



Committee on the Rights of the Child
Human Rights Treaties Division
Office of the United Nations High Commissioner for Human Rights
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva, Switzerland
April 15, 2016

Re: Supplementary Information on Nepal, scheduled for review by the Committee on the Rights of the Child during its 72nd session

Dear Committee Members:

The Center for Reproductive Rights (the Center) is pleased to submit this letter to assist the Committee on the Rights of the Child (the Committee) in its review of the Government of Nepal's (state party) compliance with the Convention on the Rights of the Child (Convention) during its 72nd session. The Center welcomes the Committee's list of issues (LOI) in relation to the state party's third to fifth periodic reports (state party report),¹ requesting information about measures taken to eradicate harmful practices, including child marriage, and their outcomes.² The Center also welcomes the Committee's questions about several important issues relating to child marriage including: elimination of discrimination against girls; efforts to address gender based violence, including sexual abuse; prohibition of child labor; acquisition of citizenship via a single parent; birth registration; and barriers faced by adolescents in accessing reproductive health services.³ The broad implications of child marriage on girls' human rights, including their sexual and reproductive health, have also been discussed in a pre-session letter submitted by the Center in June 2014 (Annex I). This letter aims to provide information about recent legal and policy developments concerning child marriage in Nepal, which are relevant to the issues raised by the Committee in the LOI.

I. Supplemental Information on Child Marriage in Response to the LOI

Recent steps taken by the state party to address child marriage and commitments. The state party has taken a monumental step towards eliminating child marriage by explicitly prohibiting the practice in the newly adopted Constitution of Nepal 2015 (2072),⁴ and establishing a right to compensation for children for violations of their rights.⁵ The Nepal Constitution further recognizes women's reproductive rights, including the right to safe motherhood,⁶ as fundamental rights, and guarantees a variety of judicial⁷ and non-judicial remedies⁸ for violations of these rights, including those implicated in cases of child marriage.

In the international political arena, Nepal has had a mixed record. The state party should be commended for its actions at the first Girl Summit hosted in London, in August 2014, where the then Minister of

Women, Children and Social Welfare, made a pledge to end child marriage.⁹ The Minister made a strong statement describing child marriage as an unacceptable social practice and a punishable crime and promised to engage with young and different stakeholders to seek support for achieving the goal of ending child marriage in Nepal.¹⁰ As a follow-up to its commitment at the London Summit, in March 2016, the state party hosted Nepal's First Girl Summit to End Child, Early and Forced Marriage where it also announced the adoption of the National Strategy to End Child Marriage.¹¹

Joining other South Asian governments in 2014, the state party also made a regional commitment to end child marriage through the adoption of the Regional Action Plan to End Child Marriage in South Asia (2015-2018).¹² This action plan was spearheaded by the South Asia Initiative to End Violence Against Children (SAIEVAC) - an inter-governmental apex body of the South Asian Association for Regional Cooperation (SAARC) created to promote the protection of children's rights in the region. Since then Nepal has assumed an important leadership role in the implementation of the Regional Action Plan, including by hosting the first regional convening of representatives from SAARC member states and key stakeholders focusing on the use of the law to promote accountability to end child marriage, in 2014.¹³ This convening concluded with the adoption of the Kathmandu Call for Action to End Child Marriage in South Asia, which outlines 12 steps that must be taken by governments in the region to ensure legal accountability for child marriage.¹⁴ More recently, in November 2015, during its Universal Periodic Review, Nepal received and accepted recommendations from other states to ramp up its efforts to eliminate child marriage.¹⁵ Despite these important expressions of political will to end child marriage and regional leadership on the issue, the state party has been inconsistent in its support for global resolutions aimed at addressing child marriage. Although Nepal was the only South Asian country with a high prevalence of child marriage to cosponsor the first Human Rights Council resolution on child marriage in 2013,¹⁶ since then it has failed to support any subsequent child marriage resolutions by the Human Rights Council or the United Nations General Assembly.

Failure to effectively implement laws and policies addressing child marriage and address inconsistencies. As discussed in depth in our pre-session submission, the state party has failed to effectively implement its national laws and policies prohibiting child marriage and has fallen short of prosecuting perpetrators of crimes for violations of the law. Despite child marriage being an offence against the state,¹⁷ the government has failed to take action against the large number of child marriages in the country. Further, only 93 cases of child marriage have been reported to the police in the last 18 years,¹⁸ which shows that the law is not being widely utilized. As noted in our pre-session letter, the Supreme Court of Nepal has issued numerous directive orders to the state party to eliminate child marriage through the effective implementation of laws, reiterating that adequate steps have not been taken towards their implementation.¹⁹

In 2015, in addition to enacting a constitution that specifically prohibits child marriage,²⁰ the state party increased the minimum legal age of marriage to 20 years, for both women and men, replacing the legal provision that previously allowed marriages at the age of 18 with parental consent.²¹ Marriages concluded before the minimum legal age of 20 years may be declared void if legal proceedings are initiated by either party to the marriage once they reach the age of 20 years, but only if there are no children born from the marriage at that time.²² Considering that Nepal has a high incidence of adolescent pregnancy and 40% of married women between the ages of 15-19 have already given birth to at least

one child,²³ the legal requirement that there should be no children born at the time of initiating legal proceedings to void a child marriage constitutes a major obstacle to this remedy. The current legal provisions are silent about support mechanisms for girls and women who leave such marriages.²⁴ Girls also face barriers in proving their actual age and age at marriage due to the weak birth registration system²⁵ as well as the low levels of marriage registration²⁶ which seriously undermine the implementation of laws prohibiting child marriage.

Conflicting provisions in Nepal’s Constitution and draft Civil and Penal Codes. Prior to the enactment of the new constitution in 2015, the state party started drafting two new Codes, a Civil Code and a Penal Code, to replace Nepal’s Country Code, which currently addresses both sets of legal issues and contains the legal provisions on child marriage. These draft codes will have to be updated and brought in compliance with the Nepal Constitution. Further, the drafts of these two codes currently take inconsistent approaches to child marriage which must be reconciled. For example, while the draft Penal Code states that any marriage below 20 years of age shall be void *ab initio*,²⁷ the draft Civil Code says such marriages shall be legally valid, though voidable.²⁸ Further, contrary to the current law establishing the minimum age of marriage as 20, under these draft codes those who have attained the age of 18 years shall be allowed to get married with the consent of their parents.²⁹ There must be no legal exceptions for child marriage.

Failure to address increased risk of child marriage due to the 2015 earthquakes. The state party has failed to take into account the increased risk of child marriage potentially faced by young girls in certain parts of the country due to the devastating earthquakes that occurred in April and May 2015,³⁰ which killed around 8,500 people, left more than 22,000 people injured and destroyed over 350,000 homes.³¹ Typically in situations where families lose their homes, communities break down and children became orphaned. The marriage of young girls takes the form of a coping mechanism for reducing the economic burden on such families and to protect girls from the increased risk of sexual violence in the community.³² Yet, the state party has yet to undertake a gendered assessment of the impact of these natural disasters on children in affected districts or take specific steps to reduce the vulnerability of young girls at risk of child marriage, a risk that has been documented in other countries facing a similar crisis.³³

II. Suggested Questions and Concluding Observations for the State Party

Reflecting on the information and concerns presented in our pre-session letter and this submission, the Center respectfully requests that this Committee pose the following additional questions to the delegation representing the state party during its 72nd session.

1. What specific steps are being taken by the state party to address the gaps and weaknesses in laws and policies on child marriage, including by reviewing and amending contradictory provisions in the draft Penal and Civil Codes, to ensure that child marriages are void *ab initio* and the minimum age of marriage is in line with national and international human rights standards?

What steps are being taken by the state party to ensure that the National Strategy to End Child Marriage is effectively implemented?

2. What specific steps are being taken by the state party to enforce the Supreme Court's directives and effectively implement legal provisions prohibiting child marriage as well as to ensure access to effective legal remedies for victims of child marriage, including by prosecuting perpetrators of child marriage?
3. What measures has the state party adopted to improve the infrastructure for ensuring the registration of births and marriages nationwide?
4. What steps are being taken to provide appropriate legal protection, especially to girls who as a result of the 2015 earthquakes are highly vulnerable to exploitation and harmful practices including child marriage?

The Center also respectfully request that this Committee consider incorporating the following recommendations in its Concluding Observations to the state party.

1. Recalling that child marriage violates the best interests of the child and recognizing that the state party's failure to enact and implement comprehensive laws to combat child marriage leads to a continuum of violations of the rights of girls, including marital rape, early pregnancy which increases the risk and occurrence of maternal mortality and morbidity, and physical and emotional abuse, take immediate steps to:
 - a. Effectively enforce laws and policies aimed at ending child marriage by implementing the Supreme Court's directives and providing access to legal remedies for victims of child marriage in addition to prosecuting perpetrators of child marriage.
 - b. Review and remove discriminatory and contradictory legal provisions including those under the draft Penal and Civil Codes by ensuring that child marriages are void *ab initio* and the minimum age of marriage is in line with national and international human rights standards.
 - c. Ensure adequate funding and institutional support to effectively implement the new national strategy and regional action plan on ending child marriage, including by paying special attention to girls who may be at increased risk of child marriage due to instability caused by the 2015 earthquakes.
 - d. Effectively improve the infrastructure nationwide for birth and marriage registrations.
2. Recognizing the role of reproductive health information and services in preventing the reproductive health harms associated with child marriage, take immediate steps to ensure the provision of comprehensive sexuality education and that adolescent girls, particularly married girls, have access to quality reproductive health information and services as well as information about maternal health care, contraception, and safe abortion.

We hope that this information is useful to the Committee as it prepares to review the state party's compliance with the provisions of the Convention. If you have any questions or would like further information, please do not hesitate to contact Purna Shrestha at pshrestha@reporights.org.

Sincerely,

Center for Reproductive Rights

¹ Government of Nepal, *Consideration of the reports submitted by States parties under article 44 of the Convention: Third to fifth periodic reports of States parties due in 2010: Nepal*, U.N. Doc. CRC/C/NPL/3-5 (2013).

² Committee on the Rights of the Child (CRC), *List of issues in relation to the combined third to fifth periodic reports of Nepal*, (69th Sess., 2014), para 9, U.N. Doc. CRC/C/NPL/Q/3-5 (2014).

³ *Id.* para 4-6, 8, 15, 12.

⁴ THE CONSTITUTION OF NEPAL, 2015 (2072), art. 39(5) [hereinafter CONSTITUTION OF NEPAL 2072].

⁵ *Id.* art. 39(10).

⁶ *Id.* art. 38(2).

⁷ *Id.* art. 133, 144, 151.

⁸ *Id.* art. 249, 253.

⁹ Girl Summit 2014 Commitments, <http://www.girlsummit2014.org/Commitment/Show>; Press Release, UNICEF, Nepal Commits To End Child Marriage (July 22, 2014).

¹⁰ *Id.*

¹¹ Press Release, UNICEF, Nepal Hosts Its First Girl Summit To End Child, Early And Forced Marriage (Mar. 23, 2016), <http://unicef.org.np/media-centre/press-releases/2016/03/23/nepal-hosts-its-first-girl-summit-to-end-child-early-and-forced-marriage>.

¹² See SOUTH ASIA INITIATIVE TO END VIOLENCE AGAINST CHILDREN (SAIEVAC), REGIONAL ACTION PLAN TO END CHILD MARRIAGE IN SOUTH ASIA (2015-2018).

¹³ Press Release, SAIEVAC, Regional Convening on Using Law to Promote Accountability to End Child Marriage (Nov. 11, 2014).

¹⁴ CENTER FOR REPRODUCTIVE RIGHTS, KATHMANDU CALL FOR ACTION TO END CHILD MARRIAGE IN SOUTH ASIA (2014).

¹⁵ Adopt a bill criminalizing harmful cultural practices, and abolish child, early and enforced marriage (Sierra Leone); Step up efforts to eliminate gender inequity and implement the national strategy on ending child marriages (Botswana); strengthen measures to combat violence against children, particularly with regard to the prevention of early and forced child marriages and child trafficking and in particular through awareness-raising campaigns among families (Belgium). Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, (31st Sess., 2015), paras. 121.7, 121.20, 122.47, U.N. Doc. A/HRC/31/9 (2015).

¹⁶ *Strengthening efforts to prevent and eliminate child, early and forced marriage: challenges, achievements, best practices and implementation gaps*. Human Rights Council on its twenty-fourth session 60 (2013), U.N. Doc A/68/53/Add.1.

¹⁷ State Cases Act, 2046, Annex 1 (1992).

¹⁸ Nepal Police, Women and Children Service Directorate, (Apr. 13, 2016), <http://cid.nepalpolice.gov.np/index.php/cid-wings/women-children-service-directorate>

¹⁹ See *Sapana Pradhan & Others v. Prime Minister & Council of Ministers & Others*, decision no. 7659, N.K.P. 2063, Vol. 3 at 289 (2006); see *Rama Panta Kharel & Others v. Government of Nepal*, Writ no. WS-128/2063 B.S. (2007); *Kavita Pandey v. Prime Minister & Council of Ministers & Others*, decision no. 8901, N.K.P. 2069, Vol. 10 at 1534 (2012).

²⁰ CONSTITUTION OF NEPAL 2072, *supra* note 4, art. 39 (5).

²¹ An Act to Amend Various Acts of Nepal to Ensure Gender Equality and End Gender-Based Violence 2015 (Nepal); The Muluki Ain, part 4, ch. 17, no. 2(1) (1963) (Nepal) [hereinafter *Muluki Ain (Nepal)*].

²² *Muluki Ain (Nepal)*, *supra* note 21, part 4, ch. 17, no. 2(9).

²³ Government of Nepal, National Demographic Health Survey (NDHS) (2011), at 79 [hereinafter GOVT. OF NEPAL, NDHS (2011)].

²⁴ *Muluki Ain (Nepal)*, *supra* note 21, part 4, ch. 17.

²⁵ The NDHS described the birth registration system in Nepal as “weak” and lacking in staff in local registration offices. GOVT. OF NEPAL, NDHS (2011), *supra* note 23, at 25.

²⁶ PLAN NEPAL ET. AL. CHILD MARRIAGE IN NEPAL: RESEARCH REPORT 44 (2012), http://resourcecentre.savethechildren.se/sites/default/files/documents/child_marriage_research_report_final.pdf.

²⁷ Nepal Draft Penal Code, sec. 171(3).

²⁸ Nepal Draft Civil Code, sec. 73(1)(a).

²⁹ Nepal Draft Penal Code, *supra* note 27, sec. 171(2); Nepal Draft Civil Code, *supra* note 28, sec. 70(1)(d).

³⁰ GOVERNMENT OF NEPAL NATIONAL PLANNING COMMISSION, NEPAL EARTHQUAKE 2015 POST DISASTER NEEDS ASSESSMENT EXECUTIVE SUMMARY 11 (2015), <http://www.worldbank.org/content/dam/Worldbank/document/SAR/nepal-pdna-executive-summary.pdf>.

³¹ *Id.* at 5-7.

³² CARE, NEPAL, GENDER AND PROTECTION OVERVIEW 10 (2015).

³³ *Id.*; PEOPLE IN NEED, HER SAFETY ASSESSMENT REPORT 11-12 (2015).