

Summary of the Shadow Report on Initial Report

According to Article 18 of the Convention on Elimination of All Forms of Discrimination against Woman, Initial Report should be submitted within one year of being a party to the Convention. The time line of June 1999 was fixed to submit the Initial Report prepared by Nepal according to above mentioned provision to the CEDAW Committee. Since the Initial Report had not included various existing problem reflecting the real status of women, the Forum for Women, Law and Development (FWLD) had prepared Shadow Report to inform the actual situation of women. The Shadow Report was prepared focusing on ten issues of special concerns of the Nepali women. The summary of the Shadow Report is as follows¹ :

Challenges in Implementation of the Convention as shown in the Shadow Report

Lack of Monitoring and Evaluation Mechanism

After the restoration of democracy in 1990, some policies were adopted to enforce the special provisions of international instruments to provide women with their rights at national level. But implementation of such policies and plans are inadequate and ineffective due to lack of proper monitoring and evaluation system. Consequently, there are no significant improvement in the situation of women's human right.

Lack of Co-ordination

There is no co-ordination between the government agencies, specially among the Foreign Ministry, Women and Social Welfare Ministry, Law and Justice Ministry, Finance Ministry and the National Planning Commission, all of which have some obligations to adjust exiting laws, policies and practices in accordance with the standard of the ratified conventions.

Obligation under the Convention not incorporated into National Laws

Women's rights groups have come forward with an organized effort to articulate their demands for equal rights in all spheres. However, the government has not taken any step to incorporate the obligations under the Convention into national laws.

Negative judicial interpretation of Right to Equality

While interpreting the equality clause, the judiciary has stated that it can not be denied the fact that there is a great influence of Hindu jurisprudence in our legal system. Judicial interpretation that, if anything regarding to women's right does not confirm with our culture and tradition, it would ultimately disrupt the entire society, has further decreased the status of women's human rights.

¹ On behalf of the non-governmental sector, the Shadow Report was prepared under the coordination of the Forum for Women, Law and Development (FWLD) in which LACC, Sancharika Samuha, ABC Nepal, SAATHI, Women Studies Program, Beyond Beijing Committee and CWCD had taken part.

Issues raised in the Shadow Report

1. Discriminatory Laws

There are so many laws in Nepal making discrimination on the ground of sex. Even while interpreting the discriminatory laws, judiciary has stated that if any law does not confirm with tradition and culture, it would disrupt the entire society. In some cases, judiciary has only issued directive orders to submit the Bill to eliminate the gender discrimination instead of declaring void on the grounds of being inconsistent to the Constitution;

The Initial Report has failed to objectively specify what the government has been doing to eliminate the discrimination against women in line with the provisions of the Convention. It has stated only about the provisions of the human rights and fundamental rights guaranteed by the Constitution. There is nothing stated about why the discriminatory laws which are inconsistent to the Constitution are not being amended though the Initial Report has accepted that there was a directive order of the Supreme Court to amend discriminatory laws within two years. Thereafter, no discriminatory law has been amended as yet.

Following recommendations were given under the discriminatory laws in the Shadow Report :

- the legal provisions that discriminate women should be amended in conformity with the Convention,
- laws making discrimination against women on the basis of sex and marital status should be repealed,
- Free legal aid should be provided to poor women.

2. Inheritance Right of Women

The legal status for the inheritance right is provided on the ground of sex and marital status of the women. Daughter, wife, widow and divorced women are provided limited and conditional inheritance right.

Due to the economic inequality, many women have become victims of trafficking or compelled to be involved in the flesh trade. Child marriage, unmatched marriage and bigamy are commonly practiced. The lack of women's economic right is one of the major factors that has exacerbated domestic violence against women. Because of their economic dependency, women are unable to counter several mental and physical abuse. The legal provision under which widows were forced to return their share of husband's property, if they marry, has discouraged widow's marriage. As daughters are considered as an object or a burden to the family and discriminated even in terms of resources and food, has a direct impact on her health as well. Due to the practice of son preference, they tend to give birth to many children in the hope of giving birth to son.

The Initial Report also fails to present a future plan of action to ensure the equal inheritance right to women. The report, on one hand, talks about the prohibition of discrimination on the basis of marital status, while on the other, property laws are based on marital status of women. Even the Bill which was proposed by the government to remove the existing discriminatory provisions of the Country Code is also based on the same concept.

The following recommendations were given under the inheritance right of women in the shadow report :

- All discriminatory provisions on property rights in family law should be eliminated by ensuring equal inheritance rights to the daughters.
- The Country Code Amendment Bill should be such as not to discriminating on the basis of marital status of women.

3. Trafficking of Woman and Girl child

The trafficking of women and girls for commercial and sexual exploitation is one of the serious problems in Nepal. Every year between 5,000 to 7,000 girls were trafficked and about 200,000 Nepali girls were said to be involved as commercial sex workers in many brothels of India.

In Nepal, there is a lack of strong implementation of the existing laws related to trafficking in human beings. There are many loopholes in the law itself. In the case of trafficking of women, buyers are exempted from the legal jurisdiction. As trafficking is an organized crime in Nepal, in most of the cases, victim can not submit the required evidences.

According to the rescued girls, they are subjected to battery, torture and intimidation and are raped by the pimps, brothel owners, clients and even by law enforcement agencies personnel. It is also reported that 50% of the women sex workers have two or more STDs at one time or another. HIV infection rate is also reported to be very high among them.

The Initial Report does not contain anything about the rehabilitation program for victims run by NGOs. The constraints faced in the implementation of the existing law were also not contained in the report.

The following recommendations were given under trafficking of women and girls child in the shadow report :

- Bilateral and regional dialogues should be initiated between the girls receiving and sending countries.
- The government should create more opportunities for income generation and self-employment both in urban and rural areas.

- National law should be formulated immediately in conformity with various international conventions and due consideration should also be given for the effective enforcement of the law.
- The government should also set up training, counseling centers and rehabilitation centers which can provide moral support and sympathy to the victims of prostitution and who are experienced physical and psychological trauma.

4. Women's participation in Political and Public Life

Due to the absence of women in decision making level, it has created a situation of gender inequality in all sectors. Participation of the women candidates in election and the presence of the women as elected number seems very minimal.

Even though it is said that law does not discriminate in voting right, women, in few places are denied the voting right during the election even after the restoration of democracy in the country.

The number of women in the government administration and different level of powers structure has also not been reflected in the Initial Report. The Initial Report states that there is no legal discrimination for women's representation at the international level but has not mentioned the situation of *de facto* discrimination commonly practiced in Nepal.

Following recommendation were given under women's participation in political and public life in the shadow report :

- At least 33% seats should be reserved for women at all levels of the political power structure.
- Government should develop a program of positive action to appoint women in leading positions.
- Women should be appointed as members of the National Planning Commission and in the diplomatic service as well.
- An independent commission for women should be established immediately.

5. Women's Right to Nationality

The provisions relating to nationality contained in the Constitution of the Kingdom of Nepal, 2047 (1990) and the Citizenship Act, 2020 (1963) are discriminatory. The provisions have not regarded women as a citizen as equal to men. There is no provision that a mother may transfer citizenship to her children and a wife to her husband. The provision has created restrictive situation to the women that a woman has to rely on the male member of the family throughout her life.

In the concluding part of the Initial Report, it states that Nepali laws give women equal rights as of men in acquiring, terminating or changing their nationality. But in practice, while applying for the nationality, the applicant needs to submit the citizenship documents of the father or husband. With this practice, it has been difficult to acquire citizenship from the mother's name. Although the initial report states it as a practical constraints it is not only practical constraints, however, but the result of the discriminatory legal provisions. The Constitution and the laws have not recognized women's personal identity regarding to the nationality.

The following recommendations were made under the right to nationality in the Shadow Report :

- Nationality is very significant for participation in all sphere of society. Thus, state party should enact the law relating to nationality in conformity with Articles 1, 2 and 9 of the Convention and the General Recommendation No. 21.
- The Government should seriously consider on the transfer of nationality through the mother by taking steps to amend the Article 9(1), (2) (5) of the Constitution and the Section 3(1)(4) and 6(2) of the Citizenship Act 2020. Women should have the same right to transfer the citizenship to her foreign spouse as Nepali men.

6. Right to Education

In spite of the state's promises to enhance the female education, the gender gap in education persists both quantitatively and qualitatively. In most of the family, they tend to train girls more in agriculture skills and home making in order to equip them for their married life rather than formal education. Due to the patriarchal pattern of the marriage system, parents see no economic return in girl's education. Specially in poor households, while parents have to choose on spending money for children's education, they prefer to educate their sons rather than their daughters.

All the maladies that lead to subordination, subjugation and exploitation of women are due to lack of education. Most of women are unpaid family workers. Though they are employed in income-generating works, they are facing the exploitative situation. Lack of education is the cause of women's economic dependency and their victimization in various ways. Due to lack of education, most of the Nepali women are compelled to live an inhuman life with no individual identity, lack of self-esteem and loss of dignity.

In the Initial Report, it is stated that girls and women are having more favorable situation than boys and men for receiving scholarship, but the statement is not proved by the facts. Even when girls/women are solicited to apply for scholarship in foreign country, they are required to produce their guardian's permission to apply. There is explicitly discriminatory treatment even at the state level, where women are

looked upon as subordinate, dependent, deserving domination and protection due to lack of gender sensitization in educational curriculum.

The following recommendations were made under the right to education in the Shadow Report :

- The state party should enforce universal female education and girl's education should be made free up to high school level.
- In order to boost female education, a massive social awareness campaigns should be launched in favor of women's education.
- The Government should enforce punitive measures to the parents who do not send their children to the school.
- The Government agencies should work in partnership with NGOs engaged in literacy and education programs to expedite and expand non-formal literacy education.
- While developing curriculum, adequate attention should be paid to the description and presentation of the gender concept.
- Educational opportunities in higher level and technical subject areas for women should be enhanced through reservation of seats, scholarships, hostel facilities and public awareness.
- Vocational education and training, which provide income generating skill, should be made comprehensively available to women and it should emphasize on equipping women with income generating skills.

7. Women and Employment

While observing the manner of labour force employment, a large proportion of women are working as unpaid family workers. Women work longer hours than men. Women are discriminated not only in employment opportunities but also in wage rate. The employed women have double burden. The gender disparity in income distribution has been explicitly seen due to the command of male household members over family income, and the involvement of the women in the unpaid domestic work.

The decision of the cabinet, even after the preparation of the Initial Report, that prohibits women in the foreign employment is an another example of the existing discriminatory practice. The right to freedom of the women has been restricted in the pretext of protection from exploitation and the right to movement has been violated as well.

The following recommendations were made under women and employment in the Shadow Report :

- To adopt special policies and guidelines to encourage women in all spheres of employment.

- To develop special provisions for credit facilities for women.
- To introduce programs for technology transfer and development
- To reduce biased attitude, increase family support, enhance women's dignity in the society and should conduct awareness creation programs for both men and women.

8. Reproductive health and women's rights

In Nepal, an average, life expectancy of women is 54.1 years, which is shorter by 1 year as compared to that of men. At global level, women have considerably longer life expectancy than men. Maternal mortality in Nepal is one of the highest rate in the world. According to a government report, everyday 12 women die because of pregnancy related complications. Illegal abortion in Nepal often takes place under unsafe conditions and often performed by untrained personnel under primitive condition resulting in high rate of mortality and unhealthy situation. Sexually transmitted diseases and HIV/AIDS has become a growing problem in Nepal.

Women are affected by various diseases in Nepal in comparison to men. Further, women are affected more in the field of reproductive health and most of them are not providing appropriate services.

Due to the special importance to the son, health of girls/woman is seriously affected because of the discrimination against them.

The following recommendations were made under reproductive health and women's right in the Shadow Report :

- The laws and policies that deny, abstract or condition the availability and access to reproductive health services should be changed.
- Women's right to reproductive health should be accepted as a fundamental need of women.
- To improve women's access to health care services.
- To provide information to women on different aspects of reproductive health.
- To involve women in the planning of reproductive health and in its implementation.
- Reproductive health of adolescent girls and elderly women should be a part of the government's reproductive health program.
- More resources should be allocated to health care services that cater women's needs as well as to conduct research on ways to improve reproductive health of women.
- A long term plan is required for the release and rehabilitation of the imprisoned women due to abortion.

9. Women in Rural Areas

Majority of Nepali women live in rural areas. They are living as an illiterate, unskilled and over burdened with works. Therefore, they are the poorest of the poor. Rural women rely on natural resources for their livelihood and their activities and mode of production is more laborious due to lack of technical knowledge.

In rural area of Nepal, since land is the main component of the production, it is necessary that the rural women should have right and control upon the land. It is necessary to develop the human resources by involving the rural women as much as in education, health and training. Development efforts should be targeted to rural development, ensuring participation of both men and women.

The following recommendations were made under women in rural areas in the Shadow Report :

- Women need to have right and control over land.
- Providing technical knowhow for rural women should be the highest priority in all rural development programs.
- Rural infrastructure projects should ensure that women are made aware of the new employment and income opportunities.
- Emphasis has to be given to establish new micro-financing institutions, expanding their service network, strengthening the capital base, lowering the service delivery cost and continuing subsidy to the targeted sections of the society, particularly women and the poor.

10. Violence against Women and Girls

Various types of violence against women and girls (VAW & G) are prevalent in Nepal. These prevalent VAW & G are domestic violence, polygamy, sexual harassment, rape and traditional forms of violence are such as the custom of *deuki* and *badi*.

Besides, trafficking of girls and women and the law to curb the social crime, the Initial Report is silent about other prevalent forms of violence against women and girls. In the report, it has been denied and ignored of the existence of these prevalent forms of VAW & G and has also not been given priority to enact legislation that combats these forms of VAW & G.

The following recommendations were made under VAW & G in the shadow report :

- It is necessary to amend the legislation to solve the problem of various types of sexual harassment and rape.

- Drafting of bills in new areas such as domestic violence has to be accorded priority.
- Mass awareness campaigns should be initiated against discriminatory social norms and values.
- Data regarding to VAW should be collected in a systematic manner.
- Women cell in police should be strengthened in order to facilitate the reporting of all crimes relating to violence and to relief the victims.
- Camera Court should be instituted.
- All the professionals who deal with the cases of violence against women such as public attorneys, private lawyers, judges, doctors and investigator polices need to be trained to be more sensitive towards the victim.