

Unprepared and Unlawful: Nepal's Continued Failure to realize the right to health during the COVID-19 pandemic

A Briefing Paper
September 2021

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Adapted & Updated from an earlier briefing paper of November 2020

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EXECUTIVE SUMMARY

The COVID-19 pandemic has brought immense challenges to public authorities in nearly every country in the world, and Nepal is no exception. The serious strain on scarce public resources in a difficult economic and developmental environment, gross failures of wealthier States to fulfil their obligations of international cooperation, and the incoherence of international responses must be taken into account in any assessment of Nepal's performance in discharging its human rights obligations. This paper should therefore be understood and read in this broader context, some of which is detailed in ICJ's September 2020 report *Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses*.¹

Within this context, Nepal, like other States, has an international legal obligation to respect, protect and fulfill the right to health, obligation that is reflected and reinforced in its Constitution. This briefing paper assesses Nepal's compliance with these and other applications human rights obligations in its responses to the COVID-19 pandemic from early 2020 through August 2021.

This briefing paper, an updated and revised version of one published in November 2020,² reveals a continuous pattern of deficiencies in public and private responses originally evidenced in the first wave of the pandemic in 2020. These include insufficient quarantine facilities; inadequate provision of health services for non-COVID-19 patients; overcharging by private hospitals; attacks of varying kinds against health workers; official corruption; overcrowded prisons; and a failure to comply with orders of the Supreme Court in COVID-19 related matters. Among the issues that are of special focus in the recent wave is the government's lack of preparedness for the predictable health crisis, leading to lack of oxygen, hospital beds, ICU capacity and medical equipment. The report also addresses impact of significant delays and impropriety in COVID-19 vaccine procurement and rollout processes.

Nepal is responsible for discharging the State's obligation 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." These obligations arise from the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Nepal is a party.³ Furthermore, 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. The obligation to provide access to COVID-19 vaccines in particular is an immediately

¹ 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>

² ICJ, "The Right to Health: redirecting the "unconstitutional path" of Nepal's COVID-19 responses", Briefing Paper (November 2020), available at: <https://www.icj.org/wp-content/uploads/2020/11/Nepal-Right-to-health-Advocacy-analysis-brief-2020-ENG.pdf>

³ ICESCR, Article 12(1).

realizable obligation, as it falls within in the minimum core obligations of States to provide access to healthcare services.⁴

The Constitution of Nepal provides for the "right to seek basic health care services from the state" and that no person should "be deprived of emergency health care."⁵ Each person also has the right to "have equal access to health care".⁶ Nepal's Public Health Service Act was adopted with an objective to implement "the right to get free basic health service and emergency health service guaranteed by the Constitution".⁷ Section 49 of the Act provides that both public and private health institutions must "make necessary arrangements for the treatment of [patients] with infectious disease[s]".⁸

These legal requirements have been the subject extensive litigation before Nepal's Supreme Court in the wake of COVID-19. The Court has for the most part discharged its responsibility to provide for access to justice to "protect the fundamental rights guaranteed by the Consitution."⁹ It has issued several judgements directing the government to increase quarantine facilities and "monitor the standards of these quarantine facilities for consistency with the WHO standards and guidelines;"¹⁰ ensure that "the health services for ...COVID-19 fall under the category of basic health services under this section and should therefore be provided for free;"¹¹ prevent the overcrowding in the prison given the risk posed for transmission;¹² and implement the government's "primary responsibility" to test and treat COVID-19 related infection.¹³

The Supreme Court's decisions appear to have had little effect on government conduct. During the second wave of COVID-19 transmission beginning in April 2021, the health system became overwhelmed with increased number of severe COVID cases requiring oxygen supply, ICU treatment and ventilators.¹⁴ There remained an acute shortage of vital medical equipments and health services capacity despite the clear warnings issued by the Supreme Court. Following petitions raising concerns about these and other issues, the Court ordered authorities to make proper provision of oxygen supply, ICU beds, ventilators and other necessary medical equipment needed to combat COVID-19.¹⁵

On an overall assesment, the Nepal Government has not adequately or appropriately adapted its health system to face the second wave of the epidemic. The health system remains unprepared and unlawfully in defiance of a range of orders of the Supreme Court relating to the realization of the right to health. A change of government has not brought a substantial change in approach, as the deficiencies identified under the government of Prime Minister Khadga Prasad

⁴ ICJ, "The Unvaccinated Equality not Charity in Southern Africa", Briefing Paper (May 2021), available at: <https://www.icj.org/wp-content/uploads/2021/05/Africa-The-Unvaccinated-Publications-Reports-2021-ENG.pdf>

⁵ Article 35(1) of the Constitution of Nepal, 2015

⁶ Article 35(1) of the Consitution of Nepal, 2015

⁷ Preamble of The Public Health Service Act, 2018

⁸ Id, s 49(6) read with definition of health institution.

⁹ Supreme Court of Nepal, "Press Release Issued by the Supreme Court ", (27 April 2020) Nepali version available at: http://supremecourt.gov.np/web/assets/downloads/covid_19_press_20770115.pdf

¹⁰ Supreme Court of Nepal, Writ No.076-WO-0933, (6 April 2020).

¹¹ Supreme Court of Nepal, Writ No.076-WO-0958 (31 May 2020).

¹² Supreme Court of Nepal, Writ No. 076-WO-0939, (03 August 2020).

¹³ Supreme Court of Nepal, Writ No. 077-WO-0130, (03 August 2020)

¹⁴ M Sharma & K Parajuli, "Seeking a rights-based approach to healthcare", *The Kathmandu Post* (14 May 2021), available at: <https://kathmandupost.com/columns/2021/05/14/seeking-a-rights-based-approach-to-healthcare>

¹⁵ Supreme Court of Nepal, Writ No. 077-WO-01120, (18 May 2021)

Sharma Oli seem to have persisted since the new government of Prime Minister Sher Bahadur Deuba assumed authority in mid July 2021.

The number of available ICU beds and ventilators as of August 2021 had not significantly increased in the face of clear shortages.¹⁶ Nor has the standard of the quarantine facilities been enhanced.¹⁷ Private hospitals continue to charge exorbitant fees for COVID treatment in defiance governmental directives.¹⁸ Prisons remain overcrowded and continue to pose serious risks of COVID-19 transmission.¹⁹

The Supreme Court has taken the extraordinary step of ordering the authorities explicitly to prepare itself for "the third wave" and "forthcoming possible infection".²⁰ Highlighting the problems created due to lack of unified pandemic law, the Court has directed the government to formulate a pandemic law to incorporate within it a human rights framework.²¹ In response, the government formulated COVID-19 Crisis Management Ordinance (CMO) that falls well short of what is required in many aspects, including its failure to consider and comply with Nepals human rights obligations or to set up governance structures with sufficient expertise to guide pandemic response measures. While the court has emphasized that it "does not believe that COVID-19 epidemic can be addressed and faced through [an] unconstitutional path",²² it remains doubtful the government has taken sufficient measures to avoid just such a path.

Public health experts in Nepal and worldwide have continued to stress the need for widescale COVID-19 vaccination to prevent further transmission and COVID-19 related deaths.²³ Yet full access to vaccines remains elusive. Nepal has yet to publish comprehensive plan for COVID-19 vaccine procurement and distribution and the little information about prioritization provided by the government has apparently been defied, with timelines and targets regularly missed. The lack of timely access to COVID-19 vaccines appears to have been exacerbated by alleged improprieties in the prioritization of vaccine administration and distribution and allegations of corruption and profiteering in vaccine acquisition processes. The government's contracting with pharmaceutical companies has been shrouded in secrecy due in part to dubious non-disclosure agreements with pharmaceutical companies.

The ICJ concludes that Nepal has failed to substantially discharge its obligations to respect, protect and fulfill right to health of its inhabitants in the context of the COVID-19 pandemic. While the Nepal Supreme Court has played an important role and made decisions to guiding the government in its implementation of these obligations, many of the Court's orders have not been fully complied with. As Advocate Manish Shrestha, a frequent litigant in the Court during this period, has

¹⁶ Nepal Government, Ministry of Health and Population, "COVID Hospital" (updated in 26 August 2021), available at: https://covid19.mohp.gov.np/hospital/covid_hospital.html

¹⁷ CARE Australia, " Nepal facing devastating Covid-19 second wave", *Press Release* (13 May 2021), available at : <https://www.care.org.au/media/media-releases/nepal-facing-devastating-covid-19-second-wave/>

¹⁸ Onlinekhabar, " Covid-19 Nepal: Some hospitals charging patients despite reimbursements from govt" *Onlinekhabar.com* (06 July 2021), available at: <https://english.onlinekhabar.com/covid-19-nepal-some-hospitals-charging-patients-despite-reimbursements-from-govt.html>

¹⁹ S Dhungana, "Crowded jails, new inmates raise Covid-19 risks", *The Kathmandu Post* (17 August 2021), available at : <https://kathmandupost.com/national/2021/08/17/crowded-jails-new-inmates-raise-covid-19-risks>

²⁰ Supreme Court of Nepal, Writ No.077-WO-1115 (17 May 2021)

²¹ Supreme Court of Nepal, Writ No.076-WO-0962(05 August 2020).

²² Supreme Court of Nepal, Writ No. 077-WO-0130, (03 August 2020).

²³ WHO, "Getting the COVID-19 Vaccine", *WHO's Vaccines Explained series* (31 March 2021), available at : <https://www.who.int/news-room/feature-stories/detail/getting-the-covid-19-vaccine>

emphasized it is important to recognize that "litigation is not a magic wand to that can be waved to make government work in compliance with human rights immediately".²⁴ There can therefore be no substitute for continued social mobilization to hold the government to account for its human rights commitments.

Nevertheless, in order to support the efforts of local civil society and human rights lawyers in their quest to ensure government accountability, this briefing paper concludes by making recommendations to the authorities to ensure improved compliance with Nepal's human rights obligations. These are reproduced in full below and include, among others that:

- The Nepal authorities should ensure that the right to health is guaranteed to all people, in law and in practice, without discrimination;
- Responsible State authorities, including the Ministry of Health and Population should ensure that there is uninterrupted supply of oxygen, hospital beds, ICU capacity and COVID-19 related medicines and equipment in all hospitals serving COVID-19 patients;
- Prison management authorities must prevent overcrowding in prisons and ensure the implementation of all necessary COVID-19 health and safety measures;
- The Ministry of Health and Population should ensure that all private healthcare providers, including hospitals and laboratories comply with legal requirements including those relating the cost of testing and treatment for COVID-19;
- Nepal should urgently develop and widely publish a COVID-19 vaccine acquisition and distribution plan, detailing concrete measures to ensure non-discriminatory access to COVID-19 vaccines to all inhabitants of Nepal as expeditiously as possible; and
- Nepal should proactively disclose and publicize contracts with pharmaceutical companies for the acquisition of COVID-19 vaccines to ensure transparency and accountability.

²⁴ M Shrestha, "COVID-19 and Courts Symposium: The Active Role of the Nepalese Judiciary in Guiding Nepal's COVID-19 Response", *OpinioJuris* (30 July 2021), available at : <http://opiniojuris.org/2021/07/30/covid-19-and-courts-symposium-the-active-role-of-the-nepalese-judiciary-in-guiding-nepals-covid-19-response/>

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The COVID-19 pandemic has resulted in immense public health challenges in Nepal, as it has done globally. 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, including its Constitution.

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.²⁵ Although the Constitution of Nepal provides for the right to "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.²⁶

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".²⁷ 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 2015.²⁸

As the ICJ documented in a September 2020 report, response measures to COVID-19 including lockdowns and quarantines have also had other direct impacts on the right to health.²⁹ 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".³⁰ These included suicides by "burning, stabbing, drowning [and] jumping from heights".³¹ 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".³²

²⁵ J Sharma et al, Envisioning a high-quality health system in Nepal: if not now, when? *Lancet* (5 September 2018), available at: [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)

²⁶ 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>.

²⁷ 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), available at: <https://undocs.org/E/C.12/2020/1> ("CESCR COVID-19 Statement"), para 1.

²⁸ 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/>

²⁹ 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>

³⁰ K Poudel & P 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>

³¹ *Id.*

³² *Id.*

This paper is an updated version of the briefing paper prepared in November 2020.³³ It discusses the continuation of certain problems that arose in the first wave of the pandemic in 2020, such as: insufficient quarantine facilities; health services for non-COVID-19 patients; overcharging by private hospitals; attack against health workers; official corruption; overcrowded prisons; and failure to comply with orders of the Supreme Court. Building on this analysis we highlight issues that have emerged during the second wave of COVID-19 in 2021. We focus in particular on the government's lack of preparation for the predictable health crisis leading to lack of oxygen, hospital beds, ICU capacity and medical equipment. The impact of significant delays and impropriety in COVID-19 vaccine procurement and roll out processes is also detailed and analyzed.

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

On 1 March 2020 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.³⁴

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.³⁵ 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,³⁶ and "freedom to practice any profession, carry on any occupation, and establish and operate any industry, trade and business".³⁷ However, the government has refrained from invoking 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,³⁸ recognizing it as a non-derogable right even during such an emergency situation.³⁹

Following the surge of COVID-19 cases in late April 2021, local bodies issued prohibitory orders in their respective districts⁴⁰ based upon the cabinet decision of 26 April 2021.⁴¹ At the same time, the government restricted the entry of citizens into Nepal other than those returning from bordering countries.⁴² The government also hastily enacted the COVID-19 Crisis Management Ordinance (CMO) which aims to provide a regulatory basis for "conducting prevention, controlling, diagnosis

³³ ICJ, "The Right to Health: redirecting the "unconstitutional path" of Nepal's COVID-19 responses", Briefing Paper (November 2020), available at: <https://www.icj.org/wp-content/uploads/2020/11/Nepal-Right-to-health-Advocacy-analysis-brief-2020-ENG.pdf>

³⁴ 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 at: <https://mofa.gov.np/decision-of-the-12th-meeting-of-hlcc-on-covid-19-24-march-2020-and-its-unofficial-translation>

³⁵ 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/>.

³⁶ Constitution of Nepal, 2015 Article 17 (2) (e).

³⁷ Constitution of Nepal, 2015 Article 17 (2) (f).

³⁸ Id, Art 273 (10)..

³⁹ Id, Art 35.

⁴⁰ Press Trust of India (PTI), " Kathmandu, other cities in Nepal under 15-day prohibitory order to contain Covid-19 surge", *The Times of India* (29 April 2021), available at: <https://timesofindia.indiatimes.com/world/south-asia/kathmandu-other-cities-in-nepal-under-15-day-prohibitory-order-to-contain-covid-19-surge/articleshow/82307265.cms>

⁴¹ Ministry of Communication and Information Technology, "Decision of cabinet dated 26 April 2021" Decision No. 24(1) Nepali version, , available at : <https://mocit.gov.np/category/categoryDetail/2078-baisakh-6-9-13>

⁴² Decision of cabinet dated 26 April 2021" Decision No. 24(2)

and treatment works of COVID-19 in unified and systematic manner”.⁴³ Section 3 of the CMO makes provision for the declaration of a “COVID-19 health emergency” which would, among other things, allow the government to:

- Take control of any public or private health institution, where necessary;
- To require health institutions and/or health professionals to provide services relating to COVID-19 diagnosis or treatment;
- To use land, buildings, structures or resources, whether publicly or privately held, to respond to COVID-19;
- To use medicines, health equipment and health materials, whether publicly or privately held, to respond to COVID-19; and
- To take any other measures required to prevent, control, diagnose or treat COVID-19.

The CMO details the powers of the government during health emergency, indicating that the government may declare an emergency “when it believes infection may impact on public health”. The powers resulting from such a declaration are extremely broad. However, the CMO does not provide any specific criteria or conditions which would determine when the government may or must declare a “COVID-19 health emergency”. Although at the time of writing, the government had not invoked this legal provision to declare a COVID-19 health emergency, there remains risk of the Government applying and misusing it, given its expansive terms.

However, the CMO also provides a legal framework for taking an integrated approach to COVID-19 response activities, and in this respect is an improvement on existing outdated legislation predating the pandemic. Prior to issuing of the CMO, government relied on the Infectious Disease Control Act of 1964 to implement measures to control the spread of COVID-19. 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”⁴⁴.

Orders and directions regulating lockdown and quarantine measures were promulgated under this Act. The Government had relied on this Act up until the surge of the second COVID-19 wave in May 2021.

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,⁴⁵ in many cases lasting for more

⁴³ COVID-19 Crisis Management Ordinance (CMO), 2018, Preamble . Translation quoted is from an unofficial translation on file with the authors.

⁴⁴ Section 2(1) of the Infectious Disease Control Act of 1964

⁴⁵ M Badu, "Nepalis are swimming across the Mahakali to get home" *The Kathmandu Post* (30 March 2020), available at: <https://kathmandupost.com/sudurpaschim-province/2020/03/30/nepalis-are-swimming-across-the-mahakali-to-get-home> ; M Dhungana "Around 400 Nepalis stranded at Sunauli border point stage a sit-in" *The Kathmandu Post* (31 March 2020), available at: <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), available at: <https://kathmandupost.com/province-no-5/2020/05/09/hundreds-of-nepalis-stranded-in-nepal-india-borders-as-federal-government-has-yet-to-respond> .

than two months.⁴⁶ In late May 2020, however, most migrant workers were allowed to enter Nepal at 20 designated points of entry.⁴⁷ 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".⁴⁸

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 failed even to meet the standards set by the Government itself.⁴⁹ For example, the Government standards required the presence of a range of appropriately qualified health workers at quarantine facilities hosting more than 100 people.⁵⁰ The standards also dictated that these sites should be staffed by a person with an MPH/MD in community medicine and that they be staffed by a range of other health workers including a medical officers, nurses, paramedics, lab technicians and pharmacists.⁵¹ However, most facilities were "equipped only with paramedics and community health workers".⁵² 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.⁵³

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 adverse impact" of COVID-19.⁵⁴ The plan designated four different quantitative "Levels", considering the number of positive COVID-19 cases. Level I is for up to

⁴⁶ 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 at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/briefingnote/wcms_748917.pdf

⁴⁷ Cabinet of Ministers, Nepal Government, "Decision of cabinet dated 25 May 2020" Decision No. 21(1) Nepali version, , available at : <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), available at : ; 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), available at: 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), available at: <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%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/> .

⁴⁸ 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 at: 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".

⁴⁹ Nepal Government, Ministry of Health & Population, "Corona Virus Quarantine Operation and Management Standard 2020", available at: <https://www.dpnet.org.np/resource/437> .

⁵⁰ Nepal Government, Ministry of Health & Population, "Corona Virus Quarantine Operation and Management Standard 2020", available at: <https://www.dpnet.org.np/resource/437> .

⁵¹ No. 5 Healthworker Management, Nepal Government, Ministry of Health & Population, "Corona Virus Quarantine Operation and Management Standard 2020".

⁵² S Subedi, "Reimagining Quarantine" *The Record* (29 May 2020), available at: <https://www.recordnepal.com/reimagining-quarantine>

⁵³ 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

⁵⁴ 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

2000 cases; Level II, for 2000 to 5000 cases; Level III, for 5000 to 10,000 cases; and Level IV, for more than 10,000 cases.⁵⁵ 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".⁵⁶

In June 2020, 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 allow it to better manage the situation.⁵⁷ The Government did not act on this recommendation. Instead, in late July it ended the four-month nation-wide lockdown,⁵⁸ following a reported drop in COVID-19 cases.⁵⁹ As the internal movement restrictions eased,⁶⁰ COVID-19 cases began to rise again.

As of 31 August 2021, the WHO had reported 761,124 confirmed COVID-19 cases in Nepal and that COVID-19 had contributed directly to at least 10,730 deaths.⁶¹ While this data is consistent with the data provided by the government,⁶² health experts estimate that the mortality rate is likely significantly higher.⁶³ As the study from the Institute for Health Metrics and Evaluation (IHME) shows, those official figures do not include "excess mortality" and "undetected COVID-19 infections".⁶⁴ This holds true for Nepal, as it does in much of the world, because as the IHME observes official statistics are often inaccurate as they commonly only include hospital deaths,⁶⁵ but not the deaths in home isolation.⁶⁶ Moreover, the lower testing rates particularly in the rural areas in Nepal likely mean that official data in Nepal in particular could be only the "tip of the iceberg" as far as COVID-19 infections and deaths are concerned.⁶⁷

Apart from direct health impacts, the pandemic has resulted in a number of other negative impacts on the human rights of Nepalis. In May 2020 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

⁵⁵ Id.

⁵⁶ Id, p 4.

⁵⁷ Republica, "As number of COVID-19 cases exceeds 2,000, govt may declare public health emergency" *Republica* (04 June 2020), available at: <https://myrepublica.nagariknetwork.com/news/as-number-of-covid-19-cases-exceeds-2-000-govt-may-declare-public-health-emergency/>

⁵⁸ Ministry of Communication and Information Technology, "Decisions of the cabinet- dated 21 July 2020" Decision *Nepali version*, available at: <https://mocit.gov.np/category/categoryDetail/cabinet-2077-04-05>

⁵⁹ Nepali Times "Nepal ends COVID-19 lockdown: Cabinet decides to lift restrictions, but limits public gatherings" (18 May 2021), available at: <https://www.nepalitimes.com/latest/nepal-ends-covid-19-lockdown>

⁶⁰ 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

⁶¹ WHO, "Situation Update #72-Corona Virus Disease 2019 (COVID-19) " WHO Country Office for Nepal (31 August 2021) available at : https://cdn.who.int/media/docs/default-source/nepal-documents/novel-coronavirus/who-nepal-sitrep/-72-weekly-who-nepal-situation-updates.pdf?sfvrsn=b795f138_9

⁶² Nepal Government, Ministry of Health and Population, COVID 19 Dash Board, *Official Website*, available at: <https://covid19.mohp.gov.np/>

⁶³ K Dhital, "Nepal Covid-19 impact worse than official figures", *Nepalitimes* (30 May 2021), available at: <https://www.nepalitimes.com/latest/nepal-covid-19-impact-worse-than-official-figures/>

⁶⁴ The Institute for Health Metrics and Evaluation (IHME), "Estimation of total mortality due to COVID-19", (May 13 2021), available at : <http://www.healthdata.org/special-analysis/estimation-excess-mortality-due-covid-19-and-scalars-reported-covid-19-deaths>

⁶⁵ K Dhital, "Nepal Covid-19 impact worse than official figures", *Nepalitimes* (30 May 2021), available at: <https://www.nepalitimes.com/latest/nepal-covid-19-impact-worse-than-official-figures/>

⁶⁶ A Poudel, " Covid-19 recovery numbers could veil actual threat if other data are ignored", *The Kathmandu Post* (10 June 2021), available at: <https://kathmandupost.com/health/2021/06/10/covid-19-recovery-numbers-could-veil-actual-threat-if-other-data-are-ignored?fbclid=IwAR0Wgm4VWibVxf5RSynkKo9TBENgHOSCYqEB-xAClSkcxVRUjaw2VyX12FA>

⁶⁷ A Poudel, " Fewer tests mean reported cases in rural Nepal could just be tip of the iceberg", *The Kathmandu Post* (17 May 2021), available at: <https://kathmandupost.com/health/2021/05/17/fewer-tests-mean-reported-cases-in-rural-nepal-could-just-be-tip-of-the-iceberg>

reinforced social inequalities and worsened the situation of marginalized people.⁶⁸ 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 percent 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".⁶⁹

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

"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".⁷⁰

Despite the gravity of the situation, Nepal's Prime Minister, KP Sharma Oli, made repeated statements downplaying the seriousness of COVID-19.⁷¹ For instance, he described COVID-19 as being "like the flu" and advised that "if contracted, one should sneeze, drink hot water and drive the virus away".⁷² He 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.⁷³ These comments and the general mismanagement in the government's COVID-19 response, have led to some youth-led protests in Kathmandu.⁷⁴ More recently after the second wave infected thousands per day, former Prime Minister Oli seemingly changed his position, stating that "he had not expected the coronavirus infection to spread at the current level in the country as he believed Nepalis had strong immunity".⁷⁵

In a review of its response to the pandemic in 2020, the Nepal government included advance "preparation for the pandemic" as an important lesson learned.⁷⁶ Despite this measure, the government did not seem to be sufficiently prepared for the predictable second wave of the pandemic.⁷⁷

⁶⁸ UNDP, "Rapid Assessment of the Social and Economic Impact of COVID-19 in Nepal" Study Report (May 2020) UNDP Study Report, available at: <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>.

⁶⁹ 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".

⁷⁰ Id, p 15.

⁷¹ 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>.

⁷² P Pandey, "Oli continues to downplay Covid-19 and propagate 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>.

⁷³ 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>.

⁷⁴ Himalayan News Service, "Enough is Enough movement voices concern" *The Himalayan Times* (21 June 2020), available at: <https://thehimalayantimes.com/nepal/enough-is-enough-movement-voices-concern/>.

⁷⁵ Onlinekhabar, "Nepal PM Oli: Had thought Covid-19 wouldnt spread at this level thanks to Nepalis strong immunity" (17 May 2021), available at : <https://english.onlinekhabar.com/nepal-pm-oli-had-thought-covid-19-wouldnt-spread-at-this-level-thanks-to-nepalis-strong-immunity.html>

⁷⁶ Ministry of Health and Population, "Responding to COVID-19: Health sector preparedness, response and lessons learnt", (2021), p.87 available at : <https://mohp.gov.np/attachments/article/703/Responding%20to%20COVID-19,%20Health%20sector%20preparedness,%20response%20and%20lessons%20learnt.pdf>

⁷⁷ Editorial, "Preparing for a 'No Normal'", *Nepalitimes* (13 April 2021), available at: <https://www.nepalitimes.com/editorial/preparing-for-a-no-normal/>

In the mid July 2021, Sher Bahadur Deuba became the new Prime Minister of Nepal and committed that his government's top priority would be vaccination and management of the COVID 19 pandemic.⁷⁸ Despite these promises, more than a month has passed since the formation of the new government, and yet Nepal still does not even have a health minister.⁷⁹ Reported COVID-19 cases have again started to rise since the end of July. Public health experts, epidemiologists and virologists have been warning about the inevitability of the third wave.⁸⁰ Nevertheless the government has still not made proper preparations to tackle future waves of COVID-19 transmission.⁸¹

During the first wave of the pandemic, 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.⁸² 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.⁸³

However, the authorities failed to adequately and fully implement various court orders issued by the Supreme Court. This 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".⁸⁴ 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.

During the second wave, there was a persistent a lack of oxygen, as well as basic medicines and treatments for COVID-19 and a delay in vaccine procurement and delivery against COVID-19. Therefore, petitioners approached the Supreme Court arguing that the government's failure to manage access to oxygen and basic medicine and to provide treatment for COVID-19 and timely vaccination constituted human rights violations warranting judicial remediation. In response, the Supreme Court issued a range of orders referencing the government's obligation to protect the right to health,⁸⁵ including a right to access basic health services free of cost. The Court pointed out that the "commitment Nepal has made being the state party to various international treaties, and domestic obligations based upon the constitution of Nepal and other prevailing laws." It

⁷⁸ New, "Nepal's new PM Sher Bahadur Deuba wins confidence vote", Aljazeera (19 July 2021), available at :

<https://www.aljazeera.com/news/2021/7/19/nepals-new-pm-sher-bahadur-deuba-wins-confidence-vote>

⁷⁹ M K.C, "Nepal has no health minister as Covid-19 cases rise again", *Nepalitimes* (21 July 2021) available at: <https://www.nepalitimes.com/latest/nepal-has-no-health-minister-as-covid-19-cases-rise-again/>

⁸⁰ A Poudel, " Covid-19 cases are on rise. Is the third wave already here?", *The Kathmandu Post* (28 July 2021), available at: <https://kathmandupost.com/health/2021/07/28/covid-19-cases-are-on-rise-is-the-third-wave-already-here>

⁸¹ A Poudel, "As third wave looms, slow recovery rate is a major concern", *The Kathmandu Post* (23 July 2021), available at : <https://kathmandupost.com/health/2021/07/23/as-third-wave-looms-slow-recovery-rate-is-a-major-concern>

⁸² 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>.

⁸³ 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.

⁸⁴ Supreme Court of Nepal, Writ No. 077-WO-0130, (03 August 2020). The case is detailed further below.

⁸⁵ Supreme Court of Nepal, Writ No.077-WO-1115 (17 May 2021) and Supreme Court of Nepal, Writ No. 077-WO-01120 (18 May 2021). The cases are discussed below.

further elaborated that "the government cannot be relieved from its responsibility to safeguard life under any pretext, including lack of resources".⁸⁶

The continued difficulties faced by people in accessing the health services and getting timely vaccination against COVID-19 illustrates that they have not been able fully realize their right to health, including through enforcement of orders of Nepal's Supreme Court.

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

The COVID-19 pandemic has had a momentous 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.⁸⁷

1. Quarantine Centres and Isolation Wards

According to a report of the Ministry of Health and Population, on 10 June 2020 some 172,266 people were kept in quarantine facilities, with an additional 3675 in the isolation, during the first wave of COVID-19.⁸⁸ It was reported that some quarantine facilities were "housing around 1,000 while their capacity to accommodate" was "just around 100".⁸⁹ 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.⁹⁰ 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.⁹¹

After the Government introduced COVID-19 case isolation management guidelines in early June 2020 dedicated hospitals were designated for COVID-19 treatment in different parts of the country.⁹² These hospitals were tasked with admitting patients requiring hospital-based treatment, including access to ventilators.⁹³ 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.⁹⁴

⁸⁶ Supreme Court of Nepal, Writ No.077-WO-1115 (17 May 2021). The case is detailed further below

⁸⁷ 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> ; 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> .

⁸⁸ 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.

⁸⁹ A 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>

⁹⁰ Id.

⁹¹ 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/>.

⁹² 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/>.

⁹³ Id.

⁹⁴ Id.

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.⁹⁵ It was widely reported that he 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”.⁹⁶

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.⁹⁷ The Commission pointed out that even symptomatic persons refusing to report to quarantine sites and some who were in quarantine 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”.⁹⁸

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.⁹⁹ 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.¹⁰⁰ At the quarantine facility, he was never 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.¹⁰¹ 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”.¹⁰²

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

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ 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%20Quarantine%20in%20accordance%20with%20the%20standards.pdf.

⁹⁸ 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/bankes-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), available at: <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), available at: <https://myrepublica.nagariknetwork.com/news/21-covid-19-patients-escape-from-quarantine-facilities-in-dailekh/>.

⁹⁹ 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/>.

¹⁰⁰ Id.

¹⁰¹ Id.

¹⁰² 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).

2020, 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.¹⁰³ Another mayor encouraged home quarantine because of shortages of medical resources.¹⁰⁴

Upon reviewing its own response to first wave, the government noted the "operational issues in running quarantine sites" as one of the key challenges in dealing with pandemic.¹⁰⁵ Moreover, health experts have suggested the need to reintroduce compulsory health check ups at entry points, as well as mandatory quarantine.¹⁰⁶ During the first wave of the pandemic, the Supreme Court called upon the government authorities to ensure that "all returnees ... be identified by the local governments and kept in quarantine facilities", and further that "authorities should monitor the standards of these quarantine facilities to be in consistent with the WHO standards and guidelines".¹⁰⁷ Despite these experts' suggestions and the legally binding court decisions, the transit points on the Nepal-India border were "open, and people are moving freely and without any precautions or tests" when cases were rapidly increasing in India in early 2021.¹⁰⁸ With the increased movement of the Nepalese migrant workers returning Nepal before the borders close in April 2021 and lack of government preparedness enough quarantine facilities,¹⁰⁹ the situation started to worsen in May 2021.

2. Lack of oxygen, hospital beds and medical services

In assessing the COVID-19 related policy of Nepal, the National Health Research Council had identified the significant challenges faced by COVID-19 patients in receiving proper care due to lack of hospital beds, oxygen, ICU capacity and ventilators in the first wave.¹¹⁰ The Council suggested there was a need to make necessary infrastructure and services available in hospitals in preparation to continue to face the pandemic.

Considering the situation in India where second wave had produced devastating consequences,¹¹¹ oxygen manufacturers were reported to have warned the government about shortages of oxygen supplies. Despite this, inadequate steps were taken to prevent such shortages in the second wave in Nepal.¹¹² COVID-19 patients throughout the country have had to scramble for hospital beds and oxygen cylinders.¹¹³ As the result, hospitals have sometimes been left with no

¹⁰³ 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/>.

¹⁰⁴ Id.

¹⁰⁵ Ministry of Health and Population, "Responding to COVID-19: Health sector preparedness, response and lessons learnt", (2021), available at : <https://mohp.gov.np/attachments/article/703/Responding%20to%20COVID-19,%20Health%20sector%20preparedness,%20response%20and%20lessons%20learnt.pdf>

¹⁰⁶ S Awale, "Nepal braces for its 2nd Covid wave", *The Kathmandu Post* (06 April 2021), available at: <https://www.nepalitimes.com/latest/nepal-braces-for-its-2nd-covid-wave/>

¹⁰⁷ *Advocate Bishnu Luitel vs Office of Prime Minister*, Supreme Court of Nepal, Writ No.076-WO-0933, (6 April 2020) & *Advocate Pushpa Raj Poudel v Office of Prime Minister*, Supreme Court of Nepal, Writ No.076-WO-0934, (6 April 2020)

¹⁰⁸ Jagadish Prasad Bist, "The Second Wave is knocking on the border" *The Kathmandu Post* (13 April 2021), available at: <https://kathmandupost.com/columns/2021/04/13/the-second-wave-is-knocking-on-the-border>

¹⁰⁹ CARE Australia, " Nepal facing devastating Covid-19 second wave", *Press Release* (13 May 2021), available at : <https://www.care.org.au/media/media-releases/nepal-facing-devastating-covid-19-second-wave/>

¹¹⁰ Government of Nepal, Nepal Health Research Council, "Rapid Assessment Of Covid-19 Related Policy Audit In Nepal", (November 2020), available at: <http://nhrc.gov.np/wp-content/uploads/2021/02/Policy-audit-Report-Final-MD.pdf>

¹¹¹ L Rodgers & etal, "Covid-19 in India: Cases, deaths and oxygen supply", *BBC News* (29 April 2021), available at: <https://www.bbc.com/news/world-asia-india-56891016>

¹¹² R Bhandari & H Ellis, "A hopeless situation: oxygen shortage fuels Nepal's Covid crisis", *The Guardian* (10 May 2021), available at: <https://www.theguardian.com/world/2021/may/10/hopeless-situation-oxygen-shortage-fuels-nepal-covid-crisis>

¹¹³ M Sharma & K Parajuli, "Seeking a rights-based approach to healthcare", *The Kathmandu Post* (14 May 2021), available at: <https://kathmandupost.com/columns/2021/05/14/seeking-a-rights-based-approach-to-healthcare>

choice but to either ask patients' family members to privately arrange oxygen cylinders or to refuse admissions.¹¹⁴

By the end of April 2021, when the number of infections were reaching a peak, there were only 1,171 intensive care unit beds and 483 ventilators in government hospitals throughout the country.¹¹⁵ Some patients shared the beds with the others,¹¹⁶ while many were treated on the floor or on hospital benches.¹¹⁷ At the time of writing there are only 1107 intensive care unit beds and 506 ventilators in the COVID designated hospitals throughout the country.¹¹⁸ This number shows that the government has not taken sufficiently serious action to increase the number of ICU beds and ventilators to prepare itself for further waves of COVID-19.

3. 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 2020, 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.¹¹⁹ As the number of COVID-19 cases started to rise in mid-October 2020, 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 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 2020 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.¹²⁰ Despite the Ministry of Health and Population directing hospitals and health centers to provide "services for emergency, acute conditions and acute chronic conditions",¹²¹ many have continued to reject patients suspected of being

¹¹⁴ T. Neupane, "Helping Nepalis breathe again", *Nepalitimes* (18 May 2021), available at: <https://www.nepalitimes.com/here-now/helping-nepalis-breathe-again/>

¹¹⁵ Government of Nepal, Ministry of Health and Population, "Health Sector Response to COVID-19" (26 April 2021), available at: https://covid19.mohp.gov.np/covid/englishSituationReport/6086a27fe72db_SitRep442_COVID-19_26-04-2021_EN.pdf

¹¹⁶ R Sedhai & S Kharel, "As COVID wave rages in Nepal, hospitals run out of beds, oxygen" *Aljazeera* (21 May 2021), available at: <https://www.aljazeera.com/news/2021/5/21/nepal-struggles-to-cope-with-surgin-covid-crisis>

¹¹⁷ D Dulal "Aspatalka Chisa Chidi Ra Plasticka Kursima Sankramit, Tara Pradhanmantri Bhanchan- Bed ko Kami Chhaina, " *Swasthyakhabar Patrika Nepali* version "Infected in Cold Ladders and Plastic Chairs but Primeministers says there are enough beds", (16 May 2021), available at:

https://swasthyakhabar.com/story/39637?fbclid=IwAR2j97zxFOpCdy201V0JWtAmvobjVDs07BcwglXRm_fGF4XgWeYSgfb6QE
¹¹⁸ Nepal Government, Ministry of Health and Population, "COVID Hospital" (updated in 26 August 2021), available at: https://covid19.mohp.gov.np/hospital/covid_hospital.html; If we see the recent update on COVID situation from Nepal government similar to footnote 114, in page number 6 of the update report, authorities have removed the column on available ICU beds and ventilators in the table showing data on COVID patients, ICU, deaths. This data from the government that includes information from all COVID designated hospitals by the government

¹¹⁹ Nepal Government, Ministry of Health and Population, "Press Meet Video" (23 March 2020), available at: <https://mohp.gov.np/en>

¹²⁰ 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), available at: <https://thehimalayantimes.com/nepal/patients-with-fever-being-turned-away-due-to-covid-fear/>.

¹²¹ 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:

COVID-19 positive.¹²² The media outlet "the Record" in early September 2020 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".¹²³

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.¹²⁴ Another person reportedly had to walk for two hours to get to the hospital providing him with dialysis.¹²⁵ 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.¹²⁶

In the second wave in early 2021, non-COVID-19 patients were even afraid to go to hospitals since across the country they had started to become overwhelmed with the COVID-19 patients.¹²⁷ Both COVID-19 and non-COVID-19 patients were treated in the same hospitals, and, as a result, non-COVID-19 patients often avoided visiting the hospitals.¹²⁸ Doctors have been warning that such "reluctance to visit the hospitals fearing COVID-19 infection could be deadly especially for people with pre-existing conditions".¹²⁹

4. 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".¹³⁰ By Level III,¹³¹ which Nepal surpassed some time ago, the plan indicates that "all private hospitals will be utilized based on their capacity including human resources".¹³²

Despite these plans, however, there are reports showing "the majority" of private health care services halting their services.¹³³ There are a number of allegations of

<http://lalitpurmun.gov.np/sites/lalitpurmun.gov.np/files/COVID%20and%20Non-CoVID%20Health%20Service%20Guideline-Final%20approved.pdf>.

¹²² Khabarhub, "Patient dies in ambulance after hospital denies admission" (25 July 2020), available at:

<https://english.khabarhub.com/2020/25/114760/>.

¹²³ 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/>.

¹²⁴ 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/>.

¹²⁵ Id.

¹²⁶ Id.

¹²⁷ S Dhungana, "People with non-Covid-19 conditions avoiding hospital visits fearing infection", *The Kathmandu Post* (20 May 2021), *The Kathmandu Post* available at: <https://kathmandupost.com/health/2021/05/20/people-with-non-covid-19-conditions-avoiding-hospital-visits-fearing-infection>

¹²⁸ S Dhungana, "People with non-Covid-19 conditions avoiding hospital visits fearing infection", *The Kathmandu Post* (20 May 2021), *The Kathmandu Post* available at: <https://kathmandupost.com/health/2021/05/20/people-with-non-covid-19-conditions-avoiding-hospital-visits-fearing-infection>

¹²⁹ ibid

¹³⁰ 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.

¹³¹ 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".

¹³² Id, p 6.

¹³³ 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/>.

private hospitals refusing to treat patients because of mere suspicion that they may be COVID-19 positive.¹³⁴ Many such cases have been reported in Birgunj, allegedly leading to deaths. These refusals of care led to protests in August 2020, 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.¹³⁵

On 20 August 2020 a Government spokesperson warned all health institutions, including private hospitals, against refusing treatment and "being selective to treatment stating COVID or non-COVID cases".¹³⁶ The spokesperson said that any healthcare provider that "does not comply with government's order shall be punished according to the law".¹³⁷ 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.¹³⁸ 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 2020¹³⁹ and a further reduction to 2000 Nepali Rupees (17.05 US dollars) applicable to all the laboratories by mid-September 2020.¹⁴⁰

With the renewed surge of COVID-19 cases in May 2021, new concerns arose in regard to price and quality of services and access to such services from private health care providers. Some private hospitals, for example, published the price lists¹⁴¹ that indicated how private hospitals were making high profits from the patients during the pandemic, with some reportedly charging three times more than amounts fixed by the government for COVID-19 patient's daily care charges.¹⁴² With public hospital beds being at capacity, people from lower and

¹³⁴ 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/>.

¹³⁵ 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/>.

¹³⁶ Spokesperson of Government and Minister of Communication and Information Technology, "Program to Publicize Cabinet's decision of date 04 Bhadra 2077" (20 August 2020).

¹³⁷ Id.

¹³⁸ 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>.

¹³⁹ Ministry of Health and Population, National Public Health Laboratory, "COVID related Lab Information" (7 September 2020), available at: <https://www.nphl.gov.np/page/ncov-related-lab-information>.

¹⁴⁰ Nepal Government, Ministry of Health and Population, "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>.

¹⁴¹ P Lama, "Kathmandu's private hospitals fleece Covid-19 patients, multiplying crisis", *Onlinekhabar.com*, (08 May 2021), available at: <https://english.onlinekhabar.com/kathmandu-private-hospitals-fleece-covid-19-patients-multiplying-crisis.html>
¹⁴² S Dhungana, "Private hospital bills give poor Covid-19 patients the shivers", *The Kathmandu Post* (23 May 2021), available at: https://kathmandupost.com/national/2021/05/23/private-hospital-bills-give-poor-covid-19-patients-the-shivers?fbclid=IwAR3j741nZ83GiUHJhDtkMuf_xxu0n2WhKtXrBfWnpMLV7mjDvIu37ayAHvI; Ministry of Health and Population has fixed a daily charge of Rs 3,500 for the treatment of normal Covid-19 patient, Rs 7,000 for moderate, and Rs 15,000 for critical cases

middle income families have not been able to get treatment even in private hospitals due to these exorbitant treatment costs.¹⁴³

5. Stigma/attacks and humiliation against health workers

Health care workers are subject to increased exposure to COVID-19 as a result of their work. In addition, an Amnesty International report issued as early as July 2020 observed a worrying 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”.¹⁴⁴

This global trend of stigmatization of health workers been borne out in Nepal from the outset of the pandemic. In June 2020 various UN agencies and local organizations called for end to stigma and discrimination against health workers in Nepal.¹⁴⁵

In early May 2020 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”.¹⁴⁶ 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.¹⁴⁷

This stigma has continued. In late August of 2020, a group of people placed signs in the vicinity of the home of two doctors isolating in the house saying: “infected zone” and “Caution, do not enter”.¹⁴⁸ In other areas demands have been made for the eviction of health workers.¹⁴⁹ 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.¹⁵⁰ 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.”¹⁵¹

¹⁴³ A Ojha, “Covid-19 patients from low, middle income can’t afford beds in private hospitals”, *The Kathmandu Post* (06 May 2021), available at: <https://kathmandupost.com/health/2021/05/06/covid-19-patients-from-low-and-middle-income-can-t-afford-beds-in-private-hospitals>

¹⁴⁴ 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/>.

¹⁴⁵ 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>

¹⁴⁶ 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>.

¹⁴⁷ 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/police-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>.

¹⁴⁸ 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>.

¹⁴⁹ Id .

¹⁵⁰ Id.

¹⁵¹ Id.

The challenges faced by health workers have been exacerbated by insufficient access to personal protective equipment (PPE).¹⁵² In early June 2020, 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.¹⁵³

Attacks on healthworkers continue in Nepal in a second wave, as shown by recent attacks against on-duty doctors and nurses in the COVID-19 ICU Ward of the Bheri hospital, in the Western Nepal.¹⁵⁴ On 27 May 2021, following the death of a COVID-19 patient, medical personnel were attacked by the patients' relatives, who alleged negligence in his treatment. After this incident, health workers protested demanding action against the alleged culprits.¹⁵⁵ A committee was also mandated by District administrative Office to investigate and report to the Chief district Officer, but its full report has not been made public. Local human rights organizations have been demanding the publication of the full report and that action be taken to hold those responsible to account.¹⁵⁶ However, the committee only publicized summary of the full report,¹⁵⁷ and this summary version prioritizes general recommendations¹⁵⁸ rather than focusing on the incident and the accountability of those responsible for wrongdoing.¹⁵⁹

After a case regarding the attack on the medical personnel was lodged in the court as per the Chapter of Offences Relating to Criminal Trespass and Criminal Mischief and Attempt to Murder under National Penal (Code) Act 2017, Banke District Court ordered the release of those accused on bail of 50,000Nrs during the remand hearing.¹⁶⁰ It was widely believed that the alleged perpetrators were close to the ruling party and were protected by the provincial government.¹⁶¹

¹⁵² 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

¹⁵³ 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>.

¹⁵⁴ A Oli, "There was no option but to jump off the window to save our lives", *Republica* (28 May 2021) available at: <https://myrepublica.nagariknetwork.com/news/health-workers-at-bheri-hospital-attacked-by-relatives-of-deceased-patient/>

¹⁵⁵ T S Tharu & R Gahatraj, "Health Workers protest at Bheri Hospital following attack on medical personnel", *The Kathmandu Post* (29 May 2021), available at; <https://kathmandupost.com/province-no-5/2021/05/29/health-workers-protest-attack-on-medical-personnel-at-bheri-hospital>; THT Online, "Bheri Hospital staffers stage protests demanding action against culprits assaulting on-duty hospital staff", *The Himalayan Times* (28 May 2021), available at: <https://thehimalayantimes.com/nepal/bheri-hospital-health-workers-stage-protests-demanding-action-against-culprits-assaulting-on-duty-hospital-staff>

¹⁵⁶ Advocacy Forum, "Demonstration of health workers continues at Bheri Hospital", *Press Release* (01 June 2021), available : <http://advocacyforum.org/news/2021/06/demonstration-of-health-workers-continues-at-bheri-hospital.php>

¹⁵⁷ Nepal Government, District Administrative Office, Banke, "Summary of the report of the committee formed to investigate the incident of attack of health workers and vandalism Bheri Hospital", *Nepali version* (04 June 2021), available at: https://daobanke.moha.gov.np/public/upload/423b75b4fd65c86138bbeb700c27f502/files/New_Doc_06_04_2021_14.41.pdf

¹⁵⁸ Nepal Government, District Administrative Office, Banke, "Summary of the report of the committee formed to investigate the incident of attack of health workers and vandalism Bheri Hospital", Recommendations to the hospital administration that include "respond well with the service seekers", "have rule to keep only one visitor", "use small gate for entry of the people visitng hospitals"

¹⁵⁹ B Gautam, "Bheri Aspatal Ghatanama Pidit kaslai bhanne? Nepali version, Who is to be said the victim in Bheri Hospital incident?", *Swasthyapage.com* (08 June 2021), available at: <https://swasthyapage.com/2021/11862/?fbclid=IwAR3Mz3Hy-QJCHk9vhG85h-NBjxBgbRQNGZNVPMgBtb02R9bqx05TkJEImbQ>

¹⁶⁰ The Order of Banke District Court dated 20 June 2021 is on file with the authors.

¹⁶¹ A Oli, "Health workers at Bheri Hospital attacked by relatives of deceased patient", *Republica* (28 May 2021), available at : <https://myrepublica.nagariknetwork.com/news/health-workers-at-bheri-hospital-attacked-by-relatives-of-deceased-patient/>

Health workers have asserted that that they continue to feel vulnerable of similar attacks as the perpetrators may enjoy "impunity" because of their political connections.

Nevertheless, following these incidents, the President issued an ordinance amending the existing Security of Health Worker and Health Organisations Act. The Ordinance has introduced "penalty of three years imprisonment or 300,000 Nrs fine or both"¹⁶² for beating or physically injuring the health workers."¹⁶³ It further bans the padlocking of health institutions or protesting on the premises of a health centre and increases the punishment for "setting health facilities on fire"¹⁶⁴ to a "sentence of two to five years or fine amount of 200,000-500,000 Nrs or both imprisonment and a fine".¹⁶⁵ However, no one has yet been penalized under these new legal arrangements.

6. 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".¹⁶⁶

COVID-19 responses by many States have sometimes meant the interruption or shut down of health services for women and girls.¹⁶⁷ 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-19.¹⁶⁸ In Nepal the COVID-19 lockdown has led to an increase in the number of home births through unsafe methods, risking unsafe delivery.¹⁶⁹ In April 2020, 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"¹⁷⁰ and "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".¹⁷¹

Women had typically struggled to access ambulance services that would allow them to receive necessary reproductive health services in hospitals, and some

¹⁶² Section 15 (2) (b) of An ordinance amending the existing Security of Health Worker and Health Organisations Act, 2021

¹⁶³ Section 3(c) of An ordinance amending the existing Security of Health Worker and Health Organisations Act, 2021

¹⁶⁴ Section 3(a) of An ordinance amending the existing Security of Health Worker and Health Organisations Act, 2021

¹⁶⁵ Section 15 (2) (a) of An ordinance amending the existing Security of Health Worker and Health Organisations Act, 2021

¹⁶⁶ 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.

¹⁶⁷ 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.5

¹⁶⁸ 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.

¹⁶⁹ 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/>.

¹⁷⁰ 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).

¹⁷¹ 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>

have died in hospitals because they only reached hospitals after experiencing “severe complications”.¹⁷² 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”.¹⁷³

High instances of maternal mortality have persisted in the second wave, as there has been little done to curb the trend, with 225 recorded cases of maternal deaths throughout the country between March 24 to April 28, 2021.¹⁷⁴

Significant increases in gender based violence, including sexual violence in quarantine facilities, were also reported in media. In June 2020 both national and international media reported an incident of a gang rape in one of the quarantine facilities.¹⁷⁵ Furthermore, as has been common globally,¹⁷⁶ many organizations also reported increased barriers to access to justice for women and girls during lockdown.¹⁷⁷ Women have also reported increased difficulty in accessing GBV related supported services in the justice sector.¹⁷⁸

These incidents have triggered debates in Nepal’s Parliament. 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.¹⁷⁹

A petition challenging the denial of police to register complaints and investigate cases related to domestic violence and other GBV was also filed in the Supreme Court, seeking court’s intervention.¹⁸⁰ In response the Court ordered authorities to “not to deny registration of complaints on domestic violence during the pandemic rather begin online case registration and hearing system”, and ordered them “to form telephone and facebook helpline in 753 local governments to carry out immediate rescue and relief of the victims of gender based violence”. It further directed all district courts to follow Section 6 of the Domestic Violence Offence and Punishment Act, 2009 to provide interim protection orders to the victims where appropriate.¹⁸¹

¹⁷² Id.

¹⁷³ 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).

¹⁷⁴ A Poudel, “Amid focus on Covid-19, pregnant women at risk of not getting care”, *The Kathmandu Post* (19 May 2021), available at: https://kathmandupost.com/health/2021/05/19/amid-focus-on-covid-19-pregnant-women-at-risk-of-not-getting-care?fbclid=IwAR1k_5WrWPqZht1dAxGDfCq8hd2lGh4jiYfUpRXV55jynaIGKT-WFjUAHko; Nepal Government, Ministry of Health and Population, COVID 19 Dash Board, *Official Website*, available at: <https://covid19.mohp.gov.np/>

¹⁷⁵ 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>.

¹⁷⁶ 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.

¹⁷⁷ 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>.

¹⁷⁸ A Aryal “Fears of a rise in cases of domestic violence due to the lockdown may have come to pass”, *The Kathmandu Post* (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>.

¹⁷⁹ Rastriya 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>.

¹⁸⁰ *Roshani Paudyal and others v. Office of Prime Minister and Council of Ministers et al.* Writ No 076-WO-0962.

¹⁸¹ The Domestic Violence (Offence and Punishment) Act, 2009, Section 6 **Interim protection order may be granted:** (1) If the Court has reason to believe, on the basis of preliminary investigation of the complaint that the Victim needs to be given immediate protection, it may, till the time the final decision on the complaint is made...

7. 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.¹⁸²

According to the Prison Management Department, 71 prisons throughout the country accommodate more than 21,000 detainees and prisoners.¹⁸³ Many of these prisons are overcrowded.¹⁸⁴ The Department of Prison Management on 20 March 2020 issued a notice to the prisons throughout the country requiring precautions including the distribution of PPE sets, thermal guns, masks and gloves in the prisons¹⁸⁵ and restrictions on access to outside visitors.¹⁸⁶ In late April 2020, 430 prisoners held for minor charges across the nation¹⁸⁷ were released in accordance with a Directive of the Supreme Court.¹⁸⁸ A press release of the Supreme Court noted that:

"As per the request from the office of Attorney General,¹⁸⁹ 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, 2017¹⁹⁰ regarding payment of fines in lieu of imprisonment".¹⁹¹

¹⁸² 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-unaid-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.

¹⁸³ 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.

¹⁸⁴ Id; BSharma, "Nepal struggling to protect its inmates from Covid-19" *The Record* (14 August 2020), available at: <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 at: <https://kathmandupost.com/national/2020/10/07/overcrowded-prisons-pose-challenge-for-keeping-inmates-safe>.

¹⁸⁵ 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>

¹⁸⁶ 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%20niventran%20sambandhama%20077-03-10.jpeg>

¹⁸⁷ 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%20bibaran.jpeg>

¹⁸⁸ 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>

¹⁸⁹ 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/oaq-post/1759>.

¹⁹⁰ 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".

¹⁹¹ 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->

Reports in August 2020 revealed the situation of overcrowding to be continuing.¹⁹² In an order issued in August 2020 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"¹⁹³ 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)".¹⁹⁴ Despite the Court's significant interventions, prisoners continued to remain highly vulnerable to COVID-19 transmission. In September 2020, 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".¹⁹⁵ For example, the Central Jail at Sundhara, with 91 confirmed COVID-19 cases, accommodates more than 3000 prisoners although its capacity is only 1800.¹⁹⁶

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 authorities refused to release all children depending on the nature of their offences.¹⁹⁷ There were reports suggesting that medical facilities in correctional homes had worsened after the pandemic. Regular check-ups have been ceased as health workers do not visit the homes amid coronavirus fears.¹⁹⁸

In early September 2020 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".¹⁹⁹

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".²⁰⁰ The Commission called on the

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

¹⁹³ 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.

¹⁹⁴ Id.

¹⁹⁵ 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/>.

¹⁹⁶ Id.

¹⁹⁷ 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-it-s-effect-on-juvenile-justice-system-in-nepal.pdf>.

¹⁹⁸ Ibid.

¹⁹⁹ 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/>.

²⁰⁰ 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.

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."²⁰¹ 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."²⁰²

Despite the court orders and the Commission's recommendations, prisons in different parts of the country continued to be overcrowded increasing the risk of transmission during the second wave in 2021.²⁰³ The Department of Prisons has again failed to take measures in containing the virus. In a February 2021 global report on COVID-19 and prisons around the world, Amnesty International highlighted that Nepal was among the countries which had failed in providing "fair treatment to the prisoners during pandemic".²⁰⁴

8. Allegations of Corruption and misuse of resources

In March 2020, the Government established the "Corona Infection Prevention, Control and Treatment Fund" in order to mobilize resources to combat COVID-19.²⁰⁵

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.²⁰⁶ Early reports indicated that the contract was awarded "through a controversial process, ignoring the Chinese government's offer of free supplies".²⁰⁷ The contract was subsequently cancelled.²⁰⁸

In June 2020 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.²⁰⁹ This echoed an estimate provided in a report of the Ministry of

²⁰¹ Id.

²⁰² National Human Rights Commission, "Recommendations of Commission regarding implementation of Prison Monitoring Report" *Press Note* (19 October 2020), available at:

https://www.nhrconepal.org/nhrc_new/doc/newsletter/NHRC_NepalPress_Note_2077_7_3_compressed.pdf

²⁰³ Himalayan News Service, "Siraha prison to quarantine new inmates for 15 days", *The Himalayan Times* (06 May 2021), available at: <https://thehimalayantimes.com/nepal/siraha-prison-to-quarantine-new-inmates-for-15-days>; Himalayan News Service, "Virus spreads among jailbirds in Bajura", *The Himalayan Times* (04 May 2021), available at:

<https://thehimalayantimes.com/nepal/virus-spreads-among-jailbirds-in-bajura>; Rastriya Samachar Samiti, "Lamjung jail bursting at the seams, inmates rue poor hygiene", *The Himalayan Times* (22 February 2021) available at: <https://thehimalayantimes.com/nepal/lamjung-jail-bursting-at-the-seams-inmates-rue-poor-hygiene>

²⁰⁴ Amnesty International, "Forgotten Behind Bars Covid-19 And Prisons", (March 2021), available at:

https://www.amnesty.at/media/8226/amnesty_forgotten-behind-bars_covid-19-in-prisons_maerz-2021.pdf

²⁰⁵ 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/>.

²⁰⁶ 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/>

²⁰⁷ 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>.

²⁰⁸ 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/>.

²⁰⁹ 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

Health and Population in May.²¹⁰ 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.²¹¹

In the early stages of the pandemic, the unavailability of COVID-19 testing kits resulted in laboratories having to halt testing in May.²¹² 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.²¹³ The Government was reported to have initially bought inadequate testing kits at inflated prices at the early stages of the pandemic.²¹⁴

In late June 2021 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.²¹⁵ The National Human Rights Commission has repeatedly requested the Nepal government improve testing.²¹⁶ 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".²¹⁷

The Government failed to take adequate measures to investigate these allegations of corruption highlighted in the first wave of the pandemic. The authorities appear to have persisted in this dereliction during the second wave of the pandemic. Media sources have reported, for example, that a private company working closely with PM Oli had hindered the purchase of vaccines from India in May 2021 due its demand for a 10% commission on vaccines purchased by the government.²¹⁸ Despite the former Minister of Health and Population, Hridayesh Tripathi stating publicly that "middlemen" were to blame for the delay in acquiring the five million doses of vaccine from the Serum Institute,²¹⁹ no investigation appears to have been carried out.

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.

²¹⁰ 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.

²¹¹ 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/>.

²¹² 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>.

²¹³ Id.

²¹⁴ 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/>.

²¹⁵ Id.

²¹⁶ 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; Nepal Human Rights Comiasasion, "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/

²¹⁷ Id.

²¹⁸ S R Subedi, "How Hukam derailed Nepal's vaccine procurement: a story of power, greed and commission" *Republica* (06 May 2021), available at : <https://myrepublica.nagariknetwork.com/news/how-hukum-enterprises-derailed-nepal-s-vaccine-procurement-a-story-of-power-greed-and-commission/>; P M Shrestha, "Nepal wanted to buy millions of jabs. Here's how it failed", *The Himalayan Times* (08 May 2021), available at: <https://kathmandupost.com/health/2021/05/08/nepal-wanted-to-buy-millions-of-jabs-here-s-how-it-failed>

9. Access to COVID-19 vaccines

As of 23 August 2021 Nepal has received 13,227,590 doses of vaccines.²²⁰ At the time of writing only 13% of Nepal, just over 4 million people have been fully vaccinated against COVID-19 vaccine.²²¹ This falls short of the former government's target to vaccinate up to 72% of its population (30 million people).²²² The Common Minimum Program of the new coalition government states that it aims to "vaccinate one-third of total population by mid October and all by mid-April next year", targets which at the current rate of vaccination Nepal is likely to miss by a considerable margin.²²³

Equitable vaccine access is required as a component of the rights to health, life and equal benefit from scientific progress, as the ICJ has detailed in its report *The Unvaccinated Equality not Charity in Southern Africa*²²⁴ and a subsequent report on COVID-19 vaccine access in Colombia.²²⁵ Nepal faces similar and significant challenges that are limiting "equitable and timely access to COVID-19 vaccines". In this regard a number of issues are worth noting.

First, Nepal initiated its national COVID-19 vaccine campaign guided by WHO's National Deployment and Vaccination Plan (NDVP),²²⁶ but the government has failed to publish a comprehensive plan for vaccination acquisition and rollout. It publicized a schedule for the first and second doses of COVID-19 vaccines.²²⁷ Based upon the NDVP, health and social sector frontliners were to have been a first priority group followed by people over 65 years and then those between 54 years and 64 years.²²⁸ However, the government has not followed this schedule, apparently due to uncertainty regarding the availability of vaccines.²²⁹ As a result the government has failed to provide the necessary second dose of the COVID-19

²²⁰ S Dhungana & A Poudel, "All you need to know about Nepal's vaccination status", *The Kathmandu Post* (24 August 2021), available at: <https://kathmandupost.com/health/2021/08/24/all-you-need-to-know-about-nepal-s-vaccination-status-1629811950> Under COVAX facility - AstraZeneca (COVISHIELD) vaccine: 348,000; J&J/Janssen vaccine (donated by USA): 1,534,850 & AstraZeneca (AZD1222) vaccine** (donated by Japan): 1,614,740, COVISHIELD vaccine : 1 million purchased (India), Vero Cell vaccine : 1.8 million (donated by China), 10 million purchased, (5.6 million delivered), Astrazeneca vaccine: 230,000 (donated by Bhutan)

²²¹ Our World in Data, "Coronavirus (COVID -19) Vaccinations", (02 December 2021 to 28 June 2021), available at: https://ourworldindata.org/explorers/coronavirus-dataexplorer?zoomToSelection=true&pickerSort=asc&pickerMetric=total_vaccinations&Metric=People+vaccinated&Interval=Cumulative&Relative+to+Population=true&Align+outbreaks=false&country=~NPL

²²² WHO, "Nepal story on COVID-19 vaccine deployment: a good start", *Country Story*, available at: <https://www.who.int/about/accountability/results/who-results-report-2020-mtr/country-story/2020/nepal-story-on-covid-19-vaccine-deployment-a-good-start>

²²³ Coalition Government, "Common Minimum Program of the new coalition government", Point 2 Policies and Programs of coalition Government Freedom from the Catastrophe resulting from COVID 19 (08 August 2021) available at : <https://drive.google.com/file/d/1QNNRrXZ-PwLXKbCtu9u2Tb4J9tjUNiAwH/view>

²²⁴ ICJ, "The Unvaccinated Equality not Charity in Southern Africa", Briefing Paper (May 2021), available at: <https://www.icj.org/wp-content/uploads/2021/05/Africa-The-Unvaccinated-Publications-Reports-2021-ENG.pdf>

²²⁵ ICJ "Maximum Disclosure: Secrecy in COVID-19 Vaccine Contracts and Other Shortcomings of Colombia's Vaccine Rollout" (July 2021), available at: <https://www.icj.org/wp-content/uploads/2021/08/Columbia-Vaccine-Briefing-Paper-ENG-2021.pdf>.

²²⁶ Government of Nepal, Ministry of Health and Population, "Nepal Covid-19 Emergency Response And Health Systems Preparedness Project", available at : <https://mohp.gov.np/attachments/article/699/ACFrOgCV3tn.pdf>

²²⁷ Incident Command System, Decision regarding the vaccination campaign against COVID by the meeting of ICS chaired by State Minister for Health and Population dated (17 March 2021) Nepali version, available at : <https://kathmandu.gov.np/notice/%e0%a4%95%e0%a5%8b%e0%a4%ad%e0%a4%bf%e0%a4%af%e0%a4%be%e0%a4%a8-%e0%a5%a7%e0%a5%af-%e0%a4%96%e0%a5%8b%e0%a4%aa-%e0%a4%85%e0%a4%ad%e0%a4%bf%e0%a4%af%e0%a4%be%e0%a4%a8-%e0%a4%b8%e0%a4%ae%e0%a5%8d%e0%a4%ac%e0%a4%a8/>

²²⁸ Ibid; WHO, "Nepal story on COVID 19 vaccine deployment: a good start", Nepal story, available at : <https://www.who.int/about/accountability/results/who-results-report-2020-mtr/country-story/2020/nepal-story-on-covid-19-vaccine-deployment-a-good-start>

²²⁹ BP Aryal, "Uncertainty over second dose of COVID-19 vaccine worries 1.5 million Nepalis", *Republica* (01 April 2021), available: <https://myrepublica.nagariknetwork.com/news/uncertainty-over-second-dose-of-covid-19-vaccine-worries-1-5-million-nepalis/>

vaccine to the 1.3 million older persons in a timely fashion in accordance with best public health advice and practice for the effectiveness of the vaccines.²³⁰

Nepal also concluded an agreement with the Serum Institute of India for the purchase of two million doses of the AstraZeneca vaccine. However, leading up to rise of COVID-19 transmission in India, the export restrictions places on vaccines in India significantly delayed vaccine deliveries from India, including to Nepal.²³¹ To date the Serum Institute has supplied Nepal with only one million of these doses,²³² despite initial agreement to deliver all the doses by the end of February 2021.²³³ In part as a result of these delays, Nepal ran out of vaccine supply and the government had to halt the inoculation campaign from early March 2021 to early April 2021.²³⁴ Cognizant of this delay, the Supreme Court made an interim order instructing the government to "make a fast supply"²³⁵ of the COVID-19 vaccine.

Secondly, allegations have emerged of undue favoritism in the provision of vaccines during the inoculation process. According to various media reports, for example, some of the vaccines allocated for older persons were instead used to inoculate political party leaders, local level representatives, army personnel, their family and friends, administrators, businessmen's families and their relatives.²³⁶ Vaccines were also reported to have been made inappropriately available in hotels²³⁷ and lunch houses,²³⁸ rather than in designated health facilities, in certain parts of the country. While monitoring different vaccine centers in the country, the National Human Rights Commission also observed "disputes and obstruction

²³⁰ THT Online, "Senior citizens awaiting second dose of AstraZeneca COVISHIELD to be inoculated from August 9", *The Himalaya Times Online* (06 August 2021), available at: <https://thehimalayantimes.com/nepal/senior-citizens-awaiting-second-dose-of-astrazeneca-covishield-to-be-inoculated-from-august-9>. Nepal had problems in securing timely access to vaccines. In respect of the COVAX facility, Nepal was reportedly supposed to have received 1.92 million vaccines by May 2021; UNICEF, "Nepal among the first countries in Asia to receive COVID-19 vaccines from COVAX Facility", *Press Release* (07 March 2021), available at: <https://www.unicef.org/nepal/press-releases/nepal-among-first-countries-asia-receive-covid-19-vaccines-covax-facility>; Gavi, "Nepal COVAX vaccine roll-out news" Official Website, available at: <https://www.gavi.org/covax-vaccine-roll-out/nepal>; THT Online, "Nepal begins inoculation of single-shot J&J vaccine starting today", *The Himalayan Times Online* (19 July 2021), available at: <https://thehimalayantimes.com/nepal/nepal-begins-inoculation-of-single-shot-jj-vaccine-starting-today>

²³¹ A Prabhala, L Menghaney, "The world's poorest countries are at India's mercy for vaccines. It's unsustainable" (2 April 2021), *Guardian*, available at: <https://www.theguardian.com/commentisfree/2021/apr/02/india-in-charge-of-developing-world-covid-vaccinesupply-unsustainable>

²³² A Sijapati, "Anger grows in Nepal over Covid vaccine delays", *NepaliTimes* (18 June 2021), available at: <https://www.nepalitimes.com/banner/anger-grows-in-nepal-over-covid-vaccine-delays/>

²³³ S R Neupane, "As Nepal struggles to continue vaccine drive, India denies export restrictions", *The Kathmandu Post* (03 April 2021), available at: <https://kathmandupost.com/national/2021/04/03/as-nepal-struggles-to-continue-vaccination-india-says-exports-not-restricted>

²³⁴ S R Neupane, "As Nepal struggles to continue vaccine drive, India denies export restrictions", *The Kathmandu Post* (03 April 2021), available at: <https://kathmandupost.com/national/2021/04/03/as-nepal-struggles-to-continue-vaccination-india-says-exports-not-restricted>

²³⁵ *Kamala Rai Timalsena v. Prime Minister*, Supreme Court of Nepal, Writ No.077-WO-01118 (18 May 2021)

²³⁶ A Poudel, "Centres run out of jabs once again as recipients are those other than from target groups", *The Kathmandu Post* (21 July 2021), available at: <https://kathmandupost.com/health/2021/07/21/centres-run-out-of-jabs-once-again-as-recipients-are-those-other-than-from-target-groups?fbclid=IwAR2B7LwTczff02SPjc8e8veP1eQRcZ9LyZy1L5AM8uo7tsDdviwlHQzPRo8>; *Image Khabar*, "300,000 doses of vaccine missing, fears of irregularities", *Imagekhabar.com* (20 July 2021) Nepali version, available at: https://www.imagekhabar.com/news/240983?fbclid=IwAR3yqKqC0rr7GZQEdmm6L110MpIaDLMeVc7ZsUPTkq_1XkGA-QEZlvYJYnk; WHO, "Focused COVID-19 Media Monitoring , Nepal", (16 June 2021), available at: https://reliefweb.int/sites/reliefweb.int/files/resources/Focused%20COVID19_Media%20Monitoring_June%2016%2C%202021.pdf As per the report, The Family Welfare Division said that there had been misuse of vaccine by public representatives and individuals from district COVID-19 vaccination committee where vaccines were used based upon "their approach". p 4-5 Editorial, "Khop ma Pahuchwala ko Rajai Roka", *Onlinekhabar.com* (14 June 2021), available at: <https://www.onlinekhabar.com/2021/06/969519>;

²³⁷ P Portel, "Two hundred doses of vaccine recovered from the hotel", *ekantipur* (30 July 2021) Nepali version, available at: https://ekantipur.com/pradesh1/2021/07/30/162764971738834894.html?fbclid=IwAR3yqKqC0rr7GZQEdmm6L110MpIaDLMeVc7ZsUPTkq_1XkGA-QEZlvYJYnk

²³⁸ B Pandey, "Vaccine in Lunch Houses", *Setopati.com* (23 July 2021), Nepali version, available at: https://www.setopati.com/social/244095?fbclid=IwAR3ehf6VbHUbBpG8FLkQfcbiqlt_qMI1vt48adISqls4L8O-hH7LDyMrRwA

as people other than the target group were being vaccinated".²³⁹ The Commission therefore urged the government "to manage inoculation, to prioritize vaccination of communities at risk and ensure access to vaccin[ation] of the target groups".²⁴⁰

As the majority of population has remained unvaccinated, on 14 June 2021 the government decided to purchase a further four million doses of the Sinopharm vaccine.²⁴¹ The price of this vaccine was not disclosed, but was reported in media accounts to be around \$10 for two doses. If those reports are accurate, this expenditure would be considerably greater than for the AstraZeneca vaccine that Nepal bought for \$4 per dose.²⁴²

The government also failed to publicize the number of vaccines to be purchased or the price it will pay per vaccine. Based upon this NDA, Nepal bought four million vaccines from Sinopharm in June, 2021 and additional 6 million doses in early August 2021.²⁴³ According to media reports the government is seeking to secure funds from the Asian Development Bank for the procurement of six million additional vaccines from China.²⁴⁴

In addition to the prices charged, the agreement with Sinopharm was based on the signing of non-disclosure agreements (NDAs), drawing the public concern.²⁴⁵ Although the Public Procurement Act aims to make procurement "open, transparent, objective and reliable,"²⁴⁶ the Act does not contain a specific provision allowing for non-disclosure agreements between the government and private contractors which necessarily inhibit the Act's core objectives. Even the newly adopted COVID-19 Crisis Management Ordinance (CMO) does not provide for non-disclosure agreements in public procurement. However, despite the apparent lack of a legal basis to do so the Nepal government has signed NDAs with pharmaceutical companies for the purchase of COVID-19 vaccines. The ICJ fears that this may have been undertaken pursuant to a vague provision of the CMO that appears to provide the government with the power to carry out vaccine purchases (and other products needed to treat, prevent, diagnose and control COVID-19) without complying with any prevailing legal requirements.²⁴⁷

²³⁹ National Human Rights Commission, "Commission's letter to the Government of Nepal to ensure access of the target group to the vaccine against COVID-19", *Press Release* (14 June 2021) Nepali version, available at https://www.nhrcnepal.org/nhrc_new/doc/newsletter/NHRC%20Nepal%20Press%20Release-2078-2-31.pdf

²⁴⁰ National Human Rights Commission, "Commission's letter to the Government of Nepal to ensure access of the target group to the vaccine against COVID-19", *Press Release* (14 June 2021) Nepali version, available at https://www.nhrcnepal.org/nhrc_new/doc/newsletter/NHRC%20Nepal%20Press%20Release-2078-2-31.pdf

²⁴¹ A Giri, "Nepal to purchase 4 million doses of Sinopharm vaccine from China", *The Kathmandu Post* (16 June 2021), available: <https://kathmandupost.com/national/2021/06/16/nepal-to-purchase-4-million-doses-of-sinopharm-vaccine-from-china>

²⁴² *ibid*

²⁴³ A Poudel, "Government to purchase additional 6 million doses of Vero Cell vaccine", *54`* (22 August 2021), available at: <https://kathmandupost.com/health/2021/08/22/government-to-purchase-additional-6-million-doses-of-vero-cell-vaccine>

²⁴⁴ *ibid*

²⁴⁵ PM Shrestha, "Nepal signs non-disclosure agreement to buy Chinese Covid-19 vaccines but legal questions remain", *The Kathmandu Post* (06 June 2021), available at: <https://kathmandupost.com/national/2021/06/06/nepal-signs-non-disclosure-agreement-to-buy-chinese-covid-19-vaccines-but-legal-questions-remain>

²⁴⁶ Preamble of The Public Procurement Act, 2007

²⁴⁷ The COVID-19 Crisis Management Ordinance 2021 section reads:

"26 Purchase Process:

(1) Notwithstanding anything contained in the purchase related prevailing law, if there may be hurdle in prevention, control, diagnosis and treatment of Covid-19 or chance of risk in human life while following process as referred to in prevailing law, the immediately required medicine, oxygen, health materials, equipment or vaccine may be purchased directly from manufacturer, distributor, authorized dealer or international organization;

...

(10) Notwithstanding anything contained in the prevailing law, in case of purchase pursuant to this ordinance for prevention, control, diagnosis and treatment of Covid-19, no question can be raised as the purchase is not done pursuant to the prevailing law." (Emphasis Added)

Non-disclosure of the terms raises serious human rights concerns and should not be entered into lightly. As the UN CESCR has indicated, "intellectual property is a social product and has a social function and consequently, States parties have a duty to prevent unreasonably high costs for access to essential medicines...".²⁴⁸ COVID-19 vaccines are widely regarded as a public good. Article 27 of the Constitution of Nepal guarantees right to information based upon which there is a right "to demand and receive information on any matter of his or her interest or of public interest". The issue of COVID-19 vaccine procurement as the part of public health responses to COVID-19 is clearly a matter of public interest covered by the Right to Information Act.²⁴⁹ While the Act does designate that certain categories of subject matter "shall not be disseminated", information pertaining to vaccine procurement does not fall within such subject matters²⁵⁰ in terms of the Act. There is therefore a right to access the information held by the public bodies regarding COVID-19 vaccine procurement, including contracts with between the government and pharmaceutical companies.²⁵¹

NDA, and in particular blanket NDAs, deny the right of all people to access to information on the matters of public concern and prevent transparency in state functioning. Such transparency is generally critical to the proper functioning of constitutional democracy but is of even more pressing concern during a pandemic.²⁵² Similar issues of transparency were raised in Colombia in a case in which an NGO challenged the government's refusal, citing just such NDAs, to publicize its contracts with pharmaceutical companies relating to COVID-19 vaccines. In this case, the Administrative Tribunal highlighted the need for disclosure of these contracts in order to protect the "right to information" and ensure "maximum disclosure" in procurement processes in the public interest.²⁵³ It therefore ordered the government to make its contracts with pharmaceutical companies relating to COVID-19 vaccines public.

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

²⁴⁸ Committee on Economic, Social and Cultural Rights, General comment No. 25 (2020) on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights) (30 April 2020), para 62

²⁴⁹ Section 2(e) of Right to Information Act 2007 defines the "right to information" as:

"the right to ask for and obtain information of public importance held in the Public Bodies and this term shall also include the right to study or observation of any written document, material held in Public Body or proceedings of such Public Body; to obtain a verified copy of such document, to visit or observe the place where any construction of public importance is going on and to obtain verified sample of any material or to obtain information held in any type of machine through such machine." Section 3 (2) indicates that the right includes a right to have "have access to the information held in the public Bodies".

An English version of the Act is available here: : <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/right-to-information-act-2064-2007.pdf>

²⁵⁰ In terms of Section 3 (3) of Right to Information Act 2007, such information that shall not be disseminated includes information:

- "(a) which seriously jeopardizes the sovereignty, integrity, national security, public peace, stability and international relations of Nepal.
- (b) which directly affects the investigation, inquiry and prosecution of a crime.
- (c) which seriously affects on the protection of economic, trade or monetary interest or intellectual property or banking or trade privacy.
- (d) which directly jeopardizes the harmonious relationship subsisted among various cast or communities.
- (e) which interferes on individual privacy and security of body, life, property or health of a person."

²⁵¹ Section 3 (2) of Right to Information Act 2007, available at : <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/right-to-information-act-2064-2007.pdf>

²⁵² ICJ "Maximum Disclosure: Secrecy in COVID-19 Vaccine Contracts and Other Shortcomings of Colombia's Vaccine Rollout" (July 2021), available at: <https://www.icj.org/wp-content/uploads/2021/08/Columbia-Vaccine-Briefing-Paper-ENG-2021.pdf>.

²⁵³ ICJ "Maximum Disclosure: Secrecy in COVID-19 Vaccine Contracts and Other Shortcomings of Colombia's Vaccine Rollout" (July 2021), available at: <https://www.icj.org/wp-content/uploads/2021/08/Columbia-Vaccine-Briefing-Paper-ENG-2021.pdf>.

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.²⁵⁴

The right to health is protected in a number of international human rights treaties.²⁵⁵ 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.²⁵⁶ 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.²⁵⁷ 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.²⁵⁸

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."²⁵⁹

²⁵⁴ 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>.

²⁵⁵ 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.

²⁵⁶ ICESCR, Article 12(1).

²⁵⁷ 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 the International Covenant on Economic, Social and Cultural Rights) E/C.12/2000/4 (11 August 2000) ("General Comment 14").

²⁵⁸ 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/>.

²⁵⁹ 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

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”.²⁶⁰

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.²⁶¹ 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.²⁶² 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”.²⁶³

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”.²⁶⁴

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.

Importantly, the provision of equitable vaccine access falls within in the minimum core obligations of States to provide access to healthcare services and is therefore immediately realizable.²⁶⁵

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.

²⁶⁰ 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, para 10.

²⁶¹ 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.”

²⁶² Id paras 14 and 25.

²⁶³ Id para 14.

²⁶⁴ Id, para 13. Emphasis added.

²⁶⁵ ICJ, “The Unvaccinated Equality not Charity in Southern Africa”, *Briefing Paper* (May 2021), available at: <https://www.icj.org/wp-content/uploads/2021/05/Africa-The-Unvaccinated-Publications-Reports-2021-ENG.pdf>

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.

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”²⁶⁶ and “ensure easy, convenient and equal access of all to quality health services”.²⁶⁷

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.²⁶⁸

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.²⁶⁹ 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”.²⁷⁰

10-11.

²⁶⁶ Article 51(h) (5) of the Constitution of Nepal, 2015.

²⁶⁷ Article 51(h) (6) of the Constitution of Nepal, 2015.

²⁶⁸ International Commission of Jurists, “Nepal’s Draft Constitution: Procedural And Substantive Concerns” Briefing Paper (July 2015), p 41, available at: <https://www.ici.org/wp-content/uploads/2015/07/NEPAL-CONSTITUTION-ADVOCACY-ANALYSIS-BRIEFS-2015-ENG.pdf>.

²⁶⁹ General Comment 14, para 12(b).

²⁷⁰ Id, para 18.

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 the Infectious Disease Act, the Disaster Risk Reduction and Management Act and the Public Health Service Act.

The **Infectious Disease Act** confers upon the government "necessary powers" to "make necessary arrangements" to "root out or prevent any infectious disease".²⁷¹ The Act provides very little detail and allows for extremely broad powers. It was 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

The **Disaster Risk Reduction and Management Act** includes coverage of disasters relating to epidemic diseases in terms of section 2(d). 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"²⁷² and empowers the government to make such a declaration specify the geographic and temporal scope of the disaster by publication in the Nepal gazette.²⁷³ 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.²⁷⁴

The **Public Health Service 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".²⁷⁵ In interpreting section 3(4) C of the Public Health Act,²⁷⁶ 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".²⁷⁷

²⁷¹ Infectious Diseases Act of 1964, available at: <http://www.lawcommission.gov.np/en/archives/12240>.

²⁷² Disaster Risk Reduction and Management Act, 2017 Section 32.

²⁷³ Disaster Risk Reduction and Management Act, 2017 Section 32 (1).

²⁷⁴ 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=IwAR2JHkR00H2MfKvyArb7SJR0Ji-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.

²⁷⁵ The Public Health Service Act, 2075 (2018), Preamble,

²⁷⁶ Id, Section 3, 4.

²⁷⁷ *Dr Punya Prasad Khatiwada vs Prime Minister*, Supreme Court of Nepal, Writ No.076-WO-0958 (31 May 2020).

Section 4 of the Act requires every health institution, whether public or private, to “provide emergency health service[s]”.²⁷⁸ Section 49 also provides that both public and private health institutions must “make necessary arrangements for the treatment of [patients] with infectious disease[s]”.²⁷⁹ The Act obliges local government, with the “necessary support” from provincial government, to take measures to respond to such diseases.

Furthermore, section 49(7) of the Act provides that “other provisions relating to the prevention of infectious diseases shall be as prescribed”.²⁸⁰ In line with this, the government has made arrangements for the free treatment of COVID-19 in all State hospitals.²⁸¹ It has also concluded an agreement with some private hospitals regarding operation of COVID-19 Care Units to ensure they provide free COVID-19 related services. However, these hospitals can arrange for certain paid services for those prepared to pay for them.²⁸² In reality, allowing for hospitals to charge for COVID-19 related services has created the opportunity to exclude those who cannot afford payment. COVID-19 Care Units are overwhelmed with patients desperate to avoid waiting for treatment. Wealthy patients may be able to avoid waiting for treatment by opting to take paid services and so end up occupying the hospital beds prioritized for paying patients. As a result poor patients who cannot afford payment often have to wait for longer and sometimes do not gain access to COVID-19 related services they need at all.

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, during the first wave and in the beginning of the second wave, 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 have 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 2020, the Supreme Court recognized that the COVID-19 pandemic had had²⁸³ “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*”.²⁸⁴ 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”.

²⁷⁸ 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”.

²⁷⁹ Id, s 49(6) read with definition of health institution.

²⁸⁰ 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.

²⁸¹ Nepal Government, Ministry of Health and Population, MoU_with_Hospitals_updated_List, *Official Notice* (18 June 2021), available at: https://mohp.gov.np/attachments/article/745/MoU_with_Hospitals_updated_List.pdf

²⁸² *ibid*

²⁸³ *Advocate Roshani Paudyal & Advocate Saroj Raj Ghimire vs Prime Ministers & etal*, Supreme Court of Nepal, Writ No.076-WO-0962(5 August 2020).

²⁸⁴ 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.

A similar order was handed down by the Supreme Court in response to a writ in May 2021. The Court ordered government to formulate a detailed "Plan of Action" for COVID prevention and treatment.²⁸⁵ Following this, the President issued The COVID-19 Crisis Management Ordinance 2078 (2021) described above, which may be interpreted, in part, as a response to the orders handed down by the Supreme Court.

The CMO is aimed at creating an integrated treatment system for COVID-19 under the Ministry of Health and Population.²⁸⁶ However, it has failed to incorporate the values of human rights to health, including special health care arrangement for high risks group, that the Court has indicated should have been considered in formulating a pandemic response law.²⁸⁷ Moreover, it has not incorporated a prioritization of access to health care for people from poor and geographically disadvantaged community.²⁸⁸ Furthermore, the Court in August 2020 had noted the need to plan for "prevention", "response" and "recovery" components to deal with COVID-19.²⁸⁹ Considering the increased maternal mortality in COVID-19 context as discussed above in section B (5), for example, the ordinance fails to address the access to the reproductive health services in such pandemic.

Most of the provisions in the ordinance aim at formation of technical and hierarchical governance structures. It does not even do this effectively or appropriately. For example, one of key mechanisms established under the Ordinance, for example, the COVID Crisis Management Center,²⁹⁰ consists of security forces and administrators. The representation of health crisis related experts on this structure is nominal.²⁹¹ The chief of the Center is politically appointed and there are no criteria (ie. qualifications, expertise or experience) set out that are required for appointment in this position.²⁹² Recently, the work of Center has been called into question after the appointment of the former general of Nepal Army to head it up. Health experts and retired bureaucrats have argued that for better performance the centre should be led by experts "not ministers or security personnel".²⁹³ Moreover, the provision regarding the purchase process in CMO discussed above, denies the right to information as appears to allow for "immediate purchase"²⁹⁴ without compliance with legal standards for government contracting.²⁹⁵

²⁸⁵ *Advocate Manish Kumar Shrestha vs. Prime Minister*, Supreme Court of Nepal, Writ No.077-WO-1115 (17 May 2021)

²⁸⁶ The COVID- 19 Crisis Management Ordinance 2021, Section 9. Unified Treatment System: (1) The central hospital shall establish and operate unified treatment system for treatment of Covid-19

²⁸⁷ *Advocate Roshani Paudyal & Advocate Saroj Raj Ghimire vs Prime Ministers & etal*, Supreme Court of Nepal, Writ No.076-WO-0962(5 August 2020)

²⁸⁸ Advocate Mandira Sharma & Advocate Karuna Parajuli , "Aaja ko Prathamik maanab adhikar: chunab ki swasthya?", Nepali version (translated Today's primary human rights: elections or health?), *Kantipur* (31 May 2021), available : <https://ekantipur.com/opinion/2021/05/31/162242690860982151.html>

²⁸⁹ *Advocate Roshani Paudyal & Advocate Saroj Raj Ghimire vs Prime Ministers & etal*, Supreme Court of Nepal, Writ No.076-WO-0962(5 August 2020)

²⁹⁰ The COVID- 19 Crisis Management Ordinance 2021, Section 13 (1)

²⁹¹ The COVID- 19 Crisis Management Ordinance 2021, Section 13 (1)

²⁹² The COVID- 19 Crisis Management Ordinance 2021, Section 13 (2)

²⁹³ Prithvi Man Shrestha, " Leadership of task force formed to fight the pandemic comes into question", *The Kathmandu Post* (05 June 2021), available <https://kathmandupost.com/national/2021/06/05/covid-19-fund-idle-even-as-pandemic-paralyses-nation>

²⁹⁴ The COVID-19 Crisis Management Ordinance 2021, Section 26 Purchase Process:

(1) Notwithstanding anything contained in the purchase related prevailing law, if there may be hurdle in prevention, control, diagnosis and treatment of Covid-19 or chance of risk in human life while following process as referred to in prevailing law, the immediately required medicine, oxygen, health materials, equipment or vaccine may be purchased directly from manufacturer, distributor, authorized dealer or international organization;

²⁹⁵ The COVID-19 Crisis Management Ordinance 2021, Section 26 (10) *Notwithstanding anything contained in the prevailing law, in case of purchase pursuant to this ordinance for prevention, control, diagnosis and treatment of Covid-19, no question can be raised as the purchase is not done pursuant to the prevailing law.*" (Emphasis Added)

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 Constitution²⁹⁶ 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".
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Similarly, in *Advocate Dal Bahadur Dhimi v Prime Minister*²⁹⁸ 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.²⁹⁹ Describing the constitutional right to health as a "basic human 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-19.³⁰⁰

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.³⁰¹ This trend has continued during the COVID-19 pandemic. The Government's failure to abide by the Supreme

²⁹⁶ 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".

²⁹⁷ Supreme Court of Nepal, Writ No. 070-WO-0577, (16 November 2017).

²⁹⁸ Supreme Court of Nepal, Writ No. 069-WO-0202, (28 June 2018) p 12,13 & 14.

²⁹⁹ 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/>

³⁰⁰ 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.

³⁰¹ 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>

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.³⁰²

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*³⁰³ 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*,³⁰⁴ 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 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*,³⁰⁵ 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 from entering 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*,³⁰⁶ 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.

³⁰² 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>

³⁰³ Supreme Court of Nepal, Writ No.076-WO-0933, (6 April 2020).

³⁰⁴ Supreme Court of Nepal, Writ No.076-WO-0934, (6 April 2020).

³⁰⁵ Supreme Court of Nepal, Writ No.076-WO-0932, (7 April 2020).

³⁰⁶ Supreme Court of Nepal, Writ No.076-WO-0935, (7 April 2020).

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 was required to "coordinate with respective countries diplomatic missions to repatriate those Nepalese home", failing which, it would have to:

"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*,³⁰⁷ 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 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*

³⁰⁷ Supreme Court of Nepal, Writ No.076-WO-0958, (31 May 2020).

In late June, in *Advocate Santosh Bhandari v Ministry of Health and Population*,³⁰⁸ the petitioner sought a declaration that the National Testing Guidelines for COVID-19³⁰⁹ 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".³¹⁰ 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.

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*,³¹¹ 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".³¹² 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)".³¹³ 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.³¹⁴

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

³⁰⁸ Supreme Court of Nepal, Writ No.076-WO-0973, (22 June 2020).

³⁰⁹ 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).

³¹⁰ Id.

³¹¹ Supreme Court of Nepal, Writ No. 076-WO-0939, (03 August 2020).

³¹² *Gopal Shiwakoti (Chintan) et al vs Prime Minister & Cabinet of Ministry & et al*, Supreme Court of Nepal, Writ No. 076-WO-0939, (03 August 2020).

³¹³ Id.

³¹⁴ Id.

In *Advocate Roshani Paudyal & Advocate Saroj Raj Ghimire*, 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.³¹⁵ 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,³¹⁶ 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 from the State, and no one shall be deprived of emergency health services."³¹⁷

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".³¹⁸ 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."³¹⁹

viii. **Provision of oxygen, basic medicine and treatment for COVID-19:** *Advocate Manish Kumar Shrestha v Prime Minister*³²⁰ and *Kritinath Sharma Paudel v Prime Minister*³²¹

³¹⁵ *Advocate Roshani Paudyal & Advocate Saroj Raj Ghimire vs Prime Ministers & etal*, Supreme Court of Nepal, Writ No.076-WO-0962, (05 August 2020).

³¹⁶ 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".

³¹⁷ Supreme Court of Nepal, Writ No. 077-WO-0130, (03 August 2020).

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ Supreme Court of Nepal, Writ No.077-WO-1115 (17 May 2021)

³²¹ Supreme Court of Nepal, Writ No. 077-WO-01120 (18 May 2021)

As COVID-19 transmission surged in May 2021, Nepal recorded more than 9,000 infections in a single day. Hospitals throughout the country ran out of oxygen supply, hospital beds, ICU capacity, ventilators and basic medicines necessary for treating COVID-19 effectively. As a result, many patients needing treatment were turned away from hospitals. Amidst these conditions, Advocate Manish Kumar Shrestha filed a petition arguing that people in Nepal have a constitutionally protected right to health as a fundamental right and that therefore the state has an obligation to protect the right to health and life by ensuring access to oxygen, basic medicines and other medical treatment for all people.

The Court found that the "protection of the public's life is the primary obligation of the state. The death of a citizen due to a lack of health care means that the state is not sensitive towards its obligation of saving the life of its citizens". It further noted that:

"the commitment Nepal has made being the state party to various international treaties, and domestic obligations based upon the constitution of Nepal and other prevailing laws, the government cannot be relieved from its responsibility to safeguard life under any pretext, including lack of resources". Additionally, the court ordered the government to "formulate a clear implementable and detailed Plan of Action for control and treatment of COVID-19."

The following day, in *Kritinath Sharma Paudel v Prime Minister*, the Supreme Court noted that "in the second wave of COVID-19 pandemic, the general public have been complaining about being deprived of their constitutionally guaranteed health related sensitive services". Therefore, it directed the government to "make an effective arrangement for oxygen supply and implement order delivered from SC on the case of Advocate Manish Kumar Shrestha v Prime Minister".

- ix. **ix. Timely vaccination against COVID 19:** *Advocate Manish Kumar Shrestha v Prime Minister*,³²² *Kritinath Sharma Paudel v Prime Minister*³²³ and *Kamala Rai Timalsena & etal v Prime Minister*³²⁴

Considering the delays in Nepal's vaccination rollout, in a separate petition brought by Advocate Manish Kumar Shrestha on 17 May 2021, the Supreme Court ordered that:

"to ensure that all citizens get a chance to be vaccinated against COVID-19 gradually and that those vaccinated with a first dose in the first phase get a chance to be vaccinated with a second dose in the second phase within the stipulated time".

This directive was further reinforced in *Kritinath Sharma Paudel v Prime Minister*,³²⁵ where the Court noted the government's ineffectiveness in the COVID-19 vaccination rollout, and issued an order requiring the "immunization of those who have yet to be vaccinated by making necessary arrangements without any delay".

³²² Supreme Court of Nepal, Writ No.077-WO-1115 (17 May 2021)

³²³ Supreme Court of Nepal, Writ No. 077-WO-01120, (18 May 2021)

³²⁴ Supreme Court of Nepal, Writ No. 077-WO-01118, (18 May 2021)

³²⁵ *Kritinath Sharma Paudel v Prime Minister*, Supreme Court of Nepal, Writ No. 077-WO-01120, (18 May 2021)

Unfortunately these two orders, handed down on consecutive days, appear to be contradictory in their treatment of the nature of the government's obligations in the wake of direct and immediate threats to life as a consequence of COVID-19. The first order (pertaining to oxygen supply) requires government action in terms of the right to health "progressively"³²⁶. In the second order (relating to vaccines), the Court found that carrying out the vaccinations should occur immediately, "without any delay".³²⁷ In terms of international human rights law, both the obligation to expeditiously provide for vaccines and the obligation to provide lifesaving oxygen supply should be considered obligations of immediate effect.³²⁸

Moreover, in the case filed by Kamala Rai Timalaena, the Court noted the delays in acquiring the Covishield vaccine and ordered that government "make effective arrangements for provision of a first dose to those who have not been vaccinated and a second dose who have received the first vaccines through fast supply of vaccines".³²⁹

In sum, the Supreme Court Jurisprudence has established the following obligations to be immediately incumbent on the responsible executive authorities:³³⁰

- Identify all returnees to Nepal and make provision for their accommodation in quarantine facilities meeting WHO standards and guidelines;³³¹
- Ensure that private hospitals operating and provide COVID-19 and non-COVID-19 services while also providing a safe working environment for health workers;³³²
- 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;³³³
- Ensure that emergency medical services for non-COVID health issues are not obstructed;³³⁴
- Take necessary measures to ensure the provision of food and health services to Nepalese citizens living under lockdown anywhere in the world;³³⁵
- Make arrangements for the provision to health workers of adequate PPE, medical objects and instruments necessary for treating COVID-19 free of charge;³³⁶

³²⁶ *Advocate Manish Kumar Shrestha v Prime Minister*, Supreme Court of Nepal, Writ No.077-WO-1115 (17 May 2021)

³²⁷ *Kritinath Sharma Paudel v Prime Minister*, Supreme Court of Nepal, Writ No. 077-WO-01120, (18 May 2021)

³²⁸ CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) (11 August 2000) , available at: <https://www.refworld.org/pdfid/4538838d0.pdf>, paras 43-44.

³²⁹ *Kamala Rai Timalaena & etal v Prime Minister*, Supreme Court of Nepal, Writ No. 077-WO-01118, (18 May 2021)

³³⁰ 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.

³³¹ *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).

³³² Id.

³³³ 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).

³³⁴ Id.

³³⁵ *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).

³³⁶ *Dr Punya Prasad Khatiwada v Prime Minister* Supreme Court of Nepal, Writ No.076-WO-0958, (31 May 2020).

- Take necessary measures to ensure protection of health and sanitation in prisons, including by making provision for isolation/medical facilities;³³⁷
- Take necessary measures to ensure protection of the rights to health and sanitation of those in prisons, including by making provision for isolation/medical facilities and look for alternative ways of penalizing offenders that do not require imprisonment.³³⁸
- Make special arrangements for pregnant women and their new born babies by making provisions for regular check-ups and vaccinations during lockdown periods.³³⁹
- Provide for oxygen supply, basic medicines and treatments for COVID-19 so as to minimize the risk of death and severe illness from COVID-19 due to the absence of necessary health care services.³⁴⁰
- Make effective arrangements and plans for COVID-19 vaccination rollout through early acquisition, supply and rollout of vaccines without delay.³⁴¹

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 should make changes to CMO to effect the following:
 - clarify the legal basis for declaring COVID-19 health emergency;
 - incorporate the directives laid down by the Court in formulating a pandemic regulations;

³³⁷ 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).

³³⁸ *Gopal Shiwakoti Chintan v Prime Minister* Supreme Court of Nepal, Writ No. 076-WO-0939, (03 August 2020).

³³⁹ *Advocate Roshani Paudyal & Advocate Saroj Raj Ghimire vs Prime Ministers & etal*, Supreme Court of Nepal, Writ No.076-WO-0962, (05 August 2020).

³⁴⁰ *Advocate Manish Kumar Shrestha v Prime Minister*, Supreme Court of Nepal, Writ No. 077-WO-1115, (18 May 2021) ; *Kritinath Sharma Paudel v Prime Minister*, Supreme Court of Nepal, Writ No. 077-WO-01120, (18 May 2021)

³⁴¹ *Advocate Manish Kumar Shrestha v Prime Minister*, Supreme Court of Nepal, Writ No. 077-WO-1115, (18 May 2021) ; *Kritinath Sharma Paudel v Prime Minister*, Supreme Court of Nepal, Writ No. 077-WO-01120, (18 May 2021)

- incorporate human rights obligations including equitable access to health services;
increase the representation of health crisis related experts in the COVID-19 Crisis Management Center;
- set criteria, qualification or experience required for appointment of the chief of the Crisis Management Center;
- remove Section 26(10) from the CMO in its entirety as it allows for government procurement of COVID-19 vaccines and other items without complying with any legal requirements;
- include a provision proactively requiring and reasserting that transparency to be maintained in public procurement processes relating to COVID-19 vaccines and other items. This provision should either prohibit NDAs and at a minimum must require their strict and narrow tailoring in accordance with international human rights law standards including those relating to the right to information.
- 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;
 - 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 government authorities, including the Ministry of Health and Population should ensure that there are uninterrupted supply of oxygen, hospital beds, ICU capacity and COVID-19 related medicines and equipment in all hospitals serving COVID-19 patients.
- 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.
- Police authorities should investigate, and where appropriate, prosecute anyone involved in obstructing the health workers performing their duties in terms of the recent ordinance amending the existing Security of Health Worker and Health Organisations Act.
- 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 take measures to ensure that private healthcare providers comply with government's fixed COVID-19 treatment prices and for compulsory provision of COVID-19 units with beds providing free services to COVID-19 patients.
- 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.

8. Vaccination

- The government, particularly the Ministry of Health and Population should publish comprehensive and widely accessible vaccine acquisition roll-out strategies and plans, detailing concrete measures to ensure non-discriminatory access to vaccines to all inhabitants of Nepal.
- The government, particularly the Ministry of Finance and the Ministry of Health and Population should act to deploy the country's its maximum available resources to ensure vaccine access within the scheduled timeframes published by the government.
- The local authorities should take measures to ensure that those who fall within the the government set prioritiy list get timely access to the vaccine and prevent any corrupt or personal connection-based access to vaccine.
- The government, particularly the Ministry of Health and Population should refrain from unilaterally signing any NDAs on matter of public interest and respect the right to information during vaccine purchase. It should respect the principle of transparency and publicize critical information on the purchase,its price and other questions involving the acquisition and distribution of the vaccine.
- The government, particularly the Ministry of Foreign Affairs should proactively engage collaborating with other States, multilateral institutions and private donors to ensure international cooperation with Nepal, including for assistance in supplying or funding the procurement of COVID-19 vaccines as a matter of priority.

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March 2021 (for an updated list, please visit www.icj.org/commission)

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