

A midterm Review Report on Economic, Social and Cultural Rights in Nepal: Women's Perspective

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Women's Rehabilitation Center
(WOREC) Nepal
Balkumari Lalitpur

A midterm Review Report on Economic, Social and Cultural Rights in Nepal

Publisher



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Acronym

AG	Attorney General
CA	Constituent Assembly
CDO	Chief District Officer
CESCR	Committee on Economic, Social and Cultural Rights
CSOs	Civil Society Organizations
ESCR	Economic, Social and Cultural Rights
FY	Financial Year
GoN	Government of Nepal
ICESCR	International Covenant on Economic, Social, Cultural Rights
NDC	National Dalit commission
NGO	Non-Governmental Organization
NWC	National Women Commission
NHRC	National Human Rights Commission
PWESCR	Programme on Women's Economic, Social and Cultural Rights
SAFA-ESCR	South Asian Feminist Alliance on Economic, Social and Cultural Rights
UN	United Nations
UP	Uterine prolapse
VAW	Violence against Women
WOREC	Women's Rehabilitation Center

Background

The Government of Nepal (GoN) ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 on 14 May 1991 along with several other human rights instruments after restoration of democracy in Nepal with establishment of multiparty system. The country was embroiled in decade long conflict which claimed more than 13,000 lives and led to disappearance of 1300 people.¹ The advent of armed conflict finds its origination in the dissatisfaction from the unfulfillment of various economic, social and cultural rights of people. For the sustainable development and peace in the country, the deep rooted structural barriers needs to be addressed and socio-economic aspects needs to be made favorable even in the interior segment of the country for protection, empowerment or development of the citizens *including the socially or culturally backward women, Dalit, indigenous nationalities, Madhesi, Tharu, Muslim, oppressed class, Pichhada class, minorities, the marginalized, farmers, labours, youths, children, senior citizens, gender and sexual minorities, persons with disabilities, pregnant women, incapacitated or helpless people, backward and indigent Khas Arya.*² Nepal is state party to ICESCR and thus liable to ensure “progressive realization” of rights of citizens and fulfil its obligation to guarantee “maximum available resources”.

The feminist group of Nepal particularly women led organizations, human rights activists and the members of South Asian Feminist Alliance on Economic, Social and Cultural Rights (SAFA for ESCR) with the leadership of Women’s Rehabilitation Center (WOREC) and technical support from Programme on Women’s Economic, Social and Cultural Rights (PWESCR) worked collaboratively to determine the real picture of women on ESCR in Nepal. A two-day workshop was organized on 31 July and 1 August 2014 to understand the procedure of Economic, Social, Cultural Rights

1 The Informal Sector Service Centre (INSEC), a leading human rights organisation in Nepal, recorded 13,236 people killed: INSEC Conflict Victim Profile (August 2010), available at www.insec.org.np/victim/. According to the International Committee of Red Cross (ICRC), more than 1,350 individuals who went missing during the conflict remain unaccounted for. International Committee of the Red Cross, “Nepal Red Cross Society releases documentary on conflict-related missing.” (8 August 2010) which is available at www.icrc.org/web/eng/siteeng0.nsf/html/nepal-news-060810. At the time of publishing this Report, the number of persons recorded as killed had increased significantly and can be expected to increase further as investigations continue.

2 Constitution of Nepal, Article 18 (3)

(ESCR) treaty body monitoring and the process to develop an Alternate Report with a clear guideline and timeline for monitoring.

In this process, WOREC coordinated with 63 organizations and individuals to discuss and bring out the ground reality of the condition of women in Nepal. The workshop, at the end, led to a formation of a group having 33 organizations and individuals to jointly develop a collaborative civil society report. The workshop also decided to build the capacity of civil society groups mainly of women leaders and enhance their capabilities to participate in CESCR country review process.

Following a decision of a workshop, on 12 November 2014, a pre-Geneva preparatory meeting was held with all the members including CSO representatives who were supposed to travel to Geneva as a delegation to CESCR for the discussion of Nepal's ESCR review. The meeting supported in developing clear understanding about UN lobbying and advocacy procedures to be followed during the review meeting with UN committee members. Likewise, on 19 November 2014, another workshop was organized focusing on fundamental rights which were essential for the review meeting with UN committee members. As a result of these interventions, a delegation from Nepal ensured meaningful participation in Nepal's ICESCR review and lobbied on further strengthening for implementation of the concluding observations.

In other hand, a delegation tabled a parallel report (developed on behalf of women-led CSOs in Nepal) together with several other reports from I/NGOs including the report from National Human Rights Commission (NHRC) of Nepal to the CESCR. After a detailed study of the country report, parallel Report of CSOs and NHRC's report, the committee provided 34 recommendations focusing widely on the overall situation of the women.

As part of treaty monitoring mechanism, Nepal was scheduled to be reviewed by the UN Committee on Economic, Social and Cultural Rights (CESCR) to consider the third periodic report of Nepal on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/NPL/3) at its 56th and 57th meetings (E/C.12/2014/SR.56-57) held on 19 and 20 November 2014. On 12 December 2014, the Committee members adopted the concluding observations with the recommendations to state party for further action on the implementation of recommendations and to ensure fulfillment of rights of the citizens.

The recommendations were based on the Nepal government's country report, NHRC's report and the report that had covered all the areas of economic, social and cultural rights (ESCR) from women perspective which was submitted by CSOs in leadership with WOREC.

WOREC has been continuously following up on the implementation of the recommendations from CESCR and extend its concern over the state's inadequate actions despite of the strong concluding observations in 2014. The Constitutional Assembly (CA) promulgated an inclusive and human rights friendly constitution in 2015 which generated hope among minorities of Nepal. At present, the parliament has ratified a set of new laws, criminal code and civil code, which has already come into effect, transforming and replacing the existing "Muluki Ain" (Nepal's first codified law), however, the hope for the women's rights seems slim. . The concerned departments of the government are examining the upcoming laws and tabling them for amendment after various consultations.

After an interaction with different groups at various places of Nepal, overall a voice of discontent of citizens was found. The newly promulgated constitution is claimed to be the most progressive and inclusive document which upholds several rights of the people, but the voice of dissatisfaction is still prominent. The literacy rate of female is just 44.5 % which is almost half as compared to male proportion i.e. 71.6%. Similarly, just 40% of female are economically active which is very less as compared to male proportion (NLSS 2011). With the lack of laws and effective implementation of existing laws, the ensured rights through the constitution cannot be realized and exercised. There are still many acts, laws and policies for instance umbrella policy to abolish harmful traditional practices which is one of the recommendation received in a concluding observation are yet to be adopted and ratified to ensure the rights. Few of the other laws are already tabled in the parliament and they are in the state of limbo.

In May, June and September 2017, Nepal conducted local elections after 20 years and total 35,041 local representatives got elected across 753 local levels including 6 metropolitan cities, 11 sub-metropolitan cities, 276 municipalities and 460 rural municipalities.³ Following a provision in the constitution, during local election one position holder among mayor

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

and deputy mayor was for women and as a result, women are able to fill a certain number of posts mostly the deputy mayor, but they rarely enjoy positions of power. In the provincial consultations on ESCR organized by WOREC, the elected women representatives shared that they had not been able to use their full authority due to male domination whether they're the mayor of a town, chair of a rural municipality, or the chair of a ward. Men dominate both in terms of numbers and executive positions.⁴ However, the recent restructuring of state is an opportune time to focus on economic, social and cultural rights through development of indicators for assessing the progress made annually.

This Mid-term Report on ESCR is a study on the status of implementation of the recommendations made by CDESCR to the government. The study finds that the government is snail paced to implement the concluding observations and lag behind to implement its core obligation to fulfill the basic needs and rights of the people. The government has initiated to work in few of the recommendations however it has not yet started working on many recommendations. The GoN needs to treat ESCR issues giving utmost importance and expedite the process to fulfill CDESCR's concluding observations.

Methodology

The information contained in this report is drawn from the primary and secondary source of information. The content is based on the desk review of previous parallel Reports from CSOs, the Constitution of Nepal, related acts and third periodic report of GoN, CDESCR concluding observations and other related documents.

Methodology of the report is based on the compilation of findings from the consultation workshops with the CSOs held in all the seven provinces. Similarly, series of interaction programs with local CSOs, Nepal Police and government administrative bodies were held at various parts of Nepal. Interaction was focused basically on the issues related to economic, social and cultural rights.

4 ibid

Furthermore, report is also based on one to one interaction with Women Cell of Nepal Policy, Chief District Officer (CDO) and Women Development Officer (WDO). An interaction program with the federal government personnel from the concerned ministry and departments was held. The report is prepared with the extensive inputs from various exchanges with these key stakeholders.

Articles 2.2 and 3: Non-Discrimination and Equality

Caste based Discrimination and “Untouchability”

Dalits are the most deprived community in Nepali society and are considered to represent the lowest rung of social hierarchy. They are subjected to live in a harsh condition, facing discrimination and poverty. They have almost no access to health services, education and social justice. They are considered as “untouchables” and often face caste-based violence. Although their population is 13% of the total population of Nepal, according to the National Demographic and Health Survey 2016, still they are forced to live under improper condition. Out of 26 million total population, civil society organizations, NGOs and Dalit organizations estimate that approximately 4.5 million Nepali are Dalit, while the national census counts only about 3 million.⁵ Dalit community lacks adequate healthy food, and according to a National Demographic and Health Survey 2016, 73% of the community still uses unsafe drinking water. Since Dalit are treated as the lowest in caste system, they are considered for the lowest paid precarious work. In civil services, Dalits are underrepresented and account to only 1% making it difficult to cope up with their upper caste colleagues.

However, the government has made some progress in terms of participation in decision making and local governance system by ensuring one seat (reservation) for Dalit women members at ward level. Local Level Election Act of 2015 specified that in each ward, two should be women representatives including one Dalit woman out of five ward committee members. Thus, out of 36,639 elected local representatives, 13,360 had to be women, with at least 6,793 of them being Dalit women.⁶ 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 covered by women, among them 6 were Khas Arya, and 1 is Madhesi. Similarly,

5 Dalit women in Nepal, International Dalit Solidarity Network (IDSN), Accessed at: <https://idsn.org/key-issues/dalit-women/dalit-women-in-nepal-2/>

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

the Chair position had 11 women, of which 6 were Khas-Arya and 5 Janajati. Dalit appear significant, but outside of the Dalit women quota, their presence barely registers.⁷

The Dalit community faces high illiteracy in Nepal. According to a report published by Dalit Work Force, a Non-Governmental Organization (NGO), only 20% of Dalit children are enrolled in primary education and the total literacy rate stands at 33% only. Among which the literacy rate of the Dalit women is even less. Almost 80% of Dalit women are illiterate. Dalits are found all over the Terai and hilly region of Nepal. Literacy rate of Dalit women from plains are lower than the hills. Geographic landscape is the key hurdle for the hilly Dalit girls to get enrolled in school and therefore, they are less than 1% in primary level schools.

The poor economic condition comes as the major reason for low school enrollment of Dalit children. The economic situation creates pressure for Dalit children to get involved into household course and earning to fulfil basic need of the family. As a result, school dropout rate is high among Dalit children. Similarly, Dalit girls are forced to get married at early age which contributes in increasing school dropout ending further education opportunities for the girl child.

When we look into a situation of Dalit women, majority of them are living in harsh condition in the society. They face triple discrimination and that are from the “upper caste” community, upper class men and men from their own community. Lack of education creates an adverse effect on their skill development and on the opportunity of choosing a job which further deprives them from financial independency. As a result, Dalit women face serious health issues, become vulnerable to domestic violence and trafficking. They are consequently excluded from the social and political mainstream.

The 2015 Constitution of Nepal has carved out several provisions against untouchability and for the protection of rights of Dalit however, lacks effective enactment and implementation of policies that leads to welfare and justice for the Dalit.

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

National Dalit Commission (NDC), established in 19 March 2002 is a constitutional body established for the protection and promotion of welfare of the Dalit community. The Article 256 of the Constitution of Nepal provides duty and rights of the commission. Sub article A to E states that the commission can recommend and suggest the government for various welfare activities and it can also suggest for legal provisions in course to enhance the better situation of the community, but the government is not bound to follow those recommendations. Furthermore, in article 256 (F), NDC is entitled to recommend the concerned authority to file a case against the person or an organization who discriminates or encourages caste-based discrimination. But the provision of article 256(F) is not clear about the concerned authority and there is no law yet enacted under which the case can be filed. A law should be enacted to provide the power and explain the procedure to sue against the perpetrator involved in discrimination. If the Office of the Attorney General (AG) is supposed to sue then it is still unclear whether NDC will collect the evidence or the AG office.

Article 40 delivers the socio-economic rights to Dalits but the law is not enacted to execute the constitutional rights and the existing laws are insufficient. The upcoming law, which is already enacted and will come in action from 17 August 2018 does not have sufficient provisions to take action against the culprit of discrimination and untouchability. Fundamental rights in Article 24 of the constitution clearly states that all kinds of discrimination or untouchability will be subjected to social crime and is punishable. The victim of untouchability and caste-based discrimination have the right to receive compensation. The reality is still not changed in the urban and rural areas both. The Ministry of Home Affairs (MoHA), in an interview says that the collection of evidence of caste-based discrimination and untouchability is almost impossible as the crime is not visible. The Ministry further says that due to insufficient law and difficulties in collecting evidence the case against the accused becomes weak.

In article 40 of the constitution, which is a special article for Dalits, states that Dalit will have the right to participate in all the organs of the state on proportional inclusive basis. It also states that a special arrangement will be made for Dalit community for its participation and representation in public services and other areas of job. The law still needs to be enacted for executing this provision of the constitution. In the same article, right to education of the Dalit is guaranteed from primary to higher education

and a special arrangement for their technical and vocational education is mentioned. Without such laws, this right cannot function. The constitution states that the state will provide essential skill and resources for Dalit community to modernize their traditional job. The civil code has no such provision mentioned and there is no other law as such. No land has been given to landless Dalits and no houses are built as guaranteed by the constitution.

In fact, discrimination and untouchability cannot be eradicated merely enacting laws against it. In the social structure of Nepal, discrimination and untouchability is ingrained in minds and is traditionally practiced. Therefore, law is just a tool in context to eradicate this ill tradition. *“There are many cases found where the law enforcement body asks for an agreement between the victim and the perpetrator in due course to dismiss the case,”* as said by a participant in an interaction. In almost all the cases of discrimination and untouchability, social and political pressure is created to withdraw the petition or to settle the case outside the court. According to NDC till date in only two cases the culprits were sentenced and in 30 cases the culprits were imposed monetary punishment. The caste-based discrimination and untouchability is a criminal case but in practice it is observed that such cases are settled out of the court through mediation.

Articles of ICESCR	Concluding Observations 2014	Available Data	State effort on Concluding Observations
Article 2.2	<p>b) Take all measures for the effective implementation of the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act 2011, in particular by sensitizing law enforcement officials, investigating and prosecuting those responsible for discrimination against Dalits and conducting awareness-raising campaigns on the rights of Dalits;</p> <p>c) Establish a national strategy and plan of action with time-bound objectives to eliminate discrimination and guarantee the rights of Dalits, as well as indicators to monitor compliance;</p>	<p>1) In 2017, the Peace Monitoring Project documented 24 incidents of caste-based discrimination against Dalits across Nepal. Of the 24 incidents, 20 involved violence. 27 people were injured - 8 of them female, and a teenage girl and a couple were killed. However, the numbers belie the prevalence of discriminatory practices against Dalits in everyday life which regularly goes unreported and only grave cases enter the public record.</p> <p>1) Only 27% of Dalit have access to safe drinking water according to National Demographic and Health Survey 2016.</p> <p>2) Only 1% of Dalit are in civil services.</p>	<p>1) According to NDC the government has cut the budget for sensitizing on the issue against untouchability. The amendment bill has been tabled in parliament long time before by provisioning an increment in monetary fines and compensation amount. Still need to be ratified.</p>
			<p>1) Budget for awareness and promotional program for NDC is cut for this fiscal year 2017/018.</p> <p>2) There is no such program from the government to establish a national strategy but according to the prime-minister office the high-level committee is planning to bring out a strategy soon.</p>

Articles of ICESCR	Concluding Observations 2014	Available Data	State effort on Concluding Observations
	<p>d) Reinforce the National Dalit Commission and provide it with the necessary resources to fulfil its mandate;</p>	<p>1) According to National Dalit Commission the culprits were sentenced in only two cases till date, and in 30 cases culprits were subjected for monetary fines.</p>	<p>1) National Dalit Commission, a constitutional body, established as a strong institution to protect rights which was just an inadequate statutory authority, autonomy, and sovereignty earlier.</p> <p>1) Budget has been cut and down sized which is sufficient just to cover the day to day office expenses only</p>
	<p>e) Take specific and targeted measures to protect the rights of Dalit women;</p>	<p>1) 80% of Dalit women are illiterate, and in total only 33% of Dalits are literate.</p> <p>2) Out of 36,639 elected local representatives, 13,360 had to be women, with at least 6,793 of them being Dalit women.⁸</p>	<p>1) State created mandatory provision to have one Dalit women member at the ward level and Dalit members at rural municipality and municipality.</p>

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

Articles of ICESCR	Concluding Observations 2014	Available Data	State effort on Concluding Observations
	<p>f) Facilitate complaints from Dalits and ensure access to justice for discriminatory acts.</p>	<p>1) Till date the court has sentenced the culprit in only two cases, and in 30 cases the court has imposed monetary fines.</p>	<p>1) The government has issued Caste Based Discrimination and Untouchability (Offence and Punishment) Regulation, 2017 to make the practice of untouchability, exclusion, restriction and expulsion on grounds of caste, creed or descent punishable.</p> <p>2) The regulation provisions that in case the police office refuses to register the complaint and does not initiate action against the suspect, one may file the complaint at the National Dalit Commission or the concerned local level within 15 days of such incident.⁹</p>

⁹ Caste-based discrimination, untouchability punishable, The Himalayan Times, June 25 2017, Accessed at: <https://thehimalayantimes.com/kathmandu/caste-based-discrimination-untouchability-punishable/>

Recommendations

- 1) Laws should be enacted without any delay to safeguard the rights of Dalits, ensured by the constitution
- 2) Ensure effective implementation of the Caste- Based Discrimination and Untouchability (Offence and Punishment) Act, 2011.
- 3) The rights of Dalit women should be given more attention in the law/policy as they are more vulnerable and discriminated.
- 4) The state should recognize Dalit rights as Human Rights and focus special attention on the ESC Rights of Dalit women.
- 5) Laws and policies should ensure more rights of Dalit women to uplift their social and economic status through creation of better life skill trainings and employment opportunities.
- 6) Social awareness program should be launched by all the local bodies and adequate budget should be allocated for it. Sensitize law enforcement officials, investigating and prosecuting those responsible for discrimination against Dalits.
- 7) The international legal obligation and instruments, related to Dalit and Dalit women should come into effect in terms of implementation, monitoring and evaluation.

Harmful Traditional Practices

Harmful Traditional Practices (HTPs) prevail all over Nepal in different forms. Among which some are commonly practiced, whereas some are only practiced in a certain part of the country. In almost all the HTPs, women are the ones mainly victimized and suffer. Dalit women face multiple discrimination and are more vulnerable in comparison to women from other communities. Girls are forbidden to choose their own partner and mostly parents make the decision to force their daughters to marry without their consent. Although early and forced marriage is not allowed legally, it is widely practiced. Most of the girls from the Dalit and Madeshi community face the brunt of poor economic status and are forced to marry early.

Women from Dalit community are often accused for witchcraft (*Bokshi*). Women accused for witchcraft are physically assaulted and mentally harassed. They are treated in a shameful way by forcing them to parade nakedly, drink urine and faeces, and some cases are reported that they are tied to a pole and beaten. Poverty and lack of education are the main reasons for this type of ill practices. When anyone is ill or dies in any family under unexpected circumstances, then the priest or the witch hunter suspects and accuses any of the woman who is in a weak situation and unable to defend herself. Mostly Dalit single women are often targeted and accused. According to a report published by US department of State on 3 March 2017, 89 cases were found regarding witchcraft in 2014 and 51 cases were reported in 2015. In the first half of 2016 there were 12 cases found. Furthermore, The Crime Investigation Department of Nepal Police reported 24 cases of witchcraft in fiscal year 2016/17.

Name: Sabina Chaudhari (name changed)
Age: 20
District: Kailali, Ghodaghodi
Educational Status: 11 class
Occupation: Student
Income Source of Family : Daily Wage Labour
Types of Violence: Harmful Traditional Practice (Blamed as Witch)

Sapana Chaudhari (name changed) is 20 years old lady who lives in Ghodaghodi Municipality of Kailali district. She is the eldest daughter in the family. Due to poor economic condition of her family, she was also full of

struggle amidst the poverty. She had worked as bonded laborer during her childhood. But, later, she on getting an opportunity to study and with great passion she had continued her study and was studying at eleventh grade at local Rastriya Secondary School, Sukkhad. It was found just before the incidence she had denied to pay homage to Bhole Baba, and he had warned her as practicing witchcraft. She was targeted by the accusers as she went against the constructed norms in the society.

On March 8, 2018, early in morning around 7 am neighbor Kishmati Chaudhary along with other girls had dragged Sapana (name changed) out of the cowshed and took to the place where the Bhole Baba alias Ram Bahadur Chaudhary was staying with his followers. The Bhole baba along with his associates accused her as witch and kicked her in stomach, face, lower abdomen and back. Amidst the thousands of villager she was beaten for 5 hours continuously. This whole incidence was recorded secretly by anonymous person and later was aired on national television as breaking news and gained nation- wide attention.

Aftermath of the incidence she sustained severe bruises on her face, neck, chest, stomach and other body parts as well. The injury was so severe that it could not be treated at local Ghodaghodi hospital and she was rushed to Seti Zonal Hospital. Later, the incidence was intervened from civil society and dozen of organization and the local government did felicitation program for the rehabilitation of Sapana (name changed) and her family in that society. Also, the government took responsibility for providing medical treatment to her. Finally, on 31 May 2018, Kailali District Court, held three perpetrators liable under the Anti-witchcraft Act (Crime and Punishment) 2072 (2015). The main perpetrator Ram Bahadur Chaudhary aka Bhole Baba was held five years imprisonment and fine of Rs. 100,000.00. Likewise, the accomplice Kismati Chaudhary was sentenced to one year in prison with a fine of Rs 50,000 and another accomplice Smarika Chaudhary has been sentenced to six months in prison with a fine Rs 25, 000.

Deuki is a tradition in which the family offers young girl to a temple, where she dances in religious ceremonies. They are often sexually exploited and end up as sex slaves.

Chhaupadi is a tradition in which girls, during their menstrual period and post child birth, are forced to live in abandoned makeshift huts or cattle shed. These huts are made in a distance from the house and are unsafe to

live in. There they have to cook themselves, cannot use warm blankets and have no toilets. Girls living in the hut are prone to getting sexually assaulted, animal attacks and snakebites. Nepal multi index survey reports that 19% of women between the age of 15 to 49 practice Chhaupadi and 50 % of women practice Chhaupadi in western and far western region of Nepal.

Constitution of Nepal, Article 24 states that (1) No person shall be subjected to any form of untouchability or discrimination in any private and public places on grounds of his or her origin, caste, tribe, community, profession, occupation or physical condition¹⁰. Furthermore, the enacted criminal code which will come to effect from 17 August 2018 states in Article 166 that any, any type of act, of discrimination or untouchability, on the basis of caste, shall not take place anywhere either at private or public places. “A woman during her menstruation or post-natal state should not be kept in Chhaupadi or treated with any kind of similar discrimination or untouchable and inhuman behavior”. There are provisions that if such act happens, the perpetrators will be sentenced for 3 years or be fined \$300 USD or both. In case of government employee, additional 3 months sentencing is applied.

Same as, in Article 168 (1) witchcraft (Bokshi) is declared as a crime; and the provision spells that the perpetrators will be sentenced for 5 years and be fined \$500 USD or both in such cases. Furthermore, article 168 (3) is the provision for Chhaupadi declaring it as a crime with 3 months of sentence and \$30 USD or both. In any of these crime, the victim will be compensated by the culprit.

There is no limit mentioned for the complaint registering in such crimes. In most of the cases it is found that the law enforcement body negotiates between the victim and the culprit and settles the case outside court. It will be easy for the police to negotiate and settle the case when there is no limitation given to register the case.

10 Constitution of Nepal, Article 24 (1)

Articles of ICESCR	Concluding Observations 2014	Available Data	State efforts on Concluding Observations
<p>Article 2.2 and Art 3</p>	<p>a) Effectively implement measures to eradicate harmful traditional practices</p>	<p>1) Witchcraft; according to a report published by US Department of State on 3rd March 2017, 89 cases were found regarding witchcraft in 2014 and 51 cases were found in 2015. In the first half of 2016 there were 12 cases found.</p> <p>WOREC documented 26 number of witchcraft cases in the fiscal year 2017/18</p> <p>2) The Crime Investigation Department of Nepal Police reports 24 cases of witchcraft in fiscal year 2016/17.</p>	<p>1) A Civil and Criminal Code has been introduced which is effective from 17 August 2018.</p> <p>2) The Criminal Code Bill passed by the Parliament on Aug 2017 categorizes an ancient practice that banishes women from the home during menstruation as crime. The new law stipulates that anyone who force a woman to follow such custom is sentenced for a three-month jail or Rs 3,000 fine, or both.</p> <p>3) The Anti-witchcraft (Crime and Punishment) Act, 2014, passed by the Legislative Parliament stipulates stringent action against those involved in the inhuman treatment of women accused of practicing witchcraft. According to the Act, the perpetrators of such an act may be fined up to Rs 100,000, along with an imprisonment of up to 10 years.</p>

Articles of ICESCR	Concluding Observations 2014	Available Data	State efforts on Concluding Observations
	<p>b) Reinforce its awareness-raising campaigns among the population and in particular in districts and social groups where such practices are prevalent, reiterating that those practices are violating human rights and that they have long-lasting negative effects;</p> <p>c) Enforce the Domestic Violence Act of 2009, investigate cases of harmful traditional practices and punish those responsible;</p>	<p>1) Nepal Multi Index Survey Reports that 19% of women between the age of 15 and 49 practice Chhaupadi.</p>	<p>1) Budget is not sufficient for awareness program as shared by the Ministry of Women, Children and Senior Citizen.</p>
		<p>1) 25 % women faces physical and/or sexual violence for lifetime by their intimate partner. 11 % of women faced physical and/or sexual violence by intimate partner in the last 12 months.</p>	<p>1) A Civil and Criminal Code has been introduced which is effective from 17 August 2018.</p> <p>2) The government of Nepal has developed two national action plans to combat violence against women: The National Action Plan Against Gender-based Violence [2010] and the Sex and Gender Based Violence and Gender Empowerment Strategy and Work Plan (2069/70-2073/74) [2012/13—2016/2017].</p>

Articles of ICESCR	Concluding Observations 2014	Available Data	State efforts on Concluding Observations
			<p>3) In a further positive development, the Ministry of Health and Population has set up 44 hospital-based One-Stop Crisis Management Centers to help female survivors of GBV.¹¹</p>
	<p>d) Provide protection and rehabilitation to victims;</p>	<p>1) There are rehabilitation centers only in 40 out of 77 districts.</p> <p>2) The legal unit of National Women's Commission, which is responsible to handle DV complaints filed at the NWC lacks the human resources and physical infrastructure to address all of the complaints. NWC officials treat DV cases by attempting mediation and then referring the cases to district legal aid committees if not resolved through mediation.¹²</p>	<p>1) There is a shortage of budget for more and highly facilitated rehabilitation centers. The available centers are inadequate.</p>

11 The Advocates for Human Rights, UPR 23, Nepal, Accessed at: https://www.upr-info.org/sites/default/files/document/nepal/session_23_-_november_2015/ahr_upr23_np_e_main_rev.pdf

12 *Ibid*

Articles of ICESCR	Concluding Observations 2014	Available Data	State efforts on Concluding Observations
	<p>e) Expedite the adoption of the bill prepared by the National Women's Commission to criminalize all kinds of harmful practices and implement the national strategy to end child marriages.</p>	<p>1) According to NDHS 2016, there are 37% women faces child / early Marriage in Nepal.</p> <p>2) The GoN together with NWC has prepared a Bill to criminalize all kinds of harmful practices that foster gender based violence. The Bill identifies 62 types of harmful practices including Chhaupadi, Deuki, Badi and Jhuma. Government agencies are organizing awareness raising programmes against these practices.¹³</p>	<p>1) The proposed law is still under discussion.</p> <p>2) The GoN has established the Badi Community Upliftment and Development Board for empowerment and protection of the Badi community.</p>

13 Nepal: Children's Rights References In The Universal Periodic Review, Nepal - Twenty Third Session – 2015, Accessed at: <https://www.crin.org/en/library/publications/nepal-childrens-rights-references-universal-periodic-review-0>

Recommendations

1. The constitution should be amended to ensure the rights of women (especially Dalit women) on equal rights on land, property, self-earnings, guarantee of jobs and equal wages.
2. Safe shelter support and social reintegration mechanism should be made by the government for the victims / survivors of traditional harmful practices.
3. Article 166 and 168 of Criminal Code should be amendment and a limitation of time for complaint registration should be increased.
4. The international legal obligations and instruments related to Dalit women should be put into practice with effective implementation, monitoring and evaluation.

Equality between Men and Women

Nepal has patriarchal societies since centuries and the effect can be clearly seen interwoven in each family. The identity of a woman in the society is always considered as someone's daughter or wife and is not seen as an active citizen, change agent or key decision maker. She has no access, control, management and ownership over the resources in her family and community. Women's unpaid work is undervalued, unrecognized and is justified to confine them within the private spheres. In rural part, women are burdened by the drudgery work and work round the clock to serve their family. Even though in many families, women are the only member who earn money, they are rarely considered as the breadwinners.

Constitution of Nepal has mentioned that men and women shall be treated equally but in practice equality between men and women is not found. Women still have to fight for their identity and are taken as a second-class citizen of the society. Therefore, they are paid less in labour market, as said by a participant in an interaction. There is a law for equal wages for equal work, but it is not applied in reality. Women are unsafe at both private and public spheres and mostly are targeted by someone they know. *"Women working outside home are unsafe from their colleagues and other male around them and those who are working at home are unsafe from their own male family members and other male relatives,"* as mentioned by Women Development Officer from Department of Women and Children. Nepal.

Women's ability of decision making is constantly questioned, and this is the reason for having only abysmal number of women in leadership position of government authorities. Although the constitution has guaranteed inclusive and proportional representation of women in the politics, their political participation is limited to tokenism. There is still a need to push women to hold key decision-making leadership roles in different political parties, government portfolios and public spheres.

The difference in treatment between boys and girls starts operating since their childhood in terms of their education, mobility, work, sexuality, marriage and reproductive health. New forms of discrimination against girls and women are emerging to curb their freedom. Substantive equality needs to be promoted at all levels and spaces for breaking the gender stereotypes. Temporal special measures need to be adopted to ensure participation of the most marginalized women at key leadership positions.

Articles of ICESCR	Concluding Observations 2014	Available Data	State effort on Concluding Observations
Article 3	<p>a) State party take adequate measures to implement effectively its non-discrimination legislation, in order to allow women to exercise their rights to inherit and to own land and assets in their name.</p> <p>b) The Committee also recommends that the State party promote awareness-raising measures in order to ensure that the local administration authorities involved in granting the transmission of nationality are fully informed about the legal provisions in place and effectively implement them.</p>	<p>1) According to data from the Population Census of Nepal in 2011, women enjoy ownership over land and property only in 19.71 per cent of households in the country. This shows that women's access to land tenure and ownership is very limited.</p>	<p>1) Over the years, the Government of Nepal has been introducing several proactive measures to promote women's access to, ownership of, and control over land and property. These measures, depending on the geographical location, include a 25 per cent to 50 per cent tax exemption on registration when land is owned by a woman; 35 per cent tax exemption for single women (Financial Bill 2072, Ministry of Finance); and joint registration of land in the names of husbands and wives with a fee of Rs. 100 (or less than \$1).</p>
		<p>1) The Citizenship Act and Rules contradicts with the international instruments that Nepal is party to. The data of 2014 reveal that 4600,000 people are without citizenship in the country. Still 22.82% of the eligible population is without citizenship. Data shows that 26% women are without citizenship compared to 13% of men without citizenship¹⁴.</p>	<p>1) The newly promulgated constitution of Nepal 2015 is seen as progressive in comparison to the Interim constitution of Nepal in many instances; nevertheless, it still has discriminatory provisions that contradict each other and restrict mothers' rights to pass citizenship to their children independently.</p>

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

Articles of ICESCR	Concluding Observations 2014	Available Data	State effort on Concluding Observations
	<p>c) The Committee recommends that the state party increases the representation of women, including Dalit and indigenous women, in decision-making positions in public and political affairs.</p>	<p>1) Although 40.9 per cent of women are now represented in local governments, disaggregated data shows that out of the total female local representatives, 47.4 per cent are Dalits (referred as 'untouchables' in the Hindu caste system), however, Dalit women have negligible presence in other positions such as deputy mayor, which has 91 per cent representation of women primarily from Khas-Arya and Janajati background. In the key decision-making positions such as mayor/ chief and ward chair, which were non-quota seats, only 2 percent of women are represented.¹⁵</p>	<p>1) The local elections held in 2017 in Nepal have been hailed as a historic moment for gender equality and political inclusion with 40 per cent of female representation achieved at the local governments. As a result, women now constitute 40.9 per cent of the total 35,041 local government representatives elected across 753 local levels, including six metropolitan cities, 11 sub-metropolitan cities, 276 municipalities and 460 rural municipalities.¹⁶</p>

¹⁵ Limbu, Sangita Thebe, Nepal's house of cards: are women included or co-opted in politics?, Accessed at: <http://www.martinchautari.org.np/index.php/71-chautarian-speak/766-nepal-s-house-of-cards-are-women-included-or-co-opted-in-politics>

¹⁶ *ibid*

Articles of ICESCR	Concluding Observations 2014	Available Data	State effort on Concluding Observations
	<p>d) The Committee further recommends that the State party address obstacles to the career advancement of women through temporary special measures and the education of men and women about equal career opportunities.</p>	<p>The adult female literacy rate in Nepal is just 49 per cent while men is 72 per cent. According to the UN, only 50 per cent of working age women are represented in the labour force globally, compared to 76 per cent men. The overwhelming majority of women are in the informal economy and concentrated in lower-paid occupations with little or no social protection.¹⁷ In Nepal, more than 70 per cent of the economically active population is involved in the informal economy. The informal economy employs 2.14 million people, accounting for 70% of the economically active population. A higher proportion of women (77.5%) are employed in this sector.¹⁸</p>	<p>An Affirmative Action Policy has been adopted by the Government since 2007 to ensure women's participation in all social, political and economic spheres. The Civil Service Act, 2007 was amended to reserve 33 percent of total seat for women leading to 14% increment in female personnel in the civil service. 20% quota has been allocated for women and socially excluded groups for the appointment of police, armed police and army.¹⁹</p>

17 Women continue to face discrimination at home, workplace, Accessed at: <https://thehimalayantimes.com/kathmandu/women-continue-face-discrimination-home-workplace/>

18 Xhenezi, Mirela and Karki, Shova Thapa, Transitioning into the Formal – Women Entrepreneurs in the Informal Economy of Nepal, Accessed at: <https://pedi.cepr.org/sites/default/files/Research%20Note%20Female%20Entrepreneurs%20in%20Nepal.pdf>

19 Mapping Progress on Women's Rights in Nepal, UNWomen, December 2014

Recommendations

1. The property law needs to be amended confirming the property owned by women is not a subject to the partition between the families.
2. National Human Rights Commission and National Women Commission (NWC) should have a mandate for monitoring, evaluation and recommendation for discrimination of women in any aspect.
3. Justice mechanism, safe shelter support and social reintegration mechanism should be established by the government for victim / survivors of domestic violence.
4. Awareness campaign on gender equality should be conducted by the federal, provincial and local governments.

Article 6: Right to Work

Women in Entertainment Sector

During the armed conflict, many families were forced to leave their home and were internally displaced. Many migrated to big cities including Kathmandu and Pokhara for safety and better livelihood opportunities. Due to lack of job opportunities people were forced to migrate for better work opportunity. However, many women, to cope up with the life in city, were compelled to choose entertainment sector that includes mainly cabin restaurants, Dohori restaurants, dance bars and massage parlors for survival. Many girls were internally trafficked to this sector where as many women opted for this sector for their basic sustenance. According to the report published by National Human Rights Commission, there are an estimated 6,000 to 7,000 female workers in cabin restaurants; 3,000 to 4,000 in dance bars; 900 in dohori restaurants and 900 in massage parlours in the valley and along the major highways of the country.

GoN considers sex work as illegal but there are significant number of women are engaged in this sector with choice or by force. The exact number involved in this sector is not yet known. There is no an official data of the people working in this sector, and no research were conducted by the government till 2008. The concerned department of Nepal Government used to claim that work in this sector is illegal therefore they do not have budget to conduct a research. After an order of the Supreme Court of Nepal, the government conducted a survey in 2008 and reported that there were 1200 massage parlors, dance bars and cabin restaurants, from where the sex trade is operated in Kathmandu. Survey also reported that 50,000 women were working in sex trade sector out of which 80% women are between the ages of 12 to 30. A total of 50 % of them suffer from some form of exploitation. Similarly about 9000 to 15000 girls involved in this sector are under aged.

Girls and women who work in entertainment sector is paid less than the minimum wage determined by Nepal Government. Personal security is another big issue for such workers, so they have to hide their occupation

to prevent themselves from defamation. They are forced to keep changing their rented house as once their occupation is exposed, the house owner refuses to let them room or house on rent. They are often harassed by the police just for keeping condom in their purse. They are deprived from the health facility as they feel stigmatized and they cannot speak openly with the health worker. Their children are also often abused, and it is difficult to admit their children in a school.

Articles of ICESCR	Concluding Observations 2014	Available Data	State effort on Concluding Observations
Art 6.1, 7a (i) (ii), 7(b)(d), 9 and 12.1	The Committee urges the State party to implement the 2009 directive of the Supreme Court for a five-year action plan (2012–2016) to regulate work in the “entertainment” sector and to ensure the labour and social security rights of women working in the sector and protect them from abuse. The Committee also recommends that the State party conduct awareness-raising campaigns to eliminate stigmatization against those women.	National Report on Entertainment Sector 2008 says that there are 1200 massage parlors, dance bars and cabin restaurants, from where the sex trade is operated in Kathmandu. Survey also reported that 50,000 women are working in sex trade sector out of which 80% women are between the ages of 12 to 30. A total of 50 % of them suffer from some form of exploitation and 9000 to 15000 girls are under-aged.	There is no further data collection or research made by the government.

Recommendations

1. Government should, without any delay, adopt an act to regulate entertainment sector.
2. Government should arrange affordable health facility for those who are working in this sector.
3. The government should conduct awareness programs to eliminate stigmatization against women working in the entertainment sector.
4. A regular research should be done by the government to get their real condition and data.

Article 7: Rights at Work and Right to Social Security

Right of the Migrant Workers

Poverty, unemployment and social insecurity are the main reasons for women to leave their family and country to move on to another country. In many cases, workers without any skill, migrate and are often ill-treated in their destination country. They are often cheated by the manpower supplying agencies and have almost no support from the concerned government agency. Although the concerned government agency expressed their sincerity, but the reality is that foreign employment department, which is the concerned government agency is indifferent on any wrong doing of a manpower supplying agency. The Department of Foreign Employment has registered 704 cases against the manpower suppliers, but they have settled only 94 cases which accounts to 14.1% only. Mostly the workers are recruited in destination country for a job which changes once they reach the land. They are trapped in inferior, low paid and perilous work. Migrant workers are mostly duped to take up work which they have not agreed to and mostly women are more vulnerable to exploitation. According to a report published by National Human Rights Commission of Nepal, in Fiscal Year 2015/16 only the total number of documented women migrant workers were 19,307 which was 4.6% of total number of migrant workers. In which 25.7% were of 18 to 25 age group, same as 47.3% from 26 to 35 age group and 2.4% were of 46 and above ages.

Name: Sharmila Rai

Age: 31

Address: Kerabari Village Municipality

Sharmila Rai born in October 3, 1986 at Bhogateni VDC ward No.6 is a daughter of Dorman Rai and Yepimaya Rai. She did not get opportunity to go to school properly due to her poor economic condition. She faced all the economic crisis and hardship, amidst the poverty and suffering she got married in May, 1997 with a resident of Kerabari Mangal Singh Limbu who went abroad after few years of marriage. Her economic crisis did not get better but had to face even more pressure to pay back the interest amount of loan which was taken while sending her husband to abroad. In this pressure of paying back the

loan, Sarmila Rai also decided to go Saudi Arab on 2011 keeping her children at maternal's place.

She had to face difficulties in understanding the language and to cope up with the living style. Also, her salaries were cut off in the case any goods were damaged however she managed to earn the amount sufficient enough to send her children to school and to provide nutritious food.

She returned back to country after 2 years and got opportunity to participate in 2 days orientation program provided by WOREC for those women who were about to go abroad and returned from abroad where she learned about the proper utilization of money earned from Saudi Arab. The orientation turned out to be really helpful to Sarmila Rai and is earning more than her husband. She has 10 goats and has taken loan from cooperative to adjust 6 more goats. She has not been facing economic crisis since then and has saved the amount sent by her husband whereby she suggests everyone to work in his/her own country. She is now living a happy life with her 4 family members.

Women migrant workers are in more insecure, unsafe and in worse condition than men as many are sexually exploited by their employer. Women migrant workers mostly work as house maid to provide care work, so they are at risk and are ill-treated by the employer.

Article 8 of Foreign Employment Act (2007) prohibits gender discrimination while sending workers for foreign employment. Provided that when an employer institution makes a demand for either male or female workers, nothing shall prevent the sending of workers for foreign employment according to the demand. According to this provision, there is no any mechanism of prevention for women to work in a foreign country, however government has imposed an age limit for the women for domestic workers in foreign employment. The main aim of imposing age limit is to prevent women from sexual exploitation in their destination countries, but this has further pushed women to use irregular channel for migration leading to trafficking. The state has violated women's right to work, mobility and against Article 8 of the Act.

Article 9 of the Foreign Employment Act (2007) provisions that a special facility should be provided for the women workers by the Department of Labour. Women are high prone to get physically assaulted and sexually exploited in their destination country. They are cheated by the labour agents and trafficked to such countries. The migrant workers in this category are not recorded in any government system, which has created

difficulty to provide remedial support and carry out repatriating process if such migrant workers are victimized or exploited.

Many women are forced to escape from the house they work and seek refuge in the Embassy of Nepal. They wait for several months for the documents to travel back to their home country as their passport is sieged by their employer. Embassy of Nepal in destination countries is not well facilitated to send a workers back to their country as said by Labour Department in a personal interview. But the workers, who are seeking refuge in the embassy have to wait for months to receive proper document and then only they are able to fly back to their home country.

Articles of ICESCR	Concluding Observations 2014	Available Data	State effort on Concluding Observations
Article 6.1, 7 and 9	Provide adequate information to women migrant workers on procedures for access to, and enjoyment of, their economic, social and cultural rights;	1) A total of 19,307 women migrant worker are recorded in FY 2015/16. More of them were from the age group of 26 to 35.	The state has provided orientation classes which is not found enough to address and realize their ESC Rights.
	Continue to sign bilateral agreements with host countries and monitor their enforcement in order to better protect the rights of women migrant workers.	Nepal government has started to sign the bilateral agreements with destination countries, recently with Jordan and Malaysia	Government permits for the particular country where a person can go to work.

Recommendations

1. Foreign Employment Act 2007 should be implemented with full functioning.
2. Article 9 of Foreign Employment Act should be amended to treat anything against Article 9 as a crime and shall be subjected to punishment.
3. The provision of age limit for women workers should be released immediately and foreign employment workers should be equipped with skills and provide adequate comprehensive orientation and information about the legal provision, language of the receiving countries.
4. The government should increase the employment opportunities within the country to reduce the forced migration and trafficking of women, and ensure social security for workers.
5. Embassies should be well facilitated and the documentation process for the workers seeking refuge, should be faster.
6. Adequate information should be provided by the government about the policies on free visa and free ticket, ethical recruitment practices should be maintained by agent; and the government should monitor such provisions for safe migration and better environment of workplace.
7. The agreement with the host country should be properly monitored, evaluated by the government through the embassies.
8. Nepal should ratify International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and ILO C 189 (rights of domestic workers).

Article 6.2, 11.2 and 13.1: Right to work, adequate standard of living and education

Trafficking in Persons

Women trafficking is a serious problem for the Nepalese society. Young girls are trafficked to other countries and sold in brothels. Poverty, unemployment, domestic violence, political instability, natural disaster and patriarchal social values are the main reasons for the trafficking.

Girls from remote hills are most vulnerable to be trafficked. Poverty and unemployment are rampant in the hilly area. Therefore, young girls from the age of 12 and above are easily targeted and trafficked to end up as a sex worker. Number of case registered in Nepal Police in the fiscal year 2015/16 is reported to be 212 and the number of victims is 352. Number of uneducated victims are found to be 78%, little less are 17% who have obtained secondary education. Higher number of victims are from agriculture sector, 25% are from non-agriculture sector and 27% are either studying or engaged in household work. Women and Children Directorate of Nepal Police reports that there were 2 girls under 18 years of age trafficked in FY 2015/16, along with 84 girls in the age of 19 to 25 were trafficked in the same fiscal year. In the age group of 26 to 35, total number was 187 and above the age of 36 were 174. This data is published by Nepal police on the basis of complaint received, although the number of unreported cases is much higher.

A female trafficked and sold in a foreign country and trafficked and sold within the country, both are taken as a crime by Human Trafficking and Transportation (Control) Act, 2007. The act has shifted the burden of proof on the perpetrator. Country has a new constitution now hence new law should be ratified to address the challenges of trafficking.

In the case of girls trafficked outside the country, few are rescued on the way to their destination and few are rescued from the brothels. Many are rescued from such condition within the country while on route, from the bus stand, airport and the open border point of the neighboring country and many are yet to be rescued.

Although the provision of prosecution itself is very strong, so punishment of imprisonment for the perpetrator is maximum for 20 years and minimum for 10 years but still the crime of trafficking is ongoing and has not reduced. The main reason for the ineffectiveness of the law is because the victims turning hostile during the prosecution and the impunity against the perpetrator. Another reason for the ineffectiveness of the law is that the person assigned for investigation does not investigate seriously, as a result there are not enough evidences to file the case in the court. In many cases, victims turn hostile because of the stigma attached with social values.

It is often found that the rescued victims are not accepted by the family and the society. The survivors are not easily rehabilitated in their community due to the stigma attached with trafficking. This makes them return to the sex work and some become trafficker themselves. There are around 10 rehabilitation centers all around the country and those are used for the rescued victims of trafficking and for the other female victims of social crimes as well.

Most of the girls are found traumatized with bad mental health. The government has no such mental health treatment facility in any of its rehabilitation centers or at any other health centers although there are few facilities for psychosocial counseling in hospitals and some such centres. The victims, after they come out of the rehabilitation centers often find difficult to live independently in the society because they do not have proper skills to work and earn.

Articles of ICESCR	Concluding Observations 2014	Available Data	State effort on Concluding Observations
Article: 6.2, 11.2 and 13.1	a) Investigating trafficking cases, prosecuting and sanctioning the traffickers and providing rehabilitation and reparation to victims;	1) Total accused person in FY 2015/16 are 447 and total 193 cases were reported.. A National report of NHRC 2015/16 states that proper prosecution is lacking.	1) A Civil and Criminal Code has been ratified and effective from 17 August 2018.
	b) Sensitizing the population to measures taken to combat trafficking, such as the child search rescue center in Kathmandu;		
	c) Further developing its cooperation with neighboring countries in order to prevent and combat trafficking across borders;	1) NHRC's National Report states that there are 153 major border points among which only 96 border points are guarded by police.	1) The State is having bilateral talks with bordering countries and a police team is patrolled at the border points in regular basis.
	d) Bringing its legislation into full compliance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.	1) A civil and criminal code has been introduced and effective from 17 August 2018.	

Recommendations

1. The government should develop focused plans and policies to reduce poverty which creates situations for trafficking.
2. The government launch skill development programs and create job opportunities targeting the most affected trafficking areas.
3. The government should launch a special program to end school drop out trend of girls..
4. The government should have a bilateral agreement with the countries where women are mostly trafficked.
5. The government should focus on awareness campaigns to make the society aware of trafficking and its consequences.
6. The government should build sufficient rehabilitation centers for the rescued survivors.
7. The government should incorporate effective mental health treatment facility in the rehabilitation centers especially in the most sensitive areas from where women and girls are mostly trafficked.
8. The government should follow up with the rescue activity at the open border of neighboring country.
9. A national level study should be carried out on the causes and consequences of the victims turning hostile.
10. The government should properly investigate and make sure to collect enough evidences against the perpetrator.

Article 10: Rights of the family and its members

Domestic Violence

Domestic violence is rampant all over Nepal which is a kind of social disease deeply entrenched in our society. Dominating patriarchal society does not want women to be uplifted to the decision-making level. Urban women are burdened to balance personal and professional lives whereas rural women are burdened by the drudgery work she has to undertake.

Traditionally, women are imposed to abide by confinement to private spheres but even in contemporary times, women have to maintain a balance between both public and private sphere. Women are considered to be dependents on male members of the family. However, women have to take responsibility to run the family and everyone else is dependent on her. The patriarchal notion makes women believe that they are inferior to men and accept the gender-based discrimination as a norm.

Most of the women do not own property and if they have a legal ownership on any property, then it is not a woman who will decide for it. It is the male member who will take decision about the property. Women are taken as less aware of the business therefore they are not even asked about the property which they legally own.

Religiously, the society is controlled by the priests and all the priests are male. They inject the thought of patriarchal hierarchy and contribute to socialization to dominate women. Manu Smriti is a religious book for Hindu, in which women are supposed to be dominated and subjugated. In almost all the religious book, women are not allowed to enjoy freedom and explore their sexuality. Women are asked to remain in slavery throughout her life. Crime Investigation Department of Nepal police, in its annual report says that in fiscal year 2014/15, the registered cases of domestic violence were 8,268 which increased in fiscal year 2015/16 to 9,398 and in fiscal year 2016/17 the number exponentially increased to 11,629. This shows a clear increment in domestic violence despite of a new constitution in existence.

Women rights are ensured in Article 38 of the chapter of Fundamental Rights of the Constitution. Sub article 1 states that “Every woman shall have equal lineage right without gender-based discrimination”. The existing act, which is relevant to the constitution, detaches women from their family where they are born. They cannot claim on their father’s property and have equal rights on their ancestral property as like their brothers. Women cannot name their children as every child has to carry the name of their father. Still the citizenship is not issued for a child, by the name of a mother, father’s name is a must in application even though the provision has been made in the Constitution.

Most of the cases are negotiated and settled either in the society itself or at the police station. In most of the cases, women are forced to withdraw the petition against the culprit. Since a woman is claimed to be dependent on the male member of the family therefore, she is forced to take the complaint back. Approximately more than 8,000 domestic violence cases were registered in FY 2014/15 but only 200 cases were taken to the court and rest were negotiated and settled outside the court.

There are 40 government run safe shelters all over Nepal, where a domestic violence survivors are kept for 45 days. Vocational classes are given to them and at the day of release each of the survivors receives approximately \$ 250 USD and \$50 USD for medical treatment.

Articles of ICESCR	Concluding Observations 2014	Available Data	State effort on Concluding Observations
Article: 2.2, 3, 6.2, 10.1	b) Investigate cases of gender-based violence, prosecute the perpetrators and punish them with adequate sanctions if they are convicted.	Case registered against domestic violence in FY 2016/17 is 11629. WOREC documented 947 cases of domestic violence in the fiscal year 2017/18	The cases of domestic violence have not been reduced. This shows the inadequate effort of the State.
c) Facilitate complaints from victims of gender-based violence and their access to justice and protect them from any kind of reprisals.		Case registered against domestic violence in FY 2016/17 is 11629.	Mostly the case is settled outside the court.
d) Continue to provide law enforcement officials with the necessary training on gender-based violence, including domestic and sexual violence.		Last year there were total 4 trainings conducted for the Police personals on gender-based violence. In which 128 police personnel participated.	The number of trainings increased after 2014 but in 2017 the number of trainings were very low.
e) Develop protective and rehabilitation measures, including shelters and hotlines for victims.		There are 40 government run rehabilitation centers all over Nepal, where a victim of domestic violence is kept for 45 days. Hotline services are operated by Nepal government and some NGOs. National Women Council has started operating a hotline named "Khabar Garau 1145" FROM December, 2017.	There is no future program of the government to increase the number of the rehabilitation center because sufficient budget has not been allocated, as said by The Ministry of Women, Children and Social Welfare.
g) Expedite the adoption of the bill, presently before the parliament, which includes provisions on effective compensation to and services for victims/survivors.		A Civil and Criminal code has been ratified by the parliament effective from 17 August 2018.	

Recommendations

- 1) The government should reduce the culture of negotiation outside the court compelling women to withdraw their complaint.
- 2) The government should facilitate psychosocial counseling to the survivors of domestic violence.
- 3) Safe shelter support should be established and made accessible for every woman survivors in Nepal quality services.
- 4) Awareness program should be planned and carried out by the government and non-government sector against domestic violence and toxic masculinity.
- 5) A follow up program should be taken by the government to check if the vocational classes are useful for the women.
- 6) Article 38- rights of women of the constitution should be implemented by developing new acts.
- 7) Domestic violence (crime and punishment) act, 2009 should be amended to apply Article 38 of the constitution.

Article 12: Right to Health

Maternal Mortality and Sexual and Reproductive Health

Traditionally, abortion is taken as a sin in Nepalese society which further stigmatizes woman. The society and the culture are hurdles for a woman seeking abortion. Most of the women are suggested to seek abortion by a *Sudeni*, an untrained lady as a birth attendant in a traditional way. As a result, abortion is unsafe and risky. Culture and unawareness of the law makes women to opt for an unsafe abortion. Very few women are aware that abortion is legal and it should be done by a trained doctor at an authorized health post with proper health facilities. In urban areas, women are aware of their legal rights to safe maternity and reproductive health but most of the rural women are still not aware of such rights. Therefore, 258 estimated Maternal Mortality Ratio (MMR) is found per 100,000 live birth, according to a survey done by Ministry of Health in 2012. There are 46 deaths found in per 1000 live births (the data is from 2006 till 2011). The report also says that 40% of women are deprived from antenatal care from skilled providers.

Most of the health centers in rural areas are not properly equipped and there is lack of trained female health personnel. In rural part of the country, health centers are difficult to access. Condition of roads are not good and takes several hours to reach the health center. Patients are carried by people physically up-to the health center without any first aid.

Uterine prolapse (UP) is also one of the common reasons for maternal mortality and is a grave concern for women's sexual and reproductive health. Gender based discrimination is the major factor for this problem followed by other various reasons such as adolescent pregnancy, unawareness about reproductive health and socio-cultural harmful traditional practices. In the interaction programs, most of the CSOs and women human rights activists raised that still women are not aware about the preventive measure and the women who suffers from UP have no access to quality treatment or management of UP.

Name: Bipana Chaudhary

Age: 35 Years

Address: Tulasipur sub metropolitan city

Marital Status: Married

Marital age: 21

Bipana Chaudhary (name changed) aged 35 resident at Tulasipur sub metropolitan city 10 is the eldest daughter of family with two brothers. Her father did second marriage and gave birth to one daughter and one son. Bipana had to lose her eyesight at the age of 8 because of poor economic condition for the medical treatment which is why she did not attend the school as well.

She got married at the age of 21 and was looked down upon by her in-laws and was treated as second class person because of not having eyesight. She gave birth to her first child after a year of marriage with very difficult as well as she was not provided with necessary pre natal care. Consequently, she suffered from uterine prolapse. Despite of her poor health she gave birth to two more children which added more problem to her uterine prolapse whereas her husband was also suffering from asthma and could not be her helping hands. She has been living separately from her family members in one room. It has made her life even more difficult as she already is having health issues.

In this process, when she was in dire need of help, she opted to go to community health post for treatment however she was not comfortable enough to share her health problem with male health worker and returned back without sharing her problem. Her health issues gradually increased and turned unbearable which is why she collected her courage to go for the treatment again. Then, she got to know about her uterine prolapse which had already reached to last stage i.e. third degree and was informed that she could not be treated at that particular health post due to limited resources thus was referred to other health post. But she was hesitant to travel and go to other health post because of her poor economic condition and decided to live with it.

Days were passing by and one day she got an opportunity to share her problem with Psycho social counselor of WOREC as she was a member of a women group formed by WOREC Nepal itself. She also received a treatment by placing **ring pessary** with WOREC's support. She is living a healthy life comparatively since then.

In a public interest litigation of Prakash Mani Sharma Vs Government of Nepal (2008), the Supreme Court instructed the government to enact a law on reproductive health after consultation with experts and civil society. However, the bill has not yet been tabled in the parliament.

The Ministry of Woman, Children and Senior Citizens and The Ministry of Health and Population is directed by the court in the same verdict to initiate effective prevention program in order to raise public awareness on problem related to reproductive health and uterine prolapse. Though the concerned Ministries and departments claim that the initiation has already been taken, the result of the interaction programs with the civil society does not reflect it.

However, the constitution of Nepal has endorsed the spirit of the verdict of the court in article 35(2) which states the right to information about health care and 38(2) which states the right to safe maternity and reproductive health, still the law has not yet been ratified to exercise the said rights.

Articles of ICESCR	Concluding Observations 2014	Available Data	State effort on Concluding Observations
Article; 12.1, 12.2(a) (b) (d)	a) Conduct dissemination campaigns on the legality of abortion in the State party.	1) Estimated maternal mortality ratio is 258 per 100,000 live birth according to a survey done by Ministry of Health in 2012. 2) Infant mortality rate is 46 per 1000 live births (the data is from 2006 till 2011). 3) About 40% of women are deprived from antenatal care from skilled providers.	1) State has not yet ratified a law even after the direction of The Supreme Court.
	b) Ensure access to sexual and reproductive health services and to safe abortion services.	1) According to Ministry of Health and Population there is one health center in every district for safe sexual and reproductive health services and for safe abortion service.	1) The state conducts a month-long campaign for safe motherhood every year.

Recommendations

1. The concerned law should be enacted without delay to execute the article 35(2) and 38(2) of the constitution of Nepal.
2. An awareness program should be launched by the Federal government in coordination with provincial and local governments for the awareness of law precise to abortion and maternity health to mitigate gender-based discrimination.
3. Each health facility needs to be upgraded to provide a comprehensive women friendly health services that constitute of psycho-social counseling, confidential reproductive health care and management of RH morbidities including UP at the local level.
4. Government should facilitate all health centers with all equipment required to provide quality services.
5. Well trained maternity health attendants especially to manage UP cases should be available in every health center.
6. The government, in coordination with civil society, should encourage massive public participation in such awareness programs.

Recommendations and conclusion

Recommendations to the State in the implementation of the Concluding Observations

- 1) About 335 laws have to be formulated or amended within the time frame of three years of promulgation day of new Constitution of Nepal. It is three years in September 2018 and as of now not even 25% out of 335 acts have been formulated or amended. Laws should be enacted without any delay to safeguard the rights of Dalits and women ensured by the 2015 Constitution of Nepal.
- 2) There are different acts and policies like Caste Based Discrimination and Untouchability (Offence and Punishment) Act (2011), Nepal Citizenship Act (2006), Domestic Violence Act (2008), Human Trafficking and Transportation (Control) Act 2007, Foreign Employment Act (2007), The Anti-witchcraft (Crime and Punishment) Act, 2014, Section 14 of the Civil Code and Criminal Code on Rape, National Reconstruction and Rehabilitation Policy (2015), Local Governance Operation Act 2017. Ensure effective implementation of these acts and if needed amend them to be in sync with the constitution.
- 3) Safe rehabilitation centers and safe houses with psychosocial support and other basic amenities should be in all the districts and that should be comfortable and accessible for the victims and survivors of violence. Also provide them with technical and vocational training for making the women self-dependent and economically resilient.
- 4) Widespread awareness programs on gender equality and social inclusion policies along with attitudinal and behavioral shifts should be prioritized and integrated in the national action plan against violence.
- 5) Safeguard and regulate the trade unions of entertainment sector to ensure just and fair conditions at work. Basic economic, social and

cultural rights of entertainment workers should be protected and promoted through a ratification of an act including ILO C189.

- 6) Increase local employment opportunities through social entrepreneurship programs to reduce the trend of out migration of workers and number of people from being trafficked.
- 7) Nepal should ratify International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- 8) A law should be enacted without delay to execute the articles 35(2) *Every person shall have the right to get information about his or her medical treatment* and article 38(2) *Every woman shall have the right to safe motherhood and reproductive health* of the constitution of Nepal. The right to bodily integrity should be promoted.
- 9) The government should ensure easy access to every health centers, facilitate all health centers with all equipment required and provide proper training to the untrained traditional health attendants. Well trained maternity health attendants should be available in every health centers.
- 10) Trainings on Economic, Social and Cultural Rights needs to be provided to relevant stakeholders at service delivery offices including civil service officers, parliamentarians and other concerned stakeholders.

Recommendation to the Local Government

- 1) Social awareness program on policies of gender equality and social inclusion should be expanded by all the local governments. Adequate and targeted budget should be allocated following the past practices of allocation of 35% of the budget to the most marginalized groups.
- 2) To uplift the economic status of Dalits and women, necessary budget should be allocated by the local governments giving special priority to Dalit women to ensure their economic independency.
- 3) Municipalities and rural municipalities can develop their gender equality and social inclusion policies making them as framework to deliver services.
- 4) Judicial Committee Members need to be well acquainted about the economic, social and cultural rights and related laws to ensure effective delivery of services and justice for VAW survivors.
- 5) The indicators on economic, social and cultural rights can be developed in each ward for evaluating the progress made each year and maintaining gender disaggregated data.

Recommendation to NHRC, NWC and NDC

- 1) National Human Rights Commission, National Women Commission (NWC) and NDC should have a stronger mandate for monitoring, conducting evaluation and providing recommendations on any form of discrimination against women and Dalits in any aspect. The constitutional bodies can play an integral role in upholding rights of women, Dalits and other marginalized communities all over the Nepal.
- 2) NHRC should work on orienting and popularizing the indicators on economic, social and cultural rights for its widespread usage at the local level.

Recommendation to the CSOs and I/NGOs

- 1) UN should recognize Dalit rights as Human Rights and focus special attention on the Rights of Dalit Women.
- 2) The international legal obligation and instruments, related to Dalits, women and other marginalized communities should come into effect in terms of implementation, monitoring and evaluation.
- 3) More effective steps should be taken for public awareness and campaign regarding women, Dalits and other marginalized communities issues.
- 4) CSOs need to monitor the implementation of CESCER's concluding observations and provide feedback, and conduct advocacy workshops with the local and federal governments to make them accountable for the progressive realization of ESC rights of people in general and women and girls in particular.

Conclusion

Although it is almost three years since the Constituent Assembly promulgated the new Constitution in 2015, there are still many laws to be formulated and promulgated to implement the provisions of the constitution. There are many laws which essentially provision to fulfill the CESCER's concluding observation received in 2014 but without emending the laws according to new political and governance practices, there are many legal hurdles to ensure those all rights. Even in the constitution, there are many clauses which need to be amended to create ensuring environment to fulfill these rights.

Awareness, sensitization and regular orientation is needed for service providers and key stakeholders to ensure ESCR of women and girls. In many of the cases, especially in the case of awareness campaigns, adequate budget has not been allocated. Civil servants lack proper trainings, and the established service centers also do not have adequate facility. With the lack of awareness campaign, population from both rural and urban areas are not well informed about their rights and duties. Thus,

they are not able to enjoy the facilities and rights provided by the state. In many issues, the service delivery centers are not accessible for the most marginalized communities.

Nepal's obligation to respect, protect and fulfill economic, social and cultural rights needs to be progressively realized to the maximum of their available resources. Nepal should fulfill its minimum core obligations to meet the minimum essential standards of each of the rights and should not adopt non-retrogressive measures in any circumstances. Nepal has progressed from the armed conflict to signing Comprehensive Peace Agreement (CPA) in 2006, conflict-to-peace transition has led to a creation of federal state and electing many leaders locally. There are existing opportunities to bring progressive and inclusive laws for improving the conditions of the most marginalized communities. Fulfillment of economic, social and cultural rights particularly is crucial to avoid possibility of slipping into new violent conflict. The sentiments of the excluded communities historically and systematically if ignored and not addressed can create new revolt within the country.

GoN can make an exemplary case in working with different CSOs collaboratively to bring attitudinal, behavioral and structural transformation for institutionalizing equality, inclusion and justice at levels and spaces of the state. Similarly, the local government with elected representatives (sub-national government) can play vital role for the effective implementation of the CESC's concluding observations and most importantly the constitution, supreme law of Nepal.

