



The Current Legal Framework and Gaps in relation to Provision of Comprehensive Social Health Protection in Nepal

Background

Social protection in health is a key instrument to address poverty, income security and access to health services. Its aim is to provide access to health services at an affordable cost. Some degree of basic social protection in health is possible and affordable in any country, but to be effective it requires political will and a strong legal framework.

Definition of Social Protection

The term social protection is usually used to describe arrangements for those people and communities who encounter adverse contingencies. The purpose of these arrangements is to provide some form of maintenance of income and services to people to ensure that they are protected and cared for in times of need.

International Labour Organization (ILO) Social Security (Minimum Standards) Convention, no 102

The Interim Constitution of Nepal, 2063 (2007) has declared the state's commitment to and responsibility for people's health for the first time in the history of Nepal. The Government of Nepal has taken the initiative to strengthen social inclusion in health sector by implementing a programme of free essential health services to targeted groups at the district hospital and free essential health services for all citizens at Sub-health Posts, Health Posts and Primary Health Care Centres.

Provision of social protection is challenging in the context of Nepal. In Nepal, around one third of the population lies below the poverty line. According to a report of the ILO (2004), only 45 percent of households have access to basic health care. Nearly 80 percent of the total labour force is engaged in the agriculture sector, 3 percent in manufacturing industries and 17 percent in service sector.

Study Methodology

Literature and documents were reviewed, specifically related to legislation and legal provision on:

- Social health protection (SHP)
- Violation and remedy available to the employees concerned
- Institutional arrangements for SHP
- Policies and provision related to staff benefits such as leave, medical benefits, and welfare funds.

Sources included:

- The Interim Constitution of Nepal, 2063 (2007)
- Acts and Regulations, human-rights conventions and standards set by the ILO.

Some key terms were compared for consistency across different legislative documents.

Ten Key Issues Arising from the Study

1. An overall framework is absent

To date, there has been no Act passed in Nepal which gives a comprehensive framework for SHP. There are a number of different Acts and Regulations applying to various groups with varying provisions and definitions of medical benefits, insurance and social protection generally.

The Interim Constitution has clearly stated that (1) Every citizen shall have the right to get free basic health services from the State as provided by the law; and (2) Every person shall have the right to live in a clean environment. Similarly, the Constitution clearly states that women, workers, the old aged, disabled as well as incapacitated and helpless citizens shall have the right to social security as provided by the law. However, no Act of Parliament has defined social security and basic health services. According to the existing legislative provisions, social health protection is an absolute responsibility of employers.

2. Protection varies by type of employment, with total lack of protection for majority of the population

Paid sick leave and maternity leave are the major components of SHP at present. Social protection is also available for some groups during work injury, disability and in case of death. Such provisions differ by formal sector employment group, though. Within the civil services, for example, contracted staffs and subordinate staffs do not benefit from sick leave under the Civil Service Act. Employees of autonomous public bodies are covered by various laws. There are some laws that deal with the informal economy, but there are no specific



laws that deal with the substantial part of the population which is unemployed. Similarly, those who work in agriculture (76% of the total workforce) are not covered by legislation.

3. Some provisions are incompatible with ILO minimum norms

Nepal has ratified ILO conventions 100 and 111, which clearly prevent discrimination against pregnant women. However, legislation on maternity in Nepal, at present, covers only the subject of leave. There are inconsistencies in the leave provisions for different groups and all, except one, fail to meet the ILO minimum of 98 days' leave. In addition, nothing is mentioned in any law about the protection of the health of pregnant woman, as recommended by the ILO Maternity Health Protection Convention, 2000. This includes important provisions on health benefits, leave, cash benefits, employment protection, non-discrimination, and breastfeeding. Many groups, both formal and informal, are excluded from any maternity benefits.

4. There are significant gaps in provision

Even for those groups which are offered some protection under current laws, there are gaps. For example, there should be a provision on the exit of an employee who is unable to perform duty due to mental and physical ill-health. Most of the legislation provide for the exit in case of the employee who has an accident while on duty and is then unable to perform duties. The law is silent on the case of an employee who is unable to work due to a long illness or accident which is not caused by a work related accident. Because of the lack of clear provisions, employers are compelled to dismiss such employees through disciplinary action, usually on the charge of long-time unauthorized absenteeism.

5. Current institutional arrangements are limited

The institutional arrangements for provision of SHP are limited and fragmented:

- The Bonus Rule 2039 (1982), which was amended in 2000, incorporated a provision for a National Level Welfare Fund. There should be a Welfare Board to operate the Fund. The Board has tripartite representation from the government, employer organisation and trade union organisation. To date, about 100 million rupees has been collected and deposited in various banks. However, it has never been spent on the welfare of the workers.
- Under the Labour Act, there is provision for enterprise-level welfare funds, however, in practice these are very rare.
- There are 17 private insurance companies offering health care benefits, operating under the Insurance Act 2049 (1991). However, they pay only direct costs such as hospital charges and costs for operations and doctors' fees. They do not cover indirect costs that may arise during the treatment.
- There is an Employees' Provident Fund (Karmachari Sanchaya Kosh), which offers benefits in the case of accidents to civil servants, army, police force and public school teachers.

The present insurance system covers only those who have paid premiums. The existing Insurance Act is not sufficient to support social health insurance schemes from a legal perspective.

6. The declaration of free health care lacks supporting legislation

On the basis of the Interim Constitution, 2063 (2007), the government declared an ambitious programme to provide free essential health services for all citizens at Sub-health Posts, Health Posts and Primary Health Care Centres, starting from January 2009. Further, the government intends to expand universal free care to District Hospitals. However, no supporting legislative arrangements have been made to make this right enforceable in law.

7. Rules on taxation require clarification

According to the Income Tax Act 2058 (2001) and Financial Act 2008, medical expenses up to rupees 750 per year may be allowed for in the calculation of personal yearly income and more than that amount may be carried forward for the following year. However, personal contributions to medical insurance are not tax-exempt. This appears inconsistent with rules for companies: the premium paid by the company may be included as an expenditure of the company for the purpose of income tax calculation.



8. Remedies to poor implementation of provisions are limited

Both government and private establishments sometimes fail to provide the mandated social health protection. For example, some of the employers try to avoid applicability of Labour Act by only hiring a maximum of nine staff. If they require more than 9 workers, they register more than one company and divide workers into a different company to circumvent the law, even though workers from both (or many) companies may work in the same work place. Some employers' organisations have declared that they will not abide by the provisions of the law. Similarly, some of the private school entrepreneurs have said that the Labour Act does not cover them. The main remedy is to file a written petition before the Supreme Court, which is very cumbersome and expensive.

9. Consultation during the legal reform process should be widened

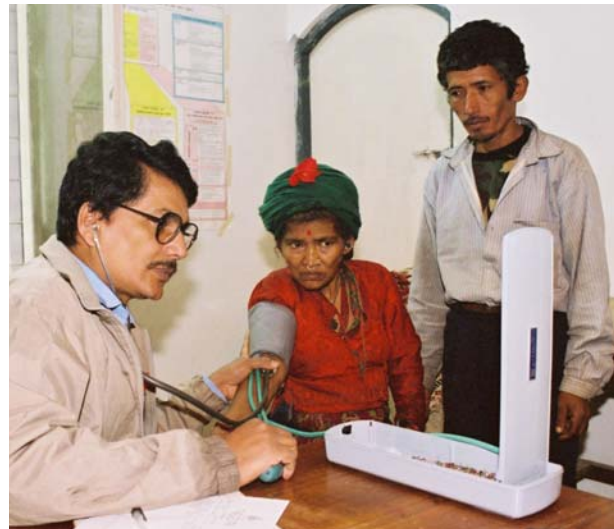
Normally, during the time of drafting of a bill or of rules and ordinances, stakeholders such as the employer and trade unions are not invited to take part in consultations. This violates the ILO Convention No. 144 on Tripartite Consultation.

10. Terminology should be consistent

There is no definition made in any legislation of 'social security' and 'social protection'. Laws related to SHP have used different types of terms. Such lack of uniformity causes confusion and weakens the rights of the individual.

Recommendations

- The government should enact a basic law that should be applied to all working within the formal sector, after consultation with stakeholders.



- Informal sector workers should be registered by the local authority and provided identity cards. All medical benefits, payment during sick leave & maternity leave and other necessary components of a benefits package should be provided through the local authority.
- An integrated social security organisational entity should be created to set operational standards, monitor compliance and ensure effective administration of SHP along with other social security benefits.
- Citizens now have the right to get free basic health care, which should be protected by clear and specific laws. An effective mechanism to achieve this would be a separate and new law on Social Health Insurance. Another approach could be to amend the current Insurance Act, along with other related laws, incorporating provision for a new Social Health Insurance.

For further details see: Badal, Ramesh (2009). The current legal framework on health care financing and social protection in Nepal, GTZ/GFA Consulting Group GmbH, Health Sector Support Programme, Department of Health Services, Kathmandu.

Deutsche Gesellschaft für
Technische Zusammenarbeit (GTZ) GmbH

- German Technical Cooperation -

Health Sector Support Programme
Department of Health Services
Teku, Kathmandu, Nepal
T +977 1 4261404
F +977 1 4261079
E hssp@gtz.org.np
I www.gtz.de/nepal

GFA Consulting Group GmbH



Editor: Sophie Witter
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