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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
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**SPECIFIC HUMAN RIGHTS ISSUES:
WOMEN AND HUMAN RIGHTS**

Written statement* submitted by the Center for Reproductive Rights, a
non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[4 July 2003]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Women in Nepal in Prison for Abortion

The Center for Reproductive Rights and the Forum for Women, Law and Development wish to bring to the Sub-Commission's attention human rights abuses related to the continued detention of women in Nepal on criminal charges related to termination of pregnancy. The more than 50 women serving sentences under these discriminatory charges are primarily low-income and rural based, with little or no access to legal assistance. Conditions in prison for these women are appalling, with discrimination, harassment and deprivation a daily reality. National-level appeals to secure the release of these women have met with government inaction. We hope the Sub-Commission will assist in efforts to uphold the human rights of these women. To that end, we call upon the Sub-Commission to recommend greater protections for women's reproductive rights, particularly their right not to be punished on the basis of their reproductive capacity.

Statement of facts

Until September 2002, Nepal criminalized abortion under all circumstances. Nepal was one of the few countries to enforce such a criminal ban against women accused of having terminated their pregnancies. While the Country Code provided for imprisonment of up to three years for abortion, in most cases of alleged abortion, women were charged with the crime of infanticide, which carries a maximum sentence of 20 years. Family and community members, often motivated by personal disagreements with the accused women, reported the majority of cases that ultimately ended in imprisonment. In 2002, the Center for Reproductive Rights and the Nepal-based Forum for Women, Law and Development (FWLD) released a factfinding report documenting the situation of these women entitled, *Abortion in Nepal: Women Imprisoned* (available at http://www.reproductiverights.org/pub_bo_nepal.html).

In March 2002, the Nepali Parliament passed the 11th Amendment Bill, which, among other things, made abortion legal on broad grounds. Abortion is now legal upon request during the first 12 weeks of pregnancy, when a woman's life or health is in danger, and in cases of rape, incest, and fetal impairment. King Gynandra gave the bill his royal seal in September 2002. However, though abortion has been legal for nine months, at least 50 women charged pursuant to the previous long-standing criminalization of abortion remain in prison. At least two of the women have exceeded their prison terms and a number of appeals remain stuck in the judicial system's bureaucracy.

In June 2003, FWLD conducted a survey to determine the situation of the women still in prison pursuant to the former abortion ban. In most cases, these women were denied legal representation and subjected to other due process violations at the time of arrest and trial, which raise serious doubts about the credibility of the charges levied against them and the legitimacy of their imprisonment. The overwhelming majority have been charged with infanticide, though a closer examination of their case histories reveal that many of these women suffered from miscarriages, stillbirths or induced abortion. At least 7 women have been prosecuted for infanticide since the legalization of abortion, despite case histories in some instances that indicate that their pregnancies actually ended in either induced or spontaneous abortions. This marks a continuation of the practice prior to legalization of penalizing abortion with the use of laws proscribing infanticide.

Given the long-standing legal and cultural confluence of the concepts of abortion and infanticide – and the consistent failure of law-enforcement officials to distinguish the two acts in their prosecutions – women's advocates at the national and international levels call for the release of all women in prison on charges of abortion and infanticide. To that end, FWLD and the Center for

Reproductive Rights are employing multiple legal strategies to secure the release of these women. In particular, we have petitioned King Gynandra and his cabinet to address the situation of the women still imprisoned. The women have also submitted their own appeal to the King. Many of the women have served more than half their prison sentences, which is generally considered one ground for a pardon.

Human rights violated

The actions of the Nepali government toward the women in prison for abortion violate a number of fundamental human rights. Three of these are the right to non-discrimination, the right to due process, and the right to humane treatment in detention. All of these rights receive broad protection in international human rights instruments, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). The following violations are documented at greater length in the above-mentioned report, *Abortion in Nepal: Women Imprisoned*.

A. The Right to Non-discrimination

(Articles 2 and 7 of the UDHR; Articles 1, 3 and 26 of the ICCPR)

Imprisonment on the basis of criminal laws that punish women for their reproductive capacity constitutes a violation of the right to freedom from gender discrimination.

In Nepal, criminal sanctions for abortion have been imposed almost exclusively upon women. Men who are complicit in performing and procuring abortions are rarely, if ever, prosecuted. Low-income and rural women face the greatest discrimination under Nepal's abortion ban. The vast majority of women in prison for abortion are rural-based, low-income and illiterate. The effects of this punitive approach have been felt not just by the women prosecuted for abortion, but also by those women who have sought clandestine abortions under unsafe conditions as a result of the criminal ban. It is estimated that half of all maternal deaths in Nepal are attributable to unsafe abortion.

B. The Right to a Fair Trial and Due Process of Law

(Articles 10 and 11 of the UDHR; Articles 9 and 14 of the ICCPR)

Violations of women's right to a fair trial and due process call into question the legitimacy of the convictions underlying the sentences of the women currently in prison for abortion. In a context in which the vast majority of women give birth at home, often without appropriate medical care, miscarriages and stillbirths are not uncommon occurrences. Yet a number of the women convicted of abortion and infanticide found that law enforcement officials and judges presumed their guilt from the beginning of the investigation. In addition, in many cases, women were denied the right to remain silent during interrogations. Others were prevented from exercising their right to appear at their own trials. Women convicted of abortion routinely lost their opportunity to appeal their convictions, either due to lack of money for an attorney or inability to obtain a formal notice of the lower court's decision. Further, many women experienced denials of their right to counsel. Of the women in prison for abortion and infanticide offenses, over half said that they had no assistance at all. For the few women who received government-appointed legal assistance, representation did not commence until the investigative phase was over and all the evidence was collected. Often an attorney met the client for the first time on the day of the trial.

The irregularities in many of these proceedings resulted in convictions based on questionable evidence, with the criminal act in question arbitrarily characterized as either abortion or infanticide. A woman accused of undergoing an abortion – an act punished by up to three years in prison – could be assigned a 20-year sentence if the prosecutor chose to pursue it as a case of infanticide.

C. Right to Humane Treatment in Detention
(Article 5 of the UDHR; Article 10 of the ICCPR)

Women who have been arrested and convicted for abortion face harsh conditions in custody, in violation of their right to humane treatment in detention. Despite special legal protections for female prisoners, several women have reported physical abuse during interrogations. Others have revealed inadequate access to health care in prison. Harassment of women prisoners is common, and in many prisons there are no women guards. Prisoners who are mothers are most often separated from their children, though some children have moved into prison with their mothers, suffering the same degrading treatment.

Action sought

We seek the support of the Sub-Commission in our campaign to secure the release of women in prison in Nepal for abortion. This support could take the form a resolution calling for respect for women's reproductive rights and strongly condemning government action that punishes women on the basis of their reproductive capacity.

Such a statement would be consistent with Paragraph 7.3 of the 1995 Programme of Action of the International Conference on Population and Development, which recognizes that:

Reproductive rights embrace certain human rights that are already recognized in national laws, international laws and international human rights documents and other consensus documents. These rights rest on the recognition of the basic rights of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.

It would also complement Paragraph 106(k) of the 1995 Beijing Platform for Action, which calls upon governments to consider reviewing “punitive measures against women who have undergone illegal abortions.” The United Nations Special Rapporteur on Violence against Women also noted the rights violations inherent to state restraints on reproductive decision-making in her 1999 report to the Human Rights Commission on violence against women (E/CN.4/1999/68/Add.4), commenting that “[a]cts deliberately restraining women from using contraception or from having an abortion constitute violence against women by subjecting women to excessive pregnancies and childbearing against their will, resulting in increased and preventable risks of maternal mortality and morbidity.”

We also encourage the Sub-Commission to recognize the manner in which discriminatory laws interact with broad social inequalities to marginalize society's most vulnerable groups, particularly low-income and rural women and adolescents. It is essential that legal safeguards – such as guarantees of due process and legal assistance – uphold the human rights of all members of society, including those least able to defend themselves.

A resolution on these points would be of great help to advocates in Nepal, as well as in ongoing advocacy efforts in other countries. We thank the Sub-Commission for its attention to this matter and are available to supply any additional information the Sub-Commission may require.

The Center for Reproductive Rights is a nonprofit, legal advocacy organization that promotes and defends the reproductive rights of women worldwide. Founded in 1992 (as the Center for Reproductive Law and Policy), the Center has used international human rights law to advance the reproductive freedom of women and has strengthened reproductive health laws and policies across the globe by working with more than 50 organizations in 44 nations including countries in Africa, Asia, East Central Europe, and Latin America and the Caribbean.

The Forum for Women, Law and Development is a non-governmental organization whose mission is to eliminate all forms of discrimination against women in Nepal and protect and promote human rights through research and public education, advocacy, legal aid and litigation.
