

I. BACKGROUND AND FRAMEWORK

1. Scope of international obligations

Save the Children is concerned about the fact that Nepal has not yet ratified the highly important international instruments, which are important to promote and protect the rights of children

Recommendations:

- The government should *immediately ratify the (i) The Convention relating to the Status of Refugee (1951) (ii) Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption (1993) (iii) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000); (iv) The Convention against Discrimination in Education (1960); and (v) the Convention on Technical and Vocational Education (1989).*

2. Constitutional and legislative framework:

Save the Children welcomes the fact that Nepal's current interim constitution recognizes special rights of children, including the right to education, basic health, social security and protection, which has also been incorporated in the recommendation to the Fundamental Rights Committees under Constituent Assembly in the impending constitution. These important provisions must be conceded in the new Constitution in an equitable and justifiable manner.

Recommendations:

- The government should *ensure right to education, basic health, protection and social security provisions in the interim constitution be given continuation in the new constitution; recognize the right of a child to choose and hold citizenship based on either parent's citizenship; ensure no child born to a Nepali mother is without a nationality.*
- The government should *either set up a separate commission for child rights or a special commissioner for child rights within National Human Rights Commission.*

3. Institutional and human rights infrastructure:

Save the Children is highly concerned about the non-existent infrastructure for children at village and municipality level. Concerned ministries and departments, particularly the Ministry of Women, Children and Social Welfare and the Child Welfare Board at center and district are not adequately resourced to carry out programmes. National Human Rights Commission does not have sufficient legislative mandate nor resources to act on complaints and to ensure redresses.

Recommendation:

- *The government should take immediate measures to set up mechanisms at Village and Municipality level to safeguard and fulfill child rights.*
- *The government should increase resources allocations in the child rights sector. It should, strengthen the Ministry of Women, Children and Social Welfare, Central and District Child Welfare Board and National Human Rights Commission to run adequate programmes and effectively respond to child rights violations.*

4. Policy measures:

Save the Children appreciates the positive initiatives of the government in policy and legislative reforms but expresses concerns, *inter alia*, in delays in endorsement of the child policy, child protection policy, minimum standards for child care homes, Child Rights Act and the education regulation which have been four years in the making.

Recommendation:

- *The government should continue consultations with civil society on policy reform and expedite endorsement of the Child Rights Act, Education Regulation, Child Protection Policy, minimum standards for child care homes and child policy immediately.*

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

Implementation of international human rights obligations

1. Right to equality and non-discrimination

Discrimination is prohibited under the Constitution of Nepal. However, Save the Children is deeply concerned with the widespread discriminatory practices against girl children, *Dalit* children, children with disabilities, children with HIV and AIDS, which are more prevalent in semi urban and rural areas. Available and appropriate services for children with disability have not received attention.

Recommendation:

- *The government should increase its efforts to ensure implementation of existing laws guaranteeing the right to non-discrimination as stipulated in article 2 of the Convention of the Rights of the Child by adopting appropriate legislation and enforcement measures to end discrimination against girls, dalits, children with disabilities and children with HIV and AIDS, and strengthen monitoring mechanisms.*
- *The government should ensure HIV and AIDS infected mothers are not denied to take care of their non-infected children and ensure mothers are provided with additional help for ensuring non transmission.*

2. Children's right to life jeopardized by explosive devices

Children's right to life is currently threatened due to the presence of explosive devices which were placed during the armed conflict. Even after the signing of the Comprehensive Peace Accord (November 2006) 275 people have been reported killed with children accounting for more than 50% of casualties. Similarly more than 240 children have been injured leaving them with permanent disability including the loss of limbs, hearing and eyesight and psychological effect.ⁱⁱ

Recommendation:

- *The government should ensure every child affected by explosive devices receive necessary and free rehabilitation.*
- *The government should identify explosive affected areas and immediately start mine clearance including mine education program targeting children and communities.*

3. The right to health

Save the Children is severely concerned with the current health services and their quality in rural areas and the inadequate allocation made by the government for child health. Although basic health care is free, nearly 40% of Nepal's populations lack access to primary health care. Infant and under-five mortality stands at 48 per 1000 and 61 per 1000, respectively with most of these deaths being preventable and treatable. Among others, malnutrition remains a dominant underlying cause of death among children. Access to safe water and hygiene is largely absent in rural areas of Nepal. In year 2009, 17 districts in the western part of Nepal suffered from a diarrheal outbreak resulting in 356 deaths in a two month period including around 100 children due to lack of good hygiene and water facilities and inadequate management.ⁱⁱⁱ

Recommendation:

- *The government should take immediate steps to realize children's right to survival and health, in accordance with the principles of the best interests of the child and non-discrimination, including availability, accessibility, acceptability and quality of curative and primary health services for newborns, children and their mothers, especially for marginalized communities and in rural areas.*
- *The government should improve child nutritional status by implementing appropriate programs targeting poor communities and food deficit areas. .*

4. Violence, sexual abuse and harmful traditional practices

Save the Children is concerned with the prevalence of widespread domestic violence, harmful practices such as child marriage, *Chhaupadi* and corporal punishment in private and public sphere. The concern is also on neglect of children during rearing and more so of girls. The Domestic Violence (crime and punishment) Act 2008 does not sufficiently address the problem of children being victims of domestic violence. In cases of molestation, the legislative provisions are flawed because the state does not represent children in such cases. And the limitation to file a complaint to the police in case of rape/attempt to rape is only 35 days, which adversely affects reporting and justice. Lack of victim assistance, social in-acceptance of girls when they file complaints and insensitivity of state institutions towards justice for children has made the situation worse.

Recommendation:

- *The government should take immediate measures, including legislation, to protect all children, whether girls or boys, from sexual abuse until the age of 18, including lengthening the period for reporting abuse; ensure child molestation cases are represented by the state, ban corporal punishment; establish child friendly administrative and judicial procedures for child victims and witnesses of crimes to ensure they receive adequate protection, rehabilitation and compensation including right to confidentiality.*
- *The government should make sure that all children affected by sexual abuse, exploitation and violation during armed conflict have access to special procedure for redress.*
- *The government should strictly enforce the law prohibiting harmful practices that violate the rights of girls, i.e., badi, chaupadi, deuki, kamalari and child marriage.*

5. Prostitution and trafficking

Save the Children is gravely concerned with the high number of women and girl children being trafficked to India for commercial sex and the ineffectiveness of cooperative mechanisms between Nepal and India to counter such menace.^{iv} More than 20,000 girl children are estimated to be in the sex trade within Nepal.^v The state has no specific mechanisms and program to address spread prostitution, protect, rescue, rehabilitate vulnerable and victims and prosecute internal and external perpetrators. Many provisions and facilities guaranteed under the Human Trafficking Control Act are not being implemented. The inter-country adoption process in Nepal is frail and open to abuses and contravene the Hague Convention 1993. Monitoring is weak to oversee cash transfers and falsification of documents. The government has established diplomatic offices in migrant destination countries but their functions are too limited to respond to trafficking or forced labour.

Recommendation:

- *The government should establish or re-enforce national and international mechanisms to fight inter-country trafficking in persons, especially children, prosecute perpetrators, and provide protection, social rehabilitation and compensation for all victims.*
- *The government should significantly increase law enforcement efforts against all types of trafficking and sex trafficking*

6. Child Labour

There is no system of registration, control and monitoring of child labour in Nepal. Children are working in various sectors. National legislation which has termed employment of children in hazardous sectors is quarries, brick kilns, mining, road construction, transportation, restaurants and roadside hotels. Children working in these sectors are prohibited by ILO convention. Employment of children in abusive and hazardous environment is a violation of UNCRC principles. Though employing children under 14 is prohibited by law, having very young children as domestic laborer is widely accepted. In the hope of escaping domestic labour, many working children end up in the street. In the absence of adequate state rehabilitation programs, there is an increasing number of children at risk coming into conflict with the law.^{vi} Although the *kamaiya*^{vii} system has been abolished, the government has failed to implement an effective program to ensure *kamalari* are brought into the formal or vocational education system.

Recommendation:

- *The government should strictly enforce laws prohibiting employment of children below 14 years of age, set up state offices to monitor, prevent, rescue and rehabilitate child laborers and children in street situations and prosecutor violators*
- *The government should strengthen programs to better address the educational and rehabilitative right of kamalari children, focusing on their place of origin.*

7. Birth registration and the right to nationality

Although birth registration is mandatory by law, Save the Children is concerned with the low rate of birth registration (35% of total children only registered birth according to the Ministry of Local Development), especially in rural areas. Many groups of children are not registered which makes it difficult for them to enjoy many other rights and privileges as children including citizenship. Save the Children is particularly concerned with the current provisions of the Birth, Death and other Personal Incidences (Vital Registration) Act of 1976, which limits a mother's right to independently register her child's birth. Similarly, the implementation of amended Citizenship Act of 1964, which allows a child to claim nationality with his /her mother's name, is also not fully implemented.

Recommendation:

- *The government should implement the newly amended provisions in the Death and other Personal Incidences (Vital Registration) Act of 1976, Citizenship Act of 1964 by developing facilitative measures such as a detail guideline for the local government agencies;*
- *The government should put into place measures to end discrimination against children born to foreign fathers, abandoned children, orphans, children born out of wedlock and children from the Badi community, amongst others, in birth registration and obtaining citizenship. Ensure that all children of refugees and asylum-seekers born in Nepal are issued with birth certificates.*

8. Children in conflict with law

Save the Children is concerned that the current juvenile justice system fails to promote diversion, restorative justice practices and alternatives to deprivation of liberty. There is insufficient training of juvenile justice actors and deprivation of liberty is the norm instead of the measure of last resort. Children deprived of liberty are still more frequently tortured than adults in Nepal.^{viii} The only correction center in the country is over populated and under resourced. The Children Act 1992 and Juvenile Justice Procedure Regulation 2006 categorically states provisions for a Juvenile Court or Bench but there has been no initiative on implementation; professional social workers and child psychologist to support children on trial have not been appointed to carry out social inquiry reports.

Recommendations:

- *The government should implement the Child Act 1992 and Juvenile Justice Procedure Regulation 2006; establish a Juvenile Court and there should be special units within the police, public prosecutor's office and judiciary to deal with children. Legislative reform must include restorative practices, diversion and child friendly procedures in juvenile justice system.*

9. The Right to education

Save the Children is deeply alarmed by the fact that primary education in Nepal is not completely free in the actual sense; there are direct and indirect associated costs. Parents do pay fees for examination and other annual charges in addition to stationary and uniforms. Save the Children is also concerned with lack of commitment by the government on compulsory education and also the disparities in retention in primary and secondary schools between girls and boys, between upper and lower castes and ethnic and indigenous groups. Save the Children is also concerned with inadequate public expenditure in education, shortage of qualified and trained teachers, poor physical infrastructure and overcrowding of classrooms.

Recommendations:

- *The government should take all necessary measures to ensure access to free and compulsory education without discrimination, especially in relation to girls, dalit and children with disabilities.*
- *The government should take all necessary measures to increase public expenditure for school education, particularly to make primary education compulsory and free.*
- *The government should ban all kinds of violence in school including corporal punishment and set up monitoring mechanisms for violations, implementation of policies and code of conduct.*

10. Refugee, asylum-seeking and internally displaced persons (IDPs)

Save the Children is concerned that refugee status presently can only be sought by certain categories of asylum-seekers. Bhutanese refugees and their children experience restrictions on movement and recreation and access to health and education is limited. There are no state programs for children of IDPs there are procedural and administrative hurdles to access education and health services.

Recommendation:

- *The government must ensure all children of internally displaced persons, refugees, asylum-seekers and their families enjoy their right to health, education and birth registration, without prejudice and discrimination.*
- *The government should bring special programs for children of internally displaced population.*

11. The right to be heard

Save the Children welcomes provisions in the Government's development plan (2006/07- 2009/10) aiming to strengthen child participation in all project cycle, in policy making and in its efforts in developing national child participation framework to implement UNCRC provisions.

Recommendation:

- *The government should ensure that the child's right to be heard be taken into account in on going policy, legislative and structural reform, in accordance with the Committee on the Rights of the Child's General Comment No. 12 (2009), including in all judicial and administrative proceedings affecting children.*

Annex

End Notes

ⁱ Save the Children Nepal is part of International Save the Children having ECOSOC status with the UN.

ⁱⁱ Information received from unicef Nepal Country office and Informal Sector Service Center (INSEC), who are monitoring the impact of explosive devices in Nepal.

ⁱⁱⁱ This is the government data compiled by the high level coordination committee, under whom Save the Children was working to respond the situation. The study done by New Era, A research institute, in 2006 revealed that there were 5000 women working as prostitutes in Kathmandu. Similarly In a study conducted by *KRIPA*, a local NGO, in 2000 revealed there are 260 places in Kathmandu for prostitution.

^{iv} Following table gives a detail account of the problem of trafficking and prostitution.

Source	Nature and extent of trafficking
CWIN, 1997	153,000 women and children trafficked to Indian brothels (20% of them below 16 years of age)
ILO-IPEC, 2001	12,000 children under aged 18s trafficked to India annually for commercial sexual exploitation
STOP/Maiti Nepal, 2002	5,000-11,000 women and girls trafficked annually for brothel based prostitution
STOP, 2002	5,000-7,000 girls and women trafficked to India annually for brothel based prostitution
Population Council, New Delhi, 2002	200,000 girls and women trafficked to India for sex industry
Asmita, 2005	22,600 girls and women trafficked from Nepal to Mumbai, Delhi, Kolkotta, Pune and other cities
Easter Benjamin Trust, 2007	600 children trafficked to India for circus performance
WCSC, 2007	2,216 missing children from various regions in Nepal between July 2007 and June 2008
WCSC, 2007	3,258 missing women in Kathmandu valley between 1998 and 2007

^v This information was shared by the Ministry of Women, Children and Social Welfare while celebrating the day against trafficking in 2009.

^{vi} See, A study conducted by Rebat Timalsena and Shiva Prasad Paudel, *Sadak Jindagani*, 2003. Also a study conducted by the Kathmandu School of Law, *Juvenile Justice System in Nepal*, 2003.

^{vii} Kamaiya is a bonded labour system which was abolished by Kamaiya Prohibition Act 2002. The bonded labour parents used to send their children as young bonded labourers (kamalari) to work as domestic labourers. Such tradition has been decreased but many of such children are still outside of school and working as a domestic labourere in urban/semi urban areas.

^{viii} Advocacy Forum, *Torture of Juveniles in Nepal : A Serious Challenge to Justice System*, 2010, Kathmandu, Nepal.