

# NEPAL CIVIL SOCIETY SUPPLEMENTARY REPORT ON THE CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

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THIRD, FOURTH AND FIFTH CONSOLIDATED REPORT  
(Covering April 2004 to June 2014)

**SUBMITTED TO:**  
**THE UN COMMITTEE ON THE RIGHTS OF THE CHILD**

**Date of Submission:**  
**July 1, 2014**

**SUBMITTED BY:**  
**CRC REPORTING COALITION NEPAL**



## Partners



## Abbreviation and Acronym

CBS	: Central Bureau of Statistics
CCWB	: Central Child Welfare Board
CDOs	: Chief District Officers
CFLG	: Child Friendly Local Governance
CNet	: Child Rights Net
CRC	: Convention on the Rights of the Child
CROs	: Child Rights Officers
CZOPP	: National Coalition for Children as Zones of Peace and Child Protection CONSORTIUM: Consortium of Organizations Working for Child Participation
DCWBs	: District Child Welfare Boards
GoN	: Government of Nepal
HRTMCC	: Human Rights Treaty Monitoring Coordination Centre
IDPs	: Internally Displaced Persons
ILO	: International Labour Organization
MoFALD	: Ministry of Federal Affairs and Local Development
MoWCSW	: The Ministry of Women, children and Social Welfare
NACRO	: National Alliance of Child Rights Organizations
NAOSC	: National Alliance of Organizations Working for Street Children
NCPA	: National Child Protection Alliance
NHRC	: National Human Rights Commission
NHRIs	: National Human Rights Institutions
OPAC	: Optional Protocol on the Involvement of Children in Armed Conflict
VDC	: Village Development Committee
WCOs	: Women and Children Officers

## EXECUTIVE SUMMARY

There have been some instrumental, infrastructural and institutional developments in the sector of child rights after the concluding observation in 2005. However, there are gaps in various policies, guidelines and frameworks introduced by Nepal and practical implementation of these legislations is not satisfactory.

Nepal's country report on CRC and its optional protocols are not widely published and disseminated. They are neither translated in the Nepali language nor in child friendly language and version. Various Nepalese laws are inconsistent within themselves in defining the age of children and their maturity, thus they need harmonization.

Despite the establishment of various agencies, departments, offices, centers and focal points, coordination between them is not satisfactory. NHRC does not hold strong mandate and lack human and financial resource for the independent monitoring of the child rights. Nepal does not have a system of centralized data recording and management system.

Even after the end of armed conflict, political parties often organise assembles and meetings in school premises. Cases have been recorded of many residential child care homes run without attaining minimum standard.

Gender discrimination is still highly prevalent in all aspects, such as, in the sector of health, education, economic opportunities. Girls from *Dalit* families or girls with disabilities face multiple discriminations. Best interest of the child is not served as there is no such provision of law that guarantees minimum standard of living, nutrition and healthcare to the children.

Nepal has often cited its poor economy and educational facilities as reasons for thousands of children working as labour, squandering their precious childhood in workplaces. In absence of shelter and other services for children withdrawn from the labour force, in general, child labourers are not rescued and withdrawn.

Nepalese laws do not adequately protect children working in informal sectors. The views of the child are not given sufficient consideration in all areas of children's lives. Nepalese laws are absent regarding children's right to opinion.

Birth registration of children is not a common practice and in priority of majority of parents. Children of refugee, asylum seekers, children born to foreign fathers, abandoned children, orphans, children born to single mothers (rape-victims, abandoned girls) who may not be able to identify or unable to produce father of their children before the VDC/municipalities are unable to register their child in local authority.

Freedom of expression, thought, conscience and religion are neglected rights for children. There is growing trend of proselytizing of youths and children to other religions from their guardians' religion baiting them with food, clothes and other benefits. Many children lack adequate and sufficient information to access to education, healthcare, legal services and to access to other social security benefits offered by state as well as from non-state sectors. Residential care is

preferred against alternative care. Many residential care facilities do not meet quality standards in conformity with the Convention and they are not regularly monitored.

Existing legal measures are inadequate and have ample loopholes to effectively control illicit transfer of children. Adoption cases are registered in local revenue offices and the officers at revenue offices are not fully equipped with the technical expertise to handle the cases of inter-country adoption. Once a child is adopted, especially in foreign land, there is no strong mechanism to avoid the termination of responsibility of biological parents. There is no strong mechanism and practice of monitoring of practice of placing children in the place of adoption.

Parental care as the right of children has not been ensured by the law. Neglect of a child is neither a punishable offence nor any law makes parents liable for compulsorily providing protection and care as required by the principles of CRC. Services for the physical and psychological recovery and social reintegration of victims of sexual and other forms of abuse, neglect, ill-treatment, violence or exploitation are not systematic, inadequate and scattered to various institutions.

There is no national system for early detection and intervention or system of referral with regard to children with disabilities. Children with mental disabilities generally are not got enrolled in schools. These children are discriminated and socially marginalized in many ways. Girl child with disabilities are further underprivileged.

Regardless of government services on health sector, there is overcrowding in government hospitals in cities and no health professionals, equipments and medicines in the hospitals in rural parts. There is no system of health insurance. Vast majority of Nepalese visit traditional health practitioners who lack appropriate knowledge of basic first aid and health care. Various harmful traditional practices prevalent and practiced in Nepal also adversely affect on adolescence health. Lack of employment opportunities and low income is still a hurdle for the parents to ensure adequate standard of living for their children. Nepal government does not have any housing plan for the people who do not have shelter and for the people living in squats and in slums.

Lack of quality education, unavailability of school close to the place of residence, discrimination and corporal punishment at school, and financial cost of attending school are some of the reasons for the right to education not being properly exercised by Nepalese children. 'Free and compulsory education' in Nepal is in practice neither compulsory nor free with hidden costs associated with schooling.

Nepalese laws have ignored the importance of recreation and participation of children in cultural and artistic activities. Many children from poor families think that only the children of rich people can have right to recreation.

Lack of laws regarding the protection of refugee children has resulted in the rights of such refugee children being neglected. They are denied protection and application of law. Nepalese laws do not precisely define the crimes of child prostitution, child pornography, harassment and neglect of children. Lack of effective victim protection system leads to stigmatization of victim and they are discouraged to register their complaints in police.

Neither the constitution nor the Act defines ‘torture’ as a punishable offence. Beating of children and students for their benefit and welfare is still regarded reasonable. Beating of children and students for their benefit and welfare is still prevalent in majority of societies in Nepal.

Many conflict affected children, whose parent(s) was/were killed or forcibly disappeared was/were unable to get compensation or reparation package because of lack of information or inaccessibility to such relief packages. Use of children in strikes, political demonstrations and rallies by the political parties is frequently reported by media.

Rehabilitative care of needy children has been one of the neglected issues of child rights in Nepal. Despite various legislations, policies and mechanisms, these are not in conformity with international juvenile justice standards. Numbers of cases have been reported that persons under 18 are not separated from adults while in detention due to lack of juvenile detention facilities. Condition of detention and facilities provided to the detainees are not as par to the standards.

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## **Report Preparation Process**

NGOs working in the sector of child rights were invited to join the report preparation process. A series of meetings were held among civil society actors to initiate a supplementary report preparation process. A wider coalition of networks, consortium, coalition, centre and alliance working in the sector of child rights was formed to prepare a single report from the child rights NGOs from Nepal. This was given name as ‘*CRC Reporting Coalition, Nepal.*’ A team of experts on child rights were assigned to identify the gaps in the state report of the CRC submitted by Nepal and to prepare a draft supplementary report. The report was reviewed by a panel of experts and finalised by *CRC Reporting Coalition, Nepal.*

### ***Formation of CRC Reporting Coalition Nepal***

Envisioning the need of synergized efforts among civil society organizations to carry out CRC monitoring and reporting, initiations to form *CRC Reporting Coalition, Nepal* began from 2012 and formally created on July 15, 2013. It comprises seven active networks/coalitions working on child rights in Nepal. It was coordinated by *CRC Committee, Human Rights Treaty Monitoring Coordination Centre (HRTMCC), National Coalition for Children as Zones of Peace and Child Protection (CZOPP), Consortium of Organizations Working for Child Participation (CONSORTIUM), National Alliance of Organizations Working for Street Children Nepal (NAOSC), National Child Protection Alliance (NCPA), Child Care Homes' Network Nepal (CNet)* and *National Alliance of Child Rights Organizations (NACRO)* are the members of *CRC Reporting Coalition Nepal*. Its mandate is to prepare and submit the civil society report of CRC and its optional protocols and involve in pre-while-post CRC monitoring and reporting as well as follow-up and advocacy activities in Nepal. It comprises an advisory committee, experts' committee and report write-up team. This coalition coordinated to prepare and submit the civil society report of 3rd/4th/5th consolidated CRC supplementary report as well as the supplementary report on the *Optional Protocol on the Involvement of Children in Armed Conflict (OPAC)* and child-led-report coordinated by CONSORTIUM Nepal.

This report carries one voice of all the child rights organizations as well as the voice of children of Nepal before the *Committee on the Rights of the Child*.



## **INTRODUCTION**

This report has been prepared by the civil society organizations of Nepal to supplement the third, fourth and fifth combined periodic reports of Nepal on the implementation of *the Convention on the Rights of the Child* (CRC) submitted to the Committee on the Rights of the Child (hereinafter referred to as ‘the Committee’) in April 2012.

This report reflects the situation of enjoyment of the rights of the child mentioned in the CRC in Nepal from April 2004 to June 2014 evaluating the constitutional and legal arrangements, government initiatives, programmes, policies, mechanisms and actions. Each section concludes with civil society’s recommendations to the Government of Nepal.

The reporting format has been followed as prescribed by the *Committee on the Rights of the Child*.

### ***Methods of Study***

#### *Review of national legal framework*

A review of the existing national legal framework and other legal arrangements regarding children seeking conformity with the CRC and other relevant international standards was conducted. National plans, policies, commitments and initiatives of Nepal to ensure child rights were also reviewed.

#### *Review of government program and activities*

Government programs and activities to address the issues of child rights were reviewed to check whether they met international obligations. The implementation of these programs were verified through interaction with stakeholders in consultation meetings.

#### *Collection and analysis of primary and secondary data*

Primary as well as secondary data was collected as per the necessity of the study. Focus group discussions and consultations were held with stakeholders, child rights activists and children to gather primary data. All together 284 youths and stakeholders and 181 children were consulted. The coalition had created a selection guideline for children and adults to participate in the consultation which facilitated the inclusiveness in selection of participants in terms of gender, disability, geography, ethnicity, race etc. Local community based organizations coordinated in inviting and selecting the participants based on the guideline. Secondary data was collected from published and unpublished sources from various organizations, government agencies and stakeholders.

*Six Consultative meetings* were held in all five development regions of Nepal with concerned stakeholders and children to receive suggestions and feedback to finalise the

report. National level consultations were held with experts and representatives of various human rights and children's organizations with experience in the field in cooperation with National Human Rights Commission (NHRC).

A relevant *case study* was compiled from consultation meetings.

## **9. GENERAL MEASURES TAKEN FOR THE IMPLEMENTATION OF THE CRC(Articles 4, 42, 44.6)**

### **A. Implementing Children's Rights (Art. 4 and 41)**

After the ratification of the *Convention on the Rights of the Child (CRC)* by Nepal on September 14 1990, *Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography* on the date of January 20, 2006, and the *Optional Protocol to the CRC on the Involvement of Children in Armed Conflict* on January 3, 2007, the provisions of these treaties obtained legal status above the domestic laws in the legal system of Nepal<sup>1</sup>.

#### **Concluding Observations of the CRC Committee in 2005 on legislative reform**

*The Committee* is concerned at the inadequate measures adopted at national level in full conformity with the principles and provisions of the Convention<sup>2</sup>. Even after 18 years of concluding observation on the initial report and nine years after the second periodic report of Nepal, the coalition finds number of Nepalese laws which require amendment to harmonize them with the principles of the CRC.<sup>3</sup>

The Committee was also concerned about the gap between existing legislation and its practical implementation<sup>4</sup>. The Committee had also urged to strengthen implementation of legislation<sup>5</sup>. There have been some instrumental, infrastructural and institutional developments in the sector of child rights after the concluding observation. However, the coalition views gaps in various policies, guidelines and frameworks introduced by Nepal and practical implementation of these legislations is not satisfactory.

The Committee's recommendation to strengthen the process of achieving compliance of Nepalese legislation, in particular, the *Children's Act, 1992* with the principles and provisions of the Convention has not yet been implemented well. Nepal still has the same 1992 Act without amendment. A new Children's Bill has been drafted but not yet been tabled in the Legislature-Parliament and adoption of this new law has not got priority. In addition, the draft Bill is not adequate as it does not specify the clear structures and mechanisms for child protection.

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<sup>1</sup> (Treaty Act 1990, Section 9)

<sup>2</sup>Section 10, Committee on the Rights of the Child, Concluding observations on Nepal, CRC/C/15/Add.57 (Twelfth session, 1996).

<sup>3</sup>Legislative review p.

<sup>4</sup>Para 10, Committee on the Rights of the Child, Concluding observations on Nepal, CRC/C/15/Add.57 (Twelfth session, 1996).

<sup>5</sup>Section 19, Committee on the Rights of the Child, Concluding observations on Nepal, CRC/C/15/Add.261(Thirty-ninth Session 2005)

The reflection of the government's expression and commitment to ensure the rights of the child can be seen in fundamental rights and responsibilities, directive principles and policies of the state in the *Interim Constitution of Nepal, 2007*. Child specific instruments like *Children's Act, 1992*; *Child Labour (Prohibition and Regulation) Act, 2000*; *Children's Rules, 1995*; *Children Development and Rehabilitation Fund Rules, 1996*, *Juvenile Justice (Procedure) Rules, 2006* and *National Child Policy 2012* have addressed children's issues and shown its commitment for the full implementation.

*CRC Reporting Coalition Nepal* (hereinafter called 'the Coalition') finds words and terms used in some provisions of these Acts and Rules vague and ambiguous. These vague and ambiguous terms in the above mentioned laws are hindering for the full enjoyment of the rights accorded in the Convention. Some provisions in these laws mention 'may' in many places putting in confusion whether it is merely a discretionary power of the person in authority or a right that every child can claim.

### **Recommendation of the Committee on the National Plan of Actions for Children 2004/05-2014/15**

The Committee on its recommendation had urged the State Party to allocate sufficient resources for effective implementation of the National Plan of Action<sup>6</sup>. The Three-Year National Action Plan on Human Rights (2010/11-2012/13) implemented by Nepal government does not reflect on substantive change in the human rights situation in Nepal.

### **Recommendation of the Committee on Coordination**

The Committee's recommendation to appoint or establish a single inter-ministerial and inter-sectoral mechanism for the coordination, monitoring and evaluation of all activities regarding the implementation of the Convention<sup>7</sup> is still not in place. The Ministry of Women, Children and Social Welfare (MoWCSW) is the focal Ministry for coordination and collaboration with other sectoral ministries. A number of other sectoral Ministries, Departments, Offices, Child Rights Officers (CROs), Women and Children Officers (WCOs), Chief District Officers (CDOs), Labour Offices, Central Child Welfare Board (CCWB), District Child Welfare Boards (DCWBs), Municipalities and Village Development Committees (VDCs) have also been assigned responsibilities to work for the protection and promotion of child rights. However, there is gap in the coordination among these authorities to fulfil the same goal. CCWB and DCWBs are created with weak institutional strengths. The resources, including human, allocated to CCWB, DCWB and the district based focal offices are insufficient to carry out activities as required. Their roles and responsibilities of child rights officers regarding child protection are not clear.

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<sup>6</sup>Section 20, 21, Committee on the Rights of the Child, Concluding Observations on Nepal, CRC/C/15/Add.261(Thirty-ninth Session 2005).

<sup>7</sup>*Ibid* Section 23.

### **Recommendation of the Committee on Independent monitoring**

The Committee's recommendation on allocation of sufficient human and financial resources to enable their effective monitoring of the implementation of the Convention is still challenging. National Human Rights Commission of Nepal has not been effective as there have not been appointment of Commissioners since September 16, 2013 after their term was ended. NHRIs independency has been challenged by the newly enacted *National Human Rights Commission Act, 2012* which empowers Attorney General to inform the NHRC that case cannot be initiated on which the NHRC had initiated under Clause (c) of Sub-Article (2) of Article 132 of the Constitution<sup>8</sup>. NHRCs recommendations on child rights to the Government of Nepal have not been satisfactorily implemented<sup>9</sup>. The Child Rights Desk at the NHRC has now been named as *CRC Focal Person*. It does not hold mandate to receive complaint on child rights violation. There is no sufficient separate budget to work for the rights of children.

Child Rights Officers (CROs) have been recruited in all 75 districts of Nepal on a temporary basis. CROs are working for the protection and promotion of child rights. CROs have so far been funded by External Development Partners and the MoWCSW has no plan to institutionalize the posts. Not all child clubs are functional. Their capacities are very limited and participation of the most marginalised and children with disabilities are very limited. Most child clubs do not have their own room to organise meetings, keep their goods and tools.

### **Recommendation of the Committee on Resource allocation for children**

Budget allocated to children are found being used in diversified developmental activities in many districts, and are not focused especially for the protection and promotion of child rights. There is no child budget tracking and auditing system.

### **Recommendation of the Committee on Data collection**

The Committee's recommendation to develop a system of data collection and indicators consistent with the Convention and disaggregated by gender, age, parish and dependency<sup>10</sup> is still not in place. Central Bureau of Statistics (CBS) carries population survey in every ten years however, this survey is unable to provide data as suggested by the *Committee*. It is remarkable that Government of Nepal (GoN) presented some data in its report. Despite that, Nepal does not have a system of centralized data recording and management system. Neither GoN nor any organization has accurately present data on child abuse, sale and trafficking; children in prostitution, child labour, street children, children affected by conflicts, children with disability, children affected by HIV and AIDS, and in many other areas of children's concern.

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<sup>8</sup> Interim Constitution of Nepal, Article 17(10).

<sup>9</sup> NHRC, *Implementation Status of national Human Rights Commission And Universal Periodic Review Recommendations on Child Rights*, 2013

<sup>10</sup>Section 29 and 30, Committee on the Rights of the Child, Concluding Observations on Nepal, CRC/C/15/Add.261(Thirty-ninth Session 2005).

## Comments on state report on implementation of the child rights

Delayed submission of periodic reports by GoN has hampered timely evaluation of progress made by Nepal as highlighted in the concluding observations. It is obvious that when three periodic reports are combined in one, the civil societies are also bound to limit information and concerns of those periods in one report. This practice results on narrow information and analysis as information of three periods are filled in one report.

Due to long transitional period, non-consensus among political parties on state restructuring and model of governance, constitution making is still not taking its pace. This has affected on amendments of legislations to harmonize them with ratified treaty provisions and recognized standards of justice. Ultimately, it has negatively contributed for non-implementation of children's rights.

Even though the *Comprehensive Peace Accord of 2006* between the then insurgents and other political parties consists of a number of commitments related to the rights of the child, including an end to misuse of schools, teachers and students for political purposes<sup>11</sup>, and aims to ensure the rights of women and children and commits to provide special protection to children and women, prohibiting all types of violence against women and children, such as child labour, child marriage, sexual exploitation, harassment, and abuse<sup>12</sup>; the coalition witnessed numbers of incidents of organizing political assemblies and meetings in school premises. There are reported cases of involvement of children in election campaigning and in rallies<sup>13</sup>.

Domestic violence is still a severe problem. Rape of girls is in alarming trend<sup>14</sup> but not all cases are reported and children are the victims and witnesses of those incidences. Child labour is widespread and perpetrators are not stringently held accountable and taken action as criminal offenders. Nepalese laws do not precisely define the crimes of child prostitution, child pornography, harassment and neglect of children.

Constitutional guarantee of the rights of children<sup>15</sup> have not become visible in practical implementation. State report in its *paragraph 12, 13 and 14* provides a list of ratified treaties, acts, regulations, policies and plan of actions. The state report also mentions about guidelines for the Child Friendly Local Governance (CFLG) under the Ministry of Federal Affairs and Local Development (MoFALD), in collaboration with development partners<sup>16</sup>. The report states that CFLG has been implemented in 23 districts and is in the process of covering all the 75 districts of Nepal. The consultation meetings revealed that the institutional orientation is very weak due to lack of human resource gap in order to materialize CFLG initiatives.

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<sup>11</sup>Para 8, of the State Report of Nepal (CRC/C/NPL/3-5)

<sup>12</sup>Article 7.6 of the CPA

<sup>13</sup>Information collected from consultation meetings with children and stakeholders

<sup>14</sup>In the year 2012/13, 677 cases of rape and 1800 cases of domestic violence was registered in police. However there is no disaggregated data on the exact number of children and adults. Source: <http://www.nepalpolice.gov.np/women-children-service-directorate.html> accessed on 28 June, 2014.

<sup>15</sup>Para 8, of the State Report of Nepal (CRC/C/NPL/3-5)

<sup>16</sup>*Ibid*, Para 15

Despite the enactment of the *Comprehensive Standards for Operation and Management of Residential Child Care Home* in 2012, there have been cases recorded of such residential child care homes run without attaining minimum standard. Rigorous monitoring of such homes is not taking place.

<b>Recorded Cases of Child Rights Violation in the Year 2013</b>						
Types of Events	By State		By non-state actors			Grand
	Female	Total	Female	Male	Total	Total
Child labour			4	3	7	7
Child marriage			18	2	20	20
Child trafficking			51	15	66	66
Corporal punishment			26	58	84	84
<i>Kamalari</i>			7	-	7	7
Killing of newborn baby			16	11	27	27
Rape			406	-	406	406
Sexual abuse	1	1	171	10	181	182
<b>Total</b>	<b>1</b>	<b>1</b>	<b>699</b>	<b>99</b>	<b>798</b>	<b>799</b>

Source: *Informal Sector Service Centre (INSEC), Nepal: Human Rights Year Book 2014*

The above mentioned statistics present an alarming problem of child protection.

## **B. Dissemination of Information on the Convention on the Rights of the Child (Art. 42)**

### **Recommendation of the Committee on Dissemination**

Despite the Committee recommendation on human rights education to include in the official curricula, at all levels of education and for systematic education and training on the rights of the Convention for children and their parents, as well as all professional groups working for and with children<sup>17</sup>, the principles and provisions of the Convention have not been incorporated into the curricula at all levels of education, and that there is no systematic plan to introduce training and awareness among professional groups working for and with children. The website of the Ministry of Women, Children and Social Welfare contains very little information about government's policies, programmes, ratified treaties and state reports.

Section 12 of the *Treaty Act, 1990* compels the GoN to publish attested copies of any treaty which it ratifies, and thinks important, in the Nepal Gazette. The section further states that such publication must be within sixty days of ratification, but it is not clear

<sup>17</sup>Section 29 and 30, Committee on the Rights of the Child, Concluding Observations on Nepal, CRC/C/15/Add.261 (Thirty-ninth Session 2005).

whether the treaty, when published in Nepal Gazette, is to be translated into Nepali and other languages spoken in Nepal.

Nepal faces serious problem of illiteracy, and most people cannot read and understand English. Publishing the Convention in English in Nepal Gazette is insufficient to inform most people about the treaty provisions. Moreover, the Gazette is not widely available to common people.

Compared to the need, training on the issues of child rights is insufficient. Except a few activities, dissemination and training on child rights is largely carried out by NGOs in support of donor agencies and INGOs. The consultation meetings while preparing the supplementary report of the OPSC showed that training on those subjects by GoN is nominal<sup>18</sup>.

### **C. Duty to Report (Art. 44), Making the Reports on Implementing the Convention widely known in the State Party's Country (Art. 44, para. 6)**

Nepal's country report on CRC and its optional protocols are not widely published and disseminated. They are neither translated in Nepali language nor in child friendly language and version. The Ministry's website contains little information about the government's, policies and programmes<sup>19</sup>.

Use of internet is still not common among child rights activists working in rural parts of Nepal. The CRC and its optional protocols are not widely available in the Nepali language as well as in other local languages. The difficulty the rights activists have in understanding English and the non-availability of documents in Nepali means that they do not properly understand issues concerning the rights of the child to raise voice for children.

Despite the claim in the state report of series of consultations in drafting, refining and finalizing the report<sup>20</sup>, the report was not widely available to child clubs as well as to the stakeholders. Considering vastly diversified geographical location of habitants, the coalition views that only two regional consultations by the state are not sufficient to reflect the views of children from throughout the country.

#### **The Coalition recommends that the Committee call for the GoN to:**

- Amend all Nepalese legislations to ensure full conformity with the principles and provisions of the Convention;
- Consolidate, harmonize, and make all policies, frameworks, guidelines consistent to each other for the protection and promotion of child rights;

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<sup>18</sup>Information obtained from regional consultations

<sup>19</sup> A questionnaire was sent to sixty Nepali child rights NGOs. None of the leading child rights NGOs were informed about the OPSC through government sources. Rather it was through self-study or via NGO and INGO programmes that the respondents learnt about the OPSC.

<sup>20</sup>Para 3, 4 and 5 of the State Report of Nepal (CRC/C/NPL/3-5)

- Adopt a comprehensive, integrated and rights-based approach to future legislative reforms and implementation mechanism on child rights in Nepal;
- Develop a comprehensive child rights infrastructure with a long term vision to address children's issue in the future and harmonise, integrate and bring synergy among several structures for child rights from the national to the local level;
- Revise Children's Bill through a broad consultation process and get it enacted by the parliament as a priority legislation;
- Mainstream child protection in constitutional reform and broad-ranging legislative reform processes vis-à-vis social protection, civil and criminal law, labour, justice, education, health and others in accordance with international norms and standards. Mainstream child protection in national as well as local plans and budgets;
- Take immediate action to establish a child protection system that detects, reports and responds to cases of violence, abuse, neglect and exploitation of children in all districts; Prioritize prevention (primary prevention) and early detection of cases through appropriately targeted interventions;
- Develop, recruit and mobilize professional social workers for case management
- Make a system to review all legislations, policies, procedures from the perspective of child rights (child impact assessment) before they are adopted by the government;
- Establish a single inter-ministerial and inter-sectoral mechanism for the coordination, monitoring and evaluation of child rights programs and activities; Upgrade the status of the CCWB to become a National Child Rights Coordination and Monitoring Body. Similar reform should be taken at the district level through introducing one single coordination mechanism responsible for children;
- Bring CROs into the regular mainstream mechanism of the GoN and allocate child protection budget from government treasury;
- Take all appropriate actions to ensure that all children, especially the poorest, benefit from greater public investment and better use of society's resources in realizing their rights;
- Develop tracking and auditing system of budget to be allocated for children as prescribed by the National Children's Policy;
- Prepare implementation plan for all relevant laws and policies for children and allocate sufficient resources to implement them;
- Strengthen the NHRC by providing adequate resources and powers to monitor and investigate child rights violation;
- Prioritize child protection and children's rights agenda within the NHRC and introduce through constitutional and legal provisions a specialized mechanism, such as a dedicated Commissioner on Children's Rights with powers to ensure



respect, protection and fulfillment of children's rights;

- Ratify the 3<sup>rd</sup> Optional Protocol to the CRC on a Communications Procedure to ensure that children have an access to remedy in case of violation of their rights which are not addressed by domestic provisions;
- Develop a comprehensive data collection system on various specific issues of children;
- Include child protection related indicators in the national census and other similar large scale surveys;
- Criminalize child labour;
- Raise awareness about child rights and the provisions of CRC among all Nepalese children and make available of the state report widely to the child rights NGOs, members of civil societies and child clubs.

## 10. DEFINITION OF THE CHILD (ARTICLE 1)

*Children's Act, 1992; Child Labor (Prohibition and Regulation) Act, 2000* defines child as a person below the age of 16. *Civil Rights Act, 1955* Section 14; *Tea Garden Labor Regulation 1933*; Rule 3(1) and *Labor Act, 1992* allows a person who has attained the age of 14 to work. *Smallpox Control Act, 1964* defines child as a person who has not attained the age of 12. *Contract Act, 2000* recognizes the age of 16 as capable to enter into a contract. *Some Nepal Law (Amendment) Act, 2007* has amended *Registration of Marriage Act, 1971* prescribing the minimum age for marriage as 20 years for both girl and boy. Every eligible person above the age of 16 can get citizenship certificate but they can vote only after the age of 18 and criminal liability starts from the age of 10. *Human Trafficking and Transportation (Control) Act, 2007* mentions a person below 18 as a child.

Various Nepalese laws are inconsistent within themselves in defining the age of children and their maturity. Allowing to work at the age of 14 and criminal liability at the age of 10 are contradictory with the recognition of the age of maturity.

*The National Child Policy, 2012, Human Trafficking and Transportation Control Act, 2007* and the proposed *Children's Act* have mentioned a person below 18 as a child. Though *Human Trafficking and Transportation Control Act, 2007* considers every person below the age of 18 as a child, it is not able to protect a person below that age but above the age of 16 from sexual exploitation, including alleged voluntary prostitution.

### **The Coalition recommends that the Committee call for the GoN to:**

- Harmonize all Nepalese legislations in defining the age of maturity

## **11. GENERAL PRINCIPLES (ARTICLES 2, 3, 6, 12)**

### **E. Non-discrimination (Art. 2)**

#### **Recommendation of the Committee on non-discrimination**

Regardless of the committee recommendation to ensure implementation of existing laws guaranteeing the right to non-discrimination, there is persistent de facto caste-based discrimination against *Dalit*, a socially deprived and marginalized group discriminated on the basis of their caste, and marginalized communities in education<sup>21</sup>, employment, marriage, access to public places including water sources and places of worship. That ultimately hampers the children from such families. Cases have been also reported of discrimination against children of HIV/AIDS infected persons<sup>22</sup>. Gender discrimination is still highly prevalent in all aspects, such as, in the sector of health, education, economic opportunities. Girls from *Dalit* families or girls with disabilities face multiple discriminations. They are more affected by harmful traditional practices such as *Chaupadi*(separation of girls and women during menstruation period from house and kept in shed built far from homes), child marriage, and practices of *Kamlahari*, dowry and *Badi* (family-run traditional prostitution).

Despite court judgments and orders to amend and repeal discriminatory provisions of laws in various dates; such laws have not been amended in absence of functional parliament.

### **F. The Best Interests of the Child (Art. 3)**

*The Interim Constitution of Nepal, 2007* provides the rights of the child in the fundamental rights section. Section 23 of the *Children's Act, 1992* prescribes that the main duty of the guardian shall be to protect interests of Child. Section 51 provides that a case may be filed on behalf a child. There are numbers of Acts and Rules that are directly or indirectly related with the best interest of the child. However, numbers of Nepalese legislations are incomplete in the sense that they have not properly addressed the issues of children, regardless of sufficient scope of addressing children's issues in the Act. There is no such provision that provides minimum standard of living, nutrition and healthcare.

Best interest of the child can only be served if the laws are implemented effectively. Relevant laws should clearly state that primary responsibility to care and serve the interest of the child goes to parents. If parents are unable to do such, state should provide them support. Issues should be clearly stated in law. Basic needs of a child should be safeguarded by clear provision in the law for the state to bear full responsibility of a child, if any child does not have parents or guardians.

### **G. The Right to Life, Survival and Development (Art. 6)**

Article 12 of the *Interim Constitution of Nepal 2007* guarantees right to life with dignity. Further, it states that no law shall be made that provides for death penalty. Similarly, Article 13 of the Interim Constitution provides right to equality and 13(3) provides for affirmative action for the welfare of women, child and marginalized groups. Similarly Article 14

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<sup>21</sup>Section 35, 36, 37 and 38, Committee on the Rights of the Child, Concluding Observations on Nepal, CRC/C/15/Add.261(Thirty-ninth Session 2005).

<sup>22</sup>Information obtained from regional consultations

provides right against *untouchability* and discrimination. Article 17 provides rights for free education up to secondary level and for primary education in the mother tongue. Article 22 is explicit on the rights of the child and Article 26 provides the rights against torture. The legal provisions of *Children's Act, 1992*; *Children Rules, 1995*; *Child Labour (Prohibition and Regulation) Rules, 2006*; *Juvenile Justice (Procedure) Rules, 2006* etc. provide various provisions for the survival and development of the child.

Regardless of abovementioned laws, some of the hindrances for child development are caused by the provisions of *Children's Act, 1992* that permit imprisonment of children with under-developed physical and mental states. Other hindrances are the provisions that permit light work for children of age 14 and above as worker. Sex-selective abortion of female foetus is increasing with wider availability of ultrasound equipment in all areas, including rural.

Nepal has often cited its poor economy and educational facilities as reasons for thousands of children working as labour, squandering their precious childhood in workplaces. Despite various plans including *National Master Plan* and *Labour and Employment Policy, 2007* as well as *the National Child Policy, 2012* that spells for the end of child labour, about 3.14 million children, i.e. about 40.4 per cent of the child population in the 5 to 17 year age group in Nepal, may be classified as children in employment<sup>23</sup>.

In absence of shelter and other services for children withdrawn from the labour force, in general, child labourers are not rescued and withdrawn. Nepalese laws do not adequately protect children working in informal sectors. Monitoring and labour inspection to control child labour is not strong. Nepal's obligation under the ratified treaty should be implemented to prove its commitment to eliminate child labour.

## **H. Taking Account of the Opinions of the Child (Art. 12)**

### **Recommendation of the Committee on Respect for the views of the child**

The Committee recommendation to amend legislation so that the rights of the child are heard and her/his views are taken into account has not yet been changed. The views of the child are not given sufficient consideration in all areas of children's lives.

Nepalese laws are absent regarding children's right to opinion. These laws do not explicitly provide 'right to opinion' as legal right. Institutionalization of meaningful child participation at decision making process and forums which affects the lives of children needs to be ensured by the law to raise their voice.

#### **The Coalition recommends that the Committee call for the GoN to:**

- Effectively implement existing laws guaranteeing the right to non-discrimination and take stringent actions to end de-facto discrimination against children from ethnic, religious, linguistic minority community or/and from socially marginalized

<sup>23</sup> International Labour Organization (ILO) and Central Bureau of Statistics (CBS), *Nepal Child Labour Report(based on the data drawn from the Nepal Labour Force Survey 2008)*, January 2011

communities;

- Guarantee rights to minimum standard of living, nutrition and healthcare by the law and ensure effective remedy in case of deprivation and violation of these rights;
- Effectively implement the laws prohibiting sex selective abortion;
- Reform the existing Child Labour Prohibition and Regulation Act of 2000 to explicitly cover child labour in informal sector as a criminal offence and create shelter and other services for children withdrawn from the harmful labour;
- Explicitly provide 'right to opinion' as legal right.

## 12. CIVIL RIGHTS AND FREEDOMS (ARTICLES 7, 8, 13, 14, 15, 16, 17, 19, 37(A))

### F. Name and Nationality (Art. 7)

#### **Recommendation of the Committee on the birth registration and the right to nationality**

Despite the recommendation of the Committee to ensure the registration of all children at birth and to review policy regarding birth registration of refugee children and children of asylum-seekers born in the State party in a timely and effective manner<sup>24</sup> children born to foreign fathers, abandoned children, orphans, children born to single mothers who may not be able to identify or unable to produce father (rape-victims, abandoned girls) of their children before the VDC/municipalities secretary are unable to register their child in local authority.<sup>25</sup>

*The Interim Constitution of Nepal 2007; Birth, Death and Other Incidents Registration Act, 1976; Children's Act, 1992; Nepal Citizenship Act, 2006 and Nepal Citizenship Rules, 2006* can be discussed regarding the issue of name and nationality of children.

Part 2 Article 8 of *The Interim Constitution of Nepal, 2007* explicitly discusses citizenship rights for children. The provisions are significant for guaranteeing nationality to children. Article 8 (b) provides that any person whose father or mother is a citizen of Nepal at the birth of such person can get Nepali citizenship. Similarly the provision ensuring the right to acquire citizenship for children without nationality, who were born till mid April, is also a remarkable one.<sup>26</sup>

The legal provisions do not make it compulsory to register the birth of a baby. *Death and Other Incidents Registration Act, 1976* also does not prescribe responsibility to the officer or responsible person of VDC, Municipality, District Development Committee, or Chief District Officer (CDO) to initiate the registration of a birth of a baby whose father and mother is not identified.

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<sup>24</sup>Section 41, 42, 43 and 44, Committee on the Rights of the Child, Concluding Observations on Nepal, CRC/C/15/Add.261 (Thirty-ninth Session 2005).

<sup>25</sup> Information based on consultation meetings with stakeholders

<sup>26</sup> Interim Constitution of Nepal 2007 Article 8(5)

The Act should include a provision that makes it a mandatory responsibility of parents to register birth of children. The act should also add further responsibility of the local authority to take into account of such incidents and initiate the birth registration of such children.

Despite the law for registration of important incidents like, birth, death, marriage, divorce, death and migration, people are not seen either aware or interested to register these incidents. The GoN should come up with special programme to encourage people to register the name of their children to ensure protection of their rights.

Disaggregated information should be maintained on birth registration. Information related to birth registration should be used for planning and monitoring purposes. It should be linked with other services. GoN should prioritize for strengthening Civil Registration of vital statistics. Birth registration should be integrated with successful initiatives such as immunization.

#### **G. Maintenance of Identity (Art. 8)**

Article 22 of *The Interim Constitution of Nepal, 2007* and Section 3 and 10 of *Children's Act, 1992* are related to Article 8 of the CRC. The provisions confer the responsibility to name a child to their parents. Section 10 of the *Children's Act* reflects the patriarchal mind-set enshrined in the legal system and society at large by explicitly asking for the name of father in various forms required during registration. However, they do not have any provisions on the obligations of the state to establish basic aspects of child's identity.

*The Children's Act, 1992* does not cover the right provided in Article 8 of the CRC. *The Interim Constitution of Nepal, 2007* has some provisions, as stated above, for the state to grant citizenship to children found without parents. However, it does not go far enough to institutionalize the obligations of the state to establish basic aspects of child's identity (name, nationality and family ties).

#### **H. Right to Freedom of Expression (Art. 13)**

*The Interim Constitution of Nepal, 2007* provides the right to expression and opinion as fundamental right but the *Children's Act, 1992* does not guarantee children's right to express opinion. In practice, children's voice are not generally heard and not given importance. District and local authorities organize assemblies called "Council" where children from child clubs are invited however their voices are not taken seriously<sup>27</sup>.

Even the civil laws do not require taking consent of the children below 16 while making any purchase or selling of fixed or movable property.

Right to expression and opinion should be clearly mentioned in future amendment of the *Children's Act, 1992*.

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<sup>27</sup> Views of children from regional and national consultations in different development regions

## **I. Right to Freedom of Thought, Conscience and Religion (Art. 14)**

The children's right to freedom of thought, conscience and religion has not been ensured in child right specific legal instruments. The rights have been mentioned in *The Interim Constitution of Nepal, 2007* in a general way but children are not entertained with these rights in formal institutions as well as in families.

Lack of explicit legal provisions on the matter has resulted children not being able to, or encouraged to, have their own thought and freely choose their religion. This has contributed for the development of the mindset of children a feeling of subordination to the elder members of the family. There is increasing trend of children and their families being influenced to convert to other religion alluring them with food, clothes and other material benefits.

Encouraging children to have their own thought and to express such would be helpful for the development of the child. Thus, there should be clear provisions in the law to grant such rights to children. There is growing trend of proselytizing of youths and children to other religions from their guardians' religion baiting them with food, clothes and other benefits.

## **J. Access to Appropriate Information (Art. 17)**

Article 27 of *The Interim Constitution of Nepal, 2007* provides right to information as a fundamental right. Section 16 of *Children's Act, 1992* provides that children should not be indulged in immoral profession. The section also restricts media from disseminating photos of children to indulge them in immoral profession. However, the laws donot provide responsibility of the media in disseminating information to children that is consistent with moral well-being and that respects the child's cultural background.

The responsibility of media in disseminating child friendly materials and allocating sufficient time in their overall programme hours should be mentioned while issuing them license.

Besides these, many children lack adequate and sufficient information to access to education, healthcare, legal formalities and to access to other social security benefits offered by state as well as from non-state sectors. There is still no code of conduct or any cyber law to protect children from technology and social media. Online child protection is now an emerging issue which need to be given due consideration.

### **The Coalition recommends that the Committee call for the GoN to:**

- Ensure the registration of all children at birth and develop all appropriate measures to ensure that no child shall fall in the situation of statelessness;
- Explicitly provide freedoms of expression, thought and conscience as legal rights in the new Children's Act;

- Ensure access to appropriate information to children through media;
- Enact laws to protect children from harmful online contents and develop code of conduct for appropriate use of technology.

### 13. FAMILY ENVIRONMENT AND ALTERNATIVE CARE (ARTICLES 5, 9, 10, 11, 18, 20, 21, 25, 27.4)

#### A. Guidance by Parents, Parental Responsibility, Separation from Parents

##### - Guidance by Parents (Art. 5)

There is no provision in *Children's Act, 1992* that explicitly makes parents liable for the guidance of their children.

The law should guarantee the rights and responsibilities of parents and the wider family to provide guidance in line with evolving capacities of children.

##### - Parental Responsibility (Art. 18 para 1-2)

Section 3 of *Children's Act, 1992* provides that every child shall be granted a name according to the religion, culture and tradition by his/her father, if the father is not available to provide name, the name to the child is to be provided by his/her mother and if the mother is also not available, then name is to be provided by any other member of his/her family. In cases where the father, mother or any other member of his/her family is not alive or their whereabouts are not known, the person or organization bringing up the child shall give a name to such child. Section 4 provides responsibility for maintenance, healthcare, education and sections 5 and 6 provide for non-discrimination. Rule 29 of *Children's Rules, 1995* provides responsibility for parents and family members to give name to a child.

##### - Separation from Parents (Art. 9)

#### **Recommendation from the Committee on Separation of children from parents/children deprived of a family environment and alternative care**

The Committee was concerned at the increasing number of children placed in residential care facilities not only as a result of the armed conflict, but also of HIV and AIDS, and was also concerned that these residential care facilities do not meet the standards set by the State party, and that many of them are not registered<sup>28</sup>. The Committee was also concerned that adequate and effective monitoring of the quality of these facilities was lacking. National Child Policy, 2012 mentions about alternative care as far as possible but regardless of the Committee concern, residential care is preferred against alternative care. The situation of residential care facilities needs improvement.

Regarding Committee recommendation Section 50 (a), (b) and (c), the coalition observes no significant progress on the development and implementation of programs through community structures and social security benefits to support parents in the performance of their parental obligations. Foster care system has not been introduced. Many

<sup>28</sup>Section 49, Committee on the Rights of the Child, Concluding Observations on Nepal, CRC/C/15/Add.261(Thirty-ninth Session 2005).

residential care facilities do not meet quality standards in conformity with the Convention and they are not regularly monitored<sup>29</sup>. Many of such residential care facilities lack child protection policy, reporting and responding procedures<sup>30</sup>.

The legal provisions of the *Children's Act, 1992* that prohibits engaging children in begging and offering children to gods are some protections against the separation from parents. Section 8 of the Act also provides the rights of separated or divorced parents to meet with their children. Rule 30 of the *Children's Rules, 1995* provides that such meeting or visit of the father or the mother may only be for the best interest of the child.

Section 9 of *Children's Act, 1992* provides the rights for the adopted daughter or son to visit his/her natural parents. *The National Code*, chapter on adoption section 12, stipulates that parents with only one son or daughter may not provide such child to others for adoption.

Even if the child has committed some offence, s/he should be offered for community service or other non-custodial measures of punishment; not imprisonment.

### **B. Family Reunification (Art. 10)**

The existing law is silent in this issue. There should be a legal provision that guarantees the right of children and their parents to leave any country and to enter their own in order to be reunited or to maintain the child-parent relationship. Parental care as a right of the child has not received due attention in Nepal.

### **Recommendation from the Committee on children with parent(s) in prison (section 51 and 52)**

Many children still live in prison with their parents. No adequate alternative care for these children has been ensured.

### **C. Illicit Transfer and Non-Return (Art. 11)**

#### **Committee recommendation on adoption (section 53, 54(a), (b), (c), (d) and (e))**

*The National Code (Muluki Ain)*, Chapter on Adoption, Section 12(a) and (b) have tried to control illicit transfer of children by requiring the approval of the person who wants to adopt a Nepali child as son or daughter.

12<sup>th</sup> amendment of the *National Code (Muluki Ain)* has added the chapter on abduction and detention of person and defined kidnapping as a crime. However, Nepalese legislative measures do not provide the state's obligation to prevent and to provide remedy of kidnapping or retention of children abroad by a parent or third party.

Nepal lacks a clear policy and appropriate legislation on inter-country adoption. Existing legal measures are inadequate and have ample loopholes to effectively control illicit transfer of children. The provisions against illicit transfer of a child within the country

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<sup>29</sup> Information obtained from field visits to Nawalparasi, Rukum, Banke, Dhangadi, Mahendranagar, Dhankuta and Kathmandu as well as from consultations with stakeholders

<sup>30</sup> *Ibid.*



and outside the country should be made more transparent through effective laws. The laws should further prescribe monitoring mechanisms for children sent outside of the country for any purpose.

Nepal has not yet ratified the *Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption*. Adoption cases are registered in local revenue offices and the officers at revenue offices are not fully equipped with the technical expertise to handle the cases of inter-country adoption.. *Conditions and Procedures to provide Nepalese Children to Foreign Nationals for Adoption (2000)*, which states that poverty of the parents of a child can be a legal ground for adoption, is still in practice.

Section 30 of the *Children's Act 1992* states that, “*in case any child is handed over to the children's welfare home, the responsibility of the guardian shall be deemed to be terminated from the date of such handover*”. Once a child is adopted, especially in foreign land, there is no strong mechanism to avoid the termination of responsibility of biological parents. There is no strong mechanism and practice of monitoring of practice of placing children in the place of adoption.

#### **D. Securing the Recovery of Maintenance Claims for the Child (Art. 27 para. 4)**

The provisions of *The Interim Constitution of Nepal, 2007* and section 4 of *Children's Act, 1992* provides about right to maintenance and upbringing, education and health care. Chapter 3, section 21 mentions about looking after an orphan and custody of his/her property. Section 23 provides about the interest and property of child to be protected. Section 30 mentions about maintenance of the child of parents having no sufficient income.

All these legal provisions are favorable for the children whose parents have property. The provisions also allow parents to enroll in residential care (child welfare homes) and terminate parental responsibilities than securing recovery maintenance for the child from the government.

#### **E. Children Deprived of their Family Environment (Art. 20)**

The *Children's Act, 1992* in its part 3 mentions about protection and guardianship of children. Section 21 provides for looking after an orphan and custody of his/her property. Section 22 provides for the provision of appointment of a guardian.<sup>31</sup> Section 30 provides provision for the maintenance of children who do not have sufficient income. Part 4 of the Act has provisioned for the welfare of children. Section 35 of the *Children's Act, 1992* provides for the provision of abandoned child to be kept in the children's welfare

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<sup>31</sup> Section 22 of Children's Act, 1992 reads: “(1) In cases where a child is deprived of his family for reasons of not living of his parents or adult relative belonging to the same home, or even if they are living but are unable to bring up or look after the child for reasons of physical or mental incapacity, every person may, for the purpose of being a guardian to the child, submit an application to the Child Welfare Officer. On receipt of such application, the Child Welfare Officer shall, upon necessary inquiry into the matter, appoint a guardian for the child subject to the provisions of this Section...”

home. Rule 21 of *Children's Rules, 1995* provides for the education, training and other facilities of children living in orphanage homes or homes for mentally challenged children.

Despite all these provisions, not a single provision provides for the consideration for cultural background of children. Many of the provisions of the *Children's Rules, 1995* have been written in such a way that there is enough scope of interpretation as necessary. The provisions provide discretionary power to the persons of authority to implement such provisions. Children cannot claim it as a right. Thus it is not clear whether the rights are guaranteed or are merely the subject of discretion of the person in authority. Most provisions of the law carry the word 'may', not 'should'.

Children without families are forced to change their way of living. They are forced to change food habits and sometimes they are denied of right to conscience and religion. If law does not provide right explicitly and left merely on the discretion of the persons in authority, the exercise of such rights would be almost impossible.

Amendment is needed in *Children's Act, 1992* and *Children's Rules, 1995* to ensure that the children who are provided shelter and other state services are given full respect for their cultural background. There should be full guarantee for the essential services for children, not on the discretion on persons of authority.

## **F. Maltreatment and Neglect, Physical and Psychological Recovery and Social Reintegration**

### **- Maltreatment and Neglect (Art. 19),**

#### **Committee Recommendation on Abuse and neglect, including physical and psychological recovery and social reintegration [section 55, 56, 57 (a), (b), (c), (d), (e) and (f)]**

There has not been comprehensive study on the causes and scope of abuse and neglect, including physical and psychological recovery and social reintegration. There are records of numbers of cases mediated and settled out of courts. There is practice of non encouragement of reporting of cases of child abuse for the sake of protection of family prestige, and to prevent child from stigmatization. There is no law at all to address neglect of a child. Neglect of a child is neither a punishable offence nor any law makes parents liable for compulsorily providing protection and care as required by the principles of CRC.

Public awareness campaigns are not sufficient as required to aware all people and children regarding the consequences of ill-treatment of children and the alternative measures of discipline for children. Despite *Women and Children Service Center* (women cell) formed in police offices, they have not been an effective mechanism as they are not well equipped, resourced or trained for receiving, monitoring and investigating complaints in a child-sensitive manner and ensuring proper prosecution of perpetrators of child abuse and neglect. There is no victim and witness protection law in Nepal.

Services for the physical and psychological recovery and social reintegration of victims of sexual and other forms of abuse, neglect, ill-treatment, violence or exploitation are not systematic, inadequate and scattered to various institutions.

**The Coalition recommends that the Committee call for the GoN to:**

- Provide positive parenting skills training to all parents to avoid neglect, maltreatment and abuse of children and to ensure that all children thrive in a safe family environment;
- Amend laws to forbid parents to terminate their responsibilities in the background of parents' poverty and inability;
- Amend laws to criminalize neglect, maltreatment and physical and humiliating punishment and treatment and bullying;
- Guarantee parental care as the right of children and responsibilities of parents and the wider family to provide guidance appropriate to the child's evolving capacities;
- Strengthen families by providing them with appropriate support so that any need of alternative care is minimized. When alternative care becomes a necessity, prioritise family and community based alternative care and residential care should be used as the measure of last resort and for the shortest possible period of time; Ensure that all children in residential care have an individualized care plan with a provision of periodic review of the plan;
- Establish a rigorous assessment system based on the principle of "necessity" and "appropriateness" according to the UN Guideline for the Alternative Care of Children; Strengthen mechanism to stop the unnecessary flow of children to residential care. Speed up the ongoing process of drafting the Alternative Care Rules and get it endorsed by the Cabinet as early as possible;
- Strengthen the monitoring of Child Care Homes to ensure that they comply with the minimum standards set by the government. Take all appropriate actions to close illegal and substandard Child Care Homes;
- Ratify *Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption*;
- Assign trained human resource to handle the cases of adoption and reform the system of monitoring the situation of children adopted by foreign parents to avoid non-return of children;
- Develop media guideline and enforce it in line with child protection perspective.

#### **14. BASIC HEALTH AND WELFARE (ARTICLES 18, 23, 24, 26, 27)**

##### **D. Children with Disabilities (Art. 23)**

Article 13(3) of *The Interim Constitution, 2007* provides special protection for the weaker section of population that includes persons with disabilities. Article 18(2) provides the right to have employment and social security for women, laborer, old age people, weaker section and poor and persons with disabilities. Article 22(4) provides that helpless, orphan, mentally retarded; conflict victims, displaced, vulnerable and street children shall have the right to get

special privileges from the state for a secured future. Similar sorts of welfare schemes have also been provided in state responsibility, directive principles and policies.

*Disable Persons Protection and Welfare Act, 1982* and *Disable Persons Protection and Welfare Rules, 1994* are the explicit legislations that provides the provisions for the protection and welfare of disable persons. Other related laws regarding this are *National Code, 1963*; *Education Act, 1968*; *Social Welfare Act, 1992*; *Children's Act, 1992*; *Local Self-governance Act, 1999*; *Disable Service National Policy, 1996*; *The Tenth Plan 2002-2007*; *Special Education Policy, 1996*; *Scholarship Act, 1964* and *Rules 2003*; *Education and Sports Amendment Act, 2007* and *First Amendment to the Scholarship Rules, 2007*. These Act and Rules provide rights and facilities to the persons with disabilities, which include free education, free health check-up for persons above 65 and with disabilities, tax exemption facilities, free legal aid, discount in transport fares, and disability allowance as social security.<sup>32</sup>Nepal formally became the party to the *UN Convention on the Persons with Disability, 2006* since 7 May 2010<sup>33</sup>.

Article 13(3) of *The Interim Constitution of Nepal, 2007* provides special protection for the weaker section of population that includes persons with disabilities. Article 18(2) provides the right to have employment and social security for women, labourer, old age people, weaker section and poor and persons with disabilities. Article 22(4) provides that helpless, orphan, mentally retarded; conflict victims, displaced, vulnerable and street children shall have the right to get special privileges from the State for a secured future. Similar sorts of welfare schemes have also been provided in state responsibility, directive principles and policies. None of the Nepal laws require building disabled friendly facilities in infrastructures built for public purposes. Schools, hospitals and other public places in Nepal are not friendly for the people with disabilities.

There is no national system for early detection and intervention or system of referral with regard to children with disabilities. Children with mental disabilities generally are not get enrolled in schools. Because of unavailability of separate specialized schools in adequate numbers for children with disability, visually impaired as well as children with *down syndrome* and other mental disabilities are taught in the regular mainstream schools causing such children difficult in learn. Books in *Braille* are not printed in sufficient number. Special schools for children with disabilities lack quality human resource for quality education. Some cases have been reported of children with mental disability been detained in houses or in sheds because of ignorance and poverty of parents or unavailability of government facilities.

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<sup>32</sup>Report on the Implementation Status of Existing Laws, Acts, Rules and Facilities Made for the Development, Promotion and Protection of the People with Disabilities, National Human Rights Commission, 2006

<sup>33</sup>[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15-a&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&lang=en) , accessed on June 23, 2014.

## **E. Health and Welfare (Art. 24)**

### **Committee recommendation on health and health services (section 60, 61 and 62)**

Article 16 of *The Interim Constitution of Nepal, 2007* has provided right to environment and health as fundamental rights. Article 16(2) provides right to get basic health service free of cost from the State as provided for in the law. Article 22(2) has provided right to get nurtured, basic health and social security as exclusive right of the child.

Section 4 of *Children's Act, 1992* provides the right of maintenance, education and healthcare. The provision also provides state responsibility to support parents to immunize children from disease. Section 4(3) provides the reproductive rights of a mother. Section 5 prohibits for the discrimination on nutrition merely on the ground of sex.

Section 14 of the *Children's Act, 1992* prohibits offering of children in the name of a god or a goddess. *National Code, 1963* has provided that alleging any person as a witch and inhuman, degrading treatment or punishment and social exclusion on the basis of such allegation as a punishable crime. It has further provided that inhumane and degrading treatment towards a person suffering from any disease is also a punishable crime.

Regardless of government services on health sector, there is overcrowding in government hospitals in cities and inadequate numbers of health professionals, equipments and medicines in the hospitals in rural areas. Despite, low rate medical check-up available in government hospitals, treatment for major diseases and operations are expensive. There is no system of health insurance. Vast majority of Nepalese visit traditional health practitioners who lack appropriate knowledge of basic first aid and health care.

There has not been comprehensive study by the government to assess the nature and extent of adolescent health problems. There is no practice, system and availability of developmental and mental health counseling services as well as reproductive health education and child-sensitive counseling services. Reproductive health education has not been incorporated in school curriculum.

Various harmful traditional practices prevalent and practiced in Nepal also adversely affect on adolescence health. Legislations are required prohibiting harmful traditional practices.

## **F. Standard of Living (Art. 27 paras. 1-3)**

### **Committee Recommendation (section 73 (a), (b), (c), (d) and 74)**

The provisions of *The Interim Constitution of Nepal, 2007* and Section 4 of *Children's Act, 1992* including the provisions mentioned above regarding social security provide the right to have a livelihood. These provisions do not provide for the standard of living.

None of the Nepali laws provide right to an adequate standard of living. Thus it has caused neglect for the standard of living of children.

Nepal ranks 157<sup>th</sup> position in human development index<sup>34</sup>. Nepal's Gross National Income (GNI) per capita (2005 PPP \$) is \$1137. Nepal has been ranked worst on the HDI than on GNI per capita in 2012. The proportion of the population living in multidimensional poverty is 44% in Nepal<sup>35</sup>. Significant proportions of children are living in slums squats. In the absence of a comprehensive legislative and regulatory social security system, these children do not get benefits and protection as deserved. These people and their children seriously lack clean drinking water and adequate nutrition.

Significant proportion of Nepalese economy is subsisting on remittance by the Nepalese migrant workers. Lack of employment opportunities and low income is still a hurdle for the parents to ensure adequate standard of living for their children. Nepal government does not have any housing plan for the people living in squats and in slums. Ironically, there have been incidents of forced eviction of these people without meaningful alternative for their shelter.

Legal provisions should be developed to guarantee a minimum standard of living to all children and to stipulate the government's responsibility to support the parents who are unable to provide such.

**The Coalition recommends that the Committee call for the GoN to:**

- Amend all Nepalese legislations in accordance with the issues mentioned in the *UN Convention on the Rights of Persons with Disability, 2006* to ensure the rights of children with disabilities;
- Carry a comprehensive study to assess the nature and extent of adolescent health problems;
- Consolidate existing social protection schemes and devise new ones to ensure that they are both child-focused and child-sensitive. Make necessary provisions to ensure that the social protection schemes are easily accessible to children;
- Intervene to modify various harmful traditional practices prevalent and practiced in Nepal that adversely affect the health of children and adolescents; Address in particular child marriage and *chhaupadi* through comprehensive and sustained program of the government;
- Guarantee an adequate standard of living to all children with available resources with the fullest extent of its utilization
- Guarantee of non-repetition of forced eviction, guarantee of alternative shelters to the squatters and slum dwellers;

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<sup>34</sup>UNDP Human Development Index 2013.

<sup>35</sup>*Ibid.*

## 15. EDUCATION, LEISURE AND CULTURAL ACTIVITIES (ARTICLES 28, 29, 31)

### Education (Article 28) and Aims of Education (Article 29)

#### Committee Recommendation (section 75, 76, 77)

*The Interim Constitution of Nepal, 2007* Article 27 ensures the right to get basic education in their mother tongue as provided in the law for all communities. It also ensures the right to free education from the primary state up to secondary level as provided in the law.

Lack of quality education, unavailability of school close to the place of residence, discrimination and corporal punishment at school, and financial cost of attending school are some of the reasons for the right to education not being properly exercised by Nepalese children. The Coalition opines that ‘free and compulsory education’ in Nepal is in practice neither compulsory nor free with hidden costs associated with schooling<sup>36</sup>. With dismal situation of low quality education in government schools, public education system is losing credibility and there is increasing trend of privatization of education which lacks public accountability.

Article 17 of *The Interim Constitution of Nepal, 2007* provides the right to education and culture. This provides for the elementary education in mother tongue and free education up to secondary level. Section 7(1) of *Education Act, 1968* prescribes that the medium of teaching will be Nepali. The Act also provides some scholarship schemes under Section 11(c), 11(p) and 16(d). There is provision for mobile schools in remote mountainous regions.

Different courses are being taught in government and in private schools. The quality of teaching and the product of government and private schools are different. There is no clear provision what the course should cover. Because of natural setting and difficult topography, many schools of mountainous regions are closed for almost four months a year.

Many schools in Nepal have shortage of qualified teachers. Dropout rate is still high. There is inequality among the children for the access to education. Large proportion of girls and children from disadvantaged backgrounds such as *Dalit* children and children with disabilities remain deprived of educational opportunities. Many schools of Nepal are situated far from localities causing more difficulties to small children and children with disabilities. Physical infrastructures of many schools in Nepal do not meet minimum standard for a comfortable and healthy teaching-learning environment<sup>37</sup>. Many building have not been built to reduce risk. Many schools are unable to run classes in rainy season because of leakage of water from the roof, flood inside the classes and risk of landslide. Many schools are prone to risk of collapse because of weak infrastructure.

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<sup>36</sup> Information obtained from regional consultation.

<sup>37</sup> Shree Primary School in Santapur of Rauthat district had been closed for past 30 years. It was started again in March 2014. Because of unavailability of adequate space, students are being taught in toilets. Teachers were getting their salary even after the school was closed. Sagarmatha Television, News broadcasted at 10:15 am, 7<sup>th</sup> April, 2014.

Quality check and control should be made effective. It should be clearly prescribed what all schools' course should cover. There should be provision to have education in mother tongue up to secondary level. Nepal's medium language should be taught together with other subjects. Quality, accessible and appropriate education is to be ensured for all children including children with disabilities. Government's 'learning without fear' and 'Schools Zones of Peace and Protection Guideline' are to be promoted. Educational institution should be made safe and violence free. Positive discipline is to be promoted in schools and at home. School hostels should have maintained minimum standards including child protection policy and reporting procedure. Education and curriculum should be gender sensitive and promoting gender equality.

### **Leisure and cultural Activities (Article 31)**

Nepalese laws do not explicitly provide any right to recreation and to participate in artistic activities. However, the *Child Labour (Prohibition and Regulation) Act, 2000* and *Children's Act, 1992* prohibit indulging children for more than 6 hours of work and continuous work without leisure. Half an hour rest after three hours of work and one-day holiday in a week has been protected by these laws.

Children in Nepal do not know that recreation is their right. Many children from poor families think that only the children of rich people can have right to recreation<sup>38</sup>. It may make negative impact on their psychology.

It should be clearly written in law that all children shall be guaranteed of the right to play and recreation. There should be clear provisions for all child care centres, orphanages and schools to arrange for recreations for children. There should be government recreation centres to all in every district and, if possible, in every community. Both girls and boys should be encouraged to play different types of games and sports materials. There should not be biased and stereotyped treatment in games and play materials for boys and girls.

#### **The Coalition recommends that the Committee call for the GoN to:**

- Amend Education Act to make legal provision for basic education (grades 1-8) to be both free *and* compulsory;
- Carry out study on the impact created to the children by merger of government schools;
- Review the numbers of schools and teachers to balance proportion to the numbers of students;
- Strictly monitor the teaching quality, provide adequate resources;
- Take effective action to control school drop outs;
- Develop quality infrastructures friendly to the children with disabilities and for disaster risk reduction;
- Strengthen quality of education for children with various types of disabilities;
- Empower parents to ensure right to recreation to the children.

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<sup>38</sup> Information based on consultation with children.



## **16. SPECIAL PROTECTION MEASURES (ARTICLES 22, 30, 32, 33, 34, 35, 37, 38, 39, 40)**

### **Refugee Children (Article 22)**

#### **Committee Recommendations (section 78, 79 and 80)**

*The Interim Constitution, 2007* in responsibilities, directive principles & policies of the state and Government on Internally Displaced Persons (IDPs) policies provide for the rehabilitation, compensation and restitution for the conflict induced IDPs. However, there is not such law in Nepal that provides the rights of refugee children.

Nepal is not a party to the *1951 Convention relating to the Status of Refugees* nor its *1967 Protocol*, nor it is a party to the *1954 Convention relating to the Status of Stateless Persons* or the *1961 Convention on the Reduction of Statelessness*. Nepal does not have a national legal refugee protection framework

Lack of laws regarding the protection of refugee children has resulted in the rights of such refugee children being neglected. They are denied protection and application of law. Tibetan refugees are denied to register the birth of their children. Many Tibetans and their children born in Nepal are in the state of statelessness.

Legislative measures should be adopted complying with international standards for the protection of refugees and reduction of statelessness. Instruments relating to the rights of refugees and statelessness should be adopted to ensure basic rights and necessities to the refugee children.

#### **Children of Minorities or Indigenous populations (Article 30)**

Article 13, 14, 17, 21, and 23 of the *Interim Constitution 2007* are related with the rights of children of minorities or indigenous populations. However, these rights have not been provided explicitly to the children. Their rights are general for all. Nepal has ratified the ILO convention no 169 regarding the rights of indigenous people.

Except in some *Terai* and some mountainous regions, children of minority communities and indigenous populations are compelled to speak in Nepali in all schools.

As per the demographic composition of students, environment should be made in such a way that all children of minority communities and indigenous populations can enjoy their own culture and to practice their own religion and language.

#### **Child Labour (Article 32)**

*Labour Act, 1992* and *Child Labour (Prohibition and Regulation) Act, 2000* recognize any person of age above 14 years as capable to work.<sup>39</sup> However the same Act defines the person below 16 is a child.<sup>40</sup>

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<sup>39</sup> Child Labour (Prohibition and Regulation) Act, 2000, section 3.

<sup>40</sup>Ibid 2(a)

*Civil Rights Act, 1955*, section 14; *Tea Garden Labour Rules, 1994*, Rule 3(1) are some of the provisions that recognize the age of 14 as workable age. Despite the fact that Nepalese standard on child rights is not contrary to the international standard, Nepal's initiatives do not show any progressive step towards reducing child labour. Enforcement of domestic legislation in the area of child labour is weak. Recruitment of child labour is not stringently taken action. There have been cases of child labour mediated and settled without reporting to police. In absence of alternative care system and facilities, child labour is often ignored by all sectors.

Despite *Kamaiya* system (traditional system of bonded labour) was abolished in 2000 and *Kamaiya Prohibition Act* was enactment in 2002, there has not been significant development of the lives of these people and their children. There have been cases of many *Kamaiya*, *Haliya* (bonded labour in agricultural sector) and *Kamlahari* (often found written as *Kamalari*) returning to their previous landlords in absence of employment opportunity. Informal sectors have not been properly monitored to eradicate child labour, especially the worst form of child labour. Many children work in hazardous conditions together with their parents, such as in construction sites, brick kilns, restaurants, agricultural fields and farms<sup>41</sup>. A report published by ILO reveals that various forms of forced and bonded labour still exist in Nepal<sup>42</sup>.

### **Substance Abuse (Article 33)**

#### **Committee Recommendation (Section 83, 84)**

Section 16(4) of *Children's Act, 1992* provides that no child should be indulged in the sale or distribution or smuggling of intoxicating substances, narcotic drugs or any other drugs. *Narcotic Drugs (Control) Act, 1976* is silent in this issue.

The law does not provide anything for the children involved in drug abuse. There is no any reformatory provision to the child involved in substance abuse; however, the child is liable to pay the fine. Many children involved in substance abuse have been neglected and often been prosecuted and put in custody. There should have been the provision to send the child to rehabilitation with availability of education to discourage the use of drugs. There is a serious problem of substance abuse among street children in Nepal.

*Narcotic Drugs (Control) Act, 1976* should clearly state that no one should sell or distribute drugs to the children. Further, there should be provision that no one should employ children to drugs smuggling.

#### **The National Coalition recommends that the Committee call for the Government of Nepal to:**

Develop mechanism for the effective monitoring of the children involved in substance abuse.

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<sup>41</sup>Information based on former Kamlahari girl and her parents in Mahendranagar, Far-western region of Nepal.

<sup>42</sup> ILO, *Forced labour of adults and children in the agriculture sector of Nepal: Focusing on Haruwa-Charuwa in Eastern Tarai and Haliya in Far-western hills*, 2013, pp-13-72.

Monitor and maintain statistics of children involved in drug abuse and provide medical treatment and rehabilitation centers for such.

### **Sexual Exploitation (Article 34)**

*The Interim Constitution of Nepal, 2007, Article 22; Consumer Protection Act, 1998; Press and Publication Act, 1952; and Some Public Offences (Crime and Punishment Act; 1971; Children's Act, 1992* can be discussed in the context of sexual exploitation of children. Section 16 of the *Children Act's Act, 1992* provides that no one should indulge children in immoral activities. 16(2) prohibits taking photos with the intention to use for immoral profession and to distribute or exhibit such and 16(3) prohibits printing and publishing such materials. Section 2 of *Some Public Offences (Crime and Punishment) Act, 1971* provides about the acts that ought not to be performed. Among them, Section 2 (c) prohibits disturbing peace through voice, language, sign, and symbol or to expose vulgarity in public places and (c1) prohibits in publishing vulgar language or words those signify vulgarity or printing or publishing vulgar pictures or exhibiting of such materials in public.

The provisions are vague and ambiguous. The provisions do not define 'immoral activities'. The provisions are not sufficient to address child prostitution, child pornography and sex tourism.

In the absence of proper law, it is difficult to prepare proper charge sheet. The general trend is to charge in accordance with *Some Public Offence Control and Punishment Act*. The nature and gravity of child sexual abuse is different than public offence. The nature and consequence of sexual abuse against male child and female child is different. Thus, new amendments to the legislation should be adopted to address this problem.

Nepalese laws do not protect the persons of 16, 17 and 18 as a child from sexual exploitations and abuses as *General Code (Muluki Ain)* provides the age for sexual consent as 16. There is no accurate data on the prevalence of sexual exploitation as these cases are hidden by families, not reported in police and settled out of courts.

### **Sale, trafficking and abduction (Article 35)**

#### **Committee Recommendations (section 95 and 96)**

The *Human Trafficking and Transportation Control Act, 2007* has been adopted explicitly to deal with the problems of trafficking in persons. The Act defines trafficking and transportation separately. The Act defines trafficking broadly, as selling or purchasing a person, using someone in prostitution with or without financial benefit, extracting human organ[s] except [as] otherwise determined by ... law and going for in prostitution<sup>43</sup>. However, the Act does not contain any provision specifically addressing the trafficking of children.

Punishment for trafficking may be from one to three months imprisonment and a fine of two thousand to five thousand rupees,<sup>44</sup> up to 20 years imprisonment and a fine of up to two

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<sup>43</sup> Human Trafficking and Transportation Control Act, Article 4

<sup>44</sup> For the offence of "going for in prostitution"

hundred thousand rupees.<sup>45</sup> A person convicted of the offence of transportation of a person for the purpose of buying, selling, or engaging someone into prostitution, may be punished by a sentence of between ten and fifteen years imprisonment and a fine of between fifty and one hundred thousand rupees.<sup>46</sup> Additional punishment is imposed if the offence is committed against children<sup>47</sup>. The Act puts the burden of proof of one's innocence on the alleged offender. The Act also has provisions for the protection of victims and witnesses, compensation and rehabilitation of victims<sup>48</sup>.

Despite the fact that the new Act has been adopted, the *Chapter on Human Trafficking* in the *Muluki Ain* (General Code) still exists as a supplementary provision. The provisions of this chapter concern only cross-border trafficking and are silent on trafficking within the country. Section 2 of the Chapter prescribes less punishment than the *Human Trafficking and Transportation Control Act* if a child or insane person is alleged to have been taken from a guardian's custody<sup>49</sup>. However, the provisions of this chapter are important in addressing using or forcing any person into slavery, servitude, and bonded labour, a crime<sup>50</sup>, on which the *Human Trafficking and Transportation Control Act* is silent.

Legal provisions on abduction have been adopted by the new amendment to the *Muluki Ain* (General code)<sup>51</sup>. Section 1 of Chapter on 'abduction and taking person into custody' defines the word 'abduction'.<sup>52</sup> There might be imprisonment ranging from seven to 15 years and a fine of fifty thousand to two hundred thousand rupees for taking persons into custody or control for the purpose of killing, harming, raping or unnatural sex, selling, pushing into slavery or in forced labour, torture, forced prostitution, or for ransom<sup>53</sup>.

Despite the acceptance of various international obligations and commitments, many Nepalese laws fail to conform to international standards. Even if domestic legal provisions provide sufficiently stringent penalties, very few have been convicted.

Victim's role in investigation process has not been ensured. Victim's protection from the very beginning has been ignored. Amendment is necessary to ensure victim protection throughout the trial. Despite the provision for camera-recorded hearings, the trend in court procedures and investigations do not protect victims from unnecessary exposure. Lack of effective victim protection system leads to stigmatization of victim and they might be discouraged to register their complaints. Right to appeal from the victims themselves should be guaranteed.

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<sup>45</sup> For selling or buying a person

<sup>46</sup> Article 15(1)-15(6) of Human Trafficking and Transportation Control Act 2007

<sup>47</sup> *Ibid.*

<sup>48</sup> Human Trafficking and Transportation Control Act, ss. 13, 17, and 26.

<sup>49</sup> Fine of five hundred rupees or three years of imprisonment or both

<sup>50</sup> Muluki Ain, Chapter on Human Trafficking, Section 3, Three to Ten Years imprisonment and compensation to the victim, if convicted.

<sup>51</sup> Added by the 12<sup>th</sup> Amendment to the *Muluki Ain*.

<sup>52</sup> ...Taking away of any person or taking into custody by the use of force, threat, coercion, deception, use of narcotics, alcoholic liquor, control of vehicle ... children or person with mental illness should not be taken away except without the consent of guardian for the benefit of children ...

<sup>53</sup> Section 3, Chapter on abduction and taking.

Nepal needs to ratify the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the *United Nations Convention against Transnational Organized Crime*.

### **Torture and deprivation of liberty (Article 37)**

Torture is prohibited by the *Interim Constitution 2007*. Nepal also has *Torture Compensation Act*. However, neither the constitution nor the Act defines ‘torture’ as a punishable offence. Beating of children and students for their benefit and welfare is still regarded reasonable, regardless of Supreme Court directive to nullify the provision in Children’s Act. Beating of children and students for their benefit and welfare is still prevalent in majority of societies in Nepal.

Section 3 to section 20 of *Children's Act, 1992* has provided 18 types of rights to the children. In section 15, the Act has stated that no children shall be nailed, hand cuffed or placed in lonely place or kept with adult prisoners.

Children are treated as adult criminals despite the understood fact that children are to be treated differently i.e. they are not supposed to be hand cuffed or placed in prison with adult prisoners, and are supposed to be sent to reformatory homes. In unavailability of reform houses in all the districts of Nepal, there have been instances of juveniles detained with adults<sup>54</sup>. Sections 11(2) and (3) of *Children's Act, 1992* permit for the imprisonment of delinquent below the age of 16.

There is very nominal and rare practice of parole and probation. Imprisonment and putting juveniles in institutional reform houses is common practice. Lack of sensitization of difference between juvenile and adult delinquency exists.

### **Armed conflicts (Article 38)**

Nepal has ratified four *Geneva Conventions of 1949*. Nepal also has ratified the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*. Article 22(5) of the *Interim constitution of Nepal 2007* provides that no minor shall be employed in factories, mines or in any other such hazardous work or shall be used in army, police or in conflicts. However, the *Children's Act, 1992* has failed to address and incorporate such issues.

After the *Comprehensive Peace Accord in 2006* between Nepal Government and the then CPN Maoists, declared armed conflict has been ended in Nepal. Thus, as a result, recruiting children in the armed forces by the warring parties is not reported. However, use of children in strikes, political demonstrations and rallies by the political parties is frequently reported by media.

Many conflict affected children, whose parent(s) was/were killed or forcibly disappeared was/were unable to get compensation or reparation package because of lack of information or

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<sup>54</sup> Information based on interaction with lawyers in Kathmandu.

inaccessibility to such relief packages<sup>55</sup>. The flaw in policies and guidelines are one of the hindrances for the access of such packages as they provide such benefits to only up to two of the children of the deceased or disappeared persons.

Political parties should be made liable for involving children in political demonstrations, strikes, assemblies and rallies so that children are not used by political parties for their purposes.

Nepal needs to ratify *the Hague Convention on the Civil Aspects of International Child Abduction*.

Incorporate in the laws the provision prohibiting the use of children in conflicts and strikes by political parties as well as armed groups.

### **Rehabilitative care (Article 39)**

'*The Responsibility of State, Directive Principles and Policies*' of *The Interim Constitution of Nepal, 2007* describe the provisions for rehabilitative care of child victims of armed conflicts, torture, neglect, maltreatment or exploitation and for receiving appropriate treatment for their recovery and social re-integration. Further, the state has launched IDP policies.

Section 35 of *Children's Act, 1992* provides for the provision of abandoned child to be kept in the Child Welfare Home.

Rehabilitative care of needy children has been one of the neglected issues of child rights in Nepal.

The issues discussed in '*Responsibility of State, Directive Principles and Policies*' part is not enforceable by the courts. The social security part of the *Children's Act 1992* should be made adequate to ensure all the issues discussed above. This should also ensure education and guarantee of enrolment at any time.

### **Administration of Juvenile Justice (Article 40)**

#### **Committee recommendations (section 97, 98 and 99)**

There is still no separate Act regarding juvenile justice in Nepal. *The State Cases Act, 1992* and the *Children's Act 1992* provide the national framework for the juvenile justice system. *Juvenile Justice (Procedure) Rule, 2006* provides detailed procedures for the handling of the cases of the child. Juvenile Justice Coordination Committee was established in 2006 according to the Rule 22 of Juvenile Justice (Procedure) Rules, 2006<sup>56</sup>. Section 32 of *Children's Act, 1992* provides for constitution of a Central Child Welfare Board (CCWB). The CCWB has the overall responsibility to ensure realization of the rights of the children of Nepal by the state collaborating with civil society as well as national and international development organizations. It works towards protection of children's rights as per the CRC standard.

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<sup>55</sup> CZOPP, *Conflict-affected Children's Access To Humanitarian Services in Nepal: Findings from Bardia District*, 2010, pp. 23-25

<sup>56</sup> <http://jjcc.gov.np/> accessed on June 18, 2014

Despite these legislations, policies and mechanisms, these are not in conformity with international juvenile justice standards. The minimum age of criminal responsibility is still set as young as 10. There is no official system of age verification in place. Numbers of cases have been reported that persons under 18 are not separated from adults while in detention due to lack of juvenile detention facilities. Condition of detention and facilities provided to the detainees are not as par to the standards. There is lack of educational facilities in prisons.

Despite the Supreme Court directive order to establishment separate juvenile courts in all the districts, none of the districts has such courts. Juvenile benches have been established<sup>57</sup> in Nepal but not all districts of Nepal have juvenile bench. Although the *Juvenile Justice Procedure Regulation 2007* prescribes that cases of juveniles should be resolved in the presence of child psychologists and sociologists, it has been revealed that there are practices of case decisions even in absence of one of them<sup>58</sup>.

The quality of human resource representing in juvenile benches as sociologists and psychologists as per the *Juvenile Justice Procedure Regulation 2007* are challengeable and unsatisfactory. These people are generally lawyers having a degree of sociology graduation or a certificate of some weeks of training on psychology. They sit in juvenile benches whenever there are cases and they also represent and practice in other cases in the same court. There may be undue influence to the judges as well as to the clients by these lawyers cum experts in juvenile benches.

**The Coalition recommends that the Committee call for the GoN to:**

- Ratify Convention relating to the *Status of Refugees, Convention relating to the Status of Stateless Persons* or the *Convention on the Reduction of Statelessness*;
- Incorporate the issues of protection of refugee children, including the guarantee of their birth registration and issuance of travel document;
- Immediately monitor and intervene to prevent forced proselytizing of children;
- Increase the services and supports offered to the children from poor and/or dalit families and extend the services and benefits to the children of ethnic and indigenous minorities;
- Strictly prohibit the sale of narcotics and alcoholic liquor to the children;
- Amend Children's Act 1992, Children's Rules, 1995, *Some Public Offences (Crime and Punishment Act; 1971*, Human Trafficking and Transportation (Control) Act, 2007, *Press and Publication Act, 1952* to incorporate the issues to neglect of children, child prostitution, child pornography, harassment of children; physical and humiliating punishment and treatment and pedophilia;
- Discourage and prevent detention of children, encourage parole, probation or other forms of community services for juvenile delinquents;
- Develop programmes to provide psycho-social counseling and recovery services;
- Develop rehabilitative care programmes for neglected and other needy children;

<sup>57</sup> Notice in Nepal Gazette April 10, 2000 for the establishment of Juvenile Benches.

<sup>58</sup> Information obtained from regional consultations.

- Amend the laws to provide adequate compensation;
- Commit that children will not be used in any political rallies, assemblies and political activities will not be taken place in schools;
- Strengthen the protection of children as victim and witness;
- Immediately establish juvenile courts and ensure full confidentiality and privacy of entire criminal proceeding from the time of case reporting;
- Amend Children's Act 1992, children's Rules 1995 and *Juvenile Justice Procedure Regulation 2007* to:
  - a. *ensure* that no child shall be handcuffed;
  - b. that child shall not be forced to respond or answer, s/he shall have right to remain silent;
  - c. Ensure the quality of child psychologist and sociologist in juvenile benches;
  - d. Reset the minimum age of criminal responsibility, this should not be less than 12 years;
  - e. Ensure that all the cases of children in conflict with the law be tried by a competent judicial authority i.e. juvenile bench or juvenile court, not in administrative body like, District Administrative Office;
  - f. Separate juvenile justice system from the adult criminal justice system;
  - g. Introduce diversion mechanisms such as victim offender dialogue, community mediation, community conference;
  - h. Build at least a Juvenile Reform Home in each five regions; provide separate detention places for juveniles;
  - i. Provide special training and education to the actors of the juvenile justice system;
  - j. Formulate effective and practical rehabilitation and reintegration policy so that the children in conflict with the law become a responsible citizen;
  - k. Establish a data bank compiling data related to juvenile justice and disseminate them as appropriate.



# Annex 1

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## **A Case Story of a child victim of armed conflict**

Umesh Ghimire was only five years when his bus was trapped in an ambush, set by Maoists, while returning from a marriage ceremony at Madi (name of place) of Chitwan district of Nepal which is known as "*Bandar Mude*" Incident. He lost his father and a sister in this incident. Umesh is a permanent resident of Palpa district and he currently resides in Bhainsepati, Kathmandu-the capital city of Nepal. He is 18 years now.

He was badly injured in the incident and had a serious problem in his brain due to which he couldn't continue his education properly. His mother spent most of the time in recovery of his health and even took him to Bangalore, a city in India, for treatment. However, the recovery was not satisfactory and even they had to sell their property like house, land etc for the treatment. After the treatment, Umesh rejoined the school but he didn't receive any scholarships or support for his education. Even though, he struggled and is currently studying in grade nine.

According to him, he has not received any compensation as a conflict victim. Government has not supported in his treatment and further education and he wants the government to punish the perpetrators who set the ambush due to which he is having such condition now. Though, government has declared various schemes for conflict victim, he has not received such compensations and support. So, he urged Government of Nepal to support his education and regular treatment.

*(Interviewed by researcher Mr. Kapil Aryal and co-researcher Mr. Mohan Dangal, in an interaction program with conflict victim regarding the formation of Truth and Reconciliation Commission in Nepal, June 26, 2014)*

# Annex 2: Demographic and Political Indicators

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## **Demography**

Population of Nepal as of the census day (June 22, 2011) stands at 26,494,504 showing population growth rate of 1.35 per annum. Total number of absent population is found to be 1,921,494. The highest proportion (44.81 percent) of absent population is from the age group 15 to 24 years. Sex ratio (number of males per 100 females) at the national level has decreased from 99.8 in 2001 to 94.2 in 2011. Female-headed household in the country has increased by about 11 point percent from 14.87% in 2001 to 25.73% in 2011. 1.94% of the total population reported to have some kind of disability. Overall literacy rate (for population aged 5 years and above) has increased from 54.1 percent in 2001 to 65.9 percent in 2011. Male literacy rate is 75.1% compared to female literacy rate of 57.4%. Total 7,524,427 Population of aged 5 years and above cannot read and write. Total 138,015 persons got married for the first time when they were below 10 years old. Out of which, 22,865 are males and 115,150 are female. Total 1,363,117 persons got married for the first time when they were between 10-14 years old. Out of which 2,61,232 are male and 1101885 are female.

## **Political Development**

During the reporting period Nepal was going through insurgency launched by the Communist Party of Nepal (Maoist), which started from 1996. As per the Ministry of Peace and Reconstruction, during the insurgency, 12,686 people were killed. The 2008 report by the National Human Rights Commission, titled *Status Report on the Individuals Disappeared During Nepal's Armed Conflict* listed 970 unresolved cases of disappearances. Of these, 299 cases of disappearances are allegedly attributed to the CPN (Maoists). Numerous other forms of human rights violence and abuse took place during the period of armed conflict. Conflict-induced internal displacement, migration to India and other countries for employment contributed for significant demographic change in remote and hilly parts of Nepal with declining of significant number of children in schools. The armed conflict negatively affected teaching-learning environment with forced recruitment of children in armed conflict, target against teachers and closure of schools in conflict affected areas.

Signing of the Comprehensive Peace Accord (CPA) between the Seven Party Alliance Government and the CPN (Maoist) on 21 November, 2006 ended the decade long violent conflict. The 2006 popular agitation of the people (*Janaandolan II*) restored the dissolved House of Representatives (HoR) and put an end to the former king Gyanendra Shah's advancement for absolute monarchy and an authoritarian rule. The Interim Constitution of Nepal (ICoN) was promulgated on January 15, 2007; and the election of the first Constituent Assembly, was held on April 10, 2008. The first CA was unable to promulgate the constitution on given time with some disagreement on principle issues. The second CA election was held on 19 November 2013 and now Nepal is focused on constitution making.