CENTER FOR REPRODUCTIVE RIGHTS

August 10, 2001

The Committee on Economic, Social and Cultural Rights

Re: Supplementary information on the Kingdom of Nepal
Scheduled for review by the Committee on Economic, Social and Cultural Rights
on August 22-23, 2001

Dear Committee Members:

The purpose of this letter is to provide independent information regarding Nepal scheduled to be reviewed by ICESCR during its 26th session (extraordinary session). Non-governmental organizations, such as the Center for Reproductive Law and Policy (CRLP), can play a central role in providing the Committee with information that is reliable, accurate and independent concerning the rights covered by the International Covenant on Economic, Social and Cultural Rights (ICESCR). This letter will highlight one area of concern related to laws and policies on the reproductive health and lives of women in Nepal. Specifically, our assessment will focus on the devastating impact of Nepal's restrictive abortion laws on the human rights, specifically the health and lives of Nepalese women. CRLP and the Forum for Women, Law and Development are collaborating on a report documenting this impact, which will be published later this year.

Women's reproductive rights form an integral part of the Committee's mandate. Article12(1) of the ICESCR recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."[1] In interpreting the right to health, this Committee, in General Comment 14, has explicitly defined this right to "include the right to control one's health and body, including sexual and reproductive freedoms."[2] The Committee further concluded that state parties are required to take "measures to improve child and maternal health, sexual and reproductive health services, including access to family planning … emergency obstetric services and access to information, as well as to resources necessary to act on that information."[3]

General Comment 14 also specifically states that "[t]he realization of women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive

health."[4] Finally, Articles 2(2) and 3 guarantee all persons the rights set forth in the ICESCR without discrimination, specifically as to "sex, social origin or other status."

We believe the situation discussed below constitutes a serious violation of the Nepalese government's obligation ensure women's Reproductive Health, under articles 12, 10 and 15(1)(B) of the ICESCR.

1. Lack of consistent data on and recognition of women's reproductive health

Nepal's initial report on its implementation of the ICESCR submitted to this Committee does not explicitly and fully convey the catastrophic nature of maternal mortality, especially as a consequence of unsafe abortions. The report fails to provide consistent data on maternal mortality and completely neglects to address the regrettably high proportion of preventable deaths due to unsafe abortions.

For example, while paragraph 94 of Nepal's submission makes reference to the country's "high maternal mortality rate," the government cites two different figures for the maternal mortality ratio in 1996/1997. Table 10 cites the optimistic statistic of 475 deaths per 100,000 live births,[5] whereas Annex 2 reports a ratio of 539 per 100,000.[6] The Ministry of Health-sponsored 1998 Maternal Mortality and Morbidity Study reported 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).[7]

In contrast, however, the International Planned Parenthood Federation (IPPF) reports a maternal mortality ratio of 1,500 per 100,000 births.[8] According to the Family Planning Association of Nepal (FPAN), the country has one of the highest maternal mortality rates in the world.[9] Nepal exhibits the highest maternal mortality ratio in South Asia, higher than in Bangladesh (440 per 100,000) and relatively less developed Bhutan (380 per 100,000).[10]

2. Unsafe abortion adversely impacts women's health and leads to high maternal mortality and morbidity

Although other UN committees in discussing Nepal's submissions on the right to health have previously expressed serious concern over this issue,[11] the government persists in its refusal to acknowledge its own statistics that two Nepalese women die every hour from pregnancy-related complications, with at least half due to botched abortions.[12] Moreover, according to FPAN, women who survive unsafe abortions "suffer serious physical injury and chronic disability."[13]

While Nepal's report to the Committee fails to make any mention of the issue of unsafe abortion, several government officials have publicly recognized unsafe abortion as a public health concern. The Ministry of Health does support decriminalizing abortion as an important step toward reducing high maternal mortality and morbidity rates.[14] The Ministry of Law, Justice and Parliamentary Affairs has proposed amending the existing law on abortion. However, to date, legislation still has not passed.

This Committee has previously expressed deep concern over the relationship between high rates of maternal mortality and illegal, unsafe, clandestine abortions in several sets of concluding observations.[15] In response, the Committee has recommended that States Parties increase education on reproductive and sexual health[16] as well as implement programs to increase access to family planning services and contraception.[17] Similar concerted efforts are needed in Nepal.

As has been thoughtfully pointed out by this Committee, low contraceptive prevalence rates, also contribute to unsafe abortions and resultant maternal deaths.[18] In Nepal contraceptive prevalence for any method has been estimated at 29% and that for modern methods at 26%.[19] The government submission, however, fails to make this link or to discuss the development of programs needed to address this critical relationship.

The Committee has recognized that the criminalization of abortion or very restrictive abortion laws contribute to the problem of unsafe abortion and high rates of maternal mortality.[20] In Nepal, where the abortion law is restrictive, women seek clandestine abortions under conditions that are medically unsafe and that endanger their lives. It is also common for women to travel across the border to neighboring India to get abortions under equally hazardous conditions. Because unsafe abortion is closely associated with high levels of preventable maternal deaths, Nepal's law forces women to resort to unsafe procedures and thus infringes upon their rights to life and health. According to a 1998 government study, complications of unsafe abortion constitute a major cause of maternal mortality and the leading reason for hospital admissions (54%).[21] Nepal's submission, however, fails to mention abortion-related deaths or to acknowledge the devastating and discriminatory nature of the country's ban on abortion.

3. Restricted access to abortion services discriminates against women's right to health

Whereas individuals are entitled to receive all necessary health care services regardless of gender, marital status, ethnicity, age, or ability to pay, Nepal's criminalization of abortion deprives women, and in particular poor and rural women, of access to needed health care.

The restrictive law on abortions disproportionately affects poor women. In Nepal, many areas remain under-served areas and in some places there is little, if any access to hospitals. Most rural women seeking abortions are forced to undergo the procedure in dangerous and unhygienic settings. As a result, according to a local study, nearly all women seeking care for complications from unsafe abortions in government hospitals were poor. Similarly, nearly all women prosecuted and imprisoned for having undergone illegal abortions are poor, illiterate and often from rural areas.[22] According to a local study, one in five women prisoners are held on abortion charges, with sentences varying from several years to life.[23] The imprisonment of these women, often accompanied by their young children and in appalling conditions, further compromises their and their children's right to health.

Concerned by such stark realities, several governmental agencies co-drafted the 11th Amendment Bill to reform all sex-discriminatory laws in Nepal, including the law on abortion. The President of the Law, Justice and Parliamentary Affairs Committee explained that "Women are [having abortions] anyway and, as a result, are dying prematurely. That is why the government has decided to legalize abortion on certain grounds."[24] Human rights activists, health professionals and leading government figures have also voiced their support for the liberalization of abortion in Nepal.

While a commendable effort, the proposed amendment to the prohibition on abortion contains a few questionable provisions and is silent on a number of important issues. It retains criminal sanctions for consensual abortions and fails to clearly permit the procedure to unmarried girls and women, including widows, divorcees and those who have been deserted by their husbands. Moreover, under the pending law, married women who opt to terminate their pregnancies must obtain the consent of their husband. This requirement not only strips women of their right to equal access to a medical procedure, but prevents them from making decisions about their reproductive health free from discrimination, coercion and violence. The proposed amendments need to be revised and expanded to include broader grounds for safe and legal abortion, to eliminate criminal sanctions and to address service provision.

The Committee should also consider addressing the following questions to the Nepalese government, pursuant to its obligations under ICESCR Article 12 and CESCR General Comment 14:

1. The government report does not adequately explain the measures undertaken to combat the persistent reality of the highest maternal mortality rate in the region and the continued low prevalence of contraceptive use. Could the government please provide the Committee with information on how the government intends to address these troubling realties?

2. What measures are being taken to address the issue of unsafe and illegal abortion, currently a predominant cause of maternal mortality in Nepal, which has a disproportionate impact on poor women and girls? What measures has the government taken to adequately reform the law that criminalizes abortion? How does the government plan to ensure that the pending revision to the prohibition on abortion will be broadened to ensure unencumbered access to safe, accessible and affordable abortion services for all women?

3. In setting forth the strategies of its health policy for 1997-2002 (para. 153), the government plans to "provide[] reproductive health services up to the village level and demand driven family planning services." Given Nepal's difficulties in allocating resources, managing facilities and retaining personnel in rural and remote areas, what measures is the government taking to improve the endemic problem of under-served areas?

4. What efforts are being made by the government to facilitate reproductive health and sexual education in the schools and in local programs for women and adolescents? What governmental policies have been established to disseminate information about reproductive health and services, including about family planning options, and to ensure that adolescents have access to reproductive health services?

There remains a significant gap between the provisions contained in the ICESCR and the reality of women's reproductive health and lives. We appreciate the active interest that the Committee has taken in the reproductive and sexual health and rights of women 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 on its compliance with the ICESCR. If you have any questions, or would like further information, please do not hesitate to contact the undersigned.

Very truly yours,

Katherine Hall Martinez
Deputy Director, International Program

Melissa Upreti
Staff Attorney, International Program

[1] International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GOAR, Supp. No. 16, at 49, U.N. Doc A/6316 (1966), 999 U.N.T.S. 3 (*entered into force* Jan. 3, 1976) [hereinafter ICESCR].
[2] Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4 (2000), at para. 8.
[3] *Id.* at para. 14.
[4] *Id.* at para. 21.
[5] Initial report submitted by States parties under articles 16 and 17 of the Convention, Nepal (Oct. 25, 1999), E/1990/5/Add.45 (2000), at 30 [hereinafter Nepal Initial Report].
[6] *Id.* at 37.
[7] MINISTRY OF HEALTH (MOH), MATERNAL MORTALITY AND MORBIDITY STUDY (1998), at 75. This figure (rounded to 540) is replicated in UNICEF, World Health Organization (WHO) and UNDP statistics. See *e.g.,* UNDP, HUMAN DEVELOPMENT REPORT*, Human Development Indicators* 38 (2001).
[8] International Planned Parenthood Federation, *Real Lives* (Feb. 2001), at 31.
[9] 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)
[10] UNDP, HUMAN DEVELOPMENT REPORT, *Human Development Indicators* 168 (2001); An inter-agency UN study revealed that in Nepal, one out of 21 women has a lifetime risk of maternal death, compared with 1 out of 42 in Bangladesh; 1 out of 30 in Bhutan; 1 out of 55 in India; and 1 out of 80 in Pakistan. WHO, UNICEF & UNDP, MATERNAL MORTALITY IN 1995 (2001), at 42-45.
[11] Committee on the Elimination of All Forms of Discrimination against Women, Concluding Observations: Nepal, at para. 31, CEDAW/C/1999/L.2/Add.5 (1999); Human Rights Committee, Concluding Observation: Nepal, at para. 8, CCPR/C/79/Add.42 (1994).
[12] According to Dr. K. B. Singh Karki, Director General, Dep't of Health Services, "[i]t has been estimated that a woman dies every two hours in Nepal from a cause related to pregnancy." MOH, *supra* note 7, at preface. The Center for Research on Environment Health and Population Activities reports that 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 (2000), at preface.
[13] Testimony by Dr. Nirmal K. Bista, *supra* note 9.
[14] *Id.*
[15] CESR, Cameroon, at para. 25, E/C.12/1/Add.40 (1999); CESR, Mauritius, at para. 15, E/C.12/1994/8 (1995); CESR, Mexico, at para. 29, E/C.12/1/Add.41 (1999); CESR , Poland, at para. 12, E/C.12/1/Add.26 (1998).
[16] CESR, Mexico, at para. 43, E/C.12/1/Add.41 (1999); CESR, Poland, at para. 12, E/C.12/1/Add.26 (1998).
[17] CESR, Poland, at para. 12, E/C.12/1/Add.26 (1998).
[18] CESR, Poland, at para. 12, E/C.12/1/Add.26 (1998).
[19] UNITED NATIONS POPULATION FUND (UNFPA), THE STATE OF THE WORLD POPULATION 2000, 68 (2000).
[20] CESR, Mauritius, at para. 15, E/C.12/1994/8 (1995); CESR, Poland, at para. 12, E/C.12/1/Add.26 (1998).
[21] MOH, *supra* note 7, at 67.
[22] CREHPA, *supra* note 12*,* preface, 15, 20.
[23] *Id.* at 15.
[24] Interview with Madhukar Yadav, President, Law, Justice and Parliamentary Affairs Committee, March 21, 2001, in Kathmandu, Nepal. (on file with CRLP).