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Women in Nepal *An Analysis of their Present Status*

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AN ANALYSIS ON PRESENT STATUS OF WOMEN IN NEPAL

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Authors' Introduction

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Table of Abbreviation

CEDAW	Convention on Elimination of All Forms of Discrimination against Women
CERD	Committee on Elimination of Racial Discrimination
CRC	Committee on Rights of Child
CRPD	Committee on Rights of Persons with Disabilities
CSOs	Civil Society Organizations
FLFPR	Female Labor Force Participation
FPTP	First Past the Post
FWLD	Forum for Law and Development
GESI	Gender Equality and Social Inclusion
GII	Gender Inequality Index
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labor Organization
NGOs	Non Governmental Organizations
PIL	Public Interest Litigation
PR	Proportional Representation
SAAPE	South Asian Alliance for Poverty Eradication
SRPC	Shadow Report Preparation Committee
UN	United Nation
UNDP	United Nation Development Program
UNTIP	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

Background

Nepal, a Himalayan country, situated in South Asia has come a long way in order to provide equal rights to women. The position of women in Nepal has improved significantly compared to the days of yore thinning the barrier of gender inequality. Out of 29.62 million population of Nepal, women constitute 50.4 percent of the population of Nepal.¹ According to the Nepal Living Standards Survey (2010/11), Nepal has an adult literacy rate of 56.6%. However, the male and female literacy rates stand at 71.6% and 44.5% respectively, pointing to a huge disparity between the two genders. The National Census 2011 states that the literacy rates of men and women in Nepal differ by 17.7%. Though many reformative actions have been taken place in ensuring women rights, women still are facing de facto discrimination in political, social, cultural aspects. *The data of 2017 shows that Nepal has a Gender Inequality Index (GII) value of 0.480, ranking it 118 out of 160 countries resulting due to inadequate special provisions to address the needs of women.*²

Nepal is a state party to major international human rights instruments and has adopted comprehensive legal framework by domesticating international obligations into national legislation. Right to equality and rights of women are enshrined in fundamental rights in Constitution of Nepal, 2015. Various legislative acts have been formulated that formally abolish inequalities on the grounds of sex, prohibit gender discrimination, and expand the system of reservations for women. *However, patriarchal mindset and various prevailing malpractices often take precedence over these laws and policy, regressing status of women. Although women are now taking leadership roles and participating in decision making positions and working in the economic, legal, political sector; the road to women's substantive participation is littered with manifold challenges.* Each of these economic, socio-cultural, political and legal aspects of women are intrinsically tied and can't be analyzed in isolation. *The role of government, non-government organizations, CSOs plays a huge role to increase accountability and monitoring of gender equality commitments and to establish and strengthen linkages between the normative and operational aspects of gender equality and women's empowerment.*

Status of Women in Political/Decision-making Level and Economic Activities

Women's political participation is a fundamental prerequisite for gender equality and genuine democracy. It facilitates women's direct engagement in public decision-making and is a means of ensuring better accountability to women.³ Despite comprising more than 50 percent of the world's population, women continue to lack access to political leadership opportunities and resources at all levels of government. Governance structures which do not result in the equal participation of men and women are by definition neither inclusive nor democratic.⁴ In Nepal, after long struggle, the constitution has transformed Nepal from unitary to federal governance with three tiers of Government at federal, provincial and local levels. Local elections were held

¹ Nepal Population, available at <https://countrymeters.info/en/Nepal>

² UNDP, Human Development Indices and Indicators: 2018 Statistical Update ,available at http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/NPL.pdf

³ UN Women, Political Participation of Women, available at <http://asiapacific.unwomen.org/en/focus-areas/governance/political-participation-of-women>

⁴ Women's Participation in Local Governance, *iKNOW politics*, available at <http://iknowpolitics.org/sites/default/files/cr20women27s20participation20in20local20governments20en.pdf>

after almost two decades in Nepal and there was successful completion of provincial and federal elections as well in 2017 which can be taken as historic milestone for the country. It has become a key vessel for acting upon the Constitutional obligation towards gender and social inclusion in the government and ending the political impasse that beset the country for many years.⁵

Articles 38, 40, 252, 253, 255, 256, 258, 259, 261 of the Constitution has guaranteed representation of women and Dalit women through the principle of proportional representation in all bodies with special provisions for participation in public services and other sectors of employment. The electoral quota of Nepal has ensured 33% women's representation in federal and provincial parliaments and 40% in local governments. ⁶ *Many Acts have been formulated accordingly to ensure women's participation in the election. Local Body Election (First Amendment) Act 2017 has provisioned 50% women candidacy for position of Chair, Vice-Chair; Mayor, Deputy Mayor; Chief and Deputy Chief of District Coordination Committee from political parties and has also ensured at least two women candidacy (including one Dalit women) at Ward level.*⁷ Similarly, State Assembly Members Election Act, 2017; Federal Parliamentary Election Act, 2017; Election Commission Act, 2017, Political Parties Registration Act all provides for the positive discrimination in the form of reservation for women. These mandatory legal provisions has led to increased representation of women of country in political decision making positions as a result of which women's representation has reached 41% in local level and 33% in federal level. However, 91% of the deputy positions-deputy mayors in municipalities and vice chairpersons in rural municipalities were won by women, but men won 98% of chief positions-mayors and chairpersons. Similarly, in HoR, 3.64% were elected via FPTP and 76.36% via PR whereas in Provincial Assembly, 5.15% were elected via FPTP and 78.18% via PR.⁸

Though 8 out of 16 parliamentary committees are being chaired by women; all chief ministers in 7 provinces are male and there are only 4 women ministers out of 25 Federal Council of Ministers. This can largely be attributed to an overarching patriarchal socialization that played out in the selection and nomination process for the leadership positions. The public perception towards elected women representatives remains clouded by the normative construct of gender roles and responsibilities. Reserved quotas still appear to be the only way Nepali women seem to be able to receive proportional nomination.⁹ In the non-quota positions as ward members, of the 13,484 positions across Nepal, only 2% were won by women, mainly because they weren't even nominated for such positions since quota nominations did not apply to these positions.¹⁰ As far as women's participation in International forum is concerned, Ms. Bandana Rana was elected in UN CEDAW Committee in 2015, Ms. Sapana Pradhan Malla was elected in UN CAT Committee in 2015, and Ms. Melisa Uprety was elected in UN Working Group on Discrimination against Women

⁵Nepal's Locally Elected Women Representatives Exploratory Study of Needs and Capacity, *Australian Aid, the Asia Foundation*, available at <https://asiafoundation.org/wp-content/uploads/2018/07/Nepals-Locally-Elected-Women-RepresentativesExploratory-Study-of-Needs-and-Capacity-Assessment.pdf>

⁶ Constitution of Nepal 2015, Article 38 (4), 84(8), 86, 91(2), 295(4), 216(4)

⁷ Local Body Election (First Amendment) Act 2017 [Chapter 4, Section 17 (4); Chapter 2, Section 6(2) and Chapter 4, Section 21]

⁸ Nepal Election Commission, *Quantitative Details of Elected Candidates by Sex*, available at <http://result.election.gov.np>

⁹ Researching women's political inclusion in the 2017 local elections: Some comments and findings, UNDP, 2018, available at <http://www.np.undp.org/content/nepal/en/home/blog/2018/researching-women-s-political-inclusion-in-the-2017-local-elections-some-comments-and-findings.html>

¹⁰ Bhola Paswan, "Data Reveals Local Elections a Disaster for Gender Equality" *The Record*, 2018 , available at <https://www.recordnepal.com/wire/features/data-reveals-local-electionsa-disaster-for-gender-equality/>.

in Law and in Practice in 2017. Similarly, there are 5 women ambassadors representing Nepal. Likewise, as per data collected from National Judicial Council, there are 2 women judges out of 19 in Supreme Court, 10 women judges out of 147 in High Court and 3 women judges out of 234 in District Court.

Considering economical aspect, Nepal has seen an economic recovery after disruptions from earthquakes and a trade blockade, but growth is expected to slow from 7.5 percent in fiscal year 2017 to 4.6 percent in 2018 due to slow recovery of exports, slowdown in remittances, and an increase in lending rates.¹¹ According to the World Economic Forum's Global Gender Gap Report of 2017, Nepal ranks 111 out of 144 countries. In 2017, among 144 countries, Nepal's rank in economic participation and opportunity is 110/144.¹² Nepal has one of the highest proportions of informal employment in the world, highest in the Asia-Pacific Region, with over 94 percent of country's workforce engaged in informal jobs. In Nepal, 90.7 percent of such jobs are in the informal sector (IS) followed by 3.4 percent and 0.2 percent in formal sector (FS) and in household (HH) jobs respectively. In terms of gender distribution of informal jobs, Nepal's 90.7 percent of men are in informal employment (85.2 in IS, 5.3 in FS and 0.2 in HH) as compared to 97.5 percent of Nepali women in similar works (95.6 in IS, 1.7 in FS and 0.3 in HH).¹³

Data from the World Bank indicates that Nepal's Female Labor Force Participation Rate (FLFPR) is 80 percent.¹⁴ Despite their increasing labour force participation rates¹⁵, women are still disadvantaged in the labour market in terms of their share in employment, remuneration and working conditions.¹⁶ The Nepal Labour Market Update (2016) partially attributes the increase in the FLFPR to the male out-migration. Women workers are more likely to be employed in agriculture than men – 84.3 per cent compared to 62.2 per cent.¹⁷ Women are less likely than men to be employed in professional/technical/managerial occupations (6% versus 10%), as well as clerical services (2% versus 6%), sales and services (13% versus 23%), skilled manual labor (6% versus 15%), and unskilled manual labor (3% versus 13%).¹⁸ Women are more involved in informal sector and there is unequal pay between men and women. According to Demographic and health survey, women are almost three times more likely than men not to be paid (52% versus 16%).¹⁹ This adversely affects in the nation's attempts at sustainable development as it reduces women's participation in the workplace and in developmental works.

¹¹ *Jobless Growth?*, Washington, D.C. : World Bank Group. , South Asia Economic Focus, 2018 available at <http://documents.worldbank.org/curated/en/407741542809287787/pdf/South-Asia-Economic-Focus-Spring-2018.pdf>

¹² Bridging the gender gap, available at <http://kathmandupost.ekantipur.com/printedition/news/2018-01-21/bridging-the-gender-gap.html>

¹³ Women and men in the informal economy: A Statistical picture (Third Edition) , International Labour Office – Geneva: ILO, 2018, ISBN 978-92-2-131581-0

¹⁴ Nepal: Female Labour Force Participation, available at https://www.theglobaleconomy.com/Nepal/Female_labor_force_participation/

¹⁵ Labor force participation rate is the proportion of the population ages 15 and older that is economically active: all people who supply labor for the production of goods and services during a specified period

¹⁶ Empowering women working in the informal economy , Global Commission on the future of the work, ILO, 2018 available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_618166.pdf

¹⁷ Nepal Labour Market Update , ILO Country Office for Nepal , 2017 available at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/publication/wcms_543497.pdf

¹⁸ *ibid*

¹⁹ Ministry of Health, Nepal; New ERA; and ICF, 2017, *Nepal Demographic and Health Survey 2016*, Kathmandu, Nepal

Labor of women is devalued in the market simply because the most important work that they do is considered as unproductive economically. Since women cannot engage in paid work, she is always considered economically dependent on men in the society, despite doing invaluable work for her family and society. As a result of which they are subjected to various kinds of physical violence and mental agony and they are forced to consider themselves as a weak and helpless.²⁰ However, there has been some improvements in the legal provisions as a result of which some positive changes have been achieved. Foreign Employment Act, 2007 prohibits gender discrimination. A man or woman has right of equal opportunity for foreign employment. Moreover, Labour Act 2017 requires an employer to follow non discrimination principle and ensure equal pay for equal value of work. The 14th Plan and Labour and Employment Policy has strategically focused on ensuring that women's employment is safe and systematic. Ministry of Finance has a Gender Responsive Budget Committee established and operated under the Gender Responsive Budget Formulation Guidelines, 2013. The land and property ownership of women has reached to 26 percent in 2017 compared to 20 percent in 2011. In the cooperative sector, involvement of women has been more than 50 per cent and around 40 per cent of cooperatives are being led by women. Affirmative actions taken by Government have shown results in public sector employment, such as in civil service, women now compromise 23% of public sector civilian workforce.

Policies and Laws

The Constitution of Nepal 2015 in its preamble aims to end all forms of discrimination and oppression against all people of Nepal. It guarantees right to equality and rights of women under section of fundamental rights. Article 18 enshrines a general principle of equality before law and outlaws any form of discrimination. Nepal's Constitution is progressive for women rights under two aspects. Firstly, the rights of women are ensured as fundamental right (FR) under Article 38 which is progressive and is ahead of other Constitutional provision of South Asia. Secondly, constitutional provision setting aside 33% representation of women in Nepal's all state machineries is a major breakthrough. Article 38 provides for equal lineage rights, equal rights in property and family affairs and also talks about right to compensation, positive discrimination, principles of proportional representation, rights relating to safe motherhood and reproductive health. It further criminalizes any physical, mental, sexual, psychological or other form of violence or exploitation against women, which in itself serves a broader spectrum.

Nepal has ratified many International Covenants including major twin covenants- ICESCR, ICCPR. It has also ratified CEDAW, CAT, CERD, CRC, CRPD. Among them CEDAW is considered international bill of women's rights and Nepal became state party in 1991 and since then it has been providing periodic reports and formulating, amending laws as per the concluding observations of CEDAW Committee. Recently, it has submitted sixth periodic report to CEDAW Committee to which the concluding observations have also been provided by CEDAW Committee on Nov, 2018.²¹ Nepal needs to ratify other important Conventions too regarding women. It should ratify the UNTIP Protocol (Palermo) without further delay and integrate its provisions into the human trafficking legislations to harmonize the human trafficking and foreign employment laws to address human trafficking in the name of foreign labor migration. Nepal Treaty Act

²⁰ Meena Acharya, Women in Unpaid Care Work, ASMITA, 2018

²¹ CEDAW Reporting status, available at

https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=NPL&Lang=EN

provides for the domestication of international laws into the national laws and on this basis and in line with Constitution of Nepal, many laws have been formulated addressing the women rights.

Initiatives have been taken to draft new laws and amend the existing ones as a result of which Federal Parliament has enacted more than 105 acts, which includes 16 acts related to fundamental rights meant for the implementation of fundamental rights enshrined in the constitution. Nepal's oldest codified law, the General code of Nepal (*Muluki Ain*) has been replaced by Civil (Code) Act 2017, Criminal (Code) Act 2017, Civil Procedures (Code) 2017, Criminal Procedures (Code) 2017, Criminal Offences (Sentencing Determination and Implementation) Act, 2017 and have been brought into effect. These acts have criminalized all forms of discrimination, violence, social malpractices, or any harmful acts against women, and made provisions for punishment of the perpetrators, along with ensuring compensation for the victims. Ministry of Women, Children and Senior Citizens at the federal level, Ministry of Social Development at the province level, and Social Development Section at the local level have been established to look into overall matters of women rights. Similarly, National Women Commission has been upgraded into a constitutional body.²²

In order to end all forms of violence against women and girls, legal provisions have been made accordingly. House of Representatives has passed a four-point resolution motion to end violence against women and girls and an action plan for the implementation of the resolution motion and a high-level mechanism for the monitoring of the implementation has been formed accordingly. Bilateral labour agreements with seven destination countries have been concluded to ensure decent work opportunity for women and end irregular migration for foreign employment. In order to mainstream the 2030 Agenda for Sustainable Development Goals and targets into National Policies and Programs 430 indicators have been devised in national level which includes 20 indicators for the implementation of Goal 5 and the targets which is related to gender equality and women empowerment.²³ Another effort in line with CEDAW is amendment of existing legislation for a change in gender discriminatory provisions. 88 laws have been amended since 2006 to free them from discriminatory provisions. Ministry of Federal Affairs and Local Development (MoFALD), since 2010, has been implementing a separate Gender Equality and Social Inclusion (GESI) Policy. Mandatory provision has been put into force for allocating at least 10 percent of government grants to local bodies for women empowerment programs.²⁴ Similarly, regarding the partition of the family Property, it does not discriminate between son and daughter as both are granted equal status with regard to the property granting equal opportunity to son and daughter to claim the ancestral property irrespective of marital relation.²⁵

Likewise, Witchcraft related Accusation (Offence and Punishment) Act, 2015; Sexual Harassment at Workplace (Control) Act, 2014; Right to Safe Motherhood and Reproductive Health Act, 2018; The Act to Amend Some Nepal Acts for Maintaining Gender Equality and Ending Gender Based Violence, 2015 are some laws that has come into force ensuring women rights. Despite the progressive legal provisions some laws are yet to be amended. Citizenship provisions have made

²² Constitution Of Nepal 2015, Article 252-254

²³ Statement delivered at the Sixth Periodic Review of Nepal at 71st session of CEDAW committee by the Leader of Nepali Delegation Hon'ble Minister for Women, Children and Senior Citizens ,Mrs. Tham Maya Thapa, available at https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/NPL/INT_CEDAW_STA_NPL_32836_E.pdf

²⁴ Presentation by H.E. Deepak Dhital, member of the Nepali Delegation to the 71st Session of the Committee on the Elimination of Discrimination Against Women (CEDAW) to Consider the 6th Periodic Report of Nepal, available at https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/NPL/INT_CEDAW_STA_NPL_32837_E.pdf

²⁵ Civil Code 2017, Chapter on Partition of Family Property, Section 205 and 206

women as 'dependent citizen'. The categorization of Nepali women envisioned by Constitution derails personality of women. Article 11(2), 11(2) and 11(7) categorizes Nepali mother as: Nepali mother with Nepali men; Nepali mother with unidentified men and Nepali mother with foreign men. Similarly, Article 11 (5) has impaired independent identity of women undermining them to confer citizenship to their children when father of children remains unidentified. This is discriminatory and needs amendment. Similarly, there is need of amendment regarding the ambiguity of bigamy. As per Section 175 (1), Chapter on Offense relating to marriage, Criminal Code 2017, bigamy is prohibited whereas Section 69 of Chapter on Marriage, Civil Code 2017 provides that if a woman is proved to have produced a child by conceiving pregnancy from physical intercourse with a man, marriage between such a man and a woman shall, ipso facto, be deemed to have been solemnized. This ambiguity needs to be amended.

Women Rights Violations and Resistance Movements by CSOs

Nepal is party to many International Conventions that has ensured the rights of women and has formulated the national laws accordingly. It is party to Conventions that protect civil and political rights, ICCPR; economic, social and cultural rights, ICESCR. However, women rights violations have been taking place in almost all these economic, social, political, cultural rights of women. Women in Nepal face many challenges due to issues of inequality and injustice in the society. Gender discrimination and gender-based violence are just some of the serious and widespread problems for women. Though efforts have been made to eliminate de jure discrimination, de facto discrimination is still prevalent. A National Women's Commission report on the Socio-Economic Status of Women in Nepal presents evidence that women have lower access to education, health services, property, social security and freedom, as well as decision-making processes.

Despite the existence of normative framework, there is lack of information on measures being taken to eliminate horizontal and vertical segregation in labour market, gender wage gap in public and private sectors. Women under age of 24 are not allowed to work as housemaids or domestic workers in foreign countries whereas it does not apply for men which is discriminatory. Nepal has the third highest rate of child marriage in Asia—37 percent of girls are married before 18, and 10 percent by 15. In 2016, the government launched a national strategy to end child marriage by 2030, but practical action plan is yet to be implemented.²⁶ Some customary discriminatory practices still exist in the society. Chaupadi, a practice that forces menstruating women and girls from their homes, was criminalized under a new law after a series of publicized deaths of women and girls in menstrual sheds. Domestic violence, rape, trafficking are some of the major forms of violence against women which needs serious amount of concern from the government authorities.²⁷ Violence against women and girls, including early and forced marriage is considered responsible for women's relative poor health, livelihood insecurity, and inadequate social mobilization. Marginalized women, women with disabilities tend to face multiple forms of discrimination and are more vulnerable. Though Act to Amend Some Nepal Acts to Maintain Gender Equality and End Gender-Based Violence 2015 stipulates that any psychological abuse of women, including asking for dowry, humiliation, physical torture, and shunning women for not

²⁶ Nepal, Events of 2017, Human Rights Watch, available at <https://www.hrw.org/world-report/2018/country-chapters/nepal>

²⁷ Anbesi, *A year Book on Violence against Women*, Lalitpur: WOREC, Nepal, 2016

providing a dowry, is punishable, it is still prevalent. Similarly, women accused of witchcraft are severely traumatized and suffer physical and mental abuse.²⁸

CSOs have been continuously carrying out its resistance movements against women right violations since the time being. Since the 1990 the number of NGOs and Civil Societies and their activities has been significantly increased in Nepal. There are varieties of NGOs in terms of their size, scope, point of reference and organizational competencies. NGOs' and CSOs' role in the economic and social transitional period is always crucial and usually beneficial.²⁹ Many NGOs have been registered in Nepal carrying out the role for putting an end to the women rights violations. They facilitate and organize training according to local need. Many advocacy campaigns, lobby/advocacy, policy advocacy are carried out by these CSOs in order to make the government sector aware on serious women rights violations issues and have carried out activities in its own initiations awaring the public about the importance of women rights and the goal have been achieved accordingly.

²⁸ Country Reports on Human Rights Practices for 2017, United States Department of State , Bureau of Democracy, Human Rights and Labour, available at <https://www.state.gov/documents/organization/277533.pdf>

²⁹ Medani Bhandari, *Civil Society and Non-Governmental Organizations (NGOs) Movements in Nepal in terms of Social Transformation*, The Pacific Journal Of Science and Technology, Vol 15, 2014

Recommendations

On basis of above discussions, following are the set of recommendations for SAAPE to consider:

- Intersectional and multiple forms of discrimination of women especially multiple discrimination faced by Dalit women, women with disabilities, displaced women, women from religious and sexual minorities, indigenous women and Madhesi women needs to be addressed for which it can conduct policy advocacy to concerned stakeholders.
- Conduct lobby/advocacy to develop as well as implement Standard of Procedures for women's reservation in key position and in public institutions and government agencies. Lobby should be carried out to political parties to increase its women membership to 50%. Moreover, lobby should be carried out to increase and ensure 33% participation of women in the portfolios (major position) within the political party.
- Carry out lobby advocacy to government sector for introducing target based and time bound special measures with phase out policy where applicable.
- Carry out literacy campaigns targeting especially displaced women, women affected by disaster, indigenous women, Dalit women, LGBTI, women with disabilities and women from geographically disadvantaged locations.
- Women's role in informal sector needs to be acknowledged and advocacy and campaigns needs to be carried out to eliminate the gender pay gap.
- Take steps to amend/repeal discriminatory provisions that prevent women from acquiring, retaining and transferring citizenship on an equal basis with men in Constitution particularly Article 11 (5), 11 (6), 11 (7) and problematic provision of Citizenship Act amendment Bill that still does not recognize independent personality of women. This can be done via collaboration with like minded organizations that have been working in this sector and joint writ application can be filed via Public Interest Litigation (PIL).
- Pressurize the concerned authorities to make data available on number of complaints filed and investigated under Sexual Harassment at Workplace and conduct awareness campaigns to aware women about the complaint mechanisms of sexual harassment at workplace.
- Pressurize concerned stakeholders to implement regulatory frameworks aimed at encouraging financial institutions that facilitate women's access to credit (eg; by allowing subsidy in collateral or in government guarantee without collateral and by allowing movable property as collateral)
- Carry out entrepreneurship activities for which government can provide loan on limited interest to empower women economically and carry out programs for their livelihood upliftment.
- Carry out campaigns/provide different schemes to concerned stakeholders regarding the need of providing subsidies to the home based appliances/equipment to make it easier for women to conduct the household activities that would help them utilize their energy/time in other activities.
- Carry out campaigns to provide age-specific, rights-based and evidence based comprehensive Sexuality Education to boys and girls in both public and private schools, to enable them to make informed choices and decision, control over their sexuality and adopt safe and responsible sexual behaviors.

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