

Committee on the Elimination of Discrimination against Women  
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**Information on Bhutan for consideration by the Committee on the Elimination of Discrimination against Women at the Pre-Sessional Working Group of its 80<sup>th</sup> Session (1 March - 5 March 2021)**

**Introduction**

1. We respectfully submit this letter for consideration in advance of the pre-sessional working group of the 80<sup>th</sup> session of the Committee on the Elimination of Discrimination against Women ('the Committee') taking place between 1 March - 5 March 2021, for consideration of the List of Issues Prior to Reporting for Bhutan. Equality Now is writing to express our concerns with regard to laws related to rape and other forms of sexual violence and procedures and practices which effectively deny access to justice for survivors of sexual violence in violation of the Convention on the Elimination of All Forms of Discrimination against Women ('the Convention'). We are recommending questions to be asked to Bhutan by the Committee and offering recommendations on the legal and procedural changes required to make sure that perpetrators of sexual violence are brought to justice and that survivors access justice.
2. Equality Now is an international human rights NGO with ECOSOC status with the mission to achieve legal and systemic change that addresses violence and discrimination against women and girls around the world. Founded in 1992, Equality Now has offices in London, New York, Nairobi and Beirut, as well as consultants based in various parts of the world. Ending sexual violence, ending sex trafficking, ending harmful practices and achieving legal equality are the main areas of Equality Now's work.
3. The legal provisions and practices detailed in our submission highlight the failure of the State to comply with its duty to provide equal protection under the law to survivors of sexual violence (Article 2(c) of the Convention) and failure of law enforcement to protect women from sexual violence (Article 2(c) and (e)). We submit that the root cause of the failures of the State is its non-compliance with the obligation to end discrimination against women in law and practice and address stereotypical and gender-discriminatory attitudes towards women and girls, contrary to Articles 2(f) and 5(a) of the Convention and the obligation to combat violence against women and provide access to justice to

survivors, as described in General Recommendations 19, 33 and 35 of the CEDAW Committee.

4. We reiterate the concluding observations on the eighth and ninth periodic reports of Bhutan<sup>1</sup>, and underscore in particular, the recommendations urging the Government of Bhutan to:
  - “Ensure that all cases of violence against women and girls are thoroughly and effectively investigated and that perpetrators are prosecuted and adequately punished, and establish specialized courts to address gender-based violence against women, including domestic violence”;
  - “Establish a coordinated, multisectoral system of support services for victims and survivors of gender-based violence against women in line with the standard operating procedures on case management and the referral system for women and children in difficult circumstances, and the joint programme on reducing violence against women and children in order to contribute to gross national happiness”; and to
  - “Continue to enhance the capacities of the police and other law enforcement agencies to prevent and respond to cases of gender-based violence against women and girls through the institutionalization of capacity-building programmes and by increasing the number of women and child protection units”.<sup>2</sup>
5. We welcome the amendments to Bhutan’s Penal Code approved by the Bhutanese Parliament in December 2020, particularly the increase in penalties for the offence of rape. The offence of rape of adult women is now considered a third degree felony, punishable with imprisonment of between 5-9 years. Whereas, prior to the amendment, rape of adult women was only classified as a fourth degree felony punishable by imprisonment of 3-5 years. Further, the punishment for statutory rape (of a child below 12 years) has been increased to life imprisonment in certain aggravated circumstances, while in other circumstances, it is a first degree felony with a minimum punishment of 15 years’ imprisonment.<sup>3</sup> However, the penalties for marital rape have not been increased correspondingly. These amendments recognise the gravity of the offence of rape in the case of adult women as well as adolescent girls and ensures that the penalties are commensurate with the serious nature of the crime of rape.

### **Legal Provisions which are discriminatory or enable impunity for perpetrators of sexual violence**

6. Bhutanese law has several provisions regarding the payment of compensation in cases of adultery (“gao”), most of which are payable to the husband in cases where the woman is involved in adultery. Extending this provision to rape cases, the law provides for payment of compensation (“gao”) to the husband in cases where a married woman is raped (in

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<sup>1</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the combined eighth and ninth periodic reports of Bhutan, 25 November 2016, CEDAW/C/BTN/CO/8-9

<sup>2</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the combined eighth and ninth periodic reports of Bhutan, 25 November 2016, CEDAW/C/BTN/CO/8-9, para 19.

<sup>3</sup> Tshering Palden, Parliament passes harsher penalties for rapists, 11 December 2020, Kuensel, <https://kuenselonline.com/parliament-passes-harsher-penalties-for-rapists/>; Damchoe Pem, Amended Penal Code decriminalizes homosexuality and is tougher on rapists, 12 December 2020, <https://thebhutanese.bt/amended-penal-code-decriminalizes-homosexuality-and-is-tougher-on-rapists/>

addition to payment of compensation to the survivor).<sup>4</sup> This discriminatory provision treats the wife as the property of her husband and is based on archaic and patriarchal notions of chastity and so-called honour.

7. In addition, Bhutan's law allows the introduction of evidence as to the past sexual history of the victim during the trial process in rape cases in certain circumstances. Section 65 of the Evidence Act states that evidence as to the past sexual behaviour or alleged sexual predisposition of the victim is not relevant except: (a) if offered to show the victim's consent; (b) if offered to show that a person other than the accused was the attacker or aggressor; or (c) the victim puts past sexual behaviour or predisposition in issue.<sup>5</sup> The broad nature of these exceptions, particularly the exception allowing introduction of evidence of past sexual behaviour to show the victim's present consent, cannot and should never be probative since consent can only be evaluated according to the circumstances prevailing at the time under charge. This information, deliberately or not, is usually evaluated to assess whether the complainant is a "worthy" victim and has been truly damaged by the rape. Such legal provisions make victims vulnerable to being asked personal questions that are not related to the case and which suggest the victims themselves were to blame for the attack. This facilitates the secondary victimisation of survivors during the legal proceedings, potentially also deterring future victims from coming forward, as well as enabling impunity for the perpetrator since it looks to judge the general character of the victim rather than focus on the evidence in the case and the actions of the alleged perpetrator.

## **Marital Rape**

8. International human rights standards highlight the obligation of States to pay specific attention when it comes to crimes committed in a domestic setting, including marital rape. Marital rape is criminalised in Bhutan's Penal Code under all circumstances. However, the offence of marital rape is classified as a petty misdemeanour, carrying a disproportionately low penalty of imprisonment of a maximum term of one year.<sup>6</sup> In contrast, the offence of rape of adult women is considered as a felony of the fourth degree which carries a penalty of imprisonment between 3-5 years.<sup>7</sup> This gradation of offences, whereby marital rape is expressly graded as a petty misdemeanour, promotes an impression under the law that spousal rape is not as serious a crime as so-called "stranger rape". It diminishes the notion of consent, suggesting that if a woman is habituated to sex with an intimate partner, then she is barely harmed, whereas evolving good practice standards provide for offences against spouses/former spouses/intimate partners to be punished more severely for the additional breach of trust and exploitation of potential additional vulnerability. Further, as a petty misdemeanour, marital rape is a compoundable offence, allowing the Court to drop the criminal charges against the accused on payment of compensation by the accused to the victim.<sup>8</sup> The guidelines on drafting effective legislation on violence against women and girls developed by the UN Women Virtual Knowledge Centre to End Violence Against Women and Girls state that in sexual violence cases, mediation should be prohibited at all stages of the process. The

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<sup>4</sup> Sections 179 and 180, Penal Code of Bhutan, 2004.

<sup>5</sup> Section 65, The Evidence Act of Bhutan, 2005.

<sup>6</sup> Sections 199 and 200, Penal Code of Bhutan, 2004.

<sup>7</sup> Sections 177 and 178, Penal Code of Bhutan, 2004.

<sup>8</sup> Sections 70-74, Penal Code of Bhutan, 2004.

Guidelines also state that financial settlements should be prohibited in sexual violence cases.<sup>9</sup> Accordingly, the Government of Bhutan ought to treat marital rape as a non-compoundable offence, as well as ensure that it is graded on the same level as other forms of rape.

9. The National Survey of Women's Health and Life Experiences conducted by the National Commission for Women and Children in 2017 ('NCWC Survey') found that 4.5% of ever-married women had been subjected to sexual violence by their partner during their lifetime.<sup>10</sup> However, rates of reporting of marital rape remain incredibly low in Bhutan. As per data from the Statistical Yearbook of Bhutan - 2020, over a period of 5 years between 2015-2019, there has been only *one* case of marital rape recorded with the Royal Bhutan Police.<sup>11</sup> These low levels of reporting are also corroborated by the findings of the NCWC Survey, which found that 41.4% of women and girls who experienced partner physical and/or sexual violence did not tell anyone and 72.5% did not seek help from any formal authority. The most common reasons for not reporting are social stigmatisation, fear of having to part from children, and fear of threats/consequences/repercussions.<sup>12</sup> There is also a lack of awareness of women's rights under the laws and the legal remedies available to them.<sup>13</sup>

### Access to Justice for Survivors of Sexual Violence

10. The NCWC Survey found that 8.7% of women and girls between the ages of 15 - 64 in Bhutan had ever experienced sexual violence in their lifetime.<sup>14</sup> Similar to marital rape, however, the rates of reporting with the police remain low. The Statistical Yearbook of Bhutan - 2020 notes that there were 54 cases of rape recorded with the Royal Bhutan Police in 2019 and 49 cases of rape recorded in 2018. The highest number of rape cases were recorded against minors between the ages of 12 to 18 in both 2018 (30 cases) and 2019 (40 cases) demonstrating the particular vulnerability of adolescent girls to sexual violence.<sup>15</sup> Social stigma and prevailing public attitudes towards sexual violence, including the belief that it is a private matter, contribute to low levels of reporting in sexual violence cases. There are also low levels of awareness on available support

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<sup>9</sup> United Nations Women, Handbook for Legislation on Violence against Women, 2012, [https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2012/12/unw\\_legislation-handbook%20pdf.pdf?la=en&vs=1502](https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2012/12/unw_legislation-handbook%20pdf.pdf?la=en&vs=1502)

<sup>10</sup> National Commission for Women and Children, Royal Government of Bhutan, *National Survey on Women's Health and Life Experiences 2017: A Study on Violence against Women and Girls in Bhutan*, [https://www.ncwc.gov.bt/publications/VAW%20\\_\\_%20Report1570788220.pdf](https://www.ncwc.gov.bt/publications/VAW%20__%20Report1570788220.pdf).

<sup>11</sup> National Statistics Bureau, *Statistical Yearbook of Bhutan 2020*, October 2020, <http://www.nsb.gov.bt/publication/files/SYB2020.pdf>

<sup>12</sup> National Commission for Women and Children, Royal Government of Bhutan, *National Survey on Women's Health and Life Experiences 2017: A Study on Violence against Women and Girls in Bhutan*, p. 88. [https://www.ncwc.gov.bt/publications/VAW%20\\_\\_%20Report1570788220.pdf](https://www.ncwc.gov.bt/publications/VAW%20__%20Report1570788220.pdf)

<sup>13</sup> Ugyen Tshering, Royal Court of Justice, Domestic Violence and Access to Justice, published in RENEW, Report of the National Symposium "The Bhutanese Pledge: A Shared Commitment Towards Eliminating Violence against Women", 2016, <https://renew.org.bt/wp-content/uploads/2017/08/RENEW-National-Symposium-%E2%80%9CThe-Bhutanese-Pledge-A-Shared-Commitment-Towards-Eliminating-Violence-against-Women%E2%80%9D-2016-2017.pdf>

<sup>14</sup> National Commission for Women and Children, Royal Government of Bhutan, *National Survey on Women's Health and Life Experiences 2017: A Study on Violence against Women and Girls in Bhutan*, [https://www.ncwc.gov.bt/publications/VAW%20\\_\\_%20Report1570788220.pdf](https://www.ncwc.gov.bt/publications/VAW%20__%20Report1570788220.pdf)

<sup>15</sup> National Statistics Bureau, *Statistical Yearbook of Bhutan 2020*, October 2020, <http://www.nsb.gov.bt/publication/files/SYB2020.pdf>.

services for survivors of sexual violence, compounded by lack of accessibility to such institutions particularly for women and girls living in rural areas.<sup>16</sup> In addition, traditional dispute resolution mechanisms or mediation are sometimes approached in cases of sexual violence, particularly if they involve domestic violence. Due to lack of trust in formal justice mechanisms, which also involve lengthy proceedings, many families continue to seek local dispute resolution or mediation in these cases. Survivors of violence who have sought local mediation frequently report that the mediators are often biased and wish to resolve the dispute with a “harmonious” outcome, irrespective of whether such outcome is in the best interests of the survivors of violence.<sup>17</sup>

11. There is no publicly available data to determine the number of rape cases in which prosecution was taken forward by the Office of the Attorney General, or to establish the conviction rates in such cases. However, the unavailability of legal aid and the lack of access to lawyers results in barriers faced by many women and girls when they approach courts and attempt to manoeuvre through the legal system without assistance.<sup>18</sup> Limited understanding of legal processes amongst the public, delays in court proceedings, lack of confidence and trust in the court system and above all, the social stigma associated with going to court, all create barriers to accessing justice for women and girls who are survivors of violence. Stakeholders in Bhutan have also highlighted the importance of improving training and resources for medical professionals, upholding stricter standards of confidentiality for service providers and improving protection measures for survivors and witnesses, including through increasing access to shelters.<sup>19</sup>

### **Suggested Questions for State Party’s List of Issues Prior to Reporting**

12. We respectfully urge the Committee to raise the following questions with the Bhutanese government:
  - a) What measures has the Bhutanese government undertaken to ensure that evidence relating to the sexual history of the rape survivor is not allowed to be introduced during the trial?
  - b) What is the Government doing to ensure that marital rape is treated as seriously as other forms of rape, to encourage survivors of marital rape to report cases to the police and to address the social stigma associated with intimate partner sexual violence?

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<sup>16</sup> National Commission for Women and Children, Royal Government of Bhutan, *Study of Violence Against Women in Bhutan*,

<https://www.ncwc.gov.bt/publications/Study%20on%20Situation%20of%20Violence%20against%20Women%20in%20Bhutan.pdf>

<sup>17</sup> RENEW, Report of the National Symposium “The Bhutanese Pledge: A Shared Commitment Towards Eliminating Violence against Women”, 2016,

<https://renew.org.bt/wp-content/uploads/2017/08/RENEW-National-Symposium-%E2%80%9CThe-Bhutanese-Pledge-A-Shared-Commitment-Towards-Eliminating-Violence-against-Women%E2%80%9D-2016-2017.pdf>

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

- c) What measures has the Government undertaken to collect disaggregated data on reports of sexual violence registered with the police, as well as rates of prosecutions and convictions in such cases?
- d) What is the Government doing to improve access to justice for survivors of sexual violence and to ensure that sexual violence investigations and trials are conducted in accordance with human rights standards, including to ensure that complainants are protected against revictimisation and any repercussions of reporting from the community?
- e) What measures has the Government undertaken to discourage “mediation” or “compromises” in cases of sexual violence?
- f) What steps has the Bhutan Government undertaken to encourage reporting of sexual violence cases, including through raising awareness amongst women and girls on their rights under the law and the availability of legal remedies and support services for survivors of sexual violence?