

Reaching out for justice

Overcoming barriers for child survivors
of sexual exploitation and trafficking
accessing justice in Nepal

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Acronyms

B.S.	Bikram Sambat (Nepali calendar)
CCWB	Central Child Welfare Board
CEDAW	United Nations Convention on the Elimination of All Forms of Discrimination against Women
CeLRRD	Centre for Legal Research and Resource Document
CSO	Civil Society Organisation
CWIN	Child Workers in Nepal
CWISH	Children-Women in Social Service and Human Rights
ECPAT	End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes
FGDs	Focus Group Discussions
FIR	First Information Report
GoN	Government of Nepal
HTTCA	Human Trafficking and Transportation (Control) Act, 2007
KIIs	Key Informant Interviews
NGOs	Non-Governmental Organizations
NHRC	National Human Rights Commission
OCMC	One Stop Crisis Management Centre
OSRT	Office of the Special Rapporteur
SASANE	Samrakshak Samuha Nepal
SOP	Standard Operating Procedure
TIP	Trafficking in Persons
UNTOC	United Nations Conventions on Transnational Organized Crime
WHO	World Health Organization

Glossary of key terms

Child sexual abuse

Contacts or interactions between a child and an older or more knowledgeable child or adult (a stranger, sibling or person in a position of authority, such as a parent or caretaker) when the child is being used as an object of gratification for an older child’s or adult’s sexual needs.

Sexual exploitation

Any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.

Trafficking

Under Article 3 of the UN Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000):

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

Under Section 4 of Nepal’s Human Trafficking and Transportation (Control) Act 2007:

“(1) If anyone commits any of the following acts, that shall be deemed to have committed human trafficking:

- (a) To sell or buy a person for any purpose,
- (b) To force someone into prostitution, with or without financial benefit,
- (c) To remove human organ except otherwise determined by law,
- (d) To engage in prostitution.

(2) If anyone commits any of the following acts, that shall be deemed to have committed human transportation:

- (a) To take a person out of the country for the purpose of buying and selling,
- (b) To take anyone from his/her home, place of residence or from a person by any means such as enticement, inducement, misinformation, forgery, tricks, coercion, abduction, hostility, allurement, influence, threat, abuse of power and keep him/her into one’s possession or take to any place within Nepal or abroad or hand over him/her to somebody else for the purpose of prostitution and exploitation.”

Survivor

Except in rare instances closely aligned with Nepalese law, this report uses the term “survivor” to describe someone who has been subject to child sexual exploitation or trafficking. This is because it best represents the term predominantly used by those involved in the development of this report. However, it should be acknowledged that the appropriate use of the terms “survivor” and “victim” can be a matter of debate among advocacy groups and survivors themselves. The use of these terms takes on particular significance in the context of access to justice for child sexual exploitation and trafficking. That is because in the eyes of the law, child sexual exploitation and trafficking are crimes, making anyone who experiences them a “victim”. This is reflected in both Nepalese legal provisions that seek to protect children, as well as the language used by judges, lawyers and prosecutors in Nepal. However, decades of experience of working with people subject to these offences highlights that the way we describe them affects our perceptions of them by internalising the subconscious messages associated with the words we use. Being a “victim” implies helplessness and pity, which can be disempowering and may not always represent the experiences of those it is supposed to describe. By contrast, the term “survivor” implies an ability to take control of one’s own life and continue fighting, whether through law, awareness raising, emotional trauma, or the obstacles to rebuilding one’s life. As such, many survivors express a preference for the latter term and it is overwhelmingly used in the context of rehabilitation and support. In the context of criminal liability, however, and particularly where perpetrators try to evade responsibility for their crimes by victim blaming, it is important to remember that those subject to sex offences were, at the time of their exploitation, the victims of their perpetrators.

Perpetrator

A person who has carried out or is responsible for an act of child sexual exploitation or trafficking.

Executive Summary

This report outlines the findings of a qualitative study on the access to justice experiences of survivors of child sexual exploitation and trafficking in Nepal. Drawing on 24 individual survivor interviews, 19 focus group discussions and 34 additional key informant interviews, it concludes that:

- 1 A huge majority of survivors of CSE have no chance of seeing justice. Survivors face multiple barriers to being able to report the crime, both of cultural and administrative nature.**
- 2 Shame and stigma coming from the patriarchal society prevents them from even being able to report the crime.**
- 3 Those who do manage to make a report face significant barriers from the police and judicial system that include: the crime being dismissed due to lack of awareness; a lack of resources and coordination; and the influencing of the judicial process by suspected perpetrators who often stand much higher in the societal hierarchy than the child survivors.**

The report ultimately recommends that the Nepal government recognises the reality of child survivor experiences by making the judicial process more child-friendly, and by identifying and eliminating child and gender-based discrimination within the institutions responsible for delivering justice.

Introduction

Nepal has long experienced high levels of child sexual exploitation and child trafficking for sexual purposes (hereinafter referred to as child sexual exploitation and trafficking). Emerging cultural trends and changing migratory phenomena have both contributed to the rising commodification of Nepalese children for sex. Poverty, lack of education, peer pressure and the necessity of finding employment, have all compounded structural barriers and social prejudices built into patriarchal systems to increase the vulnerability of children, particularly girls, to sexual exploitation.

As a result, the past decade has seen Nepal's government engage in numerous efforts to tackle these phenomena through the development of new laws, policies and action plans. Unfortunately, the findings of this report indicate that these efforts are failing. We find evidence to support the contention that while child sexual exploitation and trafficking remain prevalent, only about five in 100 cases are reported. This highlights that children are still overwhelmingly locked out of the Nepalese justice system and therefore remain unprotected by it in reality.

Context

Nepalese children are sexually exploited and trafficked for sexual purposes in multiple ways: through the adult entertainment sector (AES), street sex work, child sex tourism, pocket money sex, child pornography, online abuse, debt bondage and international trafficking for commercial sexual exploitation. Child survivors are subject to overlapping forms of discrimination that combine to render them vulnerable to exploitation and trafficking. These forms of discrimination – including issues of caste and rural background – also often interact to prevent them from accessing justice.

Nepal has ratified numerous international human rights instruments aimed at preventing the sexual exploitation and trafficking of children. However, up until March 2020, it had not ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons to the UN Convention on Transnational Organized Crime 2000 (Palermo Protocol).¹ As a result, Nepal's definition of what constitutes trafficking differs from internationally accepted standards by excluding certain forms of child sexual exploitation from its scope. This means that while Nepal's Constitution aims to protect children from *all* forms of sexual exploitation, the legal landscape for achieving this remains uneven.

This patchwork and complex approach causes confusion for survivors, as well as those responsible for protecting them, as it is often unclear which law should be applied in a given case. It also has implications for the government's ability to effectively monitor these phenomena due to inconsistencies in record-keeping that impact on the reliability of data on child sexual exploitation.

Some types of child sexual exploitation are treated as trafficking under anti-trafficking legislation. However, that legislation is vague, poorly implemented and criminalises many survivors of trafficking – a major access-to-justice defect. Other forms of child sexual exploitation are treated as sex offences under Nepalese child protection and criminal laws. While relatively new, these laws are also vague, often overlapping and subject to a one-year statute of limitations (the maximum time after the event in which legal proceedings may be initiated. When that date passes, a claim might no longer be filed or, if filed, may be subject to dismissal) – a second major legal defect that blocks survivors from accessing justice due to reporting barriers. While Nepalese law offers victims progressive rights that might ordinarily help survivors in court, they remain largely unimplemented.

¹ In March 2020, the Federal Parliament of Nepal approved the ratification of the Palermo Protocol, [as a result of extensive efforts by campaigners].

Findings regarding access to justice experiences

The procedural framework for securing access to justice is composed of three main segments: (1) case registration; (2) investigation by police; and (3) judicial proceedings ending in a verdict, sentence and compensation finding. However, the findings of this report indicate that many of the most significant barriers to justice occur before this process is even triggered.

1. Barriers to reporting

Aside from lack of awareness about the illegality of child sexual exploitation or how to report it, the stigmatisation of survivors is a key driver of non-reporting. It particularly silences Nepalese girls, who are viewed as carrying a family's honour and whose personal stigmatisation therefore extends to the whole family, meaning that some members are unsupportive of, or even hostile to, attempts to access justice. Another key obstacle to reporting is the behaviour of perpetrators, who create a fear of retributive violence or other actions against survivors and their families. Many participants underlined that perpetrators often have political reach and influence within the police and local community, and are generally higher in the power hierarchy than survivors socially, economically and politically. They thus use their positions and political ties to influence not only law enforcement and the judicial system, but also to turn families against survivors. This creates a general perception that access to justice is a challenge for those with some means and impossible for the poor. This lack of trust in the justice system means that even where survivors and their families want to take action against sexual exploitation, there is a tendency to try to resolve cases informally.

Geographical isolation was identified as another major challenge to accessing justice, with survivors in rural communities facing higher logistical and resource burdens to filing a case. Here, a chorus of voices highlighted the vital role of NGOs and civil society in supporting survivors' access to justice both in emotional and resource terms.

2. Experiences with frontline law enforcement: the police

A number of good practices were identified among police in specific cases, including polite, sensitive and professional interviewing, and accompanying survivors to hospital and court. Unfortunately, these practices were not standard. Notably, respondents highlighted a general police failure to recognise child sexual exploitation and trafficking cases as serious crimes needing priority. This makes the case registration and investigation process slow, increasing trauma and expense for survivors.

Challenges to registering a First Information Report (FIR) were identified as barring access to justice. Police are often reluctant to register cases asking survivors to write FIRs themselves or referring them to third parties whom they must pay to write for them. The use of *Kanuni Abhikarta* appears to be common practice in police stations and FIR write-up fees are charged with few exceptions. The presence of friends, family or NGOs during FIR registration has proved critical to compelling the completion of a registration. Police experience their investigative role as heavily politicised: perpetrators pressure police and survivors throughout investigations with repeated calls to the station or loitering outside to menace survivors and witnesses, sometimes disrupting the police's ability to work.

Other challenges included difficulties for children in understanding what is being asked during an FIR and that survivors remain generally unaware that they can safeguard their identities. Survivors are also often unaware that they must collect an FIR receipt to ensure follow-up of their case, and many are told to return another day to collect that receipt. Having to return increases their expense and trauma.

Child sexual exploitation and trafficking investigations are significantly hampered by:

- (1) limited police personnel with technical expertise in collecting evidence;
- (2) lack of clarity on the types of good quality evidence needed to support a case;
- (3) lack of the necessary resources and equipment required to investigate effectively;
- (4) an inadequate commitment among some officers to ensure a thorough investigation. The allocation of only 28 days to investigate a case was highlighted by police as insufficient to enable a proper enquiry, and when investigation reports are submitted to the public prosecutor there is reportedly a tendency for them to be neglected, as well as a failure to coordinate with police thereafter. Although the law requires survivors to be informed of where a case currently stands, this does not happen in practice.

3. Delivering justice through the judicial process

Patriarchal attitudes, a deeply entrenched apathy to child sexual exploitation and trafficking, incompetence and corruption can see survivors' cases prolonged for years, delaying justice and creating widespread distrust of the judicial system. Along with facing the financial costs of bringing a case, those seeking justice can often be forced to abandon and turn back to community-level negotiations for a solution.

In court, a failure to inform survivors often means legal provisions intended to support them (in-camera hearings, victim protection, fast tracking and interpretation) are unimplemented. Sensitivity towards preventing potential threats to survivors and witnesses, and safeguarding their rights and safety, were identified as major deficiencies. Judges and prosecutors are rarely present during a survivor's testimony, enabling more pressure to be exerted by perpetrators. Male-dominated court rooms, and insensitive and harassing questioning by lawyers further traumatised victims. Again, family, friend or NGO support was crucial for survivors to be able to withstand the judicial process.

These patriarchal attitudes again dominate sentencing and compensation decisions. Moreover, the complex process of applying for compensation, long delays in it being awarded, a failure or inability to inform survivors about the conclusion of their case, and the low value of compensation awards, deter victims from seeking such restorative justice. These factors reflect an inability to see such cases as serious.

Recommendations

The following recommendations have been made with a view to improving the reporting of child sexual exploitation and trafficking cases, enhancing the capacity of frontline law enforcement, improving justice delivery by the courts and advancing institutional reform surrounding child sexual exploitation and trafficking in Nepal:

- The Curriculum Development Centre, and the Ministry of Education, Science and Technology should disseminate information for at-risk children by enhancing the current school curriculum coverage of child sexual exploitation and trafficking, and expanding and deepening the police's existing 'Community-Police Partnership Programme' working through child clubs.
- Relevant government bodies and specialised NGOs working with survivors of child sexual exploitation and trafficking should lead on awareness raising of the issue in communities with a view to reducing stigma.
- The Ministry of Home Affairs should enhance the capacity of police departments to address child sexual exploitation and trafficking cases by updating training to further sensitise officers and ensure adequate allocation of resources to police forces.
- The police should enhance effective First Information Report (FIR) registration and case investigation by developing an FIR template specific to child sexual exploitation and trafficking, and providing cost-free scribes dedicated to help survivors file such reports.
- The Government of Nepal should effectively challenge obstruction of justice by legislating and implementing financial penalties for individuals and groups that try to interfere in the justice process, as well as monitoring case progression.
- Enhance coordination between the investigative and prosecution stages of a case by developing Standard Operating Procedures (SOP) for the handling of child sexual exploitation and trafficking cases.
- Enhance the sensitivity of juridical personnel in the handling of child sexual exploitation and trafficking cases through the provision of intensive awareness raising training to members of the judiciary, public prosecutors and lawyers, as well as monitoring its effectiveness.

- Improving the implementation of existing protections for testifying survivors of child sexual exploitation and trafficking by juridical personnel by
 - (1) monitoring the implementation of legislation intended to protect victims and witnesses in proceedings before local Judicial Committees, and higher-level court proceedings, including making the results of such monitoring publicly available;
 - (2) obligating prosecutors and judges to be in attendance during the giving of survivor testimony in court; and
 - (3) cultivating public prosecutors specialised in handling child sexual exploitation and trafficking cases.
- Create conditions for improving the delivery of interim relief and compensation by developing a compensation award matrix for child sexual exploitation and trafficking cases, and ensuring that compensation is awarded to survivors from the government interim fund instead of requiring them to seek it directly from perpetrators.
- In March 2020, the Federal Parliament of Nepal approved the ratification of the Palermo Protocol. The Government of Nepal should now bring domestic law on child sexual exploitation and trafficking in line with the Palermo Protocol and amend the definition of trafficking in the Human Trafficking and Transportation (Control) Act 2007. The government should also introduce a 'repatriation policy', without which the country is effectively unable to bring home trafficking survivors from India.
- Review existing best practice for child protection of survivors of sexual exploitation and trafficking in other countries including the provision of an independent representative advocating on behalf of a child survivor.

CHAPTER 1

Introduction

I. Why access to justice for child sexual exploitation and trafficking survivors

The World Health Organization (WHO) recently found that over half of children aged 2-17 years globally experience emotional, physical or sexual violence.² Of these, almost one in five girls and one in 13 boys are subject to sexual abuse. Despite its prevalence, this treatment remains “often hidden, unseen or under-reported”, leading the WHO to place the enactment, implementation and enforcement of laws at the forefront of its strategy to combat it. Aside from the moral and legal imperatives, the developmental implications are clear:

The immediate and long-term public health consequences and economic costs of violence against children undermine investments in education, health, and child well-being, and erode the productive capacity of future generations.³

The health and social consequences of sexual violence for future generations are more wide-ranging than death and injury (such as that associated with child pregnancy). They can include communicable diseases (HIV, STDs) and non-communicable diseases, as well as psychological damage (suicide, PTSD, depression and anxiety), risk behaviour (alcohol and drug abuse, unsafe sex or prostitution), educational or occupational underachievement, and involvement in crime. The economic costs of just a few of the health consequences associated with child abuse generally in the East Asia and Pacific region alone have been estimated at between 1.4 per cent and 2.5 per cent of the region’s annual GDP.⁴

In the Nepalese context, the alarmingly high prevalence of child sexual exploitation and trafficking has been pointed out by international agencies since the early 2000s.⁵ Nepal has not been unresponsive to the risks posed to its future generations from those that prey on vulnerability. The past decade has seen numerous legal reforms that have worked to transform the landscape of gender equality and social inclusion in the country. Not only has Nepal become signatory to a number of international treaties on the Rights of the Child, but at national level, new laws, policies and action plans, as well as revisions to existing child safeguarding provisions, have been implemented. Meanwhile, activists and NGOs in different sectors have worked continuously to support government efforts to address the issue effectively.

Despite these efforts, practitioner reports indicate that children are still overwhelmingly unable to access the Nepalese justice system and thus in reality remain effectively unprotected. As one frontline practitioner estimated when interviewed for this report: “maybe 5 out of 100 cases are reported with support from others, or in cases where the abuse or exploitation has been

² WHO (2016) INSPIRE: Seven Strategies for Ending Violence Against Children.

³ Ibid, p.15.

⁴ For more see, ibid, pp.10-20.

⁵ See for example, CWIN/ECPAT (2015) Preparatory Study for Situational Analysis of Commercial Sexual Exploitation of Children in Nepal, p.16-17.

extreme.”⁶ Meanwhile, organisations working with at-risk communities and survivors of child sexual exploitation and trafficking report that this phenomenon appears to be growing in prevalence,⁷ increasingly disrupting the lives of Nepalese children.

In this context, rule of law protections for children from trafficking are crucial to Nepal’s continued development. However, laws have little meaning unless they are effectively implemented. Those responsible for protecting children’s fundamental human rights – referred to in this report as ‘duty bearers’ – must facilitate their access to justice.

Until now, little has been known about how much Nepalese survivors of child sexual exploitation know about the justice system, whether they are able to access and receive justice and compensation, and the hurdles they encounter in the process. Likewise, there has been limited information on the challenges faced by duty bearers, root causes for these barriers, and measures needed to overcome them. This study aims to help fill some of these information gaps and to make specific recommendations to improve the implementation of child rights in this field in the future.

Understanding children’s justice experiences: opportunities and challenges

This report is the product of a two-year project (February 2018 – January 2020) implemented by Children-Women in Social Service and Human Rights (CWISH), Samrakshak Samuha Nepal (SASANE) and Anti-Slavery International to prevent the trafficking of children and young people into child sexual exploitation, and ensure the effective management of human trafficking cases by duty bearers.

Supported by Comic Relief, the wider project aimed to facilitate the improvement of systemic responses to child trafficking and exploitation, and access to justice for survivors. It was implemented in a number of communities affected by increased child sexual exploitation and trafficking since the 2015 earthquake. These are, namely, Dhading, Nuwakot and Sindhupalchowk districts of Nepal’s Province 3, and the Kaski district of Province 4. It also encompassed the SASANE paralegal programme operating in the cities of Kathmandu and Pokhara, as well as CWISH operations in Kathmandu (see annex 1).

Survivors of child sexual exploitation and trafficking are a participant group that is especially difficult to access for research purposes. The study team was nevertheless able to identify survivors for interview through a combination of NGOs providing shelter support and referrals by SASANE paralegals. However, while 398 survivor cases were initially identified, the target number of individual interviews conducted with survivors ultimately had to be reduced from 50 to 24. This was due to difficulties in finding interviewees who were both traceable and willing to revisit often distressing experiences concerning their exploitation and accessing justice. Similar challenges were encountered in obtaining the perspectives of parents of survivors, to the extent that only one parent was found to be both willing and able to be interviewed. Robust methodological ethics standards surrounding child (and gender-sensitive) interviewing, informed consent and confidentiality proved crucial to securing the valuable input of all these participants.

⁶ Focus group discussions with district-level CSOs, journalists, activists [Dhading, 4 June]

⁷ Discussions with Study Advisory Committee members over the course of this study.

Methodology

This research aims to gain an in-depth understanding of the barriers to justice for survivors of child sexual exploitation, including trafficking, in Nepal. The report adopts a qualitative approach, which is appropriate taking into account the focus of the study, and furthermore in terms of the available data, in particular around accessing hard-to-reach and vulnerable populations. The data for this research was collected using a four-stage iterative approach, with each stage informing the next; and focused on different levels, including survivors, impacted communities, and key stakeholders from the state and civil society. The in-depth interviews with survivors constitute the primary source for this research, providing rich experiential data on the ‘justice pathway’, and a novel, survivor-centred approach. The data from other sources served to both interrogate and contextualise this primary source. The evidential strength of the study lies in bringing together the voices of a diverse range of stakeholders.

The stages of data collection were as follows:

- **Literature review:** Existing secondary data, national and international research and project documents, academic, government, NGO and media reports, as well as relevant laws and policies, were reviewed to provide a broad understanding of the changing scenario relating to child sexual exploitation in Nepal. This review of the literature also informed the research design and determined appropriate methodologies.
- **Survivor level:** 24 individual interviews with survivors of child sexual exploitation and trafficking regarding their attempts to access justice, and the challenges and gaps they encountered. These interviews have facilitated a more intimate understanding of these children’s experiences of the Nepalese justice system. Of these survivors, four were under 10, four between 10 and 12, eight between 12 and 16, and eight between 16 and 18 years old at the time of their exploitation.⁸
- **Community level:** Focus Group Discussions (FGDs) were conducted with community stakeholders – vulnerable children, duty bearers, influencing individuals and opinion makers – who shared their opinions and experiences on safeguarding child rights. A total of 19 FGDs were conducted with 202 respondents at community and district headquarters.
- **Stakeholder level:** A total of 34 Key Informant Interviews (KIIs) were conducted with stakeholders and duty bearers directly engaged in supporting survivors of child sexual exploitation and trafficking. These comprised CSOs, advocates, lawyers, police, media, community mediators, political leaders, teachers, and local government representatives, including Judicial Committee members.

⁸ Three interviews were with guardians of children under 12 years old at the time of the interview, six with children under 16, four with children under 18, and 11 with young people under 21.

Advisory Committee

Given the highly sensitive nature of the study focus, from the outset this research has sought to maximise the safety, rights and confidentiality of participants. The formation of an expert Advisory Committee was a key innovation, and further strengthened the process and findings of this report. The Committee was composed of representatives from the Nepal Police's Anti-Human Trafficking Bureau, the Central Child Welfare Board (CCWB),⁹ the National Human Rights Council (NHRC), the National Committee for Controlling Human Trafficking (NCCHT), a legal expert, a journalist, and civil society representatives with in-depth experience regarding child sexual exploitation and trafficking, and guided the finalisation of the overall study methodology. This team of experienced practitioners provided support and guidance regarding the incorporation of ethical standards and safeguarding into research design and conduct. The Committee met twice: firstly, to review and revise data tools and processes and advise the team on ethical compliance; and secondly, to provide feedback and recommendations on the draft findings that provided the foundation for this report.

Sampling and Limitations

The Advisory Committee also collaborated on the development of sample selection criteria, all of which participants had to meet:

- **Survivors of child sexual exploitation and child trafficking;**
- **Child survivors who experienced the abuse before the age of 20;¹⁰ and**
- **Child survivors currently aged 25 or under.**

Within these criteria, potential participants were identified through the extended networks of the organisations behind this research report: CWISH, SASANE and Anti-Slavery International. In consultation with the Advisory Committee, it was agreed that survivor participants would be drawn from among the survivors supported by SASANE and other organisations including Shakti Samuha, Saathi and the Centre for Awareness Promotion (CAP) Nepal. CWISH and SASANE personnel coordinated and facilitated the identification of FGD and KII respondents.

The study locations were chosen based on the project implementation locations, namely, Dhading, Nuwakot and Sindhupalchowk, all of which were heavily impacted by the 2015 earthquake. Additionally, Pokhara and Kathmandu were incorporated as study locations due to the presence of SASANE's paralegal programme, and in consultation with CWISH.

Despite the report's significant qualitative contribution to efforts to improve child access to justice in cases of sexual exploitation and trafficking, it is also subject to certain noteworthy limitations. These limitations are outlined at the start so that readers can bear them in mind in what follows.

⁹ The institution is now entitled National Child Rights Council (NCRC).

¹⁰ Age of 20 years identified as cut-off point, based on government regulation for legal marriage age to be 20 years.

The limitations of this study are:

- The method used for sourcing interviewees for this study means that its findings have received considerable input from child survivors from CWISH and SASANE project areas, and specifically those currently or previously receiving accommodation assistance in Kathmandu and Lalitpur. Given the predominance of support services in the project areas that were the focus of this study, access to justice can be expected to be even more challenging in areas where such services are scarce. The experiences of children in these areas merit further enquiry.
- This study has chosen to focus predominantly on girl survivors of child sexual exploitation because of their higher vulnerability to this phenomenon. However, there are boy survivors of child sexual exploitation and trafficking, albeit in lower numbers. Further study into sexual exploitation of boys in the Nepalese context is therefore required.
- Given the difficulty in accessing survivors of child sexual exploitation and trafficking, the size of the sample is too small to allow statistical comparison or extrapolation. Additionally, although the Nepalese authorities collect and publish statistical data on trafficking offences, it is not consistently collected in a manner that would allow for comparison.

Ethical Considerations

As noted, the study prioritised child/young survivors' and other respondents' safety and protection through the formation of the Advisory Committee, composed of personnel with significant experience in dealing with and supporting survivors of commercial sexual exploitation, including trafficking. A specific study protocol was developed which required all researchers to sign an ethics form. A common understanding on ethical considerations among study team members was formulated in order to strengthen levels of safety and confidentiality, and to protect the rights of survivors.

Throughout the study, researchers sought to ensure the safety of survivors by conducting interviews in safe and private locations recommended by support organisations. Participants were read detailed information in Nepalese regarding study objectives, and the informed consent of participants was received both verbally and in writing. In the case of participants that were still legal minors, informed verbal and written consent was received from parents and/or guardians. Respondents were individually interviewed by the Lead Researcher, with the support of the CWISH Coordinator in some instances, and in the presence of the relevant organisation's counsellor to address the potential for re-traumatisation.

Key informants and FGD participants were informed verbally and in writing of the study objectives, their rights and obligations as participants in the study, and their freedom to withdraw. To ensure confidentiality of data, the sources have not been directly quoted in the report, unless specific permission was obtained. All source data has been securely stored, and care has been taken not to reveal personal information in this report. Access to the data was limited to the Lead Researcher, CWISH Project Coordinator and Communication and Documentation Officer alone. The data will be destroyed following publication.

II. What do we mean by “access to justice” for “child sexual exploitation and trafficking”?

Nepalese law treats any person under 18 years of age as a child.¹¹ It gives special protections to children because they are among the most vulnerable and voiceless members of Nepalese society. A child’s social status and lack of worldly experience renders them generally less aware of their situation and rights. This increases their risk of exposure to multiple forms of abuse, while impeding their ability to access justice. Such exposure is intensified by additional, often cumulative, vulnerabilities that a child can experience because of their particular economic or legal status, caste, gender, disability or education level. In the area of sexual abuse, exploitation and trafficking, these factors put already vulnerable children, and girls in particular, at even further risk.

But what is “child sexual abuse”, and when does it become “child sexual exploitation” or “trafficking”?

This report is focused on child sexual exploitation and trafficking. Both of these phenomena constitute a form of child sexual abuse. While there is no single accepted definition of child sexual abuse, the UN and major global child protection agencies, generally recognise it as involving:

*contacts or interactions between a child and an older or more knowledgeable child or adult (a stranger, sibling or person in a position of authority, such as a parent or caretaker) when the child is being used as an object of gratification for an older child’s or adult’s sexual needs.*¹²

Any sexual activity with a child generally will therefore constitute sexual abuse. Many of the acts that can be included in such behaviour are reflected in Nepalese law as offences against children. They include sexual touching, exposure to sexual behaviour or obscene materials, such as pornography, and using a child for sexual gratification, among other acts.¹³

UNICEF has suggested that such abuse becomes exploitation when a second party benefits, whether through profit or a quid pro quo, through sexual activity involving a child.¹⁴ Here, international discourse on the issue recognises sexual exploitation as a broad term encompassing,

*[a]ny actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.*¹⁵

¹¹ Children’s Act, 2018 (B.S. 2075) in Sec. 2(j).

¹² See for example UN Economic and Social Commission for Asia and the Pacific (UN ESCAP) (1999), “Sexually Abused and Sexually Exploited Children and Youth in South Asia: A Qualitative Assessment of Their Health Needs and Available Services”, New York: UN ESCAP.

¹³ See Act Relating to Children 2018, 2075/06/02, Chapter 8, s.66(3)(a) to (k).

¹⁴ See for example, L. Radford et al, Promising Programmes to Prevent and Respond to Child Sexual Abuse and Exploitation, UNICEF, available at: [https://www.unicef.org/protection/files/Promising_programme_responses_SEA_\(Radford_et_al\).pdf](https://www.unicef.org/protection/files/Promising_programme_responses_SEA_(Radford_et_al).pdf)

¹⁵ UN, Glossary on Sexual Exploitation and Abuse: Thematic Glossary of current terminology related to Sexual Exploitation and Abuse (SEA) in the context of the United Nations, 2017, p.6, available at: https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English_o.pdf

Understanding child sexual exploitation as age-based violence

Recent research (Freedom Fund, 2019) indicates that the fact that child sexual exploitation entails a quid pro quo is often seen by those engaging in such behaviour as indicating a degree of agency (“free will”) on the part of the children involved. This means that perpetrators often portray children as consenting to their own sexual exploitation, despite the fact that they cannot legally do so. Crucially, it can lead those close to a child’s sexual exploitation to normalise such behaviour by treating it merely as a business transaction, or even a benevolent act.

The reality is that these arrangements take place because of a decision to take advantage of oppressive age-class-gender power relations. Once these power relations are properly understood, it becomes clear that a child’s ability to make genuine choices is virtually non-existent. This is especially so where their other underlying vulnerabilities like low education, caste or disability worsen their experiences of the already significant power imbalance between a child and an adult. This has led child protection experts to highlight the need to recognise child commercial sexual exploitation as age-based, as well as gender-based, violence (CWIN/ECPAT: 2015). It is also precisely why the law tries to protect children by finding them legally unable to consent to sexual activity, and why any sexual activity with a child is therefore unlawful regardless of any expression of so-called “consent”.

Under international law, where exploitation has involved the use of force, coercion, threats, deception or an abuse of power or position of vulnerability, it constitutes trafficking.¹⁶ The uniquely vulnerable position of children, therefore, essentially means that all child sexual exploitation is in fact trafficking because abuse of power/position of vulnerability is inevitably involved.¹⁷ In Nepal, however, trafficking is more narrowly defined. For a child to be recognised as trafficked for sexual purposes under Nepal’s Human Trafficking and Transportation (Control) Act 2007, they need to have been prostituted, bought or sold, or moved/taken away from somewhere for the immediate or ultimate purpose of their sexual exploitation.¹⁸

Movement does worsen a child’s pre-existing vulnerabilities by removing them from safe surroundings and contexts with which they are familiar and in which they are recognised.¹⁹ However, Nepal’s narrower definition of trafficking means that survivors of child sexual exploitation not falling within it must turn to other relevant laws for protection from such behaviour.

The fact that sexual exploitation usually involves one or more people benefiting in some way, makes access to justice especially challenging in all child sexual exploitation cases, whether they constitute trafficking under Nepalese law or not.

¹⁶ Article 3, of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000).

¹⁷ For a more detailed examination of the term “child trafficking” see, UNICEF, Note on the definition of ‘child trafficking’, 2007, available at: https://www.unicef.org/southafrica/SAF_pressrelease_notetrafficking.pdf

¹⁸ Article 4 of the Human Trafficking and Transportation (Control) Act defines trafficking as, inter alia, buying or selling a person for any purpose or forcing someone into prostitution with or without financial benefit, while defining human transportation as including taking “anyone from his/her home, place of residence or from a person by any means such as enticement, inducement, misinformation, forgery, tricks, coercion, abduction, hostility, allurements, influence, threat, abuse of power and keep him/her into one’s possession or take to any place within Nepal or abroad or handover him/her to somebody else for the purpose of prostitution and exploitation”.

¹⁹ UNICEF, Note on the definition of ‘child trafficking’, 2007, p.1.

So, what does “access to justice” mean for the purposes of this report?

Access to justice is a basic principle of the rule of law, under which those whom the law seeks to protect are able to have it enforced. The availability of justice is widely recognised as “a handmaiden of true peace” – that is, a precondition for lasting social peace and security.²⁰ This report focuses primarily on the delivery of justice by law enforcement and judicial authorities (referred to in this report as “the justice system”) in implementing laws intended to protect children from sexual exploitation and trafficking. Access to justice in this context is based on the application of laws and mechanisms intended to act as both a deterrent and punishment for child sexual exploitation and trafficking, as well as offering survivors some restoration for the harms that have been done to them.

Research for this report highlights that such laws generally reflect Nepalese stakeholders’ own moral understandings of what justice responses to child sexual exploitation and trafficking should involve. Here, stakeholders’ conceptions of justice range from ensuring that perpetrators are convicted, preventing additional incidents from occurring, providing compensation to survivors, and ensuring the dignity of survivors.²¹

However, this study also reveals that a more survivor-focused enquiry into the meaning of “justice” offers a deeper understanding of how to achieve access to it. All survivors agreed on the need for fair treatment of both survivor and perpetrator. Survivors also expressed the need for knowledge that a perpetrator had been jailed and that the survivor could live with dignity in their community after the exploitation – something that generally does not happen today. Here, justice was identified as extending beyond access to the legal system to include access to survivor rehabilitation programmes as part of restorative justice. Although reference was made to the role of compensation in helping a victim to return to a ‘normal state’ (as they were before the incident), some participants emphasised justice as including helping survivors to reintegrate into their own communities, and providing them with livelihood options as part of their healing.

This understanding of justice encompasses wider resource allocation as much as individual legal recourse. Crucially, child survivors clearly identified that their experiences of continuing injustice, even after the commission of offences against them, was due to their frequent inability to speak freely about what has happened to them from the outset of their abuse. This included the inability of survivors to speak up during the exploitation or speak openly about it afterwards, including in trying to secure protection from perpetrators. Here, social stigma, lack of rights knowledge or understanding, fear and intimidation, and the compounding impact of a child’s social, legal, economic, gender or disability status emerged as integral to their experiences of injustice.

²⁰ Kofi Annan, former Secretary-General of the United Nations, UNDP, Access to Justice, Practice Note, 2004, p.2, available at: https://www.un.org/ruleoflaw/files/Access%20to%20Justice_Practice%20Note.pdf

²¹ Focus group discussions with district-level Assistant Police Inspectors [Nuwakot, 8 June 2019], Focus group discussions with district level CSOs, journalists, activists [Nuwakot, 9 June, 2019], Focus group discussions with community- and district-based leaders [Nuwakot, 13 June 2019], Focus group discussions with community- and district-based leaders [Sindupalchowk, 27 May 2019], Focus group discussions with district-level CSOs, journalists, activists [Sindupalchowk, 27 May 2019], Focus group discussions with district level Assistant Police Inspectors [Dhading, 4 June], Focus group discussions with district-level CSOs, journalists, activists [Dhading, 4 June]

In their own words...

For me justice is being able to help someone when they are facing difficult times, to support them by telling them not to worry and that all will be well.

Survivor of internal trafficking at age 16, now aged 19

Justice is being able to talk freely and to call upon justice when one is in such difficult conditions. When such an incident occurs there has to be solution to the problem, a survivor should be heard.

Survivor of child sexual exploitation at age 14, now aged 15

If the police investigate properly then justice is possible; personally I feel most [survivors] may not get justice as money is used to hide cases.

Survivor of child sexual exploitation at age 12, now aged 17

These understandings and experiences of justice in the context of child sexual exploitation and trafficking provide the contextual grounding for the structure and findings outlined in the remainder of this report.

CHAPTER 2

Context

I. Child sexual exploitation and trafficking in Nepal – what we know

Nepal has long been plagued by high levels of child sexual exploitation and trafficking, with the cross-border trafficking of girls being spotlighted from the 1980s onwards. A number of earlier studies highlight not only the prevalence of child sexual exploitation and trafficking in Nepal but also its ties to historical and cultural practices, such as child marriage and institutionalised discrimination against women and girls.²² Since the 1990s, these practices have converged with emerging cultural trends (liberalisation, pornography, the rising influence of foreign media) and migratory phenomena (increased urbanisation and displacement) to contribute to the rising commodification of children for sex.²³

Nepalese children's pre-existing vulnerabilities to sexual exploitation and trafficking have been heightened by the upheaval and poverty caused by the 1996-2006 Maoist insurgency, the collapse of the pashmina industry and, more recently, the 2015 earthquake. The latter alone affected nearly a third of Nepal's population,²⁴ occasioning a spike in orphaned children and a significant "increase in violence against women and girls", including indicators that child earthquake survivors have been targeted by traffickers for commercial sexual exploitation abroad.²⁵

Numerous studies highlight that the above, together with the wide-ranging efforts of government, non-government and external development partners, have changed the dimensions of exploitation in Nepal. They have also brought to light new forms of exploitation that had until recently been either invisible or non-existent.

Prevalence and manifestations

While numbers of children affected by sexual exploitation and trafficking are difficult to provide due to the clandestine nature of such activity, indicative figures are described in the literature as "alarmingly" high.²⁶ Worryingly, organisations working with child survivors from these sectors report that the number of children becoming involved appears to be increasing, with rising demand for access to relevant shelters.²⁷ A chorus of voices from the focus group discussions, key informant interviews and Advisory Committee meetings that form the basis for this study, indicate the existence of sexual exploitation of girls as young

²² See for example, CWIN/ECPAT, Preparatory Study for Situational Analysis of Commercial Sexual Exploitation of Children in Nepal, 2015, p.10-16; The Freedom Fund, Minors in Kathmandu's adult entertainment sector: What's driving demand? 2019, p.11.

²³ The Freedom Fund, Minors in Kathmandu's adult entertainment sector: What's driving demand? 2019, p.11.

²⁴ BBC News, "Nepal earthquake: Eight million people affected, UN says", 28 April 2015, available at: <https://www.bbc.co.uk/news/world-asia-32492232>.

²⁵ Saathi, A Survey on the Impact of Earthquake on Migration and Trafficking in 3 VDCs of Dhading District, 2017, Unpublished.

²⁶ CWIN/ECPAT, Preparatory Study for Situational Analysis of Commercial Sexual Exploitation of Children in Nepal, 2015, p.10; see also, The Freedom Fund, Minors in Kathmandu's adult entertainment sector: What's driving demand? 2019, p.5.

²⁷ Discussions with Study Advisory Committee members over the course of this study.

as eight years. Some participants referred to new forms of trafficking affecting girls as young as 12 years.

This observation of children’s heightened exposure appears to be supported by the everyday experiences of Nepalese children themselves. One recent child-led report stated that “many girls have been victims of sexual abuse including through internet and child pornography”; that “girls face sexual harassment and abuse in public places, public transportation, on streets, workplaces as well as in schools”; and that “[t]rafficking of children especially girls for sexual exploitation, labour exploitations, pornography both within and outside the country is also a major issue for girls”.²⁸

The Nepal police recorded 219 child abuse cases in 2019.²⁹ However, this excludes recorded child sex trafficking cases and can be expected to be a dramatic underrepresentation. Child sexual exploitation exists in various forms in Nepal. It includes:

- **Adult Entertainment Sector (AES)** – The 2019 US Trafficking in Persons Report states that, “traffickers increasingly subject Nepali girls and boys to trafficking in Nepal on the streets and in the AES, including dance bars, massage parlors, and cabin ‘restaurants’”. Since the 1990s, AES has mushroomed in major urban centres like Kathmandu and Pokhara, as well as in key transit hubs.³⁰ Estimates from 2010 suggested that 30 to 40 per cent of commercial sex workers in Kathmandu were under 18, with one in 10 believed to be between 12 and 15 years old.³¹ Recent interviews with females working in the sector found that most started in their childhood, with 70 per cent reporting that they had been subject to sexual abuse.³² Moreover, one recent study has indicated that many of Kathmandu’s massage parlours, dance bars, cabin restaurants and guest houses “have become a front for commercial sex, and, alarmingly, the commercial sexual exploitation of children”, while “the wider hospitality industry, such as bhattipals and khajaghars and some hotels, have also ... allowed similar exploitation.”³³
- **Street sex work, child sex tourism and pocket money sex** – Street prostitution is said to be an increasingly common form of commercial sexual exploitation of Nepalese children. In 2002, studies found that 39 per cent of respondents entered the trade under the age of 17, 31 per cent between 15 and 17, and 8 per cent under 15 years of age.³⁴ More recent reports indicate that children, particularly in urban areas, are now also engaging in pocket money sex servicing both locals and tourists. This suggests that the 2002 figures are, at best, unlikely to have decreased.³⁵

²⁸ Girls of Nepal, *Girl-Led Report on the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) Nepal*, October 2018, p.7. Prepared by 527 girls, 110 boys and two sexual minorities from 47 districts representing all seven provinces of Nepal this report gives an authoritative voice to the experiences of children across the country.

²⁹ Nepali Police, Women, Children and Senior Citizen Service Directorate, <https://cid.nepalpolice.gov.np/index.php/cid-wings/women-children-service-directorate>

³⁰ NHRC (2076) National Report on Trafficking in Persons. National Human Rights Commission, 2018, Harihar Bhawan, Lalitpur, Nepal, p.XV.

³¹ CWIN/ECPAT, Preparatory Study for Situational Analysis of Commercial Sexual Exploitation of Children in Nepal, 2015, p.10.

³² NHRC (2076) National Report on Trafficking in Persons. National Human Rights Commission, 2018, Harihar Bhawan, Lalitpur, Nepal, p.XV.

³³ The Freedom Fund (2018). Minors in Kathmandu’s Adult Entertainment Sector: Who’s Driving Demand? 2019, p.5. Bhattipals are small restaurants where local alcohol is available and khajaghars are small restaurants where snacks are available.

³⁴ CWIN/ECPAT, Preparatory Study for Situational Analysis of Commercial Sexual Exploitation of Children in Nepal, 2015, p.10.

³⁵ Ibid.

- **Child pornography and online abuse** – A number of studies indicate the prevalence of child sexual abuse images in Nepal. Children affected by exploitation report an insistence by both locals and foreigners to be able to take explicit pictures of them. Many children are reportedly exposed to pornography, harassment and blackmail online.³⁶ More recently (2017), an ECPAT study found nearly 80 per cent of sampled Nepalese children had internet access, with 15 per cent reporting that they had been sexually abused online.³⁷
- **Child migrant work/debt bondage** – Child labour in exchange for debt, board or an informal leasehold can also see children sexually exploited on top of their labour services. One study has found that “children frequently report being exploited by the landlords and their visiting relatives. Since they live in the houses of their employers they are considered to be easily available for sex.”³⁸ Likewise, the NHRC reports that child labour prevails in Nepal’s brick kilns, where it says that “[a]dolescent girls are also at risk of rape, sexual abuse and are at risk of trafficking”.³⁹
- **Trafficking for commercial sexual exploitation** – This includes trafficking that is internal to Nepal, cross-border (to India) and transnational (China, Macau, the Middle East, East Africa and beyond). The proportion of children affected is unclear as the number of trafficking (especially international trafficking) cases registered by the Nepalese police generally remains low, and, as outlined in the introduction, trafficking cases are not disaggregated.⁴⁰ In 2001, the ILO estimated that around 12,000 Nepalese children, mainly girls, were trafficked for commercial sexual exploitation annually.⁴¹ In 2015/16, four in 10 Nepalese-registered trafficking victims generally were children, with 95 per cent being female.⁴² Data from 2017/18 finds at least a quarter of trafficking survivors identified by Nepalese police generally were children,⁴³ though NGO reports concerning 13,600 victims of attempted trafficking for that year indicate that half were identified as children.⁴⁴ The NHRC points out the close relation between Nepal’s missing children phenomenon and child trafficking, highlighting that the reported number of missing children “has considerably increased to 2,772 in FY2017/18 from 1,453 in 2012/13. Annually more than 1,750 children are reported missing in Nepal. Among them, girls accounted for 55 percent”.⁴⁵

³⁶ CWIN/ECPAT, Preparatory Study for Situational Analysis of Commercial Sexual Exploitation of Children in Nepal, 2015, p.12.

³⁷ NHRC (2076) National Report on Trafficking in Persons. National Human Rights Commission, 2018, Harihar Bhawan, Lalitpur, Nepal, p.XIV.

³⁸ CWIN/ECPAT Luxembourg (2015) The Preparatory Study for a Situational Analysis of Commercial Sexual Exploitation of Children in Nepal. A Preliminary Report. January 2015.

³⁹ NHRC (2076) National Report on Trafficking in Persons. National Human Rights Commission, 2018, Harihar Bhawan, Lalitpur, Nepal, p.XIV.

⁴⁰ See generally, NHRC, National Report on Trafficking in Persons. National Human Rights Commission, 2018, Harihar Bhawan, Lalitpur, Nepal, pp.I-V.

⁴¹ CWIN/ECPAT Luxembourg (2015) The Preparatory Study for a Situational Analysis of Commercial Sexual Exploitation of Children in Nepal. A Preliminary Report. January 2015, p.10.

⁴² NHRC, National Report on Trafficking in Persons. National Human Rights Commission, 2018, Harihar Bhawan, Lalitpur, Nepal, p.I.

⁴³ NHRC (2076) National Report on Trafficking in Persons. National Human Rights Commission, 2018, Harihar Bhawan, Lalitpur, Nepal.

⁴⁴ NHRC (2076) National Report on Trafficking in Persons. National Human Rights Commission, 2018, Harihar Bhawan, Lalitpur, Nepal, p.I.

⁴⁵ Ibid, p.II.

Perpetrators of child sexual exploitation

Official reports indicate that most perpetrators of trafficking generally (three in four) are men, with nearly two-thirds of those apprehended in 2017/18 being under 35 years.⁴⁶ The NHRC points out that of those charged with relevant trafficking offences, perpetrators from ‘disadvantaged’ social groups are over-represented.⁴⁷ While this may also reflect structural inequalities in the Nepalese justice system affecting these groups, girls from disadvantaged groups are particularly vulnerable to such exploitation. Moreover, focus group discussions conducted as part of the current study highlight the frequent closeness of perpetrators to survivors: community leaders and at-risk children indicate that teachers, children’s own family members and their acquaintances can pose a threat, as well as strangers.⁴⁸ Notably, respondents in two focus group discussions stated that “parents are supporting [trafficking] because survival is a primary need”.⁴⁹ Those survivors that agreed to be interviewed as part of this study identified their perpetrators to be employers and their guests, neighbours and other known persons, such as the husband of a 13-year-old girl married off by her parents.

While a child’s own relatives and acquaintances could often be implicated in exploitation, some respondents highlighted that perpetrators were also “people with power, the rich and respected in society who are seen as more credible and trustworthy”.⁵⁰ These findings appear to compliment the 2019 findings of the US Trafficking in Persons Report that some police and political party leaders are complicit in trafficking due to financial involvement in the adult entertainment sector.⁵¹ Recruitment agents and individuals on social media were also referred to as potential perpetrators by respondents in research for the current report. Indeed, some interviewees pointed out that even children from wealthy backgrounds were not free from the risk of sexual exploitation due to the widespread use of social media.

⁴⁶ NHRC (2076) National Report on Trafficking in Persons. National Human Rights Commission, 2018, Harihar Bhawan, Lalitpur, Nepal, p.1.

⁴⁷ Ibid.

⁴⁸ Focus group discussions with out-of-school adolescent girls [Nuwakot, 13 June 2019], Focus group discussions with school-going adolescent girls [Dhading, 4 June 2019], Focus group discussions with district-level CSOs, journalists, activists [Dhading, 4 June 2019], Focus group discussions with community members [Dhading, 3 June 2019], Focus group discussions with district-level CSOs, journalists, activists [Sindupalchowk, 27 May 2019]; Focus group discussions with school-going adolescent girls [Sindupalchowk, 26 May 2019], Focus group discussions with out-of-school adolescent girls [Sindupalchowk, 25 May 2019].

⁴⁹ Focus group discussions with community members [Nuwakot, 13 June 2019], Focus group discussions with district level CSOs, Journalists, Activists [Sindupalchowk, 27 May 2019].

⁵⁰ Focus group discussions with community members [Nuwakot, 13 June 2019].

⁵¹ US Trafficking in Persons Report: Nepal, 2019.

Children’s multiple vulnerabilities to sexual exploitation

Many child survivors of sexual exploitation and trafficking are subject to overlapping forms of discrimination, which invariably interact with one another to deepen their risk exposure – a phenomenon commonly known as ‘intersectionality’.⁵² In Nepal, ECPAT has identified “poverty, lack of livelihood options, structural inequities in society, gender discrimination, the lack of educational and employment opportunities and a lack of protective legislation, services and regulations as responsible factors for commercial sexual exploitation of children”.⁵³ Indeed, there is a common thread across research on Nepal that violence against women and girls is compounded by structural barriers and social prejudices built into patriarchal systems.⁵⁴

Research for the present study supports the above assertions. Community-level focus group discussions with girls at district level highlight poverty, lack of education, hopes of employment, peer pressure and greed as primary “causes of”/vulnerabilities to trafficking.⁵⁵ Community and district-based leaders added social media, dysfunctional families and proximity to highways to these risk factors. These respondents suggested that girls from 12 years onwards, and from socially marginalised caste groups like Dalits, Tamang, Kumal and Chepang, as well as economically marginalised members of other castes, were the most susceptible to trafficking. In this context, family pressure, including financial, was referred to as being exploited by perpetrators to lure in potential victims through their blood relations. Girls aged between 17 and 19 years were also reported by community leaders to be highly vulnerable to exploitation. However, this at-risk group were said to be often unable to talk openly about the issue in fear for their reputations and the risk of social stigma.

As outlined above, the complex and perceived association of ‘agency’ in many situations of sexual exploitation, when combined with deeply entrenched discriminatory views of women, children and certain castes,⁵⁶ can serve to silence those rendered vulnerable by multiple forms of discrimination. This is particularly where they and others perceive their exploitation as having been brought about by a sequence of their own ‘choices’ in responding to such discrimination.

While merely indicative, the demographics of survivors interviewed as part of this study appear to support recent NHRC findings surrounding the vulnerability of Janajati females to trafficking.⁵⁷ However, as depicted in the accompanying graphic, it also suggests a particular susceptibility of Dalit girls to sexual exploitation. Notably, despite the seemingly even representation of Janajati and Dalit girls in the present sample, only one Dalit survivor had reported her exploitation to police, compared to five Janajati, three Chhetri and two Brahmin survivors. This appears to accord with the assertion of Nepalese children themselves who report that “girls belonging to so-called ‘lower caste’ tend to express lower levels of

⁵² B. Adewunmi, “Kimberlé Crenshaw on intersectionality: ‘I wanted to come up with an everyday metaphor that anyone could use’”, 2 April 2014, New Statesman, available: <https://www.newstatesman.com/lifestyle/2014/04/kimberl-crenshaw-intersectionality-i-wanted-come-everyday-metaphor-anyone-could>

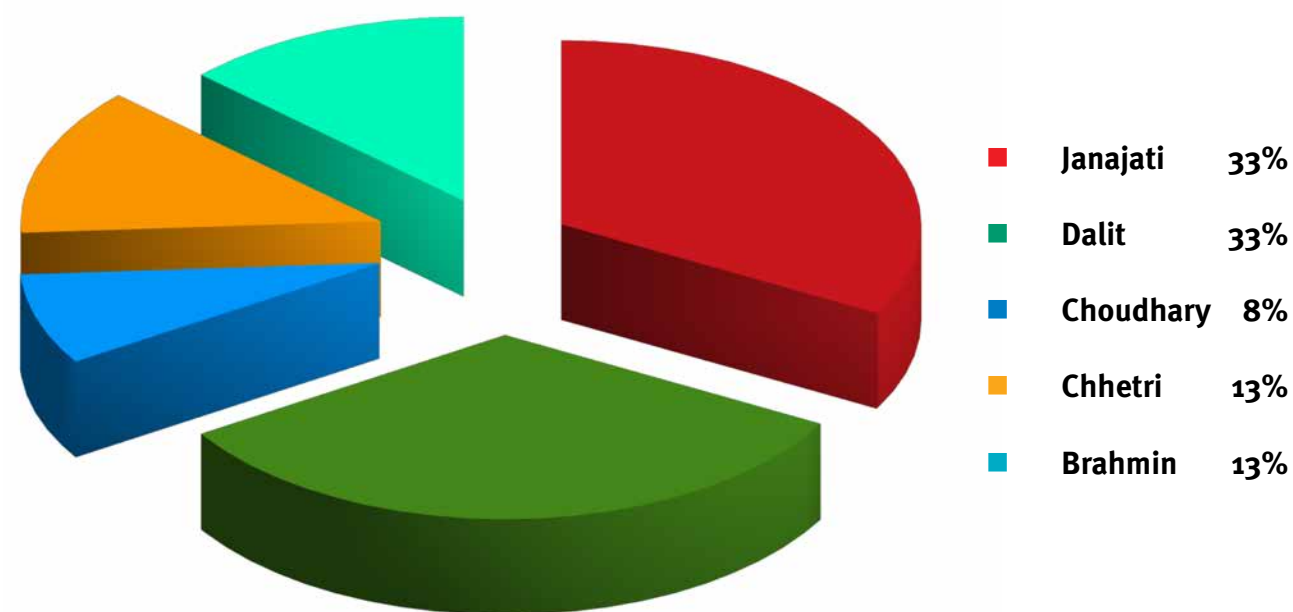
⁵³ CWIN/ECPAT Luxembourg (2015) The Preparatory Study for a Situational Analysis of Commercial Sexual Exploitation of Children in Nepal. A Preliminary Report. January 2015.

⁵⁴ Ibid.

⁵⁵ Focus group discussions with school-going adolescent girls [Dhading, 4 June 2019]

⁵⁶ See Girls of Nepal, *Girl-Led Report on the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) Nepal*, October 2018, p.4: “Although outward/visible discrimination in some areas have reduced, the perspectives of the community have not changed”.

⁵⁷ NHRC, National Report on Trafficking in Persons. National Human Rights Commission, 2018, Harihar Bhawan, Lalitpur, Nepal, p.1.



confidence due to societal perception towards them”.⁵⁸ It illustrates the significant impact that issues like caste can have on accessing justice, as well as vulnerability to trafficking.

The impact of the complex intersection of multiple forms of discrimination on sexual exploitation was further highlighted in focus group discussions with community leaders and CSOs. Here, respondents suggested a higher prevalence of child sexual exploitation among marginalised Tamang and Kumal communities, primarily due to illiteracy. These views were echoed at community level by school-going (10-14 years) and out-of-school (15-19 years) girls, who observed that girls in their communities usually dropped out of school from around age 12/13 onwards. The reasons for this ranged from distant school locations, household duties, child marriage, parental neglect or pressure, and poor educational provision (lack of good teachers) – all of which demotivated girls while increasing their vulnerability to exploitation.

These observations again mirror the findings of previous ECPAT research surrounding background factors driving child sexual exploitation. They highlight the heightened vulnerability of rural girls, who continue to be particularly affected by poverty, burdensome household chores, child marriage, disability-and caste-based discrimination and difficulties in accessing education.⁵⁹ It is in this context that the Concluding Observations on the Sixth Periodic Report of Nepal on CEDAW⁶⁰ states the need for the Nepalese State to “raise awareness among rural, displaced, indigenous and Dalit women and girls about the risks and criminal nature of trafficking”.⁶¹

⁵⁸ Girls of Nepal, Girl-Led Report on the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) Nepal, October 2018, p.4.

⁵⁹ See for example, Girls of Nepal, Girl-Led Report on the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) Nepal, October 2018, p.13.

⁶⁰ FWLD (2018) Concluding Observations on the Sixth Periodic Report of Nepal on CEDAW.

⁶¹ UN Women, Concluding Observations on the Sixth Periodic Report of Nepal on CEDAW, No.206, 2018, p.9.

II. Legal and policy frameworks for protecting children from sexual exploitation, including trafficking

Nepal has ratified numerous international and regional human rights instruments aimed at preventing the sexual abuse, exploitation and trafficking of children. In ratifying such instruments, Nepal has expressed its commitment to protecting children from such harms. Some of the instruments ratified by Nepal include: the Convention on the Elimination of Discrimination Against Women 1979, the Convention on the Rights of the Child (CRC) 1989, and the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography 2000. Unfortunately, however, Nepal has yet to ratify both the UN Convention on Rights of the Migrant Workers and Their Families 1990, and up until March 2020, it had not ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons to the UN Convention on Transnational Organized Crime 2000 (Palermo Protocol). In March 2020, the Federal Parliament of Nepal approved the ratification of the Palermo Protocol.⁶²

Nevertheless, Nepal’s Constitution (2015),⁶³ as the foundation of all Nepalese law, sets out a number of provisions that necessitate the suppression of child sexual exploitation. It includes provisions prohibiting all forms of discrimination and guaranteeing rights to a dignified life (Article 16), personal liberty (Article 17(1)) and freedom of expression (Article 17(2)(a)). It also outlines a number of fundamental rights for children (Article 39), including protections against hazardous work (Article 39(4)) and the recruitment or use of a child for sexual exploitation (Article 39(6)). In both cases, the Constitution vests in children the right to compensation for the breach of such provisions.

While Nepal’s Constitution makes it clear that the country aims to protect children from all forms of sexual exploitation, Nepal’s definition of what constitutes trafficking of children for sexual purposes differs from international accepted standards. Trafficking is more narrowly defined in Nepalese law and only covers some kinds of child sexual exploitation but not others. Following the announcement in March 2020 that Parliament has approved the ratification of the Palermo Protocol, it is hoped that domestic law will soon be brought into line with this international instrument. As a result, children are protected by what appears to be a somewhat patchwork legal landscape, with some types of exploitation constituting trafficking and others constituting sexual offences against children under child protection and criminal laws. This complexity can act as an initial barrier to justice to the extent that it introduces confusion for both survivors and duty bearers around what acts should rightly be deemed child sex trafficking, child sexual exploitation or child sex abuse. This also has implications for the government’s ability to effectively monitor this phenomenon, as pointed out in relation to the challenges surrounding quantitative analyses in chapter one of this report.

⁶² Despite this, domestic laws have attempted to address the Statement of Purpose of the Protocol by paying particular attention to women and children in combatting trafficking and attempts to protect and further the rights of trafficking victims.

⁶³ B.S. 2072.

Legal provisions explicitly intended to address trafficking

Nepal's Human Trafficking and Transportation (Control) Act 2007 (amended 2016), and its accompanying Rule 2008, are deemed by the NHRC to be “the laws for punishment of trafficking crime and protection of the rights of victims”.⁶⁴ As outlined in chapter one, this Act defines the crime of human trafficking and transportation by reference to (among other things) buying or selling someone, forcing someone into prostitution, and moving someone for the purpose of prostitution and exploitation (Section 4).

While the Act imposes punishments that are generally in line with those outlined for other sexual offences against children, this definition of trafficking has been criticised for being vague, ambiguous and overly restrictive.⁶⁵ This, it is said, prevents the adequate protection of girls from sexual exploitation and trafficking. Commentators on the Act point out that the definition fails to include “pornography, forced labor or services, slavery, slavery like practices and servitude”,⁶⁶ and is alleged to require “a demonstration of force, fraud, or coercion to constitute child sex trafficking”.⁶⁷ It is further said to conflate trafficking with prostitution, lack clarity in the differences between human trafficking and human transportation, and, most concerningly, criminalise those in prostitution rather than expose their exploitation by classifying “engagement in prostitution” as an act of trafficking (a clear barrier to even consider seeking access to justice from the outset).⁶⁸

Aside from these issues, analysis of standing practice around the Act has additionally found a number of notable barriers for survivors trying to access justice through it. This is despite legal provisions for things like interpretation and compensation for survivors, which should ordinarily improve access to justice.⁶⁹ This analysis points out that legal provisions intended to support survivors are often not implemented and that court practice in fact penalises survivors by imposing fines on them if they fail to appear in court or make changes to their statement.⁷⁰

For those child sexual exploitation cases that fall outside the Human Trafficking and Transportation (Control) Act 2007, the recently enacted National Penal (Code) Act 2017, the Act Relating to Children 2018 and the Crime Victim Protection Act 2018, provide the subsidiary legal framework for their access to justice.

⁶⁴ NHRC (2076) National Report on Trafficking in Persons. National Human Rights Commission, 2018, Harihar Bhawan, Lalitpur, Nepal, p.XXIV. See also, the Supreme Court of Nepal ‘Directives for Protection against Economic and Sexual Exploitation of Women and Girls in the Entertainment Sector, such as Dance Bars, Cabin Restaurants, 2008 (B.S. 2065)’

⁶⁵ UN Women, Concluding Observations on the Sixth Periodic Report of Nepal on CEDAW, No.206, 2018, p.8.

⁶⁶ NHRC (2076) National Report on Trafficking in Persons. National Human Rights Commission, 2018, Harihar Bhawan, Lalitpur, Nepal, p.XXIV.

⁶⁷ US Trafficking in Persons Report: Nepal, 2019.

⁶⁸ FWLD (2014) Human Trafficking and Transportation (Control) Act, 2007: Its Implementation. Forum for Women, Law and Development (FWLD), Kathmandu, Nepal, p.10-11.

⁶⁹ FWLD (2014) Human Trafficking and Transportation (Control) Act, 2007: Its Implementation. Forum for Women, Law and Development (FWLD), Kathmandu, Nepal, p.10-11.

⁷⁰ UN Women, Concluding Observations on the Sixth Periodic Report of Nepal on CEDAW, No.206, 2018, p.8.

A basic legal framework for protecting children from other forms of sexual exploitation

The Act Relating to Children 2018 (B.S. 2075) replaced the Children's Act 1992 and extends to children the right to protection from “all forms of ... gender based or untouchability related abuse, sexual abuse and exploitation” (Section 7). The Act fails to explicitly define “sexual abuse” or “sexual exploitation”. Its Section 66(3) instead provides a list of offences deemed to constitute child sexual abuse. This includes engaging in “child sexual exploitation” as one such offence but does not define how this term is to be understood. Penalties attached to these offences vary between three, four and 15 years, as well as the punishment liable to a rape offender “as per prevailing laws” (Section 72(3)(g)). However, the statute of limitations on these offences requires survivors to report any such act within one year of its commission, failing which, within one year of their 18th birthday (Section 74). This, and similar provisions in Nepali criminal law have been criticised for severely restricting access to justice in failing to “take into account the stigma that women and girls face when reporting cases of sexual and gender-based crimes”, therefore fostering impunity for such crimes.⁷¹

Other sections of the legislation provide for the right to child-friendly justice at each stage of investigation, prosecution and judicial proceedings (Section 25); the formulation and enforcement of child protection standards by those working directly with children (Section 57); the establishment of a Children's Fund for children's immediate rescue, reparation, rehabilitation and compensation (Section 63); and the enforcement of children's rights and duty-bearer obligations through local-level judicial committees (section 64).

The National Penal (Code) Act 2017 (B.S. 2074) prohibits sex with a girl under 18 years old as rape (section 219). It also overlaps with the 2018 Children's Act to the extent that it criminalises child sexual abuse as engaging in or inducing the touching of sexual organs or engaging in “any form of unusual sexual behaviour with, a child, with the motive of having sexual intercourse with the child” (section 225). The Act does not recognise consent in respect of sexual intercourse with children. Penalties for these offences range from three to 20 years depending on the characteristics of the victim and the nature of the offence.

The National Criminal Procedural (Code) Act 2017 (B.S. 2074) supplements the Penal Code 2017 and requires the provision of daily and travel allowances, and security, to witnesses appearing in court (section 113), as well as providing for in-camera proceedings for cases involving sexual offences or child victims (section 129).

⁷¹ UN Women, Concluding Observations on the Sixth Periodic Report of Nepal on CEDAW, No.206, 2018, p.3.

The Crime Victim Protection Act 2018 (B.S. 2075) outlines a number of rights for victims in the criminal justice process, including the rights to fair treatment (section 4), non-discrimination (section 5), privacy (section 6), safety (section 10) and freedom of expression (section 11). Crucially, these rights also include the right to information relating to an investigation, prosecution, court proceedings and compensation (sections 7-9 and 18); the right to stay in a separate chamber away from the accused over the course of a hearing, where possible (section 14); and the right to compensation and social rehabilitation (section 19). Chapter 4 of the Act provides for interim compensation from a Victim Relief Fund (section 29), compensation to be recovered from the offender (section 30), and a basis for determining compensation amounts (section 31), among other things.

The “Jury is out” on the efficacy of new provisions in practice...

The fact that Nepalese law does not recognise all child sexual exploitation as trafficking, and instead classifies “child sexual exploitation” as a form of child abuse without explicitly defining what it is, creates ambiguity over whether and how these different offences overlap.

Child sex offences under the newly enacted Children’s Act 2018 are vague and can often overlap. In addition, the fact that they are similar to and often overlap with provisions in the Penal Code have already generated confusion about how to prosecute child sexual abuse and exploitation. For example, some lawyers apparently view the Children’s Act as relating only to sexual harassment and assault cases, and not to rape.⁷² It is unclear how child sexual exploitation that involves sexual intercourse with a child but does not meet the criteria for trafficking should be prosecuted. As outlined above, the ambiguity this creates is also reflected in trying to analyse public data on child sexual exploitation. This is because it seems that any cases of child sexual exploitation that fall outside Nepal’s trafficking laws are currently recorded as child sexual abuse without showing which cases involve exploitation and which do not. Moreover, it is unclear whether this child sexual abuse data is taken from prosecutions under the 2017 Penal Code, the 2018 Children’s Act or both.

Due to the fact that these pieces of legislation are new, it is not yet possible to say definitively how they are being implemented. However, the improper or ineffective implementation of other laws intended to benefit child survivors of sexual exploitation, among other survivors of crime, means that expectations are low. For example, relevant literature suggests that the Child Labor (Prohibition and Regulation) Act, 1999 (B.S. 2056) is not being effectively enforced, as children working in transportation sectors, restaurants and construction sites are not being removed from these sectors of employment.⁷³ Meanwhile, implementation of the Directives for Protection against Economic and Sexual Exploitation of Women and Girls in the Entertainment Sector, such as Dance Bars, Cabin Restaurants, 2008 (B.S. 2065) have not been prioritised.⁷⁴

⁷² Ram Kumar Kamat, “New Penal Code fails minor rape victims: Lawyers”, 14 September 2019, The Himalayan Times: “Advocate Bishnu Prasad Pokharel, however, said the amendment to penal code was necessary to ensure justice to minor girls who were victims of rape. ‘Provisions of Children’s Act apply only to sexual harassment and sexual assault cases and not to rape cases. Therefore, penal code needs to be amended to increase the time limit for victims to file FIR against their perpetrators,’ Pokharel argued.”

⁷³ NHRC (2018) Trafficking in Persons in Nepal. National Report. National Human Rights Commission. Office of the Special Rapporteur on Trafficking in Persons (OSRT). Harihar Bhawan, Lalitpur, Nepal. September 2018, World Education and Plan Nepal 2012. A Rapid Assessment of Children in the Urban Transport Sector

⁷⁴ NHRC (2018) Trafficking in Persons in Nepal. National Report. National Human Rights Commission. Office of the Special Rapporteur on Trafficking in Persons (OSRT). Harihar Bhawan, Lalitpur, Nepal. September 2018

Implementing protections against child sexual exploitation and trafficking

As indicated above, implementation of relevant provisions seeking to protect children from sexual exploitation and trafficking has, to date, been challenging at best. The US Trafficking in Persons Report for 2019 highlights efforts to provide public prosecutors with training on victim-centred investigations and prosecutions, and law enforcement with training on trafficking trends and emergency victim protection. However, it also notes that police still lacked adequate resources to undertake border patrols and “lacked sophisticated investigative techniques and skills to interact in a victim-centred way with trafficking survivors”. These deficiencies are believed to have undermined prosecution efforts and compound concerns about corruption and official complicity in trafficking crimes, which already serve to inhibit law enforcement action. Indeed, CEDAW notes that judicial and law enforcement officers, in particular at local level, prevent the registration of cases of sexual and gender-based violence, do not comply with court rulings and fail to execute judgments.⁷⁵ Meanwhile, the NHRC has noted that conviction rates for trafficking cases “tend to decline as one moves from lower layered court to the higher ones”.⁷⁶

While the views of participants forming part of this study on the issue of legal implementation were mixed, the failings outlined above were, broadly speaking, reflected in the responses of focus group discussants at community level. District and community-level participants underlined that protective laws were available only to those with access and reach. Those falling between the rich and poor economic strata were believed to find access securing their implementation a challenge, while the poor were deemed to experience it as virtually non-existent. Some focus group discussants felt laws to be more male-oriented and supportive of the police, with fewer opportunities for children, women and marginalised groups to access justice. By contrast, police respondents claimed that laws in the area were effectively implemented.

Notably, in discussing elements that facilitate the implementation of law, one focus group expressed ignorance concerning issues of implementation, while another claimed that it could not discuss the matter openly due to threats. In one rural municipality, where a number of child sexual exploitation cases have been recorded, the issue of duty bearers was not raised at all by respondents, raising concerns that either these discussants too felt inhibited to speak freely, or that such practices were just an accepted part of daily life in the area. Regardless, there appeared to be a robust demand among all discussants for the provision of more information about legal provisions protecting and supporting child rights holders.

These findings appear to support recent CEDAW concerns over both the under-reporting of trafficking crimes owing to “fear or retaliation and insufficient witness protection mechanisms”, as well as the “low level of awareness among women and girls of their rights and the mechanisms available for gaining access to justice and seeking remedies”.⁷⁷

⁷⁵ UN Women, Concluding Observations on the Sixth Periodic Report of Nepal on CEDAW, No.206, 2018, p.3.

⁷⁶ NHRC (2076) National Report on Trafficking in Persons. National Human Rights Commission, 2018, Harihar Bhawan, Lalitpur, Nepal, p.1.

⁷⁷ UN Women, Concluding Observations on the Sixth Periodic Report of Nepal on CEDAW, No.206, 2018, p.3 and 8.

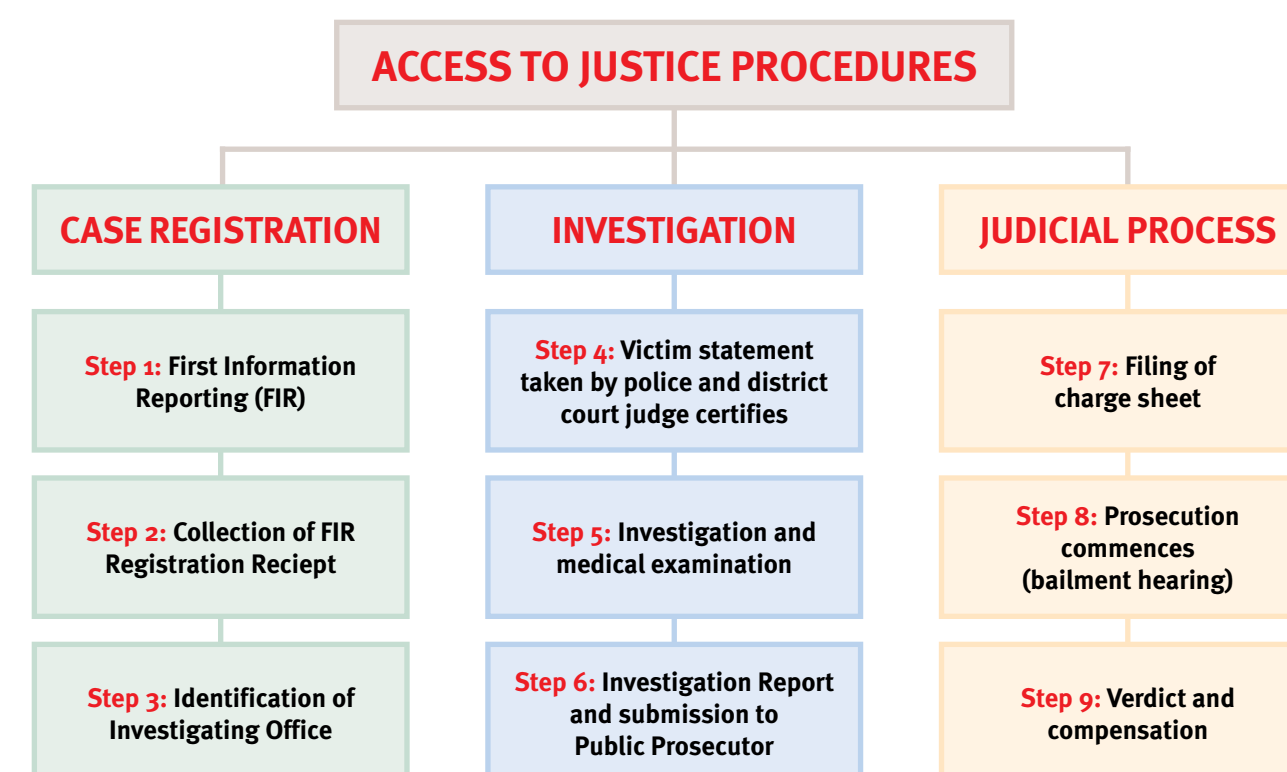
Findings regarding access to justice experience

This chapter presents the key findings of the present study into the access to justice experiences of survivors of child sexual exploitation, including trafficking. The principle focus of this chapter is on access to justice by securing the prosecution of offenders (protective, retributive and deterrent justice) and compensation for harm to survivors (restorative justice) through the legal process.

The chapter opens by outlining the procedural framework for securing access to justice through the legal system for any survivor of crime (section I). It then analyses in more detail the three key components of that framework: reporting an offence (section II), registration and investigation by police and prosecution through judicial proceedings (section III), and compensation (section VI).

I. A survivor's path: the procedural framework for access to justice

The procedural framework for securing access to justice (hereafter the “justice pathway”) is composed of three main segments: (1) case registration, (2) investigation by police, and (3) judicial proceedings culminating in a verdict, sentence and compensation finding. As illustrated in the accompanying graphic, each of these three segments is composed of a series of processes (nine steps) that must each be completed before justice can be realised.



CHAPTER 3

Nepali law mandates that survivors of sexual exploitation and trafficking must complete each of these key steps to move their case along the justice system, rendering each step vital to securing justice. While seemingly straightforward as depicted in this graphic, Nepal's justice pathway is nevertheless a procedurally challenging process of which most Nepalese remain unaware until they need to engage it. For women and children survivors of crime, it is an extremely daunting arena that is not only difficult to comprehend but also difficult to progress through, even where comprehension is clear. As outlined above, these challenges become even more acute with the addition of certain personal characteristics of the survivor or accused, including social, economic and political status, caste, education level, support networks and other factors.

As a result, key informants interviewed for this study estimate that the overwhelming majority of child sexual exploitation and trafficking cases (approximately 95 per cent) are never reported to the Nepalese police authorities. Where they are, however, survivors can expect the following:

Step 1. First Information Report (FIR) Registration: A victim, their relatives or any individual who is aware of the commission of a crime can lodge a complaint at the nearest police station to where the offence has been perpetrated or is likely to be perpetrated. By law, it should be lodged together with evidence and information about the alleged perpetrators, the location and date of the crime's commission, the actions involved, and any other information about the offence. Any verbal report of a crime should be taken down in writing and read back to the reporting individual to determine their agreement with its accuracy. Once agreed, this FIR is signed and kept in a register for the record.

Step 2. FIR Registration Receipt: The relevant office or authority with whom an FIR is lodged must register the information received and provide the person lodging the FIR with a receipt for it.⁷⁸ If a receipt is not obtained by the reporting person, their case can be either unregistered or risks being lost in the system.

Step 3. Identification of Investigating Police Officer: The relevant police office is then supposed to designate a police officer whose rank is at least assistant sub-inspector as the investigating authority for the registered case. The office also provides the relevant information to the appropriate government attorney's office and to the higher police office. The designated police authority conducts the investigation into the alleged offence.

Step 4. Statements from the victim and accused: The investigating authority must question, as necessary, any person believed (on reasonable grounds) to have knowledge of any important matter regarding the offence.⁷⁹ This includes obtaining a statement from both the victim and the accused.

⁷⁸ In the form set forth in Schedule-6 of the State Case Act.

⁷⁹ The Country Criminal Procedure (Code) Act, 2017. B.S. 2074.

Step 5. Compiling an investigation report, including medical examination:

At the end of its investigation the investigating authority prepares an investigation report. This report is accompanied by the originals and duplicates of any documentation, exhibits and evidence contained in the case file. Every investigating officer must maintain a police diary in which any action or event undertaken during the investigation is immediately recorded. This process should also include gathering medical evidence.

Step 6. Submitting the investigation report to the Public Prosecutor:

An investigation report provides information about which law a person is alleged to have breached if there is deemed to be sufficient evidence to indict them.⁸⁰ It is submitted to the relevant government attorney's office, which studies the case file and evaluates the available evidence collected in the course of investigation. The case is then sent to the Attorney General for a decision on whether or not to institute legal proceedings.

Step 7. Filing of a charge sheet: If, on studying a case file, and in view of the evidence collected, the relevant government attorney considers there to be adequate evidence for prosecuting a case, he or she will prepare a charge sheet, and submit it to the relevant court.⁸¹

Step 8. Prosecution commences: Provided all prerequisites have been met, the court commences proceedings in a case upon its filing with the court.

Step 9. Hearing, judgment, conviction and compensation: The accused must appear before the court and evidence must be produced in support of the charge. The claim in the charge sheet will be read out by the court. After passing a judgment in a case, the court goes on to pass sentence and make any necessary finding on compensation.

⁸⁰ The Country Criminal Procedure (Code) Act, 2017. B.S. 2074.

⁸¹ Ibid.

II. Reporting: placing a first foot on the justice pathway

This research confirms the widespread understanding that only a fraction of child sexual exploitation or trafficking cases are ever reported to the police or NGOs, with untold numbers of survivors never telling anyone. One focus group discussion with at-risk girls themselves highlighted the perception that less than two in 10 victims report. Meanwhile, one experienced frontline practitioner supporting child survivors estimated that:

maybe 5 out of 100 cases are reported with support from others, or in cases where the abuse or exploitation has been extreme.

This remarkable observation highlights that the starting point for any inquiry into access to justice is inevitably an analysis of the barriers to even placing a foot on the justice pathway – that is, barriers to reporting.

Understanding the silence

Of those survivors interviewed as part of this study, 11 had not registered their cases with the enforcement authorities. All had made their exploitation known to an NGO, however. Interviews with these survivors and key messages from focus group discussants and key informant interviewees highlighted that while many survivors silently tolerate their victimisation, even where such exploitation is made known, family members too are usually overwhelmingly inclined to stay quiet. The below five themes emerged as central to the reasons for this silence. Notably, their influence was again widely acknowledged as being further entrenched by underlying characteristics that deepen a survivor's marginalisation on social, educational, economic, religious, geographic or disability grounds.

1. Lack of awareness of both the law and relevant procedure among victims and their families

Lack of awareness ranged from: (1) not knowing that a child had even been the victim of an offence (i.e. not knowing the law); (2) not knowing that the behaviour should be reported to police; and (3) not knowing how to report behaviour or access justice. Interviews and group discussions highlighted that many survivors are unaware that they are victims of abuse or exploitation during the time, or even after, it occurs. As such, they do not understand the need to report their situation, however unpleasant. District-level respondents indicated that victims often believed they were 'being shown affection', and the realisation they are

I never knew I could file a case – the thought never even occurred to me. In most cases perpetrators are not arrested because victims do not share.

Survivor of internal trafficking at 16

being exploited often only emerges when there is seemingly no way out for them, or in later counselling. Some practitioner focus group discussants noted that even after their removal from exploitation, some survivors do not believe that they were sold, and can in fact become upset when informed that this was the case.

In focus group discussions with at-risk school-going and out-of-school girls, most were unaware of the risks surrounding child sexual abuse and exploitation, measures to prevent it, and the persons, institutions and means available for reporting it.⁸² Despite ongoing awareness raising efforts around basic child rights through school curricular and NGO campaigns, participants expressed a clear need for training on safe and unsafe touch, the value of accessing justice, relevant institutions and support mechanisms, and steps for reaching out, for both girls and boys from age eight upwards.

Lack of awareness surrounding child sexual exploitation and the laws and legal processes surrounding it was common among at-risk children and their families. However, this study noted that such lack of awareness also often extended to both community leaders and service providers themselves. Several key informant respondents highlighted the need for service providers to keep up to date with current laws, policies and facilities available to survivors at different levels and in different areas of service provision.

Case Study 1:

Realising, then weighing up the costs and benefits

Alisha – not her real name – is a Chhetri girl from a district near to Kathmandu. When she was 16 years old she went to Kathmandu with her sister to engage in further education while supporting herself with a job. She found a job in a restaurant through a man her sister knew. Initially, the work had been good, but later the sexual abuse and exploitation began. Alisha left the job after a period of five months, and went to work in a clothing store.

Alisha did not originally register her case with the police as she was unaware that she could do so. An NGO where she later stayed had asked her if she wanted to, but she refused because there was already a two-year gap since the abuse. She was also very afraid of how she would be viewed socially. Alisha stated that in her village, throughout secondary school no information had been provided "on risks [of sexual exploitation]... no information on law or going to the police to file a case". She said that had she known about it, she might have been able to protect herself. Alisha expressed a lack of trust in the current justice system stating that, "perpetrators should know that if they commit a crime they will get convicted; however, the trend is for perpetrators to come out of jail very quickly. Justice is a shortcut for them".

⁸² Only one focus group with at-risk girls stated that if a child's rights were violated by sexual exploitation a report should be made to the police. Their source for this knowledge reportedly came from a CWISH REFLECT class, television and Facebook.

2. Social stigma for victims and families

Social stigma was a dominant theme among all respondents for survivors not wishing to report their experiences to the police. This issue particularly works to silence girls: a recent shadow report to CEDAW highlights that in Nepal, “[d]aughters are considered the pride of the family and ... parents fear that they might do something wrong to humiliate the family pride”. Social stigma thus encompasses not only a survivor’s personal reputation but also their family’s reputation, leading many relatives to be unsupportive of, and even hostile to, reporting child sex offences due to the loss of honour that the family may suffer more widely socially as a result.

Again, issues of perceived agency in some child exploitation can further entrench issues of stigma – a matter readily weaponised by perpetrators to silence survivors. Community leaders reported that despite the very high vulnerability and awareness of girls aged 17 to 19 to sexual exploitation, the risk of societal stigma in even discussing the issue rendered them unable to talk about it, thus further entrenching their vulnerability.

3. Fear of retribution from perpetrators

Fear of perpetrators was another dominant factor preventing survivors from reporting offences. This included fear of threats of, or actual, retributive violence or other actions from perpetrators against both survivors and their families. Many survivors, focus group discussants and key informants underlined that perpetrators often have political reach and influence within the police and local community. Their ability to manipulate some law enforcement personnel was an obstacle identified by all stakeholders, with serious repercussions on a survivor’s ability to access and receive justice. Respondents indicated that as a result of this pressure, police are not always helpful while other justice and public service institutions can also be manipulated and inclined towards favouring perpetrators. In one focus group discussion, participants referred to cases where “perpetrators used different names in citizenship and real life”, which was used to protect them when cases were subsequently registered.

Indeed, findings from experienced respondents indicated that perpetrators are generally higher in the power hierarchy (certainly than those they target for exploitation) – socially, economically and politically. They use their positions and political linkages to influence not only those in law enforcement and the judicial system, but also to turn families hostile against survivors. Fear of loss of social status, limited financial resources, the threat of not being able to find a groom for a survivor daughter, as well as the social and economic costs of pursuing a difficult and long legal case with the far away prospect of conviction and nominal compensation, are elements readily exploited by perpetrators.

4. Lack of trust in the justice system

There was a general perception among community and district focus group discussants that justice is available only to those with access and reach. For those falling between the rich and poor economic strata, legal recourse was noted as challenging to access. For the poor, it was deemed virtually impossible to obtain. Indeed, it was noted by respondents that even where cases are reported, most remain unregistered due to the politicisation of the police and that perpetrators generally enjoy impunity. Even when cases are registered and perpetrators convicted and imprisoned, respondents stated that these persons are nevertheless quickly released. This raises serious questions for survivors about their safety and where they can seek shelter and protection even after they have sought justice.

Respondents pointed out that these justice deficits meant that even where there was a will to take action in response to sexual exploitation, there was nevertheless a tendency to resolve cases within families or communities, or even use power, politics, position and money to resolve the “problem”. There was a common agreement among respondents that in most cases a “community tries to negotiate, while the police also try to avoid [registering a case]”, due to the fact that investigation can become cumbersome. The use of such “alternative justice” mechanisms invariably further negates survivors’ ability to access justice.

5. Access to police stations

Distance was identified as a major challenge to reporting cases in rural communities. Often when survivors and their friends/families finally decide to register a case, whether in urban or rural areas, it can be several days after the event, impacting the availability of evidence. Indeed, such travel also often requires those reporting an offence to have the resources to cover the cost of transport, food, possibly lodging and the administrative costs related to filing a case.⁸³ Particularly where survivors and/or their families work as daily wage labourers, this presents not just a social but a further material cost to filing a report, adding to the weight of factors pushing against legal recourse.

A key finding of this research is that survivors generally only ever report cases when they have the support of friends, family or NGOs. This support is thus vital to a survivor’s access to justice both in moral and resource terms. Indeed, a common thread identified across interviews and focus group discussions was the vital role of NGOs and civil society in supporting accessing justice for survivors, from the initial disclosure of what has happened to them to receiving compensation through the judicial process.

⁸³ For example, survivors often reported having to pay for the write up of their case, that write up proving often determinative of the strength of the subsequent investigation into the offence against them.

III. Accessing protective justice: getting and staying on the justice pathway

Out of 24 survivors surveyed for this report, 13 had registered their cases with the police.⁸⁴ Of these, most were registered in Kathmandu and surrounding areas, where monitoring is higher, and the presence of NGO personnel usually warrants a softer approach from duty bearers. While this geographic predominance means that the attitudes and behaviours of police personnel at district and community levels remain unattested to by survivors themselves, various other stakeholders reported that these actors were not always as supportive.

A key focus of the research team's questions regarding survivors' experiences of the justice system was the extent to which duty bearers and processes were child friendly. Such child friendliness was determined by the extent to which respondents expressed that they felt safe and protected, were addressed politely, offered empathy, encouraged to speak, and engaged in a professional and non-judgemental manner while having their confidentiality maintained. The following outlines the key findings to emerge from survivor interviews, focus group discussions and key informant interviews, presented here in the sequence of steps that a case must clear to progress along the justice pathway.

A. Frontline duty bearers: the police as gatekeepers of the justice pathway

While a number of good practices were identified among police personnel in specific cases, information from sampled respondents indicates a belief that police officers at times generalise child sexual abuse, exploitation and trafficking cases. A general police failure to recognise such cases as serious crimes in need of priority was seen as a major obstacle to accessing justice because it rendered the process of case registration and investigation very slow. This heightens the trauma and resource obstacles for survivors.

I was initially scared as it was my first time at a police office, but later my friend reassured me. The police's behaviour was also supportive.

*They did not listen when we went on our own – only when the Maiti Nepal lady arrived.**

* Maiti Nepal is a Nepalese NGO dedicated to helping victims of trafficking through rehabilitation, prevention, awareness raising, education, advocacy and legal support.

Police, survivors and other stakeholders clearly spotlighted the significant attempts at influence by perpetrators on police proceedings. Perpetrators were often reported to mobilise their political links, at times placing considerable pressure on police personnel. Police reported receiving telephone calls from political parties requesting that "their person be looked after", sometimes even before a survivor had reached the police station to lodge their complaint. Such pressure would continue throughout an

Case Study 2:

When access to justice works, the benefits accrue beyond the individual

Binsa – not her real name – comes from a marginalised Janajati community, where she lived with her parents. At age 16, Binsa decided she needed to support her family financially after discovering money to be the source of her parents' constant fighting. She started to work in a hotel cleaning rooms and washing clothes. The job offers accommodation but she tells her mother, who does not want her to work, that she is staying with friends.

Binsa found herself having to stay at the hotel for four months. During the first month all went well, and she was paid US\$70.00 (NPR 8000.00). Thereafter, however, she did not receive her pay and the hotel owner tried to force himself on her, later bringing guests to do the same. Videos of various sexual acts were filmed against her wishes: "He used to slap me, hit me and threatened he would tell others and that I would be unable to show my face to them... I did not have the confidence to run away. There were just as many problems at home. If I shared what had happened to me, then it would only create more problems".

Binsa's rescue became possible when a friend coincidentally came to the hotel to celebrate her birthday. Binsa sought help from the friend and stayed in her room until 3:00 am, to leave the hotel in the early hours. Her friend informed her uncle, a policeman, who then reported Binsa's case to the Women's Cell. Binsa was taken to a separate room for the inquiry, and when she could not give all the details her friend helped by sharing further information: "[speaking to the police] was not the same as speaking with my friend. I could not share everything as I was scared at first. But later my friend's reassurance, and positive police personnel behaviour helped me share details". During the victim statement Binsa had to wait for five to six hours as there were many other cases, and the police were very busy. Overall Binsa found the police supportive "perhaps due to my friend's uncle being a policeman in another station".

Following the police statement Binsa was asked to indicate the hotel where she had been victimised. She identified the hotel but did not want to meet the perpetrator, and fortunately she did not have to face him again. The video evidence of abuse meant that Binsa did not have to revisit the police station. Within three days of filing the case the perpetrator was arrested for human trafficking: "I felt so relieved when I was informed by my friend's uncle that he was in jail".

Binsa is now being supported by an NGO to study law as she wants to help others who have faced harassment. The perpetrator was jailed for life. However, surprisingly, Binsa was unaware of her right to victim compensation. While her friend's uncle had informed her to contact him if she wanted further information, she had not done so.

⁸⁴ Places of reporting were police stations in the following locations: Kathmandu, Bhaktapur and Lalitpur: Balaju Chowki, Gairipatan Women's Cell, Maharaj Gunj, Bhaktapur, Samakhushi, New Baneshwor, and Jawalakhel/Lalitpur. Rakshe chowk/Ilam and India were also identified.

investigation, sometimes seriously impede the police personnel's ability to do their work. Some police reported repeated phone calls from a perpetrator's supporters. The presence of such supporters outside the police station is also reportedly being used as a tactic to put pressure on both the police and the survivor. Meanwhile, it was noted that such pressure could likewise be exerted on police from both their own families and communities, with political pressure reportedly presenting a major challenge at community levels during investigations.

Despite being directly responsible for facilitating survivors to register an FIR, respondents in one focus group discussion said that police personnel are not keen to register such cases, and could either avoid or refuse to register an FIR, ask survivors to write the report themselves or refer them to someone they have to pay for the write-up. This was confirmed in the experiences of survivors who cited instances where the police refused to register an FIR, or deliberately delayed it. Such actions were felt to be both challenging and demotivating for survivors. In one case, an FIR was not registered for four days, while in another it took place only when an NGO representative appeared to support the survivor. One focus group suggested that police personnel may not always be keen to register cases as it would involve their having to visit the locale where the offence took place to collect evidence, which could mean repeated visits, as well as interviews with victims and witnesses. Again, the presence of NGOs was reported as vital in this initial step on to the justice pathway as survivors and their families were unable to repeatedly visit the police station to insist on registration due to distance and lack of time or resources.

Registering a case of child sexual exploitation

Discussions with survivors, focus group discussants and key informants highlighted the following findings specific to each stage of case registration:

Step 1: Registration of FIR

- **Presence of friends, family and organisations** during an FIR registration is critical to the registration of a child sexual exploitation or trafficking case as that presence compelled the police to register cases being reported.
- **Survivors' experiences of the environment** at police stations evidenced several instances in which police made a clear effort to: ensure the presence of female police officers during the taking of an FIR, question child survivors in a supportive manner, and keep children in a separate room during interviews. These efforts were received very positively by the survivors that experienced them. However, such experiences varied. Other survivors reported experiencing repeated questioning, insensitive interviewing that further traumatised child survivors and being prevented from sharing relevant detailed information.
- **Children reported not always being able to understand** what was being asked of them during an FIR. Stakeholders highlighted that FIR registration can be a daunting experience for children who are already frightened by the strange environment and police in uniform at a police station. It was reported that this has at times led children not to disclose all relevant information.

- **Many police stations have developed a practice of referring survivors to 'Kanuni Abhikarta' to write up their FIR.** Kanuni Abhikarta are licensed legal scribes who provide report writing services for a fee. While, by law, anyone can report a case, which the police are responsible for registering, police have developed a strong practice of using Kanuni Abhikarta in child sexual exploitation cases (among others). Common justifications for this appear to be that police are either too busy to write such reports themselves or fear accusations of bias when they later go on to investigate a case. In the latter instance, police state that as an investigation progresses, survivors can become hostile towards them and accuse them of failing to complete the FIR correctly. The politicisation of the police role in investigations during fraught tensions between perpetrator and survivor has led many officers to view helping a survivor to write up an FIR as constituting a potential conflict with their role as the investigating body.
- **A writing fee for FIR write-ups was**, with a few exceptions, charged by those assisting in FIR registration. While such amounts varied, this charge can be the beginning of a long list of expenses for a traumatised survivor and their family. However, the significance of this initial cost to a survivor's case was highlighted by experienced key informants, who pointed out that the strength of an FIR write-up usually determined the strength of a survivor's case: if an FIR is not clear or detailed then the case overall could be compromised.
- **Survivors remain generally unaware that they can safeguard their identity** by requesting that they be referred to by a different name or by using a reference number to refer to them in an FIR report. Key informant interviews indicate that most police do not inform survivors of these possibilities and that even where survivors are offered different names, the use of these names is not maintained continuously throughout an investigation, making the survivor feel further humiliated when their true identity is referred to.
- **Police failures to avoid face-to-face confrontation between victim and perpetrator** lead to survivor distress. Findings indicate that the presence of perpetrators and their 'people' outside the police station can become harrowing experiences for child survivors because of the threat posed to their security. Moreover, in one instance, police unintentionally brought victim and perpetrator together leading to high levels of distress for the victim.

I was too scared, I was afraid as I had never met the police before.

I understood but otherwise kept shut.

I was afraid as I always thought people came here for wrongdoing.

I wondered what people were thinking about me.

Breaking down barriers: SASANE's paralegal approach

Recognising the significant obstacles posed by the practice of requiring FIR write-ups to be undertaken by fee-taking licensed third parties, the SASANE programme places trained female paralegals in specific police stations in programme areas. In doing so the programme aims to create an enabling environment for women and girls seeking to access justice but for whom the police environment can generate fear and hesitation. These paralegals guide survivors through the FIR process and sometimes in later stages of an investigation, helping them to share information through patient and empathic listening and information-gathering skills while writing up FIRs cost-free. The programme has been positively received by participating police stations and is recognised as effective and advantageous to conducting investigations.

Step 2: Collect FIR registration receipt

- **Survivors often remain unaware that they have to collect an FIR receipt** to follow up on their cases, according to legal experts consulted as part of this study.
- **Many survivors are told that they cannot collect their FIR receipt on the same day as they register their case**, forcing them to return to the police station if they wish to follow up on their case. As the failure to collect an FIR receipt can result in their report remaining unregistered and/or getting lost, this presents a significant barrier to filing a case.

Step 3: Investigation officer identified

- Investigating officers overwhelmingly exhibit a lack of the necessary skills (e.g. gender/child sensitive, investigation), and in some cases lack the commitment to investigate efficiently and effectively, according to focus group and key informant responses.

I could not answer easily because too many people were asking, which was making me stressed. I did not feel like telling, also.

It was not like sharing with my friend where I could tell everything. I was afraid and could not share everything.

Outside the police station there were three of four of the perpetrator's people. His people stayed there to threaten me – I had to change clothes to reach the taxi to avoid being noticed.

Investigating cases of child sexual exploitation

Discussions with survivors, focus group discussants and key informants highlighted the following findings specific to each stage of case investigation:

Step 4: Victim statement collected by police and certification from district judge

For most, though not all, survivors interviewed for this study, guardians or family members were present during the taking of their victim statement. Victim statement interviews were reported by different respondents to take between 30 minutes and four days to finalise.

Survivors reported mixed experiences of police behaviour (both male and female) during the victim statement interview. Some (five) described it as satisfactory and supportive due to the use of encouraging words like telling them not to be frightened, which was highly appreciated by victims. Others (six) found the relevant officers to be unsupportive in repeatedly asking the same questions, and being at times impolite, which frightened the children. Survivors expressed a mix of emotions as the statement interview progressed. Some stated that despite being worried they trusted the police personnel they were working with, though there was also a feeling of uncertainty and fear that would start to develop as the statement progressed.

Particular challenges experienced by victims during the victim statement included:

- the close proximity of the perpetrator to the survivor in the police station during the interview;
- the need to purchase refreshment at their own cost during the long wait (highlighting an absence of immediate relief and support available to child survivors);
- the long time it took to make the statement;
- the use of insensitive words and behaviour by police officers while taking the statement; and
- the need to keep returning to the police station.

The same question was repeatedly asked and this stressed me.

One policeman asked me crudely if sex took place.

I cried because they were using demeaning words.

Step 5: Investigation, including medical examination

Collecting evidence during an investigation is a major challenge made more difficult by the interference of perpetrators, as outlined above. Evidence collection can be significantly compromised by delays in reporting sexual exploitation cases. Such delays can be caused by indecision, lack of awareness or just the time taken to get to the police station. Meanwhile,

- (1) limited police personnel with technical expertise in collecting evidence;
- (2) lack of clarity on the types of good quality evidence needed to support a statement; and
- (3) lack of the necessary resources and equipment required to investigate effectively (as raised by key informant respondents in Kathmandu) were all identified as major impediments to investigations. This all aggravated the tendency of police to rely simply on ‘hearsay’ evidence in supporting a survivor’s case. These factors also serve to mask another key factor:
- (4) inadequate commitment among some officers collecting evidence to ensure a thorough investigation.

During focus group discussions and key informant interviews, police highlighted that, in trafficking cases in particular, the allocation of only 28 days to investigate a case was insufficient to enable a proper inquiry.

While the law requires survivors to be informed of where a case currently stands, this does not appear to be happening.

Survivor experiences of having medical evidence taken

All survivors interviewed who submitted an FIR were subject to a medical examination. Just over half of these interviewees reported a child-friendly environment at the hospital, often based on the encouragement received from doctors and nurses. Health personnel generally comprised female service providers, who also behaved positively towards them. The time taken for a medical examination varied between less than an hour to seven hours (due to scarcity of doctors or the presence of other survivors also being examined). Again, the presence of NGO or police personnel was seen to expedite the process, and the efforts made by some police offers to accompany survivors to the hospital was appreciated as supportive. Other findings from survivor experiences were as follows:

- **Hospital environment:** The accompaniment of the victim by personnel from a supporting organisation contributed considerably to children’s levels of comfort during medical examinations. So did the fact that medical professionals did not ask questions that re-victimised them, but rather encouraged them to respond. However, some responses indicated that survivors could experience discomfort if men are present, and when privacy is not ensured.

- **Service provider attitudes:** Health service providers, including doctors, were predominantly described as polite in speech and behaviour, with some respondents indicating that these workers almost seemed to be unaware of their status as trafficking survivors. Some instances of rude behaviour were, however, outlined.
- **Support during medical examination:** Findings indicate that respondents being accompanied by the police and a parent, friend or relative was critical to the ability of children to speak openly during the examination.
- **Availability of post-examination psycho-social counselling:** Post-examination counselling is non-existent. While in some instances doctors themselves attempted to engage in some counselling-like “polite and encouraging” conversation about a victim’s experiences, this usually lasted less than 30 minutes, and does not qualify as counselling.

Step 6: Investigation report and submission to public prosecutor

Five key informant interviewees highlighted that when investigation reports are submitted to the public prosecutor there is a tendency for them to be neglected, as well as a failure to coordinate with police thereafter.

Case study 3A:

Service providers as havens of safety from continuous abuse by perpetrators

Dhriti – not her real name – is the third of seven daughters in a family desperate for a son and living in a remote district of Sudurpaschim 7. Dhriti is from a marginalised Dalit caste and was brought to Kathmandu by neighbours at the age of 14, with the promise of education in exchange for her help in cooking and cleaning the house. In reality, Dhriti found that she was usually working until midnight, told not to go to school regularly, and attended only twice a month, and only to sit for her exams. Being a good student, Dhriti still managed to rank third or fourth in her class.

However, Dhriti also faced verbal and sexual abuse at the home where she worked. After six months of staying there, the ‘uncle’ started looking at her differently, and frequently touched her hands and legs. When Dhriti informed the ‘aunt’, the latter only became angry. After 10 months at the property, the ‘uncle’ raped her. He told her that if she did not have her regular menstrual cycle he would give her medicine. The next day he brought medicine and forced Dhriti to take it before raping her again. He further threatened that if Dhriti told anyone what had happened, he would either kill her, her father or himself. The abuse consequently continued.

A year after the sexual abuse began, Dhriti confided about it to a friend. The friend informed a school counsellor, who then shared it with NGO personnel who rescued her from the school. With the help of NGO personnel an FIR was filed. A male police officer helped Dhriti to write the FIR and was polite throughout, asking her to check what was written as well.

However, the atmosphere outside the police station was alarming as supporters of the perpetrator (three to four people) waited there to threaten her. When she was taken inside a police van to locate the perpetrator’s house and identify him, Dhriti ran away from the locality from fear because the police attempted to bring the perpetrator back to the police station in the same van. She later reached the police station on her own.

Dhriti’s medical examination required providing detailed information, which was requested from her encouragingly and positively. The process was over in 20 minutes, but no counselling took place. Meanwhile, the victim statement process could not take place at the police station due to immense pressure from the perpetrator’s supporters, who waited in large number outside. As a result, the victim statement was taken at the Teaching Hospital. Throughout the process three NGO personnel (two females, one male) were present to support Dhriti with counselling and accommodation.

In the meantime, the perpetrator had called Dhriti’s father and offered him NPR 200,000 (US\$ 1754.00) to put an end to the case. Dhriti’s father consequently came to Kathmandu to try to persuade Dhriti to drop the case and come home, even stating this in court. Dhriti refused his request.

B. Juridical duty bearers: proceedings and personnel tasked with bringing justice home

A key finding from this study is that the mindset, behaviour and attitude of those within the judiciary have a major impact on survivors’ abilities to access to justice. Focus group discussants and key informants underlined the overwhelming influence of patriarchal values on judicial proceedings. This bias is further aggravated by a disinterested and lethargic approach taken by the judicial machine towards child sexual exploitation cases. This is said to see some cases be prolonged for as long as 14 to 15 years, making them costly and cumbersome for complainants. The high levels of apathy among judicial officers on the issue of child sex offences were identified as negatively affecting the system overall. This was said to be further compounded by incompetence and corruption within the system. While legal efforts have been made to render judicial proceedings more victim-focused, respondents pointed out that such provisions remain largely ineffective.

This, and the protracted length of proceedings, which serves to delay justice, is identified by stakeholders as leading to a widespread lack of trust in the judicial process. This consequently generates a lack of trust in the justice system overall. When combined with the expenses related to legal process (travel, food and lodging costs, as well as the fees of middlemen claiming to facilitate the process, and repeat visits to police stations and courts), justice-seeking survivors and families are usually compelled to turn back to community-level negotiations. In discussing issues of compensation focus group respondents and key informants stated that the prevailing lack of trust in legal process means that even at the early stages of a police investigation, cases can be derailed by negotiations that “begin within two or three days of case registration” or through lawyers negotiating and fixing cases before they can be brought to fruition through the courts.

The following outlines some of the other key findings from survivor experiences, focus group discussions and key informant interviews as they relate to the conduct of judicial proceedings.

One of the reasons why victims do not get full justice is the lack of seriousness among those within the justice delivery system regarding justice. There is no serious sense of ‘I am delivering justice’. A lack of empathy and feeling of apathy prevails over the system.

KII respondent

Case study 3B:

Judicial proceedings losing sight of rights holders

Dhriti's experiences of the judicial process found it to be unfriendly and unsupportive to child survivors with repeated insensitive questioning, a failure to use available mechanisms to avoid further trauma, and no victim protection made available. Dhriti's safety and security was not provided for as her hair was grabbed by perpetrator supporters near to the courthouse, while the perpetrator himself would stand near the door menacingly. The school counsellor who had initially supported Dhriti, subsequently denied knowledge of her circumstances, though Dhriti's friend continued to support her throughout the trial, despite facing threats. Her experience of the appellate court was that it was merciless: "Even during the hearing no one listened to me, the victim... I realized whoever has the money and power has the hearing also". The defence lawyer asked Dhriti why she had not informed her aunt of the abuse, and whether the accused would really have cut her up. This line of questioning induced considerable anxiety in Dhriti: "I don't know why they kept questioning me repeatedly for three to four days continuously – maybe it is their rule... I must have repeated everything about 50-60 times to organisations, police, lawyers".

Dhriti's perpetrator was jailed for only two years but was subsequently released upon taking his case to the appellate court. Dhriti's victim compensation of US\$ 219.00 (NPR 25,000) was annulled following the appeal and she has been left with no support from her family, and feeling stigmatised. She is also fearful for her security now that the perpetrator has been released.

Step 7: Filing of charge sheet

Legal experts and NGO key informants highlighted the significance of the charge sheet pointing out that where public prosecutors fail to apply the appropriate legal articles, cases of child sexual exploitation and trafficking are weakened.

Step 8: Commencement of prosecution proceedings

Of those survivors who filed an FIR, only five could be confirmed as having completed the judicial process. Five had not yet reached court, and in three instances the status of the cases was unknown. These latter cases highlight a failure by victims' lawyers and/or public prosecutors to keep victims informed. Indeed, a failure to inform was a common thread among survivor and other stakeholder experiences of the judicial process. It frequently rendered the enactment of legal provisions intended for the benefit of victims and witnesses null. Examples included a lack of awareness among victims of provisions under the Witness Protection Act 2075, and other witness-friendly laws facilitating things like in-camera hearings, victim protection, witness support and fast tracking. This was due to a predominant failure by duty bearers to implement such provisions,⁸⁵ starting with the

requirement to provide information about their availability. This also appeared to apply to provisions relating to the need to provide interpreting services. While Nepali was not the first language for a number of survivors, no interpretation was offered or provided, despite this being provisioned for by law.

The significance of the application of such provisions in cases of child sexual exploitation is underlined by the fact that a key finding from survivor experiences of providing witness testimony in court was that the close proximity of perpetrators, both inside the courtroom and outside, significantly increased the level of fear experienced by child survivors during the process. Sensitivity towards preventing potential threats to survivors and witnesses, and safeguarding their rights and safety were identified as major deficiencies at this stage of the justice process. The presence of police personnel in court alone to guarantee a survivor's safety is inadequate to combatting the risks and trauma they face.

In providing court testimony, survivors found the attitude of legal service providers in court to be a mix of both friendly and unfriendly. While occasional anecdotes of prosecutors or lawyers who sought to facilitate a more child-friendly environment were encountered in the research, survivors' overall judicial process experiences were generally unpleasant. Indeed, key legal informants stated that judges and public prosecutors in child sexual exploitation cases are not generally present at court during the giving of witness testimony by the victim. This was found to be a neglect of duty that lowers survivors' morale and sees them generally subjected to higher levels of pressure from perpetrators during proceedings. Other factors said to render testimony more difficult included:

- The blunt manner of lawyers in speaking to and questioning survivors. This was found to reinforce feelings of fear and uncertainty in children;
- The male dominance of the courtroom and those taking statements (one survivor said a woman would have better understood her predicament);
- A tendency of prosecutors and lawyers to ask many, often repetitive, questions, at times to the point of harassing the victim. One particularly egregious example of inappropriate questioning, that simultaneously showed the patriarchal attitude of judicial personnel, was shared with the research team. Here, a child survivor during one child sexual abuse case was asked by the judge whether they "enjoyed the sex" to which they were subject as part of their exploitation.

In this difficult context, the frequent presence of police, friends, family members and NGO support providers at court was reported to be an important support for survivors undergoing the process.

We went to district court after one to two months. I felt as though everyone was looking at us.

It was very frightening; the perpetrator was brought right in front of us. When we returned after lunch he was sitting near the door.

⁸⁵ Video documentation was used in only one case of numerous discussed with the research team.

Initially the lawyer asked politely and in a friendly manner, but later at the District Court the perpetrators' lawyer asked very rudely and I felt re-victimised. They asked me, 'Why did you not tell the aunt about the abuse from her son, would she have cut you up?' I could not eat that day.

While for those who attended court in Kathmandu and its vicinity, testimony times ranged from 30 minutes to one hour, for those coming from rural areas, district and community stakeholders noted that testimonies could be lengthy, time consuming and expensive. Moreover, legal experts pointed out that although a continued hearing should be heard within two months, the true time taken in fact usually depends on the court personnel's attitude and behaviour.

Only one survivor interviewed reported receiving transport costs for her attendance at court, though it was unclear whether this was a provision made by the police or under the relevant legislation.

Step 9: Verdict, sentence and compensation

Of the five survivor cases known to have reached the courts, all five were said to have resulted in a conviction, with two perpetrators sentenced to eight years and 15 years, respectively, and no information on the sentences rendered in the remaining three cases. Nevertheless, one of these cases was overturned on appeal, leading to the release of the perpetrator after serving only two years. In discussing the issue of verdict and sentence with key informants, the major finding of the dominance of patriarchal perspectives on the issue of child sexual abuse was again emphasised and said to be reflected in these matters.

IV. Accessing restorative justice: the justice pathway ends where compensation begins

A recent study on access to compensation for victims of crime in Nepal concludes that:

though the claims for compensation are made in a significantly high number of cases, there is no realization amongst the victims of being compensated because the amount of compensation could not be paid until the case becomes final, which takes years.⁸⁶

Echoing this conclusion, respondents to this study were found to have very low expectations regarding compensation.

Firstly, there seemed to be less awareness around the issue of compensation among community-level stakeholders, with only one focus group raising it as part of their understanding of what restorative justice might look like.

Moreover, the complex process of applying for compensation works as a deterrent to even doing so. The court practice of requiring a victim's application for the release of compensation from the offender's property is problematic in delaying compensation awards until a case is finalised.⁸⁷ The often-protracted nature of legal proceedings means that victims are usually out of contact with the justice system by this time, and there is no systematic record to track victims for the handover of compensation. Crucially, such survivors have often moved to new locations and started new lives that they do not wish to compromise with the stigma associated with their old wounds. As such, many survivors remain unaware of where their cases stand, and one survivor interviewed was unaware that she might even be able to receive compensation. In another case, eligibility for compensation was removed by a successful appeal.

This deterrent to seeking compensation is further compounded by the fact that even when compensation is sought, patriarchal judicial mindsets and a refusal to take child sexual exploitation cases seriously means that sums awarded are generally nominal, and certainly not restorative. Key informants suggest that there is a tendency among judges to view NPR 50,000 (US\$438.00) to NPR 100,000 (US\$877.00) as sufficient to cover the full losses incurred by sexual abuse or trafficking survivors. This clearly trivialises the true social and economic costs of sexual exploitation, as well as the lifetime impact of such abuse on the mental and physical health of victims. Certainly, it highlights a clear lack of empathy among decision makers.

All these factors serve to obstruct access to restorative justice for child victims of sexual exploitation and trafficking.⁸⁸

⁸⁶ USAID, The Asia Foundation, Cases of Human Trafficking and Transportation: Provisions of Compensation and Access of Victims to Compensation, 2017, p.15.

⁸⁷ New provisions for interim relief via, for example, interim victim compensation, compensation from the offender, and the creation of victim compensation fund – all intended to provide guaranteed payment of compensation even where an offender is insolvent – while promising in theory, have, again, yet to be implemented. This is a matter currently impeded by a lack of guidelines for accessing such measures. For more, see: CeLRRD, Analytical Study of Judgement made by Nepalese Courts in Pronouncing Compensation in Child Abuse Cases. Centre for Legal Research and Resource Development, 2019, New Baneshwor, Kathmandu.

⁸⁸ For example, in Sindhupalchowk district where human trafficking has been known to prevail for decades, NGOs stated that they had not heard of any compensation received by survivors.



CHAPTER 4

Recommendations: enhancing access to justice for survivors of child sexual exploitation and trafficking

This chapter outlines recommendations that emerge from the findings of this report. The order in which these recommendations are presented reflects the experiences of child survivors seeking to access justice; it should not be seen as a prioritisation of suggested programme interventions. Indeed, the later recommendations presented here are considered crucial to addressing the challenge of holding duty bearers to account.

A. Improve reporting: awareness raising

Dissemination of information for at-risk children.

- Enhance the current school curriculum coverage of child sexual exploitation and trafficking;
- expand and deepen the police's existing 'Community-Police Partnership Programme'. This should include:
 - (1) the Curriculum Development Centre, and the Ministry of Education, Science and Technology conducting a review of the current course content to ensure greater in-depth coverage of sexual exploitation and trafficking that is tailored to the specific age group of recipients;
 - (2) annual repetition in each school;
 - (3) the development of separate teacher sensitisation training; and
 - (4) working with child clubs to maximise outreach.

Raise awareness of the issues of child sexual exploitation and trafficking with a view to reducing stigma in communities.

- Develop community-level workshops to raise awareness of child sexual exploitation and trafficking, focusing on challenging the stigma surrounding these issues to allow for the reintegration of survivors, and provide counselling to survivors and family members;
- ensure that local NGO and government service providers develop protocols on how to respond where a child discloses exploitation;
- provide reintegration programming for survivors of child sexual exploitation and trafficking to help them reintegrate into their own communities following their exploitation.

B. Enhancing the capacity of the police

Enhance the capacity of police departments to address child sexual exploitation and trafficking cases.

- Update training to sensitise police officers in relevant departments following a review of existing training relevant to these issues;
- adequately allocate more resources to police forces to address child sexual exploitation and trafficking, particularly for the women and children service centre, which looks after these cases.

Enhance effective First investigation Report (FIR) registration and case investigation.

- Develop an FIR template specific to child sexual exploitation and trafficking;
- provide FIR scribes with specialist training in writing FIRs for survivors of sexual abuse in every police station free of charge.

Effectively challenge obstruction of justice.

- Revise legislation against, and enforcing implementation of financial penalties for, the obstruction of justice: the government should achieve this by making all such acts punishable via financial penalties that can be imposed and enforced by senior police officers at a police station;
- monitor case progression: the Police, the National Child Rights Council, the National Women Commission, the National Human Rights Commission, the Ministry of Women, Children and Senior Citizens and the Judicial Council should collaborate to devise a system to track ongoing child sexual exploitation and trafficking cases.

Enhance coordination between the investigative and prosecution stages of a case.

- Develop a Standard Operating Procedure (SOP) for the handling of child sexual exploitation and trafficking cases: the Ministry of Home Affairs, the Ministry of Women, Children and Senior Citizens, and the Ministry of Law, Justice and Parliamentary Affairs, should co-operate to agree on how a SOP for the handling of child sexual exploitation and trafficking cases could be developed and monitored;
- develop a section within the SOP to ensure witness protection from the early stages: the Ministry of Home Affairs and the police should develop a section (and consider its inclusion within an SOP) for the taking of victim statements that includes a set text that is to be read to a survivor, outlining their rights if their case makes it to court.

C. Improving the delivery of justice: working with the Juridical profession

Enhance the sensitivity of juridical personnel in the handling of child sexual exploitation and trafficking.

- Provide intensive awareness raising training to members of the judiciary, public prosecutors and lawyers: the Ministry of Law, Justice and Parliamentary Affairs and other relevant bodies should consider the most effective way of achieving this.

Improve the implementation of existing protections for survivors of child sexual exploitation and trafficking by juridical personnel.

- Ensure and monitor the implementation of current TIP legislation (including security and confidentiality) intended to protect victims and witnesses in local court proceedings, and higher-level court proceedings, and making the results of such monitoring publicly available;
- oblige prosecutors and judges to attend the giving of survivor testimony in court;
- cultivate public prosecutors specialised in handling child sexual exploitation and trafficking cases.

Create conditions for improving the delivery of interim relief and compensation.

- Develop a compensation award matrix for child sexual exploitation and trafficking cases: the Ministry of Women, Children and Senior Citizen and the Ministry of Law, Justice and Parliamentary Affairs should work together to determine consistent and appropriate compensation awards in cases of sexual exploitation and trafficking;
- ensure that compensation is awarded to survivors from the government interim fund instead of requiring them to seek it directly from perpetrators: the Government of Nepal should take steps to align the provisions of the Compensation Act with those of the Human Trafficking and Transportation Act, 2007, by providing compensation to child survivors by the end of the first two months of a continuous hearing.

D. Advancing institutional reform surrounding child sexual exploitation in Nepal: implement existing mechanisms and putting law into practice

Trafficking issues need to be addressed at all levels. District and local-level committees – consisting of police, civil society etc. – are currently not functional, therefore we strongly recommend reviving their operations. It is crucial to make all committees (the National Committee on Combating Human Trafficking (NCCHT), the District Committee on Combating Human Trafficking (DCCHT), and the Local Committee on Combating Human Trafficking (LCCHT)) responsible for monitoring these issues.

Bring Nepalese law on child sexual exploitation and trafficking in line with international best practice standards on trafficking.

- Following the Federal Parliament of Nepal's approval of the ratification of the Palermo Protocol, the Government of Nepal should now bring domestic law on child sexual exploitation and trafficking in line with the Palermo Protocol and amend the definition of trafficking in the Human Trafficking and Transportation (Control) Act 2007;
- review existing best practices for effective child protection of survivors of sexual exploitation and trafficking in other countries. This includes the provision of the appointment of an independent advocate to navigate the legal and welfare systems, working in the best interests of a child survivor and ensuring their voices are heard in matters affecting their lives;
- introduce a 'repatriation policy', without which the country is effectively unable to bring home trafficking survivors from India.

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Traffic in Kathmandu, Nepal



Photo by Pete Pattison, 2018



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