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# The Intersections of the CEDAW and CRPD: Putting Women's Rights and Disability Rights into Action in Four Asian Countries

Rangita de Silva de Alwis

This report is based on the pilot projects and research conducted by the Bangladesh National Women Lawyers Association (BNWLA); The Forum for Women Law and Development in Nepal (FWLD); Mekea Srey (Cambodia) and the Asia Cause Lawyer Network (ACLN) in India.

Partial funding for this projects was provided by a grant from the Open Society Institute.

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<sup>1</sup> The projects in Bangladesh, Cambodia, Nepal and India were led by Salma Ali Esq, Honorable Mu Sochua, Honorable Sapana Malla, and Indira Jaising Esq. (currently, Additional Solicitor General of India).

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## SUMMARY

This report examines a new model built on advancing an intersectional human rights platform of action. The four country project in the Asian region provided a powerful locus for an innovative human rights praxis which integrated a dialectical interaction between different social movements, analytical insights and concrete political strategies and practices. The praxis model of four pilot projects in the Asia region was built on a framework that put into action an intersectional analysis of the Convention on the Rights of Persons with Disabilities (CRPD), the Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) so as to challenge multiple forms of human rights violations against women and children with disabilities. Discrimination is often compounded for women and children on the grounds of gender, age and minority status. A holistic approach to human rights advocacy promotes the understanding that the human rights framework is indivisible and interrelated. This report explores the programmatic ways in which this conceptual analysis was put into practice.<sup>[1]</sup>

These projects were initiated at a defining moment in the history of the bill of rights on women and persons with disabilities. In 2009, the CEDAW celebrated its 30<sup>th</sup> anniversary and the CRPD its second anniversary. The projects responded to a call to take action made by in country partners. For long the role of women with disabilities has been ignored and their voices devalued. These projects were an important vehicle to place women with disabilities as the focus of change.

Building these connections across and beyond movements and transnational associations have been a powerful tool to realize the transformative potential of women with disabilities and to reexamine the power of innovative networking to mobilize attention on cross cutting issues. These new networks also offered an opportunity to deliberate and strategize anew and the transnational networks helped raise these issues beyond the domestic sphere.

Discrimination and violence against women and girls with disabilities have been under recognized by the women's rights movements historically both nationally and internationally. Four exciting pilot projects in Asia show the way in which the coming together of the women's rights and disability rights movements mutually reinforced and strengthened the individual and collective agendas of each movement and created a new paradigm of human rights that stretched the potential of the women's rights and disability rights frameworks.

This is a narrative of these groundbreaking projects that attempted to build bridges between and among human rights groups to address more effectively the way in which multiple grounds of discrimination often violate the rights of women and girls with disabilities. Funded in part by a grant by the Open Society Institute, Dr. Rangita de Silva de Alwis at the Wellesley Centers for Women, together with the in-country partners, led the initiative.

Four premier women's rights programs in Nepal, Bangladesh, Cambodia and India were the focal points for this program. They multiplied their strengths by forging with disability rights organizations to push the frontiers of the rights of women, children and all persons with disabilities. The intersections of the CEDAW and the CRPD provided a powerful framework for this new interaction. In the past year, three in-country pilot projects were put into motion in Bangladesh, Nepal and Cambodia. Eight months later these projects were scaled up to a regional program in Delhi, India.

Below is summary of the scale and breadth of those projects.

### **A Historic Political Moment**

The pilot projects seized an important moment in the political history of each country. In Cambodia, representatives from the women's movement and the disability rights movement came together to seize the political moment afforded by the Bill on Disability Rights that was to be brought before the Cambodian parliament in early May of 2009. Forging connections between the two movements resulted in bringing the lenses of both the CEDAW and CRPD to bear on the review of the draft disability law. Once the law came into force, public forums were held in two different provinces to bring the new law to the people. In Nepal, the project seized the opportunity of the historic Constitution reform to make recommendations for a Bill of Rights of persons with disabilities. In Bangladesh, a new government came into power in early 2009 after years of instability and rule by an interim government set up by the military opening space for innovation in the laws and practice. In India, in May 2009, the Congress Party led government was revitalized by an election victory, once again, creating hope for a reformist agenda.

### **The Cornerstones of the Pilot Projects**

The national projects were founded on a strategic plan of advancing the rights of women and children with disabilities within the interlocking web of human rights. They were built on the following cornerstones:

- To strengthen the call for the ratification of the CRPD in Cambodia and Nepal.
- To Use the intersecting values enshrined in the CRPD, CEDAW and CRC in drafting the new Constitution in Nepal and in the call for new laws which are more gender sensitive and operable in Bangladesh, Nepal and Cambodia and to use the CRPD and CEDAW as an interpretive tool in litigation India.
- To build on the vibrant public interest litigation model so dominant in South Asia as a vehicle for social change to challenge multiple discrimination based on gender, age and disability in Bangladesh and Nepal.
- Given that all three countries (Bangladesh, Cambodia and Nepal) are due to report to the CEDAW committee this year, integrate a chapter on the rights of women with disabilities in the CEDAW shadow reports in all three countries.
- To build and strengthen bridges across and between human rights movements. As a prelude to the four national seminars, each country partner who is a premier women's rights group forged connections with the disability rights groups. These

relationship building initiatives resulted in stronger relations between women's rights and disability rights groups and the sharing of strategies that contributed to mutual advancement of commonly held advocacy goals.

- Locate the rights of women with disabilities at the center of the work of the women's movement.

### **Building Blocks of the Alliances:**

The focal point in each in-country project conducted a desk survey of the disability rights organizations in each country. Meetings were then held to decide on the major stake holders. The stakeholders were then asked to elect a Working Group that would be representative of disability rights, women's rights, and children's rights movements. The national conferences were then convened by the Working Group with the Wellesley Centers partnering with the focal point.

### **Some of the common gaps and concerns that were identified by the Working Groups:**

- The voices of women with disabilities are not often heard or amplified and are often marginalized even within the mainstream disability community.
- On the other hand, this was one of the first times that mainstream women's rights organizations places the rights of women with disabilities on their agendas.
- The need to build trust between and across organizations working on different categories of disability such as hearing impaired versus visually impaired. At the same time bridges had to be built across human rights movements. This was done so by developing a representative Working Group that took all decision regarding the steps leading to national conference and then the follow up action plan
- Vulnerability to physical and sexual assault coupled with a heightened sense of shame regarding their disability keep women from greater agency and participating in decisions about their lives.
- The rights discourse was new to most organizations working with women with disabilities. The traditionally used welfare approach

### **Snapshots of the In-country Projects:**

#### ***Nepal: Forum for Woman Law and Development (FWLD)***

In order to mainstream disability rights perspectives into the landscape of the legal system, it is not enough to draft or revise national disability laws. Apart from a national disability law, the spirit of the CRPD and CEDAW must be embodied in all of the laws that affect women, men and children with disabilities. In a baseline study conducted by FWLD, all of the laws affecting persons with disabilities, women, *dalits* (under privileged castes) and ethnic minorities were reviewed for their compliance with the CRPD. These laws included the Civil Code, the educational law, the Interim Constitution (2007), the Children's Act, etc.

One of the most egregious forms of discrimination on the face of the Civil Code (Muluki Ain) is Section 9 of the Code, which entitles a man and not a woman to enter into a second marriage if his wife has been rendered blind, physically or mentally disabled. This discriminates both on the ground of gender and disability. In addressing this discrimination, the FWLD used both the CEDAW and the CRPD to challenge and combat gender and disability based discrimination. Further, The Interim Constitution does not recognize disability in the equal protection guarantee. Recommendations have now been made to make disability a prohibited ground of discrimination. Moreover, the language in the Civil Law (Muluki Ain) is discriminatory in its use of language such as “deaf”, “dumb”, and “crippled”.

### ***Creating a Memorandum of Understanding to Inform the Constitutional Reform Process***

One of the major outcomes of the project in Nepal was the development of a MOU on the inclusion of disability rights in the fundamental rights chapter of the Nepalese Constitution. The Working Group moderated by FWLD drafted a blueprint for mainstreaming disability rights into the Constitution that was presented to the Speaker of the Constituent Assembly.

The process of formulating the rules and procedure for the working of the Constituent Assembly and the drafting of the Constitution was used as a mechanism to introduce change. Hon. Sapana Malla, the founding head of FWLD as a member of the Rules and Procedure Committee of the Constituent Assembly and served as the spokesperson for the community of persons with disabilities. She ensured that interpreters and readers be made available for members with hearing and sight impairments on the Constituent Assembly.

Recommendations submitted to the Constituent Assembly include among others prohibition of discrimination based on disability; recognition of Braille or other disability-friendly means of communication as a national language by the Constitution ; recognition of the multiple discrimination faced by women; equal pay for equal work for men and women with disabilities; equal participation of all persons with disabilities; right to access social security for persons with disabilities; affirmative action for persons with disabilities in employment; and inclusive or special education as need-based for persons with disabilities.

Apart from these recommendations, the recommendations call for a specific disability focus under each fundamental right. For example, among others, the right to health must ensure disability-friendly facilities; the right to information must guarantee appropriate means of communication for persons with disabilities; and under the right to political participation, the adoption of Braille or other appropriate disability-friendly means are recommended.

The memorandum submitted by the recommendations also sought to inform *the Directive Principles of State Policy*. An important recommendation was to promote policies for persons with disabilities in the frontier *Terai* Region. The recommendations also called for the establishment of a disability commission to protect and promote the rights of persons with disabilities and the establishment of an Equal Opportunity Commission (EOC) to ensure equal access in every sphere of public and private life.

The FWLD commented on the draft Fundamental Rights provisions from a gender, disability and minority rights point of view. One of the major results of these consultative processes was that disability is now a prohibited ground of discrimination in the draft Constitution.

Copies of the MOU were published and distributed to 601 members of the Constituent Assembly. Copies of the workshop report were also distributed to the Constituent Assembly members. Since the Constituent Assembly is divided into 24 committees, the Committee on Constitution Making is charged with combining all of the recommendations from the other committees and the civil society organizations and will include the MOU for consideration by all Constituent Assembly members. The FWLD along with Disability Human Rights Center (HRC) continues to mobilize attention around obtaining the drafts of the Constitution as they come out for review.

### ***Seminal Public Interest Litigation on Sexual and Reproductive Health Rights***

“If I do get pregnant I would not be able to give birth to the child as I cannot even sit properly. I am therefore cautious of pregnancy. Where shall women with disabilities who cannot even get up from their beds without assistance go for delivery since there are no facilities provided by the state or other agencies?”

- *Rama Dhakal*, Nepal Disabled Women’s Association (NDWA)  
(Woman with Physical Disability)

Litigation strategy is a powerful tool of social change because court cases influence legal discourse and shape public opinion and finally shape views of legislators.

Along with the Nepal Disabled Women’s Association (NDWA), FWLD initiated a public interest litigation challenging discrimination against reproductive health rights of women with disabilities. Women with disabilities registered as petitioners to ensure better acceptability of the issue in court, as well as to create ownership of the issue within the community. Furthermore, a lawyer from within the community of women with disabilities was appointed to represent the case in court.

The suit filed in May of 2009 cites the Ministry of Women, Children and Social Welfare, Ministry of Health and Population, Prime Minister and Council of Ministers and the Ministry of Education as the respondents and the date for hearing has been scheduled for May 2010. The law suit requests among others the following directives from the Supreme Court including:

- Raise awareness on violence against women with disabilities, reproductive health rights of women with disabilities as a state obligation under education policies or other policies. Raise consciousness amongst parents/guardians.
- Sensitization programs for doctors and nurses of hospitals.
- Existing HIV/AIDS awareness programs must incorporate sex education and awareness creation regarding use of contraceptives among persons with disabilities.
- Provide of disabled-friendly facilities such as
  - Low bed or beds with stairs
  - Disabled-friendly toilets
  - Disabled-friendly labor room facilities in consultation with women with disabilities.
  - Provision of one person with knowledge of sign language in every hospital.
- Provide caregivers with knowledge of sign language in every hospital in addition to sign language translators.
- Incorporation of provision for counseling services which may follow up with the patients regarding regular check-ups as pre-natal and post natal care under the Disability (Protection and Welfare) Act.
- Develop sensitization programs in schools for persons with disabilities as part of the school curriculum.

Given the reality that women with disabilities have to squat in giving births, one of the requests included disability friendly beds and bathrooms in hospitals.

### ***Reporting to the CEDAW Committee***

Countries that have ratified the CRPD are yet to report to the CRPD Committee. However, all Asian countries have ratified the CEDAW and the CRC and have a background in reporting to human rights committee. Thus it is important to use the CEDAW and CRC reporting as powerful tools to monitor the rights of women with disabilities.

The CEDAW and CRC Committees have recommended that States Parties in their reports to the Committees, report on the progress made in ensuring that women with disabilities enjoy their human rights in full. However most State Party reports still fail to adequately address the situation of women with disabilities and very few state party reports or shadow reports focus on the double discrimination faced by women with disabilities.

Nepal, Bangladesh and Cambodia are all to report to the CEDAW Committee at the end of 2009 and the three organizations that are the focal points to the project will be sending their shadow reports to the Committees. In the absence of CRPD treaty body Concluding

Observations, it is important that the interpretation of the CRPD benefit from the jurisprudence of the CEDAW treaty bodies.

*(See Appendix 2 for a copy of the draft chapter of the Nepal Shadow Report to the CEDAW Committee)*

### ***Calling for the Ratification of the CRPD***

Following the national conference on the rights of women with disabilities, a delegation of persons with disabilities (members of the Working Group) met with the Rt. Hon. Subhash Nemang, Speaker of the Constituent Assembly on 30th April 2009 to press for the ratification of the CRPD. Coming out of that meeting, the working Group adopted a three pronged process to create visibility for disability rights and to build momentum for ratification. The first approach was to initiate a meeting for the Working Group members with the Speaker of Parliament. The second prong of the campaign was to lobby the members of the Constituent Assembly and the five main political parties to persuade them to ratify the CRPD. The third prong was to train journalists on disability sensitivity training and encouraging them to report on disabilities

On December 27, 2009, Nepal ratified the CRPD. As the most important benchmark of the project, the ratification of the CRPD was the ultimate goal that was catalyzed by a series of initiatives spawned by the new alliances built by this project.

### ***Bangladesh: Bangladesh National Women Lawyers Association***

The heightened interaction between a premier women's rights organization and women's disability rights organization has resulted in BNWLA providing legal aid for women with disabilities who have had limited access to justice due to stringent evidentiary requirements that make it difficult for women with disabilities to meet the burden of proof in cases of sexual abuse.

### ***Gender-Sensitive Revisions to the Bangladesh Disability Welfare Law, 2001***

The Bangladesh Disability Welfare Law of 2001 is not women and child friendly. Although a quota of 10 percent has been reserved on paper for persons with disabilities, it is implemented in the breach. The law adopts a welfare approach as against a rights-based approach. The BNWLA is working with the parliamentary caucus on the new draft law. As part of this process, they are also developing a public service announcement on television.

In making recommendations to the revisions to the Disability Welfare Law of 2001, BNWLA's call to action is to build complementarities with the CEDAW, CRC and CRPD so that the rights of women and children are reflected in the revisions to the law.

Some of the recommendations made at the seminar convened by BNWLA and the Working Group on gender and disability include:

- Strengthen the call for a national human rights institution that could monitor the rights of women, men, and children with disabilities.
- Women must have 50 percent representation on a Committee on Disability Rights recommended to be formed under the law.
- Provisions protecting the rights of women and children with disabilities must be included in the draft Domestic Violence Law, draft Victim Witness Protections Laws and other pending law reform initiatives.
- It is also important to ensure that the District Commissions that are to be established under the 2001 law have women with disabilities on the Commission.
- Currently, disability rights are under the social affairs ministry. This is not ideal given that all other ministries including health, education, women and children touch the lives of persons with disabilities deeply. Creating a cell in each ministry that will be responsible for the rights of persons with disabilities will help mainstream disability rights.

Other recommendations include:

- One of the clarion calls was to include women with disabilities within the 45 seat quota for female Members of Parliament.
- Ensure the participation of women with disabilities in the domestic violence lawmaking process include appropriate support services including medical support, counseling, shelter services, legal aid, etc. for victims of violence who are disabled with a special emphasis on women and children.
- In drafting the new witness protection protocol, ensure that separate requirements be drafted in the case of witnesses for blind (and hearing impaired) victims of rape, abuse and violence.
- A committee on disability rights must be set up (similar to the Committee on women). Women must be part of this committee. The creation of this committee is important and timely.
- Include provisions protecting the rights of women and children with disabilities in the draft Domestic Violence Law, Victim Witness Protections Laws and other pending law reform initiatives.
- Create a Code of Conduct for the Treatment of Persons with Disabilities in Schools and Workplaces. This will be used to raise awareness to address stigma and prejudice when laws alone are insufficient to dismantle fear, stigma and prejudice.

- Incorporate the CRPD into national law ensure that domestic laws (including the 2001 Disability Welfare law) harmonizes with and complies with the CRPD.

***The powerful potential of public interest litigation as a transformative tool to translate the CRPD into domestic norms***

In South Asia, international human rights norms have been used as powerful interpretive tools to fill in gaps in domestic laws, clarify ambiguities in local laws, and broaden the interpretation of domestic laws in compliance with international human rights norms. Earlier in the year, BNWLA asked the High Court for directive in Sexual Harassment guidelines. Even when countries have not ratified the CRPD it can have persuasive authority in judicial decision making.

This writ petition launched by BNWLA asked the High Court for a continuing mandamus to enforce the current law and to revise the law in accordance with the CEDAW and the CRPD.

- A writ or directive for the enforcement of the existing Disability Welfare Law.
- Call for the revision of relevant provisions in the law in the light of the CRPD, CEDAW and CRC
- A rights-based approach to be adopted in the law
- Relevant gender-sensitive provisions in the law to ensure women with disabilities access to employment and education and provide deterrence and punishment in the event of violence against women and girls with disabilities
- A directive to the government to review other laws that affect persons with disabilities in compliance with the CRPD, CEDAW and CRC with special emphasis on the Building Code, and pending Domestic Violence Law, etc.

In October 2009, the Bangladesh High Court issued a groundbreaking ruling in response to the PIL filed by BNWLA on the rights of persons with disabilities. The rule was issued by Honorable Justice Mr. Syed Mahmud Hossain and Honorable Justice Mr. Quamrul Islam Siddiqui directing the respondents “to take immediate measures to implement the statutory object ensured in the Disability Welfare Act of 2001 and in the light of recent direction as given by the Honorable Prime Minister on 19<sup>th</sup> October 2009 to improve the rights of disabled persons in the light of CEDAW and UN CRPD for the persons with and for the disabilities faced by the persons especially women with disability in their day to day life.”

The hope is that the Public Interest Litigation will be the impetus and the catalyst for revision of the law with strong enforcement regulations and gender sensitive provisions. This case is be one of the first cases in the world in which both the CRPD and CEDAW was invoked in a public interest litigation. This was a groundbreaking case not just in Bangladesh but in the world.

## *Cambodia: Mekea Strey*

### *Reimagining the Law in the Image of Women and Children with Disabilities*

A high-water mark of the project in Cambodia was that it coincided with the parliamentary debates of the first ever disability bill in Cambodia. The civil society forum on disability and gender was organized at a particular important moment and was positioned as an alternative voice to submit recommendations to the parliament discussions on the Bill.

The exciting recommendations that grew out of the forum form a blueprint for a model gender-sensitive disability law. These recommendations can inform lawmaking not just in Cambodia but in other similarly situated countries in the region.

The provisions of the CRC, CEDAW and the CRPD overlap in many areas. The CRPD provides a number of entry points for intersectional analysis. These intersections were mined by the partners in Cambodia in coming up with gender-sensitive recommendations to the draft Disability Bill. This alternative bill is a powerful model that captures the harmonization of two human rights agendas covering all persons with disabilities

The recommendations include proportionate representation for women with disabilities in the disability council; 50 percent of the set quotas reserved for women; legal aid and other services for women and girls with disabilities who are victims of violence and abuse; and free reproductive health care for women and girls with disabilities.

The disadvantages women and children with disabilities face are amplified by multiple factors such as gender, poverty, minority and social status in every country in Asia.

The new law is marked by the absence of gender sensitivity and embraces a welfare approach rather than a rights-based approach as guaranteed by the CRPD. This law is drafted in terms of protection of persons with disabilities rather than in terms of the rights of persons with disabilities. Nowhere does the law recognize the equality of all persons with disability. An equal protection clause is missing from the law.

Although the law does guarantee the minimum rights of women and children with disabilities, it limits access to services and stops short of providing equal opportunities for women and men with disabilities in employment, access to education, or information. Women with disabilities are also marginalized from gender mainstreaming efforts, national policies on gender and gender-based development projects. The law makes no special reservations for persons with disabilities in property or land. To that extent, Cambodia is undermining the CEDAW to which Cambodia is a State Party.

De-mining in Cambodia is done by women and is one of the most frequent causes of disability. Women are also vulnerable to reproductive health violations and are often disabled during pregnancy and childbirth. These are gender specific disabilities and need a gender-specific response that is lacking in the Bill.

The rallying call at the national conference was to “Engender the Draft Law” and to integrate the CEDAW, CRC and CRPD in a holistic and complimentary manner in the Draft Law. Recommendations called for greater sensitivity to caregivers who are disproportionately women. Thus microcredit and vocational training for women with disabilities and caregivers of family members with disabilities must also bring together a gender-specific focus.

The accountability provisions in the law are rather weak. Although the law provides some penalties, the responsible ministries and agencies are not delineated in the law. Given the way in which these issues intersect, a multi-agency focus is needed to address multiple forms of discrimination based on gender, age and ability. Another flaw in the law is the over-general nature of the language. It is important to use mandatory rather than declaratory language.

Although the draft has been developed in consultation with Cambodian Disabled Persons Organization, the largest organization of persons with disabilities in Cambodia, women’s groups were conspicuously absent from this process.

Although Cambodia is yet to sign the CRPD, Cambodia has ratified the CEDAW and CRC and this should be referenced in the Preamble to the law. Disability as a cause and consequence of discrimination and violence against women must be acknowledged at the start in the Preamble to the Bill. This will help to link to better legal and counseling services for women victims of violence. The Preamble should also clearly recognize the best interest of the child.

Moreover, the Bill does not acknowledge sexual or bodily assaults on women and men with disabilities, acid attacks and other forms of violence against women in Cambodia as a disabling factor; reproductive health of women with disabilities and the legal rights of and access to court for people with disabilities. The penal provisions do not address the sexual exploitation and the risk of violence against women and children (and even men) with physical, mental and intellectual disabilities. The reproductive health of women with disabilities is not adequately dealt with. Access to reproductive health information, healthcare and hospitals is also absent from the law.

The quota for recruitment of persons with disabilities is a positive step in the law. However, the over-general nature of this provision makes it difficult to implement the provision. The current provision lacks specificity. Sub-decrees to the Bill which are to be drafted in the coming year provide a powerful opportunity for filling in the gaps in the law. The sub-decrees must focus on a concrete number for the quota (for example, over 10 percent of the population is disabled). The exact tax reduction for each person with disabilities in business must be provided. If not, this provision cannot be implemented as the tax rebate cannot be verified. Similarly, the special rebates offered to children with disabilities must be stated clearly in the sub decree. The sub-decrees must spell out the special pedagogical courses for teachers aimed at children with disabilities. The current law does not provide funding for the special programs such as curriculum reform, creation of special classes. Although Article 12 states it will set aside an annual budget to

assist disabled persons, without specificity, this provision is vague and amorphous. Access to schools and bathrooms in schools are not addressed and risk of violence during travel to schools has not been addressed in the section on education. Further access to education for children with disabilities can only be enhanced by providing set quotas and scholarship for children with disabilities with half reserved for the girl child. Further, a gender-sensitive pedagogy that addresses stereotypes and traditional images of women in Cambodia must be a counterpoint to *Chbab Srey*, a traditional code of conduct for women that is taught in school which sometimes has the result of stereotyping and subordinating women.

Although the Bill calls for the setting up of a Council for Persons with Disabilities, it does not provide for the composition of the Council and does not provide for the number of persons including women with disabilities who should be represented in the council. The law should state clearly the composition of women in the council. If the council is not composed of women in the management of this council it is less likely that the needs of women and girls with disability are responded to. Apart from maintaining a gender balance, persons with disabilities must constitute a majority of the council. The Ministry of Women's Affairs should be included in the multi-agency action enumerated in this article. The Ministry should be charged with addressing violence against women with disabilities.

In November 2009, the Law on the Protection and Promotion of the Rights of Persons with Disabilities was passed by both houses. Despite the fact that this Bill is a welcome piece of legislation the journey to rights protection for persons with disabilities has just begun. The sub decrees to the Bill must be drafted over the next two years and this historic opportunity must be seized to fill in the gaps in the law. Mekea Strey will continue with partners at the commune level to organize public forums to raise consciousness on the new bill.

***Building Capacity to Use the Law at the Grassroots Level: Drafting Dub Decrees to the law***

***We are ostracized and stigmatized because of our disability***  
**- Woman with disabilities from Kampong province.**

***There is no Braille in school, so we don't send our children to school***

**-Mother of sight impaired child from Kampong province**

Mekea Strey organized a public forum in Prey Beng village, Skus Commune, Sam Rong Torng District, Kampong Speu Province on November 20, 2009. The forum was in partnership with Kampong Women and Children with Disabilities Forum. Over fifty men, women and children with disabilities attended the forum.

The purpose of the forum was to raise awareness of the new law and to provide an understanding of the rights of persons with disabilities as enshrined in the law. Apart

from a “Know Your Rights” training, gaps in the Bill were identified so that these gaps could be filled through the drafting of sub decrees.

At this the first public forum held in Kampong Speu province, role play was used as a medium of education and to raise awareness of the law. Participants were asked to use the new Bill in very concrete ways to contact commune leaders for space in local markets to run small businesses.

Participants were also encouraged to stand up for their rights to education and demand local authorities for disability friendly schools and safe toilets.

Participants were very interested in Article 51 of the Bill which focused on care givers. Care givers of family members with disabilities wanted information on how to access micro credit for themselves and family members with disabilities so as to start small businesses as a way of empowering their families.

On December 19, 2009 a similar public forum was held in Battambang Province to bring the Disability Law to a group of elected women councilors.

### ***The Way Forward***

Mekea Strey hopes to continue a series of public forums in the 24 provinces of Cambodia for women, men and children with disabilities to raise awareness of their rights under the new law and to broaden their access to the law. Despite the passage of the law, there is no understanding or awareness of the law at the community and grassroots level. The training will include two major elements:

- 1) A Know Your Rights program which will provide an understanding of the rights of persons with disabilities under the law through discussion and role play.
- 2) An identification of gaps in the law that could help identify the issues to be raised in the sub decrees that are to be drafted in the next two years.

### ***Informing the CEDAW Shadow Report:***

This initiative acted as a catalyst to bring groups on disability rights to the CEDAW Shadow reporting consortium. The Cambodian Disabled Persons Organizations too joined in this consortium after the conference.

***(See Appendix 2 for a copy of the draft chapter of the Cambodian Shadow Report to the CEDAW Committee)***

## *The Asian Forum in India*

Gender-based violations such as abandonment of special needs children, acid burnings, honor crimes, kitchen accidents, stove burnings, and dowry related violence are all gender based crimes that sacrifice women at the altar of family honor and result in disabling women. Secondly, traditional practices such as child marriage in many countries in Asia causes mental, physical and psychosocial disabilities among women and girl children. Child marriage can also result in early pregnancies which in Asian countries can manifest in maternal mortality and disability.

Just as much as women and children are more vulnerable to disabilities, disabled women and children are much more likely to be targets of violence, abuse and exploitation.

Despite a vibrant and dynamic public interest litigation culture, there was general agreement that public interest lawyering based on multiple grounds of discrimination such as disability and gender is still a new ground and needs to be developed throughout the Asian region.

Some of the most interesting areas of litigation in India focused on identification of jobs or posts for persons with disabilities. Without proper indicators, the identification of such posts often tends to be arbitrary and capricious. Lawyers argued that given that India has now ratified the CRPD, the spirit of *Reasonable Accommodation* as defined by the Convention could be used to expand the interpretation of Indian law and ensure that all post are made available to person with disabilities. Another fertile area of litigation centered around the definition of the categories of disability. This was important given that a certificate of disability is needed in India in order to access special services for persons with disabilities.

Three important cases on disability rights have emerged in the Indian landscape and are being watched closely by the human rights community. One relates to the issue of compulsory sterilization of girls with mental retardation at a government-run shelter in the western state of Maharashtra. The case is pending before the Bombay High Court.

The second case deals with a High Court judgment—the first one in India—that has relied on the UNCRPD and the principle of Reasonable Accommodation. The petitioner in this case was denied employment after being short-listed on the ground that he had undergone a renal transplant some years back and hence would have a high health expenditure. The respondent has appealed against the decision before the Supreme Court.

The third case is that of a woman with mental disabilities living in a government-run orphanage, who was raped by the security guards which led to her pregnancy. The State government wanted to abort the pregnancy on the ground that the mental age of the woman was that of a minor, hence her opinion was irrelevant; that she could not distinguish between a child born within wedlock and outside of it; and that she would not be able to take care of the child and provide for her/him. The High Court allowed the abortion to take place, but its decision was challenged before the Supreme Court. The

Supreme Court stayed the High Court's order and held that the woman be allowed to continue the pregnancy. The Supreme Court has ruled that the victim's pregnancy cannot be terminated without her consent and that this would not have been to her 'best interests'. The Court invoked the language of the Maternal Termination of Pregnancy Act to show case that the Act clearly respects the personal autonomy of persons with mental disabilities who are above the age of majority. The court also urged the need to "look beyond social prejudices" to ensure the best pre and post-natal care and supervision of the mother and child.

### ***Asian Platform of Action***

One of the most important results of this project was the way in which it galvanized leading Asian women's human rights practitioners and Indian disability rights activists to come together to forge a seminal platform of action that cuts across human rights divides and makes connections across different human rights agendas to build joint action and common cause on cross-cutting issues.

This Platform of Action showcases a consensus of opinion among the vanguard of women's groups in Asia and is a call to action for all human rights groups to embrace the disability rights agenda as a pivotal and cross cutting human rights issue. Moreover it calls upon the disability rights community to integrate with the women's rights agendas and the human rights frameworks by mainstreaming a gender perspective and engaging with other human rights instruments such as the CEDAW and CRC.

***See Appendix for Platform of Action***

### ***Conclusion:***

An overarching thread that runs through these projects is the way in which law, policies, and advocacy strategies were re-imagined in the image of women with disabilities so that these laws, policies, and advocacy strategies would capture the reality of the lives of all persons with disabilities including women men and children with disabilities. Another overarching thread that stood out was the way in which violence against women is both a cause and consequence of disability and the way in which gender, disability and poverty often intersect in way that often the face of poverty is a woman with a disability.

One of the most important results of this program was the way in which bridges were built between and among different human rights groups. Each of the in country Working Groups included representatives from the different human rights movements and met many times to develop the conference agendas and the action plans. Although the programs have now concluded, the momentum built by these Working Groups endures and the different women's rights and disability rights collaborate and broaden the space for common ground.

The final goal of this initiative is to use this model as a bottom up approach to inform the CEDAW and CRC members on the importance of an intersectional analysis. The CRPD Committee and the CEDAW and CRC treaty bodies must be encouraged to respond to multiple discrimination on the ground through their General Comments and General Recommendations and thus and thus advance the complementarities of the CEDAW, CRC and CRPD.

This initiative is a perfect case study of putting theory into practice and showcases the efficacy of a bottom up approach to human rights—where the local shapes the national and the national informs the regional. The final step and the way forward is to inform the global—by submitting these case studies to the different treaty bodies or human rights committees so that the international jurisprudence is shaped and defined by the felt needs on the ground.

In the final analysis, these initiatives reaffirm that these human rights are not abstract concepts but dynamic, vibrant, robust and ever expanding norms carrying enormous transformative potential around the world and provides a lexicon to vindicate the rights of the most marginalized. It is also a validation that a holistic framework of rights within an inter related web of human rights, that do not truncate rights into narrow or rigid compartments is a powerful tool to combat the multiple forms of discrimination against women and girls with disabilities.

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# Report of the Pilot Projects in Bangladesh, Nepal, Cambodia and India

## NEPAL

At the inception of the project in 2008, Nepal was a signatory to the CEDAW and the CRC but was yet to ratify the CRPD. At the end of the project which saw the building of new alliances directed towards the ratification of the CRPD, Nepal ratified the CRPD in December 27, 2010. As the most important benchmark of the project, the ratification of the CRPD was the ultimate goal that was catalyzed by a series of initiatives spawned by the new alliances built by this project.

The flawed nature of the data available in Nepal regarding disability is one of the major problems in understanding the prevalence of disability in Nepal. Although the National Consensus of 2001 states that 0.45 percent of the population is disabled, according to a study done by MS Nepal 10 out of 100 persons in Nepal suffer from a disability. The rights community therefore has rejected the figures stated in the National Census and adopts the estimate provided by the New Era study for all purposes of advocating for policy reform, monitoring implementation of laws, as well as initiating developmental and capacity building projects. Given the increase in disability following the years of conflict and the Mao uprising the ratification of the CRPD takes on a heightened urgency.<sup>2</sup>

A call to action that was amplified by the project was the importance of locating disability rights within the framework of the ongoing inclusive democratic process in Nepal and view it within the anti-discrimination/ equality lenses. Moreover, it was important to situate disability rights within the preamble, the directive principles and fundamental chapter of the Nepalese Constitution. Similarly, affirmative action for persons with disability should be extended to cover women with disabilities and minority women with disabilities so as to address the legacy of discrimination against women with disabilities.

### *Structure of the Project*

The project was spearheaded by Nepal's foremost women's legal aid and women's rights advocacy organization, the Forum for Women Law and Development (FWLD). The Forum for Women, Law and Development protects and promotes human rights through research and public education, advocacy, legal aid and litigation. The FWLD developed

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<sup>2</sup> [http://www.msnepal.org/reports\\_pubs/ekchhin/apr2000/7.htm](http://www.msnepal.org/reports_pubs/ekchhin/apr2000/7.htm)

a representative Working Group of 20 members from different human rights organizations including disability rights, women's rights and children's groups to convene a conference that brought together women's, children's and disability rights groups. This Working Group was also charged with carrying out the key recommendations of the Platform of Action that would grow out of the conference. Even after the conclusion of this initiative the Working Group members continue to build on the momentum of this historic collaboration and continue to work together to build common cause on cross cutting issues concerning women and children with disabilities.

The Forum for Women Law and Development, as the Focal Point or Secretariat for the Working Group convened the Conference and the platform of action on gender and disability in January 2009. The Working Group on Advancing the Rights of Women and Children with Disabilities formed in Kathmandu on in November 2008 comprised of 20 individuals representing the Constituent Assembly, and representatives from organizations of persons with disabilities including physical disability, hearing disability, visual disability, parents of persons with intellectual disabilities, speech disability, multiple disabilities; medical fraternity; women's rights and children's rights groups, international NGOs and public interest and legal aid lawyers.

In order to promote inclusivity and partnership building, Working Group members nominated participants to the conference so as to ensure the representation of different groups including: persons with disabilities/organizations run by persons with disabilities; women with disabilities; parents of persons with disabilities; medical fraternity and rehabilitation services; human rights defenders including women's and children's rights organizations, Constituent Assembly members and media persons. Participants were drawn from the Western Region, Far Western Region, Mid Western Region, Central Region and Eastern Region.

### ***Aims and Goals of the Conference and Working Group:***

- Inclusion of the disability rights communities in the broad human rights agenda
- Ratification of the CRPD in Nepal.
- To inform the constitution making process: ensure the equal rights of persons with disabilities in the Directive Principles of State Policy and Bill of Rights.

### ***Revision of the Current Disability Law and Including a Disability Rights Perspective into Other Areas of Law Making***

The Working Group, advised by FWLD, conducted a review of the legal system for gaps concerning persons with disabilities. This is an important prelude to the reform of the legal system in compliance with the CRPD.

In particular, the overarching questions were how a gender perspective could animate all the processes of law revision relating to persons with disabilities. For example:

- The Disabled Persons Protection and Welfare Act does not address issues relevant for women and children with disabilities. How can these issues be addressed?
- How best can existing laws and provisions (especially affirmative action or positive discrimination) be made implementable?
- How can emerging law reform initiatives within the country be used to address disability rights or perspectives, e.g. the domestic violence bill, etc.?
- How can particular issues such as safe birth procedures and maternal health be articulated to address particular problems faced by women with disabilities?
- How can reservations for women with disabilities be implemented?
- How can the 5 percent quota for persons with disabilities in the civil services be expanded to the banking profession? How can these quotas cover women?
- Translators should be made available in public spaces like hospitals and banks.
- Benefits, social services, and safety nets must be made available for persons with disabilities who are not able to work.
- How to effectively address cultural taboos and superstitions against women with disabilities in Nepal. A woman with disabilities is not considered a suitable wife and is often subjected to double, triple, and multiple discrimination.
- Women with disabilities occupy marginalized positions in disability organizations.
- Disseminate knowledge of the CRPD in the grassroots and highlight the intersections of the rights of women and disability rights. Raise awareness of the CRPD, especially Articles 6, 7, and 18.
- There are 14 subcommittees in the Parliament. There is a subcommittee on marginalized members and there is a call for subcommittee on persons with disabilities.
- Expand legal aid to women and girls with disabilities. Perhaps create a legal aid cell for violence, sexual abuse and discrimination against women with disabilities.
- A gender perspective is important especially in cases of mental health issues concerning pregnant women, women and reproductive health, depression post pregnancy, etc.

## ***Laws Pertaining to Persons with Disabilities in Nepal:***

- Interim Constitution, (2007)
- Disabled Persons (Protection and Welfare) Act 1982 (2039)
- Disabled Persons (Protection and Welfare) Rules 1994
- Disabled Service National Policy 1996 (2053)
- Special Education Policy 1996 (2053)
- National Plan of Action for Disabled 2006

Provisions in other laws and policies include: National Code 1963 (Muluki Ain, 2020); Education Act 1971; Money Order Rules 1974; Labour Act 1991; Social Welfare Act, 199; Children's Act 1992; Local Self Governance Act, 1999; Civil Service Act 1992 (2049) (2nd Amendment 2064); Senior Citizens Act 2007; Vehicles and Transportation Act 1992 (2049); Consumer Protection Act 1997 (2054); Evidence Act 2031; Informal Education Policy 2063; and National Health Policy 2049; Labour and Employment Policy 2062 and Tenth Plan (2002-2007); Interim Plan 2007-2009; Budget for 2008-2009.

## ***Impact of Existing Laws on Women with Disabilities***

The Forum for Women Law and Development embarked on this groundbreaking project on the intersectional rights of women and children with disabilities by first conducting a baseline study on the current legal context of person with disabilities. This research identified the laws and cases relating to persons with disabilities; identified key actors in the disability rights movement, and the critical debates and discourses relating to disability rights in Nepal.

As part of the background work, the FWLD developed a study on discriminatory law against *Dalit*, ethnic communities, religious minorities and persons with disabilities. This study was published and distributed to law makers. The FWLD's review of gaps in the laws regarding persons with disabilities reveal the following:

Despite the guarantee of a general provision of non-discrimination and equality under the Constitution, women with disabilities are discriminated in the following spheres:

- Employment

Studies show that women with disabilities lack greater agency than their male counterparts. Women were also not allotted jobs in accordance with their capabilities.

- Marriage and Family Life

Though law does not pose any specific barriers to marriage or family life women with disabilities are considered to be lacking in beauty and are therefore considered ineligible for marriage.

- Education

- Provisions relating to children with disabilities under various laws are limited to a very narrow area of education.
- The report on the Implementation Status of Existing Laws, Acts, Rule and Facilities written for the Development, Promotion and Protection of People with Disabilities by National Human Rights Commission based on a study conducted between 2005-2007 states that 46.61 percent of persons with disabilities are girls only forty one point 72 percent of the total number of students at primary level of education were reported to be girls.
- Out of the total number of scholarships provided to children with disabilities, only 13 percent has been made for girl children.

- Access to Facilities and Services

- Seventy-seven percent of women with disabilities have information of disability allowance, but 80 percent of them haven't received disability allowance from the government, though they have approached the district office for it. These women were denied because of the limited quotas allocated to the disabled people in certain districts.
- Forty percent of women with disabilities have not yet received disability identity cards.
- Fifteen percent of women with disabilities have not yet received citizenship certificate despite the fact that the citizenship certificate is the right of citizen of any country.
- Seventy-one percent of women with disabilities did not have any affiliation in community-based organizations.

- Property

Women with disabilities are often not allowed to apply for citizenship or any formal identity in order to avoid allocation of family property.

### ***Some Challenges: The Absence of a Discourse on Multiple Discrimination***

The concept of multiple discrimination has been long absent from the disability rights discourse and lawmaking in Nepal. The Interim Constitution of 2007 despite being considered as the most inclusive and democratic Constitution in the history of Nepal failed to acknowledge issues pertaining to persons with disabilities through positive rights under the Chapter on Fundamental Rights. The Fundamental Rights Chapter on Rights of Women (Article 20) also fails to acknowledge multiple discrimination or the enhanced vulnerability of women with disabilities.

The *Muluki Ain* or the Nepal Civil Code provides enhanced punishment for those convicted of raping a woman with disabilities. At the same time, Section 9 of the

Chapter on Marriage allows a man to enter into a second marriage if his wife is rendered physically or mentally disabled. The same is not available to women. In 2008, the FWLD challenged this discriminatory provision through PIL but the Supreme Court directive is yet to be implemented and the law remains on the statute books.

Several laws including the Civil Code (*Mulki Ain*), laws relating to children, The Motor Vehicles Act, Medicine Act, Contract Act, law relating to parliamentarians, rules and regulations, money order regulation, education regulation, etc. need to be revised in congruence with the CRPD. In finalization of the Domestic Violence Bill it will be important to address the rights and special needs of women and children with disabilities who are victims of domestic violence. In the finalization of the Domestic Violence Bill it will be important to address the rights and special needs of women and children with disabilities who are victims of domestic violence.

The lack of implementation mechanisms in the laws is the biggest obstacle to realizing the rights of persons with disabilities.

### ***Advocating a Human Rights Approach in Addressing Rights of Women and Children with Disabilities: Reviewing the Legal Framework***

Despite being the first country in Asia to enact a specific law on disability, the entire legal framework in Nepal is based on medical and welfare approaches. Laws are also difficult to implement largely because the language suggested that the government “may” take action; the lack of accountability for inaction; cases filed on behalf of persons with disabilities or relating to disability rarely challenged the law on the basis of violation of the right to equality or nondiscrimination; the lack of up-to-date credible data and finally the fact that the mainstream disability rights movement has been silent about specific issues relating to women with disabilities.

As part of the project’s action items, the FWLD conducted an analysis of the legal system and identified discrimination in the laws relating to persons with disabilities. Some of the highlights of FWLD’s analysis reveal the following *de jure* discrimination:

#### **Interim Constitution of Nepal**

The Interim Constitution adopted in 2007, was the culmination of a people’s movement that ushered in multi-party democracy in Nepal.

Article 33 includes amongst others “to carry out an inclusive, democratic and progressive restructuring of the State by eliminating its existing form of centralized and unitary structure in order to address the problems related to women, *Dalits*, indigenous tribes [*Adivasi Janajati*], *Madhesi*, oppressed and minority communities and other disadvantaged groups, by eliminating class, caste, language, gender, cultural, religious and regional discrimination”. It further requires the State to “*to enable Madhesi, Dalits,*

*indigenous ethnic groups[Adivasi Janajati], women, labourers, farmers, the physically impaired, disadvantaged classes and disadvantaged regions to participate in all organs of the State structure on the basis of proportional inclusion”.*

Article 35 on State Policies, Clause 9 calls upon the State to make special provisions for the protection and welfare of single women, orphans, children, the helpless, the aged, disabled, incapacitated persons etc. Clause 14 reiterates the need for affirmative action in policy making for the benefit of persons with disabilities amongst other groups mentioned above. Clause 17 requires the State to pursue a policy of legislative reform making for the benefit of disadvantaged women amongst others such as aged and unemployed.

### Disabled Persons (Protection and Welfare) Act 1982 (2039) & Disabled Persons (Protection and Welfare) Rules 1994

The Disabled Persons (Protection and Welfare) Act was enacted in 1982 and was the first comprehensive legislation that provided specific rights for persons with disabilities. The Disabled Persons Protection and Welfare Rules were enacted in 1994 as a delegated legislation to implement the provisions of DPWA. **The Act originally recognized only five forms of disabilities; however, pursuant to an amendment in the definition of “Disability” published in the Nepal Government’s Gazette 2006**, two additional categories were added to the same thereby providing recognition to seven types of disabilities, which are as follows: Physical Disability; Visual Disability (Blind, Low Vision); Hearing Disability (Deaf, Hard of Hearing); Speech Disability; Deaf and Blind; Intellectual Disability (Mental Retardation, Psychosocial Disability and Autism); Multiple Disabilities.

The Act and Rules recognize the following rights and provide the following facilities for PWDs:

- **Education** – Mandates that no education fees be charged from persons with disabilities and 5 percent of all government institutions providing vocational and technical training must be reserved for such persons. Special facilities must be provided for people with sensory and intellectual impairments and in addition institutions providing special forms of education are entitled to demand assistance from the government. Some financial support for school supplies are given for school supplies. But all families with girls get two liters of oil a month if they attend school.
- **Health** – All hospitals with 50 or more beds are mandated to reserve at least two beds for the disabled — Not implemented.
- **Employment** – Discrimination against persons with disabilities is prohibited in employment and industrial enterprises of 25 employees or more are required to allocate at least 5 percent of their posts to such persons in accordance with their physical capacity, training, qualifications and experience. The Act also directs the government to conduct programmes enabling persons with disabilities to become self-employed and to set up hostels supporting them in such employment.

- **Tax Exemption** – The Government was given powers to exempt disabled persons from income tax and such other taxes. Such exemptions can also be extended to any organization established for rehabilitation of disabled persons.
- **Free Legal Aid** – The Act and its Rules contain provisions for legal counseling to persons with disabilities if demanded by such person in cases pending before the court. In such instances the Government would appoint a lawyer.
- **Transport** - The Act allows for half fares on buses, trains, and planes for persons with disabilities along with a care provider.
- **Social Security** – The government is empowered to introduce disability allowances for persons with disabilities.

### Education Act 1971

The Education Act of 1971 was amended seven times before February 2002. Section 2 of the Education provides a definition of “Special Education” as the education provided to blind, deaf, dumb or disabled or persons with intellectual disabilities. Section 6 provides facilities for special education by stating that special education should be conducted similar to general education patterns, that salaries for teachers and other employees employed for purposes of special education shall be fixed under the Act. **The Educations Rules were adopted in 2002; Section 47 allowed students with disabilities (blind, deaf, mental retarded, physically disabled) extra time of up to one hour to complete their examinations.**

### Labour Act 1991

Section 38 of the Act provides compensation for persons who have been injured, or rendered disabled in the process of carrying out their work in industries. In instances of such injuries resulting in death, compensation is to be provided to their families. Industries for the purposes of this Act refers to any company, organization, association, firm or their groups consisting of 10 persons or more that engages in manufacturing, processing, repairing, packing, cleaning, making or breaking, usage of any goods, selling, transporting, etc.

### Social Welfare Act, 1992

Social Welfare Act of 1992 requires the government to undertake and conduct special programmes for the welfare of society including protecting and promoting their rights. It specifically includes children, senior citizens, helpless persons, and persons with disabilities as groups of persons requiring welfare measures.

## Children's Act 1992

Section 34 of the Act provides for the establishment of a Children's Welfare Home in different regions by the government, or usage of private establishments for similar purposes without interference in its activities or decisions.

Section 36 of the Act provides specific rights to disabled and orphaned children. It states that such children can be kept in the appropriate establishments till 16 years of age. However in case children have problems finding a livelihood they may be retained till 18 years of age.

Section 43 of the Act specifically provides for the establishment and functioning of the shelter homes and orphanages for disabled children who are orphaned by the government as well as facilities for their education.

## Local Self Governance Act, 1999 (2055)

Section 25, Section 93, provides power and duties of the local government. Such duties include protection and support for livelihood to persons with disabilities amongst other groups.

Section 28 (k), Section 96 (j) and Section 189 (f) requires the Village Development Committee, Municipality and District Development Committees to prepare and maintain data and statistics on persons with disabilities amongst other groups. It also requires them to work for the protection of orphaned children, incapacitated women, aged persons, persons with disabilities and removal of discriminatory cultural practices from society.

## National Code 1963 (Muluki Ain, 2020)

The National Code is an integration of civil and criminal codes.

The Chapter on Court Procedures, Sec. 11 (3) states that persons with disabilities and the aged should be given priority in hearing of cases. Sec. 25, requires a guardian or any other person appointed by applicants with speaking, hearing and seeing disabilities to complete written documents on behalf of such applicant under his/her direction and also requires such representative to sign the document on their behalf. Sec. 83 states that persons with seeing, hearing and speaking disabilities may exercise the right have their legal guardians fight for their legal rights.

The Chapter on Persons who are Destitute, Sec. 5, requires the Government to provide food, shelter and clothing per year to the poor and other persons who cannot work. Sec. 8 further states that such facilities should be provided the following categories: persons suffering from leprosy, blindness, persons with physical disabilities, persons with

intellectual disabilities and orphaned children, aged and incapacitated and suffering from illnesses etc.

**The Chapter on Rape, Section 3 (a) provides enhanced punishment (by 5 years) to persons convicted of raping women who are pregnant, incapacitated and/or with disabilities.**

Chapter on Marriage, Section 4 and 5 states that in instances where physical disabilities, seeing disabilities, hearing disabilities, speaking disabilities, mental disabilities are not disclosed at the time of marriage such marriages can be voidable on the aforementioned grounds by the opposite party with the imposition of Rs. 500 as penalty on the person accused of causing fraud. These provisions apply for men and women. Section 9 of the Chapter, entitles a man to enter into a second marriage if his wife has been rendered blind, physically or mentally disabled.

### Civil Service Act 1992 (2049) (2<sup>nd</sup> Amendment 2064)

Section 7 (e) provides 5 percent reservation for persons with disabilities.

### Senior Citizens Act 2007 (2064)

Section 2 (c) of the Act states that senior citizens who have been rendered incapacitated shall be considered to be disabled mentally or physically.

Sec. 10 (2) in addition states that incapacitated or disabled senior citizens shall be provided with legal aid and representation in hearing of cases by the Court.

### Evidence Act 2031

Section 38 of the Act disqualifies children, aged persons as well as physically or mentally disabled persons from serving as witnesses in court.

Section 29 however allows persons with speech disabilities to provide evidence by sign language or written means.

### *Policies That Affect persons with Disabilities*

### Disabled Service National Policy 1996 (2053)

The Government of Nepal had formulated this policy in 1996 as an operational strategy towards persons with disabilities. Though a significant step it was largely based on the welfare approach towards persons with disabilities and covers the following areas and services:

- reviewing and amending laws to facilitate simple and dignified living of persons with disabilities with proper welfare measures
- conducting disability prevention programmes such as safe motherhood, nutrition, imposition of proper rules to stop or minimize road traffic accidents etc.
- promoting people’s awareness on prevention and security through communication media
- updating statistics and information database
- implementing programmes for free education to persons with disabilities up to bachelors degree and launching special education programmes for persons with special needs
- arranging for free medical treatment
- conducting sports entertainment and extra-curricular activities
- emphasizing on family based and community based rehabilitation
- activating government and non-government agencies for employment

### Special Education Policy 1996 (2053)

The Special Education Policy was formulated with the objective of raising awareness on integration of persons with a range of disabilities in Nepal. The Policy first and foremost provided definitions to terms such as “special education”, “special schools” and “integrated school”. The Policy states “*Special Education Policy is formulated to place disabled in the national mainstream by making arrangement of education in conformity with them as per the National Education Policy.*” It built on existing mechanisms such as the Special Education Council and aimed to achieve a wide and comprehensive list of goals ranging from provision of special boarding facilities, libraries, and scholarships to strategies for encouraging more teachers to take up special education methodologies.

### National Plan of Action for Disabled 2006

The National Policy and Plan of Action for Persons with Disabilities 2006 was developed by the Co-ordination Committee of the Ministry. The Plan of Action mainly covers the following areas:

- Awareness Raising
- Special Need Education
- Rehabilitation and Medical Care
- Training and Employment
- Support Services
- Accessibility
- Facilities
- Capacity Building of Self Help Organisation of Persons with Disabilities
- Disability Home and its Operation

It has however been reported to have been subjected to several challenges. The main challenges being in lack of sufficient resources, lack of effective evaluation, monitoring or periodic reporting mechanisms and unavailability of regional and international financial assistance.

### Tenth Plan (2002 – 2007)

The Plan envisions various activities such as skill development training, entrepreneurship development, income generation activities towards with the Persons with Disabilities. These are to be achieved through coordination between the Ministry of Women and Social Development and community based organizations. Poverty alleviation was the objective of the Tenth Plan. Based on the presumption that 5 percent (about 1.2 million) people were disabled in the country, different types of activities were proposed such as Community Based Rehabilitation, distribution of assisted living devices, skill development training, strengthening of self help organizations, distribution of ID cards to PWDs, awareness raising and special education and allowance to persons with disabilities.

### Interim Plan 2007 – 2009

The objectives and strategies of the Plan aim to achieve proportional inclusivity and participation of persons with disabilities amongst other groups. The objectives are to be achieved through special policies relating to food protection; social and economic empowerment for persons with disabilities and other groups. The Plan also aims to achieve participation of persons with disabilities in the development processes of the nation.

### Budgetary provisions

The budgetary allocation for the fiscal year 2008 - 2009 released by the Finance Minister on 19<sup>th</sup> September 2008 in its policy priorities has highlighted the need for expanding benefits for economic development for persons with different capabilities under the category of Social Security and Inclusion.

The Budget also provides increased monthly allowances for “blind-disabled”. Under the budget a monthly allowance of Rs. 1000 for fully handicapped and disabled persons, and Rs. 300 for partially handicapped and disabled is to be provided by the State. Under the category of Women, Empowerment, Transformation of Living Standard, the Budget allocates Rs. 10 Million for the National Disabled Federation *“in order to rehabilitate disabled person based on community approach by collecting data of disabled person from their physical disability; to imparting skills and leadership development training; to providing a training for self-reliance life style; and institutional strengthening of Khagendra Nava Jeewan Kendra, Jorpati.”*

### Informal Education Policy 2063

Under this document a subdivision has been allocated for the education of disabled persons. In recognition of the necessity for creation of access to educational services for persons with disabilities it purports to adopt inclusive educational policies in furtherance of co-existence, and quality. As a strategy or execution of its aims the **policy proposes to train special education trainers, facilitators, teachers, supervisors and mobilizers for persons with disabilities amongst other groups**. It also provides for creation of database for all institutions and organizations conducting informal education on the basis of various groups including persons with disabilities.

### National Health Policy 2049

This policy amongst other provisions allows for the rehabilitation of persons with disabilities in co-ordination with private sector and NGOs.

### Labour and Employment Policy 2062

The Policy in its objectives purports to provide special programs for creation of employment opportunities for persons with disabilities amongst other groups. It attempts to provide special facilities for persons with disabilities at the workplace. It recognizes the capabilities of persons who may be denied opportunities on the basis of their disabilities and therefore attempts to opportunities through positive discrimination.

### Interim Plan 2007 – 2009

The objectives and strategies of this plan aims to achieve proportional inclusivity and participation of persons with disabilities amongst other groups. The objectives are to be achieved though special policies relating to food protection, social and economic empowerment for persons with disabilities and other groups. The Plan also aims to achieve participation of persons with disabilities in the development processes of the nation.

### ***Discrimination in the Law***

While most of the laws affecting women and children with disabilities must be revised according to a rights-based approach as guaranteed by the CEDAW and CRC, certain provisions of the Evidence Act and the National Code discriminate directly against women and children with disabilities.

### **The National Code 1963 (Muluki Ain, 2020)**

Chapter on Marriage, Section 4 and 5 states that in instances where physical disabilities, seeing disabilities, hearing disabilities, speaking disabilities, mental disabilities are not disclosed at the time of marriage such marriages can be voidable on the aforementioned grounds by the opposite party with the imposition of Rs. 500 as penalty on the person accused of causing fraud. These provisions apply for men and women. Section 9 of the Chapter, entitles a man to enter into a second marriage if his wife has been rendered blind, physically or mentally disabled.

### **Evidence Act 2031**

Section 38 of the Act disqualifies children, aged persons as well as physically or mentally disabled persons from serving as witnesses in court.

### ***The Importance of the Ratification of the CRPD:***

The CRPD will be a very powerful tool to fill in the gaps in law and practice in Nepal and to provide an interpretive tool to expand the interpretation of existing laws. The CRPD contains an explicit anti-discrimination clause that prohibits discrimination between persons with or without disabilities and also between men and women with disabilities. This provision will help guide the review of all Nepalese laws.

Certain provisions in the existing laws in Nepal continue to be discriminatory. The *Muluki Ain* or the Civil Code discriminates against a woman with disabilities by allowing her husband to enter into a second marriage on the ground of the partner being disabled. The law discriminates both on the basis of disability and gender. The Evidence Act also discriminates against persons with disabilities in denying them the right to provide evidence in court.

Laws and policies on behalf of persons with disabilities are ineffective and often not implementable. Most of the Public Interest Litigation initiatives filed before the Supreme Court sought a mandamus or direction for the implementation of existing legislation. It is also not clear whether these judgments have been implemented. Poor implementation is often due to the lack of participation by persons with disabilities at the policy making level. Finally it has been stated that the use of language in the rules and provisions fail to impose duties on the government and merely provides directions in the form of guidelines that use terms such as “may be done” or “can be done” and thereby result in complacency in implementation.

The CRPD also requires State Parties to put in place a mechanism for monitoring implementation of its principles. The CRPD also requires State Parties to undertake statistics and data collection in furtherance of policy implementation.

A lack of reliable statistics relating to persons with disabilities was brought to the surface by the project. Despite provisions in the Disabled Persons (Protection and Welfare) Act, and the Local Self Government Act requiring bodies such as Village and District Development Committees to maintain statistics, reliable statistics are not easily available.

The CRPD requires State Parties to provide persons with disabilities health services and to have these services accessible to persons in rural areas. A disproportionate number of persons with disabilities in Nepal, especially in the rural areas have never received any treatment. The general practice in rural areas is to first visit faith healers.<sup>3</sup>

Access to both inclusive and specialized education is a cornerstone of the CRPD. However, according to a World Bank study on disability in Nepal, 68.2 percent of persons with disabilities in Nepal, with a majority constituting women with disabilities, have no education.<sup>4</sup>

### ***Seminar on “Advancing Rights of Women and Children with Disabilities”***

This seminar created a model for coalition building amongst human rights groups and disability rights groups. By locating the issues of women with disabilities at the forefront of the conference agenda, the conference made visible the hitherto marginalized rights of women with disabilities and created a paradigm shift in the way in which the rights of women with disabilities should be addressed through policy and legal changes in the area of multiple discrimination against women with disabilities.

One of the most important results of the conference was to build on the current process of constitution-making towards ensuring inclusivity of persons with disability within the framework of equality and nondiscrimination.

Among the 80 participants at the conference were the Speaker of the House, several Constituent Assembly Members, members of the National Human Rights Institute, and members of the National Women’s Commission were present at the conference. This Conference was also a major breakthrough for the work of the Constituent Assembly. In their words, “You have given us very important recommendations that will be used in the Constitutional drafting process. These recommendations will be incorporated in the Constitutional process.”

The conference in Nepal in and of itself created a paradigm change in the way different movements came together as change agents working together on common cause and

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<sup>3</sup> [http://siteresources.worldbank.org/DISABILITY/Resources/Regions/South%20Asia/JICA\\_Nepal.1.pdf](http://siteresources.worldbank.org/DISABILITY/Resources/Regions/South%20Asia/JICA_Nepal.1.pdf)

<sup>4</sup> [http://siteresources.worldbank.org/DISABILITY/Resources/Regions/South%20Asia/JICA\\_Nepal.1.pdf](http://siteresources.worldbank.org/DISABILITY/Resources/Regions/South%20Asia/JICA_Nepal.1.pdf)

cross cutting issues. At so many different levels, the Bangladesh and Nepal initiatives were catalysts for change and laid the essential groundwork for the work ahead.

### ***Follow-up Activities***

An unexpected consequence of the conference platform was that FWLD has been asked to play a leading role as moderator in resolving disparate and conflicting issues among disability groups. At the request of community groups, the Forum for Women Law and Development initiated and supported a consultation with parents of girls living with mental disabilities in February, 2009. These parents felt that they had not been able to discuss issues of sexuality and reproductive health of their daughters with mental disabilities at the seminar due to the presence of men. This forum therefore consisted of parents from several districts around Kathmandu and concluded with a list of suggestions to be added to the main list of recommendations drawn up at the seminar to be presented to the Constitutional drafting Committee.

#### **a) Addressing the Debate on Inclusive Education**

The Forum for Women Law and Development was also called upon to moderate a discussion meeting regarding the disagreement between the National Federation of Deaf and Hard of Hearing (NFDH) and the larger community of persons with disabilities with regard to the provision in the CRPD on inclusive education. National Federation of Deaf and Hard of Hearing had been expressing concern and dissent regarding the issue of inclusive education under Article 24 of the CRPD and had demanded that Nepal present a Reservation to Article 24 during the ratification process. The National Federation for Hard of Hearing argues that due to the range of disabilities seen in Nepal, education facilities and standards for all sections of persons with disabilities could not be the same. Similarly, geographical isolation and rough terrain render it difficult for persons with disabilities to attend average schools located far from their residences. Special schools and special facilities must therefore be established in addition to inclusive education. The community fears that that the ratification of CRPD may encourage the government to discontinue all programs on special education on the basis of its obligations under CRPD.

The Federation also demanded that special education be continued and implemented as a policy throughout Nepal and suggested withholding support for the ratification of the convention in the event that the government did not agree. At the request of NFDN, FWLD organized a discussion meeting leading to the formulation of a memorandum stating that special education should be retained in policy even with the ratification of CRPD and that adhering to a policy of inclusive education under the Convention would not exclude special education as and where needed. A resolution was drafted and finalized on 18th of May 2009 by a select drafting group consisting of representatives from the different groups and lawyers from within the community. The resolution stated that special education would be continued for the benefit of those sections of persons with disabilities for whom inclusive education was not beneficial even after the

ratification of the CRPD. The Resolution was adopted by the larger Working Group on 20th May 2009 and submitted to the Constituent Assembly. Both groups have acknowledged FWLD as a pivotal factor in facilitating a consensus on the dispute regarding Article 24 of CRPD within the community.

## **b) Public Interest Litigation on Reproductive Health Rights of Women with Disabilities**

### ***Challenging Discrimination against Persons with Disability in Court***

An important result of the Disability and Gender conference was the identification of urgent issues to be addressed through litigation. The issue of sexual and reproductive rights was an overarching theme that came up again and again at the conference and at Working Group meetings where parents of children with intellectual disabilities grappled with the issue of sexuality and the need for sex education for their children.

These pressing problems concerning the reproductive health rights of women with disabilities included the fact that women with disabilities lacked legal provisions regulating hospital and other health services; shortcomings in appropriate pre-natal and post-natal services catering to specific needs of women with disabilities; lack of sensitivity among hospital staff; lack of disabled-friendly facilities such as toilets, beds, sign language interpreters; and absence of sexual health education and awareness amongst parents of girls with disabilities.

The Forum for Women Law and Development formed a partnership with Nepal Disabled Women's Association (NWDA) in filing this historic public interest litigation. On May 18th of 2009, FWLD lawyers filed a public interest litigation on the health rights of women. The first hearing for issuance of show cause notice to the respondent ministries has already been conducted. Notice was thereupon sent by the Supreme Court to the respondents and they were given time up to 45 days from the receipt of the notice from the Supreme Court to respond to the petition. In September the court received the response and set a date for the first hearing in January.

The Forum for Women Law and Development has identified problems regarding medical services, the lack of facilities at hospitals, lack of sensitivity amongst the medical fraternity, and rampant instances of medical negligence that have reportedly contributed to a large section of the population with disabilities. There is no particular law that governs or sets minimum standards of conduct for hospitals or medical practitioners at private hospitals. One of the most pressing challenges is that the government hospitals are often difficult to access due to long distances. Thus women in the rural areas often turn to midwives with negative consequences. The Forum for Women Law and Development's court action is one of the few examples of public interest litigation regarding reproductive health services for women with disabilities in the world.

A groundbreaking element of Nepal’s pilot project was to challenge a pressing ground of discrimination against women with disabilities and to use the case as way to push the frontiers of legal advocacy on behalf of women with disabilities in Nepal.

Although several cases filed over the last several years had challenged discrimination against persons with disabilities, none of the cases addressed the issues of gender and discrimination or the way in which women and children were very often victims of multiple grounds of discrimination.<sup>5</sup>

There were several interesting facets to this narrative on public interest litigation in Nepal. One of the petitioners is a woman with disabilities from NDWA who had a miscarriage and provided evidence on what it was to face a miscarriage as a woman with disabilities in a hospital that does not address the needs of women with disabilities. The petition is based on the arguments made in one of the reports by the NDWA on the status of women with disabilities. One of the salient findings made in the report and used in the report is that girls with disabilities are fearful of going to school because of the fear of sexual abuse. The cause and effect relationship of this fact is that women with disabilities have limited access to education.

<p>Prakash Mani Sharma for Pro Public vs. Office of Prime Minister and Council of Ministers, Ministry of Women Children and Social Welfare Writ No. 3564/2063</p>	<p>This Petition was filed for the protection of rights to easy access and enjoyment of facilities for person with disabilities and little people in the public spaces on the basis of Art. 11 (3), Art 12, Art 18 and Art 26 (9) of the Interim Constitution, Sec 4 and 20 (1) of the Disabled Persons (Protection and Welfare) Act 2039 BS, and Art 25 (1) of UDHR. The petition in addition demanded for creation of accountability and establishment of a mechanism for the implementation of the existing laws relating to the above. The court issued a directive to the respondents for the formation of a committee under the co-ordination of Govt. representatives and consisting of representatives of organizations working in the field of disability including experts. The Committee vested with the responsibility of creating a plan and policy for</p>
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<sup>5</sup> *Babu Krishna Maharjan V. Prime Minister, Cabinet, Ministry of Women, Child and Social Welfare, Ministry of Health and Population and others; Prakash Mani Sharma on behalf of Pro Public & Tek Tamrakar v. Ministry of Women, Child and Social Welfare, Prime Minister and Cabinet; Babu Krishna Maharjan v. Cabinet, Ministry of Education and Sports and others; Jhabindra Prasad Adhikari v. Prime Minister and Cabinet, Ministry of Women, Child and Social Welfare and others; Ram Prasad Adhikari v. Prime Minister and Cabinet.*

	protection of rights of persons with disabilities and the submission of the report emanating from the committee to the Supreme Court in periods of 6 months each.
Prakash Mani Sharma for Pro Public vs. Office of Prime Minister and Council of Ministers, Ministry for Education and Sports, Ministry for Women, Children and Social Welfare, Writ No. 0283/2063 BS	The petition was filed for the protection of right to education under Sec 5 (1) and 9 (3) of the Disabled Person (Protection and Welfare) Act 2039 BS on the basis of Art 11 (1), 11 (3), Art. 18 and Art 26 (9) Constitution of Nepal 2047 BS, UDHR and ICESCR. The petition sought the implementation of the existing law through a substantive approach recognizing the special and specific needs of persons with hearing disabilities and seeking facilities such as sign language as medium of communication in schools and universities, and adequate resources for study. The court issued mandamus for the formulation of a plan of action should be at the earliest, the addressal of issues mentioned from the current session of school and universities itself, the employments of teachers trained in sign language in the schools and universities, provisions of materials for study at the earliest and training persons who are capable of communicating in sign language as teachers.

### **Public Interest Litigation: Reproductive Health Rights of Women with Disabilities in Nepal**

#### Prelude to the Public Interest Litigation

- Creation of a network with organizations of persons with disabilities and women's rights and children's rights groups.
- Baseline study on the existing problems and implications of existing laws on rights of Persons with Disabilities. Evaluation on the basis of principles under

#### CRPD.

- A conference on “Advancing Rights of Women and Children with Disabilities” was hosted (in partnership with the Wellesley Centers for Women and sponsored by the Open Society Institute) for the purpose of gathering recommendations for law reform, rights to be incorporated under the forthcoming Constitution, identification of issues and strategies relating to access to justice and localization of principles of CRPD within domestic jurisprudence.
- Reproductive Health Concerns Raised at the Workshop:
  - Guardians of women with disabilities prefer to keep the existence of their wards hidden from the public for fear of possible sexual assault or insist on their wards undergoing sterilization in fear of repercussions of sexual assault.
  - Women with disabilities who were married often avoided pregnancy due to fear of wrong diagnosis, harassment by medical practitioners and in particular, fear of the labor room.
  - Hospitals and other medical care providing centers were not adequately equipped to offer treatment to persons with disabilities, including basic facilities such as sign language translators, accessible toilets etc.
- Several policies such as Disabled Service National Policy, National Policy for Disabled, etc, mandated free medical care for persons with disabilities. However facilities that are provided free are inaccessible.
- The Disabled (Protection and Welfare) Act and Rules require hospitals with 50 or more beds to reserve two beds for persons with disabilities. However facilities that are necessary for women with disabilities as reproductive care such as a personal cabin with attached toilets, special labor beds, etc. are paid facilities for which women with disabilities are refused discounts.
- Due to scarcity of specialized doctors or even basic reproductive facilities in rural areas, women with disabilities often look for assistance of midwives. Post-natal care was therefore not adequately provided leading to further complications in the woman’s health.

#### Challenges apprehended:

- Lack of available disaggregated data on the status of women with disabilities, availability of health care services tailored for persons with disabilities, number of women approaching formal healthcare services related to sexual or reproductive health, maternal mortality rate amongst women with disabilities, etc.
- Lack of documented evidence depicting discriminatory treatment by healthcare professionals against women with disabilities.
- Lack of awareness amongst the women with disabilities regarding rights guaranteed under the constitution or other existing legislations.
- Lack of any existing uniform law regulating hospitals or other healthcare services (both government facilities as well as private establishments) on the basis of which reform may be demanded. The National Medical Council Act, mainly provides for the formation of a Council whose main task is certification of hospitals. The legislation allows the council to formulate a set of “Ethics and

Guidelines” on the basis of which such certification is carried out.

- Unfortunately such “ethics and guidelines” are not enforceable in court.
- Also, while conducting evaluations for general hospitals, the Council on various occasions has admitted its inability to conduct appropriate evaluations for hospitals in the tertiary sector.

#### Strategies Used:

- Forging partnership with the main national network of women with disabilities, Nepal Disabled Women’s Association (NDWA) to pursue the common concerns emerging out of the Workshop.
- Submission of a letter to the Ministry of Health and Population seeking information relating to the following:
  - Existence of disabled-friendly facilities in government hospitals around Nepal.
  - Attempts made by the Ministry to create awareness regarding sexual rights, maternal health care and reproductive rights amongst women with disabilities as well as their guardians.
  - Existence of sensitization programs for doctors and nurses relating to special needs of women with disabilities.
- Report on Status of Women with Disabilities (the first of its kind) formulated on the basis of a national level study conducted by NDWA used to substantiate the arguments. In addition statistics from Reports on the general status of persons with disabilities, e.g. the Situational Analysis of Disability in Nepal by UNICEF and New Era, depicted in relation to available information on the ratio of women with disabilities in Nepal.
- Women with disabilities registered as petitioners to ensure better acceptability of the issue in court, as well as to create ownership of the issue within the community.
- Appointment of a lawyer from within the community of women with disabilities to represent the case in court.

#### Petitioners and Respondents

- The Petitioners are:  
Four women with disabilities from NDWA and FWLD. One of the petitioners is also a lawyer representing the matter in court.
- Respondents:
  - Ministry of Women, Children and Social Welfare
  - Ministry of Health and Population
  - Prime Minister and Council of Ministers
  - Ministry of Education

Arguments based on the following:

- Provisions under the Interim Constitution
  - Article 12 of the Interim Constitution 2007 guarantees every person the right to live with dignity
  - Article 13 of the Interim Constitution stated all persons to be equal before the law and enjoy protection of the law. In addition it states:
 

*“Nothing shall be deemed to prevent the making of special provisions by the law for the protection, empowerment or advancement of women... the aged and the disabled or those who are physically or mentally incapacitated”*
  - Article 20 (2) guarantees reproductive health and reproductive life of women.
  - Article 35 on requires the state to pursue policies for adoption of special measures based on positive discrimination for disabled and women amongst others.
- Provisions under the Disabled Protection and Welfare Act 2039 requiring the State to ensure healthcare and medical treatment for persons with disabilities.
- National Policy of Disability 2053 that state provision of treatment and health services. Persons with disabilities are required to be given preference for free treatment at hospitals in all levels (central, regional and district level). For the benefit of persons with mental or intellectual disabilities the government shall also provide mobile health facilities.
- The 3-Year Interim Plan for the Years 2065-2067 mandates the State to create an enabling and accessible environment for the achievement of rights to independent living, and justiciable life for all persons with disabilities.
- Studies conducted by NDWA and UNICEF with regard to Disabilities. The UNICEF study in particular depicts that 30 percent of persons with disabilities are refused medical treatment by their own family members. Eighty-three percent of persons with disabilities are unaware of the responsibilities and obligations of the state in providing adequate health services under the law. Sixty-eight percent of persons with disabilities are illiterate. And 46.4 percent of the entire population of persons with disabilities are women in Nepal.
- Obligations under the following international treaties and conventions:
  - Article 3 and 25 of UDHR
  - Article 1 of ICCPR & ICESCR
  - Article 23 of CRC
  - UN General Recommendation No. 2856 of 1971 on mental disabilities
  - UN General Recommendation No. 3447 of 1971-guarantee of all rights for all forms of disabilities for life with dignity
  - CRPD guaranteeing human rights, equal opportunity and development for persons with disabilities (to a very limited extent and only as a signatory)

**Issues Identified:**

- Women with disabilities are often unaware of their sexual and reproductive health rights both before and after marriage.
- Due to the problems relating to reproduction, women with disabilities are often also denied the right to marriage.
- Doctors are often incapable and unequipped to provide advice and assist women

- with disabilities in carrying an entire pregnancy.
- Women with disabilities are also unaware of the necessity of seeking medical assistance or undergo medical monitoring during prenatal and post-natal care.
  - Access to existing health services are also barred due to the lack of assistants trained in sign language and with knowledge of problems faced by women with disabilities.
  - Doctors often do not entertain requests for free services and discounts on the basis of disability despite provisions under the law requiring them to provide the same.
  - Lack of facilities impede normal birth of children for women with disabilities.
  - Wheel chair or crutch users are not provided facilities such as lifts, railings ramps etc in medical centers therefore creating barriers in access to regular check-ups. In addition due to lack in translators for sign language, patients with hearing disabilities are often subjected to wrong diagnosis or misinterpretation of the prescribed use of drugs.
  - Economic difficulties often prevent women with disabilities from visiting specialist doctors and compel them to take assistance from informal systems and undergo unsafe abortion.
  - Due to lack of accessible materials for creation of awareness, women with disabilities often have no knowledge about family planning.
  - Inaccessibility of specialized and appropriate medical advice, women with disabilities are often unaware of the nutrition requirements leading to further health complications.
  - Due to lack of sex education at schools or other institutions run for the empowerment of persons with disabilities as well as access to reproductive health services, women with disabilities are often forced to undergo hysterectomy and sterilization. Parents of women with intellectual disabilities are often forced to take such decisions on behalf of their charges for fear of sexual violence and to avoid unwanted pregnancies.

Arguments:

- Existing provisions under the law regarding medical treatment and healthcare are rarely implemented.
- Women with disabilities have specific problems and needs, the lack in recognition of which is causing impediments to the realization of reproductive health rights guaranteed under the Constitution. The study conducted by NDWA shows that 40 percent women with disabilities have no information regarding family planning, 50 percent women with disabilities do not get basic health services, and 55 percent women with disabilities are forced to give birth at home and therefore are not provided adequate post-natal care. Therefore special provisions should be adopted and their rights protected by the state.
- For the realization of rights under the Interim Constitution (rights to freedom, equality, non-discrimination, marriage and family life), there is a need to enact and implement special provisions and to provide access to reproductive health facilities. Health Centers, and hospitals should have special facilities and discounted services for women with disabilities in acknowledgement of their status as vulnerable and as marginalized group.
- Due to the differences in reproductive role of women in comparison to their male

counterparts, it is important to provide special care and protection to women.

- Facilities for prenatal and post-natal care are essential components of the right to reproduction. However women with disabilities are unable to enjoy such rights therefore it is the obligation of the state to ensure that they are provided the same in an accessible manner. Such facilities are not only for the benefit of women with disabilities but also the betterment of the child's health, development and related to a child's right to overall empowerment.

**Relief Requested:**

- Create awareness on violence, reproductive health rights of women with disabilities as a state obligation under education policies or other policies. Also the creation of awareness amongst parents/guardians.
- Develop sensitization programs for doctors and nurses of hospitals.
- Existing HIV/AIDS awareness programs should incorporate sex education and awareness creation regarding use of contraceptives to persons with disabilities.
- Provide of disabled-friendly facilities such as
  - Low bed or beds with stairs
  - Disabled friendly toilets
  - Provide disabled friendly labor room facilities in consultation with women with disabilities.
  - Provision of one person with knowledge of sign language in every hospital.
- Provide caregivers with knowledge of sign language in every hospital in addition to sign language translators.
- Incorporate provisions for counseling services which may follow up with the patients regarding regular check-ups as pre-natal and post natal care under the Disability (Protection and Welfare) Act.
- Create sensitization programs in schools for persons with disabilities as part of school curriculum.

*Issues that were considered in filing the public interest litigation*

- How can PIL be used to challenge systemic discrimination against persons with disabilities?
- How can litigation be framed to address discrimination against women and children with disabilities?
- What procedural provisions should be adopted to provide persons with disabilities better access to justice?
- What are the means to provide legal aid to women and children with disabilities?
- What strategies should be adopted to ensure implementation of judgments?

- Expand Article 107 of the Constitution which refers to extraordinary jurisdiction to bring a fundamental rights case to cover urgent cases regarding persons with disabilities.
- Integrate into PIL a special focus on women and children with disabilities. Their cases should be heard. In-camera hearings should be pushed for.

### ***Shadow Reporting: Including Disability into the CEDAW Shadow Report***

Integrating the status of women and girls with disabilities into the CEDAW shadow reports is one of the most powerful ways of mainstreaming the rights of women and girls with disabilities into the human rights agenda

FWLD is leading the consortium of organizations writing the shadow report to the CEDAW. Under the auspices of the project, FWLD is including a chapter on Women with Disabilities as an issue that has hitherto received little attention in the shadow reports to the CEDAW Committee.

FWLD is the focal point of the CEDAW shadow reporting process and is charged with writing this report. This allows the Working Group to tap into FWLD's leadership role in this process. The National Women's Disability Rights organization is part of the CEDAW shadow report project. Forty civil society organizations were chosen through a democratic process to contribute to the shadow reporting process. The consortium has identified 19 issues. Of these issues, nine issues are emerging issues. The status of women with disabilities is addressed as an emerging issue. In preparation for the drafting of the report, a shadow report drafting workshop was held by FWLD. Each issue has three or four organizations drafting it with one organization as the coordinator. The NDWA and FWLD are the coordinators of the issue on women and disability.

The Government report was coordinated by the Ministry for Child and Social Welfare. However, the Ministry on Foreign Affairs sent the draft back for revision. It has to go through the foreign ministry. It was to be submitted by June 2009. The report was re-drafted and submitted to the CEDAW committee in September/ October. The shadow report can be submitted within one year of the submission of the government report. The shadow reporting process was informed by inputs from across the country and the final draft will be subject to a national consultation due to be held in December.

*(See Appendix Two for a copy of the chapter on women with disabilities)*

### ***Ratification of CRPD***

The biggest milestone reached during the life of the project was the ratification of the CRPD by the Nepal government in December 2009.

Although Nepal signed the treaty in 2008, at the start of the project, it was yet to ratify the Convention. Attempts to ensure ratification of the CRPD by the National Federation

of Disabled—Nepal (the umbrella body of all organizations of persons with disabilities in Nepal) has been ongoing since 2007 through a task force of five select members from within the community. The Working Group on Advancing Rights of Persons with Disabilities convened by FWLD on 10th November 2008 aimed at supporting the processes and advocacy for ratification. As part of the project, FWLD published and disseminated advocacy leaflets to urge stakeholders to ratify CRPD. On International Disability Day, three members of the Constituent Assembly, Hon. Sapana Pradhan Malla, Hon. Raghav Bir Joshi, and Hon. Indira Maya Gurung, spoke at the Constituent Assembly urging for the ratification of CRPD. Moreover the Working Group submitted a letter to the Ministry of Women, Child and Social Welfare urging the early ratification of the Convention. The FWLD also submitted individual letters to all members of parliament along with advocacy materials urging for early ratification of the CRPD. Subsequently on 7th December 2008, the proposal for ratification forwarded by the Ministry was accepted by the Cabinet and on the 22<sup>nd</sup> of December 2008 the CRPD was registered to be tabled at the Parliament.

The conference on advocating rights of women and children with disabilities attended by more than 100 stakeholders both from within and outside the community of persons with disabilities was also used as a platform to urge for the ratification of CRPD.

When the Prime Minister resigned in May of 2009, the cabinet too was dissolved. Given the political impasse, in August of 2009, FWLD brought the Working Group together to discuss the ratification of the CRPD and the way forward. The FWLD received feed back from legislators that the cabinet decision was binding despite dissolution of parliament and the time was ripe to lobby the parliamentarians.

The working Group has adopted a three pronged process to create visibility for disability rights and to build momentum for ratification. The first approach was to initiate a protest march organized by NFDN and joined by all Working Group members.

The protest March was held in August 2009. Seven hundred persons with disabilities across the country joined and marched from *Maitighar Mandala* to the new parliament with the aim of meeting with the speaker. At the last moment, the police stopped the March but the March had created the much needed visibility that was aimed. A video recording was made. The news papers recorded the campaign. The next day a smaller delegation met with Hon. Subhash Nemang, the speaker of the House. He informed the participants that the ratification of the CRPD was a high priority but that the Maoist's boycott of parliament was impeding the parliamentary process and thus the ratification of the CRPD.

The second prong of the campaign was to lobby the members of the Constituent Assembly and the five main political parties to persuade them to ratify the CRPD.

The third prong to be facilitated by FWLD was to train journalists on disability sensitivity training and encouraging them to report on disabilities. The National Federation for Disability Nepal called upon FWLD to build upon their long history of mobilizing the

media to advance women's rights to create greater visibility and sensitivity for persons with disabilities in the eyes of the media.

To advance this goal, FWLD held a media workshop for editors and radio professionals to educate them on fundamental rights of persons with disabilities. A section on disability was included in the press reviews. The FWLD has decided to give a Media Fellowship to a journalist to focus on disability.

### ***Disability Rights and Constitution Making: Preparation and Submission of the Memorandum to Constituent Assembly Members Regarding Law Reform***

Nepal is at a historic political moment. Despite the many political challenges and the problems regarding power sharing, the new constitution making process is seen as the cornerstone of this transition. The new constitution is expected to guarantee the rights of all marginalized and vulnerable groups within the society. This project forged at an important moment in the history of Nepal's political and constitutional history seized the important moment in time to make recommendations for the rights of persons with disabilities in the Nepal constitution.

None of the six previous constitutions in Nepal have addressed the issue of persons with disabilities. It is important that the potential of this historic opportunity of Constitution making be fully realized in the case of rights of persons with disabilities.

A Memorandum on the Rights of Persons with Disabilities was drafted by the Working Group compiling the recommendations emerging out of the Seminar in consultation with parents of girls with mental disabilities and lastly the Shadow Constituent Assembly. Honorable Sapana Malla facilitated the submission of the memorandum to the Speaker of the Constituent Assembly. The memorandum recommended the inclusion of a chapter on Rights of Persons with Disabilities in the Constitution.

The memorandum calls for a guarantee of equality for all persons including persons with disabilities must ensure the right to a judicial remedy, access to justice and justiciability of rights. Moreover, access to legal aid for indigents and persons with disabilities must be included in the Constitutional guarantees for persons with disabilities. Affirmative action for persons with disabilities must be given priority. The present Constitutional-making process must not only ensure disability is a prohibited ground of discrimination but address it within the broad equality framework, i.e., through affirmative action and special measures, etc. Some of the issues examined in the memorandum included ways in which multiple discrimination be addressed through the Constitution; how Braille script and tactile language can be made national languages and the Constitutional guarantee for reproductive health rights for women and girls with disabilities.

The current Constituent Assembly boasts of two members belonging to the community of persons with disabilities. However their candidacy was not through proportional representation on the basis of their disability but on their prior political affiliations. The Interim Constitution recognizes persons with disabilities only with regard to the following:

- Right to Equality

*“(3) The State shall not discriminate among citizens on grounds of religion, race, caste, tribe, sex, origin, language or ideological conviction or any of these.*

*Provided that nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of the interests of women, Dalit, indigenous ethnic tribes, Madeshi, or peasants, laborers or those who belong to a class which is economically, socially or culturally backward and children, the aged, **disabled and those who are physically or mentally incapacitated.**”*

- Right regarding Employment and Social Security

*“(2) Women, laborers, the aged, **disabled as well as incapacitated and helpless citizens** shall have the right to social security as provided for in the law.”*

### ***Recommendations Submitted to the Constituent Assembly: A Blue print for Disability Sensitive Constitutional Reform***

#### **Preamble**

- Recognition of Braille or other disability-friendly means of communication as forms of language.

#### **Fundamental Rights**

- Prohibition of discrimination on the basis of disability. Discrimination on the basis of disability shall be made punishable under law and it shall provide compensation to the victim of such discrimination
- Under the guarantee of equality specific measures shall be adopted for persons with disabilities by the state. On the basis of multiple discrimination faced by women, and taking into account their varied requirements, the state should adopt special provisions under the law.

- The denial of all or any necessities required by persons with disabilities for realization of right to equal opportunity and equal access to facilities at par with other citizens shall be read as discrimination.
- There shall be no discrimination in the payment of wages between men, women, and persons with disabilities for the same standard of employment.
- Equal participation of persons with disabilities in all state infrastructures and political activity under the right to social justice.
- Allocation of subsistence allowance and adoption of any other appropriate measure guaranteeing the right of social security for all persons with disabilities.
- Under the right to employment, and in pursuance of the guarantee of the right to nondiscrimination, persons with disabilities should be allowed preferences as per their capabilities.
- Under the right to education, inclusive or special education as per necessity shall be guaranteed for persons with disabilities.
- Under the right to health, adoption of disabled-friendly measures as well as specific facilities catering to the particular needs of persons with disabilities should be ensured.
- Under the right to information appropriate means of communication and required facility shall be ensured and adopted for the benefit of persons with disabilities.
- Under the right to vote adoption of Braille or other appropriate disabled friendly means shall be adopted as facilities for voting.
- Enjoyment of and access to public services shall be guaranteed inclusive of buildings, roads, and other means of transportation.
- In pursuance of the right to healthy environment factors contributing to disability and obstructing the enjoyment of rights shall be considered and measures to overcome such disability shall be adopted.
- In pursuance of the best interests of a child, rights to nurturing, development, basic education, special education shall be guaranteed for all children.
- Participation of persons with disabilities in all state governance as well as through proportional elections in political sphere shall be guaranteed.
- The duty to respect, protect, fulfill and promote fundamental rights of persons with disabilities shall lie with the state.

### **Directive Principles of State Policy**

- The state shall have the duty to ensure full and equal enjoyment of all fundamental and inherent rights of persons with disabilities
- The state shall have the duty to create an enabling environment for the development and equal access to services, facilities and rights for all persons with disabilities
- The state adopt and follow the policy of providing for education, health, employment and social security to children of persons with mental and/or intellectual disabilities or persons who are severely incapacitated or persons with disabilities who fall below the poverty line.

- The state shall adopt required policies for appointing or identifying guardians or custodians for persons with intellectual disabilities along with incapacitated persons towards realizing the guaranteeing the right of participation and representation.
- The state shall follow and promote policies for benefit of persons with disabilities belonging to remote mountainous regions or the Terai region.
- The state shall follow and promote the policy of self-employment for persons with disabilities.
- The state shall formulate and implement policies and programs for the empowerment of persons with disabilities at a national level in pursuance of their development and the protection of their rights.
- The state shall formulate and implement policies for the allocation of budget to organizations self-run by persons with disabilities towards their enjoyment of service and facilities.
- The state shall formulate policies for establishment of special schools, classrooms for children with disabilities, campaigns for providing literacy to children with disabilities in providing education
- The state shall establish special employment centers for persons with disabilities, and shall provide quotas for providing employment in recognition of their specific disabilities and capacities at all levels of the state.

### **Constitutional Commissions**

- Establishment of Disability Commissions to protect and promote rights of persons with disabilities as well as to ensure their economic and social development. It should in specific address multiple discrimination and violence against women with disabilities.
- Establishment of an Equal Opportunity Commission to ensure equality in access and opportunity in all aspects of life for persons with disabilities

### ***Foreseeable Hurdles in Realizing Rights of Persons with Disabilities through Constitutional Reform***

- Political rift and continued conflict within Nepal have been emerging as a competing issue threatening to shift focus from the constitution making process.
- Lack of consensus and communication within the community of persons with disabilities
- Lack of consensus regarding statistics on persons with disabilities creating a lacuna in implementation of programmes, laws and policies despite the guarantee of rights.
- Lack of implementation of laws as well as judgments in Nepal. (*Most cases relating to disability and otherwise seek directives for proper implementation of provisions under laws already existent*)

## ***Reform of Existing Laws and Policies***

The Disability (Protection and Welfare) Act 2039 has long been hailed as one of the first pieces of legislation in South Asia to have been formulated specifically to address issues pertaining to disabilities. However this law along with a host of provisions spread through other laws in Nepal, is primarily based on the “social welfare approach” that predated the CRPD. The under implementation of these laws has prevented these laws fulfilling their promise.

## ***Some Unanticipated Results of the Program***

This effort at building bridges resulted in creating a platform for women with disabilities in Nepal. For example, the Nepal Disabled Women’s Association ( NDWA) has now fully embraced the CEDAW and its potential to articulate the felt needs of women’s with disabilities. In fact, NDWA continues to partner with FWLD is organizing with support from FWLD a forum on violence against women with disabilities in December 2009. Moreover, the NDWA joined FWLD to file a PIL and to write the chapter on women with disabilities in the shadow report.

The Prime Minister of Nepal has declared the year 2010 to mark violence against women. At the first forum in the Prime Minister’s office marking this event in December 2009, at the invitation of FWLD, NDWA joined this forum.

Just as much as the disability community is now reaching out to the CEDAW framework, the women’s rights community is stretching and expanding their advocacy to include the spirit of the CRPD. The FWLD has in turn mainstreamed disability rights into their groundbreaking work on anti- discrimination. The congruence with the disability rights movement and a deeper understanding of the intersections of human rights agendas has helped FWLD to push the boundaries of their work on anti- discrimination and equality.

The spirit of the CRPD now animates FWLD’s work on gender. For example when National Human Rights Commission of Nepal held a workshop on the Concluding Comments of the CEDAW committee and FWLD brought up the absence of focus on women with disabilities.

### **Concrete Results**

- Most disability rights organizations integrated a gender focus in their disability work at the end of the project period.
- Most initiatives benefited from the presence of the leading women group that could at times play the role of mediator and help resolve conflicts between and among disability organizations.
- The role of our partner was to help facilitate a common agenda and forge a working relationship among different groups.

### **Resolving Conflicts: Case One**

A conflict of interest was voiced by the Nepal Federation for Deaf and Hard of Hearing (NFDH) at the seminar. A statement was sent to the Rapporteur by the NFDH regarding Article 24 of the CRPD. The Federation threatened to stall the ratification process if reservations were not made to Article 24. The federation feared that Nepal would not offer special education for the hearing impaired under the CRPD.

A fifty member forum was therefore coordinated by FWLD to address the issue raised by NFDH. The Secretary for the Ministry of Law and Parliamentary Affairs and experts on special education were invited to the forum. The debate revolved around the fact that although various laws and policies mandated special education in Nepal, these were often privileged in the breach. Special education is mandated in Nepal by law and policy. It is however not implemented well.

The federation feared that if the CRPD came into operation the government would forego its obligations to provide special education and that the CRPD would legitimize that failure. Persons with hearing disability would be discriminated in the case of education.

The conflict was resolved by all parties agreeing to a resolution that would recommend both special and inclusive education. A final decision was taken not to block the ratification of the CRPD or ask for reservations.

However, NFDH asked for the adoption of a resolution that would be backed by the entire community of disabled persons calling for special education to be continued in Nepal even after the ratification of the CRPD. Especially given the rugged terrain in Nepal, inclusive education could pose a challenge.

A drafting group was formed to write the resolution. The resolution was finalized and is to be submitted to the Parliament. The Working Group will also help to lobby the five main political parties so that when parliament reconvenes the resolution will be passed. This was emblematic of FWLD's role in conflict resolution and mediation.

### **Resolving Conflicts: Case Two**

Caregivers of women with mental disabilities felt that they were not able to make their voices heard at the conference. The FWLD therefore helped convene a discrete meeting for these caregivers which was hosted at a caregivers office. The Mothers felt they needed the privacy to articulate their daughters sexual and reproductive health and their fears about their vulnerability to sexual exploitation. On the other hand, women with disabilities needed autonomy over their sexuality and this was a challenge in the case of women with mental disability. These voices helped to in turn shape the recommendation in the PIL case on sexual and reproductive health rights of women with disabilities.

Special education for women with mental disabilities especially in the field of reproductive and sexual health was a an enormously pressing issue.

**Overcoming Challenges:**

- There was some initial resistance to the coming together of the disability community with the women’s rights groups. The steps leading to the building of the alliances were important building blocks.
- Each Working Group member was allocated different responsibilities in order to build ownership.
- The lack of credible gender and disability disaggregated data is a continuing problem.

***Conclusion: Feedback from the Community***

The development of the project by FWLD in Nepal has supported and strengthened the claims to rights of women with disabilities not only in the women’s movement but also within the community of persons with disabilities. Although there were some tension at the early stages of the project, FWLD’s role as a facilitator in resolving disputes within the human rights community as well as FWLD’s efforts to mainstream persons with disabilities within the larger human rights discourse and the Constitutional reform process has been appreciated by the women’s disability rights groups.

## **BANGLADESH**

One of the first countries in the world to ratify the CRPD and the Optional Protocol, Bangladesh is a unique case study in this project. The CRPD officially binds the government of Bangladesh and the State can be held accountable under the three pillars of the CEDAW, CRC and CRPD.

The Bangladesh National Women Lawyers Association has over the last 30 years fought for equal opportunities and human right for women and children. While broadening women's and children's access to justice, BNWLA also advances the role of women lawyers. The BNWLA programs are targeted towards the most marginalized in society. Thus, they are an ideal focal point to bridge the connection between women's and disability rights organizations.

The number of persons estimated with disabilities is approximately 150 million constituting 10 percent of the total population in Bangladesh. Persons with disabilities are disproportionately represented among the poorest segments of society and lack equal opportunities. The two major laws and policies governing disability include: the National Policy for Persons with Disabilities 1995 and the Disability Welfare Act of 2001.

### ***Conference Working Group***

The BNWLA adopted an inclusive methodology to reach out to disability rights groups. The Working Group was formed of disability rights groups who were eager to work on the cross-cutting nature of women's and disability rights. The Working Group of nine members had over 20 informal meetings in preparation for the conference. All decisions were made collaboratively in a consultative manner.

Leading up to this conference, BNWLA formed a new and broad alliance working with the National Alliance of Disabled People's Organizations (NADPO) and Women with Disability Development Foundation (WDDF). The Working Group met 12 times from September 2008 to January 2009 to organize the conference and worked in a participatory way to organize the conference.

Some steps leading to the Conference:

- The Bangladesh National Women Lawyers Association in consultation with the Working Group developed 3000 posters on persons with disabilities. The leading advertising firm 'The Asiatic' was given the responsibility of arranging the seminar and printing the posters.
- A wide range of media (both print and electronic) were invited to attend the conference.

- Disabled People’s Organizations (DPOs) from all over the country were contacted through electronic mail/invitation card. Their lodging was arranged in three local hotels. Local NGOs, Government officials, Donor organizations, students with disabilities, media were invited through invitation card and electronic mail.
- A kit was prepared containing the poster, Bengali version of CRPD, Disability Welfare Law, and papers related to the Conference.

### *Members of the Working Group*

As a result of the conference more organizations expressed their interest in becoming a part of the coalition. Since then the coalition has been working together to promote the rights of women with disabilities in the fields of: 1) human rights reporting, 2) public interest litigation to challenge multiple discrimination against women and children with disabilities and 3) revision of ‘Disability Welfare Act 2001’.

A full list of the members of working group who represent different organizations is given below:

Human Rights Reporting	<ol style="list-style-type: none"> <li>1. Salma Khan, Women for Women</li> <li>2. Adv. Bithika Hasan, BNWLA</li> <li>3. Shirin Akhter, (NADPO)</li> <li>4. Priti Ahona, BPKS</li> <li>5. Kamruzzaman Sohel, Jatio Protibondhi Unnayan Samity, Dhaka Cantonment</li> </ol>
PIL litigation to challenge multiple discrimination against women and children with disabilities	<ol style="list-style-type: none"> <li>1. Rafique Zaman, NFOWD</li> <li>2. Rashed, BPKS</li> <li>3. Rehana Sultana, BNWLA</li> <li>4. Adv. Seema Zahur, BNWLA</li> <li>5. Nigar Sultana, DCWAB</li> <li>6. Lovely, BPKS</li> <li>7. Jolly Kaosar, SARBV</li> <li>8. Joya, INAFI &amp; Special Teacher</li> <li>9. Biplob, FRPS</li> </ol>
Revision of ‘Disability Welfare Act 2001’	<ol style="list-style-type: none"> <li>1. Nobokumar Ghosh, Bangladesh Protibondhi Kolayan Samity</li> <li>2. Momotaz Uddin Milon, Chandpur, DPOD</li> <li>3. Mohammed Badrul Alam, DDKS</li> </ol>

	<ol style="list-style-type: none"> <li>4. Mohammed Badrul Hasan, BNWLA Mohammed Ayub Nobil Molla, SPD</li> <li>5. Shamsul Kabir Chowdhury, BPCS</li> <li>6. Umme Kulsum, NCDW</li> <li>7. Shakil, ADD</li> <li>8. Adv. Towhida Khondker, BNWLA</li> <li>9. Mohammed Ruhul Amin, ARS</li> </ol>
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### ***Bangladesh National Conference***

Bangladesh National Women Lawyers Association (BNWLA) together with the National Alliance of Disabled Peoples’ Organization (NADPO), and WDDF convened a seminar in December that brought together the different social movements in an inclusive manner at a participatory forum in Bangladesh. Mahbubey Alam, Attorney General of Bangladesh and Hedayetullah Al Mamoon, Director General, Department of Social Services, were the key note speakers at this forum. At the dawn of a new political era, with a new government in power, the conference was urgent and timely to place these issues on the political agenda.

The two-day long conference was divided into three panels. The first panel was on Human Rights Reporting and focused on developing a shadow report on women and children with disabilities in Bangladesh for the CEDAW Committee in 2009 and on identifying critical areas relating to the rights of women and children with disabilities that must be highlighted in the first shadow report to the CRPD in early 2010. Given that the disability rights community is yet to draft a shadow report, the women’s groups who are intimately involved in drafting shadow reports to the CEDAW and CRC Committees shared important strategies and technical assistance with the disability rights groups.

The panel on litigation to challenge discrimination against Persons with Disabilities focused on bringing seminal litigation in Bangladesh on behalf of women with disabilities. The aims and goals of this discussion was to identify an urgent area for litigation and to examine ways in which BNWLA could extend its legal aid services to women with disabilities who are victims of domestic violence.

The third session focused on the Revision of the Disability Welfare Law of 2001 and bringing a gender perspective to the law by women’s disability rights group and women’s groups. The specific aims and objectives of this panel were to: identify provisions of the Disability Welfare Law of 2001 that are inconsistent with the CRPD; provide a gender perspective to the disability law and potential revisions; and to include a disability rights perspective to other areas of the law and law making efforts. Examples include the draft Victim Witness Protocol and draft Domestic Violence Law; and a pioneering Code of Conduct for the Treatment of Persons with Disabilities: an Ethics Guideline.

At the end of the session, the participants divided into breakout groups and drafted action plans on human rights reporting, litigation and law revision.

The most outstanding achievement of this conference was the fact that the human rights movement came together in concerted action to hold stakeholders present (senior officials from the Ministry of Social Welfare, the architect of the current law and the Attorney General and others from the Ministry of Justice) accountable to the gaps and inoperable provisions in the law and solicited a commitment from these stakeholders to give weight and consideration to the recommendations that grew out of this conference. The collaboration provided an opportunity for Disabled People's Organizations (DPO) to come in direct touch with high-level lawmakers, policymakers, media and other stakeholders. This collaborative action helped to expand the advocacy of both women's movement and the disability rights movement. Given that BNWLA has access to strategic advocacy organizations, CEDAW Committee members, and political leaders can bolster the work of the disability rights communities. BNWLA in consultation with the Working Group developed 3000 posters that were distributed all over Bangladesh through the participants. A few NGOs invited at the Conference proposed to work with BNWLA in their effort to legally fight the discrimination and violence perpetrated against women and children with disabilities.

### *Some Important Recommendations*

One of the important recommendations made at the conference was the inclusion of persons with disabilities at the district level committees, a disability cell within every ministry and the formation of a disability rights committee. Following the recommendation few district level committees (In Khagrachhori, Magura, Khulna and few more) have included one person with disability in the district level committee.

### *Human Rights Reporting*

This year the leading NGOs are collaborating to write an alternative report to the CEDAW Committee and have formed a coalition in this regard. Twenty one thematic areas, including disability, have been chosen as focus areas. After the conference, BNWLA began working on the CEDAW shadow report along with partner organizations, NADPO and WDDF, focusing on the rights of the person with disabilities to fill in the gaps of the State party report. BNWLA will also raise awareness around the CRPD reporting to be done at the end of 2009 and mobilize attention to address the specific rights of children with disabilities.

This presents a unique opportunity in which women with disabilities work with their peers on the CEDAW shadow reporting process. This engagement broadens the women's rights constituency and provides a powerful platform for joint action on related and cross-cutting issues.

Since Bangladesh has ratified the Optional Protocol process under the CRPD, this was also highlighted as a powerful accountability and monitoring process. Concrete steps on shadow reporting under the human rights conventions and recommendations for the OP process were analyzed. If human rights litigation in the domestic courts are unsuccessful, the Optional Protocol is an effective alternative process.

### *Shadow Reporting under the CRPD*

BNWLA also hopes to raise awareness of the need to integrate the rights of women's issues into the CRPD reporting to be done at the end of 2009. Given that groups with disabilities were absent from CRC reporting process last year where civil society organizations were largely absent from the reporting process, it is important to ensure that all stakeholders (including women and children's rights organizations) are engaged in the CRPD reporting process. In order to do this, civil society groups must hold the government accountable so that the government consults with civil society when writing the State Party report to the CRPD committee. It is also important that the organizations work together as a coordinated human rights community to obtain a copy of the State Party report before it is sent to the CRPD committee. There is also a great need to collect gender-disaggregated data on persons with disabilities and children with disabilities.

Although the 2008 shadow report to the CRC Committee lacked information on the rights of children with disabilities (the shadow report did cover the rights of vulnerable children), a commitment must be taken to address the specific and cross-cutting rights of children with disabilities under the CRC and CRPD in the next CRC shadow report.

Two areas that BNWLA hope to focus on in their ongoing work concern violence as both a cause and a consequence of disability, which is manifested by acid throwing, one of the worst forms of rights violations against women and girl children in Bangladesh and a cause of severe disability. Children, women and men with disabilities are disproportionately represented among those who beg on the street. Street children are often disabled in order to beg.

### ***Successful Public Interest Litigation (PIL) to Challenge Multiple Discrimination against Women and Children***

As an organization of pro bono lawyers, BNWLA has an established tradition of PIL. As leading PIL lawyers, BNWLA harnessed innovative strategies and their long tradition of cause lawyering to help design a PIL on behalf of women with disabilities. The strategic litigation or PIL case (as against an individual claim or stay order) will propel the court to make directives/guidelines on a specific disability rights violation against a large group of persons with disabilities. BNWLA together with the Working Groups will demand compliance by the government.

The Bangladesh Constitution clearly specifies in Article 102 what action to take in the case of rights violations and many of the rights enumerated in the CRPD on education

and health are enshrined in the Constitution. Therefore BNWLA will use the Constitution and CRPD as the legal basis of the case. The fundamental rights of the Bangladesh Constitution correlate with the CRPD. So the current Disability Welfare Law will be revisited through the lenses of the Constitution and the CRPD.

The public interest litigation action based its claim on the twin pillars of the CRPD and the Bangladesh Constitution. Article 27 of the Constitution enshrines the right to equality before the law, Article 28 guarantees prohibitions against discrimination on grounds of religion, etc. and Article 29 affirms equality of opportunity in public employment.

Although the Bangladesh Constitution does not speak to the rights of persons with disabilities, the Fundamental Principles of State Policy guarantees in Article 15 (d) the right to social security.

In preparation for the PIL the BNWLA undertook the following activities:

- Collected and documented case studies/newspaper reports to present as evidence for the PIL
- Compiled Judgments (both regional and international) related to rights of persons with disabilities
- Prepared fact sheet for the PIL

The fact sheet for PIL consisted of: case studies, points for consideration derived from the case study; situation analysis of persons with disabilities (special emphasis given on women and children with disabilities) in Bangladesh; women with disabilities and violence against women; gaps in the Disability Welfare Act, 2001; analysis of other laws that can be used for women with disabilities such as the Penal Code, the Legal Aid Act of 2000, the Building Construction Rules of 1996 and the Dhaka Mohanogor Building Construction Rules of, 2006.

In early 2008, BNWLA went before the Supreme Court asking for mandamus (directives from the court) for sexual harassment guidelines as interim guidelines till a law was promulgated. The Supreme Court issued a mandamus asking the state to adopt these interim guidelines until such a day that a law comes into force. The Supreme Court also created precedent for a continuing mandamus which allows the petitioner to come to court (without filing a fresh petition) in the event the directives are not complied with.

This was a breakthrough and BNWLA will similarly ask for a Writ of Continuing Mandamus in the case on disability rights enforcement. Thus if the court ruling is not implemented, BNWLA can go back to Court requesting a continuing mandamus (or a continuing court order) for the implementation of the original order rather than file a fresh petition. It is a way of ensuring the court order stands despite a breach in implementation by the State.

The BNWLA as the *amicus curiae* requested the following reliefs on behalf of persons with disabilities:

- 1) A writ or directive for the enforcement of the existing Disability Welfare law
- 2) Amendment of relevant provisions in the law in the light of the CRPD, CEDAW and CRC
- 3) A rights based approach to be adopted in interpreting the law

- 4) Relevant gender sensitive provisions in the law to broaden women's access to employment and education and provide deterrence and punishment in violence against women and girls with disabilities
- 5) A directive to the government to review other laws that affect persons with disabilities in compliance with the CRPD, CEDAW and CRC with special emphasis on the Building Code, Pending Domestic Violence Law etc.

The respondents were the following ministries:

Ministry of Social Welfare  
Ministry of Law and Parliamentary Affairs  
Ministry of Women and Children  
Ministry of Health  
Ministry of Information

In October 2009, the Bangladesh High Court issued a groundbreaking ruling in response to the PIL filed by BNWLA on the rights of persons with disabilities. The rule was issued by Honorable Justice Mr. Syed Mahmud Hossain and Honorable Justice Mr. Quamrul Islam Siddiqui directing the respondents "to take immediate measures to implement the statutory object ensured in the Disability Welfare Act of 2001 and in the light of recent direction as given by the Honorable Prime Minister on 19<sup>th</sup> October 2009 to improve the rights of disabled persons in the light of CEDAW and UN CRPD for the persons with and for the disabilities faced by the persons especially women with disability in their day to day life."

The hope is that the Public Interest Litigation will be the impetus and the catalyst for revision of the law with strong enforcement regulations and gender-sensitive provisions.

This case is be one of the first cases in the world in which both the CRPD and CEDAW was invoked in a public interest litigation. This was a groundbreaking case not just in Bangladesh but in the world.

### ***Recommendations to Law Revision***

BNWLA's recommendations to the revisions to the disability law focus on revisions to the 2001 Disability Welfare Law in compliance and congruence with the new CRPD that Bangladesh is a party to. Similarly, existing law reform initiatives could be informed by a disability rights perspective. These law reform initiatives include among others the educational law, the draft domestic violence law, the draft Victim Witness Protection Protocol and the Acid Control Act. Institutional reforms such as the number of women and persons with disabilities to be included in district level committees, a woman with disabilities to be nominated to the reserved quotas of women legislators, recommendation for a disability cell within every ministry are other recommendations that were formulated at the national conference. The formation of a Disability Rights Committee within the Human Rights Commission is another important recommendation.

Another recommendation included the need for a Code of Conduct for the Treatment of Persons with Disabilities. The Working Group will lobby for the adoption of this code in different public enterprises.

Along with the revision to the 2001 law on the Disability Welfare Law other laws too must be amended including the National Plan of Action for Children with Disabilities: the Education Act must be amended to include a provision on access to education for children with disabilities. It is also important to ensure that the District Commissions that are to be established under the 2001 law have members with disabilities on the commission.

Currently, disability rights are under the social affairs ministry. This is not ideal given that all other ministries including health, education, women and children touch the lives of persons with disabilities deeply. Creating a cell in each ministry that will be responsible for the rights of persons with disabilities will help mainstream disability rights.

Other recommendations include:

- Include women with disabilities within the 45 seat quota for female Members of Parliament.
- Ensure the participation of women with disabilities in the domestic violence lawmaking process include appropriate support services including medical support, counseling, shelter services, legal aid, etc. for victims of violence who are disabled.
- In drafting the new witness protection protocol, ensure that separate requirement be drafted in the case of witnesses for blind and hearing impaired victims of rape, abuse and violence.
- A committee on disability rights must be set up (similar to the Committee on Women). Women must be part of this committee. The government has a 2/3<sup>rd</sup> majority in parliament so the creation of this committee is important and timely.
- Include provisions protecting the rights of women and children with disabilities in the draft Domestic Violence Law, Draft Victim Witness Protections laws and other pending law reform initiatives.
- Create a Code of Conduct for the Treatment of Persons with Disabilities. This will be used to raise awareness to address stigma and prejudice when laws alone are insufficient to dismantle fear, stigma and prejudice.
- Incorporate the CRPD into national law ensure that domestic laws (including the 2001 Disability Welfare law) harmonizes with and complies with the CRPD.

## ***Gaps in the Disability Law: The Need for a Rights-Based Approach***

The Disability Welfare Law of 2001 is not women- and child-friendly. Budgetary allocations for persons with disabilities is inadequate and do not correspond to the Poverty Reduction Strategy Programs (PRSP). Although a quota of 10 percent has been reserved on paper for persons with disabilities, it is not implemented in the breach.

The law adopts a welfare approach as against a rights-based approach. The definition of disability is flawed and ambiguous and defines disability in a rigid and clinical manner. The spirit of the CRPD must inform a new definition of disability. The law also does not differentiate between an intellectual disability and mental health disability.

## ***Implementation and Compliance Procedures***

The National Coordination Committee, which appears to be the focal point for action for welfare measures for persons with disabilities, lacks an appropriate mechanism of accountability as there are no implementing mechanisms. The involvement and participation of persons with disabilities in the law is also very limited. The law also fails to link all governmental agencies in the allocation of services. The functions and powers of the committees are not set out in the law. The law is almost inoperable as it is.

The law does not contain a list of offences or punitive provisions for the violation of rights of persons with disabilities. The law also fails to provide for a cause of action for the violation of rights of persons with disabilities.

Given that the law provides for programmatic rights there is no legal obligation upon the state to actualize the programmatic vision of the law.

Any new law should clarify the duties, obligations and the accountability mechanisms by the private and the public sector.

## ***Recommendations for a New Law***

A new law which recognizes the rights of persons with disabilities must be promulgated. This new law must integrate a new bill of rights and a new organizational structure for building a rights-based legal framework. The new law must adopt both a rights-based approach and a welfare approach.

As one of the first countries to ratify the CRPD, the enactment of a new law is an imperative in order for the government of Bangladesh to fulfill its obligations under the CRPD.

## ***Application of the CRPD in Bangladesh***

The Convention complements other international human rights treaties. Thus the CRPD must be read with the CEDAW and CRC. Although as a signatory to the CRPD Bangladesh will be submitting its first report to the CRPD early next year, it is important that the CEDAW and CRC reports too reflect the rights of women and children with disabilities. Based on this imperative, BNWLA will help to write a chapter on women with disabilities in the CRPD Shadow Report due at the end of the year.

At the national level, States Parties must appoint one or more focal points within the government to assist its implementation.

States Parties must maintain strengthen or establish an independent institution such as an independent national human rights institution to promote and protect the Convention.

## ***Providing Legal Aid to Women with Disabilities***

BNWLA has been providing access to court to women with disabilities especially women victims of violence and sexual abuse. In BNWLA's own words, the courtroom drama does not allow for the dignity of the woman with disabilities. The legal system provides very few facilities to get support for victims of abuse who have a disability. Earlier in the year BNWLA conducted a *Suo Moto* Rule on the basis of a newspaper report. In this case, a woman with hearing and speaking impairments was held in custody. The court ordered that "...a *Suo Moto* Rule be issued calling upon 1) The Deputy Commissioner, Khagrachhari; 2) Superintendent of Police Khagrachhari; 3) Chief Judicial Magistrate; and 4) Jailr, Khagrachhari District Jail to show the cause as to why the hearing impaired woman as reported in the Daily Star was held in custody."

## ***Conclusion***

The major achievement of this conference was the manner in which the human rights movement came together in concerted action to hold stake holders present (senior officials from the Ministry of Social Welfare, the architect of the current law and the Attorney General and others from the Ministry of Justice) accountable to the gaps and inoperable provisions in the law in the law and solicited a commitment from these stakeholders to give weight and consideration to the recommendations that grew out of this conference. Most of all, the success of the PIL was a shift in the paradigm of human rights jurisprudence and for the first time both the CEDAW and CRPD were used as persuasive authority in claiming the rights of women with disabilities. This project was thus a powerful turning point in the history of disability and women's rights in Bangladesh.

## **CAMBODIA**

The legacy of a bloody conflict has not only left more than 3 million Cambodians dead but one of the largest populations of persons with disabilities in any given country. Moreover, landmines and unexploded ordnances continue to cause further disabilities among women, men and person with disabilities.

Although current government numbers estimate that 600,000 or 5 percent of the population is disabled the numbers are much higher. Some of the chief causes of disability include, poverty, childbirth, landmines and gender-based violence.

Cambodia has pledged to ratify the CRPD and has signed two of the important international treaties related to disabilities: the Universal Declarations of Human Rights and the Convention on the Rights of the Child, and the Cambodian Constitution declares recognition of and respect for the human rights stipulated in these treaties.

### ***The Cambodian Laws Applicable to Persons with Disabilities***

- Article 74 of the Cambodian Constitution specifically addresses the State's obligation to assist people with disabilities, pronouncing that "the State shall assist the disabled and the families of combatants who sacrificed their lives for the nation."
- Royal Decree NS RKM 0699/60 on MOSALVY, of June 1999, affirms that the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation should prioritize the preparation of policies and guidelines to support disabled people;
- Government Sub-decree on Investments No. 88/ANK/BK, of June 1999, calls for a tax reduction for foreign enterprises based on several factors, including their number of workers with disabilities.
- Government Sub-Decree on Supplementary Salary of Civil Servants, Military, Police, Retirees and Disabled Officials, No 059/ANK/BK, of April 1999, calls for increase of 30 percent of "the net salary for civil servants, military, police, retirees and disabled officials."
- Government Sub-Decree on Establishment of the National Paralympics Committee of Cambodia (NPCC), No 070 AKK/BK, October 24, 1997, establishes the NPCC as the government body for sports for disabled people in Cambodia.

- The Ministerial Decision on Establishment of the Disability Action Council (DAC), of October 1999, states that DAC should be a national semi-autonomous coordinating body for rehabilitation.
- The Ministerial Decision on Establishment of the National Centre of Disabled Persons (NCDP), No. 757/MOSALVA, of May 1997, defines the NCDP as a semi-autonomous independent organization that facilitates the direct implementation of activities for people with disabilities in Cambodia.

### ***Structure of the Project***

Under the leadership of Mekea Strey and Hon. Mu Sochua , the Cambodian initiative was developed based on a strategic plan to build bridges between and among human rights groups to examine in very concrete and programmatic ways cross cutting areas of multiple discrimination to advance the rights of women and children with disabilities. This new model was built in time to seize the political moment afforded by the Bill on Disability Rights to be brought before the Cambodian parliament in early May.

This exercise in coalition building was one of the first times when the women's rights and disability rights groups came together to examine strategic ways in which the CEDAW and the CRPD could inform the new Bill. The centerpiece of the project was a conference convened in May to mobilize the different human rights group to come together to make recommendations to the Bill and to galvanize media attention to the need for a gender perspective to the Bill.

### ***Steps Leading to the Conference: Building Bridges Across Constituencies***

The conference was the culmination of a series of different steps taken to build a human rights coalition to examine the rights of women and children with disabilities in the light of the CEDAW and CRPD and the Bill before the Cambodian Parliament.

From the inception of the program, Mekea Strey and Hon. Mu Sochua were also connected to the Indian, Nepalese and Bangladesh focal points so that those linkages and connections in the region could enrich the individual and collaborative work of the country partners. Through these liaisons the Bangladeshi partners shared their acid control guidelines and the Indian programs shared the Acid Control Bill. The hope is that this provides the impetus for Cambodia to draft similar guidelines to address the rapidly growing phenomenon of acid throwing.

## ***Core Group Meetings***

The inclusive and egalitarian process leading to the conference was critical to building relationships and coalitions among different groups. Three Core Group meetings were held during the period of January 25<sup>th</sup> and May 6<sup>th</sup> in preparation for the May conference. The Wellesley Centers for Women and Mekea Strey conducted research to identify the different disability rights organizations in Cambodia and to map their activities and advocacy initiatives. The Core Group consisted of ten representatives from civil society organizations and identified groups that should be represented at the Conference. The Core Group helped to solidify the themes for discussion at the conference and shared concerns about the Bill before Parliament. The agenda for the conference was developed by the Core Group but drew from the guidelines and framework sent to the group by the Project Director at the Wellesley Centers for Women.

The aims and goals of the conference were refined in a consultative manner. The Core Group decided that the emphasis should be placed on gender sensitive recommendations to the Bill before the Cambodian Parliament.

The Core Group also helped to collect cases of gender-based violence against women with disabilities and how violence against women was often linked to disability. The Core Group also identified urgent issues relating to persons with disabilities. These concerns included disability due to post conflict land mines; violence and gender-based violence; mental health as an often overlooked stigmatized issue; and poverty as a cause and consequence of disability.

## ***Seminal Conference to Inform Gender-Sensitive Perspectives to the Disability Bill***

A Disability Rights Conference to Build Bridges Between and Across Human Rights Organizations was organized on the 6<sup>th</sup> and 7<sup>th</sup> May in Phnom Penh. This conference for the first time brought together representatives from Cambodia's women's rights, disability rights and children's rights organizations. The timing for the Conference was of enormous importance as it was organized to draw attention, raise consciousness and build momentum on the new disability rights law that was before the Cambodian Parliament.

The main goal of the Conference was to make recommendations to the Bill by bringing a much-needed gender and child rights perspective to it. The Bill had not been prepared with the engagement of women with disabilities or other women's rights organizations. Despite the fact that this was a much-awaited bill that was to make an enormous impact on persons with disabilities, women with disabilities felt that the process of writing the Bill was a patriarchal and exclusionary exercise. The participants to the conference very systematically set about addressing these gaps in the law.

Mekea Strey also got permission from the parliament for ten members with disabilities to attend the parliamentary hearing of the Bill. This was a difficult process as there is no tradition of civil society partners attending a parliamentary hearing.

An introduction to the new model was made by Rangita de Silva de Alwis who outlined the rich potential of collaborative action and examined the areas of intersection and interface in the CEDAW, CRC and the new CRPD. Although Cambodia has not ratified the CRPD, as signatories to the CEDAW and CRC,<sup>6</sup> the Cambodian government could be held accountable to discrimination and rights violation of women and children with disabilities. The important role that the combined strength of social movements making a call to action for the ratification of the CRPD was underscored and the conference marked an important milestone in bolstering the clarion call for the ratification of the CRPD.

Hon. Mu Sochua emphasized the importance of a Bill of Rights for the protection of all persons with disabilities and mobilized the participants to bring a gender perspective to the making of the new disability law. Few women's organizations and women with disabilities had been included in the negotiations leading to the drafting of the bill.

### *Testimonies of Women with Disabilities*

A unique feature of this conference was the testimonies by women and girls with disabilities. These testimonies helped provide the prism through which participants to review the Draft Law and develop recommendations for the law and for the sub-decrees.

The testimonies brought out two important correlatives that needed to resurface more clearly in the Bill: the nexus between disability and violence against women and the way in which poverty and disability are inextricably interlinked in Cambodia.

#### ■ **Poverty and Disability in Cambodia**

The testimonies of the three women illustrated the poverty in which women with disabilities are often bogged down.

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<sup>6</sup> **General Recommendation 18 of the CEDAW** recommends that States parties to the CEDAW take measures to address the equal access of women with disabilities to education, employment, health services, and social services and ensure the participation of women with disabilities in all areas of political, social and cultural life.

**General Recommendation 24 of the CEDAW** analyzes the right to health in the context of women with disabilities and also acknowledges that cultural or traditional practices carry a high risk of causing discrimination.

*“I am 19 and I cannot go to school till I sell all the cakes my mother makes. Since my mother dies, I have no means of income. It takes me two hours to go to school in my wheelchair.”*

—First Testimony

*“I am a landmine victim and my husband left me because of my disability. I am isolated from my family. My neighbours humiliate me because I am a woman with disabilities.”*

—Third Testimony

*“I have very little food to feed my grandchildren. The granddaughter is hearing impaired and I am constantly fearing for her safety. She was raped when I sent her to the Pagoda. There were no interpreters in court. I did not know how to get a sign language proficient lawyer who could represent my grandchild. There are no services available for my grandchild who was raped and abused.”*

—Second Testimony

These testimonies brought to the surface very clearly the way in which disability and poverty are inextricably intertwined and how poverty is both a significant cause and a consequence of disability.

Furthermore, discussions illustrated that although poverty affects women and men equally, women with disabilities are more vulnerable to poverty because of traditional concepts of ‘*chbab srey*’ (a traditional code of conduct for women still taught in schools) which considered possibly the biggest obstacle to progress for women in Cambodia. *Chbab srey* helps exacerbate the stigma that is attached to a woman who is disabled.

#### ■ Exclusion from Land

Some of the testimonies illustrated the way in which land appropriations taking place in Cambodia continued to displace the most vulnerable populations in Cambodia including women and persons with disabilities.

*“We used to have safe homes in our land but that has now been taken over for development projects. As veterans we need better protection. We were maimed in trying to help our country.”*

—Testimony from a Veteran

Several other veterans with disabilities testified as to unfair appropriation by the government that had stripped them of their right to a livelihood and housing. The government’s land-grabbing policies have had the most severe impact on persons with disabilities.

Persons with disabilities ousted from their living quarters: Address in the law the plight of persons with disabilities who are seeking economic empowerment but abused by law enforcement.

- **Disability and Violence**

*“I sent my hearing impaired granddaughter to the pagoda. She came back beaten and abused. She had been brutally raped. I ran to the pagoda trying to find the perpetrator of this dastardly act, I could not find him. My granddaughter was bleeding all over.”*

—Second Testimony

The cause and effect nature of disability and violence was heartbreakingly illustrated by some of the testimonies.

The first woman explained to participants that her severe neurological disability was a cause of domestic violence between her parents when she was an infant. In a physical struggle that took place, she was severely injured, leaving her unable to walk.

- **Stigma, Ostracism, Exclusion and Disability**

*“I am alone no one wants to have anything to do with me. Husband abused and raped me.*

*I am called harsh words by my husband, relatives and neighbors. They run away from me. I am orphan and I am disabled. My parents passed away when I was small. I was raped.”*

—A landmine victim, third testimony

The thread that runs through all the testimonies was the fear or the actual threat of rape and sexual abuse. Of the four testifying three had been sexual abused and one who was yet to face it feared going to school that was not easily accessible because of the fear of sexual abuse and gender-based violence.

### ***Draft Law on Disability***

The process of drafting the law on disability started in 1996 with limited consultation with persons with disabilities. The law which came into operation December 2009 is marked by the absence of gender sensitivity and embraces a welfare approach rather than a rights-based approach as guaranteed by the CRPD. Although the law does guarantee the minimum rights of women and children with disabilities, it limits access to services and

stops short of providing equal opportunities for women and men with disabilities in employment, access to education, or information. Women with disabilities are also marginalized from gender mainstreaming efforts, national policies on gender and gender-based development projects. Land law too makes no special reservations for persons with disabilities. To that extent, Cambodia is in violation of the CEDAW to which Cambodia is a State Party.

Hon. Mu Sochua regretted the missed opportunity to advance disability rights when as the former Minister of Women's Affairs, she championed Domestic Violence Law. There was a general lack of awareness of women with disabilities. This project helped to sensitize her as well as other women's rights advocates and disability rights advocates on gender sensitive disability rights policy making.

De-mining in Cambodia is done by women and is one of the most frequent causes of disability. Women are also vulnerable to reproductive health violations and are often disabled during pregnancy and childbirth. These are gender specific disabilities and need a gender-specific response.

Microcredit vocational training for women with disabilities and caregivers of family members with disabilities must also bring together a gender specific focus.

The rallying call of the May seminar was to "Engender the Draft Law" and to integrate the CEDAW, CRC and CRPD in a holistic and complimentary manner in the Draft Law.

Some of the major recommendations that the seminar introduced into the Draft Law included: enhanced access to land and adequate for women and men with disabilities; rights to have a birth certificate, prohibitions against acid attacks as a disabling form of violence against women.

An important consequence of the seminar was that it mobilized and galvanized civil society members especially women with disabilities to attend parliamentary hearings of the Bill. Thanks to this project, there is more awareness among the media and general public as to the rights of women with disabilities.

### ***Informing the Draft Disability Law***

The conference and project came together at a very important political moment in the history of Cambodia when the law was before the Parliament. This meeting mobilized support to build a new movement that bridges different groups to forge joint action on common issues and seize the opportunity to inform the draft law.

The meeting aims to create a parallel civil society led effort to draft decrees and sub-decrees to the law and to fill in the gaps in the law using the CRPD, CEDAW and CRC. Although Cambodia is yet to ratify the CRPD, Cambodia has ratified the CEDAW and CRC and there are firm obligations under those laws.

The draft law on disabilities, although a good first step, does not speak to the rights of women and children and is not in compliance with the values of the CEDAW and CRC that Cambodia has ratified and the CRPD that Cambodia has signed.

### **Some Recommendation on Overarching Themes**

One of the overarching concerns is that the law is drafted in terms of protection of persons with disabilities rather than in terms of the rights of persons with disabilities. Nowhere does the law recognize the equality of all persons with disability. An equal protection clause is missing from the law. At the same time, the accountability provisions in the law are rather weak. Although the law provides some penalties, the responsible ministries and agencies are not delineated in the law. Given the way in which these issues intersect, a multi-agency focus is needed to address multiple forms of discrimination based on gender, age and ability.

Another flaw in the law is the over-general nature of the language. It is important to use mandatory rather than declaratory language.

Although the draft has been developed in consultation with Cambodian Disabled Persons Organization, the largest organization of persons with disabilities in Cambodia, women's groups were conspicuously absent from this process.

In the absence of an extensive consultative process with NGOs in the making of the law, this conference afforded an opportunity to raise consciousness of the law.

Although the detailed recommendations and the specific language are included below, certain general recommendations are important to consider. Although Cambodia is yet to sign the CRPD, Cambodia has ratified the CEDAW and CRC and this should be referenced in the Preamble to the law. Disability as a cause and consequence of discrimination and violence against women must be acknowledged at the start in the Preamble to the Bill. This will help to link to better legal and counseling services for women victims of violence. The Preamble should also clearly recognize the best interest of the child.

In general the Bill does not acknowledge sexual or bodily assaults on people with disabilities, acid attacks and other forms of violence against women as a disabling factor, reproductive health of women with disabilities and the legal rights of and access to court for people with disabilities. The penal provisions do not address the sexual exploitation and the risk of violence against women and children (and even men) with physical, mental and intellectual disabilities. The reproductive health of women with disabilities is not adequately dealt with. Although Article 17 provides healthcare during pregnancy this is not detailed enough. Access to reproductive health information, healthcare and hospitals is absent from the law.

The quota for recruitment of persons with disabilities is a positive step. However, the over-general nature of this provision makes it difficult to implement the provision. Sub-decrees to the Bill must focus on a concrete number for the quota (for example, over 10 percent of the population is disabled). The exact tax reduction for each person with disabilities in business must be provided. If not, this provision cannot be implemented as the tax rebate cannot be verified. Similarly, the special rebates offered to children with disabilities must be stated clearly in the sub-decrees that are to soon follow. The current provision lacks specificity. The sub-decree must spell out the special pedagogical courses for teachers aimed at children with disabilities. The bill does not provide funding for the special programs such as curriculum reform, creation of special classes. Although Article 12 states it will set aside an annual budget to assist disabled persons, without specificity, this provision is vague and amorphous. Access to schools and bathrooms in schools are not addressed and risk of violence during travel to schools has not been addressed in the section on education. Further access to education for children with disabilities can only be enhanced by providing set quotas and scholarship for children with disabilities with half reserved for the girl child. Further, a gender-sensitive pedagogy that addresses stereotypes and traditional images of women in Cambodia must be a counterpoint to *chbab srey*, a traditional code of conduct for women that is taught in school which sometimes has the result of stereotyping and subordinating women.

Although the Bill calls for the setting up of a Council for Persons with Disabilities, it does not provide for the composition of the Council and does not provide for the number of persons including women with disabilities who should be represented in the council. The law should state clearly the composition of women in the council. If the council is not composed of women in the management of this council it is less likely that the needs of women and girls with disability are responded to. Apart from maintaining a gender balance, persons with disabilities must constitute a majority of the council. The Ministry of Women's Affairs should be included in the multi-agency action enumerated in this article. The Ministry should be charged with working gender-based violence as a cause and consequence of disability.

The civil society organizations present at the conference took a pledge to monitor the passage of the law and to raise awareness of the CRPD. Soon after the conference, the participants were galvanized into attending parliament as observers when the Bill was being debated. This was one of the first instances when persons with disabilities witnessed the passage of a bill that would so profoundly touch their lives. This was a marked change from the general marginalization that persons with disabilities experience.

## Civil Society Recommendations to the Draft Law on Disabilities

### GENDER AND THE DRAFT LAW ON PROTECTION AND PROMOTION OF DISABLED PERSONS

#### *Overview of the Draft Law*

- Promote respect for human rights by eliminating discrimination against disabled persons.
- Promote well-being of disabled persons by giving access to public services such as health, education and economy.
- Enhance capacity building and participation of disabled persons in development processes of all economic, social, civil, political and cultural fields.

#### *However, this law is not broadly responsive to the CEDAW*

- This law fails to recognize that disabled women are more vulnerable to social problems than disabled men because there is no part that mentions women's and girls' vulnerability to gender-based violence such as domestic violence, sexual abuses and exploitation and trafficking (**General Recommendation 19 of the CEDAW**).
- The law lacks a single article that guarantees the elimination of violence against women and children with disabilities, provides access to court and legal services for victims of gender-based violence.
- Special measures and promotion of positive actions must be mentioned in this law to promote achievement of substantive gender equality for disabled women and girls (**Article 4 of the CEDAW**).
- This law does not adequately adopt the values of the CEDAW. It does not acknowledge the different health status of women and men with disabilities resulting from their biological differences and social vulnerability (**General Recommendation 24 of the CEDAW**).
- This law aims to develop physical and intellectual wellbeing of the disabled persons through access to public services such as education, employment, health and social services, but it does not ensure the equal participation of women with disabilities into development programs.
- This law only focuses on awareness of disability among general population, particularly of disability and the rights of disabled persons. It also ought to aim to raise awareness of gender and disability.

- The current disability draft law lacks a strong anti-discrimination clause in the law. Thus there is a gender gap between what women and men with disabilities earn. The Draft Law is also not consistent with the gender values enshrined in the CRPD.
- The lack of gender-disaggregated data has resulted in an inadequate understanding of the status of women with disabilities.
- The phenomenon of acid throwing as a crime of power and control over women's bodies is rapidly growing. This has to be addressed in the law and controls on the sale of acid should be created through a policy framework as in Bangladesh.
- Sub-decrees to the current law must ensure that all laws dealing with persons with disabilities in different areas are harmonized and have uniform applicability. For example, currently the Cambodian Land Traffic Law provides for drivers' licenses for persons with disabilities, but the Ministries of Health, Transportation are yet to amend their laws in keeping with the new development in the law in this particular area of the law. Consistency in the legal system must be preserved.
- Finally, stronger implementing mechanisms are needed to ensure that women with disabilities have a cause of action to vindicate their rights to equality and to live free from violence and abuse.

**The following is the text of the Draft Law, with proposed changes in capital letters.**

**Article 1.**

This law aims at protecting **AND PROMOTING THE DIGNITY AND VALUE AND THE INHERENT RIGHTS** of persons with disabilities in the Kingdom of Cambodia.

**Article 2.**

This law has the followings purposes:

- to protect the rights and liberty of persons with disabilities
- to protect the interests of persons with disabilities
- to prevent, reduce and eliminate **MULTIPLE FORMS OF discriminations AND VIOLENCE AGAINST ALL** persons with disabilities.
- **TO PROVIDE EQUAL OPPORTUNITIES TO PERSONS WITH DISABILITIES IN PARTICULAR TO WOMEN AND**

**CHILDREN WITH DISABILITIES TO HAVE ACCESS TO BASIC SERVICES WHICH INCLUDE HEALTHCARE, EDUCATION AND LEGAL PROTECTION**

- to provide physical, intellectual and **MENTAL** rehabilitation in order to ensure opportunity for persons with disabilities to fully and equally participate in social activities
- **TO PROMOTE BIRTH REGISTRATION OF CHILDREN WITH DISABILITIES**

**Article 3.**

This law shall apply to both persons with disabilities and all activities related to them in the Kingdom of Cambodia.

**Article 4.**

Key vocabularies used in this law have the meanings as follows:

- “*Persons with disabilities*” refers to those persons who suffer lacks, losses or damages of any organ or moral causing functional limitations in daily livelihood and activities such as physical disability, eye-disability, hearing or intellectual impairment, mental illness and any other types of disabilities that limits the capacity to perform essential activities of daily life.

- “*Public places*” refers to perimeters, localities, buildings and means of transportation being either state, public or private properties that are open to and provide services for the general public, namely: ministries, offices, institutions, streets/roads, leisure areas, cultural centers, sports facilities, resorts, education institutions, hotels, hospitals, health centers, restaurants and transportation system.

- “*Public education institutions*” refers to public schools which provide education, training to students at all ages. Public Institutions include from the level of kindergarten and up.

- “*Private education institutions*” refers to private schools or organizations which receive authorizations to being established in order to provide the education and training for students at all ages.

**Chapter 2.**

**Council on the activities and the Administration of the rights of persons with disabilities**

## Article 5.

There shall establish the **Council on the activities and the Administration of the rights of persons with disabilities** with its acronym (XXX.) being a national coordination and counseling mechanism on issues of disabilities.

## Article 6.

The Council on the activities of persons with disabilities has the following roles:

- Provide specialized advice on disability and rehabilitation issues.
- Assist ministries, institutions and relevant organizations in setting policies, national planning and strategies involving disabilities and rehabilitation.
- Promote the implementation of policies, laws and regulations concerning the issues of disability and rehabilitation.
- Propose the improvement, supplementation or amendment of policies, laws and regulations regarding disability issues **IN PARTICULAR FOR VETERANS, WOMEN AND CHILDREN WITH DISABILITIES AND TO PROMOTE GENDER EQUALITY AND TO PREVENT ALL FORMS OF DISCRIMINATION AGAINST WOMEN AND CHILDREN WITH DISABILITIES.**
- Monitor and evaluate the implementation of policies, national plans, laws and regulations regarding disability issues **AND TO MONITOR IMPACT AND EVALUATE IN REGARD TO GENDER.**
- Liaise with national and international communities for the exchange in experiences, raising financial resources inside and outside the country
- **CREATE A SPECIAL COMMITTEE TO STUDY AND RESEARCH NEW TECHNOLOGIES AND UNIVERSAL DESIGN AND APPROPRIATE SERVICES.**

## Article 7.

The Council consists of:

- The Minister of in charge of Social Affairs or representative, as President,
- **A FEMALE MEMBER WITH DISABILITIES AS CO-VICE PRESIDENT**

- Representatives of relevant Ministries and Institutions. **THE REPRESENTATIVE FROM THE WOMEN'S MINISTRY SHALL BE A HIGH RANKING OFFICIAL.**
- Representatives of organizations for persons with disabilities,
- Representatives of organizations, employers and non-governmental organizations working to provide assistance to persons with disabilities
- **THIRTY TO FIFTY PERCENT OF MEMBERS SHALL BE PEOPLE WITH DISABILITIES AND HALF OF THE MEMBERS SHALL BE WOMEN.**
- The composition and functioning of the Council on the activities of persons with disabilities shall be determined by a Sub-Decree.

**Article 8.**

The Ministry in charge of Social Affairs shall create an Administration Section for persons with disabilities which is a unit within the Rehabilitation Department.

**SPECIFY THE ROLES AND RESPONSIBILITIES OF THIS INSTITUTION.**

**Chapter 3**

**Livelihoods**

**Article 10.**

The State shall undertake to improve the living condition of persons with disabilities in accordance to the economic situation of the country.

**Article 11.**

The State shall take necessary measures to encourage people, generous persons, private sectors and social organizations to provide assistance to persons with disabilities.

**Article 12.**

The State shall lay be responsible for the welfare and people with disabilities and shall set aside annual budget to assist disabled persons who suffer severe disabilities and adverse poverty and without family members by

**ENSURING THE RIGHT TO LAND OWNERSHIP AND DECENT HOUSING IN ORDER TO GUARANTEE EFFICIENT SOCIAL RE-INTEGRATION AND DIGNITY FOR PEOPLE WITH DISABILITIES AND THEIR FAMILIES.**

The State shall have annual budget for the reintegration of disabled persons into mainstream societies.

**ADDITIONAL ARTICLE: THE STATE SHALL TAKE MEASURES INCLUDING INFORMATION AND EDUCATIONAL INITIATIVES TO COMBAT AND PREVENT ALL FORMS OF DISCRIMINATION AGAINST WOMEN AND GIRLS WITH DISABILITIES.**

**Article 13.**

Parents and guardians of persons with disabilities shall:

- Protect the rights and legitimate interests of persons with disabilities,
- Undertake to provide good care for persons with disabilities,
- Encourage persons with disabilities to regain hopes in life,
- Neglecting, exploiting and abandoning persons with disabilities shall be prohibited.

**Chapter 4.**

**Physical and Moral rehabilitations, Health Care and Prevention**

**Article 14.**

**IN ORDER TO PROTECT THE INHERENT RIGHTS AND TO GUARANTEE EQUAL ACCESS TO SERVICES**, the state shall formulate physical, **PSYCHOSOCIAL AND MENTAL** rehabilitation programs aiming at helping disabled persons including **WOMEN WITH DISABILITIES** to be able to perform the functions and utilize their abilities and genius in social life.

**Article 15.**

The State shall establish and encourage social organizations and private sectors to create especially:

- Centers for physical and moral rehabilitations,
- Schools for the training of technicians to produce artificial limbs/legs,
- Center to manufacture parts for artificial limbs/legs for the needs of rehabilitation centers in providing body support facilities for persons with disabilities.

The establishment of physical and moral rehabilitation centers and the centers for the production of parts for artificial limbs shall be determined by Prakas of the Minister of Social Affairs.

**Article 16.**

The Ministry of Social Affairs, in cooperation with the Ministry of Health **AND INFORMATION** shall:

- Formulate training program for the physical **PSYCHOSOCIAL** and mental treatment in technical schools of medicine and integrate this technical skill into all hospitals so treatment can be undertaken to prevent disabilities.
- Help train families with disabled member (s) or disabled persons and train volunteers on methods for care and technique to rehabilitate physical abilities based on each type of disabilities in order for the families with disabled member (s), disabled persons to have the ability to rehabilitate the disabled persons physically and mentally.
- Improve physical rehabilitation services within communities, counseling services to treat mental illness and moral weakness
- **MAKE AVAILABLE INFORMATION PROGRAMS FOR WOMEN AND THEIR FAMILIES ON REPRODUCTIVE AND SEXUAL HEALTH RIGHTS.**
- **FACILITATE ACCESS TO LEGAL PROTECTION FOR PERSONS WITH DISABILITIES IN ORDER TO GUARANTEE THE PROTECTION OF THEIR LEGAL RIGHTS.**
- **PROVIDE COUNSELING AND LEGAL SERVICES ON TIME FOR WOMEN WITH DISABILITIES WHO ARE VICTIMS OF VIOLENCE AND SEXUAL ASSAULT.**

**Article 17.**

The State shall lay down programs to prevent disabilities for all people through:

- The provision of health-care during pregnancy,
- Timely monitoring and diagnosing the diseases that cause

disabilities,

- The provision of preventive medicine for disabilities,
- The provision of food that supports body growth,
- The education about the causes of disabilities,
- The provision of medical treatment and the timely physical rehabilitation.

#### **Article 18.**

Competent ministries and institutions shall enable persons with disabilities **IN PARTICULAR VETERAN'S WOMEN AND CHILDREN INCLUDING THE GIRL CHILD WITH DISABILITIES** to participate in all development, economic and cultural project formulation that affect their interests. The relevant ministries and institutions shall include the **SPECIAL** needs of disabled persons in all development programs **THAT WILL ALSO INCLUDE GENDER-RELATED DEVELOPMENT PROGRAMS.**

#### **Article 19.**

**FREE** assistance, health-care services, treatment and physical, **MENTAL AND PSYCHOSOCIAL** rehabilitation for the disabled person **IN PARTICULAR VETERANS, WOMEN AND CHILDREN WITH** severe disabilities or adverse poverty without dependence **AND WOMEN WITH DISABILITIES WHO EXPERIENCE GENDER-BASED VIOLENCE** shall be determined by a Sub-Decree.

#### **Article 20.**

The criteria for the type and level of disabilities shall be determined by a joint Prakas of the Minister of Social Affairs **WOMEN'S AFFAIRS** and Minister of Health **REPRESENTATIVE(S) FROM THE NATIONAL COMMISSION OF DISABLED PEOPLE AND REPRESENTATIVES OF DISABLED PERSONS WITH EQUAL REPRESENTATION OF BOTH WOMEN AND MEN.**

The determination of the criteria for the type and level of disabilities of soldiers shall be participated by the Ministry of national defense.

- **NEW ARTICLE: DEVELOP SERVICES FOR THE PREGNANT WOMEN WITH DISABILITIES AND EDUCATION ON PRENATAL AND POSTNATAL CARE.**
- **NEW ARTICLE: DISABILITY SPECIFIC REPRODUCTIVE HEALTH INFORMATION MUST BE DEVELOPED.**

- **NEW ARTICLE: DEVELOP APPROPRIATE AND TIMELY PSYCHOLOGICAL COUNSELING, SERVICES FOR WOMEN WHO ARE VICTIMS OF VIOLENCE.**
- **NEW ARTICLE: ENSURE THAT THE STANDARDS PERTAINING TO THE BEST INTEREST OF THE CHILD ARE FULFILLED.**
- **NEW ARTICLE: PROMOTE APPROPRIATE AND TIMELY DELIVERY OF LEGAL SERVICES FOR WOMEN AND GIRLS WITH DISABILITIES WHO ARE VICTIMS OF GENDER-SPECIFIC VIOLENCE AND ABUSE.**
- **NEW ARTICLE: THE STATE SHALL TRAIN HEALTH STAFF IN THE APPROPRIATE RESPONSE TO WOMEN AND CHILDREN AND ALL PERSONS WITH DISABILITIES.**

## **Chapter 5.**

### **Access to public places**

#### **Article 21.**

All public places shall be organized into conditions that facilitate access by all kinds of disabled persons such as making slopes, handrails in restrooms and signs posting.

#### **Article 22.**

Competent Ministries that provide authorization for construction projects, buildings and supervising the construction of public places shall ensure easy access for disabled persons as mentioned in article 21 of this law.

#### **Article 23.**

The establishment of easy access to public places or on means of transportation for persons with disabilities shall be determined by a joint Prakas of the Minister of Social Affairs and the relevant Ministries and Institutions.

#### **Article 24.**

Persons with disabilities have the rights to driver's licenses. The disabled persons' abilities to drive and the type of vehicles for the disabled persons shall be

determined by a joint Prakas of the Minister of Public Works and Transport and the Minister of Health.

**Article 25.**

The Ministry of Public Works and Transport shall issue special license plates and driver's licenses for disabled persons. Persons with disabilities driving vehicles shall display their license plates and driver's licenses on their vehicles for people's recognition.

The disabled persons shall display this license on their vehicles while parking in the parking spaces for disabled persons.

Forgery or violation in order to obtain this privilege is prohibited.

**Article 26.**

All public parking places shall arrange to have special parking spaces for persons with disabilities.

All public places with toilets shall arrange to have special toilets for persons with disabilities. **APPROPRIATE TOILET FACILITIES SHALL BE SEPARATE FOR MEN AND FOR WOMEN WITH DISABILITIES.**

The arrangement of special parking spaces for persons with disabilities shall be determined by a Prakas of the Minister Public Works and Transport.

**Chapter 6.**

**Education**

**Article 27.**

All students with disabilities have equal access to public and private education institutions and have rights to obtain scholarship like other students do except for the provision contrary to this.

**Article 28.**

The State shall establish policy and national strategy for the education of students with disabilities such as:

- The promotion of the integration of students with disabilities into common classes as much as possible **IN ORDER TO PREVENT**

**DISCRIMINATION AND TO PROMOTE DIGNITY AND RIGHTS.**

- The creation of special classes to respond to the needs of students with disabilities
- **CREATE GENDER EQUAL OPPORTUNITIES FOR ALL ACTIVITIES IN SCHOOL.**

**Article 29.**

The Ministry in charge of Education shall adopt a curriculum for all schools in favor of disabled students with regards to:

- Buildings, classrooms and study places,
- Sign-language and digital scripts (reading),
- Education technique and Pedagogy in line with types of disabilities,
- Education materials or other learning facilities to assist disabled students,
- Teaching aids for teachers or professors and other necessity in accordance to the actual needs of each disabled students.

**Article 30.**

The Ministry in charge of Education shall take special attentions to the needs for education of disabled students.

Disabled students from poor families or soldiers with disabilities shall be accorded free of charge with education in public institutions at all levels and textbooks together with other education materials.

Private/ **PUBLIC** education institutions shall have special reduction policy on tuition fees, textbooks and other education materials **AND SCHOLARSHIPS AND PROGRAMS** for students with disabilities and disabled soldiers **AND IN PARTICULAR WOMEN WITH DISABILITIES.**

The reduction shall be determined by a joint Praksa of the Minister in charge of Social Affairs and the Minister in charge of Education.

**NEW ARTICLE: THE PEDAGOGICAL CURRICULAR SHOULD ADDRESS THE VULNERABILITY OF WOMEN AND GIRLS WITH DISABILITIES TO GENDER BASED VIOLENCE AND SEXUAL ABUSE.**

**Article 31.**

The Ministry in charge of education shall include in the education curriculum topics such as the causes of disabilities, prevention measures and the values of persons with disabilities **STEREOTYPES THAT AFFECT THE DIGNITY, VALUE RIGHTS AND FREEDOMS OF PEOPLE WITH DISABILITIES.**

The Ministry in charge for education shall have pedagogical programs on disabilities for teachers and professors to be aware of **CHALLENGES FACED BY WOMEN AND CHILDREN WITH DISABILITIES: DISCRIMINATION, AND SEXUAL AND PHYSICAL ASSAULT** and the teaching methodologies for disabled students.

**Article 32.**

The Ministry in charge of Information shall undertake to widely promote public awareness of disabilities and the rights of disabled persons **IN PARTICULAR WOMEN AND CHILDREN WITH DISABILITIES** in order to strengthen solidarity, understanding and the respect for the rights of disabled persons through state media free of charge.

**ALL PUBLIC INFORMATION PROGRAMS SHALL RESPOND TO AND RELEVANT TO THE DIFFERENT FORMS OF DISABILITIES.**

**NEW ARTICLE:**

**AWARENESS OF GENDER AND DISABILITY**

- **BROADEN THE ACCESS OF WOMEN WITH DISABILITIES TO INFORMATION REGARDING LAW, HEALTH AND DEVELOPMENT AND APPROPRIATE TECHNOLOGY.**
- **RAISE AWARENESS THROUGH MEDIA AND COMMUNITY ON THE VALUE OF ACCESS TO EDUCATION FOR GIRLS AND WOMEN WITH DISABILITIES.**

**Chapter 7**

**Works and Vocational Training**

**Article 33.**

Disabled persons (having the aptitude and ability to take up roles, duties

and responsibilities in any function), shall be accorded with rights **ACCORDING TO GENDER BALANCE** to serve without discrimination, including serving as government officials, workers, employees, hired hands or apprentices.

**NEW: GENDER DISAGGREGATED DATA ON PERSONS WITH DISABILITIES SHALL BE COLLECTED.**

**Article 34.**

Legal persons recruiting workers, employees shall accept disabled persons as provided for in article 33 of this law in accordance with an appropriate **GENDER** quota.

This quota shall be determined by a Sub-Decree following the request of the Minister in charge of Social Affairs, the Minister in charge of Works and the Council for Development of Cambodia (CDC).

**Article 35.**

Ministries, Institutions recruiting government officials shall undertake to recruit persons with disabilities as provided for in article 33 of this law in an appropriate quota.

The quota and recruiting modality shall be determined by a Sub-Decree.

**Article 36.**

Legal persons employing disabled persons in accordance with the appropriate quota, shall submit regular reports regarding the numbers of all employees and employees with disabilities **BY TAKING INTO CONSIDERATION GENDER AND THE SPECIFIC FORMS OF DISABILITY** to the Ministry in charge of Social Affairs and the Ministry in charge of Works.

**Article 37.**

Legal persons unable to fulfill their obligations as provided for in articles 34 and 35 of this law shall make contributions to the Foundation for Disabled persons.

The rate of contribution shall be determined **BY GENDER AND SHALL BE DETERMINED** by a Sub-Decree following the request of the Minister in charge of Social Affairs, the Minister in charge of Economy and Finance and the Council for Development of Cambodia.

### **Article 38.**

Legal persons shall arrange for an appropriate coordination of disabled candidates who apply for jobs as workers, employees or hired hands or apprentices except where the coordination is too much of a burden.

### **Article 39.**

State shall endeavor to establish vocational training institutions for persons with disabilities. Technical education and vocational training institutions belonging to the State, private sectors or organizations shall undertake to admit persons with disabilities in their training programs with a fee based on an appropriate quota or free of charge for disabled persons or disabled soldiers.

The quota shall be determined by a joint Prakas of the Minister in charge of Social Affairs and the Minister in charge of vocational training.

### **Article 40.**

Technical education and vocational training institutions belonging to the State, private sectors or organizations shall arrange for an appropriate coordination of disabled persons who apply for study or to be trainees or apprentices except where the coordination is too much of a burden.

### **Article 41.**

Technical education and vocational training institutions belonging to the State, private sectors or organizations shall formulate detailed training programs in writing and make it known in advance to persons with disabilities. The training program shall be submitted to competent institution in order to insure proper implementation.

## **Chapter 8**

### **Encouragement**

### **Article 42.**

The State shall encourage persons with disabilities who own **SMALL** businesses, enterprises either individually, with family or in groups of disabled persons **SHALL BE EXEMPTED FROM TAXES. LARGE SIZE ENTERPRISES OWNED BY PEOPLE WITH DISABILITIES SHALL BE ENCOURAGED** through tax reduction and the provision of other priorities in accordance to the law in force. **THESE SPECIAL PROVISIONS COULD**

**INCLUDE FREE AND APPROPRIATE SPACE AND MARKETS FOR THEIR PRODUCTS.**

- **NEW ARTICLE: PROVIDE INCENTIVES INCLUDING ACCESS TO MICRO CREDIT FOR PERSONS WITH DISABILITIES, INCLUDING WOMEN WITH DISABILITIES.**

**Article 43.**

The State shall encourage the tax department and exert other encouragements in line with the law in force to any employers, technical education departments and vocational training institutions that admit persons with disabilities in accordance to or higher than the appropriate quota as provided for in Chapter 7 of this law.

**Chapter 9**

**Elections**

**Article 44.**

All persons with disabilities have rights to participate in elections and standing for elections in accordance to the election laws in force.

**Article 45.**

Humiliation and discrimination to candidates with disabilities shall be prohibited.

**Chapter 10**

**Foundation for persons with disabilities**

**Article 46.**

There shall establish the **FOUNDATION FOR PERSONS WITH DISABILITIES** to be the public administrative institution with the purposes as the followings:

1. To provide funds for the implementation of various programs aiming at helping persons with disabilities and assisting institutions and departments which provide services to persons with disabilities with regards to health-care, rehabilitation, technical and vocational

trainings and job placement.

2. Improve and enhance the well-being of persons with disabilities, especially:
  - poor and disabled persons and disabled soldiers who have been rehabilitated,
  - families of persons with disabilities and disabled soldiers who depend on disabled persons for their livelihoods,
  - poor and disabled persons and disabled soldiers who have received rehabilitation services or disabled persons who possess skills but have yet to be employed.

**NEW: A FUND SHALL BE SET UP FOR SUPPORT SERVICES  
FOR PERSONS WITH DISABILITIES WHO SUFFER  
SEXUAL ABUSE AND GENDER-BASED VIOLENCE.**

**Article 47.**

The arrangement and the functioning of the Foundation shall be determined by a Sub-Decree.

**Article 48.**

The Foundation for persons with disabilities relies on assistance and donation from the Royal Government, institutions, national and international organizations, generous persons from all walks of life and contributions as provided for in article 37 of this law.

## **Chapter 11**

### **Implementation of International Treaties**

**Article 49.**

The provisions of the international treaties relating to the law on the protection and promotion of the rights of persons with disabilities to which Cambodia is a signatory shall be implemented with this law.

In case of contradictories to the provisions of this law, the provisions of those international treaties shall be considered integral.

## **Chapter 12**

## **Penal provisions**

### **Article 50.**

Any act affecting the free exercise of the right to vote or the regularity of votes of persons with disabilities by using violence, coercion, threats or dishonest tricks shall be punished with imprisonment of one to three years and a fine from 2,000,000 to 6,000,000 riels.

The punishment shall be from 2 to 5 years of imprisonment and a fine from 4 to 10 million riels if the breach is associated with the use of weapon.

### **Article 51.**

The act of individuals who are responsible for the caring of disabled persons that intentionally and inhumanely abandons them shall be punished with imprisonment from 1 to 5 years and a fine from 2 to 10 million riels if the action causes devastation to health and security of the disabled persons.

### **Article 52.**

The acts of all those who have authority over persons with disabilities that deprive them from food or from care leading to the deterioration of their health shall be punished with imprisonment from 2 to 5 years and a fine from 4 to 10 million riels.

### **Article 53.**

The act of intentional exploitation over the ignorance and weakness of a person as a result of his/her disabilities status by forcing him/her to commit or omit an act causing severe damages to the usefulness of the individual shall be punished with imprisonment from 1 to 3 years and a fine from 2 to 6 million riels.

### **Article 54.**

A penalty of inconvenience from 100,000 to 1,000,000 riels for a legal person who, without reasonable ground, fails to make contribution to the Foundation for persons with disabilities as provided for in article 37 of this law.

A penalty of inconvenience from 100,000 to 1,000,000 riels for the President of a state institution who, without reason ground, fails to comply with article 35 of this law.

### **Article 55.**

Forging special license plates or driver's licenses of persons with

disabilities or committing dishonest act in order to obtain the right and privilege as provided for in article 25 of this law shall be punished from 2 to 5 years of imprisonment and a fine from 4 to 10 million riels.

**Article 56.**

A punishment from 1 to 3 years of imprisonment and a fine from 2 to 6 million riels for any unlawful act of interference into the implementation of any public function by performing any of the functions that are only for those who are entitled to the function.

**NEW ARTICLE:**

**ALL FORMS OF VIOLENCE THAT LEAD TO PERMANENT DISABILITY OR DEATH WITH THE USE OF ACID SHALL BE CONSIDERED AS FELONY IN ACCORDANCE WITH ARTICLES 31 AND 41 AND OF THE CRIMINAL CODE.**

**Chapter 13**

**Interim provisions**

**Article 57.**

All public places that were built before this law enters into force and if possible, within five year time at the longest, alterations shall be made to all those places in order to facilitate access for persons with disabilities.

In case of non-compliance to the above paragraph, there is a fine from 100,000 to 1,000,000 riels.

**Article 58.**

All public places that were built before this law enters into force and have not been altered in accordance to article 26 of this law, and if possible, alterations shall be made to all those places within five year time at the longest.

In case of non-compliance to the above paragraph, there is a fine from 100,000 to 1,000,000 riels.

**Article 59.**

Ministries, Institutions and legal persons recruiting people for employment as provided for in articles 34 and 35 of this law shall begin to implement within one year after this law enters into force.

## Chapter 14

### Final Provision

#### Article 60.

All provisions contrary to this law shall be considered null and void.

This law shall be adopted by the National  
Assembly of the Kingdom of Cambodia

on.....2009,

during the .....Parliamentary session of

the fourth legislature.

Capital City of Phnom Penh,  
.....2009

President,

Samdech Aka Moha Puhnea Chakri  
Heng Samrin

### *Civil Society Declaration*

The participants to the conference drafted a civil society declaration on the rights of persons with disabilities. This was followed immediately by a press conference at which the participants presented the declaration to media representatives.

### **The Cambodia Civil Society Declaration on Rights of All Persons with Disabilities including Women and Children with Disabilities**

**Led by Mekea Strey Organization**

**Convened by the Core Working Group on Gender and Disability, Cambodia  
In Partnership with the Wellesley Centers for Women at Wellesley College, USA**

*Phnom Penh, May 7, 2009*

A Civil Society Consultation was brought together in Phnom Penh on May 6<sup>th</sup> and 7<sup>th</sup> to make recommendations to the Bill on the Protection and Promotion of the Rights of Persons with Disabilities and the Sub-Decrees to be developed under the Bill that is currently before the Cambodian Parliament and to build support for Cambodia's ratification of the Convention on the Rights of Persons with Disabilities (CRPD). Acknowledging the multiple forms of discrimination against women with disabilities and the greater risk of gender-based violence and sexual exploitation that women with disabilities face on an every day basis, this Consultation for the first time brought together disability rights and women's rights groups to forge alliances and build joint action on interconnected and cross cutting issues. The Consultation acknowledged the important work of the Ministry of Social Affairs and Cambodian Disabled People's Organization (CDPO) in drafting a seminal disability law. After listening to testimonies of women and girls with disabilities and their on going battle against economic disempowerment, sexual abuse, violence and discrimination, the Consultation developed a set of recommendations that will guide their elected representatives comments to the Bill that is coming up for hearing next week. The Consultation used the new Convention on the Rights of Persons with Disabilities the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the Child Rights Convention (CRC) that Cambodia is a party to as powerful lenses and benchmarks to guide their analysis.

The Consultation recommended that the Bill and the Sub-Decrees establish respect for the inherent dignity of persons with disabilities; mainstream non-discrimination in to all areas of public and private life including the rights of persons with disabilities to birth registration, family life, inheritance, health care including counseling, political participation, free access to education, training, employment, economic opportunity, housing, land, micro credit with low interest rates and legal services. The Consultation recognized that disability was often a determinant of poverty and that the face of severe poverty in Cambodia was that of a woman with disability. The Consultation unanimously agreed that the draft law incorporate and embody the fundamental values of the CEDAW and the CRC and that equality between men and women with disabilities; their non disabled counterparts; and the best interest of the child concept be critical cornerstones of the new disability law.

Full and effective participation of persons with disabilities can only be achieved if the rights of persons with disabilities, including women and girls with disabilities, are guaranteed by law. The right to life and security of persons with disabilities can only be realized in a context of equality and anti-discrimination; where their access to land are not violated through unfair land appropriations, their right to livelihood is guaranteed in a non-exploitative environment and their right to personal security is protected by a legal framework that holds sexual abusers and perpetrators of violence accountable under law and are punished appropriately. Substantive equality as enshrined in the CEDAW

affirms not just equality of opportunity but equality of result. An equality of result often demands special measures guaranteed by law including accessibility to public and private institutions and public transportation, quotas, incentives, concessions and subsidies to promote the education and employment of women and girls with disabilities. The State must progressively ensure that every child with disabilities has full access to education and educational institutions and make reservations of seats for persons with disabilities in institutions of higher education and in government employment. The law must also provide preferential allocation of land and housing for persons with disabilities including veterans with disabilities and their families. The Consultation also recommended that the Sub-Decree on Council on the Activities and Administration of Persons with Disabilities include a minimum of 30 percent of persons with disabilities with equal gender representation. The role and function of the Ministry of Women's affairs should be integrated into the law in order to ensure its cooperation with the relevant ministries in advancing the rights of women and children with disabilities. Most importantly, the budgetary allocation under the law must reflect the serious needs and rights of persons with disabilities in Cambodia which the United Nations establishes is home to the highest percentage of persons living with disabilities.

Finally, the Consultation urged women with disabilities to attend the parliamentary debates on the Law on Protection and Promotion of Rights of Persons with Disabilities and monitor the passage of the bill and ensure that their parliamentary representatives give voice to their concerns.

### ***Reporting to the CEDAW Committee***

A major aim of the Cambodia project was to build a consortium of organizations to help write a shadow report to the CEDAW Committee. Initiated by this project, Mekea Strey helped form a subcommittee consisting of disability rights organizations to write specific section relating to women with disability in the shadow report. Given that Cambodia will be reporting to the CEDAW Committee at the end of 2009, this project provided the momentum and the impetus for women's and disability rights groups to get together to build common cause with each other and to broaden the advocacy circles in order to succeed.

On May 7, 2009 the CEDAW Committee shadow reporting process in Cambodia created a Steering Committee which includes: Lichado, CDP, OPEN Institute, Caram Cambodia, Cosecame, CWCC, Nicfec, and LAC. The Steering Committee divided a set of topics for examination under the CEDAW Shadow Report. These topics include:

1. Women and Economics
2. Women's Health and the Environment
3. Vulnerable women (women with disabilities and ethnic minority)
4. Violence on Women (law, land, labour and migration)
5. Women and Education (technology and media)
6. Women in Politics, and Decision-making

Meakea Strey is involved in informing two topics:

1. Women's Health and Environmental
2. Vulnerable women (Disabled Women and Ethnic Minority)

The first meeting on June 23, 2009 with six different organizations identified the strategy of the report and researched the 42 recommendations made in the earlier CEDAW Committee Concluding Observations.

Participants to the shadow reporting process were united on the fact that there should be greater awareness that women with disabilities are subject to multiple form of discrimination based on their gender, disability, ethnicity and poverty. They are also doubly vulnerable to negative and cultural stereotypes ranging from violence against women, sexual abuse, trafficking, dowry-related deaths, acid throwing, subordination, cultural traditions such as *chbab sre*y is a negative stereotypes.

Given the prolonged and unprecedented financial crisis, women with disabilities are often the worst hit during such times. Families of persons with disabilities are often more at risk to traffickers and to those who exploit the status of women with disabilities in taking them as ghost wives or using women and children with disabilities in begging. The abandonment of women and children with disabilities is another problem that should be addressed through law and policy change and education and awareness raising. Persons and families with a person with a disability are also doubly vulnerable to being evicted by the State and sacrificed at the altar of development and urban sprawl.

# **The Regional Conference in India on Gender and Disability: Building Bridges Across and Between Human Rights Movements**

## ***Background***

The Asia Regional Conference on Gender and Disability was organized as a way to scale up and showcase the work of the three country projects in Bangladesh, Cambodia and Nepal. The aim and goal of the program was to share strategies and lived experiences from the three pilot projects with human rights advocates in India and with women's rights civil society leaders from around the Asian region.

The focal point for this program was the Asia Cause Lawyer Network at the Lawyers Collective in Delhi. The Asia Cause Lawyer Network is a seminal platform of action for women's rights lawyers in the Asian region which brings together Asia's vanguard women's human rights lawyers and scholars to catalyze gender-based law and policy reform, women's human rights litigation, and to cross fertilize strategies to advance the rights of women in the Asian region.

The conference was built on the Asia Cause Lawyer Network's annual Steering Committee Meeting so that leading women's human rights lawyers could replicate some of the groundbreaking work initiated by the three country programs. It was also an opportunity for the three country programs to meet face to face to learn from each other and from peers from the disability rights community in India and the women's rights vanguard in Asia and continue to strengthen their ongoing programs.

## ***Steps Leading to the Conference***

Rangita de Silva de Alwis, the Director of International Human Rights Policy for the Wellesley Centers for Women, started working with the Asia Cause Lawyer Network's Secretariat in late 2008 and met with its Secretariat in March of 2009 in preparation for the regional program. A draft agenda was developed at this preparatory meeting. The regional forum was to start with the sharing and discussion of Country Reports. The agenda was to include panels on disability litigation strategies, reproductive rights of women with mental disabilities and specific strategies to operationalize the CRPD with a special focus on the need to harmonize the CRPD with other complementary human rights treaties such as the CEDAW and CRC. The conference was to culminate in the drafting of an Asian Regional Platform of Action which was to be adopted by the ACLN's Steering Committee on the following day.

The ACLN Secretariat also prepared a compendium of disability rights litigation in India and put together a volume of readings for the conference.

The case law compendium discussed the following cases:

- 1) The hysterectomy case in Maharashtra where wombs of 11 women with mental disabilities were forcibly removed. This case is currently pending before the Mumbai High Court.
- 2) Custodial rape of women with disabilities.
- 3) Equal access for persons with disabilities to the Indian Airlines: *Javed Abidi v. Union of India* 1999.
- 4) Equal access to political participation: *Disabled Rights Group v. Chief Election Commissioner and Another* 2004.
- 5) Access to employment: *Kunal Singh v. Union of India* 2003; *Delhi Transport Corporation v. Rajbir Singh* 2002; *Life Insurance Corporation of India v. Chief Commissioner for the Persons with Disabilities* 2002.
- 6) Equal access to educational and testing opportunities: *Amita v. Union of India* 2000; *Dr. Raman Khanna and Others v. University of Delhi* 2003.

### ***Regional Seminar***

The seminar on “Advancing the Rights of Women and Children with Disabilities: Building Bridges Between and Across Human Rights Communities” was held on 21 May, 2009 under the aegis of the Asia Cause Lawyer Network ( ACLN) of the Lawyers Collective, India. The ACLN connected with 25 individuals/organizations working in the field of disability and women’s rights in India. The Steering Committee members of the ACLN who are drawn from India, Sri Lanka, Nepal, Bangladesh, China, Indonesia, Malaysia, were also part of the seminar. The institutional heads from Bangladesh, Nepal and Cambodia joined the program to present their country report.

At the start of the conference, Rangita de Silva de Alwis introduced the unique model upon which this conference was created. She spoke of the aims and goals of the conference to create partnership across human rights groups so as to mainstream a gender perspective into disability rights and a disability right perspective into human rights and women’s rights frameworks and to build synergies and work collaboratively on cross cutting interfacing issues. She introduced the three country pilot projects as models for replication in the Asia region and spoke of the intersecting CEDAW, CRC and CRPD values that animate the project initiatives on addressing multiple forms of discrimination through constitutional and legislative change, public interest litigation, Shadow Reporting to the CEDAW Committee and mobilizing the human rights community as a whole to join the clarion call for the ratification of the CRPD.

The Three Country Reports examined the models developed to build connections and partnerships among different human rights organizations was one of the main goals of this groundbreaking program in all three countries. The common theme that was underscored by these country reports presented at the Asia Conference was that these relationship-building initiatives resulted in a greater focus on the rights of women with disabilities within the mainstream disability rights organizations; stronger relations

between women's rights and disability rights groups and the sharing of strategies that contributed to mutual advancement of commonly held advocacy goals. Finally, these initiatives resulted in the greater engagement of mainstream human rights organizations with disability rights groups.

Using the three Country Reports as a starting point, the panel discussions that followed focused on mining the potential of human rights reporting as a way to address disability rights violations and public interest litigation as a powerful tool to challenged discrimination against women with disabilities. Some of the overarching themes of the discussion are highlighted below:

### ***Litigation Strategies for Disability Rights: The Indian Experience***

One of the most important debates at the Asia Regional Forum centered around litigation on behalf of persons with disabilities. Although the Indian examples and case studies were groundbreaking in their scope, very few cases dealt with multiple discrimination based on grounds of gender and disability.

The cases below discuss litigation under the Persons with Disabilities Act in India in the areas of employment and education. This vibrant litigation has resulted in a more expansive interpretation of the law.

The litigation has been on a few broad areas:

- Since the law is not open ended in its definition of disability what kind of disability is covered under the law.
- Employment: are adequate reservations provided and identification of posts for disabled persons.
- A three percent reservation is provided in educational institutions but it falls under chapter of employment and most educational institutions assume that they do not have to reserve seats. But the Supreme Court has ruled that the spirit of the law governs and that a three percent reservation must be made.
- According to law, a person must have a 40 percent disability to be granted the benefits of the Act and this area that has been litigated quite extensively.

Panelists stated that in the Indian Constitution, disability is not a prohibited category of discrimination such as race, sex, etc. but over the years through the interpretation of Articles 14 and 21 (the right to equality and right to life) nondiscrimination on grounds of disability has been read into the Indian law. This is independent of the Persons with Disabilities Act which is a central act enacted in 1995. The disability act itself makes certain affirmative actions and nondiscrimination mandatory vis-à-vis the state. Private employers are also called upon to provide 5 percent reservation in jobs for persons with disabilities and incentives are to be provided by the government.

During the last elections the question was whether ballot papers should have a Braille counterpart. The second question was access to polling booths during elections. The High Court directed that in large sections of Maharashtra ballot papers and access must be provided. The court held that carrying persons to voting booths was not acceptable that persons had the right to vote with dignity. The election commissioner also has made major changes in the law.

In a recent groundbreaking case, a person applying for a bank job had gone through a kidney transplant failed the medical exam conducted by the bank.<sup>7</sup> The bank stated that they could not pay the medical bills. Disability rights lawyers argued in court that the CRPD would apply in this case since it has been recognized in India that once a Convention is signed it became applicable under State law. Thus, reasonable accommodation under CRPD would be integrated into Indian law. The court upheld that argument and directed the Bank to hire the plaintiff and pay the medical bill involved. The case will probably go on appeal to the Supreme Court.

### ***Mainstreaming Disability into the Legal Curriculum***

Disability studies are not part of the usual legal curriculum and the curriculum needs to be changed to embrace disability law. This will help raise awareness and also create a generation of lawyers who can challenge discrimination against persons with disabilities. Law students have an enormously powerful role to play as advocates. Law students in Maharashtra filed suit in the Mumbai High Court for buses to transport persons with disabilities. The judge agreed with students and issued notices to all the transport companies. Thirteen buses were made available because of that lawsuit. Litigation for ramps leading to toilets and in other public places is pending.

In Goa too a similar methodology was used where law students filed petition demanding a state policy on disability. In a year there was a state government policy on disability. This is a fascinating way of taking up litigation and making sure it meets a logical end.

### ***Definition of Disability***

The current law is not clear about the definition of disability. A client who had a speech defect could not have medical access as the institutions were not willing to define a speech defect as a disability. A decision of the Delhi High Court defined disability and other acts are welfare legislations and should be looked at that way and not looked to for the definitions and that a disability certificate should be given to someone with dyslexia (learning disability).<sup>8</sup>

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<sup>7</sup> Ranjit Kumar Rajak vs. State Bank of India, 2009 (5) BomCR 227

<sup>8</sup> Disabled Rights Group vs. Delhi University and Others, W.P. (C) 10055/ 2004

In a case in Karnataka, the only jobs that were identified for visually impaired persons were the post of music teacher. So the state barred the visually impaired persons from even applying for other posts as primary teachers in other subjects. This matter was taken to court and the division bench of the Karnataka court ruled such exclusion is in violation of the Article 14 on the right to equality and the right to equal opportunities in employment under Article 16.<sup>9</sup> The case is pending before the Supreme Court.

### ***Identification of Posts***

A big hurdle faced by qualified persons with disabilities is the requirement of 'identification of posts' by the appropriate Government. Section 32 of the Persons with Disabilities Act mandates that the appropriate government agency shall first identify posts in the specific establishments, which can be performed by persons with disabilities and then reserve not less than 3 percent of posts in those identified jobs. The main difficulty which is often pointed out in cases where in adequate reservations are provided to persons with disability is that the jobs are not identified. This requirement is very often used by the government to deny jobs to people with disabilities by failing to identify posts in each department. The list of identified jobs given by state governments is often very restrictive and arbitrary (e.g. in the education department, only the job of music teacher is identified for visually impaired persons and not the job of other subject teachers). Also, in identifying jobs by the appropriate government, it appears that stereotypes are reinforced as to what disabled persons are capable of. Thus, while there is a statutory obligation to identify posts, what are the posts to be identified is left to the discretion of the Government.<sup>10</sup>

In Karnataka in the case of primary school teachers, the Karnataka High Court held that the failure to identify the post of subject teachers for the blind and low-visioned was a violation of Article 14 and 16. The case is pending before the Supreme Court.

In the case of *Amita v. Union of India*<sup>11</sup> in 2005, when the Supreme Court took up the issue as to why the post of Probationary Officer in a bank was not identified for a blind person, the state government responded promptly by identifying such a post and reviewing the list.

### ***Employment-based Litigation***

In *NFB v. Union of India and others*, (2008) the Delhi High Court thus held that the percentage of reservation had to be worked out in relation to the number of posts which form the cadre-strength, both identified as well as unidentified posts and that the concept of 'vacancy' had no relevance in operating the percentage of reservations. With this interpretation of Section 33 of the Law, the Delhi High Court, in order to ensure proper implementation of the reservation policy for persons with disabilities directed the Union

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<sup>9</sup> Unreported case

<sup>10</sup> See *Ratheesh Babu v. University Grants Commission*, 2005 INDLAW MUM 317

<sup>11</sup> Writ Petition (civil) 31/ 2000 (unreported).

Government to set up a special committee to work out the backlog of vacancies for persons with disabilities in all departments/public sector undertakings/government companies from the date that the Act came into force, on the basis of the cadre strength in different establishments and to undertake a special recruitment drive for the filling up of these vacancies.

### ***Education-Based Litigation***

A majority of cases regarding access to education have dealt with additional time for exams.

In *Dhawal Chotai v. State*<sup>12</sup>, the Mumbai High Court held that as the examining institution was a statutory authority it would be bound under Article 21 of the constitution which provides the right to life. The court used the expanded notion of the right to life to mean that the right to a decent life, which includes the right to receive education and the facilities for such education and directed the authorities to grant the petitioner three extra hours to write his exam. For the first time the right to life has been broadly interpreted to require the state to give facilities for higher education.

In *Satish Prabhakar Padhye v. Union of India and Others*,<sup>13</sup> the Mumbai High Court held that the term Person with Disabilities(PWD) applies to both private and public entities. The Mumbai High Court ruled that Section 47 would apply to private establishments as well.

The Court held that the Companies Act 1956 is a central act and all companies formed and registered there under are, therefore, established under the Central Act, which would include private companies.

### ***Using the CRPD to Expand the Interpretation of “Reasonable Accommodation”***

Panelists argued that the Persons with Disabilities Act interpreted according to the CRPD would ensure that the principle of reasonable accommodation would apply to all persons with disabilities and by that meaning every post could be potentially suitable for persons with disabilities. Reasonable accommodation calls upon the employer to make reasonable accommodations to any physical features of the premises or to the duties of the job which would place disabled persons at a substantial disadvantage in comparison with other persons who are not disabled. Reasonable steps could include: adjustments to premises; reallocation of duties; redeployment to an existing vacancy; alteration of working hours; reassignment to a different place of work; allowing absence for rehabilitation; assessment or treatment; training; acquisition of equipment; modification of equipment, instructions,

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<sup>12</sup> AIR 2003 Bombay 316

<sup>13</sup> 2005 INDLAW MUM 317 (Bombay High Court); 2006 (1) CLR 455.

reference manuals and testing or assessment procedures; and provision of a reader, interpreter or supervision.<sup>14</sup> In a broad interpretation of the CRPD, the Indian government would not have to identify jobs suitable for persons with disabilities but should ensure that all jobs are made accessible to persons with disabilities.

### ***Human Rights Reporting***

The panel on human rights reporting focused on the importance of the CEDAW and CRC as complementary forces to the CRPD. She argued that in the absence of ratification of the CRPD by countries in Asia, advocates should focus on using the CEDAW and CRC as conduits to draw attention to the need to ratify the CRPD and to emphasize the right of women and children with disabilities. The panel found that leaving the CRPD Committee as the only focal point for rights of women and children would run the risk of categorizing and ghettoizing the rights of person with disabilities.

Participants also argued that the CEDAW and CRC provided an important framework to advance the rights of women caregivers of persons with disabilities. Given that caregivers of family members with disabilities are disproportionately women it was important to focus on the rights of these caregivers.

The CEDAW and CRC already provide so countries that have not ratified the CRPD an opportunity to advance the rights of women and children with disabilities. The shadow reporting processes under the CEDAW and CRC provide an important opportunity to build support for the ratification of the CRPD.

### ***Legal Expertise in Implementing the CRPD***

The conference was a call to action for legal expertise in dismantling discrimination based both on gender and disability in courts. A second important clarion call was made to support the writing of shadow reports to the CEDAW, CRC and CRPD committees. Many felt that given that many disability rights advocates have little knowledge about the Shadow Reporting process it was important for disability rights advocates to work with women's rights advocates to gain experiences in writing a shadow report.

CEDAW secretariat will accept NGO reports directly from the NGOs. CEDAW encourages Groups to come together and write a shadow report. Shadow reports are on the website. Shadow reports form the basis for formulating questions.

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<sup>14</sup> Such forms of reasonable adjustments have been mandated in the UK Disability Discrimination Act 1995, s 6 (3).

### ***Follow up Action:***

#### **a) Amendments to the Law on Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities**

A month after the conference a member of ACLN's steering committee was nominated to the Advisory Committee on the Amendments to the Law on Autism, Cerebral Palsy and Mental Retardation.

#### **b) Cases that are being followed:**

The Asia Cause Lawyer Network is following three important cases on disability rights. One relates to the issue of compulsory sterilization of girls with mental retardation at a government run shelter in the western state of Maharashtra. The case is pending before the Bombay High Court.

The second case deals with a High Court judgment—the first one in India—that has relied on the UNCRPD and the principle of Reasonable Accommodation<sup>15</sup>. The petitioner in this case was denied employment after being short-listed on the ground that he had undergone a renal transplant some years back and hence would have a high health expenditure. The respondent has appealed against the decision before the Supreme Court.

The third case is that of a woman with mental retardation living in a government run orphanage, who was raped by the security guards which led to her pregnancy. The State government wanted to abort the pregnancy on the ground that the mental age of the woman was that of a minor, hence her opinion was irrelevant; that she could not distinguish between a child born within wedlock and outside of it; and that she would not be able to take care of the child and provide for her/him. The High Court allowed the abortion to take place<sup>16</sup>, but its decision was challenged before the Supreme Court. The Supreme Court stayed the High Court's order and held that the woman be allowed to continue the pregnancy. The state has been asked to take proper care of the woman, who is in custody of the state.

The Indian Supreme Court ruled that the victim's pregnancy could not be terminated without her consent and that this would not have been to her `best interests'<sup>17</sup>. The Court invoked the language of the Maternal Termination of Pregnancy Act to show case that the Act clearly respects the personal autonomy of persons with mental disabilities who are above the age of majority. Since none of the other statutory conditions have been met in this case, the court held that it could not “permit a dilution of the requirement of consent

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<sup>15</sup> Ranjit Kumar Rajak vs. State Bank of India, 2009 (5) BomCR 227

<sup>16</sup> Chandigarh Administration vs. Nemo, [MANU/PH/0397/2009](#)

<sup>17</sup> Suchitra Srivastava vs. Chandigarh Administration, Writ Petition (Civil) No.17985/2009 (Unreported)

for proceeding with a termination of pregnancy.” The court also urged the need to “look beyond social prejudices “in order to make such decisions. The court also pointed to the findings recorded by the Expert body which states that pregnancy does not pose any grave risk to the physical or mental health of the victim. The Supreme Court also directed that the best medical facilities be made available so as to ensure proper care and supervision during the period of pregnancy as well as during post-natal care.

### **c) Work with the Special Rapporteur on Health**

ACLN secretariat member, Saptarshi attended the SAARC Region Conference of the UN Special Rapporteur on the Right to Health from 18<sup>th</sup> – 21<sup>st</sup> September 2009, at Kathmandu. Saptarshi made a presentation on disability rights in India at an audience consisting of medical professionals, health rights activists and grass root workers from a number of South Asian countries.

*From the Lawyers Collective* is the monthly online magazine of the Lawyers Collective with a focus on coverage and analysis of issues relating to human rights. Contributors include members of the Lawyers Collective, academics, lawyers and law students amongst others. Following the seminar mentioned above, the September 2009 issue of the magazine was a special issue on disability rights. The articles featured in this issue, were on right to motherhood of women with mental disabilities, legal interventions to address sexual abuse of disabled women in India, portrayal of persons with disabilities in popular cinema, among other things.

The said issue of the magazine can be accessed by registering with the Lawyers Collective website ([www.lawyerscollective.org](http://www.lawyerscollective.org)).

### **d) Engaging the Additional Solicitor General of India**

Ms. Indira Jaising the founding parent of the ACLN in her capacity as the Additional Solicitor General has been representing the Government of India before the Supreme Court. In this capacity, Ms. Jaising has been appearing in a number of cases involving issues of employment and social security for the disabled. These cases will be analyzed on the website above.

### ***Platform of Action***

Based on the discussions engaged in and recommendations made at the Asian Regional Forum, a Platform of Action was drafted by all participants on May 21<sup>st</sup> 2009. On May 22<sup>nd</sup>, the Asia Cause Lawyer Network adopted the Platform of Action which will be shared among human rights, women’s rights and children’s rights organizations in Asia. This Platform of Action showcases a consensus of opinion among the vanguard of women’s groups in Asia and is a call to action for all human rights groups to embrace the

disability rights agenda is a pivotal and cross cutting human rights issue. Moreover, it calls upon the disability rights community to integrate with the women's rights agendas and the human rights frameworks by mainstreaming a gender perspective and engaging with other human rights instruments such as the CEDAW and CRC.

**“Advancing the Rights of Women and Children with Disabilities: Building Bridges Between and Across Human Rights Communities”**

Platform of Action Adopted by the Asia Cause Lawyer Network  
at a seminar organized by the Asia Cause Lawyer Network's Secretariat (a program of  
the Lawyers Collective, India)  
18 May 2009  
Mumbai, India.

Strategies for Mainstreaming Disability Rights within the Agenda of the Women's Rights Movement:

- Strengthen the relationship between women and disability organizations and mainstream women's rights organizations.
- Mobilize women's organizations in the Asian region to take up disability rights as an important gender issue.
- Acknowledge that a major part of the disability rights work done by civil society organizations takes place in a patriarchal framework. Patriarchy needs to be combated for securing and advancing the rights of women with disabilities.
- Include disability rights on the agenda of the national conferences of the women's movement and the annual conference of the Indian Association of Women's Studies.
- Include 'women with disabilities' in the curriculum of women's studies courses and legal and medical education curricula.
- Maintain credible data on women with disabilities.
- Address the social, psychological and financial needs of the caregivers, who are mostly women.

Advancing the Rights of Women and Children with Disabilities in Law Reform and Litigation:

- All laws affecting women and children and persons with disabilities must reference the triple pillars of the Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW), the Convention on the Rights of Children, 1989 (CRC), and the Convention on the Rights of Persons with Disabilities 2007, (CRPD).
- Recognize the universal legal capacity of all persons with disabilities, including women with disabilities.

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<sup>18</sup> In partnership with the Wellesley Centers for Women, Wellesley College.

- Women with disabilities must participate in all gender-based and disability rights-based law reform initiatives.
- The rights of women with disabilities must be integrated into all areas of the laws affecting women.
- Broaden the definition of disability in the Indian Persons with Disabilities Act beyond the named categories.
- Mention 'equality of men and women' in the preamble of the Persons with Disabilities Act and also include a separate chapter on women with disabilities.
- Address the rights of women with disabilities in laws in the Asian region dealing with violence against women.
- Classify forced hysterectomy performed on women with disability as "violence against women."
- Effect changes in the abortion laws in line with the CRPD.
- Litigation on women and children with disabilities should invoke the values of all three Conventions (CEDAW, CRC and CRPD) as relevant.

Awareness of the Conventions and Reporting under them:

- Acknowledge the complementarities between the CEDAW, the CRC and the CRPD in law, policy, reporting and programming on women and children with disabilities.
- Promote greater awareness about the CRPD in the civil society, especially in the rural areas. Initiate capacity building at all levels of the society.
- Map the ongoing work of the disability rights field and link it with the CRPD. This would give greater legitimacy to the work being done by the civil society actors.
- Coordinate with women's and child rights organizations to include chapters on disability rights in the shadow reports presented to the human rights treaty bodies.
- Encourage the reports on disability rights to be authored by the persons with disabilities themselves.
- Ensure that a gender and child rights perspective is brought to bear on the shadow reports submitted to the CRPD Committee.
- Coordinate with State agencies to include gender and disability segregated data in the State reports submitted to the treaty bodies.
- Initiate training for disability rights organizations to collate information and write shadow reports to be submitted to the new CRPD committee.
- Strengthen the movement in the Asian region for the ratification of the CRPD (by governments that have not done so) by mobilizing human rights groups in the region to join the movement.
- All human rights organizations must join in partnership with the disability rights organizations to implement the CRPD in countries that have ratified the treaty.

Follow up Work Plan:

- The Platform of Action adopted by the ACLN will be disseminated among domestic and regional human rights (including women's children's and disability rights organizations) in India and in the Asian region.
- The ACLN Secretariat will develop a webpage dedicated to advancing the aims and goals of the conference.
- The webpage will act as a clearing house of information and contain relevant databases on laws, cases, law reform proposals, international conventions, procedure for reporting to human rights treaty bodies, civil society charters of demand and important reports on the rights of women and children with disabilities in the Asian region.

## **Appendices:**

### **Appendix 1:**

## **Guidelines for Writing CEDAW Shadow Reports with a Focus on the Rights of Women with Disabilities**

### **Articles 1, 2, 4 and 5**

#### **Equality**

- Has a law guaranteeing equal opportunities for persons with disabilities been drafted and/or adopted?
- Does the definition cover practices which, although not intending to discriminate, are discriminatory in effect and not reasonable or justifiable?
- Are affirmative action or other temporary measures such as a quota system mandated by law in order to guarantee substantive equality or equality of result for persons with disabilities?
- Is the establishment of a national machinery for the protection and promotion of persons with disabilities mandated by law?
- What is the official role of the national machinery? Does it have any adjudicatory or quasi-adjudicatory powers or is the role primarily advisory?
- Have training programmes for persons with disabilities been established?
- Do women with disabilities have access to the National Human Rights Institution and/ or other redress mechanisms?
- Do persons with disabilities including women with disabilities have the same access as men, in law and in fact, to the political process, social services, health and medical care, education, labour, marriage, child care, ownership of property and inheritance and access to justice?
- Are there programmes for women and other persons with disabilities to participate in law and policymaking and in the political process.
- Have any laws, regulations, or policies been promulgated that regulate the conduct of official institutions, public authorities and public officials towards women with disabilities?

- Have any special remedies or avenues of redress been developed to enable women to pursue their rights? If so, how effective have these been in regards to women with disabilities? How many cases of discrimination have been brought before the courts or other bodies in the last years concerning women with disabilities? How were they decided?

### **Article 5: Sex Roles and Stereotyping**

What measures and steps have been taken to train and inform law enforcement officials of the issue of violence against women with disabilities?

Is there a place for women with disabilities to go when faced with violence within the family? Are there special law enforcement units to deal with domestic violence?

### **Article 4: Affirmative Action to Achieve Substantive Equality**

- What positive temporary special measures, or affirmative action policies, have been adopted to achieve equality for persons with disabilities? Are there special provisions for women?
- Are quotas established in educational and employment fields where women with disabilities are underrepresented?
- Are there special measures adopted in access to health care, and education information on reproductive health?
- What enforcement mechanisms have been established to ensure that those quotas are met?
- Develop effective programmes that can lead to the creation or the strengthening of such policies and mechanisms.

### **Article 7: Equal Access to Political Participation**

- Is there a legislative provision for minimum quotas of women in Parliament and or in political parties?
- What percentage of elected officials are women? Are there women with disabilities among elected officials?
- What senior public offices are currently held by women? Are there women with disabilities among public officials?

- Do women with disabilities have equal opportunity to represent government at the International level?
- Do programmes to train women to run for public office and to take leadership roles include women with disabilities?
- Ensure that women with disabilities are included in leadership programmes for women.

### **Article 16: Equal Access to Family**

- Is birth registration mandatory by law?
- Does the law allow all women the right to choose to marry or remain unmarried, when to marry and whom to marry?
- Do all women have equal rights to divorce?
- Do women and men have equal access to property and equal rights to acquire, dispose and manage property acquired during the marriage?
- Do widows have a legal right to inherit land and other property if there is no will?
- In country's where this is a custom, is bride price and dowry prohibited?
- Does the law allow women and men the equal rights to choose the place of domicile of the family and religion of their children after marriage?
- At divorce, do women and men have equal rights in respect to property?
- If these laws are absent from the statute books, create programmes to make these changes.

### **Article 12**

#### **Sexual Reproductive Rights of Women with Disabilities**

- Is there a law on sexual and reproductive health? What areas refer to the rights to sexual and reproductive health of women?
- What enforcement and monitoring mechanisms pertain to any law on sexual and reproductive health?

- Are there any policies put into place to address the high maternal mortality and morbidity and information on different forms of family planning?
- Are there any policies put into place to address the issues of HIV/AIDS and other sexually transmitted infections as one form of unequal power relations based on women and adolescent girls often being unable to refuse sex or insist on safe and responsible sex practices?
- Is information on sexual and reproductive health available to women and children with disabilities?
- Are there policies to ensure safe pregnancies, childbirth, postpartum periods in both physical and mental health for women with disabilities?
- Are there policies that ensure women's right to safe motherhood and emergency obstetric care to the same range, quality and standard of free or affordable care as provided to other persons?
- Are there laws that protect of women's health and safety in working conditions, including the safeguarding of the reproductive function, special protection from harmful types of work during pregnancy and with the provision of paid maternity leave?

### **Women and Mental Health**

- What are policies including health care protocols and hospital procedures to address the appropriate health services including both physical and mental health services for girls and women with disabilities?
- What are the appropriate legislative, judicial, administrative, budgetary, economic and other measures put in place to ensure the maximum extent of their available resources to ensure that women realize their rights to health care?
- Do women and men with disabilities have equal access to health care services? Does the health service integrate mental health and psychosocial care?
- What are the policies, programmes and services available for women seeking mental health care and for women with mental or intellectual disabilities?
- Establish services and programmes to identify health problems including problems related to reproductive health and mental health of girls and women with disabilities.
- Revise the curricula of sex or health education classes to include information on the rights of women and girls with disabilities.

### **Women and HIV/AIDS**

- What are the policies, laws and programmes put into place to combat HIV/AIDS? Are there any policies specific for women with disabilities?
- Are there policies on increasing public awareness of the risk of HIV infection and AIDS, especially concerning women and children with disabilities and its effects on them?
- Do these policies and programmes focus on the rights of women and children with disabilities in relation to their reproductive role and their vulnerability to HIV infection?
- Harmful traditional practices, such as female genital mutilation, as well as marital rape, may also expose girls and women to the risk of contracting HIV/AIDS and other sexually transmitted infection. What are the policies effected to address harmful traditional practices with a special focus on women and girls with disabilities?

## **Article 10**

### **Achieving Inclusive Education for Children with Disabilities**

- Is there legislation that mandates children with disabilities equal access to education?
- Is there legislation that creates special measures for the advancement of the girl child to education?
- Are there incentives to broaden the girl child's access to education?
- Are there programmes that facilitate children with disabilities participation in sports or recreational activities?
- Is family life (reproductive and sexual health) education compulsory in schools?
- Is reproductive and sexual health education conducted for children with disabilities? For example, are there gender sensitive guidelines for the dissemination of these programmes?
- What kind of sexual harassment policies and anti-violence against girls policies have been enacted in educational institutions? Does this cover State/school provided travel to educational institutions? Are these policies monitored as regards the special vulnerabilities of girls with disabilities?

- Persons with disabilities have different transport needs for purposes of attending school or engaging in economic activity. This includes safety in transportation. Are there disability-related restrictions on educational experience?
- Do educational materials and teacher training convey harmful stereotypes about disability?

### **Addressing Stereotypes based on Gender and Disability**

- What legal and policy measures have been taken to change social and cultural patterns that lead to stereotyping or reinforcing the idea of inferiority of women with disabilities?
- What provisions have been taken in the legal system to address violence against women with disabilities, including rape, sexual violence, and marital rape?
- Are there provisions in the law that cover rehabilitation and reintegration of women and children with disabilities?

## **Article 11**

### **Employment and Earnings**

- Do women with disabilities have the right to own property, sign contracts and enter into financial transactions including ownership of bank accounts, savings or access to credit?
- Do women with disabilities have access to telephones, the internet, and other information sources?
- Are there laws and policies that mandate equal employment opportunities for women and men with disabilities?
- Are certain occupations or professions closed to women or men with disabilities by law or practice?
- Within the formal sector, are women with disabilities concentrated in employment in managerial and professional positions?
- Do women with disabilities have equal rights to contract under law?
- Do laws have an indirect effect on women entering into contracts?
- Do these laws and policies address gender stereotypes and disability stereotypes?
- Are training and employment opportunities available for women with disabilities?

- What is the mandatory retirement age for men and for women? Do these policies apply to women and men with disabilities?
- Are sufficient regulations put into place to protect women and men with disabilities from harmful chemicals, injuries at work that might affect the general health and reproductive health of both men and women employees?
- Have sexual harassment policies in the workplace been introduced? Do these policies pay attention to women with disabilities?
- Do workplace policies have a quota for women and men with disabilities?
- Are firms (public and private) penalized for not meeting these quotas?
- Is maternal/paternal leave considered employment for the purposes of calculating pensions or other benefits?

## **Article 12**

### **Health Care**

- Are adequate healthcare services available for women with disabilities?
- Do women with disabilities have the resources to access healthcare, either for self or for children (money, transportation, information about healthcare providers, the right to determine when and where to seek health care)?
- Is there adequate reproductive health care for women and girls with disabilities?
- Does the legal framework discriminate on the basis of disability with respect to education, health, or employment, either directly or indirectly?
- Is there a high degree of occupational segregation based on ability; i.e., are most women with disabilities in different occupations?
- Are women with disabilities concentrated in lower-level occupations than their male counterparts?
- Are women with disabilities adequately represented in local, regional, and national levels of governance such that their needs, constraints, and interests are considered and incorporated into policy and programs?

- How are disability-related issues in rural areas different from those in urban areas, and how does this affect the design and implementation of programs in these locations?

## Articles 13 and 15

### Access to Land, Property and Social Benefits

- Do women with disabilities have access to land, loans, mortgages, and other forms of financial credit?
- What are the social security benefits such as children's allowances, housing allowances, health insurance, and educational allowances available to both men and women with disabilities?

## Appendix 2:

# DRAFT CHAPTER ON DISABILITY RIGHTS IN THE NEPAL SHADOW REPORT TO THE CEDAW COMMITTEE (2009)

## WOMEN WITH DISABILITIES

### Prevalence

The World Health Organisation (WHO) states that in accounting for all emerging forms of diseases, out of the world's population of nearly 6.5 billion in 2004, 18.6 million (2.9%) were severely disabled and another 79.7 million (12.4%) had moderate long term disability. The above-mentioned statistics was collated on the basis of a definition of disability that signifies "loss of health", where health is conceptualized in terms of functioning capacity in a set of health domains such as mobility, cognition, hearing and vision. "Severe" disability, has been defined as categories that are equivalent of having blindness, down syndrome, quadriplegia, severe depression, or active psychosis, while "moderate and severe" disability has been defined as severity classes and greater forms that are equivalent of having angina, arthritis, low vision or alcohol dependence.<sup>19</sup> Eighty

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<sup>19</sup> World Health Organization, *The Global Burden of Disease: 2004 Update*, Part 3, Disease incidence, Prevalence and Disability, [http://www.who.int/healthinfo/global\\_burden\\_disease/2004\\_report\\_update/en/index.html](http://www.who.int/healthinfo/global_burden_disease/2004_report_update/en/index.html) (Last visited 20.12.2009)

per cent of PWDs live in developing countries, according to the UN Development Programme (UNDP).<sup>20</sup>

In Nepal disabilities has been defined to include the following categories<sup>21</sup>:

- Physical Disability
- Blind and low vision
- Hearing Disability sub-categorized as deaf and hard of hearing
- Deaf Blind
- Speech and Sound Disability
- Mental Disability, sub- categorized as intellectual disability/ mentally unsound, mental illness, autism
- Multiple Disability

Beyond the existing congenital forms of disabilities, 13 years of long armed conflict has resulted in acquired disabilities, thereby increasing the number of PWDs within the country significantly. Unfortunately till date there exists no conclusive data or statistics that can depict the total number of PWDs within the country. According to the National Census of 2001, a study conducted once in every 10 years, only 0.45 % of the population was stated to be PWDs with 54.56% amongst them being women.<sup>22</sup> Simultaneously, a study conducted by New Era under the aegis of National Planning Commission Secretariat and Social Welfare Council and supported by UNICEF stated that 1.63% of the entire population in the country were PWDs with 46.4% amongst them being women.<sup>23</sup> Due to a lack of clarity regarding severe and moderate forms of disabilities in the existing definition under the law, the two studies were conducted on the basis of different sets of categories, the former being narrower in comparison to the latter.

Comparative analysis of prevalence of disability in studies that were conducted previous to the above, reveal that though the incidence of disability among men is higher than that of women, the percentage of women with disabilities (WWDs) are increasing gradually. The incidence of disability amongst men were reported to be 62.6%, 60.0% and 53.6% in 1980<sup>24</sup>, 1998<sup>25</sup> and 1999<sup>26</sup> respectively whereas the incidence of disability amongst women was 37.7%, 40.0% and 46.4% in 1980, 1998 and 1999 respectively. According to New Era, "*Disabilities were seen more prevalent among males than female. The result of sex differentiation reduces the chance of survival among females. The reason for the lower prevalence of disabilities in women could be because their disabilities were not*

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<sup>20</sup> <http://www.un.org/disabilities/convention/facts.shtml> (Last visited 20.12.2009)

<sup>21</sup> Sec. 2 of Disabled (Welfare and Protection) Act 2039, Amended 2063/5/2

<sup>22</sup> *Population Census 2001: National Report*, His Majesty's Government of Nepal, National Planning Commission Secretariat, Central Bureau of Statistics, in collaboration with UNFPA Nepal, June 2002

<sup>23</sup> *Situational Analysis on Disability in Nepal*, New Era, National Planning Commission Secretariat & UNICEF, 2002

<sup>24</sup> Report on Sample survey of Disabled person in Nepal, 1980

<sup>25</sup> Disabled Situation Analysis of Nepal 1998, Poudel, M.M and Dr. KL. K. Poudel, APROSC

<sup>26</sup> *Situational Analysis on Disability in Nepal*, New Era, National Planning Commission Secretariat & UNICEF, 2002

*identified. Girls and women are often able to perform certain activities, albeit at enormous personal cost (pain and/or effort), to hide their disabilities."*<sup>27</sup>

WWDs face multiple discrimination in Nepal both under the law as well as in society from their birth. Multiple discrimination is based on the two primary identities of gender and disabilities. Girl children or women with disabilities have often been reported to be less cared for and less advantaged in comparison to the male counterparts within families and these forms of discrimination are thereafter reflected in the larger society.

Other identities including those relating to religion, ethnicity, age, geographical location, are additional grounds on which WWDs are discriminated.

Discrimination by the society against WWDs remain largely unquestioned. While the lack of appropriate legal sanctions perpetrates such discrimination, discrimination in particular at familial levels cause an eclipse of their presence from society and public life, and consequently from all decision making mechanisms. Therefore despite the emergence and rise of the disability movement in Nepal during the 1990s, women with disabilities have been rarely represented as an organized mass. Mobilising women with disabilities remain a challenge even to this day.

### **Critical Areas of Concern**

- **Cultural and societal prejudices**

Disability continues to be considered a curse on a person for sins committed in previous birth. In this context in Nepal, PWDs are seen as ill omen. Therefore, PWDs are often shunned by the society and in particular during social events such as marriages and religious celebrations. PWDs are not allowed inside temples with support devices such as wheelchair, callipers, etc. thereby effectively denying them the right to religious worship. Festivities or religious ceremonies such as Teej or Rishi Panchami being celebrated exclusively by women, WWDs find themselves disproportionately discriminated against.

In addition, existing gender role stereotypes in the society serve to enhance discrimination against WWDs. Beauty being considered to be tarnished, women with disabilities are often not considered eligible or offered an option of marriage by their own families. Their presence is almost considered asexual.

- **Marital status**

In comparison to 60% of men with disabilities who were married, only 20% of WWDs were found to be married. Amongst the few WWDs who forge marital relationships particularly with able-bodied men, large numbers experience domestic violence and

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<sup>27</sup> Id.

eventual desertion by their partners. Considerable cases have been witnessed where such partners have also entered into second marriages with able-bodied women.<sup>28</sup>

- **Lack of visibility and disparity in statistics**

Lack of reliable statistics or disaggregated data is one of primary problems that serve to enhance discrimination against WWDs. Several studies have concluded that the low prevalence rate of disabilities amongst females witnessed through available statistics could be a result of low reportage.<sup>29</sup> Families have often been witnessed to be reluctant in declaring their members as persons with disabilities and this phenomenon was seen to be more in the instance of females. Even amongst women, incidence of particular categories of disabilities such as mental disabilities were reported to be low due in surveys due to greater sense of shame associated with them. Such disparity results in low visibility of WWDs and their issues in policy-making initiatives and particularly in service delivery institutes that may cater to their needs.

- **Restriction in movement and access to services and resources**

Women with disabilities are often restricted in their movement, imposed by their families or at times self imposed, for fear of sexual assault and harassment due to their increased vulnerability. This is directly reflected in WWDs falling behind in every other perspective such as education, employment, access to health services, participation in decision-making bodies etc. Studies site that against 3.8% of men with disabilities receiving special aids by government and governmental agencies, only 2.4% of WWDs receive the same.<sup>30</sup>

- **Denial of sexual and reproductive health rights**

Health has been one of the most neglected aspects in the lives of WWDs. This is especially true for women with mental disabilities who were found to be living in unhygienic conditions, due to lack of proper hygienic care such as taking bath regularly, wearing clean clothes etc. Only 20 percent disabled women could go to hospital for check-up. Out of them 60 percent were taken to hospital by their family members, 8 percent by relatives, 12 percent by friends, 10 percent by social organizations and 10

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<sup>28</sup> *A Study On Status Of Social Inclusion, Livelihood And Violence Against Disabled Women Of Nepal*, Neeti Aryal, Nepal Disabled Women Association, 2007

<sup>29</sup> Ibid Note 8; *Prevalence of Childhood and Adolescent Disabilities in Rural Nepal*, S. Sauvey, D. Osrin, D.S. Manandhar, A.M. Costello and S. Wirz, December 20, 2004

<sup>30</sup> *Situational Analysis on Disability in Nepal*, New Era, National Planning Commission Secretariat & UNICEF, 2002

percent by neighbors. Neglect in health care has been mainly attributed to the lack of persons who could accompany WWDs and financial constraints.<sup>31</sup>

Reproductive health rights are largely not considered in the instances of WWDs due to the prescription of asexual image by the society. Studies have revealed that 20% of disabled women experience irregular menstrual cycles. Fifteen percent of WWDs had not received any information about their menstruation period. They were not taught about sanitation and care during this period. 45 percent of WWDs were found to be facing different kinds of reproductive health problem.<sup>32</sup>

40 percent of WWDs did not have any information about contraceptives, this included married women too. Of the 12% of married women 63 % had never used any contraceptives. Of the women who used contraceptives, 75 % used pills, while the remaining relied on natural methods to prevent pregnancy.<sup>33</sup>

Of the total married respondents, only 20% had become pregnant. 50% of pregnant women did not receive any basic health care services and other facilities at home required for pregnant women. They did not have regular health check ups, neither did they could get extra nutritional food. They were not also spared from regular household chores during their pregnancy.<sup>34</sup>

Research shows that 55 % of WWDs delivered their child at home, without proper medical assistance. 50% of WWDs expressed not getting appropriate care and medication after delivering the child.<sup>35</sup>

While the above-mentioned figures were collated on the basis of small samples from both urban and rural settings, other studies have cited concerns that WWDs from rural areas experience greater problems relating to health care as opposed to their urban counterparts due to lack inadequate access to information, healthcare facilities and rehabilitation services in remote areas.<sup>36</sup>

- **Discrimination in right to citizenship and therefore right to property**

There exists no apparent discrimination under the law relating to citizenship rights of persons with disabilities, however in practice parents often do not apply for citizenship identity for children with disabilities to avoid allowing them rights within the family in particular with regard to inheritance of property. This is particularly true of women with

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<sup>31</sup> *A Study On Status Of Social Inclusion, Livelihood And Violence Against Disabled Women Of Nepal*, Neeti Aryal, Nepal Disabled Women Association, 2007

<sup>32</sup> Ibid

<sup>33</sup> Id

<sup>34</sup> Id

<sup>35</sup> Id

<sup>36</sup> *Human Rights in Nepal: A Status Report 2003*, NHRC

disabilities who are doubly discriminated due to patriarchal norms in the society preferring inheritance by male children.

- **Discrimination in education, employment and livelihood options**

In workplaces beyond the discrimination in being offered jobs below their levels of capacity, WWDs are often victims of sexual harassment. Their vulnerability being increased by their disabilities and the lack of social support, taking action against such forms of violence is difficult.

Women being both economically weak as well as being disadvantaged in accessing resources such as education compared to their male counter-parts are often marginalized even within the community of PWDs. Literacy rate was considerably lower for females than males, with 77.7% of the females and 59.6% of the males having no education.<sup>37</sup> The report on the Implementation Status of Existing Laws, Acts, Rule and Facilities made for the Development, Promotion and Protection of People with Disabilities by National Human Rights Commission resulting from a study conducted between 2005 – 2007 states that 46.61% of persons with disabilities are girls. 41.72% of the total number of students with disabilities at primary level of education were reported to be girls. However, out of the total number of scholarships provided to children with disabilities only 13% has been allowed for girl children. Lack awareness and information dissemination regarding available programmes and policies for persons with disabilities are some of the root causes for low access to resources. Further due to lack of security parents are often reluctant to send girls with disabilities outside their homes and even to schools for fear of rape and harassment. General lack of facilities for education of persons with disabilities affects girls in a disproportionate manner. There have been little attempts to introduce incentive oriented policies for education or to ensure security of girls with disabilities by school authorities in Nepal.

### **Government Initiatives**

- **Ratification of CRPD**

The Convention on the Rights of Persons with Disabilities (CRPD) has been ratified by the Government of Nepal on 27<sup>th</sup> December 2009.

- **Interim Constitution**

Article 33 of the Interim Constitution of 2007 vests responsibilities in the state amongst others *“to carry out an inclusive, democratic and progressive restructuring of the State*

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<sup>37</sup> *Situational Analysis on Disability in Nepal*, New Era, National Planning Commission Secretariat & UNICEF, 2002

*by eliminating its existing form of centralized and unitary structure in order to address the problems related to women, Dalits, indigenous tribes [Adivasi Janajati], Madhesi, oppressed and minority communities and other disadvantaged groups, by eliminating class, caste, language, gender, cultural, religious and regional discrimination”. It further requires the State to “to enable Madhesi, Dalits, indigenous ethnic groups[Adivasi Janajati], women, labourers, farmers, the physically impaired, disadvantaged classes and disadvantaged regions to participate in all organs of the State structure on the basis of proportional inclusion”.*

Article 35 on State Policies, Clause 9 requires the State to pursue a policy of making special provisions for the protection and welfare of single women, orphans, children, the helpless, the aged, disabled, incapacitated persons etc. Clause 14 in further reiteration of the requirements of Clause 9 provides for positive discrimination in policy making for the benefit of persons with disabilities amongst other groups mentioned above. Finally Clause 17 requires the State to pursue a policy of legislative reform making allowances for the benefit of incapacitated women amongst others such as aged and unemployed.

- **The Disabled Persons (Protection and Welfare) Act, 1982 and Disabled Persons (Protection and Welfare) Rules, 1994**

The Disabled Persons (Protection and Welfare) Act, 1982 was the first law to define "disabilities" in Nepal. The Disabled Persons (Protection and Welfare) Rules, 1994, was enacted as a delegated legislation by His Majesty's Government to implement the main objectives of the DPWA. They provide for the following main facilities:

- Exemption of fee in educational institutions<sup>38</sup>
- Free education for two children of each disabled person.<sup>39</sup>
- A 5 % reservation of seats with free education in technical and vocational training programmes run by Government of Nepal or semi-governmental institutions.<sup>40</sup>
- Free medical check ups in government hospitals.<sup>41</sup>
- At least two free beds reserved for treatment of PWDs in every government hospital having more than fifty beds.<sup>42</sup>
- Priority in government or semi-government jobs.<sup>43</sup>
- Free legal aid.<sup>44</sup>
- Rights to equality in all matters and rights to live with dignity<sup>45</sup>

- **Provisions under other laws**

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<sup>38</sup> Sec 6 (1), Disabled Persons (Protection and Welfare) Act, 1982

<sup>39</sup> Rule 15 (2), Disabled Persons (Protection and Welfare) Rules, 1994

<sup>40</sup> Ibid, Rule 15 (5)

<sup>41</sup> Id, Rule 16 (1)

<sup>42</sup> Id, Rule 16 (2)

<sup>43</sup> Id, Rule 17 (1)

<sup>44</sup> Id

<sup>45</sup> Sec 5, Disabled Persons (Protection and Welfare) Act, 1982

There are an approximate number of 42 legislations that contain provisions relating to persons with disabilities in one form or the other. However only the following specifically mention women with disabilities:

- **Country Code 1963 (Muluki Ain, 2020):** Sec 3 (a) of Chapter 14 on Rape provides enhanced punishment by 5 yrs to persons convicted of raping women who are "*pregnant, incapacitated and/or with disabilities*".

In the Chapter on Marriage, Section 4 and 5 states that in instances where physical disabilities, seeing disabilities, hearing disabilities, speaking disabilities, mental disabilities are not disclosed at the time of marriage such marriages can be voidable on the aforementioned grounds by the opposite party with the imposition of Rs. 500 as penalty on the person accused of causing fraud. These provisions apply for men and women.

Section 9 of the Chapter, entitles a man to get enter into a second marriage if his wife has been rendered blind, physically or mentally disabled.

- **Local Self Governance Act, 1999 (2055):** Section 28 (k), Section 96 (j) and Section 189 (f) requires the Village Development Committee, Municipality and District Development Committees to prepare and maintain data and statistics on persons with disabilities amongst other groups. It also requires them to work for the protection of orphaned children, incapacitated women, aged persons, persons with disabilities and removal of discriminatory cultural practices from society.

- **Disabled Service National Policy 1996 (2053):** conducting disability prevention programmes such as safe motherhood, nutrition, imposition of proper rules to stop or minimise road traffic accidents etc.

- **Budgetary provisions**

The annual budget presented by the Finance Minister on 13<sup>th</sup> July 2009 announced the execution of special programmes for education, health, employment and empowerment of several identified marginalized groups including persons with disability, with high priority.<sup>46</sup>

In addition along with the expansion of Child Development Centres for enhancing access to education for marginalized children, special programmes were scheduled to be launched for persons with disabilities along with other marginalized groups.<sup>47</sup>

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<sup>46</sup> Poverty Alleviation and Inclusive Programme, Budget 2009 – 2010, Government of Nepal

<sup>47</sup> Education and Fundamental Right of People, Budget 2009 – 2010, Government of Nepal

- **3 yrs Interim Plan**

Chapter 8 on Gender mainstreaming and inclusivity covers a substantial portion on programmes for persons with disabilities. It cites the lack of a forum for adjudication in protection of rights of persons with disabilities, the lack of a specific law or policy protecting rights of employment for the aforesaid group of persons, lack of disability friendly infrastructure, lack of policy relating to governmental communication or official communication by the government for all categories of disabilities, lack of environment for education of all categories of persons with disabilities, lack of special programmes and measures for rehabilitation and empowerment of persons with disabilities or supporting materials by the government.

The plan proposes the removal of discriminatory provisions, creation of disabled friendly infrastructure, co-ordination and establishment of co-operation between governmental and non-governmental agencies at all level of the state towards empowerment of disabled persons, adoption of policy for mainstreaming rights and interests of persons with disabilities, reservation in civil service, ensuring access in education, information and communication, establishment of specific dedicated departments for the benefit of persons with disabilities at all service providing organizations of the Government, initiation of programmes for empowering persons with disabilities, facilitation of easy and speedy access to communication of information, initiation of specific sports and games for the health benefits and motivation of PWDs, organizations run by PWDs shall be empowered, funds to be created at every VDC for the disbursement of disability allowances.

While the Plan also adopts several programmes relating to education, employment, accessibility in infrastructure etc for PWDs, the only mention of specific initiatives targetted towards women with disabilities relate to the health and social security programmes, development of leadership skills and training in reproductive health and awareness programmes.<sup>48</sup>

- **Other Initiatives**

The following other initiatives have been adopted:

- A Disability Service National Coordination Committee has been set up with the adoption of the National Policy and Action Plan, 2007
- The decision in the case of *Prakashmani Sharma and Tek Tamrakar vs. MoWCSW and the Council of Ministers*<sup>49</sup>, which was filed for the protection of rights to easy access and enjoyment of facilities for person with disabilities and little people in the public spaces, and in particular to demand for creation of accountability and establishment of a mechanism for the implementation of the existing laws, saw the issuance of a directive by the court to the respondents for the formation of a Committee under the co-ordination of Government

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<sup>48</sup> 3 Years Interim Plan 2064/ 65 – 2066/67, Government of Nepal.

<sup>49</sup> Writ No. 3564/2063 decided on 8<sup>th</sup> May 2007 (2064/1/25)

- representatives and consisting of representatives of organizations working in the field of disability including experts. The Committee was vested with the responsibility of creating a plan and policy for protection of rights of persons with disabilities and the submission of progress reports to the Supreme Court in periods of 6 months each.
- The case of *Prakash Mani Sharma for Pro Public vs. Office of Prime Minister and Council of Ministers, Ministry for Education and Sports, Ministry for Women, Children and Social Welfare*,<sup>50</sup> was filed seeking protection of the right to education under Sec 5 (1) and 9 (3) of the Disabled Persons (Protection and Welfare) Act 2039 BS, the implementation of the existing law through a substantive approach recognizing the special and specific needs of persons with hearing disabilities, seeking facilities such as sign language as medium of communication in schools and universities, and adequate resources for study. In this case the court issued mandamus for the formulation of a plan of action should be at the earliest, the addressal of issues mentioned from the current session of school and universities itself, the employments of teachers trained in sign language in the schools and universities, provisions of materials for study at the earliest and training persons who are capable of communicating in sign language as teachers.
  - Similarly the case of *Shudarson Subedi, President of Disabled Persons' Human Right Center (DHRC) vs. HMG, Ministry of Education*,<sup>51</sup> sought the implementation of provisions under the Disabled Persons (Protection and Welfare) Act 2039 BS allowing for free education for all persons with disabilities. The court issued directives to the Government to ensure implementation of the provisions.

### **Gaps and weaknesses**

- **Lack of legal framework protecting right to equality and right against non-discrimination**

The Interim Constitution despite being recently formulated and carrying a message of inclusivity does not explicitly prescribe disability as a ground for non-discrimination nor does it provide exclusive recognition for persons with disabilities in allowing affirmative action or other temporary measures for women with disabilities such as reservations mandated by law. The current Interim Constitution does not provide for equal opportunity and there exists no mechanism to ensure the same.

- **Formal recognition of disabilities under law resulting in discrimination against women with disabilities.**

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<sup>50</sup> Writ No. 0283/2063 BS

<sup>51</sup> Writ No.: 3586 of 2057, decided on 28 Kartik, 2060 B.S.

Most of the legal provisions allowing for special services or judgements establishing implementation mechanisms for legal provisions consider persons with disabilities as a homogenous group negating the existence of differences not only on the basis of forms of disabilities but also on the basis of sex. They therefore do not take into account the realities of lack in access or lack of awareness amongst women with disabilities.

In addition the language in the existing provisions state that the government "may" undertake initiatives as opposed to the usage of "shall" which could signify mandatory action. This has often been cited to the reason for non-implementation of provisions under the law.

- **Discriminatory language**

In instances where forms of disabilities have been mentioned under the laws, the language and terminologies remain largely degrading and discriminatory. E.g. use of terms such as "lulo" "kunjo" "lato" etc.

- **Lack of basic reliable data relating to persons with disabilities**

Despite provisions under the Disabled Persons (Protection and Welfare) Act, and the Local Self Government Act, requiring bodies such as Village and District Development Committees (VDCs) to maintain statistics none are easily available. Neither are they available with the Ministry of Local Development or the Ministry of Women, Children and Social Welfare which serve as line ministries (nodal agencies) for the VDCs and the issue of disabilities respectively. The National Census of 2001 which was first time when the National Census addressed issues relating to persons with disabilities, is often cited for authenticity in figures though it has been rejected in spirit by the community of persons with disabilities for having failed to account for persons with moderate or mild disabilities.

- **Lack of disaggregated data on the basis of sex and disability in implementation of existing provisions.**

Despite legal provisions extending protection against rape of women with disabilities, due to existent social stigma and fear of further ostracisation cases of gender-related offences against women with disabilities are mostly not reported. There exists no official disaggregated data regarding the number of cases reported by women with disabilities which in turn result in lack of initiatives for establishing support mechanisms such as victim compensation and victim protection systems. Women with disabilities and parents of girls with disabilities are therefore deterred from pursuing legal action.

- **Failure in addressing discrimination on the basis of cultural and traditional practices.**

The existing laws and legal provisions relating to rights of PWDs fail to address discrimination on the basis of cultural and traditional practices and prejudices. Since such practices and prejudices are most often biased against women in Nepalese society, WWDs are disproportionately affected.

- **Lack of legal sanctions leading to indirect discrimination**

While laws relating to marriage do not explicitly deny women with disabilities the right to marry and build a family, the lack of an explicit guarantee affects them disproportionately due to existing social bias. There are also no specific provisions relating to guardianship or care of children with disabilities in instances of divorce or separation of parents under the law. The general provision allowing custody of children below 16 yrs to all mothers<sup>52</sup> apply in instances of children with disabilities as well placing disproportionate burden on women both physically as well as economically thereby affecting the child's well-being.

- **Non-implementation of judgements, laws and policies**

Section 9 of the Chapter on Marriage under the Country Code (mentioned under Government Initiatives) being entirely discriminatory towards women with disabilities, entitles a man to enter into a second marriage if his wife has been rendered blind, physically or mentally disabled. A Public Interest Litigation challenging Sec 9 was filed by Forum for Women Law and Development<sup>53</sup> challenging the said provision on the ground of discrimination in which the court issued directives to the government to amend the provisions. The provisions however continues to exist with little effort being witnessed for its amendment.

- **Lack of mechanisms or ombudsmen to promote or protect rights of persons with disabilities.**

There exists no specific body or mechanism to consider issues of persons with disabilities. The Ministry of Women, Children and Social Welfare is considered to be the line ministry for all legislative purposes relating to the PWDs. The National Women's Commission which is a statutory body (not constitutionally mandated) does not concern itself specifically with issues relating to women with disabilities. The parent statute for this body, The National Women's Commission Act, also does not mention women with disabilities within its mandate. Both the NWC and the Ministry are allocated finance through the annual budget under gender and social empowerment to consider issues relating to gender, however none of them allocate any budget to address issues of women with disabilities in particular.

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<sup>52</sup> Mulki Ain chapter on "Husband and Wife", No. 3(1)

<sup>53</sup> *Meera Dhungana & Sapana Pradhan Malla v. Government of Nepal* (Citation)

- **Lack of representation of WWDs in decision-making bodies**

Representation of Women with Disabilities in decision-making bodies is rare and is not mandated by law. Currently two members of the Constituent Assembly are persons with disabilities, one being a woman with disability. However their representation was ensured on the basis of their prior involvement with political parties and not on the basis of express stipulation in the Interim Constitution. The Interim Constitution allows for proportional representation from "other categories" which may or may not include persons with disabilities. Neither the constitution nor any other law mandates minimum participation of persons or women with disabilities in any other decision making body. Though the National Disabled Co-ordination Committee set up by the Ministry of Women, Children and Social Welfare both at the national and district levels allow for women with disabilities to be present as members, it is not statutorily mandated and does not stipulate minimum representation.

### **Recommendations**

- Collection and updating of dis-aggregated data and statistics on women with disabilities.
- Substantive implementation of existing laws, regulations and policies relating to disabilities within the country through a gendered approach.
- Representation of women with disabilities within the total percentage of representation for women in the Parliament, to be guaranteed under the forthcoming Constitution.
- Mandatory representation of women with disabilities in high level decision making bodies and in particular committees established both temporary and permanent in nature for the implementation of laws and policies within the country.
- Establishment of secured rehabilitation centres and shelter homes for women with disabilities throughout the country.
- Justiciable distribution of disability allowances keeping gender requirements and substantive need for equality in consideration.
- Reservation in employment and creation of specific employment opportunities for women with disabilities.
- Mandatory special provisions and facilities protecting reproductive health rights for women with disabilities e.g. special delivery beds, cabins etc. to be ensured in both government and private hospitals and nursing homes in addition to general provision of services such as sign language interpreters, ramps etc.
- Infrastructure at all government establishments should be disabled friendly and efforts should be made to mandate the same in private owned establishments for public usage e.g. hospitals, banks etc.
- Laws should be formulated enabling easy access of resources such as books and information for persons with disabilities.

- High-level initiatives for ending violence against women should consider specific circumstances relating to women with disabilities.

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# **DRAFT CHAPTER ON DISABILITY RIGHTS IN THE CAMBODIA SHADOW REPORT TO THE CEDAW COMMITTEE 2009**

## *General status of women with disabilities*

According to the Ministry of Social Affairs a total of 4.7 percent persons are disabled and a rough estimate of women's with disabilities who face difficulties. Women with disabilities living in impoverished conditions because of poverty and discrimination against them. Disability results in women having limited access to education and job opportunities.

According to the report by the disability network, women with disabilities are subject to rape, sexual abuse and mental and psychological abuse. Women with disabilities who are sexually abused do not have access to justice because they have no awareness of their rights and recourse to justice. Women with disabilities are stigmatized and have little opportunity for public participation. Women with disabilities have little opportunity for employment.

The Cambodian Code for women or Chhab Srey (talk softly, walk quietly, respect men) and Cambodian culture help to further subordinate women with disabilities. They therefore think of disability as part of their destiny.

Due to discrimination, violence and lack of access to education women with disabilities are marginalized from social development in Cambodia.

## **Work Done by the Government**

- **National Strategic Plan of the government in 2009 includes the problems of persons with disabilities especially women with disabilities.**
- **The Disability Law of 2009**
- **National Action Plan also has a provision regarding landmine victims and is also passed**
- **Land Mine Removal Bill 2009**
- **Policy on Capacity Strengthening and vocational strengthening for women with disabilities**
- **Ministry of women's affairs is also engaged in intervention on work with disabilities and to broaden access to education for children with disabilities.**

## **Civil Society Action**

**Disability organizations network with Gender and Development Network (GAD). Women with disabilities are integrated into GAD's work.**

### **Recommendations:**

- **Women with disabilities must enjoy equal rights with all men and women.**
- **Women with disabilities must not be subject to discrimination due to their gender or disability status.**
- **The government must develop best strategies to prioritize access to education, employment, public life, and inclusive participation in every development and poverty alleviation programs in Cambodia.**
- **Violence and sexual abuse against women and girls with disabilities must be addressed through better law enforcement and access to justice for women and girls with disabilities.**
- **The government must ratify the CRPD without delay.**
- **Cambodia's obligations under CEDAW General Recommendations 18 and 24 must be fulfilled.**

## Appendix 3: Participants

### Nepal

The participants had been invited from the following categories:

1. Organisations of Persons with Disabilities
2. Women with Disabilities
3. Parents' organisations of children with disabilities
4. Medical Fraternity and Rehabilitation Centres
5. Children's Organisations
6. Women's Organisations
7. Human Rights Organisations
8. Legal Intervenors
9. Constituent Assembly Members
10. International Organisations
11. Representatives of the Media

Sr. No.	Name	Organisation	Contact Details
1	Usha Silwal		9841466099
2	Teknath Neupani	Akhil Nepal Krantikari Apanga Sang	9841582727
3	Chintamani Poudel	National Federation of Disabled –Nepal – Regional Representative	9857831326
4	Harka Bahadur Bom	National Federation of Disabled -Nepal – Regional Representative (Far West)	9799508157
5	Rajani Thapa	Apanga Seva Kendra	9841756691
6.	Sarita Chhetri	Hospital and Rehabilitation Centre for Disabled Children	9841352236
7	Netra Bahadur Deuga	CBR National Network Nepal	9841378882
8	Rama Karki	SOS Children's Village, Jorpati	9841242532
9.	Ratna Sobha Maharjan	SOS Children's Village	9841760854
10	Saraswati Aryal	SOS Children's Village	9841135497
11	Uma Poudel	Kathmandu Association for the	9841541490

		Deaf	
12	Kumar Regmi	Nepal Association of Deaf and Hard of Hearing	9841506740 (SMS only)
13	Sarita Kharel	Nepal Disabled Women Association	9845072525
14	Ramesh Lal Shrestha	National Federation of Deaf and Hard of Hearing	9841290233
15	Laxmi Devkotta	National Federation of Deaf and Hard of Hearing	9841352966
16	Shanti Nakarmi	National Association of the Physical Disabled – Nepal	01 555 5928
17	Deepa Lamichhane	National Federation of Disabled -Nepal	9848081640
18	Ishwor Raila	National Federation of Disabled -Nepal	9841311417
19	Dr. Anil Shrestha	Nepal Orthopedic Hospital	9851048373
20	Anu Lohani	Forum for Women Law and Development	4242683
21	Tara Dhakal	Nepal Ekakrit Netrahin Bikash Sang	4355873
22	Jagadish Prasad Adhikari	Disabled Human Rights Centre – Nepal	9851074661
23	Yedunath Adhikari	National Federation of Disabled Nepal –Jhapa	9842634135
24	Subarna Kesari	Sunagava	9841399903
25	Shila Thapa	Down's Syndrome Association of Nepal	9851092250
26	Ram Shrestha	Parent's Association For Mentally Retarded	9841828611
27	Inesh Shrestha	National Federation of Disabled Nepal – Regional Representative - Central District	9845027634
28	Netra Bahadur Basnet	Hospital and Rehabilitation Centre for Disabled Children	9841411032
29	Kasi Ram Maharjan	Nepal Association for the Welfare of the Blind	9841438118
30	Lok Nath Dhakal	Dwarf Association	01 2331543
31	Mina Pathak	Nepal Disabled Women's Association	9841695808
32	Kamala Budathoki	Nepal Disbaled Women's Association	9841827221
33	Bhima Khatiwada	Nepal Disabled Women's Association (Morang)	9842064826
34	Meena Paudel	NWWD	9841853521
35	Deepak Shakya	Kathmandu Association of	9841441454

		Deaf	
36	Kumar Thapa	Nepal Association for the Welfare of the Blind	9841475912
37	Jeewan Bdr. Khadka	Nepal Stutter's Association	9841332761
38	Prakash Wagle	CBR Network	9856025314
39	Sundari Mishra	Dwarf Association	9841625968
40	Rama Dhakal	Nepal Disabled Women's Association	9841300031
42	Laxmi Maharjan	Nepal Disabled Women's Association	9841758875
43	Rupak Gautam	Koshish	9851504122
44	Rita Mukhargi shah	Intellectual Disability Mother Association, Lalitpur	9841585094
45	Sita Shiwakoti		9841546092
46	Laxmi Prasad Paudel	Nepal Television Apangata Sarokar	9841378999
47	Narayani Thapa	Nepal Television Apangata Sarokar	9841745088
48	Prabhat Kiran Pradhan	Maryknoll Foundation Nepal	014425878/9851021609
49	Mukta Srivastav	TEWA	9841371227/015572654
50	Maiya Lamsal	National Federation of Disabled – Nepal – Regional Representative (Nabalparasi)	9804471085
51	Ram Piyari Karki(helper)	National Federation of Disabled – Nepal	9841813840
52	Rashmi Kharel	Forum for Women Law and Development	
53	Padma Acharya	Forum for Women Law and Development	014242683
54	Tika Dahal	Nepal Disabled Women's Association	9841257521
55	Renu Lohani	Disabled People's Organisation Denmark	
56	Srijana K.C.	Equal Access Nepal	9803277674
57	Krishna Prasad Bhattari	Hospital and Rehabilitation Centre for Disabled Children	9851034295
58	Sanjay Kumar Jha	Nepal Stutters' Association	9841403036
59	Kiran Shilpakar	Nepal Association for Physically Disabled –Nepal	9841394453
60	Meera Dhungana	Forum for Women Law and Development	9841318201
61	Sabin Shrestha	Forum for Women Law and Development	014266415

62	Laxman Prasad Gayali	Nepal Netrahin Sangh	9851098889/014721190
63	Ramesh Naulakha	Parents Association for Mentally Retarded	9851023674
64	Raghav Bir Joshi	Constituent Assembly Member	9851012827(sms)
65	Birendra Raj Pokhrel	National Federation of Disabled – Nepal	9851043399
66	Jagannath Lamichhane	Nepal Mental Health Foundation	9841483134
67	Chiranjibi Gauragain	Nepal Mental Health Foundation	9851029200
68	Maheshwor Ghimire	Disabled Human Rights Centre- Nepal	9851068425
69	Shudarshan Subedi	Disabled Human Rights Centre- Nepal	9851059360
70	Neera Adhikari	Nepal Association of Blind	9841413607
71	Indra Maya Gurung	Constituent Assembly Member	9741037935
72	Murari Kharel	National Human Rights Commission	9841286738
73	Narayan Sundar Shrestha	Association of the Welfare of Mentally Retarded	9851050251
74	Rajeswor Niraula	National Children's Organisation	9851055585
75	Basanti Shrestha	Legal Aid and Consultancy Centre	9841344629
76	Gauri Pradhan	National Human Rights Commission	9851024932
77	Yuvraj Dasnal	Disabled Human Rights Organisation	9841209952
78	Kalpana Bajracharya	National Federation of Deaf and Hard of Hearing	9841528014
79	Balram Mahato	Forum for Women Law and Development	9803403681
80	Umesh Khatiwada	National Mental Health Foundation	9851001611
81	Dr. Shanta Thapaliya	Legal Aid and Consultancy Centre	9851044725
82	Nilambar Acharya	Constituent Assenbly Member	9851089306
83	Sanjaya Bantawa	General Secretary, National Federation of Disabled Nepal	9851090732
84	Naina Kala Thapa	Chairperson, National Women's Commission	9841712146
85	Ang Dawa Sherpa	Constituent Assembly Member	9841395294
86	Jayanti Malla	Disabled Women's Federation	014242891

87	Rita Chettri	DWA	9841404268
88	Kaladhar Bhandari	Anera Swabiyu Central Disable Committee	9841755360
89	Raj Ghimire	Anera Swabiyu Central Disable Committee	9741029594
90	Som Dulal	Anera Swabiyu Central Disable Committee	9841559001
91	Laxmi Oli	Vimeshwor Apanga Sangh (Dolakha)	9744027141
92	Sunita Thapa	Nepal Apang Mahila Sangh	9841495055
93	Sangita Mayur	Shttrii Shakti	9803214621
94	Sharmila Rana	Balaju	
95	Urga Shrestha	Sustha Manasthiti Kalyan Sangh	014270766
96	Ramesh Pokhrel	Nepal Netrahin Sangh	9841577746
97	Yubaraj Katuwal	Nepal Children's Organisation	9841625936
98	Krishna Prasad Gajurel	National Federation of Disabled – Nepal	9841602381
99	Sarita Manandhar	Lawyer	9841279029
100	Shiva Bisangkhe	Alliance for Social Dialogue	014472807
101	Manju Sharma	National Federation of Disabled – Nepal	
102	Januka Regmi	Disabled Women's Federation	014428476
103	Radhika Gyawali	Disabled Women's Federation	014428476
104	Hari Thapa	NWAP	014299915
105	Prakash Mani Sharma	Pro Public	

## Bangladesh

### Participant list:

SL	NAME	ORGANIZATION	DISTRICT
1	Shirin Akhter	National Alliance of Disabled Peoples Organizations (NADPO)	Dhaka
2	Priti Ahona	Bangladesh Protibondhi Kalyan Samity (BPKS)	Dhaka
3	Lucky Akhtar	National Alliance of Disabled Peoples Organizations (NADPO)	Dhaka
4	Joly Kaosar	Social Assistance for the Rehabilitation of the Physically Vulnerable (SARPV)	Dhaka
5	Nasrin Akhter Jahan	SARPV	Dhaka
6	Rahila Akhtar	Bangladesh Trinomul Cormoshuchi Bhaban (BTCB)	Dhaka
7	Nupur Akhtar	BTCB	Dhaka
8	Mamatajuddin Milon	Disabled People's Organization of Chandpur	Chandpur
9	Shamean Kaosar	National Alliance of Disabled Peoples Organizations (NADPO)	Dhaka
10	Ishaque Mia	Bangladesh Protibondhi Kalyan Samity (BPKS)	Dhaka
11	Iftarkhar Hossain	Save the Children Sweden Denmark	Dhaka
12	Sumon Saha	DO	Dhaka
13	Probin Chakraborti	Protibondhi Shilpa Sanskritic Sangstha	Dhaka

14	Md. Rezaul Islam	Dept. of Women and Gender Studies	Dhaka
15	Mahbuba Zannat	The Daily Star, Newspaper	Dhaka
16	S. Haydar Ali	National Alliance of Disabled Peoples Organizations	Dhaka
17	Kamruzzaman Sohel	Jatio Protibondhi Unnayan Samity, Dhaka Cantonment	Dhaka
18	Shawkat Hossain	do	Dhaka
19	Md Azmal Hossain	Bangladesh Mahila Parishad	Dhaka
20	Kamrun Nahar	Human Development and Research Organization (HDRO)	Chandpur
21	Taskina Huq	Media Consultant of ORBIS	Dhaka
22	Shakhawat	Association for Rural Society	Dhaka
23	Irin Murnee	Caritas, PO, Malibagh	Dhaka
24	Jesmin Sultana	Bangladesh Supreme Court	Dhaka
25	Kazi Fahima Nuri	Student, Dhaka University	Dhaka
26	Nasima Akhtar	Badrunnesa Govt. School & College	Dhaka
27	Suoarna Roy Talukder	do	Dhaka
28	Shapla Jesmin	Titumir College	Dhaka
29	Suriya Akhtar	do	Dhaka
30	Jannatul Nayeem	do	Dhaka

31	Parul Begum	Shamsun nahar Hall, Dhaka University	Dhaka
32	Shara Sarkar	do	Dhaka
33	Dr. M. Anisuzzaman	Centre for Disability Development (CDD)	Dhaka
34	Syed Salauddin	Jatiya Trinodal Pritibondi Sangstha	Dhaka
35	Mahmuda Khatun	Bangladesh National Woman Lawyers' Association (BNWLA)	Dhaka
36	Khalifa Shamsunnahar	Bangladesh National Woman Lawyers' Association (BNWLA)	Dhaka
37	Abdul Bached	Executive Director Shokhipur Protibondhi Kalyan Samity	Tangail
38	Md. Rafiq	Shokhipur Protibondhi Kalyan Samity	Tangail
39	Rafiqul Islam	Protibondhi Punorbason Kalyan Samity	Satkhira
40	Abul Kalam Azad	D0	Satkhira
41	Ayub Nobi Mullah	Chief Executive Save the Planet and Disability (SPD)	Meherpur
42	Md. Mamun	Save the Planet and Disability (SPD)	Meherpur
43	Mongri Chak	Bandarban Disable Peoples' Organization To Development	Bandarban
44	Shaising Anng	do	Bandarban
45	Md. Atiqur Rahman	Tangal Protibondi Unnayan Sangstha	Tangail
46	Shamsul Kabir Chowdhury	Jatiya Trinodal Pritibondi Sangstha	Dhaka

47	Zakir Hossain	do	Dhaka
48	Md. Shamsul Alam	Association for Rural Society, Muhammadpur	Dhaka
49	Shamsun Nahar	do	Dhaka
50	Maksuda Parvin	Norshingdi Disabled People Organization to Development	Norshingdi
51	Mahmuda Begum	Executive Director Norshingdi Disabled People Organization to Development(NDPOD)	Norshingdi
52	Lavly Sultana	do	Norshingdi
53	Fatema Begum	do	Norshingdi
54	Murshida Yasmin	Bangladesh Protibondhi Kalyan Samity (BPKS)	Dhaka
55	Khademulla Chowdhury	Protibondhi Unnayan Kormoshuchi	Chittagong
56	Dipankar Chowdhury	Research and Education of the Visually Impaired People (REVIP)	Chittagong
57	Uma Rani	Protibondhi Shilpa Sankskritik Samaj Kollayan	Rayer Bazar
58	Shahnaz Parvin	NADPO	Dhaka
59	Md. Tahazzat Ali	Disabled peoples organization of Bogra	Bogra
60	Ahmed Latif	Pratibondhi Kallayan Samity	Tangail
61	Md. Shafiul Islam	Pratibondhi Kallayan Samity	Jessore
62	Md. Idris Ali	do	Jessore

63	Md. Arob Ali	Disabled People's Organization of Magura	Magura
64	Zarina Khatun	do	Magura
65	Bimal Kumar	Disabled People's Organization of Natore	Natore
66	Md. Al Amin Milon	Khulna Protibondi Shangstha(KPS)	Khulna
67	Nadimul Haque Mandal	Handicap International	Dhaka
68	Lucky Roy	Dristy Protibondhi Unnayan Parishad	Rayer Bazar
69	Nazrul Islam	Bangladesh Andho Protibondhi Samity	Dhaka
70	Lalimun Thang	Bandarban Disable Peoples' Organization To Development	Bandarban
71	Md. Abu Nayeem	Student, Dhaka University	Dhaka
72	Md. Zahidul Islam	do	Dhaka
73	Advocate Mansura Chowdhury	Vice-President, Centre for Women & Development	Dhaka
74	Gita Rani	Protibondhi Shilpa Sankskritik Samaj Kollayan	Rayer Bazar
75	Selina Ahmed	Project Co-ordinator, Save the Children Sweden-Denmark	Dhaka
76	Amirul Haque	Acid Survivors Foundation, Banani	Dhaka
77	Sumaiya Islam	Titumir College	Dhaka
78	Ferdows Wahid	Bangladesh Society for Disability	Dhaka
79	Md. Habibur Rahman	do	Dhaka

80	S.M Hafizur Rahman	Bangladesh Television (BTV)	Dhaka
81	Zahidul Alam	CDDS	Dhaka
82	Irin Hassan	Bangladesh Blind Mission	Dhaka
83	Biplab Kumar Sarkar	Faridpur Disable Peoples' Organization To Development	Faridpur
84	Tamanna Momin Khan	ABC Radio Reporter	Dhaka
85	Sheikh Arif Bulbul	Reporter, The New Nation	Dhaka
86	Fatema Rashid	Canadian International Development Agency	Dhaka
87	S.M. Selim Reza	Heed International	Dhaka
88	Rafeza Begum	Bangladesh National Woman Lawyers' Association (BNWLA)	Dhaka
89	Jahirul Islam	Women and Children Rights Organization	Lakshmipur
90	Abdul Mannan	Andho kollayan Samity	Hobiganj
91	Md. Swapan	NADPO	Dhaka
92	Kashinath Bishwas	Manager, Communica,	Dhaka
93	Umme Salma	BNWLA	Dhaka
94	Hasan Ahmed	Center for Services and Information on Disability (CSID)	Dhaka
95	Naba Kumar	Bangladesh Protibondhi Kallayan Samity (BPKS)	Dhaka
96	Lovely Khatun	do	Dhaka

97	Roxana Sharif	do	Dhaka
98	Md. Faysal Rahman	Protibondhi Unnayan Sangstha	Kushtia
99	Abdus Sattar	do	Kushtia
100	Advocate Shaheen Mamtaz	Bangladesh Supreme Court	Dhaka
101	Advocate Nigar Ferdous	Bangladesh Supreme Court	Dhaka
102.	Nazma Siddiqui	Professor, Dept. of Women and Gender Studies, DU	Dhaka
103.	A.S. Mahmud	Coordinator, BSAF	Dhaka
104.	Md. Dabir Uddin	Disabled Peoples' Welfare Society (DPWS), Manikganj	Manikganj
105.	Fazor Ali	DPWS, Manikganj	Manikganj
106.	Humayun Kabir	Producer, Bangladesh Radio	Dhaka
107.	Mashrek	Boishakhi TV	Dhaka
108.	Nurshad Yesmin	Dhaka University Student	Dhaka
109.	Alamin Hauladar	Dhaka College Student	Dhaka
110.	Aktanin Khair Tanin	BDPC	Dhaka
111.	Amran Hossain	The Daily Star Stuff Photographer	Dhaka
112.	Sonia Parvin	Advocate Dhaka Judge Court	Dhaka
113.	Md. Shahidullah	Monoherganj Upazila Disable Organization, ED	Monoherganj
114.	Muktirani Kormokar	Dristi Protibondhi Unnayan Parishad City Corporation	Dhaka

115.	Md. Abdus Sabur	Ddef, ED	Dhaka
116.	Monsora Hossain	Prothom Alo	Dhaka
117.	Seema Jahor	BNWLA	Dhaka
118.	Mary Rumi Halder	BPKS	Dhaka
119.	Ruhina Tasnin Anu	Shankochil	Dhaka
120.	Md. Sohel Rana Khondoker	BNWLA	Dhaka
121.	Porosh A. Rozario	Shankhochill	Dhaka
122.	Jahan Ara Haque	Secretary, BNWLA	Dhaka
123.	Hasina Rashid	BNWLA	Dhaka
124.	Salma Khan	President, Women for Women	Dhaka
125.	Md. Jewel	DDDS	Dhaka
126.	Badrul Mamun	WSMHAR	Dhaka
127.	Jorina Begum	Magura	Magura
128.	R. A. Rema	Shangbad	Dhaka
129.	Afroza Akhtar	Protibondhi Unnayan Shangtha	Dinajpur
130.	Md. Habibur Rahman	HDRO	Dhaka
131.	Nawshin Nusrat Hasan	Kormojibi Nari , Program Officer	Dhaka
132.	S.M. Shamsuzzoha	New Age, Reporter	Dhaka

	Sumon		
133.	Mr. Masum	Reporter	Dhaka
134.	M.M. Bushra	BNWLA	Dhaka
135.	Khaleda Sultana	BNWLA	Dhaka
136.	Fahima Nasrin	Vice President, BNWLA	Dhaka
137.	Towhida Khondoker	BNWLA	Dhaka
138.	Shiri Begum	BNWLA	Dhaka
139.	Shirin Begum	Drishti Protibondhi Sangstha	Tangail
140.	Ummay Habiba Liza	Do	Tangail
141.	Nory Begum	Do	Tangail
142.	Mr. Johir	Disabled Peoples Organization	Noakhali
143.	Md. Razaul Karim	Jamalpur D.P.O.D	Jamalpur
144.	Md Anwar Hossain	Drishti Protibondhi Unnayan Sangstha	Barishal
145.	Md. Sohail Molla	do	Barishal
146.	Baidiul Alom	do	Barishal
147.	Afahar Bokh	do	Barishal
148.	Mollah Abdul Malek	Khulna Protibondho Shongtha	Khulna

149.	Gazi Badshah Meya	Khulna Protibondho Shongtha	Khulna
150.	SS Mahmud	BPKS	Dhaka
151.	Azmal Hossain	BPKS	Dhaka
152.	Israt Jahan	BNWLA(lawyer)	Dhaka
153.	Kamrun Naher	BNWLA(lawyer)	Dhaka
154.	Mizamul Haque Bipol	Jugantar	Dhaka
155.	Obaidur Rahman	Country Representative, SCSD	Dhaka
156.	Chandan Coher	Steps Towards Development	Dhaka
157.	Niger Sultana	DEWAR	Dhaka
158.	Abdul Kader Summon	NADPO	Dhaka
159.	Hasna Begum	Supreme Court Of Bangladesh	Dhaka
160.	Md. Zahangir	Samaj Pariporton Kendra-P/C	Joypurhat
161.	Mr. Motahar	BTV	Dhaka
162.	Z.B. Keka	Channel-I	Dhaka
163.	Anwar Hossain	BBCS, Badda	Dhaka
164.	Ali Hasan	Bangladesh Radio	Dhaka
165.	Seema Akhtar	Eden College	Dhaka
166.	Rumana Haque	BNWLA, Advocate	Dhaka

167.	Fahmida Akhtar	BNWLA, Advocate	Dhaka
168.	Nila Shams	ANANNA	Dhaka
169.	Marufa Rahmany	D.U.	Dhaka
170.	Mahmuda Ferdoushi	Dhaka Court	Dhaka
171.	Shireen ahmed	BNWLA	Dhaka
172.	Johirul islam	Didabled Peoples Organization	Lokkhipur
173.	Abdul Mannan Haque	Disabled People's Organization	Haziganj
174.	Monika Siddiquee	SAMATA-DD	Dhaka
175.	Md. Asadullah	BNFD	Dhaka
176.	Robaul Alam	R TV	Dhaka
177.	Suraya Munni	R TV Reporter	Dhaka
178.	Md. Shafiullah	Social Worker, Centre for Rehabilitation of Poor	Dhaka
179.	Manwer Hossain	B TV , News Presenter	Dhaka
180.	Advocate Jobaida Pervin	Supreme Court of Bangladesh	Dhaka
181.	Shamima Chowdhury	Dhaka bar, Advocate	Dhaka
182.	Fawzia Karim Firoze	President, BNWLA	Dhaka
183.	Sumayia Delwar	BNWLA	Dhaka
184.	Md. Mamonor Rashid	Bangladesh Association for Small Children	Dhaka

185.	Tahrin Rahman	University of Ottawa	Canada
186.	Sumaiya Khair	Dept. of Law, Professor & Chairperson, Dhaka University	Dhaka
187.	Dr, Shahnaz Huda	Professor, Dept of Law, Dhaka University	Dhaka
188.	Sabbir Ahamed	Groupe Development	Kolkata, India
189.	Rehnuma Sultana	Student member, BNWLA	Dhaka
190.	Wahida Begum	Member, BNWLA	Dhaka
191.	Salma Ali	ED, BNWLA	Dhaka
192.	Adv. Kohinoor Begum	Deputy Director, BNWLA	Dhaka
193.	Nazmun Zaman	BNWLA	Dhaka
194.	Advocate Amirul Haque	Acid Survivors Foundation	Dhaka
195.	Lutfar Rahman	Upozilla Protibondhi Kallayan Samity	Shakhipur
196.	Umme Kulsum Ranjona	National Council of Disable Women	Dhaka
197.	Firoza Khatun Sima	do	Dhaka
198.	Hezzy Smith	Harvard Project on Disability	Dhaka
199.	Farida Begum	Society for Human Rights and Education	Dhaka
200.	Mahua Paul	Access Bangladesh	Savar
201	Albert Mollah	do	Savar
202	Sabrina Khan	Shanto-Marium University	Dhaka

203	Md. Kausar	Asiatic MCL	Dhaka
204	Anwar Kamal	Child Sight Foundation	Dhaka
205	Michael Szporluk	Program Officer, Disability Rights Fund	USA
206	Rangita deSilva deAlwis	Wellesley Centres for Women	USA
207	Hedayetullah Al Mamoon	DG, Department of Social Services	Dhaka
208	Nasreen Begum	Joint Secretary, Ministry of Law, Justice and Parliamentary Affairs	Dhaka

## Cambodia

### List of the Participations of the Seminar

On "Building Bridges between Rights Movement to Advance a Common Platform

Of Action for Women and Children With Disabilities”

On 06-07 in May, 2009 at LA PARRANDA Residence and Hotel

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No	Name and Surname	Position	Organization
1	Chum Chamroeun	Staff	Angkor Association on Disabilities (ADD)
2	Hao Srey Ven	Staff	Angkor Association on Disabilities (ADD)
3	Sam Sarong	Staff	Angkor Association on Disabilities (ADD)
4	Nor Yunsa	Staff	Angkor Association on Disabilities (ADD)
5	Ou Sophanna	Staff	Angkor Association on Disabilities (ADD)
6	Chea Sovanna	Staff	Angkor Association on Disabilities (ADD)
7	Dy Bellin	Staff	Angkor Association on Disabilities (ADD)
8	Sem Sovantha	Executive Director	Angkor Association on Disabilities (ADD)
9	Noun Ratha	Staff	Angkor Association on Disabilities (ADD)
10	Teng Dara	Staff	Angkor Association on Disabilities (ADD)
11	Sar Davy	Project Coordinator	Project against Domestic Violence (PADV)
12	Kim Kanha		Law University
13	Mech Navy	General Coordinator	Oxfam GB
14	Pen Sophany	Government official	Ministry of Education Youth And Sports
15	Chey Sopini	Executive Director	Strey Khmer (SKO)
16	Tann Nearin	Advocacy Manager	Cambodian Women Crisis Center (CWCC)

17	Sat Salim	Department Deputy Director	Ministry of Woman affair
18	Reach Saeun	Agency's Staff	Kompong Spue Disabled Women Forum (KSDWF)
19	Mek Salout	Executive Director	Kompong Spue Disabled Women Forum (KSDWF)
20	Tep Chanbora	Advocacy Manager	Gender And Development for Cambodia GAD/C
21	Tep Ratha	Teacher	Krousa Thmey (KT)
22	Marry Scott	Country Director	The Cambodia Trust
23	Ly Huong	Staff	Cambodian Human Rights and Development Association (ADHOC)
24	Ly Samnang	Program Manager	Non-Governmental Organization/Convention on the Rights of Children (NGOCRC)
25	Chum Kalim	Deputy Director	Ministry of Labour and Vocational Training (MOLVT)
26	Ven Savoeun	Shelter Manager	Healthcare Center for Children (HCC)
27	Mom Kong	Executive Director	Cambodia Movement for Health (CMH)
28	Moch Malis	Executive Director	Khmer Disabled Women and Children Development Forum (KDWCDF)
29	Koa Srey	Staff	Khmer Disabled Women and Children Development Forum (KDWCDF)
30	Sam srey pout	Staff	Khmer Disabled Women and Children Development Forum (KDWCDF)
31	Prak Tepvichet	Rights and Inclusion Program Manager	Handicap International Belgium (HIB)
32	Chhoy Sokhon	Tem Leader	The Cambodia Trust
33	Cathy Mconnell	Manager	The Cambodia Trust
34	Sok dara	Lawyer	Cambodian Defenders Project (CDP)
35	My Sambath	Gender Expert	PAZ DESARROLLO (PYD)
36	Man Saya	Staff	Khmer Disabled Women and Children Development Forum (KDWCDF)

37	Heng Chantey	Advocacy Program officer and Rights Prevention	Cambodian Disabled People's Organization (CDPO)
38	Laura Portaro	Project coordinator	United Nation Development Fund for Women (Unifem)
39	Prok Vanny	National Coordinator, CEDAW SEAP	United Nation Development Fund for Women (Unifem)
40	Pech Polet	Deputy Director	Meakea Strey (MSO)
41	Srim Sreypin	Project Officer	Meakea Strey (MSO)
42	Arun Reaksmeay	Executive Director	Meakea Strey (MSO)
43	Siek Sina	Administrator	Meakea Strey (MSO)
44	Sun monntha	Finance Manager	Meakea Strey (MSO)
45	Cheng Chandy	Program Officer	Handicap International Belgium (HIB)

## **List of Participants of the Public Forum**

on "The New Law on Disabilities"

Prey Beng Village, Skus Commune, Samroung Torng District,  
Kampong Speu Province  
Cambodia

*November 20, 2009*

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<b>No</b>	<b>Name and Surname</b>	<b>Village/Commune / Organization</b>
1	Thoang Nhem	Tropang Preah Village, Kandol doum Commune
2	Kao Seun	Tropang Preah Village, Kandol doum Commune
3	Sun Sen	Sombour village, Chbarmon Commune
4	Sem Sun	Sombour village, Chbarmon Commune
5	Long Mom	Prey Sleuk Village, Chbarmon Commune
6	Ouk Soaphea	Prey Sleuk Village, Chbarmon Commune
7	Preab Sokhan	Thirk Lech village, Skus Commune
8	Chheum Seun	Vil Langchok Village, Skus Commune
9	Ten Heun	Komlab Village, Skus Commune

10	Teb Heang	Svay Dongkum Village, Skus Commune
11	Jun Sovan	Prey Beng Village, Skus Commune
12	Oun Phally	Prey Beng Village, Skus Commune
13	Pech Channi	Prey Beng Village, Skus Commune
14	Men Sophal	Prey Beng Village, Skus Commune
15	Chheng Savan	Prey Beng Village, Skus Commune
16	Keo Heng	Staff of Svay Krovan
17	Svay Sokhun	Staff of Svay krovan
18	Choun Chnty	Samroung Torng District, Skus Commune
19	Chhoun Sav	Samroung Torng District, Skus Commune
20	Hom Chen	Prey Beng Village, Skus Commune
21	Pat Somnang	Prey Beng Village, Skus Commune
22	Yen Sabeun	Thlok dorngka Village, Skus Commune
23	Prom Neun	Thlok dorngka Village, Skus Commune
24	Ten Touch	Staff of Development
25	Jen Pao	Staff of Disable Development
26	Svay Pech	Staff of Disable Development
27	Pen Komsot	Staff of Disable Development
28	Leng Sokhun	Prey Beng Village, Skus Commune
29	Reach Saim	Prey Beng Village, Skus Commune
30	Mek Salout	Kampong Speu Disabled Women Forum (KSDWF)
31	Phan Pho	Representative of Kampong Speu Disabled Organization
32	Kvay Houn	Kampong Speu Disabled Women Forum (KSDWF)
33	Vorng Veun	Voil Commune
34	Keo Phan	Rorka thom Commune
35	Brak Sopho	Consolidation of Svay Krovan
36	Heang Phalla	Prey Beng Village, Skus Commune
37	Phoung Sinoun	Krang Pol Tep

38	Phan Sopheap	Krom Thmey Village
39	Em Sokheun	Kampong Speu Disabled Women Forum (KSDWF)
40	Paiy Chhen	Kampong Speu Disabled Women Forum (KSDWF)
41	Ran Sitha	Consolidation
42	Vann Chrel	Consolidation
43	Eum Somnang	Skus Consolidation
44	Yon Sovan	DPOS
45	Jo Dyoch	CDDF
46	Touch Vichea	CDDF
47	Choun Sok	Trach Chom Village, Soporteb Commune
48	Nhen Sothea	Samroung Torng District, Skus Commune
49	Pao Sopheara	Prey Beng Village, Skus Commune
50	Chea Vannak	Ounab Village, Krang Ompel Commune
51	Kheav Seila	Ornlornng Banteay Village, Krang Ompel Commune
52	Leng Sokhorn	Orng Village, Skus Commune
53	Kheav Tha	Ornlong snor Village, Skus Commune
54	Pech Sokhorn	Orng Village, Skus Commune
55	Phouk Srey	Prey Beng Village, Skus Commune
56	Mey Yern	Prey Chher Teal Village, Krang Ampel Commune
57	Nheb Bonneang	Prey Beng Village, Skus Commune
58	Korn Sen	Sombour Village, Skus Commune
59	Horng Ry	Tropang Sleuk Village, Skus Commune
60	Kean Touch	Svay krovann Village, Skus Commune
61	Sem Som	Sombour Village, Skus Commune
62	Sen Sa	Tropang Orng Village, Skus Commune
63	Seun Leakhna	Ousnor Village, Skus Commune

64	Sok Sarin	Skus Consolidation
65	Set Thet	Jerng Kdei Village, Skus Commune
66	Deu Chhork	Prey Chher Teal Village, krang Ompel Commune
67	Deu La	Prey Chher Teal Village, krang Ompel Commune