



**HUMAN RIGHTS  
AND JUSTICE CENTRE**

**FACT SHEET**  
**on**  
**Conflict Related Sexual Violence**



## A BACKGROUND: TRANSITIONAL JUSTICE IN NEPAL

Between 1996 and 2006, Nepal was the scene of an internal conflict between the Governmental Forces and the Communist Party of Nepal-Maoists, during which a large number of gross human rights violations were recorded. Of the nearly 9,000 violations recorded, between 1,500 and 2,000 concerned sexual violence.<sup>1</sup>

In order to address the human rights violations committed during the conflict, through the Comprehensive Peace Accord (CPA) of 21 November 2006, the Parliament adopted, in 2014, the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2071 (2014) (TRC Act). This Act establishes two commissions, the Commission of Investigation on Enforced Disappeared Persons (CIEDP) and the Truth and Reconciliation Commission (TRC). The commissions were aimed at investigating the facts about those involved in gross violations of human rights during the armed conflict, including conflict-related sexual violence, creating an environment of reconciliation in the society, and making recommendations for legal action against those who were involved in grave offences relating to those incidents, including for reparation to the victims of those incidents.<sup>2</sup>

On 19 March 2023, the Government proposed amendments to the TRC Act which are still being examined by Parliament. Although the draft TRC bill<sup>3</sup> contains some positive provisions, regarding reparation in particular, it also incorporates several provisions that do not fully align with international standards and decisions of the national courts (see below).<sup>4</sup>

# B DEFINITIONS

## B.1. Definition of sexual violence

In 2011, the World Health Organization (WHO) defined sexual violence as: ‘any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic or otherwise directed against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work’.<sup>5</sup>

Sexual violence encompasses acts that range from verbal harassment to forced penetration, and an array of types of coercion, from social pressure and intimidation to physical force.

**Note that:** coercion can encompass varying degrees of force, psychological intimidation, blackmail or threats (of physical harm or of not obtaining a job/grade etc.).

Sexual violence includes, but is not limited to<sup>6</sup>:

- rape (within marriage or dating relationships, by strangers or acquaintances, etc.);
- unwanted sexual advances or sexual harassment (at school, work, etc.);
- systematic rape, sexual slavery and other forms of violence, which are particularly common in armed conflicts (e.g. forced impregnation);
- sexual abuse of mentally or physically disabled people;
- rape and sexual abuse of children; and
- ‘customary’ forms of sexual violence, such as forced marriage<sup>7</sup> or cohabitation.

## B.2. Definition of Conflict-Related Sexual Violence (CRSV)

The Secretary General of United-Nations defines CRSV as ‘rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys’.<sup>8</sup>

CRSV can also be perpetrated against members of the Lesbian Gay Bisexual Trans, Intersex and Queer (LGBTIQ+) community because of their sexual orientation and gender identity, however its occurrence is extremely under-documented.<sup>9</sup>

<sup>5</sup> World Health Organization (WHO), *Violence against women - Intimate partner and sexual violence against women*, 2011.

<sup>6</sup> WHO, *Understanding and addressing violence against women*, WHO/RHR/12.37, 2012.

<sup>7</sup> See International Criminal Court (ICC), Case *The Prosecutor v Dominic Ongwen*, ICC-02/04-01/15A, 20 December 2021, in which forced pregnancies and forced marriages were considered as war crimes.

<sup>8</sup> Office of the Special Representative of the Secretary-General on Sexual Violence on Conflict, *Report of the United Nations Secretary-General on Conflict-Related Sexual Violence (S/2023/413)*, 6 July 2023, para. 5.

<sup>9</sup> Sara Ferro Ribeiro and Danaé van der Straten Ponthoz on behalf of the UK Foreign & Commonwealth Office, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict - Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law*, second edition, March 2017, p. 22.

These violences are directly or indirectly linked to a conflict. This link may be evident in:

- the profile of the perpetrator, who is often affiliated with a State or non-State armed group, including those designated as terrorist groups by the United Nations;
- the profile of the victim, who is frequently an actual or perceived member of a persecuted political, ethnic or religious minority, or targeted on the basis of actual or perceived sexual orientation or gender identity;
- a climate of impunity, which is generally associated with State collapse; cross-border consequences, such as displacement. CRSV also encompasses trafficking in persons for the purpose of sexual violence and/or exploitation, when committed in situations of conflict; and/or
- violations of the provisions of a ceasefire agreement.<sup>10</sup>

As such, depending on the circumstances, sexual violence can amount to a war crime,<sup>11</sup> a crime against humanity,<sup>12</sup> an act of genocide<sup>13</sup> or other serious violations of international criminal law, human rights law or humanitarian law.

In the context of CRSV, sexual violence is inflicted by a public official or any other person acting in an official capacity or at their instigation or with their express or tacit consent. The term '*public official*' encompasses not only law enforcement officers or security forces, but also all those who exercise functions representing the State. Similarly, the reference to '*any other person acting in an official capacity*' includes private contractors acting on behalf of the State, but also all non-State actors whose authority is comparable to a governmental authority, such as insurgent groups exercising *de facto* control over a certain area or population.

In the case of Nepal, CRSV thus refers to sexual violence committed by the governmental forces during the conflict, as well as by members of the Communist Party of Nepal-Maoists.

---

10 Office of the Special Representative of the Secretary-General on Sexual Violence on Conflict, *Report of the United Nations Secretary-General on Conflict-Related Sexual Violence (S/2023/413)*, op. cit., para. 5.

11 Rome Statute of the ICC, Art. 8, paras. 2 b) xxii) & 2 e) vi).

12 *Ibid.*, Art. 7, para. 1) g) See also, International Criminal Tribunal for Rwanda (ICTR), Case *The Prosecutor v. Jean-Paul Akayesu*, n°ICTR-96-4-T, Judgment of 2 September 1998.

13 *Ibid.*, Art. 6, para. d). See also, ICTR, Case *The Prosecutor v. Jean-Paul Akayesu*, op. cit. & ICTR, Case *The Prosecutor v. Alfred Musema*, n°ICTR-96-13-A, Judgment of 27 February 2000.

### B.3. Differences between CRSV and sexual violence

The main differences between sexual violence and CRSV can be summarized as follows:

	<b>Sexual Violence</b>	<b>CRSV</b>
<b>Definitions</b>	Any sexual act committed without the victim's consent.	Any sexual act committed without the victim's consent during an armed conflict (internal or international), and which can therefore, depending on the circumstances, amount to a war crime, a crime against humanity, an act of genocide or other serious violations of international criminal law, human rights law or humanitarian law.
<b>Perpetrators</b>	Individual.	Public official affiliated with a State or non-State armed group or person exercising any authority similar to that of a public official, or acting with the tolerance, acquiescence or support of the State.
<b>Applicable laws in Nepal</b>	<ul style="list-style-type: none"> <li>- Constitution of Nepal (2072), 2015</li> <li>- Muluki Ain 2020 (General Code, 1963) (before 2018);</li> <li>- National Penal Code, 2017 (after 2018).</li> </ul>	<ul style="list-style-type: none"> <li>- Constitution of Nepal (2072), 2015</li> <li>- TRC Act 2014;</li> <li>- Muluki Ain (General Code) (2020).</li> </ul>

# C RELEVANT NEPALESE LEGISLATION ON CRSV

## C.1. Constitution of Nepal (2072), 2015

The Constitution of Nepal is the country's highest source of law. It defines the rules governing the functioning of the State and protects the fundamental rights of citizens and all persons present in the country. The Constitution specifically protects women's rights and prohibits all forms of violence against women, including any form of physical, mental, sexual or psychological violence or exploitation.<sup>14</sup> It also protects the rights of children by specifying that no child shall be subjected to any form of violence or sexual exploitation.<sup>15</sup> In this respect, any woman or child who is a victim has the right to take legal action and obtain compensation for the harm suffered in accordance with the following laws.

**Note that:** despite the fact that the Constitution of Nepal makes direct reference to sexual violence against women and girls and their special protection, there is no specific reference to CRSV or any other form of violence that occurred during the conflict.

## C.2. The Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2071 (2014) (TRC Act)

The TRC and the CIEDP established by this Act are intended, among others, to identify the victims and perpetrators and recommend the adoption of measures of reparation for the victims and their families.<sup>16</sup>

The TRC Act specifically defines rape and sexual violence as gross violations of human rights.

**Note that:** Both Commissions received complaints on gross human rights violations, including CRSV, until 18 August 2017 and currently both commissions do not accept complaints. However, a report submitted by the sub-committee under the Law, Justice, and Human Rights Committee of the House of Representatives, regarding the TRC bill proposed to include a provision in the bill allowing the victims who suffered rape and grave sexual violence during the armed conflict to again lodge complaints for a new period of three months.<sup>17</sup> It should be noted that this proposal and will only enter into force if it is adopted by the Parliament.

<sup>14</sup> Constitution of Nepal, Art. 38, Clause 3.

<sup>15</sup> *Ibid.*, Art. 39, Clauses 6 & 7.

<sup>16</sup> TRC Act, Sec. 13.

<sup>17</sup> Report submitted by the sub-committee under the Law, Justice, and Human Rights Committee of the House of Representatives regarding the Enforced Disappeared Persons, Truth and Reconciliation Commission bill (third amendment), Proposal No. 6: "After the appointment of the Chairperson and the members of the Commission, it will publicly invite victims, or representatives on their behalf, to register complaints of rape or serious sexual violence during the armed conflict once for a period of three months."

The two commissions are not conceived as courts of law and do not have the power to judge and punish perpetrators or to directly award compensation or other measures of reparation. They can recommend other bodies of the government or in the judiciary (such as the Office of the Prime Minister and the Council of Ministers, Ministry of Law, Justice and Parliamentary Affairs, or Office of the Attorney General) to do so.

**Note that:** the TRC Act prohibits amnesty for perpetrators in cases of rape and sexual violence, but allows ‘mediation’ between victims and perpetrators in cases of gross human rights violations, including rape. On 19 March 2023, the government submitted a bill to amend the TRC Act. It is notable that the draft bill distinguishes, without any apparent justification, between serious violations of human rights (which include rape) and human rights violations (which include other sexual violence). Sexual violence other than rape can, depending on its nature, constitute a serious human rights violation, as illustrated above in paragraph B.1. and if the bill is not amended to make changes to address these issue, “sexual violence”, regardless of its gravity, would be eligible for amnesty.

### **C.3. The judicial process**

The TRC Act establishes a non-judicial procedure decided by the CPA to address human rights violations committed during the conflict.

However, it is still possible to opt for a regular criminal procedure, it being specified that in this case it would be appropriate to base oneself on the substantive provisions applicable at the time of the facts (between 1996 and 2006, i.e. the Muluki Ain 2020 (**C.3.1.**)). The procedural laws are set forth in the Criminal Procedure Code 2075 (2017) as the TRC bill establishes that the sentencing would be regulated as per the ‘existing law.’ (**C.3.2.**).

**Note that:** The existing legislation still presents loopholes that hinder the access to justice, such as a flawed definition of rape; an unduly restrictive statute of limitation that prevents victims from registering criminal and civil complaints; a set of remedies that do not guarantee full and comprehensive reparation. The corresponding provisions are at odds with international law and standards. In this sense, this factsheet only aims at providing information on the existing legislation, but, bearing in mind the mentioned flaws, it is contended that there should either be an amendment or a special law should be drafted.

C.3.1. The Muluki Ain 2020 (General Code, 1963)

The Muluki Ain 2020 punished acts of rape, intention of sex and sexual harassment.

- Rape -

The Muluki Ain 2020 (General Code, 1963) defines rape as ‘*sexual intercourse with a woman without her consent or [...] sexual intercourse with a girl below the age of sixteen years with or without her consent*’.<sup>18</sup>

**Note that:**

- consent obtained through fear, coercion or force is not consent. The same applies if the person is unconscious;
- even minimal penetration is considered rape.<sup>19</sup>

This Code established that victims could obtain compensation from the offender upon considering the physical or mental loss suffered.<sup>20</sup>

Sentences range from 5 to 15 years, depending on the age of the victim, and are increased if the rape was committed in a gang, on a pregnant woman or a woman suffering from a disability (+5 years) or if the perpetrator knew he had HIV (+1 year).<sup>21</sup>

Pursuant to this Code, a complaint had to be lodged within 35 days from having suffered the rape.<sup>22</sup>

- Intention of sex/Sexual harassment/Prostitution -

The Muluki Ain 2020 (General Code, 1963) defines intention of sex as ‘*without the consent of a woman, touches or attempts to touch her sensitive organ, puts off her inner clothes (under garments), takes her to an unusually lonely place, makes her touch or catch (hold) his sexual organ or uses vulgar or other similar words or indications or shows her such drawing or picture or teases or harasses her for the purpose of sexual intercourse, or treats her with any unusual behavior or holds her with intention of having sexual intercourse*’.<sup>23</sup>

This legislation provides “*reasonable compensation*” from the offender to the victim. Sentences range from 6 months to 2 years and a fine of up to 10,000 Rupees (around 75 US dollars).<sup>24</sup>

**Note that:** the draft TRC bill, currently before Parliament contains provisions relating to sentence. Section 29d “*Provisions relating to Sentence*”, paragraph (1), states that “*the Special Court (established only for the purposes of adjudication and settlement of the cases related to the serious violations of human right committed during the conflict, pursuant to Section 29a) must determine the sentence to a person involved in serious violations of human rights with reduction in the sentence as provided for in the prevailing laws (i.e. the National Penal Code, 2017) by paying due attention to the circumstances under which the incident happened, its reason and the principles of transitional justice*”.

18 Muluki Ain 2020 (General Code, 1963), Part. 4, Chapter 14, Number 1.

19 *Muluki Ain 2020 (General Code 1963)*, Chapter 14 on Rape, No. 1 (c) reads, “Minor penetration of the penis into the vagina shall be considered to be a sexual intercourse for this Number.”

20 *Ibid.*, Part. 4, Chapter 14, Number 10.

21 *Ibid.*, Part. 4, Chapter 14, Number 3.

22 *Ibid.*, Part. 4, Chapter 14, Number 11.

23 *Ibid.*, Part. 4, Chapter 13, Number 1.

24 *Ibid.*

The relevant provisions prohibit also to lure a woman to have illegal sexual intercourse with someone or with any other person or contacts and manages for prostitution.<sup>25</sup>

Pursuant to the Code, a complaint had to be lodged within 35 days after the date on which the matter became public.<sup>26</sup>

**Note that:** it remains difficult to rely on this law to obtain redress, as it is deficient in several respects:

- the definition of rape and sexual intent rules out the possibility of any sexual violence committed against a male person;
- it establishes a statute of limitation of 35-day which, in addition to not being in line with international standards, denies victims the right to an effective remedy. Indeed, such a short deadline does not allow victims to lodge a complaint, bearing in mind that doing so during a conflict is, by nature, almost impossible. Despite this particular short statute of limitation, lodging a complaint, through registration of the 'First Information Report' (FIR) at the District Police Office, is even more difficult for the victims, insofar as often perpetrators work within the armed forces or the police.
- Additionally, the crime of 'intent of sex' was listed as an individual criminal offence that require victims, and not the State, to initiate the process of complaint registration, which can be extremely difficult for them.

Pursuant to international law and jurisprudence, under certain circumstances, sexual violence amounts to torture.<sup>27</sup> It might therefore be possible to base one's action or claim on the **Compensation Relating to Torture Act, 2053 (1996)**, which was also applicable at the time of the events and which grants compensation to victims of torture (e.g. sexual violence)<sup>28</sup> perpetrated in a place of detention<sup>29</sup>. However, this action seems doomed, as national legislation fails to recognize sexual violence perpetrated during the civil war as a form of torture.<sup>30</sup>

In addition, pursuant to this law, a complaint must be lodged within 35 days from the date of inflicting torture upon the victim or of his/her release from detention,<sup>31</sup> (which leads to the same comments as those made for the Muluki Ain 2020), following the specific procedure detailed in the Act. Accordingly, any complaint referring to crimes allegedly committed during the conflict, would be time-barred.

25 *Ibid.*, Part. 4, Chapter 13, Number 5.

26 *Ibid.*, Part. 4, Chapter 13, Number 6.

27 See for instance, International Criminal Tribunal for the Former Yugoslavia (ICTY), Case *The Prosecutor c. Kunarac et al.*, n°IT-96-23/2, Judgment of 22 February 2001.

28 Compensation Relating to Torture Act, 2053 (1996), Sec. 4 & 8.

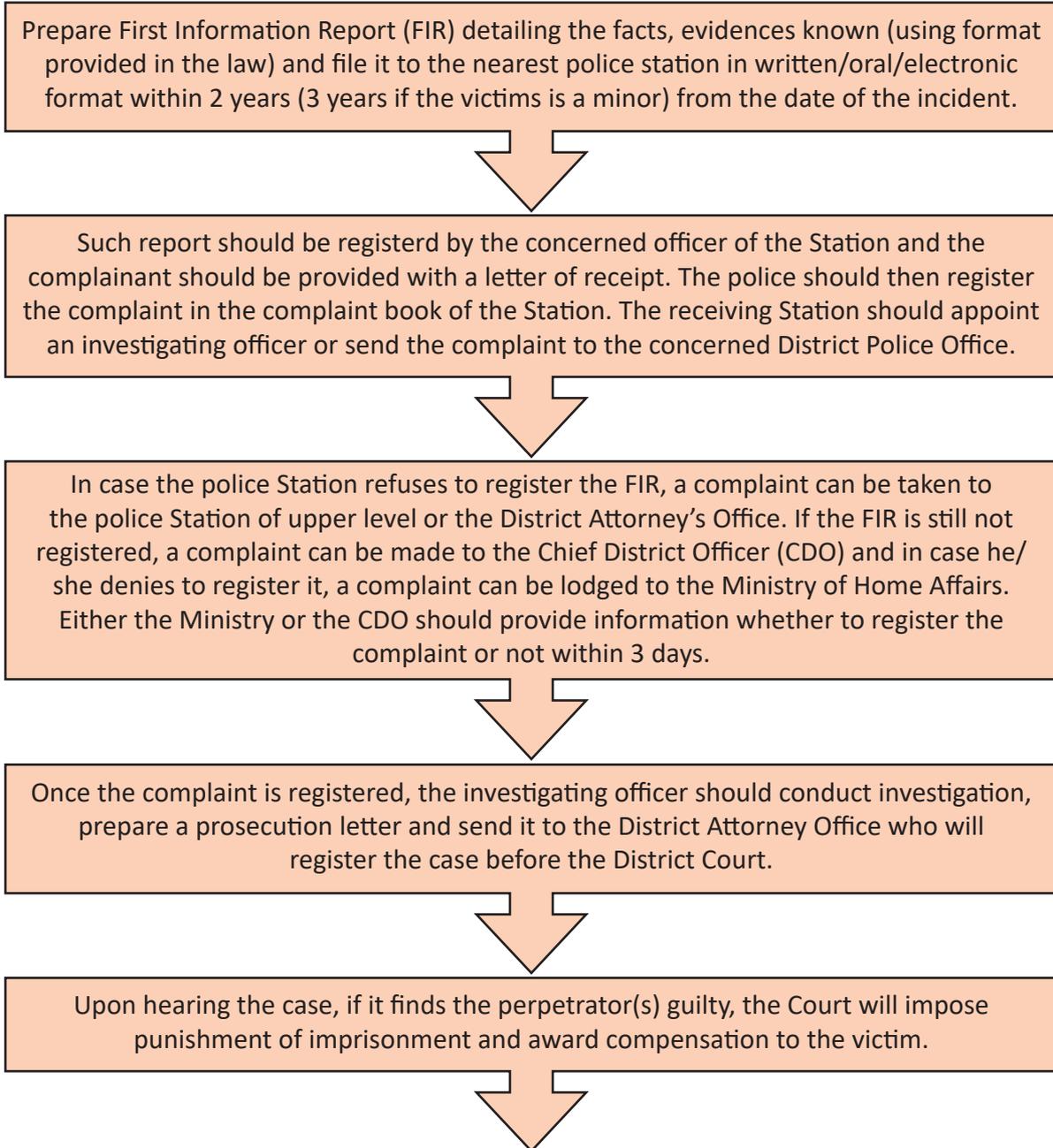
29 *Ibid.*, Preamble & Sec. 3.

30 TRIAL International and HRJC, *Report to the Committee on the Elimination of Discrimination against Women Submission on the 6<sup>th</sup> Periodic Report submitted by Nepal*, September 2018, p. 7.

31 Compensation Relating to Torture Act, 2053 (1996), Sec. 5, para. 1.

C.3.2. The Criminal Procedure Code, 2075 (2017)

The Criminal Procedure Code, 2075 (2017) came into force on 17 August 2018 and details the procedure to follow to lodge a complaint from that date onwards:



The investigating officer must inform the complainant in case the government Attorney decides not to take forward the complaint after studying the case file and examining the evidence.

In practice, however, it can be complicated to implement this procedure. There are legal obstacles to overcome, particularly with regard to the statute of limitations, and practical obstacles, particularly in that there have been many cases of District Police Offices (DPOs) refusing to register complaints (*cf.* para. C.3.1.).

#### **C.4. National Human Rights Commission Act, 2068 (2012)**

Additionally, the victim or anyone on his/her behalf can also bring a case of CRSV before the National Human Rights Commission (NHRC). Although, initially, the limitation for lodging complaints on such cases was 6 months,<sup>32</sup> in 2013, the Supreme Court declared the non-applicability of the statute of limitation.<sup>33</sup> The complaints can be submitted either in written or verbal form. The NHRC can further recommend the concerned official or agency to immediately stop such act of violation.

In case the NHRC finds a situation where the human rights of any individual have been or may be violated, the NHRC may conduct inquiry and investigation. The NHRC also may prescribe a maximum of 3,00,000 Rupees (around 2,250 US dollars) as compensation to the victim “*depending on the condition of the victim*”.<sup>34</sup>

**Note that:** the NHRC involves a non-judicial procedure and has only the power to issue recommendations. While it can be utilized for the registration of complaints. However, the TRC bill under consideration by the Parliament is suggested by its sub-committee to include a provision that allows the opening of registration of sexual violence cases for a period of 3 months and if this is passed by the parliament, TRC would be the most appropriate body to make recommendations on CRSV cases- as compared to the NHRC. Once a specific body is established as recommended by the TRC bill- to report the CRSV cases- it might be a more appropriate body to recommend the CRSV cases.

---

32 National Human Rights Commission Act, 2068 (NHRC Act), Sec. 10, para. (5).

33 *Om Prakash Aryal et al v Office of the Prime Minister and others*, Writ number 068-WS-0063, decided on 6 March 2013.

34 *NHRC Act*. Sec. 16, para. (3).

# D INTERNATIONAL ASPECTS OF CRSV IN NEPAL

## D.1. Relevant International Law on CRSV

Many international instruments prohibit CRSV. Several treaties spell out the duties of States to take action against CRSV. Some of these treaties are monitored by mechanisms called '*committees*', before which, under certain conditions, victims can lodge a complaint against the States. If a complaint is admissible, upon assessing the merits, the Committee renders a decision, called '*Views*', whereby it assesses whether there have been violations of the interational obligations of the States and, if so, recommends the corresponding measure of reparation to be adopted.

In general, for a complaint to be deemed admissible by committee, the State concerned must have ratified the relevant treaty and also accepted the competence of the said committee. There are various other criteria for the admissibility of a case before each committee, which should be assessed before lodging a complaint. The main requirement is that, before lodging a complaint at the international level, the victim must first attempt to seek justice and reparation before domestic authorities, exhausting available domestic remedies, provided that they are effective and offer a realistic prospect of success and their exhaustion is not unduly prolonged.

The Human Rights Committee (HRC), in charge of supervising the implementation of the International Covenant on Civil and Political Rights (ICCPR) and whose competence to accept individual communications Nepal has accepted,<sup>35</sup> considers that rape and other forms of sexual violence may constitute torture.

The other treaties prohibiting torture, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) to which Nepal is a party, are also relevant in cases of to CRSV. However, as Nepal has not accepted the mandate of the committee in charge of supervising the application of the CAT, CRSV's cases cannot be brought before the CAT Committee.

In this context, it also appears complicated to bring a case before the Committee of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW). Nepal ratified CEDAW on 22 April 1991 and accepted its mandate to receive individual complaints from Nepal on 15 June 2007- which means the CRSV must have occurred or is related to the conflict after this date. As the internal armed conflict ended in 2006 with no records of related sexual violence thereafter, the cases would not be eligible to be taken to the CEDAW Committee, or could only refer to violations generated by CRSV perpetrated prior to 15 June 2007, but currently ongoing (for instance: if a victim suffered CRSV during the conflict, but undertook actions to seek redress or the prosecution of perpetrators after June 2007 and the proceedings are still ongoing).

---

35 Nepal simultaneously signed the ICCPR and the first Optional Protocol establishing the individual communications mechanism on 14 May 1991 (31 Baishak 2048).

The list below details the main international human rights treaties that Nepal has ratified or acceded to and illustrates the complaints' mechanisms it has accepted:

Treaties and Optional Protocols	Ratification	Acceptance of the complaints mechanism
<b>International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965</b>	ü Ratified on 30 January 1971 (17 Magh 2027)	û Nepal still does not accept the complaints' mechanism
<b>International Covenant on Civil and Political Rights (CCPR), 1966</b>	ü Ratified on 14 May 1991 (31 Baishak 2048)	ü Complaints' mechanism accepted on 14 May 1991 (31 Baishak 2048)
Second Optional Protocol to CCPR aiming at the abolition of the death penalty (CCPR-OP2-DP), 1989	ü Ratified on 4 March 1998 (20 Falgun 2054)	
<b>Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), 1979</b>	ü Ratified on 22 April 1991 (9 Baishak 2048)	ü Complaints' mechanism accepted on 15 June 2007 (1 Ashad 2064)
<b>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984</b>	ü Ratified on 14 May 1991 (31 Baishak 2048)	û Nepal still doesn't accept the complaints' mechanism
Optional protocol to the CAT relating to the establishment of a system of regular visits of places where people are deprived of their liberty (OP-CAT), 2002	ü Ratified on 14 May 1991 (31 Baishak 2048)	
<b>Convention on the Rights of the Child (CRC), 1989</b>	ü Ratified on 14 September 1990 (29 Bhadra 2047)	û Nepal still does not accept the complaints' mechanism
Optional protocol to the CRC on the involvement of children in armed conflict (OP-CRC-AC), 2000	ü Ratified on 3 January 2007 (19 Poush 2063)	
Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OP-CRC-SC), 2000	ü Ratified on 20 January 2006 (7 Magh 2062)	
<b>Convention on the Rights of Persons with Disabilities (CRPD), 2006</b>	ü Ratified on 7 May 2010 (24 Baisakh 2067)	ü Complaints' mechanism accepted on 7 May 2010 (24 Baisakh 2067)

CRSV (in particular, rape) is also prohibited under other international treaties such as the Rome Statute of the International Criminal Court (ICC), which Nepal has not ratified yet, and the Four Geneva Conventions of 1949. However, none of these treaties establishes a complaints' mechanism that can be activated by a victim of sexual violence.



Complaints of sexual violence can actually be submitted also to other UN mechanisms called '*Special Procedures*'. When people are unable to obtain justice within Nepal, forums like these can be utilized to bring the case at an international level and put some pressure on the government to respect the rights of the victims and provide redress. However, Special Procedures cannot hold States accountable for the violation of their international obligations (i.e. they are not judicial or quasi-judicial bodies), neither individual perpetrators (i.e. they are not international criminal courts), nor award reparation to victims (they can make recommendations, but it ultimately falls on States to do so).

## **D.2. International jurisprudence on Nepal**

Before lodging an application to the UN HRC, each victim has first brought his or her case before the domestic courts (rule on the exhaustion of domestic remedies). The ineffectiveness of the decisions issued by national courts (particularly with regard to sanctions and reparations) or the lack of recourse due to the 35-day statute of limitations led victims to take their complaints to the international level.

The HRC considered that Nepal had violated the rights guaranteed under the ICCPR in four cases of CRSV:



Date	Case	Rights violated	Measures of reparation recommended
2017	<i>Purna Maya v. Nepal</i>	<ul style="list-style-type: none"><li>Prohibition of torture</li><li>Right to liberty and security</li><li>Prohibition of discrimination</li></ul>	<p><b>Regarding the cases:</b></p> <ul style="list-style-type: none"><li>conduct a thorough and effective investigation into the facts submitted by the author, in particular the treatment to which she was subjected;</li><li>prosecute, try and punish with appropriate sanctions those responsible for the violations committed;</li><li>provide the author with detailed information about the results of the investigation;</li><li>ensure that any necessary and adequate psychological rehabilitation and medical treatment is provided to the author free of charge;</li><li>provide adequate compensation and appropriate measures of satisfaction to the authors for the violations suffered,</li><li>- including reimbursement for medical expenses incurred to treat the injuries sustained as a result of torture (Purna Maya);</li><li>- including arranging an official apology in a private ceremony (Fulmati Nyaya &amp; Devi Maya);</li><li>- including an official apology and a memorial in R.R.'s name.</li></ul>
2019	<i>Fulmati Nyaya v. Nepal</i>	<ul style="list-style-type: none"><li>Prohibition of torture, cruel, inhuman or degrading treatment</li><li>Prohibition of forced labor</li><li>Right to liberty and security</li><li>Prohibition of discrimination</li></ul>	<p><b>Regarding the law:</b></p> <ul style="list-style-type: none"><li>criminalize torture and provide for appropriate sanctions and remedies commensurate with the gravity of the crime;</li><li>abolish the 35-day statute of limitation for filing complaints of rape;</li><li>adapt the definition of rape and other forms of sexual violence in accordance with international standards;</li><li>guarantee that cases of rape, other forms of sexual violence and torture give rise to a prompt, impartial and effective investigation;</li><li>remove obstacles that hinder the filing of complaints and effective access to justice and compensation for victims of rape and other forms of sexual violence against women and girls in the context of the Nepali armed conflict, as forms of torture, including by significantly increasing the statute of limitations commensurate with the gravity of such crimes.</li></ul>
2021	<i>Devi Maya v. Nepal</i>	<ul style="list-style-type: none"><li>Prohibition of torture, cruel, inhuman, and degrading treatment or punishment</li><li>Prohibition of unlawful attacks on honor or reputation</li><li>Prohibition of disruption of the victim's family life and marriage</li><li>Right to privacy</li><li>Prohibition of discrimination</li></ul>	<p><b>Regarding the decision:</b></p> <ul style="list-style-type: none"><li>publish the present Views and to have them widely distributed in the official language(s) of the State.</li></ul>
2022	<i>R.R. v. Nepal</i>	<ul style="list-style-type: none"><li>Right to life</li><li>Prohibition of torture and cruel, inhuman, and degrading treatment or punishment</li><li>Right to liberty and security</li><li>Prohibition of discrimination</li></ul>	<p><b>Regarding the decision:</b></p> <ul style="list-style-type: none"><li>publish the present Views and to have them widely distributed in the official language(s) of the State.</li></ul>



In each case, the HRC indicated various measures of reparation that, as of today, remain largely unimplemented. For example, no investigation has been carried out to identify and prosecute the perpetrators. None of these victims has received compensation or rehabilitation (such as medical treatment or psychological support, as well as social and legal services). Although the applicable legislation has been amended (see below), it remains flawed, particularly with regard to the statute of limitation, which is still at odds with international standards. None of the decisions has been translated into Nepali or widely disseminated.

# E NATIONAL ACTION PLANS FOR INTEGRATING US SECURITY COUNCIL RESOLUTIONS 1325 AND 1820

**Note that:** in view of the important role women play in conflict prevention and resolution, as well as in peace building, **United Nations Security Council Resolution No. 1325**, which was endorsed on 31 October 2000, has focused on issues such as mainstreaming a gender perspective into peace processes, promoting women's equal and full participation in such processes, strengthening their role in decision making and implementing effective mechanisms for ensuring the protection and participation of women and girls. **Resolution No. 1820**, which was endorsed on 19 June 2008, emphasized the protection of girls and women affected by gender and sexual violence during conflict and transitional periods, including addressing the needs of victims/survivors, promoting a zero-tolerance policy for sexual violence and preventing sexual violence.

## - The First National Action Plan (NAP) (2007/68 - 2011/72), 2010-11/2014-15 -

Top priorities of the 2011 NAP were increased participation of women in decision-making, the protection of women and girls from sexual and gender-based violence and ending impunity.

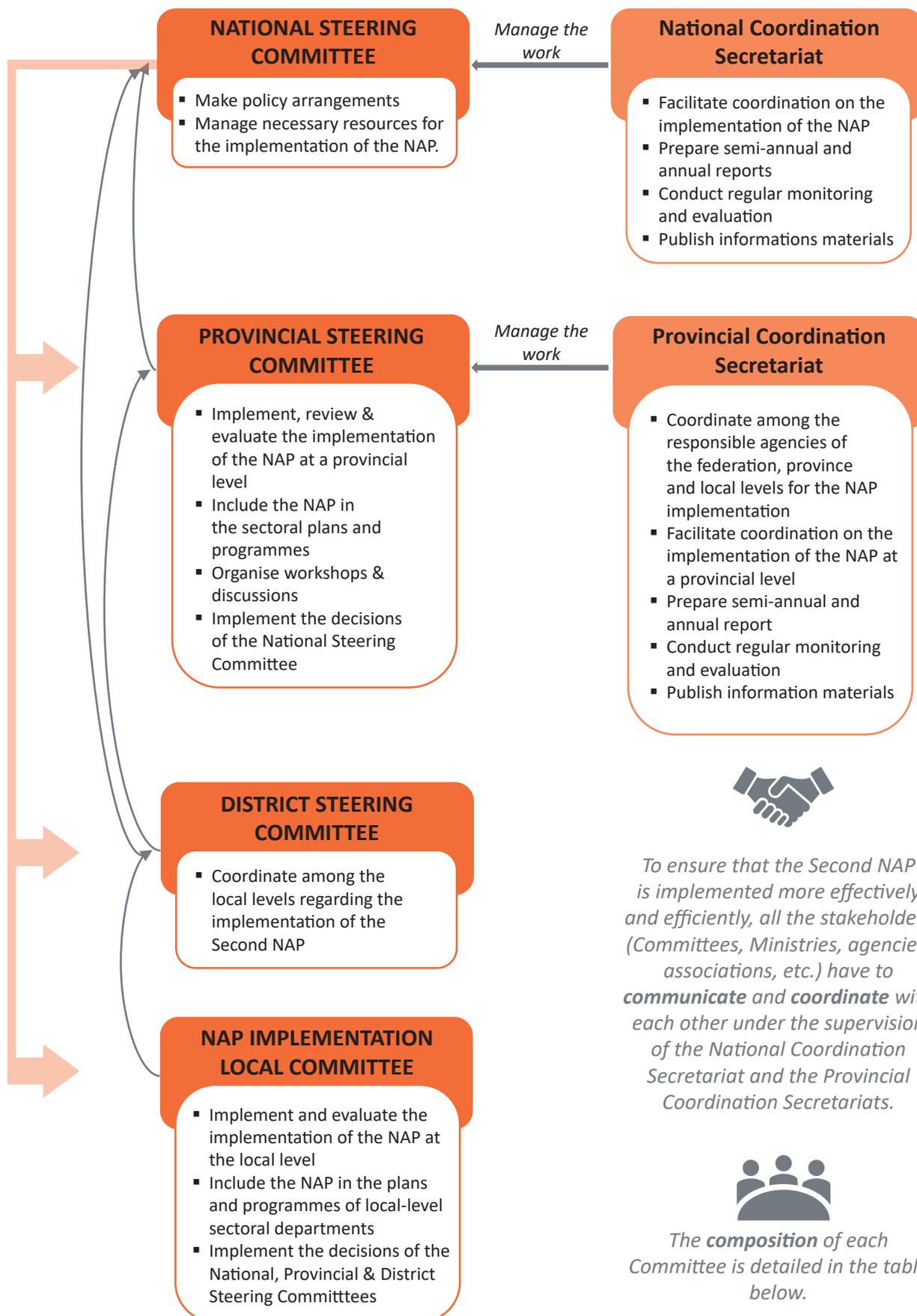
However, the NAP phased out in 2016 without any meaningful change in the lives of the victims of CRSV.

## - The Second National Action Plan (NAP) (2019/80 - 2021/82), 2022-23/2024/25 -

To complement the First NAP, the Second NAP focuses on the following objectives, defined by pillar:

1. **Participation:** ensure the equitable, proportionate, inclusive and meaningful participation of women in policymaking, peace building and development processes;
2. **Protection and prevention:** ensure the safety of women and children from physical, mental and sexual violence and adopt effective measures to prevent such violence;
3. **Relief and recovery:** arrange relief and recovery for women and children who survived violence during the conflict;
4. **Capacity building, resource management and monitoring and evaluation:** strengthen the capacity of all stakeholder agencies to implement the Second NAP and make the monitoring and evaluation work effective by ensuring the necessary resources.

The Second NAP will be implemented by various committees at national, provincial and local levels, as follows:





Committees	Composition
<b>National Steering Committee</b>	<p><u>Coordinator:</u></p> <ul style="list-style-type: none"><li>▪ Minister of Home Affairs</li></ul> <p><u>Members:</u></p> <ul style="list-style-type: none"><li>▪ Member of National Planning Commission (responsible for women and children)</li><li>▪ Secretary (responsible for human rights), Office of the Prime Minister and Council of Ministers</li><li>▪ Secretary, Ministry of Home Affairs</li><li>▪ Secretaries of ministries specified as responsible in the second NAP</li><li>▪ Two conflict-affected women representatives designated by the National Steering Committee</li></ul> <p><u>Members who can be invited for meetings:</u> representatives of:</p> <ul style="list-style-type: none"><li>▪ Resident Coordinator Office of the United Nations</li><li>▪ Development partner organisations</li><li>▪ NGOs working in this area</li><li>▪ Other officials and experts</li></ul> <p><u>Member Secretary:</u></p> <ul style="list-style-type: none"><li>▪ Joint-Secretary, Ministry of Home Affairs (responsible for relevant subject/area)</li></ul>
National Coordination Secretariat	<p><u>Coordinator:</u></p> <ul style="list-style-type: none"><li>▪ Joint-Secretary, Ministry of Home Affairs</li></ul>
<b>Provincial Steering Committee</b>	<p><u>Coordinator:</u></p> <ul style="list-style-type: none"><li>▪ Minister of the provincial-level ministry responsible for Home Administration/Peace and Security (officials from relevant ministries and agencies)</li></ul> <p><u>Members who can be invited for meetings:</u> representatives of:</p> <ul style="list-style-type: none"><li>▪ Relevant organisations/NGOs</li><li>▪ United Nations</li><li>▪ Development partner organisations</li><li>▪ Thematic experts</li></ul> <p><u>Member Secretary:</u></p> <ul style="list-style-type: none"><li>▪ Provincial-level ministry responsible for Home Administration/Peace and Security</li></ul>
Provincial Coordination Secretariat	<p><u>Coordinator:</u></p> <ul style="list-style-type: none"><li>▪ Ministry responsible for Home Administration, Peace and Security, in coordination with the Under Secretary of the Ministry and officials appointed by the Secretary of the concerned ministry</li></ul>



Committees	Composition
<b>District Steering Committee</b>	<u>Coordinator:</u> <ul style="list-style-type: none"><li>▪ Chief of the District Coordination Committee (coordinating with the Chief District Officer while implementing the Action Plan)</li></ul> <u>Members:</u> <ul style="list-style-type: none"><li>▪ Officials from related agencies</li><li>▪ Associations</li></ul>
<b>NAP Implementation Local Committee</b>	<u>Coordinator:</u> <ul style="list-style-type: none"><li>▪ Mayor/Chair of municipalities/rural municipalities</li></ul>

**Note that:** indeed, the Second NAP seems an improvement compared to the First NAP, as it envisages direct and meaningful participation of conflict-affected women in the formulation and implementation of relief, recovery, and rehabilitation programs; and aims at identifying and addressing in an holistic way the needs of women and girls victims and survivors of CRSV and ensuring proportional and meaningful participation of women at all levels. However, the Second NAP does not contain any provision concerning the promotion of accountability for CRSV in the form of investigation, prosecution and sanction of perpetrators.

## **F POSSIBLE AVENUES FOR REDRESS TO CRSV**

Based on the above information, the CRSV victims can pursue the following actions addressing the violence endured:

<p>Prosecution of perpetrators of the violations</p>	<ul style="list-style-type: none"> <li>- Submit a complaint, called a First Information Report, to the relevant office of the Nepal Police. It should be noted that the Nepal Police generally do not accept the complaint, citing the statute of limitations. However, it can be argued that, based on international principles on CRSV, complaints and investigations on CRSV should not be restricted by the statute of limitations. The relevant Nepalese Police station (most likely in the same district as the victims) will know the identity of the CRSV victim, but the complaint can be registered under a pseudonym so that the identity is not made public.</li> <li>- In the face of the lack of prosecution of perpetrators by domestic authorities, after complaints can be lodged before UN human rights bodies such as the Human Rights Committee and Special Procedures, which will recommend to the Government that the victim's request for prosecution of the crimes be addressed (nevertheless, implementation will depend on domestic authorities).</li> <li>- Prosecutions can also be initiated abroad if the perpetrators are located in a country that favours the prosecution of CRSV under the principle of 'universal jurisdiction'.</li> </ul>
<p>Receive reparation</p>	<ul style="list-style-type: none"> <li>- If the TRC Bill is passed with the possibility of registering the complaints of CRSV, those who have not registered their cases before the TRC can register their cases so that they will be registered in the national list of victims, which could be an opening door to receive the compensation in the future.</li> <li>- Liaise with local representatives such as the Deputy Mayor/ Vice-Chairman or the female member of the Executive Committee to understand the benefits available to CRSV victims in the local government under the NAP. This could be different from one local government to another and might include different forms of support such as medical or psycho-social support, skills and training for livelihood support, etc. Alternatively, CRSV victims may wish to contact the victim leaders in their community who could liaise with the local representatives on their behalf.</li> </ul>



**HUMAN RIGHTS  
AND JUSTICE CENTRE**

## SUPPORT OUR WORK! DONATE!

Human Rights and Justice Center  
Sunrise Bank Ltd  
0020388247701001

## WE WOULD LIKE TO HEAR FROM YOU

☎ +977 9819033495

✉ [contact@hrjc.org.np](mailto:contact@hrjc.org.np)

🌐 <http://www.hrjc.org.np>

<https://tinyurl.com/2ym9byf2>

<https://www.facebook.com/HRJCNepal/>

## VISIT US

Jwagal-10, Kupondole,  
Lalitpur, Nepal

FIND US ON GOOGLE MAPS

