



**United Nations Human Rights Council
Universal Periodic Review: Nepal**

**Submission of the International Center for Advocates Against Discrimination
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About ICAAD

ICAAD combats structural discrimination and promotes human rights norms consistent with public international law. Structural discrimination refers to systems of inequality that provide a social, political, cultural, or economic advantage to a dominant group while furthering barriers of exclusion that make marginalized communities more susceptible to violence and indignity. By leveraging partnerships, ICAAD brings together passionate multidisciplinary teams of lawyers, data scientists, and design strategists to improve access to justice for women, girls, and other vulnerable groups while strengthening the capacity of civil society.

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Executive Summary

This submission highlights issues of structural discrimination that affect women and minorities in Nepal. The submission examines Nepal's compliance with its international human rights obligations, covering: violence against women, problems of access to justice for women, inequality in political participation, unequal access to education for women, and discriminatory treatment of Dalits and other minorities.

(I) Women's Rights Issues

(A) Violence Against Women

(1) Systematic Discrimination:

(1) Despite Nepal's acceptance of Indonesia's Recommendation to introduce more comprehensive legislation and stringent enforcement of existing laws against domestic violence,¹ little has changed. Violence against women is on the rise, implementation of the 2009 Act on Domestic Violence is poor, and justice remains difficult to obtain.² Sexual and gender based violence is severely underreported and it is estimated that only 25% of survivors of violence seek medical help and fewer seek legal assistance.³ In fact, "77% [of survivors] have never sought help and 64% have never told anyone."⁴ Low caste, impoverished, and Dalit women are particularly susceptible to violence.⁵ Dowry deaths, abuse of women accused of witchcraft, and female infanticide all remain issues of major concern.⁶ Over 10,000 women and girls are victims of human trafficking every year, the majority of which are under 18 and forced into prostitution.⁷ Enforcement and legal protection remain weak even though Nepal accepted Spain's Recommendation to adopt effective measures to guarantee protection of victims and to investigate crimes of violence against women.⁸

(2) State Response:

(2) The Government of Nepal has made various commitments to ending all forms of violence against women (VAW) and girls. It has ratified CEDAW and

committed to implement the 12 priority areas of the Beijing Platform of Action (BPfA) and has accordingly adopted national action plans.

(3) In 2009, Nepal enacted the Act on Domestic Violence (Control and Punishment) law No. 2066,⁹ which requires cases of gender-based violence be investigated by both the National Women Commission and Nepal Police. It has further adopted a Sex and Gender Based Violence and Gender Empowerment Strategy and Work Plan (2069/70-2073/74).¹⁰

(4) Women Service Centers have been also established across 15 districts, with plans to expand up to 75 districts.¹¹ These centers are intended to be resources for women facing violence.

(3) Remaining Challenges:

(5) Gender-based violence against women continues to be alarmingly prevalent and commonly overlooked in Nepal. Violence against women most frequently occurs in the form of domestic violence, rape, sexual abuse, and violence based on cultural practices and beliefs.¹² As described above, key structural issues include a lack of reporting of cases of violence against women, discriminatory attitudes against women and caste identities, and weak enforcement of existing laws.

(6) Women who seek help often face discriminatory patriarchal attitudes and fear reporting because of how it will impact their social status. These attitudes persist especially among law enforcement institutions, further weakening enforcement against domestic violence and gender-based violence.¹³ Incidents often go unreported or uninvestigated by law enforcement.¹⁴

(7) Additionally, police directives to treat domestic violence as legitimate crimes are often ignored “because of entrenched discriminatory attitudes.”¹⁵ Most domestic violence cases are settled through mediation rather than prosecution.¹⁶ Although Nepal has banned the practice of dowry, it is still widely practiced with little enforcement against it.¹⁷ Dowry killings also occur, often with impunity.¹⁸

(8) General discriminatory attitudes against caste and gender make women in marginalized communities particularly vulnerable. Dalit women are especially prone to gender-based violence and face greater challenges to access to justice because of both their gender and caste identity.¹⁹

(9) The Women's Rehabilitation Center (WOREC) documented 82 cases of violence against women accused of witchcraft between July 2007 and September 2009.²⁰ An overwhelming majority of the women belong to the Dalit community. Persisting cultural perceptions of their caste identity combined with their gender mean such violence typically occurs with impunity and general societal acceptance.

(4) Recommendations:

(10) Remove the existing 35-day limit on the time to file a complaint in a sexual violence case, so that law enforcement agencies begin to register those cases, instead of refusing to register the case because the time limit to file has expired.²¹

(11) Nepal should pass the proposed Witchcraft Act (Charge and Punishment) 2014, to criminalize the accusing and otherwise committing acts of violence against women accused of witchcraft.²²

(12) Enforcement mechanisms must be strengthened, with special attention paid to rural women and marginalized communities such as Dalits.

(13) A standard of accountability must be established for law enforcement personnel to investigate cases of violence against women. This will require better data collection and monitoring of the progression of reported cases.

(14) Civil and criminal liability for violence against survivors who choose to report should be established as part of the implementation of a more effective enforcement regime.

(15) Create a training program for law enforcement and health workers (doctors and nurses) including referral pathways, identifying victims of violence, evidence collection, testifying, and handling cases of domestic and social violence.

(16) Engage in more public programming and education to change current cultural norms and the patriarchal system to encourage gender equality and reduce violence against women.

(B) Social Exclusion and Discrimination Against Women

(1) Systematic Discrimination:

(17) Although Nepal accepted both Singapore's Recommendation to ensure gender equality, and Azerbaijan's Recommendation to boost women's participation in political and administrative decision-making, women remain highly underrepresented in politics, positions of power, and in civil society. Nepal made immense progress in the 2008 elections when 191 women were elected to 33% of parliamentary seats. However, women are still heavily underrepresented as 51% of the population. Men dominate political parties, and male ministers comprise 83.33% of the ministerial positions.²³ The deeply entrenched patriarchal system, encompassing the spectrum between the home, marketplace, and public sphere, means that women's voices continue to remain suppressed and undervalued.

(2) State Response:

(18) The Nepal Commission is reviewing the current legal framework affecting women.²⁴ The government has made provisions to increase women's participation in the judiciary and in judicial education; and also to be more inclusive of indigenous groups, Dalits, and other minorities.²⁵

(3) Remaining Challenges:

(19) Nepalese law still contains discriminatory provisions against women, maintaining barriers to equal treatment. And where laws have been passed to correct the inequality, they face implementation barriers. For instance, a Nepali woman cannot pass citizenship to their children without proof or presence of the father.²⁶ If the father is not present, the children are stateless, even though the Citizenship Act of 2006 allows women to pass citizenship onto their children.²⁷ This means that over a quarter of the adult population of the country, over 4 million people, are undocumented, and therefore cannot avail themselves of protections under the Constitution; or to register births, change addresses, enter and exit the country, or buy mobile phone.²⁸ And the Citizenship Act of 2006 was in danger of being reversed in 2014.²⁹

(20) Discriminatory attitudes towards women's status in society under a patriarchal system continue to bar women from both educational and economic opportunities.

(21) Inadequate resources and facilities at educational institutions also prevent young Nepali girls from advancing their education. Patriarchal systems and early child marriage continue to hinder girls education. Over 41% of women in Nepal marry before the age of 18.³⁰ While “love marriages” as opposed to “arranged marriages” are becoming an increasing trend, with 25% of marriages being based on the girl’s decision, the number is still startlingly low, and concerns about economic and educational empowerment of women and girls remain a challenge.³¹

(4) Recommendations:

(22) Nepal must continue educational and promotional efforts toward gender mainstreaming. Where laws such as the Citizenship Act of 2006 are enacted, they should be enforced and not ignored.

(23) Education and economic empowerment of girls and women must be prioritized, and family planning education should also be instituted for boys and girls. Programs to modify patriarchal and cultural systems that marginalize women should be instituted.

(24) While it is commendable Nepal has a 33% reservation of administrative seats for women, there should also be active recruitment of women into governmental units.

(25) While it is commendable that Nepal is promoting the inclusion of women in the judiciary, it needs to be ensured that women are also placed in senior administrative and judicial positions.

(II) Minority Rights Issues

(A) Situation for Marginalized Social Groups

(1) Systematic Discrimination:

(26) Although Nepal has accepted Argentina’s Recommendation to eliminate discrimination and social exclusion on the basis of caste/class, and Denmark’s Recommendation to pass a bill against caste-based discrimination and untouchability, caste discrimination is still a major issue and enforcement of the new Act has not been adequately monitored.

(2) State Response:

Nepal enacted the Caste Discrimination and Untouchability Act in 2011.

(3) Remaining Challenges:

(27) A formal ban against the caste system under the Act of 2011 has not been effective in alleviating the discrimination and social exclusion faced by marginalized groups like the Dalit, Mahadeshi, and Janajati. The discrimination is so embedded in the way people operate on a daily basis that many people do not believe the law can be enforced.

(28) Law enforcement is unlikely to take complaints seriously and minorities fear violence for upsetting the social balance.³² Since the passage of the law, only one of the 33 cases brought under the law resulted in criminal convictions. In that case seven people were convicted of murder of a Dalit father whose son had an inter-caste marriage to a non-Dalit woman.³³

(4) Recommendations

(29) The discrimination Dalits, Mahadeshi, Janajati, and other minority communities face is deeply rooted in the societal structures and will require well-funded multidisciplinary initiative, that focuses on changing behaviors and attitudes, over a period of years to uproot.

(30) Law enforcement still uses torture and other methods to obtain confessions and Dalits and other marginalized populations remain at a higher-risk for facing torture if arrested.³⁴ Nepal should implement training programs for law enforcement and the judiciary to better understand discrimination and enforce the Caste Discrimination and Untouchability Act, and also stop any and all torture practices. Nepal should also integrate Dalits, women, and other marginalized communities into law enforcement, as the majority of law enforcement remains “upper-caste.”³⁵

(31) Widespread educational programming should be implemented in schools and places of employment to educate the youth and general public about discrimination, its negative impacts, and why it is detrimental to society.

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- ¹ NEPAL, MID-TERM IMPLEMENTATION ASSESSMENT, UPR.INFO (2013), p.111, *available at* <http://www.upr-info.org/followup/assessments/session23/nepal/MIA-Nepal.pdf>
- ² FACTS ON VIOLENCE AGAINST WOMEN IN NEPAL, WOREC NEPAL (2012), *available at* <http://www.worecnepal.org/blog/rameshbhandari/facts-violence-against-women-nepal>
- ³ *See* WITCHCRAFT ACCUSATIONS AND PERSECUTION IN NEPAL 2014 COUNTRY REPORT, WHRIN (2014), p.4, *available at* http://www.whrin.org/wp-content/uploads/2014/04/2480903_nepal_report_FINAL.pdf.
- ⁴ *See* DATA ON VIOLENCE AGAINST WOMEN IN NEPAL (2013), *available at* <http://www.vawhack.org/data>.
- ⁵ WITCHCRAFT ACCUSATIONS AND PERSECUTION IN NEPAL 2014 COUNTRY REPORT, *supra* note 3.
- ⁶ *Id*; *see also* Ghimire, Bhumika, FEMALE INFANTICIDE ON THE RISE IN NEPAL, FEMINISTING BLOG, (Mar. 2011), *available at* <http://feministing.com/2011/03/01/female-infanticide-on-the-rise-in-nepal/>.
- ⁷ *See* DATA ON VIOLENCE AGAINST WOMEN IN NEPAL (2013), *available at* <http://www.vawhack.org/data>.
- ⁸ NEPAL, MID-TERM IMPLEMENTATION ASSESSMENT, UPR.INFO, p. 122, *supra* note 1.
- ⁹ DOMESTIC VIOLENCE (OFFENCE AND PUNISHMENT) ACT, 2066 (2009), *available at* <http://www.lawcommission.gov.np/site/sites/default/files/Documents/domestic-violence.pdf>.
- ¹⁰ NEPAL, MID-TERM IMPLEMENTATION ASSESSMENT, UPR.INFO, p. 123, *supra* note 1.
- ¹¹ *Id*.
- ¹² NGO Coalitions, UPR STAKEHOLDER REPORT, *available at* http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/NP/NGOC Coalitions_JointSubmission-eng.pdf.
- ¹³ NEPAL, MID-TERM IMPLEMENTATION ASSESSMENT, UPR.INFO, p. 79, *supra* note 1; *see also* AMNESTY INTERNATIONAL, UNIVERSAL PERIODIC REVIEW (UPR) STAKEHOLDER REPORT, *available at* http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/NP/AI_AmnestyInternational_eng.pdf
- ¹⁴ *Id*.
- ¹⁵ U.S. STATE DEPT., COUNTRY REPORTS ON HUMAN RIGHTS (2013), *available at* <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220400>.
- ¹⁶ *Id*.
- ¹⁷ *Id*.
- ¹⁸ *Id*.
- ¹⁹ *Supra* note 3.
- ²⁰ *See* ASIAN LEGAL RESOURCE CENTER (ALRC), UPR STAKEHOLDER REPORT, *available at* http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/NP/ALRC_TheAsianLegalResourceCentreadAdvocacyForum_eng.pdf
- ²¹ NEPAL, MID-TERM IMPLEMENTATION ASSESSMENT, UPR.INFO, p. 79, *supra* note 1.
- ²² NEPAL READIES FIRST-EVER WITCHCRAFT ACT TO PROTECT WOMEN, THE WILD HUNT BLOG (June 2014), *available at* <http://wildhunt.org/2014/06/nepal-readies-first-ever-witchcraft-act-to-protect-women.html>.
- ²³ ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN NEPAL, A CIVIL SOCIETY PARALLEL REPORT, ESCR COMMITTEE, HRTMCC, (2013), *available at* http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/NPL/INT_CESCR_NGO_NPL_15369_E.pdf
- ²⁴ NEPAL, MID-TERM IMPLEMENTATION ASSESSMENT, UPR.INFO, p.120, *supra* note 1.
- ²⁵ *Id*.
- ²⁶ LATSCHAN, THOMAS, STATELESS IN NEPAL - HOW A PATRIARCHAL SYSTEM DENIES CITIZENSHIP TO MILLIONS (Jan. 2015), Deutsche Welle, *available at* <http://www.dw.de/stateless-in-nepal-how-a-patriarchal-system-denies-citizenship-to-millions/a-18223750>.

²⁷ SHRESTHA, SUBINA, NEPAL CITIZENSHIP LAW 'BIASED' AGAINST WOMEN (Sep. 2014), *available at* <http://www.aljazeera.com/indepth/features/2014/09/nepal-citizenship-law-biased-against-women-201491112653358704.html>.

²⁸ *Supra* note 26.

²⁹ *Supra* note 27.

³⁰ PERCZYNSKA, OLA, CHILD MARRIAGE IN NEPAL: WHAT DO YOU DO WHEN IT'S BY CHOICE?, THE GUARDIAN, (Feb. 2014), *available at* <http://www.theguardian.com/global-development-professionals-network/2014/feb/24/child-marriage-trends-nepal>.

³¹ *Id.*

³² MANY 'UNAWARE' OF DISCRIMINATION LAW, EKANTIPUR.COM, *available at* <http://www.ekantipur.com/2014/06/01/capital/many-unaware-of-discrimination-law/390327.html>

³³ *Id.*

³⁴ DALITS AT HIGH RISK OF TORTURE IN NEPAL, NYU CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE (Nov. 2005), *available at* http://www.nyu.edu/about/news-publications/news/2005/11/08/dalits_at_high_risk_of_torture.html, *see ALSO* ANNUAL REPORT: NEPAL 2013, AMNESTY INTERNATIONAL (May 2013), *available at* <http://www.amnestyusa.org/research/reports/annual-report-nepal-2013?page=2>.

³⁵ DALITS AT HIGH RISK OF TORTURE IN NEPAL, *supra* note 31.