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Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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INTRODUCTION

Amnesty International submits the following information to the United Nations Human Rights Committee (the Committee) in advance of its 110th meeting, at which it will review the second periodic report of the government of Nepal on its implementation of the International Covenant on Civil and Political Rights (the Covenant).

This briefing highlights Amnesty International's concerns around violations of the rights to freedom from torture or cruel, inhuman or degrading treatment, particularly sexual and gender-based violence; equality of men and women before the law and equal protection of the law in relation to the right to reproductive health, safe work and working conditions and the right to found a family. The concerns listed here are not intended to be exhaustive.¹

This briefing primarily draws on Amnesty International's report on Nepal, *Unnecessary Burden: Gender discrimination and uterine prolapse in Nepal* (AI Index ASA 31/001/2014 published on 20 February 2014), and also references findings from Amnesty International's report: *Nepal: the search for justice*, which was published in 2013, and focussed on impunity in Nepal, including the failure of the justice sector to tackle widespread sexual and domestic violence against women and girls.² The 2014 report focussed on the widespread gender-based discrimination in Nepal that has increased the risk of women developing uterine prolapse: a painful and debilitating health condition, in which the pelvic muscles are unable to support the uterus and it starts to descend into the vagina. In addition to a review of laws, policies and other relevant literature, including official statistics, this research involved interviews with women, girls and men in communities across Nepal; government officials; Nepali non-governmental organizations, especially women's rights organizations, inter-governmental organizations; and medical experts in Nepal.

GENDER-BASED VIOLENCE (ARTICLES 2, 3, 7 AND 26)

Sexual and gender-based violence against women and girls, including harmful practices justified by "custom" "tradition" or "culture", is a form of discrimination against women and girls that also impacts upon their ability to enjoy other human rights. State action to address gender-based violence is recognized by the Committee as being necessary to comply with article 7 of the

¹ Amnesty International submitted two reports for the adoption of the List of Issues at the Human Rights Committee's 108th session; *Nepal: the search for justice*, ASA31/001/2013, and *False promises: exploitation and forced labour of Nepalese migrant workers*, ASA31/007/2011, both available here; http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=623&Lang=en

² Amnesty International, *Nepal: the search for justice*, ASA 31/001/2013.

Covenant.³

RIGHT TO BE FREE FROM SEXUAL AND GENDER-BASED VIOLENCE

Gender-based violence against women and girls is widely prevalent in Nepal, and women and girls are often unable to access effective remedies for violations of their rights due to the poor implementation of existing laws and policies.⁴ A government study from 2012 found that 48% of women had experienced violence at some time in their lives with 28% experiencing violence in the previous 12 months.⁵ 41% of women with an intimate partner had experienced violence from that partner at some point and 19% had experienced violence within the previous 12 months.⁶

Amnesty International's research confirmed this. Women told researchers that marital rape was common. Men interviewed by Amnesty International said women should not refuse to have sex with their husbands and some thought it would be "surprising" if a wife refused.⁷

The government has put in place legislative measures to address gender-based violence, including the Domestic Violence (Crime and Punishment) Act, which was passed in 2009. Under the act, no one can commit, aid, abet or incite an act of domestic violence,⁸ which is defined as "any form of physical, mental, sexual and economic abuse perpetrated by any person to the other person with whom he/she has a family relationship." The definition also covers acts of "reprimand or emotional abuse".⁹ In addition to specifying interim protection measures that can be granted by courts (such as ordering the perpetrator to pay for the treatment of victims who have suffered injuries or directing that the victim continue to live in the shared house for the duration of the trial) perpetrators of domestic violence will also be punished with a fine and / or imprisonment for up to six months under this act.¹⁰ Furthermore, the *Muluki Ain* (National Code) criminalizes rape and sexual assault, including marital rape, although marital rape carries a lower punishment than rape

³ Human Rights Committee, *General Comment No. 28: Equality of rights between men and women (article 3)*, para. 11.
[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/13b02776122d4838802568b900360e80?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/13b02776122d4838802568b900360e80?Opendocument)

⁴ The Special Rapporteur on violence against women, its causes and consequences has an outstanding visit request to Nepal, a reminder for which was sent to the government on 16 March 2012. The last time this Special Rapporteur visited Nepal was in 2000.

⁵ Office of the Prime Minister and Council of Ministers, *A Study on Gender-Based Violence Conducted in Selected Rural Districts of Nepal*, (OPMCM, Study on Gender-Based Violence), November 2012, p. ix and p. 50

⁶ OPMCM, Study on Gender-Based Violence, p.59-60

⁷ Amnesty International, *Unnecessary Burden: Gender discrimination and uterine prolapse in Nepal*, ASA 31/001/2014, at p 29. (*Unnecessary Burden*)

⁸ Domestic Violence (Offence and Punishment) Act, 2009, Section 3(1),
http://www.lawcommission.gov.np/index.php?option=com_remository&Itemid=18&func=fileinfo&id=424&lang=en accessed 23 December 2013

⁹ Domestic Violence Act, Section 2(a)

¹⁰ Domestic Violence Act, section 6 (interim protection measures) and section 13 (penalty).

by someone other than a spouse.¹¹

However, implementation of the law is weak. Many women and girls Amnesty International researchers spoke with were not aware of these laws. For example, very few of the 160 women participating in focus group discussions with Amnesty International knew that a woman's right to choose whether or not to have sex, including with her husband, is protected by Nepali law.¹² When informed about it, the majority said that the law would not help them because they lived in the house belonging to their husbands and were economically and socially dependent on them.¹³ This is reinforced by a 2012 governmental study of 900 women and girls, which found that only 9% had heard about the law on marital rape.¹⁴

Even where women are aware of the law on rape, or the law on domestic violence, many are reluctant to report these abuses and seek remedies. Figures from the Office of the Prime Minister's survey on gender-based violence found that just over 60% of women had not sought any form of help after experiencing any form of violence. 83% of women who had experienced violence from an intimate partner did not seek any form of help.¹⁵ Less than 1% had sought help from the police, social workers or health service providers.¹⁶ According to the survey, the most common reason for not seeking help was "embarrassment" followed by a belief that "nothing can be done" to help.¹⁷

Data on instances of gender-based violence are collected in different ways: through the police, the National Women's Commission and NGOs. The Ministry of Women also collects data on numbers of women using the safe houses they run. There is no system for combining the figures to produce comprehensive national data on cases of different types of gender-based violence. The National Women's Commission told Amnesty International that between August 2012 and July 2013 they had received a total of 369 cases of gender-based violence of which 243 cases were of domestic violence. No cases of marital rape were registered with the Commission; however, they said that sometimes, after investigation, they found domestic violence cases which included marital rape but they kept the case under the domestic violence category.¹⁸ Figures from the Nepal police show that in 2012-13 there were 1,800 cases of domestic violence and 677 cases of rape reported to the police.¹⁹ There is no separate category for marital rape so it is not clear whether any of the

¹¹ Muluki Ain (General Code), Chapter 13 and 14, as amended by "Some Nepal Acts to Maintain Gender Equality" of 2006. Although an improvement on the previous version of the Code, the provisions are not consistent with evolving international standards on rape and sexual assault.

¹² Amnesty International, *Unnecessary Burden*, ASA 31/001/2014, at p 28.

¹³ Amnesty International, *Unnecessary Burden*, ASA 31/001/2014, at pp 28 – 32.

¹⁴ OPMCM, Study on Gender-Based Violence, p.34

¹⁵ OPMCM, Study on Gender-Based Violence, p.68

¹⁶ OPMCM, Study on Gender-Based Violence, p.69

¹⁷ OPMCM, Study on Gender-Based Violence, p.69 The most common barriers to seeking help were embarrassment (52.5%), nothing can be done (25.2%), did not trust anyone (12.3%) and fear of rejection by family or friends (12%)

¹⁸ AI Nepal meeting with National Women's Commission, 12 December 2013

¹⁹ Nepal Police, Women and Children Services Directorate, Table of Crime Data, available at:

<http://www.nepalpolice.gov.np/women-children-service-directorate.html>

domestic violence or rape cases include marital rape or whether no cases were reported.

Government officials acknowledged the difficulties in reporting violence in interviews with Amnesty International. A representative from the Ministry of Women, Children and Social Welfare spoke about the barriers faced by women in rural areas, saying, “women in the remote areas are not economically empowered. They have to go to their husbands’ place and rely on him for their livelihoods so they don’t report violence”.²⁰

The law in Nepal also prescribes limitation periods for filing rape (35 days) and domestic violence (90 days) complaints, which act as further barriers to women’s access to remedies. A 2012 report on sexual violence during the conflict noted that the 35 day limitation period for rape cases was an obstacle to securing justice in Nepal, “especially where a victim is often too traumatized and frightened to come forward within such a short period of time”.²¹ In 2011, the Committee on the Elimination of Discrimination against Women (CEDAW) commented on this, asking the government to take “immediate measures to abolish the statute of limitation for registration of cases of sexual violence to ensure women’s effective access to courts for the crime of rape and other sexual offences”.²² However, these limitation periods are still in force.

Amnesty International has previously reported on barriers faced by women and girls in seeking justice for gender-based violence. A report published in 2013 and entitled *Nepal: The search for justice*, (AI Index ASA 31/001/2013) highlighted how impunity for perpetrators of gender-based violence is the norm. Women rarely file complaints about domestic violence because of “fear of stigma, lack of resources or legal literacy, lack of safe shelter alternatives and other support services, dependence on male relatives to access the legal system, and fear of repercussions, including further abuse”. The report also noted instances where women who had reported violence faced obstruction by the authorities.²³ For example, women’s human rights activists in Dhanusha district in the Terai said that police were intentionally creating obstacles for women seeking justice, siding with perpetrators rather than assisting women who sought to file complaints, and sometimes seeking large bribes from the victims in exchange for action on cases. In the neighbouring Mahottari district human rights defenders described similar experiences trying to bring domestic violence cases to court and told Amnesty International in July 2012 that rather than investigating them the police sometimes recorded murders as suicides or recorded violence against women, such as physical assault and rape, as the work of armed groups, when in fact they were perpetrated by relatives.²⁴

Concern regarding gender-based violence is reflected in the List of Issues prepared by this

²⁰ Interview with Amnesty International, Kathmandu, 16 May 2013.

²¹ United Nations Office of the High Commissioner for Human Rights, Geneva, “Nepal Conflict Report” October 2012 p 166
http://www.ohchr.org/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf

²² Committee on the Elimination of Discrimination against Women, *Concluding Observations on the State review of Nepal*, CEDAW/C/NPL/CO/4-5, 29 July 2011, Para 20.

²³ See Amnesty International, *Nepal: The search for justice*, ASA 31/001/2013.

²⁴ Amnesty International, *Nepal: the search for justice*, ASA 31/001/2013, p 15.

Committee in relation to the second periodic report of Nepal.²⁵ The concern is also reflected in the Committee's response to the first periodic report of Nepal in which it emphasized the "situation of women who [...] continue to be de jure or de facto the object of discrimination as regards [...] protection against violence"²⁶

While replies to the List of Issues have not yet been made public, the second periodic report of the Government of Nepal lists some of the measures taken by the Government to address gender-based violence in the country, including the National Plan of Action for Year against Gender based Violence, 2010 and the Gender-Based Violence Prevention Fund (Operation) Regulation, 2010.²⁷ However, it is not clear how these policies will address the lack of awareness and weak implementation of laws and policies amongst men, women and girls in Nepal, and the many barriers to reporting violations and accessing remedies that women and girls in Nepal face.

Nepal's State report to the Committee emphasizes the "legal and policy guarantees" that have been put in place by the State to combat discrimination against women.²⁸ However, as described above and elsewhere in this submission (see section 3), the legal framework itself presents obstacles for women and girls' enjoyment of Covenant rights, such as the limitation periods for filing rape and domestic violence complaints and the lower punishment for marital rape. These obstacles constitute a failure to recognize the equal rights of men and women, in addition to raising questions about equality before the law. Even more serious is the fact that the existing laws and policies are not adequately implemented and do not guarantee women and girls' right to be free from violence, and thus from torture or cruel, inhuman or degrading treatment. Impunity for perpetrators of gender-based violence remains common.

Nepal has an obligation under Article 2 of the Covenant to exercise due diligence to prevent, punish, investigate or redress the harm caused by acts of private persons or entities that impair the enjoyment of Covenant rights.²⁹ Yet Nepal is failing to implement its positive obligations in this area. The result is that gender-based violence remains prevalent, and women and girls do not have access to effective remedies when they suffer these abuses. The Committee has understood Article 2, paragraph 3 to require that

"in addition to effective protection of Covenant rights States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. Such

²⁵ Human Rights Committee, *List of issues in relation to the second periodic report of Nepal*, CCPR/C/NPL/2, 21 August 2013, para 10.

²⁶ Consideration of reports submitted by States parties under article 40 of the Covenant, First periodic reports of States parties, Nepal, in A/50/40, Report of the Human Rights Committee to the UN General Assembly, para 67.

²⁷ Consideration of reports submitted by States parties under article 40 of the Covenant, Second periodic reports of States parties, Nepal, CCPR/C/NPL/2, p 18, <http://www.ccrpcentre.org/wp-content/uploads/2012/10/state-report-nepal.pdf>

²⁸ Consideration of reports submitted by States parties under article 40 of the Covenant, Second periodic reports of States parties, Nepal, CCPR/C/NPL/2, p 18, <http://www.ccrpcentre.org/wp-content/uploads/2012/10/state-report-nepal.pdf>

²⁹ Human Rights Committee, General Comment No. 31, para 8.

*remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of person.*³⁰

Nepal is failing to implement its obligations in this area. Judicial remedies are sometimes limited or denied as set out in the circumstances above and women and girls often face obstructions when they attempt to report violence. The result is that gender-based violence remains prevalent and many women and girls feel that they will not be provided with adequate and effective reparation when they suffer these abuses.

RIGHT TO BE FREE FROM HARMFUL PRACTICES JUSTIFIED BY “CUSTOM” OR “CULTURE”

As the Committee has said “Inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes ... States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women’s right to equality before the law and to equal enjoyment of all Covenant rights”.³¹

The traditional practice known as *chaupadi* starkly illustrates the gender discrimination faced by many Nepali women and girls that puts their health, and sometimes their lives, at risk. There is a common belief, particularly in western Nepal, that women and girls are “impure” and “untouchable” after childbirth and during menstruation. As a result, families and communities regulate what and whom women and girls may touch during this time. They are forced to leave their house and live in a cowshed or in a separate hut constructed specifically for that purpose. These sheds are frequently dirty, insecure, lack protection from severe weather and leave their occupants at risk of snake, scorpion and other animal attacks. Deaths of women and girls staying in these sheds are reported every year³² and there are reports of rape and other forms of sexual violence against women and girls linked to the practice.³³

In a case in 2005, the Supreme Court of Nepal declared this practice to be discriminatory and a violation of women’s rights.³⁴ Despite taking steps to eliminate this practice, in its second periodic report in 2012, the government of Nepal has said that “malpractices like *Chaupadi*...can still be seen

³⁰ Human Rights Committee, General Comment No. 31, para 15

³¹ Paragraph 5, General Comment No. 28: Equality of rights between men and women (article 3) [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/13b02776122d4838802568b900360e80?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/13b02776122d4838802568b900360e80?Opendocument)

³² United Nations Resident and Humanitarian Coordinator’s Office, “Chaupadi in the Far West”, April 2011, p.2 available at http://www.ohchr.org/Documents/Issues/Water/ContributionsStigma/others/field_bulletin_-_issue1_april_2011_-_chaupadi_in_far-west.pdf

³³ A Study on Gender-Based Violence Conducted in Selected Rural Districts of Nepal, Office of the Prime Minister and Council of Ministers, Kathmandu, November 2012, p.63

³⁴ Dil Badhudur Bishwakarma, v Government of Nepal, Writ Petition 3303 of 2004, Judgement May 2005

in one form or another in some parts due to deeply rooted patriarchal societal value system".³⁵ A 2011 bulletin from the United Nations Resident and Humanitarian Coordinator's Office also recorded the continuing existence of *chaupadi* in some parts of Nepal.³⁶

EQUALITY OF MEN AND WOMEN BEFORE THE LAW, EQUAL PROTECTION OF THE LAW AND THE RIGHT TO FORM A FAMILY: ARTICLES 3, 23 AND 26

Article 26 of the Covenant provides an autonomous right which "prohibits discrimination in law or in fact in any field regulated by public authorities".³⁷ The Committee has also recognized the need for States to adopt "measures of protection, but also positive measures in all areas so as to achieve the effective and equal empowerment of women."³⁸

In addition to the Covenant, the government of Nepal has ratified many international human rights treaties which guarantee the right to equality before the law and effective protection against discrimination on any ground.³⁹ Amnesty International's research found a lack of effective implementation of laws has resulted in a failure to ensure that women and girls are able to enjoy human rights free from discrimination. Also, failure to take special measures to eliminate

³⁵ Consideration of reports submitted by States parties under article 40 of the Covenant, Second periodic reports of States parties, Nepal, CCPR/C/NPL/2, Paragraph 59, page 18, <http://www.ccprcentre.org/wp-content/uploads/2012/10/state-report-nepal.pdf>

³⁶ United Nations Resident and Humanitarian Coordinator's Office, *Chaupadi in the Far West*, April 2011, available at http://www.ohchr.org/Documents/Issues/Water/ContributionsStigma/others/field_bulletin_-_issue1_april_2011_-_chaupadi_in_far-west.pdf; See also Bijoyeta Das, *Nepal's menstrual exiles*, Aljazeera, 10 Feb 2014, <http://www.aljazeera.com/indepth/features/2014/02/nepal-menstrual-exiles201423131149488509.html>; and Committee on the Elimination of Discrimination against Women, *Concluding Observations on Nepal*, CEDAW/C/NPL/CO/4-5, 29 July 2011, paras 17 and 32.

³⁷ Human Rights Committee, *General Comment No. 18, Non-discrimination*, para. 12

³⁸ Human Rights Committee, *General Comment No. 28, Equality of rights between men and women (article 3)*, para. 3

³⁹ This includes article 2(1) of the International Covenant on Civil and Political Rights; article 2(2) of the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; article 2(1), Convention on the Rights of the Child; article 4(1) of the Convention on the Rights of Persons with Disabilities.

conditions which perpetuate discrimination means that women and girls who suffer from multiple forms of discrimination, are impacted upon in particular and often more severe ways.

Article 13 of the Interim Constitution of Nepal provides that all citizens are equal before the law, and that "The State shall not discriminate among citizens on grounds of religion, race, caste, tribe, sex, origin, language or ideological conviction or any of these". Article 20 states that "No one shall be discriminated in any form merely for being a woman".⁴⁰ In its concluding observations on Nepal in 2011, the CEDAW found that the definitions of discrimination in the Interim Constitution were limited. It recommended that any new constitution should include "the principle of equality between men and women [and] provisions prohibiting discrimination against women" and "a definition of discrimination that encompasses more direct and indirect discrimination and discrimination in the public and private spheres".⁴¹ The Interim Constitution has yet not been amended.

Despite the existence of laws guaranteeing equality, lack of effective implementation of these laws mean that women and girls in Nepal do not enjoy equal and effective protection against gender-based discrimination, and are often unable to enjoy other human rights as a result.

The government of Nepal has acknowledged that gender discrimination seriously affects women and girls in Nepal and that despite their efforts to reduce discrimination much more remains to be done to ensure equality. Reporting to the CEDAW in 2010, the government said:

"The cultural, religious and traditional values often tend to perpetuate gender discrimination and violations of women's rights. Insufficient political commitment, weak institutional capabilities of delivery and regulatory mechanisms... have contributed to women's deprivation of their rights".⁴²

NON-DISCRIMINATION WITH RESPECT TO THE RIGHT TO REPRODUCTIVE HEALTH

As per Nepal's Interim Constitution, "Every woman shall have the right to reproductive health and other reproductive rights."⁴³ However, the lack of implementation of this right has led to poor health outcomes for women and girls in Nepal and considerable disparity among women and girls from different caste, ethnic and religious groups.

At least 10% of Nepali women experience some form of uterine prolapse and the true figure could be much higher in some areas.⁴⁴ A striking factor about the pattern of uterine prolapse prevalence

⁴⁰ Interim Constitution of Nepal, Article 13(1) and (3) and Article 20 (1)

⁴¹ Committee on the Elimination of Discrimination against Women, *Concluding observations on Nepal*, CEDAW/C/NPL/CO/4-5, 29 July 2011, para 10.

⁴² Government report to CEDAW, UN Doc. CEDAW/C/NPL/4-5, 9 November 2010, para 60, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/466/11/PDF/G1046611.pdf?OpenElement>

⁴³ Interim Constitution of Nepal, Article 20 (2).

⁴⁴ UNFPA, *Status of Reproductive Morbidities in Nepal*, Institute of Medicine, Kathmandu 2006, (UNFPA, Status of Reproductive Morbidities). This is the most commonly quoted study on uterine prolapse in Nepal, but other studies exist as well. There has been no comprehensive study on uterine

in Nepal is that it affects relatively young women (globally, older women, are at greatest risk of getting this condition).⁴⁵ Furthermore, experts on uterine prolapse described to Amnesty International the trends among different caste and ethnic groups that they have noted while working on the issue over more than 20 years.⁴⁶ For example, Dr Renu Rajbhandari, founder of the Women's Rehabilitation Centre (WOREC), a leading women's rights NGO established in 1991 and which has conducted substantial work on issues of maternal health, including uterine prolapse, said that in the experience of the organisation Tharu (Indigenous) women had lower rates of uterine prolapse than Brahmin and Chhetri (dominant caste) women whose lives were more controlled by their families and through traditional cultural practices. She also said rates of uterine prolapse were high among poor Dalit women who suffer discrimination on the basis of their caste, gender and poverty.⁴⁷

Several factors put women at greater risk of developing this condition, including adolescent pregnancy, lack of control over sexual conduct as a result of marital rape, lack of adequate nutrition, lack of access to skilled birth attendants, and hard physical labour during and after pregnancy. Women and girls' with increased exposure to these factors face a higher risk of uterine prolapse in Nepal.

Many of these risk factors are linked to pervasive gender-based discrimination in Nepal. For example, adolescent pregnancy is linked to the practice of early marriage and the fact that women and girls lack access to information about the negative health consequences of adolescent pregnancies and is prevented from making decisions on use of contraception. The lack of adequate nutrition has roots in cultural practices in certain communities where women eat after the men in the family, meaning they often do not have access to the best or most nutritious food or are denied particular nutritious food because of inaccurate cultural beliefs that such food is harmful to pregnant women. Similarly, women often cannot access skilled birth attendants either because they do not control all decisions around their health care, and have to often defer to husbands or families, or because they do not have access to essential reproductive health information and services.

prolapse prevalence in Nepal. The different methodologies used in the various studies mean that they found different prevalence rates. Studies have either been conducted on a small scale in specific districts in Nepal (population-based studies), or among patients in identified health centres (facility-based studies). Population-based studies take a sample from a cross-section of women living in that area and question them on their reproductive health. Some studies may involve medical examinations to confirm diagnosis of uterine prolapse but many rely on women's descriptions of their symptoms to judge whether they have prolapse. Facility-based studies examine women attending health centres, thereby including medically confirmed cases of uterine prolapse, but they exclude women who do not or cannot visit health facilities.

⁴⁵ UNFPA, *Status of Reproductive Morbidities*, p.76 "Unlike in the developed world where POP is commonly seen in the postmenopausal age group unrelated to childbirth, POP was found in the younger population" [in Nepal]. The Royal College of Obstetricians and Gynaecologists states that half of women over 50 would have some symptoms of pelvic organ prolapse. RCOG, Information Leaflet, http://www.rcog.org.uk/files/rcog-corp/2013-03-20_Pelvic_organ_prolapse.pdf

⁴⁶ Amnesty International, *Unnecessary Burden*, ASA 31/001/2014, at pp 21 and 22.

⁴⁷ Interview with Amnesty International, 26 April 2013, Kathmandu.

In 2008, the Supreme Court of Nepal found the high prevalence of uterine prolapse in Nepal violated women's right to reproductive health.⁴⁸ It directed relevant governmental ministries to put in place laws, policies and programs to raise awareness about this condition, and to prevent and treat it. However, the government's focus has consistently been on implementing large scale surgical programs to identify and treat advanced cases of uterine prolapse. There has been little government attention on preventing uterine prolapse by addressing the underlying gender discrimination. In 2008, the Government had developed a final draft of a Multi-Sectoral Plan to prevent and manage this condition. However, a lack of coordination amongst governmental ministries and insufficient political will has meant that this plan has not been adopted or implemented.⁴⁹ Effective governmental action to prevent uterine prolapse by addressing the underlying gender discrimination is essential for Nepal to meet its international human rights obligations and would also, in the long term, reduce the need for expensive surgeries.

Government data shows continuing disparities among women from different caste, ethnic and religious groups in access the reproductive health services they are entitled to receive without discrimination. For example, the 2011 Demographic and Health survey showed that nationally 36% of live births were assisted by a skilled attendant.⁵⁰ Figures disaggregated by ethnicity and caste showed large differences in access to skilled attendants. Women from the relatively advantaged Newari and Hill Brahmin groups were most likely to have a skilled person assist them (71% and 65% respectively). In sharp contrast only 22% of Terai Dalit women, 30% of Hill Dalit women, 28% of Hill and Terai Janajati women and 33% of Muslim women were assisted by a skilled birth attendant.⁵¹

The pattern is similar for access to ante natal care: 82 % of Newari women and 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 received full antenatal care.⁵² On average, 18.2% of women are under nourished in Nepal: the groups with the highest percentage of undernourished women were Terai Dalits (45%), Muslims (36%).⁵³ Similarly, the 2012 study on gender-based violence found that women from Dalit communities and religious minorities were more likely to have experienced violence.⁵⁴

The government, in its report to the Committee, acknowledged the continuing impact of caste on

⁴⁸Prakash Mani Sharma and Others v GON, Office of Prime Minister and Council of Ministers and Others, Writ Petition 064, June 2008 (Prakash Mani case)

⁴⁹ For more details, see Amnesty International, *Unnecessary Burden*, ASA 31/001/2014, at p 49 – 57.

⁵⁰ DHS 2011, p. 127

⁵¹Ministry of Health and Population, *Maternal and Child Health in Nepal: The Effects of Caste, Ethnicity and Regional Identity*, March 2013, (MoHP, Effects of Caste, Ethnicity and Regional Identity), p.16

⁵²MoHP, Effects of Caste, Ethnicity and Regional Identity, p.15. The figures for other groups were higher but still significantly less than for Newari Hill Brahmin women. 54% of Hill Chhetri, 51% of Terai Janajati, 44% of Hill Janajati and 48% of Hill Dalit women made four antenatal visits.

⁵³ MoHP, Effects of Caste, Ethnicity and Regional Identity, p.22

⁵⁴ OPMCM, Study on Gender-Based Violence, p.53-57

the enjoyment of rights when it stated that caste discrimination “is found on the ground in some forms, negatively affecting the dignity of people belonging to the Dalit community”.⁵⁵ However, local government health officials who spoke to Amnesty International said that they did not collect information about the caste or ethnic origin of women who came to seek treatment for uterine prolapse. And although central government officials acknowledged disparities in access to services such as contraception and skilled birth attendants, when asked by Amnesty International about the policies and programmes they had to address those disparities, the officials did not provide information about any initiatives they had taken.⁵⁶

In 2009, the Ministry of Health published a Health Sector Gender Equality and Social Inclusion Strategy. As a part of its objectives, this strategy sought to “Enhance the capacity of service providers and ensure equitable access and use of health services by the poor, vulnerable and marginalized castes and ethnic groups using a rights-based approach” and to “improve health-seeking behaviour of the poor, vulnerable and marginalized castes and ethnic groups using a rights-based approach”.⁵⁷ In August 2013 the government published a Progress Review of the strategy. It noted positive developments in the collection of disaggregated data, sensitization of health workers and an increase in the budget for gender equality and social inclusion activities. However, the 2013 review does not contain any information about whether this policy has led more people from disadvantaged groups to access health services, or whether it has improved their health outcomes.⁵⁸

As is demonstrated by this information, and set out in further detail in Amnesty International’s February 2014 report, *Unnecessary Burden: Gender discrimination and uterine prolapse in Nepal*, laws, policies and practices in Nepal do not adequately protect women’s and girls’ right to reproductive health rights. Since the burden of reproductive rights violations are gendered, and affect women and girls predominantly, in failing to protect these rights, the government of Nepal is failing to meet its obligation under the Covenant to ensure equal and effective protection to all under the law, free from discrimination.

NON-DISCRIMINATION WITH RESPECT TO THE RIGHT TO SAFE WORK AND WORKING CONDITIONS

In its General Comment 28, on article 3 of the Covenant, the Committee observed that

“a large proportion of women are employed in areas which are not protected by labour laws and that prevailing customs and traditions discriminate against women, particularly with

⁵⁵ Government of Nepal, Second Periodic Report to the Human Rights Committee, UN. Doc CCPR/C/NPL/2, June 2012, p.24

⁵⁶ Interview with Amnesty International, 9 May 2013, Mugu district. For more information, see Amnesty International, *Unnecessary Burden*, ASA 31/001/2014, at p 22.

⁵⁷ Ministry of Health and Population, *Health Sector Gender Equality and Social Inclusion Strategy*, 2009, p 12. http://www.nhssp.org.np/gesi/Health_Sector_GESI_Strategy_Dec_25_FINAL.pdf

⁵⁸ Ministry of Health and Population, *GESI Mainstreaming in Nepal’s Health Sector: Progress Review and Process Documentation*, August 2013, <http://www.nhssp.org.np/gesi/GESI%20Mainstreaming%20Review.pdf>

regard to access to better paid employment and to equal pay for work of equal value. States parties should review their legislation and practices and take the lead in implementing all measures necessary to eliminate discrimination against women in all fields, for example by prohibiting discrimination by private actors in areas such as employment, education, political activities and the provision of accommodation, goods and services. States parties should report on all these measures and provide information on the remedies available to victims of such discrimination".⁵⁹

According to the government of Nepal, 75% of working women in Nepal were employed in the agricultural sector.⁶⁰ More than three-quarters of those were unpaid and were mostly employed by family members.⁶¹ The overwhelming majority of women and girls interviewed by Amnesty International worked as agricultural labour, carrying cement, porters, and stone crushers. It is worthwhile noting that all these activities are part of the "informal" or "atypical" sector, and are not regulated by the government in Nepal. In its concluding observations on Nepal, the CEDAW noted the high number of women working in the informal sector in Nepal, and the lack of governmental oversight over this sector, and recommended the government "Regulate the informal sector to ensure that women in this sector are not exploited".⁶²

Women were typically unable to stop working, or take the amount of rest recommended by the government, particularly when pregnant (the government recommends at least 6 weeks of rest post-pregnancy). Women told Amnesty International that several factors influenced the low amount of rest they were able to take, including pressure from family members and economic circumstances.⁶³ This heavy workload has an adverse impact on their health, putting them at greater risk of medical conditions like uterine prolapse.

Nepal's Labour Act, 1992 does not apply to the informal sector, thus excluding most working women in Nepal. In 2005, the Nepal's Ministry of Labour issued the "Labour and Employment Policy". This policy committed to developing a social security system that extended to the informal sector, promoting and developing occupational safety and health, and ensuring equal access of women to employment.⁶⁴ More specific commitments included making the workplace safe by "by promoting and developing occupational health and safety and reproductive health as inherent aspects of all organizations and workplaces",⁶⁵ reviewing the current framework of occupational

⁵⁹ Human Rights Committee, *General Comment No. 28: Equality of rights between men and women (article 3)*, para 31.

⁶⁰ Government of Nepal report to CEDAW, p.39-40

⁶¹ Nepal Demographic and Health Survey 2011 (DHS 2011), Ministry of Health and Population, Kathmandu, March 2012, p58-60

⁶² "Committee on the Elimination of Discrimination against Women, *Concluding Observations on Nepal*, CEDAW/C/NPL/CO/4-5, 29 July 2011, para 30(b)

⁶³ Amnesty International, *Unnecessary Burden*, ASA 31/001/2014), at p 35 – 39.

⁶⁴ Labour and Employment Policy, p.3, http://www.moltm.gov.np/uploads/document/Labour%20policy-Eng-2062_20110904014004.pdf

⁶⁵ Labour and Employment Policy, p.6, para 3.3.4.

safety and health,⁶⁶ and creating a “women and family friendly” work environment by the provision of “maternal safety, security and suitable leave facilities”.⁶⁷

However, in October 2013, a representative of the Ministry of Labour told Amnesty International that there were no concrete plans to revise the Labour Act and Rules to extend them to the informal sector.⁶⁸ No tangible progress had been made on implementing aspects of the Labour and Employment Policy 2005, which committed to developing a social security system that extended to the informal sector.

The result of the State failure to extend the Labour Act and the corresponding social security system to the informal sector affects women disproportionately. According to the DHS “as women are less likely than men to be highly educated or to have attended vocational or technical schools, their employment in the professional, technical, and managerial sector is somewhat lower than men’s”.⁶⁹ For example, according to the 2011 DHS, 75% of working women were employed in the agricultural sector while only 35% of men were.⁷⁰ Furthermore, women and girls experience particular risks to their health in certain forms of work and employment, which men and boys do not – for example, they are at greater risk of uterine prolapse if they carry heavy loads, especially around pregnancy. As the informal sector is inadequately regulated by the State, women do not enjoy the equal protection of the law in terms of their labour rights. This is exacerbated by the State failure to take adequate positive measures to achieve the effective and equal empowerment of women, in particular through developing and implementing programmes that educate family members about the health risks for women and girls of carrying heavy loads before, during and after pregnancy.

INEQUALITY IN CONTROL OVER REPRODUCTION, AND THE PRACTICE OF SON PREFERENCE

The Covenant protects the right of men and women to “found a family”.⁷¹ This Committee has said

*“The right to found a family implies, in principle, the possibility to procreate and live together. When States parties adopt family planning policies, they should be compatible with the provisions of the Covenant and should, in particular, not be discriminatory or compulsory”.*⁷²

Nepal’s 2011 National Family Planning Policy aims to “fulfil the family planning needs of all men and women in all parts of Nepal”. It also states that men and women from different castes,

⁶⁶Labour and Employment Policy, p.6, para 3.3.6,

⁶⁷Labour and Employment Policy, p.9, para 3.5.10

⁶⁸ Interview with Amnesty International Nepal, 28 October 2013

⁶⁹ DHS 2011, p 58

⁷⁰ DHS 2011, p 58

⁷¹ ICCPR, Article 23 (1)

⁷² Human Rights Committee, *General Comment No. 19: Protection of the family, the right to marriage and equality of the spouses (Art. 23)*, (Thirty-ninth session, 1990), para 5.

ethnicities, religions and geographical locations will have equal access to family planning services.

Despite these policies, women in Nepal are often unable to fully exercise their right to found a family, because they are unable to control when and how many children to have. Many women Amnesty International spoke with said they were unable to make decisions on their sexual and reproductive health, including the use of contraception, because they were denied this choice by husbands and in-laws.⁷³ Some of the women interviewed, who used contraception, said that they had taken advice from their husbands and jointly decided to use it. The Nepal Living Standards Survey 2010-2011 asked women about the extent to which they were involved in decision-making on the number of children they had. It found that 66% of women made a decision jointly with their husband but 11% of women said their husband made the decision alone.⁷⁴

Many women also spoke to Amnesty International about the pressure they come under to have sons. In its report to the CEDAW in 2010, the government of Nepal acknowledged that "Because of son-preferred society, women are compelled (irrespective of consent of women as there is an indirect influence imposed by society) to try [for] at least one living son."⁷⁵

The State must guarantee women's right to control if, when and how many children to have, and must ensure that women can make decisions regarding their own sexual and reproductive health. The fact that men are able to exercise this control over women suggests a *de facto* lack of equality, which the government must address, both through measures of protection and through positive measures. Its failure to do so denotes a failure to ensure non-discrimination and equal protection of the law under the Covenant.

RECOMMENDATIONS

Amnesty International calls on the government of Nepal to:

Gender-based violence

- Revise the *Muluki Ain* to ensure that it fully complies with Nepal's obligations under international human rights law. Specifically it should ensure that the definition of rape reflects evolving international standards, that the penalty for rape committed by a husband or an intimate partner is equal to the penalty when the crime is committed by a non-partner, and that the limitation period for filing complaints for rape, is removed in line with the recommendations of treaty bodies;⁷⁶

⁷³Amnesty International, *Unnecessary Burden*, ASA 31/001/2014), at p 32.

⁷⁴ Nepal Living Standards Survey 2010/2011, p.130

⁷⁵Government of Nepal report to the UN Committee on the Elimination of Discrimination Against Women (CEDAW), UN Doc. CEDAW/C/NPL/4-5, November 2010, para 201

⁷⁶ Committee on the Elimination of Discrimination against Women, *Concluding observations on Nepal*, CEDAW/C/NPL/CO/4-5, 29 July 2011, paras 19 and 20.

- Develop a comprehensive strategy, including allocating resources, to fund and implement programmes to ensure that women, girls, men and boys understand and respect the right to bodily autonomy and to be free from all forms of violence. The programmes should include education on all legal provisions relating to gender-based violence and how those affected by violence can seek help and remedies. The programmes should also tackle attitudes which blame women and girls for the violence they suffer including address women's economic dependence on their husbands and partners;
- Fulfil the right to remedy by ensuring that the police provide a safe and confidential environment for women and girls to report incidents of violence, including sexual violence, and ensure that all such complaints are recorded and promptly, impartially and effectively investigated, and that perpetrators of these abuses are brought to justice; Take appropriate action against police who fail to record cases or investigate allegations of human rights violations, including gender-based violence against women and girls.
- Put in place a comprehensive strategy, with concrete goals and timetables, to eradicate patriarchal attitudes and deep-rooted stereotypes that discriminate against women and girls.

Equality of men and women before the law and equal protection of the law

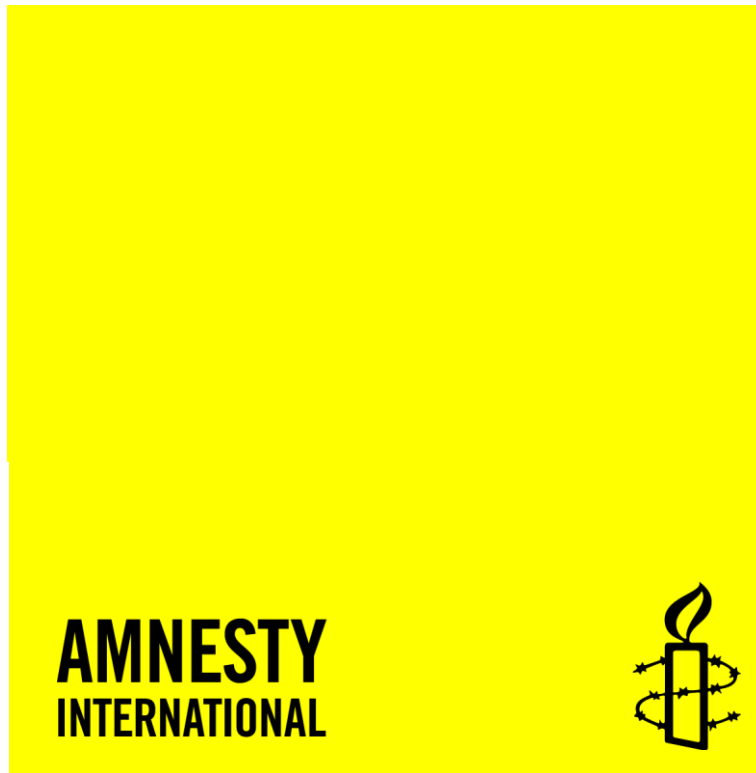
- The Parliament should amend the Labour Act and Rules to ensure that maternity benefits and social security protections comply with Nepal's international obligations to extend labour protections and paid maternity leave to all women and girls, including those working in the informal or atypical sector.
- The Ministry of Labour should fully implement the Labour and Employment Policy, 2005 and develop a social security system that extends to the informal sector, and which ensures the equal access of women to employment.
- The Ministry of Health and Population, and the Ministry of Women, Children and Social Welfare should develop and implement education programmes that target men, parents-in-law and other family members to generate awareness around the negative health impacts for women and girls of carrying heavy loads before, during and after pregnancy, and encouraging a more equitable share of work among family members.
- All government ministries should monitor the impact of all policies and programmes and collect and disaggregate data to ensure that the policy or programme is of benefit to all women and girls, without any form of discrimination. They should take action without delay to improve the situation where data suggests that women and girls from specific groups are disproportionately disadvantaged or excluded from the benefits of the policy or programme

Inequality in control over reproduction, and the practice of son preference

- Relevant government ministries, including Ministry of Women, Children and Social Welfare and the Ministry of Health and Population should cooperate to address persistent beliefs justified by culture, tradition or religion, such as the preference for sons that

adversely impact women's control over decisions around if, when and how many children to have.

- The Ministry of Health and Population, the National Health Training Centre and the National Health Education, Information and Communication Centre should strengthen their awareness-raising and educational efforts targeted at women, girls, men and boys on all available options for contraception. It should include the rights of women and girls to freely decide if, when and how many children to have. Such programmes should not, under any circumstances, result in women and girls being coerced or pressurised to make particular decisions on contraception.
- The Ministry of Health and Population should increase its efforts to address the "unmet need" for contraception by prioritizing universal access to the full range of contraceptive methods, information, and services, including emergency contraception. It should ensure that women and girls are not excluded because of their gender, sex, age, marital status, sexual orientation or any other factor which contributes to them experiencing discrimination.



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