

# **Human Rights Council Universal Periodic Review 23<sup>rd</sup> Session(November 2015)**

## **The Human Rights Situation in Nepal**

**Joint Submission of Stake Holders Report by the  
coalition of 75 Nepal NGOs, Pax Romana and  
World Evangelical Alliance**



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## **I. INTRODUCTION**

- 1) This is a joint submission by Pax Romana<sup>1</sup>, World Evangelical Alliance<sup>2</sup> and the organizations listed in annexure 1, concerning the human rights situation in Nepal to the UPR 23rd session in November 2015. Jagriti Child and Youth Concern Nepal (JCYCN) is overall leading organization of this coalition with the collective efforts of AYON, AAPRD, NAFAN, Samata Foundation, PNCC, FMCH, CISD Nepal and ITEEN coordinating the contribution of 75 local organizations<sup>3</sup> in Nepal to make this report.

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<sup>1</sup> Pax Romana was founded in 1921 and is an international non-governmental organization that has a consultative status with the UN Economic and Social Council (ECOSOC) since 1949. Pax Romana is an umbrella organization of Pax Romana IMCS (International Movement of Catholic Students) and the Pax Romana ICMICA (International Catholic Movement for Intellectual and Cultural Affairs), working for the promotion of a Culture of Peace, Human Dignity and the promotion and protection of Human Rights for all. [www.icmica-miic.org](http://www.icmica-miic.org)

<sup>2</sup> World Evangelical Alliance (WEA), an NGO with special consultative status since 1997. WEA is a network of churches in 129 nations that have each formed an evangelical alliance and over 100 international organizations, joining together to give a world-wide identity, voice, and platform to more than 600 million evangelical Christians worldwide. WEA was founded in 1846 in London. [www.worldevangelicals.org](http://www.worldevangelicals.org)

<sup>3</sup> Other 75 local organizations in Nepal that participated in the drafting of this report include: Abiral-The Arts Groups, Advocates-Nepal, Asian Resource Foundation (ARF) Nepal, Asian Academy for Peace Research And Development (AAPRD), Association of Youth Organization Nepal (AYON), Awareness Group Oppressed Women (AGOW)-Nepal, Centre For Karnali Rural Promote & Development Society (CDS-Park), Chandra Jyoti Integrated Rural Development Society (CIRDS), Child Society Nepal (CS Nepal), Children's Partner CAP Nepal, Cooperation for Integral Social Development Nepal (CISD), Community Development Support Society (CDSS) Nepal, Community Development Forum Nepal (CDFN), Chelibeti Club, Community Managed Disaster Risk Reduction (CMDRR) Forum, Community Women Welfare Multi-Proposed Co-operative Organization – Nawalparasi, Concern Centre for Rural Youth (CCRY), Cooperation for integrated Social Development (CISD), Dalit Alliance for Natural Resource Nepal (DANAR), Development Concern Society (DECOS), District Youth Club Network (DYCN), DivyaYuva Club (DYC), Eco-Social Development Organization (ESDO-Nepal), E-Nepali Khabar, Environment Conservation Centre (ECC)-Kathmandu, Environmental Law Committee (ELC), Nepal Bar Association (NBA), Family of God Church (FGC), Farwest Multipurpose Center (FWMF), Federation of Democratic NGO Nepal (FEDEN), Feyvina Foundation, Forest Environment Workers Union Nepal (FEWUN) Forum For National Building (FFNB), Forum for Women Development (FWD), Foundation for Maternal and Child Health (FMCH)-Nepal, Good Governance Protection Forum (GGPF), Good Neighbors International (GNI), Human Development and Community Services (HDCS), Human Rights and Rural Environment Protection Centre (HUREC)-Nepal, Indoor Smoke Alleviation & Environment Protection Forum (ISAEPF)-Nepal, Institute for Theological Education by Extension in Nepal (ITEEN), Integrated Rural Development Society (IRDS), Jagriti Child and Youth Concern Nepal (JCYCN), Jagriti Child Club Nepal (JCCN), Micah Network Nepal (MNN), National Forum for Advocacy Nepal (NAFAN), National Human Development Forum (NHDF), Nepal Bishwobidhyalaya Christia Bidhyarthi Sangati (NBCBS) Nepal Christia Samaj Nepal Church (NC), Nepal Ebenezer Bible College (NEBC), Nepal Friendship Society Chitwan (NFSC)-Nepal, On-line Civil Society News (CSN), Participatory Rural Development Programme (PRDP), Partnership for Poverty Action (PFPA), Patan Community Based Rehabilitation (CBR), Pax Romana-Nepal, Pravasi Nepali Coordination Committee (PNCC), Protection Nepal, SAMATA foundation, Samata Nepal, Sharada Media Sangam (SMS), Social Improve Service Forum (SISEF)-Nepal, Social or Environmental Issue Face Center (SEIFC), Society for Environment Agriculture and Prosperity (SEAP)-Nepal, Sustainable Community Development Centre (SCDC), System Development Service Centre (SDSC), Transformation Nepal (TFN), Unification Nepal (UN), United Youth for World Peace (UYWP), Women Peace Society (WPS), Humla Volunteer Aid (VAID)-Nepal, Youth

## **II. METHODOLOGY**

- 2) The methodology to draft this report has been participatory and included the following steps: Firstly, informal consultations were organized to identify current thematic human Rights issues to monitor; Secondly, a national consultation meeting was organized on eight thematic issues which were lead by eight major Civil Society Organizations (CSO)<sup>4</sup> in Nepal to coordinate with other NGOs and stakeholders working on the same thematic issue by analyzing current national context, to collect information and evaluate Nepal's implementation status of accepted recommendations of the first UPR in 2011; Thirdly, a wide on-line consultation with other CSOs and FBOs to ascertain their views and recommendations, and Finally a national workshop was organized during one week from 25 to 30 January 2015 with 75 Civil Society Organizations (CSO) & Faith Based Organizations (FBO)<sup>5</sup> to analyze the current Human Rights issues by evaluating Nepal's implementation status of the first UPR and to formulate new recommendations for the second UPR, Finally one day consultation meeting was conducted following the national consultation meeting to accept and validate the final report of this joint submission.

## **III. MAIN ASPECTS OF THE REPORT**

- 3) This report addresses the human rights situation in Nepal since 2011, with a particular focus on eight issues that affect majority of its population and the situation of vulnerable and marginalized groups in Nepal. Focusing on the actions taken by the Government of Nepal (GoN) to implement accepted recommendations of the first UPR in 2011, this reports also tries to bring into the attention of some HR issues less covered earlier. These include, inter alia: (I) Truth and Reconciliation Commission (II) Rights of Migrant Workers and Members of Their Families (III) Dalits' Access to Justice and Issues of Physical Segregation (IV) Girl Child Rights (V) Women's Health and Reproductive Right (VI) Youth Rights (VII) Freedom of Religion or Belief (VIII) Climate Change, Natural Resources and Human Rights.

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Campaign For Social Change (YCSC), Youth Network Doti (YND), Youth Network for Peace and Development (YNPD), Youth Partnership for Development and Peace (YPDP)-Nepal, Yuwalaya.

<sup>4</sup> They are AYON, AAPRD, NAFAN, Samata Foundation, PNCC, FMCH, CISD Nepal and ITEEN who have coordinated contribution from other NGOs and stakeholders working on the following eight thematic issues: (I) Truth and Reconciliation Commission (II) Rights of Migrant Workers and Members of Their Families (III) Dalits' Access to Justice and Issues of Physical Segregation (IV) Girl Child Rights (V) Women's Health and Reproductive Right (VI) Youth Rights (VII) Freedom of Religion or Belief (VIII) Climate Change, Natural Resources and Human Rights.

<sup>5</sup> The stakeholders of this joint submission works in 29 districts of 5 Development regions (Eastern Region-2 District, Central region-11, Western Region-6 District, Mid-Western Region-7 District, Far western region-3 district) of Nepal. The data and information obtained for this submission came from various sources, including first-hand information from various contact groups and 75 national and local organizations as well individuals and particular groups affected by human rights abuses in Nepal.

- 4) We express our deep concern on the lack of the follow up of the 1<sup>st</sup> UPR of 2011 by the GoN, despite the fact it has adopted an action plan in 2012 to implement the accepted recommendations of 2011 UPR.<sup>6</sup> We have noticed that GoN has failed to take necessary measures to implement most of its recommendations in effective manner, in particular, the Constitution that is not yet promulgated due to the disagreement among the political parties mainly on the issues of state restructuring, federalism and ethnic identity. The prolonged disputes among the political parties that do not provide conducive political context is also identified as one of main causes and the absence of the constitution consistent with international legal principles which does not facilitate strengthening the National Human Rights Commission (NHRC),<sup>7</sup> rule of law and the right to effective remedy, the establishment of credible transitional justice measures and the end of impunity.

## **1. TRUTH AND RECONCILIATION COMMISSION, RIGHTS OF VICTIMS AND INTERNALLY DISPLACED AND DISAPPEARED PEOPLE DURING ARMED CONFLICT**

### **A. First-cycle UPR Recommendations**

- 5) In the first-cycle of the UPR in 2011, the GoN received about 7 recommendations concerning peace and reconciliation<sup>8</sup> (TRC & COPID).<sup>9</sup>

### **B. Legal and Institutional Framework**

- 6) After Comprehensive Peace Accord (CPA) signed on 21 November 2006 between the GoN and the CPN (Maoist), the Truth and Reconciliation Act, 2071 (TRC Act, 2014) was passed by the parliament on April 2014, which powers the Commissions to recommend amnesty for gross violations of International Human Rights Law (IHRL) or serious violations of International Humanitarian Law (IHL) that is inconsistent with international instruments and UN Policies on Amnesty (Section 26). The TRC Act also has ruled out a verdict of Supreme Court of Nepal of 2 January 2014<sup>10</sup>, which was criticized by UN High Commissioner for human rights for breaching international law and the fact that the Act does not provide sufficient guarantees of the independence and impartiality of the Commissioners and the operation of the Commission.

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<sup>6</sup> The recommendations are contained in Human Rights Council, Report of the Working Group on the Universal Periodic Review Nepal, A/HRC/17/5, 8 March 2011.

<sup>7</sup> Recommendations 106.7 and 106.8

<sup>8</sup> Act on the "*Commission of Inquiry into Disappearances and a Truth and Reconciliation Commission*", 2014

<sup>9</sup> Among these, GoN accepted 5 recommendations, 2 recommendations were supposed to be examined by Nepal and committed to provide response no later than 17<sup>th</sup> session of the human rights council in June 2011 but it has not been responded till date with greater importance.

<sup>10</sup> It should in particular prohibit amnesty for acts which are crimes under international law.

- 7) The "Truth and Reconciliation Commission (TRC)" and the "Commission on the Enquiry of Disappearance (CED)" have been formed on 10th February 2015, but continuous concerns are expressed about the process of appointing commissioners due to the lack of transparency on selection criteria, the discretion that vests with the Ministry of Peace and Reconstruction to act on the commissions' recommendation and seek prosecution of individual perpetrators through the Attorney General's office (section 25 and section 29), and the amnesty powers that vest with the commission for a range of crimes (section 26). It took more than 8 years to come to this point, but still it lacks the consultation with the concerned stakeholders and its procedures that has not been thought.

### **C. Promotion and Protection on Human Rights on the ground**

- 8) While Nepal's ten-year conflict<sup>11</sup> is over, the thousands victims are still suffering from its effects of injury, torture and rape. The families of the dead can mourn and gradually rebuild their lives, but for the families of the missing there is no end to their pain: sons, husbands, wives and daughters have disappeared, taken by both parties to the conflict, and their families are still waiting to know where they are<sup>12</sup>.
- 9) Despite the efforts paid by the Recommendation Committee who has held discussions with victims' groups, political leaders, human rights activists, and civil society members, more is needed to create a transparent, consultative process that incorporates the specific concerns of women survivors, including survivors of sexual violence, who have been left out of government reparation programs, and who have been stopped from filing claims in court due to a 35-day statute of limitations period on reporting sexual violence.
- 10) No seriousness in national politics and policy has been noticed to address this grave breach of human rights and violation of international humanitarian law. There is urgent need to address the issue of disappearance with much more political will as it has merely been on the "Political Agenda".

### **D. Recommendations**

- 11) We recommend the Government of Nepal to:
  - a. Ensure independent and impartial work of the TRC and CED commissions in order to ensure effective justice to the victims, and proper dissemination of information to the public regarding the progress and the procedures of the commissions;

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<sup>11</sup> The armed conflict in Nepal (1996-2006) has left a legacy of some 16,729 dead, displacement of 78689 persons and 1,327 missing people according to the Government of Nepal, Third periodic report of Nepal on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/NPL/3).

<sup>12</sup> International Committee of Red Cross (ICRC), 2009, "*Families of Missing Persons in Nepal: A Study of their Needs*"

- b. Revisit and repeal the provision of amnesty in the TRC Act not to encourage the culture of impunity and to repeal the 35-day statute of limitations for prosecution;
- c. Promulgate domestic legal system to criminalise torture and enforced disappearance in accordance with the international HR law;
- d. Ensure legal provisions for transfer of property rights to the families of disappeared persons<sup>13</sup>;
- e. Discourage the forceful mediation between the victims and the perpetrators while dealing with the conflict era violence;
- f. Ensure that the provision of reparation is based on the rightful needs of victims and their families;
- g. Take necessary step to ratify *the International Convention for the Protection of All Persons from Enforced Disappearance*.

## **2. RIGHTS OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES**

### **A. First-cycle UPR Recommendations**

- 12) In the first-cycle of the UPR in 2011, GoN accepted one recommendation on this issue<sup>14</sup>.

### **B. Legal and Institutional Framework**

13) The Constitution of Nepal recognizes the right to work as a fundamental right and guarantees that every citizen has the right to employment as provided by law<sup>15</sup>. Special laws such as the Foreign Employment Act (FEA), 2007 and its Regulation, 2008 were promulgated to regulate and streamline the labor and employment sector, and protect the rights of employees and provide them with security. However human rights of migrant workers (MW) have been violating in different ways. Majority of cases of MWs are mediated by the Department of Foreign Employment (DFE) which is against the current law.

14) The GoN is formalizing employment through bilateral labor agreements currently with five recipient countries.<sup>16</sup> There are number of government bodies mandated to protect the rights of MWs from local to national and international level. However, services of the line agencies yet have not reached local level. Migration to India is still not been addressed by the FEA<sup>17</sup>.

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<sup>13</sup> Legal evidence and processing for dependents is tedious and unpractical in context of Nepal as the current legal provision legally prevents them to use properties of disappeared for 12 years and allows property transferred to the family members if sufficient evidence is provided.

<sup>14</sup> This recommendation was made by Poland to “Ensure that the new labour legislation includes provisions prohibiting discrimination both in the employment and the recruitment procedures, as set out in ILO Convention No. 111”.

<sup>15</sup> The GoN says that every employee or worker is entitled to proper labor exercise, and every citizen has a fundamental right against any form of exploitation, with the exception of compulsory service prescribed by law for public purposes.

<sup>16</sup> Qatar, Bahrain, United Arab Emirates and Republic of Korea.

<sup>17</sup> There is no exact data of India migration with Nepal government for instance in an incident of flashfloods Uttarakhanda, India of June 2013, missing of Nepali migrant workers is still unknown.

The law also excludes undocumented MWs in case of their death, injury and other mis-happening in destination countries.

### **C. Promotion and Protection on Human Rights on the ground**

- 15) The policies of GoN seem to be oriented towards sending Nepali to abroad for labor migration. FEA try to address the issues of rights of MWs and their family members, yet the services of government agencies is still centered at Kathmandu.
- 16) Nepal has been witnessing phenomenal growth of migration to abroad in recent years<sup>18</sup>, yet movements to protect rights of MWs and their families do not hold a notable record. Around 3.5 million Nepali MWs work in foreign lands, 55.8 percent households are receiving remittance that represents 29.5 percent in GDP. 77 percent of returnee MWs are still interested to go to overseas again. All figures mentioned above excludes large number of undocumented Nepali migrants working in India.
- 17) However, it is estimated that a MW before leaving the country, cheated at 16 places and corruption under foreign employment is NPR 17.2 billion per year<sup>19</sup>. Despite the existing laws and institutional framework, half of the problems faced by MWs arise in home country. MWs are considered as lower class people and discriminated at many places even by government institutions.
- 18) Problems faced by number of MWs are mostly non-obliged of contract, contract substitution, deaths at destination countries, stranded, cheating and health related problems<sup>20</sup>. Human trafficking in the name of migration has not been addressed seriously<sup>21</sup>. Reintegration programs and packages, education and awareness activities for safer migration and skill development trainings are in minimal numbers that can ensure safe and dignified migration as well as proper utilization of money and skills in home country.
- 19) Regulation of private sector actors involved in foreign employment by GoN has been inadequate. Private sector actors such as recruitment agencies, pre-departure orientation providers and medical centers are rampantly exploiting the MWs. There is rapidly increasing trend of MWs headed to Malaysia returning back home due to the reason of 'medical unfit'. However there is not a single case till this date where medical centers have been sued for providing 'medical fit' certificate to those who are unfit. In such case, each victimized MW lost minimum of NPR. 120,000 they have paid to recruitment agency in order to go to Malaysia.

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<sup>18</sup> In average, more than 1500 youths leaves Nepal every day. The rate of labor migration has been multiplied by 106 percent within last 20 years. The total number of absent population has increased more than two folds in a decade reaching 1.9 million in 2011. Specialists and Civil Society Organizations quote poverty and high unemployment rate as major causes of foreign migration of Nepali. It is estimated that the population living below the poverty line is approximately 25.4 per cent.

<sup>19</sup> Labor Brokerages and Trafficking of Nepali Migrant Workers: A Report published by Verite in 2012

<sup>20</sup> PNCC reports: an ngo working for rights of migrant workers and their family members alone has received the 1286 individual cases in which majority of cases belongs to violation of rights of labor

<sup>21</sup> 6000-8000 Nepali girls have been trafficked to UAE: Report published in Times of India, Jan 6, 2015.

20) Grievance handling mechanisms of Department of Foreign Employment (DoFE) is inadequate and inappropriate in relation to growing number of grievances of MWs. The victims are responsible for delivering the summon letters to the responsible recruitment agencies on behalf of DoFE that increases the vulnerability of victimized MWs including physical assault.

#### **D. Recommendations**

21) We recommend the Government of Nepal to:

- a. Amend and implement Foreign Employment Act-2064 effectively to prohibit discrimination both in the employment and the recruitment procedures as set out in ILO Convention No. 111;
- b. Make necessary arrangement in the law to hold private actors such as medical centers accountable in case of MWs being victimized due to their action with proper compensation of the losses to MWs;
- c. Ensure that complaint handling mechanism is MWs friendly and protects the workers from being further victimized;
- d. Decentralize Foreign Employment Department Services to region and districts;
- e. Monitor effectively the enforcement of bilateral labor agreements signed with 5 recipient countries and continue to sign more agreements with other host countries;
- f. Provide adequate information on procedures for access to and enjoyment of their rights to MWs, especially women MWs, to control fraudulent, reduce processing, arrange necessary mechanism to provide easy and low interest loans for reintegration purpose;
- g. Enhance the outreach service of Nepal's Embassies at major labor destination countries;
- h. Ratify the International Convention on the Protection of the Rights of All migrant Workers and Members of Their Families (ICMW).

### **3. DALITS' ACCESS TO JUSTICE AND ISSUE OF PHYSICAL SEGREGATION**

#### **A. First-cycle UPR Recommendations**

22) In the first UPR, the GoN accepted 8 out of 18 recommendations concerning Dalits, on the Dalit's Access to Justice and Issue of Physical Segregation.

#### **B. Legal and Institutional Framework**

23) Dalits represent 13.21 % of the total population in Nepal. Denied to access to public and private spheres and utilities, Physical and verbal abuses, threats, displacements, social boycotts, murder and obstruction to inter-caste marriage are key forms of discrimination suffered by Dalits. Except the enactment of Caste Based Discrimination and Untouchability (CBDU Offence & Punishment) Act, 2011, the GoN has not adequately implemented accepted recommendations of the first UPR 2011.



- 24) Although the Interim Constitution guarantees<sup>22</sup> equal rights without discrimination to Dalits, but its implementation is negligible. The Mechanisms for Promoting Dalit Rights and Eradicating CBDU Act 2011, coordinated by the Chief Secretary of the government, remains inactive since its inception as it lacks both the adequate budget and statutory mandate. National Dalit Commission (NDC) and National Human Rights Commission (NHRC) are the government institutions for monitoring of overall human rights violation in Nepal but the GoN has failed to implement the recommendations of commissions. The NDC suffers insufficient budget and lack of human resources to function.
- 25) Badi Development Board and Neglected, Suppressed and Dalit Community Upliftment Development Committee also lack budgetary and human resources support.
- 26) The GoN has not submitted its periodic report to the Committee on the Elimination of All Forms of Racial Discrimination (CERD) since 2004.

### **C. Promotion and Protection on Human Rights on the ground**

- 27) The major reasons for poor implementation of CBDU Offence & Punishment Act are identified as the lack of its rules, caste mindset of law enforcement actors, inadequate knowledge about the Act, problems to collect tangible evidences, negligence in investigation, case converting practices into another case<sup>23</sup>, failure to charge for additional punishment for public service holders<sup>24</sup>, adopting for negotiation rather than registering the cases by police, undue influence by representative of political parties, influence from local elite group to dilute the case, physical insecurity of victims and witnesses, poor socio-economic status of Dalits and discretionary power of judges to opt for soft punishment.
- 28) No training programs offered to law enforcement agencies about CBDU Act & domestic and sexual violence against Dalits women, no general awareness-raising campaigns and programmes on the rights of Dalits has been organized.

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<sup>22</sup> The Interim constitution 2007 has guaranteed the Right to live with dignity (Article 12), Rights to Equality (Article 13), Affirmative Action for Dalits (Article 13.3), Right against Untouchability and Racial Discrimination (Article 14) and Right to social justice (Article 21).

<sup>23</sup> Plaintiff GoN by application of Hira Devi Nepali Vs Jeevan Bahadur Bam and others in District court of Kanchanpur (case no. 069-CR-0034, Decision no. 207, date 23 April 2014). In this case, the issue was raised by the belongingness of Ball, Sagar Nepali and Suraj Nepali, residents of Kanchanpur District, Bhimdatta Municipality, Ward No.18 were insulted by using derogatory words such as *Dum* (low caste) and *Dholi* (Drummer) and battered by the Jiban Bahdur Bam and Harka Bahadur Bam, residents of the same place on 24 October 2012. The case was registered demanding legal treatment as per the CBD&U Act, 2011 but the case was converted into libel and slander by the final verdict of District Court of Kanchanpur.

<sup>24</sup> Plaintiff GoN by the application of Ram Bahadur Sunar Vs Sita Ram Subedi and others in district court Dhading (Case No. 069-CR-0008, Decision no. 26, date 22 May, 2013). In this case, the incident was occurred due to the inter-caste marriage between Nabraj Sunar (Dalit boy), resident of Pida V.D.C. ward no. 5, Dhading district and Samjhana Subedi (Non-Dalit girl) in the same place. After the marriage, parents and relatives of groom were brutally bitten/physically attacked by the non Dalit people where teachers of government Schools were also involved in the incident but the district Attorney officer has missed to charge the additional Section ( Sec.7.2) for them who belongs to the public service holder.

## **D. Recommendations**

29) We recommend the Government of Nepal to:

- a. Amend Caste Based Discrimination & Untouchability (Offence and Punishment) Act, 2011 to include proper sanctions against perpetrators<sup>25</sup>, allocate sufficient budget and design comprehensive national action plan to implement with time-bound objectives to eliminate Caste Based Discrimination and Untouchability ;
- b. Adopt Zero tolerance principle in justice delivery system regarding the offence of CBDU;
- c. Amend existing Evidence Act, 1974 with the provision of the 'Burden of Proof' to be shifted to the defendant in order to facilitate complaints from Dalits and ensure access to justice for discriminatory practices;
- d. Ensure the security for victims and witnesses with adequate compensation;
- e. Enhance 'Mechanism for Promoting Dalit Rights, especially Dalits women;
- f. Make the National Dalit Commission a constitutional body with adequate resources;
- g. Ensure significant representation of Dalits in law enforcement agencies, monitoring bodies and decision making levels.

## **4. GIRL CHILD RIGHTS**

### **A. First-cycle UPR Recommendations**

30) In the first UPR, the GoN accepted 15 recommendations concerning Rights of the Child<sup>26</sup>, equally related to girl child.

### **B. Legal and Institutional Framework**

31) The GoN has enacted specific laws to protect and promote the rights of the child<sup>27</sup> and right against child labour, bonded labour and Human Trafficking.<sup>28</sup>

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<sup>25</sup> To include the provision of fine at least NPR 50,000.00, compensation at least NPR 100,000.00 and imprisonment above five year for all those perpetrators of the CBDU Offence and Punishment Act, 2011

<sup>26</sup> In the first UPR in 2011, the GoN received 34 recommendations concerning Rights of the Child , accepted 15, stated that 8 are under consideration and rejected 11 recommendations. These recommendations on child rights are equally related to girl child.

<sup>27</sup> Nepal is party to several International Treaties including ICCPR, ICESCR, CEDAW, CRC and its two optional protocols and aims to end all forms of discrimination between the girl and boy. It also commits to prosecute any cases of violence against woman and girl. The constitution of Nepal states that the Right of Child as fundamental rights, every child not to be subjected to physical, mental or any other forms of exploitation, punishable by law. Helpless, orphaned, street children shall have the right to receive special privileges from the state to ensure their secure future. And the article 17 of the Constitution safeguards the right to education as a fundamental right.

<sup>28</sup> These laws include: Libel and Slander Act, 1959; Prisons Act, 1964; Some (Public Offenses and Punishment) Act, 1969; Marriage Registration Act, 1972; Nepal Treaties Act, 1990; Labor Act, 1991; Press and Publication Act, 1991; Social Welfare Act, 1992; Act Relating to Children, 1992; Trade Union Act, 1992; State Cases Act, 1992; Civil Service

- 32) The Ministry of Women, Children and Social Welfare (MOWCSW) is main responsible government institution<sup>29</sup> for the protection of child rights. The GoN has implemented a 10-year National Plan of Action on Children (2004/05-2014/15)<sup>30</sup>, protecting children against abuse, exploitation and violence, but despite of the progress made in eliminating child labour, it is known that 1.6 million children in Nepal are still engaged in child labour, the majority being girls.
- 33) There is a constitutional guaranteed right to judicial remedy for breach of rights of children. Although such rights are included as fundamental rights, 95% girls under the age of 16 are still exposed to various forms of sexual abuse. Furthermore, there is no authentic data of the street children including the girl child exposed to various sexual abuses.
- 34) Pursuant to the Education Act, 2001 (Seventh Amendment), the GoN has declared the secondary education free<sup>31</sup> for all the citizens and the National Action Plan on Education for All (2001-2015) has identified goals of elementary child education and development programmes. However, Nepal Demographic and Health Survey shows that only 6.3 % girls completed primary level and 4.4 % completed secondary level in the far-western region, which shows that no big progress has been made so far.

### **C. Promotion and Protection on Human Rights on the ground**

- 35) The situation of girl child in Nepal is much alarming despite few achievements in infant mortality and maternal mortality rate. Based upon traditional practices and patriarchy, existence of discrimination among girls and boys, in particular the access of opportunities is

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Act, 1993; Torture Related Compensation Act, 1996; Human Rights Commission Act, 1997; Legal Aid Act, 1997; Consumer Protection Act, 1998; Local Self-governance Act, 1999; Child Labor (Prohibition and Regulation) Act, 1999; Bonded Labor (Prohibition) Act, 2002; Nepal Citizenship Act, 2006; Human Trafficking and Transportation (Control) Act, 2007; Domestic Violence (Crime and Punishment) Act, 2009. Nepal also ratified ILO Convention No. 138 (1973) on the Minimum Age in 1997 and Convention No. 182 (1999) on the Worst Forms of Child Labour in 2002. Nepal is also party to Convention on Rights of the Child (CRC) Optional Protocol on the trafficking of Children, Child Prostitution and Child Pornography, however the state of children report of Central Child Welfare Board 2014 shows among 66 reported cases, 15 are boys and 51 are girls.

<sup>29</sup> The Ministry of Women, Children and Social Welfare (MOWCSW) is responsible government institution for the formulation, implementation, monitoring and evaluation of policies, plans and programmes on women, children and social welfare, and also for the protection and security of orphans, helpless children, women, senior citizens and persons with disabilities (PWDs).

<sup>30</sup> The GoN has implemented a 10-year National Plan of Action on Children (2004/05-2014/15), covering areas of health, protecting children against abuse, exploitation and violence, and combating HIV/AIDS. While the GoN made some progress in eliminating child labour, yet it remains as a serious HR concern. According to the GoN, 16,000 child labourers involved in worst forms of child labour were rescued during the period of FY 2006/07 and 2009/10, and 17,000 were prevented entering into such labour. However, 1.6 million Children are still engaged in child labour, the majority of them are girls. The Kamaiya Labour Prohibition Act prohibits debt bondage but not other forms of forced labour, nor provide sufficient penalties against offenders. Moreover the actual data of freed Kamaiyas hasn't been maintained.

<sup>31</sup> The GoN has declared the secondary education free for all the citizens and made provision of scholarship to 100 % girls at the primary and lower secondary level and to all school girl students in Karnali Zone, to cover most of the direct costs of schooling (e.g. free textbooks, and no fees for admission, tuition and examinations).

prevailing despite of various legal remedies to eliminate discrimination against girls, the situation is not improving.

- 36) According to data released by WOREC, 199 cases of rape were reported to police across the nation in the fiscal year 2013/2014, of which 105 victims are girls under the age of 16. Irrespective of the laws against rape, the reported cases show that incidents are in alarming rate as they are occurring when girls are fetching water from the public tap, doing daily chores, collecting firewood or are at home. Total of 215 victims of rape documented by INSEC are minor girls<sup>32</sup>. The home is not safe place for girl as the incident by family member or relative being perpetrator is on increase.
- 37) Many harmful cultural practices still prevail where girl child are suffering every day. In May 2005, the Supreme Court of Nepal outlawed the Chaupadi system<sup>33</sup> and issued a directive to the GoN to formulate laws eliminating the practice. However, it is still practiced throughout the Far Western Region. According to Nepal demographic and Health Survey, 28.8% of female and 6.9% of male were married between the ages of 15- 19 years<sup>34</sup>. This early pregnancy endangers the life of woman increasing risk of obstetric fistula and urinary prolapsed. GoN has not formulated any comprehensive programs to discourage child marriage especially in Terai area.

#### **D. Recommendations**

38) We recommend the Government of Nepal to:

- a. Amend the acts and legal provisions regarding the age of the “child” as per the international standards i.e. 18 years;
- b. Amend the provision of Domestic Violence Control Act, 2008 to criminalize violence against woman in informal sectors;
- c. Review and amend all domestic legislation to define and criminalize child prostitution, child trafficking, child pornography/child abuse in accordance with the optional protocol of CRC;
- d. Appoint an independent Child Right Commissioner to provide immediate action to victims and to address root causes of child abuse, violence or juvenile delinquency;
- e. Arrange appointees in Woman Commission to monitor the condition of girl child rights;
- f. Establish special mechanism to identify and protect girl child on the street, living with disabilities, to develop special program to enhance their access to education, health and other opportunities;
- g. Address the high rate of girl-drop outs in the secondary level through an adequate programs like proper latrine, setting standards of infrastructure in school and distribution of sanitary pads;

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<sup>32</sup> Report on Violence against Women/Girls Assessing the Situation of Nepal in 2013, Informal Sector Service Center, 2014 available at <http://www.inseconline.org/pics/1394188608.pdf> accessed on 30<sup>th</sup> January, 2015

<sup>33</sup> In 2008, the MOWCSW promulgated guidelines “Chhaupadi Tradition Elimination Directive 2008”, but adherence to these guidelines remains incomplete.

<sup>34</sup> Nepal Demographic and Health Survey 2011,

- h. Address the problem of increased feticide by issuing directives to hospitals regarding the maintenance of record of clients during abortion;
- i. Plan and implement programs to end child marriage focusing on child marriage prone areas;
- j. Formulate woman friendly policies like the citizenship in name of mother, inheritance, eliminating dowry, financing single mother, old aged security and determination of the surname;
- k. Develop policies that promotes and support child clubs both technically and financially for the overall personality development of girl child.

## **5. WOMEN'S HEATH AND REPRODUCTIVE RIGHT**

### **A. First-cycle UPR Recommendations**

39) In the first UPR, the GoN accepted nine recommendations concerning "women's health and reproductive right"<sup>35</sup>.

### **B. Legal and Institutional Framework**

40) The GoN showed commitment to ensure sexual and reproductive health rights of women<sup>36</sup>. The Family Health Division (FHD) is responsible in order to design, plan, implement and monitoring of reproductive health program of the country. Although Nepal has made progress

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<sup>35</sup> In the first UPR in 2011, out of 96 accepted recommendations by the GoN, nine recommendations are concerning "women's health and reproductive right". They are:

A - 106.14. Further, enhance measures aimed at protecting the human rights of children, women and other vulnerable groups (Philippines);

A - 106.30. Strengthen its measures to eradicate child abuse, sexual exploitation of children (Azerbaijan);

A - 106.31. Strengthen the implementation of its Human Trafficking and Transportation (Control) Act 2007 and its Regulation 2008 (Bhutan); further strengthen law enforcement and the judicial system in the efforts to address impunity, prevent domestic violence, and to protect women and children from trafficking as well as physical and sexual exploitation (Malaysia); combat human trafficking and forced prostitution in particular of children (Germany); fight trafficking in persons, prosecute perpetrators and provide protection and compensation to victims (Netherlands);

A - 107.8. Develop a National Action Plan on ending violence against women and children (Australia)

A - 107.22. Ensure that the cases of violence against women and girls are duly investigated (Thailand);

A - 107.23. Take measures to guarantee effective access to justice and protection for women victims of gender based violence (Brazil);

A - 108.20. Regarding human trafficking and violence against women and children, take further legislative steps, where necessary, and accelerate efforts for their effective implementation (Japan);

A - 106.41. Intensify efforts in providing basic services to vulnerable or marginalized groups or communities particularly providing quality health and education services and creating more employment opportunities (Myanmar);

NC - 108.23. Effectively investigate violations against human rights defenders, including journalists and women rights activists and bring to justice those responsible for such violations (Norway);

<sup>36</sup> Nepal has committed and progressed towards achieving "improve maternal health (MDG-5)". Nepal Interim Constitution addresses that, "Every woman shall have the right to reproductive health and reproduction". The Ministry of Health and Population (MoHP) has aim to decrease maternal and neo-natal mortality and morbidity in order to improve health situation of women of reproductive age particularly poor and marginalized community. Nepal has made significant progress in reducing maternal mortality between 1990 and 2006, from 539 to 281 per 100,000 live births according to the Report of NDHS in 2011, maternal death was reduced total from 539 to 281 per 100,000 live births. NDHS 2011, MoHP.

to improve Maternal Mortality Ratio (MMR) due to disparity among different castes and ethnic groups (Muslim, Dalit, Madheshi, etc.) including adolescent, health services have not reached adequately<sup>37</sup>.

### **C. Promotion and Protection on Human Rights on the ground**

- 41) Despite the efforts undertaken by the GoN to enact specific laws in order to reduce early marriage, sexual violence and abuse, and gender discrimination, due to the different socioeconomic situations, health problems persist. More than 29% of girls aged 15-19 are married<sup>38</sup> and therefore likely to get pregnant and give birth during their adolescence. Moreover, early marriage is embedded in some religious custom in Nepal.
- 42) After endorsement of abortion law in Nepal, abortion during adolescence increases reproductive health problem among women. Lack of awareness about consequences of early marriage and abortion maximize the sexual and reproductive health complications. Due to social norms and dignity, women particularly adolescent girls hesitate to receive health services and report in case of sexual violence and discrimination. Lack of access to health and afford to services add constrain to respect the reproductive and sexual rights of the women.

### **D. Recommendations**

- 43) We recommend the Government of Nepal to:
  - a. Ensure the access of information and women & adolescent friendly service on sexual and reproductive health (SRH) to adolescent, young people and women groups;
  - b. Design special program in order to encourage adolescent, young people and women groups to participate in developing plans, policies, strategies for securing their rights on sexual and reproductive health;
  - c. Strengthen existing SRH program in order to inspire equal participation of spouse on reproductive health and reproduction to secure quality of life;
  - d. Emphasize on awareness activities and media campaign for behavioral change to address the sexual and reproductive health issues and develop comprehensive and user friendly IEC/BCC materials;
  - e. Review and develop existing health policies, plans and strategies for quality health service delivery at all level;

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<sup>37</sup> Recent report from Central Bureau of Statistics, Population Monograph of Nepal (2014) highlighted the maternal mortality rate (MMR) as 480 per 100,000 live births, which is estimated for the first time on the basis of census data. The ratio seems to be higher compared to the estimates provided by NDHSs and other sources. MMR is highest again in Tarai (634) followed by Mountain (561) and Hill. Mid-West Mountain had 1004, the highest among the ecological development regions, despite the National Safe Motherhood Program has made momentous change in developing different strategies and specific interventions related to safe motherhood and reproductive health program implementation.

<sup>38</sup> According to the NDHS Further Analysis in 2013.

- f. Establish and strengthen effective communication and coordination mechanism in order to deliver user friendly sexual and reproductive health services to all adolescent, young people and women groups.

## **6. YOUTH RIGHTS**

### **A. First-cycle UPR Recommendations**

- 44) There had been no recommendation on Youth Rights from the first UPR in 2011.

### **B. Legal and Institutional Framework**

- 45) As an initiative to institutionalize the potential of youth, in 2009, the Ministry of Youth and Sports has been formed and the National Youth Policy (NYP) has been drafted in 2010 with 17 priority area<sup>39</sup>. With 50% of the youth unemployed and many under-employed, it is essential that adequate policies be framed for youth, especially in the areas of livelihood and employment. The NYP is a step in the right direction. However, the domestication and implementation of UN declarations on Youth<sup>40</sup> into Nepali law and policies are rare.

- 46) Employment Fund has been operating since 2008 by the GoN in partnership with SDC and HELVETAS with the aim of providing training opportunities towards economically poor and socially discriminated youths to ensure their entry into the labour market and facilitating youths who want to start their business. The 13th National Plan has also addressed the issue of youth development. Ministry of Federal Affairs and Local Development, Ministry of Labor and Employment, Ministry of Finance, National Planning Commission, National Election Commission are ministerial and institutional framework to address the issue of youths in different ways.

### **C. Promotion and Protection on Human Rights on the ground**

- 47) Youths' rights should be monitored from three key areas: provision, protection and participation. Proportional and meaningful participation of youth in every sectors of state mechanism including political parties, engagement of youth in economic opportunities and ensuring the implementation of labor rights are key issues to protect the rights of youth.

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<sup>39</sup> The National Youth Policy identifies 17 priority areas that include: Education; Youth Empowerment and Leadership Development; Participation: Social and Cultural; Health and Family Wellbeing: HIV/AIDS, Malnutrition, healthy lifestyle, mental health; Drug abuse; Human Trafficking; Environment and Sustainable Development; Science and Technology among other (NYP, 2010).

<sup>40</sup> For instance the "Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples", declaration of "International Youth Year: Participation, Peace and Development" in 1985 by UN, World Program of Action for Youth to the year 2000 and Beyond (WPAY), World Conference of Ministers Responsible for Youth and Lisbon Declaration on Youth Policies and Programmes.

48) Provision of including youth (age 16-40) under Youth Policy 2010 is contradictory to International standard, which has affected the participation of real youth groups. There is no proper action plan to implement youth policy 2010 and the Youth Council Bill is still not adopted.

49) Least representation of youth<sup>41</sup> even in direct election system, as only 19 out of 240 CA members are from youth group<sup>42</sup>. Provision of Youth Development has only included handful number of youths<sup>43</sup> and limited youth representation is noted at higher position of political parties<sup>44</sup>. Marginalized and disadvantage youth population don't have access to state mechanism and services<sup>45</sup>.

#### **D. Recommendations**

50) We recommend the Government of Nepal to:

- a. Amend the Election Commission Act to ensure the participation of youth from 18-year-old;
- b. Include larger youth population as priority group in the National Plans, especially youth from marginalized, disadvantaged and poor with the special scheme on increasing their participation at education, health, employment and legislative;
- c. Adopt Youth Employment Policy and Youth Council Act as early as possible;
- d. Adopt Employment Act according to provisions enshrined in Interim Constitution with the aim of creating employment opportunity to youths on their choices;
- e. Capacitate and expand MOYS roles and responsibilities to address the broader issues of youth;
- f. Ensure youth participation and consultation during National Youth Employment Policy drafting process.

### **7. FREEDOM OF RELIGION OR BELIEF**

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<sup>41</sup> Election Commission Act is biased on representation of youth in parliament i.e. having age limitation 25 year-old to be Member of Parliament. In proportional election system, representation of youth in close-list-system is not adopted.

<sup>42</sup> Nepal CA Election: 2013.

<sup>43</sup> There are less than 50,000 youths from 12th National Plan of Nepal.

<sup>44</sup> There is no proportional and meaningful participation of youth at State bodies and decisive participation of youth in political parties. Youth leader has no major stake on decision making process of political parties as well as representation of youth in National Planning Commission.

<sup>45</sup> Similarly Youth Vision 2025 is also being made for the youth leaders of political parties, excluding other youth groups such as Madhesi, indigenous peoples, Dalit, youth from backward regions, the disabled and minority communities. In addition, participation of 33 percent women at all levels have not been secured.



## **A. First-cycle UPR Recommendations**

51) The GoN accepted six recommendations from the first UPR in 2011 on this issue.

## **B. Legal and Institutional Framework**

52) The provision in the Interim Constitution (IC 2007) has been practically nullified by the state authority (on the ground of contradictory sub-clause B) by promoting the anti-conversion notion against the fundamental right<sup>46</sup>. A group of pro-Hindu Constituent Assembly members proposed an "Anti-conversion Bill" in 2011, which proposes that any attempt of changing one's faith or religion would be brought under civil and criminal codes. The bill is totally against religious freedom even to the extent of individual conversion.<sup>47</sup>

## **C. Promotion and Protection on Human Rights on the ground**

53) There is no registration requirement for minority religious groups thus restricting them from legally owning land and properties of other forms including burial sites and getting government funding support. This is a great concern for safeguarding the rights of all minority religions.

54) The article 18.4 of the ICCPR has given parents and legal guardians the liberty to ensure the religious and moral education of their children in conformity with their own convictions. However, the orphanage/children home managers of Christians and other minority religious faiths are often accused of proselytizing the children under their care for teaching them to pray and participate in religious functions.

55) Civil Servants (Nepal Army and Police) are not allowed to observe the religion of their choices, but forced to participate in Hindu religious ceremonies/functions thus compelling them to voluntarily resign and many times not opt for getting employed in them.

56) Disregarding of the Constitutional declaration of Nepal as a secular state, discriminatory laws against minority religions are still enforced. There are some recent incidents<sup>48</sup> where the authority has shown its ignorance or serious human right violation against minority religious groups.

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<sup>46</sup> Nepal being the co-signatory of International Covenant on Civil and Political Rights (ICCPR), the Article 18 which clearly states "ones freedom to practice ones religion". Therefore, Nepal thus commits to promote religious freedom in the country.

<sup>47</sup>The Bill defines "All forms of religious communication, including talking about one's faith, as proselytizing and punishable with fines up to USD 700 and five years in prison. Any foreigners convicted on such grounds would be liable of immediate expulsion. Furthermore, the existing constitutional proposals contain a provision that "no person shall be entitled to convert another person from one religion to another against his or her desire" and these clauses prohibit changes of religion "with or without inducement" Christian Solidarity Worldwide webpage on Nepal, <http://dynamic.csw.org.uk/article.asp?t=report&id=14> (cited on January 30<sup>th</sup> 2015, 11:25)

<sup>48</sup> Those incidents are:

## **D. Recommendations**

57) We recommend the Government of Nepal to:

- a. Ensure the equality among all religious organizations and institutions, maintaining equal protection of law, right to practice individual religion, faith, and religious activities;
- b. Amend clause 23 of Interim Constitution 2007 to ensure that every person has freedom to have or adopt a religion or belief of his/her choice and freedom to voluntary conversion, and the freedom, either individually or in community with others and in public or private, to manifest (worship, observe, practice and teach) his/her religion or belief;
- c. Form a minority Religious Commission consists of religious leaders, religious teachers, priests, pastors, imams, lama and gurus, and its members should be appointed by religious bodies;
- d. Provide sites for funerary rites (such as burial sites) and provide security for the same where such sites are already available so that people can conduct funerary rite with dignity in a secure environment;
- e. Formulate Religious Act addressing the following issues;
  - Relating to laws that directly or indirectly identifies and promotes a particular religion within the state as legal subjects;
  - Relating to the rights of religious organizations or institutions or bodies to maintain their independent legal existence, and matters pertaining to construction, protection or management of temples, Gumbas, mosques, churches, or other sites of religious importance;
  - Relating to the policies towards religious/theological schools operating on the basis of a particular religion or faith that present religion as a historical fact or teach a particular religion as superior to others;
  - Relating to religious programs that are broadcast by the state-owned radio or television and providing similar facility to all religions on an impartial and fair basis.

## **8. CLIMATE CHANGE, NATURAL RESOURCES AND HUMAN RIGHTS**

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- Pastor Mahesh Thanju along with 39 church leaders and believers were arrested and taken into custody for 3 days in June 2014, for baptizing 24 people.
  - Setopati Online News, February 26, 2014: Mrs. Dil Shova, a Christian social worker running an orphanage and an old-age home, was accused of sexually exploiting the people under her care and converting the orphans to Christianity.
  - The same online published a news in September 5, 2014 of Ms. Anju Panta, a famous Nepali professional singer accusing her of disrespecting the Hindus for opting not to sing a Hindu hymn that contradicts her conscience of being committed follower of Bible.

## **A. First-cycle UPR Recommendations**

58) The GoN accepted two recommendations on this issue from the first UPR in 2011.

## **B. Legal and Institutional Framework**

59) Nepal government came up with the Climate Change Policy 2011<sup>49</sup>. The main goal of this policy is to improve livelihoods by mitigating and adapting to the adverse impacts of climate change, adaptation a low-carbon emissions socio-economic development path and supporting and collaborating in the spirits of country's commitments to national and international agreements related to climate change<sup>50</sup>.

60) In the context of Nepal, Indigenous peoples, Dalits, women, children are vulnerable to climate change, since their way of life is often inextricably tied to the natural resources and environment. Consequently, Climate and environment change impact their ability to access water, food and shelter<sup>51</sup>.

## **C. Promotion and Protection on Human Rights on the ground**

61) **Right to Land/ Natural Resources:** Despite obtaining consent several years ago from political parties and forest users groups to live there, the forest department continues to forcibly evict and destroy the homes of landless people. Women living without land ownership are major victims affected by this. The GoN has failed to pass any law to protect tenancy rights for landless people. As a result of numerous discriminatory laws and practices, indigenous peoples are historically deprived of land and natural resources<sup>52</sup>.

62) Indigenous knowledge is not protected through legal provision that includes the use of copyright, certification marks and design, collective trademarks, patent law, moral rights and equitable sharing of the benefit arising from the utilization of traditional knowledge.

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<sup>49</sup> According to the UN charter, the Universal Declaration of Human Rights and other international human rights instruments, states have a duty to cooperate to prevent the violation of human rights, including the duty to take effective action in the fight against climate change. Furthermore, states must take adequate measures to respect and promote human rights when working to climate change or adapt to its impact. Nepal has yet to implement the international standards applicable to indigenous peoples, as set out in the Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the ILO Convention No.169 and indigenous peoples rights' to self determination. The GoN needs to meet its obligations to indigenous peoples in line with observations and recommendations made by the Special Rapporteur.

<sup>50</sup> Climate change policy 2010

<sup>51</sup> Power point presentation by Krishna Lamsal on climate change and human rights, Dr. Purna Nepali on Land rights in Nepal, Mr. Braj Kishore Yadav Joint Secretary MFSC on NBSAP, Mr. Kamal Rai and Mr. Dhan Man Gurung on ILO 169 and UNDRIP, Mr. Man Bahadur BK on DRR in Nepal.

<sup>52</sup> Development projects, Leasehold and community forest, National Parks, and Hydro-projects have displaced many indigenous peoples from their ancestral lands and territories thereby denying those people their rights to consultation, participation, benefit-sharing and natural resources.

63) **Right to Food:** The effective enjoyment of the right to food remains a serious problem in Nepal<sup>53</sup>. Due to lack of just, fair and reasonable food distribution, food shortage has been one of the major violations of the right to food.

64) It is essential to consider the human rights aspects of climate change (CC) policy and program in the country, and other relevant institutions and mechanisms<sup>54</sup>.

## **D. Recommendations**

### **On Climate Change**

65) We recommend the Government of Nepal to:

- a. Design appropriate institutions and mechanisms in Nepal CC framework that effectively operationalize the rights-related language in the policy and legal documents;
- b. Create a process(es) in the CC policy and other CC related legal framework that will consider and address communications by or on behalf of individuals, peoples or communities whose rights may be affected by CC impacts and associated response measures;

### **On Land right**

66) We recommend the Government of Nepal to:

- c. Enact tenancy law to protect tenancy rights of landless people and ensure adequate budget allocation to provide rehabilitation to landless people;
- d. Ensure that genuine land reform policy and programs are in place.

### **On the Rights of Indigenous Peoples:**

67) We recommend the Government of Nepal to:

- e. Implement urgently the ILO Convention No.169 and the UNDRIP and change existing domestic laws and policies to give due recognition to the indigenous peoples' traditions, customs and land tenure systems in line with standards set forth in the Convention No.169 and UNDRIP;
- f. Take tangible measures to recognize and protect the rights of indigenous peoples to own, control, develop and use their ancestral lands, territories and natural resources;

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<sup>53</sup> Natural calamities drought, landslides and floods, contributed to a significant decline in local food production in both 2008 and 2009, resulting in severe food shortages in several hill and mountain districts.

<sup>54</sup> For example, given the impacts of climate change and measures taken to mitigate or adapt to climate change on a wide range of human rights, it is essential to integrate human rights considerations into the institutional framework and relevant processes of the country, including whatever legal and institutional architectures emerge in the agreed outcome of the current negotiations.

- g. Consider to adopt special measures to get Free Prior Informed Consent from indigenous peoples prior to executing any development project or undertaking any other activity, which materially affects their lives;
- h. Develop and enact new forest policy, watershed management policy and related act to ensure access and control of poor and marginalized communities over the forest and resources.

### **On the Right to Food**

68) We recommend the Government of Nepal to:

- i. Adopt and implement strong development framework with affirmative policies and implementation commitments for food security, food right and food sovereignty to the marginalized population;
- j. Fulfill its human rights and constitutional obligation by allocating maximum resources to ensure the right to food.