

# NEPAL

## CEDAW Shadow Report

(Violence against Women/Girls, Female Migrant Worker, Women Human Rights Defenders, Online Gender Based Violence and Women's Health)

National Alliance of Women Human Rights Defenders, Nepal in collaboration with more than 100 NGOs/CBOs from all 7 provinces of Nepal.



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## 1. Background

It is widely recognized that "women's rights are human rights." It is further reassured by international human rights instruments, including United Nations Charter, Universal Declaration of Human Rights (UDHR), and major human rights conventions, including International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), as well as Vienna Declaration of Human Rights and Plan of Action, 1993 and Beijing Platform for Action, 1995.

The UN Charter reaffirms equality of rights for women as fundamental human rights. The UDHR highlights equality, dignity and rights of every human being. Furthermore, the CEDAW states that "the rights set forth therein are applicable to all persons without distinction of any kind, such as race, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Thus, it is an obligation of state to create conducive atmosphere for women to enjoy basic human rights at home and workplace, create adequate security and establish protection mechanisms, particularly women from marginalized populations.

Internationally, Nepal has made strong commitment to human rights, and ratified almost all major international human rights conventions, including CEDAW in 1991. Therefore, it is a duty of the Government of Nepal to implement the provisions of these conventions. Moreover, Nepal has domesticated international commitment in national protection mechanisms as per the article 9(1) of the Nepal Treaty Act, 1990.

Article 18 of CEDAW states that the state parties are required to submit first report within one year of its ratification or accession, and periodic reports must be submitted in every four years or anytime on the request of the committee. Therefore, Nepal has submitted its 4<sup>th</sup> and 5<sup>th</sup> report in 2010, and has submitted its 6<sup>th</sup> periodic report in 2018.

Nepal has been making legal and institutional improvements for the promotion of women's rights, by establishing protection mechanisms such as National Human Rights Commission and National Women's Commission. However, the status of Nepali women still remains vulnerable due to weak enforcement of laws, policies and plan of action, and poor performance of state mechanisms. It is partly happening due to lack of infrastructure, resources and responsible governance, but mostly because of state's unwillingness to invest enough resources for the protection of women and their rights.

The Gender Inequality Index of the 2015 UNDP indicates that the inequality between men and women achievements are known as reproductive health, empowerment and economic activity in which Nepal ranks in 115<sup>th</sup> position in global scenario in terms of Gender Inequality Index, 2015. Similarly, the Gender Development Indicator (GDI) shows that Nepal falls under the category of low human development ranking 145<sup>th</sup> position in the world with lowest GDI among South Asian countries.

This alternate report is prepared in collaboration with more than 100 of NGOs/CBOs from all seven provinces of Nepal, in line with the government's recent periodic report focusing on VAW, FMWs, WHRDs, online GBV and women's health. This is a supplemental report to the consolidated

alternative report of the CEDAW led by Forum for Women, Law and Development as part of collective efforts of Human Rights Treaty Monitoring Committee (HRTMCC).

## **2. Organizational Background**

National Alliance of Women Human Right Defenders (NAWHRD) is a vibrant, strong and active women's network working from feminist perspective. It is one of the largest loose network extended to seven provinces within principles of human right and democratic norms. The recognition of women's role for protection, promotion and security of women's rights and dignity as human rights, and creating and advocating for safety mechanisms for the WHRDs in private and public sphere are some of key principles of NAWHRD.

NAWHRD supports WHRDs by building their capacity, supporting them at time of distress, advocating collectively for recognition of their work as human rights defenders and create protection mechanisms for them. It also supports women whose rights gets violated, especially victims of different forms of violence and further advocates for required policy change to ensure rights of women, particularly women from marginalized groups. The primary mission of NAWHRD network is to advocate collectively and get engaged from grassroots to national level for creation of women right friendly environment and also advocate for recognition and security of WHRDs.

## **3. Methodology**

This alternate report has been prepared through seven provincial level consultative workshops and participatory process involving women working in grassroots community to policymaking levels. The report focuses on five major issues namely VAW/G, FMWs, WHRD, online GBV and Women's Health.

Each issues were thoroughly discussed and analyzed throughout the discussion, and crafted into the report after thorough study. Inputs, comments and feedbacks gathered from the participants and experts were reviewed in-depth while preparing this report. Similarly, the government reports submitted in the CEDAW committee in the past and present were also carefully read and reviewed, and analyzed government policies, programs and plan of action, as well as future strategies. Some of the undertaken processes include:

- Reviewed Government's periodic reports
- Evaluated CEDAW Committee's initial observation
- Analyzed government reports, policies, programs, strategies and plan of action, as well as the constitution, and other laws and regulations,
- Received feedbacks from national and provincial consultations
- Assessed supplementary inputs from district, provincial and national level networks of the WHRDs

#### 4. Focused Issues

This alternative report is being prepared to provide additional information on selected areas, which includes VAW/G, FMWs, WHRDs, online GBV and women's health. It reviews and analyzes different perspectives of government's policies and its status of enforcement, and actual situation of women in the country. It aims to inform members of the CEDAW committee for necessary intervention to the government of Nepal for the improvement of women's condition and promotion of their rights.

##### 4.1 Violence against Women and Girls

###### *Key Issues and Concerns*

- (a) Nepal government's legal frameworks, including Domestic Violence (Crime and Punishment) Act, 2006 are considered moderate to address the cases of domestic violence, VAW and GBV. Similarly, the 2015 Constitution of Federal Republic of Nepal and the Criminal (Penal Code) 2017 protects women and children, particularly minorities. However, these laws are not effectively implemented.
- (b) The government has made several arrangements to provide services for those seeking remedies such as National Women's Commission and Women and Children Service Centers in Nepal Police. Similarly, local governments are entitled to provide remedies to the victims of domestic violence, VAW and GBV. Unfortunately, these mechanisms are not fully functional, and found inefficient due to lack of political will, human and logistic resources and infrastructure.
- (c) According to Nepal Demographic and Health Survey (2016), women are facing various types of GBV and VAW, including physical, sexual and emotional, which exists across all caste, ethnicity, class, and socioeconomic groups. The NDHS states that "22% of women in Nepal age 15-49 have experienced physical violence since age 15, and 7% have ever experienced sexual violence. 6% of women who have ever been pregnant have experienced violence during pregnancy." In addition, spousal violence seems more prominent in Nepalese society.<sup>1</sup> Similarly, the Women's Rehabilitation Center (WOREC) states that about 73% of women suffer from different types of domestic violence and GBV.<sup>2</sup>
- (d) The number of cases of rape, physical abuse, sexual assault, mental torture, marital rape are horrendously increasing. (See table -1) Most of these cases are unaddressed as a result of social stigma or state authorities' inaction. Thus, most of potential perpetrators enjoy full immunity, which creates further vulnerability to women.

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<sup>1</sup> Nepal Demographic and Health Survey, 2016 pg. 337 - 347

<sup>2</sup> WOREC Database

- (e) Nepal Police data shows that the situation of VAW is alarming, and seems increasing in each year. It means that women are facing more threats and risks at home and workplace. (See table -2)
- (f) The wide spread discriminatory and harmful practices are continuously practiced to undermine rights and freedom of women and girls, and equal opportunities.
- (g) Despite of legal arrangements, the authorities are usually reluctant to register cases of domestic violence and GBV. These authorities rather prefer to seek settlement through mediation instead of initiating steps for prosecution. It mainly happens due to patriarchal society, and political or social pressure.
- (h) The harmful and discriminatory practices against women/girl guided by sex and stereotypes under the disguise of religion, tradition, ethnicity, *Jhuma*, Deuki, polygamy, gender selective abortion are continuously hurting women's freedom and rights. Some of these practices include child marriage, witchcraft, *chhaupadi*, dowry, etc.
- (i) Even though son and daughter are considered equal under the Constitution, the mindset of son preference continue exists. Child marriage of daughters still practiced in some society and culture. Similarly, the daughters are treated as 2<sup>nd</sup> class citizens due to patriarchal structure of society. Moreover, the government fails to stop such inhuman and discriminatory practices by bringing potential culprits into judicial process, and disseminate information that promotes equality between boys and girls. Overwhelming practice of son preference has increased female feticide in the country.
- (j) The state authorities are hesitant to pursuit legal remedies against domestic violence and GBV cases and register cases against the perpetrators. Such actions provide impunity to potential culprits and injustice to victims. In addition, the victims are often felt uncomfortable to register complaints due to fear and increasing distrust against state authorities, and ineffective criminal investigation procedure. In some cases, the victims are scared, and even faces threat from the alleged perpetrators.
- (k) Women with disabilities and minorities, including *dalit* and sexual orientation, and the conflict affected women face additional discriminatory practices from the state mechanisms and the society despite of constitutional and legal protection. It means that the state authorities are ineffective and legal mechanisms are not properly enforced to change societal attitude and transform patriarchal and discriminatory mindset of people from social stigma and superstition.
- (l) While more than 90 percent of women's labor force has been involved in informal sector. In order to protect the rights of these women engaged in the informal sector, the informal work needs to be converted in formal work and basic criteria of labor need to be applied.

- (m) There are approximately 40 to 50,000 women working in entertainment sectors. However, there is no recognition of these women's contribution from entertainment sector. Neither this sector is governed by labor laws. The non-recognition has resulted in abuse and stigmatization including unequal and low salaries, uncertain duty hours, job insecurity.

### ***Recommendations***

- a) The effective enforcement of the Constitution and existing laws related to VAW, including the Criminal Code and Domestic Violence (Crime and Punishment) should be enforced impartially, effectively and efficiently. It will ensure women's unhindered access to courts for the crime of rape, domestic violence and GBV, and other sexual offences.
- b) There is a need of proactive role of law enforcement agencies, including prosecutors, police and other government agencies, and the judiciary to ensure justice to the victims of domestic violence, VAW and GBV. These agencies must prioritize to handle such cases so that the victims feel comfortable with state mechanisms seeking justice, and file complaint against the perpetrators.
- c) The government must be vigilant for enforcement of existing laws, policies and programs. So that the people are not bound to agitate for the purpose of seeking justice. Moreover, the government and the parliament should play effective role to introduce fresh laws and develop policies to address heinous crimes such as murder after rape. The purpose of introducing such fresh laws should be aimed to serve victims without prejudice, and provide security to victims and witnesses.
- d) The government must accumulate statistical data and cases of the VAW. It should prioritize those sectors in which programs should run to end discriminatory and harmful practices. Apart implementing any laws, advocacy campaign should be launched on thematic groups like (VAW with disability, senior citizen, children and the conflict affected persons, etc.)
- e) The government should develop strategies and plan of action for proper implementation of the United Nations Security Council Resolution 1325 and 1820 to address VAW cases, and conflict related VAW, sexual violence and post conflict.
- f) While local governments are autonomous and can exercise certain legal power through Judicial Committee under the leadership of Deputy Mayor of Municipalities or Deputy Chief of Village Municipalities, they should be well resourced in terms of human and logistic resources to handle cases of domestic violence, VAW and GBV. These entities should also document such cases, and provide legal counseling services to the victims and safe housing if necessary.
- g) The government should take initiatives to ensure justice to the victims of domestic violence and GBV through the amendment of laws and introduction of new guidelines and

strategies at provincial and local levels, and provide awareness to general populations about the patterns and consequences, and remedies to the victims. It also includes child abuse and molestation.

- h) The government must take effective steps to stop traditional and harmful practices through introduction of laws and guidelines, and mobilizing state mechanisms, as well as conducting public awareness campaign, and dissemination of information through Public Service Announcements. Such activities should include outreach activities through mobilization of religious elders/leaders and local traditional leaders.
- i) Public awareness activities focusing for students combining with educational programs can play vital role for dissemination of information and sensitize local populations, and helps to change attitude, perception and mindset of the society can be instrumental.
- j) Legal remedies should be ultimate solution of domestic violence, VAW and GBV through prosecution instead of mediation or reconcile between victims and alleged perpetrator. To serve this purpose, the government should strengthen law enforcement agencies and criminal justice system.
- k) Women's contribution from informal sector and bring the women's work in restaurants, bars and other entertainment sectors under labor laws should be recognized. Such laws should also protect women working in entertainment sectors to improve working conditions, create conducive environment for these involved women, and ensure their job security by establishing complain mechanism.
- l) The constitution of Nepal under Right to Labor Article 34(2) has guaranteed the social security rights. Therefore, it is necessary to formulate legal provision for the implementation of this right for women who are engaged in informal sectors i.e. stone mining, domestic workers, entertainment sector and various other risky jobs.

## 4.2 Female Migrant Workers (FMW)

### *Key Issues and Concerns*

- (a) The condition of women workers are resulted from deep-rooted patriarchy, existing discriminatory stereotypes, the failure of state mechanisms and attitude of society. This type of perception continue exists towards FMWs at home and the abroad.
- (b) Women's work has always been precarious, casual, informal, low-skilled, mostly unpaid, unrecognized, unvalued, undervalued and invisible. Women workers of informal sectors such as domestic sectors, garment, construction, entertainment, agriculture etc. are mostly vulnerable with limited access to collective bargaining, social security and health



care. As a result, the FMWs forced to work in difficult circumstances, and treated poorly and paid unfairly.

- (c) Nepal Government has adopted the Foreign Employment Act, 2007, and seems aware about the condition of foreign migrant workers. However, the condition of FMWs is much worse than men. They face number of discriminatory practices, including physical abuse and sexual assault, emotional violence, forced labor, limited incentives and unequal pay. They also receive limited pre-departure information, skill and training, and institutional support while at risk.
- (d) Despite the government signing bilateral agreements or Memorandum of Understanding (MOU) with major destination countries, including Qatar and Jordan-BLA, United Arab Emirates, Republic of Korea and Japan G2G, and MOU with Bahrain, there are dozens of countries where the migrant workers are working either reached through employment agencies or human trafficking routes. Majorities of FMWs are illegally arrived to these destination either through India or other third countries transported by the traffickers. These women face further threats and placed in high risk due to their legal status and absence of supporting employment agencies. They start facing risks from the point of departure to the destination, and then at the workplace, as well as they go through similar challenges after their return to home.
- (e) The constitution and other laws of the country recognizes equality between men and women. But women continue face unequal treatment in terms of foreign employment. The government has placed numerous restrictive provisions for female in the name of security and safety. For example, there is a provision of age limitation for women to be eligible for foreign employment, which also requires approval from the male member of the family.
- (f) This is fact that the laws and other guidelines provides equal treatment. However, the perceptions and mindset of government mechanisms suffer FMWs from the beginning to the end of seeking foreign employment opportunities.

### ***Recommendations***

- (a) The government should set up an effective mechanism that regulates foreign employment sectors and the agencies associated with it, which should investigate if any wrongdoings are reported.
- (b) It is a duty of state mechanisms to enforce existing laws of the country, including creating foreign employment opportunities. In addition, the government should step in destination countries to provide essential support to foreign migrant workers.

- (c) The government must establish special mechanisms to handle cases of FMWs. It should also provide essential services after their return to home such as counseling. Such mechanisms should handle anyone involved in wrongdoings, including human trafficking, which can be replicated in provincial and district levels.
- (d) The government should develop safe migration policies and guidelines, and establish its support mechanisms within principles of promoting safety and security of FMWs, and women's rights.
- (e) The government should provide basic information to FMWs prior to departure, and should develop comprehensive orientation package that covers information from time to leave home to arrival of destination such as culture, religion, dress code, social practices, sanitary use, etc. This package should also include legal awareness about foreign employment, and rights of migrant workers in particular country, including Foreign Employment Act.
- (f) The discriminatory provisions about age limitation for women should be aborted under the principle of equality and equal opportunities.
- (g) The government should closely work with diplomatic offices for the enforcement of minimum wages provision entitled for migrant workers in specific countries, and deploy more Labor Liaison Officers in remaining destination countries of FMWs.
- (h) The government must create employment opportunities to reduce increasing number migration of younger generations seeking foreign employment opportunities.
- (i) The government should take initiative to sign more bilateral agreements with receiving countries aiming to eliminate current practices that private sectors have monopoly to supply human resources for foreign employment. It will reduce possibility of ill-treatment against foreign migrant workers, particularly physical, sexual and emotional abuse of FMWs.
- (j) The government should introduce resettlement package for returnees, particular FMWs, which should provide support to those returned with disability and the families of deceased one. This fund should provide legal services to those who are confined to prison while they are working as foreign migrant workers.
- (k) Open border between India and Nepal have become safe heaven for human trafficking. Therefore, the state must be vigilant in border areas by mobilizing more numbers of police and monitoring groups of civil society, thereby providing counseling services to potential victims.
- (l) Proper statistics of foreign migrant workers, including FMWs must be documented, and the data should be available for necessary action.

- (m) Considering increasing numbers of foreign migrant workers in Gulf countries should be greater concern of the government by establishing effective support mechanisms. The diplomatic offices could play instrumental role in this regard.

#### 4.3 Women Human Rights Defenders (WHRDs)

##### *Key Issues and Concerns*

- (a) WHRDs are equal to human rights defenders. But WHRDs in Nepal are poised to threats as all human rights defenders.
- (b) WHRDs faces gender specific threats or gender violence. They are often seen as challenging tradition and structure of the society due to unequal power relation between male and female. Such discriminatory structure with deeply embedded due to patriarchy is not easy to address, which may result to stigmatization and ostracism of WHRD in the society and the state.
- (c) While all the structure is formed with the unequal power relation between men and women, WHRD's continue face challenges due to structural problems because of which their work, and discriminatory and harmful practices of the society.
- (d) Goal of a WHRD is striving to achieve equality in the structure, which is deeply engrossed due to unequal power relation of the society. As a result, they are continuously stigmatized due to their work for the protection of women and minorities.
- (e) Existing patriarchal structure, attitude and mindset as well as discriminatory and harmful practices have instigated threat to WHRD's, individually and professionally. It affects to their life, liberty and security.
- (f) Restrictions on WHRD's freedom of expression and opinion, freedom of movement and assembly, and association as well as their ability to access funding to their work limits their role in official and non-official settings, which violates the principles of equality and freedom.
- (g) WHRD's active role against criminals, and protection of rights of LGBTIQ, sex workers, FMWs and drug users are often criticized and underestimated. They are often humiliated and harassed.
- (h) WHRDs generally face additional risks from family and the community in compare with their male counterparts. They also face physical and psychological abuse and threats due

to religious and harmful traditional practices in which ostracism and violent criticism are being imposed.

- (i) WHRDs often face discrimination from the family and society due to their missing identity, gender inequality, physical and psychological threats, and absence of security mechanisms.

### ***Recommendations***

- (a) Since the Constitution of Nepal (2015) has guaranteed fundamental human rights of citizens, WHRDs should be able to enjoy their legitimate rights and able to support other needy populations, particularly women, children, and minorities.
- (b) The country has envisioned numerous constitutional bodies, including National Human Rights Commission, National Women's Commission, National Dalit Commission, etc. in which these bodies should be proactive for the protection and promotion of human rights, particularly the WHRDs.
- (c) Security of human rights defenders, particularly WHRDs should be priority of the state, and laws and policies for the protection of human rights defenders should be adopted, which should be enforced immediately and effectively.
- (d) The government must introduce protection mechanisms for the WHRDs, which should be replicated throughout provincial and local level governments.
- (e) Law enforcement agencies and other government bodies should give priority to the cases of the human rights defenders, particularly WHRDs and enforce existing mechanisms for their safety and security.
- (f) The government should create mechanisms that respects and documents the contribution of WHRDs, and create conducive atmosphere for their protection.
- (g) The government should develop policies that respects the work of human rights defenders, and assures their individual and professional integrity. Such policies should be formulated in consistent with the 1998 United Nations Declaration on Human Rights Defenders.

## 4.4 Online Gender Based Violence (GBV)

### *Key Issues and Concerns*

- a) Online GBV is a continuum of VAW, and manifestation of systemic gender based discrimination. Online GBV encompasses abuses, harassments, and violence experienced by women by the use of Information, Communication and Technologies (ICTs) through using email, mobile phones, social platforms, computers, etc.
- b) Women and girls face specific threats such as trolling, cyber harassment, attacks on sexuality, surveillance, threats and discrimination based on morality, manipulation of images, non-consensual distribution of personal images leading to trauma, and increased magnitude of silencing women, girls, sex workers, people with different sexual and gender identities.
- c) WHRDs have affirmed usage of such tactics to silence them who question and challenge discrimination, protests, design rights campaign, and other public actions.
- d) According to Nepal Telecom Authority, the regulatory body for ISPs and telecom in Nepal, there is 51.68 per cent internet and data penetration in Nepal with over 13 million subscribers<sup>3</sup> as of September 2016. While this is not a true indication of access for 51 percent of population, nor does it take into account on urban-rural, mountainous-plain region user concentration and gender disaggregation, the figure--up from 43.17 per cent in the same month in 2015--demonstrates a brisk increase.
- e) Regulation of content, used to determine obscene and harmful content, is one of the approaches employed to suppress content on sexuality on the internet. In Nepal, the Public Offence Act is used to limit a wide range of behavior that the ruling minority<sup>4</sup> deems unacceptable. In addition, a majority of legal instruments pertaining to freedom of expression have a 'public decency and morality' clause. Freedom Forum, an organization working on freedom of expression in Nepal, notes: "Obscenity is one of the major excuses to criminalize FoE in general and online in particular in Nepal" (Freedom Forum, 2016, p.32).
- f) The growing reach of the internet, the rapid spread of mobile communications and the wide diffusion of social media have presented new opportunities and enabled various efforts to address VAW against women and girls<sup>5</sup>. On the flip side, it also regulates women's

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<sup>3</sup> See <http://www.nta.gov.np/en/mis-reports-en>. When combined with data, the figure is much higher than the actual internet penetration which is 17.6% as cited by World Bank. See <http://databank.worldbank.org/data/reports.aspx?source=world-development-indicators>

<sup>4</sup> The ruling group of Nepal able to impose their values through legislation and bureaucracy has historically been those who belong to the caste hill Hindu elite i.e. Brahmin and Chhetris as noted by Lawoti and Hangen (2013). Lawoti, M. & Hangen, S. (eds.) (2013). *Nationalism and ethnic conflict: Identities and mobilization after 1990*. Oxford: Routledge.

<sup>5</sup> Cyber violence against women and girls, A world-wake up call; Report by the UN Broadband Commission for Digital Development and Working Group on Broadband and Gender; page 1

freedom of expression by shrinking democratic spaces, and by diminishing the agency of women.

- g) The distinct characteristics of Information, Communication and Technology is that its borderless in nature, the fluidity of digital personhood, absence of physicality, and the anonymity and intractability it offers – has changed not only the manner by which VAW is being committed and perpetrated, but also its effects and consequences<sup>6</sup>.
- h) ICCPR is the key document that outlines Nepal’s obligations under international law regarding freedom of expression and opinion.<sup>7</sup> Article 17 and 19 of the 2015 Constitution of Nepal ensure freedom of opinion and expression and the right to communication as fundamental rights of all citizens. Provisions qualifying both of the above articles say that the state may impose restrictions on “any act, which may be contrary to public morality and decency”. This restriction is “vague in nature, beyond what is permitted in the ICCPR and open to the arbitrary interpretations” (Acharya & Sigdel, 2016, p. 3).<sup>8</sup>
- i) The Electronic Transactions Act (ETA) criminalizes publication and display of “any material in the electronic media including computer, internet...which may be contrary to the public morality or decent behavior”.<sup>9</sup> This act also criminalizes certain forms of expression. The National Broadcasting Regulation bans materials that may jeopardize “decency, morality of the general public”.<sup>10</sup> The Press and Publication Act prohibits publication of any material that hurts “the decency, morals and social honor of the people”.<sup>11</sup> The Online Media Directive released in 2016 and withdrawn for revision after opposition also had a clause banning publication and broadcast of materials “against public protocol or morality”.
- j) In June 2017, the report of the United Nations High Commissioner for Human Rights on ways to bridge the gender digital divide from a human rights perspective<sup>12</sup> highlighted that online VAW must be dealt with in the broader context of offline gender discrimination and violence, and that states should enact adequate legislative measures and ensure appropriate responses to address the phenomenon of VAW online, including through investigation of and action against perpetrators, the provision of redress and reparations to victims, and training on the application of international human rights norms and standards for law enforcement and the judiciary. Significantly, in paragraph 60 it states that any measures to eliminate online violence against women must comply with international human rights law, including the criteria for permissible restrictions to

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<sup>6</sup> Rima Athar and Women’s legal and human rights bureau, INC (November 2014). End Violence, women’s rights and safety online. Association for Progressive Communication

<sup>7</sup> See <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf> Article 18

<sup>8</sup> Acharya, U. & Sigdel, S. (2016). *Press Freedom in Constitution of Nepal 2015*. Kathmandu: Center for Media Research Nepal.

<sup>9</sup> Article 47 (1), The Electronic Transactions Act 2063 (2008)

<sup>10</sup> Article 9 (c), The National Broadcasting Regulation, 2051 (1995)

<sup>11</sup> Article 16 (e), Press and Publication Act 2048 (1991)

<sup>12</sup> A/HRC/35/9, available at: [ap.ohchr.org/documents/dpage\\_e.aspx?](http://ap.ohchr.org/documents/dpage_e.aspx?)

freedom of expression provided under Article 19(3) of the ICCPR. It calls for a multifaceted approach to addressing online violence against women:

- Preventive (including education and technical features, for example)
  - Reactive (swiftly take down unlawful content, and investigate)
  - Redress for victims.
  - These developments lead to the CEDAW General Recommendations 35 which made extensive reference to online GBV (though the actual terminology has not been used).
- k) The moralizing and policing of expression can be understood through historical anxiety around sexuality, particularly female sexuality, in the belief that “if women’s sexuality is not tightly constrained then chaos and social anarchy will result.”<sup>13</sup> Women are disciplined to follow regiments of patriarchy that controls, and monitors their sexuality and their bodies throughout their lives.
- l) In Nepali society, the *ijjat* (prestige) of the family and men in particular depends on how the women of the family exhibit qualities of moral, sexual and social propriety<sup>14</sup> including “dressing and acting in a modest fashion”, and getting married with a person chosen by family at an ‘appropriate’ age.<sup>15</sup> In the digital age, it can extend to the content and photos one posts online, who they may ‘friend’ and with whom they may ‘chat’. Technology is blamed as a reason for a myriad of actions that are seen as harming family propriety or *ijjat* such as a “love marriage”.
- m) Beyond regulations, spaces where women’s and Lesbian, Gay, Bisexual, Transgender, Queer and Intersex (LGBTQI) groups participate are controlled in other ways. Harassment, abuse, manipulation, exclusion, and discrimination that occur offline also exist online.<sup>16</sup> Those whose voices are suppressed and shut offline are targeted online too. Women who are vocal about their opinion and views, including activists have received death and rape threats.<sup>17</sup>
- n) There is no specific regulatory provision to deal with GBV online in Nepal. Existing laws pertaining to GBV such as Domestic Violence Act, Workplace Harassment Act and Human Trafficking Act deal with specific categories of violence against women<sup>18</sup>. Law enforcement agencies often invoke rules under ETA<sup>19</sup> to deal with a wide range of crimes including GBV

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<sup>13</sup> Forum for Women Law and Development. (2007). Op. Cit.

<sup>14</sup> Rankin, K.N. (2010), Gender, Place and Culture: A Journal of Feminist Geography. In *Cultures of Economies: Gender and socio-spatial change in Nepal* (pp 111-129).

<sup>15</sup> Greene, S. (2015). Op. Cit.

<sup>16</sup> Arrow for Change. (2016). *Sexuality, Sexual and Reproductive Health and Rights, and the Internet*, 22 (1).  
[www.arrow.org.my/wp-content/uploads/2016/08/AFC22.1-2016.pdf](http://www.arrow.org.my/wp-content/uploads/2016/08/AFC22.1-2016.pdf)

<sup>17</sup> Ibid.

<sup>18</sup> The Asia Foundation. (2010). Nepal: Preliminary Mapping of Gender Based Violence

<sup>19</sup> In *the Government of Nepal vs. Bikash Thapa*, the defendant was charged under ETDSA for harassing a female colleague with sexually explicit images through email over a sustained period of time. The defendant was acquitted, as the court was unable to establish the charge due to insufficient evidence.

on the internet. However, the Act's vagueness and incompatibility with other freedom of expression laws makes it prone to misapplication.

- o) In 2014/2015, the Metro Police Crime Division, Kathmandu registered 309 cases of online offenders of which 12 offenders were booked under Cyber Crime and Public Offence. Similarly, 830 cases were registered in 2015/2016 out of which 17 offenders were booked followed with 657 cases of "dishonor" in 2016/2017 amongst which nine offenders were booked respectively.<sup>20</sup> The systemic cases filed ranged from cases of dishonor, extortion through email and SMS, use of fake social account, abusive SMS, website hacking, anti-social websites and copyrights. The division has developed a monitoring system that monitors triannual cybercrimes but lacks a gender disaggregated data system.
- p) Harassment of women online is at risk of becoming established norm in our digital society. What starts off as a harmless intellectual debate soon develops into a string of personal attacks eventually turning obnoxious.<sup>21</sup> Historically women have faced reprisals, slander, stigmatization, excessive use of force, defamation for expressing their thoughts and beliefs that someone did not approve of or refused to permit.
- q) Online violence is an extension of offline patriarchal and misogynistic discrimination. Harassment, abuse, and bullying occur in cyber space because society does not approve of our freedom to express and opinions except in this instance the perpetrator is "invisible", unchecked and fluid. The impact is the same, threats of physical violence, psycho-socio harassment often leading to self-censorship.
- a) Online violence is another form of VAW. Offline VAW is often ignored and outside the periphery of the justice mechanisms, and online violence follows similar trend. The cyber-crime unit is not gender sensitive, and the police on duty are more interested to know contents, not relevant to registration. Their perceptions and attitudes usually put the blame and burden on the traits of the person rather than the perpetrators.

## ***Recommendations***

- a) The constitutional provision abides by the core principles of ICCPR on right to freedom of opinion and expression should be ensured, but the discriminatory activity and expressions should be restricted.
- b) The ETA is not synonymous to a cyber-law. The government must include online violence against women and girls within the paradigm of violence against women acts and laws, and ensure due justice process followed.

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<sup>20</sup> <http://www.myrepublica.com/news/19376/>

<sup>21</sup> <https://thehimalayantimes.com/opinion/settling-scores-online-harassment/>



- c) There is a need of involvement of civil society, women's rights activists, sexual rights activists in formulating internet governance policies, and bring them to decision making tables.
- d) Public offence laws are generally used to police activities online and offline and further regulate sexual content and expression. The government need to revise public offence laws, and be precise on what it entails without compromising human rights.
- e) Prompt action should be taken to stop using the term technology causes violence against women as an excuse to escape due diligence. Technology does not cause violence, harmful traditional practice does.
- f) Nepal Police should adopt a gender sensitive responsive system to provide justice for incidences of cyber violence against women and girls.
- g) Internet Service Providers ( ISPs) must respect rights and privacy of internet users and follow the mandate of the resolution of the UNHRC on human rights and business.

## 4.5 Women's Health

### *Key Issues and Concerns*

- a) Women's health of women and girls is related to multiple human rights, including the right to life, right to bodily autonomy, the right to be free from coercion and torture, the right to health, the right to privacy and the right to be free from gender discrimination and violence.
- b) Sexual and reproductive health is one of the most common health problems for women aged 15 to 44 in Nepal, where early pregnancy, unsafe abortions, childbirth or harmful traditional practices like early/child marriage, menstrual exclusion etc. endanger the lives of women and girls.
- c) Out of 13.6 million Nepali women 870,000 women suffer from uterine prolapse (one in every ten women). They are also being subjected to further discrimination and increased violence because of uterine prolapse. The women have poor access in the health facilities as only 69% women go to hospital at least 4 times during pregnancy for health checkup and only 57% women give birth to baby in hospital/health post. Despite considerable efforts over the past many years, maternal mortality ration (MMR) is still very high i.e. 239 deaths per 100,000 live births for the seven-year period in Nepal<sup>22</sup>.

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<sup>22</sup> Nepal Demographic Health Survey (NDHS) 2016, Key findings page 8. Ministry of Health

- d) Unequal power relation between men and women creates difficulties for women and girls to decide over their own bodies and negotiate safer sex<sup>23</sup>. Similarly according to NDHS 2016, the prevalence of child marriage is 37% and the median age at first marriage for women age 25- 49 is 17.9 years, and 17% are already mothers or pregnant. Hence, women lack control over their bodies including their sexuality, decision-making in their marriage (age of marriage, choice of partner), when and whether to have or not to have children.
- e) Social and cultural norms prescribed by patriarchy control over rural women's bodies and sexuality resulting in limited mobility, brutal violence including Bokshi (alleged as witch), sex selective abortion, marital rape, domestic violence, child marriage, exchange marriage, dowry, and sexual violence.
- f) Four in ten women only know abortion is legal in Nepal. Among these women, 29% of aware about abortion is allowable for termination of pregnancies of up to 18 weeks in the case of rape or incest and 23% know abortion is allowable up to 12 weeks gestation for any women (23%). Yet, 3% of women believe that sex-selective abortion is legal. Proportion of abortion increases with pregnancy order; 2% of first pregnancies end in abortion, compared to 21% of fifth-or-higher order pregnancies. The proportion of abortion is higher among women age 35-49 (27%) and those from the wealthiest households (16%). However, access to safe abortion still remains a challenge.
- g) Women and girls with disabilities face multiple discrimination on the grounds of both their gender and their disability status. Violence and abuses against women with disabilities are often hidden, and remains as a result of deep rooted stigma and shame connected to both sexuality and disability.
- h) People with disabilities are often denied the right to establish relationships and to decide whether, when and with whom to start a family. A recent study (2016), carried out by the Nepal Disabled Women Association (NDWA), shows that 70% of women with disability are unmarried. Reproductive health providers who often assume women with disabilities do not engage in sexual activities. So women with disabilities are not screened. Consequently, women with intellectual disability are coerced into forced abortion and removal of reproductive organs.
- i) Accessibility to maternal health services is usually very poor for women with disabilities. It is hard to reach clinics as infrastructures and transportations are not disable-friendly.
- j) Women lack access to quality sexual and reproductive health care services and information, contributing to high prevalence of morbidities like Uterine Prolapse, Obstetric Fistula, Cervical Cancer, Reproductive tract infection and mortality that are largely preventable SRH problems in Nepal.

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<sup>23</sup> <http://www.manskligarattigheter.se/en/human-rights/what-rights-are-there/sexual-and-reproductive-healthand-rights-srhr>

- k) Health facilities are not gender sensitive that encompass psycho-social counseling services, women medical practitioners in rural areas to address reproductive health problems.
- l) Unregulated healthcare services lead to lack of accountability of health care providers leading to high negligence in medical practices especially absence of quality health services and availability of essential medicines.
- m) Adolescent girls are deprived of basic comprehensive sexuality education both in and out of school due to stigma and shame attached to it that perpetuates harmful practices including unsafe sex, teenage pregnancy, unsafe abortion, STIs and HIV and so on. Similarly, very limited adolescent friendly health services.
- n) Due to stigma and lack of knowledge on safe abortion, many women turn to clandestine services impacting their health and life.
- o) The 2015 Federal Constitution ensures reproductive health rights of women and girls and the 2014 Health Policy directs to produce Reproductive Health Bill. However, it is yet to be presented draft bill.

### ***Recommendations***

- a) It is essential to ensure accessibility, availability, safe and quality women and adolescent friendly reproductive health services (psycho-social counseling services, safe abortion, maternal health services, pre-natal care, emergency obstetric care, safe delivery and post-natal care, skilled birth attendants, maternity leave etc.) needed for women and girls, which should be guaranteed throughout life-cycle.
- b) The government should provide age-specific, rights-based and evidence based Comprehensive Sexuality Education (CSE) to boys and girls in both public and private, rural and urban schools, to enable them to make informed choices and decision, control over their sexuality and adopt safe and responsible sexual behaviors.
- c) The government should also adopt and implement measure to eliminate all forms of GBV and discrimination against women and girls, including sexual violence, domestic violence, and marital rape, child marriage through effective implementation of legislation and justice and support for victims. A comprehensive policy should also be adopted to end all forms of harmful traditional practices.
- d) Awareness raising campaign should be run in community level majorly focusing on male members of the family, community leaders, traditional healers and religious leaders, etc.

in order to change their perspective and patriarchal thoughts to reduce the incidence of GBV and harmful practices in community level.

- p) The government should immediately enact Reproductive Health law and increase awareness program on safe abortion. Abortion centers must be stigma free, youth friendly and safe.
- e) Ensure formal justice system provides prerequisite services for PWDs, including provision of physical infrastructures and appropriate language, and essential element for access to justice.
- f) It is a duty of the state to allocate resources, formulate special programs to ensure access to sexual and reproductive health, including provisions of appropriate service mechanisms to meet special sexual and reproductive health and rights of women with disability.

## 5. Annexes

### 5.1 Tables

Table -1 (Data of Violence against Women)

Types of Violence	Year 2015	Year 2016	Year 2017	Year 2018
Domestic violence	1343	1300	766	1141
Rape	96	71	68	120
Mass rape	9	5		9
Attempted rape	74	27	18	37
Sexual abuse	75	84	45	69
Murder	24	11	4	16
Attempted murder	6	9	8	6
Physical torture	125	100	56	91
Mental torture	106	85	97	81
"Witchcraft"	32	17	28	29
Child marriage		16	14	92
Trafficking	6	26	24	11
Attempted Trafficking	15	26	24	11
Suicide	13	17		10
Other	6	17		10
Total	1930	1775	1150	1739

Source: Women's Rehabilitation Center (WOREC)

Table – 2 (Nepal Police Data on Violence against Women)

	Rape	Attempt to rape	Trafficking	Abortion	Polygamy	Child marriage	Domestic Violence	Witch Craft
70/071	912	414	185	18	421	15	6835	39
071/072	981	562	181	17	518	23	8268	43
072/073	1089	452	212	22	463	20	9398	28
073/074	1131	536	227	22	464	26	11629	24

Source: <https://cid.nepalpolice.gov.np/index.php/cid-wings/women-children-service-directorate>

**Table -3 (Data of Women Right Violation)**

<b>Type of Violence</b>	<b>2016</b>	<b>2017</b>
Attempt to Trafficking	7	73
Domestic Violence	2201	2733
For Practicing Witchcraft	34	33
Polygamy	222	248
Lack of Pre & Post Partum Services		2
Rape	242	265
Rape Attempt	94	122
Sexual Abuse	37	44
Women Trafficking	72	40
Total	2909	3560

**Source : Human Rights Year Book, Published by INSEC, 2016 and 2017**

## 5.2 List of NGOs/CBOs

1	AAMA Milan Kendra
2	AATWIN
3	Abbal Women Entrepreneurship
4	Adjust Nepal
5	Advocacy Forum
6	Ageing Nepal
7	Agroforestry, Basic health, and Cooperative Nepal (ABC Nepal)
8	Amnesty International Nepal- Province 2
9	Association of Youth Organization Nepal (AYON)
10	B.W.A Nepal
11	Bar Association
12	Beyond Beijing Committee (BBC)
13	Blue Diamond Society (BDS)
14	Campaign for Peace
15	Centre for Agro-Ecology and Development (CAED)
16	Change Action Nepal
17	Change Nepal
18	Child and women empowerment Centre
19	Child worker in Nepal (CWIN)
20	Children and women janajagriti Centre
21	Children Development Centre
22	Civil Society Network for peace
23	Collective Camapign for Peace
24	Conflict affected and Widow women Development Centre
25	Conflict affected Society for Justice
26	Consortium Nepal
27	CPCRP
28	CWR
29	DAFOCAS
30	Dalit Journalist Forum
31	Dalit Women Empowerment Union
32	Dalit Women right Forum Nepal
33	District Child Club Network
34	Diyalo Nepal
35	Dristi Nepal
36	Education Development Centre
37	Federation for community forest user
38	Federation of Dalit Association
39	Federation of Dalit Organization
40	Former Migrant Union

41	Freed Kamaiya Women Development Forum
42	Gadimai UNESCO club
43	HIMRIGHTS
44	Human Right Alliance Bhaktapur
45	HUSODAN
46	Informal Sector Service Centre (INSEC)
47	IRICON
48	Jagriti Child and Youth Concern Nepal (JCYCN)
49	Jagriti Mahila National Network of Sex Worker
50	Kadam Nepal
51	Legal Aid and Consultancy Centre
52	Life Nepal
53	LOOM
54	Maithali Women Group
55	Maiti Nepal
56	Mercy Crop
57	Minority Rights Groups
58	National Federation of the Disabled- Nepal
59	National Human Right Defender janakpur
60	<a href="#">National Indigenous Disabled Women Association- Nepal</a>
61	National Indigenous Women's Federation
62	National Network Against Girl's Trafficking
63	National Network of Safe Migration
64	Nepal Disability Women Association (NDWA)
65	Nepal House
66	Nepal Mahila Ekata Samaj
67	Nepal National Dalit Social Welfare Organisation
68	NGO Federation
69	Nursing Association Nepal
70	Padati Bikash Sewa Centre
71	Peace Rehabilitation Centre
72	People Forum
73	People's Forum for Human Right
74	Plan International Nepal
75	Pourakhi Nepal
76	Pravasi Nepali Coordination Committee
77	Prerana/MAM
78	Progressive Society Nepal
79	Psychological Society Nepal
80	Public Awareness Community organization
81	Rastriya Dalit Network



82	Reorganization Nepal
83	Rural Reform Forum
84	SAADE/ people's SAARC
85	SAAPE
86	Samata Foundation
87	Sankalpa
88	Sansangai Nepal
89	Shanti Foundation
90	Sibka Jagriti Federation
91	Siddshar Mahila Samuha
92	Sister For peace (CASA)
93	Society Of Anaesthesiologists of Nepal
94	Society Welfare Association Of Nepal
95	Tarangini Foundation
96	Terai Human Right Defender alliance
97	Underprivileged Childre's Educational Programs
98	UNFPA- province 7
99	Visible Impact
100	Widow women Union
101	Women Advocacy Forum
102	Women Awareness Group
103	Women Development Society
104	Women Development Union
105	Women Empowerment Forum
106	Women Federation
107	WOMEN FORUM FOR WOMEN IN NEPAL(WOFOWON)
108	Women Human Right Defender
109	Women Progressive Nepal
110	Women Security Pressure Group
111	Women's Rehabilitation Centre (WOREC)
112	Working women Journalist
113	World Withourt Anger (WWR)
114	Young Women For Change
115	Youth Action Nepal (YOAC)
116	Youth Development Centre
117	Yuwa