Awareness-raising on children’s rights in Nepal:
Dialogue about children’s Rights

August 2010
Working report
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1. Antecedents

IDE began cooperation with Creating Possibilities in 2008, and held a first seminar in Kathmandu at the end of March 2009 on the theme:

"INTRODUCTION TO CHILDREN’S RIGHTS: FROM THEORY TO PRACTICE"

The general objective of the seminar was: to influence relevant stakeholders on the importance of the implementation of Children’s rights in Nepal.

Since Nepal was in the phase of drafting a new Constitution, the specific objective of the seminar was to advocate for the integration of children’s rights in the Nepalese Constitution and to gain understanding on the Child Rights provisions that should be put in the new Constitution. For this purpose, participants were selected from groups such as Parliamentarians, Journalists, NGOs and even children.

2. Status of the New Constitution

The situation of Nepal regarding the Process of drafting is the following:

a) Summary of the Proposals

• November 2006: Comprehensive Peace Accord (CPA)
• 2007: Interim Constitution: with an article 22, dedicated to child rights, but an art. 36 which doesn’t ensure the enforceability of the rights
  ➢ Consortium of 56 NGOs active in children’s rights + National coalition for Children as Zones of Peace = 72 organisations in total
• 2010, January: Concept Note (or first unofficial draft of the New Constitution)
  ➢ comprehensive child right's provisions in the Constitution, with a new art. 24 dedicated to children’s rights
  ➢ but justiciability of children’s rights not clear
• End of March 2010: 1st draft
• May 28th 2010: signature of the new Constitution (proposed)
b) **Current situation**

   Article 22 of the Interim Constitution provides:

   1. Every child shall have the right to his/her own identity and name.
   2. Every child shall have the right to be nurtured, to basic health and to social security.
   3. Every child shall have the right to protection against physical, mental or any other forms of exploitation. Any such act of exploitation shall be punishable by law, and the child so treated shall be compensated in a manner as determined by law.
   4. Helpless, orphan, mentally retarded, conflict victims, displaced, vulnerable and street children shall have the right to special privileges from the State to secure their future.
   5. No minor shall be employed in factories, mines or in any other such hazardous work, or shall be used in the army, police or in conflicts.

c) **Proposed art 24**

   In the preliminary draft (unofficial version), the Group of the Fundamental Rights Committee proposed to devote an art. 24, in the section “Fundamental Rights” with eleven Rights regarding Children, and deletion of art. 36. These rights are:

   1. Right to a name, identity, birth registration
   2. Right to education, health, alimentation, care, sports and personal development from family and state
   3. Right to early childhood care/development
   4. Right to be educated in mother tongue
   5. Right not to be exploited at work
   6. Right not to be forced to marriage, illegal abduction, trafficking and hostage
   7. Right not to be recruited and used in army, police, armed conflicts and right not to be mistreated in the media, or by traditional or religious practices, or exploited physically, mentally and sexually
   8. Right not to be tortured at home, school and other place
   9. Right to a child friendly justice
   10. Right to special protection for orphans, disabled, victims of conflicts, displaced and at risk
   11. Criminalization of the offences of exploitation and Right of the victims : investigation + compensation

Other provisions related to education, health, dignity, prohibition of torture and death penalty, right to a name and an identity… are included.
3. A project work done by the MCR Students in SION

As part of the Study Programme of the Master of Advanced Studies in Children’s Rights (MCR) 2009-2010, IDE asked a group of six MCR students to support the project in Nepal, which advocates for the introduction of children’s rights in the new Nepalese constitution.

The six MCR students were given the task to:

- search in the Constitutions of a large variety of States for children’s rights articles,
- identify why and how these articles had been introduced in the constitutions, and
- analyze and compare the different ways of considering children’s rights at the constitutional level.

The work done by the students is excellent:

- **49 Constitutions** have been analysed: Africa, Asia & Pacific, CEE/CIS, Western Europe and North America, Latin America & Caribbean,
- **The identification** of relevant provisions by theme and with the criterion of Nepal important issues contained in the second report to the CRC Committee has been done,
- **From a Comparison** between the constitutional provisions and the CRC provisions (wording and spirit),
- **With a view to identify** provisions reflecting the CRC and the **impacts on**: legislative reforms, policy reforms, jurisprudence

This comparative study sorts out some general considerations: most of the time, constitutional reforms alone cannot achieve the full recognition of children’s rights into the domestic legislative order. In most of the countries reviewed in the study, these reforms came together with additional legislative measures. In fact, a constitutional reform remains a first step requiring further implementation through legislative reforms, in order to adopt new laws or to revise the existing ones to bring them in compliance with the constitutional norms and with the CRC.

States have adopted **different approaches** to comply with their obligations to implement children’s rights in their countries. Some have promulgated new constitutions or amended the existing ones in order to incorporate provisions of the CRC, while others have translated the CRC into domestic law. But “no single approach can be envisaged as a blueprint best suited to all countries”.

The students provide with tables and figures, showing how the different countries have dealt with children’s issues, and what could be good solutions for Nepal. They also present good practices.

This document is very valuable and will benefit to Nepal, the Constituent Assembly, the Children’s Rights activists and the children themselves. It was very useful for the mission done in March.
4. Programme

The Mission lasted from March 23 to March 28 and was led by Mr Jean Zermatten, Director, accompanied by Mrs Yanghee Lee, Professor at Sungkyunkwan University and Chairperson of the UN CRC Committee; unfortunately, Mrs Paola Riva Gapany, Deputy Director of IDE could not attend due to health reasons. The programme was developed by Creating Possibilities and was the following:

a) Meetings around the Constitution

The period of the visit coincided with a very crucial moment of the history of Nepal, since the new Constitution was in the phase of delicate negotiations between the three main political parties of Nepal: The Maoists, The Nepali Congress and The Communist party. All the discussions are based on the Concept note of a draft issued on January 2010 (see above).

23.03.2010

- Meeting with the Chairperson of the Constituent Assembly/Parliament Mr. Subash Nemwong
- Meeting with the Chair of Constitutional Committee, Mr. Nilambar Acharya
- Meeting with the Minister for the Ministry of Women, Children and Social Welfare Mr Sarba Dev Ojha.

24.03.2010

- Dialogue with the Chair of Fundamental Rights Committee Ms. Brinda Pandey and about 10 members, of this discussion, Presentation by Mrs Lee “Twenty years of the Convention on the Rights of the Child. Achievements and Challenges”

26.03.2010

- Meeting with Mr. Pushpa Kamal Dahal Alain Prachanda, Chairman of the United Nepal Communist Party of Nepal (Maoist) and leader of the opposition
- Meeting with the Rt. Hon'ble the Prime Minister Mr. Madhav Kumar Nepal

28.03.2010

- Breakfast meeting with the rt. Hon'ble President of Nepal, Dr. Ram Baran Yadav
- Meeting with Mr Jhalnath Khanal, Chairman of the Nepal Communist Party, United Marxist and Leninist

b) Conferences and Lectures

During the same period, Mr Zermatten and Mrs Lee gave several conferences or lectures
23.03.2010

- Interaction with JJ Committee- Led by the Senior Justice of Supreme Court of Mr. Khilaraj Regmi who is also the chair of JJ Committee : Mr Zermatten gave a lecture :“Trends in Juvenile Justice” and discussion and dinner with 35 people from the Justice field.

25.03.2010

- 21 Years of Child Rights Movement, Interaction with NGOs and INGOs at World Vision Nepal, about 25 people from the different NGOs, Presentation done by M. Zermatten “A new child friendly constitution for NEPAL : inputs from MCR Students” on the project work done by the MCR students

27.03.2010

- Discussion with Journalists + Press Meeting (16 people) ; presentation done by Mr. Jean Zermatten : The CRC : glass half full / half empty ; interaction and numerous questions

Visits

Mr. Zermatten and Mrs Lee took the opportunity to visit and interact with different groups, different GOs or IOGs and NGOs, including

24.03.2010

- Interaction with Children Clubs in Kavre (125 boys and girls)
- Visit of the SOS Village in Kavre

25.03.2010

- Visit of a Day Care Center for disabled girls in Kathmandu (20 adolescents girls)

26.03.2010

- Visit to Orchid Garden Nepal Day Care Center for early childhood (30 children from 6 months to 4 years)
- Visit of a correctional Center for young offenders (the unique one in Nepal), interaction with adolescents (60 boys, 3 girls)

27.10.2010

- Visit to Community Based Rehabilitation Center for disabled (children and adults in Bhaktapur
d) Discussion on training

IDE has the project to conduct training in Nepal. Mr Zermatten (jointly with Mrs Lee and Creating Possibilities), met Prof. Nikku, who is in touch with the High School for social work in Lausanne. They had also discussed with CP in order to build a project. Interests also after informal consultation, Save the Children (Jérôme Collineau and Aschih) and UNICEF (national, BV).

26.03.2010

- Meeting with Prof. Bala Raju Nikki and his organization (private College) dedicated to social workers. Interaction with the Director, prof. Nikku, 3 teachers and about 10 students

e) Press

The mission has been covered by different media

23.03.2010

- Interview Mr Zermatten and Mrs Lee, National TV, Official News

25.03.2010

- Mr. Zermatten and Mrs Lee : long interview with Republica, an English-language Daily
- different papers, in different media on the visit in Kavre

27.03.2010

- Article in “Republica” on the visit in Kavre
- Picture Mr Zermatten + Mrs Lee at the Prime Minister’s Office (no text…)

29.03.2010

- Article in Republica

f) Informal

22.03.2010

- M. Govinda Adhikari, (Creating Possibilities) and pre-eminent Members of the NGO welcomed the two experts
24.03.2010

- Meeting with UNICEF National Office: Mrs Beth Verhey and her team

25.03.2010

- Visit and lunch at Save the Children, Nepal

26.10.2010

- Meeting with OHCHR, M. Richard Bennett, Representative of the HC
- Dinner at Deepak’s place
- Dinner with UNICEF (national “regional) and OHCHR

5. Follow up

According to the discussions held with Creating Possibilities and IDE, there is an important interest in Nepal (and in the region) for a training of professionals in the field of children’s rights. IDE has interest to mid, long-term activities in Nepal. The momentum of the new Constitution is perfect.

The general opinion can be summarized as such:

- The professionals have not enough knowledge on the CRC, the OPS, and the rights-based approach; protection remains the main concern,
- The interest is large, not only in Nepal, but in the region (India, Bangladesh, Afghanistan, Pakistan, Sri-Lanka?),
- Organizing a Master degree seems to high level for the moment; a Diploma (about 30 Credits ECTS, according to the Bologna System) sounds better and more adapted to the reality
- CP has interest to be the local partner
- Having a university on board could be an advantage
- Prof. Nikku could be helpful, but not his school (focused entirely on Social work)
- The question of the fees has to be examined
- Save and UNICEF are ready to discuss; maybe they are interested to train their staff members
- Logistical issues have to be developed
- How much will the students be able to pay (scholarships?)

6. Conclusion

The very amazing networking done by CPR was impressive and the seminar’s success is due principally to this factor. All the NGOs have been contacted, including the international ones
and UN Agency like UNICEF. The fact that the CZOP and Consortium has been associated in the organization of the event is an important added value.

IDE is interested in developing long term cooperation with Creating Possibilities, seen like “an agent” of IDE in the region.

Creating Possibilities has to explore the possibility to build a project of training for professionals in the region, in or with a University, in the sense of a Diploma in Children Rights and Protection.

IDE and CP will determine together, the timetable for the future activities.

Sion, 30 March 2010
Comparative Study between National Constitutions and Children’s Rights

Draft submitted to the Institute of the Rights of the Child in March 2010
PROJECT SUPERVISORS

Paolo Riva Gapany, Deputy Director of the International Institute for the Rights of the Child, Switzerland.

PROJECT CONTRIBUTORS

Participants in the Master of Advanced Studies in Children’s Rights (2009-2010): Antonia Luedeke, Carole Tronchet, Elena Manfrina, Marie-Claire Kunz, Mustafa Hassan and Sokol Muca. The analysis and views expressed are those of our group, eventual mistakes remain ours.

ACKNOWLEDGEMENTS

The analysis of national constitutions and children’s rights has been a challenging opportunity for the MCR students group by its ambition to: (i) identify the various approaches to the constitutional recognition of children’s rights in a broad range of countries, (ii) analyze their impact on children’s lives and (iii) compare their relevance to the context of Nepal and its forthcoming new Constitution.

First of all, we would like to thank Paolo Riva Gapany, Deputy Director of the International Institute for the Rights of the Child (Switzerland), for entrusting us with this exigent project as well as for her very kind and helpful guidance throughout the study.

Furthermore, we would like to extend our thanks and acknowledge the contribution of the following persons to our work:

Jean Zermatten, Director of the International Institute for the Rights of the Child (Switzerland), for brainstorming with the group on a complex aspect of the study: the documentation of tangible impacts of constitutional reforms on children’s rights.

Deepak Raj Sapkota, member of the Executive Committee of Creating Possibilities-Nepal, for his enthusiastic cooperation and sharing with the group a list of children’s rights priority issues which are currently being debated in Nepal.

Archana Mehendale, child rights activist in India, expert in child labour issues and education rights for the very accurate and up to date information she shared with our group about law reform processes in India and the significance of justiciable rights for children.

Finally, our special thanks to Anjali Pradhan, child participation specialist in UNICEF Nepal, for sharing with the group one of the reference documents for this study: the expert submission of the Consortium and Children Zone of Peace (CZOP) to the Constituent Assembly documenting the situation of children in Nepal and the key recommendations and proposals of the Consortium and CZOP.
Comparative study between national constitutions and children’s rights

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Foreword

As part of the Study Program of the Master of Advanced Studies in Children’s Rights (MCR) 2009-2010, a call for project proposals has been sent to child rights organizations which identified relevant projects or areas of work to be developed by a group of MCR students during their studies. As partner of the International Institute for the Rights of the Child (IDE), a group of six MCR students were requested to support a project of IDE in Nepal, which advocates for the introduction of children’s rights in the new Nepalese constitution. The six MCR students were given the task to: (i) search in the constitutions of a large variety of States children’s rights articles, (ii) identify why and how these articles had been introduced in the constitutions and (iii) analyze and compare the different ways of considering children’s rights at the constitutional level. Taking into consideration the impact of the different models on jurisprudence as well as on the lives of children, advantages and disadvantages were to be analyzed. Drawing from the results of the comparative study, a model for Nepal was to be suggested and relevant principles or rights were to be pointed out.

1. Introduction

Since 1989, all but two States have ratified the Convention on the Rights of the Child (CRC). They therefore committed themselves in compliance with Article 4 to undertake all “appropriate legislative, administrative, and other measures” for the implementation of the rights recognized in the CRC. It is worth mentioning that according to the Committee on the Rights of the Child (2003), “[to ensure] that all domestic legislation is fully compatible with the Convention and that the Convention’s principles and provisions can be directly applied and appropriately enforced is fundamental”. States have adopted different approaches to comply with their obligations to implement children’s rights in their countries. Some have promulgated new constitutions or amended the existing ones in order to incorporate provisions of the CRC, while others have translated the CRC into domestic law. It is however important to note “that no single approach can be envisaged as a blueprint best suited to all countries, and no single method is sufficient to translate the breath of the Convention into the national legal framework”. In order to identify, nevertheless, good examples suitable to the context of Nepal, some background information about Nepal’s constitutional history and the children’s rights movement in the country is first provided.

2. Children’s rights in Nepal’s new constitution

In November 2006, the ten year-long armed conflict in Nepal officially came to an end with the signing of a Comprehensive Peace Accord (CPA) between the Government and the Communist Party of Nepal (Maoist,}

1 CRC Committee, General Comment No. 5. General measures of implementation of the Convention on the Rights of the Child (UN Doc. CRC/GC/2003/5, 2003).
At the heart of the conflict were important grievances about political, economic, and social exclusions. An essential component of the peace accord was therefore the drafting and introduction of a new constitution that grants equal rights and opportunities to all, regardless of gender, ethnic, caste or religious differences.

Elections to the Constituent Assembly (CA) were held on 10 April 2008. Sixty percent of the electorate voted. A record number of women, member of lower castes (Dalits) and people from ethnic groups (Janajatis) were elected making this the most socially inclusive legislative body in Nepal's history. Since then, the 601 members of the Constituent Assembly actively engaged in this historical opportunity to write a new constitution, restructure the state and establish systems of government that could address centuries of exclusion and reverse existing inequalities.

### Nepal's six constitutions:
1. 1948 constitution (under the Ranas)
2. 1951 constitution (originally to be an interim constitution)
3. 1959 multiparty parliamentary constitution
4. 1962 partyless Panchayat constitution
5. 1990 multiparty parliamentary constitution
6. 2007 post-conflict interim constitution
7. 2010 (May 28) federal democratic republic constitution

Supporting people to add their voices to the drafting process is not an easy task and the development of an inclusive constitution is an intimidating challenge in the context of Nepal. Eighty-seven percent of the population lives in scattered rural villages where communication and transport infrastructures are limited, more than half of the population remains illiterate; overall Nepal ranked 144 of 182 countries according to the UNDP’s Human Development Index (HDI) in 2009. However, a great deal of energy has been invested by numerous activists and organizations over the past two years, to increase the understanding of the importance of constitutional reforms and seek for the people’s genuine participation. This is particularly true for the reforms focusing on the constitutional recognition of fundamental rights for minorities and undermined groups. From this perspective, the movement created for the recognition of children’s rights in the new constitution is indeed exemplary; children’s themselves participated in the movement.

A partnership between a consortium of seventy one organizations working to advance the children’s rights agenda in Nepal (that includes UNICEF, Save the Children Japan/Noarvay/US, Action Aid, CWIN, PLAN Nepal, World Vision International) and the national coalition for Children as Zones of Peace (CZOP) enabled the preparation of a critical document “Expert Submission on Child Rights in the New Constitution of Nepal” meant to support the advocacy/lobbying program for the constitutional recognition of children's rights in Nepal. This document, shared with the Constituent Assembly’s Fundamental Rights Committee mid 2009, gives a comprehensive overview of the situation of children in Nepal, the way current laws in Nepal define children’s rights (particularly the Interim Constitution of 2007), the recommendations of the consortium and CZOP along with their particular rationale and suggests a possible draft for children’s rights provisions in the new constitution.

The current interim constitution of Nepal (2007) includes one specific child rights article (article 22 presented below), as well as a general clause covering children - s35 (9) concerning the action of the State on behalf of children and other marginalized and minority groups. The inclusion of these provisions was “a

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4. This document, finalized mid 2009 by the consortium and CZOP, was shared by UNICEF in September with the group of MCR students working on the IDE project work: “Comparative studies between national constitutions and children's rights”.
5. s35 (9): The State shall pursue a policy of making special provisions of social security for the protection and welfare of
progressive and positive development for child rights in Nepal” as highlighted by the consortium and CZOP. The Interim Constitution (2007) together with Nepal's ratification of the CRC in September 1990 and of its two Optional Protocols respectively in January 2006 (sale of children, child prostitution and child pornography) and in January 2007 (involvement of children in armed conflict) actually provided a solid foundation for the promotion of children’s rights in Nepal and for the inclusion of children’s rights in the new constitution.

**Article 22 of part 3 of the Interim Constitution (2007) warrants the following rights for children:**

1. Every child shall have the right to his/her own identity and name.
2. Every child shall have the right to be nurtured, to basic health and to social security.
3. Every child shall have the right to protection against physical, mental or any other forms of exploitation. Any such act of exploitation shall be punishable by law, and the child so treated shall be compensated in a manner as determined by law.
4. Helpless, orphan, mentally retarded, conflict victims, displace, vulnerable and street children shall have the right to special privileges from the State to secure their future.
5. No minor shall be employed in factories, mines or in any other such hazardous work, or shall be used in the army, police or in conflicts.

The expert submission’s document put together by the consortium and CZOP takes as its starting point the CRC and the Interim Constitution “building on the standards established in these two documents to outline a proposal for a comprehensive provision for child rights in the new Constitution”. However the expert submission proposal also goes much further in the promotion of children’s rights for the new constitution. First, it notes that a specific clause (s36) in part 4 of the Interim Constitution “Responsibilities, Directive Principles and Policies of the State” mitigated the responsibility of the State and the justiciability of children’s rights. One of the recommendations of the consortium and CZOP is therefore that such clauses should not be in the new constitution and that “state policies should be justiciable (capable of having legal effect), in the interest of increasing accountability”.

**Clause 36 of part 4 of the Interim Constitution mitigates the justiciability of children’s rights:**

36. Questions not to be raised in courts: (1) No questions shall be raised in any court as to whether provisions contained in this part are implemented or not.

Second, the expert submission’s document proposes various changes and additions to the rights outlined in 2007. For instance, one of the recommendations is to secure and promote the right to participation for all children. Through this recommendation, it is very clear that the child rights movement in Nepal is going beyond a protective approach to children for the new constitution and embarking into a comprehensive rights-based approach funded on the CRC. Through national and district-level consultations with children and a vast network of child clubs in the country, children’s voices and concerns were actually fully accounted for into the expert submission.

**Summary of the key recommendations and proposal of the Consortium and CZOP:**

**Fundamental Rights**

1. Every child has the right:
   a. To life, to survival and development to the fullest extent possible.

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6 Annex B of the Expert Submission’s document presents the outcomes of the consultations organized with children and their detailed recommendations for the new constitution.
7 In Annex A of the Expert Submission document: “Suggested legal drafting for child rights in the new Constitution”.

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b. To be registered at birth and to preserve her/his identity, including name and nationality.

c. To parental or family care or to appropriate State-provided alternative care as a measure of last resort when removed from the family environment. Such removal by authorities shall be subject to judicial review.

d. To free basic health care and social services, and to adequate nutrition and shelter.

e. To safe, free and compulsory education up to secondary level, including early childhood education and services. Degrading physical and psychological punishment is prohibited.

f. To be protected from abuse, violence, harassment, neglect and exploitation at home and in the public sphere, including trafficking, early marriage and harmful cultural or religious practices. Any such act shall be punishable by law.

g. To be protected from exploitative labor practices, work in factories, mines and any other hazardous work, and work which is harmful to the physical, mental and social well-being of the child.

h. Not to be used directly or indirectly in conflict or manipulated or coerced for political purposes, recruited into police, army or armed groups and to be protected in times of conflict.

i. Not to be arrested, detained or institutionalized (above a certain age limit) except as a matter of last resort. If detained, the child shall be kept separately from adults, and for the shortest appropriate period of time. If detained, the child shall have the right to maintain contact with her/his family. The child shall be held in conditions and treated in a manner that takes into account the child’s age. The child shall have a legal practitioner assigned to children by the State. If sentenced, the child should be held separately from adults. Alternatives to institutionalization should be made available.

j. Not to be discriminated against on the basis of the child’s, or their parents or caregivers, birth, sex, gender, race, language, caste, color, disability, ethnicity, religion, age, economic status or political or other opinion.

k. To participate and express their views in all matters affecting them.

l. To engage in play, and recreational activities appropriate to their age and to participate freely in cultural life.

2. Orphaned, mentally or physically disabled, victims of conflict, displaced and street children, minority, Dalit, disadvantaged and other children in need of protection have the right to state-provided special protection and assistance for their development and well-being.

3. In all matters and actions concerning the child, the best interest of the child shall be the primary consideration.

4. For the purposes of this section, a child is any person under 18 years of age.

5. In fulfilling these rights, the child’s family or caregivers shall have primary responsibility for the upbringing and development of the child. The State shall take all necessary steps to enable the fulfillment of these rights.

Responsibilities, Directive Principles and Policies of the State

The State shall pursue a policy of protecting and promoting children’s rights and fostering their participation at national, federal, and local levels. The State shall ensure the necessary funding structures to promote child rights and participation. The State shall ensure that the needs of all children are met, making special provisions for this purpose where necessary.
Judiciary Committee
1. The Courts shall promote effective access to justice for children at first instance and at all levels of the courts, quasi-judicial bodies, and alternative dispute resolution bodies. In all dealings involving children, the courts and other legal bodies shall act according to child-friendly procedures and processes.

2. There shall be the following courts in Nepal:
   (a) Supreme Court
   (b) Appellate Court
   (c) District Court

3. In addition to the courts referred to in the above clause, the law may also constitute and establish special types of courts, judicial institutions or tribunals for the purpose of proceeding and hearing special types of cases, provided that no court, judicial institution or tribunal shall be constituted for the purpose of hearing a particular case.

Constitutional Bodies Committee

State Restructuring Committee
All national, federal and local governance will be child-friendly, promote child participation, and provide resources to ensure the progressive realization of the rights of children.

General
The State shall effectively implement all international treaties and agreements to which it is a party, including the Convention on the Rights of the Child.

In January 2010, the Constituent Assembly’s Fundamental Rights Committee incorporated most of the Expert Submission recommendations highlighting children’s rights into the draft Concept Note that will form an important basis for the drafting of the new constitution. This is already a very significant achievement of the consortium and CZOP.

In addition to the effective work done in partnership by the consortium and CZOP, an interesting lobbying initiative and program was launched by a former MCR student (2007-2008), namely Deepak Raj Sapkota, in collaboration with the International Institute for the Rights of the Child (IDE). Deepak is a member of the Executive Committee of Creating Possibilities (CP-Nepal), a social organization founded in Nepal in 2006/2007 by a group of professionals from diverse backgrounds and active in the field of children’s rights. CP-Nepal is the organization that approached IDE to develop an advocacy/training program in Nepal that would aim at lobbying for the introduction on children’s right in the new constitution at important stages of the drafting process.

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9 Deepak Raj Sapkota is currently the Country Director of Karuna Foundation, INGO working in the field of disability prevention in Nepal since 2007. He has extensive experience in child rights programming and policy formulation. He particularly served in the capacity of Executive Director of the Central Child Welfare Board before joining Karuna Foundation. Central and Districts Boards were created by the 1992 Children’s Act and work under the directive of the Ministry of Women, Children and Social Welfare. For more details, see http://www.ccwb.gov.np/
A delegation from IDE visited Nepal during 30 March-3 April 2009\(^\text{10}\) with the aim of sensitizing Nepalese Parliamentarians, members of the Constituent Assembly, journalists and NGOs about the Convention on the Rights of the Child (CRC). There is a plan for another visit of the IDE \(^\text{11}\) on 22-26 March of this year to further advance the promotion of children’s rights and discuss the way they are addressed in the first draft of the new constitution.

**Update on the progress related to the overall drafting process of the new constitution:**

The overall process of drafting the new constitution entered a crucial phase last February 4 with discussions on the last concept papers coming to an end. The CA’s Constitutional Committee (CC) is now writing the preliminary draft of the constitution, expected by March 5. This first draft will then be presented to the CA before it is taken to the Nepali people for broader feedback (see calendar below).

Political parties, however, have not yet reach consensus on key issues like forms of governance, restructuring of state and modality of judiciary, among others. With less than four month at hand, the parties are actually grappling with such contentious issues as the official language, national flag and the name of the constitution. According to the CA regulation, each clause of the constitution will need to be passed by two-third majority of the 601-member assembly.

**Calendar:**

- Feb 5-March 5: First draft of the new constitution by the CA’CC
- March 6-March 13: CA discussion on the first draft
- March 14-April 4: Public opinion collection
- April 5-13: CA discussion on public opinion
- April 14-20: Constitution bill on public opinion
- April 21-28: CA discussion on the bill
- April 29-May 5: Amendments to the bill
- May 6-May 20: Clause-wise discussion, approval of each article and preamble
- May 22-May 28: Signatures of new constitution by members, seal by Chairman, handover of new constitution to President and promulgation of Nepal’s new constitution

3. *Selection of constitutions*

In order to fulfill their assignment, the MCR students reviewed various constitutions and literature on constitutional and legal reforms. A total of 47 constitutions were selected and examined. Furthermore, to present some possible suggestions for Nepal, examples of constitutional provisions dealing with children’s rights were analyzed in a comparative manner.

The sample of constitutions for this comparative study was selected based on several criteria. First, we selected countries which had already submitted their second reports to the CRC committee, in order to complete and update the information contained in existing relevant studies such as the UNICEF publications on constitutional and legal reforms\(^\text{12}\). Second, we followed the suggestions of our partners to add few other constitutions to the study, for instance Bolivia and Serbia as well as additional countries from the Asian continent.

The table below presents the list of considered countries, presented by region, year of adoption of their

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\(^{10}\) Jean Zermatten, IDE Director, Paola Riva Gapany, IDE Deputy Director; Andressa Curry Messer, IDE scientific collaborator and Mrs. Clara Balestra, IDE scientific collaborator.

\(^{11}\) Jean Zermatten, IDE Director and Paola Riva Gapany, IDE Deputy Director.

constitution or amendment related to children’s rights and in relation to the adoption and ratification of the CRC. As argued by Alston & Tobin (2005), we also assessed that clear trends could be identified according to the drafting time of the constitutions. Recent constitutions were more likely to reflect the CRC while older constitutions often remained incomplete or even silent on children’s rights.

<table>
<thead>
<tr>
<th>Sample of constitutions (47), reviewed by region and year of adoption or amendment relevant to children’s rights</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Region</strong></td>
</tr>
<tr>
<td><strong>Asia &amp; The Pacific</strong></td>
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<td></td>
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<td></td>
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<td></td>
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<tr>
<td><strong>Latin America &amp; The Caribbean</strong></td>
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<tr>
<td><strong>Middle East</strong></td>
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<tr>
<td><strong>Central, Eastern Europe &amp; the Common Wealth of Independent States (CEE/CIS)</strong></td>
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<tr>
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<tr>
<td><strong>Western Europe and Northern America</strong></td>
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</tbody>
</table>
4. Methodology of the comparative study

The group of MCR students assigned to this comparative study reviewed the above constitutions and assessed the scope of constitutional recognition of children’s rights in the various countries.

In the process of searching for relevant literature, a study conducted by Philip Alston and John Tobin (2005) “Laying the foundations for children’s rights” has been considered as a very useful tool for the analysis of the selected constitutions. This exhaustive study examines the extent to which the international human rights regime and the systems developed at the regional levels – in particular in Africa, the Americas and Europe – have been adapted to take full account of the principles and provisions of the Convention. Furthermore, it presents a survey of achievements at the national level, in terms of the constitutional recognition of children’s rights and the development of national institutions designed to ensure their promotion.

Inspired by Alston and Tobin’s the model, the members of the project group came up with a list of three different categories of approach to the constitutional status of children’s rights (see table 1 to table 3 below). It is important to underline that in addition, the work of the group was guided by a list of priority issues provided by Creating Possibility (CP-Nepal), indicating actual concerns of the constitutional drafting process in relation to children’s rights. This list, prepared in view of the forthcoming advocacy visit of an IDE delegation to Nepal, constituted an important frame for our comparative analysis. In particular, we tried to identify the constitutions and highlight the provisions that addressed the same issues in other countries. The main themes identified by our partner were related to the right to protection, the right to survival and development and the right to participation.

### Major Child’s Rights Issues listed by CP-Nepal for the visit of the CRC-IDE delegation in Nepal in March:

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Right to protection</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a</td>
<td>Name and nationality</td>
<td></td>
</tr>
<tr>
<td>b</td>
<td>Protection from abuses and exploitation</td>
<td></td>
</tr>
<tr>
<td>c</td>
<td>Protection from involvement in armed conflict</td>
<td></td>
</tr>
<tr>
<td>d</td>
<td>Protection from neglect and exclusion</td>
<td></td>
</tr>
<tr>
<td>e</td>
<td>Right to equality and non discrimination: on the ground of sex, ability and also on the basis of who their parents/caretakers are</td>
<td></td>
</tr>
<tr>
<td>f</td>
<td>Right to a speedy and child friendly judicial trial</td>
<td></td>
</tr>
<tr>
<td><strong>2 Right to Survival</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a</td>
<td>Care of pregnant mothers (neonatal care)</td>
<td></td>
</tr>
<tr>
<td>b</td>
<td>Right to adequate food and nutrition</td>
<td></td>
</tr>
<tr>
<td>c</td>
<td>Right to adequate health care including (immunization)</td>
<td></td>
</tr>
<tr>
<td><strong>3. Right to Development</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a</td>
<td>Right to early Childhood Care</td>
<td></td>
</tr>
<tr>
<td>b</td>
<td>Right to free and compulsory primary education</td>
<td></td>
</tr>
<tr>
<td>c</td>
<td>Right to secondary education including vocational training. It also includes the appropriate assistance for children with disability</td>
<td></td>
</tr>
<tr>
<td>d</td>
<td>Appropriate care for neglected children</td>
<td></td>
</tr>
<tr>
<td><strong>4. Right to Participation</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a</td>
<td>Children have right to be heard in the matter that are their concerned. But, Children should not be used in political activities by any political parties.</td>
<td></td>
</tr>
<tr>
<td>b</td>
<td>Children have freedom of expression, assembly and run their own organizations</td>
<td></td>
</tr>
</tbody>
</table>
5. Approaches to constitutional recognition of children’s rights

So far, according to the information gathered, Nepal that does not allow for the direct applicability of international treaties, such as the CRC. The adoption of a system of direct applicability could help Nepal in the drafting process, as it allows to decide - if a selection is required during the process - which rights to really emphasize, by introducing them at the constitutional level, without closing the door to further implementation though direct applicability of the CRC provisions that are recognized as self-executing. The table below illustrates the countries where such a possibility is given.

<table>
<thead>
<tr>
<th>Table 1: Priority given to international treaties in domestic law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania, Belgium, Bolívia, Brazil, Burkina Faso, Chile, Colombia, Georgia s., France, Nicaragua, Russian Federation, Romania, Rwanda, Switzerland, Togo, Venezuela</td>
</tr>
</tbody>
</table>

In some other countries children’s rights are not mentioned at all. As already mentioned, it is generally – but not always - the older constitutions that contain no provisions dealing with children. These constitutions were either adopted before the existence of any international human rights treaty or they were adopted after the Bill of Human Rights but modeled on the European Convention on Human Rights, which is silent...
about children (Alston & Tobin, 2005). One reason of the invisibility of children can be that constitutions were drafted before children's right became a real concern on the international and national agendas. Sometimes, this can also be justified by the adoption of general human rights provisions at the constitutional level, considered as sufficient to protect children in relation to the non discrimination principle and right. Examples of such countries can be found in table 2.

**Table 2: constitutions in which children are invisible:**

Bhutan, Canada, Czech Republic, France, Iceland, USA

Nevertheless, our opinion is that such a "constitutional philosophy" is not strong enough to promote children's rights, especially because age is often not mentioned as an explicit ground for discrimination and because the reasons listed for discrimination can also be too narrow to ensure, by extension, a real impact on other vulnerable or marginalized groups, such as children. Through its symbolic and programmatic nature, a constitution can be a powerful instrument. Mentioning children's rights explicitly and giving them visibility at the constitutional level is a way to raise awareness about their fate and juridical status that is unlikely to be achieved by general human rights wording.

It ought to be underlined that in most of the constitutions adopted or significantly amended after the adoption or ratification of the CRC, children's rights are, somehow, mentioned. Therefore, following Alston & Tobin’s model (2005), the next table gives an overview of the constitutions in which an explicit mention of children is included, by theme.

**Table 3: constitutions providing special visibility for children through constitutional provisions focused on children, by theme**

<table>
<thead>
<tr>
<th>Themes</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Children defined as any person under 18 years old</strong></td>
<td>Bolivia s58; Ghana s28 (5), Sri Lanka s22 (9).</td>
</tr>
<tr>
<td><strong>A general obligation to protect children or childhood</strong></td>
<td>Albania, s54 (1); Azerbaijan, s17; Brazil, s 227; Belarus s32; Belgium, s22bis (1); Bolivia s62; Burkina Faso, s2; Cambodia, s48; Colombia, s44; Ecuador, s45; Gambia s216 (2); Georgia s36 (3); India, s39 (f); Iraq s29 (8); Madagascar, s21; Maldives s35 (a); Mexico, s40; Nicaragua, s71 and s76; Nigeria s17 (f); Pakistan s35; Poland s72 (1), Romania s45, Rwanda, s27 and s28, Serbia, s64 and 66, Slovenia, s53, Switzerland s11 (1) and s67 (1); Russian Federation s38 (1); Togo, s36; Ukraine s51; Venezuela s78; Vietnam, s40 and s65; Yemen, s30.</td>
</tr>
<tr>
<td><strong>The equal status of illegitimate or abandoned children</strong></td>
<td>Albania, s54 (2); Bolivia s59 (III-IV); Brazil, s 227 (6); Burkina Faso, s1; Ecuador, s11; Ethiopia, s36 (4); Fiji, s11; Ghana s28 (1b); Romania, s44 (3); Serbia, s64; Slovenia, s54 (2); Ukraine s52; Togo s31.</td>
</tr>
<tr>
<td><strong>A special obligation to protect special groups of children, such as orphans, disabled or needy</strong></td>
<td>Bolivia s59 (II-IV); Brazil, s 227 (0) and (1.II); Burkina Faso, s18; Cambodia, s73; Ecuador, s47 (9); Ethiopia, s36 (5); France, preamble to the Constitution of October 26, 1946; Iraq s30 (2); Ireland, s 45 (4.1); Serbia, s21 and s66; Slovenia, s52; Sri Lanka s22 (2a); Switzerland, s62 (3); Ukraine s52; Vietnam, s67.</td>
</tr>
</tbody>
</table>
A general obligation to protect children from exploitation, abuse and violence

Albania, s54 (3); Belarus s32; Belgium, s22bis; Bolivia s61 (1); Brazil, s227 (0); Burkina Faso, s2; Cambodia, s48; Colombia, s44; Ecuador s47 (2) and s47 (4); Ethiopia, s36 (1d) and (1e); Gambia, s29 (2); Ghana s28 (1d-3); India, s39 (e) and (f); Iraq s29 (3-4); Maldives s35 (a); Nigeria s17 (f); South Africa s28 (d); Serbia, s64; Sri Lanka s22 (b); Switzerland, s11 (1), s68 (3) and s123b; Togo s36; Ukraine s52.

An obligation to protect children from exploitative labor, and provision of minimum age for employment

Albania, s54 (3); Belarus s42; Bolivia s61 (2); Brazil s227 (3); Colombia s44; Ecuador, s47 (2); Ethiopia, s1 (d)13; Gambia, s29 (2); Ghana s28 (2); India, s24; Maldives s35 (a); Pakistan s11 (3) and 37 (e); Poland, s65 (3); Romania, s38 (2) & 45(3-4); Serbia, s. 66; South Africa s28 (e) and (f); Sri Lanka s22 (7); Togo, s36.

Obligations of parents to raise and educate their children

Azerbaijan s17 & 34; Belarus s32 (2); Brazil, s 229; Burkina Faso, s23; Cambodia, s47; Colombia, s44 and s67 (obligation of the family); Gambia 29 (1); Ghana s28 (1c); India, s51A (k); Ireland, s42 (1); Madagascar, s2314; Nicaragua, s76 (obligation of the family); Romania, s44; Russian Federation s38 (3); Rwanda, s27; Serbia, s65; Slovenia, s54 (1); Togo s31; Ukraine s51; Venezuela s76; Vietnam, s64, s65 and s66.

Rights of parents to raise and educate their children

Azerbaijan s34; Burkina Faso, s24; Ecuador, s (38); Ghana s28 (1c); Ireland, s42 (1) and s41 (1); Romania, s44; Russian Federation s38 (3); Rwanda, s27; Serbia, s65; Slovenia, s54 (1).

The table above already proposes a number of relevant constitutional sources to consult while trying to formulate some specific children's rights at the constitutional level. Nevertheless, it does not address all the priority issues outlined by our partner CP-Nepal. The next table aims therefore at responding more precisely to these issues, offering a more comprehensive overview of the rights pointed out in the context of Nepal, by reference to the corresponding CRC provisions.

In the working process related to these specific issues, we quickly noticed that the formulation of some of the constitutional provisions covering the rights at stake were sometimes far too elusive or incomplete to have a real impact for individuals and especially for children. It is not in every constitution, for instance, that children are explicitly mentioned in relation to non discrimination or identified as a group holding particular needs and rights with regard to health. In addition, some formulations were more aiming at enumerating the State's obligations rather than a right for the children concerned, reflecting a rather protective and conservative approach of children's rights. Therefore, for each right, we tried to identify what we considered the best formulation among the selected constitutions, using as a criteria their closeness or similarities with the corresponding CRC's provisions. Therefore, we chose to slightly modify the initial list provided by CP-Nepal, in order to be coherent with the CRC. In particular, we added the best interests of the child in order to reflect the four general principles identified by the CRC committee.

| Table 4: CRC provisions and corresponding constitutional provisions by country following the list provided by Creating Possibility - Nepal |
|---|---|---|
| **CRC articles** | **Countries** | **Suggestion of the group** |
| Art. 2 non discrimination | Belgium, s11; Brazil, s.227 (0); Burkina Faso s37 and s23; Canada, s15; Colombia, s13, Ecuador, s11; Fiji, s38 (2) and (6); France, preamble to the | Canada s15; Ecuador 11; Mexico s10; Rwanda s11; Switzerland s8; Serbia 21. |

13 without provision of minimum age though
14 only to educate
### Article 3 (1) Best Interests of the Child
- **Belgium, 22bis; Bolivia, s60; Ecuador, s45; Gambia, s29(1); Venezuela, s75 & 78; Fiji, s27; Sri Lanka, s22; South Africa, s28(2).**

### Article 7 (1) Right to a Name and Nationality
- **Colombia, s44; Ecuador, s46; Ethiopia, s36 (1b); Fiji, s10 and 11; Gambia, s29 (1); Ghana s6 (2-4); Serbia, s38 and s64; South Africa, s28 (1a); Switzerland s38 and s119; Togo s32; Venezuela, s56.**

### Article 12, 13, and 15 Right to Participation
- **Belgium, s22bis; Bolivia s59 (V); Colombia, s45; Ecuador, s46; Serbia, s64; Switzerland, s11 (2) and s41 (g); Venezuela, s79.**

### Article 19 (2) Appropriate Care for Neglected Children
- **Nigeria, s17 (3) (f); South Africa, s28 (1) (d); Sri Lanka s22 (1-2); Sri Lanka s22 (1-2).**

### Article 24 Adequate Health Care
- **a) Brazil, s227 (1.I); Burkina Faso s18; France, preamble to the Constitution of October 29, 1946; Serbia, s63, s66 and s68; Venezuela, s76.**
- **b) Brazil, s. 227 (0); Belgium, s23; Bolivia s18 (I-III); Burkina Faso, s18; Colombia, s44; Ecuador, s45; France, preamble to the Constitution of October 29, 1946; India s39; Maldives s23 (c); Rwanda, s41; South Africa, s28 (1)(c); Serbia; 68; Sri Lanka s22 (b); Switzerland, s41 (b); Togo, s.34.**

### Article 27 Right of Every Child to a Standard of Living Adequate for Her/His Development
- **Brazil, s. 227 (0); Belgium, s23; Bolivia s16 (I-II); Burkina Faso, s18; Colombia, s44; Ecuador, s45; France, preamble to the Constitution of October 26, 1946; South Africa, s28 (1)(c); Maldives s23 (a); Sri Lanka s22 (b); Switzerland, s.12;**

### Article 28 Education
- **a) Albania, s57; Azerbaijan, s42; Bangladesh s17; Belarus s49; Belgium, Brazil, s206 (though compulsory should be added); Gambia, s30; Georgia, s35; Ghana, s25; Maldives, s36; Mexico s3; South Africa, s29**

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15 We chose to interpret "appropriate care for neglected children" mentioned in the list of issues provided by CP-Nepal as article 19 (2) CRC, as the terminology was not sufficiently precise to target a specific right of the CRC.
### b) Right to secondary education including vocational training

<table>
<thead>
<tr>
<th>Country</th>
<th>Article</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil</td>
<td>s208 (I)</td>
<td>Cambodia, s68; Chile, s19; Colombia, s67; Ecuador, s28; Gambia, s30 (a); Georgia s35 (3); Ghana s25 (1); India, s 21 (A); Iraq s34; Madagascar, s24; Maldives s36; Mexico, s3, Nicaragua, s121; Nigeria, s18 (3a); Pakistan, s37 (b); Rwanda, s40; Serbia, s71; Slovenia, s57; Sri Lanka s22 (6); Switzerland, s19 and s62 (2); Togo, s35; Ukraine s53; Venezuela, s102; Vietnam, s59.</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>s42</td>
<td>Belarus, s49; Bolivia s17; Brazil, s208 (0/2); Ecuador, s28; France, preamble to the constitution of 1946; Gambia, s30 (b); Georgia s35 (3); Ghana s25 (1b); Iraq, s34; Madagascar, s23; Maldives, s36; Mexico, s3 (III &amp; IV); Nicaragua, s121 Nigeria, s18 (3b); Pakistan, s37 (b); Russian Federation s43 (2); Serbia, s71; Ukraine, s53; Venezuela, s103; Vietnam, s59.</td>
</tr>
<tr>
<td>Brazil</td>
<td>s208 (0. IV); Colombia, s67; Ecuador (47. 1); Georgia, s35 (3); India, s45; Russian Federation, s43 (2), Ukraine, s53</td>
<td></td>
</tr>
</tbody>
</table>

### Art. 38 armed conflict

<table>
<thead>
<tr>
<th>Country</th>
<th>Article</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cambodia</td>
<td>s48; Ecuador, s47(6); South Africa, s28 (1) (i)</td>
<td></td>
</tr>
<tr>
<td>Cambodia</td>
<td>s48; South Africa s28, (1)(i)</td>
<td></td>
</tr>
</tbody>
</table>

### Art. 40 Juvenile justice

<table>
<thead>
<tr>
<th>Article</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) fair trial</td>
<td>a) Bolivia s60; Brazil, s228 (3);</td>
</tr>
<tr>
<td>b) age of criminal responsibility</td>
<td>b) Brazil, s228; Ecuador, s51; Nicaragua, s35</td>
</tr>
<tr>
<td>c) trial taking account of age</td>
<td>c) Gambia s29; Fiji, s27 (5) and s29 (4), (5) and (6);</td>
</tr>
<tr>
<td>d) privacy of criminal procedure</td>
<td>d) Maldives s42 (c);</td>
</tr>
<tr>
<td>e) right to defense</td>
<td>e) Sri Lanka s22 (c);</td>
</tr>
<tr>
<td>Brazil</td>
<td>s228</td>
</tr>
<tr>
<td>Fiji</td>
<td>s27 (5) and s29 (4), (5)</td>
</tr>
<tr>
<td>Maldives</td>
<td>s(42 (c)</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>s22 (c)</td>
</tr>
</tbody>
</table>

### Remarks on table 4:

**Article 2: non discrimination**

Provisions mentioning age as a ground for discrimination can be considered as closer to the CRC than others. If age is not expressly mentioned, then the formulation should be open enough to allow the extension of the right to non discrimination to other categories, by including words like "notably". Such formulation can be found in several constitutions, such as Burkina Faso or Ecuador. Some constitutional provisions limit the non discrimination principle to citizens and are therefore problematic as they can lead to discriminations towards foreigners or stateless residents. Some others only prohibit what they describe...
as "unfair discrimination", a wording that can become extremely problematic when not specific enough, for instance, by stressing that positive discrimination is at stake. Therefore, Canada, Ecuador, Mexico, Rwanda, Switzerland and Serbia can be considered as good example of non discrimination provision among the consulted constitutions.

**Article 3(1): best interests of the child**

Pursuant to article 3(1) of the Convention, the best interests of the child shall be a primary consideration in all actions concerning children. Together with articles, 2, 6 and 12, article 3 (1) has been identified by the Committee on the Rights of the Child as one of the four general principles of the Convention. Eight of the Constitutions of the sample make an explicit reference to the child best interest(s) or interest (Belgium, article 22bis). In the view of the group, six of these Constitutions reflect the spirit of art. 3(1) of the CRC, while two of them limit the best interests’ principle to specific issues (Fiji – children deprived of freedom; Gambia - best interests only in relation to legislation)

**Article 7(1): right to a name and nationality**

Article 7(1) of the CRC clearly mentions the right to be registered from birth as part and condition to the right to a name and nationality. Most of the reviewed articles mention the right to a name and nationality, but don’t mention birth registration. Only Serbia proposes a complete formulation thought two articles. One stresses the right to a name and nationality including the right to be registered at birth and the second stipulates that every child born in Serbia has a right to the Serbian nationality.

**Article 12, 13 and 15: right to participation**

Only few constitutions recognize expressly children's right to participation. A common feature of all these constitution is that participation is always linked to the evolving capacities of the child, enabling the exercise of rights according to age and maturity. This is the case for Serbia and Switzerland of instance. In some constitutions, the formulation becomes narrower, recognizing a right to participation only to adolescents. A right to association and freedom of expression is not mentioned in all these constitutions, with the only exception of Ecuador, in the context of students.

**Article 19 (2): appropriate care for neglected children**

Article 19 of the CRC underlines the responsibility of the State to protect the child from all forms of maltreatment by parents or others responsible for the care of the child and establish appropriate social programs for the prevention of abuse and the treatment of victims. In analyzing the constitutional dispositions of the countries with a reflection of Article 19 in their constitution, it is easy to notice that Sri Lanka's constitution is more complete in that it clearly defines these responsibilities as children’s rights, including “the right to be protected from maltreatment, neglect, abuse or degradation; the right to family or parental care; the alternative care when removed from the family environment; basic nutrition, shelter, basic care services and social services”.

**Article 24: adequate health care**

a) Care of pregnant mother/neonatal cares

The following constitutions have relevant provisions: Brazil, France, Serbia, Venezuela and Burkina Faso. None of the 5 constitutions mentioned pre-natal or post natal care as such, however the Brazilian constitution provides that the state should allocate “a percentage of public health care funds to mother and child assistance”. The constitutions of France and Serbia are less specific; the preamble of the constitution of France included “mothers” among other categories covered by the protection of health guarantee while
the constitution of Serbia mentioned that “mothers shall be given special support and protection before and after childbirth. The constitution of Serbia also mentioned that pregnant women and mothers on maternity leave shall be provided with health care from “public revenues”. In the case of Venezuela the constitution did not refer to health as such, however it guarantees “overall assistance and protection for motherhood, in general, from the moment of conception, throughout pregnancy, delivery and the puerperal period, and guarantees full family planning services based on ethical and scientific values”. The constitution of Burkina Faso is very vague and did not mention care of pregnant mothers but mentioned “health” and “protection of motherhood and of infancy” among other “social and cultural rights recognized by the present Constitution which aims to promote them.”

b) Right to adequate health care.

The following constitutions have relevant provisions: Brazil, Colombia, France, India, Serbia, South Africa and Sri Lanka.

The constitution of France included children among other groups whom the nation “shall guarantee” the “protection of their health” The Indian constitution vaguely mentioned that “the health and strength of workers, men and women, and the tender age of children are not abused”. Other constitutions were clearer on the right to health such as the constitution of Serbia which obligated the state to provide health care for children from public revenues. However, only South Africa and Sri Lanka clearly stated the right to “basic health care services” in their constitution. The constitution of Brazil clearly mentioned health as a child right provision and obliged the state to promote “full health assistance programs for children and adolescents”. The constitution of Colombia mentions health as one of the basic rights of children.

Article 27: right of every child to a standard of living adequate for her/his development

Article 27 of the Convention calls for a holistic approach to child survival and development including physical, mental, spiritual, moral and social dimensions. The right of every child to survive and develop is a fundamental assertion of the Convention that can be attained only if adequate living conditions are secured for the child. Eleven constitutions of the sample are making a reference to the right to survival and development. Five constitutions assert this right specifically for children and make this a clear obligation to the parents and the States. In the remaining cases, the right to survive and to live a life in conformity with human dignity is asserted for everyone or particularly vulnerable persons.

Article 28: Right to education

Article 28 stipulates the right to education. A majority of countries has a constitutional provision for the right to education. However, many of the constitutional provisions are rather ambiguous and do not clearly indicate the nature of the right, who is the right-holder and the responsibility of the government. Only Togo and Madagascar refer in their constitutions specifically to the right of the child to education, all other countries refer to all citizens, all persons or everyone. The majority of constitutional provisions provide for primary education to be compulsory and free, however, only a part indicates that this right should be available to all. Several constitutional provisions only provide for primary education to be free but do not mention compulsory. Yemen, for example, has a constitutional provision which provides for primary education to be compulsory but does not mention free. Four countries indicate further the years of compulsory education: Cambodia, Colombia, India and Togo. Very close in their wording to the right as stipulated by the CRC, come for example Ghana, Gambia and India. With respect to secondary education, including general and vocational education, only half of the constitutions provide a provision, whereby most of them refer to secondary education only and not to vocational education. In general, the Latin American countries provide for quite complete provisions related to education. In part b) few examples of following legislative reforms and their practical enforcement will be provided, focusing in particular on the
responsibility of the State to make education free and compulsory.

Article 38: children in armed conflict

The protection of children from armed conflict is not mentioned in specific in most of the examined institution. The constitution of South Africa mentioned that children have the right “not to be used directly in armed conflict, and to be protected in times of armed conflict” while the constitution of Cambodia stated that the state shall protect children “during wartime”

Article 40: juvenile justice

None of the constitutions address juvenile justice in a comprehensive manner as required by art. 40 of the CRC. However, some of them address particular issues: Bolivia’s - access to a prompt, timely and assisted administration of justice; Brazil - minimum age for criminal responsibility; Fiji – child friendly courts and respect for privacy; Maldives – fair and specific court proceedings for children; Sri Lanka - attorney-at-law assigned to the child by the State and at State expense, in criminal proceedings affecting the child.

6. Debates and impact related to constitutional reforms

The comparison between the different provisions provides some insight on the way children's rights can be introduced and formulated at the constitutional level. However this process raises further problems, related to the reason for adopting a specific provision and the impact of the provision.

Therefore, our group wishes to present a general overview of some of the debates and legislative developments in relation to the integration of children's rights at constitutional level. Although the contexts differ sometimes significantly from one country to another, issues and questions may overlap the ongoing debates in Nepal. We hope that the way certain rights have been incorporated at the constitutional level and the results of some debates presented below in other countries will help those involved in the campaign for the introduction of children's rights in Nepal to make choices and eventually take further contacts with the relevant countries. Furthermore, the subsequent efforts undertaken by some countries to translate constitutional aspirations into reality may also be a source of inspiration as they allow considering the constitutional reforms from a broader point of view.

a. Examples of debates related to the integration of children’s rights in the constitution

During the drafting process, the selection of the rights to include at the constitutional level is frequently a matter of debate. Some countries such as South Africa, have chosen to incorporate in their constitutions a large bill of rights reflecting almost all the rights enshrined in the CRC. Others, not mentioning children at all at the constitutional level, have opted for the adoption of a complete legislation on children's rights. In most of the countries, a mixed situation can be observed, in which children's rights are only partially mirrored at the constitutional level, but expressed and recognized through additional legislative measures.

The selection of the rights recognized at the constitutional level can find different justifications according to the context and historical background of the constitutional process, but this choice is never made without discussions and debates.

A good illustration of this type of debate can be found in Belgium, with a rather creative outcome. In relation to children's right, the Belgian constitution was first amended in 2000 though the adoption of article 22bis, as initially formulated. The first version of this article stipulated that: "each child is entitled to have its moral, physical, mental and sexual integrity respected". This amendment was proposed as a consequence of an enormous scandal of sexual abuses on children known as the "Dutroux affair" and was therefore limited to this very specific issue.
During the debates on article 22bis, proposals were made in order to include in the revision other children's rights, in order to balance the fact that the Belgian jurisdictions did not recognize the direct applicability of most of the CRC provisions. For procedural reasons, a new debate had to be opened and article 22bis was adopted as initially drafted. During this second amending process the discussions mainly focused on identifying the rights to be integrated in the constitution. Some children’s rights defenders were advocating for including in the constitution of the whole CRC. However, members of the parliamentary commission were of the opinion that the constitution should only reflect the spirit and aspirations of the Nation in concise terms, without preventing further legislative developments. These disagreements led to the hearing of several experts, such as children’s rights specialists or constitutionalists.

The outcome of the debate was an interesting compromise, opting for the introduction of the three missing general principles of the CRC - non-discrimination was already an integral part of the constitution. In its current formulation, article 22bis has been completed with the best interest of the child, the right to survival and development and the right to be heard. The aim of this formulation was clearly symbolic, affirming Belgium’s concern for children’s rights while creating a «footbridge to the other provisions of the CRC».

Unfortunately, in this first example, there seems to have been little consideration about consulting children to know what they thought about the constitutional recognition of their rights. This is probably a second critical issue when it comes to constitutional process. Even when constitutions seem to be extremely sensitive about children’s rights, the extent to which children themselves have been able to influence the debates on constitutional reforms remains often unclear or unsatisfactory. Yet, these reforms will have a direct impact on them and, in application of article 12 of the CRC, they should be able to make their views heard and taken into consideration.

In this respect, Bolivia provides an extremely interesting and successful example of children’s meaningful participation, in the context of child labor.

In the first draft of its new constitution, Bolivia had planned to introduce an article aiming at abolishing all forms of child labor. The "Niños y Adolescentes Trabajadores" (NATs), a well known movement of working children in South America, managed to meet with parliamentarians and to convince them to modify some provisions of the new constitution (2009) in order to replace the abolition of all forms of child labor with the abolition of situations of economic exploitation and forced labor, as well as to introduce an article on the rights to work in decent conditions for all. Thanks to their participation, working children were able to influence significantly the drafting process of the constitution on a subject of primary concern to them, and a yet very sensitive problem.

b. Legislative reforms

As mentioned above, most of the time, constitutional reforms alone cannot achieve the full recognition of children’s rights into the domestic legislative order. In most of the countries reviewed in this study, these reforms came together with additional legislative measures. In fact, a constitutional reform remains most of the time a first step requiring further implementation though legislative reforms, in order to adopt new laws or to revise the existing ones to bring them in compliance with the constitutional norms and with the international treaties they reflect.

This has been stressed by the CRC Committee in its concluding observation regarding Ecuador. The Committee welcomed the new Constitution adopted in 2008, but it expressed concern about the fact that much of the national legislation was not in line with the CRC. The committee urged Ecuador to undertake a

All the documents related to debate in the parliament are available at: http://www.senate.be/www/?MIval=/dossier&LEG=4&NR=800&LANG=fr
comprehensive review of its legislation in order to bring it into full compliance with the Convention” (CRC/C/EUC/CO/4, para. 10).

In a limited number of the reviewed countries, the ratification of the CRC seems to be the primary reason for legislative reforms when constitutional reforms were considered only as a second step. For instance, in Rwanda, in 2001, an important law was adopted, aiming at protecting children's against violence, the law 27/2001. Chronologically, it preceded the adoption of the new constitution of 2003, which incorporated a number of children's rights at the constitutional level. This law includes a larger range of rights recognized by the CRC than the constitution.

Nevertheless, in numerous examples, the impact of constitutional reforms can clearly be identified at the legislative level, showing that in many countries it remains one of the strongest measures that can be taken.

In Brazil for instance, only two years after the promulgation of the new constitution, the status of the Child and Adolescent was adopted in 1990. The bill clearly reflects the CRC and its formulation was largely influenced by different social movements, and in particular those related to child rights. Children were themselves very much involved in gaining its acceptance by the National Congress. In the same line, in 1998, Nicaragua adopted the “Código de la Ninez y la Adolescencia”.

A similar trend can be observed in Colombia that adopted the "Código de la Infancia y a la Adolescencia" in 2006. The article 2 of the code explicitly refers to the constitution, proclaiming that its main goal is to guarantee the recognition of children's rights at the international and constitutional level.\footnote{The code is not translated into English. In it orginal version, article 2 stipulates that: “El presente código tiene por objeto establecer normas sustantivas y procesales para la protección integral de los niños, las niñas y los adolescentes, garantizar el ejercicio de sus derechos y libertades consagrados en los instrumentos internacionales de Derechos Humanos, en la Constitución Política y en las leyes, así como su restablecimiento. Dicha garantía y protección será obligación de la familia, la sociedad y el Estado.}

In Mexico, based on article 40 of the Constitution, the Act on the Protection of the Rights of Children was adopted at the federal level. The Committee welcomed the efforts to bring national legislation in line with the CRC, but urged Mexico to ensure that all state laws are harmonized with this federal law (CRC/C/MEX/CO/3). So far, no information is available regarding the progress realized in this area.

In other countries the impulse has been given in order to adopt a comprehensive law dedicated to children and children rights, but discussions are still going on regarding the legislative moves to be made.

For instance, according to the last report submitted to the CRC Committee (CRC/C/CHL/3, 2005) by Chile, a draft bill on the protection of the rights of children is currently before the Parliament, aiming at bringing existing legislation into line with the CRC, the Political Constitution of the Republic and international treaties ratified by Chile. While not approved yet, it is expected to replace the Juvenile Act of 1967, which had been designated as a source of concern by the CRC Committee in its concluding observations (CRC/C/CHL/CO/3, 2007, par 7-8).

Similar debates have taken place in Switzerland. Article 11 of the constitutions together with article 41, allowed a parliamentarian to propose the adoption of a federal law to protect children and adolescents in Switzerland. His proposal led the Swiss government to present in 2008 its national strategy to protect children and adolescents. Nevertheless, the adoption of a federal law has been rejected, mainly due to the opposition of the cantons (regions), which stressed that it would undermine their own prerogatives. Without a federal law the implementation of children's rights faces the risk of remaining unequal in the country, a problem that has already been underlined by the CRC committee while examining the Swiss initial report on the implementation of the CRC (CRC/C/CHL/CO/3, 2007, par 7-8). Meanwhile, some other already existing federal laws have been successfully reformed in order to take children's right into account. This trend can be observed in the criminal code, where the penalties for some offenses involving children or the
prescription delays have been increased. In the field of family law, Switzerland has significantly improved its legislation as well.

In **Serbia**, after the adoption of the new constitution, the Deputy Ombudsman in charge of children’s rights announced the government’s intention to draft a comprehensive law on children’s rights. A working group has been established for this purpose.

All these examples show that the constitutional reforms undertaken in several countries were certainly a strong signal for further legislative reforms aiming at the effective implementation of children’s rights.

A successful and more detailed example of such a process can be found in **Ethiopia**. After more than 30 years of Civil War, Ethiopia, in July 1991, approved the National Charter on Peace and Democracy and created the Transnational Government (TGE) of Ethiopia. The TGE drafted a new constitution and elected a constituent assembly to discuss and adopt the draft constitution. On 9 December 1991, the TGE adopted and ratified the CRC and after the ratification by the Council of Representatives, the Convention became part of the legal system of Ethiopia by proclamation No. 10/1991 which empowered the Ministry of Labor and Social Affairs to undertake all acts necessary for the implementation of the Convention. The provision for children’s rights (Article 36) was adopted in the final constitution in 1994.18

The CRC Committee in its Concluding Observations (CRC/C/15/Add.67) in January 1997 on the Initial Report of Ethiopia (CRC/C/8/Add.27), welcomed the adoption of the new constitution, including article 36. However, it raised concerns regarding the non-compatibility of certain provisions with the CRC Convention such as the provision “for a different minimum age of marriage between girls (15 years) and boys (18 years), the provision in the Penal Code for the possibility of sentence children to corporal punishment, the provision in the Civil Code for “lightly bodily punishment” as an educative measure within the family and the limitation of the right to counsel when the child may be represented by his or her parents or legal guardian during legal proceedings”. Additionally, the Committee criticized that the age of criminal responsibility was set at 9 years and that as from the age of 15 years, children were treated as adults. After the recommendations of the CRC Committee, Ethiopia prohibited corporal punishment in schools by a directive issued by the MOE. However, it didn’t follow yet the recommendation of the CRC Committee stated in its Concluding Observations (CRC/C/ETH/CO/3) on the Second Periodic Report of November 2006 to also prohibit corporal punishment in the home setting. A right to be protected from corporal punishment in all settings in the Constitution would have set a better sign from the beginning. The minimum age for criminal responsibility also has not been raised in the new Criminal Code adopted in 2005 which the CRC Committee criticized. But the new Family Code adopted in 2000 set the age for marriage for both girls and boys as 18 years of age, which can be considered as a milestone. This decision was also influenced by a regional conference held in Mekele with the explicit purpose of recommending the revision of legal provisions which negate the right of women and children. As the Government stated in its Second Periodic Report (CRC/C/70/Add.7), “[t]he conference participants unanimously recommended that the minimum marriageable age of young females, set at 15 years by article 581 (1) of the Civil Code, should be raised, and that it should be the same for both young males and females”.

Another subject of special interest for Nepal is the right to education, to which we chose to give a particular

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18 Article 36 recognises the right “to life (a); to a name and nationality (b); not to be subject to exploitative practices, neither to be required nor permitted to perform work which may be hazardous or harmful to his or her education, health or well-being (c); to be free of corporal punishment or cruel and inhumane treatment in schools and other institutions responsible for the care of children (e); in all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be in the best interest of the child (2); Juvenile offenders admitted to corrective or rehabilitative institutions, and juveniles who become wards of the State or who are placed in public or private orphanages, shall be kept separately from adults (3). Children born out of wedlock shall have the same rights as children born of wedlock (4). The State shall accord special protection to orphans and shall encourage the establishment of institutions which ensure and promote their adoption and advance their welfare, and education (5).
focus in our work, through the several constitutions from the areas passed under review to illustrate more in depth the impact of constitutional reforms, is this specific field.

Few countries, as for example Togo, revised first their domestic law on education and later amended the Constitution accordingly; others though first amended their constitution and subsequently their legislation, as for example Nigeria; in 1999, Nigeria adopted a new constitution providing for free, compulsory and universal primary education and only in 2003, it adopted the Child Rights Act which states “Every child has the right to free, compulsory and universal basic education and it shall be the duty of the Government of Nigeria to provide such education.”

The Government of Ghana, for example, opted for a constitutional legal backing to achieve universal primary education and amended consequently its constitution in 1992. In 1996, the Government launched a Free Compulsory Basic Education program (FCUBE). Its main policy goal is to provide opportunity for every school-age child in Ghana to receive basic education by the year 2005. It set up specific structures to make the program sustainable; by law, District Assemblies have the responsibility to build, equip and maintain schools. Furthermore, it set up a sharing/recovery scheme on tuition, textbooks, equipment and tools, stationary, meals and transportation, levies, additional to the traditional budgetary allocation.19

India introduced with the 86th amendment in 2002 the provision to make primary education compulsory and free available to all under Fundamental Rights Part III, replacing the further formulation in Article 45 which stated that “The state shall endeavor to provide free and compulsory education to children up to the age of fourteen years, within ten years of commencement of the Constitution”. The inclusion of the right under Fundamental Principles makes the right justiciable. Additionally, the amendment introduced the duty of parents and guardians to ensure education of their children between the ages of 6 and 14. However, this right has been included under Fundamental Duties and is thus non-justiciable. The amendment recognized Education as a fundamental right but specified the need for a legislation to describe its mode of implementation. The draft Education Bill was composed in 2005 but received important opposition due to its mandatory provision to provide 25% reservation for disadvantaged children in private schools. The sub-committee of the Central Advisory Board Education which prepared the draft Bill held this provision as a significant prerequisite for creating a more egalitarian society. In the meantime, the government that drafted this legislation lost the elections, and the new government came up with its own version. The Right of Children to Free and Compulsory Education Act passed the approval of the cabinet on 1 November 2008 and was finally passed by the India Parliament on 4 August 2009. Together with the 86th Constitutional Amendment Act it will come into force from 1 April 2010. The Act recognizes the right of every child between the ages of 6 and 14 to free and compulsory education in a neighborhood school till completion of elementary education (from grade 1 to 8). It states that in public (government-aided) schools, the proportion of children receiving free and compulsory education should be at least 25% or the proportion of aid received by the school to the school’s annual recurring expenses, whichever is higher. Furthermore, it prohibits the practice of unrecognized schools, and makes provisions for no donation or capitation and no interview of the child or parent for the admission. The Act has been criticized, however, for failing to ensure a uniform equitable standard of quality in all schools and for excluding children under 6 years of age.

The practical changes after the introduction of constitutional articles with respect to providing free primary education vary a lot, ranging from countries rolling back from fees for primary education to others tolerating them or even others introducing fees despite the legal guarantee to provide free and compulsory education. The responsibility to provide free primary education is very often understood in a rather narrow sense, as to not levy charges for tuition, neglecting many other costs which can be considerably high for children and their families, as for example for textbooks, school uniforms, class funds, contribution to school construction, transport etc. According to the global report on the state of the right to education worldwide

19 http://webapps01.un.org/nvp/frontendPolicy.action?id=141&tab=lesson (listed on the webpage of the UN Economic and Social Council under development strategies that work)
from Tomasevski,\textsuperscript{20} former UN Special Rapporteur for Education, however, in none of the analyzed constitutions compared by us, primary education is for free as such. Iraq is a special case since its primary education is externally funded. While Bangladesh, Belarus, India, Madagascar, Rwanda and Sri Lanka are rolling back charges, Belarus, Bolivia, Burkina Faso, Cambodia, Georgia, Ghana, Maldives, Russia, Serbia, Togo, Ukraine, and Vietnam do levy charges. For example in Vietnam, fees were introduced for schooling in 1993, with the exemption for primary education. However, families have to pay for uniforms, textbooks and school construction, adding up to a considerable part of the annual total family expenditure. Since 2000, the financial responsibility for education has been transferred from the government to the family, with Government financing only 50\% of the total cost of education (ibid, p. 151ff). The same can be noted in Cambodia where families instead of Government pay up to 56\% of the costs for primary education. Identified charges range from extra tutoring, fees for exams, meals, transport and school material. Especially disadvantaged children as orphans, abandoned children, children from poor background, juvenile delinquents between the ages of 7-17 are therefore excluded from education (ibid, p. 128ff). On the other hand, the Government of Madagascar abolished in 2002 school fees and enrollment rates went from 70\% in 2002 to 82\% in 2003. However, as Tomasevski criticizes in her report, only tuition fees were abolished but other charges remained for primary education. Additionally, only children who complied with the administrative requirement of civil registration, were exempted from the tuition fees for primary education, excluding thus 2.5 million children (ibid, p. 44f).

\textbf{c. Justiciability and enforceability}

When it comes to the justiciability of the rights recognized at the constitutional level, it was not possible for the students to assess this issue in detail, as court decisions were very difficult to consult, not always accessible and most of the time not translated into a language the students could understand. In some other cases, we felt that available court decisions were far too anecdotal to be relevant for the Nepalese context. More generally, analyzing the justiciability of every child’s right recognized under the numerous constitutions considered was an almost impossible task to fulfill in the time we had. However, the students felt it was important to make some observations regarding this critical issue.

As stressed by Alston and Tobin (2005), the identification of a constitution that can be defined a “child rights” constitution does not necessarily mean that the rights under that constitution will be enforceable. In the previous part, we tried to highlight the constitutions where the provisions were the best formulated, in relation to the CRC. Nevertheless, even a perfect formulation does not prevent a provision to remain without practical impact for individuals and especially for children, who can face special difficulties when it comes to court’s accessibility. Moreover, constitutional provisions may be denied direct applicability and courts may consider that legislations are required to really implement the rights acknowledged by the constitution.

Alston and Tobin (2005) point out several examples where enforceability has been made somehow impossible, even in the case of States that had devoted remarkable efforts to include children’s right at the constitutional level. A stressed by these authors, article 44 of the Colombian constitution provides for comprehensive children’s rights. However, article 44 is not listed under article 85 of the Colombian constitution, as a right that is applicable immediately, making it difficult to attempt any action to redress rights violations. In the same way, during the debates related to the adoption of the Belgian article 22bis, the question was raised about the direct applicability of this provision and the new rights that it could confer to children in the future. No consensus could be found among the members of the parliamentary commission on this extremely important matter. Such debates may even lead to questioning the genuine will of certain States to ensure effective rights to children.

A second problem related to the enforceability of constitutionally recognized children’s rights is a rather

classical issue in the field of human rights. As underlined by Alston and Tobin (2005), a majority of child rights constitution do in fact provide some mechanisms to ensure that the rights of children are enforceable. However, as in the area of general human rights, the situation becomes more controversial when it concerns economic or social rights, whereas classical rights, such as the right to a name or to physical integrity, can be raised in front of the concerned jurisdictions without major difficulties. Alston and Tobin interestingly point out that:

“The majority of child rights constitutions do in fact provide some mechanisms to ensure the rights of children are enforceable. The constitutions of Albania, Ecuador, Ethiopia, Gambia, Ghana, Moldova, Namibia, Romania, Poland, Slovenia, South Africa, Uganda and Thailand, are among the constitutions that have some form of mechanism to allow for the enforcement of children’s rights as enumerated under the respective constitutions. The majority of these justiciable rights fall under the categories of non-discrimination on the basis of parental status, the right to a name and nationality and protection from exploitation, particularly in the area of employment. The adjudication of these rights is unlikely to require any complex examination of the allocation of resources and thus should not present significant jurisprudential difficulties for an adjudicative body. However the same cannot be said with respect to enforceable rights such as the right to nutrition, health care, social security and accommodation”.

Regarding this specific problem, South Africa is one of the rare cases where the Constitutional Court has taken steps to enforce economic, social and cultural rights in a comprehensive manner as well as children’s rights having major budgetary dimensions. South Africa is also of the only case that provides children with effective means of enforcing their constitutional rights, knowing that children face major problems if they want to complain in front of a court. For example, article 38 lists the persons who may approach the Constitutional Court in the interest of children.

7. Conclusion

The analysis of 47 national constitutions led our group to conclude that a great variety of approaches related to the incorporation of child’s rights provisions exist.

The CRC Committee stated in its General Comment No. 5 as well as in several Concluding Observations that the incorporation of the CRC is the best method to harmonize national law with the Convention. The majority of the countries studied have adopted a general children’s right act and/or an ad hoc legislation with respect to specific topics only. Many countries have also undertaken a constitutional amendment after the ratification of the CRC or taken the opportunity to provide more visibility to children through incorporating specific children’s rights provisions while adopting a new Constitution. Few countries have incorporated in their constitutions rather comprehensive children’s rights bill, while most of the other countries only incorporated certain children’s rights. However, it is important to note that in both of the aforementioned cases; the issue is whether or not the rights are enforceable. In order to provide practical relief and remedy, enforcement must be an inherent component of the Constitution. South Africa is the only country analyzed which has incorporated in its 1996 constitution a quite complete child’s rights bill also including the core principles of the CRC, and made all children’s rights enforceable and justiciable. It is also worth mentioning that with respect to the right to education, India amended its constitution accordingly, placing this right under fundamental rights and thus making it enforceable.

In table 4 of this study, examples of children’s rights constitutional provisions in line with the content and wording of relevant CRC’s articles have been identified. As the reader may observe a given country is not necessarily mentioned in every section of the table. The reason for this, is that, for example, one country may have a very good provision for the right to education but a very poor one for the rights of children in conflict with the law.

As already mentioned in the introduction, there is no blueprint for a constitution which can be considered
the best suitable for the implementation of children’s rights. Furthermore, the harmonization of the constitution with the CRC is “merely” a first step. Policies, comprehensive law reviews and reforms as well as adequate budget allocation must follow to have a real impact on the lives of children and the guarantee of their rights.

In the section dedicated to the history of Nepal’s new constitution and children’s rights, we stressed the fact that the new constitution of the country is being drafted under the spirit of inclusiveness and peace for all. A constitution that grants equal rights and opportunities to all is certainly an essential element of the peace accord signed by the Government and the Communist Party of Nepal in 2006, as important grievances about political, economic, and social exclusions were at the heart of the decade-long conflict. Our group also wishes to acknowledge the significant work and successes already achieved by the fervent children’s rights movement existing in the country. Children themselves participated in the movement for the constitutional recognition of children’s rights and were supported by more than seventy organizations working for the advancement of the children’s rights agenda in Nepal through complementary advocacy, policy or lobbying approaches. Keeping this movement vigorous and united appears to us as an essential component for further progresses and successes towards the ultimate goal of having the rights of every child realized in the country.

Belgian Senate:
Documents parlementaires du Sénat nos 2-21/1 à 6
Annales parlementaires du Sénat du 27 janvier 2000 (no 2-25)
Documents parlementaires de la Chambre des représentants nos 50-424/1 à 3
Annales parlementaires de la Chambre des représentants des 23 et 24 février 2000 (nos 44 et 45)
Documents parlementaires de la Chambre des représentants nos 52-0175/1 à 7
Annales parlementaires de la Chambre des représentants du 5 juin 2008 (no 43)
Documents parlementaires du Sénat nos 4-800/1 à 4
Annales parlementaires du Sénat du 27 novembre 2008 (no 4-50)


- Concluding observations:
  CRC Committee, Ecuador, CRC/C/EUC/CO/4, para. 10.
  CRC Committee, Concluding Observations: Mexico, 08.06.2006, CRC/C/MEX/CO/3.
  CRC Committee, Concluding Observations: Switzerland, 12.06.2002, CRC/C/15/Add.182.
  CRC Committee, Concluding Observations: Ethiopia, 01.11.2006, CRC/C/ETH/CO/3.
  CRC Committee, Concluding Observations, Ethiopia, 24.01.1007, CRC/C/15/Add.67.

- General Comment:
  CRC Committee, General Comment No. 5. General measures of implementation of the Convention on the Rights of the Child (UN Doc. CRC/GC/2003/5, 2003).

- States Parties Reports:
  CRC Committee, Third Periodical Report for Chile, (UN Doc.CRC/C/CHL/3, 2005)
  CRC Committee, Initial Report of Ethiopia, 10.08.1995, (UN Doc. CRC/C/8/Add.27)
  CRC Committee, Second Periodical Report of Ethiopia, 23.03.2000, (UN Doc. CRC/C/70/Add.7)


Yemen (1991)

Article (3)

Islamic Shari'ah is the source of all legislation.

Article (6)

The Republic of Yemen confirms its adherence to the UN Charter, the International Declaration of Human Rights, the Charter of the Arab League, and dogma of international law which are generally recognized.

Article (30)

The state shall protect mothers and children, and shall sponsor the young.

Article (32)

Education, health and social services are the basic pillars for building and developing the society. Society shall with the state take part in providing them.

Article (53)

Education is a right for all citizens. The state shall guarantee education in accordance with the law through building various schools and cultural and educational institutions. Basic education is obligatory. The state shall do its best to obliterate illiteracy and give special care to expanding technical and vocational education. The state shall give special attention to young people and protect them against perversions, provide them with religious, mental and physical education, and the appropriate environment to develop their aptitude in all fields.

Article (54)

Health care is a right for all citizens. The state shall guarantee this by building various hospitals and health establishments and expanding their care. The law shall organize the medical profession, the expansion of free health services and health education among the citizens.
A NEW CHILD FRIENDLY CONSTITUTION FOR NEPAL
Antonia LUEDEKE, Carole TRONCHET, Elena MANFRINA, Marie-Claire KUNZ,
Mustafa HASSAN and Sokol MUCA
Master of Advanced Studies in Children Rights, 2009-2010,
Institut universitaire Kurt Bösch, Sion

Nepal – Background Information

• 1990: Ratification of the CRC
• November 2006: Comprehensive Peace Accord
• 2007: Interim Constitution: article 22 – child rights
  ➢ Consortium (71 agencies) + National coalition for Children as Zones of Peace + Children
  ➢ comprehensive child right's provisions in the Constitution
  ➢ justiciability children's rights
• March 2010: 1st draft
• May 2010: signature of the new Constitution

Assignment

• Purpose
  ➢ Advocacy tool for the introduction of children's rights in the new Nepalese constitution
• Partners
  ➢ International Institute for the Rights of the Child (IDE – Switzerland)
  ➢ NGO Creating Possibilities (Nepal)
• Tasks
  ➢ search for constitutional recognitions of children's rights
  ➢ identification of the reasons and the types of constitutional recognitions
  ➢ analysis and comparison
  ➢ possible model for Nepal
### Tools and Methodology

- List of priority issues identified by CP Nepal
- National Constitutions and Laws
- National Reports to the CRC Committee and Concluding Observations

- **49 Constitutions**: Africa, Asia & Pacific, CEE CIS, Western Europe and North America, Latin America & Caribbean — second report to the CRC Committee
- **Identification** of relevant provisions by themes / CP Nepal priority issues
- **Comparison**: constitutional provision - CRC provision (wording and spirit)
- **Identification** of the provisions reflecting the CRC
- **Impact**: legislative reforms, policy reforms, jurisprudence
- **Challenges**: language barriers, inaccessibility of documentation

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### Comparative Analysis

<table>
<thead>
<tr>
<th>CRC Art/No</th>
<th>Countries</th>
<th>Acquisition of the group</th>
</tr>
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<tbody>
<tr>
<td>art. 3 (non-discrimination)</td>
<td>Belgium, Brazil, Chile, Ecuador, Peru, South Africa, France</td>
<td>Canada, France, South Africa, Switzerland, Brazil</td>
</tr>
<tr>
<td>art. 4 (right to survival)</td>
<td>Belgium, Brazil, Chile, Ecuador, Peru, South Africa, France</td>
<td>Canada, France, South Africa, Switzerland, Brazil</td>
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<tr>
<td>art. 6 (right to name and nationality)</td>
<td>Belgium, Brazil, Chile, Ecuador, Peru, South Africa, France</td>
<td>Canada, France, South Africa, Switzerland, Brazil</td>
</tr>
<tr>
<td>art. 12, 13, and 14 (right to protection and development)</td>
<td>Belgium, Brazil, Chile, Ecuador, Peru, South Africa, France</td>
<td>Canada, France, South Africa, Switzerland, Brazil</td>
</tr>
<tr>
<td>art. 15 (right to be heard)</td>
<td>Belgium, Brazil, Chile, Ecuador, Peru, South Africa, France</td>
<td>Canada, France, South Africa, Switzerland, Brazil</td>
</tr>
<tr>
<td>art. 24 (health care for children)</td>
<td>Belgium, Brazil, Chile, Ecuador, Peru, South Africa, France</td>
<td>Canada, France, South Africa, Switzerland, Brazil</td>
</tr>
<tr>
<td>art. 27 (right to non-discrimination)</td>
<td>Belgium, Brazil, Chile, Ecuador, Peru, South Africa, France</td>
<td>Canada, France, South Africa, Switzerland, Brazil</td>
</tr>
</tbody>
</table>
Concluding remarks

- Child participation in constitutional reforms: Bolivia, Nepal
- Absence of a blueprint
- Difference in "child rights' comprehensiveness": South Africa and Ethiopia
- Constitutional reforms $\Rightarrow$ Legislative reforms (comprehensive or ad hoc legislation)
- Legislative reforms $\Rightarrow$ Constitutional reforms (Togo, Ghana)
- Enforceability / justiciability of constitutional children’s rights: Colombia, South Africa
- social, economic and cultural rights versus civil and political rights (South Africa)
A NEW CHILD FRIENDLY CONSTITUTION FOR NEPAL:
INPUTS FROM MCR STUDENTS

Jean ZERMATTEN, Director of the IDE, Sion

**PLAN of the presentation**

- A project work done by MCR Students in Switzerland
- Comparative study between national constitutions and children's rights
- Nepal, children’s rights, and the Constitutions
- Comparative law
- Some proposals

**NEPAL**

- **Ratification status:**
  - CRC: R. 26 Jan 1990; EiF: 14 Sep 1990
  - Réserves, Déclarations: NO
  - OPAC: R. 8 Sep 2000; EiF: 3 Jan 2007
  - OPSC: R. 8 Sep 2000; EiF: 20 Jan 2006

- **Reporting status:**
  - OPAC: initial report due for 2009…
  - OPSC: initial report due for 2008…
Nepal – Background Information

- November 2006: Comprehensive Peace Accord
- 2007: Interim Constitution: article 22 – child rights
  - Consortium (71 agencies) + National coalition for Children as Zones of Peace + Children
  - comprehensive child right’s provisions in the Constitution
  - justiciability children’s rights
- March 2010: 1st draft?
- May 2010: signature of the new Constitution

Work of the MCR students

- **49 Constitutions:** Africa, Asia & Pacific, CEE/CIS, Western Europe and North America, Latin America & Caribbean
- **Identification** of relevant provisions by themes / Nepal important issues second report to the CRC Committee
- **Comparison:** constitutional provision - CRC provision (wording and spirit)
- **Identification** of the provisions reflecting the CRC
- **Impact:** legislative reforms, policy reforms, jurisprudence
- **Challenges:** language barriers; inaccessibility of documentation

*Literature: P. Alston and J. Tobin’s study (2005)*
**Children’s Rights in Constitutions?**

- States have adopted **different approaches** to comply with their obligations to implement children’s rights in their countries. Some have promulgated new constitutions or amended the existing ones in order to incorporate provisions of the CRC, while others have translated the CRC into domestic law.
- But “no **single approach** can be envisaged as a blueprint best suited to all countries”.

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**Interim Constitution**

- The current interim constitution of Nepal (2007) includes one specific child rights article (**article 22**, as well as a general clause covering children - s35 (9) concerning the action of the State on behalf of children and other marginalized and minority groups.
- Very **positive** and progressive **development** for the rights of the child in Nepal.
- But art. 36 **mitigated the responsibility**
Art. 22

1. Every child shall have the right to his/her own identity and name.
2. Every child shall have the right to be nurtured, to basic health and to social security.
3. Every child shall have the right to protection against physical, mental or any other forms of exploitation. Any such act of exploitation shall be punishable by law, and the child so treated shall be compensated in a manner as determined by law.
4. Helpless, orphan, mentally retarded, conflict victims, displace, vulnerable and street children shall have the right to special privileges from the State to secure their future.
5. No minor shall be employed in factories, mines or in any other such hazardous work, or shall be used in the army, police or in conflicts.

Proposal of the Cons + CZOP

The Consortium + CZOP proposed a set of recommendations

- First to delete art 36 interim Cst
- 6 key points
  1. Fundamental Rights
  2. Responsibilities of the State
  3. The Judiciary
  4. Constitutional Bodies
  5. State Restructuring Committee
  6. General
Impact

- In January 2010, the Constituent Assembly’s Fundamental Rights Committee incorporated most of the Expert Submission recommendations highlighting children’s rights into the draft Concept Note that will form an important basis for the drafting of the new constitution.
- No mention of previous art. 36.
- This is already a very significant achievement of the Consortium and CZOP.

The Calendar

- Feb 5-March 5: First draft of the new constitution by the CA’CC
- March 6-March 13: CA discussion on the first draft
- March 14-April 4: Public opinion collection
- April 5-13: CA discussion on public opinion
- April 14-20: Constitution bill on public opinion
- April 21-28: CA discussion on the bill
- April 29-May 5: Amendments to the bill
- May 6-May 20: Clause-wise discussion, approval of each article and preamble
- May 22-May 28: Signatures of new constitution by members, seal by Chairman, handover of new constitution to President and promulgation of Nepal’s new constitution
The preliminary draft

Art. 24 Preliminary draft (unofficial version)

Eleven Rights regarding Children

1. Right to a name, identity, birth registration
2. Right to education, health, alimentation, care, sports and personal development from family and state
3. Right to early childhood care/development
4. Right to be educated in mother tongue
5. Right not to be exploited at work

The preliminary draft (2)

6. Right not to be forced to marriage, illegal abduction, trafficking and hostage
7. Right not to be recruited and used in army, police, armed conflicts and right not to be mistreated in the media, or by traditional or religious practices, or exploited physically, mentally and sexually
8. Right not to be tortured at home, school and other place
9. Right to a child friendly justice
10. Right to special protection for orphans, disabled, victims of conflicts, displaced and at risk
11. Criminalization of the offences of exploitation and Right of the victims : investigation + compensation
Other issues in the draft

- The question of citizenship
  - art. 3 by descent
  - art. 4 by naturalization
- Fundamental Rights
  - dignity (art. 1) and torture (art. 7)
  - prohibition of the death penalty (art. 2)
- Rights in the justice system: offenders (art. 5) and victims (art. 6)
- Other rights for Nepali citizen? freedom of opinion and expression, assembly, equality?

Comparative analysis

- Most of the time, constitutional reforms alone cannot achieve the full recognition of children’s rights into the domestic legislative order.
- In most of the countries reviewed in the study, these reforms came together with additional legislative measures.
- In fact, a constitutional reform remains a first step requiring further implementation though legislative reforms, in order to adopt new laws or to revise the existing ones to bring them in compliance with the constitutional norms and with the CRC.
Other issues in the draft (2)

- Non discrimination (art 9)
  racial: criteria caste, tribe, origin, community: eradicate intouchability
  women, disabled people
- Right to education (16): Primary: compulsory and free. Secondary?
- Right to health (20): free basic health and emergency services. Clean water.
  Reproductive health
- Right to food (21) + accommodation (22)

Constitutional recognition of children’s rights

- Options: two systems: monist and dualist
- Nepal that does not allow for the direct applicability of international treaties, such as the CRC.
- The adoption of a system of direct applicability could help Nepal in the drafting process, as it allows to decide - if a selection is required during the process - which rights to really emphasize, by introducing them at the constitutional level.
- But this doesn’t close the door to further implementation though direct applicability of the CRC provisions that are recognized as self-executing

Examples of countries: Albania, Belgium, Bolivia, Brazil, Burkina Faso, Chile, Colombia, Georgia, France, Nicaragua, Russian Federation, Romania, Rwanda, Switzerland, Togo, Venezuela
### Examples of Comparative Analysis

| Art. 2 non discrimination | Belgium, s. 3; Brazil, s. 3; Chile, s. 3; Colombia, s. 3; Ecuador, s. 3; Germany, s. 3; Hungary, s. 3; Italy, s. 3; Japan, s. 3; Kenya, s. 3; South Korea, s. 3; Switzerland, s. 3; Peru, s. 3; South Africa, s. 3; Sri Lanka, s. 4; USA, s. 3; Vietnam, s. 3; Zimbabwe, s. 3. |
| Art. 3 (1) Best Interests of the child | Belgium, s. 3; Bolivia, s. 3; Brazil, s. 3; Colombia, s. 3; Denmark, s. 3; Finland, s. 3; France, s. 3; Germany, s. 3; Hungary, s. 3; Japan, s. 3; Kenya, s. 3; South Korea, s. 3; Switzerland, s. 3; Peru, s. 3; South Africa, s. 3; Sri Lanka, s. 4; USA, s. 3; Vietnam, s. 3; Zimbabwe, s. 3. |
| Art. 7 (1) right to a name and nationality | Belgium, s. 3; Bolivia, s. 3; Brazil, s. 3; Colombia, s. 3; Denmark, s. 3; Finland, s. 3; France, s. 3; Germany, s. 3; Hungary, s. 3; Japan, s. 3; Kenya, s. 3; South Korea, s. 3; Switzerland, s. 3; Peru, s. 3; South Africa, s. 3; Sri Lanka, s. 4; USA, s. 3; Vietnam, s. 3; Zimbabwe, s. 3. |
| Art. 12, 13, and 15 right to participation | Belgium, s. 3; Bolivia, s. 3; Brazil, s. 3; Colombia, s. 3; Denmark, s. 3; Finland, s. 3; France, s. 3; Germany, s. 3; Hungary, s. 3; Japan, s. 3; Kenya, s. 3; South Korea, s. 3; Switzerland, s. 3; Peru, s. 3; South Africa, s. 3; Sri Lanka, s. 4; USA, s. 3; Vietnam, s. 3; Zimbabwe, s. 3. |
| Art. 13 (2) Appropriate care for neglected children | Belgium, s. 3; Bolivia, s. 3; Brazil, s. 3; Colombia, s. 3; Denmark, s. 3; Finland, s. 3; France, s. 3; Germany, s. 3; Hungary, s. 3; Japan, s. 3; Kenya, s. 3; South Korea, s. 3; Switzerland, s. 3; Peru, s. 3; South Africa, s. 3; Sri Lanka, s. 4; USA, s. 3; Vietnam, s. 3; Zimbabwe, s. 3. |
| Art. 24 adequate health care | a) Brazil, s. 3; Bolivia, s. 3; Colombia, s. 3; France, provided by the Constitution of October 29, 1934, s. 3; Mexico, s. 3; Peru, s. 3; South Africa, s. 3; Sri Lanka, s. 4; Switzerland, s. 3; USA, s. 3; Vietnam, s. 3; Zimbabwe, s. 3. |
| Art. 27 right of every child to a standard of living adequate for his/her development | Brazil, s. 3; Chile, s. 3; Colombia, s. 3; Ecuador, s. 3; France, provided by the Constitution of October 29, 1934, s. 3; Mexico, s. 3; Peru, s. 3; South Africa, s. 3; Sri Lanka, s. 4; Switzerland, s. 3; USA, s. 3; Vietnam, s. 3; Zimbabwe, s. 3. |

### Example: Article 28: Right to education

- A majority of countries has a constitutional provision for the right to education. However, many of the constitutional provisions are ambiguous and do not clearly indicate the nature of the right, who is the right-holder and the responsibility of the government.
- Only Togo and Madagascar refer to their constitutions specifically to the right of the child to education; all other countries refer to all citizens, all persons or everyone.
- The majority of constitutional provisions provide for primary education to be compulsory and free, however, only a part indicates that this right should be available to all. Several constitutional provisions only provide for primary education to be free but do not mention compulsory.
- Secondary education, only half of the constitutions provide a specific provision (Latin America).
Some proposals

On the basis of this study and from an international point of view, I will propose
1. To have a clear definition of the child; the questions of the different ages (labour, MACR, marriage, sexual consent...) must be treated in the specific laws
2. To integrate the 4 general CRC principles in the Constitution (art. 2, 3, 6 and 12) about participation: to make the distinction between the right to be heard / the participation concept

Some proposals (2)

3. To ensure that the basic socio, economic and cultural rights (food, accommodation, education and health) are mentioned, as well as protection again all form of exploitation are respected
4. To guarantee the access for children to a Human Rights National Institution (with separate unit for Children, or to a specific Child Ombudsperson
5. To avoid statelessness
Specifically for Nepal

From the Cobs from the CRC Committee (2005), seems important to deal with

- **Adoption** (domestic and international)
- **Juvenile Justice**
- **Children in armed conflict**
- **Birth registration**
  It can be just principles, to be developed in the future Child Act (?)

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Some steps to take (jz)

**Justiciability**

- The fact to have rights defined in a constitution does not necessarily mean that the rights under that constitution will be enforceable.
- Even a perfect formulation does not prevent a provision to remain without practical impact for individuals and especially for children, who can face special difficulties when it comes to court’s accessibility.
- Moreover, constitutional provisions may be denied direct applicability (see art. 36 Interim Cst)
- Courts may consider that legislations are required to really implement the rights acknowledged by the constitution.
Some steps to take (2, jz)

Implementation

- Harmonization in the Constitution between the different articles: example the fundamental rights and the socio-economic and cultural rights
- Harmonization of the different legal texts with the Constitution (Child Act, Civil Code, Criminal Code, Procedural codes...)
- Avoid contradictions
- Facilitate the implementation
Constitution Making Body of Nepal commits to ensure children’s recommendation

Deepesh Paul Thakur
CZOP Chair
Advocacy and Communications Director
World Vision International Nepal
Presentation Frame

- Nepal Country Context
- Introduction to CZOP and Consortium
- CZOP and Consortium Vision for this initiative
- Constitution drafting process
- Strategies adopted by CZOP and Consortium
- Key Recommendations provided to CA
- Child Friendly Version of the Expert Submission
- Recommendations which has been included in the concept note of Nepal’s new Constitution
- Learning and Challenges
Some photos of Nepal
Some Facts of Nepal

- 50 per cent of Nepal’s population is aged less than 18 years (UNICEF, 2008).
- 191 children die every day in Nepal (CZOP/Consortium, 2008), including 44,000 under-fives who die each year (UNICEF, 2008).
- 2.6 million children aged 5—14 years are child labourers (ILO, 2001), and more girls than boys are working in all districts (ILO, 2004).
- An estimated 12,000 girls are trafficked into urban centres and across the border each year (ILO, 2004).
- Some 5,000 children are working and living on the street (CWIN, 2004).
- 34 per cent of all marriages involve children (CWIN, 2008).
- 2,973 young people have been identified as minors within the People’s Liberation Army and have resided in cantonment sites since November 2006, separated from their families and with no access to education (UNMIN, 2007).
- An estimated 990,000 children have lost one or both parents (UNICEF, 2008).
- Half of all under-fives suffer from chronic malnutrition (UNICEF, 2008).
Introduction to CZOP and Consortium

Children as Zones of Peace (CZOP)

CZOP is a movement that advocates for children’s basic rights to survival, development, and protection, especially during conflicts. Originally developed in 2001, in 2003, a coalition of national and international organizations was launched. Currently 26 members in CZOP.

- Ensuring Child Rights in Nepal’s Constitution
- Non-involvement of Children in the armed conflict
- Schools and Zones of Peace campaign
- Monitoring and addressing to the Child Rights Violations in Nepal

Consortium of Organizations Working for Child Participation (Consortium)

The Consortium is a network of 57 national and international organizations working in Nepal. The main aim of the Consortium is to further the realization of children’s participation at all levels of society.
Examples of CZOP Work

- Ensuring Child Rights in Nepal’s Constitution (Presentation in Details)
- Non-involvement of Children in the armed conflict (Shadow reporting on the CRC OPCAC)
- Schools and Zones of Peace campaign (Working with NHRC, Terai Campaign, National Policy Framework on SZOP, Lobbying, Taking Political Commitments etc)
The vision of CZOP and Consortium

Since:

- Fundamental rights that apply to adults should apply equally to children—such rights are both indivisible and inalienable,
- Consideration to children’s particular vulnerabilities and needs

Therefore,

- Children require special constitutional measures to guarantee the full realization of the rights to which they are entitled.
- Recommendations, taken together, as the most effective means of constitutionally enshrining the rights of children and promoting their realization through appropriate state structures.
Constitution Drafting Process

- Report presented by Subject-wise Committees (11)
- Draft prepared by Constitutional Committee
- Discussion on Constituent Assembly
- Public Opinion Collection and Coordination Committee
  - Public debate/discussion
- Article-wise discussion on CA
- Passed the Legislation
- Enactment/Approval of Legislation
- New Constitution
Strategies adopted by CZOP and Consortium

• Involving children and amplifying their voices (National and District Level Consultations)
• Research
• Involving stakeholder
• Awareness raising and Capacity Building of CA members
• Media Mobilization
• Lobbying
• Creating CA advocacy group
Involving children and amplifying their voices

National and District Level Consultations

• District Level: The objective was to engage community based organizations and child clubs and the debate initiative was held in 62 districts.

• National Level: First ever consultation of girls in the context of new Nepal “National Girl Child Consultation” took place on 4-7 September 2007. And Based on the information collected during the district level interaction, a two day national level consultation of children was held 14-15 December where in 63 children from 48 districts participated to summarize what they wanted in the new constitution.
Awarness-raising on children’s rights in Nepal: Dialogue about children’s rights
Child Rights Bus and Thumb Prints of Children

- To enhance the visibility of children and their voices
- Initiated to collect thumb prints of children across the nation.
- A cultural bus went to 35 districts collecting more than one million thumb prints.
- The campaign was launched by the chairperson of the Constituent Assembly.
- More than 700 NGOs facilitated “The constitution I desire”.
- Coincided with the public opinion collection activities of CA members in April. And members of the CZOP and consortium family engaged with CA members in 55 districts.
Declaration of joint commitment Presenting to Authorities

Awareness-raising on children’s rights in Nepal: Dialogue about children’s rights
Research

- Constitution of different countries (Sweden, Brazil, Turkey, Uganda, India)
- Publication of CA process and roles of individuals
- Publication of Expert Submission
- Publication of Child Friendly version of Expert Submission on the Rights of Children to be included in Nepal’s New constitution
Involving Stakeholders

CA Members and Political Parties

Rights Monitoring bodies,

Media, Development Org,

Academicians, Networks and Coalitions

Community, Civil Society, Children

Donors

INGOs

NGOs
Awareness raising and Capacity Building of CA members

- Child Rights Training to CA members

- Dr. Jean Zarmatten, Vice Chair of CRC Committee’s discussion with the CA members
Media Mobilization

Capturing Children’s Appeal on Radio Jingle

• Nepali jingle sung by Children-Nation wide coverage.
• 'Question & Answer' between CA member and their Constituencies, which is very popular.
• children asking questions to their respective CA member.
Lobbying

- Meeting with ‘Parliamentary Forum of CA Members’
- Meeting was with ‘Committee for the determination of Constitutional Bodies’.
- Several meetings with the Focal Person on Child Rights in the Fundamental Rights Committee
Creating CA advocacy Group

Parliamentary Forum for Child Rights

- Creation of ‘Informal Parliamentary Forum of CA members, who are believed to advance the case of children in the drafting of the constitution.

Mr. Rajeshwor Devkota interacting with CA Members during the formation of Parliamentary Forum of CR
Key Recommendations provided to CA

**Fundamental Rights**

- Making the best interests of the child the paramount consideration in matters affecting the child.
- Defining a ‘child’ as anyone under the age of 18 years, in line with international standards and Nepal’s international obligations.
- Enshrining the right to participation for all children.
- Including the fundamental right to life, survival and development.
- Introducing a non-discrimination clause specifically applying to children.
- Introducing juvenile justice provisions into the Constitution.
- Making education both free and compulsory up to and including secondary level.
- Adding the right to nationality at birth to the right to identity and name already guaranteed in the Interim Constitution.
- Introducing the right to family care and alternative care where necessary.
• Adding the right to basic healthcare, nutrition, shelter and access to social services to the less specific rights contained in Article 22 of the Interim Constitution.

• Broadening the right to protection as it applies to include trafficking, child marriage, harmful cultural and religious practices, work, exploitation, violence, abuse, neglect, the use and protection of children in times of conflict, and the use of children for political purposes.

• Inserting children’s right to leisure, play and culture.

• Providing for special protection and assistance by the State for particular categories of disadvantaged or marginalized children.

• Including a directive principle/state policy that specifically deals with children’s rights.
Structural/Procedural Rights

- Inserting a state policy to ensure child rights are protected and promoted at all levels of government—national, federal entity, and local. Concurrently, Article 36 (1) of the Interim Constitution, or any article to that effect, should be taken out of the new Constitution to ensure that state policies are justiciable (capable of having legal effect), in the interest of increasing accountability.

- Inserting judicial responsibility and the necessary judicial structures to ensure that children can access justice through the courts, quasi-judicial bodies, alternative dispute resolution bodies and, that if they do so, they will be treated in a child-friendly manner and with the full protection of the law in accordance with their rights.

- Creating a Child Rights Commissioner as a separate constitutional body, or expanding the role of the National Human Rights Commission in monitoring child rights violations to monitor the State’s progress on implementing the child rights guaranteed in the Constitution, and ensuring accountability.

- Ensuring that national, federal and local governance structures are child-friendly, encourage child participation, and provide financing for this purpose.

- Making a commitment to implement the international agreement and treaties, including the CRC, to which Nepal is a party.
Awarness-raising on children’s rights in Nepal: Dialogue about children’s rights

Child Friendly Version of the Expert Submission
Recommendations included in the concept note of Nepal’s new Constitution

Under the Fundamental Rights Section


Child Rights

- Right to Identity and Birth Registration
- Right to Nutrition, family care, sports, entertainment and personality development
- Right to protection and support (Orphaned, mentally disabled, conflict victims and other children in need of protection, street children)
- Right against torture (physical, mental or any kind of) in home, schools, or any other places and situation.
- Right against exploitation and misuse (from work in factories, mines and any other hazardous work or use in Army, Police or any other Armed groups; use in conflict; Child Trafficking; Child Marriage; or exploitation in the name of cultural or religious practices; physical, mental or sexual abuse)
- Right to be compensated
• Analysis of the proposed concept paper prepared by CA committees of Nepal.doc
Learning and Challenges

- Delay in drafting Constitution (Amendments)
- Political Situation
- Constitution building process not as per the scheduled time frame

- Creation of the Allies of Child Rights in the CA is very useful
- Being Strategic and having advocacy plan (for different context)
- Appreciative approach towards the Constitutional Committee members
- Working in smaller groups within the larger network
Awareness-raising on children’s rights in Nepal : Dialogue about children’s rights

Thank you
TWENTY YEARS OF THE CONVENTION ON THE RIGHTS OF THE CHILD: CHIEVEMENTS AND CHALLENGES

Prof. Yanghee LEE, Sungkyunkwan University, Seoul

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Introduction

- UN declares 1979 the International Year of the Child
- Poland proposes to sponsor a resolution for an International Treaty for the Rights of the Child
- Working Group established for the drafting of the Convention on the Rights of the Child
- Took longer than expected (10 years)
- Why?
  - Many different legal systems
  - Many different religions
  - Many different cultural and traditional views

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Introduction

- UN General Assembly Resolution 44/25
  - November 20, 1989
  - Unanimous adoption of Convention on the Rights of the Child
  - Entered into force in record speed (September 2, 1990)
  - Changed the paradigm of viewing children
  - Child no longer viewed as object of welfare charity/service
  - Child viewed as holder of right
  - Ratified by 193 States

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Introduction

- The Convention on the Rights of the Child
  - First comprehensive legal instrument to articulate all rights relevant to children, by covering economic, social, cultural, civil, and political rights
  - Special protection measures included
  - For all persons under the age of 18

- Four core principles
  - Right to life, survival, and development
  - Non-discrimination
  - Best interests of the child
  - Respect for the views of the child

Introduction

- Supplemented by 2 Optional Protocols
- Optional Protocol on children in Armed Conflict (132 ratifications as at Feb. 2010)
- Optional Protocol on sale of children, child prostitution, child pornography (136 ratifications at Feb. 2010)
Achievements

- Children have become more visible
- Children and their claim as equal participants in societies possible
- Legislations and Constitutional reforms that comply with the CRC
- Now there seems to be a certain degree of consensus that children are indeed bearers of rights
- Coordinating mechanisms
- Independent monitoring mechanisms
- Child Budget

Achievements

- Creation of an independent body of experts that reviews:
  - Integration of the Convention into international jurisprudence and States’ national systems
  - Met for the first time in 1991
  - As of its 53rd session, 18 years later:
    - Reviewed 346 country reports on compliance to the Convention
    - 53 country reports on compliance to OPAC
    - 40 reports on compliance to OPSC
Achievements

- General Discussion Days from 1992
  - Children in Armed Conflict
  - “The impact of armed conflict on children” (Graça Machel, 1996)
  - SRSG CAAC: Reports to Security Council
- Violence Against Children (2000 & 2001)
  - UN Study on Violence against children (2003-2005)
  - SRSG Violence Against Children
- Children without parental care (2005)
  - UN Guidelines for the Alternative Care of Children
  - HRC Resolution 11/7 (June 2009)
  - Adopted by the UN General Assembly (Nov., 2009)

Achievements

- 18 Days of General Discussion Days
- Adopted 12 General Comments
  - Committee’s interpretation based on jurisprudence built during 17 years of review
  - “Soft Law”
  - Provide guidance or States parties on how to improve efficacy of implementation
  - One of most influential GC is on General Measures of Implementation (GC No. 5)
Achievements

- General Comment No. 5
  - Reservations
  - Legislative Measures
  - Comprehensive National
  - Monitoring Implementation
  - State obligation to ensure that all domestic legislation is fully compatible with the Convention

- General Comment No. 12 on The Right of the child to be heard (most recent GC)
  - Commonly known as ‘participation’ right
  - ‘participation’ is not in the text of CRC
  - Unique provision in a human rights treaty
  - Addresses the legal and social status of children
  - Para 1 “shall assure” to the child who is capable of forming own views the right to express those views in all matters affecting the child: is a legal term
  - SP is under strict obligation to take measures to fully implement this right for all children
Achievements

- CRC forms part of national law in most Asian countries: Nepal, Japan, Republic of Korea
- In some countries (Sri Lanka, India), the CRC has not been incorporated directly into domestic law, but can be used to interpret legislation and legal principles
- CRC forms part of national law and takes precedence over incompatible legislation (Morocco, Tunisia, Egypt, etc.)
- In Latin American Countries (Chile, Argentina, Mexico, etc.), the CRC forms part of national law
- Central and Eastern Europe, CRC forms part of domestic law, and prevails over domestic legislation

Achievements

- In common law countries, the CRC (or other international treaties) have to be expressly incorporated by legislation
- In some countries that have adopted new constitutions since 1989, include important provisions on the rights of the child (South Africa, Georgia, Burkina Faso, Ethiopia, Slovenia, etc.)
- Nepal adopted its new constitution in 1990, but contain only brief references to the rights of the child:
  
  “to safeguard the rights and interests of children and to ensure that they are not exploited”
**Achievements**

- In some Islamic States, new constitutions were adopted, but have not included the adoption of new standards recognizing the rights of the child
- Many of the Latin American countries, constitutions were amended to incorporate the Convention on the Rights of the Child into the constitutional order
- Creation of Independent human rights institutions in many countries
- Creation of Youth Parliaments, and other means of listening to the views of children
- Adoption of consolidated children’s rights statutes in many countries

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**Recent Developments**


  “Recalling the view of the Committee on the Rights of the Child, expressed by its Chairperson in her oral report to the General Assembly at its sixty-third session, that the development of a communications procedure for the Convention the Rights of the Child would significantly contribute to the overall protection of children’s rights”
Recent Developments

➤ Resolution provided mandate for 5 working days of “open-ended working group to explore possibility of drafting an optional protocol to the Convention on the Rights of the Child (Third Optional Protocol)

➤ More than 50 Human Rights Council Member States co-sponsored this resolution

Unique rights for children in the CRC

➤ Best interests of the child to be a primary consideration in all actions concerning children

➤ Obligation to give due weight to children’s expressed views in all matters affecting the child; also to provide opportunity for child to be heard in judicial or administrative proceedings

➤ Obligation to ensure maximum survival and development of the child

➤ Institutions and services etc. for care and protection of children to conform to established standards
Unique rights for children in the CRC

- Rights of the child to know and be cared for by parents
- Preservation of the child’s identity
- Specific protection from sexual exploitation and abuse including child pornography
- Obligation to ensure the child’s access to information and material from a diversity of national and international sources
- Right not to be separated from parents unless in best interests with judicial review
- Obligations to prevent abduction and non-return of children abroad

Unique rights for children in the CRC

- Detailed aims defined for the education of the child
- Rights to protection from “all forms of physical or mental violence”
- Prohibition of life imprisonment of children without possibility of release; arrest, detention, imprisonment of the child only as a last resort and for shortest appropriate period
- Specific limitations on recruitment and involvement of children in armed conflict
- Right of access for child to health-care services and obligations to take specific measures for health; protection from traditional practices prejudicial to health
Communications Procedure

➢ Why a Communications Procedure Under the CRC is Needed?

- To protect the full range of children’s rights under the CRC
- To ensure that children have effective remedies available to redress violations
- To strengthen the effective implementation of the CRC and the accountability of States Parties

Parliamentarian Survey

➢ To assess how much Parliamentarians actually knew about the Convention
➢ To assess the most effective strategy of raising awareness of Parliamentarians
➢ Excellent opportunity to engage lawmakers
➢ 20th Anniversary of the Convention on the Rights of the Child would be ideal timing to accomplish much more than original objective!
Parliamentarian Survey

- Originally, 45 items developed
- Shortened to 16 items
- 290 Members of the Korean National Assembly received surveys
- After 2 reminders, 57 Members responded in total (19.6%)
- 700 parliamentarians of the Japanese Diet received surveys
- After 1 reminder, 82 Members responded in total (11.4%)

COMPONENTS OF SURVEY

- Means of acquiring knowledge about CRC
- Knowledge of awareness of policies related to children
- Importance of Budget
- Value of enacting legislation to full compliance with the CRC
- Soliciting views of children
- Biggest problems and issues country is facing regarding children
TRENDS IN JUVENILE JUSTICE
Jean ZERMATTEN, Director of IDE, Sion

Objectives of the presentation

- To encourage a State to develop and implement a comprehensive policy
  - Holistic approach
  - Link to 2, 3, 6, 12 CRC
  - Within GMI - 4 CRC
- To provide guidance and recommendations for the content of a comprehensive policy
- To promote integration of other international standards

Definitions

- **Juvenile Justice**: refers to legislation, norms and standards, procedures, mechanisms, institutions and groups specifically devised for dealing with juveniles perpetrators of criminal offense.
- **Children in conflict with the law**: a child is considered in conflict with the law when he/she has committed or has been accused of committing an offense = young offenders
- **Children in contact with the law**: The child as a victim or/and as a witness
Relevant international instruments

- **CRC 40, 37, 39**
- UN standards:
  4. The CRC, GC no 10, **Feb. 2007**

The CRC, content

- A holistic text, with basic principles related to Juvenile Justice:
  - Non-discrimination (art. 2)
  - Best interests of the child (art.3)
  - The child’s view (art.12)
  - Indivisible and interdependent rights
  - 3 articles: **37, 40 and 39**
Core elements of a comprehensive policy

Prevention
- Targeted and systematic measures to prevent a child from becoming an offender
- Prevention is everybody's business and not only a few specialists; prevention is everybody's business and not only a few specialists

Intervention 40 para 1 CRC
- Dignity and worth
- Respect for human rights
- Treatment that promotes reintegration
- No resorting to judicial proceedings 40 para 3 CRC
- If yes: fair trial and diversion within dispositions

Concept of DIGNITY

Article 40, par. 1 CRC

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Emphasis by JZ
MACR = minimum age of criminal responsibility

Minimum age of criminal responsibility
CRC 40/3

- A minimum age of criminal responsibility below the age of 12 years is considered not to be internationally acceptable.
- States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level.
- See GC 10, para 32 and 33

Upper limit

The upper age-limit for juvenile justice

- For all children who, at the time of their alleged commission of an offence, have not yet reached the age of 18 years.
- After 18 = adults
- No possibility to consider a 16 old child who have committed severe offences to be treated as adult
- Birth registration – proof of age
Prevention

- Support of the Riyadh Guidelines for the prevention of juvenile delinquency, but also GC 10, para 16 to 21
- Emphasis on prevention policies
- Support to parents
- Early childhood an important phase
- Broad participation in prevention

Interventions without resorting to judicial proceedings

- 40 para 3, and Beijing Rules, section 11
- Minor offences
- Legal safeguards for diversion:
  - Diversion only if convincing evidence
  - Consent with the alternative (child and parents)
  - Legal specification of cases for diversion
  - Possibility to consult with a lawyer
  - Completion of diversion – closure of the case
Diversion:
- Aim of diversion is to grant minors, at every stage of the procedure, the opportunity of an alternative way, separate from the formal justice system,
- to make the best out of restorative justice experiences, involving community,
- And to address efficiently the root causes of behavior, while identifying strategies to avoid repetition.

Dispositions (measures and sanction/ formal procedure):
- Pre-trial alternatives
- Dispositions by the juvenile court/judge
  - Prohibition of death penalty
  - No life imprisonment without parole
  - Deprivation of liberty
Deprivation of liberty

- Last resort’s principle
- Shortest time possible
- Only for very serious offenses
- With the necessity to have
  - Educational activities
  - Possibilities to maintain relationships with the family, friends
  - Educational, medical and psychological assistance

Guarantees for a fair trial

40 para 2 CRC

Guarantees: minimum standards

- Freedom from compulsory self-incrimination 40, 2(b(IV)), 37
- Decisions without delay and involvement of parents 40, 2(b(iii)), 37
- No retroactive justice, status offences 40, 2(a)
- Presumption of innocence 40, 2(b(i))
- Right to be heard 12
- Prompt and direct information of the charges 40, 2(b(ii))
- Legal and other appropriate assistance 40, 2(b(ii, iii))
Guarantees for a fair trial
40 para 2 CRC

Guarantees: minimum standards (follows)
- Presence and examination of witnesses 40, 2(b(iv))
- The right to appeal 40, 2(b(v)), as unconditional
- Free assistance of an interpreter 40, 2(b(vi))
- Full respect of privacy 40, 2(b(vii))

The organization of juvenile justice

The system: 40 para 3 CRC
- Establishment of laws, procedures, authorities and institutions
- Form of laws and procedures
- Specialised units within the police
- Specialized services: probation, counselling or supervision
- Special facilities: day treatment centres
- Effective coordination of all activities
Awareness, training and research

CRC art. 40 para 4
- Awareness raising among public at large
- The role of media
- The need for on-going training/content of this training
- Systematic data collection, evaluation of policies and programs

ECOSOC Guidelines 2005

Basic principles
- Dignity: every child is a unique human being and should be protected,
- Non-discrimination (see art. 2 CRC)
- Best interests of the child (see art. 3 CRC)
- Protection (life, survival and development see art. 6 = protection against abuse, neglect and hardship)
- Harmonious development: if traumatized, take every step to treat him/her
- Right to be heard (see art. 12 CRC)
Guidelines (follows)

Rights recognized by the Guidelines (part B art.1 to 10)
- The right to be treated with dignity and compassion;
- The right to be protected against discrimination;
- The right to be informed;
- The right to express views and to be heard;
- The right to effective assistance;
- The right to privacy;
- The right to be protected from justice process hardship;
- The right to safety;
- The right to reparation;
- The right to special preventive measures.

Concluding comments

- Juvenile Justice is a system
- Interdisciplinary work
- The training of the professionals
- Necessity of financial resources
- Juvenile Justice makes part of the
  global protection with Welfare services, Police, Facilities. Prosecutors, Lawyers, Social workers, psychologists...
JUVENILE JUSTICE IN NEPAL: EFFORTS AND WAY FORWARD
Dr. R.K. TIMALSENA, Member Secretary, Juvenile Justice Coordination Committee

Context

Before 1990
- Muluki Ain (National Code 1961)
- Equally applicable, Constitutional Rights and Citizens’ rights

After 1990
- Ratification of UNCRC on 14 September 1990.
- Enactment of Children’s Act 1992

Context

Constitutional Provisions
- 1990 Constitution:
  - Fair Trial
  - Right to Education until Primary in mother tongue
  - Special Provisions (Positive Discrimination)
Awareness-raising on children’s rights in Nepal: Dialogue about children’s rights

Context

- Constitutional Provisions
  - 2007 Interim Constitution: Right to Child
    - his/her own identity and name.
    - get nurtured, basic health and social security.
    - Right against physical, mental or any other form of exploitation
    - the right to get special privileges (Helpless, orphan, mentally retarded, conflict victims, displaced, vulnerable and street children)
  - Minor shall not be employed in hazardous work and in in army, police or in conflicts.

Context

- 2007 Interim Constitution:
  - Right to Special Provision for Children (Positive Discrimination)
  - Right to Education and Culture
    - the right to get basic education in their mother tongue
    - the right to free education up to secondary level
Children’s Act 1992

- Specific provisions of children are spelled out
  - Prohibition on torture and cruel treatment (sec. 7)
  - Minimum age of criminal responsibility (sec. 11)
    - raised to 10 for complete innocence
    - max. six months imprisonment for under 14 children in serious crime
    - Over 14, half to the punishment applicable to the adult

Children’s Act 1992

- Special Court and Procedure introduced:
  - Provision of Juvenile Court or Bench (sec. 55)
  - Priorities in the children’s cases (sec. 57)
  - Suspension of the punishment and family union (sec. 50)
  - Establishment and Operation of Child Reform Center (sec. 42)
  - Provisions of Confidentiality (sec. 49 and 52)
Juvenile Justice Procedure Regulation 2006

- Separate police unit/personnel in police office
- Child Friendly Investigation and trial
- A functional Separate Children Bench (including Social Worker and Child Psychologist)
- In-camera Hearing;
- Interpreter
- Scope of accredited non-governmental Organizations
- Social Inquiry Report

Juvenile Justice Coordination Committee

Chair - Hon’ble Justice, the Supreme Court of Nepal

Members

- Office of Attorney General
- Three Ministries
- Nepal Police
- Central Child Welfare Board
- Non Governmental Sector

Member Secretary

Registrar, the Supreme Court of Nepal
The efforts and way forward

in

the Juvenile Justice System in Nepal

Efforts

- Coordination among stakeholders
- Resource Generation (within Govt. and with Int. Dev. Agencies)
- Drafting and Enactment of Juvenile Justice Procedure Regulation 2006
- (Re) Drafting New Children’s Act
- Expansion of Correction Centers
- Initiated Pilot Project in 26 districts
Ongoing project: 26 districts

- Setting up Juvenile Benches
  - Minimum infrastructure
  - In-camera Facilities
- Improving Police Offices with minimum infrastructure support

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Ongoing project: 26 districts

- Capacity Building Training
  - 122 district court judges
  - 27 appellate court judges
  - 50 public prosecutors
  - six months training to 49 child psychologists
  - two months training to 52 social workers
Ongoing project: 26 districts

- Regular interaction/ workshops between stakeholders (over 20 in last two years)
- Orientation with child club members
- Lobbying and Advocacy
  - Revisit of Curriculum: T.U. (Psychology Department, Kathmandu School of Law, P.U
  - Course Development: Nepal Law Campus.
  - Developed the model format of court decision to make consistence in juvenile cases decisions.

Publication (in Nepali)

- Four UN Standards and Rules (Beijing, Riyadh, Tokyo and JD)
- Manual of public prosecutors
- Poster of child friendly treatment for CICL in all phases- pre-trial, trial and post trial
- Reading Material on juvenile justice for judges
Ought to be done

- First and Foremost
  - Full Implementation of the laws that we have in all 75 districts

- Further,
  - Legislative Reform
  - Sectoral Rules/guidelines
  - Facilities Development (hardware)
  - Professional Development (software)

ay forward...

- Technical Knowledge
  - Diversion
  - Restorative Justice
  - School/ community case settlements
  - Sensitivity/ suitability/ child friendliness
  - Resource Center
Awarness-raising on children’s rights in Nepal: Dialogue about children’s rights

Appendix

To move forward...

- **Increase More Resources**
  - Appointing special office/personnel
  - Setting up separate facilities for Children
    - Police Stations
    - Probations/ Child Welfare Facilities
    - Court/ Benches
    - Under trial safe homes
    - Reform Centers
    - Reintegration and Rehabilitation facilities