

Nepal's Implementation Status
of the
Convention on the Elimination of All Forms of Discrimination against
Women
(CEDAW)

*Independent Report prepared by the National Women's Commission
of Nepal to supplement the Combined 4th and 5th Periodic Report
Submitted to the CEDAW Committee by the Government of Nepal*



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1. Introduction:

- To supplement and compliment the Combined 4th and 5th periodic report submitted by the Government of Nepal (GoN) to the CEDAW Committee in July 2009, the National Women's Commission (NWC) welcomes the opportunity to submit the independent report.
- The National Women Commission (NWC) was established by the Government of Nepal through an executive decision in 2002 and a separate Act was promulgated in 2007. The NWC with a five-member Commission has a legal mandate to monitor and investigate cases of violence against women (VAW), providing legal aid, monitor the state obligations to UN reporting under CEDAW, coordinate with government and other agencies for mainstreaming gender policy in national development and recommending and monitoring for the reforms by making research. The NWC presently has six divisions: legal aid and counselling; women rights; planning, monitoring and publication; program and coordination and two administrative divisions
- The Combined 4th and 5th Periodic Report of the Government of Nepal to the CEDAW Committee, Shadow Report and other submissions prepared by Women's Non- Government Organizations submitted to the Committee provide a comprehensive overview of positive d^ev^elopmeⁿt's and current challenges referenced to every article of CEDAW. The NWC does not seek to replicate that information but rather to provide additional information. Material included in this document has been previously brought to the attention of the Government of Nepal through a range of publications and interactions
- This report makes several concrete recommendations that need to be addressed to honour GON's commitment under CEDAW and its General Recommendations.

2. Overview

Gender relations in Nepal continue to be defined by a patriarchal value system, which perpetuates women's subordination. Many women do not question it and to a certain degree believe that men have the right to control their lives and bodies. Women in Nepal are discriminated several times over. They are poorer than men with less access to property, income, inheritance and credit and often with little control over own or overall household earnings. They are less educated and more likely to be engaged in non-skilled work rather than in better paid professional, technical and management-related jobs. Though women's contribution to agricultural production is above 60% the total land holdings are only 8%. Also most women workers, over 70%, are confined to self employed, unpaid and low wage informal activities. Only 12% of women are in the civil service and 1.76 % are in the judicial service.

Nepal has enacted as well as amended many legislations and provision of laws to improve the status of women that includes Gender Equality Act 2006, Human Trafficking and Transportation Control Act 2007, 12th amendment of Country Code that criminalizes witchcraft and recognizes it as a crime against state, Domestic Violence Control Act 2008. To replace the Country Code 1963, the Criminal Code and Civil Code bills have been registered by the government. For the first time, in 2006 Parliament passed a special resolution to ensure proportional election system has been introduced along with the first past the post system and as a result 33% women from different caste, ethnicity, geography and religion are represented in the Parliament/Constituent Assembly of Nepal. As a result, there are 197 women CA members in the present Constituent Assembly of Nepal, a body of 601 members. GoN has already implemented some reservation policies in administrative and security sector and as a result, participation of women in security sector has reached to 3% in army and 7% in police.

GoN declared the year 2010 as year against Gender-Based Violence against Women is praiseworthy. Inter-ministerial Steering Committee formed in Prime Minister's office to combat VAW needs to be continued until effective institutional mechanism and law and policy is created. GON has adopted National Plan of Action on UNSCR 1325 and UNSCR 1820.

Over the years, the judiciary has played active role basically toward eliminating discrimination. At times the Supreme Court has issued the directives to the government for the amendment of law relating to discrimination. In 2008, the Supreme Court made important rulings in relation to women's rights; issuing a judgement ordering equal pay for men and women for equal work, ordering a review of the law on marital rape, particularly the current inadequate penalty, and directing the Government to extend the current statute of limitations on rape beyond 35 days. The Court also directed the Government to enact a law on reproductive rights and upheld that spousal consent is not required for a woman to have an abortion.

However, there are a number of areas in which significant further action is required to achieve substantive equality between women and men.

This Independent Report addresses four key areas of reform, relevant to Nepal's international obligations under CEDAW - nationality, participation of women in political and public life and representation at the international level, Violence against Women and Access to Justice and Institutional framework and the measures to maintain the independence of NWC. Furthermore, this Report is not a comprehensive review of all aspects of inequality. It highlights four areas in which the Commission has undertaken significant policy and advocacy at the national level. The Report highlights continuing challenges in each of these areas, and presents recommendations for addressing these challenges.

3. Nationality

Continuing Challenges

- As stated in the government report and the Addendum, in line with the CEDAW Committee's recommendations in 2004, the Interim Constitution of Nepal, 2007, for the first time recognized equal rights of Nepalese men and women to transfer their citizenship by descent to their children. However, in reality many women are unable to transfer citizenship to their children due to the lack of clarity in legal and administrative procedures. In the various public hearings conducted by the National Women Commission since 2009 in different regions of the country, the issue of women facing problems to acquire and transfer nationality has been consistently put forward by women. Even after the recent Supreme Court decision in the case of Sabina Nepali that ordered the government to grant citizenship based on the mother's citizenship,¹ the government officials on their part have been stating lack of clear guidelines to issue such citizenship certificates and share that continue to follow the previous procedures.²
- Single women including widows, divorcees or women whose husbands have deserted them face problems in acquiring citizenship for themselves as married women have to obtain the consent and assistance of their husband or husband's family in order to apply for a citizenship certificate. In such cases, for lack of their own citizenship, women are unable to transfer citizenship to their children. In cases of unmarried women, they are required to establish relationship with the father of the child to obtain citizenship for the child. Similarly, victims of trafficking and women migrant workers who have given birth to children outside of Nepal, also continue to face problems in transferring citizenship to their children.
- The Interim Constitution continues the discriminatory provision to prevent Nepali women married to foreign nationals from transferring their citizenship to their husbands and children born to them. It allows Nepali men to convey citizenship to their wives of foreign origin following proceedings to renounce their previous citizenship, whereas in cases of Nepali women married to foreigners, husband can only apply for naturalized citizenship after 15 years of residence in Nepal. Furthermore, even after the completion of 15 years residence, the naturalization remains at the discretion of officials to grant naturalized citizenship.
- Discussions relating to recognizing equal rights of women to citizenship continue to remain highly contentious and politicized in the present Constitution drafting process. The Fundamental Rights and Directive Principles of the Constituent Assembly submitted to Chairperson of CA in November 2009 draft on citizenship provisions including the contentious issues/disagreement in recognizing equal citizenship rights

¹ Sabina Damai and FWLD v. Government of Nepal, Writ no 06/0703 of 27 January 2011, decided on February 27, 2011

² Kailali Public discussion report

of women. A High Level Taskforce (HLTF) was formed to deliberate on contentious issues including citizenship rights that decided upon disagreements relating to citizenship issues in November 2010 as follows:

- The proposal now requires parents, both father and mother, to be citizens of Nepal (at the time of birth of the children) for transferring citizenship to their children. This proposal reverses the recognition of individual identity of women under the Interim Constitution thus potentially resulting in adverse implications for women including statelessness of children in many cases. This provision also fails to take into account the increasing number of single parents who raise their children by themselves.
- It proposes that children born and living in Nepal, and whose fathers are unknown, should be given citizenship by descent; that will be changed automatically to naturalized citizenship in cases where the father of such a child is identified as a foreigner. Both these provisions are regressive in comparison to the Interim Constitution which refers to “citizenship of children in cases where identity of parents is unknown” thus recognizing the individual identity of women.
- The proposal relating to transferring citizenship to spouses of foreign origin and children born to them continues to remain discriminatory as under the present Interim Constitution.

Recommendations

- The forthcoming constitution should provide for citizenship by descent through one parent, mother or father, thus recognizing the equal rights of women to transfer citizenship, also protecting the right of the child to acquire a nationality.
- In cases of transfer of citizenship to spouses of foreign origin, provisions should include equal pre-requisites for both a foreign wife and husband; shorter residency time periods; and the issuance of temporary identification cards which would confer rights - except the right to vote - until full citizenship has been acquired through naturalization.
- The government should adopt the legal measures and do away with all the existing procedural and administrative barriers that hinder women to exercise and enjoy their rights independently of their husbands or male relatives. Moreover, the government should circulate clear guidelines to all its officials to ensure uniformity in distribution of citizenship certificates.

4. Participation in Political and public life and representation at the international level

Continuing challenges

Though the GoN has taken multi-dimensional approach to eliminate the stereotypes and patriarchal attitude to achieve women’s full and equal participation in political and public life, challenges remain. Women’s representation in the civil service is 12 percent, with only 6.2 percent of women in gazette class. There are fewer women in senior level of civil service, only 14 women (Secretaries and Joint Secretaries) compared to 417 men in

the same level.³ Though quota measures are adopted in security forces as well, there are only 5.8 percent women in Nepal Police, 2.58 percent in Nepal Army and 3.4 percent in Armed Police Force. There are few women judges in Nepal constituting 1.76 percent.⁴ Women's representation in the Constitutional bodies is rare and symbolic; currently there are only two women commissioners in six Commissions, one each in National Human Rights Commission, and the Public Service Commission.⁵ There are no women in the Election Commission Nepal (ECN) after the first and only woman commissioner retired in 2008. Till date there have been only two woman ambassadors for India and Myanmar. Though names of two other woman candidates were suggested for the ambassadorial posts, they never took office.

Women's representation in Cabinet is less than 20 percent⁶ and the highest level of government that women have ever reached is the position of deputy prime minister, and deputy speaker. As mentioned earlier, in 2006, the Interim Parliament passed the resolution on achieving 33% representation of women in all state organs and at all level that resulted in 33% representation of women in the Constituent Assembly (CA) as a historical benchmark of women's participation in public political sphere. However; the resolution is not always followed by the political parties.

Best Practice

A women politician refused to take oath of Minister demanding 33% participation of women in the cabinet

Recently in May 2011, a women politician and UCPN-M leader Ms. Jaipuri Gharti Magar was recommended by her party for cabinet ministerial position in the current Jhala Nath Khanal led Government. She refused to take oath of office and maintained a position that she would take oath only if at least 33% women are included in the Ministerial positions. She continues to lobby for the implementation of the resolution. At present, the Cabinet is comprised of 28 male ministers and to 4 women including one Cabinet minister and three state ministers.

Women's participation in political parties is also low especially in leadership positions.. A study on women's representation in major political parties reveals that in central level executive committee women are only 12 percent and in the district level executive committee only 10 percent are women.⁷ Meaningful participation of women is essential to bring about the desired change. While a legal provision in the Interim Constitution 2007 calls the

³ Government of Nepal, Ministry of General Administration, Nijamati Kitabkhana, Kathmandu, Nepal, March 2010.

⁴ Renaissance Society Nepal, Women's Democratic Network and UNIFEM, 'Women's Political Participation, Empowerment and Inclusion,' 2009.

⁵ Renaissance Society Nepal, Women's Democratic Network and UNIFEM, 'Women's Political Participation, Empowerment and Inclusion,' 2009.

⁶ Renaissance Society Nepal, Women's Democratic Network and UNIFEM, 'Women's Political Participation, Empowerment and Inclusion,' 2009.

⁷ Renaissance Society Nepal, Women's Democratic Network and UNIFEM, 'Women's Political Participation, Empowerment and Inclusion,' 2009.

political parties to be inclusive including representation of women in the political parties, such provision lacks implementation due to concrete quota measures. Therefore, legal measures with quota are suggested to be included both in the new Constitution as well as the newly drafted political party management Bill by the Election Commission Nepal.

Recommendations:

- Encourage political parties to make it mandatory to have at least 33 % women representation in each level and that should be indicated in the manifesto of political parties. To increase women's representation within the political parties, ensure special measures for women in the newly drafted Political Party Bill or through constitutional provision. Also, promote political parties' support to women candidates' in particular financing and campaigning support among others, through relevant special measures for women.
- The government should also put in place measures to ensure meaningful and effective participation of women in political and public life as well as at international level.
- Address socio-economic challenges and violence against women through wider awareness programs in community also targeting men and boys and through effective enforcement of prevalent laws to protect women from violence. Provide gender sensitive training to men in politics to encourage gender friendly atmosphere within the political parties.

5. Violence against women and Access to justice

Continuing Challenges

- Violence against women and girls remains prevalent in Nepal. Growing incidents of trafficking, rape and domestic violence , child and forced marriage, sex-selective abortions, violence related to dowry and accusations of witchcraft, violence against sexual minorities, harmful traditional practices such as *chhaupadi* and *deuki* have alerted the government, civil society and other stakeholders to place more focus on addressing this issue. Participants of the public hearings conducted by the National Women's Commission in various districts have highlighted the rising number of incidents of violence against women especially against women from marginalised groups such as single women (widows), dalit women, disabled women and Muslim women.
- Most of the incidents remain to be unaddressed as either they are not reported to the concerned authorities or failure of the state authorities to react to criminal cases in the manner prescribed by law, including through the resort to 'mediation' processes outside the criminal justice system. This contributes to widespread impunity for the perpetrators thus contributing to the prevalence of violence against women and girls across the Nepali society. Besides, the other steps taken by the Government of

Nepal to address GBV, the Office of the Prime Minister and Council of Ministers (OPMCM) formulated a *National Plan of Action on the Year against Gender Based Violence 2010* (GBV Action Plan) with a special focus on the prevention and protection of women and girls. During 2010 the government made progress in the implementation of the plan, yet challenges remain.

- The absence of comprehensive legal framework, lack of integrated response mechanisms for victims of VAW including adequate health care, legal services, psycho-social counselling as well as lack of acknowledgment by legal and health practitioners, law enforcement agencies and government institutions of the special needs of survivors of VAW hamper the creation of conducive environment in which both victims and survivors can seek remedies. NGOs that have tried to support victims of VAW have sometimes suffered reprisals themselves. There is also a lack of standardized information management system and information sharing protocol in place among the VAW actors in Nepal.

- The Commission would in particular like to furnish information relating to three forms of VAW- rape, domestic violence and violence against women resulting from the allegation of practising witchcraft.
 - Nepal’s legal framework provides for a narrow definition of rape that focuses on issues of “consent” and interpreting it as forceful penetrative sexual intercourse exclusively. The statute of limitations for filing a charge-sheet remains 35 days from the date of the commission of the crime which is largely inadequate taking into consideration the gravity of the offence. The Government has yet to review and extend the statute of limitation although the Supreme Court issued a directive order in 2008. The NWC also made a third party intervention in 2010 in one of the emblematic cases of gang rape of police woman which led to the names of three perpetrators named in the original FIR against whom action was not taken to be included in the charge-sheet.

 - The NWC is one of the four complaint handling mechanism under the Domestic Violence Act. It notes that the police is denying to register incidents of domestic violence and send them for “mediation” which in reality have resulted in repetitive incidents thus making the victims more vulnerable.

 - Despite the amendment of the National Code (Muluki Ain) to deal with acts of violence against persons accused of practicing witchcraft, it remains inadequate. The provision not only fails to differentiate between the acts on the basis of gravity of the offences, it also does not provide any redress for injury or loss suffered by the victim. The NWC drafted a bill to criminalise and punish such acts which was submitted to the Ministry of Women, Children and Social Welfare in August 2010. However, resulting from differences of opinion of whether to enact a separate legislation relating to accusations of witchcraft or include it in a

legislation that addresses harmful traditional practices against women, the bill is pending with the Ministry.

- Incidents of VAW during conflict including cases of sexual violence remain unaddressed. Reports reveal that even when offences of sexual violence or rape allegedly committed by both security forces and rebels were reported to any level of authority, actions were rarely taken. Effort from the government to investigate the crimes and punish perpetrators is slow with a lack of political will that is required to address such serious cases. Moreover, the government has withdrawn a number of criminal cases which were under the consideration of courts including serious cases of sexual violence. Though National Human Rights Institutions in Nepal have recommended the formation of the Truth and Reconciliation Commission to deal with conflict related grievances, the draft Bills are under consideration.

Recommendation:

- Review the existing legal framework and enforcement procedures in relation to VAW that coordinate with existing civil and criminal laws as well streamlining the response mechanisms. In particular increase the restrictive statute of limitation for filing a Charge Sheet for rape beyond the present 35 days, enact law dealing with violence resulting from the allegations of practicing witchcraft, review the Domestic Violence Act and formulate strategies with rights based approach which are victim centric to address impunity in cases of VAW. Develop long term support mechanisms for victims and survivors of VAW including legal aid, shelter, psychosocial support, emergency funds.
- Continue to provide mandatory trainings accompanied with refresher training for government officials including law enforcement officials, health workers, community level workers including members to VDC, teachers etc to identify and deal sensitively with survivors of VAW.
- Finalize and adopt the Standard Operating Procedures to Address Operating Procedures for the prevention of and response to gender based violence. The procedures define the roles and responsibilities of actors involved in prevention and response of gender-based violence.

6. Measures to maintain the independence of National Women Commission:

Continuing challenges

As mentioned above, the NWC was established by the Nepal Government's executive decision in 2002, it lacks the impendence and autonomy required for effective role in its area. Despite the good work on the monitoring, advocacy and policy research on the women issues, its dependency on the Government limits its scope of work. The NWC itself and women activists have been making efforts to provision the constitutional status of the Commission in the new constitution to make it a powerful and effective body. In response to the consistent advocacy from civil society organisation and the NWC the

Committee of the Constitutional Assembly (CA) for Determining the Forms of Governance of State has proposed to give the NWC a constitutional status. The CA process requires the Constitutional Committee of the CA to consider the proposals of various committees formed within CA for approval. The CA's term has been extended for three months after passing its deadline on 29 May 2011. The report of the Committee on the Forms of Governance and State is yet to be considered by the Constitutional Committee of the CA. It is therefore a critical time to further strengthen advocacy to ensure that the Constitutional Committee positively responds to the proposal.

- Selection or election of chairperson and other members are not done through an transparent and fair election procedure, rather the Chairperson and members are nominated by political parties. Such procedure has deprived many qualified and competent persons being appointed in the Commission.
- Recommendations provided by the NWC with regard to VAW not taken into account to initiate action in an effective manner. NWC depends on the Government for its budget, human resource, and technical support. This seriously affects its' capacity and strengthening. Lack of resources - budget, human and technical resources. The secretariat and support staff members of NWC are the staff of Government bureaucracy which creates a little accountability towards the NWC. Frequent transfer of officers at the decision of the concerned Ministry has caused difficulty in taking forward its work effectively.
- Chances of dissolving the commission by the decision of the Ministry or delay in nominating the body give ample space for political interference and controlling the NWC by the political parties and the Government

Recommendations:

- As urged by the CEDAW Committee and taking into account of its nature of role and responsibility, it needs to be an independent autonomous body where Commissioners are appointed through a fair and competitive process. Following with the as per "PARIS PRINCIPLE".
- The Commission must be provided status of Constitutional Body to make its role, recommendations and functioning more effective it has to be equipped with more resources and technical expertise to address the issue of VAW.
- It has to have its regional offices for wider presence and effective monitoring of the VAW at the ground level The NWC secretariat should have rights to appoint its own support officers to maintain its confidentiality and better response and accountability towards the work of NWC.
- It should be free from political interference and should have independence in investigation of violence related cases.