

# **The Right to Health: Redirecting the “Unconstitutional Path” of Nepal’s COVID-19 Responses**

A Briefing Paper, November 2020

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

® The Right to Health: Redirecting the “Unconstitutional Path” of Nepal’s COVID-19 Responses

© Copyright International Commission of Jurists, November 2020

The International Commission of Jurists (ICJ) permits free reproduction of extracts from any of its publications provided that due acknowledgment is given and a copy of the publication carrying the extract is sent to their headquarters at the following address:

International Commission of Jurists  
P.O. Box 91  
Geneva  
Switzerland  
t: +41 22 979 38 00  
[www.icj.org](http://www.icj.org)

# **The Right to Health: Redirecting the “Unconstitutional Path” of Nepal’s COVID-19 Responses**

A Briefing Paper, November 2020

## **Acknowledgments**

This Briefing Paper was written and researched by Karuna Parajuli with the support of Timothy Fish Hodgson. Legal Review was provided by Timothy Fish Hodgson, Mandira Sharm and Ian Seiderman.

## Table of Contents

<b>A. How has the Nepali Government Respond to COVID-19? .....</b>	<b>5</b>
<b>B. What are the principal concerns regarding the right to health in Nepal during COVID? .....</b>	<b>8</b>
1. Quarantine Centres and Isolation Wards .....	9
2. Access to healthcare services unrelated to COVID-19.....	10
3. Private health care providers.....	11
4. Stigma/attacks and humiliation against health workers .....	12
5. Gendered impacts: GBV and sexual and reproductive health.....	14
6. Crowded prisons as “hot-spots” for COVID-19 transmission .....	15
7. Allegations of Corruption and misuse of resources.....	17
<b>C. What are Nepal’s international legal obligations to guarantee the right to health? .....</b>	<b>18</b>
<b>D. What does Nepal’s domestic law require in terms of the right to health?.....</b>	<b>20</b>
1. The Constitution: .....	21
2. Legislation:.....	21
3. Judicial Decisions .....	23
<b>E. What does the International Commission of Jurists recommend?.....</b>	<b>29</b>

## The Right to Health: redirecting the “unconstitutional path” of Nepal’s COVID-19 responses

### *Briefing Paper on Nepal’s Obligations to Guarantee the Right to Health During COVID-19 Pandemic*

The global COVID-19 pandemic has brought immense public health challenges in Nepal and around the world. Nepal, like any other State, has an obligation under international law to ensure that all of its inhabitants are able to enjoy the right to health. The right to health is also guaranteed under Nepal’s national law.

Prior to the onset COVID-19 high quality health care was not universally accessible in Nepal, but was generally enjoyed by only a relatively small and elite portion of the population.<sup>1</sup> Although the Constitution of Nepal provides “every citizen shall have equal access to health services”, generally such access is unequal and the health system faces perennial shortages of resources, essential drugs and necessary medical infrastructure.<sup>2</sup>

It is in this context that the impact of COVID-19 on the right to health in Nepal must be understood and evaluated. As the UN Committee on Economic, Social and Cultural Rights (CESCR) noted from the outset of the pandemic, COVID-19 “is threatening to overwhelm public health-care systems” which in many countries have been “weakened by decades of underinvestment in public health services and other social programmes”.<sup>3</sup> This trend has been particularly evident in Nepal, where, in addition to a generally low level of access to health services, the pandemic has occurred at a time when the country has yet to fully recover from the devastating social and economic impacts of earthquakes of 2015.<sup>4</sup>

As the ICJ documented in its recent report, *Living Like People Who Die Slowly*, response measures to COVID-19 including lockdowns and quarantines have also had other direct impacts on the right to health.<sup>5</sup> For instance, in the first month of Nepal’s nationwide lockdown it was reported that 487 people committed suicide, “which is 20% more compared with mid-February to mid-March”.<sup>6</sup> These included suicides by “burning, stabbing, drowning [and] jumping from heights”.<sup>7</sup> Two public health scholars who have studied the health impact of the COVID-19 response measures concluded that they had “affected the overall physical, mental, spiritual and social wellbeing of the Nepalese”.<sup>8</sup>

---

<sup>1</sup> J Sharma et al, Envisioning a high-quality health system in Nepal: if not now, when? *Lancet* (5 September 2018), available: [https://www.thelancet.com/journals/langlo/article/PIIS2214-109X\(18\)30322-X/fulltext](https://www.thelancet.com/journals/langlo/article/PIIS2214-109X(18)30322-X/fulltext).

<sup>2</sup> S Uprety & B Lamichhane, “Health Budgeting and Financing in Nepal: Policy Perspectives” (August 2016), available at: <https://www.herd.org.np/uploads/frontend/Publications/PublicationsAttachments1/1480582316-Health%20Budgeting%20and%20Financing%20in%20Nepal%20-%20Policy%20Perspectives.pdf>.

<sup>3</sup> UN Committee on Economic, Social and Cultural Rights, Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights, U.N. Doc. E/C.12/2020/1 (7 April 2020): <https://undocs.org/E/C.12/2020/1> (“CESCR COVID-19 Statement”), para 1.

<sup>4</sup> D Raj Singh & et al, “The perils of COVID-19 in Nepal: Implications for population health and nutritional status” *Edinburgh University Global Health Society* (June 2020), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7307805/>

<sup>5</sup> International Commission of Jurists “Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses” (1 September 2020), available here: <https://www.icj.org/wp-content/uploads/2020/09/Universal-Global-Health-COVID-19-Publications-Reports-Thematic-Reports-2020-ENG.pdf>.

<sup>6</sup> Kritika Poudel & Pramod Subedi, “Impact of COVID-19 pandemic on socioeconomic and mental health aspects in Nepal” *International Journal of Social Psychiatry* 2020, Vol. 66(8) 748–755 <https://journals.sagepub.com/doi/pdf/10.1177/0020764020942247>

<sup>7</sup> Id.

<sup>8</sup> Id.

This briefing paper, in question and answer format, sets out Nepal's obligations to respect, protect and fulfill the right to health under international law and the responsibilities of governmental authorities under Nepal's domestic law. It provides recommendations to Nepal government to ensure its compliance with such obligations and guarantees.

## **A. How has the Nepali Government Responded to COVID-19?**

On 1 March, the Government formed a "High-Level Coordination Committee for the Prevention and Control of COVID-19" (HLLCC). It initiated a country-wide lockdown as of 24 March and suspended all international flights and closed all its borders.<sup>9</sup>

Although Article 273 of the Constitution of Nepal provides for the possibility of declaring a state of emergency, the government has refrained from using such provision to facilitate its response to COVID-19 including the initiation of a lockdown.<sup>10</sup> The Constitution specifically allows for the declaration of a state of emergency in response to a "natural calamity or epidemic", which allows for the derogation of some rights including freedom of movement,<sup>11</sup> and "freedom to practice any profession, carry on any occupation, and establish and operate any industry, trade and business".<sup>12</sup> However, the government has refrained from utilizing these provisions thus far. It is important however to note that even if the government had decided to declare a state of emergency, the Constitution prohibits derogation from the right to health during such a state of emergency,<sup>13</sup> recognizing it as a non-derogable right even during such an emergency situation.<sup>14</sup>

Instead, government has relied on the Infectious Disease Control Act of 1964 to implement measures to control the spread of COVID-19.<sup>15</sup> The Act provides that:

"where any infectious disease develops or spreads or is likely to spread on the human beings throughout the Nepal or any part thereof, Government of Nepal may take necessary action to root out or prevent that disease and may issue necessary orders applicable to the general public or a group of any persons".

Orders and directions regulating lockdown and quarantine measures have been promulgated under this Act.

An initial problem faced in Nepal regarding the implementation of travel bans was in confronting the situation of the large number of Nepali migrant workers living and working in India and other countries. These workers experienced significant challenges in their attempts to return to Nepal,<sup>16</sup> in many cases lasting for more

---

<sup>9</sup> Ministry of Foreign Affairs, "Decisions of the High-Level Coordination Committee for the Prevention and Control of COVID-19 Meeting no. 12, 24 March 2020" *Unofficial Translation* (25 March 2020), available: <https://mofa.gov.np/decision-of-the-12th-meeting-of-hlcc-on-void-19-24-march-2020-and-its-unofficial-translation/>.

<sup>10</sup> I Payne, "Emergency Powers in Nepal : An Ordinary Response? *Verfassungsblog on Matters Constitutional* (15 April 2020) , available: <https://verfassungsblog.de/emergency-powers-in-nepal-an-ordinary-response/>.

<sup>11</sup> Constitution of Nepal, 2015 Article 17 (2) (e).

<sup>12</sup> Constitution of Nepal, 2015 Article 17 (2) (f).

<sup>13</sup> Id, Art 273 (10)..

<sup>14</sup> Id, Art 35.

<sup>15</sup> Infectious Disease Control Act, 1964.

<sup>16</sup> M Badu, "Nepalis are swimming across the Mahakali to get home" *The Kathmandu Post* (30 March 2020) <https://kathmandupost.com/sudurpaschim-province/2020/03/30/nepalis-are-swimming-across-the-mahakali-to-get-home>; M

than two months.<sup>17</sup> In late May, however, most migrant workers were allowed to enter Nepal at 20 designated points of entry.<sup>18</sup> Those returning home were required to follow certain procedures at the nearest "holding centres" and arrangements were made to transfer them into "hotel quarantines or such quarantines run by local government".<sup>19</sup>

With the flow of hundreds of migrant workers into Nepal each day, local governments struggled to manage these quarantine facilities. Conditions in such facilities were extremely poor and did not even meet the standards set by the Government itself.<sup>20</sup> For example, the standards set by the Government required the presence of a range of appropriately qualified health workers at quarantine facilities hosting more than 100 people.<sup>21</sup> The standards also dictated that these sites should be staffed by a person with an MPH/MD in community medicine. They should also have been be staffed by a range of other health workers including a medical officers, nurses, paramedics, lab technicians and pharmacists.<sup>22</sup> However, most facilities were "equipped only with paramedics and community health workers".<sup>23</sup> According to the Human Rights Commission of Nepal, conditions in quarantine sites were so poor that many symptomatic persons either fled or refused to stay in them.<sup>24</sup>

More generally, in May 2020, the Government introduced the "Health Sector Emergency Response Plan-COVID-19 Pandemic," with the objective to "prepare and strengthen the health system response that is capable to minimize the

---

Dhungana "Around 400 Nepalis stranded at Sunauli border point stage a sit-in" *The Kathmandu Post* (31 March 2020): <https://kathmandupost.com/2/2020/03/31/around-400-nepalis-stranded-at-sunauli-border-point-stage-a-sit-in>; M Dhungana, "Hundreds of Nepalis stranded at Nepal-India borders as federal government has yet to respond" *The Kathmandu Post* ( 09 May 2020): <https://kathmandupost.com/province-no-5/2020/05/09/hundreds-of-nepalis-stranded-in-nepal-india-borders-as-federal-government-has-yet-to-respond>.

<sup>17</sup> International Labour Organization, "Impact of COVID-19 on Nepali Migrant Workers: Protecting Nepali Migrant Workers during the Health and Economic Crisis: Challenges and the Way Forward" (10 June 2020), available: [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/briefingnote/wcms\\_748917.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/briefingnote/wcms_748917.pdf)

<sup>18</sup> Cabinet of Ministers, Nepal Government, "Decision of cabinet dated 25 May 2020" Decision No. 21(1) Nepali version, , available : <https://www.opmcm.gov.np/>; Government of Nepal, "Order relating to facilitating the repatriation of Nepali nationals who are in a state of emergency, due to the awkward situation arising out of the universal convergence of COVID-19", 2077 (2020) (allowed the entry of Nepali and their minor children to come to Nepal through designated entry points and Tribhuvan International Airport) [https://drive.google.com/file/d/1ZLIC5ieut6m00w8nfTuSS5s9TRoynr6\\_/view](https://drive.google.com/file/d/1ZLIC5ieut6m00w8nfTuSS5s9TRoynr6_/view); Government of Nepal, "Order relating to facilitating the repatriation of Nepali nationals who are in a state of emergency, due to the awkward situation arising out of the universal convergence of COVID-19, 2077 (2020)" (25 May 2020): [https://drive.google.com/file/d/1ZLIC5ieut6m00w8nfTuSS5s9TRoynr6\\_/view](https://drive.google.com/file/d/1ZLIC5ieut6m00w8nfTuSS5s9TRoynr6_/view); Post Report, "Nepalis in India to be allowed to enter through 20 border points" *The Kathmandu Post* (03 June 2020)

<https://kathmandupost.com/national/2020/06/03/nepalis-in-india-to-be-allowed-to-enter-through-20-border-points>; Embassy of Nepal, "In relation to Nepal-India Border Entry Points" Notice (30 August 2020), available at: <https://in.nepalembassy.gov.np/%e0%a4%a8%e0%a5%87%e0%a4%aa%e0%a4%be%e0%a4%b2-%e0%a4%ad%e0%a4%be%e0%a4%b0%e0%a4-%e0%a4%b8%e0%a5%80%e0%a4%ae%e0%a4%be%e0%a4%95%e0%a4%be-%e0%a4%aa%e0%a5%8d%e0%a4%b0%e0%a4%b5%e0%a5%87%e0%a4%b6/>.

<sup>19</sup> The government decision specified that any one entering Nepal through land or air was required to stay in quarantine facilities for at least for fourteen days; "Order relating to facilitating the repatriation of Nepali nationals who are in a state of emergency, due to the awkward situation arising out of the universal convergence of COVID-19, 2077 (2020), available: [https://drive.google.com/file/d/1ZLIC5ieut6m00w8nfTuSS5s9TRoynr6\\_/view](https://drive.google.com/file/d/1ZLIC5ieut6m00w8nfTuSS5s9TRoynr6_/view). The order provided the option to people entering the country either to stay in self paid hotel quarantine allocated by the government or to stay in local government run quarantine facilities. The order required that "all citizens entering into Nepal should bear the expenses of transport arrangement made from the holding centers to the quarantine facilities".

<sup>20</sup> Nepal Government, Ministry of Health & Population, "Corona Virus Quarantine Operation and Management Standard 2020", available at: <https://www.dpnet.org.np/resource/437>.

<sup>21</sup> Nepal Government, Ministry of Health & Population, " Corona Virus Quarantine Operation and Management Standard 2020" <https://www.dpnet.org.np/resource/437>.

<sup>22</sup> No. 5 Healthworker Management, Nepal Government, Ministry of Health & Population, " Corona Virus Quarantine Operation and Management Standard 2020".

<sup>23</sup> S Subedi, "Reimagining Quarantine" *The Record* (29 May 2020) <https://www.recordnepal.com/category-explainers/reimagining-quarantine/>.

<sup>24</sup> Nepal Human Rights Commissions, "Conduct operation of the quarantine as per the set standards" Press Release (18 May 2020), available at: [https://www.nhrcnepal.org/nhrc\\_new/doc/newsletter/Operate%20Quarentine%20in%20accordance%20with%20the%20standards.pdf](https://www.nhrcnepal.org/nhrc_new/doc/newsletter/Operate%20Quarentine%20in%20accordance%20with%20the%20standards.pdf).



adverse impact" of COVID-19.<sup>25</sup> The plan designated four different quantitative "Levels", considering the number of positive COVID-19 cases. Level I is for up to 2000 cases; Level II is 2000 to 5000 cases; Level III is 5000 to 10,000 cases; and Level IV is for more than 10,000 cases.<sup>26</sup> The Plan also notes that, with more than 5000 cases, at Level III, the "health systems will be over stretched ... and beyond that international humanitarian assistance will be required to manage COVID-19 cases".<sup>27</sup>

In June, with the number of COVID-19 cases exceeding 2000, the Ministry of Health recommended that the Government declare a state of public health emergency so as to better manage the situation.<sup>28</sup> The Government did not act on this recommendation. Instead, in late July it ended the four-month nation-wide lockdown,<sup>29</sup> following a reported drop in COVID-19 cases.<sup>30</sup> As the internal movement restrictions eased,<sup>31</sup> COVID-19 cases began to rise again.

As of 10 November 2020, the WHO had reported 199,759 confirmed cases in Nepal and that COVID-19 had contributed directly to at least 1148 deaths.<sup>32</sup>

Apart from direct health impacts, the pandemic has resulted in a range of other negative impacts on the human rights of Nepalis. In May, the United Nations Development Program (UNDP) carried out a "Rapid Assessment of the Social and Economic Impact of COVID-19", which showed that the pandemic had generally reinforced social inequalities and worsened the situation of marginalized people.<sup>33</sup> It found that three in five employees in micro and small businesses lost their jobs. Those who retained their jobs often faced "pay cuts or unpaid hiatus", and "seasonal and informal workers", who make up approximately 85% of the labour force, were also badly affected. They were reported be "vulnerable based on income" and do not have ability to continue livelihood during the economic "slowdown".<sup>34</sup>

The UNDP therefore recommended that the government respond by "strengthening social protection," including by:

---

<sup>25</sup> Government of Nepal, Ministry of Health and Population, "Health Sector Emergency Response Plan, COVID-19 Pandemic" (May 2020) p.5, available at: [https://www.who.int/docs/default-source/nepal-documents/novel-coronavirus/health-sector-emergency-response-plan-covid-19-endorsed-may-2020.pdf?sfvrsn=ef831f44\\_2](https://www.who.int/docs/default-source/nepal-documents/novel-coronavirus/health-sector-emergency-response-plan-covid-19-endorsed-may-2020.pdf?sfvrsn=ef831f44_2).

<sup>26</sup> Id.

<sup>27</sup> Id, p 4.

<sup>28</sup> Republica, "As number of COVID-19 cases exceeds 2,000, govt may declare public health emergency" The Republica (04 June 2020) <https://myrepublica.nagariknetwork.com/news/as-number-of-covid-19-cases-exceeds-2-000-govt-may-declare-public-health-emergency/>.

<sup>29</sup> Ministry of Communication and Information Technology, "Decisions of the cabinet- dated 21 July 2020" Decision *Nepali version* <https://mocit.gov.np/category/categoryDetail/cabinet-2077-04-05>.

<sup>30</sup> Nepali Times "Nepal ends COVID-19 lockdown: Cabinet decides to lift restrictions, but limits public gatherings" (21 July 2020), available at: <https://www.nepalitimes.com/latest/nepal-ends-covid-19-lockdown/>.

<sup>31</sup> Ministry of Communication and Information Technology, "Decision of the cabinet- dated 21 July 2020" Decision No. 20 Nepali version, available at: <https://mocit.gov.np/category/categoryDetail/cabinet-2077-04-05> On 21 July 2020.

<sup>32</sup> WHO, "Situation Update #28-Corona Virus Disease 2019 (COVID-19)" WHO Country Office for Nepal (11 November 2020), available: [https://www.who.int/docs/default-source/nepal-documents/novel-coronavirus/who-nepal-sitrep/30-who-nepal-sitrep-covid-19.pdf?sfvrsn=c7021eea\\_2](https://www.who.int/docs/default-source/nepal-documents/novel-coronavirus/who-nepal-sitrep/30-who-nepal-sitrep-covid-19.pdf?sfvrsn=c7021eea_2).

<sup>33</sup> UNDP, "Rapid Assessment of the Social and Economic Impact of COVID-19 in Nepal" Study Report ( May 2020) UNDP Study Report, available: <https://www.np.undp.org/content/nepal/en/home/presscenter/articles/2020/Three-in-Five-employees-lost-their-jobs-due-to-COVID19-in-Nepal.html>.

<sup>34</sup> Id, p 14. This despite the fact that Labour Law discourages layoff. The Labor Act, Nepal 2017, Section 15 (3) reads:

"Any employer employing ten or more labors may hold the labour in reserve for a period not exceeding fifteen days, provided that if it is necessary to hold in reserve for more than the said period, the employer shall consult with the authorized trade union or labor relation committee". Similarly, Section 39 of the Act provides "where a labour is held in reserve pursuant to this Act, the employer shall pay half the remuneration which he or she is entitled to until the work is resumed".

"ramping up guaranteed employment schemes and skill academies, harnessing the equity and talent of migrant returnees, universalizing safety nets and expediting labour-intensive infrastructure projects".<sup>35</sup>

Despite the gravity of the situation, the Prime Minister, KP Sharma Oli, has made repeated statements downplaying the seriousness of COVID-19.<sup>36</sup> For instance, he described COVID-19 as "like the flu" and advised that "if contracted, one should sneeze, drink hot water and drive the virus away".<sup>37</sup> He has also claimed that Nepalis have "better immunity" against COVID-19, because they breathe fresh air and have ginger, garlic and turmeric as integral parts of their daily diet.<sup>38</sup> These comments and the general mismanagement in the government's COVID-19 response, have led to some youth-led protests in Kathmandu.<sup>39</sup>

The slow responses of the Government in taking preventative measures; the lack of rapid testing; the low quality of testing kits; the excessive use of force by security forces to impose lockdowns; the lack of preparedness in preventing the spread of virus in prison and detention facilities; and the lack of easy access to hospital for pregnant women have triggered a the filing of range number of Public Interest Litigation petitions in the Supreme Court.<sup>40</sup> In response to these petitions, which are detailed below, the Supreme Court has issued a number of orders reinforcing government's obligations in terms of the right to health.<sup>41</sup>

However, the authorities have failed to adequately and fully implement various court orders issued by the Supreme Court. This has led the Supreme Court itself to warn the government that "the court does not believe that COVID-19 epidemic can be addressed and faced through [an] unconstitutional path".<sup>42</sup> This state of affairs presents an additional threat to public health in Nepal and creates a broader threat to human rights and the rule of law in Nepal.

## **B. What are the principal concerns regarding the right to health in Nepal during COVID?**

The COVID-19 pandemic has had an impact on the healthcare system of Nepal as a whole. However, the pandemic has disproportionately impacted certain marginalized or disadvantaged individuals and groups of people.<sup>43</sup>

---

<sup>35</sup> Id, p 15.

<sup>36</sup> B Ghimire, "Oli peddles in mistruths and sidesteps criticism before Parliament" *The Kathmandu Post* (10 June 2020), available: <https://kathmandupost.com/national/2020/06/10/oli-peddles-in-mistruths-and-sidesteps-criticism-before-parliament>.

<sup>37</sup> P Pandey, "Oli continues to downplay Covid-19 and propagates home remedies, earning ridicule on social media" *The Kathmandu Post* (19 June 2020), available at: <https://kathmandupost.com/national/2020/06/19/oli-continues-to-downplay-covid-19-and-propagate-home-remedies-earning-ridicule-on-social-media>.

<sup>38</sup> B Ghimire, "Oli peddles in mistruths and sidesteps criticism before Parliament", *The Kathmandu Post* (10 June 2020), available at: <https://kathmandupost.com/national/2020/06/10/oli-peddles-in-mistruths-and-sidesteps-criticism-before-parliament>.

<sup>39</sup> Himalayan News Service, "Enough is Enough movement voices concern" *The Himalayan Times* (21 June 2020), available: <https://thehimalayantimes.com/nepal/enough-is-enough-movement-voices-concern/>.

<sup>40</sup> Human Rights Impact of COVID-19: Advocacy Forum-Nepal's Field Monitoring Report (June 2020), available at: <http://www.advocacyforum.org/downloads/pdf/publications/af-briefing-paper-covid-19-and-human-rights-june-2020.pdf>.

<sup>41</sup> In *Dal Bahadur Dhimi vs Nepal Government, Prime Minister and Cabinet of Ministers Secretariate*, Supreme Court of Nepal Decision No. 9997 (10 August 2016) the Court held "state obligation on right to health is not limited to providing medical services rather includes assurance of access to quality health services"; In *Charles Shobaraj Vs Office of Prime Minister and Cabinet of Ministers*, Supreme Court of Nepal, Decision No.9722 (10 August 2016) the Court ordered authorities to follow UN Minimum Standard Rules for the Treatment of Prisoners to provide them with health facilities and services in prisons.

<sup>42</sup> Supreme Court of Nepal, Writ No. 077-WO-0130, (03 August 2020). The case is detailed further below.

<sup>43</sup> International Commission of Jurists, "Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses" (1 September 2020), available at: <https://www.icj.org/wp-content/uploads/2020/09/Universal-Global-Health->

## 1. Quarantine Centres and Isolation Wards

According to a report of the Ministry of Health and Population, on 10 June some 172,266 people were kept in quarantine facilities, with an additional 3675 in the isolation.<sup>44</sup> It was reported that some quarantine facilities were "housing around 1,000 while their capacity to accommodate" was "just around 100".<sup>45</sup> Many people faced difficulty in accessing treatment and observation in the isolation wards. In the absence of sufficient and proper facilities for isolation and quarantine, many COVID-19 positive patients were kept in the quarantine facilities with COVID-19 negative persons, increasing the risk of transmission.<sup>46</sup> Some COVID-19 positive patients were forced to stay in ad hoc isolation centers built in schools, without access to basic medicines, ambulances, medical professionals and ventilators.<sup>47</sup>

After the Government introduced COVID-19 case isolation management guidelines in early June, dedicated hospitals were designated for COVID-19 treatment in different parts of the country.<sup>48</sup> These hospitals were tasked with admitting patients requiring hospital-based treatment, including access to ventilators.<sup>49</sup> Prior to this, in some cases, COVID-19 positive patients had to stay outside hospitals – outdoors or in vehicles – as there were no beds available for them in isolation wards.<sup>50</sup>

The facilities at quarantine centres were highly inadequate. Poor conditions with unhygienic food and water, overcrowded spaces and poor sanitation increased risk of COVID-19 transmissions and compromised the healthcare of patients. Access to medical services often failed to be delivered in a timely manner. For example, on 17 May 2020, a youth who had stayed in Narainapur quarantine centre of Banke District died.<sup>51</sup> It was widely reported that the youth had not been "provided proper health care and an ambulance was not available to transport him to hospital when his health condition suddenly worsened in the quarantine centre".<sup>52</sup>

As the National Human Rights Commission noted, quarantine sites lacked proper arrangements for the provision of "adequate nutritious foods, drinking water, toilets, proper shelter" in violation of the rights to food, water, health and housing and WHO guidelines.<sup>53</sup> The Commission pointed out that even symptomatic persons refusing to report to quarantine sites and some who were in quarantine

---

[COVID-19-Publications-Reports-Thematic-Reports-2020-ENG.pdf](#); S Sekalala et al "Health and human rights are inextricably linked in the COVID-19 response" *BMJ Global Health* (19 August 2020) available at: <https://gh.bmj.com/content/bmjgh/5/9/e003359.full.pdf>.

<sup>44</sup> Nepal Government, Ministry of Health and Population, "Health Sector Response to COVID-19" (10 June 2020), available at: ([https://covid19.mohp.gov.np/covid/englishSituationReport/5eeb3ddc90276\\_SitRep122\\_COVID-19\\_10-06-2020\\_EN.pdf](https://covid19.mohp.gov.np/covid/englishSituationReport/5eeb3ddc90276_SitRep122_COVID-19_10-06-2020_EN.pdf)).

<sup>45</sup> Arjun Poudel, "Rising Covid-19 cases and limited isolation beds once again expose governments lack of preparedness to fight the virus" *The Kathmandu Post* (31 May 2020)p.1, available at: <https://epaper.ekantipur.com/kathmandupost/2020-05-31>

<sup>46</sup> Id.

<sup>47</sup> P Gill and J Raj Sapkota, "COVID-19: Nepal in Crisis" *The Diplomat* (29 June 2020), available at: <https://thediplomat.com/2020/06/covid-19-nepal-in-crisis/>.

<sup>48</sup> Terai Human Rights Defenders- Alliance (THRD Alliance), "Five Major Concerns of Human Rights in Response to COVID 19 in Nepal" Situation Update (09 June 2020), available at: <http://www.thrda.org/situation-update/five-major-concerns-of-human-rights-in-response-to-covid-19-in-nepal/>.

<sup>49</sup> Id.

<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> Id.

<sup>53</sup> Nepal Human Rights Commission, "Conduct operation of the quarantine as per the set standards" Press Release (18 May 2020), available at: [https://www.nhrcnepal.org/nhrc\\_new/doc/newsletter/Operate%20Quarentine%20in%20accordance%20with%20the%20standards.pdf](https://www.nhrcnepal.org/nhrc_new/doc/newsletter/Operate%20Quarentine%20in%20accordance%20with%20the%20standards.pdf).

had “[tried] to escape and run away secretly disregarding the security force and the health workers” resulting in a “high risk of transmission in the society”.<sup>54</sup>

These poor conditions also resulted in the death of a 16-year-old boy in Dhanusha district, who died in isolation ward of a provincial hospital in Jankapur.<sup>55</sup> The boy reportedly had diarrhea as a result of the unhygienic food and water provided to him at a quarantine facility where he had been compelled to stay for 17 days.<sup>56</sup> At the quarantine facility, he was not even tested for COVID-19. Due to his ailing health he had been transferred to a provincial hospital where he was placed in isolation. His family alleged that “negligence and lack of proper care” caused his death.<sup>57</sup> Considering these conditions at the quarantine centres, the Kathmandu Post characterized the quarantine centres in the country as “breeding grounds” for COVID-19 and “death traps”.<sup>58</sup>

In addition to the lack of adequate healthcare and other services at quarantine sites, many facilities have been seriously overcrowded. Certain local government representatives have publicly indicated that despite their best efforts they would not be able to comply with the guidelines set by the Nepal government or the WHO for quarantine centres because of a serious lack of resources. In early June, for example, one mayor indicated that all 28 quarantine sites within his municipality were full to capacity, while hundreds of people arrived needing admission every day.<sup>59</sup> Another mayor encouraged home quarantine because of shortages of medical resources.<sup>60</sup>

## 2. Access to healthcare services unrelated to COVID-19

In addition to the problems faced in ensuring access to COVID-19 related facilities and services, the pandemic has resulted in diminished access to health facilities and services for situations and cases unrelated to COVID-19. As the Government announced a nation-wide lockdown in March, Nepal’s Ministry of Health and Population initially ordered hospitals in Kathmandu to close out-patient departments and services for non-emergency patients in order to prioritize COVID-19 treatment.<sup>61</sup> As the number of COVID-19 cases started to rise in mid-

---

<sup>54</sup> Id. Individuals were presented with a choice: either stay at home or report to the local government provided quarantine facilities. An individual willing to quarantine at home was required to receive approval from the District COVID-19 Crisis Management Committee. See Cabinet’s decision Cabinet’s decision of 29 June 2020, available at: <https://www.opmcm.gov.np/download/%e0%a5%a8%e0%a5%a6%e0%a5%ad%e0%a5%ad-%e0%a4%b8%e0%a4%be%e0%a4%b2-%e0%a4%85%e0%a4%b8%e0%a4%be%e0%a4%b0-%e0%a4%ae%e0%a4%b9%e0%a4%bf%e0%a4%a8%e0%a4%be%e0%a4%95%e0%a5%8b-%e0%a4%ae%e0%a4%a8%e0%a5%8d/?wpdmml=6523&refresh=5f4c056b2fab81598817643>. Once an individual has tested COVID-19 positive, the Case Investigation and Contact Tracing would be engaged. See: <https://drive.google.com/file/d/1j8YIHFsqvhiuh9iyty5hITCjLcibU7ew/view>; The Rising Nepal, “Banke’s Narainapur On High Alert After COVID-19 Youth Escapes From Quarantine” *News Report* (13 May 2020), available at: <https://risingnepaldaily.com/nation/banke-narainapur-on-high-alert-after-covid-19-youth-escapes-from-quarantine>; *Annapurna Express*, “Over half of the 26,000 entering Nepal escape quarantine” (30 May 2020) *The Annapurna Express* <https://theannapurnaexpress.com/news/over-half-of-the-26-000-entering-nepal-escape-quarantine-2530>; Govinda KC, “21 Covid-19 patients escape from quarantine facilities in Dailekh” *Republica* (26 June 2020) <https://myrepublica.nagariknetwork.com/news/21-covid-19-patients-escape-from-quarantine-facilities-in-dailekh/>.

<sup>55</sup> B Kumar Yadav, “Teen dies in isolation ward in Janakpur” *The Himalayan Times* (25 June 2020), available at: <https://thehimalayantimes.com/nepal/teen-dies-in-isolation-ward-in-janakpur/>.

<sup>56</sup> Id.

<sup>57</sup> Id.

<sup>58</sup> Editorial, “Death by negligence” *The Kathmandu Post* (08 June 2020), available at: <https://kathmandupost.com/editorial/2020/06/08/death-by-negligence> (Detailing stories of 14 persons who died of COVID-19 in Nepal in isolation and quarantine facilities).

<sup>59</sup> N Rai, “Quarantine Guidelines impossible to meet: local governments” *Nepali Times* (07 June 2020), available at: <https://www.nepalitimes.com/latest/quarantine-guidelines-impossible-to-meet-local-governments/>.

<sup>60</sup> Id.

<sup>61</sup> Nepal Government, Ministry of Health and Population, “Press Meet Video” (23 March 2020), available at: <https://moHP.gov.np/en>

October, the Ministry of Health and Population further announced that government hospitals in Kathmandu valley would need to be converted to COVID-19 centres with proper arrangement of ICU beds and ventilators.

Reports have emerged throughout the crisis of certain private and public hospitals failing to respect Government directives and refusing in particular to treat any COVID-19 patients. For example, in early April it was reported that some hospitals had denied emergency treatment to patients presenting with fevers unrelated to COVID-19, based on mere suspicion that the person was COVID-19 positive.<sup>62</sup> Despite the Ministry of Health and Population directing hospitals and health centers to provide “services for emergency, acute conditions and acute chronic conditions”,<sup>63</sup> many have continued to reject patients suspected of being COVID-19 positive.<sup>64</sup> The media outlet “the Record” in early September reported that “nearly two dozen patients across the country ha[d] lost their lives after being refused treatment by hospitals”, with such rejections “so widespread that most such cases hardly make it to the news unless the patient dies”.<sup>65</sup>

Lockdown measures have also sometimes resulted in patients being unable to travel to hospitals for potentially lifesaving treatment. For example, a 61-year-old man who had been receiving kidney dialysis for more than 10 years died after lockdown measures prevented him from traveling to receive treatment.<sup>66</sup> Another person reportedly had to walk for two hours to get to the hospital providing him with dialysis.<sup>67</sup> Still another was forced to move to live somewhere closer to where he received his dialysis at a different hospital. Others report being forced to pay large amounts of money for ambulance rides to access this vital treatment.<sup>68</sup>

### 3. Private health care providers

Nepal’s healthcare system comprises both private and public healthcare facilities. According to the Ministry of Health and Population’s COVID-19 response plan, the private healthcare sector is to be “engaged” in the overall COVID-19 response through a “partnership model guided by memoranda of understanding”.<sup>69</sup> By Level III,<sup>70</sup> which Nepal surpassed some time ago, the plan indicates that “all private hospitals will be utilized based on their capacity including human resources”.<sup>71</sup>

---

<sup>62</sup> For example, in early April it was reported that some hospitals had denied emergency treatment to patients presenting with fevers unrelated to COVID-19, based on mere suspicion that the person was COVID-19 positive. S Dhakal, “Patients with fever being turned away due to COVID fear”, *The Himalayan Times* (02 April 2020) <https://thehimalayantimes.com/nepal/patients-with-fever-being-turned-away-due-to-covid-fear/>.

<sup>63</sup> Ministry of Health and Population, Nepal Government, “Interim Directives for COVID and other Health Services in the Context of COVID-19 pandemic” (2020), available at: <http://lalitpurmun.gov.np/sites/lalitpurmun.gov.np/files/COVID%20and%20Non-CoVID%20Health%20Service%20Guideline-Final%20approved.pdf>.

<sup>64</sup> Khabarhub, “Patient dies in ambulance after hospital denies admission” (25 July 2020), available at: <https://english.khabarhub.com/2020/25/114760/>.

<sup>65</sup> The Record, “Patients continue to die as hospital refuse treatment” (04 September 2020), available at <https://www.recordnepal.com/covid19/patients-continue-to-die-as-hospitals-refuse-treatment/>.

<sup>66</sup> S Dhiren, “Ordeal of kidney patients during lockdown” *Centre for Investigative Journalism, Nepal* (01 May 2020), available at: <https://cijnepal.org.np/ordeal-of-kidney-patients-during-lockdown/>.

<sup>67</sup> Id.

<sup>68</sup> Id.

<sup>69</sup> Government of Nepal, Ministry of Health and Population, “Health Sector Emergency Response Plan, COVID-19 Pandemic” (May 2020), p 15, available at: [https://www.who.int/docs/default-source/nepal-documents/novel-coronavirus/health-sector-emergency-response-plan-covid-19-endorsed-may-2020.pdf?sfvrsn=ef831f44\\_2](https://www.who.int/docs/default-source/nepal-documents/novel-coronavirus/health-sector-emergency-response-plan-covid-19-endorsed-may-2020.pdf?sfvrsn=ef831f44_2).

<sup>70</sup> Id, p 5. The Plan also notes that, with more than 5000 cases, at Level III, the “health systems will be over stretched ... and beyond that international humanitarian assistance will be required to manage COVID-19 cases”.

<sup>71</sup> Id, p 6.

Despite these plans, however, there are reports showing “the majority” of private health care services halting their services.<sup>72</sup> There are a number of allegations of private hospital refusing to treat patients because of mere suspicion that they may be COVID-19 positive.<sup>73</sup> Many such cases have been reported in Birgunj, allegedly leading to deaths. These refusals of care led to protests in August, including an instance of vandalism to a private hospital, against the alleged consistent refusal of private hospitals to admit patients suspected to be COVID-19 positive.<sup>74</sup>

On 20 August a Government spokesperson warned all health institutions, including private hospitals, against refusing treatment and "being selective to treatment stating COVID or non-COVID cases".<sup>75</sup> The spokesperson said that any healthcare provider that “does not comply with government's order shall be punished according to the law”.<sup>76</sup> The provincial Government has also warned that the hospitals refusing to treat patients during the COVID-19 crisis would result in the cancellation of registration.<sup>77</sup> However, denial of treatment continues and the ICJ has been unable to ascertain whether any specific action has been taken, against any offending hospitals.

In addition, in an effort to increase testing capacity the Government has authorized private laboratories to perform PCR testing at a fixed price of 5500 Nepali Rupees (around 46 US dollars). After repeated complaints about the unaffordability of these tests, and amidst reports of laboratories charging more than this set amount, the Government announced a reduction of these prices to 4400 Nepali Rupees (37.45 US dollars) in late August<sup>78</sup> and a further reduction to 2000 Nepali Rupees (17.05 US dollars) applicable to all the laboratories by mid-September.<sup>79</sup>

#### 4. Stigma/attacks and humiliation against health workers

In global terms, on 12 August the International Council of Nurses (ICN) estimated that health workers had suffered eight percent of all COVID-19 infections worldwide, noting that the WHO estimated the proportion of total infections could be as high as 10 percent.<sup>80</sup> In addition to increased exposure to COVID-19 as a result of their work, Amnesty International in a July report observed a worrying

---

<sup>72</sup> D Raj Singh et al, "The perils of COVID-19 in Nepal: Implications for population health and nutritional status" *Journal of Global Health* (June 2020), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7307805/>.

<sup>73</sup> The Record, "Patients continue to die as hospital refuse treatment" (04 September 2020), available at: <https://www.recordnepal.com/covid19/patients-continue-to-die-as-hospitals-refuse-treatment/>.

<sup>74</sup> R Sarraf "Narayani Hospital in Birgunj vandalised for refusing treatment to patients" (9 August 2020), available at: <https://thehimalayantimes.com/nepal/narayani-hospital-in-birgunj-vandalised-for-refusing-treatment-to-patients/>.

<sup>75</sup> Spokesperson of Government and Minister of Communication and Information Technology, "Program to Publicize Cabinet's decision of date 04 Bhadra 2077" (20 August 2020).

<sup>76</sup> Id.

<sup>77</sup> At Tiwari, "Despite strict instructions from the provincial government, private hospitals in province-2 unwilling to provide services" *The Kathmandu Post* (2 April 2020), available at: <https://kathmandupost.com/2/2020/04/02/despite-strict-instructions-from-the-provincial-government-private-hospitals-in-province-2-unwilling-to-provide-services>.

<sup>78</sup> Ministry of Health and Population, National Public Health Laboratory, "COVID related Lab Information" (7 September 2020), available at: <https://www.nphi.gov.np/page/ncov-related-lab-information>.

<sup>79</sup> Nepal Government, Ministry of Health and Populations, "COVID-19 National Update" (14 September 2020), available at: <https://www.facebook.com/mohpnep/photos/pcb.984336632054856/984333112055208/?type=3&theater>; My Republica "Govt lowers cost of PCR test for COVID-19 to Rs 2,000" (14 September 2020), available at: <https://myrepublica.nagariknetwork.com/news/govt-lowers-cost-of-pcr-test-for-covid-19-to-rs-2-000-5/>; <https://epaper.ekantipur.com/kantipur/2020-08-28>.

<sup>80</sup> International Council of Nurses, "International Council of Nurses calls on public to support nurses: stopping the spread of COVID-19 is in your hands" (12 August 2020), available at: [https://www.icn.ch/sites/default/files/inlinefiles/PR\\_42\\_AK\\_Call\\_for\\_support\\_nurses\\_FINAL\\_1.pdf](https://www.icn.ch/sites/default/files/inlinefiles/PR_42_AK_Call_for_support_nurses_FINAL_1.pdf); DW, "Coronavirus latest: WHO says health workers account for 10% of global infections" (17 July 2020), available at: <https://www.dw.com/en/coronavirus-latest-who-says-health-workers-account-for-10-of-global-infections/a-54208221>.

trend in many countries worldwide according to which health workers “experienced stigma and violence because of the job they perform in the context of the COVID-19 pandemic”.<sup>81</sup>

This global trend of stigmatization of health workers been borne out in Nepal from the outset of the pandemic. In June various UN agencies and local organizations called for end to stigma and discrimination against health workers in Nepal.<sup>82</sup>

In early May it had been reported that health workers and officials were “shunned and treated as pariahs” in Udyapur (one of the districts in eastern part of the country), and “routinely turned away from hotels and restaurants, denied food and lodging”.<sup>83</sup> The prevalence of such reports have been confirmed by local NGOs, and have included physical assault by police and soldiers and failure of the police to respond when health workers were attacked by other people.<sup>84</sup>

This stigma has continued. In late August, a group of people placed in signs in the vicinity of home two doctors isolating in the house saying: “infected zone” and “Caution, do not enter”.<sup>85</sup> In other areas demands have been made for the eviction of health workers.<sup>86</sup> Some doctors have blamed such discrimination on the government, noting that “state agencies have failed to disseminate right information regarding the pandemic”, which has allowed stigma to spread.<sup>87</sup> The Ministry of Health and Population has itself acknowledged that “[h]ealth care workers are forced to live under constant psychological threats of getting infected, attacked and humiliated” and that “it will be very difficult to provide health care services if such attacks don’t stop.”<sup>88</sup>

The challenges faced by health workers have been exacerbated by insufficient access to personal protective equipment (PPE).<sup>89</sup> In early June, a nationwide study of the health facilities designated for the treatment of COVID-19 found that only 45 percent of facilities had PPE sets in accordance with government guidelines, and training on the use of PPE was only provided in 75 percent of facilities.<sup>90</sup>

---

<sup>81</sup> Amnesty International, “Exposed. Silenced. Attacked: Failures to Protect Health and Essential Workers During The Covid-19 Pandemic” (July 2020), available at: <https://www.amnesty.org/en/latest/news/2020/09/amnesty-analysis-7000-health-workers-have-died-from-covid19/>.

<sup>82</sup> WHO, “Stop Stigma and Discrimination, Spread Love” *Press Statement* (23 June 2020), available at: <https://www.who.int/nepal/news/detail/23-06-2020-joint-press-statement-stop-stigma-and-discrimination-spread-love>

<sup>83</sup> A Poudel “Stigma against health workers, patients and area locals continues in Covid-19 hotspot (1 May 2020), available at: <https://kathmandupost.com/national/2020/05/01/stigma-against-health-workers-patients-and-area-locals-continues-in-covid-19-hotspots>.

<sup>84</sup> Human Rights Impact of COVID-19: Advocacy Forum-Nepal’s Field Monitoring Report (June 2020) available at: <http://www.advocacyforum.org/downloads/pdf/publications/af-briefing-paper-covid-19-and-human-rights-june-2020.pdf>, INSEC, Situation of Human Rights within Three Months of Lockdown (March 24 2020-June 24 2020), available at: <http://inseconline.org/en/wp-content/uploads/2020/07/Situation-of-Human-Rights-within-Three-Months-of-Lockdown.pdf>;

“Police Take Action Against DSP Lamsal For ‘Beating’ Doctors”, *Rising Nepal* (16 April 2020), available at: <https://risingnepaldaily.com/mustread/plice-take-action-against-dsp-lamsal-for-beating-doctors>; Amnesty International, “Exposed. Silenced. Attacked: Failures to Protect Health and Essential Workers During The Covid-19 Pandemic” (July 2020), p 40, available at: <https://www.amnesty.org/download/Documents/POL4025722020ENGLISH.PDF>.

<sup>85</sup> A Poudel, “Health workers under attack as lack of Covid-19 awareness is fuelling stigma” *The Kathmandu Post* (23 August 2020), available at: <https://kathmandupost.com/health/2020/08/23/health-workers-under-attack-as-lack-of-covid-19-awareness-is-fuelling-stigma>.

<sup>86</sup> Id .

<sup>87</sup> Id.

<sup>88</sup> Id.

<sup>89</sup> L Panthy & etal, “COVID-19 in Nepal: Scarcity of Personal Protective Equipment (PPE) and its Alternative” *Europasian Journal of Medical Science* (May 2020), available at: [https://www.researchgate.net/publication/341401476\\_COVID-19\\_in\\_Nepal\\_Scarcity\\_of\\_Personal\\_Protective\\_Equipment\\_PPE\\_and\\_its\\_Alternative](https://www.researchgate.net/publication/341401476_COVID-19_in_Nepal_Scarcity_of_Personal_Protective_Equipment_PPE_and_its_Alternative)

<sup>90</sup> Nepal Health Research Council , “Assessment of Health-related Country Preparedness and Readiness of Nepal for Responding to COVID-19 Pandemic Preparedness and Readiness of Government of Nepal Designated Hospital-running-COVID Clinics” *Factsheet* (5 June 2020), available at: <http://nhrc.gov.np/wp-content/uploads/2020/06/Fact-sheet-Preparedness-and-Readiness-of-Government-of-Nepal-Designated-Hospital-running-COVID-Clinics.pdf>.

## 5. Gendered impacts: GBV and sexual and reproductive health

Globally, gendered impacts of COVID-19 responses have been significant. The UN Committee on the Elimination of Discrimination against Women, for example, has noted that women and girls “have experienced multiple and compounded forms of discrimination while on the front lines of responses, at home, in the health workforce and in various sectors of production”.<sup>91</sup>

Globally, the responses by many States to COVID-19 have sometimes meant the interruption or shut down of health services for women and girls.<sup>92</sup> This is because, in many States women and girls’ sexual and reproductive health rights and services “are not regarded as life-saving priority” in the face of COVID-19.<sup>93</sup> In Nepal the COVID-19 lockdown has led to an increase in the number of home births through unsafe methods, risking unsafe delivery.<sup>94</sup> In April, the United Nations Country Team in Nepal had warned of:

“severely disrupted access to life saving sexual and reproductive health services as health system resources and capacity become stretched and resources are diverted from various programmes to address the pandemic”.<sup>95</sup>

In late May it was reported, based on information provided by the Ministry of Health and Population, that there had been an “almost 200 percent increase in maternal mortality rate” in the first two months of lockdown, with experts warning that “the real picture could be much more alarming”.<sup>96</sup> Women have typically struggled to access ambulance services that would allow them to receive necessary reproductive health services in hospitals, and some have died in hospitals because they only reached hospitals after experiencing “severe complications”.<sup>97</sup> According to a study in the medical journal the Lancet, during this two-month period alone the number of “institutional births” in Nepal decreased by 52,4 percent and there was a significant decrease in the “quality of care in the hospitals”.<sup>98</sup>

Significant increases in gender based violence, including sexual violence in quarantine facilities, were also reported in media. In June, both national and international media reported an incident of a gang rape in one of the quarantine

---

<sup>91</sup> Committee on the Elimination of Discrimination Against Women, Call for joint action in the times of the COVID-19 pandemic (21 April 2020), available at:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CEDAW/STA/9158&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CEDAW/STA/9158&Lang=en).

<sup>92</sup> International Commission of Jurists, “Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses” (1 September 2020), available at: <https://www.icj.org/wp-content/uploads/2020/09/Universal-Global-Health-COVID-19-Publications-Reports-Thematic-Reports-2020-ENG.pdf>, p.5

<sup>93</sup> UN Women et al “Justice for Women Amidst COVID19”, p 20, available at: [https://www.idlo.int/sites/default/files/pdfs/publications/idlo-justice-for-women-amidst-covid19\\_0.pdf](https://www.idlo.int/sites/default/files/pdfs/publications/idlo-justice-for-women-amidst-covid19_0.pdf).

<sup>94</sup> D Raj Pandey & et al, “The perils of COVID-19 in Nepal: Implications for population health and nutritional status” *Edinburgh University Global Health Society* (June 2020), available: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7307805/>.

<sup>95</sup> United Nations, Nepal, “Covid-19 Nepal: Preparedness And Response Plan (NPRP)” (April 2020), available at: [https://www.who.int/docs/default-source/nepal-documents/novel-coronavirus/covid-19-nepal-preparedness-and-response-plan-\(nprp\)-draft-april-9.pdf?sfvrsn=808a970a\\_2](https://www.who.int/docs/default-source/nepal-documents/novel-coronavirus/covid-19-nepal-preparedness-and-response-plan-(nprp)-draft-april-9.pdf?sfvrsn=808a970a_2).

<sup>96</sup> A Paudel, “A 200 percent increase in maternal mortality since the lockdown began” *The Kathmandu Post* (27 May 2020), available at: <https://kathmandupost.com/national/2020/05/27/a-200-percent-increase-in-maternal-mortality-since-the-lockdown-began>

<sup>97</sup> Id.

<sup>98</sup> R Karkee, Providing maternal health services during the COVID-19 pandemic in Nepal, *Lancet* (10 August 2020), available at: [https://www.thelancet.com/journals/langlo/article/PIIS2214-109X\(20\)30350-8/fulltext](https://www.thelancet.com/journals/langlo/article/PIIS2214-109X(20)30350-8/fulltext).



facilities.<sup>99</sup> Furthermore, as has been common globally,<sup>100</sup> many organizations also reported increased barriers to access to justice for women and girls during lockdown.<sup>101</sup> Women have also reported increased difficulty in accessing GBV related supported services in the justice sector.<sup>102</sup> These incidents triggered parliamentary debates. Many women parliamentarians in particular raised concerns over the gender-based violence in quarantine facilities in the parliament, calling for separate quarantine facilities for women and the deployment of female police personnel to quarantine facilities.<sup>103</sup> A writ challenging the denial of police to register complain and investigate cases related to domestic violence and other GBV was also filed in the Supreme Court, seeking court's intervention.<sup>104</sup>

## 6. Crowded prisons as "hot-spots" for COVID-19 transmission

Globally, the WHO and other UN agencies have drawn attention to the general "vulnerability of prisoners and other people deprived of liberty to the COVID-19 pandemic" and urged all States to urgently take measures to ensure the protection of persons deprived of their liberty, including by reducing overcrowding in prisons.<sup>105</sup>

According to the Prison Management Department, 71 prisons throughout the country accommodate more than 21,000 detainees and prisoners.<sup>106</sup> Many of these prisons are overcrowded<sup>107</sup> The Department of Prison Management on 20 March issued a notice to the prisons throughout the country requiring precautions including the distribution of PPE sets, thermal guns, masks and gloves in the prisons<sup>108</sup> and restrictions on access to outside visitors.<sup>109</sup> In late April, 430 prisoners held for minor charges across the nation<sup>110</sup> were released in accordance

---

<sup>99</sup> G Sharma "Nepal arrests 3 men for quarantine rape, amid protests over unsafe conditions" (15 June 2020), available at: <https://www.reuters.com/article/health-coronavirus-nepal-rape/nepal-arrests-3-men-for-quarantine-rape-amid-protests-over-unsafe-conditions-idINKBN23M2C9>.

<sup>100</sup> International Commission of Jurists, "Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses" (1 September 2020), available at: <https://www.ici.org/wp-content/uploads/2020/09/Universal-Global-Health-COVID-19-Publications-Reports-Thematic-Reports-2020-ENG.pdf>, p 60.

<sup>101</sup> M Dahal et al "Mitigating violence against women and young girls during COVID-19 induced lockdown in Nepal: a wake-up call" (21 September 2020) *Globalization and Health*, available at: <https://globalizationandhealth.biomedcentral.com/articles/10.1186/s12992-020-00616-w>.

<sup>102</sup> A Aryal "Fears of a rise in cases of domestic violence due to the lockdown may have come to pass" (27 April 2020), available <https://kathmandupost.com/national/2020/04/27/fears-of-a-rise-in-cases-of-domestic-violence-due-to-the-lockdown-may-have-come-to-pass>; UN Women "What happened after COVID-19 hit: Nepal" (16 November 2020), available at: <https://www.unwomen.org/en/news/stories/2020/11/what-happened-after-covid-19-hit-nepal>.

<sup>103</sup> R Samachar Samiti, "Parliamentarians Press for Separate Quarantine Facility for Women" *The Rising Nepal Daily* (18 June 2020), available at: <https://risingnepaldaily.com/mustread/parliamentarians-press-for-separate-quarantine-facility-for-women>.

<sup>104</sup> *Roshani Paudel and others v. Office of Prime Minister and Council of Ministers et al.* Writ No 076-WO-0962.

<sup>105</sup> WHO, "UNODC, WHO, UNAIDS and OHCHR joint statement on COVID-19 in prisons and other closed settings" *Joint Press Statement* (13 May 2020), available at: <https://www.who.int/news-room/detail/13-05-2020-unodc-who-un aids-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings>; WHO Regional Office for Europe, "Preparedness, prevention and control of COVID-19 in prisons and other places of detention" *Interim Guidance* (15 March 2020), available at: [https://www.euro.who.int/\\_data/assets/pdf\\_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1](https://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1).

<sup>106</sup> National Human Rights Commission, "Ensure Right to Health and Right to Life" Press Release (26 August 2020) Nepali version, available at: [https://www.nhrcnepal.org/nhrc\\_new/doc/newsletter/NHRC%20Nepal%20Press%20Release-2077-5-10.pdf](https://www.nhrcnepal.org/nhrc_new/doc/newsletter/NHRC%20Nepal%20Press%20Release-2077-5-10.pdf).

<sup>107</sup> Id; Bhadra Sharma, "Nepal struggling to protect its inmates from Covid-19" *The Record* (14 August 2020), available: <https://www.recordnepal.com/covid19/nepal-struggling-to-protect-its-inmates-from-covid-19/>; B Ghimire, "Overcrowded prisons pose challenge for keeping inmates safe" *The Kathmandu Post* (07 October 2020), available: <https://kathmandupost.com/national/2020/10/07/overcrowded-prisons-pose-challenge-for-keeping-inmates-safe>.

<sup>108</sup> Prison Management Department, "Health Management Against COVID-19 Infection" Letter of Information (27 May 2020), available at: <https://dopm.gov.np/uploads/files/covid.jpg>

<sup>109</sup> Department of Prison Management, "Health Management Against COVID-19 Infection" Letter of Information (20 March 2020), available at: <https://www.dopm.gov.np/uploads/files/COVID-19%20sankraman%20niyentran%20sambandhama%20077-03-10.jpeg>

<sup>110</sup> Nepal Government, Ministry of Home Affairs, prison management department, "The details regarding the release of prisoners and detainees" *Letter of Information* (22 April 2020), available at: <https://www.dopm.gov.np/uploads/files/xuteka%20kaidibandiko%20bibanar.jpeg>

with a Directive of the Supreme Court.<sup>111</sup> A press release of the Supreme Court noted that:

"As per the request from the office of Attorney General,<sup>112</sup> and to reduce prisoner overcrowding in the current crisis situation, make arrangements for the release those prisoners through necessary order from the judge panel by looking for the reasonable grounds in case of application received in terms of section 155 of Criminal Procedure Act, 2017<sup>113</sup> regarding payment of fines in lieu of imprisonment".<sup>114</sup>

As of August, the situation of overcrowding was continuing.<sup>115</sup> In an order issued in August, the Court noted that "the current COVID crisis" was "taking fearful form" and that it was therefore necessary to "address the problem of prison overcrowding and management of prisons"<sup>116</sup> and to "look for alternative ways of penalizing like Probation and Parole for those in the prisons based upon the Criminal Offences (Sentencing and Executing) Act, 2074 (2017)".<sup>117</sup> Despite the Court's significant interventions, prisoners remain vulnerable to COVID-19 transmission. In September, news reports continued to document deaths of inmates in overcrowded prisons, many of whom were "crammed with inmates and detainees more than double their capacity".<sup>118</sup> For example, the Central Jail at Sundhara, with 91 confirmed COVID-19 cases, accommodates more than 3000 prisoners although its capacity is only 1800.<sup>119</sup>

Overcrowding is also a problem in Child Correctional Homes (CCH), that house children coming into conflict with the law. The Supreme Court's Directive of 20 March 2020 also permitted the release of children in correctional homes into parental custody upon request to serve the remainder of their sentence at home. Following the directive, 228 children were released from CCHs between 24 March 2020 to 8 June 2020. However, many children continued to be in CCHs as the

---

<sup>111</sup> Supreme Court of Nepal, "Decision No. 6" *Press Release* ( 20 March 2020), available at: <https://supremecourt.gov.np/web/assets/downloads/%E0%A4%AA%E0%A5%8D%E0%A4%B0%E0%A5%87%E0%A4%B8-%E0%A4%B5%E0%A4%BF%E0%A4%9D%E0%A4%AA%E0%A5%8D%E0%A4%A4%E0%A4%BF-%E0%A5%A8%E0%A5%A6%E0%A5%AD%E0%A5%AC-%E0%A5%A7%E0%A5%A8-%E0%A5%A6%E0%A5%AD.pdf>

<sup>112</sup> Office of Attorney General, "Decision based on Emergency meeting dated 19 March 2020". In the COVID-19 context, the Office of Attorney General decided "to make request with the Supreme Court and Central Child Justice Committee to make arrangement in implementing Criminal Procedure Act, 2017, Section 155 regarding payment of money in lieu of imprisonment, to halt the punishment of the juvenile as per Section 36(5) of The Act relating Children, 2018 and the implement the provision of diverting"; available at : <https://ag.gov.np/oag-post/1759>.

<sup>113</sup> Criminal Procedure Act, 2017, Section 155 (1) reads:

"If, in view of the age of the offender who is convicted, at the first instance, of any offence punishable by a sentence of imprisonment for a term of one year or less, gravity of the offence, manner of commission of the offence and his or her conduct, as well, the court does not consider it appropriate to confine the offender in prison and is of the view that there will be no threat to the public peace, law and order if he or she is released, and the court, for the reasons to be recorded, considers it appropriate to dispense with the requirement of undergoing imprisonment upon payment of a fine in lieu of imprisonment, the court may order that the offender be not liable to undergo imprisonment if he or she makes payment of money in lieu of imprisonment".

<sup>114</sup> Supreme Court of Nepal, "Decision No. 6" *Press Release* (20 March 2020) Nepali versions, available at : <http://supremecourt.gov.np/web/assets/downloads/%E0%A4%AA%E0%A5%8D%E0%A4%B0%E0%A5%87%E0%A4%B8-%E0%A4%B5%E0%A4%BF%E0%A4%9D%E0%A4%AA%E0%A5%8D%E0%A4%A4%E0%A4%BF-%E0%A5%A8%E0%A5%A6%E0%A5%AD%E0%A5%AC-%E0%A5%A7%E0%A5%A8-%E0%A5%A6%E0%A5%AD.pdf>.

<sup>115</sup> B Sharma, "Nepal struggling to protect its inmates from Covid-19" *The Record* (14 August 2020), available: <https://www.recordnepal.com/covid19/nepal-struggling-to-protect-its-inmates-from-covid-19/>; B Ghimire, "Overcrowded prisons pose challenge for keeping inmates safe" *The Kathmandu Post* (07 October 2020), available: <https://kathmandupost.com/national/2020/10/07/overcrowded-prisons-pose-challenge-for-keeping-inmates-safe>.

<sup>116</sup> The Criminal Offences (Sentencing and Execution) Act, 2017: Section 22 (Community Service); Section 25 (Sending offender to prison home); Section 26 (Sending offender to rehabilitation center); Section 27 (Service of imprisonment in prison on the weekend or during the night only); Section 28 (Order to hold offender in open prison); Section 29 (Order to place offender on parole); Section 30 (To have socialization); Section 31 (Engagement in physical labor in lieu of imprisonment); Section 37 Remission of imprisonment.

<sup>117</sup> *Id.*

<sup>118</sup> U Satyal, "Four inmates die, COVID fear rules jails" *The Himalayan Times* (02 September 2020), available at: <https://thehimalayantimes.com/kathmandu/four-inmates-die-covid-fear-rules-jails/>.

<sup>119</sup> *Id.*

authorities refused to release all children depending on the nature of their offences.<sup>120</sup> There were reports suggesting that medical facilities in correctional homes worsened after the pandemic. Regular check-ups have been ceased as health workers do not visit the homes amid coronavirus fears.<sup>121</sup>

In early September the Nepal Human Rights Commission indicated that despite its pleas with the Government to ensure the safety of inmates from the outset of the pandemic, "nothing has been done" and prisons remain the "most neglected institutions in our society. There is no testing, no isolation, nor any health facility".<sup>122</sup>

The Commission noted that "with the rise of COVID infections, inmates in overcrowded prisons have requested the Commission to protect their health, security and life because they feel unsafe".<sup>123</sup> The Commission called on the Government to take precautions to protect the "health of detainees, prisoners, security personnel and staff" and to make arrangements "for separate housing of new inmates along with their PCR tests to protect the rights related to health and life of the inmates."<sup>124</sup> Based on its monitoring of 28 prisons in different parts of the country, in October 2020 the Commission further highlighted the risk of COVID-19 transmission in prisons and recommended that the Government take measures to address overcrowding in the prison in order "to protect right to life of inmates."<sup>125</sup>

## 7. Allegations of Corruption and misuse of resources

In March, the Government established the "Corona Infection Prevention, Control and Treatment Fund" in order to mobilize resources to combat COVID-19.<sup>126</sup>

The Deputy Prime Minister, Minister of Health and various other officials have come under public scrutiny for alleged misuse of this fund, including by allegedly entering into an irregular procurement contract with a company from China for the provision of a range of medical, laboratory and personal protective equipment.<sup>127</sup> Early reports indicated that the contract was awarded "through a controversial process, ignoring the Chinese government's offer of free supplies".<sup>128</sup> The contract was subsequently cancelled.<sup>129</sup>

---

<sup>120</sup> Advocacy Forum, Factsheet on COVID-19 and its effect on Juvenile Justice System in Nepal (June 2020), available at: <http://www.advocacyforum.org/downloads/pdf/publications/factsheet-on-covid-19-and-its-effect-on-juvenile-justice-system-in-nepal.pdf>.

<sup>121</sup> Ibid.

<sup>122</sup> B Sharma, "Tension runs high in Nepal's overcrowded prisons after first inmate dies of Covid-19" (2 September 2020), available at: <https://www.recordnepal.com/covid19/tension-runs-high-in-nepals-overcrowded-prisons-after-first-inmate-dies-of-covid-19/>.

<sup>123</sup> Nepal Human Rights Commission, "Ensure Right to Health and Right to Life" Press Release (26 August 2020) Nepali version, available at: [https://www.nhrcnepal.org/nhrc\\_new/doc/newsletter/NHRC%20Nepal%20Press%20Release-2077-5-10.pdf](https://www.nhrcnepal.org/nhrc_new/doc/newsletter/NHRC%20Nepal%20Press%20Release-2077-5-10.pdf).

<sup>124</sup> Id.

<sup>125</sup> National Human Rights Commission, "Recommendations of Commission regarding implementation of Prison Monitoring Report" Press Note (19 October 2020), available at: [https://www.nhrcnepal.org/nhrc\\_new/doc/newsletter/NHRC\\_NepalPress\\_Note\\_2077\\_7\\_3\\_compressed.pdf/](https://www.nhrcnepal.org/nhrc_new/doc/newsletter/NHRC_NepalPress_Note_2077_7_3_compressed.pdf/)

<sup>126</sup> This fund was established by the cabinet of ministers decision of 22 March 2020 ( Decision 32.1) Nepali version, available at: <https://www.opmcm.gov.np/cabinet-decision/>.

<sup>127</sup> THT Hotline, "Department of Health Scraps medical Equipment deal with Pvt company" *The Himalayan Times* (01 April 2020), available at: <https://thehimalayantimes.com/kathmandu/department-of-health-scraps-medical-equipments-deal-with-pvt-company/>.

<sup>128</sup> S Bhattarai, "Involvement of Defence Minister and Prime Minister's Adviser's sons on purchase of expensive health equipment" *The Kathmandupress.com* Nepali version (01 April 2020), available at: <https://kathmandupress.com/breaking/medical-equipment-buying-process>.

<sup>129</sup> P Gill & J Raj Sapkota, "COVID-19: Nepal in Crisis" *The Diplomat* (29 June 2020), available at: <https://thediplomat.com/2020/06/covid-19-nepal-in-crisis/>.

In June, a report published by the Prime Minister's office indicated that some 8.39 billion Nepali rupees had been spent on the Government's COVID-19 responses.<sup>130</sup> This echoed an estimate provided in a report of the Ministry of Health and Population in May.<sup>131</sup> While a substantial proportion of this budget was intended for quarantine facilities, local officials from across the country have decried the inadequacy of funding provided, indicating that the guidelines set for such facilities were "impossible to meet" within the budgeted amounts.<sup>132</sup>

In the early stages of the pandemic, the unavailability of COVID-19 testing kits resulted in laboratories having to halt testing in May.<sup>133</sup> Some 30,000 testing kits donated to Nepal by the Swiss government were reportedly left stranded in Singapore because the Nepali Government was unwilling to pay for a chartered flight to deliver the kits.<sup>134</sup> The Government was reported to have initially bought inadequate testing kits at inflated prices at the early stages of the pandemic.<sup>135</sup>

In late June it was reported that "25,000 swab samples are in queue to be tested in 20 government laboratories" and that at least 7000 people in isolation facilities were waiting on these tests to be allowed to return to their homes.<sup>136</sup> The National Human Rights Commission has repeatedly requested the Nepal government improve testing.<sup>137</sup> In a press release the Commission called on the Government to "speed up" testing, particularly in COVID-19 hotspot areas, "in order to ensure citizen's right to health".<sup>138</sup>

### **C. What are Nepal's international legal obligations to guarantee the right to health?**

As set out at greater length, in The ICJ's report *Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses*, States have clear international legal obligations when undertaking their COVID-19 responses, including those aimed at ensuring the realization of the right to health of people under their jurisdiction.<sup>139</sup>

---

<sup>130</sup> THT Online, "PM's advisor shares a statement of expenditure related to COVID-19 response" *The Himalayan Times* (13 June 2020), available at: <https://thehimalayantimes.com/nepal/pms-advisor-shares-a-statement-of-expenditure-related-to-covid-19-response/>; Government of Nepal, Ministry of Health and Population, "Health Sector Emergency Response Plan, COVID-19 Pandemic" (May 2020) available at: [https://www.who.int/docs/default-source/nepal-documents/novel-coronavirus/health-sector-emergency-response-plan-covid-19-endorsed-may-2020.pdf?sfvrsn=ef831f44\\_2](https://www.who.int/docs/default-source/nepal-documents/novel-coronavirus/health-sector-emergency-response-plan-covid-19-endorsed-may-2020.pdf?sfvrsn=ef831f44_2).

<sup>131</sup> Government of Nepal, Ministry of Health and Population, "Health Sector Emergency Response Plan, COVID-19 Pandemic" (May 2020), available at: [https://www.who.int/docs/default-source/nepal-documents/novel-coronavirus/health-sector-emergency-response-plan-covid-19-endorsed-may-2020.pdf?sfvrsn=ef831f44\\_2](https://www.who.int/docs/default-source/nepal-documents/novel-coronavirus/health-sector-emergency-response-plan-covid-19-endorsed-may-2020.pdf?sfvrsn=ef831f44_2).

<sup>132</sup> N Rai, "Quarantine guidelines impossible to meet: local governments" *Nepali Times* (7 June 2020), available: <https://www.nepalitimes.com/latest/quarantine-guidelines-impossible-to-meet-local-governments/>; P Gill and J Raj Sapkota, "COVID-19: Nepal in Crisis" *The Diplomat* (29 June 2020), available: " <https://thediplomat.com/2020/06/covid-19-nepal-in-crisis/>.

<sup>133</sup> S Budhathoki, "Many labs in Nepal halt coronavirus test as 30,000 kits are stuck in Singapore" *Onlinekhabar.com* (05 May 2020), available: <https://english.onlinekhabar.com/many-labs-in-nepal-halt-coronavirus-test-as-30000-kits-are-stuck-in-singapore.html>.

<sup>134</sup> Id.

<sup>135</sup> R Sapkota, "Why Nepal lags in COVID-19 testing" *Nepalitimes* (21 June 2020), available at: <https://www.nepalitimes.com/latest/why-nepal-lags-in-covid-19-testing/>.

<sup>136</sup> Id.

<sup>137</sup> Nepal Human Rights Commission, "Ensure citizen's right to health" *Press Release* (05 July 2020), available at: [https://www.nhrcnepal.org/nhrc\\_new/doc/newsletter/NHRC%20Nepal%20Press%20Release-2077-3-21.pdf](https://www.nhrcnepal.org/nhrc_new/doc/newsletter/NHRC%20Nepal%20Press%20Release-2077-3-21.pdf); Nepal Human Rights Commission, "Respect freedom of press as well as the freedom of expression Operate well systematic quarantines" *Press Release* (6 June 2020), available: [https://www.nhrcnepal.org/nhrc\\_new/doc/newsletter/Respect%20freedom%20of%20press%20and%20expression.pdf/](https://www.nhrcnepal.org/nhrc_new/doc/newsletter/Respect%20freedom%20of%20press%20and%20expression.pdf/)

<sup>138</sup> Id.

<sup>139</sup> International Commission of Jurists, "Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses" (1 September 2020), available at: <https://www.icj.org/wp-content/uploads/2020/09/Universal-Global-Health-COVID-19-Publications-Reports-Thematic-Reports-2020-ENG.pdf>.

The right to health is protected in a number of international human rights treaties.<sup>140</sup> The general guarantee of the right to the highest attainable standard of health is provided for in the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Nepal is a party.<sup>141</sup> Article 12(2) of ICESCR explicitly requires States parties to take steps to ensure the “prevention, treatment and control of epidemic, endemic, occupational and other diseases” and “the creation of conditions which would assure to all medical service and medical attention in the event of sickness”.

Under the ICESCR Nepal must provide for healthcare systems, facilities, goods and services of sufficient quality that are available, accessible, and acceptable to all persons under its jurisdiction, irrespective of citizenship or immigration status and wherever they may reside.<sup>142</sup> This includes both COVID-19 and non-COVID-19 related facilities, services and goods. Nepal is obliged to ensure access to COVID-19 prevention, screening and treatment measures access to any person who so requires these services.<sup>143</sup>

The poor management of restrictive measures taken, including lockdown measures and quarantine and isolation facilities, have given rise to a variety of health-related concerns related to human dignity leading to the violations of human rights in Nepal. These and other issues arising from Nepal’s COVID-19 response must therefore be evaluated against Nepal’s obligations to respect, protect and fulfil the right to health as well as other human rights.

Under international law, Nepal’s obligation to guarantee the right to health can be briefly summarized as follows:

“1) *The obligation to respect*, requiring States to refrain from measures or conduct that hinder or prevent the enjoyment of rights; 2) *The obligation to protect*, which requires States to act to prevent third parties, such as businesses or armed groups, from interfering with or impairing the enjoyment of these rights; and, 3) *the obligation to fulfil* rights by taking positive measures towards their realization.”<sup>144</sup>

It is important also for Nepalese authorities to ensure that COVID-19 responses are “based on the best available scientific evidence to protect public health”.<sup>145</sup>

---

<sup>140</sup> See as examples: Article 25 of UDHR; Article 12 of ICESCR; Article 5 (e) (iv) International Convention on the Elimination of All Forms of Racial Discrimination; Article 11 (1) (f), 12 and 14 (2) (b) of The Convention on the Elimination of All Forms of Discrimination against Women; Article 24 The 1989 Convention on the Rights of the Child; Articles 28, 43 (e) and 45 (c) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and Article 25 of the Convention on the Rights of Persons with Disabilities.

<sup>141</sup> ICESCR, Article 12(1).

<sup>142</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of of the International Covenant on Economic, Social and Cultural Rights) E/C.12/2000/4 (11 August 2000) (“General Comment 14”).

<sup>143</sup> I Siederman & TF Hodgson “COVID-19 Symposium: COVID-19 Responses and State Obligations Concerning the Right to Health (Part 1)” (1 April 2020) Opinio Juris available at: <http://opiniojuris.org/2020/04/01/covid-19-symposium-covid-19-responses-and-state-obligations-concerning-the-right-to-health-part-1/>.

<sup>144</sup> The International Commission of Jurists, “Practitioners Guide on Adjudicating Economic, Social and Cultural Rights at National Level, No.8” (2014), available at: <https://www.icj.org/wp-content/uploads/2015/07/Universal-ESCR-PG-no8-Publications-Practitioners-guide-2014-eng.pdf>, p 53; See also International Commission of Jurists, “A Guide for the Legal Enforcement and Adjudication of Economic, Social and Cultural Rights in South Africa” (2019): <https://www.icj.org/wp-content/uploads/2019/08/South-Africa-Guide-ESCR-Publications-Thematic-Report-2019-ENG.pdf>, pp 33-41.

<sup>145</sup> UN Committee on Economic, Social and Cultural Rights “Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights” (April 2020) E/C.12/2020/1, available: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2020%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2020%2f1&Lang=en), para 10.

Moreover, a significant number of the obligations in terms of ICESCR are of “immediate effect”, meaning that unlike other obligations, they are subject to progressive realization. These include, broadly, the obligations to:

1. **Take steps** towards realizing the right to health in full;
2. Avoid any **retrogressive steps** decreasing existing access to health;
3. Ensure that health services, facilities and goods are available to all without **discrimination**;
4. Ensure access to at very least the “**minimum essential level**” of health services, facilities and goods.

Importantly, while international human rights law allows for some limitations of rights in situations of public health or other emergency, there are minimum core obligations in terms of the right to health that are generally not subject to any such limitations. This is affirmed by the CESCR in its General Comment on the right to health.<sup>146</sup> Critically, in the context of Nepal, this is consistent with Article 273 of the Nepal Constitution relating to states of emergency.

In the context of COVID-19, the CESCR has indicated that States must “make every effort to mobilize the necessary resources to combat COVID-19” which it acknowledges requires an “extraordinary mobilization of resources” from States.<sup>147</sup> It also warns States that COVID-19 must be combatted in the “most equitable manner” possible so as to “avoid imposing a further economic burden on these marginalized groups” and explicitly indicates that allocation of resources should therefore “prioritize the special needs of these groups”.<sup>148</sup>

The CESCR also stresses that States must:

“adopt appropriate regulatory measures to ensure that health-care resources in *both the public and the private sectors are mobilized* and shared among the whole population to ensure a comprehensive, coordinated health-care response to the crisis”.<sup>149</sup>

This makes it clear that the ICESCR requires the mobilization and use of all available resources – whether public or private – towards efforts to combat COVID-19 and realize the right to health.

#### **D. What does Nepal’s domestic law require in terms of the right to health?**

This section provides a brief summary of some of the elements of Nepali law that address the right to health, including under the Constitution, national legislation and judicial decisions.

---

<sup>146</sup> General Comment 14, para 47 reads: “a State party cannot, under any circumstances whatsoever, justify its non-compliance with the core obligations ..... which are non-derogable.”

<sup>147</sup> Id paras 14 and 25.

<sup>148</sup> Id para 14.

<sup>149</sup> Id, para 13. Emphasis added.

## 1. The Constitution:

Article 35 of the Constitution of Nepal guarantees “the right to health care”. It provides:

- “(1) Every citizen shall have the right to seek basic health care services from the state and no citizen shall be deprived of emergency health care.
- (2) Each person shall have the right to be informed about his/her health condition with regard to health care services.
- (3) Each person shall have equal access to health care.
- (4) Each citizen shall have the right to access to clean water and hygiene.”

Similarly, the “Directive Principles, Policies and Obligations of the State” of the Constitution also require that Nepal “keep on enhancing investment necessary in the public health sector by the State in order to make the citizens healthy”<sup>150</sup> and “ensure easy, convenient and equal access of all to quality health services”.<sup>151</sup>

It should be underscored at the outset that this constitutional provision, on its face, is non-compliant with Nepal’s international legal obligations, since it is discriminatory and fails to provide equal protection to non-citizens. As the ICJ has previously indicated, this and other discriminatory provisions should be amended to ensure the equal protection of human rights to persons irrespective of citizenship status.<sup>152</sup>

The CESCR has clarified that one core element of right to health, which places an immediate obligation on States, is accessibility of the health services to everyone without discrimination.<sup>153</sup> ICESCR therefore prohibits “any forms of discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of..., national or social origin... which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health”.<sup>154</sup>

## 2. Legislation:

Nepal must give effect to its obligations concerning the right to health under the ICESCR and other treaties through legislative, administrative and judicial measures. In respect of legislative measures, generally applicable legislation particularly important in respect of the COVID-19 pandemic includes:

- **Infectious Disease Act of 1964:** As noted above, this legislation confers upon the government “necessary powers” to “make necessary arrangements” to “root out or prevent any infectious disease”.<sup>155</sup> The Act provides very little detail and allows for extremely broad powers. It was

---

<sup>150</sup> Article 51(h) (5) of the Constitution of Nepal, 2015.

<sup>151</sup> Article 51(h) (6) of the Constitution of Nepal, 2015.

<sup>152</sup> International Commission of Jurists, “Nepal’s Draft Constitution: Procedural And Substantive Concerns” Briefing Paper (July 2015), p 41, available at: <https://www.icj.org/wp-content/uploads/2015/07/NEPAL-CONSTITUTION-ADVOCACY-ANALYSIS-BRIEFS-2015-ENG.pdf>.

<sup>153</sup> General Comment 14, para 12(b).

<sup>154</sup> Id, para 18.

<sup>155</sup> Infectious Diseases Act of 1964, available at: <http://www.lawcommission.gov.np/en/archives/12240>.

also enacted before the introduction of the 2015 Constitution (which includes protection for the right to health) and a federal system of governance in Nepal. It therefore provides no guidance on the allocation of obligations as between the federal, provincial and local levels of government and does not fully cover Nepal's obligations in terms of the right to health.s

- **Disaster Risk Reduction and Management Act of 2017:** Section 2 (d) includes coverage of disasters relating to epidemic diseases. The Act covers a range of disaster risk management responsibilities that include preparedness to respond to disasters, relief measures and rehabilitation. It makes provision for the "declaration of a disaster zone"<sup>156</sup> and empowers the government to make such a declaration specify the geographic and temporal scope of the disaster by publication in the Nepal gazette.<sup>157</sup> However, the Government has not used this legislation for any responses associated to COVID-19. As stated above the Government has relied on the Infectious Diseases Act.<sup>158</sup>
- **The Public Health Service Act of (2018):** This Act was adopted for the stated purpose to ensure the protection of "the right to get free basic health service and emergency health service guaranteed by the Constitution of Nepal" in efforts to ensure access to health services by making them "regular, effective, qualitative and easily available".<sup>159</sup> In interpreting section 3(4) C of the Public Health Act,<sup>160</sup> the Supreme Court has indicated that "the health services for infectious diseases such as COVID-19 fall under the category of basic health services under this section and should therefore be provided for free".<sup>161</sup> Section 4 requires every health institution, whether public or private, to "provide emergency health service[s]".<sup>162</sup> Section 49 also provides that both public and private health institutions must "make necessary arrangements for the treatment of [patients] with infectious disease[s]".<sup>163</sup> The Act obliges local government, with the "necessary support" from provincial government, to take measures to respond to such diseases. Further, section 49(7) provides that "other provisions relating to the prevention of infectious diseases shall be as prescribed".<sup>164</sup>

<sup>156</sup> Disaster Risk Reduction and Management Act, 2017 Section 32.

<sup>157</sup> Disaster Risk Reduction and Management Act, 2017 Section 32 (1).

<sup>158</sup> Disaster Risk Reduction and Management Act, 2017: Section 3 (1) (makes provision for Disaster Risk Reduction Federal Council that shall be formed to: "effectively run the disaster management work"); Section 5 (1) ("approve the national policies and programs regarding disaster management"); Section 5(5) ("Evaluate the work of disaster management"); Section 6 (1) (Formulation of Executive Committee: "to implement the policy and plan approved by the council, there will be an executive committee"); Section 14 (Formation of "provincial disaster management committee"); Section 16 (District disaster management committee and Section 17 Local Disaster management committee); C Gyawali, "Ordinance Corona Infection Pandemic Control Ordinance 2020 *Nepali version* (23 August 2020), available at: <https://www.ujyaalonepal.com/83937/?fbclid=IwAR2JHkR00H2MfKyyArb7SJR0Ji-B2Gua8q-v4qOUqN9BVA7sdj2qNjaPCTy>.

Experts have raised concerns that the entities and institutions set up to coordinate disaster management under this Act (such as the federal council, executive committees, provincial, district and local disaster management committees) have not functioned properly, with their involvement often limited to occasional meetings.

<sup>159</sup> The Public Health Service Act, 2075 (2018), Preamble,

<sup>160</sup> *Id*, Section 3, 4.

<sup>161</sup> *Dr Punya Prasad Khatiwada vs Prime Minister*, Supreme Court of Nepal, Writ No.076-WO-0958 (31 May 2020).

<sup>162</sup> *Id*, The Public Health Service Act, section 4 read with definition of "health institution" as a "government health institution, and this term also includes a non-governmental or private, or cooperative or non-profit-making community health institution established under the prevailing law".

<sup>163</sup> *Id*, s 49(6) read with definition of health institution.

<sup>164</sup> Such prescriptions might have been made through regulations focused on prevention and treatment of infectious diseases. However, the government has not formulated such regulations as contemplated by the Act, instead preferring to make directions and orders in terms of the Infectious Diseases Act.



It is clear the many of the legislative provisions above would be applicable to ensuring the implementation of the constitutional and international law guarantees in respect of the right to health. However, the Government consistently relied instead on the overbroad provisions of the Infectious Diseases Act, rather than the more recent legislative provisions. A more unified and specified regulatory response would ensure that the government responds more effectively to the COVID-19 pandemic and that individuals are more capable of holding the government to account where it fails to adequately respect, protect and fulfill the right to health.

In early August, the Supreme Court recognized that the COVID-19 pandemic had had<sup>165</sup> "multifaceted impacts on citizen's life and nation" and that "new dimensions of the pandemic are developing each day *that require special arrangements with high priority for high risk groups*".<sup>166</sup> It observed that in the "absence of unified law to address pandemic" the Government had attempted to "temporarily address" the pandemic inappropriately "through several executive decisions". The Court ordered the Nepali Parliament to enact a COVID-19 specific law geared to "prevent, respond to, and recover losses sustained" as a result of the pandemic and to "create good in the society by removing the hatred and antipathy for the recovery of the affected".

### 3. Judicial Decisions

Prior to the onset of the COVID-19 pandemic, the Nepali Supreme Court had already issued a number of judgments affirming the right to health, both pursuant to the Interim Constitution<sup>167</sup> and the current 2015 Constitution. For example, in *Advocate Madhav Basnet v Council of Ministers*, the petitioner brought forward concerns about the failure of private hospitals and health institutions to fulfill minimum legal standards for health services and infrastructure. The Supreme Court ruled that:

"In order to practically implement the constitutional fundamental right to health, the state has to monitor and regulate different institutions providing such health services. ... [H]ealth institutions should be well equipped with the necessary infrastructure for such important services related to health".

<sup>168</sup>

Similarly, in *Advocate Dal Bahadur Dhami v Prime Minister*<sup>169</sup> the petitioner alleged violation of the right to health of children after the death of four children and sickness of hundreds of others after receiving untested and inadequate measles vaccinations.<sup>170</sup> Describing the constitutional right to health as a "basic human

---

<sup>165</sup> *Advocate Roshani Paudyal & Advocate Saroj Raj Ghimire vs Prime Ministers & etal*, Supreme Court of Nepal, Writ No.076-WO-0962(5 August 2020).

<sup>166</sup> In the same decision, Court mentions ""women, children, pregnant, women in post-partum, persons with disabilities, senior citizens" as high risk groups to COVID-19.

<sup>167</sup> Supreme Court of Nepal, Writ No. 064-WO-0230, (4 June 2008), in this matter In *Advocate Prakashmani Sharma vs Council of Ministers*, the petitioners sought to ensure the realization of certain reproductive health services for women under Interim Constitution, 2063 (2007) and international human rights treaties to which Nepal is state party. The Supreme Court held that: "the right to live a dignified life is basic feature of right to life. If the state fails to protect and provide basic health services, then the right to life cannot be well protected. Therefore, right to life should be understood in conjunction with the right to health".

<sup>168</sup> Supreme Court of Nepal, Writ No. 070-WO-0577,(16 November 2017).

<sup>169</sup> Supreme Court of Nepal, Writ No. 069-WO-0202, (28 June 2018) p 12,13 & 14.

<sup>170</sup> Himalayan News Service, "Govt told to distribute only tested vaccines, medicines" *The Himalayan Times* (1 July 2020), available at: <https://thehimalayantimes.com/kathmandu/government-told-to-distribute-only-tested-vaccines-medicines/>.

right," the Supreme Court affirmed that certain health related obligations were those of immediate effect as "minimum core obligations":

"The right to health requires ensuring an environment that enables citizen's health as far as possible. It is the responsibility of the state to guarantee such environment... rights related to basic human necessity like food, housing, basic education and health fall under minimum core obligations of the state. Therefore, in implementing these rights the issue of economic condition of the state and availability of resources become irrelevant; state has to take necessary measures to ensure these rights immediately".

Similarly, and building on this jurisprudence, the Supreme Court has issued various orders relating to the right to health during the COVID-19 pandemic. Court records show that as of mid-November 2020, the Supreme Court has issued about 40 orders associated with COVID-19.<sup>171</sup>

Even prior to the onset of the COVID-19 pandemic, a number of judicial decisions in Nepal had gone unimplemented. In some instances the judgments have been actively undermined Government authorities.<sup>172</sup> This trend has continued during the COVID-19 pandemic. The Government's failure to abide by the Supreme Court's orders relating to the right to health during COVID-19 is evidenced by the continued challenges in accessing protection for the right to health detailed in this briefing paper.<sup>173</sup>

i. **Management of Quarantine Facilities, Private/Public Hospitals**  
*Advocate Bishnu Luitel vs Office of Prime Minister; Advocate Pushpa Raj Poudel v Office of Prime Minister*

In *Advocate Bishnu Luitel vs Office of Prime Minister*<sup>174</sup> the petitioner complained about the government's failure to adequately manage quarantine facilities and the sluggishness of processing COVID-19 tests. In *Advocate Pushpa Raj Poudel v Office of Prime Minister*,<sup>175</sup> the petitioner argued that Nepal's COVID-19 responses should involve both private and public hospitals and that the State should hold private hospitals accountable for their role in responding to the pandemic.

Responding to these two petitions through a single interim order, the Supreme Court called upon the government authorities to ensure that "all returnees ...be identified by that local governments and kept in quarantine facilities." The Court stressed that "the authorities should monitor the standards of these quarantine facilities to be in consistent with the WHO standards and guidelines". The Court also noted that "the number of tests have been low so the authorities should increase the number of tests to increase access of larger number of general people". It ordered the authorities to ensure that "private hospitals can continue their services" while also securing a "safe environment to serve for health workers in private hospitals, including availability of PPE". Finally the Court ordered that

---

<sup>171</sup> Supreme Court of Nepal, "COVID-19" Official Website, available at: <http://supremecourt.gov.np/web/index>. Some of these orders are exclusively right to health related while others are also related to other human rights and issues.

<sup>172</sup> International Commission of Jurists, "Human Rights and the Rule of Law in a Federal Nepal: Recommendations from an ICJ High-Level Mission" (July 2020), available at: <https://www.icj.org/wp-content/uploads/2020/08/Nepal-High-level-mission-Publications-Reports-mission-reports-2020-ENG.pdf>.

<sup>173</sup> B Ghimire, "The government has not followed most of the Supreme Court's 23 rulings related to the pandemic" *The Kathmandu Post* (26 June 2020), available at: <https://kathmandupost.com/national/2020/06/26/the-government-has-not-followed-most-of-the-supreme-court-s-23-rulings-related-to-the-pandemic>

<sup>174</sup> Supreme Court of Nepal, Writ No.076-WO-0933, (6 April 2020).

<sup>175</sup> Supreme Court of Nepal, Writ No.076-WO-0934, (6 April 2020).

the Council of Ministers to "ensure that emergency medical services for non-COVID health issues are not obstructed".

These orders were followed the next day by an additional interim order by the Supreme Court relating to migrant workers' rights, which again responded two petitions at once.

ii. **Migrant Workers' rights to return to Nepal and to government assistance outside of Nepal:** *Advocate Meena Khadka vs Prime Ministers' Office; Advocate Manish Kumar Shrestha v Prime Ministers' Office*

In *Advocate Meena Khadka vs Prime Ministers' Office*,<sup>176</sup> the petitioner raised a complaint regarding Government's decision not to allow anyone to enter into the country because of the COVID-19 crisis. The petitioner argued that no law permitted the Government to ban Nepalese citizens to enter their country. The petitioner requested that the Court order the Council of Ministers to allow and facilitate access to the country for Nepalese citizens.

In *Advocate Manish Kumar Shrestha v Prime Ministers' Office*,<sup>177</sup> the petitioner drew the Court's attention to the dire and critical health conditions of children, elderly citizens and post-partum women at Darchula district Nepal-India border. The petitioner further raised concerns about the lack of access to health and food facilities available to Nepalis in different parts of the world and requested that the Court order the Council of Ministers to make provisions for food and health of Nepalese stranded outside of Nepal as a result of COVID-19.

Resolving these two writs with one interim order, and relying on the constitutional rights to health, equality and dignity, the Supreme Court ordered the Government to "make arrangements for all stranded at the Nepal-India border to enter the country and place them in quarantine facilities for specified time", failing which the government must "immediately coordinate with Indian government to make arrangements for food, lodging and treatment facility for those stranded" until they are permitted to enter Nepal. The Court further ordered the Council of Ministers "to identify those Nepalese abroad" in other countries "interested in returning home and having problems in accessing food, accommodation and health facilities". After identifying these people the Government must "coordinate with respective countries diplomatic missions to repatriate those Nepalese home", failing which, it must:

"take necessary measures to make proper arrangements for food and health services to protect rights of Nepalese citizens anywhere around the world living under lockdown due to COVID-19 pandemic".

iii. **Health Workers' rights to PPE and medical equipment:** *Dr Punya Prasad Khatiwada v Prime Minister*

In late May, in *Dr Punya Prasad Khatiwada v Prime Minister*,<sup>178</sup> the petitioner brought concerns regarding the unavailability of medical equipment and PPE to frontline health workers to the Court. The petitioners argued that in terms of the

---

<sup>176</sup> Supreme Court of Nepal, Writ No.076-WO-0932, (7 April 2020).

<sup>177</sup> Supreme Court of Nepal, Writ No.076-WO-0935, (7 April 2020).

<sup>178</sup> Supreme Court of Nepal, Writ No.076-WO-0958, (31 May 2020).

right to health, workers are entitled free treatment including goods such as hand sanitizers and masks.

The Court found that “basic health services” in terms of the “constitutionally protected fundamental right to health are free of cost” is to be interpreted as including PPE and medical equipment for health workers.

It ruled more generally that health services for infectious diseases such as COVID-19 fell under the category of basic health services in terms of section 3(4)(C) of the Public Health Act and should therefore be provided for free. The Court concluded, therefore, that the Office of the Prime Minister and the Council of Ministers were obliged to provide, among other things: “cetamol, clinical masks and quality hand sanitizers without any charges to anyone who needs it”. Acknowledging the importance of frontline health workers in the fight against COVID-19, the Court ordered the responsible authorities to make arrangement for “adequate amounts PPE, medical objects and instruments without charging any money to health workers”.

iv. **Compulsory testing before sending COVID-19 positive persons home from quarantine:** *Advocate Santosh Bhandari v Ministry of Health and Population*

In late June, in *Advocate Santosh Bhandari v Ministry of Health and Population*,<sup>179</sup> the petitioner sought a declaration that the National Testing Guidelines for COVID-19<sup>180</sup> issued by the Ministry of Health and Population were unconstitutional and in violation of the right to health. Under the criteria for testing, Section 6 of these Guideline provided that “no tests are required for confirmed COVID-19 cases after 14 days”.<sup>181</sup> The petitioners argued that many COVID-19 positive persons in the country were asymptomatic cases and that the Guidelines’ provision for sending them home without confirming that they were clear of COVID-19 violated their right to health.

The Court ruled that:

“the health service provided in the context of COVID-19 falls under basic health and emergency service and such service should be provided immediately free of cost. This is the spirit of right to health under fundamental right of the constitution”.

The Court further elaborated that in respect of persons who have tested positive for COVID-19 “their mental fear attached to the infection should be addressed through further testing such that they are assured to be healthy”. In addition, the Court found that sending those who had tested positive for COVID-19 home before such testing “does not seem consistent with humanity and the Constitution”. The Court therefore ordered that patients in the isolation should only be sent home after receiving a PCR test confirming the absence of the COVID-19 infection and directed the Ministry of Health and Population not to implement Section 6 of the guidelines.

---

<sup>179</sup> Supreme Court of Nepal, Writ No.076-WO-0973, (22 June 2020).

<sup>180</sup> National Testing Guidelines for COVID-19, Approved by Minister of Ministry of Health and Population (2 June 2020), available at: <https://publichealthupdate.com/national-testing-guidelines-for-covid-19/>; Section 6 (confirmed cases in isolation).

<sup>181</sup> Id.

v. **Rights of prisoners in overcrowded prisons:** *Gopal Shiwakoti Chintan v Prime Minister*

In August, in the writ petition of *Gopal Shiwakoti Chintan v Prime Minister*,<sup>182</sup> six prisoners from different parts of the country filed a writ petition raising concerns about the right to health of inmates in the context of the spread of COVID-19 in often over-crowded prisons. The Supreme Court emphasized that "the fundamental rights to a dignified life, access to basic health services, access to sanitation and clean drinking water should be ensured to the prisoners without any discrimination".<sup>183</sup> It therefore ordered authorities to "look for alternative ways of penalizing like Probation and Parole for those in the prisons based upon the Criminal Offences (Sentencing and Executing) Act, 2074 (2017)".<sup>184</sup> The Court also ordered the Prison Management Department and Ministry of Home Affairs to take necessary measures to ensure protection of health and sanitation in prisons, including by making provision for isolation/medical facilities.<sup>185</sup>

vi. **Rights of pregnant women and new born babies in context of lockdown:** *Advocate Roshani Paudyal & Advocate Saroj Raj Ghimir*

In *Advocate Roshani Paudyal & Advocate Saroj Raj Ghimir*, the Supreme Court issued an order requiring the government, Council of Ministers and the Office of the Prime Minister to make special arrangements for pregnant women and their new born babies by making provisions for regular check-ups and vaccinations during the lockdown period.<sup>186</sup> Further detail on the case is provided above in Section D(2) of this briefing paper.

vii. **COVID-19 related healthcare services should be provided free of charge:** *Advocate Keshar Jung K.C & Advocate Lokendra Bahadur Oli vs. Nepal Government Ministry of Health*

As the cases of COVID-19 surged in the autumn of 2020, the Government decided not to extend free COVID-19 testing and treatment to everyone,<sup>187</sup> citing financial constraints. However, the decision of the Government was challenged in the Supreme Court on the ground that it violated Article 35 (1) of the Constitution (the right to health) and the Public Health Service Act. The Court found the decision of the Government to charge for COVID-19 testing and treatment to be in violation the constitutional right to health care. In coming to this conclusion the Court stated:

"The court does not believe that COVID-19 epidemic can be addressed and faced through [an] unconstitutional path... As per Article 35(1) of the Consitution, every citizen shall have the right to free basic health services

---

<sup>182</sup> Supreme Court of Nepal, Writ No. 076-WO-0939, (03 August 2020).

<sup>183</sup> *Gopal Shiwakoti (Chintan) etal vs Prime Minister & Cabinet of Ministry & et al*, Supreme Court of Nepal, Writ No. 076-WO-0939, (03 August 2020).

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Advocate Roshani Paudyal & Advocate Saroj Raj Ghimire vs Prime Ministers & etal*, Supreme Court of Nepal, Writ No.076-WO-0962, (05 August 2020).

<sup>187</sup> Ministry of Health and Population, "Press Briefing on COVID -19 by Spokesperson of the Ministry of Health and Population, Dr Jageshwor Gautam" (19 October 2020). During the Press Briefing Dr Gautam shared the Cabinet's decision not bear the expenses for the test and treatment of COVID-19. In further explanation, he stated that:

"Free health coverage of corona will be provided only to the economically deprived, disabled and helpless citizens, single women, highly disabled citizens, senior citizens, front line health workers, sanitation workers, security personnel and other employees working in risky areas".

from the State, and no one shall be deprived of emergency health services.”  
188

The Court also found that the Public Health Service Act was enacted to give effect to the right to health. Section 3(4) C of this Act indicates that “every citizen shall have the right to obtain free basic health services”. “Basic health service” is defined to include promotional, retributive, diagnostic, remedial and rehabilitative services, including those required to treat communicable diseases. The Court therefore held that there should be no confusion that COVID-19 related promotional, retributive, diagnostic, remedial and rehabilitative services “should be free”.<sup>189</sup> Although recognizing that “the government can prioritise its work based on availability of resources”, the Court found that “it cannot put aside crucial or primary duty related to public health” because “the testing and treatment associated to COVID-19 infection falls under government’s primary responsibility.”<sup>190</sup>

In sum, the Supreme Court Jurisprudence has established the following obligations to be immediately incumbent on the responsible executive authorities:<sup>191</sup>

- Identify all returnees to Nepal and make provision for their accommodation in quarantine facilities meeting WHO standards and guidelines;<sup>192</sup>
- Ensure that private hospitals operating and provide COVID-19 and non-COVID-19 services while also providing a safe working environment for health workers;<sup>193</sup>
- Increase the number of COVID-19 tests to ensure access of larger number and range of people and to ensure free testing and treatment for COVID-19;<sup>194</sup>
- Ensure that emergency medical services for non-COVID health issues are not obstructed;<sup>195</sup>
- Take necessary measures to ensure the provision of food and health services to Nepalese citizens living under lockdown anywhere in the world;<sup>196</sup>
- Make arrangements for the provision to health workers of adequate PPE, medical objects and instruments necessary for treating COVID-19 free of charge;<sup>197</sup>
- Take necessary measures to ensure protection of health and sanitation in prisons, including by making provision for isolation/medical facilities;<sup>198</sup>
- Take necessary measures to ensure protection of the rights to health and sanitation of those in prisons, including by making provision for

---

<sup>188</sup> Supreme Court of Nepal, Writ No. 077-WO-0130, (03 August 2020).

<sup>189</sup> Id.

<sup>190</sup> Id.

<sup>191</sup> Such authorities include, amongst others, the Council of Ministers, the Office of the Prime Minister, the Ministry of Health and Population, the Ministry of Home Affairs and the Prison Management Department.

<sup>192</sup> *Advocate Bishnu Luitel vs Office of Prime Minister & Advocate Pushpa Raj Poudel v Office of Prime Minister*; Supreme Court of Nepal, Writ No.076-WO-0933, (6 April 2020).

<sup>193</sup> Id.

<sup>194</sup> Id; *Advocate Keshar Jung K.C & Advocate Lokendra Bahadur Oli vs. Nepal Government Ministry of Health*, Supreme Court of Nepal, Writ No. 077-WO-0130, (03 August 2020).

<sup>195</sup> Id.

<sup>196</sup> *Advocate Meena Khadka vs Prime Ministers’ Office & Advocate Manish Kumar Shrestha v Prime Ministers’ Office* Supreme Court of Nepal, Writ No.076-WO-0932, (7 April 2020).

<sup>197</sup> *Dr Punya Prasad Khatiwada v Prime Minister* Supreme Court of Nepal, Writ No.076-WO-0958, (31 May 2020).

<sup>198</sup> *Gopal Shiwakoti (Chintan) and etal vs Prime Minister & Cabinet of Ministry & et al*, Supreme Court of Nepal, Writ No. 076-WO-0939, (03 August 2020).

isolation/medical facilities and look for alternative ways of penalizing offenders that do not require imprisonment.<sup>199</sup>

- Make special arrangements for pregnant women and their new born babies by making provisions for regular check-ups and vaccinations during lockdown periods.<sup>200</sup>

## **E. What does the International Commission of Jurists recommend?**

Nepal's responses to the COVID-19 pandemic have fallen short of ensuring that it meets its obligations to respect, protect, and fulfill the the right to health to the extent required by the Nepal Constitution, national legislation and international human rights law. In order to ensure compliance with its human rights obligations, and in view of the analysis above, the ICJ makes the following recommendations:

### **1. General**

- The Nepal authorities should ensure that the right to health is guaranteed to all people, in law and in practice, without discrimination on any status or grounds. This includes prohibiting and abstaining from discrimination based on nationality and citizenship status as provided under international law.
- The Responsible Ministerial authorities should collectively and individually ensure immediate compliance with and implementation of all Supreme Court orders directing them to take measures to comply with human rights obligations in COVID-19 responses.
- The Government authorities responsible for implementing COVID-19 response measures at federal, provincial and municipal level should co-operate and coordinate with each other to strengthen and streamline all COVID-19 response measures and secure the implementation of Supreme Court orders.
- The Government authorities should immediately take all necessary steps to maximize available resources (including financial, human, technical technological, informational or natural resources) by enhancing efforts to seek and receive international cooperation and assistance.

### **2. Quarantine and Isolation Facilities**

- The Federal and provincial authorities responsible for management of quarantine and isolation facilities should act to ensure that conditions in quarantine and isolation facilities comply with Nepal's human rights obligations to realize the rights to health, food, housing, water and sanitation by ensuring provision of adequate:
  - Physical space to all for social distancing;
  - Water, sanitation facilities, soap and sanitizer to allow for hygiene management to prevent COVID-19 transmission;
  - Food and drinking water to allow for a dignified and healthy living;

---

<sup>199</sup> *Gopal Shiwakoti Chintan v Prime Minister* Supreme Court of Nepal, Writ No. 076-WO-0939, (03 August 2020).

<sup>200</sup> *Advocate Roshani Paudyal & Advocate Saroj Raj Ghimire vs Prime Ministers & etal*, Supreme Court of Nepal, Writ No.076-WO-0962, (05 August 2020).

- Healthcare services, including COVID-19 prevention, testing and treatment;
- Trained health workers to provide all necessary healthcare services;
- Timely access to ambulances for emergency transport to hospitals if necessary; and
- Security services that effectively provide for the safety of all inhabitants at all times.
- The Ministry of Home Affairs and authorities responsible for managing quarantine facilities should ensure that inhabitants of quarantine and isolation facilities are not compelled to return to their homes before they have tested negative for COVID-19.

### **3. General access to healthcare services during COVID-19 pandemic**

- The Council of Ministers, including the Ministry of Health and Population should ensure that all people in Nepal, regardless of where they live or their citizenship status, have access to necessary COVID-19 prevention, testing and treatment without discrimination of any kind.
- The Responsible governmental authorities, including the Ministry of Health and Population should ensure that irrespective of lockdown measures taken, and in compliance with the Public Health Service Act, all people in Nepal have uninterrupted access to all non-COVID-19 related basic healthcare facilities, services and treatment. This includes the need to provide affordable ambulance services for transport to health institutions for those in need of emergency medical services.
- Responsible governmental authorities, including the Ministry of Health and Population should, in accordance with the Supreme Court's orders, ensure that there is free access to COVID-19 testing to prevent further transmission of COVID-19.

### **4. Healthcare Workers**

- The Ministry of Health and Population, the Council of Ministers and the Office of Prime Minister should ensure that all health workers have access to all equipment, including personal protective equipment, necessary to safely and effectively provide health services throughout the pandemic.
- The Ministry of Health and Population should, where necessary, prioritize the testing and treatment of healthcare workers for COVID-19.
- The Ministry of Home and the Council of Ministers should take legal and other measures to prohibit and sanction all forms of discrimination against health workers, including discrimination based their COVID-19 status or the perception of their COVID-19 status.
- The Police authorities should investigate all allegations of use of force against health workers and bring those responsible to justice.
- The Ministry of Health and Population and other responsible authorities should provide all necessary psycho-social support to health workers to ensure the protection of their mental and physical health.



## **5. Gendered impacts of COVID-19**

- The Ministry of Health and Population, the Ministry of Home Affairs and the Ministry of Women, Children and Senior Citizens should take measures to ensure the safety of all women and girls from gender-based violence in all healthcare facilities, including quarantine and isolation facilities.
- The Ministry of Health and Population, the Ministry of Home and the Ministry of Women Children and Senior Citizens should ensure that there is no interruption to access to or full sexual and reproductive health services required under the Public Health Service Act, and in particular maternal health services, throughout the COVID-19 pandemic.
- The Ministry of Health and Population should ensure timely access to ambulances for emergency transport to hospitals where necessary for women to access reproductive health services.

## **6. Persons deprived of their liberty**

- The Ministry of Home Affairs, in consultation with the responsible Prison Management Authorities, should minimize as far as possible the number of detained persons by releasing at risk categories of prisoners (such as older persons, persons with chronic diseases, persons in pre-trial detention, persons convicted of minor and nonviolent offences, juveniles in correctional homes and persons with imminent release dates) as instructed by the Supreme Court.
- The prison management authorities should ensure the protection of the right to health of all persons deprived of their liberty, including by:
  - Preventing overcrowding;
  - Ensuring access to COVID-19 screening, testing and treatment on an equal basis with the general population;
  - Ensuring access to adequate water, sanitation, soap, sanitizer and PPE materials to prevent COVID-19 transmission;
  - Ensuring overall conditions complying with international human rights standards, particularly ESCR, including:
    - Adequate climatic conditions such as air, minimum floor space, lighting, heating and ventilation;
    - Suitable items to ensure personal hygiene;
    - Adequate clothing;
    - Food of nutritional value adequate for health and strength; ▪ Drinking water; and
    - Recreational activities for the benefit of mental and physical health.

## **7. Private Healthcare Providers**

- The Ministry of Health and Population and Ministry of Home Affairs should ensure that all private healthcare providers, comply with their responsibility to respect the right to health.

- The Ministry of Health and Population and Ministry of Home Affairs should ensure that all private healthcare providers, including hospitals and laboratories, comply with all responsibilities placed on all health institutions, including in terms of Public Health Services Act.
- The Ministry of Health and Population should ensure that all private healthcare providers, including hospitals and laboratories comply with legal requirements set in Nepal's COVID-19 responses and international and domestic human rights law, including regarding:
  - Continued operation and provision of health services (both related to COVID-19 and unrelated to COVID-19);
  - Refusal of health services based on a patient's suspected or actual COVID-19 status; and
  - Pricing for all basic healthcare services, including COVID-19 screening, testing and treatment.
- The Ministry of Health and Population and Ministry of Home Affairs should ensure that private healthcare providers, including hospitals and laboratories, are appropriately sanctioned in accordance with the law for their failure to comply with their legal duties and human rights responsibilities.

## Commission Members

October 2020 (for an updated list, please visit [www.icj.org/commission](http://www.icj.org/commission))

### President:

Prof. Robert Goldman, United States

### Vice-Presidents:

Prof. Carlos Ayala, Venezuela

Justice Radmila Dragicevic-Dicic, Serbia

### Executive Committee:

Justice Sir Nicolas Bratza, UK

Dame Silvia Cartwright, New Zealand

(Chair) Ms Roberta Clarke, Barbados-Canada

Mr. Shawan Jabarin, Palestine

Ms Hina Jilani, Pakistan

Justice Sanji Monageng, Botswana

Mr Belisário dos Santos Júnior, Brazil

### Other Commission Members:

Professor Kyong-Wahn Ahn, Republic of Korea

Justice Chinara Aidarbekova, Kyrgyzstan

Justice Adolfo Azcuna, Philippines

Ms Hadeel Abdel Aziz, Jordan

Mr Reed Brody, United States

Justice Azhar Cachalia, South Africa

Prof. Miguel Carbonell, Mexico

Justice Moses Chinhengo, Zimbabwe

Prof. Sarah Cleveland, United States

Justice Martine Comte, France

Mr Marzen Darwish, Syria

Mr Gamal Eid, Egypt

Mr Roberto Garretón, Chile

Ms Nahla Haidar El Addal, Lebanon

Prof. Michelo Hansungule, Zambia

Ms Gulnora Ishankanova, Uzbekistan

Ms Imrana Jalal, Fiji

Justice Kalthoum Kennou, Tunisia

Ms Jamesina Essie L. King, Sierra Leone

Prof. César Landa, Peru

Justice Qinisile Mabuza, Swaziland

Justice José Antonio Martín Pallín, Spain

Prof. Juan Méndez, Argentina

Justice Charles Mkandawire, Malawi

Justice Yvonne Mokgoro, South Africa

Justice Tamara Morschakova, Russia

Justice Willly Mutunga, Kenya

Justice Egbert Myjer, Netherlands

Justice John Lawrence O'Meally, Australia

Ms Mikiko Otani, Japan

Justice Fatsah Ouguergouz, Algeria

Dr Jarna Petman, Finland

Prof. Mónica Pinto, Argentina

Prof. Victor Rodriguez Rescia, Costa Rica

Mr Alejandro Salinas Rivera, Chile

Mr Michael Sfard, Israel

Prof. Marco Sassoli, Italy-Switzerland

Justice Ajit Prakash Shah, India

Justice Kalyan Shrestha, Nepal

Ms Ambiga Sreenevasan, Malaysia

Justice Marwan Tashani, Libya

Mr Wilder Tayler, Uruguay

Justice Philippe Texier, France

Justice Lillian Tibatemwa-Ekirikubinza, Uganda

Justice Stefan Trechsel, Switzerland

Prof. Rodrigo Uprimny Yepes, Colombia

