

2009

## Women's Interest Network

Jacqueline Klosek

---

### Recommended Citation

Jacqueline Klosek, *Women's Interest Network*, 43 INT'L L. 703 (2009)  
<https://scholar.smu.edu/til/vol43/iss2/25>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in *International Lawyer* by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

## Women's Interest Network

During this year in Women in International Law, human rights and women remain a prominent issue.

The first piece analyzes the UN Population Fund's report on gender equality concerns, and the concern that insufficient progress has been made on women's rights. The second piece examines human rights of women in Nepal.

-Melanne A. Civic

### I. UN Population Fund Report on State of World Population Shows Gender Equality Still a Major Issue Around the World

JACQUELINE KLOSEK\*

On November 12, 2008, the United Nations Population Fund issued its annual report on the State of the World Population (the Report).<sup>1</sup> Significant portions of the Report focused on issues of concern to women, including gender equality. The Report concluded that there has been insufficient progress on women's human rights. Specifically, the United Nations Population Fund found that, around the world, women still suffer disproportionately from poverty, lack of education, health problems, and oppression.

The conclusions of the Report are, unfortunately, not that surprising. The statistics cited in the Report, are, however, quite startling. The Report pointed out that three-fifths of the world's poorest people are women. In addition, according to the Report, women also account for the two-thirds of the world's illiterate and 70% of all children without access to education. Further, the Report concluded that sexual violence has become a part of almost all armed conflicts. It also pointed out that a half-a-million women die and ten to fifteen million more are permanently disabled from preventable complications associated with childbirth and pregnancy.<sup>2</sup>

The Report also draws a connection between the disparate treatment of women around the world and the ongoing quest to improve human rights. In doing so, the Report directs attention to a 2003 study of the United Nations Population Fund on violence and women, which raised the following questions:

---

\* Jacqueline Klosek is Senior Counsel with Goodwin Procter LLP.

1. See generally, United Nations Population Fund (UNFPA), *State of World Population 2008—Reaching Common Ground: Culture, Gender and Human Rights*, (2008), available at [www.unfpa.org/swp](http://www.unfpa.org/swp).

2. *Id.* at 4.

How can one aspire to achieve progress and prosperity while women, who make up half the society, experience a long-standing neglect of their interests and the rights granted to them by our religion that put them on the same footing with men? These rights voice women's noble mission and grant them justice over the inequity and violence that may befall them, despite the fact that they have made equal achievements to men, in both education and employment.<sup>3</sup>

The problems facing women identified in the Report come from varied sources and likely will require a wide range of solutions. Still, the United Nations Population Fund concluded that culturally sensitive approaches could go a long way toward helping to alleviate undue suffering among women around the globe. The Report places a lot of emphasis on the importance of culture considerations in adopting solutions to help women around the world. Specifically, the Report recommended that steps should be taken to ensure that programs aimed at helping women should be appropriately adapted to the local culture.

The issue of culture was a primary focal point of this year's Report. The annual reports issued by the United Nations Population Fund often have focused on a particular theme, such as reproductive health, migration, urbanization, poverty and gender equality. The 2008 Report continued to focus on these critical issues, while drawing attention to the ways that development can work on behalf of cultural and minority groups. Throughout the entire report, issues relating to women's empowerment and gender equality played a significant role.

The Report should help to highlight this critical yet often neglected area. The statistics referenced in the Report clearly show that while there has been some progress in improving the status of women around the world, there is much that remains to be done to achieve true equality and universal human rights.

## **II. Challenges to Securing Justice for Rape and Domestic Violence, and Protecting Human Rights of Women and Reproductive Rights in Nepal**

EILEEN MEIER\*

Nepalese women continue to face tremendous challenges to improving their legal rights in the areas of sexual and domestic violence. Additionally, the Nepalese abortion law faced a failed legal challenge for its lack of a spousal consent requirement.

---

3. *Id.* at 22.

\* Eileen Meier, J.D., M.P.H. worked for the Conflict Mitigation Project of the European Union in Nepal this year, and compiled human rights teaching projects and curricula for the Nepali Bar, Nepal Human Rights Commission, and the Nepal Supreme Court on human rights issues, legal aid peace, and reconciliation projects, anti-corruption and judicial reform.

#### A. RAPE AND DOMESTIC VIOLENCE:

It is difficult for women to find justice and for reported rapes to be prosecuted under Nepalese law due to several factors. First, the thirty-five day statutory limit for prosecutors to file a charge sheet, and the difficulty of collecting needed evidence within such a short time frame, greatly restricts the number of rapes charged.<sup>4</sup> Second, the narrow parameters of the legal definition of rape further limits prosecution—judicial interpretation of rape is limited to vaginal penetration, and to be considered rape, the woman must have resisted the sexual advances of the rapist, not merely have had sex imposed on her against her will.<sup>5</sup> Third, many rape cases do not proceed due to reluctance on the part of the woman or her family.

Achieving justice for domestic violence and for marital rape has also been difficult. The punishment for marital rape is three to six months, whereas general rape, if prosecuted, is ten to fifteen years.<sup>6</sup> On July 11, 2008, the Supreme Court of Nepal, in response to litigation filed by a victim of marital rape, ordered the government to review the marital rape law and its minimal punishment. The Court did not nullify existing provisions or change the punishment.

Nepal's police headquarters recorded 1,100 cases of domestic violence against women in the past year.<sup>7</sup> Legislation addressing domestic violence against women has existed in Nepal's parliament for the past thirteen years. Currently, adjudication for domestic violence is a quagmire of mostly unworkable laws and may end in out of court mediation or nothing. Although crimes of murder and attempted murder may be tried, physical assault is not considered a crime for which the state can be a prosecuting party. In physical assault cases, women must bring a private suit through a hired attorney. In January 2008, four women were killed by their husbands or family members in one week in Rupandehi and Nawalparasi two districts in southwestern Nepal. Three of the women were killed after dowry-related disputes, and the fourth was killed by her husband after a domestic altercation.<sup>8</sup>

#### B. ABORTION & RECENT LEGAL CASES:

On August 4, 2008, Nepal's Supreme Court dismissed a case that sought "to overturn the country's abortion law, which allows abortion upon request" for the first twelve weeks

---

4. High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal*, at 9-10, U.N. Doc. A/HRC/10/53 (Feb. 28, 2009).

5. Women in Nepal Update: Interview with DS Police Chief Gita Upreti, <http://www.mikeldunham.blogs.com/mikeldunham/2008/10/update-on-nepali-womens-issues-interview-with-ds-police-chief-gita-upreti.html> (Oct. 14, 2008). Earlier in 2008, Richard Bennett, Nepal Commissioner of the Office of the High Commissioner for Refugees, called for a change in the rape law citing it as a major hurdle against successful prosecution. *Id.*

6. See, *Nepali Supreme Court Rules to Review Marital Rape Punishment Provisions*, XINHUANET/CHINA VIEW, (Wang Hongjiang ed., July 7, 2008). [http://rss.xinhuanet.com/newsc/english/2008-07/11/content\\_8528677.htm](http://rss.xinhuanet.com/newsc/english/2008-07/11/content_8528677.htm).

7. See Sanya Dhakal, *Nepalese Women Under the Shadow of Domestic Violence*, 371 THE LANCET 547 (2008).

8. *Id.*

following conception.<sup>9</sup> The law was originally challenged by attorney Achyut Kharel in 2005 who stated that it discriminated against men, and allowed “a woman to terminate a pregnancy without requiring the consent of a husband.”<sup>10</sup> “The Nepal-based Forum for Women, Law, and Development (FWLD) convinced the Court that a spousal consent requirement for abortion would violate women’s human rights under international law and Nepal’s constitution.”<sup>11</sup>

---

9. See Press Release, Center for Reproductive Rights, Nepal Supreme Court Upholds a Woman’s Right to Abortion, (Sept. 1, 2008), available at <http://reproductiverights.org/en/press-room/nepal-supreme-court-upholds-a-womans-right-to-abortion>.

10. *Id.*

11. *Id.*