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Under the Microscope: A Comparative Analysis of Nepal and Sri Lanka's Women's Right to Health, Analyzing a Micro Model of a Macro Dilemma in the Fight for a Global Right to Health

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Introduction

Heightened monitoring and increased adherence to the international standards of health as established by the United Nations, World Health Organization, and the International Covenant on Economic, Social and Cultural Rights is needed to increase accessibility to resources in youth feminine reproductive health and feminine hygiene, rights, education, and services in the developing nations of Nepal and Sri Lanka, and beyond. The objective of this AWR paper is to establish a comparative analysis of the accessibility of youth feminine reproductive health and feminine hygiene education and services in Nepal and Sri Lanka to explore the factors that promote and impede achievement of the international human right to health everywhere. Both nations not only are geographically located adjacent to the Indian sub-continent but are similarly situated in respect to population size. Nepal is a nation of approximately twenty-nine million people of which approximately 28.8% are youth under the age of fourteen. Sri Lanka has a population of approximately twenty-two million people of which approximately 21% is comprised of Sri Lankan youth. [1][2] This research strives to bring awareness to the need for greater accessibility to youth feminine reproductive health education and services across the globe and specifically in developing nations surrounding the Indian Subcontinent. Preliminary research for this AWR primarily originates from the published works of the World Health Organization (WHO), and the United Nations Children Fund (UNICEF). The WHO research surrounding Nepal and the need for greater accessibility to youth feminine reproductive health education and services therein serves as the basis supporting the initial selection of Nepal as representative

[1] Population Stat, 2017-2022, NEPAL POPULATION WORLD POPULATION STATISTICS (2020), https://populationstat.com/nepal/#:~:text=The%20country%20of%20Nepal%20sits%20nestled%20between%20India,of%20the%2010%20highest%20mountains%20in%20the%20world. (last visited Mar 24, 2022).
[2] 2022 World Population Review, SRI LANKA POPULATION 2022 (LIVE) SRI LANKA POPULATION 2022 (DEMOGRAPHICS, MAPS, GRAPHS) (2022), https://worldpopulationreview.com/countries/sri-lanka-population (last visited Mar 26, 2022).

micro case study for what represents a much larger macro issue. The research conducted by UN regarding child survival and adolescent development in Sri Lanka serves as the reinforcement that the issues faced in the developing nations surrounding the sub-continent of India is but a microscopic view of a macroscopic difficulty in upholding the health care goals and standards established and enforced by the UN, including but not limited to, the UN Committee on the Elimination of Discrimination against Women (CEDAW), the WHO, and International Covenant on Economic, Social and Cultural Rights, or ICESCR.

International Treaties and Constitutions:

The focus of this section will surround the governing documents provided by the United Nations, World Health Organization, and other international agencies and treaties such as the International Covenant on Economic, Social and Cultural Rights. This section will explore the reach of the international treaties and agencies and the enforcement of their treaties across the globe.

The foundational document guiding the global discourse on health accessibility is the Universal Declaration on Human Rights established by the United Nations in 1948 marking the start of the international rebuilding efforts after World War II. This document not only served to set out, for the first time, fundamental human rights to be universally protected but specifically addressed a right to health for all global citizens. Specifically, Article 25 set outs the standards that everyone has the right to a standard of living adequate for the health and well-being of oneself and family, including food, clothing, housing, medical care and necessary social services.[3] In addition Article 2 of the Declaration emphasizes anti-discrimination based on sex in

[3] GENERAL ASSEMBLY & GENERAL ASSEMBLY UNITED NATIONS, UN.ORG (1949), https://www.un.org/sites/un2.un.org/files/udhr.pdf (last visited Mar 26, 2022).

the form that everyone is entitled to all the rights and freedoms set forth in this Declaration, regardless of race, sex, color, or creed. [4]

The next cornerstone document is the Constitution of the World Health Organization, which also went into effect in 1948 in which the preamble alone establishes the founding principles inscribing the concept that, health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition, fundamental to the attainment of peace and security and is dependent on the fullest co-operation of individuals and States.[5]

The International Covenant on Economic, Social and Cultural Rights, or ICESCR, specifically Article 12 enshrines a recognized right of everyone to the enjoyment of the highest attainable standard of physical and mental health.[6] Not only does the ICESCR enshrine the right health but provides a road map to instituting and enforcing that right across borders.

The treaty articulates the key metrics from which the right to health should be assessed with the tenants of Availability, Accessibility, Acceptability, and Quality.[7]

Availability is understood to be in the availability functioning public health care, facilities, goods and services, and programs.[8] These programs must be available in sufficient quantity and

[4] GENERAL ASSEMBLY & GENERAL ASSEMBLY UNITED NATIONS, UN.ORG (1949), https://www.un.org/sites/un2.un.org/files/udhr.pdf (last visited Mar 26, 2022).
[5] WORLD HEALTH ORGANIZATION & WORLD HEALTH WORLD HEALTH ORGANIZATION, CONSTITUTION OF THE WORLD HEALTH ORGANIZATION: AMENDMENTS TO ARTICLES 24 AND 25, ADOPTED BY THE FIFTY-FIRST WORLD HEALTH ASSEMBLY AT GENEVA MAY 16, 1998 1–18 (2005).
[6] UNITED NATIONS & GENERAL ASSEMBLY UNITED NATIONS, INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1996), https://www.ohchr.org/sites/default/files/cescr.pdf (last visited Mar 24, 2022).
[7] *Id.*
[8] UN Committee Economic, Social and Cultural Rights (CESCR), The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), in REFWORLD.ORG (2000), https://www.refworld.org/docid/4538838d0.html (last visited May 6, 2022).

include the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and medical personnel etc.[9]

Accessibility is understood to have several dimensions: Non-discrimination, Physical accessibility, Economic accessibility, and Information accessibility.[10] In regard to non-discrimination, health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, without discrimination.[11]

Physical accessibility includes the idea that health facilities, and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as indigenous populations and ethnic minorities, women, children, adolescents, etc.[12] This physical accessibility extends to the concept that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, in rural and remote areas as well.[13]

Economic accessibility or affordability is the concept that health facilities, goods and services must be affordable for the entire populous with the payment for health-care services, and those related to the underlying determinants of health, must be based on the principle of equity. Governments must ensure that these services, are affordable for all, including socially disadvantaged groups.

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[9] UN Committee Economic, Social and Cultural Rights (CESCR), The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), in REFWORLD.ORG (2000), https://www.refworld.org/docid/4538838d0.html (last visited May 6, 2022).
[10] *Id.*
[11] *Id.*
[12] UN Committee Economic, Social and Cultural Rights (CESCR), The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), in REFWORLD.ORG (2000), https://www.refworld.org/docid/4538838d0.html (last visited May 6, 2022).; UNITED NATIONS & GENERAL ASSEMBLY UNITED NATIONS, INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1996), https://www.ohchr.org/sites/default/files/cescr.pdf (last visited Mar 24, 2022).
[13] *Id.*

Information accessibility is understood as the right to seek, receive, and impart information and ideas concerning health issues and the right to have personal health data treated with confidentiality.[14]

Furthermore, acceptability is understood to be that health facilities, goods and services must be mindful of medical ethics and be culturally appropriate.[15] Culturally appropriate is interpreted as being respectful of individuals, minorities, peoples, and communities. Culturally appropriate also encompasses a sensitivity to gender and life-cycle requirements, with requisite confidentiality.[16]

Lastly, quality is understood in reference to, health facilities, goods and services also being scientifically and medically appropriate inclusive of skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.[17]

The CESCR also makes special reference to the women and the right to health requiring the elimination of discrimination against women.[18] The treaty expresses the governmental need to develop and implement a comprehensive national strategies for promoting women's right to health from youth through adulthood, inclusive of prevention and treatment of diseases affecting women.[19] The CESCR calls for governments to institutes policies to provide access to quality

[14] UN Committee Economic, Social and Cultural Rights (CESCR), The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), in REFWORLD.ORG (2000), https://www.refworld.org/docid/4538838d0.html (last visited May 6, 2022).
[15] *Id.*
[16] *Id.*
[17] UN Committee Economic, Social and Cultural Rights (CESCR), The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), in REFWORLD.ORG (2000), https://www.refworld.org/docid/4538838d0.html (last visited May 6, 2022).; UNITED NATIONS & GENERAL ASSEMBLY UNITED NATIONS, INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1996), https://www.ohchr.org/sites/default/files/cescr.pdf (last visited Mar 24, 2022).
[18] *Id.*
[19] *Id.*

and affordable health care, including sexual and reproductive services with an aim of lowering rates of maternal mortality and protecting women from domestic violence.[20] The CESCR recognizes that and informs governments that realization of women's right to health requires the removal of all barriers interfering with access to health services, paired with increases in education and information, especially in the field of sexual and reproductive health with a focus on preventive, promotive and remedial action to protect women from the impact of harmful traditional cultural practices that deny women full reproductive rights.[21]

The treaty suggests that implementation of achieving a universal right to health be pursued through various methods of health policy and programs development and deployment by the World Health Organization (WHO), or the adoption of specific legal instruments. CESCR General Comment 14 expresses that there is legal enforceability to this right, informing that the principle of non-discrimination in relation to health facilities, goods and services is legally enforceable in numerous national jurisdictions.[22] Furthermore, the CESCR explicates the notion that the right to health not only related to and dependent upon the realization of other human rights, including the rights to food, housing, work, education, human dignity, non-discrimination, equality, etc.[23] The CESCR comment 14 notifies global governments that the right to health encompasses socio-economic factors that promote healthy life styles inclusive of accessibility to food and nutrition, housing, safe and potable water and adequate sanitation, safe working

[20] UN Committee Economic, Social and Cultural Rights (CESCR), The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), in REFWORLD.ORG (2000), https://www.refworld.org/docid/4538838d0.html (last visited May 6, 2022).
[21] *Id.*
[22] UN Committee Economic, Social and Cultural Rights (CESCR), The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), in REFWORLD.ORG (2000), https://www.refworld.org/docid/4538838d0.html (last visited May 6, 2022).; UNITED NATIONS & GENERAL ASSEMBLY UNITED NATIONS, INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1996), https://www.ohchr.org/sites/default/files/cescr.pdf (last visited Mar 24, 2022).
[23] *Id.*

conditions, and a healthy environment.[24] The concept that the right to health is founded upon the fulfillment of a multitude of human rights is an ideal that is echoed throughout the enumerated rights of the Nepalese Constitution in epitomic fashion.

It is important to note that a treaty's true strength comes from its enforceability and recognize that the enforcement measures of the CESCR which articulate that ratifiers have mandated obligations in relation to the right to health, such as the guarantee that the right will be exercised without discrimination of any kind and the obligation to take steps towards the full realization of Article 12. These steps must be deliberate, concrete and targeted towards the full realization of the right to health.[25] The CESCR recognizes that progressive realization means that States parties have a continuous obligation to move as expeditiously and effectively as possible towards the full realization of Article 12. The CESCR asserts that retrogressive measures taken in relation to the right to health are not permissible and if such measures are taken, the State actor has the burden of proving that they have been introduced only after careful consideration of all alternatives and duly justified by reference to the totality of the rights provided for in the CESCR in the context of the full use of the State's maximum available resources.[26]

Comment 14 of the CESCR expresses that the right to health, imposes three types of obligations on the ratifying actors: the obligations to respect, protect and fulfil. The obligation to

[24] UN Committee Economic, Social and Cultural Rights (CESCR), The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), in REFWORLD.ORG (2000), https://www.refworld.org/docid/4538838d0.html (last visited May 6, 2022).
[25] *Id.*
[26] UN Committee Economic, Social and Cultural Rights (CESCR), The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), in REFWORLD.ORG (2000), https://www.refworld.org/docid/4538838d0.html (last visited May 6, 2022).; UNITED NATIONS & GENERAL ASSEMBLY UNITED NATIONS, INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1996), https://www.ohchr.org/sites/default/files/cescr.pdf (last visited Mar 24, 2022).

fulfill means to facilitate, provide, and promote the right to health.[27] The obligation to respect requires refrain from direct or indirect government interference with the enjoyment of the right to health. The obligation to protect requires governments to take prevent measures against third party interference with Article 12 rights.[28] Lastly, the obligation to fulfil requires government to adopt appropriate legislative, administrative, budgetary, and judicial measures towards the full realization of the right to health, as seen in action in both Sri Lanka and Nepal in the form of both legislative and judicial action, serving as exemplars for other developing nations across the globe.[29]

It is important to understand that the CESCR keenly outlines the international engagement elements, obligations and enforcement which ratifiers are subject to inclusive of the idea that governments can take action through their own internal methods and through international economic and technical assistance and cooperation, in effort to attain full realization of the right to health.[30] To comply with these international obligations in relation to Article 12, governments must respect the enjoyment of the right to health in other countries as well as their own, and prevent third parties from violating the right in other countries.[31] This prevention can be of legal or political means, in accordance with the Charter of the United Nations and applicable international law. States should facilitate access to essential health facilities, goods and services

[27] UN Committee Economic, Social and Cultural Rights (CESCR), The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), in REFWORLD.ORG (2000), https://www.refworld.org/docid/4538838d0.html (last visited May 6, 2022).
[28] UN Committee Economic, Social and Cultural Rights (CESCR), The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), in REFWORLD.ORG (2000), https://www.refworld.org/docid/4538838d0.html (last visited May 6, 2022).
[29] *Id.*
[30] *Id.*
[31] UN Committee Economic, Social and Cultural Rights (CESCR), The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), in REFWORLD.ORG (2000), https://www.refworld.org/docid/4538838d0.html (last visited May 6, 2022).; UNITED NATIONS & GENERAL ASSEMBLY UNITED NATIONS, INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1996), https://www.ohchr.org/sites/default/files/cescr.pdf (last visited Mar 24, 2022).

in other countries, if possible, and provide the necessary aid when required.[32] The CESEGR suggests that governments should ensure that the right to health is given due reference in international agreements and should consider the development of further legal instruments.[33] Furthermore, the CESCR instructs that governments must ensure that their actions as members of international organizations take due account of the right to health. Lastly, the CESCR encourages governments which are members of international financial institutions, such as the International Monetary Fund, the World Bank, recognize the impact of upholding the right to health in relation to the lending policies, and credit agreements of these institutions.[34]

However, it is imperative to note that the CESCR is keen to explicitly clarify that the right to health is not intended to imply a right to be healthy, but instead as a series of freedoms and entitlements.[35] The freedoms include the right to control one's body, including sexual and reproductive freedom. The right includes to be free from interference, such torture, and non-consensual medical treatment and experimentation. Hitherto, the entitlements include the right to a system of health protection providing equality of opportunity for all to experience the highest attainable level of health.[36] This conceptualization of the right to health, not the right to be healthy is an apparent undertone in the Constitution of Sri Lanka compared to the epitomic nature of the Nepalese Constitution.

[32] UN Committee Economic, Social and Cultural Rights (CESCR), The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), in REFWORLD.ORG (2000), https://www.refworld.org/docid/4538838d0.html (last visited May 6, 2022).
[33] *Id.*
[34] UN Committee Economic, Social and Cultural Rights (CESCR), The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), in REFWORLD.ORG (2000), https://www.refworld.org/docid/4538838d0.html (last visited May 6, 2022).
[35] *Id.*
[36] *Id.*

The Nepalese Constitution exemplifies a holistic approach to equality and equity for all its citizens.[37] The Constitution explicitly upholds rights to equality enshrining that no person shall be denied the equal protection of law and an emphasis that there shall be no discrimination based on origin, religion, race, caste, tribe, sex, physical conditions, disability, health condition, matrimonial status, pregnancy, economic condition, language or geographical region, or ideology.[38] The only notable exception to this stringent standard of non-discrimination is the deliberate form of actionable discrimination for promoting laws for the protection, empowerment, or advancement of the women.[39] This holistic approach is strengthened by the articulation that every citizen has the right to basic health care services from the state and shall not be deprived of emergency health care and all citizens shall have equal access to health care and the right to access to clean water and hygiene. In furtherance of this approach the constitution denotes that women specifically shall have equal right to lineage without gender discrimination and rights relating to safe motherhood and reproductive health, with an emphasis that physical, mental, sexual or psychological or any other kind of violence against women, or any kind of oppression based on religious, social and cultural tradition, and other practices is not tolerated.[40] Furthermore, there is a focus on overall equality and wellbeing across the nation, the Constitution expresses that women shall have the right to special opportunity in education, health, employment and social security on the basis of accepted positive discrimination.

[37] PARLIAMENT & PARLIAMENT OF NEPAL, HTTPS://WWW.CONSTITUTEPROJECT.ORG/CONSTITUTION/NEPAL_2015.PDF (2015), https://www.constituteproject.org/constitution/Nepal_2015.pdf (last visited Mar 26, 2022).
[38] PARLIAMENT & PARLIAMENT OF NEPAL, HTTPS://WWW.CONSTITUTEPROJECT.ORG/CONSTITUTION/NEPAL_2015.PDF (2015), https://www.constituteproject.org/constitution/Nepal_2015.pdf (last visited Mar 26, 2022).
[39] *Id.*
[40] *Id.*

Furthermore, to foster a collective national equality the Constitution preserves that all children have the right to education, health care nurturing, sports, recreation and overall personality development from family and the State and no child shall be employed in factories, mines, or in any other hazardous works. With an effort to ensure that no citizens are deliberately excluded from the protections of the national governing document, the Constitution affords, citizens who are economically poor and on the verge of extinction, the right to special opportunity in the areas of education, health, housing, employment, food, and social security, for their protection, progress, empowerment, and development. The country aims to build a society based on harmonious social relations by developing a healthy and civilized culture and references such goals as such, solidifying them in the Constitution itself. The document also indicates that the State is to make increasing investment in the public health sector to make citizens healthy by ensuring easily available and equal access to high quality health care for all. This concept is expounded via the Constitutional requisition that the State is to increase investment in the health sector and make it service oriented by regulating and managing the investment of the private sector via increasing the number of health institutions and health workers, while emphasizing research on health to make qualitative health service available to all, in an effort to increase general life expectancy by decreasing infant mortality rate by encouraging family planning population management and through facilitating insurance policy for citizens and making arrangements for their access to health care.[41]

The Sri Lanka Constitution of 2015 includes the establishment and maintenance of public hospitals, maternity homes, and access to public health services, health education, nutrition,

[41] PARLIAMENT & PARLIAMENT OF NEPAL, HTTPS://WWW.CONSTITUTEPROJECT.ORG/CONSTITUTION/NEPAL_2015.PDF (2015), https://www.constituteproject.org/constitution/Nepal_2015.pdf (last visited Mar 26, 2022).

family health maternity, childcare, food, and food sanitation.[42] Furthermore, it calls for the formulation and implementation of Health Development Plan and an Annual Health Plan for the nation. There is to also be the establishment of schools for training of auxiliary medical personnel as well as, the supervision of private medical care, control of nursing homes and of diagnostic facilities throughout the nation.[43] Lastly, the Constitution established that all persons are equal before the law and are entitled to the equal protection of the law, regardless of; race, religion, language, caste, sex, political opinion, or place of birth, with the State promoting the interests of children and youth, to ensure their physical, mental, moral, religious and social development, while protecting them from exploitation and discrimination.[44]

Nepal through the Structural Observer's Lens:

In 2015, the Nepal Ministry of Health worked with the World Health Organization (WHO) to redesign the country's Adolescent Sexual and Reproductive Health Program and to address barriers to accessibility.[45] The Innov8 Approach – an 8-step review process with a focus on enabling health programs to improve equity, gender, human rights and social determinants of health was deployed in the WHO effort.[46] The team was comprised of national and subnational authorities, NGOs, civilians, and research institutes. The objective of the initiative was to identify the adolescent subpopulations underrepresented and bolster the program in a manner to reduce inequities and improve the overall health of the target populations. The initiative

[42] PARLAIMENT & PARLAIMENT OF SRI LANKA, SRI LANKA'S CONSTITUTION OF 1978 WITH AMENDMENTS THROUGH 2015 (2015), https://www.constituteproject.org/constitution/Sri_Lanka_2015.pdf?lang=en (last visited Mar 24, 2022).
[43] *Id.*
[44] PARLIAMENT & PARLIAMENT OF SRI LANKA, SRI LANKA'S CONSTITUTION OF 1978 WITH AMENDMENTS THROUGH 2015 (2015), https://www.constituteproject.org/constitution/Sri_Lanka_2015.pdf?lang=en (last visited Mar 24, 2022).
[45] WORLD HEALTH ORGANIZATION, FINDING THE GAPS IN MEETING ADOLESCENT HEALTH NEEDS IN NEPAL (2016), https://www.who.int/news-room/feature-stories/detail/finding-the-gaps-in-meeting-adolescent-health-needs-in-nepal (last visited May 6, 2022).
[46] *Id.*

highlighted the fact that Nepal's original adolescent sexual and reproductive health program did not account for specific barriers experienced by different subpopulations.[47] Many of these barriers are not unique to Nepal alone, as they encompass common issues such as distance and cost of travel, lack of privacy and confidentiality, and adverse gender norms. As a direct result of the WHO's observations and recommendation the Nepal Ministry of Health increased focus on outreach services especially in disadvantaged areas and increased community engagement.[48] The Ministry of Health also increased efforts in training of health workers with a focus adolescent-friendly and gender-responsive services. Furthermore, in response to the findings of the WHO, the Nepal Ministry of Health worked to ensure that adolescent representatives participate in local decision-making processes on health. The WHO also utilized these findings to help shape the targets set out in the WHO's Global Strategy for Women's, Children's and Adolescents' Health, following the guidance of WHO's Global Accelerated Action for the Health of Adolescents (AA-HA!) initiative to be deployed in Nepal and beyond.[49]

The Ministry of Health also heeded the WHO's recommendation to engage other government departments, such as education, to address the underlying determinants of health and discuss the causes of early marriage and pregnancy in the nation. Similarly, the Ministry of Health coordinated with the Department of Education to combat the stigma associated with adolescent reproductive health. Conclusively, the Ministry of Health of Nepal included the WHO's Innov8 review into the new National Adolescent Health and Development Strategy,

[47] WORLD HEALTH ORGANIZATION, FINDING THE GAPS IN MEETING ADOLESCENT HEALTH NEEDS IN NEPAL (2016), https://www.who.int/news-room/feature-stories/detail/finding-the-gaps-in-meeting-adolescent-health-needs-in-nepal (last visited May 6, 2022).
[48] *Id.*
[49] *Id.*

serving as the overarching health development approach in the nation with a goal to address global inequities and promote a human-rights based approach to overall health.[50]

Nepal by the numbers--the demand is there, but are the resources?

As recently as the mid-nineties the Journal of Nepal Medical Association reported that 70-80% of women of reproductive age in Nepal, especially pregnant and lactating women, had anemia.[51] More than 90% of women nationwide did not receive any obstetric care during their last pregnancy, and female cases of AIDS outnumbered male cases 3 to 1.[52] The maternal mortality rate was 515/100,000 live births, one of the highest rates worldwide then. Maternal mortality was the major cause of death among women of reproductive age. The maternal morbidity rate was 3-4 times higher than the maternal mortality rate.[53]. Additionally, as recently as 2020, the Women, Business and the Law 2020, a study organized annually by the World Bank, developed an index covering 190 economies and structured around the life cycle of a working woman creating a survey in which, thirty-five questions were measured across the eight indicators surrounding issues impacting working women.[54] Overall scores were then calculated by taking the average of each indicator, with one hundred representing the highest possible score. One of the lowest scores for Nepal is on the indicator related to laws affecting women's work after having children. The Parenthood Indicator remains low due minimal maternity leave of only 15 days for women in the workplace.[55]

[50]WORLD HEALTH ORGANIZATION, FINDING THE GAPS IN MEETING ADOLESCENT HEALTH NEEDS IN NEPAL (2016), https://www.who.int/news-room/feature-stories/detail/finding-the-gaps-in-meeting-adolescent-health-needs-in-nepal (last visited May 6, 2022).
[51] J Baker, *JNMA*, 32 JOURNAL OF NEPAL MEDICAL ASSOCIATION 214–218 (1994).
[52] *Id.*
[53] *Id.*
[54] Women, Business and the Law 2020, WOMEN, BUSINESS AND THE LAW 2020 (2020), https://wbl.worldbank.org/content/dam/documents/wbl/2020/sep/Nepal.pdf (last visited Mar 26, 2022).
[55] *Id.*

Duration of maternal leave and government benefits remain low according to Human Rights Watch, as of 2016, 37% of girls in Nepal marry before age 18, 10% percent marry before age 15, and many marry around the time they begin menstruating.[56] Child marriage, mostly results from forced marriage arrangements, is most prevalent in marginalized communities, with the notable contributing factors to child marriage including poverty, lack of access to education and reproductive healthcare, child labor, social pressures and gender inequality, and the institution of dowry.[57] The study highlighted the negative impacts of child marriage including dropping out of school, raising children too early in a child's life, and domestic violence by the husband or husband's family.[58] Similarly, the Harvard University post-partum intrauterine contraceptive device (PPIUD) research team estimated that 27% of women of reproductive age in Nepal would like to delay or prevent pregnancy, but do not have access to modern forms of contraception.[59] Moreover, as recently as 2019, marital status served as a common pre-requisite for women to obtain sexual and reproductive health services in Nepal, leaving Single women, unmarried women and women with different gender identities unable to access such services.[60] Women were still dying of traditional yet harmful practices like menstrual huts (Chaupadi) and nearly 41 percent of women are married before the legal age—This increases the rate of teenage pregnancy and maternal mortality. [61] Furthermore, a lack of education, infrastructure, and government commitment perpetuates the issues, despite written policies on paper.

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[56]Heather Barr, "OUR TIME TO SING AND PLAY" CHILD MARRIAGE IN NEPAL HUMAN RIGHTS WATCH.ORG (2016), https://www.hrw.org/report/2016/09/09/our-time-sing-and-play/child-marriage-nepal# (last visited Mar 26, 2022).
[57] *Id.*
[58] Heather Barr, "OUR TIME TO SING AND PLAY" CHILD MARRIAGE IN NEPAL HUMAN RIGHTS WATCH.ORG (2016), https://www.hrw.org/report/2016/09/09/our-time-sing-and-play/child-marriage-nepal# (last visited Mar 26, 2022).
[59] The President and Fellows of Harvard College, WOMEN'S HEALTH IN NEPAL THE PPIUD PROJECT IN THE DEPARTMENT OF GLOBAL HEALTH AND POPULATION IN SRI LANKA, NEPAL, AND TANZANIA (2020), https://projects.iq.harvard.edu/ppiud/womens-health-nepal (last visited Mar 26, 2022).
[60] Heather Barr, "OUR TIME TO SING AND PLAY" CHILD MARRIAGE IN NEPAL HUMAN RIGHTS WATCH.ORG (2016), https://www.hrw.org/report/2016/09/09/our-time-sing-and-play/child-marriage-nepal# (last visited Mar 26, 2022)
[61] *Id.*

Sri Lanka by the numbers--the demand is there, but are the resources?

A study by the Demographic Health Services Program (DHS) of the United States Agency for International Development in conjunction with UNICEF found that poor nutrition and anemia continue to be prevalent in Sri Lanka, especially in impoverished areas, with obesity and malnutrition being widespread in adolescent girls and young pregnant mothers.[62] Amongst married pregnant women, 22.9% were underweight and 20.9% were overweight or obese.[63] The study further identified that teen pregnancy — closely correlated to poverty and education — can negatively affect an individual's physical and emotional wellbeing as well as that of the newborn. Poor awareness of basic sexual and reproductive health and limited access to contraceptive methods create additional problems like HIV infection and unwanted pregnancy. The study highlighted that water and sanitation plays a key role in respect to menstrual hygiene. The study expressed that the issue is only made worse by the existing "social stigma attached to menstruation, poor access to female teachers and low awareness of proper menstrual hygiene."[64]

The structural limitations regarding reproduction remain linked to limited accessibility to reproductive services, with women in Sri Lanka reporting desire to limit their fertility. According to the 2007 Sri Lanka Demographic and Health Survey, 20% of Sri Lankan women with one child report wanting no more children. The proportion rises to 75% for women with two children and 95% for women with three children. Female sterilization is still the most common method of family planning in Sri Lanka, and 16% of married women of reproductive age report having gotten sterilized. Progress in this field has been since legislation was introduced in 1987 to

[62] Demographic Health Services, CHILD SURVIVAL & DEVELOPMENT IN ADOLESCENCE UNICEF SRI LANKA (2022), https://www.unicef.org/srilanka/child-survival-development-adolescence (last visited Mar 28, 2022).
[63] *Id.*
[64] Demographic Health Services, CHILD SURVIVAL & DEVELOPMENT IN ADOLESCENCE UNICEF SRI LANKA (2022), https://www.unicef.org/srilanka/child-survival-development-adolescence (last visited Mar 28, 2022).

restrict contraceptive access "to women under 26 unless they already had at least 3 living children, and to women over 26 unless they already had at least two living children and their youngest living child was over two years old."[65]

Then in 1993, Women's Charter of Sri Lanka was drafted and introduced to the Constitution. This charter served as an explicit attempt to protect and enshrine the rights of women into the governing document of the nation marking a substantial step toward upholding equality in the developing nation of Sri Lanka.[66] The Charter ensured equal access to health care information and education including nutrition education, counseling and services including preventive and curative services and equality in the distribution of family food resources to both women and men. Furthermore, it ensured access to information, education, counseling, and treatment regarding sexuality transmitted diseases. The Charter also called for programs to promote and protect the mental and physical health of women, including the provision of proper and humane facilities regarding medical and psychiatric treatment of patients. The Charter ensures access to social support measures for elderly and physically handicapped women. The Charter also called for the utilization of the utmost available standards of health care services in connection with pregnancy, confinement, and the postnatal period.[67] This included the need for free services and social support to ensure sufficient rest during pregnancy and lactation. There was a recorded need to include special protection and safeguards for women in custody. The State aimed to ensure women's right to control their re-productivity, equal access to information, education

[65] The President and Fellows of Harvard College, WOMEN'S HEALTH IN SRI LANKA THE PPIUD PROJECT IN THE DEPARTMENT OF GLOBAL HEALTH AND POPULATION IN SRI LANKA, NEPAL, AND TANZANIA (2020), https://projects.iq.harvard.edu/ppiud/womens-health-sri-lanka (last visited Mar 26, 2022).
[66] MINISTRY OF WOMEN'S EMPOWERMENT AND SOCIAL WELFARE & NATIONAL COMMITTEE ON WOMEN, INTERNATIONAL LABOUR ORGANIZATION (2013), https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/50168/110633/F1379312050/LKA50168 (last visited Mar 26, 2022).
[67] *Id.*

counseling, and services in family planning. The State was instructed to provide safe family planning devices and the enforcement of regulations relating to maternal safety. The Charter also informed that family education includes understanding of parenting as a family and social responsibility of equity in entitlement.[68] There was a highlighted focus in understanding that the interests of the child is the primary consideration in all cases, marking a more formalized approach to protecting women's health as a constitutional right, however there is still much progress to be made. For example, according to the 2020 Women, Business and the Law 2021 index, one of the lowest scores for Sri Lanka is on the indicator related to laws affecting women's work after having children.[69] The Parenthood Indicator, remains low due minimal maternity leave of only 15 days for women in the workplace without 100% of maternity leave benefits being paid by the Sri Lankan government.[70]

Nepal Through the judicial Lens:

In 2008, Prakash Mani Sharma v. Gov't of Nepal, "petitioners brought a case seeking enforcement of women's reproductive health rights under Article 20 of the Interim Constitution and international human rights treaties to which Nepal is party such as the ICESCR.[71] Petitioners argued that despite budgetary allotments by the government, no effective programs had been

[68] MINISTRY OF WOMEN'S EMPOWERMENT AND SOCIAL WELFARE & NATIONAL COMMITTEE ON WOMEN, INTERNATIONAL LABOUR ORGANIZATION (2013), https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/50168/110633/F1379312050/LKA50168 (last visited Mar 26, 2022).
[69] Women, Business and the Law 2021, WOMEN, BUSINESS AND THE LAW 2021 (2021), https://wbl.worldbank.org/content/dam/documents/wbl/2021/snapshots/Sri-lanka.pdf (last visited Mar 25, 2022).
[70] *Id.*
[71] Prakash Mani Sharma and Others v GON, Office of Prime Minister and Council of Ministers and Others, No. 064 Legal Information Institute (2008), https://www.law.cornell.edu/women-and-justice/resource/prakash_mani_sharma_and_others_v_gon_office_of_prime_minister_and_council_of_ministers_and_others (last visited Mar 26, 2022).

initiated by the State to address the proliferation of uterine prolapse, experienced by hundreds of thousands of Nepalese women.[72]

This case challenged the Nepal National Human Rights Commission, the Ministry of Population and Health, the Prime Minister and Council of Ministers, the Ministry of Women, Children and Social Welfare, and the Nepal Women's Commission. The Supreme Court held that the right to reproductive health found in the constitution is fundamental, non-restrictive, and not subject to any additional conditions for its execution.[73] The Court emphasized meaningful implementation by the State in the form of legislation and infrastructure is required to recognize this right and even though the State had allocated funds to address uterine prolapse, this was still insufficient since no plans or services had been implemented. The Supreme Court of Nepal held that the government should be responsible for providing infrastructures to support women's reproductive health under Article 20 of the then interim Constitution of Nepal which guaranteed the right to reproductive health for all women.[74] The Court held that reproductive health was a right tied to all other basic human rights. However, unlike freedom of speech and others, the right to health requires positive infrastructures to be upheld, therefore ordering that a bill be passed providing reproductive health services to pregnant women[75]

[72] Prakash Mani Sharma and Others v GON, Office of Prime Minister and Council of Ministers and Others, No. 064 Legal Information Institute (2008), https://www.law.cornell.edu/women-and-justice/resource/prakash_mani_sharma_and_others_v_gon_office_of_prime_minister_and_council_of_ministers_and_others (last visited Mar 26, 2022).
[73] *Id.*
[74] SUPREME COURT OF NEPAL, BENCH, SCN, Writ No. 064 PRAKASH MANI SHARMA V. GOV'T OF NEPAL (2008), https://www.escr-net.org/caselaw/2014/prakash-mani-sharma-v-govt-nepal-scn-writ-no-064 (last visited May 7, 2022).
[75] Prakash Mani Sharma and Others v GON, Office of Prime Minister and Council of Ministers and Others, No. 064 Legal Information Institute (2008), https://www.law.cornell.edu/women-and-justice/resource/prakash_mani_sharma_and_others_v_gon_office_of_prime_minister_and_council_of_ministers_and_others (last visited Mar 26, 2022).

The government of Nepal responded to the holding of Prakash by allocating funding for surgical centers to perform hysterectomies as a remedy of uterine prolapse.[76] While, this action seemed positive in the short term, Amnesty International attempted to observe this initiative with heightened monitoring of the plans and processes in place and found that even though the government put measures in place to make surgical treatment accessible to affected women, little action had been taken in the form of education and prevention.[77] Amnesty referenced that the 2008 draft National Multi-Sectoral Strategic Plan for the Prevention and Management of Uterine Prolapse 2008-2017, called for the Ministry of Women, Children, and Social Welfare, Ministry of Labour and Employment and Ministry of Health and Population to be responsible for implementing awareness raising policies and other preventive measures to address uterine prolapse in the nation, but it was not adopted as an official policy.[78]

Amnesty also highlighted the compounding risk factors which perpetuated the prevalence of uterine prolapse in the nation, displaying the underlying interplay between human rights and health rights. Risk factors for uterine prolapse, stemming from gender discrimination, include a lack of health-related information and nutrition, adolescent pregnancy tied to early marriage, lack of control over sexual conduct and reproduction, lack of access to skilled birth attendants, and physical labor during and after pregnancy. Citing the Prakash case, the report found that the

[76] AMNESTY INTERNATIONAL, 31/001 UNNECESSARY BURDEN: GENDER DISCRIMINATION AND UTERINE PROLAPSE IN NEPAL 1–98 (001 ed. 2014), https://www.amnesty.org/en/documents/ASA31/001/2014/en/ (last visited May 7, 2022).
[77] *Id.*
[78]AMNESTY INTERNATIONAL, 31/001 UNNECESSARY BURDEN: GENDER DISCRIMINATION AND UTERINE PROLAPSE IN NEPAL 1–98 (001 ed. 2014), https://www.amnesty.org/en/documents/ASA31/001/2014/en/ (last visited May 7, 2022).

government has failed to adequately address this underlying gender discrimination and reduce women's risk of this condition. [79]

Stemming from their heightened monitoring, Amnesty International launched an initiative in 2014 calling on the Nepalese government to acknowledge the prevalence of uterine prolapse in Nepal as a human rights issue and address the underlying gender discrimination women face to prevent the condition. [80]This call to action was part of Amnesty International's larger My Body My Rights campaign, urging governments to respect, protect and fulfill sexual and reproductive rights. This initiative gained enough momentum to warrant review of the implementation of the 2008 Nepali Supreme Court decision, along with other human rights issues, by the UN Committee on Economic, Social and Cultural Rights in November of 2014.[81] The Committee had been asked to please clarify whether the State has taken steps to enact effective laws and policies to reduce the exposure of women to the risk factors for uterine prolapse and to then enforce implementation of the holding in Prakash, exemplifying how heightened monitoring and awareness leads to actualized action. [82]

It is of note that Nepalese law has permitted abortion under most circumstances, since the early 2000s.[83] However, like many recorded protections regarding women's health rights in Nepal and elsewhere, the legality is not always the reality. As articulated in Lakshmi v. Nepal,

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[79]AMNESTY INTERNATIONAL, 31/001 UNNECESSARY BURDEN: GENDER DISCRIMINATION AND UTERINE PROLAPSE IN NEPAL 1–98 (001 ed. 2014), https://www.amnesty.org/en/documents/ASA31/001/2014/en/ (last visited May 7, 2022).
[80] *Id.*
[81] *Id.*
[82] AMNESTY INTERNATIONAL, 31/001 UNNECESSARY BURDEN: GENDER DISCRIMINATION AND UTERINE PROLAPSE IN NEPAL 1–98 (001 ed. 2014), https://www.amnesty.org/en/documents/ASA31/001/2014/en/ (last visited May 7, 2022).
[83] Parliament of Nepal, SAFE MOTHERHOOD AND REPRODUCTIVE HEALTH RIGHTS ACT IN ENGLISH SAFE MOTHERHOOD AND REPRODUCTIVE HEALTH RIGHTS ACT (2018), https://reproductiverights.org/sites/default/files/2020-01/Safe%20Motherhood%20and%20Reproductive%20Health%20Rights%20Act%20in%20English.pdf (last visited Mar 26, 2022).

multiple barriers—including the government's failure to implement its own policy, prohibitive costs, and inadequate availability of abortion providers—had prevented women from accessing safe abortion services. [84]In 2007, Lakshmi v. Nepal was filed before Nepal's Supreme Court, alleging that the government had failed to implement its abortion law. This failure rendered legal and safe abortion inaccessible to most of the nation's women. The lawsuit charged that this was a violation of Nepal's human rights obligations under international treaties such as those addressed in the introduction of this paper, as well as its own constitution, which recognizes a woman's right to make her own reproductive decisions and obtain reproductive health services. [85]

In 2009, Nepal's Supreme Court ordered the Nepal government to enact a comprehensive abortion law to guarantee that women have access to safe and affordable abortion services. Under the holding the government needed to set up a fund to cover the cost of abortion for poor and rural women, invest enough resources to meet the demand for abortion services, promote access to safe services for all women, ensure stronger safeguards for women's privacy, and educate the public and health service providers about the existing abortion law. [86]

The Supreme Court decision was actualized and rights of women were further enshrined in 2018 via the inclusion of Safe Motherhood and Reproductive Health Rights Act, to the constitution which included five major issues of women's health: maternity and newborn health, family planning, safe abortion, adolescent health and women's morbidity, enshrining them as *human rights* and calling for the financing of these vital women's health services. Emphasizing

[84] Lakshmi v. Government of Nepal, No. 8464 Landmark Decision of Supreme Court of Nepal on Abortion Rights (2009), https://reproductiverighhttps://reproductiverights.org/wp-content/uploads/2021/07/Laxmi-dhitta1-endnote.pdfts.org/wp-content/uploads/2021/07/Laxmi-dhitta1-endnote.pdf (last visited Mar 26, 2022).
[85] *Id.*
[86] *Id.*

the direct results of conversion of heightened observation to political progression and increased accessibility across a nation.[87]

Furthermore, in 2020 the Forum for Women, Law and Development, reported that in Nepal women can be prosecuted if they perform abortion or obtain abortion medications that are beyond the current legalized forms and that and that ending a pregnancy after 28 weeks' gestation is not allowed even if offered as a means to save a woman's life.[88] However, as a result of 2021 Universal Periodic Review of Nepal by the UN Human Rights Council, Nepal accepted a recommendation to decriminalize abortion in an effort protect the sexual and reproductive health rights of women.[89]

Sri Lanka Through the Judicial Lens:

In 2013, NGO The Social Architects "TSA" visited the Veravil, Keranchi, Valaipaddu, Umaiyalpuram, and Malaiyalapuram villages, where Internally Displaced Persons (IDPs) had begun to rebuild their post-war lives. [90]TSA interviewed twenty-five women ranging in age from fifteen to forty-three, members of the Ministry of Health (MoH), Kilinochchi, field level health workers, and community leaders. The reported findings concluded that women in villages lack adequate access to primary care and public contraceptive services. Often public health workers encouraged women to government sponsored nutrition clinics under false pretense. Furthermore,

[87] Parliament of Nepal, SAFE MOTHERHOOD AND REPRODUCTIVE HEALTH RIGHTS ACT IN ENGLISH SAFE MOTHERHOOD AND REPRODUCTIVE HEALTH RIGHTS ACT (2018), https://reproductiverights.org/sites/default/files/2020-01/Safe%20Motherhood%20and%20Reproductive%20Health%20Rights%20Act%20in%20English.pdf (last visited Mar 26, 2022).
[88] Women, Business and the Law 2020, WOMEN, BUSINESS AND THE LAW 2020 (2020), https://wbl.worldbank.org/content/dam/documents/wbl/2020/sep/Nepal.pdf (last visited Mar 26, 2022).
[89] Center for Reproductive Rights, NEPAL - DECRIMINALISATION OF ABORTION RECOMMENDED INTERNATIONAL CAMPAIGN FOR WOMEN'S RIGHT TO SAFE ABORTION (SAWR).ORG (2021), https://www.safeabortionwomensright.org/news/nepal-decriminalisation-of-abortion-recommended/ (last visited May 7, 2022).
[90] The Social Architects, ABOVE THE LAW: VIOLATIONS OF WOMEN'S REPRODUCTIVE RIGHTS IN NORTHERN SRI LANKA GROUNDVIEWS (2014), https://groundviews.org/2013/10/11/above-the-law-violations-of-womens-reproductive-rights-in-northern-sri-lanka/amp/ (last visited Mar 25, 2022).

it was found that government health workers coerced women into receiving the medical implants while not providing adequate counseling nor obtaining informed consent. The government health workers also failed to conduct adequate medical pre-screening and to provide post-implant care instructions and women often feel unsafe asking doctors questions. Lastly, and most alarmingly, government employees have instructed subordinates to remain silent about these issues perpetuating the systemic disparate treatment of women's health.[91]

Furthermore in 2017, the Universal Period Review of the United Nations in conjunction with the Civil Society Collective in Sri Lanka declared that Sri Lankan Constitution does not recognize a right to substantive equality, bodily integrity, or a minimum quota for representation of women at local and national government levels. Furthermore, the nondiscrimination clause does not explicitly refer to discrimination of gender identities as protected characteristics. Therefore, while there is a claim to guarantee nondiscrimination, there remains no provision for judicial review of legislation, further perpetuating a discrimination toward women.[92]

However, while internal judicial review in Sri Lanka continues to perpetuate discrimination toward, the international judicial arena continues to exemplify the enforcement power of the ICESCR and the United Nations, especially since the Sri Lankan Constitution prevents legal challenges to the validity of laws that are already in action, only enabling Constitutional challenges to be brought to bills that are not codified yet in process. [93]

[91] The Social Architects, ABOVE THE LAW: VIOLATIONS OF WOMEN'S REPRODUCTIVE RIGHTS IN NORTHERN SRI LANKA GROUNDVIEWS (2014), https://groundviews.org/2013/10/11/above-the-law-violations-of-womens-reproductive-rights-in-northern-sri-lanka/amp/ (last visited Mar 25, 2022).
[92] United Nations, in UNIVERSAL PERIODIC REVIEW - SRI LANKA (2017), https://www.ohchr.org/en/hr-bodies/upr/lk-index (last visited May 7, 2022).
[93] Rosanna Flamer-Caldera v Sri Lanka 134/2018, humandignitytrust.org (2022), https://www.humandignitytrust.org/what-we-do/cases/sri-lanka-case-before-un-committee-on-the-elimination-of-discrimination-against-women-cedaw/ (last visited May 7, 2022).

In 2018, a complaint, submitted to CEDAW challenging the criminalization of lesbians and bisexual women in Sri Lanka. The complaint was submitted by Rosanna Falmer-Caldera, Executive Director of EQUAL GROUND, an LGBT organization, and a Sri Lankan woman who identifies as lesbian. She argued that the Sri Lankan Penal Code, which criminalizing same-sex sexual conduct between women, violates her human rights as protected by the Convention on the Elimination of All Forms of Discrimination against Women, which Sri Lanka has ratified inclusive of the Optional Protocol, which allows individual complaints to be considered by the CEDAW Committee. [94]

The complaint articulated that article 2 of the CEDAW required the Sri Lankan government to condemn discrimination against women in all its forms and uphold a policy of eliminating discrimination against women.[95] The laws that criminalize same-sex activity between women were found to violates the obligations of CEDAW and that article 5 of CEDAW requires that governments must modify social and cultural patterns of conduct based on discrimination or stereotypes of specific sexes. Furthermore, the case challenged that article 16 requires the government to take all appropriate measures to eliminate discrimination against women in relation to marriage and family relations, articulating that the criminalization of same-sex sexual activity violates women's sexual and reproductive rights.[96]

This year CEDAW determined that Rosanna Flamer-Caldera's rights had been violated by the criminalization of same-sex sexual intimacy in Sri Lanka. Specifically, the Committee found

[94] Rosanna Flamer-Caldera v Sri Lanka 134/2018, humandignitytrust.org (2022), https://www.humandignitytrust.org/what-we-do/cases/sri-lanka-case-before-un-committee-on-the-elimination-of-discrimination-against-women-cedaw/ (last visited May 7, 2022); United Nations, in UNIVERSAL PERIODIC REVIEW - SRI LANKA (2017), https://www.ohchr.org/en/hr-bodies/upr/lk-index (last visited May 7, 2022).
[95] *Id.*
[96]Rosanna Flamer-Caldera v Sri Lanka 134/2018, humandignitytrust.org (2022), https://www.humandignitytrust.org/what-we-do/cases/sri-lanka-case-before-un-committee-on-the-elimination-of-discrimination-against-women-cedaw/ (last visited May 7, 2022).

that the Sri Lanka law violated her rights to non-discrimination, equality before the law, especially in form of her family and reproductive rights.[97] The committee also found that Sri Lanka was failing to meet its obligations to counter gender stereotypes and prejudices, subsequently recommending that the government take immediate action to combat the harassment and abuse to which the author had been subjected. The committee recommended that the Sri Lanka government adopt preventative and protective measures and the decriminalization of consensual same-sex sexual conduct between women having passed the age of consent in Sri Lanka.[98] The committee recommended Sri Lankan government provide effective protection against gender-based violence against women, by codifying legislation against discrimination against women with specific extension of protection of lesbian, bisexual, transgender and intersex women and provide adequate protection, support systems and remedies, including reparation to victims of discrimination. CEDAW suggested the government also ensure that victims of gender-based violence against women have access to civil and criminal remedies and protection, inclusive of counselling, health services and financial support.[99] Lastly, the committee also informed the Sri Lankan government to provide training to law enforcement agencies on the Convention, the Optional Protocol thereto, to raise awareness of the human rights, so that crimes committed against lesbian, bisexual, transgender or intersex women will be understood as gender-based violence or hate crimes requiring active government intervention.[100]

[97]Rosanna Flamer-Caldera v Sri Lanka 134/2018, humandignitytrust.org (2022), https://www.humandignitytrust.org/what-we-do/cases/sri-lanka-case-before-un-committee-on-the-elimination-of-discrimination-against-women-cedaw/ (last visited May 7, 2022).
[98] *Id.*
[99] Rosanna Flamer-Caldera v Sri Lanka 134/2018, humandignitytrust.org (2022), https://www.humandignitytrust.org/what-we-do/cases/sri-lanka-case-before-un-committee-on-the-elimination-of-discrimination-against-women-cedaw/ (last visited May 7, 2022); United Nations, in UNIVERSAL PERIODIC REVIEW - SRI LANKA (2017), https://www.ohchr.org/en/hr-bodies/upr/lk-index (last visited May 7, 2022).
[100] Rosanna Flamer-Caldera v Sri Lanka 134/2018, humandignitytrust.org (2022), https://www.humandignitytrust.org/what-we-do/cases/sri-lanka-case-before-un-committee-on-the-elimination-of-discrimination-against-women-cedaw/ (last visited May 7, 2022).

This finding of the UN CEDAW Committee shows just how important and impactful the enforcement of the ICESCR can be in catalyzing governmental and legislative progress in the developing world can be.

The Similarities and The Differences:

First, it is ever apparent that both nations have distinct articles in their constitutions which recognize some form of a right to health akin to the international right to health outlined in the Universal Declaration on Human Rights, Constitution of the World Health Organization, and International Covenant on Economic, Social and Cultural Rights.[101] Both nations lack structural support and monitoring of adherence to the international standards of health for women, especially in rural areas of each respective nation.[102]

Second, each nation has undergone improvements in adherence to the international standards of health for women in the last thirty years, with each nation exhibiting legal protections for women which aim to uphold a women's right to health.[103] Each nation has displayed historic moments in which after increased monitoring of the lack of accessibility for a protected international health standard for women directly lead to a social or legal push toward equality

[101] PARLIAMENT & PARLIAMENT OF NEPAL, HTTPS://WWW.CONSTITUTEPROJECT.ORG/CONSTITUTION/NEPAL_2015.PDF (2015), https://www.constituteproject.org/constitution/Nepal_2015.pdf (last visited Mar 26, 2022).
[102] *Id.*
[103] PARLIAMENT & PARLIAMENT OF NEPAL, HTTPS://WWW.CONSTITUTEPROJECT.ORG/CONSTITUTION/NEPAL_2015.PDF (2015), https://www.constituteproject.org/constitution/Nepal_2015.pdf (last visited Mar 26, 2022); PARLAIMENT & PARLAIMENT OF SRI LANKA, SRI LANKA'S CONSTITUTION OF 1978 WITH AMENDMENTS THROUGH 2015 (2015), https://www.constituteproject.org/constitution/Sri_Lanka_2015.pdf?lang=en (last visited Mar 24, 2022); UN Committee Economic, Social and Cultural Rights (CESCR), The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), in REFWORLD.ORG (2000), https://www.refworld.org/docid/4538838d0.html (last visited May 6, 2022).; WORLD HEALTH ORGANIZATION & WORLD HEALTH WORLD HEALTH ORGANIZATION, CONSTITUTION OF THE WORLD HEALTH ORGANIZATION: AMENDMENTS TO ARTICLES 24 AND 25, ADOPTED BY THE FIFTY-FIRST WORLD HEALTH ASSEMBLY AT GENEVA MAY 16, 1998 1–18 (2005).

and protection yielded a national progression to achieved increased accessibility and adherence to international standards of health for women, especially in the realms of reproductive health.[104]

Nepal remains leaps and bounds ahead of Sri Lanka in its attempt to increase adherence to international standards of health for women, through systemic entrenchment of women's' empowerment and equality laws being formally written into the Nepalese Constitution and the widespread addition of educational programming in schools and health facilities and clinics across the nation.[105] Sri Lanka is making incremental advancement to its adherence to international standards of health for women, but the pace remains gradual, with limited formalized representation and protection of women's rights and women's health rights therein, in the Sri Lankan Constitution.[106]

Conclusion and Recommendations:

The improvements in adherence to the international standard for health and human rights in Nepal and Sri Lanka proved to be a direct result of increased governmental and third-party NGO awareness and a drive for progress. Thus, it can be deduced that with increased observation, i.e., heightened monitoring of systemic reproductive health care offerings and access to sanitary hygiene products and processes, there will be deliberate increased adherence to uphold the international standards of health and a safeguarded right to health for women in both Nepal and Sri Lanka and beyond, as was observed by the inclusion of the Sri Lankan Women's Charter and

[104] WORLD HEALTH ORGANIZATION & WORLD HEALTH WORLD HEALTH ORGANIZATION, CONSTITUTION OF THE WORLD HEALTH ORGANIZATION: AMENDMENTS TO ARTICLES 24 AND 25, ADOPTED BY THE FIFTY-FIRST WORLD HEALTH ASSEMBLY AT GENEVA MAY 16, 1998 1–18 (2005).
[105] PARLIAMENT & PARLIAMENT OF NEPAL, HTTPS://WWW.CONSTITUTEPROJECT.ORG/CONSTITUTION/NEPAL_2015.PDF (2015), https://www.constituteproject.org/constitution/Nepal_2015.pdf (last visited Mar 26, 2022).
[106] PARLAIMENT & PARLAIMENT OF SRI LANKA, SRI LANKA'S CONSTITUTION OF 1978 WITH AMENDMENTS THROUGH 2015 (2015), https://www.constituteproject.org/constitution/Sri_Lanka_2015.pdf?lang=en (last visited Mar 24, 2022).

the UN review of the Prakash supreme court case in Nepal.[107] By using the history of progress in Nepal and Sri Lanka as the micro think tank of macro initiatives many national governments can work to solidify the protections afforded under the ICESCR via a medley of information delivery, education, government doctrine formation, and policy drafting and implementation to address the underlying determinants of health in a manner with increases the availability, accessibility, acceptability, and quality of the right to health.[108]

All ICESCR ratified nations should enshrine woman's right to health in national constitutions via an addition of amendments or via the inclusion of formalized women's charters as was the case in Sri Lanka, providing a guiding document to serve as the national framework to meet or exceed the expectations of the right to health for women. Furthermore, the United Nations and the WHO should require annual monitoring by NGOs of all health programs and clinics which service women in developing nations, including, but not limited to those who have ratified the ICESCR or are recipients of WHO based fundraising initiatives. The impact this monitoring can have is immense as exemplified by Amnesty International in their monitoring of the Nepalese government's actions in response to the holding of Prakash in 2008.[109] The UN should also empower more governments, NGO's, and independent activists to bring forth complaints to the UN CEDAW committee on an annual basis in an effort to expeditiously

[107] MINISTRY OF WOMEN'S EMPOWERMENT AND SOCIAL WELFARE & NATIONAL COMMITTEE ON WOMEN, INTERNATIONAL LABOUR ORGANIZATION (2013), https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/50168/110633/F1379312050/LKA50168 (last visited Mar 26, 2022); AMNESTY INTERNATIONAL, 31/001 UNNECESSARY BURDEN: GENDER DISCRIMINATION AND UTERINE PROLAPSE IN NEPAL 1–98 (001 ed. 2014), https://www.amnesty.org/en/documents/ASA31/001/2014/en/ (last visited May 7, 2022).

[108] UN Committee Economic, Social and Cultural Rights (CESCR), The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), in REFWORLD.ORG (2000), https://www.refworld.org/docid/4538838d0.html (last visited May 6, 2022).

[109] SUPREME COURT OF NEPAL, BENCH, SCN, Writ No. 064 PRAKASH MANI SHARMA V. GOV'T OF NEPAL (2008), https://www.escr-net.org/caselaw/2014/prakash-mani-sharma-v-govt-nepal-scn-writ-no-064 (last visited May 7, 2022).

catalyze progress through review and recommendation of CEDAW cases across the globe, in order to best ensure that the right to health is being upheld in the fashion articulated by the ICESCR, as was the case in Rosanna Flamer-Caldera v Sri Lanka and the decriminalization of abortion stemming from 2021 UN Universal Periodic Review of Nepal.[110]The UN should encourage all member governments to dedicate national expenditure budgets to support efforts in Women's health and feminine hygiene and reproductive education in each nation, in an effort to actualize the right to health which is a compilation of many human rights as articulated by CESCR comment 14, with periodic review of said budgets by UN and WHO committees or NGOs such as Amnesty international to ensure equitable and adequate financing as was needed in Nepal after the Prakash holding of 2008.[111] Similarly, The UN and WHO should encourage governments across the globe to make paid leave of at least 14 weeks available to mothers, with said governments administering a substantial percentage of maternity leave benefits, and making paid parental leave available as well, by outlining these objectives as additions to the ICESCR. The UN should continue to encourage governments to enable and empower women to directly contribute and draft legislation ensuring equality and access to health services, and feminine hygiene and reproduction education, entrenching and upholding the right to health as a constitutional and international mandated reality and expectation, by including female authors of governmental doctrines. Lastly, the UN and WHO should encourage and enable more nations to participate in working to reach the targets set out in the WHO's Global Strategy for Women's, Children's and Adolescents' Health, following the WHO's Global Accelerated Action for the

[110] Rosanna Flamer-Caldera v Sri Lanka 134/2018, humandignitytrust.org (2022), https://www.humandignitytrust.org/what-we-do/cases/sri-lanka-case-before-un-committee-on-the-elimination-of-discrimination-against-women-cedaw/ (last visited May 7, 2022).
[111] AMNESTY INTERNATIONAL, 31/001 UNNECESSARY BURDEN: GENDER DISCRIMINATION AND UTERINE PROLAPSE IN NEPAL 1–98 (001 ed. 2014), https://www.amnesty.org/en/documents/ASA31/001/2014/en/ (last visited May 7, 2022).

Health of Adolescents (AA-HA!) Implementation Guidance document, which features the aforementioned Innov8 process as one of the resources for programming to aid adolescent health planning.[112]

While it is understood that Nepal and Sri Lanka represent but a microcosm in a macroworld, the experiences of each represent the impact and interplay of international agencies, treaties, and collective global enforcement therein, in respect to attaining an upholding a right to health for women everywhere and shed a light of hope for further scholarship in this area lead to more nations moving toward some of aforementioned recommendations to ensure that all nations afford their citizens an opportunity to be afforded the right to the highest attainable form of health.

[112] WORLD HEALTH ORGANIZATION, FINDING THE GAPS IN MEETING ADOLESCENT HEALTH NEEDS IN NEPAL (2016), https://www.who.int/news-room/feature-stories/detail/finding-the-gaps-in-meeting-adolescent-health-needs-in-nepal (last visited May 6, 2022).