

**TOOLKIT FOR DEVELOPING
LEGISLATION AND POLICIES ON
GENDER-BASED VIOLENCE
AGAINST WOMEN AND GIRLS
IN NEPAL**

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We, the Sovereign People of Nepal,

[...]

Resolving to build an egalitarian society founded on the proportional inclusive and participatory principles in order to ensure economic equality, prosperity and social justice, by eliminating discrimination based on class, caste, region, language, religion and gender and all forms of caste-based untouchability

[...]

Do hereby pass and promulgate this Constitution, in order to fulfil the aspirations for sustainable peace, good governance, development and prosperity through the federal, democratic, republican, system of governance.

[...]

Article 38. Rights of women:

- (1) Every woman shall have equal lineage right without gender-based discrimination.*
- (2) Every woman shall have the right to safe motherhood and reproductive health.*
- (3) No woman shall be subjected to physical, mental, sexual, psychological or other form of violence or exploitation on grounds of religion, social, cultural tradition, practice or on any other grounds. Such act shall be punishable by law, and the victim shall have the right to obtain compensation in accordance with law.*

**Constitution of Nepal
20 September 2015 (2072.6.3)**

ACRONYMS AND ABBREVIATIONS

SDG	Sustainable Development Goals
CEDAW Convention	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
GBVAWG	Gender-based violence against women and girls
UN	United Nations
UPR	Universal Periodic Review
OCCM	One Stop Crisis Management Centre
LGBTIQ+	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer

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GLOSSARY

COERCIVE CONTROL is defined as an act or pattern of acts of assault, sexual coercion, threats, humiliation, and intimidation or other abuse that is used to harm, punish or frighten a victim. This control includes a range of acts designed to make victims/survivors subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

EVIDENCE-BASED APPROACH requires that the drafting of a law/policy is conducted based on available and reliable evidence. This includes data and research on: the scope, prevalence, incidence and consequences of forms of GBVAWG; the reported cases; and lessons learnt and good practices from other countries. An evidence-based approach is necessary to ensure that the drafting of a law/policy is well-informed, aligned with the actual needs and implementable.

GENDER-BASED VIOLENCE AGAINST WOMEN AND GIRLS refers to acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.¹

HUMAN RIGHTS-BASED APPROACH is an approach where rights holders (and their entitlements), and corresponding duty bearers (and their obligations), are clearly identified. This approach has the main objective of realising victims/survivors' rights to live free from violence. It provides for a strong foundation of efforts to end GBVAWG, and to

holding those who have a duty to act accountable.

INCIDENCE refers to the number of cases of violence reported to service providers. When the source is administrative data, it may not be representative of the levels of violence in the whole population as a large number of GVAWG cases are never reported.²

PREVALENCE of GVAWG refers to the proportion of women and girls who have experienced violence as part of the total population of women and girls. Prevalence estimates usually present the percentage of women who have experienced violence either during the previous 12 months (known as point of prevalence) or at any time in their life (lifetime prevalence).³

VICTIM/SURVIVOR-CENTRED APPROACH requires a systematic focus on the needs, concerns and realities of victims/survivors to ensure that they have adequate access to services and justice.

¹ CEDAW Committee (2017), General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19, at para 14.

² United Nations (2006), Ending Violence against Women: From Words to Action, at page 70, available at: <http://www.unwomen.org/-/media/headquarters/media/publications/un/en/englishstudy.pdf?la=en&vs=954>.

³ UN Women and Australian Aid (2018), ASEAN Regional Guidelines on VAWG Data Collection and Use, at page 13, available at: <http://www2.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2018/04/asean-vawg-data-guidelines.pdf?la=en&vs=5541>.

1 INTRODUCTION AND BACKGROUND

GENERAL RECOMMENDATION N.19 of the Committee on the Elimination of Discrimination against Women: GBVAWG is “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. GBVAWG impairs or nullifies the enjoyment by women of human rights and fundamental freedoms.”

CEDAW GENERAL RECOMMENDATION N.35 of the Committee on the Elimination of Discrimination against Women: “GBVAWG refers to acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.”

1.1 NOTE

Why this brief?

This toolkit provides guidance for the development, adoption and effective implementation of comprehensive and human-rights-centred legislation and policies to end gender-based violence against women and girls (GBVAWG).

Through this guidance, the toolkit aims to support concerned stakeholders in Nepal at all levels of governance, particularly at the provincial and local levels, in their efforts to provide adequate protection to victims/survivors, strengthen prevention measures and end impunity on acts of GBVAWG.

It is crucial that GBVAWG legislation and policies go beyond mere criminalisation and prosecution of perpetrators and encompass i.e. support, protection, remedies to victims/survivors and their empowerment, as well as the prevention of violence. Thus, this toolkit presents a checklist of crucial elements for GBVAWG legislation and policies, including:

- definition of violence;
- protection of victims/survivors;
- gender-sensitive and adequate investigations, legal proceedings and handling of evidence;
- prevention;

- effective implementation and monitoring of legislation/policy.

This toolkit has been developed with an annex providing specific guidance to draft legislation/policies on the topic of sexual violence (see ANNEX 2 at page 45).

This toolkit is based on the “Drafting Specific Legislation on Violence against Women and Girls” of UN Women’s *Virtual Centre to End Violence against Women and Girls* at <http://endvawnow.org/> and UN Women’s *Handbook for Legislation on Violence against Women* (for more resources see ‘ADDITIONAL RESOURCES’ at page 42).⁴

For the purpose of this toolkit, the word “women” refers to all female identifying persons.

In line with the General Recommendation 35 of the Committee on the Elimination of Discrimination against Women (CEDAW Committee) the present toolkit uses the term “**GBVAWG**” as a more precise term that makes explicit the gendered causes and impact of the violence. The term further strengthens the understanding of the violence as a social rather than an individual concern, requiring comprehensive responses, beyond those to specific events, individual perpetrators and victims/survivors.

⁴ UN Women (2012), Handbook for Legislation on Violence against Women, available at <http://www.unwomen.org/en/digital-library/publications/2012/12/handbook-for-legislation-on-violence-against-women>.

1.2 UNDERSTANDING GBVAWG IN NEPAL

GBVAWG is one of the most global, widespread and systemic form of discrimination and violation of human rights worldwide. It has immediate and long-term physical, sexual, psychological and economic consequences for women and girls, preventing them from fully participating in society.

In addition to being a major obstacle to the fulfilment of women's and girls' human rights, GBVAWG stands in the way of achieving the 2030 Agenda for Sustainable Development and the commitments of member States to *Leave No One Behind*. GBVAWG harms families across generations, impoverishes communities and countries at large, reinforces other forms of violence throughout societies and has tremendous costs for the governments and societies.

GBVAWG in Nepal is pervasive and occurs in both the private and the public spheres throughout the country. It manifests itself in physical, sexual, psychological and economic forms. It also takes the form of trafficking and harmful practices, including child marriage, dowry, witchcraft accusations and persecution and *Chhaupadi*.

Women face varying and intersecting forms of discrimination that impact and shape their experiences of and vulnerabilities to violence. Because of various factors, GBVAWG may affect some women to different degrees, or in different ways.⁵

In Nepal, these factors stem from long standing socio-cultural traditions, norms and practices developed over centuries, including patriarchy, the caste system and other causes

DATA ON GBVAWG IN NEPAL



22 %

of women aged 15-49 have experienced physical violence



7 %

of women aged 15-49 have experienced sexual violence



26 %

of ever-married women aged 15-49 have experienced spousal violence

Source: Ministry of Health and Population (2017), Nepal Demographic Health Survey 2016, pages 348, 349, 355

of economic and political domination of certain communities over others.⁶ Such factors include:

- age
- caste/ethnicity/indigenous status
- socioeconomic status (e.g. class, ownerships of assets including land, employment status)
- religion or belief
- marital status, widowhood
- the stigmatisation of women who fight for their rights, including women's human rights defenders

⁵ CEDAW Committee (2017), General Recommendation No. 35, at para 12, available at:

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=en.

⁶ United Nations Development Assistance Framework for Nepal 2013 – 2017, United Nations Country Team Nepal, 2012 available at:

http://www.np.undp.org/content/dam/nepal/docs/legalframework/UNDP_NP_UNDAF%202013-2017.pdf.

- urban or rural location and geographical remoteness
- disability
- sexual orientation and gender identity
- internal displacement
- migration
- illiteracy
- heading a household
- health status (e.g. HIV/AIDS status)

GBVAWG is not the result of random, individual acts of misconduct. Rather, it is deeply rooted in patriarchy, power imbalances and structural relationships of inequality between men and women and harmful social and cultural norms that place lower value on women and girls in society. Harmful forms of masculinity and the widespread normalisation of violence drive GBVAWG and allow it to persist.⁷

GBVAWG remains widespread in Nepal and occurs with impunity. Sixty-six percent of

women aged 15-49 who have ever experienced violence have never sought help nor told anyone. From the women aged 15-49 who have ever experienced violence and have sought help, only 9.9 per cent have approached the police, and only 1 per cent have approached a lawyer.⁸

In Nepal, impunity is exacerbated by the low level of awareness among women and girls of their rights and the mechanisms available for gaining access to justice and seeking remedies;⁹ the normalisation of violence and the social stigma attached to reporting violence;¹⁰ the lack of targeted financial support and legal aid;¹¹ and the limited capacity to guarantee full and effective investigation of cases and the limited number of cases that lead to convictions of the perpetrator and reparation to the victim and are effectively implemented.¹²

⁷ "Ending Violence against Women", *UN Women*, <http://www.unwomen.org>, accessed on 11 June 2019

⁸ Ministry of Health (2017), Nepal Demographic Health Survey, at page 362, available at <https://www.dhsprogram.com/pubs/pdf/fr336/fr336.pdf>.

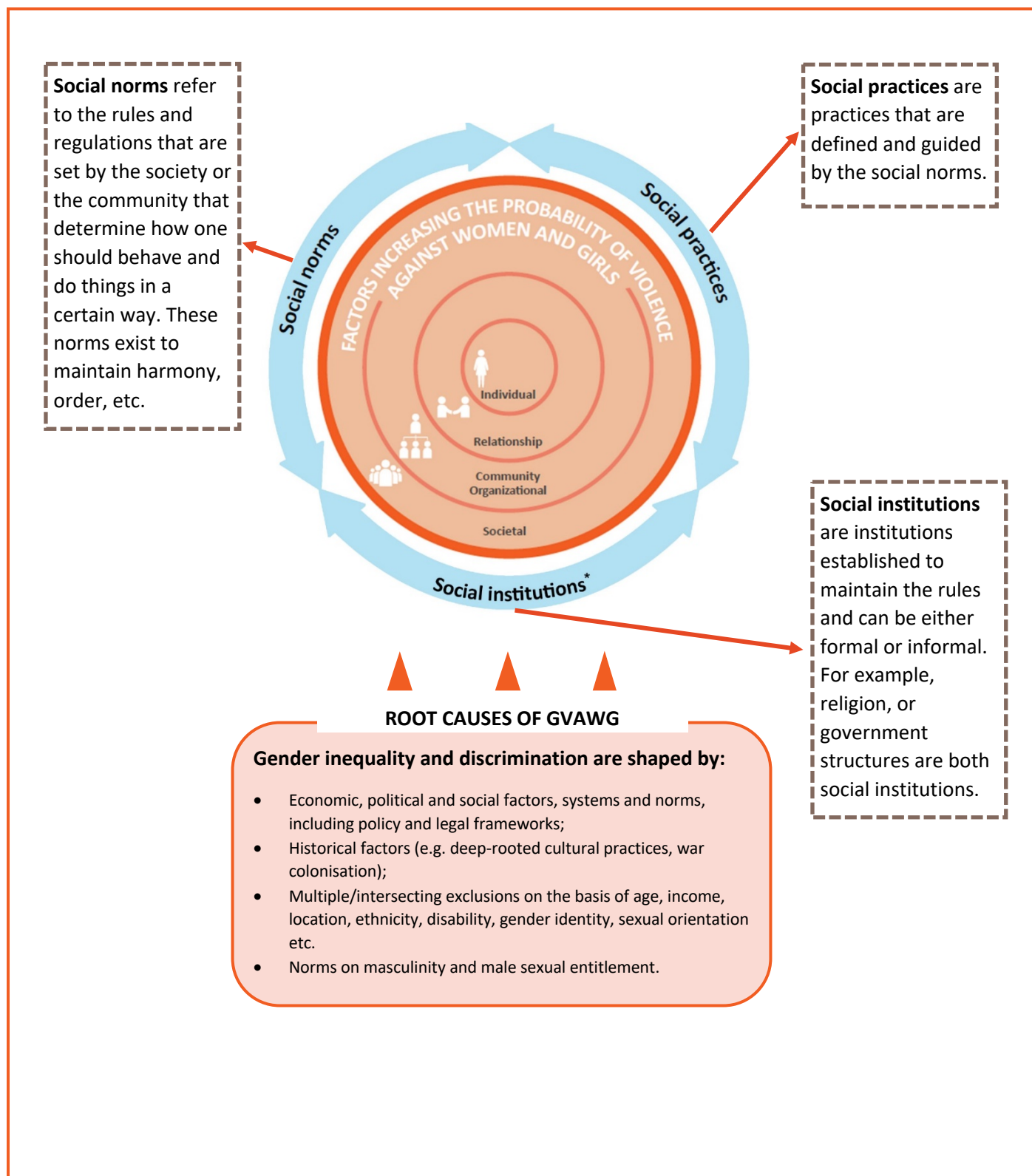
⁹ Committee on the Elimination of Discrimination against Women (CEDAW Committee) (2018), Concluding Observations on the sixth periodic report of Nepal, at para 10(a).

¹⁰ Human Rights Council (2019), Report of the Special Rapporteur on violence against women, its causes and consequences (Special Rapporteur on violence) on the visit to Nepal, at para 8.

¹¹ CEDAW Committee (2018), Concluding Observations on the sixth periodic report of Nepal, at para 10(b).

¹² UN Special Rapporteur on violence (2018), Preliminary observations and recommendations on the official visit to Nepal, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23948&LangID=E>.

1.3 SOCIO-ECOLOGICAL APPROACH TO GBVAWG¹³



¹³ UN Women (2015), A Framework to Underpin Action to Prevent Violence Against Women (adapted), at pages 22-23.

The socio-ecological approach to GBVAVG visualised above highlights factors at four levels that may increase one's risk of perpetrating violence and one's risk of experiencing it. These four levels are:¹⁴

- **Individual:** at the individual level, personal history and biological factors influence how individuals behave and increase their likelihood of becoming a victim/survivor or a perpetrator of violence. These factors include: age, education, income, substance use, or a history of abuse.
- **Relationship:** this level refers to the close relationships such as family, friends, intimate partners and peers that may increase the risk of experiencing violence as a victim/survivor or perpetrator. A person's closest social circle influences their behaviours and contributes to their experience.
- **Community or organisational:** the third level explores the settings, such as schools, workplaces, and neighbourhoods, in which social relationships occur and seeks to identify the characteristics of these settings that are associated with becoming victim/survivor or perpetrator of violence.
- **Societal levels:** this level looks at the social factors that contribute to creating an environment in which violence is encouraged or inhibited. The social factors include social and cultural norms, as well as the health, economic, educational and social policies that help to maintain economic or social inequalities between groups in societies.

The social-ecological approach is based on an

understanding that factors act in a mutually reinforcing way across all four levels. Following this approach, it is important to consider factors at each level and the relationships between and among them. For example, factors at the individual level (such as individual behaviours, attitudes and beliefs) are shaped by factors at the community/organisational level (such as community's beliefs, practices, etc.)

This approach highlights the need to ensure that activities at one level are supported and reinforced by activities at the other levels. For example, interventions focusing on promoting respectful relationships are supported and reinforced by laws/policies that promote the human rights of women. This mutually reinforcing approach has been identified as especially important for the prevention of GBVAVG.

Finally, the socio-ecological approach also highlights the importance to engage various actors in GBVAVG prevention. For example, teachers (working primarily with individuals) are well positioned, through their teaching methods, to promote non-violent and respectful relationships.

The socio-ecological approach helps us recognise the importance of developing comprehensive and human-rights centred legislation and policies to ensure an effective response to GBVAVG and for Nepal's realisation of the 2030 Agenda for Sustainable Development. In 2017, the Committee on the Elimination of Discrimination Against Women (CEDAW Committee), in its General Recommendation 35, called on States to take all measures to eliminate GBVAVG, including "having laws and legal services framework, institutions and a system in place to address GBVAVG and ensuring that they are

¹⁴ UN Women (2015), A Framework to Underpin Action to Prevent Violence Against Women (adapted), at pages 22-23; <https://www.who.int/violenceprevention/approach/ecology/en/>.

implemented and that they function effectively in practice”.¹⁵

It is crucial that GBVAWG legislation and policies go beyond mere criminalisation and prosecution of perpetrators, to encompass:

provision of justice; support, protection, remedies to victims/survivors and their empowerment; the prevention of violence; and provide for effective implementation and monitoring mechanisms.

¹⁵ CEDAW Committee (2017), General Recommendation No. 35, at para 22.

2 INTERNATIONAL AND NATIONAL FRAMEWORK

2.1 INTERNATIONAL FRAMEWORK

Ending GBVAWG is an integral part of achieving Agenda 2030. Beyond being explicitly addressed in the Sustainable Development Goal (SDG) 5 (SDG Target 5.2), GBVAWG is a barrier to the realisation of most SDGs. It has also been progressively enshrined in international frameworks, to ensure that a solid basis on ending GBVAWG is in place. GBVAWG has been defined as a form of discrimination by the CEDAW Committee in 1992,¹⁶ and recognised as a violation of human rights and fundamental freedoms in 1993.¹⁷ Since then, all major international human rights treaties have been interpreted so as to establish the duty to respect, protect and fulfil the rights of women to live free from all forms of violence. Relevant international instruments include:

- Universal Declaration on Human Rights (1948);
- International Covenant on Civil and Political Rights (1966);
- International Covenant on Economic, Social and Cultural Rights (1966);
- Convention on the Elimination of All Forms of Discrimination Against Women (1979);
- UN Declaration on the Elimination of Violence against Women and Girls (VAWG) (1993);
- General Recommendation No. 19 of the CEDAW Committee (1992);
- General Recommendation No. 35 of the CEDAW Committee (2017);
- Beijing Declaration and Platform for Action (1995);
- 2030 Agenda with the SDGs.

¹⁶ CEDAW Committee (1992), General Recommendation No. 19, at para 1.

¹⁷ General Assembly of the United Nations (1993), Declaration on the Elimination of Violence Against Women, Preamble.

2.2 NATIONAL FRAMEWORK

Nepal has adopted gender-responsive legislation and policies which formally protect women's rights, explicitly prohibit discrimination and guarantee the rights of women to be protected from any act(s) of violence or exploitation on any grounds. These include:

- **2007:** *Human Trafficking and Transportation Act.*
- **2009:** *Domestic Violence (Crime and Control) Act.*
- **2011:** *Caste-based Discrimination and Untouchability Act (Offence and Punishment).*
- **2014:** *Witchcraft-related Accusation (Crime and Punishment) Act.*
- **2015:** *Sexual Harassment at the Workplace (Elimination) Act; Constitution of Nepal (particularly Article 38(3)); Act to Amend Some Nepal Acts for Maintaining Gender Equality and Ending Gender Based Violence.*
- **2017:** Country Criminal Code and the Country Civil Code, along with the Country Civil Procedure Code and the Country Criminal Procedure Code; the *Rights of Persons with Disability Act.*
- **2018:** *Right to Safe Motherhood and Reproductive Health Act; and Crime Victims Protection Act.*

Some of the major national policies and strategies include:

- *National Plan of Action against*

Trafficking of Women and Children (2012);

- *National Strategy to End Child Marriage (2016);*
- *National Strategy and Action Plan on Gender Empowerment and Ending Gender-based Violence (2018).*

Other relevant Nepal-specific documents include:

- Concluding observations of the Human Rights Committee on the second periodic report of Nepal (2014);
- Concluding observations of the Committee on Economic, Social and Cultural Rights on the third periodic report of Nepal (2014);
- UPR Recommendations received by Nepal (2015);
- Concluding observations of the Committee on the Rights of Persons with Disabilities on the initial report of Nepal (2018);
- Concluding observations of the Committee on the Elimination of Racial Discrimination on the combined seventeenth to twenty-third periodic reports of Nepal (2018);
- Concluding observations of the CEDAW Committee on the sixth periodic report of Nepal (2018);
- Report of the Special Rapporteur on violence against women (Special Rapporteur on violence) on her visit to Nepal (2019)

3 CHECKLIST OF STEPS TO DRAFT LEGISLATION AND POLICIES ON ENDING GBVAWG

STEP 1:

DEFINE THE NEEDS AND THE GOALS OF A COMPREHENSIVE LAW/POLICY

At the beginning of the process, determine the goals of the law/policy to be drafted, what gaps it aims to address, and what are the specific needs. The goals of any law/policy on GBVAWG should be comprehensive and include: the prevention of GBVAWG:

investigation; prosecution; punishment of perpetrators; and protection and support to victims/survivors of violence. Clearly defining the goals helps ensure that the provisions of the law/policy are aligned with them.

STEP 2:

ADOPT A HUMAN RIGHTS-BASED, VICTIM/SURVIVOR-CENTRED AND EVIDENCE-BASED APPROACH

A **HUMAN RIGHTS-BASED APPROACH** is an approach where rights holders (and their entitlements), and corresponding duty bearers (and their obligations), are clearly identified. This approach has the main objective of realising victims/survivors' rights to live free from violence. It provides a strong foundation to address GBVAWG and hold accountable those who have a duty to act.

A **VICTIM/SURVIVOR-CENTRED APPROACH** requires a systematic focus on the needs, concerns and realities of victims/survivors to ensure that they have adequate access to

services and justice.

An **EVIDENCE-BASED APPROACH** requires that the drafting of a law/policy is conducted based on available and reliable evidence. This includes data and research on: the scope, prevalence, incidence (defined below) and consequences of forms of GBVAWG; the reported cases; and lessons learnt and good practices from other countries. An evidence-based approach is necessary to ensure that the drafting of a law/policy is well-informed, aligned with the actual needs and implementable.

PREVALENCE of GVAWG refers to the proportion of women and girls who have experienced violence as part of the total population of women and girls. Prevalence estimates usually present the percentage of women who have experienced violence either during the previous 12 months (known as point of prevalence) or at any time in their life (lifetime prevalence).¹⁸

INCIDENCE OF GBVAWG refers to the number of cases of violence reported to service providers. When the source is administrative data, it may not be representative of the levels of violence in the whole population as a large number of GBVAWG cases are never reported.¹⁹

STEP 3:

CONSULT WITH ALL RELEVANT STAKEHOLDERS

It is crucial to develop the law/policy in close consultation with any stakeholders that will either be directly or indirectly affected by the law/policy or involved in its implementation. This ensures that the law/policy reflects the concerns of women who experience violence and is aligned with their realities. By ensuring that everyone's voices are heard, particularly those of excluded and vulnerable groups, consultations provide a stronger ground for effective implementation. Possible stakeholders to be consulted include, but are not limited to:

- Victims/survivors;
- Government agencies or institutions at all levels, including all mechanisms involved in advancing gender equality and women's empowerment; national statistical offices and national human rights institutions, such as the National

Women Commission;

- Service providers, including the police (and other law enforcement personnel), health, social services (psychosocial counselling) and justice sectors (including prosecutors, judges, lawyers, paralegals, mediators, etc.) and other if relevant;
- Non-governmental organisations, women's groups and networks that work on GBVAWG and on women's rights, including those representing excluded groups;
- Media, teachers and other personnel of education systems; religious and community leaders; members of traditional justice mechanisms; and internet intermediaries (companies that facilitate the use of the internet).

¹⁸ UN Women and Australian Aid (2018), ASEAN Regional Guidelines on VAWG Data Collection and Use, at page 13, available at: <http://www2.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2018/04/asean-vawg-data-guidelines.pdf?la=en&vs=5541>.

¹⁹ United Nations (2006), Ending Violence against Women: From Words to Action, at page 70, available at: <http://www.unwomen.org/-/media/headquarters/media/publications/un/en/englishstudy.pdf?la=en&vs=954>.

STEP 4:

REFLECT ON YOUR PLANNING & THE DRAFT

This list of questions aims at encouraging drafters of laws or policies to reflect on the relevance and use of these laws and policies in the local context as they consider advancing efforts to eliminate GBVAWG.

Reflection on the goals and how to monitor them

- What are you hoping to accomplish with the adoption of this law/policy? What might you envision to be the implications of the adoption of the law/policy?
- How might the new law/policy relate to Nepal's wider objective of ending GBVAWG and to the recommendations and observations of the CEDAW Committee and the Special Rapporteur on violence on Nepal?
- What might be some of the essential questions that guide the development of this law/policy?
- What might be the long- and short-term effects of the adopted law/policy?
- Considering the objectives and the content of the law/policy, what might be some of the pieces of evidence that would indicate that the law/policy drafted is contributing to these objectives?
- As you evaluate the draft law/policy, what might be some of the elements that make it important in the efforts to end GBVAWG?

Reflection on strategies and approaches

- What might be some strategies used in the past towards ending GBVAWG, and how might some of these strategies be replicated through the law/policy?

- As you draft the action/implementation plan, in what order might the implementing measures be sequenced to ensure a phased approach?
- What kind of support might be useful in the implementation of the law/policy?
- What might be some strategies identified to ensure that all relevant stakeholders, who will either be directly or indirectly affected by the law/policy or involved in its implementation, know about the law/policy?
- How does the law/policy compare to the outcomes of the consultations conducted with relevant stakeholders?
- As you review the law/policy with the following framework, what might need to be added or revised in the law/policy to strengthen its implementation, monitoring and reporting?

Reflection on financing

- What might be some key components to budget for?
- What might be some ways to ensure adequacy of funds allocation to deliver quality services?
- What might be some pieces of evidence that would indicate that the resources allocated have been utilised to meet the stated objectives? What might be some existing mechanisms or tools that could support in collecting this evidence?
- As the new law/policy established funds for victims/survivors of GBVAWG, how might you assess that these funds are accessed by women from most excluded groups?

4 FRAMEWORK FOR LEGISLATION AND POLICIES ON GBVAWG

KEY RECOMMENDATIONS

- a) Explicitly recognise GBVAWG as a form of gender-based discrimination and a violation of women's human rights.
- b) Adopt a comprehensive and broad definition of GBVAWG aligned with General Recommendation No 35 of the CEDAW Committee.
- c) Recognise that women's experiences of violence are further shaped by their identities and pre-existing vulnerabilities. In this line, make specific provisions for victims/survivors experiencing such exclusions, including based on their gender identity, caste, sexual orientation, age, disability, class, geographical location, ethnicity, marital status and migration status, etc.
- d) Ensure that the law/policy covers issues of prevention, protection, victims/survivors' empowerment and support, adequate punishment of perpetrators and availability of remedies for victims/survivors.
- e) Ensure that multiple sectors and stakeholders are engaged in GBVAWG interventions (i.e. police, justice, legal support, health, psychosocial counselling, social services, shelter support, livelihood support, education and media).
- f) Ensure that multi-sectoral services on GBVAWG (health, psycho-social, legal, financial assistance, shelter and livelihood support) are available and accessible to all victims/survivors throughout Nepal, while ensuring that they are: victim/survivor-centred; of quality; coordinated; timely; efficient, sensitive; responsive to the multiple needs of victims/survivors in an empowering, informed, safe, dignified and respectful manner.
- g) Ensure the coordination between the multi-sectoral services.
- h) Provide for regular, institutionalised and specific training and capacity-building opportunities, in close consultation with civil society, for public officials and service providers to ensure that they perform their duties aligned with the new law/policy.

How to read this framework?

Key aspects of the law/policy

Recommendations on the content of the law/policy

Explanatory commentary

Referral to additional relevant sources

7.2 MONITORING AND EVALUATION⁸²

RECOMMENDATIONS

- Provide for the establishment of an institutional, specific and multi-sectoral mechanism, such as a taskforce, committee, or rapporteur, to oversee implementation and report to the relevant authority on an annual basis.
- Provide the mechanism with adequate allocation of resources and tracking of expenditure to evaluate the impact of the law or policy, disseminate good practices and propose amendments if necessary.
- Develop a monitoring framework to be followed by the institutional, specific and multi-sectoral mechanism, or any other mechanism in charge of the monitoring of the law. Among others, the monitoring framework should include: information analysis, including analysis of statistics, government

COMMENTARY

Monitoring and evaluation are at the core of the effective functioning of any legislation or policy.

HUMAN-RIGHTS MONITORING METHODOLOGY

The organization Advocates for Human Rights developed a methodology to monitor the implementation of domestic violence laws through human rights fact-finding and report.

- > For more information, see the Advocates for Human Rights (2011), Documenting the Implementation of Domestic Violence Laws: A Human Rights Monitoring Methodology, available at www.stopvaw.org.

Regular and comprehensive monitoring of legislation and policies on GBVAWG allows to determine their effectiveness, potentially revealing gaps in their scope or in the effectiveness, thereby identifying areas in need of legal reform or amendment. It also allows to glean best practices or ascertain emerging trends. By measuring the response to the violence, both in terms of action and inaction by the relevant stakeholders, monitoring may indicate the need for training

of legal professionals and other stakeholders or the lack of a coordinated response. Monitoring is also a key instrument in ensuring that the law/policy does not have adverse unanticipated effects for victims/survivors.

- > For a non-exhaustive list of relevant stakeholders, refer to Step 3 at page 19 (Checklist of steps to draft legislation and policies on ending GBVAWG).

INTERNATIONAL EXAMPLE

In India, the Lawyers Collective Women's Rights Initiative (LCWRI) has been involved in the monitoring and evaluation of the Protection of Women from Domestic Violence Act (2005) since 2007.

- > For more information, see LCWRI and the International Centre for Research on Women (2010), *Staying Alive, Fourth Monitoring & Evaluation Report 2010 on the Protection of Women from Domestic Violence Act, 2005* (available at <https://lawyerscollective.org>).

⁸² UN Women (2012), Handbook for Legislation on Violence against Women, at pages 19-20.

More information on a particular element

Good international practices examples

4.1 COMPREHENSIVE AND HUMAN RIGHTS-BASED APPROACH²⁰

RECOMMENDATIONS

- Explicitly recognise GBVAWG as a form of gender-based discrimination and a violation of women's human rights.
- Ensure that no tradition, custom, or religious considerations may be invoked to justify GBVAWG.
- Ensure the criminalisation of all forms of GBVAWG (see 4.2 DEFINING FORMS OF GBVAWG).
- Ensure that the law/policy covers issues of prevention, protection, victims/survivors' empowerment and support, adequate punishment of perpetrators and availability of remedies for victims/survivors.
- Ensure participation of multiple sectors and stakeholders in GBVAWG interventions (i.e. police, justice, legal support, health, psychosocial counselling, social services, shelter support, livelihood support, education and media).
- Protect all women equally, while making specific provisions for victims/survivors experiencing intersecting forms of discrimination.
- Provide for amendment or repeal of provisions contained in other areas of law that contradict the law/policy adopted, so as to ensure a consistent legal framework.

COMMENTARY

Ensuring a human rights-based approach to legislation and policies on GBVAWG aims at realising victims/survivors' rights to live free from violence.

Varying and intersecting forms of discrimination impact and shape women's experiences of and vulnerabilities to violence. In Nepal, these factors stem from long standing socio-cultural traditions, norms and practices developed over centuries, including patriarchy, the caste system and other causes of economic and political domination of

certain communities over others,²¹ including based on their gender identity, caste, sexual orientation, age, disability, class, geographical location, ethnicity, marital status and migration status, etc. It is thus crucial to make specific provisions for victims/survivors experiencing such exclusions.

Thus, laws and policies need to ensure equality of outcomes, which requires specific provisions addressing the needs of particular groups of women.²²

²⁰ UN Women (2012), Handbook for Legislation on Violence against Women, at pages 10-14.

²¹ United Nations Development Assistance Framework for Nepal 2013 – 2017, United Nations Country Team Nepal, 2012.

²² International Women's Rights Action Watch Asia Pacific (2009), Equity or Equality for Women? Understanding CEDAW's Equality Principles, available at: https://www.iwraw-ap.org/wp-content/uploads/2018/08/OPS_14-Equity-or-Equality-for-Women-Understanding-CEDAW's-Equality-Principles.pdf.

4.2 DEFINING FORMS OF GBVAWG²³

4.2.1 GENERAL PRINCIPLES

RECOMMENDATIONS

- Adopt a comprehensive and broad definition of GBVAWG aligned with General Recommendation No 35 of the CEDAW Committee: GBVAWG “takes multiple forms, including acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.”²⁴ GBVAWG thus includes, but is not limited to:
 - domestic violence and intimate partner violence (see 4.2.2.1 DOMESTIC VIOLENCE),
 - sexual violence (including rape, sexual abuse and sexual harassment) (see ANNEX 2: SPECIFIC GUIDANCE TO DRAFT LEGISLATION AND POLICIES ON SEXUAL VIOLENCE),
 - harmful practices (including Chhaupadi, child marriage, prenatal sex-selection, crimes committed in relation to dowry, witchcraft-accusations),
 - femicide,
 - trafficking (see 4.2.2.2 SEX TRAFFICKING).
- Recognise GBVAWG perpetrated in any specific contexts, including: in the family; in the community; in public spaces; at work; online; in conflict situations; in humanitarian emergencies (such as natural disasters); and violence committed by security forces or in police custody.
- Recognise that women’s experiences of violence are further shaped by their identities and pre-existing vulnerabilities.
- Make specific provisions for victims/survivors experiencing such exclusions, including based on their gender identity, sexual orientation, age, disability, class, geographical location, ethnicity, marital status and migration status, etc.

COMMENTARY

GBVAWG, and broader discrimination against women, is inextricably linked to other factors that affect women and girls’ lives and is shaped by their identities and pre-existing vulnerabilities. This means that GBVAWG may affect some women to different degrees, or in different ways,²⁵ and that some women and girls may experience specific manifestations of violence. It is important to note these manifestations of violence may be particular to certain groups and the same act may not constitute violence for other groups. For example, someone in a violent same-sex relationship may face the threat to have their sexual orientation or gender revealed by the other partner.

This toolkit hereby presents some specific forms of violence faced by certain groups of women. While the toolkit presents each identity separate, a woman may have more than one identity that intersects and creates layered vulnerability to GBVAWG.

VIOLENCE AND DISABILITY²⁶

Women and girls with disabilities experience GBVAWG at disproportionately higher rates and in unique forms owing to discrimination and stigma

²³ UN Women (2012), Handbook for Legislation on Violence against Women, at pages 21-26.

²⁴ CEDAW Committee (2017), General Recommendation No. 35, at para 14.

²⁵ CEDAW Committee (2017), General Recommendation No. 35, at para 12.

²⁶ UNFPA (2018), Young Persons with Disabilities: Global Study on Ending Gender-Based Violence, and Realising Sexual and Reproductive Health and Rights, available at https://www.unfpa.org/sites/default/files/pub-pdf/Final_Global_Study_English_3_Oct.pdf.

based on both gender and disability.²⁷ The exposure of women with disabilities to a greater risk of violence is directly linked to factors that increase their dependence on others or disempower and disenfranchise them.²⁸

Specific forms of violence against women and girls with disabilities can include:

- Withholding medication and mobility, vision and hearing aids.
- Forced medical treatment and reproductive health procedures without consent.
- Neglect or negligent treatment, including: leaving a woman who is in bed or uses a wheelchair with no assistance for long periods of time; withholding mobility aids, communication equipment or medication; failing to meet physical or psychological needs, protection from danger, or obtain medical, birth registration or any other services when the caregivers have the means, knowledge and access to services to do so.
- Specific forms of physical violence, such as forced sterilisation, violence at the hands of caregivers and staff within institutional and residential settings, violence in the guise of ‘treatment’ (such as aversion treatment to control behaviour).
- Torture and inhuman or degrading treatment or punishment, including the punishment of children for unwanted behaviours at the hands of staff of residential and other institutions or force used by the same actors to coerce children to engage in activities against their will.

SEXUAL AND GENDER MINORITIES

- Visit <https://queerdict.home.blog/> for an online dictionary of relevant terms.

In patriarchal society where women’s sexuality is subject to control, women and girls from sexual minorities face discrimination and stigma based on both being women and being of a different sexual orientation/gender identity.²⁹ This creates a specific type of vulnerability to violence driven by both gender inequality as well as homophobia/transphobia. Social stigma and societal factors against sexual and gender minorities may also reinforce power and control imbalances within LGBTIQ+ relationships, hereby creating specific multiple forms and manifestations of GBVAVG, in particular violence committed by family members or intimate partners.

Upon her visit in November 2018, the Special Rapporteur on violence highlighted the prevailing stigma, family pressure and traditional social expectations in Nepalese society faced by women due to their relation to sexual orientation and gender identity.³⁰

Specific forms of violence against sexual and gender minorities can include:

- Threat to reveal one partner’s sexual orientation/gender identity that may be used as a tool of abuse in violent relationships;
- Bullying in schools;
- Hate crime;
- Sexual assault, rape, and murder as “punishment” or “corrective treatment”, for example so-called “corrective rape”;³¹
- Infanticide and the conduct of medically unnecessary procedures for intersex children without their free, prior and informed consent;³²
- Violence committed by authorities, particular against transgender persons;

²⁷ Secretary General (2017), Situation of women and girls with disabilities and the Status of the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, at para 21.

²⁸ Office of the United Nations High Commissioner for Human Rights (2012), Thematic study on the issue of violence against women and girls and disability.

²⁹ The World Bank, The Global Women’s Institute, IDB and ICRW (2015), Brief on Violence against Sexual and Gender Minority Women, at page 3, available at: https://www.vawresourceguide.org/sites/vawg/files/briefs/vawg_resource_guide_sexual_and_gender_minority_women_final.pdf.

³⁰ Human Rights Council (2019), Report of the Special Rapporteur on violence on the visit to Nepal, at para 69, available at: https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/Documents/A_HRC_41_42_Add_2_EN.docx.

³¹ Human Rights Council (2019), Report of the Special Rapporteur on violence on the visit to Nepal, at para 69.

³² CEDAW Committee (1992), General Recommendation No. 19, at para 18(c) and Human Rights Council (2019), Report of the Special Rapporteur on violence on the visit to Nepal, at para 69.

- Reports of violence allegedly perpetrated by police officers, including verbal abuse, indiscriminate body searches and severe beatings, as well as harassment and arbitrary detention, on the grounds of sexual orientation or gender identity.³³

Additionally, there are other groups that experience violence at disproportionately higher rates and in unique forms, such as women from so-called “low-castes”, widowed and single women, women living with HIV, women in politics or women human rights defenders.

4.2.2 EXAMPLES OF DEFINITIONS OF FORMS OF GBVAVG

4.2.2.1 DOMESTIC VIOLENCE

RECOMMENDATIONS

- Adopt a comprehensive definition of domestic violence, that includes physical, sexual, and coercive control.
- Ensure that domestic violence includes a comprehensive scope of domestic relationships, that includes:
 - Individuals in an intimate relationship, including marital, non-marital, same sex and non-cohabitating relationship;
 - Individuals with family relationships to one another;
 - Members of the same household (including domestic workers).

COMMENTARY

While the definition of domestic violence varies between countries, domestic violence is internationally defined as referring to “an abusive behaviour or a series of behaviours that occur within the private or domestic sphere, generally between individuals who are related through blood or intimacy.”³⁴

SCOPE OF PRIVATE OR DOMESTIC RELATIONSHIPS

Legislation and policies on domestic violence should take a comprehensive approach regarding the scope of persons to be included under the private or domestic sphere.

Thus, individuals in an intimate relationship should be understood as individuals in marital, non-marital, gender diverse, same-sex and non-cohabiting relationships. The relation of intimacy does not require the relationship to be formally recognised by the law.

Beyond intimacy or family relation, laws/policies on domestic violence should also apply to members of the same household, including domestic worker or help.

Nepal’s current definition of domestic relationship, as contained in the *Nepal’s Domestic Violence (Offence and Punishment Act), 2009*, maintains the requirement of legal recognition (hereby not explicitly recognising gender diverse and non-cohabiting relationships).³⁵

It is crucial for new legislation/policies to adopt a definition of domestic violence happening in domestic relationship as understood in line with international standards.

RECOMMENDED NUANCE IN DEFINING DOMESTIC VIOLENCE

While in practice domestic violence can take the form of physical, sexual, psychological or economic

³³ Human Rights Council (2019), Report of the Special Rapporteur on violence on the visit to Nepal, at para 69.

³⁴ UNFPA (2016), Measuring Prevalence of VAW: Key terminology, at page 2.

³⁵ Domestic Violence (Offence and Punishment) Act, 2066 (2009), Section 2(b) defines domestic relationship as “meaning a relationship between two or more persons who: are living together in a shared household and are related by decent (consanguinity), marriage, adoption or are family members living together as a joint family; or a dependent domestic help living in the same family”.

violence, experience globally has shown that including the terms of psychological or economic violence in laws/policies can have unintended consequences that undermine the protection of victims/survivors of domestic violence, among others due to the difficulty in defining psychological and economic violence.

Such unintended consequences include the risk that violent abusers could manipulate the purpose of the law by claiming that they have been psychologically or economically abused by their victims/survivors.³⁶ Even when abusers do not turn claims of psychological and economic violence against their victims/survivors, these types of abuse may be very difficult to prove in legal proceedings.

In order to avoid above unintended consequences, one should consider developing a definition of domestic violence that includes physical and sexual violence, the threat of such violence, and coercive control.

Coercive control includes psychological and economic violence but does so in a way that links the concepts to a pattern of domination through intimidation, isolation, degradation, and deprivation as well as physical assault. The abuser's tactics may include controlling how the victim/survivor dresses, cleans, cooks, or performs

sexually. These types of extreme control measures target the victim/survivor's autonomy, independence and dignity in ways that compromise their ability to make decisions to escape from the subjugation. Therefore, by substituting the term "coercive control" for "psychological violence" and "economic violence" law drafters and policy makers can target truly harmful behaviour and avoid the unintended consequence of harming the victim/survivor through imprecise definition of violence against the true victim.

Coercive control is defined as *an act or pattern of acts of assault, sexual coercion, threats, humiliation, and intimidation or other abuse that is used to harm, punish or frighten a victim/survivor. This control includes a range of acts designed to make victims/survivors subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.*

Source: [Definition of Domestic Violence at https://www.endvawnow.org/en](https://www.endvawnow.org/en).

³⁶³⁶ For example, an angry or disgruntled violent abuser may seek a protection order against his wife because she used his property. Or, an abuser may claim that physical violence is an appropriate response to his wife's insults

4.2.2.2 SEX TRAFFICKING

RECOMMENDATIONS

- Adopt a comprehensive definition of sex trafficking, that refers to the commission of the acts of recruitment; receipt; enticement; harbouring; obtaining; providing; transferring; or transportation of persons by any means for the purpose of sexual exploitation, which must include, at a minimum, the exploitation of the prostitution of others.³⁷
- Means used should include, but are not limited to, any form of:³⁸
 - threats or use of force;
 - coercion;
 - abduction;
 - fraud;
 - deception;
 - abuse of power or of a position of vulnerability (including a victim/survivor's addiction to controlled substances);
 - or the giving or receiving of payments of benefits to achieve the consent of a person having authority over another person (such as guardian).

COMMENTARY

Sex trafficking breaks down into three elements: the act committed, the means, and the purpose. It is important to note that the realisation of the 'purpose' element is not a requirement for an act to be defined as sex trafficking. Thus, a person who is rescued before exploitation occurs is still a victim/survivor of trafficking.

Additionally, drafters should ensure that the law/policy prevents trafficked persons from being prosecuted, detained or punished for the illegality of their entry or residence or for the activities they

are involved in as a direct consequence of their situations as trafficked persons.³⁹

Recognising that the definition of trafficking in Nepal's legislation is not in line with international standards,⁴⁰ drafters should align the law/policy with the international definitions of trafficking as found in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000 supplementing the United Nations Convention against Transnational Organised Crime*.

³⁷ These elements are in line with Article 3 of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organised Crime (also known as the Palermo Protocol), which is the internationally accepted definition of human trafficking.

³⁸ "Sex Trafficking Acts, Means and Purposes", *UN Women Virtual Knowledge Centre to End Violence against Women and Girls*, <https://www.endvawnow.org/>, accessed on 11 June 2019.

³⁹ Economic and Social Council (2002), Recommended Principles and Guidelines on Human Rights and Human Trafficking, Guideline 4(5), <https://www.refworld.org/docid/3f1fc60f4.html>.

⁴⁰ CEDAW Committee (2018), Concluding Observations in relation to the Sixth Reporting of Nepal, at para 24(d).

4.3 PREVENTION⁴¹

RECOMMENDATIONS

- Provide for a range of measures to prevent GBVAWG that focus on:
 - increasing knowledge and understanding of gender equality and women’s human rights (including empowering women to claim their right to be free from violence);
 - sensitising on GBVAWG as a manifestation of inequality and a violation of women’s human rights;
 - changing discriminatory social and cultural norms, behaviours and gender stereotypes;
 - and increasing knowledge of existing laws/policies and mechanisms to address GBVAWG and remedies available to victims/survivors.
- Ensure these measures are developed and carried out in consultation with civil society.

COMMENTARY

Preventing measures should focus on increasing knowledge and understanding of women’s human rights, as well as of existing laws/policies and mechanisms available, while making sure that women are effectively empowered to claim their right to be free from violence.

Preventing measures include, but are not limited to:

- awareness-raising activities;
- community mobilisation (including engagement with community leaders);

sensitisation of the media; and

- provision of gender-sensitive education (including material on GBVAWG, gender equality and women’s human rights in education curricula, etc.).

The law/policy should target a broad range of audiences, including: men and boys; policy makers; multi-sectoral service providers; community and religious leaders; and women and girls, including those from excluded and vulnerable groups.

⁴¹ UN Women (2012), Handbook for Legislation on Violence against Women, at pages 26-28.

4.4 PROTECTION, SUPPORT AND ASSISTANCE TO THE VICTIM/SURVIVOR⁴²

RECOMMENDATIONS

- Systematically provide for the development and coordination of comprehensive and integrated support and protection services (including interim relief) to victims/survivors of violence and their children, with adequate allocation of financial and human resources.
- Ensure that services provided are: victim/survivor-centred; of quality; coordinated; timely; efficient; available; sensitive; and free and equally accessible for all victims/survivors. Such service must respond to the multiple needs of victims/survivors in an empowering, informed, safe, dignified and respectful manner.
- Services should be multi-sectoral, and include health, psycho-social, legal, financial assistance, shelter and livelihood support.
- Ensure the effective communication and participation by stakeholders in the design, implementation and assessment of services.
- Specifically for victims/survivors of sexual violence, provide for immediate access to free, comprehensive and integrated health services, including: treatment for injuries and pregnancy testing; emergency contraception; safe abortion services; treatment for sexually transmitted diseases; and psycho-social counselling.
- Ensure that victims/survivors conserve the choice regarding which service they wish to approach.
- Ensure that access to a service is not conditional upon prior support received from another service.
- Include specific provisions for the protection of victims/survivors from discrimination, including in relation to housing and employment.
- Mandate the establishment of at least one One Stop Crisis Management Centre (OCMC) in each district to provide women with comprehensive multi-sectoral support. More centre should be established on the basis of the population size.
- Provide regular trainings to service providers to provide quality services with a victim/survivor-centred approach.

COMMENTARY

It is crucial to ensure legislative mandate for the establishment of services for survivors/victims of violence, to ensure funding and availability of services. These services aim at responding to short term injuries, protect them from further violations, and address longer-term needs

It is fundamental to ensure that access to services provided to victims/survivors is not conditional upon prior support received from another

INTERNATIONAL EXAMPLE

Under the *Violence Protection Act (1997)* in Austria, all provinces must establish intervention centres where victims/survivors of domestic violence are proactively offered assistance after interventions by the police. The intervention centres are run by women's non-governmental organisations and financed by the Ministry of the Interior and the Ministry of Women on the basis of five-year contracts.

⁴² UN Women (2012), Handbook for Legislation on Violence against Women, at pages 29-32.

services. For example, conditions of filing a report with the police, or of testifying or working with prosecution, may prevent women from seeking medical and psychological support.

CHARACTERISTICS OF QUALITY ESSENTIAL SERVICES

All services should be provided in line with global guidelines and protocols.

Services that are **victim/survivor-centred** place the rights, needs and desires of women and girls at the centre of service delivery. This requires consideration of the multiple needs of victims/survivors, the various risks and vulnerabilities, the impact of decisions and actions taken, and ensures services are tailored to the unique requirements of each individual woman and girl. Services should respond to their wishes.⁴³

Essential health care, social services, justice and policing services must be **available** across Nepal (including rural and isolated areas) in sufficient quantity and quality to all victims/survivors of violence. Services must also be available to reach all women, including the most excluded, remote, vulnerable and marginalised without any form of discrimination regardless of their individual circumstances and life experiences, their age, identity, culture, caste, class, religion, sexual orientation, gender identity, ethnicity, language and level of literacy, marital status, disability or any other characteristic.

Culturally and age appropriate and sensitive essential services must respond to the individual circumstances and life experiences of women and girls taking into account their age, identity, culture, sexual orientation, gender identity, ethnicity and language preferences. Essential services must also respond appropriately to women and girls who face multiple forms of discrimination – due to their ethnicity, caste, sexual orientation, religion, disability, marital status, occupation or other characteristics – or because of being previously subjected to violence.⁴⁴

Accessibility requires that services must be:

- **Physically accessible:** victims/survivors must be able to access services that are within safe

physical reach. However, physical accessibility also requires that there is no barrier within the service itself. Physical accessibility in particular requires considering the specific barriers faced by victims/survivors experiencing intersecting forms of exclusion and vulnerabilities, for example women with disabilities.

PHYSICAL ACCESSIBILITY AND DISABILITY

Women with disabilities include women living with physical, visual, and hearing impairments, mental illness and/or intellectual disabilities. Because of various forms of impairments women may face, it is important to ensure that services are physically accessible for all types of disability, and to consider all barriers that do not accommodate women with disabilities. Physical accessibility for women with disabilities may thus include: installing handrails, ensuring sufficient breadth of corridors, clear hallways, avoiding loud noise (in particular for women with visual and hearing impairment), avoiding drastic changes in the physical environment of the services (as women with vision impairment often rely on their memory to navigate buildings)

Source: http://dvns.w.org.au/pwd_doc1.pdf

- **Economically accessible:** victims/survivors must be able to access services without undue financial or administrative burden. This means that services should be affordable, administratively easy to access, and in certain cases, such as police, emergency health and social services, free of charge.
- **Linguistically accessible:** to maximise access and meet the needs of different groups, particularly excluded groups, service delivery procedures and other information about essential services must be available in multiple local languages and formats (for example, oral, written, electronically, in braille) and appropriately communicated, such as through the use of plain language.

⁴³ United Nations Joint Global Programme on Essential Services for Women and Girls Subject to Violence (UN Women, UNFPA, WHO, UNDP and UNODC) (2015), Essential Services Package for Women and Girls Subject to Violence, Module 1 Overview and Introduction, at page 23.

⁴⁴ *Ib.*

ENSURING OTHER SUPPORT

Beyond recognising that victims/survivors of violence may experience discrimination based on various factors of exclusion (such as caste, class, ethnicity, language, age, marital status, etc.), it is important to consider that victims/survivors may experience discrimination based on the fact that they are victims/survivors, including in relation to employment or housing. A victim/survivor of violence may lose employment because they have missed work due to injuries and other consequences or be evicted from housing and discriminated against in housing applications.

INTERNATIONAL EXAMPLE

Article 21 of the Spanish *Organic Act on Integrated Protection Measures against Gender Violence* (2004) provides various employment and social security rights for victims/survivors of violence, including the right to reduce or reorganise working hours.

Article 43 of the Philippines' *Anti-Violence against women and their Children Act* (2004) provides that victims/survivors are entitled to take a paid leave of absence up to ten days in addition to other paid leaves.

In Austria, victims/survivors of violence who have become homeless are assisted to rent affordable flats.

4.5 INVESTIGATION⁴⁵

RECOMMENDATIONS

- Provide that investigations are impartial and not influenced by gender stereotypes or prejudice.
- Provide for regular training to justice providers (including police, prosecutors and judges).
- Charge police, prosecutors and judicial officials with specific duties to enforce laws/policies on GBVAWG in a non-discriminatory manner. These duties should include:

A. For police officers:

- Respond promptly to every request for assistance and protection.
- Give priority to all requests concerning cases of GBVAWG.
- Upon receiving a complaint:
 1. Conduct a coordinated risk assessment of the crime scene;
 2. Respond in a language understandable and accessible by the victim/survivor;
 3. Ensure confidentiality and safety for the victim/survivor and witness(es), including separate safe space;
 4. Advise the victim/survivor of their rights;
 5. Provide or arrange transport for the victim/survivor and their children/dependents, including to the nearest health care facility, if required or requested.
- Ensure gender-sensitive behaviours and that investigations do not lead to secondary victimisation through attitude or techniques.

⁴⁵ UN Women (2012), *Handbook for Legislation on Violence against Women*, at pages 34-36.

- Minimise intrusion into the life of a victim/survivor while maintaining high standards of evidence collection.⁴⁶
- Ensure, to the extent possible, that a victim/survivor's statement is taken by adequately trained female police officers, and in a language that is understandable and accessible to the victim/survivor.

B. For prosecutors:

- Re-affirm that the responsibility for the prosecution of GBVAWG cases is with the authorities and not with the victims/survivors of violence.
- Require that the victim/survivor, at all stages of the legal process, is promptly and adequately informed of: their rights; the legal proceedings; available services; support mechanisms; protective measures; opportunities for obtaining reparations; and details of events in relation to their case (including places and times of hearing) in an understandable and accessible language.
- Require that any prosecutor who discontinues a case of GBVAWG explains to the victim/survivor why the case was dropped in an understandable and accessible language.

COMMENTARY

Police and prosecutors play a crucial role in any coordinated response to GBVAWG cases.

Upon receiving a complaint or a case, it is fundamental for the police and prosecutors to recognise the multiple layers of vulnerabilities and exclusion faced by the victim/survivor, and to act accordingly. This includes adapted and adequate communication with the victim/survivor in an understandable and accessible language, which may require information to be available in multiple formats (for example, oral, written, electronically, in braille) and appropriately communicated, such as through the use of plain language.

It is crucial to ensure that investigations do not lead to secondary victimisation, also called re-victimisation. Secondary or re-victimisation is victimisation that occurs not as a direct result of the act but by through the inadequate response of institutions and individuals to the victim.⁴⁷

RISK ASSESSMENT

The police can take various actions to address women's and girls' safety needs, including

mitigating the risk of future violence. This includes conducting risk assessment and mitigation and putting in place a personal safety plan for the victim/survivor. After her 2018 visit to Nepal, the Special Rapporteur on violence highlighted the importance to introduce a risk assessment of cases of GBVAWG to strengthen the police's response.⁴⁸

A risk assessment is a critical tool to help police establish how safe or at risk of future violence a victim/survivor might be, in order to ensure they receive appropriate protection and to help them develop a plan to secure their future safety and the safety of any relatives or other dependents (children, extended family, etc).

Just as women's experiences of violence is shaped by their identities and pre-existing vulnerabilities, the safety and security of victims/survivors is further affected by their individual circumstances, as well as on the forms of violence they have experienced.

As with the entire investigations process, it is essential that police officers adopt gender-sensitive behaviours and follow ethical guidelines, and that they understand and adapt the risk assessment to

⁴⁶ UN Women (2012), Handbook for Legislation on Violence against Women, at pages 40.

⁴⁷ United Nations General Assembly (2011), Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice adopted through Resolution 65/228 on Strengthening crime prevention and criminal justice responses to violence against women, available at https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Model_Strategies_and_Practical_Measures_on_the_Elimination_of_Violence_against_Women_in_the_Field_of_Crime_Prevention_and_Criminal_Justice.pdf.

⁴⁸ Human Rights Council (2019), Report of the Special Rapporteur on violence on the visit to Nepal, at para 78(n).

individual circumstances of each victim/survivor, taking into consideration their vulnerability linked to barriers related to economic, education, language, caste, class and disability status, among others.

- For a more information on risk assessment, visit “Risk assessment” at www.endvawnow.org.

4.6 LEGAL PROCEEDINGS AND EVIDENCE⁴⁹

RECOMMENDATIONS

- Mandate the relevant authorities to take all the necessary actions to avoid re-victimisation.
- Guarantee the rights of victims/survivors through the entire legal process, including the rights to a) free legal aid; b) free court support; and c) free access to a qualified and impartial interpreter and the translation of legal documents.
- Ensure victim/survivor and witness protection.
- Explicitly prohibit mediation and any other form of reconciliation or agreement in all cases of GBVAVG, both before and during legal proceedings.
- Ensure that the registration of cases of violence, particularly cases of sexual violence, is not restricted by any statutes of limitations.⁵⁰
- Provide for time-bound and expeditious legal proceedings and reinforce special procedures for cases of GBVAVG, such as fast-track, continuous hearing, in-camera hearing, videoconferencing, and maintaining confidentiality of the victim/survivor.

EVIDENCE

- Mandate proper collection and submission to court of any evidence, as well as their timely testing.
- Provide for examination and treatment of a victim/survivor by a forensic doctor without any requirement of consent of any other person or party, such as a male relative.
- Provide that medical and forensic evidence are defined as only one of the possible types of evidence and are not always required to convict a perpetrator.
- Mandate for the possibility of prosecution in the absence of the victim/survivor, in cases where the victim/survivor is not able or does not wish to provide evidence or testify.
- State that no adverse inference should be drawn:
 - from the delay in a victim/survivor reporting a case,
 - in cases where the victim/survivor acted in self-defence,
 - in cases where the victim/survivor fled to avoid further violence.
- Provide that the credibility of the victim/survivor is not questioned, unless there are reasonable grounds for suspicion, and ensure that the statement and evidence provided by the victim/survivor does not require corroboration in order for an alleged perpetrator to be convicted.

⁴⁹ UN Women (2012), Handbook for Legislation on Violence against Women, at pages 37-42.

⁵⁰ CEDAW Committee (2018), Concluding Observations in relation to the Sixth Reporting of Nepal, at para 11.

- Prohibit the introduction of the victim/survivor’s sexual history or reputation in both civil and criminal proceedings.
- Ensure that there is no provision criminalising false accusations/allegations.

COMMENTARY

Mediation is sometimes offered as an alternative dispute resolution process that may provide greater flexibility and reduce costs and delays for victims/survivors of violence seeking justice. However, the use of mediation in GBVAWG cases is particularly problematic as it removes cases from judicial scrutiny and reduces offender accountability. Moreover, mediation reflects an assumption that both parties are equally at fault for violence and that both parties have equal bargaining power. Mediation or other form of reconciliation or agreement may lead to further violations of the victim/survivor’s rights and impunity for perpetrators, for example with the marriage between the perpetrator and the victim/survivor in cases of sexual assault.⁵¹

The CEDAW Committee in its Recommendation No. 35, recommends that legislation and policies should at least ensure that GBVAWG cases are not mandatorily referred to alternative dispute resolution procedures, including mediation and reconciliation,⁵² recommendation that was upheld by the Special Rapporteur on violence during her visit to Nepal in 2018.⁵³ Moreover, mediation or any other form of reconciliation or agreement should never be a prerequisite to legal proceedings in GBVAWG cases.

The establishment and proper functioning of specialised courts or special court proceedings is instrumental in ensuring the timely and efficient handling of GBVAWG cases. The Supreme Court of Nepal introduced continuous hearing⁵⁴ and fast-track courts⁵⁵ in 2013 and 2015 respectively, and these specific procedures are now laid down in the 2017 Civil and Penal Codes and their attached codes.⁵⁶

- For a more information on specialised courts or special court proceedings, visit “Specialised courts/tribunals for violence against women” at www.endvawnow.org.

It is also important to ensure that the law/policy on GBVAWG does not include the offence of “false accusation” or “false allegation” as this may dissuade victims/survivors from reporting their case. This is because of a fear of not being believed, and there is a high risk that such provisions maybe be misused by the accused/alleged perpetrator as a means of retaliation. Other areas of the law deal with intentionally misleading court and justice actors

⁵¹ CEDAW Committee (2015), General Recommendation No. 33, at para 57, available at:

https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf.

⁵² CEDAW Committee (2017), General Recommendation No. 35, at para 32(b).

⁵³ Human Rights Council (2019), Report of the Special Rapporteur on violence on the visit to Nepal, at para 78 (j).

⁵⁴ Supreme Court (2013), NKP Falgun Volume 11.

⁵⁵ Supreme Court (2015), NKP Jestha Volume 2.

⁵⁶ In 2017, the Government of Nepal enacted a new *Country Criminal (Code) Act 2017*, along with *Criminal Procedure Code Act 2017*, and *Sentencing Act 2017*, as well as the *Country Civil (Code) Act 2017* and *Civil Procedure (Code) Act, 2017*, which came into effect on the 17 August 2018, repealing the *Muluki Ain (General Code)* of 1964.

4.7 PROTECTION AND RESTRAINING ORDER⁵⁷

RECOMMENDATIONS

- Mandate for the possibility of courts to issue a protection order to the victim/survivor and their family if requested and/or required irrespective of the type of GBVAVG. A protection order can be issued in both in civil and criminal proceedings, and at any point of the proceedings, including post-hearing. The length of the protection order can be short, long or indefinite.
 - State that protection order should not replace any other legal proceedings, including criminal proceedings, but that no requirement of other legal proceedings (such as criminal or divorce proceedings) is necessary to make a protection order available.
 - State that a testimony/statement of the victim/survivor is sufficient evidence for the issuance of a protection order and that no further independent evidence - such as medical, criminal, or otherwise - shall be required.
 - Mandate for the development of guidance on protection orders. A protection order may, among others:
 - Order the accused/alleged perpetrator (and any other person as relevant) to stay at a specified distance away from the victim/survivor and their children (and any other person as relevant) and the places that they frequent.
 - Prohibit the accused/alleged perpetrator (and any other person as relevant) from contacting the victim/survivor and their children, causing them any violence or harm, or arranging for a third party to do so.
 - Order the accused/alleged perpetrator to provide financial assistance to the victim/survivor, including for medical bills, counselling fees, monetary compensation, rent, child support etc. as relevant.
 - Instruct the accused/alleged perpetrator to a) leave the family home, while ensuring that this has no impact on the ownership of the property; b) hand over the use of a means of transportation; and c) hand over any essential personal effects to the victim/survivor.
 - In case of an immediate danger to the victim/survivor, provide any relevant official with the authority to order the accused/alleged perpetrator to leave the house and to stay away from the victim/survivor, their children and any other person as relevant.
 - Criminalise any violation of protection orders by the accused/alleged perpetrator (or by any other person concerned by the order) and provide for sanctions for non-respect or implementation by the authorities.
-

⁵⁷ UN Women (2012), Handbook for Legislation on Violence against Women, at pages 43-48.

4.8 SENTENCING⁵⁸

RECOMMENDATIONS

- Mandate for the alignment of sentencing with the gravity of the crime committed, and mandate for the development of guidelines in this regard.
 - Prohibit exemptions or reductions in sentencing granted to perpetrators in certain circumstances (for example honour crimes) and/or in grave cases of human rights violations, such as rape.
 - Provide for enhanced sanctions for repeated or aggravated offences of GBVAVG, regardless of the level of injury.
 - Provide that sentences in criminal cases may include the payment of compensation and restitution to the victim/survivor, while compensation may not be used to substitute other penalties, such as imprisonment.
 - Provide for the creation of a government-funded compensation programme to allow victims/survivors to receive fair compensation when the perpetrator is not able to provide it.
 - Ensure that the sentencing judgments are timely and effectively executed.⁵⁹
 - Mandate for the development of intervention programmes for perpetrators, including educational and therapeutic, while ensuring that the use of alternative sentencing is approached with serious caution and only used in instances where there will be continuous monitoring by justice officials and women's rights organisations.
 - Mandate for the capacity-building of relevant stakeholders on implementing these programmes.
-

4.9 FAMILY LAW⁶⁰

RECOMMENDATIONS

- Guarantee, at a minimum, the following:
 - The possibility for a victim/survivor to divorce a violent husband and receive adequate alimony;
 - The victim/survivor's right to stay in the family housing after divorce;
 - The victim/survivor's right to social insurance and pension rights;
 - The expedited distribution of property and other relevant procedures;
 - The statutory presumption against awarding child custody to a perpetrator;
 - The rehabilitation of the victim/survivor;

⁵⁸ UN Women (2012), Handbook for Legislation on Violence against Women, at pages 49-51.

⁵⁹ CEDAW Committee (2018), Concluding Observations in relation to the Sixth Reporting of Nepal, at para 10 (d).

⁶⁰ UN Women (2012), Handbook for Legislation on Violence against Women, at pages 53-54.

- The absence of negative inference drawn against a victim/survivor in custody/visitation decisions if the victim/survivor acted in self-defence or fled in order to avoid further violence.
 - Request for any amendment or repealing of provisions in any area of law to ensure above-mentioned guarantees.
-

4.10 IMPLEMENTATION⁶¹

RECOMMENDATIONS

- Provide a time limit for the entry into force of the law/policy.
 - Mandate the formulation of an action/implementation plan with clear benchmarks, timetable and indicators, to which government entities should be held accountable.
 - Make prior assessment of the available resources and requirements that need to be in place for implementing the law/policy once enforced.
 - Mandate the allocation of specific and adequate budgets with expenditure tracking. As such, a specific budget should be allocated for awareness raising so that the law/policy is known at all levels and across communities.
 - Provide for regular, institutionalised and specific training and capacity-building opportunities, in close consultation with civil society, for public officials and service providers to ensure that they perform their duties aligned with the new law/policy.
 - Require regulations, protocols, guidelines, standard operating procedures, directives and standards aligned with international standards to be developed within a specific timeframe by the relevant authority in collaboration with line ministries, civil society and service providers.
 - Provide for the creation and strengthening of specialised court and police units, public prosecutors and court proceedings for timely and efficient handling of GBVAWG cases, and ensure adequate funding and investments for institutional, capacity and infrastructure development.
 - Provide robust accountability mechanisms with effective sanctions against authorities in cases of non-compliance.
-

⁶¹ UN Women (2012), Handbook for Legislation on Violence against Women, at pages 14-19.

4.11 MONITORING AND EVALUATION⁶²

RECOMMENDATIONS

- Provide for the establishment of an institutional, specific and multi-sectoral mechanism, such as a taskforce, committee, or rapporteur, to oversee implementation and report to the relevant authority on an annual basis.
- Provide the mechanism with adequate allocation of resources and tracking of expenditure to evaluate the impact of the law/policy, disseminate good practices and propose amendments if necessary.
- Develop a monitoring framework to be followed by the institutional, specific and multi-sectoral mechanism, or any other mechanism in charge of the monitoring of the law/policy. Among others, the monitoring framework should include: information analysis, including analysis of statistics, government expenditures, police records and court records; interview with relevant stakeholders, either directly or indirectly affected by the law/policy or involved in its implementation, including victims/survivors; as well as proposed time-bound recommendations for amendments to the law/policy if necessary.
- Mandate for systematic and regular research, collection and analysis of disaggregated data (by gender, age, ethnicity, place of occurrence, relationship to the victim/survivor and other relevant characteristics) on the magnitude, cause and consequences of GBVAWG (prevalence and incidence study) and on the effectiveness of intervention.

COMMENTARY

Monitoring and evaluation are at the core of the effective functioning of any law/policy.

Regular and comprehensive monitoring of laws/policies on GBVAWG allows to determine their effectiveness, potentially revealing gaps in their scope or in the effectiveness, thereby identifying areas in need of reform or amendment. It also allows to glean best practices or ascertain emerging trends. By measuring the response to the violence, both in terms of action and inaction by the relevant stakeholders, monitoring may indicate the need for training of legal professionals and other stakeholders or the lack of a coordinated response. Monitoring is also a key instrument in ensuring that the law/policy does not have adverse unanticipated effects for victims/survivors.

Monitoring the implementation of a law/policy on GBVAWG means documenting and analysing the response of law enforcement, the legal community, the judiciary, and medical and social services, as well as analysing the public awareness

and opinion regarding GBVAWG and the law/policy.

The close consultation with any stakeholders directly or indirectly affected by the law/policy or involved in its implementation is crucial at any stage. Thus, extensive consultation with relevant stakeholders in the monitoring of a law/policy provides a stronger ground for the need and scope of amendments of legal reform.

- For a non-exhaustive list of relevant stakeholders, refer to Step 3 at page 19 (CHECKLIST OF STEPS TO draft legislation and policies on ending GBVAWG).
- For more information on the elements of a monitoring report, refer to Annex 2 at page 45.

⁶² UN Women (2012), Handbook for Legislation on Violence against Women, at pages 19-20.

HUMAN-RIGHTS MONITORING METHODOLOGY

The organisation Advocates for Human Rights developed a methodology to monitor the implementation of domestic violence laws through human rights fact-finding and report.

This methodology envisions a final human rights report that includes findings from background research and interviews as well as recommendations for improvements. The primary guiding principle for the assessment should be whether the implementation of domestic violence laws promotes victims/survivors' safety and offenders' accountability, according to international standards.

➤ For more information, see the Advocates for Human Rights (2011), Documenting the Implementation of Domestic Violence Laws: A Human Rights Monitoring Methodology, available at www.stopvaw.org.

INTERNATIONAL EXAMPLE

In India, the Lawyers Collective Women's Rights Initiative (LCWRI) has been involved in the monitoring and evaluation of the *Protection of Women from Domestic Violence Act (2005)* since 2007. The LCWRI has been following various quantitative and qualitative methods to monitor the implementation of the Act:

- Interviews and focus group discussions using participatory methods with stakeholders.
- Analysis of relevant court judgments and orders (three-steps methodology with indicators), looking particularly at the cases filed, proceedings adopted and reliefs obtained.
- Data on infrastructure
- In cases of trainings, collection of qualitative data from training participants during pre- and post- trainings.
- Data on Knowledge, Attitudes and Practices (KAP) of the Judiciary and Police on various aspects related to the Act, and explored how they influence the implementation.

➤ For more information, see LCWRI and the International Centre for Research on Women (2010), *Staying Alive, Fourth Monitoring & Evaluation Report 2010 on the Protection of Women from Domestic Violence Act, 2005* (available at <https://lawyerscollective.org>).

5 CONCLUSION

Comprehensive legislation and policies that recognise and aim at addressing varying forms of GBVAWG are fundamental for ending GBVAWG.

Nepal has embarked upon a substantive legal reform with the aim of harmonising its national legal system with the new constitutional provisions and international commitments to women's human rights. While this reform represents significant progress, there remain considerable gaps in the laws and policies related to GBVAWG, and their implementation and monitoring continue to pose significant challenges.

It is hoped that this toolkit will be of use to concerned stakeholders in Nepal at all levels of governance, especially at the provincial and local levels, and support them in ensuring that a robust legal framework is in place to address GBVAWG. In particular, this toolkit aimed to provide guidance to support the development and effective implementation and monitoring of legislation and policies on GBVAWG that go beyond mere criminalisation and prosecution of perpetrators, prevent violence and ensure the rights and empowerment of victims/survivors across Nepal.

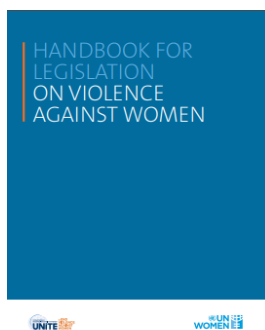
6 ADDITIONAL RESOURCES



UN Women's [website](#) contains key information on GBVAWG, including facts and figures, global norms and standards, and tools for effective tools and policies, prevention, or the creation of safe public spaces.



Launched in 2010, the [Virtual Knowledge Centre to End Violence against Women and Girls](#) was created to serve the needs of policymakers, programme implementers and other practitioners dedicated to addressing GBVAWG. This Centre aims at encouraging and supporting evidence-based programming to more efficiently and effectively design, implement, monitor and evaluate initiatives to prevent and respond to GBVAWG.



The [Handbook for Legislation on Violence against Women](#) serves as a useful tool in providing all stakeholders with detailed guidance to support the adoption and effective implementation of legislation which prevents GBVAWG, punishes perpetrators, and ensures the rights of survivors everywhere.



This [Essential Service Package for Women and Girls Subject to Violence](#) identifies the essential services to be provided by the health, social services, police and justice sectors as well as guidelines for the coordination of essential services and the governance of coordination processes and mechanisms. The package provides service delivery guidelines for the core elements of each essential service to ensure the delivery of high-quality services for women and girls experiencing violence.

7 ANNEXES

ANNEX 1

INDICATORS TO MEASURE GBVAWG

7.1.1 GLOBAL PRIORITY INDICATORS ON GBVAWG⁶³

<p>PHYSICAL VIOLENCE</p>	<p>I. Total and age-specific rate of women subjected to physical violence in the past 12 months by severity of violence, relationship to the perpetrator and frequency.</p> <p>II. Total and age-specific rate of women subjected to physical violence during their lifetime by severity of violence, relationship to the perpetrator and frequency.</p>
<p>SEXUAL VIOLENCE</p>	<p>III. Total and age specific rate of women subjected to sexual violence in the past 12 months by severity of violence, relationship to the perpetrator and frequency.</p> <p>IV. Total and age-specific rate of women subjected to sexual violence during their lifetime by severity of violence, relationship to the perpetrator and frequency.</p>
<p>INTIMATE PARTNER VIOLENCE</p>	<p>V. Total and age-specific rate of ever-partnered women subjected to sexual and/or physical violence by current or former intimate partner in the past 12 months by frequency.</p> <p>VI. Total and age-specific rate of ever-partnered women subjected to sexual and/or physical violence by current or former intimate partner during their lifetime by frequency.</p> <p>VII. Total and age-specific rate of ever-partnered women subjected to psychological violence in the past 12 months by an intimate partner.</p> <p>VIII. Total and age-specific rate of ever-partnered women subjected to economic violence in the past 12 months by an intimate partner.</p>

⁶³ United Nations (2010), Guidelines for Producing Statistics on Violence against Women, at page 15, available at https://unstats.un.org/unsd/gender/docs/Guidelines_Statistics_VAW.pdf.

7.1.2 NEPAL INDICATORS ON GBVAWG-SUSTAINABLE DEVELOPMENT GOALS⁶⁴

TARGETS AND INDICATORS		2015 (baseline)	2030 (target)
Target 5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation			
5.2.1	Proportion of ever-partnered women and girls aged 15 years and older subjected to physical, sexual or psychological violence by a current or former intimate partner in the previous 12 months, by form of violence and by age		
1	Lifetime Physical and/or Sexual violence (%)	28.4	5
2	Children age 1-14 years who experienced psychological aggression or physical punishment during the last one month (%)	81.7	13.6
5.2.2	Proportion of women and girls aged 15 years and older subjected to sexual violence by persons other than an intimate partner in the previous 12 months, by age and place of occurrence		
1	Women aged 15-49 years who experience Physical / sexual violence (%)	26	6.5
2	Women and Girls Trafficking (in number)	1697	325
Target 5.3 Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation			
5.3.1	Proportion of women aged 20-24 years who were married or in a union before age 15 and before age 18		
1	Women aged 15-19 years who are married or in union (%)	24.5	4.1

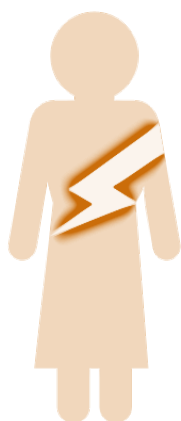
⁶⁴ National Planning Commission Nepal (2017), Sustainable Development Goals, Status and Roadmap 2016-2030, at pages 53-54, available at <http://www.np.undp.org/content/nepal/en/home/library/sustainable-development-goals-national-report---nepal/sustainable-development-goals-status-and-roadmap-2016-2030.html>.

ANNEX 2

SPECIFIC GUIDANCE TO DRAFT LEGISLATION AND POLICIES ON SEXUAL VIOLENCE

This guidance provides key elements of legislation/policies specifically on sexual violence.

For specific guidance on other forms of violence (including domestic violence, sexual harassment, sex trafficking and harmful practices), visit "Drafting Specific Legislation on Violence against Women and Girls" on <https://www.endvawnow.org/en/>.



KEY CONSIDERATIONS⁶⁵

- The root cause of GBVAG is gender inequality, discrimination and harmful social and cultural norms that place lower value on women and girls in society.
- The purpose of GBVAG legislation/policies is criminalisation of all forms of GBVAG.
- Customary or religious considerations cannot be used to justify GBVAG.
- It is the duty of the State to prevent, investigate, punish and respond to all forms of sexual violence, including sexual assault, sexual harassment and harmful practices.

1. DEFINITIONS

1.1 SEXUAL VIOLENCE⁶⁶

WHAT TO INCLUDE

- Sexual violence is an act against a person **violating a person's bodily integrity and sexual autonomy**.
- Sexual violence occurs in the **absence of consent (unequivocal and voluntary agreement)** of the victim/survivor.

WHAT TO AVOID

- Sexual violence should **not** be defined as a violation of morals or decency, or a crime against the family/community.
- Legislation/policies should not require that the **use of force or the threat of force** was present, or that **penetration** should occur, in order to constitute sexual violence.

INTERNATIONAL EXAMPLE

The World Health Organisation defines sexual violence as

"...any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work. "

Source: World Health Organisation (2002), World Report on Violence and Death.

⁶⁵ "Content of legislative preamble", *UN Women Virtual Knowledge Centre to End Violence against Women and Girls*, <https://www.endvawnow.org/>, accessed on 11 June 2019.

⁶⁶ "Definition of sexual assault and other elements", *UN Women Virtual Knowledge Centre to End Violence against Women and Girls*, <https://www.endvawnow.org/>, accessed on 11 June 2019.

The terminology on victims/survivors and perpetrators should remain gender neutral.

1.2 SEXUAL ABUSE AND SEXUAL EXPLOITATION

The Bulletin of the United Nations Secretary General on special measures for protection from sexual exploitation and sexual abuse defines:⁶⁷

- **SEXUAL ABUSE** as “the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.”
- **SEXUAL EXPLOITATION** as “any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.”

2. PROVISION ON CONSENT⁶⁸

Consent should be defined as unequivocal and voluntary agreement to sexual contact of both or all parties to the contact. Provisions on consent should be drafted in a way that do not re-victimise the victim/survivor. The accused bears the burden to prove consent and must prove the steps taken to ascertain affirmative consent.

INTERNATIONAL EXAMPLE

Article 273.1 of Canada’s Criminal Code states that no consent is obtained when:

“ 2)

- a) the agreement is expressed by the words or conduct of a person other than the complainant;
 - b) the complainant is incapable of consenting to the activity;
 - c) the accused induces the complainant to engage in the activity by abusing a position of trust, power or authority;
 - d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or
 - e) the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity...
- 3) Nothing in subsection (2) shall be construed as limiting the circumstances in which no consent is obtained.”

Consent should be addressed in terms of the environment surrounding the decision. The decision should be made without force, the threat of force, coercion, or taking advantage of a coercive environment.

The law/policy should include provisions describing circumstances in which consent is immaterial. These circumstances should include: cases where the victim/survivor lacks the capacity to give consent (including when the victim/survivor is intoxicated, underaged, disabled, or unconscious); or where the perpetrator abuses a position of authority (including school, correctional facility, professional

⁶⁷ UN Secretary General (2003), Bulletin on Special measures for protection from sexual exploitation and sexual abuse.

⁶⁸ “Consent”, *UN Women Virtual Knowledge Centre to End Violence against Women and Girls*, <https://www.endvawnow.org/>, accessed on 11 June 2019.

relationships, etc.).

Provisions on consent under coercive circumstances should describe a broad range of circumstances. It should reflect situations where the perpetrator: used coercion, such as that caused by fear of violence, duress, psychological oppression, or abuse of power; or took advantage of a coercive environment. Coercion can also occur by virtue of being in a coercive environment, such as detention. Coercion can cover a wide range of behaviours, including (but not limited to): intimidation; manipulation; threats of negative treatment; threats toward third parties; blackmail; and drug-facilitated sexual violence.

INTERNATIONAL EXAMPLE

The *Combating of Rape Act No. 8 (2000)* of Namibia includes an extensive description of coercive circumstances:

“(2) [...] “coercive circumstances” includes, but is not limited to

- *the application of physical force to the complainant or to a person other than the complainant;*
- *threats (whether verbally or through conduct) of the application of physical force to the complainant or to a person other than the complainant;*
- *threats (whether verbally or through conduct) to cause harm (other than bodily harm) to the complainant or to a person other than the complainant under circumstances where it is not reasonable for the complainant to disregard the threats;*
- *circumstances where the complainant is unlawfully detained;*
- *circumstances where the complainant is affected by -*
 - *physical disability or helplessness, mental incapacity or other inability (whether permanent or temporary); or*
 - *intoxicating liquor or any drug or other substance which mentally incapacitates the complainant; or*
 - *sleep, to such an extent that the complainant is rendered incapable of understanding the nature of the sexual act or is deprived of the opportunity to communicate unwillingness to submit to or to commit the sexual act;*
- *circumstances where the complainant submits to or commits the sexual act by reason of having been induced (whether verbally or through conduct) by the perpetrator, or by some other person to the knowledge of the perpetrator, to believe that the perpetrator or the person with whom the sexual act is being committed, is some other person;*
- *circumstances where as a result of the fraudulent misrepresentation of some fact by, or any fraudulent conduct on the part of, the perpetrator, or by or on the part of some other person to the knowledge of the perpetrator, the complainant is unaware that a sexual act is being committed with him or her;*
- *circumstances where the presence of more than one person is used to intimidate the complainant.”*

3. PRINCIPLES TO ENSURE JUSTICE⁶⁹

The law/policy should:

- Provide for the mandatory investigation of sexual violence.
- Prohibit the use of mediation at all stages of the process.
- Ensure that a case which has already been processed under a religious or customary judicial system may still be brought under Nepal's formal justice system.
- Ensure that there is no statute of limitations provisions on the registration of cases of sexual violence in all contexts.⁷⁰
- Ensure that the handling of evidence does not lead to re-victimisation of the victim/survivor.
- Prohibit any mitigating factors. These include, among others; intoxication; the belief that the victim/survivor was not a minor; or the presence of consent by an underaged person.

4. AGGRAVATING CIRCUMSTANCES⁷¹

The law/policy should provide for enhanced penalties for aggravating circumstances, such as:

- Situations of natural disaster, civil and political unrests or conflict;
- Threat or use of force;
- The victim/survivor is a person with a mental or physical disability, a minor, in custody or displaced.

5. RIGHTS OF VICTIMS/SURVIVORS⁷²

The law/policy should provide that victims/survivors:

- Have the right not to be discriminated against, at any step of the process and on any grounds.
- May have access, free of cost, to legal aid providers to assist during all steps of the process and who are obliged to maintain confidentiality and privacy.
- May have access, when requested or required, to: free legal assistance in all court proceedings; free court support; free access to interpreters; and free translation of legal documents.
- Have full access to a comprehensive range of free-of-cost health services and psychosocial care

A survivor-centred approach guarantees the right:

- To dignity and respect;
- To choice;
- To privacy and confidentiality;
- To non-discrimination;
- To information.

⁶⁹ "Content of legislative preamble", *UN Women Virtual Knowledge Centre to End Violence against Women and Girls*, <https://www.endvawnow.org/>, accessed on 11 June 2019.

⁷⁰ CEDAW Committee (2018), Concluding Observations on the Sixth Reporting of Nepal, at para 11 (c).

⁷¹ "Aggravating circumstances", *UN Women Virtual Knowledge Centre to End Violence against Women and Girls*, <https://www.endvawnow.org/>, accessed on 11 June 2019.

⁷² "Rights of Survivors", *UN Women Virtual Knowledge Centre to End Violence against Women and Girls*, <https://www.endvawnow.org/>, accessed on 11 June 2019.

within one day of travel.

6. ROLES AND RESPONSIBILITIES OF THE POLICE⁷³

The law/policy should require the police to:

- Receive regular trainings, including on: the nature and impact of sexual violence; effective investigation strategies and approaches that support victim/survivor's safety; confidentiality; and protection.
- Ensure confidentiality, data safety and protection of the victim/survivor at all stages.
- Conduct complete, fair, impartial, prompt and effective investigations, and prepare detailed reports in all cases for the record and for prosecution.
- Develop protocols for victim/survivor's interviews and medical examinations to ensure that the victim/survivor is questioned and examined in a survivor-centred, confidential, respectful and timely manner for successful evidence use at trial.
- Ensure the adequate and sensitive collection, protection and preservation of evidence.
- Ensure, to the extent possible, that the victim/survivor's interviews and statements are taken by female police officers who are properly trained to handle cases of GBVAVG.
- Carefully consider all factors underlying a victim/survivor's hesitation or decision not to provide information or evidence.
- Make reports available to the victims/survivor unconditionally in an understandable and accessible language.
- Coordinate with prosecutors, medical support services and relevant stakeholders.
- Refer the victim/survivor to coordinated sexual violence services, that include: medical services; followed by other services (legal, psychosocial, shelter and other social services).
- The law/policy should mandate the allocation of sufficient resources to the police to ensure proper investigation of sexual violence cases and regular training to handle such cases.

INTERNATIONAL EXAMPLE

The *Rape Victim Assistance and Protection Act (1998)* of Philippines states that:

“Upon receipt by the police of the complaint for rape, it shall be the duty of the police officer to: (a) Immediately refer the case to the prosecutor for inquest/investigation if the accused is detained; otherwise, the rules of court shall apply; (b) Arrange for counselling and medical services for the offended party; and (c) Immediately make a report on the action taken.”

⁷³ “Roles and responsibilities of police”, *UN Women Virtual Knowledge Centre to End Violence against Women and Girls*, <https://www.endvawnow.org/>, accessed on 11 June 2019.

7. ROLES AND RESPONSIBILITIES OF PROSECUTORS⁷⁴

The law/policy should require prosecutors to:

- Receive regular trainings on: the nature and impact of sexual violence; factors that may affect a victim/survivor's willingness or ability to participate in a prosecution; effective prosecution strategies and approaches that support victim/survivor's safety; and the use of physical evidence, expert witnesses and other trial strategies to strengthen cases in which a victim/survivor is unavailable to testify, or if some issues are present (such as delayed reporting, inconsistent reports, or recantation).
- Carefully consider all factors underlying a victim/survivor's hesitation or decision not to testify.
- Inform the victim/survivor of: all aspects of the prosecution of the case, including: details about specific times and dates for hearings; available support and protection mechanisms; and opportunities to obtain restitution and compensation.
- If the case of sexual violence is dropped, explain to the victim/survivor why the case was dropped, in an understandable and accessible language.
- If the case is not prosecuted, provide information to the victim/survivor about civil remedies, such as protective orders.
- Avoid delays in completing the trial of the perpetrator.
- The law/policy should mandate for the development of prosecutor protocols that allow for the prosecution of perpetrators in the absence of the victim/survivor.

8. SERVICES⁷⁵

The law/policy should:

- Provide for coordinated and comprehensive services with adequate allocation of financial and human resources, as well as referral pathways, including: legal; counselling; and psychosocial support.
- Provide that services to a victim/survivor: do not require a particular time frame; are not conditional upon filing a report with the police, or upon the victim's/survivor's decision to testify or to work with prosecution regarding the case; and are available to all victims/survivors, without discrimination.
- Provide for the establishment of a coordinated sexual violence response team to give victims/survivors necessary care and services and to support the prosecution of cases. Such teams should follow specific protocols and include: a forensic examiner; sexual violence advocate; prosecutor; and law enforcement officer.
- Provide that any service providers receive regular trainings on: best practices and techniques to ensure survivor-centred investigation, handling and prosecution of cases; and counselling and

⁷⁴ "Roles and responsibilities of prosecutors", *UN Women Virtual Knowledge Centre to End Violence against Women and Girls*, <https://www.endvawnow.org/>, accessed on 11 June 2019.

⁷⁵ "Survivors services", *UN Women Virtual Knowledge Centre to End Violence against Women and Girls*, <https://www.endvawnow.org/>, accessed on 11 June 2019.

psychosocial support.

- Require measures to strengthen the coordination between services and government bodies.

INTERNATIONAL EXAMPLE

The Amendment to the Criminal Procedure Code (2006) of Austria entitles victims of sexual offences or dangerous threats, and their intimate partner or relative who was a witness to the offence, to **psychosocial and legal assistance**. The Code also authorises **funding to support court accompaniment** for victims/survivors.

THE ESSENTIAL SERVICES PACKAGE FOR WOMEN AND GIRLS SUBJECT TO VIOLENCE

This document identifies the essential services to be provided by the health, social services, police and justice sectors. It also provides guidelines for the core elements of each essential service to ensure that they are survivor-centred and of high quality. Guidelines are also provided for the coordination of services and the governance of coordination processes and mechanisms.¹³

- For more information, visit “Essential Services Package for Women and Girls Subject to Violence” at www.unwomen.org/en.

9. DISASTER-SPECIFIC PROVISIONS⁷⁶

The law/policy should require:

- Safety protocols to address safety of women and girls in public shelters or camps.
- The formation of a national and provincial emergency communication system and disaster response database, in order to provide protection and support to victims/survivors of violence. An emergency communication system includes response protocols and dissemination of critical information.
- Regular monitoring in camps in order to determine: safety conditions and opportunities to report incidents of sexual violence; and to evaluate all aspects of medical-legal response. This monitoring should be accompanied with adequate accountability and oversight mechanisms.
- Camps to provide a comprehensive response to victims/survivors, including health care and psychological services.
- The participation, representation and leadership of NGOs and women and girls in setting camp policies.
- A crime reporting system, a tracking system and weather-proof storage of crime documentation to ensure that victims/survivors can effectively report cases, perpetrators can be tracked and pending cases are not destroyed.
- The transfer of administrative authority to a criminal court in an unaffected area, or the creation of an “emergency court” to plan for and coordinate judicial administration in times of natural disasters.

⁷⁶ “Sexual assault of vulnerable populations”, *UN Women Virtual Knowledge Centre to End Violence against Women and Girls*, <https://www.endvawnow.org/>, accessed on 11 June 2019.

10. PUBLIC AWARENESS AND EDUCATION⁷⁷

The law/policy should:

- Include detailed provisions on raising awareness and educating the public. Such awareness should focus on: sexual violence; women's human rights; normative framework; and social norm change initiatives. Awareness-raising and prevention education should be conducted at the community and individual level while ensuring that messages are adapted for relevant audiences. Additionally, messages of empowerment must be included in outreach programmes.
- Allocate sufficient funds to support activities that will educate the public about the law.
- Integrate media engagement in all implementation strategy.
- Provide for the engagement between policymakers and other stakeholders (including religious and community leaders) to support the development of, or changes in, social norms and practices.

11. IMPLEMENTATION⁷⁸

The law/policy should:

- Mandate for the development of an **interagency and Coordinated Community Approach**. A Coordinated Community Response programme aims at creating an available and accessible network of support for victims/survivors and their families to hold perpetrators accountable and reinforce the community's intolerance of GBVAWG. This approach helps ensure all members of the community respond consistently to GBVAWG and are held accountable for their responses. Such networks should include: multi-sectoral service providers; civil society; child protection services; educators; local businesses; the media; employers; and religious and community leaders. Coordination of responses and accountability of stakeholders is crucial for effective implementation of the law/policy created to protect victims/survivors, prosecute perpetrator and prevent further violence. Inter-agency coordination should include: appointing the body responsible for leading and coordinating efforts; creating a common vision and action plan; ensuring communication, linkages and accountability among agencies; providing clear, written mandates to each responsible agency; and establishing an entity to monitor implementation of the coordination action.⁷⁹
- Require the creation of an **action plan**, which: a) is evidence-based; b) relies on extensive consultation with relevant groups and individuals; c) includes benchmarks and sanctions for non-compliance; and d) clearly identifies costs and funding sources for reach component of the plan.⁸⁰

⁷⁷ "Public Awareness & Education, Overview", *UN Women Virtual Knowledge Centre to End Violence against Women and Girls*, <https://www.endvawnow.org/>, accessed on 11 June 2019.

⁷⁸ "Implementing Laws", *UN Women Virtual Knowledge Centre to End Violence against Women and Girls*, <https://www.endvawnow.org/>, accessed on 11 June 2019.

⁷⁹ "What is coordinated community response to violence against women?", *UN Women Virtual Knowledge Centre to End Violence against Women and Girls*, <https://www.endvawnow.org/>, accessed on 11 June 2019.

⁸⁰ "Requiring national action plans in legislation", *UN Women Virtual Knowledge Centre to End Violence against Women and Girls*, <https://www.endvawnow.org/>, accessed on 11 June 2019.

INTERNATIONAL EXAMPLE

Article 46 of the *Sexual Offences Act* of Kenya requires that the designated minister shall:

- prepare a national policy framework to guide the implementation and administration of this Act in order to secure acceptable and uniform treatment of all sexual related offences including treatment and care of victims of sexual offences;
- review the policy framework at least once every five years; and
- when required, amend the policy framework.

In compliance with the law, Kenya's Attorney General appointed a multisectoral task force to develop the National Action Plan.

12. MONITORING⁸¹

The law/policy should:

- Provide for the creation of a specific and independent body to monitor the implementation of the law/policy. Members of the body should include: members of parliament/provincial assemblies and local legislative bodies; statistics offices; law enforcement agencies; ministries for women, health, and justice; national human rights institutions (such as Nepal's National Women Commission); and women's rights organisations. The responsibilities of the monitoring body include: gathering and analysing information on the implementation; responding to parliament; and providing a public report of its efforts. Adequate funding with annual expenditure tracking should be mandated.⁸²
- Provide for various monitoring tools, such as: indicators; data sources and collection; designing a qualitative research project a situation analysis; and court monitoring.⁸³

⁸¹ "Monitoring of laws", *UN Women Virtual Knowledge Centre to End Violence against Women and Girls*, <https://www.endvawnow.org/>, accessed on 11 June 2019.

⁸² "Monitoring mechanisms, Government mechanisms", *UN Women Virtual Knowledge Centre to End Violence against Women and Girls*, <https://www.endvawnow.org/>, accessed on 11 June 2019.

⁸³ "How to monitor the implementation of laws on violence against women and girls", *UN Women Virtual Knowledge Centre to End Violence against Women and Girls*, <https://www.endvawnow.org/>, accessed on 11 June 2019.

MORE INSIGHTS ON COURT MONITORING:

Court monitoring has the objectives to:

- hold the justice system accountable for its actions by maintaining a public presence in the courts;
- identify problem patterns and issues with the court system and to propose practical solutions;
- improve the administration of justice;
- increase public awareness of and public trust in the justice system.

Court monitoring is conducted through observation of trials and court processes, where monitors assess the victim/survivor's or witness's court experience and the attitude and knowledge of the judicial and prosecutorial system. Court monitors may be volunteers or staff of the monitoring body who have received training in the criminal and civil justice processes and monitoring goals. Court monitors help identifying gaps and challenges, recommend solutions and advocate for change. Court monitors communicate and share information with the overseeing monitoring bodies and with organisations and agencies that provide direct services for victims/survivors.

- For more information, visit "Court Monitoring" at <https://www.endvawnow.org/en/>.

- Develop a monitoring framework to be followed by the specific and independent body in charge of the monitoring of the law.

ELEMENTS OF A MONITORING REPORT

A monitoring report should be developed on the basis of:

- **Review of international obligations, and of laws** at all levels of governance;
- Analysis and monitoring of: **statistics; government expenditures; monitoring of police records; and court records;**
- **Interviews** conducted with a broad range of stakeholders, including service providers (such as prosecutors, judges, probation officers, forensic doctors, police, health professionals, and psychosocial counsellors), civil society and women's rights advocates, media professionals, and religious and community leaders. Interviews with victims/survivors should only be done in circumstances in which confidentiality and safety can be ensured at all times.

Every monitoring report should include a brief conclusion highlighting **the positive and negative actions** of the various stakeholders in implementing the law, the **gaps** identified in the legislation/policy itself, as well as **time-bound recommendations**.

- For more information, visit "Background research", "Monitoring multiple aspects of laws", "Interviews for a monitoring report", and "Conclusion of monitoring studies" at <https://www.endvawnow.org/en/>.

UN Women

UN Women is the UN organisation dedicated to gender equality and the empowerment of women. A global champion for women and girls, UN Women was established to accelerate progress on meeting their needs worldwide.

UN Women supports UN Member States as they set global standards for achieving gender equality, and works with governments and civil society to design laws, policies, programmes and services needed to implement these standards. It stands behind women's equal participation in all aspects of life, focusing on five priority areas: increasing women's leadership and participation; ending violence against women; engaging women in all aspects of peace and security processes; enhancing women's economic empowerment; and making gender equality central to national development planning and budgeting. UN Women also coordinates and promotes the UN system's work in advancing gender equality.



UN WOMEN

Kathmandu, Nepal

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