National Safe Abortion Policy

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His Majesty's Government
Ministry of Health
Department of Health Services
Family Health Division
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A Few Words

I believe a woman should have the right to make decisions concerning her own health. However in Nepal, as is true for most other countries of the developing world, women are rarely given the opportunity to voice their needs concerning health matters. A civilised society cannot allow this to continue. HMG Nepal is committed to addressing women's issues and furthermore improve the health status of women and their families. HMG's commitment is reflected through its numerous activities to decrease maternal mortality over the years and through a new programme that is currently being introduced.

The new programme, Comprehensive Abortion Care Services, is an additional powerful tool in addressing high maternal mortality. The programme is based on the National Safe Abortion Policy and Strategy 2002, which was developed in the context of the 11th Amendment of the *Muluki Ain,* 1959 (2020 BS), the basic legal code for the Kingdom of Nepal. This amendment reformed the previous restrictive abortion framework, which had prohibited abortion and characterised it as an offence against life. The revised framework allows for the termination of pregnancy up to 12 weeks of gestation for any woman; up to 18 weeks of gestation if the pregnancy results from rape or incest; and any time during pregnancy with the advice of a medical practitioner.

I anticipate that the policy and strategy document will ease the process of implementing Comprehensive Abortion Care services within the parameters of the liberalised abortion framework. As this is a new effort, we should prepare ourselves to face more challenges during the implementation process. These challenges should remind us to periodically review the provisions of the policy and strategy document in order to increase implementation effectiveness.

Finally, I would like to express my sincere gratitude to all those who were instrumental in advocating to reform the restrictive abortion law in Nepal and would like to especially extend my appreciation to the leadership of the Department of Health Services in the development of the policy and strategy document.

Mahendra Nath Aryal
Secretary
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Preface

The *Muluki Ain,* 1959, the basic legal code for the Kingdom of Nepal, without exception prohibited abortion. The *Muluki Ain* characterised abortion as an offence against life even if pregnancy threatened a women's life. Persistent advocacy efforts by the government, non-governmental organisations, the private sector, women's rights activists, the medical community and other stakeholders to reform the restrictive abortion framework has finally been rewarded. The parliament approved the 11th Amendment bill to the *Muluki Ain* on the 14th of March 2002 and on the 27th of September 2002 it achieved Act status after receiving the Royal Seal. For the first time in Nepal, abortion has been conditionally liberalised.

Abortion is now legal under the following conditions: up to 12 weeks for any woman; up to 18 weeks of gestation if the pregnancy results from rape or incest; and at any time during pregnancy, with the advice— if the life, physical or mental health of the mother are at risk or if the foetus is deformed—of a medical practitioner.

Liberalising the abortion law in itself is not the end of the legal process. The law has also required the concerned ministry to draft regulations and policy documents, which are essential for the implementation of the law. In this procedural chain, the National Safe Abortion Policy and Strategy 2002 was developed under the leadership of the Family Health Division (FHD) of Department of Health Services, Ministry of Health, His Majesty's Government of Nepal.

As a step to develop the National Safe Abortion Policy and Strategy, the FHD established a task force to lead the process of preparing the ground to introduce Comprehensive Abortion Care services throughout the country. The Abortion Task Force documented the lessons learned on the development of abortion programs from regional countries, other countries with similar experiences and solicited comments/views from national experts. Having received the National Safe Abortion Policy and Strategy from the Task Force, FHD presented this document to the National Reproductive Health Steering Committee, the national committee for adoption of reproductive health related documents. This document is now approved by the National Reproductive Health Steering Committee and is regarded as the National Safe Abortion Policy and Strategy.

I would like to express my sincere gratitude to the many committed individuals who have taken on the task to liberalise the abortion law in Nepal. I highly appreciate the leadership of the Family Health Division in the development of this policy and strategy document.

It is hoped that the policy document will provide a larger framework in the implementation of the Comprehensive Abortion Care services throughout the Kingdom of Nepal.

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Acknowledgements

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Likewise, all those who have been involved at one stage or another, be it in the form of participation in the workshops or attendance at the meetings, have provided invaluable inputs for which I would like to extend my warmest appreciation.

Director
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1. Background

1.1. Abortion in Nepal

Nepal has one of the highest maternal mortality rates in the world. Maternal mortality is 539 in 100,000 thousand live births. As supported by different research findings, an apparent causal relationship between abortion and maternal mortality exists. One hospital-based study revealed that more than half of the total maternal deaths in hospitals of Nepal are attributed to unsafe abortions.[1] One community study on abortions estimated the rate of covert abortions to be 117 per 1000 women between the ages of 15-49 years.[2] The Maternal Mortality and Morbidity study of the Ministry of Health found that 54 percent of gynaecological and obstetric admissions were due to unsafe abortions.[3] Another hospital based study showed that Traditional Birth Attendants are the primary providers of 40 percent of unsafe abortions.[4] One study carried out by a Non-Governmental Organisation (NGO) in 1997 found 20 percent of women detainees in prison were held due to charges of abortion or infanticide[5]. In this regard the recently liberalised abortion law will fulfil the objective of the Ministry of Health in reducing the high maternal mortality rate of Nepal.

Abortion has been legalised, but in order to make abortion services available throughout the country there is a need for skilled service providers, adequate equipment, and essential drugs. Similarly to ensure quality service provision, monitoring and follow up are also essential. Therefore to introduce comprehensive abortion care services throughout the country gradually and in a planned manner, Comprehensive Abortion Care (CAC) services should be incorporated into the National Reproductive Health Strategy.

Information on the legal provision of safe pregnancy termination and the complications of unsafe abortion need to be disseminated to policy makers, communities and especially to women of reproductive age. Similarly, by disseminating information on the legal provision of safe abortions and its availability to the community, the right to life and reproductive health of women will be safeguarded. To implement the National Safe Abortion Law, HMG should co-ordinate with GO, NGO/INGO, and private sectors on policy, strategy and the procedural process and furthermore establish a strong network.

This new abortion policy is developed in such a way as to expand standard safe abortion services and increase abortion awareness with involvement from government, NGO/INGO, the private sector and other stakeholders.

1.2 Abortion Legal Framework

The *Muluki Ain* 1959, the basic legal code for the Kingdom of Nepal, prohibited abortion and characterised abortion as an offence against life, making no exception even when pregnancy threatened a woman's life.

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[1] Prem J Thapa, Shyam Thapa, Neera Shrestha. A Hospital Based Study of Abortion in Nepal. Studies in Family Planning 1992; 23, 5:311-318

[2] Shyam Thapa, Prem J Thapa, Neera Shrestha. Abortion in Nepal: Emerging Insights. Journal of Nepal Medical Association,1994; 32: 175-190

[3] Family Health Division, Department of Heatlh Services, Ministry of Health.Maternal Mortality and Morbidity Study.1998

[4] Prem J Thapa, Shyam Thapa, Neera Shrestha. A Hospital Based Study of Abortion in Nepal. Studies in Family Planning 1992; 23, 5:311-318

[5] CREPHA, 1997

Before the 11th Amendment was passed, the *Muluki Ain* had the provision of punishing women for abortion. The provision was jail punishment of 1 year, 3 years or 5 years for committing abortion with pregnancy of 12 weeks, 25 weeks and beyond 25 weeks respectively.

Persistent advocacy efforts by the government, non-governmental organisations, the private sector, women's rights activists, the medical community and other stakeholders to reform the restrictive abortion framework has finally been rewarded. The parliament approved the 11th Amendment bill to the *Muluki Ain* on 14th March 2002 and on 27th September 2002 it achieved Act status after receiving the Royal Seal. For the first time in Nepal, abortion has been conditionally liberalised.

The 11th Amendment added two additional clauses to the *Muluki Ain* : Clause 28 A and 28 B.

28 A: If the pregnant woman is negatively influenced or coerced for abortion, there is the provision for jail punishment of 3 to 6 months for the individual(s) responsible and service providers. If sex selective abortion is intended or performed, there is the provision for jail punishment of an additional 1 year for both parties

28B: This clause provides for nullification of Clause 28A if the qualified and authorised health workers accomplish pregnancy termination with fulfilment of the abortion procedural process set by the His Majesty's Government (HMG) under the following conditions. The conditions are:

- up to 12 weeks for any woman with the pregnant woman's consent;
- up to 18 weeks of gestation if the pregnancy results from rape or incest with the pregnant woman's consent;
- at any time during pregnancy, with the advice - if the life, physical or mental health of the mother are at risk or if the foetus is deformed - of a medical practitioner and the consent of the pregnant woman as well.

2. Policy Statement on Abortion

Being within the jurisdiction of the legal provision on abortion in the Muluki Ain and Procedural Process for Safe Pregnancy Termination Services 2060, BS, Ministry of Health executes to make Abortion Services safe and accessible along the following lines:

2.1 Comprehensive Abortion Care (CAC) services

2.1 CAC services will be safe, accessible and affordable. These services will be made available with equity and equality for all women
2.2 Comprehensive abortion care services will be provided through service providers listed as per the Safe Pregnancy Termination Order
2.3 An effort will be made to offer a choice of available (abortion?) methods
2.4 The process associated with listing the institutions and individual practitioners authorised to provide CAC services will be made as simple as possible
2.5 Referral networks will be established between CAC facilities and more advanced referral centres where a higher level of care can be offered, including complication care
2.6 In order to maximise accessibility, CAC services will be expanded through HMG/N, semi-autonomous institutions, NGOs and the private sector

2.7 Authorised CAC service providers performing these services in good faith will be protected under the law
2.8 Pregnancy termination shall not be used as a method of family planning
2.9 Pregnancy termination shall not be performed for the purpose of sex selection
2.10 Quality CAC services will be provided through a range of skilled service providers listed as per the Safe Pregnancy Process. Providers' professional conduct will be consistent with accepted medical standards and protocols
2.11 CAC services will be integrated with existing reproductive health and hospital services. CAC services as a component of the National Reproductive Health Strategy will be introduced in a phased manner with the ultimate goal of providing services at the Primary Health Care Centre level
2.12 Clinical protocols will be developed and will be the basis for CAC services and training. To update the skill and the competency of the service providers, further training as per the standard protocols will be provided. Counselling services, including family planning counselling, will be an integral part of the provision of CAC services
2.13 Traditional unsafe abortion providers will be encouraged to refer cases to skilled providers
2.14 Every institution and/or service provider should ensure that its fee structure for CAC services is transparent
2.15 Every CAC service site and referral service site will co-ordinate with one another to provide quality service

3. Human Resource Development

3.1. The appropriate human resources required for the provision of CAC services will be identified and orientation and competency-based skill training will be conducted
3.2. The required human resource development needs will be met
3.3. CAC curriculum for different levels of health service providers will be incorporated in to the pre-service and in-service training programmes
3.4. Prevention of unsafe abortion shall be incorporated into the sexual and reproductive health curriculum of secondary schools
3.5. Public, private and NGO institutions will be developed as training sites and will be monitored by the government

3. Rights of Women

4.1 Women have the right to continue or discontinue an unwanted pregnancy within the legal framework
4.2 Informed consent of the woman or her nearest relative[6] (when she has not attained 16 years or is not mentally competent) is required for pregnancy termination services
4.3 The woman must be informed about the risks, benefits and alternatives to pregnancy termination, and counselled on other reproductive health needs including FP
4.4 The health institution and/or service provider providing CAC services must not disclose any personal information pertaining to the client and provide assurance to the client about maintained confidentiality. All the documents and records shall remain confidential and no such documents and records will be made available with the exceptions as follows:
(a) to the investigating officer or the court in the process of legal investigation and hearing;

[6] "Nearest relative" as defined in the Safe Pregnancy Termination Procedural Process means any one of the following persons: husband, mother, father, mother in law, father in law, adult elder brother, younger brother, elder sister, younger sister, son, daughter, cousins, uncle, aunt or the immediate guardian of the pregnant woman.

(b) to scholars in order to cite in research documents matters concerning safe termination of pregnancy (without the identification of the woman concerned); or
(c) to the woman herself

5. Role of Non-government and Private Sectors

5.1 Comprehensive Abortion Care services will be made available through the private, non-governmental, and semi-governmental sectors
5.2 Private, semi-governmental and non-governmental sectors are encouraged to provide CAC services in undeserved areas and to marginalised populations
5.3 The private and non-governmental sectors will be encouraged to contribute to abortion information including information on training, research, and IEC/advocacy
5.4 The mechanism of networking will be established with the private and non-governmental sectors in various aspects of CAC services

6. Advocacy, IEC and Social Mobilisation

6.1 Advocacy, IEC and social mobilisation on the prevention of unwanted pregnancy and danger of unsafe abortion shall be promoted
6.2 Advocacy to address stigmatisation and misconceptions associated with safe pregnancy termination shall be promoted
6.3 Advocacy to promote a woman's right to CAC shall be promoted
6.4 Advocacy, IEC and social mobilisation measures will be launched to increase awareness and influence the development of positive perceptions and values on safe pregnancy termination. Appropriate positive messages will be used to counter the social stigma and other taboos on safe pregnancy termination through community leaders.
6.5 All available media will be used to raise public awareness on the new abortion policy, unwanted pregnancy and safe abortion, emergency contraception, and unsafe abortion. Information on CAC services and referral procedures will be disseminated in local languages

7. Coordination, Planning, Monitoring, Supervision and Follow-Up

7.1. Ministry of Health is responsible for coordinating CAC trainings and services in Nepal
7.2. Ministry of Health is responsible for planning, monitoring, supervising and follow-up of CAC services at all levels in the public sector
7.3 Ministry of Health will support in the planning and implementation of CAC services in the private sector
7.4. Effective institutional arrangements from the central level to the local level will be developed to co-ordinate, supervise, monitor and evaluate CAC services
7.5. The Family Health Division of the Department of Health Services will be the focal point for all abortion related activities
7.6. External and internal resources will be mobilised to make pregnancy termination services safe, available and accessible
7.7. The District Health Management Team will be oriented to the management aspects of CAC services
7.8. Information on CAC will be integrated into the existing HMIS
7.9. Monitoring, evaluation and quality assurance tools will be utilised

8. Research

8.1. Abortion related research will be conducted and research results and recommendations will be used to improve the policy and programme management practices

9. Institutional Arrangements

9.1 Institutional arrangements will be developed and strengthened for CAC services, including planning, follow up and networking, in accordance with the Safe Abortion Policy and Procedural Process

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1. Family Health Division, Department of health Services, Ministry of Health, Nepal Family Health Survey 1996
2. Prem J Thapa, Shyam Thapa, Neera Shrestha. A Hospital Based Study of Abortion in Nepal. Studies in Family Planning 1992; 23, 5:311-318
3. Shyam Thapa, Prem J Thapa, Neera Shrestha. Aobrtion in Nepal: Emerging Insights. Journal of Nepal Medical Association, 1994; 32:175-190
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