

**United Nations Country Team (UNCT) Nepal Submission for the Second Universal Periodic Review of Nepal in 23rd Session, 2-13 November 2015 – submitted on 23 March 2015**

**Introduction**

This submission is contributed and prepared by UNCT Nepal.<sup>1</sup> Nepal had accepted 96 recommendations during the first review in 2011. This submission focuses on issues under mandate of UNCT members participated in the drafting of this submission, providing progress of those accepted recommendations by Nepal and analysis on prevailing gaps. UNCT members are providing technical assistance under their respective mandates to Government of Nepal to achieve development and human rights targets. The submission also provides UNCT's recommendations on some specific actions that are required by Nepal for improved human rights situation. The submission covers main contribution and five annexes providing documents with data referred in the main contribution.

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<sup>1</sup> The drafting process was coordinated by UN RCO with contributions from ILO, IOM, UNAIDS, UNICEF, UNDP, UNFPA, UNHCR, UN Women.

## I. Background and Framework

### A. Scope of international obligations

1. Nepal has ratified 7 core human rights Conventions and major ILO Conventions. Nepal is yet to become party to other key Conventions. **UNCT recommends Nepal to ratify international instruments including:**
  - Convention on Enforced Disappearances
  - Convention on Migrant Workers
  - Refugee Convention and its Protocol
  - Convention relating to the Status of Stateless Persons
  - Convention on the Reduction of Statelessness
  - ILO Conventions 87, 102 and 189
  - Optional Protocol- CAT
  - Optional Protocol- ICESCR
  - Optional Protocol on Communication Procedures - CRC

### B. Constitutional and legislative framework

2. **Constitution:** The first constituent assembly (CA) was dissolved in May 2012 without finishing Constitution drafting. Elections for second CA were held on November 2013. The second CA pledged to draft a new Constitution by 22 January 2015. However, there has not yet been an agreed draft. The political parties have ongoing disagreements on major issues such as state restructuring; the new electoral, governance and judicial systems. Similarly, there are voices outside the CA mainly the indigenous groups on identity based state restructuring.
3. Drafts prepared for the new Constitution incorporate many provisions on human rights and fundamental freedom; however some critical issues require attentive deliberations. The citizenship provisions which state citizenship can be acquired only if both parents are Nepali are more restrictive than prevailing laws, and if adopted as such increase the risks of statelessness. The Interim Constitution prohibits discrimination on the grounds of sex, caste, ethnicity, religion, origin, language or ideological conviction, however does not cover discrimination on the ground of sexual orientation and gender identity (SOGI) and health conditions, and there is inadequate definition of the principle of equality between men and women and prohibition of direct and indirect discrimination against women in public and private domains. **UNCT recommends incorporating provisions in the new Constitution prohibiting discrimination on all grounds and guaranteeing substantive gender equality; ensuring independent and equal rights of Nepalese men and women to acquire, transfer, and retain citizenship; and to grant citizenship to children based on the citizenship of either parent.**
4. **Civil and criminal codes:** In 2014 the draft criminal and civil codes were submitted to the Parliament. The draft codes contain important improvements in civil law and criminal justice. However some provisions require revisions including short statutory limitation even for very serious offences.<sup>2</sup> In addition inadequate sentences are set out even for serious crimes.<sup>3</sup> Provisions on criminalization of HIV transmission, HIV exposure or failure to disclose HIV status; considering sexual acts other than heterosexual as “unnatural sex”; legalising marriage between male and female; limiting the caste based discriminations in only in public places only are of great concerns.
5. **Children’s Bill:** Children’s Bill 2012 addresses major gaps however; it does not specify and clarify roles and responsibilities of the statutory bodies. It also lacks definition of the key terms; provisions on required administrative, judicial, social and educational measures to protect all children in need of care and protection; prohibition of all forms of violence against children; low level of minimum age of criminal responsibility, and measures to protect child victims and witnesses of crimes. **UNCT**

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<sup>2</sup> For instance the criminal codes provide one year statutory limitation on rape, three months for child marriage, six months for disappearance and torture cases

<sup>3</sup> For instance punishment for torture is up to five years, paedophilia is up to three years and child marriage is up to one year only.

**recommends bringing criminal and civil codes and Children’s Bill in full compliance with international human rights law.**

**C. Institutional and human rights infrastructure and policy measures**

6. **National Institutions:** National Human Rights Commission (NHRC) Act 2012 needs amendments following Supreme Court directives. The commissioners were appointed in October 2014 with significant delay. NHRC also retained its “A” status with ICC in November 2014. However adequate staffing is still a concern with less than 50% of required staff onboard. Human rights service bill is still pending which is delaying staff recruitment. The National Women Commission (NWC); National Dalit Commission; Muslim and Minority Commission face inadequate resources, capacities and outreach. There are no legal and procedural guarantees of independence of these commissions with political appointments, limited staff and resources. While NWC is governed by an Act, albeit not adequately providing independence, other two commissions do not have enabling laws, and governed by the Government ministry.
7. National Human Rights Action Plan 2014- 2018 (NHRAP) was launched incorporating many UPR and TB recommendations however this is very generic without prioritization of key interventions. The oversight mechanism (apart from NHRC) is very big to be effectively functional.
8. There is no nationally specialised mechanism responsible for independent child rights monitoring. There is lack of resources to ensure adequate attention and prioritization of children’s rights and protection agenda in the work of the national institutions. **UNCT recommends ensuring independence of national institutions including appropriate legal frameworks; equip these institutions with adequate human and financial resources; introducing specialized, accessible and child-friendly complaints handling mechanism.**
9. **Gender responsive and child centred budget:** Gender responsive budget allocation has increased to 21.93% in 2014-15 from 11.30% in 2007-08. Government has allocated targeted budgets in grants to local communities. However, there is limited capacity to monitor the budget allocations, track expenditure and real progress achieved. Existing institutional mechanisms established for ensuring gender equality suffer from limited Infrastructure, development programs, budget allocation and human resources. The annual budget of the line Ministry was only 0.22% of the total budget in 2012/2013. Women and Children Offices suffer resource gap despite their large mandate.<sup>4</sup> Major concerns regarding budgetary allocations for children are very low allocations for child protection, particularly as compared to other social sectors and the declining share of the national budget for Education.<sup>5</sup> **UNCT recommends increasing the investments for gender equality; systematically monitoring resource allocation for children ensuring substantial budget allocation for child protection and strengthening the institutional capacity to monitor budget allocations, track expenditures and assess the impact.**

**III. Implementation of international human rights obligations, taking into account applicable international humanitarian law.**

**A. Equality and non-discrimination**

10. **Gender equality:** Despite legal reforms deeply entrenched social norms continue to constrain implementation of laws and policies limiting substantive gender equality in practice. Women and girls face discrimination and exclusion from opportunities, resources, participation, and development gains across the board of social, economic, cultural, civil and political life. There is lack of adequate sex disaggregated data and multiple capacity constraints, including limited monitoring and weak national

<sup>4</sup> Women and Children officers have mandate to address the needs of women, children, people with disabilities and senior citizens.

<sup>5</sup> Budget for the School Sector Reform Plan has been reduced from by US\$ 51 million in 2014/2015 compare to last fiscal year.

machinery. Almost 56 discriminatory laws were amended in 2006<sup>6</sup>, and further 32 laws were proposed for amendment in 2014. However, still 65 laws have been identified as having adverse effects on promoting gender equality and empowerment of women<sup>7</sup>. **UNCT recommends adopting and strengthening implementation of non-discriminatory legislation and policies to achieve gender equality; increasing investments; strengthening institutional capacity to promote substantive equality; enhanced gender statistical capacities for effective monitoring and accountability mechanisms.**

11. **Caste Based Discrimination:** Caste-based Discrimination and Untouchability Act 2011 was a positive step towards addressing deep rooted caste-based discrimination (CBD). However dalits continue to face social and economic exclusion, and CBD incidents still prevalent at public and private places. Despite some progress based on improvements in education level as well as community development and awareness programs, many dalits continue to lack awareness about the legal guarantees. There is limited understanding and capacities of authorities to implement the Act. NDC has been entrusted with implementation of this Act but face constraints. A positive development though is a Joint monitoring mechanism<sup>8</sup> providing better approach at monitoring the incidents.
12. **Sexual Orientation and Gender Identity, People living with HIV and other infectious diseases:** Following Supreme Court directive third gender is recognized in identity documents. Prejudice prevails for female sex workers, people injecting drugs, trans-genders, and PLHIV. Female sex workers experience violence in custody and health setting.<sup>9</sup> Under prevailing law mandatory test orders may be issued against PLHIV and other infectious disease without prior informed consent. There are also possibilities of the exclusion of PLHIV from employment, travelling or residential opportunities.
13. **Children:** Children are discriminated on the basis of gender, caste, ethnicity, religion, disability, economic status and HIV status. According UNICEF study, 2012<sup>10</sup>, nearly 40 percent of children aged 7-14 years believed that not all children are treated the same. Boys, richer children and younger children are perceived as being treated better. Poorer children, lower caste/ethnicity children and 'undisciplined/disobedient/dishonest/notorious children' are perceived as being treated worse. **UNCT recommends introducing legal, administrative and practical measures including allocation of adequate budget and resources to eliminate all forms of discrimination based on gender, age, cast and disability, SOGI, health conditions and other grounds.**

#### B. Right to life, liberty and security of person

14. **Gender Based Violence:** There have been consistent efforts in eliminating violence against women, including adoption of Domestic Violence (DV) Act; National Strategy and Plan of Action<sup>11</sup> etc. However prevalence remains high. A 2013 study<sup>12</sup> identified major challenges as weak implementation of laws, as well as gaps in the legislation. DV is not considered a crime against state, and marital rape is common; 35 day statutory limitations still prevails. The criminal code, yet to be endorsed, proposes one year statutory limitation for rape; this is insufficient, and does not cover all sexual abuses.
15. Another major obstacle is the severe lack of rights awareness among women and the severe social stigma attached to sexual violence. 'Compromise', where victims are encouraged to negotiate a

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6 Amending Some Nepal Acts to Maintain Gender Equality Act 2006

7 Ministry of Women, Children and Social Welfare (MoWCSW), National Review on the implementation of the Beijing Declaration and Platform for Action (1995) and the Outcomes of the Twenty-Third Special Session of the General Assembly (2000), July 2014, pp. 20-41; available at [http://www.unwomen.org/-/media/Headquarters/Attachments/Sections/CSW/59/National\\_reviews/Nepal\\_review\\_Beijing20.pdf](http://www.unwomen.org/-/media/Headquarters/Attachments/Sections/CSW/59/National_reviews/Nepal_review_Beijing20.pdf); Beyond Beijing Committee (BBC) and National Network for Beijing-review Nepal (NNBN), Civil Society Report on Beijing+20, November 2014.

8 A Joint Monitoring Group has been established at the NDC with membership of Prime Minister's Office, National Women's Commission, NHRC, National Foundation for Development of Indigenous Nationalities and Dalit NGO Federation.

9 UNDP, UNFPA, APNSW, SANGRAM 2015 the rights evidence sex work, violence and HIV in Asia a multi-country qualitative study

10 Knowledge, Attitude and Practice study UNICEF, 2012

11 National Strategy and Plan of Action related to Gender Empowerment and Ending Gender Based Violence 2012-2017

12 UNFPA, UN Women, UK Aid, UCL, CRHEPA 2013 GBV tracking study.

settlement with the perpetrators outside the legal system, is widespread. A Recent survey<sup>13</sup> finds that more than one in five women reported a lifetime experience of physical violence and more than one in ten a lifetime experience of sexual violence. Trafficking of girls for sex work is a particular problem; other specific forms of violence include dowry-related violence, widow abuse, polygamy and accusations of witchcraft.

16. **Harmful traditional practices:** Women and girls continue to suffer a number of harmful traditional practices including *Chaupadi* and child marriage. *Chaupadi*<sup>14</sup> primarily practiced in the Mid and Far-western regions. Government developed “*Chaupadi* Practice Elimination” Directive in 2007, however progress has been limited. **UNCT recommends amendments in DV Act; ensuring mechanisms to implement and monitor the legal and policy measure to address GBV; revision of statutory limitation of rape and sexual violence including in the criminal code; developing nation-wide data collection system and initiating fast tract court system to address VAW/C case, ensure engagement of men, boys in programs.**
17. **Child labour:** 2010 survey<sup>15</sup> shows over 40% of children (5 to 17 years) are working with majority in rural areas. Family-based and informal sector work is not covered by current child labour legislation, and the age of admission to hazardous work stands at 16 years. Nearly half of the children who work in hazardous labour are deprived of education, food and health care and face psychological, physical or sexual abuse by their employers. Child Labour Elimination Committee formed in 2014 mandated to advice Government has yet be effective. Labour administration need to be strengthened and decentralized to improve monitoring mechanisms for elimination of child labour and forced labour in informal sectors. Database on labour force need to be strengthened further incorporating sectorial labourers. **UNCT recommends amendments in Child labour Act and revision of draft Child Labour Elimination Policy ensuring prohibition all forms of hazardous labour under 18 years, clearly specifying hazardous labours; endorsement and implementation of revised National Master Plan and increasing number of labour inspectors with extended mandate to cover informal and domestic work sectors.**
18. **Bonded labour:** Former Bonded agriculture labour (*Haliyas*) continued to live in deplorable conditions, with inadequate access to food, housing, health, education and fair conditions of employment. Girl bonded labour (*Kamlari*) still exist despite legally prohibited. Absence of adequate legislation to protect all former bolded labour remains a challenge. **UNCT recommends enacting of new law covering all forms of bonded labour including kamlaris ensuring protection of their rights.**

#### C. Administration of justice, including impunity, and the rule of law

19. **Justice system:** Judgment Execution Directorate established at all tier of courts has succeeded apprehension of approximately 1100 convicts. Despite the progress, there are thousands of decisions pending execution. Insufficient laws and poor coordination among justice institutions are contributing for limited implementation of court decisions. Justice sector coordination secretariat<sup>16</sup> at national and district level; revised special operational guideline on in-camera benches and establishment of in camera benches in 15 districts have shown some progress in handling SGBV cases. However, support systems and procedures are yet to be established for in-camera benches. Continuous hearing system operational in several district courts has also contributed for effective trials of SGBV cases with minimal delay. 1924 cases have been heard using continuous hearing of which 842 have been decided. However, the system needs to be institutionalised with strengthened and accountable law enforcement and prosecution.

<sup>13</sup> Nepal Demographic and Health Survey, 2011

<sup>14</sup> Chaupadi is a traditional practice of segregation of women during menstruation and after child birth forcing them to stay in cow sheds.

<sup>15</sup> Nepal Child Labour Report, ILO, 2010

<sup>16</sup> Justice sector coordination secretariat includes representative from Ministry of Law and Justice, Ministry of Home Affairs, courts, Prison Management department, Nepal Police, Attorney General's Office, NBA, and representative from civil society. At district level this mechanism include Chief district Office, Local Development Officer, district representative of PMD, NP, Prosecutors' Office, NBA and local NGO.

20. Socio-Legal Aid Centres (established in 5 districts) helped in improved access by women and vulnerable groups in those districts with 1681 persons benefited from remedial legal aid services and over 22,000 from preventive legal aid services. New code of conduct for lawyers (2014) stipulates lawyers' responsibility providing legal aid to poor and vulnerable mandatorily. However the existing legal aid law need revisions in line with internal obligation as well as with interim constitution.
21. **Justice for Children:** International standard while dealing with juveniles has not been fully applied. Minimum age of criminal responsibility is set at 10 years. Measures and mechanisms for diversion, restorative justice, and alternatives to custodial sentencing are absent in law and practice. Children are often held in detention without charge, not brought before a judge within the required time, denied access to legal or other assistance, and placed in detention for petty crimes. Conditions in most detention facilities are very poor, and children are in risk of being detained with adults, particularly due to non-reliable age verification in absence of effective birth registration system. Juvenile Benches are functional in 56 districts, however, cases involving juveniles and adults together are not handled by these benches and their specialised support is not extended to child victims and witnesses. **UNCT recommends increasing minimum age of criminal responsibility; clearly defining and applying child-friendly procedures, including diversion; introducing effective measures of age verification process; and ensuring special protection measures for victims and witnesses of crimes particularly children.**
22. **Transitional Justice (TJ) and Right to effective remedy:** In 2013 Government passed an Ordinance to establish a Commission on Investigation of Disappeared Persons, Truth and Reconciliation. The Ordinance faced heavy criticism and was challenged by victims at the Supreme Court. The Court issued a landmark decision in January 2014 ordering revision of the Ordinance in line with international human rights obligations and the Interim Constitution. A new TRC Act governing establishing two commissions was passed in May 2014 which is again challenged at the Supreme Court on the ground that it contradicts the Court decision of January 2014. The case is still sub-judice at the Court. However, Government moved ahead with appointments of the commissioners for both commissions. Conflict victims have felt excluded from the TJ process and fear that their voices are not being heard. They are not satisfied with the Government's sole focus in establishing the mechanisms and demand that their other needs and aspirations are met ensuring victim centered TJ process.
23. Amidst the multitude of challenges in prosecuting conflict related cases, perpetrators in one case were convicted by a district court in December 2014. Although there were concerns that the sentences were low and disproportionate to the seriousness of the crime, the verdict is very significant as this is a first conflict related case to have been prosecuted and perpetrators sentenced through regular criminal justice system.
24. Conflict related sexual violence (CRSV) and torture victims have not been recognized as Conflict Affected Persons (CAP) excluding them from receiving dedicated services through the Government's Interim Relief Programme. They have faced significant barriers to accessing justice. Without this specific recognition, they may remain outside of any future TJ measures. CRSV cases are yet to be thoroughly investigated and official data concerning CRSV is lacking. Despite considerable achievements in implementing National Action Plan (NAP) on UNSCRs 1325 and 1820 significant challenges remain in taking its dividends to the most conflict affected women and girls. It is essential that reparations programs are gender responsive addressing the different violations women and men experienced during conflict and different needs of women and men post conflict. **UNCT recommends a holistic approach to TJ, consisting of National Consultations, Truth-seeking, Criminal prosecution, Reparations programmes, and Institutional reform. UNCT also recommends that state recognizes survivors of CRSV as conflict victims and their rights to effective remedy is fulfilled.**

#### D. Right to privacy, marriage and family life

25. **Child marriage:** The legal age of marriage (20, or 18 with parental consent) is not observed strictly. 29% of girls are married between 15-19 years. Prevalence of child marriage remains alarmingly high. Child marriage is also linked to a high prevalence of child widows (*Vaikalya*), against whom violence and discrimination is rife.<sup>17</sup> **UNCT recommends endorsement of National Strategy on Ending Child Marriage; ensuring its implementation with adequate technical and financial resources.**
26. **Same Sex marriage:** Civil and criminal code does not recognize same-sex marriage despite Supreme Court decision in 2007. The codes criminalize “unnatural sex”<sup>18</sup> which may be used against same sex practices.
27. **Family preservation and support, alternative care of children without adequate parental care:** Most of the family support, child care and protection services are fragmented and implemented by NGOs. However, there are no standards for service provision, except for residential institutions, so the quality of services is not ensured. Despite that majority of children residing in institutions have one or two parents alive, very few programmes focus on de-institutionalisation, early detection and intervention including family support services and family-based alternative care. Over 80% of orphanages are located in major touristic areas indicating that such institutions have become profit-making enterprises that attract donations, mostly from foreign tourists and donors. **UNCT recommends developing and implementing relevant mechanisms and measures to ensure family preservation and the right of a child to grow in a family-like environment; viewing an inter-country adoption within a principle of subsidiarity; ensuring that institutional care is considered as a measure of last resort.**

#### F. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life

28. **Women’s Participation in political and public life:** Some progress is seen in women’s participation in public and decision making roles. There is 29.91% female representation in the Legislature Parliament, 11.5% women at the ministerial level and 4.5% women in judiciary<sup>19</sup>. A 20% quota has been allocated for women and socially excluded groups for the appointment of police, armed police and army. There is also increased representation of women in civil service with 14% overall increase and increase in senior officer position.<sup>20</sup> Despite this progress, women comprise only 15% of Government and semi-government workforce. Women’s participation remains low at the highest levels of decision-making in political leadership, elected offices, public positions, private sector and academia. Women also are underrepresented as voters. Structural barriers (discriminatory laws, institutional barriers) still limit women’s options. Capacity gaps mean women are less likely to have the education, contacts and resources needed to become effective leaders. **UNCT recommends adopting further temporary special measures to accelerate women’s equal participation and leadership in decision making roles in both public and private spheres.**
29. **Economic Empowerment:** Women’s participation in and contributions for economic growth are constrained by lack of employment or alternative livelihood opportunities and limited access to economic resources. Only 19.7% households have land and house in the name of women.<sup>21</sup> 72% of economically active women are engaged in agriculture, a rising figure due to extensive male labour migration. Similarly, limited opportunities and the constraints have driven 13.3% women to migrate for labour. **UNCT recommends to recognize, reduce and redistribute unpaid care and home-based labour of women through investments in infrastructure and social services; ensure that employment**

<sup>17</sup> Nepal Demographic and Health Survey 2011

<sup>18</sup> Any other sexual act except between a man and a woman

<sup>19</sup> [www.can.gov.np](http://www.can.gov.np), [www.opmcm.gov.np](http://www.opmcm.gov.np), [www.supremecourt.gov.np](http://www.supremecourt.gov.np)

<sup>20</sup> Beyond Beijing Committee (BBC) and National Network for Beijing- review Nepal (NNBN), Civil society report on Beijing+20 Nepal, November 2014, p.17.

<sup>21</sup> Central Bureau of Statistics, Population Monograph of Nepal vol. II, 2014 Pg. 265

**policies improve labour market conditions and advance decent work for women; guarantee women's equal right to inheritance, access, control, and own assets.**

30. **Children's participation:** Children are being represented in key local government planning processes through children clubs; however, there is limited inclusion of marginalised children in this mechanism. **UNCT recommends addressing the root cause of exclusion and establish a conducive environment for children to associate and participate in decision making processes.**

#### G. Right to work and to just and favourable conditions of work

31. **Right to work:** Application Fundamental Principles and Rights at Work (FPRW) remains a challenge despite Government's commitments. Lack of capacity of and meagre resource-allocation to labour administration by Government is a key concern for promoting the application of FPRW. Similarly, women workers in informal sectors, particularly from agriculture and construction sector, are still discriminated on wages for equal value of work. A new labour legislation ensuring gender equality at the work place is yet to be passed. Sexual Harassment at the Workplace Act passed in 2014 with fundamental provisions related to protection from and prevention of sexual harassment at the work place. **UNCT recommends formulating policies, strategies and action proving support for equal employment opportunities and wages for women in formal and informal sectors.**

#### H. Right to social security and to an adequate standard of living

32. **Social Security:** Although the coverage of social protection schemes has been increasing, fragmentations of these schemes have reduced their efficiencies. The draft Social Security Bill and National Employment Policy incorporates a number of social protection schemes under labour market governance reform; however, they are yet to be endorsed. **UNCT recommends passages of social security bill and national employment policy ensuring social protection for the workers in the formal sector; more and decent jobs for young women and men; scaling up the child grant to all children.**
33. **Nutrition:** Though maternal and young child micronutrient status has improved, anaemia remains a serious public health problem for both women and children, with young children (6-23 months) being the most affected (69%). Maternal feeding practices are far from optimal. Child Grant that was introduced in 2009 to improve nutrition of children seen being effective. In Karnali Zone where it is designed to reach all children under 5, the coverage rate reached almost 80%; leading to a phenomenal increase in birth registration of 90% compared to the national average of 42%. **UNCT recommends approving and implementing the comprehensive Infant and Young Child Feeding Strategy, enhancing nutrition related human resource capacity and finalising development of the updated anaemia strategy.**
34. **Water and sanitation:** Disparities still persist in accessing water supply. Data shows there are disparities in access to sanitation among different social and economic groups and ecological and development regions, rural and urban set up. This has a direct implication to children who are from very low income families. The poor do not have access to safe drinking water while they also do not get adequate sanitation facilities. Children, particularly girls' right to water, sanitation, and hygiene mainly in schools, have remained a major challenge. **UNCT recommends removing barriers to accessing water supply with particular attention to the girls and groups traditionally excluded**

#### I Right to health

35. Nepal has made significant progress in reducing mortality and morbidity among children under 5. The maternal mortality ratio also felt down. Vaccine preventable diseases and key childhood diseases remain a persistent threat for the hard-to-reach populations in disadvantaged communities. While HIV/AIDS prevalence and new HIV infection rates appear to be dropping, the majority of pregnant women in need of prevention of mother-to-child transmission are not reached with life-saving drugs and care. The National Immunisation Programme includes the six globally recommended antigens and



Government is expanding the programme progressively, introducing new vaccines. However, in 2014/15 the immunization programme was affected by a shortage of vaccines.

36. In an average 58% of women receive antenatal care from a skilled provider<sup>22</sup> but there are differences in access among caste and ethnic groups. 82% of Newari 80% of Hill Brahmin women had at least four antenatal visits during their last pregnancy. In contrast just 23% of Terai Dalit women and 34% of Muslim women receive full antenatal care. Whether or not women receive healthcare is often dependent on them being given permission by their husbands or other men in the family to visit a health facility. **UNCT recommends ensuring universal coverage of vaccinations, improved access to skilled attendance at births in remote and disadvantaged areas, and accelerate progress in newborn care. It is also recommended to scale-up prevention of parent-to-child transmission services through improved detection of women living with HIV and provision of ART to those in need.**
37. **Sexual and reproductive health:** The Interim Constitution guarantees right to reproductive health and reproductive rights as women's right. In two cases the Supreme Court recognized the obligation of government to guarantee the right to information and access to methods of family planning and addressing the issue of forced marriage and sexual violence.<sup>23</sup> It is estimated that a quarter of married Nepalese women have an unmet need for contraception. This is highest among married adolescent girls between ages 15-19 and only 17.6% of married adolescents have access to reproductive health services<sup>24</sup>. A 2007 policy on Adolescent Sexual and Reproductive Health established "Adolescent Friendly Health Services" however more efforts are needed to ensure quality services. Uterine prolapse affects a large number of women<sup>25</sup> the majority of whom state that violence was a contributing factor.<sup>26</sup> **UNCT recommends ensuring information and access to quality sexual and reproductive health services for every woman and girl, particularly the most marginalized.**

#### J. Right to education

38. Government reports significant improvement in access to primary and secondary education<sup>27</sup>. However, still a lot needs to be done to reduce drop-out rates and repetition rates, increase transition rates, reduce gender disparity in the most disadvantaged districts, and improve the quality of education. The ratio of women to men at the higher-secondary level is 0.91 and at the tertiary level is only 0.71. There is still a considerable gap between literacy rates of rural males and females with 91.89% of males but 76.26% of female literacy.
39. Inequitable access to quality education remains. Data shows that children from poor, remote, low caste, disadvantaged ethnic families, and children with disabilities have disproportionately low enrolment rates. A Dalit woman in the Terai, for example, has on average only 0.86 years of schooling, compared to the national average of 6.46 years<sup>28</sup>. School drop-out rates are a concern with net enrolment rate of 95.6% in primary school falling to 72.6% at lower secondary and 54.9% at the secondary level. Progress has been impressive in access and participation in Early Childhood and Educational Development. However, only 16% of children living in the poorest households attended early childhood education compared to 50% from the richest. The quality of education remains a significant challenge. Only 44% of students taking the Grade 10 School Leaving Certificate in 2014 passed, and only 28% in public schools.
40. Government has adopted a strategy and number of incentive schemes to promote access to education, however there has been significant delay over the amendment of Education Act. **UNCT recommends**

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<sup>22</sup> Nepal Demographic and Health Survey 2011

<sup>23</sup> Lakshmi Dhikta & Others v. Government of Nepal and Prakash Mani Sharma & Others v. Government of Nepal

<sup>24</sup> Nepal Demographic and Health Survey 2011

<sup>25</sup> UNFPA, TUTH, 2006 Status of Reproductive Morbidities in Nepal

<sup>26</sup> UNFPA, MOHP 2013 health related quality of life of women suffering from pelvic organ prolapse before and 9 to 11 months after surgical interventions.

<sup>27</sup> Ministry of Education's Annual Consolidated Report 2013/14

<sup>28</sup> Nepal Demographic and Health Survey 2011

**revising Education Act; implementing National Education Equity Strategy; allocating resources to the sector with an equity focus, including for reducing gender disparity at all levels of education; prioritizing early childhood development as well as addressing poor quality of education**

#### L. Persons with disabilities

41. There is a lack of credible, disaggregated data on disability. The definition and classification of disability adopted by Government for the census is not in line with WHO standards. Therefore, the percentage of people with disabilities is expected to be much higher than reported. The existing laws and policies require revision. Furthermore, enforcement of existing laws and regulations is generally weak which is partly due to a lack of financial and trained human resources.
42. For both access and attainment, the most dramatic disparities are found among children with disabilities. While some children with a range of disabilities are enrolled in school, they make up only 1% of total primary enrolment, and increasing lower percentages for lower secondary and secondary school. Children with disabilities are 16% less likely to access school than children without disabilities. Disability had the strongest negative effect on attainment as compared to all other variables.
43. There remains a strong social stigma associated with disabilities and a tendency for families to hide their disabled members from public view. Women and young girls with disabilities face particularly high levels of discrimination and neglect. Where children have intellectual, developmental, psychosocial or multiple disabilities, poor families struggle especially to manage the care of the family and other children as well as children with disabilities, and in a 2011 study, some reported resorting to simply locking their disabled child in a room or tying them to a post. **UNCT recommends removing legal and practical barriers (physical infrastructure, widespread stigma, inadequate registration, limited resource allocation, lack of access to inclusive services, including education and employment) for persons with disabilities.**

#### M. Minorities and Indigenous Peoples

44. Government is yet to endorse the National Action Plan with adequate resources to implement ILO Convention 169. Supreme Court issued directive order in April 2013 to ensure effective participation of IPs in the Constituent Assembly, however, the order is yet to be implemented. Nepal needs to develop national guidelines on consultation mechanism with IPS and their representative organization to promote the Free, Prior and Informed Consent (FPIC). **UNCT recommends endorsing the National Action Plan with adequate resources and effective mechanism to implement the ILO Convention 169.**

#### N. Migrants, refugees and asylum seekers

45. **Migrant workers:** The enforcement of the Foreign Employment laws and establishment of mechanisms has contributed towards promoting migration governance. The labour village established in 2014 is expected to strengthen migration governance, however many challenges prevalent in closing the gaps in the structural mechanisms, building capacity of service providers and regulators and better coordination. A uniform and compatible database system across all institutions is needed, particularly consisting of required fields. The terms and conditions offered to migrants in the labor permit do not match with actual terms and conditions at the destination. Government faces challenge to regulate the recruiting agencies adequately. In an average 3 dead bodies are coming per day from destination countries due to inconsistent terms and conditions, poor and unsafe working conditions and inadequate information to migrants pre-departure. Government need to have bilateral labour agreement with key destination countries.
46. Complaints handling procedure are conducted without any standard operating procedure leading to inconsistencies in handling individual and institutional complaints. Irregular migrants have no avenues for complaint and are not entitled to any type of compensation from the state.

47. There are contradictions between the Foreign Employment Act, 2007 (and its Regulations) and the 2012 Foreign Employment Policy, particularly in promoting good governance in migration management with strong monitoring and evaluation mechanisms. Government is yet creating interministerial coordination. Nepal needs to take necessary initiative to develop gender responsive labour migration policies and legal framework. Violence against women during the migration cycle is not addressed adequately. **UNCT recommends government to develop and enforce ethical recruiting guidelines ensuring labour recruitment process corresponding international ethical principles including gender responsive migration and social protection for the migrants.**
48. **Refugees and asylum seekers:** Nepal has hosted large number of refugees for over 60 years. Tibetans arriving before 1989 and their descendants are recognized as refugees. Tibetan new arrivals are granted safe passage through its territory to India. In 1995, Government issued Refugee Certificates to Tibetan refugees 16 years old and older. Today, a significant number of Tibetans lack any form of individual identification which poses significant problems in every aspect of their daily life.
49. Bhutanese refugees have resided in camp settings in Nepal since 1990. Since large scale group resettlement programme began in 2007, over 94,500 refugees resettled. At the end of 2014, 23,059 remain in the camps. Resolving the situation for refugees who will not resettle is a pressing issue.
50. Urban refugees and asylum-seekers also seek protection in Nepal. In 2014, Nepal hosted 137 asylum-seekers and 431 recognized refugees awaited a durable solution.
51. Nepal does not have a refugee legal framework. Refugee status determination is conducted by UNHCR for individual asylum seekers. Nepal considers refugees as irregular migrants and imposes a five USD per day fine to all persons overstaying visas irrespective of refugee status. Refugees are expected to pay these fines before they may leave the country lawfully. However, Government grants visa fine waivers on an occasional *ad hoc* basis for refugees departing on resettlement. Urban refugees and asylum-seekers face risks of arrest and detention in Nepal for violation of immigration offences if they enter the county unlawfully or overstay their visas. **UNCT recommends adoption of national asylum legislation in line with international standards; carrying out comprehensive registration of long-staying Tibetans refugees to issue them proper identity documents; pursue efforts for finding durable solutions for remaining refugees from Bhutan; and exemption of refugees and asylum-seekers from visa fines.**
52. **Statelessness:** Citizenship certificates help ensure access to fundamental social, economic, and political rights. It is estimated up to 4.3 million Nepalis lack citizenship certificates with women, children, and marginalized communities most affected. **UNCT recommends ensuring all eligible persons are issued citizenship certificates in an accessible, affordable and timely fashion, to reduce the risk of statelessness.**

#### P. Right to development and environmental issues

53. Nepal is highly exposed to multi-hazards including earthquakes, floods, droughts and landslides. National Disaster Risk Management strategy includes a set of guidelines. In addition, a separate component on climate change adaptation and disaster risk reduction appears in the Water, Sanitation and Hygiene programme document. **UNCT recommends incorporating issues related to the preparedness and impact of disasters, especially on children, women and other disadvantaged groups into the development agenda, introducing policies and practices for facilities ensuring resistance to natural disasters, including safe spaces for potential survivors.**

**List of Annexes**

1. Nepal Multiple Indicator Cluster Survey (MICS) 2014, Key Findings 2015
2. Nepal Demographic and Health Survey (NDHS) 2011, primary finding table
3. UN Women, Mapping Progress on Women's Rights in Nepal, December 2014
4. UNFPA, UN Women, UK Aid, UCL, CRHEPA 2013 GBV tracking study
5. UNDP, UNFPA, APNSW, SANGRAM 2015 the rights evidence sex work, violence and HIV in Asia a multi-country qualitative study