

**REPORT ON LAWS AND LEGAL PROCEDURES
CONCERNING THE COMMERCIAL SEXUAL EXPLOITATION
OF CHILDREN IN NEPAL**

NOVEMBER 2004

ECPAT International
in collaboration with
Sapana Pradhan-Malla, President
Forum for Women, Law and Development (FWLD)



**A Joint Initiative by ECPAT International and Plan International
to Combat the Commercial Sexual Exploitation of Children**

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Written by

**Sapana Pradhan-Malla, President
Forum for Women, Law and Development (FWLD)**

Edited by

Natasha Sen
Associate Legal Officer
ECPAT International
and
Mark Eric Hecht
Lead Researcher
ECPAT International

**Layout and design by
ECPAT International**



ECPAT International
328 Phaya Thai Road,
Ratchathewi, Bangkok
10400 Thailand
Tel: (66 2) 215-3388
Fax: (66 2) 215-8272
Email: info@eapat.net
www.eapat.net



Plan International, Inc. Asia Regional Office
2nd Floor, Na-Nakorn Building
99/349 Chaengwattana Road
Thungsoyong, Laksi, Bangkok
10210 Thailand
Tel: (66 2) 576 1972-4
Fax: (66 2) 576-1978
www.plan-international.org

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CHAPTER ONE: EXECUTIVE SUMMARY

In December 2003, ECPAT International (ECPAT) and Plan International (Plan) launched a joint initiative to combat the commercial sexual exploitation of children (CSEC) in four countries in South and Southeast Asia: Bangladesh, India, Indonesia and Nepal. The objectives of the South and Southeast Asia Legal Reform Project were to: research the domestic legislation and legal procedures in the four project countries, as they relate to the commercial sexual exploitation of children; analyze these laws and procedures in light of the relevant regional and international standards; and recommend legislative and procedural reforms to better protect children against commercial sexual exploitation. The project's findings and recommendations also reflect inputs received from children and key actors working on child protection and welfare issues, such as members of the judiciary, law enforcement, and social services. This report contains the findings and recommendations for Nepal.

There are few detailed studies on legislation and legal procedures related to commercial sexual exploitation of children in Nepal, so this project was initiated to review the existing Nepalese legislation, legal procedures and jurisprudence so that children can be better protected from this form of exploitation. This project reveals that overall, in Nepal there is a need for the legal and law enforcement communities to prevent and protect children from commercial sexual exploitation by facilitating children's access to justice.

While Nepal has some laws that address the commercial sexual exploitation of children, in practice, these laws are rarely applied and enforced. The lack of a comprehensive legal framework combined with the failure to enforce existing laws and legal procedures results in a system that does not protect Nepalese children from being commercially sexually exploited. Thus, in the area of legislative reform, this report recommends that Nepalese laws be drafted and/or amended to harmonize them with international standards to better protect Nepalese children from commercial sexual exploitation. The report also suggests strengthening Nepalese laws by ratifying the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and other international instruments related to the commercial sexual exploitation of children, and by making crimes that result in the commercial sexual exploitation of children extraditable offences under the Nepal-India Extradition Treaty.

With respect to procedures, the report recommends – among several things – that Nepal raise public awareness of sexual crimes against children, develop a system to monitor these cases and train law enforcement on using scientific techniques to investigate sexual crimes against children. Moreover, the report suggests that Nepal adopt policies and establish additional Children's Homes, Juvenile Reform Homes, and quality government and non-government counselling and rehabilitation centres to better support the rehabilitation and reintegration of child survivors of commercial sexual exploitation. The report also recommends that coordination be improved among law enforcement, judicial officers, lawyers, and social service providers in order to better protect and assist child survivors of commercial sexual exploitation.

CHAPTER TWO: INTRODUCTION

I. BACKGROUND

This report is the result of the first year of the South and Southeast Asia Legal Reform Project, a joint initiative of ECPAT and Plan. The project was designed to: (1) conduct research on domestic legislation related to the commercial sexual exploitation of children in four project countries – Bangladesh, India, Indonesia and Nepal; (2) analyze this research in light of international legal standards for child protection; (3) provide, where necessary, recommendations for reform; and (4) involve key stakeholders, including children, to ensure follow-up of the project’s activities.

The project was launched in December 2003 through a series of “Validation and Orientation Seminars” that ECPAT and Plan jointly conducted in each of the four project countries. The purpose of the seminars was to bring together key stakeholders, such as child rights activists, lawyers, law enforcement personnel, judges, and government officials working against the commercial sexual exploitation of children to discuss issues they faced in their work, and to affirm the need for the project. The seminars also allowed the project managers to present the project’s methodology while soliciting feedback from the audience on the overall objectives of the project.

This report presents the project’s findings and recommendations for Nepal. This chapter provides a description of the project’s methodology and an overview of the commercial sexual exploitation of children in Nepal. Chapter Three outlines international, regional and Nepalese laws related to the commercial sexual exploitation of children, and then identifies gaps between Nepalese laws and relevant international and regional standards. Chapter Four outlines legal procedures for cases involving the commercial sexual exploitation of children, and identifies gaps between the procedures outlined and international norms. Chapter Five analyses the legislative and procedural gaps identified in Chapters Three and Four and presents recommendations to strengthen existing Nepalese laws and legal procedures to better protect children against commercial sexual exploitation.

II. METHODOLOGY

This project involved three separate components: (1) review of current domestic legislation; (2) interviews with key stakeholders; and (3) consultations with children. ECPAT was primarily responsible for the first two components, while Plan managed and conducted the children’s consultations.

ECPAT recruited and hired a Nepalese legal consultant with extensive experience in human and child rights law domestically and a base of knowledge on child protection matters internationally, Sapana Pradhan-Malla (Legal Consultant), President of the Forum for Women, Law and Development (FWLD). The Legal Consultant worked

closely with ECPAT to collect, review and analyze current jurisprudence, legislation, and legal procedures related to the commercial sexual exploitation of children in Nepal. The Legal Consultant also interviewed key actors from law enforcement, government agencies, non-government organizations, inter-government offices, the judiciary, and the legal community. The purpose of these interviews was to obtain information from those working on the ‘front lines’ on how laws and legal procedures related to the commercial sexual exploitation of children are implemented in Nepal.

In addition, Plan hired a facilitator to conduct consultations with children in Nepal, the results of which are reflected in the *Report on Consultation in Nepal conducted among Children Formally and Currently Engaged in CSE and Children at Risk of CSE*¹. With support from Plan staff, ECPAT’s Youth Coordinator, and the Legal Consultant, the facilitator held consultations with three different groups of children: (1) children at risk of commercial sexual exploitation; (2) children currently engaged in commercial sexual exploitation; and (3) children formerly engaged in commercial sexual exploitation. These consultations were designed to elicit children’s experiences regarding law enforcement and the sensitivity of the legal system towards children and survivors, and to identify gaps in the legal process based on their experience.

The three children’s consultations were conducted in March 2004 in Kathmandu and Bhaktapur using participatory methods, such as focus group discussions, group interviews, role plays, drawing, dance, games, and print materials. A total of 72 children, 51 girls and 21 boys, between 7 and 18 years of age were consulted. Sessions of four to five or more hours were held over a period of 5 days for the groups of children currently and formerly engaged in commercial sexual exploitation, and over a period of 4 days for children at risk of being commercially sexually exploited. The date, time frame and venue of the consultations were selected and planned according to the children’s suggestion and convenience. Moreover, ethical protocols were developed and respected in the consultation.

The overall objective of the children’s consultations was to ensure that the recommendations for legal reform accurately reflect the point of view and opinions of survivors, children currently engaged in commercial sexual exploitation, and children at risk of commercial sexual exploitation.

III. COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN NEPAL

Due to their age and social status, children are especially vulnerable to particular types of commercial sexual exploitation and require specialised strategies for protection and rehabilitation. Children can never be considered to consent to sexual exploitation, and this report does not refer to them as ‘sex workers’, ‘working in prostitution’ or ‘involved

¹ Plan Nepal, *Report on Consultation in Nepal conducted among Children Formerly and Children Currently Engaged in CSE and Children at Risk of CSE*. April 2004.

in prostitution². Rather, children in prostitution, children used to create child pornography, and children trafficked for sexual purposes are exploited and abused children. Thus, for purposes of this report, the term *commercial sexual exploitation of children* refers to:

criminal practices that demean, degrade and threaten the physical and psychosocial integrity of children, in particular, sexual abuse by an adult and remuneration in cash or kind to a child or third person(s). There are three primary and interrelated forms of commercial sexual exploitation of children: prostitution, pornography, and trafficking for sexual purposes. Other forms of commercial sexual exploitation of children include, but are not limited to, child sex tourism and child marriages.

All these forms of commercial sexual exploitation of children have been documented in Nepal³, and are caused by economic disparities, inequitable socio-economic structures, dysfunctional families, lack of education, growing consumerism, gender discrimination, irresponsible adult sexual behaviour, and trafficking of children⁴.

This chapter provides a brief overview of the most common forms of commercial sexual exploitation of children in Nepal.

A. Child Trafficking

Trafficking in children for commercial sexual exploitation is the most prevalent form of child exploitation in Nepal. The non-government organization, Child Workers in Nepal (CWIN) estimates that there are 200,000 Nepali prostitutes in Indian cities, and that 20 percent of them are under 16 years of age⁵. A study on girl trafficking found that while one-half of the respondents were below 16 years of age when trafficked, one quarter of the total respondents were below 14 years of age⁶. The study also found that half of the 100,000 girls between 10 and 14 years of age who are forced into prostitution in Mumbai are from Nepal⁷. These girls share similar stories of excessive exploitation: they were sexually exploited by an average of 14 abusers daily, for 13 hours a day⁸.

Trafficking in boys for commercial sexual exploitation has received less attention when compared to the subject of trafficking in girls, but studies suggest that trafficking of boys

² While laws and legislation focused on child labour issues often refer to children in prostitution and suggest that prostitution is a valid form of work for children, ECPAT does not recognise child prostitution or any form of commercial sexual exploitation of children as a valid form of labour or work. ECPAT does, however, believe that laws targeting child labour provide limited protections for children against exploitation, and on that basis, ECPAT supports these additional legal protections for children.

³ Interviews conducted in the course of this research. See Annex I.

⁴ Ibid.

⁵ <http://www.globalmarch.org/worstformsreport/world/nepal.html>. Accessed on 1 May 2004.

⁶ Central Department of Population Studies and ILO, Trafficking in Girls with Special Reference to Prostitution: A Rapid Assessment. November 2001. p.17.

⁷ Ibid.

⁸ Ibid. p.25.

from Nepal is on the rise⁹. Boys trafficked to India report being abused physically, psychologically, and sexually¹⁰.

The Special Rapporteur on Sale of Children, Child Prostitution and Child Pornography referred to a new form of trafficking in Nepal, where children are trafficked and forced to work in circuses in India¹¹. These children are often sold by their families and are required to work in inhuman conditions¹². Many of these children report being sexually abused, forced to practice other religions, and forced into marriages¹³.

B. Child Prostitution

In Nepal, the commercial sexual exploitation of children is also the result of cultural forms of sexual exploitation that exist among some communities, such as the *Badi*, *Deuki* and *Jhuma*. For the *Badi* community in the mid-western Terai of Nepal – Banke and Bardiya – girls and women were traditionally forced into prostitution to earn a living; it is reported that 35% to 40% of the *Badi* forced into prostitution are young girls below the age of fifteen¹⁴. In the *Deuki* system, girls are offered to temples where they are forced into sexual practices and, ultimately, prostitution. Traditionally, girls from these communities were dancers during special occasions, but over time they were forced to prostitute themselves in order to earn a living. The *Jhuma* are a Sherpa community that has traditionally sent their second-born daughters to monasteries for the well-being of the girls' family members.

There are reports that in some orphan homes, managers have been forcing children to engage in prostitution. A 2002 study reveals that children forced into prostitution in Kathmandu also undertake a variety of jobs; for example, 52.4% work as waitresses. More than half of the children engaged in prostitution in Kathmandu are married and three fourths of them are mothers¹⁵.

C. Child Pornography

New technologies, such as digitalised formatting and morphing (*i.e.*, pseudo pornography made by manipulating images), along with increasing use of the Internet by the general public, are creating new avenues for abusers and exploiters to produce and distribute child pornography¹⁶. Unfortunately, this has established a new demand and ever-growing global market for child pornographic images. The large sum of money involved in this

⁹ ILO-IPEC, Cross Border Trafficking of Boys, p.1, March 2002.

¹⁰ Ibid. p.14.

¹¹ Report of the Special Rapporteur on Sale of Children, Child Prostitution and Child Pornography (A/55/297, paragraphs 32-34)

¹² Interview with returned children in Bhairahawa, ABC Nepal.

¹³ Suklal Nepali (*Badi*). 'Existing Condition of *Badi* Community and State Obligation'. Paper presented at a workshop organized by Pro-public for a training session with judges on Gender Justice (2000).

¹⁴ Ibid. p.9.

¹⁵ ILO/IPEC. *Internal Trafficking Among Children and Youth Engaged in Prostitution*. March 2002. p.ii-iii.

¹⁶ John Carr. *Child Pornography*. Accessed on 1 November 2002 from:
www.focalpointngo.org/yokohama/themepapers/theme1.htm.

exploitation has made it a lucrative 'business' in Nepal. Studies show that there is a strong link between child pornography and sexual abuse of children; people who possess child pornography are likely to be, or will become, active abusers¹⁷.

D. Other Manifestations of CSEC in Nepal

Sex tourism is on the rise in Nepal. Sexual exploiters in Nepal are often foreign tourists who attract street children by providing them food, shelter, clothing and education¹⁸.

With regard to child marriages, statistics indicate that the average age of marriage for girls is 19.5 years and for boys it is 21.9 years¹⁹. Reality, however, differs: an analysis of data from 40 villages and one municipality within Parsa District reveal that 64% of the local girls married between 8 and 13 years of age. While more than one-third of them gave birth to their first child between the ages of 14 to 16, about 3% of these young women were around 12 years of age when they had their first child²⁰. These child marriages make children vulnerable to commercial sexual exploitation because they deprive children of opportunities for education and career development.

With reference to adoptions, during the past five years, the number of inter-country adoptions was 160 per year²¹. Reports suggest that some orphan homes charge US \$3,000 to US \$5,000 per adoption case, in addition to fees charged by the government for monitoring cases²². Such sums of money in a society with severe economic disparities create an environment where financial considerations are more important than children's welfare. There are recent reports of illegal adoptions based on financial transactions²³. Due to the lack of data and follow-up procedures, ensuring appropriate protection for these children and their rights cannot be assessed²⁴. There are also reports of babies being adopted and then trafficked²⁵.

¹⁷ Ibid.

¹⁸ Until now, three cases of pedophilia are formally charged under the Public Offence and Punishment Act. This law has been invoked due to the lack of specific laws on child pornography. The Eleventh Amendment to the Country Code, however, includes pedophilia as a grave form of sexual exploitation.

¹⁹ Central Bureau of Statistics, His Majesty's Government (HMG), Nepal. *Gender Disaggregated Indicators*. 2002.

²⁰ *Gorkhapatra Daily*, April 24, 2003 in *Shadow Report on the Second and Third Periodic Report of Government of Nepal on CEDAW Convention*. November 2003. p.48.

²¹ Data collected from Legal Section Ministry of Women, Children and Social Welfare, April 2004.

²² *Aparhana Daily*, 15 December 2003. p.1.

²³ Sapana Pradhan-Malla. Legal Review and Assessment of In-country/Inter-country adoption in Nepal, submitted to UNICEF Nepal, June 2004.

²⁴ Interview conducted as part of this research, see Annex I. According to the interviewee, a complaint is currently pending before the Commission for the Investigation of Abuse of Authority (CIAA) demanding action against officials at the Nepal Children's Organization and the police who are alleged to have been involved unlawfully in tracing children for the purpose of adoption without the consent of their parents.

²⁵ CWIN. *The State of the Rights of the Child in Nepal*. National Report on the Implementation Status of the Convention on the Rights of the Child. 2003. p.21.

CHAPTER 3: NEPALESE LEGISLATION RELATED TO THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN

I. NEPALESE LEGAL FRAMEWORK RELATED TO CHILDREN'S RIGHTS

A. Constitutional Framework

The concept of the rule of law is fundamental to Nepal's legal system, as it establishes the principles of procedural fairness and legal certainty. The rule of law is one of the basic structures of Nepal's Constitution²⁶, and provides for an independent and competent judiciary with the ability to transform the concept into practice²⁷.

The Constitution of the Kingdom of Nepal (1990) is the supreme law of the land, and all inconsistent or conflicting laws are presumptively void²⁸. The Constitution provides Parliament the power to create laws to improve the legal governance of the country and confers fundamental rights to Nepalese citizens: the right to non discrimination and equality²⁹, the right against exploitation³⁰, the right to privacy³¹ and the right to freedom, which includes freedom of opinion and expression, and the freedom to organize³². Special Laws can be enacted to protect and advance children's rights³³ and under Article 26(8) of the Constitution, the State must safeguard the rights and interests of children, ensure that they are not exploited, and make gradual arrangements for free education. These fundamental rights are enforceable through remedial procedures stipulated in the Constitution itself³⁴; for example, any Nepali citizen can file a petition in the Supreme Court to have any law or legal provision declared void on the grounds of inconsistency with the Constitution³⁵.

²⁶ Article 116 of the Constitution of Kingdom of Nepal 1990, which provides that spirits enshrined in the Preamble to the Constitution cannot be amended.

²⁷ Preamble to the Constitution of the Kingdom of Nepal, 1990.

²⁸ Article 1 and 131 of the Constitution of the Kingdom of Nepal 1990.

²⁹ Article 11(3) of the Constitution of Kingdom of Nepal 1990 reads: "The state shall not discriminate among citizens on grounds of religions, race, sex, caste, tribe, or ideological conviction or any of these, provided that special provisions may be made by law for the protection and advancement of the interests of women, children, the aged or those who are physically or mentally incapacitated or those who belong to a class which is economically, socially or educationally backward."

³⁰ Article 20 of the Constitution of Kingdom of Nepal 1990 provides that: "Traffic in human beings, slavery, serfdom or forced labour in any form is prohibited. Any contravention of this provision shall be punished by law; provided that nothing herein shall be a bar to providing by law for compulsory service for public purposes. No minor shall be employed in work in any factory or mine, or be engaged in any other hazardous work."

³¹ Article 22 of the Constitution of Kingdom of Nepal 1990 states that: "Except as provided by law, the privacy of the person, house, property, document, correspondence or information of anyone is inviolable, right to privacy and right to freedom that includes freedom of opinion and expression, freedom to organise have been guaranteed as a fundamental right of the citizen."

³² Article 12 of the Constitution of Kingdom of Nepal, 1990.

³³ Article 11(3) of the Constitution of Kingdom of Nepal, 1990.

³⁴ Article 23 of the Constitution of the Kingdom of Nepal, 1990, read with Article 88 of the same.

³⁵ Article 88(1) of the Constitution of Kingdom of Nepal, 1990.

In addition to the Constitution, Nepal has Directive Principles and Policies. These are overall national objectives that are fundamental to the activities and governance of the State. Implementation of the Directive Principles and Policies is subject to the means and resources available in the country³⁶, and they must be achieved in stages through law. Even though Directive Principles and Policies are not enforceable *per se*, in *Yogi Narharinath vs. Prime Minister Girija Pd. Koirala*, the Supreme Court held that “in spite of non enforceability of the directive principles and the State enshrined policies in the Constitution, the Court may allude to any decision of the Government made disrespecting the directive principle and the policy of the State”³⁷. Thus, the Constitution’s mandate to safeguard the rights and interests of children under directive principles³⁸ must be seen in light of the enforceability of these Policies.

B. Legislative Process

Law making in Nepal is done through government bills submitted and passed by both Houses of Parliament (the House of Representatives and the National Assembly), and then submitted to His Majesty for royal assent. Generally, a government ministry can propose legislation by submitting a bill to Parliament³⁹, for example, in cases of laws related to children, the Ministry of Women, Children and Social Welfare often submits a bill to either House of Parliament. In addition, individual members of Parliament may register a private bill to Parliament⁴⁰.

When new legislation, rules or regulations are introduced, the Ministry of Law, Justice and Parliamentary Affairs oversees and must approve the technical legal aspects of the bill, rule or regulation before it can be submitted to Parliament. The Cabinet must also approve new legislation, rules of regulations before they are submitted to Parliament.

Parliamentary committees play a vital role in deliberating on bills; there are nine committees in the House of Representatives and four in the National Assembly. A bill

³⁶ Article 24 of the Constitution of the Kingdom of Nepal, 1990.

³⁷ NKP 1996, v. 1, p.33.

³⁸ Article 26(8) of the Constitution of Kingdom of Nepal, 1990.

³⁹ According to Articles 68 and 69, a Bill may be introduced in either House of Parliament, i.e. the House of Representatives or the National Assembly. A Bill passed by one House of Parliament shall be transmitted to the other House as soon as possible and such Bill, if passed by the receiving House, shall be presented to His Majesty for assent. A Bill passed by either House can be rejected by the other House at once but between the House of Representatives and the National Assembly, it is the House of Representatives that prevails if it decides for the second time to pass the Bill, rejecting the suggestions from the National Assembly. Roughly similar is the case of the King and the Parliament. His Majesty can send a Bill back to Parliament if he sees reasons to seek reconsideration of the Bill, but if the Parliament, in a joint sitting of the two Houses and on its second hearing, decides to stand by its earlier stance, His Majesty has to give assent to the Bill. In the case of Finance Bills, the role of the House of Representatives is even more dominant, since the National Assembly as well as the King is expected under the Constitution to agree with the decisions of the House of Representatives.

⁴⁰ Such a Bill may be withdrawn by the member introducing it with the approval of the House. The process for passing a Private Bill is the same as for a Government Bill. In cases where the tenure of the member of Parliament who submitted the Bill is completed, the Bill lapses. Examples of Acts which began as private members’ Bills are the National Human Rights Commission Act and the Legal Aid Act.

passed by one House of Parliament is transmitted to the other House as soon as possible and such bill, if passed by the receiving House, shall be presented to His Majesty for royal assent⁴¹. A bill becomes an Act after His Majesty grants his assent by affixing the Royal Seal on the bill. Generally, a bill becomes an Act and comes into force on the date it receives royal assent, unless the bill itself prescribes an enforcement date.

When both Houses of Parliament are not in session, laws can be enacted by ordinance. His Majesty may issue an ordinance, but the ordinance must be presented at the next session of both Houses of Parliament. If both Houses of Parliament fail to pass the ordinance, the validity of the ordinance lapses six months after it was issued.

NGOs can play an informal role in the law making process where laws are drafted by directive order of the Supreme Court. NGOs participate in the law making process through filing public interest litigation cases, and pressuring and lobbying the government to implement court orders. NGOs also participate in the law making process by preparing alternate drafts of bills. The House Committees often invite members of NGOs and civil society to discuss proposals for new laws. For example, on the 25 and 26 March 2000, the Social Justice Committee of Parliament held a meeting for members of Parliament, civil society groups, and political parties to discuss the Eleventh Amendment to the Country Code, which addresses child sexual abuse. As a result of this meeting, the section 9A of the Code, which criminalizes paedophilia, has been added to this statute⁴². Similarly, the Law and Justice Committee also held meetings with civil society groups, among others, to discuss including a provision on the age of marriage in this same legislation⁴³.

C. International Instruments under Nepalese Law

Under the Nepal Treaty Act 1991, international instruments to which Nepal is a party have the force of law in Nepal, and the provisions of international instruments prevail over domestic laws where the two conflict⁴⁴. In *Reena Bajracharya's case*⁴⁵, the Supreme Court stated that the provisions of Conventions to which Nepal is a party supersede existing domestic law. Thus, international instruments are easily and efficiently implemented in Nepal.

In another case⁴⁶, the Supreme Court invalidated a government order to cancel the registration of an NGO simply because its members are minors. Relying upon the Constitution, the Supreme Court found that under Article 11(3), the State may provide special measures to protect and advance children's rights, so it is inappropriate to cancel

⁴¹ Article 69 of the Constitution of Kingdom of Nepal, 1990.

⁴² Report of the Workshop on the Existing Legal Provisions Relating to Country Code 11th Amendment and Required Areas for Reform, Social Justice Committee, National Assembly, April 2000.

⁴³ Forum for Women, Law & Development. *Inheritance Right of Nepalese Women, Journey Towards Equality*. p.42 (2003).

⁴⁴ Section 9 of the Nepal Treaty Act, 1991.

⁴⁵ *Reena Bajracharya and others vs. HMG/Nepal*, NKP 2057, v. 5, p.376.

⁴⁶ *Chandra Nath Sapkota vs HMG Nepal*, Supreme Court Bulletin. Year 10, No.22, 2002. (Falgun 16-30, 2058). p.16.

the registration of an organization merely because its members are minors. The Court also cited Article 15(1) of the UN Convention on the Rights of the Child, which requires State parties to recognize the rights of children to freedom of association and peaceful assembly.

II. INTERNATIONAL AND REGIONAL INSTRUMENTS RELATED TO CHILDREN

A. International Instruments

The **Convention on the Rights of the Child (CRC)**⁴⁷ was ratified in November 1989 and came into force in September 1990. Currently, there are 191 States that are party to the CRC. Every UN member state has signed and ratified the document with the exception of Somalia and the United States. The CRC is the first binding international instrument setting out the civil, political, economic, social and cultural rights of children.

The Convention defines a child as any persons up to 18 years of age and recognises that children have an inherent right to life and survival, to an identity, to a nationality, to be heard, to freedom of thought, conscience and religion, to health, and to an education. In the context of commercial sexual exploitation, Articles 34 through 35 of the CRC directly obligates States to protect children from all forms of sexual exploitation including child prostitution, child pornography and trafficking.

The Committee on the Rights of the Child, established under Article 43(1), examines the progress made by States parties in achieving the Conventions' obligations, thereby determining which rights fall under the language of the Convention. Pursuant to Article 44, the Committee considers reports submitted by States and publishes concluding observations with general recommendations as to how they can improve the condition of children in their countries.

The **Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (Optional Protocol)**⁴⁸ is the first of two Optional Protocols to the CRC to enter into force. It has been ratified by 43 countries, signed by 105 countries, and entered into force in January 2002. The Protocol expressly prohibits the sale of children, child prostitution and child pornography and it is the first international instrument to define these terms⁴⁹. Accordingly, the Protocol requires these offences to be treated as criminal acts⁵⁰. The Protocol requires States parties to: establish grounds for criminalising these prohibited acts; ensure jurisdiction over the offences; provide for the extradition of

⁴⁷ G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989). Entered into force 2 September 1990.

⁴⁸ G.A. Res. 54/263, Annex II, 54 U.N. GAOR Supp. (No. 49) at 6, U.N. Doc. A/54/49, Vol. III (2000). Entered into force 18 January 2002.

⁴⁹ Ibid. Article 2.

⁵⁰ Ibid. Article 3.

offenders; encourage international cooperation between States to pursue offenders; and provide support to child survivors of commercial sexual exploitation.

The **Optional Protocol on the Involvement of Children in Armed Conflict**⁵¹ was ratified by 45 countries and signed by 111 countries. It entered into force in February 2002. This protocol prohibits conscripting or compulsory recruiting children under 18 years of age for military service, and prevents children from directly participating in a military conflict⁵². The protocol also requires States to set a minimum age for voluntary recruitment⁵³, and if the recruitment age is below 18 years, requires States to ensure that such recruitment is truly voluntary⁵⁴. Although there is some evidence to suggest a connection between commercial sexual exploitation and children in armed conflict⁵⁵, the protocol is silent on the issue of protecting children from sexual exploitation during war or other distress. It focuses solely on the issue of children as soldiers.

The **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol)**⁵⁶ is a supplementary protocol added in 2001 to the United Nations Convention against Transnational Organized Crime. The Protocol was opened for signature in December 2000. This protocol grew out of the urgent need to combat transnational crime as tabled by the United Nations Centre for International Crime Prevention, the UN agency responsible for crime prevention, criminal justice and criminal law reform. The Trafficking Protocol provides the first international definition for trafficking and outlines a comprehensive law enforcement regime⁵⁷. The Protocol establishes a system to criminalise traffickers and protect and assist trafficked persons, thereby strengthening preventive trafficking measures for all persons particularly the most targeted victims – children and women.

The **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**⁵⁸, adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. CEDAW defines discrimination against women as “... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”⁵⁹ and sets up an agenda for national action to end such discrimination.

⁵¹ G.A. Res. 54/263, Annex I, 54 U.N. GAOR Supp. (No. 49) at 7, U.N. Doc. A/54/49, Vol. III (2000). Entered into force 12 February 2002.

⁵² Ibid. Articles 1 & 2.

⁵³ Ibid. Article 3(1).

⁵⁴ Ibid. Article 3(3).

⁵⁵ L. Alfredson. *Sexual Exploitation of Child Soldiers*. 2001. Accessed 7 October 2004 from: <<http://www.child-soldiers.org/cs/childsoldiers.nsf/DocumentTheme?OpenView>>; C. Clark. *Girls in War: Public Health and Social and Economic Reintegration*. 1 October 2002. Accessed 7 October 2004 from: <http://www.child-soldiers.org/cs/childsoldiers.nsf/DocumentTheme?OpenView>.

⁵⁶ G.A. res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001).

⁵⁷ Ibid. Articles 3 and Part III.

⁵⁸ G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46. Entered into force 3 September 1981.

⁵⁹ Ibid. Article I.

The Convention is the only human rights treaty that affirms the reproductive rights of women, and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's rights to acquire, change or retain their nationality and the nationality of their children. States parties also agree to take appropriate measures against all forms of trafficking in women and exploitation of women. Its application to the commercial sexual exploitation of children is not straightforward. Some academics argue that since "women" is not defined in the Convention, its articles are equally applicable to girl children. In this respect, the sections on trafficking and exploitation are relevant to the commercial sexual exploitation of children.

The Convention on Consent to Marriage, Minimum Age for Marriage and Registration for Marriages⁶⁰ was opened for signature and ratification by General Assembly Resolution 1763 A (XVII) in November 1962 and entered into force in December 1964. The Convention contains some articles that have implications for the commercial sexual exploitation of children. Article 1 states, "No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnise the marriage and of witnesses, as prescribed by law," and Article 2 explains, "States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses."

The **Declaration on the Elimination of Violence against Women**⁶¹ brings to light the role of women in society by attempting to establish a global consensus on raising the status of women. In addition, it calls on States to take steps to promote social policies aimed at eliminating gender-based violence, to which girl children are particularly vulnerable. The declaration identifies violence typically experienced both within the family and within the general community as sexual abuse and assault, as well as trafficking in women and forced prostitution.

The **International Labour Organization Convention No. 182 (ILO Convention 182)**⁶² became the first ILO convention to be unanimously adopted by the 174 member states of the ILO in June 1999. The Convention defines the worst forms of child labour as including all forms of slavery, trafficking, child prostitution, child pornography, use of children for illicit activities (such as for the production and trafficking of drugs), and use of children for any work that by its nature or the circumstances in which it is carried out is likely to harm the health, safety and morals of children⁶³. The Convention represents the international community's effort to legally define those types of labour in which children below 18 years of age should not be involved.

⁶⁰ 521 U.N.T.S. 231. Entered into force 9 December 1964.

⁶¹ G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993).

⁶² Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention 182), 38 I.L.M. 1207 (1999). Entered into force 19 November 2000.

⁶³ Ibid. Article 3.

The **International Convention 138 Concerning Minimum Age for Admission to Employment (1973)** provides that signatories to the Convention pursue a national policy raising the minimum age of employment “consistent with the fullest physical and mental development of young persons”, thereby abolishing “child labour”⁶⁴. The two guiding principles of the Convention are that: (1) the minimum age not be less than 15 years for completing compulsory schooling; and (2) the highest minimum age set for hazardous work not be lower than 18 years. The Convention is a flexible and dynamic instrument setting various minimum ages depending on the type of work. For example, in some cases of countries with an insufficiently developed economy and education facilities, the minimum age for work can be less than 15 years. The Convention is relevant to a discussion on commercial sexual exploitation of children as it complements ILO Convention No. 182 by placing the onus on States Parties to ensure that persons below 18 years of age are never involved in hazardous ‘work’ for remuneration.

In 1996, the ECPAT movement in collaboration with UNICEF and the NGO Group for the Convention on the Rights of the Child organised the First World Congress against Commercial Sexual Exploitation of Children in Stockholm, Sweden. At the Congress, 122 countries adopted the **Stockholm Agenda for Action**, which calls for States, all sectors of society, and national, regional and international organizations to take action against the commercial sexual exploitation of children. In particular, it calls on countries to develop National Plans of Action against Commercial Sexual Exploitation of Children and to implement the Agenda for Action in six areas: coordination, cooperation, prevention, protection, recovery and reintegration, and child participation. The National Plans of Action provide governmental and child-care agencies an opportunity to cooperate in devising strategies through national policy to eliminate the sexual exploitation of children and promote children’s rights in their country.

In December 2001, the Second World Congress was hosted by the Government of Japan in Yokohama. One hundred and fifty-nine countries reaffirmed their commitment to the Agenda for Action by adopting the outcome document, the **Yokohama Global Commitment**. Further, the Second World Congress participants recognized and welcomed the positive developments that had occurred since the First World Congress in 1996, including better implementation of the CRC and increased mobilization of national governments and the international community to adopt laws, regulations and programs to protect children from commercial sexual exploitation.

The **United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)**⁶⁵ adopted by the United Nations General Assembly in November 1985, precedes the CRC. These rules establish minimum standards for the juvenile justice system by, among other things: ensuring that criminal courts consider the best interest of the juvenile; guaranteeing procedural safeguards for all juveniles; requiring that juvenile offenders are dealt with differently from adult offenders; and setting the age of criminal responsibility to properly reflect a child’s emotional, mental and intellectual maturity⁶⁶.

⁶⁴ C138 Minimum Age Convention, 1973. Article 1.

⁶⁵ G.A. res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985).

⁶⁶ Ibid. Rule 4.

The Beijing Rules apply in cases of commercial sexual exploitation of children when a State party arrests a child for an offence related to sexual exploitation (i.e., if a minor is the intermediary between another minor and an adult) or when the local justice system treats the victim as an offender and puts the child on trial for prostitution or a related crime. In either case these rules must be followed.

Finally, the **United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)**⁶⁷ adopted by the General Assembly in December, 1990, complement the previously adopted Beijing Rules. The Riyadh Rules outline preventive measures for dealing with juvenile crime by providing a general social policy aimed at curbing “juvenile delinquency”. This is done by considering juveniles as valuable participants in society thereby engaging them “in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes⁶⁸.” Accordingly, the Rules call upon a socialisation process by which all of society (family, education, community, and mass media) provides the means necessary for juveniles to develop and mature both morally and mentally.

B. Regional Instruments

In South Asia, there are two regional conventions, signed by the South Asian Association for Regional Cooperation (SAARC), related to the commercial sexual exploitation of children and child rights issues. In addition, in advance of the Second World Congress Against Commercial Sexual Exploitation of Children in Yokohama, Japan in December 2001 (Yokohama), the South Asian countries of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka developed a South Asia Strategy Against Commercial Sexual Exploitation of Children and Child Abuse. While not a binding legal instrument, it suggests standards for child protection in South Asia.

SAARC Conventions

On December 8, 1985, SAARC was formed by a Charter signed by seven South Asian nations: Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. The objectives of this association are to promote the welfare of South Asian people by strengthening collaboration among these nations across economic, social, cultural, technical and scientific fields⁶⁹. These collaborations are to be guided by principles of “sovereign equality, territorial integrity, political independence, non-interference in the internal affairs of other States and mutual benefit”⁷⁰.

To accomplish its objectives, SAARC nations hold periodic meetings on technical, economic, social, cultural and scientific issues, and regularly schedule summits involving heads of state. During these summits, the member nations issue declarations on many issues, and, more recently, in January 2002, the member states drafted and signed two

⁶⁷ G.A. res. 45/112, annex, 45 U.N. GAOR Supp. (No. 49A) at 201, U.N. Doc. A/45/49 (1990).

⁶⁸ Ibid. Part I.

⁶⁹ Charter of the South Asian Association for Regional Cooperation (SAARC). Article I.

⁷⁰ Ibid. Article II.

regional conventions, the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, and the Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia.

2002 SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution

In January 2002, the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (SAARC Convention on Trafficking) was signed by all seven SAARC member states; all seven states must ratify the Convention before it comes into force. To date, only five countries have ratified it: Bangladesh, India, Pakistan, Maldives and Bhutan. The Convention defines trafficking and prescribes measures that each state must take to combat trafficking of women and children; these provisions are discussed in detail below.

2002 SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia

Also in January 2002, the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia (SAARC Convention on Child Welfare) was signed by all seven SAARC member states; all seven states must ratify the Convention before it comes into force. To date, only five countries have ratified it: Bangladesh, India, Sri Lanka, Maldives and Bhutan. This Convention is based on the CRC. Its broad purposes are to fulfil promises member states have made to South Asian children under various national, international and regional world conferences and SAARC summits; and, to work together and develop regional arrangements to protect the rights of South Asian children.

South Asia Strategy against Commercial Sexual Exploitation of Children and Child Abuse

In November 2001, the governments of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka met in advance of the Yokohama Congress. The purpose of this meeting was to develop a regional strategy to combat the commercial sexual exploitation of children to present at the Second World Congress.

These seven South Asian countries endorsed and committed their support to implement the following strategies related to legal reform and law enforcement:

- Reform legislation to ensure that children are defined as persons below the age of 18 years;
- Harmonize national laws with international standards to more comprehensively protect children's substantive and procedural legal rights; and
- Urge nations to sign and ratify the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child

Pornography and ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.

With respect to reforming national laws in line with international standards, the strategy specifically calls for:

- Child-friendly and gender-sensitive legal procedures for children;
- Registration of all births and marriages;
- Collaboration between governments to ensure prosecution of foreign violators of children's rights;
- Child rights training for lawyers, judges, and law enforcement officials;
- Humane treatment of child survivors of CSEC as victims rather than criminals;
- Establishment of monitoring systems to ensure accountability; and
- Simplified legal processes and procedures.

Ratifications and Signatures

The chart below reflects only those international legal instruments that Nepal has signed.

Instrument	Date signed	Date ratified	Reservations	Reports Submitted/due	Concluding Observations
CRC	26 Jan. 1990	14 Sept. 1990	None	First submitted in 1995; second and third due October 1997 and 2002, respectively	1996
OP on CSEC	8 Sept. 2000	Not yet	None	n/a	None
OP on Armed Conflict	September 8, 2000	Not yet	None	n/a	None
ILO No. 182	3 Jan. 2002	3 Jan. 2002	None	n/a	n/a
SAARC Trafficking	5 Jan. 2002	n/a	None	n/a	n/a
SAARC Child Welfare	5 Jan. 2002	n/a	None	n/a	None
Stockholm Agenda for Action	Adopted 28 Aug. 1996	None	None	n/a	None
Yokohama Commitment	Adopted 20 Dec. 2001	None	None	n/a	None

III. NATIONAL CHILD RIGHTS LEGAL FRAMEWORK

A. General Provisions Related to Children

The Constitution of Nepal promotes children's rights and allows the State to enact special laws to protect and advance children's rights⁷¹. In addition, Article 20 of the Constitution guarantees freedom from exploitation as a fundamental right.

Nepalese law also has separate statutes that address children's rights generally, but there is inconsistency in the definition of a child. For example, the Children Act defines a child as "a boy or girl not attaining the age of 16 years"⁷², but the Labour Act defines a child as a person who has not attained the age of 14 years⁷³, and a "minor" as a person who has attained the age of 14 years but has not completed the age of 18 years⁷⁴.

B. Legislation Related to the Commercial Sexual Exploitation of Children

In addition to the Constitution's general protections for children's rights, there are several laws on child protection in various contexts, including, among others: Traffic in Human Beings (Control) Act 1986; the Children Act 1992; the Children Regulations 1995; the Chapter on Human Trafficking in Country Code 1963; the Chapter on Rape in Country Code 1963; the Nepal Citizenship Act 1963; and the Birth, Death and other Personal Incident (Registration) Act 1976. While these statutes protect children through specific laws and procedures, Nepalese law lacks a comprehensive framework for addressing the commercial sexual exploitation of children.

1. Legislation Related to Child Prostitution

In Nepal, there are no laws specifically prohibiting the prostitution of children. Instead, laws against rape, trafficking in human beings and general children's rights are used in cases where children are forced into prostitution. Under Nepali law, forced prostitution is a crime, but voluntary prostitution is not⁷⁵. Under the rape law, however, intercourse with a girl below 16 years of age is a crime regardless of the girl's 'consent', thus so-called 'voluntary' prostitution of a girl below 16 years of age is rape⁷⁶.

⁷¹ Article 11 (3) of the Constitution provides that "special provisions may be made by law for the protection and advancement of the interests of women, children and those who are physically or mentally incapacitated or those who belong to a class which is economically, socially or educationally backward as a fundamental right."

⁷² Section 2(a) of the Children Act, 1992.

⁷³ Section 2(h) of the Labour Act, 1992.

⁷⁴ Section 2(i) of the Labour Act, 1992.

⁷⁵ Section 8 (3) of the Traffic in Human Beings (Control) Act, 1986.

⁷⁶ No. 1 of the Chapter on Rape of the Country Code of Nepal, 1963. Under this provision, commercial sex with anyone below 16 years of age is exploitation regardless of consent.

i. Country Code

Chapter on Rape

In Nepal, statutory rape is the offence of sexual intercourse with a girl below the age of 16, regardless of her consent⁷⁷. If convicted of statutory rape, the offender can be sentenced from 5 to 15 years' imprisonment, depending on the age of the girl⁷⁸. Nepalese law also provides for compensation to rape victims: one half of the offender's property shall be confiscated and given to the victim⁷⁹. In addition, no fee (*dasaud*) shall be charged for such cases. Nepalese courts have interpreted this law to apply to girl children. In a case where a girl child was raped and the offender was required to compensate her, the offender refused, arguing that the statute only applied to women, not to girl children. To the contrary, the Supreme Court interpreted the term "woman" to include all females, regardless of age, who are unmarried, married or widowed⁸⁰.

Chapter on Intention to Intercourse

This law criminalizes touching any organ, from hands to feet, of any girl above 11 years of age, excluding one's own wife, with the intention of intercourse. For those convicted of this crime, the punishment is five hundred rupees, up to one year's imprisonment, or both⁸¹. If a person entices a woman with the intent to arrange sexual intercourse with himself or with any other person, and arranges contacts for prostitution, he is liable for between six months' to two years' imprisonment, a fine ranging from 500 to 6000 rupees, or both⁸².

Chapter on Paedophilia

Paedophilia is defined in Nepalese law as unnatural sexual intercourse with a minor⁸³. It is treated as an aggravated form of statutory rape, with additional imprisonment up to one year, monetary compensation from the offender to the minor with the amount depending upon the minor's age and the harm caused⁸⁴.

It should be noted that this law is not easily applied because it fails to specify what "unnatural sexual intercourse of any type with a minor" is; there is no explanation of what unnatural sexual practices are. And, this law implies that "natural" sexual intercourse with a minor is only a type of rape, and not paedophilia, contrary to the common definition of paedophilia, which is a phenomenon where adults seek to have sex with pre-pubescent children.

⁷⁷ Ibid.

⁷⁸ No. 3 of the Chapter on Rape of the Country Code of Nepal, 1963.

⁷⁹ No. 10 of the Chapter on Rape of the Country Code, 1963.

⁸⁰ Ghan Shyam Tamoli Vs. HMG, NKP, v. 3, 1994, p.166-170.

⁸¹ No. 1 of the Chapter on Intention to Intercourse, Country Code of Nepal 1963.

⁸² No. 5 of Chapter Intention to Intercourse, Country Code of Nepal 1963

⁸³ No. 9A of the Chapter on Rape of the Country Code of Nepal 1963.

⁸⁴ Ibid.

ii. The Children Act 1992

Under this law, no person shall involve or use a child in an “immoral profession,”⁸⁵ and punishment for this offence is up to one year’s imprisonment and a 10,000 Rupee fine.⁸⁶ Research reveals no cases interpreting or registered under this provision.

2. Gaps and Discussion regarding Child Prostitution

As a result of the lack of a specific law dealing with child prostitution, no detailed explanation of child prostitution is provided under any of the present Nepalese laws. Even though forced prostitution is addressed under the Traffic in Human Beings (Control) Act, there is no law that directly prohibits prostitution of children unless it is linked to the Country Code Chapter on rape⁸⁷. Rather, law enforcers prosecute and criminalize girls for prostitution under the Public (Offence and Punishment) Act⁸⁸. Thus, without specific legislation that criminalizes prostitution of children, children in prostitution are prosecuted for public offence crimes, such as creating a public nuisance, or conducting immoral and obscene acts in public.

Also, the activities related to child prostitution are not clearly defined by any existing Nepalese laws. The Children Act specifically prohibits involving children in “immoral professions” but fails to define what an “immoral profession” is. The Children Act also gives law enforcement officials wide discretion to determine whether a profession is immoral, based on their individual understanding, which may result in inconsistent application of the law. Lacking guidance on what constitutes an immoral profession, law enforcement agencies target and arrest children in prostitution under the Public (Offences and Control) Act, rather than punishing offenders⁸⁹. This creates ‘double’ victimization of children; first by being prostituted, and then through police action and social stigma. This poor awareness of children's rights creates a further obstacle to protecting children from sexual crimes.

Under the Chapter on Intention to Intercourse, if one touches a girl or woman above 11 years of age with the intention of having sexual intercourse with her, punishment is up to one year’s imprisonment, a 500 rupee fine, or both⁹⁰. This law, however, only includes girls above 11 years of age, so there is no protection for children below 11 years of age.

Finally, the prohibition against “unnatural” sex with children under the Country Code is problematic because there is no natural sex with children. Moreover, in cases charging

⁸⁵ Section 16 of the Children's Act 1992

⁸⁶ Section 53 of the Children's Act 1992

⁸⁷ No. 1 of Chapter on Rape of the Country Code has provision for statutory rape in cases of sexual intercourse with a girl below the age of sixteen irrespective of the girl’s consent.

⁸⁸ Sapana Pradhan-Malla and Salina Joshi, FWLD. ‘Abuse of Commercial Sex Workers and Homosexuals in Nepal’. 2003. During a focus group discussion, a girl shared her experience where a policeman arrested her for prostitution and forced her to be naked in front of many policepersons.

⁸⁹ Ibid.

⁹⁰ No.1 of Chapter on Intention to Intercourse, Country Code, 1963.

paedophilia, the lack of specificity in the definition of paedophilia often allows the offender to go unpunished.

3. *Child Pornography*

Nepal has three main laws that may be used to prosecute cases of child pornography: the Children Act, the Public (Offence and Punishment) Act, and the Electronic Transaction Ordinance.

i. The Children Act 1992

This Act prohibits taking photographs, giving permission to take photographs, and distributing or exhibiting photographs of children with the purpose to involve them in an immoral profession⁹¹. This offence is punishable by up to one year's imprisonment, a 10,000 Rupee fine, or both⁹². Furthermore, if, as a result of this activity, the child's character or health is adversely affected, the officer hearing the case may order the offender to pay a reasonable amount of compensation to the child in proportion to the damage caused, in addition to imprisonment and the fine⁹³.

The term "damage to character" has not been interpreted by any Nepalese court, and research reveals no cases involving this provision.

The Central Child Welfare Board has drafted a proposed amendment to this statute to address sexual exploitation and sexual abuse⁹⁴. The proposed amendment defines sexual exploitation and sexual abuse of children as "a sexual relationship with children (which may be natural or unnatural)⁹⁵, taking pornographic photos, publishing or distributing pornographic photos in electronic media, touching or fondling sensitive parts, and showing pornographic material by means of deception, [showing] hope, force or any other influence, including [or by means of] fear, threat, or making the child unconscious, or by giving or not giving money or other goods"⁹⁶.

ii. Public Offences Act

Section 2(c) of this Act punishes the use of defamatory language, speech or the exhibition of pornographic materials in public places. It also punishes printing, producing, exhibiting and selling pornographic materials in public places.

⁹¹ Section 16 of the Children's Act, 1992.

⁹² Section 53 of the Children's Act, 1992.

⁹³ Section 53(6) of the Children's Act, 1992.

⁹⁴ Interview with Deepak Sapkota, Member Secretary, Central Child Welfare Board.

⁹⁵ In the context of commercial sexual exploitation of children, ECPAT believes that all sexual relationships between children and adults constitute a breach of a child's fundamental right to live free from sexual abuse and exploitation. Thus, the distinction between "natural" and "unnatural" sex with children is irrelevant in the context of commercial sexual exploitation of children.

⁹⁶ Section 1 of the Proposed Bill.

Moreover, this Act does not define pornography, and while there are cases involving persons accused of publishing, selling or distributing obscene materials, such as nude video films or CDs, there are no registered cases specifically involving the use of children in producing pornography.

iii. Electronic Transaction Ordinance, 2004

The government recently issued the Electronic Transaction Ordinance, 2004⁹⁷ in order to regulate electronic transactions and prevent cyber-crime. This statute penalises the acts of publishing or displaying on computers, the internet or other electronic media materials that are prohibited by law to be published or displayed because they are against public morality or decency. Violations of this law may result in up to five years' imprisonment, up to a 100,000 Rupee fine, or both⁹⁸.

Another important provision in this law is that it applies to persons committing internet-related offences outside Nepal if the computer, computer system, or computer network system from which the act is committed is located in Nepal⁹⁹.

If this new ordinance is strictly implemented, it has the potential to discourage operators and distributors of internet sites from displaying child pornography and may result in a decrease of child pornography in Nepal.

4. Gaps and Discussion regarding Child Pornography

While the Children Act provides punishment for activities related to child pornography, it fails to define this offence. In addition, the offence of child pornography has become complicated by the use of the Internet to relay child pornographic materials, and the development of new technologies, such as digitalised formatting and morphing (i.e. pseudo pornography made by manipulating images). The Children Act only punishes the act of taking pornographic pictures of children and producing, distributing and disseminating them, and fails to address many other activities related to child pornography, such as importing, exporting, offering, selling or possessing child pornography.

Moreover, while the enactment of the Electronic Transaction Ordinance is a good step by the government towards addressing internet crimes and child pornography, the use of value-laden words, such as “public morality” and “decency” in this newly enacted law weakens its reach by diverting the focus from the criminality of the sexual abuse of a child, which such images represent, to designating the offence primarily as an offence against the public morality. Rather, child pornography is a crime that represents a gross violation of children's rights.

⁹⁷ Effective from 15 September 2004.

⁹⁸ Section 47 of the Electronic Transaction Ordinance, 2004.

⁹⁹ Section 55 of the Electronic Transaction Ordinance, 2004.

In addition, application of this law to acts committed outside Nepal will be challenging unless extradition treaties are executed to make the offences outlined in this law extraditable offences.

5. Child Trafficking

Nepalese law does not specifically address child trafficking, but has several general trafficking laws that are applicable to children.

i. Country Code

The Chapter on Sale of Human Beings addresses human trafficking, including the forced prostitution of girls and women. As a general law, this statute applies unless there is a more specific law on the topic; once a more specific law is enacted, it supercedes the general law¹⁰⁰. Thus, until the Traffic in Human Beings (Control) Act was enacted in 1986, this was the only Nepalese law related to human trafficking, and when the Trafficking law was passed, it supplanted various provisions of this Chapter in the Country Code¹⁰¹. Nevertheless, this Chapter still has some valid provisions, such as the offence of separating a minor or person of unsound mind from his/her lawful guardian or parents.

Under the Country Code, “no person shall take anyone out of the country with an intention to sell”¹⁰² and prescribes punishment of up to 10 years’ imprisonment where the convict is caught before selling the person, and up to 20 years’ imprisonment where the convict is caught after the sale¹⁰³. This is a general provision that covers the sale of all persons, including children.

This chapter also states that “no person shall separate or entice any minor below the age of 16 from the legal guardian without consent” and prescribes punishment of up to 3 years’ imprisonment, up to a 500 rupee fine, or both¹⁰⁴.

Finally, the Chapter on Sale of Human Beings in the Country Code criminalises the acts of enslaving, keeping bonded labour, or serfdom, and provides punishment from 3 to 10 years’ imprisonment. The specific acts of enslaving, keeping bonded labour, and serfdom, however, are not defined¹⁰⁵, and Nepalese courts have not provided principles or criteria defining these acts.

¹⁰⁰ No. 4 of the Chapter on Preliminary Matters of the Country Code, 1963.

¹⁰¹ Section 11 of the Traffic in Human Being (Control) Act, 1986.

¹⁰² No. 1 of Chapter of Trafficking in Human Beings of the Country Code, 1963 .

¹⁰³ No. 4 of Chapter of Trafficking in Human Beings of the Country Code, 1963.

¹⁰⁴ No. 2 of the Chapter on Trafficking in Human Beings of the Country Code, 1963.

¹⁰⁵ No. 3 of the Chapter on Trafficking in Human Beings of the Country Code, 1963.

ii. Traffic in Human Beings (Control) Act, 1986

This law addresses human trafficking for any purpose, but focuses on the trafficking of women to foreign countries for the purpose of prostitution; nearly all cases filed under this law are related to women who are sold to brothels abroad. There are no reported cases involving a child being sold within the country or abroad, except for a recent case involving children trafficked to work in Indian circuses¹⁰⁶.

Under Section 3, this Act declares that no one shall sell human beings, and Section 4 lists the activities that constitute trafficking: (a) selling human beings for any purpose; (b) taking any person abroad with the intention of selling them; (c) forcing a woman into prostitution through allurement, enticement, deceit, threats, intimidation, pressures or otherwise; and (d) assisting, abetting, attempting or conspiring to commit any of these acts. The range of punishment for offenders convicted of these activities is between 5 to 20 years' imprisonment¹⁰⁷.

This statute also provides for extra-territorial jurisdiction by allowing Nepal to prosecute traffickers – both Nepalese and non-Nepalese citizens – for offences committed outside Nepal¹⁰⁸. In principle, a state may only exercise its jurisdiction over offences committed within its borders, but the Traffic in Human Beings (Control) Act allows traffickers to be prosecuted for acts of trafficking and forced prostitution committed outside Nepal: “even if a person has committed an offence of trafficking or forceful prostitution outside the Kingdom of Nepal, he/she shall be prosecuted and punished as if he/she had committed the act within the territory of Nepal.”¹⁰⁹ Thus, this is ‘victim-friendly’ since a substantial number of children, especially girls, are trafficked across Nepal’s borders.

Despite the definition of trafficking provided in this statute, the Supreme Court has not consistently defined trafficking¹¹⁰. In some cases the Court states that it is not necessary to prove that the victim was taken abroad and sold and that simply the act of taking a girl from one place to another within Nepal is enough to fall within the scope of this Act¹¹¹. In a contradictory ruling, however, the Court stated that the prosecution must prove that the trafficker took the victim abroad with the intention to sell her¹¹².

There have been many prosecutions under this law. In one case, where a person took a girl to Mumbai with the intention of selling her, the person who originally sold the girl was convicted and sentenced to 20 years' imprisonment. In its opinion, the court stated that because human trafficking is a heinous crime, the maximum punishment allowed was appropriate¹¹³.

¹⁰⁶ *The Kathmandu Post*, 18 July 2004.

¹⁰⁷ Section 8 of the Traffic in Human Beings (Control) Act, 1986.

¹⁰⁸ Section 2 of the Traffic in Human Beings (Control) Act, 1986.

¹⁰⁹ Section 2 of the Traffic in Human Beings (Control) Act, 1986.

¹¹⁰ FWLD/UNIFEM. Unpublished report on the Effectiveness of Existing Laws and Institutional Mechanisms to Combat Trafficking of Women and Children, 2001. p.92.

¹¹¹ HMG v. Gopla Prasad Dahal, SCB 1997, v. 6, no. 15, p.8.

¹¹² HMG v. Habib Miya, NKP 1988, v. 6, no. 15, p.12.

¹¹³ Krishna Bahadur v. HMG; NKP 2049, p. 511; and Lal Bahadur v. HMG; NKP 2048, p.75.

6. Gaps and Discussion Regarding Child Trafficking

Current Nepalese laws fail to define child trafficking. While the Traffic in Human Beings (Control) Act, 1986 defines ‘trafficking’ and lists the acts that are considered as trafficking, it does not specifically define ‘child trafficking’. This Act also fails to punish the buyer, further limiting the scope of the offence of trafficking. Finally, the law gives judges wide discretion to decide the range of punishment for child traffickers¹¹⁴, but does not provide criteria for imposing long sentences.

Under the Children Act, cases involving children should not be settled without proper legal representation¹¹⁵. In cases where children are not represented by counsel, the relevant court must arrange appropriate legal counsel for a child through public prosecutors or by lawyers interested in the child’s case¹¹⁶.

Recognizing that in recent years children trafficked for purposes of labour exploitation or as domestic help are also sexually exploited, a specific plan of action against Sexual and Labour Exploitation of Children has been developed¹¹⁷. With respect to registering migrations, this recent National Plan of Action¹¹⁸ suggests registering the mobility of women and girls¹¹⁹.

7. Other Manifestations of CSEC

i. Traditional harmful practices

As discussed above in Chapter Two, Nepal has several traditional practices among the *Badi*, *Deuki* and *Jhuma* communities, where girl children are offered to temples. Section 14 of the Children’s Act makes it illegal to offer a child to Gods and Goddesses, with punishment of up to five years’ imprisonment or a 10,000 Rupee fine¹²⁰.

ii. The Child Labour Act

The Child Labour (Prohibition and Regulation) Act, 2000 specifically restricts individuals and enterprises¹²¹ from engaging a child below the age of 14 as a labourer in any kind of work¹²². Though the law has not defined the word ‘work’, contravention of

¹¹⁴ Section 8(1) of the Traffic in Human Beings (Control) Act 1986 provides for punishment ranging between 10 to 20 years of imprisonment.

¹¹⁵ Section 19(1) of the Children Act, 1992.

¹¹⁶ Section 19(2) of the Children Act, 1992.

¹¹⁷ National Plan of Action against the Sexual and Labour Exploitation of Children, Ministry Of Women , Children and Social Welfare. 2003. p.15.

¹¹⁸ Ibid, p.23-30.

¹¹⁹ Border Monitoring, Sunauli Border and Interview with In-charge of Women and Children Service Center Police, District Police Office Rupandehi.

¹²⁰ Section 14(1) of the Children's Act specifically states, “No person shall, for fulfilling a promise made to God or for serving and other religious purpose offer in the name God or Goddesses, his or anybody else's child by buying such child or forcing such child out of coercion or with undue influence.”

¹²¹ Section 3 of the Child Labour (Prohibition and Regulation) Act, 2000.

¹²² Section 3(1) of the Child Labour (Prohibition and Regulation) Act, 2000.

the said provision is punishable with an imprisonment up to three months and fine of up to ten thousand rupees or both.

The law also states that children shall not be employed against their will under threat, coercion or force or misrepresentation¹²³ and not engaged in work that is likely to be harmful to the child's health or hazardous to child's life¹²⁴. If any person violates these provisions s/he shall be liable for up to one years' imprisonment or up to a 50,000 Rupee fine, or both.

The law further states that prior permission of the concerned labour office or authorised office and parents or guardian of the child is required before employing a child, in order to protect the child's interests¹²⁵. The concerned office may determine the terms and conditions of the child's work. Violation of this provision may result in up to two months' imprisonment, a 5,000 Rupee fine, or both.

Finally, in relation to the terms and conditions for employing a child above 14 years of age, the law provides as follows: between 6:00 PM and 6:00 AM no child shall work, nor shall a child be employed for more than 6 hours in a day or 36 hours in a week. Children should also be entitled to half an hour break after 3 hours of work; they shall not be employed in another enterprise after 6 hours of work in one enterprise, and the hour break and weekly leave of one day shall also be considered as part of work, (i.e. liable for remuneration)¹²⁶. Any person violating these provisions is subject to up to two months' imprisonment, a 5,000 rupee fine, or both. These labour rules, however, have not been applied in cases involving the commercial sexual exploitation of children¹²⁷.

iii. Adoption in Country Code

Nepalese law contains some measures to prevent adopted children from being abused and exploited. The age difference between the adopting parents and the child must be at least 30 years if the adopting parents are Nepalese, and 25 years if the adopting parents are foreigners¹²⁸. The theory behind this law – correct or incorrect – is that with this difference in age between the parents and the child, there is less chance of the adoption resulting in child sexual or other abuse. In addition, if the adopting parents fail to provide adequate food, clothing, health care, and educational opportunities, among other things, the adopted child shall have the same rights as natural-born children to claim property from the adopting parents¹²⁹.

There are separate procedures for inter-country adoptions. For foreigners who want to adopt a Nepalese child, the government shall investigate the foreigners' character and

¹²³ Section 4 of the Child Labour (Prohibition and Regulation) Act, 2000.

¹²⁴ Section 3(2) of the Child Labour (Prohibition and Regulation) Act, 2000.

¹²⁵ Section 6 of the Child Labour (Prohibition and Regulation) Act, 2000.

¹²⁶ Section 9 of the Child Labour (Prohibition and Regulation) Act, 2000.

¹²⁷ See discussion in footnote 2 above regarding child labour laws and the commercial sexual exploitation of children.

¹²⁸ No. 9b of Chapter on Adopted of Son of the Country Code, 1963.

¹²⁹ No. 11 of Chapter on Adopted Son of the Country Code, 1963.

economic status, and upon obtaining a letter of reference from the foreign government or consulate, the government shall develop terms of reference for the adoption¹³⁰. In addition, the government shall grant permission only after ensuring that the relevant foreign country's inheritance laws confer the same rights to adopted and natural-born children to inherit property.

iv. Chapter on Marriage of the Country Code

Under the Country Code, there are equal minimum ages for marriage for boys and girls. With parents' or guardians' consent, the minimum age of marriage is 18 years of age; without consent the minimum age of marriage is 20 years of age¹³¹. The punishment for this crime varies with the age of the children married. Where a girl is below the age of 10, the punishment ranges between 6 months to 3 years' imprisonment, and a 1,000 to 10,000 Rupee fine. Where the girl is between the ages of 10 to 14 years, punishment ranges between 3 months to 1 year imprisonment and up to a 5,000 Rupee fine. Where the girl is between the ages of 14 to 18 years, punishment is up to six months' imprisonment, up to a 10,000 Rupee fine, or both. The law prohibits marriage without the consent of the individuals being married, and imposes a sentence of up to 2 years' imprisonment for anyone who forces individuals to be married¹³².

Under Nepalese law, intercourse with a girl under 16 years of age is rape, regardless of whether the girl consents¹³³. And, as described above, although child marriage is prohibited by law, child marriage is prevalent, and intercourse in child marriage is not considered to be rape. The Supreme Court of Nepal, however, recently established marital rape as a crime; its decision allows a wife to live separately from or divorce her husband, and proposes severe punishment in cases of child marriage¹³⁴. Laws in accordance with this decision are yet to be enacted.

v. Nationality and Birth Registration

Under Nepalese law, Nepalese citizenship can only be conferred on a child by the child's father, not the mother¹³⁵. Thus, Nepalese mothers cannot grant their children Nepalese citizenship, so children whose fathers are unknown cannot acquire Nepalese citizenship. Children without an identified father are considered Nepalese citizens by descent until their father is found¹³⁶.

¹³⁰ No. 12a of Chapter on Adopted Son of the Country Code, 1963.

¹³¹ No. 2 of Chapter on Marriage of the Country Code, 1963.

¹³² No. 7 of Chapter on Marriage of the Country Code, 1963.

¹³³ No. 1 of Chapter on Rape, Country Code, 1963.

¹³⁴ Meera Dhungana for FWLD vs Ministry of Law, Publication of decision related to human rights, 2002, Special Volume, Supreme Court, pp. 129-143

¹³⁵ Constitution of Kingdom of Nepal 1990, Articles 9(1) and (2); Nepal Citizenship Act 1963, sections 3(1), 4 and 6(2).

¹³⁶ Constitution of Kingdom of Nepal 1990, Article 9(2)

For the purpose of birth registration, children may be registered by their father's name, and if no father is identified, by the name of the male head of the family¹³⁷; the head of the family is defined as the senior member who arranges family matters or maintains the family¹³⁸. (In practice, male members are considered the head of the family due to the social cultural context). For children whose fathers remain unidentified, since the mothers are unable to register their births or confer Nepalese citizenship to them¹³⁹, these children are vulnerable to all forms of exploitation, including commercial sexual exploitation, since their identities cannot be established and are questionable.

Although Nepalese law provides for birth registration, this practice is not mandatory and it is not common; many people remain unaware of the need to register a child's birth. Thus, many children do not know their dates of birth or their ages. The inability to prove a child's age in cases involving commercial sexual exploitation weakens the government's case against alleged child traffickers and sex exploiters, and may even result in the acquittal or release of the alleged offenders¹⁴⁰.

vi. Law relating to abortion

Child survivors of commercial sexual exploitation should be able to seek abortions, yet Nepalese law only permits abortions under limited circumstances: (a) until 12 weeks of pregnancy; (b) until 18 weeks of pregnancy in the event the pregnancy is the result of rape or incest; or (c) at any time during pregnancy, with the recommendation of an authorized medical practitioner, if the life of the woman is at risk or if the foetus is deformed¹⁴¹.

Under the Abortion Procedure Order, the terms and conditions for abortions set forth under Rule 10(b) requires girls below 16 years of age who want an abortion to obtain prior permission from a guardian; girls and women above 16 years of age do not require such approval. A rape victim who does not have a court order or police registration report, however, is allowed to have an abortion based on her statement.

8. Gaps and Discussion Regarding Other Manifestation of CSEC

The existing nationality law¹⁴² not only discriminates against children by conferring citizenship through the father, but also denies children citizenship in the event that the father's identity is unknown. The Personal Events Registration Act, 2028 (1971) does not allow a mother to register vital personal events such as the birth, marriage and death of a child, which deprives children with unidentified fathers of citizenship and an identity. Moreover, denying registration of these events makes it difficult to determine a child's

¹³⁷ Birth, Death and Other Personal Incidents (Registration) Act 1976, section 4(1)(a)

¹³⁸ No. 2 of the Birth, Death and Other Personal Incident Registration Act 2003

¹³⁹ Under Section 4(1) of the Birth, Death and Other Personal Incident Registration Act 1976, notification of the birth of the child to be provided by the head of the family, in the absence of the head of the family senior male member of the family to submit application form for the registration of the birth.

¹⁴⁰ Interview with the Deputy Attorney General.

¹⁴¹ No. 28 of the Chapter on Homicide of Country Code 1963.

¹⁴² Article 9 of the Constitution of Kingdom of Nepal.

age and, as a result, deprives them of certain legal entitlements. Thus, these discriminatory citizenship laws make children vulnerable to commercial sexual exploitation, and also deny them protections of the law because they do not have any citizenship.

These exclusionary nationality provisions violate the rights of children, putting them at risk of statelessness where fathers deny the birth of the children. In particular, the children of women in prostitution and *Badi* women¹⁴³ face severe consequences because these mothers cannot register their children's births, or confer them citizenship. This in turn prevents these children from going to school, since they need a birth certificate to enroll, and makes them vulnerable to being forced into prostitution because they have few other options to earn a livelihood. Recently, the NGO Pro Public filed a case in the Supreme Court seeking special citizenship arrangements for children in the *Badi* community, and the court ordered that an inquiry commission be formed to document the situation¹⁴⁴.

The adoption law takes a few preventive measures against the commercial sexual exploitation of children, recognizing the possibility that adopted children become victims of sexual exploitation. These measures include requiring adopting parents to submit certificates of character and proof of a non-criminal record, as well as a recommendation from the country of the adopting parents. The law, however, fails to punish the adoption of children without the consent of parents, guardians or the child him or herself, even where the adoption of the child was for the purpose of commercial sexual exploitation. There is no official data or information on the commercial sexual exploitation of adopted children due to lack of adequate follow-up and monitoring mechanisms.

With regard to employment, the labour laws in Nepal prohibit the involvement of children below 14 years of age in the labour industry. While the law provides terms and conditions for the employment of children between 14 and 18 years of age, the punishment for violating these regulations is minimal, and there is no monitoring agency to supervise the implementation of these conditions. In addition, there is no specific provision addressing child labourers who are victims of commercial sexual exploitation within the workplace. Girls engaged as domestic workers are more vulnerable to commercial sexual exploitation, and even when the offence is committed, there is no mechanism for redressing this under the labour law. Furthermore, the Children's (Development and Rehabilitation) Fund Rules, 1997, which could have been used for the development and reintegration of child labourers, has yet to be implemented.

With respect to cases of commercial sexual exploitation of Nepalese children in the circus industry, there is no clear law to provide remedies for the children rescued. Even though many of the children confirm that they were compelled to engage in sexual acts with the owners, managers, and other elder staff, there is no evidence of such incidents

¹⁴³ In the *Badi* community, prostitution is a means of livelihood. As a result, children born to these women are stateless because their fathers cannot be traced and Nepal's exclusionary citizenship laws do not allow mothers to confer citizenship on their children.

¹⁴⁴ *Annapurna Post*, 21 May 2004.

and cases have not been filed¹⁴⁵. In some cases, there are reports that circus managers had contracts with children's parents¹⁴⁶. Questions have been raised regarding whether law enforcement agencies need to consider the validity of these contracts if they were not done with the informed consent of the children, and where there is the sexual exploitation of children.

Finally, the stringent attitude of the legislature, which is reflected in the Abortion Procedure Order, requires a girl below the age of 16 to obtain permission from her guardian prior to having an abortion¹⁴⁷. This provision affects a girl's right to an abortion, even where she becomes pregnant as a result of being forced into prostitution or other sexual abuse. Even though the Abortion Procedure states that a victim's statement is adequate basis for an abortion even in cases of rape, this is not always followed in practice. For example, a 16 year old girl, rescued from an Indian brothel and currently in a Nepalese rehabilitation centre was refused abortion services, because under the law, pregnancy as a result of being trafficking for sexual purposes is not grounds for an abortion, even though statutory rape is. An argument was made by the doctor that if rape is used as justification for an abortion, a case must be registered with the police within 35 days of the incident. Since the case was not registered within 35 days, the abortion services were refused¹⁴⁸.

¹⁴⁵ *The Kathmandu Post*, 18 July 2004.

¹⁴⁶ Meeting with Police Women Cell in Bahirahawa and ABC Nepal.

¹⁴⁷ Rule 10(b) of the Abortion Procedure Order, 2003.

¹⁴⁸ Interview with the victim and supervisor of the Rehabilitation Center of ABC Nepal, Bahirahawa, by Sabin Shrestha. 10 May 2004.

CHAPTER 4: PROCEDURES RELATED TO THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN NEPAL

I. NEPALESE COURT SYSTEM

A. General Courts

The Constitution of Nepal establishes three tiers of courts, namely: Supreme Court; Appellate Courts; and District Courts. All of these courts fall under the Supreme Court's supervisory control. At the lowest tier, there are 75 District Courts, which are the trial courts; there is one court for each of Nepal's seventy-five administrative districts. These are general courts that hear all civil and criminal cases that arise in their respective districts, except for those cases that must be heard by specialized courts (discussed in further detail below). As a trial court, District Courts are responsible for completing the process of examining witnesses and collecting evidence, and resolving questions of both fact and law. The District Courts are also responsible for executing final decisions; thus, every District Court has an official who assumes the Court's responsibility to collect fines, imprison offenders, and enforce civil claims for damages, compensation, entitlements, and maintenance. Cases of child pornography under the Children Act and prostitution under the Traffic in Human Beings (Control) Act are also adjudicated by District Courts¹⁴⁹.

The next tier involves 16 Appellate Courts; each Appellate Court supervises a group of District Courts within its territorial jurisdiction. Among other cases, these courts hear appeals from the District Courts and other judicial bodies within their jurisdiction, as well as cases that they are required to review by law or by order of the Supreme Court.

The Supreme Court is the final court of justice, and has both judicial and non-judicial powers; it is responsible for delivering justice as well as managing all of Nepal's courts. The Supreme Court has, among other powers, the authority to review appeals from the Appellate Courts and to determine the constitutionality of Nepalese laws. Over the past ten years, the Supreme Court has played a very strong activist role in enforcing human rights – including children's rights – and enforcing constitutional and legal requirements against the State.

The Nepalese legal system is adversarial in nature and recognizes the precedents of the Supreme Court as law¹⁵⁰. The judiciary fills in legal gaps while interpreting the Constitution and laws enacted by Parliament. District and Appellate courts are not required to follow decisions of other District and Appellate Courts, but they must follow the decisions of the Supreme Court.

¹⁴⁹ Section 55(3) of the Children Act, 1992.

¹⁵⁰ Article 96 of the Constitution of Kingdom of Nepal, 1990.

B. Specialized Courts

Apart from these courts, the Constitution also allows Parliament to create specialized courts to look into certain special categories of cases. These courts are created by legislation alone. Currently many of these specialized courts are in existence. For example, there is a specialized court that reviews matters related to corruption, terrorism, offenses against the State, and offences related to foreign currency. There also is an administrative court that hears disputes related to the appointment, dismissal and promotion of civil servants, and a labour court to hear employment disputes. There is also a military court that reviews offences under the Military Act, and a Revenue Tribunal that hears appeal from decisions made by tax authorities.

In addition, the District Administration Office, which is the chief administrative district office that works on behalf of His Majesty's Government, has quasi-judicial authority to hear matters related to the Public Offence and Punishment Act, such as cases involving pornography¹⁵¹.

1. Children's Court

Under the Children's Act 1991, there is a provision to establish a Children's Court to hear and decide cases where a child is a plaintiff or a defendant¹⁵². These courts are established when the government notifies the public through the Nepal Gazette¹⁵³; the notification provides the territorial jurisdiction and location of the court.

The Children's Court has jurisdiction over all cases involving children as plaintiffs or defendants, except in cases where a person has a right to file a petition on behalf of a child, or cases involving children and adults¹⁵⁴. Thus, the Children's Court has broad authority to hear offenses addressed by the Children's Act. Past examples include cases of children engaged in an immoral profession or taking, distributing or showing photographs of children to engage them in an immoral profession¹⁵⁵.

The Supreme Court shall develop procedures for hearing cases in the Children's Court, but until such procedures are developed, the Summary Procedures Act 1972 applies¹⁵⁶. The Summary Procedures Act provides for speedy and simple procedures.

2. Child Bench

In a Gazette notification dated in 2000 - eight years after the Children's Act was created – the Supreme Court issued a directive to constitute Child Benches. This provision allows District Courts to establish separate Child Benches to hear and decide cases related to

¹⁵¹ Section 5(1) of the Public (Offence and Punishment) Act, 1970.

¹⁵² Section 55(2) of the Children's Act 1992.

¹⁵³ Section 55(1) of the Children's Act 1992.

¹⁵⁴ Section 20 of the Children's Act 1992

¹⁵⁵ Section 16 of the Children's Act 1992

¹⁵⁶ Section 55 (6) of the Children's Act 1992.

children until the Children's Court is established¹⁵⁷. The District Court can establish a Child Bench by seeking the advice and approval of the Supreme Court; once approved, the Child Bench is composed of a social worker, child specialist or child psychologist in addition to the presiding judge¹⁵⁸. Like the Children's Court, Child Benches have jurisdiction to hear cases in which children are plaintiffs or defendants¹⁵⁹. Only children and their lawyers may appear before the Child Benches, however, in practice there is no separate room, and ordinary benches are used for Child Benches¹⁶⁰.

C. Gaps and Discussion Regarding the Nepalese Court System

As of the writing of this report, the Children's Court has not been established, but several Child Benches have been formed. Through Gazette notification dated April 10, 2004 and April 13, 2004, the government approved establishing Child Benches in each district court. Even so, not many of these Child Benches have been established¹⁶¹, and those that exist function with only one district court judge and do not include a psychologist or social worker as required by law¹⁶².

II. REPORTING CASES CONCERNING THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN

A. Time Limits for Reporting and Filing Cases

Cases involving child prostitution brought under the Children's Act provisions related to immoral occupation may be filed within three years¹⁶³ of the incident, while child prostitution cases brought under the Traffic in Human Beings (Control) Act may be filed at any time¹⁶⁴. Cases involving child pornography brought under the Children's Act may be filed within one year from the date the crime was committed,¹⁶⁵ but cases involving child pornography brought under the Public Offence and Punishment Act must be filed within one week from the date of commission of the act of child pornography¹⁶⁶. Cases related to internet pornography must be filed within 35 days from the date of having information about the commission of the offence¹⁶⁷.

¹⁵⁷ Section 55(3) of the Children's Act, 1992.

¹⁵⁸ Section 55(5) of the Children Act, 1992.

¹⁵⁹ Section 55 (2) of the Children's Act, 1992.

¹⁶⁰ Interview with Balbhadra Bastola, the *Shrestadar* at the Kathmandu District Court.

¹⁶¹ Interviews during a field visit to Nawal Parashi and Pokhara District Courts. Only in Kathmandu and Biratnagar was it found that judges formed Child Benches. See Annex I.

¹⁶² Interview with the Spokesperson of the Supreme Court, 4 May 2004. See Annex I.

¹⁶³ Section 54(6) of the Children Act, 1992.

¹⁶⁴ No. 36 of Chapter on Court Procedure of Country Code, 1963.

¹⁶⁵ Section 54 of the Children Act, 1992.

¹⁶⁶ Section 4(1) of the Public (Offence and Punishment) Act, 1970.

¹⁶⁷ Section 74 of the Electronic Transaction Ordinance, 2004.

Child trafficking cases brought under the Country Code may be filed at any time against an alleged trafficker¹⁶⁸. Often, children are trafficked as minors but are adults by the time cases are filed. In these situations, cases are filed under general procedures, but these procedures are not clear about what date should be used to initiate a case.

Cases involving rape must be registered with police within the 35 days of the crime¹⁶⁹. Delays in reporting the crime and undergoing a medical examination may result in the loss of critical evidence. In one case where a child was repeatedly raped, delays in reporting the crime resulted in a loss of physical evidence. Subsequently, the alleged offender challenged the sufficiency of the evidence and the child's age, but the court found that the case was timely filed and that the child's description of sexual exploitation was sufficient evidence to establish rape¹⁷⁰.

Child marriage cases have to be reported within three months from the knowledge of such cases¹⁷¹.

B. Procedures to Report Cases

All criminal investigations begin by filing a First Information Report (FIR) with the police¹⁷²; any person can file an FIR for offences related to the commercial sexual exploitation of children¹⁷³. For offences related to trafficking, the FIR also must include all available evidence¹⁷⁴.

Women and Children Service centres have been established within the police departments of 17 districts in Nepal; there are 75 districts in all of Nepal. The personnel staffing these centres are trained to sensitively handle offences related to women and children¹⁷⁵.

When a case is filed reporting the sale of children, the victim's statement must be recorded in the presence of a government attorney. Within 24 hours of recording the statement, the child must go to the nearest district court to have the statement authenticated¹⁷⁶.

In rape cases, a child's statement should be taken in the presence of a female law police officer. If no woman police officer is available, any other police person may take a child's statement in the presence of a female social worker¹⁷⁷.

¹⁶⁸ No 36 of Chapter on Court Procedure of Country Code, 1963.

¹⁶⁹ No 11 of the Chapter on Rape of the Country Code, 1963.

¹⁷⁰ Interview with the victim girl and lawyer representing the case from Biratnagar.

¹⁷¹ No. 11 of Chapter on Marriage of the Country Code, 1963.

¹⁷² Section 5 (2) of the Traffic in Human Beings (Control) Act, 1986.

¹⁷³ Section 51(2) of the Children Act, 1992.

¹⁷⁴ Section 5 (1) of the Traffic in Human Beings (Control) Act, 1986.

¹⁷⁵ Interview with Police Personnel, April 30, 2004.

¹⁷⁶ Section 6(1) of the Traffic in Human Beings (Control) Act, 1986.

¹⁷⁷ No. 10A of the Chapter on Rape of the Country Code, 1963.

C. Gaps and Procedures Regarding the Reporting of Cases of CSEC

While estimates suggest that a large number of offences related to the commercial sexual exploitation of children are committed each year, it seems that very few cases are reported to the police. This problem is compounded because the police are reluctant to register complaints, ostensibly due to lack of evidence or its reliability. The crime report register of the police department shows that the number of trafficking cases registered is negligible in comparison to the number of girls trafficked each year, which is estimated to be 5000 to 7000.

Trafficking Reporting

Fiscal Year	No. Of Cases	No. Of Victim	Age groups of the victims		
			1-7 years old	8-12 years old	13-16 years old
053/54	117	123	3	5	37
054/55	130	134	2	4	42
055/56	110	110	5	8	28
056/57	120	147	3	4	39
057/58	90	98	-	9	20
058/59	40	48	-	7	18
059/60	54	73	1	6	19

Source: Nepal Police, 2004. (These data are based on the number of cases registered with the police)

Lack of awareness of the commercial sexual exploitation of children, the social stigma attached to commercial sexual exploitation, and low confidence in the justice system has resulted in low reporting of crime¹⁷⁸. Even in reported cases it is observed that there is a low rate of conviction,¹⁷⁹ and in cases resulting in convictions, it is observed that the minimum punishment is given to the exploiter or trafficker. Interviews with police officials reveal that families are often reluctant to file cases,¹⁸⁰ even in the 17 districts where special police cells have been established¹⁸¹.

The present laws relating to the commercial sexual exploitation of children only provide a long time period for the filing of cases of child trafficking¹⁸². Longer time periods are not provided for the offences of child pornography, child prostitution, and other manifestations of the commercial sexual exploitation of children. As a result, if a case is not filed on time, the child has no remedy.

In addition, anti-trafficking legislation does not protect victims and witnesses from threats or harm from traffickers. In the absence of such protections, the victims or

¹⁷⁸ Though the statistics reveal that about 5000 to 7000 girls are annually trafficked to India, the number of cases filed are very low. Annual Reports of the Office of Attorney General of Nepal.

¹⁷⁹ Annual Reports of the Office of Attorney General of Nepal.

¹⁸⁰ Interviews conducted with police officials and government attorneys in the course of this research.

¹⁸¹ Nepal is divided in 5 development region and 75 districts.

¹⁸² However, in *Ganga Bahadur Tamang vs HMG* (NKP 2001(2058) Vol. 18, p.7) a trafficking case, the court decided against the victim on the ground that the victim took years to lodge a complaint against the accused and that she had no reasonable justification for doing so.

witnesses fail to file cases against abusers and traffickers, remain absent from depositions, or become hostile during proceedings, for fear of retaliation¹⁸³.

Finally, in the process of investigating crimes, the confiscation of goods and assets used to produce and disseminate materials advertising pornographic materials is necessary to prohibit the practices of child prostitution, child pornography and child trafficking. The current law fails to allow for the seizure and confiscation of goods, such as materials, assets and other instruments used to commit or facilitate the commercial sexual exploitation of children, as well as the proceeds derived from such activities. It also fails to take measures to close premises used to commit offences related to the commercial sexual exploitation of children.

III. INVESTIGATING CASES CONCERNING THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN

The Nepalese criminal justice system is an adversary legal system in which the court remains neutral and the police investigate offences under the direction of a government attorney¹⁸⁴. A police investigation is initiated by the filing of a First Information Report (FIR)¹⁸⁵. Thereafter, the police investigate, collect evidence, and prepare a report of their findings.

Cases involving trafficking require additional steps to initiate an investigation. As in other types of cases, any person who receives information about a trafficked child may file a complaint with any police office. In addition, all available evidence¹⁸⁶ supporting the case must be submitted with the complaint¹⁸⁷; this requirement is included because in trafficking cases, the burden of proof is on the alleged offender, rather than the government prosecutor. Furthermore, before the police can initiate a trafficking investigation, they must obtain approval from the nearest district court¹⁸⁸. If the district court is satisfied with the sufficiency of the complaint, it shall order an investigation to be initiated, and then the police can proceed.

Government attorneys have the power to prosecute cases. According to the procedures outlined in the State Cases Act, 1992, the public prosecutor may direct the investigator during the case investigation, or the police may request legal advice from the public

¹⁸³ FWLD/UNIFEM SARO. *Report on the effectiveness of existing laws and institutional mechanisms to combat trafficking of women and children in Nepal*. 2001.

¹⁸⁴ State Cases Act, 1992.

¹⁸⁵ Section 6 of the State Cases Act, 1992.

¹⁸⁶ All available evidence means any evidence that the complainant has that may be useful to prove the crime. In many trafficking cases, a child victim may not have any evidence other than her own testimony.

¹⁸⁷ Section 5 (1) of the Traffic in Human Beings (Control) Act, 1986.

¹⁸⁸ Section 5 of the Traffic in Human Beings (Control) Act reads “(1) Any person having the knowledge of commission or preparation for commission of the offence of human trafficking may file a First Information Report (FIR) at any police station and while filing such FIR, she/he shall enclose the evidences available. (2) The police shall forward the FIR filed pursuant to sub section (1) before the nearest District Court and if the court finds appropriate grounds to begin necessary investigation with regard to FIR.”

prosecutor. In the presence of the government attorney, the police record in writing the alleged offender's statement and the government attorney reviews the evidence collected by the police. The government attorney also has legal authority to direct the police if he or she finds any shortcomings in the investigation.

Civil society plays an important role in facilitating the collection of evidence and arrest of the alleged offenders¹⁸⁹. Although there is no formal legal mechanism for civil society groups to be directly involved in prosecuting a case, social service providers and NGOs informally share information about cases with the government attorneys. For example, NGOs like Maiti Nepal and ABC Nepal, among others, have facilitated the arrests of traffickers, sex exploiters and abusers who commercial sexually exploit children. Civil society groups also play an important role in preventing the commercial sexual exploitation of children and encouraging rehabilitation and recovery of child survivors.

For investigations, the police primarily rely on the statements of the victims and alleged offenders contained in the FIR, rather than medical reports or physical evidence, such as blood, semen, hair, or items of clothing. Due to the lack of 'scientific' evidence, in most cases the prosecution relies on the alleged offender's confession, if available.

This investigatory system for cases involving the commercial sexual exploitation of children is perfunctory and outdated, and innovative tools to collect evidence are not being developed or utilized. There is also no system for recording the information learned during an investigation, and little networking takes place among the various law enforcement teams. As a result, there is no system for processing the information learned through police investigations. Since child trafficking and other offenses related to the commercial sexual exploitation of children are often part of an organized crime structure, information pertaining to one case may be useful in another case, because the various incidents may belong to the same general crime-net. Thus, the lack of a systematic method for collecting, recording and analyzing investigation data hinders the quality of investigations and the prosecution of cases involving the commercial sexual exploitation of children.

A. Gaps and Discussion Regarding the Investigation of CSEC Offences

Section 5 of the Traffic in Human (Beings) Act diminishes the normal investigatory power of the police and government attorney, as it requires an order of the court to initiate the investigation once an FIR is filed. The legal provision insulates the offender from prosecution because the delay allows the accused to escape before the court approves an investigation¹⁹⁰. This procedure is an exception to the general principle of criminal justice, since the investigating officer requires court approval to start an investigation, and witnesses statements must be authenticated by the court. These requirements complicate the investigation process in trafficking cases.

¹⁸⁹ Interview with the Attorney General Office, 30 April 2004.

¹⁹⁰ FWLD/UNIFEM SARO. *Report on the effectiveness of existing laws and institutional mechanism to combat trafficking of women and children in Nepal*. 2001.

In addition, the absence of a national database on cases related to sexual crimes against children prevents analysis and action to protect children from sexual exploitation.

IV. PROSECUTING CASES CONCERNING THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN

There are different procedures for trying criminal cases: general procedures; procedures under the Special Court Act; and procedures under the Summary Procedures Act. Most criminal cases, and cases involving the commercial sexual exploitation of children, follow general procedures because they require more time to be registered, investigated and tried. Procedures outlined in the Special Procedure Act and Summary Procedures Act are used in specific cases filed under certain statutes.

A. General Procedures in Criminal Cases

After evaluating the evidence collected by the police and examining the entire case, the government attorney frames a charge sheet and registers the case with the appropriate court. Once the charge sheet is filed, the court records the statement of the accused and the parties begin the pleading for a remand or bail order. Upon issuing an order either granting bail or remanding the accused to judicial custody, the court begins the process of reconfirming the victim's statement, and provides the parties an opportunity to present witnesses. In the course of these proceedings, the court may issue various orders as required. After both parties complete the trial by presenting their evidence and arguments in support of their cases, the court delivers a verdict that either party may appeal. If the verdict is final, the district court, through the court Bailiff (*Tahasildar*), executes the verdict¹⁹¹.

As a legal matter, crimes are considered to be committed against the State and criminal cases are prosecuted by government attorneys, but child victims may be present throughout legal proceedings and they have the right to be represented by legal counsel of their choice. General procedures must be followed in cases initiated under the Traffic in Human Beings (Control) Act.

B. Special and Summary Procedures for Criminal Cases

The procedures outlined in the Special Court Act apply in cases assigned to the specialized courts by His Majesty's Government, and this act provides for special procedures and powers to be adopted in such cases. The Special Court Act gives the court more discretion to determine whether alleged offenders should be released and in setting amounts for bail. Cases initiated under the Public (Offence and Punishment) Act¹⁹² must follow the procedures set forth in the Special Court Act.

¹⁹¹ Interview with Honorable Kalyan Shrestha, Appeal Court, 3 May 2004.

¹⁹² Section 5(2) of the Public (Offence and Punishment) Act, 1970.

The Summary Procedures Act applies to less serious criminal cases in which punishment does not exceed six months' imprisonment. These procedures require that a case be prosecuted within seven days after an FIR is lodged, and that a court issue its decision within 30 days after the case is registered. By contrast, in cases applying general procedures, remand or bail applications are determined on different grounds, a longer period of time is allotted for prosecuting the case, and litigants may seek additional time to appear before the court. Cases of child pornography initiated under the Children Act must follow the procedures set forth in the Summary Procedures Act¹⁹³.

C. Procedures for Criminal Cases Involving Children or the Commercial Sexual Exploitation of Children

1. Children as Witnesses

Courts have discretion to allow children to testify, based on a child's ability to understand the questions being asked and provide a sensible reply; the child's age is not material to the court's determination. Thus, a child may testify if she or he can comprehend the attorneys' questions and respond coherently¹⁹⁴ and whether the child's testimony is admissible as evidence depends upon these same factors – the ability to understand and reply to the questions posed. To date, there are no reported cases of children being excluded as witnesses, however, the Supreme Court has interpreted that the statement of young children must be analyzed carefully before being taken into consideration as witnesses¹⁹⁵.

In light of children's vulnerability, the need to maintain their confidentiality and protect them from stigmatisation, Nepalese courts have introduced *in camera* hearings for cases involving children, including cases involving trafficking or rape¹⁹⁶. In rape and pedophilia (regarded as a form of rape¹⁹⁷) cases, attendance in legal proceedings is limited to legal counsel, the offender, the child victim, the child's parents or guardian, the police and court employees permitted by the court¹⁹⁸. *In camera* hearings are an exception to the general rule that courts are open to all, because they limit attendance in cases involving children to the children's parents, guardians, persons working on the case or persons who are working with the children, including certain court staff¹⁹⁹. *In camera* hearings have been taking place in certain courts, and recently a court denied a copy of the court decision to the concerned lawyer in the name of maintaining confidentiality²⁰⁰.

¹⁹³ Section 55(6) of the Children Act, 1992.

¹⁹⁴ Section 38 of the Evidence Act 1974 reads: "Except any person who is deemed to be unable by the court to understand the question asked to him or to give a sensible reply thereof due to very young age, extremely old age or due to any physical or mental disease or the like reason, everybody, including a matiyar, may become a witness."

¹⁹⁵ NKP 2026 decision no 469, p.54, and NKP 2051 decision no 4935, part 6, p.473.

¹⁹⁶ Rule 46 (b) of District Court Regulation, 1995, Rule 60 (a) of Appellate Court Regulation 1991 and Rule 67 (a) of Supreme Court Regulation 1992.

¹⁹⁷ No. 9A of the Chapter on Rape of the Country Code, 1963.

¹⁹⁸ No. 10B of the Chapter on Rape of the Country Code, 1963.

¹⁹⁹ Section 49 of the Children Act, 1992.

²⁰⁰ Interview with a lawyer in the course of this research.

Although this may seem reasonable, the practice may in fact create obstacles to providing children legal counsel.

2. Hearing Cases Involving Children

Cases brought under the Children Act where children are plaintiffs or defendants have priority for hearings or verdicts over other cases²⁰¹. Nevertheless, delays in court decisions are common in the Nepalese judicial system. Even in normal cases, the Country Code requires that the trial of a case be completed within one year after the defendant submits his statement of defense, yet this time limit is regularly ignored in most cases. It often takes years to decide a case. Delays in reaching decisions can weaken the strength of the evidence, especially for child survivors of commercial sexual exploitation. Over time, child survivors may become hostile, or may want to move on with their lives and not be involved in the case.

3. Information Available to the Public about Children Involved in Legal Proceedings

The Police Office maintains statistics on children arrested and charged with violating the law; on a confidential form, the police record the child's name, age, sex, address, family background, and economic condition, along with the offence with which the child is charged and any legal proceedings related to the charges. A copy of the statistics is sent to police headquarters every 6 months²⁰². Failing to maintain or forward these statistics to police headquarters may result in up to three months' imprisonment or up to a 3,000 Rupee fine²⁰³.

In addition, legal proceedings involving children cannot be published in any newspaper without the permission of the investigating officer or the officer hearing the case²⁰⁴. This restriction applies to the owner of the press, news agents and photo news agents²⁰⁵. For example, in a case tried in Kathmandu district court where a child was repeatedly raped by her own teacher, the court restricted publication of the case proceedings in newspapers without prior court approval. In a similar case in a different court, the court ordered the use of a pseudonym to refer to a child victim.

In practice, however, these restrictions are rarely followed. A recent study found that child victims' names are mentioned in 18% of news stories²⁰⁶ and that, in many cases,

²⁰¹ Section 57 of the Children Act, 1992.

²⁰² Section 52 of the Children Act, 1992.

²⁰³ Section 53 of the Children Act, 1992.

²⁰⁴ Plan Nepal. *Report on Consultation in Nepal conducted among Children Formerly and Children Currently Engaged in CSE and Children at Risk of CSE*. April 2004. p.26-31. The Children's Consultation report remarks that journalists have been known to interview children outside of court without identifying themselves or informing the child of the purpose for the interviews.

²⁰⁵ Section 49(2) of the Children Act, 1992.

²⁰⁶ Hatemalo Sanchar. *Print Media Coverage on Child Sexual Abuse and Children's Perception*. May 2004. p.5.

children's names, castes, ages, occupations, as well as those of their parents, are also disclosed publicly²⁰⁷.

4. Burden of Proof in Trafficking Cases

Generally in the common law system the prosecution has the burden of proving that the defendant's actions resulted in the commission of the alleged offence. In trafficking cases in Nepal, however, where a female child is taken outside Nepal by any person other than her parents, guardian or close relatives, the alleged trafficker has the burden of proving that he did not take the child with him with the intention to sell her or force her into prostitution thereby creating a reverse onus²⁰⁸. For example, if the alleged trafficker claims that the child's testimony is false, the trafficker has the burden of proving this²⁰⁹.

5. Access to Legal Counsel

Children charged with criminal violations must be represented by legal counsel; courts may not hear or decide such cases if the child is not represented by counsel²¹⁰. If the child does not have a lawyer, the court can appoint a government lawyer (*Baitanik Wakil*) or any other lawyer willing to represent the child²¹¹.

D. Gaps and Discussion Regarding the Prosecution of CSEC Crimes

One of the fundamental principles of law is the presumption of innocence of the accused until proven guilty. The Traffic in Human Beings (Control) Act, however, alters this principle by shifting the burden of proof to the accused. While this is a progressive approach, it does not shift the burden of proof to the alleged trafficker if the alleged trafficker is a guardian or close relative of the victim²¹². This provision is problematic as many traffickers in Nepal are often closely related to the people they traffic.

Another impediment is that the victim of a sexual crime is denied the right to appeal. Trafficking is an offence against the state and government attorneys brings the prosecution of such crimes. Victims are not entitled to file an appeal. Even if a survivor is not satisfied with the judgement of the court, it is still the decision of the government attorney whether to file an appeal. Despite the fact that victims are critical to the prosecution, the victims or the informer are merely witnesses on behalf of the government attorney and not a party to the case²¹³.

²⁰⁷ Ibid, p.7.

²⁰⁸ Section 7 (1) of the Traffic in Human Beings (Control) Act, 1986.

²⁰⁹ Section 7 (2) of the Traffic in Human Beings (Control) Act, 1986.

²¹⁰ Section 19(1) of the Children Act, 1992.

²¹¹ Section 19(2) of the Children Act, 1992.

²¹² FWLD/UNIFEM SARO, *Report on the effectiveness of existing laws and institutional mechanism to combat trafficking of women and children in Nepal*, 2001.

²¹³ FWLD/JIT, *Monitoring Mechanism of National Laws, Polices, Regional and International Conventions relating to Trafficking of Women and Nexus between Trafficking and Migration*. 2001.

It is widely accepted that *in camera* hearings provide victims a safe and secure environment to allow them to participate in legal proceedings. Although Nepalese law provides for *in camera* hearings, victims cannot choose whether they want to proceed with an *in camera* bench or an open bench²¹⁴. Furthermore, it is left to the discretion of judges to decide who may be present during an *in camera* hearing, and no clear guidelines have been developed.

Nepalese law also does not have any provisions for recording witness statements outside the court. While the law allows for closed questioning,²¹⁵ it is not clear whether this applies to child victims. Until now, the provision has not been used in cases involving children. A child who was a rape victim (domestic worker) from Biratnagar²¹⁶, staying in a shelter, shared that she was taken to open court, and her case was discussed in an open forum. She reported that people in the court stared at her, which made her feel uncomfortable.

The Traffic in Human Beings (Control) Act requires verification of a victim's statement in the court. Often, this results in the case failing because the victim does not appear in court or sometimes turns hostile²¹⁷. In many cases, the Supreme Court has stated that unless a victim gives a statement to the court, his or her original statement is inadmissible as evidence. By this requirement, the Court creates a procedural loophole that allows offenders to avoid punishment²¹⁸.

Although the Children Act requires that child-friendly measures be used in the course of legal proceedings, in practice, children experience negative treatment by law enforcement and judicial officials²¹⁹. The interviews conducted with social organizations working for children's rights also revealed that the judicial process is not child-friendly, and that children are 'double' victims due to the lack of a sensitive approach towards them²²⁰.

Article 40 of the CRC covers the rights of all children alleged as, accused of, or recognized as having infringed the penal law. Thus, it covers treatment from the moment an allegation is made, through the investigation, arrest, charging, pre-trial proceedings, trial and sentencing. The article requires States to promote a distinctive system of juvenile justice for children (i.e., in light of article 1, up to 18 years of age or the age of

²¹⁴ Rule 46 (b) of District Court Regulation, 1995, Rule 60 (a) of Appellate Court Regulating 1991 and Rule 67 (a) of Supreme Court Regulating 1992.

²¹⁵ No.160 of the Chapter on Court Procedure of the Country Code, 1963.

²¹⁶ Interview conducted by telephone in the course of this research, 28 April 2004.

²¹⁷ UNIFEM and IIDS. *Status and Dimensions of Trafficking within Nepalese Context*. March 2004. p.105.

²¹⁸ FWLD/UNIFEM SARO. *Report on the effectiveness of existing laws and institutional mechanism to combat trafficking of women and children in Nepal*. 2001.

²¹⁹ Plan Nepal, *Report on Consultation in Nepal conducted among Children Formerly and Children Currently Engaged in CSE and Children at Risk of CSE*. April 2004. p.26-31. Remarks by the participants interviewed for the Children's Consultation suggest that it is not uncommon for judges and attorneys to use abusive language towards children as a means of intimidation during the course of a court hearing.

²²⁰ Interviews conducted with two social organizations (CWIN AND CELLRED) in the course of this research.

majority) with specific positive rather than punitive aims set out. Such treatment has not been provided to children under existing mechanisms.

V. SERVICES FOR CHILDREN INVOLVED IN LEGAL PROCEEDINGS

A. Shelters for Children

Under the Children's Act, the government may establish Children's Welfare Homes²²¹. The Child Welfare Officer and the police are required to take abandoned children to the nearest Children's Welfare Home after recording the child's name, address, father's name, grandfather's name, and any special mark on the child's body, and after taking the child's photograph and thumb impressions²²².

The Children's Act also allows the government to establish Juvenile Reform Homes to house children who must be detained due to an investigation, legal proceedings, or a conviction for violating the law,²²³ and this is recognized and supported by a Supreme Court case. Where a 14 year old child accused of theft was detained in an adult prison, the Supreme Court ordered the Banke District Court and the Home Ministry to keep the child either in a reform home as required under the Children's Act or, if a reform home is not established, in any private child welfare home, orphanage or center²²⁴.

B. Gaps and Discussion Regarding Services for Children involved in Legal Proceedings

The present law fails to include a provision for the rehabilitation and the reintegration of victims into society. A bill was drafted, the Human Trafficking (Control) Bill, which provided for a rehabilitation center, but it did not cover services such as counseling, information about legal rights, medical, psychological and material assistance, or educational and training opportunities²²⁵. The bill lapsed when the House of Representatives dissolved on 21 July 2002.

The requirement to identify special body marks not only allows strip searches of children but also creates chances of exploitation, particularly in the absence of clear guidelines on who can undertake such searches and how such searches can take place.

²²¹ Section 34 of the Children Act, 1992.

²²² Section 35 of the Children Act, 1992.

²²³ Section 42 of the Children Act, 1992.

²²⁴ Ashish Adhikari on behalf of Babulu Godia vs Banke District Court, Publication of Decision related to Human Rights 2059, special volume, Supreme Court, p.425-428.

²²⁵ Sections 15 and 16 of the Human Trafficking (Control) Bill.

VI. SYSTEMS FOR MONITORING OFFENDERS AND SURVIVORS

All personal incidents – births, marriages, divorces, migrations, and deaths – must be registered with the Local Registration Office²²⁶ within 35 days of the incident²²⁷. If a person tries to register a personal incident after 35 days, s/he has to pay a fee of up to 50 Rupees to do so. The head of the family or the senior male of the family must register births²²⁸.

As discussed earlier, with respect to registering migrations, Nepal's recent National Plan of Action²²⁹ suggests registering the mobility of women and girls²³⁰. Nepal and India share an open border, yet there is no system for recording migrations across this border, particularly by road.

²²⁶ Secretary of Village Development Committees or Municipalities are authorised to work as registration officers.

²²⁷ Section 4.1 of the Birth, Death and Other Personal Incident (Registration) Act, 1976.

²²⁸ Section 4.1 of the Birth, Death and Other Personal Incident (Registration) Act, 1976.

²²⁹ National Plan of Action against Sexual and Labour Exploitation of Children, Ministry Of Women , Children and Social Welfare, 2003. p.23-30.

²³⁰ Border Monitoring, Sunauli Border, and Interview with the person overseeing the Women and Children Service Center, District Police Office Rupandehi.

CHAPTER FIVE: ANALYSES AND RECOMMENDATIONS

I. ANALYSIS & RECOMMENDATIONS CONCERNING NATIONAL LEGISLATION AGAINST THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN

As outlined above, many Nepalese laws concerning the commercial sexual exploitation of children do not meet international standards. One reason for this may be that the government of Nepal has yet to ratify some key Conventions. Two years after signing the Optional Protocol on the Sale of Children, Child Pornography and Child Prostitution, Nepal still has not ratified this instrument. Yet, even where Nepal has acceded to UN documents, its domestic law does not meet its international obligations. For example, the Children Act and the Labour Act define “child” as a person who is below 16 years of age, despite the stipulation provided by the CRC and other international instruments that discuss a child as a person below 18 years of age.

Section 9(1) of the Nepal Treaty Act states that in the case of conflict between the international instruments signed and ratified by Nepal and domestic legislation, the provisions of the international instruments prevail. Unfortunately, the provision is seldom used to hold the government accountable. According to the Concluding Comments of the Committee on the Rights of the Child (CRC Committee) on the Initial Report of the Government of Nepal,²³¹ Nepal’s commitments to protect children against commercial sexual exploitation have yet to be reflected in government plans and policies. In the absence of data and studies on child pornography and child pedophilia, NGOs have not reflected these issues in their shadow reports to the CRC Committee. Even though there is a general assumption that children are being used to produce pornographic material, there is a lack of evidence to support this.

The lack of birth registration is a critical issue that makes children vulnerable to commercial sexual exploitation. Since the birth registration system in Nepal is weak, many children do not know their exact date of birth, and the lack of mandatory practices to determine the age of child victims often creates obstacles to obtaining justice for child survivors of commercial sexual exploitation during legal proceedings. Children cannot be afforded the rights to which they are eligible if there is no evidence that a survivor is a child.

A review of present jurisprudence also shows that there is no definition of commercial sexual exploitation of children in Nepal²³². Further, there is no distinction in Nepalese legislation between commercial sexual exploitation and general child sexual abuse²³³. This creates a problem in understanding the nature, impact and gravity of sexual crimes

²³¹ CRC/C/15/Add.57: paragraph 26.

²³² See discussion and definition at page 4 above.

²³³ UNICEF has defined Child Sexual Abuse as behaviors such as touching and playing with a child’s sexual parts. It also includes exposing children to adult sexual activity or pornographic movies and photographs.

against children, and results in traffickers and facilitators, also deserving of heavy punishments, receiving punishments of little or no consequence, and further denying any compensation to child victims of sexual crimes.

Another difficulty is that existing Nepalese laws that can be applied in cases of commercial sexual exploitation of children are scattered throughout various acts and statutes, making it difficult to address the problem comprehensively. As there is more than one law addressing the same offence, confusion exists as to which law to apply to address each particular offence. For example, if a case is initiated under the Public Offence Act for child pornography, the child victim may not receive the compensation to which s/he is eligible under the Children Act. Further, different court procedures are available under the various legislative schemes, which results in inconsistent treatment of children who are victims of similar sexual crimes.

Finally, it is important to note that not one current Nepalese law requires the government to take steps to prevent child prostitution, child pornography and child trafficking. This includes a lack of promoting awareness through training and education on the harmful effects of these offences, as well as developing programs to identify children who are vulnerable or at risk of commercial sexual exploitation. Furthermore, the laws do not state the measures the government should take to prohibit the production and dissemination of materials promoting these offences.

Recommendations

- **Harmonize all national laws and statutes addressing children's rights so that children are consistently protected and defined as all persons under 18 years of age, in accordance with the CRC definition of a child;**
- **Draft and enact a law that defines and prohibits the commercial sexual exploitation of children, and provides for extraterritorial jurisdiction over all offenses that constitute the commercial sexual exploitation of children;**
- **Draft and enact a law that defines and prohibits the prostitution of children by any person, in accordance with international law;**
- **Draft and enact a law that defines and prohibits trafficking of children for commercial sexual purposes in accordance with international law, and criminalizes those who buy children;**
- **Draft and enact a law that defines and prohibits the production, possession, and distribution of child pornography, including images that are created and accessed over the internet, in accordance with international law;**

- **Draft and enact laws that permit mothers to provide citizenship to their children, and to register their children’s births, deaths, and marriages; and**
- **Ratify the international instruments related to child rights that Nepal has signed, such as the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography and the SAARC Convention on Preventing and Combating Trafficking in Women and Children.**

II. ANALYSIS & RECOMMENDATIONS CONCERNING PRACTICES THAT CONTRIBUTE TO THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN

The long and unregulated open border with India poses a serious challenge in cases involving the commercial sexual exploitation of children. Citizens can freely move between the countries with no documentation. Non-registration of the movement of citizens of these countries has facilitated traffickers in the commission of crimes and makes it difficult to establish the offence of trafficking. In addition, many times the offender commits a crime in Nepal and then moves to India, thereby escaping arrest and conviction²³⁴. Extra-territorial jurisdiction is necessary for crimes related to child trafficking, child pornography and child prostitution. While the present trafficking law allows for extra-territorial jurisdiction, the offences related to child prostitution and child pornography are not subject to extra-territorial jurisdiction. Similarly, child marriages take place between people of Nepal and India, but again, extra-territorial legislation does not apply to cases of child marriage. And, even though the present trafficking law provides for extra-territorial jurisdiction, in practice implementation requires an extradition treaty between the countries. Nepal and India have an extradition treaty, but the offence of trafficking is not included in this treaty and therefore, traffickers living in India cannot be extradited to Nepal.

While there are some procedures for inter-country adoptions, these may not be sufficient to protect Nepalese children from commercial sexual exploitation. For foreigners who want to adopt a Nepalese child, the government must investigate the foreigners’ character and economic status, and upon obtaining a letter of reference from the foreign government or consulate, the government shall develop terms of reference for the adoption²³⁵. In addition, the government shall grant permission only after ensuring that the relevant foreign country’s inheritance laws confer the same rights to adopted and natural-born children to inherit property. Although these provisions seem efficient, the reality is that many children who are adopted locally or internationally are vulnerable to commercial sexual exploitation, particularly trafficking, due to the element of financial

²³⁴ Interview with Durga Ghimire, Chairperson of ABC Nepal, Kathmandu in the course of this research.

²³⁵ No. 12a of Chapter on Adopted Son of the Country Code of Nepal, 1963.

exchange for children in the inter-country adoption process, and the lack of mechanisms to regulate orphanages²³⁶.

While the Children Act prohibits offering children to temples, the practices of the *Badi* and *Deuki* communities are still prevalent in Nepal. And, although current law punishes child marriages, it does not prohibit them; child marriages are only voidable as long as no child is born to the couple until the girl reaches 18 years of age.

Commercial sexual exploitation is not caused by any single factor. There are many underlying factors that contribute to the commercial sexual exploitation of children. Commercial sexual exploitation of children, especially of girl children, emanates from gender-biased laws and practices traditionally reinforced in social mores and norms. Moreover, poverty and lack of education also increase vulnerability to commercial sexual exploitation of children. People living in poverty may be willing to accept any means of survival regardless of the associated risks.

Recommendations

- **Review and revise Nepal’s legislation on adoption to ensure that sufficient protections exist to prevent adoption being used as a means of commercially sexually exploiting children;**
- **Review and revise Nepal’s legislation prohibiting the practices of the *Badi*, *Deuki* and *Jhuma* and other communities to prevent girls from being commercially sexually exploited through these traditional practices;**
- **Review and revise practices related to keeping the border between Nepal and its neighbouring countries totally open and accessible by those who wish to use it as a mechanism for trafficking;**
- **Develop an effective system to record cross-border migration and strengthen border patrolling and monitoring mechanisms;**
- **Draft, negotiate and enter extradition treaties with countries where offences related to the commercial sexual exploitation of children are frequently committed; and**

²³⁶ Sapana Pradhan-Malla. *Legal Review and Assessment of In-country/Inter-country Adoption in Nepal*, (unpublished report for UNICEF). 2004, p.52 and CWIN, ‘The Status of the Rights of the Child in Nepal 2003’, p.20.

- **Develop and implement programs to:**
 - **educate and raise awareness of commercial sexual exploitation of children and its consequences;**
 - **alleviate poverty;**
 - **make child education mandatory; and**
 - **generate better employment opportunities.**

III. ANALYSIS & RECOMMENDATIONS RELATED TO REPORTING, INVESTIGATING, AND PROSECUTING SEXUAL CRIMES AGAINST CHILDREN

The Traffic in Human Beings (Control) Act deals with trafficking as well as prostitution. Yet, the lack of a conceptual understanding of trafficking and prostitution, migration versus smuggling, adult consent versus child consent, and “voluntary” prostitution versus slavery, has created confusion among law enforcers, resulting in the criminalization of victims of child prostitution under the Public (Offence and Punishment) Act. Though the Children’s Act exempts children under 10 years of age from being punished, it criminalizes children above 10 years of age, which includes a warning if the child is under 14,²³⁷ and half the prescribed punishment if the child is between 14 and 16 years of age²³⁸.

Police have the responsibility for investigating crimes, and they must present the results of their investigation to the government attorney. Unfortunately, in Nepal, the police and government attorneys do not easily communicate or cooperate with each other²³⁹. This results in weak investigations and ultimately, the inability to convict alleged offenders. For example, a 2001 report found that in 75% of trafficking cases, the investigating police officer submitted the investigation report to the government attorney on the last possible submission date, leaving the government attorney with little ability to follow-up²⁴⁰. This report further found that government attorneys are able to direct investigations in only 5% of trafficking cases²⁴¹ due to late referral of cases to them.

Generally, children are trafficked when they are minors, and by the time cases are initiated, the child victims are adults, and cases are then initiated under general procedures applicable to adults. There is no clarity about what date should be considered

²³⁷ Sec. 11(2) of Children Act 1992 reads: “If the age of the Child is 10 years or above 10 years and below 14 years and he commits an offence which is punishable with a fine under law, he shall be warned and explained and if the offence is punishable with imprisonment, he shall be punished with imprisonment for a term which may extend to six months depending on the offence.”

²³⁸ Sec. 11(3) of Children Act 1992 states: “If the child who is above 14 years and below 16 years commits an offence, he shall be punished with half of the penalty of the penalty to be imposed under law on a person who has attained maturity.”

²³⁹ UNIFEM and IIDS, *Status and Dimensions of Trafficking within Nepalese Context*. March 2004. p.111.

²⁴⁰ The Offence of Human Trafficking, Report of the Public Attorney General, 2001. p.5.

²⁴¹ The Offence of Human Trafficking, Report of the Public Attorney General, 2001. p.5.

for the initiation of cases involving sexual crimes, the date of commission of the offense or the date of investigation.

Lack of awareness of commercial sexual exploitation as well as lack of confidence in the justice system has resulted in low reporting of sexual crimes against children²⁴². For example, children report negative experiences with police and judges²⁴³, and interviews with police officials reveal that often families are not willing to file cases²⁴⁴. The failure to report these incidences of abuse to senior officials, however, leads to the strengthening of the belief of impunity of government officials²⁴⁵. The Nepal Police has formed Women and Children Service Centers to provide a child-friendly environment for reporting and handling crimes against children, but these centers lack adequate human and monetary resources, and they have only been established in 17 of Nepal's 75 districts.

In Nepal, police personnel and government attorneys lack specific training on issues relating to commercial sexual exploitation of children. Although some police, judges and government attorneys are involved in training related to the commercial sexual exploitation of children, the number is too small. There is a need to comprehensively train public officials on issues related to the commercial sexual exploitation of children and children's rights. Interviews with police officials, government attorneys and judges reveal that they would like more training to effectively handle cases involving children rights and sexual crimes against children²⁴⁶.

Delays in trial have become common in the Nepalese judicial practice. Though the Country Code provides that a trial court case must be completed within one year after submission of the statement of the defense, this time limit is violated in most cases. It often takes years to decide a case even at the trial level. Delays in the court system naturally impair the evidence produced in court. The victim may become hostile, sometimes does not follow up, or does not appear in court. Creating Child Benches in the District Courts alone will not help resolve disputes involving children in an effective manner unless similar benches are also introduced in Appellate Courts and the Supreme Court.

The Children Act contains a provision to formulate 'rules of procedure' for the Child Courts and Child Benches, but these procedures have not yet been formulated. Thus, summary trial procedures are being applied in cases involving sexual crimes against children. Furthermore, there is no clarification on who may be present at *in camera* hearings and when they are to be used, or on procedures to take statements and cross-examine child witnesses.

²⁴² Annual Reports of the Office of Attorney General of Nepal. Though the statistics reveal that about 5000 to 7000 girls are annually trafficked to India, the number of cases filed are very low.

²⁴³ Plan Nepal, *Report on Consultation in Nepal conducted among Children Formerly and Children Currently Engaged in CSE and Children at Risk of CSE*. April 2004. p. 26-31.

²⁴⁴ Interviews conducted with police officials and government attorneys in the course of this research.

²⁴⁵ Implicit from the Children's Consultation report is an atmosphere of hostility created by police towards children in custody, deterring any desire to report incidents of harm by the police at the risk of attracting further abuse.

²⁴⁶ Interviews conducted with police officials and government attorneys in the course of this research.

Even in reported cases, there is a low rate of conviction²⁴⁷; offenders are often given only the minimum punishment allowable under law.

Recommendations:

- **Adopt a ‘No Drop’ policy in cases of sexual crimes against children by eliminating time restrictions for children to report sexual crimes against them at any time during their childhood, and in cases of children 14 years and older, extend their time to report sexual crimes against them until 21 years of age;**
- **Develop awareness among the public that the commercial sexual exploitation of children is a violation of children’s fundamental rights;**
- **Develop awareness among the public about existing laws protecting children from commercial sexual exploitation and develop protocols for reporting sexual crimes against children;**
- **Develop guidelines and protocols for investigating sexual crimes against children to ensure that the maximum amount of physical and other evidence is quickly identified and secured, and train law enforcement officials, lawyers, and members of the judiciary on these guidelines and protocol;**
- **Develop standard ‘child-friendly’ procedures for all cases involving children, including:**
 - **Mandatory *in camera* hearings for all testimony by children;**
 - **Maintaining the confidentiality of the names, addresses, ages and other identifying information of all children involved in legal proceedings;**
 - **Providing protection to witnesses involved in sexual crimes against children so that they can testify and provide relevant evidence in these cases;**
 - **Facilitating the collection of evidence and testimony from children;**
 - **Giving priority to hearing cases involving sexual crimes against children so that they are quickly resolved;**
 - **Adopting a “No-Drop” policy for cases involving sexual crimes against children;**
 - **Developing protocols for determining children’s ages and applying them in all cases involving children;**
 - **Train lawyers and judges on these procedures; and**
- **Establish Child Courts or Child Benches in all districts in Nepal, in accordance with Nepalese law.**

²⁴⁷ Annual Reports of the Office of Attorney General of Nepal.

IV. ANALYSIS & RECOMMENDATIONS TO ASSIST CHILDREN WHO ARE VICTIMS OF SEXUAL CRIMES

Current Nepalese laws do not address the issue of the rescue and repatriation of child survivors who have been taken outside the country. As a result, child survivors are unable to return to Nepal and there are some instances where these children are in care homes in other countries²⁴⁸. In addition, the Child Welfare Committees working in different districts are not operating effectively, and there is no separate unit for child rights issues at the National Human Rights Commission.

Children involved in prostitution are perceived to be offenders rather than victims. Furthermore, due to the focus on morality in cases of prostitution, girls in prostitution are verbally and physically abused²⁴⁹. These children are not perceived or treated as victims but as persons without morals.

There is also a general assumption that only girl children are victims of commercial sexual exploitation. Though there is evidence to show that boy children are increasingly being sexually abused, current government plans and policies focus on girl children. Even in cases of border monitoring, the police generally question the people accompanying a girl child whereas persons accompanying boy children can cross the border unnoticed.

The Nepalese laws concerning the commercial sexual exploitation of children focus on combating crime, and lack victims' perspectives. The Children Act provides for compensation to the victims of child pornography and using children in immoral professions, but if a case of child pornography is registered under the Public Offences Act, the child victim is not eligible to receive compensation. As "immoral professions" are not clearly defined, compensation depends on case by case interpretations. In cases of child trafficking and child prostitution under the Traffic in Human Beings (Control) Act, the victim is not eligible to receive compensation. In some crimes compensation is provided by the offender, but the law is silent on who should be responsible, if an offender does not have any property.

Finally, countries that are party to the CRC and other human rights instruments are required to monitor progress in achieving the obligations undertaken by States Parties. The monitoring mechanism is based on a constructive, cooperative process rather than a punitive one. Under these international instruments, reporting by the government should include challenges and progress in fulfilling obligations to combat the commercial sexual exploitation of children; NGOs play a critical role in making the state accountable through shadow reporting and lobbying. Strong coordination and collaboration writing shadow reports is yet to be developed for reports submitted to the CRC Committee.

²⁴⁸ Sapana Pradhan-Malla. 'They are Waiting to Come Home'. *The Himalayan Times*. 8 March 2004, p.9.

²⁴⁹ Plan Nepal. *Report on Consultation in Nepal conducted among Children Formerly and Children Currently Engaged in CSE and Children at Risk of CSE*. April 2004. p.26.

Recommendations

- **Commission a study to determine the scope of commercial sexual exploitation of children in Nepal;**
- **Establish laws that allow child survivors of commercial sexual exploitation to be economically or otherwise compensated by the State as well as those convicted of trafficking, exploiting and abusing them;**
- **Develop a referral system which can be uniformly applied by law enforcement, lawyers, judges, and social service providers to provide legal assistance and social services to children who report sexual crimes, and training these professionals to identify and refer child victims;**
- **Establish guidelines for quality Child Welfare and Juvenile Reform Homes, and provide resources to increase the number throughout the country;**
- **Establish Women and Children Service Centers in police offices in all 75 districts in Nepal (now only in 17 districts);**
- **Establish a Child Rights Unit within the National Human Rights Commission to develop expertise and more focused efforts in protecting and promoting children's rights;**
- **Establish Counseling and Rehabilitation Centers for child survivors of commercial sexual exploitation, with the participation and coordination by government and non-government organizations;**
- **Improve coordination among civil society groups that work with children, including coordination to draft and submit shadow reports to the Committee on the Convention of the Rights of the Child; and**
- **Improve coordination between government and civil society organizations to facilitate the rescue and repatriation of child survivors of commercial sexual exploitation.**

ANNEX I: INTERVIEWS CONDUCTED DURING RESEARCH

1. Uma Gurung and Sajani Shrestha, Maiti Nepal (Interviewed by Adv. Sandhya Bhatta)
2. Dr Ram Krishna Timalsena, Spokesperson, Supreme Court (Interviewed on phone by Adv. Sapana Pradhan-Malla)
3. Hon'ble Justice Kalyan Shrestha, Judge, Appellate Court (Interview by Adv. Sapana Pradhan-Malla)
4. Hon'ble Justice Om Prakash Mishra, Chief Judge, District Court (Interviewed by Adv. Sandhya Bhatta)
5. Geeta Upreti, DSP, Women and Children Service Cell, Nepal Police (Interviewed by Meera Dhungana, FWLD)
6. Hon'ble Sushmalata Mathema, Judge, District Court (Interviewed by Adv. Sandhya Bhatta)
7. Ganesh Bhattarai, CeLRRd (Interviewed by Adv. Sandhya Bhatta)
8. Gauri Pradhan, CWIN (Interviewed by Adv. Sandhya Bhatta)
9. Bhupendra Khanal, Secretary, Nawal Parasi Bar Association (Interviewed by Sapana Pradhan-Malla)
10. Adv. Chhatra Gurung, LACC (Interviewed by Adv. Sandhya Bhatta)
11. Dr Rajit Bhakta Pradhananga, Reader, Nepal Law Campus (Interviewed by Sapana Pradhan-Malla)
12. Deepak Sapkota, Executive Director, Central Child Welfare Board (Interviewed on phone by Sapana Pradhan-Malla)
13. Balbhadra Bastola, Registrar, Kathmandu District Court (Interviewed by Adv. Meera Dhungana)
14. Surya Prakash Adhikari, Public Attorney, Kathmandu District Court (Interviewed by Adv. Meera Dhungana)

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