# Review Paper on Policy Arrangements Related To The Rights of Girls From Marginalized Communities.



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March, 2024

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### 1. Background:

In this document, girls from marginalized communities are mainly mentioned as – (a) girls from Dalit (hill) communities, (b) girls from Dalit and disadvantaged communities in Madhesh, (c) girls from freed bonded labour, (d) girls from Muslim communities, (e) girls from Baadi community. Additioanlly, this document's definition of marginalized girls is inclusive of (f) disabled girls, and (g) gender and sexual minority girls from all the castes, tribes, religions, physical conditions and geographical areas

This document, adolescent girls with an age group of 16 to 19 years are included.

In Nepal, "child" is defined as a person who has not completed the age of eighteen years<sup>1</sup> while "adolescent" is defined as a person in the age group of ten to nineteen years<sup>2</sup>. Similarly, the National Youth Policy 2072 B.S. defines "youth" as citizens between the age group of 16 and 40<sup>3</sup>.

However, there is no separate definition of girls from marginalized communities in Nepal's policies and laws.

The present document reviews the existing policy arrangements regarding (a) platform and opportunities, (b) access to services and resources, and (c) ability to make independent choices for girls to participate in various aspects of social and civic life. Similarly, present review has analyzed policies on issues such as (a) education, (b) health (including mental health and well-being), (c) protection, and (d) participation (in government and civil society forums) of girl child with additional suggestions and recommendations for policy reforms.

<sup>1</sup> See Section 2 (j) of the Children Act, 2075.

<sup>2</sup> See Section 2 (c) of the Right to Safe Maternal and Reproductive Health Act, 2075.

<sup>3</sup> See, Clause 2 (a) of the National Youth Policy, 2072 (passed by the Council of Ministers dated 06/19/2072 accordingly October 06, 2015).

This document has been prepared as a supplement to 'Position Paper on Rights of Girls From Marginalized community in Nepal" published last year (i.e. in 2023) by Hami DajuVai and other organisations.

## 2. Status of the marginalized girl child:

According to the National Census, 2078, the total population of Nepal is 2,91,64,578. Among them, the number of women is 1,49,11,026, the number of men is 1,42,53,558 and the number of sexual minorities is 2,928. Among it, the disaggregated data on the number of sexual minority girls (especially intersex)/adolescents is unavailable.

According to National Census, 2078 B.S., the population of children below the age of 18 years is 98,69,583, while the number of children between 8 and 18 years is 53,72,259.. In the age group of 8 to 18 years, the number of boys is 27,41,159 and the number of girls is 26,31,100. Although the number of girls is available based on the National Census, 2078 B.S., the data on girls from marginalized communities is unavailable.

However, according to the recent information released by National Statistics Office (2080 Chaitra 4), the number of citizens with disabilities in Nepal is 6,47,744, which is 2.2 percent of the total population. Among persons with disabilities, the number of males is 351,301 (i.e., 54.2 percent) and the number of females is 296,443 (i.e., 45.8 percent) of total population.

In terms of age, the number of children/adults with disabilities from birth to 19 years is 142,386, of which the number of boys/men is 78,701 and the number of girls/women is 63,685. In this way, the number of girls/women with disabilities up to 19 years of age was found to be 63,685. (See Annex -1 for details of persons with disabilities, children and girls on the basis of age)

### 3. The study method of the presented review:

A desk study of policy arrangements related to the rights of marginalized girls was done. For this, the Constitution of Nepal (2072), the laws made by the Federal Parliament, the recommendations of the Constitutional

Commission on Human Rights, some conventions on the human rights of children approved by Nepal and the recommendations of relevant bodies, sustainable development goals were studied. In addition, various reports and statistics related to Nepal's law on the rights of children were also considered.

In addition, interaction was done with the constitutional commissions on the rights of children, adolescents, marginalized girls, and women (National Women Commission, National Dalit Commision, Muslim Commission, Indigenous Nationalities Commission, Madhesi Commission, officials and high-level employees of federal government agencies (Ministry of Federal Affairs and General Administration) to collect information and review process.

In addition, a workshop had been held on 20 March 2024 with some representatives of marginalized girls from different groups covered by the policy review and summary of the outcome of this interactive workshop has also been included in this document and analyzed. Similarly, suggestions received during the interaction with the stakeholders on 21 March 2024 have been included in this document as required.

## 4. Summary of information obtained from interviews 4 with constitutional commissions:

Assuring the rights of the girl is under the jurisdiction of constitutional commissions. And, it is considered by the commissions as a cross-cutting issue. However, there are few examples of specialized commissions recommending specific policies and programs to the government for girls from marginalized communities, girls with disabilities, gender and sexual minority girls/adolescents.

<sup>4</sup> In relation to policy arrangements regarding girls from marginalized communities, interaction and discussion was done with (1) National Commission for Women, Hon'ble Chairman Kamala Parajuli, (2) National Dalit Commission, Hon'ble President Devraj Vishwakarma, (3) Muslim Commission, Hon'ble Chairman Samim Mia Ansari, (4) Indegenious Nationalities Commission, Hon'ble Member Reena Rana, and (5) Madhesi Commission, Hon'ble Member Abha Kumari Singh.

There is no specific policy of commissions targeting marginalized girls belonging to marginalized communities and no suggestions have been given to the government to implement such a policy. And, in order to formulate such policy, the commissions need to immediately begin their work and recommend the government to revise the policy as well. The local level should also implement targeted policies and programs for marginalized girls. However, the government has provided some of the services like education, health, etc., for free and provided educational scholarships for the marginalized girls from Indigenous, Dalits, Madhesi and Muslim communities. Even though there have been complaints that the amount of scholarships availed to the targeted girls is not enough, there is a need for the commissions to monitor whether the girls of the community have received scholarships or not. In some of the cases, it is also true that not all the targeted girls have received educational scholarships. Similarly, in the interview with the officials of the Madhesi Commission, there was a discussion about the case of corruption in the distribution of scholarships (especially misappropriation of the funds by including the names of those studying in private schools instead of giving them to girls who are in real need of scholarships).

National Women Commission, Dalit and Muslim Commission etc. have helped to implement various programs through the local level for citizenship, empowerment of women/adolescents through capacity building, especially targeting women and girls. Likewise, National Women Commission has run a free helpline service (1145). Similarly, it is found that the commissions such as National Women Commission, National Dalit Commission, Madhesi Commission and others receive complaints through online medium and address them.

According to the Commission's officials, the main problems faced by girls from marginalized communities are- (a) being unable to continue education without completing their studies, (b) not being able to get proper care from their parents or guardians, (c) being subjected to discrimination, violence, abuse and exploitation. The reasons for this are:

- (a) family discord and parents becoming alcoholic and chronic smokers,
- (b) Thoughts like not belonging to the society and (c) lack of instilling confidence in girls that they can do something and making them able to see 'dreams' and hope.

The constitutional commissions have been unable to concretely recommend all three levels of government to provide targeted policies, laws and programs for girls from marginalized communities regarding their authority. The main reasons for this are - (a) lack of practical thinking about the upliftment of the backward and marginalized communities in the society, (b) insufficient human resources, (c) insufficient budget, and (d) giving responsibility to development partner organizations to work on the specific issues of marginalized girls. In some cases, National Human Rights Commission and other constitutional commissions can mobilize the resources available with development partners to study and investigate the issues under their agency's responsibility and implement model programs. And, based on learning thus obtained, they can recommend policies and programs to the government.

The commissions have been advocating for the formulation of policies, laws and program and budget allocation for women and girls of marginalized communities in collaboration with the community, especially the federal parliament.

## Ministry of Federal Affairs and General Administration<sup>5</sup>

The Ministry of Federal Affairs and General Administration has not implemented a specific program to address the problems of girls from marginalized communities. However, the goal of government policies, laws, strategies and programs is to mainstream people from backward or marginalized communities. The Ministry has implemented procedures under the concept of child-friendly and nutrition-friendly local level. Indicators under these procedures state that children in the most marginalized communities should be targeted.

Head of Gender Equality and Social Inclusion Branch in the Ministry Mr. Dashrath Od and Liaison Person of Child Friendly Local Government Mr. Resham Kadel were interviewed.

## 5. Rights of children (marginalized girls) as provided in the Constitution of Nepal (2072 B.S.) and Federal Act:

The Constitution of Nepal provides for – (a) Right to live with dignity, (b) Guarantee of basic rights, (c) Against discrimination and untouchability, (d) Protection from all forms of violence, abuse and exploitation and compensation to victims, (e) Gender equality, (f) special provisions including social security to address the special needs of citizens (children and adults) in vulnerable situations, and (g) clear provisions on social justice.

Nepal's constitution, federal laws, international and regional conventions related to children's human rights ratified by Nepal have given responsibility to families and governments at all three levels (federal, state and local) to ensure the best interests of children by respecting, protecting, promoting and fulfilling their rights.

For the purpose of the presented document, the rights of girls from marginalized communities (in some cases the rights of children as a whole) provided in the constitution and the prevailing laws have been analyzed in the following groups:

- 5.1 Right to live with dignity and identity with name and nationality.
- 5.2 The right to education, health, nurturing, proper care, sports and recreation from the family and the state.
- 5.3 Right to basic freedom, personality development and participation.
- 5.4 The right to be empowered to make decisions independently.
- 5.5 Right to access to education, health (including mental health), employment (preparation) and other basic rights.
- 5.6 Right to equality and right against untouchability and discrimination.
- 5.7 Right to protection from violence, abuse, exploitation, torture, neglect and harmful traditional practices.
- 5.8 The right to receive information and services regarding your body and reproductive health.
- 5.9 Right to special opportunities with positive discrimination in social security.

5.10 (girl-friendly or friendly) access to justice, social justice and right to compensation for crime victims, etc.

## The right to live with dignity and the right to nationality with recognition of diversity

The Constitution of Nepal provides citizens with the right to live with dignity, privacy and with self-respect. Nepal's constitution and existing laws ensure the right of a child to be named and registered with his/her own identity. Similarly, according to the prevailing legal system, in the case of children - (a) the rights and human dignity are respected, (b) every agency and official should prioritize their best interests when taking any action related to children, (c) persons with disabilities (children). The rights mentioned are for each children and some rights are specific to persons with disabilities. Similarly, in Section 3 of the Personal Privacy Act, 2075 B.S., there is a special provision that the subjects such as 'biological or genetic identity, gender identity, sexuality' should be confidential.

## Right to education, health, upbringing, proper care, sports and recreation from the family and the state

Under this prevailing law, especially children/girls – (a) have the right to live in a family or in a family environment, (b) get education, health, nurturing, proper care, sports, entertainment and all-round personality development opportunities from the family and the state, and (c) be active in the community. In terms of guaranteeing all these rights, the policy system is silent on the special issue of marginalized girls.

#### Right to basic freedom, personality development and participation

The Constitution of Nepal guarantees all citizens the right to - (a) freedom of ideology and expression, (b) peaceful assembly without arms, (d) right to form associations and organizations and the right of child participation is specifically mentioned in the constitution. Similarly, according to the current law, persons with disabilities and children are

allowed to - (a) participate in decisions made by the family, community, school or other public bodies or organizations on matters affecting them, (b) form children's clubs or organizations or gather peacefully, and (c). In order to enable girls from marginalized communities to enjoy the rights mentioned in this section, they should be empowered through education, awareness, and opportunities as they are powerful means to empower the girl child.

National Youth Policy, 2072 B.S. - (a) To encourage youth to meaningfully participate in policy making by empowering them economically, socially, politically and culturally (Policy no.9.3), (b) mobilizing the youth to address the problems prevailing in the society such as poverty, illiteracy, untouchability, harmful practices, gender violence, discrimination and inequality (Policy no.9.3), and (c) helping youth develop as agents of change for social change (Policy no.9.9). Similarly, under the participation and mobilization title strategy (e), it is mentioned that 'to make the youth meaningfully participate in the policy and planning process at all levels' (5).

#### The right to be empowered to make decisions independently

As the fundamental issues and challenges seen in development efforts in the concept paper of the Sixteenth Plan - (a) Inclusion - the gap in policy, practice and results (3.14), and (b) changes in the forms of violence against women, children, senior citizens and marginalized communities, and condinued socio-cultural-economic discrimation and traditional mindset. Similarly, the philosophy of the Sixteenth Plan is identified as "Good Governance, Social Justice and Prosperity" (4.1).

Similarly, under the strategy of the Sixteenth Plan - strategy related to 'Social Empowerment, Inclusion and Social Security' - (a) conducting targeted programs for the empowerment of economically and socially backward classes, communities and gender, and (b) Economically disadvantaged, physically and intellectually disabled and family dependent citizens are included in Special Social Security Program (4.4.8).

According to the Constitution of Nepal and prevailing laws, persons with disabilities, children and adolescents can - (a) receive information on any matter of their own or public concern, (b) receive information based on disability-friendly and accessible means of public communication, and (c) Children and adolescents will be given awareness and orientation and the capacity of the organization led by them will be strengthened. In addition, there is a policy provision on meaningful participation at the policy-making level. However, there is no arrangement ensuring the participation of other girls from marginalized communities.

## Right to access to education, health (including mental health), employment (preparation) and other basic rights

There are some specific provisions in the Constitution and law regarding access to basic rights of girls from marginalized communities including education, health (including mental health), employment (preparation), etc. In particular, (a) compulsory and free education up to the basic level (free higher education and scholarships for children with disabilities, adolescents and students from the Dalit community), (b) free and accessible basic health services, (c) free availability of reproductive health services in public health institutions, (d) access to education, training, health, nursing services, rehabilitation services, job preparation and recreational opportunities for personal development, (e) Dalit, disabled and financially disadvantaged children who are out of school should get special arrangements to be enrolled in school and continue their studies, (f) provisions providing special facility and social security in favour of children from the disadvantaged community in the society. Special rights have been clearly mentioned with regards to the rights mentioned in this section in the context of (a) children at risk, (b) children displaced for any reason, and (c) Dalits, economically disadvantaged children, and children with disabilities. .

## Right to freedom and right against untouchability and discrimination As a fundamental right in the Constitution of Nepal-(a) non-discrimination between citizens on the basis of origin, religion, race, caste, caste, gender, economic status, language, region, ideological belief or any other such

basis, and (b) a person should not be discriminated on the basis of caste, community, profession, business or physical condition in both private or public space. Similarly, the current law protects any child, girl and adolescent from discrimination in (a) upbringing, education or health treatment, (b) enjoying personal freedom, and (c) living with their family or guardian. Likewise, untouchability and discrimination are punishable crimes and the victim has the right to compensation under prevailing law. In addition, National Children's Policy, 2080 B.S. has adopted the strategy of 'facilitating discrimination against children including the disadvantaged, Dalits, disabled, victims and affected by crime, sexual and gender minorities, etc. into legal scope and awareness will be increased to end it'.

#### The right to be protected from violence, abuse, exploitation, torture, neglect and harmful traditional practices

Constitution of Nepal states that any person on the basis of religion, custom, tradition, customs, practices or any other means shall not be subjected to any kind of – (a) exploitation, (b) physical, mental, sexual, psychological or any other kind of violence or exploitation, (c) Illegal transportation and abduction or taking hostages, and (d) child marriage. Similarly, the current law provides provisions to end all forms of inhumane or disrespectful treatment subjected to children and persons with disabilities/children by family, guardians or other persons, (b) to immediately rescue, protect and manage victim/affected children from violence and abuse, (c) end actions such as abandonment, neglect or being locked up at home of these children, and (d) amendment of laws necessary for special protection of children from gender and sexual minority community.

#### The right to receive information and services related to body and reproductive health

The Constitution of Nepal has provided every woman with reproductive health rights. According to the current law, children have the right to receive information about their bodies, reproduction and reproductive health according to their age and maturity. Similarly, in consideration of special condition of women with disabilities, there is a provision to provide for necessary arrangements to protect their health and reproductive rights.

## Right to special opportunities in social security including positive discrimination

Study findings of provisions under prevailing law:

- (a) Children with disabilities, conflict affected children, displaced children, and children at risk or children living on the streets should be given special protection as prescribed by the State for an assured future,
- (b) The State shall arrange for basic needs including upbringing, protection, health and education of children in need of special protection.
- (c) People with stated and verified disabilities will receive financial support or social security as specified,
- (d) Social security programs, for children in difficult situations due to economic, social, cultural and physical reasons and need special protection and alternative care, children who are victims of multiple discrimination, will be widened, and
- (e) There is an arrangement to conduct targeted programs for the empowerment of economically and socially backward classes, communities and gender.

Prevailing policy provisions, while providing social security, has identified children from certain grups as marginalized children.

## (girl friendly) access to justice, social justice and right to compensation for victims of crime

In the constitution of Nepal itself has ensured –

(a) As per principle of inclusion, the rights of socially disadvantaged women, Dalits, tribes, Madheshi, Tharu, minorities, persons with

disablities, marginalized, Muslims, gender and sexual minorities, youth to participate in State bodies, and

(b) has guaranteed the rights of economically deprived, across every gender, region and communities, to be prioritized while providing social security.

In the same way, the current law (a) children have the right to childfriendly justice and the provision of juvenile courts, (b) increasing access to justice by providing free legal aid to persons (children) with disabilities, (c) providing services such as reproductive health care ensuring it is disability friendly, (d) standards should be applied to ensure that the services/faciliies are child and disability friendly. These policy arrangements are found to be in favor of marginalized girls.

#### 6. Some conclusions and recommendations of the present review

#### Some conclusions

No clear policy arrangements have been made in policies and laws targeting girls from marginalized communities, and special arrangements have been made only with reference to a specific group of citizens. Therefore, the girl child of marginalized community experiencing challenges including double, triple discrimination, violence (physical, mental, social and sexual) and exclusion will require legal provision ensuring enabling opportunities and environment to enjoy their rights, and avail space, process and environment for participation. provisions are yet to be formulated.

In some cases, girls from marginalized communities have become the target of violent behavior and crime has been committed against them and if such situation is not addressed (preventive, remedial, rehabilitative), the possibility of them being exposed to more risks and exclusion increases. Therefore, policy and law has to provide for - (a) equality, non-discrimination and the right to protection from harm and risk, (b) access to justice, (c) compensation and rehabilitation for crime victims, but for that, State has to invest more for friendly institutional structure, skilled human resources and accessible process. Similarly, mental health and psychological competence of the affected girls and teenagers should be given due attention when addressing these various types of violence against the marginalized girls. Because stigma at the household, community and school level has serious impact on their well-being.

The important role of constitutional body is to respect, protect and promote the rights of girls from marginalized communities and to suggest, recommend and pressure the government to effectively implement the prevailing rights. Therefore, the National Human Rights Commission has a separate structure to work on the rights of children and the rights of persons with disabilities. However, other constitutional commissions were not found to have such structural system.

While providing policies and laws, specific and targeted provision with recognition of diversity within a specific group of citizens seems to be necessary. For example, definition of a citizen with disability includes — (a) 10 types of disabilities, (b) adults (men, women, gender and sexual minorities), and children (c) Severity of disability, etc., which is a diverse spectrum in itself.

While formulating policies and laws, it is necessary to ensure that they are equally applicable to all citizens or a specific group of citizens or that they should be specifically targeted to a group with a certain diversity or uniqueness. For example, the right to compulsory and free basic education (for all) is relevant, but if special provisions cannot be made for the provision of education in braille for the blind, sign language for the deaf and mute or speech-impaired citizens then the said right to education cannot be applicable for them.

#### Some suggestions

#### For Government:

 At the time of policy and law making, an investment plan should be prepared including the necessary structures, human resources

- and costs for its implementation.
- At the stage of policy and law formulation, the legal system should be implemented in manner so as to address their actual situation by ensuring the participation of marginalized girls and citizens targeted by such legal system.
- Groups that should be empowered to include the concerns of girls from marginalized communities in the policy-making process and activists lobbying to guarantee rights, organizations of citizens including children, and specific agencies of the State should have well-informed and procedural interaction/consultation.
- On behalf of the State, to the extent possible, specialized and segmented data should be collected and analyzed about girls from marginalized communities and used in formulating policies and programs.

#### For Constitutional Commissions on Human Rights-

- The constitutional commission related to the rights of the citizens and the bodies with special powers of the State should study the special situation or status For example: Studies on the rights of marginalized girls should be carried out - suggestions and recommendations should be made to the government agencies to make special policy arrangements and to decide on a strategic plan to address the situation.
- The constitutional commissions on human rights should jointly monitor the children of marginalized groups, especially the Dalit community in urban squatter settlements, free Kamaiah and free Kamlahari communities, adults from gender and sexual minorities, Madhesi Dalit and disadvantaged communities and Muslim communities.
- Constitutional commissions on human rights should audit drafts based on interrelationships and suggest improvements to ensure that specific groups of citizens and diversity within them are addressed when making policies and programs, Constitutional commissions on human rights should include their participation in policy making at any level regarding the rights of marginalized

girls and recommend that laws be drafted and implemented to address the actual situation faced by them, Constitutional Commissions on Human Rights and committees consisting representatives of the relevant ministries of the Government of Nepal, the Nepal Law Commission and other bodies should be formed, especially regarding the rights of girls from marginalized communities, and a comprehensive study and review of the existing laws and policy reforms should be carried out.

#### For active<sup>6</sup> civil campaigns and movements for the promotion of rights

- Through specific curriculum, increasingly educate, aware and empower girls from marginalized communities on their rights, concerns and participation, and support to increase their access to State agencies,
- Collaborate with relevant local level to involve, especially in the process of formulating policies and programs at the local level, special group of girls from the marginalized communities from the organisation's working areas, , and
- Engage in law-making process by submitting suggestions on existing policy on the rights of marginalized girls, their implementing status, and ammendements required, and collaborate with the State agencies by availing knowledge, skills and expertise.

<sup>6</sup> Children's rights, rights of girls (Dalit, Madhesi and Muslim, Badi and free Kamalhari and Kamaiya communities), rights of persons with disabilities (children and adults), rights of intersex children and adults of gender and sexual minorities.

## Annex-1: Details of persons with disabilities, boys and girls on the basis of age.

तालिका २०: अपाङ्गता भएका व्यक्तिहरूको उमेर समूहअनुसार जनसंख्याको वितरण

	जम्मा			पुरूष			महिला		
उमेर समूह	नेपाल	अपाङ्गता भएका		नेपाल	अपाङ्गता भएका		नेपाल	अपाङ्गता भएका	
	संख्या	संख्या	%	संख्या	संख्या	%	संख्या	संख्या	%
जम्मा	२९१६४४७८	६४७७४४	२.२	98243449	३५१३०१	٦.٤	१४९११०२७	२९६४४३	
0-8	२४३९२८३	२६३२१	9.9	१२९०४२४	१४३६४	9.9	११४८७४८	११९५६	9
X-9	२७६६४२७	३५०१७	9.3	488380X	98897	9.3	9323022	१४६०५	9.5
90-98	२९०९ ८६४	३४५७९	9.2	9884848	१९३७३	9.3	9893899	१५२०६	9.9
94 - 99	19985808	४६४६९	9.8	१४९४५२३	२४४४१	9.9	१४७१८८१	२०९१८	9.8
20 - 28	२७द३०६०	३७७६८	9.8	9309095	२१४९०	9.9	१४८२०४२	१६२७८	9.9
२४ - २९	२४४९३४९	33887	9.8	१९२२२४२	१९६८६	9.5	१३३७१०७	१३७५९	9
30 - 38	२१४७७१२	३११०७	9.8	९७८९७६	१८१०६	9.5	११६८७३६	93009	9.9
34 - 39	२०४१४९२	३२७०९	9.8	९३६९३१	१८९९४	२	9908849	१३७१४	9.2
80 - 88	१७४७८३२	३३४८३	9.8	<b>८२८४९३</b>	१९६२८	2.8	९१९३३९	93944	9.4
84 - 88	9835080	34998	2.8	६८७४२४	२०२४३	2.9	७४८४१४	98599	2
20-78	१४१३८५२	५०२१३	3.6	६९२४९४	२६२१६	3.5	७२१३५८	२३९९७	3.3
XX - X9	१०७५९४४	४४३८३	8.3	४३७४४ द	२३९९८	8.8	४३८३८६	: २१३८४	8
६० - ६४	828608	४०८४३	Х.3	४६५९६२	२६२४३	५.६	४८९६४३	२४६१०	X
६४ - ६९	७७१६१८	४७९९७	4.2	३७९६८९	२४९८०	६.६	389838	२३०१७	4.9
७० - ७४	६०९३७०	४४९४७	9.4	283088	२२६७१	9.5	३१७३१६	२३२५६	9.3
9×+	६४०७२६	६१२२९	9.8	३०६२०२	30388	9.9	३३४५२४	30558	9.3

