

**UNITED NATIONS COMMITTEE ON THE ELIMINATION OF DISCRIMINATION
AGAINST WOMEN (CEDAW)**

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SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE UN
COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN IN VIEW
OF ITS EXAMINATION OF NEPAL'S SEVENTH PERIODIC REPORT UNDER ARTICLE 18
OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION
AGAINST WOMEN

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THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN**

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the review of the Committee on the Elimination of Discrimination against Women (the Committee) of Nepal's implementation of and compliance with the Convention on the Elimination of All Forms of Discrimination against Women (the Convention), including as a result of the Committee's examination of Nepal's seventh periodic report under Article 18 of the Convention.
2. In its submission, the ICJ addresses Nepal's failure to comply with its obligations under the Convention with respect to the following:
 - i. Nepal's failure to ensure accountability for serious crimes under international law, particularly, rape and other forms of sexual violence committed during the country's decade-long armed conflict;
 - ii. Serious concerns arising in accessing healthcare services and exercising reproductive autonomy on an equal basis for women and girls with disabilities;

i. Impunity for crime of rape and other forms of sexual violence crimes committed during the armed conflict

3. In its replies to the List of Issues and questions, the Government of Nepal (GoN) states that the "amendments [to Enforced Disappeared Inquiry, Truth and Reconciliation Commission (TRC) Act, 2071 (2014)] ensure that the jurisdiction of transitional justice mechanisms expand to all violations of human rights including serious, international humanitarian law and any other national law".¹ Effectively, the GoN claims that all conflict-era (1996-2006) cases will be dealt with by the yet to be established Transitional Justice (TJ) mechanisms. Recent attempts to nominate commissioners for the two commissions failed, due to political interference.² The Truth and Reconciliation Commissions (TRC) established in 2014 could not deliver on its mandate. Conflict related sexual violence (CRSV) victims have not been able to secure remedies through the regular criminal justice system because of the statutory limitation applicable to cases of rape, which in 2017 was increased from six months to two years from the commission of the crime,³ but which is still of concern given that some victims experienced such crimes during 1996-2006. The Committee had recommended that Nepal should repeal such statute of limitations to ensure effective access to justice for the crime of rape and other sexual offences.⁴ Nepal has failed to implement this recommendation.

¹ The Committee, Replies of Nepal to the list of issues and questions in relation to its seventh periodic report (17 December 2024), para 90

² ICJ & et al, "Joint Letter to the Prime Minister and Government of Nepal: Appeal for Credible Appointments to the Transitional Justice Commissions" (17 December 2024), available at: https://amnestynepal.org/press_release/joint-letter-to-the-prime-minister-and-government-of-nepal-appeal-for-credible-appointments-to-the-transitional-justice-commissions

³ Section 292 (2) of *The Criminal Code, 2017*

⁴ Concluding observations of the CEDAW Committee on the sixth periodic report of Nepal 2018, Para 11 (c), UN Doc. CEDAW/C/NPL/CO/6

4. The recently amended Commission on the Investigation of Disappeared Persons, Truth and Reconciliation Act 2014 ("TRC Act")⁵ allows the possibility of filing complaints of "rape and other serious sexual violence with the TRC within three months of the establishment of these Commissions". However, this time limit is not in accordance with international standards. Additional concerns include the following:

- a. First, the amended TRC Act classifies "*rape and serious sexual violence*" incidents as "serious human rights violation[s]",⁶ precluding the possibility of amnesty being granted. However, what constitutes "serious" pursuant to the Act is not clear. International human rights law and international humanitarian law recognize sexual violence already as a serious crime.⁷ Requiring a "seriousness" threshold for sexual violence that is not clearly defined is likely to result in denial of access to justice and effective remedies for CRSV victims.⁸
- b. Secondly, the amended TRC Act purports to provide interim relief to rape and other sexual violence victims by giving them "priority" once the TRC's preliminary investigation into such offences has been completed.⁹ This provision is one step forward insofar as it seeks to address the concerns of CRSV victims, who, to date, have been largely excluded from the Government's Interim Relief Program (hereby IRP) scheme.¹⁰ However, it will be implemented only when the TRC is established and once the preliminary investigation has been completed. Meanwhile, since 18 years, several essential needs of CRSV victims and their families, such as short- and long-term medical services and treatment, including sexual and reproductive healthcare and mental healthcare, legal aid and livelihood support have not been adequately provided. In 2019, the UN Special Rapporteur on Violence against Women raised similar concerns following her visit to Nepal and called on the GoN to guarantee access to adequate interim relief measures for women and girl victims of the armed conflict "as a matter of urgency".¹¹ This is in line with the Committee's 2018 recommendation.¹²
- c. Thirdly, specific measures to ensure confidentiality and the privacy and security of CRSV victims are necessary for creating a favourable environment for them to come forward to seek justice. The recent amendment to the TRC Act does not include specific provisions, particularly in relation to filing complaints and the investigation of cases of rape and other forms of sexual violence. Consequently, it is likely that very few

⁵ *A Bill to Amend The Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act 2014*, Nepali version, available at

<https://hr.parliament.gov.np/uploads/attachments/xtiprcyv7hi2jbp4.pdf>

⁶ Section 2 J (2) of TRC Act, 2014

⁷ *The Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, IT-96-23 and IT-96-23/1, Appeals Chamber, Judgement, 12 June 2002; United Nations Security Council Resolution 1820 (2008), S/RES/1820(2008)

⁸ CEDAW, *General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations* (18 October 2013)

⁹ Section 23 (1) of *The Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2014*

¹⁰ Global Survivors Fund, "Reparations For Survivors Of Conflict-Related Sexual Violence", Country Briefing Nepal (June 2022), available at

https://www.globalsurvivorsfund.org/fileadmin/uploads/gsf/Documents/Resources/Global_Reparation_Studies/GSF_Country_Sheet_Nepal_EN_June2022_WEB.pdf

¹¹ Report of the Special Rapporteur on Violence against Women, its causes and consequences, Human Rights Council, Forty First Session, 24 June – 12 July 2019, A/HRC/41/42/Add.2 (19 June 2019).

¹² Concluding observations of the CEDAW Committee on the sixth periodic report of Nepal 2018, Para 23 (c)

complaints will be registered with the TRC.¹³ A comprehensive policy framework and protocols for the protection of victims is lacking. Moreover, the GoN has not collected and published official data regarding the identification of the CRSV victims.

5. The first National Action Plan (NAP) on the implementation of UN Security Council Resolutions 1325 and 1820 adopted by the GoN (February 2011- February 2016) outlined measures to increase women's political participation, but failed to address CRSV victims' access to justice and reparation. On 22 September 2022, the NAP II was adopted with a specific focus on CRSV¹⁴ and contains provisions aimed at localizing strategies at the provincial and local levels, in line with the federalization of Nepal's administrative structure. However, implementation is lacking as the GoN has failed to allocate the necessary resources and establish a suitable policy framework and institutional architecture for its implementation.¹⁵

Recommendations

- Promptly establish the TJ mechanisms envisioned under the amended TRC Act. Ensure gender parity and appoint Commissioners with the competence and experience to implement their mandates.
- Amend section 2(j)(2) of the TRC Act on the definition of serious human rights violations by removing adjective "serious" before the "sexual violence";
- Amend the criminal code and remove the statute of limitation for filing complaints of rape and other forms of sexual violence, including with respect to crimes committed during the armed conflict;
- Ensure the security and confidentiality of victims and their family to enable them to seek justice;
- Ensure coordination in allocating resources and establishing a policy framework and institutional architecture for the implementation of the NAPII.

ii. Serious concerns arising in accessing healthcare services and exercising reproductive autonomy on an equal basis for women and girls with disabilities

6. Nepali women and girls with disabilities continue to face barriers in exercising their right to health, first with respect to access to health services,¹⁶ particularly sexual and reproductive health services, and second through denial of their autonomy or agency.¹⁷ As such barriers

¹³ A TRC was established in 2014 under the TRC Act 2014. However, the legality of the Act was questioned by the victims in the Supreme Court as it violated a number of sections under international law and Nepal's constitution. TRC did not have victims' confidence. Although it recorded more than 55000 cases, CRSV in particular was particularly low as victims did not report their cases.

¹⁴ GoN, The Second National Action Plan for the Implementation of United Nations Security Council Resolution 1325 and 1820 Resolution on Women, Peace and Security (FY 2022/2023-2024/2025) (September 2022- September 2025)

¹⁵ Advocacy Forum, "Briefing on the Implementation of National Action Plan II for the Implementation of the UN Security Council Resolutions 1325 and 1820 on Women, Peace and Security", (December 2023), available at : <https://www.advocacyforum.org/downloads/pdf/publications/tj/briefing-on-the-implementation-of-national-action-plan-II.pdf>

¹⁶ Laura Herren & etal, Maternal Health Care for Women with Disabilities in Nepal, The Reach Alliance Report November 2023, available at: <https://reachalliance.org/case-study/womens-access-to-healthcare-in-nepal/>

¹⁷ Prayatna Nepal and Mama Cash, the Netherlands, "A Study on Barriers in accessing sexual and reproductive health services among adolescent girls and young women with visual impairments",

are gendered in nature, Nepal continues to violate the right to health under Article 12 of CEDAW, which requires the States "to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women".

Access to healthcare services on an equal basis

7. The Constitution of Nepal 2015 guarantees the right to reproductive health as fundamental right.¹⁸ Section 28 (3) of the Act Relating to Right of Persons with Disabilities, (hereby the ARPwD, 2017) obligates the GoN to "make necessary provisions to remove the barriers that exist to the access of the persons with disabilities to hospitals for treatment", and Section 19 of the same act requires the GoN to "make necessary provisions for the protection of their health and the reproductive right[s], taking into account the special situation of the women with disabilities". However, the current health services continue to be inaccessible, especially for women and girls with disabilities.¹⁹ Problems include: distant and inaccessible public health facilities and services; inadequate infrastructure of health facilities; the excessive cost of the healthcare; and specific challenges in accessing reproductive health services (including in respect of acquiring information in accessible formats, limited availability of sign language interpreters and lack of social support in accessing these services).²⁰ The Committee has also recognized that "women with disabilities, of all ages, often have difficulty with physical access to health services" and "women with mental disabilities are particularly vulnerable".²¹
8. In 2009, a petition was filed at the Supreme Court (SC) alleging violations of the reproductive health rights of women and girls with disabilities as a result of the obstacles they faced in accessing reproductive health services in the absence of disability-friendly infrastructure in public hospitals. In response to this petition, in 2010, the SC ordered the GoN to "create programs to make public places including hospitals, more accessible to disabled people, especially female disabled people".²² The authorities are yet to fully implement the SC's order, and women and girls with disabilities continue to face obstacles in accessing health services.²³
9. In its 2018 Concluding Observations, this Committee noted the persistent discrimination by health-care providers against women with disabilities²⁴ and recommended that the GoN take measures to end such discrimination.²⁵ The recent experience of women and girls with disabilities in their access to health services attests to the persistence of such discrimination against them.²⁶ Such behaviour appears to result from, among other things, limited

¹⁸ (2021), available at: <https://prayatnanepal.org/wp-content/uploads/2022/07/SRHR-research.pdf> (hereby Prayatna Nepal Report 2021)

¹⁹ Article 38 (2) of the *Constitution of Nepal 2015*

²⁰ Yamila Pita and et al, "The right to health: An examination of health care access for women with disability in Nepal", SSM Qualitative Research in Health. Vol 4, December 2023, available at : <https://www.sciencedirect.com/science/article/pii/S2667321523000999#:~:text=In%20terms%20of%20approachability%2C%20four,%2D%20and%20middle%2Dincome%20countries>

²¹ Ibid

²² The Committee General recommendation no. 24: on Women & Health (1999)

²³ Bimala Khadka and others v. Prime Minister and Office of the Council of Ministers and others, Writ No. 0748 of the Year 2008 (July 18, 2010)

²⁴ The Rising Nepal, "NHRC expresses concern over lack of disabled-friendly infrastructures" (04 December 2024), available <https://risingnepaldaily.com/news/53115> & Manushree Mahat, "Women with disabilities struggle to exercise reproductive health rights", The Kathmandu Post, (01 June 2024) available at :<https://kathmandupost.com/national/2024/06/01/women-with-disabilities-struggle-to-exercise-reproductive-health-rights>

²⁵ Concluding observations of the CEDAW Committee on the sixth periodic report of Nepal 2018 Para 38 (d)

²⁶ Ibid para 39 (d)

²⁷ Manushree Mahat, Supra note 22

knowledge of and training on disability rights and disability-related issues among the health care providers.²⁷

Discrimination faced in exercising reproductive autonomy

10. Autonomy of women and girls with disabilities to make reproductive choices is further limited by the continued application of Nepal's guardianship laws.²⁸ While the Civil Code 2017 makes provision for the entitlement of persons with disabilities to non-discrimination, persons with disabilities may also be declared of "unsound of mind" under the Code, and thereafter stripped of their legal competency and placed under guardianship.²⁹ Such legal provisions have particular devastating implications for women and girls with disabilities and clearly contravene Article 15(1) of the Convention, which requires that the full equality of women in civil and business matters. All legal instruments and provisions directed at restricting women's legal capacity "shall be deemed null and void".³⁰
11. Women and girls with disabilities are sometimes placed in institutions, group homes, hospitals, and other group living situations, where they may not only be prevented from making informed and independent decisions about their sexual and reproductive health,³¹ but also face an increased risk of sexual abuse and violence.³² Women and girls with intellectual and/or psychosocial disabilities are particularly vulnerable in this regard.³³
12. Gender Based Violence (GBV) against women and girls with intellectual and/or psychosocial disabilities can also take the form of forced medical treatment or procedures, including forced sterilization, often practised in Nepal.³⁴ Such forced "medical treatment", especially, contravenes Article 12 of CEDAW, which requires States to provide "acceptable health services" that are sensitive to the needs of women and allow reproductive choice where a woman can provide fully informed consent, exercise her right to dignity and confidentiality.³⁵ Moreover, Section 35 of The ARPwD, 2017 permits guardians and family members of persons with psychosocial disabilities to consent to their treatment in community-based hospitals or health centers.³⁶ This provides for a form of substituted decision-making. Furthermore, in the

²⁷ Rupa Shiawakoti & etal, "Factors affecting utilization of sexual and reproductive health services among women with disabilities- a mixed-method cross-sectional study from Ilam district, Nepal", *BMC Health Services Research* (2021), available at

<https://bmchealthserves.biomedcentral.com/articles/10.1186/s12913-021-07382-4> & Yamila Pita & etal, "The right to health: An examination of health care access for women with disability in Nepal", *SSM Qualitative Research in Health*(December 2023)

²⁸ Dev Dutta Joshi, "Breaking barrier", *Republica* (26 December, 2017), available at: <https://www.myrepublica.nagariknetwork.com/news/breaking-barrier>

²⁹ Section 33 of The Civil Code 2017

³⁰ The CRPD Committee has called on Nepal to reform this law in its Concluding Observation on Initial Report of Nepal, 2018 Para 2

³¹ Prayatna Nepal Report 2021

³² Rabindra Ghimire, "Extreme irregularities at the chaotic Khagendra Navajivan Center", *Onlinekhabar.com*, (01 June 2024) Nepali version available at: <https://www.onlinekhabar.com/2024/03/1452224/extreme-irregularity-at-the-chaotic-khagendra-navjivan-kendra>

³³ Ibid

³⁴ ICJ & etal *Kathmandu Declaration on Access to Justice for Persons with Disabilities*, 2024, available at https://www.icj.org/wp-content/uploads/2024/11/A2J_DisabilityRights_KathmanduDeclaration_English.pdf

This document is an outcome of discussion from 13 countries in the Asia region namely Nepal, Bhutan, India, Pakistan, Bangladesh, Sri Lanka, Thailand, South Korea, Malaysia, Indonesia, Taiwan, Philippines, Japan.

³⁵ The Committee General recommendation no. 24: Article 12 of the convention (women and health). 1999.

³⁶ Section 35 of The ARPwD, 2017 provides, "Additional services and facilities for the persons with mental or psycho-social disabilities: (1) The GoN shall make provisions for the treatment of the persons with mental or psycho-social disabilities in such community hospitals or health centres as chosen by them or

absence of mental health laws and policies including provisions providing fully for supported decision-making, there are concerns that in Nepal a medicalized approach to treatment of persons with intellectual and/or psychosocial disabilities persists. Such an approach strips persons with intellectual and/or psychosocial disabilities of decision-making autonomy and allows forced medical treatment and institutionalization, without their will and free and informed consent.³⁷ Noting the continued practice of forced “medical treatment”, globally, this Committee has recommended that States repeal all discriminatory laws that allow medical procedures to be performed on women with disabilities without their informed consent.³⁸

Recommendations

- Protect the right to health of women and girls with disabilities by fully implementing the directives issued under Supreme Court Writ No. 0748 (2008)
- Design programs and policies to enhance understanding of the health care providers on the rights and specific needs of women and girls with disabilities;
- Repeal all laws that fail to recognize the right to legal capacity of persons with disabilities including Section 33 of The Civil Code 2017;
- Repeal all laws that promote substitute decision-making and laws that allow guardianship of an adult with psychosocial and mental disability, including under medical treatment of such person under Section 35(1) of ARPwD, 2017, to ensure their right to autonomy, free and informed consent.
- Develop and implement, short-term, medium-term and long-term deinstitutionalization plans coupled with programs to provide community-based health services and community education to prevent, recognize and respond to GBV in compliance with the Convention and the Committee on the Rights of Persons with Disabilities’ Deinstitutionalization guidelines.

any member of their families or their guardians. (2) The GoN shall provide free medicines and consultancy service required for the persons with mental or psycho-social disabilities. (3) The GoN shall make arrangements for the treatment and rehabilitation or family reunion of the persons with mental or psychosocial disabilities who have been disregarded by their families.”

³⁷ ICJ & et al *Kathmandu Declaration on Access to Justice for Persons with Disabilities, 2024*

³⁸ The Committee General recommendation no. 35: On Gender Based Violence Against Women Updating General Recommendation No.19 (2017) CRPD, Guidelines on Deinstitutionalization, including in emergencies (2022), also stress the need to recognize legal capacity through “affirmative, free and informed expression of consent by the person concerned”, as a way to prevent forced mental health treatment