Joint Submission to the Universal Periodic Review of

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CENTER *for* REPRODUCTIVE RIGHTS

FORUM FOR WOMEN, LAW AND DEVELOPMENT 1995 Working for non-discrimination and equality

1. In accordance with Human Rights Council (HRC) Resolution 5/1, the Center for Reproductive Rights (Center), Forum for Women, Law and Development (FWLD) and Justice and Rights Institute-Nepal (JuRI-Nepal) present this joint submission as non-governmental organizations (NGOs) to supplement the report of the Government of Nepal (Government) scheduled for review in the 37th session of Universal Periodic Report (UPR) Working Group of the HRC. The Center is an international NGO dedicated to using the power of law to advance reproductive rights as fundamental human rights around the world. FWLD and JuRI-Nepal are Nepal-based NGOs working for the protection, promotion, and enjoyment of human rights. This submission focuses on the: (1) continuing legal and procedural barriers to access safe abortion services, and (2) the grave impact of the COVID-19 pandemic on sexual reproductive health and rights (SRHR) in the country.

2. Since the last UPR review in 2015, the Government has adopted the Safe Motherhood and Reproductive Health Rights (SMRHR) Act to fulfill obligations under the Constitution of Nepal (Constitution) and guarantee safe motherhood and reproductive health as fundamental rights. Despite this positive legal development, women and girls in Nepal continue to face restrictions and challenges that prevent them from fully realizing their reproductive rights in the absence of regulations to fully implement the SMRHR Act as discussed in more detail below. Access to reproductive health services is still limited in Nepal.[1] Unmet need of family planning remains high at 24%.[2] Only 43% of currently married women aged 15-49 use modern contraceptives[3], of which 58% discontinue the use within the first 12 months.[4] Fifty percent of all pregnancies are unintended and 62% of unintended pregnancies ended in abortion.[5] Only 41% of women aged 15-49 were aware that abortion is legal in the country. [6] Further, only 48% of these women were aware of a facility that performed safe abortions.[7] Although the pregnancy-related maternal mortality ratio (MMR) fell from 543 maternal deaths per 100,000 live births in 1996 to 259 per 100,000 in 2016,[8] MMR remains high and far from achieving the target of 70 per 100,000 live births under the Sustainable Development Goals (SDG).[9] Unsafe abortion continues to constitute the third leading cause of MMR.[10] These barriers and challenges have been exacerbated by the COVID-19 pandemic which have further restricted women's and girls' access to reproductive health services.

I. Right to Safe Abortion as a Fundamental Right

3. Treaty monitoring bodies have consistently recognized connection between restrictive abortion laws, high rates of unsafe abortion, and maternal mortality[11] and found that restrictive abortion laws violate many human rights, including the rights to health, life, privacy, freedom from gender discrimination or gender stereotyping, and freedom from ill-treatment.[12] They have found that criminalization of abortion, denial or delay of safe abortion and post-abortion care, and forced continuation of pregnancy are forms of gender discrimination and gender-based violence.[13] Further, the Human Rights Committee has reaffirmed that States have a duty to ensure that women and girls do not have to undertake unsafe abortions as part of preventing foreseeable threats to the right to life.[14] States have been called to decriminalize abortion in all circumstances,[15] ensure certain legal grounds for abortion,[16] and eliminate punitive measures for women who undergo abortions and for health care providers who provide abortion services.[17] Since 2015, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) has urged the Government to amend the SMRHR Act to "**fully decriminalize abortion in all cases, to legalize it at least in case of risk to health of**

the mother, in addition to the cases for which it is already legalized, including in cases of rape, incest, severe fetal impairment and risk to the life of the mother, and allocate sufficient resources to raise awareness of safe abortion clinics and services."[18] Further, UN bodies have expressed concerns about maternal mortality and morbidity rates in Nepal, particularly in rural areas and within disadvantaged and marginalized groups, and the instances of maternal deaths from unsafe abortions, owing to the low awareness regarding the legality of abortion and the existence of safe abortion services, as well as the lack of access to adequate health and reproductive services.[19]

A. National Legal Framework on the Right to Abortion

4. The Constitution ensures women's fundamental rights to safe motherhood and reproductive health.[20] As held by the Supreme Court in the landmark case of *Lakshmi v Nepal*, reproductive rights include the right to safe and affordable abortion services.[21] In this case, the Court delineated the Government's positive obligations to establish government funds to cover abortion procedure costs, provide stronger safeguards for women's privacy, promote access to safe services for all women, and disseminate information about safe abortion services to health service providers and the public.[22]

5. In September 2018, pursuant to the Constitution and the Court's pronouncement in the *Lakshmi* case, the Government enacted the SMRHR and Public Health Service (PHS) Acts. **These new Acts unequivocally recognize women's and girls' right to abortion and require that abortion services be offered by all government health facilities free of cost**.[23] Under the SMRHR Act, abortion is permitted with the consent of a pregnant woman up to 12 weeks of gestational age, and for pregnancies of up to 28 weeks of gestational age resulting from rape, incest, or in situations where the woman suffers from HIV or other types of incurable diseases.[24] Abortion is also permitted up to 28 weeks of gestational age in circumstances where a legally-recognized medical practitioner determines that a failure to undertake an abortion may pose a threat to the life of the pregnant woman, adversely affect her mental or physical health, or that the child born will be impaired.[25] Under the PHS Act, abortion is listed as a basic health service which any person shall have the right to obtain without cost.[26] Together with the National Penal Code Act 2017 (Penal Code) which imposes a penalty of imprisonment of up to 5 years for a pregnant woman undergoing an abortion beyond the legal grounds, these Acts constitute the primary abortion laws in the country. [27]

B. Legal and Procedural Barriers to Accessing Abortion Services

6. Despite the legal guarantees to the right to abortion, the Government has failed to address numerous legal and procedural barriers and restrictions to ensure women's and girls' effective access to safe abortion services. Abortion continues to be penalized in certain cases thereby exposing women and girls to the threat of or actual criminal punishment. Further, the Government's failure to clarify when abortion may be provided in cases of pregnancies resulting from rape or incest may lead to strict interpretation of the laws by health care providers and law enforcement authorities to the detriment of women and girls. Furthermore, the SMRHR Act compared to the Penal Code has restricted when abortion may be accessed beyond 28 weeks of pregnancy. Finally, the continuing lack of regulations for the SMRHR Act has prevented women and girls from having effective access to safe abortion.

7. ***Criminal penalties for women having an abortion.*** As noted in paragraph 3 above, laws criminalizing abortion violate the obligation of States to respect, protect, and fulfill women's and girls' fundamental human rights.[28] However, notwithstanding the Government's human rights obligations and national legal guarantees on the right to

safe abortion, the SMRHR Act fails to fully decriminalize abortion in all cases[29] and instead refers to the criminal provisions under the Penal Code of imprisonment of up to five years and a fine not exceeding fifty thousand rupees (approximately US$500) depending on the stage of pregnancy.[30]

8. As noted in paragraph 2, knowledge of safe abortion remains low both in terms of legality and availability of the services.[31] In a fact-finding conducted by FWLD and the Center **53 abortion-related cases were registered in 16 districts between 2011 to 2016 in the district and high courts, out of which 13 cases were against women for terminating their pregnancies**.[32] Among these 13 cases, five women were convicted, of which four were imprisoned. In cases where women were convicted, they were not only unaware of legal exceptions to the penal provisions on abortion, but also lacked information on facilities where safe abortion services were available, forcing them to seek an abortion from unlisted providers, which is illegal.[33] This is an emblematic case reflecting serious effects of continued criminalization of women and girls. [34]

> *A 15-year-girl who got pregnant as a result of rape terminated her pregnancy at around 20 weeks by consuming medical pills brought by her father from a local pharmacist. The girl's statement in the District Court notes that she sought an abortion to safeguard her own and family's prestige. The Court convicted the girl of an illegal abortion and sentenced her based on her admission. However, the Court acquitted both the father, as he had asked her not to take the medical pills despite purchasing them for her, and the pharmacists, as their involvement was not proven.[35]*

9. ***Ambiguity on the abortion provisions of the Penal Code and SMRHR Act.*** Denial or delay in accessing legal abortions services have been caused by laws written in vague terms or laws that leave room for conflicting interpretations on what they allow. In effect, health care providers have been provided the discretion on when to allow and provide access to abortion and, in some cases, this means that abortion access is frustrated by restrictive interpretations of the laws.[36] As noted in paragraphs 5 and 7, abortion provisions are regulated under the SMRHR Act (special law brought to protect sexual and reproductive health and rights) and the Penal Code (general law on offences and punishments). As both laws regulate abortion, they have caused ambiguity on when abortion may be allowed on certain cases. For example, although the SMRHR Act permits abortion **up to 28 weeks of pregnancy** in cases of rape and incest, the Penal Code only permits abortion **up to 18 weeks of pregnancy** in such cases.[37] This **legal ambiguity has caused confusion among health care providers, law enforcement, and women** with providers often interpreting the law in a way that deprives women access to the abortion.[38]

10. ***Lack of implementing rules and regulations for the SMRHR Act.*** For nearly two years since the enactment of the SMRHR Act, the Government has yet to adopt its implementing rules and regulations (Regulations). Under the Act, services and standards including procedures to access abortion will be determined under a regulation.[39] In the absence of Regulations, there is no clear guidance on the health care standards, procedures, and systems in place and/or to be established to ensure women's and girls' access to sexual and reproductive health care services including abortion. On 20 March 2020, **FWLD and several lawyers filed a writ petition at the Supreme Court** to seek immediate enactment of the Regulations under the SMRHR Act. During the first hearing on June 10, the **Court issued "Show Cause order"** to the Office of

Prime Minister and Council of Ministers, Ministry of Health and Population (MoHP) and other relevant agencies, requiring the Government to submit its written response to the writ petition.[40] As of 9 July 2020, **there is still no legal procedural framework to ensure effective access to safe abortion in the country.**

11. ***Regressive provision in the SMRHR Act.*** The SMRHR Act allows abortion **up to 28 weeks** of pregnancy[41] and does not provide for any abortion beyond it even to save a woman's life. This is more regressive than the previous Country Code[42] (repealed in August 2017) and provisions of the Penal Code that allow abortion **without gestational age limitations** in the case of risks to the life or health of a pregnant woman, fetal impairment, or where a woman has a virus that deteriorates her immune system, such as HIV.[43]

II. Disproportionate Impact of COVID-19 on Women's and Girls' Access to Sexual and Reproductive Healthcare

12. UN human rights treaty monitoring bodies, UN special procedures, and the World Health Organization (WHO) have reiterated that sexual and reproductive health (SRH) care is essential health care that governments must prioritize and include as part of their COVID-19 responses. [44] These services include confidential access to contraception, safe abortion and post-abortion services, maternity care, and easy-to-access procedures such as online prescriptions, if necessary, free of charge. [45] The CEDAW Committee has also noted that guaranteeing uninterrupted access requires governments to ensure there is no disruption in the supply chain of SRH commodities, including production, shipping, and distribution.[46] Further, as pregnancy carries heightened risks during crises, COVID-19 has created new barriers to pregnancy-related care that governments have been called upon to consider when developing responses. The WHO has reaffirmed that "all women have the right to a safe and positive childbirth experience, whether or not they have a confirmed COVID-19 infection."[47]

13. The brunt effects of COVID-19 are felt disproportionately by women and girls, who are "often an after-thought in a humanitarian crisis." [48] It also poses specific threats to the poor and marginalized particularly those who live in conditions where physical distancing is impossible to maintain, and who face greater difficultly in protecting themselves from transmission due to lack of physical space for isolation, lack of information, resources, and access to quality health and social services. As demonstrated during the earthquake of 2015 in Nepal, women tend to act as the "shock-absorbers of the household."[49] Women are impacted more because of the patriarchal structure of Nepali society which places women in a subordinated position.[50] For example, when there is a shortage of food, women reduce their own consumption so that there is more food for others.[51] During times of crisis, women's unpaid work burden also rises substantially.[52]

14. The same disproportionate impact on women and girls is reflected in the current pandemic. The lockdown imposed in Nepal since 24 March 2020 have disrupted normal delivery and resulted in reduced access to SRH services and information for women, girls, and others who are especially vulnerable in these emergency situations.[53] The lockdown has also exposed them to greater risk of domestic violence and sexual abuse, exacerbating the impact of COVID-19 in their health and lives.[54] As the pressure on healthcare and other public services intensifies, it remains crucial that women, girls, and others in vulnerable situations continue to have access to quality SRH services.

15. ***Significant increase in maternal mortalities and newborn deaths.*** According to news reports, since the lockdown, Nepal's maternal mortality rate has increased by nearly 200%.[55] As a result of the disruptions to maternal health services particularly around the time of labor, delivery and immediate postpartum, there has also been an increase in newborn deaths.[56] The substantial increase in deaths has been attributed to the difficulty pregnant women face in physically accessing needed health care facilities due to travel and mobility restrictions i.e. most health facilities are significantly far from where the women live[57] and lack of access to transportation.[58] Other factors also include the practice of some health facilities of refusing entry to pregnant women without a COVID-19 test report and, as discussed in the next paragraph, a number of facilities focusing solely on COVID-19 treatment.[59] An unpublished study by CREHPA estimated that a 10% proportional decline in short-acting reversible contraceptive use in Nepal caused by reduced access to SRH services due to the COVID-19 will result in an estimated 131,700 additional women with an unmet need for modern contraceptives and an additional 19,000 unintended pregnancies over a 12-month period. [60] It also estimated that a 10% proportional decline in service coverage of essential pregnancy related and newborn care could lead to an additional 6,000 women and 9,000 newborns experiencing major complications without care causing an additional 70 maternal deaths and 260 newborn deaths. The study also estimates that a 10% shift in abortions from safe to unsafe, would lead to additional 14,500 unsafe abortions.[61]

16. ***Converted general hospital for COVID-19 and denial of services to women by health care facilities and providers.*** To respond to the pandemic, financial and human resources have been diverted away from SRHR services. [62] The Government converted numerous tertiary, provincial, and district level hospitals for COVID-19 treatment hospital.[63] Some provincial governments and hospitals unilaterally decided and issued notices to discontinue the provision of general health services including SRH services to focus on COVID-19 treatment.[64] After advocacy by civil society groups and their engagement with the Government and hospitals, two provincial hospitals resumed the provision of SRH services.[65] There have also been reports of hospitals refusing to admit women for childbirth and denying them access to SRH services because of their focus on responding to COVID-19.[66] As reflected in the story below, instances of hospitals turning away women in crucial need of services have also been reported even after initial admittance due to fear of COVID-19 transmission.[67]

> *A pregnant woman of Udayapur district in eastern Nepal was admitted to Nobel Medical College of Biratnagar—a private hospital in Morang district for delivery. Doctors suggested her to undergo a caesarian section delivery. Following necessary preparations by the doctors, she was taken to the operating room. However, when the doctors saw her address, they refused to operate on her as the district she came from has been recently identified as a COVID-19 hotspot. She was referred to a government (Koshi) hospital. The referral ticket explicitly mentioned that she has been referred because of her address.[68]*

17. ***Insufficient policy guidelines for providing SRHR services especially abortion during the pandemic.*** When facility-based provision of SRH services is disrupted, WHO recommends prioritizing digital health services, self-care interventions, task sharing and outreach to ensure access to medicines, diagnostics, devices, information and counselling.[69] This prioritization includes among others ensuring access to abortion to

the full extent allowed by law.[70] To further improve access to abortion care during COVID-19, the Inter-Agency Working Group on Reproductive Health in Crises (IAWG) has noted that governments should ensure support for self-management of medication abortion care for up until 12 weeks of pregnancy and that remote approaches can be considered for counseling on self- management.[71] Relatedly, WHO recommends that governments ensure the availability of all essential medicines covered under the WHO Model List of Essential Medicines, which includes the active drugs for medication abortion, misoprostol and mifepristone.[72]

18. MoHP ensured that essential and basic health services including abortion will be continuously provided during the COVID-19 pandemic.[73] To ensure the delivery of these services, the Government endorsed Interim Guidelines for Reproductive, Maternal, Newborn, and Child Health Services (Guideline) during the pandemic.[74] However, the Guidelines which was adopted almost after two months of the lockdown, failed to include provisions to ensure abortion services through telemedicine and self-managed abortion as recommended by the WHO and IAWG.[75] The Guidelines only permitted safe abortion services through home visits by approved health professionals of nongovernment organizations and kept medication abortion drugs in the listed pharmacy.[76] In effect, women's and girls' access to abortion services have been further restricted during the COVID-19 pandemic.

III. Suggested Questions to the Government by Member States

19. We respectfully urge the Member States to express concerns about the continuing violations of women's and girls' rights particularly on their ability to make and exercise decisions about their body, sexuality, and reproduction because of the limited access to abortion and the absence of its full decriminalization. We also urge Member States to reiterate that, as a signatory to core international human rights treaties and as guaranteed under its national laws and policies including the Constitution and the Safe Motherhood and Reproductive Health Rights (SMRHR) Act, the Government is obliged to respect, protect, and fulfil reproductive rights as fundamental rights and to ensure that human rights guide its public health response to COVID-19. We urge the Member States to particularly raise with the Government the following questions:
    i. What actions are being taken by the Government to fully decriminalize abortion including by removing the penal provisions on abortion under its Penal Code and amending the SMRHR Act to allow abortion in all cases and removing the regressive provisions that prohibit abortion after 28 weeks even when necessary to save the woman's or girl's life or health? What steps are being done by the Government to ensure that women are not prosecuted and imprisoned under any circumstances for undertaking abortion?

    ii. What steps has the Government taken to adopt the Regulations under the SMRHR Act to ensure its full and effective implementation particularly on ensuring abortion access?

    iii. What programs are being implemented by the Government to address the negative and disproportionate impact of COVID-19 on women's and girls' access to sexual and reproductive health care including the increase in maternal deaths and instances of denial of access to certain reproductive health services?

    iv. What steps are being taken to effectively implement the Interim Guideline for Reproductive, Maternal, Newborn, and Child Health to respond to the COVID-19 pandemic and ensure that it addresses the specific barriers on

abortion access during the pandemic including by expanding access through self-managed medication abortion?

IV. Proposed Recommendations to the Government by Member States

20. Following up on past UPR and UN treaty bodies' recommendations to the Government concerning implementing measures to ensure women's and girls' access to quality sexual and reproductive healthcare, we request the Member States to consider adopting the following recommendations:

    1. To take immediate steps to decriminalize abortion in all cases and eliminate punitive measures for women who undergo abortions and for health care providers who provide abortion services including by repealing the penal provisions on abortion under the Penal Code and amending the SMRHR Act to allow abortion in all cases including for abortions beyond 28 weeks of pregnancy when necessary to save the woman's and girl's life or health;

    2. To ensure and facilitate women's and girls' full access to and enjoyment of reproductive health and rights as guaranteed by the Constitution and SMRHR Act by immediately adopting the human-rights based Regulations under the SMRHR Act and fully implementing its provisions;

    3. To guarantee that reproductive rights as fundamental human rights remain at the core of the Government's response to the COVID-19 pandemic by ensuring that women and girls continue to have access to essential sexual and reproductive health services particularly maternal health services and safe abortion services including through self-managed medication abortion.

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[1] Ministry of Health, Nepal, New ERA: and ICF, *Nepal Demographic and Health Survey (NDHS) 2016* 115 Kathmandu Nepal: Ministry of Health (2017) [hereinafter 2016 NDHS].
[2] *Id*., at 120.
[3] *Id*., at 116.
[4] *Id*., at 119.
[5] Puri et. al., ABORTION INCIDENCE AND UNINTENDED PREGNANCY IN NEPAL. INTERNATIONAL PERSPECTIVES ON SEXUAL AND REPRODUCTIVE HEALTH, Vol. 42, No. 4 (December 2016), pp. 197-209.
[6] 2016 NDHS, *supra* note 1 at 161.
[7] *Id.*
[8] *Id.*

[9] United Nations Country Team in Nepal works closely with the Government, civil society and communities to achieve by 2030 the Sustainable Development Goals (SDGs) available at https://nepal.unfpa.org/sites/default/files/pub-pdf/SDGs_booklet_English.pdf

[10] Ajit Pradhan et. al Nepal Maternal Mortality and Morbidity Study 2008/2009. Family Health Division, Department of Health Services, Ministry of Health And Population, Government Of Nepal, Kathmandu, Nepal.

[11] Committee on Economic, Social and Cultural Rights, *General Comment No. 22: On the right to sexual and reproductive health* (Art. 12 of the International Covenant on Economic, Social and Cultural Rights), paras. 10, 28, U.N. Doc. E/C.12/GC/22 (2016) [hereinafter CESCR Committee, Gen. Comment No. 22]; Human Rights Committee, *General Comment No. 36: On the right to life* (Art. 6 of the International Covenant on Civil and Political Rights), para. 8, U.N. Doc. CCPR/C/GC/36 (2018) [hereinafter Human Rights Committee, Gen. Comment No. 36]. See also, Human Rights Committee, Concluding Observations: Nigeria, para. 22, U.N. Doc. CCPR/C/NGA/CO/2 (2019).; CEDAW Committee, Concluding Observations: Paraguay, paras. 30, 31, U.N. Doc. CEDAW/C/ PRY/CO/6 (2011).; CEDAW Committee, Concluding Observations: Sierra Leone, para. 32(d), U.N. Doc. CEDAW/C/SLE/CO/6 (2014).; CESCR Committee, Concluding Observations: Argentina, para. 55, 56, U.N. Doc. E/C.12/ARG/CO/4 (2018).

[12] Mellet v. Ireland, Human Rights Committee, Commc'n No. 2324/2013, paras. 7.6, 7.7, 7.8, U.N. Doc. CCPR/C/116/D/2324/2013 (2016).; Whelan v. Ireland, Human Rights Committee, Commc'n No. 2425/2014, paras. 7.7 - 7.9, 7.12, U.N. Doc. CCPR/C/119/D/2425/2014 (2017).; K.L. v. Peru, Human Rights Committee, Commc'n No. 1153/2003, U.N. Doc. CCPR/ C/85/D/1153/2003 (2005).; L.C. v. Peru, CEDAW Committee, Commc'n No. 22/2009, para. 8.15, U.N. Doc. CEDAW/C/50/D/22/2009 (2011).; CESCR Committee, Gen. Comment No. 22, *supra* note 11, para. 10.; Alyne da Silva Pimentel Teixeira v. Brazil, CEDAW Committee, Commc'n No. 17/2008, U.N. Doc. CEDAW/C/49/D/17/2008 (2011).; CAT Committee, Concluding Observations: El Salvador, para. 23, U.N. Doc. CAT/C/SLV/CO/2 (2009).; CAT Committee, Concluding Observations: Nicaragua, para. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009).

[13] Committee on the Elimination of Discrimination against Women*, General Recommendation No. 35: Gender-based violence against women,* updating general recommendation No. 19, in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, para. 18, U.N. Doc. CEDAW/C/GC/35 (2017) [hereinafter CEDAW Committee, Gen. Recommendation No. 35]; Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24: Article 12 of the Convention* (Women and Health), (20th Sess., 1999), in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, paras. 11, 14, 17, U.N. Doc. A/54/38/Rev.1, chap I (1999) [hereinafter CEDAW Committee, Gen. Recommendation No. 24].

[14] Human Rights Committee, *General Comment No. 36, supra* note 11, para. 8.

[15] Committee on the Elimination of Discrimination against Women, United Kingdom of Great Britain and Northern Ireland Inquiry Summary (Article 8 of Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women), para. 58, U.N. Doc. CEDAW/C/OP.8/GBR/1 (2018).; Human Rights Committee, *Gen. Comment No. 36, supra* note 11, para. 8.; CESCR Committee, *Gen. Comment No.36, supra* note 11, paras. 34, 40, 49(a), 57; Committee on the Rights of Persons with Disabilities and the Committee on the Elimination of All Forms of Discrimination against Women, Joint Statement: Guaranteeing sexual and reproductive health and rights for all women in particular women with disabilities, para. 4, available at https://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDStatements.aspx (29 August 2018).

[16] Human Rights Committee, *Gen. Comment No. 36*, *supra* note, 11, para. 8.; L.C. v. Peru, CEDAW Committee, Commc'n No. 22/2009, para. 12(b), U.N. Doc. CEDAW/C/50/D/22/2009 (2011); 'Statement of CEDAW Committee on the sexual and reproductive health and rights: Beyond 2014 ICPD review, para. 7, available at https://www.ohchr.org/Documents/HRBodies/CEDAW/ Statements/SRHR26Feb2014.pdf; K.L. v. Peru, Human Rights Committee, Commc'n No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005); Human Rights Committee, Concluding Observations: Paraguay, paras. 20, 21, U.N. Doc. CCPR/C/PRY/CO/4 (2019); CEDAW Committee, *Concluding Observations: Democratic Republic of Congo,* para. 37(c), U.N. Doc. CEDAW/C/COD/CO/8 (2019); CRC Committee, *Concluding Observations: Malta,* para. 33, U.N. Doc. CRC/C/MLT/CO/3-6 (2019); CAT Committee, *Concluding Observations: Bangladesh*, paras. 38-39, U.N. Doc. CAT/C/ BGD/1 (2019).

[17] Human Rights Committee, *Gen. Comment No. 36, supra* note, 11, para. 8.; CEDAW Committee, *Gen. Recommendation No. 24, supra* note, 13, para. 14.; CRC Committee, *Concluding Observations: Nicaragua,* para. 59, U.N. Doc. CRC/C/NIC/CO/4 (2010).; CAT Committee, *Concluding Observations: Nicaragua*, para. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009).; CESCR Committee, *Concluding Observations: Pakistan*, paras. 77, 78, U.N. Doc. E/C.12/PAK/CO/1 (2017).

[18] CEDAW Committee, *Concluding Observations on the sixth periodic report of Nepal*, 39(b) p.14/18, U.N. Doc./CEDAW/C/NPL/CO/6.

[19] CEDAW Committee, *Concluding Observations: Nepal*, para. 38, U.N. Doc./CEDAW/C/NPL/CO/6 (2018); Committee on Economic, Social and Cultural Rights, *Concluding Observations on the Third Periodic Report of Nepal*, para. 26, U.N. Doc. E/C.12/NPL/CO/3 (2014); Committee on the Rights of the Child, *Concluding Observations: Nepal*, para. 53, U.N. Doc. CRC/C/NPL/CO/3-5 (2016).

[20] The Constitution of Nepal, 2015 (2072), art. 38 (2); Government of Nepal, response to list of issues and questions in relation to the sixth periodic report of Nepal, para. 109 (2018).

[21] Office of the Attorney General Nepal, Prosecution Journal, V.4, P. 446 (2018).

[22] Center for Reproductive Rights, Lakshmi Dhikta v. Government of Nepal / Amici (Supreme Court of Nepal) (May 20, 2009) available at https://reproductiverights.org/case/lakshmi-dhikta-v-government-of-nepal-amici-supreme-court-of-nepal

[23] Safe Motherhood and Reproductive Health Rights Act, part 6, secs. 22 & 23 (2018) (Nepal); The Public Health Service Act, 2075, Chapter-2, sec. 3(4)(b) (2018) (Nepal).

[24] Safe Motherhood and Reproductive Health Rights Act, para. 4, sec. 15 (a), (c) (d) [hereinafter SMRHR Act].

[25] *Id*., para. 4, sec 15 (b).

[26] The Public Health Service Act, 2075 (2018), Nepal, sec. 2 article 3, (4), (b) [hereinafter PHS Act].

[27] The National Penal (Code) Act 2074, part 1.2, Ch. 13, sec. 188 (2017) (Nepal) [hereinafter Penal Code].

[28] Committee on Economic, Social and Cultural Rights, *General Comment 22, supra* note 11, para. 40.

[29] Center for Reproductive Rights, Supplementary Information on Nepal, Scheduled for Review by the Committee on the Elimination of Discrimination Against Women During its 71st Session (2018) available at https://Tbinternet.Ohchr.Org/Treaties/Cedaw/Shared%20documents/Npl/Int_Cedaw_Css_Npl_32587_E.Pdf
[30] Penal Code, *supra* note 27, part 1.2, Ch. 13, sec. 188. A woman who undertakes an abortion may therefore be imprisoned for a term not exceeding one year and a fine not exceeding ten thousand rupees (approximately US$100) in the case of pregnancy of up to 12 weeks. In the case of pregnancy of 13 to 25 weeks, a pregnant woman may be imprisoned for a term not exceeding three years and a fine not exceeding thirty thousand rupees (approximately US$300). For an abortion involving a pregnancy of more than 25 weeks, a pregnant woman may be sentenced to imprisonment for a term not exceeding five years and a fine not exceeding fifty thousand rupees (approximately US$500) depending on the stage of pregnancy.
[31] 2016 NDHS, *supra* note 1 at 161.
[32] Center for Reproductive Rights*, Forum for Women, Law and Development Reforms Required in Laws related to Abortion and Its Enforcement Facts revealed from the review of casefiles in Nepali)*. The study is based on the abortion cases registered between fiscal year 2011/12 to 2015/16 from 16 districts of Nepal, Out of the 53 cases, 13 cases were against women terminating pregnancies, 7 were related to infanticide, 5 were related to forced abortion, and 28 were abortion caused as a result of third-party actions, including by beating.
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] J.N. Erdman, *The procedural turn: abortion at the European court of human rights.*
R.J. Cook, J.N. Erdman, B.M. Dickens (Eds.), *Abortion Law in Transnational Perspective: Cases and Controversies,* University of Pennsylvania Press, Philadelphia (2014), pp. 121-142; P. Bergallo, *The Struggle Against Informal Rules on Abortion In Argentina* R.J. Cook, J.N. Erdman, B.M. Dickens (Eds.), *Abortion In Transnational Perspective: Cases And Controversies*, University of Pennsylvania Press, Philadelphia (2014), pp. 143-165.
[37] National Penal (Code) Act, Chapter-13, 189 (2017) (Nepal) *with* Safe Motherhood and Reproductive Health Rights Act, part 4, sec. 15(b) (2018) (Nepal).
[38] "Activists seek amendment to Penal Code, safe motherhood act", The Himalayan*, March 3, 2019,* available at https://thehimalayantimes.com/kathmandu/activists-seek-amendment-to-penal-code-safe-motherhood-act/
[39]SMRHR Act, *supra* note 24, para. 1 sec, 2 (j), para. 3, sec. 6(2), 7(2), 10(2,3), para. sec 18(2,3), and para. 6 sec 22(3).
[40] See; *The Supermen Court issued the show cause notice on Reproductive Health related writ Nagarik Khabar* (NEPALI NEWSPAPER), 16 June 2020, available at https://nagarikkhabar.com/2020/6/38121?fbclid=IwAR2b18pcva952itchQqEysLWEEwCQwYh1EHH9CUTPJ6C6oYDc2iuv8lgs4o
[41] SMRHR Act, *supra* note 24, para. 4*,* sec. 15 (b)(c)(d) and (e).
[42] PHS Act, *supra* note 27 para.13, 189 (b) (d) (2017) (Nepal).
[43] *Id.,* part 1.2, Ch. 13, sec. 188 (2017) (Nepal); see also Center for Reproductive Rights, Supplementary information on Nepal, scheduled for review by the Committee on the Elimination of Discrimination against Women during its 71st Session (2018) available at https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/NPL/INT_CEDAW_CSS_NPL_32587_E.pdf
[44] CEDAW Committee Guidance Note on CEDAW and COVID-19, **)** available at **https://www.ohchr.org/Documents/HRBodies/TB/COVID19/Guidance_Note.docx** Statement by the UN Working Group on Discrimination against Women and Girls, 'Responses to the COVID-19 pandemic must **not discount women and girls', 20 April 2020,)** *available at* **https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25808&LangID=E World Health Organization, WHO releases guidelines to help countries maintain essential health services during the COVID-19 pandemic, 30 April 2020,)** available at **https://www.who.int/news-room/detail/30-03-2020-who-releases-guidelines-to-help-countries-maintain-essential-health-services-during-the-covid-19-pandemic**
[45] *Id.*
[46] CEDAW committee Guidance Note on CEDAW and COVID-19,) available at https://www.ohchr.org/Documents/HRBodies/TB/COVID19/Guidance_Note.docx
[47] World Health Organization, 2020. Coronavirus) available at https://www.who.int/images/default-source/health-topics/coronavirus/pregnancy-breastfeeding/who---pregnancy---3.png
[48] *Id.*
[49] UN Women: Asia and the Pacific, 'Take Five: Women are often an after-thought in a humanitarian crisis,) available at https://asiapacific.unwomen.org/en/news-and-events/stories/2020/05/take-five-women-are-often-an-after-thought-in-a-humanitarian-crisis
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] Center for Reproductive Rights, *April COVID-19 Landscape: SRHR and Gendered Issues in Asia,*) available at https://reproductiverights.org/sites/default/files/2020-06/April%20COVID-19%20Landscape%20SRHR%20and%20Gendered%20Issues%20in%20Asia.pdf; Center for Reproductive Rights, *May COVID-19 Landscape: SRHR and Gender Issues in Asia,*) *available at* https://reproductiverights.org/sites/default/files/2020-06/May%20COVID-19%20Landscape%20SRHR%20and%20Gendered%20Issues%20in%20Asia.pdf
[54] *Id.*
[55] A 200 percent increase in maternal mortality since the lockdown began, The Kathmandu Post, *27 May 2020* available at https://kathmandupost.com/national/2020/05/27/a-200-percent-increase-in-maternal-mortality-since-the-lockdown-began
[56] UNFPA, *In Nepal, COVID-19 turning pregnancy excitement into fear***,** May 7, 2020, available at https://nepal.unfpa.org/en/news/covid-19-turning-pregnancy-excitement-fear and Global Financing Facility *Preserve Essential Health Services during the covid-19 Pandemic Nepal* available at https://www.globalfinancingfacility.org/sites/gff_new/files/documents/Nepal-Covid-Brief_GFF.pdf

[57] UNFPA, *In Nepal, COVID-19 turning pregnancy excitement into fear*, May 7, 2020 available at https://nepal.unfpa.org/en/news/covid-19-turning-pregnancy-excitement-fear *Id.*
[58] See *Gita and Pooja became mothers in quarantine,* Online Khabar *(Nepali online news), 4 June 2020,* https://www.onlinekhabar.com/2020/06/870264?fbclid=IwAR0FRmDlu8m5f1FplMchrs4COgMD80yihksDsEh2nucPJCaF894_WRnhSI
[59] *Id.*
[60] Puri M, Stone L (2020). Potential impact of the COVID-19 pandemic on sexual and reproductive health in Nepal. Journal of Nepal Health Research Council, 2020 (*Forthcoming).*
[61] *Id.*
[62] UN Women, *Gendered and Social Impact on COVID-19,* available at https://www2.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2020/05/nepal%20gesi%20profile_updated%208%20may%202020_vr6-b(004).pdf?la=en&vs=1214
[63] Family Welfare Division Department of Health Services Ministry of Health and Population, *Interim Guidance for RMNCH services in COVID 19 Pandemic, 2020, approved on 21 May 2020 (annex-2)* available at https://app.adpc.net/sites/default/files/public/publications/attachments/Guidance_for_RMNCH_services_08-02-2077.pdf [hereinafter Interim Guidance 2020].
[64] See *Concerned of Human Rights Activists on Closing of Reproductive Health Services in Gondiki Hospital Sarangi News* (NEPALI ONLINE NEWS) 29 April 2020, http://www.saranginews.com/social/3369?fbclid=IwAR2MIfQxUkAguLeenlmbhwpSfG3oBI2HHLJDh-DfwJfnNChZrWa3QlncnrI
[65] See *Maternity service of Seti Provincial Hospital resumed, Phaschim Today* (NEPALI ONLINE NEWS) 17 April 2020. https://paschimtoday.com/news-details/16343/2020-04-17?fbclid=IwAR1NzfyB1JvR7lB4GFOHPeAY6Xy24lUX2iHfsqAewDP9Efsn6wUAjV7Wo0A#.XpmIBrKPF4Q
[66] UN Women, *Gendered and Social Impact on COVID-19,* p. 5, available at https://www2.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2020/05/nepal%20gesi%20profile_updated%208%20may%202020_vr6-b(004).pdf?la=en&vs=1214
[67] *See Expecting Mother expelled from operation theater,* The Himalayan *30 April 2020* https://thehimalayantimes.com/nepal/expecting-mother-expelled-from-operation-theatre/?fbclid=IwAR1prernoLQWGMrvD-PQRXrErMtTyg3RHQ3oOfNNYocaVsyBTBWArE5U6TE
[68] *See Expecting Mother expelled from operation theater,* The Himalayan *30 April 2020* https://thehimalayantimes.com/nepal/expecting-mother-expelled-from-operation-theatre/?fbclid=IwAR1prernoLQWGMrvD-PQRXrErMtTyg3RHQ3oOfNNYocaVsyBTBWArE5U6TE
[69] World Health Organization, Maintaining essential health services: operational guidance for the COVID-19 context: Interim guidance, 1 June 2020, para. 2.1.4, page 29.
[70] *Id*.
[71] Inter-Agency Working Group on Reproductive Health in Crises, April 2020, 'Programmatic Guidance for Sexual and Reproductive Health in Humanitarian and Fragile Settings during the COVID-19 Pandemic', available at https://cdn.iawg.rygn.io/documents/IAWG-Full-ProgrammaticGuidelines.pdf?mtime=20200410142450&focal=none#asset:30551
[72] World Health Organization Model List of Essential Medicines, 21st List (2019), available at https://apps.who.int/iris/bitstream/handle/10665/325771/WHO-MVP-EMP-IAU-2019.06-eng.pdf?ua=1
World Health Organization, COVID-19: Operational Guidance for Maintaining Essential Health Services during an Outbreak, 25 March 2020, p. 10, available at https://apps.who.int/iris/bitstream/handle/10665/331561/WHO-2019-nCoV-essential_health_services-2020.1-eng.pdf?sequence=1&isAllowed=y
[73] Government of Nepal, Ministry of Health and Population, Interim guidelines for COVID-19 and other health service delivery during the COVID-19 pandemic, 2020, sec.4.3.2. (a) available at https://drive.google.com/file/d/1kzWQTtyi2cz8HSA4Hwv3zjdHwExJQXhO/view
[74] Interim Guidance 2020, *supra* note 63.
[75] World Health Organization, Maintaining essential health services: operational guidance for the COVID-19 context: Interim guidance', 1 June 2020, para. 2.1.4, page 29.
[76] Interim Guidance 2020, *supra* note 63.