

Nepal

Report of
Non-governmental Organisation on
Universal Periodic Review (UPR)

Submitted to
UN Human Rights Council
July 2020



Nepal NGO Coalition for
Universal Periodic Review

Nepal
Report of Non-government Organization on
Universal Periodic Review
UPR Working Group of the Human Rights Council
6 July 2020

Supported By



Luthrun World Federation (LWF)

Nepal NGO Coaliation for Univerasal Periodic Review

Secretariat:



Informal Sector Service Centre (INSEC)

POBox: 2726, Kathmandu, Nepal

Tel: +977-1-5218770, Fax: +977-1-5218251,

Email: insec@insec.org.np Website: www.insec.org.np, www.inseconline.org

Nepal

Report of Non-governmental Organization on Universal Periodic Review

Published Date: July 2020

Published Quantity: 500 Copies

Preparation: Nepal NGO Coalition for UPR

Coordination: Bijay Raj Gautam, Executive Director, INSEC
Nepal NGO Coalition for UPR,
Secretariat, Informal Sector Service Centre (INSEC)

Report Preparation Committee Members

Kapil Aryal

Hom Prasad Rai Yamphu

Sanjita Timsina

Shree Ram Bajagain

Samjha Shrestha

Krishna Kumari Waiba

Lubha Raj Neupane

Materials from this report can be reproduced, republished and circulated with due acknowledgement of the source. We would appreciate being informed of the use of materials and receiving a copy of the document where possible.

Preface

This report presents the overall human rights status and trends in Nepal within the last four and half years' period with an aim to review and analyze state policies, legislations, programs, and institutional arrangements, as well as their implementation in the context of human rights of the country. It is a combined effort of 440 human rights organizations on behalf of Nepal NGO Coalition for UPR, Women Coalition for UPR and Durban Review Conference Follow-up Committee Nepal (DRCFC), who provided grass-root information to the UN Human Rights Council for the purpose of upcoming review of human rights record of the country under Universal Periodic Review (UPR) process in January 2021.

After the proclamation of the constitution of Nepal in 2015, Nepal has been declared as Federal Democratic Republican State. As per the constitutional provision there are three tier of government; federal, provincial and local level in Nepal. But there is still the existence of unequal social, political and economic systems that sustain structural discrepancies and discrimination among different groups of people. As such, the Nepali society is in a critical point of time, one filled with enormous challenges. The culture of impunity that enabled the crimes in the first place have remained intact, further increasing public distrust and incentives to resort to violence.

This report is prepared on the basis of various levels of central, provincial and thematic discussions which comprise of issues specially those which have not been given enough attention by the state, the special issues that have been neglected and the suggestions for further improvement. Several people and organizations have contributed for the preparation of this report. I would like to thank the member organizations working within the Women Coalition for UPR and Durban Review Conference Follow-up Committee under the Nepal NGO Coalition for UPR (NNC-UPR) for their efforts in preparing this report. Likewise, my sincere thanks go to the participants of the national, provincial and thematic consultative meetings who gave us firsthand information on the human rights situation.

I would like to acknowledge the support of Durban Review Conference Follow-up Committee (DRCFC), Women's Rehabilitation Centre (WOREC) and Informal Sector Service Centre (INSEC)'s province offices in conducting the provincial workshops. And, I would like to thank the organizations for the financial and technical help during its preparation. I would like to thank Luthren World Federation, Nepal for publication of this report and other technical support. I am equally thankful to other NGOs/CSOs who assisted us by providing information and other technical support.

I would like to specially thank Advocate Kapil Aryal, Advocate Hom Prasad Rai Yamphu and Sanjita Timsina for being a part of the report preparation committee and preparing the report. The efforts that Bijaya Raj Gautam, Executive Director, Samjaha Shrestha, Krishna Prasad Nepal from Secretariat, INSEC, have put for NNC-UPR and the co-ordination is highly accredited. I would like to express my gratitude to INSEC's Madan Paudel and Shreeram Bajgain for their editorial input and Gita Mali for the design and the layout. Likewise, Lubharaj Neupane of WOREC, Secretariat of National Women Coalition and Krishna Kumari Waiba of Durban Review Conference Follow-Up Committee (DRCFC)'s Secretariat, National Indigenous Women's Federation (NIWF) also deserve my heartfelt gratitude.

INSEC is humbled for being given the significant and historical responsibility for the coordination of the Nepal NGO Coalition for UPR in order to prepare the report for Universal Periodic Review. We are confident that the report will be useful for the Human Rights Council and other relevant bodies to understand and act on behalf of the international community to help improve the human rights and rule of law situation in Nepal.

Thank you

Dr. Indira Shrestha

Chairperson

INSEC Secretariat, Nepal NGO Coalition for UPR

CONTENTS

I. INTRODUCTION	6
II. METHODOLOGY	6
III. IMPLEMENTATION STATUS OF UPR 2ND CYCLE (2015) RECOMMENDATIONS AND DEVELOPMENTS SINCE THE PREVIOUS REVIEW	6
IV. BACKGROUND AND FRAMEWORK	7
A. Scope of International Obligations	7
B. Constitutional and Legislative Framework	7
C. Human Rights Institutions (HRI), Infrastructures and Policy Measures	8
V. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS	9
A. Equality and Non-discrimination	9
B. Right to Life, Liberty and Security of the Person	14
C. Administration of Justice, including Impunity and the Rule of Law	15
D. Right to Privacy, Marriage and Family Life	18
E. Economic, Social and Cultural Rights	18
Annexes	
1. List of Civil Society Organizations for UPR 2020	23
2. Joint Submission to the United Nations Universal Periodic Review (UPR), 37 th Session of the UPR Working Group	32
3. National Women Coalition' Submission to the UPR Mechanism for The Third Review of Nepal in November 2020, Coordinated by Women Rehabilitation Center (WOREC)	56

NEPAL
Nepal NGO Coalition Submission to the United Nations
Universal Periodic Review

6 July 2020

I. INTRODUCTION

This joint submission has been prepared by three coalitions, the Nepal National Coalition for UPR (NNC-UPR), National Women Coalition and Durban Review Conference Follow-up Committee (DRCFC) Nepal. The coalition comprises 440 civil society organizations (Annex 1).

II. METHODOLOGY

This report is the outcome of two national consultations, seven provincial and eight thematic consultations with 924 participants and relevant stakeholders. Participants included representatives from the National Human Rights Commission (NHRC), government, sexual minorities, Muslims, religious minorities, *Dalit* and *Madeshi* communities, indigenous peoples (IPs), journalists, lawyers, freed bounded laborers, child rights activists. This submission includes two different thematic submissions by DRCFC and the Women Coalition as annexes (Annex 2 and 3).

III. IMPLEMENTATION STATUS OF UPR 2ND CYCLE (2015)
RECOMMENDATIONS AND DEVELOPMENTS SINCE THE PREVIOUS REVIEW

1. The mid-term assessment conducted by the National Coalition suggested that only eight (4%) of a total of 152 (78%) recommendations supported by Nepal were fully implemented, 121 (62%) recommendations were partially implemented and 66 (34%) recommendations were not implemented.
2. Both Houses of Nepal's federal parliament passed 16 bills necessary to guarantee the fundamental rights mentioned in the Constitution. However, the laws remain to be effectively implemented. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, has been ratified¹.

¹ Information relating to the ratification published in Nepal Gazette on May 11, 2020.

3. The government has drafted its Fifth National Human Rights Action Plan for implementing Nepal's human rights obligations.

IV. BACKGROUND AND FRAMEWORK

A. Scope of International Obligations

4. The First and Second UPR cycles had recommended ratification of several international treaties for improving the human rights situation². Many of the recommended treaties have not been ratified.

CSO-Suggested Recommendations:

- Ratify Convention against Enforced Disappearance, Migrant Workers Convention, and all three Additional Protocols to Geneva Conventions 1949.
- Accede to the Rome Statute of International Criminal Court (ICC) and International Labour Organization (ILO) Convention 189.
- Ratify Optional Protocol (OP)s to the International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention against Torture (CAT) and Convention on the Rights of the Child (CRC)-OP III.

B. Constitutional and Legislative Framework

5. Nepal's Constitution³ commits to democratic norms and values including human rights. The Constitution is in the process of implementation under a federal governance arrangement.
6. The Constitution ensures civil and political rights as well as economic, social and cultural rights as fundamental rights.⁴ It also guarantees constitutional remedy.⁵ The Directive Principles states the objective of the state as to establish a public welfare system of governance.⁶
7. The Constitution guarantees participation of ethnic and caste groups, women, indigenous peoples, *Dalits*, Muslims, *Madhesis*, Persons with Disabilities and sexual minorities in state affairs.

2 UPR Recommendation Second Cycle Para 123.1, 123.2, 123.21

3 Promulgated on 20 September 2015

4 These rights include, right to equality, rights relating to poverty, right to language and culture, right to employment, right to labour, right relating to food and housing. The Constitution requires the State to enact necessary legislations for the implementation of fundamental rights within three years of commencement (Art. 47).

5 Art. 46, Constitution of Nepal.

6 By establishing a just system in all aspects of national life, including human rights and gender equality, among others. The Directive Principles (Article 50) also incorporate the principle of proportional participation of all sections in the system of governance on the basis of local autonomy and decentralization.

Recommendations:

- Guarantee equal rights for women to acquire and transfer citizenship.
- Ensure effective implementation of the rights of women, indigenous peoples, *Dalits*, Muslims, *Madhesi* and sexual minorities as guaranteed in the Constitution.

C. Human Rights Institutions (HRI), Infrastructures and Policy Measures

8. NHRC is an independent human rights monitoring constitutional body.⁷ The Commission has been carrying out its constitutional responsibilities through monitoring, investigation and promotion of human rights.⁸ However, implementation of NHRC recommendations by the government has been poor.⁹
9. The National Women Commission, National *Dalit* Commission, the National Inclusion Commission, the Indigenous Peoples and Nationalities Commission, the *Madhesi* Commission, the *Tharu* Commission and the National Muslim Commission are also designated as constitutional bodies.¹⁰ However, members to some commissions remain to be appointed.¹¹

Recommendations:

- Ensure full independence of NHRC¹² and effectively implement its recommendations.
- Ensure inclusive representation in appointments to the NHRC.¹³
- Form 'Disability Commission' and 'Children's Commission' with autonomy.
- Appoint commissioners and make all commissions fully staffed within 6 months.

7 Article 249 of the Constitution of Nepal.

8 <https://reliefweb.int/report/nepal/nepal-human-rights-commission-annual-progress-report-synopsis-2015-2016-enne>

9 NHRC Recommendations upon Complaints in a Decade (2000-2010).

10 Part 27 of the Constitution of Nepal.

11 <https://thehimalayantimes.com/kathmandu/constitutional-commissions-yet-to-get-full-shape/>

12 See recommendation, "Amend its National Human Rights Commission Act in order to guarantee the independence and financial autonomy of this Commission (Portugal) (para 121.11 UPR Nepal 2015; A/HRC/3/9)"; "Enact relevant legislation to provide for necessary autonomy and independence of the National Human Rights Commission in accordance with the decision of the Supreme Court of Nepal (Uganda) (para 121.12 UPR Nepal 2015; A/HRC/3/9)";

13 See recommendation. "Ensure the effective functioning of the National Human Rights Commission of Nepal, including a representative approach to appointments (Australia) (para 121.13 UPR Nepal 2015; A/HRC/3/9)"

V. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

A. Equality and Non-discrimination

10. **Gender Equality and Violence against Women**¹⁴: Nepal's Constitution guarantees that no citizens shall be discriminated on the ground of race, sex, economic condition and similar other grounds.¹⁵ Article 38 safeguards a wide range of rights of women. However, gender inequality prevails, and women are discriminated in public and political forums¹⁶. Women from *Dalit*, IPs, minority and Muslim community and women with disabilities continue to face gender and identity-based discrimination.
11. Despite legal safeguards, discrimination and violence against women in families and communities continue. The patriarchal social structure has made it hard to deal with the issues of domestic violence because victims generally do not file complaints; instead seek social settlement. The interim protection measure envisioned by the Domestic Violence (Offence and Punishment) Act has not been effective.¹⁷ INSEC recorded 3,364 cases of domestic violence against women in 2019¹⁸INSEC reported 502 cases of violence against women and children during March 24-May 16, 2020 in COVID-19 related lockdown¹⁹.

Recommendations:

- Implement laws and the Supreme Court decisions to make citizenship easily available based on the mother's citizenship.
- Ensure effective implementation of laws and policies on gender equality backed with sufficient resources.
- End harmful cultural practices and build awareness for eliminating discrimination against women.²⁰
- Investigate cases involving harmful traditional practices and punish those responsible, provide protection and rehabilitation to victims. Raise awareness against issues such as the dowry system, son preference and polygamy.²¹
- Improve mechanisms to protect women against domestic violence.

14 2nd cycle (2015) UPR Recommendation No. 122.10, 122.45

15 Article 18 of the Constitution. Nevertheless, special provisions may be made for the protection, empowerment or development of the citizens including the socially or culturally backward women, *Dalit*, indigenous people, indigenous nationalities, etc.

16 Special Rapporteur on Violence against Women, its Causes and Consequences, *Report on Country Visit to Nepal*, UN Doc. A/HRC/41/42/Add.2 of 9 June 2019, para. 35.

17 UPR Mid-term Review Report, p. 38.

18 INSEC Year Book 2020, p. 19.

19 <http://inseconline.org/en/news/violation-of-women-and-childrens-rights-during-54-days-of-lockdown/>

20 See recommendation. " Promote gender equality including through an awareness-raising programme to combat negative stereotyping against women (Malaysia) (para 122.34 UPR Nepal 2015; A/HRC/3/9)"

21 Compilation prepared by OHCHR, 2015, A/HRC/WG.6/23/ NPL/2, para 40.

12. **Discrimination against *Dalit* and *Madhesi* people:** Nepal's Constitution provides rights against untouchability and discrimination. Despite these legal guarantees²², caste-based discrimination is still practiced in Nepali society. Discrimination has affected access to education, health care, employment, water availability and ability to enjoy an adequate standard of living for members of these communities.²³
13. *Madhesi Dalits* endure greater exclusion, marginalization, and landlessness²⁴ and are discriminated even within the *Dalit* and *Madhesi* communities. *Dalit* women face discrimination based on region, class, caste and gender. *Badi* woman face sexual exploitation. *Dalit* people face caste-based discrimination and untouchability in schools, temples and other public and private places. They are deprived of education and face malnutrition, child labor, trafficking and sexual violence.²⁵

Recommendations:

- Provide mother tongue-based multilingual education and ensure access to schooling for children from *Dalit* and indigenous communities.²⁶
- Investigate²⁷ and prosecute cases of discrimination against *Dalits*, conduct awareness-raising campaigns, functionalize the National *Dalit* Commission and ensure access to justice on cases of discrimination.²⁸
- Adopt policies, plans, strategies, programs and budget for effective implementation of law against caste-based discrimination.
- Amend all discriminatory laws, regulations, rules, directives, policies and programs.²⁹
- Ensure protection for all inter-caste married couples.
- Ensure that all opportunities, resources and services are proportionally distributed among the hill and *Madhesi Dalits* and *Dalit* women as per the ratio of their respective populations.

22 Despite enactment of "Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011 (CBD Act), *Dalits* are facing many forms of discrimination.

23 Caste-Based Discrimination and Untouchability against *Dalit* in Nepal, Nepal's Civil Society Alternative Report to the UN Committee on the Elimination of all forms of Racial Discrimination, 2018, p. 13.

24 Sustainable Development Forum, Ownership of *Dalits* in Land: A Study. Kathmandu: Sustainable Development Forum 2006.

25 <https://idsn.org/wp-content/uploads/2015/11/Nepal-UPR-2015-Dalit-Coalition-and-IDSN-report.pdf>

26 Compilation prepared by OHCHR, 2015, A/HRC/WG.6/23/ NPL/2, para 82.

27 See recommendation. "Investigate all acts of discrimination against the *Dalit* community (Argentina) (para 122.55 UPR Nepal 2015; A/HRC/3/9)"

28 Compilation prepared by OHCHR, 2015, A/HRC/WG.6/23/ NPL/2, para 30.

29 See recommendation. "Assess the implementation and effectiveness of laws aimed at ending and preventing all forms of discrimination, in particular against women and *Dalits*, and take concrete steps to translate anti-discrimination efforts into effective practice on the ground (Czech Republic) (para 122.39 UPR Nepal 2015; A/HRC/3/9)"

- End landlessness within one year and ensure citizenship rights of *Dalits*.

14. **Discrimination against Muslim and Other Minorities:** Muslims³⁰ are one of the marginalized groups in Nepal.

15. Muslim women have lower access to health, justice and education because of cultural and language barriers. They suffer multiple forms of discrimination as women.³¹

Recommendations:

- Ensure that all religious groups have equal access to resources to preserve and protect religious and cultural heritage and to build religious infrastructures.
- Recognize and mainstream *Madrasha* education in Nepal's education system.
- Ensure proportional representation of Muslim women in all public spheres.

16. The GoN has recognized 60 groups of Indigenous People (IP)s³² and several IPs have been left out.³³ Several projects located in IPs land and territories have displaced IPs from their lands and natural resources.³⁴ The GoN endorsed and approved the National Action Plan for the implementation of ILO 169, but it is yet to be implemented.³⁵ Indigenous women face multiple discrimination. The Convention on the Elimination of All Form of Discrimination against Women (CEDAW) concluding observations made in 2018 remains to be implemented.³⁶

30 Muslims make up 4.4 % of the population

31 Joint Report on Muslim Women's rights in Nepal, 2018 https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/NPL/INT_CEDAW_CSS_NPL_32673_E.pdf

32 National Foundation of Indigenous Nationalities Act 2058 available at <http://www.nfdin.gov.np/uploads/ck/5df9de20bdbc7.pdf>

33 In 2009, the GoN formed a High-Level Taskforce for the revision of the official list of indigenous nationalities. Conducting a detailed study, the Taskforce submitted its report to the GoN and recommended to enlist 81 indigenous nationalities in the official schedule. The report of the Taskforce is yet to be approved by the GoN. National Foundation of Indigenous Nationalities Act 2058 available at <http://www.nfdin.gov.np/uploads/ck/5df9de20bdbc7.pdf>

34 Cases of indigenous peoples rights violation, visit at <https://www.lahurnip.org/uploads/articles/Cases%20of%20Indigenous%20Peoples.pdf>

35 Government of Nepal, Office of the Prime Minister and Council: Fourth National Plan of Action on Human Rights, Fiscal Year 2014/2015 – 2018/2019, available at file:///C:/Users/R14i5U360TS/Downloads/4thNational%20Planof%20Actions%20on%20Human%20Rights2014-2018%20(1).pdf

36 Para 40(a). The lack of recognition of the rights of indigenous women in the Constitution and the general lack of recognition of the right of indigenous peoples to self-determination;" and made recommendation in para 41 (a), "(a) **Amend the Constitution to explicitly recognize the rights of indigenous women, in particular their right to self-determination, in line with the United Nations Declaration on the Rights of Indigenous Peoples.**" Concluding Observations on the Six Periodic Report of Nepal on CEDAW, available at file:///C:/Users/R14i5U360TS/Desktop/UPR%20core%20documents/CDAW%20Concluding%20Observation%202018/Concluding-comments-English.pdf

Recommendations³⁷

- Immediately implement the Action Plan of ILO 169 endorsed by the GoN.
- Implement CEDAW concluding observations 2018.
- Recognize and uphold the right to free, prior and informed consent of IPs as a requirement for any activities that may impact on them.
- Fully implement the constitutional provisions of inclusion and proportional representation of IPs including indigenous women.
- Collect and disaggregate data of indigenous women in forthcoming National Census.

17. Persons with Disabilities (PWDs): The Rights of Persons with Disabilities Act, 2017 is focused on the medical model of disability and needs amendment to address issues of psychosocial disabilities. PWDs have been struggling for inclusion and participation in all state structures. Lacking support systems and social security, persons with psychosocial and severe disabilities are often chained, incarcerated and treated in inhuman ways. Access to education and health facilities are difficult for PWDs.

Recommendations:

- Amend PWDs Act and address issues of psychosocial and other under-represented disabilities.
- Incorporate survey questions to get data of all types of disabilities in the 2021 national census.

18. Sexual and Gender Minorities: Over a decade of Supreme Court's verdict³⁸, marriage equality is unrecognized, instead, it is legally sanctioned. The recommendation of the Supreme Court (SC) -mandated committee report is yet to be implementation.³⁹ Though the Constitution recognizes "gender and sexual minority" people among the disadvantaged groups,⁴⁰ non-recognition of marriage equality has deprived Lesbian, Gay, Bisexual, Transgender, or Intersex (LGBTI) couples of enjoying certain rights and benefits. LGBTI persons

37 In line with the previous UPR recommendations (A/HRC/31/9, para 121.9, Mexico and A/HRC/31/9, para - 122.37, Uganda)

38 Suman Panta v. Ministry of Home Affairs et. al. Case No. 073-WO-1054 on a Writ Petition for an Order of Mandamus and Certiorari

39 In 2015, the GoN formed a committee to study the possibility of legalizing same-sex marriage as per the SC's decision and have submitted an 85-page report to the Prime Minister's Office. The report has recommended that the government should legalize same-sex marriage. <https://kathmandupost.com/lifestyle/2019/05/03/nepals-indecision-on-same-sex-marriage-leaves-couples-in-limbo>

40 Article 12 (related to citizenship) of the Constitution of Nepal 2015

are subjected to discrimination, hate, social stigma, and harassment in their own families, schools, employment and public services.⁴¹

Recommendations:

- Fully implement the constitutional provisions to increase the participation and representation of the LGBTI community in public services and state mechanisms.
- Revise and amend the Civil and Criminal Codes and other discriminatory laws that restrict the rights of the LGBTI community.

19. Slavery and Former Bonded Labor: Despite legislative provisions against slavery, historical forms of bonded labor (*Kamaiya*, *Kamalari*, *Haruwa*, *Charuwa*, *Haliya*, etc.) persist in agriculture, and forced labor in brick kilns, stone quarries, entertainment sector, domestic work, restaurant and embroidered textiles. These exploitations are complex in Nepalese context where legal enforcement is weak and impunity is high without much economic opportunities.⁴² In 2000, the government declared *Kamaiya* emancipation, including from debt.⁴³ There are around 37,000 freed *Kamaiya*.⁴⁴ However, two decades after their emancipation, they are still awaiting for proper rehabilitation. They are compelled to work for previous landlords.⁴⁵

Recommendations:

- Ensure full and effective implementation of laws against slavery, including, the *Kamaiyas* (Prohibition) Act 2002;
- Provide employment opportunities to freed bonded labourers.
- Mobilize local authorities to ensure that there is no slavery, servitude or slavery-like practices in communities.
- Ensure rights to housing to all the freed bonded labours.

20. Rights of Human Rights Defenders (HRD): The Federation of Nepali Journalists listed 36 cases of killing, four cases of enforced disappearances of

41 Global Press Journal. See at <https://globalpressjournal.com/asia/nepal/wanted-male-female-transgender-people-nepal-suffer-hiring-bias-despite-law/>

42 <https://www.spotlightnepal.com/2017/09/24/trapped-modern-slavery-case-nepal/>

43 The social movement of bonded labor forced the government to declare the emancipation of thousands of *Kamaiyas* and *Kamlaris* (bonded labor form indigenous *Tharu* community) in western Nepal, on 17 July 2000. Similarly, in September 2008, the Government announced that it had abolished the *Haliya* system and cancelled the debts of *Haliya* bonded laborers from Dalit community.

44 The Kathmandu Post, July 17, 2017, available at <https://kathmandupost.com/miscellaneous/2017/07/17/many-freed-kamaiyas-yet-to-be-rehabilitated>

45 http://inseconline.org/en/wp-content/uploads/2020/YB2020/Chapter_3.3_YB2020.pdf

journalists⁴⁶ and 73 press freedom violations.⁴⁷ Women Human Rights Defender (WHRD)s share equal responsibility but face a higher level of risk. WHRDs advocating against domestic violence and for sexual rights are routinely threatened.⁴⁸

Recommendations:

- Ensure recognition, support and security to HRDs and WHRDs through law, policy and programmatic interventions.
- Take immediate actions to ensure protection in the cases of threats caused by freedom of expression.⁴⁹
- Take measures to systemically investigate⁵⁰ intimidation, threat, physical harm and aggression against HRDs.

B. Right to Life, Liberty and Security of the Person

21. Five persons, two in Bhakatapur, two in Rupandehi, and one in Sunsari district, in 2018 and three persons, one each in Saptari, Rupandehi and Sarlahi districts in 2019, were killed in fake encounter in Nepal. INSEC has raised questions on such unlawful killings conducted by Nepal police through its reports and press statements.⁵¹

Recommendations:

- Take measures to prevent warrantless arrests, torture, extrajudicial killings and other types of state misconduct.
- Carry out effective investigation on the allegations of extrajudicial killings and ensure justice for victims.⁵²

46 http://www.fnjnepal.org/uploads/freedoms/freedom_1502098548.pdf

47 Annual Press Freedom Violation Data from May 4, 2016 to May 3, 2017, available at http://www.fnjnepal.org/uploads/freedoms/freedom_1502095635.pdf

48 Nepal Human Rights Yearbook (Nepali edition), pg. 246, Informal Sector Service Centre (INSEC), Kathmandu.

49 See recommendation." Ensure the right to freedom of expression online/offline in law and in practice, including by decriminalizing defamation, and to investigate all cases of threats and attacks against journalists and human rights defenders (Estonia) (para 122.72 UPR Nepal 2015; A/HRC/3/9)"

50 See recommendation." Investigate all case of threat and attacks against human rights defenders (Botswana) (para 122.60 UPR Nepal 2015; A/HRC/3/9)"

51 http://inseconline.org/en/wp-content/uploads/2020/YB2020/Chapter_1_Executive_summary_YB2020.pdf

52 See recommendation." Investigate allegations of extrajudicial killings and deaths in custody as well as of trafficking in human organs (Sierra Leone) (para 121.27 UPR Nepal 2015; A/HRC/3/9)"; "Promptly investigate all allegations of torture, arbitrary detention, extra-judicial and summary executions and punish perpetrators (New Zealand) (para 121.26 UPR Nepal 2015; A/HRC/3/9)"

22. **Torture and Enforced Disappearance:** For the purpose of addressing human rights violations committed during armed conflict, the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act in 2014 was enacted.⁵³ Compensation Relating to Torture Act, 1996 has provision for compensating physical or mental torture of people or for cruel, inhuman or degrading treatment to such a person.⁵⁴
23. Criminal Code has criminalized the act of torture and enforced disappearance⁵⁵. The Legislature-Parliament on Aug 31, 2016, forwarded the Bill⁵⁶ to Control Torture, Inhuman, Brutal and Disrespectful Acts to a parliamentary committee for finalization⁵⁷but has not been passed yet.
24. Nepal has not yet signed the OP CAT.⁵⁸

Recommendations:

- Ratify the OP CAT⁵⁹
- Ensure proper mechanism for rehabilitation and reparation of torture victims.
- Ensure accountability and improve capacity of security forces for preventing torture.⁶⁰

C. Administration of Justice, including Impunity and the Rule of Law

25. **Right to a Fair trial:** The Constitution of Nepal 2015 guarantees a fair trial⁶¹. There is lack of effective coordination among the investigation, prosecution and

53 Pursuant to the Act, two Commissions of Inquiry (COIs) were established in February 2015: the Truth and Reconciliation Commission (TRC), which has a mandate to investigate cases of serious human rights violations including unlawful killings, sexual violence, torture and a range of other serious crimes committed during the conflict; and the Commission on Investigation of Enforced Disappeared Persons (CIEDP), which has a mandate specific to investigate the cases about the conflict related disappeared persons

54 Preamble, Torture Compensation Act, 1996

55 Persons inflicting torture may get imprisonment up to five years or Rs. 50,000 as fine or both depending on the gravity of offence.

56 Anti- Torture Draft Bill ("Torture and Cruel, Inhuman or Degrading Treatment (Control) Bill") remains to be approved by parliament. The bill proposes criminalizing torture, providing a mechanism for the investigation and prosecution of torture complaints, and compensation to victims. The Bill presented to parliament is a substantial improvement on the current legal framework and contains many positive provisions which would, if implemented, go a long way towards fulfilling Nepal's obligations under the United Nations Convention Against Torture (CAT) and other international treaties on human rights.

57 <http://kathmandupost.ekantipur.com/printedition/news/2016-08-31/anti-torture-bill-moves.html>

58 https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9-b&chapter=4&clang=_en

59 See recommendation. "Study the possibility of accepting the competence of the Committee against Torture (Panama) (para 123.1 UPR Nepal 2015; A/HRC/3/9)"; "Accede to the Optional Protocol to the Convention against Torture (New Zealand) (Czech Republic) (para 123.3 UPR Nepal 2015; A/HRC/3/9)"; "Ratify the Optional Protocol to the Convention against Torture (Montenegro) (Denmark) (Uruguay) (Ghana) (Germany) (para 123.4 UPR Nepal 2015; A/HRC/3/9)",

60 See recommendation." Train the public force on human rights principles, in particular on prevention of torture and ill treatment (Djibouti) (para 122.25 UPR Nepal 2015; A/HRC/3/9)"

61 Article 20, Constitution of Nepal.

adjudication agencies. As a result, some detainees face torture or inhuman treatment and are denied a fair trial.

Recommendations:

- Develop infrastructure and invest in criminal justice mechanisms to ensure fair trials.
- Establish a formal mechanism to coordinate among criminal justice institutions.
- Enact comprehensive witness protection law.
- Ensuring protection for victims and witnesses to crime, particularly *dalit*, women and minor.⁶²

26. Access to Justice and Effective Remedy: The judicial procedure is expensive and tiring. Legal aid hardly reaches indigent people and women due to the social and legal limitations⁶³. The Criminal Code has increased the statutory limitation for rape and sexual violence to one year but is still insufficient. Women victims of physical violence, sexual violence, and caste-based discrimination are coerced to opt for mediation rather than seeking legal remedy.

Recommendations:

- Ensure access to justice measures such as fast track court and effective continuous hearing of cases.
- Allocate sufficient human and financial resources to the judiciary and quasi-judicial bodies.
- Enact new Nepal Police Act with principles of democratic and human rights-friendly policing.

27. Transitional Justice (TJ): After 14 years of the Comprehensive Peace Accord between the government and the then rebel, victims of conflict have received only interim relief and no reparation. The modes of operation remain to be finalized even though the TJ commissions were formed in 2015⁶⁴.

28. Politically influenced appointments of commissioners – the practice to date – threaten to undermine the purpose of the commission for truth, justice, reparation and institutional reforms. Survivors of conflict-related sexual violence have not been acknowledged as conflict victims.

⁶² See Compilation prepared by OHCHR, 2015, A/HRC/WG.6/23/ NPL/2, para 52.

⁶³ Inadequate protection mechanism in Domestic Violence (Offence and Punishment) Act, 2066 (2009).

⁶⁴ See: <http://trc.gov.np/> and <https://ciedp.gov.np/en/home/>

29. The two Commissions have not produced tangible results other than receiving complaints from victims. Investigations on the complaints have not been completed.
30. Accused and perpetrator of the conflict era crime and serious human rights violation cases are being appointed, promoted and deployed in the high-level policy making institutions, executive and security agencies.

Recommendations:

- Respect decision of the Supreme Court⁶⁵ on handling cases of serious human rights violation.⁶⁶
 - Recognize conflict-era survivors of sexual violence as conflict victims and include them in all support programs.
 - Make medical, psycho-social, legal and livelihood immediately available to the survivors.
 - Ensure protection of survivors and witnesses in the TJ mechanisms.
 - Ensure that law and institution reform, and vetting approach is used in the TJ process.
 - Make sure that commissioners to the TJ mechanisms are appointed in fair manner based on their competency, not on the ground of political affiliation.
 - Implement Human Rights Committee recommendations relating to conflict era communications.
31. **Impunity:** Still a number of First Information Report (FIR)s are not registered⁶⁷ and extra judicial killings are not adequately investigated⁶⁸. In some cases, suspects are not arrested because of political protection.

Recommendations:

- Design approach to check impunity, and for ensuring equality of all before law.

⁶⁵ The decision to void amnesty and forced reconciliation should be respected.

⁶⁶ See recommendation." Implement the Supreme Court rulings of 2013 and 2015 on the Truth, Reconciliation and Disappearance Act so that investigation into human rights violations committed during the civil war, compensation for victims and reconciliation efforts are undertaken in accordance with international standards on transitional justice (Czech Republic) (para 122.63 UPR Nepal 2015; A/HRC/3/9)"

⁶⁷ <https://myrepublica.nagariknetwork.com/news/police-refuse-to-register-fir-against-ex-minister-basnet-ex-igp-khanal-ruling-party-lawmaker-shrestha-for-the-alleged-abduction-of-opposition-lawmaker/>

⁶⁸ <https://kathmandupost.com/national/2019/11/06/nepal-police-appears-unwilling-to-take-action-against-officials-involved-in-extrajudicial-killing>

D. Right to Privacy, Marriage and Family Life

32. Child marriage has been criminalized but is still practiced. Lack of enforcement of existing laws remains an issue.
33. In 2016, the government adopted "National Strategy to End Child Marriage" with the vision of ending the practice by 2030. However, it had not prepared a budget to implement the strategy.⁶⁹

Recommendations:

- Ensure effective enforcement of the legal minimum age of marriage.
- Protect girls from sexual abuse and violence and ensure reproductive health.

E. Economic, Social and Cultural Rights

34. **Right to Work and Rights at Work:** A majority of the population employed in the informal economy do not have just and favourable working conditions and social security.⁷⁰ Women working in households, restaurants, dance bars, massage parlours, etc. are not adequately protected by law and mechanism. This results in abuse and stigmatization including unequal and low salaries, uncertain duty hours, job insecurity, harassment, violence and arbitrary arrests.

Recommendations:

- Protect women working in entertainment sectors by improving working conditions, ensure job security and establish complaint mechanisms.
- Ensure domestic work as decent work and social security to the domestic workers.

35. **Right to Social Security:** The government unveiled a contribution based social security scheme on 27 November 2018.⁷¹ This scheme protects employees in formal sectors but labourers in informal sectors and unemployed may not benefit from it. The government provides allowances for senior citizens, widows, unmarried women, children, *Dalits* and endangered ethnic communities. However, many senior citizens do not receive the payments because they do not have citizenship certificates.⁷²

69 UPR Mid-term Review Report, p. 23

70 Compilation prepared by OHCHR, 2015, A/HRC/WG.6/23/ NPL/2, para 67.

71 <https://thehimalayantimes.com/nepal/government-unveils-social-security-scheme/>

72 The age in citizenship certificates are mistakenly lowered

Recommendations:

- Guarantee social security to people working in informal sectors.
- Provide protection allowances to all households below poverty line.

36. **Right to an Adequate Standard of Living:** Despite constitutional guarantee of the right relating to food⁷³ and the Supreme Court decision on holding state responsible to ensure easy access to food,⁷⁴ food scarcity is a problem in rural Nepal. There is little or no promotion of locally available nutritious food for mothers during pregnancy, and to children after six months of age.⁷⁵
37. The government has evicted landless squatters without providing them alternatives. There is no safeguard for women expelled from their families following domestic violence.
38. 10.8 million people in Nepal do not have access to improved sanitation, and 3.5 million do not have access to clean drinking water.⁷⁶

Recommendations:

- Ensure effective implementation of right relating to food and nutrition security.⁷⁷
- Improve food storage management system.
- Professionalize agriculture and ensure rights of affected people from development projects.
- Adopt a comprehensive human-rights-based strategy with a gender dimension to combat hunger.⁷⁸
- Effectively implement the Public Housing Project⁷⁹ for *Dalit* and marginalized groups and expand the scheme to other indigent communities.⁸⁰
- Abide by the UN Basic Principles and Guidelines on Development-based eviction and displacement.

73 Article 36 provisions for right to food as a fundamental right whereby every citizen shall have the right to be safe, without endangering life because of food scarcity. It also ensures the right to food sovereignty in accordance with law.

74 *Prakash Mani Sharma and Others*, NKP, 2065(2008), p.149.

75 UPR Mid-term Review Report, p. 24

76 <https://www.unicef.org/nepal/water-and-sanitation-wash>

77 See recommendation. "Consider adopting a comprehensive national strategy to ensure food and nutrition security for its people (Malaysia) (para 122.86 UPR Nepal 2015; A/HRC/3/9)"; "Adopt a comprehensive national strategy to ensure food and nutrition security for all in line with international standards (Ireland) (para 122.88 UPR Nepal 2015; A/HRC/3/9)

78 Compilation prepared by OHCHR, 2015, A/HRC/WG.6/23/ NPL/2, para 77.

79 The government declared *Janata Awas Yojana* (Public Housing Project) in the budget of FY 2009/10 to provide housing for *Dalits*, poor and Muslim families

80 See recommendation. "Pursue its efforts with a view to facilitating access to housing for marginalized and low-income groups (Morocco) (para 122.89 UPR Nepal 2015; A/HRC/3/9)"

- Ensure effective implementation of the "Policies related to Social Justice and Inclusion" as provided by the Constitution.⁸¹
- Remove barriers to accessing the water supply to traditionally excluded groups.⁸²
- Secure right to use and develop ancestral land by IPs and also seek their free, informed consent before undertaking any development project.⁸³

39. **Right to Health:** The Constitution has guaranteed right relating to health as fundamental right.⁸⁴ Safe Motherhood and Reproductive Health Rights Act, 2018 and Public Health Service Act 2018 have been enacted. However, implementation of these laws remains to be seen.

40. Despite having new plans and policies,⁸⁵ problems such as high maternal mortality rates⁸⁶, low number of doctors⁸⁷ and access to safe abortion show that the measures have been ineffective. Fifty-six new mothers died during March 24 to May 31, 2020 in the lockdown situation⁸⁸.

Recommendations:

- Create universal health insurance and make primary health service free and accessible.⁸⁹
- Create standard surveillance of communicable diseases and make better arrangements for quarantine.

81 Under article 51(j) of the Constitution of Nepal 2015, it has been envisioned to identify the freed bonded labours, *Kamlari*, *Harawa*, *Charawa*, tillers, landless, squatters and provide them with a housing plot and cultivable land or employment for their livelihoods.

82 Compilation prepared by OHCHR, 2015, A/HRC/WG.6/23/ NPL/2, para 76.

83 Compilation prepared by OHCHR, 2015, A/HRC/WG.6/23/ NPL/2, para 89.

84 According to article 35 of the Constitution of Nepal 2015, every citizen shall have the right to free basic health services from the State, and also have equal access to health services. Furthermore, women shall have special opportunity in education, health, employment and social security, on the basis of positive discrimination (article 38(5)). Children have been guaranteed the right to health, among others, as per article 39 of the Constitution. The right to safe motherhood and reproductive health have been secured as fundamental right under article 38(2). Similarly, Rights of Persons with Disabilities Act 2074, sec 19(2) mentions the duty of Nepal government, to secure the protection of health and reproductive right of women with disabilities.

85 The Government of Nepal has formulated its 20-year Second Long-Term Health Plan, 2054- 74 (1997-2017), Nepal Health Sector Plans and more recently, New National Health Policy 2014.

86 MMR at 229 and IMR at 46 per thousand live births

87 Out of 561 doctors required to be working in rural areas there were only 314.

88 <https://english.onlinekhabar.com/56-new-mothers-died-during-lockdown-60000-pregnant-women-got-deprived-of-healthcare.html>

89 See recommendation. "Continue to implement policy measures to ensure that quality healthcare is accessible to all, particularly women and children (Singapore) (para 122.90 UPR Nepal 2015; A/HRC/3/9)"; Improve access to affordable healthcare for all through the effective implementation of its policies and directives (Thailand) (para 122.92 UPR Nepal 2015; A/HRC/3/9)"; "Continue to implement measures to ensure all women and girls have equal access to quality sexual and reproductive healthcare (New Zealand) (para 122.95 UPR Nepal 2015; A/HRC/3/9)"

- Ensure universal access to sexual and reproductive health care, information and services especially for socio-economically marginalized women and adolescent girls.

41. Right to Education: School dropout is the major concern. Government's policy of compulsory and free education⁹⁰ has not been effective. Textbooks, stationery and uniforms do not reach public schools in remote districts on time. Politicization of teachers and students and corruption⁹¹ in the sector remain as major concerns. The difference in quality of education in private and public school is immense. Gender disparity still exists, and the education system is unfriendly towards children with disabilities.

Recommendations:

- Effectively implement the free and compulsory education scheme.
- Improve accessibility and quality of education particularly for girls, children with disability⁹², *dalits*.⁹³
- Adopt strategies to control school dropout.
- Ensure availability of textbooks and maintain the student-teacher ratio as per the national standard to all the rural areas.
- Enforce plans for multi-lingual education from primary to higher level.
- Increase access to technical and professional education for all, including children from marginalized communities.
- Take initiatives to include defenders of human rights of persons with disabilities in the decision-making process on education policies.⁹⁴

42. Right to Information: There is no dedicated government agency to implement the Right to Information Act and the budget is not allocated for information dissemination.

90 Ensuring Free and Compulsory Basic Education for Disadvantaged Groups in the Context of Education for All, Research Centre for Educational Innovation and Development (CERID), 2009

91 In eight *Tarai* districts, there are 600 fake schools that misused NPR 1 billion annually on paper projects concerning schools, <http://www.tinepal.org/?p=10032>

92 See recommendation." Continue to increase spending on education in order to improve coverage and quality of education with the special attention to the right to education of the vulnerable groups, including poor students, girls and children with disabilities (China) (para 122.98 UPR Nepal 2015; A/HRC/3/9)"; " Amend current education policies to ensure an inclusive education system and implement concrete measures to increase the participation of children with disability (Norway) (para 122.107 UPR Nepal 2015; A/HRC/3/9)"

93 See recommendation." Take measures to facilitate access to education for all children, particularly the poor and disadvantaged (Brazil) (para 122.48 UPR Nepal 2015; A/HRC/3/9)"

94 See recommendation." Include defenders of human rights of persons with disabilities in the decision-making process on education policies (Spain); (para 122.110 UPR Nepal 2015; A/HRC/3/9)"

Recommendations:

- Promote effective role of the National Information Commission (NIC).
- Recognize the use of digital technology for storing, providing and receiving information.
- Ensure the effective agencies in every institution to respond the concerns of rights to information.

43. Rights of the Child: Discrimination against children in communities and schools based on sex, caste, class, mother tongue, disability or residence still persists. Birth registration in absence of father is difficult. Child marriage is prevalent in many parts of Nepal. The criminal justice system is not effective in protecting victims and witnesses children. Children with disabilities lack access to education and adequate social protection. The government's Master Plan to eradicate child labour has not been effective. The juvenile justice system remains ineffective and juvenile courts remain to be established. Juvenile rehabilitation centres are overcrowded and lack adequate infrastructure and facilities.⁹⁵ The government has not ratified the Optional Protocol to the CRC despite requests by civil society.

Recommendations:

- Accelerate enactment of provincial and local level laws for the full protection of child rights.
- Establish independent child rights monitoring body.
- Effectively implement recommendations relating to children made by Committees on CRC, CEDAW, and CRPD.
- Take actions to ensure free and compulsory education for all children.
- Improve quality and facilities of juvenile rehabilitation centres.
- Launch family strengthening programs to end child labor.
- Endorse Comprehensive School Child Protection Standard.
- Accelerate actions as per the five-year strategic direction to address issues related to children living on the streets.
- Enforce Children's Act 2018 and make sure that institutionalization of children a last resort.

⁹⁵ Findings from the field visit by the researcher / author.

List of Civil Society Organizations for UPR 2020

- | | |
|---|---|
| 1. Aadhibasi Rastriya
UtthanPrathisthan | 21. Badi Development Committee |
| 2. Aadhibasi Jana Jati Mahasangh | 22. Bahing Kirat Mulukhim (BKM) |
| 3. Aadibasi Janajati Mahila Sangh
Jhapa | 23. Beyond Beijing Committee (BBC) |
| 4. ABC Nepal | 24. Bhumi Adhikar Munch |
| 5. Accountability Watch Committee | 25. Biswas Nepal |
| 6. Adibashi JanajatiAdhika Manch
(AJAM) | 26. Blue Diamond Society (BDS) |
| 7. Adjust Nepal | 27. Bung Public Welfare Center
(BPWC) |
| 8. Advocacy Forum (AF) | 28. Campaign for Human Rights and
Social Transformation Nepal
(CAHURAST) |
| 9. Akhil Nepal Women's Association
(ANWA) | 29. CAN Thasikhel |
| 10. Al Amin Muslim Women Nepal | 30. CAPED Kupondole |
| 11. All Nepal Transport Labour Union
Kaski | 31. CDS- Park Mugu |
| 12. Alliance Against Trafficking in
Women and Children (AATWIN) | 32. CEDAW Writing Committee (CWC) |
| 13. AMKAS – Nepal | 33. Center for Agro-Ecology and
Development (CAED) |
| 14. Asha Sanjal Nepal | 34. Center for Depressed and Ethnic
Development (CODED- NEPAL) |
| 15. Asian Human Rights Kaski | 35. Center for Legal Research and
Resource Development Center |
| 16. Association for Dalit Women
Advancement of Nepal (ADWAN) | 36. Center for Legal Study |
| 17. Association for Mart Nepal | 37. Centre for Ethnic Studies and
Development (CESD) |
| 18. Association of Kirat Chamling
Language and Culture
Development (AKCLCD) | 38. Centre for Himalayan Integrated
Development and Social Welfare
(CHIDSW) |
| 19. Association of Nepal KiratKulung
Language Culture Development
(ANKKLCD) | 39. Centre for Human Rights and
Democratic Studies (CEHURDES) |
| 20. Association of Youth Organization
Nepal | 40. Centre for Indigenous Ethnic
Peoples' Concern, Nepal
(CIEPCON), |

41. Centre for Protection of Law and Environment (CPLE)
42. Centre for Study on Gender and Development Study (CSGS)
43. Centre of Victims of Torture (CVICT)
44. Chamlang Creative Youth Society (CCYS)
45. Chepang Mahila Snagh Udayapur
46. Chetnshil Mahila Sanjal, Udaypur
47. Chhari Network
48. Chi: Halamtung BantawaYuvaHup Nepala
49. CHIDSW
50. Child Society Nepal
51. Child Home Federation Nepal
52. Child Nepal (CN)
53. Child Rights Concern Nepal (CONCERN Nepal)
54. Child Welfare Society Nepal (CWS)
55. Child Workers Concern Center Nepal (CWIN)
56. Children and Women in Social Service and Human Rights (CWISH)
57. Children as a Peace Zone (CZOP)
58. Children Nepal
59. Chulachuli UNESCO Club (CUC)
60. Citizen's Task Force to Combat Impunity (CTCI)
61. Citizenship Affected Peoples Network
62. Civic Concern Nepal (CCN)
63. Collective Campaign for Peace (COCAP)
64. Community Empowerment Social Justice Foundation
65. Community Action Center (CAC Nepal)
66. Community Help Centre (CHC)
67. Community Self-reliance (CSRC)
68. Conflict Victim National Alliance
69. Conflict Victims Common Platform on Transitional Justice
70. Conscious Society for Social Development (CSSD)
71. Constitutional Lawyers' Forum (CLAF)
72. Cooperative Society for National Development Nepal (COSFONAD-Nepal)
73. Cruise AIDS Nepal
74. CSGS (Centre for Studies on Gender, Society and Development Study)
75. CWSN Pokhara
76. Dalit Human Rights Organization (DHRO)
77. Dalit Literature and Cultural Academy (DLCA)
78. Dalit Mahila Samuha
79. Dalit National Liberation Front of Nepal
80. Dalit NGO Federation – Nepal (DNF)
81. Dalit Rights National Forum, Nepal (DRNF)
82. Dalit Sewa Sangh
83. Dalit Study and Development Center (DSDC)
84. Dalit Welfare Association (DWA)
85. Dalit Welfare organization (DWO)
86. Dalit Women Right Forum Nepal
87. Dalit women Association

88. Danag Tulsipur Mahila Sachetana Samuha
89. DBS Bhajani
90. DCOM Kaski
91. Development Academy) (EMMLCPRDA)
92. Disability Human Rights Centre (DHRC-Nepal)
93. Disability Independence Development (DIDA) Nepal
94. District Bar Association, Makawanpur
95. District Haliya Mukti Samaj
96. Doti Mahila Samaj
97. Dristi Nepal
98. Durban Review Conference Follow up Committee (DRCFC)
99. Dynamic Group for Change (DGC), Nepal
100. Dynamic Society
101. Educational Journalist' Group (EJG)
102. Eighteen Magarant Magar Language Literature Culture Preservation, Research and
103. Empower Nepal
104. Environment and Child Development Center
105. Environment and Rural Development Centre (ERDC)
106. Environment Development Society-Surkhet
107. Environment, Peace and Soccial Justice Centre (SCOPE Nepal)
108. Esther Benjamin Memorial Foundation
109. Family Planning Association Nepal
110. Federation of Indigenous Kirat Association (FIKA)
111. Federation of Nepalese Journalist (FNJ)
112. Federation of Sexual and Gender Minorities Nepal - FSGMN
113. Feminist Dalit organization (FEDO)
114. Food First Information & Action Nepal Network (FIAN Nepal)
115. Forest Resources Studies and Action Team (Forest Action)
116. Forum for Women Law and Development (FWLD), Nepal
117. Forum for Community Up liftment system Nepal (Focus Nepal)
118. Forum for Indigenous Nationalities Concern (FINCO), Gorkha
119. Forum for Indigenous Nationalities Development (FIND)
120. Forum for Protection of People's Rights Nepal (PPR-Nepal)
121. Forum for Public Awareness Rural Development and Environmental Conservation (FPARE)
122. Forum for Women Law and Development (FWLD)
123. Friends of Hetauda
124. Gaderi Samaj
125. Gandharba Culture and Art Organization (GCAO)
126. Gandharba Samaj
127. General Federation of Nepalese Trade Unions
128. GOMEA Nepal
129. Gramin Mahila Shrijanshil Samaj
130. Gramin Utthan Abhiyan
131. GraminSamajUtthan Kendra
132. Group for Human Rights and Socio-legal Research (GOHRAS)
133. Gyan Bodh Organization

134. Haliay Nepal
135. Haliya Mahasngah, Dadeldhura
136. Haliya Mukti Punarbas
Karyakaram- Kanachanpur-11
137. Hamro Khabar aily
138. Hamro Yatra Sanajal Sunsari
139. HDRF Nepal
140. Help Nepal
141. Hill Development & Conservation
Group Nepal (HDCGN)
142. Him Rights
143. Himalaya Bhote Society (HBS)
144. Himalayan Indigenous Society
(HIS) Nepal
145. Himalayan Natural Fiber
Foundation (HNFF)
146. Hospital and Rehabilitation Center
for Disabled Children
147. Human Rights Alliance Nepal
148. Human Rights and Community
Development Center
149. Human Rights and Democratic
Forum (FORHID)
150. Human Rights Education Radio
Listeners' Clubs Nepal (HRERLIC)
151. Human Rights Journalists
Association, Nepal (HURJA Nepal)
152. Human Rights Protection and
Promotion Center
153. Human Rights Treaty Monitoring
Coordination Committee
(HRTMCC)
154. Human Rights without Frontiers-
Nepal (HRWF)
155. Human Welfare Committee HWC –
Nepal
156. HurhureYuwa Club (HYC)
157. Independent Living Centre (CIL)
158. Indigenous Ethnic Lawyers
Council-Nepal (IELCN)
159. Indigenous Nationalities
Development Forum (INDF),
Nawalparashi
160. Indigenous Non-Governmental
Organization District Coordination
Forum (INGODCF)
161. Indigenous Research and Resource
Development Centre (IRRDC)
162. Indigenous Rural Development
Social Services Nepal (IRDSSN)
163. Indigenous Women Legal
Awareness Group (INWOLAG)
164. INEPG Nepal
165. Informal Sector Service Centre
(INSEC)
166. INHURED International
167. Institute of Human Rights
Communication Nepal (IHRICON)
168. Integrated Development Society
Nepal
169. Integrated Village Development
Service, Hetauada
170. International Commission of Jurist
171. Islamic Associate
172. Jagaran Media Center (JMC)
173. Jagaran Nepal
174. Jaghrit Nepal
175. Jagriti Child and Youth concern
Nepal
176. Jagriti Sachetana Mahila Samuha
177. Jan Prerna Kendra, Janakpur
178. Jana UtthanPratisthan (JUP)
179. Janachetana Mahila Sanajal
180. Janajati Development Forum (JDF)
181. Jero Kirat Radu Society (JKRS)
182. Jimi Rai Utthan Samajh (JRUS)

183. Journalist Federation Province
184. Justice and Rights Institute-Nepal (JuRI)
185. KalimatiYuva Club (KYC)
186. Kamhlari Bikas Munch
187. Kanchanjangha Women's Development Group (KWDG)
188. Kapan Dalit UtthanSangh
189. Karmarong (Karani) Society Service Association (KSSA)
190. Karnali Community Development Center (KCDC)
191. Karnali Netrahin Sangh
192. Kathmandu School of Law (KSL)
193. KIN Nepal
194. Kirat Community Development Centre (KCDC)
195. Kirat Khaling Rai Development Association (KKRDA)
196. Kirat Khaling Utthan Sangh
197. Kirat Rodu Nachhiring Sakham, Kathmandu (KRNS)
198. Kirat Welfare Society (KWS)
199. Kirat Youth Society (KYS)
200. KiratYakthum Chumlung
201. Kishori Adhikara Munch
202. Kopila Nepal
203. Kosish Nepal
204. Krishi Bikas Tatha Samudayik Bikas Kendra, Janakpur
205. Kulung Sangh
206. KulungVidyarthi Sangh
207. Lawyers Association for Human Rights of Nepalese Indigenous People (LAHURNIP)
208. Lawyers National Campaign Against Untouchability (LANCAU)
209. Legal Advocacy forum Nepal
210. Legal Aid Consultancy Centre (LACC)
211. Limbu Language and Culture Development Centre (LILDA)
212. Limbu Language Development Organization (LLDO)
213. LohorungYakhkhamaYuyong (LYY)
214. LokKalyan Nepal (LOK)
215. Loom Nepal
216. Love Green Development Committee (LGDC)
217. LUMANTI, Nepal
218. Luthern Community Welfare Society
219. Luzzu Nepal
220. MAA Mahila Ekal Samaj
221. Madesh Human Rights
222. Madheshi Dalit SewaSamaj
223. Madhesi Dalit Development Federation (MDDF)
224. Madhesi Dalit Mahasangh
225. Madhesi Journalist Association
226. Mahakulung Youth Council (MYC)
227. Mahila Aadhikar Munch
228. Mahila Adhikar Sanjal
229. Mahila Ekata Samuha
230. Mahila Federation Rangeli
231. Mahila Sahayogi Samaj
232. Mahila Prajanan AdhikarSamaj
233. Mahila Rastrya Sanjal
234. Mahila Sewa Samaj
235. Mahila UtthanTatha Seep Bikas Kendra
236. Mahottari Magar Service Society (MMSS)
237. MAHURI HOME
238. Maiti Nepal
239. Maitri Samajik Bikas

240. Makalu YakkhabaChuptham
241. Man Engage
242. Manab Adhikar Nigarnai Samuha
243. Manab Adhikar Sanjal Sunsari
244. Mangeni Sanjal
245. Media Advocacy Group
246. Media Advocacy Group (MAG)
247. Mewahang Yakhomma
248. Mitini Nepal
249. MOP Nepal
250. Mukta Kamhalari Samaj Dang
251. Multipurpose Development Service Institute
252. Muslim Cultural Society MCS
253. Nagarik Aawaz
254. Nari Sanjal
255. Nari Uthan Center Sunsari
256. National Alliance for Women Human Rights Defenders (NAWHRD)
257. National Association of Deaf Hard of Hearing (NADH)
258. National Association of Physically Disabled (NAPD-Nepal)
259. National Coalition Against Racial Discrimination (NCARD)
260. National Ciliation for International Criminal Court (NCICC)
261. National Disable Association
262. National Farmers Association
263. National Federation of Disable-Nepal (NFDN)
264. National Human Rights Foundation (HURFON)
265. National Human Rights Foundation (HURFON)
266. National Indigenous Disabled Women Association
267. National Indigenous Women
268. National Indigenous Women Federation (NIWF)
269. National land Concern Group (NLRCG)
270. National Muslim Federation (NMF)
271. National Muslim Forum Nepal (NMFN)
272. National Network of Indigenous Women (NNIW)
273. National Santhal Samaj
274. National School of Research
275. National Alliance of Women Human Right Defenders (NAWHRD)
276. NBS, Biratnagar
277. Nepal Association of the Blind
278. Nepal Bar Association
279. Nepal Disable Association (NDA)
280. Nepal Disabled Women Association (NDWA)
281. Nepal Goodweave Foundation
282. Nepal Indigenous Disabled Association (NIDA-Nepal)
283. Nepal Kewarat Bikas Samaj
284. Nepal Kirat Kulung Bhasa Sanskriti Utthan Sangh
285. Nepal Mahila Ekata Samaj
286. Nepal Mahila Ekata Samaj (NMES)
287. Nepal Muslim Women Welfare Society (NMWWS)
288. Nepal National Dalit Social Welfare Organization (NNDSWO)
289. Nepal Paralympic Committee
290. Nepal Rajat Jankalyan Sametee
291. Nepal Rana Tharu Society (NRTS)
292. Nepal Rana Tharu Society (NRTS), District Committee

293. Nepal Rural Development Society Center
294. Nepal Santhal Aadibasi Uthan Sangh
295. Nepal Society of the Disabled (NSD)
296. Nepal Stutters Association
297. Nepal Tamang Ghedung (NTG)
298. Nepal Tamang NGO-federation
299. Nepal Tamang Women Association (NTWG)
300. Nepal Wheel Chair Club (NWCC)
301. Nepal Youth Action
302. Nepal Youth Council
303. Netrahin Youth Association
304. Netrahin Sangh Surkhet
305. NFN Gandaki Province
306. NFN, Mkawanpur
307. NGO-Federation
308. NGO-Federation of Indigenous Nationalities Nepal (Affiliated member organizations)
309. NGO-FONIN District Committee, Dolakha
310. Ngupeal National Federation of the Deaf and Hard of Hearing (NFDH)
311. NHPD- Nepal
312. NMYC Biratnagar
313. Non-Governmental Organization Coordination Committee (NGOCC)
314. Pabitra Paldor Society (PPS)
315. Papachha Guskham
316. Parent Association of Intellectual Disability
317. Paribartanshil Samaj
318. Paribartna Nepal
319. Parichaya Samaj
320. Partnership Nepal
321. PEWA Nepal
322. Physician for Social Responsibility (PSRN)
323. PNC Butwal
324. Population Watch (Pop-Watch)
325. POURAKHI-Nepal
326. Pragati Jgaran Munch
327. Pragatihsil Sachetana Mahila Samuha
328. Pravashi Nepal
329. Prayash Mahottari
330. Prisoners Assistance Nepal (PAN)
331. Professional Development and Research Center (PDRC)
332. Pro-Public
333. Pryas Nepal
334. Public Health Concern Trust (PHECT Nepal)
335. PWEDO Nepal
336. Rajak Janaklyan Samiti
337. Raji Sanmaj Federation
338. Rastrya Dalit Network –Nepal RDN -Nepal
339. Rasuwa Nationalities Development Committee (RNDC)
340. Rauta Community Welfare Centre (RCWC)
341. RDF Nepal
342. Redef Nepal
343. Rehabilitation Development
344. Rehabilitation and Empowerment Center on Disability
345. Remote Area Women and Children Empowerment Centre (RAWCEC)
346. Resource Centre for Primary Health Care (RECPHEC)
347. Resource Centre for Rehabilitation and Development (RCRC)-Nepal
348. RHN Yuwa

349. Right for Children
350. Right to Food Network (RtFN)
351. Rights Here Right Now
352. RMHSFN, Dadeldhura
353. Rural Basic Service Organization (RBSO)
354. Rural Ethnic People's Development Forum (REPDF), Udayapur
355. Rural Reconstruction Nepal
356. Rural Reconstruction Nepal (RRN)
357. RUWON Nepal
358. SAATHI
359. SAATHI Women Shelter
360. Sahara Nepal
361. Sahara Samaj Itahari
362. Sajaha Bisauni
363. Samabesi Foundation
364. Samabikas Kendra Doti
365. Samaj Bikas M
366. Samata Foundation
367. Sambriddhha Samaj
368. Sambridhika lagi Sahayata Nepal
369. Samudaik Sashaktikaran Kendra
370. Samuri Uttan Sangh
371. Samyukta Apana Ekta Aawaj Kendra
372. Sancharika Samuha
373. Santal UtthanManch
374. SANTIMALIKA
375. SAP Nepal
376. SARCS, Nepal
377. SDM
378. Seto Gurans
379. Seven Scone Jhamsikhel
380. Shakti Milan Samaj
381. Shakti Milan Samaj
382. Shakti Samuha
383. SHEDC Nepal
384. Shree Jana Utthan Sarokar Kendra,
385. Shree Mirmire Bihani Club (SMBC), Ilam
386. Siddartha Samudayik Samaj
387. Silichong Club, Social Development Centre (SCSDC)
388. Sirjanshil Nepal
389. Social Development
390. Social Environment Welfare Association Society (SEWA), Kailali
391. Society for Indigenous Development Nepal (SID Nepal)
392. Society for People in Needs (SPIN)
393. Society for the liberation of Oppressed Caste, Nepal
394. Society for Upliftment of Disabled and Orphan
395. Society for Women's Empowerment for Sustainability (SHRISTI)
396. SOLID Nepal
397. Sudhar Nepal (Reformation Nepal)
398. Sundar Sanstha Nepal
399. Sungava (ID) Women Vocational Center
400. Sustainable Agriculture for Rural Development Concern Society Nepal
401. Sustainable Livelihood Forum (SLF) Nepal
402. SWASA Nepal
403. Syaku Nepal
404. Terai Madhesh National Council
405. Tharu Youth Innovative Society Nepal (THYINS-Nepal)
406. The East Foundation (TEF)
407. Third Alliance
408. Three Angels Nepal

409. Thulung Women Society
410. Tilpung-Kathmandu Tamang Society (TKTS)
411. UCEP -Nepal
412. Unified Dalit Rights Forum, Nepal
413. UpatyakaMandal (Kewat) Samaj
414. Uthan Sangh Morang
415. Visible Impact
416. Voice of Children
417. Voice of Mustang
418. WHRD- Dadeldhura
419. WHRD Kaski
420. Women Forum For women in Nepal
421. Women Act
422. Women Awareness Centre Nepal (WACN)
423. Women Coalition for UPR
424. Women Development Self-Empowerment Training Center (WDSETC)
425. Women Federation
426. Women Health Research Center
427. Women Human Rights Defender's Network
428. Women Human Rights Defenders Network Kathmandu
429. Women Human Rights Defenders Network Lalitpur
430. Women Rehabilitation Centre (WOREC)
431. Women Security Pressure Group (WSPG)
432. Women Skill creation Center
433. WPC Nepal Hetauda-4
434. Yamphu Kirat Samaj
435. Youth Action Nepal
436. Youth Advocacy Nepal
437. Youth Club
438. Youth Development Center, Sunsari
439. Youth Federation of Indigenous Nationalities (YFIN)
440. Youth Federation of Indigenous Nationalities, Nepal (YFIN Nepal)

Joint Submission to the United Nations Universal Periodic Review (UPR) 37th Session of the UPR Working Group July 2020

Submitted by

DURBAN REVIEW CONFERENCE FOLLOW-UP COMMITTEE (DRCFC)

National Indigenous Women Forum (NIWF), founded in 1998 by indigenous women, is currently working as the secretariat for DRCFC. NIWF is committed to protect and promote the rights and dignity of indigenous women, particularly engendered and highly marginalized indigenous women in Nepal.



National Indigenous Women Forum (NIWF)

Kathmandu Metropolitan-32, Old Sinamangal

Kathmandu, Nepal

E-mail: niwfnepal@gmail.com

Website: <https://www.niwfnepal.org.np>

Supported by



MARGINALIZED AND VULNERABLE GROUPS OF NEPAL

Keywords: *Dalit, Haliya, indigenous peoples, indigenous women, disabilities, sexual gender minorities, Muslim, Madhesi, discrimination, marginalization and displacement, international standards, recommendations, bounded labor, and non-implementations*

I. INTRODUCTION

Durban Review Conference Follow-up Committee (DRCFC), founded in 2009, is a loose network working for protection and promotion of human rights of marginalized communities of Nepal. DRCFC is actively working to end the discrimination against the marginalized and vulnerable groups – *Dalit*, Indigenous Peoples (IPs), freed bonded laborers, Sexual and Gender Minorities, Persons with Disabilities, Muslim, and *Terai-Madhesi* communities. This written submission has been prepared in line with technical guidelines tailored for the third UPR cycle.⁹⁶ Primarily, this submission assesses the implementation status of the previous UPR recommendations, developments, challenges, and human rights situations on the ground. While preparing the report, primary information was collected through a series of consultations and community interviews with stakeholders conducted from October 2019 to March 2020 at the provincial and national levels.

II. FOLLOW UP AND DEVELOPMENTS SINCE THE 2nd UPR (related to marginalized groups)

1. During the first UPR cycle 2011, Nepal supported several recommendations⁹⁷ which deals with the participation of marginalized groups in the constitution-making processes. These recommendations were reiterated in its second UPR cycle focuses on *ensuring an inclusive dialogue with all Nepali minority groups* A/HCR/31/9 – para 122.38 (Ukraine), and *accommodating all sections of Nepal to enable broad-based ownership and participation* A/HRC/31/9, para – 122.1 (India). Besides, the CERD committee's communication to the Government of Nepal (GoN) in September 2009 invited the GoN to *establish a mechanism to ensure Free, Prior, Informed Consent (FPIC) and the participation of indigenous peoples through freely chosen representatives in the constitution-making process*⁹⁸. Moreover, the Special Rapporteur

⁹⁶ Universal Periodic Review (Third Cycle): Information and guidelines for relevant stakeholders' written submissions at https://www.upr-info.org/sites/default/files/general-document/pdf/upr_technicalguidelines3rdcycle_submissions.pdf

⁹⁷ Nepal accepted several recommendations to ensure full participation and consultation with Indigenous Peoples (IPs), ethnic groups, and other marginalized groups (A/HCR/17/5, para 106.1 (Republic of Korea and Poland))

⁹⁸ Early Warning Letter was Issued by the CERD on 28 September 2009 (Ref: TS/JF), 31 August 2012 (Ref: CERD/EWUAP) and 13 March 2009 (Ref: TS/JF)

on the Rights of Indigenous Peoples (SRIP) recommended to the GoN *to ensure direct representation of IPs and to formulate a separate mechanism of IPs to hold FPIC within the Constitution Assembly* (A/HRC/12/34/Add.3, 20 July 2009, Para 86&87).⁹⁹

2. Nepal supported several recommendations concerning the participation and inclusion of IPs, minorities and vulnerable groups during the first UPR cycle¹⁰⁰. In its second UPR cycle 2015, Nepal supported similar recommendations which invited Nepal to *strengthen the legislative and institutional framework for the protection and promotion of indigenous peoples* A/HRC/31/9, para 121.9 (Mexico), and *address multiple forms of discrimination against indigenous women* A/HRC/31/9, para - 122.37 (Uganda).
3. In its second review, Nepal accepted the recommendation to *pursue policies to improve the enrolment of school-going children from indigenous and minority communities* A/HRC/31/9, para - 122.105 (Singapore), and *improve food safety of indigenous peoples* A/HRC/17/5, para 106.49 (Hungary).
4. In its first UPR cycle, Nepal accepted recommendations to continue its efforts to end all forms of discrimination and untouchability.¹⁰¹ The recommendations concerning caste-based discrimination and untouchability were reiterated in its second UPR cycle in 2015 (A/HRC/31/9, para 121.17 Thailand and Japan, A/HRC/31/9, para - 122.33 Paraguay, A/HRC/31/9, para - 122.35 Denmark, and A/HRC/31/9, para - 122.40 Germany, and A/HRC/31/9, para - 122.36, Switzerland) which focuses on *strengthening existing laws and policies to eliminate all forms of discrimination, taking policy measure to full and effective implementation of Caste-based Discrimination and Untouchability (Offence and Punishment) Act 2011*.

⁹⁹ https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NPL/INT_CERD_NGO_NPL_30811_E.pdf

¹⁰⁰ First UPR 2011 recommendations A/HRC/17/5, para - 107.8 (Australia), A/HRC/17/5 - para 107.4 (Algeria), and A/HRC/17/5, para - 107.18 (Spain), which deals with taking effective measures to increase the participation of indigenous peoples, minorities and vulnerable groups and ensure equality between all ethnic, cultural and linguistic groups for the inclusion of these groups in the civil service, law enforcement agencies, and local authorities,

¹⁰¹ Several countries recommended Nepal in first UPR cycle 2011 calling on it to take concrete efforts to eliminate caste-based discrimination and untouchability. On its first UPR cycle 2011, Nepal accepted to pass the bill on caste-based discrimination and untouchability A/HRC/17/5, para - 106.24 (Denmark), to ensure that “the policies fully implemented by local authorities” A/HRC/17/5, para - 106.24 (Czech Republic), to take legislative measures to eradicate untouchability A/HRC/17/5, para - 107.11 (Netherlands) as well as to investigate discriminatory acts against Dalits A/HRC/31/9, para - 122.55 (Argentina), and to take effect efforts to persecute the perpetrators, and compensate the victims of caste-based discrimination A/HRC/17/5 Add.1, para - 108.12 (Czech Republic). On its last UPR cycle 2015, Czech Republic invited Nepal to assess the implementation and effectiveness of the laws that aimed to prevent and protect all forms of discrimination against women and Dalits so as to take concrete efforts to end the discrimination A/HRC/31/9, para - 122.39 (Czech Republic).

5. Since the first UPR cycle, the social, cultural and economic rights of *Dalit*, marginalized and vulnerable groups have been emphasized,¹⁰² and these recommendations were reiterated in the second UPR cycle in 2015. The recommendations (A/HRC/31/9 – para 122.79 Bolivian Republic of Venezuela and A/HRC/31/9, para – 122.104 Finland) invite Nepal to *tackle the poverty and social inequalities among vulnerable groups through creating employment and to take measure for equal education for all children including Dalit accords with the observations of CEDAW and ESCR*.
6. On its second UPR cycle 2015, the recommendations concerning the rights of the persons with disabilities focus on *the amendment of current educational policies, especially for children with disabilities* A/HRC/31/9, para – 122.107 (Norway), *the participation of persons with disabilities while formulating educational policies* A/HRC/31/9, para – 122.110 (Spain) and *the revision of legal barriers and discriminatory practices towards persons with disabilities, including generation of disaggregated data of persons with disabilities*.
7. On its second UPR cycle 2015, Nepal received two recommendations that focus on *taking steps so that the new constitution ensures the rights* of LGBTI A/HRC/31/9, para 121.16 (Sweden), and *the establishment of a mechanism to investigate and punish culprits of cases of discrimination against LGBTI*, A/HRC/31/9, para – 122.42 (Spain).

III. DEVELOPMENTS [NATIONAL HUMAN RIGHTS FRAMEWORK]

8. Despite the strong disagreement of *Tharu*, IPs and *Tarai-Madhes* people, the constitution of Nepal was adopted by the Constituent Assembly (CA) in September 2015 through the “fast-track” process, without making any effort to comply with the above-mentioned recommendations. The CA failed to incorporate the rights of IPs and marginalized communities in the constitution in line with international standards to which Nepal has committed. The CA members, who belonged to indigenous communities, *Tharu* and *Madhesi*, were forced to withdraw their amendment proposals to the draft constitution by their respective political parties. Notably, the GoN had agreed to ensure the right to self-determination, autonomy, and self-governance in the New Constitution.¹⁰³
9. Despite these facts, to some extent, the constitution has made some progressive moves. It guarantees the right to the proportional inclusion and participation of the

¹⁰² On its first UPR cycle 2011, Nepal accepted recommendations on improving food safety of Dalits and Vulnerable groups A/HCR/17/5, para 106.49 (Hungary), pursuing efficient and appropriate inclusive education policies A/HRC/17/5, para – 108.34 (Slovakia), to ensure equal access of Dalit and ethnic minorities children to quality education A/HRC/17/5, para – 106.53 (Finland), providing quality health services and education, and providing employment opportunities to vulnerable groups, marginalized groups, bonded labors, persons with disabilities, Muslims, Dalits and ethnic minorities A/HCR/17/5, para 106.41 (Myanmar), A/HCR/17/5, para 106.46 (Malaysia), A/HCR/17/5, para 106.46 (Cuba).

¹⁰³ Federal Limbuwan Party and Government of Nepal had signed an agreement in Kathmandu in 2008

marginalized groups in the state mechanisms.¹⁰⁴ The constitution has set out several commissions to protect and promote the rights of marginalized communities such as the Indigenous Nationalities Commission, National Women Commission, National Dalit Commission, National Inclusion Commission, Muslim Commission, *Madhesi* Commission, and *Tharu* Commission.¹⁰⁵ But it should be noted that these commissions have not been envisaged in line with Paris Principles and lack quasi-judicial status. Moreover, even after four years since the commencement of the constitution, these commissions are yet to come into full and effective functioning. Likewise, the constitution guarantees mother tongue education and allows to open and operate schools and institution up to primary level,¹⁰⁶ guarantees the right to language and culture.¹⁰⁷ The GoN has implemented the School Sector Development Plan for 2016 to 2023.

10. Concerning the caste-based discrimination, there are some major progress – Caste-based Discrimination and Untouchability Act 2011 came into effect in 2011; the constitution guarantees “Rights against Untouchability and Discrimination,”¹⁰⁸ the social inclusion through the proportional representation of IPs, *Dalit*, *Khas Arya*, Muslims, *Tharu*, *Madhesi*, Persons with Disabilities and other backward communities in all bodies of the state,¹⁰⁹ the right to education, social justice and proportional representation at local bodies,¹¹⁰ the right to live with dignity and honor, the right to equal access to public services and facilities,¹¹¹ and the right to free education with scholarship, from primary to higher education. Besides, the Right to Housing Act 2018 and The Right to Food Security Act 2018 have been enacted.
11. As for the rights of Persons with Disabilities, the constitution guarantees disability-friendly infrastructures and transportation,¹¹² and free and inclusive education for the children of disabilities through braille scripts or sign language.¹¹³ The Disability Rights Act 2017, which replaced the Disabled Persons Welfare Act 1982, has been enacted. This can be seen as a significant shift from the welfare-based approach to the rights-based

104 The Civil Service Act was amended to ensure that 45 percent of open competition seats would be reserved for marginalized groups, including *Khas Arya* women. Of these seats, 33 percent would be reserved for women, 27 percent for *Janajati*, 22 percent for *Madhesi*, 9 percent for *Dalit*, 5 percent for people with disability, and 4 percent for candidates from neglected regions. This principle of inclusion is also enshrined in Article 42 of the Constitution.

105 Part 27 of the constitution of Nepal 2015

106 The article 31(5) of the Constitution of Nepal 2015

107 The article 32 of the Constitution of Nepal 2015

108 The Article 24 (1) of the constitution of Nepal stipulates that “No person shall be subjected to any form of untouchability or discrimination in any private and public places on grounds for his or her origin, caste, tribe, community, profession, occupation or physical condition.” Moreover, article 24 (5) states that “any act of untouchability and discrimination in any for committed in contravention of this Article shall be punishable by law as a severe social offense, and the victim of such act shall have the right to obtain compensation in accordance with the law.”

109 Articles 38(4), 40, 42, 84(2), 86(2a), 176(6) and 285(2) of the Constitution of Nepal have provisions of proportional representation of *Dalit* and other marginalized groups.

110 The article 84(3) of the Constitution of Nepal 2015

111 The article 18 of the Constitution of Nepal 2015

112 The articles 51 (h) 14 and 86(2a) of the Constitution of Nepal 2015

113 Article 31(4) of the Constitution of Nepal 2015

approach to disability. Similarly, the National Penal Code 2017 has criminalized discrimination against persons with disabilities with a heavy penalty.¹¹⁴

12. Concerning the rights of LGBTI persons, the constitution guarantees equality, freedom and the rights of LGBTI. The Constitution also recognizes “Gender and Sexual Minority people among the disadvantaged groups.”¹¹⁵ The constitution guarantees the right to participate in state mechanisms and public services based on the principle of inclusion.¹¹⁶ Following the Supreme Court’s (SC) decision in 2007, the LGBTI persons could now obtain citizenship and passport under the “Other” category. However, the UNDP report found that only very few LGBTI persons had tried to change their gender on the citizenship document.¹¹⁷ Also, for the first time, the National Census 2011 computed LGBTI as the third gender.¹¹⁸

III. PROTECTION AND PROMOTION OF HUMAN RIGHTS ON THE GROUND

Discrimination against Indigenous Peoples

13. In Nepal, indigenous peoples, known as *Adhivasi Janajati* (Indigenous Nationalities) constitute 35.81% of the total population (CBS 2011). Poverty status by case and ethnicity shows that the incidence of poverty among Hill IPs is higher (28.25%) than that of the high caste Brahmin (10.34%). The poverty incidence is much lower in urban areas (15.46%) compared to rural (27.43%) and mountain region (42.27%), the area highly populated by various indigenous communities.¹¹⁹ The GoN has recognized only 60 groups of IPs and many other IPs has been left out. In 2009, the GoN formed a High-Level Taskforce for the revision of the official list of indigenous nationalities. Conducting a detailed study, the Taskforce submitted its report to the GoN and recommended to enlist 81 indigenous nationalities in the official schedule. The report of the Taskforce is yet to be approved by the GoN.
14. The constitution promotes the religion that adheres to the norms, values, and philosophies of Hinduism. The constitution, for example, stipulates Hindu cultural symbols as national emblems, such as cow (Hindu sacred animal), flag (Hindu symbol),

114 The National Penal Code 2017 provision of 118 has stipulated one-year imprisonment or 10000 penalty or both for the act of discrimination against disability. Similarly, provision of 160 has criminalized discrimination against persons with disabilities and stipulated three years imprisonment or 30000 penalties or both for any act of discrimination against disability

115 Article 12 (related to citizenship) of the Constitution of Nepal 2015

116 The article 42 (The Right to Social Justice) of the Constitution of Nepal 2015

117 The report states that among the respondents, over 92% were found that they had to try to change their gender on the citizenship document, pp. xix. UNDP William Institute (2014): Surveying Nepal’s Sexual and Gender Minorities: An Inclusive Approach. Visit at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Nepal-Survey-Oct-2014.pdf>

118 However, the Census 2011 could not compute the real number of LGBTI due to various reasons such as limited training to enumerators, reluctance to record and so on.

119 CBS report: Poverty in Nepal visit at file:///C:/Users/R14i5U360TS/Desktop/Social%20Exclusion%20Report/CBS-view-on-poverty-in-Nepal.pdf

and Crimson (color of victory in Hindu culture).¹²⁰ As a result, the *Muluki Ain* (Civil Code) has criminalized slaughtering cow, with a penalty provision of up to 12 years of imprisonment.¹²¹ On the contrary, many non-Hindu including IPs have ritual practices of consuming cow/bullock and yak and for those cow/bullocks and yaks meat is important sources of protein.

15. The GoN has ratified ILO Convention 169 and accepted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, but even after years have passed, these international standards are yet to be incorporated into the national legal system. Though the GoN endorsed and approved the National Action Plan for the implementation of ILO 169, and entrusted the Ministry of Federal Affairs and Local Development with the responsibility to review existing laws and amend them as necessary or formulate new ones as per the Action Plan, it is yet to be implemented.¹²² The efforts to ensure the rights of IPs rights have not been effective because of the GoN's failure to approve the action plan for the implementation of ILO 169.¹²³ Moreover, there has been a setback in the constitutional guarantees of quotas for IPs, *Dalit*, *Tharu*, Muslim, *Madhesi*, and other marginalized communities for civil service jobs as the Public Service Commission of Nepal sought to undermine the constitutionally guaranteed quotas for marginalized groups for public services by defining hiring procedures.¹²⁴
16. Indigenous peoples have historically been, and continue to be, subject to social, cultural and economic, and political injustice. Their customary rights over lands and natural resources have been denied. The large-scale projects (road construction, hydro-projects and mining) and National Parks have displaced IPs from their lands, natural resources and territories, and pasturelands across the country. Thousands of indigenous peoples have been displaced from their ancestral lands, and have become marginalized in their territories.¹²⁵ The land reform program, for example, displaced *Tharu* and *Madhesi* from

120 Alternative Report of the Indigenous Peoples of Nepal to the State Report Submitted by the Government of Nepal to the Committee on the Elimination of Racial Discrimination, 95th Session of the United Nations Committee on the Elimination of Racial Discrimination, available at https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NPL/INT_CERD_NGO_NPL_30811_E.pdf

121 Number 11 states: If a person knowingly kills a cow or bullock, the person shall be liable to imprisonment for a term of Twelve Years, and a person who instigates (gives words) for the same shall be imprisonment for a term of Six years. A person who kills a yak (*Chauri*) shall be liable to a fine of Forty Rupees for each yak. The *Muluki Ain* (Code) 2020 Chapter 7: On Quadruped, available at <http://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/muluki-ain-general-code-2020.pdf>

122 Government of Nepal, Office of the Prime Minister and Council: Fourth National Plan of Action on Human Rights, Fiscal Year 2014/2015 – 2018/2019, available at file:///C:/Users/R14i5U360TS/Downloads/4th National%20Planof%20Actions%20on%20Human%20Rights2014-2018%20(1).pdf

123 National Human Rights Commission Report: Indigenous and Tribal Convention 169 Implementation Status Report, 2019, available at http://www.nhrcnepal.org/nhrc_new/doc/newsletter/ILO_169_Implimentation_Report_English_NHRC_Jestha_2076.pdf

124 Human Rights Watch's World Report 2020, available at <https://www.hrw.org/world-report/2020/country-chapters/nepal#814a01> and <https://www.recordnepal.com/featured/the-anti-reservation-brigade/>

125 Cases of indigenous peoples rights violation, visit at <https://www.lahurnip.org/uploads/articles/Cases%20of%20Indijenous%20Peoples.pdf>

their lands and rendered to *Kamaiya* (bonded labor) in the western *Terai*.¹²⁶ Several National Parks established in indigenous territories have displaced *Chepang*, *Tharu*, *Bote*, *Raute*, *Bankariya*, *Majhi*, *Darai*, *Rai*, *Gurung*, and many other groups from their lands and territories.¹²⁷ Hydro-projects such as *Arun III*, *Upper Trishuli*, and *Kulekhani*, and road constructions and extension have displaced *Tamang*, *Rai*, *Shingsa-Lhomi*, and many other IPs from their lands and territories.¹²⁸ Expansion of the existing roads or new constructions, particularly unsystematic and haphazard road construction in rural areas have further increased the risk of landslides.¹²⁹ The programs of the community forest, which is seen as one of the most successful programs in Nepal, have curtailed the rights of customary use of forest resources. This has not only affected the economic life of IPs but also jeopardized their traditional ways of life, cultural heritage, beliefs and practices, indigenous knowledge and skills, and has affected indigenous peoples' identity and histories – social embeddedness.¹³⁰

17. Indigenous women continue to suffer from constitutional non-recognition including various forms of exclusion and discrimination in comparison to women of dominant caste groups. They have been neglected, and have neither projected in national census data, nor have they been included in the plans and policy documents of the government. They have less access to public and social services, justice and education; they have limited access to productive resources such as land, water, forests, and other natural resources; their traditional knowledge, skills and practices have been undermined and criminalized. Trafficking women is a widespread social reality in Nepal, and indigenous girls are more vulnerable to trafficking. A study shows, 76% of women survivors of the total, 821 women were from indigenous communities followed by *Dalits* (12 %) and *Bahun* and *Chhetri* (12%).¹³¹ Deeply rooted exploitation, discrimination, poverty, and structural inequality are responsible for this

126 For example, Arjun Gunerate (1998:760) notes, "In Dang, following on "loss of land, mass migration, and poverty . . . [several major festivals that were previously celebrated annually are now no longer celebrated at all, because of a lack of economic resources" (Cox n.d., 11). In Chitwan, the wholesale destruction of the forest by settlers following the success of the malaria eradication project removed from the ritual calendar the worship of many gods whose jungle shrines had been destroyed in the process. Chitwan *Tharus* believe that the power of their deities is closely linked to the presence of forests; when the forests are destroyed, they believe the gods abandon the area. When rituals are no longer performed, the young are no longer socialized into their performance, and they disappear from the local knowledge system."

127 The Record, May 1, 2017. Available at <https://www.recordnepal.com/art-letter/books/the-dark-side-of-nepals-national-parks/>

128 Case study of Indigenous Peoples' Rights violation. Visit at file:///D:/Working%20Folder%202020/UPR%202020/Publications%20of%20LAHURNIP%203%20Sep.%202019/Cases%20of%20Indigenous%20Peoples.pdf

129 Human Rights Year 2020, INSEC Nepal. Visit at <https://www.insec.org.np/wp-content/uploads/2020/02/Nepal-Human-Right-Year-Book-2020-Eng.pdf>

130 Ibid.

131 See more at: <http://www.indigenousvoice.com/7-out-of-every-10-victims-of-trafficking-in-person-are-indigenous-women-and-girls-in-nepal.html#sthash.oRTS5TL2.dpuf>

vulnerability.¹³²The GoN has shown no interest to implement CEDAW concluding observations made in 2018 that aptly states in para 40(a).¹³³

Recommendations:

In line with the previous UPR recommendations (A/HRC/31/9, para 121.9, Mexico and A/HRC/31/9, para - 122.37, Uganda):

- Approve and implement the Action Plan endorsed by the GoN for the implementation of the ILO Convention 169, review the existing laws and amend them or formulate new ones as per the Action of Plan to ensure the rights of Indigenous peoples.
- Recognize and uphold the right to Free, Prior and Informed Consent (FPIC) of IPs as stipulated in the UNDRIP and ILO 169 as a requirement for any project or activities that may impact on them;
- Implement the recommendations of High Level-Task Force for the Revision of Official Lists of Indigenous Nationalities of Nepal 2009 to enlist indigenous communities in the official list. Moreover, ensure the recognition of all other indigenous groups with due regards to their self-identity;
- Expedite the appointment of the commissioners on Indigenous Nationalities Commission and allocate sufficient budget, provide adequate, human and technical resources for its full and effective functioning;
- Fully implement the constitutional provisions of inclusion and proportional representative to ensure inclusion of IPs including indigenous women at decision-making levels and state polity;
- Establish a system of data collection that would allow the forthcoming National Census 2021 to compute the disaggregated data of indigenous women. Moreover, use the statistics to develop a national policy of indigenous women to address the intersectionality issues within women;
- Implement CEDAW concluding observations 2018 and amend the constitution to recognize indigenous women's right to self-determination in line with UNDRIP concluding observations 2018.

Discrimination against *Dalit* and vulnerable groups

18. The GoN has failed to take specific measures to implement the Caste-based Discrimination and Untouchability Act in conformity with the previous UPR recommendations. As a result, untouchability and discrimination against *Dalit* remain

132 National Indigenous Women's Federation (NIWF) Workshop report 2014. "A Report on the Consultation Workshop on the Key Concerns of Indigenous Women, Kathmandu, Nepal

133 The lack of recognition of the rights of indigenous women in the Constitution and the general lack of recognition of the right of indigenous peoples to self-determination;" and made recommendation in para 41 (a), "(a) **Amend the Constitution to explicitly recognize the rights of indigenous women, in particular their right to self-determination, in line with the United Nations Declaration on the Rights of Indigenous Peoples.**"Concluding Observations on the Six Periodic Report of Nepal on CEDAW, available at file:///C:/Users/R14i5U360TS/Desktop/UPR%20core%20documents/CDAW%20Concluding%20Observation%202018/Concluding-comments-English.pdf

widespread across the country. For example, in 2017, in Siraha district, six *Dalit* women were beaten because they fetched water from the public well.¹³⁴ Despite constitutional and legal guarantee, impunity for caste-based discrimination and violence remains high in Nepal.¹³⁵ On 23 May 2020, Nawaraj BK, who belonged to a so-called *Dalit* group, and his friends were killed in Rukum district when Nawaraj went to his girlfriend's house with a plan to elope with her as she belongs to a so-called high caste.¹³⁶ *Dalit* youth and children are discriminated against as untouchable in schools, temples and other public and private places.¹³⁷ Untouchability and caste-based discrimination also exist within *Dalit* community as intra-*Dalit* untouchability. However, very few cases of caste-based discrimination come into the courts, and increasingly, a trend of resolving the cases through conciliation has become a common practice across the country.¹³⁸ Many Terai *Dalit* who use the surnames that are common among the so-called high caste have been denied citizenship.¹³⁹

19. In the same fashion, the GoN has failed to uphold the principle of proportional inclusion in the state polity. For example, the Judicial Council's recommendation on 2 April 2019 of appointing judges failed to uphold the inclusion requirements of *Dalit* and others. All judges appointed to the Supreme Court were high caste Brahmin.¹⁴⁰
20. *Dalit* have the least access to education, health, and nutritious food in comparison to non-*Dalit*. Moreover, the majority of *Dalit* are landless. Compared to other groups, food insecurity among both the *Dalit* groups and indigenous communities (*Chepang*, *Raute*, *Bankariya*, *Bote*) is severe.¹⁴¹ *Dalit* bear a much higher burden of poverty compared to non-*Dalit*. The percentage of poor among *Dalit* is 42% compared to 23% for non-*Dalit*.¹⁴² A study reports that 23% of hill *Dalit* and 44% of *Madhesi Dalit* are entirely landless including *Haliyas*.¹⁴³ Unfortunately, the Land (Amendment) Act enacted in 2018 does not honor the principle of article 40 of the constitution.

Recommendations:

In line with previous UPR recommendations (A/HCR/31/9, para 121.17, Thailand and Japan, A/HRC/31/9, para - 122.33, Paraguay, A/HRC/31/9, para - 122.35, Denmark, A/HRC/31/9, para - 122.40, Germany and A/HRC/31/9, para - 122.36, Switzerland):

134 HUFFPOST, Dec. 6, 2017. See at https://www.huffpost.com/entry/untouchable-modern-nepals_b_10309260

135 OHCHR's statement, 29 May 2020. Visit at <https://www.ohchr.org/EN/pages/home.aspx>

136 The Kathmandu Post, 02 June 2020 <https://kathmandupost.com/national/2020/05/29/un-condemns-dalit-killings-in-rukum-west-and-calls-for-independent-probe>

137 Ibid.

138 See at <http://therisingnepal.org.np/news/452>

139 Participants in the consolation meetings brought several cases that *Dalit* people who use a certain surname which is commonly practiced by the so-called upper caste, they have been denied to receive citizenship with that surname in the Terai region.

140 Ibid.

141 Human Rights Year 2020, INSEC Nepal. Visit at <https://www.insec.org.np/wp-content/uploads/2020/02/Nepal-Human-Right-Year-Book-2020-Eng.pdf>

142 CBS report: Poverty in Nepal 2011. file:///C:/Users/R14i5U360TS/Desktop/Social%20Exclusion%20Report/CBS-view-on-poverty-in-Nepal.pdf

143 Sustainable Development Forum. 2006. Ownership of *Dalit* in Land: A Study. Kathmandu: Sustainable Development Forum

- Develop a national plan of action, promulgate necessary regulations, formulate policies and directives, and establish an institutional mechanism for full and effective implementation of the Caste-based Discrimination and Untouchability (Offence and Punishment) Act 2011 and 16 fundamental rights, related Acts enacted in 2018;
- Expedite the appointment of the commissioners on National *Dalit* Commission, members of *Dalit* Development Board and *Badi* Development Board, allocate sufficient budget, provide adequate, human and technical resources for its full and effective functioning;
- Ensure the proportional representation of *Dalit* including *Dalit* women at decision-making levels and state polity in line with the constitutional provisions.
- Formulate and launch a nationwide campaign to educate and sensitize people to the Caste-based Discrimination and Untouchability (Offence and Punishment) Act 2011 and 16 fundamental rights, related Acts enacted in 2018.

Discrimination against Persons with Disabilities (PWDs)

21. A total of 1.94% of persons with disabilities of the total population (CBS 2011) are deprived of enjoying social, economic, cultural, and political rights.¹⁴⁴ Key issues raised during the consultations are: persons with disabilities face family restriction to choose their partner and get married, hold children and get parental property; they are subject to negligence, abuse, and violence; they have little chance of participating in social and cultural events, and women with disabilities often suffer from sexual abuse and violence. Majority persons with disabilities (more than 70%)¹⁴⁵ do not know about government facilities, fundamental rights and legal services available to them.
22. Even within disability, persons with disabilities belonging to marginalized groups and poor communities suffer from “violation of multiple rights.”¹⁴⁶ A study shows that 81% of indigenous Persons with Disabilities have poor access to public facilities compared to other groups.¹⁴⁷ Moreover, due to ethnicity, language, geographical remoteness and other factors indigenous women with disabilities are more vulnerable and subject to further underrepresentation, marginalization, and discrimination than the women from dominant groups.¹⁴⁸ Likewise, *Dalit* women with disabilities suffer from caste-based discrimination and untouchability. The constitution and the Disability Act 2018 frames

144 http://www.nhrconepal.org/nhrc_new/doc/newsletter/The_Rights_of_the_Persons_with_Disability_2075.pdf

145 Committee on the Rights of Persons with Disabilities reviews the report of Nepal, visit at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22676&LangID=E>

146 Ibid.

147 Disaster, Disability and Differences, A Study of the Challenges faced by Persons with Disabilities in Post-Earthquake Nepal, 2016 UNPD, Social Science Baha and National Federation of Disabled Nepal.

148 A study notes that, for example, women with disabilities access to education and other services is affected not only by gender and disability but also by their type of their disabilities, the socio-economic status of their family, their race/ethnicity, whether they live in urban or rural areas and a host of other factors. Along with disability and gender, persons with disabilities rights are denied in services based on their identities like being ethnic, *Dalit*, or backward geography. 90.9% of women with disabilities expressed that intersectional discrimination prevails them which impacts receiving information and access to services. The state as well National Federation of the Disabled Nepal (NFDN) has not taken into account as a human rights issue of indigenous peoples with disabilities in Nepal.

women and persons with disabilities into a homogenous group. The Disability Act does not adequately consider *multiple discriminations* faced by an indigenous person with disabilities and other marginalized groups.

23. Children with disabilities remain out of schools and face serious obstacles to quality and inclusive education (Human Rights Watch 2018).¹⁴⁹ During the consultations, it was reported that most of the children with disabilities remain out of school and those who go to school will be segregated into separate classrooms. Reports also show that around 1500 to 5600 children with disabilities, ages 5 to 12, did not attend schools in 2016. In 2018, Human Rights Watch reported that out of 30,000 schools in Nepal, just 340 have resourceful classes where children who are blind or who have an intellectual disability are grouped with others.¹⁵⁰

Recommendations:

In line with the previous UPR recommendations (A/HRC/31/9, para – 122.107, Norway and A/HRC/31/9, para – 122.110, Spain):

- Establish a system of data collection that would allow the forthcoming National Census 2021 to compute the disaggregated data of Persons with Disabilities of *Dalit*, *IPs*, *Madhesi*, and Muslim by the types of disability. Moreover, use the statistics to develop a national policy of disability to address the intersectionality issues within the disability;
- Develop a national plan of action and promulgate necessary regulation related to the Disability Act for its full and effective implementation;
- Increase the annual budget allocations for health and education sections to provide quality healthcare and education for persons with disabilities, increase access of women with disability to sexual and reproductive health services, ensure schools are accessible for children with disabilities as well as adequate training for school teachers;
- Ensure the schools are accessible for children with disabilities and provide school teachers with the training of inclusive education;
- Fully implement the laws and constitutional provisions to ensure the meaningful participation of persons with disabilities in public services and state polity.
- Review and implement Disability Act to recognize the rights of indigenous peoples/women with disabilities the multiple layers of discrimination faced by them, in line with human rights models of disability enshrined in the UNCRPD Convention.

149 Human Rights Watch Report 2018 <https://www.hrw.org/news/2018/09/13/nepal-barriers-inclusive-education>

150 Referring to the UN and World Health Organization, in 2018, Human Rights Watch said: Based on UN and World Health Organization estimates, Nepal has 60,000 to 180,000 children ages 5 to 14 with disabilities. In a 2011 report, Human Rights Watch estimated that at least 207,000 children in Nepal have a disability. In 2016, UNICEF found that 30.6 percent of children with disabilities, or approximately 15,000 to 56,000 children, ages 5 to 12, did not attend school. Visit at <https://www.hrw.org/news/2018/09/13/nepal-barriers-inclusive-education>

Discrimination against Sexual Orientation and Gender Identity and Sex Characteristics

24. Discriminatory laws and practices and non-implementation of the existing laws are serious concerns in Nepal. Over a decade of SC's verdict, same-sex marriage is unrecognized, instead, it is legally sanctioned. The recommendation of the Supreme Court-mandated committee report is also pedant of implementation.¹⁵¹ The Nepal Civil Code 2017 only recognizes marriage between a man and a woman.¹⁵² LGBTI activists complain that the definitive use of "man", "woman", or "husband", and "wife", precludes the possibility of marriage between same sex individuals. Consequently, non-recognition of same-sex marriage has deprived LGBTI couples of enjoying certain rights and benefits: gain social security, open a joint bank account, share income tax, sell and transfer jointly registered property, and to be considered one another's legal agents. The provisions of new civil and criminal code are against the constitution and Supreme Court's directives including the ICCPR and ICESCR of which Nepal is a signatory. The Criminal Code includes regressive word "Unnatural Sex," which is against the Constitution and Supreme Court decision. The right to Safe Motherhood and Reproductive Health Act 2018 has several discriminatory provisions such as women shall have the right to reproductive health, not LGBTI women.¹⁵³ Citizenship bill tabled in the State Affairs and Good Governance Committee of the House of Representative is a setback as it has a provision that requires transgender persons to provide the medical proof that identifies the gender identity of the persons to receive citizenship.
25. LGBTI persons are subject to discrimination, hate, social stigma, and harassment;¹⁵⁴ discrimination against the community in their own families, schools, employment, and public services remains widespread.¹⁵⁵ However, only a few victims of discrimination go to the court. In 2013, a sample study shows that LGBTI persons experience discrimination, harassment, and abuse in public life settings such as denials of health care, experience abuse by law enforcement and harassment on public transportation.¹⁵⁶ Due to social stigma associated with sexual orientation, many LGBTI persons remain closeted and have become a victim of hate.¹⁵⁷ Given the situation, many LGBTI persons, for fear of being socially excluded, they cannot reveal their gender identity.¹⁵⁸

151 In 2015, the GoN formed a committee to study the possibility of legalizing same-sex marriage as per the SC's decision and have submitted an 85-page report to the Prime Minister's Office. The report has recommended that the government should legalize same-sex marriage. <https://kathmandupost.com/life--style/2019/05/03/nepals-indecision-on-same-sex-marriage-leaves-couples-in-limbo>

152 Chapter 3, Part- 1, Article 67 of the Civil Code 2017

153 Chapter 2 – Right to Reproductive Health of The Right to Safe Motherhood and Reproductive Health Act 2018

154 The Rising Nepal, available at <http://www.therisingnepal.org.np/index/news/23500>

155 Global Press Journal. See at <https://globalpressjournal.com/asia/nepal/wanted-male-female-transgender-people-nepal-suffer-hiring-bias-despite-law/>

156 UNDP William Institute (2014): Surveying Nepal's Sexual and Gender Minorities: An Inclusive Approach. Visit at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Nepal-Survey-Oct-2014.pdf>

157 The Kathmandu Post, March 6, 2020. <https://kathmandupost.com/life--style/2019/05/03/nepals-indecision-on-same-sex-marriage-leaves-couples-in-limbo>

158 The Rising Nepal, available at <http://www.therisingnepal.org.np/index/news/23500>

Recommendations:

- Implement the Same-Sex Marriage Committee report and enact a law that recognizes same-sex marriage;
- Revise and amend the Civil and Criminal Codes including other discriminatory laws that are against the rights of LGBTI community;
- Develop mechanism to address violence and discrimination on the basis of SOGISC
- In line with previous UPR recommendations (A/HRC/31/9, para - 122.42, Spain), establish an independent commission to protect and promote economic, social and cultural rights of the LGBTI communities;
- Adopt anti-discriminatory law and policy measures to facilitate access to justice for LGBTI persons;
- Take viable steps to create a safe environment so that the LGBTI community come up with their identity;
- Ensure constitutional recognition of sexual and gender minorities and intersex people as one of the minority groups;
- Fully implement the constitutional provisions of inclusion principles to increase the participation and representation of the LGBTI in public services and state mechanisms, and to provide equal opportunity on education and employment.

Discrimination against the Muslim community

26. The CBS 2011 reports that 4.4% of the total population is Muslim in Nepal. Human Development Report 2015 shows that nearly- one - quarter live below the poverty line and HDI of Muslims is 0.422, which is lower than that of *Dalit* (0.434).¹⁵⁹Historically, Muslims have been struggling for socio-economic and political inclusion in Nepal, with a distinct identity;¹⁶⁰ they continuously suffer from various forms of discrimination concerning economic, social and cultural rights. From a legal perspective, for example, Islamic marriage and divorce take place as per Muslim customs and family laws that have not been recognized.
27. Islamic Holiday has been recognized as national holyday. The constitution has recognized Muslims as a separate cluster for political and administrative representation based on the inclusive principle.¹⁶¹ Despite constitutional guarantees, the government has failed to uphold the principle of inclusion in the state polity. The Judicial Council's recommendation on 2 April 2019 of appointing judges, for instance, failed to uphold the inclusion requirements of Muslims and others. All judges appointed to the Supreme Court were high caste Brahmin.¹⁶²
28. Muslim have the least access to health, justice, and education because of a language barrier; registered Madrasa schools are deprived of receiving government supports as

159 Nepal Human Development Report 2014, available at http://www.hdr.undp.org/sites/default/files/nepal_nhdr_2014-final.pdf

160 Nepali Times, May 3, 2019. <https://www.nepalitimes.com/opinion/moving-to-the-mainstream/>

161 The Articles 42, 84(2), 51(18j) and 176(6) of the Constitution of Nepal 2015

162 Human Rights Year 2020, INSEC Nepal. Visit at <https://www.insec.org.np/wp-content/uploads/2020/02/Nepal-Human-Right-Year-Book-2020-Eng.pdf>

other government schools do; they lack government's oversights and regulation; they are sort-staffed and underfunded, and do not get facilities and resources as other government schools have. As a result, in most Madrasa schools, teachers are not receiving their minimal salaries on time and numerous Madrasas now are receiving donations from likeminded organizations.¹⁶³

Recommendations:

- Fully implement the constitutional provisions to ensure proportional representation and participation of Muslim including Muslim women in all state mechanisms;
- Expedite the appointment commissioners on Muslim Commission, allocate sufficient budget, and provide adequate, human and technical resources for its full, meaningful and effective functioning;
- Intensify existing efforts to protect religious freedom and freedom of expression of the Muslim community;
- Adopt national legislation that recognizes and respects Muslim customs, traditional practices, culture, language, and way of life;
- Adopt a Madrasa Education Act to overview and regulate the madrasa education system and recognize the Madrasa education as accepted formal educational institutions up to higher level;
- Stop discriminatory practices against recognized Madrasa schools, and provide sufficient budget, adequate staff/teachers to provide quality education for Muslim children.

Discrimination against Former Bonded Labor (*Kamaiya*, *Haliya*, and *Haruwa/Charuwa*)

29. *Kamaiya* and *Kamalari* laborers are largely from *Tharu* Terai indigenous peoples. Much of the land formerly controlled by *Tharu* passed into the hands of immigrants (High caste groups),¹⁶⁴ and eventually *Tharu* were forced to become bonded labor, *Kamaiya* to the hill immigrants. Following the loss of forest and pastureland, mass migration from the Hills, and poverty, *Tharu* became unable to continue their traditional life and

¹⁶³ Nepali Times, March 3, 2019. <https://www.nepalitimes.com/banner/nepali-muslims-on-the-margins/>

¹⁶⁴ Arjun Gunaratne (1998:759 in footnote): An example will illustrate the sorts of methods used. A Brahmin who came to Chitwan after the malaria eradication program became notorious in the surrounding villages for the way he amassed land. He readily provided loans to *Tharu*; when they found themselves unable to pay back the loan within the stipulated time, he would extend the repayment period, but in return they would be asked to agree to the addition of another zero to the sum specified on the promissory note. The *Tharu*, illiterate and unfamiliar with written documents, would fail to see the significance of this and would readily consent. The debtor, eventually confronted by the moneylender with a promissory note for a sum far greater than that which he had originally borrowed, and well beyond his ability to repay, would lose all or part of his land in fulfillment of the debt (See, Arjun Gunaratne (1998) Modernization, the State, and the Construction of a *Tharu* Identity in Nepal

30. perform customary rituals as they no longer had the resources to do so.¹⁶⁵ The *Kamaiya* system was prevalent in Banke, Bardiya, Dang, Kailali, and Kanchanpur districts of the western and far-western region of Nepal. In 2000, the government declared *Kamaiya* emancipation, including from debt.¹⁶⁶ There are around 37,000 freed *Kamaiya*.¹⁶⁷
31. However, two decades after the emancipation of the *Kamaiya*, the GoN has failed to provide them with proper rehabilitation.¹⁶⁸ Key issues raised by freed *Kamaiya* and *Kamlari* during the consultations are: still freed *Kamaiya* are working to their landlord;¹⁶⁹ many *Kamaiya* are yet to be rehabilitated; even after rehabilitation, *Kamaiya* are facing a crisis to live in dignity and decency; despite government's commitment to providing free higher education to freed *Kamaiya* and *Kamlari*, schools are imposing fees under various titles and; they have been deprived of exercising their basic social, cultural and economic rights.
32. *Haliya* is a system of agriculture bonded labor that allowed the landlord to keep a well-to-do family to keep a tenant as a slave for life for a small sum of money. So, from generation to generation, *Haliya* used to work for their landlords to repay debt taken by their forefathers. This *Haliya* system prevailed in Western Hills of Nepal, particularly 12 hill districts of Karnali and far-western regions. Of the total, 97% *Haliya* are *Dalit* and 3% are other caste groups.¹⁷⁰ In 2008, the GoN abolished *Haliya* system. After the abolition of *Haliya*, the GoN launched *Haliya* Rehabilitation Program. However, even after decades of emancipation, just 38% of *Haliya* have received the government's rehabilitation packages so far, with a large number of *Haliya* are outside the support.¹⁷¹ The support provided them with is inadequate to rebuild their lives and establish their

165 For example, Arjun Gunerate (1998:760) notes, "In Dang, following on "loss of land, mass migration and poverty . . . [several major festivals that were previously celebrated annually are now no longer celebrated at all, because of a lack of economic resources" (Cox n.d., 11). In Chitwan, the wholesale destruction of the forest by settlers following the success of the malaria eradication project removed from the ritual calendar the worship of many gods whose jungle shrines had been destroyed in the process. Chitwan *Tharu* believe that the power of their deities is closely linked to the presence of forests; when the forests are destroyed, they believe the gods abandon the area. When rituals are no longer performed, the young are no longer socialized into their performance, and they disappear from the local knowledge system."

166 The social movement of bonded labor forced the government to declare the emancipation of thousands of *Kamaiya* and *Kamlaris* (bonded labor form indigenous *Tharu* community) in western Nepal, on 17 July 2000. Similarly, in September 2008, the Government announced that it had abolished the *Haliya* system and cancelled the debts of *Haliya* bonded laborers from *Dalit* community.

167 The Kathmandu Post, July 17, 2017, available at <https://kathmandupost.com/miscellaneous/2017/07/17/many-freed-kamaiyas-yet-to-be-rehabilitated>

168 http://inseconline.org/en/wp-content/uploads/2020/YB2020/Chapter_3.3_YB2020.pdf

169 More than 412 *Kamlaris* are working as bonded labor in various districts a – Dang, Bardiya, Kailai, Kanchanpur and Banke - and at least 5000 freed *Kamaiyas* are yet to be identified.

170 New Spotlight, November 3, 2018, available at <https://www.spotlightnepal.com/2018/11/03/lwf-nepal-programs-hope-haliyas/>

171 After the emancipation of *Haliyas*, the government had announced 4 categories A, B, C and D. According to the classification, people with no house and land are under A category. Those who have a house but no lands are category B and those who have land but no house are under category C. Those who have land and houses are under category D. Under the rehabilitation package, the government agreed to provide 325,000 for category A to purchase land, and 325,000 for construction of the house for A and C in hill and 225,000 in Terai. For B and D, the government agrees to provide Rs.125, 000. However, the rehabilitation packages are neither sufficient nor complete. New Spotlight at <https://www.spotlightnepal.com/2018/11/03/lwf-nepal-programs-hope-haliyas/>

livelihoods. Consultation meetings with *Haliya* in Karnali and far-western Nepal revealed that even after rehabilitation, *Haliya* are facing a crisis to live in dignity and decency.

33. *Haruwa/Charuwa* system is another form of bonded labors based on indebtedness, practiced in the eastern Terai, especially in province no.2. Working in the field to the landlords, a *Haruwa* laborer receives a share of the harvest which is not enough to run his family. By tradition other family members also must work to the same landlord at the very low daily wages.
34. The constitution stipulates that all people should be free of exploitation, forced and bonded labor, slavery, and trafficking¹⁷² and sets out the provision of housing and land for *Kamaiya*, *Haruwa* and *Charuwa*.¹⁷³ Nonetheless, no law exists on forced and bonded labor that is in line with international standards. However, several existing laws focus on the forced and bonded labor practices in Nepal including *Kamaiya* Labor (Prohibition Act (2002)).¹⁷⁴ The *Kamaiya* Act bans forced labor imposed on *Kamaiya*, *Haruwa*, *Charuwa*, and *Haliya*, but the problem is a lack of proper enforcement mechanisms and insufficient resources for the enactment of the Act. There is also a lack of clarity on the roles and responsibilities of government institutions, making enforcement weak as a result. Many of those freed from bonded labor are forced to seek overseas employment, often in the low skilled and least protected segments of the workforce in India, Gulf cooperation countries and Malaysia.¹⁷⁵ In 2009, the GoN has decided to establish a Freed *Kamaiya* Rehabilitation Problem Resolution Commission

Recommendations:

- Ensure the full and effective implementation of the *Kamaiya* (Prohibition) Act 2002;
- Provide housing, land, employment and income-generating activities to freed bonded labor per the agreement to re-establish their lives and livelihoods;
- Allocating sufficient budget and human resources, establish a High-Level Commission to promote and protect the rights of former bonded labor;
- Increase the annual budget allocations for the Rehabilitation Plan, support to those who are yet to be rehabilitated, and extend further financial support to livelihood development and poverty reduction of freed *Haliya*, *Haruwa/Charuwa*, and *Kamaiya*;
- Increases the annual budget allocations for health and education sections to provide quality healthcare and education for freed *Haliya*, *Haruwa/Charuwa* and *Kamaiya*;
- Adopt a legal and policy measure to recognize the identity of freed *Haliya* and *Haruwa/Charuwa* to ensure their access to quotas systems for public service.

¹⁷² The article 29 of the constitution of Nepal 2015

¹⁷³ Article 51(6j) of the Constitution of Nepal 2015

¹⁷⁴ Other laws, including but not limited, the Nepali Civil Code (2018), Child Rights Act (1954), Child Labor (Prohibition and Regulation) Act (2000), Foreign Employment Act (2007), and Human Trafficking and Transportation (Control) Act (2007)

¹⁷⁵ The Kathmandu Post, March 8, 2020. <https://kathmandupost.com/opinion/2017/02/13/aftermath-of-liberation>

Discrimination against *Tharu* and *Tarai-Madhesi* communities

35. CBS 2011 reports a total of 50.3% people of the total population live in the southern region of Nepal, known as *Terai-Madhes* which is a home to many indigenous and ethnic and Madhesi communities. *Madhesi* community reflects multi-ethnic, multi-caste, multi-lingual and multi-cultural diversity. They face constant prejudice and exclusion across the country based on color, region, language and socio-cultural identity.¹⁷⁶ Historically, the national policies such as language policy which attempts to impose *Khas Nepali*, instead of recognizing mother tongues as lingua franca of *Terai-Madhes*. Likewise, the problem of citizenship still prevails in the *Terai* region, including access to public services, education and health services, and social and economic opportunities. *Madhesi* communities are often discriminated against and stigmatized by dominant Hill caste groups and are often made feel to alien – Indian¹⁷⁷ on the ground that Madhesi communities have close cultural and linguistic ties with India.
36. Following the promulgation of the Constitution, the protest movements of IPs, *Tharu* and *Tarai-Madhes* people over the New Constitution that left at least 45 people killed, including 9 police officers.¹⁷⁸ Indigenous and ethnic minorities and *Tarai-Madhes* people are demanding the amendment of the provisions of the constitution which they deem discriminatory. Major issues included: the new federal boundaries that revoke government's commitment made to *Tharu* and *Madhesi* communities; the provisions that create Madhesi communities as "second-class" citizens; and the provision of unequal distribution of parliamentary constituencies and restrictions on the right of women to pass citizenship to their children.¹⁷⁹ Resistance against the discriminatory provisions continues and these peoples and communities are organizing a protest against these discriminatory provisions of the constitution.¹⁸⁰

Recommendations:

- Repeal all constitutional and legal provisions that discriminate against *Tharu* and *Madhesi* people, in particular areas of nationality, language and culture, and identity;
- Ensure that victims accused of violence and other crimes during the protests are accorded full due process rights, including a fair trial, freedom from torture, and access to lawyers and family;

176 Arun K. L. Das and Magnus Hatlebakk, Statistical Evidence on Social and Economic Exclusion in Nepal CIM report, available at <https://www.cmi.no/publications/file/3577-statistical-evidence-on-social-and-economic.pdf>

177 Fredrick H. Gaige. Regionalism and National Unity in Nepal (Kathmandu: Himal Books, 2009)

178 <https://www.hrw.org/news/2017/12/21/nepal-publish-commission-report-terai-violence>

179 Human Rights Watch (2015). Like We Are Not Nepali: Protest and Police Crackdown in the Terai Region of Nepal, available at file:///C:/Users/R14i5U360TS/Desktop/UPR%20core%20documents/Like%20we%20are%20not%20Nepali%20(Human%20Rights%20Watch).pdf

180 <https://iprav33n.com/2019/09/20/five-observation-as-constitution-enters-fifth-year/>

- Expedite the appointment of commissioners on *Tharu* and *Madhesi* Commissions, allocate sufficient budget, and provide adequate, human and technical resources for its full and effective functioning;
- Take concrete steps to eliminate color, region, language and socio-cultural identity-based discrimination towards *Terai-Madhesi* people;
- In line with previous UPR recommendations (A/HCR/31/9 – para 122.38, Ukraine and A/HRC/31/9, para – 122.1, India), conduct dialogue with IPs, *Tharu* and *Terai-Madhes* people to discuss key issues and concerns related to the amendment of the constitution;
- Take action to implement the commitments and agreements made with *Madhesi* political parties and amend the constitution accordingly;
- Fully implement the constitutional and other legal provisions of social inclusion to ensure ‘proportionate representation of the *Madhesi* in the state mechanisms’;
- Publicize the Lal Report and take action to eliminate extrajudicial killing and impunity in *Terai-Madhes*.

Annex-1 List of Civil Society Organizations

- | | |
|--|---|
| 1. Aadhiwasi Janajati Mahasangh | 14. Blue Diamond Society (BDS) |
| 2. Aadhiwasi Rastriya Utthan Prathisthan | 15. Blue Diamond Society, Kathmandu |
| 3. Aadiwasi Janajati Bikaskalagi Sanjal | 16. Blue Haven, Bara |
| 4. Adiwashi Janajati Adhikar Manch (AJAM) | 17. Bung Public Welfare Center (BPWC) |
| 5. Advocacy Forum (AF) | 18. CEDAW Writing Committee (CWC) |
| 6. Akhil Nepal Women's Association (ANWA) | 19. Centre for Ethnic Studies and Development (CESD) |
| 7. Alliance Against Trafficking in Women and Children (AATWIN) | 20. Centre for Human Rights and Democratic Studies (CEHURDES) |
| 8. Aslam Society | 21. Centre for Indigenous Ethnic Peoples' concern, Nepal (CIEPCON), |
| 9. Association for Dalit Women Advancement of Nepal (ADWAN) | 22. Centre for Protection of Law and Environment (CPLE) |
| 10. Association of Kirat Chamling Language and Culture Development (AKCLCD) | 23. Centre for Study on Gender and Development Study (CSGS) |
| 11. Association of Nepal Kirat Kulung Language Culture Development (ANKKLCD) | 24. Chamling Creative Youth Society (CCYS) |
| 12. Bahing Kirat Mulukhim (BKM) | 25. Chautari Nepal, Mahottari |
| 13. Beyond Beijing Committee (BBC) Nepal | 26. Child Rights Concern Nepal (CONCERN Nepal) |
| | 27. Child Workers Concern Center Nepal (CWIN) |

28. Children and Women in Social Service and Human Rights (CWISH)
29. Chulachuli UNESCO Club (CUC)
30. Community Action Center (CAC Nepal)
31. Community Help Centre (CHC)
32. Community Self-reliance (CSRC)
33. Concern for Children and Environment Nepal (CONCERN)
34. Conscious Society for Social Development (CSSD)
35. Cooperative Society for National Development Nepal (COSFONAD-Nepal)
36. Cruise Aids Nepal, Kathmandu
37. CSGS (Centre for Studies on Gender, Society and Development Study)
38. Dalit Human Rights Organisation (DHRO)
39. Dalit Literature and Cultural Academy (DLCA)
40. Dalit NGO Federation – Nepal DNF Nepal
41. Dalit NGO Federation (DNF)
42. Dalit Study and Development Center (DSDC)
43. Dalit Welfare Association (DWA)
44. Dalit Welfare Organization (DWO)
45. Disability Human Rights Centre (DHRC-Nepal)
46. Dynamic Group for Change (DGC), Nepal
47. Eighteen Magartant Magar Language Literature Culture Preservation, Research and Development Academy) (EMMLCPRDA)
48. Ekta Nepal, Kailali
49. Empower Nepal, Nawalparasi
50. Environment and child Development center
51. Environment and Rural Development Centre (ERDC)
52. Federation of Nepalese Journalist (FNJ)
53. Federation of Sexual and gender minorities, Nepal, Kathmandu
54. Feminist Dalit organization (FEDO)
55. Forest resources Studies and Action Team (Forest Action)
56. Forum for Indigenous Nationalities Concern (FINCO), Gorkha
57. Forum for Indigenous Nationalities Development (FIND)
58. Forum for Protection of People's Rights Nepal (PPR-Nepal)
59. Forum for Public Awareness Rural Development and Environmental Conservation (FPARE)
60. Forum for Women Law and Development (FWLD)
61. Friends Hetauda, Makwanpur
62. Gandharba Culture and Art Organization (GCAO)
63. Group for Human Rights and Socio-legal Research (GOHRAS)
64. Help Nepal
65. Hill Development & Conservation Group Nepal (HDCGN)
66. Him Rights
67. Himalaya Bhote Society (HBS)
68. Himalayan Indigenous Society (HIS) Nepal
69. Himalayan Natural Fiber Foundation (HNFF)
70. Hospital and Rehabilitation Center for Disabled Children
71. Human Conscious Society, Chitwan
72. Human Health Society, Dang
73. Human Rights Alliance Nepal
74. Human Rights and community Development center

75. Human Rights and Democratic Forum (FORHID)
76. Human Rights Education Radio Listeners' Clubs Nepal (HRERLIC)
77. Human Rights Protection and Promotion Center
78. Human Rights Treaty Monitoring Coordination Committee (HRTMCC)
79. Human Rights without Frontiers-Nepal (HRWF)
80. Human Welfare Committee HWC - Nepal
81. Human Welfare Society, Sunsari
82. Hurhure Yuwa Club (HYC)
83. Independent Living Centre
84. Independent Living Centre (CIL)
85. Indigenous Ethnic Lawyers Council-Nepal (IELCN)
86. Indigenous Nationalities Development Forum (INDF), Nawalparashi
87. Indigenous Non-Governmental Organization District Coordination Forum (INGODCF)
88. Indigenous Research and Resource Development Centre (IRRDC)
89. Indigenous Rural Development Social Services Nepal (IRDSSN)
90. Indigenous Television
91. Indigenous Women Legal Awareness Group (INWOLAG)
92. Indreni Srijansil, Samaj, Tikapur, Kailali
93. Informal Sector Service Centre (INSEC)
94. INHURED International
95. Institute of Human Rights Communication Nepal (IHRICON)
96. Jagaran Media Center (JMC)
97. Jagriti Nepal
98. Jan Prerna Kendra, Janakpur
99. Janajati Development Forum (JDF)
100. Janautthan Pratisthan (JUP)
101. JASEC Nepal, Nayabaneshor (Contact Office)
102. Jeevan Jyoti Samaj, Siraha
103. Jero Kirat Radu Society (JKRS)
104. Jimi Rai Utthan Samajh (JRUS)
105. Kalimati Yuva Club (KYC)
106. Kanchanjangha Women's Development Group (KWDG)
107. Karani Community development center (KCDC)
108. Karmarong (Karani) Society Service Association (KSSA)
109. Kathmandu School of Law (KSL)
110. Kirat Community Development Centre (KCDC) Forum for Women Development (FORWOD)
111. Kirat Khaling Rai Development Association (KKRDA)
112. Kirat Rodu Nachhiring Sakham, Kathmandu (KRNS)
113. Kirat Welfare Society (KWS)
114. Kirat Yakthum Chumlung
115. Kirat Youth Society (KYS)
116. Lawyers Association for Human Rights of Nepalese Indigenous People (LAHURNIP)
117. Lawyers National Campaign Against Untouchability (LANCAU)
118. Lead Nepal, Jhapa
119. Legal Aid Consultancy Centre (LACC)
120. Limbu Language and Culture Development Centre (LILDA)
121. Limbu Language Development Organization (LLDO)
122. Lohorung Yakhkhama Yuyong (LYY)
123. Lok Kalyan Nepal (LOK)
124. Love Green Development Committee (LGDC)

125. LUMANTI, Nepal
126. Luzza Nepal
127. Madheshi Dalit Sewa Samaj
128. Madhesi Dalit Development Federation (MDDF)
129. Madhesi Dalit Mahasangh
130. Madhesi Muslim Samaj
131. Madhesi Nagarik Samaj
132. Mahakulung Youth Council (MYC)
133. Mahila Rastriya Sanjal
134. Mahottari Magar Service Society (MMSS)
135. Manab Kalyan Samaj, Ithari
136. Mono Support Maple Group, Rupandehi
137. Multipurpose Development Service Institute
138. Muslim Cultural Society MCS
139. National Alliance for Women Human Rights Defenders (NAWHRD)
140. National Association of Deaf Hard of Hearing (NADH)
141. National Association of Physically Disabled (NAPD-Nepal)
142. National Coalition Against Racial Discrimination (NCARD)
143. National Federation of Disable-Nepal (NFDN)
144. National Human Rights Foundation (HURFON)
145. National Indigenous Women Forum (NIWF)
146. National Indigenous Women's Federation (NIWF)
147. National land Concern Group (NLRCG)
148. National Muslim Federation (NMF)
149. National Muslim Forum Nepal (NMFN)
150. National Network of Indigenous Women (NNIW)
151. National School of Research
152. Naulo Bihani Pokhara, Kaski
153. Naulo Bihani, Pokhara
154. Naulo Srijana, Banke
155. Nawa Jeevan, Kapilbastu
156. Nepal Association of the Blind
157. Nepal Chepang Association NCA
158. Nepal Development society
159. Nepal Disable Association (NDA)
160. Nepal Disabled Women Association (NDWA)
161. Nepal Kusunda Sangh
162. Nepal Mahila Ekata Samaj (NMES)
163. Nepal Muslim Women Welfare Society (NMWS)
164. Nepal National Dalit Social Welfare Organization (NNDSWO)
165. Nepal National Federation of the Deaf and Hard of Hearing (NFDH)
166. Nepal Paralympic Committee
167. Nepal Rajat Jankalyan Samiti
168. Nepal Raji Utthan Sangh
169. Nepal Rana Tharu Society (NRTS)
170. Nepal Rana Tharu Society (NRTS), District Committee
171. Nepal Society of the Disabled (NSD)
172. Nepal Stutters Association
173. Nepal Tamang Ghedung (NTG)
174. Nepal Tamang NGO-Federation
175. Nepal Tamang Women Association (NTWG)
176. Nepal Wheel Chair Club (NWCC)
177. NGO-Federation of Indigenous Nationalities of Nepal (Affiliated member organizations)
178. NGO-Federation of Nepal
179. NGO-FONIN District Committee, Dolakha
180. Non-Governmental Organization Coordination Committee (NGOCC)
181. Our Equal access, Bhaktapur

182. Pabitra Paldor Society (PPS)
183. Pahichan Nepal, Sarlahi
184. Parent Association of Intellectual Disability
185. Paribartan Nepal, Kaski
186. Paribartan Nepal, Morang
187. Parichaya Samaj
188. Parichya Samaj, Lalitpur
189. Partnership Nepal
190. PEWA Nepal
191. Physician for Social Responsibility (PSRN)
192. Pink Triangle Nepal, Kathmandu
193. Population Watch (Pop-Watch)
194. POURAKHI
195. Pravashi Nepal
196. Prayash Mahottari
197. Prisoners Assistance Nepal (PAN)
198. Pro-Public
199. Professional Development and Research Center (PDRC)
200. Public Health Concern Trust (PHECT Nepal)
201. Rajak Jana Kalyan Samiti
202. Rastriya Dalit Network -Nepal RDN - Nepal
203. Rasuwa Nationalities Development Committee (RNDC)
204. Rauta Community Welfare Centre (RCWC)
205. Read Nepal
206. Rehabilitation and Empowerment center on Disability
207. Remote Area Women and Children Empowerment Centre (RAWCEC)
208. Resource Centre for Primary Health Care (RECPHEC)
209. Resource Centre for Rehabilitation and Development (RCRC)-Nepal
210. Right to Food Network (RtFN)
211. Rising Down, Sunsari
212. Rural Basic Service Organisation (RBSO)
213. Rural Ethnic People's Development Forum (REPDF), Udayapur
214. Rural Reconstruction Nepal (RRN)
215. SAATHI Women Shelter
216. Sahara Samaj BDS
217. Sahara Samaj, Sunsari
218. Sahasi Kadam Nepal, Butawal
219. Sahayatra Nepal, Kanchanpur
220. Sahayatri Samaj, Parsa
221. Sahayogi Samaj Saptari
222. Saino Nepal, Chitwan
223. Samari Utthan Sewa
224. Samata Foundation
225. Sambridha Samaj, Morang
226. Samudaik Sashaktikaran Kendra
227. Sancharika Samuha
228. Santhal Utthan Manch
229. SANTIMALIKA
230. Saptarangi Nepal, Rautahat
231. Sexual and Gender Minorities Students forum, Kathmandu
232. Shakti Samuha
233. Shree Jana Utthan Sarokar Kendra,
234. Shree Mirmire Bihani Club (SMBC), Ilam
235. Shreejansil Sarki Samaj
236. Silichong Club, Social Development Centre (SCSDC)
237. Sisa Nepal
238. Society for Indigenous Development Nepal (SID Nepal)
239. Society For People In Needs (SPIN)
240. Society for Upliftment of Disabled and Orphan
241. Society for Women's Empowerment and Sustainability-SHRISTI
242. SOLID Nepal
243. Sudhar Nepal (Reformation Nepal)
244. Sudur Paschim Samaj

245. Sudur Paschim Samaj Kailal
246. Sunaulo Bihani Samaj, Dhanusha
247. Sundar Sansar, Bardia
248. Sungava (ID) Women Vocational Center
249. Sustainable Agriculture for Rural Development Concern Society Nepal
250. Sustainable Livelihood Forum (SLF) Nepal
251. Terai Madhesh Rastriya Parishad
252. Tharu Youth Innovative Society Nepal (THYINS-Nepal)
253. The East Foundation (TEF)
254. Thulung Women Society
255. Tilpung-Kathmandu Tamang Society (TKTS)
256. UCEP -Nepal
257. Varosa Samaj, Butwal, Rupandehi
258. Voice of Children
259. Voice of Mustang
260. West Star Nepal, Banke
261. Women Awareness Centre Nepal (WACN) Women Coalition for UPR
262. Women Development Self-Empowerment Training Center (WDSETC)
263. Women Federation
264. Women Forum for Women in Nepal (WoFoWon)
265. Women Human Rights Defender's Network
266. Women Human Rights Defenders Network Kathmandu
267. Women Human Rights Defenders Network Lalitpur
268. Women Security Pressure Group (WSPG)
269. Women Welfare Society (WWS)
270. Women's Reproductive Rights Program-Center for. Agro-Ecology and Development (WRRP/CAED)
271. Women's Rehabilitation Centre (WOREC)
272. Yamphu Kirat Society
273. Youth Action

**National Women Coalition' Submission to the UPR
Mechanism for The Third Review of Nepal in November 2020,
Coordinated by Women Rehabilitation Center (WOREC)
email: ics@worecnepal.org.**

INTRODUCTION

Nepal has ratified seven of the nine major international human rights conventions. To be ratified are the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) and the Convention for the Protection of All Persons from Enforced Disappearance (CED). The process of bringing domestic legal frameworks in line with these conventions has been dogged by political instability and a lack of political will. Since the UPR 2nd Cycle the GoN has made some policy level changes for the protection of the rights of women in the country. The Constitution of Nepal-2015 includes provisions for establishing rights to equality and non-discrimination however subsequent specific legislation rushed through without the necessary consultation process will lead to these provisions failing from the outset.

This submission is an integral part of the collective NGO submissions on the human rights situation in Nepal. This submission was coordinated by Women's Rehabilitation Center (WOREC), secretariat of National Women's Coalition for UPR. Seven provincial consultations and two national consultation were organized in preparing the submission.

Constitution and National Mechanisms for the Protection of Human Rights

According to UNDP the Constitution of Nepal, 2015 is a significant milestone for gender equality and social inclusion, enshrining equal rights for women, the poor, the vulnerable and people from different social groups.¹⁸¹ Positive provisions included affirmative action to address historical disadvantages and a ban on sex or caste/ethnicity-based discrimination. The article on Rights of Women establishes for women the right to equal lineage; right to safe motherhood and reproductive health; right to participate in public and political life; right to property and family affairs; and positive discrimination in education, health, employment and social security. It also makes any act of violence against women punishable by law. The Right to Equality further elaborates the special provisions

181 https://www.undp.org/content/dam/nepal/docs/generic/GESI%20framework%20Report_Final_2017.pdf

by law for the protection, empowerment or development of citizens, including those described by the constitution as “socially or culturally backward.” Article 12 of the 2015 Constitution ensures entitlement to citizenship by descent from either parent. However, Article 11(5) establishes that transfer of citizenship by the mother is only in the case of someone born and resident of Nepal where the father is unknown. In the case that the father is held to be a foreign citizen, the citizenship can only be transferred by naturalization.

Although established by the constitution many of the national mechanisms continue to face challenges in implementing their constitutional mandates. Commissioners to the National Women Commission are yet to be appointed and recommendations made to the GoN by the National Human Rights Commission go largely unimplemented.

Recommendations:

A number of recommendations related to the constitution were accepted during the second cycle of the UPR however the provision on citizenship remains discriminatory in terms of acquisition, transfer and retention.

- (i) Amend the Constitution of Nepal by GON to ensure equality before the law for women by guaranteeing full citizenship to women and the ability of women to transfer citizenship to their children.
- (ii) Ensure the full independence of the National Women Commission including an impartial and transparent appointment process to the commission and the necessary resources for national coverage in compliance with the Paris Principles on National Human Rights Institutions.
- (iii) Take all necessary measures to develop and enact necessary provincial laws, policies and guidelines in line with the spirit of the constitution of Nepal so women and girls including people living with disabilities and minorities groups are able to enjoy their rights.

Transitional Justice – continued impunity for grave human rights abuses

Over 13,000 people were killed and 1,300 disappeared during Nepal’s civil war, fought between the insurgent Communist Party of Nepal-Maoist (CPN-M) forces and the government. The armed conflict lasted a decade and ended in 2006 with a Comprehensive Peace Agreement that included a commitment to provide justice to victims of human rights abuses. In 2015, the two justice commissions were formed, receiving over 60,000 complaints. However, despite several extensions, the commissions have failed to make significant progress in their investigations.

Before the commissions even began their work, the Supreme Court in 2015 struck down key provisions of the law governing them, finding that it could be used to provide amnesties to those responsible for the gravest abuses. The Office of the United Nations High Commissioner for Human Rights published a technical note listing ways in which the

law needed to be revised to meet basic international standards and Nepal's obligations under international law.¹⁸²

Yet, years after the Supreme Court's landmark judgment, this law has yet to be amended. The proposed amendments in 2018 included some positive efforts to ensure reparations but permitted the two transitional justice commissions to authorize prosecutions without strengthening the commissions themselves, proposed a special court without clear guidelines on impartial investigations, and included a section permitting non-custodial sentences for the most serious crimes. In March 2019 the UN Secretary General urged the GoN to "guarantee interim relief and full reparations for victims of conflict-related sexual violence, including health and psychosocial assistance, livelihood support and adequate compensation."¹⁸³

Recommendations:

- (i) Investigate fully and impartially the cases of sexual violence during the conflict have yet to be investigated. Victims rights to truth, justice, reparation and the guarantees of non-repetition have yet to be respected and established.
- (ii) Enact laws and formulate policies to fulfil the socio-economic rights of women survivors of sexual violence and ensure their right to justice.
- (iii) Establish Psychosocial counselling Centers and provide services at the local level to facilitate women in managing the psychosocial impact of the abuses they have suffered.
- (iv) Reform the countries rape and sexual violence laws to ensure that punishment is commensurate with the crime; that the statute of limitation is removed and; victims are afforded adequate compensation in line with the international principle of reparation and guarantee of non-repetition of violence.

Gender Equality

Patriarchy, institutionalized gender-based discrimination, exclusion and poverty prevent women from taking advantage of the opportunities presented by the Constitution of Nepal. Women in Nepal constitute more than 50% of the total population yet lag behind in terms of meaningful participation and representation in political, social, economic life. Nepal had a Gender Inequality Index ranking of 115 out of 162 countries in the 2018.¹⁸⁴ 29% of adult women have reached at least a secondary level of education compared to 44% of men. Participation in the formal labor market is 22% of economically active women compared to 84% for men.

The 33% quota system for female candidates introduced by the Constitution of Nepal has increased participation in politics yet criticism would suggest the quota favors quantity

182 https://www.ohchr.org/Documents/Countries/NP/OHCHRTechnical_Note_Nepal_CIDP_TRC_Act2014.pdf

183 <https://reliefweb.int/report/nepal/nepal-yet-take-steps-ensure-justice-women-who-suffered-sexual-violence-during-conflict>

184 http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/NPL.pdf

over quality. In 2018 local elections were held in 6 metropolitan cities, 11 sub-metropolitan cities, 276 municipalities and 460 rural municipalities for 753 Mayors/chairperson seats. out of 753 seats only 18 women were elected as mayor/chairperson. However, majority 276 and 424 women were elected as deputy mayors and vice chairperson respectively. Only 3 of the 21 Federal ministers are women.

The Nepal Labor Force Survey 2017-18 suggests that working women are paid 30% less than their male colleagues and that men are more likely to hold managerial positions.¹⁸⁵ Most workingwomen spend on average 4 hours a day on unpaid domestic labor including caring for dependents. Only 19.7% of women own land. This is only 5% of the total land of Nepal. Of these women only 11% have control over their land.¹⁸⁶

Across the world, women and girls are performing more than three-quarters of the total amount of unpaid care work and two-thirds of care workers are women. Demographic, socio-economic and environmental transformations are increasing the demand for care workers, who are often trapped in low quality jobs. If not addressed properly, current deficits in care work and its quality will create a severe and unsustainable global care crisis and further increase gender inequalities in the world of work. In Nepal it is estimated that women spend at least 4.5 hours a day caring for the home, children and other dependents compared to men who spend around 1 hour. Care responsibilities prevent women from actively engaging in the labor market and their contributions go unrecognized.

Recommendations:

- (i) The GoN has recently passed a considerable number of laws that would deem to protect the rights of women in Nepal and establish equality. However, these laws go largely unenforced. The GoN should amend current legislation, where necessary to ensure equality before the law for women in theory and ensure the full implementation of the law establishing equality for women in practice.
- (ii) Ensure gender equality at work as guaranteed under Labor Act, 2017 and develop monitoring and regulating system of payment of wages at work.
- (iii) Adopt temporary special measures with clear timelines, in line with CEDAW 2018 concluding observation and constitutional provisions on “special opportunities”, to enhance access for women facing intersecting and multiple forms of discrimination, including indigenous, Dalit, Madhesi women, rural women, women with disabilities and widows in the Hindu community, as well as women affected by conflict and disasters, to health services, education, safe water and sanitation services, nutrition food, fertile land, natural resources, housing, credit and income-generating opportunities, including through the presidential programme to uplift women.

185 <https://kathmandupost.com/valley/2019/05/02/only-22-percent-of-working-age-women-are-employed-in-nepal>

186 https://www.land-links.org/wp-content/uploads/2010/09/USAID_Land_Tenure_Nepal_Profile.pdf

- (iv) To avoid a repeat of the *Ichangu Nayaran* Housing Complex fiasco where housing developed for squatter communities remains unoccupied the GoN should ensure that the implementation of the Right to Housing Act 2018 be done in close consultation with squatter and slum dwellers rights organisations in particular with women squatters and slum dwellers.
- (v) The GoN should develop policies that measure all forms of care work and take unpaid care work into account in decision-making and invest in quality care services, care policies and care-relevant infrastructures.
- (vi) Promote active labor market policies that support the attachment, reintegration and progress of unpaid cares into the labor force and social security scheme and enact and implement family-friendly working arrangements for all workers.
- (vii) The GoN should promote information and education for more gender-equal households, workplaces and societies

Women Headed Households (Single Women)

According to the World Bank over 30% of households in Nepal in 2016 were headed by women, a percentage that had almost tripled over the preceding two decades.¹⁸⁷ In 2018 the GoN passed the Labour Act that seeks to define workers contributions to the new social security system and The **Social Security Act** (the Compensation-based **Social Security Act**-2017 that aims to regulate the right to social security for sectors of the population unable to support themselves. “Helpless single women”, women who haven’t remarried, Widows, legally separated and unmarried women and women who have not reached the age of 60 who are unable to make a living of a standard determined by the GoN.¹⁸⁸ The Act does not specify the amounts that these women are to receive in benefits. Neither does it mention lesbian, bisexual or transgender women under the category of women in need. In 2018 the women at the age of 65 in Nepal could claim the “Old Age Allowance” of some 2000 Rupees (19USD).¹⁸⁹ Furthermore it’s not clear whether women would be able to receive contributions made by their spouses.

A 2013 UN Women report would suggest the policies and practices developed prior to the 2015 Constitution for the protection of the rights of single women though conceptually sound suffered from a lack of full implementation. There is little to suggest that the political will exists to see the Labor Act and the Social Security Act implemented in a way that would favor the rights of single women.

187 <https://tradingeconomics.com/nepal/female-headed-households-percent-of-households-with-a-female-head-wb-data.html>

188 <http://www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Social-Security-Act-2075-2018.pdf>

189 <https://kathmandupost.com/national/2018/01/25/citizens-can-now-claim-elderly-allowance-at-65>

Recommendations:

- (i) The GoN should ensure the full and comprehensive implementation of the Labor Act and the Social Security Act to protect single women's rights.
- (ii) The GoN should adopt legal measures to protect the rights of women in unregistered marriages and upon the dissolution of unregistered or polygamous marriages, provide for the mandatory registration of all marriages, including religious and customary marriages, and fully implement the provisions of the Criminal Code on the minimum age of marriage;
- (iii) The GoN should eliminate the practice of unilateral divorce (*talaq*) through legal and policy measures that promote equality in matters of marriage and divorce as recommended by CEDAW Committee on 2018.
- (iv) The GoN should guarantee that women and men have equal rights to divorce, including with regard to grounds for divorce and the financial consequences, taking into account the contributions made by the woman to the family's economic well-being during the marriage;
- (v) Enforce the legal and constitutional provisions on the equal rights of women and men to inherit property, including land.

Violence against Women (VAW)

According to WOREC **domestic violence** is the commonest form of violence perpetrated against women in Nepal.¹⁹⁰ One out of five, 22% of women over the age of 15 experienced physical violence. 84% of these crimes were perpetrated by their husbands at the time. 7% of women have experienced sexual violence. 80% of these crimes were perpetrated by their husbands.¹⁹¹ Many women remain largely unaware or unable to access the provisions for both legal and support services under the 2009 Domestic Violence (Offence and Punishment) Act.¹⁹² In 2016- 2017 WOREC recorded 139 cases of **dowry related violence**. The majority of these cases occurring in the Terai region of the country. According to Nepal Police statistics the number of reported **rape** cases has increased four-fold over the last decade with over 50% of those reported cases being perpetrated against minors below the age of 16.¹⁹³ Numerous cases related to sexual violence and the killing of women and girls have resulted in impunity for the perpetrators, despite having been referred to the police or a court for redress. An example of such a case is that of Nirmala Panta, a 13-year-old girl who was brutally raped and murdered in western Nepal at the end of July 2018. The case prompted public outrage, leading to a number of public rallies calling for justice for Nirmala. Reports suggest that the pattern of police negligence, including the alleged

190 Out of 1150 cases reported in WOREC from July 2016 to June 2017, 67% (766) cases were domestic violence.

191 Op Cit

192 <http://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/domestic-violence-crime-and-punishment-act-2066-2009.pdf> Articles 6, 9,10 and 11

193 <https://www.nepalitimes.com/banner/four-fold-increase-in-reported-rape-in-10-years/>

mishandling of evidence and the wrongful arrest and alleged beating of a man accused of the crime, has significantly hindered the investigative process.¹⁹⁴

The National Human Rights Commission states that, the number of registered cases of trafficking in persons has increased by over 61% with 305 being the total number of registered cases in 2018.¹⁹⁵ 78% of the victims are women and girls, who are especially vulnerable due to limited economic opportunities, illiteracy or low education, and low socio economic. Women and girls are also more vulnerable to trafficking if they are involved in marginalized livelihoods, deserted by their husbands or families, victims of abuse and violence, and those from disadvantaged communities and extremely poor families. Law and GoN policy that restricts the freedom of movement of women under 24 years of age are said to be forcing women to find other often illegal means to migrate for work. The Entertainment sector has become both the destination as well as a site of transit for the trafficking of women and girls. Working conditions in the sector are notoriously exploitative and abusive creating conditions for cross-border trafficking. Social stigma fueled by the association of trafficking with sex work often prevents survivors from reintegrating into society. A lack of social security and support programmes including health services increases the vulnerability of survivors to further trafficking.

Recommendations:

- (i) Amend the Domestic Violence Crime and Punishment Act 2009 and bring it in line with current understandings of human rights most notably strengthen the provisions regarding protective orders (section 6 of the DV Act) and provide for immediate protective measures when a credible report is received.
- (ii) Guarantee full and comprehensive investigations into cases of gender-related killings, including the case of Nirmala Panta, and ensure that they are fully and properly investigated and that perpetrators are brought to justice.
- (iii) The GoN should continue working to increase the integrated interagency responses among NGOs, police, courts, social workers, and health care providers. Provide the local authorities with the resources and training necessary to enable them to carry out their responsibility to receive and manage complaints under the Act.
- (iv) The GoN should Provide training and capacity building to police officers, judges, court officials, local government officials, and NWC officials on the amended laws.
- (v) Amend Human Trafficking and Transportation (Control) Act 2007 clarifying, the distinction between trafficking in persons and sex work, remove restrictions on freedom of movement and enabling survivors to pursue justice.

¹⁹⁴ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/176/93/PDF/G1917693.pdf?OpenElement>

¹⁹⁵ http://www.nhrcnepal.org/nhrc_new/doc/newsletter/NHRC_National_Report_TIP_in_Nepal_September_2018.pdf

Rights to Sexual and Reproductive health

Out of 13.6 million, 10-15% of women with reproductive age (approx.870,000) suffers from uterine prolapse 1 in every ten women.¹⁹⁶ Women have poor access to health facilities as only 69% women go to hospital at least 4 times during pregnancy for health checkup and only 57% women give birth in a hospital or health post. Prior to 2016 the maternal mortality ratio (MMR) for Nepal was 239 deaths per 100,000 live births. In 2016 MMR ranges from 134 to 345 deaths per 100,000 live births.¹⁹⁷ 50% of girls from rural areas and 39% of girls from urban areas studying at school are hesitant to attend school during their menstruation. In Nepal, 17% of adolescent women aged between 15-19 are already mothers or pregnant with their first child. Teenage pregnancy is higher in rural areas (22%) than in urban areas (13%). Only Four in ten women are aware that abortion is legal in Nepal. Only 29% of those women are aware that in cases of rape or incest the termination of pregnancies is permissible up to 18 weeks and 23% know abortion is permissible in all cases. 3% of women still believe that abortion can be done if the fetus shows to be female.¹⁹⁸ Abortion rates increase with the order of pregnancy; 2% of first pregnancies end in abortion, compared to 21% of fifth or later pregnancies. Abortion is higher among women age 35-49 (27%) and those from higher-income households (16%). Access to safe abortion still remains a challenge for many women or trans men particularly those with disabilities. Existing hospitals and health care facilities do not accommodate special reproductive health needs of women with disabilities.

Recommendations:

- (i) Pursuant to the The Right to Safe Motherhood and Reproductive Health Act 2018 the GoN should ensure universal access to safe abortion and ensure accessibility, availability, affordability, adequacy and quality of sexual and reproductive health services.
- (ii) Ensure universal access to reproductive health care information and services, including maternal health care, contraception and safe abortion, especially for socio-economically marginalized women, single women and adolescent girls.
- (iii) Address disparities in maternal mortality by ensuring that high quality basic and essential maternal health services are provided to all women at local level.
- (iv) Take necessary measures to introduce sexual and reproductive health course in school curriculum and Comprehensive sexuality education should be given to young adolescents.

Women with disability

The numbers of people with disabilities is hard to determine in Nepal. The World Bank estimates that 10% of the world's population are currently living with a disability. Women

¹⁹⁶ Nepal Demographic Health Survey 2016, MoH, GoN. NB. Trans men as people as gestational bodies were not included in the survey.

¹⁹⁷ National Demographic and Health Survey Report 2016.

¹⁹⁸ Op Cit

and girls with disabilities face discrimination on the grounds of both their gender and their disability. Cultural norms and poverty expose women living with disabilities to violence and other forms of abuse. Cultural perception create deep-seated stigma and shame over sexuality and disability. Women living with disabilities are often denied the right to form relationships and to decide whether, when and with whom to have a family. A 2016 study by the Nepal Disabled Women Association (NDWA), states that 70% of women with disability are unmarried. Health workers often assume women with disabilities are not sexually active and do not screen women with disabilities for sexually transmitted infections or provide access to contraceptives. Accessibility to maternal health services is usually very poor for women with disabilities.

Recommendations:

- (i) In line with the Act Relating to Rights of Persons with Disabilities 2017 the GoN should allocate resources including provision of physical infrastructure and appropriate language, formulate special programs to ensure access to sexual and reproductive health including provisions of appropriate service mechanisms to meet the specific sexual and reproductive health and rights of women with disability.

Mental health

The right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health.¹⁹⁹ According to the World Health Organization, one in four people experience mental or neurological disorders at some point in their lives. A 2013 small-scale epistemological study showed that 37.5% of Nepal's population suffers from mental disorders.²⁰⁰ On 25 April 2015, a 7.8 magnitude earthquake rocked Nepal. The quake and a series of aftershocks delivered a severe blow, causing widespread damage in infrastructure and loss of lives. Thirty-five of the country's districts were affected – 14 severely so. Approximately 9,000 people lost their lives and more than 22,000 people were injured. Among others, one of the major intangible effects of the earthquake was on the mental health and well-being of the population. The disastrous earthquake came as a shock that made diverted public attention towards the importance of mental health and psychosocial wellbeing. According to mental health experts, the number of people experiencing mental health issues increased after the 2015 earthquake⁴. Many people were traumatized, suffered significant emotional distress and this trauma has existed since the disaster. In 2018 the Centre for Mental Health and Counseling Nepal (CMC) highlighted the rural-based women were more prone to suffering from mental health issues. They went on to

199 CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)
<https://www.refworld.org/pdfid/4538838d0.pdf>

200 Luitel, Nagendra P., et al (2013). Conflict and mental health: a cross-sectional epidemiological study in Nepal. *Social psychiatry and psychiatric epidemiology*, 48(2): 183-193.

state that 67% of the people they treated were women, an estimated total of over 32,000 women. CMC reported that most of the women they treated for mental health issues identified the causes as loveless marriages, co-habitation problems with in-laws, domestic violence the pressures of working both outside and inside the home.

Suicide

Increasing numbers of pregnant women and new mothers are taking their own lives in Nepal as they deal with extreme poverty, disasters, domestic violence and oppression. Suicide represents 16% of all deaths in women of reproductive age. Suicide is primarily associated with unwanted pregnancy or the feeling of being trapped in poverty or situations of sexual and physical abuse.²⁰¹ A 2014 study showed that over 90% of pregnant women experienced some kind of physical, emotional or sexual abuse – mostly at the hands of their husbands and other in-laws. In Nepal, 21% of the suicides among women aged 15-49 were in girls under 18 due to violence and feelings of powerlessness.²⁰² Patriarchal constructs disguised as cultural practices and social norms, gender inequality and early marriage limit women's choices. Depression and anxiety are common and affect ten to 15 out of every 100 pregnant women in the country. Postnatal depression is often reported, but less attention is given to more common and less obvious mental health issues.

Recommendations:

- (i) The GoN should in consultation with both mental health service providers and service users enact a human rights-based Mental Health Legislation that provides adequate resources to service provision and care and that considers the impact of poor mental health on women in rural areas of the country.

Women migrant workers

In the past decade, it has been seen an exponential increase in the number of Nepali migrant workers abroad and Nepal now sends the most workers abroad per capita in Asia. The remittance received by Nepal in fiscal year 2018/2019 accounts for 28 percentage of GDP for that year, which clearly states that labour migration is one of the most important contributing factor for the overall Nepali economy²⁰³ and almost half of all households have at least one family member who is currently working or has previously worked abroad. The Department of Foreign Employment (DoFE) had issued 236,208 labour permits in the last fiscal year, this number does not include the migrant workers migrated to India and through irregular channels. Migration in Nepal (2019) report has estimated 500,000 Nepali migrants in Malaysia, followed by Qatar with over 400,000, Saudi Arabia 334,451, the United Arab of Emirates 224,905 and Kuwait 70,000. These five countries alone

201 <http://theconversation.com/why-suicide-rates-among-pregnant-women-in-nepal-are-rising-86252>

202 Op Cit

203 <https://moless.gov.np/wp-content/uploads/2020/03/Migration-Report-2020-English.pdf>

accommodate over 1.5 million Nepalis. Nepali population in India is estimated between 3 to 4 million as Nepal and India share an open border, there are no official figures²⁰⁴. The majority of Nepalis traveling to the Middle East for work are men, but the country's existing policy of restriction to the mobility on women migrant domestic workers leads to irregular migration and the data of women migration gets undocumented by the official mechanism. Nepali migrant workers suffer particularly high levels of abuse and exploitation at the countries of destinations. Routine harms include contract substitution and fundamental changes in the nature or conditions of work, non-payment of wages, unsafe work conditions, inadequate rest, inhumane housing conditions, no social protection, and confiscation of identity documents. In more serious cases, migrant workers suffer verbal, physical and sexual abuse. Hundreds of workers die while working abroad each year, often from work-related causes. Women are particularly more vulnerable to serious abuse for reasons of gender discrimination, the isolated nature of their work in private homes, and irregular status. In some cases, abuses amount to labor trafficking, forced labor, and debt bondage. In 2018 the GoN said that it would begin discussions on amending the 2007 Foreign Employment Act to make it more labor friendly.²⁰⁵ The government of Nepal has, on and off, restricted women from migrating to foreign countries for work in the unorganized sector, mostly in domestic work since 1998. From August 2017, the government had completely banned the mobility of migrant domestic workers. Because of this blanket ban on migrant domestic workers, they have not been able to return to the countries of origin after the government prohibited Nepali citizens from going to work as domestic workers in the Gulf countries. After the advocacy by the women human rights activists and labour rights organizations, in 2019 the government resumed renewing labour permits for those who had older work permits in the domestic sector in the Gulf, but stopped first-timers to seek employment as domestic workers.

The current COVID-19 pandemic is affecting the world of work- the migrant workers are among the worst hit. According to the various media reports, it has been pictured that many Nepali migrant workers are planning to return home because of uncertainty in terms of both job and food security in addition to fear about getting contaminated by the COVID 19 virus²⁰⁶.

However, the GoN has been ineffective and insensitive in the repatriation measures on migrants right to return home during this emergency situation. For e.g. government plan to charge repatriation fees to Nepali migrant workers stranded in the countries of destinations; delaying in the process of returning migrant workers to their origin. This has been lambasted by the migrant rights activists.

204 <https://kathmandupost.com/national/2020/04/22/with-hundreds-of-thousands-of-migrants-predicted-to-return-home-nepal-needs-to-brace-for-a-crisis>

205 <https://www.nepalisansar.com/immigration/nepal-to-amend-foreign-employment-act-for-labor-migrants/>

206 <https://kathmandupost.com/national/2020/03/26/nepalis-in-qatar-live-in-overcrowded-and-squalid-conditions-even-during-pandemic>

Recommendations:

- (i) Amend the Foreign Employment Act 2007 and the Foreign Employment Policy 2012 ensuring gender equality in terms of opportunities and protection in consultation with women migrant workers and their organizations.
- (ii) Government should withdraw the discriminatory restrictions and age limitation imposed on women migrant workers and establish a standard contract for domestic workers, to be included in all bilateral agreements, which should include provisions on standard living wages, working hours, working conditions, overtime pay, annual leave and effective remedies, as set out in ILO Convention No. 189.
- (iii) Establish special mechanisms to handle cases of women migrant workers providing them with access to justice, remedy and reparations through streamlining the individual complaints procedure and ensure that case back logs are cleared.
- (iv) Take necessary action to encourage coordination and collaboration among different government agencies particularly The Ministry of Labor, Employment and Social Security, the Department of Immigration and with the Ministry of Women, Children and Social Welfare to address issues on human trafficking, social costs of labor migration and women in foreign employment.
- (v) Given that only 16% of migrant workers emanate from Province 3 The GoN should decentralize and devolve labor migration governance in accordance with the new federal structure as a key priority. There should be wide-spread consultations, particularly with women on the matter and implications of decentralized governance on labor migration should be gauged.
- (vi) Adopt effective strategies for life skill trainings and creating income-generating opportunities for women, including in rural areas and also establish a sustainable social reintegration policy and enhance the services provisions for the reintegration of returned migrants, including psychosocial services and livelihood opportunities,
- (vii) The government should introduce resettlement package for returnees, particularly women migrant workers in this COVID-19 situation, which should provide support to those returned with disability, job losses and the families of deceased one.
- (viii) Establish a sustainable reintegration policy and enhance the services provided for the reintegration of returned migrants, including psychosocial services and livelihood opportunities as thousands of migrant workers are returning home after the COVID-19 crisis.
- (ix) Ensure the rescue, repatriation and medical treatment of migrant workers free of charge during the pandemic.

Right to decent work

According to the ILO in 2018 Nepal had one of the highest proportions of informal employment in the world with over 90% percent of jobs are in informal sector. 97% of women working in the informal sector. 99% of women in the agriculture sector, 95% in

industry and 80% in the services sectors are in informal employment.²⁰⁷ The informal economy contributes 38.4% to the GDP of the country. This presents a significant obstacle to the goal of realizing decent work for all. Formalization is a gradual process cutting across several policy areas and embedded within the commitment for decent work for all.²⁰⁸ According to the ILO the GoN is committed to “moving out of informality”.²⁰⁹ There are approximately 40 to 50,000 women working in entertainment sector a sector that much like the rest of the informal economy suffers from a lack of regulation that has resulted in exploitative and abusive working conditions.

Recommendations:

- (i) The GoN should expand its understanding of the remit of the Labor Act 2017 and regulate labor in the entertainment sector including compliance with the 2015 Constitution, Article 34(2) Right to Labor, guaranteeing rights to social security for women working in the entertainment sector.
- (ii) Establish an effective complaints procedure under the Ministry of Labor and Employment for women working in the entertainment sector protecting their rights to decent work.
- (iii) The GON should develop the code of conduct for both the employers and domestic workers.
- (iv) The GON should develop the regulation for the newly introduced law on domestic workers in Labour Act 2074.
- (v) The GON should take steps to ratify the Decent Work for Domestic Workers Convention 189.

Women Sex Workers

Chapter 5, of The State Criminal Code, 2017, Offences against Public Interest, Health, Safety, Convenience and Morals, section 119 through 124 criminalize sex work. UNAIDS estimates that there are over 67,000 sex workers in Nepal.²¹⁰ Poverty is one of the main drivers behind why many people, including both cis and transgender, gay and straight men and women, go into sex work in Nepal. It presents a lack of opportunities that is particularly acute for women. Women have a limited amount of resources to draw to break out of the cycle of poverty despite gaining ground in terms of property ownership and other civil rights in recent years. Women constitute a majority of these sex workers, because they rarely have any opportunities otherwise. These women may feel empowered by the work that they do, in the sense that they can better provide for their families. Continued criminalization of sex work increases exposure to workplace violence and abuse. Failure to regard sex work as work prohibits any regulation of workplace, hours

207 <https://economynepal.com/informal-employment-major-challenge-for-nepals-economy/>

208 <https://sustainabledevelopment.un.org/sdg8>

209 https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/publication/wcms_421590.pdf

210 <https://www.unaids.org/en/regionscountries/countries/nepal>

and more importantly protections against abuse and exploitation. Nearly 70, 000 people live with no workplace protections in place contrary international human rights standards. ILO has advanced the goal of ‘decent work’, including through their Decent Work Agenda²¹¹. The concept of decent work involves “opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.

Recommendations:

- (i) The GoN should decriminalize sex work by reforming the State Criminal Code 2017 and in consultation with women sex workers develop regulatory policy and programmes that are both realistic and responsive to the needs of women sex workers seeking protection at work.
- (ii) Develop regulatory policies and programmes as ascribed by the ILO Decent Work Agenda and ratify all outstanding ILO Conventions covering the issue, namely Conventions on Fundamental Principles and rights at work, 87; Work and family, 183, 156; Specific Categories 200, 189, 97, 143; working conditions, 89, 171, 177 and 175.
- (iii) Develop policy and programmes in close consultation with women sex workers and service users that are both realistic and responsive to the needs of women voluntarily willing to exit sex work. Comprehensive measures should include vocational training, employment, micro-finance programmes, legal support, safe housing and childcare services.

Women Intravenous Drug Users (IDU)

UNAIDS estimates that there are over 30,900 IDU in Nepal. Whilst the majority of these people are likely to identify as men a growing number of IDU are women and a growing number of those users are between 16 -30 years old. Women IDU, particularly young women experience stigma and discrimination both for being women and for being IDU and have specific needs in addressing these and other intersections.

The lack of education and information on Sexual and Reproductive Health and Rights (SRHR) women are reluctant to access services provided however skilled and empathetic service providers are few in number in service centers which has resulted women who use drugs to go through stigma and discrimination. Several HIV and AIDS prevention and care services, including drug dependence treatment, do not admit women, particularly if they are pregnant, HIV-positive, or have children. Women who use drugs with their children are not well equipped with additional information on Sexual and Reproductive Health Rights. Additionally, most treatment are not welcome to women those who are mothers & very few services aim at mitigating the consequences of continued drug use.

211 <https://www.ilo.org/global/topics/decent-work/lang-en/index.htm>

Many legal provisions that undermine the corrective measures for Women Who Use Drugs (WWUD) and rather focuses only on punitive measures further hinder effective programmatic responses that include women who use drugs from inception.

Recommendations:

- I. Adopt a legal and policy measures to reduce stigma and prioritize health and safety over punishment; The Drug ACT 1976 needs to be revised as there are still many provisions that undermine the corrective measures for WWUD and rather focuses only on punitive measures.
- II. The GoN should in consultation with WWUD and service receivers, develop specific services for women IDU that include community outreach by women peer educators; women friendly Harm Reduction services and care materials; specialized gender friendly treatment centers, including substitution treatment, women who use drugs with and without children; access to essential prevention commodities such as male and female condoms, and sterile needles and syringes; self-testing , integrated counselling; diagnosis and treatment of sexually transmitted infections; antiretroviral treatment for women who use drugs and living with HIV and prevent them from vertical transmission.

Women Human Rights Defenders

During the 6th periodic review of Nepal CEDAW noted that there were insufficient efforts made by the GoN to actively consult with women human rights defenders and their organisations in the development of legislation and policy for the implementation of the provisions of the 2015 Constitution. Moreover, it noted that the GoN had failed to meaningfully engage the national human rights institutions in the protection of civic space and civil society engagement.²¹² Lack of recognition by the GoN of the important contribution to women rights in Nepal has serious consequences. The National Alliance of Women Human Rights Defenders noted that women human rights defenders were targeted, criticized, threatened, intimidated, surveilled and harassed, offline and online, because of their gender and the work they did. At least 95 per cent of women human rights defenders had been subjected to domestic violence, faced reprisals, death threats, verbal abuse and harassment. Those who identified as lesbians or bisexuals, sex workers, health workers, indigenous rights activists, and women with disabilities were often further marginalized by social stigma.²¹³

Recommendations:

- (i) In open and public consultations with women human rights defenders the GoN should draft and adopt a specific security policy for that both recognizes their contribution to establishing the rule of law and protects them from reprisals due to their work.

²¹² CEDAW/C/NPL/CO/6

²¹³ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23745&LangID=E>

- (ii) The GoN should establish a specific emergency fund to support WHRDs under threat where they required immediate get support.

Issues of Gender and sexual minority

The 2015 Constitution, some 8 years after the 2007 Supreme Court Ruling, provided for the non-discrimination and protection of sexual and gender minorities. State Criminal Code, 2017 decriminalized consensual same-sex sexual relations. Despite these legal wins transgender people still face prohibitive restrictions in changing their gender markers on official documents that impact on their rights to education, health and employment. Lesbian and bisexual women are not afforded the same rights as other women particularly with regard to rights to a family and sexual and reproductive health rights. Trans Men are often denied routine health examinations. Discrimination against LBT women in the recruitment process for work continues to exist. The 2015 The Sexual Harassment at Workplace (elimination) Act offer no specific protection to members of the LGBTI workforce.

Recommendations:

- (i) The GoN must remove all prohibitive restrictions to self-identification of one gender and changing of gender markers on official documents.
- (ii) The GoN must ensure that all state funded institutions develop policies to prevent discrimination against LBT women and Trans Men. The GoN should enlist LGBTI CSOs is developing training programmes for state institutions where necessary.
- (iii) Pursuant to the Right to Safe Motherhood and Reproductive Health Act 2018 the GoN should ensure universal access to safe abortion and ensure accessibility, availability, affordability, adequacy and quality of sexual and reproductive health services to lesbians and bisexual women and trans men.
- (iv) Nepal is one of the few countries around the world that legally recognizes a “third gender” option yet the Gender Equality Act still refers to a gender binary. The GoN should amend the its gender policies to include the non-binary reality of Nepal.
- (v) The GoN should amend the Sexual Harassment at Workplace Prevention Act, 2015 to broaden the definition of workplace to include schools, hospitals and other institutions and also make specific reference to the prevention of sexual harassment of LGBTI people.
- (vi) The 2015 Constitution has ensured the rights to equality before the law and non-discrimination for sexual and gender minorities in Nepal. The State Civil Code, 2017 establishes the act of marriage as between a man and woman. Yet then talks of every person’s right to marriage and family life. The GoN should resolve these inconsistencies in the Civil Code by drafting and approving a Marriage Equality Act.

Women Rehabilitation Centre (WOREC)
Secretariat of National Women's Coalition for UPR

- | | |
|---|--|
| 1. 3 Angels Nepal | 24. National Alliance for Women Human Rights Defenders (NAWHRD) |
| 2. Akhil Nepal Women's Association (ANWA) | 25. Nepal Disabled Women Association (NDWA) |
| 3. Alliance Against Trafficking in Woman And Children In Nepal (AATWIN) | 26. Nepal Mahila EkataSamaj (NMES) |
| 4. Aaprabasi MahitaKamdar Samuha (AMKAS) | 27. Nepal Muslim Welfare Society (NMWWS) |
| 5. Beyond Beijing Committee (BBC) | 28. POURAKHI-Nepal |
| 6. Biswas Nepal | 29. Public Health Concern Trust (Phect) Nepal |
| 7. Change Action Nepal (CAN) | 30. Resource Center for Primary Health Care (RECPHEC) |
| 8. Community Action Center (CAC Nepal) | 31. SAATHI Women Shelter |
| 9. CSGS (Centre for Studies on Gender, Society and Development Study) | 32. Sex Workers and Allies (SWASA Nepal) |
| 10. Dalit NGO Federation (DNF) | 33. Shakti Samuha |
| 11. Dristi Nepal | 34. Society for Women Awareness Nepal (SWAN) |
| 12. Fedration of Sexual and Gender Minoritiies Nepal, (FSGMN) | 35. SOLID Nepal |
| 13. Feminist Dalit Organisation (FEDO) | 36. Women for Human Rights Single Women Group (WHR) |
| 14. Forum for Women Law and Development (FWLD) | 37. Women Act |
| 15. Gyanbodh Research and Development Services | 38. Women Forum for Women in Nepal (WoFoWon) |
| 16. Him Rights | 39. Women Human Rights Defenders Network Kathmandu |
| 17. Indigenous Women League-LWL Nepal | 40. Women Human Rights Defenders Network Lalitpur |
| 18. Institute of Human Rights Communication Nepal (IHRICON) | 41. Women Security Pressure Group (WSPG) |
| 19. Jagriti Mahila MahaSangh, Nepal's Federation of Female Sex Workers (JMMS) | 42. Women's Reproductive Rights Program-Center for Agro-Ecology and Development (WRRP) |
| 20. Loom Nepal | 43. Youth Action Nepal |
| 21. Luzza Nepal | |
| 22. Mitini-Nepal | |
| 23. Nagarikaawaz | |