

PROMOTING GENDER EQUALITY AND SOCIAL INCLUSION: NEPAL'S COMMITMENTS AND OBLIGATIONS



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Publisher



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Cover Photo : Conor-Ashleigh

ISBN : 978-9937-8387-9-5

Design & Print : Creative Press Pvt. Ltd.
Kathmandu, Nepal

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DISCLAIMER: This “Promoting Gender Equality and Social Inclusion: Nepal’s Commitments and Obligations” has been made possible by the support of the American People through the United States Agency for International Development (USAID) and The Asia Foundation (TAF). The contents of this report are the sole responsibility of INHURED International and do not necessarily reflect the views of USAID or the United States Government and TAF.

ACKNOWLEDGEMENT

International Institute for Human Rights Environment and Development (INHURED International) implemented “Promoting Gender Equality and Social Inclusion: Nepal’s Commitments and Obligations” with the support of the American People through the United States Agency for International Development (USAID) and The Asia Foundation. This is the product of *Mitigating Conflict and Improving Implementation of Gender and Social Inclusion (GESI) Policies through a People-to-People (P2P) Approach in Nepal (CM-GESI) project*

With the promulgation of the Constitution of Nepal 2015 following by the changed federated structure, it gives plentiful opportunity of hope and aspiration in transforming Nepal’s international commitment and obligation relating to Gender Equality and Social Inclusion into the effective application. The assessment carried out by INHURED International aims to provide the constructive feedback on the thematic areas to the concerned stakeholders in designing, and implementing the desired intervention with regards to Gender Equality and Social Inclusion. From the inception to the final stage of the project cycle, the CM-GESI project evolved with the changed political context and got an opportunity to cater the needs of newly formed structures. This publication highlights the achievements, gaps and challenges also with recommendations that is vital for prompt, adequate and effective service delivery from the State actors. It has looked into the Nepal’s International commitments and obligations on how the commitments are transformed into the local level and what needs to be done to achieve those desired mileages.

Finally, the Foundation would like to thank our implementing partner INHURED International and its dedicated team members for making this publication a reality through their diligent efforts and dedication.

Nandita Baruah
Deputy Country Representative, Nepal
The Asia Foundation

TRANSFORMING WORDS INTO ACTION

Nepal has an age-long patriarchal social, economic, political and cultural set up that is deeply entrenched and widespread in which women and *Dalits* are the hardest-hit. Social exclusion and inequality means permanent vulnerability to the affected population which jeopardizes their economy, livelihood, health, education, well-being, rights and dignity.

The recent wave of political change in the country has brought significant progress in addressing these issues, supported by positive national and international commitments and affirmative action towards the marginalized population. Nepal's international commitment towards elimination of all forms of discrimination and legislative endeavor at domestic front is commendable. However, a large proportion of women and *Dalit* population still continues to be affected by gross discrimination and inequality compounded with lack of a coherent approach among concerned agencies to address such an adversarial scenario.

The bright side of the political transformation in the country is witnessed due to restoration of peace after a decade-long internal strife which has opened-up a wider corridor of opportunities to GESI as a mainstream transformation agenda. With the promulgation of the new Constitution, it is important for the Government to align its development strategy and priorities with overall development process in tune with the Sustainable Development Goals (SDGs). Yet a critical constraint for mitigating conflict and attaining peace and prosperity will be how the newly established federated apparatus will work to ensure that women and *Dalits* have equitable access to the benefits and opportunities of peace and development dividends, including in the disaster-struck communities. Our major concern is to ensure effective coordination with proper division of power and authority to the institutions/organizations responsible for GESI implementation at different tiers of government. The entire doctrine of GESI demands adequately resourced and mandated institutions to support for addressing challenges around GESI.

This study carried out by INHURED International in assistance with USAID/TAF on legal, policy, institutional and administrative frameworks on GESI is a vigorous task which vividly mirrors the status of State obligation as a core part of a democratic state and at the same time reveals with evidences on the practical aspiration towards effective realization of GESI at the ground level. The study is expected to serve as a vital tool to be used strategically for broader advocacy, lobby and campaigns for reforms at P2P, household, community, national, regional and international arenas. INHURED International is

committed to continuously work in close coordination with various concerned stakeholders to carry out tasks related to advocacy and lobbying in the realm of GESI becoming a main game changer of broader human rights movement.

Gopal Krishna Siwakoti, PhD

President, INHURED International
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ACRONYMS

AIDS	Acquired Immune Deficiency Syndrome
ANM	Auxiliary Nurse Midwife
BIMSTEC	Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation
BPFA	Beijing Platform for Action
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CPPED	Convention for the Protection of All Persons from Disappearance
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CeLRRd	Center for Legal Research and Resource Development
CERD	Convention on the Elimination of All forms of Racial Discrimination
CDO	Chief District Officer
CLC	Community Learning Centers
CM GESI	Mitigating conflict and improving implementation of Gender Equality and Social Inclusion (GESI) policies through a People-to-People (P2P) approach in Nepal project
CMW	Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CPA	Comprehensive Peace Agreement
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CTEVT	Council for Technical Education and Vocational Training
DDC	District Development Committee
DDRC	District Disaster Relief Committee

DFA	Dakar Framework for Action
DHO	District Health Office
DOHS	Department of Health Services
DPHO	District Public Health Office
DVAW	Declaration on Violence against Women
ECD	Early Childhood Development
EFA	Education for All
EPC	Education Policy Committee
ERO	Education Review Office
FGD	Focus Group Discussion
FIR	First Information Report
FPTP	First Past the Post
GBV	Gender Based Violence
GDI	Gender Development Index
GESI	Gender Equality and Social Inclusion
GoN	Government of Nepal
GRB	Gender Responsive Budget
HDI	Human Development Index
HIV	Human Immunodeficiency Virus
HTTCA	Human Trafficking and Transportation (Control) Act, 2064 (2007)
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for Yugoslavia
IEC	Information Education and Communication
ILO	International Labor Organization
INGO	International Non-Governmental Organization

LSGA	Local Self-Governance Act
MCHW	Maternal and Child Health Workers
MD	Medical Doctorate
MDG	Millennium Development Goal
MLD	Ministry of Local Development
MMR	Maternal Mortality Rate
MoF	Ministry of Finance
MoFALD	Ministry of Federal Affairs and Local Development
MoHA	Ministry of Home Affairs
MOHP	Ministry of Health and Population
MS	Masters of Science
MoWCSC	Ministry of Women, Children and Senior Citizens
NAM	Non-Aligned Movement
NFE-MIS	Non-Formal Education Management Information System
NGO	Non-Governmental Organization
NDC	National Dalit Commission
NFEMIS	Non-formal Education Management Information System
NEB	National Examinations Board
NHRC	National Human Rights Commission
NHTC	National Health Training Centre
NPA	National Plan of Action
NPC	National Planning Commission
NRA	National Reconstruction Authority
NWC	National Women Commission
OAG	Office of the Auditor General
OCMC	One-Stop Crisis Management Centre

PR	Proportional Representation
SAARC	South Asian Association for Regional Cooperation
SESP	Secondary Education Support Program
SBA	Skilled Birth Attendants
SBV	Sex Based Violence
SMC	School Management Committee
SSR	School Sector Reform
TEP	Teacher Education Project
TIP	Trafficking in Person
TWG	Thematic Working Group
TYIP	Three Year Interim Plans
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UNTIP	Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children
VAW	Violence against Women
VAWG	Violence against Women and Girls
VCLT	Vienna Convention on the Law of Treaties
VDC	Village Development Committee

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EXECUTIVE SUMMARY

Nepal being a multi-ethnic, multi-lingual, multi-religious, multi-cultural society with aspirations of people living in diverse geographical regions has prevalence of latent caste and gender-based conflicts. The underlying caste and gender-based hierarchy has also been a cause of many violent outbursts impacting lives and livelihoods. Political instability, weak public security and history of violent conflict have heavily strained the social fabric and resulted in lack of trust in civil institutions. To address this predicament, Nepal has taken multiple approaches through domestic, regional and international normative frameworks. Nepal is state party to a large number of treaties and has subsequently introduced number of legislations to eliminate caste and gender-based discrimination. However, their implementation status is still not satisfactory. It is believed that the primary reason for such a situation is largely due to non-allocation of needed funding, diversion of such funding into fulfillment of different needs, ignorance of general public regarding existing mechanisms and provisions and finally the inadequate capacity of State's apparatus. A more serious inhibition to Gender Equality and Social Inclusion (hereinafter GESI) comes from social and political resistance by dominant groups across multiple state institutions, such as political parties, the bureaucracy, the courts, public officials and law enforcement agencies. As public service delivery occurs primarily at the local level, the attitudes and behaviors of local actors and institutions is central to effectively address the problems with due diligence.

Nepal is a state party to widely ratified international human rights instruments including those specifically related to GESI. To date, Nepal has ratified/signed/acceded to 23 international human rights instruments including 13 core international human rights treaties. It is the first country in South Asia region to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and to the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) aiming at Abolition of the Death Penalty. In terms of GESI related international Treaties and Conventions, Nepal is a State Party to International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention against All Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD) and the ILO Convention on Indigenous and Tribal Peoples Convention, 1989 (No. 169).

These are the positive facets; however, on the other hand, Nepal is yet to ratify international treaties relating to statelessness and refugee protection including the Convention Relating to the Status of Refugees, 1951; the Convention relating to the Status of Stateless Persons, 1954; and the Convention

on the Reduction of Statelessness, 1961. Likewise, it is yet to be state party to the Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. This thereby creates a serious gap for the protection and inclusion of persons belonging to these groups. Furthermore, Nepal is not a party to the Optional Protocol to ICESCR and the CERD thereby preventing GESI groups especially *Dalits* to file individual complaints with respective treaty bodies regarding violations of their rights under the respective Conventions that Nepal is state party to. Furthermore, Nepal has not ratified the Convention against Transnational Organized Crime, and the Protocol.

Furthermore, it can be observed that Nepal has adopted both the monistic and dualistic approaches¹ of adoption of international law, but lately Nepal is seen to be as predominantly a monistic country and as such it is bound to apply the provisions of international treaties that it is a party to.

While looking at the constitutional provisions, the Constitution of Nepal-2015 (hereinafter Constitution) contains provisions for institutional mechanisms relating to GESI. Inclusion is also ensured through other provisions such as Article 283 which states that appointment to the constitutional bodies and agencies shall be made based on the principles of inclusion. Article 269 makes it mandatory for all the political parties to abide by the policy of inclusion. The Constitution promotes proportional representation for the appointment in Government of Nepal (GoN) services.

Nepal has ensured inclusivity as fundamental rights and directive principles constitutionally. Moreover, the scrutiny of other Nepalese statutes reveals legal safeguards on special provisions for the rights of women and *Dalit* in equality and inclusion agenda. With various provisions intact, Nepal still fails to bring application of those provisions.

Apart from these legislations, the GoN has set up multiple structures that deliver GESI related services. The Department of Women Development under the Ministry of Women, Children and Senior Citizens (hereinafter MoWCSC) looks after women's and children's programs and implements them through its Women Development Offices, which are the key gender focal points in the local level. Also, GESI units/ social divisions units or like functioned divisions have been found to exist within the Ministries of Health and Population, and Agriculture and Cooperatives, Education, Ministry of Federal Affairs and Local Development (MoFALD), National Planning Commission (hereinafter NPC), Ministry of Finance, etc. However, their levels of functionality still leave room for big improvements. The research also uncovered that the GoN has been implementing Gender Responsive Budgeting since F/Y 2007/2008.

With regards to the principle of non-discrimination, Nepal being a state party to major United Nations (UN) conventions has ensured that all instances of *de jure* discriminations have been eliminated in almost all of the areas; moreover, it has ensured that right against discrimination is ensured as a fundamental right of every citizen. However, the same cannot be said about elimination of *de facto* discrimination.

With regards to the right to acquire and transfer citizenship, the Constitution ensures the acquisition of citizenship as a right of every citizen in the country and no Nepali citizen is to be deprived of this right. It confers citizenship by descent to all children living in Nepal and born to parents one of who is a Nepali

¹ This approach has been exclusively described in the fourth coming chapter, page no. 9

citizen. However, for a mother to confer citizenship by descent to her child, the mother has to prove that her husband is Nepali and not a foreigner because women married to a foreigner can only confer naturalized citizenship to her children. A person born to a Nepali mother living in Nepal whose father is not identified shall be granted citizenship of Nepal by descent; however, if a father is identified as a foreign citizen the person's citizenship will be converted to naturalized citizenship.

The assessment also uncovered the gaps between legal provisions and their implementation in terms of women and *Dalits*' political participation as there was lack of concrete goals and planned timetable. Likewise, the GoN has introduced various legislations to combat Violence against Women (VAW) however, these need to be backed by speedy compensation mechanisms with functional shelters and rehabilitation centers that is highly required.

With regards to specific health related provisions, the assessment found that there were implementation mechanisms guidelines available from central to local level. It was additionally discovered that GESI service delivery representatives are well aware about their responsibilities. However, there is lack of adequate health related goods and services including 'free medicines'.

Furthermore, the assessment ascertained that legal mechanisms for implementation are available at both central and local level. Positively, local stakeholders seem aware of their rights and responsibilities. But it was detected that the money allocated for scholarships were diverted to pay teachers' salaries and construction of physical infrastructures. Likewise, it was also found that the number of students in need of scholarships is much higher than the allocated budget.

The rate of internal and cross-border trafficking has increased in post-earthquake context and many girls from dysfunctional families easily fell prey to brokers. While there were few successful cases of saving girls from being trafficked, the exact whereabouts of many are difficult to trace. The temporary shelters made after earthquake also increased the incidents of rapes. Majority of victims were minor girls and were raped by close family member/relative. In few incidents, first information report (FIR) had not been registered due to hesitation of family and survivor along with threat from the offender. The lack of a separate unit in Nepal Police to deal with organized crimes like trafficking and heinous crime such as rape has created further impediment on the effective control of these crimes. Likewise, the protectionist approach to the survivors of trafficking and rape is weak as there is limitation in number of seats and time period of stay at shelter homes. The mechanism like 'One Stop Crisis Management Centers' are less in number and have not reached all across the country.

While *Dalits* were considered equal before the laws and untouchability as punishable; in cases of violation, the parties were subjected to mediation. The malpractices such as purifying through so called pure water after touching *Dalits*, avoiding eating with *Dalits* were still prevalent in the sampled districts. Even in the economic sector, *Dalits* and women earned less in both organized and unorganized sectors.

Similarly, it has been found that women participation inside the structure of a political party was highly neglected and overlooked as politics is considered a man's job. The belief that men represent parties better and collect adequate money required for campaigns along with non-support of male family members

largely discounted the political participation of women in the leadership positions. In few cases, during the local elections, the political parties opted to form alliances between two parties which led to men winning the leadership positions whereby women were limited to just subsidiary roles. In few districts, *Dalits* were forcefully represented in the election, so much so that the family members of a same family had given candidacy from different political parties during the local elections held in 2017.

In addition to these, women and *Dalits* had minimal representation in other public and private positions. On the whole, the practice of meaningful public and political participation of women and *Dalits* was found to be perfunctory and based on welfare approach rather than rights-based approach.

In the sampled districts, the data from police stations depicted that child marriage was in decreasing trend whereas pregnant girls below 20 years of age visiting health posts were high in numbers. The health posts hence had more reliable place to seek the real victims than police stations to check the data on VAW. Health Post, Primary Health Centre and District Hospital have distributed only a limited number of free medicines and hence did not reach the needy locals. The lack of medicines was sometimes caused by syphoning of medicines by the corrupt team itself while other times due to non-supply from the central authority to the hospitals. The lack of doctors, equipment and difficult roads are added troubles for the patients of the districts.

While scholarships were provided to *Dalits* in schools, the meager amount offered through the scholarship was inadequate for the fees and basic stationery supplies. Hence, the *Dalits* from privileged economic background received scholarships while many poorer did not attend schools. Further, it was found that *Dalits* students were bullied for receiving scholarship to study thus, it requires attempt to make scholarship awards dignified.

Regarding the post-earthquake reconstruction, very few percentages of houses had been rebuilt in sample districts with the state relief fund. Further, many households had not received the second installment of the relief package. As the government relief package has ceiling of NPR three lakhs, only the ones with better financial status could rebuild the houses. The beneficiaries living in remote places or far from administrative centers, especially groups with limited mobility, for instance, women caring for small children, the elderly or those with disabilities to travel and receive the grants of the government had difficulty in receiving the relief. The female household had distinct difficulty in assessing the relief. When District Disaster Relief Committees (DDRCs) used the list of male household heads to recognize the victims of the earthquake, it missed out women whose husbands were abroad. Hence, despite laws and mechanisms, due to various malpractices at the local and central level, the rebuilding process is failing to progress in actuality.

The overall finding of the research is that significant populations of the beneficiaries are unaware of their rights and the facilities that are owed to them, which greatly affects the implementation of GESI laws and policies. It mirrored that there was a huge gap between demand and supply of related goods and services. This was exacerbated by the absence of local level elected representatives before the local elections in 2017; heavy workload on a single administrative officer; and anti- equity social values and practices.



Photo by: USAID

1.1 Background

Nepal is home to 103 ethnic groups and 17 official languages. Apparently, the relationships between these diverse groups appear stable, but grievances arising out of political marginalization, caste-based discrimination, and exclusionary state practices have maintained historical divides between communities. Occasional violent outbursts further impact inter-ethnic relationships, such as the *Madhes* uprisings (2007 and 2015) and the *Kapilvastu* Riot (2007). Political instability, weak public security, and a history of violent conflict have heavily strained the social fabric resulted in lack of trust in civic institutions.

Subsequent to the signing of the Comprehensive Peace Agreement (CPA) in 2006, the Nepali state has sought to address social tensions by ending discrimination based on ethnicity, gender, caste, culture, sexual orientation and religion through social and legal reforms. A number of legal and policy reform measures to improve inclusion have been enacted, including: The Act amending Some Nepal Acts to Maintain Gender Equality (2006); Caste-Based Discrimination and Untouchability (Offence and Punishment) Act (2011); and the National Action Plan on Implementation of the UN Security Council Resolutions 1325 and 1820 (2011). Similar policy-level changes on civil service hiring quotas, *Dalit* child scholarships, and guidelines for local bodies with spending targets for marginalized are in place. However, implementation of these policies initiatives to promote GESI has been weak, with little impact towards the intended beneficiaries.

Slow pace of progress in implementing GESI policies is largely due to indifference of local and national elites to render values or prioritize such changes that are required from GESI lens, as well as challenging the capacity of civil institutions. A more serious hindrance to GESI originates from social and political resistance by dominant groups across multiple state institutions, such as political parties, the bureaucracy, the courts, public officials and law enforcement agencies. As public service delivery occurs primarily at the local level, the attitudes and behaviors of local actors and institutions are fundamental to effectively address the problems. Subsequent to the changed federated structure, the public service delivery is expected to ensure smooth operation in comparison to previous setup.

With the promulgation of the Constitution, the GoN has guaranteed to end all forms of discrimination and oppression created by the feudalistic, autocratic, centralized, unitary system of governance and has reaffirmed to protect and promote social and cultural solidarity, tolerance and harmony. It is committed

for unity in diversity by recognizing the multi-ethnic, multi-lingual, multi-religious, multi-cultural and diverse regional characteristics, resolving to build an egalitarian society founded on the proportional inclusive and participatory principles in order to ensure economic equality, prosperity and social justice, by eliminating discrimination based on class, caste, geographic region, language, religion and gender and all forms of caste-based untouchability.²

In addition to this, the State has also demonstrated its commitment to ensure democratic norms and values including the people's competitive multiparty democratic system of governance, civil liberties, fundamental rights, human rights, adult franchise, periodic elections, freedom of expression, and independent, impartial and competent judiciary and rule of law in an attempt to build a prosperous nation.³

It is theorized that the poor state of the implementation of laws and policies meant to cater to the disadvantaged sections of the community, namely women and *Dalits*, may be one of the reasons of the continuing unrest in the society. Since December 2015, “*Mitigate Conflict and Improve Implementation of Gender and Social Inclusion Policies through People to People Approach in Nepal*” project was implemented that aimed at mitigation of caste and gender conflict and improve the efficacy of GESI policy and program implementation in Nepal. The project was funded by USAID and technically supported by The Asia Foundation and contributed through achievement of Four mutually-reinforcing objectives to

1. Transform the attitudes and practices of key actors within local GESI service delivery agencies;
2. Promote intra-and inter-stakeholder dialogues and increase collaboration and the advocacy capacity of Dalit communities and women’s groups at the local level; and
3. Institutionalize GESI-responsive decision-making in local service delivery agencies through People to People (P2P) approaches.
4. Enhance use of GESI evidences and analysis to inform stakeholders and P2P activities that supports the transformation of attitudes and practices.

In the year 2016, two assessments were conducted: (i) a comprehensive assessment of international commitments and obligations of Nepal to promote GESI in relation to the national legal and policy framework; and (ii) an assessment of the national vs. district level GESI legal and policy framework and assessment of its implementation at district level focusing on the different thematic areas of concern from GESI perspective in Achham, Kailali, Kathmandu, Kaski, Ramechhap and Sindhuli. Likewise, in the year 2017, another separate assessment was carried out to assess and analyze strength and gaps between GESI related laws, proposed policies, and their implementation status in the earthquake affected projects districts (Dolakha, Dhading, Nuwakot, Rasuwa). All three assessments have been combined in this report titled “*Promoting Gender Equality and Social Inclusion: Nepal’s Commitments and Obligations*”

2 Constitution of Nepal 2072 (2015), preamble para, available at http://www.lawcommission.gov.np/?workflow_state=prevailing-laws-constitution [accessed on 10 April, 2016]

3 Ibid

1.2 Scope

The scope of the assessment:

- (i) A comparative legislative and policy review of the international human rights framework and relevant regional instruments relating to GESI and identify Nepal's national legal and policy framework and analyze gaps therein;
- (ii) Assessment of the actual implementation of Nepal's GESI specific policies, laws and budgets as well as GESI provisions/allocations within sectoral policies, and identify specific gaps and challenges; and
- (iii) Assessment of the functioning of national GESI institutions, sectorial bodies and service delivery mechanisms and identify gaps and challenges thereof.

In conducting the assessment, the study focused on GESI specific legal and policy provisions as well as sectorial laws, policies, budgets and institutional arrangements. In addition to this, the study has also attempted to analyze how policy and legal provisions affect women and *Dalits* in particular and identify and analyze the actual implementation of specific provisions for women and *Dalits*. Furthermore, the assessment has also examined direct and indirect; formal and informal forms of discrimination and how multiple forms of discrimination compound each other and impact GESI groups.

In assessing sectorial laws, policies, budgets, institutions, service delivery mechanisms etc, the study has focused on the health and education sector and all forms of violence targeted against women and *Dalits*.

1.3 Conceptual Framework

This assessment uses GESI as an overarching concept comprised of the concepts of gender equality and equity and social inclusion. For purposes of this assessment, gender has been referred to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, as well as the relations between women and those between men. These attributes, dynamics and relationships are socially constructed and are learned through socialization processes. They are context/time-specific and subjected to transformation.

Gender equality refers to the equal rights, resources, responsibilities and access to opportunities of between the sexes. Gender equality implies that the interests, needs and priorities of all sexes are taken into consideration, recognizing the diversity of different groups of women and men. Gender equality encompasses gender equity, which refers to fairness of treatment for women and men, according to their respective needs. This may include equal treatment or treatment that is different, but which is considered equivalent in terms of rights, benefits, obligations, accountabilities and opportunities.

This assessment uses the term social inclusion to refer to both the outcome and the process of improving the terms on which people are engaged in meaningful participation in society. The World Bank defines social inclusion as the process of improving the terms for individuals and groups to take part in society.

Another more advanced definition of social inclusion is – “the process of improving the ability, opportunity and dignity of people, disadvantaged on the basis of their identity, to take part in society.” Social inclusion aims to empower poor and marginalized people.⁴

In order to advocate on the issues of inclusion, first and foremost, it is important to understand exclusion. Social exclusion refers to the experience of individual or groups who are systematically and historically disadvantaged because of discrimination based on their gender, caste, ethnicity, or religious belief. Exclusion occurs in public (formal) institutions such as the legal or education system, as well as social (informal) institutions such as communities and households.⁵

This study sought to evaluate the compliance of existing international normative framework in national policies and laws relating to GESI and the actual implementation of those normative frameworks in local level with specific focus on the 2015 post-earthquake reconstruction context. The assessment focuses on two specific GESI groups, namely women and *Dalits*, as the primary target group of the CM-GESI project. Whilst there is no commonly accepted definition of the term *Dalit*, for the purposes of this assessment the National *Dalit* Commission (NDC) has defined the term *Dalit* community in its proposed bill as referring to communities (identified in Annex 1 of the Bill), “who have been left behind in social, economic, educational, political and religious spheres and deprived of human dignity and social justice due to caste-based discrimination and untouchability.”⁷

1.4 Methodology

This assessment is based on a comparative legal analysis of international treaties, national and district policies and legislation relating to GESI.

Firstly, a desk review of primary sources including relevant international human rights treaties; general comments of international human rights treaty bodies; periodic reports of the GoN, shadow reports of civil society and the concluding observations of treaty bodies in response to these; reports of special rapporteurs in relation to Nepal was conducted. In order to assess Nepal’s implementation of its international obligations towards GESI, primary sources at national level were reviewed including the Constitution; national laws and policies relating to GESI; sectorial laws and policies focusing on the health and education sector; bylaws, national action plans, budgets etc.

Secondly, the assessment reviewed secondary resources including the key literature on Nepal’s compliance with international human rights treaties; the status of implementation of GESI and sectorial policies and laws; bill review reports; reports of international organizations and civil society on Nepal’s GESI policy performance etc.

4 TAF CM/GESI presentation

5 Ibid.

6 Bill Relating to the Role, Duties and Rights of the National Dalit Commission

7 Krishna B. Bhattachan, Tej B. Sunar & Yasso Kanti Bhattachhan, ‘Caste-Based Discrimination in Nepal’, Indian Institute of Dalit Studies, Working Paper Series, Volume III Number 08, 2009, p. 3 available at http://idsn.org/wp-content/uploads/user_folder/pdf/New_files/Nepal/Caste-based_Discrimination_in_Nepal.pdf [accessed on 10 April 2016]

In order to assess GESI policy implementation in practice, field test was conducted through district consultations in *Achham, Dhading, Dolakha, Kailali, Kaski, Kathmandu, Nuwakot, Ramechhap, Rasuwa and Sindhuli* with all relevant stakeholders including the GoN, and civil society groups working in GESI issues. While assessing the information, focused group discussion, key informant interview, interaction and observation were used as main assessment tools.

Finally, the preliminary findings of the assessment were shared through national consultations with relevant stakeholders from heterogeneous groups on 18th May 2016 and 5th November 2017 respectively. The meaningful and interactive session paved the way in soliciting the feedback from invaluable participants.

1.5 Limitations

The concept of GESI covers a wide spectrum of issues and involves a wide range of different groups in society. For the purposes of the assessment, the focus of GESI issues has been primarily on GESI issues in relation to women and *Dalits* as the primary beneficiaries of the CM-GESI project.

In assessing the implementation of GESI national policies and laws at district level, the scope of the assessment is limited to assessing sectorial laws, policies, budgets, institutions and service delivery mechanisms in relation to the structures that was relevant before the changed federated structure. As the result, the formal governance structures have been quoted frequently.

This assessment has not touched the information with regards to the changed scope of governance structure; as of date it is still work on progress.



Photo by: Prashant Budhathoki

INTERNATIONAL INSTRUMENTS AND NATIONAL OBLIGATIONS OF NEPAL

2.1 Status of Ratification of International Human Rights Treaties Relating to GESI by Nepal

The Constitution of Nepal, in its preamble, ensures to put an end to all forms of discrimination and oppression.⁸Nepal is an independent, sovereign and democratic country. The Constitution in article 2 has vested the sovereignty of Nepal in the Nepalese people. State power is exercised solely on the basis of the Constitution and such laws, which are in accordance with the Constitution. The universally recognized principles and norms of international law ratified by Nepal are an inseparable part of the Nepalese legal system.

Moreover, as a sovereign state, Nepal has the right to enter into relations with other states, conclude treaties, exchange diplomatic and consular representatives, and participate in the activities of international organizations. Since 1955, Nepal is a member of the UN and its specialized agencies. It is also a member of the Non-Aligned Movement (NAM), the Group of 77 and various international as well as regional organizations such as South Asian Association for Regional Cooperation (SAARC) and Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC).

2.2 Status of Reporting to International Human Rights Treaty Bodies on GESI

In compliance with its reporting obligations, the GoN has submitted its periodic reports on the status of implementation of the various international human rights conventions relating to GESI. However, in most instances, the GoN has been late with the submission of these reports to the respective treaty bodies.

8 Constitution of Nepal (n. 1)

2.3 Status of International Treaties in Nepal's Legal System

Before a treaty can create a legally binding obligation for Nepal as a State, two distinct criteria must be met. First, the State must have given its consent to be bound. Secondly, the treaty must have entered into force.

Nepal is a signatory to the Vienna Convention on the Law of Treaties (VCLT) which it signed on May 23, 1969. Article 26 of the Convention stipulates that every treaty in force is binding upon the parties to it and must be performed by them in good faith. In the corresponding article it further states that a State Party may not invoke the provision of its internal law as a justification for its failure to perform a treaty. Thus, Nepal, by virtue of signing, ratifying or acceding to a treaty is bound by their provisions and must give full effect to these at national level.

There are at least two modes of giving effect to the international instruments at the national level: (i) by incorporating the provisions of the instruments into domestic legislation; and (ii) by accepting such instruments as higher authority within the national legal framework. The former mode of domestication is based on the dualistic system, where the international law is not directly applicable domestically. While the latter mode of domestication is based on monistic system, where the Constitution provides the same or higher status to international law, treaties do not need to be translated into national law. The act of ratifying an international treaty immediately incorporates the treaty into national law.

In Nepal, there has been a dominance of both monistic and dualistic legal traditions.⁹ On the one hand, the Section 9 of the Nepal Treaties Act, 1990 explicitly provides a guarantee for the direct effect of a Convention or treaty to which Nepal is a party and has ensured the supremacy of international treaties and conventions. On the other hand, Article 1 of the Constitution stipulates the supremacy of the Constitution and it declares that all other laws inconsistent with it are void to the extent of such inconsistency. Various international treaty bodies have commented that the status of the treaties and conventions within the legal system of Nepal is unclear and that the necessary steps to adopt legislative and other measures to give effect to the rights recognized in these have not yet been taken.¹⁰

2.4 General Measures of Implementation and Monitoring of Implementation

To implement the international human rights treaties, State Parties are required to undertake necessary steps and adopt general measures of implementation. The widely ratified convention in its article has ensured to take such legislative¹¹ or other special measures¹² international assistance, cooperation for achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means¹³.

9 NHRC, *The Domestication Status Of International Covenant On Civil And Political Rights In Nepal*, May 2007, p. 2 available at http://www.nhrcnepal.org/nhrc_new/doc/newsletter/ICCPR%20Study%20Report.pdf [accessed on March 15 2016]

10 UN CCPR Human Rights Committee (HRC), *Concluding Observations on the Second Periodic Report of Nepal*, 2014, CCPR/C/NPL/CO/2, see paras. 10,14,15,20, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CPR%2fC%2fNPL%2fCO%2f2&Lang=en [accessed on March 15 2016]

11 Article 2(2) of ICCPR

12 Article 2 of CERD

13 Article 2 of ICESCR, Article 2 of CEDAW, Article 4 of CRC

In terms of monitoring of implementation, various treaty bodies have issued specific guidance. It urges State Parties to establish a permanent coordination and monitoring mechanism to ensure that the treaty is respected and applied to all within their jurisdiction without discrimination¹⁴ and to put in place appropriate mechanisms and institutions¹⁵ through constitutional protection¹⁶.

The CEDAW Committee¹⁷ also recommends in article 56 that State Parties take all appropriate steps to ensure that all specialized judicial and quasi-judicial mechanisms are available and accessible to all and exercise their mandates under the same requirements as the regular courts provide for independent monitoring and review of the decisions of specialized judicial and quasi-judicial mechanisms.

It also recommends putting in place programs, policies and strategies to facilitate and guarantee the equal participation of women and men at all levels in those specialized judicial and quasi-judicial mechanisms and ensuring the national implementation of international instruments and decisions of international and regional justice systems relating to women's rights and establish monitoring mechanisms for the implementation of international law.

In General Comment No. 9¹⁸, the CRC Committee makes it clear that national plans of action and policies and all other programs must be adequately supplied with financial and human resources and equipped with built-in monitoring mechanisms for children with disabilities.¹⁹ In General Comment No. 13²⁰, the CRC Committee explains with reference article 72, the elements to be mainstreamed into the national coordinating frameworks. Paragraph (h) of article 72 of the CRC stipulates that State Parties should make provision for the allocation of human, financial and technical resources needed across different sectors to be allocated to the maximum extent of possible. Strong monitoring mechanisms must be developed and implemented to ensure accountability regarding allocation of budgets and their efficient utilization.

In order to transform accountability and obligation of international commitments made by the GoN in national context, specific monitoring mechanisms have been established by the GoN on GESI. The National Human Rights Commission (NHRC) was established in 2000 as an independent, autonomous statutory body under the Human Rights Commission Act 1997 (2053 BS). The Interim Constitution of Nepal 2007 (2063 B.S) alleviated the NHRC as a constitutional body with aggravated responsibilities. These responsibilities compliment the responsibilities of the normal machinery of the administration of justice, the Supreme Court, and the Office of the Attorney General, the Commission for the

14 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, 16 December 2010, CEDAW/C/GC/28, para. 39, available at: <http://www.refworld.org/docid/4d467ea72.html> [accessed 24 June 2016]

15 *Ibid* para. 40

16 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 33 on women's access to justice*, 3 August 2015, CEDAW/C/GC/33 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/33&Lang=en [accessed 24 June 2016].

17 *Ibid*

18 UN Committee on the Rights of the Child (CRC), *General comment No. 9 (2006): The rights of children with disabilities*, 27 February 2007, CRC/C/GC/9, available at: <http://www.refworld.org/docid/461b93f72.html> [accessed 28 April 2016]

19 *Ibid*.

20 UN Committee on the Rights of the Child (CRC), *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13, available at: <http://www.refworld.org/docid/4e6da4922.html> [accessed 28 April 2016]

Investigation of Abuse of Authority, and other existing executive, quasi-judicial or judicial bodies of Nepal. The Constitution in Article 249 specifies that “(i) It shall be the duty of the National Human Rights Commission to ensure the respect, protection and promotion of human rights and their effective implementation.”

Similarly, Article 253 of the Constitution designates the National Women Commission (NWC) as an important monitoring and evaluation mechanism relating to GESI with a mandate consisting of the specific duties. Likewise, Article 256 of the Constitution provides for another important monitoring and evaluation mechanism for GESI in the form of the National *Dalit* Commission (NDC).

Article 293 of the Constitution specifies in relation to the monitoring and evaluation of works of constitutional bodies that “The chief and officials of the constitutional bodies shall be accountable and answerable to federal legislature. The respective committee of the House of Representatives may monitor and evaluate the functioning of the constitutional bodies including reports, other than that of the National Human Rights Commission, and issue necessary directives and suggestions.”

Despite these provisions, implementation of policies remains weak. “Policies and legal mandates to improve gender equity and the inclusion of women and *Dalits* have been inadequately implemented due to Nepal’s prolonged political transition, weak systems of public service delivery, and lack of accountability in the public service. Informal social norms, practices, values, and biases also continue to constrain the implementation of measures that seek to transform power relations. *Dalits* continue to experience caste-based discrimination despite parliamentary declarations and laws outlawing such practices.”²¹

21 ADB, Overview of Gender Equality and Social Inclusion, 2010.



Photo by: Prashant Budhathoki

NATIONAL IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS TREATIES RELATING TO GESI BY NEPAL

3.1 National Laws relating to GESI

The Constitution constitutes a new era for GESI issues. The rights related to GESI have been reflected through the fundamental rights section and other subsequent articles in the Constitution.

The Constitution similarly contains provisions for formation of institutional mechanisms²² relating to GESI. Likewise, inclusion is also ensured on the appointment to the constitutional bodies²³ along with the policy of inclusion that political parties abide by.²⁴

3.1.1 National Policies Relating to GESI

GESI commitments are reflected in several of the government's sector policies.²⁵ MoFALD formulated a GESI policy in 2010. The National Urban Policy (2007) prioritizes industrial development in poorer regions, income-generating activities for squatters or low-income groups, and soft loans for housing. The School Sector Reform Plan 2009–2015 has attempted to address exclusion by taking substantive measures to increase the education of girls and children from vulnerable groups. The Agriculture Development Strategy (2014–2034) sets targets for inclusiveness. Policies in the water supply and sanitation sectors have also incorporated GESI issues, especially for representation in User Committees. The National Building Code (2003) contains provisions to increase access for disabled persons. However, policies in the energy, irrigation, and transport sectors are weak in addressing GESI considerations. They do not mandate representation of women and the excluded groups in project processes and in user committees and have addressed only economic or geographical-based exclusion issues in their subsidy policies.

22 National Women Commission, the National Dalit Commission, the Inclusion Commission, the *Adibasi Janajati* Commission, the Muslim Commission and Tharu Commission

23 Article 283 of Constitution

24 Article 269 of Constitution

25 The Ministry of Federal Affairs and Local Development (MoFALD) formulated a GESI policy in 2010. The National Urban Policy (2007) prioritizes industrial development in poorer regions, income-generating activities for squatters or low-income groups, and soft loans for housing.

3.1.2 Institutional Structures Related to GESI

Institutional structures are mandated with responsibilities to ensure the promotion of GESI. MoWCSC is the key Ministry for the promotion of gender equality and women's empowerment. It also coordinates initiatives related to children and senior citizens (which includes the elderly and people with disabilities).²⁶ The Department of Women Development under the MoWCSC looks after women's and children's programs and implements them through its Women Development Offices, which are the key gender focal points in the districts. At all levels—ministry, department, and district—effectiveness is constrained by inadequate resources and weak capacity.²⁷

It has been found that key agencies are not adequately equipped to operate in three different areas (gender equality, children, and social welfare). Another shortcoming found has been that the women-targeted programs of the Department of Women Development and the Women Development Offices do not adequately address issues of diversity among women, although there is an increasing awareness of the prerequisite to do so.²⁸ In addition, it is encouraging that so far seven major sectoral ministries (Agriculture, Education, Forest, Health, Federal Affairs and Local Development, Urban Development, Water Supply and Sanitation) have issued and are implementing GESI policies and guidelines and, in many cases, have established dedicated units with specially trained staff and systems to monitor results.²⁹

GESI Units have been formed in the Ministries³⁰ without clear functional role. The NPC has a Social Development Division with responsibility to address women's empowerment issues. The Agriculture and Rural Infrastructure Development Division of the NPC has the responsibility to work on social inclusion.³¹ The MoWCSC has been implementing women-focused programs that also targets disadvantaged and marginalized groups, such as children, senior citizens, and people with disabilities. The Ministry of Finance (MoF) established the inter-ministerial Gender-Responsive Budget Committee with the mandate to design a methodology to monitor sectorial budget allocations and public expenditures from a gender perspective and to assess the impact of development policies on women and men. While gender focal points have been designated in the NPC and in all ministries and departments, some of which even have a GESI unit, the focal points have been unable to deliver effectively. The main reasons for this include their lack of authority and the absence of any institutionalized linkage between their gender mandate and the main work of the ministries.³² The MoFALD has produced guidelines and manuals on how to mainstream *Dalits* within the development process. These include 'Social Mobilization Guidelines' for municipalities, 'Gender Responsive and Social Inclusive Budgeting and Auditing Guidelines' and 'Development Grant Guidelines' for Districts, Municipalities, Blocks and Villages. This resulted in Establishment of 75 Dalit Barga Utthan District Coordination Committees to address development processes in relation to *Dalits* at local level towards supporting the implementation of plans, strategies, policies and programs in relation to *Dalits* in co-ordination with Local Bodies.³³

26 Asian Development Bank, Overview of Gender Equality and Social Inclusion, 2010, ADB, p. 6, available at <http://www.adb.org/sites/default/files/institutional-document/32237/cga-nep-2010.pdf> [accessed on 30 April 2016]

27 Ibid.

28 Ibid.

29 Pg 2: GESI Working Group, 2017: Gender Equality and Social Inclusion Working Group, International Development Partners Group, Nepal.

30 Health and Population, and Agriculture and Cooperatives, Education and MoFALD

31 Ibid.

32 Ibid.

33 <http://www.indianet.nl/pdf/InternationalConsultationOnCaste-BasedDiscrimination.pdf>

As mentioned above, there are several institutional mechanisms that have been established with dedicated mandates relating to GESI. The NWC, the NDC, the National Foundation for the Development of Indigenous Nationalities, and the Muslim Commission seek to protect of the rights of these groups. As explained, the effectiveness of these institutions, however, has been limited due to ignored application of GESI issues.

3.1.3 GESI Responsive Budgeting

Gender Responsive Budgeting (GRB) was introduced by the MoF in the FY 2007/08 which initiated the three categories (i) directly gender responsive with 50% allocation, (ii) indirectly gender responsive with 20-25% allocation and (iii) neutral with less than 20% directly benefitting women.

The first indicates more than 50% of the allocation directly benefitting women, the second 20-50% and the third indicates less than 20% directly benefitting women. Classification must be carried out according to the given indicators and quantitative. A Gender Responsive Budget Committee has been formed with the objective to monitor the patterns of budget allocation and implementation to make the budget gender responsive, to evaluate public expenditure from a gender perspective, to regularly analyze the impact of economic policies on women and incorporate the findings in an economic survey, to strengthen the capacity of gender focal points and planning divisions of sectorial ministries responsible for budgeting and to disseminate information on GRB³⁴ for providing inputs to the Government to make the budget gender responsive. On the local level, the few initiatives for the introduction of Gender Budgeting remain fragmented and fairly limited in their scope. Although, the Ministry of Local Development (MLD) has produced GRB Guideline for all the Local Governments (which are currently under revision), there is very limited awareness about its existence resulting in non-utilization of guidelines in GRB application.

GRB allocations and trends can be seen over the period 2007/08- 2014/15 shows that budget allocations that are indirectly gender responsive have been increasing followed by those that are neutral. While budget allocations that are directly gender responsive have been increasing as well, they still remain relatively low. According to the MoF, 10% of allocated budget is targeted for women in local bodies (DDCs, municipalities and VDCs). Likewise, the Local Self-Governance Act 1999 is an important instrument towards enforcing the provisions on elimination of caste-based discrimination and untouchability. It has institutionalized the representation of caste communities into the planning process of local bodies and it gives high priority to development programs benefitting marginalized groups. District, Municipality, Block and Village Development Grant Guidelines included provision for a minimum of 35 % of their total budget to be reserved for target groups, (10% for women, 10% for children and 15% for socially excluded groups).³⁵

34 Gender responsive budgeting

35 <http://www.indianet.nl/pdf/InternationalConsultationOnCaste-BasedDiscrimination.pdf>



Photo by: Chandra Shekhar

3.2 Non-Discrimination

3.2.1 International Obligations Relating to Non-Discrimination

This section reviews the international instruments relevant to non-discrimination to examine the Nepal's international obligations in relation to GESI. It also assesses the national legislation on equality and non-discrimination.

Article 2 of the UDHR provides that everyone is entitled to all the rights and freedoms set forth in the Declaration, without any distinction of any kind, such as race, color, sex, language, religion, political, or other opinion, national or social origin, property, birth or other status. In addition, article 7 provides that all are equal before law and are entitled to their basic human rights without discrimination and to equal protection of the law.

Likewise, legally binding widely ratified international instruments also echo similar provisions which have been enshrined in the UDHR.

According to article 2 of the ICCPR, Nepal as a State Party is obliged to respect, protect, and fulfill the rights recognized in the Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or opinion, national or social origin, property or other status.

Similarly, article 2 (2) of the ICESCR, obligates Nepal to guarantee economic, social and cultural rights under the Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

According to Article 2 of the CRC, Nepal is obligated to respect, protect and fulfill the rights within the Convention without discrimination of any kind', irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Thus, the provision specifically is intended to protect children against any form of discrimination based on sex or status.

Article 2 of CEDAW requires State Parties to condemn discrimination in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.

CEDAW General Comment No.28: The core obligations of State Parties under Article 2 has detailed out the core obligation of State Parties which further aims to clarify the scope and meaning of article 2 of the Convention (covers gender-based discrimination against women, ensure full development of women, legal obligations under the Convention to respect, protect and fulfill women's right to non-discrimination and to the enjoyment of equality).

- The obligation to respect requires that State parties refrain from making laws, policies, regulations, programs, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights.
- The obligation to protect requires that States parties protect women against discrimination by private actors and take steps directly aimed at eliminating customary and all other practices that prejudice and perpetuate the notion of inferiority or superiority of either of the sexes, and of stereotyped roles for men and women.
- The obligation to fulfill requires that States parties take a wide variety of steps to ensure that women and men enjoy equal rights de jure and de facto, including, where appropriate, the adoption of temporary special measures

Article 1 of the CERD defines racial discrimination as any “distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” Article 5 contains the obligation of State Parties to guarantee the enjoyment of civil, political, economic, social and cultural rights and freedoms without racial discrimination:

In its General Comment No.25, the CERD Committee specifically draws attention to the gender related dimensions of racial discrimination. It explicitly recognizes that there are circumstances in which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men. It also acknowledges that “certain forms of racial discrimination may be directed towards women specifically because of their gender. It also acknowledges that racial discrimination may have consequences that affect primarily or only women may also be further hindered by a lack of access to remedies and complaint mechanisms for racial discrimination because of gender-related impediments, such as gender bias in the legal system and discrimination against women in private spheres of life.” It encourages State Parties to fully take into account the gender-related dimensions of racial discrimination.

In relation to *Dalits*, the CERD in 2002 issued General Recommendation 29 in which it confirmed that the term “descent” did not solely refer to “race” and unequivocally established that descent-based discrimination “includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights”. The Committee recognized multiple discriminations faced by women of descent-based communities and urges all States to take the measures necessary in order to eliminate multiple discrimination including against them, particularly in the areas of personal security, employment and education. The Committee identified several factors that could indicate the existence of discrimination on the basis of caste and analogous systems of inherited status in affected communities, including “inability or restricted ability to alter inherited status; socially enforced restrictions on marriage outside the community; private and public segregation, including in housing and education, access to public spaces, places of worship and public sources of food and water; limitation of freedom to renounce inherited occupations or degrading or hazardous work; subjection to debt bondage; subjection to dehumanizing

discourses referring to pollution or untouchability; and generalized lack of respect for their human dignity and equality”. It also made specific recommendations, including in the areas of preventing hate speech in the media, administration of justice, political participation and the right to education.

Other instruments relevant to non-discrimination based on caste include The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) which requires States to take measures to ensure “that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law” (art. 4 (1)). In addition, the draft UN Principles and Guidelines for the Effective Elimination of Discrimination based on work and descent, published by the Human Rights Council in 2009, constitute a comprehensive framework to assist multiple stakeholders, including States, UN agencies and civil society organizations, in identifying caste-based discrimination and in implementing measures to combat such discrimination. The draft principles and guidelines formulate specific recommendations to States to develop and implement a legal framework explicitly prohibiting discrimination based on work and descent and establish plans of action to enforce the abolition of untouchability and segregation at the national and local levels. They also recommend that States conduct surveys and research on affected communities, and combat discrimination based on work and descent in multiple areas, including physical security, protection against violence, and access to justice, equal political participation, employment, health, food, water, housing and education.

3.2.2 National Legislation on Non-Discrimination

Article 18, of the Constitution ensures the right to equality. Likewise, in 2006, the Act Amending Some Nepal Acts to Maintain Gender Equality was passed. This Act repealed and amended 56 discriminatory provisions of various previous Acts and also incorporated provisions to ensure women's rights. For instance, some discriminatory provisions amended by the Act are:(i) the provision that required a daughter to return inherited property upon marriage;(ii) the provision for summons issued by the court to be received by a male family member as far as possible; (iii) and, the provision for divorce in the case of not having children within 10 years of marriage. Furthermore, the Act establishes sexual violence as a crime punishable by varying years of imprisonment, depending on the age of the victim.

In 2002, the GoN established the national Women Commission (NWC) and adopted the NWC Act and Regulation in 2007 and 2009. As defined in the preamble of the Act, the NWC was established for the protection and promotion of the rights and interests of the women there by effectively include them in the mainstream of development of the women establishing gender justice. In the fiscal year 2014/2015, 419 complaints were filed before the Commission out of which 317 related to domestic violence and 102 related to violence against women.³⁶

In 2011, Nepal's legislature passed the bill on Caste-Based Discrimination and Untouchability, designed to end discriminatory practices aimed at those considered to be members of the lowest castes, known as “*Dalits*.” It had been under consideration by the Parliament for two years. The legislation prohibits such

36 INSEC, (n. 7)

discrimination and treatment of individuals as “untouchable” in public and private spheres, establishes increased punishment for officials guilty of discrimination, criminalizes incitement to caste-based discrimination, and provides for compensation to victims from perpetrators of biased acts. According to article 4, “Caste-Based discrimination or untouchability constitutes discrimination based on the ground of custom, tradition, religion, culture, rituals, caste, race, descent, community or occupation, commit or cause to commit the following act in public or private sphere (place) against a person”:

In 2002, the previous Government established a NDC mandated with protecting and promoting *Dalit* (formerly called “untouchable”) rights and ensuring active participation of the *Dalit* community in the development of the country. However, caste-based discrimination continues to exist. As per the legal provision to hear complaints, the Commission only received 26 complaints in the fiscal year 2014/15.³⁷

Prior to the adoption of the new Constitution, various international treaty bodies have commented on Nepal’s measures undertaken to ensure non-discrimination. Most recently, the Human Rights Committee in relation to Nepal’s second periodic report viewed that: “While noting the steps taken by the State party to promote gender equality, the Committee expresses concern at the extremely low representation of women, particularly *Dalit* and indigenous women, in high-level decision-making positions. The Committee regrets the persistence of patriarchal attitudes and deep-rooted stereotypes that perpetrate discrimination against women in all spheres of life, and the prevalence of harmful traditional practices such as child marriage, the dowry system, son preference, witchcraft accusations and Chhaupadi (paragraphs 2, 3 and 26).”

The HRC in the concluding observation on the second periodic report of Nepal, in its paragraph 8 recommends to take all necessary measures to effectively implement and enforce the existing legal and policy frameworks on gender equality and non-discrimination, pursue its efforts to increase the representation of women in decision making positions, and develop concrete strategies to eliminate gender stereotypes on the role of women, including through public awareness campaigns. It should also take appropriate measures to (a) explicitly prohibit all forms of harmful traditional practices in domestic law and ensure its effective implementation in practice; (b) conduct awareness-raising campaigns on the prohibition and negative effects of such practices, particularly in rural areas; and (c) encourage reporting of such offences, investigate complaints from victims and bring those responsible to justice.”³⁸

Similarly, in relation to caste-based discrimination, the HRC reflected its concern at the lack of effective implementation and the persistence of de facto discrimination against the *Dalit* community and also the GoN’s failure to provide sufficient resources to NDC and implement its recommendations despite the adoption of Caste-based Discrimination and Untouchability (Offence and Punishment) Act in 2011.³⁹

37 Ibid.

38 UN Human Rights Committee, *Concluding Observations on the Second Periodic Report of Nepal*, 2014, CCPR/C/NPL/CO/2, para. 8, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fNPL%2fCO%2f2&Lang=en [accessed on 1 May 2016]

39 Ibid para 2 and 26



Photo by: Interface

3.2.3 Caste Based Discrimination in Post 2015 Earthquake Context

Caste-based discrimination is still rampant though the law has eliminated caste-based hierarchy and untouchability in 2020 BS. Further in 2068 BS, a special law has been made to eliminate discrimination and untouchability. But this study found that there is still *de facto* practice of untouchability in all four sampled districts namely Dhading, Dolakha, Nuwakot and Rasuwa.

The respondents highlighted that the discrimination towards *Dalits* still exists but in different forms. For instance, the camouflaged equality is practiced in public sphere and function however, in the day to day life, untouchability is profoundly practiced. Practices like purifying through pure water after touching *Dalits*, avoiding eating with *Dalits* are still practiced in the sampled district. In the hotels of Gumdi village of Dhading, the *Dalits* still have to clean the dishes they use for their meal. Respondents opined that in an incident while a case was tried to file against this, everyone (villagers) pressurized to solve the issue through mediation. Facing all the odds and challenges while lodging the complaint against the case of discrimination against *Dalits*, police officers have been found reluctant to lodge it and often initiated for the mediation. Kumar Bishwokarma, a participant of Dolakha, during the consultation informed that there was an incidence of caste-based violence where the complaint had been registered stating that the victim had been fed with human excreta. However, later it was stated that the complaint had been falsified. The implementation of law found to be very weak as the FIRs (First Information Reports) are not registered easily and huge efforts have to be made in the police stations in the cases of caste discrimination. Such incidence is dealt in an improper gravity.

During the consultation carried out by INHURED International, it was reported that *Dalits* are trusted less in job recruitment. Nepotism prevails during hiring any staff instead of representation of *Dalits*. A *Dalit* woman is more marginalized because there is lack of legal education and awareness in the sampled district and thus women are unknown about their rights. Hence, awareness on the legal provisions and processes are suggested.

GESI advocacy group have been engaged in imparting the awareness on GESI, which is guided towards providing easy access in cases of difficulties faced by the women and *Dalits* after earthquake. However, at practical level, the discrimination towards *Dalits* is present even among the social workers. For instance, although no direct discrimination is shown towards the *Dalits*; practice such as making excuses to eat with them still persists as an indirect exclusion.

Gaps and Challenges of Caste Based Discrimination

- Indirect discrimination is faced by *Dalits* in all four districts.
- Economic and overall development of *Dalits* is yet to be achieved.
- Livelihood and income generating programs are not adequately conducted for the beneficiaries.
- Difficult to register FIR against caste-based discrimination due to non-cooperation of police personnel. This indicates huge gap in law and practice.
- *De Jure* equality and *de facto* discrimination against *Dalits* in the present context.

- Special provisions for earthquake survivors mainly *Dalits*, girl children, elderly people and person with disabilities are lacking.
- The access to grants was majorly received by those who had good influence (*tatha-batha*) in the district and had knowledge of the relief and *Dalits* were excluded since they didn't have good access to information.

Recommendations

- Programs should be developed to impart education on *Dalits* rights which is explicitly mentioned in the Constitution, its implementation and challenges.
- Livelihood and income generating programs must be provided to the economically poor people who are in vulnerable condition.
- Awareness and advocacy programs need to be conducted immediately about rights and remedies.
- People from so called high caste need to take initiation to eliminate caste-based discrimination.
- Maintain special provisions for earthquake survivor namely *Dalits*, girl children, elderly people and person with disabilities.
- All facilities provided by the state must be accessible to the target group including *Dalits*.

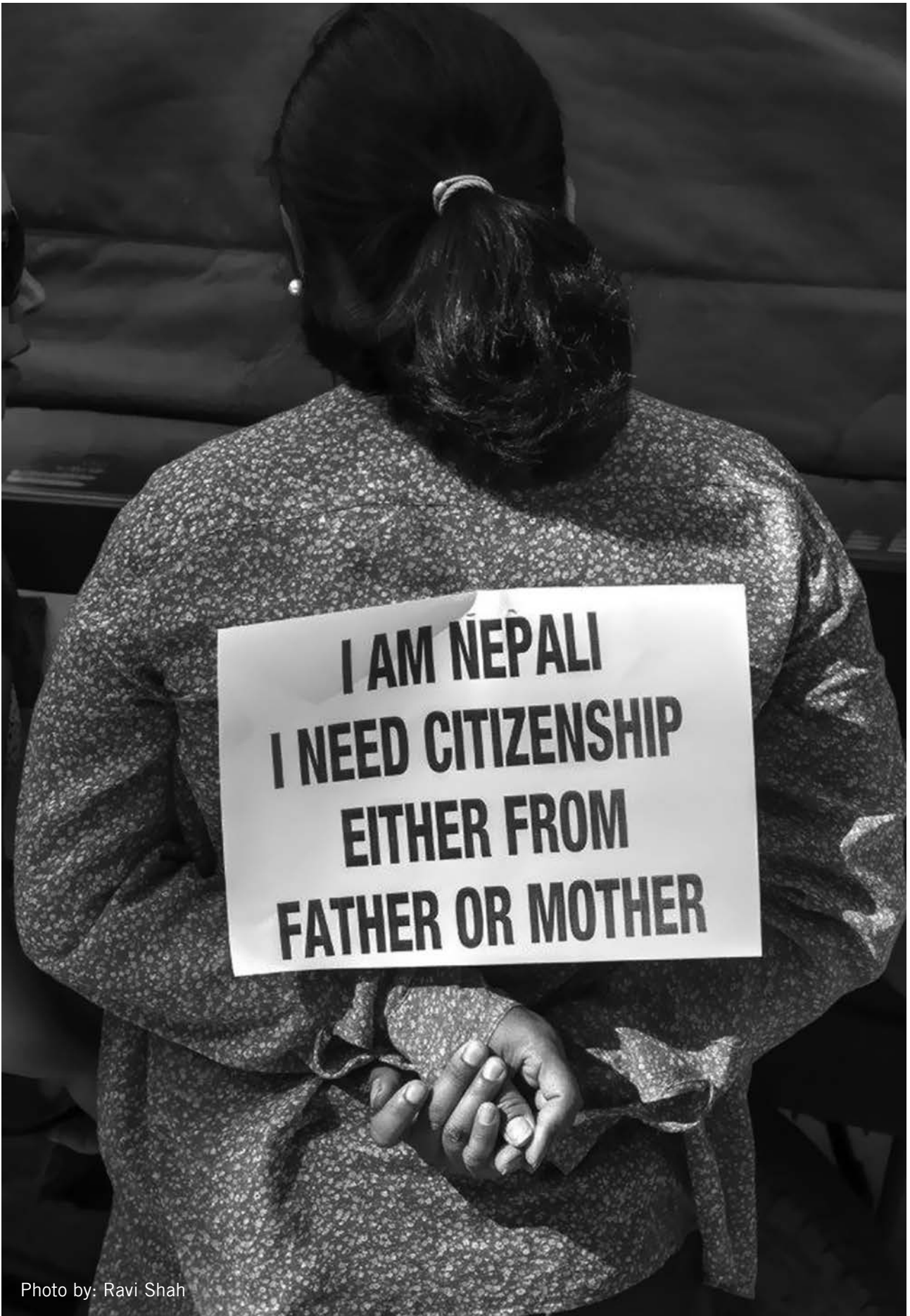


Photo by: Ravi Shah

3.3 Citizenship/Nationality

3.3.1 International Obligations on Citizenship/Nationality

The right to citizenship is internationally referred as the right to nationality which has been recognized in a series of widely ratified international legal instruments like UDHR, ICCPR, CEDAW, CERD and the CRC.⁴⁰

Article 15 of the UDHR guarantees that everyone has a right to nationality and no one should be arbitrarily deprived of the nationality nor denied the right to change the nationality.

Article 24 of the ICCPR ensures that every child has right to acquire nationality. Human Rights Committee's General Comment No. 28 on Article 3 (the equality of rights between men and women) 2000 has echoed that State Parties should ensure that there is no sex-based discrimination in respect of the acquisition or loss of nationality by any means such as marriage, residence rights, and right of each spouse to retain the use of his or her original family name or to participate on an equal basis in the choice of a new family name.

Article 9 of CEDAW guarantees that State Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage with an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband. Along with it, the State Parties shall grant women equal rights with men regarding the nationality of their children.⁴¹

The CEDAW Committee in General Comment No. 21 explicitly recognizes the significance of the right to nationality for women. It notes that “without status as nationals or citizens, women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence. An adult woman should be able to change her nationality and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality.” Similarly, in General Comment No. 30, on women in conflict prevention, conflict and post-conflict situations (2013), it notes that “in addition to the heightened risks faced by internally displaced persons, refugees and asylum seekers, conflict can also be both a cause and a consequence of statelessness, rendering women and girls particularly vulnerable to various forms of abuse in both the private and public domains. Statelessness can arise when a woman's experience of conflict intersects with discrimination with regard to nationality rights, such as laws that require women to change nationality upon marriage or its dissolution or that deny them the ability to pass on their nationality. Statelessness may also result in situations in which women are denied the ability to pass on nationality to their children by gender-discriminatory nationality laws.”

40 Also see the Convention on the Nationality of Married Women and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which have not been ratified by Nepal.

41 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations*, 1994, available at: <http://www.refworld.org/docid/48abd52c0.html> [accessed 28 April 2016] GR 21 provides that nationality is critical to full participation in society. In general, States confer nationality to those who are born in that country. Nationality can also be acquired by reason of settlement or granted for humanitarian reasons such as statelessness.

Article 7 of the CRC ensures that the child shall be registered immediately after birth and shall have the right to name from birth, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents. State Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments.⁴² Similarly, Article 8 emphasized that State Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. It also provides that where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establish his or her identity.⁴³

The CRC General Comment No. 11 (2009) on indigenous children and their rights under the Convention obliges the State Party to ensure that all children are registered immediately after birth and that they acquire a nationality. Birth registration should be free and universally accessible. The Committee is concerned that indigenous children, to a greater extent than non-indigenous children, remain without birth registration and at a higher risk of being stateless.⁴⁴

The outcome document of the Durban Review Conference, 2001, urges States to refrain from taking discriminatory measures and from enacting or maintaining legislation that would arbitrarily deprive persons of their nationality, especially if such measures and legislation render a person stateless.⁴⁵

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2001 has also urged States, in accordance with their national law and their obligations under the relevant international instruments to take measures to guarantee, without any discrimination, the equal right of all children to the immediate registration of birth, in order to enable them to exercise their human rights and fundamental freedoms. States shall grant women equal rights with men with respect to nationality. It also calls upon States to undertake and facilitate activities aimed at educating young people in human rights and democratic citizenship and instilling values of solidarity, respect and appreciation of diversity, including respect for different groups. A special effort to inform and sensitize young people to respect democratic values and human rights should be undertaken or developed to fight against ideologies based on the fallacious theory of racial superiority.

3.3.2 National Legislation on Citizenship

The right to citizenship is internationally referred to as the right to nationality which has been recognized in a series of widely ratified international legal instruments that Nepal is party to. In this context, Nepal has a duty to formulate laws and policies that align with its treaty obligations.

42 UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, UN, Treaty Series, vol. 1577, p. 3, article 7, available at: <http://www.refworld.org/docid/3ae6b38f0.html> [accessed 28 April 2016]

43 Ibid article 8.

44 UN Committee on the Rights of the Child (CRC), *General comment No. 11 (2009): Indigenous children and their rights under the Convention [on the Rights of the Child]*, 12 February 2009, CRC/C/GC/11, para. 41, available at: <http://www.refworld.org/docid/49f6bd922.html> [accessed 20 April 2016].

45 UN, *Outcome Document of the Durban Review Conference, 2009*, para 83 available at http://www.un.org/en/durbanreview2009/pdf/Durban_Review_outcome_document_En.pdf [accessed on 10 April 2016]

Nepal follows the principle of *jus sanguinis* (right of blood), transferring citizenship through parents as opposed to *jus soli* (right of birthplace), transferring citizenship to anyone born on the territory of a state. Citizenship creates a legal relationship between the state and its citizens. It is of paramount importance because it provides person with a sense of identity enables them to exercise a wide range of basic social, economic, and political rights and gives them the protection of their country of nationality.

The Constitution provides for the acquisition of citizenship as a right of every citizen in the country and that no Nepali citizen is to be deprived of this right.⁴⁶The Constitution provides citizenship by descent to all children living in Nepal and born to parents one of who is a Nepali citizen.⁴⁷ This provision ensures that the person does not have to be born in Nepal to be eligible for Nepali citizenship if either of the parents was a Nepali citizen at the birth of such a person. Citizenship creates a legal covenant between the state and citizens; therefore, the burden is to make sure that statelessness is avoided and non-discrimination on the basis of sex is guaranteed.

However, a child born of parents, who obtained citizenship before the commencement of the Constitution, will require both mother and father to be the citizens of Nepal to be eligible for Nepali citizenship.⁴⁸A child who is found in Nepal and whose parents' identity is unknown will be a citizen of Nepal by descent until the father or mother of the child is traced.⁴⁹However, for a mother to confer citizenship by descent to her child, the mother has to prove that her husband is not a foreigner since women married to a foreigner can only confer naturalized citizenship to her children. A person born to a Nepali mother living in Nepal whose father is not identified shall be granted citizenship of Nepal by descent; however, if a father is identified as a foreign citizen the person's citizenship will be converted to naturalized citizenship. Thus, the burden of proof lies onto women whereas men who are married to a foreign wife do not have to provide such proof and are able to confer citizenship to their child based on descent.

In addition, the child whose father is identified as a foreign citizen will only be able to obtain naturalized citizenship whereas this does not apply to children from fathers married to a foreign wife.⁵⁰ As naturalization is not a matter of right in Nepal, citizenship will only be conferred upon the discretion of the state thereby creating great legal uncertainty. Furthermore, to make it restrictive only for women, the Constitution also requires that for women their children need to be born in Nepal to obtain citizenship by descent. With this requirement, a different standard is clearly and egregiously applied to the children of Nepali women, whereas this is not applied to the children of Nepali men. This will clearly bring out problems to the children of trafficked women, women labor migrant and other transient women whose offspring are born outside Nepal.

Inequality is also perpetuated on citizenship by naturalization in other entitlements under the constitution. Article 11 (6) prevents Nepali women to transfer citizenship based on marital naturalization to their foreign national husbands, while on the other hand, Nepali men may transfer naturalized citizenship to their foreign national wives without any complication.

46 Constitution of Nepal, (n. 1) art 11(3).

47 Ibid, art. 11 (2) (b)

48 Ibid, Art.11 (3)

49

50 Ibid, Art. 11 (5)

Apart from the new Constitution, citizenship in Nepal is governed by the Nepal Citizenship Act (2006). Several of the provisions in the Act are contradictory to the Constitution, hence needs to be amended.⁵¹ Similarly, the Nepal Citizenship Rules of 2006, which provide for procedures in order to obtain Nepali citizenship and naturalized citizenship, needs to be amended to be aligned to the Constitutional provision.

Although through the Constitutional measures the law in relation to citizenship has improved, there are still discriminatory provisions against women in the Constitution, the Citizenship Act and Rules that contradicts with the international instruments that Nepal is state party to. The 2014 data reveal that 46,00,000 people are without citizenship in the country. Still 22.82% of the eligible population is without citizenship. The data shows that 26% women are without citizenship compared to 13% of men without citizenship.⁵²

3.3.3 Post-2015 earthquake context on citizenship

A study conducted in 2015 reflects that 5.2 million people in Nepal are without citizenship certificate, who are not foreigners.⁵³ Another statistics shows that 26% women are without citizenship compared to 13% of men⁵⁴, which also reflected the vulnerable situation of women without the much required document for her to exercise different rights. While the present Constitution has recognized acquisition of citizenship as a right of all Nepali citizens⁵⁵ and guaranteed rights of women⁵⁶; the implementation of the laws are absent in actuality. This might be partly true because of the lacunas on Citizenship Act and Rules 2006⁵⁷; the practices in the districts also depict a context where women are by and large deprived of citizenship certificate.

3.3.4 Gaps and Challenges in acquiring Citizenship

The following areas are the major areas of challenges in the scope of implementation:

i) Insensitivity/ ineffectiveness of bureaucrats

The Citizenship Rules 2006 confer power to the Chief District Officer (CDO) to issue the certificate of citizenship.⁵⁸ However, in majority of the situations, insensitivity or ineffectiveness of the government officials are one of the major causes of not issuing citizenship certificate to the eligible national. The responsible governmental officers were found making excuses that they would require procedural guidelines from the Central level to confer citizenship in the name of mother.

On the contrary, in Rasuwa district, where the CDO and ACDO were found to be sensitive, had been thoroughly involved in combating challenges to provide citizenship certificate. There were many instances in the district where Government officials took initiatives to confer the citizenship certificate. They

51 Ibid, Sec 18 (2).

52 [accessed on June 21, 2016]

53 Acquisition of Citizenship Certificate in Nepal: Estimation and Projection, FWLD, December 2015.

54 GoN, National Planning Commission Secretariat, Central Bureau of Statistics, available at http://cbs.gov.np/?page_id=2726 [accessed on June 21, 2016]

55 Constitution, Art 10 (1)

56 Article 38 (1) has guaranteed women with rights relating to lineage.

57 See FWLD, Legal Analysis of CITIZENSHIP, LAW OF NEPAL A Comparative Study of the Nepal Citizenship Act, 2006 with the Constitution, Precedents, International Human Rights Obligation and Best Practices of Other Countries, 2016.

58 Citizenship Rules, Rule 8

coordinated with other governmental offices like Land Registration Office and non-governmental bodies like Child Workers in Nepal (CWIN) to produce evidence and conferred the citizenship certificate. The CDO and ACDO were personally involved in counseling the beneficiaries, assessing evidences and identifying the documents to confer the citizenship certificate. This is the clear evidence that the provision gets operational provided there are trained and sensible human resources in all sectors.

The newly elected members of the local level government in all researched districts were committed towards lobbying to provide citizenship certificates in the name of mothers. They had just begun their work responsibility and showed full commitment to provide citizenship on an equal basis.

ii) Citizenship in the name of mother

Another struggle in accessing citizenship lies in cases of children born out of rape. Although the present constitution guarantees citizenship by descent in the name of father or mother,⁵⁹ such has not been found in practice in the districts. The discriminations towards women exist in various forms with many hassles attached. For instance, in Dhading, the children born out of rape have not been able to receive citizenship certificates as they fail to submit the identity of their father. In another instance of the same district, citizenship certificate in mother's name was only provided after media critically published about non-issuance of citizenship certificate. In another case of Nuwakot, the child whose father had died in the conflict was not provided citizenship until he presented his father's death certificate as recommended by the District Administration Office (DAO). This clearly demonstrates that, a person without adequate networking in the society often gets exhausted and neglected even to acquire the basic document guaranteed by the Constitution.

iii) Processes related to acquiring citizenship

The procedure relating to provide citizenship of Nepal is explicitly written in the Citizenship Rules 2006. However, women of rural areas have no idea or are little known about details such as the institution, processes and documents attached with gaining citizenship certificate. Added to this, the elders of the family fear that providing a woman with citizenship certificate would lead to providing property to the daughters. Hence, they rather avoid the mechanism. In Nuwakot, *Dalit* women were provided with citizenship and marriages were registered with the help of 'Citizen Awareness Centre (CAC)' (Nagarik Sachetana Kendra).

3.3.5 Recommendations

- Reform the Citizenship Act and Rules in line with the international laws with equal rights to male and female;
- Educate/train the newly elected members on the issuance of citizenship and its acquisition process;
- Expedite awareness campaigns related to citizenship and its legal processes in the districts through mobile teams such as P2P groups;

⁵⁹ Constitution, Art 11 (2) (b)

- Establish information centers in the institutions that disseminate information on the legal processes and required documents for citizenship; and
- Educate and sensitize the government officials on equal rights of father and mother on conferring citizenship.



Photo by: TAF/Nepal

3.4 Political and Public Participation of Women and Dalits

3.4.1 International Obligations relating to Political and Public Participation of Women and Dalits

State Parties have been called upon to take appropriate measures to eliminate discrimination against women in political and public life.⁶⁰ It requires State Parties to ensure women's right to vote in all elections and public referenda, and to be eligible for election to all public elected bodies. It calls for ensuring participation of women in the formulation of Government policy and its implementation, and to hold public office and perform all public functions at all levels of government, and to participate in non-governmental organizations, and associations concerned with the public and political life of the country.⁶¹

Article 8 of CEDAW calls upon State Parties to take appropriate measures to ensure opportunity to women to represent their Government at the international level and to participate in the work of international organizations.⁶² General recommendation No. 8 (1988) on the implementation of Article 8 of the CEDAW reiterates that State Parties should take direct measures in accordance with article 4 of the Convention to ensure opportunities of women to represent their Government at the international level and to participate in the work of international organizations.⁶³ General recommendation No. 25 (2004) of CEDAW reiterates its general recommendations 5, 8 and 23 in which, it recommends the application of temporary special measures in the area of women representing their governments at the international level.⁶⁴

CEDAW General Recommendation No. 5 (1988) recommends State Parties to make more use of temporary special measures such as affirmative action, preferential treatment or quota systems to advance women's integration into education, the economy politics and employment.⁶⁵

General Recommendation No. 33 recommends that States Parties remove barriers to women's participation as professionals within all bodies and levels of judicial and *quasi-judicial* systems and to take temporary special measures to ensure that women are equally represented in judiciary and other law implementation mechanism as magistrates, judges, prosecutors, public defenders, lawyers, administrators, mediators, law enforcement officials, judicial and penal officials and expert practitioners.⁶⁶

General Comment No. 28 (2000) of the Committee on Civil and Political Rights (CCPR) recommends that the States Parties must ensure that the law guarantees to women the rights contained in Article 25

60 Article 7, CEDAW

61 UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, UN, Treaty Series, vol. 1249, p. 13, article 7 available at: <http://www.refworld.org/docid/3ae6b3970.html> [accessed 28 June 2016]

62 Ibid article 8.

63 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 8: Implementation of article 8 of the Convention*, 1988, available at: <http://www.refworld.org/docid/52d929c64.html> [accessed 28 June 2016]

64 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*, 2004, available at: <http://www.refworld.org/docid/453882a7e0.html> [accessed 29 April 2016]

65 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 5: Temporary Special Measures*, 1988, available at: <http://www.refworld.org/docid/52dcfeb84.html> [accessed 29 June 2016].

66 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, 5 November 2014, CEDAW/C/GC/32, available at: <http://www.refworld.org/docid/54620fb54.html> [accessed 29 June 2016].

of ICCPR on equal terms with men and take effective and positive measures to promote and ensure women's participation in the conduct of public affairs and in public office, including appropriate affirmative action.⁶⁷ The HRC requires States parties to provide statistical information on the percentage of women in publicly elected office, including legislature, as well as in high ranking civil service positions and the judiciary.⁶⁸

Article 2 (c) of CERD guarantees that State Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the political rights in particular the right to participate in elections to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.⁶⁹

Likewise, the Beijing Platform for Action (BPFA)⁷⁰ calls for setting specific targets and implementing measures to substantially increase the number of women with a view to achieve equal representation of women and men through affirmative action, in all governmental and public administration positions. It also recommends taking measures, including, where appropriate, in electoral systems that encourage political parties to integrate women in elective and non-elective public positions in the same proportion and at the same levels as men.⁷¹

3.4.2 National Legislation on Political and Public Participation of Women and Dalits

Nepal ranks as number 70 on women's political empowerment on the World Economic Forum's Gender Gap Index 2015.⁷² The Constituent Assembly (CA) which was transformed into a Legislative-Parliament since mid-2015, had 176 women members out of 595 seats (29.6%).⁷³ Previously, the participation of women in the Parliament was all time high 32.8 % in Nepal during the first CA but it decreased to 29.8 in the second CA. In October 2015, Nepal made history by electing its first Woman Speaker in the Parliament and first female President as head of the State. In terms of *Dalit* members, Nepal has not progressed much, with 50 *Dalit* members in the Constituent Assembly (current Legislative-Parliament) (8.3%). The Local Level Election Act of 2015, specified that each ward committee of five members should have two women representatives including one *Dalit* woman. Thus, out of 36,639 elected local

67 UN Human Rights Committee (HRC), *CCPR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)*, 29 March 2000, CCPR/C/21/Rev.1/Add.10, available at: <http://www.refworld.org/docid/45139c9b4.html> [accessed 29 June 2016].

68 Ibid.

69 UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, UN, Treaty Series, vol. 660, p. 195, available at: <http://www.refworld.org/docid/3ae6b3940.html> [accessed 29 June 2016].

70 UN, *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women*, 27 October 1995, para. 190, available at: <http://www.refworld.org/docid/3dde04324.html> [accessed 29 June 2016].

71 The BPFA also calls for protecting and promoting the equal rights of women and men to engage in political activities and to freedom of association, including membership in political parties and trade unions. It recommended reviewing the differential impact of electoral systems on the political representation of women in elected bodies and reforming the electoral system accordingly. It calls to monitor and evaluate progress in the representation of women through the regular collection, analysis and dissemination of quantitative and qualitative data on women and men at all levels in various decision-making positions in the public and private sectors and disseminate data on the number of women and men employed at various levels in Governments on a yearly basis. The BPFA also calls for Government action to aim at gender balance in the lists of national candidates nominated for election or appointment to UN bodies, specialized agencies and other autonomous organizations of the UN system, particularly for posts at the senior level.

72 World Economic Forum, *Global Gender Gap Index*, 2015, available at <http://www3.weforum.org/docs/GGGR2015/cover.pdf> [accessed on 29 April 2016]

73 Inter-Parliamentary Union, *Women in Parliament Index*, available at <http://www.ipu.org/wmn-e/classif.htm> [1 April 2016]

representatives, 13,360 had to be women, with at least 6,793 of them being *Dalit* women.⁷⁴ A total of 14,339 women are part of the local government. Among them, 47.4% are *Dalits*, 23.5% are Khas Arya women, 19.9% are Janajati, 8% Madhesi, and 1.3% Muslim. Seven out of 263 mayor seats were won by women, among them 6 are Khas Arya, and 1 is Madhesi. Similarly, the Chair position had 11 women, of which 6 were Khas-Arya and 5 Janajati. *Dalits* appear significant, but outside of the *Dalit* women quota, their presence barely registers.⁷⁵

The trajectory towards increased political participation for women made a major step forward in 1998 when women quota was introduced in local elections. In 2006, the Parliament endorsed a proposal ensuring 33% quota for women in each state organ. In 2008, the Interim Constitution ensured proportional inclusion rights for women and *Dalits*. The Constitution provides for special measures to promote women's and *Dalit's* participation in political and public spheres at various levels of state mechanisms. The provisions that are in line with the above-discussed provisions of the international instruments are as below:

(i) Right to vote: The Constitution guarantees right to vote to all its citizens who have attained the age of eighteen years and who shall be entitled to vote in any constituency.⁷⁶

(ii) Right to candidacy/eligible to be elected: The Constitution guarantees the right to candidacy/eligibility of women and *Dalits* as it stipulates that citizens of Nepal, who have reached the age eighteen for a given position is eligible to be elected for various elected bodies.⁷⁷

(iii) Right to Participate in State Structures: Women shall have the right to participate in all state structures and bodies on the basis of the principle of proportional inclusion.⁷⁸ Similarly, persons from the *Dalit* community shall have the right to participate in all agencies of the state based on the principle of proportional representation, and that there shall be legal provision of empowerment, representation and participation of *Dalit* community for employment in other area also including the public service.⁷⁹

(iv) Quota for women and *Dalits* in Federal Parliament: The Constitution has provided for a national legislature consisting of two houses—the House of Representatives and the National Assembly. Women's representation is ensured by at least one-third among two hundred and seventy-five members in the House of Representatives.⁸⁰ The Constitution provides persons from the *Dalit* community among other disadvantaged groups to be included in various state mechanisms. It ensures that persons from *Dalit* community are enlisted in the closed list submitted by political parties while filing their candidacy under proportional representation system for the House of Representative election.⁸¹ The election of the house of representative will be through a combination of first past the post system (FPTP) and the proportional representation (PR) system. Among the 275 members 165 will be elected through the FPTP and 110 will be elected through the proportional representation election system.⁸² In case, one-third percentages of

74 Gender Equality and Social Inclusion: Incident Monitoring Report 2017, COCAP, 2017

75 Paswan, Bhola, Data Reveals Local Elections a Disaster for Gender Equality, The Record, October 24, 2017

76 Constitution of Nepal (n. 1) Article 84 (5)

77 Ibid Article 87

78 Ibid Article 38 (4)

79 Ibid Article 40

80 Constitution of Nepal 84 (2)(8)

81 Ibid Article 84 (2)

82 Ibid Article 84 (1)

women are not elected through the FPTP system, it should be ensured through PR system.⁸³ Among Speaker and Deputy Speaker for the House of Representatives one of the two shall be a woman.⁸⁴

(v) Quota for women and Dalits in the National Assembly: In the National Assembly, women's representation has been ensured by at least 7% by the Constitution. Among the 56 represented from electoral college, (comprising of provincial assembly and Chairpersons and Vice-Chairpersons of Village Councils and Mayors and Deputy Mayors of Municipal Councils and eight members from each province) there ought to be at least three women, one person from *Dalit* community⁸⁵, and one person with disability or from a minority community.⁸⁶ Among the three nominated, from the GoN, at least one will be nominated by the President using his/ her prerogatives and the recommendation of the GoN⁸⁷.

(vi) Ensuring women's representation among the speaker and deputy speaker: The Constitution provides that while electing the Speaker and Deputy Speaker for the House of Representatives, either one should be a woman.⁸⁸

(vii) Ensuring women's representation among the Chairperson and the Deputy Chairperson: The Constitution also ensures that either the Chairperson or Vice Chairperson of the National Assembly should be a woman.⁸⁹

(viii) Quota for Women and Dalits in Provincial Assembly: Nepal is divided into 7 Provinces with Provincial Assemblies. At least one third of women's representation is ensured in the provincial assembly and if representation is not ensured through the FPTP system, the political parties should ensure the minimum numbers through the PR side of the electoral system.⁹⁰ The Constitution calls for ensuring representation of persons from *Dalit* community in provincial legislature/provincial assembly by including them in the closed list for PR system of provincial assembly election on the basis of geography and population.⁹¹

(ix) Quota for women and Dalits in the local executive: According to the Constitution, the local executive power is vested in the village or town (Municipality) executive.⁹² The Village Executive is comprised of a head, deputy executive, ward chairpersons elected from each ward and four women and two persons from *Dalit* community shall be members of the village executive.⁹³

(x) Quota for women and Dalits in the municipality executive: The municipality executive shall be comprised of a Mayor, Deputy Mayor, Ward Chairperson elected from each ward and five women members that are elected by the Municipal Assembly members from among themselves and three persons elected from the *Dalit* or minority community.⁹⁴

83 Ibid Article 84 (1) (8)

84 Ibid Article 91 (2)

85 Ibid Article 86 (2) (a)

86 Ibid Article 86 (2) a

87 Ibid Article 86 (2) (b)

88 Ibid Article 91 (2)

89 Ibid Article 92 (2)

90 Ibid Article 176 (9)

91 Constitution of Nepal Article 176 (6)

92 Ibid Article 214

93 Ibid Article 215 (4)

94 Ibid Article 216 (1)(2) and (4)

(xi) Quota for women and Dalits in the local legislature: The local legislature will be constituted by the village assembly and the municipal assembly. The Village Assembly shall comprise of a village executive Head, a Deputy Head and four members elected from every Ward of the Village council and member of the village executive elected from the *Dalit* or minority community.⁹⁵ The Village Assembly shall have representation of at least two women from every Ward of the Village Council. The Municipal Assembly will be a seven member Municipal Assembly comprising of the Mayor and Deputy Mayor, Ward Chairperson and four members elected from every Ward of the Municipal council and member of the Municipal.⁹⁶ The Municipal Assembly shall have the representation of at least two women from every Ward of the Municipality.⁹⁷ The Village Assembly shall have the member of the village executive elected from *Dalit* or minority community among those comprised of a village Executive Head, a Deputy Head and four members elected from every Ward of the Village Council.⁹⁸

(xii) Quota for women in the District Assembly and District Coordination Committee: The District Assembly is established for coordination and essential management among the rural municipalities and municipalities within the district. The District Assembly is to be comprised of the head of every village executive, Mayor of every Municipal executive within the district.⁹⁹ The District Assembly shall, pursuant to Provincial laws, elect a District Coordination Committee with a maximum of nine members including a Head, a Deputy Head, at least three women and at least one person from the *Dalit* or minority community. The District Coordination Committee shall execute all tasks to be carried out on behalf of the District Assembly.

(xiii) Quota for Persons for Dalit community/minority in District Assembly: Among the nine members of a District Coordination Committee elected by the District Assembly will at-least one person will be from *Dalit* or minority community.¹⁰⁰

(xiv) National Women's Commission: The Constitution provides that the chairperson of the NWC should be a woman.

(xv) National Dalit Commission: The Constitution provides that a person from *Dalit* community shall be the chairperson of the *Dalit* Commission who has significantly contributed to *Dalit* welfare, human rights and in the legal field for at least ten years.

(xvi) Quota for women and Dalits in the civil service: To make the civil service inclusive, 45 percent of the posts are set aside to be filled-up by having a separate competition for women among others. Among the 45 percent separated, 33 percent of the seats are reserved for open competition among women, and 9 percent of seats are reserved for open competition among persons from *Dalit* community.¹⁰¹

95 Ibid Article 222 (2)

96 Ibid Article 223 (2)

97 Ibid Article 223 (3)

98 Ibid Article 222 (2)

99 Ibid Article 220 (1)(2)(3)

100 Constitution of Nepal Article 220 (3)

101 Civil Service Act 1993 (2049) s.7 (7)

(xvii) Policy measures to promote women’s political and public participation:

The GoN has adopted a NAP to implement the UN Security Council Resolution (UNSCR) on 1325 and 1820. As participation is one of the main pillars stipulated in the National Action Plan (NAP), it ensures in: (i) identifying gaps in the existing normative framework, including the security sector reform ii) ensure proportional and meaningful participation of women in peace negotiations, informal talks, discussions, special taskforce, national and foreign missions as well as in all aspects of peace building processes iii) ensure proportional and meaningful participation of women in the Council of Ministers, National Planning Commission, office bearers of other commissions, advisors and other important public positions as well as at all levels of State mechanisms, and iv) conduct capacity building programs from local to central level for meaningful participation of women in all peace, security and judicial mechanisms iv) encourage and support women to file candidacy in elections.¹⁰²

In addition to the NAP, there are GESI policies of the ministries, departments and programs, which call for women’s participation in decision making including inclusion of *Dalit* women in various mechanisms developed under these offices.¹⁰³

While concrete legislative measures are undertaken to ensure that at-least a critical mass (33 percent) of women’s participation in various level of state mechanisms, some gaps still exist in relation to full compliance under the international treaty obligations.

3.4.3 Gaps in compliance

(i) Lack of concrete goals and timetable to accelerate the increase in the representation of women including *Dalit* women:

The Constitutional provisions to promote women’s participation need to be implemented in the policy framework for its effective implementation. The GoN in its clearest terms has stipulated that the 33% representation is the minimum threshold: however, the generic understanding of that has been like a maximum threshold. In addition to this, to transform rhetoric into reality, in targeting the women’s minimum representation/participation, there is a gap in setting goals and timeline beyond 33% which has been ensured by the Constitution under Article 38 (4).

(ii) Gap on national legislation to ensure to women to represent the Government at international level:

The GoN is obligated under the international treaty law to take special measures/direct measures to ensure that women represent the GoN at international level.¹⁰⁴ However, the GoN has not adopted any legal or policy measures to ensure that women represent the GoN at international level. Accordingly,

102 Ministry of Peace and Reconstruction, *National Action Plan on Implementation of UN Security Council Resolutions 1325 and 1820*, (2011/2012-2015/2016), 2011

103 Ministry of Local Development, *GESI Policy*, (2009); Ministry of Health and Population, *GESI Policy*, (2009); and, Ministry of Urban Development, *GESI Operational Guideline*, (2013).

104 CEDAW GR 25 (n. 59)

there is absence of policy measure that reflects the call of the BPFA aimed at gender balance in the lists of national candidates nominated for election or appointment to UN bodies, specialized agencies and other autonomous organizations of the UN system, particularly for posts at the senior level.¹⁰⁵

(iii) Gaps on national legislation on ensuring women’s participation in non- governmental organizations and associations:

CEDAW, to which Nepal is State party, recommends that States parties ensure that there is women’s participation in all collaborations and consultations with civil society and non-governmental organizations representing various groups of women is especially recommended.¹⁰⁶

The national legislation does not have any provisions that reflect this commitment under the Convention.

(iv) Gap in promoting women’s participation in judiciary:

The General Recommendation No. 33 recommends that states parties take temporary special measures to ensure that women are equally represented in the judiciary and other law implementation mechanisms.¹⁰⁷ Despite such recommendation made by competent body, there is absence of legislative or policy provision to provide for any special measures to promote women as judges.

(v) Gaps on data sharing:

The Human Rights Committee (HRC) in its General Recommendation recommends State Parties to provide statistical information on the percentage of women in publicly elected office, including the legislature, as well as in high ranking civil service positions and the judiciary.¹⁰⁸ This recommendation is yet to be incorporated in the national policy framework. The BPFA calls for monitoring and evaluating progress in the representation of women through the regular collection, analysis and dissemination of quantitative and qualitative data on women and men at all levels in various decision-making positions in the public and private sectors, and disseminate data on the number of women and men employed at various levels in Governments on a yearly basis; ensure that women and men have equal access to the full range of public appointments and set up mechanisms within governmental structures for monitoring progress in this field, including support to non-governmental organizations and research institutes that conduct studies on women's participation in and impact on decision-making and the decision-making environment. These recommendations are yet to be adequately incorporated in the national legislative and policy framework.

(vi) Inclusion of *Dalit* women’s participation:

The NAP on 1325 and 1820 acknowledges the low level of *Dalit* women’s participation, but no activity was targeted to promote the participation of disadvantaged women including women from *Dalit*

105 BPFA (n. 65)

106 Para 34, CEDAW GR 25

107 CEDAW GR 33 (n. 61)

108 HRC GC 33 (n. 62).

community.¹⁰⁹The Constitution has guaranteed representation of persons from *Dalit* community at various state mechanisms at the federal level and provincial level. However, for District and Village Assemblies representation is ensured of either a person from the *Dalit* community or from a minority group, thereby not guaranteeing the representation of persons from *Dalit* community in those mechanisms.

(vii) Underlying reasons:

Despite affirmative action, participation of women in politics remains low due to underlying deeply structured reasons including patriarchal values and norms, lack of institutional and family support, lack of security, criminalization in politics, and multiple responsibilities without helping hand hence creating burdens.

The Concluding Observations of the ESCR on the third periodic report (2014) of Nepal recommends the GoN to increase the representation of women, including *Dalit* and indigenous women in decision making positions in public and political affairs. The Committee further recommends that the State Party address obstacles relating to career advancement of women through temporary special measures and the education of men and women about equal career opportunities.

During the field research, data from FGD reveals that all of the districts visited had female and *Dalit* participation in the political parties and public posts. However, participation was nominal and not meaningful as they are not entitled to decision making capacity. The “quotas” were maintained as per the laws but they are not given enough room for meaningful participation. They have been used only for the registration and “show casing”. Even after appointment and holding a post for service delivery, woman is usually referred as only ‘somebody’s *wife*’, stated one of the stakeholders in *Ramechhap*.

One of the stakeholders in *Kailali* stated that in certain cases, women show interest to join politics; however, it remains challenging for them to continue the politics due to environment barriers such as providing family time, discouragement by the fellow party members. It was also mirrored by few stakeholders that women do not feel comfortable even to exercise their own powers guaranteed by the job. In addition to this, in case of allocation of budget, women employers tend to be hesitant to use up the money and take suggestions from the male employers.

3.4.4. Political Empowerment Post-Earthquake Context

The Constitution has guaranteed right of women¹¹⁰ and *Dalits*¹¹¹ to participate in state structures on the basis of the principle of proportional inclusion. The quotas in Federal Parliament,¹¹² National Assembly,¹¹³ Provincial Assembly,¹¹⁴ Local Executive,¹¹⁵ Municipal Executive,¹¹⁶ Local Legislature,¹¹⁷ District Assembly

109 For the reference, The NAP on UNSCR 1325 and 1820 has already expired

110 Constitution, 2015, Article 38 (4)

111 Ibid Article 40

112 Constitution, 2015, Article 84 (2); 84 (2)(8); 84 (1); 84 (1) (8); 91 (2)

113 Ibid Article 86 (2) (a); 86 (2) (b); 91 (2); 92 (2)

114 Ibid Article 176 (9); 176 (6)

115 Ibid Article 214; 215 (4)

116 Ibid Article 216 (1)(2) and (4)

117 Ibid Article 222 (2); Article 223 (2); 223 (3); 222 (2)

and District Coordination Committee,¹¹⁸ District Assembly,¹¹⁹ National Women's Commission, National Dalit Commission, in the civil service¹²⁰ GESI policies of the ministries, departments and programs, which call for women's participation in decision making including inclusion of *Dalit* women in various mechanisms developed under these offices.¹²¹ Despite the current reformed legislative measure, challenges for its effective implementation are listed below.

i) Limited accessibility of women and *Dalits* towards politics

It has been found that women participation inside the structure of a party is highly neglected as politics is considered a man's job. There were very few women representatives inside the different political parties in the districts. As the key posts inside the political party are always held by men, it is difficult to achieve the target of 40% representation of women. This happens because women are not supported from their families to be involved in politics. For instance, one of the participants in *Dhading* mentioned that her husband had become suspicious and non-helping after she started being involved in the political activities. Her family support had lessened after she joined politics and been questioned by her husband. The practice to exclude women from the political participation in the district is been practiced in a different way.

There is wide belief that men can better represent their political parties and collect fund for the campaigns during election. This was also reflected during selection of representatives for the election in Nuwakot where women were only provided ticket from their respective parties to represent in the election if they were likely to lose. The anticipated winning election posts were provided to males only by the political parties.

The treatment towards *Dalits* in these years has changed in very insignificant manner as there still exists practice of untouchability in the districts. For instance, although no direct discrimination is shown towards the *Dalits*; practice such as making excuses to eat with them still persists as an indirect exclusion. Unless deeply rooted thoughts and behavior like these are changed; inclusivity would remain a failure.

It was found that the 'People to People Groups' have been formed in the district with the efforts of Dalit NGO Federation (DNF) and Women Act with the support from USAID and The Asia Foundation (TAF). There are three phases of this formation, namely: 1. Single Identity Group Training, 2. Mixed Identity Group Training and formation of advocacy group and 3. Collaborative Leadership and Advocacy Training with development of Community Action Plans (CAPs). The group has executed 10 activities including waste management programs, awareness programs through street dramas and *dobori* (duet) songs. They expressed commitment to perform need analysis and coordinate with governmental bodies for the program conduction in the future.

Similarly, it was found that the parties only choose women candidates to fulfill the criteria that were set forth in the laws. For instance, the political parties opted to form alliances between two parties which led men winning the leadership positions and women are limited to just subsidiary roles. Similarly, in

118 Ibid Article 220 (1)(2)(3)

119 Ibid Article 220 (3)

120 Civil Service Act 1993 (2049) s.7 (7)

121 Ministry of Local Development, *GESI Policy*, (2009); Ministry of Health and Population, *GESI Policy*, (2009); and, Ministry of Urban Development, *GESI Operational Guideline*, (2013).

Dhading, few *Dalits* were convinced to participate in the elections either forcefully or without their much interest to fulfill the criteria of representation of *Dalits* as per the laws. This has largely disturbed their social and family life as they are facing difficulties in continuing their daily activities. The cosmetic political participation concluded without the proper pre-work has been very costly to women. In Dhading, one of the newly represented members from *Dalit* community complained that after winning the election under political representation, his farming has been affected as he has to attend many meetings and only gets few days to work in the field. On a different note, it was also found that *Dalits* women from same family were contesting candidates from different parties in few cases just to fulfill quota which creates ideological conflict within the same family.

ii) Local Election's Representation

The number of women and *Dalits* representation in the districts is low. For instance, 60% men and 40% women representation were made in the election in Dhading. In total, 47% of *Dalit's* representation was present in women posts. However, none of the women representative was elected in the decision-making posts such as 'ward chief' and 'ward chairperson'. In a total of 13 ward chiefs and 104 ward chairpersons, not a single person was a female. Overall, only 8% of women are elected in the decisive position.¹²² The female representation in a decision-making position was only visible in the post of 'deputy chief' which the law specifically has provided to the women.

iii) Public participation of women and *Dalits*: 'welfare approach' versus 'rights-based approach'

Women are hardly provided with the decision-making roles from the central to local level. For instance, earlier Ministry of Women, Children and Social Welfare of Nepal had very few women ministers. Similarly, women and *Dalits* have minimal representation in public positions. Further, there is no representation of *Dalits* in school management committee, road construction committee and others in Dhading. The stakeholders in Nuwakot stated that there are less NGOs in the district with women in leadership. Nonetheless, there was good representation of women in judicial committees in the local authorities where seven among nine committees were held by women in *Dolakha*.

Furthermore, although women representation at local level has increased, it has not been able to achieve meaningfulness. For instance, the stakeholders of Nuwakot mentioned that in an organization, the positions are provided to women, but the men co-workers influence or make decisions for women co-workers.

Apart from these, a government representative of District Coordination Committee (DCC) from Nuwakot stated that the Committee had not been able to keep GESI focal person as per the governmental rules because there are many transfers in the government position and hence women representative would not be always available in the district. This has occurred as there is general tendency in the district that the position can only have women representative. Consequently, the women and *Dalit* representation are rather seen as welfare scheme towards them and not as their rights they are entitled to.

122 Decisive position here refers position of Ward Chairperson, Chairperson and Deputy Chairperson

Recommendations

- Increase meaningful representation of women, including *Dalit* and indigenous women in decision making positions in public and political affairs.
- Establish a well-resourced GESI Unit in every institution along with its strict supervision and monitoring.
- Address obstacles relating to career advancement of women through temporary special measures and the education of men and women about equal career opportunities.
- Encourage young women to engage in politics through various awareness and opportunities.
- Conduct capacity strengthening programs to impart education on GESI policies, its implementation, challenges and their roles to the newly elected members.



Photo by: Chandra Shekhar

3.5 Economic Empowerment of Women and Dalits

3.5.1 International Obligations Relating to Economic Empowerment of Women and *Dalits*

A number of international instruments that Nepal is state party to promote women's and *Dalit's* economic empowerment by obligating states to take appropriate measures such as temporary special measures/ quota provisions, job evaluation system based on gender neutral criteria, economic opportunities in safe environment, creating employment opportunities within the country with access to loans, equal wages for equal work, just and favorable remuneration, and addressing multiple discriminations against women belonging to vulnerable groups.

Article 1 of the CEDAW states that there shall be no discrimination against women on the basis of sex and on the basis of equality of men and women, and fundamental freedoms in economic field among others.¹²³ Article 3 of the CEDAW calls the states parties to take appropriate measures, including legislation to ensure full development and advancement of women in various fields including economic.¹²⁴ Article 13 calls states parties to ensure the right to bank loans, mortgages and other forms of financial credit to women.¹²⁵ Article 14 provides that states parties take into account the significant role which rural women play in the economic survival of their families including in the non-monetized sectors of the economy and take measures to apply the provisions of the conventions to women in rural areas.¹²⁶

The CEDAW General Recommendation No. 5 (1988) recommends states parties to make use of temporary special measures such as affirmative action, preferential treatment and quota system to advance integration of women in the economy among others.¹²⁷

The CEDAW General Recommendation No 13 (1989) recommends state parties to consider the study, development and adoption of job evaluation systems based on gender-neutral criteria that would facilitate the comparison of the value of those jobs of a different nature, in which women presently predominate, with those jobs in which men presently predominate. They should support the creation of implementation machinery and encourage the efforts of the parties to collective agreements, where they apply, to ensure the application of the principle of equal remuneration for work of equal value.¹²⁸

The CEDAW General Recommendation No. 25 recommends that the state parties should include, in their constitutions or in their national legislation, provisions that allow for the adoption of temporary special measure on employment among others. Relevant legislation on non-discrimination and temporary special measures should cover governmental actors as well as private organizations or enterprises.¹²⁹

123 CEDAW (n. 56) article 1.

124 Ibid article 3

125 Ibid article 13

126 Ibid article 14.

127 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 5: Temporary Special Measures*, 1988, available at: <http://www.refworld.org/docid/52dcfeb84.html> [accessed 29 June 2016]

128 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 13: Equal remuneration for work of equal value*, 1989, available at: <http://www.refworld.org/docid/52d925754.html> [accessed 29 June 2016]

129 CEDAW GR 25 (n. 59)

CEDAW General Recommendation No. 30 recommends state parties to ensure that economic recovery strategies promote gender equality as a necessary precondition for a sustainable post-conflict economy and encourages to target women working in both the formal and informal employment sectors. It recommends designing specific interventions to leverage opportunities for women's economic empowerment, in particular for women in rural areas and other disadvantaged groups of women.¹³⁰

CEDAW/CRC joint recommendation No. 31 recommends state parties to provide girls and women with educational and economic opportunities in a safe and enabling environment where they can develop their self-esteem, awareness of their rights and communication, negotiation and problem-solving skills.¹³¹

The Concluding Observations of the CEDAW (fourth and fifth report-2011) recommends the GoN to strengthen preventive measures aimed at improving the economic situation of girls and women by assisting gainful employment and other resources to eliminate their vulnerability to trafficking. It also recommends the GoN to investigate the cause of women's migration, create employment or self-employment opportunities for women within the country and ensure that women have access to loans. It also recommends signing bilateral agreements with the country of employment ensuring the security of women migrant workers and establishing mechanisms in the country of destination to deal with the violation of the rights of women migrant workers during employment.¹³²

The CERD calls upon State Parties to ensure the adequate development and protection of certain racial groups or individuals to guarantee them full and equal enjoyment of human rights and fundamental freedoms in the field of economy among others. The CERD also calls states parties to ensure the rights to work, free choice of employment, just and favorable conditions of work, to protect against unemployment, equal pay for equal work, to just and favorable remuneration.¹³³

The Committee on CERD recommends the state party consider issues of political representation, personal security, employment and education and eliminate multiple discriminations against women who belong to vulnerable groups.¹³⁴

Article 6 of the ICESCR, calls for taking technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental rights, political and economic freedoms to the individual.¹³⁵

130 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, 1 November 2013, CEDAW/C/GC/30, available at: <http://www.refworld.org/docid/5268d2064.html> [accessed 29 June 2016]

131 CEDAW/CRC, *Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practice*, 2014, CEDAW/C/GC/31-CRC/C/GC/18, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/78/PDF/N1462778.pdf?OpenElement> [accessed on 29 June 2016]

132 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding observations of the Committee on the Elimination of Discrimination against Women*, 2011, CEDAW/C/NPL/CO/4-5:2011, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fNPL%2fCO%2f4-5&Lang=en [accessed on 29 June 2016]

133 CERD (n. 64) articles 2, 5.

134 UN Committee On The Elimination of Racial Discrimination, *Consideration Of Reports Submitted By States parties Under Article 9 Of The Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination: NEPAL(xv-xvi combines)*, 2004, CERD/C/64/CO/528 April 2004, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2f64%2fCO%2f5&Lang=en [accessed on 29 April 2016]

135 UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, UN, Treaty Series, vol. 993, p. 3, article 6, available at: <http://www.refworld.org/docid/3ae6b36c0.html> [accessed 29 June 2016]

3.5.2 National Legislation Relating to Economic Empowerment of Women and *Dalits*

Nepal is ranked 110th on the World Economic Forum's gender gap index in terms of women's economic empowerment in 2017.¹³⁶ According to the World Bank's Women, Business and the Law Report, 83% of women is active in the labor force. However, various barriers to women's economic participation still exist. Especially *Dalit* women continue to face discrimination when it comes to their socio-economic status.

The Constitution prohibits discrimination on the basis of sex, race and economical condition among others in the Constitution.¹³⁷ Likewise in line with the promotion of positive discrimination and temporary special measures by the international instruments and the Constitution, specifically mentions the rights of women and states that women shall have the right to special opportunity in the spheres of employment among others on the basis of positive discrimination.¹³⁸ Constitutional provision also focuses on prioritizing employment of single women who are in helpless conditions on the basis of skill, capability and merit.¹³⁹

The right to land to *Dalits* are ensured in the Constitution, and mentions that the state shall according to law, provide land to landless *Dalits* for one time and make housing arrangements for *Dalits* who do not have housing of their own.¹⁴⁰

Legal measures are included in the Constitution for ensuring that women especially those who are vulnerable, victims of conflict, excluded by family and the society are self-reliant by providing them rehabilitation and protection. Notably, the Constitution provides legal measure to economically evaluating the works and contribution with regards to child care and care for the family.¹⁴¹

The National Foreign Policy 2015 has incorporated provisions to promote women's and *Dalit's* employment and economic activities. It states that women and *Dalit* among others will be provided with skills and self-employment training. They will be provided with skills, loan and business development skills to establish small and medium business.¹⁴² *Dalits* and others from disadvantaged groups will be encouraged to adopt new technology and increase productivity to ensure they are not limited to traditional economic activity.¹⁴³ Access to high school education will be improved for children of poor and disadvantaged groups including children from *Dalit* community by removing fee for school entry, provide scholarship and reducing cost of school books and uniform. Those that leave formal education in the middle will be provided skill-oriented education.¹⁴⁴ Legal literacy programs will be provided to women and persons from *Dalit* community among others to improve the conducive environment for employment.¹⁴⁵ Scholarship, student loan and financial support will be extended to socially backward groups to improve

136 World Economic Forum

137 Constitution of Nepal (n. 1) Article 18

138 Ibid article 38.

139 Ibid article 51 (l).

140 Ibid article 40.

141 Ibid article 51 (j).

142 National Employment Policy 2015 (2071), policy 11.2.

143 National Employment Policy 2015 (2071), policy 11.9.

144 National Employment Policy 2015 (2071), policy 11.3.

145 National Employment Policy 2015 (2071), policy 12.4.

their access to high-level technical education.¹⁴⁶ There will be emphasis to promote safe and secure work for women in regard to foreign employment.¹⁴⁷ The policy reintegrates that its provisions shall be effectively implemented to encourage women entrepreneurship.¹⁴⁸

The Three-Year Plan 2014-2017 and Labour and Employment Policy has strategically focused on ensuring women's employment is safe and systematic. Likewise, the policy has continued efforts to make foreign employment inclusive and pro-poor by imparting employment-oriented skill training and entrepreneurship development so as to increase access of women to employment, especially women from poor, *Dalit*, indigenous and disadvantaged groups.¹⁴⁹

The GoN's Industrial Policy (2010) is in place as strategic platform for the development of women entrepreneurship and employment creation for women at large. Key provisions of the policy also include inclusive development of industry in Nepal with gender-responsive provisions and addressing the issues and concerns of marginalized communities.¹⁵⁰

The GoN has put into force the Sexual Harassment at the Workplace Act (2014) to make workplaces safe for working women. The Act requires mechanisms for hearing complaints of sexual harassment within office premises, which includes GoN offices, constitutional bodies and public institutions under the government. Any other organization, institution, business or service center established under existing laws is also defined as workplaces. The Act makes sexual harassment at the workplace punishable by three months in prison and a fine of Rs. 25,000.¹⁵¹

The sectorial policy of the Ministry of Urban Development includes establishing employment generating opportunities and identifies reasons for which women and socially excluded groups failed to benefit from its project in consultation with the project personnel and the intended beneficiary groups. It ensures that women employment in civil works should be provided with equal wages as men.¹⁵²

Despite the existence of these policies, practical implementation remains a major challenge. At district level, the majority of the women and *Dalits* were in fragile situation economically. The reasons included of child marriage, no or less education, dependency on husband after marriage. In cases generally related to domestic violence and polygamy cases where women are married deceitfully. The woman after facing the discrimination or knowing the truth of her husband is bound to live with him for the economic support as mentioned by stakeholders in Kailali. Furthermore, the trainings to women conducted by GoN or other I/NGOs are mostly limited to activities like candle making, pickle making, sewing which are less practiced by women to earn as it provides less money. The stakeholders in Kailali stressed on the need to technical trainings like mending mobile phones, TVs, repairing electrical appliances is what is needed in the districts to enhance economic status. Also, there is a general tendency to pay woman less for same work as performed by men. This is generally applied in jobs building constructions sites.

146 National Employment Policy 2015 (2071), policy 12.8.

147 National Employment Policy 2015 (2071), policy 13.10.

148 National Employment Policy 2015 (2071), policy 14.3.

149 Government of Nepal, Three Year Plan 2014-2017.

150 Government of Nepal, The Industrial Policy 2010

151 Sexual Harassment at the workplace Act 2014 (2071)

152 GoN, Ministry of Urban Development, *Gender Equality and Social Inclusion, Operational Guideline* 2013

3.5.3 Economic Empowerment in post 2015 earthquake context

With 0.558 Human Development Index (HDI)¹⁵³, 0.925 Gender Development Index (GDI)¹⁵⁴ and \$2,337 in 2015, Nepal seems to have progressed from the past. Another progress Nepal has made is by guaranteeing equal economic condition to male and female¹⁵⁵ along with positive discriminations and temporary special measures¹⁵⁶ through constitutional safeguard. Priority is placed on employment of single women who are in helpless conditions on the basis of skill, capability and merit.¹⁵⁷

Women participation in micro credits has increased the saving of women and helped them have control over the money and respect in their household. These micro credits finance is run by women groups such as ‘*aama samuha*’ has increased the savings of women compared to the past. In Rasuwa, it was found that previously there were only women saving accounts in the district. People to People Group (P2P) has initiated the program of mixed (men and men) saving accounts which has helped the members in a family to save money cooperatively. The stakeholders in Dhading mentioned that women were employed more in banks compared to men. It reduced the risk of embezzlement of money and engagement in alcohol consumption.

Despite this, below are many challenges towards implementation of women’s economic empowerment in the districts.

i) Pay gap and access to work

The pay gap between male and female workers is prominently present in the districts. This is mostly prevalent in the case of wage laborers. Many construction activities which included of labor jobs such as carrying raw materials, stoning and so on had increased in post-earthquake context. However, women have been found paid less than men for the same job. The Supreme Court has pronounced a verdict directing the ‘government authorities to ensure equal remuneration for male and female workers in various enterprises and monitor the situation properly’¹⁵⁸ which is yet to be implemented.

Furthermore, women and *Dalits* are not considered eligible for certain works and excluded with no or little access. Inclusive development had been targeted by government initiatives such as Three-Year Plan (2014-2017),¹⁵⁹ Industrial Policy (2010).¹⁶⁰ The policies included inclusivity and aimed at imparting employment-oriented skill training and entrepreneurship development so as to increase access of women to employment, especially women from poor, *Dalit*, indigenous and disadvantaged groups. Nonetheless, women and *Dalits* still earn less in most of the organized and unorganized sector due to less access to work opportunity. As stated by stakeholders during the consultation, one of the main reasons for so is because the economy inside every household is controlled by the male member.

153 UNDP, Human Development Report, 2016, p. 200.

154 UNDP, Human Development Report, available at <http://hdr.undp.org/en/composite/GDI>, accessed on 16 November 2017.

155 Constitution of Nepal (n. 1) Article 18

156 Ibid article 38.

157 Ibid article 51 (j).

158 Republica, SC tells govt to ensure equal pay for female workers, available at <http://www.myrepublica.com/news/30013/?categoryId=81>, accessed on 16 November

159 Government of Nepal, Three Year Plan 2014-2017.

160 Government of Nepal, The Industrial Policy 2010

The National Foreign Policy 2015 has incorporated provisions to promote women's and *Dalit's* employment and economic activities. It states that women and *Dalit* among others will be provided with skills and self-employment training. They will be provided with skills, loan and business development skills to establish small and medium business.¹⁶¹ The stakeholders in Dhading clarified that although numerous jobs were created post-earthquake in the district; *Dalits* were not provided with the job. Further, very few numbers of *Dalits* were provided employment opportunity in the NGOs.

ii) Government schemes practiced differently

Social security policy of Nepal has provided special rights for single women and *Dalit* women since they get old age fund at the age of 60 while others were receiving at the age of 70. Furthermore, the government policy required allocation of 10% and 15% of budget of the local government for the welfare and benefit of women and *Dalits* respectively. The other backward groups have also been kept in priority list policy-wise. However, on a practical level, the budget does not reach the needy. Instead, they are utilized in public interest developmental infrastructure issues such as construction of roads/hospitals or such. But no such provision is mandatory now.

Further, the *Dalits* of 18 households of Tipling VDC do not have Land Registration document. They missed the announcement made in the Local Daily about the call of the government to receive the land deed and still remain deprived of land deed. Among them, only one *Dalit* processed to receive the document. The information dissemination medium adopted by the government thereby could not reach the *Dalits* and they remained landless.

Recommendations

- The Government should establish a mechanism to collect appropriate and realistic information from the bottom level to the governance level regarding equal pay.
- The Government should set up an agency to monitor the implementation of GESI policies in the implementing organizations along with mandatory annual reporting on key indicators dealing with gender and caste-based issues.
- The Government should identify the needs of the local women and feasibility of the economic skills they wish to endeavor before providing skills and trainings.

161 National Employment Policy 2015 (2071), policy 11.2.



Photo by: Interface

3.6 Domestic Violence

Domestic violence is described to be violence or abuse inflicted upon an individual who have psychological, physical, sexual, financial or emotional impact on a victim¹⁶² caused by intimate partner or a family member. In order to address this kind of violence which has direct impact on the family relations and whose victim could be women or even a small child of the family. There are number of international instrument which recommends state parties to follow the necessary measures to overcome the violence that occurs in domestic sphere. Nepal has a specific statute regarding the domestic violence in order to protect victim of domestic violence and to punish the perpetrator.

3.6.1 International Obligations Relating to Domestic Violence

The CEDAW General Recommendation No. 19 (1992) on violence against women recommends the States Parties to take measures that are necessary to overcome domestic violence which should include i) criminal penalties where necessary and civil remedies in case of domestic violence ii) legislation to remove the defense of honor in regard to the assault or murder of a female family member iii) services to ensure the safety and security of victims of family violence, including refuges, counseling and rehabilitation programs iv) rehabilitation programs for perpetrators of domestic violence and v) support services for families where incest or sexual abuse has occurred.¹⁶³

The CEDAW General Recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations recommends the state parties to enhance women's access to justice, including through the provision of legal aid and the establishment of specialized courts, such as domestic violence and family courts, providing mobile courts for camps and settlement settings and for remote areas, and ensure adequate protection measures for victims and witnesses, including non-disclosure of identity and the provision of shelters.

The CEDAW General Recommendation No. 33 (2015) on women's access to justice recommends the state parties to improve the criminal justice response to domestic violence, including through recording of emergency calls taking photographic evidence of destruction of property and signs of violence and considering reports from doctors or social workers, which can show how violence, even if committed without witnesses, has material effects on the physical, mental and social well-being of victims.¹⁶⁴

The BPFA (1995) recommends the GoN among others to promote research, collect data and compile statistics, especially concerning domestic violence relating to the prevalence of different forms of violence against women, and encourage research into the causes, nature, seriousness and consequences of violence against women and the effectiveness of measures implemented to prevent and redress violence against women. In addition, it recommends disseminating findings of research and studies widely.¹⁶⁵

162 Domestic Violence, What is Domestic Violence, available at <http://www.domesticviolence.co.uk/>, [accessed 21 June 2016]

163 UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 19: Violence against women, 1992, available at: <http://www.refworld.org/docid/52d920c54.html> [accessed 29 June 2016]

164 CEDAW GR 33 (n. 27)

165 BPFA (n. 65) para. 129.

3.6.2 National Legislation Relating to Domestic Violence

Article 38 of the Constitution and Domestic Violence Act (2009) make the act of domestic violence punishable by law, and the victim shall have the right to compensation. The Constitution enshrines some fundamental rights to women including that there shall not be any physical, mental, sexual or psychological or any other kind of violence against women, or any kind of oppression based on religious, social and cultural tradition, and other practices.¹⁶⁶

A person who commits the crime of domestic violence is penalized with NPR. three thousand rupees up to twenty-five thousand rupees or six months of imprisonment or both. A person who attempts to commit the crime or abets the crime or incite others to commit the crime shall be liable to half of the punishment given to the perpetrator. A person who repeats domestic violence will be given double the punishment each time the crime is repeated. A person holding a public post commits the crime will receive additional ten percent of the punishment given. A person who disobeys the Court orders made in relation to interim protection order shall be punished with a fine of two thousand rupees up to fifteen thousand rupees or four months of imprisonment or both.¹⁶⁷

The Domestic Violence Act provides that no one shall commit, aid or incite domestic violence,¹⁶⁸ in order to improve victim's access to justice it has provision on the procedure of filing a complaint including different complaint receiving mechanisms categorically speaking: the police, the national women's commission and any local governmental body.¹⁶⁹

Article 9 of the Domestic Violence Act provides that the total costs of treatment of the victim of the domestic violence, who has endured physical or mental injuries of as to require medical help in the hospital shall be borne by the perpetrator. If the perpetrator is not able to pay for the treatment due to economic condition, the court can order to the Service Center to provide treatment expenses to the victim.¹⁷⁰

The court can order the perpetrator to pay compensation to the victim depending on the nature of the act of domestic violence and the degree of pain suffered by the victim and also taking into account the economic and social status of the perpetrator and victim.

The Domestic Violence Act requires government/other organizations to establish a Service Centre with the purpose of immediate protection of the victim to provide separate accommodation during the course of treatment. The Centre is also expected to provide psychological counseling services to the victims of domestic violence. Also, the Centre is required to provide legal aid and economic aid to the victims.

166 Constitution of Nepal (n. 1) article 38.

167 Domestic Violence Act, 2009 (2066) s. 13.

168 Ibid. 3.

169 Ibid. 4.

170 Domestic Violence Act, 2009 (2066) . 9.

The Article 7 of the Domestic Violence Act provides for the proceedings to be held in-camera if requested by the Victim, and only those among the claimant, defendant, and their legal practitioners would be allowed to enter the court room as permitted by the court.¹⁷¹

The victim of crime shall have the right to be informed about the investigation and proceedings of the case regarding his/her victimization. The victim of crime shall have the right to social rehabilitation and justice with compensation as provided for by law.¹⁷²

3.6.3 Various gaps in the implementation

- Some provisions under the international instruments relevant to domestic violence. There is a lack of legal measures providing for specialized courts and mobile courts which has been ensured by international instruments.
- International instruments and the subsequent recommendations under the instruments discussed above, obligate States to provide for specialized courts, and mobile courts for camps, settlement settings or at the remote areas. However, there is absence of legal provision in the national legislation to provide for such measures. Also, as called for the international instruments, there is no legal provision that provides for rehabilitation to victim, or support mechanism to the families where incest might have been committed.
- Likewise, there is no provision for a rehabilitation program for victim of crime in the Domestic Violence Act which has been ensured by Article 21(2) of the Constitution of Nepal which guarantees for the social rehabilitation and justice with compensation as provided for by law. Similarly, the scope for mediation under Domestic Violence Act negates the provision ensured by the CEDAW General Recommendation No. 33 on women's access to justice, (2015) as it recommends that alternative dispute resolution should not be allowed in the case of domestic violence.
- There is no provision to promote research, collect and compile statistics and dissemination of finding of the research and studies as urged by the Beijing Declaration and Platform of Action.
- There is also absence of legal provision to ensure that victim is informed of the in-camera hearing. The provision about in-camera hearing in the domestic violence act provides that the victim may ask for in-camera procedure, however, the legal provision does not ensure that the victim is informed about this option.
- Domestic violence was one of the crimes that were reported high in every district visited. Battering was mainly mentioned as a form of violence and performed by husbands along with other family members as well. Though Gender Violence Support and awareness programs are provided in districts, due to scarcity of funding, there is difficulty in running programs and services such as safe houses.

171 Ibid. 7(1), (2).

172 Ibid. 21.

- Women and children cells are operating in the police stations where women police officers hear the complaints. It was found that in most of the cases that required investigation and appropriate punishment, mediation is practiced in domestic violence cases which negate the Nepal's international commitment.
- It was also found that women tend to forgive her husband and take the complaints back and continue to live like before due to lack of economic securities.



Photo by: Conor Ashleigh

3.7 Trafficking Against Persons

This section reviews specific international instruments relevant to Trafficking Against Persons (TIP), rape and traditional harmful practices to examine the extent to which the instruments are implemented through national legislation. It also assesses the implementation of national legislation relating to these areas at district level.

3.7.1 International Obligations Relating to Trafficking in Persons

Trafficking in person is one of the most insidious challenges in Nepal, a modern-day form of slavery, of which an overwhelming majority of victims are women and children. Trafficking constitutes of a crime against the individual and the State.¹⁷³ Geographical location is no guarantee against trafficking, with landlocked and island nations susceptible to being source, transit or destination states. The UN has endorsed the additional two Protocols in 2000 called The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (hereinafter UNTIP) and Protocol against the Smuggling of Migrants by Land, Sea and Air. The first document entered into force since 2003 and the second since 2004. The UNTIP in Article 5 sets out the obligation of State to criminalize human trafficking in domestic legislation. The UNTIP Protocol has defined human trafficking in terms of process of actions and use of authority and power, yet the definition has limited the conception of human trafficking with purpose of exploitation of labor, exploitation of one's sex work (Prostitution), slavery practices and removal of organs.¹⁷⁴ Similarly, the second protocol on preventing smuggling of migrants have defined smuggling just as illegal entry which is further elaborated as use of fraudulent documents, or somebody's document used by the other one.¹⁷⁵

The CEDAW obliges State parties to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.¹⁷⁶ Trafficking is of serious concern to the CEDAW Committee, as majority of trafficking victims are women and girls. Nepal is no exception to this.¹⁷⁷ As Bertone describes, three types of networks exist namely large-scale networks, medium sized networks and small networks responsible for trafficking in women;¹⁷⁸ strong mechanism to combat the crime is must.

In General Recommendation 19, the CEDAW Committee has recognized poverty and unemployment as among the main reasons behind trafficking in women. The recommendation addresses various forms of sexual exploitation, such as sex tourism, the recruitment of domestic labor from developing countries to work in developed countries, and organized marriages between women from developing countries

173 UNDOC, *COMBATING TRAFFICKING IN PERSONS: A Handbook for Parliamentarians*, (2009) <www.unodc.org/...trafficking/UN_Handbook_engl_core_low.pdf> [22 April 2016]

174 See UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the UN Convention against Transnational Organized Crime, G.A. Res. 25, Annex II, UNGAOR, 55th Sess., Supp. No. 49, UN Doc. A/RES/55/25, Art. 3 (a)

175 See UNGA, Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the UN Convention against Transnational Organized Crime [15 November 2000] A/RES/55/25 art 3 (a)

176 CEDAW (n. 56) art 6.

177 UN Office on Drugs and Crime, World Drug Report 2014 (UN publication, Sales No. E.14.XI.7) available at https://www.unodc.org/documents/wdr2014/World_Drug_Report_2014_web.pdf [accessed 19 April 2016]

178 Andrea Marie Bertone, 'Sexual Trafficking in Women: International Political Economy and the Politics of Sex' (1999), Springer Link, 18 Gender Issues 4, 22, available at link.springer.com/article/10.1007%2Fs12147-999-0020-x#page-1 [accessed on 1 April 2016]

and foreign nationals. These practices are incompatible with the equal enjoyment of rights and dignity by women. They put women at special risk of violence and abuse. The recommendation mentions that the commercial sex workers are especially vulnerable to violence because of their status, which may be unlawful, tends to marginalize them. They need equal protection of laws against rape and other forms of violence. It further obliges State Parties to take preventive, punitive and remedial measures for the protection of victims and punish the culprits.

Likewise, the CRC too puts an obligation on States to take appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.¹⁷⁹ The provision is especially significant in the post-earthquake context of Nepal in which children are at increased risk of being trafficked by traffickers, who might use it as an opportunity to recruit children for the purpose of exploitation.¹⁸⁰ The UNODC report of 2014 too identifies trafficking victims as child victims, particularly girls under 18.¹⁸¹

Regional mechanisms are best to counter the pernicious crimes like trafficking. The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002 (hereinafter the SAARC Convention) aims to eliminate all forms of trafficking and includes punishment for all persons who manage, maintain, provider of finance any facility used in trafficking.¹⁸² State parties are required to grant each other broad mutual assistance in investigation, inquiries, trials or other proceedings dealing with trafficking.¹⁸³ State Parties are required to exchange information regarding agencies, institutions and individuals involved in trafficking in the region.¹⁸⁴ Nepal has reaffirmed the effective implementation of the revised SAARC Convention, by the SAARC Summit 2014, the GoN needs to pursue in building regional mechanisms for building institutional capacity, cross-border cooperation and broad based collaborations to combat the trafficking.

The SAARC Convention urges the state parties to establish protective homes or shelters for rehabilitation of victims of trafficking. Suitable provisions shall also be made for granting legal advice, counseling, job training and health care facilities for the victims.¹⁸⁵ It also allows States to authorize recognized non-governmental organizations to establish such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking¹⁸⁶ and encourage them in efforts aimed at prevention, intervention and rehabilitation, including through the establishment of such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.¹⁸⁷

179 CRC (n. 44) art. 35.

180 CWIN Nepal, *Increased Vulnerability of Child Trafficking After Nepal Earthquake 2015*, available <<http://www.cwin.org.np/nepal-earthquake-2015/152-increased-vulnerability-of-child-trafficking-after-nepal-earthquake-2015>> 3 April 2016.

181 UNODC (n. 143).

182 SAARC Convention On Preventing And Combating Trafficking In Women And Children For Prostitution [adopted on 5 January, 2002] Art 3(2).

183 SAARC Convention On Preventing And Combating Trafficking In Women And Children For Prostitution [adopted on 5 January, 2002], art 6(1).

184 Ibid, Art 8(5).

185 Ibid, Art 9(3).

186 Ibid, Art 9(4).

187 Ibid, Article 9(5).

3.7.2 National Instruments Relating to Trafficking in Persons

Internal trafficking these days is looming large thereby threatening to rupture the very fabric of human society. Around 16,500 Nepali citizens, mostly unmarried women and children, were trafficked in the past two years.¹⁸⁸ A study conducted in 2014 had shown that 16 out of 36 kidney donors interviewed were *Dalits*.¹⁸⁹ The NHRC report has also claimed an increase in vulnerability of trafficking especially of women and children, at least by 20 percent after the April earthquake.¹⁹⁰ Moreover, roughly 40,000 girls and women of ages from 12 to 30 work in 1,200 cabin/dance restaurants and massage parlors in Kathmandu alone. Some of them are sexually exploited and/or trafficked.¹⁹¹ Hence, to combat the crime of trafficking, national mechanisms must be strong and reliable.

The Constitution in Articles 18, 38, 29 guarantees the equality principle and prohibits any form of exploitation. Article 18 ensures equality of all citizens and equal protection of law. Likewise, Article 38 provides the equal right to lineage without any discrimination to women and ensures special opportunity to women on the basis of positive discrimination. Article 29 restricts exploitation on the basis of religion, custom, tradition, culture, practices or any other bases. The article is further aided by the provision that guarantees no subjection to human trafficking or bonded labor and ensures punishment for such. The article also disallows any subjection to forced labor. In case of human trafficking, bonded labor and forced labor, the Constitution also guarantees for the compensation to the victim by the offender. The provisions in the Directives of the State¹⁹² and policies of the State¹⁹³ too call for provision to end all forms of discrimination. The establishment of the Women Commission as a constitutional body additionally strengthens the attention to the issues of women.

However, the practical implications of this provision have complexities. Firstly, there is no authentic and adequate data that reflects the investigations and prosecutions in cross borders of extra territorial effect. Secondly, the offenders caught in cross border are handed over to the police officers of the country where the offender is caught. For instance, offender caught by Nepal police in India is handed over to the Indian police. Hence, the investigation, prosecution and punishing the offenders cannot be guaranteed.

The Act, partially complying with the UNTIP in Section 4 states that if anyone commits acts for selling or purchasing a person for any purpose or use someone into prostitution, with or without any benefit, extract human organ except otherwise determined by law, or go for in prostitution that shall be deemed to have been committed human trafficking.¹⁹⁴ The State Cases Act defines the crime of trafficking in women and girls as an offence against the state of Nepal.¹⁹⁵

188 Reporter, '16,500 Nepalese trafficked in last two years: NHRC' *The Kathmandu Post* (Kathmandu, 26 April 2016), available at <http://kathmandupost.ekantipur.com/printedition/news/2016-04-26/16500-nepalis-trafficked-in-last-two-years-nhrc.html> [accessed 26 April 2016].

189 Ibid.

190 NHRC, Nepal Earthquake Human Right Monitoring Report http://nhrcnepal.org/nhrc_new/doc/newsletter/NHRC_Nepal_Earthquake_Human_Rights_Monitoring_Report_12Baishakh2072.pdf accessed 29 April 2016.

191 Rupa Rai, 'Trafficking on the Rise in Nepal' *UCA News* (March 4 2011) <<http://www.ucanews.com/news/trafficking-on-the-rise-in-nepal/6192>> accessed 29 April 2016.

192 Constitution of Nepal (n. 1) art 50 (2)

193 Ibid, art 51.

194 Human Trafficking and Transportation (Control) Act, Nepal, 2064(2007), s. 4.

195 State cases Act, Nepal, 2049(1992), Schedule 1

The new Act provides a number of legal safeguards, including the provision of rehabilitation and integration of victims of trafficking, protection of victims and witnesses, compensation and others. The scope of the Act is wide as it establishes extra-territorial jurisdiction, to reach offenses that are committed outside Nepal.¹⁹⁶ Human trafficking is an offence under this act.¹⁹⁷ Similarly, section 15 of the Act gives the provision of punishment. Trafficking of women for the sexual exploitation is punishable as per section 15 of the act.¹⁹⁸

In FY 2013/14, a total of 1,007 trafficking cases were registered in the Supreme Court, Appellate Courts and District Courts of Nepal. This accounts for less than one percent of the total cases (158,699).¹⁹⁹ The Supreme Court of Nepal has time and again ordered the GoN to amend the HTTCA 2007 in particular Section 15(6), making compulsory arrangement to provide the information to the victims, establishing the Compensation Fund, making compulsory budget for the witness appearing in the court; paying the Daily Service Allowances incurred for attending the court to the witnesses of the GoN cases; and arranging the security to the victims and informants. The Supreme Court has also issued an order in the name of MoHA, OAG and Register of the Supreme Court for continuous hearing of the serious nature of the crimes such as trafficking and rape. Recently, the Legislature-Parliament has amended some Sections of the HTTCA 2007. The conviction rates of TIP in the courts declines as one move from the district courts to appellate courts to the Supreme Court. The five-year (2008/09-2013/14) average conviction rate in the Supreme Court is 33 percent while it 44 percent in appellate courts and 58 percent in districts courts of Nepal.²⁰⁰

There exist certain challenges in relation to law enforcement and judicial response. The effective functioning of the laws demand to increase the effective implementation of the Act; increase efforts to enforce the laws; develop the functional capacity and professional efficiency of prosecutors and judges; increase efforts to maintain the privacy of the Special Type of Cases; increase budget allocation; increase the conceptual clarity about the differences between the crime of human trafficking and offences envisioned under the Foreign Employment Act 2007.

The massive earthquake of 2015 has greatly increased the vulnerability of trafficking especially of women and children. Evidences confirm that there has been the nexus of foreign labor migration and TIP, and protection and promotion of the migrant workers should be the lexicon priority of the GoN.²⁰¹ Law enforcement status is still not satisfactory. Surveillance and monitoring in the formal and informal institutions have been ineffective. The GoN compliance on rescue, rehabilitation and reintegration of trafficked survivors appears to be grossly inadequate mainly because of low budget allocated. Recent judicial responses are encouraging but much effort is needed to reorient the whole judicial system as

196 Human Trafficking and Transportation (Control) Act, 2064 (2007), Nepal, s. 1

197 Ibid, s. 3

198 Ibid, s. 15(1)(e).

For a person who is involved in transportation of human being for the purpose of buying, selling and engaging someone in prostitution:

10 years to 15 years imprisonment and a fine of Rs 50,000 to Rs 100,000 for taking a person out of the country.

15 years to 20 years imprisonment and a fine of Rs 100,000 to Rs 200,000 for taking a child out of the country.

10 years of prison and a fine of Rs 50,000 to Rs.100,000 for taking a person from one place to another place within the country.

10 years to 12 years imprisonment and a fine of Rs 100,000 for taking a child from one place to another place within the country.

199 National Human Rights Commission and Office of the Special Rapporteur on Trafficking in Persons (OSRT), *Trafficking in Person National Report*, 2013-15, March 2016, xvii.

200 Ibid.

201 The Rising Nepal, June, 19, 2015

human rights friendly and victim centric. The GoN of Nepal has the responsibility to establish necessary rehabilitation centers for physical and mental treatment, social rehabilitation and family reconciliation of the victims²⁰²and conduct regular monitoring.²⁰³

The MoWCSC extended the working areas of the eight NGOs run rehabilitation centers that have been providing the rehab services to the trafficked survivors to cover all 75 districts for the protection and rehabilitation of the trafficked survivors. The detailed working of the districts is listed below:²⁰⁴

The GoN has allotted NPR 10,800,000 to the NGOs running rehabilitation centers for the fiscal year 2015/16. The Nepalese legal provisions provide that a victim of trafficking is provided with not less than 50% of the fine paid by the convicted offender. This does not serve the purpose of ‘successful reintegration’, because those sold victims remain remediless but whose perpetrators are not found. In this context, the State’s inability to fulfill its obligation towards its citizens is clearly visible for not being able to apprehend the perpetrators and secondly it denies such victims the reintegration when compensations are based on fine by the perpetrator. In addition to this, the law provides that the victims who are kept in the rehabilitation center shall not be kept for more than six months. The provision beholds sheer failure to understand that reintegration is a sensitive and lengthy process and majority of the time, takes longer.

Furthermore, the GoN shall establish a rehabilitation fund for operation of the rehabilitation center.²⁰⁵ The mechanism for compensation is also maintained in the Act.²⁰⁶The GoN should involve itself in providing rehabilitation and reintegration of the victims and maintain surveillance on the existing shelter homes and reintegration process. The NGOs working for the right of these victims are concerned that there is no proper data on the reintegrated victims, which also poses question on the follow up of the victims once reintegrated.²⁰⁷

The Human trafficking and Transportation (Control) Rules, 2065(2008) established a National Committee²⁰⁸ and the District Committees are established under it.²⁰⁹ These Committees have various duties and functions. The National Committee has the duty to formulate and submit necessary policies, plans and programs against human trafficking and transportation to the Ministry and implement the approved plans and policies. Apart from monitoring the activities of the District Committees and the implementation of obligations under international as well as regional treaties relating to human trafficking and transportation of which Nepal is a party to the contractual labor, it has the obligation to assist those stranded in foreign countries and to return them to Nepal on their consent. Furthermore, it is obligated to make and implement the standards for distribution of seed money among the persons received skillful training. The District Committee also has a very important duty to monitor the rehabilitation center in

202 Human Trafficking and Transportation (Control) Act, 2064 (2007) s. 13 (1).

203 Ibid, s. 13 (2)

204 Extracted from National Human Rights Commission and Office of the Special Rapporteur on Trafficking in Persons (OSRT), Trafficking in Person National Report 2013-15, March 2016, xvii

205 Ibid, s. 14(1).

206 Ibid, s. 17.

207 NHRC & ORST (n 171).

208 Human Trafficking and Transportation (control) Rules, 2065 (2008), Rule 3.

209 Ibid, Rule 6.

the district in accordance with the direction given by the National Committee.²¹⁰ It moreover implements programs and plans formulated by the National Committee.

The GoN has allocated budget for the District Committee on controlling human trafficking for all the then 75 districts. Looking at budget spent in the FY 2014/15, majority of districts in hills and mountains spent NPR 42,000 and in Terai, NPR. 57,000. The total amount spent is NP. 3,854,400. Major areas of spending are interaction programs, formation of the Village Committees, meeting allowances, awareness programs and rallies on anti-trafficking days. The District Committees had some balance amount in Emergency Rescue Fund by the end of April 2015.²¹¹

A new challenge of Nepal to combat the crime of human trafficking is the emerging destinations of trafficking. The trafficking destinations that were limited to the cross-borders, majorly India, followed by Bangladesh, Bhutan and Sri Lanka have now extended to cross- continents like Europe and Africa. Hence, it is crucial for the GoN to review the overseas recruitment companies and their authenticity. The vigilance of the GoN authorities must be responsible and effective in issuing legal travel documents.

The GoN in collaboration with different UN agencies, I/NGOs has initiated and implemented different policies and programs to combat trafficking in person (TIP). The GoN has developed an institutional mechanism for controlling TIP. The GoN adopted in 2011 the National Plan of Action (NPA) against TIP 2011-2016. The NPA was formulated in line with the HTTCA 2007, the UN Protocol on Trafficking and the South Asian Association for Regional Cooperation (SAARC) Convention on Trafficking. The NPA identifies five broad areas for interventions: prevention, protection, prosecution, capacity building, and cooperation. In an effort to develop policy on to rescue, repatriation, rehabilitation and reintegration (4-Rs) of the victims/survivors of trafficking, NHRC recommended 4-Rs policy to the GoN. The policy aims to promote and protect the rights of the victims/survivors for realization of their dignified live and creation of a situation for providing the justice for the victims/survivors and punishing the perpetrators. The MoWCSC (formerly MWCSW) is the leading Ministry in this direction. The Ministry adopted Operation Guideline of Rehabilitation Center 2011, National Minimum Standards for the Protection and Care of Victims/Survivors of Human Trafficking 2011, the Operational Guideline for Rehabilitation Fund 2011 and the Conditions and Standards on Operating Children's Home 2011 and National Child Protection Policy 2011.

The GoN made national budget more gender responsive. The proportion of budget allocated for programs directly gender responsive increased from 11 percent in FY 2008/09 to nearly 22 percent in the FY 2014/15. No budget of Rs. 8 million to Rs. 10 million each fiscal year for providing rehab services to the trafficked survivors. Budget has also been allocated from Nepali Embassy to India, Consulate General Office of Nepal in Kolkata and Nepali Embassy to Thailand in recent fiscal years.

The MoWCSC has already formed District Committees in all 75 districts in the country. Some of the District Committees like Morang and Sunsari have also formulated Five-Year District Plan of Action (2015-2019). One of the advantages of these districts Plan of Action is that they are formulated with the

210 Ibid, Rule 7 (c).

211 NHRC & ORST (n 171).

wide engagement of key stakeholders. The Department of Women and Children has been carrying out a number of women's empowerment programs. A large number of women's groups have been formed in the country. The number of such groups reached to more than 150,000 in FY 2013/14 from about 124,000 in the FY 2011/12. Examining the proportion of women involvement in the collectivities by social groups, it appears that the women's programs have been highly representative and inclusive.

As a prevention and protection measure, a Child Helpline with a toll-free number 1098 has been in operation in 12 districts. In FY 2013/14, six organizations operated child helpline and provided different services to 4,830 children. In the FY 2014/15, there were 577 Child Care Homes in 44 districts of the country with 16,400 children residing in these Homes.

Various I/NGOs have been working against trafficking. About 9,000 persons especially women and children were intercepted from the border areas, bus parks and other places in each of the fiscal year of 2013/14 and 2014/15. Similarly, 1551 victims in FY 2013/14 and 1971 in FY 2014/15 were rescued mainly from abroad. More than 3600 victims especially women and children were referred to different organizations for psychosocial counseling and medical treatment. It is reported that only four NGOs received 1858 missing person applications in FY 2013/14 and 1906 in FY 2014/15. In terms of legal support which includes FIR, prosecution and court proceeding, a total of 988 persons in FY 2013/14 and 1355 persons in FY 2014/15 were provided legal support by the 11 NGOs.²¹²

The periodical three-year plans of the GoN till 2070 B.S. had inserted the plans on human trafficking under the chapter on 'Gender Mainstreaming and Women Empowerment'. For the first-time, the plan of 2070 to 2073 B.S. constructed a separate chapter for trafficking issue in its concept note. Further, the note has stressed on prevention, rehabilitation of the victims and legal prosecution in consideration with the changing dynamics of the trafficking.

NGOs mobilized a lot of resources in the year of 2014. A total of 454.7 million Rupees was mobilized by 27 NGOs affiliated with Social Welfare Council for 63 projects in the year of 2014. Of the total funding mobilized, 97 percent came from the external donors while about 3 percent was internal ones. Among the 27 NGOs listed in SWC, the five-top NGOs that mobilized maximum budget in the year of 2014 include: CWIN (38%), Maiti Nepal (14%), WOREC Nepal (10%), Shakti Samuha (5.5%) and KI Nepal (5%)²¹³.

Print media coverage in TIP can be evaluated from a recent study conducted by AATWIN (2015)²¹⁴. It covered the news and article published in the five national daily newspapers in between April 14, 2014 to April 13, 2015. Of 1007 news articles published, 61.5 percent of news was related to migration while only 30 percent was related to trafficking. It appears that the issues of trafficking do not get priority in mainstream media. Only 38 percent of the news was covered by only one newspaper and 62 percent of the news was covered by print media. The identity of trafficked survivors is found to have been totally protected in very few cases.

212 NHRC & ORST (n 171).

213 Ibid.

214 Ibid, p. 94.

Despite adoption of various plans on trafficking, key challenges in relation to implementation of policies and programs are to strengthen the Secretariat of the National Committee; increase the coordination among the key line agencies; integrate TIP prevention activities with the poverty alleviation, education and empowerment programs; reduce the overlap in program interventions and increase the media coverage on trafficking issues by ensuring the confidentiality and privacy of the victims/survivors. The improvements also include effective implementation of the shelter homes.

Various NGOs have stationed their offices in certain borders of Nepal to prevent trafficking. However, while doing so, in a few border districts, there is no NGO presence at all. This has caused duplication in activities of the NGOs in districts they work and has resulted in several districts that are needy but do not have NGO presence.

Responses to trafficking typically adopt a three-prong framework focusing on the "three P's"--prosecution of traffickers, protecting trafficked persons, and preventing trafficking. In practice, however, these responses focus on the prosecution of traffickers and, to a lesser extent, prevention of the crime. The GoN has not yet formulated any 'trafficking search units' those are specially designed to search and rescue the victims.

As per the information obtained from the field discussion, there is a lack of reporting of cases in this regard. For example, in Kailali, as a district close to the borders of Nepal and India, no cases of trafficking have been reported. Likewise, in Achham and Kaski, there is no case filed and no reporting of the case of human trafficking. Researchers are not able to obtain data from rest of other sampled districts. During the FGDs in the districts, stakeholders were aware of the local bodies established for the prevention and monitoring of the trafficking. Despite various efforts made by the GoN, the stakeholders stated that still a large number of people are unaware on the provisions regarding human trafficking in particular women at district level. The budget that is allocated for the empowerment of women is used up in providing small trainings like candle making, stitching, preparing dry food, etc. Funds are not allocated to make women aware of their legal rights and the mechanisms available to initiate proceedings in case of violation of their rights. Similarly, it was found that GoN officials are not aware about the legal framework concerning trafficking.

3.7.3 Trafficking in Persons in Post 2015 Earthquake Context

TIP is persisting and growing phenomena in Nepal. Even a TIP report has placed Nepal in Tier 2 and defines Nepal as a source, transit, and destination country for men, women, and children subjected to forced labor and sex trafficking and recommended to follow all Three measures namely prosecution, promotion and prevention for effective result.²¹⁵

As per the information provided by the Key Informants in all sampled districts, internal trafficking, including trafficking of boys has increased in post-earthquake context. It was informed that internal migration has scaled up in the post-earthquake context, where majority have migrated to cities for low

215 Trafficking of women and children in post- earthquake Nepal, Center for Legal Research and Resource Center (CeLRRd), 2017[Unpublished] and Trafficking in Person Report, U.S. Department of State, 2016.

paid jobs along with overseas labor migration. The migration has changed the social setting of the people in various aspects of life such as education and employment hence has been a strong push factor. However, a significant size of population has been victim of trafficking in the migratory cycle.

The girls of Ghyangfedi of Nuwakot, Haaku, Ramche and Syafru of Rasuwa are more vulnerable to trafficking in the districts. There has been change in the pattern of trafficking including the route that they use. Lakpa Tamang, Principal of Shree Sarashwoti School of Rasuwa stated that there is a high trend of trafficking of girls to China through Kerung Pass. In an incident, some of the students of class 8 and 9 studying in his school were trafficked to China and were rescued with the help of organizations like *Shakti Samuha*, Umbrella Foundation, Nepal Police, and Indigenous Rights Foundation.

Similarly, during the discussion, it was shared that due to discriminatory practices of different kinds, girls were looking for the spaces outside home, and in absence of secured environment, often found in the trafficked situation.

In an incident, two students were missing from Nuwakot district. Later, they were found in Kalanki, Kathmandu about to be trafficked, and were rescued by the Nepal Police. Later it was revealed that one among two girls had no mother and the other was scorned by her family members as she had illness. Brokers generally seek for such cases so that they can easily allure the girls to leave their home.

To deal with the diverse kinds of criminal incidents, Nepal Police lacks separate specialized unit to combat crimes such as trafficking. Since crimes are increasing, prevention and prosecution should be extended and should not be approached by the same lens.

According to the research done by CeLRRd, TIP has been increased after the earthquake. The research reflected that the number of the interception of the vulnerable persons has increased after the earthquake – an increase by at least 15% to 20% before and after three months of the earthquake.²¹⁶

Findings

- Vulnerability to trafficking of women and children has increased since unsafe migration has increased in post-earthquake setting.
- Women and girls who have been facing gender-based violence especially domestic violence are more likely to be trafficked.
- Unsafe shelter and poor economic condition of earthquake victims has increased vulnerability.
- Discriminatory treatment by the family members to women and girls may lead to trafficking since they do not have access to safe houses.

216 Trafficking of women and children in post- earthquake Nepal, CeLRRd, 2017

3.8 Gender-based Violence in Post-Earthquake Context

Gender-based Violence (GBV) is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.²¹⁷ According to the BPFA and Beijing Declaration, violence against women (VAW) is an obstacle to the enjoyment of the objectives of 'Equality, Peace and Development'.

According to the United States Strategy to prevent and respond gender-based violence globally, "gender-based violence" is violence that is directed at an individual based on his or her biological sex, gender identity, or perceived adherence to socially defined norms of masculinity and femininity. It includes physical, sexual, and psychological abuse; threats; coercion; arbitrary deprivation of liberty; and economic deprivation, whether occurring in public or private life²¹⁸.

According to the study, up to 70 per cent of women experience violence in their lifetime²¹⁹ and most importantly women from the age of 15-44 are more vulnerable and are more at risk from rape and domestic violence than from cancer, car accidents, war and malaria.²²⁰

VAW indicates the gender-based discrimination. According to the Declaration on Elimination of Violence against Women (DVAW), 1993, the gender-based violence is defined as: "any act that inflicts physical, sexual or mental harm or suffering, or the threats of such acts or coercion to deprive the legal rights of women in public and private sphere."²²¹

Furthermore, the UN Women defined that "Violence against women and girls is a grave violation of human rights. Its impact ranges from immediate to long-term multiple physical, sexual and mental consequences for women and girls, including death. It negatively affects women's general well-being and prevents women from fully participating in society. Violence not only has negative consequences for women but also their families, the community and the country at large. It has tremendous costs, from greater health care and legal expenses and losses in productivity, impacting national budgets and overall development."²²²

This kind of violence which amounts to crime prevails in every society, but its degree of prevalence may differ. Likewise, Nepal is not an exception of this world reality. The following data (Table No.1) shows that women of Nepal are being victims of violence in multiple spheres. This data reveals that domestic violence, rape, attempt to rape, polygamy, human trafficking, and witchcraft allegation are mostly committed against women and children. Among them, domestic violence is in high ratio with 79 percent.

217 General Recommendation No. 19 of CEDAW, Violence Against Women (Eleventh Session, 1992)

218 United States Strategy to Prevent and Respond Gender Based Violence Globally,

219 To End Violence Against Women, www.enviolence.un.org, November, 2011

220 Ibid

221 UN Declaration on Elimination of Violence Against Women, 1993.

222 <http://www.unwomen.org/en/what-we-do/ending-violence-against-women>

Table 1: Three years Data of Crimes Committed against Women and Children²²³ (FY 2070/71 to FY 2072/73)

Offences	Five Development Regions and Valley						Total	%
	East	Mid	West	Mid-west	Far-west	Valley		
Domestic Violence	1781	7728	4869	4152	1879	4092	24501	79.03
Rape	877	620	528	369	196	392	2982	9.62
Attempted Rape	435	330	242	167	97	157	1428	4.61
Polygamy	364	276	285	195	78	204	1402	4.52
Human Trafficking	138	92	119	66	60	103	578	1.86
Allegation of Witchcraft	34	58	6	10		2	110	0.35
Total	3629	9104	6050	4959	2310	4950	31002	100.00
Percentage	11.71	29.37	19.51	16.00	7.45	15.97		100

Recognizing that GBV is immoral and a human rights violation with high costs for families, communities and the nation, the then Prime Minister of Nepal in 2009 declared 2010 as the "Year against Gender Based Violence" with Nepal National Plan of Action which mentioned that violence against women and girls (VAWG) is a common and widespread form of GBV in the country. GBV encompasses the spectrum of abuse experienced disproportionately by women and perpetrated predominantly by men²²⁴.

Moreover, the reported cases only reflect the case documented by Nepal Police. There are higher possibilities of the undocumented cases in any of the concerned authorities. Considering this context of violence, this study has made an attempt to find out the situation of the following crimes in the sample districts.

3.8.1 Domestic Violence

The above-mentioned data shows that domestic violence is the most prevalent crime in Nepal. Family is a place where people normally feel safe and free to enjoy their rights and perform their duties. But, this concept does not apply to all places and all families. The incidents of violence occurred within the home is the evidence of it.

Domestic Violence Act talks about physical, psychological, economic and sexual forms of violence with legal remedies. It has provided interim remedies to the victims of violence and tried to make accessible to the needy people by providing jurisdiction to the National Women Commission, Police Station, the courts and the local authorities to receive complaints.²²⁵

223 Crime Against Women and Children, An Analysis of sexual offences from Human Rights perspectives, Tara Devi Thapa, Nepal Police, 2017

224 National Plan of Action Against Gender Based Violence, Nepal 2009

225 Clause 4, Domestic Violence Act, 2066

1. Causes that gives effect to the Domestic Violence

i. Consumption of Alcohol

Consumption of alcohol by the family member especially male member is one of the causes of domestic violence. Respondents from all sampled districts opined that there are instances of violence due to increasing consumption of alcohol among males of the districts. They further added that consumption of alcohol is increasing in women too and male too are victims sometimes. The consumption of alcohol is the normal phenomenon in the rural districts and has been increased in post-earthquake context.

According to the statistics collected by *Sahayatri*,²²⁶ an NGO working in Dhading district, the highest number of domestic violence cases was recorded in the year of earthquake compared to other years. Caste-wise data revealed that 88% of violence was committed in Brahmin, 52% among Dalits and 77% among Janjatis.

ii. Temporary Shelter after Earthquake

Respondents from the sampled districts mentioned that, people had to stay in temporary shelters following the earthquake. As government stakeholders including security forces were engaged in rescue activities, the implementation on GESI issues had become difficult immediately after the disaster. Similarly, this has affected the cases of domestic violence to bring them in the forefront as the attention shifted towards various other factors in post-earthquake context. The additional dimension of the decade-long activism has resulted in decreased incidence of domestic violence however; significant increase has been noticed in reporting as people are more aware about their rights.

iii. Unemployment and poor economic condition

Another reason of violence is unemployment and poor economic condition of women. To address this, various awareness programs are being conducted in the districts in active coordination with NGOs. Women are being provided with skill development trainings. Additionally, mother groups (*Aama Samuha*) too have been working as monitoring groups in dealing with every kind of violence.

Likewise, efforts are ongoing to eliminate violence against women by making women economically empowered. According to the newly elected President of Gosainkunda Village Council of Rasuwa²²⁷ stated that the village council is targeting to achieve economic development in the district. He stated that the village council is focusing more on industrial development and has included women and *Dalits* in this endeavor. Village council of Gosainkunda Village Council Rasuwa has not prioritized on any orientation and sensitization program to avoid the duplication of the works as many NGOs are already working on it.²²⁸

He further stated that they are intensely discussing on mechanism to include women in tourism business more and are operating a special program including 54 female volunteers for social service in the Council. They are also making a list of issues (food security, GESI, and others) worked on by NGOs so that the thematic issues can be picked up to work in the future.

226 *Sahayatrāsan* NGO working for the promotion of rights of women and underprivileged group in Dhading district

227 Conversation based with Mr. Kaisang Nurpu Tamang

228 Ibid

In the district of Dolakha, it was found that there is lack of safe/shelter house, education and trainings centers which has created difficulties in catering services for the women survivors of violence. The lack of safe houses thereby creates a troublesome situation to the victims as they do not have a place to return to live except their husbands' house, where they will again be exposed to violence.

The situation of Nuwakot with regards to the victims of GBV is also similar in nature. The district lacks One-Stop Crisis Management Centre (OCMC). The women victims of violence are kept in a room rented by District Development Committee, the food and accommodation are being taken care by the Women and Children's Office.

In the district of Dhading, there is presence of a safe house. In addition to this, there is a mediation center in the district, however, due to meager salary, people are losing interest to work and are raising outstanding question if the offered mechanism are adequate and effective. Correspondingly, it was mentioned during the discussion that the mediation center is receiving increased political pressure. The local representatives of the political parties were found often in influencing the outcome of mediation in favor of their people belonging to their party. This raises serious question of neutrality in dealing with the issues.

iv. Lack of adequate awareness about rights and remedies

Awareness level among local people is increasing through the efforts of local government and NGOs. NGOs in the communities are mostly working in coordination with Women and Children Officer. Likewise, District Police Office has also been conducting awareness programs, but such trainings and programs are not adequate to understand the procedure to get remedies. Women including victims of domestic violence in the districts lack knowledge of processes on legal remedies in case of violations. Many participants stressed that awareness on legal remedies and its procedure is required to be familiar with court proceeding in the district.

Findings

- Consumption of alcohol is one of the key causes of domestic violence.
- Unequal power relation between men and women creates violence within home.
- Poor economic condition and unemployment further increase violence.
- Lack of adequate awareness in regard rights and remedies has been the major hurdle to get justice.

Gaps and challenges of GBV

- There are more advocacy programs and less livelihood programs from I/NGOs. Similarly, the programs are short-lived.
- The people from rural parts of the district lack knowledge on legal processes in case of occurrence of crime.
- The newly elected members are enthusiastic in working towards the betterment of their district, however, lack issue-based orientation.

- Adequate awareness about rights, remedies and procedure to be followed by the victims, legal provisions remain in letters only.
- There is lack of safe/shelter house which has created difficulties for the women survivors of violence.
- There is no separate unit as well as trained officers under Nepal Police to investigate the cases of GBV.
- Unsafe migration is another existing challenge which needs immediate redressed.
- Newly elected local representatives lack competencies in dealing with GESI policies and handling the judicial committee.

Recommendations

- Programs should be developed to impart education on GESI policies, its implementation, challenges and the role of newly elected representatives holding responsibilities of the judicial committee.
- Livelihood and income generating programs must be provided to the people who are in poor and vulnerable condition.
- Awareness programs about rights and remedies must be widely organized.
- Focus on counseling the girls on the repercussions of migration is vital. For this, coordination can be formed with the government administrative head at the local level.
- Creation of a separate unit and deploy trained officers in each police office to deal with the cases related to violence is essential.
- At least one fully equipped safe house/shelter in each district should be in operation. Vital event registration should be made compulsory and effective.
- Construction of damaged house must be rebuilt immediately to minimize incidences of GBV.
- A strong mechanism should be developed to coordinate among government and non-governmental institutions especially with National Reconstruction Authority (NRA) in the post-earthquake context.



Photo by: TAF/Nepal

3.9 Traditional Harmful Practices (Witchcraft and Chhaupadi)

3.9.1 International Obligations Relating to Traditional Practices

Violations of women's and girls' rights fall under harmful practices. However, certain forms of VAW that are based and defended on grounds of tradition, culture, religion or superstition by some community members are termed as 'harmful traditional practices.'

The CRC obliges States to take effective and appropriate measures on abolishing traditional practices prejudicial to the health of children.²²⁹ Such is also reiterated in the CEDAW.²³⁰ Harmful practices are prohibited in various other international documents that call for the eradication of any conflicts, which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.²³¹

3.9.2 National Legislation Relating to Traditional Harmful Practices

The Constitution provides that no person shall be exploited on the basis of religion, custom, tradition, culture, practices or any other bases²³² as a fundamental right. Similar provision is also enshrined in the Directive Principles²³³ and the State Policy²³⁴ of the Constitution. This right is extended whereby any physical, mental, sexual or psychological or any other kind of violence against women, or any kind of oppression based on religious, social and cultural tradition, and other practices is forbidden by the Constitution.²³⁵ The punishment for the perpetrator and the compensation to the victim is also ensured by the same article.

Wiping out of the social ill practices for the protection of girls and women long had been provided for in the Local Self Governance Act, 1999.²³⁶ According to the Act, the District Development Committee (DDC) was provided with the duty to carry acts to wipe out the social ill practices and protect women and girls.²³⁷ These provisions were later realized in various Acts of the country as discussed below.

In Nepal, women, generally elderly women or widows of lower social status have been branded as witches and have been victims of unabated violence.²³⁸ Women, particularly so called 'low castes' are the hardest-hit sufferers as they are considered to be morally weak and needed to be controlled by men.²³⁹ Especially

229 CRC (n. 44) art. 24 (3).

230 CERD (n. 64) art. 25.

231 See UNGA, *Vienna Declaration and Programme of Action*, adopted on 12 July 1993, A/CONF.157/23, para 38; UN Specialised Conferences, *Beijing Declaration and Platform of Action*, 27 October 1995, Endorsed by GA Resolution 50/203, para 114 (a), para 119, para 25

232 Constitution of Nepal (n. 1) art 29 (2).

233 Ibid, art. 50 (2)

234 Ibid, art. 51 (c) (5)

235 Ibid, art. 38 (3)

236 *Local Self-Governance Act*, 2055 (1999), s. 28 (k)

237 Ibid, s. 189 (f)

238 Economic and Social Commission for Asia and the Pacific, *Gender and Development Discussion Paper Series No. 21: Harmful Traditional Practices in Three Countries of South Asia: culture, human rights and violence against women*, UN Economic and Social Commission for Asia and Pacific, p. 38.

239 David N. Gellner, 'Priests, Healers, Mediums and Witches: The Context of Possession in the Kathmandu Valley', Nepal. Man, New Series Vol. 29, No.1 Mar. 1994, p. 36.

widows and women from marginalized communities are subjected to discrimination and physical, sexual and psychological abuse in the name of witchcraft.²⁴⁰ Generally, public health hazards are blamed as the doings by witches.²⁴¹ To combat the crime of witchcraft in the country, the parliament enacted an Act ‘Witchcraft Act (Offense and Punishment) 2072 (2015)’. The Act enumerates a list of acts falling under witchcraft²⁴² and provides for the treatment of the victim. Police officials are obliged to ensure that doctors prepare a treatment report of the victims.²⁴³ The officials also have a duty to make an arrangement for the psychological counseling from an expert, but this support is only supposed to be provided immediately in the case of necessity.²⁴⁴ An assessment of which of the situation to be considered as ‘an immediate necessary’ situation is still nowhere mentioned.

A relief package to the victim is provided in the forms of an interim protective order²⁴⁵, compensation²⁴⁶ and money for treatment²⁴⁷ in the Act. The victim is provided with food and stay in the shelter he/she has been living in along with the protection from beating and to have gentle behavior. The assessment of the compensation is carried out in the nature of the crime, quantity, the pain inflicted on the victim and the economic status of the perpetrator. In case of inability of the perpetrator to pay the victim, the court will bear the cost of the compensation. Furthermore, the perpetrator should pay all the cost of the treatment of the victim and the person accompanying the victim in the hospital. The money for such cause can be drawn from the ‘Gender Violence Prevention Fund’ in case the court finds it necessary on the basis of economic status of the perpetrator. The victim in case requires security and separately treated, such should be arranged by the police station.²⁴⁸ Since the law itself is new and there is no regulation to implement these provisions, the result is yet to be seen.

Chhaupadi is a tradition practiced in the western parts of Nepal where girls and women during their menstruation are forbidden of participating in normal family life. They are not allowed to perform certain acts like cooking, touching men and are bound to stay in sheds, separate from the homes because they are considered impure during this period. Traditional practices like *chhaupadi*²⁴⁹ perpetuate the inferior status of women.²⁵⁰ Despite their harmful nature and their violation of international human rights laws, such practices persist because they are not questioned.²⁵¹ Following the Supreme Court’s order²⁵², a directive has been issued to eradicate *chhaupadi*. The directive aims at eradicating ill tradition and establishing equity based society.²⁵³ The GoN aims at eradicating *chhaupadi* in two prongs: with immediate program and long-term programs.²⁵⁴ The long-term program includes adhering to the ideas to create awareness against

240 Ibid, p.1

241 The Witchcraft and Human Rights Information Centre, PPR Nepal & Bar Human Rights Committee England and Wales, *Women Witchcraft Accusations and Persecution in Nepal*, 2014 Country Report

242 *Witchcraft Act (On Offense and Punishment) 2072 (2015)*, Sec 3

243 Ibid, Sec 5 (2)

244 Ibid, Sec 5 (3)

245 Ibid, Sec 10

246 Ibid, Sec 12

247 Ibid, Sec 13

248 Ibid, Sec 14

249 Chhaupadi is a practice where a Female are forced to stay in the shed for thirteen days during their first and second menstrual cycle, seven days in their third cycle and four days of every other menstrual cycle. The practice of *Chhaupadis* also followed by woman during child birth and for up to eleven days after the delivery.

250 Human Rights Matrix, ‘Harmful Traditional Practices’, available at <http://www.policyproject.com/matrix/harmfultradpractices.cfm>, accessed on 11 April 2016.

251 UNHCHR, Fact Sheet No.23, *Harmful Traditional Practices Affecting the Health of Women and Children*, available at <http://www.unhcr.ch/html/menu6/2/fs23.htm>, accessed on 16 April 2016.

252 *Dalit NGO Federation v HMG*, Writ No. 3303/061, 2 May 2005

253 Directives to Eradicate *Chhaupadi*, 2064, No. 2.

254 Ibid, No. 3.

traditional belief, understanding and practice towards *chhaupadi*, providing information about health service and nutrition to the women and girls who are directly affected by *chhaupadi* and respecting the person, family and community ending *chhaupadi* tradition. The long-term program includes conducting programs for inclusive participation of women by strengthening her economically, socially and politically and establishing equitable society by guaranteeing women human rights through legal mechanisms.

Among the districts visited, in Achham from the Far-Western Region of Nepal (Province 7), the practice of *chhaupadi* exists prominently. One of the stakeholders in the FGD, a representative of a local GoN body, was unaware of her duties assigned by *chhaupadi* directives. She looked perplexed upon being asked on her job as assigned by the *chhaupadi* directive. She initially denied the assignment, while she later stated that she is unaware of the mechanism provided in the directive and her job assigned on it. Similarly, civil society members expressed their heroic achievements and efforts in declaring around 13 Village Development Committees (VDCs) of the district as a '*chhaupadi* free' zones. However, their long run fight towards *chhaupadi* ended with the declaration of '*chhaupadi* free' zone. The role of media is similar in this. Many radio awareness programs were conducted preceding the declaration. Once the declaration took place, the airing of such programs too came to a halt.

The implementation of the declaration of eradication of *chhaupadi* has made significant change in Achham. The villagers and the family members are now ready to listen to the views of others and realized that *chhaupadi* left women behind in every sector of public life. However, the families who are educated and advocate for the eradication are themselves to practice it. After the declaration, many houses still practice *chhaupadi* covertly. The families generally pretend to not follow *chhaupadi*, but at night the girls and women are bound to stay separately. One of the stakeholders stressed that monitoring becomes a tough job as *chhaupadi* cannot be monitored during the day as people are busy outside the house and at nights, it is difficult for males to check the cow-sheds or houses as they might be accused of having ill intention. Females normally do not go for monitoring at nights.

Meneka Dhungana, a local radio journalist mentioned, 'Generally, women of all categories are victimized by this practice. However, the progress is that at least there are few families where the women are not sent to cow-sheds but have to live separately. This is an achievement itself.' She added, 'the girls are aware of their security and can take care of themselves now.' This was what *chhaupadi* eradication had brought to her life and many other girls of Achham. The program initiations of eradication of *chhaupadi* have been playing positive roles for the reform. It is a long process and takes time to completely eradicate it as one of the respondents mentioned during the discussions. However, it will be meaningless if monitoring mechanisms and follow up programs go inactive or be discontinued.



Photo by: Rage Against Rape

3.10 Rape

3.10.1 International Obligations Relating to Rape

The lexis of the CEDAW does not explicitly list a right against sexual violence, however; the *CEDAW Committee*, under *General Recommendation 19* recognizes and affirms that GBV, including rape and other forms of sexual violence, is a 'form of discrimination within the meaning of article 1 of the Convention.'²⁵⁵ The recommendation has further called for the State to uphold the responsibility of preventing violations of rights, investigating and punishing acts of violence and providing compensation.²⁵⁶ The importance of care and attention to be provided to the victims of the rape can never be sidelined. Hence, States are obliged to safeguard the rights of a victim of sexual violence, especially the rape victims, to receive medical treatment to recover from the physical harm and trauma inflicted upon her, having a lasting or permanent impact in the *International Covenant on Economic, Social and Cultural Rights*.²⁵⁷

The CRC obligates States to 'protect the child from all forms of sexual exploitation and sexual abuses including the inducement or coercion of a child to engage in any unlawful sexual activity.'²⁵⁸ It is further bolstered in the *General Comment 13* of the *Committee on the Rights of the Child* which explains that 'any' sexual activity involving constitutes sexual violence and is detrimental to the fundamental principle of survival and development of the children.²⁵⁹ An extensive discussion on the definition of rape as a war crime is made by the International Criminal Tribunal for Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR). Both the tribunals have affirmed that sexual, violence, in particular, rape constitutes torture.²⁶⁰

The *BPEA* envisages that in order for women to be empowered in actual sense, their human right 'to have control over and decide freely and responsibly on matters related to their sexuality.'²⁶¹ It also construes equality between men and women including full respect for the integrity of the person requires mutual respect, consent and shared responsibility for sexual contact and its consequences.²⁶²

3.10.2 National Legislation Relating to Rape

The specific element of rape as form of sexual violence is considered generally that there has to be penetration, even if slightest. The evolving jurisprudence recognizes vaginal, oral and anal penetration. National legislations excluding any of these forms are deemed as exclusionary and detrimental to the

255 See for detail, UNGA, *Convention on the Elimination of All Forms of Discrimination Against Women*, adopted on 18 December 1979, 1249 UNTS 13.

256 CEDAW Committee, *General Recommendation 19*, adopted in 1992, UN Doc. A/47/38, para 9; Also see *Declaration on the Elimination of Violence against Women* (n 5), art. 4; Also see UNGA, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, adopted on 16 March 2001, UN Doc. A/RES/54/263, art.2(a).

257 Art.12(1), 12(2)(d) of ICESCR

258 Art. 34 of the CRC.

259 UN Committee on the Rights of the Child (CRC), *General comment No. 13 on the right of the child to freedom from all forms of violence*.

260 *Kumarac* (n 16), para.153; *Prosecutor v. Delalic*, ICTY- 96-21-T, 12 November 1998, para. 494; *Prosecutor v. Semanza*, ICTR-97-20-T, 13 May 2003, para. 342. For further details also see UN Economic and Social Council, *Report by Special Rapporteur, Mr. P. Kooijmans*, 19 February 1986, UN Doc. E/CN.4/1986/15, p. 29.

261 World Conference on Women, *Beijing Declaration and Platform for Action*, adopted on 15 September 1995, UN Doc. A/CONF.177/20, para 97.

262 Ibid.

spirit of principle physical integrity of the victim.²⁶³ With this notion, the Act to Amend Some Nepal Acts for Maintaining Gender Equality has amended on the provisions of the Chapter of Rape of *Muluki Ain* to include partial penetration of penis into vagina as intercourse.²⁶⁴ Likewise, the definition of rape has been broadened to incorporate oral and anal penetration too.²⁶⁵ The new definition as provided in the gazette has included oral sex, anal sex, and insertion of objects into vagina as rape.²⁶⁶ The word ‘pedophile’ has been used in the recent formed Gazette instead of ‘unnatural sex’. The gazette has also provisioned for safe houses in case of marital rape, monetary payment by husband for treatment, to manage arrangements for women’s security. The alterations in the chapter of Rape suit the modern jurisprudence of the crime of rape.

Furthermore, the Act Amending Some Nepal Acts to Maintain Gender Equality has assisted in explaining the ‘consent’ in the definition of the rape. The definition of rape is expressed as ‘Whoever does have sexual intercourse with any woman without her consent or with a girl child below the age of sixteen years with or without her consent’ constitutes of rape. The consent in this definition does not include the consent acquired through fear, threat, duress or coercion or by subjecting her to undue influence, fraud or by use of force or kidnapping her or making her a hostage or consent acquired in the state of unconsciousness.²⁶⁷

The mechanism of punishment in rape cases is based on ‘age groups’. The lower the age, the higher the punishment is provisioned in the Chapter of Rape.²⁶⁸ The Act amending some Nepal Acts to maintain Gender Equality too has not been able to address this problematic provision which determines the intensity of severity of crime by the ‘age of the victim’ and not by ‘act of crime’.²⁶⁹ The provision is still guided by the traditional concept of punishing of offenders of rape for breaking the virginity and chastity’ of the victim. A paradigm shift to consider rape as harm against the ‘dignity of the victim’ is essential.

Rape is categorized under the Chapter as Gang Rape,²⁷⁰ Marital Rape,²⁷¹ Custodial Rape,²⁷² Sodomy with minor²⁷³. The incestuous sexual relation and the rape with the knowledge of being infected with HIV brings additional punishment to the one prescribed by the chapter on Rape. Gang rape, rape to a pregnant woman or a disabled woman is punished with 5 years of imprisonment added to the prescribed imprisonment. The punishment in marital rape too has been increased to the punishment of term of imprisonment, ranging from three years to five years.²⁷⁴

Regarding the compensation provided to the victim in rape cases; the property to be awarded as compensation must be specified in the judgment, even if such property is held by the accused jointly

263 *SV/P v. Bulgaria*, CEDAW Committee Comm. no.No. 31/2011, communicated on 24 November 2012, UN Doc. CEDAW/C/53/D/31/2011, p. 11.

264 Amending Act some Nepal Acts to maintain Gender Equality, 2072, Nepal Gazette, Ashoj14, 2072. (2006), Sec 12 (1) (c).

265 Nepal Gazette, 14 Ashoj 2072.

266 Nepal Gazette, Ashoj 14, 2072

267 Amending Act some Nepal Acts to maintain Gender Equality, 2072, Nepal Gazette, Ashoj14, 2072 (n 10), sec 12 (1).

268 National Code (n. 165) chapter on Rape, clause 3.

269 Amending Act some Nepal Acts to maintain Gender Equality, 2072, Nepal Gazette, Ashoj14, 2072 (n 10)

270 National Code (n 165) clause 3A.

271 Ibid, Clause 3.

272 Ibid, Chapter on Decency, Clause 5.

273 Ibid, Chapter on rape, Clause 9 A.

274 Amending Act some Nepal Acts to maintain Gender Equality, 2072, Nepal Gazette, Ashoj14, 2072

with other right holders from the family.²⁷⁵ If the accused has no property, state is responsible to provide compensation to the victim through the victim compensation fund established at Women and Children Center of particular district.²⁷⁶ Further, the compensation of any kind may be awarded to the victim only when the verdict is announced by convicting the accused. The provision like this depicts insensitivity of the State towards the rape victims. The procedural complexities make it difficult for the victims to get justice. The provision is apparently insufficient and inadequate.

The time limitation to file a law suit on rape cases has been increased from thirty-five days to six months.²⁷⁷ The National Code has provided no time limitation in certain cases²⁷⁸ but a grave case like rape is limited to six months of time limitation. One of the respondents viewed that even existing time limitation is insufficient and can leave the victim remediless.

The direct mechanism for proceeding of the crime of rape is the court after police station. These country organs perform the role of investigating to prosecuting to deciding the case.

3.10.3 Rape in Post 2015 Earthquake Context

There are increased cases of rape in last 2-3 years and more prominently after the earthquake in Dhading. The majority of victims of rape is girls below 14 and raped by family members/relatives. This information is further justified by the data from Nepal Police which shows that 'rape is the second largest crime committed against women and girls in Nepal. (See: Table 1 above). Rape and attempted rape are committed against women and girls. Victims as young as 16 months to as old as 76 years old had been prey as three years data are considered.²⁷⁹

Most surprising fact according to this research is more than 60% of rape and its attempt is committed either by close relatives of victims or by someone who is closely known to her. It shows that known persons pose more threat to women and girls than unknown persons. Out of close relatives, father is found to be the most common threat to the daughters.

There are few incidents of FIR not being registered, due to hesitation of family and survivor along with the threat by offender. There is lack of separate investigation unit inside police. Hence, the need for trained investigative officers to deal with such sensitive issues is the demand of the day.

Many were raped while they were in temporary shelters in the post-earthquake circumstances. As the community people and police were engaged in collecting post-disaster relief distribution, incidences of rape occurred. Many mentally challenged girls have been victims of rape. In few instances, the parents were aware regarding the incident only after the victim became pregnant. The following table shows that reporting of the rape cases to the police is increasing in number.

275 National Code (n 165), clause 10 (c)

276 Amending Act some Nepal Acts to maintain Gender Equality, 2072, Nepal Gazette, Ashoj14, 2072.

277 Published on Nepal Gazette,14Ashoj 2072.

278 National Code (n 165), Chapter on Court Management, clause 37, Chapter on Partition, clause 35, Chapter on General Transactions, clause 40, Chapter on Theft, clause 29.

279 Crime Against Women and Children, An Analysis of sexual offences from Human Rights perspectives, Tara Devi Thapa, Nepal Police, 2017[unpublished]

Table-2: Three Years Crime Data of Sexual Offences²⁸⁰

Fiscal Years	Rape	Attempted Rape	Total
2070/71	912	414	1326
2071/72	981	562	1543
2072/73	1090	452	1542
Total	2983	1428	4411

Findings

- Rape crime has been increasing in post-earthquake situation.
- Many were raped while they were in temporary shelters taking advantage of their vulnerable state.
- Threat was posed by the offender to the victims and her family to register the FIR
- Mostly, the victims are not aware about their rights and remedies provided by law.

280 Crime Against Women and Children, An Analysis of sexual offences from Human Rights perspectives, Tara Devi Thapa, Nepal Police, 2017



Photo by: Hamro Chahana Nepal

4

SECTORAL IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS TREATIES RELATING TO GESI BY NEPAL

4.1 Health Sector

This section reviews specific international instruments relevant right to health focusing on women and Dalits to examine the extent to which the instruments are implemented through formulation of national legislations with provisions for special measures and other appropriate measures. The section also examines for any discriminatory provisions that violates the international instruments ratified by Nepal. Likewise, it has made an attempt to analyze the district level implementation of it.

4.2 International Obligations Relating to Health

'Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care.'²⁸¹ From the very beginning, right to health has been regarded as the basic rights of people by international human rights instruments. The ICESCR has recognized 'highest attainable standard of physical and mental health.'²⁸² Likewise, reproductive health right of working mother with paid leave before and after childbirth has been provided as special rights of women.²⁸³

The CERD provided equal rights of all people and non-discrimination based on race guaranteed 'right to public health, medical care, social security and social services' as state responsibility under Article 5(e) (iv).

Article 12 of the CEDAW, realizing the fact that women are discriminated, obliges all state parties to take all appropriate measures to eliminate discrimination against women in the field of health care.²⁸⁴ Further,

281 Article 25 of Universal Declaration of Human Rights (UDHR), 1948

282 CEDAW (n. 56) Article 12 (1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

283 UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, UN, Treaty Series, vol. 993, p. 3, Article 10 (2), available at: <http://www.refworld.org/docid/3ae6b36c0.html> [accessed 19 March 2016].

284 CEDAW (n. 56), Article 12 (1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

this Article provides rights relating to reproductive health rights as special rights of women.²⁸⁵ General Recommendation 24 to CEDAW²⁸⁶ specifically deals with the health issues of women. The recommendation has called for State Parties to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health-care services, including those related to family planning. The recommendation has also extended the list of rights to be provided by the State which includes of appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

The CEDAW Committee encourages the State parties to include in their reports information on diseases, health conditions and conditions hazardous to health that affect women or certain groups of women differently from men, as well as information on possible intervention in this regard. The committee has called the States parties to ensure, on a basis of equality of men and women, access to health-care services, information and education implies an obligation to respect, protect and fulfill women's rights to health care. States parties have the responsibility to ensure that legislation and executive action and policy comply with these three obligations.²⁸⁷

The Committee recommends that States must enact and effectively enforce the laws and the formulation of policies, including health-care protocols and hospital procedures to address violence against women and sexual abuse of girl children and the provision of appropriate health services and provide gender sensitive trainings. The Committee has called the States to fulfill the duty of an obligation on States parties to take appropriate legislative, judicial, administrative, budgetary, economic and other measures to the maximum extent of their available resources to ensure that women realize their rights to health care. Further, the State parties should ensure the rights of female and male adolescents to sexual and reproductive health education by properly trained personnel in specially designed programs that respect their right to privacy and confidentiality. The committee also realizes that women have the right to be fully informed, by properly trained personnel, of their options in agreeing to treatment or research, including likely benefits and potential adverse effects of proposed procedures and available alternatives. In a nutshell, the committee has called on the States parties to implement a comprehensive national strategy to promote women's health throughout their lifespan.

The CEDAW Committee in its General Recommendation No 24 urges state parties to report their legislation, plan, policies and programs regarding health of women with reliable data with preventive and curative measures.²⁸⁸ It also talks about "acceptable and quality" health care service.²⁸⁹

285 Ibid Article 12 (2) Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

286 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 19: Violence against women, 1992*, available at: <http://www.refworld.org/docid/52d920c54.html> [accessed 18 July 2016].

287 Ibid

288 States parties are in the best position to report on the most critical health issues affecting women in that country. Therefore, in order to enable the Committee to evaluate whether measures to eliminate discrimination against women in the field of health care are appropriate, States parties must report on their health legislation, plans and policies for women with reliable data disaggregated by sex on the incidence and severity of diseases and conditions hazardous to women's health and nutrition and on the availability and cost-effectiveness of preventive and curative measures. For details see General Recommendation adopted by the CEDAW Committee, Twentieth session (1999), General Recommendation No. 24

289 Acceptable services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives. States parties should not permit forms of coercion, such as non-consensual sterilization, mandatory testing for sexually transmitted diseases or mandatory pregnancy testing as a condition of employment that violate women's rights to informed consent and dignity. Ibid, GR 24.

The CRC provides that “States parties recognize the right of the child to the enjoyment of the highest attainable standard of health.”²⁹⁰ Apart from that CRC committee has obliged State Parties to respect, protect and fulfill the rights relating to health of child.²⁹¹ The committee also urges states parties to take all appropriate measures including legislative and executive efforts considering availability, accessibility, acceptability and quality.²⁹²

4.3 National Implementation of GESI Related International Obligations on Health

Article 35 of the Constitution recognizes the right to health care as a fundamental right. Citizens’ right to be informed about their health condition and equal access to health care has also been provided for under the Constitution.²⁹³ Article 38 includes the right to reproductive health as a fundamental right of women. It also guarantees the right to have special opportunity in the spheres of health based on positive discrimination.²⁹⁴ Likewise, Article 40 provides health care and social security to the *Dalit* community. It further mentions that “special arrangements shall be made in accordance with law.”²⁹⁵ While the Constitution provides for the free distribution of 35 types of medicines from health posts across the country, in reality these medicines are not available in all health posts and district hospitals.

The Constitution has prescribed certain state policies where easily available and equal access to high quality health care for all need has been ensured under basic needs of citizens. It further has to adopt a policy to gradually increase necessary investment in the public health sector in order to make citizens healthy.²⁹⁶

There is no special legislation formulated by the GoN targeting women or *Dalit* health right issues specifically. However, certain rights related to health of a woman are safeguarded by the Constitution and several national legislations. The Civil Service Act, 2049 (1993) has ensured maternity leave and maternity care leave.²⁹⁷ The Civil Service Rules has provided maternity leave of sixty days before and/or after delivery. The mother can extend the leave without pay for an additional period of six months in

290 CRC (n.)Article 24

291 UN Committee on the Rights of the Child (CRC), General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), 17 April 2013, CRC/C/GC/15, available at: <http://www.refworld.org/docid/51ef9e134.html> [accessed 19 March 2016].

292 Ibid.

293 Article 35 on the right to health care: (1) Every citizen shall have the right to seek basic health care services from the state and no citizen shall be deprived of emergency health care. (2) Each person shall have the right to be informed about his/her health condition with regard to health care services. (3) Each person shall have equal access to health care. (4) Each citizen shall have the right to access to clean water and hygiene.

294 Art. 38 Right of women (2) Every woman shall have the right relating to safe motherhood and reproductive health. (5) Women shall have the right to special opportunity in the spheres of education, health, employment and social security on the basis of positive discrimination.

295 Art. 40 Right of *Dalits* (3) In order to provide health care and social security to Dalit community, special arrangements shall be made in accordance with law. (7) The facilities provided to the Dalit community according to this Article, shall have to be justly distributed to Dalit women and men and all the Dalit communities living in different parts of the country, ensuring that all Dalits receive the facilities proportionally.

296 Art. 51 State policies:

The State shall pursue the following policies: (j) Policies regarding labor and employment: (9) Gradually increase the number of health institutions and health workers, while emphasizing research on health in order to make qualitative health service available to all. (h) Policies regarding the basic needs of citizens: (5) The State shall gradually increase necessary investment in the public health sector in order to make citizens healthy. (6) Ensuring easily available and equal access to high quality health care for all. (9) Gradually increase the number of health institutions and health workers, while emphasizing research on health in order to make qualitative health service available to all.

297 Civil Service Act, 2049 Sec 71 (d) & (d1)

maximum as not to be deducted from any leave.²⁹⁸ The leave assures the full salary of the female during her leave.²⁹⁹ Such leave is provided only for two times during the service period.³⁰⁰ Extended to this right, the employee who has got the maternity leave and the maternity care leave is be given an infant care allowance in a lump sum of five thousand rupees for each infant for a maximum of two infants.³⁰¹ The male civil employee is provided with leave of fifteen days before and/or after delivery as maternity care leave with full salary assured.³⁰²

The Village Development Committee (VDC) is the designated body at local level to provide the citizens with their right to health through the provision of health services. The VDC is empowered to formulate programs relating to family planning, mother and child welfare, extensive vaccination, nutrition, population education and public health, and to implement or cause to be implemented the same. It also includes authority to launch program on family planning and maternity and childcare.³⁰³ Likewise, in formulating the plans, the VDC has to give priority to projects providing direct benefits to women as well as those belonging to disadvantaged communities.³⁰⁴ While formulating the periodical plans of VDCs, matters relating to disadvantaged groups have to be included.³⁰⁵ Similarly, project plans of municipality have to be formulated in such a way to provide direct benefits to women as well as other disadvantaged groups.³⁰⁶ The GoN is responsible to regularly monitor as to whether the local body has carried out the functions entrusted to it pursuant to the prevailing law, whether it has accorded necessary priority to disadvantaged, women and others and give necessary directions upon it.³⁰⁷

Nepalese laws are based on the Civil and Criminal Code 1963 (the *Muluki Ain* 2020). The amendments to the Code have been made twelve times so far and have brought substantial changes to the Code since its inception. Along with these amendments, the Parliament also has framed an Act known as “The Act to Amend Some Nepal Acts for Maintaining Gender Equality, 2063 (2006)” and has been published in *Nepalese Gazette*³⁰⁸ to amend some Nepalese Acts to ensure gender equality in relation to the health of women and *Dalits*.

The Police Act enlists the crimes that are punishable with imprisonment of term not exceeding five years or a fine not exceeding the total amount of one year's salary, if committed by police officer in Section 34. The *Nepalese Gazette* has now added GBV as one of the crimes punishable under the same section.³⁰⁹ It includes any act that restricts a woman to enjoy her freedom.³¹⁰ Reference to mental harm as one of the effects of domestic violence should be taken as a progressive step.

The *Gazette* has also given recognition to acid attacks under the ‘chapter on hurt/battery’ and penalized it from twenty-five rupees to one lakh rupees fine and imprisonment ranging from three years to eight

298 Civil Service Rules, Rule 59 (1).

299 Ibid, Rule 59 (2).

300 Ibid, Rule 59 (3).

301 Ibid, Rule 59 (3a).

302 Ibid, Rule 59 (A).

303 Ibid, Rule 28 (g).

304 Ibid, 43 (3) (e).

305 Ibid, Rule 43 (6) (c).

306 Ibid, Rule 111 (4) (e).

307 Ibid, Rule 234 (1).

308 *Nepalese Gazette* are the documents with the laws published.

309 *Nepalese Gazette* 2072, added as amendment to Police Act, 2012.

310 Ibid, added as Clause 1 (a) (ii) on the Chapter of Court Management.

years.³¹¹ The punishment for committing an act on pregnant woman with anger or malice resulting in abortion has been increased.³¹² Identification of sex of the fetus with the intention of terminating pregnancy is punished with imprisonment from three months to six months. The one who carries out or causes to carry out pregnancy termination after identification of sex is liable with imprisonment from six months to two years.³¹³

Comprehensive policies are the primary manifestations of the commitment of the GoN commitment to meet the needs of its constituents. Policies like strategy, guidelines, and plans are adopted by the executive branch of the government. They make broad commitments for action, articulate necessary steps and divide the tasks among the GoN agencies. Below mentioned are few of such policies:

4.3.1 Health Sector Gender Equality and Social Inclusion Strategy³¹⁴

This strategy has been prepared to fulfill the health goals of the National Planning Commission (NPC)'s Three Year Interim Plan (TYIP). It also reflects significant programmatic contributions to achieving the Millennium Development Goals (MDGs). The implementation of the strategy was anticipated to achieve all the health goals of the NPC, the MDGs and greatly improve the quality of and access to health services. The preparation of the strategy involved the participation of policy makers, various development agencies, NGOs, the private sector and other concerned stakeholders through workshops and consultative meetings. The strategy aims at achieving certain objectives including to develop policies, strategies, plans and programs that create a favorable environment for integrating (mainstreaming) GESI in Nepal's health sector; to enhance the capacity of service providers and ensure equitable access and use of health services by the poor, vulnerable and marginalized castes and ethnic groups using a rights-based approach; and to improve health-seeking behavior of the poor, vulnerable and marginalized castes and ethnic groups using a rights-based approach.

To achieve the aforementioned objectives, the strategy proposes the following sub-strategies:

- (i) Ensure inclusion of GESI in the development of policies, strategies, plans, setting standards, and budgeting, and advocate for use of such policies, standards and budget provisioning at the central level;
- (ii) Prioritize GESI in planning, programming, budgeting, monitoring and evaluation at local levels (DDC, DHO, DPHO and VDC) to ensure services are accessible and available to the poor, vulnerable and marginalized castes and ethnic groups;
- (iii) Establish and institutionalize GESI unit/desk at the MOHP, DOHS and divisions of the DOHS, regional directorates, and DHO/DPHO, and Social Service Units for GESI at central, regional, sub-regional, and zonal hospitals;

311 Ibid, added as clause 14 (A) on the Chapter on Hurt/Battery.

312 Ibid, added as clause 32 on the Chapter on Homicide. The term of imprisonment ranges from three years of imprisonment to five years of imprisonment for the abortion of foetus of twelve week to twenty-five weeks.

313 National Code (n. 165) chapter on Homicide, Clause 28 (c) & (d).

314 Government of Nepal, Ministry of Health and Population, *Health Sector Gender Equality and Social Inclusion Strategy* (GESI Strategy), (December 2009).

- (iv) Enhance the capacity of the service providers to deliver essential health care service to poor, vulnerable, marginalized castes and ethnic groups in an equitable manner and make service providers responsible and accountable;
- (v) Address GESI-related barriers by properly identifying target groups, ensuring remote communities are reached, and emphasizing programs to reduce morbidity and mortality of the poor, vulnerable and marginalized castes and ethnic groups;
- (vi) Enhance or modify services to be sensitive to GESI and ensure access is equitable and services are delivered uniformly without regard to social status;
- (vii) Develop and implement Information Education and Communication (IEC) programs to improve health seeking behavior of the poor, vulnerable and marginalized groups;
- (viii) Empower the target groups to demand their rights and conduct their roles with realizing their responsibility.

Added to this, the Ministry of Health and Population has introduced ‘Operational Guidelines for GESI Mainstreaming in the Health Sector’ in 2013 and institutionalized the GESI unit for mainstreaming gender issues in the health sector, along with efforts to harmonize gender into policy, law, strategies and programs.

4.3.2 The National Safe Motherhood Program³¹⁵

The National Safe Motherhood Program was launched in 2002. The 15-year strategy (2002-2017) aims at improving the maternal and neonatal health in Nepal. It focuses on reduction of MMR (Maternal Mortality Rate) and Neo-natal Mortality (NNM). The strategy is to increase access to services at hospitals and primary health care centers through establishment of basic and comprehensive essential obstetric care and skilled attendance through trained Maternal and Child Health Workers (MCHW) at the community level. The expected outcomes of this strategy are (i) increased access to all relevant maternal health information and services; and (ii) increased access to all relevant maternal health services ensured.

There are currently 1478 birth centers in the country, which constitutes one birth center for every 3,080 women of reproductive age. However, on checking the practical intricacies, many facilities required in birth centers are lacking. The districts are struggling to train Auxiliary Nurse Midwife (ANM) as Skilled Birth Attendants (SBA). Further, the birth centers are not open 24 hours a day. The main reason behind this is lack of adequate staff and can also be attributed to feeble monitoring system. The institutional deliveries in Nepal are only 50% of total births,³¹⁶ which indicates reluctance of the Government’s commitment towards institutional deliveries. Furthermore, to obtain the allowance guaranteed by the GoN for the institutional delivery is a tedious process.

315 Government of Nepal, Ministry of Health and Population, Department of Health Services, *The National Safe Motherhood Program*, 2002, Family Health Division.

316 DOHS, Department of Health Services, *Annual Report*, Kathmandu: Ministry of Health, 2013/14.

4.3.3 National Policy on Skilled Birth Attendants (SBA), 2006³¹⁷

The policy was launched to achieve the MDG targets of reducing MMR by three-quarters between 1990 and 2015 and an increase in the proportion of births attended by skilled attendant. The policy set as target 60% of births attended by a skilled attendant by 2015 amidst challenges related to human resource development and management, socio-economic and cultural barriers to accessing SBAs, high unmet need for emergency obstetric care, and weak referral back-up. The primary objective held by the policy is to reduce maternal and neonatal morbidity and mortality by ensuring availability, access and utilization of skilled care at every birth. For this purpose, the strategies adopted by the Policy include human resource development, strengthening SBA training sites, deployment and retention of SBAs, quality service provision, enabling the required environment with effective partnership with health workers in the district, a birthing facility, technical supervision, supplies of adequate essential drugs and equipment, encouragement to take a lead in the advising MoHP on matters pertaining to the registration of nursing and midwifery practitioners and maintaining the professional standards in their profession.

The policy additionally proposes strategies to encourage NGOs and the private sector and communities to establish maternity hospitals and community based "birth centers" by mobilizing their own resources. The policy assigns the role for human resource management, and particularly the SBAs to the HR/PA division of MoHP. The National Health Training Centre (NHTC) is assigned lead on the SBA human resource development.

Besides this policy, the GoN has implemented the 'Multi-sector Nutritional Plan 2013-2017' (NPC, Multi-sector Nutritional Plan) which targets teenage girls, pregnant women and breast-feeding mothers of low income groups. This plan is being implemented and has had positive impacts so far, such as increase in life expectancy, decrease in maternal mortality and improvements in the basic health of girl children.

4.3.4 National Health Policy³¹⁸

The policy aims at providing 'Universal Health Coverage'. Under this scheme, the policy provides for free medical services for the fundamental rights related to health of a citizen in an effective manner. The Policy aims at achieving this by making laws on fundamental health services, providing free health service, developing and implementing national directives and protocols to provide effective health service, providing health services in both rural areas and excluded urban areas. The Policy aims at providing one doctor and nurse along with other health technicians in every VDC and one nurse and a midwife in every ward. The Policy provides a mechanism to appoint an investigating officer in every elected area with power of investigation and management of health services.

317 Government of Nepal, Ministry of Health and Population, Department of Health Services, National Policy on Skilled Birth Attendants, 2006 (Supplementary to Safe Motherhood Policy 1998), Family Health Division

318 Government of Nepal, Ministry of Health and Population, *National Health Policy 2071* (2015)

4.3.5 Female Community Health Volunteer Fund Operational Guideline³¹⁹

The operational guideline is based on mobilization of a network of local women volunteers. Currently, the program has mobilized 52,000 female volunteers representing every ward of all VDCs in Nepal. The Guideline provides for the establishment of a fund, a 'District Level Fund', to be managed by a District Level Management Committee to promote the welfare of health volunteers at district level and Health Volunteer Fund Committee at VDC level comprising of a Female Community Health volunteer, Health facility in charge and representative of the concerned VDC. The Regional Health Directorate and District Health Office/Public Health Office are assigned to monitor and issue the directives of the VDC level fund.

4.3.6 National Plan of Action on Gender Equality and Women Empowerment³²⁰

The National Plan of Action (NAP) aims at empowering women by eradicating gender discrimination through education and training. The NAP adopts a policy of advocacy that reaches women of all classes, increases the level of women education, coordination between the local bodies and respective ministries, prioritize infrastructure of development in rural areas, develops human resources in the health sector, encourage the private and non-government sector to conduct programs for women progress, to strengthen the information, education and media sectors for the enhancement of female health in education, advocate for the budget and programs for women health, prioritize the issues of women health, to mainstream gender in the budget and programs related to the health sector.

Further, the plans include the adoption of measure for the positive discrimination of women in the health sector, implementation of programs to provide relating to the health of women, operation of NGOs and local bodies, encouraging health workers of rural areas, controlling HIV AIDS, ensuring safe motherhood, provision of services for adolescent girls and examination and evaluation of gender sensitivity, increasing gender awareness and building capacity of females, operating private sectors, non-governmental sectors and local bodies.

4.3.7 National Plan of Action on Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 2060 B.S.³²¹

The NPA lists out the programs and activities to undertake actions and programs related to female reproductive health and protection of fundamental health rights. The NPA provides for the expansion of unified health service to protect fundamental health and maternity health of women along with progression on the preventive, progressive and remedial service of health services; conduct co-education and training on reproductive health, maternal health, family planning, sex education; include maternal and reproductive health education in secondary level curriculum; increase access to safe abortion, provide information related to HIV/AIDS, diarrhea, malnutrition, gynecological problems and delivery;

319 Government of Nepal, Ministry of Health and Population, *Female Community Health Volunteer Fund Operational Guideline*, 2008, Family Health Division,

320 Government of Nepal, MoWCSC, *National Plan of Action on Gender Equality and Women Empowerment*, 2004

321 Government of Nepal, *National Plan of Action on Convention on The Elimination of All Forms of Discrimination Against Women (CEDAW) 2060 B.S.*

organize programs targeting women's needs, versatile work and her busy hours and implement general recommendation no. 24 under article 12 of CEDAW.

4.3.8 District Level Implementation status of GESI Policy in health

The GoN has formulated policies and programs targeting women especially in reproductive health sector. However, several challenges prevail in achieving the practical outcomes provided in the policies and programs.

a) Awareness Raising

The majority of women during the field visits were aware of the programs and policies brought by the GoN in the health sector. However, few women are aware on their health conditions, how they can prevent it, the reliable place to access the information relating to it and the mechanism adopted and provided by the GoN to achieve health measures. While the GoN has launched certain programs targeting women health, nevertheless most of the programs are treatment oriented than preventive ones. While the need for treatment-oriented programming is huge, prevention programs play a crucial role in protecting the future generation or unaffected women. A practice initiated by a project of GoN and funded by an INGO since April 2015 in Ramechhap is mention-worthy. The project is named 'Unity against Gender Violence' chaired by the CDO and consists of a team of a Government, Attorney nurse, doctor. Under the project, when a rape victim approaches to the health post for check-up, a team mentioned above would assist her and would report and file the case on her behalf.

b) Capacity Building

An effective health sector requires adequate doctors, nurses, skilled birth attendants, physician and others. There is a lack of adequate number of trained service providers for health sector. This scarcity reflects on the initiative taken by women for her treatment. When a woman approaches health institution and does not receive the needed health assistance, the probability of her returning to the health service is rare. One of the stakeholders in Sindhuli stated that the people resort to traditional practices such as witchcraft/*Dhami/Jhankri*³²² when they find no doctors in health institutions. All the districts visited during the field research did not have sufficient female health workers. A concern was raised in the sampled districts where the female health workers are de-motivated to work as they were paid very little for their work.

c) Logistical support

Many districts lack the required health services. Despite the governmental policies on logistic support, many districts have no ambulance, equipment like X-ray machines, free medical supplies, SBVs and other facilities required. Smaller facilities like soaps are also absent in the health institutions. The medicines in the districts are insufficient for all the people. The budget allocated, and the supply of the medicine is meager and does not reach all the people in need. In Sindhuli district, sanitary pads after the earthquake

322 Traditional healer, who's often been criticized for being superstitious and creating more psychological harm in people's lives trying to make them believe on cultural and religious malpractices.

were readily available. When NGOs provided the sanitary pads in one of the wards of Sindhuli after earthquake, many women could not make use of it as they did not use underpants. The supplies hence were useless as they trashed the pads due to unawareness about the process of using it.

d) Monitoring

The lack of monitoring mechanisms in relation to health services in the districts of Nepal has not only resulted in a lack of information but also misuse of the resources provided. The incidents in Ramechhap and Sindhuli are similar to the scarcity of free supplies of medicine. Generally, free medicine is sold in the pharmacies of the private clinics in the districts and large portion of the people in the district are unaware of the 'free' medicine. In Ramechhap, the medicine is sold in the building of the Government health post itself. In addition, most of the doctors do not stay or visit the rural wards of the district and focus their work in the headquarters. Usually doctors setup their own private clinics and provide less time to the Government health institutions. Furthermore, the budget allocated to the health and women are not utilized properly. There is no assessment or planning on the use of budget and generally the budget is used haphazardly. The problem was similar in all the districts visited. There is no need analysis carried out on the budget for the required sector and the Government officials use it at their own discretion.

e) Budget

Studies have clearly demonstrated the strong linkages between better health and reduction of poverty and income inequality.³²³Nepal has made significant strides in the health sector over the past decade. At the same line, the budget of 15/16 continued to increase the budget on health from previous ones. The budget speech of 2015/16 made by the Minister of Finance promises the following:

- Allocation has been ensured of Rs. 250 million for the development of physical infrastructure of Karnali Health Science Academy.
- The dress allowance that has been provided to the maternal health workers, who are significantly contributing to maternal and child health, has been increased by NPR.1000 to make it NPR.6000.
- Allocation of NPR.750 million for health facilities for disadvantaged citizens, doubling of the budget to make the free distribution of medicine more effective and easily available and no levying of fees for legal abortions in GoN health institutions.
- Arrangement of free of cost treatment in the Government health institutions for the new born baby till 28 days from birthday.
- In order to facilitate access of all Nepalese people to basic health services, the "One Village One Doctor" program will be gradually implemented by ensuring at least one doctor in every health organization. An arrangement will be made for infrastructure with equipment and tools and required health workers in all Government hospitals and health posts.

323 Devendra P. Shrestha, *Nepal: Health Sector Program Budgeting and Cost Effectiveness Analysis*, Policy Brief, Series 2, Health, Policy Research and Development Nepal.

- 15 beds in each newly formed municipality in the coming Fiscal Year.
- Allocation of NPR .270 million to start free of cost master level education including MD and MS provided by the Government teaching institutes.
- A program will be launched in order to end all kind of violence against women and adolescent girls who have been at risk and suffering from economic and social disadvantaged and are poor, single, affected by sexual violence, natural disaster under the *Yogamaya Women Empowerment Program*.
- Provision of quality and regular supply of free medicine in the Government hospitals and health institutions.

Table 3: Budget details 2013/14, 2014/15 and 2015/16

Heading	2013/14 Actual	2014/15 Revised	2015/16 Estimate	Source		
				GON	Grant	Loan
Health	26518430	31262916	41338648	33596789	7741859	0
Medical products, appliances/equipment	781978	609853	618667	349180	269487	0
Out-patient services	2036432	2311697	6390827	1888679	4502148	0
Hospital services	8992521	13053982	12281692	12052467	229225	0
Public health services	12151572	12622877	17031799	15449491	1582308	0
Repro-Health	2555927	2664507	5015663	3856972	1158691	0

There has been a significant increase in the GoN expenditure in health. The GoN has introduced many new initiatives such as free health service, maternity incentive scheme etc in health sector resulting to the sharp rise in the health expenditure including per capita expenditure in recent years.

Source: Budget Speech of Fiscal Year 2015/16 Ministry of Finance, 14 July 2015

Table 4: Administrative Expenditure Estimates (Including Financing)

Heading	2013/14 Actual	2014/2015 Revised	2015/16 Estimate	Source	
				GON	Grant
Ministry of Health and Population	22,852,247	24,691,972	36,729,504	28,987,645	7,741,859
Recurrent	19,922,242	22,019,445	33,495,360	26,376,008	7,119,352
Capital	2,930,005	2,672,527	3,234,144	2,611,637	622,507

Source: Budget Speech of Fiscal Year 2015/16 Ministry of Finance, 14 July 2015

Table 5: Function-wise Prioritization of Budget (Including Financing)

Sector/ Ministry	1 st Priority		2 nd Priority		3 rd Priority		Total
	Recurrent	Capital & Financing	Recurrent	Capital & Financing	Recurrent	Capital & Financing	
Health	31,749,932	3,067,065	5,645,352	351,438	524,861	0	41,338,648
Medical products, appliances & equipment	208,480	0	0	0	0	0	618,667

Source: Budget Speech of Fiscal Year 2015/16 Ministry of Finance, 14 July 2015

Key Findings of the district level implementation

- Implementation mechanisms are available in laws and policies (Central to local level);
- Mechanisms are formed on the basis of laws and policies (central to local level);
- Local stakeholders are aware about their responsibility;
- Increasing the level of awareness among local people;
- Capacity building programs are ongoing;
- Logistic supports for example: ambulance, equipment like X-ray machines are not available in the hospitals of all sampled districts;
- 'Free medicine' is not adequately available in the VDCs; and
- Doctors and trained human resources are not readily available in need.

4.4 Health in Post-2015 Earthquake Context

The Constitution has ensured right to health³²⁴ along with reproductive right,³²⁵ health care and social security to the *Dalit* community³²⁶ and has adopted a Policy to increase necessary investment in the public health sector in order to make citizens healthy.³²⁷ Various laws correspond in line of the Constitutional spirit.³²⁸ Policies like strategy, guidelines, and plans are adopted by the executive branch of the government.³²⁹ Nevertheless, there are still rooms for challenges in the districts as:

324 Constitution of Nepal, 2015, Article 35

325 Ibid, Art 38

326 Ibid, Art. 40

327 Ibid, Art. 51

328 See Civil Service Rules, Rule 59 (1), Rule 59 (2), 59 (3), 59 (3a); The Act to Amend Some Nepal Acts for Maintaining Gender Equality, 2063 (2006); Domestic violence (Offense and Punishment) Act, 2008 (2063).

329 Government of Nepal (GON), Ministry of Health and Population (MOHP), *Health Sector Gender Equality and Social Inclusion Strategy* (GESI Strategy), (December 2009); MOHP, *The National Safe Motherhood Program*, 2002, Family Health Division; DOHS, Department of Health Services, *Annual Report*, Kathmandu: Ministry of Health, 2013/14; MOHP, National Policy on Skilled Birth Attendants, 2006 (Supplementary to Safe Motherhood Policy 1998), Family Health Division; MOHP, *National Health Policy 2071* (2015); GON, MOHP, *Female Community Health Volunteer Fund Operational Guideline*, 2008, Family Health Division; GON, MoWCSC, National Plan of Action on Gender Equality and Women Empowerment, 2004; GON, National Plan of Action on Convention On The Elimination of All Forms of Discrimination Against Women (CEDAW) 2060 B.S.

i) Higher number of victims at the health posts

There are many incidences of child marriages and domestic abuses in the district. However, the exact data of such is difficult to find. In Dhading, the data from police stations depicts that child marriage is in decreasing trend whereas pregnant girls below 20 years of age visiting health posts are in a high number. Interestingly, the health posts are more reliable places to seek the real victims than police stations to check the data on VAW. The police records consequently have become misleading. Therefore, it is important to set up a national mechanism to conduct fair and correct data collection on child marriages and other crimes. This would not only be helpful to develop strategies for each district but also to control the duplication of the work carried out by different entities.

ii) Lack of access to free medicine and infrastructure

The District Health Office coordinates and controls the activities of Health Post, Primary Health Centre and District Hospital. 38, 53 and 83 types of medicine should be provided free of cost by Health posts, Primary Health Centre and District Hospital respectively. 10%, 20% and 70% of the local budget are respectively provided by the district, region and center to buy medicines. Although iron and vitamin pills to women are adequately provided in the case of pregnancy, but majority of the medicines that are supposed to be distributed in cost free manner are lacking in the hospital either syphoning of medicine by the corrupt team itself or the central government do not supply those medicines to the government hospitals. For instance, in Dhading, only 22 types of medicines that are available which is cost free.

Practice such as mothers delivering at birthing center are provided with NPR. 1500 as transportation help and warm clothes alongside reduction of the cost of medical facilities in districts can be taken as good practice. Yet, the districts lack resources to a great extent. For instance, in Dhading, Trishuli Hospital has only one operation theatre and one gynecologist. Henceforward, in cases of caesarian delivery where women have to be taken to hospital, it takes hours to reach Kathmandu. There were initially two gynecologists in the district but after transfer of one, only one is remaining and there are no regular doctors in the district. There is neither any transparent monitoring mechanism nor any complaints handling body who could take up the issue for solution.

In addition to this, post-earthquake, many hospitals and health posts have been damaged and are awaiting reconstruction. Until such is done, there are open spaces in few hospitals/posts for check-up which is uncomfortable for women patients.

Recommendations

- Establish a robust monitoring mechanism to check on the irregularity of the doctors and medical supplies in the government hospitals.
- Extend the services of One Stop Crisis Management Centers in all districts.
- Create a legal and psychosocial counseling desk in the health posts for the victims of abuse.
- Increase and ensure essential medical equipment in the health posts.



Photo by: Prashant Budhathoki

This section reviews Nepal’s international instruments relating to the right to education focusing on women and *Dalits* to examine the extent to which the obligations contained therein are implemented at national and district level.

5.1 International Obligations Relating to Education

Article 26 of the UDHR provides for the right to education for everyone. The article further mentions that there should be free and compulsory education in the elementary and fundamental stages.³³⁰

Similarly, articles 13 and 14 of the ICESCR recognize the right of everyone to education, obliging the State Party to ensure compulsory, free of charge, plan of action and progressive implementation mechanisms.³³¹

Article 28 (1) of CRC provides for free and compulsory education of children.³³² It has obliged state parties to make education available and accessible to every child and reduce drop-out rate.

Article 10 of the CEDAW provides for the equal right of men and women to education stating that “State Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure equality of

330 1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the UN for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

331 See UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant)*, 10 May 1999, E/1992/23, available at: <http://www.refworld.org/docid/4538838c0.html> [accessed 18 April 2016]

332 Article 28(1) States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

men and women.”³³³ The CEDAW Committee has further urged all States parties to adopt education and public information programs to help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women.³³⁴

The right to education has further been assured by the CERD, which states that “State Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination”³³⁵

5.2 National Implementation of GESI Related International Obligations on Education

The Constitution recognizes the right to education as a fundamental right stating that every citizen shall have the right to compulsory and free basic education, and free education up to the secondary level.³³⁶ Physically and visually impaired persons and citizens who are financially poor shall have the right to free higher education as provided for in law and free education with the medium of brail script respectively.³³⁷

Likewise, Article 38 (5) of same Constitution places emphasis on the special right for women in education, mentioning that “women shall have the right to special opportunity in the spheres of education, health, employment and social security on the basis of positive discrimination.”

For *Dalit students*, the Constitution guarantees the provision of free education and scholarships from the primary to higher level of education as provided for in law.³³⁸ However, the specification “as provided by law”, could potentially limit the implementation of the article.

The Education Act of Nepal (1971) provides that the community schools should provide free primary education and the students of such schools should be provided with free books by the GoN.³³⁹ The provision further clarifies that students from *Dalits* and the tribal class that fall below the poverty line are provided with free education in community schools.³⁴⁰ The names of such students are recommended by the Village Education Committee or the concerned Ward Office of the Municipality.³⁴¹ The schools must ask the income status during the time of admitting the students.³⁴²

333 See CEDAW (n. 56) Article 10.

334 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, 5 November 2014, CEDAW/C/GC/32, available at: <http://www.refworld.org/docid/54620fb54.html> [accessed 18 April 2016]

335 CEDAW (n. 56) Article 7.

336 Ibid Article 31 Right to education.

337 Article 31(3) The physically impaired and citizens who are financially poor shall have the right to free higher education as provided for in law.

(4) The visually impaired person shall have the right to free education with the medium of brail script.

(5) Every Nepali community living in Nepal shall have the right to acquire education in its mother tongue up to the secondary level, and the right to open and run schools and educational institutions as provided for by law.

338 Article 40 (2)

339 Education Act 1971(2028) , sec 16 (d)

340 Ibid, sec 16 (d) (2), Education Rules, Rule 152 (1)

341 Education Rules 2002 (2059) , Rule 152 (2)

342 Ibid, Rule 78 (5)

The Act has further ensured the provision of scholarships in lower-secondary and secondary level.³⁴³ The Act also establishes a rural education development fund to support the physical infrastructure of the community schools operating in rural areas.³⁴⁴ The District Education Officer is responsible for the distribution system of free course books by collecting the opinion of the management committee and teachers.³⁴⁵

The functions of the VDC regarding education are provided in the LSGA³⁴⁶. Facilities relating to education are one of the sectors on which the GoN bases its classification of VDCs of the country. The underdeveloped village development areas with educational facilities are to be provided with arrangements for affluent means and facilities on the recommendation of the concerned DDC.³⁴⁷ The VDC is assigned with the responsibility to establish pre-primary schools with its own resources, to give permission to establish them and to operate and manage the same, to supervise and manage the schools being operated within the village development area, to assist in providing primary level education in mother tongue within the village development area. They should also provide programs on adult education and informal education and to carry out or cause to be carried out the same, to establish and operate or cause to be established or operate libraries and to make arrangements for providing scholarships to the students of oppressed ethnic communities who are extremely backward from economic point of view.³⁴⁸

5.2.1 GESI policies on education

Policies are the manifestation of the GoN towards the commitments under international instruments and provisions guaranteed under the laws of the country. The policies reflect the mechanisms adopted to implement the provisions in the laws and regulations. They build on the efforts made by the GoN in regard to strengthening equity in education.

School Sector Reform Plan³⁴⁹

The reform plan was initiated by the Ministry of Education aiming at achieving the attainment of access, equality and excellence in education. With the purpose to improve efficiency in education, aiming at Education For All (EFA) and MDG goals to reach parity in gender and inclusion, and ensure equitable access to quality education through a holistic school sector approach; the plan aims at implementing EFA, Secondary Education Support Program (SESP), Teacher Education Project (TEP), Food for Education and other programs have provided a firm foundation for the GoN to move from standalone (sub) structures to a more holistic sectorial approach.

The plan has adopted GESI as one of the major thrusts to make schools gender and *Dalit* responsive. The local governments are provided a lead role in creating conducive environment and will encourage girls and other children facing multiple exclusions, including *Dalits* to attend school. Special attention is

343 Education Act (n 12) , sec 11 (o)

344 Ibid, sec 12 (b)

345 Education Rules (n 14), Rule 16 (t)

346 Sec 28 (d), Local Self Governance Act 2055

347 Sec 20, Local Self Governance Act 2055

348 Ibid, Sec 28 (d)

349 Government of Nepal, Ministry of Education, School Sector Reform Plan, 2009-2015

paid to providing protection to girls by making sanitary facilities, personal safety, and taking measures to curb harassment and bullying practices. All schools are aimed expected to provide basic sanitary facilities including toilets, water and change-room for girls. Norms and standards are set to ensure child-friendly learning environment in all schools, addressing diversity needs of learners.

A Code of Conduct is to be introduced both at policy and practice levels to make all institutions, organizations and individuals responsive to gender and inclusion. Major strategies for inclusion in the SSR (School Sector Reform) Plan consist of multi-lingual education, targeted interventions for extremely marginalized groups and communities, and flexible as well as decentralized approaches and differentiated treatments are employed to facilitate and integrate the populations with diversity needs. Special provisions are to be made in the curricula, teacher education and delivery systems to reorient the frontline providers and make the schools responsive to the needs of the people living with HIV/AIDS.

Mechanisms under the Reform Plan

New institutional arrangements are made to functionalize the plan which consists of:

- Education Policy Committee (EPC) aiming at policy harmonization and coordination.
- Technical Board aiming at integrating technical functions and granting approval to norms and standards in the MoE system.
- National Examinations Board (NEB) aiming at integrating school level examination functions, certification and accreditation.
- Education Review Office (ERO) aiming at systemic auditing against the national norms and standards. In addition to the exiting support systems, the SSR Plan introduces new institutions to underpin the implementation of the reform. The new institutional arrangements will include:
 - (i) EPC aiming at policy harmonization and coordination;
 - (ii) Technical Board aiming at integrating technical functions and granting approval to norms and standards in the MoE system;
 - (iii) NEB aiming at integrating school level examination functions, certification and accreditation; and
 - (iv) ERO aiming at systemic auditing against the national norms and standards.

Consolidated Equity Strategy 2014³⁵⁰

The Strategy is the guiding framework for implementing educational programs with targeted interventions across the education sector. The need of the strategy was identified by the GoN and SSRP development partners during the 2012 SSRP Mid-Term Review. The strategy focuses on access to education, participation on education and learning outcomes from the education. These three sectors are dealt differently on the basis of gender, disability and vulnerable groups. The strategy objectives include:

1. Achieving equity in access, identifying the most marginalized groups of learners that have so far remained unable to access education, through utilizing disaggregated data, monitoring and initiatives to ensure they are supported on a needs basis and thereby able to overcome their barriers in accessing education;
2. Strengthening of equity in participation, retention and inclusion. Identifying learners that are currently dropping out of education or at risk of doing so and addressing their specific barriers, both schools and non-school based barriers by addressing the knowledge will be an alignment of regards to these barriers. There will be an alignment of efforts and initiatives to strengthen their educational survival rate; and
3. Strengthening of equity in learning outcomes, reducing inequitable learning outcomes and addressing root causes of these discrepancies through targeted interventions focused on the removal of barriers for learners and catering specific needs, with regards to the relevance of education to skills that translate into quality life outcomes in the context of the learner and labor market.

The strategy provides that monitoring and evaluation of education should involve:

- Developing equity profiles at district levels for all districts that have specific disaggregated analysis on the district context against the equity dimensions and areas as well as district wise targets against national equity indicators within the education sector.
- Institutionalizing of the Education Review Office and strengthen its capacity to monitor equitable access, participation and learning outcomes on an annual basis.
- Ensuring programs from the GoN and from I/NGOs rely on the same baselines and data sets generated through NFEMIS.
- Ensuring child clubs at all schools.
- Conducting further research to deepen understanding on specific challenges to reach equitable access, participation and quality learning outcomes.
- Undertaking an impact evaluation on the effect of scholarships and redefine distribution and allocation by using severity/prevalence scale developed by the Thematic Working Group

350 Government of Nepal, Ministry of Education, *Consolidated Equity Strategy 2014, For the School Education Sector in Nepal* Department of Education, Ministry of Education.

- Carrying out research activities focusing on developing disabilities friendly modes of teaching learning and assessment system.

National Plan of Action on Gender Equality and Women Empowerment 2004³⁵¹

The NPA aims at empowering women by eradicating gender discrimination through education and training. The NAP aims at achieving the purpose of providing equal opportunities to education to women and *Dalits*, to eradicate illiteracy of women, increase participation of women in higher secondary and high level of education, monitor the system of women education, develop business and skillful leadership capacity of women, increase participation of women in policy making of education sector, provide equal access in technical and business training, increase gender awareness in the sector of education, develop a system of gender sensitive information, increase gender sensitivity on education system.

The NAP has outlined the outputs, indicators and means of verification as listed below:

Outputs	Indicators	Means of Verification
<ul style="list-style-type: none"> • Increasing enrollment of girl students • Legal provision ensuring education as a right of a woman • Education system with gender sensitivity • Increase in participation from non-governmental and local representatives • Increase in training for women on higher education and training • Increase in women participation in policy making bodies • Increase in access to education of women and <i>Dalits</i> • Increase awareness on gender sensitivity • Establishment of gender information system • Establishment of monitoring mechanisms • Establishment of women education fund 	<ul style="list-style-type: none"> • Policy of positive discrimination on education sector • Bill on the amendment on laws • Increase the scholarship scheme for women • Increase in participation in local bodies and non- governmental sector • Initiating ECD, Out School Program / Alternative Schooling • Gender Budgeting on allocation of resources • Initiating Gender audit in the programs and activities • Increase female teachers • Formation of Gender sensitive monitoring indicators • Legal mechanism for women education fund • Directive to institutions that provide female teachers and disable women 	<ul style="list-style-type: none"> • Study and Investigation • Independent survey reports • Reporting of the media • Programs and budget • Monitoring report • People's opinion • Institutional reports • Data to show the gender disparity

351 Government of Nepal, MoWCSC, *National Plan of Action on Gender Equality and Women Empowerment 2004*.

Education for All, National Plan of Action³⁵²

The World Education Forum on Education for All (EFA), held in Dakar, Senegal in April 2000 reviewed the achievements of EFA campaigns in 1990 realized the difficulties of countries like Nepal. Accordingly, the Forum adopted the Dakar Framework for Action (DFA), Education for All: Meeting our Collective Commitments. The NPA realizes the challenges it has faced to attain EFA and continues the EFA campaign as the core strategy of educational development aligning the strategies outlined by the world forum. Thereby, the NPA report itself is a report of the process and outcome of the preparation to achieve EFA goals.

The NPA had outlined following six goals to reach by the end of year 2015:

- a. Expanding and improving comprehensive early childhood care and education, especially for the most vulnerable and disadvantaged children;
- b. Ensuring that by 2015 all children, particularly girls, the disabled, and children in difficult circumstances and those belonging to ethnic minorities, and *Dalits* have access to free and compulsory primary education of good quality;
- c. Ensuring that the learning needs of all young people and adults are met through equitable access to appropriate learning and life skills programs;
- d. Achieving a 50% improvement in levels of adult literacy by 2015, especially for women, and equitable access to basic and continuing education for all adults;
- e. Eliminating gender disparities in primary and secondary education by 2005 and achieving gender equality in education by 2015, with a focus on ensuring girl's full and equal access to and achievement in, basic education of good quality; and
- f. Improving all aspects of the quality of education and ensuring excellence of all so that recognized and measurable learning outcomes are achieved by all, especially in literacy, numeracy and essential life skills.

The NPA has also focused on practical approaches in dealing with the access to education with schemes like developing Community Learning Centres (CLCs), providing Council for Technical Education and Vocational Training (CTEVT), teaching adult learning skills and others. The NPA also mentions of the formation of national language policy commission to make learning easier by providing education in the mother tongue as per the seventh amendment of the Education Act in 2001.

The main policy-strategies to reduce the gender gap discussed in the NPA are:

- o Providing scholarship/incentives for girls to join school and complete the full cycle of schooling;
- o Improving school environment in order to make it more gender friendly;

352 Government of Nepal, Ministry of Education, *Education for All, National Plan of Action*, 2001-2003.

- Enhancing participation of females in education through affirmative action, e.g., promoting the recruitment of female teachers at primary school. There is provision for the recruitment of at least one female teacher in each primary school. Special incentive programs such as girls' scholarship programs have been implemented to enhance participation of girl students; and
- Implementing gender sensitization programs for teachers, head teachers, educators, community, parents and students. The concerns of gender equity are now in-built in teacher training packages.

The NPA has taken the job of implementing through networking of educational institutions such as schools, Community Learning Centers, Community-Based Organizations, and other Non-Governmental Organizations that will be continually generating knowledge and disseminating information. It also discusses a social web to ensure that all the children, youths and adults have at least basic knowledge, skills and information for sustainable living with dignity.

The NPA has adopted strategies in three phases:

Immediate Strategy (2001-2005)	Medium Term Strategy (2006-2011)	Long Term Strategy (2012-2015)
The strategy focuses on Basic and Primary Education Project (BPEP).	this period will include <ul style="list-style-type: none"> • integrated approach to ECD -- community-based ECD and school-based ECD • free and compulsory primary education of reasonable quality • open learning opportunities to enhance life-long learning • income generation program for the parents • completion of infrastructure for the initiation of basic and primary education up to grade 8 • increasing the minimum qualification of teachers (12+ years of education with 10-month training) 	Extension of basic and primary education up to grade 8 (grades 1-8) <ul style="list-style-type: none"> • De-centralized curriculum and textbooks with adequate life skill related content • Definitive improvement in the school curriculum practices • Full enhancement of the teacher qualification and training

National Plan of Action on Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 2060 B.S.³⁵³

The NPA focuses on co-education and training on reproductive health, family planning, sex education by local bodies. It further stresses on access to trainings to women, effective implementation of free and compulsory primary education, make the school management committee accountable, arrange scholarship programs and free Tiffin system, monitoring the existing schools, compulsory female representative in school management committee, increase access to education by providing education materials and

³⁵³ Government of Nepal, MoWCSC, National Plan of Action on Convention on The Elimination of All Forms of Discrimination Against Women (CEDAW) 2060 B.S.

books and maintaining a managed girls hostel, encourage elderly women to study, make teachers and management committee liable to decrease the rate of drop outs, conduct technical and business related trainings, conduct timely trainings for teachers, manage a monitoring team of local bodies and civil society, conduct trainings on apprenticeship and create awareness to provide education to women and girls.

District Level Implementation of GESI Policy on Education:

The Constitution and other laws have realized that education as a basic right of citizens and mechanisms to its implementation through various policies have been developed accordingly. A stark reality amidst this lies in the fact that many women in Nepal are still not empowered with education.

The GoN has been providing different scholarship schemes at different levels of school education. The schemes aim to expand equitable access of students at corresponding levels, improve retention rate, and broaden the meaningful teaching opportunities. Despite this, on the average, 500,000 students enrolled in grade one to 10 tend to drop-out each year in Nepal.

The implementation of policies suffers through various difficulties enlisted below:

a) Awareness Raising

Nepalese mindset still is imbedded in patriarchal roots where women are treated as servers to men. This reason has led to many child marriages in various parts of the country, where education is denied after marriage. The deeply entrenched and imbued patriarchy does not end here. It entrenches to drop out from the schools and campuses without receiving degrees. During the study, there was unanimity among stakeholders that ‘behavioral change’ is required to change the dynamics of how women are treated to not encourage them to complete their studies. Added to this, the stakeholders also mentioned that the child marriage has reduced to a large extent from the previous times.

Various schemes have been adopted by the GoN to encourage the participation of females in education. One such scheme is that the GoN is rooting for is ‘scholarship scheme to needy and poor women and *Dalits*’. However, during the field visit, it was found that certain groups of people were not aware on the scholarship schemes provided by the Government. The awareness on the scholarship schemes though has reached the headquarters of the districts; it still has not made its way to the rural VDCs.

During the FGDs, the stakeholders who presented their ideas on the subject matters were men from the so called high caste families in majority. Although women participation was maintained, fewer women wanted to reflect on the laws and ongoing context of the district. Similar was in the case of *Dalits*.

b) Infrastructural and logistical support

Many schools in Nepal after the 2015 earthquake were destructed causing repercussions on the education. The NRA has been supposedly provided with the mandate to initiate the rebuilding process; however,

such has not taken full pace. Supposing the Authority's pace of work, it would take long for the schools to resume its work as per the capacity. This will only force many students to remain out of school involuntarily for unknown period of time. Conducting the classes inside the damaged schools will only put the life of students at risk.

The policies are the reflection of the commitment and responsibilities undertaken by the GoN to fulfill the provisions guaranteed by the Constitution and laws of the country. The NPA (2001-2015) too has specified that the policies are fashioned with special consideration to girl students, disabled and *Dalits*. National data identifies between 1.94% of the total population of Nepal having some form of disability.³⁵⁴ The GoN data shows that there are only 1% of the total enrolment at primary level and 0.6% at secondary level of disabled children, indicating their enrolment at these levels is between 28% and 17% respectively.³⁵⁵ Thus, the participation of disabled children themselves is low. Certain impediments such as adoption of facilities such as brail reading, sign language and others required for these students are reality in the districts of Nepal. In such cases, the provided scholarship fund becomes inefficient. Concern on disabled girl students is prominent as the girl children of rural area is in greater threat of access to education compared to disabled boy of urban area.³⁵⁶ Hence, disabled girl children of rural area require special attention on education. Few schools in *Ramechhap* were found to use sign language as a teaching method to hearing impaired students. However, the practice is rare, inadequate and limited. The 2011 census data reveal that 45.11% rural families in their household do not have toilets. As likely to this data, separate toilet for girl students is absent in most of the districts jeopardizing their reproductive health.

The qualification and training of ECD teachers/facilitators remains a concern, so is the provision of their low remuneration. The NPA provides for technical skills such as CTEVT. However, there is lack of qualified trainers to motivate and guide the people towards appropriate life skill training. Overall, the infrastructure and the system arrangements still need to be developed to reach the people in an effective and beneficial way.

c) Limited Support

The budget allocated for girl students is limited as it does not suffice to be provided to the needy students. The number of needy students is more while the budget is provided for few. This has resulted in unequal distribution of scholarships. The distribution has also resulted in rippling effect of discontinuation of girl students' education despite their enrollment in primary education and better performance than boy students.

Women are not provided with free technical education. The trainings for women are limited to cottage industries and home utilities like preparing bead necklace, weaving, stitching, which has less of their help. Such learning skills for adult women become functionless where the men have already started overtaking on technical jobs.

354 Central Bureau of Statistics, 2012.

355 Government of Nepal, Ministry of Education, Department of Education, Flash Report, 2013.

356 UNICEF analysis of 15 sample districts based on NLSS 2010/11.

The educational system itself has been criticized for its dogmatic approach of teaching theories and neglecting the practical approach. Such education does not empower women in real sense and is reflected among the educated mass of women. Stakeholders in all districts raised the issue that women officers in public post generally lack confidence to utilize the budget. They are reluctant and fear on which sector to invest the budget and tend to seek help from male officers. The instance challenges the concept of 'meaningful participation' that arises from lack of skill though education provided. Further, if women always seek help from male officers, women friendly decisions become far reach.

d) Setting the priorities

A public officer is entitled with the power to utilize the budget on the required areas. However, the practice is quite different. When the allocation of budget is performed, no assessment or need analysis is performed and the money is released haphazardly. The budget to women development is invested in smaller and short-term trainings. In other case, the money that is earmarked for women development is used in building of roads or buildings. The public officials on this advocate that even women are benefited by these development schemes of roads and buildings.

e) Monitoring

The scholarship scheme record is maintained in every district. At the first place, the records show proper utilization of budget. Sadly, the distribution is practiced differently. An incident of Kaski reflected that the students provided with scholarship are made to sign on the document while the allotted money is used to pay the teachers. The deficiency of proper monitoring mechanism has resulted in misuse of the budget allotted. The feeble monitoring mechanism has caused in ineffective use of the budget.

f) Scholarships

There are certain incentives prescribed to make education accessible and equitable. According to the report by Ministry of Education "the largest program is **scholarships** that are currently provided for girls, *Dalit*, children from remote and deprived areas (the Karnali zone) and children with disabilities. The relative importance and effect of these is not fully understood, but several studies indicate that they have a significant impact on enrolment. Currently, the GoN has adopted a 'blanket approach' for the dissemination of these incentives, which often causes them to be insufficient for the poorest and most needy children.³⁵⁷

Same report further reveals that 'free education is said to be undermined by indirect costs, such as finding the money for notebooks, still causing poor families to not enroll their children in school (22.1% of children never attended school because they had to 'help at home') or take their children out of school.'³⁵⁸

357 Government of Nepal, Ministry of Education Consolidated Equity Strategy 2014, For the School Education Sector in Nepal Department of Education.

358 Ibid.

g) Inclusive Policies and enabling environment

Another program implemented by the GoN is ‘Welcome to School Campaign’ which helped to bring the students from marginalized communities, such as Satar, Chepang, Majhi, Bote, Danuwar, and Thami. In addition, the GoN has established partnerships with national and local media to ensure transparency and accountability as well as advocacy and awareness on the value of and right to education.³⁵⁹ Making education inclusive it is found that the GoN has adopted affirmative action oriented policies with regard to establishing a balanced representation of the population within the teacher force and the public service sector as a whole. Currently 45% of all teaching positions are reserved by policy for under-represented groups, out of which 33% are reserved for female teachers and SMC need to have at least 1 female member.³⁶⁰

Key Findings

- Implementation mechanisms are available in laws and policies (Central to local level);
- Mechanisms are formed on the basis of laws and policies (central to local level);
- Local stakeholders are aware about their responsibility;
- Heightened awareness level among people (mainly men) was found;
- Budget is allocated (though insufficient);
- Scholarships are provided for girls and Dalits. However, the researcher uncovered that in many instances the students provided with scholarship are made to sign on the document while the allotted money is used to pay the teachers; and
- The number of needy students for scholarship is more while the budget is provided for few.

5.3 Education in Post 2015 Context

The Constitution recognizes the right to education as a fundamental right³⁶¹ with compulsory and free basic education, and free education up to the secondary level. Physically and visually impaired persons and citizens who are financially poor shall have the right to free higher education as provided for in law and free education with the medium of brail script respectively.³⁶² The Constitution also guarantees special right for women in education.³⁶³ Similarly, *Dalits* are provided with free education and scholarships from primary to

359 Ibid.

360 Government of Nepal, Ministry of Education, Consolidated Equity Strategy 2014, For the School Education Sector in Nepal Department of Education, p. 14.

361 Constitution of Nepal, 2015, Article 31

362 Ibid, Article 31(3)

363 Ibid, Art 38 (5)

higher level of education.³⁶⁴ Similar provisions have been maintained in various national Acts.³⁶⁵ Along with these, various policies³⁶⁶ and NPAs have been framed to implement the provisions of laws adequately and effectively.³⁶⁷ Despite these, certain challenges still persist in the districts as described below:

i) Limited scholarships

Despite the provision guaranteed for free primary, secondary and higher secondary education to *Dalits*, the stakeholders in Dhading complained that *Dalit* students are not provided with such and bound to drop out. Few stakeholders stated that the money is used to pay the teacher's salary. Even in the cases the *Dalit* students are provided with the scholarship, the amount is only NPR. 400 which is very less compared to increasing market price. Few participants complained that 'need basis analysis' is not performed while distributing scholarship. Due to this reason, *Dalits* who are economically sound are receiving education scholarship compared to poor non-*Dalits*. It raises an outstanding concern on the accessibility of the people who are not in need over the population in vulnerable condition and who are in dire need of support for their development.

Another dimension of the scholarship has been the accountability of making the scholarship award dignified so that the student who receive such support do not get bullied from the fellow classmate on the ground of not being able to afford the education due to economic circumstances. The students who received scholarship on the merit basis were not reported of being victim of bullies.

ii) No facilities at schools

None of the districts had gender friendly infrastructure in the schools. The problem with separate toilet has become acute challenge subsequent to the destruction of buildings and toilets due to earthquake. Similarly, it was found that the Government teachers were engaged with their maximum time for private tuition and paid less attention to teaching at school which compromised the quality of education in the government schools.

iii) Politicized school committees

While the management committee of the teachers is formed at the schools; the selection of the members is based upon political benefits over student's benefit. Principally, the school should be free from any political influence, however, in many instances, the reality is whole structure is being hijacked by the political color.

iv) False literacy assessment

In Dhading district, none of the members of the *Dalit* community of Tipling VDC is educated. In contrast, the Government has already declared it as a literate VDC. There is lack of information to the extent that none of the people have ever seen national newspaper in their lives. The language is another barrier for them to access information from the government.

364 Article 40 (2)

365 Education Act 1971(2028) , sec 16 (d), sec 16 (d) (2), sec 11 (o), sec 12 (b); Education Rules, Rule 152 (1), Rule 152 (2), 78 (5), Rules (n 14), Rule 16 (t)

366 Government of Nepal (GON), Ministry of Education (MOE), School Sector Reform Plan, 2009-2015; MOE *Consolidated Equity Strategy 2014, For the School Education Sector in Nepal Department of Education*, Ministry of Education;

367 Government of Nepal, MoWCSC, *National Plan of Action on Gender Equality and Women Empowerment 2004*; *Education for All, National Plan of Action*, 2001-2003; National Plan of Action on Convention On The Elimination of All Forms of Discrimination Against Women (CEDAW) 2060 B.S.

Recommendations

- Maintain a monitoring mechanism for fair and effective scholarship distribution;
- Conduct regular monitoring of teachers' performance at schools involving parents and teachers;
- Prepare a guideline outlining 'basis of need' in case of bigger number of beneficiaries compared to the scholarship numbers; and
- Make scholarship adequate, prompt and effective.



Photo by: Tenzing Paljor

POST EARTHQUAKE RECONSTRUCTION AND GESI NEXUS

The NRA had been set up to regulate systematic reconstruction post-earthquake. Many apparatuses like Disaster Assessment Guideline 2072, Guideline on Reconstruction Community Committee 2073, Procedure on National Reconstruction Authority, Reconstruction Fund Management and Conduction 2073, Guideline on Conduction and Management of Training 2073 were also set up for the smooth reconstruction. While participation of the population who were traditionally excluded from the mainstream for any development agendas are critical to effectively manage disaster risk and designing, resourcing and implementing gender-sensitive disaster risk reduction policies, plans and programs³⁶⁸; women and *Dalit* remain largely excluded in this context.

Below are the observed challenges in the districts:

i) Limited and unregulated reconstruction

Despite the development of various guidelines and procedures, only few houses have been rebuilt in the districts with the fund of Government relief.

Furthermore, the NRA representatives stated that the Government set standard must be maintained to receive second installment for the reconstruction of houses. However, in order to do so, the relief package provided by the government with a ceiling of NPR three lakhs were insufficient for majority in the districts. Thereby, only the ones with better financial status could rebuild the houses. Many who have rebuilt the house on loans and seeking for the second installment have not received it yet. In Gosainkunda rural municipality of Rasuwa, where the newly elected member of the local election himself had involved in reconstruction, 17 houses had been passed by the NRA for the reconstruction and the people of the council were receiving second and third installments of the relief. For this job, a team of Ward Chairperson, social mobilizer and engineer adopted door to door policy to take the measurements for the reconstruction.

³⁶⁸ Sendai Framework for Disaster Risk Reduction 2015 to 2030, United Nations, Priority 4: Enhancing disaster preparedness for effective response and to “Build Back Better” in recovery, rehabilitation and reconstruction

Further, it was found that the government failed in wide dissemination of information about the relief package; segregate between the real and fake victims; and include elderly, people with disability and slum dwellers in the list of victims. Apart from this, it becomes more difficult to the beneficiaries living far from administrative centers, especially groups with limited mobility, for instance, women caring for small children, the elderly or those with disabilities to travel and receive the grants of the government. Such 'bureaucratic exclusion' has led to duplication in receipt of the relief. The access to grants was majorly received by those who had good influence (*tatha-batha*) in the district and had knowledge of the relief.

Also, as NRA staff rarely stayed at the district office, NRA suffered lack of human resources; it hired social mobilizers during the relief. While so is done, the hired staffs are less dedicated towards the work of NRA.

ii) Difficulty for women household heads

The District Disaster Relief Committees (DDRC) were instructed to issue Earthquake-Affected Household Identity Cards under the supervision of the Ministry of Home Affairs in May 2015. In order to receive the card, families had to submit a form and supporting documents (citizenship certificate and recommendation from a Ward Committee member) to the VDC Secretary. The DDRCs used the list of male household heads while recognizing the victims of the earthquake, missing out women whose husbands were abroad. It was particularly difficult for single women household heads to receive the relief support from the government in all four sampled districts. In many instances where husbands were abroad, the daughter in laws were not trusted by the in laws and suspected that she would remarry after receiving grant from her present husband's side. In other cases, where relief money has been deposited in the name of her husband by the government authorities but the wife is unable to access it despite the recommendation of the local authority. There still exists such invisible gender norm³⁶⁹ in various forms which needs to be identified and provided immediate special attention.

iii) Grievance Handling

The 'Procedure on Management of Grievances Relating to Reconstruction and Rehabilitation', 2073, with a mechanism for grievance redressal was developed. However, the people in the districts were not acquainted with this. As a result of the lack of resources, the grievance handling too has become a difficult task. During the study, it was found that few officials had not been recruited which created difficulties in furthering the actions of the relief. Moreover, it was found that the district had confusion regarding the reconstruction activities. For instance, in Rasuwa, the representative from NRA pointed that the Chairperson of rural municipality is responsible to look after the cases related to reconstruction and solve them in coordination with data from the District Administration Office. However, it was found that the responsible state institutions were not coordinating and blamed each other for the slackening of the reconstruction. The officials even pointed out that all these can only be solved through new laws made by the newly elected members. All these depicts that the officials are rather involved in blaming, naming and shaming than working towards the rights of beneficiaries.

369 Jana Naujoks, Building Back Better or Restoring Inequalities? Gender and conflict sensitivity in the response to Nepal's 2015 earthquakes, International Alert 2016

iv) Other societal difficulties

As the reconstruction has been a very slow process, basic necessities have remained unsolved. For instance, in Dolakha, access to water has been obstructed due to earthquake and landslide. The source and pipelines of water were swept away. However, no attempts were made of any sort from the village council on this. The Government representative requested to provide suggestions and recommendations on the issue as programs for drinking water were being finalized.

With the increase in reconstruction work and high rate of migration among youth to abroad, child labor increased in the districts and well-being of children is not treated as a grave concern.

Recommendations

- The Government must monitor the activities of GESI Unit in the NRA to ensure integration of GESI measures for all recovery and reconstruction processes and ensure women's leadership and participation during planning, implementation and monitoring of recovery and reconstruction efforts at national, regional and district levels.
- The Government must maintain a strict record of government officials in the districts, especially remote ones.
- Bureaucratic exclusion must be removed by reaching the remote areas of the districts to disseminate information, provide relief through mobile teams.
- The civil society groups must coordinate with the NRA for the relief and reconstruction and by engaging women equally in distribution of relief packages.
- "Community-based psychosocial counseling' should be conducted especially to the victims of earthquake, especially to the single women.
- Special provisions for earthquake survivor girl children with disabilities should be maintained



Photo by: Prashant Budhathoki

CONCLUSION

Nepal scores one of the highest records in ratifying major international human rights instruments including those specifically related to GESI. However, Nepal is yet to accede to international treaties relating to migration, statelessness and refugee protection namely, the **Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990**, the Convention Relating to the Status of Refugees, 1951; the Convention relating to the Status of Stateless Persons, 1954; and the Convention on the Reduction of Statelessness, 1961. This thereby creates a serious gap for the protection and inclusion of persons belonging to these vulnerable groups. Furthermore, Nepal is not a party to the Optional Protocol to ICESCR and the CERD thereby preventing GESI groups especially *Dalits* to file individual complaints with the respective treaty bodies regarding violations of their rights under the respective Conventions. Furthermore, Nepal has not ratified the Convention against Transnational Organized Crime and its Protocol but is considering ratification of the Protocol to strengthen its anti-trafficking regime.

In terms of translating its international obligations into national legislation, Nepal has adopted a comprehensive legal framework. The Constitution in its preamble aims to end all forms of discrimination and oppression against all people of Nepal. It guarantees the right to equality under the section on fundamental rights. While assessing the implementation status of national and international instruments in regard to GESI, the assessment did not identify any discriminatory provisions except in relation to citizenship. In the other thematic areas, the related laws also provide for equality. Moreover, special measures based on sex and caste is also provided under the Constitution and a number of other laws. However, the main challenge remains as actual implementation of laws and policies in order to give full effect to the provisions relating to GESI contained therein.

The Constitution provides for acquisition of citizenship as a right of every citizen in the country and that no Nepali citizen is to be deprived of this right. It confers citizenship by descent to all children living in Nepal and born to parents one of who is a Nepali citizen. However, a child born of parents, who obtained citizenship before the commencement of the Constitution, will require both mother and father to be the citizens of Nepal to be eligible for Nepali citizenship. However, for a mother to confer citizenship by descent to her child, the mother has to prove that her husband is Nepali and not a foreigner because women married to a foreigner can only confer naturalized citizenship to her children. A person born to a Nepali mother living in Nepal whose father is not identified shall be granted citizenship of Nepal by descent; however, if a father is identified as a foreign citizen the person's citizenship will be

converted to naturalized citizenship. As such, the Constitution discriminates between women and men when it comes to conferring citizenship. Furthermore, the Nepal Citizenship Act and Rules will require amendment to ensure that they are aligned to the Constitution.

With a quota for women in parliament of 33%, Nepal scores quite high in international indices on women's political participation. In addition, the Constitution contains various positive discrimination provisions to promote participation of women within a new federal system although it will take time before these are actually implemented. However, the main challenge remains ensuring meaningful participation of women in practice. Underlying reasons include patriarchal values and norms, lack of institutional and family support, lack of security, criminalization in politics, and multiple burdens still constitute barriers for women to participate in politics and public life. In terms of political participation, their participation remains limited to 0.72 percent compared to their population ratio.

While women's labor force participation in Nepal with 83% is indeed high, there is not much of an enabling environment for women to be economically active. The Constitution prohibits discrimination in the application of general on the basis of sex, race and economical condition among others in the Constitution. Likewise, in line with the promotion of positive discriminations and temporary special measures by the international instruments and the Constitution specifically mentions the rights of women and states that women shall have the right to special opportunity in the spheres of employment among others on the basis of positive discrimination. Constitutional provision also focuses on prioritizing employment of single women who are in helpless conditions on the basis of skill, capability and merit. The right to land to *Dalits* are ensured in the Constitution, and state that the states shall according to law, provide land to landless *Dalits* for one time and make housing arrangements for *Dalits* who do not have housing of their own. Various policies including the national foreign policy, the Three-Year Plan (2014-2017), the Labor and Employment Policy contain special provisions to promote access of women to employment, especially women from poor, Dalit, indigenous and disadvantaged groups. However, despite these provisions, women and *Dalits* continue to face challenges in terms of their mobility to move outside the house for employment and in the types of employment they can choose due to prevailing social norms.

Women and *Dalits* are subjected to various forms of violence. Domestic violence is one of the forms of violence widely practiced in Nepal. The assessment found that at the field level, the awareness level of people is increasing and traditional practices like *Chhaupadi* are changing slowly. Implementation remains a key challenge as due to threats and social norms and stigma, makes women reluctant to report the cases. There is lack of speedy compensation to the victims and there are no adequate shelters and safe houses for women to live in temporarily.

The international treaties ratified by Nepal provide various guarantees against TIP. The Human Trafficking and Transportation (Control) Act enacted in 2007 has broadened the scope of combating TIP but is not fully implemented. The national committee and district committees have been established under the Act with various duties and functions including policy formulation, implementation of programs and monitoring. However, the need to strengthen human resources and financial capacity is strongly felt. The NPA against TIP 2011-2016 identifies five broad areas for interventions: prevention, protection,

prosecution, capacity building, and cooperation. A key challenge remains to increase the coordination among the key line agencies and reduce the overlap in program interventions.

Although implementation mechanisms in this area are available in laws and policies from central to the local level, there is no separate legislation formulated by the GoN specifically focusing on women or *Dalit* health issues. However, certain rights related to the health of women are safeguarded by the Constitution and several national legislations. The majority of women during the field assessment were found to be aware of the programs and policies of the GoN in the health sector. Programs like capacity building, awareness raising campaigns, monitoring are adequately framed to make the health rights accessible to all people. Regardless of such a context, logistic supports are not available in the hospitals of all sampled districts. Likewise, 'free medicine' is not adequately available in the VDCs. Doctors and trained human resources are not readily available where the need is immense.

Regarding education sector, implementation mechanisms have been incorporated in laws and policies in different tiers. For example, the right to education has been guaranteed in the national legislation. Compulsory and free basic education and free education up to the secondary level is a fundamental right of every citizen. Furthermore, special provisions have been made for *Dalits* by the Constitution guaranteeing the provisions of 'free education with scholarships for *Dalit* students from the primary to higher level of education'. The Education Act of Nepal provides that the community schools should provide free primary education and the students of such schools should be provided free books by the GoN. The provision further clarifies that students from the *Dalits* and the tribal class that fall below the poverty line should be provided free education in community schools. The Act has further ensured the provision of scholarship in lower-secondary and secondary level. Various policies reflect on the mechanisms adopted to materialize the provisions in the laws and regulations. They build on the efforts made by the GoN in regard to strengthening equity in education. Overall, these plans have adopted GESI as one of the major thrusts to make schools gender and Dalit responsive. The local governments are provided a lead role in creating conducive environment and to encourage girls and other children facing multiple exclusions, including *Dalits* to attend school.

Regardless of this, the budget allocated for girls/*Dalit* students is limited and is not sufficient to provide to all the needy students. The number of needy students is more while the budget is provided for few. This has unfortunately resulted in unequal distribution of scholarships. Although scholarships are provided for girls and *Dalit* students, in several instances, due to insufficiency of the budget dedicated to basic infrastructures and benefits for teaching staff, the scholarship fund is being diverted to fulfill such pressing needs.



TJ Theory

Women in
Constitution

Police
Reform

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Photo by: Conor Ashleigh



ANNEX I: LITERATURE LIST

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