



**FOLLOW-UP REPORT
ON THE CONCLUDING OBSERVATIONS
of the
COMMITTEE ON THE ELIMINATION OF DISCRIMINATION
AGAINST WOMEN
on
NEPAL
(CEDAW/C/NPL/CO/6)**

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Submitted by

**Advocacy Forum-Nepal
Himalayan Human Rights Monitors
Human Rights and Justice Centre
TRIAL International**

I. Introduction

1. On 9 November 2018, the Committee on the Elimination of Discrimination against Women (hereinafter, “the Committee”) issued its concluding observations on the 6th periodic report submitted by Nepal,¹ and requested the State party to provide, within two years (i.e. by 9 November 2020), written information on the steps taken to implement certain recommendations.
2. Advocacy Forum-Nepal (hereinafter, “AF”), Himalayan Human Rights Monitors (hereinafter, ‘HimRights’), the Human Rights and Justice Centre (hereinafter, “the HRJC”) and TRIAL International submit this follow-up report to provide information to the Committee on the progress (or lack thereof) with regard to the implementation of some of the recommendations included in its concluding observations.
3. The organisations submitting this follow-up report are aware that the Committee requested to receive information concerning the recommendations contained respectively in paras. 31(a)-(b) and 43(b)-(c),² concerning nationality³ and discriminatory laws in marriage and family. They are also conscious that, pursuant to the Committee’s guidelines on the submission of follow-up reports by NGOs, the latter are expected to submit information four weeks before the beginning of the session during which the State party’s follow-up report is scheduled to be assessed.
4. At the time of writing, to the knowledge of the organisations submitting this follow-up report, the State party has not yet submitted its follow-up report and the Committee has only indicated “February 2021” as tentative date for the assessment of Nepal for follow-up purposes. Notwithstanding, the four organisations subscribing the present report consider that, two years after the adoption of the concluding observations, it is worth providing information on the implementation – or lack thereof – of some of the Committee’s recommendations that are directly related to their field of work and expertise, namely: the application of **statute of limitations** on the registration of cases of sexual violence;⁴ the **flawed criminal legislation** concerning **rape and**

¹ Committee on the Elimination of Discrimination against Women (CEDAW), *Concluding Observations on Nepal*, UN Doc. CEDAW/C/NPL/CO/6 of 9 November 2018.

² *Ibid.*, para. 51.

³ *Infra*, paras. 31-35.

⁴ *Ibid.*, para. 11(c).

other forms of sexual violence;⁵ **the flawed transitional justice process;**⁶ and the existing **loopholes in the draft legislation on citizenship.**⁷

5. **None of the Committee’s recommendations concerning the matters at stake has been implemented two years after the concluding observations were adopted.** The organisations subscribing this report consider that this is illustrative of the State party’s lack of political will and commitment to human rights and the rule of law and to abide by its international obligations and should be duly taken into account by the Committee when conducting its follow-up assessment. The exclusion of other subjects from the present follow-up report does not imply by any means that the subscribing organisations find that Nepal fully complies with all its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter: “the Convention”) or that it has implemented all the other recommendations contained in the concluding observations adopted by the Committee in 2018. Bearing this in mind, the organisations submitting this report respectfully call on the Committee to take this follow-up report into account if indeed it will conduct its follow-up assessment of Nepal in February 2021. Nevertheless, the organisations also reserve themselves the right to submit additional follow-up information when the Committee will indeed confirm the date for the assessment of the State party’s report.

II. The Application of the Statute of Limitations on the Registration of Cases of Sexual Violence and Ongoing Impunity for Conflict-Related Sexual Violence

6. In its concluding observations, the Committee expressed its concern because “the statute of limitations, which provides for a period of one year to file cases of rape and other forms of sexual violence, fails to take into account the stigma that women and girls face when reporting cases of sexual and gender-based crimes, and therefore, fosters impunity for such crimes”.⁸ Accordingly, it recommended Nepal to **repeal the statute of limitations provision** on the registration of cases of sexual violence in all contexts to ensure effective access for women to justice for the crime of rape and other sexual violence offences.

⁵ *Ibid.*, para. 21(c).

⁶ *Ibid.*, para. 23(a)-(c).

⁷ *Ibid.*, para. 31 (a)-(b).

⁸ *Ibid.*, para. 10(c).

7. It is noteworthy that **the Committee had already issued an almost identical recommendation in its previous concluding observations on Nepal.**⁹ Moreover, since November 2018, the same recommendation was issued by other international human rights mechanisms, including the Human Rights Committee¹⁰ and the Special Rapporteur on Violence against Women, its Causes and Consequences.¹¹
8. However, at the time of writing, the **applicable provisions have not been amended nor has any corresponding legislation been initiated or enacted**, thus showing an evident and ongoing lack of will of the State party to abide by its international obligations pursuant to international human rights law.
9. At present, the statute of limitations on the registration of cases of sexual violence remains **one year** pursuant to Sect. 229 (2) of the Penal (Code) Act (*Muluki Foujdaari Samhita, 2074 BS* - The National Penal (Code) Act, 2017, entered into force on 17 August 2018). The **situation of women victims of rape or other forms of sexual violence during the internal armed conflict (1996-2006) is even worse**, provided that the Penal (Code) Act does not apply retroactively and therefore their complaints are considered **time-barred**. This makes access to justice impossible for thousands of women who were subjected to rape or other forms of sexual violence during the conflict,¹² while **perpetrators enjoy impunity**.
10. Accordingly, the Committee's recommendation in para. 11(c) of the concluding observations must be regarded as **non-implemented**.
11. Moreover, the subscribing organisations wish to inform the Committee that the government of Nepal presented a draft of the National Action Plan II(NAP-II)¹³ for the implementation of UN Security Council Resolutions 1325 and 1820. The draft NAP-II enshrines the strategic objective of women participation,¹⁴ security and prevention,¹⁵ and relief and recovery of the women¹⁶ including the victims of conflict-related sexual violence and other conflict-affected women. Although this a welcome step from the government of Nepal, the **draft NAP-II does not include an objective reflecting the responsibility of the State to put an end to impunity and**

⁹ CEDAW, *Concluding Observations on Nepal*, UN Doc. CEDAW/C/NPL/4-5 of 29 July 2011, para. 20(c).

¹⁰ Human Rights Committee (HRC), *Case Fulmati Nyaya v. Nepal*, views of 18 March 2019, paras. 7.9 and 9.v.

¹¹ Special Rapporteur on Violence against Women, its Causes and Consequences, *Report on Country Visit to Nepal*, UN Doc. A/HRC/41/42/Add.2 of 19 June 2019, para. 59. Hereinafter, "Report of the Special Rapporteur on her Country-Visit to Nepal".

¹² *Infra*, paras. 16-17 and 30.

¹³ Second National Action Plan (NAP-II), available at <https://moha.gov.np/en/post/second-national-action-plan-nap-ii-preliminary-draft> (Nepali version).

¹⁴ *Ibid.*, Objective 1 of the NAP-II.

¹⁵ *Ibid.*, Objective 2 of NAP-II.

¹⁶ *Ibid.*, Objective 3 of NAP-II.

prosecution of those responsible for crimes relating to sexual or other violence against women and girls and this, coupled with the described flaws of the legislation, fails to address the grave existing accountability gap. Bearing in mind that, once passed by the government, the NAP-II will be implemented over the next three years, it is important that the **final version of the NAP-II is amended and brought in line with Nepal’s international undertakings.**

12. Finally, in October 2020, the National Human Rights Commission (hereinafter, “NHRC”) published a report whereby the level of implementation of its recommendations over the past 20 years is assessed (notably, 49,12% of the recommendations remains unimplemented and 37,24% have been implemented only partially).¹⁷ The NHRC explicitly **criticised the fact that the National Penal (Code) Act does not adequately address crimes committed during the conflict**, thus leaving victims without access to justice.¹⁸ The report also contains the **name of 268 individuals implicated in the commission of gross human rights violations, including rape** or other forms of sexual violence, during the conflict. All of these individuals are **enjoying impunity** and it is unclear if and how Nepalese authorities are planning to eventually take action in this regard through the adequate channels and not by merely referring the issue to the flawed transitional justice process.¹⁹ It is essential that the NHRC’s recommendations are completely implemented without any further delay, pursuant to the applicable law.

III. The Flawed Legislation concerning Rape and other Forms of Sexual Violence

13. In its concluding observations, the Committee noted with concern “the restrictive definition of rape in the Penal Code, the absence of provisions on war crimes in the legislation of the State party and the lack of concrete measures to prevent sexual violence, including rape and forced abortion”.²⁰ Hence, it recommended Nepal to **amend provisions of the Penal Code** so that sexual violence, including rape and forced abortion, is **recognised as a form of torture** and bring the definition of rape into line with the Rome Statute of the International Criminal Court.

¹⁷ National Human Rights Commission, *20 years of the Commission- Recommendations of the Commission and their implementation status*, October 2020 available at https://www.nhrcnepal.org/nhrc_new/doc/newsletter/Inner_20_Years_Book_2077_Final_CT (Nepali version).

¹⁸ *Ibid.*, p. 61.

¹⁹ *Infra*, Section III.

²⁰ CEDAW, *Concluding Observations on Nepal*, *supra* note 1, para. 20(c).

14. The Special Rapporteur on Violence against Women, its Causes and Consequences formulated the same recommendation in the report issued after her visit to Nepal.²¹
15. However, two years after the adoption of the Committee's concluding observations, **Nepal has not undertaken any initiative to amend the pertinent criminal legislation** and the corresponding recommendation must therefore be regarded as **non-implemented**.
16. The applicable **Nepalese criminal legislation remains at odds with international law**. Firstly, it does not codify war crimes and crimes against humanity. Secondly, Sect. 219 of the National Penal (Code) Act defines rape as "*a man has sexual intercourse with a woman without her consent or with a girl child below the age of eighteen years with her consent.*" This definition is insufficient as it does not provide for other victims of rape, such as a man, a male child, or a transgender person. It also eliminates the possibility of a woman being the perpetrator of the crime of rape. Furthermore, the penetration of the anus of the victim by objects other than the penis is not acknowledged in the domestic legal framework. Moreover, Sect. 221 of the National Penal (Code) Act does not approach sexual violence when committed by State agents as a form of torture.
17. Finally, another general problem contributing to impunity besides the flawed criminal legislation, is that of the ongoing **practice of the Police to deny the registration of a formal complaint (after rejecting the registration of a First Information Report)**, that is the only way to trigger an investigation pursuant to Nepalese criminal legislation. In cases involving rape and other forms of sexual violence, after having rejected the registration of the First Information Report, the **Police arranges a forced reconciliation between victims of sexual violence and alleged perpetrators**, often with the mediation and under the supervision of the so-called Panchayats (i.e. local leaders) and political leaders, including the elected government representatives. This process, which is not regulated by any legal provision, **puts victims under threat and duress**. After the outbreak of COVID-19, there has been a surge in these instances.²²

III. The Flawed Transitional Justice Process

²¹ Report of the Special Rapporteur on her Country-Visit to Nepal, paras. 35 and 83(d).

²² See, among others, <http://inseconline.org/en/news/victim-accuses-police-of-not-registering-complaint-against-rape-case/>; and <https://myrepublica.nagariknetwork.com/news/rape-victim-in-saptari-commits-suicide-after-villagers-stop-her-from-filing-a-case-with-police/>.

18. In its concluding observations, the Committee expressed concern because “a) the fact that the draft bill to amend the Truth and Reconciliation Commission Act impedes legal action for claims relating to sexual and gender-based violence, including as a war crime and a crime against humanity, owing to the exclusion of the applicability of criminal law legislation with regard to offences committed during the armed conflict that occurred between 1996 and 2006; the lack of definitions of those crimes; the imposition of additional requirements for their prosecution; the substantial reduction in the length of sentences, leaving them disproportionate to the gravity of the crime; the suspension of ongoing criminal investigations; and provisions allowing for amnesty and reconciliation; (b) The lack of independence of the Commissioners and insufficient resource allocation to the Commissions, which prevent the advancement of the peace process; (c) The fact that women and girls who are victims of the armed conflict, including widows, family members of disappeared persons and victims of rape and other forms of sexual violence, do not benefit from interim relief or full reparations; including widows, family members of disappeared persons and victims of rape and other forms of sexual violence, do not benefit from interim relief or full reparations”.²³
19. In the light of the above, the Committee recommended Nepal to remove the statute of limitations for filing cases relating to sexual violence perpetrated during the conflict; bring the Truth and Reconciliation Commission Act in line with its obligations under international law, in consultation with civil society and victims, taking into account the ruling of the Supreme Court of 26 February 2015 and international standards, and ensuring the integration of a gender perspective in the Act; ensure the independence and impartiality of the commissioners and allocate adequate human, technical and financial resources for the two Commissions; and guarantee access for women and girls who are victims of the armed conflict to interim relief and full and effective reparations, including restitution, compensation, rehabilitation and guarantees of non-recurrence.²⁴
20. On her part, the Special Rapporteur on Violence against Women, its Causes and Consequences echoed almost identical recommendations in the report issued after her visit to Nepal.²⁵

²³ CEDAW, *Concluding Observations on Nepal*, *supra* note 1, para. 22 (a)-(c).

²⁴ *Ibid.*, para. 23 (a)-(c).

²⁵ Report of the Special Rapporteur on her Country-Visit to Nepal, paras. 57-58 and 83.

21. Two years after the Committee issued its concluding observations and the corresponding recommendations, and notwithstanding the case law of the Supreme Court of Nepal and the unanimous calls issued by international human rights mechanisms, **Nepal has not implemented any of the Committee's recommendations concerning transitional justice** and continues violating the fundamental rights of, among others, thousands of women victims of rape or other forms of sexual violence during the conflict. It is noteworthy that the situation of these women has further deteriorated due to the outbreak of COVID-19 and therefore the lack of support and redress for past harm is imposing an even heavier toll on them.
22. Pursuant to the Act on Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2014 (hereinafter, "the TRC Act"), in February 2015, two transitional justice bodies were eventually established, namely the Truth and Reconciliation Commission (hereinafter, "TRC") and the Commission on Investigation of Enforced Disappearance of Persons (hereinafter, "CIEDP"). Each commission was entrusted with a two-year mandate, which has been extended already multiple times.
23. In February 2015, the Supreme Court of Nepal issued a decision whereby it declared several provisions of the TRC Act unconstitutional and at odds with Nepal's international obligations. The Supreme Court directed the government to amend and make them consistent with its international undertakings. In subsequent rulings, the Supreme Court reaffirmed the existence of serious loopholes in the legislative framework on transitional justice. Among others, the provisions that would allow amnesties for crimes under international law and gross human rights violations were the source of special concern, together with the lack of adequate guarantees of the independence and impartiality of the two commissions.
24. Notwithstanding the Supreme Court's clear orders, **the legislative framework regulating the functioning of the two commissions has not been amended and they collected complaints based on such flawed mandate.**²⁶
25. The TRC registered more than 60,000 complaints of gross human rights violations and the CIEDP received more than 3,000 complaints of enforced disappearance. The registration of complaints was conducted in the absence of an adequate witness protection programme and lacking technical knowledge and expertise. The commissions only launched some preliminary investigations, but the lack of

competence and political will made it impossible to obtain any meaningful result. Their mandate expired before they could come up with any findings in a single case, publish a final report on the outcome of their work, or grant redress to victims.

26. In February 2019, the mandate of the two commissions was extended a third time (i.e. until February 2020). However, throughout the entire year 2019, Nepal failed to amend the underlying legislative framework and to appoint new commissioners, *de facto* paralysing the transitional justice process.
27. After a whole year of inactivity, in the proximity of a further expiry of the mandate, in January 2020, the government announced its intention to appoint new commissioners at the end of a rushed and secretive and politically driven process, thus causing outrage among victims' groups, who consider that the provincial consultations convened for such purpose on 13 January 2020 and lasted only 3 hours are a mockery in the face of their suffering and that the appointments are clearly politicised, thus undermining their trust vis-à-vis the entire process.²⁷
28. Notwithstanding, on 27 January 2020, the Cabinet of Ministers decided to extend the mandate of the two commissions for one more year (i.e. until February 2021). Although the mandate has formally been renewed of the mandate, this is unlikely to produce any meaningful results, until the legislative framework regulating their mandate remains at odds with international law; the process of selection and appointment of the commissioners is not transparent, consultative and not politicized; and the commissions are provided with adequate technical expertise and resources.²⁸
29. On 27 April 2020, the Supreme Court of Nepal rejected a petition previously lodged by the government of Nepal, seeking the review of the 2015 ruling against amnesties for grave conflict-era crimes, including rape or other forms of sexual violence. The rejection of the government's petition is certainly a positive signal from the Nepalese judiciary, but until the relevant legislation is not amended, the State party will continue breaching its international obligations.
30. At the time of writing, not only **transitional justice legislation has not been amended and the commissions' mandate and composition hence remains seriously flawed and lacking credibility**, but also **any complaint concerning rape**

²⁷ See <http://advocacyforum.org/downloads/pdf/publications/tj/briefing-paper-on-tj-consultation-february-2020.pdf>.

²⁸ See <http://www.advocacyforum.org/downloads/pdf/press-statement/2020/victims-public-appeal-to-the-government-idd-30-august-2020.pdf>; and <http://www.advocacyforum.org/downloads/pdf/press-statement/2020/joint-press-statement-30-august-idd-2020-english-version.pdf>.

or other forms of sexual violence committed during the conflict is declared time-barred,²⁹ and thousands of women have not received interim relief nor integral reparations for the harm suffered.

IV. The Loopholes in the Draft Legislation on Citizenship

31. In its concluding observations, the Committee requested Nepal to bring its legislation in line with the Convention, among others, by guaranteeing that Nepali women may transmit their nationality to their children, as well as to their foreign spouses, under the same conditions as Nepali men, whether they are in the country or abroad, and removing requirements regarding consent and assistance of the husband or the husband's family and documentation of the whereabouts and identity of the husband.³⁰
32. **Nepal did not comply with these recommendations** and seems to be going in the **opposite direction**. The Parliamentary Committee on State Affairs and Good Governance passed a bill to amend the Citizenship Act on 21 June 2020. The draft Bill has been presented in the House of Representatives for deliberation and will be discussed in the coming months. The draft Bill contains a provision that requires a foreign woman marrying a Nepali man to wait for 7 years – during which she must be residing continuously in Nepal – for receiving the citizenship. Furthermore, the draft Bill does not incorporate the Committee's recommendation to remove the 15 years' period for foreign men married to Nepali women.
33. The draft Bill does not address the issue of statelessness, because children born from a Nepali mother and a foreign father continue to face obstacles in obtaining the Nepali citizenship. Finally, the draft Bill discriminates against sexual minority groups by not recognising their right to self-determination.
34. The above-mentioned loopholes, which openly disregard the Committee's recommendations and are the source of grave concern for civil society organisations,³¹ have been detected as troublesome also by three Special Procedures (i.e. the Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity; the Special Rapporteur on Violence against Women, its Causes and Consequences; and the

²⁹ *Supra*, paras. 6-10.

³⁰ CEDAW, *Concluding Observations on Nepal*, *supra* note 1, para. 31 (a)-(b).

³¹ See https://www.upr-info.org/sites/default/files/document/nepal/session_23_-_november_2015/js9_upr23_npl_e_main.pdf.

Working Group on Discrimination against Women and Girls) that, accordingly, on 21 September 2020, sent a letter to the government of Nepal seeking clarifications on the matter.³²

35. All in all, the described situation is yet another token of **Nepal's resistance vis-à-vis the recommendations received from international mechanisms** and its disregard for its obligations. The organisations presenting this report respectfully **call on the Committee to acknowledge this grave situation in its follow-up assessment.**

³² Availabe at <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25552>.

Organisations submitting the follow-up report

Advocacy Forum (AF) is a leading non-profit, non-governmental organization working to promote the rule of law and uphold international human rights standards in Nepal. Since its establishment in 2001, AF has been at the forefront of human rights advocacy and actively confronting the deeply entrenched culture of impunity in Nepal.

Himalayan Human Rights Monitors (HimRights) is a non-governmental, non-partisan, non-profit organization committed to defending the rights of poor, marginalized and socially excluded communities and individuals, with special focus on women, children and youth. Peace building has been one of the main strategic direction since its establishment in 1999.

The **Human Rights and Justice Centre (HRJC)** improves access to justice for victims of human rights violations in Nepal such as torture, enforced disappearances, extrajudicial executions and sexual violence.

The HRJC provides free legal support to victims regardless of their background, religious or political affiliation. Through a network of trusted Nepalese human rights lawyers, it litigates cases domestically and internationally to end impunity and enforce the rule of law.

TRIAL International is a non-governmental organization fighting impunity for international crimes and supporting victims in their quest for justice.

TRIAL International takes an innovative approach to the law, paving the way to justice for survivors of unspeakable sufferings. The organization provides legal assistance, litigates cases, develops local capacity and pushes the human rights agenda forward.