

**SUBMISSION FOR THE THEMATIC REPORT OF
THE SPECIAL RAPPORTEUR ON TORTURE ON
“IDENTIFYING, DOCUMENTING,
INVESTIGATING, AND PROSECUTING CRIMES
OF SEXUAL TORTURE COMMITTED DURING
WAR AND ARMED CONFLICTS, AND
REHABILITATION FOR VICTIMS AND
SURVIVORS**

24 APRIL 2024

*Submitted by Human Rights and Justice Centre and Conflict Women
National Network*

Background:

1. Nepal suffered from an internal armed conflict (hereinafter, "conflict") from 1996 to 2006 which ended with the signing of the Comprehensive Peace Accord (hereinafter, "CPA") between the Government of Nepal and the Communist Party of Nepal-Maoists (hereinafter "CPN-M"). On 4 February 1996, the CPN-M submitted a 40-point demand to the Government with a stern warning to launch a 'forceful struggle' if their demands were not addressed by 17 February 1996. On 13 February 1996, they launched the attack, formally commencing the armed conflict.¹ In 2001, the Government of Nepal declared a state of emergency and, owing to increased Maoist activities decided to mobilize Nepal Police (hereinafter, "NP") and Armed Police Force (hereinafter, "APF")² under unified command of the Royal Nepal Army (hereinafter, "RNA") during joint operations.³

2. Several reports reveal that gross human rights violations, including sexual violence, torture, extra-judicial killings and enforced disappearances were committed on a widespread and systematic scale during the conflict by all parties involved.⁴ In particular, the widespread use of conflict-related sexual violence (hereinafter, "CRSV") committed by State security agencies⁵ has been documented. Women and girls were raped and sexually violated while in custody⁶ and detention⁷ and during joint operations;⁸ if suspected to be a Maoist or someone sympathetic towards the Maoists.⁹ Nonetheless,

¹ Office of the United Nations High Commissioner for Human Rights (OHCHR), *Nepal Conflict Report*, 2012, p. 15, available at https://www.ohchr.org/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf.

² The APF was an elite paramilitary force created to fight against the insurgency in 2001.

³ OHCHR, *Nepal Conflict Report*, op. cit., p. 15.

⁴ International Centre for Transitional Justice (ICTJ) and Centre for Research on Environment Health and Population Activities (CREPAH), *To Walk Freely with a Wide Heart*, 2014, available at <https://www.ictj.org/sites/default/files/ICTJ-Report-Nepal-Reparations-2014.pdf>, p. 7; ICTJ and Advocacy Forum, *Across the Lines, The Impact of Nepal's Conflict on Women*, 2010, available at <https://www.ictj.org/sites/default/files/ICTJ-Nepal-Across-Lines-2010-English.pdf>, p. 51; and Institute of Human Rights Communication, Nepal (IHRICON), *Sexual Violence in the "People's War": The Impact of Armed Conflict on Women and Girls in Nepal*, Kathmandu, 2007, p. 10.

⁵ Indicates personnel belonging to security forces operating during the conflict as NP, RNA and APF.

⁶ Committee against Torture (CAT), *Concluding Observations on Nepal*, UN Doc CAT/C/NPL/CO/2, 13 April 2007, para. 27; and ICTJ and Advocacy Forum, *Across the Lines, The Impact of Nepal's Conflict on Women*, op. cit., p. 56.

⁷ OHCHR, *Nepal Conflict Report*, op. cit., p. 173.

⁸ *Ibid.*, p. 23; Human Rights Watch (HRW), *Silenced and Forgotten: Survivors of Nepal's Conflict-era Sexual Violence*, 2014, available at http://www.hrw.org/sites/default/files/reports/nepal0914_ForUpload_0.pdf, p. 11; and ICTJ and Advocacy Forum: *Across the Lines, The Impact of Nepal's Conflict on Women*, op. cit., p. 53.

⁹ HRW, *Silenced and Forgotten: Survivors of Nepal's Conflict-era Sexual Violence*, op. cit., p. 8.

there are studies indicating that also members of CPN-Maoists perpetrated sexual violence.¹⁰

3. In this context, as reported by the Office of the High Commissioner for Human Rights (hereinafter, “OHCHR”), many women¹¹ remained silent about the sexual violence endured during the conflict due to stigmatization and fear that was further reinforced by the militarization of the country.¹² Although many victims experienced a deep sense of injustice,¹³ they could not report the violence due to lack of information on the available legal mechanisms and other legal obstacles.¹⁴ Nepal’s deep-rooted sexual and gender-based violence reflected in intersecting forms of discrimination perpetrated against women, children, and indigenous peoples, among others,¹⁵ was exacerbated during the internal conflict.¹⁶ There has been no accountability in cases of CRSV in Nepal. Instead, a culture of impunity has thrived since the conflict's end.¹⁷ Individuals accused of significant offenses (not of sexual violence in nature) have even raised to leadership roles in the Government, despite Supreme Court’s directives in certain instances instructing the police to officially document cases and launch investigations into the corresponding allegations.¹⁸

¹⁰ Madhav Joshi and Subodh Raj Pyakurel, ‘Individual-Level Data on the Victims of Nepal’s Civil War, 1996-2006: A New Dataset’, 2015, *Empirical and Theoretical Research International Interactions*, 41(3), pp. 601–619.

¹¹ Although the OHCHR report of 2012 does not report male victims of CRSV, over the time a few CSOs working on the subject have identified a few male survivors of CRSV as well. However, this submission will mostly focus on women and girls victims of CRSV, although some of the problems and structural obstacles here identified equally apply to male survivors of CRSV.

¹² OHCHR *Nepal Conflict Report*, op. cit., p. 167.

¹³ *Ibid.*, p. 13.

¹⁴ ICTJ, *We Cannot Forget: Truth and Memory in Post Conflict Nepal*, 2017, available at <https://www.ictj.org/sites/default/files/We%20Cannot%20Forget%20Book.pdf>, p. 23.

¹⁵ Special Rapporteur on Violence against Women and Girls, its Causes and Consequences, Report on Country Visit to Nepal, UN Doc. A/HRC/41/42/Add.2 of 19 June 2019, para. 35.

¹⁶ ICTJ, Global Survivors Fund, and others, ‘Nepal Study On Opportunities For Reparations For Victims Andv Survivors Of Conflict-Related Sexual Violence’, 2022, p. 37.

¹⁷ *Ibid.*, p. 42.

¹⁸ Mohan Guragain, ‘What is the controversy over Agni Sapkota as Speaker all about?’ *The Kathmandu Post* (30 January 2020) <https://kathmandupost.com/politics/2020/01/30/what-is-the-controversy-over-agni-sapkota-as-speaker-all-about>. In January 2020, for instance, Agni Prasad Sapkota became Speaker of the House of Representatives, despite facing a potential abduction and murder charge and a March 2008 Supreme Court ordering the authorities to register a case filed by the victim’s wife.

4. A few cases brought before national courts did not yield effective investigations and no prosecutions of persons accused of CRSV have been conducted so far. Similarly, the decisions from UN treaty bodies (in particular, the Human Rights Committee) ascertaining the State's responsibility in cases of CRSV remain unimplemented, furthering the long struggle and the frustration of the few victims who attempted to bring their case before international bodies (*see also below paragraphs 17 and 25*).

5. The CPA signed on 21 November 2006 included a commitment to establish two transitional justice mechanisms, aimed at delivering justice and redress to victims and their families. Pursuant to the Act on Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2014 (hereinafter, "the TRC Act"), in February 2015, two transitional justice bodies were eventually established, namely the Truth and Reconciliation Commission (hereinafter, "TRC") and the Commission on Investigation of Enforced Disappearance of Persons (hereinafter, "CIEDP"). Each commission was entrusted with a two-year mandate, which has been extended multiple times, without ever accomplishing significant results. In January 2024, the Government extended the mandate for both commissions until mid-July 2024.¹⁹ However, the terms of the Chair and members of both commissions expired on 15 July 2022 and the commissions have been vacant and non-functional since then. In March 2024, the Supreme Court directed the Government to initiate the process of appointing commissioners in TRC and CIEDP. Following the order, on 12 April 2024, the Government formed a committee to select candidates for the chairpersons and members for these two commissions. However, the appointment without a previous amendment of the TRC Act would lead to ineffectiveness and inactions of the commissions as in the past. In this regard, the Government ignored the concerns of the victims and human rights activists on the amendment of the TRC Act.²⁰

¹⁹ The Kathmandu Post, 'Transitional justice commissions get one more extension but legal issues remain', Published on 12 January 2024, available at <https://kathmandupost.com/national/2024/01/12/transitional-justice-commissions-get-one-more-extension-but-legal-issues-remain>

²⁰ The Kathmandu Post, 'Victims decry TJ office bearers selection panel without amending law', Published 14 April 2024, available at https://kathmandupost.com/national/2024/04/14/victims-decry-tj-office-bearers-selection-panel-without-amending-law?fbclid=IwAR0qUfl3g-P4iLyDMX1k5wTriXIVqn4UBy_f-FxO3i_UFfStPh5wdShTYZY

6. In 2014, the OHCHR technical note²¹ considered the TRC Act to be inconsistent with international standards. Similarly, in February 2015, the Supreme Court of Nepal echoed these concerns and directed the Government to amend various provisions of the TRC Act and align them with its international undertakings.²² In subsequent rulings, the Supreme Court reaffirmed the existence of serious loopholes in the legislative framework on transitional justice.²³ Among others, the provisions that would allow amnesties for gross human rights violations, such as sexual violence, were the source of special concern, together with the lack of adequate guarantees of the independence and impartiality of the two commissions.²⁴

7. In July 2022, the Government of Nepal introduced a bill to amend the TRC Act. Despite initial consultations were held by the Government, the contents of the bill were not discussed with the victims' groups or civil society organizations before registering the bill at the Parliament. Hence, the overall process lacked transparency and meaningful engagement. The bill was further delayed by political upheaval, with subsequent attempts at discussion stalled by Government reshuffles. The proposed amendments in the bill also fall short of international standards and would leave the possibility to grant amnesty for serious human rights violations such as sexual violence. The details of the provisions in the bill are discussed below in paragraphs 12 to 14. The bill's ambiguity regarding applicable laws raises concerns about potential impunity for perpetrators. This legal

²¹ OHCHR Technical Note The Nepal Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2071 (2014) – as Gazetted 21 May 2014, available at https://www.ohchr.org/sites/default/files/Documents/Countries/NP/OHCHRTechnical_Note_Nepal_CIDP_TRC_Act2014.pdf

²² Among others, Supreme Court of Nepal, *Suman Adhikari vs. The Office of Prime Minister and Council of Ministers and Others*, Nepal Law Journal 2015, Decision No. 9303, Writ No. 070-WS-0050, 26 February 2015; Supreme Court of Nepal, *Madhav Kumar Basnet vs. Nepal Government*, Writ no. 069-WS-0057, Nepal Law Journal 2018, Decision no. 9051, 1 February 2018.

²³ Among others, Supreme Court of Nepal, *Madhav Kumar Basnet vs The Office of the Prime Ministers et al*, Nepal Law Journal, Writ no. 068-WS-0815, Decision no. 0004, 14 January 2016; *Advocate Anita Neupane Thapaliya vs Office of the Prime Minister et al*, Nepal Law Journal, Writ no. 067-WS-1105, 4 January 2017.

²⁴ See Convention on the Elimination of all forms of Discrimination against women, Concluding observations on the sixth periodic report of Nepal, CEDAW/C/NPL/CO/6, 14 November 2018, para. 23.

uncertainty prolongs the suffering of victims and undermines efforts to ensure justice and accountability.

8. The TRC and CIEDP together registered more than 63,000 complaints of gross human rights violations. Out of these complaints, only 308 relate to CRSV,²⁵ which is believed to be outrageously less compared to numbers identified in several studies conducted by international organizations or civil society organizations in the country.²⁶ However, as of today, there is no official data on the number of victims of CRSV, which, in turn, makes the design and implementation of effective policies and legislation more difficult, as the universe of potential beneficiaries remains undetermined. More importantly, the registration of complaints was conducted in the absence of an adequate witness protection programme and lacking technical knowledge and expertise (*see below paragraphs 18-19*).

Questionnaire:

Question I. Challenges, impediments, and obstacles to effective identification, documentation, investigation, and prosecution of crimes of sexual torture and related ill-treatment: What are the main impediments preventing full and prompt investigations and prosecutions into allegations of sexual torture and related crimes committed during an armed conflict – consider matters such as gaps in civil or military legal and regulatory frameworks (see next), political-cultural-leadership, institutional, sociological, psychological, practical, forensic, health, other challenges? What are some examples of the strategies or good practices for addressing these challenges?

²⁵ UNSG, 'Conflict-Related Sexual Violence: Report of the United Nations Secretary-General' (3 June 2020) UN Doc S/2020/487, para. 65, available at <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/07/report/conflict-related-sexual-violence-report-of-the-united-nations-secretary-general/2019-SGReport.pdf>.

²⁶ The OHCHR report (2012) cited over 100 cases of sexual violence (1996-2006). See OHCHR, 'Nepal Conflict Report', 2012; A UNFPA/UNICEF project (2012) documented 821 cases of SGBV, with 70 potentially suitable for transitional justice. See UNDP (Multi-Partner Trust Fund Office), 'Evaluation Report, Ensuring recognition of sexual violence as a tool of conflict in the Nepal peace building process through documentation and provision of comprehensive services to women and girl victims/survivors', 26 November 2012; Advocacy Forum-Nepal (2013) found 128 cases in various districts. See Advocacy Forum, 'Challenges to Redress Victims of SGBV in Nepal', March 2013. In a study (2022), a Government official estimated 1500 to 2000 cases of CRSV. See ICTJ, Global Survivors Fund, and others, 'Nepal Study On Opportunities For Reparations For Victims And Survivors Of Conflict-Related Sexual Violence', 2022.

9. Answer: In the context of the above background, there has been no effective documentation and investigation by the competent Nepalese authorities of crimes of a sexual nature committed during the conflict. There are multiple impediments and obstacles in this regard, as illustrated below:

a. Legal barriers:

i. *Provisions of the TRC Act and its flaws*

10. As mentioned in paragraphs 7 and 8 above, the TRC Act, legislation developed to address violations perpetrated during the conflict, including sexual torture and other crimes, is flawed. The TRC Act specifically defines rape and sexual violence as gross violations of human rights.²⁷ It further prohibits amnesty for perpetrators in cases of rape, but not for perpetrators of sexual violence,²⁸ and it allows mediation between victims and perpetrators in cases of gross human rights violations, including sexual torture and related ill-treatment.²⁹ The term ‘reconciliation’ is used and understood as synonymous with mediation between individual victims and perpetrators, rather than understanding reconciliation as the outcome of a societal process of acknowledging and addressing the past through the establishment of institutions that are trustworthy and that genuinely embody the idea that each individual is a rights holder.³⁰

11. Section 22 (4) of the TRC Act reads “the TRC may encourage the perpetrator and the victim to reconcile...”. In this regard, the TRC may ask the perpetrator to apologize and pay compensation for damages caused to the victim. There is no obligation to seek the consent of the victim prior to mediation. The only limitation to the power to mediate is provided for by Section 22(6) of the TRC Act, pursuant to which “the Commission may not initiate mediation between victims and a perpetrator who is not recommended for amnesty pursuant to sub-section (2) of Section 26”. Under Section 26 (2) of the TRC Act, “the Commission shall not recommend for amnesty to the perpetrators involved in the rape and

²⁷ Enforced Disappearances Inquiry, Truth and Reconciliation Commission Act (TRC Act) 2014, Section 2 (j) (7).

²⁸ *Ibid.*, Section 26 (2).

²⁹ *Ibid.*, Section 22 of the Act provides that “[i]f a perpetrator or a victim files an application before the Commission for mediation, the Commission may cause to reconcile between the perpetrator and the victim.”

³⁰ Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff, Report to the Human Rights Council, UN doc. A/HRC/24/42, 28 August 2013, para. 49.

other crimes of serious nature in which the Commission follows the investigation and does not find sufficient reasons and grounds for amnesty”.³¹ It is therefore possible for the TRC to recommend amnesty for all the crimes of sexual torture and related ill-treatment under its jurisdiction, except for rape, provided that it finds sufficient reasons and grounds to do so. Although such provision bars amnesty for crimes of rape, it still provides wide discretion and clear potential for amnesties for other crimes of sexual nature, including sexual torture that does not amount to rape. Additionally, the definition of rape enshrined in Nepal’s legislation is restrictive as will be discussed below in paragraphs 15 to 16. Hence, many cases of sexual torture would be considered to fall into categories of crimes for which amnesty can be granted.

12. On 15 July 2022, the Government of Nepal registered a Bill to amend the TRC Act after collaborating and consulting with civil society organizations at the initial stage of its drafting. However, when the draft was submitted to the Parliament, no victims’ group or civil society organization was informed about the exact contents of the amendment bill nor consulted for review and feedback before registering in Parliament. The draft submitted to the Parliament did not address the concerns of the victims and rather came as a (disappointing) surprise to them, somewhat frustrating the scope of the consultations conducted in the previous weeks. The bill could not pass through due to the dissolution of the Parliament in September 2022.

13. Subsequently, on 19 March 2023, a new draft amendment bill (hereafter, “TRC bill”) – similar to the one of 2022 – was registered in Parliament. In May 2023, an 11-member sub-committee of parliamentarians was formed to discuss the TRC bill. On 10 October 2023, the sub-committee submitted a report with its recommendations to the “Law, Justice, and Human Rights Committee” of the Parliament. The TRC bill was presumed to be discussed during the Parliament’s winter session that commenced on 5 February 2024. In a sudden change of events, in March 2024, the Prime Minister reshuffled the cabinet and formed a new alliance in the Government. This change hurdled the consideration of the

³¹ TRC Act, Sec 26 (2).

TRC bill in Parliament and, at the time of writing, it is not clear when the committee will resume discussion on the bill.³² The described situation only furthers victims' uncertainty, leaving them to cope with a flawed legal framework that hinders their chances to obtain justice and redress.

14. The TRC bill pending in Parliament contains some provisions that would advance the rights of victims of CRSV, such as the recognition of the right to reparations for victims of sexual violence,³³ the possibility of establishing a reparative fund,³⁴ and the possibility to register complaints of CRSV before the TRC. However, many provisions of the TRC bill remain at odds with international standards and require thorough discussion and effective amendment. For instance, Section 2 (4) of the TRC bill differentiates between 'human rights violations' and 'gross human rights violations.' The former includes 'sexual violence' and 'physical or mental torture', among others. The TRC bill empowers the commissions to provide amnesty for these violations.³⁵ The list of gross human rights violations for which amnesty is prohibited includes 'cruel and inhuman torture' and 'rape', among others. Such segregation does not seem to be justified. It showcases an erroneous understanding of the elements of crimes, including the prohibition of torture, ill-treatment, and sexual violence. Additionally, the TRC bill attempts to tackle the sentencing for serious human rights violations by referring to the "existing law." Yet, it falls short in specifying which existing law would apply, especially concerning sexual violence and other human rights violations. As the TRC bill currently stands, everyone, including those involved in the commission of gross violations of human rights, including sexual violence, is likely to enjoy *de facto* impunity.

³² The Kathmandu Post, 'Dahal and Deuba meet as conflict victims grow weary', Published on 29 March 2024, available at <https://kathmandupost.com/politics/2024/03/29/dahal-and-deuba-meet-as-conflict-victims-grow-weary>.

³³ See Amendment bill to TRC Act, March 2023, Section 10 (2).

³⁴ *Ibid*, Section 12.

³⁵ Bill on TRC Act (third amendment), Section 15.

ii. Flawed criminal legislation

15. On 17 August 2018, Nepal enforced a National Penal Code (hereinafter, “NPC”) that criminalizes and sanctions crimes of sexual nature as rape³⁶ and other sexual offenses.³⁷ However, there are no provisions in the NPC on sexual torture inflicted during armed conflict. Additionally, the definition of rape in the NPC is rather restrictive. For instance, the definition does not include males or LGBTIQ+ persons as potential victims of rape. Similarly, the NPC defines rape by referring to “the penetration of [the] penis, to any extent, into the anus, mouth or vagina, [and] [the] insertion of any object other than the penis into the vagina”.³⁸ The provision thus excludes the insertion of any object or parts of the body other than the penis into the anus, as well as other scenarios not encompassed by this limited definition. The NPC considers penetration an essential element of the crime of rape and non-physical forms of sexual violence are considered under sexual harassment. Additionally, the NPC envisages a term of two years of statute of limitation in cases of rape³⁹ and it does not contain any provisions whatsoever on the retrospective application for the violations that were perpetrated during the conflict. Notably, pursuant to the legislation in force during the conflict, a 35-day statute of limitation applied, which essentially doomed all attempts by victims of sexual torture to obtain justice and redress.⁴⁰

16. The TRC Act or the currently pending TRC bill do not have any provision on rape and sexual violence. If, in the future, the commissions apply the definitions enshrined in the NPC, all crimes of sexual torture inflicted during the armed conflict will most likely not fall under the definition of rape contained in the NPC, and perpetrators would be eligible for amnesty.

³⁶ National Penal Code 2018, Chapter on Rape, Section 219.

³⁷ *Ibid*, incest (Section 220); sexual intercourse with a detainee (Section 221); sexual intercourse with a person under one’s protection (Section 222); sexual intercourse with a person in office or receiving professional services (Section 223); sexual harassment (Section 224); child sexual abuse (Section 225); unnatural sexual intercourse (Section 226); bestiality (Section 227).

³⁸ *Ibid*, Sec 219.

³⁹ *Ibid*, Sec. 229 (2).

⁴⁰ Human Rights Committee (HRC), Case *Fulmati Nyaya v Nepal*, Views of 18 March 2019, para. 7.9.

iii. Non-implementation of international decisions

17. Four complaints concerning cases of sexual torture that occurred during the conflict in Nepal were lodged to, and adjudicated by, the UN Human Rights Committee (hereinafter, “HRC”).⁴¹ In all four cases, the HRC has established Nepal’s international responsibility and requested the State to conduct a thorough and effective investigation into the facts surrounding the events; prosecute, try and punish those responsible for the violations committed, and provide the victims with detailed information about the results of the investigation.⁴² However, none of these measures has been implemented so far and there has been no progress in the investigation of the underlying cases of CRSV, while perpetrators continue enjoying impunity. The failure to implement decisions rendered by international human rights mechanisms such as the HRC does not concern solely cases of sexual torture and it is mostly due to a combination of scarce political will and the absence of an effective procedure – and the corresponding institutional machinery – at the domestic level to ensure the enforcement of the measures indicated by international mechanisms.

b. Stalled transitional process

18. As discussed in previous paragraphs 5 to 6, transitional justice mechanisms were established nine years after the end of the conflict. Similarly, between 2015 to 2017, the TRC collected complaints through Local Peace Committees (hereafter, ‘LPCs’) formed at the local level.⁴³ One of the primary functions of the LPCs was to identify and register the complaints of conflict-affected persons. However, most of the victims of CRSV could not register their complaints. As narrated by the victims, some were told that the registration of a complaint on sexual violence required eyewitnesses; while others refrained from lodging a complaint due to the lack of victim protection mechanisms during the collection of the complaints. Overall, the stigmatization attached to cases of CRSV always

⁴¹ See HRC, Case *Fulmati Nyaya*, op. cit.; Case *Devi Maya Nepal v Nepal*, Views of 15 July 2021; Case *RR v Nepal*, Views of 14 March 2022; HRC, Case *Purna Maya Nepal v Nepal*, Views of 17 March 2017.

⁴² See Case *Fulmati Nyaya*, op. cit., para. 9; Case *Devi Maya Nepal v Nepal*, op. cit., para 9; Case *RR v Nepal*, op. cit., para. 9; Case *Purna Maya Nepal v Nepal*, op. cit., para. 14.

⁴³ Local quasi-representative bodies of the Ministry of Peace and Reconstruction established at the district and municipality level.

prevented the victims from registering complaints. Not only have the commissions failed to listen carefully to the stories of CRSV victims; but they have also failed to create a safe and amicable environment to collect information on sexual violence perpetrated during the conflict.

19. Even the few victims who have registered their complaints on CRSV before the TRC have never heard back on the status of their complaints and this has further nourished their marginalization and sense of abandonment.

c. Ambitious policies on women, peace and security

20. On 23 September 2022, the Government endorsed a National Action Plan (hereinafter, “NAP II”) on Security Council Resolutions No. 1325 and 1820. This was the second NAP after the implementation of the first NAP from February 2011 to February 2016 that did not bring any meaningful change in the lives of the victims and survivors of CRSV⁴⁴ and failed to recognize and act upon their concerns and needs.⁴⁵ NAP II was developed in consultation with various actors from 2020 onwards. It was adopted by the cabinet in August 2022, but its launch was delayed till May 2023, due to the elections and drawn-out negotiations on the formation of a new Government. NAP II officially covers the three years from April 2022 to April 2025. The Ministry of Home Affairs (hereinafter, “MOHA”) is the focal ministry on NAP II, which envisages the role of Government bodies at the federal, provincial, and local levels for its implementation.

21. NAP II recognizes four priority pillars: participation, protection and prevention, relief and recovery and capacity building, resource management, monitoring and evaluation. The provisions of NAP II address crisis services, shelters, safe houses for women and children who are victims of violence, which was otherwise lacking in the first NAP, as indicated by the Special Rapporteur on Violence against Women and Girls in her country

⁴⁴ Punam Yadav, '1325 – is that a taxi number? Implementation of the National Action Plan on 1325 and 1820 in Nepal', 3 May 2017, available at <https://blogs.lse.ac.uk/wps/2017/05/03/1325-is-that-a-taxi-number-implementation-of-the-national-action-plan-on-1325-and-1820-in-nepal-punam-yadav-42017/>.

⁴⁵ Special Rapporteur on Violence against Women and Girls, its Causes and Consequences, Report on country visit to Nepal, op. cit., para. 62.

visit report.⁴⁶ Indeed, NAP II seems an improvement compared to the previous one, as it envisages direct and meaningful participation of conflict-affected women in its formulation and implementation. However, NAP II does not contain any provision concerning the promotion of accountability for CRSV in the form of investigation, prosecution and sanction of perpetrators. Moreover, while covering the issue of legislative amendments, NAP II only refers to the amendment of the law to facilitate the process of the legal transfer, protection, and enjoyment of property of relatives of victims of enforced disappearance and does not include any plan to amend the existing legislation that poses obstacles to the investigation and prosecution of CRSV, such as the restrictive definition of rape and the applicable statutory limitations, as explained above in paragraphs 15 and 16.

c. Stigmatization of sexual violence

22. In her report on the visit to Nepal, the Special Rapporteur on Violence against Women and Girls confirmed the existence of deeply rooted gender stereotypes, which create a favorable environment for the commission of violence against women and the ensuing impunity. In her words, “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.⁴⁷ Many women were not able to communicate the sufferings of sexual violence even to their family members,⁴⁸ let alone report the events to the judicial/non-judicial authorities.⁴⁹ This, besides the already mentioned practical and legislative obstacles, also resulted in a very small number of complaints filed to the TRC as mentioned in paragraphs 8 and 18 to 19. Such a stigmatizing environment concretely hinders the investigation and prosecution of sexual torture and ill-treatment, all the more so if they are conflict-related.

⁴⁶ *Ibid.*, para. 21.

⁴⁷ Special Rapporteur on Violence against Women and Girls, *its Causes and Consequences, Report on Country Visit to Nepal*, UN Doc. A/HRC/41/42/Add.2 of 19 June 2019, para. 27.

⁴⁸ HRW, *Silenced and Forgotten: Survivors of Nepal’s Conflict-era Sexual Violence*, op. cit., p. 8.

⁴⁹ See, for instance, HRC, Case *Fulmati Nyaya v. Nepal*, op. cit., para 6.4; Case *Devi Maya Nepal v Nepal*, op. cit., para. 6.4.

Question II. Regulatory frameworks – civilian and military codes: Does the national legislative or regulatory framework account for sexual torture inflicted during armed conflict?

23. No. As mentioned in paragraph 10, although “rape and sexual violence” are mentioned as gross human rights violations in the TRC Act, there is no definition of the corresponding crimes. The definition of rape enshrined in the current NPC, as highlighted in paragraph 15, is restrictive and flawed, and it does not encompass sexual torture committed during the conflict. The NAP II defines sexual violence as: “all types of sexual violence against women and girls, including any act of rape during the conflict, attempted sexual intercourse, forced pregnancy and abortion, acts of being stripped or forced to be nude, human trafficking, forced marriage, acts against the sexuality of any person, the use of obscene language or sexual abuse.” The NAP II however does not envisage provisions on accountability for these crimes and would not be relevant for victims of CRSV who are not female, thus excluding a significant number of persons. Moreover, as mentioned above, in its current format, the pending TRC bill does not contain provisions that would ensure the effective investigation and prosecution of conflict-related sexual torture.

Sub-questions:

- How is torture of a sexual nature (and related forms of cruel, inhuman or degrading treatment or punishment, as applicable) prohibited and criminalized in national legislation? Please refer to both general criminal code, as well as any applicable military laws.

24. The NPC and TRC Act are the most relevant laws on torture of a sexual nature. Kindly refer to paragraphs 15 and 16 to find an analysis of the relevant provisions and the corresponding flaws. Additionally, the provisions on torture are also incorporated under “Chapter 10- offences relating to discrimination and other degrading treatment” in the NPC and Compensation Relating to Torture Act 1996. However, neither explicitly refers to, or regulates, sexual torture.

- Is “sexual torture” defined explicitly in national law? If so, is it a separate offence, or has your national law defined ‘discrimination’ as contained in the definition of torture in Article 1 of the UN Convention against Torture?

25.No. National law does not explicitly define “sexual torture”. There are decisions by the UN HRC that have defined Nepal’s CRSV as a form of torture⁵⁰ and requested Nepal to bring domestic provisions on rape in line with international standards.⁵¹ However, such amendments have not yet been made. The only definition of torture under national law is provided under the NPC. However, the definition does not include ‘discrimination’⁵² as a reason for which torture may be committed, as contained in the UN Convention against Torture.

- If there is no explicit crime of sexual torture, does the general crime of torture include the sexualized nature of the torture as an aggravating factor that may increase any criminal penalties? Does the law incorporate any other approaches that specifically address the sexualized nature of the crime?

26.No. There are no national provisions on torture that consider sexualized torture as an aggravating factor. However, Section 38 (u) of the NPC determines that, if any offence committed was a crime against humanity, it will be deemed an aggravating circumstance of that crime. However, the NPC does not provide any further details and it is unclear if rape can be considered a crime against humanity, provided that international standards are fulfilled. Additionally, crime against humanity and war crimes are not defined under Nepali legislation.

⁵⁰ See. for instance, HRC, Case *Fulmati Nyaya, v Nepal*, op. cit., para. 7.2; Case *Devi Maya Nepal v Nepal*, op. cit., para. 7.3.

⁵¹ Case *Fulmati Nyaya v Nepal*, op. cit., para. 9.; Case *Devi Maya Nepal v Nepal*, op. cit., para. 9.

⁵² NPC, Sec 167 (2) defines torture as Intentional inflicting of physical or mental pain or suffering on any person who is arrested, taken into control, held in custody, detention or imprisonment or under preventive detention or security or any other person interested in such person or subjecting such person to cruel, brutal, inhuman or degrading treatment or punishment for the following purpose shall be considered to constitute torture or cruel, brutal, inhuman or degrading treatment or punishment against or to such person: (a) To get information on any matter, (b) To extort confession of any offence, (c) To punish for any act, (d) To show fear, intimidation or coercion, or (e) To do any other act contrary to law.

- Please provide examples (and copies) of national laws, or leading judgments, that criminalize sexual torture (and related forms of cruel, inhuman or degrading treatment or punishment, as applicable), and the penalties applied.

27. Sexual torture is not criminalized in Nepal.

Question III. Victim participation and protection during investigation and prosecution: What special arrangements (procedures, standards, protocols, good practices) and protections are available for victims of sexual torture and related ill-treatment in armed conflicts? Are there any consultation and/or discussion platforms to enable victims and survivors of sexual torture crimes committed in armed conflicts to actively participate in the design, implementation and evaluation of the legal and/or administrative processes specifically established for justice and reparations of such crimes?

28. As described in paragraphs 8 and 18 to 19, only a small portion of CRSV cases have been registered as complaints before the TRC. Victims were often afraid to do so for fear of repercussions⁵³ and no special arrangements to guarantee their safety were made. In general, and not only related to CRSV, the Supreme Court of Nepal (hereinafter, “SC”) has developed a sound case law protecting victims’ right to privacy such as in *Sapana Pradhan Malla vs. Nepal Government*,⁵⁴ where the SC developed the Procedural Guidelines for Protecting the Privacy of the Parties in the Proceedings of Special type of Cases, 2007 (2064 B.S.) which protect victims’ identities, including of victims of sexual violence,⁵⁵ and foresee the sealing of the victim’s personal information, such as name, address, family title.⁵⁶ The SC Rules guarantee closed camera hearings⁵⁷ for victims of

⁵³ Special Rapporteur on Violence against Women and Girls, its Causes and Consequences, Report on country visit to Nepal, op. cit., para. 58.

⁵⁴ Supreme Court, *Sapana Pradhan Malla vs. Nepal Government*, NKP 2064, Decision No. 7880, 25 December 2007 (10.09.2064), para. 15.

⁵⁵ The Procedural Guidelines for Protecting the Privacy of the Parties in the Proceedings of Special type of Cases, 2064(2007), Section 2(1).

⁵⁶ *Ibid*, Section 3.

⁵⁷ National Criminal Procedural Code Regulation, 2019 (2075), Rule 63; Supreme Court Regulation, 1992 (2049), Rule 67(a); Supreme Court Regulation, 2017 (2074), Rule 81(1). Closed camera hearing means case hearing in the court where only the concerned parties to the case are allowed in the room such as – respective legal

sexual violence. The Crime Victim Protection Act, 2018 (2075 B.S.) bars anyone to disclose the victim's identity in cases of rape and sexual harassment, among others, in the course of the investigation, inquiry, prosecution and court proceedings.⁵⁸ However, in the writ petition on the issue of CRSV, the victims share their personal information that identifies the victim's name and address,⁵⁹ as prescribed under the SC Regulations, 2017 (2074 B.S.).⁶⁰ For instance, in the case of *AC vs. Nepal Government, Ministry of Home Affairs, and others*, the petitioner's details, such as her name and address were included in the final decision of the SC.⁶¹ The victim's right to protect her identity was here compromised despite the existing legal guarantees on the right to privacy.

29. To implement the NAP II, a coalition of NGOs and victims' associations, led by the Conflict Victims Women's Network (hereinafter. "CVWN"), is working with Government representatives, and, in particular, the MOHA. The coalition (also called "Victim and Civil Society for Women, Peace and Security" - hereinafter, "VCS for WPS"), has underscored the importance of guidelines and protocols to document and investigate the crimes of sexual torture in various informal meetings. However, it is often faced with challenges such as a lack of funding and international expertise to tailor a practical protocol in line with international standards.

IV. Evidence collection and documentation pursuant to the Istanbul Protocol: What are the practical, logistical, or other challenges in evidence collection of sexual torture in armed conflict? What good practices are used to address such challenges?

30. The challenges are explained in paragraphs 9 to 22 above. A good practice to address such challenges can be the participation and leadership of women victims' groups (not only victims of CRSV) in the implementation of the NAP II. While the implementation of NAP II is full of challenges and requires meticulous protocols and expertise for future case

representatives of each parties, victim, defendant, guardians (where applicable) and court officials and police provided with the permission of court to be at the hearing.

⁵⁸ Crime Victim Protection Act, 2018 A.D. (2075 B.S.), Section 6(f).

⁵⁹ Supreme Court, *AC vs. Nepal Government, Ministry of Home Affairs and others*, op. cit., paras. 1 and 2

⁶⁰ Supreme Court Regulations, 2017 A.D. (2074 B.S.), Section 13 (3) lay down that document filed in the Supreme Court must include name, phone number and other credentials to identify the applicant and the defendant.

⁶¹ Supreme Court, *AC vs. Nepal Government, Ministry of Home Affairs and others*, op. cit., paras. 1 and 2.

documentation, the inclusion of women victims of conflict is a progress. Similarly, NAP II includes operating local structures at the grassroots level. Central to this is the establishment of a five-member sub-committee that will be responsible for identifying the overall needs of conflict-affected women and girls. The sub-committee will include a deputy mayor in a municipality, a deputy chairperson in a rural municipality or a female member of the executive committee, two conflict-affected women (representing both sides of the conflict) and women's development officer. Such local bodies hold immense promise as reliable mechanisms for identifying and addressing the plights of victims, leveraging their proximity to the affected community.

31. Additionally, Istanbul Protocol is not implemented in Nepal so far. As described in paragraph 30 above, there is a possibility to document cases of sexual torture in the future, based on NAP II. However, it is not certain if international protocols like the Istanbul Protocol will be utilized as tools to document these cases and it is not currently explicitly foreseen in the legislation.

- Please provide examples of the specialized policies, protocols and practices used to identify, document and secure evidence collection in respect of crimes of sexual torture in armed conflict and related ill-treatment and the damages caused to individuals, families, and communities. Please provide information on any specialist skills sets or interviewing techniques applied.

32. At present, there are no specialized policies, protocols and practices to identify, document and secure evidence collection in respect of crimes of sexual torture in armed conflict and related ill-treatment. In the past, when the TRC collected complaints of CRSV, as illustrated in paragraph 8 above, some victims reported that they were told by TRC staff that the registration of a complaint of sexual violence required eyewitnesses as

evidence.⁶² The staff clearly were not trained and had no tools or protocols to conduct interviews with the victims or register the complaints.

33. Many CRSV victims refrained from lodging a complaint due to the lack of victim protection mechanisms during the collection of the complaints.⁶³ Overall, the stigmatization attached to cases of CRSV always prevented the victims from registering complaints.

- Has your country recognised the Istanbul Protocol? Have your authorities identified any specific challenges with applying the Istanbul Protocol to victims and survivors of sexual torture or related ill-treatment? What are some of their best practices in implementing the Istanbul Protocol to victims and survivors of sexual torture?

34. A few civil society organizations have translated, and disseminated international protocols to document gross human rights violations, like the Istanbul Protocol and the Minnesota Protocol, and held consultations and training programs in the past. However, the reach of such dissemination is limited. Some organisations also believe that international protocols (such as the Istanbul Protocol) remain a framework for documenting cases, although not all the details of the protocol can be followed due to lack of time and resources.⁶⁴ The Government has not officially translated or used the Istanbul Protocol.

35. The National Judicial Academy, as an autonomous governmental body, conducts training to judges, Government attorneys, Government legal officers, judicial officers, private law practitioners, and others who are directly involved in the administration of

⁶² Human Rights and Justice Centre, *Judicial Perspective on Cases of Conflict-Related Sexual Violence: A Study of the Case Laws of the Supreme Court of Nepal*, 2023, p. 13, available at https://hrjc.org.np/wp-content/uploads/2023/05/CRSV-Report_HRJC_March-2023.pdf.

⁶³ See, for instance, HRC, *Case Fulmati Nyaya v Nepal*, op. cit., para. 6.4; and *Case Devi Maya Nepal v Nepal*, op. cit., para. 6.4.

⁶⁴ Tobias Kelly et al, 'A comparative study of the use of the Istanbul Protocol amongst civil society organizations in low-income countries', 2016, *Torture: quarterly journal on rehabilitation of torture victims and prevention of torture*, vol. 26, no. 3, p. 67.

justice in Nepal. The sessions for newly appointed District Court Judges, High Court Judges, and legal officers include the subject of “forensic science and autopsy”. However, the sessions are limited to theoretical aspects⁶⁵ and do not cover international practical tools such as the Istanbul Protocol. In the absence of standard reference materials, it is doubtful that the Protocol is discussed during any of such sessions.

36. The Human Rights Section of the NP maintains that officials are trained on the subjects of human rights and the use of force, among others. However, the contents of such trainings are not publicly available. Similarly, in 2018, the APF, in joint efforts with the Danish Institute for Human Rights; the National Human Rights Commission (hereinafter, “NHRC”) of Nepal, and the Kathmandu School of Law, developed a “Training Manual on Human Rights, Guidelines for Armed Police Force, Nepal Personnel”. The document refers to international treaties, Declarations, and Principles, which, however, are only concisely mentioned, thus resulting in an inadequate coverage of the real scenarios of gross human rights violations, including rape and sexual torture. Moreover, the Training Manual does not mention anywhere the Istanbul Protocol.

V. Rehabilitation: What specialist rehabilitation approaches and services are provided to victims, witnesses, families, and communities that have been impacted by sexual torture and related ill-treatment in armed conflict? How do these differ from other rehabilitation support provided to victims of torture? How do they differ from rehabilitation provided in non-armed conflict situations? How should the nature or process of rehabilitation be tailored to different groups of victims (e.g. take into account intersecting characteristics as sex/gender, age, other health circumstances, civilian versus military victims, etc.), or the types of sexual torture suffered during armed conflict? How do these relate to the provision of other forms of reparation (compensation, restitution, satisfaction, and non-repetition)?

⁶⁵ The sessions to District Court Judges include topics as Definition of Death, Death Declaration, Death Certification, Cause of Death, Mechanism of Death, Modes of Death, and Manner of Death; The Session to Legal Officers include topics as Examination of a dead body, the procedure to collect evidence of a dead body, issues to be incorporated in death body examination report, vocabulary used in the death body examination report and their meaning, causes of death. The sessions to High Court Judges include topics as: Use of Forensic Science in criminal justice system and autopsy and other physical injuries.

37. The following paragraphs aim at answering the question by analysing different relevant pieces of legislation and whether they deal with rehabilitation in line with international standards. The Compensation Relating to Torture Act 1996 (hereinafter, “CRTA”) treats complaints of torture as civil complaints and provides no room for investigation or prosecution of the crime. Under the CRTA, victims of torture are provided with compensation determined based on the physical or mental pain or suffering caused to the victim and its gravity; depreciation in income earning capability of the victim as a result of torture; in case the physical or mental damage caused which cannot be treated, the victim’s age and responsibility towards the family; and estimated expenses required for treatment if the damage can be treated.⁶⁶ The CRTA was also applicable at the time of the conflict and granted compensation to victims of torture perpetrated in a place of detention.⁶⁷ Such a restriction on the place where torture could take place would lead to the exclusion of some of the CRSV victims in Nepal. Additionally, the CRTA envisioned a 35-day statute of limitation to register the complaints,⁶⁸ which concretely prevented the victims of sexual torture from accessing justice avenues, as discussed in the paragraphs above; and does not fulfil the State’s obligation to provide the victims with any other reparative measures, such as rehabilitation.

38. Additionally, in 2008, the Government introduced an Interim Relief Program (hereinafter, “IRP”) to provide compensation to the families of victims of the conflict. However, the program excluded victims of both torture and CRSV. Such exclusion has contributed to significant health problems, both physical and psychological, for the CRSV victims and they continue to live in these circumstances.⁶⁹

⁶⁶ Compensation Relating to Torture Act 1996, Section 8.

⁶⁷ *Ibid.*, Preamble & Sec. 3.

⁶⁸ *Ibid.*, Sec 5 (1) A victim may, within 35 days from the date of inflicting torture upon him/her or of his/her release from detention, file with the District Court of the District, where he/she has been detained, a complaint making a claim for compensation.

⁶⁹ Special Rapporteur on Violence against Women and Girls, its Causes and Consequences, Report on Country Visit to Nepal, op. cit., para 61.

39. The TRC Act defines reparation as “compensation, facilities, or concessions to be provided to the victims.”⁷⁰ The definition does not encompass other pillars of reparations, including rehabilitation. The TRC Act also provides the TRC with the competence to offer recommendations for reparations to victims or their families⁷¹ and provide them with information following the conclusion of investigations.⁷² The TRC Act states that, after the completion of the investigation, the TRC shall make recommendations to the Government for rehabilitation. However, the absence of the definition of rehabilitation, the incomplete definition of reparations and the ambiguity in defining sexual violence reflect that the Government lacked a clear strategy for rehabilitation for the CRSV victims.

40. Additionally, the TRC Act defines ‘victim’ as the person who died or suffered harm in the form of physical, mental or sexual violation or incurred financial loss and damage or detainee and his/her family as a result of the gross violation of human rights in the course of the armed conflict, and this term also includes the community which sustained severe adverse impact humanitarially, socially or communally as a result of the gross violation of human rights.⁷³ In order to acknowledge all victims of sexual torture during the conflict, the definition needs to be broadened, so as to include those suffering, regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.⁷⁴

41. In general, Nepal’s legislative framework on crimes does not include the concept of ‘reparation’. For instance, the Crime Victim Protection Act, 2018 A.D. (2075 B.S)⁷⁵ establishes victims’ right to compensation and social rehabilitation.⁷⁶ However, it lacks a concrete definition of what amounts to social rehabilitation. Further, the Act establishes that victims may have access to interim relief and the amount concerned should be

⁷⁰ TRC Act, Section 2 (e).

⁷¹ *Ibid*, Section 13 (d).

⁷² *Ibid*, Section 13 (f).

⁷³ *Ibid*, Section 2 (h).

⁷⁴ Advocacy Forum, Policy Recommendations on the Reparative Rights of Victims, June 2022, p. 8.

⁷⁵ The Crime Victim Protection Act, 2018 A.D. (2075 B.S).

⁷⁶ *Ibid*, Section 19.

provided through the Victims' Trust Fund.⁷⁷ In case the accused is convicted of the offence upon judgment by a court, the latter shall order him or her to pay the amount of compensation or relief that had been provided from the Fund within 35 days from the date on which the judgment was adopted.⁷⁸ If such amount cannot be paid by the offender, it will be recovered from any assets belonging to the offender, within 60 days from the date on which the judgment was issued.⁷⁹ The provision does not adequately reflect the difference between interim relief (meant to provide support vis-à-vis the victim's immediate needs) and compensation (meant to redress the harm suffered by the victim).

42. The NAP II envisages “the work of rehabilitating conflict-affected women and girls in the family or society, enabling them to use opportunities available and advocate for their rights”.⁸⁰ The problem with this definition is the grouping of rehabilitation and reintegration without clear criteria. Additionally, the scope and definition of rehabilitation of both national action plans does not include CRSV-affected men, male children, and members of the LGBTIQ+ community, thereby hindering their access to the rehabilitation schemes provided by both national action plans. NAP II envisions livelihood and empowerment programs for long-term rehabilitation. These programs include providing employment opportunities and necessary skills training, self-employment and skills training programs, psychosocial counselling, analysis of market potential, social rehabilitation, family reunification, and social rehabilitation for women and girls survivors of conflict-related sexual violence.

43. The implementation of NAP II concerning rehabilitation is challenging. Even after one year and six months since the NAP II's launch, there has been insufficient progress in identifying victims and providing them with rehabilitation services by the Government. Although VCS for WPS aims to offer limited rehabilitation services to victims, such

⁷⁷ *Ibid*, Section 29 (2). The Victims' Trust Fund has been established under the competence of the Supreme Court of Nepal and the government of Nepal has allocated a budget to ensure its functioning. However, in practice, although the application of the relevant provisions has already been invoked in court, this is very recent, and the pertinent decisions rendered by District Courts are yet to reach the implementation phase.

⁷⁸ *Ibid*, Section 29 (3).

⁷⁹ *Ibid*, Section 29 (4).

⁸⁰ Second NAP on UN Security Council Resolutions No. 1325 and 1820, 2022 A.D. (NAP II).

resources can be insufficient. Concerningly, persistent challenges such as lack of prioritization by the bilateral donors on NAP II; limited time frame; and lack of coordination issues among CSOs continue to hinder their efforts.⁸¹

44. The NAP II considers rehabilitation as one of the forms of “relief and recovery” outlined as one of its objectives. However, the exclusion of males and gender minorities impedes its proper implementation, exacerbating their challenges in seeking help due to the fear of social repercussions. Besides, it is also important that the program acknowledges the vulnerabilities of victims belonging to marginalized communities, as they face compound challenges due to their status in their communities. While most CRSV victims are adults or older adults, many were children when the violence occurred and are now adults dealing with trauma, who need reintegrative support to help them establish themselves within their communities. Older adults, having endured lifelong trauma, face numerous specific health challenges as a result.

45. As discussed several paragraphs above, the HRC requested Nepal to provide rehabilitation to the victims in the four CRSV cases it has adjudicated so far. However, the recommendations, including measures of reparation such as rehabilitation remain unimplemented and the efforts of coordinating with the Government agencies on implementation have so far not been successful. For instance, the Government has established “One-stop Crisis Management Centres” (hereinafter, “OCMC”) as service hubs for CRSV victims, also as indicated by NAP II. However, the Government still needs to enhance the capacity of the staff at these centres across all provinces.⁸² Based on past experiences of civil society organizations, OCMC staff frequently lacks specific training to

⁸¹ Advocacy Forum, Briefing on the Implementation of National Action Plan II for the Implementation of UN Security Council Resolutions 1325 and 1820 on Women, Peace and Security, December 2023, available at <https://www.advocacyforum.org/downloads/pdf/publications/tj/briefing-on-the-implementation-of-national-action-plan-II.pdf>.

⁸² See Review of the scale-up, functionality and utilization, including barriers to access, of One Stop Crisis Management Centres, Ministry of Health and Population, 2020 A.D., p. 5, available at <https://www.nhssp.org.np/Resources/GESI/Scaling%20Up%20OCMCs%20-%20April%202020.pdf>.

effectively address the needs of CRSV victims and survivors, despite being outlined in the OCMC guidelines.⁸³

46. Similarly, the Government has a programme to support the targeted group of patients with access to free health services under the Social Service Unit (hereinafter, "SSU"), a unit within each hospital in the districts of Nepal. The unit is guided by the "Social Service Unit Establishment and Operation Guideline, 2022". Under its targeted beneficiaries, it is mentioned that the program will provide treatment to the detained individuals brought by the police who are ill.⁸⁴ However, it does not make specific reference to torture or sexual torture victims among the targeted groups of beneficiaries. This precludes their access to the service provided by the SSU.⁸⁵ The exclusion from specified beneficiaries to access SSU services could result in denial of essential medical care, violating the fundamental human rights of victims of sexual torture and undermining rehabilitation efforts. All these elements ultimately hinder their right to health and freedom from torture, rehabilitation, recovery and reintegrating into society. Moreover, the units have an allocated budget from the Government, which is insufficient most of the times.⁸⁶ Also, it has been found that not all staff of the units in the districts are aware and trained to assist victims of gross human rights violations and, in particular, of sexual torture.⁸⁷

⁸³ Hospital Based One-Stop Crisis Management Center (Establishment and Operational) Manual, 2020 A.D. (2078 B.S), Section 1, target group under point 1.7.

⁸⁴ Social Service Unit under the Social Service Unit (Establishment and Operation) Manual, 2022, Section 19 (11).

⁸⁵ *Ibid.*

⁸⁶ In general, Nepal's public health sector does not have an adequate budget. Due to this, Social Service Unit have a direct impact in providing health services to its beneficiaries. *Massive health budget cuts loom, all programs to be affected*, in *The Kathmandu Post*, 11 April 2023, available at <https://kathmandupost.com/health/2023/04/11/massive-health-budget-cuts-loom-all-programmes-to-be-affected>. Furthermore, in the previous meeting held by representatives of the HRJC on 4 June 2023 with the officials of Social Service Unit based in Nepalgunj, Banke district, Nepal, they also mentioned the budget restrictions and budget shortage.

⁸⁷ In the meeting held by representatives of the Human Rights and Justice Centre on 4 June 2023 with the doctor responsible for reviewing medico-legal documentation at Seti Hospital, it was referred that not everyone possesses the technical knowledge and skills required to recognize signs of torture. Without the recognition of these signs, it would be challenging to comprehend the gravity of the violations at stake. Additionally, Dr. Harihar Wasti, a forensic expert, pointed out that medico-legal reports frequently lack quality or are entirely absent due to institutional issues. He also highlighted how the lack of political commitment has hindered efforts to increase the number of trained forensic experts in hospitals, leading to an overall shortage of medico-legal training for

Information about the submitting organization

Human Rights and Justice Centre (HRJC) is a non-governmental organization, which improves access to justice for victims of serious human rights violations in Nepal, such as torture, enforced disappearances, extrajudicial executions, and conflict-related sexual violence. Registered in Nepal in 2016 December and based in Lalitpur, it was founded with the support of TRIAL International, a Geneva-based NGO specializing in seeking justice for survivors of mass atrocities.

Conflict Victim Women National Network (CVWN) was registered in 2020 by a group of conflict-affected women during armed conflict. CVWN is a non-profit governmental organization (NGO). CVWN was formed to protect the rights of conflict victim women and create a safe and dignified space for women victims. CVWN addresses special needs and justice issues of conflict-affected women, resulting in the discourse of peacebuilding transitional justice and lobbying.

medical professionals. Rise of Torture, Advocacy Forum, 26 June 2018, available at <https://www.advocacyforum.org/downloads/pdf/publications/torture/june-2019-report.pdf>.