

**T**he Shadow Report to the Second and Third Periodical Report of the Government of Nepal to the CEDAW Committee (Government Report hereinafter) has been prepared by the CEDAW Monitoring Committee (CMC), an informal network of NGOs working on CEDAW Convention, coordinated by Forum for Women, Law and Development (FWLD), an NGO basically working for women's rights. The Shadow Report addresses the situation of women, article wise on the backdrop of the Government Report. There are many issues under each article that we would like to address but taking into consideration the length of the Report we have included only priority issues. This time the Report includes a few emerging issues such as Single Women, Dalit Women, Indigenous Women, Women and Armed Conflict, Migration, Women and ICT, Refugee Women and Women and HIV/AIDS.

Shadow Report on the Convention of Elimination of All Forms of Discrimination Against Women (CEDAW)

# SHADOW REPORT

*on  
Convention on Elimination of  
All Forms of Discrimination  
Against Women (CEDAW)*

CEDAW Monitoring Committee, Nepal  
Coordinated by Forum for Women, Law and Development (FWLD)  
November 2003

# Shadow Report on the Second and Third Periodic Report of Government of Nepal on CEDAW Convention

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## Acronyms

ANC	Ante Natal Care
BPEP	Basic Primary Education Program
CMC	CEDAW Monitoring Committee
CTEVT	Council for Technical Education and Vocational Training
DDC	District Development Committee
DEO	District Education Officer
EC	Election Commission
FWLD	Forum for Women, Law and Development
HMG/N	His Majesty`s Government of Nepal
ICT	Information Communication Technology
MCPW	Micro-Credit Project for Women
MGEP	Mainstreaming Gender Equity Program
MMR	Maternal Mortality Ratio
MOES	Ministry of Education and Sports
MWCSW	Ministry Of Women, Children and Social Welfare
NCC	National CEDAW Committee
NHRC	National Human Rights Commission
NKP	Nepal Kanoon Patrika (Collection of decisions of the Supreme Court of Nepal)
NPC	National Planning Commission
NWC	National Women's Commission
PAF	Poverty Alleviation Fund
PCRW	Productive Credit for Rural Women
PNC	Post Natal Care
PSC	Public Service Commission
RNAC	Royal Nepal Airlines Corporation
SAARC	South Asian Association for Regional Cooperation
SCCs	Savings & Credit Cooperatives
SCOs	Savings & Credit Organizations
TVET	Technical and Vocational Training to Women
UNDP	United Nations Development Program
UNFPA	United Nations Population Fund
UNIFEM	United Nations Fund for Women
VDC	Village Development Committee

# Executive Summary

## Background

The Shadow Report addresses the situation of women in Nepal as a backdrop to the Government Report. There are many issues under each article and each is equally important, but taking into consideration the length of the Report, this executive summary deals with some of the most pressing issues to bring them to the attention of the Committee members.

## Positive Interventions of the Government

- ◆ There have been some changes in the discriminatory laws, mostly through the Eleventh Amendment to the *Country Code of Nepal, 1963*. The amendments have resulted in guaranteeing, besides other rights importantly, women`s right to property, rights in marriage and family life, right against sexual offences and liberalisation of abortion.
- ◆ A High Powered Committee was formed with the responsibility to review the existing discriminatory laws and draft the amendment bill after the publication of “Discriminatory laws in Nepal and their impacts on Women” by FWLD in 2000. The committee submitted its report to the Prime Minister on 28 October 2002.
- ◆ Formation of National Human Rights Commission, National Women`s Commission and National Dalit Commission.
- ◆ The judiciary has interpreted marital rape as a crime, has declared rape of a prostitute as discrimination in effect, and has declared the provision of *Tribal/Indigenous Upliftment National Academy Act* as *ultra vires* even when the intention or purpose was not discriminatory but the effect was to deny women`s reappointment and give women a shorter tenure.
- ◆ The government has taken various steps to address the Maoist insurgency by providing compensation to spouses of the deceased, scholarships to children, mobile health posts and continuing dialogue through peace talks.
- ◆ In the Tenth Plan (2003-2007) the government has committed to review the existing legislations from the lens of the international human rights instruments and gender perspective.
- ◆ Signature of the Optional Protocol to the CEDAW Convention.

## Implementation Status of Concluding Comments

- ◆ While there have been several changes in the laws and the level of sensitization among policy makers seems to have improved, the state is still reluctant to fully incorporate the definition of discrimination in relevant laws.
- ◆ There have been some perceptible changes in the attitude of the judiciary since the Concluding Comments of 1999. The Supreme Court has made some progressive interpretations of discrimination in line with CEDAW provisions. The government initiative in the form of the Eleventh Amendment to the *Country Code of Nepal, 1963* is an appreciable action in line with the Concluding Comments of the CEDAW Committee, which in 1999 had called for the

amendment of discriminatory laws as a matter of priority. Despite that, an updated study conducted by FWLD indicates that there are still 290 different legal provisions in the *Constitution of the Kingdom of Nepal, 1990*, various Acts and Regulations that discriminate against women on such issues as property, nationality, marriage and family, legal procedure and court proceedings, trafficking and sexual abuse, employment, education and citizenship.

- ◆ As far as the dissemination of the 1999 Concluding Comments is concerned, the government has taken very few initiatives, and most of the dissemination was done through the effort of non-government organizations.
- ◆ The government has collected gender-disaggregated data on housing and population for the census of 2001. It has played a significant role in identifying household level work of women. However, sectoral ministries, government departments and the judiciary have yet to take initiatives along similar lines.
- ◆ Despite an appointment of a woman judge in the Supreme Court and a woman member in the National Planning Commission (NPC), there are very few actions of the government that could be counted as in compliance with the Concluding Comments. Of all the appointments made recently to head the municipalities, only two women have been appointed as deputy mayors.
- ◆ Progress on eradicating harmful traditional practices that victimize women has been less than satisfactory. The only saving grace is the Strategy on Gender Equality of the Tenth Plan that states that the government needs to enact laws and implementation strategies to eradicate harmful traditional practices such as witchcraft, *jbuma*, *devaki* and *badi*.
- ◆ There have been no initiatives to eliminate the discriminatory provisions of nationality law that continue to violate one of the fundamental rights of women and have an adverse impact on the exercise of so many other rights that flow from it.
- ◆ The initiative to provide free education to girls has yet to show notable progress in girls' participation in education. The government has not been very successful in addressing the issues of drop-outs and repetition rates, highly prevalent among girls at the primary level of education. In vocational and skill development training, women's enrollment remains low. The minimum requirement to gain admission to most of these courses is class 10 and these courses are limited to vocations that are low paid and have limited employment opportunities.
- ◆ Provision of equal remuneration between male and female workers has not been implemented in the informal and unorganised sectors.
- ◆ The government has liberalized the law relating to abortion through the Eleventh Amendment to the Country Code. However, almost a full year since the change in the law, no abortion service is available at government hospitals due to the delay in the adoption of an abortion policy/order.
- ◆ While the government has included family planning services as an integral part of the government health service, there is a huge unmet need for family planning, quoted as 27.8%. In relation to sex education, the Ministry of Women, Children and Social Welfare has targeted to provide sex education to adolescent girls.
- ◆ The government has not launched any meaningful programme to enhance the eligibility of women to receive institutional credit for beginning an enterprise. There is a lack of impact-based policy, both in terms of number and quality for increasing women's employment in the service and industry sector. There are very limited target-based gender employment programs in terms of area, population, resources and training.

- ◆ It is observed that the present government report has elaborated more on rural women as compared to the previous reports. Principal areas of concerns and recommendations that the government report elaborates on micro-credit, opportunities in agriculture, capacity building in development planning and delivery of social services. However, the government report is silent about women`s right to land.

## Challenges

- ◆ Persistence of a strong patriarchal culture, which emphasizes traditional roles for women, is a major hurdle in the implementation of the CEDAW Convention in Nepal. Social attitudes perpetuate discrimination against women in all spheres of public and private life and pose an obstacle to achieve *de jure* and *de facto* equality of women.
- ◆ Although the *Constitution of the Kingdom of Nepal, 1990*, guarantees equality between men and women and the *Treaty Act, 1991*, specifically provides that international instruments ratified or acceded to by Nepal prevail over the domestic legislation, there are 290 discriminatory provisions in various laws that conflict with rights provided under the CEDAW Convention.
- ◆ An overarching problem with realising rights in Nepal at present is political instability and the Maoist insurgency, which have been hindering development, as the major focus of the government remains on political and security issues.
- ◆ There are inadequate financial and human resources in institutions entrusted with various obligations related to human rights and women`s rights to carry out their functions effectively.
- ◆ Initiatives (plan of actions, policy decisions, development plans, gender budget systems, etc) taken by the Ministry of Women, Children and Social Welfare (MWCSW) do not seem to have been taken very seriously by other ministries. While MWCSW has a cross-sectoral mandate, other ministries have yet to recognize this and are reluctant to cooperate and comply with its decisions.
- ◆ Lack of conceptual clarity related to the principle of equality among people in the judiciary and the legislature has created confusion, reinforcing the protectionist approach, which further limits women`s fundamental rights and freedom.
- ◆ Besides enacting special legal provisions, the government has hardly taken any initiative to implement or monitor their actual implementation. For instance, a study conducted by FWLD found that excluding a few positive exceptions, the special measures are only on paper and have not made any difference to the lives of women.
- ◆ The existing discriminatory laws and practices, as well as the lack of initiative on the part of the government to do away with such discriminatory laws and practices, intensifies the stereotyping of women into gender roles.

## Recommendations

- ◆ Women cannot, under the prevailing constitutional and legal provision, confer citizenship to their children or husbands. As a result, the law fails to recognize women`s individual identity and women are deprived of the right to nationality, right to family life and right to choose residence. Therefore, the government, should, as a matter of utmost priority, amend provisions relating to nationality and birth registration such as Article 9(1), (2) and (5) of the *Constitution of the Kingdom of Nepal, 1990*, Section 3(1), (4) and Section 6(2) of *Nepal Citizenship Act 1963*,



and Section 4(1)(a) of the *Birth, Death and Other Personal Incidents (Registration) Act, 1976* to recognise women as a legal identity.

- ◆ Even after the Eleventh Amendment of the *Country Code of Nepal, 1963*, provisions in law exist that discriminate amongst daughters on the basis of marital status in partition and intestate property. This violates the principle of non-discrimination stated in article 1 of the CEDAW Convention. In case of intestate property, a married daughter is much lower in hierarchy for succession. Furthermore, only an unmarried daughter is entitled to receive share in parental property and intestate property and has to return her remaining share of property to her maternal family upon marriage.
- ◆ The government as a matter of priority, and by stating a definite timeline, should make a plan of action to amend/repeal the existing discriminatory legal provisions such as nationality and birth registration, bonus law, partition law, succession law, divorce law, rape law, marriage laws, employment laws including Army Act and Foreign Employment Act, Taxation laws, laws on legal procedure, etc. whether they are substantive or procedural. The government should enact a specific law to deal with the increasing problem of sexual harassment.
- ◆ For the effective implementation of CEDAW Convention, the government should ratify Optional Protocol to CEDAW Convention.
- ◆ There should be specific laws to prohibit and penalise practices such as *deuki, badi, jhuma, cheupadi*, dowry and witchcraft. The government should develop programmes for the rehabilitation and reintegration of girls/women who are victims of these practices.
- ◆ The government should define discrimination as per the CEDAW Convention in the domestic legislation. There is also a need to expand the ground of discrimination that includes discrimination on the basis of sexual orientation.
- ◆ The Human Trafficking Control Bill is more progressive compared to the existing trafficking law, as it includes *in camera* hearing for survivors, compensation to the victims, etc. However, the Bill focuses on combating trafficking from a moral perspective rather than a human rights perspective, confuses trafficking with prostitution, and criminalizes voluntary prostitution without understanding its impact on the victims. It lacks a human rights perspective and is devoid of human rights-friendly provisions such as victim and witness protection mechanisms. Therefore, the government should remove the provision criminalizing voluntary sex work from the Human Trafficking (Control) Bill, incorporate appropriate victim justice mechanisms and reintroduce the Bill.
- ◆ The government should introduce the Bill on Domestic Violence and address issues such as broadening the definition of family members, including economic and sexual abuse as domestic violence, providing emergency monetary relief, emergency preventive relief and the right to reside in the home.
- ◆ The National Women`s Commission lacks autonomous and independent status, as it was established through executive order. Therefore, the National Women`s Commission should be made an independent statutory body that can function effectively to protect the rights of women and make government accountable. The National Human Rights Commission, which has a broad mandate to promote and protect the human rights of all citizens should take initiatives by focussing on women`s rights.
- ◆ In line with the judicial interpretation of marital rape as an offence, the government should amend the rape law and include marital rape in the definition of rape and specifically prescribe punishment for same. The amended definition of rape should include all forms of sexual abuse and should in no way be restricted only to vaginal penetration.

- ◆ As the law relating to abortion has been liberalised to ensure the availability of safe, affordable and accessible abortion, the government, as a matter of priority, should formulate and adopt a comprehensive abortion procedure order. The order should include the definition of abortion, miscarriage and infanticide, fees for services and availability of abortion services in public hospitals at minimum cost.
- ◆ Even after the liberalisation of abortion, there are 48 women in various prisons, serving terms for abortion-related offences. In addition to that, due to lack of a procedure order on abortion, not only are abortion services not available, but seven more women have been arrested on abortion-related charges since the change in the law. Therefore, steps should be taken to release women imprisoned for abortion-related offences and they should be rehabilitated into their family and society.
- ◆ According to the present law, a husband can marry for the second time under certain circumstances without divorcing his first wife. Furthermore, besides this provision, second marriage is specifically prohibited under the law but still it is not considered void. Therefore, bigamy/polygamy should be declared null and void under any circumstances.
- ◆ Due to the social practice of child marriage and low level of reporting of such cases, the government should address the problem of child marriage comprehensively. An increase in punishment only is not enough to address this problem. There needs to be massive awareness campaigns in coordination with NGOs to inform the general public that marriage is not the end of a girls life and that her education and professional qualifications are important, just as they are deemed important for boys. Therefore, the law on child marriage should be implemented effectively.
- ◆ Lack of conceptual clarity related to the principle of equality amongst judiciary and lawmakers has created confusion, reinforcing the protectionist approach, which further limits women`s fundamental rights and freedom. A case was filed challenging the legal provision that requires employment agencies to get approval from the government and her guardian in case of foreign employment of women. In this case, the Supreme Court, instead of declaring the provision *ultra vires* validated the provision saying the government was, under the Constitution, free to take measures for the advancement of women and to protect them from exploitation. This stands as a clear case of lack of conceptual clarity on matters of substantive equality even at the highest level of the judiciary. Therefore, there is an urgent need to enhance conceptual clarity among members of the judiciary, legislature and the bureaucracy on issues of substantive equality and the difference between a corrective approach and a protectionist approach.
- ◆ Target-based and time-bound new special measures in favour of women should be introduced together with a phase-out policy. Special measures should be introduced into social, cultural and economic areas along with education, health, political participation, and civil service. Special measures should not be limited to reservation but should also include creating enabling environment and capacity building of women. Special attention should be given within special measures to advance the situation of women in disadvantaged groups such as indigenous women, rural women, *Dalit* women, disabled women and women from minority communities.
- ◆ There is a lack of women at decision-making levels in the civil service, judiciary, parliament, local government and constitutional bodies and commissions formed by the government. Therefore, the government should introduce a temporary special measure of reservation of 33% (critical mass) representation at all levels of the power structure from grassroots to national level and political parties, to ensure their functional participation.
- ◆ Law and policy relating to women-friendly working environment should be incorporated to increase women`s participation in the labour force.

- ◆ During the two different peace talks between the government and the Maoist insurgents, women were excluded from both sides. In any talks that may take place in the future, the government should involve women so that their problems are raised and they are given an opportunity to be equal partners in the peace process.
- ◆ To address the problem of single women in Nepalese society, the government should commence schemes like income generation training for single women, easy access to loan opportunities, counselling services, reservations for job opportunities, helpline services, free education to children of needy single women, sensitisation programs to stop continuing stigmatisation within family and community, housing schemes, compensation, and elimination of the discriminatory pension practices.
- ◆ There should be specific laws to address the multiple forms of discrimination against Dalit women and the problem of untouchability as a whole. In case of inter-caste marriages amongst Dalits and non-Dalits, the couples are socially boycotted, physically and mentally tortured. These instances are on the rise and therefore, the government should take strict action against persons who incite such violence and provide protection to the couple.
- ◆ The government should lift the ban on work in the domestic sectors of Gulf countries to ensure human rights of migrant women workers and mainstream the issue of migrant women workers in other thematic areas such as HIV/AIDS, economic empowerment, banking system, violence against women, poverty alleviation, education and training etc.
- ◆ The government should ensure free and compulsory education and health services to girl children in rural areas, as they are forced to remain house workers due to the poverty level. Access to health care services such as ANC, delivery and Post Natal Care (PNC) care, and family planning services for the unmet contraceptive needs should be provided to the rural women. In addition, establishment of small and medium enterprises in rural areas giving women higher rate of return for their investment of money and time should be a priority. Additionally, skill-oriented training and micro-finance programs should be expanded at the rural level, with collateral-free loans to landless rural women.
- ◆ The government should mainstream gender in the educational system as a whole. This should include gender-sensitive textbooks, teaching materials and teaching methods; gender sensitization training for teachers, head teachers, supervisors, resource persons and DEOs, awareness program among parents, children, local leaders and community members about the value of educating girls; child-care centre in the community so that girls can be free from taking care of younger siblings and go to school; counselling programs and life skill for girls; mother tongue and local language studies facilities in the school and school quotas for those children that belong to the Dalit and indigenous families.
- ◆ The state should consider specific measures relating to HIV/AIDS, including ensuring greater availability of affordable female condoms and microbicides, availability of anti-retroviral drugs and treatment for opportunistic infection.
- ◆ The state should establish policies, programs and projects that consider, identify and analyze the gender differences and inequalities in the access to and use of ICT and ensure its effective implementation with appropriate monitoring and evaluation mechanisms.
- ◆ There should be arrangements for refugee women to register in the camps independently from their husbands if they desire. All women should have access to their own ration card, as per UNHCR guidelines. Refugee women who marry Nepalese locals should be able to register their children in the camps.

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# **INTRODUCTION**

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## **A. Introduction**

The Shadow Report to the Second and Third Periodic Report of the Government of Nepal to the CEDAW Committee (Government Report hereinafter) has been prepared by the CEDAW Monitoring Committee (CMC), an informal network of NGOs working on CEDAW Convention, coordinated by Forum for Women, Law and Development (FWLD), an NGO basically working for women's rights. The names of individuals and NGOs involved in the preparation of the Shadow Report are stated in the title page of this report.

## **B. Activities carried out in the preparation of the Shadow Report**

For the preparation of the Shadow Report, an advertisement was published in English and Nepali local newspapers on April 10, 2003 and April 16, 2003 and aired on radio on April 17, 2003, calling interested NGOs to collaborate with FWLD in the preparation of the Shadow Report. On the basis of the response received from various NGOs to the advertisement for collaboration published by FWLD, an Orientation and Planning Meeting was held on May 11, 2003 to form the Working Committee and Writing Committee of the Shadow Report. Accordingly, work was distributed amongst various NGOs to write separate chapters of the Shadow Report. It was decided at the meeting to include emerging issues such as: Single Women and HIV/AIDS, Dalit Women, Migrant Women Workers, Women and ICT and Refugee Women in the Shadow Report. The members of the Writing Committee prepared a draft report. To receive input from the civil societies and interested stakeholders on the draft Shadow Report, an advertisement was published in the local newspapers on September 10, 2003 and September 12, 2003 inviting civil society to give/raise their concern and recommendations on the draft Shadow Report. To do so, a two-day National Consultation was held on September 24 and 25, 2003 to finalise the draft Shadow Report and receive inputs from NGOs, individuals and interested stakeholders who were not a part of preparation of the Shadow Report. 231 participants including 81 participants from 34 districts of Nepal attended the Consultation. The draft Shadow Report was shared with all the participants by way of presentation of individual writers. Overwhelming response and valuable inputs were received from the group discussion held after presentation of the various issues that are a part of the draft Shadow Report. The inputs received from the National Consultation have been incorporated in the final Shadow Report.

## **C. Human Rights Situation in Nepal**

Nepal is witnessing one of the worst human rights crises in recent times. A country known for the peaceful serenity and abundant natural beauty throughout the world has been marred by widespread violation of human rights, especially since the Maoist insurgency started from February 1996. Initially, the insurgency started from the remote villages of the mid-western hill districts of Nepal calling to eliminate discrimination, poverty and developmental imbalance, which has since touched almost every part of Nepal. Successive governments, since then, have attempted, through dialogue and force, to address the insurgency. None of them have been successful and use of force by the Maoists and the government to achieve their respective goals has resulted in indiscriminate killing of people, mutilation, all kinds of physical and mental violence, and torture to thousands of the citizens of Nepal. Since the failure of first cease-fire between the Maoists & the government in earlier 2001, violent activities have taken a worse and more vicious turn, and Nepali people have

seen mass killing and unimaginable extra-judicial killing. About 10,000 people have died as a result of the insurgency. This has made a mockery of the constitutionally guaranteed fundamental rights against capital punishment under Article 12(1) of the *Constitution of the Kingdom of Nepal 1990*. Disappearances caused by the Maoists and the government and torture has been frequently reported and hardly anything has been done to stop such incidents from reoccurring. All these activities are not only direct violations of the fundamental rights guaranteed by the Constitution but also violations of non-derogable human rights guaranteed under the ICCPR and customary international human rights law.

Apart from affecting right to life, people are unable to enjoy right to freedom of movement, as there are restrictions from both the Maoists and the government. Various fundamental rights that includes right to property, right to freedom of expression, freedom of association, right o employment, incorporated in the *Constitution of the Kingdom of Nepal, 1990* have been affected due to the internal conflict. Frequent and unexpected *bandhs* and general strikes have violated right to livelihood and caused untold economic hardship to the poor and ordinary citizens. Frequent closure of the educational institutions has violated the right to education of children and adolescent and this has affected the overall improvement and upliftment of the country at large including serious impact on women and children.

Amidst this harrowing background of massive human rights violation by both sides, there has arguably been at least one positive development in the form of positive commitments from both the government and the Maoists to respect and protect women's rights. In the post-conflict Nepal, which will hopefully emerge soon, it can be expected that as a result of commitment of both the government and the Maoists, women's rights in general will be more respected and secured through amendments in the laws and through introduction of special measures.

As part of its Agenda for Reforms, presented to the Maoists during recent the negotiations, the government has proposed, among others, the following:

1. Provision for reservation for the indigenous, ethnic and *Dalit* people in the representative institutions, education, health, administrative services and other employment sectors until they reach the national average on the basis of Human Development Index.
2. Reservation of 25% seats in all representative institutions for women and constitutionally ensured special reservation to them in education, health, administration and other employment sectors.

#### **D. Background of Shadow Report**

The Shadow Report (the Report hereinafter) addresses the situation of women, article wise on the backdrop of the Government Report. There are many issues under each article that we would like to address but taking into consideration the length of the Report we have included only priority issues. This time the Report includes a few emerging issues such as Single Women, Dalit Women, Indigenous Women, Women and Armed Conflict, Migrant Women Workers, Women and ICT, Refugee Women and Women and HIV/AIDS. The writing format of the chapters basically reflects the prevalence of the problem- general introduction to the topic-,critical areas of concern- priority issues under each article with effects on women-, gaps and weaknesses- contributory factors as well as problems in realizing women's righ-, and recommendations under each article and a few emerging issues.

## ARTICLE 1 : Definition of Discrimination

### A. Prevalence of the Problem

The claim to equality is the most fundamental right of human beings as it is the starting point of all other liberties.<sup>1</sup> Nepalese women, who represent the largest single group in the country, face unfavourable and/or prejudiced treatment because they are women. They are discriminated against not only by the social and cultural norms but also by the laws. Consequently, this has resulted in disparities and disadvantaged position-making women vulnerable to violence. The *Constitution of the Kingdom of Nepal, 1990* (hereinafter *Constitution of Nepal, 1990*) states that there shall be no discrimination on the basis of race, religion, sex etc.<sup>2</sup> However, there is no broad definition of discrimination either in the Constitution or in any other law except prohibition for discrimination on the basis of sex. The Government Report does not provide any information on the non-inclusion of the definition of discrimination in the relevant laws.

### B. Implementation Status of Concluding Comments

The CEDAW Committee recommended that the government to include definition of discrimination in relevant laws.<sup>3</sup> However, the government failed to include the definition of discrimination in the relevant laws or take any action to do so.

### C. Critical Areas of Concern

► **Judicial initiative yet to be reflected in laws and practices:** In *Reena Bajracharya's*<sup>4</sup> case the provision of early retirement age (30 years) or 10 years of service, whichever was earlier, for the airhostess was declared *ultravires*. And the clause of non-discrimination under Article 1 of CEDAW was reinforced in its interpretation.

In a case filed by the FWLD, the validity of the definition of rape in the Country Code<sup>5</sup>, which excludes the act of having sexual intercourse with one's own wife without her consent, was challenged. In this case the court held that "If an act is an offence by its very nature, it is unreasonable to say that it is not an offence merely because of the difference in the status of the person committing the act. It will yield discriminatory results if we interpret that an act committed to any other woman is an offence and it is not an offence if the same act is committed against one's own wife".<sup>6</sup>

In another case<sup>7</sup> FWLD challenged the discriminatory provision relating to rape of a prostitute.<sup>8</sup> According to the said provision the punishment for rape of a prostitute was much lower than the general punishment provided for rape of any other woman. The Court held that though the discriminatory provision of rape does not directly discriminate against women, in

<sup>1</sup> Sir Henry Lauterpatcht, Cf. B.G. Ramacharan, "Equality and non-discrimination" in Louis Henkin ed., *The International Bill of Rights: The Covenant on Civil and Political Rights* (New York: Columbia University Press, 1981) at 247.

<sup>2</sup> Article 11 of the Constitution of the Kingdom of Nepal, 1990.

<sup>3</sup> Paragraph 23 of the Concluding Comments of the Committee on the Elimination of All Forms of Discrimination against Women, Twenty-first Session, 7-25 June, 1999 (hereinafter referred to as Concluding Comments).

<sup>4</sup> *Reena Bjaracharya vs. HMG/Nepal*, NKP 2000, Vol. 5, p.376.

<sup>5</sup> No.1 of the Chapter on Rape of the Country Code.

<sup>6</sup> *Meera Dbungana for FWLD vs. HMG/Nepal*, Publication of Decisions relating to Human Rights, Special Issue, Supreme Court, 2002, p.129.

<sup>7</sup> *Sapana Pradhan Malla for FWLD vs. HMG/Nepal*, Publication of Decisions relating to Human Rights, Special Issue, Supreme Court, 2002, p. 144.

<sup>8</sup> No.7 of Chapter on Rape, *Country Code of Nepal, 1963*.

effect it discriminates against women, as there is leniency in punishment to the accused in case the victim is a prostitute.

Recently section 7 (3) of on Tribal/Indigenous Upliftment National Academy Act was challenged<sup>9</sup> where the Supreme Court declared this provision *ultra vires* even when intention or purpose was not discriminatory but the effect was to deny women's reappointment and shorter tenure.

By these decisions the Supreme Court has interpreted discrimination against women, however, the legislators have failed to take note of these definitions and incorporate the definition of discrimination in relevant laws.

► **Discrimination on the basis of marital status :** Even after the Eleventh Amendment to the *Country Code of Nepal, 1963*, provisions in law exist which discriminate amongst daughters on the basis of marital status in partition and intestate property.<sup>10</sup> Only an unmarried daughter is entitled to receive a share to parental property and has to return her share of property upon marriage.<sup>11</sup> Furthermore, in case of intestate property, a married daughter is much lower in hierarchy for the succession. Even in case of intestate property, the unmarried daughter has to return her remaining share of property to her maternal family upon marriage.<sup>12</sup>

#### D. Gaps and Weakness

The government has failed to note the importance of defining discrimination under various laws and has taken no initiative to incorporate the said definition. Gender based violence against women has not been defined as a violence against women, especially sexual harassment at the work place and domestic violence. There is no realization of principle of non-discrimination and concept of equality being changed.

In *Reena Bajrachary's* case when Royal Nepal Airlines Corporation's (RNAC) policy was amended as per the Court decision, instead of increasing the age of retirement age of airhostess to 55 years, age of air steward was decreased to 45. This shows resistance in the implementation of the court decision. In *Meera Gurung's*<sup>13</sup> case also, when discriminatory immigration laws related to visa were amended, the government started levying visa fee on the basis of marital status whereas formerly there was no provision for paying visa fee to obtain visa on matrimonial grounds. Furthermore even when law is being amended it takes a long time and a lot of effort to do so. For instance, to ensure women's right to property, it took seven years for passing the Eleventh Amendment *Country Code of Nepal, 1963*.<sup>14</sup>

#### E. Recommendations

- Define discrimination as per the CEDAW Convention in the relevant laws like the *Constitution of Nepal, Act Relating to Interpretation of Nepalese Laws, 1953, Country Code of Nepal, 1963*.

<sup>9</sup> Advocate Ms. Basundhar Thapa vs. HMG/Nepal, Supreme Court Bulletin, 2003, Vol. 6 pg. 3.

<sup>10</sup> No. 6, 9, 10, 12 of Chapter on Intestate Property, *Country Code of Nepal, 1963*.

<sup>11</sup> No. 16 Chapter of Partition " if a daughter having obtained her partition share gets married, the remaining property upon her subsistence there from shall pass to the heir towards her parental line", *Country Code of Nepal, 1963*.

<sup>12</sup> No.2 of Chapter of Intestate Property "No other person shall be entitled to inherit the ancestral property so long as there is the husband, wife, son, unmarried daughter, son's son or his unmarried daughter of the deceased, subject to the other numbers of this chapter. If the deceased has not son but widow daughter-in-law, she shall be entitled to inherit the property as if she were the son. If there is none of them, then the married daughter, her son or unmarried daughter if there is no even the unmarried daughter and if there is no such heir, the heir according to law shall inherit the property", *Country Code of Nepal, 1963*.

No. 12A of Chapter of Intestate Property " if the unmarried daughter who has got inheritance gets married, the remaining inherited property after her enjoyment shall devolve on the heir towards her parental line", *Country Code of Nepal, 1963*.

<sup>13</sup> *Meera Gurung vs. Department of Immigration*, NKP 1991, Vol.11, p.749.

<sup>14</sup> Updated Baseline Study of Inheritance Rights, FWLD, 2003.



- Need to expand the ground of discrimination that includes discrimination on the basis of sexual orientation.
- The legal provisions related to inheritance and intestate that discriminate against women on the basis of marital status should be amended.<sup>15</sup>
- Negative effect of positive judgments need to be monitored and enforced positively.

## **ARTICLE 2: Obligations to Eliminate Discrimination**

### **A. Prevalence of the Problem**

The *Constitution of Nepal, 1990* guarantees the fundamental right to equality before the law and equal protection by the law.<sup>16</sup> However, even today, legal provisions exist which discriminate against women on the basis of sex. The Government Report recognises that despite the Constitutional provision that ensures equality between men and women, there are still many legal provisions that discriminate against women. However, it does not state specifically the extent to which women are discriminated against by the discriminatory laws. The Government Report states that discrimination against women is a result of factors like illiteracy, cultural norms based on patriarchal values, lack of common understanding between key players, intra institutional differences, women's minimal participation in power and decision making etc. However, it only states these challenges and does not address how to deal with them and do away with the discrimination faced by women. Moreover, it has not addressed the issue of sexual harassment in the workplace.

### **B. Implementation Status of Concluding Comments**

The CEDAW Committee in its Concluding Comments on the Initial Report of the Government showed its concern on the issue of "*interpretation of discriminatory laws by the Supreme Court and the Court's view that if any laws do not conform with culture and tradition, society will be disrupted.*" Some change in the attitudes of the judiciary since the Concluding Comments can be seen. For instance: the progressive interpretation of discrimination in accordance to the definition of CEDAW.<sup>17</sup>

The Committee urged the government "*to amend, as a matter of priority, discriminatory laws on property and inheritance, the laws on marriage, nationality and birth registration, the Bonus Act, and the discriminatory criminal laws including the law on abortion.*" The Committee had also requested a wide dissemination of the Concluding Comments. This is mainly to make people, and in particular, government administrators and politicians aware of the steps that have been taken to ensure *de jure* and *de facto* equality of women.

On its part, the government has amended a few discriminatory provisions of law, by the Eleventh Amendment, to the *Country Code of Nepal, 1963*.<sup>18</sup> The Amendment has made the following changes

- Daughters accepted as equal heirs to the property<sup>19</sup>
- Widows are given full right to inherit the property of the deceased husband, which was conditional before<sup>20</sup>

<sup>15</sup> See Article 16 for details.

<sup>16</sup> Article 11 of the *Constitution of the Kingdom of Nepal, 1990*.

<sup>17</sup> Refer to Article 1 of the Report for the decisions.

<sup>18</sup> September 26, 2002.

<sup>19</sup> No.1 of the Chapter on Partition, *Country Code of Nepal, 1963*

<sup>20</sup> No.12 of the Chapter on Partition, *Country Code of Nepal, 1963*.

<sup>21</sup> No.10 A of the Chapter on Partition, *Country Code of Nepal, 1963*, which imposed the condition of completion of 35 years of age or 15 years of marriage to acquire share in the property, deleted.

- The condition of completion of age and married years for women to attain share of husband's property done away with<sup>21</sup>
- Daughter's given right to upbringing<sup>22</sup>
- Women's right to property in case of divorce<sup>23</sup>
- Equality in grounds for divorce<sup>24</sup>
- Repeal of the provision of *dolaji*<sup>25</sup>
- Equal punishment in marriage by misrepresentation<sup>26</sup>
- Equality in age of marriage<sup>27</sup>
- Liberalization of law on abortion<sup>28</sup>

However, there are gaps in these initiatives such as: A daughter has to return her share of property after marriage.<sup>29</sup> Although the conditions for women to receive share of her husband's property have been removed, in reality women can claim for their share of property only if the husband fails to take care of their needs, or fails to provide food and clothing or throws her out of the house, which is more restrictive than the earlier provision<sup>30</sup> and the law on abortion is still under the chapter of Homicide of the *Country Code of Nepal, 1963*.<sup>31</sup> In addition, there are still other provisions of law that discriminate against women.<sup>32</sup>

A High Powered Committee<sup>33</sup> was formed with the responsibility of reviewing the existing discriminatory laws and drafting the amendment bill after the publication of "Discriminatory laws in Nepal and their impacts on Women" by FWLD. The committee has already submitted its report to the Prime Minister on 28 October 2002. However, no initiative has been taken to initiate changes through the formal law reform process. Furthermore, the report of the High Powered Committee fails to incorporate the issue of discriminatory provision of law relating to nationality in its amendment framework.

Coming to the dissemination of the Concluding Comments, the government has taken very few initiatives to do so. Concluding Comments have not been disseminated largely, except for advocacy leaflets- CEDAW Information Package, prepared by FWLD for Mainstreaming Gender Equity Program (MGEP), Ministry Of Women, Children and Social Welfare (MWCSW) and United Nations Development Program (UNDP). The CEDAW Status Review shows that out of 37 respondents from policy-makers and civil societies, 54.05 percent of the respondents were not aware about the Concluding Comments though they were aware about the CEDAW Convention. A study on the implementation status of the Concluding Comments was recently conducted by FWLD. This study highlights the efforts of the government to implement the Concluding Comments as well as the gaps and weaknesses in the government efforts.<sup>34</sup>

### C. Critical Areas of Concern

<sup>22</sup> No.10 of the Chapter on Partition, *Country Code of Nepal, 1963*.

<sup>23</sup> No.4 (a) of Chapter on Husband and Wife, *Country Code of Nepal, 1963*.

<sup>24</sup> No.1 of Chapter on Husband and Wife, *Country Code of Nepal, 1963*.

<sup>25</sup> *Dolaji* was a process followed by couples without sons, to give their daughter/s full right over their property. However, upon the death of such daughter, her property would go to the nearest relatives of the person instituting her *dolaji*.

<sup>26</sup> No.8 of Chapter on Marriage, *Country Code of Nepal, 1963*.

<sup>27</sup> No.2 of Chapter on Marriage, *Country Code of Nepal, 1963*.

<sup>28</sup> No.28 of Chapter on Homicide, *Country Code of Nepal, 1963*.

<sup>29</sup> No.16 of Chapter on Partition, *Country Code of Nepal, 1963*.

<sup>30</sup> No.10 of Chapter on Partition, *Country Code of Nepal, 1963*.

<sup>31</sup> No.28-33 of the Chapter on Homicide, *Country Code of Nepal, 1963*.

<sup>32</sup> See below for details.

<sup>33</sup> Formed on August 29, 2001.

<sup>34</sup> Implementation Status of Concluding Comments on Initial Report to CEDAW Convention, FWLD, March 2003.

<sup>35</sup> Discriminatory Laws in Nepal and their Impact on Women: A Review of the Current Situation and Proposals for Change, FWLD, August 2000.

► **Discriminatory laws:** FWLD identified 54 discriminatory legislations<sup>35</sup>, however the Country Code is only one of the 54 legislations that has been recently amended. The update study conducted by FWLD has indicated there are still 290 different legal provisions in the *Constitution of Nepal, 1990*, Acts and Regulation that discriminate against women such as property, marriage and family, nationality, legal procedure and court proceedings, trafficking and sexual abuse, employment, education and citizenship.<sup>36</sup>

► **Sexual harassment:** The absence of a specific law dealing with sexual harassment in the work place adversely affects women's physical, emotional, and economic well being, thereby limiting their economic productivity and social development. According to a study on the problem, there were 48.4 percent of women who were sexually harassed in their workplaces and 14.3 percent men and 39.4 percent women employees stated that they were aware of sexual harassment at workplace.<sup>37</sup> There is no government policy, law or organisational policy in place to provide relief to the harassed women. Bad practices such as terminating an employee's job for reporting the crime, stigmatising the victim and not taking the concerns of victim seriously has infringed on women's economic and social rights.

► **Marital rape:** The present definition of rape is very restrictive and does not include various sexual abuses. In a case filed by FWLD challenging the validity of the definition of rape in the Country Code,<sup>38</sup> the court recognized marital rape as an offence and issued a directive order to introduce a Bill for providing immediate relief by allowing the wife to live separate from or to divorce the rapist husband; prescribing the degree of offence in rape committed in the circumstance of child marriage, and for making complete legal provisions for justifiable and appropriate solution in an integrated manner with regard to marital rape taking into account the special situation of marital relationship and position of the husband.<sup>39</sup> By this decision marital rape has been declared as an offence. However, the rape law has not been amended to date.

#### D. Gaps and Weaknesses

- At present the Bills addressing the issues of domestic violence<sup>40</sup> and trafficking<sup>41</sup> have also lapsed as the House of Representatives dissolved again.
- No programs are initiated for changing customs and practices that result in discrimination against women or perpetuate such discrimination.

#### E. Recommendations

- By stating a definite timeline, the government should make a plan of action as a matter of priority to amend/repeal the existing discriminatory legal provisions such as nationality, bonus law, partition law, succession law, divorce law, rape law, marriage laws, employment laws, laws on legal procedure etc whether they are substantive or procedural and removing the provisions of abortion from the Chapter on Homicide.

<sup>35</sup> The first study was conducted by FWLD in 2000 which recently updated study after the amendment of *Country Code of Nepal, 1963* on September 26, 2002.

<sup>37</sup> Sexual Harassment in the Workplace, FWLD/ILO, 2001.

<sup>38</sup> No.1 of the Chapter on Rape, *Country Code of Nepal, 1963*.

<sup>39</sup> *Meera Dhungana for FWLD vs. HMG/Nepal*, Publication of Decisions relating to Human Rights, Special Issue, Supreme Court, 2002, p.129.

<sup>40</sup> Bill on domestic violence was first registered in 21<sup>st</sup> Session of the Parliament, passed by the House of Representatives on April 14, 2002 and sent to the National Assembly. However, the Bill lapsed as the House of Representatives dissolved on July 21, 2002.

<sup>41</sup> Bill on Trafficking first registered in 2000. Lapsed as Prime Minister resigned on July 21, 2001. Again registered on February 22, 2002. Bill passed in the House of Representatives but lapsed again as the House of Representatives dissolved on May 21, 2002. Activities Report on the study on effectiveness of existing laws and the institutions of mechanism to combat trafficking in women and children in Nepal.

- In line with the judicial interpretation of marital rape as an offence, the government should amend the rape law and include marital rape in the definition of rape and specifically prescribe punishment for the same. The amended definition of rape should include all forms of sexual abuse and should in no way be restricted only to vaginal penetration.
- The government needs to enact a separate law dealing with sexual harassment in both public and private spheres. This law should include definition of sexual harassment, victim compensation, confidential complaint mechanism, adequate punishment to the harasser, compulsory inclusion of policy on sexual harassment in every organisation's code of conduct.
- Sensitisation of the judiciary and Parliamentarians on the issues of discriminatory laws and their effects on the lives of women as well as Nepal's obligations under national and international law. At the same time trainings should also be conducted for conceptual clarity on equality.

## **ARTICLE 3 : The Development and Advancement of Women**

### **A. Prevalence of the Problem**

The government is responsible to promote women's right and their advancement. It has established institutions to promote women's rights, however, the government initiatives in establishing institutions do not match the level of their result due to lack of comprehensive strategies. Another important reason for their failure is the lack of clear mandate and budgetary constraint. The Government Report states that the Government has drafted a Plan of Action to implement CEDAW at the National level. Unfortunately, this Plan of Action is still in a draft form since 1999.

### **B. Implementation Status of Concluding Comments**

The Concluding Comments on the Initial Report mentions about the unavailability of reliable gender disaggregated data. Government has collected gender-disaggregated data on housing and population from the census 2001. It has played a significant role in identifying household level work of women. However, sectoral ministries, government departments and judiciary have not taken such initiative.

### **C. Critical Areas of Concern**

► **Institutional mechanism:** The National Council for Development of Women and Children established in 1995 is not functional since its inception. The National Human Rights Commission (NHRC) has been established by the enactment of *National Human Rights Act, 1997* (NHRC Act). Till May 2003, there have been 1229 human rights abuse cases filed at the Commission. In the fiscal year 2002-2003, 483 cases were filed, out of these cases 29 cases were related to women's human right. Out of the decided cases the government has not shown much initiative in the execution of the decision. The NHRC Act requires the government to seek the opinion of the Commission while sending reports about the international treaties. However, the government has undermined the commission while rendering such reports.<sup>42</sup>

The National Women's Commission (NWC) was established on March 8, 2002 to ensure women's rights by advising the government to effectively implement the international human rights instruments and to develop plans and policies specifically aimed at advancing women.<sup>43</sup> However,

<sup>42</sup> The Kathmandu Post daily dated June 10, 2002.

<sup>43</sup> Nepal Gazette, Vol. 51, March 7, 2002.

it lacks a clear mandate regarding the authority, as it was established under executive order without any legislative mandate and its work is duplicated with the mandate of Ministry of Women, Child and Social Welfare (MWCSW). Furthermore, it is more of a political body as the government on the recommendation of political parties nominated the members of the Commission.

The National CEDAW Committee (NCC), formed in late 1999 under the aegis of MWCSW, is not effectively functional as it is a mere Committee represented by various focal points of different ministries. Before this, CEDAW Monitoring Committee was established by the NGO network during the submission of first shadow report in early 1999, after which committee is monitoring the implementation of CEDAW.

A gender focal point/person has been established in various sectoral ministries. National Administrative staff college has established a gender unit. However main ministries like home and finance do not have focal point/person.<sup>44</sup> In case of Gender Focal Point only one individual has been given the responsibility of gender mainstreaming for the whole ministry. There needs to be a separate unit. There is inadequate coordination between gender focal point. Women Police Cell is also established only in 16 districts.

Women Caucus of Parliament was established for raising women-related issues in the Parliament. Unfortunately the caucus lacks equal status with other parliamentarian committees as well as clear mandates and resources<sup>45</sup>

► **Optional Protocol to CEDAW:** Government on December 18, 2000 signed the Optional Protocol and under the tenth plan, the government has committed for the ratification of the Optional Protocol within the plan period.<sup>46</sup> Even though there is an agreement amongst the Government agencies for the ratification of the Optional Protocol, Ministry of Law has recommended for the ratification with declaration on Article 8 and 9, that restricts the jurisdiction of the committee for inquiry process.

► **Gender budgeting:** The Gender Budget Audit of the Ministry of Finance under the headings of Health, Education, and Agriculture was carried out for the first time in Nepal in 2002 by the MWCSW in partnership with United Nations Fund for Women (UNIFEM) and UNDP with the goal to ensure gender awareness and gender mainstreaming in all aspects of budgeting at national and local levels and to ensure that government expenditure, source of revenues and allocation were monitored and evaluated from gender lens. The study analysed the budget from the standpoint of fulfilling international commitment especially in relation to CEDAW & the Beijing Platform for Action.<sup>47</sup>

The findings have shown that the retrogressive tax system. Particularly the practice of combining the wife's income with the husband's income for tax purposes impacts negatively on the status of women as women generally earn lesser than men<sup>48</sup>. Furthermore, Ministry of Finance considers all its macro-economic policies and tax measures as gender neutral and has paid no attention to gender aspects in its policies and taxation measure so far. There is no practice in the Finance

<sup>44</sup> Implementation Status of the Outcome Document of BPFA, FWLD, May 2003, Page 43

<sup>45</sup> Ibid

<sup>46</sup> Tenth Plan, 2003-2007, Planning Commission, pg. 450.

<sup>47</sup> It also examined whether the allocation of 25 percent of the budget to social sectors as specified in the Local Governance Act has benefited women. In this regard the focus was on two processes – (i) situation analysis of gender targeted programmes, budget allocation and whether the programmes were implemented or not and what were the reasons if they were not implemented; and (ii) assess the roles of donor agencies in programmes and budget allocations and what influence they have in these processes.

<sup>48</sup> Section 21 A of the *Income Tax Act, 1974* states that tax should be determined in joint income of the husband and wife in the name of husband.

Ministry of carrying out impact analysis of its macro economic and taxation policies on women or the poor in general.

The impact of budgetary policies on women as workers, farmers and food suppliers and consumers is not satisfactory. In general, rural women have been affected adversely as workers due to the new tariff regime, since the traditional manufacture and service sectors have been closing down because of the onslaught of the cheap factory produced goods and imports. Rural households, in general, have faced a loss because of high investment cost and low incomes from farm products. The withdrawal of fertilizer and other farm subsidies and the increasing prices of petroleum products due to the progressive devaluation of Nepalese rupees against convertible currencies are some causes of such loss. Since a majority of rural women survive without much consumption of market goods, they get no benefits from tax reduction. Also, women form only a minimal part of the organised labour force, both in the public and private sector, and they benefit very little from various kinds of social security schemes such as pension, insurance and other deductions and exemptions.

► **Legal aid** : Although the *Constitution of Nepal, 1990* and the *Legal Aid Act, 1997* provide free legal services to all destitute people, very few people actually have access to them. The *Legal Aid Act* has been formally implemented in only 13 districts<sup>49</sup> and is in the process of being implemented in 10 more districts. Moreover, the Act provides legal services only to persons who earn less than forty thousand rupees per annum. Thus, because of the unacceptably low threshold, many needy persons especially women are excluded and unable to access the justice system.

The judiciary also appoints a pay-roll lawyer to each court to aid workers in employment and salary disputes. Nepal Bar association along with many other NGO's are running legal aid services. Although NGOs have begun to offer legal aid to the destitute, the types of cases, which they are willing to handle, and their fields of expertise are limited.

#### **D. Gaps and Weaknesses**

- Inadequate financial and human resources in institutions to carry out the functions effectively
- Inadequate knowledge and skills to effectively develop gender sensitive indicators
- In case of gender budgeting, gender issues are gaining some recognition only in allocation part. In the absence of bottom-up planning and co-ordination of local level programmes the voices and needs of the excluded gets further diminished and remains un-addressed.
- The government run legal aid program is not only inaccessible to women due to the low ceiling, but the lawyers offering free legal aid services generally offer their clients very poor service as their salaries are low<sup>50</sup> and only inexperienced lawyers are willing to take up the job. Another problem facing the legal aid program is a lack of adequate paralegal training programs. Without a sufficient number of such training programs, the quantity of effective paralegals is limited and legal aid, which depends on paralegals, cannot succeed.

#### **E. Recommendations**

- NWC should be an independent statutory body to function effectively in protecting the rights of women and making government accountable.
- The government should abide by the decisions of the NHRC and take appropriate actions to

<sup>49</sup> Those districts are Sunsari, Dolakha, Baraha, Palpa, Banke, Gulmi, Sarlahi, Dhading, Jhapa, Dhanusha, Makwanpur, Kaski and Kanchanpur.

<sup>50</sup> The salary of court lawyers is approximately Rs. 2000.00 per month in the Supreme Court, whereas the pleader's salary is about Rs. 1500.00 per month in the Appellate Court.

do away with the continuing violations as suggested by the NHRC. Government should also seek the opinion of the members of NHRC while fulfilling its reporting obligation under various human rights treaties that Nepal is a party to.

- Equitable distribution and allocation of resources in the upcoming budget and other planning exercises and sensitisation at programme and sector level to understand the concept of gender budgeting. Gender budget needs to be done in all other sectors. Tax law that make tax assessment in the name of husband should be amended accepting women as an independent individual.
- The Government should ratify Optional Protocol to CEDAW without any declaration.
- Extend the number of women police cell in other district and build up capacity of such cell with adequate power and resources.
- Gender focal units need to be established in all ministries instead of focal person, building capacity of such units with clear mandate and adequate resources.
- Women caucus of parliamentarians needs to be recognized as one of the parliamentary committee with clear mandate and resources.
- Gender desegregated data needs to be maintained by all the sectoral ministries, government departments and judiciary.
- Need to revise Plan of Actions of CEDAW in the changed context, especially incorporating upcoming concluding comments on Second and Third Periodical Report.
- *Legal Aid Act 1997* needs to be implemented in all 75 districts and assure the quality of the provided services by building capacity of the lawyers and paralegals who provide such services. A basic legal education should be included in the curriculum of every secondary level school.
- Since gender-neutral legislation has not been able to achieve equality and address violence against women, gender auditing of all policies, laws and programs need to be carried out

## **ARTICLE 4 : Temporary Special Measures for Substantive Equality**

### **A. Prevalence of the Problem**

Women in Nepal have been disadvantaged and oppressed resulting in limited access to education, health, employment, and income generation as well as political and legal rights. Therefore, in order to uplift the position of women in the society, there is a need for strategic interventions by taking special temporary measures that guarantee the *de facto* equality of women. Article 11(3) of the *Constitution of Nepal, 1990* provides that the government can take special measures for the advancement of women. At present, Nepal has 150 special measures for women, spread in 56 different laws, including the Constitution in conceptual provisions, political and public participation, education, employment, health, violence against women, court procedure and gender justice and

<sup>51</sup> Special Measures for Women and Their Impact, FWLD, April 2003.

<sup>52</sup> Including provisions like:

- Reservation of at least 5 percentage candidature of political parties for women in elections to the House of Representatives
- Reservation of twenty percent of the seats in Local Self-Governments for women in the *Local Self-Governance Act (1999)*
- Reservation of at least one woman teacher in each government primary schools, etc.
- Shorter promotion periods for women in the *Civil Service (First Amendment) Act (1998)* Provision for women friendly working environments in the *Labour Act (1991) and Labour Rules (1993)*.

marriage and family life.<sup>51</sup> The government has taken few initiatives to accelerate equality between men and women.<sup>52</sup> The Government Report lists these initiatives, however fails to provide information on the effects of these special measures on the lives of women and the remaining challenges in providing these measures to women from different walks of life.

## B. Implementation Status of Concluding Comments

The CEDAW Committee recommended the State to take temporary special measures to ensure greater participation of women at all levels of decision-making.<sup>53</sup>

Except appointment of one woman in National Planning Commission (NPC), no other initiatives have been taken in compliance with Concluding Comments. Even when the government was in a position to appoint officials in municipalities, only two women have been appointed as deputy mayors out of the 58 municipalities.

## C. Critical Areas of Concern

► **Lack of conceptual clarity:** Lack of conceptual clarity related to the principle of equality amongst judiciary and lawmakers has created confusion reinforcing the protectionist approach, which further limits women's fundamental rights and freedom.

In judgements relating to foreign employment, the Foreign Employment Act, 1986<sup>54</sup> requires foreign employment agencies to take the approval of guardians and HMG/Nepal for women applicants before sending them for foreign employment, whereas the same provision is lacking for men.<sup>55</sup> The Supreme Court instead of repealing the discriminatory provision quashed the writ petition. The said decision was validated by the lawmakers as being special measure for women justified on the grounds of protectionist approach to stop women from being trafficked.

The recently enacted *Tribal/Indigenous Upliftment National Academy Act, 2002* states that only male members of the Academy are eligible for re-appointment whereas women members are not qualified for re-appointment. Tenure of male member is four years whereas that for women member is only two years. The reasoning behind this discriminatory provision, as given by the lawmakers, is to provide opportunities to more women and according to them this is a special measure for women.<sup>56</sup>

► **Special measures unable to reduce gender gap:** The Gender Development Indicator (GDI) shows that Nepal falls not only under the category of one of the lowest GDI in the world, but also has the lowest GDI amongst South Asian Countries. Although Nepal has 150 special provisions, most of these measures are inadequate to address the needs of women. This is due to the lack of a target based and time-bound special measures which fail to reduce the gender gap.

► **Limited nature of special measures contribute lack of gender-friendly environment and empowerment:** Out of the 150 special measures, around 70 provisions are related to a minimum reservation (generally one seat) or maternity leave. General assumption is that special measures mean reservation. Because of this, other types of special measures such as enabling environment, capacity building etc are lacking. This leads towards a lack of gender-friendly environment and women's empowerment.

## D. Gaps and Weaknesses

<sup>53</sup> Para. 35 and 36 of the Concluding Comments.

<sup>54</sup> Section 12 of the *Foreign Employment Act, 1986*.

<sup>55</sup> *Advocate Sabin Shrestha for FWLD vs. HMG/Nepal*, Supreme Court Bulletin 2001, Vol.19, p.1

<sup>56</sup> This provision has been already declared *ultra-vires* by the Supreme Court in *Advocate Basundhara Thapa vs HMG Nepal* Supreme Court Bulletin, 2003, Vol. 6 pg. 3



► **Weakness in implementation:** There is a lack of political will, in Nepal, to implement the existing special measures. Although the government has taken a number of special measures, there are several gaps in such measures. Therefore, the responsible agencies entrusted to implement the measures are able to bypass the laws and as a result, women are not getting the desired benefits.

For instance, in the elections for the House of Representatives, each political party is required by the Constitution to give at least five percent of their party tickets to woman candidates. In practice, to meet with the Constitutional provision, women are given tickets in only those constituencies where the chances of their winning the election are very less. In addition, such prescribed minimum allocation has been acting as the maximum limit and political parties are using this to their benefit.

► **Inadequate and ineffective special measures:** There are limited measures quantitatively as well as qualitatively for accelerating gender equality. For example, there are few special measures regarding health and safety of women at work place and the requirement of employers to make provisions for maternity. While most of these measures are not fully adequate in creating women-friendly work environment it is also a fact that whatever measures exist have not been properly implemented. For instance, the law provides breast-feeding breaks for nursing mothers, but in reality women are not able to benefit from this provision. This is because only enterprises in which more than fifty workers are employed are required to provide child-care facilities within the enterprises; and most enterprises generally do not employ fifty workers or more because they want to avoid the facility of child care as it is considered as extra liability.

► **Unable to benefit women of all categories equally:** Another reality is that in practice, existing special measures benefit only a small number of women. It has been observed that although on paper there are special measures for women, in reality, as there is disparity among women of different class, caste, ethnicity and economic status and all women are not able to benefit from the available special measures. However, existing special measures generalise all women in a single category and do not take into consideration the intersections of class, religion and socio-economic situations amongst women.

► **Limited areas and limited natures of special measures:** Only a few areas, such as education, employment and politics have been considered by the State as those that require special measures in favour of women.<sup>57</sup> This parameter is insufficient and has limited the State's accountability, as gender gap exists in every sector. Most of the special measures are based on reservation policy (quota system).

► **Lack of monitoring mechanism of implementation:** Besides enacting these legal provisions, the government has not taken any initiative to implement them or monitor their actual implementation. A study conducted by FWLD<sup>58</sup> shows that excluding a few positive exceptions the special measures are only on paper and have not made any difference to the lives of women.<sup>59</sup> Therefore, there is a need for a greater effort from the government for proper and strategic implementation with regular monitoring to ensure committed and effective implementation.

## E. Recommendations:

- There is an urgent need for conceptual clarity amongst legislators and the bureaucracy on issues of substantive equality and difference between corrective approach and protectionist

<sup>57</sup> Article 26 (7) of the Constitution of the Kingdom of Nepal, 1990.

<sup>58</sup> Special Measures for Women and Their Impact, FWLD, April 2003

<sup>59</sup> The study shows that the special measures have increased women's participation in politics especially in local governments, increased the number of women teachers and girls enrolment in school, measures in court proceedings has recognised women's right to privacy etc

approach. Training to judges, law enforcers and legislators on the aforementioned issues to increase awareness and provide clarity is a necessity.

- Target-based and time-bound new special measures in favour of women should be introduced together with phase out policy.
- Special attention should be given within special measures to advance the situation of women in disadvantaged groups such as indigenous women, rural women, *dalit* women, disabled women and women from minority communities.
- Additional special measures with phase-out policy should be introduced not only in education, health, political participation, and civil service but also in social, cultural and economic areas. There is also a need to introduce affirmative measures such as special measures for creating enabling environment and capacity building of women.
- It is recommended that adequate allocation of budgetary resources for effective implementation of programs relating to temporary special measures for the advancement of women be made.
- Monitoring mechanism to monitor the implementation of special measures should be established through legislation with representation from civil society along with different governmental agencies.

## **ARTICLE 5 : Sex Roles and Stereotyping**

### **A. Prevalence of the Problem**

Nepali Women, like women in many other countries, are entrusted the responsibility of carrying forward the culture and tradition from one generation to another. Even today women are glorified in the roles of caring mothers and docile wives, whose ultimate duty is to assure the happiness of the family. Women are generally expected to follow the orders of their husbands and in-laws. They are also given the dual duties of caretaker of the house and domestic labourer, from whom no economic benefits are derived. Women's roles are restricted to family and society. In contrast, men are given positions of supremacy and are considered to be the breadwinners of the family. The statistics show that men are the heads of 94.49 percent of households in Nepal.<sup>60</sup> In addition, the media reinforces the stereotypical roles of women by glorifying them in the roles of caring mothers, obedient wives and daughters, and remorseful widows.

Besides the subordination of girls and women, practices like child marriage, violence in marriage, dowry, *chhenpad*<sup>61</sup>, *deuki*<sup>62</sup>, *badi*<sup>63</sup>, and *jbuma*<sup>64</sup> are still prevalent in Nepalese society. In spite of the fact that there are legal provisions that eliminate customs such as dowry<sup>65</sup> and *deuki*<sup>66</sup>, such legal provisions are not implemented. Thus resulting in the continuation of these malpractices of women's oppression.

Although the Government Report acknowledges the presence of "various social and cultural patterns that stand in the way of women's full development,"<sup>67</sup> it addresses neither the issues fully, nor the

<sup>60</sup> Tenth Plan(2003-2007) , Planning Commission, p.440

<sup>61</sup> It is a practice in the western region of the country where women during menstruation and during delivery are kept separately in the cowshed as they are considered impure.

<sup>62</sup> Deuki is a practice in the far western region of Nepal, where a person who wishes to gain personal advantage offers a girl or woman to a temple.

<sup>63</sup> Badi is a community where the fathers and husbands live on the earning of the women earned through sexual services. Usually the fathers and the husbands prostitute their daughters.

<sup>64</sup> A tradition in the mountain region where second daughter of Sherpa community is sent to monastery at young age.

<sup>65</sup> Chapter on marriage of the *Country Code of Nepal, 1963* and the *Social Behaviour Reform Act, 1973*.

<sup>66</sup> Prohibited by *Children's Act, 1992*.

<sup>67</sup> Paragraph.141 of the Government Report.

challenges in changing such gender stereotyping. Furthermore, the report does not consider the issue of domestic violence, which is on the increase in society. Although the report recognises the need to eradicate practices like *deuki*, *jbuma*, *kumari* it has not stated any initiatives that have been taken or need to be taken to do so.

## B. Implementation Status of the Concluding Comments

The CEDAW Committee expressed its concern on the continuing traditional and cultural practices of *deuki* and *badi* that are detrimental towards women and girls. The Committee also recommended the government to initiate policies and programs to remove these practices.

The government has failed to undertake any programs and policies to eradicate these harmful practices. However, the Tenth Plan in its Strategy on Gender Equality states that the state needs to enact laws and implementation strategies in order to eradicate harmful traditional practices such as witchcraft, *jbuma*, *devaki* and *badi*.<sup>68</sup>

## C. Critical Areas of Concern

► **Gender stereotyping of roles :** As a result of religious practices and the stereotyping of gender roles, women often consider themselves to be inferior to men. Reinforcing such attitudes not only limits the personal development of women, but also results in a lack of self-confidence. Moreover, they often have little or no opportunity to develop their individual identities. Due to the stereotyping of gender roles, girls' education is given lesser importance than the education of boys. Instead of gaining a formal education, girls are generally trained to do household work. Thus, in future it leads to their economic dependency on the family thus reinforcing the stereotypical roles. In addition there is an ongoing review of primary level schoolbooks to change the portrayal of men and women away from stereotypical roles. Though the review started seven years before, there are only sporadic changes in the textbooks and there is no proper policy for doing so.

► **Harmful effects of traditional practices:** As a result of traditional practices like *deuki*, *badi*, and *jbuma*<sup>69</sup>, various rights of girl children are violated importantly, right to education, right to live a dignified life, right to choice in marriage etc.<sup>70</sup> In addition to these practices, practices such as *cheupadi* are not only discriminatory, but also affect the health and nutritional needs of women. Women and girls are not allowed to enter the kitchen or even touch water during menses and they are not allowed to consume milk and milk products. In addition, upon childbirth they are not allowed to eat green vegetables and pulses on the pretext that it is harmful to the newborn child. Furthermore, as a result of the practice of *cheupadi*, in the western region of Nepal, the woman has to deliver the child in a cowshed without any assistance from Trained Birth Assistants or family members. In many cases this leads to complications during deliveries that result in the death of women.

In February 2001, a woman from Aacham District faced severe complications including high fever and continuous bleeding as a result of giving birth to a child in the cowshed alone. However, nobody in her family came to her rescue and her husband who was away in Nepalgunj was informed only after 2 days. Due to the geographical distance the husband could reach the village only after 2 days. Upon her husband's arrival she was immediately moved to the District Hospital in Aacham, which referred her to hospital in Dhangadi due to unavailability of services to manage the complications. However, on the

<sup>68</sup> Chapter on Women, Children and Social Welfare, Tenth Plan (2003-2007), Planning Commission, p.448

<sup>69</sup> *Jbumas* are usually involved in taking care of the monasteries, however, there are reports that in few cases, these girls have been forced to provide sexual services to priests.

<sup>70</sup> Though these issues had been raised in the Shadow Report in 1999 and concluding comments were received, as no steps have been taken to implement the Concluding Comments, we found it is necessary to raise these issues again in order to obtain stronger Concluding Comments on harmful traditional practices this time.

way to the Dhangadi Hospital, the women died as a result of the high fever and loss of blood.

*Personal experience shared by Dr. Aruna Upreti, a gynecologist working for women's rights*

► **Torture under the allegation of so called witchcraft:** Women in rural Nepal are being subjected to mental and physical torture for allegedly practising witchcraft. The victims are often paraded naked and are forced to do other inhuman acts such as being forced to consume human urine and faeces. This is done with a belief that once a witch consumes human stool she cannot practice witchcraft. Such incidents are on rise. A report of the fact-finding mission on alleged witchcraft shows that some women have been murdered and some women have committed suicide unable to bear violence perpetrated against them.<sup>71</sup> There are reports women who are alleged to be witches are tried to be sacrificed by the perpetrators under the belief that the people who are affected by their so called black magic, will be freed from the negative influence.<sup>72</sup>

#### **D. Gaps and Weaknesses**

► **Failure of government to implement the recommendation of NHRC :** Recently, the NHRC sent recommendations to HMG/Nepal for providing compensation to thirteen women who were condemned and punished for practicing witchcraft.<sup>73</sup> The NHRC has asked the government to provide Rs. 30,000 (approx. US\$ 405.00) to each of the victims and Rs. 59,000 (approx. US\$ 797.00) for one amongst them, who died shortly after the torture. However, the government has failed to implement the said recommendation of NHRC.

► **Social and cultural biases:** Right from childhood, girls grow up in a gender-biased culture. The girls are expected to look after the house and siblings from a very young age. They have little or no preference in matters of food, education, and health care. Thus, because such values are embedded in their minds from childhood, they internalise the socially acceptable norms of behaviour that give them little preference to make decisions about their own lives.

► **Religion as a means of subordination:** One of the important reasons for the subordination of women is based in the Hindu religious philosophy. Only sons are considered eligible to sustain the lineal continuation of a family and perform funerals and after death rites of parents. This custom leads to the subordinate status of daughters. In addition, the notions of purity and impurity, which are dominant in Hindu religion, are even more stringent in relation to women.<sup>74</sup> Menstruation and childbirth are considered as impure, thus according a lower status to women.

► **Law reinforces stereotyping:** The existing discriminatory laws and practices, as well as the lack of initiative on the part of the government to do away with such discriminatory laws and practices, intensifies the stereotyping of women into gender roles.<sup>75</sup>

► **Stereotypical portrayal of women by media:** The continuing portrayal of women in stereotypical roles in newspapers, advertisements, and serials reinforces the notion that women are inferior to their male counterparts.

#### **E. Recommendations**

- The government needs to take strong and effective steps to do away with the gender stereotyping of roles such as- awareness programmes to change the attitude of the society towards women

<sup>71</sup> Fact finding mission conducted by FWLD with support from MGEP, 2002

<sup>72</sup> Ibid.

<sup>73</sup> Gorkhapatra Daily, June 7, 2003

<sup>74</sup> See Jocelyn Krygier, "Caste & Female Pollution" in Women in India and Nepal, Michael Allen & S. N. Mukherjee, Eds., Sterling Publishers Pvt. Ltd., New Delhi, 1990, pp.76-97

<sup>75</sup> Refer to Article 2 of this Report for details on existing discriminatory laws.

- as well as to change perception of women towards themselves, change in school curricula etc.
- Empower women by making them self reliant through income generating schemes.
  - Specific law to prohibit and penalise practices such as *deuki*, *badi*, *jbuma*, *cheupadi* and witchcraft, and make programmes for the rehabilitation and reintegration of girls/women who are victims of these practices.
  - Policy intervention to change deep-rooted patriarchal biases such as the provision of paternity leave for sharing equal responsibility in taking care of the child to change the gender stereotypical role that only mother is responsible for the upbringing of the child.

## **ARTICLE 6: Trafficking of Women and Exploitation of Prostitution**

### **A. Prevalence of the Problem**

Trafficking remains a serious problem in Nepal despite several initiatives from civil society, aid agencies and the government. The main reason for trafficking still remains illiteracy, subordinate position of women and lack of employment opportunities. More recently, trafficking has been aggravated by the internal armed conflict in the country. Globalisation, on the one hand has created certain job opportunities, on the other it has also aggravated sexual exploitation of women and children.

Young girls are presumed to be free of HIV virus and therefore, are in demand in the sex market. Many women and children who have been rescued from the brothels have contracted HIV/AIDS. In addition, the law and enforcement agencies are ineffective in encouraging survivors to report their cases against trafficking.

The NGOs in Nepal have been very active in prevention, rescue, rehabilitation, reintegration, and law and policy reformation regarding trafficking. There has been consistent effort from the civil society in identifying prone areas and conducting awareness raising and border surveillance, skill training, health care, income generating opportunity, legal and counselling support for survivors. The Government Report mentions the various initiatives it has taken to control trafficking.<sup>76</sup>

### **B. Implementation Status of the Concluding Comments**

The Committee in its concluding comments urged the government to take steps to review exiting laws on trafficking in compliance with the convention and ensure its effective implementation. Further the committee urged the government to initiate bilateral cooperation, establish repatriation and rehabilitation programs and support services for the victims of trafficking.

The government has taken some initiatives such as drafting of the Human Trafficking (Control) Bill with provisions for rehabilitation. However, the Bill has some serious problems. Though the Committee has urged to initiate bilateral cooperation, so far no such measure has been taken by the government of Nepal to address the issue of Trafficking.

### **C. Critical Areas of Concern**

► **National Plan of Action and Task Forces** : The national plan of action<sup>77</sup> against trafficking

<sup>76</sup> Which includes developing a national plan of action against trafficking, establishing national and district task forces, establishing a women self reliance and rehabilitation home. Women cells have been established in police headquarters. Importantly, the government has also developed a Human Trafficking (Control) Bill in 2001.

<sup>77</sup> National Plan of Action against Trafficking developed by Ministry of Women, Children and Social Welfare.

<sup>78</sup> Ibid.

though progressive is not linked with the national health policy or education policy to mainstream the issue of trafficking. The district task forces are mandated to identifying trafficking prone areas and conduct awareness raising campaigns, to collect data on trafficking of women and children, to disseminate trafficking related information and data, and coordinate with all stakeholders to address the issue of trafficking.<sup>78</sup> However, the district task force formed by the government is not active and not able to conduct its activities, which has been mentioned in the work plan.

► **Existing Law and Human Trafficking Control Bill** : The existing law<sup>79</sup> is seriously inadequate to address trafficking, as it does not even include a definition on trafficking, it fails to view trafficking in a comprehensive manner and lacks in human rights friendly measures. Though the present law does not criminalize prostitution, the study<sup>80</sup> conducted by Central Women Cell and FWLD on the Abuse of Commercial Sex Workers showed that there are high incidence of abuse and harassment to sex workers. They were arrested, sexually and physically abused in the custody and were bribed exorbitant amount for their release. Also the police threatened the sex workers to expose their work to their children and were forced to give money and jewellery.

The Human Trafficking Control Bill therefore is a welcome effort. The Bill has tried to be progressive than the existing trafficking law by including *in camera* hearing for survivors, compensation to the victims, etc. However, the Bill focuses on combating trafficking from a moral perspective rather than a human rights perspective and confuses trafficking with prostitution and criminalizes voluntary prostitution without understanding its impact on the victims.

► **Ratifying and Implementing Regional and International Human Rights Instruments** : Though the government of Nepal voices its commitment to combat trafficking, its seriousness is seldom reflected in action. Though the South Asian Association for Regional Cooperation (SAARC) Convention on trafficking was adopted in Kathmandu in January 2002 it still has not been ratified. The SAARC Convention on trafficking can be a strong regional tool to address trafficking within the region, as there are evidences that most of the women and children are trafficked to India for prostitution and labour intensive work. Despite the advocacy of civil society to ratify the convention the government is silent about it.

► **Rehabilitation Program of Government** : Rehabilitation of trafficking survivors has been sole responsibility of the NGOs. The government has not taken any interest, until recently when the MWCSW started a rehabilitation centre, however this centre only provided some vocational training and later it also stopped. There is lack of psychosocial counselling to the victims of trafficking. Though the government has initiated a residential vocational training to the possible victims from prone area, it is not very effective.

► **Ineffectiveness of Law Enforcers to address trafficking** : According to a study<sup>81</sup> conducted by an NGO in 2001 to examine the effectiveness of law enforcers, it showed that the police, government attorney and judges are not effective in their roles due to number of reasons. The police treat the trafficking victims as criminals and are harsh towards them when the victims approach them for reporting. This has discouraged reporting as not more than 150 cases have been reported though it is estimated that 5,000 to 7,000 women and children are trafficked every year from Nepal. There is lack of coordination between government attorneys and police that results in weak argument from the government attorney's side and consequently victims are denied justice. The Judges seldom follow their own precedent and can be inconsistent in their decision. Trial delays are commonplace in Nepalese judicial system. It was seen that it often takes years to

<sup>79</sup> Human Trafficking (Control) Act, 1986.

<sup>80</sup> Report on Focus Group Discussion on Abuse of Commercial Sex workers and Homosexuals, September 2003.

<sup>81</sup> Effectiveness of existing laws and institutional mechanism to combat trafficking in women in Nepal, conducted by FWLD, 2001.

<sup>82</sup> Ibid.

decide a case even at the trial level and in Supreme Court there were only 15.3 cases decided whereas 84.7 cases were pending.<sup>82</sup>

► **Poverty, Employment Opportunities and Education** : As trafficking takes place due to poverty and unemployment, innovative efforts need to be focused on generating employment opportunities for the youth. Also education is important and though the government has made these efforts it has some adverse effects. The girl children are provided with free education however, this initiative did not result in the increase in girl children's admission in schools. This is because the girl children are often burdened with house chores and parents cannot afford to send them to school compromising on the house chores.

#### **D. Gaps and Weaknesses**

- National Plan of Action on Trafficking not effectively implemented.
- Both the existing laws and the Human Trafficking (Control) Bill lacks a human rights perspective and is devoid of human rights-friendly provisions such as adequate compensation to victims, in camera hearing, victims and witness protection mechanism. As a result of the political instability, the Bill which was registered in the Parliament has lapsed as the Parliament dissolved in March 2002.
- Law enforcers are inadequately manned with resources and inadequately trained to deal with the cases of trafficking. In addition they are not adequately aware of human rights issues as well as human rights instruments that Nepal has ratified.
- Failure of government to generate effective employment programmes.
- Failure of government to address the problem of open borders with India, which is one of the main reasons for easy passage for trafficking of victims.

#### **D. Recommendations**

- Remove the provision of criminalizing voluntary sex work from the Human Trafficking (Control) Bill and incorporate appropriate victim justice mechanism and reintroduce the Bill.
- Ratify the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. Also Ratify the UN Protocol to Prevent, Punish and Suppress Trafficking in Persons, Supplementing the Organised Crime Convention.
- Strengthen the national task force and district task force with full time committed members, infrastructure and resources to carry out the activities.
- Conduct research to collect data on the trafficked persons every year to identify the prone areas and to know whether trafficking is increasing or decreasing and formulate specific programmes and policies.
- Provide training to law enforcers on international human rights instruments and other human rights and norms to strengthen access to justice for victims of trafficking.
- Generate employment opportunities inside the country so that women and girls can earn their living in the country and don't have to make difficult and dangerous choices.

**ARTICLE 7 : Women's Participation in Political and Public Life**  
**ARTICLE : 8 Women's International Representation**

## A. Prevalence of the Problem

Women, representing approximately 50% of the population, have had virtually no voice in

**Table 1: Women's Representation in the Civil Service**

Description	Total	Women	% Women
Special and First Class	647	26	4.02
Class Two	2356	113	4.80
Class Three	6514	348	5.34
<b>Total</b>	<b>9517</b>	<b>487</b>	<b>5.12</b>

Source: Ministry of Women, Children and Social Welfare

**Table 2: Women's Representation in the Judiciary**

Description	Total	Women	% Women
District Court	133	3	2.2
Appellate Court	90	2	2.2
Special Court	3	-	0
Supreme Court	15	1	6.2
<b>Total</b>	<b>235</b>	<b>6</b>	<b>2.5</b>

Source: FWLD

influencing the pace and priorities of their country's development so far, as women's representation in all three organs of the state i.e. - legislative, judiciary and executive is negligible. Due to women's low representation in all decision-making bodies of the government (Table 1 and 2), women's social, political, economic and legal rights are most likely to be overlooked in policy planning and implementation and thus it has become difficult for women to break away from the Vicious Circle of poverty and disempowerment (Figure 1).

The policy initiatives and various measures adopted by the government for bringing about gender equality since restoration of democracy are noteworthy. They are:

- Establishment of a separate ministry, MWCSW as a focal agency for bringing about social and gender equality.
- *Civil Service Act, (1993 Amendment):*
  - ♦ Age bar for entry into CS reduced to 40 years for women as against 35 for men
  - ♦ Probation period for women reduced to 6 months as against 1 year for men
  - ♦ Placement of spouses in the same district if both husband and wife are in government service
  - ♦ Minimum service period for eligibility for promotion reduced by one year for women
- 11th Amendment to the *Country Code of Nepal, 1963*
- *Political participation:*

**Figure 1: Vicious Circle of Disempowerment**

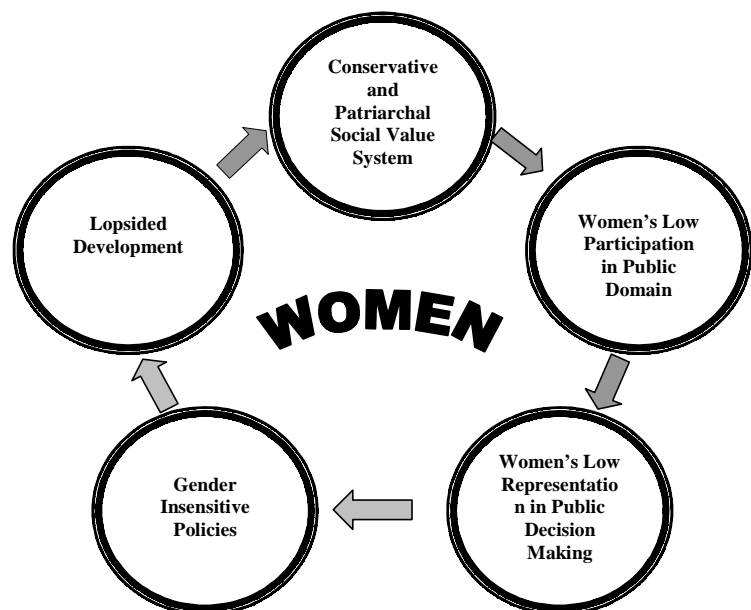


Figure 1 clearly demonstrates how women are confined within the set socio-cultural pattern and trapped in the consequent Vicious Circle of Disempowerment. Women have limited access to opportunity in different fields, confining them to their existing condition where they lag behind their counterparts in all sectors.



- ◆ 20% reservation for women in ward level elections
- ◆ At least one reserved seat for women in village and district levels
- ◆ At least 5% candidacy for women in all political parties for national elections
- ◆ At least 3 members from the elected members at the National Assembly
- ◆ Ninth Plan emphasis on increasing women's access to political, economic and social sectors
- ◆ Tenth Plan advocates affirmative action to increase women's role in public offices, administration and community and community level participation and management.
- ◆ Formation of NHRC, NWC and National Dalit Commission
- ◆ Collaborative and partnership working modality initiated between MWCSW and the non-governmental organizations
- ◆ Formation of a Caucus of Women Parliamentarians
- ◆ Present government's proposed reforms.

All these initiatives have brought significant awareness of the need for women's broader participation in the national development process and specifically on their representation in decision-making positions.

## **B. Implementation Status of Concluding Comments**

The implementation status has been dealt under Article 4 of this Report.

## **C. Critical areas of Concern**

► **Lack of women's representation in decision-making levels:** For the first time, a woman has been appointed as a Member in the NPC that is the apex policymaking body of Nepal. In general, there is a lack of women at decision-making levels in various constitutional bodies and commissions formed by the government. In spite of the fact that Nepalese women have been in the front-line in the struggle for democracy, very few of them have had the opportunity to occupy influential political positions<sup>83</sup>.

Women's representation in government delegations at the international meetings and seminars is negligible. So far, the only case where women have led a delegation to international conventions is on Women and Development.

► **Women's political participation:** All of the four major political parties have made verbal commitment of fielding 10% women candidates for the house of representative elections. However, none of these major parties fielded more than 8% women candidates in the national election of 1999. Women's representation in central committees (executive) of all major parties in Nepal is less than 10% which portrays a very poor qualitative as well as quantitative representation of 50% of the population in the major political arena of the country. As a result, women's (and other socially excluded group's) representation in the legislative body is pathetically low at present, casting a negative impact on the whole development process. Percentage of women candidates in national elections is very low (6.39%), and still lower is the percentage elected (5.85%). It is felt that women are usually given candidacy in weak constituencies, which results in their losing the election and decreases the percentage of elected women. When the full house was in operation, women's representation was slightly better in the National Assembly or the Upper House with 15% occupancy (9 out of 60) of seats.

► **Women's participation in local self-government:** There is a provision of 20% reservation

<sup>83</sup> Pro-Poor Governance Assessment Nepal, 2001, Enabling State Program, pg 26

<sup>84</sup> Source: Ministry of Local Development/HMG/Nepal.

for women in local bodies. Though this quantitative provision is in place, corresponding qualitative improvements in women's participation is yet to happen. Only a very small percentage of the 40,000 women thus elected are in decision-making positions, the rest are all Ward Members. Moreover, these elected women have not been prepared for their roles and responsibilities, and neither have they been allocated any specific role formally as people's representative. Local women leaders have frequently publicly complained of being marginalized and given no roles in local governments. In the process of appointing officials in the municipalities, until elections can be conducted, none of those appointed as Mayors are women. The case for Deputy Mayors is slightly better, with 4% of those appointed being women.<sup>84</sup>

► **Governmental and non-governmental partnership:** A government- non-governmental partnership developed in this sector mentioned in Government Report is indeed exemplary and worthy of mention.<sup>85</sup> This partnership has brought about significant progress towards building a strong pressure group for women's empowerment. However, there is a lack of unity and solidarity among women political leaders as well as activists, which severely restricts women's effective political participation. A caucus of women parliamentarians was formed to raise their voice for unified cause, but this has not been able to make much impact because of the dissolution of the House of Representatives shortly after forming this caucus.

#### D. Gaps and Weaknesses

► **No impact analysis of the special provisions :** The Government Report enumerates the positive initiatives the government has taken but it has not assessed the actual impact of these initiatives. While some initiatives are not adequate to address the rampant inequality in all fields, others lack effective implementation. For instance: the provision of reservation made for women at various levels (20 % in local governments, 3 in National assembly, and 5% candidacy in the House of Representative elections), though meant to be minimum, has actually come to set a ceiling against their further representation. This proves a lack of political will and commitment towards integrating women into mainstream politics.

Similarly, no substantial improvement has taken place even after special provisions were made for women in the *Civil Service Act (1993 Amendment)* in terms of entry regulations, career development and service conditions, as they seem to be impractical in the present bureaucratic setup. So far, only one-woman officer has benefited from the special provision regarding promotion<sup>86</sup>. Though Public Service Commission (PSC) is presently considering the option of revising the curricula of PSC examinations from gender perspective, no decision have yet been taken<sup>87</sup>.

► **Weakness of the government initiatives:** Initiatives (plan of actions, policy decisions, development plans' emphasis, gender budget systems, etc) taken by the MWCSW are not taken seriously and have not been adopted by other ministries. While MWCSW has a cross-sectoral mandate, other ministries have not accepted this and do not comply with its decisions. When an international convention was held in Nepal on children's issue, instead of MWCSW, the Ministry of Finance organized it. Despite all state commitments, there has been a substantial reduction in the budget allocated for women's education, primary to higher levels<sup>88</sup> from this year.

The financial and human resource constraint mentioned by the government report<sup>89</sup> is not an

<sup>85</sup> Paragraph 46 of the Government Report

<sup>86</sup> Engendering Nepalese Civil Service with Specific Reference to Promotion and Entry in Administrative Services, MGEP/HMGN, Page 33.

<sup>87</sup> Informal communication with PSC official.

<sup>88</sup> Department of Education Official as quoted in Kantipur (national daily) of 8 September, 2003

<sup>89</sup> Paragraph 48 of Government Report.

insurmountable problem. There is a high inflow of foreign aid from donors (international, bilateral and INGOs) for women's development that the government can easily mobilize effectively in partnership with the non-governmental sector.

► **Establishment of commissions by executive order:** NWC and National Dalit Commission were constituted through executive decision without any legal enactment. Members of the NWC were nominated only from various political parties without nominating women professionals who have contributed substantially in the field of women's rights and their development. This indicates the low importance the government attaches to these commissions, and its repercussion on the power they are likely to wield.

► **Lack of gender sensitive approach:** The lack of women's (and other disadvantaged group's) political participation have been reflected in the past gender neutral policies adopted by the government leading to the country's gender and socially imbalanced development. As mentioned earlier, the government has proposed its reform measures during peace talks with the Maoists, and also during public announcements at various programs. Unfortunately no concrete steps have been taken in this direction so far. One important fact to be noted is that while forming caretaker local governing bodies, the number of women nominated is negligible, demonstrating the government's intentions.

► **Election manifestoes only on paper:** Despite all major parties pledging in their election manifestos to "*make special legal provisions for the protection of women's rights and interests, provide equal rights to women in areas of social life, increase women's participation at the public or policy-making level and repeal or amend all existing discriminatory laws*"<sup>90</sup>, little changes have taken place.<sup>91</sup> Women's empowerment is still a popular development jargon to be used by political leaders in public speeches, rallies and election manifestos in order to capture votes. Despite written public commitment from the leaders of four major political parties for enhancing political leadership of women<sup>92</sup> in their respective parties, no substantial reform measures have been undertaken.

► **Absence of voting culture:** Undesirable political activities during elections discourage women from exercising their voting rights. Absence of gender-disaggregated information regarding elections has also made it impossible to address gender related problems so as to encourage women's participation in elections.

## E. Recommendations

- Introduce temporary positive measure of reservation of 33% (critical mass) representation in all levels of power structure from grassroots to national level at all levels of governments and political parties for women, with their functional participation ensured. In order to make this step successful and sustainable, certain activities must be undertaken simultaneously as follows:
- Provide increased educational opportunities from primary to higher levels for women and other disadvantaged groups.
- Initiate integrated programs to improve women's conditions all over the country

<sup>90</sup> Exploratory Activity Report on Enhancing Leadership Development of Women in Major Political Parties of Nepal. IHRICON, pg. 28.

<sup>91</sup> The same can be said of the various indigenous and other disadvantaged groups that make up Nepal's population. Though all parties have their own women's and disadvantaged people's wings, which are supposed to act as a pressure group for enhancing their representation, and furthering their particular causes, no significant changes have occurred in any major political party so far.

<sup>92</sup> *All Party Declaration on Enhancing Political Leadership of Women* signed by leaders of the 4 major political parties on 17 March 2002.

- Launch massive gender awareness programs nationally, highlighting the benefits accruing to family, community and nation from women's participation in public affairs.
- Conduct effective capacity building/leadership training for all women and other disadvantaged groups' representatives (local and national) as well as members of political parties. NGOs can also be mobilized for this purpose.
- Modify Public Service Commission examination curricula to make it more conducive to the present context.
- Conduct impact assessment of special PSC preparatory training courses for women and modify to make them more effective
- Conduct voter's education programs regularly
- Conduct gender sensitizing training for all officials responsible for conducting elections
- Enforce strict implementation of the Code of Conduct during elections.
- All discriminatory laws should be repealed or amended.
- Enactment of law on political parties.
- Sufficient allocation of budget for activities relating to women and socially disadvantaged groups
- The MWCSW should be strengthened to enable it to take a more pro-active role in the field of women's development. National Women's Commission and National Dalit Commission should also be legally empowered to successfully achieve their targeted objectives. A one-window system should be introduced to launch a coordinated and effective program for women's empowerment. This will lead to optimum use of resources, both internal and external, and avoid duplications and wastages. The modality of operation should be developed with the involvement of all three stakeholders - government, political parties and the non-governmental sector, including such organized groups as the trade unions, etc.
- A consensus should be developed among all women political leaders of different parties on issues affecting women. A strong and effective caucus of women parliamentarians can serve to convince male party colleagues of the need to change their outlook in favour of gender equality.

## **ARTICLE 9 : Nationality**

### **A. Prevalence of the problem**

The Government of Nepal committed itself to changing the Nationality laws upon the ratification of the CEDAW Convention and granting women equal rights in their ability to acquire, change or retain their nationality. However, even after 12 years of ratification, there are no changes in the discriminatory citizenship provisions. Women can acquire citizenship only through their father or husband and cannot obtain citizenship if they are unable to procure the consent of their father or husband. As a result the law fails to recognize women's individual identity and women are deprived of the right to nationality, right to family life, right to choose residence and the right to transfer their citizenship to their spouse or children.<sup>93</sup>

### **B. Implementation Status of Concluding Comments**

The Committee urged the government to amend as a matter of priority discriminatory laws including nationality laws.

<sup>93</sup> Discriminatory Laws in Nepal and their Impact on Women: A Review of the Current Situation and Proposals for Change, FWLD, August 2000, pp. 31-37.

However in reality the government has failed to take any steps to do away with the discriminatory provisions of nationality law, those are continuing to violate rights of women.

Article 9(1) and (2) of the *Constitution of Nepal, 1990*, Section 3(1), 4 and 6(2) of *Nepal Citizenship Act 1963*, provide that a Nepalese citizenship of descent may be conferred only subject to the condition that the father of the person in question is a Nepalese citizen at the time of acquiring Nepalese citizenship. Therefore, a woman cannot grant citizenship to her children.

Article 9(2) of the *Constitution of Nepal, 1990*, provides that every child who is found within kingdom and the whereabouts of whose parents are not known, until the father of the child is traced, is considered a citizen of Nepal by descent. This provision is discriminatory as the law recognizes the child only through its father and the mother's role in giving birth to the child is totally undermined.

According to Article 9(5) of the *Constitution of Nepal, 1990*, a woman of foreign nationality who has married a Nepali citizen, and who has initiated the proceedings for renunciation of her foreign citizenship, may acquire Nepali citizenship. However, this provision does not apply to a man of foreign nationality, as the law does not permit husbands of foreign origin to acquire Nepali citizenship. This also affects the children born out of such wedlock, as the woman cannot transfer her citizenship to her children.

**A**mita (pseudonym used) married a Dutch on the condition that the couple will continue to live in Nepal. Her husband left his family and gave up his flourishing career in Holland to join his wife. They have three children and life was smooth. Their children were issued travel documents when required. However, life has taken a sad turn for this family recently when their eldest daughter who was awarded a scholarship in China was refused travel documents and instead asked to go to her father's country of origin. As a result the daughter is unable to pursue her education and the whole family is thinking of moving to Holland.

**Source: CAC Nepal, 2003**

In addition, the government has also failed to amend Section 4(1) (a) of the *Birth, Death and Other Personal Incidents (Registration) Act, 1976*, which requires the birth of a child to be registered by the head of the family and in his absence by the eldest major male member of the family. In many cases the father refuses to register the birth of the child, which results in the statelessness of the child.

Furthermore, even the High Power Committee of the government formed to review the existing discriminatory laws against women, failed to highlight the discriminatory nationality provisions under the existing law and the need to amend these provisions.

### **C. Critical Areas of Concern**

In addition to the existing problems relating to citizenship that have been highlighted in the sections above in this chapter and the Shadow Report submitted to the CEDAW Committee in 1999, there are other areas of concern that need to be highlighted. They are as follows:

► **Children affected due to mother's inability to provide citizenship** : The discriminatory nationality provisions not only violate women's basic rights but also violate the rights of the children as they are at risk of statelessness in cases where the father denies the birth of the child.

<sup>94</sup> Section 3(1), 3(4) and 3(6) of *The Citizenship Act, 1963*.

Especially, the children of sex workers and *badi* women face severe consequences because their mother cannot register their birth, or confer citizenship which hinders them from getting admission to the schools as a birth certificate is required for admission to school.

► **Restriction in freedom to choose residence and domicile :** A woman cannot transfer citizenship to her children and spouse, which denies women the right to choose the residence as the Nationality law denies a mother and a wife the right to provide citizenship.<sup>94</sup> The citizenship certificate only recognizes a father or a husband, denying the independent existence of a wife or a mother as citizen of the country. Denial of citizenship rights to foreign husbands means that a woman very often has to choose between her marriage and her place of residence because the social assumption is that after marriage she belongs to her husband's side of the family.

► **Negative interpretation by the judiciary :** The judiciary, which is active, has failed to take any initiatives to change the discriminatory provisions relating to Nationality. For instance in the case of *Chandra Kant Gyawali v. HMG/Nepal*,<sup>95</sup> the petitioner challenged discriminatory provisions of the Nationality law as going against the spirit of equality guaranteed by the *Constitution of Nepal, 1990*.

In this case though the court said that Article 88(1) of the Constitution gives the right to the judiciary to declare laws that are inconsistent with the Constitution as void and repeal them, it said that the judiciary does not have the right to challenge the validity of the provisions of the Constitution. In addition, the judges also stated that, though Nepal is a party to the CEDAW Convention and needs to amend, enact or repeal laws in accordance to the principles of CEDAW, and is bound by the Treaty Act 1990, however, this applies only in case of other laws and does not receive priority in case of the Constitution thereby quashing the case.

#### D. Gaps and Weaknesses

- **Lack of initiatives from the government:** As mentioned earlier, the government has not been taking the issue of Nationality and birth registration seriously.
- **Discriminatory laws:** The Constitution, which on one hand guarantees equality to all citizens without any discrimination on the basis of race, religion, caste, language, sex etc. discriminates against women in the provisions of nationality and birth registration.
- **Socio-cultural bias:** The prevalent socio-cultural bias towards woman is also responsible for the continuing discrimination of women, which considers women as second-class citizens.

#### E. Recommendations

- The government as a matter of utmost priority should amend provisions relating to nationality and birth registration such as Article 9(1) and (2), (5) of the *Constitution of Nepal, 1990*, Section 3(1), (4) and Section 6(2) of *Nepal Citizenship Act 1963*, and Section 4(1)(a) of the *Birth, Death and Other Personal Incidents (Registration) Act, 1976* and women should be able to grant citizenship to their spouse as well as children.
- Children who are deprived and displaced, for instance children who are born to unwed mothers,

<sup>95</sup> Decision no. 7044, NKP, 2001, Vol. 43, p. 615

victims of trafficking, should obtain citizenship with the recommendations and help of NGO's, Social welfare organizations and Village Development Committees (VDC).

- Mothers name should be included with the father's name in the Birth Certificates, Citizenship Card, and School Certificates.
- Judiciary needs to be sensitized through trainings on the sensitive issues like nationality and the effects of discriminatory nationality laws on the lives of women. It also needs to be reminded that it has been given the right to declare void the laws that go against the basic principle of the Constitution of Nepal, which is the principle of non-discrimination and equality.

## **ARTICLE 10: Education**

### **A. Prevalence of the Problem**

The breakdown of literacy rate of women and men in Nepal is 42.8% and 65.5%. Literacy among adult population reveals that less than half the percentage of women are literate as compared to men. The disparity between the enrollment of boys and girls in primary school in Nepal is one of the highest in the World. The net enrollment rate in primary schools for boys is 79.4% and for girls 61.2% according to Ministry of Education and Sports (MOES) data of 2000.<sup>96</sup> Completion rates are much lower for girls (only 42%) than for boys (65%). Although girls' enrollment is on the rise, the gender disparity has not significantly reduced. Women's adult literacy is only 34% while men's is 74.5% and this gender disparity is increasing. This is an indication that the underlying causes of disadvantage and discrimination against women and girls are not being addressed meaningfully. There is still a lack of women teachers in about 40% of Nepal's primary schools. And strong social and political barriers obstruct female teacher recruitment in school. Despite intensive school construction by government and communities in recent years, the closest primary school is still too far away for thousands of girls to attend.

### **B. Implementation Status of Concluding Comments**

The Concluding Comments urged the government of Nepal to introduce and implement policies and programs geared at free education for all girls at primary level and to also start vocational and skill development training, facilitation of women's access to non-traditional and non-stereotypical education. It also recommended the government to take concrete steps to increase the number of women in higher education, particularly in non-traditional fields and revision of curricula and textbooks to eliminate gender stereotyping of roles.

On its part, the government has taken a few initiatives such as the Basic Primary Education Program (BPEP) which started in 1992 and now is in its second phase, vocational and skill development training to women under Technical and Vocational Training to Women (TVET) program and establishment of Council for Technical Education and Vocational Training (CTEVT). It has also revised the curriculum and teacher's manual for grades 4 and 5 with inclusion of gender perspective. It also had introduced the free and compulsory education in its Ninth Plan.

However, most of the government initiatives lack effectiveness. The initiative to provide free education to girls has been a failure, as the girls' participation has not improved. Only taking initiative but not assessing the impact and addressing the impact is one of the major problems in its failure. Furthermore, the government has not addressed the issues of drop out and repetition

<sup>96</sup> SASU Consultants, Statistical Review on Status of Girls' Education in Nepal, 2002.

<sup>97</sup> Implementation Status of Concluding Comments to CEDAW Convention, FWLD and UNIFEM/SARO, March 2003, p.12

rates, highly prevalent amongst girls at the primary level of education. Women's participation in higher education is very low. Government needs to strengthen its educational programmes to facilitate women for higher studies.

Though the government has made an initiative to review the textbooks to incorporate gender perspectives, it has been limited only to grade 4 and 5.<sup>97</sup> Therefore, the initiatives need to be widespread to include other standard of education.

In case of vocational and skill development training, women's enrolment remains low as the minimum requirement to get admission to most of these courses is class 10 and they are limited to vocations that are low paid and have limited employment opportunities. The government has failed to take any initiatives to ensure parents' compliance with the obligation of compulsory education.

### C. Critical Areas of Concern

► **Non-enrollment of girls and related problems** : The reasons for non- enrollment of girls in educational institutions are complex such as-the nature of the supply of education, the school environment, the lack of female teachers, stereotypical textbooks and the cost of attending school. In addition, an intricate mixture of socio-economic, cultural and caste issues affects the ability and desire of women and girls to participate in educational activities.

In recent years a trend to enroll boys in private boarding schools (perceived by parents as providing better quality education than public schools), and girls in public schools has developed. This adds new dimensions to the complexity of the gender issue in education. Girls are not only disadvantaged in terms of access to primary education in Nepal, but learning achievement tests suggest that girls almost in all subjects are performing worse than boys. These findings call for more research to identify the reasons behind this situation.<sup>98</sup> Small surveys suggest that the teaching-learning environment in public schools consistently favors and encourages boys more than girls.

► **Lack of budget on girls' education** : Education sector's share in the total budget is around 13 percent. Between 1998/99 and 2000/01, the expenditure on education in the total budget averaged 11.7 per cent. Of the MOES budget, recurrent expenditure accounts for 70 to 75 per cent, comprising mainly of teachers' salaries and administrative expenses. Whereas the development expenditure accounted for 25 to 30 per cent, which includes expenditure on capacity building expansion of schools and higher educational facilities, adult literacy activities, sports activities and various scholarships<sup>99</sup>.

Overall, the increasing allocation to the primary education in recent years does not seem to have accelerated the process of girls' education very much. Literacy rate has increased at a much slower speed as compared to the budget allocated on primary education during the 1990s. Program impact on female education has been positive but there are very few program impact evaluations, which can guide budget allocations.

### D. Gaps and Weaknesses

► **Lack of Proper scholarship programs** : There are scholarships given to the economically poor students.<sup>100</sup> These are dependent upon the whims and fancies of the Head Teacher. In past studies it has been proved that sometimes the scholarships are divided, as the amount is not commensurate to the demand for concessions.<sup>101</sup> This dilutes the initiative, as it does not help the

<sup>98</sup> Koirala, C; Basnet, N & Mc Caffery, J (2002): A Gender Audit of the basic and Primary Education Program II, DOE/MOES, Kathmandu.

<sup>99</sup> IIDS, 2002.

<sup>100</sup> CERID (1999), Review and Evaluation of the Incentive Schemes to Encourage Girls' and Women's participation in Basic and Primary education, UNESCO/TU

<sup>101</sup> CERID (2002), Access to education for Disadvantaged groups, TU, Formative research Project, Katmandu



awardees in anyway

► **Lack of infrastructure** : The issues related to physical facilities, teaching materials, quality education are vital determinants of educational performance of women and girls. Inadequate physical facilities such as- classrooms, teaching materials, drinking water, toilets, emergency health care, insufficient classrooms and seats in the school- leads to overcrowding, noisy environment and poor concentration by the students, lack of adequate trained teachers, particularly female teachers, are very common problems that have not been addressed with due attention.

► **Lack of women teachers** : Despite a government policy since Fifth plan (1975-80s) to recruit at least one female teacher in a primary school there are still 8000 schools without a female teacher. They also lack opportunity for higher academic degrees and training on teaching and education management. Lack of gender sensitivity among teachers and other educational personnel, overload of household responsibilities, as there is no distribution of household work, are major bottlenecks for better performance. In addition, male domination, lack of basic facilities in the school, problem related to residence, child-care, health services and security in many villages increase the problems. Most of the time, the seats allocated for female teachers are temporary. So there is no job guarantee for them - an ideal perceptible to analyze the gap between commitment and action.

The importance of training and recruiting female teachers cannot be understated. Seventeen of the 25 districts in Nepal with the lowest number of female teachers also have the lowest number of girls enrolled in primary school and the highest incidence of child labor.<sup>102</sup>

► **Under representation of women at all levels** : As primary right holders of the education system, girls and women are consistently underrepresented. It is not surprising that this is also the case for women's participation in the delivery system. At all levels in the MOES, from primary teacher level all the way up to senior management, women are severely underrepresented. Despite a policy since the early '90s aimed at improving the number of female teachers, women hardly make up a quarter of the primary teaching force and 7.2% of the secondary education teaching force. There are no females at decision-making level (recently only one female joint secretary), in MOES.

There is under-representation of women at all levels in educational management and in terms of promotion, access to training and upgrading activities such as exposure tours abroad etc besides negative attitudes displayed by male colleagues towards women.

## E. Recommendations

- Adequate resources must be allocated to female-only programs. The centralization of education management should also be devolved at local levels so that more and more women and disadvantaged community members have access to decisions and management of those matters. In addition, action to increase inefficiency of expenditure, women's participation in the budgetary process has to taken.
- Mainstream Gender in education system as a whole which will include :
  - ◆ Gender sensitive textbooks, teaching materials and teaching methods.
  - ◆ Gender sensitization training among teachers, head teachers, supervisors, resource persons, DEOs is needed. Provision of comfortable, non-traditional and girl friendly uniform is also important factor to be considered.
  - ◆ Awareness program among parents, children, local leaders and community members about the value of educating girls.

<sup>102</sup> ICIMOD 1997.

- Child-care center in the community so that the girls can be free from taking care of younger sibling and go to school.
- Special package of counseling program and life skills to girls.
- Mother tongue and local language studies should be given some priority in the school curriculum.
- Schools should have quotas for those children that belong to the Dalit Families.
- Increase and improve incentive programs:
  - Proper and timely distribution of textbooks from the school.
  - Proper dissemination of information about number and types of the incentive programs implemented in the district should be provided. For this, parent-teachers interaction program should be conducted. Besides the use of local newspapers, mobilizing local leaders, youth members (especially female), female health worker can be one of the best strategies.
  - Encourage community ownership in implementation, monitoring and evaluations of the incentives programs. Timely following of the program, disbursement of budget by the district and center level authorities should be ensured.
  - Increase the number of scholarship quotas for girls/women.
  - All the girls incentive programs such as scholarship, hostel facilities, free text books free uniform and mid day meal should be reviewed from time to time to make them effective and to ensure that only the needy and deserving ones get them.
- Female Teachers
  - Recruit more female teachers. More female supervisors and administrators.
  - Increase the number of female teacher quotas by mobilizing local graduates and feeder hostel graduates.
  - Residence, child-care and health facilities should be provided to the female teachers.
  - Policy advocacy for permanent job and positions for female teachers.
- Improve physical facilities such as toilets and classroom facility and sufficient classrooms with adequate seat for girls.
- Expand and improve functional non-formal education programs for women and adolescents
  - Functional non-formal basic education must be promoted on priority basis for the out of schoolgirls and women.
  - All women literacy program must have saving and credit association, the adult women also should be given parenting education to promote their daughter's education.

## **ARTICLE 11: Right to Employment**

### **A. Prevalence of the Problem**

Women constitute 50% of the total population, however there is a very low representation of women in public service, army, non-governmental sector and others. Deprivation from vocational education, discrimination in social, economic and political sector, non-evaluation of women's work, lack of access to multinational companies, restriction on women to choose jobs freely, and discrimination on equal pay and equal opportunity in the profession are some of the problems in the field of employment.

<sup>103</sup> See Paragraph 71 to 80 of the Government Report.

The Government Report includes the latest policies and plans as well as programmes and data on women's participation in the labour field.<sup>103</sup> The report includes the disparity between the salary of women and men, difference of working hours and the foreign employment opportunities of women. However, the report doesn't explain how the plan and programmes are being carried out and their effects on the lives of women.

## B. Concluding Comments

The Committee urged the government to adopt labour legislation prohibiting wage discrimination. Though the labour law has equal provision of payment of wages between male and female workers, the provision has not been implemented in practice basically in the informal and unorganised sector of labour. For instance, agriculture labourers, particularly women do not get equal payment. In addition, work done by women at home is not counted as labour force. The total percentage of unpaid work of women is 63.0 whereas paid job is only 7.3 and income earning is 29.8.<sup>104</sup>

The Tenth Plan has adopted strategies to empower women in order to maximise involvement in the areas of work (employment).<sup>105</sup>

- Special measures will be adopted in order to increase the women's involvement from the grass root level to the central in political, administrative and economic sector.
- Enhance the women's access to the employment, professional jobs and to the natural resources.
- Enactment and amendment of the necessary laws, policies to bring women in the mainstream of industrial sector.

However, implementation of these policies is yet to be seen.

## C. Critical Areas of Concern

► **Stereotypical roles in employment** : Most women serving in the public sector are not at decision making level. Usually they are assigned lower paid and unskilled jobs. The employee percentage of women in every sector including teaching, tourism, sports and technology is very low. There are only 8.55% women in the public services, 10.85 women in foreign employment whereas there are 60.5% women in the agriculture sector, most as unpaid laborers.<sup>106</sup>

Women spend much more time than men in subsistence activities and domestic work. They spend about 13 to 14 hours per day as unpaid family workers. Due to lack of technical/vocational skills trainings, most women are involved in low paid or clerical jobs. Statistics reveal that 63% of women are involved in unpaid work.<sup>107</sup>

► **Discriminatory laws and practices** : Certain legal provisions in Nepal prevent women from applying to certain posts. Section 10 of the *Army Act, 1959*, denies women the right to join the army except in departments, sections and attached units of the Army.<sup>108</sup> Recently, women have been recruited in the army as lawyers, doctors, and parachute folders and in civil i.e. non-combatant jobs.<sup>109</sup> Presently there are approximately 200 women in the medical field, 4 legal officers, 40 parachute folders and 40 women in the civil job.<sup>110</sup> However, all these jobs do not involve direct

<sup>104</sup> National Human Development Report, 1998, UNDP

<sup>105</sup> Chapter on Labour and Transport Management, Tenth Plan, Planning Commission, p.221-230

<sup>106</sup> CBS, 2001

<sup>107</sup> Nepal Human Development Report, 1998, UNDP.

<sup>108</sup> "No women shall be recruited or engaged to work in the Royal Nepalese Army or in any association attached with any organisation or division of the army."

<sup>109</sup> In the medical field they have been recruited since 1961 and as lawyers they have been recruited since 1999.

<sup>110</sup> Personal Communication with Major Ganesh Bista and Major Shah of the Army HQ on November 4, 2003.

<sup>111</sup> Section 12 of the *Foreign Employment Act, 1985* reads: ... anything contained in this Act, no license holders can provide foreign employment to women and children. Provided that women can be employed with the prior approval of HMG/Nepal and guardian".

<sup>112</sup> *Sabin Shrestha for FWLD vs. HMG/Nepal*, Supreme Court Bulletin, 2001, Vol. 19, p.1

combating with the enemy. Therefore, employment in the army can be said to be discriminatory.

In case of foreign employment, women are restricted from seeking employment except with the permission of their guardian. Similarly, employment agencies cannot employ women in foreign services unless they get approval from the HMG/N and from their guardians.<sup>111</sup> In this context, FWLD filed a case arguing that women should enjoy the same employment opportunities as men. However, in this case the Supreme Court instead of declaring the provision *ultra vires* validated it on the basis of the constitutional provision, which allows making special laws for the advancement and protection of women.<sup>112</sup>

The *Civil Service Act, 1992* and *Regulations relating to Employees of Auditor General Office, 1993* allows women to enter the civil service up to the age of 40 but the retirement age is 58. Also the service period required for receiving pension is 20 years same for both men and women. Women entering the service at the age of 40 cannot meet this criterion and are deprived of the pension facility.

The *Labour Act, 1991* provides working mothers time to breast-feed. However, there are no related regulations stating the provision in detail.<sup>113</sup> Also, no extra time is allocated for working mothers to breast feed the children. Furthermore, as offices/working places are public places, the Act fails to make a provision for providing separate room for breast-feeding. The Labour Act also makes employers liable to provide childcare facilities in enterprises that have more than fifty women workers.<sup>114</sup> However, no single establishment all over the country provides this facility and employers avoid the legal trap by hiring 49 women.<sup>115</sup>

#### D. Gaps and Weaknesses

- As a result of the prevalent stereotyping of roles women are expected to complete the domestic chores which leads to double burden on women ultimately affecting their professional output.
- Stereotypical mindset has lead to the non-recruitment of women in the army as well as the provision of consent of guardians for foreign employment.
- Lack of information on employment relating to vacancy announcement, syllabus and examination procedures, and male biased syllabus discourage women to compete in the examination. Furthermore, as most of these examinations take place in Kathmandu, it limits women candidates from appearing the exams.
- There are no provisions such as tax incentives or other benefits to enterprises that employ women.

#### E. Recommendations

- Large number of women are engaged in non-formal sector where women are discriminated on salary, health services etc. Therefore, the government should formulate effective policies and strategies to eliminate the discrimination against women workers in the non-formal sector by guaranteeing them equal pay for equal work.
- The government should enact gender friendly laws and regulations from recruitment to retirement in the formal and informal sector taking into consideration the reproductive role of women, which limits their productivity in the prime years of their life.
- To fulfil its obligations under the Tenth Plan, the government to should take following initiatives to increase the participation of women in employment sector.
  - ♦ Guarantee social security.

<sup>113</sup> Section 42(3) of the *Labour Act, 1991*.

<sup>114</sup> Section 42(2) of the *Labour Act, 1991*.

<sup>115</sup> Special Measures for Women and Their Impact, FWLD, April 2003, p. 85.

- Special measures should be guaranteed in every sector of employment.
- Specific trainings to empower women and to build their capacity.
- Effective implementation of positive provisions that have been enacted for women.
- The requirement of prior approval of the HMG/Nepal and guardian in case a woman wants to work abroad in the *Foreign Employment Act, 1985* should be repealed.
- The *Army Act, 1959* to be amended to recruit women in combatant positions.
- Women are not entitled to acquire citizenship and passport independently. Therefore, women should be given citizenship and passport on their own identity.
- Women should be informed of international labour market and the right to choose their work area should be guaranteed by the state. Right to employment including the right to mobility (foreign employment) should be guaranteed to women by providing training to women.

## **ARTICLE 12: Health Including Reproductive Health**

### **A. Prevalence of the Problem**

The service delivery in the health sector remains to be very weak. Though the government has committed to constructing an extensive network of primary health care centers there is still a lack of proper management, gender sensitivity, trained personal, availability of medicine and proper health care delivery mechanisms in many parts of rural Nepal. Basic health services are still far from the reach of rural people, particularly women.

### **B. Implementation of Concluding Comments**

The Committee has urged the government to revise the existing legislation on abortion and to reconsider the proposed amendments so as to provide safe abortion services. It also urged the government to prioritize the prevention of unwanted pregnancy through family planning services and sex education.

On its part the government, with the Eleventh Amendment to the Country Code, has liberalized the law relating to abortion. Abortion is permitted under certain conditions with the consent of the women.<sup>116</sup>

- (i) Access to abortion in the first trimester (12 weeks)
- (ii) In case the pregnancy results from rape or incest, it is permissible up to 18 weeks.
- (iii) At any time during the pregnancy, with the recommendation of an authorized medical practitioner, abortion is permissible if the life of the woman is at risk or if the fetus is deformed.

It is more than a year since abortion has been liberalized,<sup>117</sup> however, even today, no service is provided by the government hospitals, as no abortion policy/ order has been put in place yet even after the government established a task force for policy formulation on abortion services.

Coming to family planning initiatives, although the government has made family planning services an integral part of the government health service, there is a huge unmet need for family planning quoted as 27.87.<sup>118</sup> In addition, most of these programmes are targeted towards women and there

<sup>116</sup> No.28 of the Chapter on Homicide, *Country Code of Nepal*, 1963.

<sup>117</sup> The law relating to abortion was passed by the Parliament on March 14, 2002 and received Royal Assent on Sept. 26, 2002.

<sup>118</sup> Annual report , 2001/2003 , DHS , Ministry of Health, Kathmandu p 77

<sup>119</sup> Chapter on Health, Tenth Plan, Planning Commission, pp. 407-411

is a lack of male-targeted family planning programs.

In relation to sex education, the Tenth Plan in its policy on Health has targeted to provide education on reproductive and sexual health to adolescents.<sup>119</sup> Also, in keeping with the Tenth Plan, the Ministry of Women, Children and Social Welfare has targeted to provide sex education to adolescent girls.

### C. Critical areas of Concern

► **Access to care facilities** : Women's access to health care facilities is limited. According to the government report only ten percent of deliveries are conducted at hospitals or health centre and only twenty three percent of deliveries are conducted by trained health personal including trained birth assistant. However, in many remote places in Nepal, due to the lack of trained health personals, women especially during pregnancy and delivery are treated by untrained birth attendants or old relatives who have very little knowledge of health and sanitation.

The average population per physician in Nepal is 23, 038. Most of the doctors are residents of Kathmandu and other urban areas. In remote places, especially in Far western region, there are very few doctors. For example, in Acham, one of the remote places in Far western region, there are only two male doctors in hospital for a population of about two hundred thousand, more than 50 percent of which are women. The inadequacy of services provided to rural population and the inadequate equipping in terms of staff and infrastructure of the primary health care centre are the biggest challenges to the health sector.

In some places where there are hospitals and health posts, there are other factors such as lack of money and power to take decisions to go to health posts. They act as great obstacles for women to seek care.

► **Female Mortality and Morbidity** : Maternal Mortality Ratio (MMR) in Nepal is one of the highest 539/10,000. The main causes of deaths, during pregnancy, delivery and during postpartum, are hemorrhage (36.4 %), sepsis (8.4%), hypertension disorders (9.8%), obstructed labor (11.4%), other indirect cases (23.5%) and anemia (21.2%).<sup>120</sup> These figures show that the causes of deaths can be prevented if they are provided timely health care facilities and proper care. For example, anemia is responsible for 21% of maternal deaths, and research has shown that about 75% of women have anemia during pregnancy. 67% of women of reproductive age have anemia, which shows that it is a life long condition rather than an episode during pregnancy only. A clinical based research conducted in 2001 in far western part of Nepal showed that 24-25% of women who came to clinic were found to be suffering from prolapsed uterus. Some of them were suffering from these problems for 20 years and were unable to get treatment because of lack of proper services in hospitals.<sup>121</sup>

In Nepal, information related to nationwide reproductive morbidity is scarce. However, research conducted in some districts reveals some facts. Information was collected during health camps in remote areas of the country. United Nations Population Fund (UNFPA) conducted a research in 1999 in 16 villages (401 women were examined).<sup>122</sup> The purpose of study was to access the reproductive health from not only a medical point of view, but from socio-cultural perspective as well. The study shows information on non-pregnancy related reproductive health problems. The complaints ranged from prolapsed uterus (6%) problems associated with menstruation (26.1%), STI/RTI (9%), to menopausal disorders (5%), and sub fertility (1%).

<sup>120</sup> Pathak L.R, et.al. Maternal Mortality and Morbidity study, Family health Division . Ministry of Health /UNFPA, Kathmandu , Nepal, 1998 .

<sup>121</sup> Bonneti TR ; Erpelding A : Pathak L. R : 2002 " Reproductive Morbidity – A Neglected Issue ? A report of a clinic based study held in Far-western Nepal " Kathmandu, Nepal , Ministry of health , GTZ and UNFPA.

<sup>122</sup> UNFPA/Samanta, Focus Group Study on Reproductive Health in Nepal from a Social Culture Perspective, Kathmandu, Nepal, 1999.

<sup>123</sup> Bonetti TR and all . 2002 ,2 Bonneti TR ; Erpelding A : Pathak L. R : 2002 " reproductive Morbidity – a neglected Issue ? A report of a clinic based study held in Far-western Nepal " Kathmandu , Nepal , Ministry of health , GTZ and UNFPA.

Many studies have been carried out that assess the maternal mortality rate in our countries but very few studies have been conducted on morbidity pattern. Maternal mortality is often referred as "*tip of the ice berg*" suggesting that a greater number of women suffer from Reproductive morbidity and disability. Yet, the magnitude of the "base of the iceberg " is not known yet and up to now has received little attention.<sup>123</sup>

► **Gender Discrimination in Nutrition :** Gender discrimination is one of the main factors for nutrient deficiency for girl children and women in Nepal. In many parts of the country, gender – based differences to access to certain foods appeared linked in part to specific food beliefs and practices that reduce women’s consumption of micro-nutrition –rich food such as dietary restriction during menstruation, pregnancy and lactation. Iron deficiency anemia is the most common nutritional problem in Nepal affecting approximately three – quarters of women and children. From various research studies it has already been shown that anemia is an underlying fact in pregnancy and childbirth complications and mortality. In 1998, the overall prevalence of anemia in women of reproductive age was 67.7, in pregnant women.<sup>124</sup>

► **Family Planning :** The contraceptive prevalence rate has increased from 34.5 in 1996 to 39.3 in 2001. Total fertility rate in 1996 was 4.64 and in 2001 it reduced to 4.1. However, the total unmet need for family planning is 27.8.<sup>125</sup>

The cause of unintended pregnancy among women especially in rural areas is non – use of contraception, non-availability of contraception, cultural obstacles and dropout because of side effect of contraception. Lack of female health workers in most of rural health posts and unhealthy posts are another factor for non use of contraception by women. Among women in rural areas Depo-Provera was popular. However, many women had common side effects like heavy bleeding, obesity and spotting.<sup>126</sup> One of the reasons for the high drop out rate is improper counseling and lack of knowledge about how to handle the common side effects of contraception among rural healers like maternal child health workers and auxiliary nurse midwives.

► **Limited abortion services:** Unsafe and illegal abortion has been one of the main reasons of high maternal mortality in Nepal. In order to reduce maternal death and to provide women with their reproductive rights, various organizations struggled for a long time to make abortion legal. In September 2002 the Eleventh Amendment to the Country Code liberalized abortion under certain conditions.<sup>127</sup> As noted in Section B above, it is more than a year since abortion has been liberalized, however, even today no service is provided by the government hospitals, as there is no abortion policy in place yet.

Furthermore, even today there are women languishing in prison for undertaking abortion or abortion related offences.<sup>128</sup> This shows that even today there is a tendency to criminalize reproductive health behavior of women.

**F**WLD in collaboration with CRR and IPAS have undertaken a project "*Releasing Women Imprisoned in Charge of Abortion and Related Offences*". This project started in March 2003. A field visit to various prisons was undertaken in June 2003 to update the number of women in prison for abortion or abortion related offences. There were 58

<sup>124</sup> Nepal Micronutrient status Survey, 1998 Kathmandu , Nepal; Pathak L.R.1998 Child Health Division, HMG/N , New Era , Micronutrient Initiative , UNICEF ,Nepal , WHO.

<sup>125</sup> Annual report , 2001/2003 , DHS , Ministry of Health, Kathmandu p. 77.

<sup>126</sup> Case studies conducted by the Dr. Aruna Upreti and discussion with rural health workers and women.

<sup>127</sup> Refer to Implementation Status of Concluding Comments, Section B above.

<sup>128</sup> Until November 10, 2003.

women languishing in jail and one woman was on bail. With the continued advocacy and lobbying until November 7, 2003, 20 women have been released.

*FWLD, November 7, 2003*

Amongst other challenges are the lack of adequately trained doctors, nurses, and health care professionals; lack of sufficient space, equipment, medicine, and resources; lack of knowledge about the current laws amongst common people as well as to health personals; lack of resources for women and couples to go to a hospital or health care facility and demand abortion. These obstacles may lead women, who would like to seek help for termination of pregnancy, to turn to unqualified persons ultimately leading to abortion-related complications or even death as a result of lack of proper medical procedures.

In June 2003, the author went to various hospitals in Kathmandu and outside of Kathmandu to conduct discussion with several doctors and nurses in rural areas about delivery of safe abortion services. However, from the discussion it was discovered out that lack of policy from the government's side was an obstacle to offering abortion services. One gynecologist said "*Although we could provide safe abortion services to women, we are not doing it because we have not been authorized to conduct abortion service*". After one and half year of legal provision of safe abortion, it is still far from accessible to women.

*Interview and discussion conducted by Dr. Aruna Uprety in Dhangadi , Doti , Achham, Pokhara with health personals during June 2003*

► **Mental health problems** : During the last few years mental health problems associated with social and political instability is growing in Nepal. However, adequate research in the field has not been done so far. Because of the "*people's war*", many families in remote areas have been forced to leave their villages or country due to deterioration of the economy or political conflict. During the conflict, women in rural areas have been victimized in many ways. They have been abused verbally, physically, sexually and mentally leading towards their stigmatization in the society. This has, in a way, changed the entire lifestyle of the community, particularly of women in the community. Many women have not been able to cope with the changes brought about by the conflict resulting in the breaking up of families and communities. As a result they are suffering from mental health problems like depression and anxiety. However, there are hardly any plans and programs to combat these problems as it has not been recognized as a public health issue.

#### **D. Gaps and Weaknesses**

► **Shortcomings in health care system** : Most of the health posts and hospitals in rural areas have no doctors and health workers. In the absence of qualified health workers, people are forced to seek treatment from either *shamans* or quack, and unqualified people who do more harm than good. In many health posts there is a lack of medicine or presence of substandard or faulty products. Cold chains are not maintained because of lack of electricity, lack of proper equipment and lack of knowledge among the village health workers in maintaining them for vaccination. Corruption among the rural health workers and Ministry of Health is another key obstacle in proper health service delivery. All these issues lead toward women and children becoming victims of disease.



Such negligence, as mentioned above, leads to the risk of diseases both in rural as well as some urban areas. Very few effective steps have been taken by the Ministry of Health or District Health Office to improve the conditions. In fact these institutions themselves are in dire need of changes in management and governance.

▶ **Lack of female health workers** : In many places, the gender insensitive approach to women's health discourages women to take available services. Women in rural areas are shy to seek care from male health workers and in most remote places, there are very few female health workers to deliver services.

▶ **Accessibility restricted due to fees:** Though on paper, the service delivery provided by government is free, yet many women cannot get it because there are no services or when they are examined free they have to pay for the medicine, lab investigation and x-rays. Furthermore, as a result of lack of public health services, women seek health care from private providers who ask women to pay exorbitant fees. In urban areas, people who can afford to pay try to seek medical services from private hospitals and doctors, rather than from the government hospitals that are poor in quality and where corruption has affected the hospital management.

▶ **Political instability in the country** : For last seven years the "*undeclared civil war*" between the Maoist and the government has severely hampered health care delivery program in many parts of the country; specially in the Far Western Region of Nepal. Many health workers have given up posts because of the insecurity, are the lack of medicines. The NGOS and INGOs that were very functional in providing medical services have left many areas because of attacks and insecurity. *"Many health programs which were women focused, in the Western part of Nepal had to be canceled because of the insecure condition of the country. It is a great loss for the women of that community as it was the only chance to get quality service at their doorsteps"*.<sup>129</sup>

▶ **Gender discrimination in accessing health care** : By law, there is no gender discrimination for accessing health care facilities. However, the lower status of women, heavy burden of work, safety, lack of easy transportation and economic rights restricts women's access to health care services equally. The government has taken very few steps to combat this problem.

## E. Recommendations

- The government should:
  - ♦ Make the health system more responsive to women's needs through improvement of care services. Gender sensitive approaches to the needs of women should be developed amongst the health care providers.
  - ♦ Conduct research to develop alternative models providing such integrated services in different socio-economic and cultural setting.
  - ♦ Improve women's access to health care services.
  - ♦ Provide information to women on different aspects of reproductive health.
- Conducting a combination of research and advocacy on implementation of legal provision on abortion should be major priority of the government. It is very important to conduct research on disseminating the information related to the legalization of abortion and on how to implement the programs among the medical community, health-care workers in rural areas and women. At the same time the Ministry of Health should formulate a comprehensive abortion policy. The policy should include the definition of abortion, miscarriage, infanticide, calculation of period of gestation, issues of privacy and confidentiality, fees for services, availability of abortion services in public hospitals at minimum cost.

<sup>129</sup> Personal communication between Dr. Aruna Upreti and the team leader of a Reproductive health program to the author.

- Private doctors and hospitals, who are willing to and have the means to provide high quality service for abortion care, need to be mobilized to carry out abortion services at an affordable cost.
- Steps should be taken to release women imprisoned for undertaking abortion and rehabilitating them into their family and society.
- Training of health workers on comprehensive reproductive health services, including PAC and other abortion should be carried out. Relevant gender sensitive plans and policies should be undertaken and strong emphasis should be given that these policies are understood by the health personal and implemented in a practical manner.

## **ARTICLE 13 : Social and Economic Benefit**

### **A. Prevalence of the Problem**

Nepal does not have a formal system of family benefits such as children's allowance, housing allowance, health insurance and other social security benefits. Old age allowance scheme have been introduced by HMG/N for those who are above the age of 75 and for widows above the age of 60.<sup>130</sup> The major commercial banks provide various insurance schemes for those who have opened savings account with them. Due to these insurance schemes, the savings account holders are covered in case of any sudden illness or accidental injury or death. Those employed in offices that have taken group insurance schemes for their employees enjoy health insurance benefits also. Those employed with HMG/N enjoy the benefits of pension, widows of Government employees get life-long pension after the death of their husbands, and those employed have an access to various schemes such as Citizens Investment Fund and Employee Provident Fund to get pension benefits. No legal, social, economic or cultural barriers prevent women's equal participation in recreational activities, sports or any other aspect of cultural life except the norms of patriarchal society and the age-old tradition of subjugation of women. Women qualify equally for bank loans/ mortgages and credits. Most of the credit-providing organizations do not demand an official consent of husbands to enjoy these benefits and no official mechanism of making complaints is available other than the complainant lodging a case in the court.

In addition, the country does not have a formal system of family benefits such as children's allowance, housing allowance, medical insurance that would cover maternity expenses also, and other social security benefits. Old age allowance of a meagre Rs.100 (US\$ 1.35) does not provide enough benefits. Government should also develop a mechanism for providing travel and medical treatment on discount for aged people.

The Tenth Plan has made a suggestion to include women's work in national account, initiate gender audit, establish independent tax evaluation policy and law, provide loan without collateral to them, provide loan on low interest rates and start prioritisation for women in the lending process, to make the women economically self-reliant and empowered.

### **B. Implementation status of Concluding Comments**

The Concluding Comments of the CEDAW committee urges the government to develop special credit facilities for women to enable them to establish small enterprises and that it introduce special measures to encourage women to participate in all sectors of employment.

The government has not launched any programme to enhance the eligibility of women to institutional

<sup>130</sup> MWSCW, MGEP, UNDP & FWLD; Nepal; *CEDAW Status Review: A Study to make the State Accountable towards Effective Implementation of the CEDAW Convention*, November 2001

<sup>131</sup> Implementation Status of Concluding Comments, FWLD, March 2003, p.25

credit for launching an enterprising occupation.<sup>131</sup> There is a lack of impact-based policy, both in terms of number and quality for increasing women employment in the service and industry sector. There are limited target-based gender employment programs in terms of area, population resource and training.

### C. Critical Areas of Concern

Although the government has introduced various programmes for women, they face practical problems such as those women who are married and unemployed have the disadvantage of having to obtain their husband's consent even in buying an insurance policy for herself or simply mortgaging a land or property that she owns. The banks prefer to have husband as witness. When buying an insurance policy for their children, women cannot be the *prastavak*, or applicant. This place is secured for the father and mother can only be the nominee. The above is not required by law but is a general practise on behalf of credit or insurance providing agencies.

**M**s. Sangeeta (pseudonym used) an employed woman in Nepal tried to take a life insurance policy for her son on her own initiative. She could not keep her name as the *prastavak* (or applicant) and make her husband as the nominee. The

▶ **Old age allowance:** Old age allowance is provided to the elderly people who are 60 years of age or above. It is a monthly allowance of Rs 1000/ month for a wife and Rs 1200 for a husband. The husband and the wife both are eligible. Even though it was the wife who was going to pay the yearly insurance premium. It was not a written rule of the company, but the special system did not accept the move. The case is about Nepal Life Insurance Company and happened recently in Kathmandu. The final document that was given after filling up the form does not

▶ **Maternity benefits:** Banks do not cover Maternity Benefits for the account holders in the savings and current accounts. The account holders are covered by sudden illness or accidental illness and death. The same scheme could have easily included maternity benefits up-to one or two children if the account holder was not pregnant at the time of opening the account. This scheme of commercial banks is unavailable in the rural areas.

▶ **Problems in obtaining credit:** Government has started numerous micro-credit schemes to cater to the needs of poor rural women, but urban poor women are at a loss when it comes to access to credit. Central Bank does not cater to those urban poor women who may have access to enough skill, thanks to their being located in urban areas. These women, who still do not have an access to property in any form but are empowered enough to start an enterprise of their own, have no place to go to take loan<sup>132</sup>. Group guarantee scheme is usually not applicable in the urban areas and the banks shy away from providing a loan to women on personal, group guarantee and third party guarantee.

▶ **Problems of women entrepreneurs:** Women entrepreneurs are left to compete with big entrepreneurs while paying various taxes and sending their export cargo, even though a majority of women are micro-and small-scale entrepreneurs. Their cargo are usually small in size and they are burdened with the high cargo rates and their products are as a result less competitive in the foreign market and the same applies when they are left to pay high taxes after the establishment of their firm.

<sup>132</sup> Normally the banks set aside a loan loss provision of 1% when the loan is passed. The loan loss provision is accordingly increased to 25% in the second quarter for sub-standard loans, 50% in the third quarter for doubtful loans and 100% for loss making loans. The Central Bank Directive to the commercial banks and financial institutions is to set aside an additional loan loss provision of 20% on the above when giving loan without collateral and on personal guarantee. This system of loan loss provision affects the net profit of the credit providing organizations and as a result they are unwilling to provide a loan under such circumstances. The old system of Deprived Sector (providing credit for amount less than Rs 30 thousand) and Priority Sector lending (providing credit for amount less than Rs 25 Lakhs) does not have the above impact but the Industry has to be registered at the Department of Cottage and Small Industries and so the women do not enjoy this facility also.

## D. Gaps and Weaknesses

- The government introduced various programmes for women. They however, face practical problems such as those women who are married and unemployed have the disadvantage of having to get their husband's consent in even buying an insurance policy for herself or simply mortgaging a land or property that she owns, the banks prefer to have only her husband as witness. This is not required by law but is a general practise on behalf of credit or insurance providing agencies.
- The government has not taken any steps in the insurance sector, on the tax system and also in formulating the cargo rates etc. The special needs of the new generation of urban women have also not been reflected in the government initiatives. The various policies such as providing loan without collateral and on less interest rates have been there for quite a long time but have not been able to cater to the needs of women entrepreneurs. These issues are not yet discovered in the government reports nor do they get a reference in the challenges that the government feels that lies ahead of them and hence they have no recommendations to deal with them in future.
- As observed in the recent past, the amount of loan is little in case of deprived sector and priority sector lending, the commercial banks find it easier to pay penalty to the Central Bank rather than complying to the directive of at least 3% of their total lending in this sector<sup>133</sup>. This has a direct impact on the way banks deal with those customers who want a loan without collateral and on personal guarantee. Of the total households, the percentage of households where women own the land is just 10.83% whereas just 4.4% of the total cultivable land remains under the ownership of women. Of all the women who have the land ownership, more than 81% of women have less than 1 hectare of land<sup>134</sup>. With this statistical data it is very clear that 90% women in Nepal have to contest for getting credit from commercial banks under the above conditions, which explains why in practise very less women qualify for credit.
- No tax holidays are provided to the women entrepreneurs in any sector and under these circumstances they are left to compete equally with men when it comes to business.

## E. Recommendations

- If not all, then at least some lending agencies should be granted the task of catering to the urban poor women by providing them loan without collateral. When providing a loan on third party guarantee those agencies should be exempted from having to put an extra loan loss provision of 20%. Establishing women cell at commercial banks to deal with women clients' loan issues separately could also solve the problem.
- The government should take an action against those who still make the requirement of husband's consent necessary and also public awareness should be raised on this issue so that the women are made aware of their rights under such circumstances. Also, the application forms requiring husband's name should be changed.
- The women should be provided tax holiday of at least 5 years after they start their business and should be sent to international trade fairs and similar exposure providing events on priority. The issue of same cargo rates for all exporters should also be made a little flexible to help out micro-and small-scale women entrepreneurs.

<sup>133</sup> Commercial Bank Act, 1974 (with Amendments) Section 19a.

<sup>134</sup> National Planning Commission; Nepal Tenth Plan 2002/03. Pp 443.

- Health-insurance schemes should be made accessible to women and help during maternity should not be overseen in any insurance sectors. Maternity benefits should also be covered by the savings account insurance schemes of the commercial banks and such schemes should be made available to the rural areas also.
- Proper advanced training mechanisms are needed as well as a mechanism to provide women entrepreneurs with enough exposure to the international standards for at least a few years. This will facilitate the process of bringing women to equal playing grounds. Networks like The Chambers of Commerce and Industry, Trade Associations and similar organizations formed to cater to the entrepreneurs should reserve some percent of seats for women entrepreneurs when sending their representatives to international trade fairs. At least 33% seats at the decision-making level should be reserved for women representation in the Board of Directors of such institutions.
- If the old-age, pension could be provided to women on the basis of voter's identity card this could also help in increasing the outreach of the beneficiaries. Also young widows should be included in such schemes and the amount of pension should also be increased.

## **ARTICLE 14: Rural Women**

### **A. Prevalence of the Problem**

Eighty seven percent of Nepali women live in rural areas. In comparison to men, more women live in rural areas. However, rural women in Nepal are not homogeneous. Constraints and opportunities of rural women vary greatly based on the geographical and socio-cultural diversity of the country. Different conditions prevail in mountains, hills and (*Tarai*) plains. Similarly there are differences also based on class, caste/ethnicity, religion and the development region. Notwithstanding this diversity, the treatment of "women as a category of gender" plays a pivotal role in the present status of under developed human capacity and disempowerment of Nepalese rural women.

### **B. Implementation Status of Concluding Comments**

In the concluding comments provided by the CEDAW committee, during the last report, there was a stress to provide more information on rural women. It is observed that the present government report has elaborated more on rural women as compared to the previous reports. Principal areas of concerns and recommendations that the government report elaborates are micro-credit, opportunities in agriculture, capacity building in development planning and delivery of social services. However, the government report is silent about women's right to land through inheritance, which is the single most important productive asset for rural women.

### **C. Critical Areas of Concern**

► **Micro-credit programs:** Although the socio-economic impact made by micro-credit programs in the lives of rural women is significant, it must be mentioned here that the coverage of providing financial services to them has been very little in the last twenty years. This has been reflected in the report itself, which mentions that both financial services and enterprise for women are still very limited. There is still lack of capacity building of women in education/training and managerial skills together with establishing sustainable micro-finance institutions.

The Census 2001 reports that 43.8% of women (i.e. 50,75,326 women) are participating in the labour force. It is estimated that currently both the government and non-government initiated micro-credit programme caters to about 300,000 women. This implies that they are serving only

5/6 % of the women who are participating in the labour force. A recent government report of the year 2001/2002 mentions that among the government initiated micro-credit programmes, Productive Credit for Rural Women (PCRW) covered only 28,641 women; Micro-Credit Project for Women (MCPW) provided loan to 26,481 women and *Jagriti* involved 1,04,741 women. The per capita group savings for PCRW is Rs. 1984, for MCPW it was Rs. 1,550 and for *Jagriti* it was only Rs. 524.<sup>135</sup>

A recent study commissioned by the NPC revealed that a vast majority of ultra poor and disadvantaged women are still excluded from these programmes.<sup>136</sup>

In spite of the above scenario, there is a dynamic development of self-initiated community based Savings & Credit Organizations (SCOs) and Savings & Credit Cooperatives (SCCs) of women, where relatively well-off women are organizing as financial bodies. These SCOs and SCCs have large amount of savings within their organizations. Many of those are now looking for investment opportunities in enterprises with higher rate of return. Additionally, these SCOs and SCCs are seeking capacity building in terms of training, information, and managerial and marketing skills.<sup>137</sup> There is a high potential for these SCOs and SCCs to transform into viable and sustainable enterprises providing employment to rural women.

► **Health care for rural women** : Although the government reports that health initiatives are being taken such as safe motherhood, reproductive health and the services of female community health volunteers, rural women are still not able to access health services. The maternal mortality rate is 539/100,000 live births.<sup>138</sup> Nepal Demographic and Health Survey, 2001 show that still 53.4% of rural women have no access to Ante-Natal Care (ANC) care. Still 91.3% of rural women give birth at home with assistance from traditional birth attendants and relatives/friends 80% of the times and 9% with the help of no one. Eighty percent of the rural women reported that they do not receive postnatal checkup.<sup>139</sup>

► **Unmet need for contraception and side effects of banned contraceptives:** The Government Report states that the total fertility rate of rural women is 5.8 as against 3.5 for urban women, which is indicative of rural women still bearing the brunt of childbearing and rearing. Access to contraceptives to rural women is restricted both in terms of access to devices and in terms of "informed choice of devices". Nepal Demographic and Health Survey, 2001 shows that the unmet need for family planning for rural women is 29% out of 67% demanding contraceptives (which is 41% of the total demand) and women are forced to bear children because their demand for contraception is not met. Although, the government states that the family planning services are provided using a "cafeteria approach", i. e., different methods of contraception are made available to most health institutions for the clients to choose from, women generally end up on the receiving end of family planning.<sup>140</sup>

Although, many injectables and implants are banned in other countries as hazardous to women's health, they are still prescribed to and are quite popular among Nepalese women due to ignorance. Injectables are especially favoured for spacing child-birth, as others in the family (mother-in-laws, husbands) would not know about it. These women are not aware about the health hazards of

<sup>135</sup> Department of Women Development, Ministry of Women, Children & Social Welfare (April 2003), *Women Development in Nepal: Concept, Structural Status, Activities in Progress and Challenges*

<sup>136</sup> *Study On The Effectiveness Of Programmes Targeted To Women*. (2003). Study commissioned by the National Planning Commission and conducted by Women's Studies Programme, Tribhuvan University, Nepal

<sup>137</sup> Personal involvement of Dr. Chandra Bhadra as gender trainer to SCOs and SCCs through the Centre for Micro-Finance/Nepal Ministry of Population and Environment (2002), *Nepal Population Report 2002*.

<sup>139</sup> Source: Ministry of Health: *Nepal Demographic and Health Survey, 2001*

<sup>140</sup> Among those currently using modern contraceptive methods (38.9% of currently married couples), the highest number is female sterilization (16.5%) followed by injectables (9.3%), pills (1.8%), and implants and IUDs (1.1%). Male share of contraceptives is only 10% with 7% male sterilization and 3.2% male condoms.

these devices. The Survey (2001) data about the menopause age show that the general menopause age are: 3.4% of women between the ages 30-34 years, 5.2% of women between the ages 35-39 years and 9% between the ages 40-41 years. To have such a large proportion (17.6%) of women younger than 41 years to be menopausal is a matter of grave concern both for physical and psychological state of women's health. Early menopause or menopausal syndrome is implicated on women using injectables and implants.

► **Micro-credit and horticulture** : Micro-credit and horticulture, especially vegetable production is very well blended in the cash crop agriculture. However, in many instances, marketing becomes the bottleneck. Due to the perishable nature of the products, they have to either sell in a cost-ineffective manner or bear heavy losses. These products need to be transformed into processed food products, with the value-addition going to women. Nepal is still a large importer of processed food from India and other third countries. If rural women's enterprises are geared towards food processing, it will have both the substitution effect and creation of employment in rural areas.

► **Rural women and information communication technology (ICT)** : The government reports about capacity building of rural women for development planning. Although, women's organizations and institutions have been established in many rural areas, they do not have access to ICT. The Tenth Plan plans to establish 1500 community information centres within the Plan period extending subsequently into the years to follow. Access to this community based ICT to rural women must be ensured and women's capacity building should be geared through "distance learning facilities".

► **Rural women and alternative energy technologies** : Rural women still have heavy workload due to lack of household and agricultural time saving technologies. The 10<sup>th</sup> Plan envisages to install alternative energy technologies such as micro-hydro electricity in 47 VDCs, 200,000 bio-gas plants, 2,700 solar dryer and cooker, 4,000 improved water-mills and 2,50,000 improved stoves. Access to these energy technologies has immense implication on rural women's drudgery reduction, labour efficiency/productivity, improvement in health and entrepreneurial opportunities. Women should be made active partners in these project planning, implementation, operation and maintenance, and monitoring and evaluation of these projects.

► **Rural women and migration for foreign work** : The trend of migration of rural people for international employment in general and rural women in particular is also an important issue. The amount of remittance injected into the national economy through this is significant. Research indicates that 5% of the total migrant workers in foreign countries are women but it may be underestimated as many women who are working in Gulf areas especially those working as domestic help are not reported due to the ban imposed by the government. Nevertheless, the amount of remittance women contributed was estimated as Rs. 12.9 billion in 2002. This is indeed a substantial amount as compared to the limited access to income by women within the country.<sup>141</sup>

► **Village/Cultural Tourism Potential Income Opportunity for Rural Women** : Nepal's natural beauty and cultural diversity makes it a potential hot-spot for village/cultural tourism. It can be a good income source for rural women. Although, in few places village/cultural tourism has benefited rural women immensely, till now this potential has not been explored fully.

#### **D. Gaps and Weaknesses**

- There is a gap between policy and implementation of the policy due to lack of gender mainstreaming in macro-economic, national and sectoral policies, plans and programme/project. This is mainly due to both lack of knowledge and lack of commitment.

<sup>141</sup> Source: Nepali Women Workers in Foreign Lands: Mapping the Migration Process and Contribution to Nepali Economy and Society. Study conducted for UNIFEM/Nepal by Nepal Institute of Development Studies (NIDS), 2003.

- There is a lack of financial and human resources development for taking women and their families out of the poverty trap
- The budget allocation of 2003/2004 shows that the budgetary allocation to the MWCSW as the lead agency for women's empowerment and for sectoral agency for women-focused or pro-women programmes is either non-existent or very meager. This type of budgetary allocation and budget cut especially after the "state of emergency" leaves no room for the empowerment of rural women. In fact, rural women and girls will definitely be affected by this budget and the programme cut.

## **E. Recommendations**

- Free and compulsory education and health services to the girl children of rural areas as they are forced to be involved as house worker due to the poverty level. Technical education should be made compulsory from the primary level.
- Access to health care service such as ANC, delivery and Post Natal Care (PNC) care, and family planning services with immediate availing of the unmet contraceptives demand must be provided.
- There needs to be the establishment of small and medium enterprises in rural areas giving women higher rate of return for their investment of money and time. These enterprises should use the local agricultural products as raw materials and it should result in import substitution. Additionally, skill oriented training and micro-finance programs should be expanded at rural level, with co-lateral free loan to landless rural women.
- Steps need to be taken to initiate empowerment of potential women migrant workers through information, training and other capacity building ensuring safe migration.
- Village/cultural tourism needs to be developed as women's group-enterprises.
- Women should have access to the community level ICT centre and access to "distance learning facilities".
- There must be equal representation of women and men at all levels of Poverty Alleviation Fund (PAF) committee (in the 10th Plan women's participation in all cycles of local level poverty alleviation has been stressed), from the Central level, District level to Village level.
- The concept of gender budgeting should be implemented from the local level to the district and the central level revenue generation and budgetary allocation. For this, VDC representatives, District Development Committee (DDC) representatives, Local Development Officers and the Ministry of Finance personnel need to be sensitized. The budget policies and programs of the VDC and municipalities should be publicized and made transparent to general public.
- There should be equal representation of women and men in local level development planning committees, including ex-officio or non-ex-officio positions.
- Rural women's ownership and control over land is possible only by "unconditional inheritance right". So, the inheritance law should be revised.



## ARTICLE 15: Equality Before the Law and in Civil Matters

### A. Prevalence of the Problem

The *Constitution of Nepal, 1990* guarantees all citizens, the equality before the law and equal protection by laws.<sup>142</sup> Ironically, even today, there are still 290 different legal provisions in the *Constitution of Nepal, 1990*, Acts and Regulation that discriminate against women such as property, marriage and family, legal procedure and court proceedings, trafficking and sexual abuse, employment, education and citizenship.<sup>143</sup> A High-level committee formed by the government, upon reviewing the existing laws submitted the report stating that there are still as many as 85 clauses/sections/rules, and 25 different schedules in 20 different laws that are discriminatory towards women. Amongst them, the Country Code, the law that deals with the substantial as well as procedural matters relating to major components of civil and criminal laws, contains 28 clauses, which are discriminatory against women. The decision of the Supreme Court in citizenship case reconfirmed the confusion that 'non discriminatory character' of constitution does prevail over the citizenship provisions which clearly discriminates against the women.<sup>144</sup>

### B. Implementation Status of Concluding Comments

The implementation status of the Concluding Comments has been dealt under Article 2.

### C. Critical Areas of Concern

► **Amendment and Enactment of Acts :** The Government Report has mentioned that the government has taken initiatives to amend acts to ensure equality between men and women. But the Government fails to mention that the amendments still have discriminatory provisions. The Amended Land Act discriminates on the ground of marital status of a daughter<sup>145</sup> and does not accept the same role and status for son and daughter.<sup>146</sup>

The *Legal Aid Act, 1997* has been enacted, but it has not been implemented in all districts. However, existing legal provision on legal aid and administrations of justice are not adequate for effective dispersion of justice and ensuring access to justice to the common indigent population.<sup>147</sup> Similarly court fee has not been exempted<sup>148</sup> for the poor women. The government and the Legal Aid Committee have not taken much initiative to disseminate information of free legal aid. Hence, many people have not come forward to take the benefit of free legal aid. For example, in Sunsari District Court<sup>149</sup> around one thousand cases are filed every year. Out of these cases only twenty-seven cases were filed in the Legal Aid committee.<sup>150</sup> People with low income<sup>151</sup> prefer to tolerate the injustice rather than spend their limited resources in litigation.

<sup>142</sup> Article 11(1) and (2) of the *Constitution of Nepal, 1990*.

<sup>143</sup> The first study was conducted by FWLD in 2000 "Discriminatory Laws in Nepal and their Impact on Women: A Review of the Current Situation and Proposals for Change", which recently updated study after the amendment of *Country Code of Nepal, 1963* on September 26, 2002.

<sup>144</sup> *Chandrakanta Gyawali vs. HMG/Nepal*, Writ No. 3667, 2057 B.S. For further details see Article 9 of this Report.

<sup>145</sup> See 26 (1) of the *Land Act, 1969*. Tenancy right not transferable to daughter, adopted daughter and sister.

<sup>146</sup> See 2 C (3) and 2 C (4) of the *Land Act, 1969*.

<sup>147</sup> CEDAW Status Review, Nov. 2001, MWCSW, MGEP, UNDP and FWLD, p. 78.

<sup>148</sup> However, Court Fee Act has only levied court fee in civil cases.

<sup>149</sup> One of the District out of thirteen districts where Legal Aid Act has been implemented.

<sup>150</sup> Ineffective Legal Aid Committee, Nepal Samachar Patra, August 20, 2003.

<sup>151</sup> The Legal Aid Act has treated a person who has an earning of more than NRs 40,000 per annum as ineligible for getting legal aid.

► **Equality in legal capacity including in civil matters such as administering property, making contracts, real state :** Any petition response or appeal submitted in the court must mention the names of the father or the husband of the person who register such deeds.<sup>152</sup> Similarly the court proceedings in the *Country Code of Nepal, 1963* do not consider women as capable to receive court notices and summons.<sup>153</sup> A person is recognized through the father but not by the mother.<sup>154</sup> The format assumes that only son can submit it.<sup>155</sup>

The *Contract Act, 2000* entitles women to enter into contract in any form and establish private firm or company, to take a share of company and obtain benefits from them. Women are eligible to all kinds of bank loans mortgages and all forms of financial credit from banks and financial institutions. However in the present provision of the *Country Code of Nepal, 1963* relating to disposal of women's share of property, daughters need permission from fathers, wives require permission of their husbands, widows need the consent of their sons. Due to this, women do not have full rights in their property. The law does not recognize transaction carried out by a wife without the consent of her husband.<sup>156</sup> To dispose off more than half of the immovable property, which a woman receives under partition, she has to take the consent of her father if she is unmarried or the children if she is widow.<sup>157</sup>

► **Open courts:** A study on Gender and Judges revealed that women were unable to state their problems freely in an open court comprising mostly of men.<sup>158</sup> The general language used in the court is not gender sensitive. Questions that are discouraging, insulting and embarrassing not only get permission to be asked, but are also allowed to be repeated a number of times.<sup>159</sup>

► **Restriction in freedom in movement :** Women do not have the same rights to freedom of movement as men. Passport is the basic requirement for traveling aboard. According to the Nepalese law, a woman can only acquire passport by the permission of her father or husband. In case the husband is a foreigner she has to acquire consent from her father in getting her passport. Application form for passport requires only the father's name making women dependent to father and husband.<sup>160</sup> Permission of the guardian and the Government are a prerequisite to go abroad for employment.<sup>161</sup> The conventional ideas about women's role to bear and rear children and to perform household work have not changed. Hence, the socio-cultural values restrict the mobility of women. Absence of sexual harassment law has encouraged harassment in public and private places hindering women's right to movement.

#### D. Gaps and Weaknesses

► **Persisting negative mindset :** Government officials, judges and parliamentarians are influenced by stereotype image of women and thus overlook the importance of women's individual identity. When the time comes to enact laws related to equal rights, the parliamentarians take conservative position in the name of saving the society from chaos, anarchy and maintaining social structure and societal order. They have not been able to see pervasive subtle and obvious discriminatory

<sup>152</sup> No. 107 of the Chapter on Court Proceedings, *Country Code of Nepal, 1963*.

<sup>153</sup> No. 110 of the Chapter on Court Proceedings *Country Code of Nepal, 1963*. Women are only allowed to receive summon or subpoena issued by a court in the name of another person if men are not available to receive such order. footnote incomplete

<sup>154</sup> No. 152 (1), 161(1) of the section on Court Proceedings, *Country Code of Nepal, 1963*. No. 152 says that while taking statement of the witness, firstly name of their father should be asked. No. 161 says that the name of the father of the party or witness of the case should be asked while taking the statement.

<sup>155</sup> Annex 4 (a) *District Court Rules, 1995*.

<sup>156</sup> No. 9 of the Chapter on Transaction, *Country Code of Nepal, 1963*.

<sup>157</sup> No. 2 of the Chapter on Women's Exclusive Property, *Country Code of Nepal, 1963*.

<sup>158</sup> A study on Gender and Judges 2000, Forum for Protection of Public Interest. p. 58

<sup>159</sup> A Study on Gender and Judges 2000, Forum for Protection of Public Interest. p. 65

<sup>160</sup> *Passport Rules, 1970* Page 3 of the passport 15, Article 9(5) of the *Constitution of Nepal, 1990*.

<sup>161</sup> Section 12 of *Foreign Employment Act, 1985*.

behavior underneath the social structure. Many parliamentarians and high level law administrators lack the knowledge of the existence of discriminatory laws.

## **E. Recommendations**

- Women's name should also be included in petitions, responses or appeal to be submitted in the court. Women should be recognized as independent parties during the court procedure by all the legal documents including summons, subpoena and notice under the *Country Code of Nepal, 1963*. Various discriminatory procedural rules as well as forms that deny equal access to women in legal proceedings must be amended.
- *Legal Aid Act, 1997* should be implemented in all the districts. Court Fee should be exempted for poor women.
- Mothers should be given the right to register the birth of their children.
- Expose Judges, Policy Makers, Parliamentarians and Civil Societies to gender education, which would enlighten the judiciary on existing assumptions, myths and stereotype about women and how these can interfere with a fair and equitable administration of justice.

## **ARTICLE 16 : Marriage and Family Life**

### **A. Prevalence of the Problem:**

Nepal is influenced by the *dictas* of Hindu religion. Based on this principles the goal of a woman's life is getting married and fulfilling the responsibilities towards the family with a stress on giving birth to children, rearing them and taking care of all the domestic needs of the family. Limited rights to inherit property always reinforces on the mind of the daughter that she does not belong to the maternal home. Women's individual identity is not recognized and she has to depend on the family for her decisions. There is a persistent growth in domestic violence as a result of early marriage and dowry. Several socio-economic values result to various forms of physical, mental and psychological violence against women in Nepal.

The government report acknowledges the inequality between men and women in marriage and family life. It also accepts the prevalence of discriminatory social practices such as child marriage and states that the legal provisions for their eradication are not fully effective. However, the report does not address the growing practice of dowry, which is rampant in the *Tarai* region of Nepal.

### **B. Implementation Status of Concluding Comments**

Although the government has amended various provisions relating to inheritance of property and marriage and family life, there are provisions which discriminate against women in these areas such as- discrimination amongst daughters on the basis of marital status, provision of bigamy (second marriage without divorcing the first wife), division of property equally amongst all the wives, married women can adopt children in limited situation, daughters required to return intestate property upon marriage, discrimination over child custody.

### **C. Critical Areas of Concern**

► **Status of women in marriage:** Marriage as an institution gives husbands the superior status, which leads to them being the head of the family in most cases. Husbands also have control over the property and hence the economic dependency of the women limits their equal status in the family. Although the responsibility of giving birth to children and their upbringing is mostly entrusted on the mother only the father is the natural guardian of the children. In cases of adoption, a wife

can adopt only in case she is living separately after partition of property with husband, whereas the husband can adopt without the consent of the wife.<sup>162</sup>

► **Child marriage:** The marital age of majority of Nepali people is eighteen. The minimum age for marriage as amended by the recent amendment to the *Country Code of Nepal, 1963* is 20 years for both boys and girls.<sup>163</sup> However, in cases, where the parents or guardians consent to the marriage, the minimum age is 18 years<sup>164</sup> and in case of court marriage the age is set to be 18 years for girl and 22 years for boys<sup>165</sup>. In spite of these legal provisions, the general practice of child marriage is rampant in Nepal. In reality, the average age of marriage for girls is between 16 years and 20 years. The government statistics show that the mean age for marriage for girls is 19.5 for girls and 21.9 for boys.<sup>166</sup> However, the population census results in gender perspective shows that, 55.5% of the girls get married between the ages of 15 to 19 years.<sup>167</sup>

**A** study conducted by Jagriti Vikas Manch, Parsa in 2002 (involving 40 Village Development Councils of Parsa Districts and Birgunj Nagarpalika) shows that 64 percent of girls were married between the age of 8 and 13. The study also reveals the disturbing facts that 3 percent of girls give birth to child around the age of 12 years and 36 percent of girls deliver their first child between the ages of 14 to 16.

*Gorkhapatra Daily, April 24, 2003*

Most of the girls are married off at an early age due to the cultural mind set which gives undue importance to the marriage in a girl's life. Early pregnancy, repeated pregnancy, violence in marital life, economic dependency, discontinuation in formal education, health problems are some of the negative outcomes associated with child marriage.<sup>168</sup> According to law, child marriage is voidable upon reaching the age of eighteen only incase where no child is born to the couple.<sup>169</sup> However, as a result of the birth of one or more children by that age, these girls cannot revoke their marriages. Statistics reveal that about 30 percent of women who are married between the ages of 15 and 19 have three to four children and about 35 percent of such women have one to two children.<sup>170</sup> Though the Eleventh Amendment to the *Country Code of Nepal, 1963* has increased the penalty in case of child marriage, this is meagre, as child marriage is still not declared void.<sup>171</sup>

► **Bigamy/Polygamy :** According to the present law, a husband can marry for the second time without divorcing his first wife under the following circumstances<sup>172</sup> :

- If the wife contracts any incurable contagious venereal disease
- If the wife becomes incurably insane
- If no child is born or are alive within ten years of marriage

<sup>162</sup> No.2 and 2(a) of Chapter on Adoption of Son, *Country Code of Nepal, 1963*.

<sup>163</sup> No.2 of Chapter on Marriage, *Country Code of Nepal, 1963*.

<sup>164</sup> Ibid.

<sup>165</sup> Section 4(3) of the *Marriage Registration Act, 1976*.

<sup>166</sup> Gender Disaggregated Indicators, 2002, Central Bureau of Statistics.

<sup>167</sup> Population Census Results in Gender Perspective (Population Census 2001) Vol. III, HMG, National Planning Commission Secretariat, Central Bureau of Statistics, Kathmandu, Nepal, 2001, p.12.

<sup>168</sup> Levels of Unwanted Childbearing are High in Nepal, Where Only One in Three Women Use Contraceptives (1998) 24 International Family Planning Perspectives 95

<sup>169</sup> No.2(9) of Chapter on Marriage, *Country Code of Nepal, 1963*.

<sup>170</sup> Population Census Results in Gender Perspective (Population Census 2001) Vol. III, HMG, National Planning Commission Secretariat, Central Bureau of Statistics, Kathmandu, Nepal, 2001, p.12.

<sup>171</sup> No. 2 of the Chapter on Marriage, *Country Code of Nepal, 1963*.

<sup>172</sup> No. 9 of the Chapter on Marriage, *Country Code of Nepal, 1963*.

- If the wife becomes lame and cannot walk
- If the wife becomes blind
- If the wife is living separately after obtaining her share in the property

In a country where the law itself supports bigamy, it is obvious that the result can be observed in the society. A study on polygamy conducted by SAATHI shows that out of the 41 respondents in 5 districts, 19 percent of the respondents were second wives, 8 percent third wives and 2 percent fourth wives.<sup>173</sup>

The second marriage is prohibited by law but not declared void. The second wife and her children too are given right to property thus affecting the right to property of the first wife.<sup>174</sup> However, in most instances due to the economic dependency as well as cultural and social barriers, the first wife prefers to continue her marriage.

► **Right to property** : According to the law men and women have equal rights in the management and disposal of property. In practice however, women do not exercise this right. The government's effort of doing away with a few discriminatory provisions of law relating to women's inheritance is well appreciated. However, even today discriminatory provisions exist that act as a hurdle in women's equal rights to inheritance. The daughter has to return her share of property upon marriage.<sup>175</sup> The reasoning for this provision is that upon marriage a daughter has a right to property in her husband's property. However, in reality this is not the case. According to the earlier provision a woman could receive her share in the family property after the completion of 35 years of age and 15 years of marriage. Although this limitation of age and number of years of marriage has been done away with by the Eleventh Amendment to the Country Code, according to the present provision, a married woman can claim for her share of property only if the husband fails to take care of her needs, or fails to provide her food and clothing or throws her out of the house.<sup>176</sup> Therefore, the daughter not only forfeits her right to parental property but also has only limited right to her husband's property.

► **Domestic violence**: Domestic violence is prevalent in many forms in Nepal. Such violence includes physical and sexual abuses, deprivation from enough food, limitations on movement, limitations on continuing profession etc. As men consider their wives to be their property, men feel that they have the right to physically and sexually abuse their wives. Women perceive such behavior as normal and as a result, the violence is accepted. The problem of domestic violence is on the increase. The study of the phone calls received by the Women's Rights Help line shows that out of the total calls received since its inception, 58 percent were received from victims of brutality within the family.<sup>177</sup> Furthermore, according to a study by SAATHI, an NGO working on issues of domestic violence, conducted on the situation analysis of violence against women<sup>178</sup> 77 percent of the perpetrators of violence against women are family members and 58 percent of the victims complained of daily abuses. Presently, as there is no law dealing with domestic violence, the cases are dealt under the Chapter on Injury of the *Country Code of Nepal, 1963*.

To address the growing menace of Domestic Violence, the government proposed a bill on domestic violence, which was first, registered in 21<sup>st</sup> Session of the Parliament, passed by the House of Representatives on April 12, 2002 and sent to the National Assembly. However, the Bill lapsed as

<sup>173</sup> Arzu Deuba and Pinky S. Rana, "A Study on the Psycho-Social Impacts of Violence Against Women and Girls with Special Focus on Rape, Incest and Polygamy", SAATHI and SNV/Nepal, 2001, p.41

<sup>174</sup> No.4 of the Chapter on Partition, *Country Code of Nepal, 1963*.

<sup>175</sup> No.16 of Chapter on Partition, *Country Code of Nepal, 1963*.

<sup>176</sup> No.10 of Chapter on Partition, *Country Code of Nepal, 1963*.

<sup>177</sup> "Checking violence against women should begin at home", The Himalayan Times, February 1, 2002.

<sup>178</sup> "A Situation Analysis of Violence Against Women", SAATHI, 1997, p.12-28

the House of Representatives dissolved on July 21, 2002. Furthermore, the Bill fails to address the issue of domestic violence comprehensively.<sup>179</sup>

▶ **Dowry**<sup>180</sup>: The age-old practice of dowry, i.e. giving of gifts to the family of the groom by the family of bride during marriage, reinforces the inferior status of women. This also encourages complexities in marital relationship and social status. Although initially the dowry was dependent on the will of the bride's parents, it has now taken complex form with the parents of the groom demanding particular items from the bride's family and on their refusal ill-treating the bride. The violence resulting from non-payment of dowry includes both physical as well as mental torture to the bride. A study conducted by an NGO shows the incidence of dowry in Nepal is on rise.<sup>181</sup>

#### **D. Gaps and Weaknesses**

▶ **Prevalent socio-cultural bias**: The inequality towards girls and women in marriage and family comes from the religious scriptures. These scriptures state that a woman does not have her own individual identity. Therefore she needs to be under the control of her father and brothers before marriage, under the control of her husband during marriage and under the control of her son/s after the husband's death. This attitude is not only seen in the unequal distribution of property but is also a reason for child marriage.

▶ **Lack of effective programmes and policies**: Lack of effective programmes and policies for the empowerment of women is one of the main reasons that women do not share equal status in their family.

▶ **Persisting discriminatory laws**: Even after the Eleventh Amendment there are persisting discriminatory laws related to marriage and family life.<sup>182</sup> They include – daughters have to return her share of the property upon marriage, discrimination amongst married and unmarried daughters in partition of property, inter state property and in transactional of property etc., no provision about interim relief, no provision to declare bigamy and child marriage void, even in case of child marriage limitation of only 3 months for reporting the matter, limitation on a woman's right to adopt, mother is denied to register the birth of a child etc.

▶ **Child marriage not effectively addressed**: The government has not effectively dealt with the problem of child marriage. Though the statistics reveal high percentage of child marriages, the reported cases are very low. Only 59 cases have been registered under the offence of child marriage between the years 1990 to 2000.<sup>183</sup> Therefore, only passage of law and increasing punishment cannot be an effective strategy for controlling the child marriage.

▶ **No effective provision of law to deal with the practice of dowry**: Though there are a few provisions of law, which deal with the ill practice of dowry, they are either not implemented or not specific to deal with the ever-growing problem of dowry.

▶ **Establishment of Family Court**: Although initiatives were taken by MWCSW by way of drafting a bill on family courts, neither the bill has been registered nor are there any efforts in doing so.

#### **E. Recommendations**

- There is a need to repeal all persisting discriminatory laws against women in marriage and family relations. This includes practices like – requirement of husband's consent for the

<sup>179</sup> For details see recommendations below.

<sup>180</sup> Dowry is also a form of domestic violence where the daughter in law is physically and mentally abused by the husband and the in laws for demand of various things from the maternal family of the daughter in law, such as money, jewellery, house etc.

<sup>181</sup> A Situation Analysis of Violence Against Women and Girls in Nepal, SAATHI, 1997, p.24

<sup>182</sup> The first study was conducted by FWLD in 2000 "Discriminatory Laws in Nepal and their Impact on Women: A Review of the Current Situation and Proposals for Change", which recently updated study after the amendment of *Country Code of Nepal, 1963* on September 26, 2002.

<sup>183</sup> Statistical Year Book of Nepal 2001, Central Bureau of Statistics, Kathmandu, Nepal, p.438.

division of property; Mother not recognized as the natural guardian of the child; Discrimination in adoption; Discrimination amongst daughters on the basis of marital status; Provision of bigamy (second marriage without divorcing the first wife); Division of property equally amongst all the wives; Provision of married women allowed to adopt children only in limited situations; Daughter's required to return interstate property upon marriage; Discrimination over child custody.

- Due to the social acceptance of child marriage and low level of reporting of such cases, the government needs to address the problem of child marriage comprehensively. Only increase in punishment is not enough to address this problem. There needs to be massive awareness campaigns in coordination with NGOs for relaying to the general public that marriage is not the end of a girls life and that her education and professional qualification are equally important as boys.
- There is a need to promulgate separate law to deal with the problem of dowry. The Act should include definition of dowry, penalty for giving, taking or demanding dowry, and agreement for giving or taking dowry.
- There is a need to establish family courts for the settlement of disputes between husband and wife on matters of marriage and divorce. This is essential as open court hearing system often brings private family life of the couple in public thereby violating the right to privacy of the individuals.
- Follow the passage of the Bill on domestic violence and address the issues<sup>184</sup> like broadening the definition of family members, inclusion of economic and sexual abuses as domestic violence, burden of proof to be shifted on accused, provision of emergency monetary relief and preventive relief, provision of voluntary counseling, establishment of separate mechanism to execute the decision, right to reside in home, priority to women for child custody, support homes for women when they are thrown out of family or face domestic violence in marriage
- Declare bigamy/ polygamy null and void. It is essential to do so because if the second marriage or any number of marriages after the first marriage is considered legal after the payment of fine and completion of punishment, it in a way legalizes the second marriage and does not end the continuing discrimination faced by the women.

## **EMERGING ISSUES**

### ***Single Women of Nepal***

#### **A. Prevalence of the Problem and Critical Areas of Concern**

In Nepal single women are stigmatized as “bad” and a problem and burden to the family. They are excluded from different social activities like marriage and auspicious functions. They are discriminated and deprived of getting a chance to live a normal socio-cultural life. Single women in Nepal are treated as an unwanted family members who are perceived to be bad omen, a burden and sexually vulnerable. Widow’s access to family resources, both physical and emotional is usually cut off at the time of her husband's death. Cultural patterns are manifested in symbolic rituals and they are banned from using colorful clothes and are labeled to make themselves unattractive.

<sup>184</sup> A study of the Domestic Violence Bill undertaken by Ms. Purna Shrestha, Unpublished, 2002, Law on Domestic Violence : A Necessity, FWLD & MGEP.

According to a study on *The Status of Single Women of 17 Districts of Nepal*, conducted by Women for Human Rights, an organization working for single women, the most immediate problem faced by single women is economic deprivation.<sup>185</sup> They are not aware of their legal and property rights. The primary factors responsible on their being marginalized are the deep-rooted social structure. The religious and social practices count a lot in encouraging the loss of self- esteem among single women. Her lack of resources and self- confidence is another important cause.

The single women go through lots of changes physically, mentally and psychologically.<sup>186</sup> Most of them face mental depression, sleeplessness, irritation and headache. Young single women are abused both verbally and physically even to a greater extent. Most of them face inhumane behavior during their mourning period and some young single women have to face sexual harassments at their work place. They feel lonely and unwanted by the society. The most immediate economic deprivation faced by single widows is the challenge that they face to the right to shelter in their husband's house. During the study conducted by Women for Human Rights, it was found that most of these widows feel a loss of identity and self-confidence.

The government of Nepal has identified the issues of single women only in welfare approach. There is a scheme, which supports only old single women by providing them shelter and Rs.150 stipend per month.<sup>187</sup> There are no special security measures for the single women except for providing compensation to the spouse of the security forces in case of the death during insurgency.

It is an important fact that no concrete efforts have been made, so far, to uphold the rights of these women who have been widowed because of the conflict between the Maoists and the government. It is a reality that the social costs of last seven years of insurgency in the country has been enormous in many districts of Nepal and the socio economic condition of the single women are amongst the worst.

For the first time in Nepal, the 10<sup>th</sup> plan has incorporated the issues of single women.<sup>188</sup> Based on the strategies of the 10<sup>th</sup>, the government is now trying to create jobs and skill training to single women of Nepal.

#### **D. Recommendations**

- To meet the gaps and challenges to eliminate the discrimination on single women, it is important to create a social awareness and to work towards changing the mind-set of the public towards single women. It is also necessary to educate girls, so that they can be independent and fight for themselves and their own rights.
- Government should commence schemes like income generation training to the single women, easy access to loan opportunity, counseling services, some reservations for job opportunity, help line services, free education to children of needy single women, sensitization program to make aware the family and community, housing schemes, pensions or compensations etc.
- The 10<sup>th</sup> plan regarding single women's empowerment should be implemented by formulating favorable policies. Some reservations especially for positive discrimination to single women should be incorporated. There is also a need for internationalization of this issue.

<sup>185</sup> The Status of single women of 17 districts- A Study conducted by WHR on 2002.

<sup>186</sup> A Study conducted by WHR on 2002.

<sup>187</sup> A Study on Conflict Widows by Nagarik Awaj, 2002.

<sup>188</sup> 10th 5 yr plan published by National Planning Commission Pg no 446



## Women and Armed Conflict

### A. Prevalence of the Problem and Critical Areas of Concern<sup>189</sup>

Since the past 7 years, Nepal has been severely affected by internal armed conflict. The Maoist insurgency has been affecting the lives of women in Nepal. The government has failed to address this issue in its periodical report. History shows that any war or internal conflict affects women more than men and this is true in the case of Nepal too. There are reports that both the government (Army/Police) and the Maoist are violating the rights of women. Both the sides are using sexual violence as a tool to punish the women for their alleged connection with either side. Young girls are compelled to leave the house because of fear to be joined with the Maoist or tortured and being raped by the security forces.<sup>190</sup> There are reports that women affected by the insurgency do not receive adequate compensation, there are hardly any scholarships for their children and due to the violence women are migrating to cities leaving behind their land and cattle. About 10,000 people have lost their lives, some people are disappearing and others are forced to migrate. Those who are still residing in their hometown are also suffering from the undeclared civil war particularly from the Maoist and security forces. In many cases death has removed earning members from the household. This has reflected on the decrease of agricultural production and increase in poverty. As a result the living standard of people is declining day by day. Many people have started marrying off their daughters at very early age due to fear of the girls being raped. Mostly in remote areas women are more violated. They are compelled to migrate and are also victims of girl/women trafficking.

According to a study conducted by an NGO, 589 women have faced human rights violation from the government and 201 women faced human rights violation from the Maoist.<sup>191</sup> Similarly, another study reveals that in a sample size of 142, the 69% women have faced human rights violations from the government side and 31% from the Maoist.<sup>192</sup> Out of these 142 cases 43% women's husbands have disappeared.<sup>193</sup> Most of the widows are aged below 30 years and now in a vulnerable and insecure situation and are mentally disordered and depressed because of deep sorrow for losing their husband, son and other family members.<sup>194</sup> They lack awareness on their legal rights to claim for compensation. In a sample study of 25 women, only one woman who happens to be the spouse of a political party leader has received compensation.<sup>195</sup> Conflict affected women are very depressed and face stress due to anxiousness about the future of their children.

Maoists are not allowing them to perform funeral rituals. Women in Nepal are very traditional and religious. Not performing funeral rights of their husbands' depress them as it is both socially and religiously not accepted and they strongly believe that their husbands' soul are not liberated after death.<sup>196</sup> Most of the women, who have lost their family members, have now started developing a feeling of taking revenge. Another problem faced by women who are involved in the war is the

<sup>189</sup> The overall conditions of conflict-affected women in Nepal according to the study made by different organizations:

- Fact Findings Study on Conflict Widows- Nagarik Awaz
- Fact Finding Study on Violation of Human Rights of Women on Conflict Areas-Jagaran Nepal
- Human Rights information book 2003- Informal Service Sector (INSEC)
- A Study on the Affect of Conflict of Women and Children -INSEC
- Maoist insurgency and the Human rights violation of women: Women' Rehabilitation Centre (WOREC)
- Women and children in the periphery of people's war- Institute of Human Rights Commission Nepal (IHRICON)

<sup>190</sup> Fact Finding study on violation of Human rights of women on conflict areas-Jagaran Nepal

<sup>191</sup> INSEC Human Rights information Book 2003

<sup>192</sup> Maoist insurgency and the Human rights violation of women: WOREC

<sup>193</sup> Ibid.

<sup>194</sup> Fact Finding Study on Violation of Human Rights of Women on Conflict Areas-Jagaran Nepal

<sup>195</sup> Ibid.

<sup>196</sup> Fact Finding Study on Violation of Human Rights of Women on Conflict Areas-Jagaran Nepal

necessity of giving birth to children in jungles as the health posts have been destroyed during the insurgency.<sup>197</sup>

This is a new and an emerging issue in Nepal, therefore no plan and policies concerning these issues are in place. Even certain initiatives taken by the government, like establishing mobile health posts and counseling centers to reduce the impact on physical and mental health, are out of reach of most of these women as they are ignorant of the services. There are no clear guidelines and regulations related to compensation. Women who do not have access to the government are delayed in receiving any facility. Furthermore, women's participation in negotiation process from both the sides is nil.

## B. Recommendations

- Government should take obligations for protecting women's rights as detailed under the Geneva Convention, UN regulation 1325 and the other Human Rights Convention seriously.
- The emphasis should be given to the equality approach for women's involvement and active participation in every process of peace building including representation in peace dialogue committee, human rights monitoring committee from local level to National level.
- The government should elaborate suitable policy and programmes for the benefit of women and children affected directly and indirectly by the conflict. This could include speedy compensation, support for education of children, money for fulfilling the emergency needs etc.
- The government should also undertake continuous monitoring of the programmes and policies it has undertaken for the benefit of the women and children who are victims of armed conflict.
- The government should ensure that the counseling centers and mobile health posts it has established for reducing the impact on mental and physical health of women due to the conflict should be implemented effectively. Such services including medications should be easily accessible to women and children.
- The government should involve women in the peace talks so that their problems come upfront and they are given an opportunity to be equal partners in the peace process.
- Women's agenda, which has come up during the negotiation talk, should be taken into consideration seriously by the government.

## Dalit Women

### A. Prevalence of the Problem and Critical Areas of Concern

The *Constitution of Nepal 1990*, under the chapter of fundamental rights strictly prohibits the practice of untouchability.<sup>198</sup> The same act is made punishable up to one-year imprisonment or fine of up to rupees three thousand or both.<sup>199</sup> However, the practice of untouchability still exists in Nepal. The Nepalese social structure, which is based on caste hierarchy, discriminates against Dalit who lie at the bottom of this class hierarchy. Though according to law, all citizens can equally access all public places, the deep-rooted discriminatory societal norms still deny Dalits entering in the public places like temples, water spring, hotels and houses of so-called upper caste people. Marrying and eating together with the so-called higher caste people and fetching water

<sup>197</sup> Maoist insurgency and the Human rights violation of women : WOREC

<sup>198</sup> Article 11(4) of the *Constitution of Nepal, 1990*.

<sup>199</sup> No. 10(a) of Chapter on *Adal* Miscellaneous, *Country Code of Nepal, 1963*.

from the same public tap are strictly prohibited for the Dalit people. Such discriminations and lower social and economical status of Dalit women are making them abused both mentally and physically.

In recent days, government efforts for women empowerment are taking place through structural reforms in civil services and establishment of National Women Commission and National Dalit Commission. Similarly, civil society organizations are taking a leading role in women's movements. Despite these positive initiation and efforts no significance change in the Dalit women's life is realized.

The Dalit women's quality of life is substandard compared to the national levels, though they comprise about 16% of Nepalese women.<sup>200</sup> Their families are ultra poor and occupy about 80% of ultra poor of Nepal. All of the human development indicators show substandard level of Dalit women. Their literacy rate accounts 9% against 42%, the national average for women of other caste.<sup>201</sup> The life expectancy of the Dalit women is 42 years as against the national average of about 59.8 years.<sup>202</sup> High rate of birth mortality and high rate of maternal death amongst the Dalit women are the serious and common health problems.

A small tribe amongst the Dalits called *Badi* are still unwillingly engaged in the sex works as granted by the society. They are being trafficked and sexually harassed by the people from high caste due to their poverty and lack of societal prestige.<sup>203</sup> It is apparent that Dalit women cannot easily raise their voice against such misconducts since almost all Dalit men and women's economy largely relies on the patron-client relation with the so-called high caste people while on the other hand they are unaware of legal rights.

Dalit women are left behind in the policy making from the grass root level to the central level. Thus, their daily routine and living lies in the history of pain, agony, sorrow, misconduct and ill treatment. The Dalit women are facing threats of social embargo and even of death as to when they get married with higher caste and touch the water of higher caste people.

**A** heterogeneous society of eastern Nepal expelled a blind couple from their village, because a blind Dalit women got married to a blind man belonging to a higher caste. Similarly, Muna Devi Pariyar of far western was beaten to death by a higher caste couple as she touched their water. They charged her to be a witch and even forced her to eat human waste.

*Source: Feminist Dalit Organisation (FEDO), Nepal*

Such evidences can be seen in daily newspapers regularly.<sup>204</sup> However, the Nepal's women movements are hardly paying its attention to such violence in order to give justice to the victim, the Dalit women.

Effectiveness of government initiatives that prohibits caste discrimination are yet to be seen.

<sup>200</sup> Dahal Dilli Ram (et. al.) (2002), National Dalit Strategy Report, prepared for National Planning Commission, Kathmandu.

<sup>201</sup> CBS, (2001), HMG/Nepal.

<sup>202</sup> Nepal Human Development Report (2001), UNDP, Kathmandu.

<sup>203</sup> Bhattachan Krishna (2002), Social and Economic Condition of Dalit Women in Devkota P. 9ed.), Dalit of Nepal, FEDO, Kathmandu.

<sup>204</sup> Public hearing "Issues of caste discrimination against Dalits in Far-Western Nepal", organized on 17 June, 2003, Kathmandu.

## **B. Recommendations**

- The mass awareness, functional education, women's organizations and economic empowerment along with positive discriminatory legislative provisions in state functions would serve as the necessary tools that should be carried out by the state without further delaying. The civil society in collaboration with the government should take the actions of social transformation, such as prohibition of traditional negative custom of untouchables and adopting new culture that respects people's rights.
- Specific law to address the issues of Dalit as a whole and Dalit women including the problem of untouchability needs to be enacted to address the multiform of discrimination.
- Massive awareness in community and technical educational should be encouraged.
- Dalit women themselves should be active.
- Inter caste marriage should be recognized and the couple needs to be protected from harassment.
- Special measures for Dalit women in each and every sector of the society i.e. education, health, employment, etc.
- Skill development training should be organized.

## ***Indigenous Nationalities Women***

### **A. Prevalence of the Problem and Critical Areas of Concern**

According to the Census of 2001 female population comprise 11,359,378 (50.03%) of the total 22,736,934 population of Nepal. Out of 11,359,378 female populations, indigenous women comprise 36.7% (4,181,136). Indigenous women of Nepal have been victims of multiple discriminations. Gender discrimination against indigenous women exists among Hindu families of indigenous nationalities. All indigenous women of Nepal have been intensively oppressed due to continuing racial, linguistic, cultural and religious discrimination in the last 234 years. It is unfortunate to the nation that indigenous women are deprived from non-formal and basic and primary education in their respective mother tongues and subsequent lack of access to development due to denial of right to information.

### **B. Recommendations**

- All forms of racial, linguistic, religious, and cultural discrimination against indigenous women must be eliminated.
- Indigenous women have spiritual and interdependent relations with land and natural resources since time immemorial. Therefore, HMG/N must formulate rehabilitation program for those indigenous women who have been oppressed and displaced by policies of the state related to land, forest, water etc. Also, indigenous women's access to traditional land and natural resources must be ensured.
- Proportional representation of indigenous women must be ensured in any affirmative action policy designed for women from local to national levels.
- Basic and primary education must be given in mother tongues to indigenous girl child and HMG/N must ensure to provide trilingual education (mother tongue, one other national language and one international language) to indigenous women.
- "Dry are" movement (or "liquor ban campaign") of women's movement has hit hard on cultural life of indigenous women from their birth to death, on the one hand, and HMG/N's campaign to destroy container of fermented rice and other food grains to produce liquor has

- hit hard on their last effort to make their livelihood has put many of them to a risk of being trafficked in. Instead of "denial" of production, controlled use of liquor must be emphasized.
- Out of 86% of women who live in rural areas, most of the indigenous women live in remote and high altitude places with no facility. Therefore, rural development programs must have special focus on indigenous women.

## **Women and HIV/AIDS**

### **A. Prevalence of the Problem and Critical Areas of Concern**

The total number of HIV positive people in Nepal is 3103, out of which 859 are women.<sup>205</sup> The government data shows that out of the total number of HIV positive women, 795 belongs to 15 – 39 years age group and 270 HIV positive women are housewives. Cultural norms of sexual ignorance and purity for women block their access to prevention information. Gender power imbalance makes it difficult for women to negotiate safer sexual practices with their partner. Economic dependence and the fear of violence effectively force women to consent to unprotected sex. Women are receiving inadequate care and treatment both because it is being directly withheld from them and what is provided is inaccessible and unsuited to their health needs. The trafficking of young girls and women are also further fueling the epidemic.

The Government has formulated the National Policy on AIDS and STD Control that includes promotion of safer sexual behavior, counseling to people with HIV/AIDS, discouragement against the discrimination of the people with HIV positive status etc.<sup>206</sup> It is very general and has not received due consideration from the gender perspective. The National Center for AIDS and STD Control, Department of Health Services prepared a Strategic Plan for HIV and AIDS in Nepal for 2002 – 2006 which comprises promotion of safer sexual behavior among both men and women through the promotion of condom including female condom, empowerment of family and community members to provide care and support to people living with HIV/AIDS, gender-sensitive services with an emphasis on information about reproductive health and sexuality, prevention of HIV transmission etc.

Vulnerability to infection and consequences of infection are different for men and women. The policy somehow tends to forget the specific prevention, care and support needs of men and women are different, not just because of their physiology but also more importantly in the context of gender roles and relations. The Policy lacks appreciation of these specific needs of women and the allocation of greater resources. Many health education messages are blatantly gender-biased, portraying “immoral” women as responsible for the spread of diseases.

The sexual exploitation of women and girls also increases the likelihood of infection. Violence and the fear for violence may intimidate women from trying to negotiate safer sex. Vulnerability is extremely high in coercive situation such as trafficking and child prostitution, where women and girls have little power to insist on condom use or otherwise control the terms under which sex takes place. Further, women who are HIV positive or who are perceived to be positive, such as sex workers, are subject to discriminatory treatment. They are usually abandoned, shunned by families and communities and dismissed from employment. It is women, rather than men, who are most likely to be blamed as the culprits and are stigmatized as immoral for contracting the disease.

<sup>205</sup> Data as of August 31, 2003 made available by National Center for AIDS & STD Control, Ministry of Health, HMG/Nepal.

<sup>206</sup> National Policy on AIDS and STD Control, 2052 B.S., National Center for AIDS and STD Control, Ministry of Health, HMG/Nepal.

In this situation where HIV positive women are stigmatized, and where their privacy is not protected, they may be reluctant to seek testing, treatment and taking necessary steps to prevent spreading the disease to family members.

Pregnant women who are HIV positive may be subjected to coercive mandatory pre and postnatal testing. Abortion may be forced upon them, they may take these choices under pressure or on the basis of misinformation.

Negative attitude of family and society against infected and affected women, inaccessibility of medication and treatment and lack of rehabilitation centers for HIV infected women and their children are other critical issues.

Women face greater danger for HIV infection for biological reasons as well as due to social, cultural and economic implications. Gender-based discrimination and low socio-economic status, increase the vulnerability of women making them more susceptible to infection than men. Women are not in a position to access the full benefit of the services offered by the state, because of their status and power relation in the present social structure. Accessibility of health services for women population is a factor of serious concern. The distance from the house, getting access to transport or even time available to go to the services centre, the cost of health care and medicine can be detrimental in meeting the particular health needs of women. Accessibility also includes culturally appropriate care. Stigma and discrimination against people with HIV/AIDS also prevent them from coming forward to taking the limited facilities offered for them. The awareness raising programs are not being able to reach rural women as they have very limited access to media resources.

## **B. Recommendations**

- Effective implementation the awareness raising programs on HIV/AIDS targeting specifically on women, taking into consideration their special needs and concerns, at all level.
- Launch public education campaigns to counteract stigma and discrimination attached against HIV and the women living with HIV/AIDS.
- Sensitize medical practitioners to provide adequate HIV treatment and health care services without biasness based on gender and profession.
- Change discriminatory cultural norms and stereotypes relating to women and men's sexuality through public education and introducing new message about sexuality into courses and programmes in school, taking into consideration their special needs and concerns, at all level.
- State should consider specific measures relating to HIV/AIDS, including ensuring greater availability of affordable female condoms and microbicides, availability of anti-retroviral drugs and treatment for opportunistic infection.
- Adequate health care facilities and HIV/AIDS information and counseling to rural women should be provided by the state.
- Provide HIV positive pregnant women with accurate information to assist them in making their own decisions regarding pregnancy and providing option of breast milk substitutes. Provide affordable and accessible treatment to HIV positive pregnant women to prevent transmission to their children.
- Assess existing laws and policies from the HIV/AIDS related human rights perspective and develop a comprehensive legal framework preventing further spread of the virus as well as protecting rights of the People Living With HIV/AIDS.
- Establish rehabilitation center for HIV infected women and their children.

## **Migrant Women Workers**

### **A. Prevalence of the Problem and Critical Areas of Concern**

Since the last quarter of the 20<sup>th</sup> Century the striking feature of the employment scenario in Nepal has been the movement of women from rural to urban and from urban to foreign countries. Migration has been influenced by many factors such as lack of employment opportunities in the country, globalization, and internal armed conflict. Many women are opting for foreign employment for self-sustenance and to financially support the family in the face of scarce employment opportunities. Yet, this option is often hindered by government policies, cultural norms and values, and restrictions imposed on migrant women workers (MWW). In a foreign cultural setting, such situation is worsened in absence of concrete mechanisms for safe working environment and to protect MWW's rights and welfare. Women receive virtually no information regarding their job abroad, the work condition, working hours, wage they receive etc. Women who opt for foreign employment are unskilled, and uninformed and therefore are vulnerable to manipulation.

Though Nepal is benefiting from the remittance sent by the migrant workers, situation for MWWs in the home country as well as in the destination country has not been encouraging and supporting. Moreover, women's contribution for national economy as well as household sustenance is not recognized. Also recruiting agencies are centralized in Kathmandu and access to their service is denied to the rural women where ninety percent of these women reside.

Few initiatives have been taken by the government to address the issue of Women Migrant Workers.<sup>207</sup>

A ban is imposed on migrant women workers to go for foreign employment to the Gulf countries via India through unauthorized agents. This has made them more vulnerable as they are branded as illegal migrants. Though the ban has been lifted in organized sectors but due to some provisions women are still going to the Gulf countries illegally. Due to their illegal status, the women are always in a threat of deportation and do not have a bargaining power vis-à-vis the agents, the employer, etc. Furthermore, the discriminatory provisions of Foreign Employment Act curtail women's right to mobility and right to choice of occupation.

The issue of Migrant women workers is relatively a new issue in women's movement in Nepal. It is misunderstood and overlapped with issues of trafficking. The existing "Protective" mindset and attitude towards women in foreign employment at all levels from the government, development organisations, civil society and the media, viewing the issue from the Right Based perspective is a challenge to ensure their rights to employment and their mobility.

Though Nepal does not have a systematic gender disaggregated data system on migrant women workers, however the Population and Housing Census, 2001 states that 82,712 women have migrated outside Nepal. Though this data does not explicitly indicate that all these women have migrated for employment, but nevertheless there is an indication. That women have migrated outside Nepal and most of them must be working. However, according to the Department of Labour and Employment Promotion, only 181 women have migrated officially for foreign employment since the past two years.

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<sup>207</sup> Such as: National Labour Policy, 1999, Tenth Plan- Issues of Migrant Women Workers have been reflected in the Tenth Plan of Nepal (2003-2007). Also the government in a press release has announced of some measures to on January 17, 2003 to address some of the issues of MWW of Nepal, Steering Committee has been formed to facilitate the issue of Migrant Women Workers in Nepal in the Department of Labour and Employment Promotion, Ministry of Labour and Transport Management, and, National Consultation - A National Consultation on Empowering Migrant Women Workers of Nepal was conducted to address the issue of migrant women workers in Nepal. A number of recommendations have been brought out in the consultation to address the issues around migration.

## **B. Recommendations**

- Revision of the Foreign Employment Act with Rights based approach.
- Lifting of the ban in domestic sectors of Gulf countries to ensure Human Rights of migrant women workers.
- Implement the policy to send women to work in organized sector to Gulf Countries.
- Initiate bilateral agreements between the country of origin and country of employment.
- A standardized comprehensive pre-departure training has to be made mandatory in strict monitoring.
- Ensure the rights of undocumented workers through government-to-government talk.
- Budget should be allocated to regularize the system for foreign employment.
- Mainstreaming the issue of migrant women workers in other thematic areas such as HIV/AIDS, economic empowerment, banking system, violence against women, poverty alleviation, education and training etc
- Massive interaction and sensitization programme on conceptual clarity and the rights of migrant women workers, targeting to the immigration, central district office, recruiting agencies, and health officials, Banks, NGOs etc.
- An effective mechanism has to be developed to collect disaggregated data of both documented and undocumented migrant workers for situational analysis to formulate programme and policies to address their concerns.
- Ratify the International Convention on Protection of the Rights of All Migrant Workers and Members of their Families.
- Introduce schemes to facilitate migrant women workers such as scholarship programme for their children, loans etc.

## **Women and ICT**

### **A. Prevalence of the Problem and Critical Areas of Concern**

Gender discrimination in the access to information is one prime reason for hampering sustainable development. It is a fact that information and communication technologies (ICTs) have a major role to play in bridging this gap. Thus, if access to and use of the new technologies is directly linked to socio-economic development, then it is essential to ensure that women in developing countries understand the significance of these technologies and also use them.

In spite of the very fast rate at which the information industry is growing, the majority of Nepali women either lack knowledge or lack access to this technology. Thus the gender gap in the 'digital divide' itself is now an increasing concern.

HMG/N has recognized the potential of ICT for overall national development. However, government plans need to clearly indicate how the potential of ICT will be explored and utilized to ensure women's involvement not only as a consumer but also as a manager. Therefore, it is necessary that ICT be fully integrated in every level of the national policies in order to make a tangible difference in the quality of the common people's life particularly the rural poor.



Women are in the deepest part of this digital divide and further removed from the information age than men. Therefore, in order to bridge this gap, it is essential that gender issues be considered early in the process of the introduction of information technology in Nepal so that gender concerns can be incorporated from the beginning and not as corrective measure afterwards. It is also essential to explore other forms of communication tools to meet the needs and preferences of those who either cannot or choose not to engage in digitally enabled communications technology. This is particularly important for women in marginalized communities, who are at a risk of being further marginalized as community-based solutions are edged out by market-driven solutions to the so-called "digital divide."

In Nepal, only a privileged few have access to information and the capacity to use it for development purposes. A handful of these people are women but the problem is that they are mostly used as back office employees and for transferring data instead of designing programs, system analysts and other decision-making positions. Though there has been no gender research and analysis on the impact of information and communication technology, it is widely understood that a series of factors, including literacy and education, language, time, cost, geographical location of facilities, social and cultural norms and lack of women's computer and information search and dissemination skills constrain their access to information technology. Unequal power relations and other social and cultural aspects have contributed to this differential access, participation, and status of men and women in the country.

Presently there exists a cross-cutting pattern of discrimination whereby women and members of minority ethnic/racial communities are less likely to have access to the equipment and necessary skills training, social, cultural support to utilise ICTs.

## **B. Recommendations**

- Establish policies, programs and projects that consider, identify and analyze the gender differences and inequalities in the access to and use of ICT ensure its effective implementation with appropriate monitoring and evaluation mechanisms.
- Ensure the inclusion of a gender perspective and coordination of the gender activities in all domains of national ICT policies and legislation
- Conduct gender research and analysis on the impact of information and communication technology for addressing the consequences of the digital revolution on gender equality.
- Promote dissemination of information to women in rural areas through alternative means of information technology by providing affordable ICT resources and assets and build ICT capacity of marginalized groups
- Support ICT capacity building in women's organizations to enhance their capability to transfer knowledge to their target groups up to the grassroots level. State should also provide affordable and accessible communication technology, as this is most significant to the rural women.
- Use the media to raise awareness and knowledge about how ICT can empower women and provide training for media journalists (50% women) in reporting on women and ICT.
- Promote enabling environment in all ICT sectors to strengthen the use of low-cost and open source technologies to facilitate access to information for disadvantaged groups particularly women.
- Identify measurable indicators to monitor and assess the progress and impact, including social aspects, of ICT policies and programs in improving the quality of life of the disadvantaged group.
- Initiate the formulation of specific cyber law and provision for its implementation.

## ***Bhutanese Refugee Women in Nepal***

### **A. Prevalence of the Problem and Critical Areas of Concern**

More than 100,000 Bhutanese refugees have been living in refugee camps in Nepal for the last 12 years. They are living in camps administered by the government of Nepal and the United Nations High Commissioner for Refugees (UNHCR). Approximately 50% of these refugees are women.

Refugee women are being denied their rights to nationality, and their right to return to their country. They are at high risk of statelessness. It is difficult for women to obtain their own separate ration cards. This leaves women in abusive relationships, especially vulnerable to situations where their husbands may deny them their full rations. Women who are in polygynous marriages and living separately from their husbands may not be able to access some items like stoves, soap, and blankets – which are only distributed by household rather than individually.

Women are discriminated against if they marry outside the refugee camp. If refugee men marry outside the camp, their children will be registered, will receive rations, and will be eligible for repatriation. If refugee women marry outside the camp, their children are not registered except in exceptional cases. There are problems of sexual and gender-based violence in the camps. Some of these cases have involved aid workers and Nepalese government officials.

There are many cases of sexual and domestic violence among the refugees, as well as some cases of girls who have been trafficked from the camps for sex work in India. There have been cases where girls who have been raped are forced to marry their assailant in order to “save” their honor. Before these cases became public in November 2002, many of these cases were handled by the refugee-run camp management committees – which were dominated by men. They had completely inadequate methods for handling these cases in which victims would be given public apologies and compensation as little as 10 Rupees. Some of the rape victims have been as young as age 6. After these problems received publicity – the government of Nepal and UNHCR have taken steps to try to prevent and adequately respond to these problems.

### **B. Recommendations**

- Arrange for women to register in the camps independently from their husbands if they desire. All women should have access to their own ration card, as per UNHCR guidelines. Refugee women who marry Nepalese locals should be able to register their children in the camps.
- Hold all government officials accountable for sexual exploitation of refugee women and girls and ensure that they are prosecuted in a timely manner.
- Repeal or amend the 35-day statute of limitations that prevents many women and girls from pursuing legal remedies for sexual and domestic violence.
- Adjust procedures for collecting medico-legal evidence in rape and sexual assault cases so that they are more easily completed and do not further traumatise the victim.
- Facilitate and implement UNHCR’s programming to prevent and respond to sexual and gender-based violence.

### ***Implementation Status of Beijing Platform for Action (BPFA)***

The government report states the steps it has taken to implement the BPFA. Though significant initiatives have been taken, the status of women and children has not significantly improved. Prevalent discriminatory social values compounded with discriminatory laws have been acting as a major hurdle to uplift the status of women and children. Likewise, budget allocation for women

oriented programs and policy is inadequate. Major line ministries have not been able to include gender issues in all their programmes and activities and there is a lack of gender units in all line ministries.<sup>208</sup> Furthermore, political instability has been hindering the development, as the major focus of the government remains on political issues rather than development issues. The Outcome Document of BPFA (hereinafter Outcome Document) has not been adequately shared with all the key stakeholders and this has ultimately hindered the implementation of the Outcome Document.<sup>209</sup> In addition, the level of awareness on National Plan of Action on BPFA is also inadequate.<sup>210</sup>

The government report describes of various activities undertaken for poverty alleviation. The poverty reduction programmes for women are addressed with little commitment. Governmental accountability has lessened due to the frequent change of governmental administration. Another barrier in the planning, implementation and monitoring of poverty programmes for women is the lack of calculation of domestic chores in the gender-disaggregated data.<sup>211</sup> The government programmes are very general macro analyses and assumption-based programmes, which lack clear vision of implementation and have remained mere aspirations than achievements.<sup>212</sup>

Service delivery in the health sector remains weak and though the government has been committed to construct extensive network of primary health care centers, lack of proper management, lack of gender sensitivity and lack of trained personal and medicine are the obstacles for proper health care delivery in many parts of rural Nepal. Though programs for reducing maternal mortality rate, like the Safe Motherhood program have been boosted, in reality no significant improvement has been achieved. Furthermore, the components of privacy, confidentiality and informed consent can hardly be observed in the health care system of Nepal.

The Maoist insurgency in the country has affected the lives of women and girls. Women are facing inexplicable pain at the hands of Maoists and Security forces. Though the government has taken various steps to address the Maoist insurgency by providing compensation, scholarships to children, mobile health posts, peace talks, not much has been achieved and the insurgency continues to affect the lives of women.

In case of land ownership, of the total households, the percentage of households where women own the land is just 10.83% whereas just 4.4% of the total cultivable land remains under the ownership of women. Of all the women who own land, more than 81% of women have less than 1 hectare of land.<sup>213</sup> In addition, as stated earlier there is no law to tackle sexual harassment in workplace. There is no practice in the Finance Ministry to carry out impact analysis of its macro economic and taxation policies on women or the poor in general. In case of budgetary allocation, the Ministry of Finance considers all its macro-economic policies and tax measure as gender neutral and has paid no attention to gender aspects in its policies and taxation measures so far.<sup>214</sup>

Women's qualitative as well as quantitative representation in major political parties remains very poor. Women's representation in government delegations at the international meeting and seminars is also negligible.

<sup>208</sup> Implementation Status of the Outcome Document of Beijing Platform for Action, FWLD and TAF, May 2003, p.62.

<sup>209</sup> Ibid. p.61

<sup>210</sup> Ibid.

<sup>211</sup> Ibid. p.8

<sup>212</sup> Ibid.

<sup>213</sup> National Planning Commission; Nepal. *Tenth Plan 2059-2060*. Pp 443

<sup>214</sup> See Article 3

Though a National Plan of Action of BPFA exists, there is no single unit in the MWCSW responsible for monitoring the implementation of BPFA. Inadequate financial and human resources in these institutions to carry out the functions effectively is one of the major hurdles in the operation of institutional mechanisms.

Women are predominantly portrayed in stereotypical roles and glorified in the roles of caring mothers, obedient wives and daughters, and remorseful widows. Though steps have been taken on the part of the government to do away with stereotypical images of women, not much has changed. The Press Council, which is supposed to officially monitor any violation of media code of conduct, usually addresses general media issues and has not exhibited any serious attention to improving media's portrayal and representation of women.<sup>215</sup> In addition, women are also not a part of official commissions, boards and committees formed for formulating policies or monitoring the media. Though the government has recognized the potential of ICT for all round national development, the plans of the government fail to clearly indicate the potential of ICT to ensure women's involvement not only as a consumer but also as a manager in all these plans.

The government has incorporated gender perspective in environmental and agricultural policies and mechanisms. The tenth plan also incorporates the gender perspectives in the environment sector. However, gender insensitive attitude and behavior of government officials, staff, village leaders and influential people is a big challenge. Furthermore, there is no specific mechanism to ensure women's rights concerning control over resources generated through the agricultural development interventions.

Besides the steps taken by government to improve the status of girl children, they are neglected in all walks of life. Statistics show low enrollment of girls in schools and colleges, which decreases access to further studies.<sup>216</sup> The major reason is stereotyping of roles where parents prefer to train daughters in domestic chores rather than formal education. The government statistics show that the mean age for marriage for girls is 19.5 for girls and 21.9 for boys.<sup>217</sup> However, the population census results in gender perspective shows that, 55.5% of the girls get married between the ages of 15 to 19 years.<sup>218</sup> This leads to early pregnancy and childbirth which affects various aspects of their development, physical, mental as well as psychological. Therefore, unless the government does not address the major cultural barriers and stereotypical roles, no actual improvement in girls' lives can be observed.

<sup>215</sup> Implementation Status of the Outcome Document of Beijing Platform for Action, FWLD and TAF, May 2003, p.50

<sup>216</sup> See Article 10

<sup>217</sup> Gender Disaggregated Indicators, 2002, Central Bureau of Statistics.

<sup>218</sup> Population Census Results in Gender Perspective (Population Census 2001) Vol. III, HMG, National Planning Commission Secretariat, Central Bureau of Statistics, Kathmandu, Nepal, 2001, p.12.

**Participants of the National Consultation of Shadow Report  
(September 24-25, 2003)**

**Eastern Region**

S.No.	Name	Organization	District
1.	Bina Podhar	Women Help Group	Sunsari
2.	Binita Simkhada	ABC/Nepal	Morang
3.	Binod K. Chaudhary	Forum for Community Development	Sihara
4.	Bishnu Sharma	Help Group	Morang
5.	Harikala Shrestha	LACC, District Committee	Ilam
6.	Mandir Kumar Mahato	Patron	Siraha
7.	Manju Dahal	"	"
8.	Maya Bhandari	Para Legal Community	Udayapur
9.	Mina Giri	A.B.C.	Morang
10.	Mina Kumari Dev	Lawyer	Saptari
11.	Mina Pulami	LACC	Sunsari
12.	Mira Aryal	ABC/Nepal	"
13.	Prakash Mishra	FWLD	"
14.	Rita Shakya	A.B.C	Morang
15.	Shankar Prasad Pokharel	Lawyer	Mahottari
16.	Shova Rai	"	"
17.	Suman Guragai	Coordinator, FWLD	Dhankuta
18.	Surendra Raj Bhattarai	Social and Economic Development Center	Sunsari

**Mid Region**

S.No.	Name	Organization	District
1.	Basanti Jha	Women Awareness Project	"
2.	Bebi K.C.	Nepal Women Power Service center	"
3.	Bhagawati Upreti	Nari Awareness Center	Dhading
4.	Binda Dhungana	Victim Women Group	Nuwakot
5.	Chandana Aryal	ABC/Nepal	Dhanusha
6.	Chitra Lekha Upadhayay	LACC	Makwanpur
7.	Durga Khatri	CWD	"
8.	Gauri Kumari Shrestha	LACC	Chitwan
9.	Goma Timilsina	"	"
10.	Gun Bahadur Raut	Advocate	Mahottari
11.	Jogman Tamang	Kavre	Kavre
12.	Kedarji Kandel	Kantipur Manpower Development Center	Chitwan
13.	Krishna B. Basnet	FWLD	Dolakha
14.	Lalita Shrestha	Women law service	Makwanpur
15.	Laxmi Dahal	Community Women Development Center	Makwanpur
16.	Mishra Devi Tiwari	"	"
17.	Radha Acharya	Polytechnic	Chitwan
18.	Ramadhar Kapar	RCDSC	Mahottari
19.	Rita Dhakal	Women Social Service	"
20.	Sabitri Bastola	LACC	Chitwan

21.	Sanju Shrestha	Makwanpur, NBA	Makwanpur
22.	Sarada Dahal	Women Culture Awareness Center	Mahottari
23.	Sarsowati Sharma	District Women Office	Chitwan
24.	Shanta Subedi	Legal Help Group	Makwanpur
25.	Shristi Baral	Women Empowerment	Mahottari
26.	Tulasa Kharel	Social-Service Nepal	Nuwakot

### Western Region

S.No.	Name	Organization	District
1.	Anju G.C.	Resh Aama Samuha	Baglung
2.	Bhupendra Khanal	FWLD	Nawalparasi
3.	Bishnu Gurung	Children and Women Related	Palpa
4.	Ganga Rimal	Press Nepal	Parbat
5.	Geeta Sharma	NBA	Palpa
6.	Himnidhi Laodari		Kaski
7.	Hira Ghale	Milan	Magdi
8.	Kalpana Shrestha	Creative Nari Samaj	Baglung
9.	Lila Devi Khadka	Women	Baglung
10.	Madhav Adhikari	National Environment and Health	Gorkha
11.	Pramod Subedi	"	"
12.	Prema Shrestha		Baglung
13.	Ramesh Paudel	NTV, Pokhara Branch	Kaski
14.	Riya Thapa	Lumbini Information and Communication Cooperative Organization Ltd.	Rupandehi
15.	Santosh Gyawali	Forum for Awareness	Kapilbastu
16.	Saranga Subedi	Justice Suggestion and Service Center	Pokhara
17.	Tara Maya Shrestha	D.I.R.D.C.	Baglung
18.	Taranath Adhikari	Gorakhakai Study	Gorkha
19.	Tham Maya Thapa	Former M.P.	Baglung
20.	Trishna Sharma	SAATHI	Bhairawa
21.	Yamuna G.C.	Dhaulagiri Rural	Baglung

### Mid Western Region

S. No.	Name	Organization	District
1.	Basanta Gautam	FWLD	Banke
2.	Geeta Saud	"	"
3.	Gopal Krishna Acharya	Women Development	Syanga
4.	Kendra Gurung	CWD	Banke
5.	Madan Pokharel	FWLD	Dang
6.	Pramila Chaudhari	BCD	Dang
7.	Ranjita Sharma	NGO Federation	Dang
8.	Sarita Gyawali	FWLD	Banke
9.	Tika Maya Gurung	Health Worker	Syanga
10.	Tirtha Gautam	Former MP	Rukum
11.	Umang Adhikari	Chetana Club	Dang

## Far Western Region

S.No.	Name	Organization	District
1.	Bikram Kunwar	FWLD	Kanchanpur
2.	Sarala Khadka	Nari Uthan Kendra	Kanchanpur

## Local Participants Kathmandu

S.No.	Name	Organization
1.	Ajita Aryal	WRALS
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3.	Amera Aryal	P.K. Campus
4.	Amika Rajthala	Space Time Daily
5.	Amita Adhikari	WHR
6.	Anita Shrestha	ILO
7.	Anjali Shrestha	UNICEF
8.	Anju Rana	FWLD
9.	Aruna R. Thapa	"
10.	Aryal	Women`s Security Pressure Group
11.	Asha Giri	Annapurna Post
12.	Asmita Pokhrel	Research Scholar
13.	B. Satyal	ABC/Nepal
14.	Babu Ram Aryal	
15.	Babu Ram Dhakal	Dristi Weekly
16.	Badri P. Dhakal	The Himalyan Times
17.	Bal Kumari Gurung	UMN
18.	Bassri Sigdel	Ratio Nepal
19.	Bhim Prasad Bhurtel	ENJVS
20.	Bidhya Devi Ghimire	Former Parliamentarian
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22.	Bimala Sunuwar	Ra.A.Ja.Ma.Ma.
23.	Binay Raj Adhikari	Tarun
24.	Bishnu Budhathoki	The Rising Nepal
25.	Bishnu Kumari Acharya	Pact/Samihauta
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33.	Dr. Vijaya Manandhar	WHO
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35.	Ekta Sunar	"
36.	G. Pandeya	DPR
37.	Ganesh Bashyal	Campus
38.	Gayatri Basnet	ABRWA
39.	Geeta Aryal	FWLD
40.	Geeta Shrestha	RDF/Nepal
41.	Hari Pd Lamsal	
42.	Hari Priya Pandey	NNAGT

43.	Hem Shanker Singh	The Himalayan Times
44.	Indira Pant	Hamro Kathmandu
45.	Indira Rana	NHRC
46.	Jamuna Poudyal	CVICT
47.	Janak Neupane	
48.	Janak Raj Pandit	Nepal One TV
49.	Jaya Ghimire	ANWA
50.	Jaya Sharma	CCO
51.	Julia Gold	Fulbright Commission
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53.	Kamala Sharma	SWATI
54.	Kanta Rizal	SACPEW
55.	Kedarshree Joshi	Janaprabhat
56.	Khilendra Luitel	Sukhi Prakashan (Rastra)
57.	Kiran Kr. Panta	Nepal One TV
58.	Krishna Timilsina	Image Metro
59.	Laxmi Kumari	RRN
60.	Laxmi Neupane	SAP-Nepal
61.	Laxmi Rai	National Women `s Commission
62.	Leyla Tegmo-Reddy	ILO
63.	Lynn Bennett	World Bank
64.	Mala Adhikari	
65.	Meena Acharya	SAHAUAGI
66.	Meera Dhungana	FWLD
67.	Mette Damgawd	David/Hugoo
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69.	Mohan Sharma	Samacharpatra
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71.	Muna Joshi	Saathi
72.	Narayan Malla	NIWF
73.	Nawaraj Thapaliya	LACC
74.	Nirmala Acharya	RSS
75.	Nirmala Sharma	Sancharika
76.	Padma Mathema	National Planning Commission
77.	Pankaj Jalan	Lord Buddha Education Foundation
78.	Pooja Mijar	Shakti Samuha
79.	Poonam Poudel	Kantipur TV
80.	Poonam Shrestha	CAC/Nepal
81.	Pradip Mahat	Labour Patrika
82.	Prakash Gurung	Maiti Nepal
83.	Prakash Sharma	CAC/Nepal
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85.	Prasana Chitrakar	The Himalayan
86.	Pratima Sharma	Samjhauta Nepal
87.	Pratima Sharma	Samjhauta Nepal
88.	Prava Basnet	WHR
89.	Preeti Thapa	Pro Public
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96.	Ram Maya Lamichhane	KSL, Kathmandu
97.	Ram Thapamagar	Rastriya Aawaj



98.	Ramesh P. Regmi	FWLD
99.	Ranjana Thapa	INSEC
100.	Ratna Lamichhane	Shakti Weekly
101.	Rija Singh	
102.	Rita Bahadra	Sap/Nepal
103.	Rupa Bhandari	Women`s Studies
104.	Saarmila Parajuli	Pro-Public
105.	Sabita Raji Raj	DWO
106.	Salina Joshi	FWLD
107.	Saloni Singh	Didi Bahini
108.	Sandhya Shrestha	Oxfam
109.	Sangeeta Rijal	The Kathmandu Post
110.	Sangita Thapa	UNIFEM
111.	Sanu Shakya	Lalitpur Bar
112.	Saraj Raj Thapa	CWLAC
113.	Saraswati Pokhrel	DWO
114.	Sarmila Karki	Jagran Nepal
115.	Saru Joshi	UNIFEM
116.	Shalini Manandhar	JIT
117.	Shalini Tripathi	TIPS/WINNER
118.	Shankar Kharel	Kantipur
119.	Shanker Shah	
120.	Shanta Manabi	Form MP
121.	Shanta Sedhai	NBA Legal Aid project
122.	Shanta Thapaliya	LACC
123.	Shanti Khanal	Appellate Court Patan
124.	Sharda Pokharel	Former MP
125.	Shashi Acharya	CCWB
126.	Shashi Adhikary	LACC
127.	Shivani Neupane	P.K. Campus
128.	Shradha Pradhan	WHR
129.	Shuvechha Bindu	Nepal Samachar Patra
130.	Shyam Shrestha	Kantipur TV
131.	Soham Subedi	Communication Corner
132.	Spandana KC	CWIN
133.	Srijana Mali Pradhan	WALC
134.	Subala Subba	CWIN
135.	Subhadra Ballav	Worldview
136.	Sulochana Shrestha	UNV/UNFPA
137.	Sunita Senchury	“
138.	Surya Prasad Neupane	UMN/AGNW
139.	Sushma Baral	Kathmandu Bar
140.	Tirtha Neupane	Bimarsha
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144.	Usha Malbul	FEDO
145.	Vijaya Adhikari	UMN
146.	Y.R. Abiral	Dharohara Times
147.	Yasso K. Bhattachan	NIWF

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