

July 23, 2003

The Committee on the Elimination of Discrimination Against Women (CEDAW)

Re: Supplementary information on Nepal
Scheduled for review by CEDAW During its 30th Session

Dear Committee Members:

The purpose of this letter is to provide independent information regarding Nepal, scheduled to be reviewed by CEDAW during its 30th session. Non-governmental organizations, such as the Center for Reproductive Rights, can play a central role in providing the committee with information that is reliable, accurate and independent concerning the rights protected in the Convention on the Elimination of all forms of Discrimination Against Women (Women's Convention). This letter will highlight two particular areas of concern related to the status of women's reproductive health and lives in Nepal: (A) the threat of unsafe abortion that stems from the government's failure to implement a strategy for ensuring safe and legal abortion services and (B) the plight of women affected by the Maoist insurgency.

Reproductive rights are fundamental to women's health and equality and States Parties' commitment to ensuring them should receive serious attention. Further, reproductive health and rights are explicitly protected under the Women's Convention. Article 12 requires States Parties to "take all appropriate measures to eliminate discrimination against women in the field of health care," and specifies that women should have access to "appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation." Article 10(h) requires women to have "access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning." CEDAW's General Recommendation on Women and Health also expands upon the integral role of reproductive rights in securing women's health and equality. In its General Recommendation 24, the Committee notes that "it is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women."¹

We hope to point the Committee's attention to the following issues of concern, which directly affect the reproductive health and lives of women in Nepal:

A. Lack of Commitment to Ensuring Safe Abortion and other Reproductive Rights

In September 2002, King Gyanendra signed the 11th Amendment Bill, officially legalizing abortion under certain conditions, including upon request during the first 12 weeks of pregnancy, when a woman's life or health is in danger, and in cases of rape, incest, and fetal impairment.² However, the government has taken insufficient steps to ensure women's ability to exercise the right to safe and legal abortion. According to this Committee's General Recommendation 24, States parties have a duty "to ensure, on a basis of equality of men and women, access to health-care services, information and education."³ States have a related obligation to "respect, protect and fulfill women's rights to health care."⁴ Legislation, in the form of the law legalizing abortion, does not amount to sufficient compliance with this provision. The government must institute policies and make the necessary financial commitments to ensure that its obligations are met.⁵ It has been estimated that up to half of all maternal deaths in Nepal are due to unsafe abortions⁶ and it is unlikely that the situation has changed following the decriminalization of abortion, since the government has not taken adequate steps to implement the new law. Required steps include: 1) adoption of a policy for the provision of safe abortion services, 2) outreach to raise awareness of abortion's legalization, 3) development of programs to remove the stigma attached to seeking abortion services, and 4) sensitization of law enforcement officials regarding the change in law on abortion and women's human rights. In addition, the government should ensure relief for the women who are currently in prison pursuant to the former abortion ban.

1. Failure to Implement Policies and Strategies that Allow for the Provision of Abortion Services

A proposed national policy on safe abortion, an accompanying procedural order and other relevant protocols which would enable providers in government hospitals and clinics to offer much needed counseling and services have been stuck in the government's bureaucracy for months. The government's failure to act is defeating the purpose of the abortion reform. Furthermore, the proposed national policy under discussion is itself vague and inadequate to address the underlying barriers to ensuring safe abortion and safeguarding women's internationally and nationally protected reproductive rights.

One result of the government's inaction is that public hospitals are still not authorized to provide abortions. This Committee has previously urged the Nepalese government to provide services for safe abortions.⁷ Similarly, in its recommendations to other States, the Committee has stressed the importance of providing abortion services in public hospitals. For example, in its Concluding Observations on Croatia, the Committee "recommend[ed] that the Government take steps to secure the enjoyment by women of their reproductive rights by, *inter alia*, guaranteeing them access to abortion services in public hospitals."⁸ The Nepalese government must ensure that public hospitals have government authorization to provide safe abortion services.

In implementing programs to ensure that women are guaranteed safe abortions, the government must include all women, with particular focus on those living in rural areas, as the country is predominantly rural. Almost 90% of the total population, a little over half of whom are women, reside in villages and largely underserved areas characterized by extremely harsh mountainous terrain.⁹ The government must take extra measures to ensure that their special needs for information and access to services are sufficiently met.¹⁰ In its Concluding Observations on Nepal, this Committee has noted “with concern” the lack of information regarding women in rural areas. Because of the continued social stigma associated with abortion, particularly in rural areas, it is especially important that the government’s efforts to provide safe abortions include rural women.

2. Failure to Spread Awareness Regarding the Legalization of Abortion

Another major concern is that most Nepalese, both men and women, including health workers, judges and government officials are unaware of the law decriminalizing abortion.¹¹ In addition, among those who know about the law, many are confused about its content, as is evidenced in the Nepali government’s report to this Committee, which in Paragraph 93 states that only a married woman with her husband’s consent may obtain an abortion.¹² In fact, the law makes abortion legal for any consenting woman during the first 12 weeks of pregnancy. The government’s report has also failed to note that abortion is legal in cases of fetal impairment.

According to polls conducted by the Center for Research on Environment, Health and Population Activities (CREHPA) in October, 2002, among 1214 men and 1299 women, between ages 18 and 60, in ten major cities, only 22% of the population was aware of the new abortion law. About half of the men and 24% of the women continued to believe that abortion was illegal. On the other hand, only 24% of the men and 19% of the women knew about the new abortion law. While most individuals (87%) supported the new law, many did not understand the conditions under which abortions can be carried out.¹³ It is therefore crucial that the government increase social recognition of the law by disseminating information, for example through awareness campaigns.¹⁴ Rather than depending on NGOs to engage in such work, the government itself must spearhead such efforts through policies and programs.¹⁵

3. Failure to Eliminate Long-Standing Stigma Associated with Abortion

Part of the government’s efforts to increase awareness of the new law must include efforts to change people’s perceptions regarding abortion. As this Committee has noted previously, “different cultural practices and traditions and persisting highly patriarchal values and norms affecting all spheres of life are impediments to the full implementation of the Convention.”¹⁶ Indeed, despite the new law, many women continue to be reluctant to seek safe abortion services because of the social stigma associated with doing so. This stigma has its roots in long-established attitudes, particularly social norms and beliefs among members of society, especially in rural areas, who accuse those seeking abortions of infanticide.¹⁷ The result has been the continued practice of clandestine abortion under

unsafe conditions. Addressing stigma is key to creating a support system within families and communities to enable women to make personal decisions about their pregnancies.

4. Failure to Sensitize Law Enforcement Officials

The association of abortion with infanticide has serious implications for women's rights within Nepal's criminal justice system. The practice of charging women who have had abortions, or experienced still births, with the harsher crime of infanticide is alarmingly common and has continued with impunity for many years. Government officials have played a key role in perpetuating and legitimizing the social and legal biases that support this unfair treatment of women. Many different human rights violations resulting from this practice have been extensively documented by human rights groups including the Center for Reproductive Rights in collaboration with the Forum for Women, Law and Development in Nepal.¹⁸

5. Failure to Release Women in Prison

Finally, because the law legalizing abortion does not apply retroactively, women who are imprisoned – the majority of whom are illiterate, low-income, and in many cases have suffered miscarriage or stillborn births – continue to serve harsh sentences under arbitrarily imposed charges of infanticide.¹⁹ Those women who are imprisoned are often separated from their children and abandoned by their families²⁰ or, alternatively, their children are imprisoned with them.²¹ For example, one prisoner currently serving her sentence is accompanied by her four-year-old child because the child has nowhere to go.²² All these women have been subjected to gender and class discrimination with accompanying violations of due process.²³ Women's advocates at both the national and international levels are calling for the release of all women who are imprisoned on charges of abortion and infanticide, particularly because of the long-standing legal and cultural confluence of the concepts of abortion and infanticide and the consistent failure of law-enforcement officials to distinguish between the two in prosecuting cases.²⁴

B. Internally Displaced Women

The Maoist insurgency, led by the Communist Party of Nepal, has actively sought to destroy the monarchy and establish a Maoist people's democracy since 1996.²⁵ In the conflict between the Government of Nepal and Maoist rebels, "it is the women and children who are most vulnerable."²⁶ Specifically, the greatest amount of hardship has fallen on rural women, thousands of whom have become widows, and children, many of whom have been orphaned.²⁷ The women have been left behind to serve as heads of households and to contend with war and poverty, while men have migrated to search for employment or fight the war.²⁸ For example, in one village in the far western region of Nepal, among a population of 265 households, there are no adult males.²⁹ Similarly, in the villages of Chapakot, Kuwakot and Ratnapur, because the majority of the adult men have left their homes for security reasons, only "kids, women and elderly people" remain.³⁰

Women have had to face a multitude of difficulties, leading one writer to use the term “triple marginalization” to describe their plight.³¹ In addition to having to take on physical and economic tasks, such as ploughing fields, maintaining irrigation canals, protecting community forests, and selling produce, women have had to suffer the loss of loved ones, confront the tearing apart of their families, and face isolation.³² They have been thrust into the position of being the sole providers for their families and communities, as they are often the only ones left to care for children and the elderly.³³ Their health has deteriorated, as a result of their lack of access to health care and the fact that they have had to go hungry as a result of food shortages.³⁴

In its General Recommendation 19, this Committee has noted “the right to equal protection according to humanitarian norms in time of international or internal armed conflict.”³⁵ According to the Beijing Declaration and Platform for Action, in situations of armed conflict, “women and girls are particularly affected because of their status in society and their sex,”³⁶ and in fact the majority of internally displaced persons tend to be women, adolescent girls and children.³⁷ This Committee has noted that in particular, women are subjected to harm during armed conflict in the form of increased prostitution, trafficking, and sexual assault.³⁸

As a result of the particular harms that women face in armed conflict, this Committee, in its General Recommendations, has stated that it is especially important that “special protective and punitive measures” be instituted on behalf of women against perpetrators.³⁹ In order for the particular harms that women face to be given attention, this Committee has said that a “gender perspective and analysis is necessary” for an understanding of the differing effects of armed conflict on women and men.⁴⁰ Perpetrators of rape and other forms of sexual violence must be brought to justice and special proceedings must be instituted to enable women to seek redress and rehabilitation. The Nepal government has taken inadequate steps to assess the social impact of the conflict on women and girls and use the information gathered to address human rights violations and other deprivations perpetrated by Maoist insurgents and law enforcement agents during the course of the conflict. For example, according to news sources, earlier this year, while the government planned to launch a relief program in 18 districts to rehabilitate women, minors and orphans who have been affected by the Maoist insurgency, the program was only able to accommodate 11 women, 11 minors, and 35 orphans in one district, while the number of people seeking relief was ten times greater.⁴¹ The inadequacy of the program reflects the insufficiency of the steps that the government has taken. Issues of sexual violence against women and girls and the denial of services critical to their health and well being have been ignored, in contrast to the government’s attention to violations pertaining to arbitrary arrests and torture of suspected Maoists.

In addition, a gender sensitive approach should help define the types of services that are provided. For example, “States parties should ensure that adequate protection and health services, including trauma treatment and counseling, are provided for women.”⁴² Further, States must “offer adequate protection and assistance to women and children displaced within their country.”⁴³ Further, efforts such as health service provision, capacity building, empowerment and micro-credit programs aimed at improving

women's lives, discontinued as a result of the Maoist insurgency, should be resurrected and further developed.

An additional means to ensure that the particular harm that women face in armed conflict is addressed is to ensure that women are included in significant numbers in all efforts aimed at preventing and resolving conflict.⁴⁴ In order to ensure that gender is incorporated in the peace process, women must be involved throughout the peace process.⁴⁵ The peace process must directly address violations of women's fundamental rights.⁴⁶ To date, women have been inadequately represented in negotiations to end the conflict in Nepal.

The Committee should also consider addressing the following questions to the Nepalese government:

1. What measures are being taken to provide necessary resources, both physical facilities and human resources, to ensure that affordable and acceptable, safe and high-quality abortions are provided nationwide?
2. How does the proposed national abortion policy address the underlying barriers to ensuring safe abortion and safeguard women's reproductive rights, including the rights to privacy, confidentiality and adequate information?
3. What measures are being taken to ensure that women and couples are fully informed about the abortion law?
4. How has the government addressed the stigma attached to seeking safe abortion services?
5. What measures have been taken to sensitive law enforcement officials regarding the legalization of abortion?
6. What steps are being taken regarding women who are currently imprisoned as a result of Nepal's longstanding punitive approach to abortion?
7. What strategies are being taken to identify and redress the particular harms that women have suffered as a result of the armed conflict?
8. What strategies have been implemented to ensure that a gender perspective is incorporated into the peace process?
9. What steps have been taken to ensure that women are adequately represented on both sides in the peace process?

There remains a significant gap between the provisions in the Women's Convention and the reality of women's reproductive health and lives. We appreciate the active interest that the Committee has taken in women's reproductive health and rights and the strong

concluding observations and recommendations the Committee has issued to governments in the past, stressing the need for governments to take steps to ensure the realization of these rights.

We hope that this information is useful during the Committee's review of the Nepalese government's report. If you have any questions, or would like further information, please do not hesitate to contact us.

Very truly yours,

Melissa Upreti
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¹ Committee on the Elimination of Discrimination against Women, *General Recommendation 24: Women and Health* (20th Sess., 1999), para. 11 [hereinafter *General Recommendation on Health*].

² Press Release, Center for Reproductive Rights, *Nepal's King Legalizes Abortion* (Sept. 26, 2002) (on file with CRR).

³ *General Recommendation on Health*, supra note 1, para. 13

⁴ *Id.*

⁵ *Id.*

⁶ CENTER FOR REPRODUCTIVE RIGHTS & FORUM FOR WOMEN, LAW AND DEVELOPMENT (FWLD), *ABORTION IN NEPAL WOMEN IMPRISONED 23* (2002) [hereinafter *ABORTION IN NEPAL*].

⁷ *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Nepal*, para. 148, U.N. Doc. A/54/38 (1999).

⁸ *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Croatia*, para. 117, U.N. Doc. A/53/38 (1998).

⁹ *ABORTION IN NEPAL*, supra note 6, at 87.

¹⁰ *Abortion Law: Why It Has Failed to Impact*, Space Times Today, Feb. 7, 2003, available at www.spacetimeonline.com/Pub/Feb_7/ST-Today_Feature.htm [hereinafter *Abortion Law: Why It Has Failed*].

¹¹ Hemlata Rai, *The New Law on Abortion Has Many Gaps, and the Government Doesn't Seem Too Keen on Making it Work Fast*, NEPALI TIMES, Oct. 31, 2002, available at www.nepalnews.com.np/ntimes/issue116/nation_1.htm; Aruna Upreti, *Legalising it Does Not Ensure Accessibility, or Affordability of Safe Abortion*, NEPALI TIMES, Oct. 31, 2002, available at www.nepalnews.com.np/ntimes/issue116/nation_2.htm.

¹² Government of Nepal, Combined 2nd and 3rd Periodic Report of States Parties to the Committee on the Elimination of Discrimination against Women, April 7, 2003, CEDAW/C/NPL//2-3, para. 93.

¹³ Sudha Shrestha, *Women Not Availing of Abortion Law Benefits*, KATHMANDU POST, April 30, 2003, at www.nepalnews.com/contents/englishdaily/ktmpost/2003/apr/apr30/.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Nepal*, para. 135, U.N. Doc. A/54/38 (1999).

¹⁷ *Abortion Law: Why It Has Failed*, supra note 10.

¹⁸ See *ABORTION IN NEPAL*, supra note 6.

¹⁹ *Id.* at 39-40, 63; Center for Reproductive Rights, *Abortion Reform in Nepal: For Women Still in Prison, Nothing Has Changed* (July, 2003), available at http://www.crlp.org/ww_asia_nepalabortion.html [hereinafter *Abortion Reform in Nepal*]; Sapana Pradhan Malla, Chief of Forum for Women, Law and Development in Nepal: Abortion Legal but Women Still Imprisoned, April 17, 2003.

²⁰ Press Release, Center for Reproductive Rights, *Nepal's King Urged to Continue Commitment to Human Rights by Releasing Women Imprisoned for Abortion* (July 1, 2003) [hereinafter *Nepal's King Urged to Continue Commitment*].

²¹ *Abortion Reform in Nepal*, supra note 19.

²² Forum for Women, Law and Development, Update of Situation of Women in Prison, June 2003 (on file with the Center for Reproductive Rights).

²³ *Nepal's King Urged to Continue Commitment*, supra note 20.

²⁴ Statement from the Center for Reproductive Rights and the Forum for Women, Law and Development, to the Sub-Commission on the Promotion and Protection of Human Rights Fifty-fifth Session (July 28 to Aug. 15, 2003) (on file with the Center for Reproductive Rights).

²⁵ Chitra K. Tiwari, *Nepal: Maoist Insurgency*, SOUTH ASIA PROGRAM, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, March 1, 2001.

²⁶ Aruna Upreti, *Sick of War*, NEPALI TIMES, July 25, 2002, available at www.nepalnews.com.np/ntimes/issue103/headline_1.htm.

²⁷ *Nepalese Rights Body Says Government, Maoists "Openly Violated" Rights, Laws*, BBC MONITORING SOUTH ASIA, June 7, 2002.

²⁸ A Letter of Peace from Nepal Women's Organizations resulting from the Jagriti Bridging Worlds Workshop, Kathmandu January 2003 where 18 Nepal women's organizations, each representing from 20 to

more than 1,000 women met, *available at*
www.jagritifoundation.org/newsletters/200306/WBPeaceNepal.asp

²⁹ *Id.*

³⁰ *Nepal: Hundreds Flee Villages After Attack by Insurgents*, BBC MONITORING SOUTH ASIA, Nov. 5, 2001.

³¹ Megh Ranjan, *Mother Nepal*, NEPALI TIMES, Dec. 5, 2002, *at*
www.nepalnews.com.np/ntimes/issue121/encounters.htm.

³² *Id.*

³³ *Id.*

³⁴ Mohan Mainali, *Famine by February*, NEPALI TIMES, Nov. 28, 2002, *available at*
www.nepalnews.com.np/ntimes/issue120/headline_1.htm; Aruna Uprety, *supra* note 26.

³⁵ Committee on the Elimination of Discrimination against Women, Gen. Recommendation 19, *Violence against Women*, para. 7(c), U.N. Doc. A/47/38 (1992) [hereinafter *General Recommendation on Violence against Women*].

³⁶ *Beijing Declaration and the Platform for Action, Fourth World Conference on Women*, Beijing, China, Sept. 4-15, 1995, U.N. Doc. A/CONF 177/20/Add. 1 (1995) [hereinafter *Beijing Declaration and Platform for Action*], para. 136.

³⁷ *Id.* para. 134.

³⁸ *General Recommendation on Violence against Women*, *supra* note 35, para. 16.

³⁹ *Id.*

⁴⁰ *Id.* para. 40.

⁴¹ *Nepal Government Plans Relief Programme for Victims of Maoist Conflict*, BBC MONITORING SOUTH ASIA, Feb. 28, 2003.

⁴² *General Recommendation on Violence against Women*, *supra* note 35, para. 16.

⁴³ *Beijing Declaration and the Platform for Action, Fourth World Conference on Women*, Beijing, China, Sept. 4-15, 1995, U.N. Doc. A/CONF 177/20/Add. 1 (1995) [hereinafter *Beijing Declaration and Platform for Action*], para. 149.

⁴⁴ *Id.* para. 135.

⁴⁵ A Letter of Peace from Nepal Women's Organizations, *supra* note 28.

⁴⁶ *Id.*

Supplementary Letter
January 12, 2004

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January 12, 2004

The Committee on the Elimination of Discrimination against Women (CEDAW)

Re: Supplementary Information on Nepal, CEDAW Committee 30th Session

Dear Committee Members:

The Center for Reproductive Rights submitted the attached letter regarding Nepal to the Committee during its pre-session meeting in July 2003. We hope that the Committee will have an opportunity to review this letter as it considers the report submitted by the government of Nepal this session. We wish to point out two major developments related to the facts presented in the attached letter that have occurred since July. These developments are as follows:

1. Implementation of Policies for the Provision of Abortion Services

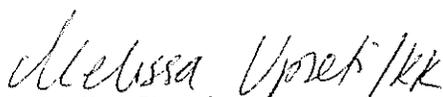
There has been a tremendous lag between the passage of legislation legalizing abortion in Nepal and the adoption of policies regulating the provision of abortion services. As discussed on page 2 of the letter, the result has been an inability to ensure access to safe, affordable abortion services and a failure to meet the government's commitment to reducing the country's high rate of maternal mortality. Earlier this month, however, following several months of advocacy and lobbying and the signing of a writ petition in the Supreme Court of Nepal, the Cabinet passed a procedural order implementing a national policy on provision of abortion services. We hope the Committee will encourage the government to take immediate steps to implement the policy and ensure that it remains a priority, particularly by training health care providers and making women are aware that safe, legal abortion services are available.

2. Women in Prison Pursuant to Nepal's Former Abortion Ban

As noted on page 4 of the letter, women in Nepal continue to serve prison sentences pursuant to Nepal's longstanding punitive approach to abortion, which has been legally conflated with the crime of infanticide. However, with the cooperation of a responsive judiciary and prison administration, women's NGOs in Nepal have successfully secured the release of at least 23 of these women. We hope the Committee will encourage the government of Nepal to take further action to expedite the release of the approximately 34 women who remain in prison on the grounds of abortion and infanticide.

We thank the Committee for taking these points into consideration. If you have any questions, or would like further information, please do not hesitate to contact us.

Sincerely,


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