

NHRIs Report

2018

2018

This joint submission to
the CEDAW Committee
for the 71st session
reviewing Nepal's 6th
periodic report

Submitted by:
National Human
Rights Commission,
Nepal & National
Women Commission,
Nepal

BACKGROUND:

The Government of Nepal submitted its sixth periodic report to the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) Committee in 15 March 2017. The presentation and examination of the report is scheduled for the 71st session of CEDAW Committee, taking place in Geneva from 22 October to 9 November 2018.

The National Human Rights Commission and National Women Commission are constitutional¹ and independent institutions of Nepal working for the protection and promotion of human rights. As part of their mandate and in consultation with the Government, NGOs, INGOs and civil societies, the NHRC and NWC are submitting a joint report with information on the status of implementation of CEDAW Convention in the country.

ARTICLE 1: NON-DISCRIMINATION

Constitution of Nepal has extended the definition of discrimination which includes marital status and pregnancy, disability, health condition and economic condition as a ground of discrimination² and enacted a new National Criminal Code which criminalizes discrimination on various grounds including based on sex, pregnancy and marital status. It also provides for punishment and compensation in cases of discrimination.³ Nepali society still have patriarchal perception which restricts women and girls' right to freedom.

Recommendations:

- Need to adopt a comprehensive definition of discrimination in the Constitution to encompass both de jure and de facto discrimination, direct and indirect discrimination in line with CEDAW.
- Establish a mechanism to monitor discrimination against women with disability including discrimination within the family.

ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION

In Nepal, discrimination against women on the basis of their sex still exists. Despite the newly enacted National Criminal Code and National Civil Code which broaden the grounds of punishment for discrimination against women.

The government did not seek consultation with NHRC and NWC in enacting these laws. There also prevails a problem of disable friendly complain mechanism.

¹ Part – 5, Article 248 and Article 249 of the Constitution of Nepal.

² Article 18(2) of the Constitution of Nepal

³ Section of the National Criminal Code, 2017

Recommendations:

- Discriminatory laws and provisions against women and setting a time-bound target for their amendment.
- Consultation with NHRC and NWC by the government prior to drafting or amending laws to see if they are in line with CEDAW and international human rights commitments.
- Disable friendly services and facilities should be built to promote independent living for women with disability.

ARTICLE 3: ADVANCEMENT OF WOMEN THROUGH INSTITUTIONS

In the new federal structure and the Ministries are also being restructured. Under this restructuring, the Ministry of Women, Children and Senior Citizens has been created at the federal level. At the provincial level, Social Development Ministry has been established as the focal ministry for women's issues. The lack of resources is a barrier for establish shelters and services for the victim of gender-based violence.

The NWC, earlier statuaries body, now recognized as a constitutional body. In a progressive step, NWC has started a 24hour helpline service. Awareness raising programs are being provided on women's rights, gender based violence and its remedies, including investigation of women's rights violation and legal aid. Though the status of NWC elevated to constitutional body, there is no significant increase in the budget and human resources provisions.

Lack of gender-disaggregated database in has been maintained in various governmental and non-governmental institutions make it difficult to collection accurate information about the situation of women in various sectors.

Recommendations:

- Allocate adequate financial and human resources for the NWC to ensure it can fulfill its Constitutional mandate.
- Issue clear TORs to the women and children units at the local level, which must include the work done by the earlier women and children district offices.
- Introduce mandatory provisions to maintain gender-disaggregated database including sex, marital status, age, caste, ethnicity, sexual orientation and persons with disability in all governmental and non-governmental agencies.
- Construct shelter homes for women and children victims of gender-based violence with adequate resources, including counseling, at local level.

ARTICLE 4: SPECIAL MEASURE AND SUBSTANTIVE EQUALITY

Article 38(5) of the Constitution of Nepal states that women can participate in all bodies of the state on the basis of the principles of proportional inclusion, special opportunity and positive discrimination. To date, three years since the adoption of the Constitution, this Article has not been fully implemented as there is a lack of understanding about the principle of equality among different organs of the state, including the executive, legislature and judiciary. There still is a narrow mind-set which considers quotas and reservations as special opportunities. Representation of women from marginalized community and geographically disadvantaged locations has also not been taken into consideration. Article 47 of the Constitution provides that new laws should be adopted within 3 years to bring these provisions into operation, however, Special Opportunity Act has yet to be enacted . There is a need to introduce special measures for women in the private sector.

Recommendation:

- Enact the Special Opportunity Act timely as per the constitutional obligations.
- Acknowledge the diversity of women within the framework of special measures in order to advance the situation of women in disadvantaged groups to extend different organs of the state on equality, special measure and positive discrimination.
- Ensure the private sector is inclusive and provides special measures for women.

ARTICLE 5: SEX ROLE AND STEREOTYPING

Nepal has been making progressive efforts in enacting laws to address stereotyping and discriminatory cultural practice. Examples include the recently promulgated Anti-Witchcraft (Crime and Punishment) Act, 2015 and the National Criminal Code which penalizes discriminatory practices including “*chhaupadi*”⁴. The implementation of these provisions remains to be seen. The laws have been enacted to reform gender biased cultural practices, there is no practical implementation of these laws and such stereotypical practices still prevail.

Recommendations:

- Establish and introduce laws, policies and programs as well as mechanisms with adequate resources to deal with traditional discriminatory and harmful practices.

ARTICLE 6: TRAFFICKING AND EXPLOITATION OF PROSTITUTION

Incidents of internal as well as external trafficking are on increase.⁵ Not only exploitation, but human trafficking in the form of foreign employment has widely increased. The rescue and reparation of the victims is of concern, and social re-integration is a challenge. Nepal has not ratified any international

⁴ Section of National Penal Code, 2074

⁵ <https://cid.nepalpolice.gov.np/indes.phd/cid-wings/women-children-service-directoratre>

human right instrument which gives open door to bi-lateral cooperation between the country of origin and destination. Labor exploitation is not covered by Nepal's Anti-Human Trafficking laws. In the amended Human Trafficking and Transportation Act, 2007, provisions for a rehabilitation fund has been created to regulate the rehabilitation centers and compensation. Although the Ministry of Women Children and Senior Citizens has agreed to partially fund the rehabilitation homes, there are only 8 shelter homes, which is clearly insufficient. A separate law to regulate the entertainment sector is in need and ordered by the Supreme Court in 2008 but the government has so far failed to act on the court's order.

Recommendations:

- Make the definition of human trafficking comprehensive incorporating labor exploitation.
- Enact a law to regulate the entertainment sector.
- Ratify the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and incorporate it into domestic law in line with the international standards.

Access to justice

The prevailing state of impunity in the country has created multiple hurdles for victims of GBV seeking justice, making them vulnerable. Rape and Murder case of Nirmala Panta, till 55 days and few other cases have also not been investigated on time. NHRC discovered several lapses on the part of crime investigation. Their right to effective remedy is not upheld. They need fast track and speedy justice, gender sensitive investigation, prosecution and justice delivery system. Recent finding of NHRC VAW is the major challenges in 71 districts⁶. A victim protection mechanism for survivors of rape has to be developed.⁷ Though the statute of limitation to file a complaint in rape has now been extended to 12 months, it remains to be inadequate, especially for women suffering from post-traumatic stress or mental health disabilities.

Recommendations:

- Ensure accountability for authorities' refusal to file FIRs and failure to undertake criminal investigations upon filing of FIRs by putting in place strict disciplinary action for officials who do not take necessary action.
- Increase the number of shelter homes for survivors of GBV.
- Extend the time limitation to file the complaints of sexual violence (rape).
- Provide adequate budget for rescue, rehabilitation, reparation, social integration and adequate compensation for survivors of GBV.
- Ensure proper investigation and prosecution of GBV to ensure justice to the victims.

⁶ www.nhrcnepal.org /Report on "Priority issues of Human Rights in Nepal"

⁷ National Human rights commission's National inquiry report

ARTICLE 7: POLITICAL AND PUBLIC LIFE

Nepal has ensured 33% women's representation at federal and provincial parliament and 40% in local government. At the lowest level of government (ward committee), 2 women must be included in the committee, one of whom must be from the Dalit community. As per the Constitution, appointment of president and vice president and speaker and deputy speaker of federal and the provincial parliament has to be of different sex. At the local level, political parties are required to select their candidates for mayor or deputy mayor or president or vice-president from different sex. A female president was elected which showed a progressive step towards equality, but all the nine speakers are male and all deputy speakers in the federal and provincial parliament are female suggesting a clear hierarchy if not discrimination at play. Similarly, 92% of women are limited in the position of deputy mayor or vice president at the local level. The newly enacted law for political party states that there must be 33% representation of women in the governance structures of the parties, but this provision remains to be implemented. The political parties have also ignored the principle of inclusiveness and they are at best practicing a tokenistic system.

Recommendations:

- The Election Commission should effectively implement the enacted laws related to political parties ensuring the provisions ensuring representation of women and especially Dalit women, women with disability, women from religious and sexual minority, indigenous women and madhesi women are upheld.

ARTICLE 8: WOMEN'S INTERNATIONAL REPRESENTATION

Nepal gradually developed women's international representation. By appointing women as Deputy Permanent Representative to the UN, and nominate women as members to Committee against Torture and CEDAW Committee, Nepal has shown some progress in the field of women's international participation. Despite General Recommendation no. 23, only 2 out of 21 ambassadors appointed by the government of Nepal on April 20, 2016 were women.

Recommendations:

- Ensure proportional representation of women by setting a minimum target of women's representation at the international level (at least 33%).
- Develop a periodic analysis of gender-based data of international representation both from the government and civil society.

ARTICLE 9: NATIONALITY

Nepal falls among the small number of 25 countries around the world that continues to discriminate women to confer their nationality on their children on an equal basis with men. Article 11(5) of the Constitution has impaired the independent identity of women undermining them to confer the citizenship to their children when the father of the children remains unidentified. Terms such as “father not traced” bestow the concerned authority with sole discretion to interpret such statement on the basis of their prejudice. Article 11 (7) – a child born from a Nepali mother and a foreign father and who has permanently resided in Nepal and who has not acquired the citizenship of a foreign country can only acquire the naturalized citizenship which is discriminatory. Nepali women who marry foreigners before obtaining their citizenship certificates of Nepal are barred from conferring their nationality to their child(ren). This is a direct violation of Article 11(2) of the Constitution and amounts to an arbitrary deprivation of nationality. While Nepalese men can confer their nationality to foreign spouses and their children, Nepalese women are barred from doing so. The only path to Nepalese citizenship for foreigner male spouses is through the residence-based naturalization process. Though the 2015 Constitution has more progressive provisions from gender perspective than the previous one, these provisions still need to be translated into Citizenship Act, Regulation and Guidelines. A Bill on Citizenship has already been submitted to the Parliament. Though the Bill has been submitted to the Parliament, it still contains many discriminatory provisions which results in not accepting the independent existence of women, even to confer citizenship to her children.

Recommendations:

- Take immediate steps to amend/repeal all discriminatory provisions that prevent women from acquiring, retaining and transferring citizenship on an equal basis with men.
- Ensure the equal spousal right to transfer citizenship.
- Recognize the independent right of each parent to provide citizenship based on lineal descent to their children.
- Recognize that the right to nationality is not subject to unfettered discretion of administrative authorities, but instead should be protected by the state, which has an obligation to implement court decisions in this regard.
- Recognize the universal concept of Birth Registration irrespective of the status of the parents.

ARTICLE 10: WOMEN AND EDUCATION

There are still concerns of irregular attendance and school dropouts among girls. This is because of the patriarchal perception in society. Though the girls are enrolled, they attend school irregularly and many have dropped out of school as girls' education is still not considered a priority in some parts of the country. Also, due to the unfriendly environment and inaccessibility, girl students with disability face such problems in a much bigger way. Many schools have not been reconstructed after the earthquake. Women's representation among teachers is also very low in number despite 33% seats are reserved for female teachers.

Recommendations:

- Introduce an effective scholarship programs with special attention to girl students with disability that meet all the needs, including indirect cost.
- Introduce intensive gender sensitization programs among parents and community.
- Recruit female teachers, offering more training and capacity-building opportunities.
- Include age-based sexuality education in school curricula.

ARTICLE 11: WOMEN AND EMPLOYMENT

One of the main areas of concern in Nepal is women's employment. The Constitution has guaranteed special opportunity and social security on the basis of positive discrimination and the Sexual Harassment at Workplace (Elimination) Act, 2014 has been enacted. The rate of women going for foreign employment has risen over the years, though women under 24 years of age are not allowed to work as housemaid or domestic workers in foreign countries. Wage discrimination between genders still prevails and the Sexual Harassment at Workplace (Elimination) Act remains to be effectively implemented. Indigenous women have their own indigenous knowledge and skills but that is not still recognized.

Recommendations:

- Create a mechanism to monitor and punish the discriminatory wage practice in informal sectors.
- Doing away with the protectionist approach, remove the age bar of 24 for women and the bar forbidding lactating mother up to 2 years from foreign employment.
- Develop clear guidelines for the effective implementation of the Sexual Harassment at Workplace (Elimination) Act.
- Ratify the ILO Convention concerning Decent Work for Domestic Workers (Convention No. 189) and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- Ensure financial support for indigenous women to enhance indigenous knowledge and skills.

ARTICLE 12: HEALTH

Lack of adequate information and access to health services for women especially adolescent girls, unwanted pregnancy, sex selective abortion continue to be matters of concern. Access to contraceptive information and services for both married and unmarried women continues.

Mistreatment during childbirth continues to remain a problem and the issue of post-delivery depression has been overlooked. The government has recently enacted the Reproductive Health Rights Law that

recognizes women's access to reproductive health information and services as a human right. Its effective implementation remains to be seen⁸.

Should there be something on how the health esp. RH is now under the federal, provincial and local list of governments and how it is necessary to ensure budgetary allocation for effective implementation.

Recommendations:

- Launch intensive awareness campaigns about abortion.
- Increase women's access to contraceptives and family planning.
- Arrange sanitary kits tax free and easily available, including in rural areas.
- Construct girl friendly toilets in every school.
- Establish disability friendly birthing centers.
- Provide proper psycho-social counseling to women on post-natal depression.

ARTICLE 13: ECONOMIC AND SOCIAL BENEFITS

Although the Constitution has guaranteed economic and social rights to everyone, including women, due to a lack of awareness, many women are unaware of such rights and even among those who are aware, many are deprived of such rights. Even among women, some receive better benefits such as maternity benefits than others.

Women are dependent on their husband or parents for their livelihood because they are not economically empowered. The economic status of women should be kept in mind and must be of concern. Women must be self-sustaining to remove their dependency upon others.

Recommendations:

- Introduce a social security system that benefits and supports women facing marginalization, including on the basis of caste, ethnicity, marital status and disabilities.
- Provide income generation programs and skills-oriented trainings to women.

ARTICLE 14: RURAL WOMEN

Education and health services in rural areas are very limited. Among the places that have such services, quality and adequacy of such services are problematic. With low self-confidence of rural women, overall development of such women is also lagging behind. Violence against women during the armed conflict

⁸ Nepal Demography Health Survey 2016 & 2017

(1996-2006) has far reaching negative consequences. It has exposed the victims to severe physical risk and medical problems resulting in depression, fear and low self-esteem including suicidal tendency.⁹

Recommendations:

- Develop capacity-building programs and training for rural women to ensure they are able to combat discriminatory culture and demonstrate effective leadership in local bodies.
- Recognize indigenous women's personalities in the constitution, laws, policies, and government programs.
- Amend the criminal code to ensure opportunity to file complaints for sexual violence that occurred during the conflict.

ARTICLE 15: EQUALITY BEFORE THE LAW

Although most of the problems concerning gender equality to women are dealt, with in which Article 38(1) of the Constitution states equal lineage rights. Women are still denied to receive compensation, provide disaster benefit due to lack of ownership of property and citizenship right.

Recommendations:

- Review and amend all discriminatory laws and policies against women in all areas of the law, specifically regarding women's equal right to acquire and confer citizenship, and to parental property and inheritance, regardless of marital status
- Ensure that women and men are equally prioritized while receiving post-disaster reconstruction benefits.

ARTICLE 16: MARRIAGE AND FAMILY LIFE

Given the strong value driven socio cultural importance of marriage in a women's life and the notion that family chooses the spouse, girls and women are not in a position to choose their partners. Statistics reveal that in about more than 60 percent of cases, family chooses the spouse. Child marriage has been declared *void ab initio*. However, it remains to be seen how this will be implemented in reality given the strong prevalence of the practice in country. Moreover, the legal provisions do not have any clear response mechanism where children are married below the legal age of marriage. Bigamy has also been declared illegal. Dowry system continues to remain a problem.

Recommendations:

- Ensure that the government of Nepal provides support mechanisms to victims of child marriage including protection measures, interim relief, services for physical and psychosocial well-being, access to comprehensive sexual and reproductive health services, rehabilitation, and adequate compensation and reparations.

⁹ Sexual Violence Assessment – HimRights 2012

- Ensure the availability and accessibility of legal counseling and legal aid to girls at risk of child marriage and married girls.
- Address the problem of child marriage comprehensively along with initiating a substantial awareness campaign in coordination with NGOs and INGOs creating awareness among the general public.
- Effective and proper implementation of the newly-adopted National Criminal Code to deal with the social evils like dowry and child marriage.