



Empowered lives.
Resilient nations.



Empowering Women Affected by HIV to Protect
their Rights at Health Care Settings

POSITIVE PROTECTION

TRAINING MANUAL – FACILITATOR'S BACKGROUND INFORMATION





*Empowered lives.
Resilient nations.*

United Nations Development Programme (UNDP)

UNDP partners with people at all levels of society to help build nations that can withstand crisis, and drive and sustain the kind of growth that improves the quality of life for everyone. On the ground in more than 170 countries and territories, we offer global perspective and local insight to help empower lives and build resilient nations.

Copyright © UNDP 2016

Layout : Himal Shrestha

**United Nations Development Programme
Nepal Country Office**

UN House
P.O. Box 107
Kathmandu, Nepal
Tel: +977-1-5523200
Fax: +977-1-5523991
Email: registry.np@undp.org
Website: www.np.undp.org

Disclaimer:

The views expressed in this publication are those of the authors and do not necessarily represent those of the United Nations, including UNDP, or UN Member States.



Empowered lives.
Resilient nations.

*Empowering Women Affected by HIV to
Protect their Rights at Health Care Settings*

POSITIVE PROTECTION

TRAINING MANUAL – FACILITATOR’S BACKGROUND INFORMATION

FOREWORD

In Nepal, 40,000 people are living with HIV, one-third of whom are women. While prevalence is relatively low nationwide at about 0.2–0.3 percent over the past five years, that picture changes drastically when narrowed to marginalized groups, including female sex workers and their clients, injecting drug users, men who have sex with men, and transgendered women, where HIV rates are the highest.

Tremendous effort has been made by Nepal's government, civil society organizations and development partners to combat HIV through the National HIV/AIDS Strategy 2011–2016. This strategy guided the national response to HIV/AIDS by embracing principles of universal access and human rights and a multisectoral approach; and by acknowledging the myriad challenges facing people living with HIV in Nepal. The new strategy 2016–2021 “Nepal HIVision 2020” that is under development aims at fast-tracking these efforts to ending the AIDS epidemic by 2030.

However, despite continuous efforts to end stigma and discrimination, people living with HIV, and in particular women living with HIV, face impediments to living healthier and more productive lives. Women with behaviours that may place them at higher risk of HIV exposure lack economic and social opportunities, and struggle to access health, justice and education, due to stigma, violence and discrimination.

Women affected by HIV in Nepal have reported violations of their rights, particularly in health care settings, being subject to forced and coerced sterilization or abortions, or denied access to sexual and reproductive health services. Yet, according to a UNDP Report released in 2013, not a single case was officially filed claiming discrimination or abuses in a health care setting. This is why this toolkit is needed and why it is vital for Nepal's fight against HIV.

As we embrace the Sustainable Development Goals (SDGs) and the 2030 Agenda on Sustainable Development, this training manual, **Positive Protection: Empowering Women Affected by HIV to Protect their Rights at Healthcare Settings**, will help ensure no one is left behind or overlooked in our work to achieve the SDGs. This manual is aimed at empowering women with HIV to know and protect their rights, and to gain access to justice in cases where those rights have been violated.

The manual is very much a community-owned product, that has come through a consultative process with key population networks (female sex workers, men who have sex with men, transgender people and people who inject drugs), driven by women affected by HIV, with support from UNDP and UNAIDS. We would like to congratulate the National Federation of Women Living with HIV and AIDS for their leadership in taking this initiative forward in Nepal, and thank the National Centre for AIDS and STD Control and the National Human Rights Commission of Nepal for the support shown in preparing this training manual.

UNDP is committed to advancing gender equality and women's empowerment not only as basic human rights, but as pathways to achieving the Sustainable Development Goals. This manual is an important step forward in that direction.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the left.

Renaud Meyer
Country Director
UNDP Nepal

ACKNOWLEDGMENTS

Positive Protection is a training manual to empower civil society organizations to protect the rights of women affected by HIV at health care settings in Nepal. It was developed by the United Nations Development Programme (UNDP), the Asia Pacific Network of People living with HIV (APN+) and the National Federation of Women Living with HIV and AIDS in Nepal, in partnership with UNAIDS.

The training manual was developed based on consultations with a wide range of national civil society groups in Nepal, including a two-day consultative workshop in November 2014 in Kathmandu to agree on the main areas to be included in the manual, and a two-day meeting in August 2015 in Nepal to agree on and validate the final draft of the manual.

We would like to thank the following organizations in Nepal for their contributions: the National Centre for AIDS and STD Control, the National Human Rights Commission of Nepal, the Network of People Living with HIV/AIDS in Nepal, Save the Children Nepal, Blue Diamond Society (Federation of Sexual and Gender Minorities), Jagriti Mahila Maha Sang (Federation of Female Sex Workers in Nepal), Dristi Nepal, FHI 360 Nepal, Srijansil Mahila Samuha, Young Key Affected Populations Nepal, Shakti Milan Samaj, UNFPA Nepal, and UN Women Nepal.

The coordinating author of the training manual is Andrea Irvin; legal expert advice on Nepal was provided by Basant Adhikari.

We would gratefully like to acknowledge the following individuals for their technical review and substantive contributions: Nukshinaro Ao (APN+), Susan Paxton (consultant with APN+), Harry Prabowo (APN+), Yuki Takemoto (UNAIDS), Brianna Harrison (UNAIDS), Tony Lisle (UNAIDS), Smriti Aryal (UN Women), Inthira Tirangkura (UN Women), Juncal Plazaola (UNFPA), Antje Kraft (UNDP), Susana Fried (UNDP), Liz Tremlett (GNP+), Rebecca Matheson (ICW), Annette Sohn (TREAT Asia), Jennifer Ho (TREAT Asia), Neera Thakur (UNFPA), Rose Koenders (Asia Pacific Alliance), Sangita Singh (UNDP) and Bharat Man Shrestha (UNDP).

Nashida Sattar (UNDP), Binda Magar (UNDP), Bina Pokharel (UNAIDS), Sita Shahi (FLWHA) and Nukshinaro Ao (APN+) for technical review, substantive contribution and for managing the development and the consultative process of the training manual.

TABLE OF CONTENTS

BACKGROUND INFORMATION FOR SESSION 1.1: KNOW THE EPIDEMIC	1
HIV Epidemiology and Trends	1
Who Is at Risk of HIV Infection in Nepal?	2
Vulnerability to HIV	7
HIV Services	8
BACKGROUND INFORMATION FOR SESSION 1.2: OUR RIGHTS	11
What Are Human Rights?	11
Where Do Human Rights Come From?	12
What Do Governments Have to Do to Guarantee People’s Rights?	13
Rights Related to the Sexual and Reproductive Health Care of Women Affected by HIV	14
BACKGROUND INFORMATION FOR 2.1: OPTIONS FOR SEEKING JUSTICE	25
Option 1: Making a Complaint to the Health Service	25
Option 2: Making a Complaint to the Medical Council, Nursing Council or Health Professional Council	25
Option 3: Using Mediation	26
Option 4: Making a Complaint to the National Human Rights Commission of Nepal	27
Option 5: Taking a Case to Court	27
BACKGROUND INFORMATION FOR SESSION 2.3: LET’S COMPLAIN!	29
Additional Information about the Medical Council, Nursing Council or Health Professional Council	29
BACKGROUND INFORMATION FOR SESSION 2.4: MEDIATION	32
What is Alternative Dispute Resolution?	32
Alternative Dispute Resolution in Nepal	32
Using Mediation	33
The Mediation Process in Nepal	34

Debates about Mediation	34
Groups to contact to identify mediators for the session are:	35
BACKGROUND INFORMATION FOR SESSION 2.5: TAKING YOUR CASE TO THE HUMAN RIGHTS COMMISSION	37
The National Human Rights Commission	37
Powers of the Commission	37
Handling Complaints	38
NHRC and Civil Society	38
BACKGROUND INFORMATION FOR SESSION 2.6: TAKING IT TO COURT!	39
Civil and Criminal Cases	39
How to Take a Medical Negligence or Malpractice Case to Court	39
Rights of the Victim in Court	40
Legal Aid	41
Legal Aid Provided by the Government	41
Non-Governmental Legal Aid	42
The National Women's Commission	43
BACKGROUND INFORMATION FOR SESSION 2.8: TAKING IT TO THE NEXT LEVEL: CONTRIBUTING TO NATIONAL REPORTS ON HUMAN RIGHTS TREATIES	44
The Treaty Review Process	44
The Role of Civil Society in Treaty Review	45
Submitting a Civil Society Report	45
Attending Sessions	46
Following up on the Committees' Recommendations	47
The Universal Periodic Review	47
Civil Society Involvement in the Universal Periodic Review	48
When Will Nepal Report?	48
BACKGROUND INFORMATION FOR SESSION 3.5: PLANNING FOR MONITORING AND EVALUATION	50
How Do We Monitor and Evaluate Together?	50
Encouraging Participatory Monitoring and Evaluation	53
Ethical issues	54
Record-keeping and Monitoring and Evaluation Tools	55

ACRONYMS AND ABBREVIATIONS

AIDS	Acquired Immune Deficiency Syndrome
ART	Antiretroviral Therapy
CEDAW	Convention on the Elimination of Discrimination against Women
HIV	Human Immunodeficiency Virus
NGO	Non-governmental Organization
NHRC	National Human Rights Commission of Nepal
OHCHR	Office of the High Commissioner on Human Rights
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UPR	Universal Periodic Review
VDC	Village Development Committee

KNOW THE EPIDEMIC

HIV Epidemiology and Trends

Note to Facilitator: Make sure you have the latest data and update the information provided. You can find out if there are new data about HIV in Nepal by contacting the UNAIDS Office or by checking on the Internet. If you have access to the Internet, visit the UNAIDS Data Hub website at <http://www.aidsdatahub.org/Country-Profiles/Nepal> for the latest information.

HIV was first reported in Nepal in 1988. By 2013, it was estimated that there were between 35,000 and 43,000 people living with HIV in Nepal.¹ Among people living with HIV in Nepal, about two-thirds or 66 percent (26,902) are male and one-third or 34 percent (13,821) are female. Over time, the percentage of the total number of HIV infections among women has increased. This has happened as men with HIV infected their regular female partners or wives. Table 1 below gives the estimated number of people living with HIV in Nepal by age and sex.²

Table 1: Estimated number of people living with HIV in Nepal by age and gender

(Data from the Country Progress Report on HIV/AIDS, Nepal, 2014)

Age	Male		Female		Total	
	Number	Percent	Number	Percent	Number	Percent
0–14	1,684	4.1%	1,598	3.9%	3,282	8.1%
15–24	2,182	5.4%	1,380	3.4%	3,562	8.7%
25–49	20,507	50.4%	9,987	24.5%	30,494	74.9%
50+	2,529	6.2%	856	2.1%	3,385	8.3%
Total	26,902	66.2%	13,821	33.8%	40,723	100%

1. HIV and AIDS Data Hub for Asia-Pacific (2015).Nepal: Review in Slides.
2. National Centre for AIDS and STD Control (2014).Country Progress Report on HIV/AIDS Response: Nepal, Kathmandu: Ministry of Health and Population.

As the table shows, most people living with HIV in Nepal are between the ages of 25 and 49. However, 8 percent are children under 15 years old, another 8–9 percent are young people between the ages of 15–24, and another 8 percent are over 50 years old. The total number of cases reported to the Ministry of Health and Population as of 15 July 2014 was 25,222. Of those, 15,837 were male, 9,344 were female, and 41 were transgender.³

The prevalence of HIV is still low in the general population of Nepal, with less than 0.3 percent living with HIV. This means that in every 1,000 people, 2 or 3 will have HIV. This number did not change much between 2008 and 2013. Although the HIV prevalence has not changed, the number of new infections each year has gone down. In 2000, there were 8,039 new infections; in 2013, there were 1,408.⁴ The estimated number of deaths from AIDS each year is also expected to go down because more people living with HIV are on anti-retroviral therapy (ART). In 2013, the estimated deaths were 3,362; the estimate for 2016 is 641.⁵

Who Is at Risk of HIV Infection in Nepal?

In Nepal, HIV is most often transmitted through having sex without a condom. More than 80 percent of HIV infections in Nepal were the result of having unprotected sex. Injecting drugs with unclean needles and syringes is the next most common way that HIV is passed from person to person in Nepal.⁶

Nepal has a concentrated HIV epidemic, which means that HIV is mostly found in specific groups of people. These groups include people who inject drugs, men who have sex with men, transgendered people, female and male sex workers, clients of sex workers, and men who travel for work, especially to India. Figure 1 below shows the estimated number of people living with HIV in these groups. It also shows the estimated number of women and men living with HIV who are not part of any of these key affected groups (called ‘Female remaining population’ and ‘Male remaining male’).⁷

3. Ibid.

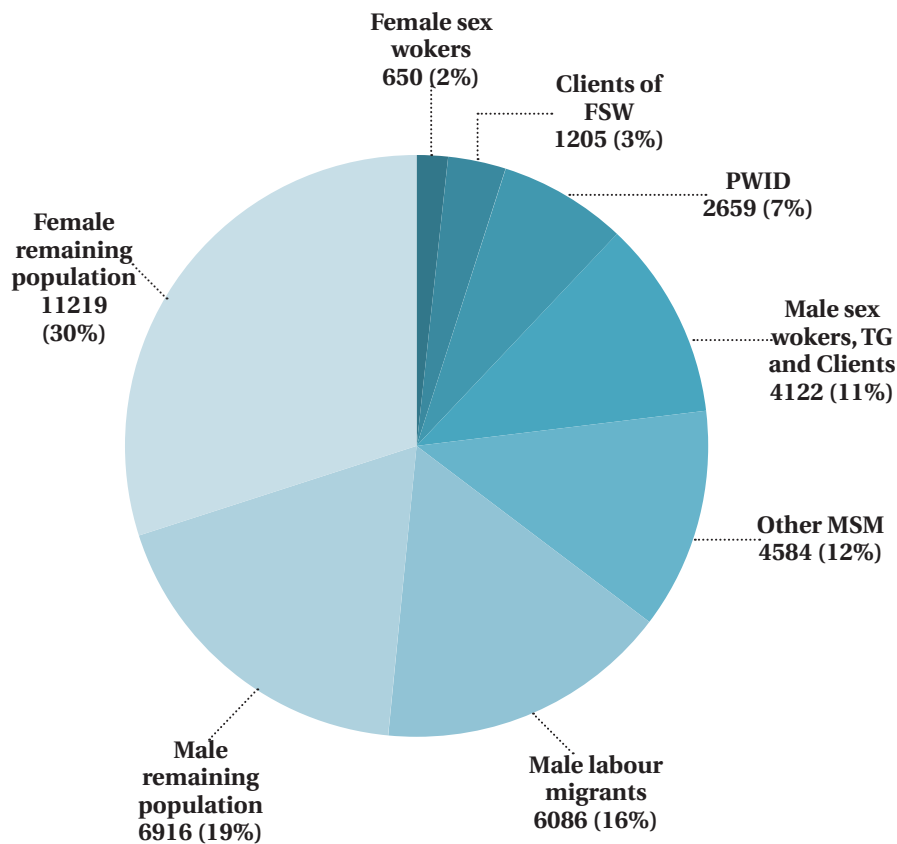
4. Ibid.

5. Ibid.

6. Ibid.

7. Ibid.

Figure 1: Estimated people living with HIV by population group in Nepal, 2013
(HIV and AIDS Data Hub for Asia-Pacific (2015). Nepal: Review in Slides.)



Most of the affected groups consist mostly of men – for example, men who have sex with men, male labour migrants, male sex workers, clients of female sex workers and people who inject drugs. The only key affected group that is entirely female is female sex workers. In addition, there are also a small number of women who inject drugs. Most women living with HIV are in the general population. Many are likely to be the wives of men in key affected groups, for example, wives of male labour migrants. Women living with HIV who are not classified as part of key affected groups make up the largest share of people living with HIV in Nepal, 30 percent, or 11,219 people.

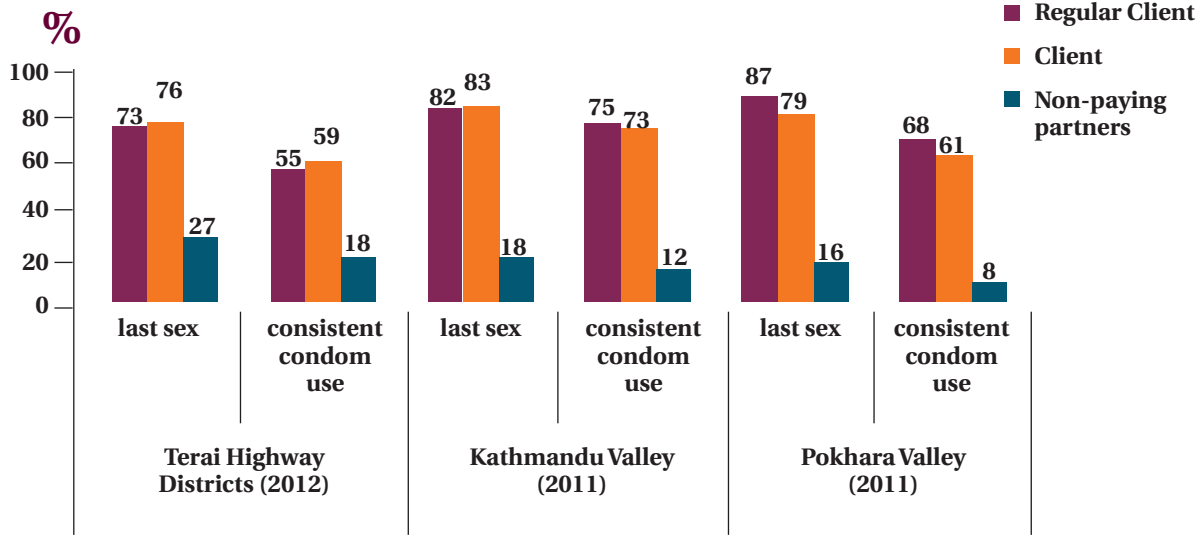
Female sex workers: In 2010, there were an estimated 26,500 female sex workers in Nepal.⁸ Research on the prevalence of HIV among female sex workers has been done in Kathmandu, Pokhara and 22 Terai districts since 2004. These studies show that the HIV prevalence among female sex workers has been kept low – at less than 2 percent. However, the prevalence of HIV is different for different types of sex workers and sex workers in different locations. In Kathmandu, HIV is higher among female sex workers who work on the street and HIV

8. HIV and AIDS Data Hub for Asia-Pacific (2015).Nepal: Review in Slides.

prevalence rose from 2 percent in 2004 to 4.2 percent in 2011. For female sex workers who work in establishments (like hotels) in Kathmandu, the HIV prevalence went down from 2 percent in 2004 to 0 percent in 2011. In Pokhara Valley, the HIV prevalence among female sex workers went up from 2 percent in 2004 to 3 percent in 2011. In the Terai districts, it went down from 2 percent in 2004 to 1 percent in 2011.⁹

Overall, 83 percent of female sex workers said they had used a condom the last time they had sex. Figure 2 below shows the percentage of female sex workers who said they used a condom the last time they had sex with different types of partners, as well as those who said they had used condoms consistently in the previous year, by type of partner.¹⁰

Figure 2: Percentage of female sex workers who reported condom use at last sex and consistent condom use in the last 12 months by partner type and by location, 2011–2012 (HIV and AIDS Data Hub for Asia-Pacific (2015).Nepal: Review in Slides.)

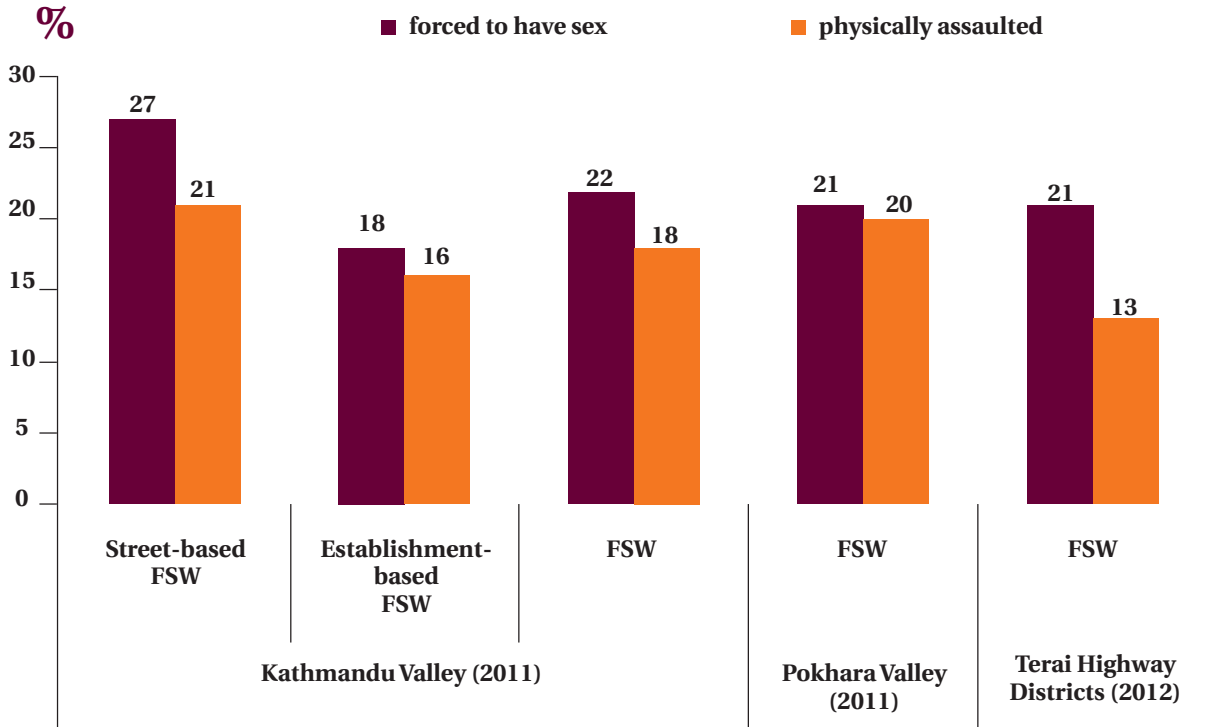


Sex workers also experience high levels of violence. Figure 3 shows the percentage of sex workers who said they had been forced to have sex and those who said they had been physically attacked in the previous year.¹¹

9. National Centre for AIDS and STD Control (2014).Country *Progress Report on HIV/AIDS Response: Nepal*, Kathmandu: Ministry of Health and Population.
 10. HIV and AIDS Data Hub for Asia-Pacific (2015).Nepal: Review in Slides.
 11. Ibid.

Figure 3: Percentage of female sex workers who were forced to have sex and physically assaulted in the last 12 months by type and location, 2011–2012

(HIV and AIDS Data Hub for Asia-Pacific (2015).Nepal: Review in Slides.)



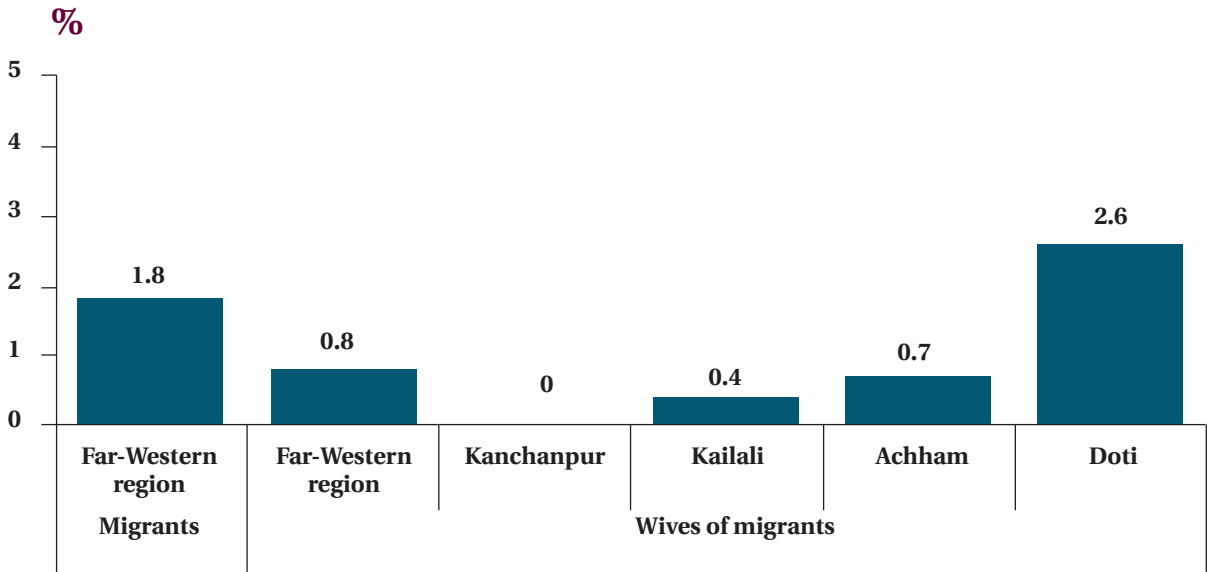
People who inject drugs: In 2013, the Central Bureau of Statistics estimated 52,000 people who inject drugs in Nepal. Of these, an estimated 4,453 are women. HIV among people who inject drugs has gone down consistently in all parts of Nepal where it was studied. The prevalence of HIV in this group varies a lot by region. In Kathmandu, HIV prevalence among people who inject drugs went from 68 percent in 2002 to 6.3 percent in 2011. In Pokhara, it went from 22 percent in 2003 to 4.6 percent in 2012. In Eastern Terai, it went down from 35.1 percent in 2003 to 8.1 percent in 2012; and in the Far-Western Terai, it went down from 12 percent in 2003 to 5 percent in 2012. A 2011 study on women who inject drugs found that 4 percent of them had HIV.¹²

Other men at higher risk of HIV exposure: Among other male key populations at higher risk of HIV exposure, the trends in HIV infection vary. Among male sex workers, HIV prevalence went up, from 4.8 percent in 2004 to 6.8 percent in 2012. Among men who have sex with men, HIV prevalence did not change – it was 3.9 percent in 2004 and 3.8 percent in 2012. HIV prevalence among male labour migrants varies by district. Among those from the Mid-

12. National Centre for AIDS and STD Control (2014).Country *Progress Report on HIV/AIDS Response: Nepal*, Kathmandu: Ministry of Health and Population.

and Far-Western Hill districts, HIV went down from 2.8 percent in 2006 to 1.4 percent in 2012. Among those from the Western Hill Districts, it did not change – it was 1.1 percent in 2006 and 1.1 percent in 2012. Studies among the wives of male labour migrants found that the prevalence of HIV among them varied quite a lot by district.¹³ See Figure 4 below for the details.

Figure 4: HIV prevalence among migrants and wives of migrants, 2010
(HIV and AIDS Data Hub for Asia-Pacific (2015).Nepal: Review in Slides.)



Female partners of men in key populations: *HIV Transmission in Intimate Partner Relationships in Asia* states that: “Evidence from many countries in Asia indicates that most women are acquiring HIV not because of their own sexual behaviours but because their partners engage in unsafe behaviours.” The report cites Bennetts et al. and Silverman et al. to estimate that more than 90 percent of women living with HIV acquired the virus from their husbands or from their boyfriends while in long-term relationships. The report also cites recent research by Gurung on Nepali migrants to Maharashtra, documenting a high prevalence of HIV and syphilis among male returnees to Nepal; while Poudel et al. describe these infections as presumed to occur from contact with sex workers in India. The female partners of migrant workers have been shown to be at an increased risk of infection when the latter return from working in countries with a high HIV prevalence.

Preventing HIV Transmission in Intimate Partner Relationships: *Evidence, strategies and approaches for addressing concentrated HIV epidemics in Asia* states that: “In Asia, women who are at heightened risk of HIV include female intimate partners of men who are currently, or were formerly, part of a population at higher risk of HIV (e.g. male clients of sex workers,

13. HIV and AIDS Data Hub for Asia-Pacific (2015).Nepal: Review in Slides.

men who inject drugs, and men who have sex with men)... For instance in India and Nepal, studies have shown a higher HIV prevalence among wives of returnee migrant workers compared to women in the general population.”

Vulnerability to HIV

There are a number of factors that create vulnerability to HIV in Nepal. Those that particularly affect women are:

- The low status of women in society reduces their power to control their own lives, including negotiating safer sex in order to protect themselves. It also makes it more likely that violence will be used to force them to have sex or to get them to do what their partner wants out of fear. Forced sex increases the risk of HIV transmission because it is likely to result in injuries that allow HIV to enter the body more easily.
- Women’s lack of economic independence makes them reliant on their husbands for their basic needs. This reduces their power to negotiate safer sex and refuse unsafe sex and their ability to leave an unsafe or violent relationship.
- Due to poverty and greed, between 7,000–15,000 young women and girls are trafficked to India from Nepal every year. These women are forced to become sex workers, making them vulnerable to HIV.
- The low status of sex work has resulted in many sex workers remaining ‘hidden’. Those who are hidden are difficult to reach with prevention and treatment programmes because they are not part of a community of sex workers or existing networks.¹⁴

Other factors that create vulnerability to HIV in Nepal include:

- **Not enough opportunities for work.** This results in many people, especially men, travelling within Nepal or to India for work. When men are away from their spouses, they are more likely to have extramarital sex partners or to visit sex workers.
- **Stigma and discrimination against people living with HIV.** Because of stigma and discrimination, people may be afraid to use HIV services, such as counselling, testing and ART services, which would help prevent the transmission of HIV to others.
- **Stigma and discrimination against men who have sex with men, sex workers and transgender people.** The lack of acceptance of these groups in society can result in low self-esteem and self care. It also results in high levels of violence against them, including forced sex.

14. HIV and AIDS Data Hub for Asia-Pacific, (2011). Asia-Pacific Country Reviews: Nepal at a Glance, September 2011.

- **Natural disasters, conflict and violence.** These cause large numbers of people to leave their homes, which makes it more difficult to reach them with HIV prevention and treatment, such as condoms. Violence against women, including sexual violence, may also increase in these situations.
- **Having sex before physical and emotional maturity.** Sex before maturity makes young people vulnerable to HIV. The virus may more easily enter their bodies because their mucous membranes are more delicate and more easily damaged, allowing HIV to enter the body. They also may not have the power and/or comfort to demand condom use in their relationship. A study in Nepal in 2006 found that among those aged 15–24, 7.5 percent of women and 4 percent of men had had sex before the age of 15. These numbers were higher for those who had no education at all – 13 percent for women and 10 percent for men.¹⁵
- **Lack of information needed to protect oneself from HIV.** The National Demographic and Health Survey in 2011 found that only 26 percent of women and 44 percent of men aged 15–24 had comprehensive knowledge about HIV prevention. Comprehensive knowledge means that they could correctly identify the ways to prevent HIV as well as the wrong information about how HIV is transmitted. Those below the age of 20 had slightly lower levels of comprehensive knowledge than those aged 20–24. For those aged 15–49, 21 percent of women and 30 percent of men had comprehensive knowledge about HIV.¹⁶

HIV SERVICES

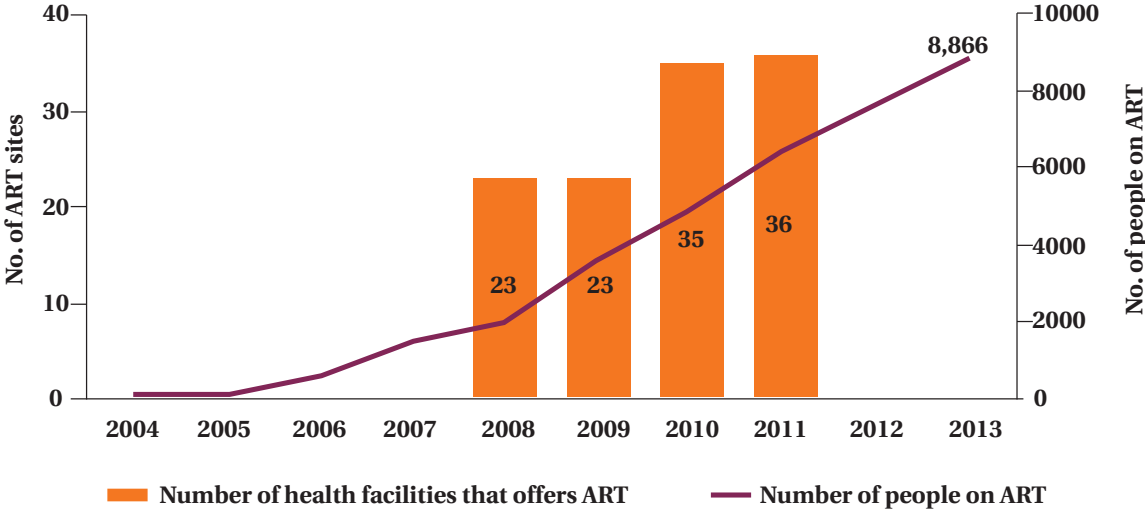
By 2011, there were 36 places that provided anti-retroviral treatment. In 2013, there were an estimated 40,700 people with HIV in Nepal, of which 22,994 had been tested and diagnosed. Of those, 15,991 had been enrolled in treatment and 8,860 were receiving ART. This means that 22 percent of HIV positive people were receiving ART services in 2013.¹⁷ Figure 5 below shows how access to ART has increased over time in Nepal.

15. Ibid.

16. Ministry of Health and Population (MOHP), New ERA, and ICF International Inc. (2012). Nepal Demographic and Health Survey 2011, Kathmandu, Nepal: Ministry of Health and Population, New ERA, and ICF International, Calverton, Maryland.

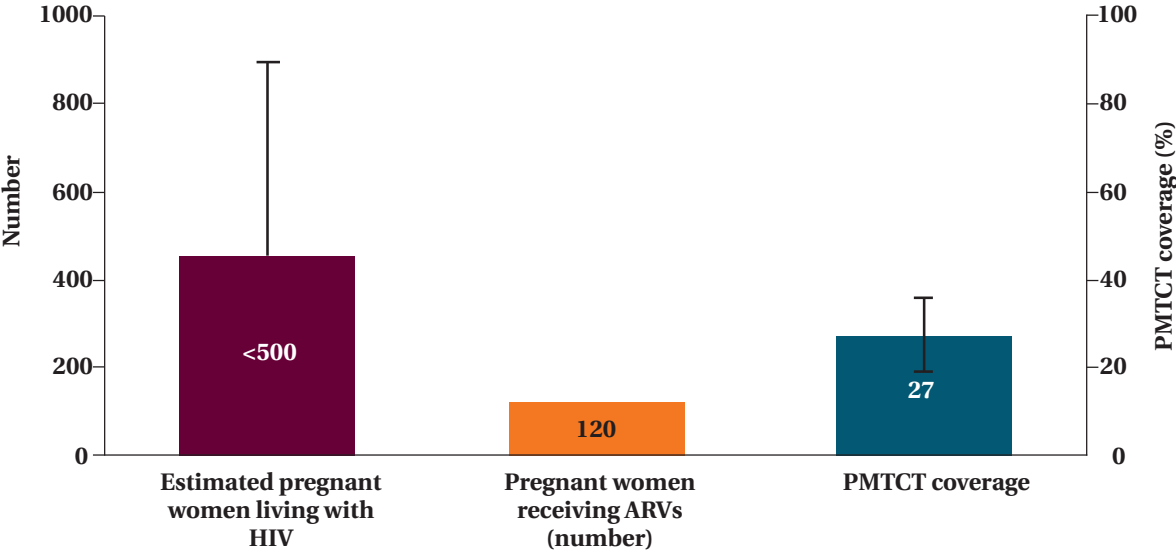
17. HIV and AIDS Data Hub for Asia-Pacific (2015). Nepal: Review in Slides.

Figure 5: Number of ART sites and number of people on ART, 2004–2013
 (HIV and AIDS Data Hub for Asia-Pacific (2015),Nepal: Review in Slides.)



In 2013, there were an estimated 450 pregnant women living with HIV in Nepal. Of those, 120 (or 27 percent) were receiving ART to prevent the transmission of HIV to their babies, as shown in Figure 6.¹⁸

Figure 6: Estimated number of pregnant women living with HIV, receiving ARVs, and PMTCT coverage, 2013
 (HIV and AIDS Data Hub for Asia-Pacific (2015).Nepal: Review in Slides.)



18. Ibid.

REFERENCES

- HIV and AIDS Data Hub for Asia-Pacific (2015). Nepal: Review in Slides. Available at: <http://www.aidsdatahub.org/Overview-in-Slides> [accessed 6 December 2015].
- HIV and AIDS Data Hub for Asia-Pacific (2011). Asia-Pacific Country Reviews: Nepal at a Glance, September 2011. Available at: [http://www.aidsdatahub.org/sites/default/files/documents/Nepal_Country_Review_2011._HIV_and_AIDS_Data_Hub_for_Asia-Pacific_\(2011\).pdf](http://www.aidsdatahub.org/sites/default/files/documents/Nepal_Country_Review_2011._HIV_and_AIDS_Data_Hub_for_Asia-Pacific_(2011).pdf) [accessed 5 March 2015].
- Measure DHS Online Tools: HIV/AIDS Survey Indicators Database Nepal.
- Ministry of Health and Population (MOHP), New ERA, and ICF International Inc. (2012). *Nepal Demographic and Health Survey 2011*, Kathmandu, Nepal: Ministry of Health and Population, New ERA, and ICF International, Calverton, Maryland.
- National Centre for AIDS and STD Control (2014). *Country Progress Report on HIV/AIDS, Nepal, 2013*. Kathmandu: Ministry of Health and Population. Available at <http://www.aidsdatahub.org/Nepal-Global-AIDS-Response-Progress-Report-2014> [accessed 15 December 2014].
- National Centre for AIDS and STD Control (2014). Factsheet 2: Reported HIV Cases, as of Asar 2071 (15 July 2014). Kathmandu: Ministry of Health and Population.
- Nazish, K (2014). Women and Girls, “A Commodity: Human Trafficking in Nepal”, *The Diplomat*. Available at <http://thediplomat.com/2014/02/women-and-girls-a-commodity-human-trafficking-in-nepal/> [accessed 20 January 2015].
- Nepal Country Profile (2013). Available at <http://www.aidsdatahub.org/Country-Profiles/Nepal> [accessed 15 December 2014].
- Shah, V, Brar B and Rana, SY (2002). Layers of Silence: Links between women’s vulnerability, trafficking and HIV/AIDS in Bangladesh, India and Nepal. Paper prepared for the United Nations Research Institute for Social Development project HIV/AIDS and Development.
- Survey Indicator Data, Indicator: 9.1.2 – Sex before the age of 15 from the Demographic and Health Survey, 2006. Available at: http://hivdata.measuredhs.com/surveys/survey_ind_data.cfm?survey_id=464&survey_ind_id=6610&ind_id=118 [accessed 20 January 2015].
- UNAIDS (2009). *HIV Transmission in Intimate Partner Relationships In Asia*, Geneva: UNAIDS
- UNDP (2015). *Preventing HIV Transmission in Intimate Partner Relationships: Evidence, strategies and approaches for addressing concentrated HIV epidemics in Asia*, Bangkok: UNDP.

OUR RIGHTS

What Are Human Rights?

Human rights are the basic freedoms and protections that people are entitled to simply because they are human beings. All people have the same human rights, regardless of their gender, colour, race, ethnicity, religion, class, caste, ability, sexual orientation, gender identity, or any other characteristic, including their HIV status.

Human rights define what governments and others can do to us, cannot do to us and should do for us. They are standards for laws, policies and practices. The legal obligation to ensure human rights belongs mostly to governments. Other actors can also have responsibilities for ensuring rights, such as corporations and individual health care providers. For example, if a person has a right to education, it means that the government has an obligation to provide that person with education and that no one can stop a person from getting an education.

Rights also provide rules for interactions between people as individuals and as groups. They guide and limit or control the actions of individuals or groups. For example, the right to life means that people cannot kill other people. A person agrees to respect the rights of others in exchange for having their rights respected by others. All members of society are responsible for respecting the human rights of other members.

Human rights are to be applied equally to everyone, everywhere in the world, in all cultures and religions. Rights are important because they recognize equality, protect freedom and promote justice, and therefore challenge power imbalances and injustice.

BASIC HUMAN RIGHTS

Some of the most recognized human rights are:

- The right to life
- The right to security (to not be afraid you will be harmed)
- The right to a basic standard of living (for example, food, shelter and clothing)
- The right to education
- The right to health
- The right to work for yourself (not be a slave)
- The right to own property
- The right to free speech (to say what you want)

- The right to not be arrested unless there is reason to believe you have committed a crime
- The right to have a fair trial
- The right to be seen as innocent, even if you are arrested, until you are found to be guilty by a fair trial
- The right to be a citizen of a country
- The right to vote
- The right to seek asylum if your country treats you badly
- The right to marry who you wish
- The right to think freely
- The right to believe and practise the religion you choose
- The right to protest peacefully or speak against a government or group

Where Do Human Rights Come From?

Human rights are recognized in national constitutions and laws as well as in international treaties. Part 3 of Nepal's Constitution is entitled 'Fundamental Rights and Duties' and it lays out the human rights of all Nepali citizens. In addition, according to the Nepal Treaty Act (1990), once Nepal has ratified an international treaty through its Parliament, if there is a conflict between the treaty and current domestic law, then the law will no longer be valid. The Supreme Court of Nepal has used these international treaties to decide cases. This means that the rights in any treaty that Nepal signs are effectively laws.

In 1948, the United Nations (UN) adopted the 'Universal Declaration of Human Rights', which became the foundation for all human rights. The Universal Declaration of Human Rights asserts that each of us is entitled to the same rights simply by the fact that we are human beings. All nations endorsed the Declaration and are expected to publicize, promote and implement it.

The rights outlined in the Universal Declaration are supported by two important international treaties: the International Covenant on Economic, Social and Cultural Rights; and the International Covenant on Civil and Political Rights, both adopted in 1966. These covenants further clarify the rights in the Universal Declaration of Human Rights. Together these documents make up what is known as the International Bill of Human Rights. Countries that sign them agree to legally protect those rights. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted in 1979 to more clearly and fully protect and promote the human rights of women. Nepal ratified these two international covenants as well as CEDAW in 1991.

What Do Governments Have to Do to Guarantee People's Rights?

When a country signs or ratifies a rights treaty, covenant or convention, it becomes binding. In other words, they have legally agreed to implement it and must do so.

Governments have three obligations – they have to 1) respect the rights; 2) protect the rights; and 3) fulfil the rights in the treaties they sign.

- **Respecting the right** means the state cannot violate the right directly. For example, a government violates its responsibility to respect the right to health if it does not provide medical care to populations directly in its care, such as prisoners.
- **Protecting the right** means that the state has to prevent others from violating the right and offer a way to seek justice if a violation happens. For example, the country needs to make it illegal for anyone to deny health care to someone because they have a health condition such as HIV. It must make sure that a person who is denied care can take action to get the care they need and compensation for the violation of their right.
- **Fulfilling the right** means that the state has to take all necessary steps to make sure that its people enjoy the right. It must make sure that the institutions, procedures and money are in place for people to enjoy the right. For example, for health, the state must provide enough resources (money, trained health care workers, and facilities) to meet the health needs of its people.

Because Nepal has signed these human rights covenants and conventions, the Government of Nepal is legally bound to promote and protect the human rights in those documents. The Government should do this by enacting laws that recognize and protect those rights; agreeing on the consequences for organizations or individuals who violate rights; and providing adequate funding to the programmes needed to fulfil those rights.

The Government is responsible for protecting the human rights of everyone, regardless of their HIV status, their gender, sexuality, work or any other characteristic. The human rights of people living with HIV, transgendered people and sex workers are the same as the human rights of all other people. The Government is required to submit a report every four or five years on how they are implementing the provisions of each of the treaties they have signed and the progress they are making towards achieving the desired outcomes. At that time, an NGO Shadow Report is also usually produced. This shadow report is an additional report written by non-governmental organizations (NGOs) that provides information from a different perspective to complement the Government report. Women living with HIV can participate in producing these Shadow Reports and can give information to be included in them if they have evidence of violations of the rights of women affected by HIV.

Rights Related to the Sexual and Reproductive Health Care of Women Affected by HIV

The exact wording of the articles that ensure the rights included in this session are presented below. See the references for websites where you can download the entire documents.

Constitution of Nepal (promulgated on 20 September 2015)

Article 16. Right to Live with Dignity:

- (1) Each person shall have the right to live with dignity.

Article 17. Right to Freedom:

- (1) Except as provided for by law no person shall be deprived of her/his personal liberty.

Article 18. Right to Equality:

- (1) All citizens shall be equal before the law. No person shall be denied the equal protection and benefit of the laws.
- (2) There shall be no discrimination in the application of general laws on the grounds of origin, religion, race, caste, tribe, sex, physical conditions, disability, health condition, matrimonial status, pregnancy, economic condition, language or geographical region, or ideology or any other such grounds.
- (3) The state shall not discriminate among citizens on grounds of origin, religion, race, caste, tribe, sex, economic condition, language or geographical region, ideology and such other matters. Provided that nothing shall be deemed to bar the making of special provisions by law for the protection, empowerment or advancement of the women lagging behind socially and culturally, Dalits, Adibasi, Madhesi, Tharus, Muslims, oppressed class, backward communities, minorities, marginalized groups, peasants, laborers, youths, children, senior citizens, sexual minorities, persons with disability, pregnant, incapacitated and the helpless persons, and of the citizens who belong to backward regions and financially deprived citizens including the Khas Arya.
- (4) There shall not be any gender discriminations regarding remuneration for the same work and social security.
- (5) There shall be no gender discrimination regarding the right to parental property with regard to all family members.

Article 20. Right to Justice:

- (1) No person shall be detained without being informed of the ground for such an arrest...
- (10) An indigent person shall have the right to free legal aid as provided for by law.

Article 22. Right against Torture:

- (1) No person in detention shall be subjected to physical or mental torture, or be treated in a cruel, inhuman or degrading manner.

- (2) Any such act pursuant to clause (1) shall be punishable by law and a victim of such an act shall have the right to compensation as provided for by law.

Article 24. Right against Untouchability and Discrimination:

- (1) No person shall be treated with any kind of untouchability or discrimination in any private or public place on grounds of caste, ethnicity, origin, community, occupation, or physical condition...
- (5) All forms of untouchability or discrimination contrary to this provision shall be punishable by law as a serious social crime, and the victim of such an act shall have the right to compensation as provided for by law.

Article 27. Right to Information:

Every citizen shall have the right to seek information on any matters of concern to her/him or the public. Provided that nothing shall be deemed to compel any person to provide information about which confidentiality is to be maintained according to law.

Article 28. Right to Privacy:

Except in circumstances provided by law, privacy in relation to the person, and their residence, property, documents, records, statistics and correspondence, and their reputation are inviolable.

Article 29. Right against Exploitation:

- (1) Every person shall have the right against exploitation.
- (2) No person shall be subjected to any kind of exploitation on the basis of religion, custom, tradition, culture, practices or any other bases.
- (3) No person shall be subjected to human trafficking or bonded labor, and such an act shall be punishable by law.
- (4) No one shall be forced to work against his or her will. Provided that nothing shall be deemed to prevent the making of law empowering the State to require citizens to perform compulsory service for public purposes. ...
- (5) Any act contrary to clause (3) and (4) shall be punishable by law and the victim of such an act shall have the right to compensation from the perpetrator.

Article 35. Right to Health Care:

- (1) Every citizen shall have the right to seek basic health care services from the state and no citizen shall be deprived of emergency health care.
- (2) Each person shall have the right to be informed about his/her health condition with regard to health care services.
- (3) Each person shall have equal access to health care.
- (4) Each citizen shall have the right to access to clean water and hygiene.

Article 38. Right of Women:

- (1) Every woman shall have equal right to lineage without any gender discriminations.
- (2) Every woman shall have the right relating to safe motherhood and reproductive health.
- (3) There shall not be any physical, mental, sexual or psychological or any other kind of violence against women, or any kind of oppression based on religious, social and cultural tradition, and other practices. Such an act shall be punishable by law and the victim shall have the right to compensation as provided for in law.
- (4) Women shall have the right to participate in all state structures and bodies on the basis of the principle of proportional inclusion.
- (5) Women shall have the right to special opportunity in the spheres of education, health, employment and social security on the basis of positive discrimination. (6) Both the spouses shall have equal rights in property and family affairs.

Article 42. Right to Social Justice:

- (1) Socially backward women, Dalits, Adibasi, Janajati, Adibasi Janajati, Madhesi, Tharu, minority groups, persons with disability, marginalized groups, Muslim, backward classes, gender and sexually minority groups, youths, peasants, laborers, the oppressed and the citizens of backward regions, and economically poor Khas Arya shall have the right to employment in state structures on the basis of the principle of inclusion.

Article 44. Right of Consumers:

- (1) Each consumer shall have the right to quality foodstuffs and services.
- (2) A person who has suffered from sub-standard object or service shall have the right to be compensated as provided for by law.

Article 46. Right to Constitutional Remedy:

There shall be right to constitutional remedy pursuant to the Articles 133 or 144 in course of implementation of rights granted in this part.

Article 133. Jurisdiction of the Supreme Court:

- (2) The Supreme Court shall, for the enforcement of the fundamental rights conferred by this Constitution, for the enforcement of any other legal right for which no other remedy has been provided or for which the remedy even though provided appears to be inadequate or ineffective, or for the settlement of any constitutional or legal question involved in any dispute of public interest or concern, have the extraordinary power to issue necessary and appropriate orders to enforce such rights or settle the dispute.

Article 144. Jurisdiction of High Court:

- (1) The High Court shall have the power to issue necessary and appropriate orders, for the enforcement of the fundamental rights conferred by this Constitution or for the enforcement of any other legal right for which no other remedy has been provided or for which the remedy even though provided appears to be inadequate or ineffective or for the settlement of any legal question involved in any dispute of public interest or concern.

The Civil Rights Act (1955)

Section 3. Equality in the eye of law:

No citizen shall be denied equality before the law and equal protection of law subject to the provisions of prevailing laws.

Section 5. Power of Government to provide for special provision to the specific class.

- (a) The Government of Nepal shall have power to provide special provisions to the female, children and underprivileged class of citizens.

The Libel and Slander Act (1959)

Section 3. Libel/defamation:

If a person by way of writing or words or signs or understandable symbols accuses another person of any charge or publishes such matter with intent to damage that other person's character or knowingly or having reason to believe that it will make such a damage, the person shall be deemed to have libeled that other person. (3) No act shall be held to be a libelous act damaging the prestige of a person unless an allegation is so made directly or indirectly that it, in the opinion of other persons, undermines the person's moral or intellectual character or character or reputation relating to race or occupation or that it, in a believable manner, indicates that the person's body is in a hateful situation or in a situation normally considered to be degrading.

Explanation: No act shall be held to be a libelous act damaging the prestige of a person unless an allegation is so made directly or indirectly that it, in the opinion of other persons, undermines the person's moral or intellectual character or character or reputation relating to race or occupation or that it, in a believable manner, indicates that the person's body is in a hateful situation or in a situation normally considered to be degrading.

The Marriage Registration Act (1971)

Section 4: Marriage may be concluded, except [it is] otherwise prohibited to get married.

Pursuant to prevailing law, the following male and female may conclude marriage...:

- (a) In case, the male or female does not have a husband or wife;
- (b) In case, the male or female has not gone mad;
- (c) In case, both male and female have completed the age of 20 years.

Nepal Health Service Act (1997)

Section 63: Restriction on acting recklessly or with bad intentions:

No employee [health service staff] shall, in rendering health services to a patient in the course of performing his or her duties, act recklessly or with bad intentions in a manner likely to cause loss or damage to the patient's body.

Section 70:

In order to institute a case against any [health service] employee... the following matters have to be observed in respect of a civil case:

- (a) A written notice stating the reasons for instituting the case and the name and address of the plaintiff and of his/her attorney, if any, has been delivered to the Authority or the concerned employee or sent by post through a registered mail and a copy of such notice has been submitted to the Government of Nepal.
- (b) The case has been filed within eight months from the date of [the violation]. [This statute of limitations does not apply to filing law suits claiming compensation in which] an employee has caused physical loss and damage to any person as a result of his or her acts done recklessly or with bad intention,

The Medical Council Act (1964)

Section 7A: Functions, duties and powers of the Council:

- (1) Functions, duties and powers of the Council shall be as follows:
 - (e) To prepare code of conduct of the Medical practitioner as prescribed and remove the name of a Medical practitioner from the Registration book after taking actions as prescribed against the Medical practitioner who has breached such a code of conduct.

The Medical Council Code of Ethics

3. Duties of Physicians to their Patients

- 3.1 Obligation to the Patient:** A physician is not bound to treat each and every patient asking for his services except in emergencies, but s/he should be ready to respond to the calls of the sick and injured in conformity with the high character of medical profession.
- 3.2 Patient's Secrecy:** Patient's confidence concerning individual or domestic life entrusted by the patient to a physician and observed during medical attendance should never be divulged unless the laws of the country require its revelation. Even in such circumstances it should only be made after formal protest.
- 3.3 Prognosis of the Disease:** A physician should explain the nature of the illness to the patient. S/he should neither exaggerate nor minimize the gravity of a patient's condition but should always be sympathetic to the patient and his/her family.
- 3.4 Service to the Patients:** A physician is free to choose whom to serve except in emergency cases. But once s/he undertakes a patient for treatment s/he should not reject the patient without giving reasonable time or information in advance to the patient and his/her relatives.
- 3.5 Consent:** A physician must seek an informed written consent prior to performing a diagnostic or treatment procedure. Consent should be taken from the patient if s/he is above sixteen years, but in the case of minors or unconscious patients, consent from guardian can be taken. If there is an emergency and nobody

is available to sign consent on behalf of patient, it is the responsibility of the physician to start the treatment. It is obligatory for the physician to explain the nature of the procedure and the expected result.

The Nursing Council Act (1996)

Section 9: Functions, duties and powers of Council:

- (1) The functions, duties and powers of the Council shall be as follows: (g) To fix professional code of conduct of nursing professionals and take action against the nursing professional who violates such code of conduct.

Nepal Health Professional Council Act (1997)

Section 18: Deletion of name from register and re-registration:

- (1) In any of the following circumstances, the Council may issue an order to delete the name of a registered health professional from the register:
 - (a) where he/she has been punished by a court in a criminal offense involving moral turpitude;
 - (b) where two-thirds majority of the Council adopt a resolution that he/she has not observed the prescribed professional code of conduct.

Nepal Health Professional Council Rules (1999) (also used by the Nepal Nursing Council)

Regulation 13: Professional conduct:

- (1) For the purposes of Clause (b) of Sub-section (1) of Section 18 of the Act, the registered health professionals shall, while carry on health profession, observe the professional conduct as follows:
 - (b) **Maintaining decency and secrecy:** They have to deal decently with the persons who come to their contact in the course of health profession. They shall not disclose the information that they come to know about the personal life or health of any person to another person except where so required by the prevailing law.
 - (c) **Prohibition on discrimination:** In using the professional knowledge and skills, they should not discriminate against any person on grounds of religion, race, sex and social caste, tribe or any other matter.

Medical Council Regulation (1968)

Regulation 22: Code of conduct of the medical practitioners:

- (1) Registered medical practitioners' code of conduct towards patient and member of patient family shall be as follows:
 - (e) Except in the following circumstances, not to deprive a patient of his treatment:
 - (1) On refusal to provide remuneration, (2) If he does not take the drug

recommended by him, (3) If he pressurizes or compels the medical practitioner to recommend unnecessary drugs, (4) If he has given pressure to carry out illegal acts by any means.

- (g) To show decent behavior to the patient and a person looking after the patient and to treat disease according to his fullest knowledge, intelligence, and experience and nor to neglect and ignore the treatment of disease.
- (i) Not to disclose, except according to law under the order of a court of law, any secret matters concerning with patient stated by the patient to him under his trust.

Civil Code of Nepal (Muluki Ain)

Chapter 10, Number 28A on Homicide:

No one shall cause abortion upon causing coercion, threat, lure or offer (Pralovan) to a pregnant woman.

Chapter 12, Number 2:

In cases where a surgery has to be performed to split, burst, take out or cut (Chirna, Forna, Jhikna, Katna) from the body for the best interest of the patient, the medical practitioner or a Vadihaya holding a certificate (Passwala) may himself or herself perform such an operation upon receiving the consent of the patient if he or she is major and conscious and upon receiving the consent of the guardian if the patient is minor or in a state of unconsciousness, and even without receiving any consent but in the best interest of the patient on behalf of the hospital in the case of a person without any guardian.

Chapter 17, Number 1 on Medical Treatment:

Save within the relationship punishable under the Chapter on Incest, any marriage may be solemnized with one's consent according to one's own will and pleasure, subject to the provisions set forth in several Numbers of this Chapter.

Universal Declaration of Human Rights

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3: Everyone has the right to life, liberty and security of person.

Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 16:

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 25:

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

International Covenant on Civil and Political Rights

Article 6:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life (*Note: there are additional parts to this Article on the death penalty that are not cited here*).

Article 7:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 17:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 23:

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 26:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

International Covenant of Economic, Social and Cultural Rights**Article 12:**

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**Article 12:**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the

post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 15:

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage;
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
 - (c) The same rights and responsibilities during marriage and at its dissolution;
 - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
 - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
 - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
 - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

REFERENCES

- Government of Nepal (2015). *Constitution Of Nepal 2015*. Unofficial translation by Nepal Law Society, International Institute for Democracy and Electoral Assistance and UNDP. Available at: http://www.constitutionnet.org/files/nepal_constituton_2015_final_english_version_23_sep_2015.pdf [accessed 30 Nov 2015].
- Government of Nepal (1999). *Nepal Health Professional Council Rules, 2056 (1999)*. Available at: http://www.lawcommission.gov.np/index.php?option=com_remository&func=fileinfo&id=1074&Itemid=14&lang=en [accessed 15 August 2015].
- Government of Nepal (1997). *Nepal Health Professional Council Act, 2053 (1997)*. Available at: http://www.lawcommission.gov.np/index.php?option=com_remository&Itemid=14&func=fileinfo&id=341&lang=en [accessed 15 August 2015].
- Government of Nepal (1997). *Nepal Health Service Act, 2053 (1997)*. Available at: http://nepalpolicy.net.com/images/documents/publichealth/acts/1997_Nepal%20Health%20Service%20Act.pdf [accessed 15 August 2015].
- Government of Nepal (1996). *Nepal Nursing Council Act, 2052 (1996)*. Available at: [http://nepalpolicy.net.com/images/documents/publichealth/acts/Nepal%20Nursing%20Council%20Act,%202052%20\(1996\).pdf](http://nepalpolicy.net.com/images/documents/publichealth/acts/Nepal%20Nursing%20Council%20Act,%202052%20(1996).pdf) [accessed 15 August 2015].
- Government of Nepal (1971). *Marriage Registration Act, 2028 (1971)*. Available at: <http://www.lawcommission.gov.np/site/sites/default/files/Documents/marriage-registration.pdf> [accessed 15 August 2015].
- Government of Nepal (1968). *Nepal Medical Council Regulation, 2024 (1968)*. Available at: www.nmc.org.np/downloads/43095.doc [accessed 15 August 2015].
- Government of Nepal (1964). *Nepal Medical Council Act, 2020 (1964)*. Available at: [http://nepalpolicy.net.com/images/documents/education/acts/Nepal%20Medical%20Council%20Act,%202020%20\(1964\).pdf](http://nepalpolicy.net.com/images/documents/education/acts/Nepal%20Medical%20Council%20Act,%202020%20(1964).pdf) [accessed 15 August 2015].
- Government of Nepal (1963). *The Muluki Ain (General Code)*. Available at: http://nepalconflictreport.ohchr.org/files/docs/1963-04-12_legal_govt-of-nepal_eng.pdf [accessed 11 March 2015].
- Government of Nepal (1959). *Libel and Slander Act, 2016 (1959)*. Available at: <http://www.lawcommission.gov.np/site/sites/default/files/Documents/libel-and-slander-act-2016-1959-english.pdf> [accessed 15 August 2015].
- Government of Nepal (1955). *Civil Rights Act, 2012 (1955)*. Available at: <http://www.lawcommission.gov.np/site/en/content/civil-rights-act-2012-1955> [accessed 15 August 2015].
- Inter-Parliamentary Union (2003). *The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol : Handbook for Parliamentarians*. Available at: <http://www.refworld.org/docid/51e7af054.html> [accessed 15 January 2015].
- Nepal Medical Council (n.d.). *NMC - Code of Ethics*. Available at: <http://www.nmc.org.np/information/nmc-code-of-ethics.html> [accessed 15 August 2015].
- Office of the United Nations High Commissioner for Human Rights (OHCHR) and World Health Organization (WHO) (2008). *The Right to Health, Fact Sheet No. 31*. Geneva: United Nations.
- OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO (2014). *Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement*. Geneva: World Health Organization.
- United Nations Development Program (UNDP), Women of Asia Pacific Plus, APN Plus and South Asian Association for Regional Co-operation in Law (SAARCLAW) (2013). *Protecting the rights of key HIV-affected women and girls in health care settings: A legal scan*. Regional report – Bangladesh, India, Pakistan, Nepal. Bangkok: UNDP.
- UN General Assembly (1966). *International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol. 999, p. 171. Available at: <http://www.refworld.org/docid/3ae6b3aa0.html> [accessed 15 January 2015].
- UN General Assembly (1966). *International Covenant on Economic, Social and Cultural Rights*, United Nations, Treaty Series, vol. 993, p. 3. Available at: <http://www.refworld.org/docid/3ae6b36c0.html> [accessed 15 January 2015].
- UN General Assembly (1948). *Universal Declaration of Human Rights*. Available at: <http://www.un.org/en/documents/udhr> [accessed 15 December 2014].

OPTIONS FOR SEEKING JUSTICE

This resource briefly describes the main options for women affected by HIV to seek justice if their rights have been violated in a health care setting. More details are provided in the sessions on each option. Which is the best option for seeking justice depends upon the nature and seriousness of the rights violation and the type of solution or remedy the victim is seeking.

Option 1 Making a Complaint to the Health Service

In Nepal, health facilities should have established processes for handling complaints from patients. For example, according to the Good Governance (Management and Operation) Act (2008) and the Accountability-related Mechanism Implementation Strategy (2010)¹⁹, every public health facility should have a complaint box in an appropriate place; a citizen charter indicating the quality, types, time and cost of services; and a person who is responsible for handling the complaints. However, a study in 2013 found that many do not have complaint boxes and many have not posted their citizen charters.²⁰ Nonetheless, users have the right to make a complaint to the person in charge of a health facility, to the District Public Health Office, or to the National Centre for AIDS and STD Control.

In some communities, the management of health facilities has been shifted to a Health Facility Operation and Management Committee, which is made up of community members, including marginalized and underserved people.²¹ In villages and districts where this approach has been instituted, women can make complaints to the Committee. Some Committee chairpersons, however, have said that the Health Facility In-charge should listen to and solve complaints from users.

Option 2 Making a Complaint to the Medical Council, Nursing Council or Health Professional Council

In 1964, the Nepal Medical Council Act established the Medical Council in Nepal. One purpose of the Medical Council is to protect the public by making sure people are treated properly by doctors. A health care user can file a complaint against a doctor with the Medical Council.

19. Devkota B, et al. (2013).

20. Ibid.

21. USAID (2012).

If two-thirds of the Medical Council's members decide that the doctor has behaved in an unprofessional or improper manner as a doctor, they can remove his or her registration to practise medicine. In addition, they can warn the doctor, suspend him or her from practising for a certain period (weeks or months), recommend departmental action, and adopt a resolution to write to the Government of Nepal advising them to file a lawsuit against an individual doctor or institution.

However, in practice the Nepal Medical Council has not fulfilled this role well. The Chairman of the Council admitted in 2013 that the Council had received complaints from patients, but had "failed to take effective measures."²² With advocacy and activism, the Council might be pressured to take responsibility.

The Nepal Nursing Council and the Nepal Health Professional Council have the same functions in relation to qualified nurses and allied health professionals.

Option 3 **Using Mediation**

Mediation is an alternative dispute resolution mechanism that is being introduced for resolving disputes in Nepal. Mediation is a facilitated process that provides immediate, affordable, and locally accessible dispute resolution. Mediation is not the same as the traditional ways that community leaders have unofficially resolved disputes.

Community mediation is legally permitted for a wide variety of interpersonal and group cases and is commonly used to resolve disputes related to family, property, land, violence and similar community matters. It can be used to resolve any case, except those in which the government is a party (i.e. cases that were filed by a government attorney, such as the district attorney). These include criminal cases, such as rape, attempted murder or murder.

Mediation can be used for cases of assault that are not reported to the police, that the government does not take up, or that the court refers to mediation. It can be used to address complaints and disputes involving workers at public and private institutions, including health care facilities. For example, if a health worker denied treatment to a woman affected by HIV, she may take her complaint to the community mediation centre at the Village Development Committee (VDC). The community mediation centre will call the health worker for mediation.

Some organizations have been providing training on mediation, but not all Village Development Committees have trained mediators yet. Where the programme is implemented, an individual, family or extended family or group can bring a dispute to the mediation centre and seek help to solve it. The dispute can be resolved either by one mediator, if both parties agree, or by a panel of three mediators. If using one mediator, both parties agree on who the

22. Pun, W and Gautam, M. (2013).

mediator will be. If using a three-member panel, each party will select one mediator and the mediation centre coordinator will assign the third mediator.²³ This mediator or panel of mediators then brings the disputants together and conducts the face-to-face sessions. The mediators remain neutral and impartial and do not offer solutions. Their aim is to create a safe space where disputing parties can express themselves, listen to each other, uncover the roots of their dispute, and agree on a 'win-win' settlement without assigning guilt or innocence.

In cases taken to the courts, the judge can ask the complainants if they want to go to mediation or both parties can request to go to mediation. When such cases are referred to mediation, it is called 'court-referred mediation.' The same mediation process applies to these cases.

Option 4 Making a Complaint to the National Human Rights Commission of Nepal

The National Human Rights Commission of Nepal (NHRC, or the 'Commission') was established in 2000. The NHRC's purpose is to ensure respect for and the protection and promotion of the human rights guaranteed in the Constitution and in the treaties Nepal has signed. The Commission can investigate cases, supervise government departments, issue directives and make recommendations to government agencies. If the case involves an individual or private institution, the Commission will recommend that the government or appropriate regulatory authority intervene, and will also write to the individual or institution. It can record any official or body that defies its recommendations or directions as a violator of human rights, and issue an order for the provision of compensation to the victims.²⁴

Once a case is filed with the Commission, they will investigate the case. They will write a report and make recommendations to the government. The report may be published on their website and shared with the relevant government departments and possibly with the international community. They can write press releases on issues and often inform the media of their findings. Information from the reports may be included in the Commission's reports to UN committees on how Nepal is implementing the human rights treaties it has signed and in the Universal Periodic Review report to international treaty bodies. The Commission also follows up with the responsible government agency to find out how their recommendations have been implemented.

Option 5 Taking a Case to Court

In Nepal, cases of medical negligence and medical malpractice can be taken to court under the Consumer Protection Act 1998. The Consumer Protection Act has been interpreted to

23. Lederach, JP, and Thapa, P. (2012).

24. Law and Human Rights Division, Office of Prime Minister, Government of Nepal (2010).

include medical care under the definition of ‘services’. There are four parts to cases of medical negligence or malpractice. The patient must show that 1) the doctor treated them; 2) the doctor did not follow accepted medical practice; 3) the doctor’s negligence clearly caused the injury; and 4) the injury caused by the doctor led to specific damages (physical pain; mental suffering or distress; cost of more medical care; and/or lost work or ability to work).

If a woman wants to file a case of medical negligence and/or malpractice, she should contact a lawyer or a legal services group to get a lawyer. The lawyer can do one or both of the following:

1. File a complaint with the inspection officer at the appropriate office (Office of Cottage and Small Industries, Office of Commerce, or District Administration Office). The inspection officer will investigate the case and, if justified, will file a lawsuit with the District Court on behalf of the woman.
2. File a complaint with the Compensation Committee at the District Administration Office requesting compensation within 35 days of the incident that caused the harm.

If the woman wants compensation, she or her lawyer must file with the compensation committee. It may also be possible to file a case under the Contract Act 2056 for breach of contract to get compensation. If a case is filed under the Nepal Health Services Act, the outcome can only be departmental action, not compensation.

Few cases of medical negligence are properly investigated and prosecuted in Nepal. The first case in which the complainant was awarded compensation was in 2011.

REFERENCES

- Adhikari, B and Stein, D (2013) Community Mediation: Policy Brief, Enabling State Programme (ESP). Available at: <http://www.edgroup.com.au/wp-content/uploads/2014/03/ESP-CM-Policy-Brief-Final.pdf> [accessed 27 January 2015].
- Devkota B, Ghimire J, Devkota A, Gupta RP, Mahato RK, Thapa N, Shrestha B (2013) “Health Governance at Local Level from Human Resource for Health Perspectives: the Case of Nepal”, *Journal of Nepal’s Health Research Council*, Vol. 11 No. 2 Issue 24 May 2013. Available at: https://www.academia.edu/8523358/Health_Governance_at_Local_Level_from_Human_Resource_for_Health_Perspectives_the_Case_of_Nepal [accessed 28 January 2015].
- Government of Nepal (2007). *Good Governance (Management and Operation) Act, 2064 (2008)*, Available at: <http://www.lawcommission.gov.np/site/sites/default/files/Documents/susasan-ain-english.pdf> [accessed 21 August 2015].
- Law and Human Rights Division, Office of Prime Minister, Government of Nepal (2010). National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Nepal, submitted to the Human Rights Council, New York: United Nations.
- Lederach, JP, and Thapa, P (2012). *Staying True In Nepal: Understanding Community Mediation Through Action Research*, Occasional Paper, No. 10, The Asia Foundation: Kathmandu.
- Pun, W and Gautam, M (2013). “Medical negligence painful to fight”, Kathmandu Post, 15 April 2013. Available at <http://www.ekantipur.com/the-kathmandu-post/2013/04/14/top-story/medical-negligence-painful-to-fight/247570.html> [accessed 28 January 2015].
- USAID (2012). Health Facility Management Strengthening Program, Nepal Family Health Program II Technical Brief # 17, Available at <http://nfhpc.jsi.com/Res/Docs/TB17-HFMSP.pdf> [accessed 10 February 2015].

LET'S COMPLAIN!

Additional Information about the Medical Council, Nursing Council or Health Professional Council

In 1964, the Nepal Medical Council Act established the Medical Council in Nepal. The purpose of the Medical Council is to protect the public by making sure they are treated properly by doctors and to oversee medical education in Nepal. The Council registers doctors and gives them a licence to practise medicine in Nepal.

Code of Ethics

The Medical Council has developed a Code of Ethics for doctors that all of them sign in order to register to practise medicine. The Code of Ethics includes the following statements (among others):

- I will not allow consideration of age, sex, religion, nationality, ethnicity, politics, or social standing to intervene between my duty and my patient.
- I will carry out my professional duties with conscience and dignity.
- The health of my patient will be my first consideration.
- I will respect the secrets of my patients confided in me.

In addition, the Medical Council's Code of Ethics states that:

- Doctors also need to keep information observed during medical attendance confidential.
- They are required to explain the illness to the patient and always be sympathetic to the patient and his/her family.
- A physician must seek an informed written consent prior to performing a diagnostic or treatment procedure. If patient is unconscious, consent can be taken from the person's guardian. The doctor must explain the nature of the procedure and the expected result.

However, doctors are not obliged to treat every patient asking for their services except in emergencies, but they should be ready to “respond to the calls of the sick and injured”. Once they take a patient for treatment, they should not reject the patient later unless the patient has: refused to pay the fee for service; not complied with the recommended treatment; pressured the doctor to prescribe unnecessary drugs; or forced the doctor to do an immoral act; or if the doctor is unwell.

Investigation of complaint and outcomes

A woman can register a complaint about a doctor's behaviour or treatment with the Medical Council. She should address her letter to the Registrar of the Nepal Medical Council. The Registrar will forward the complaint to the Professional Conduct and Ethical Committee for further investigation. When the inquiry is completed, the Committee will do one of the following:

- If the doctor is found innocent, the Committee will caution or warn him or her only.
- Postpone making a judgement and ask that the doctor be put on probation, while professional referees observe the doctor's conduct for a specified period of time. If their report is satisfactory, then no further action will be taken.
- Suspend the doctor's registration for a period of weeks or months.
- If the Committee finds serious professional misconduct or the report of a doctor on probation is not satisfactory, the Committee can recommend that the doctor's name be struck off the register. In that case, the doctor would find it difficult to continue to work as a doctor. The erasure of registration is for two years, after which time, the doctor can apply to have their registration restored.
- If the Council thinks that a lawsuit needs to be filed against any person or institution for violation of the Nepal Medical Council Act, they will pass a resolution and request that the government investigate and file the lawsuit against the violator.

Effectiveness

Although the Nepal Medical Council is intended to protect the public, in practice it has protected doctors more than penalizing them for negligence, malpractice, or unethical behaviour.²⁵ According to a 1999 study by the World Health Organization, in the history of the Nepal Medical Council, there has been only one case of cancellation of registration, which was due to the submission of false certificates of qualifications. No cases of complaints against medical practitioners have resulted in a significant conviction to date. The study also notes that the Nepal Medical Council has inadequate infrastructure to instruct and educate the doctors and to supervise their work, and no mechanism to help doctors to resolve the ethical dilemmas they may face in their practice.²⁶

25. Bhattarai, P (2014) "Whither Medical Accountability?" GokhapatraOnline.com. Accessed at: <http://trn.gokhapatraonline.com/index.php/op-ed/13447-whither-medical-accountability-pranav-bhattarai.html> on 28 January 2015.

26. Kasturiaratchi, N, Lie, R and Seeberg, J, eds. (1999). *Health ethics in six SEAR countries Health Ethics in South-East Asia, Volume 1*, New Delhi: World Health Organization, Regional Office for South-East Asia.

The Chairperson of the Council also admitted in 2013 that the Council had received complaints from patients, but had “failed to take effective measures.”²⁷ The Council reports that it does not keep records of its actions but that in several cases they have issued the doctor a warning, suspended the doctor from practising for weeks or months, or recommended that the department take action. However, this may slowly change with more and more cases coming up against doctors in Nepal and a request in 2014 by the Cabinet Secretariat that the Nepal Medical Council (NMC) and Ministry of Health investigate a case of negligence and take action against the hospital if found guilty.

The Nepal Nursing Council and the Nepal Health Professional Council have the same functions in relation to qualified nurses and allied health professionals. The Nepal Health Professional Council registers health assistants, auxiliary health workers, lab technicians, medical/health laboratory technicians, public health professionals, microbiologists, physiotherapists, auxiliary Ayurvedic workers, dental hygienists and ophthalmic assistants, before providing them with a certificate to practice.

REFERENCES

- Bhattarai, P (2014). “Whither Medical Accountability?”, *GokhapatraOnline.com*. Available at <http://trn.gokhapatraonline.com/index.php/op-ed/13447-whither-medical-accountability-pranav-bhattarai.html> [accessed 28 January 2015].
- Dixit, H (2009). “Nepal Medical Council: The past and the future”, *Kathmandu University Medical Journal*, Vol. 7, No. 3, Issue 27. Available at <http://kumj.com.np/issue/27/6-13.pdf> [accessed 28 January 2015].
- Gautam, M (2013). “Licence test to be mandatory for all health professionals”, *Kathmandu Post* 25 January 2013. Available at: <http://www.ekantipur.com/the-kathmandu-post/2013/01/24/nation/licence-test-to-be-mandatory-for-all-health-professionals/244479.html> [accessed 28 January 2015].
- Kasturiaratchi, N, Lie, R and Seeberg, J, eds. (1999). *Health ethics in six SEAR countries Health Ethics in South-East Asia, Volume 1*, New Delhi: World Health Organization, Regional Office for South-East Asia.
- Nepal Medical Council (N.D.). *Code of Ethics*. Available at <http://www.nmc.org.np/information/nmc-code-of-ethics.html> [accessed 28 January 2015].
- No author, 2014. “Govt directs investigation into Ami Risa’s case”, *Setopati*, 16 July 2014. Available at <http://setopati.net/society/2308/> [accessed 28 January 2015].
- Pun, W and Gautam, M (2013). “Medical negligence painful to fight”, *Kathmandu Post*, 15 April 2013. Available at: <http://www.ekantipur.com/the-kathmandu-post/2013/04/14/top-story/medical-negligence-painful-to-fight/247570.html> [accessed 28 January 2015].
- Sharma, RK (2006). *Fundamentals of Forensic Medicine and Toxicology (Medical Jurisprudence) Specially Designed for Nepal*, Kathmandu. Available at https://www.academia.edu/469933/Fundamentals_of_Forensic_Medicine_and_Toxicology_Medical_Jurisprudence_Specially_Designed_for_Nepal [accessed 20 February 2015].

27. Pun, W and Gautam, M (2013). “Medical negligence painful to fight”, *Kathmandu Post* 15 April 2013. Accessed at: <http://www.ekantipur.com/the-kathmandu-post/2013/04/14/top-story/medical-negligence-painful-to-fight/247570.html> on 28 January 2015.

MEDIATION

What is Alternative Dispute Resolution?

Alternative dispute resolution, known as ADR for short, includes several procedures that allow people or groups to resolve their disputes out of the court. Some types of ADR used in Nepal are mediation, arbitration and negotiation.

Mediation

In mediation, the parties in a dispute agree voluntarily to have a neutral third party, the mediator(s), take them through a process that helps them to find a solution to which they both agree. The mediator cannot make or impose a decision or solution and the process does not determine guilt.

Arbitration

In arbitration, the parties in a dispute agree voluntarily to allow one or more arbitrators to decide their case. The arbitrators act as judges: they hear or review the evidence in the case and make a decision that can be enforced by the courts. Arbitration resembles a court proceeding: each side calls witnesses, presents evidence and makes arguments. The case is decided in favour of one party. For example, the two parties may agree that the head of the VDC can listen to and decide upon their case. In Nepal, arbitration is used mostly for corporate cases.

Negotiation

In negotiation, participation is voluntary and there is no third party who facilitates the resolution process or imposes a resolution.

Alternative Dispute Resolution in Nepal

The Local Self-Governance Act (1999) calls for dispute resolution by VDCs and municipalities. In 2001, the Government committed to supporting local mediation as well as arbitration, and in 2011, they enacted the Mediation Act. So, community mediation is endorsed by law in Nepal. The Mediation Act is intended to enhance and promote mediation to resolve contractual, community and court-referred disputes.

Using Mediation

Mediation has become well known in Nepal as a way for resolving local disputes. People like it because it enables immediate, affordable, and locally accessible dispute resolution. Community mediation is intended to improve access to justice and to help empower disputants to solve their own problems in the process. It can help people who cannot afford to travel to larger cities or to hire a lawyer to take a case to court to pursue a solution and feel they have received justice.

Community mediation aims to create a safe space where disputing parties can express themselves, listen to each other, find the sources of their dispute and agree on a solution. The process depends on having the mediator(s), who act as an impartial third party, facilitate an agreement. The goal is to find a 'win-win' outcome, meaning that both parties agree to and are happy with the solution. It does not assign guilt or innocence. VDC officials can refer cases to mediation and are responsible for certifying agreements that result from mediation.

Each VDC and ward where mediation is available maintains a panel of 27 to 30 volunteer mediators who are nominated by their communities. The panels are intended to be representative of the gender, ethnic and caste composition of the community. Nationally, more than one-half of mediators are women.²⁸ Mediators are often respected community members but they do not usually hold formal positions of power.

All mediators are required by law to take 40 hours of mediation training approved by the Mediation Council of Nepal. This includes training on communication skills, listening, reframing, and question formation along with human rights and women's issues. Neutrality, impartiality and how to refrain from offering solutions are emphasized. The mediators are also specifically trained to empower marginalized disputants to express their needs and interests during the mediation process. The inclusion of marginalized communities on the panel and the use of empowerment skills are intended to make community mediation more approachable and egalitarian than the formal and traditional justice systems.

Mediation is not available in all communities. In early 2014, the Asia Foundation reported that mediation was available in 134 Village Development Committees and municipalities in their project districts, with 4,200 trained mediators.²⁹ GRM and the Department for International Development (DFID) reported at the end of 2013, that there are 1,400 active community mediation committees in 140 VDCs in 10 districts of the Eastern and Central Development Regions.³⁰

28. Adhikari, B and Stein, D (2013).

29. Ibid.

30. The Asia Foundation (2014).

The Mediation Process in Nepal

Community mediation is legally permitted to handle a wide variety of interpersonal and group cases. It cannot be used in criminal cases in which the government is a party, such as rape, attempted murder, murder, bribery or corruption. If a contract has a provision for mediation, any dispute about the contract will be mediated accordingly. If the case is already filed in court, but parties to the dispute want to solve the case through mediation, they can do so.

Cases can arrive at the VDC and ward-level mediation committees in a number of ways, including by word of mouth, referral by the police or VDC Secretary or the courts, as well as on the advice of local community members, women's rights groups and local leaders. After registering a case at a mediation committee, the mediation process starts.

When an individual, family, extended family or group brings a dispute to the mediation programme and seeks help, the programme's services and procedure are first described to them. If they decide to continue, the mediator or mediators are selected. By law, there can either be one or three mediators. In the case of one mediator, both parties must agree to use that mediator. If there are three mediators, they are shown photos of the local mediators and asked to choose one each. The mediation centre coordinator, the two selected mediators or the two parties select the third mediator. This panel of mediators then brings the disputants together for face-to-face sessions.

First, the mediators work with the disputants to establish and agree on the ground rules for the mediation. They then facilitate discussions that clarify each party's interest, needs and concerns. The participants come up with and discuss options for resolving the issue. During this process, the mediators stress the importance of coexistence and respect. Mediators may give general advice but must remain impartial and supportive of both parties. They cannot advocate for a particular outcome or in favour of one disputant. When the disputants have agreed on the solution, the terms of the agreement are written down and signed by the disputants and the mediators. The document is stamped and kept on file at the local VDC or municipality office. This serves as evidence if the issue arises again. The agreement is binding and must be implemented within 45 days. If the agreement is not implemented, the party can file a petition with the VDC or municipality. However, there is no official penalty if they break the terms of the agreement.

According to the law, the mediation process should be confidential unless the parties to the dispute want it to be open. However, domestic violence and family matters that require confidentiality are always resolved in closed sessions.

Debates about Mediation

People working in law and justice have different opinions about mediation as a way to achieve justice. Those who support it see mediation as a practical alternative to court-based

dispute resolution mechanisms, which they see as serving the elite. To them, it is a way for those who are marginalized to gain access to justice. Courts are often backed up and cases can take years to be heard and judged. Mediation is also seen as a way to relieve the burden on the courts and speed up the process of justice.

Critics of mediation are doubtful about the claims that it can level out or transform power relations in communities. They see mediation as shifting conflicts that are or should be dealt with through the law into the social arena. They are concerned that it may reinforce the impunity of the more powerful and the marginalization of the less powerful.

Groups to contact to identify mediators for the session are:

The Asia Foundation - Nepal

G.P.O. Box 935 Bhat Bhateni
Kathmandu, Nepal
Phone: (977) (1) 444-3316 or 441-8345
Fax: (977) (1) 441-5881
Email: nepal.general@asiafoundation.org

Mediation Council

Supreme Court Building (Annex)
Ramshahapath Kathmandu Nepal
Phone Number: (977) 1 425-2087
Email: mediationcouncil@gmail.com

Nepal Mediators' Society

Kathmandu-32, Anamnagar
Phone: (977) 1-4102701
Email- nepalmediators@yahoo.com

Forum for Women, Law and Development (FWLD)

Head Office: 72 Adarsha Marg, Thapathali, Kathmandu, Nepal
Phone: (977) 1-423-3524, 423-3525, 424-268, 426-6415
Fax: (977) 1-424-0627
Email: fwld@fwld.wlink.com.np & fwld2013@gmail.com
Skype: [fwld.nepal](https://www.skype.com/name/fwld.nepal)
Website: www.fwld.org
They have branches in Banke, Biratnagar, Makwanpur, and Nawalparasi.

Human Rights and Community Development Academy Nepal

Rajbiraj-1, Saptari
Phone: 031-520-917
Fax: 031-521-226
<http://hucodannepal.org.np/Default.aspx>

Nepal International ADR Centre

House No. 163, Pragatimarg-2,
Hanumanthan, Anamnagar, Kathmandu-32, Nepal.
Phone: (977) 1-426-4609
Email: niac.adr@gmail.com
Web: www.niac.asia.np

Center for Legal Research and Resource Development

P.O. Box: 6618, Lakhechaur Marg
New Baneshwor, Kathmandu, Nepal
Phone: (977) 1 448-3706, 204-2268
Fax: (977) 1 448-3706
E-mail: info@celrrd.org, celrrd@wlink.com.np
Website: www.celrrd.org

Forum for Protection of Public Interest

Gautambuddha Marg, Annamnagar
P.O. Box: 14307
Telephone: (977)-01-426-8681, 426-5023
Fax: (977) 1-426-8022
E-mail: propublic@wlink.com.np

Institute of Governance and Development

P.O. Box 8134, Kathmandu
Lazimpat, Kathmandu, Nepal
Voice: (977) 1-400-2144
Fax: (977) 1-400-2236
Email: igd@igd.org.np

Rural Women's Development Unity Center

Prasuti Marg, Thapathali,
PO Box 13205, Kathmandu
Phone: (977) 1-425-8993, 424-9505
Email: ruwduchq@wlink.com.np

REFERENCES

- Adhikari, B and Stein, D (2013). Community Mediation: Policy Brief, Kathmandu: GRM International Ltd. Available at: <http://www.edgroup.com.au/wp-content/uploads/2014/03/ESP-CM-Policy-Brief-Final.pdf> [accessed 27 January 2015].
- Asia Foundation (2014). Community Mediation in Nepal. Available at: <https://asiafoundation.org/resources/pdfs/CommunityMediationinNepal.pdf> [accessed 27 January 2015].
- Lederach, JP, and Thapa, P (2012). Staying True In Nepal: Understanding Community Mediation Through Action Research, Occasional Paper, No. 10, The Asia Foundation: Kathmandu.
- Government of Nepal (2011). *Mediation Act, 2068 (2011)*. Available at: <http://www.lawcommission.gov.np/> [accessed 27 January 2015].
- Stein, D (2013). Community Mediation and Social Harmony in Nepal. Justice and Security Research Programme Paper 5, Theories In Practice Series, International Development Department: London.

TAKING YOUR CASE TO THE HUMAN RIGHTS COMMISSION

The National Human Rights Commission

The National Human Rights Commission (NHRC) is an independent body that was established in 2000. It was made a constitutional body in 2007 by the Interim Constitution of Nepal. The NHRC has the primary responsibility to protect and promote the human rights of the Nepalese people.

Powers of the Commission

In order to perform this responsibility, the NHRC has the power to:

- Receive complaints about violations of human rights and conduct inquiries or investigations into them.
- Conduct inquiries and investigations related to the violation of human rights on its own or when petitioned.
- Visit and observe any authority, prison and detention centre or any organization or agency under the Government of Nepal, without prior notification.
- Conduct rescue, search and seizure operations at suspicious places.
- Make recommendations for prosecution or departmental action against perpetrators and for compensation to victims or their relatives.
- Submit recommendations to the Government of Nepal on the reforms to be made to functions, procedures and/or physical facilities to protect human rights.
- Monitor the implementation of international human rights treaties and the human rights situation.
- Review laws and policies in relation to human rights, and recommend changes.
- Work with NGOs and civil society for the promotion of human rights and provide human rights education.
- Make the name of human rights violators public.
- Undertake or commission research into human rights issues in Nepal.

Handling Complaints

Handling complaints is a primary function of the NHRC. The NHRC can receive complaints from the victims, third parties on behalf of a victim, or any other source. The NHRC has very accessible complaints procedures. People can submit complaints in writing or orally by going to an NHRC office; calling their 24-hour hotline; or filing a complaint online. The NHRC encourages civil society to lodge complaints whenever a human rights violation occurs.

Since 2000, the NHRC has received more than ten thousand complaints; most cases are conflict-related, for example, enforced disappearances, killings, torture and forceful displacement. However, it has also received complaints related to discrimination, torture, and inhuman and degrading treatment from marginalized groups, such as the gay, lesbian, bisexual and transgender community.

NHRC and Civil Society

The NHRC is also mandated to work together with civil society to increase awareness of human rights. For example, they have had a number of formal and informal meetings with those defending the human rights of sexual minorities in Nepal. Such meetings help sensitize the NHRC staff to the rights issues that particular groups are experiencing and encourage them to respond with quick actions, policy recommendations and ongoing interventions. They also help the community to know about the NHRC's work and their rights. The NHRC has facilitated internships for young people in its offices. The internship policy prioritizes people from marginalized and vulnerable groups including Dalit, Janajati, Madheshi and women.

The NHRC can also act as an advocate, for example, for the inclusion of a strong human rights component in the national HIV plan. It can also assist efforts to monitor progress towards universal access to HIV prevention, treatment, care and support, which is a part of the right to health and non-discrimination.

REFERENCES

- Kaleidoscope Human Rights Foundation (with the assistance of DLA Piper and Nepalese LGBTI Advocacy Groups) (2014). Shadow Report to the UN Human Rights Committee regarding Nepal's protection of the Rights of LGBTI Persons, unpublished. Available at: <http://www.law.monash.edu.au/castancentre/policywork/nepal-shadow-report.pdf> [accessed 20 February 2015].
- Law and Human Rights Division, Office of Prime Minister, Government of Nepal (2010). Annex to Human Rights Council resolution 5/1, Nepal, submitted to the Human Rights Council, New York: United Nations. Paragraph 15 (a)
- National Human Rights Commission of Nepal (2012). Report to the Regional National Human Rights Institutions Project on Inclusion, the Right to Health and Sexual Orientation and Gender Identity, Bangkok, Thailand: International Development Law Organization and United Nations Development Program. Available at: <http://www.aidsdatahub.org/sites/default/files/publication/rbap-hhd-2013-nhri-project-on-right-to-health-sogi-nepal.pdf> [accessed 20 February 2015].
- OHCHR and UNAIDS (2007). *Handbook on HIV and Human Rights for National Human Rights Institutions*. Geneva: Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS.

TAKING IT TO COURT!

Women who experience rights violations that cause serious, long-term personal harm and suffering, such as forced or coerced sterilization or abortion or whose babies die due to negligence during delivery, may decide to take their cases to court.

Civil and Criminal Cases

Criminal cases involve an action that is considered to harm the society as a whole. They are brought by the state against a person or organization. Examples of criminal cases are: homicide, theft, robbery, rape and assault. If the defendant is found guilty in a criminal case, they can be fined and/or put in prison.

Civil cases usually involve private disputes between persons or organizations. They are brought by a person or organization against another. Examples are land-related disputes, contracts, inheritance and adoptions. In a civil case, if the defendant is found guilty, they may be required to fulfil their duty and/or to pay compensation for the harm done.

Most cases of medical negligence and malpractice are civil cases. Civil claims are complex and often costly. Because they require a detailed understanding of legal arguments, evidence and other rules, victims must have the assistance of a lawyer who can conduct these proceedings on their behalf and represent them in court.

How to Take a Medical Negligence or Malpractice Case to Court

Medical malpractice occurs when a doctor or nurse does not do their job according to the accepted standard of care, causing injury or death. Some examples of malpractice are: mistakes during childbirth; mistakes during surgery; unnecessary surgery; and wrong diagnoses.

Medical negligence occurs when a doctor or nurse does not do something they should have done or does something that they should not have done. Examples of medical negligence include: not getting informed consent; not warning a patient of the risks of treatment; not attending to or treating a patient; and not providing a needed referral.

Four things must be proven in a case of medical negligence and malpractice:

- 1) The doctor treated the patient.
- 2) The doctor did not follow accepted medical practice or ethics and was negligent.

- 3) The doctor's negligence clearly caused the injury or harm to the patient. Medical experts usually have to testify to this.
- 4) The injury caused by the doctor led to specific damages. These damages can be physical pain; mental suffering or distress; cost of more medical care; and/or lost work or ability to work.

In Nepal, cases of medical negligence and malpractice have been filed under the Consumer Protection Act. Under the Consumer Protection Act, the woman or her lawyer must:

- a. File a complaint with the designated inspection officer. The inspection officer will be at the Office of Cottage and Small Industries, the Office of Commerce, or the District Administration Office. The inspection officer will then investigate the case. If the inspection officer finds there is a case, they will file a lawsuit with the district court on behalf of the woman within 35 days of completing the investigation. In such cases, a government attorney will prosecute the health care worker or facility on behalf of the woman.
- b. If the woman wants to receive compensation, a separate complaint must be filed with the Compensation Committee at the District Administration Office within **35 days** of the incident that cause the harm.

It may also be possible to file a case under the Contract Act for breach of contract to get compensation within two years of the incident.

Rights of the Victim in Court

Those who file a case in court have the right to the following:

- To make a statement about how the crime has affected them and the impact it has had on their lives. The statement will be written in the complaint.
- To attend and observe the trial.
- To consult a lawyer who will represent them in the proceedings and speak on their behalf in court. Those who cannot afford this have the right to apply to legal aid for a lawyer (See section on legal aid below).
- To be heard by the court during the proceedings. Victims can appoint a lawyer to speak in court on their behalf in both civil and criminal cases. This can include questioning witnesses and making legal arguments on victims' behalf.
- To be accompanied by a person of their choice to support them.
- If they will testify, to speak to support staff about the legal procedures involved so they understand what will be expected of them and what will happen on the day.
- To speak with or meet with prosecutors or other court staff in advance, so they have an opportunity to ask them any questions about the procedures.

- To protection in the courthouse if victims are worried about supporters of the defendant who might be present.
- Victims testifying as witnesses do not have to be in the same room as the defendant. The victim can request that the court can arrange for a separate room from which the victim and/or witnesses can testify.
- Victims can also request a private hearing for cases of a sensitive nature, such as those to do with HIV, rape, human trafficking, and children. This is called an in camera session.

Legal Aid

The Constitution includes the right to consult and to be defended by a lawyer as a fundamental right. As such, legal aid for the poor is a basic entitlement. Nepal's Legal Aid Act (1997) aims to help people who are unable to protect their constitutional or legal rights for financial and social reasons to get legal aid. In Nepal, legal aid is provided by the government as well as by non-governmental organizations. Legal aid is available for both civil and criminal cases, except for cases that involve the following: rape, human trafficking, drugs, espionage, corruption, revenue leakages and cases under ancient monument preservation.

Legal Aid Provided by the Government

Legal aid provided by the Government of Nepal can be accessed through District Legal Aid Committees, the Bar Association or through the courts. To be considered for legal aid from the government, the person must make less than 40,000 rupees a year. This amount was set in 1998 and has not changed. Anyone who receives legal aid from the government may be required to reimburse legal aid expenses if they receive any property or economic gain as a result of receiving such free legal aid, but this requirement can be waived.

District Legal Aid Committees: Each district has a District Legal Aid Committee that is in charge of providing legal aid. To get legal aid, a person submits an application and a letter of recommendation from their Village Development Committee, Ward or Municipality to the Committee that verifies that their income is less than Rs. 40,000 per year. The Committee decides within 45 days whether or not to provide legal aid. There are District Legal Aid Committees in each of the 75 districts and at least 35 districts have Legal Aid Officers appointed by the Committees.³¹ The Committees do not have their own lawyers, but ask the Bar Association to assign a lawyer.

Court-Provided Aid: In Nepal, the district courts, appellate courts and the Supreme Court also provide legal aid through lawyers called baitanik wakil (or Stipendiary Lawyer). These lawyers receive a salary from the court. A person who needs legal aid applies to the Chief

31. Supreme Court and UNDP Nepal (2012).

Judge, concerned Bench or the Registrar, who will decide whether or not to provide legal aid. If the person receives legal aid, the Baitanik Wakil will prepare necessary legal documents and plead the case in court. These lawyers are mostly used to defend the accused in criminal cases; however, they might be available for civil cases if the person who brings the case requests it.

Government-provided legal aid is accessible nationwide. However, there are some concerns about the quality of the legal aid provided. The lawyers are not paid well. Most are young and inexperienced. They often get the case only a few days before it goes to court or even sometimes on the day of the hearing. The lawyers often have limited interactions with the client, so are often unable to prepare the case well. For this reason, they generally do not provide legal counselling before the case gets to the court. They also provide legal services only for court proceedings. They do not provide legal aid in administrative offices or in quasi-judicial bodies.

Non-Governmental Legal Aid

Nepal Bar Association is the professional organization of lawyers, which also provides legal aid services. It provides legal aid through different Bar Units. It has a Unit in the Supreme Court and in all of the Appellate Courts. It also has District Units in almost all of the District Courts. In its Units where there are more than three women lawyers practising, it has Women Lawyer Centres that provide legal aid to needy women only. Immigrants cannot get legal aid from the Bar Association.

Non-Governmental Organizations: There are also NGOs that provide legal aid in Nepal. NGOs that focus on legal aid for women are: the Legal Aid Consultancy Centre, Forum for Women Law and Development, and Consortium for Women's Rights. Maiti Nepal provides legal aid for women victims of trafficking and Raksha Nepal for sexually exploited women. These organizations provide services to any woman who seeks their help, with no other criteria. Some have a national-level network covering many districts, but others provide legal aid service in Kathmandu valley only. None have a presence in every district. See 'Participant Information: Taking a Case to Court and Getting Legal Aid' for contact information for these organisations, including for the Consortium for Women's Rights that has a free hotline that provides legal advice

Other legal aid providers who may also be able to assist women affected by HIV include:

- **The Fatima Foundation Nepal** focuses on Muslim women.
- **The Centre for Victims of Torture** provides legal support and counselling to torture victims and legal assistance to the victims of other serious human rights violations such as sexual assault and being accused of witchcraft.
- **The Forum for Protection of People's Rights Nepal** provides legal aid to victims of torture and human trafficking, to vulnerable people and to those accused of witchcraft.

- **The Forum for the Protection of Consumer Rights** fights for compensation on behalf of the victims of medical negligence.

The exact nature of the services provided varies by NGO, but most provide a wide range of legal services, including legal advice and counselling, preparing documents, representing their clients in court, and referring clients to other legal aid providers and to alternative dispute resolution. Many are also able to provide legal representation in quasi-judicial institutions and in mediation. The Legal Aid Consultancy Centre conducts mediation between the parties first and only approaches the court with a case if mediation does not work.

Most have their own team of lawyers to represent their clients in court. They are able to hire competent and experienced lawyers and some think their services are more efficient and effective than those provided through the government's legal aid program. Some of the legal aid NGOs also specialize in providing certain kinds of legal aid, and therefore have built up expertise in those types of cases. Most of these NGOs are only located in urban areas.

The National Women's Commission

The National Women's Commission provides free legal counselling to women and refers women to NGOs that provide legal services. They can also recommend cases to the Bar Association units.

REFERENCES

- Adhikari, Basanta (2012). Status of Consumer Organisations in Nepal, Kathmandu, Nepal: United Nations Industrial Development Organisation (UNIDO). Available at <http://www.consumersinternational.org/media/958808/booklet%20on%20status%20of%20consumer%20organisations%20in%20nepal.pdf> [accessed 27 February, 2015].
- Bhattara, AM, ed. (2010). *The Landmark Decisions of the Supreme Court, Nepal on Gender Justice*, Lalitpur, Nepal: National Judicial Academy and UNIFEM, Nepal.
- Canadian HIV/AIDS Legal Network and UNAIDS (2006). *Courting rights: case studies in litigating the human rights of people living with HIV* (UNAIDS best practice collection), Geneva: Canadian HIV/AIDS Legal Network and UNAIDS.
- Forum for the Protection of People's Rights Nepal (2012). *Assessment of Impact of Legal Aid Services in Nepal: A Study Report*, Kathmandu, Nepal: Supreme Court/UNDP Nepal.
- Government of Nepal (1997). *Legal Aid Act, 2054 (1997)*. Available at: http://www.ncf.org.np/upload/files/184_en_legal-aid-act.pdf [accessed 25 January 2015].
- Nepal Bar Association (2011). *Information Sheet – Nepal Bar Association*. Available at: http://www.nichibenren.or.jp/library/ja/bar_association/word/data/Nepal.pdf [accessed 28 January 2015].
- Sharma, RK (2006). *Fundamentals of Forensic Medicine and Toxicology (Medical Jurisprudence) Specially Designed for Nepal*, Kathmandu. Available at: https://www.academia.edu/469933/Fundamentals_of_Forensic_Medicine_and_Toxicology_Medical_Jurisprudence_Specially_Designed_for_Nepal [accessed 15 February 2015].
- Supreme Court and UNDP Nepal (2012). *Assessment of Impact of Legal Aid Services in Nepal, Enhancing Access to Justice for Consolidation Peace in Nepal Project (A2J)*, Kathmandu, Nepal.
- UNDP, Women of Asia Pacific Plus (WAP+), Asia Pacific Network Plus (APN+) and South Asia Association for Regional Cooperation in Law (SAARCLAW) (2013). *Protecting the rights of key HIV-affected women and girls in health care settings: A legal scan. Regional report – Bangladesh, India, Pakistan, Nepal*. Bangkok: UNDP.

TAKING IT TO THE NEXT LEVEL: CONTRIBUTING TO NATIONAL REPORTS ON HUMAN RIGHTS TREATIES

When countries sign an international rights treaty, they agree to ensure that everyone in the country can enjoy the rights laid out in the treaty. The UN has developed a system to monitor how countries are implementing the treaties that they have signed. This is done in two ways:

1) through the review process of a specific treaty; and 2) through the Universal Periodic Review.

The Treaty Review Process

Each treaty has a committee of independent experts that monitors the implementation of the treaty and makes recommendations for further action. For example, the Human Rights Committee reviews the implementation of the International Covenant on Civil and Political Rights, and the Committee on the Elimination of Discrimination against Women monitors the Convention on the Elimination of All Forms of Discrimination against Women. The countries that have signed the treaty are required to report on their progress to those committees. They must do an initial report within 1 or 2 years and then submit follow-up reports every 4 or 5 years, depending on the treaty.

In the government report, the country must explain in detail how they are implementing the treaty nationally and any factors or difficulties they are encountering. The committees also receive information on the country's human rights situation from other sources, including United Nations agencies, national human rights institutions, international and national NGOs, and academic institutions. The committees carefully examine all information received to determine the extent to which a country has met its obligations under the treaty.

The committees invite the government to send a delegation to attend the session at which the committee will consider their report. This allows them to respond to members' questions and provide additional information on their efforts to implement the provisions of the treaty. During these sessions, the committees aim for a constructive dialogue with the government that will assist it to implement the treaty as fully and effectively as possible. Most committees also allow time to hear from NGOs and UN agencies.

After examining a report and discussing it, the committees make 'concluding observations' that acknowledge positive steps taken by the government, but also identify areas of concern

and where more work is needed, and make practical recommendations. The government must publicize the concluding observations within the country to inform public debate on how to move forward.

In their next report, the government must report back to the committee on what it has done to implement the recommendations made in the previous report.

The Role of Civil Society in Treaty Review

Civil society organizations, such as NGOs and community-based organizations, play an important role in providing the committees with reliable independent information about the human rights situations and developments in their countries, including on how their recommendations have been implemented.

Some ways that civil society can engage in the treaty reporting process are:

- Monitoring the government's compliance with their reporting obligations.
- Submitting written reports, information and material to the committees.
- Participating in the committees' sessions as observers or by orally briefing the committee.
- Following up on the committees' recommendations.

Submitting a Civil Society Report

The most effective way for civil society organizations to submit additional information is through a written report. Generally, civil society organizations should submit information and material to the committee after the government has submitted its report but before the committee reviews it. This will enable the committee to take the information into account when preparing for the session with the government. Written information submitted to these committees is regarded as public information, but the committees will keep information confidential if specifically asked to do so. The report must be written in one of the UN working languages (i.e. in English).

Before submitting written information, it is important to check:

- Whether your country has ratified or acceded to the relevant treaty, and, if so, if they have made any reservations. NGO reports can still address issues that the government has reservations about.
- When the next country report is due and when the next session of the committee is scheduled.
- The main issues that are or have been under discussion. It is important to read the previous reports, concluding observations and previous lists of issues.

Before civil society organizations begin drafting their reports, they need to become familiar with the specific reporting guidelines of the committee. Written reports should:

- Be clear and precise, accurate and objective.
- Highlight what the organizations see as priority problems in implementation.
- Make concrete recommendations to improve the human rights situation in the country.
- Make direct reference to the article of the treaty providing the specific right that is allegedly violated.
- Support allegations of human rights violations with evidence and documentation.

Guidelines for reporting to the committees can be found here:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/413/80/PDF/G0441380.pdf?OpenElement>

Examples of civil society submissions are available on the section on human rights treaty bodies on the website of the Office of the High Commissioner for Human Rights.

Attending Sessions

Country reports are discussed at public meetings, which civil society organizations may attend as observers. Attending sessions enables civil society actors to:

- Brief the committee as a whole or its individual members.
- Observe the dialogue between the committee and the government.
- Learn first-hand about the issues raised and the recommendations made by the committee.

The rules and practices governing the participation of civil society in committee sessions, as well as in the preparation period before the session, vary by committee. The Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee against Torture, the Committee on the Elimination of Discrimination against Women, and the Committee on Migrant Workers all give time to civil society for presentations during their reporting sessions. An organization may need to be accredited to attend committee sessions. Accreditation must be requested from the relevant secretariat in advance.

The Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women also allocate time to civil society organizations during the working group meetings when they are preparing for the session with the government. For example, for CEDAW, this will be two sessions before the one with the government. NGOs must contact the secretariat of the relevant committee well in advance to inform it officially of their planned participation.

Committee sessions also normally provide opportunities for civil society organizations to meet informally with committee members. Informal briefings may be organized as side events, for example, during the lunch break.

Following up on the Committees' Recommendations

After the committee session, civil society organizations can raise awareness of the recommendations and to encourage the government to implement the recommendations. Follow-up activities include:

- Working together with the government to help it meet its obligations, for example, by promoting national legislative reforms and revising national policies.
- Monitoring the human rights situation and the steps taken to implement the recommendations.
- Raising awareness about the committee sessions and the recommendations that the government must implement.
- Providing specific information to the committees about their governments' progress in implementing the recommendations.

The Universal Periodic Review

The Universal Periodic Review (UPR) was established in 2006 and is conducted by the United Nations Human Rights Council. In the UPR, the Human Rights Council reviews how each UN member state is fulfilling all of its human rights obligations and commitments every four years.

The UPR has four stages:

- 1. Preparation:** The country under review prepares its national report; the Office of the United Nations High Commissioner for Human Rights (OHCHR) compiles information on human rights in the country from UN agencies; and the OHCHR prepares a summary of information submitted by other stakeholders, including NGOs.
- 2. The review:** The Working Group on the UPR, which is composed of the 47 member States of the Council, meets 3 times a year and reviews 16 countries at each meeting. The review is done through an interactive dialogue between the country under review and the members of the Working Group.
- 3. The outcome document:** At the end of each review, the Working Group adopts an outcome document. The Human Rights Council considers and adopts this document at its next session.
- 4. Follow-up:** The government and other stakeholders, including NGOs, implement the recommendations in outcome document.

Civil Society Involvement in the Universal Periodic Review

Civil society organizations can participate in the universal periodic review process by:

- Participating in consultations held by the government to prepare their national report on the human rights situation in their country.
- Preparing reports on the human rights situation in their country. The information provided may be included in the summary of stakeholders' submissions prepared by OHCHR.
- Contributing to the follow-up and implementation of review outcomes and recommendations.

The subsequent reviews will focus especially on the implementation of the recommendations that the country has accepted in the previous review and on further developments in their human rights situation.

To attend sessions of the Working Group on the UPR and sessions of the Human Rights Council, an NGO must have consultative status with the United Nations Economic and Social Council. To find out more about getting consultative status see the following web pages:

- <http://csonet.org/index.php?menu=17>
- <http://csonet.org/index.php?menu=30>
- <http://csonet.org/index.php?menu=34>

If you want consultative status, apply right away as it can take time to get it.

Nepal's first UPR was in 2011 and the second one was in 2015. To find the documents related to Nepal's first UPR, go to:

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/NPSession10.aspx>

When Will Nepal Report?

Treaties	Due Date of Nepal's Next Report
International Covenant on Economic, Social and Cultural Rights	4 November 2019
International Covenant on Civil and Political Rights	23 March 2018
Convention on the Elimination of All Forms of Discrimination against Women	1 July 2015
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	12 June 2016
Universal Periodic Review	20 July 2015

To get information on the status of Nepal's reports and to download previous government and civil society reports as well as previous lists of issues, responses to those, and concluding observations and other information for each treaty, go to:

- <http://www.ohchr.org/EN/countries/AsiaRegion/Pages/NPIndex.aspx>
- http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=NPL&Lang=EN

REFERENCES

- Office of the High Commissioner for Human Rights (2012). *The United Nations Human Rights Treaty System*, Fact Sheet No. 30/Rev.1, New York and Geneva: the United Nations.
- Office of the High Commissioner for Human Rights (2008). *Working with the United Nations Human Rights Programme – A Handbook for Civil Society*, New York and Geneva: the United Nations.

PLANNING FOR MONITORING AND EVALUATION

How Do We Monitor and Evaluate Together?

Step 1 Planning the monitoring and evaluation.

To develop a Monitoring and Evaluation Plan for your community group or network's Action Plan, follow these steps.

- A. First you need to choose your indicators.** Indicators help you decide what information you need to collect in order to monitor and evaluate your progress. **Activity indicators** tell you about what you have done. **Change indicators** tell you about what changes have happened as a result of your work.

It is important to choose indicators that are not too difficult to collect information about, and to only select the most useful indicators. Collecting information takes time. If you select too many indicators you will spend too much time collecting information.

- 1. Choose activity indicators by asking: What will tell us if we are doing what we planned?**

For example, if your activities include providing training on the rights of women affected by HIV, you can use 'number of people trained' as an indicator of what you have done. This indicator tells you if you have trained more or less people than you planned. It does not tell you if the trainings were useful to the participants or if they helped increase respect for the rights of women affected by HIV. For that, you need a change indicator.

After you have chosen your activity indicators, ask yourselves the following questions:

- How easy is it to collect information about the indicator?
- Will this indicator tell us something useful?
- Does it tell us something new?
- Is it relevant to the objectives of the process?
- Is the meaning of the indicator clear to everyone? For example, if one of the indicators is the number of home-care clients, should you collect information about the number of people served or the number of households served?

2. Choose change indicators by asking: What will tell us if we are making progress towards our objectives?

For example, if you want to know whether the trainings were useful to the participants, you might use the indicator ‘number of people who reported training was useful’. If you want to know whether the trainings helped increase respect for the rights of women affected by HIV, you might use the indicator ‘number of human rights abuses reported against women affected by HIV’.

After you have chosen your change indicators, ask yourselves the following questions:

- How easy is it to collect information about the indicator?
- Will this indicator tell us something useful?
- Does it tell us something new?
- Is it relevant to the objectives of the process?
- Is the meaning of the indicator clear to everyone?

B. Plan how you will collect the information. Once you have decided what information to collect, you need to agree who will collect it and when and how they will collect it.

1. Make a list of the information you need to collect to be able to report on your activity indicators.

2. Make a list of the information you need to collect to report on your change indicators.

3. Decide when you will collect the information.

Information for monitoring is usually collected on a regular and routine basis. For example, you might collect monitoring information about community discussion groups every time you do a discussion group. There are lots of ways of collecting monitoring information – for example, by observation, by talking to people, from service records and by using participatory tools.

4. Decide how you will collect the information.

Choose methods that do not take too much time if they are going to be repeated often. Always consider issues of confidentiality when collecting or using information. Meetings of your network or of a community mobilization team can be used to gather information on activities. At the end of a community group discussion, you can ask questions to find out what effect the discussion had on the people in the group.

5. Decide how you will record the information.

It is important to agree on a simple and clear way of recording and gathering routine monitoring information. For example, people who do home visits may use symbols on a wall chart to record how many visits they make.

6. **Decide who will collect the information.**
7. **Decide when and how often you will review the information you collect.**
It is helpful to plan regular times to look at monitoring information that you have collected and assess your progress. For example, you might decide to do this weekly, monthly or every quarter.
8. **Make any record-keeping forms that you will need to collect the information.**

Now you are ready to implement your plan!

Step 2 Collect information about your activities.

Monitoring and evaluating relies on collecting useful information. It is important to start collecting information as soon as possible and to collect it every time you do an activity.

Step 3 Use the information you collect to monitor the activities you have done.

Use the information you collected about your activities to compare what you have actually done to what you planned to do in your Activity Plan. You can ask the following questions:

- Have you done each activity that you planned to do? Have you done more or less than you planned? What are the reasons for this?
- Have you done activities you did not plan? What are the reasons for this?
- Are there activities you should add to your plans? What are the reasons for this?
- What lessons have you learned about how to do the activities? What works? What doesn't? Why? How can you improve?

Identifying the reasons for differences between what you did and what you planned to do will help you decide what to do next and how to improve your work.

Step 4 Evaluating progress towards your goals or objectives

You also need to evaluate how much progress you are making towards your objectives. It is helpful to do this at regular planned intervals, for example, every year and/or at the end of a set of planned activities. To evaluate, you need to have clear objectives in your action plan. This helps everyone to agree on the purpose of the evaluation and guides you in deciding what issues and information to focus on.

An evaluation uses the information collected during routine monitoring and additional information collected just for the evaluation. Evaluations are wider in scope and give you an opportunity to identify and review changes that may have been triggered by your project

beyond the indicators that you first selected. Setting objectives and the scope for each evaluation will help identify the areas that you probe into or get more information about. Evaluation often involves many stakeholders and a more in-depth look at what progress your group has made. Participatory tools are very useful for looking in-depth at your progress. They are also a good way of exploring different perspectives about the progress you have made.

To evaluate progress, you try to find out if there has been a change in each of your indicators since you started your activities or since your last evaluation. You can use information from different sources to do this. You have some information from your day-to-day monitoring activities. You can also use participatory tools to discuss the current situation and compare this to information from your assessment before you started activities. It is often helpful to repeat a tool you have used before in order to see what change there is. For example, if you did an assessment before you started your activities that showed that women affected by HIV experienced a lot of stigma and discrimination in antenatal care, then repeating this assessment during an evaluation will help indicate if there has been any change in levels of stigma and discrimination.

In addition, it is important to explore what changes affected women think are important and why they believe this. There may be important changes in the community that you did not expect. You need to ask open-ended questions about change to find out what is important to people. Remember, different people will have different views about what has changed, what is significant, and which changes are positive and negative. All are valid.

You also need to identify the reasons why something has changed. There may be a number of different reasons, some unrelated to your activities. Identifying these, including those that you did not influence, can help you develop more effective strategies and identify opportunities for collaboration.

If evaluation shows there has been little change, you need to identify the reasons for this. There may be barriers and problems you did not expect, or your strategy may not be effective. An evaluation that shows little progress towards objectives can be demotivating for people who have been working hard to bring about change. Encourage people to view the evaluation as a positive opportunity for learning and take enough time to reflect on the reasons for lack of progress.

Encouraging Participatory Monitoring and Evaluation

Community members are usually busy. Collecting information for monitoring and evaluation may not seem like a priority compared to doing the planned activities. The following actions can help motivate community members to monitor and evaluate:

- Enable community members to identify the benefits of monitoring and evaluation.

- Enable community members to identify their own indicators for monitoring and evaluation. Find out what indicates success to them and what matters to them.
- Make sure that community members are fully involved in all aspects of monitoring and evaluation, not just in collecting information.
- Keep monitoring and evaluation simple and easy.
- Use all the information that is collected. Do not collect information that will not be used.
- Share the results of monitoring and evaluation regularly and often so people can see the progress they are making.

Ethical issues

It is also important to consider ethical issues about monitoring and evaluation. For example, some community members may expect to be paid for the time involved in collecting information, while others may worry about how the information about their community will be used.

Information in this handout was adapted from ALL TOGETHER NOW! Community mobilization for HIV/AIDS published by the International HIV/AIDS Alliance.

RECORD-KEEPING AND MONITORING AND EVALUATION TOOLS

This section is ONLY for the civil society networks who will take the lead on implementing the action plans. The forms provided are those required to be completed and submitted to demonstrate progress made on implementing the action plans.

There are four record-keeping and monitoring and evaluation tools included for your convenience. These are provided to help you collect the information you need to report on your use of the toolkit as well as the results of the training. This section explains what they are and how you can use them.

Tool 1: Participant Registration Sheet

The first tool is a participant registration sheet that will allow you to keep track of everyone that you have trained using the Positive Protection Training Manual. It is designed to collect all the information you will need from the participants in the Positive Protection training. You may also need this information for your report to those who are funding the training.

Using the tool: Before the training starts on the first day, you should register your participants. Someone should sit at the table with the registration sheet and greet participants. Some may not be able to read and write and so should be asked if they need help or to have the form filled out for them.

The following information is recorded on the sheet:

- Name
- Address
- Phone number
- Email address
- All networks you belong to
- Education completed
- Signature

Contact information: The participants' names and contact information are collected so you can contact them again in the future if needed. It also allows you to report how many women you have trained and from which areas of Nepal they come from.

Networks: It is important to record all the networks that the participants belong to because you will need to report to the donors how many women you have trained from the different affected groups (such as sex workers, transgender and injecting drug users).

Education: The highest grade completed is asked so that the facilitators will be able to assess the literacy level of the participants as a group. You use this information to decide whether to use the higher- or lower-literacy options during the training. After all participants have registered, add up the number of participants you have that have completed primary school or higher. If more than half of the participants have completed primary school or higher, you can use the higher-literacy options.

Tool 2: Positive Protection Training Summary Log

The Training Summary Log tool will enable you to keep a running summary of the Positive Protection trainings that you have done during a specific time-frame. The tool captures the key information you will need to provide to your donors and makes reporting easy. This is expected to be sent to the donor every four months.

Using the tool: After every training, take the information that you collected on the participant registration sheet and fill in one line of the summary sheet. The information recorded includes: the training dates, location and name of the trainers, as well as the number of participants from each type of network (positive women, sex worker and transgender).

At the end of the reporting period, add up the number of trainings completed and the number of women from each type of network as well as the total number of women trained.

Tool 3: Human Rights Violations Case Registration Log

In order to be able to report on the results of providing the Positive Protection Training, it is recommended that your network start a file of case reports and to register the cases of rights violations in your network that come to your attention.

Documenting rights violations: When women come to your network to tell you about a rights violation that they have experienced and to get your advice on what to do or support to take action, use the Form for Documenting Rights Violations (see the Participant Worksheet with this name on page 10 of the Participant's Handbook). You can use this form to collect all the information needed about what occurred. If the women have documented the rights violation themselves, ask them if you can make a copy of the documentation. Keep all of these together in a file.

The Case Registration Log will enable you to get a quick overview of the cases that your network has recorded, counselled on, and supported so that you can report more easily to your donors on what has happened.

Using the tool: Every time a case of a human rights violation is documented in your network, register it on the Case Registration Log by recording the following information from the documentation of the rights violation:

- **Organization and reporting period:** Fill in the name of your network and the dates of the period you are reporting on.
- **Date:** Record the date that the person contacted your organization about the violation.
- **Summary of Case:** Briefly summarize the case, including the following information (please do NOT include confidential information):
 - **The type of rights violation that occurred.** Note whether the case was:
 - ◆ Discrimination (treated differently from others).
 - ◆ Humiliating or degrading treatment.
 - ◆ Treatment without consent, including forced or coerced sterilization or abortions.
 - ◆ Broken confidentiality (not keeping information private).
 - ◆ Refusal of services (being sent away or to another facility).
 - ◆ Misinformation (being given wrong or incomplete information).
 - ◆ **The perpetrator:** Note who committed the rights violation and the type of health care worker (e.g. doctor, nurse, lab technician). Note: do not include names, only functional titles.
 - ◆ **The facility and location:** Note the name and location of the health service facility.
 - ◆ **The harm:** Summarize the harm that resulted from the violation.
- **Action Taken:** Record all actions that were taken in the case. These might include:
 - Rights violations documented.
 - Written complaint filed with health care providers or District Public Health Administration Offices.
 - Verbal complaint made to health care providers or District Public Health Administration Offices.
 - Complaint made to the Nepal Medical Council, Nepal Nursing Council or Nepal Health Professionals Council.
 - Took case to mediation.
 - Filed case with the National Human Rights Commission.

- o Requested legal aid.
- o Filed case with a Compensation Committee.
- o Filed case with an Inspector (for consumer complaints).
- o Filed case with the courts (under the Contracts Act).
- **Outcome:** When you know what the outcomes of the actions taken are, record them here (this will most likely be at some later time). These might include:
 - o An apology.
 - o Health care worker agreed to change their behaviour and/or attitude.
 - o Health care worker warned, suspended, fined, demoted, transferred, deregistered, imprisoned.
 - o Medical, Nursing or Health Professional Council recommended departmental action or recommended Government of Nepal file lawsuit against the worker or institution.
 - o Positive solution found in mediation (describe it).
 - o Case investigated by National Human Rights Commission.
 - o National Human Rights Commission recommended governmental action or recommended compensation.
 - o National Human Rights Commission published a report, issued a press release or got media attention.
 - o National Human Rights Commission found case was not a rights violation.
 - o Legal aid provided to the woman.
 - o Inspector filed lawsuit under the Consumer Protection Act.
 - o Inspector found no case under the Consumer Protection Act.
 - o Compensation Committee awarded compensation.
 - o Lawsuit decided in favour of the woman.
 - o Lawsuit decided against the woman.

Tool 4: Summary Report of Actions Taken and Outcomes

This tool will enable you to summarize the actions taken and the outcomes of those actions. It will help you to report to donors more easily.

Using the tool: When you need to report on your activities and outcomes:

- **Organization and reporting period:** Fill in the name of your network and the dates of the period you are reporting on.
- **Actions to prevent rights abuses:** Refer to your activity reports and record the activities that you undertook to prevent rights abuses during the period you are reporting on. See the list of possible actions listed on the form. If you undertook other activities, describe these in the box where it says 'Other'.
- **Actions to respond to rights abuses:** Take your Human Rights Violations Case Registration Log and count up the number of actions your network took to respond to rights violations during your reporting period. See the categories on the form and fill in the number in the box on the right side for each.
- **Outcomes of actions to prevent rights abuses:** Using your activity reports and other information you have about the results of your actions to prevent rights abuses, record them on the form. See the list of possible outcomes listed on the form. If other outcomes resulted from your work, describe these in the box where it says 'Other'.
- **Outcomes of actions to respond to rights abuses:** Take your Human Rights Violations Case Registration Log and count up the different outcomes (listed on the form) of the cases on your log that occurred during the period you are reporting on. Fill in the number in the box on the right side. Also count the number of cases that do not yet have outcomes for cases registered in this period and for cases registered previously.

Tool 1: Registration Sheet

Training dates: From: _____ (date) to _____ (date) Location: _____

	Name	Gender	Caste/ Ethnicity	Address	Phone number	Email address	All networks you belong to	Education: highest grade completed	Signature
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									

Tool 2: Positive Protection Training – Summary Log

Name of organization: _____

From _____ (date) to _____ (date)

Training dates	Location	Name of Trainers	Number of participants from:				Total number of participants
			Positive women's networks	Sex worker networks	Transgender networks	Injecting drug user networks	
SUMMARY	Number of Trainings:		Total number of participants from each type of network:				No. of participants

From _____ (date) to _____ (date)

Training dates	Location	Name of Trainers	Number of participants from:				Total number of participants
			Positive women's networks	Sex worker networks	Transgender networks	Injecting drug user networks	
SUMMARY	Number of Trainings:		Total number of participants from each type of network:				No. of participants

Tool 3: Human Rights Violations Case Registration Log

Name of organization: _____

Time-frame: From _____ (date) to _____ (date)

	Date	Name	Summary of Case	Actions Taken	Outcomes
1					
2					
3					
4					
5					
6					
7					
8					
9					

Tool 4: Summary Report of Actions Taken and Outcomes

Name of organization: _____

Time-frame: From _____ (date) to _____ (date)

Actions to Prevent Rights Abuses	Number during this period
Meetings with the National Human Rights Commission	
Other activities with the National Human Rights Commission (e.g. training, participating in reporting to international treaty bodies on rights violations)	
Meetings with health care providers	
Advocacy campaigns conducted	
Other (Describe):	
Other (Describe):	
Actions to Respond to Rights Abuses	
Cases of rights violations documented	
Written complaints filed with health care providers or District Public Health Administration Offices	
Verbal complaints made to health care providers or District Public Health Administration Offices	
Complaints made to the Nepal Medical Council, Nepal Nursing Council or Nepal Health Professionals Council	
Cases taken to mediation	
Cases filed with the National Human Rights Commission	
Cases for which legal aid was requested	
Cases filed with a Compensation Committee	
Cases filed with an Inspector (for consumer complaints)	
Cases filed with the courts (under the Contracts Act)	

Outcomes	Number during this period
Outcomes of Actions to Prevent Rights Abuses	
National Human Rights Commission advocated on behalf of women affected by HIV	
Health care workers changed their behavior or attitude towards women affected by HIV	
Health care workers trained in rights	
Report on an international treaty included the violation of the rights of women affected by HIV	
Other (describe):	
Other (describe):	
Outcomes of Actions to Respond to Rights Abuses	
Apology	
Health care worker agreed to change their behaviour and/or attitude	
Health care worker warned	
Health care worker suspended	
Health care worker fined	
Health care worker demoted	
Health care worker transferred	
Health care worker deregistered	
Health care worker imprisoned	
Medical, Nursing or Health Professional Council recommended departmental action	

Medical, Nursing or Health Professional Council recommended Government of Nepal to file lawsuit against the worker or institution	
Positive solution found in mediation	
Case investigated by National Human Rights Commission	
NHRC recommended governmental action	
NHRC recommended compensation	
NHRC published a report	
NHRC issued a press release or received media attention	
National Human Rights Commission found issue not to be a rights violation	
Legal aid provided to woman	
Inspector filed law suit under the Consumer Protection Act	
Inspector found no case under the Consumer Protection Act	
Compensation Committee awarded compensation	
Lawsuit decided in favour of the woman	
Lawsuit decided against the woman	
Case still pending (no outcome yet)	
Other (describe):	
Other (describe):	



75/12 Ocean Tower II, 15th Floor.
Soi Sukhumvit 19 , Klong Toey Nua.
Wattana , Bangkok , THAILAND
10110
Tel : +66 2 2597488-9
Fax : +66 2 2597487
Email: apnplus.communication@gmail.com
Website : www.apnplus.org



Dhobighat, Naya Bato - Lalitpur
P.O. Box No.: 9806, Kathmandu, Nepal
Phone No.: 977-1-5526725



UN House
P.O.Box No. 107, Kathmandu, Nepal
Phone No.: 977-1-5523200
Fax No.: 977-1-5523991, 5523986
Email: registry.np@undp.org



UN House
P.O.Box No. 107, Kathmandu, Nepal
Phone No.: 977-1-5523200
Fax No.: 977-1-5523991, 5523986
Email: registry.np@undp.org