

Universal Periodic Review of NEPAL

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&

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Executive Summary

1. This report highlights the status of women's right to safe abortion in Nepal, which has been legal since 2002. The National Safe Abortion Policy was developed in 2003, and the government began providing Comprehensive Abortion Care (CAC) services from March 2004. Yet despite the progressive laws and policies on access to safe abortion services, women's right to safe abortion remains unfulfilled due to the following reasons.
2. Although local health facilities are registered for CAC, many remain nonfunctional due to the absence of trained health personnel. This is because the majority of service providers prefer to work in urban areas, which results in the lack of trained health providers in rural public health settings. In addition, long waiting time, lack of privacy and confidentiality, and prioritization of services other than abortion in public health facilities are other barriers.
3. The fact that abortion is legal in Nepal does not and cannot guarantee that women have access to adequate and supportive abortion facilities. There are too many constraints such as lack of knowledge about the legalization, lack of human resources, distant health facilities, and geographical barriers in many parts of Nepal particularly in the rural areas.
4. In Nepal because of patriarchy, having an abortion is generally associated in society with a lack of morality that leads to losing status in the community. This cultivates feelings of guilt and stigma among women about having an abortion, and they will hesitate to openly access CAC services and instead revert to traditional unsafe remedies, which in some cases are even fatal.
5. Although the Supreme Court ordered the government (*Lakshmi Dhikta Vs Nepal Government* case) to make a separate law on abortion disassociating it from discussions on murder, and to ensure that cost is not a barrier for women to access the service, legal provisions for abortion still reside in the chapter on life in the National Civil Code (*Muluki Ain*). No comprehensive safe abortion law has been enacted yet, though a draft has been submitted to the Ministry of Health and Population (MoPH) by civil society organizations working in this issue, including Beyond Beijing Committee. Further, for women to access the service free of charge, the process to prove that they are unable to pay is a long one.
6. For the reasons listed above, women put their life and health at risk seeking unsafe or illegal abortions increasing morbidity or even death among women.

Progress and gaps in the implementation of recommendations from the 1st cycle of the UPR

7. In the first cycle of the Universal Periodic Review (UPR), Nepal did not receive any specific recommendations relating to women's right to safe abortion. However, the compilation of UN information recorded a concern raised by the Committee for Economic, Social and Cultural Rights regarding the inadequate number of staff and supply of health posts as well as the cost of reproductive health services, which continue to place women at risk. The Committee also highlighted that traditional attitudes among some castes and ethnic groups contributed to reproductive health problems for women. However, the government has not taken any actions in this regard.
8. A recommendation from Slovakia to review the legal framework and provide better protection and promotion of women's rights relates also to the protection and promotion

of women's right to safe abortion. This recommendation was accepted by the Government of Nepal (GoN). In its action plan on the implementation of UPR recommendations, the GoN planned to review laws that discriminate against women, with the view to better protect and promote women's rights as a result. However, no progress has been made regarding women's right to access safe abortion, which still resides in the chapter on life in the National Civil Code (*Muluki Ain*).

Background

9. Nepal's interim constitution recognized reproductive rights as fundamental rights of women. Nepal legalized abortion in September 2002 after many years of intensive research, advocacy, and lobbying. Before 2002, there was a provision of punishment to any woman if found that she had had an abortion. Currently, the abortion law under 12th amendment of National Civil Code allows women to terminate their pregnancy under the following conditions: pregnancies of 12 weeks gestation or less for any woman on her own decision, pregnancies of 18 weeks gestation if the pregnancy is a result of rape or incest, and pregnancies of any duration with the recommendation of an authorized medical practitioner if the life of the mother is at risk, if her physical or mental health is at risk, or if the fetus is deformed.¹ According to Nepal's law, comprehensive abortion care is to be safe, accessible, and affordable, and is to be available with equity and equality for all women belonging to different social and economic groups. In addition, only doctors and health workers who are specially trained on safe abortion care can provide these services. However, the law prohibits abortions done without the consent of the woman, sex-selective abortions, and abortions performed outside the legally permissible criteria².
10. The increasing trend in the utilization of abortion services shows that more and more women are seeking safe abortion services³. This has contributed to a large decline in the country's maternal mortality rate (MMR), reducing the number of women who died from pregnancy related complications from 539 per 100,000 live births in 1996 to 281 in 2006, and down to 229⁴ in 2008/2009.
11. The liberalization of the law led to the formulation of the National Safe Abortion Policy in 2003. This guarantees access to safe and affordable abortion services to women without discrimination. The Government issued a Safe Abortion Service Procedure in 2004 and began providing comprehensive abortion care (CAC) services from March 2004, 18 months after the legalization of abortion. There are currently 245 registered sites covering all 75 districts in the country⁵.

¹Ministry of Health and Population (MoHP), New Era & ICF International. (2012). *Nepal demographic and health survey 2011*. Kathmandu.

²Ministry of Health and Population (MoHP), New Era & ICF International. (2012). *Nepal demographic and health survey 2011*. Kathmandu.

³Department of Health Services (DoHS). (2013). *Department of Health Services: Annual report 2068/69*. Kathmandu.

⁴Samandari, G., Wolf, M., Basnett, I., Hyman, A., & Andersen, K. (2012). Implementation of legal abortion in Nepal: A model for rapid scale-up of high-quality care. *Reproductive Health, 9*(7).

⁵Ministry of Health and Population (MoHP), New Era & ICF International. (2012). *Nepal demographic and health survey 2011*. Kathmandu: Author.

12. The legal provisions for abortion currently reside in the chapter on life in the National Civil Code (*Muluki Ain*) even after its 11th amendment in 2002. Punishments for crimes against human life such as murder are also found in this section, implicitly identifying abortion as a crime akin to murder. Abortion will be punishable on the following two conditions: 1) sex selective abortion; and 2) abortion without the consent of the pregnant woman.⁶ No one shall conduct an amniocentesis test to perform an abortion on the basis of sex. The Bill establishes punishment of imprisonment of 3 to 6 months if the person conducts or causes to be conducted such amniocentesis test, and additional punishment of one year imprisonment to the person who performs or causes to be performed an abortion on the basis of sex.
13. In the decision in the case of *Lakshmi Dhikta v. Nepal Government*, the Supreme Court ruled that the government must guarantee access to safe and affordable abortion services. In this landmark decision issued on May 20, 2009, Nepal's Supreme Court directed the government – specifically the Office of the Prime Minister and the Cabinet, the Ministry of Health and Population, the Ministry of Law, Justice, and Constituent Assembly Affairs, and the Ministry of Women, Children, and Social Welfare – to enact a comprehensive law and to take several necessary measures to guarantee women's right to safe abortion services. The Court ruled that women face obstacles that obstruct their access to safe abortion services. It instructed the government to take the following steps⁷:
- Introduce a comprehensive abortion law;
 - Expand and decentralize abortion services to ensure broad access to safe and legal abortions;
 - Establish a government fund to cover abortion costs for poor women; and
 - Launch awareness programs to educate the public about abortion rights and address the misconceptions in Nepal about abortion.
14. Safe abortion services protect a woman's right to health. The right to health has been interpreted by various treaty monitoring bodies to require governments to respond appropriately to ensure that women are not exposed to the risks of unsafe abortion. Such measures include removing legal restrictions on abortion and ensuring access to high quality abortion services. Indeed, the Programme of Action adopted at the United Nations International Conference on Population and Development in Cairo in 1994 states that governments should deal with the health impact of unsafe abortion as a major public health concern⁸. The concluding observations from CEDAW committee for Nepal Government's 4th and 5th periodic report under health theme state -"Improve access to abortion services throughout the country".
15. The review of the legal framework concerning access to safe and legal abortion has been completed yet no comprehensive safe abortion law has been formulated. A civil society alliance has been putting pressure on the government to enact a separate safe abortion law

⁶Center for Research on Environment Health and Population Activities (CREHPA). (2006). *Unsafe Abortion, Nepal Country Profile*. Retrieved from http://www.crehpa.org.np/download/unsafe_abortion_nepal_country_profile_2006.pdf

⁷Retrieved from http://reproductiverights.org/sites/crr.civicactions.net/files/flash/LBS_LAKSHMI%20DHIKTA_FINAL%20NOV2010.pdf

⁸International Planned Parenthood Federation (IPPF). (2008). *Access to safe abortion: A tool for assessing legal and other obstacles*. United Kingdom: IPPF.

and has submitted a draft law to the Ministry of Health and Population of Nepal. However there has been no response or further action from the Ministry yet.

Problem identification

16. In Nepal, the fact that abortion is legal does not and cannot guarantee that women have access to adequate and supportive abortion facilities. There are too many constraints such as lack of knowledge about the legalization of abortion, lack of human resources such as certified doctors and nurses in many parts of Nepal particularly in the rural and remote areas, lack of confidence of women and their own perception, financial obstacles due to regulation on the fee for abortion especially in the private sector, a male-dominant society, culture and social taboos and stigmas and geographical barriers, among others.
17. **[lack of/inadequate service providers]** Legality of safe abortion do not guarantee that all women have access to safe abortion or are able to enjoy their rights. Increasing access to safe and affordable abortion care, thereby decreasing unsafe abortion practices by women especially in rural areas, are some of the major post-legalization challenges. The GoN has approved the provision of comprehensive abortion care (CAC) services in public (government) hospitals and selected non-government clinics which are located in the urban/peri-urban areas or at the district headquarters of the country. Out of 9 health facilities approved for CAC services that BBC has monitored, 2 are unable to provide full time CAC services due to the limited number of health personnel. With service providers preferring to be posted in urban areas, public facilities in the rural areas have suffered. Moreover, due to long waiting time and insufficient time given to patients in public CACs and prioritization of other services such as safe delivery and family planning, women are discouraged from accessing the service from public CACs. BBC's own experience shows that women tend to get medicines for medical abortion from private pharmacies when there is no skilled provider in the nearby health facility. This has increased the number of women with complications visiting health institutions for post abortion care (PAC).
18. **[lack of knowledge regarding legality of abortion]** According to the Nepal Demographic Health Survey (NDHS) 2011, only 38% of women are aware about the legalization of abortion. Nearly two-fifths of women did not know under what circumstances abortion in Nepal is legal. This was especially true for women in rural areas, those with no education, and those in the lowest wealth quintile. 59 percent of women aged 15-49 reported not knowing a place where a safe abortion can be obtained. Knowledge of a safe abortion place is higher among urban, educated, and wealthy women. Women who report knowing places for safe abortion are more likely to mention the government sector (71 percent) than the private sector (58 percent) or the nongovernment sector (29 percent). The level of awareness about legalization among adolescents, laborers, rural, uneducated and *Magar* women were less whereas among women of age group 20-34 years, urban residents, service holders, *Brahmin/Chhetri* caste and higher educated women there was greater awareness. The majority of the women received information from the media, and health personnel were the least common source of information⁹. Among women presenting to hospitals in Nepal with complications following induced abortion of pregnancy, the majority had undergone medically induced abortions using unknown substances acquired from uncertified sources. Women using medications and those accessing uncertified providers were less aware that

⁹Tuladhar.,H & Risal.,A (2010). Level of awareness about legalization of abortion in Nepal: A study at Nepal Medical College Teaching Hospital. *Nepal Med College Journal*, 12(2), 76-80.

abortion is now legal in Nepal. These findings highlight the need for continued improvements in the provision and awareness of abortion services in Nepal.¹⁰ Knowledge regarding the legal context is essential for women to be able to access the service within the specified time frame and from a registered facility. This contributes to reducing the cases where women needing abortion, who are more than 12 weeks pregnant, cannot receive the service legally and ultimately find alternate unsafe methods to terminate their pregnancy.

19. [**lack of rural women's access to safe abortion**] Women in rural areas face many constraints and barriers in accessing abortion services, such as lack of knowledge about the legalization of the service, lack of human resources in health facilities, distant health facilities, geographical barriers, a male-dominant society, culture and social taboos and stigmas, among others. Women from the lower economic background and marginalized groups are often vulnerable to traditional unsafe methods of abortion due to inaccessible and inadequate abortion services. This puts women at risk of seeking out unsafe or illegal abortion methods, increasing morbidity and mortality among women.
20. [**Stigma and discrimination**] Abortion stigma violates women's most basic human rights including the right to be free from gender-based discrimination, the right to privacy and the right to the highest attainable standard of health¹¹. In Nepal because of patriarchal norms and beliefs, having an abortion has been associated in society with women losing morality and status in the community, cultivating a feeling of guilt among women. Abortion stigma affects all levels and groups of women and prevails at the community level, including among service providers, having a negative impact on confidentiality in service provision. This leads to women seeking over-the-counter medication to terminate pregnancies¹², or using traditional and unsafe remedies, which in some cases are fatal.
21. [**Financial obstacles**] In the decision of the *Lakshmi Dhikta Vs Nepal Government* case¹³, the Supreme Court states that legal provisions on abortion must be contained in a separate law and cost should not be a barrier for women to access the service. According to the Nepal Demographic Health survey, 2011, nearly one in two (48 percent) women with an abortion in the five years preceding the survey said that they paid more than Nepalese Rupees 1,500 for their most recent abortion, while 36 percent paid between 1,000-1,500 and 10 percent paid less than 1,000. Only 6 percent of women mentioned that they had

¹⁰Rocca,C., Puri, M., Dulal, B., Bajracharya, L., Harper, C., Blum, M., Henderson,J.,(2013) Unsafe abortion after legalisation in Nepal: a cross-sectional study of women presenting to hospitals. *BJOG*120(9).

¹¹ United Nations Human Rights Council. (2012). Technical guidance on the application of a human rights based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality:Report of the Office of the United Nations High Commissioner for Human Rights (A/HRC/21/22).Retrieved from http://www2.ohchr.org/english/issues/women/docs/A.HRC.21.22_en.pdf

¹²Center for Research on Environment Health and Population Activities (CREHPA) & Program for Appropriate Technology in Health (PATH). (2007). *The Influence of Male Partners in Pregnancy Decision-Making and Outcomes in Nepal: Executive Summary*. Kathmandu: CREHPA & PATH

¹³Centre for Reproductive Rights (CRR). (2011). Nepal Supreme Court: Abortion Is a Right. Retrieved from <http://reproductiverights.org/feature/nepal-supreme-court-abortion-is-a-right>

obtained free abortion services.¹⁴ For women to avail of a free service, the process to prove that they are unable to pay is a long one and thus women hesitate to avail of it and eventually may turn to unsafe methods.

Recommendations for action:

22. Increase the number of CAC services to address the needs of marginalized women and women in rural settings with adequate staffing, adequate time frames and short distances to health facilities.
23. Develop and implement effective strategies to increase sensitivity among health service providers to maintain privacy/confidentiality of abortion seeking clients and treat them with dignity and a non-judgmental attitude.
24. Undertake awareness raising activities, especially among rural and marginalized communities, particularly women, through more IEC/public awareness efforts to impart correct knowledge and easy to understand information about abortion rights, legal provisions and safe abortion (CAC) services.
25. Enact a comprehensive abortion law that codifies the legal principles and establishes a concrete, rights based legal framework for ensuring access to affordable and high-quality safe abortion services to all women needing them.
26. Develop and implement strategies to eliminate abortion stigma against women who undergo abortions, at the individual, community, institutional and policymaking levels.
27. Put in place effective mechanisms to provide free safe abortion services to poor women who are not able to pay for it.
28. Ensure quality care for safe abortion addressing adequate supplies, infrastructure and safe procedures at all existing health facilities to minimize complications during, and post abortion.

¹⁴Ministry of Health and Population (MoHP), New Era & ICF International. (2012). *Nepal demographic and health survey 2011*. Kathmandu: Author.