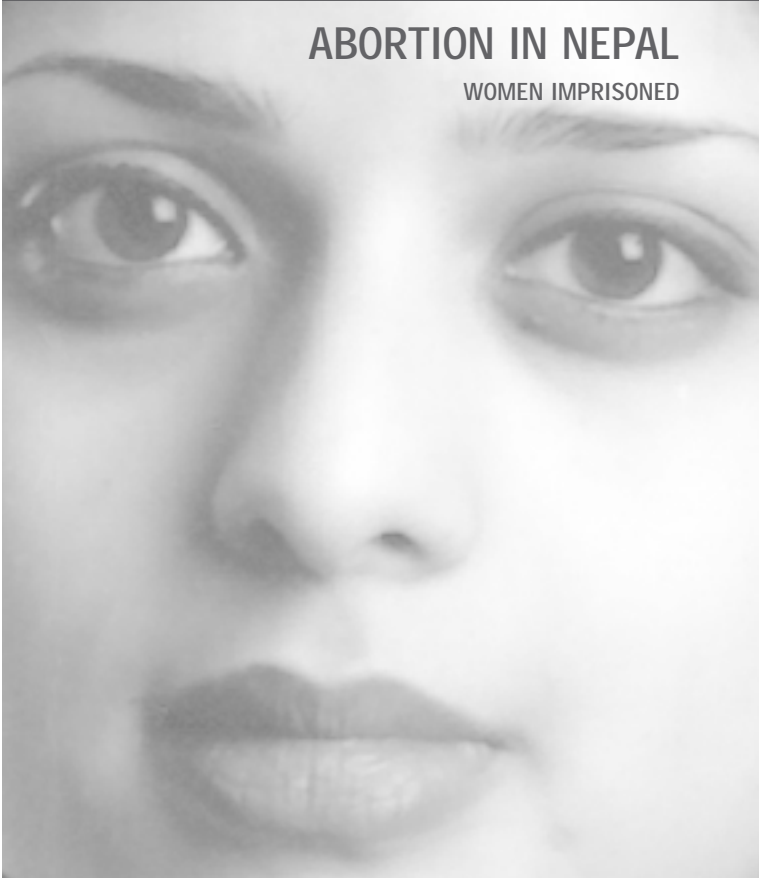


THE CENTER FOR
REPRODUCTIVE
LAW AND POLICY (CRLP)

FORUM FOR WOMEN,
LAW AND DEVELOPMENT (FWLD)

ABORTION IN NEPAL

WOMEN IMPRISONED



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TABLE OF ABBREVIATIONS AND GLOSSARY

ABBREVIATION	COMPLETE TERM and DEFINITION
11th Amendment Bill	Muluki Ain 11 th Amendment Bill, 1997: Bill to amend Nepal's Country Code
Basic Principles	Basic Principles on the Role of Lawyers: UN instrument adopted by the Economic and Social Council setting norms for the protection of criminal defendants and prisoners
Beijing Conference	1995 United Nations Fourth World Conference on Women: Global conference on women's human rights
Beijing Platform for Action	Beijing Declaration and Platform for Action, United Nations Fourth World Conference on Women: Consensus document adopted by nations participating in the Beijing Conference
Body of Principles	Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment: UN instrument adopted by the General Assembly setting norms for the protection of criminal defendants and prisoners
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women: International treaty codifying states' duties to eliminate discrimination against women
CEDAW Committee	Committee on the Elimination of Discrimination against Women: UN body charged with monitoring states' implementation of CEDAW
Country Code	Muluki Ain, 2020 (1963): Basic legal code for the Kingdom of Nepal
Children's Rights Convention	Convention on the Rights of the Child: International treaty upholding the human rights of children
Civil and Political Rights Covenant	International Covenant on Civil and Political Rights: International treaty protecting individuals' civil and political human rights
Economic, Social and Cultural Rights Covenant	International Covenant on Economic, Social and Cultural Rights: International treaty protecting individuals' economic, social and cultural human rights
Global Gag Rule	United States government's Global Gag Rule: 2001 U.S. Executive Order (Mexico City Policy) prohibiting foreign NGOs receiving U.S. population assistance funds from providing abortion services and counseling and engaging in public information campaigns and lobbying aimed at legalizing abortion

ICPD Programme of Action	Programme of Action of the International Conference on Population and Development: Consensus document adopted by nations participating in the International Conference on Population and Development
NPR	Nepali Rupees: Unit of currency for the Kingdom of Nepal
Racial Discrimination Convention	International Convention on the Elimination of All Forms of Racial Discrimination: International treaty upholding individuals' human rights to be free of discrimination on the basis of race
Rome Statute of the ICC	Rome Statute of the International Criminal Court: UN treaty establishing a global criminal tribunal devoted to crimes of genocide, war crimes and crimes against humanity
Standard Minimum Rules	Standard Minimum Rules for the Treatment of Prisoners: UN instrument adopted by the Economic and Social Council setting norms for the protection of criminal defendants and prisoners
Convention against Torture	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: UN treaty upholding individuals' right to be free from torture and other forms of cruelty
UNDP	United Nations Development Programme: UN agency devoted to funding and supporting development initiatives in low-income countries
UNFPA	United Nations Population Fund: UN agency devoted to funding and supporting population and reproductive health programs in low-income countries
Universal Declaration	Universal Declaration of Human Rights: UN human rights instrument at the foundation of modern international human rights law
USAID	United States Agency for International Development: U.S. government body responsible for funding and overseeing U.S. foreign assistance programs worldwide
WHO	World Health Organization: UN agency devoted to researching and promoting public health worldwide

Twenty-year-old Kamala is serving a life sentence at the Dilli Bazaar Khor prison. She was forced into an arranged marriage and has a two-year-old son.

I do not know the whereabouts of my husband and have been living with my parents for quite some time. It was late at night and I was in my parents' home when I had a miscarriage. I was four months pregnant and I had been bleeding for around nine days before the miscarriage occurred. I could not afford medical treatment. I could also not afford to ease my heavy workload, which I suspect contributed to my miscarriage.

The neighbors helped dispose of the fetus. Five days after my miscarriage, the police came and arrested me. I have no idea who reported me and why. The police asked me if I induced the abortion. They beat me and I became unconscious from the physical strain caused by the pregnancy and miscarriage. I was taken to a hospital for medical treatment where I spent 15 days. I was then taken to court and was locked up. I received no medical examination.

Before being transferred to the Central Jail for medical treatment, I was asked to sign a document stating that the case may continue in my absence. I later learned that I signed an agreement to accept whatever decision was issued by the court. I never went to school and could not know what I signed. I was never even present in court. The court handed down a decision sentencing me to life imprisonment.

Before my trial, when I continued to suffer from aches and bleeding, the police made arrangements to transfer me to the Kathmandu Central Jail for more medical treatment. I have not received the medical treatment that they told me I needed and said I would get. I have made many requests to be sent back to the Gorkha jail, because my child and parents are back in Gorkha. I was told that I would have to pay for the transfer myself and I have no money. I am stuck.

Executive Summary

This report documents human rights violations arising from the criminalization of abortion in Nepal and finds that the government has breached its duties under international law. The report analyzes violations inherent to the abortion ban itself, as well as those that arise from enforcement of the law. Based on a fact-finding mission conducted by the Center for Reproductive Law and Policy (CRLP) and the Forum for Women, Law and Development (FWLD) in Nepal in March 2001, this report exposes the government's denial of Nepali women's right to safe and legal abortion and its violation of the rights of criminal defendants who are prosecuted under the abortion prohibition.

THE ABORTION BAN IN CONTEXT

Nepal's abortion ban operates in a context in which economic development has been hampered by political instability and social unrest. Despite significant gains in health, education and employment,¹ Nepal remains one of the poorest countries in the world, with nearly half of its population subsisting below the poverty line.² Nepal's average life expectancy of 59.6 years is one of the lowest in the South Asian region.³ In contrast to the global pattern of a higher female life expectancy, Nepali women die younger than their male counterparts.⁴ Life expectancy, infant mortality, literacy, access to health care and income levels vary greatly across Nepal's geographic regions,⁵ caste and social groups.⁶

Despite constitutional guarantees of equality and freedom, Nepali women continue to experience severe gender discrimination. An entrenched cultural preference for sons has resulted in the neglect of girls and women,⁷ manifested by significantly higher female infant and child mortality rates.⁸ Similarly, girls and women's lives are characterized by lower school enrollment and higher dropout rates;⁹ greater workloads, including household chores, care for siblings and children and farm work;¹⁰ and early marriages.¹¹

Maternal mortality remains a major public health problem. According to the United Nations (UN) statistics, Nepal's maternal mortality rates are among the highest in South Asia and the world.¹² Estimates of maternal mortality range from 539 to 1,100 deaths per 100,000 live births.¹³ Unsafe abortion accounts for at least half of all pregnancy-related deaths.¹⁴ The problems associated with the absence of safe and legal abortion services are compounded by Nepal's vast unmet need for family planning services: more than seven out every ten Nepali women still lack access to contraceptive methods.¹⁵

THE CURRENT CRIMINAL ABORTION LAW AND REFORM EFFORTS

The *Muluki Ain, 2020* (Country Code), a basic national legal text, prohibits abortion, characterizing it as an offense against life.¹⁶ A woman accused of abortion faces up to three years in prison.¹⁷ No explicit exception is made to permit abortion when a pregnancy threatens a woman's life, although an ambiguous provision excludes punishment when an abortion is performed for the purpose of "welfare."¹⁸ Generally, this provision is not interpreted to provide a legal ground for abortion, although its ambiguity has led to confusion among some law enforcement officials.

Awareness of the devastating public health effects of the abortion ban, coinciding with the emergence of a women's movement in Nepal in the early 1990s, led to a series of efforts to reform the abortion law. The most recent legislative effort to reform the law is the *Muluki Ain* 11th Amendment Bill, 1997 (11th Amendment Bill), which proposes to amend all gender discriminatory laws in the Country Code, including the prohibition on abortion. Rejected by the National Assembly because of a disagreement over provisions relating to women's inheritance rights, the bill is due to be reconsidered by the lower house during the next legislative session and if re-approved will become law.

THE ABORTION BAN VIOLATES INTERNATIONAL AND DOMESTIC NORMS

Nepal's law and policy on abortion violates internationally and nationally protected human rights. By criminalizing abortion, Nepal denies women their rights to life and health, to non-discrimination, and to self-determination in reproductive decision-making. The criminal sanctions imposed upon those who have undergone abortions penalize women who attempt to exercise their fundamental human rights. Further, in implementing its abortion ban, Nepal permits consistent violations of accepted international norms and national laws regarding the rights of criminal defendants and prisoners, including the right to equal treatment under the law, the right to be free from arbitrary arrest and detention, the right to due process of law, and the right to humane detention conditions. Nepal's punitive approach to abortion, combined with its weak protections for women who are arrested and prosecuted, has resulted in several disturbing trends.

Human rights violations associated with Nepal's abortion ban can be divided into two broad categories: those related to the abortion ban and those associated with enforcement of this ban.

Violations relating to the abortion ban:

- The abortion ban violates women's right to life by forcing them to seek clandestine abortions under conditions that endanger their lives. Roughly half of maternal deaths are attributed to unsafe abortion.¹⁹ Methods for ter-

minating pregnancy include “insertion of foreign substance into the cervix such as mercury, sharp pieces of glass, or sticks pasted with herbal mixtures or cow dung”²⁰ and “pressing the abdomen with a heavy grinding stone.”²¹

- A woman whose life and health are threatened by a pregnancy has no legal right to an abortion. Nor is abortion permitted in cases of rape, incest, or impairment of the fetus. The economic and social circumstances of women—including their income, marital status and age—are given no consideration under the law. Failure to ensure access to a basic component of reproductive health care has resulted in a denial of the right to health.
- The abortion ban discriminates against women by denying them equal enjoyment of their right to health and reinforcing discriminatory views about women’s decision-making capacity and role in society. It disproportionately affects low-income and rural women who, unlike their urban and wealthier counterparts, do not have access to private medical services that perform safe abortion for high fees.
- Criminalization of abortion undermines women’s right to privacy, physical integrity and reproductive decision-making in a context in which women’s self-determination is already weakened by their low status within their families, widespread early marriage, poverty and lack of access to family planning.

Violations relating to enforcement of the abortion law:

- Nepali women’s right to be free from arbitrary arrest and detention is violated by inconsistent application of the criminal abortion law. Judges and law enforcement officials adopt their own interpretations of the ambiguous abortion provisions, in some cases reading exceptions into the law. Inconsistency in enforcement of the law makes women’s criminal liability a matter of chance.
- The right to equality and non-discrimination is violated by Nepal’s practice of imposing criminal sanctions for abortion almost exclusively upon women. Men who are complicit in performing and procuring abortions are rarely, if ever, prosecuted.
- Low-income and rural women face the greatest discrimination under Nepal’s abortion ban. All the women profiled and subsequently interviewed for this report were rural-based, poor and illiterate. About 60% of them have never attended any school.
- Law enforcement agents routinely disregard women’s right to be informed promptly of the charges against them. Women are also often subjected to false assurances and at times the use of force in the extraction of confessions. Women’s right to prompt proceedings is frequently disregarded, as many women wait for days before being presented to a judge following arrest, often followed by months of waiting prior to going to trial.

- The fact-finding results bring into question Nepal's respect for the right to counsel. Of the total number of women in prison for abortion and infanticide offenses, the vast majority did not have lawyers and nearly half said that they had no assistance at all. For the few women who receive government-appointed legal assistance, representation does not commence until the investigative phase is over and all the evidence has been collected. Often an attorney meets the client for the first time on the day of the trial.
- Women's right to a fair trial is compromised during both the investigative and trial phases when they are denied their right to remain silent. Moreover, women have been denied their opportunity to appear at their own trials. Finally, women convicted of abortion routinely lose their opportunity to appeal their convictions, either due to lack of money for an attorney or inability to obtain a formal notice of the lower court's decision.
- Women who have been arrested and convicted for abortion face harsh conditions in custody, in violation of their right to humane treatment in detention. Despite special legal protections for female prisoners, several women reported physical abuse during interrogations. Others revealed inadequate access to health care in prison.

For the women of Nepal, that country's abortion prohibition is a source of profound injustice. By denying women the right to safe, legal and accessible abortion services, the law violates all women's rights to life and health, equality and reproductive self-determination. In addition, disregard for women's rights in the enforcement of the law results in violations of internationally and nationally protected human rights of those accused of abortion. Disproportionately affected by the criminalization of abortion in Nepal are low-income and rural women, who are more likely to have to resort to unsafe abortion procedures and to face prosecution and punishment under the law. Justice requires a reversal of the abortion ban and the release of women wrongfully imprisoned for abortion.

Recommendations

Because the violations exposed in this report are directly attributable to the actions or inaction of the government of Nepal, primary responsibility for their redress lies with the three branches of the government—the legislature, the executive and the judiciary. Recommended actions include legal reform, programmatic responses and greater enforcement of existing legal protections. Non-governmental organizations (NGOs), health care providers, the media, donor agencies and international organizations also play a crucial role in ensuring women’s enjoyment of their human rights; therefore several suggestions for future action are offered to each of these groups of actors. Women’s human rights can be realized only where legal reform is accompanied by a concerted effort to improve women’s status.

TO THE GOVERNMENT OF NEPAL

TO THE LEGISLATURE:

- As an immediate measure, adopt the 11th Amendment Bill decriminalizing abortion in most circumstances and establishing broad grounds upon which women are permitted to access the procedure.
- Adopt more comprehensive legislation removing abortion from the Country Code chapter on “Homicide,” and upholding women’s right to abortion care. Such legislation should prescribe the manner in which abortion services are to be delivered, with particular attention to the needs of women who are underserved by virtue of geographical constraints and/or social and economic obstacles.

TO THE EXECUTIVE BRANCH:

Prime Minister and Members of the Cabinet:

- Release women who are currently in prison for having had abortions. Ensure that all legal remedies are available to women who have been unjustly imprisoned on grounds related to abortion and infanticide.
- Strengthen and mainstream institutional mechanisms charged with protecting women’s human rights, particularly the Ministry of Women, Children and Social Welfare.
- Accompany legal reform with public awareness campaigns to promote women’s knowledge of the legality and availability of safe abortion services, as well as the dangers of traditional and unsafe methods of terminating pregnancy.
- In implementing policies aimed at advancing reproductive health, promote women’s reproductive rights and empowerment.

- Undertake education and awareness campaigns aimed at providing women with information about their reproductive health and rights. Expand access to formal education for girls and women.

Ministry of Law, Justice and Parliamentary Affairs:

- While abortion remains a crime, cease prosecuting women for having undergone illegal abortion procedures.
- Take immediate measures to implement and enforce guarantees of the rights of criminal defendants and prisoners, including the rights to be free from arbitrary arrest and detention, the right to equality and non-discrimination, the right to due process, and the right to humane conditions of detention.
- Enforcement measures should include sanctions for officials who violate the law and remedies for defendants and prisoners whose rights are violated.
- In taking action to reform the criminal justice system, consider the manner in which the current system compromises women's human rights and integrate this gender perspective in proposals for change.
- Interpret constitutional guarantees of women's rights to provide the broadest possible protection on all matters affecting women's status, particularly in the area of reproductive rights.
- Interpret and enforce all domestic laws and policies consistently with international guarantees. Recommend that all laws and policies that are irreconcilable with international human rights protections and the Constitution be repealed.
- Design training courses for law enforcement officials, members of the judiciary and public health officials on international legal protections of women's human rights, including reproductive rights.

Ministry of Health:

- Expand and strengthen post-abortion care facilities in all government health care institutions. Develop a policy addressing training for providers, post-abortion counseling, and guarantees of patient confidentiality.
- Make safe abortion services, as well as post-abortion care, available in all government hospitals and primary health care centers. Allocate funds to the training of health care personnel and the equipping of health care facilities to ensure skilled and safe performance of these procedures.
- License a broad range of health care entities, including private practitioners and non-governmental organizations, to perform abortion in authorized facilities.
- Invest in expansion of family planning services for all Nepali women, taking steps to ensure access to such services for rural women and adolescents.

- Create assistance and support programs for survivors of rape and other sexual offenses. Ensure access to emergency contraception and counseling for women seeking care through these programs.
- Invite members of civil society—particularly women’s groups that are working to advance reproductive rights—to contribute to the formulation of national, regional and local policies and programs relating to women’s sexual and reproductive health.
- Collect current data on the extent of unsafe abortion in Nepal and document its impact on the maternal mortality and morbidity rates of Nepali women.
- Work with the Ministry of Law, Justice and Parliamentary Affairs to introduce legislation ensuring quality of abortion care and protecting the rights of women seeking abortion services.

To the Judiciary:

- While abortion is illegal and prosecuted under the criminal law, use judicial discretionary powers to minimize penalties for women charged with abortion-related offenses.
- Penalize police failure to observe national and international protections of the rights of those accused of crimes, including the rights to be promptly informed of charges and the right to remain silent.
- Review carefully criminal defendants’ claims relating to improper methods of evidence gathering by law enforcement officials. Discount evidence that appears to have been drawn from improper or incomplete investigations.
- Interpret domestic law in a manner consistent with international human rights legal mandates. Apply international human rights standards in Nepali courts when adjudicating claims of rights violations.

TO NON-GOVERNMENTAL ORGANIZATIONS

- Continue to put pressure on Parliament to adopt the 11th Amendment Bill and to develop follow-up legislation to ensure women’s right to safe and legal abortion and to elaborate the conditions under which women may access the procedure.
- Offer *pro bono* legal representation for women facing criminal prosecution for having an abortion.
- Develop collaborative relationships among NGOs providing reproductive health care and NGOs engaged in promoting women’s human rights, in order to gain recognition of safe and legal abortion as a protected human right.
- Provide data, legal analysis and other expertise to government ministries involved in developing policies affecting women’s reproductive health and rights.

- Use all available domestic mechanisms to ensure government compliance with its duties under the Constitution and international human rights law, including filing complaints with the Human Rights Commission and bringing civil suits in Nepali courts.
- Use the international mechanisms for enforcement of human rights treaties, including opportunities to submit reports to treaty monitoring bodies and file complaints under the optional protocols to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Covenant on Civil and Political Rights (Civil and Political Rights Covenant).
- Lobby for the establishment of a national women's commission to protect women's rights in Nepal. One of the responsibilities of this body should be to protect and promote women's reproductive rights.
- Gather data on the effects of the U.S. government's "global gag rule" and present these findings U.S.-based NGOs, and the national and international media.

TO HEALTH CARE PROVIDERS

- Provide post-abortion care to all women arriving at health care facilities suffering from complications of unsafe abortion. Seek training in the latest technologies for safe abortion services and post-abortion care.
- Share personal experiences in dealing with unsafe abortion with policy-makers. Provide data in order to influence government policies.
- With associations of health professionals, create forums where health care providers, particularly gynecologists who support women's reproductive rights, can speak out publicly on abortion as a public health concern.
- Work to expand provisions of the code of medical ethics in order to broaden the circumstances under which health care providers are ethically permitted to provide abortion services.

TO THE MEDIA:

- Provide impartial coverage of the abortion prohibition's negative effect on women's overall health, reproductive health, and enjoyment of their human rights.
- Promote the human rights of women by creating forums for discussion of sexual and reproductive rights, with particular emphasis on the impact of the criminal abortion law.
- Take steps to alter pervasive gender stereotypes in the media, which constitute obstacles to the advancement of women's human rights.
- Use editorial and opinion pages to condemn discrimination against women, including in the area of reproductive rights.

TO DONOR AGENCIES AND INTERNATIONAL ORGANIZATIONS IN NEPAL:

- Place pressure on the government of Nepal to reverse the criminal ban on abortion and to ensure respect for women's right to safe and legal abortion.
- Support NGOs that are advocating for the advancement of women's reproductive rights, including the right to safe and legal abortion.
- Support the work of the Ministry of Health aimed at ensuring greater access to family planning and providing sexual and reproductive health education.
- Support the work of NGOs and the Nepali government to study the public health dimensions of unsafe abortion and its impact on maternal mortality and morbidity.
- Take a position opposing the global gag rule and work to minimize its effects on Nepali women's access to safe and legal abortion.

An inmate at the Kathmandu Central Jail, Renu Shrestha has served a year and four months of her two-year jail sentence, reduced from 20 years. She has been married twice, and has three children. Her youngest is staying in prison with her. Renu is thin and sickly with a skin rash on her face. As she told her story, she could barely speak and was crying frequently. She is an orphan and has no siblings.

My husband did not allow me to use contraception (*parivaar niyojan*). Even the doctor I visited told me to come back after my son was one and a half years old because he was always falling sick. My last pregnancy was difficult. I had been feeling unwell and kept getting dizzy spells. At seven months, out of sheer frustration, I took a bunch of paracetamol (pain reliever) in the hope that it would provide me with some relief.

I was alone when I miscarried around six in the morning. Shortly after, the landlord and another tenant in the same building appeared. The landlord reported me to the police, telling them that I had committed a murder, that my miscarriage was intentional. The police arrived around 7:00 A.M. and took me away in their van. They assured me nothing was going to happen. Later, they made me sign a statement saying I had destroyed my fetus intentionally.... I told them about the medicine I took for dizziness.

I was kept in police custody at Mangal Bazaar for 14 days. Later, I was taken to a hospital for treatment.... I was forced to go by the police and I had to pay for it myself.... I was able to get a lawyer with the help of a women's group. But my lawyer has not done much for me despite the fact that she charged me more than NPR 3,500 (USD 45).²² I was present during the trial and appeared in court eight times before the final decision was issued. I paid my lawyer NPR 1,000 (USD 13) on the date of the decision but I had not yet received a copy of it. The lawyer keeps assuring me that I will be released soon. In fact, she has promised to get me released in eight months, but only if I pay an additional NPR 3,000 (USD 39) for the appeal.

The judge sentenced me to 20 years in prison (life sentence) and then reduced it to two years. The main reason for reducing the sentence was "*lok laaj*," my understanding that I committed the crime.

I barely have access to health care in prison. I have to raise money from other inmates for treatment and it is very difficult to obtain permission for treatment in an outside facility. I receive NPR 15 (USD .19) for lentils, which must also cover the spices and kerosene oil to cook my food and soap for washing. I receive seven kilo-

grams of rice a month, and a sari and a shawl once a year. I have to support my young son with what little I get. I receive two small buckets of drinking water and six small buckets of water to wash clothes and bathe every week. I live in a dark room, and have my own mattress and have to provide my own linen.

My ten-year-old son works as a domestic servant for a family in Kathmandu. My seven-year-old daughter lives with my married stepdaughter, who I believe treats her no better than a domestic servant. My stepdaughter has never brought my daughter to visit me in prison. My five-year-old son is with me in jail. I am very worried about my children. After I am released I will go back to my husband.

Introduction

This report documents human rights violations arising from the criminalization of abortion in Nepal and finds that the government has breached its duties under international law. The report analyzes violations inherent to the abortion ban itself, as well as those that arise from enforcement of the law. Based on a fact-finding mission conducted by CRLP and FWLD in Nepal in March 2001, this report exposes the government's denial of Nepali women's right to safe and legal abortion and its violation of the rights of criminal defendants who are prosecuted under the abortion prohibition. Each chapter of this report is preceded by an account of a woman in prison for an abortion-related offense.

A. STATEMENT OF THE PROBLEM

Nepal is one of only a handful of countries in the world that consistently prosecute and imprison women for having abortions. The law and the criminal justice system ignore the circumstances surrounding a woman's pregnancy and abortion. Law enforcement officials arbitrarily classify many abortion cases as "infanticide," or the murder of a child following birth—a crime that carries heavy criminal penalties. Hence, more than half of the women imprisoned on such charges as of January 2001 had received a 20-year sentence.²³ Medical practitioners and unskilled abortion providers are rarely, if ever, indicted. The women targeted generally lack even elementary schooling and come from rural and low-income areas.

In Nepal, women seek clandestine abortions under conditions that endanger their lives. About 50% of all maternal deaths in the country are attributed to unsafe abortion,²⁴ contrasted with a global rate of 13% of maternal deaths due to unsafe abortion.²⁵ A 1998 Nepalese government study on maternal mortality and morbidity reports a total of 4,478 maternal deaths per year, or one death every two hours.²⁶ This figure places Nepal among the countries with the highest maternal mortality rates in South Asia and the world.²⁷ It has been reported that complications of unsafe abortion are the leading reason for hospital admissions (54%).²⁸ Thousands of preventable deaths of Nepali women can be linked to Nepal's criminalization of abortion. Because most abortions are conducted clandestinely, it is likely that the actual number of abortion-related deaths is much higher.

In response to these circumstances, one United Nations human rights committee has noted with alarm that "the current law on abortion contributes both to the higher maternal mortality rate in Nepal and the higher number of women prisoners in that State."²⁹ This concern has been echoed by several other international

human rights committees, each of which has urged Nepal to take legislative measures to remedy the plight of its women.³⁰ While the government has responded by introducing legislation to liberalize the abortion law, to date this legislation has not yet been adopted.

Restrictive abortion laws such as the one in Nepal force women to seek clandestine abortions under conditions that are medically unsafe and that endanger their lives. Moreover, the arrest, prosecution and imprisonment of women accused of abortion occur in blatant violation of internationally and nationally recognized safeguards for the rights of defendants and prisoners. Nepali women accused of undergoing an abortion, whether spontaneous or induced, are subjected to a criminal justice system that systematically violates their rights as suspects, defendants, and prisoners. The abuses include convictions based on insufficient evidence and denials of due process. Few women imprisoned for abortion have had legal representation at trial, despite a law that guarantees legal aid. Failure to provide women accused of abortion with any legal counsel, particularly since the majority of them lack any formal schooling, compounds the denial of their right to prepare and present a defense.³¹

Once detained, women and girls are subjected to inhumane detention conditions and undignified treatment. Persistent complaints include inadequate portions of food and unavailable or sporadic medical assistance, despite ailments among most of the women detainees.³² Young children of convicted women are often forced to serve their mothers' sentences alongside them, as no other care arrangements are available for them.

B. OBJECTIVES OF THE REPORT

The purpose of this report is to document the human rights violations inherent in the criminalization of abortion in Nepal and to hold the government of Nepal accountable for these violations under international law. This report analyzes the manner in which both the abortion ban itself and the government's means of enforcing it violate Nepali women's international human rights, as well as legal protections at the national level. The report exposes the government's role in denying women's right to safe and legal abortion and in violating the rights of criminal defendants who are prosecuted under the abortion prohibition.

C. METHODOLOGY

The findings of this report are based primarily on a human rights fact-finding mission conducted by CRLP over a three-week period in March 2001, in partnership with FWLD, Nepal. The mission involved interviews with: 19 women convicts in ten different prisons on charges of abortion or infanticide; nine judges; six police officers; six public prosecutors; ten officials from various government ministries and

agencies; 13 health care providers; and 15 lawyers and NGO representatives based in districts across the country. Questionnaires for these interviews were developed by CRLP in consultation with FWLD. In most cases, additional questions were raised during interviews, generally prompted by the responses of interviewees.

The women interviewed in prisons were identified on the basis of a preliminary round of research conducted in January 2001, in which 57 women prosecuted for abortion and infanticide offenses were identified in 26 prisons across the country and their profiles compiled. Nineteen women whose stories revealed a fact-pattern suggesting abortion, i.e., termination of a pregnancy within nine months, were singled out for interviews during the March 2001 fact-finding. The interviews were conducted in Nepali, in some cases with English interpretation provided by members of FWLD. Some of these interviews have been translated and compiled in the form of testimonials and are included at the beginning of each chapter of this report.

To protect the privacy of the women in prison who were interviewed for this report, their names have been changed. In addition, given the continued illegality of abortion and its political sensitivity in Nepal, quotes of public officials who spoke to us about the abortion ban have not been attributed by name.

In addition, judicial decisions related to abortion and infanticide have been analyzed for this study to assess the approach of the courts to abortion-related cases and to examine the manner in which the judicial system treats women. In analyzing these judgements, both qualitative and quantitative approaches have been applied. The analysis is based on judgements published in the *Nepal Kanoon Patrika* (NKP) from 1979/80 to 1998/99.³³

Other data was drawn from the work of NGOs in Nepal that have long been concerned with the effects of the abortion prohibition on women's health and rights. These NGOs include the Center for Research on Environmental Health and Population Activities (CREHPA) and the Family Planning Association of Nepal (FPAN). Of particular value was a report released by CREHPA in 2000 entitled "Women in Prison in Nepal for Abortion," which reveals the findings of a 1997 study on the number and characteristics of Nepali women who faced criminal punishment for undergoing abortion.³⁴

D. STRUCTURE OF THE REPORT

The body of this report is divided into three chapters. Chapter I sets the context for the study by providing a brief overview of Nepal, with particular focus on women's status, national reproductive health policies, Nepal's legal framework, and the current abortion law and the movement to reform it. Chapter II discusses the human rights violations inherent to Nepal's abortion ban itself, while Chapter III exposes violations that arise from enforcement of the law. In the latter two chapters, discussion

of each violation is preceded by an overview of the relevant international and Nepali legal protections. Examples of violations are drawn from the testimonies of women in prison, law enforcement agents and health personnel who were interviewed for this report. Appendices at the end of the report discuss Nepal's demographic, historical and socioeconomic background and the structure of the Nepalese government. An executive summary and a holistic set of recommendations addressed to the government of Nepal and other key players precede this chapter.

An inmate at Jhapa jail, Aarti has served two years of her 20-year sentence, with an opinion to reduce to 12 years. She is in her early thirties and has four children.

I had a love marriage and had been married for 15 to 16 years. Family planning was available in my village (Kalikhola) but I did not use contraceptives because my husband was not around; I felt awkward. My husband has been away for eight-to-ten years. I became pregnant in his absence and I didn't know whose child I was carrying. I went into labor while digging in the fields. I hadn't taken any precautions just because I was pregnant; I had to work. I was five months pregnant and the fetus was expelled dead. I told the village elder that I had miscarried but he responded by saying "You killed it!" I denied killing it but he said "It is held as murder," and he reported me to the police.

The police came and arrested me for the "murder of a fetus." I was kept in custody for 25 days. The police made me give a statement saying that I killed my child. I told the court that I didn't. I was confronted with the question "Then who did?" I continued to deny having killed the fetus but no one listened.

I did not undergo a medical examination. The police did, however, inspect the fetus. I did not have a lawyer and was not informed about my right to legal representation. No one tried to get a lawyer for me and I didn't ask for one because I didn't know I could.

I was taken to court a couple of times, but not on the day of the final hearing. The court handed down a sentence of 12 years in prison using the discretionary power. I then spent two years in Ilam jail. I learned about having a lawyer from other inmates who suggested that I appeal my sentence. I did appeal but the higher court affirmed the lower court's sentence.

In jail, I spend my time knitting woolens. No one from my family has ever come to visit me. My husband doesn't know that I am in prison. The villagers know. I used to have a shop. I will return to my village upon my release.

Chapter I: Overall Context

Understanding the harsh implications of Nepal's abortion law for women requires insight into the various demographic, historical, political, social and cultural forces that shape modern Nepal and the position of women within this setting. Nepal emerged out of political isolation in the 1950s and since then has traversed a long and arduous path to become one of the world's youngest democracies. Following the transition to democracy in 1990, the biggest challenge for the government has been upholding the democratic principles and establishing new institutions for their realization. Citizens, in turn, have been confronted with the equally daunting task of understanding the democratic process and enforcing their rights. Legacies of the past, including feudal practices, patriarchal norms and religious traditions, have posed significant impediments to the creation of a new social order based on principles of equality and freedom. These barriers have been particularly high for women, who for centuries have been conspicuously deprived of these basic human rights.

This chapter attempts to illuminate some of the critical forces defining Nepalese society and to describe the context in which the ban on abortion operates. The chapter is comprised of four sections. Section A provides a general discussion of the status of women in Nepal, including an account of some of the steps taken within the broader women's movement and by the government to address matters of concern. Section B features information about the government's strategies to address women's reproductive health needs by laying out related strategies in the broader context of its health system and highlighting some of the challenges. Section C presents information about Nepali sources of law and describes the role of international law and human rights in the domestic legal sphere. Section D outlines the existing abortion-related legal provisions and provides an account of the law reform initiatives currently being undertaken to repeal the abortion ban.

A. WOMEN IN NEPAL

Centuries of patriarchy and feudalism and over 150 years of formal gender discrimination have resulted in unequal treatment and unequal opportunities for women at all levels and in all spheres of life. Numerous studies have established that, despite the onset of democracy, women are treated as "second-class citizens" solely on the basis of their sex and as a result they are marginalized and oppressed.³⁵ Approximately three-quarters of the total female population is illiterate.³⁶ Despite the adoption of a constitution that guarantees equality and freedom for all, formal discrimination persists with respect to inheritance, marriage, adoption, divorce, and citizenship. The

ban on abortion is a particularly severe form of discrimination facing women in Nepal.

i. Women's Status

The women of Nepal do not constitute a homogeneous group. Therefore the issues they confront and the degrees of discrimination to which they are subjected vary by caste and ethnicity. It has been noted that women belonging to indigenous groups have greater rights within the private sphere and therefore a greater say in matters relating to their health and sexuality than women belonging to higher castes.³⁷ This is partly illustrated by the fact that in 1997 there were more higher-caste women in prison on charges of abortion/infanticide than any other social group.³⁸ The situation in the public sphere is just the reverse, with women from indigenous groups facing greater economic and political disadvantages than women belonging to higher castes.³⁹

Women experience extreme forms of gender discrimination throughout their entire life cycle. One of the fundamental principles of patriarchy is a preference for sons,⁴⁰ the existence of which as a social norm has resulted in the neglect of women's needs from childhood. With the routine neglect of young girls' basic needs, the female infant and child mortality rates significantly exceed those for male children.⁴¹ This has played out in a number of ways, including an unfavorable female-to-male gender ratio that stands at 97:100.⁴² Enrollment in primary schools is much lower for girls than for boys;⁴³ absenteeism and drop out rates are higher among girls than boys.⁴⁴ These disparities are attributable to a range of factors, including the higher workload imposed on girl children (1.4 times greater than that for boys).⁴⁵ The additional workload consists of household chores, providing care for siblings and farm work.⁴⁶ The vulnerability of young women is heightened by the tradition of early marriage.⁴⁷ It is reported that up to 44% of all women are married by age 19.⁴⁸ Limited access to education, an excessive workload and early marriage combine to severely limit women's opportunities and quality of life. As a result, they are locked into a vicious cycle of oppression and submission from a very young age.

In contrast to the global pattern of a higher female life expectancy, Nepali women die younger than their male counterparts.⁴⁹ This disparity in life spans has been attributed to a combination of high levels of mortality among girl children and of maternal mortality.⁵⁰ The neglect of women's health and well-being at a time as critical as during pregnancy is further evidenced by the fact that two-thirds of all pregnant women are anemic⁵¹ and only 9% of all births are aided by skilled attendants.⁵² A mere 13% of all mothers have access to professional post-natal care.⁵³ The situation of rural women is worse, as they have very limited access to even the most basic health care services.⁵⁴ Nine out of ten births in rural areas take place at home.⁵⁵

In the public sphere, women constitute 40.5% of the domestic workforce.⁵⁶

However, they systematically receive less pay than their male counterparts, despite a constitutional guarantee of equal pay for equal work.⁵⁷ In addition, they have very limited access to economic resources because of gender inequality in property rights.⁵⁸ These trends have stifled women's economic advancement and increased their dependence on male family members, thereby severely limiting their ability to voice their needs and to make independent decisions about their well-being.

Women in Nepal have been actively involved in politics for over 50 years and were at the forefront of the movement for democracy. To enhance women's political participation, the 1990 Constitution requires that at least 5% of the total number of candidates running in an election from any political party be women⁵⁹ and that at least three out of the 35 members elected to the national assembly by the House of Representatives also be women.⁶⁰ In addition, a measure requiring reservation of 20% of seats in local governing bodies has been enacted.⁶¹ While the number of women in Parliament is still pitifully low,⁶² their growing presence at local levels of government has been encouraging.⁶³ As compared to men, the number of women enrolled in political parties is very low. From 1994 to 1998, the number of women in the central governing bodies of major Nepali political parties increased from 5.6% to only 9.67%. The proportion of women in the governing bodies of Nepal's major national parties has never exceeded 10%.⁶⁴ Women generally need permission from their husbands or fathers to embark on a political or public career. Thus, several barriers to women's political participation remain, such as the dominant patriarchal ideology perpetuated by social norms and values, restrictions on women's autonomy and decision-making power, economic dependence, and the high level of corruption within politics. In addition, women's domestic responsibilities reduce their mobility.⁶⁵

ii. The Women's Movement

The origins of the women's movement can be traced to the formation of a number of key women's groups in the mid-1940s, including the *Mahila Samiti* (the Women's Committee), the *Nepal Mahila Sangh* (Nepal Women's Association) and the *Adarasha Mahila Samiti* (Ideal Women's Committee).⁶⁶ Most of these women groups were affiliated with larger political parties and the political representation of women was high on the groups' agenda.⁶⁷ During the *Panchayat* regime (1951-1990), the *Nepal Mahila Sangathan* (Nepal Women's Organization) was the only women's organization recognized by the government; their primary focus was on women's literacy, the law, and income-generation.⁶⁸

Following the disintegration of the *Panchayat* regime in 1990, a plethora of women's rights groups emerged and the focus of these activists broadened to include issues ranging from property rights to reproductive rights. Particularly over the last decade, women have been engaged in a persistent struggle to end discrimination and

exploitation both in the private and public spheres. Some of the issues on their agenda include equal inheritance, the right to safe, legal abortion, safe motherhood, affirmative action in educational and political institutions, the right of women to confer citizenship on their children, and the recognition and fulfillment of women's human rights.⁶⁹ Campaigns have been initiated against child marriage, domestic violence, the trafficking of young women and girls.⁷⁰

Overall, progressive commentators and members of civil society have taken a positive view of the growth in women's organizations, which has been accompanied by increased networking among national and international groups.⁷¹ Women's groups have been instrumental in pressuring the government to uphold its international and constitutional commitments to protect and promote women's rights by engaging government officials in awareness and advocacy programs through workshops seminars, meetings, rallies, demonstrations, publications, and press statements.⁷² They were a major force in pushing legislation through the Lower House of Parliament that proposes a wholesale amendment of several discriminatory laws, including the restrictive abortion law. (This legislation will be discussed further in section D.)

iii. Government Initiatives to Address Women's Issues

The year 1956 marked the beginning of planned development in Nepal, but women did not feature prominently in development programs until the 1980s.⁷³ Strategies addressing the unequal status of women began only with the Sixth Five Year Plan (1980/81-1984/85),⁷⁴ which included "population control activities."⁷⁵ The Seventh Five Year Plan (1985/86-1989/90) contained a commitment to remove provisions hindering women's participation in national development.⁷⁶ The Ninth Plan (1997-2002), which is currently in force, emphasizes the implementation of policies aimed at eliminating gender inequalities and promoting women's empowerment.⁷⁷ In 1981, Women Development Officers (WDOS) were appointed in five districts with the objective of securing credit for rural women and social mobilization. The WDOS are now working in sixty-eight districts.

In 1995, His Majesty's Government of Nepal established the Ministry of Women and Social Welfare (subsequently renamed the Ministry of Women, Children and Social Welfare). The stated goal of the Ministry is "to bring women [into] the mainstream of development through women's empowerment on the basis of gender equality."⁷⁸ The 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides the core principles for its work.⁷⁹ The Ministry's activities include creating a women's development policy for integration into broader national development policies; making efforts to increase funding for women's development programs; and taking steps to eliminate institutional barriers to women's development.⁸⁰ Some of the strategies adopted by the ministry in

pursuit of its goals include gender sensitization programs for parliamentarians; advocacy promoting a rights-based approach to women's development; and mobilization of resources from the donor community.⁸¹

As discussed in section D, comprehensive legislation seeking to end various forms of discrimination against women has been drafted. Civil society groups have provided significant input at the bill's various drafting stages. It includes a proposal to decriminalize abortion and grant the right to safe and legal abortion on broad grounds.

Nepal has made significant reforms since the first pro-democracy revolution of 1951. While the government has taken selected steps to address women's needs, including their reproductive health concerns, these efforts have been significantly diluted by a lack of formal equality for women and a gender bias that pervades all institutional levels, ranging from the government to the family.

B. NATIONAL REPRODUCTIVE HEALTH POLICIES

Over the last 25 years, the manner in which health care has been provided in Nepal has been determined by a number of concurrent policy instruments, including a series of national five-year plans, two long-term health plans, the 1985 Basic Needs Program, and the 1991 National Health Policy. The emphasis of these policies has been on universalizing access to primary health care.⁸² Notably, in its 1997-2017 long-term National Health Policy (Health Policy), the government of Nepal has clearly recognized access to health care services as "a basic human right."⁸³

The Ministry of Health, through the Secretary of Health Services, is responsible for formulating and executing the country's health policies and programs. Two of the main objectives of the Health Policy have been articulated as follows:

1. To significantly improve the general health conditions of the people by providing preventative, promotive, curative, rehabilitative and family planning services through the development and extension of existing health services with the realization that health service is a basic human right; and
2. To reduce population growth rate by popularizing the concept of small families through health and family planning services.⁸⁴

A key strategy of the government's long-term Health Policy is to strengthen the reproductive health and family planning programs with a view to ensuring safe motherhood.⁸⁵ The reproductive health goals outlined in this policy have been reiterated in Nepal's Ninth Plan (1997-2002), a comprehensive national policy for social and economic development.⁸⁶ Specific policy instruments such as the "National Reproductive Health Strategy" and the "National Safe Motherhood Plan of Action" have been formulated and are currently being implemented to achieve these goals.

i. National Reproductive Health Strategy

The National Reproductive Health Strategy was formulated after the 1994 United Nations International Conference on Population and Development (ICPD) to consolidate the government's ongoing work in the areas of safe motherhood, family planning, HIV/AIDS and STDs, child survival, and nutrition. It brings a gender perspective to these initiatives and strengthens linkages between the Department of Health Services and other sectors of government dealing specifically with education, local development, women's issues and the law.⁸⁷ The National Reproductive Health Strategy is implemented by the Family Health Division and services are delivered through the primary health care system.⁸⁸ It includes provisions for the prevention and management of complications of abortion.⁸⁹

In addition to service provision, there is significant emphasis on training to improve the coverage and quality of services,⁹⁰ research,⁹¹ and NGO-private sector collaboration to promote the expansion of services and sustainability.⁹² Two committees, the National Reproductive Health Programme Steering Committee and the National Reproductive Health Programme Coordinating Committee, have been created to support the National Reproductive Health Strategy.⁹³

ii. National Safe Motherhood Plan of Action

Following the ICPD, the government of Nepal drafted a National Safe Motherhood Plan of Action for the period 1994-1997. This program is being implemented, by the Family Health Division, in different phases. During the first phase, it was operated in ten districts, selected out of a total of 75.⁹⁴ This program aims to bolster community-based maternal health services, strengthen the referral system, and improve the provision of maternity care through various institutions.⁹⁵

In 1996, the National Maternity Care Guidelines (NMCG) were created within the framework of the government's policies on safe motherhood to facilitate the implementation of the National Safe Motherhood Plan of Action; together, they constitute the basis of maternal health care in Nepal.⁹⁶ These guidelines prescribe the basic care to be provided to women and newborns during pregnancy, delivery and the post-natal period.⁹⁷ In addition, they create a framework for the delivery of these services at various institutional levels, including the family, the community and the formal health care system.⁹⁸

As part of its broader strategy to promote reproductive health, the government has sought to enhance the community's role in the delivery of services, by promoting the Female Community Health Volunteer (FCHV) Programme⁹⁹ and the Trained Birth Attendant (TBA) Programme.¹⁰⁰ These programs mark the government's attempt to involve women as service providers in national strategies to reduce maternal mortality and morbidity and to promote family planning.

The FCHV Programme is currently being implemented in 28 districts.¹⁰¹ The

volunteers provide information to women about safe motherhood and family planning and motivate them to utilize available services;¹⁰² they also play an active role in distributing family planning products.¹⁰³ The TBA Programme aims to create access to services that will enable couples to prevent early, closely spaced, or frequent pregnancies.¹⁰⁴ In addition, it seeks to make care available to women during all stages of pregnancy and to facilitate referrals in cases of high-risk pregnancies and when emergency obstetric care is required.¹⁰⁵ TBAs are given the skills and basic kits to perform delivery services at home.¹⁰⁶

iii. Challenges to the Fulfillment of Reproductive Health Goals

Significant gains have been made in the area of reproductive health over the two decades. There has been a marked increase in the number of pro-natal and post-natal care visits by expectant mothers and the number of deliveries assisted by TBAs, particularly in recent years.¹⁰⁷ However, these improvements have not been universal and many women continue to suffer extreme deprivation due to such factors as early child-birth and anemia.¹⁰⁸ Maternal and pre-natal disorders are still highly prevalent and remain a leading cause of premature death among women.¹⁰⁹ Women consistently have had a lower life expectancy than men for over 45 years.¹¹⁰

Access to health services continues to be severely limited, with marked variations across different parts of the country and between rural and urban populations.¹¹¹ Most notably, the problems in managing health care facilities and retaining personnel in less developed areas have hindered efforts to improve the health status of rural people.¹¹² The level of absenteeism among medical staff in areas outside the capital city is very high.¹¹³ This has resulted in relatively poor health among the rural population. The life expectancy of inhabitants of rural areas is ten years lower than that of urban inhabitants,¹¹⁴ and infants in rural areas are 1.6 times more likely to die than their urban counterparts.¹¹⁵ Legal barriers such as the ban on abortion have exacerbated the poor health situation of rural women. This is illustrated by the fact that more rural women than urban women die from unsafe abortions, suffer from complications resulting from unsafe abortions, and are imprisoned on charges of abortion.¹¹⁶

The unmet need for family planning services is another major impediment to the realization of women's reproductive health needs. The Family Planning Association of Nepal (FPAN) has been in operation since 1956.¹¹⁷ Despite its efforts, however, over 60% of Nepali women still do not have access to family planning methods.¹¹⁸ There is a growing desire among families to limit the number of births. This view is widely promoted by the government through radio commercials and broad public education campaigns. In fact, one of the stated health objectives of the Ninth Plan is to reduce the population growth rate by popularizing the concept of small families through health and family planning services.¹¹⁹ Consequently, a

widely held desire to limit family size coexists with a general shortage of family planning services. In Nepal, the result is a high rate of clandestine and unsafe abortions.

Insufficient attention to the leading causes of maternal mortality—such as unsafe abortion, limited access to quality services and the unmet need for family planning—have resulted in Nepali women's reproductive health needs being severely compromised. As succinctly noted by development experts, "The reproductive process... remains a serious health hazard for women in Nepal."¹²⁰

C. SOURCES OF LAW IN NEPAL

To understand the broader legal context in which Nepal's abortion ban is interpreted and enforced, it is necessary to examine the country's major sources of law. As the following discussion reveals, constitutional protections of individual rights are at the core of Nepal's legal structure. These are reinforced by international human rights principles, which supersede national laws where the two conflict. These protective principles currently coexist with a range of other sources of law, many of which conflict with both the Constitution and international human rights norms.

i. Domestic Sources

The 1990 Constitution is the domestic law of highest authority. It was drafted after a mass uprising finally ended years of absolute monarchical rule.¹²¹ This Constitution, Nepal's fifth to date,¹²² establishes the foundations of democracy in Nepal and guarantees to its citizens (and in some instances non-citizens), a range of fundamental rights, including several with relevance for women's reproductive rights.

The Preamble to the Constitution, which sets forth the ideals and aspirations of the Constitution, names as one of its goals the guarantee of "basic human rights to every citizen of Nepal."¹²³ Any law inconsistent with the provisions of the Constitution is void.¹²⁴ The Constitution grants any citizen the right to file a petition in the Supreme Court to have any law or any part a law declared void if it is inconsistent with the Constitution "because it imposes an unreasonable restriction on the enjoyment of the fundamental rights conferred by [the] Constitution or on any other ground..."¹²⁵

The Constitution contains several "Directive Principles and Policies of the State," which, although not enforceable in Nepali courts, are considered "fundamental to the activities and governance of the State..."¹²⁶ and are said to be "legal rights in the making."¹²⁷ The Directive Principles are to be "implemented in stages through laws within the limits of the resources and the means available in the country."¹²⁸ These principles and policies inform the government about the goals to be attained through legislation,¹²⁹ and can therefore be invoked to demonstrate political commitment to ensuring certain fundamental rights and to support the broad interpretation of these rights. One such Directive Principle expands upon the

Constitution's protection of equality, declaring that state objectives include "establishing a just system in all aspects of national life"¹³⁰ and "eliminating all types of economic and social inequalities" as a means to establishing and developing a healthy social life.¹³¹

Acts of Parliament, rules and regulations, judicial decisions, constitutional conventions and books of authority are also important sources of law and are widely used to interpret the provisions of the 1990 Constitution.¹³² Among these, the *Muluki Ain*, 2020, also known as the Country Code, 1963 (Country Code), is particularly important as a basic source of substantive and procedural laws relating to civil and criminal matters, including provisions on family law. Introduced in 1853, the *Muluki Ain* was the first Nepali law to exist in written form.¹³³ Dictated by Hindu religious principles and beliefs, it was rife with provisions that sanctioned caste-based and gender-based discrimination.¹³⁴ When revised in 1963, many caste-based discriminatory provisions were removed.¹³⁵ The gender-based discriminatory provisions, however, remained. Although secondary to the Constitution, legislation and court decisions, the Country Code contains the basic substantive legal provisions relating to marriage, rape, divorce and inheritance.¹³⁶ Many of these provisions discriminate against women by according them lesser protections than those enjoyed by men.¹³⁷ Nepal's legal provisions on abortion are found in the Chapter on Homicide, which also addresses murder.

Judicial decisions of the Supreme Court are considered binding precedent, unless nullified by an Act of Parliament or overruled by a subsequent decision of the Supreme Court.¹³⁸ On a few notable occasions, the Supreme Court has broadly interpreted fundamental rights guaranteed in the Constitution, thereby functioning as an important vehicle for the promotion and protection of women's rights.¹³⁹ However, there is little consistency overall in the judiciary's approach to women's issues¹⁴⁰ and judges in the upper echelons of the judiciary continue to use religion as a legal basis for justifying discrimination against women.¹⁴¹ Although religious law is not recognized as a binding source, it has a strong influence in the interpretation of secular law. This was most notable in a recent case where the Supreme Court held that "[a]bove all ... religious codes play a vital role in determining such matters that are mainly influenced by family and social behavior..."¹⁴²

ii. International Sources

Among the major treaties signed and ratified by Nepal are: the International Covenant on Civil and Political Rights (Civil and Political Rights Covenant) and its First Optional Protocol; the International Covenant on Economic, Social and Cultural Rights (Economic, Social and Cultural Rights Covenant); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (Children's Rights Convention); the

International Convention for the Elimination of All Forms of Racial Discrimination (Racial Discrimination Convention); and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture).¹⁴³

The government of Nepal also has recently approved signature of the Optional Protocol to CEDAW.¹⁴⁴ Moreover, it has signed consensus documents negotiated at UN conferences that have further articulated reproductive rights, such as the ICPD and the 1995 United Nations Fourth World Conference on Women (Beijing Conference), and their five-year reviews.¹⁴⁵

By signing and ratifying international human rights treaties, Nepal has assumed a binding obligation to ensure enjoyment of their provisions within its jurisdiction. Although an international treaty signed and ratified by the government is not self-executing,¹⁴⁶ Section 9 of the Treaty Act 2047 (1990) expressly states that any conflict between a provision of domestic law and an international treaty must be resolved in favor of the treaty.¹⁴⁷ National laws and policies in Nepal should therefore comply with binding international law, which is recognized by domestic law as controlling.

D. CURRENT CRIMINAL ABORTION LAWS AND REFORM INITIATIVES

At the foundation of the human rights abuses relating to abortion in Nepal is the abortion law itself, which characterizes the procedure as a criminal offense. This section outlines the major criminal law provisions relating to abortion, describing the acts that are considered “criminal” and the penalties for performing those acts. This section also discusses recent efforts to reform the abortion law and describes how the law will be changed if those efforts are successful.

i. The Existing Abortion Laws and their Interpretation

The law prohibiting abortion can be found in Chapter 10 of the Country Code, the Chapter on Homicide, which contains the legal provisions relating to murder/homicide. The translated text of the abortion prohibition as stated in number (section) 28 of Chapter 10 is as follows:

Except while doing something for the purpose of welfare, if a pregnancy is terminated, the person who terminates the pregnancy, the person who makes another terminate a pregnancy or the person who helps in the termination of a pregnancy shall be guilty of the offense.¹⁴⁸

The provision appears to create an exception to the ban, where a pregnancy is terminated while doing something for the purpose of “welfare.” However, it is not

stated whose welfare is envisaged and under what circumstances an intervention is justified. Since the term “welfare” has not been defined in the law and is open to varying interpretations, the scope of this exception to the abortion prohibition is unknown. While some law enforcement officials have interpreted narrow exceptions into the law, most legal authorities and commentators affirm that abortion is not permitted on any grounds.¹⁴⁹

It is noteworthy that the Nepal Medical Council Rules, 1967—which establish principles of medical ethics for health care providers—do allow for abortions on medical grounds. However, since these rules do not override the provisions of the Country Code, they do not provide a legal basis for abortion on any ground and doctors generally do not believe they are legally permitted to provide abortions under any circumstances.¹⁵⁰

The punishment for abortion varies according to the duration of the pregnancy and whether or not the woman having the abortion consented to the procedure. If abortion occurs with the consent of the woman during the first six months of pregnancy, both the woman and the person terminating the pregnancy shall be subject to one year in prison. If the abortion occurs after the sixth month of pregnancy, both shall be subject to one and a half years in prison.¹⁵¹ If the pregnancy has been terminated without the consent of the woman before six months, the person terminating the pregnancy shall be liable to two years in prison. If the woman has not consented and the pregnancy is beyond the sixth month, the person is liable to three years in prison.¹⁵² If the attempt to terminate the pregnancy is unsuccessful, the perpetrators shall be liable to half the stipulated prison term.¹⁵³ For a criminal prosecution, an abortion must be reported within three months from the date of its performance.¹⁵⁴ This statutory limit does not apply where a person confesses to a crime.¹⁵⁵

According to Provision Number 29 of Chapter 10 of the Country Code, a “miscarriage” caused by a person who does something out of malice or anger to a pregnant woman, even if without the intention of causing a miscarriage, is deemed a criminal act.¹⁵⁶ If the “miscarriage” is caused with knowledge of the pregnancy during its first six months, it is punishable with three months in prison; after the sixth month of pregnancy, it is punishable with six months in prison.¹⁵⁷ If the “miscarriage” is caused without knowledge of the pregnancy during the first six months, the person committing the crime is liable to pay a fine of NRP 25 (approx. USD 0.32); after sixth months, the fine is NRP 50 (approx. USD 0.65).¹⁵⁸

Nepal’s criminal law prohibiting abortion has been read by many in conjunction with criminal provisions on infanticide. Because the Country Code characterizes abortion as a homicide, the distinction between termination of pregnancy and infanticide has been blurred in the minds of many law enforcement officials and cit-

izens of Nepal. The terms are often used interchangeably. Nonetheless, it is important to note that Nepali law defines the term “infanticide” to cover the killing of a newborn child following a live birth. It is an act punishable with a prison sentence of 20 years and confiscation of property.¹⁵⁹ Sentences may be reduced at the discretion of Appellate and Supreme Court judges.¹⁶⁰

ii. Current Law Reform Initiatives

Abortion is not a novelty in Nepal. It has been widely practiced for generations—albeit clandestinely—and has been the subject of debate among policy makers for over 30 years.¹⁶¹ However, with the transition to democracy in 1990 and the accompanying growth in consciousness of human rights among women, the human toll resulting from clandestine abortions—be it death, imprisonment or the destruction of families—has surfaced. This has in recent years broadened the discourse on abortion, transforming it from a debate on morality into a discussion of rights.

The right to safe and legal abortion has eluded women in Nepal and the consequences have been disastrous. Nepal has one of the highest maternal mortality rates in the world, with half of maternal deaths attributable to unsafe abortions.¹⁶² This translates into almost 12 maternal deaths per day.¹⁶³ A 1997 study found that an estimated 20% of the total number of women in prison are serving sentences of up to 20 years for abortion-related offenses.¹⁶⁴ Young children have been forced to go to prison with their mothers, denying them too of their freedom and other basic rights.

The devastation caused by the abortion prohibition has spurred a number of reform initiatives, originating both in civil society and within the government. In 1996, Member of Parliament and then President of the Family Planning Association of Nepal, Mr. Sunil Bhandari, introduced a bill seeking to legalize abortion on certain grounds and to regulate access.¹⁶⁵ The bill generated a considerable amount of debate both in Parliament and among the general public. However, it lapsed before it could be voted on, due to the sudden dissolution of Parliament the same year.¹⁶⁶ Concurrently, a more contentious public discussion on women’s right to ancestral property was gaining momentum. The controversy centered on the question of whether daughters, like sons, should be entitled to inherit ancestral property from their fathers. This discussion became a national debate and propelled the issue of formal discrimination against women to the attention of government officials at the highest levels. As a result, the government, notably the Ministry of Law, Justice and Parliamentary Affairs, with the assistance of the Ministry of Health and civil society groups, drafted the *Muluki Ain* 11th Amendment Bill, 1997 (11th Amendment Bill), which proposes to amend some gender-based discriminatory laws in the Country Code, including the prohibition on abortion.

In its original form, the 11th Amendment Bill proposed the legalization of abortion on limited grounds. It sought to create the right to legal and safe abortion for married women with their husband's consent within the first twelve weeks of pregnancy; on grounds of rape and incest within the first 18 weeks; to save the life of the woman or where the woman's health is in danger at anytime during the pregnancy; and where there is evidence of fetal impairment anytime during the pregnancy.¹⁶⁷ Subsequent to revisions made by the Law, Justice and Parliamentary Affairs Committee of the Parliament at the behest of a variety of civil society actors and groups,¹⁶⁸ the original bill has been significantly broadened. The most notable changes are the removal of marital distinctions, which have resulted in the creation of the right to safe and legal abortion for all women. With the removal of the consent requirement, a husband or a guardian's will cannot overrule a woman's choice. The bill also prohibits sex-selective abortions and the use of amniocentesis tests to that end.¹⁶⁹ The House of Representatives approved this version of the bill on October 9, 2001.¹⁷⁰ It was subsequently rejected by the National Assembly because of a disagreement over unrelated provisions pertaining to women's property rights.¹⁷¹ However, it is due to be reconsidered by the lower House of Parliament in the next parliamentary session in 2002 and if reapproved will become law.¹⁷² To enter into force, the 11th Amendment Bill has to be passed by the House of Representatives again and submitted to the King for assent. If the bill is not adopted, it will lapse and a new bill will have to be introduced.

The approval by the House of Representatives of the 11th Amendment Bill, 1999, and with it the proposed changes to the abortion law, represents a major victory for advocates of women's reproductive rights because it marks the first time that lawmakers in Nepal have expressed sufficient political will to lift the ban on abortion and to make it legal and safe.

An inmate at Jhapa Jail, Kali Maya is serving her 20-year sentence, with an opinion recommending a reduction to six years. She had an arranged marriage, but her husband had married a second wife while she was pregnant.

I lived in a remote village with my husband of five years. I had been sick during my pregnancy with a fever almost every other day. I didn't receive any treatment. I didn't work. I was in my eighth month of pregnancy when I miscarried. I was in my room and called my mother and neighbors for help.

The villagers accused me of killing the child. My parents tried to defend me and said that I had been ill for a while. The villagers kept arguing about what really happened and finally, three days later, a couple of village men reported the incident to the police. I don't know of any particular reason why they would report me but there were some villagers who were jealous and angry with my parents and there had been arguments over petty things like kids going over to play in someone else's garden. I also suspect my husband of having instigated the villagers to report me. He had already married another woman. I feel that the second wife compelled him to go against me because she was herself pregnant.

The police came and arrested me and kept me in a hospital for six days. I was very weak and required four bottles of saline. A post-mortem of the fetus was conducted and it was kept in the hospital for three days. I was treated for a fever but not examined to determine whether I had spontaneously miscarried or not.

The police then took me to the district jail and kept me there for a month. I believe I may have been charged with abortion. I did not have a lawyer. It was especially hard because I cannot read or write. My family didn't come to meet me, including my husband. The district court sentenced me to 20 years in prison with a formal opinion for a reduction to six years. The decision was handed down in my presence but I was not questioned. Later a lawyer came and volunteered his services. The case is now on appeal in the Supreme Court.

I spend time in prison knitting. I have not received any skill development training. None of the inmates do.

Chapter II: The Abortion Ban

A Violation of Women's Human Rights

Laws that criminalize abortion deny women enjoyment of their basic human rights, including the rights to life and health, to non-discrimination, and to self-determination in reproductive decision-making. Criminal sanctions that are imposed upon women who have undergone abortions serve to penalize women for attempting to exercise their fundamental human rights. The international community called into question the validity of criminal sanctions for women accused of abortion at the Beijing Conference, where it was recommended that governments “consider reviewing laws containing punitive measures against women who have undergone illegal abortions.”¹⁷³

Nepali women's human rights are severely undermined by Nepal's abortion law. It is a law that threatens women's lives and health, discriminates against them, and interferes with their ability to make independent decisions regarding reproduction. For these reasons, even were the law enforced in strict compliance with international human rights norms, the law itself would constitute a violation of women's rights.

This chapter examines the international and national norms that are violated by Nepal's abortion law. Following a brief discussion of the principal sources of international human rights law, the rights to life, health, equality and non-discrimination and reproductive self-determination are discussed in the context of both international and Nepali law. Following a discussion of each right is an explanation of the manner in which it is violated by Nepal's abortion ban.

A. INTERNATIONAL LEGAL AND POLICY INSTRUMENTS: GENERAL BACKGROUND

The international community has agreed upon the universality of basic human rights in numerous international treaties and declarations.¹⁷⁴ Three of the earliest and most authoritative human rights instruments are the Universal Declaration of Human Rights (Universal Declaration),¹⁷⁵ the International Covenant on Civil and Political Rights (Civil and Political Rights Covenant),¹⁷⁶ and the International Covenant on Economic, Social and Cultural Rights (Economic, Social and Cultural Rights Covenant).¹⁷⁷ The Universal Declaration, although not a treaty, is considered a fundamental human rights text with normative value.¹⁷⁸ The international covenants, which are legally binding upon nations that have ratified them, elaborate upon the rights contained in the Universal Declaration. Two more recently adopted treaties,

the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹⁷⁹ and the Convention on the Rights of the Child¹⁸⁰ (Children's Rights Convention) provide more explicit protection of the rights of women and girls. The Rome Statute of the International Criminal Court (Rome Statute of the ICC), a treaty establishing a global criminal tribunal devoted to crimes of genocide, war crimes and crimes against humanity, outlines more specific international standards of criminal justice guarantees for suspects and defendants.¹⁸¹

The observations and recommendations of the various UN treaty monitoring bodies are of particular value in interpreting human rights treaties. Such committees have been established under CEDAW; the Civil and Political Rights Covenant; the Economic, Social and Cultural Rights Covenant; and the Children's Rights Convention, among others. These bodies monitor national compliance with international human rights treaties. Nations that are parties to the human rights treaties are required to submit reports to these committees on a periodic basis to document their compliance with the norms of a particular treaty.

In addition to the above-mentioned sources of international human rights law, declarations or decisions of inter-governmental bodies, such as the UN General Assembly, offer broad legal standards. While these instruments are not treaties, and therefore not binding, they may be considered evidence of emerging international custom or general principles of law.¹⁸² The UN General Assembly Declaration on the Elimination of Violence against Women provides broad protections of women's physical integrity in both public and private settings.¹⁸³ UN instruments devoted exclusively to ensuring the rights of criminal defendants and prisoners include the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (Body of Principles), the Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), and its Basic Principles on the Role of Lawyers (Basic Principles).¹⁸⁴ The first was adopted by the General Assembly in 1988 and the latter two were adopted by the Economic and Social Council in 1957 and 1990 respectively.¹⁸⁵

Particularly important for the development of international norms are international conferences. These include the Programme of Action of the International Conference on Population and Development (ICPD Programme of Action)¹⁸⁶ and the Beijing Declaration and Platform for Action, Fourth World Conference on Women (Beijing Platform for Action).¹⁸⁷ Again, while not legally binding, the documents adopted at these meetings contribute to the advancement of values recognized by the international community, and may assist in interpreting the scope of provisions contained within existing human rights instruments.¹⁸⁸

Many countries have not only committed themselves to complying with international norms, but have adopted national-level legal instruments that parallel these

international norms. This is the case in Nepal, where a number of international protections have been either explicitly repeated in national instruments or have been read into broader legal guarantees.

Governments' obligations to uphold human rights norms have been characterized as the duty to *respect*, *protect* and *fulfill* human rights. The duty to *respect* human rights requires governments to refrain from action that directly or indirectly compromises the rights of those living within their jurisdictions. The duty to *protect* human rights requires that governments take action to uphold individuals' rights against the actions of third parties. Finally, the duty to *fulfill* human rights calls for "appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights."¹⁸⁹ The analysis in this chapter and the next focuses on the government's failure to respect Nepali women's rights, emphasizing direct governmental action in violation of binding human rights norms. Implicit in the discussion, however, is the understanding that the government's obligation goes beyond merely refraining from violating the rights of Nepali women, but also requires affirmative steps to protect and fulfill these basic human rights.

B. WOMEN'S RIGHT TO LIFE

i. International Legal Standards

The right to life¹⁹⁰ is a fundamental human right, protected in such basic human rights instruments as the Universal Declaration and the Civil and Political Rights Covenant. The right to life has been interpreted to require states to take "all possible measures" aimed at preserving life.¹⁹¹ The Human Rights Committee—the United Nations treaty body that monitors state compliance with the Civil and Political Rights Covenant—has stated that:

The right to life has been too often narrowly interpreted. The expression "inherent right to life" cannot be properly understood in a restrictive manner and the protection of this right requires that states adopt positive measures.¹⁹²

Where unsafe abortion contributes to high rates of maternal death, governments must take steps to make abortion legal and accessible. The Human Rights Committee itself, in its concluding observations of states party reports, has found that maternal deaths due to unsafe abortion constitute a deprivation of the right to life. In reviewing the periodic report of the government of Peru, the Human Rights Committee noted that "clandestine abortions continues to be the main cause of maternal mortality."¹⁹³ It found that Peru's criminalization of abortion violated the right to life, as well as other protections of the Covenant.¹⁹⁴ Similarly, the

Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee), which oversees implementation of CEDAW characterized Colombia's ban on abortion as "[violative] of the rights of women to life..."¹⁹⁵ The CEDAW Committee has also explicitly recognized that abortion-related death results from a governmental failure to protect women's lives. In its Concluding Observations on Belize, the CEDAW Committee noted that "the [high] level of maternal mortality due to clandestine abortions may indicate that the Government does not fully implement its obligations to respect the right to life of its women citizens."¹⁹⁶

The international community has acknowledged the threat to women's lives posed by unsafe abortion in other forums. The Beijing Platform for Action states that "[u]nsafe abortions threaten the lives of a large number of women, representing a grave public health problem as it is primarily the poorest and youngest who take the highest risk."¹⁹⁷ The document calls upon states to recognize "the impact of unsafe abortion as a major public health concern."¹⁹⁸

ii. Nepali Legal Standards

The Nepali Constitution does not explicitly guarantee the right to life. However, the Supreme Court has interpreted the protection of the right to freedom in Article 12 to encompass the guarantees of Section 12 of the Civil Liberties Act, 1955, which states that "[t]he life and personal liberty of any person shall not be deprived save in accordance with the law..."¹⁹⁹ According to the Supreme Court, this provision creates a governmental obligation to "refrain from acts or omissions that directly endanger life" and requires the government "to take reasonable steps in order to prevent deprivations of life by individuals."²⁰⁰

iii. Violations of Women's Right to Life

Protections of the right to life require the government of Nepal to ensure women's access to legal and safe abortion services. Nepal's denial of the right to safe and legal abortion puts the lives of women at risk, thereby violating Nepal's duty to respect women's right to life. In reviewing Nepal's periodic report, the CEDAW Committee acknowledged the link between restrictive abortion laws and deprivation of the right to life, stating that the "current law on abortion contributes to the high maternal mortality rate in Nepal."²⁰¹

In Nepal, women seek clandestine abortions under conditions that endanger their lives. Roughly half of maternal deaths are attributed to unsafe abortion;²⁰² globally, in contrast, 13% of maternal deaths are attributed to unsafe abortion.²⁰³ A 1998 Nepali government study on maternal mortality and morbidity reports a total of 4,478 maternal deaths per year, or one death every two hours.²⁰⁴ This figure places Nepal among the countries with the highest maternal mortality rates in South

Asia and the world.²⁰⁵ It has been reported that complications of unsafe abortion are the leading reason for hospital admissions (54%).²⁰⁶ Thousands of preventable deaths of Nepali women can be linked to Nepal's criminalization of abortion. Because most abortions are conducted clandestinely, it is likely that the actual number is much higher.

Women's right to life entitles them to legal, safe and accessible abortion services. The daily toll on women's lives attributable to a preventable threat—unsafe abortion—puts Nepal in violation of the most fundamental human rights guarantee, the right to life.

C. RIGHT TO HEALTH

i. International Legal Standards

International human rights law guarantees individuals "the highest attainable standard of physical and mental health."²⁰⁷ The World Health Organization (WHO) has defined health as "a state of complete physical, mental and social well-being, not merely the absence of disease or infirmity."²⁰⁸ While the right to health does not guarantee perfect health for all people, it has been interpreted to require governments to provide health care and to work toward creating conditions conducive to the enjoyment of good health.²⁰⁹

Criminalizing abortion violates the right to health in two ways. First, where the unavailability of legal and safe abortion services causes women to undergo unsafe procedures and suffer injuries, women are denied their right to enjoy the highest attainable standard of health. Second, banning abortion denies women a basic component of reproductive health care services, thereby failing to create the conditions that are necessary for good health.

Unsafe abortion is associated with a range of injuries to women's physical health. These include: sepsis, hemorrhage, and uterine perforation—all of which may be fatal if left untreated and often lead to infertility, permanent physical impairment, and chronic morbidity; gas gangrene and acute renal failure, which contribute to abortion deaths as secondary complications; chronic pelvic pain, pelvic inflammatory disease, tubal occlusion, secondary infertility, as well as a high risk of ectopic pregnancy, premature delivery, and future spontaneous abortions; and reproductive tract infections, of which between 20% and 40% lead to pelvic inflammatory disease and consequent infertility.²¹⁰

Furthermore, abortion is a medical procedure and safe abortion services should be treated as a component of women's health care. There are a number of circumstances in which a woman may need to terminate a pregnancy in order to maintain her health. When a pregnancy is unwanted, it places a heavy burden on a woman's physical and mental health. An adolescent woman with little familial or economic

support will face enormous stress if forced to undertake undesired motherhood. Likewise, a woman with children who is unable to care for an additional child will suffer trauma—both physical deprivation and emotional anguish—as she struggles to meet the needs of her family. Unquestionably, a pregnancy that results from non-consensual sexual intercourse will have serious effects on a woman's well-being if she is forced to carry it to term. Enjoyment of the highest attainable standard of health, therefore, means having access to a safe procedure for termination of an undesired pregnancy. This need is heightened when the pregnancy poses an immediate threat to a woman's life or physical or mental health. An abortion law that prohibits the procedure under all circumstances—regardless of the pregnancy's potential danger to the woman—violates women's right to health care.

International instruments, including CEDAW, have specifically noted the importance of reproductive health care for women.²¹¹ The recommendations of various international conferences also focus on the duties of governments with respect to health care. Beginning with the 1993 Vienna Declaration and Platform for Action, states have affirmed “the importance of the enjoyment by women of the highest standard of physical and mental health throughout their life span [and] a woman's right to accessible and adequate health care and the widest range of family planning services.”²¹² The ICPD Programme of Action explicitly states that:

States should take all appropriate measures to ensure, on a basis of equality of men and women, universal access to health-care services, including those related to reproductive health care, which includes family planning and sexual health. Reproductive health-care programmes should provide the widest range of services without any form of coercion....²¹³

Similarly, CEDAW characterizes as a barrier to appropriate health care “laws that criminalize medical procedures only needed by women and that punish women who undergo these procedures.”²¹⁴

ii. Nepali Legal Standards

While there is no constitutional protection of the right to health in Nepal, one of the Constitution's Directive Principles states that “[t]he State shall pursue a policy of making the female population participate, to a greater extent, in the task of national development by making special provisions for their education, health, and employment (emphasis added).”²¹⁵ In addition, the government of Nepal, in its National Health Policy, has recognized that access to health care services is “a basic human right.”²¹⁶ One of the strategies of the Health Policy is to strengthen reproductive health services with a view to ensuring safe motherhood and maternal health.²¹⁷ These goals are reiterated in Nepal's Ninth Plan (1997-

2002), a comprehensive policy for social and economic development.²¹⁸

iii. Violations of Women's Right to Health

Nepal's criminal ban on abortion forces women to resort to unsafe abortion, thereby threatening their enjoyment of the highest attainable standard of health. It also denies women access to a basic component of reproductive health care, hindering enjoyment of the conditions that are necessary for good health.

The health consequences of unsafe abortion are well known in Nepal. Since abortion is illegal, government hospitals and health centers—which otherwise provide services and medications at minimal cost—do not provide abortion services. Consequently, women seeking abortions are forced to go to private clinics. These services are expensive and thus inaccessible to the majority of the population, which is rural-based. Those living in rural areas have incomes approximately two times less than those living in urban areas.²¹⁹ Rural women are forced to seek the help of providers with little or no medical training, often in unhygienic conditions. Methods for terminating pregnancy include “insertion of foreign substance into the cervix such as mercury, sharp pieces of glass, or sticks pasted with herbal mixtures or cow dung”²²⁰ and “pressing the abdomen with a heavy grinding stone.”²²¹ The most common complications suffered by women who undergo unsafe abortions include hemorrhage, sepsis, high fever, uterine perforation, pelvic peritonitis, and renal failure.²²²

For many women, the journey does not end there. In fact, their struggle for survival begins after a clandestine abortion, when they are confronted with serious complications. While post-abortion care is provided at government hospitals under the current reproductive health strategy, studies have revealed that, for women who can afford it, treatment for the complications of abortion may cost as much as NPR 10,000.00 (USD 129).²²³ Rather than recognizing safe abortion services as a component of women's health care, the government forces women to jeopardize their lives and health before they can seek assistance in government health care facilities.

Furthermore, by denying women a basic component of their reproductive health care, Nepal fails to ensure the conditions necessary for good health, thereby violating an essential element of the right to health. Women facing various conditions that cause them to require abortion services are denied necessary treatment. In reviewing Nepal's periodic report, the Committee on Economic, Social and Cultural Rights recognized the violation inherent to this denial of health care, noting “with alarm that abortion is absolutely illegal and is considered as a criminal offense ... even when pregnancy is life threatening or the result of incest or rape.”²²⁴

The government of Nepal, in banning abortion, denies women access to a basic health care service that could prevent needless risks to women's health. Access to abortion would also enable women to terminate safely a pregnancy that may itself

threaten their well-being. The government's failure to ensure access to safe and legal abortion is a violation of women's right to health.

D. RIGHT TO EQUALITY AND NON-DISCRIMINATION

i. International Legal Standards

The right to equality and freedom from discrimination is a fundamental principle of human rights law. Every major international human rights treaty upholds the tenet articulated in the Universal Declaration that “[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law.”²²⁵ In both the Civil and Political Rights Covenant and the Economic, Social and Cultural Rights Covenant, individuals are guaranteed freedom from discrimination on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”²²⁶ Criminalizing abortion discriminates against women and has a disproportionate effect on low-income and rural women, thereby discriminating on the basis socioeconomic status.

According to Article 1 of CEDAW, “discrimination against women” includes laws that have either the “effect” or the “purpose” of preventing a woman from exercising any of her human rights or fundamental freedoms on a basis of equality with men.²²⁷ Restrictive abortion laws have both that effect and that purpose. As noted above, banning abortion has the *effect* of denying women access to a health care procedure that only they need, thus preventing them from enjoying their right to health equally with men. Abortion prohibitions also have the discriminatory *purpose* of relegating women to traditional gender roles, undermining their capacity for independent decision-making, and excluding them from full participation in every sector of society. Discrimination of the latter kind is explicitly addressed in the Beijing Platform for Action, which notes that “[i]n most countries, the neglect of women's reproductive rights severely limits their opportunities in public and private life, including opportunities for education and economic and political empowerment. The ability of women to control their own fertility forms an important basis for the enjoyment of other rights.”²²⁸

Because criminal abortion laws tend to have their greatest effect on women who cannot access discreet and safe abortion services in private clinics, those who bear the primary brunt of these laws are low-income women and women living in rural areas. The effect of these laws is to further marginalize women already in the most vulnerable social groups, perpetuating and reinforcing discrimination on the basis of socioeconomic status. The Committee on Economic, Social and Cultural Rights, in its General Comment 14, proscribes any discrimination in access to health care on the grounds of any status that has the effect of nullifying or impairing enjoyment of the right to health.²²⁹ Similarly, in its concluding observations, the Committee has

condemned discrimination on the basis of socioeconomic status in exercising one's right to health.²³⁰

CEDAW has noted that discrimination on the basis of social factors compounds gender discrimination. Article 14 of CEDAW calls upon states to "take into account the particular problems faced by rural women" and to "take all appropriate measures to ensure the application of the provisions of [CEDAW] to women in rural areas."²³¹ In particular, states are required to ensure rural women the right to "have access to adequate health care facilities, including information, counseling and services in family planning...."²³²

ii. Nepali Legal Standards

The principle of equality also receives broad protection in Nepal's Constitution, which provides that "[a]ll citizens shall be equal before the law. No person shall be denied the equal protection of the laws."²³³ The Constitution further states that the "State shall not discriminate among citizens on grounds of ... sex, caste, tribe ... or any of these."²³⁴ Indeed, the same article provides that "special provisions may be made by law for the protection and advancement of the interests of women ... or those who belong to a class which is economically, socially or educationally backward."²³⁵ The Constitution's Directive Principles elaborate on these standards of equality, declaring that state objectives include "establishing a just system in all aspects of national life"²³⁶ and "eliminating all types of economic and social inequalities" as a means to establishing and developing a healthy social life.²³⁷

iii. Violations of Women's Right to Equality and Non-Discrimination

Nepal's abortion law violates women's right to equality and non-discrimination. It meets the definition of discrimination against women articulated in CEDAW, as it is a restriction with both the effect and purpose of preventing women from enjoying their rights on an equal basis with men. The abortion law also disproportionately affects low-income and rural women, thereby discriminating on socioeconomic grounds.

Nepal's abortion ban has the *effect* of denying women a health care service that only they need. They alone must suffer the physical consequences of seeking care clandestinely. While explanations for the law vary, its discriminatory *purpose* can be inferred from the views of those who oppose reform of the law. From interviews with members of the government and legal community, it is clear that the abortion law is closely linked to views of women's role in the family and society.²³⁸ By permitting a woman to regulate her own fertility and freeing her from the consequences of unwanted pregnancy, legalized abortion, it is feared, will encourage women to engage in extramarital sex, thereby destroying the marriage institution and disintegrating society's moral fabric.²³⁹ The abortion prohibition, therefore, reinforces a

patriarchal view that social order depends upon women's conformity to traditional gender roles.

Even those who support reform of the abortion ban have expressed this concern. A justice of the Supreme Court of Nepal stated that "abortion should be liberalized, but at the same time, social order and harmony should not be disturbed."²⁴⁰ This is a point of view that has been expressed by other judges, particularly one judge who stated that "there should be a harmony between women's right to health and public morality regarding sexuality."²⁴¹ Permitting women to make choices regarding their reproductive capacity is equated with a loss of social control. This view is reflected in the position of some law enforcement officials who stated that, while abortion should be available under some circumstances, a woman who has many sexual partners should not be spared prosecution.²⁴²

The abortion law also has a disproportionate effect on low-income and rural women, and is therefore discriminatory on the basis of socioeconomic status. Low-income and rural women do not have access to safe abortion services and thus suffer more of the damaging health effects of the abortion prohibition than do their wealthier urban counterparts. The incidence of fatalities and complications resulting from unsafe abortions is significantly higher among rural women.²⁴³ For women in cities who can afford to pay for abortion services in private clinics, the abortion ban has relatively few health effects. As pointed out by one judge, "abortion is socially recognized and accepted among educated women."²⁴⁴

The impact of the abortion ban may be greater for low-income and rural women in part because they have a greater need for abortion services. These women have less access to family planning services,²⁴⁵ and thus experience more unwanted pregnancy. In addition, there is evidence that low-income and rural women are more vulnerable to sexual abuse within their communities. A member of Nepal's Human Rights Commission pointed out that "[a]bortion is a crime in rural areas and this is a result of the behavior of the powerful elite. Powerful men abuse and violate women as a result of which they become pregnant and are forced by the same men to have abortions."²⁴⁶ Men are rarely prosecuted for abortion, even when they commit an act of rape or incest that results in an illegal termination of pregnancy.²⁴⁷

Nepal's abortion ban discriminates on the basis of sex and socioeconomic status. Criminal sanctions for abortion and other barriers to the procedure have their greatest impact on women, particularly rural and low-income women.

E. RIGHT TO REPRODUCTIVE SELF-DETERMINATION

i. International Legal Standards

Fundamentally, a woman's right to terminate a pregnancy emanates from her right to make decisions regarding her own body and reproductive capacity. Support

for this right is found in a number of human rights instruments, which contain provisions that ensure autonomy in decision-making about intimate matters. Such provisions include protections of the right to decide freely and responsibly the number and spacing of one's children,²⁴⁸ the right to physical integrity,²⁴⁹ and the right to privacy.²⁵⁰

Recognition of the right to determine the number and spacing of one's children reflects the fact that only a pregnant woman knows whether she is ready to have a child and endure the risks of pregnancy. Governments cannot make that decision on the woman's behalf. The right to physical integrity ensures freedom from unwanted invasions of one's body. A woman forced to carry an unwanted pregnancy to term loses her bodily autonomy as she faces the physical and emotional effects of undesired motherhood. Decisions one makes about one's own body, particularly regarding one's reproductive life, lie squarely in the domain of private decision-making and are thus shielded from interference under the right to privacy. All decisions relating to reproduction have far-reaching consequences for a woman's physical, mental, social, and intellectual well-being. They also determine the extent to which she can realize her potential and participate in both private and public life.

The principles of autonomy in decision-making are inherent in the common understanding of other human rights as well, including the right to health. The Committee on Economic, Social and Cultural Rights has stated that reproductive health means "that women and men have the freedom to decide if and when to reproduce and the right to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice as well as the right of access to appropriate health-care services..."²⁵¹

ii. Nepali Legal Standards

The right to reproductive self-determination has support in Nepal's Constitution, which provides broad protections of privacy rights. The Constitution provides that, except as provided by law, "the privacy of the person ... is inviolable."²⁵² Commentators view this guarantee as expansive, covering a range of privacy interests including bodily privacy, sexual privacy and confidentiality in medical treatment.²⁵³ Protection against interference with private, family and home life and with physical or mental integrity or moral or intellectual freedom are some of the conceptual starting points for this right.²⁵⁴

iii. Violations of Women's Right to Reproductive Self-Determination

The government of Nepal subordinates women's autonomy by prohibiting abortion, thereby denying women the ability to decide what is best for their well-being and family life. The abortion prohibition must be examined in light of the social and economic realities that deny Nepali women the ability to make decisions

affecting their reproductive lives. In the Nepali context, where women live with their extended families, decisions regarding sex and childbearing are significantly influenced by the wishes of family members, ranging from a woman's spouse to all categories of in-laws and even children.²⁵⁵ Rather than creating mechanisms to protect women from encroachments on their privacy by third parties, the government has further weakened women's decision-making abilities by criminalizing abortion.

Early marriage is common in Nepal. Forty-four percent of 16-to-19-year-old women are married.²⁵⁶ As a result, the transition from childhood to womanhood and, by extension, motherhood is much quicker than in most countries. Many young women are confronted with pregnancies long before they have the physical capacity to endure them, let alone the maturity to face the emotional and material challenges of motherhood.

Women's silence and submission are compounded by poverty, illiteracy and lack of sexual and reproductive health knowledge. For women 15 years or older, the literacy rate is 25%, which is far below that of men (60%). Between primary school and secondary school, the enrollment level of girls declines steeply—from 96% to 33%.²⁵⁷ As a general rule, the schools offer no educational programs on sexuality and human reproduction, so even those girls who go to school have little knowledge about these issues. Reproductive self-determination is further weakened by the government's failure to ensure access to family planning information and services. The pregnancies that young women face are often unplanned.²⁵⁸

In a context in which women have little decision-making power in most aspects of their lives, Nepal's abortion ban further undercuts women's autonomy in matters of reproduction. The determination of whether and when to have a child must be left to each individual woman. Criminalizing a procedure that enables a woman to make such a decision without dire consequences for her health is an interference with women's right to reproductive self-determination.

Nepal's abortion prohibition undermines the human rights of all Nepali women by denying them their rights to life, health, equality and non-discrimination, and reproductive self-determination. Even were the law enforced in strict compliance with accepted norms of criminal procedure, it would constitute a violation of women's human rights. As the next chapter discusses, however, enforcement of the law is equally problematic, with the government routinely disregarding the rights of criminal defendants and prisoners prosecuted under Nepal's abortion ban.

Eighteen-year old Sarita is serving a life sentence at the Dilli Bazaar Khor prison.

I was 17 when I left my village and eloped with the man I later married. My husband wanted me to go to India with him but I wanted to go back to my village. I did not use any method of family planning because I did not know about it and none of my friends were married at the time. I became pregnant and had a miscarriage during the eighth month. It began with stomach pain. When I asked my husband and friends to take me to a doctor, they refused to help. They were all angry with me for refusing to go to India. In fact, my two “friends” reported me to the police and alleged that I killed the fetus.

The police arrested me and took me to the police station. They asked me if I killed the fetus and I denied it. I was not examined by a doctor. They kept me in custody for 17 days. My friends who reported me submitted statements alleging my guilt but they did not appear in court.

In court, no one asked me any questions or let me tell my side of the story. I have been sentenced to life in prison.... I was not present at the time of sentencing. I was taken to court twice but on both occasions, got there after the proceedings were over.... In court, no one asked me any questions or let me tell my side of the story.

No one ever comes to visit me. I have no idea where my husband is. I don't even know if my parents know I am in prison. They'd probably come to see me if they knew.

Chapter III: Women's Human Rights Violations Resulting from Enforcement of the Abortion Ban

Given the many rights violations inherent in Nepal's abortion law, enforcement of the law's criminal sanctions constitutes yet another assault on women's human rights. Criminalization of abortion has particularly devastating effects in Nepal, where the criminal justice system is itself rife with irregularities and lapses in procedural fairness. Nepal's punitive approach to abortion, combined with its weak protections for women who are arrested and prosecuted, results in systematic violations of international human rights norms, as well as of national-level legal protections. These norms include the right to be free of arbitrary arrest and detention, to equality and non-discrimination before the law, the right to due process of law, and the right to humane conditions of detention. The outcome of these violations is the imprisonment and mistreatment of Nepali women who are accused of illegally terminating their pregnancies. In this chapter, their stories illustrate the patterns of abuse inherent to Nepal's abortion prohibition and criminal justice system.

A. RIGHT TO BE FREE FROM ARBITRARY ARREST AND DETENTION

i. International Legal Standards

Enjoyment of human rights requires governmental respect for the rule of law. Where judges, prosecutors and police interpret and enforce criminal laws inconsistently, a defendant's criminal liability becomes a matter of chance, rather than a clear application of the law. Behavior that is considered legal in one jurisdiction may be the basis for a prosecution in another.

International law protects against arbitrary deprivations of liberty. The Civil and Political Rights Covenant declares that "[n]o one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."²⁵⁹ Criminal laws must clearly state what behavior is prohibited, providing a clear directive to those charged with enforcing the law. Similarly, the penalties assigned for criminal violations should be proscribed in law.

ii. Nepali Legal Standards

The Preamble to the 1990 Constitution explicitly states that one of the goals of

the Constitution is “to establish an independent and competent system of justice with a view to transforming the concept of the Rule of Law into a living reality.”²⁶⁰ It follows that consistency in interpretation, application and enforcement of the law is fundamental to the proper implementation of Nepali constitutional law. This principle has further support in Article 12 (1) of the Constitution, which guarantees the right to freedom and explicitly states that “[n]o person shall be deprived of his personal liberty save in accordance with the law...”²⁶¹ Elaborating the meaning of the qualifying phrase “save in accordance with the law,” the Supreme Court has written as follows:

When depriving a person of his life or liberty, both substantive and procedural requirements of the law must be duly observed, with maximum care and presence of mind.... If anybody is proved guilty, by prejudiced disposition or malicious harboring, the authority proving such guilt is to be deemed guilty, rather than such person.²⁶²

Where law enforcement agents act arbitrarily or inconsistently, an individual's personal liberty is endangered and the principle of the rule of law is violated.

iii. Violations in the Enforcement of Nepal's Abortion Law

Nepal's abortion law is interpreted and enforced in an inconsistent and arbitrary manner. As noted above, the law makes no explicit exception to its prohibition of abortion. It does, however, specify that abortion does not give rise to criminal liability where a pregnancy is terminated while doing something for the purpose of “welfare.”²⁶³ As discussed in Chapter I, this ambiguous exception provides no guidance to providers or law enforcement officials, since it neither defines “welfare” nor specifies whose welfare is protected. Judges and law enforcement officials throughout the country thus interpret the law differently. Several consider abortion to be prohibited under all circumstances.²⁶⁴ However, interviews with judges, prosecutors and police reveal that the exception has been variously interpreted to permit abortion to save a woman's life,²⁶⁵ protect her health,²⁶⁶ and in cases of rape or incest.²⁶⁷ With judges and law enforcement officials adopting their own interpretation of the law, the manner in which the law is enforced becomes a matter of chance for each woman.

Coherent enforcement of Nepal's abortion law is further called into question by law enforcement officials' practice of approaching allegations of abortion as cases of infanticide. Whether a woman is charged with abortion or infanticide appears to be a determination of individual law enforcement officials. Abortion, an act that is officially punishable with up to three years in prison, can carry penalties of up to 20 years when prosecuted as a case of infanticide.²⁶⁸ A number of the women who are

serving prison sentences for infanticide describe having had miscarriages, in one case as early as the fourth month of pregnancy.²⁶⁹ This would suggest that, in these cases, the question for law enforcement officials was whether the women's miscarriages were spontaneous or induced, i.e., whether or not these women had abortions. Instead, the investigations apparently focused on whether the newborns were born dead or killed after birth. In a context in which procedural protections for defendants are weak and irregularities in criminal investigations are rampant, a number of these prosecutions resulted in convictions. As one law enforcement official stated, "Most cases actually involve abortions but they are prosecuted as infanticide ... the fact of abortion creates such suspicion. Likewise, the police are also under pressure to ask for higher sentences."²⁷⁰ By manipulating the basis of prosecution, law enforcement officials have arbitrarily assigned penalties for abortion that are much greater than those defined in the law.

B. RIGHT TO EQUALITY AND NON-DISCRIMINATION

i. International Legal Standards

As noted in Chapter II, equality is a core principle of human rights law.²⁷¹ Equality under the law encompasses the right to equal access to and treatment by the courts,²⁷² and to equal protection in the application and enforcement of laws.²⁷³ The Universal Declaration explicitly states that: "[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."²⁷⁴

With the goal of ensuring such equality, the Beijing Platform for Action requires that governments eliminate gender bias in the judicial system to "ensure equality and non-discrimination under the law and in practice."²⁷⁵ The Beijing Platform for Action also specifically calls on governments to "ensure that women defendants, victims and/or witnesses are not revictimized or discriminated against in the investigation and prosecution of crimes."²⁷⁶

The CEDAW Committee has further stated that in some countries a woman's "status as a witness or her evidence is accorded less respect or weight than that of a man. Such laws or customs ... diminish her standing as an independent, responsible and valued member of her community. When countries limit a woman's legal capacity by their laws, or permit individuals or institutions to do the same, they are denying women their rights to be equal with men...."²⁷⁷

Guarantees of equality also extend to low-income and rural women. Discrimination on the basis of socioeconomic status is prohibited under the non-discrimination provision of the binding international covenants.²⁷⁸

ii. Nepali Legal Standards

Nepal's national laws stress the importance of the principle of equality. Not only

must national laws and policies uphold this principle, but law enforcement officials must treat defendants equally and enforce the law in a non-discriminatory manner. The Constitution explicitly states that “all citizens shall be equal before the law [and that] no person shall be denied the equal protection of the laws.”²⁷⁹ Moreover, the Constitution and laws prohibit discrimination on the grounds of “sex, caste, tribe ... or any of these.”²⁸⁰

“The law is biased and one-sided. Men are not prosecuted for their role in bringing women within the net of the law. The existing law does not get at the real culprit. Legal changes are required in this regard.”²⁸¹

Justice of the Supreme Court

iii. Violations in the Enforcement of Nepal's Abortion Law

Criminal sanctions for abortion are imposed almost exclusively upon women. Men who are complicit in performing or procuring abortions are rarely prosecuted. The law seeks to punish persons assisting in abortions, but men who provide their partners with medicine to terminate their pregnancies or those who take their wives to unqualified providers are not punished.²⁸² Many women seek abortions when pregnancy arises from extramarital relationships.²⁸³ In these circumstances, even if men have been involved in or dictated the decisions to seek an abortion, they evade detection because evidence linking them to the pregnancy is elusive.²⁸⁴ Since evidence of women's role in procuring an abortion is more readily available, criminal investigations usually end with them.²⁸⁵ In addition, because men are usually more affluent, they are able to exert greater influence with the police and avoid prosecution.²⁸⁶

This trend is evidenced by the analysis of the judgments related to abortion and infanticide that have been published in the *Nepal Kanoon Patrika* (NKP) from 1979/80 to 1998/99 (2036 to 2055). Out of 25 cases published, 17 resulted in convictions and eight ended in acquittals. The women who had abortions were convicted in 15 of these cases. In only two of these cases were men convicted.²⁸⁷ In cases where women have made statements about the involvement of men in the commission of the “crime,” the court has been known to acquit the men on the ground that the statements of the women have to be corroborated by direct evidence.²⁸⁸ Consequently, men are able to escape prosecution merely by denying the existence of a sexual relationship. Recognizing the discriminatory nature of the abortion law, one judge pointed out that the law is biased and one-sided and legal changes are required in this regard.²⁸⁹

Furthermore, it is mostly low-income and illiterate rural-based women who face prosecution under Nepal's criminal ban on abortion. In fact, it is not uncommon for women of higher status, such as doctors and public officials, to attest openly to having had abortions.²⁹⁰ One member of the Human Rights Commission observed that "[i]n urban areas doctors perform abortion openly and it is not a crime whereas in rural areas it is a crime."²⁹¹ Similarly, the vulnerability of indigent and rural women makes them more likely to be reported and convicted for abortion. This is illustrated by numerous studies. One 1997 study of women in prison for abortion revealed that, of 80 women convicted for abortion and infanticide, all of them were illiterate and from low-income families.²⁹² This trend was borne out in the present study, where all the women profiled and subsequently interviewed were rural-based, low-income and illiterate.²⁹³

Lack of familiarity with the legal system and its norms, and the additional barriers posed by illiteracy and isolation, make most women outsiders to the legal system. They are confronted by it only after their arrest. Most of them are unaware of their basic rights at the time of and after their arrest, including the right to legal representation and the right to remain silent.²⁹⁴ They are thus vulnerable to numerous forms of procedural abuse, which often have far-reaching consequences at the time of trial and sentencing. As pointed out by a member of the Nepal Bar Association, "If women received proper legal representation in the first place, sentencing would not be so harsh."²⁹⁵ One district judge went further, stating that "with proper legal representation, many women could probably escape liability altogether."²⁹⁶

Discrimination is present not only in sentencing but also in the treatment of women in prison. As stated by **Sanu Karki**, a prison inmate, "[life in prison] is more restrictive for women than for men."²⁹⁷ (This is further discussed in section D on the rights of women in prison.)

Women who are prosecuted and punished under Nepal's restrictive abortion law have been denied their right to equality and non-discrimination. Enforcement of the law is targeted against women, the vast majority of whom are based. In addition, as discussed below, widespread discrimination and disrespect for women's rights makes women more vulnerable to the violations and abuses prevalent in Nepal's criminal justice system.

C. RIGHT TO DUE PROCESS

In the context of criminal justice, due process guarantees require governments to act strictly within their prescribed powers and ensure safeguards for the rights of the accused.²⁹⁸ A number of basic due process protections have been recognized in international human rights instruments, including the Civil and Political Rights Covenant. The broad protections discussed here are the right to be informed

promptly of charges and to prompt proceedings, the right to counsel, and the right to a fair and public hearing.

i. Right to be Informed Promptly of Charges and the Right to Prompt Proceedings

a. International Legal Standards

Under the Civil and Political Rights Covenant, individuals who are arrested or detained “shall be informed, at the time of arrest, of the reasons for [the] arrest and shall be promptly informed of any charges against [them].”²⁹⁹ The information provided must specifically and substantively address the factual and legal basis for the arrest or detention. As specified by the Human Rights Committee, which oversees the enforcement of the Civil and Political Rights Covenant, it is necessary to inform a detainee “of the substance of the complaint against him.”³⁰⁰ Moreover, information about the charges must be provided promptly. The Human Rights Committee, for example, in examining an individual complaint against the Dominican Republic, found that the authorities violated the right of a detainee by keeping him uninformed of the reasons for his arrest for 50 hours.³⁰¹

Article 9(3) of the Civil and Political Rights Covenant states that “[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release....”³⁰² While the term “prompt” has not been defined in international law, the Human Rights Committee has stated that “delays must not exceed a few days.”³⁰³ Generally, defendants have the right to be tried within a reasonable time and “without undue delay.”³⁰⁴ The proceedings, including final appeal, and the issuance of the judgment must also be completed within a reasonable time.³⁰⁵

b. Nepali Legal Standards

Nepali law protects the right to be promptly informed of charges under the fundamental guarantee of the right to criminal justice. Article 14(5) of the Constitution states that: “No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest.”³⁰⁶ The Nepali Civil Rights Act (1955) reiterates this guarantee and stipulates that “the person arrested ... [s]hall not be detained in custody without giving him the notice along with grounds of the arrest as soon as possible.”³⁰⁷

Nepali law not only ensures the right to prompt proceedings, but also states explicitly what time period constitutes “prompt.”³⁰⁸ As stated by the Constitution and echoed in the State Cases Act:

Every person who is arrested and detained in custody shall be produced

before a judicial authority within a period of twenty-four hours after such arrest, excluding the time necessary for the journey from the place of arrest to such authority, and no such person shall be detained in custody beyond the said period except on the order of such authority.³⁰⁹

c. Violations in the Enforcement of Nepal's Abortion Law

The accounts of a number of women in jails across the country reveal that law enforcement agents routinely disregard women's right to be informed promptly of charges. **Renu Shrestha**, an inmate at Kathmandu Central Jail, described her first encounter with the police in the following words: "The police arrived around 7:00 A.M. and took me away in their van. They assured me nothing was going to happen. Later, they made me sign a statement saying I had destroyed my fetus intentionally..."³¹⁰

Sanu Karki also spoke about the summary manner in which she was arrested by the police. Recounting her experience she said: "The police came and arrested me. All they said was that they wanted me to go with them..."³¹¹

Bimala recalled the night of her arrest in the following words: "The police came to arrest me at night. They pulled me out of bed, put me in the car, and took me to the station. The police told me why they had arrested me only on the way to the station.... I was formally charged only after 14 days."³¹²

The testimonies reveal a consistent and systemic failure on the part of police officers to execute even their most basic duties in accordance with the law. Not only are women not informed of the offense with which they are charged, they are subjected to false assurances and even the use of force. Some law enforcement officials appear to be unaware of their duty to inform suspects of the reason for their arrest. When asked whether arresting officers inform women of their charges, an assistant superintendent of police in a district where there are three women in prison for abortion flatly responded that "[T]here is no reason to spell out a reason because they already know why they are being arrested."³¹³

Similarly, the failure of the Nepali criminal justice system to ensure prompt proceedings is evident from the following testimonies.

Durga described what happened after she was arrested as follows: "I was presented to the judge after two days in custody. After being charged by the court, I was sent back to jail. It took about 15 to 16 months for my case to be heard."³¹⁴

Pramila had to endure an even longer initial period of waiting. She recalled what happened after she was arrested in the following words: "I had to wait seven days before coming before a judge.... I had to wait seven months for a trial."³¹⁵

It is evident that in many cases the waiting before being presented before a judge is much longer than the legally mandated 24 hours. The police's disregard of their duty to produce an accused person before the appropriate authorities is compound-

ed by their failure to inform women of why they are being made to wait. By not informing women of the status of their cases, the police exacerbate the fear and psychological trauma connected to the arrest itself.

The delay in investigating and prosecuting abortion cases leads to women being thrown into prison with other convicts before their guilt is established. As one lawyer put it, “The accused goes to prison before trial...”³¹⁶ This is in part due to the fact that abortion is not a priority case for the police.³¹⁷

While international law recognizes the possibility of delays in criminal proceedings, such delays should not be a result of neglect or arbitrary behavior on the part of law enforcement officials. Women accused of abortion and infanticide, who are generally unaware of their rights and lacking legal representation, are regularly required to wait in police custody with no information about the status of their cases.

ii. Right to Counsel

a. International Legal Standards

Anyone arrested or charged with a crime, whether or not detained, must be informed of his or her right to counsel or to free legal assistance.³¹⁸ The right to counsel applies while in custody, both before and during the trial. The general right to a legal defense, including through counsel, is a fundamental tenet of human rights law and a prerequisite for judicial fairness.³¹⁹ Article 14(3)(d) of the Civil and Political Rights Covenant requires that, at a minimum, a suspect be permitted “to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right.”³²⁰

The right to counsel extends to all stages of the proceedings, including the interrogation,³²¹ and attaches immediately upon arrest.³²² The Human Rights Committee has stated that detainees “must immediately have access to counsel.”³²³ Consequently, suspects, even if not arrested or detained, must be notified of this right to facilitate the preparation of a defense.³²⁴ Defendants are not only entitled to counsel, but also to competent and effective representation.³²⁵

The right to counsel becomes meaningful only when the defendant has adequate time and facilities to prepare a defense and to communicate with counsel of choice.³²⁶ The Human Rights Committee has held that while “adequate time” varies with the circumstances of each case, “facilities must include access to documents and other evidence which the accused requires to prepare his case, as well as the opportunity to engage and communicate with counsel.”³²⁷

A suspect or defendant who lacks the means to obtain legal counsel is entitled “to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient

means to pay for it.”³²⁸ In considering judicial fairness under Article 14 of the Civil and Political Rights Covenant, the Human Rights Committee characterized the availability of free legal counsel to indigent defendants in capital cases as “axiomatic.”³²⁹ The Rome Statute of the ICC requires that any defendant under its jurisdiction have access to “legal assistance... in any case where the interests of justice so require, and without payment by the person in any such case if the person does not have sufficient means to pay for it.”³³⁰

In addition, the Beijing Platform for Action calls on governments to “[e]nsure access to free or low-cost legal services, including legal literacy, especially designed to reach women living in poverty.”³³¹

b. Nepali Legal Standards

Nepali law places the right to counsel within the guarantee of the right to criminal justice, thereby granting it the status of a fundamental right under the Constitution. Article 14(5) states that: “No person who is arrested ... shall be denied the right to consult and be defended by a legal practitioner of his choice.”³³² Support for this right is also found in the Civil Rights Act which specifies that individuals under arrest and in custody “shall not be deprived of the right to counsel with the legal practitioner of his choice or the attorney appointed as per laws and to be defended by him.”³³³

Nepali law also recognizes the right of indigent defendants to free counsel. Article 26(14) of the Constitution states that: “[t]he State shall, in order to secure justice for all, pursue a policy of providing free legal aid to indigent persons for their legal representation in keeping with the principle of the Rule of Law.”³³⁴

“No one tried to get a lawyer for me and I didn’t ask for one because I didn’t know I could.”³³⁵

Aarti, inmate Jhapa jail

c. Violations in the Enforcement of Nepal’s Abortion Law

The right to legal counsel is routinely violated in cases involving abortion and infanticide. Of the total number of women in prison for abortion and infanticide offenses, the vast majority did not have lawyers and nearly half said that they had no assistance at all.³³⁶

Aarti did not have a lawyer because she was not informed about her right to legal representation.³³⁷ She was told about her right to a lawyer only by other inmates who urged her to appeal her sentence. **Asha** had a lawyer at her final hearing. She described her access to legal counsel as follows: “At the final hearing, I had a lawyer, but did not know his name or anything about him. [He] is no longer in

QUESTIONS POSED: WHO HELPED YOU AT TRIAL?

(Total Number of Respondents = 57)

RESPONSES	NUMBER OF RESPONDENTS	PERCENTAGE OF TOTAL
Had no assistance	27	47.37
Friend	2	3.51
Family member	10	17.54
Lawyer	7	12.28
Other	4	7.02

touch. My parents gave him money and then he disappeared; there's no more money."³³⁸ **Reeta** did have a lawyer arranged by her father, but no longer has one because her father passed away.³³⁹ **Maiya** was not informed about her

right to counsel, but her mother hired one for her.³⁴⁰

Renu Shrestha³⁴¹ appointed counsel with the help of a women's group called *Rupa Mahila*. However, Renu says her lawyer has not done much for her despite the fact that she has taken more than NRP 3,500 (USD 45) from her. Renu was present during her trial and appeared in court eight times before a final decision was handed down. She even paid her lawyer NRP 1,000 (USD 13) on the date of the decision but has not received a copy of the judgment in writing. The lawyer keeps assuring her that she will be released soon. She has promised to get Renu released in eight months, but says it will cost her another NRP 3,000 (USD 39). Renu does not have money to appeal and is helpless.

Women's lack of familiarity with the legal system prevents them from asking for assistance. As expressed by one judge, "Women don't know what a lawyer is ... what the role of a lawyer is ... what justice is ... and what courts are..."³⁴² A number of women who have hired lawyers have no idea of their role. **Sunita**³⁴³ believes she has two lawyers. One is from her village. She does not know where the other is

EDUCATIONAL QUALIFICATION OF WOMEN PRISONER

(Total Number of Respondents = 57)

LEVEL OF SCHOOL	NUMBER OF RESPONDENTS	PERCENTAGE OF TOTAL
No schooling	34	59.65
Primary school	13	22.81
Secondary school	6	10.53
University		
No response	4	7.01

from. The police did not tell **Durga**³⁴⁴ that she could have a lawyer. She found out in jail and then hired a private lawyer. It is not clear at what stage she had a lawyer. She says she "thinks" there was one at the time of her pleading.

Women's vulnerability in the absence of legal representation is heightened by the fact that most of the accused have little or no education. Out of the women surveyed in this study, 60% of them have never been to school and none of them have attended university.³⁴⁵

Thus, there is a greater need for the government to take proactive measures to ensure that women are aware of their right to legal assistance.

When asked why most women do not receive legal representation, one police official responded:

No information is given about the right to legal representation because the police and the accused are on “opposite sides.” One can inform them informally but it is not the police’s duty to make arrangements. Abortion is a crime and the government is responsible for prosecuting those who have abortions; since the police are part of the government, it is not their responsibility to get a lawyer for the “other side....” Only those who knock on justice’s door deserve to get justice.³⁴⁶

The view that it is the duty of the accused to ask for a lawyer, rather than a police officer’s duty to inform the accused of the right to counsel, was echoed by a number of police officers.³⁴⁷ It was also widely acknowledged that whether or not a woman is informed of this right depends on the attitudes of investigating officers and their awareness of human rights.³⁴⁸

Guarantees of legal assistance for the indigent have had little effect in Nepal. Women’s financial condition affects their ability to receive effective legal representation. **Sarita**, who has been sentenced to life in prison, could not hire a lawyer because she has no money.³⁴⁹ **Pushpa** had to sell all her jewelry to raise enough money to hire a lawyer.³⁵⁰ **Sanu Karki** also did not have the means to hire a lawyer and the court appointed one for her. However, she was taken to court only to sign the final decision and was not asked any questions nor given the opportunity to defend herself.³⁵¹

NGOs and other legal service providers serving indigent defendants express frustration that standards of legal ethics prevent them from providing women with information about their services. Because attorneys are not permitted to solicit clients, they may not go to the jails or police stations to inform women of their right to an attorney and the availability of free legal services. These lawyers must wait until defendants or their families request legal services. Legal aid providers are thus dependent upon law enforcement officials to inform women that these services exist and that there are lawyers willing to take their cases.³⁵²

The right to counsel is not realized merely upon the hiring or appointment of a lawyer alone. The quality of service provided is critical to fulfillment of this right. A number of women do receive lawyers appointed by the court at some stage of their trial. There are, however, serious questions as to the quality of services provided by lawyers appointed by the court, who are usually severely underpaid. The uneven quality of representation, which is amply illustrated by the women’s testimonies, was

also raised by a Supreme Court Justice, who pointed out that: “[G]overnment defenders are paid very poorly so they don’t take such cases seriously ... priority is given to conventional murder cases, not infanticide and abortion.”³⁵³

While legal services are also provided by bar associations, abortion cases do not elicit the same commitment and interest as other cases. As one police official pointed out: “[b]ar associations are not always willing to take on abortion cases. They are more interested in political issues and related cases. They are also more inclined to take on the cases of influential people.”³⁵⁴

The criminal law’s major failing is that by the time the court appoints a lawyer for an indigent person, the investigation is over, all the evidence has been collected, and the accused has not had the opportunity to prepare a defense. There is no legal provision to guarantee a lawyer during the investigative phase, which makes the appointment of a lawyer during the trial stage almost futile. Often an attorney meets his or her client for the first time on the day of the trial. As an attorney in Palpa reported, no space in the courthouse is designated for attorney–client consultations. Lawyers are often denied admission to prisons prior to trial by prison officials.³⁵⁵ With no time to collect additional evidence that may prove a client’s innocence, the defense attorney must limit him or herself to the record provided by the prosecution.

There are serious lapses in Nepal’s implementation of the right to counsel. The consequences for many women are criminal convictions and harsh sentences. In addition, women who lack defense attorneys are in a weaker position to challenge police tactics that violate Nepali and international law. The patterns of abuse during criminal investigations therefore go unquestioned.

iii. Right to a Fair and Public Hearing

a. International Legal Standards

A fundamental right of defendants is the right to a fair³⁵⁶ and public hearing.³⁵⁷ According to Article 14(1) of the Civil and Political Rights Covenant, “[i]n the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...”³⁵⁸ This broad right encompasses several distinct rights, including the right to be presumed innocent; the right to be present at trial; the right to a defense, either alone or through counsel; the right to call and examine witnesses; and the right to an impartial tribunal.³⁵⁹ In the words of the Human Rights Committee: “The accused or his lawyer must have the right to act diligently and fearlessly in pursuing all available defenses and the right to challenge the conduct of the case if they believe it to be unfair.”³⁶⁰

As a prerequisite for fair proceedings, the Universal Declaration states that a

defendant must be “presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.”³⁶¹ The Human Rights Committee declared the presumption “fundamental to the protection of human rights.”³⁶² The presumption of innocence extends from the investigative, pre-trial stages of the proceedings and throughout the trial and appeal process.

Moreover, a defendant may be convicted only if the prosecution successfully proves, beyond a reasonable doubt, that she is in fact guilty.³⁶³ Summing up these associated rights, the Human Rights Committee has stated that “[b]y reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.”³⁶⁴

Relatedly, individuals accused of an offense have the right to remain silent.³⁶⁵ According to the Human Rights Committee, the guarantee against being compelled to testify against one’s self or to confess guilt “must be understood in terms of the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt.”³⁶⁶ Similarly, Principle 21 of the Body of Principles prohibits taking advantage of an accused’s state of detention to extract self-incriminating statements.³⁶⁷

Finally, convicted defendants have the right to appeal for a review of their conviction and sentence by a higher court.³⁶⁸ The right of appeal, according to the Human Rights Committee, “is not confined only to the most serious offenses.”³⁶⁹

h. Nepali Legal Standards

The right to a fair trial is recognized as an integral part of the right to liberty. Any violation of this right amounts to a violation of personal liberty as guaranteed under Article 12(1) of the Constitution.³⁷⁰ Among the protections enshrined in the Constitution and statutory provisions are the right to a fair trial are the right to freedom from self-incrimination, the right to the presumption of innocence, and the right to present a defense at trial. In addition, the accused is entitled to an opportunity to appeal a conviction.

Under the Constitution and the Civil Rights Act “no person accused of any offense shall be compelled to be a witness against himself,”³⁷¹ a protection that reinforces the individual’s right to be presumed innocent until proven guilty.³⁷² A prerequisite to the fulfillment of this right is requiring the prosecution to meet the burden of proof.³⁷³ The Evidence Act, 1964, establishes the principle that the burden of proof lies on the prosecution.³⁷⁴ This principle has been reaffirmed by the Supreme Court in *Chandra Bahadur v. Cabinet Secretariat*, where it held that the burden of proof lies on the prosecution and “the accused need not make a self-incrim-

inatory statement, because he has the right to remain silent.”³⁷⁵ As will be discussed in below, the Supreme Court has carved out exceptions to this ruling on burden of proof, including in the context of infanticide cases. Nevertheless, the basic principle outlined in *Bahadur* is considered the prevailing standard.³⁷⁶

Nepali law also guarantees the right to appeal a criminal conviction. This right is recognized as an integral part of the fundamental right to freedom on the principle that everyone who is convicted must be given at least one opportunity to appeal.³⁷⁷ It is further protected under the provisions of the 1991 Administration of Justice Act, which specifies that:

8. (1) The appellate court shall hear appeals against the initial judgments or final orders made by a district court or authority within its territorial jurisdiction.

9. (1) The Supreme Court shall have jurisdiction to hear appeal against, inter alia, the initial judgment of an appellate court.³⁷⁸

“The accused have a constitutional right to remain silent but no one tells them so.”³⁷⁹

Public Prosecutor, Banke

c. Violations in the Enforcement of Nepal’s Abortion Law

Violations of the right to a fair and public hearing begin in the investigative phase, when women’s right to be presumed innocent and to remain silent are routinely disregarded. These violations, which continue into the trial phase, permit the government to develop a case against the accused women, even where credible evidence is lacking. Other violations of the right to a fair and public hearing include the failure to ensure the defendant’s presence at trial and obstruction of defendant’s right to appeal a conviction.

“[W]omen lie about what happened and always say that the fetus was spontaneously expelled before nine months to save themselves...”³⁸⁰

Police Official, Jhapa

Right to be Presumed Innocent

In Nepal, a woman whose fetus dies is immediately regarded with suspicion. Presumptions about women accused of abortion or infanticide operate at three dif-

ferent levels: community, law enforcement, and judiciary. The biases at all three levels interact to influence the outcome of each case.

Bias at the community level is often responsible for brining women into the criminal justice system in the first place. **Aarti's** account of the initial reactions of the members of her community clearly illustrate their readiness to presume women's guilt. She said: "I went into labor while digging in the fields. I hadn't taken any precautions just because I was pregnant; I had to work. I was five months pregnant and the fetus was expelled dead. I told the village elder that I had miscarried but he responded by saying "You killed it!" I denied killing it but he said "It is held as murder," and he reported me to the police."³⁸¹

Similarly, extreme bias operates against women at the law enforcement level. This is reflected in the statement of one police officer who said: "[W]omen lie about what happened and always say that the fetus was spontaneously expelled before nine months to save themselves... babies are rarely born dead at eight or nine months."³⁸² Apart from medical evidence, abortion investigations tend to focus on whether the woman is married or unmarried, and if the pregnancy resulted from an "illicit" relationship.³⁸³ Given strong son-preference in Nepal, it appears that police tend to presume a woman's guilt if the fetus is female. As pointed out by one police officer, "If the fetus were female, the police would be more likely to suspect abortion."³⁸⁴ In addition, public opinion significantly sways the direction and focus of an investigation.

The Supreme Court, in considering abortion and infanticide cases, has diluted the constitutionally protected presumption of innocence. In a recent case, the court held that if an infant born from an illicit relationship is found dead, it shall be presumed to be a case of infanticide, unless proved otherwise.³⁸⁵ This case has superseded prior cases reaffirming the presumption of innocence in cases of infanticide.³⁸⁶

Other recent rulings have further compromised women's right to be presumed innocent in cases of abortion and infanticide. The Supreme Court has held that where direct evidence is lacking, guilt may be established on the basis of circumstantial evidence.³⁸⁷ This ruling has eroded the prosecution's duty to meet its burden of proof by opening the door to reliance on facts with little probative value. Evidence that is deemed persuasive in determining whether a woman is responsible for her miscarriage include such factors as whether or not the miscarriage was made public.³⁸⁸ Here, the Court is of the view that only a guilty party, bearing a criminal intent, would not make a miscarriage public. Women who spontaneously miscarry, therefore, may be found guilty for failing to report the miscarriage promptly. Thus, a woman who is recovering, emotionally and physically, from her pregnancy and miscarriage and is unable to report her condition immediately is vulnerable to criminal conviction, regardless of her innocence under the law.

These shifts in the burden of proof have particularly troubling implications in

Nepal, where police often cut corners in carrying out investigations. For women accused of abortion or infanticide, police negligence comes into play in the inconsistent use of medical examinations. In abortion and infanticide cases, the medical report is one of the most important pieces of evidence.³⁸⁹ Police officers, prosecutors and judges have emphasized the importance of medical reports as a basis for framing a charge and securing a conviction.³⁹⁰ As emphatically pointed out by one police officer, “The police look at medical evidence in every case; they cannot function without medical reports. All women must undergo a medical exam.”³⁹¹ Once a formal complaint is lodged, the police begin an investigation by ordering a medical examination of the accused.³⁹²

The heavy reliance on the medical examination is problematic in remote areas where a doctor cannot be found for miles. In many cases, there are no specialists available to provide an examination. Women from remote areas who are arrested for abortion are often not examined by a doctor at all.³⁹³

Renu Shrestha talked about how it took 14 days for her to get a medical examination.³⁹⁴ **Aarti** was not subjected to a medical examination, although her dead fetus was inspected by the police.³⁹⁵ When asked if required to undergo a medical examination, **Reeta** responded: “Yes, I was examined by a doctor; he touched me on my stomach.”³⁹⁶

Also problematic is the police practice of ordering a medical examination of a dead fetus and drawing conclusions primarily from the findings of this examination. Where there are questions about whether a pregnancy terminated in a miscarriage, an abortion, or a delivery, examination of the fetus alone will not yield complete information about a woman’s case. This is especially true because, in many cases, techniques for determining the cause of death of a fetus are inconclusive at best.³⁹⁷

A high-ranking public prosecutor was of the view that the post-mortem report of the fetus is the most important piece of evidence and that evidence of the mother’s physical condition is secondary.³⁹⁸ Interviews revealed inconsistency in this view, however, as another public prosecutor asserted that the post-mortem report of the fetus is taken into consideration only if the medical report of the woman is not clear.³⁹⁹ This inconsistency suggests arbitrariness in approach among police and prosecutors, who together are responsible for framing a charge.

Right to Remain Silent

Women’s accounts of their treatment at the hands of police officers suggest that law enforcement officials routinely disregard women’s right to remain silent.

Aarti related how she was treated by the police after her arrest as follows: “The police made me give a statement saying that I killed my child. I told the court that I didn’t. I was confronted with the question ‘Then who did?’ I continued to deny having killed the fetus but no one listened.”⁴⁰⁰

Durga's story provides another account: "They brought me to the station and wrote a statement for me and told me to sign. I am illiterate and could not read the statement. Still, I went ahead and signed it."⁴⁰¹

Meena experienced severe physical abuse when the arresting officers took her statement: "The police beat me when they took my statement. The beating was so severe, I was hospitalized for eight days. They forcefully made me confess."⁴⁰²

These testimonies suggest widespread police violations of the right to remain silent. Systemic abuses of this kind are also evidenced by the fact that out of the total number of cases of infanticide that came before the Supreme Court in 1979/80 to 1998/99, accused persons confessed before the police in 76% of the cases, but only in 16% of the cases did they confess before the court.⁴⁰³ Many judges routinely discount confessions made in police custody.⁴⁰⁴ However, as revealed by **Aarti's** testimony, a subsequent refutation of an in-custody confession may carry little weight in a court of law.

The Supreme Court, taking into account the realities of Nepal's criminal justice system, has held that "a confession made in police custody is not admissible against the accused, unless it is substantiated by other independent evidence."⁴⁰⁵ However, the same court failed to apply this principle in a subsequent case in which a woman was sentenced to five years in prison for attempting to commit an abortion. Her conviction was based solely on a statement recorded by the police.⁴⁰⁶ Given the judiciary's inconsistent protection of the right to freedom from self-incrimination, respect for defendants' rights from the beginning of an investigation is critical to a fair outcome.

Where police do not extract confessions through physical abuse, they often engage in more subtle coercion by simply not informing a defendant of her right to remain silent. As a general rule, women arrested on charges of abortion are illiterate and uninformed of the workings of the criminal justice system.⁴⁰⁷ Consequently, they are vulnerable to abuse at the hands of law enforcement authorities. By failing to inform them of their right to remain silent, police officers indirectly lead women to self-incrimination. As a result, women unknowingly open themselves up to false charges and more abuse. Where the bases of an arrest are not clarified by arresting officers, charges may be manipulated during the interrogation phase, depending upon what a suspect admits. This has far-reaching consequences for cases involving abortion, because they are frequently mischaracterized as cases of infanticide.⁴⁰⁸ It is this charge that frames the investigation, ultimately leading to harsher sentencing.

According to prosecutors and judges, police are aware of their duty to inform suspects of their right to remain silent.⁴⁰⁹ However, the duty is often ignored, and the practice of coercing confessions is so entrenched that it is taken for granted. As a prominent judge pointed out, "[I]f the accused says 'my statement was forcefully

taken,' the police officer should be punished; but [courts] never have done it; the custom is to ignore the allegation."⁴¹⁰

“I have been sentenced to life in prison.... In court, no one asked me any questions or let me tell my side of the story.”⁴¹¹

Sarita, inmate, Dilli Bazaar Knor Jail, Kathmandu

Right to be Present at Trial

A basic requirement of the right to a fair trial is the presence of the accused at the trial. Interviews with women prisoners revealed that the accused's right to be present at trial is flagrantly violated. **Sarita** provided the following account of her trial: “I have been sentenced to life in prison.... I was not present at the time of sentencing. I was taken to court twice but on both occasions, got there after the proceedings were over.... In court, no one asked me any questions or let me tell my side of the story.”⁴¹²

Kamala too was not present during her trial. She related her story as follows: “Before being transferred to the Central Jail for medical treatment, I was asked to sign a document stating that the case may continue in my absence. I later learned that I signed an agreement to accept whatever decision was issued by the court. I never went to school and could not know what I signed. I was never even present in court...”⁴¹³

Law enforcement officials often lay the blame for this failure to ensure the accused at their trials on prison and court officials. As expressed by a public prosecutor, “[I]t is mandatory to present an accused person in court ... sometimes jailers fail to bring the accused to a hearing but this is the jailer's fault. It is also often the fault of court authorities who do not notify the jailer in time.”⁴¹⁴

Right to Appeal a Conviction

Women convicted of abortion routinely lose their opportunity to appeal their convictions. While judges may recommend an automatic reduction of sentence on appeal, women often waive their right to have a conviction and sentence reviewed on other grounds. Women face a number of constraints in pursuing appeals, ranging from lack of money to hire a lawyer to not having received formal notice of the lower court's decision. **Renu Shrestha** has not been able to appeal her sentence because her lawyer has told her that she needs NRP 3,000 (USD 39) to do so.⁴¹⁵ This is a huge sum for the average rural woman who has no income or family support, and whose earning power is curtailed while she is languishing in jail. **Radha** has been in prison for over nine months. She wants to appeal her sentence, but is still waiting for

a copy of the court's decision.⁴¹⁶ **Sarita** has been sentenced to life imprisonment, but has not appealed her conviction.⁴¹⁷ On the two occasions that she was taken to court, she arrived only after the proceedings were over and was not present at the time of sentencing. Neither **Rahda** nor **Sarita** had legal representation.

Apart from the above-mentioned constraints, lack of knowledge of the workings of the justice system creates an enormous barrier to women's enjoyment of their rights. **Aarti** learned about the benefit of hiring a lawyer only from other inmates who suggested that she appeal her sentence.⁴¹⁸ Many women do not even know the term of their sentences. **Sunita** received a life sentence at trial, but thinks that she only has to serve three years in prison.⁴¹⁹

These trends are also reflected in statistics gathered from the present survey of 57 women convicted of abortion or infanticide. According to the study, a large number of women currently in prison for abortion/infanticide have not appealed their sentences.⁴²⁰

Norms of due process exist to ensure that even the most vulnerable members of society are able to protect themselves against arbitrary government action. In Nepal, where women are marginalized within their communities and in government institutions, due process is crucial to women's enjoyment of their human rights. For women

APPEAL FILED AGAINST THE DECISION OF LOWER COURT (Total Number of Respondents = 57)		
POSSIBLE RESPONSES	NUMBER OF RESPONDENTS	PERCENTAGE OF TOTAL
Yes	24	42.11
No	23	40.35
No response	10	17.54

accused of abortion and infanticide, however, not only has there been a failure to ensure procedural protections, but the biases and prejudices of the larger society have affected the outcomes of criminal investigations and trials. The criminal ban on abortion has thus had devastating effects for women in Nepal, particularly low-income women living in rural areas.

D. RIGHT TO HUMANE TREATMENT IN DETENTION: SPECIAL RIGHTS OF WOMEN PRISONERS

i. International Legal Standards

Individuals held in custody must be kept under humane conditions and free from cruel and degrading treatment. Under the Civil and Political Rights Covenant, there is an absolute, right not to "be subjected to torture or to cruel, inhuman or degrading treatment or punishment."⁴²¹ It further details that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dig-

nity of the human person.”⁴²² Juveniles in detention must likewise be accorded such treatment in a “manner which takes into account the needs of persons of [their] age.”⁴²³

Under international human rights law, governments must ensure minimum standards for people during detention and imprisonment. People in detention, according to the Human Rights Committee, may not be “subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed.... Persons deprived of their liberty enjoy all the rights set forth in the [Civil and Political Rights Covenant], subject to the restrictions that are unavoidable in a closed environment.”⁴²⁴

According to Amnesty International’s Fair Trials Manual, “[s]tates cannot claim a lack of material resources or financial difficulties as a justification for inhumane treatment ... [and they] are obliged to provide all detainees and prisoners with services that will satisfy their essential needs.”⁴²⁵ One such essential need is access to adequate medical care.⁴²⁶ The Human Rights Committee has held that “denial of adequate medical care ... constitute[s] cruel and inhuman treatment ... and [violates the requirement that] detained persons be treated with respect for their human dignity.”⁴²⁷

Rights of Women Prisoners

Women detainees and prisoners must be kept separated from men and supervised by women wardens.⁴²⁸ Under the Standard Minimum Rules, male staff must be accompanied by female staff when entering areas designated for women prisoners and during the interrogation of women detainees.⁴²⁹ The Human Rights Committee censured the United States for permitting “male prison officers access to women detention centres ... which has led to serious allegations of sexual abuse of women and the invasion of their privacy.”⁴³⁰

Detained girls are afforded additional protections. Under the Civil and Political Rights Covenant, Article 10(3), they “shall be separated from adults and be accorded treatment appropriate to their age and legal status.”⁴³¹ Imprisoned juveniles also retain the right to maintain contact with family members (with stringent exceptions)⁴³² and to pursue their right to education.⁴³³ Women prisoners should also have access to pre-natal and post-natal care and treatment facilities, and to be able to deliver in off-site health facilities.⁴³⁴

ii. Nepali Legal Standards

The right to be free from cruel and unusual punishment is both defined under the right to freedom⁴³⁵ and explicitly guaranteed under the right to criminal justice.⁴³⁶ As stated in Article 14(4) of the 1990 Constitution, “[n]o person who is detained during investigation or for trial or for any other reason shall be subjected

to physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment. Any person so treated shall be compensated in a manner as determined by law.”⁴³⁷

The 1996 Compensation Act bans the torture of any person “in detention [or in custody] in the course of an inquiry.”⁴³⁸ Addressing a more specific dimension of mistreatment of detained individuals, the 1963 Prison Act prohibits the use of handcuffing and fitters, “[e]xcept [for] the prisoner who is re-arrested after escaping the prison or who has attempted to do so or [who has violated the 1955 Civil Rights Act].”⁴³⁹

Rights of Women Prisoners

Nepali law stipulates that during detention and imprisonment “[m]en and women shall be segregated and if available, they shall be kept in separate buildings, and if not available and they have to be kept in the same building they shall be kept in separate part[s] of the building so that they may not meet or talk to each other.”⁴⁴⁰

Nepal’s 1963 Prison Regulations make special provisions for women who give birth in prisons. It provides that women prisoners who give birth should receive additional foods and provisions for up to 60 days from the date of delivery, including extra portions of rice, *ghee* (clarified butter), edible oil, hot spices, additional cloth and *raadi* (raw traditional rug), and NRP 100 (USD 1) in cash for the entire period of one delivery.⁴⁴¹ The Prison Act provides that where a pregnant woman is in custody,⁴⁴² she shall be granted bail with security upon completion of six months of the pregnancy. A woman who is granted bail shall be returned to prison two months after delivery unless imprisonment is deemed unnecessary or her prison term has ended.⁴⁴³

“Prisoners are not people, they have no identity; they’re neglected by the management.”⁴⁴⁴

Lawyer, Center for Victims of Torture

iii. Violations in the Enforcement of Nepal’s Abortion Law

The police have a great deal of autonomy in the investigative process and have little accountability.⁴⁴⁵ The result has been abuses of police power. There have been reports of systematic beatings of people in police custody, including women and children.⁴⁴⁶ A number of women who were interviewed related incidents of police brutality. **Kamala** recalled her experience in police custody in the following words: “Five days after my miscarriage, the police came and arrested me. I have no idea who reported me and why. The police asked me if I induced the abortion. They beat me

and I became unconscious from the physical strain caused by the pregnancy and miscarriage.”⁴⁴⁷

Furthermore, the overall conditions in prisons in Nepal are appalling. Out of all the women surveyed, only 32% said that medical treatment was always available.⁴⁴⁸

ACCESS TO MEDICAL SERVICES IN PRISON		
(Total Number of Respondents = 57)		
RESPONSES	NUMBER OF RESPONDENTS	PERCENTAGE OF TOTAL
Always available	18	31.58
Usually available	31	54.39
Rarely available	5	8.77
Never available	1	1.75
No response	2	3.51

An alarmingly high number of women, 74%, said that they were ill and in need of medical attention.⁴⁴⁹

HEALTH CONDITION OF PRISONER IN PRISON		
(Total Number of Respondents = 57)		
RESPONSES	NUMBER OF RESPONDENTS	PERCENTAGE OF TOTAL
Fell ill	42	73.68
Didn't fall ill	11	19.30
No response	4	7.02

While 61% of the women had asked for medical treatment, 35% said that they had not bothered to ask.⁴⁵⁰

SUFFICIENCY OF FOOD		
(Total Number of Respondents = 57)		
RESPONSES	NUMBER OF RESPONDENTS	PERCENTAGE OF TOTAL
Sufficient	15	26.32
Not sufficient	41	71.93
No response	1	1.75

A troubling aspect of the provision of health care in prisons is the fact that in many instances, women are required to pay for their own medical treatment.

Renu Shrestha, has been in Central Jail, Kathmandu, for over a year and a half and is visibly very sick. She is frail and has a skin rash on her face and cries frequently. When asked if she had received any medical treatment before or after being sentenced, she said: "I was kept in police custody at Mangal Bazaar for 14 days. Later, I was taken to a hospital for treatment I was forced to go by the police and I had to pay for it myself I barely have access to health care in prison. I have to raise money from other inmates for treatment and it is very difficult to obtain permission for treatment in an outside facility."⁴⁵¹

Likewise, **Pushpa**⁴⁵² also an inmate at Central Jail, Kathmandu, talked about how she is taken to a doctor when ill, but she has to pay for the treatment. She makes a living for herself in jail by weaving cloth.

Kamala,⁴⁵³ an inmate at Dilli Bazaar Khor, had more serious problems. She complained about continuous aches and bleeding. She was transferred from her hometown of Gorkha to Kathmandu so that she could get appropriate medical treatment; however, after seven months, she had not received the treatment she sought. Kamala has made repeated requests to be sent back to Gorkha, but has been told that she has to pay for it herself. She has no money.

The inmates of Dilli Bazaar Khor,⁴⁵⁴ Bhimfedi Jail,⁴⁵⁵ Nawalparasi Jail,⁴⁵⁶ Gulmi Jail,⁴⁵⁷ and Tansen Jail⁴⁵⁸ did not express major grievances about the unavailability of medical facilities. However, they did complain about congested cells⁴⁵⁹ and difficult conditions in general.⁴⁶⁰

Many inmates complained about the inadequate supply of food and water. **Renu Shrestha**⁴⁶¹ who is being held at Kathmandu Central Jail with her son, receives NPR 15 (USD .19) per day for lentils. She has to buy spices, kerosene oil to cook her food, and soap with the same money since there is no separate provision for these items. She receives 700 grams of rice per day and clothing composed of one sari and a shawl once a year. She receives two small buckets of drinking water and six small buckets of water to wash clothes and bathe every week. She lives in a dark cell, and had to arrange for a mattress and linen herself. Helplessly, she said, "I have to support my young son [and myself] with what little I get."⁴⁶²

Describing her living conditions, **Pushpa**⁴⁶³ said that women cook collectively to make ends meet. She has to share a room with six women. They cook and sleep in the same room. Like almost all inmates, Pushpa does not receive any support from her family.

The general tone of the women interviewed was one of defeat and unquestioned resignation to their fate. All the women interviewed live in the most appalling

conditions, yet they all spoke of how they had “adjusted” and that the inhumane circumstances in which they lived were “tolerable.”

This attitude must be understood in light of the general tendency of women to give their health needs low priority, and their inability to articulate them. The most common symptoms of unsafe abortion include hemorrhage and sepsis,⁴⁶⁴ yet according to one prison official, the only health emergencies that arise relate to diarrhea and vomiting.⁴⁶⁵ This suggests that women in prison do not seek the kind of medical attention warranted by their condition.

“Harassment is common in prison. In many prisons, there are no women police guards ... women are harassed and some women have babies with the guards.”⁴⁶⁶

Member, Human Rights Commission

Rights of Women and Girls in Custody

Despite international and domestic standards governing the rights of women and girls in custody, it was evident from the physical condition of all the jails visited that these standards have not been met. Some jails do not have any females on staff.⁴⁶⁷ A number of interviews were conducted with male guards hovering nearby. When asked for privacy, they merely stepped back and continued to listen intently.⁴⁶⁸

Where there are no separate prisons for women, both men and women are housed in different sections of the same facility. In many instances, they have to share a common outdoor space at alternate intervals.⁴⁶⁹ However, in one jail, it was noted that women were required to spend all their time cramped in their common cell, while men occupied the common courtyard through the day because it was also the space where they spent their time making furniture.⁴⁷⁰ Women at this jail were not involved in any productive activity because, according to the jailer, they did not have any skills and there are no provisions for training.⁴⁷¹

A number of police officers⁴⁷² pointed out that women officers are present during the interrogation stage to make women more comfortable revealing the details of what happened. However, once in prison, ensuring women’s comfort is not a priority. One reason for the outright neglect of women’s special needs, as pointed out by one lawyer, is the fact that “the management is entirely male-dominated and there is no one to pay attention to female issues. Most female employees in prisons are hired as clerks and have no influence over the day-to-day management of the facilities.”⁴⁷³ Women prisoners do not enjoy their rights because no one is accountable

for the lack of implementation. In Bhojpur prison, women and men prisoners are forced to share the same toilet due to a lack of separate facilities. One woman charged in infanticide had a relationship with one of the male prisoners as a result of which she conceived and gave birth to a baby.⁴⁷⁴ For many women in prison, the special protections to which they are entitled to do little to prevent abuse.

In Nepal, there is a lack of accountability for officials' failure to implement prisoners' rights in general,⁴⁷⁵ and the situation is particularly dire for women in prison, whose needs are often ignored by prison officials and who may be excluded from income-generating and educational programs that benefit male prisoners.

The foregoing discussion has contrasted international human rights norms, and those professed by the government of Nepal, with the reality of Nepali women's lives. Despite international and national protections, Nepali women facing prosecution for abortion suffer systematic abuses at every stage. Stereotypes and assumptions about women affect the outcome of criminal investigations and prosecutions. Women accused of abortion and infanticide must overcome the prejudices of their communities, law enforcement, and even the courts of law.

Conclusion

This report documents the suffering of Nepali women under the country's abortion ban. It exposes the human rights violations inherent in the law itself, as well as those arising from the law's enforcement. Nepal's punitive approach to abortion has threatened women's lives and health, reinforced entrenched gender discrimination, and interfered with women's decision-making on a matter with immense personal implications. For these reasons, it violates recognized protections of the rights to life and health, the right to equality and non-discrimination, and the right to reproductive self-determination. All of Nepal's women endure these violations of their basic human rights.

For those who are arrested, prosecuted and imprisoned on abortion-related offenses, Nepal's abortion ban gives rise to another set of human rights violations. Women pursued under the law, predominantly low-income and rural-based, are subjected to violations of their basic rights as criminal defendants and prisoners. Abuses include systematic denials of the right to be free from arbitrary arrest and detention, the right to equality and non-discrimination, the right to due process, and the right to humane treatment in detention. The punitive abortion law, combined with Nepal's weak protections for the rights of criminal defendants, has disastrous effects on society's most vulnerable members.

Reform of Nepal's abortion ban and release of women wrongfully imprisoned under the abortion law are needed as immediate steps. In addition, further legislative action is required to ensure that all women can access safe and legal abortion services. Finally, law reform should be accompanied by a holistic set of initiatives to raise women's status in Nepal. Justice demands that action be taken to end the needless suffering and loss of life of Nepali women.

Appendix I: Nepal's Demographic, Political, and Socioeconomic Background

A. DEMOGRAPHIC BACKGROUND

The state of Nepal is home to approximately 23.4 million people.⁴⁷⁶ Covering an area of 147,181 square kilometers,⁴⁷⁷ it is situated between India and China, two of the world's most populous countries, and is landlocked. Nepal is predominantly rural, with 88% of the total population living in rural areas.⁴⁷⁸ Women constitute an estimated 49.3% of the total population,⁴⁷⁹ while children under 15 years of age account for 42.4%.⁴⁸⁰ With nearly half of its population living below the poverty line,⁴⁸¹ Nepal remains one of the poorest countries in the world.⁴⁸² The average annual per capita income is a mere USD 244.⁴⁸³ Nearly 80% of the total population depends upon agriculture as its primary source of income⁴⁸⁴ and most of the country's gross domestic product is derived from agriculture.⁴⁸⁵

Between 1961 and 1991, Nepal experienced a twofold increase in its total population.⁴⁸⁶ The total fertility rate for 2000-2005 is estimated at 4.48.⁴⁸⁷ The contraceptive prevalence rate among married and non-pregnant women of reproductive age has increased from a mere 3% in 1976 to 29% in 1996.⁴⁸⁸

The country is divisible into three principal "eco-systemic regions," namely, the mountains, the hills, and the *tarai* (low-lying plains);⁴⁸⁹ and five "development regions" that run across the country from east to west, namely, the far-western region, the mid-western region, the western region, the central region and the eastern region.⁴⁹⁰ Levels of human development vary among the different eco-systemic and development regions, with greater hardship and less development in the mountains⁴⁹¹ and low levels of income and life expectancy in the mid-western region.⁴⁹² These factors have resulted in high levels of migration from the mountains and hills to the *tarai* and urban areas such as Kathmandu, the capital city.⁴⁹³ Politically, the country is divided into 75 districts for administrative purposes.⁴⁹⁴

Nepal's complex topographical variations have greatly impacted the dispersion of both populations and resources⁴⁹⁵ and have led to the emergence of localized cultural and social lifestyles and constraints.⁴⁹⁶ Life expectancy rates, along with other social and economic indicators, vary across the different topographical regions (the mountains, the hills and the low lying plains). Mountain inhabitants, for example,

live seven years less than those in the *tarai*, and urban dwellers live 10 years more than those in rural areas.⁴⁹⁷ Similar geographical variations are replicated in infant mortality, literacy, access to health care and income levels.⁴⁹⁸ For instance, infants in the mountains are twice as likely to die as those in the hills or *tarai*.⁴⁹⁹ The general population is multi-ethnic in character and the main caste and ethnic groups are the *Newars*, *Brahmins* and *Chettris* followed by the *Gurungs*, *Magars*, *Sherpas*, *Rais*, *Limbus*, *Rajbanshis*, *Yadavs* and *Ahirs*.⁵⁰⁰ The *Gurungs*, *Magars*, *Sherpas*, *Rais* and *Limbus* are largely based in the hills while the *Rajbanshis*, *Yadavs* and *Ahirs* are concentrated in the *tarai*.⁵⁰¹ The quality of life varies sharply among different castes and ethnic groups, with the highest caste living standard enjoyed by the *Newars*, closely followed by the *Brahmins* and *Chettris*.⁵⁰² Nearly 90% of the population is Hindu, 5.3% Buddhist and 2.7% Muslim.⁵⁰³ Mixed forms of Hinduism, Buddhism and animism, as well as Christianity, are also practiced.⁵⁰⁴

B. POLITICAL HISTORY

In the eighteenth Century, the House of the Gurkhas unified control over the area that constitutes modern-day Nepal.⁵⁰⁵ The historic Anglo-Nepali War (1814-1816)—fought over clashes between the Gurkhas and the British East India Company—shrank the Kingdom's area, but Nepal was never colonized.⁵⁰⁶ From the mid-nineteenth century until 1950, Nepal was governed by a series of Rana prime ministers, known for their regimes of political and economic isolation. Nepal was closed to foreigners until the end of their rule.⁵⁰⁷ Though largely a feudal aristocracy at the time, it was officially described as a constitutional monarchy with a parliamentary government.⁵⁰⁸ In 1951, a revolutionary movement ousted the Ranas⁵⁰⁹ and a partyless system of *panchayat* democracy was instituted, which vested a King with authority over virtually all aspects of governance.⁵¹⁰

Dissatisfaction with this regime finally led to a mass popular movement calling for an end to absolute monarchical rule and a transition to multiparty democracy. With the establishment of the Movement for the Restoration of Democracy in 1990, rallies, demonstrations, and in some cases violence and arrests swept the country.⁵¹¹ Widespread protests finally resulted in the removal of the ban on political parties, the resignation of the prime minister, and the dissolution of the Council of Ministers and the *Rashtriya Panchayat* in April 1990.⁵¹² The new constitution, promulgated the same year, ended years of absolute monarchy, led to the dissolution of the *panchayat* system and ushered in a constitutional monarchy with a multiparty parliamentary system,⁵¹³ in which the King is removed from everyday governance.⁵¹⁴

Political instability has marked Nepal's transition to democracy. Frequently shifting government coalitions have often resulted in paralysis over legislative action on issues of national importance, which has hampered Nepal's development

prospects. Adding to the unrest, in 1996, the Maoist United People's Front launched a "People's War," which called for the abolition of the constitutional monarchy, the declaration of Nepal as a republic and the promulgation of a new constitution.⁵¹⁵

C. NEPAL AND HINDUISM

Nepal holds the distinction of being the world's only Hindu Kingdom, but it is not a theocratic state. While officially declaring Nepal a Hindu Kingdom, the 1990 constitution provides for a secular state⁵¹⁶ and requires that society be governed by secular principles rather than religious convictions.⁵¹⁷ The King is not a religious head of state,⁵¹⁸ and it is not the role of the state to promote any particular religion.⁵¹⁹ Citizens have been granted the freedom to practice the religion of their choice⁵²⁰ and the Constitution requires that for a law to be valid it must have a secular legislative purpose.⁵²¹ Commentators have specifically pointed out that a correct reading of the Constitution would require that secular principles override religious beliefs on personal matters such as family planning.⁵²² However, in reality, the social fabric is largely representative of Hindu religious values and norms. This is mainly attributable to the fact that the majority of the population professes Hinduism.⁵²³ Moreover, the Country Code is largely based on religious texts and practices, both reflecting and resulting in the significant influence of religion in everyday life.

Nepal is socially segregated along lines not only of caste but also of ethnicity with approximately 60 discrete groups and 20 living languages having been documented.⁵²⁴ Despite the legal abolition of the caste system in the early 1960s, caste hierarchies and the practice of "untouchability" still resonate strongly, within Nepal's predominantly Hindu society⁵²⁵ and norms based on ethnicity or caste still exclude certain social groups from public resources. As overall levels of education and economic status have increased, especially in the Kathmandu Valley area, there has been a gradual abandonment of the practice of deeming certain groups "untouchable." However, the lower castes have shorter life spans and higher infant mortality,⁵²⁶ and there is a greater rate of absolute poverty among such castes than among higher castes.⁵²⁷

Because approximately 80% of the total population subsists on farming,⁵²⁸ lack of equal access to land and resources constitutes a major obstacle to equitable development and serves to reinforce social inequities. Only 20% of the total land area is arable.⁵²⁹ In some instances, denial of access to land ownership has led to such extreme deprivation that even though slavery was formally abolished in 1924, the institution of bonded labor continues to exist in various forms.⁵³⁰ One of the most extreme forms of bonded labor, the *Kamaiya* system—deriving from landlessness as opposed to mere indebtedness—was abolished in 2000.⁵³¹ Despite several legislative attempts at land reform, land ownership remains concentrated in the hands of a small

minority.⁵³²

Widespread poverty and underdevelopment have resulted in an average life expectancy of 59.6 years, which is the lowest in the South Asian region.⁵³³ Reasons for such high mortality include inadequate food consumption, poor housing, insufficient safe water, inadequate sanitation facilities, unsatisfactory health care, alcohol and tobacco use, and early marriage and childbearing.⁵³⁴ Safe drinking water is available to only 81% of the population⁵³⁵ and only 22% have access to sanitation.⁵³⁶ With 88% of the total population being rural-based, these constraints determine the lifestyle of the majority of Nepali.⁵³⁷

Appendix II: Structure of Government in Nepal

The Constitution of the Kingdom of Nepal, 1990 (the Constitution) vests the sovereignty of the Kingdom of Nepal in its people.⁵³⁸ It establishes the country's multiparty parliamentary democracy,⁵³⁹ characterized by a single central government with a constitutional monarch as its titular head. In accordance with the doctrine of separation of powers, the Constitution provides for executive, legislative and judicial branches of government,⁵⁴⁰ creating a system of checks and balances to prevent abuse.⁵⁴¹

A. EXECUTIVE BRANCH

The executive branch is comprised of the council of ministers, the monarchy, the civil services, the armed forces, and the police, which together officially constitute His Majesty's Government of Nepal.⁵⁴² The King is primarily a titular figure and his powers are considerably circumscribed by the Constitution.⁵⁴³ Powers vested in the King must be exercised at the direction of the Council of Ministers or a constitutional entity.⁵⁴⁴ The King's governmental powers include the authority to grant pardons; suspend, commute, or remit any court sentence; appoint ambassadors; and award titles and honors.⁵⁴⁵

The Prime Minister heads the Council of Ministers and leads the majority party or coalition in the House of Representatives.⁵⁴⁶ The Council guides the administration of the country, and the Prime Minister informs the monarch of all actions regarding the administration of the country.⁵⁴⁷ The Prime Minister has responsibility to ensure that governmental acts comply with international agreements.

B. LEGISLATIVE BRANCH

The Nepali legislature comprises the King and the bicameral parliament, consisting of the National Assembly (*Rashtriya Sabha*) and the House of Representatives (*Pratinidhi Sabha*).⁵⁴⁸ The 205-member House of Representatives is made up of directly elected representatives of the people⁵⁴⁹ and therefore has a central role in the formation of the government and significant control over the government's financial affairs.⁵⁵⁰ The National Assembly consists of 60 members.⁵⁵¹ The Constitution mandates that at least 5% of the total number of candidates contesting an election from any organization or party must be female.⁵⁵² Thirty-five members of the National Assembly, including at least three women, are elected by the House of Representatives.⁵⁵³ Fifteen members are chosen by the five Development

Regions⁵⁵⁴ and 10 are nominated by the King.⁵⁵⁵ This body is intended to ensure a broader representation of interests and serve as a check on the activities of the House of Representatives.⁵⁵⁶

The primary function of the legislature is to enact laws. Once a bill is passed by both the House of Representatives and the National Assembly, it is sent to the King for approval.⁵⁵⁷ The King lacks the authority to veto a bill, but he may send it back to Parliament for discussion. If the bill is passed again, the King must assent to it within 30 days.⁵⁵⁸

C. JUDICIAL BRANCH

Both Hindu legal and English common law traditions inform Nepal's judicial system.⁵⁵⁹ The Supreme Court of Nepal is the highest court in the country's three-tiered judicial hierarchy, which also includes appellate courts and district courts.⁵⁶⁰ The King appoints all judges upon recommendations from the Constitutional Council or the Judicial Council.⁵⁶¹ The Supreme Court supervises all lower courts and presides over cases submitted by lower Appellate courts.⁵⁶² More importantly, the 1990 Constitution grants the Supreme Court the power of judicial review to adjudicate the constitutionality of legislation and executive action.⁵⁶³ Any citizen can file a petition in the Supreme Court to have a law or any part of a law declared void on the ground that it violates the Constitution.⁵⁶⁴

Endnotes

¹ See Nepal South Asia Centre (NESAC), for United Nations Development Programme (UNDP), Nepal Human Development Report 1998 iii (1998).

² See *id.* at ii.

³ Compare with life expectancy at birth in India: 64.9 years; Pakistan: 60.9 years; Bangladesh: 60.8 years; and Sri Lanka: 75.9 years. United Nations Population Fund (UNFPA), *State of World Population 2001* 68 (2001). Note that the Nepali government sets the average life expectancy at 59.7 years. His Majesty's Government (HMG) Central Bureau of Statistics, 2001 HMG National Planning Commission Secretariat (2001).

⁴ See NESAC, *supra* note 1, at 57.

⁵ See *id.* at iii.

⁶ See *id.*

⁷ See Krishna B. Bhattachan, *Sociological Perspectives on Gender Issues in Changing Nepalese Society*, in *Gender and Democracy in Nepal* 76, 83 (Laxmi Keshari Manandhar & Krishna B. Bhattachan eds., 2001); See also NESAC, *supra* note 1, at 7.

⁸ See NESAC, *supra* note 1, at 7.

⁹ See *id.* at 78.

¹⁰ See *id.* at 7.

¹¹ See *id.*

¹² See UNFPA, *supra* note 3, at 68. The latest UN estimate of the maternal mortality ratio in Nepal is 830 deaths per 100,000 live births, as compared with rates in neighboring countries: 440 in India; 600 in Bangladesh; 500 in Bhutan; 200 in Pakistan; and 60 in Sri Lanka. See *id.*

¹³ The figure of 539 deaths per 100,000 live births (or an estimated total of 4,478, which breaks down to 12 deaths a day, one every two hours) is the maternal mortality ratio estimated by the government of Nepal. See Family Health Division, Ministry of Health (MOH), *Maternal Mortality and Morbidity Study 75 (1998)* [hereinafter *Maternal Mortality & Morbidity Study*]; see also UNFPA, *supra* note 3, at 68; World Health Organization (WHO), *Maternal Mortality in 1995: Estimates Developed by WHO, UNICEF, UNFPA (2001)*.

¹⁴ The Center for Research on Environment Health and Population Activities "estimated that over half of all maternal deaths are due to unsafe abortions." Center for Research on Environment Health and Population Activities (CREHPA), *Women in Prison in Nepal for Abortion: A Study on Implications of Restrictive Abortion Law on Women's Social Status and Health* preface (2000).

¹⁵ According to UNFPA, 29% of Nepali women use some contraceptive method. See UNFPA, *supra* note 3, at 68.

¹⁶ *Muluki Ain* 2020 [Country Code 1963], ch. 10, § 28 (unofficial translation) [hereinafter Country Code].

¹⁷ See CREHPA, *supra* note 14, at 10.

¹⁸ Country Code, ch. 10, § 28.

¹⁹ See Prabhat Rana, *Fight Continues to end harsh abortion law*, Real Lives, Aug. 2000, at 22 (IPPF South Asian Region, eds.).

²⁰ *Maternal Morality and the Criminalization of Abortion*, equality now 1998-1999 Report 10 (1999) [hereinafter equality now Report].

²¹ CREHPA, *supra* note 14, at 23.

²² USD 1.00 = NPR 77.4245 conversion rate as of Feb 21, 2002. See Universal Currency Converter Results, at <http://www.xe.com/ucc/convert.cgi> (last visited Feb. 21, 2002). All USD amounts are rounded to the nearest whole dollar amount.

²³ See *Forum for Women, Development and Law (FWLD), Survey of 57 Women Imprisoned on Charges of Abortion or Infanticide* (Jan. 2001) (on file with FWLD & CRLP) [hereinafter FWLD Survey].

²⁴ See Rana, *supra* note 19, at 22.

²⁵ See World Health Organization (WHO), *Abortion: A Tabulation of Available Data on the Frequency & Mortality of Unsafe Abortion* 9 (1998) [hereinafter WHO Abortion].

²⁶ See *Maternal Mortality & Morbidity Study*, *supra* note 13, at 75.

²⁷ See UNFPA, *supra* note 3, at 68.

²⁸ See *Maternal Mortality & Morbidity Study*, *supra* note 13, at 67.

²⁹ *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Nepal*, 21st Sess., 434th & 439th mtgs., para. 147, U.N. Doc. CEDAW/A/54/38 (1999) [hereinafter *CEDAW Committee Observations: Nepal*].

³⁰ See, e.g. Human Rights Committee, reviewing Nepal's report pursuant to the International Covenant on Civil and Political Rights, stated that "[i]t regrets the high proportion of women prisoners sentenced for offenses resulting from unwanted pregnancies." *Concluding Observations of the Human Rights Committee: Nepal*, 52nd Sess., para. 8, U.N. Doc. CCPR/C/79/Add.42 (1994). More recently, the Committee on Economic, Social and Cultural Rights noted "with deep concern the high rates of maternal mortality, especially in rural areas, owing mainly to unsafe and illegal abortions..." *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Nepal*, 26th Sess., 44th-46th, 55th mtgs., para. 32, U.N. Doc. E/C.12/1/Add.66 (2001) [hereinafter *CESCR Observations: Nepal*]. The Committee urged Nepal "to take remedial action to address the problems of clandestine abortions, unwanted pregnancies and the high rate of maternal mortality." *Id.* at para. 55.

³¹ See FWLD Survey, *supra* note 23.

³² See *id.*

- 33 *FWLD, Abortion: Judgement Analysis based on the Nepal Kanoon Patrika (NKP) 2035-2055 (1979/80-1998/99) (on file with FWLD and CRLP) [hereinafter Judgement Analysis].*
- 34 *See generally* CREHPA, *supra* note 14.
- 35 *FWLD, Discriminatory Laws in Nepal and their Impact on Women: A Review of the Current Situation and Proposals for Change 1, 2 (2000) [hereinafter FWLD Discriminatory Law Review].*
- 36 *See* UNFPA, *supra* note 3, at 68.
- 37 *See* *FWLD Discriminatory Law Review, supra* note 35, at 1.
- 38 Hill Brahmin/Chhetri women constituted 37.5% of the women in prison for abortion and infanticide. CREHPA, *supra* note 14, at 13, table 2.1.
- 39 *See* *FWLD Discriminatory Law Review, supra* note 35, at 1.
- 40 *See* Bhattachan, *supra* note 7, at 76, 83; *See also* NESAC, *supra* note 1, at 7.
- 41 *See* NESAC, *supra* note 1, at 7.
- 42 *See* United Nations, *The World's Women 2000: Trends and Statistics 19 (2000) [hereinafter World's Women].*
- 43 *See* NESAC, *supra* note 1, at 78.
- 44 *See id.*
- 45 *See id.* at 7.
- 46 *See id.*
- 47 *See id.*
- 48 *See id.*
- 49 *See* NESAC, *supra* note 1, at 57.
- 50 *See id.*
- 51 *See id.* at 63.
- 52 *See* UNFPA, *supra* note 3, at 71.
- 53 *See* NESAC, *supra* note 1, at 63.
- 54 *See id.* at 12.
- 55 *See id.* at 63.
- 56 *See* World Bank, *World Development Indicators 2000 47 (2000). [hereinafter World Bank Indicators].*
- 57 *See* Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, *Nepal Country Report on Human Rights Practices for 2000 § 4 (2001), available at* <http://www.state.gov/g/drl/rls/hrrpt/2000/sa/index.cfm?docid=711> (released Feb. 2001).
- 58 "According to the Country Code, "[t]he son by birth has a right to ancestral property whereas an unmarried daughter above the age of 35 has this right." *FWLD Discriminatory Law Review, supra* note 35, at 16.
- 59 *Kingdom of Nepal Const. 2047 (1990) art. 114 (unofficial trans.); See also* NESAC, *supra* note 1, at 151.
- 60 *Nepal Const. art. 46(b); See also* NESAC, *supra* note 1, at 151.
- 61 *See* *FWLD Discriminatory Law Review, supra* note 35, at 3.
- 62 According to the Inter-Parliamentary Union, in the lower house, there are only

12 women out of 205 seats. Thus, women comprise only 5.9% of the single lower house. In the upper house, there are no women represented. Inter-Parliamentary Union, *Women in National Parliaments*, available at <http://www.ipu.org/wmn-e/classif.htm> (situation as of Dec. 5, 2001, last visited Jan. 3, 2002). Nepal is well below the regional average for women's political representation in the single or lower house, which is 15.6%. Inter-Parliamentary Union, *Women in National Parliaments*, available at <http://www.ipu.org/wmn-e/world.htm> (situation as of Dec. 5, 2001, last visited Jan. 29, 2002).

⁶³ “The new Local Self-Governance Act, 1997 introduced provisions to increase the participation of women at the local level. Similarly, it has also made provisions to reserve one seat for a woman on each district and village development committee. As a result, around 40,000 women are now involved in local governance. This provision compelled all political parties to support female candidates and encouraged women to become involved in local government.” FWLD, Shadow Report on Initial Report of Government of Nepal on CEDAW: Briefing of Initial Report and Concluding Comments 22 (1999) [hereinafter FWLD CEDAW Shadow Report].

⁶⁴ See FWLD, Women's Participation in Political Process of Nepal at 17 (1999) (unpublished report submitted to Asia Pacific Forum for Women, Law and Development).

⁶⁵ See FWLD CEDAW Shadow Report, *supra* note 63, at 22.

⁶⁶ See Bhattachan, *supra* note 7, at 81. Other key women's groups are *Akhil Nepal Mahila Sangathan* (“All Nepal Women's Organization”), *Akhil Nepal Mahila Sangh* (“All Nepal Women's Organization”), *Mahila Swyam Sewa* (“Women's Voluntary Services”). See *id.*

⁶⁷ See *id.*

⁶⁸ See *id.* at 81-82.

⁶⁹ See *id.* at 84.

⁷⁰ See *id.* at 84-85.

⁷¹ See *id.* at 82.

⁷² See *id.* at 85-86.

⁷³ See FWLD Discriminatory Law Review, *supra* note 35, at 3.

⁷⁴ See *id.*

⁷⁵ See *id.*

⁷⁶ See *id.*

⁷⁷ The plan has two stated objectives: (1) to involve women actively in different sectors of development in order to build an egalitarian democratic society, and (2) to increase women's access to the political, economic and social sectors, and to promote law reform that ensures women's rights and their effective participation in society. The plan also names three policies for implementation: (1) to mainstream women's involvement in national development, (2) to eliminate gender inequality, and (3) to promote women's empowerment. *Id.* at 4 *citing* The Ninth Plan (1997-2002) 720 (1998).

- ⁷⁸ FWLD Discriminatory Law Review, *supra* note 35, at 4 *citing* A Concept Paper of Ministry of Women and Social Welfare (2053 B.S.), at 4.
- ⁷⁹ Interview with Pratap Kumar Pathak, Joint Secretary of Ministry of Women, Children and Social Welfare, Kathmandu, Nepal (Mar. 21, 2001); *see also* Interview with Ishwari Bhattarai, Under-Secretary of Ministry of Women, Children and Social Welfare, Kathmandu, Nepal (Mar. 21, 2001).
- ⁸⁰ *See* FWLD Discriminatory Law Review, *supra* note 35, at 4.
- ⁸¹ Interview with Pratap Kumar Pathak, *supra* note 79; *see also* Interview with Ishwari Bhattarai, *supra* note 79.
- ⁸² *See* NESAC, *supra* note 1, at 71.
- ⁸³ Department of Health Services, Ministry of Health, Annual Report 2055/56 (1998/99) 11 (1998/99). [hereinafter Annual Report]
- ⁸⁴ Annual Report, *supra* note 83, at 11.
- ⁸⁵ *See id.* at 12.
- ⁸⁶ National Planning Commission, The Ninth Plan (1997-2002) 655 (1998) (unofficial trans.) [hereinafter Ninth Plan].
- ⁸⁷ Family Health Division, Ministry of Health, National Reproductive Health Strategy 4 2054 (1998).
- ⁸⁸ *Id.* at 7. Other components of the integrated reproductive health care package include family planning, safe motherhood, child health (new born care), RTI/STD/HIV/AIDS, prevention and management of sub-fertility, adolescent reproductive health, and problems of elderly women i.e. uterine, cervical and breast cancer treatment at the tertiary level or in the private sector. *Id.*
- ⁸⁹ *See id.* at 10.
- ⁹⁰ *See id.* at 9.
- ⁹¹ *See id.* at 13.
- ⁹² *See id.* at 14.
- ⁹³ *See id.*
- ⁹⁴ *See* Maternal Mortality & Morbidity Study, *supra* note 13, at 1.
- ⁹⁵ *See* NESAC, *supra* note 1, at 63.
- ⁹⁶ *See* Annual Report, *supra* note 83, at 90.
- ⁹⁷ *See id.*
- ⁹⁸ *See id.*
- ⁹⁹ *See id.* at 97.
- ¹⁰⁰ *See id.* at 103.
- ¹⁰¹ *See id.* at 97.
- ¹⁰² *See id.*
- ¹⁰³ *See id.*
- ¹⁰⁴ *See id.* at 103
- ¹⁰⁵ *See id.*
- ¹⁰⁶ *See id.* at 104
- ¹⁰⁷ *See id.* at 3.
- ¹⁰⁸ *See* NESAC, *supra* note 1, at 63.

- ¹⁰⁹ See *Initial State Party Report of the Government of Nepal before the International Covenant on Economic, Social and Cultural Rights*, para. 40, U.N. Doc. E/1990/5/Add/45 (2000) [hereinafter *Government Report*].
- ¹¹⁰ See NESAC, *supra* note 1, at 57.
- ¹¹¹ See *id.* at 72.
- ¹¹² See *Government Report*, *supra* note 109, para. 40.
- ¹¹³ See NESAC, *supra* note 1, at 74.
- ¹¹⁴ See *id.* at 57.
- ¹¹⁵ See *id.* at iv.
- ¹¹⁶ See generally CREHPA, *supra* note 14.
- ¹¹⁷ See NESAC, *supra* note 1, at 62.
- ¹¹⁸ See Testimony of Dr. Nirmal K. Bista, Director General, Family Planning Association of Nepal, before the U.S. Senate Foreign Relations Committee (July 19, 2001) (on file with CRLP).
- ¹¹⁹ Ninth Plan, *supra* note 86, at 655.
- ¹²⁰ NESAC, *supra* note 1, at 62-63.
- ¹²¹ See Surya PS Dhungel et al., *Commentary on the Nepalese Constitution 1* (1st ed. 1998).
- ¹²² See *id.*
- ¹²³ Nepal Const. pmb.
- ¹²⁴ Nepal Const. art. 1(1).
- ¹²⁵ Nepal Const. art. 88(c).
- ¹²⁶ Nepal Const. art. 24 (1)(2) *reprinted in* Dhungel et al, *supra* note 121, at 202.
- ¹²⁷ See Dhungel et al, *supra* note 121, at 199.
- ¹²⁸ Nepal Const. art. 24 (2) *reprinted in* Dhungel et al, *supra* note 121, at 202.
- ¹²⁹ See Dhungel et al, *supra* note 121, at 199.
- ¹³⁰ Nepal Const. art. 25(1) *reprinted in* Dhungel et al, *supra* note 121, at 204.
- ¹³¹ Nepal Const. art. 25(3) *reprinted in* Dhungel et al, *supra* note 121, at 204.
- ¹³² See Dhungel et al, *supra* note 121, at 10.
- ¹³³ See Yubaraj Sangroula, *Women's Personality: Defined in Terms of their Sex and Marital Status, in Gender and Democracy in Nepal* 105, 107 (Laxmi Keshari Manandhar & Krishna B. Bhattachan eds., 2001).
- ¹³⁴ See *id.* at 106.
- ¹³⁵ See *id.*
- ¹³⁶ See FWLD Discriminatory Law Review, *supra* note 35, at 5.
- ¹³⁷ See *id.* at 5,7,8.
- ¹³⁸ See *id.* at 6.
- ¹³⁹ The Supreme Court held that testing of the vagina and uterus to determine whether a woman is married or not violates the right to privacy. See FWLD Discriminatory Law Review, *supra* note 35, at 82 *citing* *Annapurna Rana v. Ambika Rajya Lakshmi Rana* 2055 (1998), Vol. 40, at 476. The Supreme Court held that Rule 14 of the Foreigners Rules, 1975 which allows the concerned authorities to deny a visa to the foreign husband of a Nepali woman and grant one to the for-

eign wife of a Nepali man violates the right to equality. FWLD Discriminatory Law Review, *supra* note 35, at 84 *citing Mira Gurung v. Department of Immigration* 2051 (1994), Vol. 36, at 68.

¹⁴⁰ See FWLD Discriminatory Law Review, *supra* note 35, at 93. See *id.* at 93 *citing Sabita Shrestha v. Dharama Dhows Bhandari* NKP 2049 (1993), at 678.

¹⁴¹ See *id.* at 83. In *Chanda Bajracharya for Misha Khala v. Parliament Secretariat et al.* and *Sapana Pradhan for FWLD v. Ministry of Law and Justice*, “discriminatory legal provisions in the penal law, adoption law, succession (legacy), discrimination on punishment, divorce and remarriage were challenged... the [Supreme] Court said that it could not be denied that there is a great influence of Hindu Jurisprudence on our legal system...above all our religious codes play a vital role in determining such matter that are mainly influenced by family and social behavior, culture, tradition, activity and conduct.” *Id.* at 83 *citing Chanda Bajracharya for Misha Khala v. Parliament Secretariat et al.* at 2053 (1996), Vol. 38, at 537 & *Sapana Pradhan for FWLD v. Ministry of Law and Justice* unpublished case; Writ No. 2824, decided on 2053.4.3 (18.07.1996)

¹⁴² *Id.* at 83 *citing Chanda Bajracharya for Misha Khala v. Parliament Secretariat et al.* at 2053 (1996), Vol. 38, at 537.

¹⁴³ United Nations High Commissioner for Human Rights, *Treaty Status of Ratification by Country: Nepal*, available at

<http://www.unhcr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet> (last visited Dec. 4, 2001).

¹⁴⁴ United Nations, Division for the Advancement of Women, *Signatures to and Ratifications of the Optional Protocol*, available at

<http://www.un.org/womenwatch/daw/cedaw/sigop.htm> (last visited Dec. 4, 2001).

¹⁴⁵ *Programme of Action of the International Conference on Population and Development*, Cairo, Egypt, Sept. 5-13, 1994, U.N. Doc. A/CONF.171/13/Rev.1 (1995) [hereinafter *ICPD Programme of Action*]; *Beijing Declaration and the Platform for Action*, *Fourth World Conference on Women*, Beijing, China, Sept. 4-15, 1995, U.N. Doc.

DPI/1766/Wom (1996) [hereinafter *Beijing Declaration and Platform for Action*].

¹⁴⁶ See Dhungel et al, *supra* note 121, at 678. When a treaty is not self-executing, it may not be enforced in domestic courts until implementing legislation has been adopted by the national government. This does not affect the government’s duty to uphold the commitments it made by signing and ratifying the treaty. See *id.*

¹⁴⁷ Nepal Treaty Act 2047 (1990) § 9.

¹⁴⁸ Country Code, ch. 10, § 28.

¹⁴⁹ Interview with Court of Appeals Justice, Butwal Nepal (Mar. 16, 2001);

Interview with District Court Judge, Nawalparasi, Nepal (Mar. 15, 2001).

¹⁵⁰ See Prem J. Thapa et al., *A Hospital-Based Study of Abortion in Nepal*, 23:5 *Stud. in Fam. Plan.* 311, 312 (1992).

¹⁵¹ Country Code, ch. 10, § 31.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.* ch. 10, § 33.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* ch. 10, § 29.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* ch. 10, § 32.

¹⁵⁹ *Id.* ch. 10, § 13 (3).

¹⁶⁰ *Id.* Ch. on Court Proceedings, no. 188; *See also*, Administration of Justice Act (1991) § 8, 9, 10 (unofficial trans.).

¹⁶¹ Interview with Supreme Court Justice, Kathmandu, Nepal (Mar. 8, 2001).

¹⁶² *See* Rana, *supra* note 19, at 22.

¹⁶³ *See* Maternal Mortality & Morbidity study, *supra* note 13, at 75.

¹⁶⁴ *See* CREHPA, *supra* note 14, at 15.

¹⁶⁵ *See* FWLD Discriminatory Law Review, *supra* note 35, at 80.

¹⁶⁶ *See id.*; *see also* CREHPA, *supra* note 14, at 30-31.

¹⁶⁷ *See* FWLD Discriminatory Law Review, *supra* note 35, at 72-73.

¹⁶⁸ CRLP was among the NGOs who submitted comments on the draft bill. *See* Center for Reproductive Law and Policy (CRLP), Draft Provision on Abortion in the Kingdom of Nepal: Comments and Recommendations 6 (June 13, 2001) (on file with CRLP).

¹⁶⁹ Ministry of Law, Justice and Parliamentary Affairs, New Recommendations on Country Code 11th Amendment Bill, approved by House of Representatives.

¹⁷⁰ *See* Binaj Gurubacharya, *House approves property rights Bill amid protests: Bill also legalizes abortion under specific cases*, Kathmandu Post, Oct. 10, 2001, available at <http://www.nepalnews.com.np/contents/englishdaily/ktmpost/2001/oct/oct10/index1.htm>.

¹⁷¹ *See* *Upper House rejects property rights Bill*, Kathmandu Post, Oct. 14, 2001, available at <http://www.nepalnews.com.np/contents/englishdaily/ktmpost/2001/oct/oct14/index.htm#2>; *See also* Pramod Poudel, *Pro-abortion activists hopeful about its legality*, Kathmandu Post, Oct. 14, 2001, available <http://www.nepalnews.com.np/contents/englishdaily/ktmpost/2001/oct/oct14/index.htm#2>.

¹⁷² Nepal Const. art. 69(7).

¹⁷³ *Beijing Declaration and the Platform for Action*, *supra* note 145, para. 106(k).

¹⁷⁴ *See generally* The International Human Rights of Women, Instruments of Change 4-89 (Carol Elizabeth Lockwood et al. eds 1998).

¹⁷⁵ Universal Declaration of Human Rights, *adopted* Dec. 10, 1948, G.A. Res. 217A (III), at 71, U.N. Doc. A/810 (1948) [hereinafter Universal Declaration].

¹⁷⁶ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976) [hereinafter Civil and Political Rights Covenant].

¹⁷⁷ International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, at 49, U.N. Doc A/6316 (1966), 999 U.N.T.S. 3 (*entered into force* Jan. 3, 1976) [hereinafter Economic, Social and Cultural

Rights Covenant].

¹⁷⁸ See Louis Henkin et al., *International Law, Cases and Materials* 608 (1999).

¹⁷⁹ Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979) (*entered into force* Sept. 3, 1981) [hereinafter CEDAW].

¹⁸⁰ Convention on the Rights of the Child, *adopted* Nov. 20, 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 166, U.N. Doc. A/44/49 (1989) (*entered into force* Sept. 2, 1990) [hereinafter Children's Rights Convention].

¹⁸¹ Rome Statute of the International Criminal Court, *adopted* July 17, 1998, United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, Italy, June 15—July 17, 1998, U.N. Doc. A/CONF.183/9 (1998) (not yet in force) [hereinafter Rome Statute of the ICC]. Similar protections are outlined in the Statute of the International Criminal Tribunal for the Former Yugoslavia, *established by* S.C. Res. 827, U.N. SCOR, 48th Sess., U.N. Doc. S/RES/827 (1992), *as amended by* Res. 1166 and 1329 (2000) and the International Criminal Tribunal for Rwanda, *established by* S.C. Res. 955, U.N. SCOR, 49th Sess., U.N. Doc. S/RES/955 (1994).

¹⁸² See Henkin et al, *supra* note 178, at 129.

¹⁸³ *Declaration on the Elimination of Violence against Women*, G.A. Res. 48/104, U.N. GAOR, U.N. Doc. A/Res/48/104 (1994).

¹⁸⁴ *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, G.A. Res. 43/173, U.N. GAOR, Annex, Supp. No. 49, at 298, U.N. Doc. A/43/49 (1988) [hereinafter *Body of Principles*]; *Standard Minimum Rules for the Treatment of Prisoners*, *adopted* Aug. 20, 1955, U.N. Doc. A/CONF/611, Annex I, E.S.C. res. 663C, 24 U.N. ESCOR, Supp. No. 1, at 11, U.N. Doc. E/3048 (1957), *amended by* E.S.C. Res. 2076, 62 U.N. ESCOR, Supp. No. 1, at 35, U.N. Doc. E/5988 (1977) [hereinafter *Standard Minimum Rules*]; *Basic Principles on the Role of Lawyers*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, *adopted* Aug. 27 - Sept. 7, 1990, U.N. Doc. A/CONF.144/28/Rev.1, at 118 (1990) [hereinafter *Basic Principles*].

¹⁸⁵ *Id.*

¹⁸⁶ *ICPD Programme of Action*, *supra* note 145.

¹⁸⁷ *Beijing Declaration and Platform for Action*, *supra* note 145.

¹⁸⁸ See Rebecca J. Cook, *Human Rights and Reproductive Self-Determination*, 44:4 Am. U. L. Review 976, 977-978 (1995).

¹⁸⁹ *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, Maastricht, Netherlands, Jan. 22-26, 1997, guideline 6, *available at* http://www1.umn.edu/humanrts/instree/Maastrichtguidelines_.html (last visited Feb. 8, 2002) [hereinafter *Maastricht Guidelines*].

¹⁹⁰ See, e.g., Universal Declaration, *supra* note 175, art. 3; Civil and Political Rights Covenant, *supra* note 176, arts. 6.1, 9.1; Children's Rights Convention, *supra* note

180, paras. 6.1, 6.2; *ICPD Programme of Action*, *supra* note 145, paras. 7.3, 7.15, 8.34; *Beijing Declaration and Platform for Action*, *supra* note 145, paras. 96, 106, 108.

¹⁹¹ Human Rights Committee, General Comment 6 (16th Sess., 1982), *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, para. 5, U.N. Doc. HRI\GEN\1\Rev.1 at 6 (1994) [hereinafter HRC, General Comment 6]; *See also* Human Rights Committee, General Comment 14, Article 6 (23rd Sess., 1984), *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, para. 4, U.N. Doc. HRI\GEN\1\Rev.1 at 18 (1994) [hereinafter HRC, General Comment 14].

¹⁹² HRC, General Comment 6, *supra* note 191, *para. 5*.

¹⁹³ *Concluding Observations of the Human Rights Committee: Peru*, 17th Sess., 1892nd mtg., para. 20, U.N. Doc. CCPR/CO/70/PER (2000).

¹⁹⁴ *Id.*

¹⁹⁵ *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Columbia*, 20th Sess., 422nd-423rd mtgs., para. 393, U.N. Doc. CEDAW/A/54/38, paras. 337-401 (1999).

¹⁹⁶ *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Belize*, 21st Sess., 432nd-433rd, 428th mtgs., para. 56, U.N. Doc. CEDAW/A/54/38, paras. 31-69 (1999).

¹⁹⁷ *Beijing Declaration and the Platform for Action*, *supra* note 145, para. 97.

¹⁹⁸ *Id.* at para. 106(k).

¹⁹⁹ Dhungel et al, *supra* note 121, at 122. “The 1962 Constitution by contrast, formally protected a right to life but allowed capital punishment, as a result of which a number of political activists were subject to the death penalty. The Interim Cabinet when finalizing the draft Constitution of the Constitution Recommendation Commission, deleted the word “life” from the “life and personal liberty” clause of Article 12(1). The prohibition on capital punishment in the present Constitution, it was argued, anyway amounts to a right to life, and all other issues fall under personal liberty. The background to the formation of the Constitution thus allows the conclusion to be drawn that the right to life does not need the separate formal protection given to all other fundamental rights in Part 3 (especially the Article 12(2) freedoms), because every one of these other rights is predicated upon the existence of a right to life.” *Id.*

²⁰⁰ *Id.* at 123.

²⁰¹ *CEDAW Committee Observations: Nepal*, *supra* note 29, para. 147.

²⁰² *See* Rana, *supra* note 19, at 22.

²⁰³ *See* WHO Abortion, *supra* note 25, at 9.

²⁰⁴ *See* Maternal Mortality & Morbidity Study, *supra* note 13, at 75.

²⁰⁵ *See* UNFPA, *supra* note 3, at 68.

²⁰⁶ *See* Maternal Mortality & Morbidity Study, *supra* note 13, at 67.

²⁰⁷ Economic, Social and Cultural Rights Covenant, *supra* note 177, art. 12(1).

²⁰⁸ World Health Organization (WHO), Constitution of the World Health

Organization, *adopted on July 22, 1946 (14th ed. 1994), available at* [http://policy.who.int/cgi-](http://policy.who.int/cgi-bin/om_isapi.dll?infobase=Basicdoc&softpage=Browse_Frame_Pg42)

[bin/om_isapi.dll?infobase=Basicdoc&softpage=Browse_Frame_Pg42](http://policy.who.int/cgi-bin/om_isapi.dll?infobase=Basicdoc&softpage=Browse_Frame_Pg42).

²⁰⁹ See Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health, 22nd Sess., paras. 8-11, U.N. Doc. E/C.12/2000/4 (2000) [hereinafter CESCR, General Comment 14].

²¹⁰ See WHO Abortion, *supra* note 25, at 3-4.

²¹¹ CEDAW, *supra* note 179, art. 12.

²¹² *Vienna Declaration and Programme of Action, World Conference on Human Rights*, Vienna, Austria, June 14-25, 1993, pt. 3 at 41, U.N. Doc. A/CONF.157/23 (1993).

²¹³ *ICPD Programme of Action*, *supra* note 145, principle 8.

²¹⁴ Committee on the Elimination of Discrimination Against Women, General Recommendation 24, Women and Health (Article 12), 20th Sess., para. 14, U.N. Doc. No. A/54/38/Rev. 1 (1999) [hereinafter CEDAW, General Recommendation 24].

²¹⁵ Nepal Const. art. 26(7) *reprinted in* Dhungel et al, *supra* note 121, at 210.

²¹⁶ Annual Report, *supra* note 83, at 11.

²¹⁷ *Id.* at 12.

²¹⁸ See Ninth Plan, *supra* note 86, at 655.

²¹⁹ See NESAC, *supra* note 1, at 114.

²²⁰ See Equality Now Report, *supra* note 20, at 10.

²²¹ See CREHPA, *supra* note 21, at 23.

²²² See *id.* at 23-24.

²²³ See Center for Research on Environment Health and Population Activities, Unwanted Pregnancy & Unsafe Abortion in Nepal: Some Facts & Figures (2000).

²²⁴ *CESCR Observations: Nepal*, *supra* note 30, para. 33.

²²⁵ Universal Declaration, *supra* note 175, art. 7; See also Economic, Social and Cultural Rights Covenant, *supra* note 177, art. 2.2; Civil and Political Rights Covenant, *supra* note 176, art. 2.1; CEDAW, *supra* note 179, arts. 1, 3; *ICPD Programme of Action*, *supra* note 145, principles 1, 4; *Beijing Declaration and Platform for Action*, *supra* note 145, para. 214.

²²⁶ Civil and Political Rights Covenant, *supra* note 176, art. 2.1; Economic, Social and Cultural Rights Covenant, *supra* note 177, art. 2.2.

²²⁷ CEDAW, *supra* note 179, art. 1.

²²⁸ *Beijing Declaration and Platform for Action*, *supra* note 145, para. 97.

²²⁹ Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health, 22nd Sess., paras. 18-19, U.N. Doc. E/C.12/2000/4 (2000) [hereinafter CESCR, General Comment 14].

²³⁰ See e.g. *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Belgium*, para. 10, UN Doc. E/C.12/1994/7 (1994); *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Guatemala*, para. 32, UN Doc. E/C.12/1/Add.3 (1996).

- ²³¹ CEDAW, *supra* note 179, art. 14 (1).
- ²³² *Id.* art. 14 (2)(b).
- ²³³ Nepal Const. art. 11(1).
- ²³⁴ *Id.* art. 11(3).
- ²³⁵ *Id.*
- ²³⁶ Nepal Const. art. 25(1) *reprinted in* Dhungel et al, *supra* note 121, at 204.
- ²³⁷ Nepal Const. art. 25(3) *reprinted in* Dhungel et al, *supra* note 121, at 204.
- ²³⁸ Interviews conducted with various members of legal and government community (Mar. 6-21, 2001).
- ²³⁹ See Interview with Member, National Planning Commission, Kathmandu, Nepal (Mar. 21, 2001).
- ²⁴⁰ Interview with Supreme Court Justice, *supra* note 161.
- ²⁴¹ Interview with Court of Appeals Justice, *supra* note 149.
- ²⁴² Interview with Police Official, Dharan, Nepal (Mar. 13, 2001).
- ²⁴³ See CREHPA, *supra* note 14, at 24.
- ²⁴⁴ Interview with Court of Appeals Justice, *supra* note 149.
- ²⁴⁵ See CREHPA, *supra* note 14, at 15, 20; See also NESAC, *supra* note 1, at 63.
- ²⁴⁶ Interview with Member, Human Rights Commission, Kathmandu, Nepal (Mar. 7, 2001).
- ²⁴⁷ See CREHPA, *supra* note 14, at 18.
- ²⁴⁸ See CEDAW, *supra* note 179, art. 16 (1.e); *ICPD Programme of Action*, *supra* note 145, principle 8; *Beijing Declaration and Platform for Action*, *supra* note 145, para. 223.
- ²⁴⁹ See Universal Declaration, *supra* note 175, art. 3; Civil and Political Rights Covenant, *supra* note 176, arts. 6.1, 9.1; Children's Convention, *supra* note 180, arts. 6.1, 6.2; *ICPD Programme of Action*, *supra* note 145, paras. 7.3, 7.15, 8.34; *Beijing Declaration and Platform for Action*, *supra* note 145, paras. 96, 106, 108.
- ²⁵⁰ See Civil and Political Rights Convention, *supra* note 176, art. 17.1; Children's Rights Convention, *supra* note 180, arts. 16.1, 16.2; *ICPD Programme of Action*, *supra* note 145, para. 7.45; *Beijing Declaration and Platform for Action*, *supra* note 145, paras. 106, 107.
- ²⁵¹ CESCR, General Comment 14, *supra* note 30, note 12.
- ²⁵² Nepal Const. art. 22.
- ²⁵³ See Dhungel et al, *supra* note 121, at 188. The framers of the Constitution "considered a separate guarantee of the right to privacy as being necessary to augment the right to personal liberty guaranteed by Article 12(1) of the Constitution." *Id.*
- ²⁵⁴ See *id.*
- ²⁵⁵ See Interview with Court of Appeals Justice, *supra* note 149.
- ²⁵⁶ See World's Women, *supra* note 42, at 48; See also NESAC, *supra* note 1, at 7. According to the Country Code, Chapter on Marriage, marriage under 16 years of age is illegal. Country Code, ch. 17, § 2.
- ²⁵⁷ See UNFPA, *supra* note 3, at 68, 71.
- ²⁵⁸ The Alan Guttmacher Institute, *Into the New World: Young Women's*

Sexual and Reproductive Lives 24 (1998).

²⁵⁹ Civil and Political Rights Covenant, *supra* note 176, art. 9 (1).

²⁶⁰ Nepal Const. pmb.

²⁶¹ Nepal Const. art. 12(1).

²⁶² Dhungel et al, *supra* note 121, at 131 quoting *Yagyamurti Banjade v. Bagmati Special Court*, 12 nkp 57 (2027).

²⁶³ Country Code, ch. 10, § 28.

²⁶⁴ See Interview with District Court Judge, Nawalparasi, *supra* note 149; see also Interview with Court of Appeals Justice, *supra* note 149.

²⁶⁵ See Interview with District Court Judge, Biratnagar, Nepal (Mar. 12, 2001); see also Interview with Public Prosecutor, Kathmandu (National), Nepal (Mar. 14, 2001).

²⁶⁶ See Interview with Police Official, Butwal, Nepal (Mar. 15, 2001).

²⁶⁷ See Interview with Police Official, Kathmandu, Nepal (Mar. 22, 2001).

²⁶⁸ See CREHPA, *supra* note 14, at 9-10, 21.

²⁶⁹ See Interview with Renu Shreshta, inmate in Kathmandu Central Jail, Kathmandu, Nepal (Mar. 5, 2001) (miscarried in seventh month); Interview with Radha, inmate in Dilli Bazaar Khor Jail, Kathmandu, Nepal (Mar. 6, 2001) (miscarried in seventh month); Interview with Sarita, inmate in Dilli Bazaar Khor Jail, Kathmandu, Nepal (Mar. 6, 2001) (miscarried in eighth month); Interview with Kamala, inmate in Dilli Bazaar Khor Jail, Kathmandu, Nepal (Mar. 6, 2001) (miscarried in fourth month); Interview with Aarti, inmate in Jhapa Jail, Jhapa, Nepal (Mar. 13, 2001) (miscarried in fifth month); Interview with Kali Maya, inmate in Jhapa Jail, Jhapa, Nepal (Mar. 13, 2001) (miscarried in eighth month); Interview with Sanu Karki, inmate in Jhapa Jail, Jhapa, Nepal (Mar. 13, 2001) (miscarried; no gestational period given, but before others knew she was pregnant); Interview with Asha, inmate in Nawalparasi Prison, Nawalparasi, Nepal (Mar. 15, 2001) (miscarried in eighth month); Interview with Durga, inmate in Gulmi Jail, Gulmi, Nepal (Mar. 19, 2001) (miscarried in eighth month); Interview with Maiya, inmate in Gulmi Jail, Gulmi, Nepal (Mar. 19, 2001) (miscarried in eighth month); Interview with Pramila, inmate in Lamjung Jail, Lamjung, Nepal (Mar. 20, 2001) (miscarried in sixth month).

²⁷⁰ Interview with Public Prosecutor, Jhapa, Nepal, (Mar. 13, 2001).

²⁷¹ See, e.g. Universal Declaration, *supra* note 175, arts. 7, 10; Civil and Political Rights Covenant, *supra* note 176, arts. 2(1), 3, 26; CEDAW, *supra* note 179, arts 2, 15; International Convention on the Elimination of All Forms of Racial Discrimination, arts. 2,5, 7, 660 U.N.T.S. 195 (*entered into force* Jan. 4, 1969) [hereinafter Racial Discrimination Convention].

²⁷² See, e.g. Civil and Political Rights Covenant, *supra* note 176, art. 14(1); CEDAW, *supra* note 179, arts. 2, 15; Racial Discrimination Convention, *supra* note 271, arts. 2, 5; Rome Statute of the ICC, *supra* note 181, art. 67(1).

²⁷³ See, e.g. Civil and Political Rights Covenant, *supra* note 176, art 2; CEDAW, *supra* note 179, art. 15; Racial Discrimination Convention, *supra* note 271, art. 5.

²⁷⁴ Universal Declaration, *supra* note 271, art 10.

²⁷⁵ *Beijing Declaration and Platform for Action*, *supra* note 145, art. 231(k).

²⁷⁶ *Id.* art. 232(l).

²⁷⁷ Committee on the Elimination of Discrimination Against Women, General Recommendation 21, Equality in marriage and family relations, 13th Sess., art. 15, para. 8, U.N. Doc. A/47/38 (1994).

²⁷⁸ *See, e.g.*, Civil and Political Rights Covenant, *supra* note 176, art. 2.1; Economic, Social and Cultural Rights Covenant, *supra* note 177, art. 2.2. .

²⁷⁹ Nepal Const. art. 11(3); *see also* the section on equality before the law in the Civil Rights Act (1955) stating that: “Subject to Nepal laws in force, no citizen shall be denied equality before law and equal protection of law.” Civil Rights Act § 3 (1955) (unofficial trans.)

²⁸⁰ Nepal Const. art. 11(3).

²⁸¹ Interview with Supreme Court Justice, Kathmandu, Nepal (Mar. 8, 2001)

²⁸² *See* FWLD Discriminatory Laws Review, *supra* note 35, at 56.

²⁸³ Interview with Public Prosecutor (National), *supra* note 265.

²⁸⁴ *See id.*

²⁸⁵ *See id.*

²⁸⁶ Interview with Lawyer, Center for Victims of Torture, *supra* note 316.

²⁸⁷ *Judgement Analysis*, *supra* note 33, at 4.

²⁸⁸ *Id.* at 4 *citing* *HMG v Ratna Kumari Khadka*: NKP 2040, Vol. 1, at 12-4.

²⁸⁹ Interview with Supreme Court Justice, *supra* note 281.

²⁹⁰ During interviews with experts and officials, at least two interviewees referred to having had abortions themselves.

²⁹¹ Interview with Member, Human Rights Commission, *supra* note 246.

²⁹² *See* CREHPA, *supra* note 14, at 15.

²⁹³ *See* FWLD Survey, *supra* note 23.

²⁹⁴ Dhungel et al, *supra* note 121, at 151 *citing* 3:15 S. Ct. Bull. 1 (2051).

²⁹⁵ Interview with Member, Nepal Bar Association, Kathmandu, Nepal (Mar. 6, 2001).

²⁹⁶ Interview with District Court Judge, Gulmi, Nepal (Mar. 18, 2001).

²⁹⁷ Interview with Sanu Karki, *supra* note 269.

²⁹⁸ *See* Black’s Law Dictionary 501 (6th ed. 1990).

²⁹⁹ Civil and Political Rights Covenant, *supra* note 176, art. 9(2); *See also* *Body of Principles*, *supra* note 184, principles 10, 11(2).

³⁰⁰ Decisions and Views of the Human Rights Committee, *Adolfo Drescher Caldas v Uruguay*, Communication No. 43/1979 (Jan. 11, 1983), Supp. No. 40, at 192, 38th Sess. para. 13.2 (views under art. 5(4) of the optional protocol), U.N. Doc. A/38/40 (1983).

³⁰¹ Decisions and Views of the Human Rights Committee, Sess. 43, *Ramon B. Martinez Portorreal v Dominican Republic*, Communication No. 188/1984 (Nov. 5, 1987), Supp. No. 40, at 207, 43rd Sess., paras. 9.2, 11 (views under art. 5, para. 4 of the Optional Protocol), U.N. Doc. A/43/40 (1988).

³⁰² Civil and Political Rights Covenant, *supra* note 176, art. 9(3); *See also* Rome Statute of the ICC, *supra* note 181, art. 59(2); Principle 11(1) of the *Body of Principles* states that: “A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.” *Body of Principles*, *supra* note 181.

³⁰³ Human Rights Committee, General Comment 8, Article 9 (16th Sess. 1982) Right to liberty and security of persons, para. 2, U.N. Doc. HRI\GEN\1\Rev.1 at 8 (1994).

³⁰⁴ Civil and Political Rights Covenant, *supra* note 176, art. 14(3)(c); *See also* Rome Statute of the ICC, *supra* note 181, art. 67(1)(c).

³⁰⁵ *See, e.g.*, Civil and Political Rights Covenant, *supra* note 176, art. 14(3)(c); Rome Statute of the ICC, *supra* note 181, art. 67(1)(c). The Human Rights Committee has also stated that “[t]his guarantee relates not only to the time by which a trial should commence, but also the time by which it should end and judgment be rendered; all stages must take place ‘without undue delay’. To make this right effective, a procedure must be available in order to ensure that the trial will proceed ‘without undue delay’, both in first instance and on appeal.” Human Rights Committee, General Comment 13, Article 14 (21st Sess. 1984), *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, para. 10, U.N. Doc. HRI\GEN\1\Rev.1 at 6 (1994) [hereinafter HRC, General Comment 13].

³⁰⁶ Nepal Const. art. 14(5).

³⁰⁷ Civil Rights Act § 15 (1)(a) (1955) (unofficial trans.).

³⁰⁸ *See* Country Code, Chapter on Court Proceedings § 13-14.

³⁰⁹ Nepal Const. art. 14(6); A section in the State Cases Act (1992) also states that: “[e]very person who is arrested and detained in custody shall be produced before a judicial authority within a period of twenty four hours after such arrest, excluding the time necessary for the journey from the place of arrest to such authority, and no such person shall be detained in custody beyond the said period except on the order of such authority.” State Cases Act § 15(2) (1992) (unofficial trans.).

³¹⁰ Interview with Renu Shrestha, *supra* note 269.

³¹¹ Interview with Sanu Karki, *supra* note 269.

³¹² Interview with Bimala, inmate in Tansen Jail, Palpa, Nepal (Mar. 18, 2001).

³¹³ Interview with Police Official, Jhapa, Nepal (Mar. 13, 2001).

³¹⁴ Interview with Durga, *supra* note 269.

³¹⁵ Interview with Pramila, *supra* note 269.

³¹⁶ Interview with Lawyer, Center for Victims of Torture, Kathmandu, Nepal (Mar. 6, 2001).

³¹⁷ Interview with Police Official, Dharan, *supra* note 242.

³¹⁸ *See, e.g.*, *Basic Principles*, *supra* note 184, principles 1, 5; *Body of Principles*, *supra* note 184, principle 17(1); Rome Statute of ICC, *supra* note 181, art. 55(2)(c).

³¹⁹ See, e.g., Universal Declaration, *supra* note 175, art. 11(1); Civil and Political Rights Covenant, *supra* note 176, art. 14(3)(d); Rome Statute of ICC, *supra* note 181, art. 67(1)(d).

³²⁰ Civil and Political Rights Covenant, *supra* note 176, art. 14(3)(d); See also *Basic Principles*, *supra* note 184, principle 1; Rome Statute of the ICC, *supra* note 181, art. 67(1)(d); Principle 1 of *The Basic Principles* states: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings." *Basic Principles*, *supra* note 184.

³²¹ See, e.g., Rome Statute of the ICC, *supra* note 181, art. 55(2)(d).

³²² See, e.g., *Basic Principles*, *supra* note 184, principle 1; *Body of Principles*, *supra* note 184, principle 17.

³²³ *Concluding Observations of the Human Rights Committee: Georgia*, 59th Sess., 1564-1566th mtg., para. 28, U.N. Doc. CCPR/C/79/Add.74 (1997); See also Principle 7 The *Basic Principles* states that: "Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention." *Basic Principles*, *supra* note 184.

³²⁴ See, e.g., Civil and Political Rights Covenant, *supra* note 176, art. 14(3)(d); *Basic Principles*, *supra* note 184, principle 5; Rome Statute of ICC, *supra* note 181, art. 55(2)(c).

³²⁵ See *Basic Principles*, *supra* note 184, principles 13-14.

³²⁶ See, e.g., Civil and Political Rights Covenant, *supra* note 176, art. 14(3)(b); Rome Statute of ICC, *supra* note 181, art. 67(1)(b); *Basic Principles*, *supra* note 184, principle 8; *Body of Principles*, *supra* note 184, principle 18(2); *Standard Minimum Rules*, *supra* note 184, rule 93.

³²⁷ HRC, General Comment 13, *supra* note 305, para. 9; See also *Basic Principles*, *supra* note 184, principle 21; Rome Statute of the ICC, *supra* note 184, art. 67(2).

³²⁸ Civil and Political Rights Covenant, *supra* note 176, art. 14(3)(d); see also *Body of Principles*, *supra* note 184, principle 17(2); *Basic Principles*, *supra* note 184, principle 6; Rome Statute of the ICC, *supra* note 181, art. 55(2)(c). Principle 3 of the *Basic Principles* obliges governments to provide "sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons." *Basic Principles*, *supra* note 184. The UN Standard Minimum Rules for the Administration of Juvenile Justice extends this guarantee to minors: "Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aids where there is provision for such aid in the country." United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), G.A. Res. 40/33, U.N. GAOR, Supp. No. 53, at 207, art. 15.1, U.N. Doc. A/40/53 (1985) [hereinafter *Standard Minimum Rules for Juvenile*].

³²⁹ Decision and Views of the Human Rights Committee, *Frank Robinson v. Jamaica*, Communication No. 223/1987 (Mar. 30, 1989), Supp. No. 40, at 241, 44th Sess., para. 10.3 (views under art. 5 para. 4 of the Optional Protocol), U.N. Doc.

A/44/40 (1989).

³³⁰ Rome Statute of the ICC, *supra* note 181, art. 55(2)(c); *See also id.* art. 67(1)(d).

³³¹ *Beijing Declaration and Platform for Action*, *supra* note 145, art. 61(a).

³³² Nepal Const. art. 14(5).

³³³ Civil Rights Act § 15 (1)(b) (1955) (unofficial trans.). For the purpose of this clause, the words “legal practitioner” shall mean any person who is authorized by law to represent any person in any court. *Id.*

³³⁴ Nepal Const. 26(14)

³³⁵ Interview with Aarti, *supra* note 269.

³³⁶ *See* FWLD Survey, *supra* note 23.

³³⁷ Interview with Aarti, *supra* note 269.

³³⁸ Interview with Asha, *supra* note 269.

³³⁹ Interview with Reeta, inmate in Bhimfedi Jail, Bhimfedi, Nepal (Mar. 19, 2001).

³⁴⁰ Interview with Maiya, *supra* note 269.

³⁴¹ Interview with Renu Shrestha, *supra* note 269.

³⁴² Interview with Court of Appeals Justice, *supra* note 149.

³⁴³ Interview with Sunita, inmate in Nawalparsai Prison, Nawalparsai, Nepal (Mar. 15, 2001).

³⁴⁴ Interview with Durga, *supra* note 269.

³⁴⁵ *See* FWLD Survey, *supra* note 23.

³⁴⁶ Interview with Police Official, Jhapa, *supra* note 313.

³⁴⁷ Interview with Police Official, Dharan, *supra* note 242; Interview with Police Official, Palpa, Nepal (Mar. 18, 2001).

³⁴⁸ *See* Interview with Public Prosecutor, Kathmandu (National), *supra* note 265; Police Official, Nepalganj, Banke, Nepal (Mar. 15, 2001).

³⁴⁹ Interview with Sarita, *supra* note 269.

³⁵⁰ Interview with Pushpa, inmate in Kathmandu Central Jail, Kathmandu, Nepal (Mar. 5, 2001).

³⁵¹ Interview with Sanu Karki, *supra* note 269.

³⁵² *See* Interview with Kishore Silwal, Kathmandu School of Law, Kathmandu, Nepal (Mar. 7, 2001); *see also* Interview with Lawyer, Center for Victims of Torture, *supra* note 316.

³⁵³ Interview with Supreme Court Justice, *supra* note 161.

³⁵⁴ Interview with Police Official, Jhapa, *supra* note 313.

³⁵⁵ Interview with Attorney, Legal Aid Committee, Palpa, Nepal (Mar. 18, 2001).

³⁵⁶ *See, e.g.* Universal Declaration, *supra* note 175, art. 10; Civil and Political Rights Covenant, *supra* note 176, art. 14(1); Rome Statute of the ICC, *supra* note 181, arts. 64(2), 67(1).

³⁵⁷ *See, e.g.* HRC, General Comment 13, *supra* note 305, para. 6; Universal Declaration, *supra* note 175, arts. 10, 11; Civil and Political Covenant, *supra* note 176, art. 14(1); Rome Statute of the ICC, *supra* note 181, arts. 64(7), 67(1).

³⁵⁸ Civil and Political Rights Covenant, *supra* note 176, art. 14(1).

³⁵⁹ See Amnesty International Fair Trials Manual § 13-14 (1998), available at <http://www.amnesty.org/ailib/intcam/fairtrial/indxftm.htm> (last visited Jan. 2, 2002) [hereinafter Amnesty Manual].

³⁶⁰ HRC, General Comment 13, *supra* note 305, para. 11.

³⁶¹ Universal Declaration, *supra* note 175, art. 11; See also Civil and Political Rights Covenant, *supra* note 176, art. 14(2); *Body of Principles*, *supra* note 184, principle 36(1); Rome Statute of the ICC, *supra* note 181, art. 66; *Standard Minimum Rules*, *supra* note 184, rule 84(2).

³⁶² HRC, General Comment 13, *supra* note 305, para 7.

³⁶³ Article 66(3) of the Rome Statute of the ICC provides that “[i]n order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt.” Rome Statute of the ICC, *supra* note 181.

³⁶⁴ HRC, General Comment 13, *supra* note 305, para. 7.

³⁶⁵ Article 55(2)(b) of the Rome Statute of the ICC guarantees the right to “remain silent, without such silence being a consideration in the determination of guilt or innocence.” Rome Statute of the ICC, *supra* note 181.

³⁶⁶ *Kelly v. Jamaica*, (253/1987), Report of the Human Rights Committee, U.N. Doc. A/46/40 (1991); *Conteris v. Uruguay*, (139/1983), 2 Sel. Dec. 168 (1985); *Estrella v. Uruguay*, (74/1980), 2 Sel. Dec. 93 (1983) cited in Amnesty Manual, *supra* note 359, § 9.2, available at

http://www.amnesty.org/ailib/intcam/fairtrial/indxftm_a.htm.

³⁶⁷ *Body of Principles*, *supra* note 184, principle 21. According to Principle 21 of the Body of Principles:

1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.
2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or judgment. *Id.*

³⁶⁸ See, e.g., Civil and Political Rights Covenant, *supra* note 176, art. 14(5); Rome Statute of the ICC, *supra* note 181, art 81(b).

³⁶⁹ HRC, General Comment 13, *supra* note 305, para. 17.

³⁷⁰ Nepal Const. art.12(1); See also Dhungel et al, *supra* note 121, at 126.

³⁷¹ NEPAL CONST. art.14(3); See also “No person who is accused of an offense shall be compelled to be a witness against himself.” Civil Right Act § 11(3) (1955) (unofficial trans.).

³⁷² See Dhungel et al, *supra* note 121, at 152.

³⁷³ See *id.* at 150.

³⁷⁴ See *id.* at 151.

³⁷⁵ Dhungel et al, *supra* note 121, at 151 citing 3:15 S. Ct. Bull. 1 (2051).

³⁷⁶ See Interview with District Court Judge, Kathmandu, Nepal (Mar. 21, 2001).

³⁷⁷ See Dhungel et al, *supra* note 121, at 129.

- 378 Nepal Act I Series Part 1, Law Book Management Board, Ministry of Law, Justice and Parliamentary Affairs, Nepal Act I Series Pt. 1.
- 379 Interview with Public Prosecutor, Banke, Nepal (Mar. 15, 2001).
- 380 Interview with Police Official, Jhapa, *supra* note 313.
- 381 Interview with Aarti, *supra* note 269.
- 382 Interview with Police Official, Jhapa, *supra* note 313.
- 383 *See* Interview with Police Official, Nepalganj, Banke, *supra* note 348: “their general approach to infanticide cases is to see if the woman is married or unmarried; if the pregnancy resulted from an illicit relationship; if the fetus was born dead and public opinion. All these factors influence a police investigation.” *Id*
- 384 Interview with Police Official, Dharan, *supra* note 242.
- 385 *See Judgement Analysis, supra* note 33, at 4 *citing Manimaya Shrish v HMG*, NKP: 2049, at 361-365.
- 386 *See id. citing HMG v. Ishware Pant* : NKP 2042, Vol. 12, at 1101-1103.
- 387 *See id. citing HMG v. Kanchhi Tamangi*: NKP 2045, Vol 11, at 1196-1199.
- 388 *See id. citing Krishnalal Yadav v. HMG* : NKP 2044, Vol. 6, at 671-675.
- 389 “Whenever a complaint (FIR) is registered in this office, an investigation is initiated. It begins with a medical check-up of the woman in question. If the results are positive, the indictment is submitted to the court. . . . The medical report is key—it is the main piece of evidence. Once arrested, a woman has to undergo a medical exam.” Interview with Police Official, Palpa, *supra* note 347.
- 390 “Regarding the proof required to prove abortion the following are considered most important, viz., medical examination of the accused, an estimate of the month of pregnancy, statement by the accused, statements from friends and family.” Interview with Police Official, Jhapa, *supra* note 313.
- 391 Interview with Police Official, Dharan, *supra* note 242.
- 392 Interview with Police Official, Palpa, *supra* note 347.
- 393 *See* Interview with Public Prosecutor, Kathmandu (National), *supra* note 265; *see also* Interview with Aarti, *supra* note 269.
- 394 Interview with Renu Shrestha, *supra* note 269.
- 395 Interview with Aarti, *supra* note 269. “A post mortem of the fetus was conducted and it was kept in the hospital for three days. I was treated for a fever but not examined to determine whether I had spontaneously miscarried or not.” *Id*
- 396 Interview with Reeta, *supra* note 339. “I was brought to Mechi Zonal hospital where the doctor merely “touched” me before reaching the conclusion that I killed the fetus.” *Id*
- 397 *See* Interview with Hospital Director, Gulmi, Nepal (Mar. 19, 2001).
- 398 Interview with Public Prosecutor (National), *supra* note 265. When asked about the importance of different kinds of evidence, the Public Prosecutor said that the post mortem report of the fetus is most important. Second is evidence of the mother’s physical condition to determine whether the abortion was spontaneous or induced and whether the fetus was born dead or alive. *Id*.
- 399 Interview with Public Prosecutor, Banke, Nepal, *supra* note 379. When asked

what factors are considered while deciding whether or not to prosecute, the Public Prosecutor said the findings of the medical report, whether the woman allegedly consented or not, statements of villagers, the woman's statement and the post-mortem report of the fetus if the medical report of the woman is not conclusive.

Id.

⁴⁰⁰ Interview with Aarti, *supra* note 269.

⁴⁰¹ Interview with Durga, *supra* note 269.

⁴⁰² Interview with Meena, inmate in Tansen Jail, Palpa, Nepal (Mar. 18, 2001).

⁴⁰³ See *Judgement Analysis*, *supra* note 33, at 4.

⁴⁰⁴ See Interview with Court of Appeals Justice, *supra* note 149; Interview with District Court Judge, Gulmi, *supra* note 296.

⁴⁰⁵ dhungel et. al, *supra* note 121, at 151 citing *Hirapashi v. HMG* 12 (2028) 208.

⁴⁰⁶ See *Judgement Analysis*, *supra* note 33, at 3-4 citing *HMG v. Deurupa alias Draupadi Chhetri*: NKP 2044, Vol. 6, Supp. Issue, at 284-287.

⁴⁰⁷ See *supra* notes 292-293 and accompanying text.

⁴⁰⁸ See *supra* notes 23, 159-160 and accompanying text.

⁴⁰⁹ "There is a constitutional right to keep quiet." Interview with District Judge, Biratnagar, *supra* note 265.

⁴¹⁰ Interview with Court of Appeals Justice, *supra* note 149.

⁴¹¹ Interview with Sarita, *supra* note 269.

⁴¹² *Id.*

⁴¹³ Interview with Kamala, *supra* note 269.

⁴¹⁴ Interview with Public Prosecutor, Jhapa, *supra* note 270.

⁴¹⁵ Interview with Renu Shrestha, *supra* note 269.

⁴¹⁶ Interview with Radha, *supra* note 269.

⁴¹⁷ Interview with Sarita, *supra* note 269.

⁴¹⁸ Interview with Aarti, *supra* note 269.

⁴¹⁹ Interview with Sunita, *supra* note 343.

⁴²⁰ See FWLD Survey, *supra* note 23.

⁴²¹ Civil and Political Rights Covenant, *supra* note 176, art 7; see also Universal Declaration, *supra* note 175, art. 5; *Body of Principles*, *supra* note 184, principle 6.

⁴²² Civil and Political Rights Covenant, *supra* note 176, art 10(1)

⁴²³ Children's Rights Convention, *supra* note 180, art. 37(c)

⁴²⁴ Human Rights Committee, General Comment 21, Article 10 (44th Sess. 1992), *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, para. 3, U.N. Doc. HRI\GEN\1\Rev.1 at 33 (1994).

⁴²⁵ Amnesty Manual, *supra* note 359, § 10.1 citing *Kelly v. Jamaica*, (253/1987), 8 April 1991, Report of the Human Rights Committee, (A/46/40), 1991; *Párkányi v. Hungary* (410/1990), 27 July 1992, Report of the Human Rights Committee, (A/47/40), 1992. "These essential needs include food, washing and sanitary facilities, bedding, clothing, medical care, access to natural light, recreation, physical exercise, facilities to allow religious practice and communication with others including those in the outside world." Amnesty Manual, *supra* note 359, § 10.1

⁴²⁶ See, e.g., The Body of Principles (principle 24) and the Standard Minimum Rules (rules 25-26) mandate that medical personnel be available to any detainee or prisoner who either directly complains of or is reported to suffer from any ailment or injury. *Body of Principles*, *supra* note 184, principle 24; *Standard Minimum Rules*, *supra* note 184, rules 25-26.

⁴²⁷ Decisions and Views of the Human Rights Committee, *Linton v. Jamaica*, Communication No. 255/1987, 46th Sess., para. 8.5, U.N. Doc. CCPR/C/46/D/255/1987 (1992); See also Decisions and Views of the Human Rights Committee, 57th Sess., *Uton Lewis v. Jamaica*, Communication No. 527/1993, para. 10.4, U.N. Doc. CCPR/C/57/D/527/1993 (1996).

⁴²⁸ See Amnesty Manual, *supra* note 359, § 10. 3.

⁴²⁹ *Standard Minimum Rules*, *supra* note 184, rules 8(a), 53.

⁴³⁰ Human Rights Committee, Comments on the United States of America, 53rd Sess., 1401st–1402nd, 1405-1406th mtgs., para. 20, U.N. Doc. CCPR/C/79/Add.50 (1995).

⁴³¹ Civil and Political Right Covenant, *supra* note 176, art. 10(3); See also Children's Rights Convention, *supra* note 180, art. 37(c); *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, G.A. Res. 45/113, Annex, U.N. GAOR, Supp. No. 49A, at 205, rules 28-29, U.N. Doc.A/45/49 (1990).

⁴³² See, e.g., Civil and Political Rights Covenant, *supra* note 176, art. 37(c).

⁴³³ See, e.g., Civil and Political Rights Covenant, *supra* note 176, art. 28; *Standard Minimum Rules for Juvenile*, *supra* note 328, art. 24.

⁴³⁴ See *Standard Minimum Rules*, *supra* note 184, rule 23(1).

⁴³⁵ Nepal Const. art. 12.

⁴³⁶ Nepal Const. art. 14.

⁴³⁷ Nepal Const. art. 14(4).

⁴³⁸ Compensation for Torture Act § 3(1) (1996) (unofficial trans.) Under this section on the Ban on Torture “a person who is in detention also means a person who is in custody according to current law.” *Id.*

⁴³⁹ Prison Act § 7 (1963) (unofficial trans.).

⁴⁴⁰ Prison Act § 6(a) (1963) (unofficial trans.).

⁴⁴¹ The Prison Regulation § rule 24 (1963) (unofficial trans.).

⁴⁴² The law excludes any woman who is convicted of an offense relating to the throne, the Royal Family or treason or who is on trial or convicted of a crime punishable with a life sentence or murder. Prison Act § 12(1) (1962) (unofficial trans.).

⁴⁴³ *Id.*

⁴⁴⁴ Interview with Lawyer, Center for Victims of Torture, *supra* note 316.

⁴⁴⁵ *Id.*; Interview with Public Prosecutor, *supra* note 265.

⁴⁴⁶ Interview with Lawyer, Center for Victims of Torture, *supra* note 316.

⁴⁴⁷ Interview with Kamala, *supra* note 269.

⁴⁴⁸ See FWLD Survey, *supra* note 23.

⁴⁴⁹ See *id.*

450 *See id.*

451 Interview with Renu Shrestha, *supra* note 269.

452 Interview with Pushpa, *supra* note 350.

453 Interview with Kamala, *supra* note 269.

454 *See* Interview with Radha, *supra* note 269; Interview with Sarita, *supra* note 269; Interview with Kamala, *supra* note 269.

455 *See* Interview with Reeta, *supra* note 339; Interview with Charu, inmate in Bhimfedi Jail, Bhimfedi, Nepal (Mar. 19, 2001).

456 *See* Interview with Asha, *supra* note 269; Interview with Sunita, *supra* note 343.

457 *See* Interview with Durga, *supra* note 269; Interview with Maiya, *supra* note 269.

458 *See* Interview with Bimala, *supra* note 313; Interview with Meena, *supra* note 403.

459 *See* Interview with Asha, *supra* note 269.

460 *See* Interview with Sunita, *supra* note 343.

461 Interview with Renu Shrestha, *supra* note 269.

462 *Id.*

463 Interview with Pushpa, *supra* note 350.

464 *See* CREHPA, *supra* note 14, at 25.

465 Interview with Female Inmates Officer, Kathmandu Central Jail, Kathmandu, Nepal (Mar. 5, 2001).

466 Interview with Member, National Human Rights Commission, Kathmandu, Nepal (Mar. 22, 2001).

467 *See* Interview with Pramila, *supra* note 269.

468 *See* Interview with Durga, *supra* note 269.

469 *See* Interview with Pramila, *supra* note 269.

470 Direct observations of Jhapa Jail, Melissa Upreti, CRLP Staff Attorney (Mar. 13, 2001) (on file with CRLP).

471 *Id.*

472 *See* Interview with Police Official, Jhapa, *supra* note 313; *See also* Interview with Police Official, Nepalganj, *supra* note 348.

473 Interview with Lawyer, Center for Victims of Torture, *supra* note 316.

474 Correspondence from FWLD to CRLP, Jan. 16, 2002 (on file with CRLP).

475 Interview with Lawyer, Center for Victims of Torture, *supra* note 316.

476 *See* His Majesty's Government (HMG) Central Bureau of Statistics, Nepal in Figures 2001 (2001).

477 *See* World Bank Indicators 2000, *supra* note 56, at 11.

478 *See* NESAC, *supra* note 1, at 12.

479 *See* World's Women, *supra* note 42, at 19.

480 *See* Family Health Division, Ministry of Health, Nepal Family Health Survey 1996 3 (1997). These statistics are as of 1991.

481 According to the World Bank, 42% of Nepal's population is below the poverty line. *See* World Bank Indicators, *supra* note 56, at 63.

- 482 Federal Research Division, Library of Congress, *Nepal: A Country Study* (Andrea Matles Savada ed., 1991), available at [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+np0063\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+np0063)) (released Sept. 1991) [hereinafter Library of Congress]
- 483 See His Majesty's Government (HMG) Central Bureau of Statistics, *Statistical Year Book of Nepal 2001 iv* (2001).
- 484 *Id.* at ii.
- 485 See Library of Congress, *supra* note 482, available at [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+np0009\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+np0009)).
- 486 See NESAC, *supra* note 1, at 11.
- 487 See UNFPA, *supra* note 3, at 71, 75, which states cites 4.48% for the period 2000-2005.
- 488 See NESAC, *supra* note 1, at 62; See also UNFPA, *supra* note 3, at 68 which also cites the 29% figure.
- 489 See NESAC, *supra* note 1, at 40.
- 490 See *id.* at 41.
- 491 See *id.* at 40-41.
- 492 See *id.* at 41.
- 493 See *id.* at 12.
- 494 See *id.* at 42.
- 495 See Library of Congress, *supra* note 482, available at [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+np0048\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+np0048)).
- 496 See NESAC, *supra* note 1, at 58.
- 497 See *id.* at 57.
- 498 See *id.* at 58, 77, 64, 116.
- 499 See *id.* at 58.
- 500 See *id.* at 44.
- 501 See *id.*
- 502 See *id.*
- 503 See Library of Congress, *supra* note 482, available at [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+np0008\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+np0008)).
- 504 See NESAC, *supra* note 1, at 3. According to the World Almanac, 90% of the Nepalis are Hindu, 5% are Buddhist, and 3% are Muslim. Robert Famighetti et al., *World Almanac and Book of Facts: 1998 802* (1998).
- 505 See Famighetti et al., *supra* note 504, at 803; See also Library of Congress, *supra* note 482, available at [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+np0004\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+np0004)).
- 506 See Library of Congress, *supra* note 482, available at [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+np0004\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+np0004)).
- 507 See Bhattachan, *supra* note 7, at 77.
- 508 See Famighetti et al., *supra* note 504, at 802; See also Library of Congress, *supra* note 482, available at [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+np0004\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+np0004)).

509 See Dhungel et. al., *supra* note 121, at 22; See also Library of Congress, *supra* note 482, available at [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+np0004\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+np0004)).

510 See *id*.

511 See Library of Congress, *supra* note 482, available at [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+np0004\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+np0004)).

512 See *id*.

513 See *id*.

514 See *id*.

515 See BBC News, *Mao in the Mountains* (Apr. 5, 2001), at http://news.bbc.co.uk/hi/english/world/south_asia/newsid_1261000/1261820.stm; See also BBC News, *Eyewitness: Nepal's Maoist power base* (July 4, 2001), at http://news.bbc.co.uk/hi/english/world/south_asia/newsid_1422000/1422194.stm.

516 See Dhungel et al, *supra* note 121, at 179.

517 See *id*. at 76.

518 See *id*. at 75.

519 See *id*. at 179.

520 See *id*. 178.

521 See *id*. 179.

522 See *id*. 76.

523 See NESAC, *supra* note 1, at 3.

524 See *id*. at 8.

525 See *id*.

526 See NESAC, *supra* note 1, at 57.

527 See *id*. at xi.

528 See NESAC, *supra* note 1, at ii.

529 See *id* at 10.

530 See *id* at 110-111.

531 *Kamaiya system ends: Bonded labours freed from debts*, Kathmandu Post, July 18, 2000, available at <http://www.nepalnews.com>.

532 Library of Congress, *supra* note 482, available at [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+np00077\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+np00077)) .

533 See UNFPA *supra* note 3, at 68.

534 See NESAC, *supra* note 1, at 58. Nearly three out of five households report not having proper access to health care. NESAC, *supra* note 1, at 64.

535 See UNFPA, *supra* note 3, at 71.

536 See NESAC, *supra* note 1, at 123.

537 See *id*. at 12.

538 This was the first Nepali constitution to do so. See Dhungel et. al., *supra* note 121, at 43.

539 See Albert P. Blaustein & Gilbert H. Flanz, *Constitutions of the Countries of the World: Nepal* xiii (1994).

540 See Dhungel et al, *supra* note 121, at 449.

541 See *id.*

542 See *id.* at 255.

543 See *id.* at 44; See also Library of Congress, *supra* note 482, available at [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+np0103\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+np0103)).

544 See Dhungel et al, *supra* note 121, at 44.

545 See Library of Congress, *supra* note 482, available at [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+np0103\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+np0103)).

546 Nepal Const. art.36.

547 Nepal Const. art. 43, 35 (3).

548 Nepal Const. art. 44; See also Library of Congress, *supra* note 482, available at [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+np0104\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+np0104)).

549 Nepal Const. art. 45.

550 See Dhungel et al, *supra* note 121, at 45.

551 Nepal Const. art. 46; See also NESAC, *supra* note 1, at 151.

552 Nepal Const. art. 114.

553 Nepal Const. art. 46(b).

554 Nepal Const. art. 46(c).

555 Nepal Const. art. 46(a).

556 See Dhungel et al, *supra* note 121, at 45.

557 Nepal Const. art. 69.

558 Nepal Const. art. 71(3).

559 See Library of Congress, *supra* note 482, available at [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+np0101\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+np0101)); [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+np0011\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+np0011))

560 Nepal Const. art. 85.

561 Nepal Const. art. 87,91,117.

562 Nepal Const. art. 86(1)(2).

563 Nepal Const. art. 88 (1)(5).

564 Nepal Const. art. 88 (1).