

Universal Periodic Review of Nepal
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JOINT STAKEHOLDER REPORT

Report submitted by:
The Asian Pacific Resource & Research Centre for Women (ARROW)
On behalf of Right Here Right Now



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Right Here, Right Now global partnership envisions a world where young people, in all their diversity, acquire full and uninterrupted access to comprehensive sexuality education and youth-friendly sexual and reproductive health services, including safe abortion. The Asian Pacific Resource & Research Centre for Women (ARROW) is the regional coordinator and one of the members of the *Right Here, Right Now* global partnership.

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The Sexual Rights Initiative is a coalition of six organizations from all regions of the world that work together to advance human rights related to gender, sexuality and reproduction at the United Nations.

The submission is endorsed by: Association of Youth Organizations Nepal (AYON); Beyond Beijing Committee (BBC); Blue Diamond Society (BDS); CDS-PARK, Mugu; Family Planning Association of Nepal (FPAN); Federation of Sexual and Gender Minorities in Nepal (FSGMN); Human Development and Environment Protection Forum (HUDEP); LOOM Nepal; Restless Development; Rural Women's Network Nepal (RUWON); Visible Impact; Youth Action Nepal; Youth Development Center (YDC); YUWA and Yuwalaya.

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Executive Summary

1. Inclusive growth is a persistent challenge in Nepal with the benefits of development spread unevenly across ethnic, gender, and geographic categories, a defining feature of the country’s historical trajectory. Geographic and environmental factors exacerbate vulnerabilities and inequalities. The existing socio-economic and physical conditions of women (especially vulnerable groups of women), children, people with disabilities, senior citizens, sexual and gender minorities, those living in poverty and other socially marginalized persons increase the barriers and challenges in accessing education, health services, employment, and social security.
2. Young people aged 10-29 in Nepal comprises more than 41% of the total population, while youths aged 15-24 make up almost 29% of the total population.^[1] This is the highest proportion of young people ever in history, making Nepal one of the richest countries in the world in terms of young human resources. This is an opportunity for a demographic dividend, provided that these young people have good health, quality education, have their human rights respected and fulfilled, have access to social, economic and political engagement and meaningful participation in decision making.
3. However, only 45.42% of young people aged 10-24 discuss issues related to family planning with anybody, the median age at first marriage is 17.9 years among women. In comparison, teenage childbearing is reported to be 17% among women aged 15-19 years. 79% of young women and 73% of young men aged 15-24 do not have comprehensive knowledge of HIV.^[1] Rights based, age-appropriate information to youth helps to reduce pregnancy-related health risks in women, empowers people, and enhances education, which contributes to the reduction of adolescent pregnancies. Sexual and reproductive health and rights (SRHR) is a crucial part in the lives of young people – whether or not they are sexually active.
4. There is limited access to contraceptives and safe abortion services, human rights-based and gender-inclusive, comprehensive sexuality education, as well as the poor implementation of the right to gender identity. Therefore, the four issues viz access to SRH services, including safe abortion, comprehensive sexuality education, marriage equality, and gender-based citizenship, have been prioritized in this submission.
5. In the second UPR cycle of Nepal, Sweden, Spain, Israel, and Brazil made recommendations on the legalization of same-sex marriage and the protection of LGBTI+ rights. Government of Nepal supported recommendations made by Sweden, Spain, and Israel, while noted Brazil’s recommendation on the implementation of Supreme’s Court’s decision concerning same sex marriage. Nepal did not receive any specific recommendations on safe abortion and comprehensive sexuality education. Recommendations made by Sweden and Israel on the protection of LGBTI rights were partially implemented, while recommendations made by Spain and Brazil on the legalization of same-sex marriage and establishing mechanisms for addressing discrimination against sexual and gender minorities have not been implemented.^[2]

6. Hence, this report recommends (a) developing regulations and directives for the effective implementation of the Right to Safe motherhood and Reproductive health act 2018 that provides specific guidelines for the allocation of specific budget; (b) ensuring access to Comprehensive Sexuality Education that includes all components of International Technical Guidelines on Sexuality Education (ITGSE) for both in school and out of school curricula while keeping a specific monitoring mechanism in place, (c) Immediately pass the marriage equality bill and strongly implement existing laws that aligns with the Universal Declaration of Human Rights and Constitution of Nepal and d) ensuring all citizens the right to self-identify their gender on all official documents as per the constitution of Nepal 2015.

Priority Issue 1: Safe Abortion

7. Abortion was legalized in Nepal in 2002 and considered as an issue of women's human rights after the landmark 2009 supreme court decision. This assisted the expansion and availability of safe abortion services in all districts of Nepal.^[3] After the legalization of safe abortion, Nepal has seen significant progress in reducing maternal mortality and morbidity and also received a Millennium Development Goal award for this achievement due to its contribution to a sharp decline in maternal mortality, which fell from 580 to 190 per 100000 live births in 2013.^[5] In 2015, the Government of Nepal announced free safe abortion services in public health facilities to help overcome the economic burden of accessing safe abortion services.^[4] Right to Safe Motherhood and Reproductive Health Act 2018 served as another landmark document in identifying safe abortion as a women's right. Likewise, Nepal has enshrined reproductive rights in the Constitution of Nepal 2015 as a fundamental right of women.^[6]
8. Despite these positive developments, more than half of abortions that occur in Nepal are unsafe and consequently contributes to around 8 -10 % of maternal mortality of Nepal.^[7] 59% of the women aged 15-49 are still not aware of the legalization of abortion.^[8] Abortion is still included in the Criminal Code of conduct with exception to the conditions as stated in the National Safe Abortion Policy 2003, implying that abortion is not fully considered as women's fundamental rights. Therefore, many women are convicted of abortion and infanticide and kept behind the bars while being treated as a criminal.^[9] There is a lack of availability of the enlisted service provider in most of the listed safe abortion service sites, especially in the remote and rural areas where the prevalence of maternal mortality and morbidity from unsafe abortion is high. Most of the external donors and stakeholders, strengthening the health system of the government to expand the abortion service, are also concentrated in the urban areas.
9. Despite being one of the most progressive countries in regard to abortion laws and policies, there are various gaps and loopholes. Safe abortion was kept as an essential health care service in the Nepal Health Sector Support Program II (2010-2015), while the third Nepal Health Sector Support Program (2015-2020), which is currently in place, has not included safe abortion as a basic health service package. Additionally, in the absence of the regulation and directives for the right to safe motherhood and reproductive health act, the right to safe abortion cannot be implemented and ensured. The shifting of the government structure and frequent transfer of health staff might pose challenges to ensure the implementation of policies and guidelines at all levels.^[10] The

abortion stigma in the community, service providers, as well as among policymakers, has been one of the main barriers to safe abortion service despite the progressive laws and policies. The anecdotal evidence has suggested that the budget for safe motherhood is allocated in bulk without a specific budget for safe abortion. In this process, abortion has been the least prioritized issue in comparison to other maternal health issues.

10. In the second cycle of UPR of Nepal, New Zealand recommended Nepal to continue to implement measures to ensure all women and girls have equal access to quality sexual and reproductive healthcare, which was accepted by Nepal. Nepal received no recommendations specific to abortion in the previous UPR cycle. The Convention on Elimination of all Forms of Discrimination Against Women (CEDAW) committee recommended Nepal Government to “Amend the act to fully decriminalize abortion in all cases, to legalize it at least in case of risk to the health of pregnant women, additionally to the cases of rape, incest, severe fetal impairment, and risk to the life of pregnant women that are already legalized, and allocate sufficient resources to raise awareness on safe abortion clinics and services in the Nepal's 6th periodic review (2018)".^[11] However, the government has not amended as per the recommendation by the committee; therefore, abortion is still in the criminal code.

Recommendations on access to safe abortion

11. Decriminalize abortion by removing abortion from the criminal code and including it in the civil code to ensure the right to safe abortion, including for young people.
12. Formulate regulations and directives for the effective implementation of the Right to Safe Motherhood and Reproductive Health Act 2018 that provides specific guidelines for the allocation of a specific budget for safe abortion services at provincial and local levels ensuring that abortion services are accessible, available, affordable, stigma-free and of quality.
13. Include rights-based Value Clarification and Attitude Transformation training in the pre-service and in-service training curriculum of the health service providers to reduce the stigma, thereby increasing access to safe abortion for all women irrespective of the age, marital status and gender.
14. Raise awareness on the correct and complete information on safe abortion services and its legal status using a multisectoral approach (health, human rights, population, education, religion, media), and launch rights based stigma reduction campaigns at the community level.

Priority Issue 2: Comprehensive Sexuality Education

15. Nepal didn't receive any recommendations on comprehensive sexuality education in past reviews.
16. There is no specific policy or law that ensures the implementation of comprehensive sexuality education at schools though it has been mentioned in the School Sector Development Plan (2016-2023).^[12] Sexuality education was formally introduced in the school curriculum in Nepal for students of classes 9 and 10 in 2003 as a mandatory lesson under Environment, Population, and Health subject. Though it was a milestone, it was far from being comprehensive and age

appropriate. After a decade long advocacy effort by civil society organizations, an attempt to make it comprehensive and age-appropriate led the curriculum to be amended in 2013 to include the subjects for Grade 6, 7, and 8 as well.

17. The curriculum is only focused on reproductive health rather than all components of Comprehensive Sexuality Education. Currently, curriculum revision from Grade 4-8 is on-going, where only four components of Comprehensive Sexuality Education as per International Technical Guidelines on Sexuality Education (ITGSE) have been partly included. The curriculum has missed components like gender, sexuality, and skills for health and well-being. Also, it does not include adequate information about where to refer to for further information, nor does it promote discussing SRHR at home with parents or siblings. The public schools usually do not go beyond what is in the curriculum, though some private schools have made an effort to include several topics out of the syllabus as well.^[13] Recently, Curriculum Development Centre has made the “Environment Population and Health” subject optional for Grade 9 and 10 in the new National Curriculum framework 2075, which is a major setback.
18. Teachers often do not have adequate capacity to deliver to youth the information they need to make informed choices about their sexual health and life. Teacher’s training has been provided for all the teachers, but since there is no designated skilled teacher for health subject, the effectiveness of the training and delivery of life-skills based subject is not ensured. A monitoring mechanism is in place that sends Government resource persons to each school to assess their teaching ability and attendance comprehensively, but no monitoring framework exists to assess the quality of materials delivered during CSE classes. Also, currently, the teacher’s training is being done through initiatives of civil society organizations that are not able to cover the training for all the teachers. UNFPA, the UN reproductive health, and rights agency, in collaboration with the National Centre for Educational Development (NCED) now Centre for Education and Human Resource Development (CEHRD) and SISO Nepal, developed this teachers' training package on comprehensive sexuality education (CSE). The teacher's training package includes a five-day training module on six key concepts of International Technical Guidance on Sexuality Education along with the resource material for teachers on CSE.^[14]
19. The focus of the government is mostly on school-going children, whereas there is no attention for out of school children who are one of the most vulnerable groups. There have been efforts to provide alternative education to out of school children and youth. However, out of school curriculum only contains some information on HIV and AIDS.

Recommendations on comprehensive sexuality education

20. Include Comprehensive Sexuality Education that complies with the International Technical Guidelines on Sexuality Education (ITGSE) in both school-based and out of school curricula and implement a specific monitoring and evaluation mechanism.
21. Repeal the decision of making the subject Environment Population and Health as an optional subject for Grade 9 and 10 and make it mandatory in the National Curriculum Framework 2075.

Priority Issue 3: Marriage Equality

22. During Nepal's second universal periodic review, four recommendations were made that focused on human rights relating to sexual orientation and gender identity and expression. One of these, a recommendation made by Brazil, focused specifically on implementing the Supreme Court of Appeal's decision concerning same-sex marriage. Nepal noted this recommendation stating progressive measures taken so far to address the issues regarding same-sex marriage to take the measures required further to protect the rights of LGBTI persons in due course of time.
23. Nepal is regarded as one of the most progressive countries in Asia for Lesbian Gay Bisexual Transgender, Intersex and Queer (LGBTIQ) persons. The Constitution of Nepal 2015 explicitly includes rights relating to sexual orientation and gender identity and expression. Article 10 states that no citizen of Nepal may be deprived of the right to obtain citizenship; Article 12 states that citizenship may not be denied based on descent and gender identity; Right to live with dignity article 16, Right to equality article 18, rights to social justice article 42.^[15] The government of Nepal legalized homosexuality in 2017 and introduced several new laws that include protections based on the basis of sexual orientation. The election commission of Nepal has begun allowing voters, who do not self-identify as either male or female, to register as a third gender. The Central Bureau of Statistics, a government entity for the census, attempted in Demographic Health Survey 2015 to count the population by three genders, which was unsuccessful due to the insignificant number of LGBTI people in the survey results. Nepal also includes "other" as a gender category in passport and citizenship.^[16] Moreover, Sunil Babu Pant was the first out gay parliamentarian in Nepal's first constituent Assembly in 2008. The apex court in 2012 recognized live-in-relationship for a lesbian couple. Data gathered by Blue Diamond Society (BDS) found that there are nine hundred thousand persons identifying as lesbian, gay, bisexual, transgender or gender non-conforming.
24. However, despite advocacy efforts by LGBTI activists and allies, the new constitution does not explicitly address same-sex marriage. The Civil Code, Chapter 3 article 67, defines marriage as a union of man and woman - who accept each other as husband and wife through any celebration, ceremony, formal event or any medium. This provision clearly excludes marriage between same-sex couples and gender non-conforming people/persons. The provision does not include the marriage of the same sex. Moreover, this article contradicts the Constitution of Nepal which states that every person has the right to live with dignity (article 16), all citizens are equal before the law, and special provision bylaws shall be constructed for the development or empowerment and protection of gender and sexual minorities (article 18).
25. In December 2007, a landmark Supreme Court decision acknowledged the rights of sexual minorities, and also directed the government to make necessary arrangements, including making new laws or amending existing ones to ensure that people of different gender identities and sexual orientations could enjoy the rights without discrimination. The verdict was a major step in decriminalizing other gender identities and sexual orientations. However, the Supreme Court refrained from deciding on legalising same-sex marriage. The legalisation of same-sex marriage was to be recommended by a committee after carrying out a thorough study and analysis of international human rights instruments, global values and practices, and its impact on society. In

2015, a committee formed to study the possibility of legalising same-sex marriage in Nepal submitted an 85-page report to the Prime Minister's Office. It recommended that the government legalise same-sex marriage. Over a decade after the Supreme Court's verdict and five years after the committee's report, same-sex marriage remains unrecognised.

26. Despite all these legal achievements, lack of acceptance leads to deprivation of legal recognition of Marriage, and other associated legal provisions like surrogacy, adoption of a child, and property rights, which was recommended by the Same Sex-Marriage Drafting Bill Committee.

Recommendations on marriage equality

27. Immediately pass marriage equality legislation and implement to the fullest existing laws that align with Universal Declaration of Human Rights, Article 1, which exclusively recognizes equal rights and dignity of every individual, Constitution of Nepal, Article 18 (Right to Equality) & 42 (Right to Social Justice), the International Covenant on Civil and Political Right (ICCPR) 1966 Article 23 which provides legal protection for every individual and self-choice for marriage.
28. Amend the 'Definition of Marriage' in all existing laws and policies to ensure compliance with the definition of marriage in the Criminal Code Chapter 11, Section 171, which defines marriage as being between person to person and not between men and women.

Priority Issue 4: Gender identity and expression

29. The phrase 'gender identity' is mentioned in article 12 (citizenship ID) of the Constitution. The Supreme Court has recognized the right to gender identity and accorded the status of 'other' to transgender and non-binary people, including intersex individuals. This allows for "third gender" identifying individuals to open bank accounts, own property, and register for universities but the persons who have already received their citizenship with the gender identity as male or female cannot amend the citizenship with the gender identity of their choice. There is no provision to change name or gender identity in other legal areas.
30. Likewise, Nepal received four recommendations on the issue of sexual orientation and gender identity. Of these, Nepal supported three recommendations made by Spain, Israel, and Sweden. The government only noted recommendation on this theme was on same-sex marriage made by Brazil. Out of the total recommendations, only 2 (50%) recommendations have been partially implemented while the rest have not been implemented.

Recommendations on gender identity and expression

31. Amend the law that requires medical proof for the recognition of one's gender identity for issuing citizenship while ensuring all citizens' right to self-identity of their gender on all official documents according to article 12 of the constitution of Nepal 2072.
32. Implement and interpret the legal provisions for human rights of sexual and gender minorities by capacitating the government officials at all government levels i.e., central, provincial, and local while promoting sex-positive, sex and gender affirmative attitude, perspective and behavior towards sexual and gender minorities by the use of media and gender-friendly school curriculum.

33. Ensure meaningful and inclusive participation of the sexual and gender minorities in all decision-making processes at the local level to the central level, including formulation, implementation, monitoring and evaluation of policies, plans, and programs. Develop a protocol mechanism to monitor the implementation of article 18 and article 42 through the development of a database.

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