3. Nepal

Statistics

GENERAL

Population

- Total population: 25,200,000.[1]
- Population by sex: 11,781,610 (female) and 12,371,340 (male).[2]
- Percentage of population aged 0–14: 40.7.[3]
- Percentage of population aged 15–24: 19.2.[4]
- Percentage of population in rural areas: 88.[5]

Economy

- Annual percentage growth of gross domestic product (GDP): 4.9.[6]
- Gross national income per capita: USD 230.[7]
- Government expenditure on health: 4.2% of GDP.[8]
- Government expenditure on education: 2.0% of GDP.[9]
- Population below the poverty line: 42.0% (below national poverty line); 37.7% (below USD 1 a day poverty line); 82.5% (below USD 2 a day poverty line).[10]

WOMEN'S STATUS

- Life expectancy: 60.1 (female) and 59.6 (male).[11]
- Average age at marriage: 17.9 (female) and 21.5 (male).[12]
- Labor force participation: 85.0% (female) and 92.1% (male).[13]
- Percentage of employed women in agricultural labor force: 45.1.[14]
- Percentage of women among administrative and managerial workers: 9.[15]
- Literacy rate among population aged 15 and older: 24.0% (female) and 59.5% (male).[16]
- Percentage of female-headed households: 13.[17]
- Percentage of seats held by women in national government: 6.[18]

CONTRACEPTION

- Total fertility rate: 4.26 lifetime births per woman.[19]
- Contraceptive prevalence rate among married women aged 15–49: 39% (any method) and 35% (modern methods).[20]
- Prevalence of sterilization among couples: 17.5% (total); 12.1% (female); 5.4%(male).[21]
- Sterilization as a percentage of overall contraceptive prevalence: 61.4.[22]

MATERNAL HEALTH

- Lifetime risk of maternal death: 1 in 21 women.[23]
- Maternal mortality ratio per 100,000 live births: 905.[24]
- Percentage of pregnant women with anemia: 65.[25]
- Percentage of births monitored by trained attendants: 12.[26]

ABORTION

- Total number of abortions per year: Information unavailable.[27]
- Annual number of hospitalizations for abortion-related complications: Information unavailable.[28]
- Rate of abortion per 1,000 women aged 15–44: Information unavailable.[29]
- Breakdown by age of women obtaining abortions: 6.7% (under 20); 20.0% (between 20–24); 15.8% (between 25–29); 26.7% (between 30–34); 17.6% (between 35–39); 13.3% (40 or older).[30]
- Percentage of abortions that are obtained by married women: 87.9.[31]

SEXUALLY TRANSMISSIBLE INFECTIONS (STIs) AND HIV/AIDS

- Number of people living with sexually transmissible infections: Information unavailable.
- Number of people living with HIV/AIDS: 58,000.[32]
- Percentage of people aged 15–24 living with HIV/AIDS: 0.28 (female) and 0.27 (male).[33]
- Estimated number of deaths due to AIDS: 2,400.[34]

CHILDREN AND ADOLESCENTS

- Infant mortality rate per 1,000 live births: 71.[35]
- Under five mortality rate per 1,000 live births: 106 (female) and 91 (male).[36]
- Gross primary school enrollment ratio: 108 (female) and 128 (male).[37]
- Primary school completion rate: 76% (female) and 67% (male).[38]
- Number of births per 1,000 women aged 15–19: 117.[39]
- Contraceptive prevalence rates among married female adolescents: 4.4% (modern methods); 2.2% (traditional methods); 6.5% (any method).[40]
- Percentage of abortions that are obtained by women younger than age 20: 6.7.[41]
- Number of children under the age of 15 living with HIV/AIDS: 1,500.[42]

ENDNOTES

1. *See* United Nations Population Fund (UNFPA), The State of World Population 2003 75 (2003)[hereinafter The State of World Population 2003]. Estimates for 2003.
2. *See* United Nations Population Fund (UNFPA), UNFPA Country Profiles, *available at* http://www.unfpa.org/profile/default.cfm (last visited Aug. 12, 2003). The figures for male and female population was not available in The State of World Population 2002. Estimates for 2001.
3. *See* The World Bank, World Development Indicators 2003 39 (2003). Estimates for 2001.
4. *See* United Nations Population Fund (UNFPA), UNFPA Country Profiles, *available at* http://www.unfpa.org/profile/default.cfm (last visited Aug. 12, 2003).
5. *See* The State of World Population 2003 75 (2003). Estimates for 2003, *supra* note 1, at 75. Estimates for 2003.
6. *See* The World Bank, World Development Indicators 2003 187 (2003). Estimates for 1990-2001.
7. *See* The World Bank, World Development Indicators 2003, Data Query, *available at* http://devdata.worldbank.org/data-query/ (last visited Aug. 18, 2003). The statistic was obtained through the Atlas method in or the US $ conversion rate during 2001.
8. *See* The State of World Population 2003 75 (2003), *supra* note 1, at 75..
9. *See* The World Bank, World Development Indicators 2000 285 (2000).
10. *See* United Nations Population Fund (UNFPA), UNFPA Country Profiles, *available at* http://www.unfpa.org/profile/default.cfm (last visited Aug. 12, 2003).
11. *See* World Health Organization South-East Asia Region (WHOSEA), Women's Health in South-East Asia, Women's health and development indicators- Nepal, *at* http://w3.whosea.org/women/regtab_nepal.htm (last visited Aug. 19, 2003). WHOSEA's source was Central Bureau of Statistics, Population Census 1991 (1993). Estimates for 1991.
12. *See* United Nations Population Fund (UNFPA), The State of World Population 2003 71 (2003).
13. *See* United Nations Population Fund (UNFPA), UNFPA Country Profiles, *available at* http://www.unfpa.org/profile/default.cfm (last visited Aug. 12, 2003).
14. *See* United Nations Population Fund (UNFPA), UNFPA Country Profiles, *available at* http://www.unfpa.org/profile/default.cfm (last visited Aug. 12, 2003).
15. *See* World Health Organization South-East Asia Region (WHOSEA), Women's Health in South-East Asia, Women's health and development indicators- Nepal, *at* http://w3.whosea.org/women/regtab_nepal.htm (last visited Aug. 19, 2003).
16. *See* Save the Children, State of World's Mothers 2003 40 (2003). This indicator represents the percentage of seats in national legislatures or parliaments occupied by women.
17. *See* The United Nations, The World's Women 2000 48 (2000). Estimates for 1991/1997.
18. *See* WHO et al., Maternal Mortality in 1995: Estimates Developed by WHO, United Nations Children's Fund (UNICEF), UNFPA 45 (2001) [hereinafter WHO et al., Maternal Mortality in 1995]. Estimates for 1995.
19. *See* The State of World Population 2003 71 (2003), *supra* note 1, at 71.
20. *See* Save the Children, State of World's Mothers 2003 40 (2003).
21. *See* The State of World Population 2003 75 (2003), *supra* note 1, at 71.
22. *See* id.
23. *See* id.
24. *See* Akinrinola Bankole et. al., *Characteristics of Women Who Obtain Induced Abortion: A Worldwide Review,* 25 Int'l Fam. Planning Persp. 68-77 (1999), *available at* http://www.agi-usa.org/pubs/journals/2506899.html (last visited Aug. 21, 2003). The statistics were obtained through ad hoc surveys and hospital records. Estimates for 1984–1985.
25. *See* id.
26. *See* id.
27. *See* UNAIDS & World Health Organization (WHO), Epidemiological Fact Sheets on HIV/AIDS and Sexually Transmitted Infections Updated 18 August 2003: Nepal 2 (2003), *available at* http://www.who.int/GlobalAtlas/home.asp, last visited Aug. 18, 2003). Estimates for 2001.
28. *See* The State of World Population 2003 71 (2003), *supra* note 1, at 71.
29. *See* UNAIDS & World Health Organization (WHO), Epidemiological Fact Sheets on HIV/AIDS and Sexually Transmitted Infections Updated 18 August 2003: Nepal 2 (2003), *available at* http://www.who.int/GlobalAtlas/home.asp, last visited Aug. 18, 2003).
30. *See* The State of World Population 2003 71 (2003), *supra* note 1, at 71.
31. *See* United Nations Population Fund (UNFPA), UNFPA Country Profiles, *available at* http://www.unfpa.org/profile/default.cfm (last visited Aug. 12, 2003).
32. *See* The State of World Population 2003 71 (2003), *supra* note 1, at 71.
33. *See* United Nations Population Fund (UNFPA), The State of World Population 2002 70 (2002).
34. *See* The State of World Population 2003 71 (2003), *supra* note 1, at 71.
35. *See* Saroj & K.G. Santhya, *Reproductive Choices for Asian Adolescents: A Focus on Contraceptive Behavior*, 28 Int'l Fam. Planning Persp. 186-195 (2002), *available at* http://www.agi-usa.org/pubs/journals/2818602t.html (last visited Aug. 21, 2003). Estimate for 1996.
36. *See* Akinrinola Bankole et. al., *Characteristics of Women Who Obtain Induced Abortion: A Worldwide Review,* 25 Int'l Fam. Planning Persp. 68-77 (1999), *available at* http://www.agi-usa.org/pubs/journals/2506899.html (last visited Aug. 21, 2003). The statistics were obtained through ad hoc surveys and hospital records.
37. *See* UNAIDS & World Health Organization (WHO), Epidemiological Fact Sheets on HIV/AIDS and Sexually Transmitted Infections Updated 18 August 2003: Nepal 2 (2003), *available at* http://www.who.int/GlobalAtlas/home.asp, last visited Aug. 18, 2003).

Nepal has existed as an independent kingdom for more than 1,500 years[1]. Although it is surrounded by former British colonies, Nepal has never been ruled by a foreign power.[2] Instead, the kingdom has been under the control of absolute monarchs for much of its history.[3] This tradition ended in November 1990, when a nationwide movement led to the formation of a multiparty democracy and constitutional monarchy under a new constitution.[4] In 1991, Girija Prasad Koirala became the country's first elected prime minister.[5] There have been frequent changes in government since then, reflecting a period of political instability.[6] In 2002, the king dismissed the elected prime minister and assumed a greater role for himself. All prime ministers since then have been appointed by the king.[7]

In 1996, the Communist Party of Nepal (Maoists) launched a "People's War" against the government, demanding social, political and economic reforms.[8] More than 8,500 Maoists, security force members and civilians have died since the beginning of the insurgency.[9] In view of the escalating violence, the government declared a state of emergency throughout Nepal in November 2001, which lasted until August 2002.[10] In January 2003, the government and insurgency leaders entered into a cease-fire agreement, which broke down in August of that year.[11]

Nepal has a population of approximately 23.2 million, of which some 88% live in rural areas.[12] Women make up 49% of the population.[13] There are 61 indigenous ethnic groups and four castes.[14] Although Nepalese speak more than 125 languages and dialects, the official language is Nepali, which is spoken by almost 60% of the population.[15] Nepal is the only official Hindu state in the world.[16] While 86% of the population is Hindu, 8% of Nepalese practice Buddhism, 4% follow Islam and 2% practice other religions.[17]

There are some 100,000 Bhutanese refugees living in Nepal.[18] They fled Bhutan in response to that country's discriminatory citizenship policies targeting its ethnic Nepalese population in the early 1990s.[19]

Nepal has been a member of the United Nations (UN) since 1955.[20] It also belongs to the South Asian Association for Regional Cooperation (SAARC).[21]

I. Setting the Stage: The Legal and Political Framework of Nepal

Fundamental rights are rooted in a nation's legal and political framework, as established by its constitution. The principles and goals enshrined in a constitution along with the processes it prescribes for advancing them, determine the extent to which these basic rights are enjoyed and protected. A constitution that upholds equality, liberty and social justice can provide a sound basis for the realization of women's human rights, including their reproductive rights. Likewise, a political system committed to democracy and the rule of law is critical to establishing an environment for advancing these rights. The following section outlines Nepal's legal and political framework.

A. THE STRUCTURE OF NATIONAL GOVERNMENT

On November 9, 1990, Nepal ratified a new constitution and became a constitutional monarchy with a multiparty democracy.[22] Under the constitution, the Nepalese people maintain principal authority for the country.[23] The constitution also establishes three branches of government—executive, legislative and judicial—and outlines functions for each.

Executive branch

The executive power of government is vested in the king and the Council of Ministers, a body consisting of members of Nepal's bicameral parliament and headed by the prime minister.[24]

The king is chief of state and largely a figurehead of the government.[25] He also serves as commander of the Royal Nepal Army, although a three-member Defense Council headed by the prime minister commands the military.[26] The king's role as commander gives him broad powers to declare a state of emergency, subject to approval by the *Pratinidhi Sabha* (House of Representatives), in cases of threats to national security or sovereignty, foreign aggression, armed revolt, or severe economic depression.[27] During the period of emergency, which may remain in effect for six months and is renewable for the same duration, fundamental rights may be suspended.[28] The king's responsibilities include appointing the prime minister, state ministers and assistant ministers from among elected members of parliament.[29] He also has the authority to suspend or discontinue a legislative session of either house; dissolve the *Pratinidhi Sabha* with the prime minister's recommendation and call for new elections; grant pardons; suspend, commute or remit any sentence passed by any court; appoint all ambassadors and emissaries for the kingdom; and remove any barriers to enforcing the constitution.[30]

Accession to the throne is hereditary and subject to declaration by the *Raj Parishad*, which consists of members of the royal family and leading members of various branches of government.[31] The king may lose the throne by either abdicating power or being declared physically or mentally unfit to perform his duties upon a two-thirds vote of the *Raj*

Parishad.[32] In either case, the *Raj Parishad* is responsible for declaring the heir apparent to be the new king or appointing a regent when the heir is under the age of 18.[33]

The prime minister, who is usually the leader of the majority party in the *Pratinidhi Sabha*, is in fact the head of government.[34] He or she serves as the chief link between the palace and the government.[35] The prime minister's duties include informing the king of decisions regarding administration of the kingdom, bills to be introduced in parliament and the state of affairs of the country.[36] The prime minister also presides over the Council of Ministers, which is responsible for the direction, supervision and conduct of the general administration of the country.[37] The king's powers, except those that are exclusively within his domain, are exercised by and with the advice and consent of the council.[38] Council members are appointed by the king upon the prime minister's recommendation from among elected members of parliament.[39] Both the prime minister and other council ministers are collectively responsible to the *Pratinidhi Sabha*.[40]

Legislative branch

The two houses of parliament are the *Rashtriya Sabha* (National Assembly) and the *Pratinidhi Sabha*.[41]

The *Rashtriya Sabha* is a permanent house consisting of 60 members, each serving a six-year term, with one-third of its membership retiring every two years.[42] Of the total number of members, ten are nominated by the king; 15 are elected by an electoral college representing the local government of each of Nepal's five development regions; and 35 members, including at least three women, are elected by the *Pratinidhi Sabha*.[43] The *Rashtriya Sabha* has various subcommittees such as the Social Justice Committee, which have advocated for the reform of discriminatory laws against women.[44]

The *Pratinidhi Sabha* consists of 205 directly elected members; each member serves a five-year term, unless the house is dissolved earlier.[45] The constitution requires that women account for at least 5% of every political party's candidates for election to the *Pratinidhi Sabha*.[46] The constitution empowers the house to form any number of committees to conduct business; there are currently nine standing committees, including the Foreign Affairs and Human Rights Committee, and the Population and Social Development Committee.[47] Either house of parliament may also pass a resolution demanding that a joint committee be constituted to facilitate the conduct of business between the two houses, resolve disagreements on any bill or for any other specified reason.[48] The constitution provides that the joint committee shall consist of up to 15 members in the ratio of two *Pratinidhi Sabha* members to one *Rashtriya Sabha* member.[49] The committees are dissolved when parliament dissolves, and are reconstituted after general elections.[50]

Parliament's principal function is to create laws. All bills, with the exception of finance bills, which must originate in the *Pratinidhi Sabha,* may be introduced in either house.[51] The standard legislative procedure for a bill to become law requires a bill's passage by both houses and approval by the king.[52] If the king returns the bill to its originating house for further discussion and an identical or amended version of the bill is again passed by both houses, the king must sign it within 30 days of receipt.[53]

The constitution prohibits discussion of certain subjects in both houses.[54] Neither house may discuss the conduct of the royal family or matters under consideration in any court, nor question any judicial decision.[55]

B. THE STRUCTURE OF LOCAL GOVERNMENTS

For administrative purposes, Nepal is divided into five development regions, 14 zones and 75 administrative districts.[56] Districts are subdivided into village development committees in rural areas and municipalities in urban areas. Each village development committee consists of nine wards, while the number of wards in urban municipalities varies by population size and political persuasion.[57] According to national-level data from 2001, there were 3,914 village development committees and 58 municipalities.[58] The structure, powers and duties of local bodies of governance are prescribed by the constitution and the 1999 Local Self-Governance Act.

Executive branch

Local bodies of governance include district development committees, district councils, village development committees, village councils, municipalities, municipal councils, and ward committees.[59] District and village development committees, and municipalities in urban areas, serve as the executive arm of the local government infrastructure.[60]

District development committees consist of an elected president and vice president and other members, including members of the *Pratinidhi Sabha* and *Rashtriya Sabha* from the district who serve as ex officio members. One member must be a woman.[61] General members are elected by village and municipal council members from among the council's membership.[62] The Local Self-Governance Act outlines general members' duties, which include formulating district-level policies on agriculture and livestock development; formulating district policies on adult and nonformal education; overseeing the operation and management of schools in the area; establishing labor wages and rates; devising and implementing programs on the abolition of child labor; and maintaining records of cottage industries within the area.[63] The committees also have a number of responsibilities relating to district-level

health services, including formulating and implementing programs on family planning, maternal and child welfare, vaccination, nutrition, population education, and public health; operating and managing district-level health facilities; and overseeing the supply and quality standards of medical drugs and equipment for health-care facilities in the area.[64] Village development committees consist of an elected chairman and vice chairman, and other members.[65] Municipalities consist of an elected mayor and deputy mayor, and other elected and appointed members.[66] Village development committees, municipalities and ward committees, which are local governing units below the village and municipal levels, must each include one female member.[67] Although village development committees and municipalities are not empowered to formulate policies, they otherwise serve similar functions as their district-level counterparts. They operate and manage various facilities and services within their jurisdiction, and prepare and implement plans on subjects outlined in the Local Self-Governance Act.[68] In the area of health, the duties of these bodies include operating and managing village- or municipal-level health facilities; preparing and implementing programs on primary health education, sanitation and waste disposal; and launching programs on family planning and maternal and child health care.[69] Members serve five-year terms.[70]

District and village development committees and municipalities are all charged with preparing and implementing plans for the advancement of women and the elimination of "social ill practices" against women and girls.[71] These bodies are also required to formulate periodic and annual development plans. Periodic plans must include income-generating and skills development programs for women and children, among other things.[72] Annual plans must support national development policies and goals.[73]

Legislative branch

District, village and municipal councils serve as the legislative organs of the local government infrastructure, with council members performing the role of lawmakers at their respective levels.[74] At least one woman must serve on all councils.[75] Among other functions, these councils give final approval for budgetary and programmatic proposals submitted by the relevant executive body.[76] They also evaluate and provide direction for the development and infrastructure projects carried out within their respective areas.[77] Members of these councils serve five-year terms.[78]

C. THE JUDICIAL BRANCH

The constitution provides for a three-tiered judicial system: a Supreme Court, appellate courts and district courts.[79] Other courts or tribunals may be constituted by law as necessary.[80]

The Supreme Court is the highest court in the country.[81] All other courts and institutions exercising judicial powers, except military courts, are subordinate to the Supreme Court.[82] Its interpretations of law are binding on all, including the king.[83] The court has both original and appellate jurisdiction, and may inspect, supervise and issue directives to subordinate courts and other judicial institutions.[84] Any Nepalese citizen may petition the court to declare any law void due to its inconsistency with the constitution.[85] The court may also issue orders or writs for various purposes, including to enforce fundamental rights guaranteed in the constitution or determine constitutional or legal questions raised in cases involving the public interest.[86] The king appoints a chief justice to head the court upon the recommendation of the Constitutional Council, which consists of the prime minister, the speaker of the *Pratinidhi Sabha*, the chairman of the *Rashtriya Sabha*, the leader of the opposition party in the *Pratinidhi Sabha*, and the presiding chief justice of the Supreme Court.[87] The chief justice serves for a seven-year term or until the age of 65, whichever comes first.[88] The king also appoints up to 14 other judges to serve on the Supreme Court upon the recommendation of the Judicial Council, which consists of the Minister of Justice, the chief justice of the Supreme Court, the two most senior judges of the Supreme Court, and one distinguished jurist nominated by the king.[89] Associate judges of the Supreme Court serve until the age of 65.[90] Any Supreme Court judge may resign at any time or may be removed from office for incompetence or misbehavior if two-thirds of the total membership of the *Pratinidhi Sabha* pass an appropriate resolution that is approved by the king.[91]

There are 16 appellate courts and 75 district courts below the Supreme Court.[92] Appellate courts primarily hear appeals of lower court decisions. District courts have both civil and criminal jurisdiction. They may hear cases relating to family and property matters, marriage, divorce, adoption, rape, child abuse, inheritance, and infanticide.[93] The king appoints judges to serve on the appellate courts and district courts upon the recommendation of the Judicial Council.[94] Both appellate and district court judges serve until the age of 63.[95]

The Local Self-Governance Act vests village development committees and municipalities with judicial powers to hear cases at the village and municipality levels.[96] Under the act, these bodies may form arbitration boards to hear and settle local disputes relating to specified subjects, including land, property and water.[97] The boards may issue enforceable judgments; appeals of these judgments fall under the jurisdiction of district courts.[98]

Apart from the traditional hierarchy of regular courts, the

1974 Special Courts Act provides for special courts to hear specific types of cases, such as those involving high treason, sedition or corruption by public servants.[99] Special courts may also be constituted to try locally sensitive criminal cases.[100]

To promote equal access to the legal system, the government enacted the Legal Aid Act in 1997 to provide free legal assistance to low-income individuals, particularly women, through court-hired attorneys, legal assistance projects and law firms.[101] In addition, through a legal assistance program under the Central Women Legal Aid Committee of the Ministry of Women, Children and Social Welfare, free legal aid is available in cases connected with abortion, trafficking, sexual exploitation, and domestic violence.[102]

Customary forms of alternative dispute resolution

There are no customary law courts in Nepal.[103]

D. THE ROLE OF CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS (NGOs)

The Social Welfare Council, a statutory body established under the 1977 Social Welfare Council Act, regulates the functions of local and international NGOs working in Nepal.[104] The council is chaired by the Minister of the Ministry of Women, Children and Social Welfare.[105] All international NGOs must obtain authorization from the council to work in Nepal.[106] NGOs may register with the council or at chief district administration offices under the 1977 Association Registration Act.[107]

There are some 25,000 NGOs operating in Nepal.[108] As of December 1999, there were 10,719 NGOs registered with the Social Welfare Council, of which 1,100 were working primarily on women's issues.[109] The Family Planning Association of Nepal is a leading NGO in the field of reproductive health, providing programs and services in 33 of Nepal's 75 districts and serving approximately six million people, nearly 960,000 of whom are married women of reproductive age.[110]

E. SOURCES OF LAW AND POLICY

Domestic sources

Nepal's legal system is a hybrid of Hindu law and English common law.[111] Customs have also been important sources of law, taking precedence over other sources in some cases.[112]

The constitution is the fundamental law of Nepal and all laws inconsistent with it are invalid.[113] The document guarantees several fundamental rights and identifies means for enforcing them, as well as effective remedies for the violation of those rights. In particular, the constitution ensures life, liberty, security, and integrity of person; it also endorses equality and equal protection of the law to all, without regard to religion, race, sex, caste, tribe, or ideological conviction, "provided that special provisions may be made by law to protect or promote the interests of women, children, aged or persons who are physically or mentally incapacitated or those who belong to a class which is economically, socially and educationally backward."[114] The constitution further guarantees the rights to freedom of opinion and expression, assembly, movement within Nepal, and the practice of any profession.[115] It prohibits cruel, inhuman or degrading treatment; preventive detention; traffic in human beings; slavery; forced labor; and specific types of child labor.[116] The constitution additionally guarantees the rights to information, property, religion, privacy, and of each community to preserve and promote its written and spoken language and its culture.[117] In addition to fundamental rights, the constitution enumerates several Directive Principles and Policies of the State that, although not legally enforceable, are intended to guide the government in its formation of laws and policies.[118]

Statutes are a primary source of domestic law. The king may also make rules or issue statutory orders, or approve rules framed by an authorized body.[119] Such rules and orders have the legal effect of acts.[120] The king may also promulgate ordinances when parliament is not in session to meet the immediate requirements of the existing circumstance. Such ordinances have the same force and effect as acts, but cease to have effect 60 days after the commencement of parliament's session.[121]

The lack of codified laws is one of the main features of the Nepalese legal system.[122] The *Muluki Ain,* derived, in part, from Hindu law and custom, serves as a general code of civil and criminal law and procedure.[123] It applies to all citizens of Nepal, regardless of religion or ethnicity. The code includes substantive and procedural civil and criminal laws pertaining to property, inheritance, adoption, marriage, divorce, maintenance, homicide, rape, and incest, among other subjects.[124] Where a provision in the *Muluki Ain* conflicts with formal law (i.e., a particular statute or the constitution), the latter prevails.[125]

Supreme Court decisions are another source of law. They are binding unless nullified by an act of parliament or overruled by a subsequent Supreme Court judgment.[126]

There are no separate customary or religion-based personal laws.[127]

Specific government policies are formulated within the framework of the constitution and its Directive Principles and Policies of the State and successive five-year development plans; these plans are comprehensive policy documents setting forth the government's main goals and strategies for various aspects of national development. The Tenth Plan, covering 2003–08, is currently operative.

International sources

International treaties signed by the government must be ratified by parliament to become effective. Once ratified, a treaty has the same legal status as a domestic law, and the government is obligated to protect and advance the rights it identifies. Under the 1990 Nepal Treaties Act, an international treaty to which the country is a party takes precedence over a Nepalese law if the two conflict.[128]

Nepal is a party to several international human rights treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Optional Protocol to CEDAW; the Convention on the Rights of the Child (Children's Rights Convention), the Optional Protocol on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography; the International Convention on the Elimination of All Forms of Racial Discrimination (Racial Discrimination Convention); the International Covenant on Civil and Political Rights (Civil and Political Rights Covenant) and the Optional Protocol and Second Optional Protocol to the Covenant; and the International Covenant on Economic, Social and Cultural Rights (Economic, Social and Cultural Rights Covenant).[129]

The government of Nepal has also participated in several key international conferences and has endorsed the development goals and human rights principles contained in the resulting consensus documents. International consensus documents that the government has adopted include the 1993 Vienna Declaration and Programme of Action; the 1994 International Conference on Population and Development (ICPD) Programme of Action; the 1995 Beijing Declaration and Platform for Action; and the 2000 United Nations Millennium Declaration.[130]

RELEVANT LAWS AND POLICIES

- National Health Policy, 1991
- Second Long Term Health Plan, 1997–2017
- Tenth Plan, 2003–08
- Eleventh Amendment to Muluki Ain

Nepal is also a signatory to the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. As of May 2003, the government had not ratified the convention.[131]

II. Examining Reproductive Health and Rights

In general, reproductive health issues are addressed through a variety of complementary, and sometimes contradictory, laws and policies. The manner in which these issues are addressed reflects a government's commitment to advancing reproductive health. The following section presents key legal and policy provisions that together determine women's reproductive rights and choices in Nepal.

A. GENERAL HEALTH LAWS AND POLICIES

The constitution's Directive Principles and Policies of the State provide guidance to the government in the formulation of health policies. They enjoin the government to adopt policies to achieve the following objectives:

- raise the standard of living of the general public through the development of an education, health, housing, and employment infrastructure;
- provide opportunities for the maximum participation of women in the task of national development by making special provisions for their education, health and employment; and
- protect the welfare of "orphans, helpless woman [*sic*], aged, disabled and incapacitated persons" through special measures relating to education, health and social security.[132]

The National Health Policy, adopted in 1991, the Second Long Term Health Plan for 1997–2017 and the Tenth Plan set forth the government's current objectives in the health sector and provide the policy framework for the delivery of health-care services.

Objectives

The National Health Policy broadly aims to improve the health conditions of the people of Nepal. Its primary objective is to improve the health of people living in rural areas by providing primary health-care services and accessible modern medical facilities at the village level.[133] In support of these goals, the policy sets forth the following strategies:

- provide integrated preventive health services through sub-health posts in rural areas, with an emphasis on programs that directly help reduce infant and child mortality rates;
- provide health services to promote good health, including programs to raise public awareness about health issues, improve nutrition and educate people about personal hygiene and environmental health issues;
- make curative health services available at health institutions at the central, district and village levels,

including organizing mobile teams to provide specialized health services in remote areas and developing a referral system;
- establish sub-health posts in all village development committees to provide basic primary health services;
- increase community participation in health services through female community health volunteers, traditional birth attendants and leaders of various social organizations;
- improve the organization and management of health facilities at the central, regional and district levels;
- develop human resources for health development, including strengthening training centers and academic institutions;
- coordinate with the private sector, NGOs and non-health sectors of the country to provide health services;
- develop Ayurvedic and other traditional health services;
- improve drug supplies by increasing domestic production and improving the quality of essential drugs through effective implementation of the National Drug Policy;
- mobilize national and international resources for health services, including exploring health insurance, user fees and revolving drug schemes;
- encourage research in the health sector;
- continue decentralizing health services and strengthening the regional delivery of services;
- authorize the Nepal Red Cross Society to conduct all programs related to blood transfusion, and prohibit the buying, selling and depositing of blood;
- formulate health laws and regulations as necessary; and
- develop programs in coordination with the private sector and NGOs regarding the welfare of disabled and handicapped persons.[134]

Within preventive health care, the policy identifies the following priority areas:
- family planning and maternal and child health care;
- expanded immunization;
- safe motherhood;
- diarrhea and acute respiratory infection control;
- tuberculosis, leprosy, malaria, and kalajar control;
- control and prevention of communicable diseases;
- prevention of noncommunicable diseases;
- primary health services in urban slums; and
- prevention and control of HIV/AIDS.[135]

The Second Long Term Health Plan similarly aims to improve the health of the population, with particular attention to addressing those health needs that are not often met.[136] Its objectives include the following:
- improve the health status of the most vulnerable groups of the population, particularly those whose health needs often are not met—women and children, people living in rural areas, low-income people, the underprivileged, and marginalized populations;
- extend cost-effective public health measures and essential curative services to all districts for the appropriate treatment of common diseases and injuries;
- provide the appropriate numbers, distribution and types of technically competent and socially responsible health personnel for quality health care throughout the country, particularly in underserved areas;
- improve the management and organization of the public health sector and increase the efficiency and effectiveness of the health-care system;
- develop appropriate roles for NGOs and the public and private sectors in providing and financing health services; and
- improve coordination within and among sectors, and provide the necessary conditions and support for effective decentralization with full community participation.[137]

The plan establishes specific targets to achieve by 2017, which include the following:
- reduce the infant mortality rate to 34.4 deaths per 1,000 live births;
- reduce the under five mortality rate to 62.5 deaths per 1,000 live births;
- reduce the total fertility rate to 3.05;
- increase life expectancy to 68.7 years;
- reduce the maternal mortality ratio to 250 maternal deaths per 100,000 live births;
- increase the contraceptive prevalence rate to 58.2%;
- increase the percentage of deliveries attended by trained personnel to 95%;
- increase the percentage of pregnant women making a minimum of four prenatal visits to 80%;
- reduce the percentage of iron deficiency anemia among pregnant women to 15%;
- increase the percentage of women of childbearing age (15–44) who receive tetanus shots to 90%;
- decrease the percentage of newborns weighing less than 2,500 grams to 12%;
- make essential health-care services in the districts available to 90% of the population living within 30 minutes of facilities;

- make essential drugs available at all facilities;
- equip all facilities with full staff to deliver essential health-care services; and
- increase overall health expenditures to 10% of total government expenditures.[138]

The health objectives of the Tenth Plan reinforce those of the national health policies. The plan's main objective in the area of health is to ensure that basic health services are available and accessible to all Nepalese, specifically those groups who have traditionally lacked such access, including high-risk women, children and people living in remote and rural areas.[139] Components of the plan's health objectives include the following:

- placing special emphasis on making health-care services available to low-income groups and people living in rural and remote areas;
- realizing the small family ideal by making reproductive health care and family planning services easily accessible to people in rural areas;
- broadening community participation in all levels of health services;
- coordinating the efforts of governmental organizations, the private sector and NGOs in providing health-care services; and
- ensuring efficient management of human, financial and physical resources to increase the quality of health-care services provided by governmental organizations, the private sector and NGOs.[140]

The plan sets forth a series of policies and strategies related to its health objectives. Its policies include the following:

- gradually turning over responsibility for managing district- and lower-level health institutions to local bodies;
- strengthening the referral system between local health institutions that provide basic health-care services and all governmental, NGO and private health sector institutions that provide health-care services at the central and other levels;
- strengthening the drug regulation process to ensure self-reliance in the manufacture of quality medicines and the quality of imported medicines;
- implementing a cost sharing and cost recovery system in community drug programs and insurance to improve access to health-care services; and
- adopting and implementing uniform health standards for health-care services provided by the governmental, NGO and private sectors.[141]

Infrastructure of health-care services

Government facilities

The Ministry of Health is the country's health authority; as such, it is responsible for formulating national policy guidelines on health. Within the Ministry of Health, the Department of Health Services is the chief government body responsible for executing health-related policies, programs and services.[142] The department's overall purpose is to deliver preventive, promotive and curative health services throughout Nepal.[143] It consists of seven divisions, including the Family Health Division, the Child Health Division and the Epidemiology and Disease Control Division, and five centers, including the National Centre for AIDS and STD Control, the National Public Health Laboratory, and the National Health Education, Information and Communication Centre.[144]

Government health services are delivered through a seven-tier delivery system that includes some 4,200 public health facilities.[145] The various levels of service delivery include the following:

- the central level, consisting of five central hospitals;
- the regional level, consisting of five regional health services directorates that include a hospital, training center, laboratory, medical store, and tuberculosis center;
- the zonal level, consisting of 11 zonal hospitals;
- the district level, consisting of 74 district hospitals, 14 district public health offices and 61 district health offices;
- the electoral constituency level, consisting of 120 primary health-care centers, 17 health centers and 747 health posts;
- the village development committee level, including 3,195 sub-health posts and a system of maternal and child health workers; and
- the community level, including some 47,000 female community health volunteers, 14,000 traditional birth attendants, 13,507 primary health-care outreach workers, and an unspecified number of immunization outreach workers.[146]

There is only one mental hospital in the country, which is located in the capital, Kathmandu.[147]

Public health-care facilities at the electoral constituency level and below, such as primary health-care centers, health posts and sub-health posts, provide preventive, promotive and essential clinical care.[148] Sub-health posts, which exist at the village development committee level, are the first contact point between the community and a government health facility. These facilities provide basic health services and serve as referral centers for community outreach workers and as

venues for community-based activities, such as primary health care, immunization outreach and home-visit programs.[149] Each sub-health post is staffed by an auxiliary health worker and a female maternal and child health worker.[150] Doctors head primary health-care centers, which are one level above sub-health posts.[151] Each facility above the sub-health post serves as a referral point for the level below it.[152]

At the district level and above, hospitals provide curative health care.[153]

The doctor to patient population ratio in Nepal is about 1 to 15,000.[154] Most doctors and public-sector facilities are concentrated in urban areas and in the more developed regions of the country.[155] One-half to three-quarters of the population relies on the public sector for health-care services.[156]

Privately run facilities

Health-care services are provided through private health institutions and international and local NGOs. One of the main health strategies of the Tenth Plan is to increase the accessibility and quality of health-care services by involving the private sector in the health-care system, as well as promote cooperation between the public, private and NGO sectors.[157]

The private sector includes hospitals, nursing homes and diagnostic centers run by qualified doctors in urban areas; practitioners of indigenous systems of medicine and non-registered providers who operate throughout rural parts of the country; and pharmacies.[158] Like public-sector facilities, most private health facilities are concentrated in the relatively developed regions of the country. The central region, one of the more developed regions of Nepal, accounts for 73% of all private health-care facilities, 78% of all private hospital beds and 41% of all registered pharmacies.[159] In contrast, there are no private health facilities in the two least developed regions of Nepal.[160]

Some 200 NGOs are involved in providing both preventive and curative health services, primarily in the area of reproductive health and family planning.[161] About 60% of NGOs operate in the central region, 32% in the eastern and western regions, and 8% in the mid-western and far-western regions of the country.[162]

Financing and costs of health-care services

Government financing

About 5.6% of the government's total budget in 1998–99 was allocated for the health sector, totaling Rs 4,317 million (about USD 58 million).[163] Of this amount, more than 70% was for programs and activities under the Department of Health Services.[164] The department's budget was distributed relatively equally between the central and district levels, with 46.1% allocated to the central government and 53.9% going to the district level.[165]

Public-sector spending for health is roughly USD 3.10 per person annually.[166]

Private and international financing

Private spending accounts for some 70% of total expenditure on health.[167] Most private expenditure (70%) is out-of-pocket spending on public health-care services.[168]

International donors contributed more than one-third of the Department of Health Services' health budget in 1998–99.[169] India was the top donor country, accounting for 40.5% of total donor contributions.[170] Other key donor countries included Germany and Japan.[171]

Costs

Government health services often involve fees for medicine, X-rays, lab tests, and other services, although government hospitals and health centers provide services and medicine at subsidized rates.[172] The average cost of seeking treatment in a public health facility is Rs 367, ranging from Rs 183 in a primary health-care center to Rs 637 in a hospital.[173] Household expenditures on government health services vary substantially by income group, ranging from Rs 470 per year for the lowest-income quartile of the population to Rs 5,016 for the highest-income quartile.[174]

Private health facilities in the cities charge higher rates for health-care services.[175]

One of the priorities of the Tenth Plan is to develop and implement health insurance schemes in Nepal.[176] Insurance coverage is currently limited, although a number of insurance coverage schemes are underway.[177] For example, the Center for Micro Finance and Rural Development Banks introduced a pilot insurance scheme for low-income individuals in three districts in Nepal in 2002. Under the scheme, clients pay Rs 70 per year for insurance coverage, which includes all accidents, medical claims, natural calamities, and deaths (except suicides).[178] In 2003–04, the government plans to introduce a pilot community health insurance scheme in eight districts in Nepal.[179]

Regulation of health-care providers

The practice of various health professions in Nepal is governed by statutes and regulatory bodies.

The Nepal Medical Council, established by the Nepal Medical Council Act, is a statutory body responsible for regulating the practice of medicine in Nepal by determining the eligibility of individuals to practice medicine and overseeing the registration of practitioners.[180] The legal practice of medicine requires that doctors in Nepal possess a degree, diploma, certificate, license, or title from a medical institution formally

recognized by the government.[181] In certain exceptional cases, individuals who receive their degrees and training from other institutions may still be eligible to practice medicine in Nepal upon the recommendation of the Nepal Medical Council.[182] All doctors must register with the council.[183] The illegal practice of medicine, such as failing to register with the council or adding unearned medical credentials to one's name, may result in imprisonment of up to three years, a fine of Rs 3,000 or both.[184] The council also prescribes a Code of Ethics for doctors, which sets forth general principles of medical ethics, but is not legally binding.[185]

A number of other statutory councils regulate the practice of other health-related professions. The Nepal Nursing Council, established under the Nepal Nursing Council Act, is a statutory body that regulates the practice of nursing in Nepal. All nurses or auxiliary nurse-midwives must register with the council to practice legally.[186] The practice of nursing in violation of the act is subject to six months' imprisonment, a fine of Rs 3,000 or both.[187]

The Nepal Health Professional Council, constituted under the Nepal Health Professional Act, regulates the practice of health professionals other than doctors and nurses. Such individuals are required to complete prescribed degree requirements and register with the council in order to legally practice.[188]

In addition, the Nepal Pharmacy Council Act provides for the establishment of a statutory council to regulate the practice of pharmacology in Nepal.[189] The Health Research Council regulates ethical issues related to research on health.[190]

According to the *Muluki Ain,* major treatment and surgery can be performed only by certified doctors, while minor ailments may be treated by health-care providers with some experience in such treatment.[191]

Regulation of reproductive health technologies

Assisted reproductive technologies

There is currently no regulation of assisted reproductive technologies in Nepal. In July 2002, a treatment center in the Putalisadak area of Kathmandu began offering in vitro fertilization for couples without children, the first such reproductive assistance technology in Nepal.[192]

Sex determination techniques

The *Muluki Ain*, as amended by its Eleventh Amendment, prohibits the use of amniocentesis tests to determine fetal sex for the purpose of sex-based abortion.[193] The law prescribes a punishment of three to six months' imprisonment for anyone who conducts such a test or causes one to be conducted.[194] (See "Abortion" for information on the prohibition of sex-selective abortion.)

Patients' rights

There are no separate laws protecting patients' rights in Nepal. However, under the *Muluki Ain*, doctors can be held liable for the death of a patient or injury resulting from negligence and may be subject to two years' imprisonment, a fine of up to Rs 500 or both.[195]

The 1997 Consumer Protection Act, which protects consumers from the sale or distribution of harmful consumable products and services, may also be used in the context of medical malpractice claims.[196] Penalties under the act include: 1) 14 years' imprisonment, a fine of up to Rs 500,000 or both, in the case of imminent danger to the life of the patient; 2) ten years' imprisonment, a fine of up to Rs 500,000 or both, if any part of the body is paralyzed or lost; or 3) five years' imprisonment, a fine of up to Rs 300,000 or both, in other cases of violation.[197] Under the act, injured individuals may also submit a claim for monetary compensation within 35 days of the date of injury.[198]

An individual who dies or suffers injury due to the use of substandard drugs may claim compensation from the responsible manufacturer under the Drugs Act.[199]

B. REPRODUCTIVE HEALTH LAWS AND POLICIES

Women's reproductive health is addressed through specific and general policies, including the 1998 National Reproductive Health Strategy, the National Health Policy, the Second Long Term Health Plan, the Tenth Plan, the National Plan of Action for Gender Equality and Women Empowerment ("National Plan of Action"), and the 2000 National Reproductive Health Research Strategy.

The ICPD Programme of Action serves as the basis for the National Reproductive Health Strategy, which adopts a new "holistic life cycle approach" to providing services under the country's existing health programs in safe motherhood, family planning, sexually transmissible infections (STIs) and HIV/AIDS, child survival, and nutrition.[200] The strategy aims to incorporate gender perspectives and women's empowerment into all such program areas.[201] It adopts the following strategies for the effective and efficient provision of quality reproductive health services:

- implement the Integrated Reproductive Health Package in hospitals, primary health-care centers, health posts, and sub-health posts, as well as through community-based workers at the community level;
- enhance the functional integration of reproductive health activities carried out by different divisions;
- emphasize advocacy for the concept of reproductive health;
- review and develop information, education and

communication materials to support all levels of intervention;
- review and update the existing health training curricula to include missing reproductive health components;
- ensure effective management systems by strengthening and revitalizing existing committees at various levels;
- develop a national reproductive health research strategy that outlines research priorities and work plans based on information requirements of policy-makers, planners, managers, and service providers;
- construct and upgrade appropriate service delivery and training facilities at the national, regional, district, and electoral constituency levels;
- strengthen health institutions through structured planning, monitoring, supervision, and performance review;
- develop an appropriate reproductive health program for adolescents;
- provide support for national experts and consultants; and
- promote inter- and multisectoral coordination.[202]

The Integrated Reproductive Health Package to which the strategy refers includes a set of reproductive health services to be provided through government health-care facilities at the district level and below.[203] The package includes the following components:
- family planning;
- safe motherhood;
- child health (newborn care);
- prevention and management of complications of abortion;
- reproductive tract infections, STIs and HIV/AIDS;
- prevention and management of subfertility;
- adolescent reproductive health; and
- problems of elderly women (i.e., cancers of the uterus, cervix and breast) at the tertiary health-care level or in the private sector.[204]

Two committees have been established within the Ministry of Health to support the national reproductive health program. They are the National Reproductive Health Programme Steering Committee, which is to provide policy guidance for all reproductive health activities in Nepal, and the National Reproductive Programme Coordinating Committee, which is responsible for executing, implementing, reviewing, and monitoring the program at all levels.[205]

The National Reproductive Health Strategy fits within the framework of the National Health Policy and the Second Long Term Health Plan.[206] The National Health Policy outlines several strategies to promote women's reproductive health, including:
- giving priority to programs for family planning, maternal and child health care, safe motherhood, and the prevention and control of AIDS among preventive health services;
- establishing one hospital in each zone of the country that provides specialized gynecological services, among others;
- ensuring the availability of at least one hospital in each district of the country that provides family planning, maternal and child health services and immunization services, among others;
- establishing sub-health posts, staffed with one maternal and child health worker and one auxiliary health worker, in all village development committee areas of the country to provide services that include immunization, family planning, maternal and child health care, health education, and nutrition; and
- mobilizing the participation of female volunteers and traditional birth attendants for health programs at the ward level.[207]

The Second Long Term Health Plan sets several target goals related to reproductive health. (See "General Health Laws and Policies" for specific targets.)

The Tenth Plan also includes several government objectives in the area of reproductive health, including family planning, safe motherhood for women and adolescents, STIs and HIV/AIDS, and nutrition.[208] (See "Family Planning," "Maternal Health" and "Sexually Transmissible Infections (STIs) and HIV/AIDS" for specific objectives.)

The National Plan of Action**,** which was formulated to implement Nepal's commitments under the Beijing Declaration and Platform for Action, includes several objectives related to reproductive health. One objective is to expand women's access to health services throughout their life cycle and provide affordable basic health services, including holistic reproductive health services, to all citizens.[209] The plan also calls for research on women's health issues, increased resource allocation for women's health services and programs, a system to provide gender-disaggregated data on the delivery and quality of health services, and amendments to existing laws related to women's health.[210]

The National Reproductive Health Research Strategy was developed pursuant to the National Reproductive Health Strategy. The research strategy recognizes the value attributed to research in reproductive health program development and implementation in the ICPD Programme of Action, and aims to conduct research to assess,

assist and improve Nepal's own reproductive health programs.[211] Its specific objectives are the following:

- promote continued research and utilize research findings at all levels;
- identify strengths, weaknesses, gaps, and overlapping areas in the reproductive health program;
- conduct studies to remedy shortcomings in reproductive health interventions identified through ongoing evaluations of programs;
- identify undiscovered research needs;
- prioritize research needs according to their importance and necessity;
- plan additional research as required, while simultaneously strengthening mechanisms to link needs with available human and material resources for reproductive health research, strengthening research capacities at different levels, and identifying additional required financial resources;
- develop appropriate mechanisms for the dissemination and utilization of research;
- conduct follow-up to assess the implementation of recommendations; and
- regularly assess the implementation of the Reproductive Health Research Strategy for cost-effectiveness.[212]

National policies related to reproductive health are implemented through various national programs assisted by international donor agencies, among other strategies. One program is the national Female Community Health Volunteer Program, which was launched in 1988 with assistance from the United States Agency for International Development (USAID) in an effort to involve women in primary health-care activities at the community level throughout the country.[213] The role of volunteers includes providing information to local women about a range of health issues (including safe motherhood, maternal and child health care, family planning and community health) and distributing oral pills and condoms.[214] Another program is the Population and Family Health Project, which began in 1994 with World Bank assistance, and supports government efforts to reduce morbidity and mortality, raise life expectancy, increase the contraceptive prevalence rate, and decrease the total fertility rate.[215]

Family Planning

The main thrust of the National Health Policy with regard to family planning is to expand contraceptive coverage and sustain adequate family planning services through all health facilities, down to the village level.[216] The Tenth Plan also specifies several family planning objectives, which include the following:

- gradually reduce the population growth rate;
- explain the concept of the small family to rural people;
- increase the availability of and the demand for family planning services;
- provide quality services;
- reduce unmet need for family planning;
- increase the involvement of the private sector and NGOs; and
- launch mobile sterilization camps in remote districts to increase access to sterilization.[217]

The plan's specific target goals for family planning are to increase the contraceptive prevalence rate to 47% and reduce the total fertility rate to 3.5.[218]

Contraception

National-level data from 2001 indicates that 39% of currently married women are using some method of family planning and that most (35%) use modern methods.[219] Current usage of modern methods has increased by 13% since 1996.[220] An estimated 15% of women use female sterilization, 8% the injectable, 6% male sterilization, 3% condoms, and 2% oral pills; less than 1% each rely on the IUD or the implant.[221] Contraceptive use varies by age, with lower rates among younger and older women, and a peak in usage among women aged 35–39.[222] Women in urban areas are also more likely than their rural counterparts to use a family planning method; the contraceptive prevalence rate for any method is 62% in urban areas, compared with 37% in rural areas.[223]

Despite relatively low rates of contraceptive use, knowledge of at least one modern method of family planning is nearly universal in Nepal.[224] The most widely known mod-

RELEVANT LAWS AND POLICIES

- National Reproductive Health Strategy, 1998
- National Health Policy, 1991
- Second Long Term Health Plan, 1997–2017
- Tenth Plan, 2003–08
- National Plan of Action for Gender Equality and Women Empowerment
- National Reproductive Health Research Strategy, 2000
- Drugs Act
- Eleventh Amendment to Muluki Ain
- Safe Abortion Services Directive, 2003
- National Safe Abortion Policy
- National Policy on AIDS and STD Prevention, 1995
- National Strategic Plan on HIV/AIDS, 2002–06
- Safe blood policy, 1993

ern contraceptives among both ever-married and currently married women are female sterilization (99%), male sterilization (98%), injectables (97%), oral pills (93%) and condoms (91%).[225]

Contraception: legal status

There is no specific legislation regulating the sale, distribution and quality of contraceptives. However, contraceptives are within the scope of medicinal drugs regulated by the Drugs Act. The act regulates the availability, sale and distribution of medicinal drugs in Nepal. According to the act, only physicians are authorized to prescribe certain categories of drugs through verbal or written permission.[226] Individuals and companies involved in the retail sale of drugs must also register with the government in accordance with the law.[227] Selling expired drugs is prohibited.[228]

The government's general policy on contraceptives is to provide direct support for making contraceptives widely available to the public.[229]

The government has not approved emergency contraception products.[230]

Regulation of information on contraception

The government promotes the dissemination of information on family planning and contraception. Radio and television are important media through which the government communicates messages about family planning.[231] The most common media source for such messages in Nepal is radio.[232] As part of a strong effort to inform women and men about family planning, the National Health Education, Information and Communication Centre has launched radio programs with technical assistance from foreign institutions.[233] These radio broadcasts include dramas and songs that relay information about family planning in an accessible way.[234]

Sterilization

Among currently married women, female sterilization is the most commonly used method of contraception, with a prevalence of 15%.[235] Female sterilization is more common among women in urban areas (21.8%) than among their rural counterparts (14.3%).[236] Six percent of currently married women rely on male sterilization for contraception.[237]

Sterilization: legal status

Available surgical contraception services include vasectomies, laparoscopies and minilaps. Such procedures require the consent of the individual undergoing the procedure.[238] No data is available on other eligibility requirements for sterilization.

Sterilization policies

The National Reproductive Health Strategy aims to increase the availability of sterilization services by providing procedures at district hospitals and select primary health-care centers.[239] Similarly, one of the health priorities of the Tenth Plan is to expand mobile sterilization camps to remote areas to increase accessibility to sterilization services.[240]

The government provides "wage compensation" of about Rs 100 to individuals undergoing sterilization.[241]

Government delivery of family planning services

The government provides temporary family planning methods, such as the pill, condoms and injectables, at hospitals (at the national, regional, zonal, and district levels); primary health-care centers; health posts; sub-health posts; and through community-based health workers and volunteers.[242] The implant and the IUD are available at a limited number of hospitals, primary health-care centers and select health posts where trained workers are available.[243] Surgical sterilization is primarily provided through scheduled "seasonal" or mobile outreach services in 21 districts.[244]

The public sector is the primary source of contraception in Nepal, supplying four in five users with their method of contraception.[245]

Family planning services provided by NGOs and the private sector

The private sector and NGOs complement and supplement government efforts in providing family planning services. The Nepal Contraceptive Retail Sales Company promotes social marketing of contraceptives.[246] Most contraceptives sold in pharmacies are provided through the company.[247] Seven percent of contraceptive users get their methods from the private sector, mostly from pharmacies.[248]

A number of NGOs are involved in delivering family planning services, including sterilization services, at the community level throughout the country. NGO family planning activities include operating stationary and mobile clinics to provide temporary and permanent forms of contraception; providing home visits and referral services; and conducting health education and awareness-raising programs.[249] A special NGO Mobilization Project, which addresses the reproductive health needs of vulnerable and disadvantaged groups, is also in the process of being implemented.[250] NGOs involved in family planning activities include the Family Planning Association of Nepal, the Nepal Fertility Care Center, the Center for Development and Population Activities, and the Asia Foundation.[251] Eight percent of contraceptive users get their methods from the NGO sector, mostly from the Family Planning Association of Nepal.[252]

Maternal Health

Nepal's maternal mortality ratio is about 415 maternal deaths per 100,000 live births.[253] Although the abortion law has recently been liberalized, abortion-related maternal deaths used to reach more than 4,000 per year.[254] Overall, one in

two pregnant women obtain prenatal care, although there are wide urban and rural discrepancies: 82% of women in urban areas utilize prenatal services, compared with 47% of their rural counterparts.[255] Less than half (47%) of deliveries are reportedly assisted by a trained health worker or traditional birth attendant.[256] Fewer than one in five mothers receive postnatal care within the first two days after delivery.[257]

Policies

The government developed a national Safe Motherhood Program in 1994 that aims to improve maternal health through providing "around-the-clock" essential obstetric services and ensuring the presence of skilled attendants at deliveries, especially home deliveries.[258] A plan of action to implement the program has been developed.[259] The government ultimately aims to implement the program in phases in all 75 districts of the country.[260] In its first phase, the program was launched in three districts.[261] Six more districts were incorporated by 2001.[262] The program's main objectives include the following:

- reduce maternal and neonatal mortality and morbidity;
- standardize maternity care services using clinical guidelines for each level to ensure quality and consistency of care;
- improve accessibility, coverage and quality of prenatal, natal, postnatal, neonatal, and emergency obstetric care through appropriate training of health personnel;
- strengthen emergency obstetric services through the improvement of facilities, provision of essential drugs and appropriate equipment, and building of staff capacity at district hospitals;
- establish a functioning referral system between peripheral health institutions and district hospitals;
- strengthen community-based maternity care services through community information and education;
- raise public awareness about safe motherhood issues;
- advocate for legal reforms that would reduce the incidence of maternal deaths resulting from factors such as unsafe abortion and early marriage;
- promote educational opportunities for the girl child and adolescents, as well as adult literacy and income-generating activities for women;
- identify and initiate priority research and evaluation activities aimed at improving maternal and neonatal health services;
- reduce anemia in pregnant women by distributing iron tablets; and
- increase the coverage of tetanus toxoid immunization for women of reproductive age.[263]

The Tenth Plan reflects many of the objectives of the Safe Motherhood Program.[264] The plan's general objectives in promoting safe motherhood include:

- expanding and strengthening health services to pregnant women;
- ensuring that health workers provide maternity services; and
- providing basic obstetric care and comprehensive emergency obstetric care at primary health-care centers and hospitals.[265]

One of the plan's main goals is to reduce the maternal mortality ratio to 400 deaths per 100,000 live births by 2008; its long-term goal is to reduce the ratio to 300 deaths.[266] The plan also aims for 25% of pregnant women to receive four prenatal care visits, and 55% of women aged 15–44 to receive the tetanus toxoid vaccine by 2008.[267]

The national Traditional Birth Attendant Program is an important government initiative to improve the quality and usage of maternal health services to reduce maternal and neonatal mortality.[268] Traditional birth attendants provide a range of maternal health-care services in the home, which include delivery assistance, pre- and postnatal care, family planning counseling and condom distribution, and referrals for tetanus toxoid immunization and pregnancy complications.[269] The program seeks to ensure access to information and services to help control the timing, spacing and number of pregnancies for all couples, and access to prenatal care, trained attendants during childbirth, and referrals for high-risk pregnancies and obstetric emergencies for all pregnant women.[270] In 1998–99 alone, traditional birth attendants assisted 42,369 deliveries.[271]

International aid organizations have initiated safe motherhood programs in several targeted districts to complement government efforts. Participating organizations include the World Health Organization, United Nations Children's Fund (UNICEF), United Nations Population Fund, the Department for International Development, USAID, and Deutsche Gesellschaft für Technische Zusammenarbeit (the German Agency for Technical Cooperation).[272] Program activities have included providing essential obstetric care kits and maternal and child health equipment to primary health-care centers and hospitals, constructing maternity facilities and developing human resources.[273]

Nutrition

Iron deficiency anemia is the most common nutritional problem in Nepal, affecting approximately three-fourths of pregnant women and two-thirds of women of reproductive age.[274] Vitamin A deficiency is also a common problem among women of reproductive age.[275] According to national health surveys, 7.5% of women of reproductive age

reported night blindness, and 19.6% had night blindness during their last pregnancy.[276]

The National Health Policy identifies nutrition as an area for intervention and gives priority to programs for the prevention of iodine deficiency disorders, and iron and vitamin A deficiencies. In 2000–01, the government carried out various programs for anemia treatment and prevention and undertook mass distribution of vitamin A capsules.[277]

Abortion

Before the recent legalization of abortion in Nepal, illegal unsafe abortion was widespread, especially in urban areas of the country.[278] Official government statistics on the prevalence of abortion are not available, although one community-based study estimated the abortion rate among women aged 15–49 to be 117 per 1,000.[279] Between 20% and 60% of obstetric and gynecological admissions at major hospitals were due to complications from unsafe abortion.[280] According to international sources of data on Nepal, illegal unsafe abortions were responsible for 50% of maternal deaths in the country.[281] Until quite recently, up to 20% of all women in prison were imprisoned for having an illegal abortion.[282]

Abortion: legal status

Nepal recently amended its restrictive abortion law with the passing of the Eleventh Amendment in the *Muluki Ain*, which came into effect on September 26, 2002.[283] Prior to this amendment, abortion was strictly prohibited except when carried out for the purpose of "welfare," although the law did not clearly state under what circumstances this exception would apply.[284] Abortion was considered a homicide and was punishable with up to three years' imprisonment.[285]

The Eleventh Amendment changes the homicide provisions of the *Muluki Ain* and legalizes abortions that are performed by a government-approved physician under the following conditions:

- upon request for pregnancies of up to 12 weeks, with the voluntary consent of the woman;
- when the pregnancy (of up to 18 weeks) results from rape or incest; and
- when, at any time during the pregnancy, the life or physical or mental health of the pregnant woman is at risk, or if there is a risk of fetal impairment, with the women's consent and the recommendation of an authorized medical practitioner.[286]

No spousal consent is necessary for abortion and the law makes no distinction between married and unmarried women. The Safe Abortion Services Directive, approved by the government in December 2003 to implement the new law, requires the involvement of a third party in the decision-making process of a minor seeking abortion. The directive also establishes specific rules and procedures for the provision of safe abortion services in government hospitals and clinics.[287]

No data is available on the legal status of medical abortion in Nepal.

The law prohibits anyone from forcing, coercing, "tricking," or providing incentives to a pregnant woman to have a sex-based abortion or to determine the sex of the fetus for the purpose of abortion.[288] Violators of these prohibitions are subject to imprisonment of one year.[289] Anyone who performs or forces a pregnant woman to undergo a sex-selective abortion is punishable with additional imprisonment of one year.[290]

Regulation of information on abortion

Under new government policies on abortion, counseling and informed choice for abortion are to be made available by abortion service providers throughout the country.[291]

Abortion policies

The National Safe Abortion Policy was formulated subsequent to the legalization of abortion in Nepal. The policy was drafted by the Abortion Task Force, a group of government and NGO representatives that was formed under the Family Health Division in February 2002 to work toward implementation of the new abortion law.[292] The policy, on which the Safe Abortion Services Directive is largely based, came into effect with the approval of the directive in December 2003.[293]

The policy lays out various strategies to ensure women's access to safe abortion services, including:

- ensuring that abortion providers respect the rights of women, including their rights to informed consent, counseling and confidentiality;
- developing clinical protocols to serve as the basis for comprehensive abortion care services and training;
- developing measures to address the service needs of socioeconomically marginalized groups;
- ensuring transparency of fees for abortion services by all abortion providers and institutions;
- linking every abortion facility to a higher-level referral center where more specialized care can be provided; and
- developing public, private and NGO institutions as training sites under government monitoring.[294]

A draft Implementation of Comprehensive Abortion Care Services, 2003–2005 Training Strategy has also been formulated.[295] The strategy's main goal is to ensure that safe and comprehensive abortion services are available and accessible throughout the country.[296]

Government delivery of abortion services

The government is in the process of creating facilities for safe abortion services.[297] The Safe Abortion Services Directive authorizes the provision of safe abortion services in gov-

ernment hospitals and clinics.[298]

Abortion services provided by NGOs and the private sector

The Safe Abortion Services Directive encourages NGOs to provide safe abortion services and information throughout the country. The National Safe Abortion Policy also envisages an important role for NGOs in the provision of safe abortion services.[299]

Sexually Transmissible Infections (STIs) and HIV/AIDS

STIs are emerging as a major health threat in Nepal, with socioeconomic ramifications. Although there is currently no national-level data on STIs in Nepal, various studies indicate that prevalence rates are quite high.[300]

There are 3,103 reported cases of HIV infection in Nepal; 859 of these cases are women.[301] The government acknowledges that these official figures probably grossly underestimate actual numbers of cases, given the limited HIV/AIDS surveillance system in the country.[302] According to international sources of data on Nepal, there were approximately 34,000 cases of HIV infection in the country in 2000.[303]

By age-group, individuals aged 20–29 account for the greatest number of infections, followed by those aged 30–39.[304] As a group, sex workers represent the greatest number of those infected.[305]

Relevant laws

There is no specific legislation on STIs or HIV/AIDS, or on prohibiting discrimination against infected persons.[306]

Policies for the prevention and treatment of STIs and HIV/AIDS

The government's formal initiatives in the area of HIV/AIDS and STIs began in 1986, with the organization of the AIDS/STD Control Committee under the Ministry of Health.[307] Short- and medium-term plans for the control of STIs and HIV/AIDS were adopted in subsequent years, with a focus on providing advocacy and training, establishing laboratory facilities, raising awareness, and providing STI services and counseling.[308]

The National Centre for AIDS and STD Control was established under the Ministry of Health in 1993 to coordinate the government's previous initiatives in the area of STI and HIV/AIDS prevention and control.[309] The center's activities include:

- screening blood;
- conducting surveillance;
- generating information;
- providing education and communication materials;
- promoting condoms;
- counseling and treating those infected with STIs; and
- training health workers in the clinical management of HIV/AIDS patients.[310]

The center issued the National Policy on AIDS and STD Prevention in 1995, which has the following objectives:

- accord high priority to STI and HIV/AIDS prevention programs;
- execute an integrated, coordinated, decentralized, and multisectoral program;
- pursue follow-up and evaluation of prevention activities in both the governmental and non-governmental sectors;
- promote safe sexual behavior;
- provide counseling and other services to people living with HIV/AIDS;
- maintain confidentiality for blood tests for STIs and HIV/AIDS;
- collect blood test reports at the National Centre for AIDS and STD Control;
- screen all donated blood before transfusion;
- discourage discrimination on the basis of one's HIV/AIDS status; and
- mandate universal precautions and proper disposal of medical instruments and equipment.[311]

The center also prepared a 2002–06 National Strategic Plan to combat HIV/AIDS in Nepal.[312] The plan's priority action areas include the following:

- prevention among at-risk populations and youth;
- care and support to people living with HIV/AIDS, including voluntary counseling and testing and mother-to-child transmission;
- second generation surveillance;
- capacity building; and
- monitoring and evaluation.[313]

Programs and services for the prevention and treatment of STIs and HIV/AIDS in Nepal are priority areas in both the National Reproductive Health Strategy and the Tenth Plan. The Tenth Plan emphasizes the importance of coordinating the efforts of various sectors and conducting awareness-raising campaigns to reduce the incidence of HIV/AIDS and change high-risk behavior.[314] In addition, the National Plan of Action calls for holistic and integrated programs for the provision of HIV/AIDS services.[315]

Nepal also has a policy to ensure the screening of all donated blood, which the government adopted in 1993.[316]

The growing spread and threat of HIV/AIDS among the general population, together with the limited capacity of the National Centre for AIDS and STD Control, resulted in the formation of the Nepal HIV/AIDS Initiative Program in 2001, which is a joint effort of the government and other multilateral and bilateral agencies.[317]

Regulation of information on STIs and HIV/AIDS

No data is available on how information on STIs or

HIV/AIDS is regulated in Nepal.

C. POPULATION

The government's first population policy was formally initiated during the Third Five Year Plan, covering the period 1965–70.[318] The main focus of this plan was on family planning, with the objective of reducing the crude birth rate.[319]

Family planning services during the Fourth Five Year Plan targeted only 5% of married couples, but these services were greatly expanded through outreach workers beginning in the Fifth Five Year Plan. In addition to an emphasis on family planning, population policies and programs from this period onward began incorporating long-term strategies to encourage the small family norm, such as education and employment programs aimed at raising women's status.

The Eighth Five Year Plan, covering 1992–97, continued the integrated approach adopted in previous plans. It emphasized family planning and maternal and child health programs as strategies to control population growth, improve people's standard of living and minimize the possible adverse effects of population growth on the socioeconomic development of the country.[320]

The Ninth Five Year Plan had the long-term objective of lowering fertility to replacement level within the next 20 years. The plan's immediate objectives were to encourage couples to adopt a two-child family norm; implement various programs to lower the fertility rate to replacement level; and make high quality family planning and maternal child health services easily available and accessible. The plan aimed to reduce population growth primarily through social awareness, education and family planning programs.[321] At the time of the Ninth Five Year Plan, the total fertility rate in Nepal was 4.1 births per woman.[322]

Population policy

Objectives

Nepal's current population policy is set forth in the Tenth Plan.[323] The plan's main long-term objective is to promote the concept of the small family to achieve replacement fertility levels by the end of the Twelfth Five Year Plan.[324] In the immediate term, it aims to reduce the total fertility rate to 3.5 lifetime births per woman and increase the percentage of family planning users to 47% by 2008.[325]

In order to achieve its objectives, the plan enumerates several strategies, including:

- centering policies around special programs targeted at adolescents and youths;
- increasing local participation in population management programs, in line with the vision of decentralization;
- working in partnership with the private sector and NGOs in population management programs;
- encouraging late marriage and the availability of reproductive health care;
- reviewing population-related laws and policies for improvement;
- raising the family and social status of women, with an emphasis on increasing women's job skills, employment and levels of education;
- improving educational institutions' involvement in the planning and implementation of population management; and
- stressing massive public awareness of population issues.[326]

Implementing agencies

The Ministry of Population and Environment was established in 1995 as the government agency in charge of developing and implementing Nepal's population policies.[327] In 1996, the government established a national population committee composed of ministers from various ministries and chaired by the prime minister to provide strong political leadership and guidance in formulating population policies and coordinating, implementing, monitoring, and evaluating population activities.[328]

III. Legal Status of Women

Women's health and reproductive rights cannot be fully understood without taking into account the legal and social status of women. Laws relating to women's legal status not only reflect societal attitudes that shape the landscape of reproductive rights, they directly impact women's ability to exercise these rights. Issues such as the respect and dignity a woman commands within marriage, her ability to own property and earn an independent income, her level of education, and her vulnerability to violence affect a woman's ability to make decisions about her reproductive health-care needs and to access the appropriate services. The following section details the nature of women's legal status in Nepal.

A. RIGHTS TO GENDER EQUALITY AND NONDISCRIMINATION

The constitution establishes the right of all citizens to equality; equal protection of the law; and nondiscrimination in application of the law on the basis of religion, race, sex, caste, tribe, or ideology.[329] It also allows for "special provisions … made by law for the protection and advancement of the interests of women, children, the aged or those who are physically or mentally incapacitated or those who belong to a class which is economically, socially and educationally backward."[330]

The constitution's Directive Principles and Policies of the State enjoin the government to aim to "eliminat[e] all types of economic and social inequalities."[331] The government should specifically adopt a policy of encouraging women's participation "in the task of national development" through special measures for their education, health and employment.[332]

Statutes that aim to promote gender equality include the Local Self-Governance Act, the 1991 Labour Act, 1993 Labour Regulations, and the 1955 Civil Rights Act.[333]

Formal institutions and policies

The government has established a number of institutional mechanisms and formulated specific policies for the advancement of gender equality.

RELEVANT LAWS AND POLICIES

- National Plan of Action for Gender Equality and Women Empowerment
- Tenth Plan, 2003–08
- Nepal Citizenship Act, 1964

The Ministry of Women, Children and Social Welfare, established in 1995 following the Fourth World Conference on Women in Beijing, is the lead agency charged with the task of fulfilling Nepal's national and international obligations on gender equality.[334] The ministry's functions include formulating plans and policies for women's advancement and ensuring the integration of gender concerns into broader national policies.[335] It also has the mandate to supervise, monitor, evaluate, and coordinate development activities for women in all government ministries and departments.[336] It serves as the focal point for all CEDAW-related activities, including oversight of a national CEDAW committee formed to monitor the implementation of CEDAW provisions.[337] Additional activities of the ministry include organizing training programs, seminars and workshops for policy-makers, civil servants and other members of civil society to raise awareness about women's rights and the need for gender equality.[338]

One of the major policy efforts of the ministry is the National Plan of Action.[339] The plan encompasses all "12 critical areas of concern" identified in the Beijing Declaration and Platform for Action and identifies objectives, strategies and institutional mechanisms for achieving its aims.[340] (See "Reproductive Health Laws and Policies," "Education," "Labor and employment" and "Right to Physical Integrity" for specific provisions.) The broad objectives of the National Plan of Action include:

- strengthening institutional capacity for women's development;
- incorporating gender issues into legislation, public policies and programs;
- collecting and disseminating gender-disaggregated data and information;
- protecting women's human rights as defined by CEDAW;
- establishing equal legal rights for women; and
- providing legal education.[341]

The Tenth Plan recognizes that poverty alleviation, one of the primary goals of national development, is contingent upon the achievement of gender equality.[342] The plan identifies various forms of existing traditional, cultural and legal discrimination against women, and recognizes that women suffer disproportionately from violence, low literacy rates, poor health, and poor access to property and economic opportunities and resources. It commits to reversing these trends by implementing CEDAW, the Beijing Declaration and Platform for Action and other laws, policies and programs that promote gender equality.[343] The plan's strategies for promoting gender equality and women's empowerment include:

- formulating laws and amending discriminatory laws on the basis of notions of equality and international commitments;
- coordinating, monitoring and evaluating women-targeted programs and policies of all sectors;
- increasing awareness regarding women's rights and gender inequality;
- undertaking special measures to increase women's participation at the central and local levels in political and administrative areas; and
- strengthening the National Women's Commission.[344]

The government has established a number of councils and commissions dedicated to protecting and promoting women's rights. The National Women's Commission was established in 2002 with a similar mandate as that of the Ministry of Women, Children and Social Welfare.[345] The commission is charged with advising the government on the effective implementation of international human rights instruments and on the formulation of plans and policies specifically aimed at advancing women's rights; coordinating the efforts of relevant government agencies and NGOs; and providing support to victims of violence.[346] The National Child and Women Development Council, which is chaired by the prime minister and consists of relevant government and NGO representatives, gender experts and lawyers, plays a coordinating, monitoring and advisory role on policies and activities relating to women's issues and concerns.[347] There is a National Human Rights Commission, which may hear complaints from any citizen or third party acting on behalf of an aggrieved party.[348] There is also a high-level commission to review existing discriminatory laws against

women and make recommendations for reform measures.[349]

Additionally, "women and development" units have been appointed in sectoral ministries with the objective of ensuring that women's issues are incorporated into government policies and programs.[350] Currently, such units have been established in the Ministries of Local Development; Agriculture and Cooperatives; Labour and Transport Management; and Education and Sports.[351] Various other ministries that do not have such units have specific projects or programs on women's issues.[352]

NGOs and civil society actors have played an important role in advancing gender equality, particularly in fighting legal discrimination against women. Their efforts have included monitoring the government's efforts to eliminate discriminatory laws, cooperating with government actors in drafting laws on women's rights, and initiating public interest litigation that challenges discriminatory provisions of existing laws.[353] NGOs have also formed a CEDAW Monitoring Committee to hold the government accountable for its obligations under CEDAW.[354] The Ministry of Women, Children and Social Welfare has also enlisted significant support from various civil society organizations in its efforts to raise awareness about gender issues.[355]

B. CITIZENSHIP

The constitution and the 1964 Nepal Citizenship Act are the main sources of law that govern citizenship status. Under the law, only male Nepalese citizens may confer automatic citizenship upon their children.[356] A woman of foreign nationality married to a Nepalese citizen may acquire Nepalese citizenship, provided that she renounces her foreign citizenship.[357] However, a foreign man married to a Nepalese citizen is not entitled to Nepalese citizenship through such a marriage.[358]

Under recent amendments to the 1996 Immigration Rules, male foreign nationals married to Nepalese citizens may obtain visas, subject to renewal every year.[359]

C. RIGHTS WITHIN MARRIAGE

Marriage laws

The *Muluki Ain* sets out the rights and responsibilities of spouses in the contracting and dissolving of marriage. Pursuant to the Eleventh Amendment to the *Muluki Ain*, the legal age for marriage for both sexes is 20 years; however, where the parents or guardians consent to the marriage, the minimum age is 18 years for both sexes.[360] Generally, a marriage must be performed with the consent of both parties.[361] Marriages entered into without the free and full consent of both parties are voidable.[362] Under the 1972 Marriage Registration Act, spouses may register their marriage, but registration is not compulsory.[363] The law does not prohibit the remarriage of a woman who has been divorced or widowed.[364]

Bigamy is generally prohibited by law.[365] Despite this general prohibition, bigamy is common in practice.[366] Exceptions to the general rule allow a man to enter into a second marriage if the first wife is infected with an incurable STI; becomes physically disabled or insane; is infertile or does not bear a child who survives during the first ten years of marriage; becomes lame and cannot walk; becomes completely blind; or is living separately after obtaining her share of property from her husband.[367] Previously, no medical examination was necessary to confirm a husband's claim of his wife's infertility.[368] However, the Eleventh Amendment to the *Muluki Ain* requires the wife's infertility to be confirmed by a medical board certified by the government.[369] The Eleventh Amendment also increases the punishment for bigamy. A second marriage in the absence of one of these exceptions is punishable with imprisonment of one to three years and a fine ranging from Rs 5,000 to 25,000.[370] However, the law does not make the second marriage void.[371] Women who wish to file a claim of bigamy have three months from the date they learned about the bigamous marriage to file their claim.[372]

The law penalizes married women or widows who misrepresent the fact of their existing or former marriage when entering into a subsequent marriage.[373] The Eleventh Amendment to the *Muluki Ain* prescribes punishments for married or divorced men and widowers who make similar misrepresentations.[374]

Divorce laws

Marriage may be dissolved through the consent of both parties or through one of several grounds enumerated in the *Muluki Ain*.[375] The grounds for divorce differ for women and men. A wife may divorce her husband if the marriage was performed without the consent of both parties, through fraud or on any of the following grounds:

- bigamy;
- husband throws her out of the home or fails to provide basic food, clothing and support;
- desertion for a period of three continuous years or more;
- threats or acts of serious bodily or mental injury;
- impotence,
- incurable STI; or
- adultery.[376]

A husband may divorce his wife if the marriage was performed without the consent of both parties, through fraud or on any of the following grounds:[377]

- desertion for a period of three continuous years or longer without the husband's permission;
- threats or acts of serious bodily or mental injury;
- incurable STI;
- the wife is unable to bear a child due to a condition certified by a physician; or
- adultery.[378]

A husband who wishes to divorce his wife must first take his case to the relevant village development committee and, on the committee's recommendation, to the district court. However, if a woman wishes to divorce her husband, she may take her claim directly to the district court.[379]

Judicial separation

In the Supreme Court case of *Lila Bahadur Karki v. Annapurna Karki*, the court established a wife's right to separation.[380]

Maintenance and support laws

The Eleventh Amendment to the *Muluki Ain* provides for the right of a divorced woman to partition of the couple's property at the time of divorce.[381] If the woman wants to receive yearly or monthly payments instead of taking her share of property, a court may set the payment amount on the basis of the husband's property and level of earnings.[382] A woman is entitled to such payments until she remarries.[383]

A divorced woman is also entitled to maintenance from her former husband for their minor children's reasonable expenses for food, clothing, education, and medical treatment, as long as the woman does not remarry.[384]

Custody and adoption laws

Upon a decree of divorce, a woman is entitled to custody of a minor child until the child reaches five years of age.[385] She may maintain custody even after the child reaches age five, so long as she does not remarry.[386] In the event that the woman does not want custody, the father is responsible for the care of the child.[387]

Adoption by a couple is permitted only if they do not have a child. The law requires that the age difference between an adopted daughter or son and an adoptive father be at least 30 years.[388]

Under the general rule, a married woman cannot adopt if her husband is alive or if she has children of her own.[389] The Eleventh Amendment to the *Muluki Ain* added a provision to the code that allows a married woman to adopt under some circumstances. A woman may now adopt if she is separated from her husband or has taken her share of property from him, provided that she does not have children of her own in either case.[390]

RELEVANT LAWS AND POLICIES

- Muluki Ain; and Eleventh Amendment to the Muluki Ain
- Marriage Registration Act, 1972

Under the Eleventh Amendment, parents who have only one daughter may not give the child up for adoption; this prohibition previously applied only where a couple had only one son.[391] No adoption made pursuant to the law may be revoked except on specific grounds.[392]

D. ECONOMIC AND SOCIAL RIGHTS

Property laws

The constitution guarantees the right of all citizens to "acquire, enjoy, dispose of and deal in other manner with their property" and prevents the state from acquiring or creating any encumbrance on the property of any person.[393]

The *Muluki Ain* is the main source of law that governs property and inheritance rights, which are determined in part on the basis of marital status and gender. The Eleventh Amendment to the *Muluki Ain* amended some provisions relating to property, providing greater rights for women. Under the amendment, married women have full rights in their husband's property and may, without any restrictions of age or duration of marriage, take their share of property and live separately from their husband. A divorced woman is entitled to a share of property from her husband at the time of divorce.[394] Widows are fully entitled to inheritance and may use their share as they wish, even upon remarriage.[395] In cases of bigamy, the first wife and any children from a first marriage must share their property with the second wife and children.[396] Sons and daughters are entitled to inheritance rights to ancestral property.[397] However, daughters must return their share of partitioned intestate property after marriage.[398]

In matters of disposing of her share of property, a woman must obtain the consent of her father and mother if she is unmarried, or of her adult son or daughter if she is divorced or widowed, to dispose of more than half of any immovable property she receives in partition.[399] Also, the law does not recognize a transaction carried out by a woman without the consent of her husband in matters dealing with his property.[400]

In *Mira Dhungana v. Ministry of Law, Justice and Parliamentary Affairs*, a Supreme Court case involving the issue of equal property rights for women, the court issued a directive order requiring the government to introduce appropriate legislation to enforce gender equality provisions in the constitution.[401]

Rights to agricultural land

Women account for only 6% of all landowners, and own a combined share of 4% of arable land.[402] Of women who do own land, most (81%) own less than one hectare of land.[403]

Under a recent amendment to the 1964 Act Relating to Land, daughters, daughters-in-law and grand-daughters may obtain tenancy rights previously reserved for men only; however, the amendment stipulates that these female relatives must be at least 35 years of age and unmarried to inherit tenancy rights.[404]

Women's exclusive property

A married woman has the full right of disposition only on movable and immovable property she earns either in the form of *daijo,* defined as any property given to a women by relatives and friends of her family and any property generated therefrom, or *pewa*, defined as any property given to a woman by her husband or coparcenaries of her husband in writing, or any property given by her husband's relatives or friends.[405]

RELEVANT LAWS AND POLICIES

- Act Relating to Land, 1964
- Muluki Ain; and Eleventh Amendment to Muluki Ain

Labor and employment

About 66% of Nepalese women participate in the labor force.[406] The agricultural sector is the largest source of employment for women, as it is for the population in general.[407] About 24% of the urban population, 81% of the rural population, 94% of women, and 79% of men are engaged in agriculture.[408] Women receive less pay than men for equal work in this sector.[409] Only about 7% of women are employed in a job other than agriculture, and only 2.6% have wage employment.[410] In contrast, 27% of men are employed in an economic sector other than agriculture, and 16.4% have wage employment.[411] Women constitute 8.6% of the workforce in civil service.[412]

The constitution guarantees the right "to carry out any profession, occupation, trade or industry" and to equal pay for men and women for equal work.[413] In addition, the constitution's Directive Principles and Policies of the State contain a number of policy recommendations related to labor and employment, including increasing overall participation in the labor force and guaranteeing the right to work; providing opportunities for women through special provisions for their employment; and making special provisions for the employment of "socially and economically backward tribes and communities."[414]

The Labour Act and Labour Regulations include provisions for job security, minimum wage, workplace safety, medical benefits and leave, workplace code of conduct, and labor courts for dispute settlement.[415] The act and regulations provide special benefits for women. The regulations entitle women to two maternity leaves of 52 days each with full pay over the course of her employment.[416] There is no requirement for accruing a minimum number of working days before taking advantage of the maternity leave benefit.[417] The Labour Act requires organizations with more than 50 employees to establish child-care centers, and requires all employers regulated by the act to allow breaks for breast-feeding.[418]

Under the 1998 Civil Service Act, women may apply for a civil service job up to the age of 40, and men can do so up to the age of 35.[419] The act also provides for a six-month probationary period for women and a one-year probationary period for men, and sets the minimum service period required for promotion to be one year less for women than the minimum required for men.[420] Similarly, under the 2000 National Teachers Service Commission Regulation, women may apply for teaching positions until the age of 35, while men may join until the age of 40. Female candidates need not have previous training in teaching.[421]

The law restricts women's participation in some employment activities. The Labour Act and Labour Regulations limit women's working hours from 6 a.m. to 6 p.m.[422] Women may only work outside of these prescribed hours if they and their employer provide consent, and if the employer agrees to make special arrangements for their security.[423] The 1959 Army Act prohibits recruitment of women to serve in the Royal Nepal Army or in any association attached to any organization or division of the army.[424] Under the 1971 Police Boy Rules, boys receive priority over girls for training in police service.[425] Under the 1997 Foreign Employment Act, a woman who wishes to seek foreign employment must obtain the consent of a guardian or husband.[426] Agencies that seek to place women in foreign employment positions must obtain the approval of the Nepalese government and affirm the woman's family's consent.[427]

In some cases, the Supreme Court has intervened with regard to discriminatory labor provisions. The court declared *ultra vires* and unconstitutional a provision of the 1974 Royal Nepal Airlines Corporation Rules that required retirement for men at age 55 and for women at age 30.[428]

The government has introduced the provision of social security for citizens aged 75 and older and for widows aged 60 and older.[429] Payments are made through recipients' respective village district committees and municipalities.[430]

The government has taken policy and programmatic

measures to promote women's participation and opportunities in the workforce. The National Plan of Action sets forth specific strategies in the area of women's economic participation, including:

- improving women's access to productive resources through promoting employment opportunities and creating a positive work environment;
- improving women's equal access to resources, employment, markets, and business opportunities;
- providing training, skills promotion opportunities and business services for low-income women; and
- strengthening commercial networks of women.[431]

The plan also calls for reserving 25% of seats in employment-oriented training programs and 20% of new job opportunities for women.[432]

RELEVANT LAWS AND POLICIES

- Labour Act, 1991; and Labour Regulations, 1993
- Civil Service Act, 1998
- National Teachers Service Commission Regulation, 2000
- Army Act, 1959
- Police Boy Rules, 1971
- Foreign Employment Act, 1997
- National Plan of Action for Gender Equality and Women Empowerment
- Contract Act, 1966

In the agricultural sector, the Ministry of Agriculture and Cooperatives has prepared guidelines for gender-sensitive planning in local-level agricultural activities.[433] The Agriculture Perspective Plan, approved by the government in 1995, aims to ensure that all training programs in agricultural activities have equal numbers of female and male participants.[434] In the field of education, the government requires that all primary schools have at least one female teacher.[435] To recognize the full contribution of women's labor to the national economy, the government is undertaking a reform of the national accounting system that will incorporate a much broader definition of women's economic activities, including their contribution to the household economy, and will provide gender-disaggregated data.[436] In 2001, the national census included household economic activities by women.[437]

Access to credit

The 1966 Contract Act states that women have the legal capacity to obtain bank loans, mortgages and other forms of financial credit.[438] However, women are largely ineligible for obtaining institutional credit because all formal credit institutions seek tangible collateral for loans.[439] The introduction of microcredit programs for women, particularly low-income women in rural areas, has been a major government policy initiative to enhance women's socioeconomic status and expand their limited access to credit.[440]

One of the largest microcredit programs in the country is the Women Development Programme.[441] The program covers 540 village development committees in 67 districts of the country, and almost 67,000 rural women benefit from its lending operations.[442] No collateral is required for obtaining loans from the program.[443] Important components of the program include group and community saving schemes and training in various issues, including savings and credit management, reproductive health, leadership, and entrepreneurial skills.[444] The program has trained almost 316,000 women in approximately 15 disciplines.[445] It has also implemented a "revolving fund" initiative, which extends credit to women's groups for activities in ten districts.[446]

The Small Farmers Development Program, initiated by the Agricultural Bank of Nepal, is the leading institution for women-focused microcredit services in the banking sector.[447] The program organizes farmers into homogenous groups of five to ten members and extends loans to each group for agricultural income-generating activities.[448] The program aims for women to make up at least 25% of the groups' members.[449] Other main components of the program include adult education; and support for farmer-managed irrigation systems, child-care centers, and hygiene and sanitation.[450] In addition, about 11 rural banks provide microcredit services.[451]

NGOs also play an important role in microcredit lending activities. More than 155 NGOs approved by the Central Bank in Nepal provide microcredit services.[452]

Education

Over the past few decades, the literacy rate for both sexes has increased markedly.[453] The female literacy rate among those aged 15 and older rose from 3.9% in 1971 to 42.5% in 2001.[454] Male adult literacy rates rose from 23.6% to 65.1% during the same time span.[455] Female literacy rates are far higher in urban areas than in rural areas—55% versus 22%.[456]

The constitution guarantees each community the right to "establish schools for providing primary level education to the children in their mother tongue."[457] The constitution's Directive Principles and Policies of the State recommend several government policies related to education, including:

- raising the standard of living through developing public education;
- facilitating women's participation in national devel-

opment by making special provisions for their education; and
- promoting special measures on education for certain groups, such as "orphans, helpless woman [*sic*], aged, disabled and incapacitated persons" and "socially and economically backward tribes and communities."[458]

The government has promoted the concept of women's education since the implementation of the Fifth Five Year Plan, covering 1975–80.[459] The Tenth Plan sets forth the government's current education policy, the main objectives of which include:
- making free primary education universally accessible, and gradually making primary schooling compulsory;
- enhancing the quality of general education;
- implementing programs on literacy, post-literacy, income generation, and other nonformal education for assisting marginalized groups, including women, in improving their standard of living;
- empowering local bodies and communities to shoulder the responsibility for education policy-making and management of schools;
- ensuring gender equality in education;
- formulating and implementing programs on formal and nonformal technical education and vocational training for producing human power as required by the country; and
- expanding technical higher education.[460]

RELEVANT LAWS AND POLICIES
- Tenth Plan, 2003–08
- National Plan of Action for Gender Equality and Women Empowerment

The government additionally proposes in the plan to introduce a Gender Auditing System throughout the entire education system to prepare concrete gender indicators for learning, teaching, training, policy-making, and management.[461]

The National Plan of Action also includes objectives in the area of women's education and training. Its five strategic interventions include:
- promotion of equal opportunities for women;
- literacy promotion among women;
- promotion of equal access to vocational education and technical training;
- development of measures to counter gender stereotyping; and
- allocation of adequate resources.[462]

It additionally calls for the provision of legal education to women.[463]

Nonformal literacy programs are an important component of government efforts to promote adult literacy. In addition to the literacy aspect, these programs focus on building functional skills to generate income.[464] Some 500 NGOs are also involved in adult nonformal education programs, and many work together with the government.[465]

Government initiatives in the area of adult education also include promoting technical education and vocational training programs for women.[466] These programs are implemented through the Council for Technical Education and Vocational Training under the Ministry of Education and Sports as well as through various sectoral ministries, general secondary schools, universities, and civil society organizations.[467] Women constitute almost one-third of students in technical schools.[468] Several institutions have a policy of providing scholarships to women and other disadvantaged groups.[469]

Through various policy and programmatic efforts to promote education and literacy, especially among women and other marginalized groups, the government aims to achieve the following target goals:
- elimination of gender disparities in primary and secondary education by 2005;
- an improvement of 50% in adult literacy by 2015; and
- gender equality by 2015.[470]

E. RIGHT TO PHYSICAL INTEGRITY

There is a dearth of official data on the prevalence of violence against women in Nepal, but non-governmental sources have reported a high prevalence of various forms of violence, including rape, sexual abuse, domestic violence, dowry related violence, sexual harassment in the workplace, trafficking of women and children, and traditional cultural forms of violence.[471] There are also many cases of sexual and domestic violence in refugee camps, as well as some cases of refugee girls who have been trafficked to India for sex work.[472]

The National Plan of Action specifically addresses the issue of violence against women and sets forth three broad objectives:
- adoption of an integrated approach to control and eliminate violence against women;
- raising of awareness about gender-based violence among all segments of society; and
- rehabilitation of victims of violence.[473]

Rape

Rape as described in the *Muluki Ain* is an act of sexual intercourse with a woman without her consent or with the use of force, threats, fear, or immoral enticement.[474] The law

does not further explain the scope or definition of rape. However, judicial interpretations have limited the definition of rape to vaginal penetration.

Nepalese courts have strictly interpreted the non-consent requirement: if a woman is raped against her will but does not resist the sexual advances of the rapist, the act does not amount to rape.[475]

The *Muluki Ain* does not recognize marital rape.[476] However, a landmark Supreme Court decision in 2002 held that failing to recognize rape as a criminal act solely because of the marital relationship of the parties involved constitutes discrimination and is in violation of the constitution and Nepal's commitments under CEDAW.[477]

The *Muluki Ain* prescribes five to seven years' imprisonment for an individual convicted of rape if the victim is age 16 or older.[478] Other penalties vary depending on the age of the victim. (See "Sexual Offenses against Minors" for specific penalties.) The code provides for additional punishment of five years' imprisonment for the crime of gang rape and the rape of a pregnant or disabled woman.[479] Rape of a prostitute is punishable with up to one year of imprisonment or a fine of up to Rs 500, in contrast to the more severe sentences prescribed by the code for the rape of other women.[480] In a 2002 decision, the Supreme Court declared this provision of the *Muluki Ain* to be *ultra vires,* deeming it unconstitutional and discriminatory against women.[481] In addition to imprisonment, a rapist is obliged to transfer half of his property to the woman he raped.[482]

RELEVANT LAWS AND POLICIES

- National Plan of Action for Gender Equality and Women Empowerment
- Muluki Ain
- State Cases Act
- Public Offenses Act, 1970
- Traffic in Human Beings (Control) Act, 1986
- Children's Act, 1992

UP AND COMING LEGISLATION:

- Legislation on domestic violence; amendment to Traffic in Human Beings (Control) Act, 1986; national anti-trafficking policy

Anyone who assists in rape is liable to up to three years' imprisonment.[483] If the victim is under the age of 16, the punishment may extend up to six years' imprisonment.[484]

The law immunizes a woman from punishment if she kills the rapist in self-defense during the rape or out of uncontrollable anger within an hour of the incident.[485] However, if she kills the perpetrator after one hour has passed, she is subject to ten years' imprisonment or a fine of Rs 5,000.[486]

Cases of rape must be reported within 35 days from the date of the incident in order to be heard in court.[487] The law further provides that a victim's statements are to be taken by female police officers only.[488] In addition, access to the courtroom in cases involving sex crimes is restricted to people related to the case such as the near relatives of the victim, lawyers or the police.[489]

Incest

The *Muluki Ain* deals with the offense of incest. It provides punishment for incestuous relationships depending on the degree of closeness of the individuals involved.[490] Incest with one's sister or daughter is punishable with ten years' imprisonment.[491]

The code provides that marriages can be solemnized between near relations if such customs persist in the particular community.[492]

Domestic violence

There is no separate legislation on domestic violence. However, laws under the *Muluki Ain* punishing murder, attempted murder and physical assault are used in prosecuting cases of domestic violence.[493]

The State Cases Act is another legislative tool for bringing claims of domestic violence, although the state will only prosecute for the crimes of murder and attempted murder; physical assault is not considered a crime for which the state can be a prosecuting party. In physical assault cases, the victim must bring a private suit through a hired attorney; this distinction prevents the police from filing or investigating many forms of domestic violence.[494]

The 1970 Public Offenses Act may be invoked to prosecute some types of assault, but as the title implies, the crime must be committed and witnessed in public.[495] Claims covered by this act are heard through an administrative system under a chief district officer, rather than through the regular channels of the judicial system.[496] Penalties can include significant fines and up to 35 days' imprisonment, which may be increased to two years by an appellate court.[497] Conviction under the Public Offenses Act precludes prosecution under any other law for the same offense.[498]

To pursue a claim of domestic violence, the victim must file a complaint known as the First Information Report with the police.[499] Police have stated that their first step in these cases is to pursue reconciliation, whereby they try to convince the victim to return to her home and obtain a written promise from the offender to not assault again.[500]

The Ministry of Women, Children and Social Welfare

is drafting a new bill on domestic violence.[501] The bill aims to eliminate family violence and establish a family court to address issues of domestic violence, rape, family conflict, marriage, divorce, and custody.[502]

Sexual harassment

There is no law addressing all forms of sexual harassment.[503] However, some aspects of sexual harassment are dealt with in provisions of the *Muluki Ain*. Any man who touches the body of a woman other than his wife, or a girl above the age of 11, with the intention of having sexual intercourse is liable to up to one year of imprisonment, a fine of up to Rs 500 or both.[504] Additionally, the seduction of a woman with the intention of sexual intercourse is punishable with six months to two years' imprisonment, a fine of Rs 500–6,000 or both.[505] There is no specific law on sexual harassment in the workplace.[506]

Commercial sex work

The law in Nepal is silent on prostitution. However, in reality, women are arrested under the Public Offenses Act for the practice.[507]

Sex-trafficking

According to government sources, there were 110 reported cases of trafficking in 1998–99, a slight decrease from figures reported in previous years.[508] However, many cases go unreported.[509] As many as 35% of girls trafficked for prostitution from Nepal to neighboring countries are lured with promises of opportunities for employment or marriage.[510]

The constitution guarantees the right against exploitation, which prohibits trafficking in human beings, slavery, serfdom, or forced labor in any form.[511] Any contravention of this provision is punishable by law.[512]

The constitution is supplemented by provisions in the *Muluki Ain* against trafficking in human beings within Nepal and to other countries. The code decrees prison sentences of 20 years for international trafficking cases where the victim has already been sold, and 10 years for the attempted sale of a victim, in addition to fines equivalent to the amount of the transaction.[513] In cases where the purchaser is found within Nepal's borders, he or she is subject to the same punishment as the seller.[514] The code also forbids slavery and all other "transactions in human beings"; violations of these provisions are punishable with three to ten years of imprisonment.[515] The offender is also liable for monetary compensation to the victim upon conviction.[516] In addition, pimping and solicitation of prostitutes is forbidden under the code.[517] Any person involved in pimping or solicitation of prostitutes is punishable with six months to two years' imprisonment, a fine of Rs 500 to 6,000 or both.[518]

In addition to provisions in the constitution and in the *Muluki Ain* on trafficking, the 1986 Traffic in Human Beings (Control) Act is a specific law dealing with the crime of trafficking. The act expressly forbids the sale of human beings for any purpose; the transport of any person to another country with intent of sale; the act of compelling any woman to prostitute herself through "allurement, enticement, deceit, threats, intimidation, or any form of pressure"; and conspiracy to commit any of these acts.[519] The act also provides for extraterritorial application of the law: if any offense specified under the act is committed outside of Nepal's borders, the person committing the offense is punishable under the act as if the offense were committed within Nepal.[520] The act prescribes penal sanctions of 10 to 20 years' imprisonment for any person convicted of trading in human beings; five to ten years' imprisonment for any person convicted of trafficking a person to another country with the intent to sell; 10 to 15 years' imprisonment for enticing, tricking or pressuring a woman into prostitution; and up to five years' imprisonment for conspiring, assisting or advising in trafficking.[521] In addition to the term of imprisonment, the amount procured from the transaction is confiscated.[522] In cases involving a charge of trafficking, there is a presumption of guilt against the accused if that person is not the victim's guardian or close relative.[523]

The judiciary has interpreted legal provisions in favor of victims of trafficking in some cases. In *Durga Dhimal v. HMG*, the court held that the statement of a female victim of trafficking who filed a First Information Report with the police was reliable and admissible evidence, thus shifting the burden of proof to the offender.[524]

The Ministry of Women, Children and Social Welfare serves as the focal point for government initiatives and activities against trafficking.[525] The ministry has proposed a new bill to replace the Traffic in Human Beings (Control) Act, which aims to incorporate relevant trafficking provisions of various laws into a single comprehensive law.[526] Among other things, the bill broadens the definition of trafficking and prescribes increased penal sanctions for a person who traffics his own wife, near relative, or a woman or child under his care.[527] The ministry has also taken the lead in formulating a national anti-trafficking policy.[528] In 1998, the ministry also established a "women self-reliance and rehabilitation home" for victims of trafficking.[529]

In January 2003, a National Rapporteur on Trafficking was appointed to oversee and monitor the implementation of anti-trafficking efforts in Nepal.[530] The rapporteur's duties also include preparing a report on the current status of trafficking in Nepal and making recommendations for further actions.[531]

Other government anti-trafficking initiatives include

the creation of a national Coordination Committee and Task Force for anti-trafficking activities, and task forces at the district and village levels with representatives from local bodies, police units and NGOs.[532] So far, 26 district task forces have been formed.[533] In addition, the Nepal police headquarters has instituted a Women's Cell that, among other activities, works in coordination with UNICEF to promote awareness about trafficking and sexual exploitation.[534] The headquarters is creating women's cells in its district-level security units.[535] It is also implementing a five-year project to train and mobilize the police force in preventing and raising awareness about trafficking.[536]

The government has additionally instituted rehabilitation programs for victims of trafficking and worked closely with civil society actors to raise awareness about trafficking.[537] The National Network Against Girl Trafficking and the Alliance Against Trafficking in Women in Nepal are two networks of NGOs that have actively collaborated with the government in launching media campaigns against trafficking.[538] NGOs have also been active in establishing shelters for victims of trafficking and other vulnerable groups, such as street girls and orphans.[539]

Customary forms of violence

Customary forms of violence such as *deuki*, *badi*, dowry related violence, and witchcraft are highly prevalent in Nepal.[540]

D*euki* and *badi* are both customary forms of prostitution.[541] *Deuki* is the practice of placing young girls in temples and offering them to gods; when the girls grow up, they are forced to become prostitutes.[542] *Badi* is the practice of an ethnic group of the same name, whereby young women are trained to become prostitutes.[543] Allegations of being a witch have led women to suffer humiliating and degrading treatment, as well as severe forms of violence and even death.[544]

The 1992 Children's Act discourages the practice of *deuki* by punishing offenders with imprisonment for five years.[545] However, there is no other legislation that addresses these forms of violence against women.[546]

IV. Focusing on the Rights of a Special Group: Adolescents

The reproductive rights of adolescents, particularly the girl child, are often neglected. Adolescents face many age-specific disadvantages that are not addressed through formal laws and policies. The ability of adolescents to access the health system, their rights within the family, their level of education, and their vulnerability to sexual violence together determine the state of their reproductive health and their overall well-being. The following section presents some of the factors that shape adolescents' reproductive lives in Nepal.

A. REPRODUCTIVE HEALTH

According to the 2001 census, adolescent girls aged 10–19 constitute 23.6% of the population in Nepal.[547] According to national-level data from 2001, only 12% of women aged 15–19 were using any method of contraception.[548] More than one-fifth of women in this age-group were mothers or were pregnant with their first child.[549] While only 2% of 15-year-olds had begun childbearing, 41% of 19-year-olds had begun this process.[550] The majority of women aged 15–19 give birth without trained assistance.[551] Among women younger than age 20, 72% suffer from anemia.[552] Women aged 15–19 account for more than one-fifth of all maternal deaths and 5.5% of ever-married women in this age-group have had an abortion.[553] Adolescents aged 14–19 make up 13% of all HIV-positive cases.[554]

The government developed the National Adolescent Health and Development Strategy in 2000 in recognition of the need for a clear framework to address adolescent-specific health and development issues in Nepal.[555] In the strategy, the government also recalls its commitments under the ICPD Programme of Action and other international conferences to improve the reproductive health of the people of Nepal, including adolescents.[556] The strategy's main objectives include the following:

- increase the availability and accessibility of information on adolescent health and development, and provide skill-building opportunities to adolescents, service providers and educators;
- increase the accessibility and use of health and counseling services for adolescents; and
- create a safe and supportive environment for adolescents to improve their legal, social and economic status.[557]

The strategy identifies eight areas for intervention and develops a series of objectives, plans and implementing activities for each area. The intervention areas are as follows:

- information and skills;
- health services and counseling;
- creation of a safe and enabling environment for adolescent health and development initiatives;
- collaboration among various sectors;
- research in adolescent health and development;
- young people's participation in the development and implementation of programs;

- program management; and
- gender sensitivity and equality in adolescent health and development initiatives.[558]

In the area of information and skills, the strategy recognizes the need to empower adolescents with accurate, current and age-appropriate information and skills so that they may develop and practice safe and responsible behaviors and be able to seek appropriate services.[559] One of the activities based on this objective is the formulation of a standard information package on adolescent health and development to distribute to adolescents, service providers, parents, educators, policymakers, and the broader community.[560] The package would include information on the following topics:

- human sexuality, including puberty, marriage, the reproductive process, sexual relationships, and responsible parenthood;
- contraception, emphasizing the prevention of early and unwanted pregnancies, and STIs for all sexually active adolescents without discrimination;
- safe motherhood, including healthy pregnancy, safe delivery, pre- and neonatal care and breast-feeding;
- prevention and management of unsafe abortions and abortion complications;
- prevention and management of reproductive tract infections, STIs, HIV/AIDS, and other reproductive health conditions; and
- nutrition, emphasizing the importance of specific nutritional requirements of childhood and adolescence, especially for girls.[561]

In the area of health services and counseling, the strategy aims to provide "adolescent-friendly" health services that are affordable, accessible, confidential, and nonjudgmental to improve adolescents' access to and use of health services.[562] The strategy highlights the need for such improvements to reduce the incidence of early, frequent and unwanted childbearing, and address the problem of STIs and HIV/AIDS, malnutrition and mental health issues among adolescents.[563] The strategy also aims to promote counseling services on adolescent health and development issues.[564]

RELEVANT LAWS AND POLICIES

- National Adolescent Health and Development Strategy, 2000
- National Plan of Action Against Trafficking in Children and their Commercial Exploitation

Strategies and activities developed on the basis of these objectives include the following:

- integrating adolescent health services into the existing health-care delivery system and developing innovative models for adolescent-friendly health services;
- providing health services and counseling irrespective of marital status;
- involving and establishing links with NGOs and the private sector;
- providing health screening and counseling services through schools, clubs and other community-based organizations; and
- initiating peer counseling programs in schools, clubs and workplaces.[565]

In the area of efforts to create a safe and enabling environment for adolescent health and development initiatives, one of the strategy's objectives is to formulate and revise laws and policies as needed in the areas of health, education, skills, welfare, and rights.[566]

The strategy also calls for increased collaboration between various sectors on adolescent health and development initiatives, including between government and NGOs. Key NGOs currently working in the area of adolescent health include Family Planning Association of Nepal, Bisweswar Prasad Koirala Memorial Foundation, Nepal Society of Obstetricians and Gynaecologists, and Margaret Sanger Center International.

B. MARRIAGE

Despite the illegality of early marriage, the practice is pervasive in Nepal.[567] Among adolescent females aged 15–19, 43.3% are married.[568] According to national-level data from 2001, the median age at marriage is 16.8 among women currently aged 20–24.[569] Generally, women in rural areas marry about a year earlier than their urban counterparts.[570]

Under the Eleventh Amendment to the *Muluki Ain*, the minimum marriageable age for both sexes is 20 without parental consent.[571] The minimum age is 18 for both sexes with parental consent.[572] Previously, women could marry at age 16 and men at 18 with parental consent, and women could marry at age 18 and men at 21 in the absence of such consent.[573]

The Eleventh Amendment increased the punishment for child marriage, imposing longer prison terms and higher fines for underage marriage. The severity of the penalty varies depending on the age of the child bride. Parents may be punished with six months to three years' imprisonment and a fine of Rs 1,000 to 10,000 where the bride is younger than age ten; three months to one year imprisonment and a fine of up to Rs 5,000 where the bride is age 10 or older and younger than 14; up to six months' imprisonment, a fine of up to Rs 10,000 or both, where the bride is age 14 or older and younger than 18; and

up to six months' imprisonment, a fine of up to Rs 10,000 or both, where the bride is age 18 or older and younger than 20 and the marriage occurs without parental consent.[574] (See "Rights within Marriage" for more information.)

C. EDUCATION

Among adolescents aged 10–14, 51.0% of girls are literate, compared with 68.4% of boys.[575] Among those aged 15–19, about 48.8% of girls are literate, compared with 74.5% of boys.[576] Some 44.1% of girls are enrolled in primary school and 40.6% are enrolled in secondary school.[577] However, only about 41% of all children complete their primary school education within a period of 5–13 years, and only 14% of children in first grade complete primary school without a failing grade.[578]

The constitution's Directive Principles and Policies of the State declare that the state shall "gradually implement a program of free-education [*sic*]."[579] It further provides that the state "shall adopt a policy of education, health and social security of the orphans, helpless woman [*sic*], aged, disabled and incapacitated persons for their protection and welfare."[580]

In accordance with these directives, the government has made primary education free up to grade ten in public schools.[581] Free textbooks are also provided to students up to grade five.[582] Under the Labour Act and Children's Act, employers, including tea plantations, must establish primary schools if they employ more than 50 children between the ages of 5 and 14 and there is no primary school within a radius of one kilometer from the employer.[583] Provisions in the 1971 Education Act and 1992 Education Regulations provide for special education to children with physical and mental disabilities.[584]

The government aims to expand access to quality primary education for all communities, with a special focus on girls and socioeconomically disadvantaged groups, and to implement special programs to reduce gender and ethnic imbalances in secondary and higher education.[585] The Tenth Plan aims to gradually make free primary education compulsory.[586]

In 1992, the Ministry of Education and Sports launched the Basic and Primary Education Program to improve the accessibility and quality of basic education in Nepal.[587] Teacher training, education for out-of-school children, special needs education, literacy programs, and revision of textbooks and curricula are important components of the program.[588] The program has been the main provider of nonformal literacy programs to out-of-school children and young women.[589] The aim of such programs, many of which are operated in collaboration with national and international NGOs, is to encourage and motivate girls and out-of-school children, and eventually integrate them into mainstream formal schools.[590] The program is also one of two main sources of government scholarships for girls, which are provided to girls from remote districts at the primary, secondary and university levels.[591]

The government has also implemented a meal program in primary schools in 16 districts with especially large food deficits to increase students' attendance and maximize their learning capacity.[592] About 250,000 children in rural areas will benefit from this program.[593]

The government is also making efforts to enhance gender sensitivity and equity in the education sector. National-level gender orientation workshops have been held for policy-makers in the Ministry of Education and Sports, and similar workshops are planned for ministry officials involved in the implementation of programs and policies.[594] The government is also undertaking reforms of textbooks at all levels of the education system to incorporate gender perspectives and eliminate gender stereotyping of professions.[595]

Adolescents in Nepal, especially those in rural areas, have very little knowledge or access to information about sexual and reproductive health issues due to factors such as illiteracy, lack of education and social taboos.[596] Few adolescent girls know about menstruation or puberty.[597] One NGO study revealed that only 19% of adolescent girls had some knowledge of diseases or complications related to pregnancy.[598] Another study showed that more than 40% of adolescents admitted having no knowledge about any type of sexual activity.[599] According to national-level data from 2001, only 52.1% of females aged 15–19 have heard of HIV/AIDS.[600] Only 42.3% of the adolescent women who have heard of HIV/AIDS believe there is a way to avoid infection.[601]

The government has undertaken some health and education initiatives to address this lack of information. The government began including AIDS education in secondary school curricula in 1993.[602] "Population Studies," which include family and reproductive health information, have also been introduced in secondary schools.[603] The National Safe Abortion Policy calls for the incorporation of education on the prevention of unsafe abortion in school sexual and reproductive health curricula.[604]

D. SEXUAL OFFENSES AGAINST MINORS

Adolescents in Nepal are the victims are various forms of sexual abuse and exploitation. There are an estimated 5,000 female commercial sex workers under the age of 16 in Nepal.[605] About 5,000–7,000 Nepalese girls are trafficked to India every year, where 60,000 Nepalese girls under the age of 18 are working as commercial sex workers.[606]

Under the *Muluki Ain,* an act of sexual intercourse with a

girl under age 16 is considered statutory rape. Penalties for rape vary depending on the age of the victim, ranging from 10 to 15 years' imprisonment if the victim is younger than age ten; seven to ten years' imprisonment if the victim is older than age 10 and younger than 16; and five to seven years' imprisonment if the victim is age 16 or older.[607] Pedophilia is also dealt with under the *Muluki Ain*.[608] The law provides for one extra year of imprisonment for the offense of pedophilia in addition to the sentence imposed for rape, as well as appropriate compensation for the victim.[609]

The Children's Act prohibits the use or involvement of children in immoral or pornographic acts, including photography and the distribution or display of immoral pictures, and the use of publicity materials that are damaging to the child's character.[610] The act also discourages the practice of *deuki* by punishing offenders with five years' imprisonment.[611] (See "Customary forms of violence" for more information on *deuki*.)

In 1997, the Ministry for Women, Children and Social Welfare formed a national task force to draft national plans and policies for the prevention of trafficking of girls.[612] One outcome was the formulation of the National Plan of Action Against Trafficking in Children and their Commercial Sexual Exploitation, which calls for the creation of district task forces to identify high trafficking areas and conduct awareness-raising campaigns; distribute information on trafficking; collect data on trafficking of women and children; and coordinate with other stakeholders to address the problem.[613]

ENDNOTES

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343. *Id.*
344. *Id.* ch. 24, § 25.2.3.

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346. *Id.* at 42 n.1.
347. Beijing Plus Five Country Report, *supra* note 335, at 34; CEDAW Committee, Combined 2nd and 3rd reports of States parties, Nepal, *supra* note 13, ¶ 3.
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