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October 1, 2108

**Re: Supplementary information on Nepal, scheduled for review by the Committee on the Elimination of Discrimination against Women during its 71<sup>st</sup> Session**

Respected Committee Members,

The Center for Reproductive Rights (the Center), an international non-governmental organization with offices in Nepal, Colombia, Kenya, Switzerland, and the United States, is pleased to submit this letter to assist the Committee on the Elimination of Discrimination against Women (the Committee) in its sixth periodic review of the Government of Nepal's (the State party) compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) during its 71<sup>st</sup> session. The Center welcomes the Committee's list of issues (LOIs) in relation to the State party's sixth periodic report,<sup>1</sup> requesting information on the progress made towards reproductive health bill,<sup>2</sup> steps being taken to decriminalize abortion,<sup>3</sup> and measures taken to eradicate the practice of child marriage.<sup>4</sup> This letter supplements the January 2018 joint pre-session letter submitted by the Center together with its partners (annexed to this letter), and aims to provide information on recent legal developments concerning women's rights to abortion and child marriage in Nepal, which are relevant to the issues raised by the Committee in the LOIs.

**A. Progress and Challenges to Decriminalize Abortion in Nepal**

We welcome the Committee's inclusion of questions pertaining to the reproductive health bill and on the decriminalization of abortion in the LOIs to the State party. The LOIs specifically request the State party to **“provide an update on progress made toward adopting the bill on reproductive health”** and **“describe the steps being taken to amend the General Code to decriminalize abortion in all cases.”**<sup>5</sup>

Since the Committee's review in 2011, Nepal has taken several positive steps to improve women's and girls' access to reproductive health and information services, including safe abortion. The

Constitution of Nepal ensures women's rights to safe motherhood and reproductive health as a fundamental right.<sup>6</sup> Following the constitutional guarantees, since fiscal year 2015/16 the State party announced and allocated a budget for free abortion services at government health facilities.<sup>7</sup> More recently, in one of its judgements, the Supreme Court issued a writ of mandamus in the name of the Council of Ministers and the Ministry of Health to take measures to adopt necessary laws, policies, and programs to ensure effective implementation for ensuring women's access to contraceptive information and services.<sup>8</sup>

On September 18, 2018, the State party took monumental step towards implementing fundamental guarantees to protect and promote women's reproductive health rights by enacting the Safe Motherhood and Reproductive Health Rights Act, 2075 (the RH Act). The RH Act has several positive aspects that comprehensively cover matters related to safe motherhood,<sup>9</sup> family planning,<sup>10</sup> reproductive health related morbidity,<sup>11</sup> and safe abortion.<sup>12</sup> It specifically provides a broad definition of reproductive health rights,<sup>13</sup> prohibits discrimination on the availability of reproductive healthcare services,<sup>14</sup> and requires such services be adolescent and disabled friendly.<sup>15</sup> Moreover, it makes all reproductive healthcare services free of cost at all government health facilities<sup>16</sup> and requires all levels of government, including the federal, provincial, and local levels, to allocate a specific budget for reproductive health services.<sup>17</sup>

Unlike the previous legal provisions that only provided for legal exceptions to the general ban on abortion, the RH Act has taken a progressive approach, recognizing women's rights to abortion as a reproductive right.<sup>18</sup> Accordingly, abortion is permitted with the consent of a pregnant woman up to 12 weeks of gestational age, and a pregnancy of up to 28 weeks of gestational age resulting from rape or incest or in situations where the woman suffers from HIV or other similar types of incurable diseases.<sup>19</sup> Abortion is also permitted in circumstances where a legally recognized medical practitioner prescribes that a failure to undertake an abortion may pose a threat to the life of the pregnant woman or adversely affect her mental or physical health or cause birth of a deformed fetus.<sup>20</sup> Furthermore, the RH Act prohibits abortion without the consent of the concerned pregnant woman.<sup>21</sup>

Despite these positive measures, as claimed by the State party's response to the LOIs that "*a comprehensive RH Bill... has been submitted in the Federal Parliament*"<sup>22</sup> "*to decriminalize abortion and ensure abortion on right-based approach*"<sup>23</sup> was not achieved by the enactment of the RH Act. The RH Act fails to address legal gaps in previous law and continues to criminalize women for undertaking abortion beyond legal conditions.<sup>24</sup> Moreover, in matters pertaining to the punishment for abortion undertaken beyond legal conditions, the RH Act links itself with the provision of the Country Penal (Code) Act, 2017 and specifically states that abortion related punishment provisions will be dealt with in accordance to the Penal Code.<sup>25</sup>

As a result, despite all of the progressive provisions embodied in the RH Act as a whole, it fails to decriminalize abortion completely. While the implementation of the RH Act is yet to be seen, there is a continued possibility of legal prosecution against women for undertaking abortion.<sup>26</sup>

## B. Inconsistencies in Laws Addressing Child Marriage in Nepal

We welcome the Committee's inclusion of the issue of eradicating child marriage in Nepal in the LOIs, and specifically the Committee's requests to the State party to **"provide information on the measures taken under the national strategy to end child marriage," "eradicate the practice," "describe the measures being taken to harmonize the General Code and the Criminal Code, which have contradictory provisions with regard to the legality of child marriage"** and to **"amend the Criminal Code, which currently punishes minors for marrying below the minimum legal age of marriage."**<sup>27</sup>

Since the Committee's review in 2011, the State party has taken a monumental step towards eliminating child marriage by explicitly prohibiting the practice in the 2015 Constitution of Nepal<sup>28</sup> and establishing a right to compensation for children whose rights have been violated.<sup>29</sup> After the promulgation of the Constitution, from August 17, 2018, separate criminal and civil codes, namely, the Country Penal (Code) Act, 2017 (the Penal Code) and the Country Civil (Code) Act, 2017 (the Civil Code), came to effect. According to these Codes, the legal age of marriage is 20 years in Nepal<sup>30</sup> and marriage below the legal age is a criminal offence.<sup>31</sup>

The State party's responses to the Committee's LOIs, however, do not specifically address the issue of eradicating child marriage in Nepal. The response only noted that *"[t]he annual budget and program for the FY 2018/19 provides a budget for conducting awareness program[s] for anti-child marriage[.]"*<sup>32</sup> Additionally, it was noted that, *"[p]ursuant to Section 12(2)(C)(32) of the Local Government Operation Act, 2017, Local Governments are responsible for addressing the issues related to child marriage"*<sup>33</sup> and other practices that discriminate against women in Nepal.<sup>34</sup> However, in the present context of recent restructuring in Nepal, the effective implementation of the Local Government Operation Act, 2017 remains to be seen. This has become a specific challenge as the previous district level officials (i.e. Women Development Officers and Child Protection Officers) responsible for implementing, coordinating and monitoring district level activities against child marriage in accordance with the 2016 National Strategy to End Child Marriage<sup>35</sup> have recently been merged in the local government, and there is still a lack of clarity on the roles and functions of the local mechanisms.

Although the State party's response to the Committee's LOIs claims that *"(w)ith the enactment of the Civil Code and Penal Code... there remains no contradiction as to the legality of child marriage"* and *"all such marriages have now completely been declared null and void,"*<sup>36</sup> in reality, the Penal Code and Civil Code are still inconsistent and contradictory in their approaches for addressing the issue of child marriage. While the Penal Code criminalizes marriage below twenty years and declares it *void ab initio*,<sup>37</sup> the Civil Code declares that such marriages are legally valid but voidable.<sup>38</sup> In its response to the LOIs, referring to the Penal Code, the State party only states that *"Section 173(2) makes child marriage void ab initio"*<sup>39</sup> and does not discuss the provision under the Civil Code, which still hold child marriages as voidable.<sup>40</sup> Such legal inconsistencies have led to multiple interpretations of the laws addressing child marriage and thereby are unlikely to be implemented effectively. The lack of harmonization among these new laws creates confusion

and as a result, undermine victims' access to legal remedies and perpetuates the continuity of child marriage without state deterrence.<sup>41</sup>

In line with the Committee's LOIs on August 8, 2018, even though a Bill to Amend Some Acts related to Country Codes was registered at the National Assembly proposing to harmonize the provisions related to child marriage by declaring it *void ab initio*,<sup>42</sup> the Bill is yet to be passed by the Parliament. Furthermore, the proposed Bill failed to remove the provision from the Penal Code that punishes minors for marrying below the minimum legal age<sup>43</sup> – a concern specifically raised by the Committee in its LOIs to the State party.<sup>44</sup>

Although the Constitution recognizes victims' rights to compensation, social rehabilitation, and justice,<sup>45</sup> the current legal provisions of the Penal Code and Civil Code do not adequately address reparations or support systems for girls and women who leave child marriages. Although victims may resort to existing service centers and rehabilitation centers that support victims of sexual violence, these centers are limited in scope and location.<sup>46</sup> Furthermore, there are no mechanisms or programs providing long-term remedies to these victims, who are often disowned by their families for leaving their marriages.<sup>47</sup> The proposed Bill amending the Penal Code and Civil Code also fails to provide support mechanisms and social protection systems for victims of child marriage, including legal aid, sexual and reproductive health services, psycho-social counselling, life skills trainings, educational programs and employment opportunities, and shelter for girls and women who opt to leave such marriages.

### **C. Recommended Questions**

1. What actions will the State party take to remove provisions related to abortion from the Penal Code and ensure that women are not prosecuted and imprisoned under any circumstances for undertaking abortion?
2. What steps will the State party take to ensure the passage of the proposed Bill to harmonize contradictory provisions in the Penal Code and Civil Code ensuring that child marriages are void *ab initio*, and minors are not punished for marrying below the minimum legal age of marriage?
3. In the context of the new federal structure in Nepal, what specific steps are being taken by the State party to effectively enforce legal provisions prohibiting child marriage and to ensure access to effective legal remedies and support mechanisms for girls married young?

### **D. Suggested Concluding Observations**

1. Remove provisions related to abortion from the Penal Code and ensure that women are not prosecuted or imprisoned under any circumstances for undertaking abortion in Nepal.

2. Take necessary measures to harmonize contradictory provisions in the Penal Code and Civil Code by establishing child marriages as void *ab initio*, and ensure minors are not punished for marrying below the minimum legal age of marriage.
3. Strengthen enforcement of legal provisions prohibiting child marriage and recognize the rights of girls married young to effective legal remedies and support mechanisms.

We sincerely hope that this information is useful to the Committee as it prepares to review the government's compliance with the provisions of the Convention. If you have any questions or would like further information, please contact Purna Shrestha at [pshrestha@reprorights.org](mailto:pshrestha@reprorights.org).

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<sup>1</sup> Committee on the Elimination of Discrimination against Women, List of Issues and questions in relation to the sixth periodic report of Nepal (71<sup>st</sup> Sess., 2018), U.N. Doc. CEDAW/C/NPL/Q/6 (2018).

<sup>2</sup> Committee on the Elimination of Discrimination against Women, List of Issues and questions in relation to the sixth periodic report of Nepal (71<sup>st</sup> Sess., 2018), at para. 18, U.N. Doc. CEDAW/C/NPL/Q/6 (2018).

<sup>3</sup> Committee on the Elimination of Discrimination against Women, List of Issues and questions in relation to the sixth periodic report of Nepal (71<sup>st</sup> Sess., 2018), at para. 18, U.N. Doc. CEDAW/C/NPL/Q/6 (2018).

<sup>4</sup> Committee on the Elimination of Discrimination against Women, List of Issues and questions in relation to the sixth periodic report of Nepal (71<sup>st</sup> Sess., 2018), at para. 8, U.N. Doc. CEDAW/C/NPL/Q/6 (2018).

<sup>5</sup> Committee on the Elimination of Discrimination against Women, List of Issues and questions in relation to the sixth periodic report of Nepal (71<sup>st</sup> Sess., 2018), at para. 18, U.N. Doc. CEDAW/C/NPL/Q/6 (2018).

<sup>6</sup> THE CONSTITUTION OF NEPAL, 2015 (2072), art. 38(2); GOVERNMENT OF NEPAL, RESPONSE TO LIST OF ISSUES AND QUESTIONS IN RELATION TO THE SIXTH PERIODIC REPORT OF NEPAL, para. 109 (2018).

<sup>7</sup> GOVERNMENT OF NEPAL, BUDGET SPEECH NO. 158, FISCAL YEAR 2072/73 B.S., *available at* [http://mof.gov.np/uploads/document/file/BudgetSpeech\\_Final\\_20150714124417.pdf](http://mof.gov.np/uploads/document/file/BudgetSpeech_Final_20150714124417.pdf).

<sup>8</sup> Manju and Others v. Government of Nepal, Writ No. 070-WO, 0194, (2013), decided on August 8, 2017.

<sup>9</sup> Safe Motherhood and Reproductive Health Rights Act, part 3 (2018).

<sup>10</sup> Safe Motherhood and Reproductive Health Rights Act, part 3, secs. 10, 11, & 12 (2018).

<sup>11</sup> Safe Motherhood and Reproductive Health Rights Act, part 5 (2018).

<sup>12</sup> Safe Motherhood and Reproductive Health Rights Act, part 4 (2018).

<sup>13</sup> Safe Motherhood and Reproductive Health Rights Act, part 2 (2018).

<sup>14</sup> Safe Motherhood and Reproductive Health Rights Act, part 8, sec. 29 (2018).

<sup>15</sup> Safe Motherhood and Reproductive Health Rights Act, part 8, sec. 28 (2018).

<sup>16</sup> Safe Motherhood and Reproductive Health Rights Act, part 8, sec. 32 (2018).

<sup>17</sup> Safe Motherhood and Reproductive Health Rights Act, part 6, secs. 22 & 23 (2018).

<sup>18</sup> Safe Motherhood and Reproductive Health Rights Act, part 2, sec. 3(5) (2018).

<sup>19</sup> Safe Motherhood and Reproductive Health Rights Act, part 4, sec. 15(1), (3) & (4) (2018).

<sup>20</sup> Safe Motherhood and Reproductive Health Rights Act, part 4, sec. 15 (2) (2018).

<sup>21</sup> Safe Motherhood and Reproductive Health Rights Act, part 4, sec. 16 (2018).

<sup>22</sup> GOVERNMENT OF NEPAL, RESPONSE TO LIST OF ISSUES AND QUESTIONS IN RELATION TO THE SIXTH PERIODIC REPORT OF NEPAL, para. 109 (2018).

<sup>23</sup> GOVERNMENT OF NEPAL, RESPONSE TO LIST OF ISSUES AND QUESTIONS IN RELATION TO THE SIXTH PERIODIC REPORT OF NEPAL, para. 109 (2018).

<sup>24</sup> Safe Motherhood and Reproductive Health Rights Act, part 4, sec. 16 & part 7, sec. 25(g) (2018).

<sup>25</sup> Safe Motherhood and Reproductive Health Rights Act, part 7, sec. 26(c) (2018); Country Criminal (Code) Act 2074, part 1.2, ch. 13, sec. 188 (2017) (Nepal).

<sup>26</sup> *For details, refer to Annex for pre-session submission.*

<sup>27</sup> Committee on the Elimination of Discrimination against Women, List of Issues and questions in relation to the sixth periodic report of Nepal (71<sup>st</sup> Sess., 2018), at para. 8, U.N. Doc. CEDAW/C/NPL/Q/6 (2018).

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- <sup>28</sup> THE CONSTITUTION OF NEPAL, 2015 (2072), art. 39 (5).
- <sup>29</sup> THE CONSTITUTION OF NEPAL, 2015 (2072), art. 39 (10).
- <sup>30</sup> Country Criminal (Code) Act 2074, part 1.2, ch. 11, sec. 173(1) (2017) (Nepal). The Country Civil (Code) Act, 2074, part 1.3, ch. 1, sec. 70(1)(d) (2017) (Nepal).
- <sup>31</sup> Country Criminal (Code) Act 2074, part 1.2, ch. 11, sec. 173(3) (2017) (Nepal).
- <sup>32</sup> GOVERNMENT OF NEPAL, RESPONSE TO LIST OF ISSUES AND QUESTIONS IN RELATION TO THE SIXTH PERIODIC REPORT OF NEPAL, para. 40 (2018).
- <sup>33</sup> GOVERNMENT OF NEPAL, RESPONSE TO LIST OF ISSUES AND QUESTIONS IN RELATION TO THE SIXTH PERIODIC REPORT OF NEPAL, para. 40 (2018).
- <sup>34</sup> GOVERNMENT OF NEPAL, RESPONSE TO LIST OF ISSUES AND QUESTIONS IN RELATION TO THE SIXTH PERIODIC REPORT OF NEPAL, para. 40 (2018).
- <sup>35</sup> UNICEF, *Nepal Hosts Its First Girl Summit to End Child, Early and Forced Marriage* (2016), available at <http://unicef.org.np/media-centre/press-releases/2016/03/23/nepal-hosts-its-first-girl-summit-to-end-child-early-and-forced-marriage>.
- <sup>36</sup> GOVERNMENT OF NEPAL, RESPONSE TO LIST OF ISSUES AND QUESTIONS IN RELATION TO THE SIXTH PERIODIC REPORT OF NEPAL, para. 42 (2018).
- <sup>37</sup> Country Criminal (Code) Act 2074, part 1.2, ch. 11, sec. 173(2) (2017) (Nepal).
- <sup>38</sup> The Country Civil (Code) Act, 2074, part 1.3, ch. 1, sec. 73(1)(a) (2017) (Nepal).
- <sup>39</sup> GOVERNMENT OF NEPAL, RESPONSE TO LIST OF ISSUES AND QUESTIONS IN RELATION TO THE SIXTH PERIODIC REPORT OF NEPAL, para. 42 (2018).
- <sup>40</sup> The Country Civil (Code) Act, 2074, part 1.3, ch. 1, sec. 73(1)(a) (2017) (Nepal).
- <sup>41</sup> CENTER FOR REPRODUCTIVE RIGHTS ET AL., ENDING IMPUNITY FOR CHILD MARRIAGE IN NEPAL: A REVIEW OF NORMATIVE AND IMPLEMENTATION GAPS, 20-21 (2016), available at [https://nepal.unfpa.org/sites/default/files/pub-pdf/Ending%20Impunity%20for%20Child%20marriage%28final%29\\_25Nov16.pdf](https://nepal.unfpa.org/sites/default/files/pub-pdf/Ending%20Impunity%20for%20Child%20marriage%28final%29_25Nov16.pdf).
- <sup>42</sup> GOVERNMENT OF NEPAL, A BILL TO AMEND SOME ACTS RELATED TO COUNTRY CODES, sec. 2(6) (2018).
- <sup>43</sup> Country Criminal (Code) Act 2074, part 1.2, ch. 11, sec. 173(3) (2017) (Nepal).
- <sup>44</sup> Committee on the Elimination of Discrimination against Women, List of Issues and questions in relation to the sixth periodic report of Nepal (71<sup>st</sup> Sess., 2018), at para. 8, U.N. Doc. CEDAW/C/NPL/Q/6 (2018).
- <sup>45</sup> THE CONSTITUTION OF NEPAL, 2015 (2072), arts. 21(2) & 39(10).
- <sup>46</sup> GOVERNMENT OF NEPAL, MINISTRY OF WOMEN, CHILDREN, AND SOCIAL WELFARE, CENTRAL CHILD WELFARE BOARD, REPORT RELATING TO SERVICE CENTERS AND REHABILITATION HOMES FOR VICTIMS OF HUMAN TRAFFICKING AND DOMESTIC VIOLENCE 2073, 3 (2016), available at <http://www.mowcsw.gov.np/article.php?type=article&aid=98>.
- <sup>47</sup> CENTER FOR REPRODUCTIVE RIGHTS ET AL., ENDING IMPUNITY FOR CHILD MARRIAGE IN NEPAL: A REVIEW OF NORMATIVE AND IMPLEMENTATION GAPS, 21 (2016), available at [https://nepal.unfpa.org/sites/default/files/pub-pdf/Ending%20Impunity%20for%20Child%20marriage%28final%29\\_25Nov16.pdf](https://nepal.unfpa.org/sites/default/files/pub-pdf/Ending%20Impunity%20for%20Child%20marriage%28final%29_25Nov16.pdf).