in health, education, participation, income generation, self-confidence, and access to policy-making processes remains poor and was worsened by the decade-long conflict. The state has no clear policy to ensure equality between men and women, which impacts women's ESCR.

Women contribute substantially to the Nepal economy in general but it goes largely unnoticed because their traditional roles are taken for granted. Women are seen to focus on reproductive and home life roles and responsibilities while men focus on "productive," income-earning roles. The work burden on women in Nepal (16 hours a day) is much higher than the global average.<sup>47</sup> Only 45.2% of women, compared with 68.2% of men, are classified as "economically active."<sup>48</sup> Women's participation in the informal sector has increased significantly in both urban and rural areas. For example, vending, petty trade, liquor-making, and vegetable selling are some of the more common employment ventures of women.

In rural areas, employment outside of the household by women is generally limited to planting, weeding, and harvesting. In urban areas, women are employed in domestic and traditional jobs, as well as in the government sector, but mostly in low-level positions. The ratio of women in foreign employment is also low, but the number of undocumented women foreign employees is high. Only 14.8% women, which includes 3.76% women judges, are employed in the civil service. Women's representation in politics, bureaucracy, judiciary, security, administrative and other decision-making positions of the state is still very low.<sup>49</sup>

Women also lag far behind men in literacy and educational attainment, and a pronounced divide between literate men and women.<sup>50</sup> The enrolment rate of girls in secondary level education is 49.7 % and in higher secondary is 51.2 %. This rate falls to only 37% in higher education. Women's involvement in technical and vocational education is also lower than men.

Nepal's peace process in general and the participation of women in the peace process in particular has been faced with several problems and challenges. A patriarchal social structure and power relationship is an obvious key factor hindering the meaningful participation of women in the peace process. In fact, key political decision makers have not embraced the importance of qualitative engagement of women in decision making.

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<sup>46</sup> Sex ratio (number of males per 100 females) at the national level has decreased from 99.8 in 2001 to 94.2 in 2011. In abstract number, there are 796,422 more females than males in the country.

<sup>47</sup> HRTMCC. 2007. *Status and Trends: Economic, Social and Cultural Rights in Nepal (A Civil Society Report)*. Kathmandu: Human Rights Treaty Monitoring Coordination Committee

<sup>48</sup> [www.everestuncensored.org/3411/2008/12/02/status-of-women-in-nepal/](http://www.everestuncensored.org/3411/2008/12/02/status-of-women-in-nepal/)

<sup>49</sup> NWC. 2013. *Disaggregated data on the basis of gender (in Nepali)*. Kathmandu: National Women Commission

<sup>50</sup> According to the CBS 2011 Census report, male literacy rate is 75.1% compared to female literacy rate of 57.4%

Government policies and mechanisms also fail to ensure the participation of women in the peace process.

By law, women do not have an autonomous identity; men inherit and control most property. Only 19.7% of women own real property.<sup>51</sup> Women's dependence on men is reinforced in law, religion, and cultural norms. The IC has guaranteed equal property rights for men and women. It also recognizes women's right to reproductive health. However, inequality between men and women remains a key problem in national laws. Further, like other equality provisions in the IC, there are not sufficient efforts to translate these provisions into practice.

Moreover, the efforts that were made by the CA for a gender-friendly are of limited use due to the dissolution of the CA. On 30 May 2006, the HoR passed a resolution that requires a 33% representation by women in all state structures. The Nepal IC introduced proportional representation to Nepal for the first time. As a result 33% women from different castes, ethnicities, geographic region, and religions gained representation in the CA.<sup>52</sup> There are a total of 197 women in the CA out of a total of 601 members – 30 were elected through proportional representation, 161 were elected through the first-past-the-post system, and 6 nominated by the GoN.

The GoN has implemented some policies and passed legislation to improve the status of women. These include the 2006 Gender Equality Act, the 2008 Domestic Violence Control Act, and 12th Amendment to the Civil Code. However, the implementation of these laws is a major challenge. The courts have played proactive role in responding to public interest litigation to ensure gender equality in some cases. Similarly, the GoN has passed a National Strategy and Action Plan to combat gender-based violence and established a Gender Empowerment and Coordination Unit (GECU) within the Prime Minister's Office (PMO). The adoption of a National Action Plan on UN Security Council Resolutions 1325 and 1820 is yet another positive measure. However, persistent discriminatory legal provisions continue to hold back progress.<sup>53</sup>

The 2007 IC states that there shall be no discrimination on the basis of sex. However, there is no comprehensive definition of discrimination in either the Constitution or in any other law. Consequently, even today, women continue to be denied the use and exercise of their ESC rights. Further, the IC establishes no substantive provisions to ensure these rights for women.

Moreover, political parties play a discouraging role with respect to women's representation in the State's executive body. Men comprise 83.33% whereas women only 16.67%. No political parties provide equal representation for women ministers. In March 2013, only one-woman minister was appointed to the 11-member government, formed to hold the CA elections.

Gender equality was the subject of the largest number of UPR recommendations for Nepal and the GoN accepted all them, including those to: implement a legal and policy framework to end gender-based discrimination; investigate and prosecute cases of gender-based violence; protect victims and ensure access to justice; and implement

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<sup>51</sup> NWC. 2013. Op. cit. 49

<sup>52</sup> HRTMCC. 2011. *CEDAW Shadow Report*. Kathmandu: Human Rights Treaty Monitoring Coordination Committee

<sup>53</sup> FWLD. 2010. *Discriminatory Laws in Nepal and Their Impact on Women*. Kathmandu: Forum for Women, Law and Development

Supreme Court decisions.<sup>54</sup> Translating this commitment into reality, however, remains a major challenge.

### Critical areas of concern

**Existing discriminatory laws:** The GoN has amended numerous laws to ensure gender equality and justice. Over 100 provisions in various laws still discriminate against women, however. Discriminatory provisions still exist primarily in the following areas: property ownership, marriage and family, nationality, legal and court proceedings, trafficking and sexual abuses, employment, and education. The CA made some efforts to define the general contours for non-discrimination on the basis of gender, as well as sexual orientation, physical conditions, disabilities, health, marital status, and pregnancy, but these definitions have not been implemented due to the failure of the CA.

**Implementation:** The government has enacted various laws, programs, and strategies to eliminate discrimination against women. However, the main problem remains with substantive implementation. The judiciary has shown leadership in promoting the value of justice and ensuring rights to a remedy for women victims of violence. The government formed a committee for the monitoring and enforcement of judgments handed down by the Supreme Court, but the mechanism is not functioning effectively, and many decisions are not enforced.

**Violence against women:** Violence against women is a widespread problem in Nepal in both private and public spheres.<sup>55</sup> It exists in various forms such as domestic violence, social violence, and cultural violence, including *Deuki* (a practice in western Nepal where girl children are offered to serve temples that often leads to sexual abuse), *Jhuma* (a similar practice in eastern Nepal), *Chhaupadi* (a social practice prohibiting women from participating in family activities, living in the home, or eating anything other than dried foods during menstruation that often leads to abuse and confinement), and witchcraft allegation practices. There is no standard definition or legal principle to deal with violence against women. In 2009, the Domestic Violence (Offence and Punishment) Act was formulated that criminalized domestic violence but does not cover the broader issue of violence against women. Neither is it satisfactory in its implementation. The Supreme Court analysed the shortcomings of the Act and determined that special measures should be taken to provide an effective and speedy remedy to victims of violence,<sup>56</sup> but implementation remains a concern.

**Access to justice:** Existing justice mechanisms are time consuming, ambiguous, and cumbersome, and are not gender-friendly. Key challenges include the lack of access to justice for women victims, the reluctance of actors within the criminal justice system to use gender-sensitive approaches to justice. Frequent use of “mediation” systems and lack of knowledge and awareness of existing laws and remedy mechanisms result in deprivations of justice for victims of violence. The GoN has opened shelters and service centres for women victims of violence, and recruitment of more women police. The judiciary has also introduced some court rules in this regard.<sup>57</sup> However, usefulness of these institutional measures and the lack of judicial order implementation have hindered

<sup>54</sup> A/HRC/19/21/Add.4

<sup>55</sup> OPMCM. 2012. *A Study on Gender-based Violence Conducted in Selected Districts in Nepal*. Kathmandu: Office of the Prime Minister and Council of Ministers, Government of Nepal. p.4

<sup>56</sup> *Jyoyi Lamsal Poudel V. Government of Nepal*, Writ No. Wo0424/2064, decision date 2066/8/15

<sup>57</sup> To ensure speedy justice and avoid unnecessary delay in cases, provisions of continuous hearing and calendar system has been incorporated in the district court regulation 2052 BS

reform. Further, justice for women victims of the decade-long armed conflict is yet another issue that still needs to be addressed in Nepal.

**Institutional mechanisms:** The GoN has undertaken a number of positive initiatives with respect to the rights of women, including establishing the NWC as a statutory body, opening Women and Children Offices in 75 districts, creating the Women and Children Police Directorate and GECU within PMO, and gender-budgeting. Even though the NWC is now a statutory body, it remains ineffective due to the lack of political will. The government has announced 21.51% of the budget directly benefits women.<sup>58</sup> However, this has not guaranteed gender-responsive practices, and the allocated budget is misused by local authorities.<sup>59</sup> Effective monitoring and corrective measures are a key concern.

## **Recommendations**

- In order to promote gender equality, the participation of women should be guaranteed in all levels of decision-making. This will promote gender equality, and reduce discrimination and violence.
- All discriminatory laws must be amended and socio-cultural practices against women eliminated. New laws should outlaw all forms of discrimination.
- A comprehensive law on gender-based violence must be introduced that covers all issues and forms of violence against women. More stringent enforcement of existing laws on domestic violence should be ensured at all levels of the government.
- The new CA should work on a comprehensive approach to eliminating inequality, prohibiting discrimination, and penalties and compensation.
- Speedy and accessible means to access justice should be ensured for women. To promote access, gender desks should be established in the courts, the number of women police should be increased, and gender-friendly criminal justice procedures should be developed and enforced.
- Effective measures should be taken for the investigation and prosecution of cases of violence against women, including the conflict era violence. Specific programmes should be developed targeting women affected by the conflict. Similarly, the Truth and Reconciliation Commission (TRC) commission ordinance should be reviewed and revised in line with international standards to ensure justice for women victims of the conflict.
- The GoN must ensure full implementation of court decisions and recommendations of NHRIs.
- The full independent role of NHRIs, including the NWC, should be ensured, including by providing adequate funds and autonomy to fulfill their mandates. The NHRC and NWC offices should be expanded to all districts and regions to

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<sup>58</sup> MoF. 2012. *Annual Budget Speech of the Minister for Finance for the fiscal year 2012/2013, Annex 14*. Kathmandu: Ministry of Finance

<sup>59</sup> NWC. 2012. *Women: Access to Justice (A Report Prepared on the Basis of Public Hearings Conducted in Districts)*. Kathmandu: National Women Commission

better ensure their watch-dog functions for the promotion and protection of human rights.

- The GoN should increase its budgetary allocation for the direct benefit of women. Putting mechanisms in place to ensure the effective and proper use of resources should also be given priority to improve better service delivery.

## **ARTICLE 4 - LIMITATIONS ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN TIME OF PUBLIC EMERGENCY**

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### **Situation**

The 2007 IC guarantees that certain rights, such as the right to life, the prohibition against torture, and the right against arbitrary detention are non-derogable, even during states of emergency. ESC rights are not identified as non-derogable and can be curtailed in times of emergency.

Though there was no formal declaration of a “state of emergency” as defined in the IC during the current reporting period, persisting political uncertainty, increased impunity, a deteriorating rule of law, the absence of elected local bodies, unchecked corruption, heightened insecurity, operations of various armed groups in many districts, and rifts between people from the Hills and Tarai regions leading to internal displacement, among other factors, has resulted in a de facto state of emergency.

Despite commitments to inclusiveness in the CPA and IC, social exclusion has remained a major problem. Women, Madheshi, Dalits, Janajatis, and other marginalized groups continued to be severely under-represented in most of the political parties' central committees, state structures, local authorities, and other entities.<sup>60</sup> In the absence of any perceived satisfactory solutions to the issues, protests, rallies, and strikes continued throughout the CA's work as a means by marginalized groups to put pressure on the GoN and the political parties. Key issues highlighted were political participation, representation, self-determination, and autonomy.

Frequent calls for strikes, blockades to roads and transport, forceful closures of schools, hospitals, businesses, and other enterprises by various political parties and armed groups resulted in violations of rights followed by economic and social losses in the country. The actions of armed groups created chaos among the people in affected areas resulted in violations of their rights to housing, access to health, work, personal safety and security, and education, among other rights.<sup>61</sup> Persistent strikes had an adverse impact on the national economy and basic rights of citizens.

The country faced ethnic strife in various districts in the southern part of the country as people in those areas expressed dissatisfaction with the provision of the IC. Armed groups in the Tarai districts launched criminal and armed activities following the 2007 Madhesh Movement. The government's activities in the name of security escalated a series of violations of right to life, liberty, and security, as well as ESCR.

The activities of around 50 identified and unidentified violent armed groups in middle Tarai and eastern hill districts remained a serious challenge during this period. The groups were involved in criminal activities such as killing, abduction, extortion, road blockades, looting, and confiscating private and public properties. Some were also involved in killing and intimidating human rights defenders and journalists.<sup>62</sup> To maintain law and order, the government in 2009 introduced the Special Security Programme with the objective of controlling the unrest and establishing peace. The

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<sup>60</sup> <http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/CPA%20Report.pdf>

<sup>61</sup> NHRC. 2011. *Annual Activities Report, 2009-2010*. Kathmandu: National Human Rights Commission

<sup>62</sup> Ibid

government claimed that Programme aimed at improving the deteriorated law and order situation across country. However, under the auspices of the plan, security agencies violated human rights and enjoyed impunity.

At the same time, the prolonged transition period and public frustration increased the flight of youths abroad dramatically, and as a result, rural areas witnessed a vacuum in the labour force. The agricultural economy went into decline and local income generation activities diminished. Women, children, and the elderly were forced to bear the brunt of this situation since government welfare programmes and mechanisms are ineffective, inefficient and lack adequate resources. These have all negatively impacted the enjoyment of ESCR.

#### **Incitement to communal violence and racial hatred**

The underlying issues are complex, in articulating their demands, some of the armed groups have increasingly been using inflammatory language, blatantly inciting communal violence and racial hatred between the Madheshi and *pahadi* [hill-origin] communities. Both the main factions of JTMM [Jana Tantrik Morcha] have ordered pahadis to leave the Tarai, especially government employees, for example in a JTMM-JS [Jwala Singh] press release on 17 July.

A *pahadi* secretary of a VDC was subsequently abducted and killed. VDC and court staff stopped work in protest at the threats and the killing. Some VDC staff moved to the district headquarters because of security fears and in November, many threatened to resign, further weakening local governance and delivery of local services. VDC staff have continued to protest at the lack of security, as abductions of VDC and other personnel have continued.

Many persons of hill origin have now left the southern Tarai plains.

As a result of the incidents affecting the Tarai during this period, the exercise by the population of some of its economic, social and cultural rights was also restricted. For example, people were unable to work and many children were unable to access their schools, so that their access to education was disrupted.

*Source: UNOHCHR. December 2007. Human Rights in Nepal: One year after the Comprehensive Peace Agreement*

#### **Critical areas of concern**

**ESCR as fundamental:** The 2007 IC recognizes ESC rights such as health and education under the fundamental rights but because the rights require further implementation through legislation that has yet to be enacted, they remain ineffectual. Moreover, under the constitution, ESC rights can be curtailed during the state of emergency.

**Addressing diverse demands:** Nepal is in the process of holding CA elections for the second time in efforts to draft a new constitution. The demands of marginalized, ethnic minority, and indigenous groups regarding their political participation, proportional representation, self-determination, and autonomy should also be addressed.

**Maintaining law and order:** This period was a difficult one with respect to law and order in Nepal, particularly in the Tarai region and in Kathmandu. The country continued to experience serious security challenges. Major causes for this are the government's failure to maintain law and order and the emergence of armed and splinter groups of the various political parties. Similarly, political instability, cross-border criminality, violent activities of youth wings of political parties, and inadequate human and other resources for security agencies fueled the deterioration of stability.

## **Recommendations**

- The constitution-making process must recognize ESC rights as fundamental in the new constitution and ensure for full realization of the rights.
- The government should take effective measures to address the demands of people from various groups towards more inclusive state policies, programmes, and structures.
- The government should take all necessary measures to strengthen law enforcement agencies, particularly the Nepal Police, with adequate resources and trainings as well as accountability mechanisms.
- New laws should be promulgated to address organized crime, establish accountability of state mechanisms, and promote transparency and integrity across state affairs.

## ARTICLE 6 - RIGHT TO WORK

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### Situation

The 2007 IC provides for the right to work, as well as to education, health, food, health, social security, and social justice. Article 13(4) of the IC ensures right to equality of remuneration and social security between men and women for the same work.<sup>63</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 protecting their rights and interests.

There are important protections in the law with respect to the right to work. Notably, protections are included the 1992 Labour Act, the 1992 Transportation Act, the 2000 Child Labour Act, the 1994 Working Journalist Act, and the 1995 Labour Court Regulation Act. The Ministry of Labour and Transportation Management (MoLTM) has initiated a social dialogue processes for reforming the labour law.<sup>64</sup> The Haliya (bonded agricultural labour) system was formally abolished in September 2008. The GoN enacted the 2010 Emancipated *Haliyas* (Labour Prohibition). The 2007 Foreign Employment Act prohibits gender discrimination in foreign employment, and also prohibits sending girls and boys of under 18 years to such employment. The Act and its 2008 Regulation streamlines the labour and employment sector, and protects the rights of employees.

However, the State institutional framework remains too weak to ensure implementation.<sup>65</sup> The lack of investment to generate employment has also been a major challenge,<sup>66</sup> and compliance with labour rights legislation is unsatisfactory.<sup>67</sup> Employers are generally hesitant to comply with labour laws, while employees are unhappy with the deteriorating economic, technical, and social dimensions of their work.<sup>68</sup> Therefore, the need for reform of existing laws is felt by both trade unions and employers.

### Unemployment

The unemployment rate in Nepal remained largely unchanged between 1998/99 and 2008, and stood at 2.1% in 2008.<sup>69</sup> The unemployment rate increased slightly from 1.8% in 1998/99 to 2.1% in 2008, mainly for females aged 15 years and above (whose unemployment rate rose from 1.7% to 2.0%).<sup>70</sup> Although open unemployment in Nepal is fairly low (at approximately 4%), because the vast majority of Nepali people (almost 80%) rely on subsistence agriculture for their livelihoods, youth unemployment is

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<sup>63</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.

<sup>64</sup> Employers' Council. 2010. *Labour Law Reformation Process: A Summary*

<sup>65</sup> *Nepal: Trade Union Unity in the New Context*. Available at [www.telegraphnepal.comnational2010-08-15nepal-trade-union-unity-in-the-new-context](http://www.telegraphnepal.comnational2010-08-15nepal-trade-union-unity-in-the-new-context)

<sup>66</sup> GoN. 2011. *Third Periodic Report on Measures Taken to Give Effect to the International Covenant on Economic, Social and Cultural Rights*. P.48

<sup>67</sup> ILO. 2008. *Decent Work Country Programme for Nepal 2008-2012*. Geneva: International Labour Organisation. p.12

<sup>68</sup> *Ibid.* p.11

<sup>69</sup> ILO. 2010. *Labour and Social Trends in Nepal 2010*. Geneva. International Labour Organization. p. 26

<sup>70</sup> CBS. 2009. *Report on the Nepal Labour Force Survey 2008*. Kathmandu: Central Bureau of Statistics. p. 102

relatively high (at approximately 6%).<sup>71</sup> Women have a higher unemployment rate than men in the cities, and a lower rate in the villages.<sup>72</sup> The current unemployment rate increased dramatically in the Mountain belt and in the Far-western development region, but it is relatively stable elsewhere.<sup>73</sup>

### *Child labour*

Nepal has one of the highest child labour rates in the world. The 2008 Nepal Labour Force Survey (NLFS) estimates the child population between 5 and 17 years of age to be 7.77 million, which is approximately 33% of country's total population.<sup>74</sup> Studies show that, of the reported child labour exploitation cases, 3% are boys, 45% girls, and 51% are unidentified. In 2010, 491 child labour exploitation cases were recorded, showing a significant increase for that year.<sup>75</sup>

As a result of the depressed economy and increased income inequality, child labour is flourishing.<sup>76</sup> There are several reasons for children joining the workforce: social, economic, and psychological reasons, and inadequate policy and regulatory system, lack of comprehensive social and developmental infrastructure, among others.<sup>77</sup> It is argued that child labour is directly related to education. If a child is not in school, then the child is (likely to be) working.<sup>78</sup> Despite ratification of a range of international conventions and domestic policy provisions, implementation has been poor and has resulted in a worsening situation.

### *Informal sector*

The informal sector represents an important part of the economy and labour market in many countries, especially in developing countries. It plays a major role in employment creation, production, and income generation,<sup>79</sup> and Nepal is no exception. Because the country lags behind in industrial development, there are fewer jobs. As a result, informal employment sectors are popular,<sup>80</sup> and employ more than 96% of the economically active population in the country.<sup>81</sup> Almost all Nepali workers (96.2% of those employed) are in informal employment. Less than 1.5% of employed women have formal jobs.<sup>82</sup>

The NLFS 2008 estimated that approximately 2.1 million people aged 15 and over were employed in the non-agricultural informal sector (70% of total non-agricultural

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<sup>71</sup> ILO. 2008. *Employment Sector Employment Working Paper No.10, School-to-work Transition: Evidence from Nepal*. Geneva, International Labour Organization. p. 1

<sup>72</sup> ILO. 2011. *Employment Sector Employment Working Paper No. 76, The dynamics of employment, the labour market and the economy in Nepal*. Geneva, International Labour Organization. p. 15

<sup>73</sup> CBS. 2009. Op. cit. 70. p. 115

<sup>74</sup> ILO and CBS. 2011. *Nepal Child Labour Report based on Data Drawn from Nepal Labour Force Survey 2008*. Kathmandu: International Labour Organization and Central Bureau of Statistics. p. 1

<sup>75</sup> CWIN. 2010. *The State of the Rights of the Child in Nepal*. Kathmandu: Child Workers in Nepal Concerned Centre. p.4

<sup>76</sup> ILO and CBS. 2011. Op. cit. 74. p. 2

<sup>77</sup> MoLTM.2004. *National Master Plan on Child Labour (2004-2005)*. Kathmandu: Ministry of Labour and Transport Management. p. 13

<sup>78</sup> Afke de Groot. 2010. *Child Labour in Kathmandu, Nepal*. Leiden, Institute for Research on Working Children (IREWOC).p. 80

<sup>79</sup> Adhikari Dipak Bahadur. 2011. *Income Generation in Informal Sector: A Case Study of the Street Vendors of Kathmandu Metropolitan City*. Economic Journal of Development Issues Vol. 13 & 14. No. 1-2 (2011). p. 1

<sup>80</sup> *Dynamics of Street Economy. Kathmandu*. Artha. Vol. 02, Issue 06 July - August, 2011.

<http://samriddhi.org/userfiles/aartha/issue%206%20volume%202.pdf>. p. 1

<sup>81</sup> Suwal Rudra and Pant Bishnu. 2009. *Measuring Informal Sector Economic Activities in Nepal*. [www.iariw.org/papers/2009/7%20Suwal.pdf](http://www.iariw.org/papers/2009/7%20Suwal.pdf)

<sup>82</sup> ILO. 2010. Op. cit. 69. p. 9

employment) as compared to 1.7 million in 1998/99 (73% of current non-agricultural employment).<sup>83</sup> Around 1.4 million males and 0.7 million females aged 15 and over are working in the informal sector.<sup>84</sup> Thus, 77.5% of females and 66.0% of males employed in the informal sector have their primary jobs in the non-agricultural informal sector.<sup>85</sup> In the context of globalization and economic reform, growth of employment in the public sector is likely to slow and the informal sector will play a major role in employment generation.<sup>86</sup> The current National Labour Force Data do not clearly indicate whether informal employment is decreasing or not.<sup>87</sup>

The situation for women in the various informal labour sectors is very difficult. For example, women in the entertainment sector face high degrees of insecurity; they have irregular working hours, very low wages, and suffer from sexual harassment and other forms of exploitation. *Kamlaris* (female bonded labourers) are still compelled to work with little to no pay and are often exploited.<sup>88</sup> The government has yet to do much with regard to directives issued by the Supreme Court concerning the women working in entertainment sector.

Because daily wages are the main income source for the poor, most of these poor are engaged in informal employment.<sup>89</sup> This has been found to be a consequence of limited options resulting from limited education and/or low aspirations.<sup>90</sup> Those involved in the informal sectors do not have adequate legal or social protections and often have no voice in the workplace.<sup>91</sup> While the informal sector offers a cushion to workers during economic crises, the benefits of informal employment may not be sufficient to provide for an acceptable standard of living, as informal employment rarely comes with social protection, good working conditions, or adequate wages.<sup>92</sup> Work in the informal sector also has low levels of productivity and therefore may not serve as a tool to reduce poverty.

### *Foreign employment*

The 2007 Foreign Employment Act focuses on rights of migrants and promotion of foreign employment. It gives priority to women and people who are Dalit or indigenous, or to people who are victims of natural disasters or live in remote areas. In fiscal year 2010/11 354,716 people (of which 10,416, or 2.9% were women) work permits through this system.<sup>93</sup> However, these figures from the Department of Foreign Employment (DoFE) may be low because Nepali men and women sometimes use illegal channels work abroad, including in the Gulf. Overall, Nepali men and women employed abroad face serious, and sometimes life-threatening and slave-like conditions.<sup>94</sup> In 2010 alone, over 800 Nepali migrant workers died while working in Malaysia, Gulf countries, and countries in the Middle-East. Suicides among Nepali migrant workers have also risen at

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<sup>83</sup> CBS. 2009. Op. cit. 70. p.iii

<sup>84</sup> Ibid. p. 122

<sup>85</sup> Ibid

<sup>86</sup> Adhikari Dipak Bahadur. 2011. Op. cit. 79. p.5

<sup>87</sup> MoLE and ILO. 2012. *Way Out of Informality (WOI) Project: Facilitating Formalization of Informal Economy in Nepal*. Lalitpur: Ministry of Labour and Employment and International Labour Organization. p.12

<sup>88</sup> WOREC. 2010. *Annex 3 to Nepal NGO Coalition Submission to the United Nations Universal Periodic Review by Human Rights Council*. Women Rehabilitation Centre

<sup>89</sup> Suwal Rudra and Pant Bishnu. 2009. Op. cit. 81. p.2

<sup>90</sup> ILO. 2008. Op. cit. 71. p.26

<sup>91</sup> ILO. 2010. Op. cit. 69. p. 33

<sup>92</sup> Suwal, Rudra and Pant, Bishnu. 2009. Op. cit. 81. p.2

<sup>93</sup> Sijapati, Bandita and Limbu, Amrita. 2012. *Governing Labour Migration in Nepal: An Analysis of Existing Policies and Institutional Mechanisms*. Kathmandu: Centre for the Study of Labour and Mobility, p.15

<sup>94</sup> *Even Slaves are Treated Better*. Nepali Times, 8-14 June 2012

an alarming rate, with 160 reported suicides in 2010.<sup>95</sup> Women in particular face multiple risks throughout their employment abroad.

#### **1,357 Nepali migrant workers dead in last three years**

According to a recent government study, over 1,357 Nepali migrant workers abroad have died in the last three years. The Foreign Employment Board (FEB) reported that most of the deaths were related to work place and road accidents and suicides and murders as well. The report also states that significant number of deaths could have been avoided if the migrant workers had taken orientation on workplace safety, road safety and climatic conditions.

The report shows that 299 workers died of natural causes, 185 died in road accidents and 102 died in work place accidents. While 120 committed suicides, 292 died of respiratory problems, 76 died of heart attack and 100 were murdered. The majority of the Nepali migrant workers were in the 20-50 age groups.

441 migrant workers died in Malaysia, 350 in Saudi Arabia, 306 in Qatar, 125 in UAE and 73 died in other countries. According to FEB, basic orientation for the migrant workers could have avoided most of the road accidents since many migrant workers were found to have no knowledge of even how to cross the road in foreign countries.

Nepal government does have a counselling agency - Migration Resource Centre (MRC) which provides orientation and training to potential migrant workers but very few visits the office. MRC stated that only 466 people visited the office to learn and gather information on their destination countries in 2011. Orientation classes are free but are not mandatory and therefore many migrant workers do not attend the session.

*Source: ParakhiReviews.com, 12 January 2012*

#### *Women at work*

Throughout the world, men dominate waged labour occupations. Female workers in Nepal are, on average, paid at a 31% lower rate than their male counterparts.<sup>96</sup> Studies in the Nepal labour market have shown that the majority of women workers work long and irregular hours in places with poor facilities, have no job security, and are mostly paid on a piecework basis.<sup>97</sup>

Men continue to determine women's reproduction, labour access, and mobility in the workplace, resulting in women being among the poorest in society, relegated to poverty.<sup>98</sup> While the situation remains problematic overall, the past 10 years (1998/99-2008) have seen a slight uptick in women's wages: men's wages rose by 55.7%, while women's rose by 61.7%.<sup>99</sup>

According to the 2001 census, women comprise 44% of the economically active population. However, only 7.7% of the female labour force receives equal remuneration for their work; 63.4% are unpaid; and the remaining women are self-employed.<sup>100</sup> In general, women have more limited job options,<sup>101</sup> and less than 1.5% of employed

<sup>95</sup> The Himalayan Times, 13 January 2011

<sup>96</sup> Adhikari, Dev Raj. 2012. *Decent Work: The case of Nepal*. Paper submitted to: International Labour and Employment Relations Association (ILERA) World Congress Philadelphia, Pennsylvania, USA, p.10

<sup>97</sup> Sijapati, Bandita, Limbu, Amrita et al. 2011. *Trafficking and Forced Labour in Nepal*. Kathmandu, Centre for the Study of Labour and Mobility, p.101

<sup>98</sup> Wydra Mark, Jay Sam et al. *Empowering Women in Nepal A 2010 Report*. University of Oregon. p.10. Available at: [http://pages.uoregon.edu/aweiss/intl442\\_542/Nepal-Empowering%20Women.pdf](http://pages.uoregon.edu/aweiss/intl442_542/Nepal-Empowering%20Women.pdf)

<sup>99</sup> ILO. 2011. Op. cit. 72. p.20

<sup>100</sup> ILO. *Decent Work Country Programme For Nepal 2008-2012*. p.2. Available at: <http://www.ilo.org/public/english/bureau/program/dwcp/download/nepal.pdf>

<sup>101</sup> ILO. 2011. Op. cit. 72. p.94

Nepali women have formal jobs.<sup>102</sup> In 2008, men accounted for 73.9% of those with paid employment, with women accounting for a relatively meagre 26.2%.<sup>103</sup> More women than men work in agriculture, while industry and services employ more men than women.<sup>104</sup> Gender inequality can be seen in unequal access for girl children to education, and results in unequal access to employment for women.<sup>105</sup> Literacy rates are a direct hindrance on women's mobility and empowerment within Nepalese society.

### *Ongoing impact of bonded labour systems*

Although the traditional *Kamaiya* and *Haliya* (bonded labour) systems have been formally eradicated, it remains a problem in the western part of Nepal, particularly in the agricultural sector.<sup>106</sup> Social customs and unemployment have made it difficult for ex-*Kamaiya* and ex-*Haliya* to settle and work.<sup>107</sup> The limited training they received as bonded labourers left them without skills for most jobs.<sup>108</sup> Many have shifted to seasonal agricultural wage labour but the wages are low and not uniform across the country, which especially affects freed *Kamaiya* and *Haliya*, who are vulnerable.<sup>109</sup> Many are now paying more attention to wage labour rather than focusing on agriculture.<sup>110</sup> In the absence of other options, efforts at rescuing *Kamlaris* (another bonded labour system) has not proved effective; instead, a work-contract system could be established with the family/employer to protect the rights of former *Kamlaris* with a guarantee of wages.

### **Critical areas of concern**

**Creating jobs:** There are numerous challenges to exercising the right to work. Government investment is not targeted or effective in creating jobs for the people. Lack of coordinating mechanisms between government and the private sector has limited opportunities. The government must prioritize new development projects, which could boost job creation.

**Management of the informal sector:** Existing legal protections for the right to work deal only with limited sectors of the formal economy and ignore the much larger unorganized and informal sectors. The informal sector lacks security and mechanisms to address existing problems. Women, especially those in the informal and entertainment sectors, need security, increased wages, and set working hours, among others things. Existing legal and institutional provisions do not adequately address these issues.

**Regulating foreign employment:** Foreign employment remains a necessity for many Nepali youth and women, and comprises a large part of the national economy. Hundreds of Nepalis leave the country in pursuit of employment only to find themselves in exploitative and insecure jobs. Those who work as domestic labourers are especially vulnerable because they lack skills, knowledge of their rights, and protection

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<sup>102</sup> ILO. 2010. Op. cit. 69. p. 9

<sup>103</sup> Ibid. p. 25

<sup>104</sup> ILO. 2008. Op. cit. 71. p.19

<sup>105</sup> ILO. 2011. Op. cit. 72. p. 12

<sup>106</sup> Rule of Law Initiative. 2011. *Human Trafficking Assessment Tool Report for Nepal*. Washington DC: American Bar Association. p. 20

<sup>107</sup> Chaudhary, Suresh (Tharu). 2008. *A Research article on the plight of the Ex-Kamaiyas*. Lalitpur: Social Inclusion Research Fund. p. 9

<sup>108</sup> Ibid. p. 16

<sup>109</sup> UNRCO. 2011. *Freed Haliya in the Far-west and their land concerns*. Field Bulletin. Nepal: United Nations Resident and Humanitarian Coordinator's Office. p. 5

<sup>110</sup> Chaudhary, Suresh (Tharu). 2008. Op. cit. 107. p. 25

mechanisms. The State has not been able to regulate this sector; services provided by the foreign employment department are centralized and cannot reach those in need of their counsel. As a result, people rely instead on agents, and without skills or the power to bargain, lose any financial resources they may initially have had.

**Addressing child labour:** Whereas Nepal has adopted the Children's Act, the Labour Act, and has addressed children's rights in national development plans and programs, a comprehensive and clear mechanism for effectively prohibiting child labour and monitoring progress does not exist.<sup>111</sup> Lack of education, poverty, and the flight of the young from rural areas has increased child labour. One major cause of the persistence of child labour is the ongoing dearth of government programmes targeting children's rights.

**Effective implementation of the laws:** Existing laws and policies regarding the bonded labour system and its remnants are not effectively implemented. This results in persisting problems of unemployment and poverty, especially for marginalized people. Due to the absence of alternative employment, ex-*Kamaiyas* and *Haliyas* are trapped in new forms of exploitation.

**New Constitution:** The new constitution must ultimately include workers' rights and the right to work with provisions for monitoring and enforcement mechanisms.<sup>112</sup>

**Consultation:** As noted above, existing laws are not implemented,<sup>113</sup> but better consultation may improve the situation. In Nepal, unions are politically charged, and consultation with unions is imperative, especially when promulgating future legislation.<sup>114</sup> Political instability, weak governance, and lack of political will has left weakened implementation of the laws, including the Labour Act. Despite efforts by the government and other stakeholders, issues such as equal remuneration and standardized regulation have not been realized. Weak government monitoring systems are one major cause for this.

## Recommendations

- Specific provisions should be made in existing labour laws to improve the informal sector and ensure social security.
- All relevant ILO conventions, including ILO Convention No. 81 and 87 should be ratified by the State.
- Legal and institutional provisions should be created locally to effectively regulate foreign employment. National labour policies on foreign employment should also address issues of gender equality.
- Job creation should be given high priority by introducing large-scale development and industrial projects that also protect workers' rights. The government should formulate long-term employment strategies that are embedded in sectoral development programmes.

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<sup>111</sup> MoLTM.2004. *National Master Plan on Child Labour (2004-2005)*. Kathmandu: Ministry of Labour and Transport Management. p.20

<sup>112</sup> *Nepal: Trade Union Unity in the New Context*. Available at: [www.telegraphnepal.comnational2010-08-15nepal-trade-union-unity-in-the-new-context](http://www.telegraphnepal.comnational2010-08-15nepal-trade-union-unity-in-the-new-context)

<sup>113</sup> ILO. 2011. Op. cit. 72. p.12

<sup>114</sup> Ibid

- Legal as well as administrative methods must be utilized to fulfill Nepal's international obligations. Notably, existing laws should be amended after the adoption of a new constitution. Provision should also be made in the law to ensure job security and high standards of the labour force.
- The right to work must be incorporated in the development policies and resource allocation agenda of the state. Subsidies and reservation policies for people with special needs in all sectors of society should be designed and implemented with a time limits and indicators for monitoring.
- All forms of exploitation, including child labour and *Haliya* and other bonded labour practices should be strictly prohibited, and alternative employment options should be provided to Nepal's youth.
- Effective mechanisms should be put in place to ensure rights to equal opportunity of employment, equal wages for equal work, and the right to social security should be provided to every woman and every man.
- The state must examine issues of forced labour in the informal sector, including domestic work, small-scale businesses, and unregistered companies, and develop a strong regulatory framework that includes effective monitoring mechanisms.

## ARTICLE 7 - RIGHT TO ENJOYMENT OF JUST AND FAVORABLE CONDITIONS OF WORK

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### Situation

The 2007 IC includes provisions prohibiting slavery, serfdom, forced labour, bonded labour, and trafficking in human beings.<sup>115</sup> The Constitution also provides every worker and employee the right to “proper work practice.”<sup>116</sup> Issues of social security are addressed by the Labour Act and related regulations. Nepali laws and regulations also deal with small formal sector workplaces but are unable to cover the informal sector at large.

The Three-Year Development Plan of Nepal aims at protecting the rights of workers and promoting favourable conditions of work by, for example, reducing labour disputes and fostering conducive investment environment.<sup>117</sup> The 1992 Labour Act includes provisions for occupational health and safety, including sick leave, maternity leave, working women's compensation, pension, gratuity, and old age benefits. Employees are entitled to various benefits such as medical expenses, insurance, and salary during leave with pension. Similarly, new provisions include childcare centres, canteens, and a welfare officer in public offices.

However, the problem resides with implementation. Moreover, many legal protections do not cover the large numbers of workers who are not in government offices. The informal sector suffers the most, as described above. The provision for welfare officers is limited to a few central-level institutions while childcare centres and other services are almost non-functional. The provisions for minimum wages leave many sectors untouched, except in the manufacturing sector, within which there are discrepancies in practices.

Targets in the Labour Act for increasing the quality of the workforce and labour opportunities have not been reached due to poor implementation. The labour sector is still faces challenges of insecurity and uncertainty at the central and local levels. The government has not been able to standardize minimum wages or keep competitive with inflation, and parity of payment between women and men remains a problem. There is also an increase in disputes between employers and employees and ongoing problems of instability in the labour sector in general.

### *Work in hazardous areas*

Work in brick kilns is seasonal work in Nepal, which begins in October and runs through May, until the monsoon season.<sup>118</sup> There are more than 500 brick factories in Nepal that employ over 400,000 workers.<sup>119</sup> A 2009 study of selected areas of the country identified 348 children working alongside their parents in these kilns. The parents of 64% of these children had taken advances from the labour contractors or the brick kiln owners and were therefore bonded to the particular brick kiln to repay the

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<sup>115</sup> Article 29 (2) and (3), *Interim Constitution of Nepal, 2007*

<sup>116</sup> Article 30 (1), *Interim Constitution of Nepal, 2007*

<sup>117</sup> NPC. 2011. Three Year Development Plan. Kathmandu: National Planning Commission. pp. 72-73

<sup>118</sup> World Education. 2009. *Children Working in Brick Factories: Child Labour Status Report*. p. 2

<sup>119</sup> GEFONT. 2007. *Nepal: Labour under the Chimney A Study on the Brick Kilns of Nepal*. Kathmandu, General Federation of Nepalese Trade Unions. p. 14

advance.<sup>120</sup> Because labour in the brick kiln industry largely informal sector labour, data on the number of brick kiln workers, including children, vary greatly.<sup>121</sup>

Although work in the kilns is hazardous to one's health, people are driven to work there due to high levels of poverty and a dearth of other opportunities, especially in rural areas.<sup>122</sup> Common health hazards include head injuries due to carrying loads of bricks on the head; respiratory and lung problems resulting from the dusty work environment and poor living conditions; back problems from carrying bricks; and dysentery and fevers due to poor sanitation.<sup>123</sup> Women and children are some of the most vulnerable in this sector.

There are over 17,000 construction companies that employ over 2.2 million people in Nepal.<sup>124</sup> Three point one percent of employed people aged 15 years and above are working in construction sector.<sup>125</sup> Forced labour has been documented in that sector and the manufacturing sector, and is especially common in carpet factories, brick kilns, stone quarries, garment factories, and embroidery workshops.<sup>126</sup> Bonded labour remains a problem, resulting from advances issued to workers before the season concludes or withholding a portion of payment until the end of the season.<sup>127</sup>

Another service sector where forced labour is widespread is the entertainment industry. Studies indicate that approximately 11,000 to 13,000 women and children work in the entertainment sector in the Kathmandu Valley, and about half of those are engaged in sex work.<sup>128</sup> Raids by police have been ineffective<sup>129</sup> instead re-victimise women and girls.

### *Workplace environment*

No legislation in Nepal specifically and comprehensively deals with sexual and other forms of harassment in the workplace. A draft of the Sexual Harassment at Workplace (Prevention) Act was submitted to the Parliament in 2009 but has not yet been enacted. The Ministry of Women, Children and Social Welfare (MoWCSW) has set up a task force with representatives from various line ministries to deal with this serious issue,<sup>130</sup> but due to lack of capacity and weak government mechanisms, little has been accomplished. Promoting gender-responsive workplaces remain hollow words. Lack of childcare centres, the limited capacity of existing safe houses for women, and the absence of healthcare and emergency support centres for workers are some of the key issues that have jeopardized the workplace environment in general.

### *Worst forms of child labour*

Latest estimates are that approximately 3.14 million children, which is around 40.4% of the child population in the 5 to 17 year age group, may be classified as working

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<sup>120</sup> Anti-Slavery. 2009. *Forced and Bonded Labour in Nepal*. Information on Nepal, Compliance with ILO Convention No. 29 on Forced Labour. p. 3

<sup>121</sup> Afke de Groot. 2010. *Op. cit.* 78. p.18

<sup>122</sup> GEFONT. 2007. *Op. cit.* 119. p.14

<sup>123</sup> World Education. 2009. *Op. cit.* 118. p.8

<sup>124</sup> Pokharel Jagadish C. 2012. *Promoting Employment: Challenges and Opportunities in Nepal*. Paper presented at National Labour and Employment Conference July 9-11, 2012, Kathmandu. p.7

<sup>125</sup> Ibid

<sup>126</sup> Ibid. p.15

<sup>127</sup> GEFONT. 2007. *Op. cit.* 119. p. 61

<sup>128</sup> Ibid. p. 57

<sup>129</sup> Ibid. p. 19

<sup>130</sup> Ibid. p. 6

children. Among these, 1.60 million, or almost 51% of all working children, fall into the category of child labour. Within this group, 0.62 million have been identified as engaged in “hazardous work.”<sup>131</sup> The government has set a target of eliminating the worst forms of child labour by 2016, and all forms of child labour by 2020.<sup>132</sup> The government has enacted some programmes such as “education for all,” and created budgetary allocations to address child labour, for example for freed-*Kamaiya* children. The programmes are under resourced, however, and children continue to engage in the worst forms of child labour, including in agriculture and commercial sex work.<sup>133</sup> The government’s efforts to address these problems have been largely weak and ineffective.

#### **127,000 children in worst forms of labour nationwide**

RSS

Kanchanpur: As many as 127,000 children have been found involved in the worst forms of child labour across the country.

According to the data collected by the Department of Labour, out of 1.6 million children involved in labour, 620,000 are involved in risky works.

Speaking at an awareness programme related to child labour, at Jhalari of Kanchanpur, Officer at the Department, Babulal Regmi, said that number of girls rather than boys involved in labour is increasing.

Master Plan related to child labour and International Labour Organization (ILO) Convention No. 183, Clause 3, defines bonded child labourers, street children, child porters, domestic child labourers, among others, as child labours engaged in worst forms of labour, Regmi added.

He said the Child Labour Prohibition and Regulation Act-2000 implemented by the government has the provision that children below 14 years not to be involved in labour but most of children below 14 years are found to be involved in labour.

Bhagiram Chaudhary, a local, said that parents of the most of the children used to send their children in labours due to financial crises, poverty and lack of public awareness.

Number of child labourer is increasing with the law implementation agency not showing concern though the government has made legal provision for child labour regulation.

More than 800 children are involved in worst labours in Kanchanpur, it is learnt.

Accounts Officer at the Department, Arjun Baral, said that the Government of Nepal has implemented the National Master Plan (2061-2071 BS) for child labour elimination and added that there is a target to eradicate worst child labours by 2016 and all types of child labour by 2020.

*Source: The Himalayan Times, 10 April 2013*

#### *Foreign employment*

More than two million Nepalis are estimated to be working abroad, including in India; every year 200,000 people leave for work overseas, excluding India, with the vast majority of migrant workers being male.<sup>134</sup> The number of Nepalis leaving the country for overseas jobs increased by 52.15%, to 45,165 from mid-July to mid-August 2011 compared to the figure from the same period in 2010.<sup>135</sup> Nepal’s economy has continued to slow due to low investment in industry, power cuts of up to sixteen hours a day, and a

<sup>131</sup> ILO and CBS. 2012. *Nepal Child Labour Report*. International Labour Organization and Central Bureau of Statistics p. xii

<sup>132</sup> NPC. 2011. Op. cit. 117. p. 73

<sup>133</sup> United States Department of Labour. 2012. *2011 Findings on the Worst Forms of Child Labour - Nepal*

<sup>134</sup> ILO. 2010. Op. cit. 69. p. 10

<sup>135</sup> Samridhhi. 2011. *Foreign Employment for Economic Growth*. Kathmandu: The Prosperity Foundation. p.6

tumultuous political and business environment has led to increasing numbers of young Nepalis leaving the country for opportunities abroad.<sup>136</sup>

National, bilateral, and international policy instruments govern international labour migration in Nepal. These instruments include the 2007 Foreign Employment Act and the 2008 Foreign Employment Rules, and a number of other national laws, bilateral labour agreements, memoranda of understanding (MoUs), treaties, and international conventions, also comprise the framework.<sup>137</sup> Unlike its predecessor, the 2007 Act reflects the government's effort to not only regulate the process of foreign employment but also to protect the rights of migrants.<sup>138</sup> The 2012 Foreign Employment Policy was formulated to give direction to the effective management of foreign employment, to make the process of migration safe and accessible, and to overcome the shortcomings of existing Acts and Rules in addressing problems related to foreign employment.<sup>139</sup>

Despite having laws and policies to govern foreign employment, Nepal cannot exercise extraterritorial jurisdiction to protect its migrant workers in destination countries or prosecute foreign individuals or organizations under its law.<sup>140</sup> Further, the Foreign Employment Act and the Labour Act are regulatory laws but do not fully recognize the protection of the rights of the migrants.<sup>141</sup>

Despite numerous efforts by foreign employment recruiting agencies to draw attention to the plight of migrants and to promote safe migration, little progress has been made.<sup>142</sup> These businesses are also dominated by local, unlicensed brokers who fuel irregular migration through India and augment the trafficking phenomenon.<sup>143</sup> This sector remains hazardous for Nepalese people who are compelled to leave Nepal due to lack of domestic opportunities.

### **Critical areas of concern**

**Improving the workplace:** Existing labour laws do not address workplace safety issues. The workplace remains largely insecure and is sometimes a threat to human life. Moreover, people are not aware of their rights under the existing legal framework. Benefits, such as pension, transportation assistance, medical and educational facilities for children, residence facilities or allowances, and life insurance remain accessible to only a few workers. Gender-sensitivity in the workplace remains a crucial area of concern. Establishing effective monitoring mechanisms and strengthening the overall labour administration are keys to bring about necessary changes.

**Addressing hazardous sectors:** The construction, manufacturing, transportation, and entertainment industries have some of the most hazardous environments. These are also the areas where forced labour is most prevalent. Carpet factories, brick kilns, stone quarries, garment and embroidery workshops, the transport industry, entertainment venues, and informal agriculture workplaces are key areas where current laws, policies, and programmes fall short.

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<sup>136</sup> Ibid

<sup>137</sup> Sijapati, Bandita and Limbu, Amrita. 2012. Op. cit. 93. p. 2

<sup>138</sup> Ibid. p.37

<sup>139</sup> Ibid. p. 52

<sup>140</sup> Ibid. p. 67

<sup>141</sup> Sijapati, Bandita, Limbu, Amrita et al. 2011. Op. cit. 97. p.159

<sup>142</sup> Samriddhi. 2011.Op. cit. 135. p.20

<sup>143</sup> Rule of Law Initiative. 2011. Op. cit. 106. p. 17

**Eliminating the worst forms of child labour:** The government's target to eliminate the worst forms of child labour by 2016 is unlikely given the lack of response mechanisms and the current weak legal and policy framework. Lack of resources in these areas is another issue of concern.

**Ensuring secure foreign employment:** Migrants employed abroad are some of the most vulnerable Nepalis, but young people and women continue to be victimized by brokers at home and in their host countries. The government's policy to regulate this sector lacks effective legal and institutional mechanisms. Migrants' rights are also impacted by the government's weak geopolitical status and inability to negotiate stronger protections with host country governments.

### **Recommendations**

- Enforcement must be a priority to reduce exploitation in factories. Workers in brick kilns stronger protections through representation by unions, use of collective bargaining, and other workers rights protections.
- Effective legal and institutional measures must be taken to end sexual and other forms of violence against women at the workplace as well as in foreign employment.
- Labour Court decisions must be implemented. Similarly, expansion of the Labour Courts should be given a priority for efficient justice with respect to labour rights matters at the local level.
- Legal and institutional arrangements must be made to eliminate all forms of child labour. Adequate resource allocation should be considered a priority by the government. Unfair labour practices, particularly in relation to women workers, child workers, and bonded labourers, must be reduced.
- Social security programmes should be developed and implemented for all informal and formal sectors, geographical regions, and employees at various levels. Minimum wages should be established in all formal and informal sectors. Workers should benefit from social protection incentives such as maternity leave, old age benefits, workplace injury treatment, and sickness and dependent benefits, among others.
- Greater emphasis should be given to the protection of workers by developing legal protections, decentralizing the system, and making maximum use of social funds established by the government and in industrial sectors. Central and local levels of government must establish effective monitoring and supervision mechanisms.
- Current foreign employment and labour laws should be amended to effectively deal with home and host country vulnerability issues faced by migrant workers.

## ARTICLE 8 - RIGHT TO FORM TRADE UNIONS

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### Situation

The right to organize and join trade unions and associations is protected by the 2007 IC and the Labour Act. All Nepalis are free to form unions and associations of their choice; and all workers and employees can engage in collective bargaining to protect their interests.<sup>144</sup>

Through the CA, Nepali trade unions and workers can discuss their rights and have all voices heard equally. The establishment of unions in Nepal was an important social and political step, which gave workers a voice in the future of the country and its transformation.<sup>145</sup> In July of 2009, pressure from the trade union movement and the ILO led to commitments from prominent Nepali political figures in favour of the ratification of ILO Convention 87 on freedom of association and protection of the right to organize. However, Nepal has yet to ratify this international instrument. Moreover, the dissolution of the CA in 2012 destroyed negotiations with trade unions for better constitutional protections for trade unions. With that, the commitment shown by the political parties to this end also became uncertain for the future.

Low salary, lack of insurance and social security, inadequate health and safety standards, and exploitation and abuse are issues that trade unions have the right to address.<sup>146</sup> However, because of fragmentation among trade unions and the high politicization of these issues, opportunities for an effective response to these issues have been lost.

The CA limits the right to strike, stating that the government may stop a strike or suspend a trade union's activities if the strike disturbs the peace or is deemed to adversely affect the interests of the nation.<sup>147</sup> The misuse of trade unions and workers for political purposes hampers economic growth and inclusive development puts existing employment opportunities in peril.<sup>148</sup> The government's role in this respect has been to control rather than facilitate, and it has widened the mistrust between government and the trade unions.

Because trade unions are highly politicized in Nepal, the broader human rights community has embraced trade union rights and they remain a political issue. There are very few organizations working on those rights, and trade unions and human rights organizations seldom cooperate for the protection and promotion of the trade union rights.

Recent studies show that the rate of unionization is very high, at approximately 90% in the industrial, tourism, tea plantation, urban informal, and health sectors, followed by 66% in the transport sector. Availability of union offices within enterprises is highest in the tourism sector (87%) and lowest in the transport sector (17%).<sup>149</sup> However,

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<sup>144</sup> Article 12 (3) (d), (f) and Article 30 (2), *Interim Constitution of Nepal, 2007*

<sup>145</sup> [www.telegraphnepal.comnational2010-08-15nepal-trade-union-unity-in-the-new-context](http://www.telegraphnepal.comnational2010-08-15nepal-trade-union-unity-in-the-new-context)

<sup>146</sup> [www.ceslam.orgindex.php?pageName=newsDetail&nid=563](http://www.ceslam.orgindex.php?pageName=newsDetail&nid=563)

<sup>147</sup> International Trade Union Confederation. 2010. *Annual Survey of violations of trade union rights - Nepal, 9 June 2010*. [www.refworld.org/docid/4c4fec63c.html](http://www.refworld.org/docid/4c4fec63c.html)

<sup>148</sup> [www.ceslam.orgindex.php?pageName=newsDetail&nid=563](http://www.ceslam.orgindex.php?pageName=newsDetail&nid=563)

<sup>149</sup> GEFONT. 2012. *Trade Union Rights*. Kathmandu: General Federation of Nepalese Trade Unions. pp. 22-23

implementation of collective agreements between trade unions and management is weak. Only 38% enterprises have implemented agreements signed by both union and management.<sup>150</sup> This is due to negligence on the part of employers; an absence of trade unions in workplaces, demands not submitted collectively, lack of knowledge of collective demands among workers, and fears among workers of being dismissed. The lack of union-management cooperation demonstrates a fearful environment in workplaces, which results in weak safeguards for union rights.

Trade unions are still developing their administrative and organizing structures, collective bargaining, and worker education programmes. The vast majority of agricultural workers have yet to be organized and brought under the umbrella of trade unions. This not only limits the rights of agricultural workers but also endangers the modernization of the agriculture sector itself.

The 1992 Trade Union Act, the Labour Act, related 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 the Industrial Trainee's Training Act are some of the key legal instruments that address issues regarding the rights of workers and trade unions. However, recent amendments and effective implementation mechanisms are yet to be enacted. While the formation of trade unions is an important step, this implementation remains a serious concern and limits rights. Coordination and collaboration amongst trade unions also remains an issue. The government's role has not been constructive and has tended to seek control rather than enabling collaboration.

### **Critical areas of concern**

**Organizing the unorganized:** Unionization in the formal sector is important. However, the formal sector is just a small part of Nepal's total labour force. Organizing the large informal sector, which is mainly agricultural, is a crucial challenge. However, current laws are limited and only address unionization of the formal sector.

**Implementation of laws:** Implementation remains a serious problem. Absence of institutional mechanisms to cover informal sectors leaves behind a large part of the labour force. Better harmonization of Trade Union Act, Labour Act, and the Essential Services Act is imperative to ensure freedom of organization and association as well.

**Systematizing trade unions:** Forming trade unions does not just achieve vested political interests. Trade unions should seriously provide leadership to the voice of the workers, hence, by taking up the professional issues for collective benefits and welfare. The government's role is to provide a conducive policy environment, bring appropriate programmatic and institutional mechanisms and ensure their effective implementation. Coordination between the government and trade unions, and between the trade unions and human rights sector is crucial for the promotion and protection of trade union rights.

**Bridging the gaps:** Implementation and capacity gaps hinder progress. Minimum wage, infrastructure development, social security, health and physical security issues and the exploitation of workers in formal and informal sectors are rampant. There is an utmost need to address these priorities for which the government needs to work in coordination with trade unions and take effective measures.

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<sup>150</sup> Ibid

**Strengthening collective bargaining:** Institutional mechanisms to ensure rights to collective bargaining at all levels are crucial to Nepal's trade union sector. Current collective bargaining process and practices are limited to the enterprise and formal level only. An industry level bargaining system is not envisioned within the current legal and institutional frameworks. Further, dealing with this issue in the informal sector remains more complicated.

### **Recommendations**

- Legal and institutional frameworks should be developed to ensure organizing the unorganized workers. The implementation and capacity gaps must be addressed to allow larger number of workers benefit from their right to freedom of organization and association.
- Effective implementation of existing laws and programmes must be ensured in coordination with various stakeholders including trade unions and human rights organizations. Also, the process should be facilitated wherein trade unions rights are also effectively taken up by the constitutional and statutory watch-dog bodies such as NHRC, NWC and NDC.
- Specific measures should be taken to ensure that trade unions coordinate and collaborate with each other, and engage in more professional issues rather than mere vested political interests and that they have professional relation with employers and enterprises.
- Effective policy and mechanisms should be developed to systematize collective bargaining by involving government as a facilitator, which could ensure timely implementation of agreements reached between trade unions and enterprises. Also, it should be monitored whether trade unions only engage in limited formal enterprises or also cover the wider range of labour sector for effective collective bargaining that benefits workers.
- Legal framework should be introduced that institutionalizes 'umbrella confederation' concept of trade unions in Nepal which could address the politicization and fragmentation of trade unions.

## ARTICLE 9 - RIGHT TO SOCIAL SECURITY, INCLUDING SOCIAL INSURANCE

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### Situation

Article 18 of the IC ensures the right to social security as a fundamental right. However, it limits the right to social security by saying that it is guaranteed only in so far as is “provided for in the law.” This effectively means that the right to social security is not constitutionally protected and, therefore, the forms of social security are to be implemented by subsequent legislation. Even though the Constitution aims at establishing a social welfare-based state, the government is yet to work for the formulation of a national social security policy and legislation.

The draft concept paper for the new constitution prepared by the CA was limited to members of certain groups of people, and did not effectively address the issue of social security. The right to social security has been limited to certain groups rather than being made available to “people in need.”<sup>151</sup> The draft lacks any adequate requirement for the amount or form of social security to be provided as required under international standards.

### *Single women*

According to the 2011 census, half a million women are widows, which is an unprecedented rise in the number of single women in Nepal. More than ever before, single women are carrying the burden of supporting their households while still facing significant legal, political, cultural and economic obstacles. Nepal’s traditional patriarchal social structure has created an environment of discrimination against women, and particularly single women at both the national and local levels.<sup>152</sup> Only 11% of single women are literate, compared to the national average of 57% for women.

A baseline study conducted by Women Human Rights shows that more than 40% of women got married before the age of 20, around 67% of them being under 20-35 years of age and having on average 3-4 children. Amongst these women, 29% of were illiterate, with only 2% of them having gained some sort of college education. 10% of single women were forced to migrate and were displaced due to the conflict in their community.<sup>153</sup> There is a lack of authentic updated data collected by the government or by other organizations related to single women afterwards.

All single women face problems related to extra work burden, exploitation, domestic violence, and a sense of loneliness and insecurity. It was also found that most of their children had dropped out of school due to a lack of financial sources.<sup>154</sup> There are very few social security schemes for single women (that is, widows) that focus only on a few specific criteria such as monthly allowance and the allowance for re-marriage.

Government policy on distribution of widow allowances is not effective for all widows as there is a restriction of age to get the allowances. Considerations have not been made

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<sup>151</sup> ICJ. 2010. Op. cit. 3. p. 9

<sup>152</sup> Thapa Lily, *All single ladies*, The Kathmandu Post, 30 April 2013

<sup>153</sup> WHR. 2004. *Problems and Challenges Faced by Single Women*. Kathmandu: Women for Human Rights

<sup>154</sup> Ibid

to give emphasis to health and education of single women and their children. The tokenism is ad-hoc and does not provide grounds for a dignified life of the single women across the country.

### *Informal sector*

There is no notable social security arrangement for the informal sectors. The informal sector is characterized by variation in wage rates, conditions of employment, and discrimination based on gender and age. Some of the workers in the informal sectors are covered partly by the legislation. The Vehicle and Transportation Management Act provides accidental compensation to workers under a compulsory insurance provision. As per this provision, the vehicle owner should have accidental insurance coverage for the driver and helper. Similarly, the workers in the trekking and mountaineering sectors should also have their accidental insurances covered. Likewise, employer should have a group insurance policy for accidental injuries for construction workers.

In labour markets, the formal sector employment is almost stagnant, and the growing labour force is mainly joining the informal sector. It is difficult to determine the size of the informal sector due to its nature, being unorganized and unregulated.

Some sort of reliefs are targeted in a very limited scope and on an ad-hoc basis, such as the senior citizen allowance provided to persons above 70 years of age and to widow and helpless women above 65, maternity protection allowances and so on.<sup>155</sup>

The Labour Act is the primary legal framework that provides ground for various types of social security to workers. However, these cover only government employees such as army, police and civil servants. Workers in informal sector are largely deprived of these social protection benefits.

#### **VDC secys suspended for embezzling social security allowances**

RAJBIRAJ, July 11: Five VDC secretaries and one technical assistant have been suspended in Sapatari district for embezzling social security allowances.

While Brahmapur VDC secretary Dev Narayan Sah, Jandaul VDC secretary Krishna Bahadur Dahal and Jandaul VDC's technical assistant Ram Charitra Thakur have been suspended for embezzling social security allowances meant for elderly people, Kanchanpur VDC secretary Prem Puri, Manraja and Basalpur VDC secretary Bindu Lal Chaudhary and Chhinamasta VDC secretary Tahir Husain have been suspended for embezzling nutrition allowances meant for children under five from Dalit communities. All of them have been suspended for two months.

VDC secretaries Sah and Dahal and technical assistant Thakur were suspended after they were found guilty of embezzling social security allowances by forging signatures and fingerprints of the dead.

According to Saptari's Local Development Officer (LDO) Krishna Prasad Sapkota, they did not remove the names of dead people from the list of elderly people entitled to social security allowances. Instead, they pocketed allowances by forging signatures and fingerprints of the dead.

Of the three, Sah has been suspended on the charge of embezzling social security allowances for the second time in a year. Earlier, Sah, when he was VDC secretary of Bairaba VDC, was suspended when a team led by then Federal Affairs and Local Development Minister Narayan Krishna Shrestha found him guilty of embezzling social security allowances.

In Brahmapur VDC, Sah has been accused of misappropriating social security allowances of 22 elderly people. Jandaul VDC secretary Dahal and technical assistant Thakur were found guilty of forging

<sup>155</sup> Deepak Gajurel. *Labour, Social Security and State in Nepal*. April 2010, <http://nepalpolity.blogspot.com>

signatures and fingerprints of the 17 dead and withdrawing allowances in their name.

Similarly, Chhinnamasta VDC secretary Husain, Manraja VDC secretary Chaudhary and Kanchanpur VDC secretary Puri have been suspended on the charge of misappropriating nutrition allowances meant for Dalit children under the age of five.

The suspension of five VDC secretaries comes at a time when reports of misuse of social security allowances are pouring in from across the country. LDO Sapkota says the case in Saptari could just be the tip of iceberg, hinting at probabilities that a large amount of social security allowances is being misused elsewhere as well.

*Source: Republica, 12 July 2013*

### *Elderly people*

According to the 2011 census, elderly people constitute 9.1% (male 4.6 and female 4.5%) of the total population. The Senior Citizens Act, 2006 identifies senior citizens as "people who are 60 years and above." However, this definition contradicts with the civil servant rules, where the retirement age varies for different disciplines; for example, for lower rank military and police, the retirement age ranges between 45 and 48 years, for higher ranks military and all other civil servants it is 58, for university teachers it is 63, and for judiciary, it is 65 years.<sup>156</sup> If a universal pension system is to be implemented, it is essential to redefine what constitute senior citizen in line with the various retirement ages of government servants.

The 2007 IC has provisions for the protection of rights and privileges of elderly people; however, the provisions have not been effectively implemented. The GoN from 1992 started providing \$6 per month elderly age allowance to people who are above the age of 75 years, and for widows of 60+ years. Since then the older age allowance is built up in the regular annual budget, which is disbursed to elderly individuals as per the Local Development Act 1995-96, Article 233(2). The Senior Citizens Act, 2006 and the Rules, 2008 have provisioned to reserve special seating arrangements for elderly people in transportation and other public services. In addition to various provisions made by the government, elderly people deserve welfare programmes and respect as per the set international norms. Nepal's existing social pension programmes do not provide adequate income or coverage to elderly people as in other countries, including healthcare and nutritional packages.

### *Persons with disabilities*

Nepal ratified the UN Convention on the Rights of Persons with Disabilities in 2010. National legislation has not yet been aligned. Moreover, policies alone have not been translated into concrete benefits for people due to lack of awareness, advocacy and Government capacity to deliver its promise.<sup>157</sup> Policy makers and planners lack commitments to implement policies about the issue. The 1982 Disability Act and other legal provisions are not enough to address the needs of PWDs and include them into the national development agenda. There is also a lack of information about PWDs and no mechanism has been developed to identify them, prioritise the needs and provide support from a human rights-based approach.

<sup>156</sup> Nepal's ageing population: Are we prepared for elderly care?, [www.nepalnews.com/home/index.php/guest-column/18567-nepals-ageing-population-are-we-prepared-for-elderly-care.html](http://www.nepalnews.com/home/index.php/guest-column/18567-nepals-ageing-population-are-we-prepared-for-elderly-care.html)

<sup>157</sup> NORAD. 2012. Op. cit. 43

Both in rural and urban areas, discrimination against PWDs is widespread in all communities. Even families tend to neglect the basic needs of PWDs. The condition of disables is depressing as they are considered a burden to the family and the society. Disabilities are often seen as sins committed in prior lives. Illiteracy, poverty, humiliation, and lack of awareness and information have resulted in the relegation of these individuals to the lowest rung of each stratum of society. Women with disabilities face multiple disadvantages because of their sex coupled with their poverty, illiteracy and weaker status in the family and society.

In a Public Interest Litigation (PIL), the Supreme Court's verdict on 14 November 2003 categorically stated that blind, mentally retarded, differently able, and those with impaired hearing should be entitled to free education at all levels. The court verdict has not been implemented.

The 2007 IC has incorporated the right to employment and social security as fundamental rights. The provisions however, are flawed with the condition that they will be put into implementation only after the enactment of related laws. The situation of PWDs in this regard is largely neglected.

### **Critical areas of concern**

**Private sector and social security:** Social security provisions are not extended to the overall private sectors and due to lapses in the laws; private sectors always enjoy exemption in practice. Because of growing contract-based and piece-rate employment pattern, social security benefits are not reaching the entire labour sector. Employers, mostly the big business houses from the private sector have been demanding strong provisions in the 1992 Labour Act that empowers them to hire and fire labourers easily. It is eventually impacting on the curtailment of trade union rights and putting psychological pressure on the workers not to opt for any demands. Lack of effective regulatory framework is being a hallway of freedom for private sector employers.

**Empowering single women:** Single women face various obstacles that prevent their empowerment. Especially in the rural areas, most of the single women are uneducated and have very little income-generating skills. Single women are denied adequate access to nutrition, health resources, social security and freedom of mobility. It is for these reasons that single women and their dependants fall under the category of the most marginalized, poorest of the poor, with their voices unheard and their needs - immediate and long-term - unmet.<sup>158</sup>

**Inclusion of PWDs:** PWDs are excluded in all strata of economic, social and cultural rights. The exclusion of disability issues from all national development processes has forced PWDs to demand for the formation of the National Disabled Commission. However, their demand has not yet been fulfilled. Poor implementation of the 1982 Disabled Protection and Welfare Act however, has led people to question its effectiveness.

**Rights of elderly people:** The GoN's current approach to deal with the rights of elderly people is largely a welfare approach. It does not recognize their human rights and entitlements. The Senior Citizen's Act has found its base on the welfare approach, hence, does not address the real-life situation of elderly people.

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<sup>158</sup> HRTMCC. 2011. Op. cit. 52

**Role of actors:** Social security is not being a concern for many national and international organizations and the government bodies. The allowance system in the national budget and the provisions for the labour sector has been the major social security area promoted. The ILO is also working in this field, in cooperation with the trade union organizations. Better coordination, collaboration, knowledge sharing and targeting specific results by these organizations can increase their effectiveness and result in a positive shift in the current GoN approach and practices.

### **Recommendations**

- To encourage widow remarriage, the government should respect the choices of single women and provide healthcare, economic empowerment and educational benefits for their children instead of cash benefit to the couple.
- Single women are facing multiple forms of discrimination in the society. Therefore, necessary social security schemes for single women needs to be launched.
- Close coordination and collaboration between the state and non-state agencies working for the well being of the elderly, signal women, informal sector workers and PWDs is imperative to ensure their ESC rights.
- Legal provisions for the welfare and social security of elderly people should be implemented strictly. The welfare mechanisms should also address the need of elderly people who did not get the opportunity to serve as the government employee such as the provision of provident fund.
- Adequate social security allowances should be ensured for unemployed PWDs to support their livelihoods.
- The condition on the right to social security, which states that citizens will be able to enjoy the right only after future provisions, should be scrapped from the constitution.
- A separate law should be promulgated to define and address the issues of social security in a comprehensive and integrated way.
- Emphasis should be given to equitable social life. The GoN therefore should adopt a rights-based approach to deal with concerns of social security and immediately adopt legal policy provisions in favour of those who are working in the private sector and do not enjoy social security benefits.
- Local bodies, non-governmental sectors and trade unions should be promoted and encouraged to increasingly work for social security issues.
- Social security must be given priority by the political parties in their political manifestos and their commitments must be translated into practice.

## ARTICLE 10 – PROTECTION AND ASSISTANCE TO THE FAMILY

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### Situation

In Nepal, over half the adults were married when they were children. One study reports that 51% of Nepalese women were married by the time they reached 18.<sup>159</sup> Nepal's marriage law stipulates 20 years as the legal age for marriage for both sexes, but current records at the Ministry of Health and Population (MoHPP) show at least 23% of girls getting married off at 15-9 years. Between the ages of 20-24 years, prevalence of child marriage among the sexes was 46.2% (52.3% among females and 33.8% among males). Often parents (in 55.9% of cases for males and 63% for females) decide upon the marriages of their children. Child marriage is most prevalent among non-literate, Janajati and Dalit of Nepal, especially among the women in these groups.<sup>160</sup>

The eleventh amendment to the Country Code states that individuals can marry at age 18 with parental consent and at age 20 without consent. The punishment for child marriage is imprisonment for up to three years and a fine of up to NRs. 10,000. While progressive legislation is a positive step against child marriage, high numbers of girls continue to be married before the age of 18.<sup>161</sup> However, the implementation of the legal provision has remained a major challenge. Though the act is restricted by the law, there is no any record of punishment to those who go against the law.

Dire poverty and lack of government initiatives to get girls to school are among reasons for the girls in Nepal, a country where more than half of a total population of 30 million people live on less than 1.25 dollars a day. Poverty is one of the prime reasons for families forcing their daughters and sisters to marry young.

Nepal scores poorly on gender disparity. In 2011 Nepal stood 126<sup>th</sup> out of 135 countries in the 'Global Gender Gap' index of the World Economic Forum. Child marriage not only denies girls an education, it often makes them vulnerable to a cycle of discrimination, domestic violence and abuse. Due to the dowry system, in which the parents of the bride have to pay a huge sum of money to the groom's family, girls are often married off young as dowries will be less than those expected for an adult.

The incidence of child labour in Nepal is relatively high compared with other countries in South Asia.<sup>162</sup> Nepal has 34% of its children between the age of 5 and 14 who are involved in child labour, compared with 12% in the South Asia region as a whole.<sup>163</sup> There are more female than male child labourers, and the situation is worse in rural than urban areas. The proportion of children aged 5-14 who are economically active was 33.9% in 2008.<sup>164</sup>

Most children (60.5%) worked up to 19 hours a day in 2008, while 32.2% worked 20 to 40 hours a week and 7.3% worked for more than 40 hours in a week. This trend is consistent in both rural and urban areas. In the 2003/2004 Nepal Living Standards

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<sup>159</sup> WV. 2013. *Untying the Know: Exploring Early Marriage in Fragile States*. UK: World Vision, p. 47

<sup>160</sup> Plan. 2013. *Asia Child Marriage initiative: Summary of Research in Bangladesh, India and Nepal*. Bangkok: Plan Asia Regional Office. p. 13

<sup>161</sup> Ibid

<sup>162</sup> [http://www.unicef.org/protection/South\\_Asia.pdf](http://www.unicef.org/protection/South_Asia.pdf)

<sup>163</sup> [http://en.wikipedia.org/wiki/Child\\_labour\\_in\\_Nepal](http://en.wikipedia.org/wiki/Child_labour_in_Nepal)

<sup>164</sup> CBS. 2009. Op. cit. 70. p. iv

Survey Statistical Report Volume II, it was found that children from the poorest consumption quintile has the highest percentage (18.7%) of children who worked for more than 40 hours a week as compared with the rest of the consumption quintile. The implementation of the Children's Act and the regulation has remained a major challenge to ensure participation, eliminate child labour and for the development of children.

#### **The State of Children in Nepal**

- The population of children (below 18 years of age) is 12.2 million - around 48% of total population.
- Every week, 2000 children or every day 191 children lose their lives due to the country's indifference towards them.
- The under-five mortality rate is 59 out of every 1000 live births. Out of 3.6 million children under five years of age, 62% do not have access to basic health services.
- Every year 50,000 children die of preventable diseases. 39% children do not get to finish primary education.
- 2.6 million children are working as child labourers in order to eke out a living. Among them, 127,000 children's lives are in danger.
- Child marriage before the age of eighteen is at 51%.
- Every year, 12,000 children and women are trafficked in Nepal. Among them, 20% of children are below 16 years of age.

*Source: The State of Children of Nepal 2008, World Vision, Plan Nepal and Save the Children*

Children are trafficked for domestic work, carpet weaving, circus, forced marriage and prostitution. Every year, 12,000 children and women are trafficked in Nepal. Among them, 20% of children are below 16 years of age. Children are trafficked for domestic work, carpet weaving, circus, forced marriage and prostitution.<sup>165</sup> The government does not have actual data of child victims of trafficking and sexual exploitation.<sup>166</sup> 46% of street boys have been sexually abused.<sup>167</sup> Most sexual abuse and exploitation of boys is conducted mostly by Nepali men not foreigners as is assumed. In addition, paedophiles mostly use boys for sexual relation but unfortunately existing laws do not address this issue.<sup>168</sup> The laws on child prostitution and child pornography are not clear; neither do the laws prohibit possession, procurement and attainment of child pornography, which is against any international norm.

Though the country has been declared a caste discrimination-free nation, the issue of inter-caste marriage remains a big problem. 90% of the inter-caste marriage has not been successful and the couple has been isolated by the family and society.<sup>169</sup> The physical and mental torture, domestic violence and discrimination that Dalit women and men have to tackle are very challenging.<sup>170</sup> Couples of such marriages face extensive discrimination and hardship, although some had been accepted by both couple's families and sometimes received support from district authorities.<sup>171</sup> Although Nepali law outlaws discrimination on the grounds of race, sex or caste, such discrimination is commonly practiced, especially in rural areas. Couples marrying outside their caste face

<sup>165</sup> CWIN. 2009. *The Girl Child in Nepal*. Kathmandu: Child Workers in Nepal Concerned Centre

<sup>166</sup> HRTMCC. 2011. *Child Rights NGO Report: CRC Committee*. Kathmandu: Human Rights Treaty Monitoring Coordination Committee

<sup>167</sup> CWIN. 2010. *A Study on the Sexual Abuse of Street Boys in Kathmandu-2010*. Kathmandu: Child Workers in Nepal Concerned Centre

<sup>168</sup> Session 59 – Nepal, Recommendations made under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Child Helpline International and Child Helpline Nepal, September 2011

<sup>169</sup> Public Hearing on Inter-caste Marriage, FEDO E-Bulletin, Issue No. 3, January 2011

<sup>170</sup> NEPAL: A Dalit man stabbed to death – his family members are under threat following an inter-caste marriage, 9 March 2012, [www.humanrights.asia/news/urgent-appeals/AHRC-UAC-043-2012](http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-043-2012)

<sup>171</sup> Inter-caste marriages in Nepal face violence and intimidation, [www.advocacy.net.org/page/intercaste](http://www.advocacy.net.org/page/intercaste)

four specific examples of abuses: harassment, forced separation, displacement and institutional discrimination.

Moreover, many traditional cultural practices, such as *Chhaupadi*, *Deuki* and untouchability, are highly prevalent in certain locations of Nepal. The *Chhaupadi* and *Deuki* system in the mid- and far-western regions has been affecting the lives of women and girls very negatively. Untouchability prevails across the country and in many caste and ethnic communities. These are more discriminatory against women and children than men. The GoN has developed some policy frameworks such as the Directives against *Chhaupadi* but their implementation is very weak.

Living together without marriage is emerging in Nepali society. Although it is fairly common in developed countries, Nepal's traditional society still frowns on premarital sex and prefers arranged marriages. Laws also restrict same sex marriages. A report published by the NWC in 2010, reveals considerable number of couple living together in Kathmandu without marriage. There has not been any study to reveal the exact number of such couples. However, the NWC has registered 26 cases in which such couples had problems and seek support of the Commission.<sup>172</sup>

Reintegration and rehabilitation of former child soldiers has remained another major challenge in the transitional political process in Nepal. As part of the peace deal which brought the conflict to an end, 2,974 former combatants were identified as child soldiers and disqualified from efforts to integrate the rebels into Nepal's army. The widespread expectations and disappointment among former child soldiers means that the rehabilitation process remains a huge challenge.<sup>173</sup>

### **Critical areas of concern**

**Legal arrangements:** Existing legal mechanisms are characterized by many inconsistencies in ensuring the right to establish family and dealing with issues of child marriage, forced and inter-caste marriage as well as responsibility to maintain a family. It is felt that such legal arrangements have failed to regulate the cross-cutting relationship of child marriage and trafficking, forced marriage and domestic violence, inter-caste marriage and socio-cultural discrimination.

**Consistent definition:** There no clarity about the age of the child through various laws in Nepal. It is necessary to bring uniformity in the age of children in every legal measure. For example, the UN CRC states children as persons under 18 years while Nepalese Children's Act states it as persons under 16 years of age. The law does not protect the sexual exploitation of boys and girls from the ages of 16 and below 18. There is no specific law for the protection of boys from sexual exploitation as well.

**Insufficient Infrastructure:** Legal and judicial procedures are lengthy and cumbersome which are not children friendly. Lack of sensitivity among law enforcement officers, prosecutors and adjudicators and problems in enforcing in camera hearings have created multiple hurdles in discharging justice in favour of the victims. In many cases there is a loss of confidentiality; failure of the police and courts to prosecute and punish perpetrators and offer appropriate remedies to victims; and lack of adequate funding to establish transit homes and rehabilitation centres are also major concerns.

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<sup>172</sup> Living Together Without Marriage – New Trend in Nepali Society, June 2010, <http://xnepali.net/movies/living-together-without-marriage-new-trend-in-nepali-society/>

<sup>173</sup> Khabar South Asia, [http://khabarsouthasia.com/en\\_GB/articles/apwi/articles/features/2012/07/05/feature-01](http://khabarsouthasia.com/en_GB/articles/apwi/articles/features/2012/07/05/feature-01)

**Awareness and capacity building:** Several reports have underlined that there is a low level of awareness of the fact that child labour, child marriage and caste-based discrimination are crimes defined by law. Due to the lack of proper awareness raising programmes, trainings and resources, receiving complaints, investigation and the collection of evidence is weak. Due to lack of knowledge on legal procedures, most of the victims are forced to mediate cases within the community.

**Eliminating harmful cultural practices:** Still the practices of untouchability and other cultural practices such as *Chhaupadi* and *Deuki* are prevalent in Nepalese society. They are also the treats to form and run families, hence more discriminatory to women and girls. Bringing about changes in the attitudes and behaviour of men and women is imperative to come out of these life-threatening cultural practices.

### Recommendations

- Comprehensive legal measures should be adopted by the GoN to ensure the right to establish family and deal with issues of child marriage, forced marriage, inter-cast marriage, and responsibility to maintain family.
- 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 the care and education of dependent children, elderly persons and PWDs.
- All people, especially women, children and PWDs should be protected from economic and social exploitations. Their employment in vulnerable and unsafe work, which is dangerous to their life, should be categorised to improve work conditions. Standard safeguard measures should be taken to reduce work hazardous.
- State policies and programmes should be formulated and implemented to encourage modification of socio-cultural patterns that are discriminatory and exploitative against women, children, and other marginalized communities. Existing legal and policy provisions should be effectively implemented to eliminate discriminatory practices such as untouchability, *Chhaupadi* and *Deuki* practices at the local level. New institutional measures should be adopted and better coordination should be ensured amongst state and non-state actors to maximise the effective implementation of state laws and policies.

## **ARTICLE 11 - RIGHT TO AN ADEQUATE STANDARD OF LIVING**

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### **Situation**

The right to an adequate standard of living requires, at a minimum, that everyone shall enjoy the necessary subsistence rights: adequate food and nutrition, clothing, housing and the necessary conditions of care when required. However, the standard of living in Nepal is below standards set at an international level.

### *Food*

For the first time in the constitutional history of Nepal, the right to food sovereignty was enshrined in the 2007 IC. However, the rights require further implementation through legislation; thus the constitutional provision restricts enjoyment of these rights. The Supreme Court in its decisions has related the right to food with the right to dignified life clarifying that it is an obligation of the state to protect people from possible starvation, however, the decisions is yet to be implemented.

Effective enjoyment of the right to food remains a serious problem in Nepal. Natural calamities such as drought, landslides and floods, contributed to a significant decline in local food production in both 2008 and 2009, resulting in severe food shortages in several hill and mountain districts.<sup>174</sup> Due to lack of just, fair and reasonable distribution, food shortage has been one of the major violations of the right to food.

In Nepal, 41% of people do not get 2,144 calories. The World Food Programme (WFP) has stated that more than 3 million Nepalese face food crisis.<sup>175</sup> Some remote villages of the districts in the mid- and far-western regions are severely affected by food crisis. Nepal ranks at 60<sup>th</sup> position in terms of hunger index in 2012. About 1.6 million people in Nepal are facing some kind of food crisis. The country has one of the highest rates of child malnutrition in the world.<sup>176</sup> It shows a serious hunger situation in the country.

One quarter (six million) of Nepal's population is undernourished; half of all children under five suffer from malnutrition and stunting. Of 75 districts, 42 are food deficit, and 40 % of the families have started to skip or reduce their meals. It is because of stagnating growth in overall cereal production, increasing population, poverty, climate change, continuing high food price and ongoing drought and floods, weak distribution system and market, especially in remote areas, and poor political and economic governance.<sup>177</sup> More than 80% of all working adults in Nepal depend on agriculture for their survival. However, in a growing number of districts about half of the people involved in farming, agricultural labour, share-cropping and rural service delivery are hungry. Food insecurity is pervasive in both food surplus and food deficit districts. Hunger and malnutrition is prevalent largely due to lack of proper distribution of resources, and missing assertion of rights. Most affected are primarily women and children, indigenous people, Dalits, Muslims, ex-bonded labourers, PWDs, gender and sexual minorities, and people living with HIV/AIDS.

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<sup>174</sup> UN Doc, A/HRC/13/73

<sup>175</sup> INSEC. 2013. *Nepal Human Rights Year Book 2013*. Kathmandu: Informal Sector Service Centre. p. 154

<sup>176</sup> IFPRI. 2012. *Global Food Policy Report*. USA: International Food Policy Research Institute. p. 11 & 112

<sup>177</sup> FAO. 2010. *Assessment of Food Security and Nutrition Situation in Nepal*. Kathmandu: Food and Agriculture Organization. p. 37

**Food crisis hits Bajura VDCs**

*Impending food crisis looms*

BAJURA: Eleven VDCs of Bajura district have been facing food shortage.

With Kolti depot of the Nepal Food Corporation running out of stock, villagers of Pandusen, Kolti, Kotila, Jagannath, Bai, Bandh, Sampata, Jukot, Rugin, Gotri and Bichhiya VDCs have been reeling under severe food crisis.

Locals of Kolti have been facing food crisis as the Nepal Food Corporation (NFC) did not send necessary rice to the areas on time. The fate of people in Rugin, Bichhanya, Kolti, Bandu, Sampata and others are no different. "Only 450 quintal rice is there in the store. Now we are distributing rice twice a month," said Kolti depot chief Ramesh Bahadur Singh, adding that only 28 kg of rice is being distributed to a family from the depot now.

Meanwhile, Nepal Food Corporation chief of Bajura, Basu Dev Bhatta said rice stock is not sufficient for the fiscal year in the district. He added Martadi-based corporation depot has the quota of only 6,500 quintal of rice. "We have written to the concerned authority about the impending food crisis but to no avail," Bhatta said, adding the people in the district would face further crisis in the days to come. Rice shortage in 10 months out of the whole year is a perennial problem in the district. Villagers say they are hardly meeting their need of two square meals a day.

*Source: The Himalayan Times, 30 March 2013*

*Land*

Land ownership is a key indicator of identity, power, wealth and political access. Yet up to 25% of Nepal's population is estimated to be landless or near-landless: the bottom 47% of agricultural households control only 15% of agricultural land; the top 5% control more than 37%.<sup>178</sup> Human rights consequences of landlessness has a wide scope of impact: landlessness in Nepal is characterized by exploitative labour conditions for tenant farmers and near bonded-labour conditions for bonded labourers freed as recently as 2002 and 2008; frequent, arbitrary, and often violent evictions; lack of access to traditional resources (e.g., fisheries and forests) for tribal and indigenous groups; lack of access to water and food resources; inability to access police and the judiciary; and deep discrimination against women, Dalits, ethnic and religious minorities, and tribal groups who make up a disproportionate proportion of landless people.<sup>179</sup>

Nepal's HDI value for 2012 was 0.463, in the low human development category, positioning the country at 157 out of 187 countries and territories.<sup>180</sup> Similarly, 44.2% of the population lives in multidimensional poverty (MPI) while an additional 17.4% are vulnerable to multiple deprivations. The intensity of deprivation, the average percentage of deprivation experienced by people living in multidimensional poverty, in the country is 49%.<sup>181</sup> The issues of land come across as one of the key factor that has direct links with the poverty and human development.

Access to land is fundamental to numerous underlying rights, including the right to food, housing, water, tenancy security, and political participation. The 2007 CPA and the 2007 IC include goals to deal with land issues and address landlessness, among other things by forming a high level commission on land rights. However, no

<sup>178</sup> LCILJ. 2011. *Land is life, land is power: Landlessness, Exclusion, and Deprivation in Nepal*. USA: Leitner Centre for International Law and Justice. p. 2

<sup>179</sup> Ibid

<sup>180</sup> UNDP. 2013. *Human Development Report 2013*. USA: United Nations Development Programme. p.143

<sup>181</sup> Ibid. p. 160

substantive progress has been observed. A high-level commission was formed in December 2008 but the politicization crippled its functioning. The commission itself has already undergone a number of personnel changes and weak institutional capacity. The GoN has developed a Land Use Policy in 2012; however, the optimum use of land could only be possible when proper legislative and institutional arrangements have been made.

Despite obtaining consent from political parties and forest users groups to live in places of their occupancies several years ago, landless people in various parties of the country have been forcibly evicted and their homes destroyed by the GoN's District Forest Office. Women living without land ownership are more affected by this. The GoN has failed to pass any law to protect tenancy rights for landless people.

Land reform is a huge task, which has been unresolved for more than five decades. There is significantly low national budget share and allocation for the land reform activities. Only 0.01% of the national annual budget is allocated to the Ministry of Land Reform and Management (MoLRM), of which more than 70% is spent for human resources and administrative expenses.<sup>182</sup>

Nepal does not have an integrated land policy. So far only the Land Act 1964 provides guidelines for land policy. It, however, lacks clear provisions. The regulations are dispersed in more than 65 laws, which also contradict with each other. Current legal and procedural system does not permit introduction of modern technology and efficient administrative processes. Some laws constrain socially equitable distribution of land. The administrative and service delivery mechanism is traditional. Records are not accurate and there is storage problem within government offices as the records are paper-based.

Due to lack of awareness and information about land policies amongst people, a number of local conflicts have emerged and escalated in various parts of the country. People have strong demands that the GoN should guarantee their land entitlement. Therefore, a shift from deed system to title-based land ownership system is currently at a high level of debate.

Despite increased concerns on land entitlement issues by the organizations working with landless people, the state response mechanisms have not been created, hence leaving the voices largely unheard and ignored. Land reform traditionally remains a lip service of political parties and the government. GoN's institutional structure is heavy and weak to carry new functions as well as apply modern technology for efficient delivery of services to clients. Moreover, decision-making is still centralised even though some attempts have been made to make the district level land management offices more effective. Inter- and intra-ministerial coordination is very weak both at the local and central levels. Weak local land governance remains one of the key concern areas.<sup>183</sup>

#### **Govt dissolves Landless Squatters' Commission**

KATHMANDU, May 23: The government has dissolved the dissolved the Landless Squatters' Commission formed by the erstwhile Baburam Bhattarai-led government.

A cabinet meeting held at Singha Durbar on Thursday took a decision to this effect. The government's decision comes in the wake of the Nepali Congress and CPN-UML demanding that all political

<sup>182</sup> CSRC. 2012. *Land Reform Monitoring Indicators, Nepal*. Kathmandu: Community Self Reliance Centre

<sup>183</sup> CSRC. 2010. *Land First: Land Journal of Land and Agrarian Reform, Vol. 10*. Kathmandu: Community Self-Reliance Centre. pp.48-49

appointments made by the Bhattarai-led government be scrapped to ensure free and fair election.

NC and UML had alleged that the commission had distributed identity cards only to those who supported UCPN (Maoist) apparently to influence the upcoming Constituent Assembly (CA) elections. The issue of the scrapping political appointments made by the Bhattarai-led government to influence the upcoming election had been a bone of contention among the political parties represented in the High Level Political Committee (HLPC) meetings.

According to Minister for Information and Communications Madhav Poudel, who is also the spokesperson of the Khil Raj Regmi-led Interim Election Council of Ministers, the cabinet meeting Thursday also decided to form a judicial committee under former justice Tahir Ali Ansari to probe the murder of former lawmaker Sadrul Miya Haq. Likewise, the meeting decided to provide Rs 1 million to the family of slain Haq as compensation.

Among other things, the cabinet meeting has decided to delegate the authorities of Department of Foreign Employment to Embassy of Nepal in Saudi Arabia in view of the Saudi government's decision to grant amnesty to those working illegally there. This amnesty provision will pave the way to them for both changing their illegal status into legal ones and coming back home without having to face any punishment.

*Source: Republica, 24 May 2013*

### *Housing*

The 2007 IC recognizes the right to housing and shelter by putting emphasis to the notion of 'housing for all'. However, existing policies and plans have not adequately recognized housing sector as a potential resource for the overall socio-economic and physical development. Adoption of a shelter policy by the GoN in 1996 had opened door for interventions. However, the policy implementation tools used are weak and inadequate.<sup>184</sup> Absence of a comprehensive housing policy leaves this area untouched except in the case of regulating housing construction in city areas.

Nepal's current population growth rate stands at 1.35% per year. Similarly, total number of households in the country is 5,427,302 with 5,423,297 individual households and 4,005 institutional households (Barracks, Hostels, and Monasteries etc). Altogether, 85.26% of the households reside in their own house whereas 12.81% in rented, 0.63% in institutional and 1.30% in other arrangements. In urban areas, 40.22% live in rented house. Kathmandu district has the highest percentage (58.65) of households living in rented house.<sup>185</sup>

The housing situation in Nepal, especially for the urban poor, remains far from adequate. Indeed, urban dwellers in Nepal have been finding it increasingly difficult to afford housing due to rapid price rises in land. The Nepal Housing Profile Study, published jointly with the Ministry of Planning and Physical Works (MoPPW), shows that urban land prices had raised by 300% since 2003, making housing increasingly out of reach for lower income residents. The country was urbanizing rapidly due to an expansion of urban areas and high rates of rural-urban migration.<sup>186</sup> Though the number of squatters in Nepal is low in comparison to other South Asian countries, the situation is worsening quickly and turning into a serious social predicament. Currently 7-10% of the country's urban dwellers are squatters, according to the report, but this is expected to rise.<sup>187</sup>

<sup>184</sup> UN-HABITAT. 2010. *Nepal: Urban Housing Sector Profile*. Kenya: United Nations Human Settlements Programme. p. 18

<sup>185</sup> CBS and NPC. 2011. Op. cit. 30

<sup>186</sup> Unaffordability of housing in Nepal on the rise, [www.unhabitat.org/content.asp?cid=9088&catid=54&typeid=6](http://www.unhabitat.org/content.asp?cid=9088&catid=54&typeid=6)

<sup>187</sup> UN-HABITAT. 2010. Op. cit. 184. p. 7

The UN-HABITAT report also highlighted the need for comprehensive land use policy and planning, as well as the establishment of a rental act as approximately 42% of people live in rented accommodation in urban areas, rising to 58% in Kathmandu. The government still considers housing for the poor as a social welfare issue, which they may or may not be able to afford to address rather than as basic human rights, illustrated by the fact that the 2007 MDG Report of Nepal does not even include the MDG 7/10 and 7/11 goals.<sup>188</sup>

**Joint Statement on Force Eviction in slum area of Kathmandu and Right to Adequate Housing**

Date : 23 September 2012, Joint Statement

On 22 September 2012, 23 women's human rights defenders from eleven countries from Asia gathered in Kathmandu in solidarity with the forcibly evicted Thapathali, Puarakhi village (slums) of Bagmati river bank.

The delegation expressed serious concerns around the situation of people in the evicted slum areas. In May 2012, the Kathmandu municipality officials and the Armed Police Force demolished sections of Thapathali area; evicted 257 households without providing any alternatives. The residents of the settlement (272 women, 271 men and 401 children) who have been living there for many years were evicted in order to develop a planned urban development project; leaving around 944 people homeless. We are very concerned that this forced eviction of Thapathali area is the first of several planned. If the government pursues its plan an estimated 12,000 people who have been living in the settlements for over 20 years will be rendered homeless.

The solidarity visit to the Thapathali community noted potential human right violations, particularly on their right to adequate housing, right to sanitation and safe water, right to health and, most importantly, democratic rights to participate in decision making over their own lives.

Citizenship rights violations were also noted by the delegation. It appears that citizenship rights require evidence of land title. Furthermore, we note with concern that women's citizenship and legal status is dependent on their husband's or father's citizenship status. This puts a fundamental obstacle to women's rights enjoyment including the freedom of movement, right to employment and other rights.

We women human rights defenders from Asia in solidarity with the Pourakhi Village of Thapathali call on the government of Nepal to fulfil obligations detailed in the International Covenant on Economic, Social and Cultural Right (ICESCR) ratified by Nepal. Nepal's Interim Constitution (2007) states that the state is responsible for ensuring economic security of the squatters and other marginalized peoples. We are concerned that the government of Nepal has not yet responded to the repeated calls from the international community and UN mandate holders to uphold the rights of the affected communities and facilitate meaningful consultation. In particular, we call on the government of Nepal to:

- Implement the verdict of the Supreme Court and hold genuine consultation with the squatter communities;
- Provide sustainable alternative adequate housing and infrastructure to the forcibly evicted Paurakhi village of Thapathali as well as compensation for their loss of livelihoods and human rights violations;
- Commit to ensuring there are no further forced evictions of the 65 settlements in Kathmandu and across the country;
- Women must be part of all consultation and decision making process with the community;
- Any relocation plan must consider people's enjoyment of economic, social and cultural rights including right to work and dignified living conditions.
- Fulfil commitments made through the Millienium Development Goals (goal 7) and provide shelter to one million squatters.

WOREC Nepal NAWHRD Nepal Mahila Ekata Samaj APWLD

Source: [www.worecnepal.org](http://www.worecnepal.org)

<sup>188</sup> Ibid. p. 18

## **Critical Areas of Concern**

**Recognition of the right to adequate standard of living:** Besides a few constitutional provisions, no significant measures have been taken to recognize the right to adequate standard of living. The areas of concerns include generating awareness on the right the people are entitled to, sensitizing government agencies and political parties, and developing legal and institutional mechanisms.

**Food sovereignty:** Positive initiatives by the GoN are the inclusion of food sovereignty and the integration of land reform provisions into the IC, as well as community forestry and protected area buffer zones management. However, GoN strategies to address hunger are not comprehensive. Lack of coordination between the capital, regions and districts is worsening the situation. Non-implementation of genuine land reform is the key hurdle in the overall right to food sector. Agricultural policy focuses only on production and commercialization but not on accessibility and distribution. Existing food distribution strategy often does not reach to the most vulnerable, and lacks proper transparency, accountability, and monitoring. Relief measures for disasters lack sustainable resettlement plans.

**Land disputes:** Courts at all levels get more than 62% of their cases from civil matters, including land-related land disputes.<sup>189</sup> These disputes could be partly resolved when records are accurate and administrative process is simple and transparent. Similarly, rights to land for women, marginalized groups, and indigenous populations are also important for social development and poverty reduction.

**Land reform:** Land distribution and management, and modernization of the agricultural sector are keys to institutionalize land reform in Nepal. On the one hand, very small numbers of people hold a large quantity of land leaving larger population with a nominal quantity. Moreover, current land ownership does not guarantee utilization. Those who own large areas of land do not necessarily use it for production, due to which land remains just a matter of occupancy and wealth in the sell value. Overall, agriculture sector suffers from traditional objectives, manual tools and subsistence focus.

**National frameworks:** Legislative and institutional frameworks and mechanisms are vital for dealing with food, land and housing rights. Decentralised approach to governance and adequate resources for bringing about changes at the local level need greater political commitment, participation of people and ownership of the process and results.

**Equitable access to resources:** Ensuring access to resources and equitable distribution among citizens is one of the prominent areas for adequate standard of living. Equity and accountability focused approaches promote people's empowerment, organize them, facilitate connections with resource and service providers, and on the supply side, contribute to capacity development and institutional set ups. Food, land and housing rights are directly linked to the issue of access to and control over resources, particularly, by the marginalized and disadvantaged people.

**Coordination and capacity:** Coordination amongst government and non-governmental sectors, including civil society and private sectors, research and analysis, and innovative

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<sup>189</sup> [www.celrrd.org/prog1.php](http://www.celrrd.org/prog1.php)

approaches to maximise the use of resources is imperative for ensuring the right to adequate standard of living. Food, land and housing are the sectors where multiple actors have diverse knowledge and capacity, which could be capitalised.

### **Recommendations**

- Strong legal provisions should be made by clarifying the distinction between rights in fundamental rights chapter of the IC and directive principles. Human rights obligations that ensure equality and non-discrimination and access to housing, food and land should be recognized as fundamental rights in the new constitution where they can be enforced in the court.
- A national policy and legislative framework for the eradication of hunger and realization of the right to food, including monitoring and evaluation mechanisms, should be developed
- Strong development framework with affirmative policies and implementation commitments for food security, right to food and food sovereignty to marginalized population should be adopted and implemented.
- Procedures for reporting and facilitating access to effective remedies, either judicial or administrative, for the violation of food, land and housing rights should be created.
- The Land Reform Act, 1964 should be amended and provisions for recognition of unregistered tenants be made. Tenancy rights for all tenants should be ensured. In particular, the Land Reform Act must strengthen evictions protections and recognize other forms of tenancy security than the land certificate. Strong protection against forced evictions must be adopted in the Land Act or separate legislation and monitored at the local, regional and central levels.
- The high-level land reform commission should be provided with clear mandate and jurisdictions to review and carry out their work
- Equal opportunities must be provided for all and special policies and plans should address the needs of the homeless, the backward classes and the most vulnerable in the society
- Adequate alternative housing and infrastructure should be provided by the GoN for those forcibly evicted as well as compensation for their loss of livelihood and violation of human rights
- Any relocation plan should consider the people's enjoyment of their ESCR, including right to work and to have dignified living conditions
- Long-term policies and plans should be formulated to provide adequate housing for all

## **ARTICLE 12 - RIGHT TO ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH**

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### **Situation**

Article 16 of the 2007 IC stipulates free basis health services as a fundamental rights but the constitution restricts, as this rights requires further implementation through the enactment of new law. The Supreme Court in a number of public interest litigations has directed the GoN to ensure basic health needs of citizens. However, none of the decisions have been implemented properly.

Health system in the country is influenced by poverty, education, infrastructure and the broader social and political environment; hence, Nepali people are in a vulnerable position in terms of health. Under-five mortality rate (50 in 1000), infant mortality rate (41 in 1000), neonatal mortality rate (28 in 1000), maternal mortality ratio (280 per 100,000 live births), and life expectancy at birth (68 years)<sup>190</sup> incites the urgent need to improve health system in Nepal.

Healthcare facilities, hygiene, nutrition and sanitation are of poor quality and inadequate, particularly in the rural areas. Provisions of healthcare services are constrained by inadequate government funding. Poor and excluded groups have limited access to basic healthcare due to its high costs and low availability. The demand for health services is further lowered by the lack of health education. Reproductive healthcare is neglected, putting women at a disadvantage.

Communicable diseases, malnutrition and the motherhood related diseases are found to be the causes of 68% of all diseases and 50% of total mortality rate. There is substantial disparity in the condition of health services between the urban and the rural areas.<sup>191</sup> Despite the services are provided by both public and private sectors, it is still beyond the access of citizens. Medical treatment is very expensive and whatever facility is available is too far and impractical for most Nepali. Health service offered by the private sectors is highly expensive, based at the central levels and thus only few have access on the services which is the result of poor monitoring mechanism of the government. Health sector decentralization is also important part of the overall health sector reform.

According to Nepal living standard survey 2010/11, overall, 18% of households perceive their healthcare to be “less than adequate”. Households reporting healthcare as “just adequate” is 79%. The rural mid and far western hill areas have the highest proportions (35%) of households reporting less than adequate healthcare facility. Among ecological zones, the mountains zone has the highest incidence of households reporting healthcare inadequacy (40%) and the Tarai has the lowest incidence (15%).<sup>192</sup> Nepal ranked 139 in life expectancy in 2010 with the average Nepalese living to 65.8 years.<sup>193</sup>

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<sup>190</sup> UNICEF, New Era and NPC. 2010. *Child Poverty and Disparities in Nepal: Towards Escaping the Cycle of Poverty*. Kathmandu: United Nations Children Fund, New Era and National Planning Commission. pp. 65-69

<sup>191</sup> Pant, Arjun. *Health Situation in Nepal*. [www.youthforumnepal.org/vision/health.php](http://www.youthforumnepal.org/vision/health.php)

<sup>192</sup> CBS and NPC. 2011. *Nepal Living Standard Survey 2010/11, Statistical Report, Volume II*. Kathmandu: Central Bureau of Statistics and National Planning Commission. p.123

<sup>193</sup> WHO. 2010. *World Health Rankings*. [www.worldlifeexpectancy.com/country-health-profile/nepal](http://www.worldlifeexpectancy.com/country-health-profile/nepal)

On the basis of health indicators, health status is positively changed but not as expected even though the GoN has brought legal instruments for health and population, and set health institutions throughout the country. In the majority of rural areas, government operated health posts are however only medical facilities available for the poor people. Health posts lack the facilities and human resources to cater for prenatal and postnatal reproductive health needs. Further, frontline health workers are not in sufficient numbers, they are not available at work place of remote areas in particular. Health institutions are not well equipped with sufficient medical tools and other logistic materials.<sup>194</sup> Shortage of female doctors and health workers, especially in rural and most inaccessible areas are major problem affecting women.

### *Sexual and Reproductive Health Rights*

Providing appropriate, quality reproductive health services under such conditions is a major challenge in Nepal.<sup>195</sup> Women receiving antenatal care from skilled providers, women giving birth with assistance from a skilled provider and contraceptive prevalence rates have significantly increased. However, contraceptive prevalence rate is reported to have slightly declined from 44% in 2006 to 43% in 2011. The total fertility rate declined from 4.6% in 1996 to 2.6% in 2011.<sup>196</sup>

According to UNFPA (2005), 600,000 women in Nepal suffered from prolepses, and that 200,000 of those needed immediate surgery.<sup>197</sup> Although there are many laws defining rights related to reproductive health issues of women, they are seldom implemented. There are still pressures from families and communities to have or not to have children; and concerning feeding practices. A broader problem of violence against women has made them the vulnerable group even unable to protect their fundamental rights of living life. Lack of access to the health related facilities and unequal status of men and women has made the reproductive rights a distant dream.

In Nepal, almost two thirds of all the Disability Adjusted Life Year losses are caused by infectious diseases and maternal, pre-natal and nutritional problems.<sup>198</sup> An additional medical condition incapacitating adult women is the prolapsed uterine which triggers higher levels of morbidity. Higher incidence of prolapsed uterus and fistula occur in women who deliver their babies at home with the help of untrained birth attendants.<sup>199</sup> Protection of reproductive health rights of women with disabilities is reflected in policy but in practical side none of the health centres have special program neither the health workers are trained to provide services to the women with disabilities.

### *HIV and AIDS*

The prevalence of HIV/AIDS is precariously high amongst certain population groups, including: female sex workers (2.3%), men who have sex with men (3.2%), migrant workers (1.4%), housewives of migrants (3.4%), and intravenous drug users (34%). Estimates show that over 43,000 people were infected with the HIV virus in 2011.<sup>200</sup>

<sup>194</sup> Paudel, Narendra Raj. 2010. *Health Policy Design and Implementation in Nepal: A Policy Discussion*. Kathmandu: Nepal Constitution Foundation. pp. 5-6

<sup>195</sup> Providing quality reproductive health in Nepal, [www.unfpa.org/stronger\\_voices/nepal.htm](http://www.unfpa.org/stronger_voices/nepal.htm)

<sup>196</sup> Shakya, Prabin. *Reproductive health challenges remain*. [www.gorkhapatra.org.np/rising.detail.php?article\\_id=68763&cat\\_id=7](http://www.gorkhapatra.org.np/rising.detail.php?article_id=68763&cat_id=7)

<sup>197</sup> BBC. 2011. *CEDAW Shadow Report Concerning Sexual and Reproductive Health and Rights of Women*. Kathmandu: Beyond Beijing Committee. p. 10

<sup>198</sup> National Health Sector Programme – Implementation Plan, 2004

<sup>199</sup> HRTMCC. 2011. Op. cit. 52. p.42

<sup>200</sup> MoHP. 2012. *Nepal Country Progress Report 2012*. Kathmandu: Ministry of Health and Population. p. 5

The prospect of the infection multiplying is the biggest threat factor but there are limited resources to treat the patients and to spread awareness and understanding of its causes and consequences. The low awareness about the disease is a major challenge. However, due to the stigma and discrimination related to HIV/AIDS, persons living with HIV/AIDS are deprived from accessing the minimal services currently available. Besides being a health issue, different social factors, such as stigma, discrimination and exclusion have factored in the increase of HIV/AIDS infection.<sup>201</sup> There is a shortage of trained personnel to treat HIV/AIDS patients. Very limited number of care treatment centres and facilities exist for HIV/AIDS patients in the capital and major cities. There are only 15 centres for prevention from mother to child transmission. These are not sufficient to meet the national needs.

### *Communicable disease*

Some 80,000 Nepalese suffer from tuberculosis and 45,000 new infections are reported every year. At least 15,000 Nepalese die of tuberculosis annually.<sup>202</sup> A study has revealed that about 14% of Nepal's population suffers from some form or degree of mental illness. Only 10 out of total 75 districts have psychiatric treatment facilities, with only 134 beds for the mentally ill. There are nearly 60 beds for mentally ill people in the private sector including rehabilitative centres. It means only a total of 194 psychiatric beds for all the 24 million people. Availability of human resources for mentally ill people is another problem. Only 25 psychiatrists (only one woman) are available for the entire national population.<sup>203</sup> Similarly, only a handful of NGOs and INGOs work in this sector.

### *Mental Health*

Less than 3% of the national budget is allocated to the health sector. Mental health receives insignificant attention. The GoN spends about 1% of the health budget on mental health.<sup>204</sup> There is no mental health law and the National Mental Health Policy formulated in 1997 is yet to be fully operational. Mental ill health is not much talked about because of the stigma attached. The roles of the legal and insurance systems are almost negligible. A majority of modern healthcare facilities across the country are devoid of a mental health facility. The main contextual challenges for mental health in Nepal are the provision of adequate human resource, spreading the services across the country, increasing public awareness and formulating and implementing an adequate policy. Although as yet there is no separate mental health legislation, a final draft of mental health legislation has been prepared and under review in the ministry of health. The law in Nepal continues to define mental illness as madness.<sup>205</sup>

## **Critical areas of concern**

**Centralized health facilities:** To effectively manage the health facilities, clear directives from the central level regarding the authorities delegated at various levels is necessary. Lack of coordination amongst different sectors, including inter- and intra-

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<sup>201</sup> HRTMCC. 2011. Op. cit. 52. p.45

<sup>202</sup> Gurung, Ganesh. 2000. *Patterns in Foreign Employment and Vulnerability of Migrant Workers*. Kathmandu: Nepal Institute of Development Studies

<sup>203</sup> [www.searo.who.int/en/section313/section1523\\_6867](http://www.searo.who.int/en/section313/section1523_6867)

<sup>204</sup> *Mental Health in Nepal: Voice of Khosis, Psychology in Action*, July 2011, [www.apa.org/international/pi/2011/07/nepal.aspx](http://www.apa.org/international/pi/2011/07/nepal.aspx)

<sup>205</sup> In the civil code, the legal definition of mental illness is not clarified, but the language of the legislation refers to someone with a broken mind.

ministerial divisions of the MoPH is a major concern. Lack of elected bodies at the VDC level is another key reason why the decentralization is not making expected progress.<sup>206</sup> There is very little participation of local people and communities in policy making, operation and supervision of health services.

**Managing the private sector:** Healthcare is increasingly commercialized and out of reach for people in the rural areas. 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.<sup>207</sup> On top of that the monitoring and evaluation mechanisms are very poor and negligible.

**Accessible health services:** Although the efforts has been made to establish a strong primary healthcare system and to providing free medical and free maternity services. However, a proper mechanism of putting this in place is lacking. There are no organizations and no management system of offering of the health service which are gender sensitive and can be accessible by all. Also the geographical and demographic realities of Nepal have not been considered during the design phase of the necessary health services. Furthermore, the delivery of healthcare is not designed to meet the needs and circumstances of women. Information on available health services is limited and people are unable to access even the minimal services provided.

**Capacity development:** There is one doctor for 10,439 people and one nurse for 4987 people. There are approximately 837 traditional healthcare providers, 54,000 Female Community Health Volunteers and 14,951 Trained Traditional Birth Attendants. In some remote areas, like the far west and the Karnali Zone the ratio of doctors to patients is one for 100,000 patients.<sup>208</sup> The lack of trained healthcare personnel is a major challenge for the country.

**Mental health:** Lack of adequate mental health professionals and treatment facilities. There is only one mental health hospital in the country, and mental health services are not easily available in rural and remote areas. Mental health infrastructure is poor and human resources are not sufficient to meet the need. GoN structures to address mental health are not yet in place. Although legislation is planned, there is presently no division for mental health under the MoPH, and there is not an adequate budget for mental health services.

**Adequate funding:** Lack of adequate funding to the service and maintain healthcare facilities are the major obstacles to proper healthcare facilities. Shortage of medicines and instrumentation along with the uneven distribution of medicines and facilities are also result of insufficient budget to the health sector. Poor health conditions, inadequate health infrastructure, ineffective health policy and poor budgetary allocation and its disbursement are costing the Nepalese their very lives.

**Reproductive health:** No access to healthcare, high maternal mortality rate, inadequate attention to adolescent health, gender discrimination, malnutrition, mental health of women , cultural barrier in making independent decision on contraception, gender discrimination in healthcare system are some of the critical concern on women and

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<sup>206</sup> Gurung, G. 2011. *Nepal Health Sector Decentralization in Limbo: What are the Bottlenecks?* Nepal Medical College Journal-2011. Kathmandu: Nepal Medical College. pp.137-139

<sup>207</sup> HRTMCC. 2007. Op. cit. 47. p. 44

<sup>208</sup> HRTMCC. 2011. Op. cit. 52. p. 43

health. Basic health right has already been recognized as a fundamental right, for which quality healthcare facilities is critical.

### **Recommendations**

- Special policies should be formulated by the GoN 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.
- Right to health including mental and physical health should be recognized as a fundamental right through constitutional and legislative measures.
- Effective regulatory frameworks and monitoring mechanisms should be developed to control the expensive health services of the private sector.
- Non-governmental sector should be encouraged, involved and supported in the treatment and rehabilitation of acute and chronic mental patients.
- Physical infrastructures should be extended and the allocation of resources should be increased in health sector.
- A separate law should be enacted for safe abortion; currently it is dealt under the chapter of Homicide in the Country Code. Abortion should be made safe, accessible, and affordable so that it enables women to avoid unwanted pregnancies.
- The reproductive health issues of women and adolescents girls with disabilities should also be addressed and implemented in practice. Awareness should be raised about the reproductive health facilities introduced by the GoN.
- The health programs, strategies and plans to improve the health and quality of life of people infected with HIV/AIDS should be created on the basis of respect for the principles of 'greater involvement'.

## ARTICLES 13 AND 14 - RIGHT TO EDUCATION AND PROVISION OF COMPULSORY EDUCATION

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### Situation

The essence of the right to education is the right to access educational facilities by every citizen.<sup>209</sup> Legal standards of ICESCR on right to education encompass two broad components: enhancement of access of all to education on the basis of equality and non-discrimination, and freedom to choose the kind and content of education. Both aspects represent the spirit and cardinal essence of the right to education.<sup>210</sup> Realization of the right to education demands an effort on the part of the state to make education available and accessible.<sup>211</sup> Equalizing opportunities for the access to education is a necessary pre-requisite to ensure social mobility<sup>212</sup> as well the enjoyment of all other ESC rights.

The 2007 IC provides that every citizen shall have the right to receive free education from the State up to secondary level as provided for in the law.<sup>213</sup> Currently, there are 34,298 schools across the country, out of which 29,000 are government-run and 5,298 private schools. The number of government high and middle schools is 8,416 and 14,447 respectively; remaining are primary schools. There are 107,000 permanent teachers and additional 13,000 will be added. However, to improve the quality of education further 20,000 teachers are required.<sup>214</sup>

The GoN has a target of 'ensuring, by 2015 all children, particularly girls, children in difficult circumstances and those belonging to ethnic minorities, have access to complete, free and compulsory primary education of good quality.'<sup>215</sup> Policy makers tend to believe that the primary education net enrolment ratio of 94% in the school year 2009-10, with a gender parity index of 0.98, is noteworthy towards achieving universal primary education in Nepal.<sup>216</sup> The network of primary and secondary schools has considerably increased throughout the country facilitating easy access to children.<sup>217</sup> In order to increase the access of minorities in education, the Ministry of Education (MOE) has emphasized the need for making primary schooling relevant to them.<sup>218</sup> Despite GoN's wide range of international and national commitments to make education accessible for all, the implementation aspect of those commitments seems very poor.

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<sup>209</sup> Basnet, Gyan. *Politics & the Right to Education*. <http://weeklymirror.com.np/index.php?action=news&id=3216>

<sup>210</sup> *The Right to Education: Using Module 16 in a Training Program*.  
[www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module16.htm](http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module16.htm)

<sup>211</sup> Basnet, Gyan. Op. cit. 209

<sup>212</sup> Shrestha, B.T. 2003. *Education for the Sustainability of Biological Diversity*. In, *Education for Sustainable Development in Nepal Views and Visions*. Japan: Institute for Global Environmental Strategies. p. 130

<sup>213</sup> Article 17(2)

<sup>214</sup> Subedi, Som Lal. *The situation is very complex in education sector*. In, *Spot Light*, 28 June 2013

<sup>215</sup> CERID and UNICEF. 2009. *Baseline Survey of the Knowledge, Attitude and Practice (KAP) of Parents/Guardians on Early Childhood Development and Primary Education in Nepal*. Kathmandu: Research Centre for Educational Innovation and Development and United Nations Children's Fund. p. 32

<sup>216</sup> Singh, R. *Education for all- Can Nepal achieve the goal?* In, *The Himalayan Times*, 16 July 2010

<sup>217</sup> Shrestha, B.T. 2003. Op. cit. 212. p. 160

<sup>218</sup> CERID. 2008. *Formal Education in Madrasas of Nepal: A Study on Emerging Trends and Issues*. Kathmandu: Research Centre for Educational Innovation and Development. p. 3

### *Literacy and MDG targets*

Overall adult (15 years and above) literacy rate is 55.6%.<sup>219</sup> There was a substantial increase in the proportions of the adult population who had attended school. In 2008, only 46.7% of persons aged 15 years and above had never attended school compared with 60.3% in 1998/99.<sup>220</sup> About 63.2% Nepalese aged 5 years and over in 2008 can read and write a simple message in any language. This is a substantial increase over the literacy rate (5 years and above) of 49.8% in 1998/99. The increases differed by sex with literacy rates improving from 64.5% to 74.7% for male and from 35.8% to 53.1% for female aged 5 years and above.

When examining educational development in Nepal, one can argue that it has made significant progress in many aspects of education such as literacy and primary education by quoting facts and figures.<sup>221</sup> However, despite different endeavours, a large fraction of Nepalese population is still illiterate.<sup>222</sup> An analysis of grade-wise enrolment and nationwide grade progression rates reveals that in 2009-10, only 45%, 38%, 28% and 9% children were able to reach grades 5, 8, 10 and 12 respectively compared to their base year of enrolment five, eight, ten and twelve years ago.<sup>223</sup> Even for those children who do have access to schooling, the survival rate to grade 5 is only 87%. At current rate of progress, Nepal is unlikely to achieve the MDG for which Nepal's national targets are to achieve by 2015: 100% net enrolment in primary school, 100% completion rate to grade 5, and 100% literacy among the 15-24 age group of youth.<sup>224</sup> Similarly the country will be far behind achieving the target of 75% adult literacy rate in 2015.<sup>225</sup>

#### **Students deprived of right to education in Rukum**

Rukum, May 26 –

Most schools in remote areas of Rukum district are closed due to the shortage of textbooks.

Schools in Hukam, Maikot, Kol, Taksera and Rangsi VDCs of the district are shut for months citing unavailability of textbooks.

As a result, students are deprived of their right to education and they are staying home helping their parents in household works.

Some students who can afford to go to schools in neighbouring VDCs and the district headquarters are doing so.

School textbooks supplied by the government have not arrived in these VDCs and even if they arrive the limited stock is sold immediately, said a local stationery supplier.

However, the District Education Office, the government office responsible for smooth operation of schools has expressed its ignorance to the lack of textbooks in these areas.

*Source: The Kathmandu Post, 27 May 2011*

<sup>219</sup> CBS. 2009. Op. cit. 70. p. 47

<sup>220</sup> Ibid. p. i

<sup>221</sup> Singh, R. Op. cit. 216

<sup>222</sup> CERID. 2008. Op. cit. 218. p. 1

<sup>223</sup> Singh, R. Op. cit. 216

<sup>224</sup> Gautam, Kul Chandra. 2008. *Quality Basic Education as the Foundation for Nepal's Development*.

[www.rbf.org.np/speech\\_kul\\_c\\_gautam.pdf](http://www.rbf.org.np/speech_kul_c_gautam.pdf)

<sup>225</sup> Singh, R. Op. cit. 216

### *Vocational and non-formal education*

Vocational training and non-formal education outside the formal school system can play a useful role in developing skills of the workforce. The ability of people to function effectively in their jobs depends not just on their level of educational attainment, but also on any further training that they have received in areas directly related to the work they have to perform.<sup>226</sup> A Council for Technical Education and Vocational Training (CTEVT) has been set up with overall responsibility for managing technical education and vocational training at central as well as district level.

The major subjects of vocational training include trainings in computers, dressmaking/tailoring, agriculture and animal husbandry, driving skills, health, handicrafts, electrical and cooking. For just over 60% of cases, the training lasts for less than six months and 88% are for less than 12 months. Many of the courses in agriculture and in health-related topics last for less than a month.<sup>227</sup> It is estimated that just over a million people in Nepal have received formal training outside the school system. In rural areas, the youth are neither equipped with the skills that are required for any technical or vocational professions, nor do they have any convenient opportunities to acquire them.<sup>228</sup> Due to limited financial and human resources, the GoN mechanisms such as CTEVT however are not able to reach out to the people in need. Centralised system of governance is affecting the whole range of education and training sector as well.

### *Education for girls*

The 2007 IC ensures that no woman shall be discriminated against in any way on the basis of gender.<sup>229</sup> The GoN has aimed at ensuring that, by 2015 all children, particularly girls, children in difficult circumstances and those belonging to ethnic minorities, have access to complete, free and compulsory primary education of good quality.<sup>230</sup> The GoN also supports social welfare expenditures i.e. on providing free textbooks, scholarships to girls and the Dalit children and the nutritious food program.<sup>231</sup> A 'Girls' Education Fund' has also been established to provide scholarships and financial incentives to poor and disadvantaged girls for the continuation of their higher education. However, these policies and structures are highly centralised and are not effective to cover the hard-to-reach.

Male and female literacy rates for those aged 5 years and above stand at 74.7% and 53.1% respectively, implying a wide gender gap. These gaps are seen in all parts of the country.<sup>232</sup> The contrast in the attendance rates for boys and girls aged 5 to 14 years is particularly marked in rural areas, with 91% of boys, but only 86.4% of girls, attending school.<sup>233</sup> The ratio of girls to boys in primary, secondary and tertiary education increased in both urban and rural areas. For example in the country as a whole, the ratio has now increased for those currently in secondary school from 59 girls to 77 girls for every hundred boys.<sup>234</sup> We only have 36% female teachers at the primary level, 19% in lower secondary and a miserable 12% in higher secondary schools. Even the very

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<sup>226</sup> CBS. 2009. Op. cit. 70. p. 29

<sup>227</sup> Ibid. p. 48

<sup>228</sup> Shrestha B.T. 2003. Op. cit. 212. p. 139

<sup>229</sup> Article 13 (2)

<sup>230</sup> CERID and UNICEF. 2009. Op. cit. 215. p. 32

<sup>231</sup> Shrestha, B.T. 2003. Op. cit. 212. p.173

<sup>232</sup> CBS. 2009. Op. cit. 70. p. 47

<sup>233</sup> Ibid. p. 136

<sup>234</sup> Ibid. p. 175

modest government objective of having at least one female teacher in every primary school has not been achieved yet.<sup>235</sup> There is a lack of implementation of the GoN policy on compulsory education and also the disparities in retention in primary and secondary schools between girls and boys, between upper and lower castes and ethnic and indigenous groups.<sup>236</sup>

#### Equity and discrimination

Khem Bahadur Budhamagar, 40, of Allital VDC, Dadeldhura, has a big family with a wife, a son and five daughters. During an interview, he strongly condemned gender discrimination in education. He said, "Son and daughter are equal. Both should be provided equal opportunity and quality education. I have sent my son and daughters to the same school. I have made no discrimination between my son and daughters." However, detailed scrutiny of his family profile during the household survey revealed that, in reality, his eldest daughter Gangi, 18 years, was never sent to school. His second daughter Dilsari, 11 years, who had been sent to school at the age of nine years, dropped out of Grade 1 and repeated it. Now she is in Grade 2. Only his son Khadga had been enrolled in Grade 1 at the age of five after completing the early child development (ECD) class.

Nirmala, one year younger than Khadga, had been enrolled in Grade 1 with no exposure to ECD. The second youngest daughter Mina recently joined the ECD class at the age of five years. These enrolment findings suggest that daughters are still being discriminated against in education. In addition, it should be noted that access to opportunity does not prevent some forms of discrimination. Although the act of sending all children to the same school was equitable, there was discrimination in terms of providing ECD services and sending the child to school at the right enrolment age.

*Source: Baseline Survey of the Knowledge, Attitude and Practice (KAP) of Parents/Guardians on Early Childhood Development and Primary Education in Nepal, CERID and UNICEF, 2009*

#### Poverty and education

The GoN has promulgated their policy of free education for all; however, the principle of compulsory education is still incomplete. Despite the GoN policy, primary education in Nepal is not entirely free; there are direct and indirect associated costs for families. Parents do pay fees for examination and other annual charges in addition to stationary and uniforms.<sup>237</sup> People in the rural areas, where majority of them reside, still seem to prefer education lesser than anything else. The reasons for all these could also be the centralized educational administration system, lack of modern means of transport and easy physical inaccessibility. Similarly, poverty, traditional social beliefs, lack of qualified teachers, absence of basic physical facilities in the schools, and regular mobility of the remote-rural and highland people are other reasons for low enrolment.<sup>238</sup> The introduction of free and compulsory primary/basic education has thus remained unfulfilled.<sup>239</sup> Children from poor households are not enrolling into schools and are not regular to school and have higher chances to drop out, even if they enrol.<sup>240</sup>

#### Nepal march for education

Nepal is granted US\$120 million for the implementation of the School Sector Reform Plan. With an annual per capita income of about US\$ 470 in 2008, Nepal is among the poorest countries in South Asia. Thirty percent of its children drop out of primary grades and hundreds of thousands of children do not attend school at all. The national education plan aims to address this by bringing the hardest to reach

<sup>235</sup> Gautam, Kul Chandra. 2008. Op. cit. 224

<sup>236</sup> *Submission by Save the Children Nepal for the Universal Periodic Review – 10<sup>th</sup> session.*

[http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/NP/SCN\\_SavetheChildrenNepal\\_eng.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/NP/SCN_SavetheChildrenNepal_eng.pdf). p.4

<sup>237</sup> CCD. 2009. Op. cit. 35

<sup>238</sup> Shrestha, B.T. 2003. Op. cit. 212. p.134

<sup>239</sup> Singh, R. Op. cit. 216

<sup>240</sup> Education Financing Reference Group. *Financing Education in Federal Nepal.*

[www.ridanepal.org/downloaded/financing%20education%20in%20federal%20nepal.pdf](http://www.ridanepal.org/downloaded/financing%20education%20in%20federal%20nepal.pdf). p.7

children into schools and reducing the financial burden on communities. The grant will also finance multi-lingual teaching and establish teachers' compensation grants to help the decentralization of teacher hiring. [...]

Source: *Global March* ([www.globalmarch.org](http://www.globalmarch.org)), 9 November 2009

### *Security, law, and order*

Frequent *bandhs* and strikes by various groups, mainly political parties and some ethnic groups, have crippled the overall education sector. It is even harder for students when such strikes are imposed during their examinations. The self-seeking political leaders for their nefarious political gains have been fanning up these educationally dissatisfied and disgruntled students to stage strikes, to resort to lock-outs and burnings of priceless teaching materials.<sup>241</sup> In urban areas, strikes and demonstrations have led to prolonged closure of schools.<sup>242</sup> In addition to other groups, teachers, too, call for such strikes.<sup>243</sup> Following the end of the Maoist insurgency in November 2006, the number of teachers and students abducted dropped dramatically, but the combined number of teachers and students killed continued at similar rates as during the conflict.<sup>244</sup> Alarming insecurity has posed threats to the notion of schools as zone of peace.

### *Quota system*

The 2007 IC provisions that the State shall pursue a policy which will help to uplift the economically and socially backward indigenous tribes, Madheshi, Dalits, as well as marginalized communities, and workers and farmers living below the poverty line by making provisions for reservations in education for a certain period of time.<sup>245</sup> The aim of such provisions is to ensure equal educational opportunity for children from poor and disadvantaged groups as well as to reflect the composition of gender and ethnic groups in the area of teaching. However, there are cases of misusing these provisions, in the enrolment of students and recruitment of teachers. Even the ministers are found involved in the misuse of quota. Lack of adequate connections between schools, local bodies and vital registration data has been the major cause for this. Similarly, the quota of schools and teachers are allocated without long term plan and vision.<sup>246</sup> It has further resulted in a criticism of the implementation of the quota provisions.

#### **Ex-minister behind quota misuse: PAC**

HIMALAYAN NEWS SERVICE

KATHMANDU: A parliamentary Sub-Committee under Public Account Committee, which was formed for studying the distribution of 12,000 teacher's relief quota and per child funding for teachers of two years ago, has found that erstwhile education minister Ram Chandra Kushwaha was behind the misappropriation in distribution.

Following media reports of his involvement, the minister was sacked from the post. PAC today issued a directive to the education ministry to scrap teachers' appointments, take action against those district education officers involved in distributing the 12,000 teacher's quota illegally, and submit report to PAC.

The committee completed the study of Bara, Parsa, Mahottari, Dhanusha, Nawalparasi, Siraha and

<sup>241</sup> Shrestha, B.T. 2003. Op. cit. 212. p. 107

<sup>242</sup> Gautam, Kul Chandra. 2008. Op. cit. 224

<sup>243</sup> *Teachers deprive eight lakh kids of right to education*. In, The Himalayan Times. 27 February 2012

<sup>244</sup> UNESCO. *Education under Attack 2010*. [www.refworld.org/publisher,UNESCO,,,50ffbce5196,,0.html](http://www.refworld.org/publisher,UNESCO,,,50ffbce5196,,0.html)

<sup>245</sup> Article 35 (10)

<sup>246</sup> Subedi, Som Lal. Op. cit. 214

Terhathum and said the erstwhile secretaries and director general of Department of Education were behind the irregularity and should be punished.

A Sub-Committee led by lawmaker Keshav Raj Mainali submitted the study report today to PAC Chairman Ram Krishna Yadav. "The teachers were appointed on direct orders from minister, secretaries and director general of Department of Education instead of through a meeting of District Education Committee," reads an excerpt of the report. The committee is authorised to make appointments.

Chief of District Officers have to mandatorily chair the meeting called by District Education Officers, as member-secretary. Minister, officials of ministry, department of education and regional directorates had protected the wrongdoing officials, said the report.

Teachers were appointed in schools having no students, 48 teachers quota were not authorised by the government in Nawalparasi, no documentation was found for teachers' appointment in Mahottari and Bara districts, according to the report.

*Source: The Himalayan Times, 29 August 2011*

### *Scholarships for Dalit students*

The Education Act has preserved the rights of children from Dalit, marginalized, extremely poor, and ethnic minority groups to receive secondary education free of charge. Affirmative policies have been taken to mainstream girls, Dalits and disadvantaged groups into the education system. Special scholarships in higher education are offered to women, Dalits and other marginalized ethnic groups.<sup>247</sup> As per the provisions, GoN should provide scholarships to Rs. 350 per student for 50% of the girls and Dalits for primary level in the community schools.<sup>248</sup> Similarly, there should be arrangements to support social welfare expenditures i.e. on providing free textbooks, scholarships to girls and the Dalit children and the nutritious food program. However, effective implementation of these provisions without any discrimination is in question. For many Dalits, education is not possible given the 'untouchability' practiced by people and teachers from other caste groups and school fees charged. Only 38% of children from the indigenous communities, 18% of Dalits and a mere 1% of children with disabilities are believed to be enrolled in primary schools.<sup>249</sup> The expectations of scholarship programmes are to get Dalit students into schools, provide them with a conducive environment and increase educational affordability. However, poor implementation and widely prevalent discriminations in the society and in schools leave scholarships ineffective and Dalits out of schools.

### **Key areas of concern**

**Resource concerns:** Improving access to education requires adequate resources and mechanisms to deliver. Mobilisation of national and local resources and ensuring coordination amongst wide range of stakeholders including state agencies and non-governmental actors are necessary to meet educational needs. Unless specifically targeted programmes with adequate funding and clear accountability and monitoring mechanisms are designed and implemented for the poorest households, it will not be possible to ensure universal literacy and universal primary education, especially for the disadvantaged and marginalized.<sup>250</sup> Collecting accurate education data is another important area to design and implement targeted programmes.

<sup>247</sup> UNESCO. 2010. *Implementing the Right to Education*. Paris: United Nations Educational, Scientific and Cultural Organization. p.102

<sup>248</sup> Education Financing Reference Group. Op. cit. 240. p. 7

<sup>249</sup> Gautam, Kul Chandra. 2008. Op. cit. 224

<sup>250</sup> Singh, R. Op. cit. 216

**Targeting right:** Making education accessible to poor, deprived and disadvantaged communities needs concerted efforts to reduce direct and indirect costs, end discrimination, provide incentives and set up schools in rural areas. Meeting universal targets, including MDGs in education, needs right targeting strategies with adequate resources, capacity and commitments of the GoN to ensure the strategies are implemented effectively.

**Vocational training and non-formal education:** Non-formal education and primary education could be complementary to each other to improve the literacy status if they are delivered in a more consistent and coordinated way. Vocational trainings are mainly to develop skills and bring changes in attitudes and behaviours of people. Linking the vocational trainings and non-formal education with formal education and job markets is not given priority by actors involved in the education sector.

**Education as zones of peace:** Addressing the issue of insecurity and weak law and order in education sector is one of the major challenges facing the country. Highly politicisation of all sectors and increased influence of political parties in school management committees are some of the areas that have adversely affected the overall sector. Frequent *bandhs* and strikes have put the security pressure and in many cases children are targeted by various groups as shields of their vested interests.

**Ending discrimination:** Untouchability, sexual and gender-based violence, and discrimination against PWDs, gender and sexual minorities, and persons with HIV/AIDS are widespread concerns. These have direct negative impact on access to education. Taking affirmative action could add value to ending discriminations and promoting access to education.

**Infrastructures:** Mainly, the physical infrastructures of government schools and colleges are very weak and below any established standards. In rural areas, it is more vicarious. Proper management and maintenance of infrastructures has not been given priority in actions though in many cases the 'resources' is not an issue. Similarly, majority of education institutions are not gender-friendly; more adverse they are when we take the issue of accessibility of PWDs.

**Capacity:** For the effective delivery of education and to improve the current status, developing capacity of human resources—teachers and staff—is a must. Current training packages are either one-off type or leave large number of teachers and staff out of the scene. Political influence has limited access to such opportunities for those who do not have connections with 'powerful' political leaders in the district and centre. GoN's capacity development strategies in the education sector do not consider the training needs assessment and behavioural and attitudinal aspects due to which existing limited efforts also go ineffective.

## Recommendations

- Appropriate strategies should be developed by the GoN to meet international and national targets for education, including by amending existing legal and policy provisions. Proper plan and programmes should be developed and implemented to increase female enrolment and their continuity up to higher level university education.

- Special measures should be taken to reduce high dropout rates of female and students from Dalit, PWDs, gender and sexual minorities, persons with HIV/AIDS and other poor and marginalised communities.
- Adequate resources, including national budget, must be allocated and mechanisms established at the local level to effectively implement the educational policies, programmes and strategies. Access to education for poor and disadvantaged families should be promoted through special incentive packages and affirmative actions.
- Infrastructures of the education sector, mainly physical infrastructures should be made gender-friendly and suitable to the needs of PWDs.
- Effective management of community schools, quality ensuring government institutions and regulating private sector must be given priority by the GoN to improve the overall education system.
- The GoN should prioritize the end of corruption and misuse of resources, including proper implementation of scholarships and the quota system. Improving regulatory frameworks and their close supervision from beneficiaries and other stakeholders should be promoted by establishing mechanisms at the local level.
- Steps should be taken to ensure coordination amongst all stakeholders involved in the education sector, including state agencies, national and international organisations, and training institutions. Proper monitoring mechanisms should be set up both at national, regional, district and local levels. VDCs and municipalities should be provided with the necessary structures and resources to monitor the education sector. This role needs to be integrated in the existing legal and policy frameworks.
- The GoN must adopt inclusive and gender-friendly policies to ensure that education sector free of any discrimination against women, and people from various caste/ethnic groups and geographical locations. Ending sexual harassment and all forms of gender-based violence in the education sector needs to be given high priority. Similarly, eliminating caste-based discrimination in the society as well as in educational institutions must be taken into consideration in all programmes implemented by the state and non-state actors.
- The education sector must be declared zone of peace and the GoN should provide adequate security to the sector, including from *bandhs*, strikes and high politicisation. Safety and security of students, teachers and staff needs to be given priority and transparency and accountability of their operations should be

strengthened. GoN's more proactive role is imperative to bring about changes in the current situation.

- More integrated educational development policies, programmes and mechanisms should be developed to establish connections between vocational trainings, non-formal education and formal education.
- The GoN make special provisions for practical and vocational education targeting youths from rural areas, those dropout and are not able to pursue their education through secondary and higher secondary levels. Priority must be given to youths from poor families and remote geographical areas.
- In remote, semi-urban and urban areas, alternative schooling facilities should be developed to ensure access to education by children and youths who also involve in domestic works and some kind of employment for their survival. Additional special facilities should be established to target street children, orphans and PWDs.

## ARTICLE 15 - RIGHT TO CULTURAL LIFE, SCIENTIFIC RESEARCH AND CREATIVE ACTIVITIES

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### Situation

The 2007 IC defined Nepal as a 'secular, inclusive and fully democratic' state and as a 'multiethnic, multilingual, multi-religious and multicultural' country. It thereby replaced the formulation of the previous constitution which had enshrined the Hindu identity of the country and its monarchy. Nepal is a country with religious, social and cultural diversity. There are several religious and ethnic groups in the country. The 2011 Census classified the population of Nepal into ten broad religious categories: Hindu, Buddhism, Islam, Kirat, Christianity, Prakriti, Bon, Jainism, Bahai and Skhism. Hindus accounted for 81.3%, followed by Buddhism (9.0%), Islam (4.4%), Kirat (3.1%), Christianity (1.4%), and others (0.8%).<sup>251</sup>

Following the declaration of Nepal as a secular state no significant effort has been made to make legal provisions consistent with secularism or to minimize the relations between government and religion during the democratization process.<sup>252</sup> Though the declaration respects general feelings of the people, there are many discriminatory social provisions, which directly obstruct the cultural beliefs of communities.<sup>253</sup> The 1990 Constitution enshrined the right to culture as a fundamental right. Article 17 (3) of the 2007 IC has further guaranteed the right to conserve and promote language, script, culture, cultural civility and heritage. However, such pledges could not be translated into practice, as the GoN has not been able to fulfil its commitments. Several of business transactions, interest, collateral, *naso* (entrusted deposit), deposit and court proceedings have acquired some aspects of the Hindu law. Likewise, legal provisions relating to *aputali* (property of couples with no children for inheritance), family planning, divorce, consumption of liquor and gambling also have religious dimensions.<sup>254</sup> These issues have yet to be standardized through the law.

Dalit, women, gender and sexual minorities, senior citizens, PWDs and other marginalized communities continue to be the victims of discrimination in the name of culture. They suffer from structural discrimination in various fronts. The 19<sup>th</sup> century Civil Code (*Muluki Ain*) was not free from religious influence, as it created a legal basis for caste-based system. The discriminatory influence of the law in Nepal's multi-religious and multi-cultural society has continued ever since, although caste discrimination was formally abolished following the democratic changes in 1990. The practice continued even after the popular uprising of 2006, and formulation of the Gender Equality Act in 2007 and the Caste-based Discrimination and Untouchability (Offence and Punishment) Act in 2011.

Law and religion are often manipulated to discriminate against women and people with poor income and with so-called lower status in the caste hierarchy. Both law and religion are used as shields to suppress weaker sectors of the society. An example of this is the practice of "Talaq" that continues to be promoted though not recognized by law.

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<sup>251</sup> CBS and NPC. 2011. Op. cit. 30. p. 184

<sup>252</sup> CCD. 2009. *State and Religion: Participatory Constitution Building in Nepal Booklet Series No. 1*. Kathmandu: Centre for Constitutional Dialogue. p.5

<sup>253</sup> HRTMCC. 2007. Op. cit. 47. p.49

<sup>254</sup> CCD. 2009. Op. cit. 252. p.6

Muslim marriages can only be ended by the husband and only on the pronouncement of the word "Talaq" three times. Family law in Nepal does not recognize this form of divorce and promotes women and men's equal rights in marriage and divorce. However, Muslim community in Nepal continues to follow this practice of Talaq and women continue to live in fear and hence their rights are restricted and compromised. Achievements in repealing the gender discriminatory marriage and divorce laws are thus not equally applicable to Muslim community and remain to be one of the critical areas of concern.<sup>255</sup> State made secular law should therefore be effectively implemented and women's rights should not be curtailed in name of religion and culture.

The picture of the right to culture is dismal in connection with minorities, indigenous people, particularly in relation to the use of their own language. Language is directly related to one's freedom of expression, right to access to information and education, and right to cultural identity. The 2007 IC well reflects the importance of mother language education by stating that all communities shall have the right to receive basic education in their own mother tongue. But the education system is highly repressive when the issue of implementation comes. Language is seen as one of the key reasons for the 1.3 million children between the ages of 6-15 for not being enrolled in school, and the reason for hundreds of thousands of children to drop-out from primary grades.<sup>256</sup> The MoE has developed materials for primary schools in several of the languages spoken in the country. However, these materials are not prepared for all linguistic groups and those available are not sufficiently used. The government has adopted a policy to apply three languages in the education but the implementation remains a major challenge. Recognition of Nepali language as the official language has created obstacles to accessing education and government services, as well as public information.<sup>257</sup> Many indigenous languages are under threat.<sup>258</sup>

Currently 59 indigenous groups have been recognized officially, many other indigenous groups are yet to be recognized by the state which has reinforced the marginalization of non-recognized indigenous peoples.<sup>259</sup> Recognition of all indigenous groups and communities, and ensuring their cultural rights remains a challenge.

### **Critical areas of concern**

**Discriminatory laws and practices:** In Nepal, religion and customs play vital role in the life of people and often determine the status of people especially women and Dalits. Laws discriminatory against certain sections of social life still exist.

**Punishment on violation of cultural rights:** The culture of impunity is widespread in Nepal, in all spheres of life. 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. State has not developed alternatives to replace cultural ill practices. Women and Dalits are facing the most serious forms of discrimination in the name of cultural promotion and preservation.

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<sup>255</sup> HRTMCC. 2011. Op. cit. 52. p. 74

<sup>256</sup> Plathe, Axel. *Mother Languages*. My Republica. 21 February 2013

<sup>257</sup> FWLD. 2009. *Discriminatory Laws against Women, Dalits, Ethnicity, Religious and Persons with Disabilities*. Kathmandu: Forum for Women Law and Development

<sup>258</sup> Subba, Chaitanya. 2008. *Nepal Federation of Indigenous Nationalities-Janajati Empowerment Project, Review of Achievements and Impacts (2002-2008)*. p.47

<sup>259</sup> Nepal NGO Coalition for UPR. 2010. Op. cit. 31. p.14

**Election and power to the local government:** The absence of elected representatives at the local bodies has stalled the local development works, including preservation of community culture. Local bodies are vital to all democracies, and their continuous absence in Nepal has weakened the institution at its roots. Local bodies can be appropriate mechanisms in dealing with issues since they are closer to 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 and cultural life.

**Implementation:** Formulation of laws and policies is not sufficient to make people enjoy their cultural rights. A comprehensive law with strong implementation mechanisms can only ensure the right to culture. Implementation of international obligations to give due recognition to the cultural rights of various communities is important.

### **Recommendations**

- Constitutional and legal provisions and systems needs to be reviewed critically from cultural rights perspectives and all forms of discriminatory provisions and practices should be eliminated.
- The religion and customs should not be allowed to be used as shields to treat women, Dalits and other people differently. Discriminatory traditional practices such as *Chhaupadi*, *Talaq*, and *Deuki* practiced in the name of religion and culture should be strongly dealt with by the GoN. Discriminatory and exploitive religious and cultural practices should be restricted by law itself.
- The primary education should be in the mother tongue and the GoN should appoint local language speakers in local government offices, if not, there should be translation services available in state health, legal administration and justice sectors.
- All laws and policies should be streamlined in accordance with the provisions and spirit of the constitution and the parliamentary declaration defining Nepal as a secular state. New constitution intended to bring through the new CA should fully recognize the cultural rights as a fundamental right.
- GoN should put in place effective mechanisms to monitor the implementation of the state laws and policies. Adequate human, financial and other physical resources should be allocated to ensure functional system across the country, with more focus at the local level.

## **Part III**

### **Overall Assessment Rating**

**RATING ON REALIZATION OF ICESCR IN NEPAL (2007-2013)**

Section	Rating									
	Policy framework					Mechanisms and implementation				
	1	2	3	4	5	1	2	3	4	5
Absence of policy framework	Very limited policy framework	Some policy framework	Policies to address majority of areas	Policy framework to address all areas	Not at all	Very limited mechanisms but no implementation	Some mechanisms and limited implementation	Mechanisms in place and implementation in majority areas	Required mechanisms in place and effective implementation in all areas	
Overall			X					X		
Article 1		X					X			
Article 2			X				X			
Article 3				X				X		
Article 4		X						X		
Article 6			X				X			
Article 7		X					X			
Article 8			X					X		
Article 9			X					X		
Article 10			X					X		
Article 11			X				X			
Article 12		X					X			
Article 13				X			X			
Article 14				X			X			
Article 15		X					X			

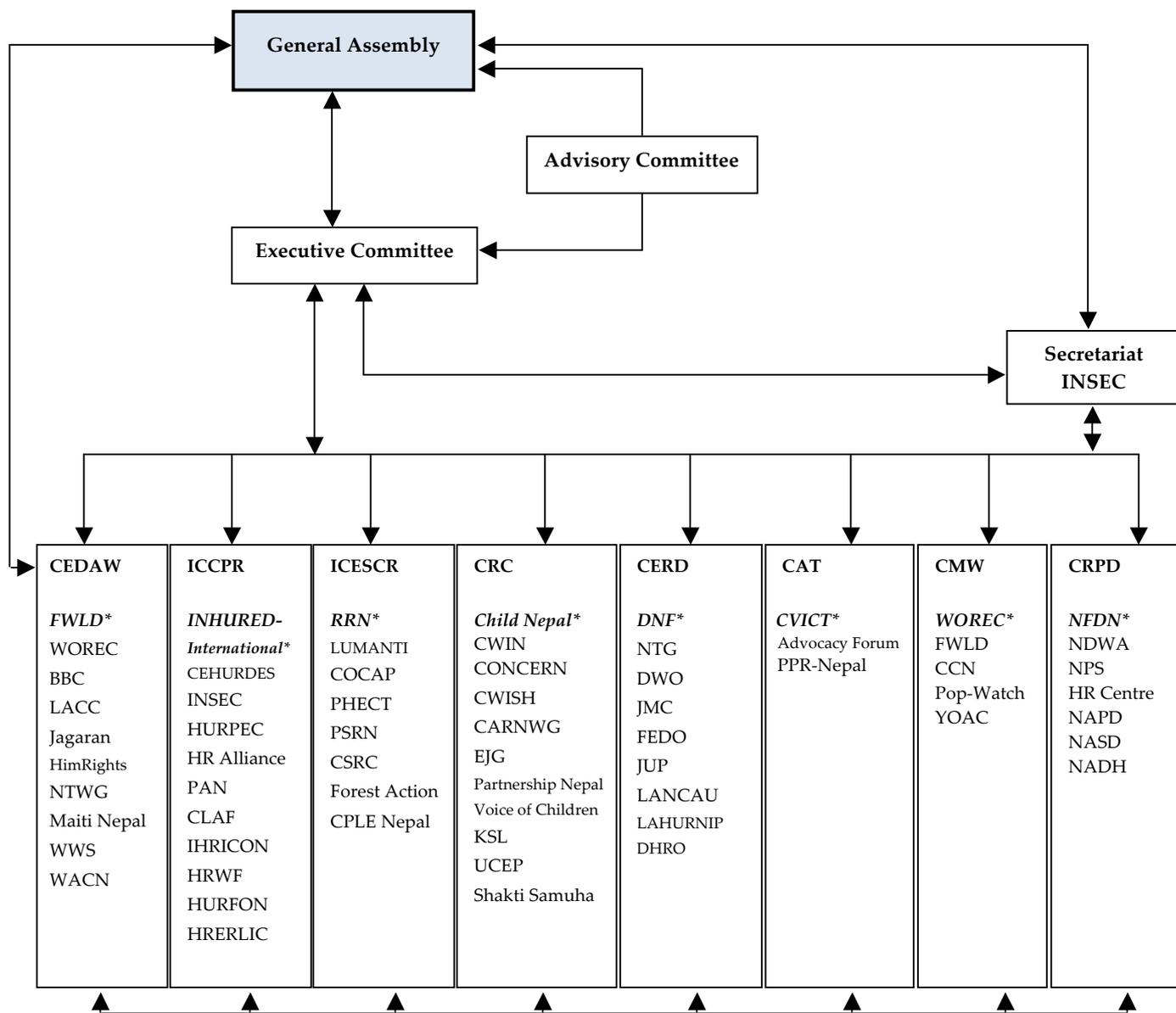
*Note: Based on the overall observation and analysis by HRTMCC*

## **Part IV**

## **Annexes**

ANNEXES

Annex 1: Organizational Structure of HRTMCC



\* Coordinator of respective Committee

## **Annex 2: Reports of National and Regional Consultation Meetings**

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### **A. National Level Consultation Meeting – Kathmandu 26 July, 2013 Kathmandu, Nepal**

The National level Consultation on the Parallel Report of the International Convention on the Economic, Social and Cultural Rights on 26 July, 2013 in Kathmandu, Nepal organized by Human Rights Treaty Monitoring Coordination Centre (HRTMCC). Fifty participants who are Lawyers, Human Rights Defenders, Teachers, and Journalists participated in the program. Also, the representative from Dalit, Madhesi, Third Gender and other marginalized community also participated in the program.

The program was chaired by the Chairperson of INSEC; Mr. Subodh Raj Pyakurel and the Guest of the Program was Mr. Charan Prasain, Human Rights Activist in Nepal. The introduction of the program was made by Birendra Adhikari, RRN. The presentation on the Parallel Report was made by Samjha Shrestha from HRTMCC Secretariat/INSEC.

The participants of the Consultation Meeting expressed their views and concerns over the Parallel report and as well as gave their suggestions. The following summarizes the discussion at the meeting:

#### **Article 1**

- There is no clarity in the definition of the right to self-determination because of which it is confused with the being concerned with politics rather than a human right.

#### **Article 2**

- The state should implement the measures to achieve the economic, social; and cultural rights and also should make the mechanisms to implement them.
- Disabled People Commission has to be made in order to investigate the issues concerned with the disabled people.
- The appointment procedure of the National Women Commission should be fair and non-political.

#### **Article 3**

- The rights for the disabled people should also be included under the right to equality.
- The issues of the Women should not be included in lumpsum.
- There is a need to pressurize government in issuing the citizenship the name of mother; though legally it has been incorporated; the failure is at the implementation level.
- The appointment of women judges recently in June should also be incorporated in the report.
- There is no prioritization and reservation system for the Muslims rather they are taken as a portion of Madhesi people when they actually are the ethnic

minorities. For example, there was no quota for Muslim in Teacher Service Commission.

- There is no quota given for the third gendered people. Also, they face discrimination at various levels even when they want to study on their own.
- The road infrastructures should be made disabled friendly.

#### **Article 4**

- The report regarding the less concern of the State towards the Humanitarian Assistance on the Natural Disaster Management should be included.

#### **Article 6**

- The disabled people are not able to enjoy the right to employment because of the employer of any organization de-motivate the disabled people saying that the infrastructures are not disabled friendly.
- The disabled people are not capable to go for foreign employment so the alternative measure has to be looked for.

#### **Article 7**

- The Youth-employment program should be made effective.
- The banking institutions are limited to the urban areas. Their access to the rural networks will increase in employment opportunities.

#### **Article 8**

- There is very less number of Labour organization across the country because large number of people works on commission basis.
- Though there is right of having strike by the Labours, the problem lies in the implementation of the right as there are very limited numbers of Labours who work as Labourers.
- While doing strike, it is also important to take in the consideration of the damage it keeps in other areas. E.g. Strike by Medical Practitioners may adversely affect the right of health. Therefore, strike at very sensitive areas like health should be addressed promptly.

#### **Article 9**

- Monitoring of the fund allocated in social security is important.
- Make the authorities accountable for the abuse of the fund.
- Effective monitoring of the Senior Citizen allowance is necessary.
- There is lack of effective implementation of the allowance so it should be monitored.
- The people who have serious disability have not received any benefits from the government.

#### **Article 10**

- Since there is difficulty in registration of the inter-caste marriage as the family members deny to give the testimony, the registration of the birth of their baby is also impossible.

- The concerns of reproductive right and reproductive health; including infrastructural facilities for reproductive rights should be incorporated.
- The issues on lack of effective investigation of the Human Trafficking should be incorporated.

#### **Article 11**

- The review and resettlement concepts regarding the right to housing should also be included.
- The National Policy of Nepal talks about the food Security of the people residing in Karnali. However, the policy should rather focus on the food security everywhere.
- There should be prioritization of the Local food; indigenous food.

#### **Article 12**

- The effect upon the mental health of the conflict affected persons should be included.
- The nursing academic curriculum should include the mental health as well.
- The absence of focal Person at the mentally ill people Department of the Government.
- There is no separate place for the health check-up keeping in mind the separate sexual identity of the Third gender people.
- The health workers who are the social worker do not approach to the needy people.

#### **Article 13 and 14**

- There is no mechanism to make complaints to the State where the right to education is seriously impaired as a result of the failure to provide the education by the family members because of various problems and also when the protection from the States side is lacking.
- There is need of mainstreaming Madarasa education because the budget which is allocated for the Madarasa education is not received by the Muslim community rather goes to the other disadvantaged people like Dalits.
- There is no access to education for the third gender people after School; Leaving Certificate.
- The infrastructures of the School and the Colleges are not disabled people friendly. In order to utilize the scholarships provided to the disabled people; the infrastructures should first be made friendly to them.
- Providing education to the education deprived people like Ex-Kamlari should be included in the report.
- There is no implementation of the “School as the Zone of Peace” campaign of the government.
- The quality of the education is being challenged because of the politicization of the education by both the teachers and the students.
- More resources should be made available for the Braille language as well as there is no such measures adopted by the Schools where the mentally ill people can also go for education.

- Though the primary education is said to be free; the schools charge the money to the students in the categories like Dress, Books and Teachers etc.

**Article 15**

- No comments

At the end of the program, INSEC Chairperson Subodh Raj Pyakurel, stressing on the weak implementation of existing provisions, said that the commitment of civil society should also be included in the parallel report. Also, that the rules say that the health and educational institutions should provide free service to 10 per cent of customers. The implementation of this rule should also be monitored.

Human rights activist Charan Prasain claimed that the government report submitted at the UN is like a document of white lies adding that the government was not favourable towards the economic, social and cultural rights of the people.

Samjha Shrestha, on behalf of the HRTMCC secretariat said that the current judicial mechanisms were cumbersome, ambiguous, long and not gender-friendly.

## B. Regional Level Consultation Meetings

The Regional level Consultations on the Parallel Report of the International Convention on the Economic, Social and Cultural Rights was conducted Human Rights Treaty Monitoring Coordination Centre (HRTMCC) in different dates in different regions. Below is the information about the regional consultations and the issues raised in those consultations in tabular form.

Participants				Key Issues Raised
Date	Place	No. of Participants	Community	
12 June 2013	Hetauda	38	Lawyers, Teachers, Journalists, Human Rights Defenders, Government representatives, NGOs, Media	<ul style="list-style-type: none"> <li>• People deprived of social security allowance as they do not have citizenship.</li> <li>• The perpetrators are receiving the political protection due to which justice delivery to the victims of armed conflict is being hindered.</li> <li>• Increasing number of landless people because of ununiformed distribution of land;</li> <li>• No access of the marginalized and poor community over the resources of the state.</li> </ul>
17 June 2013	Pokhara	46	Lawyers, Teachers, Journalists, Human Rights Defenders, Government representatives, NGOs, Media, Dalit NGO Federation,	<ul style="list-style-type: none"> <li>• Equity based land use policy should be introduced;</li> <li>• The concerns of senior citizens should be adequately addressed;</li> <li>• The culture of the society is hindering the equal protection of law;</li> <li>• People who became disabled during the conflict should be provided employment and social security allowance;</li> <li>• Clarify the legal provisions regarding abortion</li> <li>• Mechanism should be made for exercise of various rights as there is no local elected government.</li> </ul>
9 June 2013	Morang	50	Lawyers, Teachers, Journalists, Human Rights Defenders, Government representatives, NGOs, Media, Single Women, Farmers	<ul style="list-style-type: none"> <li>• Situation of Transition still existing;</li> <li>• Dissolution of Constituent Assembly and no Constitution;</li> <li>• No local government election;</li> <li>• National Women Commission should be decentralized;</li> <li>• Generate employment opportunities at national level so that the people will not see for foreign employment;</li> <li>• Laws regarding senior citizen, disabled people, single women should be made;</li> <li>• Include about reproductive health in parallel report.</li> </ul>
22	Nepalgunj	37	Lawyers, Teachers,	<ul style="list-style-type: none"> <li>• Some marginalized communities like</li> </ul>

June 2013			Journalists, Human Rights Defenders, Government representatives, NGOs, Media, Dalit Women Organization, Nepal Muslim Society	<p>Raji, Teli, Chidimaar, Sona are not listed in the marginalized communities and therefore lack the benefits and services of the government;</p> <ul style="list-style-type: none"> <li>• Include the Islamic family Law into National level legal framework;</li> <li>• Establish Consumer Court;</li> <li>• Existence of slavery in different form; state should take steps to liberate Kamlari, Haruwa, Haliya, Khalo, Kamaiya in true sense;</li> <li>• Laws regarding sexual harassment is not adequate;</li> <li>• The women of the Muslim community who are divorced through “Talaq” are not receiving the single women allowance;</li> <li>• Make alternative arrangements for Landless people;</li> <li>• Family Court should be established;</li> <li>• Adequate resources should be allocated to the health institutions;</li> <li>• Scholarship should be given to the economically poor people of marginalized caste/communities;</li> <li>• Disable friendly schools must be built.</li> </ul>
24 June 2013	Dhangadhi	33	Lawyers, Teachers, Journalists, Human Rights Defenders, Government representatives, NGOs, Media, Freed Kamaiya Women Development Forum; National Badi Rights Struggling Committee; Kamlari; Haliya	<ul style="list-style-type: none"> <li>• Awareness should be raised about the right to self-determination as human right and not the political agenda;</li> <li>• Plans and policies regarding the Indigenous, Janajati Dalit, Muslim and other sexual minorities are not being effectively implemented;</li> <li>• Fast Track Court must be established to look the case of Gender Based Violence;</li> <li>• No monitoring of implementation of the minimum wage rate at district level;</li> <li>• The programs and facilities promised by the government for Badi, Kamaiya, Kamlari, Haliyas etc. are not fulfilled;</li> <li>• District Committee for the Senior Citizen Welfare Committee should be established;</li> <li>• Difficulty for the disabled people to get the identity card because they have to travel to the city headquarters;</li> <li>• Difficulty for Haliya, Kamaiya, Badi people to get the identity card;</li> <li>• No land for the Haliya, Kamaiya and Badi people though they are largely dependent on the agricultural sector.</li> </ul>

### Annex 3: An Overview on Status of Implementation of CESCRC Concluding Comments

Suggestions & Recommendations	Comment on Implementation
<p>29. The Committee encourages the State party to strengthen its cooperation with the Office of the High Commissioner for Human Rights.</p>	<p>Despite the demand for the need of extension of OHCHR mandate, government decided to not to extend the mandate. Following the decision of the Government of Nepal to not renew the mandate of OHCHR's Country Office in Nepal, OHCHR's field presence formally closed operations on 31 March 2012.</p>
<p>30. The Committee requests the State party to provide in its next periodic report detailed, updated information including disaggregated data on a comparative basis, on the effective measures undertaken to implement its treaty obligations. The Committee urges the State party to ensure that, in the Constitutional process currently underway, all sectors of society, including disadvantaged and marginalized groups, in particular the Dalit, the Madheshi and indigenous communities, and especially women within these groups, are represented in decision-making bodies at all levels. It recommends that concrete and active efforts be made to promote the participation of these groups in the Constituent Assembly, which, following the election of its members in 2007 will embark on the drafting of a new Constitution.</p>	<p>In the election of Constituent Assembly, out of 240 elected 12.3% were women. Out of 601 members, there were a total of 196 (32.6%) Madheshi CA members, 50 (8.32%) Dalit CA members, 218 (36.27%) Janajati members, and 196 932.61% were from non-marginalized castes/ethnicities. One of the major problems for the failure of CA was the lack of inclusion of all groups in the constitution making process. Constitution making process demonstrates that marginalized groups faced serious challenges, which curtailed their ability to contribute effectively to the new constitution. Another challenge faced by marginalized groups was that although it can be said that they were represented within the CA and its various committees, positions of leadership in political parties were always occupied by men from non-marginalized caste/ethnicities. During the constitution making process marginalized groups were not represented in much of the decision making process. Meaningful participation of the CA members from marginalized groups were lacking in the whole constitution making process.</p>
<p>31. The Committee recommends that the State party establish a transparent appointment process of Commissioners in the National Human Rights Commission to enable the Commission to have full institutional capacities in accordance with the Paris Principles (General Assembly resolution 48/134 of 20 December 1993, annex). In this regard, the Committee draws the attention of the State party to its general comment No. 10 (1998) on the role of national human rights institutions in the protection of economic, social and cultural rights.</p>	<p>Though the Interim Constitution upgraded NHRC with the constitutional status, the appointment procedure is a grave flaw. The provision has endangered appointment of the NHRC members because of possible political interest of the Prime Minister. The amendment in NHRC act in 2013 has resulted in lack of independence of the institution since several components of the Paris Principles have been compromised, including financial autonomy.</p> <p>The NHRC jointly with OHCHR office developed an indicator for ESC rights. However, monitoring of progress has not been done.</p>
<p>32. The Committee recommends that a thorough review of national laws be undertaken with a view to identifying and rectifying all provisions that directly or indirectly permit discrimination on the basis of caste and multiple discrimination of women from certain groups. It urges the State party to strengthen its efforts to make widely known the prohibition of such discrimination and to improve effectively access to judicial and administrative remedies in cases of alleged</p>	<p>Adopted Law criminalizing caste based discrimination and untouchability in May 2011. However, there is a huge gap in implementation. Authorities have not provided information on law adequately.</p> <p>GoN tabled bills on civil code, penal code, Civil and criminal Procedure Code and sentencing act before the Legislature-Parliament however, the parliament dissolved in May 2012 within adopting the codes.</p>

<p>violations. The Committee further recommends that special units be established to monitor the implementation of programmes to protect and promote the full enjoyment without discrimination of their economic, social and cultural rights by disadvantaged and marginalized groups, in particular the Dalit, the Madheshi and indigenous communities, and especially women within these groups.</p>	<p>The NDC has adopted a range of measures to make widely known the prohibition of discrimination. It has prepared Nepali version of the CERD and other relevant instruments and distributed the same up to the grassroots level.<sup>260</sup> Though the NDC disseminated the Nepali version of the CERD, the NDC and GoN failed to deliver the message of the convention.</p>
<p>33. The Committee urges the State party to implement effectively, the Comprehensive Peace Agreement underlining the safe and sustainable return of all internally displaced persons (IDPs), particularly in mountain and hill districts where the environment has not been conducive to reintegration. The Committee recommends further that the State party establish an effective strategic plan including a monitoring mechanism, for the safe and dignified return, registration, rehabilitation and reintegration of IDPs.</p>	<p>The displacement crisis in Nepal received limited attention from the government and international agencies. This limitation is reflected in the absence of targeted assistance to address the most immediate humanitarian needs. No survey has been carried out to assess the vulnerability of IDPs on the basis of different indicators such as access to shelter, food, drinking water, sanitation, medicine and care.</p> <p>The government's definition of IDPs included those who were displaced by Maoist forces, but it excluded people who were forced by governmental forces to move away from their homes (Internal Displacement Monitoring Centre, 2006). Those who were forced by state security forces to flee their homes found little incentive to register as IDPs because they often did not qualify for government assistance (OCHA, 2008)</p> <p>Governmental failure or unwillingness to address the displacement crisis has thus further increased the vulnerability of IDPs. The absence of systematic monitoring systems of population movement by both international and national authorities also made it difficult to assess the scope of displacement since the beginning of the conflict, thereby preventing the provision and distribution of effective aid.</p>
<p>34. The Committee urges the State party to strictly enforce the law prohibiting harmful practices that violate the rights of women and girls such as <i>deuki</i>, <i>badi</i>, <i>chaupadi</i>, marrying child brides and witchcraft. The Committee requests that the State party provide detailed information on the extent of these practices and the measures being taken to strictly enforce its laws for the protection of women and girls from such harmful practices.</p>	<p>Existing customary practices with negative impacts on women are yet to be identified and abolished. Women were victimized because of cultural practice of <i>Deuki</i>, and continue to be victims of practices such as <i>Badi</i>, <i>Jhuma</i>, <i>Chhaupadi</i>, domestic, sexual and other forms of violence. In spite of legal provisions which aim to eliminate some of these practices, the changes are yet to occur. These practices exist amongst communities in remote hilly regions in which parents receive money for solemnization of marriage of their children at an early age, are yet to be acknowledged for their negative impact on society and women. Girl children are found to be the most significant victims of the system increasing their vulnerability to further acts of violence such as domestic violence, trafficking etc.</p>
<p>35. The Committee urges the State party to adopt without delay specific legislation on domestic violence without delay defining these acts as a specific offence, and to undertake a major information campaign to raise awareness about such legislation. It further urges the State party to take measures to develop procedures and educate law enforcement officials, judges, lawyers, social</p>	<p>Government adopted legislation on domestic violence in 2008. Laws to deal with DVAW need to be reviewed and improved. Serious forms of domestic violence needs to be recognized as a crime against state and police should have power to detain for investigation in domestic violence cases. Protection officer needs to be appointed for prevention and protection of victim of domestic</p>

<sup>260</sup> GoN. 2011. *Third Periodic Report to CESCR*. Kathmandu: Government of Nepal. p.16

<p>workers and medical professionals to enable them to protect effectively victims of domestic violence.</p>	<p>violence. Government failed to raise awareness on legislation on DV to the major stakeholders such as police and VDC secretary, who have been authorized to take a complaint under the act. Police and VDC secretaries are not aware of the provisions of the law and their role under the law.</p>
<p>36. The Committee encourages the Government to provide adequate and immediate assistance, in particular through special temporary measures, to alleviate the adverse impact of the conflict on women, including poverty and loss of income, social stigma, and insecurity of tenure resulting from unclear property rights due to the unknown fate of the missing spouses.</p>	<p>The continuing culture of impunity has created the main obstacle in ensuring women's security and protection from conflict related violence and transitional justice.</p> <p>Women and girls are largely absent from a number of “interim relief” programmes initiated by the state since the end of the conflict. None of the government relief programmes and compensation schemes includes assistance for victims of sexual violence, and some of these existing schemes discriminate against certain categories of women. In the CPA, both parties to the conflict promised to form a high-level Truth and Reconciliation Commission (TRC), a Disappearances Commission and a National Peace and Rehabilitation Commission. To date, none of these has been established. Investigation and prosecution of crimes committed against women, including crimes of sexual violence, and ensuring that all actors cooperate in such investigations.</p>
<p>37. The Committee recommends that the State party strengthen its efforts to promote labour intensive industries and increase productivity in the agricultural sectors. The Committee also recommends that special programmes for ex-Kamaiyas and ex-Haliyas, Dalits, indigenous persons and groups, and particularly women belonging to these groups, be expanded in the rural areas as a matter of priority.</p>	<p>The current constitution prohibits slavery, serfdom, forced labour, or trafficking in human beings in any form; however, forced labour and trafficking in persons remain acute. The Department of Labour enforces laws against forced labour in the small formal sector, but remains unable to enforce the law outside that sector. The residue of bonded labour system and other forms of servitude still persist, including Haliya, Haruwa, Balighare (fixed but nominal compensation in kind) and Charuwa systems.</p>
<p>38. The Committee recommends that the State party continue to address the situation of children engaged in the worst forms of child labour, with the assistance of the International Labour Organization. The Committee recommends that measures to rehabilitate affected children, to monitor their work conditions and their living conditions following removal from such work, be strengthened and significantly expanded to cover all children engaged in the worst forms of child labour.</p>	<p>The Labour Act specifically prohibits forced or bonded child labour, but enforcement of this law has been inadequate. The law prohibits forced or bonded labour by children, but it exists in many sectors, including carpet industry, entertainment sector, stone quarrying and brick kilns.</p> <p>During the armed conflict an estimated 6,000 to 9,000 Maoist cadres were believed to have been children. UNMIN had reported that over 3000 child recruits remained in the cantonment sites. Lack of government strategies for proper rehabilitation and reintegration, many child combatants found their way into violent groups.</p> <p>The number of child involved in worst forms of child labour is increasing and government monitoring and assistance doesn't exist.</p>
<p>39. The Committee urges that the minimum wage be set at a sufficient level to enable workers and their families enjoy an adequate standard of living. The Committee encourages the State party to carry out periodic reviews of the minimum wage. It further requests information in the next report about the methodology for the calculation of the minimum</p>	<p>Adopted some measures to set the minimum wage however, the distribution is not equal. Wage labour is mostly dominated by made occupation throughout the world, expect some cases of female's involvement. Female workers get 31% lesser wages compared to the wage of their male counterparts.</p>

wage.	
40. While noting that Nepal is a low income country and its resources are correspondingly limited, the Committee reminds the State party that it is obliged to comply with its Covenant obligations to the maximum of its available resources. In this regard, the Committee refers the State party to its recent statement on the evaluation of the obligation to take steps to the "maximum of available resources" under an Optional Protocol to the Covenant (E/C.12/2007/1).	GoN has developed human rights action plan and also the action plan for the implementation of recommendations received from the UPR process. However, the development process was not inclusive and was also not consultative. The action plans are vague and lacks concrete commitment. It does not specify time frame for the implementation of the plan. Nepal is yet to ratify OP-ICESCR.
41. The Committee also recommends that specific mechanisms and procedures be established to monitor the implementation of such strategies and evaluate the progress achieved in combating poverty effectively, including among the most disadvantaged and marginalized groups.	The NHRC jointly with OHCHR office developed an indicator for ESC rights. However, monitoring of progress has not been done.
42. The Committee recommends that the State party take urgent steps to ensure food security and access to water for all; particularly those who belong to the most disadvantaged and marginalized groups. It recommends that agricultural policies aim effectively at improving not only productivity and commercialization but also access and distribution. In this regard, the Committee urges that specific measures be implemented with a view to enhancing the participation of the lower castes in the production, distribution and consumption of food. The Committee requests the State party to provide in its third periodic report detailed information about the extent of food insecurity, the groups most vulnerable to it, and the concrete measures envisaged to address it. In this regard, the Committee draws the attention of the State party to its general comment No. 12 (1999) on the right to adequate food and general comment No. 15 (2002) on the right to water.	The effective enjoyment of the right to food remains a serious problem in Nepal. Natural calamities drought, landslides and floods, contributed to a significant decline in local food production in both 2008 and 2009, resulting in severe food shortages in several hill and mountain districts. Due to lack of just, faire and reasonable food distribution, food shortage has been one of the major violations of the right to food.  Food insecurity is pervasive in both food surplus and food deficit districts. Hunger and malnutrition in Nepal is prevailing largely due to lack of proper distribution of resources, and missing assertion of rights.  Non-implementation of genuine land reform; agricultural policy focuses on production and commercialization, but not on accessibility and distribution; relief measures for disasters lack sustainable resettlement plans; food distribution often does not reach to the most vulnerable, and lacks proper transparency, accountability, and monitoring.
43. The Committee recommends the immediate application of the Interim Constitution and laws prohibiting caste-based discrimination and segregation in cases of denial of access to public water sources. It recommends that access to public wells be closely monitored by the District Development Committees or by another appropriate local body.	Despite the caste based discrimination being punishable by law, instances of society giving it continuity are reported frequently. Nepal retains its centuries-old caste-based discrimination and the practice of "untouchability". Dalits, the discriminated people under this system, suffer from restriction on the use public amenities, deprivation of economic opportunities, and general neglect by the state and society.
44. The Committee recommends that the State party adopt a national housing policy by providing low-cost housing units for the rural poor and the disadvantaged individuals and groups.	Existing policies and plans has not recognized housing sector as a potential resource in the overall socio- economic and physical development of cities in Nepal, despite the newly emerged national shelter policies and their implementing strategies. 'Housing for all' is mentioned specifically in the 2007 IC, but the urban reality is different. Some policy instruments, legal provisions and institutional responsibilities have been put in place but no comprehensive housing policy.
45. The Committee recommends that higher priority be accorded to reducing maternal and infant	Less than 3% of the national budget is allocated to the health sector. Mental health receives

<p>mortality rates and that due consideration be given to the need for integrating into the general health-care system, mental health services and programmes aimed at preventing and treating HIV/AIDS. The Committee stresses that the right to the highest attainable standard of health encompasses mental as well as physical health and the importance of mental healthcare, particularly in relation to persons affected by the conflict.</p>	<p>insignificant attention. The Government spends about 1% of the health budget on mental health. There is no mental health act and the National Mental Health Policy formulated in 1997 is yet to be fully operational. Nepali law defines mental illness as madness.</p> <p>There is a shortage of trained personnel to treat HIV and AIDS patients. The very limited number of care treatment centers and facilities for HIV/ AIDS patients exists in the capital and major cities. GoN has not developed clear policies to support the mental and physical healthcare facilities for conflict affected people</p>
<p>46. The Committee recommends that as part of the general improvement in the national healthcare system, physical and economic access to reproductive healthcare 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 professionals.</p>	<p>Healthcare facilities, hygiene, nutrition and sanitation are of poor quality and inadequate, particularly in the rural areas. Provisions of healthcare services are constrained by inadequate government funding. Poor and excluded groups have limited access to basic healthcare due to its high costs and low availability.</p> <p>The demand for health services is further lowered by the lack of health education. Reproductive healthcare is neglected, putting women at a disadvantage.</p> <p>Health service offered by the private sectors is highly expensive, based at the central levels and thus only few have access on the services which is the result of poor monitoring mechanism of the government. Health sector decentralization is also important part of the overall health sector reform.</p> <p>Protection of reproductive health rights of women with disabilities is reflected in policy but in practical side none of the health centers have special program neither the health workers are trained to provide services to the women with disabilities.</p>
<p>47. The Committee calls upon the State party to introduce not only free but also compulsory education, in conformity with articles 13 and 14 of the Covenant, and to specify in its third periodic report by when it plans to achieve this, as well as concrete benchmarks through which progress can be measured. In this regard, the Committee refers the State party to its general comment No. 11 (1999) on plans of action for primary education, and general comment No. 13 (1999) on the right to education. It further urges that human rights be introduced at all levels of education, both as a subject and as a methodology of instruction, reflecting values of participation and social inclusion. The Committee stresses the value of education as a tool for national reconciliation, the eradication of harmful feudal practices, the promotion of respect for the dignity of all persons and groups, as well as the building of skills to enhance future employment prospects.</p>	<p>Despite GoN's wide range of international and national commitments to make education accessible for all, the implementation aspect of those commitments seems very poor.</p> <p>Looking at the educational development in Nepal, it has made significant progress in many aspects of education such as literacy and primary education by quoting facts and figures. However, despite different endeavors, a large fraction of Nepali population is still illiterate.</p> <p>A Girls education Fund has been established to provided scholarships and financial incentives to poor and disadvantaged girls for the continuation of their higher education. However, these policies and structures are highly centralized and are not effective to cover the hard-to-reach.</p>
<p>48. The Committee recommends that the State party include in its third periodic report detailed information about criteria used to recognize officially indigenous nationalities and about the</p>	<p>The high level task force formed by GON has submitted suggesting to enlisting 81 indigenous nationalists through the amendment in National Federation of Indigenous Nationalities (NEFIN)</p>

implications thereof.	however, the GoN is yet to implement the recommendation of the task force.
49. The Committee requests the State party to include in its next periodic report a specific section on the results of the measures taken to combat discrimination and enhance respect, protection and fulfilment of all economic, social and cultural rights. The Committee further requests the State party to include in its next periodic report, annual data, disaggregated by caste, ethnicity and sex, as well as specific benchmarks, to enable adequate monitoring and evaluation of the progress achieved.	GON report provides information on specific concluding observation and also provides article wise information on the status of the ICESCR. The report lacks information on disaggregated data as suggested in the concluding observation.
50. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, particularly among government officials and judicial authorities and to inform the Committee on the steps the it has taken to implement them in its next periodic report. The Committee also encourages the State party to engage nongovernmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.	Collaboration of GON with CSOs was very minimal. The concluding observation was translated in local language by the CSOs and disseminated to various levels including to the government agencies. However, government did not make any effort to disseminate the concluding observations.
51. The Committee invites the State party to update its core document in accordance with the 2006 harmonized guidelines on a common core document (HRI/GEN/2/Rev.4).	Government has followed the guideline while drafting the report.
52. The Committee encourages the State party to consider ratifying the Convention on the Rights of Persons with Disabilities. The Committee also encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.	GoN ratified Convention on the Rights of Persons with Disabilities and its optional protocol in May 2010. However, GoN is yet to implement the provision of the convention. GoN is yet to ratify International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
53. Finally, the Committee requests the State party to submit its third periodic report by 30 June 2011 and to include in that report, detailed information on the steps it has undertaken to implement the recommendations contained in the present concluding observations.	GoN has submitted third periodic report within the due date provided by the committee and the report includes the information on the status of the concluding observation.

**Annex 4: An Overview on Implementation of ESCR-related UPR Recommendations**

Theme	Outcome Document Paragraph number	Recommendations	Implementation Status
Constitution Making	106.1, 2	<ul style="list-style-type: none"> <li>▪ Ensure drafting a new Constitution by May 2011</li> <li>▪ Ensure full participation of ethnic groups and caste in Constitution making process in the CA</li> <li>▪ Accelerate steps</li> <li>▪ Undertake democratic, inclusive and progressive state restructuring</li> <li>▪ Ensure right to freedom of religion according to international standards</li> <li>▪ Guarantee in Constitution right to freedom of religion or belief and right to equality and non discrimination in line with international standards</li> </ul>	<p>Since the constituent Assembly could not make the constitution in time and dissolved in May 2012; different political parties have politically agreed upon to initiate constitution making again through the CA.</p> <p>Yet, there have not been agreement among the political parties themselves. In this context of instability, impunity and incidents of human rights violation, the date of the election of the Constituent Assembly should be declared as soon as possible with the consensus of all the political parties in a fearless environment.</p>
<b>GBV and women's right</b> Legal frame work	106.2. 106.10. 108.10., 106.4. 108.20. 107.11.	<ul style="list-style-type: none"> <li>▪ Review legal framework</li> <li>▪ Implement national action plans on the elimination of discrimination against women</li> <li>▪ Enact laws to criminalize all forms of discrimination</li> <li>▪ Introduce legislation and more stringent enforcement of existing laws),</li> <li>▪ Take further legislative steps and accelerate efforts for their effective implementation</li> <li>▪ Take necessary legal and policy measures to end discrimination, including of women, children and Dalits.</li> </ul>	<p>Though the Action Plan for the elimination of GBV; it has not been effectively Implemented and monitored. Introduce the mechanism for the monitoring of the Action Plan to see its effectiveness in the Local Level.</p> <p>Programs has not been reached to the people who do not have access and though there is Safe Shelter available for the victims, the time frame for the stay is too minimal i.e. 1 month. Extension of the Service Centre for the Victims should be done in all 75 districts.</p>
<b>GBV and women's right</b> Investigation, prosecution, reporting and compensation	106.28. 107.22.	<ul style="list-style-type: none"> <li>▪ Adopt measures and duly investigate allegations and ensure those responsible be prosecuted and sanctioned.</li> <li>▪ Ensure cases of Violence against Women (VAW) and girls are duly investigated.</li> </ul>	<p>Necessary mechanism has to be made for providing the help to the victims of violence and Human Rights Defender by making a committee of Police, Civil Society, Lawyer and Government Authorities for a district level helping mechanism.</p> <p>Though Prime Minister have directed to promptly respond to a complaint regarding Violence Against Women; the response has not been reached to District and Community level; also that laws regarding Violence Against Women are inadequate. Laws to fight against the Social malpractices should be made.</p>

Theme	Outcome Document Paragraph number	Recommendations	Implementation Status
			Domestic Violence Act, 2066 should be amended. Necessary works should be done to make every agencies gender friendly environment for respecting and honouring women; merely enacting the laws is not enough.
<b>GBV and women's right</b> Participation/ involvement	106.22, 106.29.	<ul style="list-style-type: none"> <li>▪ Promote role of women in society</li> <li>▪ Putting forward efforts to eliminate VAW and boost their participation in decision-making</li> </ul>	Amend the laws on the basis of the experiences of the people working in the field of Violence Against Women and the victims of such violence. Necessary management should be done so as to make the lengthy and complicated justice procedure simplified and accessible to the victims.
<b>Others related women's rights</b>	106.22, 106.46., 106.13, 106.14, 106.21. 108.14. 107.12, 107.23	<ul style="list-style-type: none"> <li>▪ Ensure gender equality</li> <li>▪ Redouble efforts to protect the rights of women</li> <li>▪ Design and implement programmes for rehabilitation of women, particularly those affected by conflict</li> <li>▪ Further enhance measures to protect the rights of women</li> <li>Make further efforts to overcome difficult issue of discrimination</li> <li>▪ Continue efforts to end discrimination on ground of gender</li> </ul>	There are less rehabilitation centres; lack of accessibility to the Rehabilitation fund by the citizens and difficulty in helping the victims. A necessary effort has to be taken in order to ensure that the victims get speedy justice and help from the government sector for the treatment purpose.
		<ul style="list-style-type: none"> <li>▪ Ensure the rights of women.</li> <li>▪ Criminalize discrimination based on gender</li> <li>▪ Take measures to guarantee effective access to justice and protection</li> </ul>	There is no guarantee of access to justice and protection of the women who are victim of GBV. There is risk of threats to Women Human Rights Officer so Fast Track Courts and One Door Approach should be introduced. The policies related to the protection of witness and human rights officer should be enforced as soon as possible.  Rural Women should have access to the committee on GBV at district and their voice has to be heard. Regular monitoring and evaluation of the committee should be done so as to make the committee effectively function.
<b>Trafficking</b>	106.31, 106.4.	<ul style="list-style-type: none"> <li>▪ Strengthen implementation of Human Trafficking and Transportation Act 2007 and Regulation 2008</li> <li>▪ Strengthen law enforcement and judicial system</li> <li>▪ Combat human trafficking and forced prostitution</li> <li>▪ Fight trafficking in persons, prosecute perpetrators and provide protection and compensation to victims</li> <li>▪ Introduce legislation and more stringent enforcement of existing laws of domestic violence towards women and</li> </ul>	Effective implementations of the act remain a major challenge. Current mechanism lacks provisions to provide the compensation to the victims of Human Trafficking; Rape and other kinds of violence. The state has to make the mechanism to provide the compensation as it is difficult for victim to reimburse from the perpetrator.  State lacks clear policies to support the persons who are affected and are victim of violence; State should introduce programs and do

Theme	Outcome Document Paragraph number	Recommendations	Implementation Status
		human trafficking	<p>follow-ups regarding the sensitivity and accountability. State should also make the plans, policies, programs and give the information about the commitments made at the national and international level in order to make them responsible.</p> <p>Lacks policies and mechanism for immediate hearing and decision of the special kinds of cases.</p>
<b>Employment, capacity enhancement</b>	106.39, 106.41, 108.31, 108.32.	<ul style="list-style-type: none"> <li>▪ Encourage women to undertake legal training and facilitate their entry into the judiciary</li> <li>▪ Intensify efforts in providing basic services particularly creating more employment opportunities</li> <li>▪ Formulate strategies and programmes to provide employment and income generating opportunities</li> <li>▪ Ensure labour legislation include provisions prohibiting discrimination in the employment and recruitment procedures, in accordance with ILO Convention No. 111.</li> </ul>	<p>Only 2 % women represent the judiciary of women. Government is yet to ensure 33 % representation in all sectors. Government has not developed any employment opportunities and social security for women working in informal sector and sector of entertainment.</p> <p>State mechanism is ineffective to implement, monitoring and evaluation of labour act and lacks clear strategies for implementation of ILO 111</p>
<b>Caste-based discrimination, Untouchability and Dalits' rights</b>	106.24, 107.13, 107.11, 107.12, 108.11, 108.12.	<ul style="list-style-type: none"> <li>▪ Eliminate all forms of discrimination, pass Bill on caste-based discrimination and untouchability</li> <li>▪ Implementation of commitments undertook with CERD</li> <li>▪ Ensure local authorities fully implement policies to combat caste-based discrimination</li> <li>▪ Initiate legislative measures to address and eradicate long-standing discrimination, including "untouchability"</li> <li>▪ Take necessary legal and policy measures to end discrimination, including of Dalits</li> <li>▪ Criminalize discrimination based on caste</li> <li>▪ Review and adopt relevant legislation and policies, including Bills on Caste-based discrimination</li> <li>▪ Cases of caste-based discrimination are reported, investigated, perpetrators prosecuted and victims compensated.</li> </ul>	<p>GoN adopted the Caste Based discrimination and untouchability act 2011 but the effective implementation of the act is huge challenge. GoN should take prompt action to make sure that Police Personnel takes the initiatives to register the case regarding the Caste Discrimination and Untouchability as well as no delay is caused in taking legal action against the act. GON is yet to bring regulation on caste based discrimination.</p> <p>GoN system lacks monitoring mechanisms to regulate the distribution of the Scholarship separated for Dalits.</p> <p>Prioritize, setting the policies, strategies and programs for the elimination of the discrimination on the basis of caste and sex done towards Dalit women, sexual exploitation on Badi Women and also for implementation of the agreements made with them.</p> <p>Independence and financial autonomy of National Women Commission and National Dalit Commission remain under threat. No efforts were made to review the constitution of NWC and NDC.</p>
<b>Economic,</b>	106.17., 106.21.	<ul style="list-style-type: none"> <li>▪ Ensure full enjoyment of all human rights in particular ESCR</li> </ul>	State lacks concrete action plan to provide quality education and

Theme	Outcome Document Paragraph number	Recommendations	Implementation Status
<b>Social and Cultural Rights (ESCR)</b>	106.46., 106.49., 106.52., 106.51., 106.48., 106.40. , 106.47., 106.41. 106.45., 106.43. 108.3	<ul style="list-style-type: none"> <li>▪ Continue efforts to overcome discrimination and social exclusion based on gender, caste, class, ethnic groups, disability or geographic situation to ensure the respect of civil, political, ESC rights</li> <li>▪ Step up efforts to achieve realization of ESCR by ensuring adequate access to food, health, education and fair employment</li> <li>▪ Improve food safety</li> <li>▪ Continue applying programmes and measures for enjoyment of the right to health</li> <li>▪ Pursuing and enhancing housing programmes</li> <li>▪ Continue measures to narrow down gap between rich and poor</li> <li>▪ Protect citizens from labour exploitation</li> <li>▪ Continue efforts in reducing gas emissions to safe-levels Intensify efforts in providing basic services, particularly quality health and education</li> <li>▪ Continue applying strategies and plans for socio-economic development</li> <li>▪ Speed up efforts to reduce poverty and unemployment and seek broader international cooperation to deal with climate change</li> <li>▪ Continue efforts to combat poverty and ensure sustainable development</li> <li>▪ Step up efforts to reduce poverty</li> <li>▪ Reinforce efforts to fight against poverty to attain MDGs and to request financial and technical assistance</li> <li>▪ Continue to implement economic measures to eradicate poverty</li> <li>▪ Prepare specific plan to ensure Nepal Land Act will in practice effectively promote equality</li> </ul>	<p>health service as well as introduce informational program and free health check-up for the marginalized and disadvantaged communities. Provide access to and free health check-up in reproductive health sector.</p> <p>Policy regarding the easy access of disables women, disadvantaged, poor people on the payment for the health check-up and scholarships by disseminating information to the community.</p> <p>Frame the policy that encourages the investors to invest in the employment generating projects so as to reduce the increasing gap between the rich and poor population and prevent polarization.</p> <p>Frame the policies regarding the agricultural development and animal husbandry for the increment of national economy and create an environment for the investment in such sector as well as provide the agriculture related tools as soon as possible.</p> <p>Frame the necessary policies and programs to ensure that no marginalized communities are double-victimized while carrying out the activities on equitable socio-economic development for increasing the living standard of such people.</p> <p>Avoid importing the rotten rice from foreign country and rather create a situation for the consumption of the locally grown foods in order to ensure Food security. Also, use national products for the protection of the people against starvation, homelessness and address the problem of food, clothe, shelter, education and health of displaced peoples.</p> <p>Unable to implement scientific land distribution.</p> <p>Effective evaluation and monitoring mechanism and action plan should be made aimed toward the affected population. Lack of strategies to bridge the gap between the rich and poor people.</p>
<b>Education</b>	108.35.	<ul style="list-style-type: none"> <li>▪ Pay special attention to complete education cycle and to</li> </ul>	Introduce the education policy that focuses on the practical aspect of

Theme	Outcome Document Paragraph number	Recommendations	Implementation Status
	108.33., 108.34., 106.50., 106.52. , 106.53, 106.54.	<p>ensure employment opportunities</p> <ul style="list-style-type: none"> <li>▪ Continue perusing educational policies to provide free and compulsory education</li> <li>▪ Expand School Feeding Programmes and use locally-sourced food</li> <li>▪ Continue efforts to free and compulsory primary education</li> <li>▪ Continue programmes and measures for the enjoyment of right to education</li> <li>▪ Ensure equal access to quality education</li> <li>▪ Reach out to parents groups to promote equal access to education and participation in local institutions for children</li> </ul>	<p>the Human Rights; Gender Discrimination from early class as well it should teach about the accountability and one's own role in implementing them.</p> <p>Establish a monitoring mechanism to see the trend of the Community Schools collecting the tuition fees like that of the private schools even though free education has been granted and introduce behavioural education system.</p> <p>Give the responsibility to the local coalitions in monitoring of the School nutrition program and make the policies to ensure that they perform their work sincerely.</p> <p>Draft the policies for proportional participation of the Lady Teacher in the higher grades. Though the Parents representation is there, there have not been steps for the promotion of equal access to education of all people.</p>
<b>Persons with Disabilities (PWDs)</b>	106.46., 106.10., 108.13., 108.14., 107.12.	<ul style="list-style-type: none"> <li>▪ Redouble efforts to protect rights of PWDs and aged persons</li> <li>▪ implement national action plans on the elimination of discrimination against PWDs</li> <li>▪ Ensure PWDs participate in job training, vocational training, literacy and numeracy programmes and set targets measurable within one year</li> <li>▪ Ensure the rights of PWDs</li> <li>▪ Criminalize discrimination based on disabilities.</li> </ul>	<p>No efforts were made to bring necessary Action Plan and infrastructures for the effective implementation of the CRPD and its Optional Protocol ratified on 27 December 2009.</p> <p>Promptly commence the work to build the physical infrastructure in all government agencies that are Disable friendly as per the prior commitments and build Disabled friendly educational institution. Ensure that the disabled people have easy access to Scholarships in educational sector.</p> <p>Take necessary measures for elimination of the discrimination against disabled people in the areas like education, employment, health, housing and others. Enforce the Disabled people friendly educational system.</p> <p>Ensure meaningful participation and inclusion of the people with disability in drafting of the State Policies and all other Public Spheres.</p>
<b>Child rights</b>	106.14., 106.46.,	<ul style="list-style-type: none"> <li>▪ Further enhance measures aimed at protecting human rights</li> </ul>	Nepal has adopted policy for children. Draft Bill for Children's Act

Theme	Outcome Document Paragraph number	Recommendations	Implementation Status
	<p>106.13., 106.32, 106.30. 106.52 108.4, 108.14. 108.21, 108.36, 108.11. 107.20., 107. 18, 107.19, 107.11</p>	<p>of children</p> <ul style="list-style-type: none"> <li>▪ Redouble efforts to protect rights of children</li> <li>▪ Design and implement programmes for protection of rights of children, in particular rehabilitation of children affected by conflict</li> <li>▪ Strengthen implementation of Child Labour Act 1999</li> <li>▪ Strengthen measures to eradicate child abuse, sexual exploitation of children</li> <li>▪ Ensure primary education becomes free and compulsory for all children</li> <li>▪ Expedite endorsement of child policy legislation, including Child Rights Act, Education Regulation, Child Protection Policy, and minimum standards for childcare homes, and take necessary steps to ensure their full implementation</li> <li>▪ Ensure rights of children</li> <li>▪ Develop legal framework to protect children from trafficking</li> <li>▪ Ensure children of internally displaced persons, refugees, asylum seekers and their families enjoy the right to health, education and birth registration</li> <li>▪ Review and adopt relevant legislation and policies, including Bills related to the rights of the Child</li> <li>▪ Abolish all forms of child labour, including bonded labour, in accordance with ILO Convention No. 138</li> <li>▪ Ensure any form of violence against children and child recruitment becomes punishable under domestic law</li> <li>▪ Intensify efforts for the social and educational reintegration of child soldiers who remain in military camps</li> <li>▪ Establish State structures for supervision, prevention, rescue and rehabilitation of child labour and mendacity and ensure that those responsible be prosecuted and sanctioned</li> <li>▪ Take necessary legal and policy measures to end discrimination, including of children</li> </ul>	<p>was prepared but could not come as an Act. Since the dissolve of Legislative Parliament/Constituent Assembly, there is less hope of promulgation of the new Children’s Act soon.</p> <p>The prevailing Children’s Act was enacted just after restoration of multiparty democracy system and after the ratification of the CRC, the provisions of Nepalese Children's Act 1992 are found not written and incorporated in the line with the provisions and principles of CRC. Nepalese laws concerning children’s rights do not comply on many issues including the definition of a child. Likewise the Act is inadequate as there are no provisions adequately covering and guaranteeing ‘best interest of the child’. The laws do not define corporal punishment to a child is a crime. Nepalese laws need serious review to bring it to a line that ensures juvenile justice and to control illicit transfer of the children.</p> <p>Despite Child Protection Policy was adopted in 2068, implementation part is still challenging. Withdrawal of children from street and their reintegration or rehabilitation needs serious commitment.</p> <p>Nepal’s initiatives in rehabilitating and reintegrating of children affected by armed conflict seems encouraging but Nepal still needs to assure unhindered access to the rehabilitation packages and adequacy of such reparation packages as there have been news in media about dissatisfaction of children victims of conflict as well as former combatants.</p> <p>Despite the enactment of Acts and agreement between political parties, there are still practices of organizing political assemblies and meeting in school grounds and taking school children in rallies. There is certainly room for more government actions, and commitment from political parties.</p> <p>The Nepalese government has taken some commendable steps to reduce human trafficking in Nepal, focusing particularly on women and children. The positive steps taken by the Nepalese government</p>

Theme	Outcome Document Paragraph number	Recommendations	Implementation Status
			<p>noted above must not be ignored but there is certainly much room for improvement in order to satisfy the UPR recommendation regarding child trafficking.</p> <p>Nepalese laws do not adequately all aspects of sexual exploitation including child prostitution and child pornography. There is still a need to establish mechanisms for the identification, reporting, referral, investigation, treatment and coordination of cases of child victims of sale of children, child prostitution and child pornography.</p> <p>Victim and witness protection system should be strengthened to eradicate abuse and exploitation of children.</p> <p>Despite the incompatibilities with international standards, Nepal's law on juveniles remains unchanged.</p> <p>Nepal government has not undertaken any major action towards securing other schemes and mechanisms for effective implementation of the law in order to abolish child labour.</p>
<b>LGBTIs</b>	106.5. , 106.23	<ul style="list-style-type: none"> <li>▪ Take step to non-discrimination in the proposed civil and criminal laws</li> <li>▪ Implement Supreme Court decision</li> </ul>	<p>LGBTIs people are harassed by police mainly, in Kathmandu.</p> <p>Few members of LGBTI group have received citizenship but as the State lacks clear policy to distribute citizenship, huge number of people are still denied from right to citizenship</p> <p>To implement the decision of the SC made in 2008, taskforce was formed but the task force is yet to submit its recommendation to the government.</p>
<b>Religious minorities</b>	106.21 107.12.	<ul style="list-style-type: none"> <li>▪ Make further efforts to overcome discrimination on ground of religion</li> <li>▪ Criminalize discrimination based on religion.</li> </ul>	<p>The state has failed to recognize Muslims as a religious minority because of the state's tendency to define Muslims as Islamists rather than as a community.</p> <p>The government set forth the inclusive policy in 2007, and introduced quote to many marginalized communities. However, it failed to recognize Muslims and reserve quote for them. This proves that all the policies, programs, laws are discriminatory against Muslims.</p>

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			In order to empower Muslim women, the state must recognize the diversity, and while dealing with women, the diversity, and while dealing with women, the constitution, its laws, policies and programs and provisions should clearly outline Muslim women, Indigenous and Dalit women.
<b>Indigenous People (IPs)</b>	108.11. 107.28., 107.12.	<ul style="list-style-type: none"> <li>▪ Review and adopt relevant legislation and policies, including Bills related to the rights of IPs</li> <li>▪ Take measures to increase involvement of IPs, minorities and vulnerable groups in civil service, law enforcement agencies and local authorities</li> <li>▪ Criminalize discrimination based on ethnicity.</li> </ul>	Effective evaluation and monitoring mechanism and action plan should be made aimed toward the affected population. Prepare action plan to bridge the gap between the rich and poor people.
<b>NHRIs</b>	106.7 106.25 107.5 107.5 107.5 106.8 107.6 108.11	<ul style="list-style-type: none"> <li>▪ Strengthen NHRC to enable it to maintain its A-status accreditation</li> <li>▪ Implement NHRC recommendations regarding prosecutions/departmental actions</li> <li>▪ Ensure independence and mandate of NHRC in line with Paris Principles and autonomy</li> <li>▪ Take measures to build NHRC capacity and Implement NHRC recommendations strengthen as independent institution</li> <li>▪ respect independence and autonomy</li> <li>▪ Provide adequate funds and autonomy to NHRC to fulfil its mandate</li> <li>▪ Promote work of NWC and NDC through reinforcement of resources allowing them to work efficiently</li> <li>▪ Provide NWC and NDC with sufficient resources to effectively realize their mandate</li> <li>▪ Review and adopt relevant legislation on NWC, NDC</li> </ul>	<p>The recent amendment in the Act relating to the NHRC has resulted in lack of independence of the watchdog body since several components of the Paris Principles have been compromised, including financial autonomy. Also frequent changes of government and an ongoing political stalemate have weakened the ability of NHRC to pursue human rights monitoring especially the war-time crimes.</p> <p>The large number of NHRC recommendations is not implemented and victims are waiting for justice for years. As part of implementation, compensation is paid to victims and their kin in a number of cases. Very few recommendations are implemented towards the prosecution and departmental action against perpetrators. Out of total cases handled and recommended for action, 55 percent have been partially implemented; 28 percent fully implemented and 17 percent rejected. This trend would erode the value of the NHRC and public confidence in it could decline.</p> <p>The staff management is an unresolved issue since the inception of NHRC. At the moment, there is absence of credible law for the recruitment as recruitment process initiated under prevailing NHRC rules were stopped by the Supreme Court ruling.</p> <p>The NHRC-CSO relationship is also quite weak in contrary to the</p>

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			provisions of the Paris Principles, which recognize that relationships with civil society can help NHRIs to protect their independence and pluralism.
<b>IDPs/Refugees</b>	106.55	<ul style="list-style-type: none"> <li>▪ Ensure return, rehabilitation and reintegration of IDPs establish monitoring mechanism</li> <li>establish follow up mechanism, ensure return, registering, re-adaptation and reinsertion of IDP with security and dignity</li> </ul>	GON has adopted policy related to internally displaced persons in 2006 which aims to return, rehabilitate and reintegration and also has adopted civil relief guidelines. GON has established peace committee to work on return, rehabilitation and reintegration of IDPs. However, IDPs have not reintegrated fully.
<b>Cooperation with international mechanisms</b>	106.19, 20 107.9 108.5	<ul style="list-style-type: none"> <li>▪ Implement recommendations of various treaty bodies</li> <li>Continue cooperation with the UN and other international organizations</li> <li>Undertake participatory process in implementation of UPR recommendations</li> <li>▪ Cooperate closely with the United Nations in particular with the local Office of the High Commissioner for Human Rights</li> <li>▪ Work with OHCHR to develop Common Core document which will help streamline treaty reporting</li> </ul>	<p>Nepal has ratified 24 international treaties including 7 core treaties. However, the implementation of the provisions of the treaties is not satisfactory. GON has failed to implement the recommendations provided by treaty bodies. Similarly it has failed to submit the reports to the committees in due dates.</p> <p>GON has developed action plan for the implementation of the UPR recommendations, which are very vague. Further, the drafting process was not consultative.</p> <p>Despite of need of presence and several requests from UN and international community, GON did not extend the mandate of OHCHR Nepal office.</p> <p>Though the GON did some consultation with OHCHR office to streamline the treaty reporting, the GON could not work on procedural effects.</p>
<b>Others</b>	106.10	<ul style="list-style-type: none"> <li>▪ Fully implement National Plan of Action for human rights</li> </ul>	GON has adopted National Plan for Action for human rights but it has not been effectively implementing the action plan.
	107.21	<ul style="list-style-type: none"> <li>▪ Create mechanisms to end case backlog at all levels of judiciary</li> </ul>	Judiciary has adopted a strategic plan to effective implementation of court decisions. And also planned to introduce system to deliver speedy justice. However, the GON has not implemented the decisions made by different levels of courts.

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