

POLICY PAPER

VIOLENCE AGAINST HOME-BASED WORKERS IN THE WORLD OF WORK IN NEPAL



Network of Homebased workers in South Asia

Laudes ———
——— Foundation

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Table of Contents

1.	Background of the Paper	4
2.	Objectives of the Paper	6
3.	Methodology	6
4.	State Accountability to Ensure the Rights of Home-based Workers under International Instruments	6
4.1	International Covenant on Economic, Social and Cultural Rights (ICESCR)	9
4.2	Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	10
4.3	Convention on the Rights of the Child (CRC)	11
4.4	International Labour Organization (ILO) Conventions	11
4.5	Advocacy Efforts to Ratify ILO C190 in Nepal	15
5.	Review of the Legal Framework on Women Working in the Formal and Informal Sectors	18
5.1	The Constitution of Nepal	18
5.2	Labour Act, 2017	20
5.3	National Civil Code, 2017	22
5.4	Right to Employment Act, 2018	23
5.5	Implementation of the Laws	23
6.	Laws and Policies Relating to Protection Against Sexual and Gender-based Violence	25
6.1	Law Against Domestic Violence	26
6.2	Law Against Sexual Violence	27
6.3	Law Against Sexual Harassment in the Workplace	28
7.	Gaps and Weaknesses	30
8.	Recommendations	31
A.	Recommendations to the Government of Nepal	31
B.	Recommendations to the International Labour Organization (ILO)	31
C.	Recommendations to Civil Society	31

Background of the Paper

Home-based work is defined as employment that takes place in one's own home or in a structure or grounds attached to one's home. Home-based work includes a wide range of activities, from professional occupations in the services sector to manufacturing or agricultural work that takes place near to the home.^[1]

There were over 1.5 million home-based workers in Nepal in 2017/18, which represents 22 per cent

of total employment. In Nepal, there were around 1.01 million non-agricultural and 554,606 agricultural home-based workers, according to the 2017/18 Labour Force Survey; this represents 14 and 8 per cent, respectively, of the employed population aged 15 and older. Non-agricultural home-based work has decreased slightly overall from 2008, when there were around 1.09 million home-based workers. However, the number

of women home-based workers in the non-agricultural sector has risen over time, from 463,516 in 2008 to 552,148 in 2017/18, while the number of men home-based workers fell from 625,083 in 2008 to 458,074 in 2017/18. This has resulted in the share of women home-based workers relative to home-based workers in total increasing from 43 per cent in 2008 to 55 per cent in 2017/18.^[2]

Home-based Workers in Total, in Agricultural Employment and Non-agricultural Employment by Sex, 2017/18: Numbers and percentages of employment^[3]

	All		Women		Men	
All	1,564,828	(22.1)	912,138	(34.4)	652,690	(14.8)
Non-agriculture	1,010,222	(14.3)	552,148	(20.8)	458,074	(10.4)
Agriculture	554,606	(7.8)	359,990	(13.6)	194,616	(4.4)

The share of women in non-agricultural home-based work relative to women's employment in total also rose from 8 per cent in 2008 to 21 per cent in 2017/18, whereas for men, this share has remained relatively stable at around 10–11 per cent.

For both the agricultural and non-agricultural sectors in 2017/18, home-based work represents a greater percentage of employment for women than for men. For women, non-agricultural and agricultural home-based work account for 21 and 14 per cent of women's total

employment, respectively; for men, these types of work account for 10 and 4 per cent, respectively. According to the 2017/18 Labour Force Survey, the majority of home-based workers were in urban areas (61 per cent), compared to those in rural areas (39 per cent).

^[1] *Home-Based Workers in Nepal, 2017/18: A statistical profile, Statistical Brief No. 28, April 2021, Women in Informal Employment: Globalizing and Organizing (WIEGO).*

^[2] *Home-Based Workers in Nepal, 2017/18: A statistical profile, Statistical Brief No. 28, April 2021, WIEGO.*

^[3] *Home-Based Workers in Nepal, 2017/18: A statistical profile, Statistical Brief No. 28, April 2021, WIEGO.*

Violence Against Home-Based Workers
in the World of Work in Nepal

For women, a total of 562,527 (36 per cent) home-based workers were in urban areas, compared to 349,612 (22 per cent) in rural areas. For men, 262,315 (17 per cent) were in rural areas and 390,375 (25 per cent) were in urban areas. For this time period, the highest concentration of home-based workers in rural and urban areas, by sex, was urban women in non-agricultural home-based work; they represent about 24 per cent of all home-based workers. The next highest was urban men in non-agricultural home-based work (19 per cent). The lowest concentration of home-based workers was men in agricultural home-based work

(about 6 per cent in both rural and urban areas).^[4]

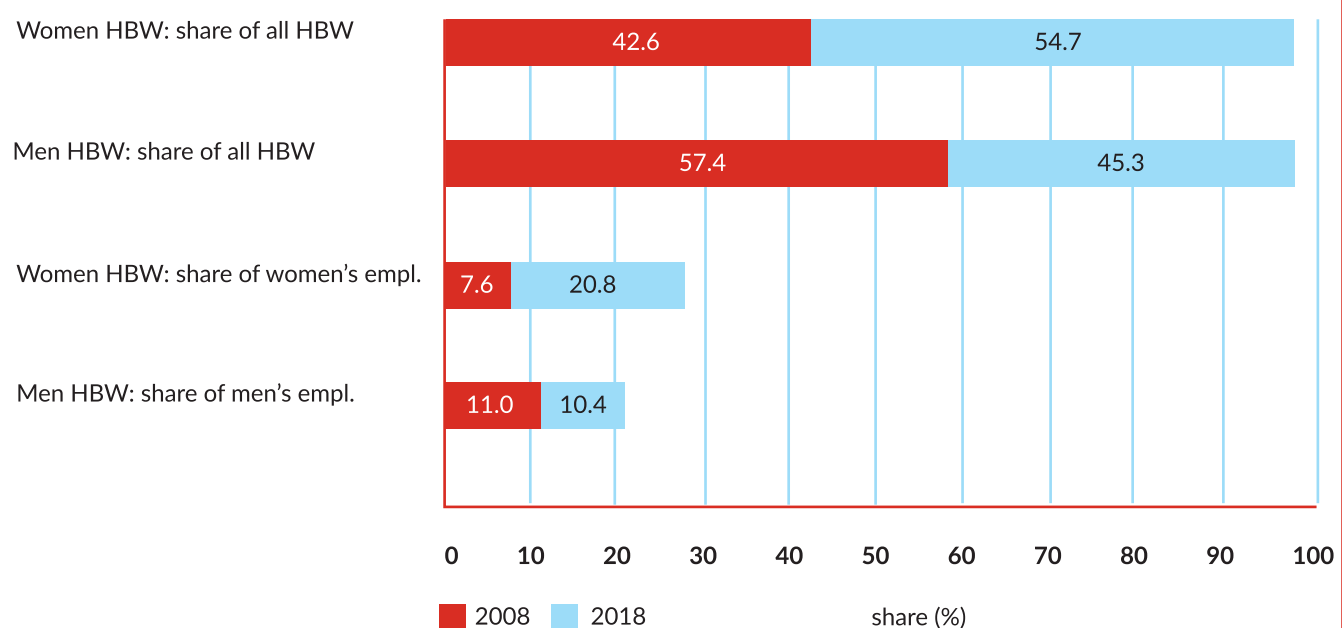
Since 2008, the number of non-agricultural home-based workers in urban areas has risen dramatically. In 2008, there were 253,440 urban home-based workers, compared to 835,159 in rural areas; by 2018, the number of urban home-based workers had grown to 661,245, while the number in rural areas had shrunk to 348,997. Home-based work increased for both men and women in urban areas. Relative to all home-based workers, the share of urban women home-based workers increased from 10 to 37 per cent between 2008 and 2018, while for

urban men, the share increased from 13 to 29 per cent.^[5]

Home-based work has certainly become a more important source of employment among women. Among all employed women, the share of women home-based workers has increased in both urban and rural areas, with a greater increase in urban areas (from 2 to 23 per cent) compared to the increase in rural areas (from 6 to 11 per cent).^[6]

Among all employed men, while the share of urban home-based workers increased from 2 to 8 per cent, it fell from 9 to 5 per cent among rural home-based workers.^[7]

Women and men non-agricultural home-based workers (HBW) as share of HBW and of employment: 2008 and 2017/18



Share of Home-Based Work and Employment for Women And Men in 2008 and 2017/18 ^[8]

^[4] *Home-Based Workers in Nepal, 2017/18: A statistical profile, Statistical Brief No. 28, April 2021, WIEGO.*

^[5] *Home-Based Workers in Nepal, 2017/18: A statistical profile, Statistical Brief No. 28, April 2021, WIEGO.*

^[6] *Home-Based Workers in Nepal, 2017/18: A statistical profile, Statistical Brief No. 28, April 2021, WIEGO.*

^[7] *Home-Based Workers in Nepal, 2017/18: A statistical profile, Statistical Brief No. 28, April 2021, WIEGO.*

^[8] *Home-Based Workers in Nepal, 2017/18: A statistical profile, Statistical Brief No. 28, April 2021, WIEGO.*

2. Objectives of the Paper

The overall objective of this paper is to make recommendations on legal provisions for home-based workers with respect to violence against women and to identify gaps in both the legal framework and its implementation.

3. Methodology

The paper is based on an extensive desk review. The desk review has been carried out based upon primary and secondary information. Furthermore, the information collected through this desk review has been analysed in order to understand the gaps in the legal framework in regard to the rights of home-based workers when it comes to violence against women and to put together recommendations for necessary reformations. This paper has espoused a qualitative methodology.

4. State Accountability to Ensure the Rights of Home-based Workers under International Instruments

Nepal has ratified several international human rights treaties, which includes 21 United Nations (UN) human rights instruments and 11 International Labour Organization (ILO) Conventions. The details of the instruments and Conventions and their respective ratification dates are as follows:

Human Rights Instruments

SN	Name of Instrument	Ratification (r) Accession (a)
1	Slavery, Servitude, Forced Labour and Similar Institutions and Practices, 1926	7 January 1963 (a)
2	Protocol Amending the Slavery Convention, 1953	7 January 1963 (a)
3	Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956	7 January 1963 (a)
4	Convention on the Political Rights of Women, 1952	26 April 1966 (a)
5	Convention on the Prevention and Punishment of the Crime of Genocide, 1948	17 January 1969 (a)

SN	Name of Instrument	Ratification (r) Accession (a)
6	International Convention on the Elimination of All Forms of Racial Discrimination, 1965	30 January 1971 (a)
7	International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973	12 July 1977 (a)
8	International Convention Against Apartheid in Sports, 1985	1 March 1989 (r)
9	Convention on the Rights of the Child, 1989	14 September 1990 (r)
10	Convention on the Elimination of All Forms of Discrimination Against Women, 1979	22 April 1991 (r)
11	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984	14 May 1991 (a)
12	International Covenant on Economic, Social and Cultural Rights, 1966	14 May 1991 (a)
13	International Covenant on Civil and Political Rights, 1966	14 May 1991 (a)
14	Optional Protocol to the International Covenant on Civil and Political Rights, 1966	14 May 1991 (a)
15	Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949	27 December 1995 (a)
16	Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, 1989	14 March 1998 (a)
17	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000	31 October 2005 (r)
18	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000	20 January 2006 (a)
19	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 1999	15 June 2007 (r)
20	Convention on the Rights of Persons with Disabilities, 2006	7 May 2010 (r)
21	Optional Protocol to the Convention on the Rights of Persons with Disabilities, 2006	7 May 2010 (r)

International Labour Organization (ILO) Conventions

Sn	Ilo Convention	Ratification Date
1	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	19 September 1974
2	Minimum Wage Fixing Convention, 1970 (No. 131)	19 September 1974
3	Equal Remuneration Convention, 1951 (No. 100)	10 June 1976
4	Weekly Rest (Industry) Convention, 1921 (No. 14)	10 December 1986
5	Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	21 March 1995
6	Right to Organize and Collective Bargaining Convention, 1949 (No. 98)	11 November 1996
7	Minimum Age Convention, 1973 (No. 138)	30 May 1997
8	Forced Labour Convention, 1930 (C029)	03 January 2002
9	Worst Forms of Child Labour Convention, 1999 (No. 182)	03 January 2002
10	Abolition of Forced Labour Convention, 1957 (No. 105)	30 August 2007
11	Indigenous and Tribal Peoples Convention, 1989 (No. 169)	14 September 2007

Section 9(1) of the Nepal Treaty Act, 1990, states that 'In case of the provisions of a treaty, to which Nepal or Government of Nepal is a party upon its ratification, accession, acceptance or approval by the Parliament, inconsistent with the provisions of prevailing laws, the inconsistent provision of the law shall be void for the purpose of that treaty, and the provisions of the treaty shall be enforceable as

good as Nepali laws.'^[9]

Similarly, Section 9(2) mentions that, upon the ratification of such treaties, the Nepal government is required to make legal arrangements to enforce the provisions of the international treaties. After the ratification of such a treaty, the state parties are also obligated to provide periodic reports to the treaty body in

question. The treaty body receives submissions from the state and civil-society organizations, and it then provides the state with suggestions called 'concluding observations.'^[10]

Nepal has ratified the following treaties and is thus obligated to implement the provisions included in them.

^[9] Nepal Treaty Act, 1990, Section 9(1).

^[10] Nepal Treaty Act, 1990, Section 9(2).

4.1 International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty that was adopted by the UN General Assembly on 16 December 1966 and came in force on 3 January 1976. It commits its parties to work towards granting economic, social and cultural rights (ESCRs) including labour rights and the right to an adequate standard of living. Nepal ratified the ICESCR on 14 May 1991.

The ICESCR urges states to utilize the maximum resources they have available towards the progressive realization of rights. These rights include equal rights and protection from discrimination, as well as the rights to work, to an adequate standard of living, to rest and leisure, and to education. States also have an obligation to respect, promote and fulfil rights by abiding by the principles of minimum essential levels, equality

and non-discrimination, as well as participation, transparency and accountability.^[11]

The ICESCR recognizes the right to work, which is defined as the opportunity of everyone to gain a means of sustenance by a means of freely chosen or accepted work. Parties are required to take 'appropriate steps' to safeguard this right, including providing technical and vocational training, plus having economic policies aimed at steady economic development and, ultimately, full employment. The right implies that the parties must guarantee equal access to employment and protect workers from being unfairly deprived of employment. They must prevent discrimination in the workplace and ensure access to employment for the disadvantaged. The fact that work must be freely chosen or accepted means parties must prohibit forced and child labour.^[12]

The right of everyone to 'just and favourable' working conditions is recognized by the ICESCR. These, in turn, are defined as fair wages with equal pay for equal work, which is sufficient to provide a decent living for workers and their dependents; safe working conditions; equal opportunities in the workplace; and sufficient rest and leisure, including limited working hours and regular paid holidays.^[13]

The ICESCR also acknowledges the right of workers to form or join trade unions, and it protects the right to strike. However, it allows these rights to be restricted for members of the armed forces, the police and government administrators. Several parties have placed reservations on this clause, allowing it to be interpreted in a manner consistent with their constitutions or to extend the restriction of union rights to groups such as firefighters.^[14]

^[11] ICESCR, 1966, Article 2.

^[12] ICESCR, 1966, Article 6.

^[13] ICESCR, 1966, Article 7.

^[14] ICESCR, 1966, Article 8.

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

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the UN General Assembly on 19 December 1979, and it came into force as a treaty on 3 December 1981. The CEDAW is often referred to as the International Bill of Rights for Women. Nepal ratified the CEDAW on 22 April 1991.

The CEDAW provides the basis for realizing equality between women and men through ensuring women's equal access to every sphere of life, including employment. The CEDAW obligates state parties to take all appropriate measures – including legislation in the political, social,

economic and cultural fields – to ensure the full development and advancement of women.^[15]

The CEDAW discusses the equal rights of men and women in the field of employment, categorizing them into the following:^[16]

- a) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment
- b) The right to the free choice of profession and employment; the right to promotion, job security, and all benefits and conditions of service; and the right to receive vocational training and retraining, including

apprenticeships, advanced vocational training and recurrent training

- c) The right to equal remuneration, including benefits; to equal treatment in respect to work and equal value; and to equal treatment in the evaluation of the quality of work
- d) The right to social security – particularly in cases of retirement, unemployment, sickness, invalidity, old age and other types of incapacity to work – as well as the right to paid leave
- e) The right to health protection and to safety in working conditions, including the safeguarding of reproduction

^[15] CEDAW, 1979, Article 3.

^[16] CEDAW, 1979, Article 11.

4.3 Convention on the Rights of the Child (CRC)

The Convention on the Rights of the Child (CRC) was adopted by the UN General Assembly in 1989 and is the most widely adopted international human rights treaty in history. The CRC sets out the human rights of every person under the age of 18. It came into force on 2 September 1990, and Nepal ratified the CRC on 14 September 1990.

The CRC obliges state parties to respect and ensure that the rights presented in the Convention are accorded to each child within their

jurisdiction, without discrimination of any kind, irrespective of the child's, his or her parents' or his or her legal guardians' race; colour; sex; language; religion; political or other opinion; national, ethnic or social origin; property; disability; or birth or other status.^[17]

The CRC recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous; to interfere with the child's education; or to be harmful to the child's health or physical,

mental, spiritual, moral or social development.^[18]

The CRC also requires state parties to take legislative, administrative, social and educational measures. In particular, they must do the following: establish a minimum age for admission to employment; establish appropriate regulation of the hours and conditions of employment; and establish appropriate penalties or other sanctions, so as to ensure the effective enforcement of the provisions on child employment.^[19]

4.4 International Labour Organization (ILO) Conventions

The ILO's goal is to promote equal opportunities for women and men to obtain decent work. 'Decent work' is defined as work that is 'productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives, and equality of opportunity and treatment for all women and men.'^[20]

The ILO considers gender equality a

critical element to achieving its four strategic objectives:

- Promote and realize standards, fundamental principles and rights at work
- Create greater opportunities for men and women to secure decent employment and income
- Enhance the coverage and effectiveness of social protection for all
- Strengthen tripartite and social dialogue

The ILO's mandate to promote gender equality in the world of work is enshrined in its constitution

and reflected in the relevant international labour standards.

The four key ILO gender-equality Conventions are the Equal Remuneration Convention (No. 100), the Discrimination (Employment and Occupation) Convention (No. 111), the Workers with Family Responsibilities Convention (No. 156) and the Maternity Protection Convention (No. 183). Conventions Nos 100 and 111 are also among the eight fundamental Conventions, for which the enshrined principles and rights are found in the ILO Declaration on Fundamental

^[17] CRC, 1989, Article 2(1).

^[18] CRC, 1989, Article 32(1).

^[19] CRC, 1989, Article 32(2).

^[20] xyz

Principles and Rights at Work. In addition to these eight Conventions, the ILO has adopted two new Conventions: the Domestic Workers Convention, 2011 (No. 189), and the Violence and Harassment Convention, 2019 (No. 190).

A brief description of these ten Conventions is as follows:

i. Freedom of Association and Protection of the Right to Organize Convention, 1948 (ILO C87): This Convention was signed on 9 July 1948. Parties subject to the Convention are obliged to ensure the right of both employers and employees to join an organization of their choice and free from any influence of authorities – this belongs to the core principles of the ILO. Furthermore, the Convention sets up general rules for such organizations themselves; for instance, the voting for officers and the consolidation of an internal constitution. The ILO's Committee of Experts supervises the Convention's implementation; every three years, a state party must report on the current position of the implementation, which is then reviewed and evaluated by the Committee of Experts. Additionally, the right to freedom of association is monitored by the Committee on Freedom of Association (CFA). This body investigates

complaints made by employers' and workers' organizations against states, regardless of whether the state is a party to the Convention or not.

ii. Equal Remuneration Convention, 1951 (ILO C100): This Convention was formally adopted on 29 June 1951, and it came into force on 23 May 1953. The Convention focuses on gender discrimination in employment and thus outlines the principles for equal remuneration for work of equal value, independent of whether it is performed by men or women. In order to achieve equal pay, parties to the Convention are required to implement domestic laws, implement regulations on wage determination, and/or support collective agreements between workers' and employers' organizations. The ILO's Committee of Experts supervises the Convention's implementation; every three years, a state party must report on the current position of the implementation, which is then reviewed and evaluated by the Committee of Experts.

iii. Social Security (Minimum Standards) Convention, 1952 (ILO C102): This Convention was adopted by the ILO on 28 June 1952; it is the flagship of all ILO social security Conventions, as it is the only

international instrument based on basic social security principles that establishes worldwide agreed minimum standards for all nine branches of social security. These branches are medical care, sickness benefit, unemployment benefit, old-age benefit, employment-injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit. While Convention No. 102 covers all these branches, it requires that only three of them are ratified by member states, which allows for the step-by-step extension of social security coverage by the ratifying countries.

iv. Discrimination (Employment and Occupation) Convention, 1958 (ILO C111): This Convention was formally adopted on 25 June 1958, and it came into force on 15 June 1960. The Convention lays out a definition for discrimination, and it forbids distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction or social origin. Parties to the Convention are required to set up and align national policies to guarantee equality of treatment and opportunity. This includes *inter alia* strong cooperation with workers' and employers' organizations, and the promotion of

educational programmes. The ILO's Committee of Experts supervises the Convention's implementation, and it also reviews and evaluates the state party's reports, which must be submitted every three years.

- v. **Workers with Family Responsibilities Convention, 1981 (ILO C156):** This Convention was formally adopted on 23 June 1981, and it came into force on 11 August 1983. This Convention applies to working men and women whose responsibilities caring for and supporting their dependent children and/or other members of their immediate family may restrict their possibilities of preparing for, entering into, participating in or advancing in economic activity.

Many of the problems all workers face are aggravated in the case of workers who must care for family members, and there is a need to improve the conditions of the latter, through both measures responding to their special needs and measures designed to improve the conditions of workers in general. This Convention was adopted in recognition of the fact that earlier Conventions did not expressly cover either distinctions based on family responsibilities or how the problems of workers who must care for family members affect

society at large and should therefore be taken into account in national policies.

- vi. **Home Work Convention, 1996 (ILO C177):** On 20 June 1996, this Convention was adopted by the International Labour Conference (ILC). This Convention aims to promote and protect the rights of those who work at home creating products for an employer. Home-based workers are those who do paid work within their homes or the surrounding grounds. They produce goods for local or global value chains. ILO C177 calls for these home-based workers to have the same rights as other wagedworkers – such as fair remuneration; social protection, including occupational health and safety regulations and maternity benefits; the right to organize; and freedom from discrimination – and such changes would lead to the recognition of home-based workers as wagedworkers.
- vii. **Worst Forms of Child Labour Convention, 1999 (ILO C182):** This Convention was adopted by ILO member states meeting in Geneva in 1999. It was the first ILO Convention to achieve universal ratification and the most rapidly ratified Convention in the history of the ILO, with most ratifications occurring within the first three years

after it was adopted in 1999. Convention No. 182 calls for the prohibition and elimination of the worst forms of child labour, including slavery, forced labour and trafficking. It forbids the use of children under 18 in armed conflict, prostitution, pornography, illicit activities such as drug trafficking, and in hazardous work. It is one of the fundamental Conventions, which cover issues such as the elimination of forced labour, the abolition of work-related discrimination, and the rights to freedom of association and collective bargaining.

- viii. **Maternity Protection Convention, 2000 (ILO C183):** This Convention was formally adopted on 15 June 2000, and it came into force on 7 February 2002. Under Convention No. 183, all employed women – including those in atypical forms of dependent work – should be covered for pregnancy, childbirth and their consequences. The persons protected should be entitled to maternity benefits for a minimum period of 14 weeks (including six weeks of compulsory leave after childbirth) at no less than two-thirds of their previous earnings. The medical benefits provided to protected persons must include prenatal, childbirth and post-natal care. This Convention also lays down

the right to breaks from work for breastfeeding, as well as provisions relating to health protection, employment protection and non-discrimination.

ix. Domestic Workers Convention, 2011 (ILO C189):

The objective of Convention No. 189 is to improve living and working conditions for the millions of domestic workers throughout the world, thus guaranteeing them a decent job that provides them with protections equivalent to those enjoyed by other workers.

x. Violence and Harassment Convention, 2019 (ILO C190):

This new Convention acknowledges the impact of violence and harassment in the world of work and the right of everyone to a world of work

that is free from violence, including gender-based violence (GBV). Violence and harassment is unacceptable, incompatible with decent work, and a violation of human rights. ILO C190 protects the workers – regardless of their employment status – from violence and harassment, including gender-based discrimination in the workplace, and it ensures that awareness-raising campaigns against violence and harassment are in place. Nepal is yet to ratify this Convention.

The ILO mandate on gender equality is reinforced by related Resolutions adopted by its highest decision-making body, the ILC. The most recent of these are the Resolution concerning gender equality at the heart of decent work (adopted in June 2009) and the Resolution concerning the promotion of gender

equality, pay equity and maternity protection (adopted in June 2004). Attention to gender equality in all aspects of the ILO's technical cooperation is mandated by the governing body's March 2005 Decision on Gender Mainstreaming in Technical Cooperation.

The ILO's gender-equality mandate has been developed in the context of an array of international instruments advancing equality between women and men. Among others, these include the UN Charter itself, numerous resolutions of the UN General Assembly, the UN Economic and Social Council's 1997 Agreed Conclusions on gender mainstreaming, the CEDAW, the 1995 Beijing Platform for Action, its follow-up of the Millennium Development Goals, and the soon-to-be adopted Sustainable Development Goals.

4.5 Advocacy Efforts to Ratify ILO C190 in Nepal

No country, from either the Global North or the Global South, has succeeded in eliminating GBV in the world of work, which contributes to social and economic inequality, creates vulnerability, and perpetuates exploitation and precarious working conditions for millions; it is based on gender and other intersecting identities. Economic vulnerability and poverty increase the risk of violence and harassment towards women as job-seekers and workers. These dynamics often impede women's access to the labour market and, once admitted to it, make them dependent on jobs with exploitative conditions or with abusive employers, co-workers or third parties.^[21] Nepal is also not untouched by the aforementioned scenario; due to it being a patriarchal society, Nepalese women have long been forced to remain in the home and prioritize domestic and caring roles. The penetration of women into the labour force in Nepal is a modern phenomenon, and women's vulnerability and insecurity in the place of work remains a major challenge. The labour market – both formal and informal sectors – has not been sensitive regarding the issue of violence and harassment in the workplace, and neither does

it consider domestic violence or any other form of discrimination or violence as a cause of setbacks in women workers' professional lives.

During the lockdown period as a result of the COVID-19 pandemic, many women lost their jobs, and those who could work from home also had to deal with the pressure of balancing their professional and personal lives. It has mostly been women working in informal sectors who have been affected due to the pandemic, as they saw a fall in their salaries and many lost their jobs. The pandemic and its control measures have exponentially increased the burden women carry in terms of unpaid domestic and care work; decimated livelihoods, particularly in the informal sector; and propelled a surge in GBV in public and private spaces.^[22] ILO C190 recognizes this reality and supports a radical, gendered and intersectional approach to eliminating GBV and harassment in the world of work, and it acknowledges the specific vulnerabilities of different populations and aims to transform unequal power relations.^[23] Hence, ratifying ILO C190 will obligate the government to address the violence and harassment women face in their workplaces.

Therefore, owing to the need to advocate for the ratification of the Convention, the National Coalition to Advocate for Ratification of ILO 190 was formed by a few members, and it has the Forum for Women, Law and Development (FWLD) as its secretariat.

Formation of the National Coalition to Advocate for Ratification of ILO 190

The formation meeting for the National Coalition to Advocate for Ratification of ILO 190 was held on 9 March 2021 at Hotel Greenwich. A total of 21 participants from different civil-society organizations related to working attended the meeting. The meeting discussed the modality of the coalition and also formed a steering committee as its working group. The second meeting of the coalition was organized to coincide with the event '16 days of Activism Against Gender-based Violence' and included the screening of an infographics video on the necessity of ratifying ILO C190. The coalition members were present at the meeting, and they were of the view that the video is very informative and explains simply the benefits of the ratification and how the Convention covers all working spaces, whether public or private.

^[21] *Advocacy Guide on 16 Days of Activism against Gender-based Violence*, 2019, p.8. <https://16dayscampaign.org/wp-content/uploads/2019/10/2019-Global-16Days-Campaign-Guide-Final.pdf>

^[22] *Advocacy Guide on 16 days of Activism against Gender Based Violence*, 2020, p.8.

^[23] *Ibid*, p.9.

Development of the Infographics Video on the Necessity of Ratifying ILO C190

The objective of developing the infographics video was to increase the stakeholders' and general public's awareness regarding the ILO's Violence and Harassment Convention, 2019 (No. 190), in terms of its features, its importance and benefits of its ratification in the context of Nepal.

Virtual Dialogue Programmes

The FWLD, as the secretariat of the coalition, conducted virtual policy dialogue programmes, the objective of which was to initiate discussion on various aspects of violence and harassment in the world of work and also to inform people about these issues through experts. Three virtual policy dialogue programmes were conducted, the details of which are as follows:

- a) Virtual Policy Dialogue on Violence and Harassment in the World of Work: What will address it?
This dialogue focused on the rationale behind ILO C190, its importance for home-based workers and the legal aspects of ratifying the Conventions.
- b) Virtual Policy Dialogue on the Law Against Violence and Harassment, and the Status of Implementation
This dialogue focused on the prevalent laws against violence and harassment in Nepal, as well as the implementation status of

- these laws in Nepal.
- c) Virtual Policy Dialogue on Violence and Harassment in the Health Sector
This dialogue focused on the violence and harassment that health-service providers face while delivering services, the personal experiences of health-service providers and obstetric violence, and its situation in Nepal.

Consultation Meeting with Government Agencies

On 17 December 2021, the coalition also conducted a consultation meeting with government agencies on the ratification of ILO C190; the Sexual Harassment at Workplace (Prevention) Act, 2014; and the required Model Code of Conduct. The objective of this meeting was to discuss with the government agencies the need for a model code of conduct as provisioned by the Sexual Harassment at Workplace (Prevention) Act 2014 and to confer on the need to ratify ILO C190 to end violence and harassment in the world of work. Present at this meeting were representatives from the Ministry of Women, Children and Senior Citizen (MOWCSC); the Ministry of Industry, Commerce and Supplies; the Ministry of Labour, Employment and Social Security; the Ministry of Law, Justice and Parliamentary Affairs; the Ministry of Home Affairs; the National Human Rights Commission; the Nepal Police; the Anti-Human Trafficking Bureau; and ILO Nepal.

Advocacy Meeting with Civil-Society Organizations

The FWLD, on behalf of the coalition, also arranged a meeting with civil-society organizations on 20 December 2021. The meeting was organized with the joint support of the Center for Women's Global Leadership (CWGL) and the ILO. The objective of the meeting was to discuss and build a common understanding on the ratification process for ILO C190. It was felt that, although the ratification has continuously been advocated for, there is a lack of awareness and confusion regarding the steps that need to be taken, and the advocacy moves with the government agencies. Hence, knowing the process will help in strategizing the movement, and the government stakeholders concerned with the ratification, with whom the coalition will need to work, will also be known. This meeting was attended by the members of the National Coalition to Advocate for Ratification of ILO 190, the C190 Action Groups, the media and other concerned stakeholders.

Media-orientation Workshop

The FWLD also organized a media-orientation workshop on the necessity of ratifying ILO C190 to raise the journalists' awareness of the tenets of ILO C190, so as to provide them with conceptual clarity on why the prevalent laws and policies do not cover the broad areas that the Convention encompasses. Present at the

meeting were the Honourable Binda Pandey (member of the House of Representatives) and Ms Shrada Rijal (Under Secretary to the Office of the Prime Minister and Council of Ministers), who were the key speakers of the programme.

Steering Committee Meeting of the National Coalition to Advocate for Ratification of ILO 190

This meeting was conducted to discuss the modality of the work of the coalition and expanding the number of members in the coalition.

Feasibility Study Regarding the Ratification of ILO C190 by the Ministry of Labour, Employment and Social Security

The Ministry of Labour, Employment and Social Security has started a feasibility study in order to determine the merits and viability of ratifying ILO C190 in Nepal. After the study has been completed, the Ministry of Labour, Employment and Social Security will discuss the same with the Ministry of Law, Justice and Parliamentary

Affairs for further process.

Formation of the C190 Action Group by the ILO

The C190 Action Group was formed by engaging members, both women and men, who came from employers' and workers' organizations and the government. The launch meeting for the group was held on 11 February 2021. The C190 Action Group aims to advance gender equality and social justice by working towards the elimination of violence and harassment in the world of work in Nepal. Furthermore, it has an objective to increase the capacity of the government and also employers' and workers' organizations to prevent and respond to violence and harassment in their respective organizations' worlds of work, to work on institutional strengthening, and to build networks to fulfil the aim of the group.

C190 Action Group Training

Similarly, training was also conducted in April 2021 for C190 Action Group members to strengthen that organization's capacity to prevent and eliminate violence and harassment in the

world of work.

National Dialogue on the Elimination of Violence and Harassment in the World of Work in Nepal and Promoting the ILO Violence and Harassment Convention, 2019 (No. 190), and Its Associated Recommendation (No. 206)

To mark the second anniversary of the adoption of the ILO Violence and Harassment Convention, 2019 (No. 190), and its associated Recommendation (No. 206), a national dialogue on the elimination of violence and harassment in the world of work in Nepal was organized on 25 June 2021. At the event, the key findings from a study on violence and harassment in the world of work in the health sector in Nepal were presented, followed by key stakeholders in the health sector sharing their experiences. The event also called for a renewed commitment and ambitious actions to accelerate progress to prevent, address and end violence and harassment in the world of work for all.

5. Review of the Legal Framework on Women Working in the Formal and Informal Sectors

5.1 The Constitution of Nepal

The Constitution of Nepal states the country's economic, social and political ideals in both the preamble and the definition of the state, including civil liberties, fundamental rights and human rights. The preamble and state definition within the Constitution of Nepal emphasize the need to acknowledge diversity and inclusiveness for a flourishing country. Moreover, through various affirmative measures, along with fundamental rights – including both ESCRs and civil liberties – the constitution has laid the foundation for a more inclusive and fairer society.

Furthermore, the constitution guarantees a wide variety of mutually interrelated rights under the overall heading of 'fundamental rights'. A total of 31 rights –

including civil rights, political rights and ESCRs – have been guaranteed. In other words, ESCRs alone would not sustain a dignified existence for individuals in the absence of civil and political rights. The right to freedom directly impacts individuals achieving economic justice in their daily lives. However, there are some rights guaranteed by the constitution that have a direct impact on economic justice, such as the right to equality, property rights, the right to a clean environment, the right to education, the right to work, the right to health, the right to food, the right to housing, the right to social justice, the right to social security and the rights of the consumer, along with some fundamental rights of groups, such as the rights of women, the rights of children, the rights of Dalits

and the rights of elderly persons. Without the freedom, privilege and entitlement of ESCRs, the right to live in dignity cannot be guaranteed. As a result, these rights are regarded as extensions of the right to a dignified life.

The most important part of the constitution is that it designates ESCRs – which are fundamental rights – to be justiciable rights. There are constitutional remedies if such rights are violated. Individuals can file a complaint with the Supreme Court, thus utilizing the extraordinary jurisdiction of the Supreme Court to hold the state accountable for the fulfilment of individuals fundamental rights, according to Article 133(2)^[24] and (3).^[25]

^[24] *The Supreme Court shall, for the enforcement of the fundamental rights conferred by this constitution or of any other legal right for which no other remedy has been provided or for which the remedy, even though provided, appears to be inadequate or ineffective, or for the settlement of any constitutional or ineffective rights, or for the settlement of any constitutional or legal question involved in any dispute of public interest or concern, have the extraordinary power to issue necessary and appropriate orders, provide appropriate remedies, enforce such rights or settle such disputes.*

^[25] *Under the extraordinary jurisdiction covered by clause (2), the Supreme Court may issue appropriate orders and writs, including the writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto. Provided that, except on the grounds of lack of jurisdiction, the Supreme Court shall not under this clause interfere with any internal proceedings of the Federal Parliament or State Assembly, and with any proceedings instituted by the Federal Parliament or State Assembly concerning the violation of its privileges and penalties imposed, therefore.*

The constitution further ensures the right to decent work and employment. Hence, every individual within / citizen of Nepal is entitled to work.^[26] The right to work forms a basis for dignified living and facilitates the realization of other human rights that the constitution ensures are fundamental rights. It encompasses the opportunity to make a living through freely chosen or accepted work.^[27] States must ensure the availability of technical and vocational skill-development opportunities and take suitable measures to create a conducive environment to realize this right gradually. States are obliged to ensure non-discrimination in all facets of work. Moreover, the constitution prohibits the use of forced labour.^[28]

The right to just and decent working conditions and trade-union-related rights are intrinsically tied to the

right to work. In that context, the constitution also ensures that fair wages, equal pay for equal work, and an equal wage for work of equal worth are all obligations of states. Workers should be provided with a minimum income that enables them and their families to have a decent living. The workplace must be safe, healthy and respectful of human dignity. Furthermore, employees must be given reasonable work hours, sufficient rest and recreation time, and periodic paid holidays.

Overall, the Constitution of Nepal guarantees citizens' rights to work and employment as fundamental rights. It also lays out the state's broader scope and guiding framework to ensure the availability, accessibility, acceptability and quality of such rights in citizens' daily lives, as stated by the UN Committee on Economic, Social, and Cultural Rights (CESCR) in its general

comments. The general comments give specific guidelines to states regarding their responsibility to respect, safeguard and fulfil the right to employment.^[29] However, none of the provisions in the constitution spell out explicitly the rights of home-based workers.

Similarly, several new legislations have been enacted after the promulgation of the new constitution to enforce the fundamental rights fully and to achieve economic and social justice. This chapter explains and analyses the legislations relating to economic justice for women and marginalized groups, and it lays down both the positive aspects of the laws and the problematic provisions from a home-based-workers' perspective. The provisions of the laws are also compared with the corresponding constitutional provisions to understand wherein lies the legal problem.

^[26] Article 33 (1) & (2), the Constitution of Nepal, 2015, Right to Employment:

(1). Every citizen shall have the right to employment. The terms and conditions of employment and unemployment benefit shall be as provided for in the federal law. (2) Every citizen shall have the right to choose employment.

^[27] Article 17 (2) (f), the Constitution of Nepal, 2015.

^[28] Article 29, the Constitution of Nepal, 2015.

^[29] The CESCR further points out that the right to employment comprises the following interconnected and critical features:

- Availability – The state must guarantee specifically curated services are available to assist people in identifying and obtaining jobs.
- Accessibility – Non-discrimination, physical accessibility and information accessibility are all important aspects of work access.
- Discrimination in employment access and continuation is restricted. States must make reasonable accommodations to make workplaces physically accessible, especially for those with physical disabilities.
- Every individual is entitled to seek, obtain and share information on employment opportunities.
- Acceptability and quality – The right to work includes several interlinked elements, such as the freedom to choose and accept work, the right to reasonable and beneficial working terms, the right to a safe and fair working environment, and the right to form trade unions.

5.2 Labour Act, 2017

A new piece of legislation on labour was enacted in 2017 after the promulgation of the Constitution of Nepal in 2015. This statute repeals the older Labour Act, 1992, and aims to reflect on and implement the provisions of Article 34 of the constitution, which recognizes the right to employment as a fundamental right. The provision stipulates the right to appropriate work and the corresponding remuneration of every worker. It also protects the right of every worker to join and form trade unions and engage in collective bargaining. This new act has comprehensive provisions for labour in both the formal and informal sectors. The preamble of the act states that the law aims to end all forms of exploitation of labour and develop good labour practices.^[30]

Before enacting this new Labour Act, the government had also formulated the National Employment Policy, 2015, which largely concerns women (among others) and addresses the existing inequalities and discrimination; it does this by encouraging

productive employment to alleviate poverty and achieve sustainable economic growth.

The act has a specific provision on non-discrimination, which states 'No employer shall discriminate any labour on the ground of religion, colour, sex, caste, tribe, origin, language, ideological conviction or other similar ground.'^[31] The act also makes special provisions for pregnant women by expressing that allowing them to engage in easier work or services would not be considered discrimination.^[32] The Labour Act has ensured the equal rights of women in terms of wages (equal value for equal work) and social security provided by the governmental institutions.^[33]

The act prohibits any form of sexual harassment in the workplace or in the course of work, including the provision for dismissal or other punishment pursuant to the law.^[34] Nepal also has specific legislation to address this issue; i.e. the Sexual Harassment at Workplace (Prevention) Act, 2014. The application of this

special act is limited to the formal sectors only;^[35] however, the Labour Act's provision regarding sexual harassment has a broader application, which includes both the formal and informal sectors.

This act requires that, when employing female labour, where their working hours begin after sunset or before sunrise, the employer shall make the necessary arrangements for transportation to and from the workplace for those women.^[36] There is also a provision for additional leave for women on International Women's Day each year.

The act stipulates the formation of a Central Labour Advisory Council. It guarantees that the council has at least four members who are women, out of a total of 21 members. The Ministry of Labour, Employment and Social Security will nominate two of them from employers and two from the trade union federations.^[37] Maternity leave for women has been set as a total of 14 weeks, encompassing leave both before and after delivery.^[38] The compulsory

^[30] Labour Act, 2017, Preamble.

^[31] Labour Act, 2017, Section 6(1).

^[32] Labour Act, 2017, Section 6(2).

^[33] Labour Act, 2017, Section 7.

^[34] Labour Act, 2017, Section 132(1).

^[35] Sexual Harassment at Workplace (Prevention) Act, 2014, Section 2(C).

^[36] Labour Act, 2017, Section 33.

^[37] Labour Act, 2017, Section 102.

^[38] Labour Act, 2017, Section 45(1).

elements of this maternity leave are specified as being at least two weeks before the expected delivery and at least six weeks after the date of delivery.^[39] The act also states that where a female worker who has reached at least seven months' pregnant gives birth to a deceased child or where a female worker has an abortion, she shall receive the same leave as if she had delivered her child normally.^[40] Additionally, the act mentions that pregnant women should be assigned easier tasks if they choose to work during their pregnancy.^[41]

However, the act declares that a female employee taking maternity leave will only be paid her full remuneration for 60 days. This is contradictory to the Right to Safe Motherhood and Reproductive Health Act, 2018, which requires that any woman working in a governmental, non-governmental or private organization or institution shall have the right to

take obstetric leave with pay for a minimum of 98 days before or after the delivery.^[42] The ambiguity of the maternity leave provision is a major issue. The larger 98-day provision of the Safe Motherhood and Reproductive Health Right Act, 2018, is fair, reasonable and in line with ILO Convention on Maternity Leave, 2000 (No. 183). The 60-day leave provision of the Labour Act does not provide full protection to pregnant women or lactating mothers. Also, the leave for miscarriage occurring when a woman is more than seven months' pregnant implies that women who suffer a miscarriage before reaching seven months' pregnant do not get maternity leave. Paternity leave is only provided for 15 days, which again puts the burden of care work mostly on women.^[43] This further reinforces the stereotypical male and female gender roles and assumes that men have no role during pregnancy and in the care of the newborn. Men should

be provided with an adequate number of days' paternity leave to ensure women and men are both responsible during the pregnancy and subsequent childcare.

Nepal's previous Labour Act required organizations with more than 49 female employees to arrange for a childcare centre within the establishment, but the current act does not have a provision like this.

The Labour Act has special provisions regarding workers in industries/services of a special nature, such as tea-estate labour,^[44] construction labour,^[45] transportation labour,^[46] labour related to tourism^[47], domestic labour^[48] and seasonal labour.^[49] However, the act has failed to incorporate provisions relating to home-based workers, and in particular, regarding violence against them.

^[39] Labour Act, 2017, Section 45(2).

^[40] Labour Act, 2017, Section 45(5).

^[41] Labour Act, 2017, Section 81.

^[42] Safe Motherhood and Reproductive Health Right Act, 2018, Section 13(1).

^[43] Labour Act, 2017, Section 45(7).

^[44] Labour Act, 2017, Section 84.

^[45] Labour Act, 2017, Section 85.

^[46] Labour Act, 2017, Section 86.

^[47] Labour Act, 2017, Section 87.

^[48] Labour Act, 2017, Section 88.

^[49] Labour Act, 2017, Section 89.

5.3 National Civil Code, 2017

Within the National Civil Code, 2017, in the section on the provision of wages, there are provisions related to domestic workers. These provisions mirror those of the Labour Act in terms of the number of working hours allowed and the legal working age. It specifies that the legal age of being employed is 14, but this has the proviso that any person who has not attained 16 years of age cannot be employed in hazardous business or work. The number of working hours set is eight hours a day, and consent must be obtained if there is a need to employ the person for any additional hours. Additional pay must be given for any work done beyond the eight hours per day. The chapter on wages within the National Civil Code, however, mentions that this does not apply in the case of employing domestic helpers.^[50] A 'domestic helper' is defined as a person employed in household work, and he or she may be employed in said household work at any time, as necessary.

There are certain special provisions relating to the employment of domestic helpers. According to Section 644(1),^[51] the employer of domestic helpers needs to comply with the following terms and

conditions:

- (a) to determine the domestic helpers' wages on a monthly or annual basis, and then pay the wages on that basis;
- (b) to provide meals three times per day – specifically, in the morning, afternoon and evening – and provide clothes suitable for the weather, according to the capacity of the employer;
- (c) to provide facilities for the domestic helpers to use, in the form of appropriate housing, toilet and bathing facilities, according to the capacity of the employer;
- (d) if a domestic helper is under 18 years of age, to make provision for his or her study at an appropriate time, taking into account household work, if he or she so wishes to study;
- (e) to arrange for medical treatment for the domestic helper if he or she falls sick; the expenses incurred in his or her medical treatment may not be deducted from his or her monthly or yearly wages;
- (f) not to require the domestic helper to do his or her work if he or she is sick, and in other situations, not to require him or her to perform such a work that he or she may not be able to do

due to his or her age, ability or condition;

- (g) if he or she dies, to bear the expenses incurred in relation to his or her funeral and perform obsequies in a normal way;
- (h) not to commit any inhumane or degrading treatment or domestic violence; and
- (i) to comply with any other terms and conditions agreed upon between the employer and the domestic helper.

Despite this, the National Civil Code ignores the rights of unpaid care workers. As unpaid care workers are generally the female household members, many women are tied up in the unpaid care of their family members, thus preventing them from earning for the family. Their exclusion from any labour rights puts them at risk of exploitation and dependency on the male members of the family. Interestingly, the Constitution of Nepal explicitly recognizes such care work, but the corresponding laws do not recognize the rights of unpaid care workers.

The non-recognition of home-based workers is also a concern. Home-based workers differ from domestic workers as they generally reside with their own family and

^[50] *National Civil Code, 2017, Section 640(3).*

^[51] *National Civil Code, 2017, Section 644(1).*

are, in many ways, dependent on the family and susceptible to more exploitation. The family is not held accountable for their behaviour towards the worker. Not all such work is unpaid, but this can hamper the opportunities of the worker to

attain education and participate in other income-generating activities. The National Civil Code fails to secure many of the rights for domestic helpers afforded by the Constitution of Nepal, such as the right to choose employment;^[52]

the right to engage in appropriate labour;^[53] the right to appropriate remuneration, facilities and contributory social security;^[54] and the right to form and join trade unions.^[55]

5.4 Right to Employment Act, 2018

Pursuant to the constitutional protection of every citizen's right to employment and the stipulation that the terms and conditions of employment and unemployment benefit will be provided under federal law,^[56] a separate legislation to implement this fundamental right was enacted in the form of the Right to Employment Act, 2018.

This act restricts any form of discrimination based on one's origin,

religion, colour, caste, ethnicity, sex, language, region, ideology or similar other grounds.^[57] The act discusses the government conducting employment programmes for unemployed persons, in which women, Dalits and other marginalized groups would be prioritized.^[58] To complement the Right to Employment Act, the Local Government Operation Act, 2017, has given responsibility to local municipalities to collect and

maintain statistics on employed and unemployed human resources and to establish and operationalize an employment information centre.^[59]

The act also envisions a steering committee to operate, look after and direct the functions related to the protection of citizens' right to employment.^[60] In this act, there is no provision for reserved member seats for women among the eight members of the committee.

5.5 Implementation of the Laws

Laws in Nepal are very progressive in nature. The provisions offered by the laws are adaptable, allowing them to be used to address issues related to the modern environment. However, regardless of the progressiveness of laws in

Nepal, the implementation of them is challenging, and this is where Nepal is lacking. For example, with respect to Nepal's progressive laws, one of the features of both the Labour Act, 2017, and the Right to Employment Act, 2018, is that

the acts include provisions for a standard level of facilities to be supplied to the labourers, whereas no signs of the implementation of such a standard are seen in practice. There is a specific provision in the Labour Act that requires the

^[52] *The Constitution of Nepal, 2015, Article 33(2).*

^[53] *The Constitution of Nepal, 2015, Article 34(1).*

^[54] *The Constitution of Nepal, 2015, Article 34(2).*

^[55] *The Constitution of Nepal, 2015, Article 34(3).*

^[56] *The Constitution of Nepal, 2015, Article 33.*

^[57] *Right to Employment Act, 2018, Section 6.*

^[58] *Right to Employment Act, 2018, Section 8.*

^[59] *Local Government Operation Act, 2017, Section 11(2)(o).*

^[60] *Right to Employment Act, 2018, Section 17.*

submission of a labour audit to the relevant authorities every year by each and every organization. The problem here, again, is the actual implementation. A very low number of labour audits are submitted by the organizations. Once the labour audit has been submitted, the relevant authorities must then conduct a compulsory monitoring visit according to the organizations. Yet again, even though an audit is submitted by a few organizations, the relevant authorities' monitoring process is not conducted, which

results in the authorities not knowing the actual scenario and the condition of the organization.

The Right to Employment Act also includes a few progressive provisions. One of the provisions highlighted by the act discusses generating self-employment for the unemployed. However, the Right to Employment Act – and specifically, this provision – has not been applied effectively. One of the reasons for this weak implementation is due to tokenism and political influence

on such generated employment. A government salary is provided in this employment, but the people who are politically appointed receive their salaries without doing any work. The work done to claim such a salary is also not substantive in nature. A very low-level of labour is involved.

Although the laws have also supplied provisions for domestic workers, these laws and provisions are not executed by employers.

6. Laws and Policies Relating to Protection Against Sexual and Gender-based Violence (SGBV)

Sexual and gender-based violence (SGBV) is a broad concept that does not correspond directly to the collection of most statistics, which is generally based on types of criminal violence and on the biological sex of the perpetrators and survivors. For example, most of the UN's systematic research on the subject is based around the concept of violence against women and girls, including the 2016 report of the UN Country Theme (UNCT) for Nepal's Gender Theme Group (GTG), which states that violence against women and girls is 'one of the most systemic and

widespread human rights violations in the world, which affects women and girls in every country, regardless of their age, ethnicity, socio-economic status, physical ability, sexual orientation or gender identity'.^[61]

According to a 2012 study on GBV commissioned by Nepal's Office of the Prime Minister, which surveyed 900 women in six selected rural districts, almost half of the women surveyed (48 per cent) reported that they had experienced violence at some time in their lives, and 28 per cent had experienced

violence in the past 12 months. For women who reported experiencing violence, almost 75 per cent of the perpetrators were the woman in question's intimate partner (including husbands). Other commonly mentioned perpetrators included family members (35.2 per cent) and neighbours (22 per cent).^{[62], [63]}

The statistics for the incidents of violence against women (VAW) reported by the Women, Children and Senior Citizens Services Directorate of the Nepal Police are shown in the following:

Reported Incidents of Violence Against Women (VAW) in the Last Three Years^[64]

SN	Type of Violence	2018/19	2019/20	2020/21	Total
1	Rape	2,230	2,144	2,532	6,906
2	Attempt to rape	786	687	735	2,208
3	Polygamy	1,001	734	852	2,587
4	Child marriage	86	64	84	234
5	Witchcraft	46	34	61	141
6	Illegal abortion	27	29	27	83
7	Caste untouchability	43	30	39	112

^[61] UNCT Gender Theme Group, *Position Paper on Ending Violence Against Women and Girls in Nepal (2016)*, available at http://www.un.org.np/sites/default/files/20160907_position_paper.pdf (accessed on 8 April 2017), p.2.

^[62] Office of the Prime Minister and Council of Ministers, *A Study on Gender-Based Violence Conducted in Selected Rural Districts of Nepal (Kathmandu: 2012)*, p.8.

^[63] This study, which was carried out a household level, is a quantitative survey of 900 women aged 15–59 years in the Dadeldhura, Nawalparasi, Makwanpur, Siraha, Sindhupalchowk and Sankhuwashava districts. It was completed using a multistage, stratified cluster-sampling approach.

^[64]

SN	Type of Violence	2018/19	2019/20	2020/21	Total
8	Unnatural sex	24	27	36	87
9	Child sexual abuse	211	232	281	724
10	Human trafficking and rape	15	0	10	25
11	Abduction and rape	47	34	67	148
12	Homicide after rape	11	2	4	17
13	Child marriage and rape	3	0	0	3
14	Domestic violence	14,774	11,738	14,232	40,744
	Total	19,304	15,755	18,960	54,019

Article 38(3) of the Constitution of Nepal states that 'No woman shall be subjected to physical, mental, sexual, psychological or other form of violence or exploitation on grounds of religion, social, cultural tradition, practice or on any other grounds. Such act shall be punishable by law, and the victim shall have the right to obtain compensation in accordance with law'.^[65] Nepal has also made a determined effort to combat SGBV by passing specific legislation on different aspects of SGBV, including the following: the Domestic Violence (Offence and Punishment) Act, 2009; the Human Trafficking

and Transportation (Control) Act, 2007; the Sexual Harassment at Workplace (Prevention) Act, 2014; the Witchcraft Allegation (Offence and Punishment) Act, 2016; the GBV Relief Fund Regulation, 2010; and the different chapters of the National Criminal Procedure (Code) Act, 2017, which set out the law on sexual violence, marriage, acid attacks, menstruation discrimination and others.

The government has established a GBV Relief Fund to offer relief services to the survivors of SGBV. The GBV Relief Fund Regulation,

2010, provides for the fund to be utilized for the rehabilitation of the victim, including emergency health check-ups, and rescuing survivors of SGBV. The Nepal Police has created an organization called the Women, Children and Senior Citizens Services Directorate, which is located at the police headquarters, and there is a Women, Children and Senior Citizens Service Centre (women's cell) at each of the 77 district police offices. These are permanent centres and are intended to operate as the first point of contact for complaints about SGBV.

6.1 Law Against Domestic Violence

'Domestic violence' is defined as any form of physical, mental, sexual or economic harm perpetrated by one person against a person with whom he or she has a domestic

relationship, and it includes any acts of reprimand or emotional harm.^[66]

The Domestic Violence (Offence and Punishment) Act, 2009, bestows

the right to file claims with a police office, the National Women's Commission or local bodies (such as municipalities and village executives) on any person who has reason to

^[65] *The Constitution of Nepal, 2015, Article 38(3).*

^[66] *Domestic Violence (Offence and Punishment) Act 2009, Section 2(a).*

believe that an act of domestic violence has been, is being or is likely to be committed.^[67] A person who commits an act of domestic violence shall be punished with a fine between 3,000 and 25,000

rupees, six months' imprisonment, or both.^[68] The act requires that the proceedings of such cases shall be on camera.^[69] It also provides for compensation to be granted to the victim of domestic violence,

depending on the nature of the act of domestic violence and degree of pain suffered by the victim.^[70] The offence of domestic violence must be reported within 90 days of the perpetration of the crime.^[71]

6.2 Law Against Sexual Violence

According to Nepali law, when a man has sexual intercourse with a woman without her consent or with a girl under 18 years of age, even with her consent, the man shall be considered to have committed the rape of said woman or girl. For the purposes of identifying the crime of rape, consent obtained by way of coercion, undue influence, intimidation, threat, misrepresentation, or kidnapping or taking hostage shall not be considered to be consent, and consent obtained during a time when the person raped was of unsound mind shall not be considered to be consent.^[72] The penetration of the penis, to any extent, into the anus, mouth or vagina; and the insertion of any object other than a penis into the vagina shall be considered to be rape.^[73]

A person who commits rape shall be liable to a sentence of imprisonment as follows, taking into account the circumstances of said sexual intercourse and the age of the woman or girl: imprisonment for a term of 16 to 20 years if the rape was committed against a girl child under 10 years of age; imprisonment for a term of 14 to 16 years if the rape was committed against a girl child who is 10 years of age or above but below 14 years of age; imprisonment for a term of 12 to 14 years if the rape was committed against a girl child who is 14 years of age or above but below 16 years of age; imprisonment for a term of 10 to 12 years if the woman is 16 years of age or above but below 18 years of age; and imprisonment for a term of 7 to 10 years, if the woman

is 18 years of age or above.^[74]

Nepali law also criminalizes marital rape. It says if the husband commits the rape of his wife while a marital relationship exists between them, he shall be liable to a sentence of imprisonment for a term not exceeding five years.^[75]

Nepali law also prohibits incest. It says no person shall have sexual intercourse with another person knowing that said person falls within the prohibited degree of relationship by consanguinity or affinity for marriage according to the usage, custom or tradition being practised in his or her caste or lineage. A person who commits the offence shall be liable to a sentence of imprisonment up to life, based on the relationship.^[76]

^[67] *Domestic Violence (Offense and Punishment) Act 2009, Section 4(1).*

^[68] *Domestic Violence (Offense and Punishment) Act 2009, Section 13.*

^[69] *Domestic Violence (Offense and Punishment) Act 2009, Section 7.*

^[70] *Domestic Violence (Offense and Punishment) Act 2009, Section 10.*

^[71] *Domestic Violence (Offense and Punishment) Act 2009, Section 14.*

^[72] *National Criminal Procedure (Code) Act, 2017, Section 219(2).*

^[73] *National Criminal Procedure (Code) Act, 2017, Section 219(2).*

^[74] *National Criminal Procedure (Code) Act, 2017, Section 219(3).*

^[75] *National Criminal Procedure (Code) Act, 2017, Section 219(4).*

^[76] *National Criminal Procedure (Code) Act, 2017, Section 220.*

6.3 Law Against Sexual Harassment in the Workplace

The preamble of the Sexual Harassment at Workplace (Prohibition) Act, 2014, says it is expedient to make necessary provisions for the prevention of sexual harassment in the workplace by ensuring the right of every person to work in a safe, fair and dignified environment; therefore, Parliament has enacted this act. The act defines a 'workplace' as an institution or firm, and it also includes a place used in the course of performing one's work for such a body, institution or firm; a government body; a corporate body that is partially or fully owned by the Government of Nepal; a body or a corporate body that was established pursuant to the prevalent laws; a firm, body or corporate body permitted or registered pursuant to the prevalent laws, so as to conduct any business or transaction or to deliver any service.^[77] The act also defines 'sexual harassment' as being where anyone commits or causes to be committed the abuse of one's position, power or authority in regard to any employee or customer in the workplace by creating any form of pressure, influence or enticement of a sexual nature, or by discouraging. It shall be considered that sexual harassment has been

committed if any of the following have occurred:^[78]

- There has been touching or an attempt to touch any part or organ of the body with sexual intent.
- There has been any use or displaying of words, pictures, newspapers, audio-visual or other information technology media, or any object or material related to obscene and sexual activity.
- There has been any display or expression of obscene and sexual intent through writing, speaking or gesticulating.
- There has been an offer made for sexual activity.
- There has been any teasing or annoying with sexual intent.

The act is intended to prevent anyone from committing or causing to be committed sexual harassment in the workplace.^[79]

The organization/manager should make necessary provisions for this law in the employees' terms and conditions of service, so as to prevent sexual harassment, create awareness among the employees and customers in order to ensure that sexual harassment does not occur, adopt necessary reformative measures in order to ensure that

sexual harassment is not repeated, provide psychological counselling services to the victim as necessary, and maintain a grievance box in the workplace in order to ensure that sexual harassment does not occur in the workplace.^[80]

With respect to the action that is required to take place within the workplace itself, if anyone commits any form of sexual harassment against any employee or customer in the workplace, the victimised employee, customer or anyone else may file a written or oral complaint against the perpetrator, on the victim's behalf, to the manager within 15 days of the incident taking place.^[81]

The manager should immediately conduct an investigation on the matter when such a complaint is filed.^[82] If it is found by the investigation that the accused has sexually harassed the complainant, then the manager should conduct conciliation between the victim and the accused, if both parties agree to it; facilitate the accused apologizing to the victim; reprimand the accused not to repeat such an act again; order the accused to pay reasonable compensation to the victim; and

^[77] *Sexual Harassment at Workplace (Prevention) Act, 2014, Section 2(c).*

^[78] *Sexual Harassment at Workplace (Prevention) Act, 2014, Section 2(d) and 4.*

^[79] *Sexual Harassment at Workplace (Prevention) Act, 2014, Section 3.*

^[80] *Sexual Harassment at Workplace (Prevention) Act, 2014, Section 5.*

^[81] *Sexual Harassment at Workplace (Prevention) Act, 2014, Section 6(1).*

^[82] *Sexual Harassment at Workplace (Prevention) Act, 2014, Section 6(2).*

take departmental action against the accused in accordance with the laws relating to the terms and conditions of service.^[83]

However, the victimised employee, customer or anyone else may instead (or also) file a complaint on the victim's behalf with the complaint-hearing authority, to whom they must provide evidence; this complaint must be raised within 90 days of the date on which the alleged sexual harassment was committed.^[84] However, the victimised employee, customer or anyone else may file a complaint on the victim's behalf with the complaint-hearing authority beyond the aforementioned time limit if the complaint has not been finalized by the manager in the workplace, or if any party is not satisfied with the decision of the manager, within 70 days of such a decision being made.^[85] The concerned person may file a complaint with the complaint-hearing authority against the manager if the manager has not complied with the responsibilities or other provisions of the act or with the direction given by the

complaint-hearing authority or body that requires inspection or monitoring.^[86]

The manager shall not remove an employee from service, take other departmental action, or take any other actions against him or her, including a transfer or the promotion of the concerned person, which may impact his or her career development, merely on the grounds that a complaint has been filed. If any employee, for the reason of having made a complaint, feels in any way insecure in the workplace, such an employee may file a petition with the manager to request security. The manager should make proper arrangements for the security of such an employee in the workplace. However, if it is proved that the accused employee has committed sexual harassment and it does not seem appropriate to retain such an employee in the same office as the victim, then the manager should transfer the employee who has committed sexual harassment.^[87]

If anyone is convicted of committing sexual harassment against an

employee or customer, he or she shall be liable for punishment, taking into consideration the nature of the offence, in the form of imprisonment not exceeding six months, a fine not exceeding 50,000 rupees, or both.^[88] If anyone is found to have filed a false complaint deliberately, he or she shall be liable for a fine not exceeding 10,000 rupees.^[89] If the accused person is convicted of sexual harassment, the complaint-hearing authority should order the payment of the compensation amount to the victim.^[90] If the victim has requested in writing that the complaint hearing be conducted on camera, the complaint-hearing authority must conduct the complaint hearing in this manner.^[91]

The Government of Nepal should frame and introduce the necessary code of conduct with regard to the prevention of sexual harassment in the workplace. Each organization, in accordance with the nature of the workplace, should be required to frame and introduce its own separate code of conduct. It should be the duty of all concerned to comply with the codes of conduct.^[92]

^[83] *Sexual Harassment at Workplace (Prevention) Act, 2014, Section 6(3).*

^[84] *Sexual Harassment at Workplace (Prevention) Act, 2014, Section 7(1).*

^[85] *Sexual Harassment at Workplace (Prevention) Act, 2014, Section 7(2).*

^[86] *Sexual Harassment at Workplace (Prevention) Act, 2014, Section 7(3).*

^[87] *Sexual Harassment at Workplace (Prevention) Act, 2014,*

^[88] *Sexual Harassment at Workplace (Prevention) Act, 2014, Section 12(1).*

^[89] *Sexual Harassment at Workplace (Prevention) Act, 2014, Section 12(5).*

^[90] *Sexual Harassment at Workplace (Prevention) Act, 2014, Section 13.*

^[91] *Sexual Harassment at Workplace (Prevention) Act, 2014, Section 15(2).*

^[92] *Sexual Harassment at Workplace (Prevention) Act, 2014, Section 21. Section 9.*

7. Gaps and Weaknesses

Nepal's SGBV protection laws are relatively comprehensive in addressing SGBV issues during normal working. However, there are no specific legal provisions to address the situation of home-based workers. In addition to criminalizing SGBV, Nepal has also made sexual harassment an offence (both in public and in the workplace). Nevertheless, the Sexual Harassment at Workplace (prevention) Act, 2014, only covers the formal sector of work, leaving the informal sector completely exposed. Though the Labour Act, 2017, covers the informal sector as well and has provision for prosecution on sexual harassment, it is not comprehensive. Nepal lacks specific legislation to deal comprehensively with violence and harassment in the world of work. Procedurally, these laws also provide for compensation and an on-camera hearing for cases relating to women and children.

However, some gaps remain, as do some challenges for the implementation of these laws and raising community-level awareness. Women have a low awareness of

the SGBV protection laws and how to access justice under these laws, with the majority of women being unaware of any laws that address SGBV. The complexity of the legal proceedings can be a barrier for women who do not have high levels of education and/or who do not have access to legal aid. The long delays in court proceedings and the execution of judgements delay access to justice, and complainants tend to give up. Although the laws and specific mechanisms are in place for SGBV support and the raising of complaints, such as the hospital-based One-Stop Crisis Management Centers (OCMCs) and the Nepal Police's women's cells at district police stations, there is no clear legal provision or specific mechanism to deal with violence against home-based workers. Due to this, there are gaps in the data concerning SGBV against home-based workers. One of the main gaps is a lack of awareness among home-based workers on the legal provision for SGBV and the complaint mechanism.

The Constitution of Nepal has secured the rights of women and workers to facilitate the creation of

a more equitable society. It provides room for the equitable distribution of resources through social security. Most of the laws reviewed in this paper were enacted after the promulgation of the Constitution of Nepal, 2015. The major objectives of the aforementioned acts are to implement the fundamental rights secured by the constitution, such as the right to employment, the right to labour, and the right to social security and social protection. These acts have attempted to bring positive developments in terms of legal reform to address structural barriers and create incentives to attain socio-economic justice for women and workers. However, certain issues have either been overlooked or ignored, and they should be subject to the necessary reforms for the complete realization of the rights of women and workers to socio-economic justice.

The Constitution of Nepal has guaranteed women's and workers' rights to obtain special employment and social security opportunities based on positive discrimination, but it has not mainstreamed these rights in the legislation.

8. Recommendations

Therefore, in response to the challenges and gaps in the constitution and legislation in ensuring the rights of home-based workers, and to bring this in line with the Constitution of Nepal, the following is recommended:

A. Recommendations to the Government of Nepal

The Constitution of Nepal

Harmonize the anti-violence-related provision in the various Articles of the constitution with Articles 38 (2) and 42 to ensure the fundamental right of the proportional representation of women

Labour Act, 2017

Provide recognition of home-based workers in the Labour Act and specific legal provisions or policies to address the issues of home-based workers
Provide full remuneration for the entire duration of maternity leave
Increase the number of days of paternity leave
Arrange for a childcare centre
Home-based workers should be included in and protected by this act

National Civil Code, 2017

Include a provision on unpaid domestic work and/or care work performed by family members
Recognize home-based workers
Secure the rights of domestic workers/helpers

Right to Employment Act, 2018

Ensure special measures are in place for women and home-based workers to ensure they have access to employment
Ensure the proportional participation and representation of women home-based workers in the institutional mechanism envisioned by the act

Contribution-based Security Act, 2018

Include provision for home-based workers to receive benefits from the Social Security Fund
Implement a maternity protection scheme
Define maternity protection from a broader perspective

Institutional Arrangements

The laws, institutional mandates and resources relating to SGBV protection should be reviewed with a view to ensuring the rights of home-based workers, such that they are able to operate effectively, and these should also cover the issues and needs of home-based workers
Formally recognize and clarify the supporting role of networks and groups of home-based workers so as to realize the rights and SGBV protection of the same
Strengthen and build the capacity of the Women, Children and Senior Citizens Service Centres of the Nepal Police so the issues of home-based workers may be understood and the risks of

discrimination and SGBV reduced
Strengthen the capacity of the hospital-based OCMCs through the training of personnel on meeting the needs of SGBV survivors among home-based workers
Establish a focal section within the Ministry of Labour, Employment and Social Security and Labour Offices to deal with issues of home-based workers

B. Recommendations to the International Labour Organization (ILO)

Provide technical support to the government and civil-society organizations
Conduct a feasibility study on the positive impacts of ratifying ILO C190
Provide support to civil societies and organizations on the issues of harassment and violence against home-based workers

C. Recommendations to Civil Society

Raise public awareness regarding the recognition and rights of home-based workers
Conduct advocacy to ratify the related ILO Conventions, particularly Home Work Convention, 1996 (ILO C177)
Submit a shadow/alternate report to raise the home-based workers' issue with the CEDAW, the ICESCR, the Universal Periodic Review (UPR) and other UN-treaty monitoring committees

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