

**POLICY BRIEF**

# Ending Impunity for Child Marriage in Nepal

A REVIEW OF NORMATIVE AND IMPLEMENTATION GAPS



## MISSION AND VISION

**The Center for Reproductive Rights** uses the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to protect, respect, and fulfill.

Reproductive freedom lies at the heart of the promise of human dignity, self-determination, and equality embodied in both the U.S. Constitution and the Universal Declaration of Human Rights. The Center works toward the time when that promise is enshrined in law in the United States and throughout the world. We envision a world where every woman is free to decide whether and when to have children; where every woman has access to the best reproductive healthcare available; where every woman can exercise her choices without coercion or discrimination. More simply put, we envision a world where every woman participates with full dignity as an equal member of society.

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A REVIEW OF NORMATIVE AND IMPLEMENTATION GAPS

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# GLOSSARY

<b>ADOLESCENTS</b>	People between the ages of 10 and 19
<b>ANNULMENT</b>	When a marriage is terminated and treated legally as though it never occurred.
<b>B.S.</b>	Bikram Samvat, Nepali calendar year
<b>CCWB</b>	Central Children Welfare Board
<b>CEDAW COMMITTEE</b>	Committee on the Elimination of Discrimination against Women: The United Nations body charged with interpreting and monitoring states parties' implementation of the Convention on the Elimination of all Forms of Discrimination against Women.
<b>CHILD MARRIAGE</b>	A legal or customary union between two people, in which one or both spouses are below the age of 18. In the Nepalese context, given that the legal age of marriage is 20 years for both parties to the marriage, for the purposes of this publication, child marriage is referred to as marriage below the age of 20.
<b>CRC</b>	Committee on the Rights of the Child: The United Nations body charged with interpreting and monitoring states parties' implementation of the Convention on the Rights of the Child.
<b>DIVORCE</b>	The termination of a marriage through legal action, requiring a petition or complaint by one or both parties.
<b>DOWRY</b>	Property or money brought by a bride to her husband on their marriage.
<b>ESCR COMMITTEE</b>	Committee on Economic, Social and Cultural Rights: The United Nations body charged with interpreting and monitoring states parties' implementation of the International Covenant on Economic, Social and Cultural Rights.
<b>FIR</b>	First Information Report. An official written document prepared by the police when they receive information about the commission of a cognizable offense.
<b>GENDER BASED VIOLENCE</b>	Violence that targets women or affects women disproportionality. This includes acts that inflict physical, mental, or sexual harm.
<b>HIV</b>	Human immunodeficiency virus

<b>HRC</b>	Human Rights Committee: The United Nations body charged with interpreting and monitoring states parties' implementation of the International Covenant on Civil and Political Rights.
<b>KCA</b>	Kathmandu Call for Action to End Child Marriage in South Asia
<b>LAKH</b>	One hundred thousand
<b>MATERNAL MORBIDITY</b>	Illness or disability in women caused directly or indirectly by factors relating to pregnancy, childbirth, or the puerperal (post-delivery) period.
<b>MATERNAL MORTALITY</b>	Deaths of women caused directly or indirectly by factors relating to pregnancy, childbirth, or the puerperal (post-delivery) period.
<b>MoWCSW</b>	Ministry of Women, Children and Social Welfare
<b>MULUKI AIN</b>	Nepali legal code that includes substantive legal provisions and administrative procedures for civil and criminal matters, including marriage and family law.
<b>NDHS</b>	National Demographic Health Survey
<b>NHRC</b>	National Human Rights Commission
<b>NHRI</b>	National Human Rights Institutions: Administrative bodies separate from the government established either in national constitutions or through human rights legislation to monitor human rights at the national level.
<b>NWC</b>	National Women Commission
<b>PREROGATIVE WRIT</b>	A writ issued by a court in special circumstances.
<b>PIL</b>	Public interest litigation: Litigation brought for the protection of the interest of the public.
<b>NEPALI RUPEES</b>	Currency of Nepal
<b>SAARC</b>	South Asian Association for Regional Cooperation
<b>SDGs</b>	Sustainable Development Goals

<b>TERAI REGION</b>	Plain areas of Nepal that lie in the South of the country adjoining India.
<b>UNFPA</b>	United Nations Population Fund
<b>U.N. TMB</b>	United Nations treaty monitoring body
<b>UPR</b>	Universal Periodic Report
<b>USD</b>	United States Dollar
<b>VOID MARRIAGE</b>	The term given to a marriage with no legal validity because it is prohibited by law.
<b>VOIDABLE MARRIAGE</b>	Marriage with legal force and effects that can later be annulled by a court through a recession process.

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## SECTION I: OVERVIEW OF CHILD MARRIAGE IN NEPAL

Child marriage, though a criminal offense,<sup>1</sup> has been practiced for generations in Nepal.<sup>2</sup> Globally, Nepal has one of the highest rates of child marriage: 37% of Nepali women ages 20-24 years were first married by age 18, and 10% were married by age 15.<sup>3</sup> According to Nepal's 2011 national census, of the married women who were surveyed, approximately 75% were married before their 20th birthday, and over 100,000 girls were given away in marriage before the age of 10.<sup>4</sup> The prevalence of child marriage in Nepal varies by sex, with far more women being married as children than men,<sup>5</sup> and by geographic location, with a significantly higher prevalence in rural areas.<sup>6</sup> Additional variations are found based on region,<sup>7</sup> education levels,<sup>8</sup> household wealth,<sup>9</sup> and caste and ethnicity.<sup>10</sup>

### Factors Contributing to Child Marriage

A wide range of factors place girls at risk of child marriage, including the persistence of gender inequality and social norms that value women less and consider them to belong to their husband's family, the ineffective implementation of existing legal provisions prohibiting child marriage, and barriers in accessing legal remedies.<sup>11</sup> The most common reasons for marriage under age 18 are social pressure, culture, and because, "it is normal—everyone does it."<sup>12</sup>

The majority of adolescent girls married before age 20 have reported the leading causes of child marriage to be parental pressure and "traditional practices."<sup>13</sup> Parents' decisions to marry their daughters at an early age are often driven by stereotypical views of female sexuality and women's role in society.<sup>14</sup> Marriage is viewed as a means to protect girls from sexual violence, prevent premarital sexual relations, ward off any perceived dishonor to the family that may be caused by inter-caste marriage, and restore a sense of family honor in cases of sexual violence.<sup>15</sup> Parents often arrange child marriages with the intention of reducing the financial burden on the family as lower dowry is expected for younger brides, particularly in communities living in the Terai region.<sup>16</sup>

Furthermore, Nepal had a widely reported increase in the incidence of child marriage after the 2015 earthquakes.<sup>17</sup> Marrying off girls in the wake of a natural disaster represents a coping mechanism that is perceived to reduce families' economic burden and protect girls from any risk of sexual violence caused by societal instability and devastation.<sup>18</sup>

### Continuum of Reproductive Health Harms Suffered by Women and Girls as a Result of Child Marriage

Child marriage affects both boys and the girls, however, it disproportionately affects girls' ability to enjoy their rights and freedoms, especially due to the serious risks of sexual and reproductive harms associated with this practice. Child marriage triggers a continuum of reproductive and sexual harms and violations by exposing girls to forced initiation into sex and unprotected sex, as well as early, unplanned, and frequent pregnancies. Women and girls subject to child marriage are likely to face slavery-like practices such as servile marriage, sexual slavery, child servitude, child trafficking, and forced labor.<sup>19</sup> According to the Nepal Demographic Health Survey (NDHS), 47% of women who first had sex before

age 15 and 29% of women who first had sex between ages 15-19 have stated that their initial experience was forced and against their will, and a majority of these cases occurred within marriage.<sup>20</sup> While rates of sexual violence among married adolescents are high throughout Nepal, they also vary by region, with the Terai region experiencing significantly higher rates than the Mid and Far Western regions. A study reveals that 37% of currently married girls ages 15 to 19 in the Terai region have experienced sexual violence, and 19% of them have experienced other forms of physical violence.<sup>21</sup>

Women and girls married as children are often denied educational<sup>22</sup> and employment opportunities, which undermines their self-development and negatively impacts their lives, leaving them economically dependent, vulnerable, and disempowered.<sup>23</sup> The harmful consequences of child marriage are exacerbated by married girls' lack of access to reproductive health information and services, including contraception<sup>24</sup> and safe abortion services.<sup>25</sup> Patriarchal norms and unequal power dynamics further limit their ability to negotiate safe sex and contraceptive use. The compromised ability to determine the number and spacing of their children places them at a heightened risk of early and frequent pregnancies,<sup>26</sup> resulting in high rates of maternal mortality<sup>27</sup> and morbidity,<sup>28</sup> and increases their exposure to sexually transmitted infections such as HIV.<sup>29</sup>

## Purpose of the Policy Brief

The purpose of *Ending Impunity for Child Marriage in Nepal: A Review of Normative and Implementation Gaps* is to identify and inform policy makers, law enforcement officials, and human rights defenders, of the key legal gaps and inconsistencies that have undermined efforts to address child marriage in Nepal, particularly in light of the constitutional guarantees, national laws, and international human rights standards. This assessment highlights multiple challenges faced in the implementation of the existing affirmative laws and makes linkages to other causes of systemic discrimination in law and practice that contribute to impunity. It puts forward a set of concrete recommendations for addressing the gaps and challenges in order to promote access to justice for the victims of child marriage. This report uses a broad definition of access to justice that includes “access by people, in particular from poor and disadvantaged groups, to fair, effective, and accountable mechanisms for the protection of rights, control of abuse of power, and resolution of conflicts. This includes the ability of people to seek and obtain a remedy through justice systems.”<sup>30</sup>

Relevant provisions of draft bills currently under consideration of the Parliament have also been reviewed to recommend necessary revisions. However, the study does not examine issues pertaining to cross-border child marriages or self-initiated marriages.

## Methodology

The research for the policy brief was supported by JuRI-Nepal, who organized a series of nine consultations and a validation workshop with relevant stakeholders. Among these, three preliminary consultations with representatives from government and non-governmental agencies, police, attorney general offices, women and children development offices, national human rights institutions (NHRIs), central child welfare board (CCWB), bar associations, and others were held in Kathmandu on September 11 and November 5, 2015, and February 28, 2016. Six district-level consultation meetings were organized with district-level law enforcement officials and relevant

district-level stakeholders between February 26 to March 6, 2016 (Siraha, Feb 26; Sunsari, Feb 29; Kapilvastu, Feb 28; Ramechhap, March 1; Sindhupalchowk, March 3; and Dolakha, March 6).

In the course of finalizing the policy brief, the research findings and draft recommendations were discussed with representatives from government and non-governmental agencies, NHRIs, civil society, and relevant stakeholders in a validation workshop convened in Kathmandu on May 30, 2016. Altogether, 208 representatives from the government, national and district-level institutions, civil society organizations, and the legal community, participated in these consultative processes. Prior to the finalization of the policy brief, drafts of the findings, analysis and recommendations were reviewed by two legal experts.

## SECTION II: CURRENT LEGAL FRAMEWORK ON CHILD MARRIAGE

### National Legal Framework

The **Constitution of Nepal, 2015** (the Constitution), for the first time, explicitly prohibits child marriage<sup>31</sup> as a punishable offense and establishes victims' right to compensation for violations from perpetrators.<sup>32</sup> The Constitution also specifically recognizes women's right to be free from all forms of violence<sup>33</sup> and guarantees reproductive health rights as fundamental rights.<sup>34</sup> Other guarantees against child marriage, which is also a form of gender-based discrimination and violence, include the right to equality and nondiscrimination,<sup>35</sup> the right to live with dignity,<sup>36</sup> and the right to protection from exploitation.<sup>37</sup> The Constitution also protects children from child marriage by guaranteeing their right to identity and birth registration; right to education and health care; right to protection from hazardous work; and protection from neglect, immoral use, or any form of physical, mental, or sexual abuse or exploitation in the name of religious or cultural practices.<sup>38</sup> The Constitution provides judicial and non-judicial remedies through prerogative writs and public interest litigation to obtain redress for violations of these fundamental rights.<sup>39</sup>

The 2002 Eleventh Amendment to the **Muluki Ain** sets the legal age of marriage as 20 years for both men and women.<sup>40</sup> The law specifically penalizes marriages below the legal age with imprisonment and fines for adults who marry children.<sup>41</sup> Agreeing to perform a child marriage, regardless of solemnization (performance of the ceremony), is a criminal offense.<sup>42</sup> Priests, matchmakers, and other abettors who knowingly facilitate such marriages are also liable to punishment including imprisonment and fines.<sup>43</sup> The offense of child marriage is included in the State Cases Act,<sup>44</sup> which lists it as an offense against the state, thus obligating the government to initiate investigation and prosecution. As per the State Cases Act, instances of child marriage can be reported either in writing or verbally by any person knowing that a crime has been, is being, or is going to be committed.<sup>45</sup> The statute of limitation for filing a complaint, by any person, is three months from the date that the person learns of the child marriage.<sup>46</sup> However, either party to the marriage can seek legal recourse to officially have the marriage declared void within three months of turning 20 years of age, if the couple does not have any children.<sup>47</sup>

The **Children's Act, 1992**,<sup>48</sup> defines a "child" as a minor under 16 years of age,<sup>49</sup> and establishes the rights to determination of the date of birth<sup>50</sup> and to necessary protection without discrimination from parents<sup>51</sup> and state authorities.<sup>52</sup> The **Children's Rules, 1995**, specifically entrusts the CCWB with the duty to identify measures to eliminate child marriage and encourage and support the appropriate government agencies and non-governmental organizations to implement those measures.<sup>53</sup> Accordingly, the CCWB's 2015 Report on the State of Children in Nepal documents progress in relation to measures taken by the government to address child marriage.<sup>54</sup> Raising awareness on child rights issues, including on child marriage, is also one of the priority interventions of the CCWB.<sup>55</sup>

The **Local Self Governance Act, 1999**, obligates local-level governance bodies to adopt necessary programs for the protection of women and children.<sup>56</sup> Accordingly, the Ministry of Local Development's guidelines on granting support to local governments requires that they allocate at least 10% of their budgets for programs and projects that directly benefit women and children.<sup>57</sup> These funds may be used by local bodies in formulating specific programs to end child marriage.

The government of Nepal has also adopted the **National Strategy to End Child Marriage in Nepal, 2016**, that provides an overarching policy framework to combat child marriage and promote legal accountability. It envisions Nepal free from child marriage and aims to end child marriage by 2030.<sup>58</sup> Taking a multi-sectoral approach to end child marriage, the Strategy incorporates six pillars, namely: empowerment of girls and adolescents; quality education for girls and adolescents; engaging boys, adolescents, and men; mobilizing families and communities; access to services; and strengthening and implementing laws and policies.<sup>59</sup> Effective implementation and reform of existing legal provisions on child marriage is one of the objectives of the Strategy.<sup>60</sup> The Strategy calls for reviewing laws and policies related to child marriage in line with constitutional and international human rights standards, and harmonizing them with other areas of law including property rights, gender-based violence, as well as provisions relating to divorce, annulment, marital rape, dowry, birth registration, and citizenship.<sup>61</sup>

### Gaps and Loopholes in Nepal's Laws on Child Marriage

Despite constitutional and legal guarantees, Nepal's legal framework falls short in addressing the myriad causes and consequences of child marriage. Some of the important shortcomings are noted below.

***A child marriage is valid unless and until it is voided at 20 years of age:*** Though an offense, child marriage is not void ab initio, rather it is only 'voidable'. Consequently, once a child marriage takes place in contravention of the law, it is valid. Such marriages may be declared void by either party to the marriage after he or she turns 20 years old, but only in cases where the couple does not have any children from the marriage.<sup>62</sup> Therefore, a girl married before the age of 20 has no legal recourse to end the marriage until she reaches 20 years, and she loses this right if she has any children from the marriage. Given the cultural and social pressure on girls to prove their fertility after marriage, and the barriers to contraceptive information and services, the legal requirement that there be no children can lead to girls effectively being trapped in child marriages. Notably, Nepal has a high incidence of adolescent pregnancy, wherein 40% of married girls ages 15-19 have already given birth to at least one child.<sup>63</sup> This legal requirement that individuals who are 20 years of age cannot have children at the time of initiating legal proceedings to void a child marriage constitutes a major practical obstacle. Similarly, child marriage is also a ground for divorce, but only if the couple does not have children from marriage while seeking divorce at the age of 20 years.<sup>64</sup> Further, if a woman files for divorce at 20, she has the right to inherit a share of her husband's ancestral property, which she loses in cases where she gets an annulment and the marriage is declared void. However, filing for divorce is not an adequate substitute for voiding a marriage, as it does not protect girls from the continuum of harms as a result of child marriage.

***Free and full consent is not defined in the law:*** The Muluki Ain does not specifically require the free and full consent of both parties in the presence of a competent authority as a prerequisite for solemnizing a marriage. It only states that the parties may willingly solemnize a marriage,<sup>65</sup> however, the law does not define "willingness" or establish any criteria or process for establishing free and full consent. The 2015 Amendment to the Muluki Ain repealed a previous legal provision that explicitly declared marriage without consent as forced marriage and thus void.<sup>66</sup> Therefore, in the current context marriage without consent is not clearly prohibited and this constitutes a major gap in the existing legal framework.

***Inadequate punishment, fines, and compensation:*** An adult who marries a person below the age of 20 or who arranges a child marriage can be punished with up to three years of imprisonment and/or a fine of up to 10,000 rupees (approximately USD 100).<sup>67</sup> Punishments for priests, matchmakers, and others who knowingly facilitate the child marriage are less stringent, with up to one month of imprisonment or a fine of up to 1,000 rupees (approximately USD 10).<sup>68</sup> Although child marriage often results in grave forms of physical and sexual violence, the sanctions associated with child marriage are considerably lesser than those prescribed for these forms of violence outside marriage. For example rape is punishable with five to fifteen years of imprisonment,<sup>69</sup> while grievous bodily injury is punishable with

three to ten years of imprisonment, and up to two lakhs rupees (approximately USD 2,000) compensation for the victim.<sup>70</sup> The punishments specifically prescribed for child marriage are lower and do not correspond with the serious nature of the offense. (See Section on “Other Legal Issues Contributing to the Continuation of Child Marriage”, p. 14, for more information)

## Range of existing punishments for an adult marrying a person below age 20 or arranging a child marriage

If a female below the age of 10 years is married or caused to be married	Imprisonment for a term from 6 months to 3 years and a fine of 1,000 to 10,000 rupees (approximately USD 10 to 100)
If a female age 10-13 is married or caused to be married	Imprisonment for a term from 3 months to 1 year with a maximum fine of 5,000 rupees (approximately USD 50)
If a female age 14-17 is married or caused to be married	Imprisonment for a term not exceeding 6 months and/or a maximum fine of 10,000 rupees (approximately USD 100)
If a male or female under the age of 20 is married or cause to be married	Imprisonment for a term not exceeding 6 months and/or a maximum fine of 10,000 rupees (approximately USD 100)

The minimal punishment for child marriage is further weakened by wide discretionary sentencing powers given to the courts. For instance, in the case of HMG/Nepal v. Kaluman Rai,<sup>71</sup> the father of a 13-year-old girl confessed having arranged the marriage of his minor daughter but defended himself on grounds of cultural practices. The Supreme Court in this case upheld the lower court’s decision, which provided for three days of imprisonment and a fine of just 25 rupees (approximately USD 0.25). However, in another case, Child Welfare Committee, Surkhet v. Govinda Sunuwar,<sup>72</sup> which involved the marriage of a 13-year-old girl to an adult, the perpetrator was punished with three months’ imprisonment and 1,000 rupees fine.

The Constitution recognizes victims’ right to compensation;<sup>73</sup> however, it only requires the guilty party to pay compensation and there is no obligation on the state party for its failure to protect girls and women from the harms of child marriage. In line with the constitutional provision, the Muluki Ain provides that the fine collected from the guilty party should be given to the victim as compensation.<sup>74</sup> In cases where the guilty party fails to pay the fine, an equivalent share of the guilty party’s property can be confiscated and given to the victim.<sup>75</sup> As a result, the compensation scheme is completely dependent on the guilty party’s financial capacity, and if the guilty party does not have any property, the victim will not receive any compensation – effectively denying the victim’s right to adequate reparations. Moreover, although the Constitution provides for the right to social rehabilitation and justice,<sup>76</sup> the current legal provisions are silent about support mechanisms for girls and women who leave child marriages.<sup>77</sup>

**Insufficient statute of limitations:** The three-month statutory time limit for filing a case of child marriage from the date of knowledge of such marriage<sup>78</sup> is insufficient and establishes a shorter time frame for reporting child marriages in comparison to other serious offenses involving violence against women and girls. For instance, the statute of limitations for rape is six months<sup>79</sup> and there is no specified time limit for reporting cases of trafficking.<sup>80</sup> Due to limited knowledge of the law and legal procedures, coupled with practical barriers to accessing justice, the victim—a child—is often not in a position to file a complaint within the prescribed timeframe. In addition, the three-month time frame is too short for victims of child marriage to declare the marriage void after turning 20 years old (with no children born out of the marriage).

### Other Legal Issues Contributing to the Continuation of Child Marriage

In Nepal, inadequate recognition of women's specific vulnerabilities and pervasive gender stereotyping leads to continued systemic discrimination within the law, which denies women full legal status and equal rights as compared with men.<sup>81</sup> Laws relating to citizenship and inheritance deny women equal legal status and unfairly link certain rights to their marital status. This section reviews some of the key legal provisions that contribute to systemic gender discrimination making girls more vulnerable to and in child marriage.

**Citizenship:** Women and girls can obtain citizenship from either of their parents<sup>82</sup> at the age of 16,<sup>83</sup> or from their husbands after marriage.<sup>84</sup> However, due to the common perception that a girl belongs to her husband's family after marriage, in practice girls and women who marry before obtaining a citizenship certificate are generally dependent on their husbands to acquire citizenship. Consequently, if a girl is married before the age of 20 (the legal age of marriage) without obtaining a citizenship certificate through her father or mother, and opts to leave her marriage,<sup>85</sup> she may encounter enormous practical difficulties in obtaining citizenship, especially if her parents do not support her decision to leave the marriage.<sup>86</sup> Cases have been reported where biological family members have refused to support the citizenship applications of married daughters including child brides as they do not want them to have a legal claim to family property and inheritance.<sup>87</sup> Moreover, due to a prejudiced mindset, government officials who are responsible for processing citizenship applications often deny citizenship to married daughters through their fathers and insist on the husband's presence to process their citizenship.<sup>88</sup> Fearing statelessness, child brides in these situations remain in their relationships, which at times are even violent or abusive.<sup>89</sup>

**Inheritance:** The present Constitution guarantees women equal rights to property.<sup>90</sup> However, the 2015 Amendment to the *Muluki Ain*, which reviewed and amended discriminatory legal provisions in line with constitutional guarantees, still fails to recognize equal property rights of married daughters. Although the current legal provisions recognize married daughters as coparceners (members of a joint family entitled to equal shares of ancestral property),<sup>91</sup> they require them to live in "sangol" (together with their parents) in order to have a right in the sale or any other disposal of ancestral and parental property, while no such condition applies to sons.<sup>92</sup> In accordance with patriarchal norms, girls and women in Nepal generally move into their husband's house after marriage. This makes the fulfillment of the legal requirement to live in "sangol" to be able to assert right

in the family property impracticable, going clearly against the established judicial precedents<sup>93</sup> and constitutional guarantees.

**Domestic violence:** Child brides are often more likely to experience domestic violence and least likely to take action against such abuse.<sup>94</sup> As a result of gender-based stereotyping, child brides are also expected to fulfill certain “responsibilities” including “sexual duties” and household chores. Non-fulfillment of these expectations often leads to physical and psychological violence.<sup>95</sup> The Domestic Violence (Crime and Punishment) Act, 2008 (DV Act) prohibits any act of domestic violence,<sup>96</sup> and enables any person who has knowledge of such an act to file a complaint with the police, National Women Commission, or village development committee.<sup>97</sup> In addition to prescribing punishments, including imprisonment and fines,<sup>98</sup> the DV Act provides interim recourse including interim protection orders,<sup>99</sup> free legal aid,<sup>100</sup> and temporary shelters.<sup>101</sup> Child brides who have experienced domestic violence can file complaints under the DV Act.

Problematically, mediation is one of the primary avenues of recourse for victims of domestic violence.<sup>102</sup> Inadequate knowledge about available referral services including free legal aid and temporary shelters and how to reach such services,<sup>103</sup> compels victims of domestic violence to seek mediation. In cases of domestic violence, unequal power dynamics undermine victims’ perspectives and rights, especially for child brides. In many instances, local-level actors, such as police, local authorities, political leaders, and watch groups, serve as informal mediators and lead the mediation process.<sup>104</sup> Women in such cases are “forced to compromise or accept informal monetary settlements, even for criminal offenses”<sup>105</sup> committed against them, including grievous physical injury, thus limiting legal accountability, in contravention of the principles of due diligence.

**Dowry:** Dowry<sup>106</sup> is closely linked to the practice of child marriage as demand for dowry often increases with girls’ age and education level.<sup>107</sup> The 2015 Amendment to the DV Act incorporates offenses related to demand for dowry, including demanding or forcing someone to pay a dowry or ill-treatment for not paying a dowry, recognizing this as a form of economic violence within the definition of domestic violence.<sup>108</sup> As a result, punishment and other relief provided under the DV Act are applicable to married women and girls who are harassed for dowry. However, child brides who are victims of dowry-related harassment and abuse are often unable to obtain legal remedies given the social emphasis on settling disputes through mediation under the DV Act.

In contravention to the DV Act, the Social Practice (Reform) Act, 1976, provides that dowry up to a maximum of 10,000 rupees, pursuant to the family tradition is not an offense.<sup>109</sup> However, demanding or taking dowry over 10,000 rupees is punishable with imprisonment and fine.<sup>110</sup> Instances of dowry harassment, including dowry deaths, are regularly reported in the media, but the government has yet to systematically take concrete actions, such as impartial investigations and prosecutions, to address the problem.

**Rape:** Sexual intercourse with a girl below age 16 is defined as statutory rape and is punishable with imprisonment of up to 15 years, based on the victim’s age.<sup>111</sup> Even though child marriage often exposes young girls to forced initiation into sex, it is generally not reported as rape in the cultural context where wives are expected to submit themselves to their husbands. Even when cases of rape are reported, since the marriage remains legally in effect until it is annulled by the court, punishment for marital rape is generally applied, which is trivial in comparison to the punishment for statutory rape or rape of a girl below the age of 20. In cases of marital rape,

the punishment ranges from three to five years of imprisonment,<sup>112</sup> whereas the punishment for statutory rape of girls under age 16 ranges from six to fifteen years of imprisonment,<sup>113</sup> and for girls below age 20 from five to eight years of imprisonment.<sup>114</sup>

**Marriage for the purpose of trafficking:** Exploiting marriage as a means to procure girls for human trafficking is an increasing trend.<sup>115</sup> As most marriages are not registered in Nepal, traffickers can easily perform fraudulent marriages in order to traffic girls.<sup>116</sup> The South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution<sup>117</sup> specifically defines persons subjected to trafficking as “women and children victimized or forced into prostitution by the traffickers by deception, threat, coercion ... fraudulent marriage, [or] child marriage.”<sup>118</sup> Although Nepal is a party to the SAARC Convention, the law criminalizing human trafficking does not establish the connection between marriage and trafficking. The definition of the crime of human trafficking under the Human Trafficking and Transportation (Control) Act, 2007, fails to include fraudulent and child marriage as a means of committing human trafficking.<sup>119</sup>

**Child labor:** Child marriage amounts to a form of “servile marriage” that gives rise to domestic servitude.<sup>120</sup> One of the primary reasons for child marriage in Nepal is to obtain support for domestic help. A study reveals that 45.2% of men reportedly marry in order to have support for domestic chores.<sup>121</sup> While demand for domestic labor is one of the push factors, the Labour Act, 1992, does not provide legal protection for workers engaged in the informal sector, in particular agriculture and domestic work.<sup>122</sup> The Child Labour (Prohibition and Regulation) Act, 2000, prohibits the employment of children below 14 years in any kind of work, the use of children below 16 years from undertaking hazardous work,<sup>123</sup> and engaging children in work against their will.<sup>124</sup> Regulating hours of work for children ages 14–16, the Act provides that no child shall be engaged in work from 6 p.m. to 6 a.m.<sup>125</sup> However, there is no specific law that punishes the hazardous, excessive, and exploitative work conditions for underage brides. They face immense exploitation at the hands of family members and are often deprived of sufficient food and support.<sup>126</sup>

**Registration of births and marriages:** Registration of vital statistics such as births and marriages plays a critical role in preventing child marriage and ensuring women and girls have a basis for seeking legal remedies for child marriage. Birth and marriage registration is compulsory in Nepal.<sup>127</sup> Yet, since the mandatory birth registration requirement is commonly flouted in practice,<sup>128</sup> girls are often unable to prove their actual age at the time of marriage,<sup>129</sup> which undermines the implementation of laws prohibiting child marriage. Low level of public awareness, and lack of monitoring and accountability of officials for their inaction in relation to registration of vital statistics, are some of the main factors linked to poor implementation of registration of vital statistics.<sup>130</sup>

### Case Law Related to Child Marriage

The Supreme Court of Nepal has played a vital role in advancing legal reform and in promoting implementation of key laws and policies against child marriage. In 2006, in *Sapana Pradhan Malla and Others v. Office of the Prime Minister and Council of Ministers and Others*, where inconsistencies in the age of marriage within different pieces of legislation was challenged, the Supreme Court noted that despite being a crime, child marriage was rampant and threatened girls’ lives and health.<sup>131</sup> The

Court expressed concern about the low level of prosecution and issued directives to the government to make necessary amendments to laws to ensure consistency and uniformity in the ages of marriage of boys and girls, and to implement the laws effectively.<sup>132</sup> Similarly, in 2007, in *Rama Panta Kharel and Others v. Ministry of Women, Children and Social Welfare and Others*, where the inconsistency between the legal age of marriage and age for voiding the marriage was challenged, the Supreme Court upheld its findings from 2006 and issued directives to the government to amend inconsistencies in legal provisions relating to child marriage and eliminate child marriage through effective enforcement of the law.<sup>133</sup>

*Kabita Pandey for Pro Public v. Office of the Prime Minister and Council of Ministers and others* challenged the prevailing practice of *baikalya*, where young married girls are socially ostracized and face discrimination throughout their lives.<sup>134</sup> The Court underscored that any kind of traditional practice that prevents women from enjoying their rights creates barriers to their development and empowerment, and thereby promotes inequality. In this case, the Court directed the government of Nepal to adopt the necessary legal, institutional, and awareness-raising measures and programs against such traditional practices and stressed the need to uproot the dowry system from society.<sup>135</sup>

## International Legal Obligations

Several international human rights treaties, to which Nepal is a party, condemn the practice of child marriage.<sup>136</sup> The Constitution entrusts the state with the obligation to implement international treaties and agreements to which Nepal is a party.<sup>137</sup> The Nepal Treaty Act, 1990, provides that when a provision of a treaty to which Nepal is a party conflicts with the provisions of prevailing Nepalese laws, the former assumes primacy over Nepalese law.<sup>138</sup>

United Nations treaty monitoring bodies (U.N. TMBs) and other mechanisms, including the Universal Periodic Report (UPR), have repeatedly reminded Nepal of its obligations to eliminate child marriage and other harmful practices, a few examples of which are included below:

***Committee on the Rights of the Child (CRC):*** The CRC has repeatedly urged the government to take active measures to eliminate child marriage. In 2016, the Committee specifically recommended that the government develop awareness-raising campaigns and programs on the harmful effects of early marriage, targeting households, local authorities, religious leaders, judges, and prosecutors, as well as establish a protection and support scheme for children wishing to void their marriages.<sup>139</sup> Similarly, in 2012 and 2005, respectively, the Committee urged Nepal “to take active measures to ensure an effective implementation of laws prohibiting child marriage, including through massive awareness-raising measures;”<sup>140</sup> and to strengthen “enforcement of the existing legislation to prevent early marriage.”<sup>141</sup>

***Human Rights Committee (HRC):*** In 2014, the HRC noted the “prevalence of harmful traditional practices such as child marriage” as a principle matter of concern and urged Nepal to ensure effective implementation of domestic law in practice.<sup>142</sup> In its previous review of Nepal, in 1994, the HRC raised concerns about the situation of women<sup>143</sup> and called on Nepal to adopt “administrative and educational measures designed to eliminate traditional practices and customs detrimental to the well-being and status of women and vulnerable groups of the Nepalese society.”<sup>144</sup>

***Committee on the Elimination of Discrimination against Women (CEDAW Committee):*** In 2011, the CEDAW Committee recommended undertaking awareness-raising measures throughout the country on the negative effects of early marriage on women's enjoyment of their human rights, and called for the enforcement of provisions banning early marriage.<sup>145</sup> Similarly, in 2004, the Committee urged the government to “enforce its marriage laws, particularly as they relate to the prohibition of child marriage.”<sup>146</sup>

***Committee on Economic, Social and Cultural Rights (ESCR Committee):*** The ESCR Committee, in 2008 and 2015, repeatedly urged Nepal to “strictly enforce” existing laws prohibiting harmful practices that violate the rights of women and girls, including child marriage;<sup>147</sup> to criminalize all kinds of harmful practices; and to adopt the National Strategy to End Child Marriages.<sup>148</sup>

***Universal Periodic Review (UPR):*** In November 2015, during its second UPR, Nepal received specific recommendations to take actions to eliminate child marriage. These include stepping up “efforts to eliminate gender inequity and implement the national strategy on ending child marriages” and strengthening “measures to combat violence against children, particularly with regard to the prevention of early and forced child marriages... in particular through awareness-raising campaigns among families.”<sup>149</sup> The government formally accepted these recommendations.<sup>150</sup>

### Political Commitments

In 2014, jointly with other South Asian countries, Nepal adopted the Regional Action Plan to End Child Marriage in South Asia, which reflects governments' commitment to address the socio-economic causes of child marriage and promote laws and policies aimed at eliminating child marriage.<sup>151</sup> The same year, Nepal also hosted the first regional convening of representatives from SAARC member states and key stakeholders focusing on the use of the law to promote legal accountability to end child marriage, which concluded with the adoption of the Kathmandu Call for Action to End Child Marriage in South Asia (KCA).<sup>152</sup> The KCA enumerates concrete steps to address child marriage, including strengthening national laws and addressing married girls' reproductive health needs.

Similarly, in August 2014, at the first Girl Summit hosted in London, the Nepal government made a pledge to end child marriage.<sup>153</sup> Following that, it organized the first Girl Summit in Nepal in March 2016, where it announced the adoption of the National Strategy to End Child Marriage in Nepal.<sup>154</sup>

Nepal is the only South Asian country with a high incidence of child marriage that has co-sponsored the Human Rights Council Resolution on “Strengthening efforts to prevent and eliminate child, early and forced marriage: challenges, achievements, best practices and implementation gaps”<sup>155</sup> The Resolution recognizes child marriage as a violation of human rights and calls for strengthened efforts to prevent and eliminate child marriage and support married girls.

Nepal has committed to achieving the Sustainable Development Goals (SDGs), adopted in September 2015, which establish the elimination of child marriage as part of the global agenda that aims “to achieve gender equality and the empowerment of all women and girls” including through “eliminat[ing] all harmful practices, such as child, early and forced marriage...”<sup>156</sup>

## Draft Legislation

The government of Nepal has introduced in the Parliament different bills aimed at significantly changing the country's civil and criminal laws. The draft Penal Code<sup>157</sup> and draft Civil Code<sup>158</sup> contain provisions on child marriage and related issues, including sexual violence and inheritance.

**Legal age of marriage:** Contrary to the current law that establishes the minimum age of marriage as 20, these draft Codes propose that marriage be permitted at the age of 18 with parental consent.<sup>159</sup>

**Void v. Voidable:** The draft Penal Code proposes that marriage below 20 years of age be void ab initio,<sup>160</sup> and the draft Civil Code proposes that marriages below the legal age be voidable.<sup>161</sup> Both Codes accord importance to consent for marriage from the parties to the marriage and propose that marriage without consent be declared void.<sup>162</sup>

**Legal status of marriage:** The draft Civil Code recognizes marriages solemnized in accordance with communities' customs and traditions, and states that in cases where a woman and a man accept each other as husband and wife by performing any ceremony or any other activity, such an act is deemed as marriage.<sup>163</sup> This provision is problematic as it may lead to the legal minimum age of marriage being circumvented. Furthermore, the draft Civil Code provides that if evidence establishes that a woman has given birth to a child as a result of sexual contact, the man and woman are considered to be married.<sup>164</sup> This is against the judicial precedent established in *Annapurana Rana v. District Court of Kathmandu*, where the Supreme Court ruled that sexual intercourse and giving birth to a child does not amount to marriage.<sup>165</sup>

**Punishment for child marriage:** Under the draft Penal Code, although child marriage is recognized as an act against the state, the proposed provisions relating to punishment are less stringent than in the current penal law. The draft Penal Code provides for up to one year of imprisonment and/or a fine of 10,000 rupees,<sup>166</sup> which is notably less than the current penal provision, which has a maximum of three years of imprisonment. Moreover, the draft provisions do not include a minimum penalty, continuing to give wide discretionary sentencing power to the judiciary. The draft Penal Code retains the three-month statute of limitations<sup>167</sup> as under the *Muluki Ain*, which is less than the statute of limitations for other crimes of a sexual nature. (See Section on "Gaps and Loopholes in Nepal's Laws on Child Marriage", p. 12)

**Rape:** While marital rape is punishable under the *Muluki Ain*, with a minimum of three to five years imprisonment,<sup>168</sup> the draft Penal Code proposes imprisonment of up to five years without stipulating a minimum range.<sup>169</sup> The statute of limitation proposed for rape cases under the draft Penal Code is one year,<sup>170</sup> which is progressive in comparison to the existing six month limitation period.

**Inheritance:** In relation to equality between married and unmarried daughters with respect to parental property, the draft Civil Code is progressive in that it rejects the classification of daughters on the basis of marital status,<sup>171</sup> and proposes equal rights irrespective of marital status.

## SECTION III: KEY CHALLENGES IN ENDING IMPUNITY FOR CHILD MARRIAGE IN NEPAL

Despite constitutional guarantees and legal prohibition, child marriage in Nepal continues unabatedly. Ineffective implementation of existing laws prohibiting the practice, coupled with normative gaps and inconsistencies, lead to continuing impunity for the guilty parties and lack of access to justice for victims. This section highlights some of the existing challenges that need to be addressed to ensure state accountability for ending impunity.

***Failure to report cases of child marriage:*** In Nepal, child marriage is commonly perceived as a social evil rather than a crime.<sup>172</sup> In addition, due to the peculiar nature of the crime, where family members themselves are engaged in committing the offense and thus are liable to punishment, girls are generally unwilling to seek legal remedies. Similarly, third parties generally do not report such incidents, as marriage is considered to be an individual family matter.<sup>173</sup> As a result, incidents of child marriage are rarely reported to state accountability mechanisms, including the police. In the last 18 years (1996–2014, 2053/4 -2070/1 B.S.), only 93 cases of child marriage have been reported to the police.<sup>174</sup>

The social understanding that girls belong to their husband's family and that marriage is a lifetime commitment prevents girls from challenging such unions. Even when they choose to challenge the marriage, they are often forced to informally settle through negotiations or mediation in the community. This process is often driven by social pressure<sup>175</sup> and political influence, wherein if the perpetrator has a close relationship with a political party, it can force the victim or the person acting on her behalf to either not file a complaint or withdraw it.<sup>176</sup>

Rape victims in general face barriers to accessing justice, and this is exacerbated for child brides. Poor knowledge of legal procedures coupled with lack of resources, can compel these girls to silently endure sexual violence, which often leads to forced, repeated, and shortly-spaced pregnancies. There are instances where victims of rape under the age of 20 have been married off to the perpetrators,<sup>177</sup> even in the presence of government officials.<sup>178</sup>

***Poor knowledge of the law and legal age of marriage:*** Lack of awareness of the legal provisions relating to the legal age of marriage, legal proceedings, and the fact that child marriages can be prosecuted contribute to the continuation of this practice.<sup>179</sup> A recent study revealed that only 28% of girls and 24% of boys are aware of the legal minimum age of marriage for girls.<sup>180</sup> Similarly, only 9% of girls and 18% of boys reported knowing about the punishments for child marriage.<sup>181</sup> Moreover, the prevailing misconception that the onus of filing a case lies only on the victims limits reporting.<sup>182</sup> Taking note of this fact, the Supreme Court<sup>183</sup> and U.N. TMBs, in their concluding observations to Nepal,<sup>184</sup> have repeatedly directed the government to undertake wider awareness-raising, specifically regarding the legal provisions on child marriage.

***Lack of harmonization between relevant laws:*** As noted earlier, existing gaps and inconsistencies among laws relating to child marriage and legal provisions on citizenship, property, and violence against women contribute to the continuation of the practice by making it difficult for girls and women to challenge or leave these marriages. The lack of harmonization among these laws undermines victims' access to legal remedies.

**Limited knowledge among law enforcement agencies about their roles:** Since child marriage is an offense against the state,<sup>185</sup> law enforcement officials have a *suo motu* obligation to take action in these cases. But in practice, police action remains contingent on a complaint being initiated by, or on the behalf of, the victim. Even when the victim chooses to file an official complaint or First Information Report (FIR), police reportedly often discourage such action.<sup>186</sup> As with other cases of gender-based violence, police generally encourage victims to either reconsider their actions in the name of family 'honor' or to protect their parents from being punished or to settle such matters through informal mediation including reconciliation and negotiation.<sup>187</sup> In a study on gender-based violence in Nepal, 78% of respondents reported that law enforcement agencies are not gender friendly and need to change their gender-biased mindset in order to increase victims' access to justice.<sup>188</sup>

**Lack of legal accountability for not taking required actions:** The absence of legal provisions to hold law enforcement officials accountable for denying the registration of FIRs or for not taking action in line with constitutional or legal guarantees<sup>189</sup> weakens accountability for the failure to fulfill their official duties and promote access to justice for victims.<sup>190</sup>

NHRIs, such as the National Human Rights Commission of Nepal (NHRC) and the National Women Commission (NWC), which have clear mandates to monitor and investigate human rights violations, have taken initiatives to promote legal accountability in cases such as witchcraft, trafficking, and untouchability, by directly investigating them and making specific recommendations for relevant government agencies to address these issues.<sup>191</sup> However, the NHRIs have yet to make such interventions for promoting accountability for ending child marriage.

**Limited prosecution of child marriage:** As noted earlier, women and girls face barriers in proving their actual age and age at marriage due to the weak birth registration system<sup>192</sup> and low levels of marriage registration,<sup>193</sup> which seriously undermine the reporting and prosecution of child marriages.

The Supreme Court of Nepal has repeatedly noted the poor enforcement of child marriage laws and ordered the government to address the problem.<sup>194</sup> Though the Annual Report of the Supreme Court indicates some progress<sup>195</sup> in terms of legal actions against child marriage, these figures do not correlate with the high prevalence of child marriage in Nepal, revealing a large gap in legal accountability.

**Lack of support mechanisms for victims:** The lack of support mechanisms for child brides and women who want to leave their marriages further undermines victims' access to justice. The current legal provisions addressing child marriage require that the fine collected from the guilty party should be given to the victim as compensation.<sup>196</sup> However, the laws are silent in relation to other support mechanisms and social protection schemes such as legal aid, sexual and reproductive health services, psycho-social counseling, life skills programs, out of school programs, and shelters for girls and women who opt to leave such marriages. Although these girls can resort to existing service centers and rehabilitation homes established under the DV Act<sup>197</sup> and the Human Trafficking and Transportation (Control) Act,<sup>198</sup> the number of these institutions is relatively minimal: there are only 25,<sup>199</sup> which does not cover all 75 districts of the country. Furthermore, there are not any mechanisms or programs that provide long-term remedies such as life-skills trainings, education scholarship, and employment opportunities to these girls, who are often disowned by their families for disobeying their decisions regarding marriage.

## SECTION IV: CONCLUSION AND RECOMMENDATIONS

Effective legal strategies are critical to ending impunity for child marriage in Nepal. To ensure accountability, it is important to address the existing gaps in and inconsistencies between the laws prohibiting child marriage and laws that disempower girls and women and act as barriers in accessing legal remedies. To ensure effective implementation, it is equally important to invest in the relevant actors and stakeholders, specifically law enforcement officials, in order to enhance their ability to translate legal provisions into actions, and to strengthen mechanisms that ensure access to legal remedies and redress for victims of child marriage. Unless these factors are addressed, the practice of child marriage will continue to violate a range of women's and girls' human rights, including their sexual and reproductive health and rights.

Based on the analysis of legal barriers and gaps in implementation, coupled with suggestions from stakeholders, some specific recommendations below—though not exhaustive—provide guidance for actions to end impunity.

### Executive Bodies including Governmental Ministries

#### 1. Ministry of Women, Children and Social Welfare

- a. As a focal ministry for addressing child marriage, the MoWCSW (especially the Division on Women Empowerment and Child Development) should take the lead in initiating required legislative reform to strengthen legal protections against child marriage and to harmonize laws on child marriage with other related laws. While doing so, it should also examine the need for a separate law to address child marriage. Specifics to be addressed during the law reform process include the following:
  - Declare marriage below the minimum legal age as void ab initio, meaning it shall have no legal effect under any pretext such as custom, religion, or traditional practices.
  - Require free and full consent as a prerequisite to solemnize marriage and penalize forced marriages, including in cases where consent is obtained under threat, duress, fraud, or misrepresentation.
  - Increase the existing range of punishments and fines for all parties involved in abetting or performing child marriages, in order to correspond with the seriousness of the offense.
  - Revise the statute of limitations for filing a complaint against a child marriage with no explicit timeline.
  - Increase the penalty for marital rape to harmonize it with rape outside marriage.
  - Exclude the use of mediation as a remedy in cases of child marriage and related criminal cases, as provided under the DV Act.
  - Review and amend the definition of human trafficking in anti-trafficking legislation to explicitly include child marriage for the purpose of trafficking and trafficking for the purpose of child marriage.

- Review the Social Practice (Reform) Act to prohibit dowry, as well as harassment and abuse for dowry, and include imprisonment and fines to correspond with the seriousness of the offense.
  - Recognizing child marriage as a form of child labor, explicitly criminalize child labor within the domestic sphere under the Children's Act.
- b. In coordination with other relevant ministries, the MoWCSW (especially the Women and Child Development Office) should develop and implement programs for enhancing the capacity of law enforcement authorities, including local authorities, judicial and quasi-judicial bodies, and other stakeholders, to enable them to execute their responsibilities to implement laws on child marriage.
  - c. Ensure effective coordination, cooperation, advocacy, and allocation of technical and financial resources between different stakeholders for preventing, investigating, and prosecuting cases of child marriage, as well as providing remedies to the victims.

## **2. Ministry of Information and Communication**

- a. Launch a mass media initiative to promote awareness about the legal age of marriage and available legal protections against child marriage, especially in communities where girls are at increased risk.
- b. Address existing social barriers that impede women's and girls' access to legal remedies and launch targeted legal awareness-raising programs with particular focus on the districts and communities where the practice of child marriage remains pervasive.
- c. Collaborate with the private sector to reach out to communities for massive awareness-raising.
- d. Launch sensitization programs to encourage individuals to report cases of child marriage and suo moto action by police and other legal authorities.

## **3. Ministry of Education**

- a. Integrate information on the minimum age of marriage, as well as the legal prohibition on and long-term impact of child marriage into school curricula.
- b. Develop and implement programs to enhance teachers' capacity to become advocates against child marriage in school and in the community.

## **4. Ministry of Federal Affairs and Local Development**

- a. Ensure local governments allocate adequate budgets to run social campaigns against child marriage.
- b. Strengthen and implement a vital registration system and create an integrated database to avoid falsification of marriage and birth certificates.
- c. Establish a separate "child marriage relief fund" in each district to mobilize necessary resources for local government officials and other relevant stakeholders to execute their responsibilities to prevent child marriage and to provide access to legal remedies to victims of child marriage in local communities.

### Legislative Bodies

- a. Undertake proactive initiatives to review and amend legal obstacles to the enforcement of laws prohibiting child marriage and which undermine women and girls' access to remedies. Specific issues to be dealt with include the following:
  - Review and amend all discriminatory laws and policies against women in all areas of the law, specifically regarding women's equal right to acquire and confer citizenship, and to parental property and inheritance, regardless of marital status.
  - Ensure accountability for authorities' refusal to file FIRs and failure to undertake criminal investigations upon filing of FIRs by putting in place strict disciplinary action for officials who do not take necessary action.
  - Ensure the availability and accessibility of legal counseling and legal aid to girls at risk of child marriage and married girls.
  - Ensure that the state provides support mechanisms to victims of child marriage including protection measures, interim relief, services for physical and psycho-social well-being, access to comprehensive sexual and reproductive health services, rehabilitation, and adequate compensation and reparations.

### Parliamentary Oversight Bodies

- a. Existing oversight mechanisms including the Parliamentary Committee on Women, Children, Senior Citizens and Social Welfare, NHRC, and NWC should proactively monitor violations resulting from child marriage and recommend actions for specific government agencies to ensure accountability for each incident of child marriage.

### National Judicial Bodies

- a. Hold government officials accountable for not taking action as per the law to prevent child marriage.
- b. Recognizing child marriage as a fundamental rights violation, take suo moto action to address poor enforcement of legal prohibitions and to harmonize legal gaps and inconsistencies between child marriage and other related laws.
- c. Establish a mechanism to systematically track progress in terms of implementing the judicial rulings in cases of or related to child marriage.

### National Human Rights Institutions

- a. Conduct national inquiries specifically on human rights violations due to child marriage, and present recommendations to the government for ending impunity.
- b. Monitor implementation of the government's obligations in line with concluding observations of U.N. TMBs and under the UPRs.

## Civil Society Organizations

- a. Lead community-level campaigns to raise awareness about the illegality of child marriage and the continuum of harms resulting from the practice.
- b. Provide necessary support to address barriers faced by victims of child marriage in accessing protection mechanisms and legal remedies, such as by providing information on their rights and procedures to claim those rights, legal counseling, and legal aid.
- c. Promote strategic litigation to hold authorities at the central, provincial, and local levels accountable for taking adequate action to implement affirmative legal provisions aimed at preventing, investigating, and prosecuting child marriage, as well as implementing judicial orders and decisions.

## U.N. Agencies and International Non-governmental Organizations

- a. Promote accountability for child marriage, including by providing technical and other support to government agencies for the implementation of recommendations made by U.N. TMBs and during the UPRs.
- b. Support the Nepal government in strengthening legal mechanisms and procedures aimed at eliminating child marriage and addressing human rights violations resulting from the practice.

## ENDNOTES

- 1 The Muluki Ain [Country Code], part 4, ch. 17, no. 2 (1963) (Nepal) [hereinafter *Muluki Ain (Nepal)*].
- 2 UNICEF, *EARLY MARRIAGE IN SOUTH ASIA: A DISCUSSION PAPER 2* (2009), [hereinafter *UNICEF, EARLY MARRIAGE IN SOUTH ASIA* (2009)].
- 3 UNICEF, *STATE OF THE WORLD'S CHILDREN* 151 (2016).
- 4 GOVERNMENT OF NEPAL, NATIONAL PLANNING COMMISSION SECRETARIAT, NATIONAL POPULATION AND HOUSING CENSUS 2011 (NATIONAL CENSUS 2011) 131(2012).
- 5 CENTRAL CHILD WELFARE BOARD, *THE STATE OF CHILDREN IN NEPAL*, 2072 25-26 (2015). 41% of women in comparison to 11% of men between 20 to 24 years of age are found married before they reach 18.
- 6 UNFPA, *MARRYING TOO YOUNG: END CHILD MARRIAGE* 73 (2012) [hereinafter *UNFPA, MARRYING TOO YOUNG*]. 42.9% of women residing in rural areas were married before reaching age 18 in comparison to 26.9% of those residing in urban areas.
- 7 *Id.*, at 25. The prevalence of child marriage in the mid-western region of Nepal is the highest (53%) followed by the Far-Western region (48%), Central region (40%), Western region (36%) and Eastern region (34%).
- 8 UNFPA, *MARRYING TOO YOUNG*, *supra* note 6, at 68. Women between ages 25-49 with a school-leaving certificate and higher education marry five years later (21.8 years) than those with no education (16.6 years).
- 9 NDHS 2011, *supra* note 9, at 68. Women between ages 25-49 from the highest wealth quintile marry two years later (19 years) than those from lower wealth quintiles (17 years).
- 10 GOVT. OF NEPAL, NAYS, at 49. The proportion of women between ages 20-24 years who have married before 20 years of age is highest among the more disadvantaged non-Dalit Terai caste groups (85%) and Dalits (76%) in comparison to upper caste groups (57%) and relatively advantaged Janajatis (42%).
- 11 Report of Consultation Meetings with Central and District Level Law Enforcement Officials and Stakeholders (2015-2016) (on file with the Center for Reproductive Rights) [hereinafter *Report of Consultation Meetings*].
- 12 Office of the United Nations High Commissioner for Human Rights, *Preventing and eliminating child, early and forced marriage*, para. 19 U.N. Doc. A/HRC/26/22 (April 2, 2014).
- 13 GOVT. OF NEPAL, NAYS, *supra* note 10, at 49. See, UNICEF Nepal and Population Council, *Adolescent Development and Participation (ADAP) Baseline Study* 28 (2014) [hereinafter *UNICEF Nepal, ADAP Baseline Study*].
- 14 Office of the United Nations High Commissioner for Human Rights, *Preventing and eliminating child, early and forced marriage*, para. 19 U.N. Doc. A/HRC/26/22 (April 2, 2014).
- 15 *Id.* See Report of Consultation Meetings, *supra* note 11.
- 16 PLAN NEPAL ET AL., *CHILD MARRIAGE IN NEPAL: RESEARCH REPORT 44* (2012) [hereinafter *PLAN NEPAL, CHILD MARRIAGE IN NEPAL*]. See UNICEF Nepal, *ADAP Baseline Study*, *supra* note 13, at 29.
- 17 Kathleen Ebbitt, *Nepal earthquake is increasing child marriages*, GLOBAL CITIZEN (May 28, 2015), <https://www.globalcitizen.org/en/content/what-you-need-to-know-about-child-marriages-post-ef/>; *Adolescent girls strive for a better future in post-quake Nepal*, PLAN UK (April 22, 2016), <http://www.plan-uk.org/news/news-and-features/adolescent-girls-future-post-quake-nepal/>.
- 18 Emma Batha, *Child marriages, trafficking will soar after Nepal quake-charity*, REUTERS (May 19, 2015), <http://www.worldbank.org/content/dam/Worldbank/document/SAR/nepal-pdna-executive-summary.pdf>; CARE, *NEPAL: GENDER AND PROTECTION OVERVIEW* 10 (2015).
- 19 ANTI-SLAVERY INTERNATIONAL, *OUT OF THE SHADOWS: CHILD MARRIAGE AND SLAVERY* 7, 28, 29 (2013), [hereinafter *ANTI-SLAVERY INTERNATIONAL, CHILD MARRIAGE AND SLAVERY*].
- 20 NDHS 2011, *supra* note 9, at 239.
- 21 UNICEF Nepal, *ADAP Baseline Study*, *supra* note 13, at 33.
- 22 GOVT. OF NEPAL, NAYS, *supra* note 10, at 42. 26.64% of girls ages between 15 -19 drop-out of schools due to marriage in Nepal.
- 23 NDHS 2011, *supra* note 9, at 84. Young girls with no education are nearly four times more likely to begin having children (31.6%) than those who complete school and pursue a higher education (8%).
- 24 *Id.*, at 104-105. The unmet need for contraception is highest among married adolescent girls ages 15-19, with only 17.6% of married adolescents having access to contraception.
- 25 *Id.*, at 137, 139. Only 38% of women ages 15-49 are aware that abortion is legal, and approx. 41% are unaware of a place for seeking safe abortion services.
- 26 *Id.*, at 79. 40% of married women between the ages of 15-19 have already given birth to at least one child in Nepal.
- 27 GOVERNMENT OF NEPAL, MINISTRY OF HEALTH AND POPULATION, DEPARTMENT OF HEALTH SERVICES, FAMILY HEALTH DIVISION, *NEPAL MATERNAL MORTALITY AND MORBIDITY STUDY: 2008/09* 6 (2009). MMR for girls below 20 is 297 per 100,000 live births, whereas it is 119 for women ages 20-24 years.
- 28 NDHS 2011, *supra* note 9, at 143. Uterine prolapse, which 10% of Nepali women of reproductive age suffer, is linked to early and frequent pregnancies. The average woman who has undergone uterine prolapse surgery first experienced symptoms of uterine prolapse at 26.8 years old, after their third pregnancy. See, UNFPA, *HEALTH RELATED QUALITY OF LIFE OF WOMEN SUFFERING FROM PELVIC ORGAN PROLAPSE: BEFORE AND 9 TO 11 MONTHS AFTER SURGICAL INTERVENTIONS* 21-22 (2013).
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- 32 *Id.*, art. 39(10).
- 33 *Id.*, art. 38(3).
- 34 *Id.*, art. 38(2).
- 35 *Id.*, art. 18.
- 36 *Id.*, art. 16(1).
- 37 *Id.*, art. 29(1-3).
- 38 *Id.*, art. 39(1-9).
- 39 *Id.*, art. 133, 144, 249, 252.
- 40 *Muluki Ain (Nepal)*, *supra* note 1, ch. 17, no. 2.
- 41 *Id.*, part 4, ch. 17, no. 2(1-4).
- 42 *Id.*, part 4, ch. 17, no. 2(7).
- 43 *Id.*, part 4, ch. 17, no. 2(6).
- 44 The State Cases Act, 2049 (1992) at Annex I (Nepal).
- 45 *Id.*, sec. 3(1) (Nepal).
- 46 *Muluki Ain (Nepal)*, *supra* note 1, part 4, ch. 17, no. 11.
- 47 *Id.*, ch. 17, no. 2(9); read together with no. 11.
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- 49 *Id.*, sec. 2(a) (Nepal).
- 50 *Id.*, sec. 3(2) (Nepal).
- 51 *Id.*, sec. 5 (Nepal).
- 52 *Id.*, sec. 21, 22, 30 (Nepal).
- 53 The Children's Rules, 2051 (1995), sec. 3(i) (Nepal).
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58 GOVERNMENT OF NEPAL, MINISTRY OF WOMEN, CHILDREN AND SOCIAL WELFARE, NATIONAL STRATEGY TO END CHILD MARRIAGE IN NEPAL 2072 8 (2016).

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64 Muluki Ain (Nepal), *supra* note 1, part 3, ch. 12, no. 1.

65 *Id.*, part 4, ch. 17, no. 1.

66 An Act to Amend Some Nepal Laws to ensure Gender Equality and to End Gender Based Violence, 2072 (2015), sec. 8(14)(f) (Nepal).

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69 *Id.*, part 4, ch. 14, no. 3.

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74 Muluki Ain (Nepal), *supra* note 1, part 4, ch. 17, no. 2(8).

75 *Id.*

76 THE CONSTITUTION OF NEPAL, 2072 (2015), art. 21(2) (Nepal).

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81 FORUM FOR WOMEN, LAW AND DEVELOPMENT (FWLD), A STUDY ON DISCRIMINATORY LAWS: AGAINST WOMEN, DALIT, ETHNIC COMMUNITY, RELIGIOUS MINORITY AND PERSONS WITH DISABILITIES (2009).

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83 The Nepal Citizenship Act, 2063 (2006), sec. 8 (1) (Nepal).

84 The Citizenship Guidelines, 2063 (2006), no. 4(5) (Nepal). Requires the woman married before acquiring the citizenship certificate to, among others, produce a copy of citizenship of her husband or father-in-law.

85 At 20 years when she is legally eligible to challenge the marriage. Muluki Ain (Nepal), *supra* note 1, part 4, ch. 17, no. 2(9).

86 Interview with Advocate Sabin Shrestha, Executive Director of FWLD (April 26, 2016). [hereinafter Sabin Shrestha Interview (2016)].

87 *Id.* See FORUM FOR WOMEN, LAW AND DEVELOPMENT (FWLD), ACQUISITION OF CITIZENSHIP CERTIFICATE IN NEPAL: UNDERSTANDING TRENDS, BARRIERS AND IMPACTS 16 (2014).

88 Several instances of the Supreme Court of Nepal's interventions demonstrate the extent of the problem linked to the patriarchal mindset of the authorities that women and children in Nepal facing pertaining to citizenship. For example: the judicial interventions were made to allow married women obtain citizenship based on their father's citizenship certificate (*Nakkali Maharjan v. Office of the Prime Ministers et. al.*, Decision No. 8035, N.K.P. 2065, Vol. 11 at 1340 (2008)); to allow the applicant obtain a citizenship certificate based on residence address of either mother or father (*Ranjeet Thapa v. Government of Nepal*, Decision No. 8165, N.K.P. 2066, Vol. 6 at 1014 (2009)); and to ensure that children of Nepali mother can acquire citizenship by descent through their mother in case of non-identification of father (*Sabina Damai v. Government of Nepal*, Decision No. 8557, N.K.P. 2068, Vol. 2 at 247 (2011)). See also NATIONAL WOMEN COMMISSION, FORUM FOR WOMEN, LAW AND DEVELOPMENT (FWLD), ANALYSIS OF NEPALESE CITIZENSHIP LAWS FROM A GENDER PERSPECTIVE 13 (2014).

89 Sabin Shrestha Interview (2016), *supra* note 86.

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92 Muluki Ain (Nepal), *supra* note 1, part 3, ch. 13, no. 19.

93 *Prakash Mani Sharma for Pro Public v. Office of the Prime Minister and Council of Ministers et. al.*, Decision No. 7577, N.K.P. 2062, Vol. 8 at 931 (2005). The Supreme Court stated that unless non-discrimination regardless of marital status in regard to parental property is ensured, there may be family pressure to marry girls before partition of parental property.

94 UNICEF, EARLY MARRIAGE IN SOUTH ASIA, *supra* note 2, at 6.

95 *Id.*, at 56.

96 The Domestic Violence (Crime and Punishment) Act 2066, (2008), sec. 2(a) (Nepal). "Domestic Violence" shall mean any form of physical, mental, sexual and economic abuse perpetrated by any person to other person with whom he has a family relationship.

97 *Id.*, sec. 4(1) (Nepal).

98 *Id.*, sec. 13.

99 *Id.*, sec. 6. An interim protection order may be granted by the respective district court, "(a) To allow the Victim to continue to live in the shared house, to provide him/her with food, clothes, to not cause physical injury to him/her and to behave with him/ her in a civilized and dignified manner. (b) To manage for necessary treatment or to give money for the treatment of the victim if he/ she has suffered physical or mental injury. (c) To make necessary arrangements for the separate stay of the perpetrator in a case that it's not conducive for them to live together, and make necessary arrangements for the maintenance of the victim. (d) To not insult, threaten or behave in an uncivilized manner; or not to cause to do these acts. (e) To not harass the Victim by entering his/ her place of separate residence; or in public roads; or entering his/ her place of employment; or through the communication media or in any other manner. (f) To carry out or cause to carry out necessary and relevant actions for the protection and welfare of the victim."

100 *Id.*, sec. 12B (Nepal).

101 *Id.*, sec. 11.

102 *Id.*, sec. 4(8).

103 USAID NEPAL, THE ROLE OF COMMUNITY MEDIATION IN ADDRESSING GENDER-BASED VIOLENCE, 27-28 (2016) [hereinafter USAID, THE ROLE OF COMMUNITY MEDIATION (2016)].

104 *Id.*, at 28.

105 *Id.*, at 29.

106 Dowry is an age old practice of giving gifts to the family of the groom including jewelry, furniture, cash, property, etc. to help the newly married couple set up home.

107 UNICEF Nepal, ADAP Baseline Study, *supra* note 13, at 28.

108 The Domestic Violence (Crime and Punishment) Act 2066, (2008), sec. 2(f) (Nepal).

- 109 *Id.*, sec. 5(2). In addition to a set of ornament wearing in body, whosoever intends to give dowry as per own rites, rituals and pleasure, may be entitled to give dowry up to ten thousand rupees, in maximum.
- 110 The Social Practice (Reform) Act 2033 (1976), sec. 5(3) (Nepal). Parties contravening the provisions shall be liable to a fine up to ten thousand rupees or an imprisonment not exceeding fifteen days or the both and the property which is prohibited to accept and give shall be forfeited.
- 111 Muluki Ain (Nepal), *supra* note 1, part 4, ch. 14, no. 3.
- 112 *Id.*, part 4, ch. 14, no. 3(6).
- 113 *Id.*, part 4, ch. 14, no. 3(1-3).
- 114 *Id.*, part 4, ch. 14, no. 3(3).
- 115 Chiai Uruguchi, Professional Report Presented to the Faculty of Cornell Institute for Public Affairs: Current Trends of Human Trafficking in Nepal (May 7, 2010).
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- 117 SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution 2002, adopted on January 5, 2002 at Kathmandu.
- 118 *Id.*, at art. 1(5).
- 119 Human Trafficking and Transportation (Control) Act, 2064 (2007), sec. 4 (Nepal).
- 120 ANTI-SLAVERY INTERNATIONAL, CHILD MARRIAGE AND SLAVERY, *supra* note 19.
- 121 PLAN NEPAL, CHILD MARRIAGE IN NEPAL, *supra* note 16, at 28.
- 122 Labour Act, 2048 (1992), sec. 2 (b). "Enterprise" means any factory, company, organisation, association, firm, or group thereof, established under the prevailing laws for the purpose of operating any industry, profession or service, where ten or more workers or employees are engaged.
- 123 The Child Labour (Prohibition and Regulation) Act, 2056 (2000), sec. 3(1), sec. 3(2) & Schedule 1 (Nepal).
- 124 *Id.*, sec. 4.
- 125 *Id.*, sec. 9(1).
- 126 PLAN NEPAL, CHILD MARRIAGE IN NEPAL, *supra* note 16, at 31-36.
- 127 The Birth, Death and Other Personal Events (Registration) Act, 2033 (1976), sec. 4(1), 5(4) (Nepal).
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- 130 GOVERNMENT OF NEPAL, MINISTRY OF FEDERAL AFFAIRS AND LOCAL DEVELOPMENT, DEPARTMENT OF CIVIL REGISTRATION, ANNUAL REPORT OF CIVIL REGISTRATION PROGRAM (2067-2069), pp. 35-37 (2012).
- 131 *Sapana Pradhan & Others v. Prime Minister & Council of Ministers & Others*, Decision No. 7659, N.K.P. 2063, Vol. 3 at 289, paras. 19 and 23 (2006).
- 132 *Id.*, at 289, paras. 23-24.
- 133 *Rama Panta Kharel & Others v. Government of Nepal*, Writ No. WS-128/2063 B.S. (2007) in CENTER FOR REPRODUCTIVE RIGHTS (THE CENTER), FORUM FOR WOMEN, LAW AND DEVELOPMENT (FWLD) AND NATIONAL WOMEN COMMISSION (NWC), A COMPILATION OF SUPREME COURT DECISIONS ON REPRODUCTIVE RIGHTS 69 (2013) [hereinafter CENTER FOR REPRODUCTIVE RIGHTS, SUPREME COURT DECISIONS].
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- 135 *Id.*
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- 137 THE CONSTITUTION OF NEPAL, 2072 (2015), art. 51(b)(3) (Nepal).
- 138 Nepal Treaty Act, 2047 (1990), sec. 9(1) (Nepal).
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- 148 ECSR Committee, *Concluding Observations on the third periodic report of Nepal*, para. 14, U.N. Doc E/C.12/NPL/CO/3 (2014).
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- 164 *Id.*, sec. 74.
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- 169 Bill on Penal Code, 2071 (2014), sec. 216(4) (Nepal).
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