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**Promotion and protection of all human rights, civil,
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including the right to development**

Visit to Nepal

Report of the Special Rapporteur on violence against women, its causes and consequences^{*}, ^{}**

Summary

The Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, visited Nepal from 19 to 29 November 2018. In the report, she examines gaps and challenges in fulfilling the obligations of the State to eliminate violence against women, its causes and consequences, and recommends measures for preventing and combating violence against women in the country.

* The summary of the report is being circulated in all official languages. The report itself, which is annexed to the summary, is being circulated in the language of submission only.

** The present report was submitted late to reflect the most recent developments.



Annex

Report of the Special Rapporteur on violence against women, its causes and consequences on her visit to Nepal

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I. Introduction

1. The Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, conducted an official visit to Nepal from 19 to 29 November 2018, at the invitation of the Government. The main focus of the visit was to assess the overall situation of violence against women in the country and to evaluate the efforts being made to eliminate violence against women, including through relevant laws, policies and services, and the obstacles faced in this regard.
2. The Special Rapporteur expresses her appreciation for the excellent cooperation extended to her by the Government before, throughout and after the visit. During the visit, the Special Rapporteur met with various government representatives, including representatives from the Ministry of Foreign Affairs, the Ministry of Women, Children and Senior Citizens, the Ministry of Law, Justice and Parliamentary Affairs, the Ministry of Health, the Ministry of Finance, the Ministry of Land Management, Cooperatives and Poverty Alleviation, the Ministry of Home Affairs and the Human Rights Division of the Nepal police. She met with the Attorney General, the Joint Secretary at the Office of the Prime Minister and Council of Ministers, commissioners of the Law Commission and a principal female Supreme Court judge. In addition, she met with authorities representing the Government and other relevant stakeholders in Dhangadi (Province 7) and Nepalgunj (Province 5).
3. The Special Rapporteur visited two correctional facilities, including Nakkhu prison, and the women's section of the central prison in Kathmandu. She also visited shelters for women fleeing violence in the various locations to which she travelled.
4. She met with the Chair of the National Human Rights Commission and convened meetings with a broad range of civil society organizations.
5. She is very grateful to the United Nations Resident Coordinator Office and the United Nations country team, as well as other relevant stakeholders, for their invaluable support in facilitating her visit.
6. She wishes to express her heartfelt thanks to all the victims who agreed to relate their personal and often traumatic experiences of violence and gender-based discrimination, allowing her to gain an insight into some of the systematic problems they face when it comes to gender-based violence against women and their right to live a life free from violence.

II. General context

7. Over the past 20 years, Nepal has experienced profound political change, including the abolition of its monarchy in 2008, the appointment of the country's first female President in 2015 and, more recently, its transition to a federal democratic State after 2017. The successful completion of local, provincial and federal elections in 2018 represented a significant turning point in the country's recent political history and resulted in a record number of women representatives elected to office, including women from Dalit and indigenous communities.
8. Despite these positive steps, the Special Rapporteur's visit highlighted the major challenges that the country still faces in eliminating violence against women and attaining gender equality in line with its new constitutional and international commitments. Indeed, many government officials and other stakeholders with whom the Special Rapporteur met recognized that violence against women is a disturbingly common occurrence that is deeply rooted in the mindset and patriarchal attitudes that exist throughout the country. Patriarchal social norms, as well as the persistence of discriminatory harmful practices, the normalization of violence and the social stigma attached to reporting violence, continue to pervade society at all levels, disproportionately affecting women and girls, in particular those from marginalized groups, who face intersecting and multiple forms of discrimination.

9. The recent substantial reform of the legal system, including the adoption of the new Constitution and the Sexual Harassment at the Workplace (Elimination) Act of 2015 and the enactment of the new National Penal Code of 2017, together with the Criminal Procedure (Code) Act of 2017, the Criminal Offences (Sentencing and Execution) Act of 2017, the National Civil Code of 2017 and the Civil Procedure (Code) Act of 2017, has brought significant legal changes, namely, by introducing key provisions further protecting the rights of women and enabling progress towards ending violence against women. The main challenge now is to ensure that these laws and policies are fully implemented at the federal, provincial and local levels.

10. The country's new federal structure, which encompasses the devolution of powers to the provincial and local levels, combined with the lack of effective coordination between mechanisms on violence against women, presents additional challenges in assessing the extent to which the right of women to be free from violence is protected throughout the country.

III. Incorporation of the international framework on violence against women

11. Nepal is a party to seven of the nine principal international treaties, including the Convention on the Elimination of All Forms of Discrimination against Women, which it ratified in 1991, together with the Optional Protocol thereto, which it ratified in 2007. It has yet to ratify a number of other core United Nations human rights treaties and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. The Special Rapporteur notes that, according to article 51 (b) (3) of the Constitution, Nepal shall pursue policies to implement the international treaties and agreements to which it is a party.

12. The visit of the Special Rapporteur followed the examination of the sixth periodic report of Nepal by the Committee on the Elimination of Discrimination against Women in October 2018. She therefore hopes that the recommendations outlined in the present report will be implemented in conjunction with those provided by the Committee (see CEDAW/C/NPL/CO/6), as a means of developing a road map to assist the Government in its efforts to eliminate violence against women and to uphold the rights of women in the public and especially the private spheres, in line with the Convention on the Elimination of All Forms of Discrimination against Women, the Declaration on the Elimination of Violence against Women¹ and Goal 5 of the Sustainable Development Goals, in particular target 5.5.

IV. State response and measures to address violence against women

A. Constitutional, legislative and policy framework

1. Constitutional framework

13. The Special Rapporteur commends the promulgation in 2015 of the new Constitution, which has brought many progressive provisions with the aspiration of achieving an equitable society in accordance with the principles of inclusion and proportional participation of women. In particular, it contains a specific article on violence against women (art. 38 (3)), according to which no woman shall be subjected to physical, mental, sexual, psychological or other forms of violence or exploitation on the grounds of religion or social or cultural tradition or practice, or on any other grounds. Such acts shall

¹ General Assembly resolution 48/104.

be punishable by law, and the victim shall have the right to obtain compensation in accordance with the law.

14. Despite this significant progress, the Special Rapporteur is concerned by the fact that discriminatory provisions remain. While article 10 (1) of the Constitution provides that no citizen of Nepal may be deprived of the right to obtain citizenship, article 11 of the Constitution and the Citizenship Act of 2006 limit the autonomy of women with regard to nationality and their ability to transmit citizenship through marriage and to their children, as highlighted by both the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women. The acquisition of Nepalese citizenship by descent is conditional on evidence that both the father and the mother of the child are Nepalese citizens. The criteria for the transmission of citizenship from Nepalese mothers to their children remain discriminatory, as they require the mother to be a resident of Nepal, exclude children born to women who are not permanent residents and make citizenship subject to conversion for children whose previously unidentified father is later proven to be a foreigner. This provision is not in line with article 9 of the Convention on the Elimination of All Forms of Discrimination against Women.

2. Legislative framework and policies on combating and preventing violence against women

15. The Special Rapporteur welcomes the substantive legal reforms undertaken by the Government over the past three years with the aim of harmonizing its national legal system with the new constitutional provisions and international commitments to human rights. Although this progress is indeed noteworthy, the Special Rapporteur was informed that the process of repealing or amending gender-discriminatory provisions and adopting new laws and policies is still ongoing, while legislation and harmful practices that discriminate against women still exist. Considerable implementation gaps with respect to new laws relating to the rights of women, ranging from laws on harmful practices, sexual violence and domestic violence to laws on trafficking, continue to pose significant challenges.

16. In 2015, the Government identified the need to amend 315 laws and enact 110 federal laws, 22 provincial laws and 6 local-level laws in order to fully implement the provisions of the Constitution. The legislative reforms have resulted in the establishment of a new legal framework on the rights of women and included amendments to gender-discriminatory provisions in 32 acts through the Act to amend some acts for maintaining gender equality and ending gender-based violence of 2015.

17. Although it may be too early to assess the full impact of recently adopted laws and provisions, current gaps in the effective implementation, monitoring and evaluation of policies and programmes for eliminating gender-based violence against women are compounded by limited budgetary allocations. The main challenge now is to ensure that laws and policies on the rights of women and violence against women are properly interpreted and fully implemented at the federal, provincial and local levels.

18. Under the new federal system, judicial committees have been established at the local level as a means of facilitating access to justice for women, in particular those living in rural and remote areas. The committees, 90 per cent of which are led by women, are chaired primarily by the Deputy Mayor or Vice-Chair (the vast majority of mayors are male) and include women representing minority groups, including women from Dalit and indigenous communities. Despite this promising statistic and high expectations, the Special Rapporteur is concerned that, given the lack of legal expertise and knowledge of gender-sensitive investigation procedures among committee members, as well as the unclear relationship between the committees and court procedures, the limited financial resources, the insufficient coordination between federal, provincial and local structures and the quasi-judicial and political nature of the committees, results may be limited.

19. While noting as positive the overall efforts being made to improve access to justice for women, the Special Rapporteur is concerned by the fact that considerable challenges remain, including the lack of training for the police and judiciary to enable them to adopt a gender-sensitive approach when investigating cases, the social stigma associated with reporting and the general lack of awareness among women of their rights. The economic

dependence of women on their husbands and in-laws is also a significant factor preventing women from seeking justice, as are geographical and linguistic constraints. Preventive measures and measures to ensure the compensation, rehabilitation and protection of victims are also weak, while the low level of implementation of court judgments, including judgments to grant compensation, is an additional issue of concern.

3. National action plan

20. A national strategy and action plan on gender empowerment and ending gender-based violence was implemented from 2013 to 2018, while a strategy and workplan on ending sexual and gender-based violence and gender empowerment were implemented from 2012 to 2017. On 24 August 2018, the House of Representatives passed a four-point resolution on ending violence against women and girls, and a high-level mechanism for ensuring its implementation has been formed.² At the time of the visit, a second national strategy and action plan on gender empowerment and ending gender-based violence was being drafted at the Office of the Prime Minister and Council of Ministers (see CEDAW/C/NPL/Q/6/Add.1).

21. While welcoming the aforementioned initiative, the Special Rapporteur notes that the previous strategies lacked a holistic and human rights-based approach to violence against women, as they did not sufficiently address the need for adequate crisis services, shelters or safe houses for women and children who are victims of violence and opportunities for empowerment in such places.

B. National machinery and independent institutions

22. Under the new federal structure, the Ministry of Women, Children and Senior Citizens is responsible for coordinating policy and programmes concerning gender equality and the rights of women and ensuring their implementation across the country, while the Ministry of Social Development, which is responsible for monitoring the implementation of plans to address gender-based violence at the provincial level, has established gender focal points in each of the provinces (see CEDAW/C/NPL/6, para. 13). Sections for gender violence control and for women's development and gender mainstreaming have been established at the Ministry of Women, Children and Senior Citizens.

23. Previously, each district benefited from the services provided by the district offices for women and children, which were mandated to assist survivors of gender-based violence in obtaining access to psychosocial counselling, free legal aid, adequate security and protection and necessary health services. In 2018, however, the offices were closed at the district level and devolved to local government structures.

24. The National Women's Commission was upgraded from a statutory body to a constitutional commission through the National Women's Commission Act of 2017, with the aim of increasing its authority and independence and equipping it with the legal tools necessary to implement its broad constitutional mandate. At the time of writing, however, the Commission was not fully functioning owing to the considerable delay by the Constitutional Council in appointing the Chair and members of the Commission, together with the limited increase in the Commission's budget and human and technical resources. The delay is having a significant impact on the ability of the Commission to efficiently implement its mandate.

25. The National Human Rights Commission was established in 2000. The Commission was recognized by the interim Constitution of 2007. The National Human Rights Commission Act, enacted by the Constituent Assembly in 2012, defines the functions, duties and powers of the Commission. The Commission has been entrusted with the power

² Tham Maya Thapa, Minister of Women, Children and Senior Citizens, statement of the Government of Nepal to the seventy-first session of the Committee on the Elimination of Discrimination against Women, Geneva, 23 October 2018. Available at https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/NPL/INT_CEDAW_STA_NPL_32836_E.pdf.

to monitor the implementation of the recommendations made by the Commission on the Investigation of Disappeared Persons and the Truth and Reconciliation Commission.

26. The Special Rapporteur noted through her interactions with the various institutions that, as highlighted by the Committee on the Elimination of Discrimination against Women (see CEDAW/C/NPL/CO/6, paras. 12 (b)–(c)), there is limited coordination and a distinct disconnect between the National Women’s Commission, the Ministry of Women, Children and Senior Citizens, the Ministry of Federal Affairs and Local Development and the Ministry for Social Development in their efforts to promote gender equality, while the lack of adequate capacity-building, expertise and resources at the local government level is a barrier to addressing the needs of victims of gender-based violence.

V. Manifestations of violence against women, its causes and consequences

27. Violence against women in Nepal is pervasive, occurring in both the private and the public spheres throughout the country, and is further compounded by the persistence of entrenched patriarchal attitudes, gender stereotypes and harmful practices.

28. According to data received by the Special Rapporteur, 149 people, 140 of them female, were killed in incidents of gender-based violence in 2017. Of them, 75 women were killed in intimate partner or domestic violence. This means that, of the 446 total killings in 2017, one third can be attributed directly to gender-based violence, making it the leading identifiable trigger for violent deaths in Nepal that year.³ However, the full extent of the problem certainly exceeds these estimations, in particular as there is no national collection of comparable data on different forms of violence against women, including data on gender-related killings of women or femicide and/or suicides of women, and it is likely that many instances of violence go unreported and unpunished.

29. Despite the adoption in 2009 of the Domestic Violence (Offence and Punishment) Act, domestic violence continues to permeate society. In the first quarter of 2018, there was a spike in gender-based violence against women compared with the final quarter of 2017, with the number of cases doubling from 125 to 251, making up the largest proportion of all recorded violent incidents.⁴ Domestic violence was the second most common form of gender-based violence against women, resulting in 24 deaths.⁵ Domestic violence, including physical, sexual and psychological abuse, is still considered a private matter and not an issue of public concern in most parts of the country. The incidence of domestic violence is still underreported, owing in part to the lack of public awareness about this societal problem, fear of retaliation and stigmatization, the lack of trust in law enforcement agencies and the low quality of existing services and protection mechanisms for victims of violence. According to the demographic and health survey of Nepal of 2016, the lack of coordinated, gender-friendly and comprehensive essential services for survivors of violence against women has led to a high level of impunity for perpetrators, with 66 per cent of women who have experienced any type of physical or sexual violence opting not to seek help of any kind.⁶

30. The Special Rapporteur was informed that, despite the increasing attention paid to violence against women, sexual violence, both within and outside the context of domestic and family violence, has become less visible in the combating violence against women agenda and related developments in policy and practice.

³ See www.nepalmonitor.org/blog/wp-content/uploads/2018/04/CM-GESI-Monitoring-Report-2017-Eng.pdf.

⁴ Collective Campaign for Peace, “The Nepal peace monitor: annual review 2017”, October 2018.

⁵ Nepal Peace Monitoring Project, “Trends of violence and contestation in Nepal”, sixth quarterly report, April–June 2018. Available at www.nepalmonitor.org/blog/wp-content/uploads/2018/09/Sixth-Quarterly-Report.pdf.

⁶ See www.dhsprogram.com/pubs/pdf/fr336/fr336.pdf.

A. Femicide or gender-related killings of women

31. There is a general lack of official data on gender-related killings of women or femicide in the country. According to data provided by the Nepal Peace Monitoring Project in 2017, 116 incidents of domestic violence were recorded, while there were 49 gender-related deaths of women in the first quarter of 2018. The Special Rapporteur noted that, in many cases of killings committed by former or current intimate partners, the victims had previously reported acts of violence to the police but had not been provided with adequate and effective protection. She commends the work being carried out by non-governmental organizations, including women's organizations at the local level, to quantify gender-related killings of women.⁷

32. The mandate holder wishes to reiterate the call she made for all States to establish a "femicide watch and/or observatory" or a "gender-related killing of women watch" and to collect and release each year on the International Day for the Elimination of Violence against Women (25 November) data on the number of intimate partner and family-related femicides, indicating the relationship between the victim and the perpetrator, and other gender-related killings. Data on the prosecution of perpetrators should also be collected and published. Most importantly, all such cases should be carefully analysed to identify any failure of protection, with a view to improving and developing further preventive measures.

33. While there is currently a general lack of disaggregated data, in particular with regard to gender-based violence against women, trafficking and sexual and labour exploitation, the Special Rapporteur welcomes the commitment towards the comprehensive collection of gender-disaggregated data through the census planned for 2021 and the efforts through the National Women's Commission to coordinate a gender-based violence information management system to facilitate nationwide data collection, assessment and monitoring of cases.

B. Sexual violence, including rape

34. The Special Rapporteur received information suggesting that the number of cases of sexual violence and rape is increasing. According to Government reports for 2016 and 2017, a total of 1,874 rape cases were filed in court, resulting in 654 convictions and 333 acquittals, while 870 cases of attempted rape were filed, resulting in 270 convictions and 275 acquittals (see CEDAW/C/NPL/Q/6/Add.1, para. 50). According to the report of the Nepal Peace Monitoring Project, compared with the previous quarter, there was an increase in rape and attempted rape of 9 per cent in the period from April to June 2018.⁸ Young women and girls are particularly vulnerable to sexual violence, and 145 of the recorded victims were below the age of 26 years.⁹ While these figures may reflect an increase in overall reporting, they are nevertheless troubling and highlight the need to properly address such cases.

35. In chapter 18 of the National Penal Code of 2017, a number of sexual offences are defined and prohibited and penalties are provided for the perpetrator. However, the Code fails to adequately criminalize rape and other forms of sexual violence in line with international law. While the Code, in section 229 (2), extends the statute of limitations for the prosecution of cases of sexual violence to one year, the Special Rapporteur remains concerned that this extension may be too short, especially for offences that were committed during the conflict and for cases involving young girls. Nepalese law does not codify war crimes and crimes against humanity. As a consequence, cases of rape during the conflict can be prosecuted only as ordinary offences, with no regard for the specificities of the commission of the crimes in the context of an armed conflict.

⁷ The Nepal Monitor, for example, is a nationwide data platform collating information and data on violence and associated injuries and on incidents related to gender-based violence and killings.

⁸ Nepal Peace Monitoring Project, "Trends of violence and contestation in Nepal".

⁹ Ibid.

36. Following the landmark Supreme Court decision of 2003,¹⁰ marital rape is now considered a crime under law, and, under the National Penal Code of 2017, the punishment for marital rape was increased to five years in prison. While welcoming these positive developments, the Special Rapporteur is concerned by the fact that sexual violence within intimate partner relationships is still largely a taboo subject, with low levels of reporting. When intimate partner sexual abuse is reported, it is often less likely to result in prosecutions and convictions than assault by a stranger.

37. During her visit, the Special Rapporteur expressed grave concern about reports suggesting that numerous cases related to sexual violence and the killing of women and girls have resulted in impunity for the perpetrators, despite having been referred to the police or a court for redress. An example of such a case is that of Nirmala Panta, a 13-year-old girl who was brutally raped and murdered in western Nepal at the end of July 2018. The case prompted public outrage, leading to a number of public rallies calling for justice for Nirmala. Reports suggest that the pattern of police negligence, including the alleged mishandling of evidence and the wrongful arrest and alleged beating of a man accused of the crime, has significantly hindered the investigative process.

38. The Special Rapporteur was informed by the Government that an investigation into the case is ongoing and that six police officers involved in the investigation of the case by the Ministry of Home Affairs have been suspended.¹¹ The Special Rapporteur is deeply concerned, however, that the investigation may be insufficient. At the time of writing, the perpetrator or perpetrators remained at large, while reports that those defending Nirmala's case had been subjected to threats and harassment continued to prejudice the case.

C. Harmful practices

39. Although not exhaustive, the present section illustrates the most prevalent manifestations of violence against women and girls in the country, including numerous harmful practices that were discussed during the Special Rapporteur's visit.

40. The Special Rapporteur welcomes the new laws and plans to abolish and criminalize harmful traditional practices, such as the Witchcraft Accusation (Crime and Punishment) Act of 2015, the National Penal Code of 2017, which criminalizes *chhaupadi*, and the national strategy to end child marriage of 2016. However, these laws have yet to prevent traditional harmful practices that constitute gender-based violence against women, as such practices are deeply entrenched in the fabric of Nepali society, continuing to have a negative impact on the lives of women and girls throughout the country and preventing the full implementation of adopted laws.

1. *Chhaupadi*

41. *Chhaupadi* is a traditional practice whereby menstruating women and girls, who are considered to be impure and untouchable, are banished from their family home and forced to live in a cowshed or a *chhaupadi* hut for from five to seven days every month. In some areas, women are also forced to give birth in a *chhaupadi* hut and remain there for up to two weeks under the same restrictions, jeopardizing the health and well-being of both mother and infant.¹² Having visited communities in which *chhaupadi* continues to be practised, the mandate holder noted that the women and girls with whom she met clung to a deeply ingrained superstition that triggers the belief that, if they do not adhere to this practice, their family members may fall ill or come to harm. Women and girls living in

¹⁰ Supreme Court of Nepal, Special Bench, *Meera Dhungana v. Government of Nepal*, Writ No. 55 of the year 2058 BS (2001–2002).

¹¹ The Ministry of Home Affairs formed a high-level committee charged with investigating the “mishandling” of the case. The report of the committee was published on 7 October 2018. The National Human Rights Commission also issued a robust response, in which it outlined eight points requiring action.

¹² Prabisha Amatya and others, “Practice and lived experience of menstrual exiles (*chhaupadi*) among adolescent girls in far-western Nepal”, *PLOS ONE*, 10 December 2018.

chhaupadi huts are routinely exposed to cold and face a heightened risk of sexual violence and attacks by animals. The Special Rapporteur was informed of a number of cases involving the deaths of women and girls, and in some cases their children, while *chhaupadi* was being practised, due to hypothermia, suffocation or attacks by animals.

42. Despite the explicit criminalization of *chhaupadi* in section 168 (3) of the Penal Code in 2017, with penalties including a 3,000-rupee fine and a three-month prison term, it continues to be practised in the far and mid-western regions of the country that the Special Rapporteur visited.

43. The Special Rapporteur notes the efforts being made at the local level, by civil society groups and local community representatives in particular, to raise awareness among women and girls of the risks that they face by practising the tradition. During the visit, she was informed about a project being run by the United Nations trust fund in this regard. While welcoming the project, she notes that there is limited scope to effectively address harmful practices through unsustainable projects, in particular as such forms of gender-based violence against women are deeply ingrained at the societal level and should be tackled through education, targeting both girls and boys. Religious leaders also play an important role in informing communities about the new laws that prohibit this harmful practice.

2. Child marriage

44. Nepal has the seventeenth highest prevalence rate of child marriage in the world and the seventeenth highest number of child brides.¹³ According to reports received by the Special Rapporteur, 37 per cent of girls in Nepal are married by the age of 18, with 10 per cent married before the age of 15. Many young girls are forced into marriage owing to poverty, a lack of access to education, child labour, social pressure and harmful practices.¹⁴ The practice is particularly prevalent within Dalit and Madhesi communities. The Special Rapporteur met with a number of girls from those communities during her visit and was deeply concerned to learn that the number of suicides of young girls coerced into marriage has increased considerably in recent years.

45. The explicit prohibition of child marriage in the Constitution and the adoption in 2016 of the national strategy to end child marriage by 2030 should be commended, as should the creation of village-level committees to support girls and families at risk of child marriage. The Special Rapporteur notes, however, that existing gaps and inconsistencies between the laws prohibiting child marriage are hindering progress in this regard. The lack of implementation of the legal provisions relating to the legal age of marriage have led to a lack of reporting. Recent research indicates that police rarely act to prevent child marriage or bring charges, and they almost never do so unless a complaint is filed. Indeed, the Supreme Court has ordered the Government to address the limited enforcement of child marriage laws.¹⁵

46. Child marriage is an offence by law. The Special Rapporteur was informed that an increasing number of boys and girls marry at their own will (so-called love marriages). In this regard, she is concerned at the State party's decision to raise the legal age of marriage to 20 years and to criminalize all marriages below that age. Furthermore, the Special Rapporteur is concerned that the current legal age of marriage, at 20 years, may lead to difficulties in the criminal justice system in processing cases of rape, in particular as the age of consent is set at 18 years.

¹³ See www.girlsnotbrides.org/child-marriage/nepal/.

¹⁴ Human Rights Watch, "*Our Time to Sing and Play*": *Child Marriage in Nepal* (2016). Available at www.hrw.org/sites/default/files/report_pdf/nepal0816_web.pdf.

¹⁵ Center for Reproductive Rights, "Ending impunity for child marriage in Nepal: a review of normative and implementation gaps", policy brief, Kathmandu, 2016, p. 21.

3. Witchcraft

47. Despite the introduction of the Witchcraft Accusation (Crime and Punishment) Act in 2015, the Special Rapporteur is concerned by the fact that the persecution and killing of women accused of practising witchcraft is still very prevalent in some parts of the country, with Dalit women disproportionately affected.¹⁶ For the most part, witchcraft accusations are based on superstition and stem from allegations of black magic, such as casting a spell on food or drinks, making children sick and spreading disease within the community. The accused women are often subjected to inhumane and degrading treatment, ranging from physical beatings to forced consumption of human excrement. In some cases, the injuries sustained have led to death. The Special Rapporteur was informed of a number of cases involving such accusations and notes that the indifference of the police to the crime of witch-hunting and the fear of reprisal on the part of the victims often lead to impunity, with perpetrators continuing to walk free.

4. Dowry-related violence against women

48. The 2015 amendment to the Domestic Violence (Offence and Punishment) Act incorporates dowry-related offences, including demanding or forcing someone to pay a dowry or ill-treatment for not paying a dowry, and recognizes such offences as a form of economic violence within the definition of domestic violence.¹⁷ In section 5 of the Social Practices (Reform) Act of 1976, the practice of requesting a dowry is also prohibited, but the custom still exists in some parts of the country, with a devastating impact on women and young girls, who are frequently subjected to physical and psychological abuse for failing to present the expected dowry upon marriage.

D. Trafficking of women and girls

49. The issue of trafficking in Nepal was addressed by the former Special Rapporteur on violence against women, its causes and consequences, Radhika Coomaraswamy, in her report on her mission to Bangladesh, India and Nepal in 2000 (E/CN.4/2001/73/Add.2).

50. While the current Special Rapporteur welcomes the establishment of an anti-trafficking cell in the Ministry of Women, Children and Senior Citizens, the launch of various programmes in collaboration with civil society organizations and the establishment of a fund for the rehabilitation of survivors of human trafficking in each district, she is concerned that those who are most vulnerable to trafficking may not be benefiting from these mechanisms owing to the lack of coordination among relevant stakeholders. She is further concerned at the lack of a specific definition of the crime of trafficking in national law and the lack of ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. She notes that the trafficking of women and girls continues to present a considerable challenge in the country, with regard to indigenous, Dalit and Badi women and girls in particular, as well as women and girls living in areas along the border with India. In its report covering the period 2013–2015, the National Human Rights Commission noted that trafficking had escalated after the earthquake in April 2015, while a total of 329 cases of human trafficking and transportation were filed in 2016–2017, of which 121 cases resulted in convictions of perpetrators and 91 in acquittals. An acute lack of awareness, combined with underreporting for fear of retaliation and lack of witness protection, and the complicity of family members continue to exacerbate the issue.

51. Almost 25 per cent of the population of Nepal over the age of 16 years (5.7 million people), including many women, do not possess citizenship certificates.¹⁸ In addition to preventing women and children from enjoying basic rights and having access to services

¹⁶ See www.womankind.org.uk/docs/default-source/resources/briefings/fedo-lobby-document.pdf?sfvrsn=0.

¹⁷ Nepal, Domestic Violence (Crime and Punishment) Act of 2009, sect. 2 (f).

¹⁸ Forum for Women, Law and Development, “Legal analysis of citizenship law of Nepal”, November 2016.

and opportunities, the lack of identity documents increases and perpetuates their vulnerability, including their vulnerability to trafficking and exploitation.

52. The Special Rapporteur shares the concerns of the Special Rapporteur on the human rights of migrants (see A/HRC/38/41/Add.1, para. 77) with regard to the guidelines issued by the Government in 2015 that prohibit migrant women from Nepal with a child below the age of 2 years from taking up employment as domestic workers abroad. In 2017, a temporary ban was also placed on Nepalese migrant women from travelling to countries of the Cooperation Council for the Arab States of the Gulf for domestic work, as a result of a decision taken by the International Relations and Labour Committee on the basis of the inappropriate working conditions in those countries. Having met with returnee migrant women, the Special Rapporteur noted that women facing economic difficulties and wishing to seek alternative work abroad face heightened risks of trafficking and sexual exploitation. She also noted the lack of appropriate services in place, along border areas in particular, to ensure the identification of victims and their referral to appropriate rehabilitation services.

E. Situation of women in detention

53. The Special Rapporteur visited the women's section of the central prison in Kathmandu, where she spoke with a number of women and girls who were incarcerated. Many of these women and girls had been victims of multiple and intersecting forms of violence, sexual assault, trauma and abuse. The Special Rapporteur was troubled to see that a number of the women had small children and noted the distinct lack of facilities available to support them in raising their children.

54. A number of the women with whom she met had been convicted on drug-related charges. Women in Nepal often get involved in such crimes owing to gender-related factors, such as pressure or coercion by an intimate partner, or because they are drug users, or they may have been victims of serious forms of gender-based violence and resorted to drugs as a way out. Imprisoned women have often experienced domestic violence and sexual assault, but they rarely have access to programmes or support to assist them in dealing with trauma.

55. The mandate holder was deeply concerned about the dire conditions at the facility, in relation to overcrowding in particular, as well as the lack of adequate facilities, such as a separate meeting area for receiving visitors, appropriate bedding, access to nutritious food, access to clean water and sanitation and access to health care (in particular psychosocial care), inadequate re-entry programmes to prevent reoffending and the lack of alternatives to custodial sentences, in particular for women with dependent children. Most of the women visited in the centre had been incarcerated for minor, non-violent offences, such as stealing, fraud and breaches of domestic violence orders. The Special Rapporteur was also concerned to learn that women in pretrial detention were being detained alongside those who had already been sentenced. The lack of a child and mother programme is also of concern, as is the lack of skill-based training opportunities.

56. The Special Rapporteur expressed concern at the jailing of girls in adult facilities (including a 17-year-old girl with whom she met), in contravention of the Convention on the Rights of the Child and the recommendations issued by the Committee on the Rights of the Child on the administration of juvenile justice (see CRC/C/15/Add.268, para. 74 (g)).

F. Victims of sexual violence during the conflict

57. The Special Rapporteur notes the establishment of the Commission on the Investigation of Disappeared Persons and the Truth and Reconciliation Commission, as well as the ongoing amendment of the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act of 2014. She regrets, however, that she did not have the opportunity to meet with the Truth and Reconciliation Commission during her visit, despite several requests to do so. Furthermore, she is concerned at reports suggesting that the transitional justice measures undertaken since the signing of the Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal (Maoist) in 2006 have not been fully functioning and have faced considerable challenges.

58. Of particular concern is the impact thereof on women and girls who were victims of sexual violence, rape and torture during the conflict. Since its establishment in 2015, the Truth and Reconciliation Commission has received more than 63,000 complaints of human rights violations, and the Commission on the Investigation of Disappeared Persons has received more than 3,000 complaints. Of these, approximately 300 are reports of conflict-related sexual violence, indicating that many victims and survivors have not been able to register complaints, and they are often afraid to do so for fear of repercussions.

59. While noting the planned suspension of the statute of limitations on filing cases relating to rape and other forms of sexual offences during the conflict through the bill to amend the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act of 2014, the Special Rapporteur is concerned that the current provisions in the new Penal Code of 2017, which extend the statute of limitations for registering cases of sexual violence and rape, including those that occurred during the conflict, may still fail to provide victims with adequate time to come forward. In addition, they may not wish to report the crime for fear of reprisal or because they do not wish to relive the trauma that they have suffered. The fact that a victim is required to submit a first information report at the police office located nearest to the incident may also deter victims from reporting for fear of coming face-to-face with the perpetrator.

60. While sections 23 (A) and (B) of the bill to amend the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act of 2014 recognize the right of victims to reparation and stipulate that interim relief shall be provided to those who did not receive support through the interim relief programme initially, the Special Rapporteur is concerned by the fact that women affected by rape and sexual violence during the conflict have not been able to register their cases as such or to gain access to interim relief packages, compensation, reparations and other support services. Within the current framework of the interim relief programme, only the relatives of individuals killed or forcibly disappeared and those injured or disabled as a result of the armed conflict were granted interim relief measures and monetary assistance. Women and girls who are victims of torture, including rape and other forms of sexual violence, were not entitled to claim compensation.

61. For this reason, the cases of conflict-affected women victims and survivors were not reported effectively, and their stories have never been recorded or investigated. The Special Rapporteur met with some of these women during her visit. She was deeply saddened by the fact that the women and girls who suffered sexual violence and torture during the conflict have not received interim relief measures, including medical or psychosocial support or compensation, in particular as many have experienced significant health problems, both physical and psychological, as a result of their ordeal. The fact that so many of them were just girls at the time has had a significant impact on their ability to continue their lives without additional medical support.

62. The Special Rapporteur was informed that the adoption of the second national action plan on Security Council resolutions 1325 (2000) and 1820 (2008) had been postponed, which is another matter of concern. The first phase of the plan, covering the period from 2011 to 2016, was important, but it failed to recognize and act upon the needs and concerns of women and girl victims and survivors, in particular victims and survivors of conflict-related sexual violence.

63. With the proposed amendments to the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act of 2014, it is time for the Government to demonstrate its commitment to ensuring that women and girls attain justice, including through access to interim relief, and that their cases are investigated in a gender-friendly manner, while guaranteeing protection for victims.

G. Situation of women who encounter multiple and intersecting forms of discrimination and violence

64. During her visit, the Special Rapporteur paid special attention to the situation of women and girls who encounter multiple and intersecting forms of discrimination and violence and experience higher rates of all forms of violence against women.

65. Violence against women disproportionately affects women and girls who face intersecting and multiple forms of discrimination, such as Dalit women, indigenous women, including Madhesi, Tharu and Badi women, lesbian and bisexual women and transgender and intersex persons, women from religious minorities, women with disabilities, women living in remote areas, single women (widows), women affected by leprosy and women human rights defenders.

66. In the new Constitution of 2015, the rights of all castes, races and ethnicities were enshrined under fundamental rights. Through the adoption of the Caste-based and Other Social Untouchability and Discrimination (Offence and Punishment) Act of 2011, the rights of Dalit and other women discriminated against on the basis of caste were further protected, while the Government has also established policies to combat untouchability through social inclusion. Despite the commendable legal provisions, Dalit women continue to face multiple forms of discrimination, including exclusion through customary provisions of caste institutions on the basis of the notion of purity and pollution, patriarchal attitudes and gender discrimination. As a result of such exclusion and discrimination, they endure extreme forms of poverty, humiliation and the denial of social and economic rights.¹⁹ Their vulnerable economic status, combined with the patriarchal values, exposes them to various forms of violence.

67. Indigenous women experiencing family violence are one of the most marginalized and disadvantaged groups in society. The causes of the overrepresentation of indigenous women in rates of family violence are complex and intersectional, as such women face multiple and intersecting forms of discrimination on the grounds of gender and race. In addition to sexism and racism, indigenous women also face class-based discrimination, owing to their low socioeconomic status, and social exclusion in regional or remote geographical locations. Those forms of discrimination and exclusion create extremely difficult social conditions and manifest themselves in an alarmingly high prevalence of violence against indigenous women, who continue to experience higher rates of domestic and family violence and more severe forms of such violence as compared with other women.

68. Although violence against persons with disabilities is prohibited under the Human Rights for Persons with Disabilities Act of 2017, the legislative process has not yet been successful in the prevention or the reduction of violence. In 2018, the Committee on the Rights of Persons with Disabilities expressed concerns “about the reportedly high number of cases of sexual violence and abuse of women and girls, including cases of gang rape of women and girls with disabilities, and that some cases remain unreported” (CRPD/C/NPL/CO/1, para. 11). The Special Rapporteur received reports that women with psychosocial disabilities faced significant obstacles to obtaining access to justice. The prevalent practice of restricting the exercise of legal capacity makes it impossible for such women to initiate or participate in legal proceedings on their own behalf, and public officials, because of their prejudices, tend to doubt the credibility of the testimonies of such women. Women and girls with disabilities face additional obstacles to leaving situations of family violence. They often live in a circle of poverty, violence and homelessness. Service providers are also often slow to react to financial abuse by family members. Furthermore, on the basis of the information received and the shelters visited, the Special Rapporteur noted that there is a lack of culturally sensitive accessibility for disabled women.

69. Through her interactions with members of the lesbian, bisexual, transgender and intersex community, the Special Rapporteur learned that, despite progressive legislation, the prevailing stigma, family pressure and traditional social expectations in Nepalese society have led to continuing discrimination on the basis of sexual orientation. Lesbian and bisexual women and transgender and intersex persons experience discrimination in all aspects of their lives, including in the home, at work and in the health-care and education sectors. The Special Rapporteur is concerned at reports suggesting the use of “corrective rape” and reports of violence allegedly perpetrated by police officers, including verbal

¹⁹ See https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/NPL/INT_CEDAW_CSS_NPL_32516_E.pdf.

abuse, indiscriminate body searches and severe beatings, as well as harassment and arbitrary detention, on the grounds of sexual orientation or gender identity. Further reports suggest the existence of medically unnecessary procedures on intersex infants and children without their free, prior and informed consent.²⁰

70. The Special Rapporteur is concerned at reports suggesting that women human rights defenders have been targeted, criticized, threatened, intimidated, subjected to surveillance and harassed, including online, because of their gender and their work. At least 95 per cent of the documented incidents show that women human rights defenders, as well as their family members and intimate partners, face reprisals, death threats, verbal abuse and harassment by State and non-State actors to delegitimize their work.²¹

71. Muslim women constitute approximately 4.4 per cent of the population and live mainly in the Terai region. They are typically less literate compared with the national average²² and tend to suffer disproportionately from poverty and to lack access to basic health care, water and sanitation.²³ In article 18 (3) of the new Constitution of 2015, Nepalese Muslims are recognized as a distinct and marginalized community. However, they continue to face, at every stage of their lives, gender-based violence and discrimination, including sex-selective abortion, differential access to food, education and medical care, child marriage, dowry-related, domestic and/or spousal violence, sexual exploitation and abuse, trafficking, elder abuse and traditional harmful practices.²⁴ Muslim and Madhesi women and girls living in the Rautahat district experience the highest levels of physical violence (34 per cent) and spousal physical, sexual or emotional violence (37 per cent) in Nepal. Only 15 per cent of the women living in Province 2 (where Rautahat is located) who have experienced physical or sexual violence have ever sought help, the lowest rate in the country. Many such cases are not recorded officially and escape public knowledge.

H. Provision of shelters and access to essential services

72. In 2017, the Government established one-stop crisis management centres in hospitals in 20 districts. As at September 2018, such centres had been established in 45 districts (see CEDAW/C/NPL/Q/6/Add.1, para. 53), although they were not fully operational. During her visit, the Special Rapporteur was concerned by the fact that almost all interlocutors with whom she met pointed to the dire shortage of adequate shelters across the country offering a safe house for women and girls who have been victims of violence, within indigenous communities in particular and in rural and remote areas. The limited support provided to the shelters that are in place and the lack of coordinated, gender-friendly and comprehensive essential services for survivors of violence are of considerable concern. The Special Rapporteur welcomes the proposal by the Ministry of Women, Children and Senior Citizens to open safe houses in 53 districts under the President's programme for the upliftment of women.

73. The high level of suicides among women is extremely worrying and may be linked to the fact that women victims of violence feel that they cannot escape, often owing to fear for their lives or to family pressure to reconcile with the perpetrator. The lack of safe shelters and 24-hour helplines, as well as the lack of awareness among women of their rights in such cases, only contributes to the high level of impunity of perpetrators, with 66

²⁰ StopIGM, submission for the review of the sixth periodic report of Nepal by the Committee on the Elimination of Discrimination against Women at its seventy-first session, Geneva, 22 October–9 November 2018.

²¹ National Alliance of Women Human Rights Defenders, Nepal, submission for the review of the sixth periodic report of Nepal by the Committee on the Elimination of Discrimination against Women at its seventy-first session, Geneva, 22 October–9 November 2018.

²² Lynn Bennett, "Gender, caste and ethnic exclusion in Nepal: following the policy process from analysis to action", conference paper prepared for the conference on new frontiers of social policy, Arusha, United Republic of Tanzania, 12–15 December 2005. Available at <http://siteresources.worldbank.org/INTRANETSOCIALDEVELOPMENT/Resources/Bennett.rev.pdf>.

²³ United Nations Development Programme, *Human Development Report 2014* (New York, 2014).

²⁴ District police office report, 2017.

per cent of women who have experienced any type of physical or sexual violence choosing not to seek help.²⁵

I. Protection orders

74. The Special Rapporteur received some information on the limited possibility of seeking protection orders in cases of domestic violence. She is concerned, however, that such orders may not be effective and that the lack of awareness of this possibility among women, as well as among officials from the newly formed justice committees, may hinder their implementation.

J. Emerging forms of violence against women

75. Online violence against women and girls is an emerging issue, and the Special Rapporteur recommends that the Government address this new form of violence against women and girls as a form of gender-based violence interrelated with the broader framework of discrimination and violence against women and girls. In this regard, she refers the Government to her report on online violence against women (A/HRC/38/47).

VI. Conclusions and recommendations

76. **The Special Rapporteur commends the political will to address violence against women as a national priority through legislative reform. She notes, however, that there are numerous shortcomings, including the persistence of harmful practices that contradict the new legal framework and are preventing the elimination of violence against women and girls.**

77. **On the basis of the above findings and in a spirit of cooperation and dialogue, the Special Rapporteur offers the following recommendations, which should be considered in conjunction with the relevant recommendations made by the Committee on the Elimination of Discrimination against Women in October 2018 (see CEDAW/NPL/C/CO/6).**

78. **On the constitutional, legislative, judicial and institutional framework for combating and preventing violence against women, the Government should:**

(a) **Continue to reform legislation and ensure that the proposed amendments to the Citizenship Act of 2006 eliminate any discriminatory provisions against women, bringing it into line with article 9 (1) of the Convention on the Elimination of All Forms of Discrimination against Women, and interpret the constitutional provision on citizenship in accordance with article 9 (1) of the Nepal Treaty Act of 1990, or revise it to bring it into line with article 9 (1) of the Convention on the Elimination of All Forms of Discrimination against Women;**

(b) **In line with the recommendations of the Committee on the Elimination of Discrimination against Women, adopt comprehensive anti-discrimination legislation that includes a definition of discrimination against women and encompasses direct and indirect discrimination and multiple and intersecting forms of discrimination in the public and private spheres, in order to provide a standard for harmonizing laws related to the rights of women and the prevention of gender-based violence against women. This could be done by taking the following steps:**

(i) **Reviewing the Domestic Violence (Offence and Punishment) Act of 2009 and the Sex Discrimination Act of 1984 and adopting the special opportunity bill and the ending violence against women bill in order to establish a comprehensive legal framework for the prevention of violence against women, and establishing appropriate integrated services for its implementation;**

²⁵ See www.dhsprogram.com/pubs/pdf/fr336/fr336.pdf.

- (ii) Enacting a federal law on combating and preventing violence against women and domestic violence on the basis of the Convention on the Elimination of All Forms of Discrimination against Women and general recommendations of the Committee on the Elimination of Discrimination against Women Nos. 19 (1992) on violence against women and 35 (2017) on gender-based violence against women, updating general recommendation No. 19;
- (c) Expand the definitions of family and domestic violence to cover all forms of gender-based violence against women, including sexual assault, sexual harassment, violence in residential settings and online violence and harassment, and bring them into line with article 38 (3) of the Constitution;
- (d) Expedite the adoption of the national strategy and action plan on gender empowerment and ending gender-based violence and allocate adequate resources for its implementation (see CEDAW/C/NPL/CO/6, para. 21 (b)), ensuring that it is implemented in line with general recommendations of the Committee on the Elimination of Discrimination against Women Nos. 19 and 35, and adopt a specific national action plan on violence against Dalit and indigenous women that includes appropriate temporary special measures to accelerate their full participation in decision-making. This would be in line with the commitments made under articles 22 and 23 of the United Nations Declaration on the Rights of Indigenous Peoples;
- (e) Take urgent steps to appoint a Commissioner on Women's Rights and provide the National Women's Commission with adequate budgetary and human resources for implementing, monitoring and evaluating activities related to combating violence against women;
- (f) Strengthen efforts aimed at ensuring systematic and institutionalized coordination among the Ministry of Women, Children and Senior Citizens, the focal points for gender equality and social inclusion of the National Women's Commission and provincial and local women's offices, as well as among all relevant stakeholders, including the National Human Rights Commission and non-governmental organizations;
- (g) Expand the activities of the National Human Rights Commission in particular in relation to receiving complaints from women who have been victims of rape and sexual violence, including during the conflict, and of gender-based violence;
- (h) Provide mandatory training through the National Judicial Academy to all members of the judiciary, including members of judicial committees, and law enforcement officers on the rights of women and on gender-sensitive investigation and interrogation procedures in cases of gender-based violence against women, in line with the commitments made during the second cycle of the universal periodic review (see A/HRC/31/9, para. 122.46);
- (i) Encourage women to report incidents of gender-based violence, including domestic violence, and ensure that all cases of gender-based violence against women are effectively investigated and that perpetrators are prosecuted and adequately punished;
- (j) Implement the necessary legislative or other measures to prohibit mandatory mediation and conciliation in cases of gender-based violence against women, in line with general recommendation No. 35 of the Committee on the Elimination of Discrimination against Women (para. 45);
- (k) Take immediate measures to ensure that the necessary legislative and other measures are taken to ensure that the statute of limitations for initiating any legal proceedings with regard to rape and other sexual violence shall continue for a period of time that is sufficient and commensurate with the gravity of the offence in

question, to allow for the efficient initiation of proceedings after the victim has reached the age of majority;²⁶

(l) Establish a mechanism to collect comparable data on violence against women, gender-related killings of women or femicide and suicides of women, by setting up at the federal level a system for collecting data from all jurisdictions, to include data indicating the relationship between the victim and the perpetrator;

(m) Consider establishing a femicide watch or observatories on violence against women and gender-based killings of women in all provinces, in close cooperation with the National Women's Commission, the National Human Rights Commission and representatives from civil society, as recommended in the Special Rapporteur's thematic report on this topic (A/71/398);

(n) Shift the police services delivery model towards more intervention and prevention and continue to work towards changing the underlying attitudes and behaviour of the police, and introduce a risk assessment of cases of violence against women;

(o) Guarantee full and comprehensive investigations into cases of gender-related killings, including the case of Nirmala Panta, and ensure that they are fully and properly investigated and that perpetrators are brought to justice.

79. On harmful practices, the Government should:

(a) Develop a comprehensive strategy on each detected form of harmful practice, with concrete goals and resources, in collaboration with civil society, local government and judicial committees, to raise awareness among all relevant stakeholders, including the police, the judiciary, village-based health networks and networks of religious and community leaders, on new legislation in place to eliminate harmful practices;

(b) In line with joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2014) on harmful practices, review current legislation related to the criminalization of marriage below the age of 20 years and focus on marriages that take place below the age of 18 years, in particular early forced marriages, conduct comprehensive awareness-raising campaigns to challenge cultural attitudes legitimizing early marriage and introduce mechanisms to register all marriages, especially in rural, remote and indigenous areas;

(c) Ensure the availability and accessibility of legal counselling and legal aid to women and girls who are at risk or have been victims of harmful practices;

(d) Strengthen awareness-raising campaigns at the local level in relation to witchcraft accusations and ensure that victims are provided with adequate access to justice and support;

(e) Further develop awareness-raising campaigns related to *chhaupadi*, ensuring that they are incorporated into the school curriculum, targeting both girls and boys, and disseminated at the local and village levels, including with the support of local religious leaders.

80. On trafficking, the Government should:²⁷

(a) Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, as a matter of priority and revise the bill to amend the Human Trafficking and Transportation (Control) Act of 2007;

²⁶ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, art. 58.

²⁷ The recommendations on trafficking should be read in conjunction with the recommendations outlined in E/CN.4/2001/73/Add.2.

(b) Strengthen the investigative capacity of the human trafficking and transportation control bureau of the police, in particular in districts in border areas, and ensure the provision of adequate shelters and support facilities for victims of trafficking;

(c) Establish witness protection schemes for women victims so as to encourage them to testify against their traffickers and revise the guidelines issued by the Government in 2015 that prohibit migrant women from Nepal with a child below the age of 2 years from taking up employment as domestic workers abroad.

81. On women facing intersecting and multiple forms of violence, the Government should:

(a) Adopt a national action plan on violence against women that includes adequate resources, a timeline and measurable targets and requires authorities at the federal, provincial and local levels to implement relevant laws to prevent and eliminate all forms of de facto discrimination against women;

(b) Ensure that women human rights defenders and women representatives from non-governmental organizations are protected from all forms of reprisal, in line with international law and the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms;

(c) Address the stigma and discrimination faced by, as well as the lack of protection measures in place for, lesbian and bisexual women and transgender and intersex persons, including by raising public awareness of their rights, in cooperation with civil society;

(d) Strengthen the implementation of legislation and establish accessible monitoring and reporting mechanisms to detect, prevent and combat all forms of violence, including sexual violence, against women and girls with disabilities, in line with the recommendations made by the Committee on the Rights of Persons with Disabilities (see CRPD/C/NPL/CO/1, para. 12).

82. On the situation of women in detention, the Government should:

(a) Implement the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), which provide guidance on the specific characteristics and needs of women in prison, in particular rule 26, which recognizes the significant impact that loss of contact with children has on mothers (and on the best interests of the child);

(b) Improve prison conditions for women, in particular to ensure that adequate health-care facilities, including facilities for obstetric and gynaecological care, adequate bedding, access to nutritious food, mother and baby facilities and suitable space for receiving visitors are provided, and adopt a gendered approach to the incarceration of women and girls, providing programmes to prevent reoffending and ensuring that girls under the age of 18 years are held separately from adult women.

83. On victims of sexual violence during the conflict, the Government should:

(a) Address any obstacles in legislation that prevent the prosecution of rape or sexual violence and torture during the conflict;

(b) Remove any statute of limitations for filing cases related to rape or sexual violence and torture perpetrated during the conflict, bring the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act of 2014 into line with the obligations of Nepal under international law, in consultation with civil society and victims and taking into account the ruling of the Supreme Court of 26 February 2015 that orders the amendment of the amnesty provisions of the Act, and guarantee the gender sensitivity of the Act;

(c) Guarantee as a matter of urgency the access of women and girl victims of the armed conflict to adequate interim relief measures, including immediate access

to medical and psychosocial care, as well as the provision of full and effective reparations, including restitution, compensation, rehabilitation and guarantees of non-recurrence;

(d) Address the limited definition of torture provided for in the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act and the 35-day statutory limitation for filing a complaint, and amend legislation so as to guarantee to victims of torture and sexual violence the right to file criminal complaints and to ensure that State authorities launch investigations into the reported facts and that those responsible are prosecuted before ordinary courts;

(e) Expedite the adoption of the second national action plan for the implementation of Security Council resolution 1325 (2000) on women and peace and security and include therein measures for women and girls who have been victims of rape or sexual violence during the conflict.

84. On the provision of shelters, the Government should:

(a) Ensure sustainable funding for a sufficient number of safe shelters throughout the country offering culturally sensitive accessibility for women with disabilities;

(b) Evaluate the one-stop crisis management centres and strengthen them in order to make them sustainable and ensure that they are equipped to provide integrated services for survivors of gender-based violence;

(c) Establish protection orders as legal instruments in criminal and civil laws and grant competent authorities the power to issue effective protection orders for all forms of violence against women and domestic violence. The orders must be easily available and enforced to protect the well-being and safety of those under their protection, including children.

85. With regard to the services that should be provided by shelters, including safety planning, counselling, children's programming, employment-seeking assistance and protection orders, the Special Rapporteur draws the Government's attention to the recommendations contained in her thematic report on a human rights-based approach to integrated services and protection measures on violence against women, with a focus on shelters and protection orders (A/HRC/35/30).

86. On emerging forms of violence against women, the Government should take steps to revise the draft national integrity and ethics policy, the privacy policy and the draft online media directive and to amend the Electronic Transactions Act and the National Broadcasting Regulations, in consultation with the National Human Rights Commission and civil society, to ensure that they do not restrict the activities and freedom of expression of representatives of non-governmental organizations working on the rights of women. In this regard, the Special Rapporteur refers the Government to her report on online violence against women (A/HRC/38/47).
