

**Nepal: Contribution for the Special Rapporteur on Violence Against Women annual
report to Human Rights Council
31 December 2020**

The Constitution of Nepal 2015, Article 18 guarantees the right to equality and non-discrimination, including on the grounds of gender. Article 38(3) states that ‘no woman shall be subjected to physical, mental, sexual, psychological or other form of violence or exploitation on grounds of religion, social, cultural tradition, practice or on any other grounds. Such act shall be punishable by law, and the victim shall have the right to obtain compensation in accordance with law.’

Nepal is signatory to seven out of nine core human rights treaties.¹ Nepal has not ratified the Rome Statute of International Criminal Court. Nepal was also elected to the Human Rights Council on October 2020 for consecutive second term (2021-2023).

Definition

The National Penal (Code) Act, 2017 has criminalized the offence of rape under Chapter- 18, Section 219. The Section 219 (2) defines rape as “where any person has sexual intercourse with a woman without her consent or with a girl child below eighteen years of age even with her consent, the person shall be considered to commit rape on such woman or girl child.” Section 219 (2) (a) states that consent obtained by way of coercion, undue influence, intimidation, threat, misinterpretation, or kidnapping or taking of hostage shall not be considered consent. Furthermore, the section 219 (2) (b) ensures that consent obtained at the time of being of unsoundness of mind shall not be considered consent.

The definition defines the perpetrator as a ‘person’ and it only covers the rape committed against women and girls as offence. This sets the offence of rape against boys or sexual and gender minorities outside the jurisdiction of the law. Similarly, the concept of consent in the definition is inferred through descriptions of the circumstances where the consent does not exist rather than defining the concept as unequivocal voluntary agreement to enter sexual intercourse.

Similarly, the definition of rape only covers the penetration of penis into anus or mouth, penetration of penis, to any extent, into anus, mouth or vagina, insertion of any object other than penis into vagina.² The definition lacks consistency with the broader international legal standards³ as it only covers object/penile-vaginal penetration, oral or anal sex but does not include conducts resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any other part of the body.

The code explicitly criminalizes marital rape and prescribes punishment not exceeding five years imprisonment.⁴ Although the maximum limit of imprisonment has been defined by the law, the minimum limit is not provided.⁵ The law further explains that those persons whose case of partition has been instituted upon making separation of board and bread; the wife who has lived separate upon

¹ ICCPR, ICESCR, ICERD, CAT, CRC, CEDAW, CRPD.

² Section 219 (2) (c), National Penal (Code) Act, 2017.

³ Article 7(1) (g), Rome Statute of International Criminal Court 2002.

⁴ Section 219 (4), National Penal Code, 2017.

⁵ In the case of *Jit Kumari Pangehi (Neupane) and Others v. Prime Ministers and Council of Ministers and Others*, Decision number 7973., the Supreme Court issued directive to the Ministry of Law, Justice and Parliamentary Affairs to bring coordination between the discriminatory sentencing policies between marital and non-marital rape stating that discrimination on punishment between marital and non-marital rape cannot be made and there is no justifiable reason in providing lesser punishment on the basis of relationship with regards to marital rape.

taking her partition share from the husband and in case where a case of divorce from the husband has been instituted are not considered as the existence of the marital relationship. Despite this criminalization, the law reduces the severity of the crime by not seeing marital rape as aggravating factor, as the punishment imposed for marital rape is less than punishment prescribed for the commission of rape.

Table 1: Number of cases reported, prosecuted and sanctioned

| Year ⁶ | No. of rape cases reported to Police ⁷ | Attempt to Rape cases reported to Police ⁸ | Prosecuted (Rape/Attempt) ⁹ | Sanctioned (Rape/Attempt) ¹⁰ |
|----------------------------|---|---|--|---|
| 16 July 2015- 15 July 2016 | 1089 | 452 | 1730 | 1105 (64%) |
| 16 July 2016- 15 July 2017 | 1131 | 536 | 2027 | 952 (60%) |
| 16 July 2017-15 July 2018 | 1480 | 727 | 2196 | 1083 (58%) |
| 16 July 2018- 15 July 2019 | 2230 | 786 | 3158 | 1348 (54%) |
| 16 July 2019- 15 July 2020 | 2144 | 687 | Data not available. | Data not available. |
| 16 July 2020 - onwards | Data not available. | | | |

Punishment and Compensation

The National Penal (Code) Act 2017 prescribes different provisions for imprisoning the perpetrator based on the age of the victim and offers additional punishment where there are aggravating circumstances. The highest degree of punishment is imprisonment for life where there has been murder after rape¹¹ and when there is sexual relationship between the natural mother and her natural son or between the natural father and his natural daughter.¹²

Section 219 (3) of the National Penal (Code) Act 2017 prescribes the following punishment:

Table 2: Punishment and Compensation

| Age of victim | Imprisonment | Fine/Compensation ¹³ |
|-----------------------------------|--------------|---------------------------------|
| Less than 10yrs | 16-20yrs | 600,000 NPR |
| 10yrs or 10 to less than 14yrs | 14-16yrs | 600,000 NPR |
| 14yrs or 14 to less than 16yrs | 12-14yrs | 400,000 NPR |
| 16yrs or above 16 but below 18yrs | 10-12yrs | 400,000 NPR |
| 18yrs or above 18yrs | 7-10yrs | 200,000 NPR |

⁶ Nepali Fiscal year starts 16 July-15 July of any given year.

⁷ Data published by Women, Children and Senior Citizen Directorate available at [Women, Children and Senior Citizen Service Directorate \(nepalpolice.gov.np\)](http://www.womenandchildren.gov.np/).

⁸ Ibid.

⁹ A publication from Office of the Attorney General in Nepali language on "Legal Safeguards and Judicial Perspective on protection of Human Dignity", Second Edition, August 2020, p 55 available at [Manab maryada content pg_1600754701.pdf \(ag.gov.np\)](http://www.manab.org.np/content/pg_1600754701.pdf)

¹⁰ Ibid.

¹¹ Section 41 (f), National Penal (Code), Act, 2017.

¹² Section 220 (2) (a), National Penal (Code), Act 2017.

¹³ Introduced through an Ordinance enacted to amend some acts against sexual violence, 6 December 2020.

| | | |
|--------------|--------------------|-------------|
| Marital rape | Not more than 5yrs | 200,000 NPR |
|--------------|--------------------|-------------|

Later, on 6 December 2020, the Government issued an Ordinance enacted to amend some acts against sexual violence and specified the fine amounts in addition to the imprisonment for the perpetrator. The ordinance also clarifies that the *reasonable amount shall be imposed on perpetrator*¹⁴ while determining the fine amount to be received from the perpetrator. Such fine amount is payable to victims as compensation.

The Criminal Offences (Sentencing and Execution) Act, 2017 further describes that the amount of compensation for any offence would be determined by considering the physical, bodily, mental and emotional injury caused to the victim; if the victim has died, the injury caused to her heirs; the offender's financial sources and condition; the condition of the victim and his/her dependents; and as the court see appropriate,¹⁵ as well as including the medical expenses if the victim has sustained hurt or grievous hurt as a result of the offence, and the funeral and obsequies expenses if the victim has died.¹⁶ Such compensation are to be paid immediately¹⁷ and in cases where the offender is unable to make immediate payments, the court may order payment in maximum of three installments.¹⁸

The Crime Victim Protection Act, 2018 in section 19 (1), guarantees the right of compensation and social rehabilitation of the victim for the damage inflicted¹⁹ and assigns responsibility to the Government of Nepal, Provincial Government and Local Level to adopt necessary plans and programs based on the available resources and means, through mutual coordination, for the sake of the social rehabilitation of the victim.²⁰

It provides a comprehensive framework for receipt of compensation by victims of a crime. The Act stipulates the establishment of the Victim Relief Fund, which is not operational as of December 2020. The Act authorizes the court to issue orders to get the victim medically treated or to provide relief funds in an interim manner if the victim is to be treated immediately or is to be provided compensation or any kind of relief funds²¹ from the Victim Relief Fund. If the alleged perpetrator is later found guilty, the offender is required to reimburse the Fund. The compensation that can be provided to the victim should be for expenses incurred by the victim for medical, psychological or psychiatric counselling, medical treatment of the victim, unexpected travel costs, expenses for legal professionals, damages inflicted upon the personal capacity of the victim due to direct result of the crime, and financial loss borne or to be borne by the victim²² amongst others. Specifically, in the case of rape, the compensation would be based on the negative effect inflicted upon social, cultural or family prestige or other relationships of the victim from such crime. Further, if the victim is pregnant due to rape, expenses for abortion, giving birth to and nurturing the baby, and other applicable expenses will be covered.²³

The victim is entitled to receive the compensation from the Fund for damage undergone as a result of any crime committed by a person who does not have to bear criminal liability due to age, mental illness, diplomatic immunity and any other reason.²⁴

¹⁴ Amendment made to Section 228, National Penal (Code) Act 2017 that had wordings "*reasonable compensation*" to the victim by the perpetrator.

¹⁵ Section 41 (2), Criminal Offences (Sentencing and Execution) Act, 2017.

¹⁶ Section 41 (3), Criminal Offences (Sentencing and Execution) Act, 2017.

¹⁷ Section 42 (1), Criminal Offences (Sentencing and Execution) Act, 2017.

¹⁸ Section 42 (2), Criminal Offences (Sentencing and Execution) Act, 2017.

¹⁹ Section 19 (1), The Crime Victim Protection Act, 2018.

²⁰ Section 19 (2), The Crime Victim Protection Act, 2018.

²¹ Section 29, The Crime Victim Protection Act, 2018.

²² Section 31, The Crime Victim Protection Act, 2018.

²³ Section 31 (k), (l), The Crime Victim Protection Act, 2018.

²⁴ Section 47, The Crime Victim Protection Act, 2018.

The regulation to implement these provisions is however not in place and therefore affecting the victim's right to compensation. Additionally, both the Crime Victim Protection Act, 2018 and the National Penal (Code) Act 2017 and the Criminal Procedure (Code) Act, 2017 are silent regarding the obligation of the State to provide reparation for the victim in cases where the perpetrator is financially incapable to compensate the victim or when the perpetrator is a government employee, the responsibility of the State to compensate the victim.

The National Penal (Code) Act and the Criminal Procedure (Code) Act have not translated these provisions in their legal framework. to the lengthy court procedure on establishment of the offence, implementation of the decision on providing compensation to the victim from the offender cause delay in receipt of the compensation in timely manner. The legal provisions also lack incorporation of other forms of reparation, such as restitution²⁵, satisfaction, rehabilitation, guarantees of non-occurrence as prescribed on the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation.

Aggravating circumstances

The National Penal (Code) Act 2017 describes aggravating factors for the offence of rape resulting in additional punishment to the perpetrator. These factors are dependent on the age of the victim, physical and mental status of the victim, status and health of the perpetrator, relationship between the perpetrator and the victim.

The chapter on sexual offence imposes additional punishment if rape is committed by a person despite knowing that the person has human immune deficiency virus (HIV positive) or any other sexually transmitted disease. In case HIV positive is transmitted with negligence or recklessness, failing any intent to transmit it, the offender is still liable for punishment. Other circumstances include rape committed in gang (multiple perpetrators), against a pregnant women more than six months of pregnancy or on a woman who is infirm or disabled or suffering from physical or mental illness, or commits rape showing arms.

Similarly, offences committed against elderly person above seventy-five years of age, persons of unsound mind by reason of physical or mental illness, persons incapable of defending themselves because of disability, or being a child also amount as aggravating factors.²⁶

The following table shows the additional punishment imposed when the aggravating circumstance are existent:

Table 3: Aggravating circumstances and additional punishment

| Circumstance | Additional Punishment |
|--|---|
| Committed by person despite knowing he has HIV positive ²⁷ | Imprisonment for ten years and one hundred thousand fines |
| Committed by person who has any other sexually transmitted disease ²⁸ | Up to three years imprisonment and fine not exceeding thirty thousand |

²⁵ Sentencing act provides restitution only in the offences where the victim's property has been damaged.

²⁶ Section 38 (w), Criminal Offences (Sentencing and Execution) Act, 2017.

²⁷ Punishment in accordance with Section 105 (2), National Penal (Code), Act 2017 on prohibition of transmission of the HIV.

²⁸ Section 219 (6) (b) National Penal (Code), Act 2017.

| | |
|--|--|
| Commission of gang rape ²⁹ | Imprisonment for a term not exceeding five years |
| Committed on Women who has pregnancy more than six months ³⁰ | Imprisonment for a term not exceeding five years |
| Committed on a woman who is infirm or disabled or suffering from physical or mental illness ³¹ | Imprisonment for a term not exceeding five years |
| Committed by showing arms ³² | Imprisonment for a term not exceeding five years |
| Sexual intercourse by government employee with detainees or aiding another person to do so ³³ | Imprisonment for a term not exceeding three years as well as the additional punishment if such act is penalized by other law. ³⁴ |
| Sexual intercourse with person in one's own protection or security or custody; by office-bearer or employee of any organization providing treatment or rehabilitation services to persons of unsound mind or suffering from physical or mental illness held in such organization. ³⁵ | Imprisonment for a term not exceeding three years as well as the additional punishment if such act is penalized by other law. ³⁶ |
| Sexual intercourse by employee serving in a government office or private office or person providing any professional service or commercial work with a person serving in such office or a person making contact or being in contact for such service or work, while performing functions of such office or providing such service or at the place where such service is provided or aiding another person to do so ³⁷ | Imprisonment for a term not exceeding four year and a fine not exceeding forty thousand rupees as well as the additional punishment if such act is penalized by other law. ³⁸ |

The law has reduced the severity of the offence by making distinction between woman who is pregnant for less than six months and a woman who is pregnant for more than six months. The law should be amended to criminalize rape against pregnant women, irrespective of the months of pregnancy.

Moreover, rape committed against woman within prohibited degree of relationship of consanguinity or affinity imposes additional sentence prescribed under the incest.³⁹ In this context as well, the law only covers the rape against women, excluding boys/man from its coverage.

The Section 220 of the National Penal (Code) Act, 2017 criminalizes and penalizes person who knowingly has sexual intercourse with another person who fall within the prohibited degree of relationship by consanguinity or affinity for marriage according to the usage, custom or tradition being practiced in his or her caste or lineage.

²⁹ Section 216 (7), National Penal (Code), Act 2017.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Section 221 (1), National Penal (Code) Act, 2017.

³⁴ Section 221 (2), National Penal (Code), Act 2017.

³⁵ Section 222 (1), National Penal (Code), Act 2017.

³⁶ Section 222 (2), National Penal (Code), Act 2017.

³⁷ Section 223 (1), National Penal (Code), Act 2017.

³⁸ Section 223 (2), National Penal (Code), Act 2017.

³⁹ Section 219 (8), National Penal (Code), Act 2017.

The provision on incest prescribes following punishment:

Table 4: Relationship and punishment for incest

| Relationship | Punishment |
|---|--|
| Sexual intercourse between the natural mother and her natural son or between the natural father and his natural daughter ⁴⁰ | Imprisonment for life |
| Sexual intercourse between the step-mother and her step-son, between the step father and his step daughter, between the full blood elder sister and brother, between full blood elder brother and sister, between father-in-law and daughter-in-law within the same branch, between grand-father and grand-daughter or great-grand-daughter within the same branch, between elder brother-in-law and sister-in-law within the same branch or between younger brother-in-law and sister-in-law within the same branch ⁴¹ | Imprisonment for four years to ten years and a fine of forty thousand rupees to one hundred thousand rupees. |
| Sexual intercourse between grand-mother and her grand-son or great-grand-son within the three generations of the same branch, between father's elder brother or uncle and niece within the same branch, between nephew and great mother (wife of own father's brother) or aunty within the same branch, between father-in-law and brother's daughter-in law within the same branch, between uterine maternal uncle and niece or nephew and maternal aunty, between mother's elder sister or younger sister and nephew or between mother-in-law (one's wife side) and son-in-law ⁴² | Imprisonment for three to six years and a fine of thirty thousand to sixty thousand rupees. |
| Sexual intercourse between persons in other relationship within seven generations of one's own clan except that referred above. ⁴³ | Imprisonment one year to three years and a fine of ten thousand to thirty thousand rupees. |

Mediation of the rape

In order to prevent community settlements and mediation of the offences related to rape, an Ordinance enacted to amend some acts against sexual violence criminalized the mediation of rape cases with the victim or the victim's family. The ordinance states: "After commission of rape pursuant to this chapter, no one shall presume consent for not complaining about such offense or not registering the FIR or for not appearing in the court due to any kinds of fear, influence, threat or any kinds of giving and taking or not doing so due to coercion to the victim or family members of victim or due to mediation or reconciliation between the offender and victim or members of the family of victim or to any kind of pressure or influence. "

Any person involved in such mediation is liable for punishment up to three years imprisonment and thirty thousand rupees in fines. In cases, where such mediation is made by the person holding public office, the person is liable for additional six months of imprisonment.

The law is silent regarding non-prosecution of perpetrator, in conditions where the victim reconciles with the perpetrator or when the perpetrator marries the victim. While rendering its decision in one case, the Supreme Court stated that even when the perpetrator marries the victim, the perpetrator

⁴⁰ Section 220 (2) (a), National Penal (Code), Act 2017.

⁴¹ Section 220 (b), National Penal (Code), Act 2017.

⁴² Section 220 (c), National Penal (Code), Act 2017.

⁴³ Section 220 (d), National Penal (Code), Act 2017.

should still be punished.⁴⁴ Despite directive from the Supreme Court⁴⁵, the criminal code does not have explicit provision related to criminalization when the perpetrator and the victim are living together.

Mitigating circumstances

The Criminal Code under section 39 provides number of mitigating circumstances for the offences under the Act, such as:

1. In case where the perpetrator is below the age of 18 or above 75 years of age;
2. The offender voluntarily confessed to the offence or expressed a remorse;
3. The offender surrendered himself or herself to the concerned authority;
4. The offender, having confessed the offence committed by him or her, has already provided or agreed to pay compensation to the victim;
5. The offender has diminished capacity because of physical, mental ability or disability;
6. The offender rendered assistance in judicial process by telling the truth to the court.

Statute of limitation

The Statute of limitation imposed for rape is inconsistent with the international legal standards as well as directives issued by the Supreme Court at various instances.⁴⁶ Victim of rape must have to report the offence to the police within one year of the offence.⁴⁷ However, since there is no statutory limitation for reporting the offence of incest,⁴⁸ the rape committed within the prohibited degree of consanguinity or affinity can be reported any time. In case where the offence is committed against a person held in detention, taken into control, kidnapped or taken hostage, no complaint shall lie after the expiry of three months from the date of release from such detention, control, kidnapping or hostage-taking.

There is no provision allowing a child who was a victim of rape to report it after reaching adulthood.

Procedure relating to investigation/prosecution of offence of rape

The offence of rape is prosecuted by the Government Attorney in accordance with the National Criminal Procedure (Code) Act, 2017. There is no provision on plea bargaining in the offence of rape. It prohibits withdrawal of cases that are filed under sub-section (2) and (3) of Section 219 of the National Penal (Code) Act 2017. Mediation of the case relating to unnatural sex⁴⁹ is, however, permissible where the victim is above 18 years of age.⁵⁰

The Crime Victim Protection Act, 2018 guarantees the right to privacy for the victim during the course of investigation, enquiry, prosecution and courtly actions of crime, including rape.⁵¹

⁴⁴ *Government of Nepal v. Narayan Poudel Khatri*, Decision no. 8564.

⁴⁵ *Jit Kumari Pangen (Neupane) and Others v. Prime Ministers and Council of Ministers and Others*, Decision number 7973.

⁴⁶ *Sapana Pradhan Malla v. Government of Nepal*, Decision no. 8038.

⁴⁷ Section 229 (2), National Penal (Code) Act 2017.

⁴⁸ Section 229 (1), National Penal (Code) Act, 2017.

⁴⁹ Unnatural sex is not defined in the National Penal (Code), Act, 2017. However, this is understood to describe the sexual conducts between the gender and sexual minorities.

⁵⁰ Section 120, Criminal Procedure (Code) Act, 2017.

⁵¹ Section 6, Crime Victim Protection Act, 2018

The National Criminal Procedure (Code) Act, 2017 provides authority to the court to authorize the investigation authority to keep the identity (name, surname, address of his/her or his/her father) of the victim secret if the disclosure is pre-judicial to the social prestige or honor the victim or if it may result in undue fear, terror etc.⁵² In cases related to rape, the code authorizes the court to order in-camera trial (closed trial) in camera prohibiting the access of any person to such bench other than the concerned parties, their lawyer, employees of the court and other persons as court deems necessary.⁵³

Conflict related rape

The National Penal (Code) Act 2017 does not criminalize rape as a war crime or a crime against humanity. In order to address the sexual violence committed during the decade long (1996-2006) armed conflict, a separate legislation on the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2014 (TJ Act) was adopted in 2014. The Act criminalized the offence of rape as the serious violation of human rights and established the Truth and Reconciliation Commission (TRC) as a mechanism to receive complaints⁵⁴ related to rape and other sexual violence, investigate them and recommend for prosecution/amnesty and reparation.

However, the Act is in contravention to the international legal standards that Nepal has committed to, as the legislation grants authority to the Commissions to recommend amnesty for serious violations of human rights, including the offence of rape. Furthermore, the statutory limitation of one year for prosecuting the offence of rape extends to conflict-related rape, thus barring the victims' and survivors' access to justice.

Additionally, victims and survivors have not benefitted from interim relief or full reparations, due to the failure of the Government to include them as target populations for interim relief or full reparations.⁵⁵ However, there are signs of government commitment to addressing these issues by finalizing⁵⁶ the National Action Plan (NAP) Phase-II on Women, Peace and Security that⁵⁷ focuses on the concerns and priorities of survivors, children born out of rape and children survivors. The NAP-Phase -II is still pending cabinet approval.

National context:

Despite an increase in the reporting of the rape cases, many incidents of rape are underreported and are resolved within the communities⁵⁸ and in some cases the case is resolved at community level by marriage between the victim and offender.⁵⁹ The under-reporting of rape is generally attributed to fear of stigmatization, retaliation and re-victimization, a lack of trust and knowledge in the process, victim blaming as well as low social status which typically undermine the ability of victims of gender-based violence to obtain remedies.

⁵² Section 183, Criminal Procedure (Code) Act, 2017.

⁵³ Section 129, Criminal Procedure (Code) Act, 2017

⁵⁴ The TRC's November 2018 data revealed that 322 of their cases relate to CRSV, perpetrated both government security forces and the then Maoists.

⁵⁵ Universal Periodic Review (UPR) submission of forty conflict victims' organizations for Nepal's third UPR Review, July 2020.

⁵⁶ Joint program between UNDP, UN Women, UNFPA, IOM and UNODC, UNRCPD coordinated by UNRCO supported the Ministry of Home Affairs in the drafting, consultation and validation process leading up to the finalization of the NAP Phase-II.

⁵⁷ UN Security Council Resolution 1325, 1820 and its subsequent resolutions.

⁵⁸ For example: In Bajhang district, during the investigation of rape and murder case of Samjhana Kami, the police found that the alleged perpetrator had raped another girl several weeks before this event and relatives made agreement with the girls' side by paying 500 rupees from the perpetrator and bowing at the victim's feet.

⁵⁹ For example: In Case of Angira Pasi, the victim was forced to marry her rapist by the local leaders. The victim committed suicide the other day of the marriage.

There are multiple hurdles for victims of gender-based violence (GBV) seeking justice that make victims more vulnerable. The victims turning hostile, due to threat or fear during case hearings also affect success of cases. Weak forensic infrastructure, both in terms of technical equipment and availability and access to medico-legal experts, are identified as key barriers during the investigation of the case.

For example: In the rape and murder case of Nirmala Pantha, a proper investigation was not conducted until 55 days of the crime. Later the National Human Rights Commission (NHRC) Nepal discovered several lapses on the part of the investigation of the crime, such as a lack of search of the incident-initiated spot and enquiry in a timely manner; lack of separate deeds on scene of crime, lack of collection of the evidences in reasonable manner by the Scene of Crime Officer, absence of the responsible investigation office during the post-mortem, loss of the undergarments of the victim, and wiping off the private parts of the victim, among others.⁶⁰

The NHRC also highlighted the practice of community settlement of cases, pressure on the victim's family to not register the First Information report (FIR) or to withdraw such FIR, marriage with the victim by the perpetrator, in its report of 2019.⁶¹ There is also a general lack of disaggregated data by sex, caste/ethnicity, geographical location and other relevant factors, particularly regarding GBV.

Recommendations

The UNCT recommends the following to the Government of Nepal:

Legal reform

- 1) Amend the rape legislation to ensure that the provision is gender neutral for both perpetrator and the victims;
- 2) Amend the definition of rape in line with the international legal standards such as the ICC;
- 3) Amend the provision on consent for clarity to ensure that consent refers to unequivocal and voluntary agreement for engagement in a sexual act;
- 4) Amend the legislation to delete the provision on different punishment for the offence of marital rape;
- 5) Amend the legislation to ensure rape committed against pregnant women, irrespective of the stage of pregnancy, as an aggravating circumstance;
- 6) Remove the statutory limitation for reporting rapes, including enabling the victims of sexual violence during the conflict to report the cases;
- 7) Amend the rape legislation to ensure the rape committed by the State actors can be prosecuted as an offence of torture;

Reparation

- 8) Adopt the necessary mechanisms and regulations to implement the provision related to the compensation guaranteed by the Crime Victim Protection Act, 2018;
- 9) Review and operationalize existing funding provisions and mechanisms under various laws (including the Crime Victim Protection Act, 2018) and policies for responding to GBV;
- 10) Amend the Crime Victim Protection Act and the Criminal Offences (Sentencing and Execution) Act in the federal structure, by introducing regulations to enable provincial and local

⁶⁰ Recommendation and Direction to the Government of Nepal on the murder incident of Nirmala Pant, 27 January 2019 available at [ldt M @\)^@÷\\$÷# \(nhrcnepal.org\)](mailto:ldt M @)^@÷$÷# (nhrcnepal.org)

⁶¹ Study report on "Human Rights situation of the rape victims and accountability of Nepal Police in Access to Justice" National Human Rights Commission Nepal, 2019, p 68 available at [GPV_Report.pdf \(nhrcnepal.org\)](#).

governments to establish funds without having to enact their own legislation, as well as provide resourcing and oversight for these funds across all tiers of the government;

- 11) Adopt a comprehensive reparation that constitutes restitution, satisfaction, rehabilitation and guarantees of non-repetition in addition to compensation;

Conflict related rape

- 12) Amend the rape legislation to ensure that the offence of rape is included as a war crime and a crime against humanity;
- 13) Take necessary action to guarantee access to justice for the victims of rape through gender-sensitive and prompt investigations and continuous trials at the courts.
- 14) Expedite the revision and adoption of the Bill to amend the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, in line with its obligations under international law and the Supreme Court verdict⁶², in consultation with civil society and victims/survivors, to guarantee the gender-sensitivity of the Act;
- 15) Expedite the adoption of the NAP Phase-II for the implementation of UNSCR on women, peace and security and ensure access to interim relief and full and effective reparations.

Prevention and Response

- 16) Prioritize and implement interventions focusing on social norms (both with the duty bearers as well as at the community level)
- 17) Ensure unhindered access to GBV response services and justice particularly through the roll out of a comprehensive package of essential services.
- 18) Strengthen the capacity of the law enforcement officials as well as the justice sector to ensure gender sensitivity during the investigation and prosecution of the rape.
- 19) Strengthen One Stop Crisis Management Centers for effective response and multi sectoral services to rape victims.
- 20) Ensure women's right to sexual and reproductive health as enshrined in the Right to Safe Motherhood and Reproductive Health Rights Act, 2075.
- 21) Strengthen forensic infrastructure and human resources across the country; prioritize medico legal sector for appropriate examination and collection of evidence as well as ensure access to justice where there are limitations on medical evidences.
- 22) Ensure availability, accessibility and quality of multisectoral services related to health, psychological counselling, justice, shelters, livelihood recovery for survivors of rape and sexual violence – including services such as 24/7 open helplines through virtual/remote medium during pandemic.

⁶² Suman Adhikari vs. *the Office of the Prime Minister and Council of Ministers*, Decision date 14 February 2015.