

# HIV/AIDS and Human Rights: A Legislative Audit



National Centre for AIDS and STD Control (NCASC)  
POLICY Project/Nepal  
Forum for Women, Law and Development (FWLD)



**Published by: National Centre for AIDS and STD Control (NCASC)**

Ministry of Health, HMG/Nepal  
Teku, Kathmandu, Nepal  
Phone: 00977-1-4261653/4258219  
Email: [ncasc@ntc.net.np](mailto:ncasc@ntc.net.np)  
Website: [www.ncasc.gov.np](http://www.ncasc.gov.np)

**POLICY Project/Nepal**

Department of Health Service Complex  
Teku, Kathmandu, Nepal  
Phone: 00977-1-4255996/4261773  
Fax: 00977-1-4257142  
Email: [info@policynepal.org](mailto:info@policynepal.org)  
Website: [www.policynepal.org](http://www.policynepal.org)

**Forum for Women, Law and Development (FWLD)**

336 Prasuti Marg, Thapathali  
P.O. Box 2923, Kathmandu, Nepal  
Phone: 00977-1-4242683/4266415  
Fax: 00977-1-4240627  
Email: [fwld@fwld.wlink.com.np](mailto:fwld@fwld.wlink.com.np)  
Website: [www.fwld.org.np](http://www.fwld.org.np)

This study, “HIV/AIDS and Human Rights: A Legislative Audit” was conducted by the Forum for Women, Law and Development (FWLD) with the support of the POLICY Project/Nepal under subcontract 5909-586 FWL01. The POLICY Project is supported by the U.S. Agency for International Development (USAID) under Contract No. HRN-C-00-00-00006-00. The project is implemented by The Futures Group International in collaboration with the Centre for Development and Population Activities (CEDPA) and Research Triangle Institute (RTI). The analyses and opinions contained herein do not necessarily reflect the views or policies of the U.S. Government.



# **HIV/AIDS and Human Rights: A Legislative Audit**

## **Research Expert**

Advocate Sapana Pradhan-Malla

## **Research Consultant**

Mr. Chris Ward  
POLICY Project/Cambodia

## **Legal Experts**

Advocate Rup Narayan Shrestha  
Advocate Basant B. Basnet

## **Coordinator**

Ms. Purna Shrestha

**Publication No. 76**

**Forum for Women, Law and Development (FWLD)**

March 2004

## CONTENTS

<b>Foreword</b>	
<b>Acknowledgements</b>	
<b>Abbreviations</b>	<b>I</b>
<b>List of Cases</b>	<b>III</b>
<b>Executive Summary</b>	<b>IV</b>
<b>1. Introduction .....</b>	<b>1-8</b>
1.1 The Incidence of HIV .....	1
1.2 Statement of the Issue .....	4
1.3 Objectives of the Study .....	5
1.4 Methodology of the Study .....	5
1.5 Scope of the Study .....	7
1.6 Limitation of the Study .....	8
<b>2. Legislative Audit on HIV/AIDS and Human Rights .....</b>	<b>9-65</b>
2.1 Public Health .....	9
2.2 Criminal Laws and Transmission Offences .....	15
2.3 Anti-discrimination .....	21
2.4 Privacy/Confidentiality .....	31
2.5 Sexual Offences .....	35
2.6 Prisons/Correctional Laws .....	39
2.7 Employment .....	43
2.8 Equality of Status of Vulnerable Populations .....	49
2.9 Regulation of Health Care Professionals and Ethical Research .....	57
2.10 Treatment, Therapeutic Goods, Testing and Other Issues .....	61
<b>Bibliography</b>	<b>66-67</b>
<b>Annexes</b>	<b>68-83</b>
1. Legislative Audit Tools and Scoring .....	68
2. Relevant Laws, Policies, Executive Orders, Guidelines, and Draft Bills .....	78
3. List of Participants of Consultation Meeting on HIV/AIDS and Human Rights Audit Tool .....	82

*Govind Bahadur Shrestha*  
*Chief Justice*



**SUPREME COURT, NEPAL**



**FOREWORD**



HIV/AIDS has been a serious problem in Nepal in the last few years as indicated by various research studies. Its increase has created a number of issues including the issue of violation of human rights of the HIV infected people. Moreover, the prevailing legal and social discrimination and stigmatization have become a serious concern to People Living with HIV/AIDS (PWHA). Nepal does not have an adequate legal framework for addressing the HIV/AIDS epidemic and the violation of rights of PWHA. I believe it is high time to make an assessment and to initiate reform on laws and policies regarding this problem. The role of civil society is critical in this endeavor.

In this context, the study, **HIV/AIDS and Human Rights: A Legislative Audit**, the first ever initiated in Nepal, is a remarkable step towards addressing discrimination and stigma through legal reform. This attempt at auditing human rights legislation is a model of human rights monitoring that attempts to identify the gap between international obligations and national practices as implemented by a country's legal system.

The focus of the study has brought to the surface the need for laws and policies to be strengthened so that society can be safeguarded from HIV/AIDS and its impacts. Out of a possible maximum score of 100, the Nepalese legal system has scored 40. This implies that there is a need for law reform so that the legal system makes a more positive contribution to controlling the further spread of HIV and protects rights of people infected and affected with HIV/AIDS.

His Majesty's Government/Nepal needs to review the outcome of this study and initiate law and policy reform to address the prevailing discrimination. To ensure each individual the rights conferred by the Constitution, the judiciary needs to be sensitive to the issues of equality and human rights.

I highly appreciate the collaborative effort of NCASC, USAID, POLICY Project/Nepal, and the Forum for Women, Law and Development (FWLD) for their endeavor to conduct this legislative audit. The research team deserves special appreciation for making such systematic and scientific efforts to map out existing laws, policies, and providing the comprehensive and in-depth understanding of the current situation of Nepali legislation in addressing the HIV/AIDS epidemic. I believe that this initiative will contribute to safeguarding the basic human rights of people living with HIV/AIDS and will foster an environment of non-discrimination and non-stigmatization, thereby promoting the right to live with dignity.

March 19, 2004

.....  
**Govind Bahadur Shrestha**  
**Chief Justice**



Ref. ....



# NATIONAL CENTRE FOR AIDS AND STD CONTROL

Phone: 261653  
258219

Fax: 261406

Email: ncasc@ntc.net.np

Teku, Kathmandu,  
Nepal

Date:- .....

## FOREWORD



I congratulate for accomplishing the study **“HIV/AIDS and Human Rights: A Legislative Audit.”** It is a major milestone towards responding the commitments made by Nepal in its various international agreements such as UNGASS. The major contribution of the study is that it identifies the gaps between international obligations and Nepal’s existing national law and administrative practices as reflected in the country’s legal system. This is the ‘first ever’ initiative document, which represents a dynamic step towards addressing stigma and discrimination as an agenda for legal reform. This approach is in compliance with the human rights

issues. It may also serve as a model of monitoring the advancement of human rights policies and practices, particularly with respect to vulnerable groups and other marginalized sub-populations among the Nepalese society.

The UNGASS declaration specifically provides that all signatory countries will have enacted, strengthened and enforced legislation to prevent discrimination against people living with HIV/AIDS and against groups who are vulnerable to HIV/AIDS. In this context, this study systematically and thoroughly maps existing laws and policies. It also provides comprehensive and in-depth understanding of the current situation about adequacy of current Nepali legislation in addressing the HIV/AIDS epidemic. This study is, in fact, a major response in creating unique opportunity for enabling the policy reform in Nepal.

The study shows out of possible maximum of 100 points, our legal system has scored only 40 points. Therefore, it clearly indicates the need for certain laws and policies to be changed, and others strengthened, so that vulnerable populations may be safeguarded from HIV/AIDS and prevented from a devastating impact of a generalized epidemic. The study also indicates an urgent need for legal reform so that Nepal’s legal system makes more positive contribution in controlling the further scaling of the HIV infection rates. However, such reform is only possible through the strategic commitments from all the stakeholders to which I very much positively look forward.

I strongly believe that this document will also help us in fostering the process of non-discrimination and non-stigmatization by legally promoting the human rights of everyone, particularly with respect to the Articles of the Universal Declaration of Human Rights. My thankful appreciation goes to USAID and the POLICY Project for supporting to carry on this study and to FWLD for conducting this important study.

.....

**Ram Prasad Shrestha**

**Director**

**National Centre for AIDS and STD Control (NCASC)**



## FOREWORD



**HIV/AIDS and Human Rights: A Legislative Audit** is a pioneering effort by FWLD in collaboration with NCASC, USAID, and POLICY Project/Nepal to map out existing laws, policies, and executive orders and provide a comprehensive and in-depth understanding of the current situation of Nepali legislation in addressing the HIV/AIDS epidemic.

The POLICY Project is committed to support His Majesty's Government of Nepal's National Strategic Plan on HIV/AIDS 2002 and actions to meet its commitment to reducing stigma and discrimination reflected in all international agreements. This attempt at auditing human rights legislation is a model of human rights monitoring that attempts to identify the gap between international obligations and national practices as implemented by a country's legal system.

Reducing stigma and discrimination and promoting human rights are priorities for the POLICY Project. The POLICY Project views human rights not just as one important aspect of HIV/AIDS policies and programs; rather, they are the very foundation on which effective strategies to address the epidemic must be built.

The findings from the audit imply that there is a need for law reform so that the legal system makes a more positive contribution in controlling the further spread of HIV and to protect the rights of people infected and affected by HIV/AIDS. To ensure the human rights of the vulnerable groups, POLICY will work with all stakeholders to draft legal and policy reforms and advocate with concerned bodies. We are positive that HMG/N will initiate possible policy reformation to address the existing gaps regarding HIV/AIDS.

Our appreciation is extended to the team of experts from FWLD who worked on the legislative audit and to Mr. Chris Ward who provided technical advice from the conceptualization phase. Our special thanks goes to NCASC and USAID for their invaluable support.

.....  
**Bhojraj Pokharel**  
Country Director  
POLICY Project/Nepal

## ACKNOWLEDGEMENTS



The present study, **HIV/AIDS and Human Rights: A Legislative Audit**, is an attempt to audit the existing laws, policies, and executives orders of Nepal in accordance with the *International Guidelines on HIV/AIDS and Human Rights*. The study also attempts to highlight the implementation of laws and policies in practice, identifying many gaps and weaknesses in existing laws and policies. We hope that this study will provide guidance in reforming laws and policies and in developing an improved legal framework that best contributes to an effective response to the HIV/AIDS epidemic and protects the rights and interests of PWHA and vulnerable groups.

We are indebted to a number of people and organizations, without whose support and valuable contributions this study would not have materialized. We would like to convey our special thanks to Mr. Chris Ward, Senior Technical Advisor, HIV/AIDS and Human Rights, POLICY Project/Cambodia, for his valuable time in enhancing the capacity of the research team. We also would like to acknowledge the importance of continuous and timely support and the vital suggestions he made during the study.

We are grateful to Mr. Bhojraj Pokharel and Ms. Sumi Devkota, POLICY Project/Nepal and the National Centre for AIDS and STD Control (NCASC)/Nepal, for taking up the challenge of conducting this study.

We are indebted to all the stakeholders of the consultation meeting for providing their valuable comments and feedback. Thanks are also due to Advocate Meera Dhungana, Advocate Sabin Shrestha, Ms. Sonali Regmi, Advocate Ratna K. Shrestha, and Mr. Phanindra Gautam, who contributed for the successful completion of the study; and to Mr. Himlal Shrestha and Mr. Raj B. Sapkota for their persistent effort in the design and layout of the study.

Advocate Jogendra K. Ghimire deserves special mention for editing the report. Last but not least, FWLD thanks Mr. P.M. Jesse Brandt and Ms. Nadia Carvalho, USAID/Nepal for critically reviewing the study report and also to USAID and POLICY Project for supporting the study.

A handwritten signature in black ink, reading "Sapana Pradhan-Malla".

.....  
**Sapana Pradhan-Malla**  
President

Forum for Women, Law and Development (FWLD)



## ABBREVIATIONS

AIDS	Acquired Immuno-Deficiency Syndrome
B.S.	<i>Bikram Samvat (Nepali Calendar)</i>
CBO	Community-based organization
CDO	Chief District Officer
e.g.	For example
ERB	Ethical Review Board
FWLD	Forum for Women, Law and Development
FSW	Female sex workers
HIV	Human immunodeficiency virus
HMG/N	His Majesty's Government/Nepal
IDU	Injecting drug user
i.e.	That is
MSM	Men having sex with men
NCASC	National Centre for AIDS and STD Control
NGO	Nongovernmental organization
NHRC	National Human Rights Commission
NKP	<i>Nepal Kanoon Patrika</i>
NMA	Nepal Medical Association
No.	Number
NWC	National Women's Commission
p.	Page
pp.	Pages
PWHA	People living with HIV/AIDS
RPR	Rapid Plasma Reagin
STD	Sexually transmitted disease
SW	Sex worker

TRIPS	Trade-related Aspects of Intellectual Property Rights
UICP	Universal Infection Control Precautions
UNAIDS	Joint United Nations Program on HIV/AIDS
UNDP	United Nations Development Program
UNGASS	United Nations General Assembly Special Session
VCT	Voluntary HIV/AIDS Counseling and Testing
Vol.	Volume
vs.	Versus
VDRL	Venereal Disease Research Laboratory Test
WHO	World Health Organization
WTO	World Trade Organization

## LIST OF CASES

1. Annapurana Rana vs. Ambika Rajya Laxmi Rana and others, NKP 2055 (1998), Vol. 8, p. 476. 32, 35, 55
2. Chandra Kumar Bhattarai vs. Ministry of Agriculture, HMG/Nepal, Nepal Law Journal 2059, Decision No. 4582 p. 658. 26
3. Chandranath Sapkota vs. Ministry of Home and others, Supreme Court Bulletin, 2058 (2000), Vol. 22, p.16. 54
4. Dr. Chanda Bajracharya vs. HMG/Nepal, NKP 2053 (1996), Vol. 7, p. 537. 27, 53
5. Durga Sob vs. HMG/Nepal, Writ No. 3644, Decision Date: April 18, 2001. 53
6. Gopal Krishna Shiwakoti vs. HMG/Nepal and others, NKP 2051, Vol. 4, p. 255. 11
7. Man Bahadur Bishwokarma vs. HMG/Nepal, NKP 2049 (1994), Vol. 12, p. 1010. 53
8. Meera Dhungana vs. HMG/Nepal, NKP 2052 (1995), Vol. 6. p. 462. 27, 53
9. Meera Dhungana for Forum for Women, Law and Development vs. HMG/Nepal, Supreme Court Bulletin 2059 (2002), Vol. 5, p. 13. 19, 27, 37, 53
10. Radheshyam Parajuli vs. HMG/Nepal, Writ No. 3692, 2056. 10. 4 B.S. (January 18, 2000). 51
11. Reena Bajracharya vs. HMG/Nepal, NKP 2057 (2000), Vol. 5, p. 376. 27, 53
12. Sapana P. Malla for Forum for Women, Law and Development vs. HMG/Nepal, Publication of Judgments relating to Human Rights (Special issue) Supreme Court 2059 (2002), pp. 144-151. 17, 22, 27, 38, 53
13. Tilottam Poudel vs. Ministry of Home and others, Supreme Court Bulletin, 2058 (2000), Vol.10, p. 3. 54

## EXECUTIVE SUMMARY

Auditing legislation is a model form of human rights monitoring that attempts to identify the gap between international obligations, such as those that a country assumes when it ratifies an international treaty or convention, and national practice as implemented by a country's legal system. It is a model that can be applied to a range of subject matters. The importance of human rights in the context of HIV/AIDS is twofold: first, the human rights of people living with or affected by HIV/AIDS are worthy of protection and promotion in their own right; and second, an environment in which human rights are respected ensures that vulnerability to HIV/AIDS is reduced, that people infected with and affected by HIV/AIDS can lead a life of dignity without discrimination, and the personal and societal impact of HIV infection is alleviated.

Pioneering work in the field of auditing HIV/AIDS-related human rights work has been done by Dr. Helen Watchirs of the Research School of Social Sciences at the Australian National University. Dr. Watchirs wrote the *International Guidelines on HIV/AIDS and Human Rights* (the International Guidelines) for the Joint United Nations Program on HIV/AIDS and the United Nations Office of the High Commissioner for Human Rights in 1996. The International Guidelines draw upon existing international human rights instruments such as the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, and the *International Covenant on Economic, Social, and Cultural Rights*, to determine how the human rights expressed in these instruments are relevant in the context of HIV/AIDS. Thus, the International Guidelines has not "invented" any new human rights to apply in the context of HIV/AIDS, but has looked at the relevance of existing human rights instruments to promoting effective responses to HIV/AIDS.

Dr. Watchirs also developed an audit "tool," or questionnaire, that measures the extent to which a country's legal system is consistent with the standards contained in the International Guidelines. This audit tool was applied in several jurisdictions in Australia and employed 10 indicators each consisting of a series of questions examining different elements of the legal system based on the justiciable elements contained in the International Guidelines. The audit tool developed in Australia formed the basis for the audit tool used in Nepal, which consists of 10 components or indicators: public health; criminal laws and transmission offences; anti-discrimination laws; privacy and confidentiality; sexual offences; prisons/correctional laws; employment; equality of status of vulnerable populations; regulation of health care professionals and ethical research; and treatment, therapeutic goods, and other issues.

The audit tool is based on the International Guidelines and covers a wide range of substantive and procedural issues. The exact content of laws is not prescribed by the audit, as there is a range of good legislative practices that can satisfy the criteria in the International Guidelines. Some countries have passed comprehensive HIV/AIDS legislation that deals with various issues such as discrimination, confidentiality, and voluntary testing. In other countries, however, legal provisions relevant to HIV/AIDS are found in a variety of laws, regulations, and court decisions. Examples of the former approach can be found in the Philippines and Cambodia, which have both passed legislation dealing with many of the legal issues raised by the HIV/AIDS epidemic. Like most countries, Nepal has not yet taken this

approach, and the task of researching and assessing all relevant laws has been substantial. In addition to measuring the degree to which laws and subordinate instruments, such as executive orders, are consistent with the International Guidelines, the Nepalese assessment has also examined relevant policies, although this aspect of the assessment has not been subject to a formal scoring process in the same way as for the laws.

The process of conducting the audit in Nepal involved several steps. The first step was to determine the precise form of the audit tool to be used. While developing the tool an attempt was made to ensure that it asked the appropriate questions about Nepal's legal system and the impact of the legal system on Nepal's response to HIV/AIDS. These issues were determined in part by the content of the International Guidelines but also by the characteristics of the epidemic and the legal system in the jurisdiction being audited. The second step was the preparation of an audit report based on the analysis of legal research (mapping of laws). For the purpose of legal research, the Constitution of the Kingdom of Nepal, 1990; 280 Acts; 210 Regulations; three Executive Orders; seven Policies; three Guidelines; and two Draft Bills were mapped. The third step involved a consultation meeting to gather information both on the accuracy of the legal research in the draft report and on gaps between the formal content of laws and the way in which the legal system operates in practice. For these reasons, in finalizing the audit report it was important to consult with a wide variety of people representing both government and communities affected by the HIV/AIDS epidemic.

As noted above, while policy was not scored, a detailed commentary in relation to each indicator including information concerning relevant policies is provided. Summaries of the findings in relation to the 10 indicators are set out below.

### **Public Health**

This indicator produced a low score of approximately 1 point out of a possible score of 10, indicating only minimal legislative compliance with the standards in the Guidelines. The audit found no legal requirement to implement universal infection control precautions in health settings, no prohibition on the segregation of people on the basis of their HIV-positive status, no legal requirement to report HIV test results to public health authorities, no prohibition of compulsory or mandatory HIV testing, and no requirement for obtaining informed consent with pre- and post-test counseling by those performing HIV tests. Points were scored for the fact that the Curriculum Development Council under the Ministry of Education includes HIV/AIDS in school curricula beginning at grade six, and that the government has issued an executive order requiring all donated blood to be tested for HIV.

### **Criminal Laws and Transmission Offences**

This indicator scored 6 points out of a possible score of 10. Points were scored for the fact that the intentional transmission of HIV was not singled out from other behaviors causing harm (an approach that can potentially add to the stigma associated with HIV/AIDS), although, like all behaviors causing harm to others, it is punishable by the criminal justice system. Points were also awarded for diversionary programs available to people charged with minor drug offences, the fact that there are no restrictions on the availability of condoms, and the laws protecting children and (to some extent) adults from sexual and other violence (although laws against "unnatural" sex may be used to prosecute men who have sex with men, and the law does not recognize that a male can be raped). Sex workers have a right to choose their own occupation; however, other laws dealing with public order and obscenity are often used by police to harass and prosecute sex workers. There is no legal protection for the distribution of sterile

injecting equipment in the community, and the Ministry of Home has formally indicated that distributing injecting equipment is considered in breach of laws against drug use.

### **Anti-discrimination**

This indicator scored approximately 5 points out of 10. Laws which were found to be compliant with the International Guidelines included the legal protection against discrimination on the grounds of disability, the protection against discrimination on the grounds of profession, reasonable time limits for lodging complaints, the provisions for representative complaints, the capacity to fast-track complaints where a complainant is terminally ill, and an independent institution with responsibility to educate and promote respect for human rights. Areas where the law was not compliant with the International Guidelines included a lack of protection against discrimination for entrants to the country and members of the armed forces, a lack of confidentiality protections for people lodging complaints of discrimination, and a lack of power on the part of the National Human Rights Commission to make enforceable decisions where a finding of discrimination has been made.

### **Privacy/Confidentiality**

This indicator scored only 3 points out of 10, notwithstanding the fact that privacy is one of the fundamental rights expressly recognized in the Constitution of the Kingdom of Nepal. The low score was attributable to the fact that while there is a general statement of a right to privacy in the Constitution, there is a lack of specific privacy protections in situations likely to affect people living with HIV/AIDS; for example, people with HIV who are subject to public health interventions or who are involved in legal proceedings. Furthermore, there is no right of privacy concerning one's sexual orientation, which is significant given the institutionalized stigma and discrimination to which men who have sex with men are subjected in Nepal. Although there is no guarantee of access, where sexual and reproductive health services are available, providers are legally required to maintain the confidentiality of information regarding patients who use the services.

### **Sexual Offences**

This indicator scored 6.5 points out of 10. Positive aspects of the law include the absence of formal regulatory controls that discriminate against sex workers as compared with other workers providing a personal service, prohibitions on trafficking of vulnerable populations such as women and children, the criminalization of forced heterosexual relations, and the protection of children from sexual offences. Points were lost for the prohibition on “unnatural sexual acts,” which may be used to prosecute men who have sex with men, for policing practices regarding sex workers that amount to persecution and harassment, the failure in effect to criminalize forced sexual intercourse between men, and the failure to punish the purchasers (as opposed to the brokers) in transactions involving the trafficking of human beings.

### **Prisons/Correctional Laws**

This indicator received a relatively low score of 3 points out of 10. There were some positive aspects to the issues covered, such as the fact that the Prison Act allows physically or mentally ill prisoners to be treated by a government doctor, and that female prisoners are protected from sexual violence from prison officials. However, there is no right to access HIV/AIDS-related information and education materials. Access to such materials may be granted, but at the discretion of the prison's authorities, and there is no

right of access to means of preventing HIV and other blood-borne virus transmission in prisons such as condoms, bleach, and sterile injecting equipment. At the policy level, the National HIV/AIDS Strategy permits the distribution and possession of condoms in prisons. Improving awareness and understanding on the part of policymakers for the prevention of HIV in prisons is one of the objectives of the Strategy. However, compulsory HIV testing of prisoners at any time is possible under the provisions of the Infectious Diseases (Control) Act, and HIV-positive prisoners are routinely segregated from other prisoners. There is no law that permits the early release of prisoners with an AIDS-related illness.

## **Employment**

This indicator received a low score of 2 points out of 10. There is no prohibition of HIV screening for general employment purposes, nor is there a legal requirement that universal infection control procedures be implemented in the workplace. Work-related health insurance is not available for occupational diseases, and while certain industries are regulated by legislation concerning occupational injuries (such as the Labor Rules), these laws are not clear regarding entitlement to compensation for occupationally acquired diseases, which in any case is a matter for the discretion of the relevant investigation officer. While there is no law which specifically provides employment security for HIV-positive workers who are able to work, misconduct and age limits for service are the only legal grounds for termination of employment, so employment security is in effect guaranteed. There are some provisions for material support to employees who are too ill to continue working, such as extended sick leave and early retirement benefits, but these provisions do not amount to a comprehensive system of social security benefits. There is no law requiring access to HIV/AIDS information and education for occupational health and safety reasons, or for workers traveling outside the country. However, the National HIV/AIDS Strategy addresses the issue of the vulnerability of mobile populations by providing predeparture and post-arrival information and counseling services regarding HIV/AIDS.

## **Equality of Status of Vulnerable Populations**

This indicator scored about 4 points out of a possible score of 10 points. Steps have been taken to improve the formal legal equality of men and women in Nepal; however, some degree of inequality still exists in the areas of inheritance, child custody rights, capacity to enter certain contracts, and remuneration for equal work. Even more marked is the formal legal inequality between heterosexuals and men who have sex with men. The Constitution of the Kingdom of Nepal, 1990 provides for the right of peaceful assembly of all Nepali citizens, with the only restriction on this right being the Infectious Diseases (Control) Act, which permits quarantine and segregation of people with infectious diseases, and presents a threat to the civil liberties of people living with HIV/AIDS.

## **Regulation of Health Care Professionals and Ethical Research**

There is a high level of compliance with the International Guidelines regarding the regulation of health care professionals and ethical research in Nepal, and as such this indicator scored 7.5 points out of a possible 10 points. The law provides remedies for breaches of health professionals' standards, with complaints adjudicated by an independent body. There are also procedures established under law for the ongoing and independent evaluation of human research including consideration of the scientific validity and ethical conduct of the research. In addition, there are legal requirements for informed consent from research participants, the maintenance of participant confidentiality, and insurance coverage and compensation with respect to research participants who suffer disability or death as a result of their participation in research. Points were lost for the lack of an exemption in censorship legislation for

explicit health education and information, and for a lack of legal protection against discrimination for research participants.

### **Treatment, Therapeutic Goods, Testing, and Other Issues**

The audit produced a low score for this indicator, 2 points out of a possible 10, although, as the full text of the commentary reveals, many of the issues covered in this indicator are dealt with through government policy rather than legislation. The only criterion in this indicator where Nepalese law was found to be consistent with the International Guidelines is the need of approval for the sale, distribution, and marketing of pharmaceutical drugs, which are required to be safe and efficacious. Criteria concerning access to affordable and approved HIV/AIDS medications and health care, and the regulation of the quality, accuracy, and availability of HIV test kits, were not met. Positive policy initiatives in relation to these issues include the celebration of Condom Day every year by His Majesty's Government, recognition by the Tenth Plan on the need to monitor and evaluate the standard of health services, and expansion of health services to rural areas.

### **Conclusion**

Out of a possible maximum score of 100, the Nepalese legal system scored 40. In absence of any specific laws to address the HIV epidemic, the score implies the need for law reform so that the legal system makes a more positive contribution to controlling the further spread of HIV and to protecting the rights of people infected and affected with HIV/AIDS. To achieve the necessary reforms, strategic interventions are required from all stakeholders. The next step is to draft amendments to relevant laws and to conduct advocacy in support of law reform.





CHAPTER

1

**Introduction**



## INTRODUCTION

### 1.1 The Incidence of HIV

The Acquired Immuno-Deficiency Syndrome (AIDS) epidemic has claimed more than 3 million lives and an estimated 5 million people have acquired the human immunodeficiency virus (HIV) in 2002—bringing the number of people globally living with the virus to 42 million (with women accounting for 50 percent of adults living with HIV/AIDS worldwide).<sup>1</sup> South and Southeast Asia accounted for 6 million, the second highest number globally after sub-Saharan Africa.

According to the official figures, the number of HIV-positive people in Nepal is 3,204, of which 881 are women. As of October 31, 2003, there were only 182 reported deaths resulting from AIDS in Nepal.<sup>2</sup> However, the lack of health care and the stigma associated with HIV/AIDS in Nepal are likely to affect the detection and reporting of HIV/AIDS, thus giving the false impression that Nepal has somehow escaped this devastating epidemic. Furthermore, the government acknowledged that because of Nepal's existing medical and public health infrastructure and the lack of continuity in national HIV/AIDS surveillance systems, it is likely that the actual number of cases is many times higher.<sup>3</sup> According to UNAIDS/WHO, the total estimated number of HIV-positive people in Nepal in 2002 was 60,018, and 2,958 AIDS-related deaths were estimated to have occurred that year alone. Among the adult population (15–49 years), the estimated prevalence rate is 0.5 percent.<sup>4</sup>

The World Bank report on AIDS in South Asia also noted that although the absolute number of HIV/AIDS cases is still low, there are already “concentrated” epidemics within certain groups practicing high-risk behaviors in Nepal.<sup>5</sup> Without a concerted and coherent response, Nepal is confronting the real possibility of devastating social and economic effects associated with the HIV/AIDS epidemics in other countries. Immediate and vigorous action must be taken now to prevent the further spread of HIV among high-risk groups and curb the infection in the larger population.

While the epidemic appears in the form of infection and illness in individuals, it rapidly devastates families, communities, and in the long run, entire nations. These devastating impacts are not only

1 Joint United Nations Program on HIV/AIDS (UNAIDS) and the World Health Organization (WHO). 2002. *AIDS Epidemic Update December 2002*. Geneva: UNAIDS/WHO, p. 3.

2 Data as of October 31, 2003, made available by the National Centre for AIDS and STD Control (NCASC), Ministry of Health, HMG/N. However, the data provided by NCASC are only from reported HIV/AIDS cases to the NCASC. As of February 2004, the number of HIV-positive people in Nepal is 3432, of which 938 are women and 189 deaths due to AIDS are reported.

3 National HIV/AIDS Strategy (2002–2006). 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal, p. 3 (Nepali language version).

4 National HIV/AIDS Strategy (2002–2006). 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal, p. 3 (Nepali language version).

5 IDA and the World Bank. 2001. *HIV/AIDS in South Asia: A Human and Development Challenge*. IDA and the World Bank.

confined to increased mortality and morbidity, but they also produce extra health care costs; loss of productivity including women's labor contribution inside and outside the home; loss of investment in the training of skilled labor and professionals; loss of remittances; and loss of tourist revenues. Moreover, HIV primarily affects the people who are productive in society, both socially and economically. Families, communities, and nations lose their productive members and children lose their parents, leaving the elderly and very young.<sup>6</sup> If effective interventions do not stop the further spread of the epidemic, it may challenge the existence of the human species.

## Human Rights and HIV/AIDS

HIV/AIDS has focused attention on various issues allied with it, such as human rights. Human rights stem from the fundamental principle that society in all its activities must respect the basic dignity of the human person.<sup>7</sup> However, widespread abuse of human rights and fundamental freedoms as a result of the spread of HIV/AIDS has emerged in all parts of the world. Nepal is no exception. Misconceptions regarding HIV infection often result in violations of the basic human rights of infected and affected people. The social response to HIV has involved stigma (negative judgments and prejudice toward those infected and affected) and discrimination (unequal treatment of those infected and affected). Such violations increase the likelihood that HIV will spread, since people are less willing to seek counseling and advice if they are concerned that they may be at risk of HIV, to test for HIV, or to admit their HIV-positive status and seek treatment and support.

Public health and human rights are thus complementary, not conflicting, goals. The protection of public health should not be used as a pretext to justify punitive measures. Such measures may drive people most in need of prevention and care services underground, thereby blocking achievement of the desired goals of preventing new infections, and ensuring care and support for people living with HIV/AIDS (PLWHA). HIV/AIDS is not merely a medical problem, but requires a broader, multifaceted response.<sup>8</sup> Therefore, a consensus now exists that public policy is required to address not only medical or public health issues, but also the socioeconomic context, including issues pertaining to human dignity and elimination of stigma and discrimination.<sup>9</sup>

Human rights are universal, inherent, and inalienable. There cannot be different standards of human rights norms and standards for different categories of people. In addition, it is in the interest of all to protect the rights of those with HIV/AIDS. The rights-based prevention approach recognizes societal vulnerability to HIV/AIDS, not just individual risk behavior. It also recognizes vulnerability in different contexts of stigmatized or disempowered populations, such as women, children, gay men, injecting drug users and sex workers.

---

6 United Nations Development Program (UNDP). 1999. *AIDS and South and Southwest Asia: A Development Challenge*. New Delhi: UNDP, p. 5.

7 United Nations. 1991. *Report of an International Consultation on AIDS and Human Rights*. New York: United Nations.

8 Joint United Nations Program on HIV/AIDS (UNAIDS)/Inter-Parliamentary Union (IPU). 1999. *Handbook for Legislators on HIV/AIDS, Law and Human Rights: Action to Combat HIV/AIDS in View of its Devastating Human, Economic and Social Impact*. Geneva: UNAIDS/IPU, p. 25.

9 United Nations Development Program (UNDP). 2003. *Regional Human Development Report: HIV/AIDS and Development in South Asia, 2003*. New Delhi: UNDP, p. vi.

## HIV/AIDS and International Guidelines

Because of the epidemic's shocking growth and its potential to flourish from the lack of human rights protection, the international community has written standards in the form of the *International Guidelines on HIV/AIDS and Human Rights* (the International Guidelines).<sup>10</sup> Dr. Helen Watchirs of the Research School of Social Sciences at the Australian National University, one of the pioneers in the field of auditing HIV/AIDS-related human rights, wrote the International Guidelines in 1996 for Joint United Nations Programme on HIV/AIDS (UNAIDS) and the United Nations Office of the High Commissioner for Human Rights (UNHCR). The International Guidelines draw upon existing international human rights instruments, such as the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, and the *International Covenant on Economic, Social, and Cultural Rights*, to determine how the human rights expressed in these instruments are relevant in the context of HIV/AIDS. The International Guidelines, thus, have not “invented” any new human rights to apply in the context of HIV/AIDS; they have looked at the relevance of existing human rights instruments to promoting effective responses to HIV/AIDS. In 2002, a review revised the section of the International Guidelines dealing with access to treatments for HIV infection and associated conditions.

The emphasis in the International Guidelines is on governments, because they are the responsible state parties under relevant international human rights instruments, but it is important to recognize that partnerships with other essential parts of society are crucial for an effective response to the epidemic.<sup>11</sup> The International Guidelines urge states to establish an effective national framework for their response to HIV/AIDS through community consultation, and to ensure the right to non-discrimination, information, privacy and confidentiality of PWHA and vulnerable groups. The International Guidelines also provide explicit benchmarks to implement and measure performance in developing an effective rights-based response to the epidemic.

The International Guidelines incorporate three approaches: to improve the government's capacity for multisectoral coordination and accountability, to reform laws and legal support services, and to increase private sector and community involvement in responses to HIV/AIDS. The International Guidelines state, “In the context of HIV/AIDS, an environment in which human rights are respected ensures that the vulnerability to HIV/AIDS is reduced, those infected with and affected by HIV/AIDS live a life of dignity without discrimination and the personal and societal impact of HIV infection is alleviated.”<sup>12</sup>

The International Guidelines further articulate the following 12 state obligations:

1. Establishing an effective national framework for the response to HIV/AIDS, integrating HIV/AIDS across all branches of government.
2. Ensuring there is community consultation in all phases of the response—policy and program design, implementation and evaluation, and that community-based organizations (CBOs) can carry out their activities including in the fields of law, ethics, and human rights.

10 United Nations High Commissioner for Human Rights (UNHCR) and Joint United Nations Program on HIV/AIDS (UNAIDS). 1998. *International Guidelines on HIV/AIDS and Human Rights*. New York: UNHCR and UNAIDS.

11 Joint United Nations Program on HIV/AIDS (UNAIDS)/Inter-Parliamentary Union (IPU). 1999. *Handbook for Legislators on HIV/AIDS, Law and Human Rights: Action to Combat HIV/AIDS in View of its Devastating Human, Economic and Social Impact*. Geneva: UNAIDS/IPU, p. 25.

12 United Nations High Commissioner for Human Rights (UNHCR) and Joint United Nations Program on HIV/AIDS (UNAIDS). 1998. *International Guidelines on HIV/AIDS and Human Rights*. New York: UNHCR and UNAIDS. HR/PUB/91/1: Commission on Human Rights Resolution E/CN.4/RES/1997/33.

3. Reviewing and reforming public health laws to ensure that provisions applicable to casually transmitted diseases are not inappropriately applied to HIV/AIDS.
4. Reviewing and reforming criminal laws and correctional systems to ensure they are consistent with international obligations, and not misused in the context of HIV/AIDS or targeted against vulnerable groups.
5. Enacting or strengthening anti-discrimination laws that protect vulnerable groups and PWHA from discrimination in both the public and private sectors, ensure privacy and confidentiality and ethics in research involving human subjects, emphasize education and conciliation and provide for speedy and effective remedies.
6. Enacting legislation to provide for the regulation of HIV-related goods, services, and information, ensure the widespread availability of prevention services and measures, and adequate HIV prevention and care information, and to ensure the availability of safe and effective medication at an affordable price.
7. Implementing and supporting legal services to educate people affected by HIV about their rights, provide free legal services to enforce those rights, develop expertise on HIV-related legal issues, and utilize other means to protect and promote human rights in addition to the courts, such as ombudspersons, health complaint units, and human rights commissions.
8. Providing a supportive environment for women, children, and other vulnerable groups by addressing underlying prejudices and inequalities through community dialogue, especially designed social and health services and support to community groups.
9. Promoting wide and ongoing distribution of creative education, training, and media programs explicitly designed to change attitudes of discrimination and stigmatization associated with HIV/AIDS to understanding and acceptance.
10. Ensuring that government and the private sector develop codes of conduct regarding HIV/AIDS issues that translate human rights principles into codes of professional responsibility and practice, with accompanying mechanisms to implement and enforce these codes.
11. Ensuring monitoring and enforcement mechanisms to guarantee the protection of HIV-related human rights, including those of PWHA, their families, and communities.
12. Cooperating through the United Nations system to share knowledge and experience concerning HIV-related human rights issues and to ensure effective mechanisms to protect human rights in the context of HIV/AIDS at the international level.<sup>13</sup>

## 1.2 Statement of the Issue

The unchecked and ever-increasing spread of HIV and the resulting multiplicity of HIV-infected people worldwide, irrespective of age, sex, gender, or geographical boundaries, has drawn the attention of the global community to the three interconnected epidemics: HIV infection; AIDS; and the social, cultural,

---

<sup>13</sup> Guidelines 1–12 of the International Guidelines.

and political reaction to HIV and AIDS. The third epidemic increasingly threatens to overshadow and overwhelm the epidemics of HIV and AIDS.<sup>14</sup>

In Nepal, HIV/AIDS has already become a significant public health issue. Poverty, trafficking, migration, and the secondary status of women are recognized as predisposing factors for HIV infection in Nepal.<sup>15</sup> Similarly, the prevalence of HIV/AIDS in Nepal is also attributed to the lack of awareness about the infection, false beliefs about how to protect against sexually transmitted diseases (STDs)<sup>16</sup> and HIV, and the low rates of consistent condom use among most-at-risk groups. The lack of awareness reflects the country's low literacy rate, a shortage of appropriate AIDS education, and strong cultural prohibitions against the public discussion of sex.<sup>17</sup>

Societal vulnerability to HIV infection stems from sociocultural, economic, and political factors that limit people's options to reduce their risk. Usually, the law has a role either to initiate or to respond to social changes. Sometimes, it leads to social change and sometimes it responds to social change. Like in every other sector, it plays a vital role in the response to HIV/AIDS by complementing and assisting education and public health measures, in addition to prescribing patterns of behavior.<sup>18</sup> Prevention of the further spread of the virus and mitigation of the societal and personal consequences of HIV infection are increasingly the aim of initiatives around the world. Law and policy reforms, which promote respect for the human rights of PWHA and people who are vulnerable to infection, are a vital part of responding effectively to the epidemic. To control the increasing trend of HIV infection and to protect the rights of PWHA and vulnerable groups, it is necessary to assess the existing laws and policies, and the degree to which they promote or undermine respect for human rights in the context of HIV/AIDS.

A 2001 regional study, *Mapping Exercise of Policies, Ethics, Laws and Judicial Pronouncements on HIV/AIDS*, endeavored to identify the laws and policies that were inconsistent with or contradictory to the International Guidelines. Based on the experiences of many other countries, human rights concerns relating to HIV infection need to be addressed through the development of a comprehensive legal framework. Legislative auditing in accordance with the International Guidelines is being carried out in the present study to achieve this goal.

### 1.3 Objectives of the Study

The main objectives of the study were to audit the existing laws, policies, and executive orders of Nepal in accordance with the International Guidelines; and to highlight the implementation of laws and policies in practice.

### 1.4 Methodology of the Study

The methodology used in the study is as follows:

- ❖ **Familiarization with the International Guidelines:** Five-days training was conducted from June 16–20, 2003, to familiarize the study team with the International Guidelines,

14 United Nations. 1991. *Report of an International Consultation on AIDS and Human Rights*. New York: United Nations, p.1 (Background).

15 United Nations Development Program (UNDP). 1999. *AIDS and South and Southwest Asia: A Development Challenge*. New Delhi: UNDP; also cited in *HIMAL South Asian*, October 2000, p. 12.

16 In this document STD and STI are used interchangeably.

17 Cox. T. and B.K. Suvedi. 1994. *Sexual Networking in Five Urban Areas in the Nepal Terai*. Valley Research Group; also cited in *Knowledge, Attitudes, Behavior and Practices on HIV/AIDS among Ricksaw Pullers and Factory Workers of Sunsari*. 1999.

18 Forum for Women, Law and Development (FWLD). 2001. *Mapping Exercise of Policies, Ethics, Laws and Judicial Pronouncements on HIV/AIDS. A UNDP Regional Study*. Kathmandu: FWLD, p.3.

audit instruments and processes, and examples of best practice laws and policies. Mr. Chris Ward, Senior Technical Advisor, HIV/AIDS and Human Rights, POLICY Project/Cambodia, was the resource person for the training.

❖ **The Audit Process:** The audit process focused on the second of the three approaches incorporated into the International Guidelines: “Reform of laws and legal support services.” To measure the extent to which the Nepalese legal system is consistent with the International Guidelines, an audit tool with 10 “indicators” was developed, based on a questionnaire developed by Dr. Watchirs and applied in several jurisdictions in Australia. Each indicator consisted of a series of five questions dealing with one or more of the areas of law and human rights covered by the International Guidelines. The topics in the audit questionnaire follow:

1. Public health
2. Criminal laws and transmission offences
3. Anti-discrimination laws
4. Privacy and confidentiality
5. Sexual offences
6. Prisons/correctional laws
7. Employment
8. Equality of status of vulnerable populations
9. Regulation of health care professionals and ethical research
10. Treatment, therapeutic goods, and other issues

Scores were awarded to laws relevant to each of the indicators, according to their consistency with norms and standards contained in the International Guidelines. A maximum score of 2 awarded for each of the five questions which make up each indicator, giving a maximum score of 10 for each indicator. Scoring of policies was not carried out; however, it is a matter that needs to be reviewed.

The scoring of the laws in each question was done on the basis of the following criteria:

S. No.	Criteria	Score (%)
1.	The legal provision is effective and adequate as per the requirements of the International Guidelines.	100
2.	The legal provision is present; however, it is not entirely effective and adequate as per the requirements of the International Guidelines.	50

3.	The legal provision is silent and its impact is consistent with the requirements of the International Guidelines.	100
4.	The legal provision is silent and its impact is not consistent with the requirements of the International Guidelines.	0
5.	The legal provision is contrary to the requirements of the International Guidelines.	0
6.	The legal provision is not specific to HIV/AIDS; however, it has the potential to contribute to meeting the requirements of the International Guidelines.	50
7.	The legal provision is not specific to HIV/AIDS; however, it has the potential to undermine compliance with the requirements of the International Guidelines.	0

- ❖ **Mapping of Laws, Policies, Executive Orders, Guidelines, and Draft Bills:** The Constitution of the Kingdom of Nepal, 1990; 280 Acts; 210 Regulations; three Executive Orders; seven Policies; three Guidelines; and two Draft Bills were mapped for the purpose of auditing Nepalese laws.
- ❖ **Case Studies:** Five case studies were collected from both primary and secondary sources. The primary source consisted of interviews. Some cases were drawn from secondary sources, such as newspapers, reports, reported judgments, and books. Case studies have been used to highlight the issue and the practice. Descriptions of some cases are short or long, depending on the nature and significance of the issues.
- ❖ **Consultation Meeting on HIV/AIDS and the Human Rights Audit Tool:** After the write-up of the first draft of the audit report, a mixed-group consultation meeting with various stakeholders, including representatives of government organizations (GOs), nongovernmental organizations (NGOs), female sex workers (FSW), homosexuals, and PWHA, was conducted on October 21, 2003 (see Annex-3 for the list of participants). Ninety people attended, thus ensuring that a wide variety of views were canvassed. The consultation was conducted to incorporate the knowledge and experiences of concerned groups in the audit report, and to seek recommendations for the formulation of a legal framework that helps reduce the further spread of HIV infection, and to protect the rights and interests of PWHA and vulnerable groups.

## 1.5 Scope of the Study

While auditing the existing Laws, Policies, and Executive Orders of Nepal in accordance with the International Guidelines, the study also sought to incorporate information about the impact of the relevant Laws, Policies, and Executive Orders through their implementation (or non-implementation).



## 1.6 Limitations of the Study

The mapping of Laws, Policies, Executive Orders, Guidelines, and Draft Bills was carried out within a period of three months. Initially, the study team attempted to map all executive orders; however, due to the inaccessibility of some government circulars, their mapping was limited to those available at the time of the research. The information incorporated in this study is based on the research carried out up through October 31, 2003.

One of the major challenges faced during the study was the collection of information from government agencies. Unawareness about the importance of providing information are the reasons behind the challenge.

In addition, due to time and resource constraints, all practices that were highlighted during the consultation with stakeholders have not been covered.



CHAPTER

2

**Legislative Audit on  
HIV/AIDS and Human Rights**

## PUBLIC HEALTH

The debate of public health vs. human rights is not a contemporary issue. Human rights of PWHA have always been violated in the name of public health or rights of others. Segregation, discrimination, and stigmatization against PWHA occur in the name of preventing further public infection. However, these are the often cited reasons for the human rights restrictions in relation to HIV/AIDS; it cannot easily be diffused or spread from one person to another unless some particular act occurs. Unlike other communicable diseases, HIV transmission is directly attributable to human behavior patterns, such as unprotected sexual practice, intravenous drug usage through syringe sharing, blood transfusions, and mother-to-infant transmission. Similarly, (although popularly believed otherwise) the virus does not spread through such practices as shaking hands, sharing clothes, using the same toilet, a mosquito bite, and so forth.

Therefore, it is important to understand that the protection of the human rights of PWHA and the creation of a supportive environment necessary to encourage people to come forward, to help them benefit from HIV education and services, and thus change behavior, are critical to reduce further infection. Coercive measures not only violate human rights but also subvert this process.

1. (a) Does the law or policy require medical and other health practitioners to follow the Universal Infection Control Precautions?
- (b) Does the law or policy prohibit restriction or segregation of HIV infected people on the basis of their HIV-positive status (i.e., restrictions usually applicable to diseases that are casually transmitted)?

**Score 1 for each affirmative answer, maximum score of 2.**

### (a) Practice of Universal Infection Control Precautions (UICP)

#### Law

Current Nepalese laws do not require medical and other health practitioners to observe UICP relating to HIV/AIDS. The Nepal Health Services Act, the Nepal Medical Council Act, and the Rules that regulate and control health services do not have any concept relating to UICP. **Thus, a mark of 0 is allotted to this question.**

#### Policy

The National STD Case Management Guidelines incorporate information for controlling infection in order to prevent infectious diseases.<sup>1</sup> Similarly, the Guide Book on HIV/AIDS Care and Prevention, prepared by the Nepal Medical Association, stipulates proper infection control measures that medical doctors must follow for the treatment and prevention of HIV.<sup>2</sup> Furthermore, the National HIV/AIDS Strategy adopted a strategy of implementation of UICP by medical professionals.<sup>3</sup> Thus, although nothing has been stated in the health laws regarding UICP, it has been dealt with within some policies.

<sup>1</sup> National STD Case Management Guidelines 1997 (second revision). Kathmandu: National Centre for AIDS and STD Control, Department of Health Services, Ministry of Health, HMG/Nepal. pp. 32–33.

<sup>2</sup> No. 1 of the *NMA Guide Book on HIV/AIDS Care and Prevention*. 2000. Kathmandu: Nepal Medical Association (NMA).

### UICP and practice

Health practitioners of various hospitals in Kathmandu, revealed that although there are hospital policies for UICP, doctors are not always aware of these policies and UICP are not followed in practice. Moreover, health workers identified an inadequacy of materials for the maintenance of UICP standards as the reason for non-observance of UICP in practice.

*Source: Consultation meeting on HIV/AIDS and Human Rights Audit Tool, October 21, 2003, organized by FWLD, Kathmandu.*

#### (b) Prohibition on restriction or segregation on the basis of HIV-positive status

##### Law

Despite the constitutional guarantee that prohibits discrimination among citizens on the grounds of religion, race, caste, tribe, or ideological conviction, and provides equal protection under the law to all citizens,<sup>4</sup> in practice there are some legal provisions that discriminate against persons suffering from infectious diseases, which may include HIV-infected persons. In order to prevent transmission of and to cure infectious diseases, the Infectious Disease Control Act confers powers to His Majesty's Government (HMG/N) to issue any order on people or group of people.<sup>5</sup> It also provides that infected persons may be kept separately in any place or hospital and their movements may be controlled.<sup>6</sup>

The Prison Act requires the segregation of sick prisoners from other prisoners.<sup>7</sup> Also, the Hotel Management and Liquor Sales and Distribution (Control) Act requires that hotel rooms be accommodated by persons not suffering from any communicable or infectious disease.<sup>8</sup> Since these Acts do not clarify which diseases are included within the definition of "disease" or "infectious diseases," it is not clear whether persons suffering from HIV/AIDS could be segregated by order; however, it is possible that the law may be used for this purpose.

HMG/N has issued an order to make arrangements for separate special beds in the Teaching Hospital and in any hospital of the HMG/N to treat HIV/AIDS infected patients.

*Source: His Majesty's Government's Cabinet decision of HMG/Nepal, Date 2046/1/21 B.S. (May 3, 1989).*

Although Nepal's Constitution prohibits discrimination, there are laws that may be used to segregate persons infected with HIV/AIDS. **Thus, a mark of 0 is allotted to this question.**

##### Policy

The Tenth Plan maintains a policy of rehabilitating PWHA and person infected with STDs through income-generating programs for decent living and promotes special strategies to assist persons suffering from HIV/AIDS and STDs.<sup>9</sup> The National Policy on AIDS and STD Control prohibits discrimination among citizens on the basis of HIV/AIDS/STD infection.<sup>10</sup>

<sup>3</sup> National HIV/AIDS Strategy (2002–2006). 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal, p. 38 (Nepali language version).

<sup>4</sup> Article 11 of the Constitution of the Kingdom of Nepal, 2047 (1990).

<sup>5</sup> Section 2 (1) of the Infectious Diseases Control Act, 2020 (1963).

<sup>6</sup> Section 2 (3) of the Infectious Diseases Control Act, 2020 (1963).

<sup>7</sup> Section 6 (1) (e) of the Prison Act, 2019 (1962).

<sup>8</sup> Section 5 (1) (b) of the Hotel Management and Liquor Sales and Distribution (Control) Act, 2023 (1967).

<sup>9</sup> Tenth Plan (2059–2064), National Planning Commission, HMG/Nepal, 2059 (2002). pp. 408–412.

<sup>10</sup> No. 8 of the National Policy on AIDS and STD Control, 2052 (1995).

### Health practitioners and fear of transmission

Health practitioners of various hospitals acknowledged that they discriminate against patients infected with HIV/AIDS because of fear of becoming infected with HIV. During the discussion, health practitioners also viewed that patients suffering from HIV/AIDS must be segregated from other patients.

*Source: Consultation meeting on HIV/AIDS and Human Rights Audit Tool, October 21, 2003, organized by FWLD, Kathmandu.*

2. (a) Does the law or policy require government to provide general HIV/AIDS information and education to public?
- (b) Does the law or policy require reporting of HIV/AIDS test results to public health authorities by a limited class of persons (e.g., medical practitioners or pathologists) for epidemiological purposes with adequate privacy protection (e.g., coded rather than nominal data)?

**Score 1 for each affirmative answer, maximum score of 2.**

#### (a) Government to provide general HIV/AIDS information and education to public

##### Law

The Constitution of the Kingdom of Nepal grants the right to information to citizens;<sup>11</sup> however, no law has been framed to inform the general public on sensitive matters of public health and on the process to obtain information.

The Curriculum Development Council, under the Ministry of Education, has the authority to prescribe and design curriculum for schools.<sup>12</sup> The Council, pursuant to the National Policy on AIDS and STD Control, included educational and informative curricula on HIV/AIDS beginning from grade six. **Thus, a mark of 0.5 out of 1 is allotted to this question.**

### Right to information

The Supreme Court ruled on the right to information provided by Article 16 of the Constitution. The Court held that Article 16 provides for the protection of citizens' rights to information and that the Court may fulfill the gap if any procedural difficulty arises in the application of this right. The government has an obligation to provide information on any matter of public concern, including public health; and except on matters for which confidentiality has to be maintained according to the law, citizens have the right to obtain information from the government.

*Source: Gopal Krishna Shivakoti vs. HMG/N and others, Nepal Kannon Patrika (NKP) 2051 B.S., Vol. 4, p. 255.*

##### Policy

To control the further spread of HIV/AIDS and sexually transmitted diseases (STDs), the Tenth Plan aims at using different modes of media to raise awareness. It also aims at providing education on reproductive health to adolescent youth.<sup>13</sup> Similarly, in the programs of the Women, Children, and Social Welfare sector, the Tenth Plan aims to provide sex education and counseling to adolescent women and to launch HIV/AIDS awareness programs.<sup>14</sup>

<sup>11</sup> Article 16 of the Constitution of the Kingdom of Nepal, 2047 (1990).

<sup>12</sup> Rule 33 (a) of the Education Regulation, 2059 (2002).

<sup>13</sup> Tenth Plan (2059–2064), National Planning Commission, HMG/Nepal, 2059 (2002). pp. 408-412.

<sup>14</sup> Tenth Plan (2059–2064), National Planning Commission, HMG/Nepal, 2059 (2002). p. 441.

Likewise, the National Policy on AIDS and STD Control aims at providing HIV/AIDS education to the general public through different strategies.<sup>15</sup>

In addition, though not clearly directed by any law, the National Centre for AIDS and STD Control (NCASC) has been publishing monthly cumulative HIV/AIDS situation analysis in Nepal. With regard to the publication and dissemination of information, there are vast differences between the statistics of HIV/AIDS published in the United Nations report and national statistics published by HMG/N.<sup>16</sup> The NCASC and other NGOs have also been launching mass awareness campaigns in different parts of the country.

### (b) Reporting of HIV/AIDS test results to public health authorities

#### Law

The law does not obligate health workers or pathologists to submit a report of an HIV/AIDS test result to any public health agency or authority. **Thus, a mark of 0 is allotted to this question.**

#### Policy

The National Policy on AIDS and STD Control requires that result of any blood test conducted with regard to the control of AIDS and STDs be forwarded to the NCASC as soon as possible.<sup>17</sup> Moreover, it provides that all authorized persons or agencies involved in HIV testing and providing services to PWHA provide details of HIV-positive persons to the NCASC, maintaining confidentiality, as soon as possible.<sup>18</sup>

### 3 Does the law or policy provide for screening against HIV contamination of the following supplies:

- (a) Blood and blood products?
- (b) Tissues and organs?
- (c) Semen and ova?

**Score 0.67 for each affirmative answer, maximum score of 2.**

### Screening against HIV contamination of blood and blood products, tissues and organs, and semen and ova

#### Law

There is no specific law with regard to the examination of blood or blood-related substances, tissues, organs, semen, and ova. Furthermore, the Human Organs Transplantation (Control and Prohibition) Act, which is related to the transplantation of human organs from one body to another, does not provide for mandatory screening of HIV before transplantation. However, on May 3, 1989, HMG/N issued an executive order requiring all donated blood to be tested for HIV before a transfusion.<sup>19</sup> **Thus, a mark of 0.67 out of 2 is allotted to this question.**

#### Policy

The Nepal Medical Association's (NMA) *Guide Book on HIV/AIDS Care and Prevention* adopted three essential measures to prevent HIV transmission in the health care setting; one of these measures is the rationale use of blood and blood products.<sup>20</sup> Under it, doctors are directed to only transfuse HIV-negative blood or blood products.<sup>21</sup>

<sup>15</sup> No. 9 of the National Policy on AIDS and STD Control, 2052 (1995).

<sup>16</sup> See Introduction Chapter of this study at p. 1.

<sup>17</sup> No. 1 (k) of the National Policy on AIDS and STD Control, 2052 (1995).

<sup>18</sup> No. 6 of the National Policy on AIDS and STD Control, 2052 (1995).

<sup>19</sup> His Majesty's Government's Cabinet decision of HMG/Nepal, date 2046/1/21B.S. (May 3, 1989).

<sup>20</sup> *NMA Guide Book on HIV/AIDS Care and Prevention. 2000.* Kathmandu: Nepal Medical Association (NMA). p. 1.

<sup>21</sup> No. 3 of the *NMA Guide Book on HIV/AIDS Care and Prevention. 2000.* Kathmandu: Nepal Medical Association (NMA).

The National Policy on AIDS and STD Control adopted the policy of distributing blood collected from blood donation only after carrying out tests relating to HIV/AIDS, Hepatitis B virus and RPR (VDRL).<sup>22</sup> The NCASC adopted the strategy of developing a legal and policy framework of safe blood transmission and organ transplantation to achieve the objectives of reducing HIV- and other blood-related infections.<sup>23</sup>

### Nepal Red Cross Society for blood transfusions

The National Health Policy has pursued a policy of conducting all programs of blood transfusion through the Nepal Red Cross Society.\* Accordingly, acts relating to blood tests are being carried out by Nepal Red Cross Society throughout the country.

\*National Health Policy, 2048 (1991), Ministry of Health, HMG/N. No. 12.

Although the National Health Policy authorizes the Nepal Red Cross Society to conduct all acts of blood transfusion, the organization is a nongovernmental body, and if it carries out acts relating to blood transfusion without following due process, the policy is silent as to whom the Society is accountable. Moreover, there is no specific guideline on how to carry out tests of HIV/AIDS and to maintain confidentiality of the test results.

4. Does the law or policy prohibit mandatory or compulsory HIV testing (except blood and other human tissue donors) not otherwise covered by this audit (see indicator 6) of any person, including entrants, armed forces, migrants, civil pilots, or refugees?

**Score 2 for affirmative answer.**

### Prohibition of mandatory or compulsory HIV testing

#### Law

Under the Infectious Disease Control Act, HMG/N may issue any order on people or group of people in order to prevent the spread of infectious diseases.<sup>24</sup> The Immigration Regulation makes it mandatory for foreigners entering Nepal to submit an international medical certificate; and if no such certificate is submitted or the person is suffering from an infectious disease, the visa of the said foreigner may be revoked.<sup>25</sup>

Although there is no provision of mandatory testing for HIV/AIDS, mandatory test orders may be issued at any time to achieve the objectives under the Infectious Diseases Control Act.

Likewise, HMG/N issued an executive order that allows the Government to conduct compulsory testing of any person suspected of having HIV. In the order, it is clearly mentioned that the Ministry of Health should make arrangements for HIV testing of people involved in sexual mischief and of women returned from foreign countries after being involved in sex work and of drug addicts. Also, if any foreigner staying in a hotel is found to be sick, the hotel's doctor should made arrangements to have the foreigner tested.<sup>26</sup> **Thus, a mark of 0 is allotted to this question.**

5. Does the law or policy require that the following protection be given to individuals tested for HIV in circumstances where they will be given the results of the test (that is not unlinked, sentinel surveillance):
- (a) Specific informed consent to the test (i.e., not implied with other blood test)?
  - (b) Pre- and post-test counseling?

**Score 1 for each affirmative answer, maximum score of 2.**

<sup>22</sup> No. 5 of National Policy on AIDS and STD Control, 2052 (1995).

<sup>23</sup> National HIV/AIDS Strategy (2002–2006). 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal, p. 39 (Nepali language version).

<sup>24</sup> Section 2 (1) of the Infectious Diseases Control Act, 2020 (1963).

<sup>25</sup> Rule 28 of the Immigration Regulation, 2051 (1994).

<sup>26</sup> His Majesty's Government's Cabinet decision of HMG/Nepal, date 2046/1/21B.S. (May 3, 1989).

(a) **Specific informed consent to the test**

**Law**

There is no specific law requiring informed consent to be taken from a person before an HIV test. **Thus, a mark of 0 is allotted to this question.**

**Policy**

The *NMA Guide Book on HIV/AIDS Care and Prevention* provides directions with regard to HIV testing to any patient who seeks advice on HIV/AIDS or other diseases. According to the guide book, counseling must be offered before testing, and blood can only be drawn after obtaining consent.<sup>27</sup>

(b) **Pre- and post-test counseling**

**Law**

There is no specific law requiring pre- and post-test counseling before and after HIV testing. **Thus, a mark of 0 is allotted to this question.**

**Policy**

The National STD Case Management Guidelines adopted the 4C policy<sup>28</sup> for effective control of the further spread of STDs; one C stands for counseling.<sup>29</sup> Moreover, the *NMA Guide Book* refers to the detailed process of pre- and post-test counseling.<sup>30</sup>

The National Policy on AIDS and STD Control provides for the necessary health counseling for people with HIV and STDs.<sup>31</sup> Under the National HIV/AIDS Strategy, the policy of pre- and post-test counseling before and after HIV testing was adopted as a directive principle to be followed within the strategy period.<sup>32</sup>

<sup>27</sup> No. 9 of the *NMA Guide Book on HIV/AIDS Care and Prevention*. 2000. Kathmandu: Nepal Medical Association (NMA).

<sup>28</sup> The 4C policy stands for

- Compliance: completing all the treatment as prescribed;
- Counseling/education: about the disease, about HIV and AIDS;
- Contact tracing: making sure all sexual partners are encouraged to get treatment; and
- Condoms: promoting condom use and providing them, how to avoid catching an STD again.

<sup>29</sup> National STD Case Management Guidelines 1997 (second revision). Kathmandu: National Centre for AIDS and STD Control, Department of Health Services, Ministry of Health, HMG/Nepal. p. 14.

<sup>30</sup> No. 8 of the *NMA Guide Book on HIV/AIDS Care and Prevention*. 2000. Kathmandu: Nepal Medical Association (NMA).

<sup>31</sup> No. 1 (h) of the National Policy on AIDS and STD Control, 2052 (1995).

<sup>32</sup> National HIV/AIDS Strategy (2002–2006). 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal, p. 14 (Nepali language version).



## CRIMINAL LAWS AND TRANSMISSION OFFENCES

Criminal law is the body of law that deals with crimes and their punishment: sexual violence, homicide, drug abuse, sex work for commercial purposes, and other sexual behavior such as homosexuality. Each of these issues brings a whole range of discussion when it comes to HIV/AIDS. The very nature of the virus and its modes of transmission make it important to assess these laws for the purpose of human right auditing.

To reduce the sexual vulnerability of people, especially women and children, it becomes important for the state to enact laws that protect people from sexual abuse and exploitation, and that empower people to control their own health and well-being.

In addition to addressing sexual violence, harm reduction programs are vital to reduce the vulnerability of IDUs, sex workers and their clients, and also come under the periphery of criminal laws.

The risk of HIV infection is one of the harms associated with injecting drug use. There are many challenges in changing addictive behaviors; thus “harm reduction” programs needs to be designed to reduce the harmful impact of drug use on the user, their partner(s), and the community. Comprehensive harm reduction programs encompass a range of interventions, including voluntary HIV counseling and testing, information on the risks associated with injecting drug use, referral services, demand reduction programs, and substance abuse treatment, as well as needle and syringe exchanges in some cases.

### 1. Does the law make it a general offence for deliberately transmitting a communicable disease?

**Score 2 for affirmative answer.**

#### Transmission of a communicable disease

##### Law

Nepalese law is silent with regard to the act of intentionally transmitting any infectious disease. If there had been any specific provisions related to HIV-related criminal offences, it could have added to the stigma and discrimination against PWHA. Therefore, as the law is silent in this regard, **a mark of 2 out of 2 is allotted to this question.**

However, the Draft Penal Code proposes punishment to individuals who intentionally transmit HIV/AIDS. According to this provision, whoever knows himself or another person to be HIV-positive and intends to transfer the disease; gives or causes to give blood to any person; has or causes to have sexual intercourse without any kind of precaution; or causes to enter the blood, semen, or any other human organ into another person’s body, shall be charged with attempt to murder and shall be imprisoned for up to 10 years.<sup>1</sup>

2. (a) Does the law or policy enable the distribution of clean needles and syringes in the community?
- (b) Does the law or policy enable the diversion from the criminal justice system of persons charge or convicted of minor drug offences and referral for care and treatment?

**Score 1 for each affirmative answer, maximum score of 2.**

<sup>1</sup> Section 113 of the Draft Penal Code, 2059 (2002).

## (a) Distribution of clean needles and syringes in the community

### Law

There is no specific law that enables the distribution of sterilized needles and syringes in the community. However, no restriction has been imposed by any provision of the law on the act to distribute and keep clean syringes.

Through the Nepal Initiative (NI), a few NGOs in Nepal were involved in distributing sterilized injecting equipment to drug users. However, through two separate letters issued by the Department of Drugs and Natural Calamities Management, Ministry of Home Affairs, and the National Centre for AIDS and STD Control, the government stopped the free distribution of sterilized syringes. A letter issued by the Ministry of Home Affairs stated that the consumption of drugs was a criminal offence as per the prevailing law, and such a program of syringe exchange and injection is also considered a crime under that law.<sup>2</sup> As the criminal law dealing with illicit drug use<sup>3</sup> is interpreted to prevent the distribution of sterile injecting equipment to IDUs, **a mark of 0 out of 1 is allotted to this question.**

### Policy

Due to the higher possibilities of HIV transmission through the use of the same non-sterilized syringe, the National Policy on AIDS and STD Control undertook a policy to advocate for the use of sterilized syringes and to encourage NGOs to do so.<sup>4</sup>

Furthermore, in order to create a supportive environment for the implementation of effective harm-reduction programs, the National HIV/AIDS Strategy adopted a strategy of improving the understanding of authorities and communities about the behavior of IDUs and the importance of harm reduction interventions, and of ensuring the conducive legal and policy framework for the implementation of harm-reduction activities, including needle and syringe exchange.<sup>5</sup> The National HIV/AIDS Strategy also adopted a strategy of building capacity for the establishment and rapid expansion of harm-reduction programs, including those for needle and syringe exchange and drug substitution therapy.<sup>6</sup>

## (b) Diversion from the criminal justice system of persons charged or convicted of minor drug offences and referral for care and treatment

### Law

Although the Narcotic Drugs (Control) Act completely prohibits the use of narcotic drugs and has made a provision of up to one-year imprisonment for drug use, it allows the addicted individual to be diverted from the criminal justice system. If any person or institution takes responsibility for the addict's treatment at a treatment center for up to three months, the judicial authority may not punish the addicted person on the condition that they submit proof of treatment fortnightly from the treatment center.<sup>7</sup> Also, the Social Welfare Act provides that HMG/N may carry out special programs that help drug users live a dignified life.<sup>8</sup> **Thus, a mark of 1 out of 1 is allotted to this question.**

### Policy

To reduce the number of addicted people, the Tenth Plan focuses on programs to stop drug misuse and to promote public awareness. It has given priority to employment-generating programs for rehabilitating

<sup>2</sup> Letter issued by the National Centre for AIDS and STD Control on September 13, 2002.

<sup>3</sup> Section 4 of the Narcotic Drugs (Control) Act, 2033 (1976).

<sup>4</sup> No. 10 of the National Policy on AIDS and STD Control, 2052 (1995).

<sup>5</sup> National HIV/AIDS Strategy (2002–2006). 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal, p. 20 (Nepali language version).

<sup>6</sup> National HIV/AIDS Strategy (2002–2006). 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal, p. 20 (Nepali language version).

<sup>7</sup> Section 14 (1) (a), (e) and (h) of the Narcotic Drug (Control) Act, 2033 (1976).

<sup>8</sup> Section 4 of the Social Welfare Act, 2043 (1986).

addicted youth.<sup>9</sup> In addition, the National HIV/AIDS Strategy adopted the strategy of developing and gradually implementing appropriate support services for IDUs, including counseling, primary health care, education on harm reduction, legal support, and developing guidelines, policies, and capacity for the rehabilitation of IDUs.<sup>10</sup>

Various NGOs, namely the Richmond Fellowship, Youth Nepal, Youth Vision, Freedom Center, Nava Kiran, and Aasara are engaged in reforming and treating addicted persons. However, HMG/N has not yet undertaken any similar initiative.

3. (a) Does the law or policy not criminalize voluntary sex work (street, single, brothel)?  
(b) Does the law or policy not criminalize homosexual behaviors (e.g., sodomy)?

**Score 1 for each affirmative answer, maximum score of 2.**

(a) Voluntary sex work

**Law**

The Constitution of the Kingdom of Nepal confers the freedom to practice any profession or carry on any occupation, industry, or trade, except in a situation in which the law imposes restrictions on an act that may be contrary to public health or morality.<sup>11</sup> No law exists regarding voluntary sex work, whether performed in the street or in brothels; therefore, voluntary sex work has not been criminalized per se. Furthermore, in one case,<sup>12</sup> the Supreme Court of Nepal expressed its view that prostitution is a type of profession and every person has the right to choose a profession.

Although the law has not expressly criminalized voluntary sex work, female sex workers (FSW) have been tortured and abused by police and quasi-judicial bodies. Police personnel commonly arrest FSW, accuse them of disturbing the peace or demonstrating obscenity and prosecute them under the Some Public (Offence and Punishment) Act.<sup>13</sup> In view of the conflicting approaches to sex work under laws and practice, **a score of 0.5 out of 1 is allotted to this question.**

The Traffic in Persons (Prevention) Bill, 2058 B.S. (2001) proposes criminalization of voluntary prostitution with a provision for punishment for committing prostitution or causing others to engage in prostitution.<sup>14</sup>

**Policeman not only arrested me but also made me take off my clothes and exposed my naked body in front of many police personnel**

"I am sixteen years old. I was arrested from a hotel room with a client. The client was released after he paid a large amount of money to the policeman, but I was taken into police custody. I was beaten and badly hurt. A policeman made me take off my clothes and exposed my naked body to 15 policemen at the police station. I was also forced to have sex with a policeman in the toilet at the police station."

*Source: Report on the Abuse of Commercial Sex Workers and Homosexuals. Kathmandu: FWLD, GWP, WATCH, WCNP and BDS, 2003.*

<sup>9</sup> Tenth Plan (2059–2064), National Planning Commission, HMG/Nepal, 2059 (2002). p. 417.

<sup>10</sup> National HIV/AIDS Strategy (2002–2006). 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal, p. 20 (Nepali language version).

<sup>11</sup> Article 12 (2) (e) of the Constitution of the Kingdom of Nepal, 2047 (1990).

<sup>12</sup> Sapana P. Malla vs. HMG/Nepal, Publication of Judgments relating to Human Rights (Special issue) Supreme Court, 2059 (2002), pp. 144–151.

<sup>13</sup> Section 2 of the Some Public (Offence and Punishment) Act, 2027 (1970).

<sup>14</sup> Although the Bill was passed by the House of Representatives, it lapsed as the House was dissolved in May 2002, before the Bill was discussed in the Upper House. For details, please refer to the proposal from the private sector prepared by the FWLD regarding the necessary improvement in the Bill.

## (b) Homosexual behavior

### Law

The law does not exactly use the words “homosexual<sup>15</sup>” or “homosexuality” in any legislation; however, the Chapter on Bestiality in the Country Code states that acts of unnatural sex are prohibited, with the provision for punishment of up to one-year imprisonment.<sup>16</sup> This law can be used to prosecute people engaging in homosexual acts.

Furthermore, the Chapter on Marriage in the Country Code<sup>17</sup> and the Marriage Registration Act<sup>18</sup> provide that marriage is to be solemnized only between a man and a woman. As a consequence, conjugal relationships and sexual intercourse are legally possible only between members of the opposite sex.

**Thus, a mark of 0 out of 1 is allotted to this question.**

In addition, the Draft Penal Code proposes criminalizing homosexuality with imprisonment of up to three months, even if the relationship is consensual.<sup>19</sup>

### I was robbed of my valuables

Shiva\* and his friends were returning home after performing at a cultural program organized by the Blue Diamond Society. Shiva, who had performed as a female dancer, was still in a costume. A group of policeman rounded them up and harassed them at the police station. They were humiliated and called *Hizras* and the police forced their sticks to their anus. Later, the police demanded that they leave their jewelry and money, and were told not to reclaim them; if so, the police threatened to inform their parents about their “illicit sexual behavior.” Shiva complied and gave them his one and one-half tola gold chain and all the money he had.

\* Pseudonym

*Source: Report on the Abuse of Commercial Sex Workers and Homosexuals. Kathmandu: FWLD, GWP, WAATCH, WCNP and BDS, 2003.*

## 4. Does the law or policy not unnecessarily restrict the availability of condoms?

**Score 2 for affirmative answer.**

### Restriction on availability of condoms

#### Law

The law is silent with regard to any restriction on the availability of condoms; **thus, a mark of 1 out of 2 is allotted to this question.**

#### Policy

The National STD Case Management Guidelines adopted the 4C policy for the effective control of the further spread of STDs; one C stands for the greater availability and promotion of condoms.<sup>20</sup>

Condom promotion was undertaken by the National HIV/AIDS Strategy as a major strategy to control the transmission of HIV. It emphasizes 100 percent condom use and the social marketing of condoms, including the female condom.<sup>21</sup>

<sup>15</sup> In this document homosexual means MSM and lesbians both.

<sup>16</sup> No. 1 and 4 of the Chapter on Bestiality in the Country Code, 2020 (1963).

<sup>17</sup> No. 2 of the Chapter on Marriage in the Country Code, 2020 (1963).

<sup>18</sup> Section 4 of the Marriage Registration Act, 2028 (1971).

<sup>19</sup> Section 224 of the Draft Penal Code, 2059 (2002).

<sup>20</sup> National STD Case Management Guidelines 1997 (second revision). Kathmandu: National Centre for AIDS and STD Control, Department of Health Services, Ministry of Health, HMG/Nepal. p. 14.

<sup>21</sup> National HIV/AIDS Strategy (2002–2006). 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal, p. 17 (Nepali language version).

5. (a) Does the law or policy provide protection under the criminal law for adults against sexual and other violence?
- (b) Does the law or policy provide protection under the criminal law for children against sexual abuse and exploitation?

**Score 1 for each affirmative answer, maximum score of 2.**

**(a) Protection of adults against sexual and other violence**

**Law**

The Constitution of the Kingdom of Nepal provides as a fundamental right the right against exploitation,<sup>22</sup> including the trafficking in human beings and forced labor.

The Traffic in Human Beings (Control) Act prohibits the selling of people for any purpose, taking a person outside the territory of the country for the purpose of selling, or causing a woman to be engaged in prostitution by misleading her by threats or force or coercion or by any other means.<sup>23</sup> Furthermore, a provision has also been made to punish anyone who incites or abets in the performance of such acts. However, this provision assumes that only women are the victims of sexual exploitation. As a consequence, violence related to sexual exploitation against men or homosexuals is undermined; whereas, in the course of interaction with the Blue Diamond Society, it was found that MSM were often victims of sexual exploitation by police personnel.<sup>24</sup>

The Chapter on Beating in the Country Code considers the act of mutilation, making bloody injuries or any other acts that creates pain in the body, by using a weapon or any other means, as beating and has made provisions for punishment.<sup>25</sup>

The Country Code defines rape as sexual intercourse with a girl, widow, or another's wife with physical force, coercion, or undue influence.<sup>26</sup> Furthermore, the Supreme Court interpreted forcible sexual intercourse by a husband with his wife as rape.<sup>27</sup>

The Chapter on Intention to Rape in the Country Code defines "intention to rape" as touching any part of a woman 11 years of age or older, other than one's own wife, with the intention of having sex and has made a provision for punishment.<sup>28</sup>

As both these provisions deny the fact that rape may occur to men as well, the law has not imposed restrictions on sexual exploitation against men and homosexuals. **Thus, a mark of 0.5 out of 1 is allotted to this question.**

**Positive initiative to protect abuse against men having sex with men (MSM)**

At the initiative of FWLD, a focus group discussion on victimization of MSM was held amongst the Blue Diamond Society, the media and the Nepal Police . During the discussion, in the presence of media and senior police officers, MSM shared their experiences of being victims of harassment and abuse at the hands of law implementing agencies, especially police personnel.

<sup>22</sup> Article 20 of the Constitution of the Kingdom of Nepal, 2047 (1990).

<sup>23</sup> Section 3 of the Traffic in Human Beings (Control) Act, 2043 (1986).

<sup>24</sup> Forum for Women, Law and Development (FWLD), General Welfare Prasthithan (GWP), Women Acting Together for Change (WATCH), Women Cell of Nepal Police (WCNP) and Blue Diamond Society (BDS). 2003. *Report on the Abuse of Commercial Sex Workers and Homosexuals*. Kathmandu: FWLD, GWP, WATCH, WCNP and BDS.

<sup>25</sup> No. 1 of the Chapter on Beating in the Country Code, 2020 (1963).

<sup>26</sup> No. 1 of the Chapter on Rape in the Country Code, 2020 (1963).

<sup>27</sup> Meera Dhungana for Forum for Women, Law and Development vs. HMG/Nepal, *Supreme Court Bulletin 2059* (2002), No. 5, p. 13.

<sup>28</sup> No. 1 of the Chapter on Intention to Rape in the Country Code, 2020 (1963).

In response to the discussion, on 2060/1/17 B.S. (April 30, 2003) the Nepal Police Headquarter issued an order to its concern departments, to identify security persons or ex-security persons who were involved in harassing MSM, to take serious actions against them and inform Headquarters about this.

*Source: Circular issued by Crime Investigation Department of Police Headquarter, letter no. 282/2059-60, date: 2060/1/17 B.S. (April 30, 2003).*

## Policy

The Tenth Plan, as well as the Action Plan of the Ministry of Women, Children, and Social Welfare on Sexual and Other Exploitation against Woman, provide for various protection measures for women.<sup>29</sup> In addition, the National Plan of Action against Trafficking in Women and Children for Sexual and Labor Exploitation also provides for the protection from sexual and other exploitation.<sup>30</sup>

### (b) Protection of children against exploitation and sexual abuses

#### Law

The Constitution of the Kingdom of Nepal safeguards children from exploitation, with a provision that states that no minor shall be employed to work in any factory or mine, or be engaged in any other hazardous work.<sup>31</sup>

The Chapter on Rape in the Country Code provides that sexual intercourse with any girl below age 16, whether with or without her consent, shall be deemed rape.<sup>32</sup> Further, the 11th amendment of the Country Code provides that if any person commits, or causes to commit, any kind of unnatural sexual intercourse with a minor, such person shall be deemed to have committed rape and be punished with additional one-year imprisonment on the punishment of rape. There is also a provision for reasonable compensation to be paid by the offender to the minors.<sup>33</sup>

Furthermore, the Children's Act states that nobody should use or involve children in immoral acts or should take or cause photographs to be taken with the intention of involving children in an immoral profession or for publication of such photographs.<sup>34</sup> The Act also provides for the punishment of a person who commits such acts and compensation to the victim.<sup>35</sup> In this way, the law provides safeguards to children against exploitation and sexual abuse. **Thus, a mark of 1 out of 1 is allotted to this question.**

#### Policy

The Constitution has a policy for making the necessary arrangements to safeguard the rights and interests of children and making gradual arrangements for free education.<sup>36</sup> The Constitution has also undertaken to pursue a policy of making special arrangements for social security of orphans in matters of their security and welfare.<sup>37</sup>

However, during a time when HIV continues to be spread, minor girls continue to be recruited into the sex trade, and are often victims of trafficking. This is due to the notion that young girls are less likely to be infected with HIV than women who are more experienced sexually.

*Source: United Nations Development Program (UNDP), Regional Human Development Report: HIV/AIDS and Development in South Asia, 2003, New Delhi, p. 47.*

<sup>29</sup> Tenth Plan (2059–2064), National Planning Commission, HMG/Nepal, 2059 (2002). p. 448; and Chapter 4 of the Gender Equality and Women Empowerment, National Plan of Action, HMG/Ministry of Women and Social Welfare and Canadian Co-Operation Office, Kathmandu, November 1997.

<sup>30</sup> National Plan of Action against Trafficking in Women and Children for Sexual and Labor Exploitation, Ministry of Women, Children and Social Welfare, HMG/Nepal, Kathmandu. p. 19 (No. 3.4).

<sup>31</sup> Article 20 (2) of the Constitution of the Kingdom of Nepal, 2047 (1990).

<sup>32</sup> No. 1 of the Chapter on Rape in the Country Code, 2020 (1963).

<sup>33</sup> No. 9 A of the Chapter on Rape in the Country Code, 2020 (1963).

<sup>34</sup> Section 16 (1) of the Children's Act, 2048 (1991).

<sup>35</sup> Section 53 of the Children's Act, 2048 (1991).

<sup>36</sup> Article 26 (8) of the Constitution of the Kingdom of Nepal, 2047 (1990).

<sup>37</sup> Article 26 (9) of the Constitution of the Kingdom of Nepal, 2047 (1990).

## ANTI-DISCRIMINATION

PWHA are discriminated against on the basis of their HIV-positive status. The misconception regarding the modes of transmission and its confinement to certain categories of “risk groups,” such as sex workers, IDUs, and homosexuals, makes people stigmatize and discriminate against PWHA.

Furthermore, the fear of discrimination discourages PWHA from disclosing their status, which further impedes them to seek treatment, proper counseling, and necessary information for required behavioral change. This ultimately worsens the impact of the HIV epidemic.

1. (a) Does the law and policy provide for protection against discrimination on the grounds of disability, widely defined to include HIV/AIDS?
- (b) Does the law and policy provide for protection against discrimination on the grounds of profession (e.g., sex work)?

**Score 1 for each affirmative answer, maximum score of 2.**

### (a) Protection against discrimination on the grounds of disability

#### Law

The Constitution of the Kingdom of Nepal guarantees the fundamental right to equality, according to which all citizens are equal before the law and no one shall be denied equal protection under the law. The state may, however, make special measures for persons who are *inter alia*, physically or mentally incapacitated, or economically, socially, or educationally backward.<sup>1</sup>

The Disabled Persons Protection and Welfare Act defines disability as being mentally or physically disabled or incapacitated.<sup>2</sup> The Act states that no disabled person shall be restricted from taking part in education, training, social or cultural programs; or from entering any organization, club, community, or attending any ceremony within Nepal on the basis of incapacity or disability. It guarantees the right of the incapacitated or disabled and provides that they shall not be discriminated against in appointment, promotion or transfer in government or other public services, and that they shall not be deprived of political, economic, social security, or employment rights.<sup>3</sup> The description of these provisions indicates that they provide protection against discrimination for people who are incapacitated as a result of AIDS-related illnesses; however, they do not appear to provide protection against discrimination for people who have asymptomatic HIV infection. As special measures can be enacted for the disabled and incapacitated, which may include incapacity due to HIV/AIDS, **a mark of 0.5 out of 1 is allotted to this question.**

<sup>1</sup> Article 11 of the Constitution of the Kingdom of Nepal, 2047 (1990).

<sup>2</sup> Section 2 (a) of the Disabled Persons Protection and Welfare Act, 2039 (1982).

<sup>3</sup> Section 5 of the Disabled Persons Protection and Welfare Act, 2039 (1982).

**(b) Protection against discrimination on the grounds of profession**

**Law**

The Constitution of the Kingdom of Nepal guarantees non-discrimination among citizens on any grounds.<sup>4</sup> Moreover, the right to carry out one's profession is guaranteed to each citizen.<sup>5</sup> Similarly, the Civil Rights Act provides that no discrimination shall be made because of one's profession or business, and that everyone is entitled to carry out the profession or business of their choice.<sup>6</sup>

**Supreme Court's interpretation of sex work as a profession**

Provision No. 7 of the Chapter on Rape in the Country Code provides that if a female prostitute is raped, the maximum penalty for the rapist on conviction shall be a fine up to only NRs. 500/- or with imprisonment not exceeding one year. This provision of punishment was discriminatory against female prostitutes in comparison to a maximum penalty of 10 years imprisonment and a one-half share of the rapist's property to the victim, who is not a prostitute. Advocate Sapana Pradhan Malla filed a writ petition at the Supreme Court challenging this provision as discriminatory. In its final decree, the Court stated that sex work is like any other profession, and no discrimination could be made on the basis of sex work. The Court declared the said legal provision null and void.

*Source: Publication of Judgments relating to Human Rights (special issue). Kathmandu: Supreme Court, pp. 144–151.*

**Thus, a mark of 1 out of 1 is allotted to this question.**

**2. Does the law or policy provide for protection against discrimination on the basis of HIV-positive status:**

- (a) In the public/private sectors (e.g., health care, employment, education, and accommodation)?
- (b) To entrants of the country (e.g., migrants or refugees)
- (c) To members of the armed forces (e.g., military, police)?

**Score 0.67 for each affirmative answer, maximum score of 2.**

**(a) Protection against discrimination on the basis of HIV-positive status in the public/private sectors**

**Law**

The Constitution of the Kingdom of Nepal guarantees the right to non-discrimination, and no one shall be denied equal protection under the law.<sup>7</sup> However, there is no specific provision in the law that protects against discrimination on the basis of HIV status. Furthermore, to receive an appointment in civil service or other government organizations or associations, one must submit a medical certificate of good health.<sup>8</sup> The Hotel Management and Liquor Sales and Distribution (Control) Act also prohibits hotel entrepreneurs from providing accommodation to a person suffering from an infectious disease or diseases.<sup>9</sup>

<sup>4</sup> Article 11 (2) of the Constitution of the Kingdom of Nepal, 2047 (1990).

<sup>5</sup> Article 12 (2) (e) of the Constitution of the Kingdom of Nepal, 2047 (1990).

<sup>6</sup> Section 6 (7) of the Civil Rights Act, 2012 (1955).

<sup>7</sup> Article 11 of the Constitution of the Kingdom of Nepal, 2047 (1990).

<sup>8</sup> Rule 58 of the Civil Service Regulation, 2050 (1993); Rule 220 of the Local Self-Governance Regulation, 2056 (1999), Rule 19 of the Health Services Regulation, 2055 (1998).

<sup>9</sup> Section 5 (1) (b) of the Hotel Management and Liquor Sales and Distribution (Control) Act, 2023 (1967).



Although the Constitution guarantees non-discrimination to all citizens, there is no specific law to protect discrimination against PWHA. Also, due to the discriminatory provision in the hotel law and the requirement of a good health certificate for civil service work (which does not clearly mention whether HIV-positive status affects good health), **a mark of 0.33 out of 0.67 is allotted to this question.**

## Policy

The National Policy on AIDS and STD Control<sup>10</sup> and the NMA Guide Book<sup>11</sup> maintain the policy of non-discrimination to PWHA. Also, human rights approaches for reducing stigma and discrimination against PWHA is a central guideline and principle of the National HIV/AIDS Strategy.<sup>12</sup>

### HIV-positive drug addict rejected from rehabilitation center

Dinesh,\* a resident of Naxal, Kathmandu, was a drug addict. Despite efforts by his family, he was not cured from his addiction. Therefore, his parents ultimately decided to send him to a rehabilitation center for recovery.

All arrangements were made and Dinesh was admitted to Ashara, a rehabilitation center established by the Nepal Police Women Family Association. However, the next day officials of the rehabilitation center informed Dinesh's family that Dinesh was HIV-positive and they could not keep him in the center. Dinesh and his family were shocked by the information and the manner in which it was conveyed to them.

\*Pseudonym

*Source: Interview with the family member of the affected person. Interview taken by FWLD during the research period.*

## (b) Protection against discrimination on the basis of HIV-positive status to entrants of the country

### Law

The Immigration Act confers powers to the Director General of the Department of Immigration to regulate, manage, and control the entrance, presence, and departure of foreigners in Nepal.<sup>13</sup> According to the Regulation formulated under this Act, the Director General may revoke the visa of a foreigner who does not submit an international certificate providing his/her health status, or who is suffering from an infectious or severe disease.<sup>14</sup> Similarly, trekking permission may also be revoked.<sup>15</sup> Moreover, any foreigner who commits an act in contravention to the Immigration Act or Immigration Rules may be denied entry into Nepal.<sup>16</sup>

<sup>10</sup> No. 1 (i) and No. 8 of the National Policy on AIDS and STD Control, 2052 (1995).

<sup>11</sup> Objectives of the *NMA Guide Book on HIV/AIDS Care and Prevention. 2000*. Kathmandu: Nepal Medical Association (NMA).

<sup>12</sup> National HIV/AIDS Strategy (2002–2006). 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal, p. 13 (Nepali language version).

<sup>13</sup> Section 7 of the Immigration Act, 2049 (1992).

<sup>14</sup> Rule 13 of the Immigration Regulation, 2051 (1994).

<sup>15</sup> Rule 37 of the Immigration Regulation, 2051(1994). Though HMG has abolished the requirement of trekking permit for various mountain regions, few trekking areas like; Upper Mustang, Langton, Manaslu, Kanchanjangha and Dolpa still requires trekking permit. For details refer Nepal Tourism Board (NTB). *Trekking in Nepal, Kathmandu. 2003*.

<sup>16</sup> Rule 13 of the Immigration Regulation, 2051 (1994).

HMG/N issued an order that if any foreigner, if tested positive for HIV, it should be informed to the Ministry of Home Affairs, and the Ministry should take the necessary actions to deport such foreigners.

*Source: His Majesty's Government's Cabinet decision of HMG/Nepal, date 2046/1/21 B.S. (May 3, 1989).*

**Thus, a mark of 0 out of 0.67 is allotted to this question.**

**(c) Protection against discrimination on the basis of HIV-positive status to members of the armed forces**

**Law**

The Disabled Persons Protection and Welfare Act provides that incapacitated and disabled persons shall not be discriminated against in appointment, promotion, or transfer in government or other public services, and that they shall not be deprived of political, economic, social security, and employment rights.<sup>17</sup> However, in order to recruit a candidate into the army, police, and armed police, the candidate must be declared healthy after receiving health check-up carried out by the prescribed medical board or doctor. Any medical and physical disability is grounds for rejection.<sup>18</sup> **Thus, a mark of 0 out of 0.67 is allotted to this question.**

**3. Does the law or policy provide for the following:**

- (a) Representative complaints (e.g., public interest organizations on behalf of individuals)?**
- (b) Speedy redress (e.g., guaranteed processing of case within a reasonable period) or fast-tracking cases where the complainant is terminally ill?**
- (c) Access to free legal assistance?**
- (d) Reasonable time limit for lodging complaints with agency discretion to extend?**
- (e) Confidentiality protection in all stages of complaints (e.g., use of pseudonyms to report cases)?**

**Score 0.40 for each affirmative answer, maximum score of 2.**

**(a) Representative complaints**

**Law**

In case of any injury or loss sustained or incurred due to any consumable item or service, any consumer organization may file a case in a Court making a claim for compensation on behalf of such a consumer.<sup>19</sup> This also covers pharmaceutical goods and services provided to consumers by medical professionals.

The National Human Rights Commission (NHRC) has a wide range of authority with regard to hearing personal complaints according to which the victim, or any person on the victim's behalf, may file an

<sup>17</sup> Section 5 of the Disabled Persons Protection and Welfare Act, 2039 (1982).

<sup>18</sup> Rule 4 (c) of the Royal Nepalese Army Recruitment Rules, 2019 (1963); Rule 3 (f) of the Royal Nepalese Army Recruitment, Promotion and Other Various General Provisions Rules, 2020 (1964); Rule 5 (e) of the Army Legal Department (Recruitment, Promotion and Terms of Service) Rules, 2019 (1960); Rules 6 and 7 of Boys (Recruitment and Terms of Service) Rules, 2028 (1971); Rules 8 and 9 of the Armed Police Regulation, 2060 (2003); and Rule 13 (j) of the Police Regulation, 2049 (1992).

<sup>19</sup> Section 22 of the Consumers Protection Act, 2054 (1997).

application or complaint. The Commission may also investigate incidents of human rights violations on the basis of information it receives from any source or on its own discretion.<sup>20</sup>

The Constitution of the Kingdom of Nepal provides that any Nepali citizen may file a writ petition under extraordinary jurisdiction of the Supreme Court on any matter of public interest or concern.<sup>21</sup> Moreover, the Country Code provides that anybody may, having obtained approval of the Court, file a case on any matter, which by its very nature or subject involves public interest or concern.<sup>22</sup> **Thus, a mark of 0.4 out of 0.4 is allotted to this question.**

### **(b) Speedy redress or fast-tracking case procedure for terminally ill complainant**

#### **Law**

In cases of public interest or other issues that come under the extraordinary jurisdiction of the Supreme and Appellate Courts, the courts may hear and decide those cases with priority.<sup>23</sup>

The Country Code lays down the order of priority for hearing cases, which includes cases involving disabled (sick) persons.<sup>24</sup> **Thus, a mark of 0.4 out of 0.4 is allotted to this question.**

### **(c) Access to free legal assistance**

#### **Law**

The Legal Aid Act determines the criteria of persons to whom the State has to provide free legal aid. Accordingly, free legal aid should be provided to persons whose annual income is less than NRs. 40,000.<sup>25</sup> Moreover, in order to ensure representation of helpless (indigent) parties in all Courts, there is a provision of a paid lawyer.<sup>26</sup>

The Nepal Bar Association also provides free legal aid from their Bar units to represent women and helpless (indigent) persons.<sup>27</sup> However, even after six years of enactment of Free Legal Aid Act, it only has enforced in 13 districts.<sup>28</sup> Also, due to a lack of training and orientation to legal practitioners appointed to provide services, the probability of success in such cases involving legal aid is much lower. **Thus, a mark of 0.2 out of 0.4 is allotted to this question.**

#### **Policy**

The Constitution of the Kingdom of Nepal provides that the State shall, to secure justice for all, pursue a policy of providing free legal aid to indigent persons, for their legal representation in keeping with the principle of the Rule of Law.<sup>29</sup>

<sup>20</sup> Section 9 (2) (a) of the Human Rights Commission Act, 2053 (1996).

<sup>21</sup> Article 88 of the Constitution of Kingdom of Nepal, 2047 (1990); Rule 40 of the Supreme Court Regulation, 2049 (1992).

<sup>22</sup> No. 10 of the Chapter on Court Procedures in the Country Code, 2020 (1963).

<sup>23</sup> Rule 63 (3) of the Supreme Court Regulation, 2049 (1992); Rule 51 (3) of the Appellate Court Regulation, 2048 (1991).

<sup>24</sup> No. 11 of Chapter on Court Procedures of the Country Code, 2020 (1963) and Rule 31 of the District Court Regulation, 2052 (1995).

<sup>25</sup> Section 3 (1) of the Legal Aid Act, 2054 (1997); Rule 6 (1) of the Legal Aid Regulations, 2055 (1998).

<sup>26</sup> Rule 96 of the District Court Regulation, 2052 (1995); Rule 106 of the Appellate Court Regulation, 2048 (1991).

<sup>27</sup> Nepal Bar Association, Kathmandu.

<sup>28</sup> Those districts are Sunsari, Dolakha, Bara, Palpa, Banke, Gulmi, Sarlahi, Dhading, Jhapa, Dhanusa, Makwanpur, Kanchanpur, and Kaski.

<sup>29</sup> Article 26 (14) of the Constitution of the Kingdom of Nepal, 2047 (1990).

**(d) Reasonable time limit for lodging complaints with agency discretion to extend**

**Law**

The time limitation for lodging complaints is different as per the nature of the cases.<sup>30</sup> Similarly, the time limitation for cases filed under the Summary Procedures Act and Special Court Act is different for filing cases in their respective jurisdictions.<sup>31</sup> Moreover, the Country Code provides that if there is no fixed limitation for filing cases, cases can be filed at any time.<sup>32</sup>

In addition, if any person becomes sick and cannot file a complaint in time, the time limit may be extended for 30 days.<sup>33</sup> The extended time limit under the Summary Procedures Act and Special Court Act is 15<sup>34</sup> and 7 days,<sup>35</sup> respectively.

Even though no specific time limit is mentioned for cases with regard to the fundamental rights guaranteed by the Constitution, a complaint may be filed within a reasonable time. Due and reasonable time logically embodies the concept of the “doctrine of *laches*”<sup>36</sup> that one must be always aware and ready to exercise one’s own rights.<sup>37</sup> However, in cases of public interest, such as discrimination or absence of law, the complaint may be filed at any time. **Thus, a mark of 0.4 out of 0.4 is allotted to this question.**

**(e) Protection of confidentiality in all stage of complaints**

**Law**

There is no specific law that protects the confidentiality of persons during the time of their filing a complaint, hearing cases, or in other situations. **Thus, a mark of 0 out of 0.4 is allotted to this question.**

**Policy**

The protection of the right to confidentiality of people infected and affected by HIV/AIDS is one of the guiding principles of the National HIV/AIDS Strategy.<sup>38</sup>

**4. Does the law or policy contain the following substantive features:**

- (a) Coverage of direct and indirect discrimination?**
- (b) Coverage of presumed discrimination (e.g., assumed infection) as well as associates (e.g., care providers, partners, and family)?**
- (c) Coverage of abuse and victimizations (whether generic or specific)?**

**Score 0.67 for each affirmative answer, maximum score of 2.**

<sup>30</sup> For example, 35 days for cases of rape, three months for cases related to marriage, two years for cases related to adoption, and three years for succession of property.

<sup>31</sup> For example, one year for cases related to husband and wife and 35 days for cases related to patent, design, and trademark.

<sup>32</sup> No. 36 of Chapter on Court Procedures in the Country Code, 2020 (1963).

<sup>33</sup> No. 59 of the Chapter on Court Procedures in the Country Code, 2020 (1963).

<sup>34</sup> Section 7 of the Summary Procedures Act, 2028 (1971).

<sup>35</sup> Section 9 (b) of the Special Court Act, 2033 (1976).

<sup>36</sup> “Doctrine of laches”, is based upon maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity. As defined in Black’s Law Dictionary, The Publishers Editorial Staff, St. Paul, Minn West Publishing Co. 1990, sixth edition, p. 875.

<sup>37</sup> Supreme Court of Nepal has defined the principle of *laches* in various cases, such as Chandra Kumar Bhattarai vs. Ministry of Agriculture/HMG Nepal, Nepal Law Journal, 2059, Decision No. 4582, p. 658.

<sup>38</sup> National HIV/AIDS Strategy (2002–2006). 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal, p. 13 (Nepali language version).

## (a) Coverage of direct and indirect discrimination

### Law

The Constitution of the Kingdom of Nepal guarantees the right to equality to all citizens, and no person shall be denied equal protection of the laws. The Constitution also guarantees against discrimination citizens on grounds of caste, tribe, language, or ideological conviction.<sup>39</sup> The Supreme Court interpreted these provisions in various cases in which direct discrimination is covered.<sup>40</sup> Furthermore, the Supreme Court elaborated that discrimination in result also amounts to discrimination; thus, indirect discrimination is covered within the periphery of the definition of discrimination. However, there is no specific provision that covers direct and indirect discrimination on the basis of HIV/AIDS. **Thus, a mark of 0.33 out of 0.67 is allotted to this question.**

#### Indirect discrimination or discrimination in result also amounts to discrimination

In *Sapana Pradhan Malla vs. HMG/N*, the Supreme Court held that indirect discriminatory practices, or discrimination in result, amount to discrimination. In the case, the Court held that "The provision, which provides less punishment for rape to a prostitute, has discriminated against them without any reasonable grounds, construing them as lower class. The existence of such laws, which are discriminatory and unequal among citizens, does not comply with the spirit of the Constitution. It is not reasonable to think that the punishment for the crime should be different only on the basis of any profession or any individual's character. If we keep in force such discriminatory legal provisions, it further encourages the rape of prostitutes. It is, therefore, not reasonable to keep in force such legal provisions that encourage grave crime. . . . And the legal provision which punishes differently for the same type of crime only on the basis of a victim's character and profession becomes discriminatory."

*Source: Publication of Judgments relating to Human Rights (special issue) Supreme Court, 2059 (2002), pp. 144–151.*

### Policy

The National Policy on AIDS and STD Control has adopted a policy of non-discrimination among citizens on the grounds of HIV/AIDS and STD infection.<sup>41</sup>

## (b) Coverage of presumed discrimination

### Law

If any person or group of persons is suspected or likely to be suffering from an infectious disease, in order to inspect for or to control the spread of the infectious disease the HMG/N can issue an order applicable to such person or group of people requiring them to be referred to a hospital or a separate place.<sup>42</sup> **Thus, a mark of 0 out of 0.67 is allotted to this question.**

<sup>39</sup> Article 11 (1), (2) of the Constitution of the Kingdom of Nepal, 2047 (1990).

<sup>40</sup> *Meera Dhungana vs. HMG/Nepal NKP*, 2052 (1995), Vol. 6, p. 462; *Dr. Chanda Bajracharya vs. HMG/Nepal, NKP* 2053 (1996), Vol. 7, p. 537; *Reena Bajracharya vs. HMG/Nepal, NKP*, 2057 (2000), Vol. 5, p. 376; *Meera Dhungana for FWLD vs. HMG/Nepal*, Supreme Court Bulletin, 2059 (2002), Vol. 5, p. 13.

<sup>41</sup> No. 1 (i) and No. 8 of the National Policy on AIDS and STD Control, 2052 (1995).

<sup>42</sup> Section 2 (3) of the Infectious Diseases Control Act, 2020 (1963).

(c) Coverage of abuse and victimization

Law

The Constitution of the Kingdom of Nepal guarantees that no person shall be punished for an act not punishable by law when the act was committed, nor shall any person be subjected to punishment greater than that prescribed by law at the time the offence was committed.<sup>43</sup> The Constitution also provides that no person accused of an offence shall be compelled to be a witness against themselves.<sup>44</sup> Similarly, it provides that if the arrested/detained person is not produced before the authority to hear the case within 24 hours, the detention is unlawful.<sup>45</sup>

The Country Code prohibits teasing and joking inside the Court.<sup>46</sup> Furthermore, the Police Act provides that police personnel must treat people politely and they must maintain due dignity and politeness while dealing with women and children.<sup>47</sup> The Compensation to Torture Act provides that no person detained in the course of an investigation shall be dealt with in an inhuman or degrading manner, and no physical or mental torture shall be inflicted. If a detainee is treated in a degrading manner, that person is entitled to compensation of up to NRs. 100,000/-, and the culprit is subjected to departmental action.<sup>48</sup> However, there is no law that specifically covers the abuse and victimization of people infected and affected with HIV/AIDS. **Thus, a mark of 0.33 out of 0.67 is allotted to this question.**

5. Does the law or policy provide the independent institution administering legislation (e.g., Human Rights Commission or ombudsperson) with the following functions and powers:

- (a) Education and promotion of human rights?
- (b) Role of advising government, and monitoring compliance by domestic legislation and practice with human rights standards (based on international obligations)?
- (c) Power to investigate and conciliate individual complaints, and address systemic discrimination?
- (d) Power to make adequate and enforceable decisions to resolve individual cases?

**Score 0.50 for each affirmative answer, maximum score of 2.**

(a) Independent institution for education and promotion of human rights

Law

The NHRC was established to protect, promote, and raise awareness of human rights. The protection and promotion of human rights are the main duties of the Commission.<sup>49</sup> To achieve its objectives, the NHRC may carry out the following activities:<sup>50</sup>

1. Conduct inquiries and investigations on violation of human rights.
2. Publicize and propagate human rights education among various sections of society through seminars,

<sup>43</sup> Article 14 (1) of the Constitution of the Kingdom of Nepal, 2047 (1990).

<sup>44</sup> Article 14 (3) of Constitution of the Kingdom of Nepal, 2047 (1990).

<sup>45</sup> Article 14 (6) of Constitution of the Kingdom of Nepal, 2047 (1990).

<sup>46</sup> No. 3 and 134 of the Chapter on Court Procedures in the Country Code, 2020 (1963).

<sup>47</sup> Section 15 (1) (k) of the Police Act, 2012 (1956).

<sup>48</sup> Section 2, 3, 4, and 7 of the Compensation of Torture Act, 2053 (1996).

<sup>49</sup> Section 9 (1) of the Human Rights Commission Act, 2053 (1996).

<sup>50</sup> Section 9 (1), 9 (2) (h), (i), (j), (k), (l) of the Human Rights Commission Act, 2053 (1996).

symposia, conferences, and build consciousness and awareness about the guarantees bestowed by law for the protection of human rights.

3. Encourage the functioning and efforts of institutions working in the nongovernmental sector.
4. Evaluate the existing human rights situation of the country.
5. Make necessary recommendations to HMG/N regarding reports to be furnished by Nepal pursuant to the provisions of international treaties on human rights.

Moreover, in order to coordinate with various governmental bodies and NGOs; to investigate and conduct research on events of violations of women's human rights and on events happened in national and international arena on women's issues; and to inform the concerned bodies about such events, a National Women's Commission (NWC) was established in 2002.<sup>51</sup> **Thus, a mark of 0.5 out of 0.5 is allotted to this question.**

### **(b) Role of advising government and monitoring compliance by domestic legislation**

#### **Law**

The NHRC and the NWC have been conferred powers to measure the standard of human rights in national laws. The Human Rights Commission Act provides that the NHRC study international treaties and instruments on human rights and submit necessary and appropriate recommendations to HMG/N for effective implementation of the related provisions.<sup>52</sup> The Commission can also make necessary recommendations to the Government regarding reports to be furnished by Nepal pursuant to the provisions of international treaties on human rights.<sup>53</sup> Moreover, the Act provides that HMG/N must obtain the opinion of the NHRC on matters in which Nepal is under an obligation to forward reports according to international treaties or agreements relating to human rights.<sup>54</sup>

Similarly, the NWC has been conferred powers to implement international treaties or agreements relating to women's rights to which Nepal is a party. The Commission can conduct studies and research on international treaties or agreements related to women's rights, interests, and initiatives taken for their implementation in Nepal; give suggestions on reports to be sent by Nepal according to international treaties and agreements; and give suggestions to HMG/N on protection and promotion of women's rights.<sup>55</sup> **Thus, a mark of 0.5 out of 0.5 is allotted to this question.**

### **(c) Power to investigate and conciliate individual complaints, and address systemic discrimination**

#### **Law**

To prevent the violation of human rights, the NHRC can conduct an inquiry or investigation if any person or organization acts with recklessness or negligence. Not only is the NHRC empowered to conduct inquiries or investigations, it may order an investigation to be carried out by an employee of HMG/N or any other person.<sup>56</sup> However, the NHRC does not have the power to look into matters

<sup>51</sup> No. 4 (g) (h) of the Notice of Formation of National Women's Commission, Nepal Gazette, 2058/11/23 B.S. (March 7, 2002) Part 51, Pre Extraordinary issue 72.

<sup>52</sup> Section 9 (2) (g) of the Human Rights Commission Act, 2053 (1996).

<sup>53</sup> Section 9 (2) (l) of the Human Rights Commission Act, 2053 (1996).

<sup>54</sup> Section 9 (3) of the Human Rights Commission Act, 2053 (1996).

<sup>55</sup> No. 4 (b) and (c) of the Notice of Formation of National Women's Commission, Nepal Gazette, 2058/11/23 B.S. (March 7, 2002).

<sup>56</sup> Section 9 (2) (a) (b), the Human Rights Commission Act, 2053 (1996).

under the Military Act, any matter related to a treaty or agreement concluded between HMG/N and any foreign government or international body, any matter certified by HMG/N Chief Secretary as something that may have an adverse impact on the security of Nepal, and any matter certified by the Attorney General of Nepal that such investigation may have an adverse impact on the investigation or inquiry of a crime or finding of the criminal.<sup>57</sup>

On matters under its jurisdiction of investigation, the NHRC has authority equal to a regular Court with regard to inquiry and investigation. Under it, the NHRC may summon and examine witnesses, carry out field inspections, and require the presence of any person before it.<sup>58</sup>

With regard to NWC, has not been conferred the power to freely investigate individual complaints. However, the Commission may provide necessary legal counseling to women victimized by sexual exploitation, trafficking, domestic violence, and social violence.<sup>59</sup> **Thus, a mark of 0.25 out of 0.5 is allotted to this question.**

**(d) Power to make adequate and enforceable decisions to resolve individual cases**

**Law**

There are separate procedures laid down for inquiries and investigations, and in reaching findings; however, there is no specific authority that has been conferred to the NHRC with regard to enforcing its findings and recommendations. The NHRC shall prepare its annual report on its activities and submit it to His Majesty the King, and the King shall have to send the report to be presented in Parliament. The NHRC must also publish its annual report for the general public.<sup>60</sup>

The NHRC cannot implement decisions on its own; it must refer to the concerned authorities to take action against persons who are found guilty according to its findings, or pay compensation to the persons victimized within three months. However, there is no legal provision as to how the NHRC would implement its decision, if the decision is not implemented after three months.<sup>61</sup> **Thus, a mark of 0 out of 0.5 is allotted to this question.**

<sup>57</sup> Section 10 of the Human Rights Commission Act, 2053 (1996).

<sup>58</sup> Section 11 of the Human Rights Commission Act, 2053 (1996).

<sup>59</sup> No. 4 (k) of the Notice of Formation of National Women's Commission, Nepal Gazette, 2058/11/23 B.S. (March 7, 2002).

<sup>60</sup> Sections 12 and 14 of the Human Rights Commission Act, 2053 (1996).

<sup>61</sup> Section 13 of the Human Rights Commission Act, 2053 (1996).



## PRIVACY/CONFIDENTIALITY

People have the right to keep confidential any information that is highly personal, the divulgence of which could be detrimental to them, including information about their HIV/AIDS status. The right to privacy should be observed so that individuals are not compelled to reveal information regarding their HIV status or undergo any examination to determine the same. The decision of sharing one's HIV-positive status should be solely up to the infected person. People also have the right to confidentiality about their sexual orientation. Protection of information about a person's sexual orientation and HIV-positive status is necessary to prevent that person from possible stigmatization and discrimination.

Some people see a conflict of interest between the right to privacy and the right to information. However, each person should be responsible for securing protection against HIV infection through abstinence and fidelity, and by using protective measures such as condoms, UICP in medical care, and other practices to prevent HIV transmission. Successful HIV prevention cannot be based on the known or presumed HIV status of other people. Even when a person tests HIV negative, that person may still be infected with the virus, but may not have developed the antibodies necessary to produce a positive test.

1. Does the law or policy provide for general privacy or confidentiality protection (i.e., prohibit unauthorized use and disclosure) of medical and/or personal information, widely defined to include HIV-related data?

**Score 2 for affirmative answer.**

### General privacy or confidentiality protection of medical and/or personal information

#### Law

The right to privacy is also one of the fundamental rights expressly recognized in the Constitution of the Kingdom of Nepal. Under the Constitution, except as provided by the law, the privacy of person, house, property, documents, correspondence, or information of anyone is inviolable.<sup>1</sup> PWHAs are equally entitled to the right to privacy guaranteed by the Constitution.

The Code of Conduct for Journalists, with regard to unauthorized use and publicity of a person's health and personal details, provides that journalists and communication media should not publish or transmit news, photographs, or visuals so as to cause more pain to victims or disclose the name, address, and identity of victims.<sup>2</sup>

The Code of Ethics of the Nepal Medical Council provides that medical practitioners at the time of registration should read and agree to a declaration stating they will respect the confidentiality of patients' information confided to them.<sup>3</sup> It prohibits the use of a patient's health information for any purpose other than scientific

<sup>1</sup> Article 22 of the Constitution of Kingdom of Nepal, 2047 (1990).

<sup>2</sup> Section 4 (6) and (7) of the Code of Conduct for Journalist, 2060 (2003).

<sup>3</sup> No. 1 of the Code of Ethics, Nepal Medical Council, Kathmandu, January 2001.

research and other prescribed purposes; and provides that while carrying out scientific research, personal details of the patient should not be disclosed. Confidentiality will not be deemed to have been violated, however, if the health information is disclosed with care without disclosing personal details.<sup>4</sup>

### Examination of a person's private parts is a violation of the right to privacy

The Supreme Court interpreted the right to privacy in the case of *Annapurna Rana*. With reference to the case of partition of property in *Annapurna Rana vs. Kathmandu District Court and other*, in order to determine whether Annapurna Rana was married, the Kathmandu District Court ordered her to have a virginity test. The order for a virginity test was challenged in the Supreme Court, in which the Court invalidated the order, stating that the order requiring the examination of sensitive organs of a woman, such as the vagina and uterus, was against the right to privacy guaranteed by the Constitution.

*Source: Annapurna Rana vs. Kathmandu District Court and others, NKP.2055 (1998) Vol. 8, p. 476.*

Nepalese laws secure the fundamental right to privacy, and professional codes of conduct prohibit the publication of identification information about victims and patients. **Therefore, a mark of 2 out of 2 is allotted to this question.**

### Policy

The National Policy on AIDS and STD Control provides that the results of tests carried out in the course of AIDS and STD control programs shall be kept confidential.<sup>5</sup> Also, the policy provides that the test results shall be forwarded to NCASC as soon as possible.<sup>6</sup> Therefore, although the policy provides for maintaining the confidentiality of test results conducted in the course of controlled programs, it does not specifically prohibit the unauthorized use and publicity of details of HIV-infected persons.

2. Does the law or policy authorize health care professionals to notify directly or indirectly (e.g., through a specified person in the Health Department) the HIV status of their patients to others (e.g., sexual partners and those sharing needles) in accordance with counseling of the HIV-positive patient has failed to achieve appropriate behavioral change; and the HIV-positive patient has refused to notify or consent to notification of the partner?

**Score 2 for affirmative answer.**

### Authorization to health care professionals to notify the HIV status of their patients to others

### Laws

The Code of Ethics of the Nepal Medical Council provides that, except in cases of exceptions created by the laws of the country, no information pertaining to the privacy of patients shall be disclosed.<sup>7</sup> The Code of Ethics also provides that even in cases in which information has to be given as per legal requirements, it must be given only after formally informing the concerned patient; otherwise, such acts amount to unprofessional conduct and actions may be taken against the misconduct.<sup>8</sup>

<sup>4</sup> No. 3.2 of the Code of Ethics, Nepal Medical Council, Kathmandu, January 2001.

<sup>5</sup> No.1 (j) of the National Policy on AIDS and STD Control, 2052 (1995).

<sup>6</sup> No.1 (k) of the National Policy on AIDS and STD Control, 2052 (1995).

<sup>7</sup> No. 3.2 of the Code of Ethics, Nepal Medical Council, Kathmandu, January 2001.

<sup>8</sup> No. 2.3.2 and 3.2 of the Code of Ethics, Nepal Medical Council, Kathmandu, January 2001.

Thus, Nepalese law does not allow health workers to inform the sexual partners of HIV-positive patients in cases in which the counseling given to HIV-infected persons has failed to reform their habits, or infected persons denies to inform their partners about their status. **Thus, a mark of 0 out of 2 is allotted to this question.**

3. Does the law or policy enable HIV-positive people to have their privacy and identity protection (e.g., closed hearings, suppression orders, or use of pseudonyms) in public health proceedings or general cases?

**Score 2 for affirmative answer.**

#### Protection of privacy and identity of HIV-positive people

##### Law

Nepalese law does not have any provision of in-camera hearing, suppression orders or the use of pseudonyms for PWHA during any process relating to public health. Similarly, no legal provision has been made to protect the identity of PWHA who are parties to general Court cases. **Thus, a mark of 0 out of 2 is allotted to this question.**

4. Does the law or policy protect the right to privacy on the basis of sexual orientation (e.g., MSM)?

**Score 2 for affirmative answer.**

#### Protection of right to privacy on the basis of sexual orientation

##### Law

The Constitution of the Kingdom of Nepal guarantees the right to privacy of the person, home, property, documents, correspondence, and information, except in cases provided in laws by the State.<sup>9</sup> However, the Constitution is silent as to the right to privacy regarding sexual behavior. The right to privacy of person could be interpreted to include the right to privacy regarding sexual acts; however, since Nepalese laws criminalize “unnatural sex,” it cannot be assumed that sexual acts are covered by the right to privacy. **Thus, a mark of 0 out of 2 is allotted to this question.**

5. Does the law or policy provide access to confidential sexual and reproductive health services to the people?

**Score 2 for affirmative answer.**

#### Access to confidential sexual and reproductive health services to the people

##### Law

The law does not have any provision with regard to access to confidential services relating to sexual and reproductive matters. However, a provision has been made to maintain privacy with regard to health services. The Nepal Medical Council Regulation provides that, except for the matters that must be disclosed at the order of a Court according to law, facts disclosed in confidence must be kept secret.<sup>10</sup>

<sup>9</sup> Article 22 of the Constitution of Kingdom of Nepal, 2047 (1990).

<sup>10</sup> Rule 22 (i) of the Nepal Medical Council Regulation, 2024 (1967).

The Code of Conduct of the Nepal Medical Council also provides for the privacy of patients and professional responsibility, which prohibits doctors from disclosing any matters about his/her patients, except as prescribed by law.<sup>11</sup> The Health Professional Council Regulation provides that any information relating to the private life or health of a person, which has come to the notice of a health professional in connection with carrying out duties as a health professional, shall not be disclosed except in cases in which the law requires the disclosure of such information.<sup>12</sup>

Similarly, the Nepal Nursing Council Regulation provides that any nurse or Assistant Nurse Midwife must keep secret personal matters or facts about the health of their patients, and they should not disclose a patient's private matters to anybody, except as provided for by law.<sup>13</sup> These rules protect the right to privacy of the patient by stating that their health status must not be disclosed to anybody, except the authorized person.<sup>14</sup> **Thus, a mark of 1 out of 2 is allotted to this question.**

## Policy

To ensure all PWHA have access to adequate medical services and treatment, the National HIV/AIDS Strategy adopted a strategy to ensure confidential services at all levels, through training of staff and regular follow-up.<sup>15</sup>

---

<sup>11</sup> No. 3.2 of the Code of Ethics, Nepal Medical Council, Kathmandu, January 2001.

<sup>12</sup> Rule 13 (1) (b) of the Nepal Health Professional Council Regulation, 2056 (1999).

<sup>13</sup> Rule 22 of the Nepal Nursing Council Regulation, 2053 (1996).

<sup>14</sup> Rule 22 (a) of the Nepal Nursing Council Regulation, 2053 (1996).

<sup>15</sup> National HIV/AIDS Strategy (2002–2006). 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal, p. 37 (Nepali language version).

## SEXUAL OFFENCES

It is important to assess the laws relating to sexual offences, as it is one being one of the important modes of HIV transmission. Criminal laws prohibiting specific sexual activity between consenting adults in private, such as adultery, sodomy, fornication, or acts “against the order of nature” or social order of morality, can impede HIV/AIDS prevention and care programs by contributing to the stigma and discrimination associated with such behavior, thus making it more difficult to reach people through education and information promoting health and preventing HIV transmission through sex.

Furthermore, the denial of legal and social recognition to those practicing homosexual behavior also prevents many people at risk of an infection from seeking the measures required to protect them from this deadly virus. Laws relating to sexual offences also deal with the issue of trafficking and sexual exploitation, which are also major contributing factors for the spread of HIV epidemic, especially in the context of Nepal.

1. Does the law or policy not prohibit sexual acts (e.g., fornication or adultery) between consenting adults in private?

**Score 2 for affirmative answer.**

### Sexual acts between consenting adults in private

#### Law

The law does not prohibit consensual sexual acts between adult men and women in private,<sup>1</sup> however such acts are prohibited if they are incestuous.<sup>2</sup> Even though sexual acts between consenting adults outside the marital relationship are not expressly prohibited, such acts are grounds for divorce.<sup>3</sup>

#### Recognition of the relationship before marriage

The Supreme Court states, “Even if the changed social circumstances are considered, to maintain virginity and to have sexual relationships freely with a person of one’s own choice is the matter of private conduct of a person.”

*Source: Annapurna Rana vs. Kathmandu District Court and others, NKP 2055 (1998) Vol. 8, p. 476.*

The Country Code considers unnatural sex an offence and provides for imprisonment of up to one year for such an act.<sup>4</sup> A similar provision is also included in the Draft Penal Code; if any person commits sexual relations, other than between a man and woman, that person shall be punished by imprisonment

<sup>1</sup> No. 1 of the Chapter on Rape in the Country Code, 2020 (1963).

<sup>2</sup> No. 1, 2, 3, and 4 of the Chapter on Incest in the Country Code, 2020 (1963).

<sup>3</sup> No. 1 of the Chapter on Husband and Wife in the Country Code, 2020 (1963).

<sup>4</sup> No. 1 and 4 of the Chapter on Bestiality in the Country Code, 2020 (1963).

of up to three months, even if the relationship is consensual.<sup>5</sup> Thus, a mark of 1 out of 2 is allotted to this question

2. Does the law or policy have reasonable controls on sex workers (e.g., nuisance law) applicable to other analogous personal service work?

**Score 2 for affirmative answer.**

### Reasonable controls on sex workers applicable to other analogous personal service work

#### Law

The Some Public (Offence and Punishment) Act prohibits acts of violating the peace by using obscene words, language, gestures, or acts of demonstrating obscenity in public places.<sup>6</sup> Although the law does not intend to restrict sexual activities in private places and controls sex work in public places, police are nevertheless found to raid private homes and rooms, and FSWs are arrested in massage parlors, hotels, lodges and restaurants. FSWs are harassed and prosecuted by the police, with the justification that this action maintains the peace in public places. As a result, the intention of lawmakers is arbitrarily used by the police. No regulatory mechanism has been introduced to regulate sex work in order to control the further spread of HIV/AIDS. As the problem is more with the implementation of law, a mark of 1.5 out of 2 is allotted to this question.

A study revealed that 89 percent of FSWs have been harassed by the police, either in their place of working or at police stations. This includes arrest, physical abuse, sexual abuse, psychological and verbal abuse, and extortion (blackmail).

*Source: Report on the Abuse of Commercial Sex Workers and Homosexuals. Kathmandu: FWLD, GWP, WATCH, WCNP and BDS, 2003.*

3. Does the law or policy protect vulnerable groups, especially children or women, from coercion and trafficking focusing on those responsible (i.e., owner or intermediaries (pimp))?

**Score 2 for affirmative answer.**

### Protection of vulnerable groups from coercion and trafficking

#### Law

According to the Traffic in Human Beings (Control) Act, selling of human beings for any purpose or taking them to a foreign country is prohibited, and any act of that kind shall be deemed to be an offence. The Act prohibits any actions that might cause women to engage in prostitution through any kind of consideration, persuasion, enticement, or coercion.<sup>7</sup> The Chapter on Trafficking in Persons in the Country Code also provides for imprisonment of up to 20 years for enticing or persuading women, with the intention of selling them in a foreign land.<sup>8</sup> Also, taking away children below 16 years of age without the

<sup>5</sup> Section 221 of the Draft Penal Code, 2059 (2002).

<sup>6</sup> Section 2 and 3 of the Some Public (Offence and Punishment) Act, 2027 (1970).

<sup>7</sup> Section 4 of the Traffic in Human Beings (Control) Act, 2043 (1986).

<sup>8</sup> No. 1 of the Chapter on Trafficking in Person in the Country Code, 2020 (1963).

consent of guardians is considered to be abduction. Any act of abduction or persuading for abduction is punishable with an imprisonment of up to 3 years.<sup>9</sup> Although the law provides punishment for the person or broker who sells or takes a person to a foreign land for that purpose, there is no provision of punishment for the purchaser. In addition, the Children's Act prohibits anyone to offer or surrender a child to any god or goddess through selling the child, offering incentives, or exercising coercion or undue influence. It also prohibits a parent to surrender their child for such purposes. The Act furthermore provides punishment for the priest or *panda*, who performs such religious acts.<sup>10</sup> The Act respects the rights of the child by prohibiting children to be made to engage in begging, making them *sanyasi* (ascetic), or involving them in an immoral profession.<sup>11</sup> **Thus, a mark of 1.5 out of 2 is allotted to this question.**

## Policy

HMG/N has formulated a National Action Plan against Trafficking of Women and Children for Sexual and Labor Exploitation in order to protect women and children vulnerable to forceful acts and trafficking, and to punish those engaged in such acts.<sup>12</sup> However, the Government is in the process of adopting a new Plan of Action.

4. (a) Does the law or policy criminalize forced sexual abuse and intercourse within and outside the marriage?
- (b) Does the law or policy protect children from sexual offences, including sexual intercourse?

**Score 1 for each affirmative answer, maximum score of 2.**

- (a) Criminalization of forced sexual abuse and intercourse within and outside the marriage

## Law

The Chapter on Rape in the Country Code prohibits sexual intercourse with any women without her free will and consent.<sup>13</sup> Since this provision of the Country Code incorporates the words “girl,” “widow,” and “other’s wife,” it was assumed that raping one’s wife is exempt. Advocate Meera Dhungana of FWLD<sup>14</sup> filed a writ petition in the Supreme Court that challenged the said provision. The Court in its verdict interpreted any forceful sexual relationship within the conjugal life as rape, and thus marital rape is punishable. However, no initiative is taken yet to insert the provision in the definition of rape given by the Country Code. The Traffic in Human Beings (Control) Act prohibits causing any women to forcefully engage in prostitution.<sup>15</sup> The Chapter on Intention to Rape in the Country Code provides for punishment if a man touches a woman, other than his wife, on any part of her body, with an intention of having sexual intercourse.<sup>16</sup>

However, the law does not realize that sexual violence can take place against men as well. Furthermore, as homosexual activities has not been recognized yet in Nepal, the law does not address any sexual offenses against men or homosexuals. **Thus, a mark of 0.5 out of 1 is allotted to this question.**

<sup>9</sup> No. 2 of the Chapter on Trafficking in Person in the Country Code, 2020 (1963).

<sup>10</sup> Section 14 of the Children's Act, 2048 (1991).

<sup>11</sup> Section 13 and 16 of the Children's Act, 2048 (1991).

<sup>12</sup> National Plan of Action Against Trafficking in Women and Children for Sexual and Labor Exploitation, Ministry of Women, Children and Social Welfare, Kathmandu.

<sup>13</sup> No. 1 of the Chapter on Rape in the Country Code reads, “A sexual intercourse with any girl, widow or other’s wife, if below the age of sixteen, in any manner whether with or without consent, and if above the age of sixteen without her free will and consent in any manner with physical force, coercion or undue influence deemed to be rape.”

<sup>14</sup> Meera Dhungana for Forum for Women, Law and Development vs. HMG/Nepal, Supreme Court Bulletin, 2059 (2002), Vol. 5, p. 13.

<sup>15</sup> Section 4 (c) of the Traffic in Human Beings (Control) Act, 2043 (1986).

<sup>16</sup> No. 1 of the Chapter on Intention to Rape in the Country Code, 2020 (1963).

## Policy

In the Chapter on Violence against Women under the National Action Plan on Gender Equality and Women Empowerment, a policy of controlling violence, including sexual offences, against women and girls has been incorporated.<sup>17</sup>

### (b) Protection of children from sexual offences

## Law

In the Chapter on Rape in the Country Code, sexual intercourse with a girl under the age of 16, in any manner whether with or without consent, is deemed rape and is punishable.<sup>18</sup> Likewise, any unnatural sexual activities with a minor is deemed an offence of rape and is punishable by up to an additional one year in prison, in addition to the punishment set forth for an offence of rape.<sup>19</sup>

Accordingly, as per the Children's Act, if children are forced into an immoral profession, this is considered as a crime and is punishable.<sup>20</sup> Furthermore, the Act prohibits photographs to be taken for the purpose of involving children in an immoral profession or exhibition, or the distribution of photographs and personal events to tarnish child's character. **Thus, a mark of 1 out of 1 is allotted to this question.**

### 5. Does the law or policy prohibit discrimination in punishment for sexual offences against different groups (e.g., sex worker, MSM)?

**Score 2 for affirmative answer.**

### Prohibition of discrimination in punishment for sexual offences against different groups

## Law

No. 7 of the Chapter on Rape in the Country Code provides a fine of up to NRs. 500/- or imprisonment for up to one year for raping a prostitute. Such a provision was challenged through a writ petition before the Supreme Court, wherein the Court nullified the law.<sup>21</sup> Thus, discrimination in punishment is prohibited for sexual offences against different groups of women.

However, as there are no specific laws that provide punishment for sexual offences against men, laws are unable to protect violence against men and homosexuals. **Thus, a mark of 1 out of 2 is allotted to this question.**

<sup>17</sup> Chapter 4 of the Gender Equality and Women Empowerment, National Plan of Action, HMG/Ministry of Women and Social Welfare and Canadian Co-Operation Office, Kathmandu, November 1997.

<sup>18</sup> No. 1 and 3 of the Chapter on Rape in the Country Code, 2020 (1963).

<sup>19</sup> No. 9 A of the Chapter on Rape in the Country Code, 2020 (1963).

<sup>20</sup> Section 16 (2) of the Children's Act, 2048 (1991).

<sup>21</sup> Sapana Pradhan Malla vs. HMG/Nepal, Publication of Judgments relating to Human Rights (special issue) Supreme Court, 2059 (2002), pp. 144 -151.



## PRISONS/CORRECTIONAL LAWS

Prisoners are part of society and will return to society after completing their sentences. Furthermore, prisoners have human rights. They are imprisoned for their crimes, and their HIV-positive status cannot be used to treat them differently from other prisoners.

Intervening among prisoners to protect them from HIV infection is vital because the risk of HIV transmission, such as unsafe sex (whether consensual or coerced) and syringe sharing, remains in prison. Protecting the rights of HIV-positive prisoners and preventing further infection among prisoners is the responsibility of prison authorities.

1. Does the law or policy provide for at least access equal to the outside community to the following HIV-related prevention and care services to people in prisons or correctional facilities:
  - (a) Information and education?
  - (b) Voluntary testing?
  - (c) Access to the means of prevention (i.e., condoms and bleach or clean injecting equipment)?
  - (d) Treatment?

**Score 0.50 for each affirmative answer, maximum score of 2.**

### (a) Information and education

#### Law

Laws related to prisoners provide prisoners the right to meet with relatives and friends as well as legal practitioners or lawyers. Facilities are provided to send and receive letters, after they are censored and pass through the Chief of the Prison,<sup>1</sup> thus allowing prisoners' access to information related to HIV. Similarly, the law provides prisoners with libraries inside prison and a radio listening center.<sup>2</sup>

Since materials, including information and education related to HIV, can be supplied only with the permission of a prison's authorities, prisoners do not have equal access to information and education materials related to HIV, as do people outside prisons. Access depends on the conscience of prison authorities. **Thus, a mark of 0.25 out of 0.5 is allotted to this question.**

#### Policy

The National HIV/AIDS Strategy has adopted a strategy of developing and distributing appropriate education material in prisons and implementing peer education activities on HIV/AIDS/STDs among prisoners.<sup>3</sup>

1 Rule 26 of the Prison Regulation, 2020 (1963).

2 Rule 33 of the Prison Regulation, 2020 (1963).

3 National HIV/AIDS Strategy (2002–2006). 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal, p. 27 (Nepali language version).

**(b) Voluntary test**

**Law**

There is no legal provision regarding voluntary testing of HIV. Although there is no law that prohibits voluntary testing, in the absence of a law protecting their rights, prisoners do not have the same access to the testing (within or outside the prison) as do people outside of prison. **Thus, a mark of 0.25 out of 0.5 is allotted to this question.**

**(c) Access to the means of prevention**

**Law**

Prison rules provide for adequate health care inside prison.<sup>4</sup> According to this provision, prison authorities should provide healthy food for prisoners, arrange for sports inside the prison, and provide a well-managed and clean prison. However, the law has failed to incorporate the means or instruments for HIV/AIDS prevention, such as condoms, bleach, and clean syringes. **Thus, a mark of 0 out of 0.5 is allotted to this question.**

**Policy**

The National HIV/AIDS Strategy adopted a strategy to allow the possession and distribution of condoms in prisons. One of the objectives of the Strategy is to improve the awareness and understanding of policymakers in the prevention of HIV infection through the use of protection during sexual activities or exchange of syringes inside prisons.<sup>5</sup>

**(d) Treatment**

**Law**

The Prison Act allows mentally or physically sick prisoners to be treated by a government doctor.<sup>6</sup> With a recommendation of a government doctor, the prisoner may be admitted to a hospital if the prisoner is seriously ill.<sup>7</sup> **Thus, a mark of 0.5 out of 0.5 is allotted to this question.**

**Policy**

The National HIV/AIDS Strategy adopted a strategy to ensure that prisoners living with HIV/AIDS have access to quality care and support and to establish counseling services to prisoners through NGOs.<sup>8</sup>

2. (a) Does the law or policy not require compulsory HIV testing of prisoners on entry and exit?  
(b) Does the law or policy not require segregation of prisoners merely on the basis of their HIV-status as opposed to behavior?

**Score 1 for each affirmative answer, maximum score of 2.**

4 Rule 38 of the Prison Regulation, 2020 (1963).

5 National HIV/AIDS Strategy (2002–2006). 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/ Nepal, pp. 26-27 (Nepali language version).

6 Section 11 of the Prison Act, 2019 (1962).

7 Section 11 of the Prison Act, 2019 (1962).

8 National HIV/AIDS Strategy (2002–2006). 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/ Nepal, p. 28 (Nepali language version).

(a) **Compulsory HIV testing of prisoners**

**Law**

There is no legal provision that requires compulsory HIV testing of prisoners upon entry and exit. However, the Infectious Disease (Control) Act has a general provision permitting the Government to issue an order for any person or group of people as appropriate to prevent the spread of infectious disease.<sup>9</sup> Therefore, there is a possibility of prisoner's being compulsory tested at any time. **Thus, a mark of 0.5 out of 1 is allotted to this question.**

(b) **Segregation of prisoners on the basis of HIV-status**

**Law**

The Prison Act provides that sick prisoners be separated from the rest of the prison population, if possible.<sup>10</sup> Although it does not specifically state that HIV infection is a ground for segregation, HIV-positive prisoners are being segregated by implying that they are sick. **Thus, a mark of 0 out of 1 is allotted to this question.**

**HIV-positive prisoners are kept separately**

In the Central Jail in Kathmandu, HIV-positive prisoners are kept separately from other prisoners.

*Source: Central Jail, Jaggnath Dewal, Kathmandu, October 2003.*

3. **Does the law or policy provide legal protection of prisoners against involuntary acts that may transmit the virus (i.e., rape, sexual violence, or coercion)?**

**Score 2 for affirmative answer.**

**Legal protection of prisoners against involuntary acts**

**Law**

Sexual violence against female prisoners is dealt with under the general laws. Moreover, the Chapter on Miscellaneous in the Country Code provides that if any government official rapes a female prisoner, an additional one-year sentence shall be added to the rape sentence.<sup>11</sup> However, this protection is only applicable to female prisoners and there is no law providing for the protection of male prisoners from forced or unwanted sexual relations or sexual exploitation. **Thus, a mark of 1 out of 2 is allotted to this question.**

4. (a) **Does the law or policy enable nondiscriminatory access to facilities and privileges for HIV-positive prisoners compared with other prisoners?**

(b) **Does the law or policy provide for confidentiality of prisoner's medical/personal information, including HIV status?**

**Score 1 for each affirmative answer, maximum score of 2.**

9 Section 2 (1) of the Infectious Disease (Control) Act, 2020 (1963).

10 Section 6 (1)(e) of the Prison Act, 2019 (1962).

11 No. 5 of the Chapter on Miscellaneous in the Country Code, 2020 (1963).

(a) **Nondiscriminatory access to facilities and privileges for HIV-positive prisoners**

**Law**

There is no specific law that discriminates against HIV-positive prisoners in terms of access to facilities and benefits. However, since prisoners can be segregated on the basis of sickness, they might not be able to access and enjoy all available facilities and benefits as do other prisoners. It all depends on the conscience of the prison authorities. **Thus, a mark of 0.5 out of 1 is allotted to this question.**

(b) **Confidentiality of prisoner's medical/personal information, including HIV-status**

**Law**

The Prison Act, Prison Regulation and other prison-related by-laws do not have any provision regarding the confidentiality of medical and personal information of prisoners. The Prison Regulation accords the head of the prison control over personal meetings and letters, as well as the right to censor letters and materials of prisoners.<sup>12</sup> In addition, the segregation of sick prisoners may disclose the health conditions of HIV-infected prisoners, and the right to privacy of such prisoners may be adversely affected. Since there is no law providing protection of the right to privacy of prisoners, their medical and personal information may easily be disclosed. **Thus, a mark of 0 out of 1 is allotted to this question.**

5. **Does the law or policy (e.g., sentencing) provide for medical conditions, such as an AIDS-defining illness, as grounds for compassionate early release or diversion to alternatives other than incarceration?**

**Score 2 for affirmative answer.**

**Medical conditions as grounds for diversion to alternatives other than incarceration**

**Law**

The duration of hospitalization for any prisoner admitted to hospital due to serious illness can be deducted from the prisoner's imprisonment period.<sup>13</sup> However, there is no specific law that provides for the release of prisoners before their imprisonment period on medical reasons, including AIDS-related illnesses. **Thus, a mark of 0 out of 2 is allotted to this question.**

12 Rule 26 of the Prison Regulation, 2020 (1963).

13 Section 11 of the Prison Act, 2019 (1962).

## EMPLOYMENT

The unfair discrimination against workers with HIV/AIDS, the availability of appropriate prevention measures for occupational health and safety, and the availability of adequate compensation to those who acquire HIV occupationally, are areas of concern for employment laws with regard to HIV/AIDS.

It has been proven that PWHA are able to lead reasonably long and productive lives; furthermore, they are not dangerous to other workers, except in certain circumstances, such as surgery to parts of the body where there is poor visual access. Therefore, employees should not be obliged to disclose their HIV status to employers, and an HIV-positive status should not be a ground for denying the right to employment and employment facilities to PWHA. The deprivation of employment to PWHA will further increase the economic burden of the epidemic.

1. Does the law or policy prohibit HIV screening for general purposes in public and private employment (i.e., appointment, promotion, training, and benefits)?

**Score 2 for affirmative answer.**

### Prohibition of HIV screening for general purposes in employment

#### Law

Although there is no legal provision specifically requiring HIV testing for appointment, promotion, training, or other facilities for employees in government, there is a mandatory provision requiring the submission of a certificate of health stating that the employee is not suffering from a serious or contagious disease before receiving a public appointment, including in the civil services.<sup>1</sup> However, the employee may be appointed if the certified doctor recommends that the candidate can carry out their prescribed functions.<sup>2</sup>

In order to get new recruits in the Royal Nepalese Army,<sup>3</sup> Nepal Police,<sup>4</sup> and Armed Police,<sup>5</sup> the candidate must be declared healthy after receiving health check-up carried out by the prescribed medical board or doctor. Any medical and physical disability is grounds for rejection.

1 Rule 19 of the Civil Service Regulation, 2050 (1993).

2 Schedule 5 of the Civil Service Regulation, 2050 (1993), Schedule 7 of the Nepal Television By-Laws, 2055 (1998).

3 Rule 4 (c) of the Royal Nepalese Army Recruitment Rules, 2019 (1963); Rule 3 (f) of the Royal Nepalese Army Recruitment, Promotion, and other various General Provisions Rules, 2020 (1964); Rule 5 (e) of the Army Legal Department (Recruitment, Promotion, and Terms of Service) Rules, 2019 (1960); Rules 6 and 7 of Boys (Recruitment and Terms of Service) Rules, 2028 (1971).

4 Rule 13 (j) of the Police Regulation, 2049 (1992).

5 Rules 8 and 9 of the Armed Police Regulation, 2060 (2003).

The law does not require proof of good health for employment in the private sector; however, there are reported cases in which employers in the private sector have refused employment to individuals known to be HIV-positive, or required people to resign from their positions if the employer found out that they were HIV-positive.<sup>6</sup>

As the law does not prohibit HIV screening for general purposes in either public or private employment, **a mark of 0 out of 2 is allotted to this question.**

2. (a) **Does the law or policy require implementation of universal infection control measures, including training and provision of equipment, in settings involving exposure to blood/body fluids (e.g., first aid, and health care work) in the workplace?**

(b) **Does worker's compensation legislation cover occupational transmission of HIV?**

**Score 1 for each affirmative answer, maximum score of 2.**

(a) **Implementation of universal infection control measures in workplace**

#### **Law**

The labor law, which is applicable to the organized sector, specifically requires that each establishment make arrangements for medical treatment with a minimum facilities within the workplace. According to the law, the management of an enterprise where 50 or more employees work at a time must arrange to have on staff a person having general medical knowledge; where 400 or more employees work at a time, the management must arrange to have a treatment center under the supervision of a trained and experienced health assistant, along with the necessary medicines and first-aid equipment; and where 1,000 or more employees work at a time, the management must arrange to have a health center with a doctor and health assistant, along with the necessary medicines and first-aid equipment.<sup>7</sup>

The provision of medical assistance in the workplace has attempted to address health care needs in the workplace. However, due to the absence of any regulation requiring maintenance of UICP and appointment of trained or experienced personnel, **a mark of 0 out of 1 is allotted to this question.**

(b) **Compensation legislation for occupational transmission**

#### **Law**

The Labor Act provides that if an employer learns that an employee or worker is suffering from any occupational disease, this information must be forwarded to the Labor Office within seven days. On receipt of such information, the Labor Office may appoint an investigation officer to inquire about the disease.<sup>8</sup> A similar provision has been made to the Labor Regulation Related to Tea Estates.<sup>9</sup> However, none of these laws has clarified they type of compensation or benefits that must be provided in the case

6 Consultation Meeting on HIV/AIDS and Human Rights Audit Tool, October 21, 2003, organized by FWLD, Kathmandu.

7 Rule 27 of the Labor Regulation, 2050 (1993).

8 Section 35 of the Labor Act, 2048 (1991); Rule 44 of the Labor Regulation, 2050 (1993).

9 Rule 41 of the Labor Regulation Related to Tea Estates, 2050 (1993).

of suffering caused by an occupational disease. Furthermore, the employee is entitled to compensation only if an investigation officer states in the investigation report that compensation must be given.

The labor law provides for medical expenses as compensation to a worker or employee wounded by an accident while working in the enterprise and who must seek treatment.<sup>10</sup> In addition, in case any worker or employee becomes physically disabled while working, this individual shall be paid compensation according to the percentage of disabilities.<sup>11</sup>

Although the Labor Act provides for accidental insurance for workers in the transportation sectors,<sup>12</sup> and the Civil Service Act<sup>13</sup> and Nepal Health Services Act<sup>14</sup> provide for the general insurance of employees, no health insurance provision exists for occupational diseases. **Thus, a mark of 0 out of 1 is allotted to this question**

3. (a) Does the law or policy provide for employment security while HIV-positive workers are able to work (e.g., unfair dismissal rules)?
- (b) Does the law or policy require that social security benefits are available to people with HIV/AIDS who are too ill to work?

**Score 1 for each affirmative answer, maximum score of 2.**

**(a) Employment security for HIV-positive workers who are able to work**

**Law**

There is no specific law that provides employment security for a PWHA who is able to continue employment. However, since misconduct and age are the only grounds for termination<sup>15</sup> (HIV infection is not grounds for termination), **a mark of 0.5 out of 1 is allotted to this question.**

**(b) Social security benefits to PWHA who are too ill to work**

**Law**

The law does not guarantee social security to PWHA who are too ill to work. However, the Civil Services Regulation,<sup>16</sup> Nepal Health Services Regulation,<sup>17</sup> Military Leave Rules,<sup>18</sup> Police Regulation,<sup>19</sup> and Armed Police Regulation<sup>20</sup> have made provisions for additional leave of up to one year in the case of serious illness.

10 Rule 15 of the Labor Regulation, 2050 (1993).

11 As per the Rule 16 of the Labor Regulation, 2050 (1993), the compensation provision only covers employees' physical disabilities and does not account to disabilities due to HIV or other infections.

12 Section 47 of the Labor Act, 2048 (1991).

13 Section 37 of the Civil Service Act, 2049 (1992).

14 Section 43 of the Nepal Health Services Act, 2053 (1996).

15 Section 59, 60, and 61 of the Civil Service Act, 2049 (1992); Section 15, 50, 51 of the Labor Act, 2048 (1991).

16 Rule 58 (9) of the Civil Services Regulation, 2050 (1993).

17 Rule 50 (9) of the Nepal Health Services Regulation, 2053 (1996).

18 Rule 7 of the Military Leave Rules, 2029 (1972).

19 Rule 55 (4) of the Police Regulation, 2049 (1992).

20 Rule 104 (7) of the Armed Police Regulation, 2060 (2002).

Besides this, the labor law provides for sick leave of up to 15 days a year to employees or workers with half payment,<sup>21</sup> and laws related to government services, including civil services, provide for sick leave of 12 days in a year with full payment.<sup>22</sup>

In public service, employees are entitled to a pension after completing a certain period of service.<sup>23</sup> Furthermore, in both the civil and health services, if the HMG/N-formed Medical Board certifies that any employee is unable to work regularly due to a physical or mental disease, the employee may be given retirement adding up to seven years in his/her service period.<sup>24</sup>

In case worker or employee is wounded in an accident while working in the enterprise and has to seek treatment, the management must pay full remuneration if treatment is carried out in the hospital and half remuneration if treatment is carried out at home.<sup>25</sup> But, if the treatment takes more than a year, the employer is not liable to pay any remuneration.<sup>26</sup>

Although sick leave and additional leave are provided to employees, there is no specific provision requiring social security to be made available to PWHA. In the case of the civil service, an employee person can be retired after adding a service period of seven years; however, no provision has been made with regard to civil employees who are not entitled to a pension even after adding the seven-year service period. Similarly, there is no specific provision of providing additional financial benefits to employees infected with HIV. **Thus, a mark of 0.5 out of 1 is allotted to this question.**

4. (a) **Does the law or policy require provision of access to general HIV/AIDS information and education for occupational health and safety reasons (e.g., counseling of workers following needle stick injuries)?**
- (b) **Does the law or policy require provision of access to general HIV/AIDS information and education for workers traveling outside the country especially, areas of high HIV incidence?**

**Score 1 for each affirmative answer, maximum score of 2.**

- (a) **General HIV/AIDS information and education for occupational health and safety reasons**

#### **Law**

There is no specific provision in the law that provides access to general HIV/AIDS information and education for the occupational health and safety, such as counseling and advice to be given to health workers engaged in professional safety and health-related areas in case of wounds that may be caused through the medium of a needle or similar equipment. **Thus, a mark of 0 out of 1 is allotted to this question.**

21 Rule 31 of the Labor Regulation, 2050 (1993).

22 Rule 58 (1) and (2) of the Civil Services Regulation, 2050 (1993); Rule 6 of the Military Leave Rules, 2029 (1972); and Rule 55(1) of the Police Regulation, 2049 (1992).

23 Twenty years of service period for civil service as per the Section 37 of the Civil Services Act, 2049 (1992); 17–20 years of the service period as per the Rule 3 of the Royal Nepal Army (Pension, Gratuity and Other Facilities) Regulation, 2033 (1976); and 16–20 years of the service period as per the Rule 101 of the Police Regulation, 2049 (1992).

24 Section 34 (a) of the Civil Service Act, 2049 (1992); Section 44 of the Nepal Health Services Act, 2053 (1996).

25 Rule 15 of the Labor Regulation, 2050 (1993).

26 Rule 21 of the Labor Regulation, 2050 (1993).



**(b) General HIV/AIDS information and education for workers traveling outside the country**

**Law**

No specific provision has been made in the law with regard to informing and educating workers traveling to destinations outside Nepal in connection with work about HIV/AIDS. On June 17, 2003, the Labour and Transport Department decided on the compulsory provision of pre-orientation for workers traveling for foreign employment, and on the submission of an orientation certificate to the Labour Department in order to obtain permission for foreign employment. The purpose of the orientation is to pre-inform workers traveling for foreign employment about the social, cultural, political and other context of their destinations.<sup>27</sup> However, it does not specifically require the Government to provide orientation or information on HIV/AIDS. **Thus, a mark of 0 out of 1 is allotted to this question.**

**Policy**

The National HIV/AIDS Strategy adopted several strategies in order to reduce the vulnerability of mobile populations and their families to STDs and HIV/AIDS. These include the establishment of pre-departure and post-arrival information and counseling services for HIV/AIDS/STDs and mobility at prioritized locations; the use of peer education to address knowledge and group norms regarding behavioral risk factors of labor migration and trafficking; and the increase of communication between labor migrants and their families.<sup>28</sup>

In addition, the Internal Working Procedures Guidelines on Overseas Employment provides that employees traveling overseas on business should travel only after having a proper medical checkup. An employee who travels to a foreign country without a medical checkup and is found to be sick while there, must return to Nepal.<sup>29</sup> However, the Guidelines do not mention information related to HIV/AIDS.

**5. Does the law or policy not exclude PWHA from working in the following industries if adequate precautions are taken to prevent transmission:**

- (a) Health professionals?**
- (b) Skin penetration workers and food/pharmaceutical handlers?**
- (c) Emergency workers and police?**
- (d) Sex workers?**

**Score 0.50 for each affirmative answer, maximum score of 2.**

**Inclusion of PWHA in work with adequate precautionary measures**

**Law**

The Constitution of the Kingdom of Nepal guarantees the right to equality and freedom to choose a profession.<sup>30</sup> However, the Infectious Disease Control Act provides that if any person is found infected

27 Gorkhapatra National Daily, July 25, 2003.

28 National HIV/AIDS Strategy (2002–2006). 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal, pp. 23–24 (Nepali language version).

29 No. 4 (9) of the Internal Working Procedures Guidelines on Overseas Employment, 2057 (2000), Ministry of Labor and Transportation Management, HMG/Nepal, Kathmandu.

30 Articles 11 and 12 of the Constitution of the Kingdom of Nepal, 2047 (1990).

or is likely to be infected with an infectious disease, HMG/N can issue an order against these persons or group of people,<sup>31</sup> which may exclude them from jobs on the basis of an HIV-positive status.

The Medicines Production Code specifically mentions that a person with an infectious disease should not be involved in the production of medicine.<sup>32</sup> It requires that a person involved in producing medicine take effective precautionary measures, such as putting on shoes, caps, masks, gloves, and spectacles to cover various parts of the body;<sup>33</sup> however, the Code is silent as to whether PWHA, having taken all necessary precautions, may be allowed to work. The law is also silent with regard to people engaged in acts of skin penetration, the police, sex workers, or people engaged in essential services.

Even though there is no specific provision allowing segregation on the basis of HIV/AIDS, there is a possibility of their exclusion from work. **Thus, a mark of 1 out of 2 is allotted to this question.**

---

31 Section 2 of the Infectious Disease Control Act, 2020 (1963).

32 Rule 8 (e) of the Medicines Production Code, 2041 (1985).

33 Rule 8 (c) of the Medicines Production Code, 2041 (1985).

## EQUALITY OF STATUS OF VULNERABLE POPULATIONS

Today, everyone is vulnerable to HIV infection. However, there are a few specific groups who are more susceptible to it. These populations include women, children, indigenous populations, MSM, IDUs, FSW and migrants. The vulnerability factors of these populations range from their lower status in the society, lack of information and education, economic dependency, and their “unacceptable” behavior. In addition to being more vulnerable to infection, they are the ones who are most disempowered to cope with the impact of infection. To achieve an effective response to the epidemic, the vulnerability factors of these groups should be addressed.

1. Does the law or policy ensure equal status of men and women in the following areas:

- (a) Ownership of property and inheritance?
- (b) Marital relations (e.g., divorce and custody)?
- (c) Capacity to enter into contracts, mortgages, credit, and finance?
- (d) Equal remuneration for equal work?

**Score 0.50 for each affirmative answer, maximum score of 2.**

(a) Ownership of property and inheritance

**Law**

The 11th amendment of the Country Code attempts to provide equal rights of inheritance to women and men. In accordance with this, the rights of unmarried women, married women, divorced women, and widows have been protected by an amendment of the previously existing discriminatory laws. However, even though the 11th amendment accepts unmarried daughters as joint heirs,<sup>1</sup> it has a discriminatory stipulation that the share acquired by them must be returned to the other heirs of parental property once they are married.<sup>2</sup>

In the law of succession, in case an unmarried daughter inherits succession property, she must return this property to the successor of the parental property after her marriage.<sup>3</sup> Furthermore, married daughters are treated unequally as compared with sons and unmarried daughters.<sup>4</sup> Due to the legal requirements

1 No. 1 of the Chapter on Partition in the Country Code, 2020 (1963).

2 No. 16 of the Chapter on Partition in the Country Code, 2020 (1963).

3 No. 12 A of the Chapter on Inheritance in the Country Code, 2020 (1963).

4 No. 2 and 7 of the Chapter on Inheritance in the Country Code, 2020 (1963).

on women to return inherited property to the family, which do not apply to men, women's groups strongly feel that rights are still created on the basis of marital status which discriminates against women.

Pursuant to another provision of the Chapter on Partition in the Country Code, after marriage a woman has equal rights over shares of her husband's property.<sup>5</sup> However, she has no rights to live independently until her husband provides adequate means for her survival.<sup>6</sup> The new amendment provides a widow the right to claim partition at any time with absolute ownership of the property once she acquires it.<sup>7</sup>

As the property law has not been able to incorporate even *formal equality* as enshrined in the Constitution of Kingdom of Nepal, **a mark of 0.25 out of 0.5 is allotted to this question.**

#### HIV-positive man denied of maintenance

When Upendra,\* a 31-year-old, HIV-positive male, asked his parents for medical expenses, his parents refused to support him, saying that even if they provided medicines he would not survive. They said, "If you are not going to survive, why do you want to waste money and give us a difficult life."

\*Pseudonym

*Source: Based on interview with the victim. Interview taken by FWLD during the research period.*

#### (b) Marital relations

##### Law

To get married, a man and woman must be 20 years of age, or 18 years with approval from their parents.<sup>8</sup> Under the Marriage Registration Act, a woman must be at least 18 years of age, whereas the man must be at least 22 years of age.<sup>9</sup> However, the choice and consent of marriage is often challenged by families, especially in relation to girls. Cases have also been reported where homosexuals are forced to enter into heterosexual marriages.

#### Forced marriage increasing the vulnerability

Naresh and Pradeep,\* two men, have been sexual partners from a very young age. However, due to family pressure and to protect himself from social stigma, Pradeep had to enter into a marital relationship with Seema. Pradeep and Seema had a son; however, his relationship with Naresh continued.

One day Naresh went to Rakshol to seek treatment of jaundice. During the treatment, Naresh was informed that he was HIV-positive and that he should take necessary precautions. Naresh informed Pradeep of his status and suggested that he also be tested for HIV. However,

5 No. 1 of the Chapter on Partition in the Country Code, 2020 (1963).

6 No.10 of the Chapter on Partition in the Country Code, 2020 (1963).

7 No. 12 of the Chapter on Partition in the Country Code, 2020 (1963).

8 No. 2 of the Chapter on Marriage in the Country Code, 2020 (1963).

9 Section 4 (3) of Marriage Registration Act, 2028 (1971).

it was not an easy decision for Pradeep since he was concerned about his wife and child. He is still not been able to disclose his bisexuality and the possibility of being HIV-positive to his wife.

\* Pseudonym

*Source: Consultation Meeting on HIV/AIDS and Human Rights Audit Tool, October 21, 2003, Organized by FWLD, Kathmandu.*

The Chapter on Husband and Wife in the Country Code not only provides for equal status relating to divorce for both the husband and wife, but also grants special preference to the wife in submitting the divorce application before the Court,<sup>10</sup> whereas the husband must submit an application to the Village Development Committee or Municipality.<sup>11</sup> The wife is entitled to an equal share from her husband's property or maintenance at the time of divorce,<sup>12</sup> and the Country Code stipulates that, until the process of partition is accomplished, the husband must bear all expenses for his wife's survival.<sup>13</sup>

Conditions for getting a divorce have been provided to both the husband and wife; such as either spouse becoming infected by a transferable or incurable sexual disease, or of causing death or serious bodily harm or mental torture to the spouse, or of having an extramarital relationship or living in separation for three years.<sup>14</sup> Similarly, it is also provided that a husband can divorce his wife if she is unable to give birth within 10 years of marriage; in the case of a wife, she can divorce her husband if he is impotent.<sup>15</sup>

Despite the special provisions of equal status relating to divorce, the Chapter on Marriage persists in discriminating against women by providing exemptions to men for bigamy. If a wife is infected by a transferable, incurable sexual disease, if she has become insane, crippled or blind, or if she has been unable to give birth within 10 years of marriage, the husband can remarry without seeking a divorce.<sup>16</sup>

After a divorce, or if a husband and wife are living separately, the wife is provided custody of any children below five years of age.<sup>17</sup> The husband is liable in case the mother is unwilling to take care of the child. Despite these provisions, if a mother remarries and the child is more than five years of age, she is not able to bring up her children from the previous marriage.<sup>18</sup>

Therefore, because women are treated unequally regarding bigamous marriage and child custody rights, **a mark of 0.25 out of 0.5 is allotted to this question.**

10 No. 1 and 1 A of the Chapter on Husband and Wife in the Country Code, 2020 (1963).

11 In case of *Radheshyam Parajuli vs. HMG Nepal, Writ No. 3692, 2056. 10. 4 B.S.* (January 8, 2000), this legal provision has also been justified by Supreme Court as a special law in favor of women.

12 No. 4 (a) of the Chapter on Husband and Wife in the Country Code, 2020 (1963).

13 No. 4 (b) of the Chapter on Husband and Wife in the Country Code, 2020 (1963).

14 No. 1 (1) and (2) of the Chapter on Husband and Wife in the Country Code, 2020 (1963).

15 No. 1 (1) and (2) of the Chapter on Husband and Wife in the Country Code, 2020 (1963).

16 No. 9 of the Chapter on Marriage in the Country Code, 2020 (1963).

17 No. 3 of the Chapter on Husband and Wife in the Country Code, 2020 (1963).

18 No. 3 of the Chapter on Husband and Wife in the Country Code, 2020 (1963).

### (c) Capacity to enter into contracts, mortgages, credit, and finance

#### Law

There are various discriminatory laws that provide secondary status to women in comparison to the status of men. Although there is no law that directly discriminates against women in entering into contracts, mortgages, loans, or finance-related transactions, restrictions are made in the use of property.<sup>19</sup> If a woman has taken on a loan, that loan cannot be taken back if the collateral is more than the one-half that she can use independently.<sup>20</sup> **Therefore, a mark of 0.25 out of 0.5 is allotted to this question.**

Due to the social traditions and practices, even where laws guarantee rights, in reality women are unable to exercise the aforesaid rights. Because of this, they lag behind their male counterparts in relation to contract, mortgage, credit, and finance transactions.

#### Policy

Discriminatory provisions exist against women, requiring them to be literate with a source of income, to obtain life insurance in the National Insurance Corporation, whereas the same condition is not applicable to men. Furthermore, a woman with a source of income can only insure up to an amount of NRs. 25,000/-. For women who have no source of income, their husbands or guardians must enter into an agreement or commitment to pay the insurance premium.<sup>21</sup> This provision denies women the right to secure themselves and the right to enter into an insurance agreement.

### (d) Equal remuneration for equal work

#### Law

The Constitution of the Kingdom of Nepal guarantees equal remuneration to men and women for equal work.<sup>22</sup> The Labor Regulation also provides that all employees shall be paid equal wages for equal work.<sup>23</sup> However, the aforesaid provision is not applicable to the unorganized sector, and in practice equal wages for equal work are not always provided. There is no uniformity of remuneration for men and women working in the unorganized sectors, such as agriculture and construction; thus, discrimination is still prevalent.

Even though special authority is conferred to local bodies to fix wages in the informal sectors,<sup>24</sup> there is no legal provision to determine the standard of remuneration. **Hence, a mark of 0.25 out of 0.5 is allotted to this question.**

19 No. 2 of the Chapter on Women's Exclusive Property in the Country Code, 2020 (1963).

20 No. 3 of the Chapter on Women's Exclusive Property in the Country Code, 2020 (1963).

21 Introduction to Nonlife or Life Insurance Profession Regulated by National Insurance Corporation (*Rashtriya Beema Samanathan Dvara Sanchalit Nijivan Bima Byavasaya tatha Jivan Bima Byavasaya ko Chinari*), published by National Insurance Corporation, Kathmandu, 2000, p. 30.

22 Article 11(5) of the Constitution of the Kingdom of Nepal, 2047 (1990).

23 Rule 11 of the Labor Regulation, 2050 (1993); Rule 11 of the Labor Regulation Related to Tea Estates, 2050 (1993).

24 Rule 130, 131, 132, of the Local Bodies (Financial Administration) Regulation, 2056 (1999).

2. Does the law or policy ensure equality on the grounds of membership of groups that are, or are perceived to be, more vulnerable to HIV/AIDS in the jurisdictions (e.g., gender, homosexuality, caste, indigenous populations)?

**Score 2 for affirmative answer.**

### Equality on the grounds of membership of groups more vulnerable to HIV/AIDS

#### Law

The Constitution of the Kingdom of Nepal guarantees equality by endorsing that no citizen shall be discriminated against on the grounds of religion, race, sex, caste, tribe, or ideological conviction.<sup>25</sup> In addition, the Supreme Court of Nepal recognizes the commitment of the State to bring to an end the practice of untouchability by declaring void the untouchable custom incorporated in the Country Code.<sup>26</sup> Besides this, the Supreme Court of Nepal issued the directive order to HMG/N stating that, not only in law but in practice, equality should be ensured and it is the responsibility of the government to observe the laws enacted in compliance with the constitutional provision of the right to equality.<sup>27</sup> However, these provisions have not been able to address discrimination based on caste in the private sector.

The Constitution not only guarantees non-discrimination based on gender, but also recognizes the Substantive Model of Equality as provided in the Convention on the Elimination of All Forms of Discrimination against Women.<sup>28</sup> Recognizing the principle of non-discrimination, the Supreme Court quashed many discriminatory legal provisions against women, issuing a directive order to HMG/N to enact laws based on equality.<sup>29</sup> However, even today there are many discriminatory laws that consider women as subordinate and secondary citizens.<sup>30</sup>

With the objectives of establishing the rights of various communities, the Constitution provides each community in the Kingdom of Nepal the right to preserve its culture and ethnicity.<sup>31</sup> Under this, the National Foundation for Development of Indigenous Nationalities Act<sup>32</sup> was enacted to empower indigenous nationalities and bring them in line with the national mainstream.

The Constitution of the Kingdom of Nepal has not been able to guarantee equality on the grounds of sexual orientation and the Country Code has makes unnatural sex a punishable offense with up to one-year of imprisonment.<sup>33</sup> **Thus, a mark of 1 out of 2 is allotted to this question.**

25 Article 11 (3) of the Constitution of the Kingdom of Nepal, 2047 (1990).

26 Man Bahadur Bishwokarma vs. HMG/Nepal, NKP, 2049 (1994), Vol. 12, p. 1010.

27 Durga Sob vs. HMG/Nepal, Writ No.3644, Decision Date: April 18, 2001.

28 Article 11 (1), (2) and (3) of the Constitution of the Kingdom of Nepal, 2047 (1990).

29 Meera Dhungana vs. HMG/Nepal, NKP, 2052 (1995), Vol. 6, p. 462; Dr. Chanda Bajracharya vs. HMG/Nepal, NKP, 2053 (1996), Vol. 7, p. 537; Sapana Pradhan Malla for FWLD vs. HMG/Nepal, Publication of Judgments relating to Human Rights (special issue) Supreme Court, 2059 (2002), pp. 144 -151; Reena Bajracharya vs. HMG/Nepal, NKP, 2057 (2000), Vol. 5, p. 376; Meera Dhungana for FWLD vs. HMG/Nepal, Supreme Court Bulletin, 2059 (2002), Vol. 5, p. 13.

30 Forum for Women, Law and Development (FWLD). 2000. *Discriminatory Laws in Nepal and Their Impact on Women: A Review of the Current Situation and Proposals for Change*. Kathmandu: FWLD. Annex 1

31 Article 18 of the Constitution of the Kingdom of Nepal, 2047 (1990).

32 Nepal Gazette, Issued Date: 2058/10/25 (February 10, 2002).

33 Section 1 and 4 of the Chapter on Bestiality in the Country Code, 2020 (1963).

3. Does the law or policy not place unreasonable restrictions on members of AIDS service organizations, organization of PWHA or vulnerable groups (e.g., gay men, sex workers, or refugees) in respect of assembly, association, and movement?

Score 2 for affirmative answer.

### Right to assemble, associate, and movement

#### Law

The Constitution of the Kingdom of Nepal provides each Nepali citizen the freedom to assemble peacefully and without arms.<sup>34</sup> The HMG/N may make laws to impose reasonable restrictions on any action that undermines the sovereignty and integrity of the Kingdom of Nepal, which may jeopardize the harmonious relations among the people of various castes, tribes, or communities, or which may undermine the law and order of the Kingdom of Nepal. HIV/AIDS-infected men and women, sex workers, and homosexuals are provided equal rights to the freedom to assemble under this provision. There are no laws imposing unreasonable restrictions for any group or community to assemble peacefully. For example, the Blue Diamond Society, an association of homosexuals, organized a beauty contest for the public (Meta No 1),<sup>35</sup> participated in *Gaijatra*,<sup>36</sup> and organized a national consultation through which their freedom to assemble was exercised.<sup>37</sup>

Likewise, the Constitution of the Kingdom of Nepal provides any group or association the freedom to form unions and associations.<sup>38</sup> However, any act that undermines the sovereignty and integrity of the Kingdom of Nepal, which jeopardizes the harmonious relations among the people of various castes, tribes, or communities, which instigates violence and destructive activities, or which is contrary to decent public morality, is restricted.

The Supreme Court of Nepal holds that even children may organize and register an institution; while giving this verdict, the Court stated that all the citizens of Nepal can exercise the right to freedom of organization as provided by the Constitution until and unless restricted under certain conditions.<sup>39</sup> Different associations have become active after registering themselves to provide consultation/counseling services to PWHA.<sup>40</sup> Although homosexuals have their own organization, it is not registered openly as a homosexuals group.<sup>41</sup> Neither are sex workers able to form their own association.

The Constitution of the Kingdom of Nepal protects the right of movement for all citizens.<sup>42</sup> However, this right may be curtailed if it jeopardizes the harmonious relations among the people of various castes, tribes, or communities as prescribed under the law. Similarly, the Civil Rights Act provides each

34 Article 12 (2) (b) of the Constitution of the Kingdom of Nepal, 2047 (1990); a similar provision is laid down in Section 6 (2) of the Civil Rights Act, 2012 (1955).

35 The Kathmandu Post Daily, Kathmandu, May 3, 2003.

36 Spacetime Daily, Kathmandu, August 13, 2003.

37 National Consultation Program, February 1, 2003, see more on *HIMAL*, Falgun 1–15 issue, 2059 B.S. (2003).

38 Article 12 (2) (c) of the Constitution of the Kingdom of Nepal; a similar provision is laid down in Section 6 (3) of the Civil Rights Act, 2012 (1955).

39 *Tilottam Poudel vs. Ministry of Home and others*, Supreme Court Bulletin, 2058 (2000), Vol.10, p. 3; *Chandranath Sapkota vs. Ministry of Home and others*, Supreme Court Bulletin, 2058 (2000), Vol. 22, p. 16.

40 Lifesaving and Lifegiving Society (LALS), registered in Kathmandu Chief District Office (CDO) office on September 25, 1996; Prema, registered in Kathmandu CDO Office on June 17, 1998.

41 Blue Diamond Society was registered in the Kathmandu CDO Office on September 12, 2001, not as an *Association of Gay* but as a *Male Sexual Health Program Center*.

42 Article 12 (2) (d) of the Constitution of the Kingdom of Nepal, 2047 (1990).



citizen the right to freedom of movement and freedom to reside in any part of the Kingdom of Nepal.<sup>43</sup> However, incidents have been recorded in which *badi* women from *Nepalgunj (Gaganganj)* were forced to leave the areas where they were residing for years.<sup>44</sup>

Against the aforementioned provisions, however, the Infectious Disease (Control) Act bestows the authority to the HMG/N to control and keep any person or group of people separately under the conditions of infectious or transferable disease.<sup>45</sup> Due to this provision, the right to freedom conferred by the Constitution is in jeopardy for PWHA, as it is obvious that the rights of PWHA or vulnerable groups will be encroached upon if the government issues an order to segregate them. **Thus, a mark of 1.67 out of 2 is allotted to this question.**

**4. Does the law or policy recognize de facto domestic relationships (including sexual relationships) between same-sex and heterosexuals on an equal basis?**

**Score 2 for affirmative answer.**

**Equal recognition of *de facto* domestic relationship between same-sex and heterosexuals**

**Law**

Nepalese law does not recognize homosexuality and heterosexuality on an equal basis. The Constitution does not provide equality to citizens on the basis of sexual orientation. The law limits marital relationships to heterosexuals (male and female),<sup>46</sup> and thereby does not legally recognize marital relationships (*de jure* or *de facto*) among homosexuals.

Even though in *Annapurna Rana's* case,<sup>47</sup> the Supreme Court accepted the reality of a society where men and women can live together without entering into a marital relationship, as well as the existence of unwed mothers, this is yet to be accepted by law. The Chapter on Bestiality in the Country Code criminalizes unnatural sex,<sup>48</sup> it therefore does not recognize any other kinds of sexual activities other than heterosexuality. **Thus, a mark of 0 out of 2 is allotted to this question.**

**Policy**

In order to create a supportive environment for MSM to address their needs, the National HIV/AIDS Strategy adopts strategies to increase awareness among decision makers of the existence of MSM and the risks that they face; to reduce public discrimination against MSM through awareness-raising activities; and to review and amend, if necessary, the legal and policy framework.<sup>49</sup> To some extent, the policy recognizes and accepts the relationship between homosexuals; however, the policy is silent regarding their domestic relationships.

43 Section 6 (4) and (5) of the Civil Rights Act, 2012 (1955).

44 Forum for Women, Law and Development (FWLD), General Welfare Pratisthan (GWP), Women Acting Together for Change (WATCH), Women Cell of Nepal Police (WCNP) and Blue Diamond Society (BDS). 2003. *Report on the Abuse of Commercial Sex Workers and Homosexuals*. Kathmandu: FWLD, GWP, WATCH, WCNP and BDS.

45 Section 2 (1) and (3) of the Infectious Disease (Control) Act, 2020 (1963).

46 No. 2 of the Chapter on Marriage in the Country Code, 2020 (1963); Section 4 and 5 of the Marriage Registration Act, 2028 (1971).

47 *Annapurna Rana vs. Kathmandu District Court and others*, NKP. 2035 (1998) Part 8, p. 476.

48 No. 1 and 4 of the Chapter on Bestiality in the Country Code, 2020 (1963).

49 National HIV/AIDS Strategy (2002–2006). 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal, p. 25 (Nepali language version).

5. Does the law or policy provide for an equal age of consent for heterosexual and homosexual acts?

**Score 2 for affirmative answer.**

The law does not stipulate the definite age of consent for a sexual relationship,<sup>50</sup> although the Chapter on Rape in the Country Code mentions that sexual intercourse with a girl under 16 years of age, even with her consent, shall be considered rape.<sup>51</sup> Therefore, the Country Code implies that a woman over 16 years of age can give her consent for a lawful sexual relationship.

The Chapter on Rape stipulates that anybody who indulges in an unnatural sexual relationship with an infant or girl under the age of 16 shall be prosecuted as a child pedophile.<sup>52</sup> On the basis of this provision, legal action can be taken against any individual who indulges in sexual activities, even with a boy under age 16. However, there appears to be no restriction for a boy under age 16 to have a sexual relationship with a woman over 16 years of age, if it is consensual. On the other hand, child marriage is still prevalent in Nepal. As child marriage is not void *ab initio*, a sexual relationship with a child in a marital relationship is not prohibited by law.

Even though attempts have been made to recognize the age of consent for heterosexual relationships, no attempt has been made to recognize homosexuality. **Thus, a mark of 0 out of 2 is allotted to this question.**

---

50 No. 2 of the Chapter on Marriage in the Country Code, 2020 (1963); Section 4 (3) of the Marriage Registration Act, 2028 (1971).

51 No. 1 of the Chapter on Rape in the Country Code, 2020 (1963).

52 No. 9A of the Chapter on Rape in the Country Code, 2020 (1963).

## REGULATION OF HEALTH CARE PROFESSIONALS AND ETHICAL RESEARCH

Medical/health professionals are the source of preventive education and information. Society trusts the information that medical/health professionals provide. PWHA first learn about their HIV status from medical practitioners; therefore, the manner in which medical professionals disseminate information is crucial in promoting responsible behavior.

In addition, due to the nature of their jobs, health care professionals are a vulnerable population to HIV infection and must use UICP to avoid becoming infected. Professional ethics requires health care professionals to maintain strict confidentiality concerning all personal information obtained from clients in their professional work and to provide their clients with care and treatment without discrimination.

At the same time, however, it is also critical to understand and address the vulnerability factors these professionals face and to ensure that they are protected from HIV in their occupations. It is also vital to provide legal and ethical protection to people who participate in HIV-related research.

1. Does the law or policy provide remedies for breach of health professional standards (e.g., a finding by a registration board of professional misconduct based on codes of conduct in relations to matters such as confidentiality, informed consent, and duty to treat) against medical practitioners; nurses; dentists and dental technicians; and chiropractors, osteopaths, podiatrists, psychologists, physiotherapists, and others?

**Score 2 for affirmative answer.**

### Remedies for breach of health professional standards

#### Law

The Nepal Medical Council Act, which governs medical doctors, stipulates that legal action can be undertaken if a medical doctor is found guilty of professional misconduct. Regulations enacted under this Act and the Code of Ethics, provide that doctors are responsible for treatment of their patients<sup>1</sup> and that disciplinary action, by withdrawing the name of the offending practitioner from the Nepal Medical Council Register Book, shall be taken in violation of the aforesaid responsibility and in misuse of professional competency.<sup>2</sup>

Similarly, the Health Professional Council Regulation enacted under the Nepal Health Professional Council Act incorporates the Code of Ethics for health professionals, which covers all levels of medical practitioners.<sup>3</sup> The Regulation incorporates various provisions, such as the maintenance of decency and confidentiality, the need to be disciplined and trustworthy, the duty not to discriminate against patients, the requirement to carry out those duties within the limitation of the doctor's responsibility, a bar against any activity that may jeopardize the health profession, and the requirement to be responsible for the work done. In the event any health professional behaves contrary to the Code of Ethics, that health care professional's

1 Rule 22 of the Nepal Medical Council Regulation, 2024 (1967); Nos. 2.3.2 and 3.2 of the Code of Ethics, Nepal Medical Council, Kathmandu, January 2001.

2 Section 17 (1) (b) of the Nepal Medical Council Act, 2020 (1963); Rule 23 of the Nepal Medical Council Regulation, 2024 (1967).

3 Rule 13 of the Nepal Health Professional Council Regulation, 2056 (1999).

license may be removed from the record book of the Council.<sup>4</sup> Apart from this, there is a provision of suspending health care professionals during an investigation related to their conduct.<sup>5</sup>

The Nepal Nursing Council Regulation makes the provision of professional ethics for nurses and Assistant Nurse Midwives.<sup>6</sup> Professional conduct of nurses consists of maintaining time and regularity, discipline, obeying orders, maintaining decent behavior, exercising reason to protect the lives of patients, not discriminating against patients, not disclosing known information, and maintaining confidentiality. It is provided that the names of health care professionals shall be withdrawn from the register for not observing the aforementioned professional conduct.<sup>7</sup> **Therefore, a mark of 2 out of 2 is allotted to this question.**

**2. Does the law or policy enable complaints to be made against health care professionals to an independent body?**

**Score 2 for affirmative answer.**

**Complaints against health care professionals to an independent body**

**Law**

In the event that the Nepal Health Professional Council receives information of a violation of professional ethics, through any source, as prescribed by the Nepal Health Professionals Council Regulation, the Council can form an investigation committee to look into the matter.<sup>8</sup> The term “any source” gives broader meaning to the source of information, which also implies a complaint against the health professional made to the Council.

Similarly, the Medical Practitioners Code of Ethics, enacted pursuant to the Nepal Medical Council Act, stipulates that the Health and Professional Ethics Committee may be instituted to investigate the complaint made.<sup>9</sup> Although the Code does not broadly mention the procedure for making a complaint, by providing that the Committee undertakes a preliminary investigation and awards a decision, it recognizes the complaint mechanism. Parties unsatisfied with the Council’s decision have the right to appeal in the Appellate Court.<sup>10</sup> **Thus, a mark of 2 out of 2 is allotted to this question.**

**3. Are specific exceptions, health education and information (general and targeted audiences) contained in**

- (a) Censorship legislation?**
- (b) Broadcasting standards?**

**Score 1 for each affirmative answer, maximum score of 2.**

**(a) Exceptions for health education and information in censorship legislation**

**Law**

There is no specific provision that considers health education and information exceptions to censorship. The Film (Production, Exhibition, and Distribution) Act prohibits the exhibition of film in contrary to public interest, harmony, or morality.<sup>11</sup>

4 Section 18 (1) (b) of the Nepal Health Professional Council Act, 2053 (1996); Rule 18 of the Nepal Health Professional Council Regulation, 2056 (1999).

5 Rule 17 of the Nepal Health Professional Council Regulation, 2056 (1999).

6 Rule 22 of the Nepal Nursing Council Regulation, 2053 (1996).

7 Rule 31 of the Nepal Nursing Council Regulation, 2053 (1996).

8 Rule 14 of the Nepal Health Professional Council Regulation, 2056 (1999).

9 No.10 of the Code of Ethics, Nepal Medical Council, Kathmandu, January 2001.

10 Section 19 of the Nepal Medical Council Act, 2020 (1963); Section 31 of the Nepal Health Professional Council Act, 2053 (1996).

11 Section 8 (3) of the Film (Production, Exhibition, and Distribution) Act, 2026 (1969).

Similarly, the Press and Publication Act stipulates that publication shall be restricted on the limited grounds prohibited by law.<sup>12</sup> Any publication, including books, magazines, or newspapers, as well as those imported from abroad, which may jeopardize the harmonious relations among peoples, or any act which may be contrary to decent public behavior or morality, can be restricted.

However, this stipulation does not mention any exceptional provision regarding the concession of the importation and publication of health-related information and education. **Thus, a mark of 0 out of 1 is allotted to this question.**

**(b) Exceptions for health education and information in broadcasting legislation**

**Law**

The HMG/N enacted the National Broadcasting Act with the objectives of imparting information to all citizens by the medium of language of the nation (Nepali) or national languages.<sup>13</sup> In the process of determining the standard of broadcasting, it has also prescribed the rights and duties of the broadcasters.<sup>14</sup> Pursuant to this, a broadcaster has the duty not to broadcast or allow the broadcasting of programs that may jeopardize the public security, morality, and social dignity.<sup>15</sup> Likewise, the Act stipulates that advertising of immodest kinds of items is forbidden.<sup>16</sup> However, these provisions do not exempt health education and information programs or materials from being forbidden on the basis of immodesty.

Since the laws do not specifically allow for health education and information as an exception, **a mark of 0 out of 1 is allotted to this question.**

**4 Does the law or policy require an independent process for the ongoing evaluation of human research (e.g., establishing ethical review committees), with the following criteria:**

- (a) Scientific validity?**
- (b) Ethical conduct of research?**

**Score 1 for each affirmative answer, maximum score of 2.**

**(a) Independent process for the ongoing evaluation of human research for scientific validity**

**Law**

The Nepal Health Research Council Act has the objective of coordinating health research in Nepal. Pursuant to the Act, the Nepal Health Research Council was established as an independent body authorized to undertake research on various health-related areas within Nepal in line with HMG/N's health policy.<sup>17</sup> The Council provides the necessary advice, direction, perform evaluation, and research coordination activities pertaining to health.<sup>18</sup> The Council also has the authority to grant licenses to individuals or institutions to undertake research in the health sector. Furthermore, it has the authority to validate research results and to make recommendations to HMG/N.<sup>19</sup>

The Medicine Act stipulates that permission be required from the Department of Drugs Management for the distribution of medicines for clinical trials.<sup>20</sup> **Thus, a mark of 1 out of 1 is allotted to this question.**

---

12 Section 14 of the Press and Publication Act, 2048 (1991).  
13 Preamble of the National Broadcasting Act, 2049 (1992).  
14 Section 16 of the National Broadcasting Act, 2049 (1992).  
15 Section 16 (c) of the National Broadcasting Act, 2049 (1992).  
16 Section 15 (1) (b) of the National Broadcasting Act, 2049 (1992).  
17 Section 5 of the Nepal Health Research Council Act, 2047 (1990).  
18 Section 6 of the Nepal Health Research Council Act, 2047 (1990).  
19 Section 6 and 11 of the Nepal Health Research Council Act, 2047 (1990).  
20 Section 31 of the Medicine Act, 2035 (1978).

(b) Independent process for the ongoing evaluation of human research for ethical conduct of research

Law

The National Ethical Guidelines for Health Research in Nepal, enacted as per the Nepal Health Research Council Act, has criteria for specific provisions related to ethical guidelines for health-related research in Nepal. The Guidelines have criteria for the research proposal,<sup>21</sup> ongoing review of research, and termination or suspension of approved research.<sup>22</sup> The Guidelines have established an Ethical Review Board (ERB) in order to carry out these activities.<sup>23</sup> **Thus, a mark of 1 out of 1 is allotted to this question.**

5. Does the law or policy provide for the following legal protection for subjects in ethical human research (before, during, and after participation);

- (a) Requiring informed consent?
- (b) Confidentiality of personal information obtained in the process of research?
- (c) Counseling, health and support services?
- (d) Protection from discrimination?

**Score 0.5 for each affirmative answer, maximum score of 2.**

Legal protection of human subjects in ethical human research

Law

The Nepal Health Research Council Act makes it a duty of the Council to provide advice, evaluate, give direction, and coordinate health-related research activities.<sup>24</sup> The Council, while awarding licenses, prescribes the necessary terms and conditions for health-related research.<sup>25</sup>

The National Ethical Guidelines for Health Research in Nepal makes specific provisions requiring informed consent to be sought and properly documented from each prospective research participant or the participant's legally authorized representative.<sup>26</sup> The Guidelines require a statement guaranteeing confidentiality from the person or institution carrying out such research.<sup>27</sup> Although the Guidelines do not specifically mention about counseling and protection from discrimination, it have a provision requiring insurance coverage for any permanent disability or death caused directly by the investigational treatment or procedure.<sup>28</sup> In additions, it has also made provision of compensation to human subjects participating in the research.<sup>29</sup>

The Medicine Act stipulates that approval from the Department of Drug Management should be received before carrying out a clinical trial of any medicine.<sup>30</sup>

While there is no provision protecting human subjects from discrimination, the Guidelines provide for informed consent, maintenance of confidentiality, and a health and support system; therefore, **a mark of 1.5 out of 2 is allotted to this question.**

21 Such as minimization of risk to subject, informed consent, confidentiality, mechanism for compensation, and withdrawal from research at any time without fear of any action.

22 Such as suspension and termination of research work, if conducted against the ERB's requirement, and possibilities of unexpected serious harm to participants.

23 Section B of the National Ethical Guidelines for Health Research in Nepal, Nepal Health Research Council, Kathmandu, 2001.

24 Section 6 (f) of the Nepal Health Research Council Act, 2047 (1990).

25 Section 11 (2) of the Nepal Health Research Council Act, 2047 (1990).

26 No. 3.4 of the Section B of the National Ethical Guidelines for Health Research in Nepal, Nepal Health Research Council, Kathmandu, 2001.

27 No. 3.1.8 of Section C of the National Ethical Guidelines for Health Research in Nepal, Nepal Health Research Council, Kathmandu, 2001.

28 No. 3.1.11 of Section C of the National Ethical Guidelines for Health Research in Nepal, Nepal Health Research Council, Kathmandu, 2001.

29 No. 13.4 of Section B of the National Ethical Guidelines for Health Research in Nepal, Nepal Health Research Council, Kathmandu, 2001.

30 Section 31 of the Medicine Act, 2035 (1978).

## TREATMENT, THERAPEUTIC GOODS, TESTING, AND OTHERS ISSUES

In the absence of a cure or vaccine for HIV, education, information, and preventive measures remain the only means to prevent transmission. The laws therefore must ensure access to both information about HIV prevention, and to high-quality prevention equipment.

For PWHA, the right access to effective treatments for HIV infection and associated conditions is essential. This includes ensuring that individuals provide free and informed consent to participation in clinical trials, that the welfare of trial participants takes precedence over the scientific goals of medical research, and research participants are entitled to share in the benefits of any scientific advances achieved as a result of the research.

1. Does the law or policy enable consumers to gain access to affordable and approved HIV/AIDS medication (e.g., a subsidized or free pharmaceutical benefits scheme)?

**Score 2 for affirmative answer.**

### Access to affordable and approved HIV/AIDS medication to consumers

#### Law

There is no provision in the law allowing the general public affordable access to approved medical expenses relating to HIV/AIDS therapy. **Thus, a mark of 0 out of 2 is allotted to this question.**

#### Policy

In order to control HIV/AIDS and other sexual diseases, the Tenth Plan has a provision for the general treatment of persons infected by these diseases. It also targets self-reliance in the related sector of medicine within the Plan period;<sup>1</sup> however, no target is set to provide subsidized or free medicine related to HIV/AIDS.

Prevention, care, support, and effective treatment of HIV/AIDS, and implementation of these sequential activities under the title “From Prevention to Care,” are components of the National HIV/AIDS Strategy, which emphasizes their involvement in the fight against the epidemic.<sup>2</sup>

Stressing upon the conclusions of the United Nations General Assembly Special Session (UNGASS) on HIV/AIDS, which emphasize “...that care, support, and treatment can contribute to effective prevention

1 Tenth Plan (2059–2064), National Planning Commission, HMG/Nepal, 2059 (2002), p. 408.

2 National HIV/AIDS Strategy (2002–2006). 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal, p. 13 (Nepali language version).

through increased acceptance of voluntary and confidential counseling and testing and by keeping PWHA and vulnerable groups in close contact with health-care systems and facilitating their access to information, counseling, and preventive supplies,” the National HIV/AIDS Strategy also stresses effective prevention of HIV/AIDS through the provision of easy access to required supplies for infected persons—useful for their information, consultation, and prevention.<sup>3</sup>

AIDS preventive medication has come into use in Nepal only after 17 years of its development and application. However, Nepal has recently joined the World Trade Organization (WTO) and it is envisioned that this membership will directly affect free trade between member states of the WTO in the production and distribution of medicines. More importantly, it will affect the availability of costly antiretroviral therapy to the needy. Taking into consideration the effect of the Trade-related Aspects of Intellectual Property Rights (TRIPS) Agreement<sup>4</sup> on the availability of HIV/AIDS drugs to people of developing countries, the WTO called upon the Ministerial Conference in Doha to make necessary arrangements in the field of public health for the production of these medicines.<sup>5</sup> In accordance with the conference’s declaration, developed countries should provide technical support to developing and under-developed countries, and provide patents for medicines required for HIV/AIDS and other epidemics. In the event of emergencies, developing countries can produce medicines without prior approval of the patent holder or multinational company. Nepal must therefore ensure that its patent laws permit it to use the special provisions agreed on by the WTO, which will enable the country to access pharmaceutical products as a developing country.

#### Free distribution of drugs to PWHA

The institutions and laws of HMG/N have not yet been able to do anything in regard to PWHA’s easy and affordable access to the required medications. However, some efforts have been carried out from the nongovernmental side in this regard. Maiti Nepal recently initiated a program making antiretroviral therapy available for free to PWHA at their rehabilitation center under regular medical supervision. This free pharmaceutical benefit scheme of Maiti Nepal will only be provided to a limited number of people rehabilitated at the Maiti Nepal’s rehabilitation center.

The Nav-Kiran Society, another HIV/AIDS support organization, is also providing antiretroviral therapy to two PWHA.

Recently, from February 12, 2004, HMG/N also initiated antiretroviral treatment for PWHA from one of the government hospital (Shukraraj Tropical and Infectious Disease Hospital). Initially, HMG/N is targeting to provide the treatment to 25 PWHA.

*Source: Gorkhapatra National Daily, date: 2060.5.18 B.S. (September 4, 2003); Nav Kiran Society; and NCASC.*

## 2. Does the law or policy give consumers the right to access affordable HIV/AIDS health care (e.g., a subsidized or free universal health scheme)?

**Score 2 for affirmative answer.**

3 National HIV/AIDS Strategy (2002–2006). 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal, p. 13 (Nepali language version).

4 WTO/TRIPS Agreement 1995, Article 27(3).

5 Declaration on the TRIPS Agreement and Public Health, Ministerial Conference, Fourth Session, Doha, November 9–14, 2001, WT/MIN(01)/DEC/W/2.



## Access to affordable and approved HIV/AIDS health care to consumers

### Law

The International Guidelines require state to undertake appropriate measures for the adequate remedy, care, and help of PWHA; however there is no such guarantee under the existing laws of Nepal. **Thus, a mark of 0 out of 2 is allotted to this question.**

### Policy

The Tenth Plan set the target to extend health services to the village level. Taking into consideration Nepal's geographic situation, the Tenth Plan aims to run distance education programs;<sup>6</sup> however, it does not make any provision of health therapy related to the access to affordable health care for HIV/AIDS.

In order to ensure that all PWHA have access to adequate medical services and treatment, the National HIV/AIDS Strategy adopted a strategy to ensure the availability of treatment for opportunistic infections, a quality control/assurance system to monitor medical services both in the public and private sectors, and establishment of regional centers at locations that provide equitable access for all people in Nepal. Each of those centers should be able to provide diagnosis, treatment, and care for HIV/AIDS-related illnesses and STDs.<sup>7</sup>

Only a few governmental institutions provide health facilities related to HIV/AIDS in Nepal, but such institutions are limited to urban areas; thus, many PWHA use the private sector or go abroad to obtain therapy.

3. **Does the law or policy require approval of the sale, distribution, and marketing (including protection for consumers against fraudulent claims) of pharmaceuticals and vaccines only if they are safe and efficacious?**

**Score 2 for affirmative answer.**

## Approval of the sale, distribution, and marketing of safe and efficacious drugs

### Law

According to the Medicine Act a license must be obtained from the Department of Drug Management before establishing a drug business.<sup>8</sup> A permission letter is required prior to the production of medicines,<sup>9</sup> and registration is also required prior to the sale and distribution of medicines.<sup>10</sup> Licenses must be also obtained in order to import medicines from foreign countries and for the sale and distribution of such medicines. There is also the provision that medicines can be sold, distributed, or imported only if they are safe, efficacious, and maintain quality. In the event of a breach of these conditions, there is a provision for legal action against the producer and seller.<sup>11</sup>

6 Tenth Plan (2059–2064), National Planning Commission, HMG/Nepal, 2059 (2002). p. 407.

7 National HIV/AIDS Strategy (2002–2006). 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal, p. 37 (Nepali language version).

8 Section 7 of the Medicine Act, 2035 (1978).

9 Section 8 of the Medicine Act, 2035 (1978).

10 Section 9 of the Medicine Act, 2035 (1978).

11 Preamble of the Medicine Act, 2035 (1978).

The Act clearly mentions that medicines should be safe, maintain quality, and be efficacious; it prohibits the sale, distribution, import, export, storage, and consumption of unsafe, inefficacious, inferior medicines.<sup>12</sup> The Act stipulates that the producer of unsafe, inefficacious, inferior medicines, or his representative, shall have to withdraw such medicines from distributors or sellers.<sup>13</sup> It also stipulates that the producer of such medicines shall be legally liable to pay damages to the concerned person in case of injury or death by the consumption of such medicine.<sup>14</sup> Similarly, there is the provision of obtaining a license from the Department of Drug Management for the experimentation of new medicines.<sup>15</sup>

The Medicine Standard (Control) Regulation states that HMG/N must determine the standard of medicines, including safety, efficacy, and quality.<sup>16</sup> In addition, the Regulation provides damages from NRs. 5,000/- to NRs. 300,000/- in cases of injury or death as the result of defective medicines.<sup>17</sup>

As the laws have taken care of the safety and efficacy of drugs, **a mark of 2 out of 2 is allotted to this question.**

### Policy

One of the objectives of the Tenth Plan is to promote access to health services among poor people in rural and remote areas of Nepal by improving health services.<sup>18</sup> It states that investment in health sector will be increased in order to attain this objective. Necessary health services will be expanded to implement this strategy and there will be a working policy of monitoring the quality of medicines in accordance with WHO standards. The Tenth Plan also aims to educate people on the adequate consumption of effective and quality medicines and to enhance community drug programs to promote cost-sharing and cost-recovery.<sup>19</sup>

**4. Does the law or policy regulate the quality, accuracy, and availability of HIV tests (including rapid or home, if approved)?**

**Score 2 for affirmative answer.**

### Quality, accuracy, and availability of HIV tests

#### Law

The law has no provision regarding the regulation of standards (real and easily accessible) for HIV/AIDS test facilities. **Thus, a mark of 0 out of 2 is allotted to this question.**

#### Policy

The Tenth Plan identifies the lack of effective monitoring of standards and evaluation, accessibility of health services from the private health sectors, and formulation of a plan for the health sector and its implementation as major problems.<sup>20</sup> It stipulates that blood donation services will be regulated and blood banks will be established in the central, regional, zonal, and district hospitals. The Tenth Plan also states that Nepal Red Cross Society's services will be made more reliable and scientific through additional technologies and the support of donor agencies.<sup>21</sup>

12 Section 13 of the Medicine Act, 2035 (1978).

13 Section 14 of the Medicine Act, 2035 (1978).

14 Section 15 of the Medicine Act, 2035 (1978).

15 Section 31 of the Medicine Act, 2035 (1978).

16 Rule 6 of the Medicine Standard Control Regulation, 2043 (1986).

17 Rule 8 of the Medicine Standard Control Regulation, 2043 (1986).

18 Tenth Plan (2059–2064), National Planning Commission, HMG/Nepal, 2059 (2002). p. 404.

19 Ibid. p. 407.

20 Ibid. p. 403.

21 Ibid. p. 415.

The NCASC adopted National Guidelines for Voluntary HIV/AIDS Counseling and Testing (VCT) in order to regulate HIV counseling and testing services, and to standardize protocols and procedures for VCT in public and private settings in Nepal. The Guidelines establish national standards for HIV testing, and stipulate accepted forms of HIV testing. To ensure the accuracy of HIV testing, it specifically requires that HIV testing must consist of an initial screening test, and a retest with another test if the first result is positive, in order to confirm this positive result; those testing negative by a second test should be subjected to a third test. These testing algorithms are required as a minimum standard at all levels of the health care delivery system (hospitals, health centers, clinics, etc.) in government, private and NGO settings. The Guidelines further give the Ministry of Health responsibility for ensuring the quality of all HIV testing services in the public and private sector. As such, the Ministry of Health requires laboratories at all levels (e.g., HIV laboratories and VCT sites) to participate in national external quality assurance to assess their performance.<sup>22</sup>

The Department of Health Services, HMG/N recently introduced CD4 cell counting services at a cost of NRs. 2500/- per test, which is not affordable to the majority of PWHA.

5. Does the law or policy regulate the safety and quality of condoms (e.g., monitoring and compliance with the international condom standard)?

Score 2 for affirmative answer.

### Safety and quality of condoms

#### Law

HMG/N celebrates Condom Day every year.<sup>23</sup> Various programs relating to the promotion of condoms are organized by government-owned organizations. However, there is no legal provision pertaining to the availability of safe and quality condoms.<sup>24</sup> **Thus, a mark of 0 out of 2 is allotted to this question.**

#### Policy

As condoms are one of the most effective means of preventing sexual diseases and HIV infection, the National Policy on AIDS and STD Control has made the provision that condom promotion programs shall be implemented for the easy and extensive accessibility of condoms.<sup>25</sup>

The National HIV/AIDS Strategy pursues a strategy of promoting 100 percent condom use with the objective of behavioral change in STD management and HIV prevention. Likewise, there is also a strategy for the social marketing of male and female condoms, particularly for vulnerable populations.<sup>26</sup> The Strategy also speaks about making condoms available in prisons. However, there is no national policy relating to the standard and quality of condoms.

22 National Guidelines for Voluntary HIV/AIDS Counseling and Testing, 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal, pp. 40 –50.

23 Kantipur Daily, Kathmandu, October 7, 2003.

24 In Nepal all condoms are imported. All donor-donated condom meet ISO 4074 and WHO standard for safety and quality.

25 No. 9 (d) of the National Policy on AIDS and STD Control, 2052 (1995).

26 National HIV/AIDS Strategy (2002–2006). 2003. Nepal: National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal, p. 17 (Nepali language version).

## Books/Reports/Journals/Articles

1. Joint United Nations Program on HIV/AIDS (UNAIDS) and the World Health Organization (WHO). 2002. *AIDS Epidemic Update December 2002*. Geneva: UNAIDS/WHO
2. United Nations Development Program (UNDP). 1999. *AIDS and South and Southwest Asia: A Development Challenge*. New Delhi: UNDP.
3. The Publishers Editorial Staff, Minn West Publishing Co. 1990. *Black's Law Dictionary* (sixth edition). St. Paul: The Publishers Editorial Staff.
4. World Trade Organization (WTO). 2001. *Declaration on the TRIPS Agreement and Public Health, Ministerial Conference*. Fourth Session. Doha. November 9–14.
5. Forum for Women, Law and Development (FWLD). 2000. *Discriminatory Laws in Nepal and Their Impact on Women: A Review of the Current Situation and Proposals for Change* (Annex 1). Kathmandu: FWLD.
6. Joint United Nations Program on HIV/AIDS (UNAIDS)/Inter-Parliamentary Union (IPU). 1999. *Handbook for Legislators on HIV/AIDS, Law and Human Rights: Action to Combat HIV/AIDS in View of its Devastating Human, Economic and Social Impact*. Geneva: UNAIDS/IPU.
7. Himalayan Pvt Ltd. 2000. *HIMAL South Asian (special edition: AIDS Learning from Africa South Africa)*. Kathmandu: Himalayan Pvt. Ltd..
8. United Nations High Commissioner for Human Rights (UNHCR) and UNAIDS. 1998. *International Guidelines on HIV/AIDS and Human Rights*. New York: UNHCR and UNAIDS.
9. National Law School of India University (NLSIU). 2000. *HIV/AIDS and Legal, Ethical and Human Rights Concerns Obtaining Indian Response*. Edited by Prof. (Dr.) S.V. Joga Rao. Bangalore, India: The Institute of Law and Ethics in Medicine, NLSIU.
10. IDA and the World Bank. 2001. *HIV/AIDS in South Asia: A Human and Development Challenge*. IDA and the World Bank.
11. United Nations Development Program (UNDP). 1995. *HIV Law, Ethics and Human Rights—Text and Materials*. Edited by D.C. Jayasuriya. India: UNDP.
12. Forum for Women, Law and Development (FWLD). 2001. *Mapping Exercise of Policies, Ethics, Laws and Judicial Pronouncements on HIV/AIDS*. A UNDP Regional Study. Kathmandu: FWLD.
13. Supreme Court. 1966–2002. *Nepal Kannon Patrika*. Kathmandu: Supreme Court Publication
14. Supreme Court. 2002. *Publication of Judgments relating to Human Rights (special issue)*. Kathmandu: Supreme Court.
15. United Nations Development Program (UNDP). 2003. *Regional Human Development Report: HIV/AIDS and Development in South Asia, 2003*. New Delhi: UNDP.
16. United Nations. 1991. *Report of an International Consultation on AIDS and Human Rights*. New York: United Nations.
17. Forum for Women, Law and Development (FWLD)/General Welfare Pratisthan (GWP)/Women

Acting Together for Change (WATCH)/Women Cell of Nepal Police (WCNP)/Blue Diamond Society (BDS). 2003. *Report on Abuse of Commercial Sex Workers and Homosexuals*. Kathmandu: FWLD/GWP/WATCH/WCNP/BDS.

18. Forum for Women, Law and Development (FWLD). 2001. *Synthesis of Mapping Exercise of Policies, Ethics, Laws and Judicial Pronouncements with a view to Facilitate Structuring of Comprehensive Human Rights and Gender Based HIV/AIDS Policy and Law*. Kathmandu: FWLD.
19. His Majesty's Government (HMG). 2002. *Sthaniya Prashashan Digidarshan*. 2059 B.S. Nepal: Ministry of Home, HMG/Nepal.
20. Supreme Court. 1990–2002. *Supreme Court Bulletin*. Kathmandu: Supreme Court Publication.
21. Forum for Women, Law and Development (FWLD). 2001. *Jui masne bechane karya tatha oosar pasar aparadha nishedha garna prastabit bidhyakama garnuparne sudharbaru*, Kathmandu: FWLD).
22. Nepal Tourism Board (NTB). 2003. *Trekking in Nepal*, Kathmandu.
23. Sapana Pradhan-Malla. *HIV/AIDS: Laws and ethical issues*. The Kathmandu Post. November 30, 2001.

## Newspapers

1. The Kathmandu Post Daily, Kathmandu, May 3, 2003.
2. Spacetime Daily, Kathmandu, August 13, 2003.
3. Gorkhapatra National Daily, Kathmandu, September 4, 2003.
4. Kantipur Daily, Kathmandu, October 7, 2003.
5. Gorkhapatra National Daily, July 25, 2003.

## LEGISLATIVE AUDIT TOOLS AND SCORING

S. No.	1. Public Health Questions	Scoring
1	(a) Does the law or policy require medical and other health practitioners to follow the Universal Infection Control Precautions? (b) Does the law or policy prohibit restriction or segregation of HIV infected people on the basis of their HIV-positive status (i.e., restrictions usually applicable to diseases that are casually transmitted)? Score 1 for each affirmative answer, maximum score of 2.	0
2	(a) Does the law or policy require government to provide general HIV/AIDS information and education to public? (b) Does the law or policy require reporting of HIV/AIDS test results to public health authorities by a limited class of persons (e.g., medical practitioners or pathologists) for epidemiological purposes with adequate privacy protection (e.g., coded rather than nominal data)? Score 1 for each affirmative answer, maximum score of 2.	0.5
3	Does the law or policy provide for screening against HIV contamination of the following supplies: (a) Blood and blood products? (b) Tissues and organs? (c) Semen and ova? Score 0.67 for each affirmative answer, maximum score of 2.	0.67
4	Does the law or policy prohibit mandatory or compulsory HIV testing (except blood and other human tissue donors) not otherwise covered by this audit (see indicator 6) of any person, including entrants, armed forces, migrants, civil pilots, or refugees? Score 2 for affirmative answer.	0
5	Does the law or policy require that the following protection be given to individuals tested for HIV in circumstances where they will be given the results of the test (that is not unlinked, sentinel surveillance): (a) Specific informed consent to the test (i.e., not implied with other blood test)? (b) Pre- and post-test counseling? Score 1 for each affirmative answer, maximum score of 2.	0
<b>Total</b>		<b>1.17*</b>

The score is rounded to its nearby number in the Executive Summary of the Study.

<b>2. Criminal Laws and Transmission Offences</b>		
<b>S. No.</b>	<b>Questions</b>	<b>Scoring</b>
1	Does the law make it a general offence for deliberately transmitting a communicable disease?  Score 2 for affirmative answer.	2
2	(a) Does the law or policy enable the distribution of clean needles and syringes in the community?  (b) Does the law or policy enable the diversion from the criminal justice system of persons charge or convicted of minor drug offences and referral for care and treatment?  Score 1 for each affirmative answer, maximum score of 2.	1
3	(a) Does the law or policy not criminalize voluntary sex work (street, single, brothel)?  (b) Does the law or policy not criminalize homosexual behaviors (e.g., sodomy)?  Score 1 for each affirmative answer, maximum score of 2.	0.5
4	Does the law or policy not unnecessarily restrict the availability of condoms?  Score 2 for affirmative answer.	1
5	(a) Does the law or policy provide protection under the criminal law for adults against sexual and other violence?  (b) Does the law or policy provide protection under the criminal law for children against sexual abuse and exploitation?  Score 1 for each affirmative answer, maximum score of 2.	1.5
<b>Total</b>		<b>6</b>

<b>3. Anti-discrimination</b>		
<b>S. No.</b>	<b>Questions</b>	<b>Scoring</b>
1	(a) Does the law and policy provide for protection against discrimination on the ground of disability, widely defined to include HIV/AIDS? (b) Does the law and policy provide for protection against discrimination on the ground of profession (e.g., sex work)? Score 1 for each affirmative answer, maximum score of 2.	1.5
2	Does the law or policy provide for protection against discrimination on the basis of HIV-positive status: (a) In the public/private sectors (e.g., health care, employment, education and accommodation)? (b) To entrants of the country (e.g., migrants or refugees)? (c) To members of the armed forces (e.g., military, police)? Score 0.67 for each affirmative answer, maximum score of 2.	0.33
3	Does the law or policy provide for the following: (a) Representative complaints (e.g., public interest organizations on behalf of individuals)? (b) Speedy redress (e.g., guaranteed processing of case within a reasonable period) or fast-tracking cases in which the complainant is terminally ill? (c) Access to free legal assistance? (d) Reasonable time limit for lodging complaints with agency discretion to extend? (e) Confidentiality protection in all stage of complaints (e.g., use of pseudonyms to report cases)? Score 0.40 for each affirmative answer, maximum score of 2.	1.4
4	Does the law or policy contain the following substantive features: (a) Coverage of direct and indirect discrimination? (b) Coverage of presumed discrimination (e.g., assumed infection) as well as associates (e.g., care providers, partners and family)? (c) Coverage of abuse and victimizations (whether generic or specific)? Score 0.67 for each affirmative answer, maximum score of 2.	0.66
5	Does the law or policy provide the independent institution administering legislation (e.g., Human Rights Commission or ombudsperson) with the following functions and powers: (a) Education and promotion of human rights? (b) Role of advising government, and monitoring compliance by domestic legislation and practice with human rights standards (based on international obligations)? (c) Power to investigate and conciliate individual complaints, and address systemic discrimination? (d) Power to make adequate and enforceable decisions to resolve individual cases? Score 0.50 for each affirmative answer, maximum score of 2.	1.25
<b>Total</b>		<b>5.14*</b>

The score is rounded to its nearby number in the Executive Summary of the Study.



<b>4. Privacy / Confidentiality</b>		
<b>S. No.</b>	<b>Questions</b>	<b>Scoring</b>
1	Does the law or policy provide for general privacy or confidentiality protection (i.e., prohibit unauthorized use and disclosure) of medical and/or personal information, widely defined to include HIV-related data?  Score 2 for affirmative answer.	2
2	Does the law or policy authorize health care professionals to notify directly or indirectly (e.g., through a specified person in the Health Department) the HIV-status of their patients to others (e.g., sexual partners and those sharing needles) in accordance with counseling of the HIV-positive patient has failed to achieve appropriate behavioral change; and the HIV-positive patient has refused to notify or consent to notification of the partner?  Score 2 for affirmative answer.	0
3	Does the law or policy enable HIV-positive people to have their privacy and identity protection (e.g., closed hearings, suppression orders, or use of pseudonyms) in public health proceedings, or general cases?  Score 2 for affirmative answer.	0
4	Does the law or policy protect the right to privacy on the basis of sexual orientation (e.g., MSM)?  Score 2 for affirmative answer.	0
5	Does the law or policy provide access to confidential sexual and reproductive health services to the people?  Score 2 for affirmative answer.	1
<b>Total</b>		<b>3</b>

5. Sexual Offences		
S. No.	Questions	Scoring
1	Does the law or policy not prohibit the sexual acts (e.g., fornication or adultery) between consenting adults in private?  Score 2 for affirmative answer.	1
2	Does the law or policy have reasonable controls on sex workers (e.g., nuisance law) applicable to other analogous personal service work?  Score 2 for affirmative answer.	1.5
3	Does the law or policy protect vulnerable groups especially children or women, from coercion and trafficking focusing on those responsible (i.e., owner or intermediaries (pimp))?  Score 2 for affirmative answer.	1.5
4	(a) Does the law or policy criminalize forced sexual abuse and intercourse within and outside the marriage?  (b) Does the law or policy protect children from sexual offences, including sexual intercourse?  Score 1 for each affirmative answer, maximum score of 2.	1.5
5	Does the law or policy prohibit discrimination in punishment for sexual offences against different groups (e.g., sex worker, MSM)?  Score 2 for affirmative answer.	1
<b>Total</b>		<b>6.5</b>

<b>6. Prisons/Correctional Laws</b>		
<b>S. No.</b>	<b>Questions</b>	<b>Scoring</b>
1	<p>Does the law or policy provide for at least access equal to the outside community to the following HIV-related prevention and care services to people in prisons or correctional facilities:</p> <p>(a) Information and education?            (b) Voluntary testing?            (c) Access to the means of prevention (i.e., condoms and bleach or clean injecting equipment)?            (d) Treatment?</p> <p>Score 0.50 for each affirmative answer, maximum score of 2.</p>	1
2	<p>(a) Does the law or policy not require compulsory HIV testing of prisoners on entry and exit?            (b) Does the law or policy not require segregation of prisoners, merely on the basis of their HIV-status as opposed to behavior?</p> <p>Score 1 for each affirmative answer, maximum score of 2.</p>	0.5
3	<p>Does the law or policy provide legal protection of prisoners against involuntary acts that may transmit the virus (i.e., rape, sexual violence, or coercion)?</p> <p>Score 2 for affirmative answer.</p>	1
4	<p>(a) Does the law or policy enable non-discriminatory access to facilities and privileges for HIV-positive prisoners compared with other prisoners?            (b) Does the law or policy provide for confidentiality of prisoner's medical/personal information, including HIV-status?</p> <p>Score 1 for each affirmative answer, maximum score of 2.</p>	0.5
5	<p>Does the law or policy (e.g., sentencing) provide for medical conditions, such as an AIDS defining illness, as grounds for compassionate early release or diversion to alternatives other than incarceration?</p> <p>Score 2 for affirmative answer.</p>	0
<b>Total</b>		<b>3</b>

<b>7. Employment</b>		
<b>S. No.</b>	<b>Questions</b>	<b>Scoring</b>
1	<p>Does the law or policy prohibit HIV screening for general purposes in public and private employment (i.e., appointment, promotion, training, and benefits)?</p> <p style="text-align: center;">Score 2 for affirmative answer.</p>	0
2	<p>(a) Does the law or policy require implementation of universal infection control measures, including training and provision of equipment, in settings involving exposure to blood/body fluids (e.g., first aid and health care work) in the workplace?</p> <p>(b) Does worker's compensation legislation cover occupational transmission of HIV?</p> <p style="text-align: center;">Score 1 for each affirmative answer, maximum score of 2.</p>	0
3	<p>(a) Does the law or policy provide for employment security while HIV-positive workers are able to work (e.g., unfair dismissal rules)?</p> <p>(b) Does the law or policy require that social security benefits are available to people with HIV/AIDS who are too ill to work?</p> <p style="text-align: center;">Score 1 for each affirmative answer, maximum score of 2.</p>	1
4	<p>(a) Does the law or policy require provision of access to general HIV/AIDS information and education for occupational health and safety reasons (e.g., counseling of workers following needle stick injuries)?</p> <p>(b) Does the law or policy require provision of access to general HIV/AIDS information and education for workers traveling outside the country especially, areas of high HIV incidence?</p> <p style="text-align: center;">Score 1 for each affirmative answer, maximum score of 2.</p>	0
5	<p>Does the law or policy not exclude PWHA from working in the following industries if adequate precautions are taken to prevent transmission:</p> <p>(a) Health professionals?</p> <p>(b) Skin penetration workers, and food/pharmaceutical handlers?</p> <p>(c) Emergency worker and police?</p> <p>(d) Sex workers?</p> <p style="text-align: center;">Score 0.50 for each affirmative answer, maximum score of 2.</p>	1
<b>Total</b>		<b>2</b>

<b>8. Equality of Status of Vulnerable Populations</b>		
<b>S. No.</b>	<b>Questions</b>	<b>Scoring</b>
1	<p>Does the law or policy ensure equal status of men and women in the following areas:</p> <p>(a) Ownership of property and inheritance?</p> <p>(b) Marital relations (e.g., divorce and custody)?</p> <p>(c) Capacity to enter into contracts, mortgages, credit and finance?</p> <p>(d) Equal remuneration for equal work?</p> <p>Score 0.50 for each affirmative answer, maximum score of 2.</p>	1
2	<p>Does the law or policy ensure equality on the grounds of membership of groups that are, or are perceived to be, more vulnerable to HIV/AIDS in the jurisdictions (e.g., gender, homosexuality, caste, indigenous populations)?</p> <p>Score 2 for affirmative answer.</p>	1
3	<p>Does the law or policy not place unreasonable restrictions on members of AIDS service organizations, organizations of PWHA or vulnerable groups (e.g., for gay men, sex workers, or refugees) in respect of assembly, association, and movement?</p> <p>Score 2 for affirmative answer.</p>	1.67
4	<p>Does the law or policy recognize <i>de facto</i> domestic relationships (including sexual relationships) between same-sex and heterosexuals on an equal basis?</p> <p>Score 2 for affirmative answer.</p>	0
5	<p>Does the law or policy provide for an equal age of consent for heterosexual and homosexual acts?</p> <p>Score 2 for affirmative answer.</p>	0
<b>Total</b>		<b>3.67*</b>

The score is rounded to its nearby number in the Executive Summary of the Study.

<b>9. Regulation of Health Care Professionals and Ethical Research</b>		
<b>S. No.</b>	<b>Questions</b>	<b>Scoring</b>
1	<p>Does the law or policy provide remedies for breach of health professional standards (e.g., a finding by a registration board of professional misconduct based on codes of conduct in relations to matters such as confidentiality, informed consent and duty to treat) against medical practitioners; nurses; dentist and dental technicians; and chiropractors, osteopaths, podiatrists, psychologists, physiotherapists, and others?</p> <p>Score 2 for affirmative answer.</p>	2
2	<p>Does the law or policy enable complaints to be made against health care professional to an independent body?</p> <p>Score 2 for affirmative answer.</p>	2
3	<p>Are specific exceptions, health education and information (general and targeted audiences) contained in</p> <p>(a) Censorship legislation?</p> <p>(b) Broadcasting standards?</p> <p>Score 1 for each affirmative answer, maximum score of 2.</p>	0
4	<p>Does the law or policy require an independent process for the ongoing evaluation of human research, (e.g., establishing ethical review committees), with the following criteria:</p> <p>(a) Scientific validity?</p> <p>(b) Ethical conduct of research?</p> <p>Score 1 for each affirmative answer, maximum score of 2.</p>	2
5	<p>Does the law or policy provide for the following legal protection for subjects in ethical human research (before, during, and after participation);</p> <p>(a) Requiring informed consent?</p> <p>(b) Confidentiality of personal information obtained in the process of research?</p> <p>(a) Counseling, health and support services?</p> <p>(b) Protection from discrimination?</p> <p>Score 0.50 for each affirmative answer, maximum score of 2.</p>	1.5
<b>Total</b>		<b>7.5</b>

<b>10. Treatment, Therapeutic Goods, Testing and Other Issues</b>		
<b>S. No.</b>	<b>Questions</b>	<b>Scoring</b>
1	Does the law or policy enable consumers to gain access to affordable and approved HIV/AIDS medication (e.g., a subsidized or free pharmaceutical benefits scheme)?  Score 2 for affirmative answer.	0
2	Does the law or policy give consumers the right to access affordable HIV/AIDS health care (e.g., a subsidized or free universal health scheme)?  Score 2 for affirmative answer.	0
3	Does the law or policy require approval of the sale, distribution, and marketing (including protection for consumers against fraudulent claims) of pharmaceuticals and vaccines only if they are safe and efficacious?  Score 2 for affirmative answer.	2
4	Does the law or policy regulate the quality, accuracy and availability of HIV tests (including rapid or home, if approved)?  Score 2 for affirmative answer.	0
5	Does the law or policy regulate the safety and quality of condoms (e.g., monitoring, compliance with the international condom standard)?  Score 2 for affirmative answer.	0
<b>Total</b>		<b>2</b>

## RELEVANT LAWS, POLICIES, EXECUTIVE ORDERS, GUIDELINES, AND DRAFT BILLS

### Constitution

1. Constitution of the Kingdom of Nepal, 2047 (1990), Articles 11, 12, 14(3), 14(6), 16, 18, 20, 22, 26 (8) , 26 (9), 26 (14) and 88.

### Acts

1. Chapter on Beating in the Country Code, 2020 (1963), No. 1.
2. Chapter on Bestiality in the Country Code, 2020 (1963), Nos. 1 and 4.
3. Chapter on Court Procedures in the Country Code 2020 (1963), Nos. 3, 10, 11, 36, 59 and 134.
4. Chapter on Husband and Wife in the Country Code, 2020 (1963), Nos. 1, 1 A, 3, 4 (a) and 4 (b).
5. Chapter on Incest in the Country Code, 2020 (1963), Nos. 1, 2, 3 and 4.
6. Chapter on Inheritance in the Country Code, 2020 (1963), Nos. 2, 7 and 12 A.
7. Chapter on Intention to Rape in the Country Code, 2020 (1963), No. 1.
8. Chapter on Miscellaneous in the Country Code, 2020 (1963), No. 5.
9. Chapter on Marriage in the Country Code, 2020 (1963), Nos. 2 and 9.
10. Chapter on Partition in the Country Code, 2020 (1963), Nos. 1, 10, 12 and 16.
11. Chapter on Rape in the Country Code, 2020 (1963), Nos. 1, 3 and 9 A.
12. Chapter on Trafficking in Person in the Country Code, 2020 (1963), Nos. 1 and 2.
13. Chapter on Women's Exclusive Property in the Country Code, 2020 (1963), Nos. 2 and 3.
14. Children's Act, 2048 (1991), Sections 13, 14, 16 and 53.
15. Civil Rights Act, 2012 (1955), Section 6.
16. Civil Service Act, 2049 (1992), Sections 34 (a), 37, 59, 60 and 61.
17. Compensation of Torture Act, 2053 (1996), Sections 2, 3, 4 and 7.
18. Consumer Protection Act, 2054 (1997), Section 22.
19. Disabled Persons Protection and Welfare Act, 2039 (1982), Sections 2 and 5.
20. Film (Production, Exhibition, and Distribution) Act, 2026 (1969), Section 8 (3).
21. Hotel Management and Liquor Sales and Distribution (Control) Act, 2023 (1967), Section 5 (1) (b).
22. Human Rights Commission Act, 2053 (1996), Sections 9, 10, 11, 12, 13 and 14.
23. Immigration Act, 2049 (1992), Section 7.
24. Infectious Disease (Control) Act, 2020 (1963), Section 2.
25. Labour Act, 2048 (1991), Sections 15, 35, 47, 50 and 51.
26. Legal Aid Act, 2054 (1997), Section 3(1).



27. Marriage Registration Act, 2028 (1971), Sections 4 and 5.
28. Medicine Act, 2035 (1978), Preamble, Sections 7, 8, 9,13, 14, 15 and 31.
29. Narcotic Drug (Control) Act, 2033 (1976), Sections 4 and 14 (1) (a), (e), (h).
30. National Broadcasting Act, 2049 (1992), Preamble, Sections 15(1) (b) and 16.
31. Nepal Health Professional Council Act, 2053 (1996), Sections 18(1) (b) and 31.
32. Nepal Health Research Council Act, 2047 (1990), Sections 5, 6 and 11.
33. Nepal Health Services Act, 2053 (1996), Sections 43 and 44.
34. Nepal Medical Council Act, 2020 (1963), Sections 17(1) (b) and 19.
35. Police Act, 2012 (1956), Sections 15 (1) (k).
36. Press and Publication Act, 2048 (1991), Section 14.
37. Prison Act, 2019 (1962), Sections 6 and 11.
38. Social Welfare Act, 2043 (1986), Section 4.
39. Some Public (Offence and Punishment) Act, 2027 (1970), Sections 2 and 3.
40. Summary Procedures Act, 2028 (1971), Section 7.
41. Special Court Act, 2033 (1976), Section 9 (b).
42. Traffic in Human Beings (Control) Act, 2043 (1986), Sections 3 and 4.

### **Regulations**

1. Appellate Court Regulation, 2048 (1991) Rules 51(3) and 106.
2. Army Legal Department (Recruitment, Promotion and Terms of Service) Rules, 2019 (1960), Rule 5(e).
3. Armed Police Regulation, 2060 (2003), Rules 8, 9 and 104 (7).
4. Boys (Recruitment and Terms of Service) Rules, 2028 (1971), Rules 6 and 7.
5. Civil Services Regulation, 2050 (1993), Rules 19, 58 and Schedule 5.
6. District Court Regulation, 2052 (1995), Rules 31 and 96.
7. Education Regulation, 2059 (2002), Rule 33(a).
8. Health Services Regulation, 2055 (1998), Rules 19 and 50 (9).
9. Immigration Regulation, 2051 (1995), Rules 13, 28 and 37.
10. Labor Regulation, 2050 (1993), Rules 11,15, 16, 21, 27, 31 and 44.
11. Labor Regulation Related to Tea Estates, 2050 (1993), Rules 11 and 41.
12. Legal Aid Regulations, 2055 (1998), Rule 6(1).
13. Local Bodies (Financial Administration) Regulation, 2056 (1999), Rules 130, 131 and 132.
14. Local Self-Governance Regulation, 2056 (1999), Rule 220.
15. Medicine Standard Control Regulation, 2043 (1986), Rules 6 and 8.
16. Medicines Production Code, 2041 (1985), Rules 8 (c) and 8(e).
17. Military Leave Rules, 2029 (1972), Rules 6 and 7.
18. Nepal Health Services Regulation, 2053 (1996), Rule 50 (9).

19. Nepal Health Professional Council Regulation, 2056 (1999), Rules 13, 14, 17 and 18.
20. Nepal Medical Council Regulation, 2024 (1967), Rules 22 and 23.
21. Nepal Nursing Council Regulation, 2053 (1996), Rules 22 and 31.
22. Nepal Television By-Laws, 2055 (1998), Schedule 7.
23. Police Regulation, 2049 (1992), Rules 13 (j), 55 (1), 55(4) and 101.
24. Prison Regulation, 2020 (1963), Rules 26, 33 and 38.
25. Royal Nepal Army (Pension, Gratuity and Other Facilities) Regulation, 2033 (1976), Rule 3.
26. Royal Nepalese Army Recruitment Rules, 2019 (1963), Rule 4(c).
27. Royal Nepalese Army Recruitment, Promotion and Other Various General Provisions Regulation, 2020 (1964), Rule 3(f).
28. Supreme Court Regulation, 2049 (1992), Rules 40 and 63 (3).

### **Code of Conduct**

1. Code of Conduct for Journalist, 2060 (2003), Section 4.
2. Code of Ethics, Nepal Medical Council, Kathmandu, January 2001, Nos. 1, 2.3.2, 3.2 and 10.

### **Policies**

1. Gender Equality and Women Empowerment, National Plan of Action, HMG/Ministry of Women and Social Welfare and Canadian Co-Operation Office, Kathmandu, November 1997, Chapter 4.
2. Internal Working Procedures Guidelines on Overseas Employment, 2057 (2000), Published by Ministry of Labour and Transportation Management, His Majesty's Government of Nepal, Kathmandu, No. 4 (9).
3. Introduction to Nonlife or Life Insurance Profession Regulated by National Insurance Corporation (*Rashtriya Beema Samansthan Dwara Sanchalit Nirjivan Bima Byavasaya tatha Jivan Bima Byavasaya ko Chinari*), Published by National Insurance Corporation, Kathmandu, 2000, p. 30.
4. National Ethical Guidelines for Health Research in Nepal, Nepal Health Research Council, Kathmandu, 2001, Section B and C.
5. National Guidelines for Voluntary HIV/AIDS Counseling and Testing, 2003, Nepal, National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal.
6. National Health Policy, 2048 (1991), Ministry of Health, HMG/Nepal.
7. National HIV/AIDS Strategy (2002–2006), 2003, Nepal, National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal.
8. National Plan of Action against Trafficking in Women and Children for Sexual and Labor Exploitation, Ministry of Women, Children and Social Welfare, Kathmandu, p. 19.
9. National Policy on AIDS and STD Control, 2052 (1995), National Centre for AIDS and STD Control, Ministry of Health, HMG/Nepal.
10. National STD Case Management Guidelines 1997 (second revision). Kathmandu: National Centre for AIDS and STD Control, Department of Health Services, Ministry of Health, HMG/Nepal.

11. NMA Guide Book on HIV/AIDS Care and Prevention, Nepal Medical Association, Kathmandu, 2000.
12. Tenth Plan (2059–2064), National Planning Commission, HMG/Nepal, 2059 (2002), pp. 403, 404, 407, 408–412, 415, 417, 441 and 448.

#### **Gazette**

1. Nepal Gazette, Issued Date: 2058/10/25 (February 10, 2002)
2. Order of formation of National Women's Commission, Nepal Gazette 2058/11/23 B.S. (March 7, 2002) Part 51, Pre Extraordinary issue 72. No. 4(g) (h).

#### **Cabinet Decision**

1. His Majesty's Government's Cabinet decision of HMG/Nepal, Date 2046/1/21 B.S. (May 3, 1989).

#### **Circular**

1. Circular issued by Crime Investigation Department of Police Headquarter, letter no. 282/2059-60, date: 2060/1/17 B.S. (April 30, 2003)

#### **Letter**

1. Letter issued by the National Centre for AIDS and STD Control on 13<sup>th</sup> September 2002.

#### **Draft Bills**

1. Draft Penal Code, 2059 (2002).
2. The Traffic in Persons (Prevention) Bill, 2058 (2001).

## Consultation Meeting on HIV/AIDS and Human Rights Audit Tool

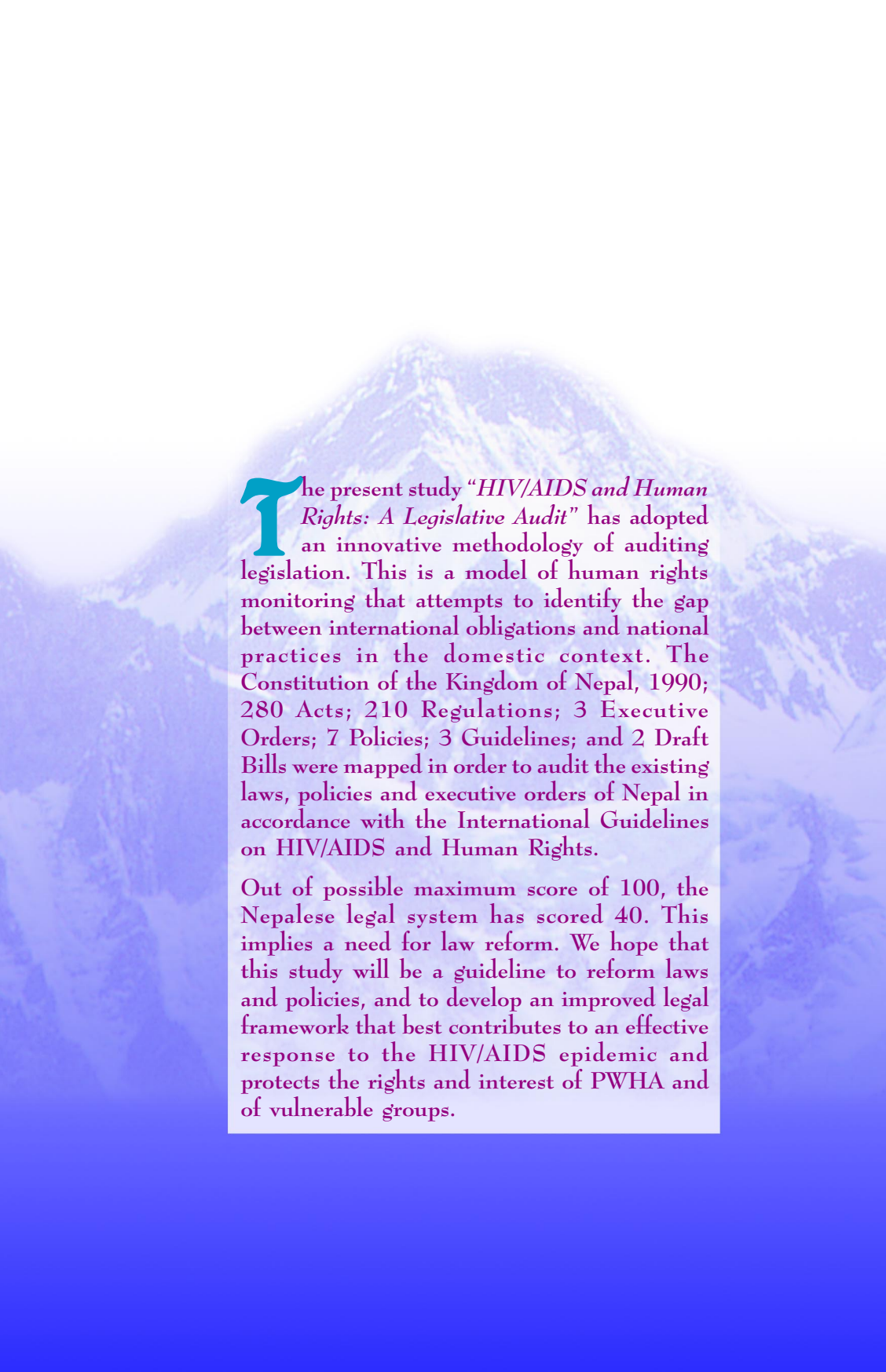
### List of Participants

Date: October 21, 2013

Venue: Hotel Bluestar, Kathmandu

S.N.	Name	Designation	Organization
1.	Mr. Anand Chand	Officer	National Human Rights Commission
2.	Mr. Sunil B. Pant	Director	Blue Diamond Society
3.	Mr. N.P. Bidari	Under Secretary	Prime Minister's Office
4.	Ms. Pooja Niruola	Asst. Program Officer	Richmond Fellowship Nepal
5.	Ms. Shanta M. Gurung	Program Specialist	USAID
6.	Dr. Krishna Thapa	-	-
7.	Mr. Prateek Shrestha	Reporter	Kirtiman
8.	Mr. Niranjan Kayastha	Camera Man	Image Metro T.V.
9.	Ms. Usha Jha	CEO	Samjhauta Nepal
10.	Ms. Geeta Karki	Facilitator	WATCH
11.	Ms. Lila Kumari K.C.	Section Officer	MoPE
12.	Ms. Tshering Sherpa	-	Karuna Bhawan
13.	Ms. Ivana Lohar	Programme Officer	POLICY Project
14.	Ms. Ekta Mahat	Asst. Coordinator	IDU Core Project
15.	Ms. Philippa Lawson	-	POLICY Project
16.	Dr. Mukta	-	Maiti Nepal
17.	Mr. Bhupendra Poudyal	Under Secretary	Ministry of Defense
18.	Mr. Shree Ram Dawadi	Advocate	Kathmandu District Bar
19.	Mr. Kishor Silwal	Director	CeLRRD
20.	Mr. Ram Singh	Program Coordinator	LALS
21.	Ms. Yukta Thapa	Captain	Royal Nepal Army
22.	Ms. Hari Priya Pandey	-	NNAGT
23.	Ms. Sudha Neupane	Under Secretary	MWCSW
24.	Mr. Mohan Khanal	Reporter	Press
25.	Mr. Babu Ram Aryal	Reporter	Deshantar Weekly
26.	Ms. Sangeeta Rijal	Reporter	The Kathmandu Post
27.	Mr. Chandra Kanta Poudel	Legal Officer	M.L.T.M.
28.	Mr. Pramod Shrestha	Adm. Officer	FWLD
29.	Dr. V.L. Gurubacharya	Chairman	SACTS
30.	Mr. P.K. Koirala	Attorney	Off. Attorney General
31.	Ms. Renu Chhetri	Reporter	The Himalayan
32.	Ms. Sanitu Subedi	-	CAC Nepal
33.	Ms. Maina Dhital	Reporter	Kantipur
34.	Mr. Rajendra Paudel	Section Officer	Information Communication Center
35.	Mr. D. P. Khanal	Press Reporter	Sathi Sahar
36.	Mr. Santosh Giri	Advocate	FWLD
37.	Ms. Anjana Rawal	Senior Correspondent	Nepal TV
38.	Ms. Namrata Shah	-	-
39.	Mr. Nabin Shrestha	Advocate	FWLD
40.	Ms. Nijma Shrestha	-	FWLD
41.	Mr. Tanka Dahal	Reporter	Rajdhani
42.	Dr. Sashi Sharma	-	T.U., Teaching Hospital

S.N.	Name	Designation	Organization
43.	Mr. Om Thapa	Reporter	Gorkhapatra
44.	Ms. Shirjana Ranjitkar	O. Manager	POLICY Project
45.	Mr. Birendra Kumar Singh	Under Secretary	MoCTCA
46.	Mr. Krishna Thapa	Out Reach Supervisor	Richmond Fellowship
47.	Mr. Keshav Pd. Adhikari	Section Officer	MoLJP
48.	Mr. Krishna Pd. Adhikari	Section Officer	MoLJP
49.	Mr. Tanka Panta	Sr. Associate Editor	Nepal Samachar Patra
50.	Ms. Nadia Carvalho	Public Health Specialist	USAID
51.	Mr. Milan Timilsina	Reporter	Communication Corner
52.	Mr. Bal Krishna Thapa	Photographer	The Himalayan
53.	Mr. Sanket Koirala	Editor	Image Channel
54.	Ms. Kate Thomsan	-	Global Int.
55.	Dr. Rajit Bhakta Pradhanang	Reader	Nepal Law Campus
56.	Mr. Rati Raj Kaphle	Section Officer	Ministry of Home
57.	Mr. Krihsna Prasad Joshi	Section Officer	Minsitry of Local Development
58.	Mr. Anjan Amatya	Co-ordinator	NNPTN
59.	Ms. Bishnu Sharma	Coordinator	The Richmond Fellowship
60.	Mr. Gopal Acharya	Editor	Business Times
61.	Mr. Ranendra K.C.	Legal Advisor	Nepal Plus
62.	Ms. Asha Basnyat	Asso. Director	FHI-Nepal
63.	Ms. Anu K.C.	S.P.T.	-
64.	Mr. Bharat B. Raut	Asso. Director	GWP
65.	Mr. Bhoj Raj Pokharel	Country Director	POLICY Project
66.	Ms. Meera Dhunanga	Advocate	FWLD
67.	Ms. Savitri Ratna Gurung	Lt	Royal Nepal Army
68.	Mr. Shayam Pd. Khatiwada	Under Secretary	Nepal Women Commission
69.	Mr. Pradeep Jung Pandey	Social Worker	CSSC (FNCCI)
70.	Mr. Shyamer Thapa Magar	Anthropologist	Nepal Health Research Council
71.	Mr. Rishi Ojha	President	Youth Power Nepal
72.	Mr. Bal Bahadur Mukhia	Lecturer	Nepal Law Campus
73.	Mr. Jun Raj Shrestha	-	-
74.	Mr. Inorak	Reporter	Metro FM
75.	Mr. Ram Luitel	Reporter	Annapurna Post
76.	Dr. Pulkit Chaudhary	SMO	NCASC
77.	Ms. Arohena Basnet	Program Officer	CAC Nepal
78.	Ms. Beena Pradhan	Under Secretary	Film Dev. Board
79.	Ms. Bimala Gyawali	Program coordinator	AATWIN
80.	Ms. Sapana Pradhan-Malla	President	FWLD
81.	Mr. Sabin Shrestha	Coordinator	”
82.	Ms. Amoda Shrestha	Center Member	DECONT
83.	Mr. Bishnu Kalpit	Camerman	Nepal-1
84.	Mr. Hom P. Lamsal	Reporter	Biklpa Saptahik
85.	Mr. Rup Narayan Shrestha	Advocate	Development Law Associates
86.	Mr. Basanta B. Basnet	Advocate	FWLD
87.	Mr. Raj B. Sapkota	Associate	FWLD
88.	Mr. Santosh Poudel	Account Officer	DLA
89.	Ms. Anju Rana	Advocate	FWLD
90.	Ms. Purna Shrestha	Programme Officer	FWLD



The present study “*HIV/AIDS and Human Rights: A Legislative Audit*” has adopted an innovative methodology of auditing legislation. This is a model of human rights monitoring that attempts to identify the gap between international obligations and national practices in the domestic context. The Constitution of the Kingdom of Nepal, 1990; 280 Acts; 210 Regulations; 3 Executive Orders; 7 Policies; 3 Guidelines; and 2 Draft Bills were mapped in order to audit the existing laws, policies and executive orders of Nepal in accordance with the International Guidelines on HIV/AIDS and Human Rights.

Out of possible maximum score of 100, the Nepalese legal system has scored 40. This implies a need for law reform. We hope that this study will be a guideline to reform laws and policies, and to develop an improved legal framework that best contributes to an effective response to the HIV/AIDS epidemic and protects the rights and interest of PWHA and of vulnerable groups.