

# NEPAL

## A BRIEF ON CHILD MARRIAGE, NON-DISCRIMINATION IN WORK AND EMPLOYMENT, AND DISCRIMINATION AND SEXUAL HARASSMENT IN EDUCATION (CEDAW Articles 2, 10, 11, 16 and General Recommendation 36)

*Information for the Committee on the Elimination of Discrimination Against Women  
89<sup>th</sup> Pre-Sessional Working Group, February 2024*

### **Submitted By**

The WORLD Policy Analysis Center  
University of California, Los Angeles



**TABLE OF CONTENTS**

**INTRODUCTION** .....2

**Summary of Findings and Recommendations**.....3

1. Child Marriage (Articles 2, 16).....3

2. Non-Discrimination in Work and Employment (Article 11).....3

3. Discrimination and Sexual Harassment in Education (Article 10, General Recommendation 36).....5

**Detail of Legislative Findings** .....6

1. Child Marriage (Articles 2, 16).....6

2. Non-Discrimination in Work and Employment (Article 11).....7

3. Discrimination and Sexual Harassment in Education (Article 10, General Recommendation 36).....9



## INTRODUCTION

The WORLD Policy Analysis Center, based at the University of California, Los Angeles, captures quantitative policy data on more than 2,000 indicators that matter to equality, health, and well-being. We strive to improve the quantity and quality of globally comparative data available to policymakers, citizens, national governments, intergovernmental organizations, civil society, and researchers for all 193 UN member states. We submit the following brief in advance of the 89<sup>th</sup> Pre-Sessional Working Group of the Committee on the Elimination of Discrimination against Women.

This brief will focus on the following areas:

1. Child Marriage (Articles 2, 16)
2. Non-discrimination in Work and Employment (Article 11)
3. Discrimination and Sexual Harassment in Education (Article 10, General Recommendation 36)

We have collected and analyzed information on rights, laws, and policies in these areas for all 193 UN member states using a variety of sources, including primary national legal sources (e.g. original legislation and constitutions), national reports on policies and laws to the United Nations and official global and regional bodies, and secondary sources where clarification or corroboration of primary data is needed. Using a rigorous double-coding process, we create original databases which distill thousands of pages of text to highlight the essential features of each right, law, or policy. These original databases are the reference for the following brief. When drafting each brief, we perform a series of additional verifications to ensure the data provided reflects the current constitutional and legal landscape of a country.

In this report we first provide a summary of our legislative findings, as well as suggested questions for the Committee to ask Nepal and topics we hope the Committee will address in its concluding observations. This summary is followed by detailed legislative excerpts documenting our findings. We hope the Committee will recommend that Nepal address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations. We also recognize that while having strong laws and policies in place are necessary first steps, implementation is also of paramount importance. In areas where we have commended Nepal for having provisions in place, we hope the Committee will recommend that Nepal work with stakeholders to overcome any obstacles in implementing these provisions.



## SUMMARY OF FINDINGS AND RECOMMENDATIONS

### 1. Child Marriage (Articles 2, 16)

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Based on our review, Nepal’s legislative framework requires both parties to be 20 years old to be married, although marriage at the ages of 18 and 19 is possible with parental consent. Nepal’s last recorded child marriage rates remained high: 33% of women aged 20-24 at the time of survey had been married before age 18, 8% had been married before age 15, and 19% of girls ages 15 to 19 were already married.<sup>1</sup>

#### RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

**We hope the Committee will:**

- In its list of issues, ask Nepal: Can Nepal outline any concrete, near-term measures that it is taking to examine and resolve barriers to the effective implementation of its prohibition of child marriage?
  - If Nepal does not have plans for concrete near-term measures to examine and resolve these barriers, recommend in its concluding observations that Nepal develop a concrete, near-term plan to effectively reduce the rate of child marriage.

### 2. Non-Discrimination in Work and Employment (Article 11)

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Nepal’s labor code broadly prohibits discrimination on the basis of sex, and it also specifically mandates equal pay for work of equal value regardless of sex.

We found no provisions on discrimination on the basis of family status, marital status, or pregnancy. We further found no provisions on indirect discrimination, or against retaliatory action for bringing forward claims of workplace discrimination.

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<sup>1</sup> UNICEF Data Warehouse – Child Marriage. Retrieved November 30, 2023 from [https://data.unicef.org/resources/data\\_explorer/unicef\\_f/?ag=UNICEF&df=GLOBAL\\_DATAFLOW&ver=1.0&dq=.PT\\_F\\_20-24\\_MRD\\_U15+PT\\_M\\_20-24\\_MRD\\_U18+PT\\_F\\_20-24\\_MRD\\_U18+PT\\_M\\_15-19\\_MRD+PT\\_F\\_15-19\\_MRD..&startPeriod=2016&endPeriod=2022](https://data.unicef.org/resources/data_explorer/unicef_f/?ag=UNICEF&df=GLOBAL_DATAFLOW&ver=1.0&dq=.PT_F_20-24_MRD_U15+PT_M_20-24_MRD_U18+PT_F_20-24_MRD_U18+PT_M_15-19_MRD+PT_F_15-19_MRD..&startPeriod=2016&endPeriod=2022)



**RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS**

**We hope the Committee will:**

- In its list of issues, ask Nepal: has the Labor Code’s broad protection against discrimination on the basis of gender been interpreted –through case law or otherwise—to apply specifically to discrimination in hiring, promotions or demotions, terminations, and employer-provided vocational training?
  - If it has not, can Nepal outline any concrete, near-term plans to pass legislation that **comprehensively prohibits discrimination at work** -- in hiring, training, promotions or demotions, terminations, and vocational training – **on the basis of sex**?
    - If concrete, near-term plans are not in place, recommend in its concluding observations that Nepal pass and implement legislation that enacts protections against discrimination in hiring, training, promotions and demotions, and terminations on the basis of sex.
- In its list of issues, ask Nepal: Can Nepal outline any concrete, near-term plans to pass legislation that **comprehensively prohibits discrimination at work** -- in hiring, training, promotions or demotions, remuneration, terminations, and vocational training – **on the basis of marital status, family status, and pregnancy**?
  - If concrete, near-term plans are not in place, recommend in its concluding observations that Nepal pass and implement legislation that comprehensively prohibits discrimination at work -- in hiring, training, promotions or demotions, remuneration, terminations, and vocational training – **on the basis of marital status, family status, and pregnancy**
- In its list of issues, ask Nepal: Can Nepal outline any concrete, near-term plans to pass legislation that explicitly prohibits **indirect discrimination at work on the basis of sex**?
  - If concrete, near-term plans are not in place, recommend in its concluding observations that Nepal pass and implement legislation that explicitly prohibits indirect discrimination on the basis of sex.
- In its list of issues, ask Nepal: Can Nepal outline any concrete, near-term plans to pass legislation that explicitly prohibits **retaliatory action against claims of workplace discrimination**?
  - If concrete, near-term plans are not in place, recommend in its concluding observations that Nepal pass and implement legislation that explicitly prohibits retaliatory action against claims of workplace discrimination.



### 3. Discrimination and Sexual Harassment in Education (Article 10, General Recommendation 36)

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Nepal’s laws prohibit discrimination in education on the basis of sex. Further, **Nepal’s criminal code has explicit provisions on sexual harassment that apply to a wide range of potential actions and perpetrators. However, these sexual harassment provisions describe sexual harassment as requiring “the motive of having sexual intercourse”, and may therefore not cover other forms of sexual harassment that frequently occur in educational settings, including sexual behaviors without intent of leading to intercourse and actions that create a hostile school environment.**

#### RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

**We hope the Committee will:**

- In its list of issues, ask Nepal: can Nepal outline any concrete, near-term plans to pass legislation explicitly focused on sexual harassment in education?
  - If concrete, near-term plans are not in place, recommend that Nepal pass and implement legal provisions that prohibit all forms of sexual harassment in educational settings.
    - Further recommend that Nepal include in these provisions the most relevant elements of sexual harassment:
      - a definition of sexual harassment that includes both quid pro quo and the creation of a hostile school environment; and
      - protections for students from harassment by fellow students, teachers and other actors in education.



## DETAIL OF LEGISLATIVE FINDINGS

While the following review is systematic and rigorous, we recognize that there may be laws or policies governing these areas that we have not captured, including new legislation or policies that have not yet been published globally.

### 1. Child Marriage (Articles 2, 16)

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Child marriage disproportionately affects girls, often leading to social, economic, educational, and health inequalities, which States Parties have committed to eliminating. Article 16.2 of the Convention calls on States Parties to legislate a minimum age of marriage and prohibit the marriage of children. Additionally, disparities in the legal minimum age of marriage between girls and boys contravenes Article 2(a) of the Convention, which commits States Parties to “embody the principle of the equality of men and women” in their “national constitutions or other appropriate legislation”.

We systematically reviewed national civil codes and child-related legislation for all 193 UN member states to determine whether national legislation established a minimum age of marriage for both girls and boys generally, with parental consent, and under religious and customary law. We reviewed all legislation available through the Lexadin World Law Guide, Foreign Law Guide, International Labour Organization’s NATLEX database, regional sources, and official country websites.

#### *NEPAL’S LEGISLATIVE PROVISIONS: Underage marriage explicitly prohibited, but rates remain high*

Based on our review, Nepal’s legislative framework establishes the minimum age of marriage at 20 for both men and women, although marriage at ages 18 and over is possible with parental consent.

#### *Muluki Ain*

*Number 2. 495 While contracting a marriage, no one shall arrange to marry nor cause to be married where the male and the female have not completed the age of eighteen years with the consent of the guardian and that of twenty years in case of absence of the consent of the guardian.*

*The persons having attained majority, out of those who marry or cause to be married in violation of this provision, shall be punished as follows:*

*(...)*

*If a female below the age of Ten years is married or caused to be married, punishment of imprisonment for a term from six months to Three years and with a fine of One Thousand Rupees to Ten Thousand Rupees shall be imposed -----1*



*If a female above the age of Ten years but below the age of Fourteen years is married or caused to be married, punishment of imprisonment for a term from Three months to One year and with a fine of a maximum of Five Thousand Rupees or both shall be imposed -----2*

*If a female above the age of fourteen years but below the age of Eighteen years is married or caused to be married, punishment of imprisonment for a term not exceeding Six months or a fine of a maximum of Ten Thousand Rupees or both shall be imposed.....3*

*If a male or female who has not completed the age of twenty years is married or cause to be married, punishment of imprisonment for a term not exceeding six months or a fine of a maximum of Ten Thousand Rupees or both shall be imposed -----4*

**Despite this legislative framework, the last available data shows high rates of child marriage in Nepal: 33% of women aged 20-24 at the time of survey had been married before age 18, 8% had been married before age 15, and 19% of girls ages 15 to 19 were already married.<sup>2</sup> Therefore, this remains a matter of concern.**

## 2. Non-Discrimination in Work and Employment (Article 11)

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Article 11 of the Convention states that:

*[p]arties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:*

*(...)*

*(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;*

*(c) The right to 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;*

*(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;*

*(...)*

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<sup>2</sup> 2019 data taken from UNICEF. UNICEF Data Warehouse – Child Marriage. Retrieved November 30, 2023 from [https://data.unicef.org/resources/data\\_explorer/unicef\\_f/?ag=UNICEF&df=GLOBAL\\_DATAFLOW&ver=1.0&dq=.PT\\_F\\_20-24\\_MRD\\_U15+PT\\_M\\_20-24\\_MRD\\_U18+PT\\_F\\_20-24\\_MRD\\_U18+PT\\_M\\_15-19\\_MRD+PT\\_F\\_15-19\\_MRD.&startPeriod=2016&endPeriod=2022](https://data.unicef.org/resources/data_explorer/unicef_f/?ag=UNICEF&df=GLOBAL_DATAFLOW&ver=1.0&dq=.PT_F_20-24_MRD_U15+PT_M_20-24_MRD_U18+PT_F_20-24_MRD_U18+PT_M_15-19_MRD+PT_F_15-19_MRD.&startPeriod=2016&endPeriod=2022)





We systematically reviewed national labor codes, gender equality, and other relevant legislation available through the International Labour Organization’s NATLEX database for all 193 UN member states to determine whether national legislation prohibited gender discrimination in employment in five areas covered by CEDAW:

- employment opportunities or hiring (art. 11.1.b)
- equal pay for work of equal value (art. 11.1.d)
- training (art. 11.1.c)
- promotions or demotions (art. 11.1.c)
- job security or terminations (art. 11.1.c)

We assessed whether women were explicitly protected from discrimination at work in each of these areas and whether the definition of discrimination included both direct and indirect discrimination.

We also examined whether there were explicit protections from discrimination on the grounds of pregnancy, marital status, and family status in line with Article 11.2.a) of the Convention, which prohibits “dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status”. Although the Convention focuses only on protecting from dismissal on these additional grounds, we nevertheless further examined whether discrimination on the grounds of pregnancy, marital status, or family status was prohibited in other stages of employment, consistent with CEDAW’s spirit of prohibiting discrimination against all women, regardless of their circumstances.

*NEPAL’S LEGISLATIVE PROVISIONS: Very scarce protections against discrimination on the basis of sex*

Nepal’s Labor Code broadly protects against discrimination at work on the basis of gender, and specifically prohibits discrimination in compensation for work of equal value.

*Labor Code, 2017*

*6. Non-discrimination: (1) An employer shall not discriminate against a worker on the basis of religion, color, gender, caste and ethnicity, origin, language or belief or any other related basis.  
(...)*

*7. Non-discrimination in remuneration for the same work: (1) There should be no discrimination on the basis of gender in terms of remuneration on equal value of work.  
(...)*

We found no further protections of any kind against workplace discrimination on the basis of sex, including: protections against discrimination in other areas of employment, such as hiring, promotions or demotions, terminations and vocational training; protections against discrimination on the basis of family status, marital status, or pregnancy; protections against indirect discrimination; and protections against employer retaliatory action for bringing forward claims of discrimination.



A summary of these findings is presented in Table 1.

| <b>Table 1: Does Nepal have legislative provisions in place explicitly guaranteeing non-discrimination for women in the following key areas of employment?</b> |                       |
|--|-----------------------|
| Employment opportunities and hiring  | Broad protection only |
| Equal pay for work of equal value  | Yes                   |
| Training   | Broad protection only |
| Promotions and/or demotions  | Broad protection only |
| Terminations   | Broad protection only |
| Discrimination on the basis of marital status, family status, and pregnancy  | No provisions found   |
| Indirect discrimination  | No provisions found   |
| Retaliatory action   | No provisions found   |

### 3. Discrimination and Sexual Harassment in Education (Article 10, General Recommendation 36)

Around the world, girls encounter barriers that prevent them from fully participating in education and reaching their full potential. Article 10 of the Convention calls on States Parties to “eliminate discrimination against women in order to ensure to them equal rights with men in the field of education”, and Paragraph 69(a) of General Recommendation 36 calls on countries to:

*Enact and enforce appropriate laws, policies and procedures to prohibit and tackle violence against girls and women in and around educational institutions, including verbal and emotional abuse, stalking, sexual harassment and sexual violence, physical violence and exploitation;*

We systematically reviewed education laws, penal codes, equal opportunity, and other relevant legislation available through the International Labour Organization’s NATLEX database for all 193 UN member states to determine whether national legislation prohibited both discrimination and sexual harassment in education. We further examined whether protections from sexual harassment at school were in line with international agreement of what constitutes key components on sexual harassment, namely do laws:

- define sexual harassment to cover quid pro quo and the creation of a hostile environment;
- include sex-based harassment as well as sexual-behavior based harassment; and
- protect students from harassment by other students and by teachers, as well as by other actors in the education system;



*NEPAL'S LEGISLATIVE PROVISIONS: No sexual harassment provisions specific to education*

Nepal's laws protect children of both sexes specifically from discrimination in the right to education.

*Act Relating to Children*

*5. Right against discrimination: (1) No child shall be discriminated against on ground of her/his own, her/his families' or guardians' religion, race, caste, ethnicity, sex, origin, language, culture, ideology, physical or mental conditions, disability, marital status, familial status, occupation, health status, economic or social status, geographical region or any other such grounds.*

*(2) No one shall discriminate between son and daughter, sons, sons or daughters, daughters or between children born to former husband or wife or to current husband or wife in matters of their nurturing, education or healthcare.*

*15. Right to education: (1) Children under six years of age shall have the right to learn in a manner suitable to their age and development stage and to early childhood development.*

*(2) Every child shall have the right to receive compulsory and free education up to basic level and free education up to secondary level in a child-friendly environment in accordance with prevailing laws.*

*(3) Every child shall have the right to receive education through the use of appropriate study materials and teaching methods suitable to her/his special physical and mental conditions as per prevailing laws. (4) Dalit children shall have the right to receive free education, along with scholarships, as per prevailing law.*

Nepal's Criminal Code **prohibits sexual harassment by a wide range of perpetrators. However, these criminal provisions describe sexual harassment as requiring "the motive of having sexual intercourse", and may therefore not cover other forms of sexual harassment that frequently occur in educational settings**, including sexual behaviors without intent of leading to intercourse and actions that create a hostile school environment.

*Criminal Code of 2017*

*224. Prohibition of sexual harassment: (1) No person shall commit, or caused to be committed, sexual harassment to another person.*

*(2) A person shall be considered to commit sexual harassment if the person holds or touches or attempts to touch any sensitive organ of, or opens or attempts to open undergarments of, or obstructs or hinders in any way the wearing or removing of undergarments of, or takes to any lonely place in an unusual manner, or gets his or her sexual organ to be touched or held by, or uses vulgar or similar other words, spoken or written or by gesture or by way of electronic*



*medium, or shows any pornography to, or teases or annoys with sexual motive, or behaves in an unusual, undesirable or indecent manner with, a person who is not his wife or her husband, without her or his consent, with the motive of having sexual intercourse with her or him.*

*(...)*

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BRIEFING PREPARED BY THE WORLD POLICY ANALYSIS CENTER, UNIVERSITY OF CALIFORNIA, LOS ANGELES