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CHILDREN'S RIGHT TO
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SUMMARY:

The purpose of this essay is to examine how Nepal has implemented article 28 of the UN Convention on the Rights of the Child (CRC). The essay focuses on subdivision 1(a) in the article which establishes that all States Parties shall make primary education compulsory and free to all children within their country. Through the ratification of the CRC the Government of Nepal is under the obligation to ensure each and every child's right to basic education. However, according to article 4 of the CRC the States Parties shall, concerning the right to education, undertake measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation. The right to education is in other words not an absolute right.

The essay is based on a field study which the author have conducted in Nepal between November 2000 and February 2001. The materials is based on interviews, law texts, other written documents by the Government and reports conducted by organisations such as INGOs and UN Agencies.

The essay describes the implementation process of article 28 such as relevant actors and what their obligations and/or contributions in the process are. It identifies all relevant levels of the Government, from central to local, working with child rights issues and then all the specialised organs working with primary education. Relevant legislation, policies and strategies have been analysed. I have also looked further into the role of the NGOs, INGOs and UN Agencies in the implementation process. Due to the close connection between the lack of access to education and the existence of child labour I have chosen to describe and analyse this problematic in one independent chapter. One chapter provides a situation analysis of the situation of education in existence today in Nepal. The essay also outlines the basic problems that the system of education struggles with.

From my point of view the situation today is that many countries in the world, under international pressure to ratify international conventions but without the means of enforcing them nationally, may get the impression that the most important thing is the ratification in itself, and not the process of legislation, enforcement and evaluation that should follow this ratification. Governments may ratify conventions for political reasons, whilst knowing that the provisions will be difficult to enforce in their countries. Poor countries are becoming increasingly eager to speedily ratify human rights conventions. The first twenty Governments to ratify the CRC were those of third world countries, whereas USA still has not signed.

Over the last ten years Nepal has made some notable efforts to improve the situation for its children through the adoption of needed legislation such as the Children's act 1992, establishment of different governmental organs at all level of

the society and the enactment of policies and programs. Although great progress over the last decade has been made, the formal education system in Nepal still suffers from poor quality of instructions, inadequate materials and poor school management, which undeniably contributes to the high drop-out and repetition rates, especially among girls living in rural areas.

The obligation to ensure each and every child's right to basic education lies primarily within the Government of Nepal. Nevertheless, in Nepal primary education is still not made compulsory and free of charge. The Government tries to fulfil its obligations under article 28 of the CRC but my opinion is that it does not try hard enough. The Government and its Agencies do struggle with many domestic problems such as political instability, lack of resources, lack of adequate people and fundamental administrative problems. In addition, rural poverty, traditional social barriers and lack of awareness about children's rights are some major obstacles in the implementation process that the Government must set to work at. However, positive changes have appeared such as more schools have been constructed, more children do actually start primary school and more families send their girls to school. Unfortunately only a very small part of the population can take part of these changes, mostly still live in absolute poverty without any familiarity at all about children's rights.

PREFACE:

First of all I would especially like to thank Johanna Eriksson at UNICEF in Nepal for both practical and theoretical assistance during my visit in Nepal. I would also thank Save the Children, US, in Siraha District for their help during my field visit in their region. I would also like to thank the people in Nepal, both foreign and domestic, at UN Agencies, NGOs and INGOs, and Ministries etc. that took their time to answer my questions as well as people in Sweden that have encouraged me in my work.

ABBREVIATIONS:

ADB	Asian Development Bank
BPEP	Basic and Primary Education Program
CBS	Central Bureau of Statistic
CDO	Chief District Officer
CeLRRd	Centre for Legal Research and Resource Development
CRC	The UN Convention on the Rights of the Child
CCWB	Central Child Welfare Board
DCWB	District Child Welfare Board
DCWC	District Child Welfare Committee
DDC	District Development Committee
DEO	District Education Officer
DOE	Department of Education
EFA	Education for All
EU	European Union
HMG/N	His Majesty's Government of Nepal
IDA	International Development Agencies
ILO	International Labour Organisation
INGO	International Non-Governmental Organisation
JICA	Japanese International Co-operation Agency
MOE	Ministry of Education
MP	Member of parliament
MWCSW	Ministry for Women, Children and Social Welfare
NCWCD	National Council for Women and Child Development
NGO	Non-Governmental Organisation
NORAD	Norwegian Aid for International Development
NPC	National Planning Commission
PEDP	Primary Education Development Project
SC	Save the Children
SPR	State Party Report
UN	United Nations
UNICEF	United Nations Children's Fund
UNDP	United Nations Development Program
VDC	Village Development Committee
WB	The World Bank

1 INTRODUCTION:

Today it is eleven years since the UN Convention on the Rights of the Child (CRC) was adopted by the UN General Assembly. During this time it has almost obtain total support world wide. The Convention is a legally binding, international treaty and at the same time a political, visionary objective for how a society where children live in harmony shall be. The States Parties have the overall responsibility for the realisation of the children's rights through legislation, public administration, private and public institutions, support and education to parents and dissemination of information about the Convention. Within this encompassing obligation, many actors play vital roles in delivering high quality basic education to all children, from central to local governments, from international agencies to local communities, NGOs and religious groups. However, it is only the State that can put together all the components into a coherent but flexible education system.

Over 130 million children of school age in the developing world are growing up without access to basic education. The consequences of illiteracy are devastating. They start from the denial of a fundamental right namely the right to education, proclaimed in agreements assigned from the 50-year-old Universal Declaration of Human Rights to the 1989 Convention on the Rights of the Child. Ensuring the right of education is a matter of morality, justice and economic sense. It is universally recognised that children's right to survival, protection, development and participation is a prerequisite of a society's development and human progress. The absence of free education for all children is an obstacle to the democratisation of a society and for social development. Education strengthen peoples possibility to control and influence their lives. The investment of girls education has shown to be the investment which gives the highest economical return.

Since Nepal in 1990 became a parliamentary democracy it has taken its first step for the rights of the children. The same year, Nepal ratified the CRC without reservations. The ruling Nepali Congress has undertaken the challenging task of providing free and compulsory education to all children below 13 years of age. This is certainly an attempt to ensure every child's right to basic education according to the CRC. These efforts, notwithstanding the pledge to ensure the universal right to education, has however remained a mere ruling party political slogan. Approximately one -third of elementary school-age children across the country remain deprived of formal education. The system of education in Nepal is still very much characterised by the country's agricultural structure with an unwillingness of sending the children to school, especially the girls. The country also struggles with unacceptable high rights of school drop outs. The reason for

this unfortunate state of conditions is that compulsory primary education has never been seriously implemented.¹

1.1 Purpose and set of questions:

When Nepal ratified the CRC in 1990 it committed it self to work within the CRC framework and fulfil its obligations. However the relationship between human rights and norms at the domestic level is a controversial side of international law and unfortunately the approach adopted at international level does often not resemble with those adopted in different national systems of law. To achieve actual results, more is required of a Government than the mere signing of the CRC and promulgating of national laws. The purpose of this essay, therefore, is to examine how Nepal has implemented article 28 of the CRC. In order to limit the study of article 28 I have chosen to look further into the question if Nepal has made the primary education free and compulsory for all children in Nepal as stated in article 28 subdivision 1(a).

This essay does not attempt to exhaustively examine all the legislative provisions that relate to children and education, nor does it claim to even examine exhaustively the provisions in the relevant laws in focus or the Organs of State, programs and other mechanisms relating to education. Rather this essay is meant to describe and analyse the key issues and tools for the implementation process of article 28 1(a) in Nepal, whereas legislation is only one powerful tool in this operation.

The aim is further to determine if the legislative efforts and the system that is established by them offer sufficient education for the children, at primary age, from a legal point of view. By sufficient education I mean that the laws are in accordance with the existing system of education, that they correspond to relevant international standards, and that they are implemented, enforced and monitored in practice.

The questions I will answer in this essay are as follows:

- How is article 28 subdivision 1(a) of the CRC being implemented in Nepal?
- What problems do the system of education faces today in Nepal?
- What are the different actors and what are their roles in the implementation process?
- What has the ratification of the CRC meant for the Government of Nepal?
- In what way has the ratification of the CRC affected the children in Nepal concerning their right to free and compulsory education ?

¹ *The Kathmandu Post*, 21/1-01, p. 4.

1.2 Method:

This essay is mainly based on a field study, conducted in Nepal during November 2000 to February 2001. I basically stayed in Kathmandu, the capital, during my study because most of the organisations and central government institutions were to be found here. I met with government officials, international and national NGO representatives, UN Agencies, child rights advocates as well as teachers, headmasters and children. During approximately one week I visited Siraha District in the South of Nepal where I together with representatives from Save the Children US (SC US) got in touch with local people in this District. In addition to this I also did some smaller visits outside Kathmandu in order to meet relevant people and collect material for my study and to get a reflection of my own of the implementation of the CRC, article 28.

The study in Nepal was possible to conduct thanks to a Minor Field Study scholarship, sponsored by the Swedish International Development Co-operation Agency, Sida.

My material is composed of interviews, law text, other written documents and studies made by different governmental and non-governmental organisations and UN Agencies. I intentionally made interviews with different groups of actors involved in the implementation process of the CRC due to my desire to get an, as far as possible, correct picture of the situation prevailing in Nepal. I did about 20 interviews with people from several categories of professionals. The categories that I have chosen are all concerned with education and/or implementations of projects. I had the opportunity to interview both Nepali citizens as well as people from abroad working in Nepal. The interviews were conducted in English or with an interpreter. It should also be noted that most of the reports originate from different international organisations which might influence some of the parts of this essay which are based on these reports. Otherwise I have, as with the interviews, tried to work with different kind of literature in order to not get caught in only one aspect of the situation in Nepal.

It is also worth noting that the governmental administrative structure in Nepal are very often re-organised. This means that some number or descriptions in the essay may already or shortly be out of date. Sometimes I got different answers about pure administrative and structural facts which depends on the overall instability in the system. Routines and Organs of State are new and changes regularly, not everyone can be fully informed about the current situation.

2 THE CONVENTION ON THE RIGHTS OF THE CHILD (CRC):

2.1 Intro to the CRC:

Through the adoption of the CRC in 1989 a huge step was taken toward recognising the child as a holder of human rights. The CRC is more powerful than the previous declarations from 1924 and 1959 in protecting the child. These declarations were weaker since declarations are not legally binding, and they did not include any monitoring and follow-up mechanisms in order to implement them. The CRC also covers a broader area through also including obligations on parents and others responsible for the child's welfare. The Convention establishes that children are not only the concerns of the families. They are also a responsibility of the State Parties and the society overall. The Convention states the duties of the State towards the child. In this way the political agenda has to issues questions concerning child rights permanently.²

2.2 The creation of the CRC³:

The first international agreement about children's rights was reached by the Federation in 1924. It was called the Geneva declaration on the rights of the child. It consisted of five main principles for the safe of the child and its welfare. The principle of universality (every child's equal right independently of race, religion, sex) was fundamental as well as the principle of everyone's jointly responsibility for all children. With the Geneva declaration serving as a model, the creation of a new declaration on children's rights started after the Second World War. This new declaration was adopted by the General Assembly in 1959. In this declaration the child was given the right to a name and the right to acquire a nationality. This was the first time that civil - and political rights were mentioned in relation to children. Both the 1924 and the 1959 declaration were only explanations of the wills of the approving states. They were not legally binding and therefore not including mechanisms to control the execution of the declarations.

The work to improve children's rights continued. In 1979 the Government of Poland took the initiative to a legally binding convention on the rights of the child. It was supposed to serve as a complement to the already existing declaration. The

² *The legal framework on trafficking in persons in Bangladesh, Nepal and Sri Lanka*, DANIDA, 2000, p.1-2.

³ This chapter is based on: *Barn*, Rättsvetenskapliga Institutionen, nr. 6 1999, p. 10, 26 – 28; Bergström, Orkan and Voors, *För barnets bästa*, Stockholm, 1999, p. 20 – 21.

UN Commission for Human Rights set up a committee to work on a draft of a convention. It is worth to notice the great impact that different Non – Governmental organisations (NGO) had on the committee’s work and later on the final text of the CRC. A special NGO – group was created in purpose to study the proposal on a convention. The NGO – group existed of about 20 organisations. Without the NGO – group the Convention would probably have taken a different form. Finally in 1989 the Convention was accepted without a vote which means that no state was against the proposal.

When the Convention was ready for signing in January 1990 it immediately was signed by 62 states. This was an unique support which no other Convention of Human rights has had so soon after its adoption. It was set in force the 2nd September in 1990. Today the Convention is widely spread all over the world. No other Convention has a covering like the CRC. 191 states have ratified the Convention, all states except from USA and Somalia.

2.3 Rights of different kinds:

Children’s rights in the CRC are often referred to as the three “Ps”, i.e. the right to:

- Protection
- Provision
- Participation

The right to protection means being protected from poverty, child labour, trafficking, discrimination, abuse and humiliation. The right to provision means right to survival, basic psychosocial needs, health, education and equal opportunities (including children from minority groups). The right to participate means being heard in subjects concerning the child’s own life.⁴

The rights laid down in the CRC can be divided into two main categorises. One group includes civil and political rights, while the other group comprises economic, social and cultural rights. All rights are interdependent, i.e. in order for children to be able to exercise their civil and political rights, their economic and social rights must also be provided for.⁵ Despite their interdependence the rights in the two groups are different in nature. The first group characterises as absolute rights that must be respected by all states irrespective of the developed level of the country. The economic, social and cultural (the second group) are more like goals. The obligation to respect these rights are dependent upon a country’s available resources. However, and of equal importance, is the fact that these countries shall undertake measures to the maximum extent of their available

⁴ *Rights and Needs of Children in Danish Development Assistance to Nepal*, (2000), p. 2.

⁵ (ibid).

resources and, when needed, within the framework of international co-operation.⁶ The prohibition of discrimination in article 2 states that the resources shall be distributed on a loyal basis.

Article 6 of the Convention serves as an example of the characteristic of the two groups of rights. Article 6 establishes that every child has an inherent right to life. This is a civil right. The right to life can sometimes have a very broad meaning. However, in this context the basic idea is to give protection against summary or arbitrary executions and to give safety guarantees against the death penalty. The provision should therefore be read together with article 37 which consists of an absolute prohibition against death penalty concerning crimes that someone has begun before the age of 18 years. Article 6 subdivision 2 however contains an economic / social right namely the child's right to survival and development. This right shall the State Party "ensure to the maximum extent possible". A development country that executes a child violates the Convention while there is not a question of a crime against the CRC in a strict sense if the same country lacks economical possibilities to provide food and health service to the child.⁷

2.4 Decisions with a child perspective:

The CRC does not contain any new, revolutionary facts about children and their needs, nor does it consist of any established methods or solutions on how to deal with different problems concerning children. Despite this, the Convention stipulates certain absolute provisions which must be fulfilled by everyone who takes decisions about or has responsibilities towards children. One of the most fundamental and important principles of the Convention is the principle of "*the best interest of the child*" in article 3. This article states that all decisions and actions affecting children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, shall develop from "the best interest of the child". Another provision states that in all situations concerning children, they shall have the opportunity of stating their opinions and that these opinions shall be considered according to age and maturity of the child.⁸ Through these articles the Convention becomes a mechanism in order to systematically incorporate a child perspective in the process of making decisions, in activities concerning children and in legislation.⁹

⁶ The UN Convention on the Rights on the Child, art.4.

⁷ Rönqvist, *Mänskliga rättigheter, Konventionen om barnets rättigheter*, Stockholm, (1996), p. 11-13.

⁸ CRC, art.12.

⁹ *The effectiveness of the Labour Act, the Children's Act and the Child Labour prohibition and regulation Act in terms of protecting working children in Nepal*, Neumiller, (2000), section 3.1; *Rights and Needs of Children in Danish Development Assistance to Nepal*, (2000), p. 2-3.

2.5 CRC as a political instrument:

Despite the fact that the CRC is a legal document it serves as a political instrument as well. It has been shown that the CRC has become more powerful than what many of the countries which ratified the Convention thought from the outset. Thanks to NGOs and other institutions for human right such as Children's Ombudsmen who have frequently used the CRC in debates and in their work the CRC is today an effective tool for change. However, the reporting process to the CRC Committee in Geneva¹⁰ and thereafter the Committee's scrutiny of the State Report, are the only external accounts that States must present regarding the way they treat children.¹¹

2.6 States Parties' obligations under the CRC:

All States are under an international obligation to fulfil their treaty commitments in good faith. As stated by article 4 of the Convention, States Parties are under a duty to undertake all appropriate legislative, administrative and other measure for the implementation of the rights in the Convention. According to the Committee on the Rights of the Child, State Parties shall adopt general measures in order to ensure that all legislation is fully compatible with the Convention. They should further develop a detailed and comprehensive national strategy for children, based on the Convention. In order to ensure effective co-ordination, monitoring and evaluation of the implementation, the States should develop mechanisms to handle this. The Government should carry out frequently analysis of the child impact in the society. The Government should also ensure that a proper data-collection on the state of children exists and it should develop independent organs and institutions to safeguard children's rights. The Government should further promote the awareness of children's issues in the society. It should also promote a collaboration with civil society groups such as NGOs, professional associations and children. Finally the Government should work for an international co-operation in the implementation process. To fulfil these proposed measures by the CRC Committee there is a need of guidelines on each of the measures.¹²

¹⁰ According to art.43 in the CRC the Committee shall consists of ten experts of high moral standing and recognised competence in the filed of children's rights.

¹¹ *Rights and Needs of Children in Danish Development Assistance to Nepal*, (2000), p. 3.

¹² Hammarberg and Newell, *International Monitoring on the CRC*, (1999), p. 14-15.

2.7 Sanctions in the CRC:

It is not very likely to expect that only laws, without any control mechanisms at all, ever could make the provisions in the CRC effectively working in a society.

Therefore the CRC in article 4 requires States to take all necessary legislative, administrative and other measures for the implementation of the rights recognised in the Convention. These measures should include appropriate sanctions for non-compliance.¹³

Every State Party shall thereby respect and ensure the rights in the Convention to each child within its jurisdiction.¹⁴ The legal duties recognised in the CRC create a contractual effect, forcing Parties to co-operate with each other, e.g. by handing in reports to the CRC Committee in Geneva. If a State Party fails to fulfil the obligation laid down in the Convention, the other State Parties have been legally offended which leads them to the possibility to take any action under international law in order to defend the rights. In other terms, claims from other State Parties would probably go through diplomatic channels in order to achieve compliance with the requirements of the Convention. Other parties may also participate in public condemnation if a State Party has neglected the obligations arising from a ratification. International actions like this may come into existence if a State Party has failed to adopt legislation in order to implement the “non-self-executing provisions” of the Convention or if the national courts refuse to give effect to the Convention. There is no possibility of international adjudication under the Convention and there is no provision in the Convention that gives the International Court of Justice or any other international tribunal the power to solve a dispute arising from the Convention.¹⁵

2.8 How is the observance of the the CRC being controlled?:

Part 2 of the Convention, article 42-45, contain provisions for the realisation of the Convention. First of all the importance of spreading information to adults and children is emphasised.¹⁶ For the purpose of examining the progress made by State Parties in achieving the realisation of the obligations in the Convention, there is a CRC Committee consisting of ten experts. The States that have joined the CRC shall every 5th year submit reports to the Committee containing their measures they have taken in order to fulfil its obligations according to the Convention. The Committee can also demand complementary information from

¹³ *The effectiveness of the Labour Act, the Children's Act and the Child Labour prohibition and Regulation Act in terms of protecting working children in Nepal*, (2000), section 6.1

¹⁴ CRC, article 2

¹⁵ Fox, *Report on the United Nations Convention on the Rights of the Child*, (1994-1995), s. 16-17.

¹⁶ The CRC, article 42.

the States about how the provisions of the Convention have been implemented.¹⁷ In order to promote the implementation of the Convention as well as encourage international co-operation in this area UNICEF and other UN Agencies are entitled to participate in the scrutiny of the State reports. They do also have the possibility themselves to submit reports to the Committee regarding the implementation in a specific country.¹⁸

Unlike for example the Convention on Civil and Political Rights the CRC does not contain any mechanisms for inquiring into complaints from individuals. One could say that the provisions for implementation of the Convention are based on the fundamental idea that a dialog shall arise between the States, the CRC Committee, the different UN Agencies and other competent bodies.

¹⁷ The CRC, article 44.

¹⁸ The CRC, article 45.

3 LEGAL FRAMEWORK IN NEPAL:

His Majesty's Government of Nepal (HMG/N) was one of the first nations to ratify the CRC in 1990. This happened right after the country's change into a multiparty democracy. Soon thereafter Nepal made a number of statements and introduced measures intended to signify its commitment to children's rights. A specific provision in article 11(3) on children's rights was introduced in the Constitution and a Children's Act was adopted in 1992. Nepal is the only South Asian country that have ratified the International Labour Organisation Convention No. 138 on minimum age for employment. Recently the HMG/N also ratified the Convention concerning the prohibition and immediate action for the elimination of the worst forms of child labour adopted by the general conference of the International Labour Organisation at its eighty-seventh session, 17 June 1999 (Convention 182) – a new international convention to eliminate the worst forms of child labour. The government's openness to advise and supervision from international organisations concerning child rights issues was positive observed by the UN CRC Committee in its concluding observations on Nepal's initial report. However the problems with the weakness in the legal framework are still not wiped out and they keep on preventing the implementation of the provisions of the CRC.¹⁹

At the time Nepal became a party to the CRC there were only some provisions in various Acts with the purpose to protect the child's interest. Specific laws relating to the rights of the child did not exist. After the ratification of the CRC in September 1990 Nepal has taken some new legislative, administrative and other measures for the purpose of implementing the rights of the child as they are set forth in the Convention. Legal provisions have either been repealed or amended and a few acts and regulations have been enacted, all with the aim of bringing Nepalese law and policy in harmony with the provisions of the Convention.²⁰ However there are still many laws in existence that are inadequate with the provisions of the CRC. And there is a big gap between existing legislation and its practical implementation.²¹

3.1 A brief overview of the Nepal law system:

1. The Constitution (ex. fundamental rights, directive policies and principles)

¹⁹ *Good Governance for Children in South Asia*, (2001), section 2, p.1.

²⁰ *Nepal's Initial Report to the CRC Committee*, (10/05/95).

²¹ *Concluding observations of the Committee on the Rights of the Child*, 7 June 1996, p.2; Interview with Yubaraj Sangroula, 5/12

2. Local Government legislation
3. Other subsidiary legislation:
 - a) “environmental legislation”-those that deal with aspect of natural world (land, water etc),
 - b) “social legislation” which means welfare legislation and labour relations statutes. Ex. the Children’s Act 1992 and the Education act 1971.
4. The Muluki Ain (National Code 1963). The Code consists of wide-ranging provisions, regulating matters as widely different as the inheritance rights of women, lost and found animals, trust property and incest.²²

3.2 Nepal’s relation with international law:

In addition to being consistent with the Constitution, the subsidiary legislation must also overcome another obstacle in order to be fully effective as a law. According to section 9 of the Nepal Treaty Act 1990 the contents of a subsidiary legislation that is in conflict with an international treaty, to which Nepal is a party, will be invalid in favour of the treaty. The provisions of the treaty will instead become applicable as if they were Nepalese law. Where a conflict is obvious and where a treaty creates rights or imposes positive duties, the consequences of this provision can be significant.²³ Although Section 9 of the Treaty Act gives the international treaty prevalence if a conflict between domestic and international law breaks out, this provision is not always being put into practice by the judges, especially not in the lower courts. They often resist using the international treaty.²⁴

After Nepal has ratified an international convention it makes a new domestic act of the provisions in the Convention. The convention will be translated into domestic language and will then end up as Nepalese law. The Children’s Act 1992 is a very distinct example of this method.²⁵

3.3 Constitution of the Kingdom of Nepal 1990:

The 1990 Constitution of Nepal guarantees the fundamental rights of the citizens. All laws inconsistent with the Constitution are void to the extent of their inconsistency.²⁶ As the supreme law of the country the Constitution lays down the administrative framework by which Nepal is governed. It also comprises the legal rights which are due to every citizen of the country²⁷, and the directive principles

²² Murgatroyd, *The Law of Development in Nepal*, (1996), p.20-30.

²³ Interview with Yubaraj Sangurola 5/12; Murgatroyd, (1996), p.19-20.

²⁴ *Good governance for Children in South Asia*, (2001), section 2, p.4.

²⁵ Interview with Yubaraj Sangurola 5/12

²⁶ The Constitution of the Kingdom of Nepal 1990, art. 1(1).

²⁷ The Constitution, part 3.

and policies of the Government²⁸. In this way the Constitution sets out the central and most important part of the legal framework for government in Nepal.²⁹

The mass movement of 1990 was not a spontaneous action. It was a result of 30 years of political struggle against the Panchayat system³⁰. The new Constitution came into existence the same year the Panchayat system fell. The characteristics of the Constitution are all features of the context, conditions and conflict in which it was produced. The most obvious unique features of the Constitution are the following:

- It is the first Constitution in Nepal's history to have been drafted by the leaders of a mass movement, by common consent and with the consent of the monarch.
- It is the first document to bring the rule of law into a reality in Nepal so that the Constitution is above everyone, even the King.
- It is the first constitution in Nepal's history to declare that the sovereignty of the Kingdom lies in the people.
- It is the first document to establish fundamental human rights in Nepal and to give the Supreme Court the right to adjudicate on the constitutionality of legislation and executive action.³¹

Fundamental rights in the Constitution:

There are a great number of fundamental rights that are all protected by the Constitution. They are important for the development related work in Nepal. Most of them are also involved in specific "public policy" regulations. The most important rights can be classified into the following groups: equality, freedom, access to information, protection of property, preservation of culture and education, practice of religion, prevention of exploitation, prevention of exile, maintenance of privacy and availability of remedies. The fundamental rights laid down in part 3 of the Constitution are specific and detailed "negative rights", and they can be enforced directly in the courts. For example: if a Nepali citizen is being kept from expressing his opinion, he petitions the Supreme Court under art. 88 for redress for the violation of his rights under art. 12(2)(a).³²

Directive Principles and Policies in the Constitution:

The directive policies and principles entrenched in part 2 art.24-26, unlike the fundamental rights, are general and unspecific "positive rights" and can not be enforced in any court. On the other hand they are fundamental to the activities and

²⁸ The Constitution, part 4.

²⁹ Murgatroyd, (1996), p.20.

³⁰ The former system of governance in Nepal under which the King enjoyed virtually sole power.

³¹ Adhikari, Bhandari, Dhungel, Murgatroyd, "Commentary on the Nepalese Constitution", (1998), p.35-43.

³² Murgatroyd, (1996), p.21-22.

governance of Nepal and shall be implemented stage by stage through laws in accordance with available resources and means in the country³³. There are numerous policies that deal with what one can call “second-generation” and “third-generation” human rights i.e., the right to economic progress, the right to clean environment etc. The directive policies are general statements of the overruling objectives which have the purpose to direct the State in its work. The directive principles are in their turn specific statements telling how these overruling objectives should be reached.³⁴ Basically the principles are good governance of a developing country and therefore the directive policies get intimately involved with development work. There are 16 policies and only 2 (dealing with foreign policy and international relations) are not directly connected to development work.³⁵ Mainly, the principles and policies are expressly dealing with the development of the citizens of Nepal, such as the obligation on the State to fulfil a policy of increasing the standards of living for the citizens of Nepal.³⁶

Constitutional provisions related to children and education:

The Constitution together with other subsidiary acts include provisions that either require, or allow the Government to act on behalf of different people. Under art. 11(3) in the Constitution special provisions may be made by law for the protection and advancement of the interests of children. This article gives the Government the possibility to enact special provisions for the benefit of the children. In fact, it empowers the state to discriminate in favour of the interests of children. Art. 11(1) protects the citizens of Nepal to be “equal before the law” as well as the right of a citizen to “equal protection of the laws”. Art. 11(2) of the Constitution guarantees non-discrimination in the application of general laws. Article 18 provides each community in Nepal the right to preserve and promote its own language, script and culture as well as the right to operate schools up to primary level in its own mother tongue. Article 26 provides an ambitious plan of action for the state to pursue over time. Art. 26(8) establishes that the State shall make necessary arrangements to safeguard the rights and interests of children, the State shall ensure that the children are not exploited, and it shall make gradual arrangements for free education. The article puts a responsibility on the Government to create an environment that will be conducive in making the children active and capable citizens. Since Nepal is a party to the CRC the obligation imposed by this article has also an international dimension. Important is also article 26(9) that requires the State to take special measures to promote the education and social security.³⁷

³³ The Constitution, art. 24(2).

³⁴ Murgatroyd, (1996), p.22.

³⁵ Murgatroyd, (1996), p. 21-22.

³⁶ The Constitution, art 26(1).

³⁷ Murgatroyd, (1996) p.1-3; *Trafficking in Nepal*, 2000, p.17; Adhikari, Bhandari, Dhungel, Murgatroyd, (1998), p. 209-220.

3.4 The Children's Act 1992:

The aim of the Act was to establish a comprehensive structure to ensure children's rights. It was enacted just after Nepal ratified the CRC in order to implement the provisions of the CRC into domestic legislation. A key feature of the Act is the framework of administrative agencies, agents, and other institutions which are designed to regulate government activities in relation to children. The Act lays down the establishment of the Central Child Welfare Board (CCWB) as the central organ for the whole country as well as a District Child welfare Board (DCWB) in each district in Nepal. These bodies shall consist of social workers, medical practitioners, child psychologists and teachers etc. The main function of the Boards is to protect the interest of the child and they are important tools in the implementation process.³⁸ The Act also sets out the structures of District Child Welfare Committees (DCWC), a system of Child Welfare Homes, Management Committees to supervise Child Welfare Homes, Administrators to run Child Welfare Homes, and Child Welfare Officers to assist District Child Welfare Committees. Each of these agencies, agents and institutions do all get their power, obligations and functions from the Act where they are all clearly expressed.³⁹

Provisions related to education:

The Children's Act is silent on children's right to education. The Act only mentions education in relation to the obligations given upon parents to make arrangements for providing education to the child. It leaves an open choice for the parents due to the obligation of providing education shall be enforced according to the economic status of their family.⁴⁰

Implementation of the Children's Act:

Together the CCWB and the DCWBs have the main responsibility for the implementation of the Act through their specific functions they have been given.⁴¹ However the prevalent opinion about the implementation of the Act is that it is very weak. The fact is that not a single case has so far been filed under this Act where crimes have been committed against children. Some layers are of the opinion that the language in which it has been drafted is more idealistic rather than legalistic. This results in different and subjective interpretations of the Act which thereafter makes the implementation extremely difficult.⁴²

³⁸ *Child labour in Nepal*, (1995), p.25.

³⁹ Murgatroyd, *Draft Final Report on the legal regime and system of implementation for protection of child rights in Nepal and recommendations*, (2000), p.3.

⁴⁰ The Children's Act 1992, chapter 2.4(1).

⁴¹ *Child labour in Nepal*, (1995), p.26.

⁴² *Good Governance for Children in South Asia*, (2001), section 2, p.1.

The Act is formally a comprehensive and decent Act, but the implementation and enforcement do not exist.⁴³ There is a very strong and common opinion that the Government does not take its fully responsibility to implement the Act. The Government took some responsibility through creating the Act, but after this establishment the Government is not very interested in making it work. In some areas of Nepal for example in Siraha District, the child labour has actually increased.⁴⁴ The fact is that the Act has not really achieved much of what it has set out to achieve. Some people argues that this has a lot to do with the political will or more precisely the lack of political will. This is very obvious and most serious at the highest levels of the administration. The Children's Act seem to have been brought up in a time where "once the law is enacted and gazetted the matter is totally ignored by the government and follow up actions do not take place until the government is put to great embarrassment through court decisions or political agitation"⁴⁵ .⁴⁶

Enforcement of the Children's Act:

Any person who wants to file a petition on behalf of a child for the enforcement of the rights under the Children's Act are entitled to do this to a District Court within whose jurisdiction the child belongs to. When the Court has received the petition it may issue an appropriate order, direction or writ. The Court can further grant certain amounts of compensation when a child is injured as a result of inflicting harm on any right conferred by the law.⁴⁷ A complaint must be filed within a year from the date of the commission of an offence under the Children's Act.⁴⁸

Punishment provided by the Children's Act are both fine and imprisonment. However, this is the theory. In practice the judiciary system is not very friendly to women and children. A study of criminal system carried through in 1999⁴⁹ shows that there is a significant low level of sensitivity among Nepalese judges and prosecutors. A survey in the Districts Nuwakot, Sindhupalchowk and Kathmandu states that 51 trafficking and rape cases had not been preceded by any properly investigations. Only 32 women did get their complaints registered. There is an opinion among activists that women do not have access to justice when a criminal

⁴³ Interview with J.B. Shrestha 9/1, Govinda Bista and Deepak Shrestha 13/12, Hari Rana and Krishna Bandhu Adhikary and Pramod Mahat 12/12, Dhanbir Prasad Bal 12/12, Yubaraj Sangroula 5/12, Programme Officer at CeLRRd 4/12.

⁴⁴ Interview with Govinda Bista and Deepak Shrestha, 13/12.

⁴⁵ From a Discussion paper on "Enforcement of Legislation on Child Labour and Child Trafficking" prepared by Tribhuvan University Faculty of Law and ILO/IPEC for the workshop of District Judges, Public Prosecutors and Activist Lawyers held in Kathmandu between 30/8 – 1/9 1996.

⁴⁶ Murgatroyd, (2000), p. 3.

⁴⁷ The Children's Act 1992, section 20, p. 6.

⁴⁸ The Children's Act 1992, section 54, p. 18.

⁴⁹ Analysis and Reforms of the criminal Justice System of Nepal, CeLRRd 1999, and Impact of Corruption in Criminal Justice on Women, CeLRRd, 2000.

offence is committed. In civil cases, litigation can take up to 10 years and there is an obvious problem for women to pursue such cases⁵⁰

The enforcement of the Act as well as the implementation of the Act struggles with some serious problems. There is a lack of properly definitions of who has the responsibility to enforce the Act.⁵¹ The enforcement mechanisms such as the responsible Ministry, the CCWB and the DCWB are mostly concerned with projects related to the urban areas. They do not want to put any effort on the problems in the rural area and have no wishes to work there.⁵²

Weaknesses of the Children's Act:

Unfortunately the Act was passed in great hurry without any further policy research after Nepal's transition to multi-party democracy. There was not much of a discussion before the adoption of the Act and there are today several ambiguities existing in the law. An interesting comparison can be made with the Labour Act (1992) that deals with child labour and is far more specific than the Children's Act. Before the Labour Act was finally adopted there were lots of debates and discussion of its construction and content. Subsequently the Act has also gone through necessary changes and several amendments have been made. These new creations have become reality much due to the pressure from the trade union. The Children's Act on the other hand has not been exposed to the same pressure and this simply because there have not been enough pressure groups demanding alterations in the Children's Act.⁵³

Some of the most significant imperfections of the Act are:

- It allows parents, members of the family and teachers to beat a child if it is thought to be in the interest of the child⁵⁴
- It is silent on children's right to participation or their right to association as well as their right to education.
- It makes violation of the Children's Act a civil dispute. It follows that the state does not take cognisance of incident, and as such does not investigate the incident.
- The State has not taken up responsibility to implement the Act and it does not provide anything for monitoring of the implementation.⁵⁵

⁵⁰ *Good Governance for Children in South Asia*, (2001), section 2, p.2.

⁵¹ Interview with Yubaraj Sangroula, 5/12.

⁵² Interview with a Program Officer at CeLRRd, 4/12.

⁵³ *Good Governance for Children in South Asia*, (2001), section 2, p.1.

⁵⁴ The Children's Act 1992, section 7.

⁵⁵ *Good Governance for Children in South Asia*, (2001), section 2, p.2.

It may not reflect the whole truth to describe the Children’s Act as only “ a nice piece for decoration in the archives of Human Rights legislation”⁵⁶ but much evidence indicate that the framework created by the Act is not able to provide the protection of child rights in Nepal that the CRC demands. This was established by the Committee on the Rights of the Child during its Twelfth Session when making its concluding observations on the initial report submitted to the Committee by Nepal under the CRC.⁵⁷

⁵⁶ From a Discussion paper on “enforcement of Legislation on Child Labour and Child Trafficking” prepared by Tribhuvan University Faculty of Law and ILO/IPEC for the workshop of District Judges, Public Prosecutors and Activist lawyers held in Kathmandu between 30 August and 1 September 1996.

⁵⁷Murgatroyd, (2000), p.3.

4 SYSTEM OF LAW ENFORCEMENT FOR PROTECTION OF CHILD RIGHTS IN NEPAL:

It is not only the legal regime itself that is important for the purpose of ensuring protection and promotion of child rights. Equally important is also the way in which individual actors operating under that regime live up to their responsibilities, and fulfil the tasks assigned to them. In this section I will identify people from national to local level in the governmental sector working with a direct responsibility for the protection of the rights of children.

4.1 ORGANS OF STATE:

The main organs of the state play an important role in the system of protection of child rights and law enforcement. They set the framework for the national policy. They enact appropriate legislation and work through the Ministries and Departments in order to implement this policy in accordance with this legislation. At central level, the Organs of State can be divided into five different categories as follows: (1) the Executive (2) the Legislature (3) the Judiciary (4) Constitutional bodies (5) the Civil service. Despite any constitutional power the National Planning Commission (NPC) is also an important instrument, and should not be neglected, in the process of formulating and implementing the policy over time.⁵⁸

4.1.1 The constitutional system:

The Constitution of the Kingdom of Nepal makes the governance of the country subject to a separation of powers in three different parts. This means that the Parliament is responsible for making the will of the people into law, the Executive Government is responsible for carrying out the will of the people in accordance with acts of the legislature, and the Judiciary is responsible for controlling the activities of the Executive power in accordance with laws and other accepted legal principles.⁵⁹

⁵⁸ Murgatroyd, (2000), p. 15.

⁵⁹ Murgatroyd, (2000), p.15.

The Constitution itself is the fundamental law of the country and defines the powers of the separate organs of the State.⁶⁰ It states that no law incompatible with the Constitution should be allowed into existence and laws or parts of any laws incompatible with the Constitution is liable to be taken away.⁶¹

The Constitution, in co-operation with other subsidiary legislation, consists of rules, both requiring and permitting the Government to take action as the representative of different kinds of people.⁶² In order to protect the rights of the children through legislation, and to set up provisions for the enforcement of law by the executive authorities, it is necessary that all organs of State work in consistence with the regulation already established in the Constitution.⁶³

4.1.2 The legislature:

The process by which legislation such as the Children's Act 1992 is brought into existence is ruled by Part 9 of the Constitution and Parliamentary Rules of procedure. The purpose of these rules is to ensure that any proposal, before coming into binding legislation, will be exposed to a scrutiny at all levels of the legislative process and also that an open debate on the subject is held wherever possible.⁶⁴

Meanwhile the new legislative provision moves through the Parliament the lawmakers must be quick and alert in finding any signs of the new law conflicting with existing obligations that Nepal are bounded by due to international treaties and other agreements. The Nepal Treaty Act 1990 establishes clearly that if any legislation is inconsistent with provisions of an international treaty to which Nepal is a party, the inconsistent legislation will be invalid and the treaty will step forward instead. The provisions in the treaty will be applicable as if they were Nepal law.⁶⁵ During the legislative process officials in the Ministry of Law and Justice regularly give their expert advice.⁶⁶

4.1.2.1 The Parliamentary Committee system:

Concerning the protection of child rights and enforcement of the law as it relates to children the Parliamentarians are not only important for the enactment of new legislation, the system of Committees in the Parliament also permits the lawmakers to investigate the executive's work considering children's issues and to put

⁶⁰ The Constitution, art. 1.

⁶¹ Murgatroyd, (2000), p. 15.

⁶² Murgatroyd, (1996), p.3.

⁶³ Murgatroyd, (2000), p.15.

⁶⁴ (ibid), p.16-17.

⁶⁵ Nepal Treaty Act 1990, section 9.

⁶⁶ Murgatroyd, (2000), p.17.

questions to individuals with certain responsibilities for child rights. The Committees are all connected and responsible to certain areas of the work of the government. There is not one single Committee designed to work with children's issues alone. Instead the responsibility is split on nine Committees. As with the central Ministries one could hereby say that every Committee is an important actor in protecting child rights. To make Parliamentarians more aware of child rights issues a group of child rights experts was recently visited the Parliament in order to help and assist parliamentarians in their understanding and work for child rights.⁶⁷

4.1.3 The Executive:

The King and the Council of Ministry shares the executive power. However, in practical terms the Council of Ministry has the executive power alone. The sovereign, at the present time King Birendra, is head of state and commander – in – chief.⁶⁸ Originating from the 1990 mass movement and events, the King is a constitutional monarch with a limited amount of power in the daily issues of the government. The King is responsible for preserving and securing the Constitution⁶⁹ and in the Preamble to the Constitution the importance of the parliamentary system of government, the constitutional monarchy and the system of multiparty democracy is being emphasised.⁷⁰

Unfortunately, one of the greatest problem Nepal is facing today is the unstable governing. Nepal changes Government regularly, approximately twice a year. This also means that the people in the Ministries are being changed which make it very difficult to launch any projects or to get competent people working in the Ministries.⁷¹

4.1.3.1 The Council of Ministry:⁷²

The Constitution gives the Prime Minister the right to determine the size of the Council of Ministry himself.⁷³ More important is however the fact that the Constitution emphasises the principle of collective responsibility. The Prime Minister and his Council of Ministry are hereby collectively responsible to the Parliament for their work. However, each member of the Council of Ministry is individually responsible to the Prime Minister and the Parliament for the actions of his Ministry.

⁶⁷ Murgatroyd, (2000), p.17.

⁶⁸ *Country Profile Nepal*, (2000), p.31.

⁶⁹ The Constitution, art.27(3).

⁷⁰ Murgatroyd, (2000), p.18.

⁷¹ Interview with Vinita Sekeran, 6/12.

⁷² This chapter is based on Murgatroyd, (2000), p.18-19.

⁷³ The Constitution, art. 36(2).

The most important Ministries concerning enforcement of child rights and education are The Ministry for Women, Children and Social Welfare (MWCSW) and the Ministry of Education (MOE). A further description will be given on these Ministries later in the essay.

4.1.4 The Judiciary:

As the third pillar of central Government under the separation of powers enforced by Constitution, the judiciary has a decisive function in ensuring that the legislative activities of Parliament conform with the Constitution, and in observing executive action to see if the Parliament exceeds its powers in the Constitution and acts of Parliament. The judiciary system consists of about 70 District courts, about 20 appellate courts and a Supreme court situated in Kathmandu. The Constitution explicitly permits the Supreme court to review legislative action⁷⁴ and to issue several remedies in order to prevent the Government to act in the opposite way of the will of the people as been brought into reality through the Parliament, and, in special situations, to impose it to work in the way that the Constitution (and/or Parliament) has instructed it to act.⁷⁵

4.1.5 Local and District Administration:

As part of changing to multiparty democracy, the Panchayat system of government at the local level in Nepal changed into a new system of Development Committees. Development Committees were created in a first wave of local government legislation in 1990 which was replaced by new, comprehensive local government legislation in 1992. The new legislation make detailed provisions for the work of the District Development Committees (DDC), Village Development Committees (VDC) and Municipalities which all were created by the 1990 legislation. Together the both Acts set out the framework of local political officials in the different areas of Nepal.⁷⁶

In every district in Nepal work Civil Servants, appointed by the Central Government. Their duty is to act on behalf of the Central Government at local levels together with locally elected officials in DDCs, VDCs and Municipalities. There are many Civil Servants in each of the different Districts representing a great number of Ministries with a local presence.⁷⁷

⁷⁴ The Constitution, art. 88(1).

⁷⁵ Murgatroyd, (2000), p.20.

⁷⁶ (ibid), p 8-16.

⁷⁷ Murgatroyd, (2000), p.24.

The Civil Servants appointed by the Government do still have an important role to play as the representatives of Central Government, Ministries in the regions, and sometimes, as the implementing agents for different Central Government initiatives. Unfortunately the relationship between them and their locally elected counterparts is not always straightforward. As been mentioned above the 1992 Local Government Legislation (the DDC Act 1992 and the VDC Act 1992 and the Municipality Act 1992 together) fundamentally changed the relationship between centrally appointed officials, who had become used to work within the party less Panchayat system, and the new representatives of political parties at District level. The relationship has further been changed under the Local Self – Government Act 1999 which has increased the quality and power of DDCs in the District planning process and as the agency in District level development initiatives, and emphasised their importance as co-ordinators of all programmes in the District. Under the new Act the DDC is responsible for co-ordinating with Central Government Officials as well as with governmental and non-governmental organisations whilst formulating the integrated District Development Plan⁷⁸, and for directing the implementation of the development programmes under the plan.⁷⁹ At the same time, a DDC must abide by the directions given by National Planning Committee (NPC) and the concerned Ministry of HMG in operating the plan.⁸⁰

In addition to the Officials, who derive their powers from the 1992 local government legislation, in the different Districts and Village Areas numerous other local agencies and Officials with development work responsibilities have been created and operate under the legislation. Today most of the Central Government Agencies are in existence but some have still not been set up and Officials have not yet been appointed.⁸¹

Some of the Central Government Officials at the local level in Nepal are very important for the system of law enforcement for protection of child rights. They are responsible for major parts of the legislation. They include: (1) District Education Officers (DEO), (2) District Health Officers, (3) Local Development Officers and (4) Women’s Development Officers.⁸²

4.1.5.1 District Education Officers:

HMG has the power to appoint a DEO in each District in Nepal. The DEO is the most important official in each District Education Office. His functions, duties and powers are extensive. They are set out in the Education Act 1992. They contain the obligation to implement regional directives, the obligation to construe an education plan for the District and to have it approved by the District Education Committee, the obligation to send data once a year to the Ministry of Education

⁷⁸ Local Self-Government Act 1999, section 204.

⁷⁹ (ibid), section 205.

⁸⁰ (ibid), section 207(2).

⁸¹ Murgatroyd, (1996), p.8-16.

⁸² Murgatroyd, (2000), p.24.

and finally the obligation to make the situation better, through organising workshops and training, concerning the system of education in the District.⁸³ (A more detailed description of the DEO's duties will be given in chapter 7).

4.1.6 Village Development Committee:

The VDC is an autonomous body. The area of the VDC has been fixed by HMG by marking of a certain rural area. Further the VDC has been divided into 9 wards. Each VDC has also 9 ward members, a chair person and vice chair person. Ward and VDC members are elected by the local people every five years.⁸⁴

The overall duties of a VDC are to construct plans for community development. In order to fulfil this obligation it shall work in collaboration with the local people to identify needs and problems regarding education, health, social welfare etc. The formulation of the projects shall also include a plan for execution, monitoring and evaluation of the projects. A VDC shall also make special arrangements for the fulfilment of women's need. Despite this, a VDC has legal obligations as hearing complaints for example against the encroachment of road ways and of others land as well as labour complaints. The resources for which the VDC can fulfil its duties can be summarised as follows: Taxes and fees, contributions received from the DDC, grants and donations from HMG and other organisations and persons.⁸⁵

4.1.7 District Development Committee:

There is one DDC in each of the 75 District in Nepal. The DDC work with similar duties as the VDC but on the district level. In other words, the DDC prepare plans, execute them, does monitoring and evaluation. And as the VDC it has to, when constructing their programmes, pay special attention to women and children's situation in the District in order to improve it. Like the VDC the DDC is an autonomous and organised body. The Precedent and Vice – precedent of the DDC are elected by the members of the VDC and Municipalities in the District. The District Council consists of VDC members , Mayor and Deputy Mayer of the Municipalities and members of the DDC. The District Council meet once a year in order to approve the budget of the District, the annual plans and programmes as well as development policies.⁸⁶

⁸³ Murgatroyd, (1996),p.8-16.

⁸⁴ Bahini, *Rural Women's Advocacy*, (1996), p. 24 – 29.

⁸⁵ Bahini, (1996), p.24-29.

⁸⁶ (ibid), p.38 – 39.

The resources a DDC has at its disposal are contributions of HMG, amounts received from the Public Revenue fixed by HMG, amounts deriving from its own resources, gifts and donations from organisations, credit and loans received from funds and organisations.⁸⁷

4.1.8 Special government mechanisms set up to promote, co – ordinate and monitor measures for children at central and district level:

HMG has established a number of institutions to deal with children’s issues and the question of children’s rights:

4.1.8.1 The National Council for Women and Child Development (NCWCD):

This body was established in 1995 under the chairmanship of the Prime Minister. In order to make the protection of child rights as effective as possible there was a need for co-ordination between government departments. The duty of NCWCD is to formulate national policies for the development of children and women and to monitor program towards world summit for children goals. The Council also monitors and co-ordinates governmental and inter-governmental actions concerning children and women.⁸⁸

The Council consists of representatives from almost every Ministry, women members of the Parliament, lawyers, social workers, intellectuals, representatives from the NPC and NGOs. At some levels the co-ordination between the Ministries concerning major governmental programmes is functioning well. However this co-ordination does not involve far from all activities related to children. The Ministry of Education has traditionally handled child rights issues at governmental level and it continues to take the lead on many child-centred programmes because of its responsibility for the formal education throughout Nepal. At the same time the Ministry of Labour take responsibility for child labour issues, the Ministry of Women, Children and Social Welfare assumes responsibility for child welfare concerns, and the Ministry of Health organises basic primary health care. At once, the Ministry of Local Government is appointed under the Local Self – Government Act 1999 to be the co-ordinating body for all local institutes wishing to work with HMG.⁸⁹ Obviously there is a need for co-ordination between the different Ministries concerned with child rights issues but as important is also that these Ministries co-ordinate and work together with the VDC and DDC. The Local Development Ministry is the boss over VDC and DDC, but the Ministry it self works almost alone without any co-ordination

⁸⁷ (Ibid)

⁸⁸ Concluding Observations of the CRC-Committee 7 June 1996, Murgatroyd, (2000), p.19-20, Good Governance for Children in South Asia, (2001), section 2, p.6-7.

⁸⁹ (ibid)

with VDC, DDC or with other ministries. Their work becomes separate but in reality their subject field is closely connected to each other.⁹⁰

4.1.8.2 The Ministry for Women, Children and Social Welfare:

In September 1995 the responsibility for matters related to children's rights and child development was shifted to the newly created Ministry for Women and Social Welfare. Before this these children's issues were under the Ministry of Labour. In the beginning of year 2000, as a part of a major restructuring of the Government Ministries, the word "children" was added in the nomenclature. Today it is called the Ministry for Women, Children and Social Welfare. The change indicates that the Government takes child rights more seriously and allows more space for these kind of questions.⁹¹ However, opinions differ about this statement. Some observers say this change was mainly because of strong women's lobby in Nepal and the new name including children was only symbolic. The same observers also claim that MWCSW is ineffective in fulfilling the obligations of the HMG as a State Party to the CRC. A common opinion of the MWCSW is, compared to the other Ministries, that it is less powerful.⁹² It is a weak Ministry. It is new, without money and needs lots of support from NGOs.⁹³ Despite the changes the priority of the MWCSW is still not children's issues. According to themselves they can't work with these questions effectively because of lack of resources.⁹⁴

There is also an obvious lack of instructions to the Districts considering the contributions of money given to them. MWCSW gives 50,000 Nepali Rupies to each District every year but the money comes to nothing. The Districts do not know what to do with the money and how to do it and as long as the MWCSW is silent there is only a vast amount of money.⁹⁵ This situation is a consequence of the fact that the MWCSW is not very much aware of child rights and the Ministry itself is bureaucratic. As a solution the Ministry could invite DDV and VDC and together formulate a program for the implementation of the CRC. A co-ordination between these organs would make better awareness of child rights and constructing a plan together would make the implementation more effective.⁹⁶

4.1.8.3 The National Planning Commission:

Directly after Nepal ratified the CRC this Commission became the responsible organ of State for policy and program planning relating to children's rights. The Commission consists of politicians, administrators and experts. It is connected to

⁹⁰ Interview with Haribakta 3/12.

⁹¹ Interview with Vinita Sekera, 6/12.

⁹² Good Governance for Children in South Asia, (2001), section 2, p.7.

⁹³ Interview with Vinita Sekera, 6/12.

⁹⁴ Interview with a Program Officer at CELRRD, 4/12.

⁹⁵ Interview with Haribakta Kojko, 3/12.

⁹⁶ (ibid)

the work of Central Government in Kathmandu, and Local Government in the regions, mainly through the DDCs. In 1993 a Child and Women Development section was set up within the NPC Secretariat. This establishment of a new mechanism to deal with children's issues and the questions of child rights was especially welcomed in the concluding observations of the Committee on the Rights of the Child in 1996.⁹⁷

The NPC has been involved in various child related initiatives. As a result of an initiative taken by some people in the NPC a National Plan of Action and a 10-year National Program of Action for Children and Development have been created. The Commission also played an important role in co-ordinating the initial State Party Report. During this time, mid nineties, the NPC was able to run some very well-made and profitable programmes and actions for the implementation of child rights. But thereafter the main responsibility for implementing child rights has moved under the MWCSW. Some people is of the opinion that as a result of this change the officials do not take similar interest in these questions as before.⁹⁸

Today the NPC co-ordinates HMG's development and planning activities. The most important duty of the NPC is to formulate five-yearly national development plans. These plans make the essential features of Government policy concerning the structure of the development of the nation over time. At the moment (period 1997-2002) the Ninth Plan is in existence.⁹⁹

4.1.8.4 Child Welfare Boards:

Following the ratification of the CRC and the creation of the Children's Act 1992 Nepal finally in 1996 under the new Ministry for Women and Social Welfare established a structure of Child Welfare Boards. The structure consists of one Central Child Welfare Board headed by the Minister and of 75 District Child Welfare Boards led by the Chief District Officer (CDO). Provisions for the establishment of the structure is made in the Act itself.¹⁰⁰ In other words, the CCWB was brought into existence exactly three and a half years after the Child Act 1992 came into force. During the following four years it met once.¹⁰¹

Today all the 75 DCWB are supposed to have been set up in all Districts of Nepal, but there are still plenty DCWBs which do not exist. Only 40 percent out of 75 boards are believed somehow to be functioning and the majority of the boards are said to be unclear about their role and responsibility. However, there

⁹⁷ Murgatroyd, (2000), p.23-24; *Good Governance for Children in South Asia*, (2001), section 2, p.7.

⁹⁸ (ibid)

⁹⁹ Murgatroyd, (2000), p.23-24; *Good Governance for Children in South Asia*, (2001), section 2., p.7.

¹⁰⁰ The Childrens Act 1992, section 32(1) and (2).

¹⁰¹ Murgatroyd, (2000), p.26.

are some DCWBs that have been proportionately active during the last 2 – 3 years. These active and most successful DCWBs are those which have, since 1998, been strengthened by a project carried out by a tripartite agreement between SC Norway, SC UK and the MWCSW.¹⁰² A mid-term analysis of this program tells that these 10 DCWBs have achieved good results in terms of data collection and analysis, spreading out information on the CRC at District and VDC levels and establishing a physical presence in the Districts. However the report also establishes that much more could be achieved if there were better directions from the MWCSW and CCWB as well as better co-ordination at all levels. This include co-ordination between the CCWB, HMG/N and the NPC at the top level, between DCWBs and local organs such as DDCs and VDCs at the district level, and between grass-roots organisations, NGOs, child-clubs and other at the village level. An essential part of the co-ordination is that all different actors will be part of DCWB activities.¹⁰³

Both the CCWB and the DCWBs were supposed to play an important role as institutional mechanism to advocate, protect and promote children's rights. As been showed above the outcome of the DCWBs have not really been as satisfied as they were expected to be.¹⁰⁴ The CCWB has not been able to live up to its expectations either. There is a lack of clear instruction how the delegation of power from the government to the CCWB shall work, the CCWB is only an advisory body not an executive body which make it less effective and the Chief of the board is not paying enough attention to children's situation. Instead he is busy dealing with other things.¹⁰⁵

The Central Child Welfare Board:

The CCWB has a very broad authority to perform certain actions. It ranges from the duty to examine ways and means on how to solve social issues that result in violation of children's rights, whether it is child labour, child marriage or offering children to Gods and Goddesses to developing national policies, plans and programs. The CCWB also has the authority to prepare and present the CRC Report on behalf of HMG to the CRC Committee in Geneva. The thought is that for this occasion the CCWB shall be assisted by all the DCWBs in the country. The DCWBs should monitor children's situation in their districts, hand in a report to CCWB on the basis of updated information and also assist in the CRC reporting process by providing necessary feed back, suggestions, inputs and data. Thereafter the CCWB shall collect and analyse all data, finalise and submit the Final CRC Report to Geneva. Some NGOs that are members of the NCWCD as well as the CCWB have expressed criticism of how the latter has worked.

¹⁰² Murgatroyd, (2000), p.26; *Rights and Needs of Children in Danish Development Assistance to Nepal*, (2000), p.25.

¹⁰³ Murgatroyd, (2000), p.27.

¹⁰⁴ *Good Governance for Children in South Asia*, (2001), section 2, p.7-8.

¹⁰⁵ Interview with Yubarai Sangroula, 5/12.

Although the CCWB has widespread power it has neither organised a single meeting nor developed any policy guidelines. It has also not taken its responsibility as it is stated in Children's Act. The members of the Board do not fairly know the responsibilities the Government stands in front of following the ratification of the CRC. They are not familiar with their own role and obligations either. CCWB members have lots of things to keep up with and they all have different priorities and obligations. However, recently the CCWB went through a reformation and new members were appointed. This was very welcomed and the expectations are high that the new members will take more responsibility for their duties and show the child related issues more interest.¹⁰⁶

The District Child welfare Boards:

DCWBs are working with the Children's Act. Certain parts of the CRC are being implemented by the DCWBs as for example welfare activities in the Districts. Any concrete directives on how this implementation shall work are however not in existence.¹⁰⁷ The DCWBs are functioning as a district level structure of the CCWB. The CDO has the main responsibility for the work of the DCWB. He plays the role of finding resources and protecting the law, the CRC and child rights.¹⁰⁸ As the administrative head of the DCWB he shall organise program, co-ordinate the work with other partners e.g. with the CCWB, co-ordinate NGO-work and make sure it is all functioning well. He also appoints the members of the Board for a period of four years founded on criteria laid down by the Children's Act 1992.¹⁰⁹

The CDOs are trying to do their best to implement the CRC, but it is difficult to get any support from the Central Government, there is no priority to give them any resources.¹¹⁰ How the CRC is being implemented is very much depending on the CDO and his interests. The CDO is usually busy with lots of things in the District. Sometimes they do not care about child issues.¹¹¹ And many of them are busy trying to solve the problems related to the Maoists.¹¹² However, there are CDOs that are very positive and engaged in the implementation process. In Siraha District the CDO puts 10 percent of its annual budget on activities promoting the implementation of the CRC.¹¹³

¹⁰⁶ *Good Governance for Children in South Asia*, (2001), section 2, p.7-8.

¹⁰⁷ (ibid)

¹⁰⁸ Interview with Hari Rana, Krishna Bandhu Adhikary, Pramod Mahat, 12/12.

¹⁰⁹ Interview with the Program Officer at CELRRD, 4/12; *Good Governance for Children in South Asia*, (2001), p. 8.

¹¹⁰ Interview with the Program Officer at CELRRD, 4/12.

¹¹¹ Interview with Hari Rana, Krishna Bandhu Adhikary and Pramod Mahat, 12/12.

¹¹² Interview with Haribakta Kajo, 3/12, (This interview was made in one of the most maoist-affected areas of the country.)

¹¹³ Interview with Hari Rana, Krishna Bandhu Adhikary and Pramod Mahat, 12/12.

5 A SITUATION ANALYSIS OF THE EDUCATION SECTOR:

5.1 Statistical overview of the situation of education:

According to MOE statistics from 1998, the number of primary schools¹¹⁴ and primary teachers¹¹⁵ has increased considerably. The enrolment rate has more than doubled from 1.75 million in 1984 to 3.6 million in 1998. However, in spite of this progress, the MOE statistic also reflects the serious problems in meeting the rights of all children to free and compulsory primary education: of the estimated 2.9 million children (6-10 years) belonging to primary school age, only about 70 % are enrolled in school. There is a Net Enrolment Rate¹¹⁶ of 61.2 % of girls and 79.4 % of boys and the apparent graduation rate in primary education is 53 %. Out of them 41.9 % are girls and 64.5 % are boys. In other words only 47 % of enrolled children are expected to complete primary education.¹¹⁷ Only 10 % of children enrolled in grade one are expected to complete primary education without repeating any grade; the annual drop-out rate in first grade is 21 % and the repetition rate is 42 %. About one-third of all girls access lower secondary (grade 6-8) education, in contrast to three-fifths of all boys graduated from primary school.¹¹⁸ It shall be noted that the statistical averages cover a wide variance between rural and urban areas and various caste and ethnic groups. (see further discussion below).

The literacy rate has increased steadily over the past years due to increased investment in education, especially in primary education. Despite this, the literacy rate above 6 years is still low, estimated at only 40 % (female literacy rate of 25 %) (UNDP, 1998). The low literacy rate for women is worrying, in particular since this reflects the overall discrimination against girls and women and the very poor conditions of women. In many parts of the country the female literacy rate may only be about 1 %. A concrete example is the Siraha District where 10 % of the women are literate meanwhile 48 % of the men are literate¹¹⁹.

¹¹⁴ From 7 634 in 1971 to 23 885 in 1998.

¹¹⁵ From 46 484 in 1984 to 91 878 in 1998.

¹¹⁶ The net enrolment rate (NER) is the number of students of the respective age group specified for that level education in a given year, as percentage of age group population specified for that level of education in the same year.

¹¹⁷ *Education Information of Nepal*, (2000), p.8-11.

¹¹⁸ *Rights and Needs of Children in Danish Development Assistance to Nepal*, (2000), p.9.

¹¹⁹ Interview with Hari Rana, Krishna Bandhu Adhikary and Pramond Mahat, 12/12-2000; *Rights and Needs of Children in Danish Development Assistance to Nepal*, (2000), p.9.

Important in this context is the circumstances on how data collection is being carried out and compiled in Nepal. The Central Bureau of Statistics (CBS) has collected census data methodically since 1952/54 and is the main source of information on literacy. The definitions of literacy is very diffuse and have varied from time to time. In the 1991 census, literacy was defined as “ the ability to read and write with understanding and to perform simple arithmetic calculations”. CBS states that it has, during the censuses, not been able to go through with any literacy tests, which means that the reported pictures may overestimate the real literacy rate in the country. Important is also the fact that according to the Human Development Report from 1998 produced by UNDP the statistical data provided by MOE and CBS are obviously different. There has not been any explanations for these differences. In other words the reliability of the data is questionable.¹²⁰

5.2 Factors influencing the system of education in Nepal:

5.2.1 Poverty:

Nepal is one of the poorest countries of the world where more than half of the population live in absolute poverty which mainly affects the most vulnerable groups.¹²¹ Most of the people live on the countryside basically involved in the agriculture sector. The families are generally big and the survival of a family depends to a large extent on all members’ performance in the household. Due to the poor resources of the schools, especially in the countryside, it is very common that the children are being charged extra for textbooks and uniforms etc. Many people are of the opinion that the primary education is not free. Children must buy their own material and they also have to pay an admission fee and sometimes also a monthly fee. Many parents are unable to bear these costs.¹²²

Nepal is mainly an agriculture society. To maintain the economic status in the family the parents have to use their children to work in the fields. Especially when it is sow – and harvest time there is no time for children to be in school and even if they could attend school there is no free time for them at home to make their home works.¹²³

A concrete and unfortunately a very common example of this situation is the child Goma Kumari Shrestha living in the District Siraha in Nepal. Goma is a girl whose parents did not permit her to attend school. The reason is that she comes from a

¹²⁰ *Rights and Needs of Children in Danish Development Assistance to Nepal*, (2000), p.9.

¹²¹ *Concluding observations of the Committee on the Rights of the Child*, 7 June 1996.

¹²² Interview with J.B. Shrestha, 9/1; Children of “Asha Child Club” and “Shrijana Childclub”, 13/12; Ramashhis Singh, 12/12.

¹²³ Interview with J.B Shrestha 9/1; Dhanbir Prasad Pal, 12/12.

very poor family where her parents had to work which resulted in that she had to stay home and take care of her younger sisters and brothers. She said that her only wish during this whole time was that she one day would be able to go to school and learn how to read and write.¹²⁴

For many uneducated and poor people the right to education means money. They know that they do not have the facilities and possibilities to invest in child rights. The Government has a responsibility to encourage parents (and children) to attend school. The schools in the villages do not only need financial support, they also need mental and moral support in order to pursue parents to let their children go to school. The Community has an obligation to help children in their homes to relieve their heavy burden of work and especially parents need to be encouraged and even pursued to let their children get free time for their homework.¹²⁵

5.2.2 Governmental and Community poverty:

The Government system does not effectively address the rights of all children to education. This is especially true for the socially disadvantaged and vulnerable groups. Despite of primary education being tuition free, most schools charge “non – tuition fees”, require school uniforms, writing materials etc. As been mentioned above a large number of income-poor households are not able to pay these costs.¹²⁶ A danger of formation of an “elite” monopoly in education is increasing. Over the years, the governmental schools have been stagnating because of lack of funds and educational materials. They have no teachers, no roofs and no books. Many good teachers have shifted their jobs to the more attractive private boarding schools. Today it has reached a point where one can see an obvious segregation: the public school are only for the children who cannot afford going to expensive private schools. The village schools are forced to raise a smaller fee from the children in order to survive, and then the Maoist¹²⁷ have order to cancel it. This leads to permanent economical collapse for many schools.¹²⁸

Some people in Nepal are convinced that the Government today does not have enough resources to make the education free, compulsory and equal for all children in Nepal.¹²⁹ It is not unusual that teachers do not get any salary at all because of lack of money in the system. To solve this problem the governmental schools take out an extra fee. For these money the school management committee pays the salary for the teachers and also hires additional teachers. Another serious problem the governmental schools struggles with is the lack of teachers due to

¹²⁴ Interview with Goma Kumari Shrestha, Shrijana Child Club, 13/12.

¹²⁵ Interview with Dhanbir Prasad Pal, 12/12.

¹²⁶ *Rights and Needs of Children in Danish Development Assistance to Nepal*, (2000),p.11.

¹²⁷ The guerrillas of Nepal.

¹²⁸ Information letter from Yubaraj Sangroula, 21/11.

¹²⁹ Interview with Yubaraj Sangroula, 5/12.

them leaving for private alternatives. The schools facing these kinds of problems must solve them with money from their own pockets. The District Education Officer (DEO) in the Siraha District is a concrete example of this matter of problem. The DEO is very ineffective and does not take its responsibility to provide the support needed. The children themselves have to buy textbooks, uniforms and other necessary materials. The DEO does not invest enough materials which leads to that the schools have to charge parents extra fees in order to buy crayons for the black board, furniture etc. The idea is that the DEO shall repay the parents for their expenses. However, the DEO does not repay in time. Instead it can take months and years before the parents receive their money back. This means that poor community people cannot and do not want to send their children to school. The problem with the teachers' salaries has increased the last years and does not only effect the teachers. It hits the access to school for the children. When the teachers do not get enough money or if the salary is not being paid at all the teachers fail to come. And when the teachers do not come, the children can not come. A child that has walked one or two hours to reach the school will not bother to do the walk the next day if there was no teacher there in the first place.¹³⁰

5.2.3 Discrimination:

The Constitution guarantees equality to all citizens of Nepal, (notwithstanding the right of the State to make special provisions for the protection and advancement of children)¹³¹. In the Children's Act of 1992 there are also some articles prohibiting discrimination. The Act establishes that no discrimination shall be made between sons and daughters themselves in matters relating to their upbringing, education and health care¹³². Further the Act states that no discrimination shall be made between children born out of wedlock or in lawful wedlock or between the adopted or the natural child¹³³. Despite these regulations Nepal is a society where discrimination of different kinds are very common:

5.2.3.1 Girls:

One of the most disadvantaged groups in the Nepalese society constitutes the girls. Nepal is often called a patriarchal society. In the long term parents are economically and culturally more dependent on sons and daughters-in-law than on daughters. Daughters are expected to work more in the home, to get less education than sons, to marry earlier and after the marriage to care for housework, children, husband, parents in law and in rural areas also to take care

¹³⁰ Interview with Hari Rana, Krishna Bandhu Adhikary and Pramod Mahat, 12/12; Ramashis Singh, 12/12; Vinita Sankera, 6/12; Yubaraj Sangroula ,5/12; Haribakta Kojo, 3/12.

¹³¹ The Constitution, Art.11.

¹³² The Children's Act, 1992, chapter 2 art. 5

¹³³ The Children's Act, 1992, chapter 2 art. 6

of livestock and work on the fields.¹³⁴ The few girls that reach a little higher up in the school, that is more than few years, are still forced to stop their education due to marriage, usually at an age of 15.¹³⁵

There are a large number of factors that are considered to affect the low enrolment and high drop-out rates of girl children. Some of the most important are the following:

- Girls must do the domestic household work and child care activities.
- Classrooms are not “girl-friendly” because of incompetent male teachers and the lack of female teachers.
- Many families are very traditional in the way that they believe that girls education is unnecessary and economical wasted as she will be married off, usually when she is very young.
- Some families are of the opinion that if their daughters will get an appropriate education it will hamper the family’s possibility to find her a husband.
- There are some very traditional communities, especially in the south of Nepal, where it is thought that girls must be segregated from men and boys.¹³⁶

This kind of discrimination between girls and boys is also reflected in the Nepalese legislation, as the minimum age for marriage is 16 years for girls and 18 years for boys, and also in the context of inheritance of property, where daughters are only permitted to get a share if they are 35 years old and they must as well be unmarried at the time.¹³⁷ The CRC Committee has observed these unsatisfying circumstances and expressed its concern in particular at the insufficient measures adopted to ensure the effective implementation of the principle of non-discrimination in the CRC.¹³⁸ The Committee takes exception to the still existing discriminatory attitudes towards girls, as reflected in the prevailing son preference, the existence of early marriage, the lower school attendance of girls and their higher drop-out rate. Further the Committee also underlines its concern about the different marriage age for girls and boys and establishes that this state of condition is not in conformity with article 2 of the CRC.¹³⁹

5.2.3.2 Location:

The opportunities for literacy is much higher in the urban than in the rural areas. Despite the last two decades of an unparalleled rate of urban growth still approximately 90 % of Nepal’s population is rural.¹⁴⁰ The people living in the

¹³⁴ *Rights and Needs of Children in Danish Development Assistance to Nepal*, (2000), p.15.

¹³⁵ Interview with Yubaraj Sangroula, 5/12.

¹³⁶ *Children and Women of Nepal. A situation analysis 1996*, p.117-118; Interview with Haribakta Kojo, 3/12.

¹³⁷ *Rights and Needs of Children in Danish Development assistance to Nepal*, (2000), p.15.

¹³⁸ The CRC, art.2

¹³⁹ *Concluding observation of the Committee on the Rights of the Child*, 7 June 1996.

¹⁴⁰ *Children and women of Nepal, a situation analysis, 1996*, p.149.

rural areas are today facing fatal problems. The adequate teachers flee to the more attractive boarding schools in the urban areas. The Government tend to invest more money in the new city schools than in the village schools which are in desperately need of money to have any chance at all to offer a reasonably education. The village schools are in very poor condition, poorly maintained and with an unpleasant environment that does not constitute an atmosphere promoting learning. This results in an increasing difference in quality of education and an obvious indirectly discrimination. The guidelines for the city boarding schools given by the responsible Ministry are the same as the guidelines for the rural areas. A child in a proper boarding school in Kathmandu will certainly finish his/her education much earlier and will at that time be more educated than a child attending a village school. The children in village schools must go to school for many more years to learn as much as a “city child”. All these factors result in a state where poor children from rural areas not will be able to compete with children from city schools and in the very long it will only be the cities that will get high educated people.¹⁴¹

5.2.3.3 The Cast system:

The disparity in literacy is very high among the various caste and ethnic groups. There is a high percentage of high caste groups and a few percentage of smaller ethnic groups belonging to the upper literacy domain and an over representation of the lowest caste groups at the very bottom. Children in Nepal of all minor ethnic groups and castes are liable to injustice. However the most liable are poor children of low castes and minority groups.¹⁴²

HMG aims to provide primary education to all school aged children. However, significant proportion of children are still out of school. These out of school children are forced to be involved in different forms of working activities, most of them are Dalits.¹⁴³ The caste system is probably one of the most primitive hierarchical systems in the world today which goes several thousand years back. Still it is one of the major social problems in Nepal. There are a number of Dalit castes in existence today in the country.¹⁴⁴

Out of an estimated population of 22 million 20 % (4 million) are Dalits in Nepal. Out of these 4 million Dalits 50 % are below 18 years of age. 80-90 % Dalits are living below poverty line, 12 % are literate, only 3.2 % of the Dalit women are literate. The school enrolment in primary level is 48 %. Before the children

¹⁴¹ *Rights and Needs of Children in Danish Development Assistance to Nepal*, (2000), p,10; Interview with Haribakta Kojo, 5/12.

¹⁴² *Rights and Needs of Children in Danish Development Assistance to Nepal*, (2000), p,10, 15.

¹⁴³ Dalit=“untouchable”=a person born into one of the lower castes.

¹⁴⁴ J.B Shresthna, *The Concern*, (2000), p.16-17.

complete 5th class more than half of them have dropped out. Over 50 % of Dalits children suffer from malnutrition.¹⁴⁵

It can not be much worse today in the Nepalese life than to be a Dalit and poor. There are a number of higher caste groups which are economically poor but there is a significant difference between a poor Brahman from the highest caste groups and a poor Dalit. From birth a Dalit child is branded as untouchable and its life is a curse. Before Nepal ratified the CRC the Dalit children were not allowed to get education and go to school. Today the Constitution and the Children's Act have opened new doors for Dalit children. However, still they have to face a number of problems in schools and especially in the classrooms. Mostly schools in western Nepal do not permit Dalit children in the classroom, they have to stay outside separated from the other children.¹⁴⁶ Overall, lower caste groups do not get the same attention as the other children by the teachers in school.¹⁴⁷

The caste system is today deep-rooted in the Nepalese society and parents in the lower caste groups think that it is useless to send their children to school. Their own conception of themselves is that they are poor and nothing will change this fact. They will always be of the lower caste which means that education is only a waste of time and money. Their children will not get a job anyway.¹⁴⁸

5.2.3.4 Children with special educational needs:

The term "children with special educational needs" was introduced in the Salamanca Declaration from 1994¹⁴⁹. The main concept of this declaration is that "schools should accommodate all children regardless of their physical, intellectual, social, emotional, linguistic or other conditions. This should include disabled and gifted children, street and working children, children from remote or nomadic populations, children from linguistic, ethnic or cultural minorities and children from other disadvantaged or marginalized areas or groups". One of the most important ideas in the declaration is the construction of "inclusive schools". This means a development of a child centred pedagogy capable of educating all children, including those who have serious disadvantages and disabilities. (Children from different ethnic, minority and caste groups have been discussed above and are therefore excluded here).¹⁵⁰

¹⁴⁵ J.B Shrestna, (2000), p.16-17.

¹⁴⁶ (ibid).

¹⁴⁷ Interview with Hari Rana, Krishna Bandhu Adhikary and Pramod Mahat, 12/12.

¹⁴⁸ Interview with Ram Autar Yadav, 13/12; Hari Rana, Krishna Bandhu Adhikary and Pramod Mahat, 12/12; Udayh Murinumhar, 30/11.

¹⁴⁹ The Salamanca Statement and framework for Action on Special Needs Education, 1994.

¹⁵⁰ *Rights and Needs of Children in Danish Development Assistance to Nepal*, (2000), p.12-15.

Special needs education is underlined as very important in BPEP 2¹⁵¹, and must be specifically emphasised in the development of compulsory primary education and in reaching the goal of “Education for all”. Unfortunately, schools in Nepal tend rather to exclude than include these children. Out of the children with disabilities there is estimated only 1 % that have access to school or any education. The ones who get an education today are those who attend either special disability schools run by NGOs, some are partly supported by MOE, or in so-called resource classes constructed by MOE. The content of the education given in these special classes is unfortunately not always the very best for the children. Lack of guide lines, proper supervision and support for the teachers in combination with the fact that the children have to live away from home in hostels to have access to these schools or classes make the situation sometimes even worse. In addition, the conditions in the hostels are often inadequate and in some cases even shocking. In many cases these children do not come from the local community which means that the VDC, the school management and the administration do not care for these children because they are not under their responsibility.¹⁵²

Another very exposed and also vulnerable group in Nepal is children with mental illnesses. The Nepalese law permits the placement of mentally disturbed children and adults in jail. No medical examination nor treatment, education and rehabilitation are available for such children. Husbands or parents may with arbitrary place women (mothers) in jails on account of mental illness. Children of these mothers may have to stay in jail for a long time.¹⁵³

5.2.4 Environment in school:

According to the Children’s Act chapter 2 article 7 it is prohibited to expose a child to torture or cruel treatment. However, the same article also allows parents, members of the family and teachers to beat a child if it is thought to be in “the interest of the child”. The environment in the schools are overall not very friendly for the children. One of the reasons for the high drop-out rate is that the teachers are mean and the children are regularly being beaten. Also the school buildings themselves are a reason way children stop going to school. The classrooms are cold and gloomy and it is not unusual that the schools do not have any walls at all which makes the children unconcentrated.¹⁵⁴

¹⁵¹ Basic Primary Education Program. Launched in July 1999. A governmental program mainly sponsored by donars.

¹⁵² *Rights and Needs of Children in Danish Development Assistance to Nepal*, (2000), p.12-15.

¹⁵³ (ibid).

¹⁵⁴ Interview with Yubaraj Sangroula, 5/12; Udayh Murinumhar, 30/11.

The torture in the boarding schools are especially serious. Punishments are common. The children have to take lunch at school, and the vegetable is always potato. A low quality of “dalbhat”¹⁵⁵ is served in expensive prices. A smaller girl once said that they had to eat whatever given, and if something was left behind not eaten the child would be punished. To avoid punishment she had to swallow the food down with water. Little left-over could be put into the mouth and then throwing it away while going to toilet. She said that one friend of her once put food in his pocket. Many children are getting sick of this unhealthy food being served in many schools in Nepal and parents can not complain. If they do, their children will be given less marks in the exams.¹⁵⁶

It is not only the teachers that abuse their power. This problem reaches higher up in the hierarchy. In every governmental school there is a Committee, a Board, that has the responsibility and power to make the policy for the school. The principle of the school is only the Secretary of this Board and does not really have any influence. The Board is appointed by politicians of the VDC and they mostly care about political issues. The principle will only get attention if he is of the right party and has, from their point of view, good opinions. The members of the Board are taking their own children to more glamorous private schools and their interest for the governmental school that they are running is therefore not very serious.¹⁵⁷

However, despite this dreary situation there are some bright spots coming up more and more. Areas of Nepal where it has been given CRC teachers training show up a result where teachers stop beating children and the understanding of a good environment as a prerequisite and important factor in the children’s development and learning process have increased.¹⁵⁸

5.2.5 Quality of education:

Generally the quality of education in government primary schools is low. The consequences of this low quality are high rates of repetition and drop-out. A number of factors contribute the low achievement level like: “ poor pre-school facilities, ineffective teaching, timely unavailability of textbooks and instructional materials, lack of continuous monitoring of student progress, poor physical facilities, irregular attendance of students and teachers, language barrier in classroom transaction. Although BPEP 1 developed and implemented new curriculum and textbooks, their dissemination for the most part has not been effective.”¹⁵⁹

¹⁵⁵ The Nepali national dish.

¹⁵⁶ Information letter from Yubaraj Sangroula, 21/11.

¹⁵⁷ Interview with J.B. Shrestha, 9/1.

¹⁵⁸ Interview with Hari Rana, Krishna Bandhu Adhikary and Pramod Mahat, 12/12.

¹⁵⁹ Statement of the Ministry of Education in 1999: *Rights and Needs of Children in Danish Development Assistance to Nepal*, (2000), p.11.

The low quality of education depends very much on the low professional qualifications of teachers. Employment of teachers who do not have any pedagogical training is very common. Usually primary school teachers only have their own teachers from primary and secondary school serving as models for practising teaching.¹⁶⁰ This lack of professional qualification does in many cases also lead to a lack of motivation and commitment of the teachers in primary schools.¹⁶¹ There is also a problem with the concept of imposing which means that the children in school want something out of the education which does not go together with what the teachers and the parents want from the education. For example, parents want their children to learn traditional, “visible” facts such as read and write. Otherwise they do not want to send their children to school. The children do not like the traditional teaching, they want a better environment where they can learn and play altogether, learning in a more pedagogical way. The curriculum is not very flexible and most of the teachers do not have the inspiration to find out what the children need in their classroom and then form the teaching after this.¹⁶² Another factor which lower the quality of education in Nepal is that the teachers are not seldom involved in other business outside the schools and the frequency of being absent from work among teachers is high. Many schools in rural areas are in fact not open regularly because of this. Also, teachers do not really have any opportunity to make a career through upgrading their qualifications which results in weaker motivation for their work.¹⁶³

¹⁶⁰ Interview with Haribakta Kojo, 3/12.

¹⁶¹ *Rights and Needs of Children in Danish Development Assistance to Nepal*, (2000), p.11-12.

¹⁶² Interview with Tirtha Maya and Urmila Shretha, 3/12.

¹⁶³ *Rights and Needs of Children in Danish Development Assistance to Nepal*, (2000), p.11-12.

6 CHILD LABOUR AND ITS RELATION TO EDUCATION:

Lack of access to education and schools is often close connected with the existence of child labour. Therefore, lots of people claim that education is the most important factor in the fight against child labour. The fact is that there is powerful evidence which shows that by introducing compulsory education the elimination of child labour will increase.¹⁶⁴ However one can also look at the concept from the other side: if abolishing child labour first more children will then go to school because there is no demand for child workers on the market anymore. In other words if the government put in resources and adopt necessary regulations to solve the problem with child labour more children in Nepal will get easier access to education.

In many poor countries in the world child labour has emerged as one of the major problems these countries are facing today. It is especially countries which have had a dramatic increase in population, economic stagnation, drought, war and disease etc which have lead to that most families have lost the ability to earn a decent living. More and more children have been forced into the labour market as a necessary factor of the family's survival. Abolishing child labour demands more than only labour legislative measures and enforcement mechanism. Experience has shown that there is a complex interplay of many other factors which need consideration and one of these factors is the system of education.¹⁶⁵

In Nepal the problems with child labour is getting rapidly worse. One of the reasons is that urban migration due to rural poverty has dramatically increased and the situation for these people is very miserable and this has led to more exploitation of child labour the recent years in Nepal. However, the global pressure has more and more increased on Nepal against the problems of girl prostitution and trafficking as well as the use of child labour in the carpet industry. This has drawn the publics attention to the problems and has also waken up the Government and NGOs. But the critical signs are obvious and clear, especially in the rural areas, and major efforts has to be made to a) initiate preventive strategies, b) increase public awareness, and c) develop effective intervention mechanisms. It is important that the Government succeeds in its efforts to make primary education free and compulsory for all children. Many people think that otherwise the situation may get out of control.¹⁶⁶

¹⁶⁴ *Child labour in Nepal*, (1992), p.33.

¹⁶⁵ *Child labour in Nepal*, (1995), p.1.

¹⁶⁶ (ibid), p.3-4.

6.1 The Legal system in combating the child labour:

Today Nepal is both under domestic and international obligation to eliminate child labour. Nepal has ratified a number of ILO Conventions. Among these, two are of more interest, namely the Minimum Age Convention¹⁶⁷ from 1973 and the very lately adopted Convention concerning the prohibition and immediate action for the elimination of the worst forms of child labour from 1999¹⁶⁸. The former requires the ratifying states to establish a policy that makes sure an effective elimination of child labour and to gradually raise the minimum age for employment or work to a level in consistency with children's physical and mental development.¹⁶⁹ The latter shall serve as an effective tool to combat the worst form of child labour such as slavery, sale and trafficking of children, debt, bondage and the use of children in any other illicit activity that is likely to harm the health, safety and morals of the children concerned. It is a stronger and more effective Convention than its predecessors, mostly because it is a time bound Convention. This means that every country must have composed a time bound program in order to abolish the child labour in the country.¹⁷⁰

Further Nepal is, as a member of the UN, forced to respect and implement the provisions of the Universal Declaration of Human Rights. Nepal has also ratified the International Covenant on Civil and Political Rights and other Conventions related to child labour. According to the CRC article 32(1) the state party has to protect the child from economic exploitation and from performing any work that could harm or to interfere with the child's education, or to cause damages to the child's health or physical, mental, spiritual, moral or social development. Article 32(2) says further that the state party shall take legislative, administrative, social and educational measures to ensure the implementation of the article.¹⁷¹

As been mentioned earlier in this essay the Constitution of the Kingdom of Nepal (1990) seeks to protect the interest of children by giving them certain fundamental rights and imposing certain duties on the state in the form of the directive principles and policies of the state. Article 20 of the Constitution guarantees the right against exploitation and Article 26(8) places an obligation on the state to form necessary plans to protect the rights and interest of children and to ensure that they are not exploited.

In 1992 Nepal enacted the Labour Act which provides for the rights, interests, facilities and safety of workers and employees working in enterprises in different sectors. Section five of the Act prohibits the employment of children. The Act

¹⁶⁷ Convention No. 138

¹⁶⁸ ILO Convention No. 182.

¹⁶⁹ *Child labour in Nepal*, (1995), p.19-27.

¹⁷⁰ Interview with Casper Edmonds, 29/1.

¹⁷¹ *Child Labour in Nepal*, (1995), p.19-27.

defines a child as a person below the age of 14 years. Worth to be noted is that the Children's Act defines a child as a person who has not attained the age of 16 years. The Children's Act prohibits in section 18 the engagement of a child in work which is likely to be harmful to the child's health or hazardous to the child's life. Section 17 of the Act says further that a child who has not attained the age of 14 years shall not be employed in any work at all as a labourer. Both the Labour Act and the Children's Act are results of Nepal's obligation to implement the international Conventions it has ratified.¹⁷²

¹⁷² *Child labour in Nepal*, (1995), p. 48.

7 THE IMPLEMENTATION OF ART.28 OF THE CRC:

7.1 The CRC statements on education:

CRC, Art. 28, stresses the child's right, without discrimination, to education and the State's duty to ensure that primary education is made compulsory and free to all children. Emphasis is made on the need for international co-operation to ensure this right¹⁷³. Under Art. 28(2) States are obliged to take all necessary measures to ensure that school discipline is practised in a way consistent with the child's human dignity and also in conformity with the CRC. On the way to progressively achieve the goal of compulsory and free education for all children, States shall: 1) Make educational and vocational information and guidance available and accessible to all children. 2) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.¹⁷⁴

In this chapter I will identify the special governmental institutions concerned with the implementation of article 28 of the CRC, and describe the governmental policies prevailing. I will also shortly present the roles of the NGOs and INGOs in the implementation process.

7.2 The Ministry of Education:

The Ministry of Education was first created in 1951. Since then it has gone through a number of transformations until recently when it became the Ministry of Education. The Ministry has the responsibility for planning, managing and delivering programs in the education sector across the country. All the functional units and other organs and autonomous institutions belonging to the Ministry are components of the structure specialised to achieve the goals and carrying out functions and activities of the Ministry.¹⁷⁵

The Planning Division:

One of the most important units of the Ministry is the Planning Division. This division prepares annual and periodic plans in line with the national policies. The Division also follows out monitoring activities in combination with program

¹⁷³ CRC, art. 28(3).

¹⁷⁴ *Rights and Needs of Children in Danish Development Assistance to Nepal*, (2000), p.9; Sharon Detrick, *A commentary on the UN CRC*, (1999), p.472-473.

¹⁷⁵ *Education information of Nepal*, (2000), p.13.

implementation. It is also in charge of the foreign aids and the projects implemented in the Ministry. It is the entrance of every donor agencies.¹⁷⁶

Further the Planning Division consists of five subsections which also mirrors the duties of the Planning Division:

- Educational Standard and Policy Section
- Monitoring and Evaluation Section
- Statistics Section
- Foreign Aid Co-ordination Section
- Program and Budgeting Section

Department of Education (DOE):

HMG created the DOE under the MOE in July 1999. The Department is directly connected with the regional and district office. It has been given administrative and financial authority which means that the Department is responsible for implementing and monitoring educational programs on regional and district level.

Some of the main objectives of the Department are:

- To prepare plans, budget and programs related to primary education based on the existing policies and regulations and to propose it to the Planning Division of MOE.
- To implement primary education programs in conformity with policies and regulations formulated by the MOE.
- To supervise and monitor the activities relating to primary education and propose reports to the concerned agencies etc.¹⁷⁷

Primary Education Division:

One of the Divisions of the DOE is the Primary Education Division. It has the main responsibility for early childhood education, basic and primary education, women's education, special education and educational statistics. They prepare and implement and then evaluate educational planning and programming based on primary education policies. They also decide the number of teachers and schools that shall be available in the country.¹⁷⁸

District Education Offices (DEO):

There are 75 different DEO working as the Government's correspondents in the Districts. Their duty is to prepare and implement education programs in their own District in accordance with the policies set up by the Government and the following directives made by the Department of Education. They also have the responsibility to carry out district level school administration policies in accordance with the directions from MOE. The DEO shall also, when needed,

¹⁷⁶ Interview with S.P.Shresta, 10/1; *Education information of Nepal*, (2000), p.17.

¹⁷⁷ *Education information of Nepal*, (2000), p.20.

¹⁷⁸ (ibid), p.21-26.

establish new schools and strengthening existing schools. The DEO shall give the schools the supervision they need and provide professional inputs to principles, teachers, and students.¹⁷⁹ Despite this, the overall conception about the DEO's performance is that they are ineffective and do not provide the support needed. The DEO shall provide all children with textbooks, but they have not. Children must buy textbooks themselves. The DEO shall then repay the parents for their expenses but the procedure takes such a long time which leads to a situation where parents can not and do not want to send their children to school.¹⁸⁰

7.3 Educational Policies and Strategies:

The year 1990 signalled an important change of perspective in Nepal's education establishment. Nepal participated in the World Conference on Education for All held in Jomtien, Thailand, and the World Summit for Children held in New York and committed itself to develop and to provide "Education for All" (EFA). The commitment meant an obligation for Nepal's Government, by the year 2000, to make the basic education universal accessible for all children and to receive a nation wide completion of primary education by at least 80 % of children in primary school age. Priority should be given to the reduction on current differences between boys and girls. With this in their thoughts the Government introduced in 1991 the BPEP Master Plan which identified external and internal financial support needed for achieving the goal of "Education for All". According to the Plan the aim of the Government was to increase primary school enrolment to 100 per cent by the year 2000.¹⁸¹

The most important educational policies and strategies, in existence today, made by the Government can be summarised in following four paragraphs:

- Widen the access to quality primary education at the national level to all communities. Special focus shall be made on girls and socio-economically disadvantaged groups.
- Widen the plan of action of providing primary level education in different mother tongues.
- Take necessary actions for implementing compulsory primary education gradually throughout the country.
- Increase physical, human and educational resources to primary schools.¹⁸²

In order to fulfil the policies and strategies the Government, through the MOE, has taken decision to make a decentralisation of governance of education. It shall

¹⁷⁹ (ibid), p.29a.

¹⁸⁰ Interview with Ramashis Singh 12/12.

¹⁸¹ *Education information of Nepal*, (2000), p.79-81; *Children and Women of Nepal. A situation analysis 1996*, p.113-123; *Nepal's Initial Report to the CRC Committee*, 10/05/95, section 2.

¹⁸² *Education information of Nepal*, (2000), p.4.

implement a policy of effective decentralisation in purpose of increasing active local and community participation in the management and operation of educational institutions. Decentralised levels like DDC, VDC and School Management Committees shall be given more power in order to give them a special feeling of ownership which will lead to improved and effective participation. Communities, private sector and NGOs shall be encouraged to participate in the development and expansion of basic and primary education.¹⁸³

7.4 The Eight Plan (1992 – 1997):

The five-yearly plans are governmental plans – policy documents. They set out the framework of all activities and projects that the Government and its Ministries and Agencies are engaged in. All programmes (considering education, health etc.) set up shall be reflected in the plans. Governmental Offices are obliged to follow the guidelines and policies in the plans. The NGOs are also performing their programmes in accordance with the plans. They are in need of co-operation with the Government. If they neglect the will of the Government the Government ends their co-operation and the work of the NGOs will have no result.¹⁸⁴

The Eight Plan contained both plans and goals on how to make the education situation better and how to implement the objectives in article 28 of the CRC. The educational objectives, adopted by MOE, to be implemented during the Eight Plan period were for example:

- Access to basic and primary education should be expanded by increasing the number of primary school, and the literacy rate should have been raised to 67 per cent by the year 2000;
- Provide local bodies with the necessary authority to implement a free and compulsory education system;
- Implement the BPEP in all districts of Nepal;
- Promote primary education by providing the necessary physical facilities and teachers.¹⁸⁵

7.5 The Ninth Plan (1997-2002):

The Ninth Plan that exists today is lengthy (over 700 pages) and focused primarily on macroeconomic development issues. The Ninth Plan includes important educational policies, guidelines, made by the Government for the Ministry of

¹⁸³ (ibid), p.7.

¹⁸⁴ Interview with Sadanandu Kadel, 29/1.

¹⁸⁵ *Education information of Nepal*, (2000), p. 7.

Education to implement. There is doubt however if the Government follows these established guidelines seriously in its work. Discussions with the Government shows that the Government avoids to face this question of implementation. They usually maintains that they are very positive to work on this issue, but not at this very moment. Maybe in the next five years Plan they say “ At the moment we can not work on the question, but we will try...” is a very common statement by a Governmental Officer when he is confronted.¹⁸⁶

The Plan states, among other things, that the Government shall focus on making the primary education compulsory for all children in Nepal. The Plan also states that the primary education shall be free without any charges.¹⁸⁷ Further goals in the Ninth Plan concerning education are providing equal opportunities to all sections of society, developing education as the guiding principle of national development and improving its quality. The literacy rate of the country will be raised to 100 per cent within 20 years through compulsory primary education. To reach this goal new literacy programmes will be launched especially focusing on deprived, backward groups and women.¹⁸⁸

The Ninth Plan contains many goals and long-term objectives but there are not really any concrete proposals for action. A characteristic example is that the Plan states a commitment only “to make primary education easily accessible to people and conduct programme for making primary education gradually compulsory” and “primary education will be made practically compulsory during the plan period, and the number of children going to pre-primary school will be increased qualitatively. Specifically, the involvement of girl child will be encouraged in this matter and special arrangement for encouragement will be made for girl child to stop drop-outs.”¹⁸⁹

7.6 Governmental programmes:

The Basic and Primary Education Project (BPEP) was implemented in 1992. The aim of BPEP is to expand access to basic and primary education, improve the quality of primary education and to strengthen management efficiency. It is financed by WB, DANIDA, UNICEF, JICA and others. Some key element among the measures to improve the quality of primary education and reduce the high drop-out and repetition rates are curriculum reform, production of textbooks and learning materials and teacher training.¹⁹⁰

¹⁸⁶ Interview with Sadanandu Kadel, 29/1; J.B. Shrestna, 9/1.

¹⁸⁷ (ibid).

¹⁸⁸ Murgatroyd, (2000), p.9.

¹⁸⁹ (ibid)

¹⁹⁰ (ibid).

The BPEP has recently been updated and as its predecessor it works on the basis of joint funding, this time from basically IDA, DANIDA, EU, NORAD. It uses a “basket funding” approach which enables INGOs and NGOs to influence national policies and programmes.¹⁹¹ New for this major project is that it has taken a child rights approach. It does not only make new schools, it is focusing more on the quality of education. The project includes for example to find children at risks and give them access to education. To make the situation better for specifically them.¹⁹²

EFA is a Plan of Action, following the commitments of the world Conference in Thailand and the World Summit for Children in New York, where UN agencies work together with the Government. The Plan is more like a demonstration programme and it is not as powerful as the BPEP. The major difference between these two main projects that exist today in Nepal is that the donors that support BPEP put in big amounts of money which the UN agencies not have the possibility to do. The donors of the BPEP are mostly INGOs and can therefore chose another strategy of influencing the Government than the UN agencies can. An INGO with lots of money to invest do also have the power and possibility to make claims like “we give aid, we want a difference...!”. The UN agencies do not have either this money or this power.¹⁹³

7.7 Non-formal education:

“Bal Shiksha” classes for out-of school children, mostly girls and children of disadvantaged castes and ethnic minorities, were first launched 1989. The main purpose of the “Bal Shiksha” programme is to provide children, who have missed the formal schooling, an opportunity to join primary school. The projects of “Bal Shiksha” school are supported by for example UNICEF and classes have been implemented by local NGOs and by DEO of MOE.¹⁹⁴

¹⁹¹ *Progress Report Education Programme, UNICEF, (2000), p.9.*

¹⁹² Interview with Kasper Edmonds, 11/1.

¹⁹³ (ibid).

¹⁹⁴ *Children and women of Nepal. A situation Analysis 1996, p.122-123; Progress report UNICEF, (2000), p.11-12.*

7.8 The role of Non-Governmental Organisations:

7.8.1 Domestic Non-Governmental Organisations:

Nepalese NGOs have through the years been active in promoting the concept of child rights and the implementation of the CRC. Many leaders of NGOs participated in the pro democracy movement in the late 1980s and used their power to influence the new multiparty system in paying attention on child rights issues. They did also put pressure on the Government to sign a number of international treaties, including the CRC, and to adopt domestic legislation like the Children's Act (1992). NGOs and the Government worked in a very close partnership while preparing the initial State Party Report (SPR) of Nepal for example. The NGOs provided the Government with information that the Government otherwise would not been able to get, and the NGOs could during the whole process maintain a pressure for their interests on the Government. Indeed, the close relationship and the Government becoming more and more dependent on the NGOs have led to a situation, as stated by the UN CRC-Committee in its deliberations on the initial SPR, where there is a danger for the Government of becoming too dependent and over reliant on the NGOs and renounce its own responsibility. Lots of NGO leaders have been appointed posts in Governmental Committees. In many situations this appointment is rather personality driven than a result of a process of negotiation and consultation. These very visible and audible NGOs maintain to be influential actors on the national and international level. However, the situation is not the same concerning the smaller NGOs that mainly work on the district and local level and do not act or have any influence on the national level.¹⁹⁵

The Social Welfare Council, a statutory body, has the responsibility for co-operation and co-ordination between the Government and NGOs. All NGOs working on district level must also register by the CDO's. Despite the attempts with district level co-ordination committees in some districts and NGO representation in the DCWBs, the co-operation between the NGOs and the Government at sub national level is vague and irregular.¹⁹⁶

The problem with the domestic non-governmental organisation community is that they all tend to work alone and only with their specific issue. They do not like to work together. However, many are of the opinion that in order to put heavy pressure on the Government in child related issues they have to collaborate more intensively. Another problem is that many NGOs do only work in urban areas, not in the rural areas where they are specifically needed. There is an obvious need for a deeper involvement and to spend more time on the countryside. Irregular

¹⁹⁵ *Good Governance for Children in South Asia*, (2001), section 2, p.15-17.

¹⁹⁶ (ibid).

visits in rural areas in order to only tell the community people what to do and then turn back to the city do not help very much.¹⁹⁷

7.8.2 International Non-Governmental Organisations and International Organisations:

The role of the INGOs are crucial in assisting the Government's development activities. They provide support, both economically and technically, to different child related activities. Among the most active organisations of child rights in Nepal are the members of the Save the Children Alliance, specifically SCF (Norway), SCF (UK) and SCF(US). One of their priority issues is to launch programmes concerning formal and informal education. Alliance members as well as other INGOs such as Plan International work close with other organisations, and the INGOs implement lesser or greater proportions of their programmes through partner organisations, usually Nepali NGOs.¹⁹⁸ A great amount of resources are spent by INGOs in Nepal to provide various basic services. When donors meet the Government they use the CRC in collaboration with their resources, as instruments to put pressure on the Government to implement child rights. They do not give any aid unless there is an implementation of the CRC!¹⁹⁹

Since 1960, UNICEF has been co-operating with other organisations and governmental organs in expanding and improving the situation for the children of Nepal. It has assist the Government in many different areas, among others basic and primary education.²⁰⁰

Both the INGOs and the Nepali NGOs try to work with the Governmental Organs on district and local level.²⁰¹ Over a period of three years (with UNICEF support) SCF (US) has been giving CRC training to DCWC members, VDC members, school teachers, other staff, children and parents. To implement its programmes on education and health they have a close contact with families, communities, VDCs, schools, teachers, DCWC, and DEOs.²⁰²

The important difference between INGOs and domestic NGOs in Nepal is that the NGOs can do a more radically work and put more pressure on the Government. The INGOs have however usually more money as an effective pressure tool, but they can not do any project without the approval from the

¹⁹⁷ Interview with Vinita Sekera, 6/12; The Program Officer at CELLRD, 4/12.

¹⁹⁸ Murgatroyd, (2000), p.41-42.

¹⁹⁹ Interview Vinita Sekera, 6/12.

²⁰⁰ Interview with Vinita Sekera 6/12; *Nepal's Initial Report to the CRC Committee*, 10/05/95, nr. 42-25.

²⁰¹ Interview Haribakta Kojo, 3/12.

²⁰² Interview with Hari Rana, Krishna Bandhu Adhikary and Pramod Mahat, 12/12.

Government. If their work does not suit the Government they can always be kicked out of the country. This fear do not the domestic NGOs have.²⁰³

²⁰³ Interview with Vinita Sekera, 6/12.

8 CONCLUSIONS:

Legislation is a powerful tool for development and change on both national and international level. Over the last ten years Nepal has made some notable efforts to improve the situation of its children through the ratification of several important international conventions, and the adoption of some needed legislation. However, to achieve actual results, more is required of a Government than the mere signing of international conventions and promulgating of national laws. The Government of Nepal has realised that they need new laws, policies and structures to promote a new priority and more positive attitudes towards children throughout the Government and the society. Unfortunately, one of the greatest problems Nepal is facing today is the unstable governing. Nepal changes Government regularly, approximately twice a year. This also means that the people in the Ministries are being changed which make it very difficult to launch any projects or to get competent people working in the Ministries.

In this final part of the essay I will describe my conclusions from my field study through answering the questions set forth in the introduction one by one. I will also present some reflections and final thoughts in the end.

How is article 28 subdivision 1 (a) being implemented in Nepal ?

Given the commitment of the Government to the CRC, the role of the Government is to ensure each and every child's right to basic and primary education. According to article 28 of the Convention the primary education shall be compulsory and free for every child. Although Nepal has ratified the Convention, implementation of the provisions set forth in the Convention has been rather slow. Despite a tremendous growth in the education sector, Nepal still faces many problems. Children in remote areas do not have access to even basic education, although primary education is formally free. Rural poverty, traditional social barriers and lack of awareness about children's rights are some major obstacles in the implementation process in Nepal. However, the Government has taken many steps in the direction of a proper implementation of article 28 of the Convention and over the last years positive changes can be noted such as more schools have been constructed, more children start primary school and more families send their girls to school. A Children's Act has been adopted in order to implement the provisions of the CRC.

National plans, educational policies and strategies as well as educational programs have been adopted by the Government in order to implement the CRC. The overall problem with these establishments is that they do not provide concrete proposals for action. There are commitments to make primary education easily accessible to people and programs for making primary education gradually compulsory but there is no explicitly statements on how the goals will be achieved, i.e. how article 28 of the Convention shall be correctly implemented.

Bringing domestic law into conformity with the CRC will take more than optimistic statements in the National Plan. Although there are many existing legislative provisions such as the Children's Act 1992 none of them goes all the way towards incorporating Nepal's commitments under the CRC into domestic law. There is no law or other regulation in Nepal establishing that primary education shall be compulsory for all children in Nepal. The Nepali law system clearly shows a picture with much domestic legislation that could be said to be relevant to the CRC in one way or another whilst there is very little that can be said directly to incorporate CRC provisions into domestic law. Nepal still has, despite active efforts to adopt more comprehensive legislation in areas of concern to children, key provisions scattered throughout the system.. The Children's Act has not been as successful as it was thought to be. The implementation of the Act has been very weak and the lack of enforcement mechanisms are obvious. Formally it is a competent Act, practically it does not hardly exists.

What problems does the system of education faces today in Nepal ?

The main problems affecting primary education can be summarised as (a) High drop-out and repetition rates, especially because children are an important work force and due to the failure of the education system retaining these children (b) Schools are often located far from children's home, which discourages children from going to school (c) Many primary school teachers are untrained and in combination with inadequate school materials the quality of education is very low (d) Cast discrimination is a major reason among lower caste groups for staying away from school (e) The primary schools take usually fees for teacher's salary, uniforms and textbooks which many parents are unable to pay (f) Due to the girl child's inferior status within the family and her obligation to look after domestic chores and child-care activities many girls in Nepal are deprived of their right to education.

What are the different actors and what are their roles in the implementation process ?

The Government has established, in accordance with the Children's Act, a number of bodies that explicitly shall work for children's rights on different levels in the society. Many of these have mandate to form long-term plans and policies for the protection of the rights and welfare of children in the country. Others are responsible for implementing programs and activities. In each of the 75 Districts of the country, there shall be a District Education Office for the planning and implementation of district level education programs in line with instructions from the Ministry of Education. Unfortunately, mostly of these organs are unable to live up to their obligations. Reading about their assignments as well as the policies and programs composed by the Government in order to be implemented one finds a very ambiguous and over realistic plan for making the primary education compulsory and free to every child in Nepal. The District Education Offices are

today very ineffective institutions. The Officers are not competent enough to handle their work assignments, no one really know what they do, they move around on different posts which makes it impossible for them to engage in different projects and situations. Unfortunately this is only one example of the prevailing situation in Nepal concerning both appointed local officials and child act structures as well as elected officials on different levels. The patterns with incompetent, not serious officials busy with domestic political fights instead of protecting child rights are too common and destroys many of the governmental attempts that exist to alleviate illiteracy and strengthen the education system.

Despite efforts to develop policies and laws that specifically address the problem of education the Government has, in addition, designated the Ministry of Women, Children and Social Welfare as well as the Ministry of Education as clear focus points within the Government to deal with children's rights and education. The National Plan and other policy documents call for collaboration with private sector, NGOs and INGOs, as well as the establishment of co-ordination committees at the national, district and village levels. But, as I have already mentioned above, national bodies in Nepal are weak and this has impacted negatively on data collection, policy planning, law reforms, law enforcement, and resource allocation. It has hampered even the process of regular reporting on the CRC, and continued monitoring and improvement of the situation of the children. From my opinion, national bodies all around the country need to be strengthened so that they become effective gearwheels for child rights management. Nepal is today in desperately need of competent people on all levels of the education sector and they all need to co-operate more effectively with each other.

What has the ratification of the CRC meant for the Government of Nepal ?

Through the ratification of the CRC the Government of Nepal is obliged to ensure each and every child's right to basic education. According to the Convention Nepal shall undertake all appropriate legislative, administrative, and other measures to the extent of their available resources. Nepal is one of the poorest countries of the world where more than half the population lives in absolute poverty which mainly affects the most vulnerable groups and hampers the enjoyment of children's rights. This reality, added to the foreign debt and debt servicing, represents serious difficulties affecting the degree of fulfilment of the Government's obligation and capacity under the Convention. My opinion is, after my field study which forms the basis of this essay, that the Government tries to fulfil its obligation under the CRC, the willingness is there. The Government do struggle with many problems which a rich Western country not have. Still however, I think the Government can do more, it does not simply try hard enough, it is more concerned with domestic political problems prevailing in the country. Most of the implements that have been done within the education sector in Nepal since the ratification of the CRC are made by NGOs, INGOs and UN

agencies and they would probably be in Nepal working irrespective of the ratification of the CRC.

In what way has the ratification of the CRC affected the children in Nepal concerning their right to free and compulsory education?

The primary education has still not been made compulsory in the country and the education, despite regulation establishing that it shall be no chargeable, means money for many families which they do not have. However, with the help of domestic NGOs and INGOs and UN agencies the Government has succeeded in making some improvements for the children concerning their right to education. More schools have been constructed and considerable more children start primary school today than for ten years ago. Unfortunately only a small part of the total society can benefit from this improvement. Mostly of the Nepali citizens still live under very poor conditions in the rural area and they have never heard about anything called child rights.

Reflections:

To be able to fulfil its obligation in the CRC, to make the primary education compulsory and free for every child in Nepal, the country first of all must come to terms with the basic problems that are already today hampering the effective enforcement of existing legislation, and will continue to do so even where proposed legislation is concerned. The problems will not be solved by simple introducing more legislation in the area of children's rights. There are still many laws today that does not correspond to the reality such as the prohibition of the cast system which is forbidden but highly existing throughout the country. I think that the Government must seek long-term solutions to the underlying economic and social causes of the problems such as widespread poverty, high female illiteracy, and wide social discrimination against women and other disadvantages groups. The Government does also have to clear up the domestic political disturbances prevailing in the country so that all efforts can be made on the development of children's rights instead of fighting with each other within the governance on both top level and district as well as local level. Nepal needs a stable, energetic and powerful Government that collaborates with all levels of the society in order to give access to school for children in Nepal.

Important is also that the Government makes children, and children's rights and needs, more visible in the society and in the Government as well. CRC-training is today mainly launched by civil society groups. District level government functionaries who are members of child rights co-ordination bodies have and are being provided training on the CRC. Unfortunately, while these training seek to raise the awareness about the CRC, they do not add much by way of what can be done, what they need to do and how. Most CRC training is quite basic and not very action-oriented.

Final words:

It is important to realise that the ratification is not a goal in it self. Without the existence of necessary elements within the national legislation, the ratification will have little effect. No previous multilateral Convention has received such a quick and widespread ratification as the CRC. As no country would like to appear as it does not give the well-being of its children highest priorities, the Convention was ratified by countries with little hope of being able to fulfil the obligations set forth within the given time. I think many Governments felt the pressure to sign. As a result of this the CRC has turned into a mere political declaration of the parties' will to change, rather than of their actual commitment to do so. However, I think that the basic idea that children have rights has been spread into many countries which it would not have done without the existence of the CRC. One of the most significant observations and also most important from my point of view that I made while doing this study is that child issues in Nepal have caught the politicians interests and also become a part of the political agenda. I do hope the Nepali Government, together with international agencies and NGOs continue their attempts to spread education and literacy to all children in Nepal. After all, the right to education is the right of each child and also the best investment for the future.

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