CENTER FOR REPRODUCTIVE RIGHTS

May 17, 2005

The Committee on the Rights of the Child

Re: Supplementary information on Nepal, scheduled for review by the Committee on the Rights of the Child during its 39th Session

Dear Committee Members:

This letter is intended to supplement the periodic report submitted by Nepal, which is scheduled to be reviewed by the Committee on the Rights of the Child (hereinafter referred to as "the Committee") during its 39th session. The Center for Reproductive Rights, an independent non-governmental organization, hopes to further the work of the Committee by providing independent information concerning the rights protected in the Convention on the Rights of the Child (Children's Rights Convention). This letter highlights areas of concern relating to the reproductive health and rights of girls and adolescents in Nepal with a focus on the practice of child marriage and lack of access to reproductive health care for adolescents and girls.

Reproductive rights are fundamental to the dignity, health and equality of adolescents and girls, and states parties' commitment to ensuring them must be thoroughly scrutinized. Adolescent reproductive health and rights receive broad protection under the Children's Rights Convention. Article 24 of the Children's Rights Convention recognizes girls' and adolescents' right "to the enjoyment of the highest attainable standard of health." It also requires states parties to take appropriate measures to develop "family planning and education services." In General Comment No. 4, the Committee has expressed concern that "early marriage and pregnancy are a significant factor for health problems related to sexual and reproductive health, including HIV/AIDS." Specifically with regard to Nepal, the Committee on the Rights of the Child has stated that child marriage violates protections against discrimination (Article 2), commitments to act in the best interest of the child (Article 3), the rights of children to life, survival, and development, and guarantees to respect the views of the child (Article 12).[1]

Despite the concerns expressed by the Committee, the rights of girls and adolescents in Nepal continue to be neglected. While the Government of Nepal (hereinafter referred to as "the Government") has acknowledged the problem of child marriage as a harmful traditional practice in the combined second and third periodic report (hereinafter referred to as the "Combined Report") the multiple health risks associated with the practice and

the broader implications for children's rights to life, education and bodily integrity remain unaddressed.

Key developments since the first report

In the first report submitted in 1995, the Government approached child marriage as a constraint on the efficacy of the primary educational system for females.[2] The Government proposed collecting data on married children as a response to the problem, and suggested nothing further. In the Concluding Observations on Nepal (1995) the Committee considered the issue more broadly and "noted in particular the lack of conformity of legislative provisions concerning non-discrimination including in relation to marriage…."[3] The Committee also noted minimum age requirements for marriage as being lower for females than males, which explicitly violate Article 2 of the Convention.[4] The Concluding Observations called for legal reform and the need to address the issues relating to females in a public information campaign.[5]

As per the Committee's recommendations, the Government introduced groundbreaking legislative reform by increasing the legal age at marriage to 18 with parental consent and 20 without parental consent and eliminating the age differential through an amendment to the National Civil Code (1963) in 2002.[6] The Amendment also increased the punishment for child marriage, imposing longer prison terms and higher fines for underage marriage.[7] Furthermore, in 2000, the Government adopted a National Adolescent Health and Development Strategy.

Key considerations under the current report

Basic Health and Welfare

<u>The Right to be Free from Traditional Practices that are Harmful to Children's Health: Article 24(3)</u>

Article 24(3) requires state parties to take measures to abolish traditional practices that are harmful to children's health. The Committee has determined that child and forced marriage are both harmful traditional practices and forms of gender discrimination.[8] In recent Concluding Observations, the Committee expressed concern at "the persistence of harmful practices such as…early marriage."[9] It recommended that governments "develop public awareness campaigns and measures to provide appropriate assistance to families in carrying out their child-rearing responsibilities with a view…to preventing early marriages and other harmful traditional practices.[10]

Despite the illegality of early marriage, the practice is pervasive in Nepal.[11] The government has characterized child marriage as "a social problem in some areas of the country," but statistics presented by the Government in the state report and in official policies point to a much larger problem."[12] According to the Central Bureau of Statistics,

34% of girls marry by the age of 15; the National Adolescent Health and Development Strategy offers a higher estimate of approximately 50%.[13] In some communities, the proportion rises to an alarming 83.1%.

According to national-level data from 2001, the median age at marriage is 16.8 among women currently aged 20–24.[14] This is lower than the average age estimated by UNFPA which ranks Nepal as the country with the lowest average age at marriage in South Asia.[15] Women in rural areas marry about a year earlier than their urban counterparts.[16] The true scope of child marriage can only be understood when these statistics are considered in light of the fact that almost 20% of Nepal's total population comprises of adolescents[17] and over 40% are between the ages of 0–14 and poised to soon enter this phase.[18] Furthermore, almost 90% of the population is based in rural areas.[19]

The government's inadequate response to the widespread practice of child marriage is also evidenced by its failure to recognize and address it as a form of gender discrimination. In the 10th National Development Plan (2003) which was enacted after the submission of the periodic report, encouraging late marriage has been emphasized as a strategy to control Nepal's population growth. It has not been discussed as a strategy to promote gender equality, the health of girl children or the children's rights more broadly. The issue of child marriage finds no mention in the policy actions laid out in these three areas of intervention.

The National Adolescent Health and Development Strategy has identified the empowerment of adolescents by according recognition to their reproductive rights as one of its strategies.[20] It also enumerates various strategies for the prevention of early marriage, one of them being to increase the legal age at marriage and to reduce the age gap between males and females at the time of marriage.[21] The policy also establishes targets for decreasing the incidence of early marriage from 45.5% to 30% in 2002–2006 and to 20% in 2007–2011.[22] However, the policy fails to make critical links between child marriage and the health and lives of girl children, particularly due to their vulnerability to coercion, early child bearing, and sexual violence within marriage.

The Children's Act, 2048 (1992), was enacted to make legal provisions to protect the rights and interests of children.[23] However, it defines a child as a "human being below the age of 16 years"[24] thereby denying children between the ages of 16–18 the protections offered by the Act with respect to health care and non-discrimination and options for redress in case their rights are denied. The Children's Act is silent on the issue of child marriage.

The National Civil Code recognizes marriages entered into without the free and full consent of both parties as void-able.[25] However, judicial recourse to these provisions and a supportive social environment for the termination of non-consensual marriages are lacking. Bigamy continues to be permitted by law on certain grounds and is still practiced.

The Combined Report currently under consideration does propose in very general terms promising measures such as integrating the issue of child marriage into the school curriculum, and activating village and district development committees, child clubs, and civil society to monitor child marriage. It also expresses a commitment on behalf of the Ministry of Women, Children, and Social Welfare to discourage early marriages through appropriate policy measures, and the mobilization of NGOs to do grassroots work.[26] However, in the "Next Steps" summation of the Combined Report, the government fails to articulate specific measures to deal with issues confronting the girl child, or of child marriage in particular. Furthermore, it is unclear how any of the measures described in the Combined Report submitted to the Committee can be enforced in the current context of insecurity and violence as a result of the ongoing internal armed conflict and increased spending on the military at the cost of public services and programs.

The Right to Reproductive Health Services: Article 24

Child marriage, generally accompanied by early pregnancy and childbirth, creates widespread need for reproductive health services among adolescents in Nepal. The Committee has regularly expressed concern in its Concluding Observations where adolescents have limited access to reproductive health services and has asked states parties to increase women's and adolescents' access to such services.[27] The Committee has frequently expressed concern over high rates of maternal mortality,[28] and has brought attention specifically to maternal death related to teenage pregnancy.[29] To address high rates of maternal mortality, the Committee has asked states parties to allocate adequate resources[30] and develop comprehensive policies and programs.[31] It has recommended measures to improve women's access to pregnancy-related health care services,[32] emphasizing the importance of appropriately trained personnel attending births.[33]

Adolescents in Nepal begin childbearing early in life. According to the Nepal Family Health Survey (NFHS), almost a quarter (24%) of all adolescents are already pregnant or mothers with their first child.[34] Almost 90% of women aged 15–19 give birth without trained assistance; over 50% are assisted by friends and relatives.[35] Among women younger than age 20, 72% suffer from anemia.[36] Adolescent women aged 15–19 account for nearly one-fifth of all maternal deaths.[37]

Young girls, married and unmarried, have a significant unmet need for contraception. According to national-level data from 2001, only 12% of women aged 15–19 use any method of contraception;[38] the NFHS puts the contraceptive prevalence rate for any method at 6.5% and for modern methods at 4.4%.[39]

The 10th National Development Plan states that special emphasis will be given to the health of women and children, but none of the 21 strategies enumerated in the health section take into account the vulnerability of married adolescents and the unique challenges to their reproductive and sexual health created by lack of access to services. The Adolescent Health and Development Strategy does enumerate strategies for increasing adolescents' access to health care, but despite these efforts, the situation in

Nepal remain abysmal, and it is not clear how these measures are being implemented. Over a quarter of all suicides among women of reproductive age is attributable to adolescents.[40]

The Right to Education on Sexuality and Family Planning: Article 24

The Committee, in evaluating state party compliance with the Children's Rights Convention, has recognized states' duty to ensure access to sexual and reproductive health education. In numerous Concluding Observations, the Committee has recommended that states parties strengthen their reproductive health education programs for adolescents in order to combat adolescent pregnancy and the spread of HIV/AIDS and other STIs.[41] Further, the Committee has suggested in its General Comment that adolescent girls should have access to information on the harm that early pregnancy can cause, and that those who become pregnant should have access to services sensitive to their particular needs. The Committee urges states to address this issue by fostering positive and supportive attitudes towards adolescent parenthood for their mothers and fathers and ensuring adequate access to sexual and reproductive health services.[42]

In terms of access to reproductive and sexual health education, adolescents in Nepal, especially the majority who live in rural areas, have very little knowledge or access to information about sexual and reproductive health issues due to factors such as illiteracy, lack of education and social taboos.[43] Few adolescent girls know about menstruation or puberty.[44] One NGO study revealed that only 19% of adolescent girls had some knowledge of diseases or complications related to pregnancy.[45] Another study showed that more than 40% of adolescents admitted having no knowledge about any type of sexual activity.[46] According to national-level data from 2001, only 52.1% of females aged 15–19 have heard of HIV/AIDS.[47] Less than half (42.3%) of the adolescent women who have heard of HIV/AIDS believe there is a way to avoid infection.[48]

The 10th National Development Plan does not contain strategies for promoting adolescents' access to reproductive and sexual health information. *None of the 27 strategies enumerated in the education section nor the 21 strategies listed in the health section address this need.* The National Adolescent Health and Development Strategy (2000) has the potential to be a successful means through which to provide education as well as actual services, but the government needs to commit to its implementation fiscally and politically.

Furthermore, the Children's Act does recognize a general right to education, but states that the government shall take steps to provide "advice, education and services relating to family planning and preventive health care to the parents."[49] While educating parents is important since they are the main perpetrators of child marriage and are instrumental in curbing the practice, confining educational efforts to parents creates the risk of reinforcing the stereotypical notion that children and adolescents cannot be trusted with information about their sexual and reproductive health and make independent decisions.

In the Combined Report, although the Government has suggested that it will take steps to increase health awareness, it has made no mention of addressing the sexual and domestic violence that is concurrent with child marriage.

We hope the Committee will consider addressing the following questions to the government of Nepal:

1. What steps has the government taken to effectively implement current laws and policies pertaining to adolescents? Has the government allocated sufficient resources to implement the programs stated in current policies?

2. What steps are being taken to promote a holistic, rights-based approach to addressing child marriage and related problems including early child-bearing, domestic violence, sexual abuse and exploitation? Has the government created mechanisms and community support systems to make legal redress available to young women in abusive marriages and taken steps to sensitize service providers and equip the existing health system to cater to the special health needs of this vulnerable group? What special measures of protection have been introduced for this vulnerable group?

3. How does the government propose to continue sensitization and other efforts to curb child-marriage and to make services available to those in need in light of the prevailing internal conflict and breakdown of health services in many parts of rural Nepal?

4. What concrete steps has the government taken to enable married and unmarried children and adolescents to protect themselves against unwanted pregnancies, maternal morbidity and death, STIs and HIV/AIDS?

5. What steps does the government plan to take to enable children and adolescents to make their views and opinions heard in the public arena and to create opportunities for them to discuss health and security issues with family members, policymakers and other key stakeholders?

Finally, we will be submitting the following supporting documentation for the Committee's reference:

> Chapter on Nepal in *Women of the World: Laws and Policies Affecting Their Reproductive Lives, South Asia,* Center for Reproductive Rights ed. 2004.

There remains a significant gap between the provisions of the Children's Rights Convention and the reality of adolescents' reproductive health and lives in Nepal. We appreciate the active interest that the Committee has taken in the reproductive health and rights of adolescents and the strong concluding observations and recommendations the

Committee has issued to governments in the past, stressing the need to take steps to ensure the realization of these rights.

We hope that this information is useful during the Committee's review of the Nepal government's compliance with the provisions of the Children's Rights Convention. If you have any questions, or would like further information, please do not hesitate to contact the undersigned.

Sincerely,

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Legal Adviser for Asia

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[1] *Concluding Observations of the Committee on the Rights of the Child: Nepal*, U.N. Committee on the Rights of the Child (CRC), 12th Sess., 301–303rd mtg., para. 11, U.N. Doc. CRC/C/15/Add.57 (1996).
[2] *Initial reports of States parties due in 1992: Nepal,* CRC, para. 300(c), U.N. Doc. CRC/C/3/Add.34 (1995). The report states, "Many families hold traditional views that a girl's education is not necessary and is a waste of money as she will be married off. Many girls are still married off at a very young age."
[3] *Concluding Observations of the Committee on the Rights of the Child: Nepal*, *supra* note 1, para. 10.
[4] *Id.* para. 12.
[5] *Id.* paras. 25–26.
[6] *Id.*
[7] Muluki Ain, 2020 (1963), No. 2(1)–(4), Chapter on Marriage.
[8] *See e.g., Concluding Observations of the Committee on the Rights of the Child: Bangladesh,* CRC, 15th Sess., 380–382nd mtg., para. 15, U.N. Doc. CRC/C/15/Add.74 (1997); *Concluding Observations of the Committee on the Rights of the Child: Burkina Faso,* CRC, 6th Sess., 135–137th mtg., para. 14, U.N. Doc. CRC/C/15/Add.19 (1994); *Concluding Observations of the Committee on the Rights of the Child: India*, CRC, 23rd Sess., 615th mtg., paras. 32–33, U.N. Doc. CRC/C/15/Add.115 (2000).
[9] *Concluding Observations of the Committee on the Rights of the Child: Bangladesh, supra* note 8, para. 15.
[10] *Id.*
[11] NATIONAL RESOURCE CENTRE FOR NON-FORMAL EDUCATION (NRC-NFE), COMMUNICATION AND ADVOCACY STRATEGIES: ADOLESCENT REPRODUCTIVE AND SEXUAL HEALTH– CASE STUDY, NEPAL 1 (2000).
[12] *Second periodic report of States parties due in 1997: Nepal,* CRC, para. 234, U.N. Doc. CRC/C/65/Add.30 (2004).
[13] FAMILY HEALTH DIVISION, GOVERNMENT OF NEPAL, NATIONAL ADOLESCENT HEALTH AND DEVELOPMENT STRATEGY 1 (2000) [hereinafter NATIONAL ADOLESCENT STRATEGY].
[14] FAMILY HEALTH DIVISION, GOVERNMENT OF NEPAL, NEPAL DEMOGRAPHIC AND HEALTH SURVEY 2001, at 105 (2002).
[15] UNITED NATIONS POPULATION FUND, POPULATION AND REPRODUCTIVE HEALTH COUNTRY PROFILES, http://www.unfpa.org/worldwide/ (last visited May 17, 2005).
[16] NEPAL DEMOGRAPHIC AND HEALTH SURVEY 2001, *supra* note 14, at 105.
[17] WOMEN OF THE WORLD: LAWS AND POLICIES AFFECTING THEIR REPRODUCTIVE LIVES–SOUTH ASIA 115 (Center for Reproductive Rights ed., 2004).
[18] *Id.*
[19] *Id.*
[20] NATIONAL ADOLESCENT STRATEGY, *supra* note 13, at 20.
[21] *Id.* at 21.
[22] *Id.* at 11.

[23] Children's Act, 2048 (1992), preamble (1992) (Nepal).
[24] *Id.* ch. 1, § 2(a).
[25] Muluki Ain, 2020 (1963), No. 7, Chapter on Marriage.
[26] *Second periodic report of States parties due in 1997: Nepal, supra* note 12.
[27] *See e.g., Concluding Observations of the Committee on the Rights of the Child: Benin,* CRC, 21st Sess., 557th mtg., para. 25, U.N. Doc. CRC/C/15/Add.106 (1999); *Concluding Observations of the Committee on the Rights of the Child: Cambodia,* CRC, 24th Sess., 641st mtg., para. 53, U.N. Doc. CRC/C/15/Add.128 (2000); *Concluding Observations of the Committee on the Rights of the Child: Mexico,* CRC, 22nd Sess., 586th mtg., para. 27, U.N. Doc. CRC/C/15/Add.112 (1999).
[28] *Concluding Observations of the Committee on the Rights of the Child: Bangladesh, supra* note 8, para. 20; *Concluding Observations of the Committee on the Rights of the Child: Colombia,* CRC, 25th Sess., 669th mtg., para. 48, U.N. Doc. CRC/C/15/Add.13 (2000); *Concluding Observations of the Committee on the Rights of the Child: Djibouti,* CRC, 24th Sess., 641st mtg., para. 41, U.N. Doc. CRC/C/15/Add.131 (2000); *Concluding Observations of the Committee on the Rights of the Child: India*, *supra* note 8, para. 48.
[29] *See e.g., Concluding Observations of the Committee on the Rights of the Child: Chad,* CRC, 21st Sess., 557th mtg., para. 30, U.N. Doc. CRC/C/15/Add.107 (1999); *Concluding Observations of the Committee on the Rights of the Child: Dominican Republic,* CRC, 26th Sess., 697th mtg., para. 37, U.N. Doc. CRC/C/15/Add.150 (2001); *Concluding Observations of the Committee on the Rights of the Child: Peru*, CRC, 615th mtg., para. 24, U.N. Doc. CRC/C/15/Add.120 (2000).
[30] *See e.g., Concluding Observations of the Committee on the Rights of the Child: Burundi,* CRC, 25th Sess., 669th mtg., para. 55, U.N. Doc. CRC/C/15/Add.133 (2000); *Concluding Observations of the Committee on the Rights of the Child: Georgia,* CRC, 34th Sess., 918th mtg., para. 45, U.N. Doc. CRC/C/15/Add.124 (2000); *Concluding Observations of the Committee on the Rights of the Child: Lesotho*, CRC, 26th Sess., 697th mtg., para. 44, U.N. Doc. CRC/C/15/Add.147 (2001).
[31] *See e.g., Concluding Observations of the Committee on the Rights of the Child: Azerbaijan*, CRC, 15th Sess., 390–392nd mtg., para. 45, U.N. Doc. CRC/C/15/Add.77 (1997); *Concluding Observations of the Committee on the Rights of the Child*: *Côte d'Ivoire,* CRC, 27th Sess., 721st mtg., para. 39, U.N. Doc. CRC/C/15/Add.155 (2001); *Concluding Observations of the Committee on the Rights of the Child: Dominican Republic*, *supra* note 29, paras. 37–38.
[32] *See e.g., Concluding Observations of the Committee on the Rights of the Child: Central African Republic*, CRC, 25th Sess., 669th mtg., para. 55, U.N. Doc. CRC/C/15/Add.138 (2000); *Concluding Observations of the Committee on the Rights of the Child: Guatemala*, CRC, 27th Sess., 721st mtg., para. 41, U.N. Doc. CRC/C/15/Add.154 (2001); *Concluding Observations of the Committee on the Rights of the Child: Yemen*, para. 24, U.N. Doc. CRC/C/15/Add.102 (1999).
[33] *See e.g., Concluding Observations of the Committee on the Rights of the Child: Guatemala, supra* note 32, para. 35; *Concluding Observations of the Committee on the Rights of the Child: United Republic of Tanzania*, CRC, 27th Sess., 721st mtg., para. 47, U.N. Doc. CRC/C/15/Add.156 (2001); *Concluding Observations of the Committee on the Rights of the Child: Yemen,* CRC, 20th Sess., 531st mtg., para. 24, U.N. Doc. CRC/C/15/Add.102 (1999).
[34] NATIONAL ADOLESCENT STRATEGY, *supra* note 13, at 1.
[35] *See id.* annex II, at 16 (2000).
[36] *Id*.
[37] *Id*.
[38] NEPAL DEMOGRAPHIC AND HEALTH SURVEY 2001, *supra* note 14, at 70 tbl.5.3.
[39] NATIONAL ADOLESCENT STRATEGY, *supra* note 13, annex II, at 16
[40] *Id.*
[41] *See Concluding Observations of the Committee on the Rights of the Child: Argentina*, CRC, 8th Sess., para. 19, U.N. Doc. CRC/C/15/Add.35 (1995); *Concluding Observations of the Committee on the Rights of the Child: Egypt*, CRC, 26th Sess., 697th mtg., para. 44, U.N. Doc. CRC/C/15/Add.145 (2001); *Concluding Observations of the Committee on the Rights of the Child: Georgia*, *supra* note 30, para. 47; *Concluding Observations of the Committee on the Rights of the Child: Latvia*, CRC, 26th Sess., 697th mtg., paras. 39–40, U.N. Doc. CRC/C/15/Add.142 (2001); *Concluding Observations of the Committee on the Rights of the Child: Russian Federation*, CRC, 22nd Sess., 586th mtg., para. 48, U.N. Doc. CRC/C/15/Add 110 (1999).

[42] CRC, *General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child*, 33rd Sess., para. 31, U.N. Doc. CRC/GC/2003/4 (2003).
[43] NATIONAL RESOURCE CENTRE FOR NON-FORMAL EDUCATION, *supra* note 11, at 1.
[44] *Id*.
[45] WOMEN'S REHABILITATION CENTRE, NEPALI RURAL ADOLESCENT GIRLS SPEAK OF THEIR REPRODUCTIVE HEALTH CONCERNS 38 (2000).
[46] NATIONAL RESOURCE CENTRE FOR NON-FORMAL EDUCATION, *supra* note 11, at 7.
[47] NEPAL DEMOGRAPHIC AND HEALTH SURVEY 2001, *supra* note 14, 197 tbl.11.1.
[48] *Id.*
[49] Children's Act, 2048 (1992), ch. 1, § 4(4) (1992) (Nepal).