

Unveiling Justice: Rape Survivors Speak out



www.worecnepal.org



We Link Women Internationally

www.isis.or.ug

The people on cover pages are not survivors of rape
but advocates for survivors to access justice

UNVEILING JUSTICE: RAPE SURVIVORS SPEAK OUT

A Research Report on Access to Justice for Rape Survivors in Nepal 2007-2010

By

WOREC Nepal and Isis-WICCE



Isis-Women's International Cross Cultural Exchange
We Link Women Internationally

WITH FINANCIAL SUPPORT FROM:



Correspondence

Please address all correspondence to:

The Executive Director
Women's Rehabilitation Centre
(WOREC)
P. O. Box 13233,
Balkumari, Lalitpur, NEPAL
Phone: +977-1-5006373/2123124
Fax: +977-1-5006271
E-mail: icsworecktm@gmail.com,
Website: www.worecnepal.org

The Executive Director
Isis-WICCE
Plot 23 Bukoto Street, Kamwokya
P. O. Box 4934 Kampala, Uganda
Tel: +256-414-543953
Fax: +256-414-543954
E-mail: isis@starcom.co.ug
Website: <http://www.isis.or.ug>

ISBN: 978-9970-574-13-2

© Isis-WICCE 2011, All Rights reserved

Requests for permission to reproduce or translate this publication for education and non commercial purposes should be addressed to Isis-WICCE and WOREC

Table of Content

Acronyms and Abbreviations	viii
Acknowledgements	xiii
Executive Summary	xvi
Foreword	xi
Chapter One Introduction	1
1.1 Background	3
1.2 Nepal	4
1.3 Conflict in Nepal	5
1.4 Rape: Context and Environment	11
1.5 The Problem	14
1.6 Purpose of the Study	17
1.7 Objectives of the Study	17
1.8 Key Questions	18
1.9 State Obligations under International Laws	19
Chapter Two Research Process And Methodology	21
2.1 Introduction	23
2.2 The Process	23
2.3 Study Design, Sampling Procedure and Data Collection Methods	25
2.4 Data Management and Analysis	33
2.5 Validation of Findings	34
2.6 Limitations and Difficulties	35
2.7 Ethical Considerations and Confidentiality	35
Chapter Three Magnitude and Socio-Economic Demographic Characteristics of Rape Survivors	37
3.1 Introduction	39
3.2 Magnitude of Rape Incidents	39
3.3 Age of Rape Survivors	45
3.4 Rape in Minors	46
3.5 Occupation of the Survivors	48
3.6 Marital Status	48
3.7 Sites of the Incident	49

3.8	Time of Rape Incidents	50
3.9	Survivors' Relationship with Perpetrators	51
3.10	Marital Rape	52
3.11	Rape within Intimate Relationship	53
3.12	Date Rape	54
3.13	Rape within Family Relationship (Incest)	56
3.14	Rape by State Actors	58
3.15	Rape in Persons with Disabilities	60
3.16	Rape in Sexual Minorities	61
3.17	Rape and Women Human Rights Defenders	63
3.18	Rape among Refugees	64
3.19	Conclusion	65
Chapter Four Causes and Consequences of Rape		67
4.1	Introduction	69
4.2	Causes of Rape	69
4.3	The Consequences and Impact of Rape	76
4.4	Conclusion	92
Chapter Five Mediation as a Community Justice System		93
5.1	Mediation as an Option	95
5.2	Forms of Mediation	96
5.3	Is mediation Really a Choice of the Survivors?	100
5.4.	Why is Mediation Preferred?	101
5.5	Justice Denied through Mediation	103
5.6	Survivors' Reasons for Non-reporting	104
5.7	Conclusion	110
Chapter Six Existing Response Mechanisms: Constraints and Challenges		111
6.1	Introduction	113
6.2	Family Level	113
6.3	Community Level	116
6.4	NGOs/Civil Society	132
6.5	Government Level	134
6.6	National Human Rights Organizations	143
6.7	International Organizations	146

6.8 Conclusion 148

Chapter Seven Legal Framework and Environment 151

7.1 Introduction 153

7.2 Existing Legal Provisions 153

7.3 Law Enforcement Process and Situation 159

7.4 Analysis of the Gaps and Challenges of Existing Laws 161

7.5 Gaps in Implementation 169

7.6 Other Legal Related Concerns 182

7.7 Conclusion 185

Chapter Eight Conclusion and Recommendations 187

8.1 Introduction 189

8.2 Conclusion 189

8.3 Recommendations 192

References 197

Appendix I Questionnaire 206

Appendix II Key Informant Interview Guide 227

Appendix III Demystification: Challenging Myths Relating to Rape 235

Appendix IV Map of Nepal..... 237

List of Tables

Table 1: The sampled districts and selection criteria	26
Table 2: Quantitative data collection methods and samples	30
Table 3: Qualitative methods and numbers by districts	33
Table 4: Percentage distribution of caste/ethnicity of rape survivors	45
Table 5: Main occupation of rape survivors reported in media and organization	48
Table 6: Marital Status of the rape survivors reported in media and organization	49
Table 7: Distribution of percentage of sites where rape incidents took place	50
Table 8: Percentage of Survivors and their relationship with perpetrators	52
Table 9: Number of rape cases documented and or supported by different organizations	133
Table 10: Number of registered versus prosecuted cases of the Year 2065/66 (2008/09)	168
Table 11: Number of rape cases prosecuted and decided	180
Table 12: In relation to attempt to rape cases	180
Table 13: Situation of legal response to rape survivors	181

List of Figures

Figure 1: Year-wise cases reported in the media and documented in organizations	40
Figure 2: Year-wise registered cases at police office	41
Figure 3: Percentage distribution of rape by types	41
Figure 4: Rape survivors by ecological region (percentage)	42
Figure 5: Percentage of reported cases by development region	43
Figure 6: Age Distribution of rape survivors as reported in media ..	45
Figure 7: Age Distribution of rape survivors as as documented by organisations	45
Figure 8: Percentage of child survivors of rape	46
Figure 9: Percentage of rape incidents and time reported in media, organization and IDI.....	51
Figure 10: Impact of rape on survivors	76

ACRONYMS AND ABBREVIATIONS

ABC	Anti Trafficking, Basic Human Rights and Cooperatives
BS	Bikram Sambat
CA	Constituent Assembly
CBS	Central Bureau of Statistics
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CDO	Chief District Officer
CRC	Convention on Child Rights
CSA	Child Sexual Abuse
CSE	Child Sexual Exploitation
CW	Community Women
CWIN	Child Workers in Nepal
CWISH	Children-Women in Social Service and Human Rights
DSP	Deputy Superintendent of Police
DIG	Deputy Inspector General
FGD	Focus Group Discussion
FIR	First Information Report
FWLD	Forum for Women Law and Development
GBV	Gender Based Violence
GNI	Gross and Net Income
HDR	Human Development Report
HRD	Human Right Defender
IDI	In-depth Interview
IMF	International Monetary Fund
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights

INSEC	Informal Sector Service Centre
KII	Key Informant Interview
LACC	Legal Aid and Consultancy Centre
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
MoWCSW	Ministry of Women Children and Social Welfare
MR	Media Review
NAWHRDs	National Alliance of Women Human Rights Defenders
NDHS	Nepal Demographic Health Survey
NDWA	Nepal Disable Women Association
NGO	Non-governmental Organization
NHRC	National Human Rights Commission
NWC	National Women Commission
OBC	Other Backward Caste
OHCHR	Office of the High Commissioner for Human Rights
OPM	Office of Prime Minister
OR	Organisations' documented cases Review
PC	Para-legal Committee
PHECT	Primary Health
PLA	People's Liberation Army
SARI/Equity	South Asia Regional Initiative/Equity Support Program
SP	Superintendent of Police
SPSS	Statistical Package for the Social Sciences
UK	United Kingdom
UPR	Universal Periodic Report
UN	United Nations
UNICEF	United Nations Fund for Children
UNFPA	United Nations Population Fund
UNIFEM	United Nations Development Fund for Women

UNSCR	United Nations Security Council Resolution
USA	United States of America
VAW	Violence against Women
VDC	Village Development Committee
WDO	Women Development Office
WCSC	Women and Children Service Centre
WHRD	Women Human Rights Defender
WOREC	Women's Rehabilitation Centre
YCL	Young Communist League

FOREWORD

Isis-WICCE and WOREC Nepal have over the past decades been at the frontline of giving voice and space to women in conflict and post conflict communities, using different strategies. Despite this activism, as elsewhere in the world, RAPE has continued to escalate depriving women the full enjoyment of their inherent rights, and participation in governance and decision making. Due to entrenched patriarchal and cultural norms, including lack of holistic functional and supportive legal frameworks, survivors of armed conflict have continued to live in silence with physical, psychological and emotional consequences.

As stated by the Secretary General of the United Nations – Ban Ki-Moon, *‘Justice is central to the effort to help women become equal partners in decision making and development. Without Justice, women are disenfranchised, disempowered and denied their rightful place. But with sound legal and justice systems, women can flourish and contribute to the advancement of society as a whole, including by helping to improve those very same systems for future generations – daughters and sons alike’.*

It is in the spirit of sisterhood and by working collectively, to raise the Voices of Women, that Isis-WICCE and WOREC Nepal are proud to present the first ever comprehensive report on lack of justice for raped victims; in a report entitled *“Unveiling Justice: Rape Survivors Speak out”*.

The report examines the context of conflict in Nepal and how it has perpetuated the different forms of violence. It further analyses the legal framework and response mechanisms, the barriers that women face in accessing justice. It concludes by providing proposals for reform that will enable women enjoy their rights and access justice. The report also calls for enhanced institutional support to ensure that not only victims get justice but it is extended to Women Human Rights Defenders, who have also continued to suffer due to the roles they undertake to fight

for women's rights. It calls for harmonized approach on all the fronts to ensure that justice mechanisms are women friendly.

Isis-WICCE and WOREC calls upon all stakeholders to implement the proposed reforms.

In solidarity we stand.

Ruth Ojiambo Ochieng
Executive Director
Isis-WICCE

Dr. Renu Rajbhandari
Chairperson
WOREC - Nepal

ACKNOWLEDGEMENTS

WOREC Nepal and Isis-WICCE would like to acknowledge the confidence and resilience of all the survivors for the courage in speaking out and sharing their experiences. To our partners EED and Open Society Institute, your financial and technical support was a catalyst that enabled us to dialogue and journey to the different corners of Nepal, in an attempt to amplify the hidden and deep rooted violations that have inhibited women's esteem and realisation of their dignity and capacities.

We appreciate the expertise and time that the different consultants, members of the research team, officials from national organisations and government departments put into this process.

Research Leadership and Coordination

Leadership/Advisors

Dr. Renu Rajbhandary, Chairperson - WOREC

Ruth Ojiambo Ochieng, Executive Director - Isis-WICCE, Uganda

Technical Support and Research Coordinator

Juliet Were Oguttu, Isis-WICCE, Uganda

Research Coordinator

Jyotsna Maskay, WOREC Nepal

Research Team

Lead Researcher

Bindu P. Gautam

Researcher

Shaileshwori Sharma

Research Assistants

Sanjita Timsina, Sangita Mayur, Sabnam Sharma, Pooja Bhattarai, Durga Thapa, Rama Dhakal, Bimala BK, Rupa Shrestha, Kiran Panthi, Rupa (Neha) Sharma, Anita Paudel

Legal Experts

Jyoti Paudel, Tanka Dulal

Statistician

Santosh Shah

Data Entry

Navaraj Subedi, Bikita Basnyat, Seema Sharma

Editorial Team

Laxmi Murthy, Nepal

Ruth Ojiambo Ochieng; Executive Director, Isis-WICCE

Helen Kezie-Nwoha; Programme Manager, Isis-WICCE

Juliet Were Oguttu; Research Coordinator, Isis-WICCE

Bedha Balikudembe Kireju; Communications Coordinator, Isis-WICCE

Harriet Nabukeera Musoke; Exchange Programme Coordinator, Isis-WICCE

Reviewer: *Dr. Meena Acharya*

Other Supporting Members

Administration/Logistics

Parbati Basnet, Bina Pokharel, Jwala Kolakshyapati, Deepa Rajbhandari, Indramati Nembang, Krishna Chaudhary, Sanju Gautam and *Shobha B.K*

Lorna Nakato, Sylvia Kimono Meya and *Suzan Nkinzi*.

Library/Misc

Binu, Deepa, Prabina, Deependra

Video Documentation

ABC Television

Cameraperson

Meha Magar

Special Acknowledgments

WHRD Network, WOREC District Staff, *Smriti Thapa, Roni Pradhan, Rachana Bhattarai, Simon Gautam, Parag Shivakoti* and *Jiwanti Paudel* for the support and participation in the different phases of the research.

Supporting organizations

AAWAJ, Advocacy Forum, Agro-forestry, Basic health & Cooperatives, Nepal (ABC Nepal), Blue Diamond Society (BDS), CAED Nepal and WEAJ (Dailekh), Child Workers in Nepal (CWIN), Children-Women in Social Service and Human Rights (CWISH), Feminist Dalit Organization, Forum for Women Law and Development (FWLD), Informal Sector Service Center (INSEC), Legal Aid and Consultancy Center (LACC Nepal), Mitini Nepal, National Human Rights Commission (NHRC), National Women Commission (NWC), Nepal Disabled Women Association (NDWA), Public Health Concern Trust (pfect-Nepal), S A A T H I

EXECUTIVE SUMMARY

Nepal, a country emerging from armed conflict and with a strong base of patriarchy and feudalism at its roots, has institutionalized the norm of violence as portrayed in social values, political criminalisation and impunity. The practice of routinely subjecting women to various forms of violence from the womb to the grave is pervasive. Socially, the sanctity of marriage remains a key structure through which the liberty of women is hampered. Thus, the inter-linkages of women's chastity with their sexuality wherein any breaches are considered to be contaminating norms have contributed to situate rape as the crime shrouded in secrecy, giving rise to a pervasive and prevalent culture of silence among the survivors. Rape is a heinous human rights violation that infringes upon the sexual autonomy and integrity of an individual.

Nepal committed herself to uphold the international human rights norms as stipulated in the Convention on the Elimination of all forms of Discrimination against Women (CEDAW); Convention on the Rights of the Child; International Covenant of Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); as a State party to international law. In addition, with the UNSCR 1325 and 1820 which are clear on promoting women's participation and working towards combating sexual violence, it is mandatory for the Government of Nepal to put in place mechanisms to actualize its commitment to women's rights.

It is within this mandate that WOREC-Nepal and Isis-WICCE set out to examine the extent to which survivors of rape and sexual violence access justice and the efficacy of response mechanisms, in an effort to inform and draw the attention of decision and policy makers, activists, development workers, legal practitioners, and academic practitioners, to this critical development concern. Based on 55 in-depth interviews with survivors, 114 key informant interviews, 33 focus group discussions as primary sources; and media review (MR) of 201 cases and analysis of 723 documented cases

by organizations (OR) as secondary sources, the research team covered the 10 districts of Morang, Dhanusha, Kailali, Udayapur, Kavrepalanchowk, Kathmandu, Baglung, Dailekh, Dolakha and Darchula.

Major findings

i) Prevalence and magnitude of rape

The findings show that the reporting and documentation of rape cases is still very marginal. An average of 443 cases in a year¹ reflects a high prevalence of rape if systems are conducive for survivors to report. The analysis further indicates that rape is a deeply entrenched national problem that transcends class, caste, ethnicity, age, economic, educational, geographical and religious status. From the regional perspective, *Terai/Madhes* was rated at (46.5% -MR and 45.1% -OR); and *Jhapa* (43-OR) district as having the highest rate of rape. According to the media review, the most affected group was in *Hill Janjati* (39.3%); and as per organizations' documentation review, *Brahmin/Chhetri* and *Hill Dalit* (24.5% for each) followed by *Hill Janjati* (23%). The groups of minors (62.8%-OR, 63.6%-MR and 65.9%-police), students (67.9% -MR and 62.5%-OR) and unmarried women (79.4%-MR and 88.3%-OR) were the most vulnerable and affected.

Though it is a fact that rape within marriage exists, it remains a taboo subject which is kept well hidden and institutionalized within the family structure. It was therefore difficult to identify and document marital rape related cases.

ii) Perpetrators and Location of Incident

The study noted that the perpetrators ranged from family members, community members as well as duty bearers (police, politicians, etc). It was revealed that 54%-MR, 80%-OR and 87%-IDI of the survivors knew their rapists/perpetrators; 35.7%-OR and 34.3 %- MR rape incidents took place at survivors' own homes; 62%-IDI, 49%-OR and 41%-MR of the rapes during day time; and 27.3%-IDI, 11.3 %-OR, and 11%-MR of the rapes were within the family set up.

1 An average, based on four consecutive years of registered cases in the police office.

iii) *Causes of Rape*

The underlying causes of rape are fuelled by patriarchy and are entrenched in the unequal power relations and the subordinate position of women. The study noted that most stakeholders, especially within legal structures and systems attributed this criminal offence to behavioural deterioration and loss of morals, for which there is no legal remedy. The blame was further put on women themselves as either being provocateurs of the violence or for their silence and inability to access support and redress. Only a few stakeholders were cognisant of the survivors' circumstances and the fact that they have a right to be protected and supported. All this illustrates the patriarchal mindset among stakeholders, some of whom would be responsible for providing support to the survivors.

It was observed that the high levels of poverty and illiteracy made women prey to sexual violence thus making it difficult for them to utilise even the existing legal structures in place.

iv) *Impact of rape on Survivors*

Survivors reported psychological/mental distress (83.6%), physical impairment (61.8%), gynaecological (40%), economic (81.8%) and social (61.8%) effects on their bodies and well being. In terms of redress, some survivors received medical treatment for the physical and gynaecological effects. For those with psychological problems, there was no support to enable them to find coping mechanisms to heal. Socially, they were victimized, stigmatized and blamed, leading to further isolation. At times, they were even forced to live in hiding.

v) *Access to Justice*

Formal Legal System

The Nepali law on rape is both limited in scope and narrow. The gap however does not just lie in the terminology associated with rape (*jabarjasti karani* instead of *balatkar*) but ranges to areas of deeper concern such as non-recognition of male or transgender victims, of oral and anal sex and of the usage of other objects. By focusing so

completely on penile-vaginal penetration, the written law ignores many aspects of rape that are now recognized by international courts.

The absence of victim and witness protection mechanisms has contributed to the impunity which prevails for past and present human rights violations in the country. The modalities of compensation for survivors are also not clear and left to the discretionary power vested in the judges and survivors are rarely able to get compensation. The poor implementation of the written laws was a repeatedly reiterated problem and could be clearly observed with respect to the police, the government attorney's office, and during court proceedings. The lengthy and re-victimization approach in administering justice; further deprives women survivors of the timely and dignified justice to which they are entitled. With lack of support and protection mechanisms, justice continues to elude women.

Community Legal system

At the community level, mediation has remained the preferred form of retribution within their reach given that it maintains social order without disruption. The majority of female survivors did not prefer mediation but were either directly forced or indirectly coerced and not consulted as to the punishment to be imposed on the offenders. Punishments usually took the form of exchange of money or material or of the perpetrator marrying the survivor. Privacy and security of the survivor is not prioritised by many parties including the community and political leaders. This is in spite of the fact that Paralegal Committees, Village Development Committee, police personnel, and at times women groups' representatives are present during proceedings.

vi) Documentation systems and Processes

It was observed that there is a lack of consistency in documentation, reporting and outreach. On the side of the media, it relied mainly on secondary sources rather than investigative journalism. With regard to organizational documentation, though many cases had been documented, there was no standardized format.

vii) Response mechanisms

In terms of response mechanisms, the family structure was reported to be the most oppressive, restrictive and inhibitive of access to justice. Survivors were prevented from disclosing the incident of rape and forced to remain in hiding.

On the other hand, community structures in the form of women groups like the Women Human Rights Defenders network were strong and at the frontline of advocating for support of survivors and their empowerment; reporting and filing cases to the police and offering legal representation, safe shelter houses, medical treatment and counselling services, financial help, skill-based trainings and income generating activities.

Paralegal Committees played a key role in mediation. However, it was observed that their procedures contributed to the normalization and institutionalization of violence against women.

It was further observed that there is no clear coordinated response mechanism. The organizations are limited in number, lack necessary financial and professional capacity, and officials are intimidated and threatened as they speak out for the rights of survivors. Whereas, a lot of development support has been injected by INGOs, it has not translated into improving the empowerment of women, especially for survivors of sexual violence. The Government of Nepal has specific structures like the GBV unit at the office of the Prime Minister, Women Development Office at community level and National Women Commission for monitoring. These however, are poorly equipped without enough resources to handle the magnitude of violence against women.

Recommendations:

- * Review and Reform the criminal justice system to ensure that it complies with human rights standards. Discriminatory laws and provisions incompatible with the promotion and protection of

women's rights should be repealed, and/or amended. In addition, rape should be redefined to fit within the international standards.

- * Establish high level mechanisms and a special court to investigate and handle cases of violence against women during and in the post conflict [transitional phase] in Nepal, including in cases of female combatants in the People's Liberation Army.
- * Establish victim and witness protection laws, sexual offences legislation including a victim/survivor support fund.
- * Establish mechanisms to punish the persons who unduly influence the justice delivery system and procedures and make government attorneys accountable for not pursuing cases using their discretionary power.
- * Establish an integrated mechanism for reporting and providing immediate support to survivors (One-Stop Centre) at the community level.
- * Establish psychosocial treatment centres to address the massive psychological post conflict problems of the population and specifically sexual violence among women. In addition, design multi-sectoral and multi-disciplinary post-conflict recovery policies and programmes to support women especially those linked with uplifting their livelihood status.
- * Strengthen a legal aid scheme for the poor and vulnerable, and ensure that there are provisions of giving substantial support to organizations that provide legal aid services to women. Make accessible medical services at the grassroots levels for survivors of sexual violence and their families
- * Put in place specialized and professional training for police and judicial staff on investigating and gathering evidence (including forensic evidence); skill-development and training on gender

and restorative justice for law enforcement agencies, including judges, lawyers, prosecutors, police, prisons, local courts, paralegal committees with a focus on rights-based approach to legislation should be provided.

- * Increase the number of women in the policing and legal profession. There should be special women's desks at police stations and well resourced and skilled women police cells in all districts to support survivors of sexual violence.
- * Develop a systematic, uniform and coordinated procedure for documenting cases of sexual violence, which should also be popularised among all parties engaged in documentation.
- * Put in place training and sensitization programmes for government, judiciary, local leaders, policy makers, police, religious leaders and health workers on the effect of sexual violence and any form of women's rights violations and how it deters development.
- * Ensure that there is a coordinated and well-funded mass campaign to raise awareness on sexuality, sexual violence, and increase male involvement in efforts to end violence against women.
- * Media to do investigative and continuous follow-up reporting on the cases and highlight the cases where the perpetrator has been penalized for committing crimes.
- * Strengthen community level mechanisms so that they can advocate for the victims/survivors' rights. The State must recognize the role of the WHRD network in defending rights of survivors and in addressing VAW, as well as being accountable for their protection.
- * There is need of further researches to analyse the result and impact of mediation initiated by paralegal committees; to investigate rape cases committed during conflict; on violence against women based on their socio-economic, cultural and geographic variations.

1

Chapter One INTRODUCTION

INTRODUCTION

1.1 Background

In Nepal, widespread violence against women with roots in patriarchy and feudalism operates against realization of their human rights. The Interim Constitution¹ of Nepal enshrines equality and human rights for women. However, translation of rights into lived experiences of women and laws ensuring justice in the context of violence remains a crucial issue. Customs, traditions, institutions and discriminatory laws perpetuate male domination. Women are still subjected to structural violence in families, marriage, community, society and the State. They continue to be the second sex dependent on male members in the family and in society. The forms of violence against women have changed, but the extent of violation has not decreased. The discrimination which begins with the elimination of female foetuses, continues throughout a woman's life and even beyond death.

Women are deeply affected by militarization and militarism, fundamentalism, cultural and gender essentialism. Today, there is “a growing nexus between fundamentalisms, neoliberal globalisation and militarization” reinforcing patriarchy and making women more vulnerable to various forms of violence including the heinous crime of rape. In post-conflict Nepal, women continue to be denied the right over their bodies. Successive governments have failed to address the structural violence based on gender, caste and ethnicity that perpetuate discrimination and violence.

The high degree of social insecurity and the lack of voice results in a number of women accepting their trauma as fate they have to bear with, rather than questioning the patriarchal system and feudal relations. As a consequence many traumatic experiences are not reported. This contributes to the denial of the victims' perspective in the system of justice. Rape, followed by inaccessibility to justice, which results in impunity for the perpetrators worsens the situation.

1 Interim Constitution, GON, 2007 AD

Based on an analysis of the data collected during the research, this study presents the status of the women affected by rape, the context of the response mechanisms and access to the justice system. The primary focus in the collection of data and analysis of information is on finding out whether the survivors get the necessary response and are able to realise their rights. The study seeks to ascertain the gaps both in the provisions of response as well as access to justice and their implementation from the perspective of the rights of rape victims/survivors.

1.2 Nepal

Nepal, a South Asian country, is one of the youngest republic nations in the world and a land of much geographical, social and cultural diversity. The land extends over an area of 147,181 sq. km; bordered by India on the East, West and South and by China in the North. The topography consists of high Himalayas with the world's highest peak (Mt. Everest) in the North, the hills in the middle and the plains called in the South. Altogether, Nepal has 103 caste ethnic groups, 93 mother tongues and 10 religions (CBS, 2002). Nepali is the official language and lingua franca. Nepal's current population of 27,736,934 (female 50.03% and male 49.96%) is increasing at a rate of 2.24% (CBS, 2002). In a recent estimate, it has increased to 28,563,377 of which 51.02% is female and 48.97% is male. The national literacy rate is 53.74% (female 42.48% and male 65.08%) (CBS 2002). The life expectancy at birth is 67.5 years (HDR 2010)², maternal mortality ratio is 380 per 100,000 live births (Ibid) and the gender inequality index value is 0.681 (Ibid). The GNI per capita (constant 2008 US\$PPP) is 1200.8 (Ibid). The women employment record is 86% because of their engagement in agriculture, but it involves 68% of their unpaid labour (NDHS 2006), while the male record is 70% and it involves paid labour (Ibid.). The intensity of deprivation (poverty) is 54.0 (HDR 2010). The overall human development index rank is 138 (Ibid).

2 <http://hdrstats.undp.org/en/countries/profiles/NPL.html>

The Terai-Madhes plains are a strategic region of Nepal on several counts: major source of food-grain, industrial hub, open border with neighbouring India, border security and maintenance of peace. It comprises of multi-group settlements (caste-ethnic-language-religious groups of Indian origin) and their relations across the border, border trade, crime and violence, border politics, national politics and river water management. If at any moment these strategic factors are mishandled or manipulated by either side, a spiral of negative effects on people and politics is triggered. The increasing insecurity, violence, crime, trafficking and drug deals has worsened the situation. For people living on the Nepal side, the open border has more negative than positive effects. These often manifest directly on women as sexual abuse, rape, abduction and trafficking across the border. Additionally, women in the Terai-Madhes plains lead a relatively more closed life than those in the mid-hills and the high mountains. The majority of the population is illiterate and relatively fewer women participate in public life.

The issue of judicious management of conflict inherent in the realities of Nepal's geographical location, socio-cultural milieu and ideological diversity has remained unaddressed by successive governments and the political leadership. An associated challenge is the management of the realities of the open border with India. Violence in general, and against women and girls in particular, are directly and indirectly associated with these internal and external realities.

1.3 Conflict in Nepal

1.3.1 Historical Context

The historical context of conflict in Nepal is entrenched in the socio-cultural and economic exclusion of multicultural groups and women since prehistoric times. The migrants from India to Kathmandu during 800 BC and later with the dynasty of Licchavis in Kathmandu,

the Hindu culture of caste division made its way to Nepal. Beginning from 800 BC with the Kirat kings, until as late as 2007 AD under the Shah kings, the people of Nepal were forcibly ruled and indoctrinated in the systems of patriarchy and feudalism. The dynasties of Kirats, Licchavis, Mallas, and Shahs ruled through centralized, hierarchical, unitary, exclusionary, patriarchal and feudal socio-cultural and political structures. The successive rulers imposed supremacist values and moulded the psyche of the people of Nepal who had diverse culture and identities. The people who practiced different professions came to be defined as belonging to the respective categories in the hierarchy of castes. A Hindu cultural sense of purity and impurity became the dividing line between these castes and between women and men. The cumulative effects of all the exclusionary constructs fell on women across all categories of castes and ethnic groups.

Nepal was forged out of the “” or ‘groups of 22-24 autonomous states’ as late as 1768 AD by King Prithvi Narayan Shah. In the absence of identification and inclusion of the multi-cultures in the State identity by the subsequent rulers, Nepal failed to become a nation-State. The people of Nepal raised their voices for consolidation of identity as a nation on four occasions: 1950, 1980, 1990 and 1996-2006. The last attempt is characterized in Nepali history as a ten-year Maoist armed conflict or People’s War which culminated in a 19-day peaceful mass movement during April 2006. It ended with the government and the Maoist’s signing the Comprehensive Peace Accord (CPA) on November 21, 2006. This time round, all the historic sources of people’s exclusion, non-identification and discrimination are being tackled. The first to be abolished was the institution of monarchy, the very source of patriarchy, feudalism, socio-cultural exclusion, and non-identification. However, there is a continuing struggle to build long term strategies to give the culturally diverse people who inhabit the region a distinct sense of political and cultural identity as a Nation (Gautam, 2010).

1.3.2 Armed Conflict 1996-2006 and its Consequences

The failure of the State to manage difference and diversity triggered conflicts and bloody violence, particularly affecting women and children. The Nepali “ideological Left” (Aronowitz, 1995) took the initiative to consolidate the despised and excluded voices across the country. It began with the forty-point demand (Upreti, 2004) to the then ruling “political Right” (Ibid.). The government did not take on board the fact that caste, ethnicity, gender and nationality are important coordinates of the construction of the identity of a people. The mainstream Right continued to remain patriarchal, feudal, unitary, centralized, exclusionary and supremacist in the name of globalization and liberalization. This caused the Maoist Left to formally launch the ‘People’s War’ on 13 February 1996.

The Nepali armed conflict is rooted in socio-cultural and economic exclusion, sexual as well as other forms of discrimination and poverty (Upreti, 2004; Thapa, 2008; Chhetri, Thapa and Gyawali, 2007; and WOREC, 2008). It is clear that the successive rulers were not able to initiate and enforce positive social transformative measures. They also failed to recognize that “Nepal’s historical and cultural reality is embedded in coexistence of multiculturalism” (Gautam 2010). Failure to address social and economic exclusion, discrimination against women and lack of a sense of identity and poverty, the violence escalated. This was reflected in the Maoists’ ten-year (1996-2006) armed conflict and the associated violence against women, including rape (Thapa, 2008).

On 21st November 2006, Nepal signed the Comprehensive Peace Accord (CPA) ending more than a decade of political conflict. The CPA was signed by key political parties with the commitment of respecting and promoting the human rights of all Nepali, especially those of women and children. But as Nepal entered the transitional phase, it went off the track, creating situations of rampant impunity, lack of rule of law, statelessness, politicization of crimes and amnesty for the perpetrators who were in positions of leadership in political parties. This has posed a great challenge towards peace, democracy and

stability. Though the armed conflict led by the Maoists has settled down, the proliferation of various armed and non-armed groups has given rise to other forms of conflict in the transition phase. The seemingly endless tension and internal conflict between the parties, communities and groups must be viewed as a process to impose agendas and create space for competing interests. By and large, the struggle is between those wanting transformation and others who were in power for many years and want to maintain the status quo.

The armed conflict (1996-2006) has had both positive and negative impacts on women in Nepal. It benefited the suppressed groups in terms of their empowerment and socio-political transformation; ethnic, caste and gender inclusion; and overall social transformation (Lawoti and Pahari 2010). Particularly, in the Maoist controlled areas, the patron-client relation was subverted and socio-economic oppression decreased. The villagers experienced some relief from caste-hierarchy, religious and social prohibitions, sexist and patriarchal relations, and ethnic and anti-Dalit prejudices. Women were also encouraged to participate in the public domain as PLA fighters, militia, and on other decision-making platforms. Due to the campaigns against social crimes, rape and trafficking showed “a declining trend as the insurgency spread” (INSEC 2008 in Lawoti and Pahari 2010). The institution of monarchy has been abolished and the country has now been declared a secular State. As stipulated in the Interim Constitution, the country is moving towards a federal system. Multicultural and gender-based identities are now part of the State agenda with policies of inclusion and proportionate representation of different groups and women. After the Constituent Assembly (CA) election through mixed electoral system, the drafting of a new federal constitution is underway. People’s participation by ethnicity, caste and gender is high in the CA which is now more inclusive than before with 33 percent of members being women and 50 (8.3 percent) Dalits.

However, during the conflict, people across the board faced adversities. Many innocent people lost their lives at the hands of armies from both sides on suspicion of being supporters of the rival group. As the war

turned more violent, the number of men killed or who disappeared increased creating a double burden on women. The village women were cut off from any social support system (Crawford et al. in Lawoti and Pahari 2010). The State is held responsible for 63% and Maoists for 37% of those killed during the 1996-2006 conflict (INSEC 2007 in Lawoti and Pahari, 2010). The State has been held responsible for the disappearance of 828 and the Maoists for the disappearance of 105 persons (INSEC in Lawoti and Pahari, 2010). Both warring violated the rights of citizens. However, during the state of emergency, the government security forces acted with impunity and heightened the violence more than before (Ibid.). During the period of 2002-2004, 50,365 people were displaced (INSEC, 2008). However, about a 100,000-150,000 people are reported to have been displaced during the entire conflict period. A large number of families of disappeared persons are still waiting for justice, and the crimes have gone on unpunished (AF & HRW, 2008).

Women have suffered mental and physical abuse, rape and other human rights violations (AI 2001). In fact, Women Human Rights Defenders (WHRDs) also suffered sexual violence, rape, threats to life and attacks on personal integrity (WOREC 2008, 2009; Thapa, 2008). In the context of armed conflict, rape of girls and women is often used as a tool of revenge (Yami, 2007; Gautam, 2007). Despite “potential gains,” girls and women were crushed between the rebel forces and the State forces, and suffered a sense of “insecurity, fear and deepening poverty” (Bennett, 2003; CSW, 2004; Gautam, 2001; NWC, 2004; Lawoti and Pahari, 2010). They faced harassment and victimization from both sides. However, evidence shows that rape of women as a tool to suppress, humiliate and undermine the morale of the rebels during the conflict was used more by State. There were several rapes committed by the security forces in custody. The record by INSEC shows that during the peak of armed conflict from 2001 to 2005, the incidence of rape was far higher than in the pre- or post- conflict period.³ In addition,

3 The accumulation of cases documented in INSEC Year Book: 2001, 2002, 2003, 2004, 2005, shows 48 rape and 23 attempted rape cases were committed by the State and 7 rape and 5 attempted rape by the rebels in same period of time (refer table 6 in annex 4).

there are bound to be other cases which were suppressed and are not reflected in the data. The conflict also resulted in mothers being left alone with children born outside marriage. The government's conflict management agenda does not address the issue.

Accurate data on the extent of war trauma, the number of people affected and the social cost paid is not available. Physical infrastructure could be rebuilt, but the psychological trauma suffered is not easy to remedy. The armed conflict has resulted in people's "socialization" into a "violent political culture" (Lawoti and Pahari 2010) and militarism has resulted in impunity for human rights abuses by both State and non-State actors. Maina Sunuwar was raped and murdered by the government army men and Suntali Dhami, herself a police woman and human rights defender, was raped by male counterparts on duty. The perpetrators are yet to be punished by the State. These are cases of violation of both women's human rights and State obligation to international conventions and reflect the emergence of "militarization" in Nepal (Pallattao, 2008; Chenoy, 2002). Women and girls continue to meet the fate of Maina and Suntali at the hands of the very government agencies responsible for implementation of law, the security of people and the safeguarding of human rights including women's rights.

Sexual exploitation and violence against children are not new in Nepal. The recent armed conflict has further intensified this serious problem.⁴ Reports show that girls were raped by the security forces during "search operations" (Ibid.). At times, once the news spreads in the locality, the victims become prey to local perpetrators. Threats to life are issued to the rape survivor if she reports to the police or goes for a medical check-up. Rape and sexual violence against girls are offences under criminal law. It is a "violation of the State's obligations under international human rights law and international humanitarian law, a war crime and, under certain circumstances, a crime against humanity" (Ibid.). The State is obliged to abide by the CEDAW and CRC to protect women and children from all forms of sexual exploitation and sexual

4 <http://www.amnesty.org>

abuse and to take all appropriate measures to prevent and protect women and children.

In conclusion, the positive consequence for women was an increase in national consciousness and presence in public spaces. On the other hand, the continued impunity and unpunished male encroachment on the bodily integrity and sexuality of women impacted negatively on women.

1.4 Rape: Context and Environment

Rape is a human rights violation infringing upon the sexual autonomy and integrity of an individual, whether woman, man or transgender. However, the incidence of women being raped is far higher than any other category. Violence against women (VAW) is a well established category, but has failed to get due recognition in Nepal. VAW with roots in patriarchal socio-cultural norms and practices is played out primarily in the private sphere (Rajbhandari, 2006). The personal is not considered political in Nepal, especially in closed communities with rigid cultural and religious practices in the Terai-Madhes and the far western mountainous region. There is a culture of silence about VAW, more so around sexual violence and rape. The purity and chastity of women and girls is a marker of the family's prestige and status in the community and society. The more strict control of women's sexuality, the higher the ranking in social status for the community. Sexuality is seen in the context of marriage, and purity is highly valued. A family in which a woman is sexually abused is labelled as contaminated and the daughters find it difficult to get married. At times the entire community is defamed as 'impure'. Marriage is considered inevitable and the cornerstone of a decent life for girls in the family structure (Madhurima, 1996). Family as a closed unit is emphasized to the extent that even serious violence committed within it is kept hidden. This kind of institutionalized social order of violence has helped promote the culture of silence and covered up the cases of rape. This has led to a tendency to mediate rape cases at the community level which disallows survivors to raise their voice for justice. This is done to save the image

of the concerned family and community. This is more prevalent in communities with a higher degree of caste and class discrimination.

The culture of silence in the private sphere makes crimes against women and children invisible in the public sphere, making it more difficult to gather evidence in cases of sexual violence and rape. This gets compounded due to lack of an integrated mechanism to protect and support rape survivors. The message it sends is that men are entitled to exercise control over women's bodies and to deny them rights to freedom of expression, association and physical integrity. This gets accentuated for young women and those who are economically, politically and socially marginalized. The underlying assumption seems to suggest that men have unchallenged power to humiliate and subject a woman to sexual abuse if they do not approve of her. This is in total violation of justice and equality before law. (Amnesty International)

The institutions of family, marriage and religion evolved under patriarchy and feudalism have for long socialized women to be subordinate to men. The socio-cultural institutions and the State function on this reality are resistant to women-friendly social change and transformation. The though regarded as the most progressive, could not ensure social inclusion and justice to women and other excluded groups who are the victims of social injustice (Tiwari, 2010).

Heterosexuality is the dominant norm in Nepal and this gives power to men to control women's bodies. Patriarchy uses heterosexuality as a tool to subordinate not only women but other sexual minorities as well: lesbian, gay, bisexual, transgender and intersex (LGBTI) (Pallattao, 2008). Patriarchy's interest is to maintain the heterosexual norm even if it has to use "violence, shame, guile and ostracism" (Ibid). Even among LGBTI, women have less choice than men, for "patriarchy serves male interests and pleasure even if these fall outside of the norm" (Ibid.). So, the lesbians are more hard-hit economically, politically and socio-culturally. They are the "first to be fired and last to be hired" (Ibid.). They "remain discriminated and invisible in laws and welfare programmes;" and they are victims of "a homophobic, feudal-patriarchal, bourgeois-

decadent system of culture as embodied by heterosexism” (Ibid.). They face violence due to their sexual orientation. “Feminists, indigenous peoples, sexual minorities, people with disabilities, and the impoverished” had to raise their voice for equal share of rights even after the countries in the Asia Pacific region received independence (Ibid.). It is akin to internal colonization of the minorities and subordinates. The lesbians face a three layered oppression: for being women, for being a minority, and for being subordinates. The more vulnerable the context, the more are individuals likely to face violence in general, and rape in particular.

Militarization, fundamentalism, cultural and gender essentialism are creating contexts that make women vulnerable to violence and rape. Militarization imposes the physical attributes of the institution of the army, while militarism imposes its ideals and values on civil society (Chenoy, 2002). Both reinforce the culture of patriarchy because they relive the myths of femininity and masculinity. In the demonstration of masculinity, men begin to become violent against women in the community. Women and men are affected differently, but the State legitimises the differential impact in the name of nationhood and national security (Pallettao, 2008; Chenoy, 2002). “A key characteristic of militarization is the increased power given to the military to violate human rights under the guise of national security” (Pallettao, 2008). This has been characteristic of the conflict in Nepal. In Fiji, women activists were taken to army camps and made to lick the boots of the army officers (Ibid.), while in Nepal, women were raped while in custody. With the State-sponsored “village defence forces”, violence, rapes and murders further escalated. In February 2005, girl children were gang raped, while 31 persons were killed and more than 600 houses were burnt down⁵ in search for rebels in several villages in Kapilbastu.⁶ This is an illustration of militarization, that give legitimacy to state sponsored violence that stems from the misuse of power.

5 www.amnesty.org

6 www.globalsecurity.org/military/library/news/2006/10mil-061027_irino4.htm, last visited again in August 9, 2011.

Even in post-conflict Nepal, violence, rape and impunity resulting from militarization and criminalization of politics is prevalent. Similarly, fundamentalism works against women's intellectual and physical freedom. It works on "religion, ethnicity, or culture to win political and economic powers and social control" over women and men (Ibid.). It jumps to "take advantage of people's sense of insecurity and powerlessness in a world where decisions about their life and community are influenced by policies propagated by IMF, World Bank and other powers" (Ibid.). "There are only two opinions in fundamentalisms, i.e. theirs (right) and that of others (wrong)" (Pallettao, 2008). Both cultural essentialism in terms of singularity of culture and gender essentialism in terms of supremacy of masculinity work to promote patriarchy, feudalism, fundamentalism, militarization and militarism.

However, rape as a crime is equally serious in non-armed situations as well. Patriarchal and feudal practices, religious fundamentalism, control on sexual and reproductive rights, poverty, social exclusion, creation of dependency on men, and women's lack of right to their own bodies help to create the contexts and environment for the occurrence of violence and rape. The general attitude to girls and women is that they are the objects of men's sexual satisfaction and instrument to exercise power (Upreti, 2004; Thapa, 2008; Chhetri et al, 2007; WOREC, 2008). In men's supremacist attitude, rape is not perceived as the violation of women's human rights. Rather, it is taken as the display of masculinity. Instead of punishing the perpetrator, the victim is accused of projecting herself as a person of loose character who sexually aroused the perpetrator. So, the perpetrator is hardly considered liable to any social or legal punishment. This helps to deny the rape survivor's perspective in the system. It undermines her right to access the justice system. Victim-blaming speak volumes of the playing out of men's politics on women's bodies. Rape is the worst manifestation of this body politics.

1.5 The Problem under study

The problem under study is the lack of access to the justice for survivors of rape. In Nepal, the occurrence of rape, inaccessibility of justice to

the survivors and impunity for the perpetrators has assumed serious dimensions. Rape in Nepal has multiple dimensions. The ideological dimension is the patriarchal control of women's sexuality through the institutions of family and marriage and associated conceptions of chastity and purity-impurity of women prevalent in culture and religion. This leads to linking of virginity and the woman's sexual purity to honour, prestige and pride of the family, more so for the male members of the family. The burden of it falls on women to continue the culture of silence within family and marriage and outside. The continuing linkage of the institution of (a living goddess who is sexually chaste) with family and community prestige and pride is an illustration of a patriarchal strategy to control women's sexuality in Nepali culture (Yami, 2007). Women's virginity/chastity is given a divine status. Such institutions are associated only with women and such questions are considered redundant in the context of men. In Nepali society, the value of women in terms of their bodily integrity, personality, quality of life, and abilities is a distant dream. In such a philosophical, religious, social, moral and cultural context, women are viewed as men's property and objects of sex. Their sexual purity is associated with divinity, while impurity is associated with stigma and degradation. The human rights, integrity, bodily rights, voices, experiences, condition, and identity of women are considered insignificant.

Given their vulnerability during violent conflicts and wars, women are used as tools. Rape becomes a means of taking revenge on the enemy, a means of attacking his prestige. There is a line of difference between rape-violence and non-rape. Rape is more traumatic and leads to more stigmatization in society. The genital-related violence affects the survivors with psychological, social, and cultural trauma with more intensity. Rape puts women in a position where they are forced to think of themselves as having lost chastity. Rape devastates their life as chastity is the socially and culturally approved means of maintaining normal relations in the family and society. This can make survivors of rape further vulnerable in the family if they are left without social security, financial and psychological support. This calls for the making of provisions for ensuring access to social justice and legal

justice to rape survivors. The context of the impunity for perpetrators, the complexity and lack of access to social and legal justice, makes it necessary to the study of the problem of rape against women vis-à-vis the justice system in Nepal.

In Nepal, violence against women cuts across all social, cultural, political, economic, geographic, and religious boundaries. It knows no class, caste, ethnic, educational or age barriers.

Patriarchal indoctrination through the socio-cultural institutions of family and marriage as well as the formal educational institutions such as schools and colleges, condition women to bear systemic discrimination and lack of social and legal justice. This leads to a number of women ascribing their trauma to fate, rather than questioning patriarchal and feudal indoctrination. As a result not many traumatic experiences come out in reporting. The cases documented from different parts of the country show different forms of violence: domestic, social, sexual, rape, gang rape, rape followed by murder, and trafficking. Among these different forms, the highest percentage is of domestic violence (WOREC, 2008, 2009 & 2010). A total of 1594 cases of violence against women were collected and published by WOREC in which the rape accounts for 9% (WOREC, 2010). Yet another report mentions that out of the recorded 163 cases of sexual violence, 63% were of rape (INSEC, 2009).

The agencies responsible for law and order and people's safety and security are now in the grips of the political parties both at local and central levels. The criminalization of politics has adversely impacted the independent investigation of crimes and the perpetrators go unpunished. The conduct of political parties has encouraged the government agencies responsible to provide security and to act as perpetrators of crimes. Crimes and corruption are politicized and are not punished. This has led to erosion of hopes of ending impunity.

The law on rape too is discriminatory. The definition of rape against women is narrow. The mechanism of reporting rape cases within the

time limitation of 35 days is impractical considering Nepal's geography and the realities of the life of the survivor. The government hospitals lack the requisite facilities for physical examination soon after the event of rape. The lack of survivor-friendly response systems and protection further victimizes the rape survivor (SARI/Equity). The cumulative effect of all this has made women's access to justice almost impossible. The case of policewoman Suntali Dhami (2009), who was gang-raped by her colleagues while on duty is illustrative. Dhami registered the case and presented the evidence, but justice is still being delayed. In practice, justice is often subordinated leading to impunity of perpetrators.

The examples of survivors of rape facing hurdles in accessing justice are many. In spite of laws and efforts made by government and the civil society, survivors find it difficult to get justice. As a step towards ensuring an environment where survivors can realize their right to justice, exploration and analysis of the gaps in the entire machinery is a necessity. The realities of the survivors have been documented with this objective. In this context, the crucial question is: why do most persons affected by rape remain in an agonizing situation without getting justice?

1.6 Purpose of the Study

The study expects to better inform decision makers, policy makers, activists, development workers, legal practitioners, and academics about the varied stories of the hidden faces and silent voices in Nepali society so that they can effectively respond to the persons affected by sexual violence/rape.

1.7 Objectives of the Study

The objectives of the study were:

- a) To identify the magnitude of sexual violence/rape and document the socio-economic and demographic characteristics of survivors of rape;

- b) To assess the impact of rape survivors and their families;
- c) To map out the existing mechanisms and measures taken by different stakeholders in response to rape survivors;
- d) To identify gaps and challenges in existing response mechanisms and initiatives for obtaining justice for rape survivors; and
- e) To map out a way forward and provide action and policy recommendations for an effective mechanism to ensure the survivors' rights to justice.

1.8 Key Questions

- a) What is the magnitude of rape incidents and how has it been changing?
- b) What are the socio-economic and demographic characteristics of rape survivors?
- c) What are the root causes of rape?
- d) What are the impacts and consequences of rape to the well being of survivors and family?
- e) What are the existing response mechanisms and the roles played by the State and non-State actors to address rape and to respond and access justice to the persons affected by rape?
- f) What are the gaps and challenges in existing response mechanisms of governmental and non-governmental organizations, and the community support system and mechanisms?
- g) What are the legal provisions to respond to rape and ensure survivor's rights to justice?
- h) What are legal and policy challenges and gaps in implementation in the existing system from the perspective of the survivor's right to justice?
- i) What is the way forward to obtaining justice for the persons affected by sexual violence/rape?
 - o What should be changed in the existing mechanisms to ensure the survivors of sexual violence access justice effectively and efficiently?
 - o What should be done to strengthen the referral mechanisms,

protection for survivors, witnesses, service providers, W/HR defenders and legal supporters working to ensure right to justice for survivors of rape?

1.9 State Obligations under International Laws

The State has obligations under international law to respect, fulfil and protect human rights. It bears accountability for all human rights violations within its territory and it must investigate and act upon the violations accordingly. Perpetrators of serious human rights violations, such as sexual violence/rape must be prosecuted and punished.

Nepal has been party to all relevant international treaties regarding sexual violence. The most important obligations can be found in the Convention on Elimination of all Forms of Discrimination against Women (CEDAW) 1979, Convention on the Rights of the Child (CRC) 1989, International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 and International Covenant on Civil and Political Rights (ICCPR) 1966. Besides these legally binding conventions, the two declarations on the Elimination of Violence against Women and Basic Principles of Justice for Victims of Crime and Abuse of Power are applicable to sexual violence and related legal cases. In addition, with the UNSCR1325 and 1820 which are clear on promoting women's participation and working towards combating sexual violence, it is mandatory for the Nepal government to put in place mechanisms to actualise its global mandate.

Since Nepal is party to CEDAW, the bases of analysis in this study are its obligations and its general recommendation No. 19 that says that the State has to protect, fulfil and respect the rights of the victims/survivors. Article 1 in CEDAW (1979) defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex.” The General Recommendation No. 19 (24) under CEDAW provides the following specific recommendations to respect, to fulfil and to protect the rights of study victims/survivors:

- (a) State should take appropriate and effective measures to overcome

all forms of gender-based violence, whether by public or a private act;

- (b) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity.
- (c) Appropriate protective and support services should be provided for victims;
- (d) Effective complaints procedures and remedies, including compensation, should be provided;
- (e) States should establish support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refugees, specially trained health workers, rehabilitation and counselling; States should ensure that services for victims of violence are accessible to rural women and that where necessary special services are provided to isolated communities;
- (f) State should take measures that are necessary to overcome family violence: services to ensure the safety and security of victims of family violence, including refugees, counselling and rehabilitation programs, and support services for families where incest or sexual abuse has occurred.
- (g) State should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence;

State should take effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including violence and abuse in the family, sexual assault and sexual harassment in the workplace; protective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence.

2

Chapter Two RESEARCH PROCESS AND METHODOLOGY

RESEARCH PROCESS AND METHODOLOGY

2.1 Introduction

Chapter two describes the research activities and the overall process, the methods used for data/information gathering, data processing and analysis, and the limitations of the research.

2.2 The Process

The study entailed the following activities:

2.2.1 Study conceptualisation and consultations

A concept paper on the study was prepared and discussed during the consultative meeting that was held with 23 national level organizations in Kathmandu, Nepal in April 2010. The purpose of the meeting was to enable various organizations working on issues of violence against women to incorporate ideas and suggestions on the proposed study topic, discuss the research objectives and methodology. The meeting also elicited a commitment from several organizations to participate in the research process.

2.2.2 Training the research team

Phase 1: In November 2009, Isis-WICCE and WOREC conducted an International Training Institute in which Nepal Women participated. The training focussed on gender and conflict analysis, human rights mechanisms, research and documentation.

The Nepali participants agreed to undertake case study documentation on the following topics; 'Socio economic situation of single women heads of household in post conflict Accham district', 'Impact of food insecurity on women in the far western development region of Nepal', 'Violence against women in politics in Nepal', 'Effect of armed conflict

on women in Kaski district', 'Media monitoring of rape and domestic violence', 'Sexual abuse amongst young girls studying in private college of Kathmandu valley', 'Sexual exploitation among single women (widow) in Kathmandu', 'Violence faced by female migrant workers of Sunsari district of Nepal', 'Social exclusion of LGBTI people in Kathmandu' and 'Violence against dalit women activists in Bardiya district'.

Phase 2: As part of the In-depth documentation, the Nepal Research team once again underwent a six days training in June 2010, in Kathmandu, Nepal. The training included the 11 Nepali participants from the Isis-WICCE 2009/10 Institute and three additional researchers from other civil society organizations in Nepal. The training team included staff from Isis-WICCE, WOREC, Nepal Police, a Lawyer and a counsellor.

This session enabled the research team to have a detailed understanding of the laws and related policies on rape and sexual violence.

The research team reviewed the study concept, the objectives and methodology. The team further discussed the differences between an in-depth research and case study documentation, and were taken through practical exercises on approaches of carrying out an interview and how to handle the respondents.

The study instruments were reviewed and discussed. The language and interpretation was improved and its presentation agreed upon. The team further pre-tested the instruments with three categories; 2 focus group discussions (one in Chhahhari with eight unmarried women between 17-34 years; and one composed of women human rights defenders) and in-depth interviews. This practical exercise enabled the research assistants to test and check their moderation and probing skills, and also to recognize that interviewing survivors of rape/sexual violence is complex and requires a special technique and patience.

The team was taken through a counseling session with the facilitation of a psychosocial counselor. It was emphasized that the researchers

need to have space to share the different traumatic stories listened to as a way of supporting each other to avoid secondary trauma. Tips on how to handle a traumatized survivor were also shared e.g. building a good relationship, having good communication, letting survivors cry, among others.

2.2.3 Field preparation and visits

Consultations were held with WHRDs and local organizations for field visit preparation. The concerned stakeholders were informed prior to the visit of the research team. In most cases, the visits were made to the offices of key informants (stakeholders) to brief them about the research objectives and to solicit time for interview and information collection etc. WHRDs played a key role in identifying participants, organising Focus Group Discussions (FGDs), and identifying survivors and preparing them for in-depth interviews. A team visiting an assigned district typically consisted of 2-5 members and they spent 10 to 12 days in a district on average to gather information.

2.2.4 Technical support and monitoring

Isis-WICCE and WOREC provided the leadership, technical support and regular monitoring thus ensuring research quality. The Isis-WICCE research co-ordinator provided technical support from a distance through internet and telephone as well as through actual field visits to some districts in conjunction with the research team.

2.3 Study Design, Sampling Procedure and Data Collection Methods

The study adopted explorative research and purposive sampling design. For purposes of having a national representative sample, reported rape cases documented by national level organizations and those reported in national daily newspapers were considered. For primary information, out of 75 districts, 10 were selected based on several criteria. The primary parameters were geographical, social, cultural, ethnic, conflict affected

and the district-wise frequency of rape incidents reported in the media (five daily national news papers were surveyed to identify districts of high and low number of reported rape incidents). Special attention was paid to the grouping of the districts so that the selected districts would, socio-culturally and caste-ethnically, be representative of the region. The sampled districts and selection criteria were as follows:

2.3.1 Study areas

Table 1: The sampled districts and selection criteria

District and Development Region	Basis for selection	Remarks
<u>Morang</u> Eastern	<ul style="list-style-type: none"> • Ecological Eastern Terai/ Madhesh region • Represents districts of Jhapa, Morang and Sunsari of Eastern Terai region which have similar socio-cultural and ethnic base • High number of rape incidents reported in media review 	Districts in the group represent Eastern Development Region
<u>Dhanusha</u> Central	<ul style="list-style-type: none"> • Ecological Eastern and Mid part of Terai/Madhesh region • Districts Represented: Saptari, Siraha, Dhanusha, Mahottari, Sarlahi, Rautahat, Bara, Parsa, <u>Chitwan</u>, <u>Nawalparasi</u>, <u>Rupandehi</u> and <u>Kapilvastu</u>.¹ • High number of rape incidents reported in media review • Terai conflicting groups 	Districts in the group represent Eastern, Central and Western Development Regions

<u>Kailali</u> Far Western	<ul style="list-style-type: none"> • Ecological western Terai (Tharuwan) region • Districts represented: Dang, Banke, Bardiya, Kailali and Kanchanpur • High number rape incidents reported in media review 	Districts in the group represent Mid-and Far- Western Development Regions
<u>Udayapur</u> Eastern	<ul style="list-style-type: none"> • Ecological Hill and inner Terai region (eastern parts) • Districts represented: Ilam, Panchthar, Tehrathum, Dhankuta, Bhojpur, Khotang, Udayapur, Okhaldhunga 	Districts in the group represent Eastern Development Region
<u>Kavrepalan-chowk</u> Central	<ul style="list-style-type: none"> • Ecological hill region – central part • Districts represented: Ramechhap, Kavrepalanchowk, Sindhuli • High number rape incidents reported in media review 	Districts in the group represent Central Development Region
<u>Kathmandu²</u> Central	<ul style="list-style-type: none"> • Capital, important to interview central level stakeholders • District represented: Bhaktapur, Kathmandu, Lalitpur, Makwanpur, Dhading, Nuwakot 	Districts in the group represent Central Development Region
<u>Baglung</u> West	<ul style="list-style-type: none"> • Ecological hill region – mid part • Districts represented: Gorkha, Lamjung Tanahu, Syangja, Kaski, Parbat, Myagdi, Baglung, Gulmi, Palpa, Arghakhachi • Conflict affected • Low number of rape incidents reported in media review 	Districts in the group represent Western Development Regions

<u>Dailekh</u> Mid-western	<ul style="list-style-type: none"> • Ecological hill region – Mid Western • Districts represented: Pyuthan, Rolpa, Rukum, Jajarkot, Dailekh Salyan, Surkhet, Kalikot, Achham, Doti, Dadeldhura, Baitadi • Conflict affected • Low number of rape incidents reported in media review 	Districts in the group represent Mid- and Far-Western Development Regions
<u>Dolakha</u> Eastern	<ul style="list-style-type: none"> • Ecological high hills and Mountains - east part • Districts represented: Taplejung, Sankhuwasabha, Solukhumbu, Dolakha, Sindhupalchowk, Rasuwa 	Districts in the group represent Eastern and Central Development Regions_
<u>Darchula</u> Far western	<ul style="list-style-type: none"> • Ecological high hills and Mountains - west part • Districts represented: Manang, Mustang, Dolpa, Jumla, Mugu, Humla, Bajura, Bajhang, Darchula • Low number of rape incidents reported in media review 	Districts in the group represent Western, Mid- and Far-Western Regions

2.3.2 Data collection methods

The data collection process started in August until October 2010 and used both primary and secondary sources of information and employed both qualitative and quantitative data collection methods.

a) Quantitative Data Collection methods

The Quantitative Data Collection was based on review of cases reported in the national newspapers as well as those documented by different development organisations in Nepal.

b) Media reporting survey

The media survey was done basically to obtain quantitative data and was one of the criteria for district selection. The media reported cases of rape and attempt to rape incidents in five daily national newspapers from January 2007 to December 2009 was identified, entered into the standard format of SPSS version 16 and compiled for analysis. The emphasis was on magnitude, rape incidents by types and places (rape in family/home, communities, work places etc.) and Socio-economic and demographic profile and characteristics of affected persons of rape violence

c) Documented case analysis

Various national non-governmental and human rights organizations working on issues of violence against women and sexual minorities had overtime been documenting cases of sexual violence. The compiled/ documented cases related to rape and attempt to rape were collected from these organizations and further analysed. The emphasis was on capturing the data on the;

- Magnitude, rape incidents by types and places and socio-economic and demographic profile and characteristics.
- Impact and consequences of rape violence on survivors and family,
- Socio-economic and other factors that support accessing justice, and the obstacles that stand in the way to obtaining right to justice,
- Community support system and protection mechanisms and their effectiveness,

- Trends and practices of formal mechanisms, their effectiveness and efficiency in responding to survivor in providing support and accessing justice.

The table below presents data collection methods and sampled number:

Table 2: Quantitative data collection methods and samples

Methods	Number	Remarks
Media reporting survey (2007-2009)	201	Five daily national newspapers: <i>Gorakhapatra, Kantipur, Annapurna, Samacharpatra and Naya Patrika</i>
Documented Case analysis (2007-2009)	723	Collected from different organizations working on VAW

2.3.3 Qualitative methods

The qualitative methods included In-Depth Interviews, Key Informant Interviews and Focus Group Discussions.

i) *In-Depth Interviews*

Altogether 55 In-Depth Interviews were conducted with rape survivors which became the base of survivor testimonies. The survivors were identified for interview with the help of district WHRD networks and the organizations that already knew such persons or had dealt with and cared for them. Some survivors were also identified during FGDs and taken to a confidential spot for in-depth interviews. All interviews were taken with survivors' informed consent. Interviews were conducted with the help of concerned stakeholders/organization who knew the survivors well and care was taken to maintain their anonymity. WHRDs were key instruments for identifying survivors and preparing them for interviews. It was arranged in a manner that

would not prove detrimental to their wellbeing and their development since the incident but rather contribute to the process of their healing. This method provided a guideline for collecting information on the following themes:

- Situation of rape victims/survivors, impact and consequences of rape violence;
- Effect of support services received by the survivors from family, community and other formal systems
- Constraints/obstacles while accessing support services and legal justice.

ii) Focus group discussions

Altogether 33 focus group discussions in 10 districts were carried out with Women Human Right Defenders, Paralegal Committees and community women. This method sought the following information:

- Overall aspects of violence against women and rape violence such as:
 - perception
 - social and cultural aspects
 - stigma associated with sexual violence/rape
 - family response
 - community response
 - mediation
- Factors that make the cases into success or failure in terms of obtaining justice.
- Work related difficulties experienced by service providers, WHR Defenders and their consequences while providing care and support to the persons affected by rape violence and defending their rights to justice.
- Community support system and protection mechanisms and their effectiveness.

iii) Narratives/case studies

The narratives and case studies collected from the survivors and different organization were also helpful to understand the situation and dimensions of rape violence. These helped to guide the researchers on following themes:

- Illustrations of the situations and the processes that they went through and experienced;
- The real contexts of suffering, obstacles in accessing services, support, and social and legal justice.

iv) Key Informant Interviews

A total of 112 Key Informant Interviews were conducted with different level stakeholders using semi-structured questionnaires. The interviews were conducted with representatives of different levels of government and non-government stakeholders, law enforcement authorities, human rights organizations, media persons, political leaders, religious leaders. The interviews sought information on the following themes:

- Perceptions towards violence against women and causes of rape violence;
- Response to rape victims/survivors at different levels and roles played by state and non-state actors to address sexual violence;
- Trends and practices of formal mechanisms, their effectiveness and efficiency in responding to survivors for their support and accessing justice;
- Policy and implementation gaps and challenges of existing legal system and survivors' support system and mechanisms.

v) Filming, audio recording and photography

The interviews and focus group discussions were audio (and where possible) video recorded, and photographs were taken with informed consent of the respondents. This method enabled the team to capture

testimonies and all the important information. A video documentary has also been processed.

Table 3: Qualitative methods and numbers by districts

District	IDI	KII	Focus Group Discussions			
			CW	WHRD	PC	Other
Kathmandu	6	19	1	1		
Morang	7	9	1	1	1	One with women rights networks One with WOREC Staff
Dhanusha	8	11	1	1	1	-
Kailali	6	12	3	1	1	One With WDO staff
Udayapur	10	9	1	1	1	A group of NGO people
Kavre	3	8	1	1	-	-
Baglung	1	7	2	1	-	One group of Maoist cadres (who are now in politics)
Dailekh	7	10	1	1	-	One with mixed women group*
Dolakha	7	13	1	1	-	-
Darchula	1	14	2	1	-	-
Total	56	112	14	10	4	5

IDI=In-Depth Interview, KII=Key Informant Interview, CW=Community Women, WHRD=Women Human Rights Defenders, PC=Paralegal Committee

*Women involved in politics, WHRD, NGO worker and those working in government offices

2.4 Data Management and Analysis

The data collected from the media survey, organizations, and in-depth interviews was entered and analyzed using the statistical package of SPSS version 16. A statistician provided technical support to encode the data and for overall production of output of quantitative data. The qualitative data was transcribed from audio recorders and organized under appropriate heading and subheadings. The testimonies thus derived are used to validate the analysis and to supplement

the quantitative analysis. The cases are used to illustrate findings. Quantitative and qualitative data was analysed separately and organised in different sections.

2.5 Validation of Findings

A half-day workshop was organized on 23rd November, 2010 to validate and authenticate the research findings among the key stakeholders and those who had shared their painful experiences and memories. There was wide national representation of key stakeholders from 73 out of 75 districts of the country were present at the workshop. This included community women, WHRD members and Paralegal Committee Members, national and international non-governmental organizations, media, police, legal enforcement authorities, concerned government officials and Isis-WICCE Institute participants and Research Assistants. The group work during the workshop provided an opportunity to amend lapses and information gaps. The input and information received from participants was later incorporated in the report. This also created ownership on the research findings among different levels of stakeholders and crafted a means to hold them accountable to implement the research recommendations.

Further, the research findings were presented on 25th November, 2010 (International Violence against Women Day) in a consultative workshop with the UN Special Rapporteur for Human Rights. The presence of a wider spectrum of participants in this workshop also provided an additional opportunity to validate the research findings.

In preparation for the Universal Peer Review process for Nepal, WOREC utilized the findings from the study to compile an advocacy document brief entitled “” which highlighted the key needs and recommendations for improving the status of women. This document was shared with key actors in the Nepal government as well as representatives from foreign embassies prior to the Universal Peer Review Process in Geneva. This enabled country delegates present to ask pertinent questions on the situation in Nepal.

In addition, WOREC Nepal and Isis-WICCE organized a workshop that was held on 26th January 2011 in Geneva, to provide the alternative perspective of the situation of women's rights in Nepal to the attention of Government, Rights holders, the civil society, Missions in Geneva, and development partners and Experts working on issues related to sexual violence in different parts of the world. The overall objective of this workshop was to raise awareness on the scope and the gravity of violence against women in Nepal and lobby the government to fulfill its state obligations.

2.6 Limitations and Difficulties

The following were the limitations of the study:

- 1) Although a total of 723 documented cases from 2007 to 2009 were collected from the organizations, most of the data fields were incomplete. No uniform data was thus found because the documentation of cases by various organizations was in different formats resulting in inconsistency. This led to difficulties in data analysis and in giving a comprehensive quantitative picture of demographic and socio-economic aspects of rape.
- 2) Due to resource and time constraints, sampling of more districts remained a constraint.
- 3) The field work was affected in part by the monsoon season and festivals.

2.7 Ethical Considerations and Confidentiality

The research team was trained on ethical issues and confidentiality and were availed a guideline. Respondents were availed enough information on the purpose of the study and the fact that their submissions would remain confidential. Consent for use of information collected for publication was requested for from each respondent interviewed. For

purposes of protecting the identify of the respondents, pseudo names have been used where survivors' testimonies appear in this report.

WHRDs were also key support facilitators for preparing survivors for interviews and providing confidence that the process contributes to their healing. The interviews and focus group discussions were audio and where possible video recorded, and photographs were taken with informed consent of the respondent, however the confidentiality of survivors was strictly maintained while recording. Except for those who exposed their will, all names of survivors are changed in the report to maintain confidentiality.

(Endnotes)

- 1 Chitwan, Nawalparasi, Rupandehi, and Kapilvastu were grouped as one cluster, but to balance Terai, hill and mountain regions later they were aligned to Dhanusha cluster, as it was fair to do so from a socio-cultural and language aspect, rather than to group them in the Western terai (Tharuwan).
- 2 Kathmandu was chosen by default because it was important for Key Informant Interviews at the policy making level.

Chapter Three

3

MAGNITUDE AND SOCIO- ECONOMIC DEMOGRAPHIC CHARACTERISTICS OF RAPE SURVIVORS

MAGNITUDE AND SOCIO-ECONOMIC DEMOGRAPHIC CHARACTERISTICS OF RAPE SURVIVORS

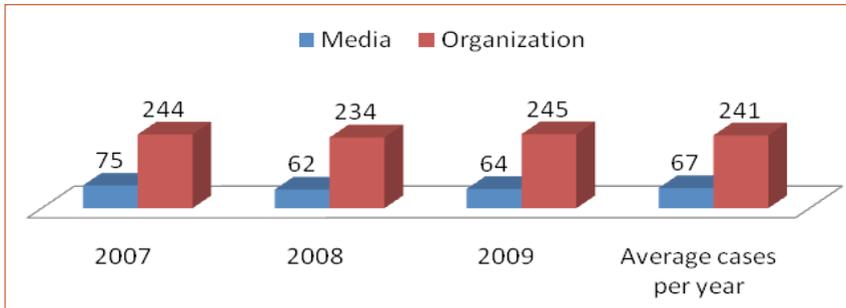
3.1 Introduction

In Nepal, checking the accuracy of the data and the magnitude of rape incidents remain difficult because of secrecy and the associated stigma. Incidents of rape are not easily reported and may not enter the public domain. Much depends upon how the family and society take the issue forward and treat the rape survivors. In this context, it becomes imperative to know the trend and the various aspects of rape incidents so that appropriate actions can be taken for addressing violence against women. This Chapter discusses the socio-economic demographic characteristics of rape survivors as analysed basing on the data from media reports, documented cases collected from organizations and In-Depth Interviews. It also presents the magnitude of this violation in Nepal..

3.2 Magnitude of Rape Incidents

Overall, the research found that very few cases come to the surface for reporting and documentation. But even these few cases are vital in establishing the high prevalence of rape and show that the trend is towards an increase in the number of incidents. The media reports and organizations' documented cases for three years show the average number of incidents to be 241 (Figure 1). Only 75, 62 and 64 cases were reported in the media in consecutive years ('07, '08 and '09 respectively), whereas organizations had documented 244, 234, 245 cases in the same years respectively. This illustrates how the media has a trend of low reporting when it comes to rape incidents. Furthermore, the number of events recorded by INSEC in its yearbook showing 260, 268, and 259 rape incidents in '07, '08 and '09 respectively also validate the magnitude of cases documented by the organizations.

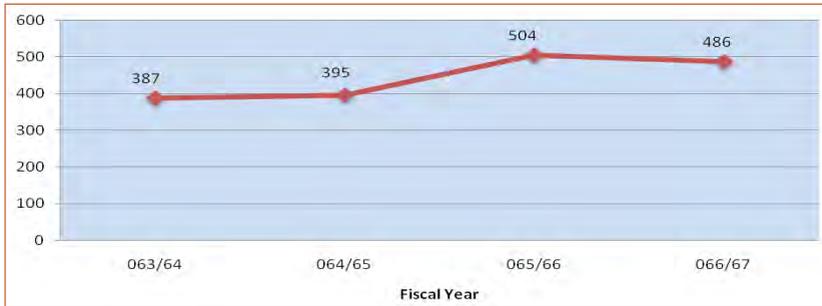
Figure 1: Year-wise cases reported in the media and documented in organizations



Source: cases reported in media and documented cases by organizations

The police record of four consecutive years (Figure 2) shows an average of 443 registered cases in a year. It has an increasing trend in successive years from 2063/64 to 2065/66 (2006/7 to 2008/9 AD) and which declined a little in 2066/67 (2009/10). The police officials claim that the trend of reporting has been increasing but that the occurrence of rape incidents has a consistent pattern. However, the total number proves a high magnitude of rape. Most stakeholders in interviews and community women in FGDs reiterated that the occurrence of rape incidents has increased in the past two or three years in comparison with previous years. They were in agreement that the reporting is far less as compared to the increased occurrence. The 2010 yearbook also validates the high prevalence of rape as it is found to be the second highest (9.5%) category of violence against women after domestic violence (WOREC, 2010).

Figure 2: Year-wise registered cases at police office



Source: Department of Crime Investigation, Police Headquarters

3.2.1 Forms of rape

The data shows that around 20% (IDI), 19.4% (media) and 18% (organization) of the total cases were attempted rape cases. There was a large variation in the percentage of gang rape in media reporting and in the documentation by organizations – 28.9% (media) and 2.9% (organization). A general analysis from this could be that the media might be more focused on reporting gang rape as it makes far more sensational news and has more impact on the survivors. Rape where only one perpetrator was involved was 51.7% (media), 79.1% (organization) and 65.5% (IDI). The data further shows that 4.5% (media) of the rape victims are murdered after they are raped.

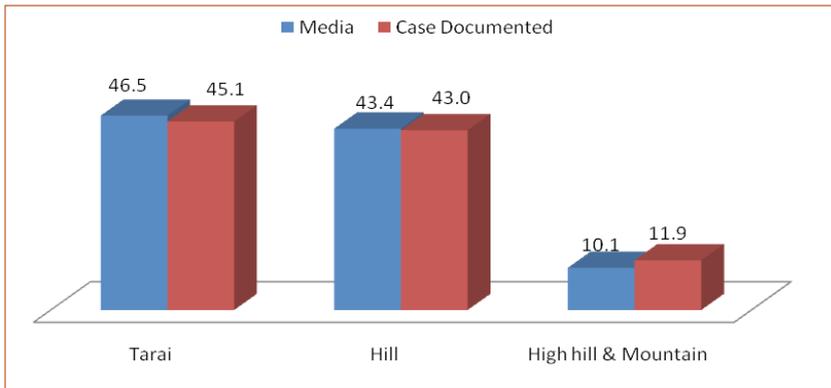
Figure 3: Percentage distribution of rape by types



3.2.2 Rape incidents by region and districts

In Figure 3, the data shows that *Terai/Madhesh* (plains) has a high incidence of rape which accounts for 46.5% (media) and 45.1% (organization) followed by Hill 43.4% (media) and 43% (organization). The high hills and mountains only have 10.1% (media) and 11.9% (organization) of the total incidents. However, the qualitative information suggests that there are many incidents of rape in the high hill and mountains too, though they remain hidden. They do not come out easily in the open due to strong socio-cultural barriers and severe stigma. Also, most of the key stakeholders of these areas pointed out that many of these cases cannot be reported due to geographical barriers. Thus, these incidents are neither reported nor documented by media and organizations.

Figure 4: Rape survivors by ecological region (percentage)



In terms of Development Regions, the *Central Region* has a high percentage, accounting for 40.8% (media) and 27.2% (organization). This is followed by the *Eastern Region* accounting for 30.1% (media) and 31.6% (organization), the *Western Region* accounts for 16.9% (organization) and 11.7% (media), *Mid-Western Region* 16.5% (organization) and 11.7% (media) and *Far-Western Region* 7.8% (organization) and 7.1% (media) respectively (Figure 5). This is further confirmed with data of registered cases in the same period obtained from the Central Police Office which shows the same pattern.

Figure 5: Percentage of reported cases by development region



The documented cases indicate that all the 75 districts are affected by rape. The districts of Terai/Madhesh: Jhapa (43), Sunsari (26), Morang (19), of Eastern Region; Siraha (27), Dhanusha (17) of Central Region, Nawalparasi (37), and Chitwan (16), of Western Region; Bardiya (20), Banke (15) of Mid-Western Region and Kailali (20), and Kanchanpur (15) of Far-Western Region had the highest number of cases as documented by organizations.

The documented number of cases indicate that all the 75 districts are affected by rape. The districts of Terai/Madhesh: Jhapa (43), Sunsari (26), Morang (19), of Eastern Region; Siraha (27), Dhanusha (17) of Central Region, Nawalparasi (37), and Chitwan (16), of Western Region; Bardiya (20), Banke (15) of Mid-Western Region and Kailali (20), and Kanchanpur (15) of Far-Western Region had the highest number of cases as documented by organizations.

The districts of: Surkhet (32), Udayapur (30), Dang (19) from inner-Terai and Hill areas also had a high number of documented rape cases as per organizational data. The hilly districts: Sindhupalchowk (21), Lalitpur (19), and Dhading (18) from Central Region saw relatively higher number of incidents than other hilly districts. But the police data indicates that Kathmandu is one of the highest reported districts.

Furthermore, the districts with low number of documented cases were Baitadi, Jumla, Kalikot, Pyuthan and Bara with only one case in each district; Myagdi, Parbat Arghakhachi, Darchula, Manang, and Mugu with 2 cases each; and Bajhang, Humla, Rolpa, Dailekh, Baglung, Ramechhap and Bhaktapur with three cases each. The low reported districts were mostly from Hill and High Hill areas, except Bara from Terai region. Ironically, 19 districts mostly in Hills and Mountains had no reporting in the media, an indication that the national print media (newspapers) have low reach in remote districts. On the other hand, it was evident that in areas where leading national NGOs are working to reduce violence against women, a larger number of cases were reported and documented both in the media and at the police.

3.2.3 Caste/ethnicity of rape survivors

Since the identity of the survivors was kept anonymous, the analysis was derived based on the caste or ethnicity of the survivors as reflected in Table 4. The two sources of data (media and organization) give slightly different pictures in relation to caste/ethnicity. The media reporting shows Hill *Janjati* as the most affected group by rape (39.3%), whereas organizations' documentation show *Brahmin/Chhetri* and Hill *Dalit* as the most affected group (24.5% for each group), followed by Hill *Janjati* (23%). Out of the total cases, 19.7% (media) and 15.8% (organization) of *Terai/Madhesi Janjati* and 8.2% (media) and 4.3% (organization) of *Terai Dalit* were affected by rape. Similarly, 6.5% (organization) and 1.6% (media) of Other Backward Caste (OBC) of *Terai/Madhes* were also affected by this same violence. Muslims constituting 1.4% (organization) were also affected by rape. This variation leads to the conclusion that rape transcends all castes and ethnic groups.

Table 4: Percentage distribution of caste/ethnicity of rape survivors

Caste/Ethnicity	Media	Organization
Brahmin/Chhetri	21.3	24.5
Hill Janjati	39.3	23.0
Terai Janjati	19.7	15.8
Hill Dalit	9.8	24.5
Terai Dalit	8.2	4.3
Other back-ward caste (Madhesi)	1.6	6.5
Muslim	0.0	1.4
Total	61	139
N/A	140	584

3.3 Age of Rape Survivors

Figure 6 and 7 show that the perpetrators of rape target all age groups from 2 to 102 years. However, children were the most affected group with 50.8% (media) and 54.2 % (organization) being in the range of 10-20 years. Those less than 10 years were 25.8% (media) and 20.8% (organization).

On the other hand, 5.3% (media) and 7.6% (organization) were in the age group of 30-40; 3% (media) and 2.1% (organization) were 40-50 years; and 4.5% (media) and 2.7% (organization) were 50 years and above respectively.

Figure 6

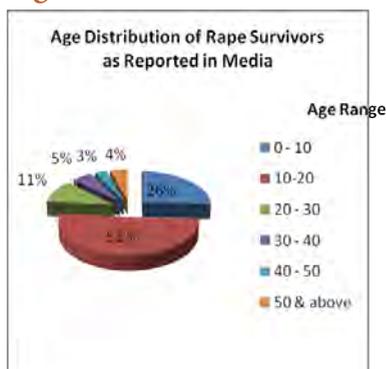
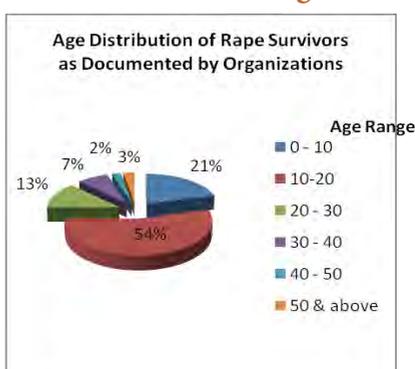


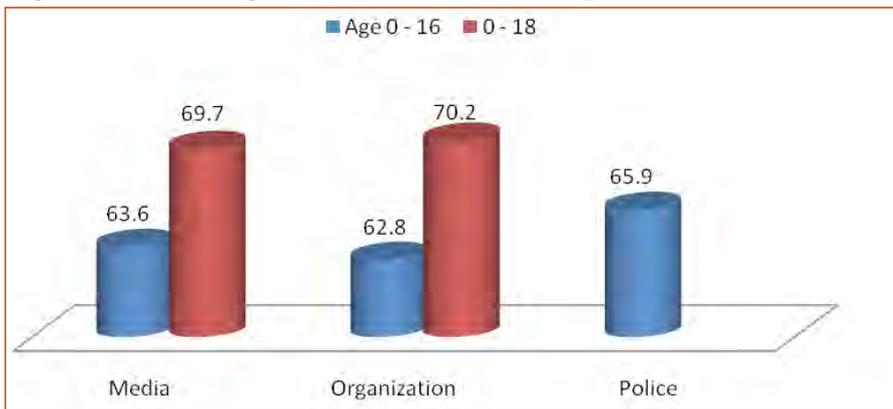
Figure 7



3.4 Rape in Minors

The data from all the sources consistently shows that minors (girls) are the most vulnerable and affected group. 62.8% (organization), 63.6% (media) and 65.9% (police) of rape survivors were below 16 years. While considering the international definition⁷ of a child, i.e. below 18 years; 70.2% (organization) and 69.7% (media) of girls had experienced rape (Figure 8). The minors are most affected due to their vulnerability given their young age and the culture of silence.

Figure 8: Percentage of child survivors of rape



Multiple data sources confirm that rape in children all over the world is a troubling but yet growing problem. Nepal is not exceptional from this phenomenon. Over 60% of the rape survivors in Nepal are under the age of 16. The innocence of these children has been viciously preyed upon and violated. Institutional data clearly shows that they are usually lured with treats such as chocolates, money, etc. Many of these incidents occur at home where the children have been left alone by working parents. Some children have been kidnapped by perpetrators while playing and taken to a nearby place and raped. Children in villages who contribute to the daily household chores by cutting grass, doing agricultural fieldwork or fetching water have also been targeted. Among the children, the plight of the minor domestic workers is especially appalling. Since these children are taken away from their

⁷ Convention on the Rights of the Child to which Nepal is a party

parents at an early age to an unknown places, their vulnerability increases significantly. They are at the disposal of the homeowners who can abuse them sexually or in other ways. Since the level of trust with regard to domestic workers is not high, she finds it difficult to reveal the incident to other members of the families. The power dynamics and the dependence of the domestic workers on the house-owner makes them an easy target of repeated violence and rape as testified below;

“I was brought to Kathmandu by my employer (an ex-Inspector) when I was very little and I hardly have any memory of my family since I have been living here since then. I was brought here to mainly look after my employer’s daughter who is about my age. They would go to work and lock both of us in a room for hours. Whenever they came back, they would physically abuse me (they have thrown me down two flights of stairs, beaten me with whatever was around, and dragged me across the room). But he would still pretend to treat me like a daughter, worshipping me on Puja days. He started abusing me when my breasts were just beginning to grow. He would take every opportunity and would beat me with the back of a khukuri if I ever refused to comply. Once, his wife had gone away for training for four months and he took advantage of me. He used to rape me three times a day then. Even if I slept with my door locked, he would bang on it until I was forced to open and unwillingly let him in.

I did tell his wife but instead she claimed I was at fault. But they did have an argument and did not speak for ten days after that. Throughout the days, I suffered a lot of lower abdominal pain and mental trauma. I could barely concentrate on my work.

I later joined a literacy programme conducted by an organization and I became more aware about sexual abuse. One day, I finally found the courage to tell our trainer about the problems I was going through. I was then rescued with the help of police (senior police personnel since the perpetrator was an ex-policeman). The perpetrator is behind bars and the case is ongoing”.

3.5 Occupation of the Survivors

Table 5 presents the occupation of survivors (173 from media reporting and 611 of organizations’ documented cases). Students were found to be most affected by rape with 67.9% (media) and 62.5% (organization). This was followed by the persons working in the informal sector 17.9% (organization) and 7.1% (media). The survivors who were engaged in agriculture were 8% (organization) and domestic labourers included 7.1% (media) and 5.4% (organization). The occupational pattern of rape affected groups shows that the perpetrators mostly attack victims who are vulnerable due to being young students or those belonging to low income earning families.

Table 5: Main occupation of rape survivors reported in media and organization

Main Occupation	Media n = 173	Organization n=611
Agriculture		8.0
Student	67.9	62.5
Labour	7.1	17.9
Job ³	7.1	1.8
Small entrepreneurship	0.0	0.0
Domestic labour	7.1	4.5
Other ⁴	10.7	5.4
Total	28	112
N/A	173	611

3.6 Marital Status

Table 6 shows that unmarried women are most targeted for rape constituting 79.4% (media) and 88.3% (organization) of the total cases. In contrast, the percentage of rape of married women is 19.4% (media) and 10% (organization). Divorced, separated and widowed women are also affected by rape but their percentage is relatively low. The reason for targeting unmarried women could be controlling women’s sexuality and suppression of the individual and her family. With the prevalent

notion that marriage is mandatory for any woman to lead a dignified life and have a family, men use rape as a tool to deprive women of a normal life. When a woman loses her virginity, she is considered ‘impure’ and therefore unfit for marriage. Rape could also serve as a tool to assuage men’s ego and feed into notions of having established their superiority over women.

Table 6: Marital Status of the rape survivors reported in media and organization

Marital Status	Media	Organization
Unmarried	79.4	88.3
Married	19.4	10.0
Divorced		0.2
Separated	0.6	0.2
Widowed	0.6	1.2
Single Mother	0	0.0
Total	165	428
N/A	36	295

3.7 Sites of the Incident

As evidenced in previous studies (WOREC, 2009), women continue to face increased violence in the public as well as in the private sphere. Table 7 shows that the highest percentage of rape crimes was committed outside the home, in farms, fields and jungles while collecting firewood and fodder, cutting grass, fetching water, harvesting grains or going for defecation. These accounted for 40.4% (organization) and 31.4% (media) of the total rape cases. Surprisingly, in contrast to the belief that home is the safest place, 35.7% (Organisation) and 34.3 % (media) rape incidents took place at survivors’ own homes. This breaks the myth that the girls are safe being at home and controlling mobility is a way to protect women from harm. A further 20.1% (media) and 5.9% (organisation) rape crimes were committed at perpetrators’ homes (Table 7). The survivors’ workplace and hotel/lodge/guest houses were sites where rape took place. Some other sites where rape took place

were toilets, schools, health clinics, refugee camps, hospitals, buses and fairs.

Table 7: Distribution of percentage of sites where rape incidents took place

Sites of Incidents	Media	Institution
Own home	34.3	35.7
Perpetrator home	20.1	5.9
Neighbour	4.7	7.0
Out of home (Jungle, field etc)	31.4	40.4
Own workplace	1.8	1.4
Hotel/Lodge/Guest house	0.6	2.6
Perpetrator’s workplace	N/A	0.9
Other	7.1	6.1
Total	169	574

3.8 Time of Rape Incidents

There is a commonly held assumption that rape only occurs at night but the findings establish that this is a myth. The fact is that rape can occur anytime and anywhere. Figure 9 indicates that 61.8% (IDI), 49.2% (media) and 40.1% (organization) of rapes occurred in the day or when it was not dark. Only 21 (38.2% - IDI) out of 55 interviewed survivors were raped during night time. Though the time of the rape incident was not mentioned for many cases in the media and in the documentation of the organizations, out of the available data, 59.1% (media) and 50.8% (organization) survivors were raped during night time.

Figure 9: Percentage of rape incidents and time reported in media, organization and IDI



3.9 Survivors' Relationship with Perpetrators

The data from all sources shows that the majority of survivors knew their rapists. The perpetrators were blood relatives or part of wider kin relationships, neighbours and colleagues or related in some other way. Table 8 illustrates a disturbing finding that the neighbours, who are considered most trusted by the family in Nepali society, accounted for the highest percentage of 59% (organization) and 33.3% (media) amongst the perpetrators. It is well recognized that rape within intimate relationships is both an abuse of trust and an extreme betrayal. The data shows that rape within family relations (incest) accounts for 10.8% (organization) and 8.9% (media) and by husband accounts for 2.1% (media) of the rape incidents. Rape within intimate relationships like any other form of gender based violence is an abuse of trust and is generally under-reported (Amnesty International, 2010).

Table 8: Percentage of Survivors and their relationship with perpetrators

Relation with perpetrators	Media	Organization
Husband	2.1	0.5
Family relation (Incest) ⁵	8.9	10.8
Neighbours	33.3	59
Lover/friend/husband's friend/ colleague	3.6	1.6
Boss/house owner	2.1	2.9
Police	0	1.8
Teacher	3.6	1
Health service provider ⁶	0	0.8
Priest/traditional healer (witch doctor)	0	0.5
No relation	46.4	21
Total	192	381

3.10 Marital Rape

It is noteworthy that barring few exceptions, neither media nor organization have been able to report and document marital rape cases. PHECT, a health-centred organization, has identified a significant number of marital rape cases during its clinical screening in the process of gynaecological/reproductive health check-up. Between 2007 and 2009 itself, 282 women who came to PHECT clinic for health service, were found to have experienced marital rape and were able to talk about their sex life, an indicator that they had built their trust in this organisation. The fact is that marital rape is prevalent but organizations somehow fail to identify and document these cases. It corroborates the assumption that despite recognition in the law, marital rape is as yet not an issue in Nepal. Rather, this violence that 46% of the young married women surveyed had experienced sexual violence by their husbands and 31% had experienced it in the last 12 months (CREPHA, 2010).

Most women are brought up to keep such ‘private’ issues locked up behind closed doors. Culturally, women are deprived from discussing issues of sex in general and especially within the institution of marriage. Looking at this aspect of marriage, the institution could be labelled as one providing licence to men to rape women.

“If a woman speaks openly, she is considered to be spoilt and characterless. An unmarried guy can come and ask for condoms but we married women cannot even do that without raising the Assistant Health Worker’s (AHW) eyebrows. So, how can we tell anybody that we have been raped by our own husbands? I think everybody goes through it. He goes to work all day and needs it when he comes back. We might do it in tears or amidst laughter. Not everyday is the same. That is the disclosed reality.”

“There are incidents of both rape and marital rape in society. But these do not come out due to the fear of stigmatization and expulsion from home. Incidents like rape have never come out openly due to this fear factor. Only 5 incidents came to light in the last one and half years. But there are many more out there; most of them suppressed.” FGD Udayapur

Though the punishment is nominal, the law’s recognition of marital rape has been taken as a positive step by women’s rights activists. Before this, it would merely be looked upon as a private matter and grouped with other kinds of domestic issues. Defining marital rape as a crime is crucial for the recognition that sex within intimate relationships can be forced and is punishable. It contributes to women moving towards having consensual sexual relations with their husbands.

3.11 Rape within Intimate Relationship

The decision of the perpetrator to rape is based on how easily the target can be intimidated. Rape within intimate relations i.e., lover, friend and

colleagues account for 3.6% (media) and 1.6% (organization). Teacher-student is another significant category where the intimate relation is abused. 3.6% (media) of rape is committed by teachers on their students. Health service providers, priests and traditional healers are yet another category of trusted relationships who were perpetrators. The data contradicts the general assumption that rape is committed by unknown persons/strangers. Only 21% (organization) survivors had no relation or did not know their rapists/perpetrators. However, the media reporting gives a different picture and shows that 46.4% survivors had no relation with perpetrators.

3.12 Date Rape

There are several instances of rape within intimate relationships that have failed to come out in the open due to the fear of stigmatization. Cases of “date rape” are especially common among the young. Date rape is especially prevalent between intimate partners. This is an increasing trend that preys on the vulnerabilities of the young girls who have always been told to stay away from sex. The importance of being a virgin bride is instilled early on in their psyche and is an integral part of parenting. In some cases, this forced restraint results in an unbridled curiosity and sometimes risky experimentation among young people.

Since date rape occurs mostly among young adults in whom sexual relations are discouraged by parents, guardians, teachers and society in general, these crimes are one of the most under-reported. Due to the non-recognition of such acts as crimes, or violation of personal integrity the survivor usually suffers the impact of it alone, often afraid of being blamed themselves if shared with others. The lack of understanding and support for such rape crimes translates into deepened scars that seem to lead the survivors into other dysfunctional relationships.

Date rape has been discussed in the context of drug or alcohol usage. The use of drugs or alcohol distorts perception and adversely impacts the capacity for judgment. Thus, consent becomes less an act of an alert

mind and more of the going along of an intoxicated or drugged mind which is oblivious of the consequences.

CASE: Naiveté preyed upon

“Despite having lived in Kathmandu all my life, I was completely naïve and like a child even at 18. This was the first boy I had ever befriended and I had no idea at the time what relationships should be like. By then, he and I had been talking on the phone for a few months. Though he did not like to admit it then, I now see that he did not want to be seen with me in a public space. That fateful summer day, he had been refusing to eat because I had refused to have sex with him a few days ago. He was adamant he would only break his ‘fast’ when I gave in. I decided to visit him at his home to persuade him to start eating and to let him know that his stand was childish. He welcomed me warmly with a hug and I could see no trace of anger. I thought maybe he had finally come to his senses. At first it was awkward because I had never been in such a circumstance before – I did not know what to do or talk about.

Later however, he suggested that we lie down on the low bed that we had been sitting on. Lying down like that was one of the most beautiful moments of my life but if only I had known what was to follow. He suddenly climbed on top of me. At first I thought he was just kidding around but this was a 6 feet tall muscular guy whose weight totally crushed me. I realized I was pinned. I was terrified into silence. I had already told him that it was the 4th day of my period and that I was all bloody down there. I had naively imagined that that would be deterrence enough. I could not shout or call for help because I was in his house and even if people came, it would be my ‘prestige’ that was at stake. After all, I had been the one who came to his home. I kept trying to resist and dissuade him in vain. He kept arguing that in any case we were to be married

later and that it would not matter that I was not a virgin bride. He also kept saying that this had been a dream of his from years and something he had been eagerly awaiting.

At one point, I stopped arguing; I did not see a way out and simply submitted. Some may even say that it was my moment of implied consent. I was completely shattered and I had to leave. My thighs were aching and my crotch area was throbbing. I could barely walk. When I got home, I just curled up and cried. I felt I had been robbed of my innocence. There was nobody I could tell this about, nobody who would listen but not judge. I took a shower and tried to wash away his intruding presence. Of course, it was only after five years that I realized that it was not my fault and that I had been ‘raped on a date’. This realization then brought the empowerment that changed me from a victim to a survivor”.

3.13 Rape within Family Relationship (Incest)

Contrary to common belief that the perpetrators of rape are strangers, there were many cases of incest reported in the media, documented by organizations and also in the in-depth interviews. In many of the incest cases, it was found that the survivor was a minor and the perpetrator simply took advantage of the trust and power bestowed upon him in the family relationship.

An additional observation was that incest usually took place within dysfunctional families. The most common traits of such families were parents’ separation, father and/or mother remarrying, husband going away for foreign employment, abusive father, etc. An alarming trend was the rape of daughter-in-laws by their father-in-laws in districts of the far west and some districts of *Terai/Madhes* where women’s roles in the family are largely undermined. In most cases, the daughter-in-laws had to silently bear the brunt of repeated rapes or attempts to rape. They could not share it with their husbands or other members of the

family due to the fear that their own character would come in question. Since the male heads of household have considerable influence over other members, their doubts were not baseless. The following cases of incest illustrate the many dimensions of dysfunctional families and the inter-relation to incest:

- I. *The survivor's father-in-law had made several passes at her and some attempts to rape her which she had successfully resisted. When she informed her mother-in-law, her husband and mother-in-law accused her of having a sexual relationship with the father-in-law.*
- II. *The survivor's husband had run away from home after stealing a relative's jewellery and did not come back. The father-in-law constantly tried to 'discipline' his daughter-in-law and once came with a machete to chop her. When all efforts failed, he resorted to raping her as an act of inducing submission.*
- III. *The father of the survivor was a priest who had remarried a second wife after his separation from the first wife following multiple domestic disputes. The survivor lived with her father and also took care of the children born by her step-mother. She was repeatedly raped by her own father and could only tell of the incident to her maternal aunt.*
- IV. *The survivor was very young when her mother and father separated and got re-married to other people. One day, when she and her father had gone together to dig a road, he raped her. She was in Class 2 then. The villagers found out about the incident but let the father go saying such a case had to be repeated to establish the intention to rape on the part of the father. On the day of Tika on Dashain, the father who had been drinking, took her out of the house at night on the pretence of finding her step-mother but raped her when they were away from the house.*

- V. *The survivor was repeatedly raped by her father and she became pregnant. When the family members asked her whose child she was bearing, she could not dare to tell the truth and had to lie that a stranger had raped her once. Later, because she could not bear it anymore, she finally revealed the incident.*
- VI. *The two sisters lived at home with their mother and the father who worked in the Nepal Army visited occasionally. He was a drunkard and abusive towards their mother. From early on, he would bite his daughters' cheeks and tongue to the point that they sometimes bled. If the mother asked, he would tell her that it was his way of showing love. At night, he would get drunk and beat the mother so that she would run away from the house. Finding his two young daughters alone, he would sexually abuse and rape them. They too ran away from the home and spent the night in the jungle crying until the mother found them and took them home.*
- VII. *The survivor's father was abusive from the start and would direct his anger mostly at the mother. He also remarried and had two children from the second wife. When the second wife left him because she could not bear the abuse, she did not take the two children. The family then moved to the Terai belt. He then started beating the survivor (his daughter) and broke her arm once. The mother constantly lied to cover up his misdeeds when the villagers asked. She was once beaten badly and she fainted. When the villagers took her to the hospital, they discovered that she was pregnant. The family opted for an abortion. It was only later when there was talk of her father coming back home that she finally confessed how he had repeatedly raped her (up to three times).*

3.14 Rape by State Actors

An incident of rape committed by police, armed police, army and government officials is considered to be rape by State actors. Among the 201 cases reported in the media in 52 cases the perpetrators could

be identified. Seventeen (32%) of the rape crimes were committed by the State actors. Similarly, out of the 41 identified perpetrators from the cases of 55 interviewed survivors, eleven (26.8%) were police and army personnel. It is a serious issue for a State that the very persons responsible for providing security, safeguarding human rights, and implementation of law were themselves the violators. The legal framework for rape by State actors becomes complicated because the law applicable to civilian perpetrators does not apply to the police and army personnel. The statutes relating to the Police, Armed Police and Military make provisions for internal disciplinary actions such as transfer to another district or demotion by a rank. These disciplinary actions are unsatisfactory and cannot act as deterrents in tune with the nature of the crime. They also become impediments to registering and processing a criminal case. The understanding that the police and army are outside the pale of law has resulted in the suppression of many cases and in mediation in other cases. The legal enforcement agency tries to suppress these cases as they impact the reputation of the security forces. They often cite lack of evidence and survivor's failure to file a FIR as reasons for dropping the cases.

CASE: Rape on suspicion

My father was a supporter of the UML party and was put in jail on the suspicion of killing a party leader. Though he was later rescued, there were people belonging to other parties that were always trying to take revenge. The army came to my house on the pretext of investigating because my family had provided shelter to Maoists a couple of days ago. But even with the Maoists, we really had no choice because we had heard that they come in by force with weapons and if someone refused entry, they would not spare them. The army had been made drunk by villagers who were jealous of our progress. They beat everyone in the house including me. They then told me that Devi Khadka [a Maoist leader and current CA member] had called me. I did not know what to do because their weapons were aimed at me. They took me to my uncle's house and raped me there. The next day, they

had a feast with our livestock. We ran away from there because we did not want any more incidents to occur. Even now when I remember that incident, it gives me immense pain. It is true that many people suffered during the conflict but that kind of suffering is still extreme. After the incident I became affiliated with the Maoist party and worked as a combatant. I am now married to a fellow cadre and we are running our own business and leading a normal life.

3.15 Rape in Persons with Disabilities

The vulnerability of women with disabilities to violence is higher because generally their ability for self protection physical retaliation is significantly hindered. The social stigma attached to physical and mental disability further increases the vulnerability.

The in-depth interviews of three cases and 27 institutionally documented cases show that after the incident, the survivors face difficulties in the reintegration process despite support. In many cases, the organizational help also translates into dependence upon the organization. Therefore, the government responsibility towards long-term rehabilitation becomes crucial. Though the existing legal framework recognizes people with disabilities and provides for enhanced punishment for rape, there are several problems at the procedural level. Special provision for reporting, protection of evidence and statement should be made with the needs of the mentally challenged and deaf/dumb victims in mind. The need for victim protection is higher in the case of disabled victims. The time limit fixed for reporting too poses a problem, more so in the absence of a support system like the family after the incident.

Institutional data illustrates that most victims with disabilities were raped within their own homes or while doing chores. According to the data, mentally challenged women were the most vulnerable and were taken most advantage of compared to persons with other disabilities. In most of these cases, the mother of the victim reported the case to the

police. Only in a few rare instances was the survivor able to fight the perpetrator and protect themselves. For example, a dumb victim was lured with sweets and taken to a perpetrator's room but the victim managed to shout when rape was attempted, and villagers came to her rescue.

CASE: A life of struggle

At 25 years, this disabled survivor seemed already tired of life as she had lived it. The dual stigma of being disabled and a rape survivor has her wary and constantly worried. The lower part of her body has been paralysed since she can remember and she uses a wheelchair for mobility. Due to this disability, she was constantly mistreated at her family home. She is uneducated but has acquired some income-generating skills.

She had been living for 9 years under the shelter of an organization that helped people with disabilities. In an effort to normalize her life, she tried to find a place to rent. In the process, the person who took her in became the main perpetrator of a gang rape. She found out the hard way that no one can be trusted. When she shared her ordeal to a journalist friend, he instead helped the perpetrator to escape and mediated on her behalf without consulting her. By then, it was too late to report the case. She is still wary of recalling the case and her hesitation is not unjustified. At the moment, she lives in a hostel for women with disabilities. She does not know how long she can live there and this dependence factor troubles her. Survivor with disabilities

3.16 Rape in Sexual Minorities

The common belief is that only women are victims of sexual violence and rape. Contrary to this assumption, there are many cases of rape of persons belonging to the sexual minorities. These incidents are kept hidden because of the fear of being misunderstood and ostracized by society. Sexual minorities in Nepal already have to face many kinds

of violence and in-depth interview with transgender survivors (male to female) show that the violence increases after rape. The present definition of rape in the laws of Nepal poses a big problem for transgender survivors. By defining rape as penile-vaginal penetration, oral and anal sex culminating in rape in the case of sexual minorities is kept out of the ambit. Thus, in terms of legal justice, the failure of law to recognize rape outside that of penile-vaginal penetration has resulted in a denial of justice to transgender survivors.

Since a number of transgender persons are already expelled from their homes, they do not have a support system in terms of family. When they seek justice for rape, at times they get further violated and traumatized by legal enforcement officials themselves. Important institutions like the police were not only unresponsive but at times further victimized the victim. One of the survivors who had gone to report the rape was raped by the police. In another instance, the police took advantage of their official position to gang-rape a survivor who was frequenting the streets at night. The refusal by the survivor to have sex with some of the police personnel, lead to physical abuse and beatings by them.

The survivors claimed that their only support came from Blue Diamond Society which is an organization that works for sexual minorities in Nepal. Other transgender friends also played a pivotal role in their recovery. But despite this support, the level of trauma and depression in transgender survivors was found to be relatively higher in comparison to other survivors. There are many obstacles on the road to recovery of survivors belonging to sexual minorities including the impact of social denunciation and being forced to be silent about the rape..

CASE: A path unlike others

My walk, talk and my work became a curse. I first endured repeated violence from my own father. Together with my brother, he would beat me repeatedly and torture me physically. I was only saved from their murder conspiracy because of my mother. I was repeatedly humiliated at home, in school, in

the village and also in the market. I was raped by the son of the mukhiya of my village. When I tried to speak about it, nobody could believe that a man could be raped by another man. I was taken to the police by a friend. I was mocked and raped there too. The very people who I thought would provide me some shelter from harm turned out to be the very ones to perpetrate more harm. I became a victim of injustice when I went to seek justice. There was no limit to the dread and depression I felt then. My life became even more of a struggle. I feel bolder now because there is an organization that works for the likes of us. But the struggle continues. -Transgender (male to female) survivor

3.17 Rape and Women Human Rights Defenders

Though many cases of rape among Women Human Rights Defenders have so far not come in the open, they face repeated threats of rape in the course of their work. Women Human Rights Defenders act as a link and with their focus on providing support and justice to the survivor, play an important role in society. At times the nature of their work brings them into direct conflict with community leaders, corrupt politicians and indifferent law enforcement officials; they constantly risk violence and rape. In questioning, challenging and protesting discrimination and violence against women, they put themselves right in the line of fire. Their bold steps against the prevalent male domination are looked upon by feudal and patriarchal traditionalists as an act of rebellion by second class citizens that needs to be squashed. The power-holders feel insecure because of the actions of these defenders. They use threats and in some extreme cases commit rape as a means of “putting them in their place”.

A price to the voice raised against injustice

I worked in remote districts as a police personnel and I would not hesitate to question injustice even as a child. Thus, it was only apt that I was employed in a place that people go to for

justice. When I first joined the force, I had no idea about the corruption and discrimination rampant in this institution (police). Not being able to bear this, I continued to raise my voice against any injustice done by my colleagues. I opposed the usage of vulgar words within my workspace. I spoke against the mistreatment of anyone who came to seek service. I rebelled against the ones who committed injustice. This is why I was targeted and raped. They tried to silence my voice. But my voice was not muted and will never be. My voice will always rise against any and all injustice. I know that the legal system may or may not provide justice but we will have to revolt collectively nonetheless. We cannot stay silent and wait for justice to come to us. But I do not want anyone to question me later, so I will go through the rigours of the legal process and see it to its end.-WHRD, survivor of rape by State actors.

3.18 Rape among Refugees

Women refugees are also a vulnerable group - uprooted from their home countries and living in pre-arranged camps where security is dismal. Not only are these women's basic rights to food violated, they are in added danger from their fellow male refugees. Since the inter-country treaty leaves refugees without a proper source of income, domestic and sexual violence become the outlets for aggravated males to vent their frustration. The combination of compromised living arrangements and the rampant unemployment characteristic of refugee camps, puts these women in a vulnerable spot. Crime rates are high in camps and the legal enforcement mechanism are not as responsive as in the case of offences committed against a citizen.

Thus, rape of Bhutanese refugees residing in the eastern parts of Nepal has been largely ignored both by the media and by most organizations. Surprisingly, girls and women residing in these camps in Morang and Jhapa, have suffered several incidents of rape, where the perpetrators are mostly males within the same camps. In case a rape survivor in

these camps report the incident to the police, the absence of victim and witness protection exposes them to added risk of violence.

The following cases of rape and attempted rape have been extracted from the INSEC documentation:

- I. *A 34-year old man from the Beldangi refugee camp attempted to rape a 26-year-old woman in a Bhutanese refugee camp in Khudunabari, Jhapa.*
- II. *A 25-year-old disabled (blind and deaf) refugee was raped in her own home by a neighbour.*
- III. *A 30-year old woman in Khudunabari's refugee camp was gang raped by 4 men from the same camp.*
- IV. *A 32-year-old Bhutanese refugee was raped by a man from the same camp when she had gone to fetch firewood in a nearby jungle.*
- V. *A 7-year old girl living in a Bhutanese refugee camp in Damak, Jhapa was raped by a 20-year-old man living in the same camp.*
- VI. *A 7-year old refugee living in Khudunabari camp in Jhapa was raped in her own home by a 60-year old man.*

3.19 Conclusion

In Nepal, there is high prevalence of rape and an increase in the number of incidents. However, despite this increase, only a few cases surface and get reported and documented. There is not a single district of Nepal where rape has not occurred. Rape cuts across all social, cultural, economic, geographic, and religious boundaries. Similarly, it is carried out on victims in spite of class, caste, ethnic, educational or age barriers. The inter-related categories of minor girls, students and unmarried women have been found to be the most vulnerable to rape. Rape within marriage is not yet an issue in Nepal; rather it

has been institutionalized within family and marriage. Marital rape is prevalent but organizations fail to identify and document these cases. The research disproved several myths relating to rape, such as, “rape is committed by strangers, outside the home, mostly at night and only on young women wearing ‘provocative’ clothes”.

(Endnotes)

- 1 Job includes both governmental and non-governmental
- 2 Other includes house-hold workers, etc.
- 3 Family relation includes close relationships of family such as brother, in-laws (father and brother), cousins etc.
- 4 Health service provider includes doctor, health worker, and pharmacist.

4

Chapter Four CAUSES AND CONSEQUENCES OF RAPE

CAUSES AND CONSEQUENCES OF RAPE

4.1 Introduction

One of the primary questions used for interviewing key stakeholders referred to the reasons for rape including its consequences and impact to survivors. This was basically to understand the perspective of different stakeholders regarding rape and the reasons attributed for its occurrence. The responses from respondents gave a picture of how the issue is perceived, the reasons behind this act and its impact on access to justice for survivors. The mixed responses received from stakeholders have been compiled either in the form of testimonies or statements

4.2 Causes of Rape

4.2.1 Social structure and patriarchal values

The multiple dimensions of patriarchy were reflected in answers from stakeholders who have been dealing with such violence for many years. For example, one of the most cited reasons for rape was the prevalent attitude in males that women are mere objects, powerless and second-class citizens. Many lawyers and senior police officials viewed the impulse to rape as a result of sexual dissatisfaction at home or simply as a product of animal instincts in males.

Due to the mixture of culture and religion within the social structures, women throughout their life are in the care of male guardians – first their fathers then husbands and sons. The difference in upbringing was referred to by young female stakeholders who saw its impact as leading to the helpless attitude in most females. The lack of access to resources also greatly undermines women's power in society. As analysed by a female lawyer, this is manifested in the practice where women are merely made pawns in a game of exchange of money between men, leading to rape.

On the other hand, most male stakeholders alluded to the fact that these incidents are ‘natural’ phenomenon in young males when they become sexually aggressive; between the ages of 17 to 30/35. Dismissing such heinous acts as natural involuntary behaviour reflects the psychology of the males and their general attitude towards women. Some male stakeholders indicated that confining sex within the institution of marriage makes men try to adventure in other horizons resulting into rape. The lack of sex education was one of the most cited reasons for the occurrence of rape.

4.2.2 Male attitude of power demonstration

The demonstration of power by men with roots in the all pervasive patriarchy manifests itself in an extreme form in rape. Since males are conditioned while growing up to look at women as mere objects, men think that women are incapable of confronting or resisting their actions. Legal enforcement officials confirmed this attitude of males which makes the perpetrators feel invincible and confident that they can get away with anything. Interviewees also pointed out that the social construct that blames women for any “stains” in their character also encourages males to commit such crimes. Males sometimes also feel that raping a female is the best way to attack a family’s honour and seek revenge. Since power is unequal in male-female relationships, moreso where the females are minors, males take advantage of this imbalance to abuse the trust vested in them through their roles as fathers, teachers, priests, service providers etc.

4.2.3 Poverty

Poverty appears to be a big factor in many rape cases across the country. A normal life in the villages involves collecting firewood, cutting grass, working in the fields etc. The data shows that it is while doing these activities and going about their daily chores that women are most vulnerable. In many districts in Terai, the absence of latrines within the home means that survivors are raped on their

way to defecate and urinate in the fields, especially at night. In one case, the survivors (mother and daughter) were raped in a hotel in the district headquarters in the remote Karnali region where they had gone to get their monthly food rations. Another instance of poverty resulting in increased vulnerability and consequent violence is in the case of domestic workers where they have to leave their homes to live and work in another person's home. The complete dependence and an environment where they are forced to trust, gives rise to an imbalanced power dynamics between the male homeowners and the domestic workers. Many times, the domestic workers who have suffered rape are threatened into silence. At times, even when they try to talk about it, the homeowner's wives choose not to see or are indifferent.

With the increasing trend of foreign migration and working abroad, many women are subjected to repeated sexual violence and sometimes rape in the countries that they go to for employment. Those going to the Gulf countries through illegal and unsafe migration are especially vulnerable since their plight is not monitored by any agency in the country. Since they get their jobs through agents who only bear minimum liability, the journeys of these migrant workers are full of heart-wrenching hardships.

In the case of minors, the perpetrators seem to regularly use small lures such as chocolate, toffee or few rupees to coax the victims into submission and/or sexual relationships. Sometimes these 'gifts' are also used to silence any survivor who threatens to reveal the incident. The incidents also bring to light how poverty is exploited to commit heinous acts of rape. Poverty also adds to the ignorance about revealing, reporting and seeking legal and other types of support. As such, many survivors are silenced forever.

Unsafe migration: Perilous outcome

She was only 17 when she faked her age in the passport as 22 and applied to go abroad to work. She was constantly told by her parents that there was no need but she was determined.

She would tell them that they would have been able to send her to school had they only been richer. Her friends had filled her with dreams, telling her that working abroad would mean the end to all her family's worries. Since she was tired of being poor and looked down upon, she decided to take the offer. The agent took her to Saudi Arabia (instead of Kuwait as was promised). All the papers were faked. She was taken to a home as a domestic labourer and the cycle of violence started. She would be beaten if she did not do her chores on time. Even worse, the homeowner, his son and all the visitors would rape her at every chance they got. She became pregnant but had no idea whose child it was. This cycle of violence made her lose her mental balance. She was then sent to a mental asylum from where the parents received a call that she was being sent back to Nepal. Her Nepali friends then paid for her ticket home. Her mother still suspects that she was sent back home after abortion because of her bodily symptoms. Her mother cannot bear to see her young daughter in this state and only wishes their poverty had not affected her as it did.

4.2.4 Armed Conflict

In countries like Rwanda and Uganda, conflict is recognized as a causative factor for rape. In Nepal the ten-year conflict between the Maoists and the State fed into the patriarchal, feudal and fundamentalist context of gross violations against women. However, surprisingly the situation has deteriorated even after the armed conflict subsided i.e. after the peace accord was signed in 2006. This is important to illustrate a possible belated impact of the conflict. The state of impunity, breakdowns of government, criminalization of politics and rampant corruptions has actually increased especially in *Terai/Madhesh* where armed groups have proliferated in the region substantially contributing to gang rapes. Although there were some areas that were especially hard-hit, the effect of conflict was widespread throughout the State. Women were not only hit because they were directly involved in the

decade long struggle, but also because their families were suspected to side with the rebels or simply based on suspicion of such an alliance. Thus the State abused this family linkage factor by making political alliance a reason for rape. The women were used as tools to suppress a political cause and rape was looked upon as a way of punishing and threatening the family members of those who posed a risk to the State. As a result, rape by State actors was high during the peak period of conflict. The INSEC record in its yearbooks shows that 48 rapes and 23 attempted rapes were committed by the State and 7 rapes and 5 attempted rapes by the rebels during the period of 2001 to 2005.

Most of the cases of rape during conflict have yet to come out. While this was understandable during the conflict when the survivors would fall in between the line of fire of the two warring parties, this phenomenon is distressing in the aftermath of violence. In the absence of proper state mechanisms and policies with emphasis on providing redress, many survivors of rape during conflict feel coming out in the open is of no use and have kept the cases hidden or are only willing to informally open up. Because of this, many people feel that it is important to have a transitional justice system that addresses the violations faced by women and focuses on a broader definition of justice. This system could provide an alternative way of bringing out some cases that have hitherto not been reported. This requires specific research and careful analysis to understand war trauma and appropriate mechanisms for proper redress. Importantly, this could lead to a realization that a high level mechanism that can deal with all forms of sexual violence faced by female combatants during armed conflict is required.

“The army used to frequent my home and ask me where my husband was. I would answer that I didn’t know as this was the truth. It was a long time since I had been informed of his whereabouts. They again came to my home one day and asked me to go with them. On reaching the barracks, they again began to ask me the same question. When my answer did not change, they began to growl like tigers. They abused

me and I became unconscious...oh the words that they used, oh what all they did! When I regained consciousness, I was near death. My jewellery had fallen to the ground. They even threatened to insert their penis in my mouth. Oh what all they did...". A survivor

4.2.5 Elements of social evil

In terms of social evils, legal enforcement officials generally took the view that a criminal mindset and the abuse of alcohol and drugs were the main triggers of rape. Some even went on to blame new fashion trends and films for being the stimulants. Viewing pornographic materials through various media was also a common reason referred to by many. Stakeholders claimed that these elements are the instruments of social evils that transform a man into a beast, losing his sense of what is right and wrong.

4.2.6 Women themselves are responsible

The argument advanced by males was that women with their skimpy clothes and exposure of their skin (*anga pradarshan*) were stimulants leading to rape. This throws light on the feeling of guilt that rape survivors carry where they blame themselves for being raped. One of the police officers blamed women for their role as silent victims and onlookers. His argument was that the police is able to control such crimes only when they have been informed of the situation. Government stakeholders especially in Terai region also repeatedly referred to cases where there is first consent by women and later when society finds out, it is labelled rape. The lack of confidence of women to pursue justice was also given as a possible reason holding women indirectly responsible for rape. While sexual dissatisfaction was brought up, some of the interviewees blamed the women for being unable to satisfy their husbands who would then go in search of easy prey. The many arguments presented demonstrated how stakeholders are conditioned by their own values and social upbringing. They are thus unable to put

themselves in the shoes of the survivor to arrive at a more balanced and rational understanding of rape.

4.2.7 Lack of awareness/education

Some stakeholders, who have been working with women and in the sector of VAW, give the objectification of women in the media as a possible reason for rape. These stakeholders further pointed out that the innocence and ignorance among women made them vulnerable to ‘traps’ that lead to rape. Scenarios where women had been easily lured either in the name of providing jobs, watching cinema, dating or by offering money were shared. Female stakeholders within legal enforcement mechanisms and Women Human Rights Defenders brought to light the fact that lack of awareness on the part of women about the legal punishment that could be put/imposed on the perpetrator may be a subtle factor leading to more violence.

4.2.8 Weak legal environment

In terms of legal environment, stakeholders attributed the increasing incidences of rape to inadequate and weak implementation of the law, which fail to address the many dimensions of rape. Many stakeholders were of the view that due to one factor or another, mediation in cases of rape is increasing and only cases unresolved by mediation reach formal legal structures. NGO staff and some Women Development Officers saw this process as institutionalizing crime and encouraging criminals.

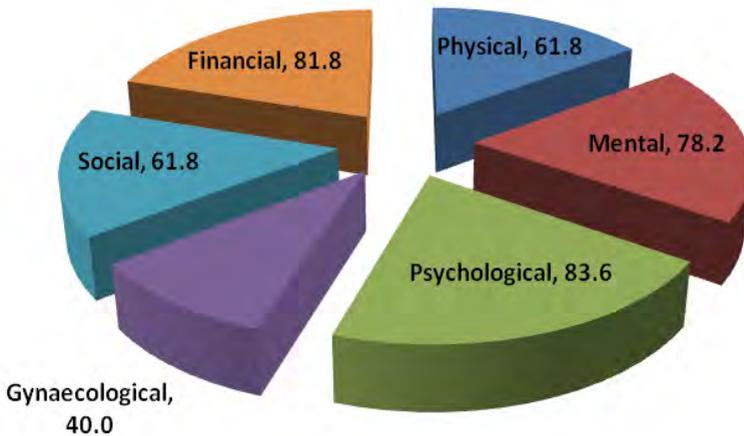
4.2.9 Other reasons

Challenging geographical terrain was mentioned as a reason by stakeholders who held offices in remote regions of the country. The view was that the difficult topography of these regions created opportunities for the criminals and also contributed to the non-reporting of cases. Police personnel also highlighted the special difficulties they face in providing security in these areas.

4.3 The Consequences and Impact of Rape

The consequences and impact of rape are profound but difficult to quantify. As with other crimes, the survivors of rape and their families too suffer from scars that are both deep and long-lasting. As rape is an extreme violation of bodily integrity and trust, it has visible physical and gynaecological effects. However, it is the invisible psychological/mental trauma, social exclusion and economic/financial burden which affect the survivors more. The impact of rape on survivors is severe in all aspects of their lives. Figure 10 below shows that the psychological and mental impact of rape is highest (83.6%) amongst the survivors. This is followed by financial burden experienced by survivors (81.8%) including impact on children and family. Similarly, 61.8% survivors experienced social problems and difficulties and the same percentage of survivors experienced physical problems. Forty percent (40%) of the survivors experienced gynaecological problem and disorders.

Figure 10: Impact of rape on survivors



The In-Depth Interviews with the survivors offered an opportunity to look at the different facets of the impact of rape which would not have been possible through analysis of secondary data. Their testimonies,

which are testaments to their boldness and resilience in life, are interspersed throughout the following section which looks in detail into the impact; both upon the survivors and their families.

4.3.1. Rape leads to multifarious violence

Rape itself is an extreme form of violence and it leads to a vicious cycle of physical, social, cultural, economic and other forms of violence. In the case which follows, the rape survivor was burnt and sexually abused when she tried to retaliate. She was ostracized by family and relatives, made to suffer extreme humiliation, and denied support for healing or livelihood security. She is now alone without any redress by the State. It is noteworthy that by committing rape, the perpetrators feel that they have opened to inflict other kinds of violations with impunity. Apart from the perpetrators, there are many others within the family and in society who prey on the vulnerabilities of a rape survivor. This is especially true in the cases where the survivors are not empowered or are not aware of their rights and are not supported by any organization.

I am not afraid of tigers but of males

“My father-in-law started to sexually attack me from the 17th day of his wife’s death. He would constantly tell me, “Be my son’s in the night and be mine during the day. No one will see, let me do it.” I have a disease [epilepsy] that makes me unconscious at times. When I was sick/unconscious during the day, my father-in-law would climb on my body and would have sexual relations with me. When he tried to do the same while I was conscious and I refused to comply, he kicked me into the stove. I burnt. He would even rape me three times a day. I was a victim of this kind of extreme violence daily for five years.

One afternoon, when I refused to have sex with him, he pushed me to the ground and put his penis first inside my

eye and then inside my mouth. My eye was infected after this and though I tried to treat it with some herbs in the village, it did not really help and I still cannot see properly. I told my husband about all this but he did not believe me. Later he saw it with his own eyes. He then persuaded me to climb a tree saying we both had nothing to live for anymore and pushed me down. My hand cracked in several places. I just treated it at home and cannot work anymore because it is crooked and limp now. I went to my parental home but I suffered more humiliation and maltreatment there too. My brother and his wife tried to poison my food but I luckily escaped. My brother once told me that maybe it was his chance to do what my father-in-law had done. Not being able to bear such things, I went to my relative's house and was eventually ousted from there too.

I am currently living in a buffalo shed near the jungle. Even if there is a danger of tigers, I feel secure because I do not have to see men. I don't know how long this arrangement can go on. My one constant worry is where will I go when the buffalo has to be tied inside the shed. I had a son who now lives with my husband. I worry about him too. I have heard that my husband has remarried but I don't care what he does now. All I wish is that nobody called me names and that I had two meals to eat a day. That is all I want, nothing more". -A Dalit Survivor, Dailekh

4.3.2 Physical consequences

Physical consequences on the survivor are immediately noticeable and easier to assess than other effects. This was seen in 61.8% of the survivors who were interviewed. Many rapes are accompanied by physical struggle as the survivor tries to free herself thus, physical injuries, swellings and wounds were common after incidents of rape.

Other consequences included the death of the survivor. Institutional data showed that the survivors often committed suicide or died from excessive bleeding after being gang-raped. Some victims were also brutally murdered after being raped. About 4.5% of the total reported cases in the media were of rape with murder.

Many survivors complained about the difficulty in walking immediately after the incident. One of the survivors shared that her anus was torn, making it difficult to pass stool. Other complications included lower back pain. Where the rape was accompanied by beating, survivors had body aches, chest pains, dizziness, etc.

In incidences of incest, it is also worse, such as the case of a woman in Dailekh district who was repeatedly raped and beaten several times and wounded by her father-in-law. This woman lived in the same house with the father in law who had access to her at any time. She sustained a broken arm and also got burnt in the struggle and opted to treat herself at home instead of going to the hospital. Many survivors of rape prefer home treatment or keeping silent rather than exposing the incident to an outsider by having it professionally treated. Speaking of her progressive weakening physical condition, she claimed, *“I have become so weak that I cannot work anymore.”* In this case the physical impact is closely inter-linked with her ability to earn livelihood, compounding the damage.

Analyzing the cases documented by institutions, most survivors experienced similar physical impact such as wounds (including stab wounds), abrasions, bleeding, bodily aches etc. Notably, there was a case of a minor whose lips had almost been completely bitten off by the perpetrator.

On the overall the physical consequences and impact of rape on survivors included; physical injuries, bruises and excessive bleeding, headaches; chest, back and joint pains; swellings; difficulty in breathing; dizziness; difficulty in walking; bodily weakness; broken limbs; anal boils and bleeding; among others.

4.3.3 Forced marriage

Marrying a rape survivor to the perpetrator is seen as a natural step and a way to legitimize the pre-marital sex and establish the relation of husband and wife. It is also seen by parents as a way to hand away the daughter to the one who now “possesses” her. The basis for this course of action is rooted in looking upon women as objects, as is reflected in Hindu marriage rites, where the father hands his daughter off to the son-in-law in a ceremony called *Kanyadaan*. Marriage is seen as intrinsic to a woman’s life, without which her life is futile. Since rape survivors are considered impure after the incident, their prospect for marriage greatly diminishes. The fact that it was forced and since rape is not considered significant, the immediate solution is for the girl to get married to the perpetrator as a way of saving the family’s ‘honour’. Marrying the survivor to the perpetrator is considered a proper alternative to keeping an unmarried rape survivor at home

“There is a trend here where the survivor is given off as the responsibility of the perpetrator. This is a nice trend because if the survivor seeks legal justice, she will have to feel more ashamed. It is better to just give her off” Dailekh community woman

The fear of ostracism propels marriage of the survivor to the perpetrator especially in cases where there is unwanted pregnancy from the rape. Survivors’ families are attuned to the social dishonour that unmarried, single mothers have to bear. Even well-intentioned families feel that marriage to the perpetrator is the best means of securing the future of both the survivor and the child. As the survivors are not consulted and their right to living with dignity is not considered, the option of marriage to the perpetrator adds to the trauma and leads to severe and systematic re-victimization. The issue of how the rape survivor can live a life free from violence and with dignity in society is not given any consideration.

“Bunu is a resident of the Udayapur district. Her mother is long dead and her family now consists of her father, elder brother, sister-in-law along with other members. She was raped in a jungle by a neighbour boy when she had gone to cut grass. After the rape, Bunu stayed quiet for a while because the boy had threatened her saying he would kill her if she told anybody about the incident. But she became pregnant from the incident and as the months bore on, the family found out about her condition. She finally opened up when the family members started to scold her. When family members and community people reported the incident to the Area Police Office, the offender was arrested. But the perpetrator’s side proposed that instead of taking the matter forward legally, the victim and the perpetrator get married and settle the case. The victim’s family agreed to this and she was sent to the perpetrator’s house despite her wishes. A day after this, the perpetrator ran away from home and has still not come back. She left the perpetrator’s house because the environment there was not friendly. But even in her parental home, her brother and his wife would scold her saying that the incident was her own fault. It was only her father who loved her and was constantly worried about her future. In the midst of all this, a boy from the neighbourhood came to ask for the then seven-months pregnant Bunu’s hand in marriage. Despite not agreeing to the wedding, she was compelled to marry him. Now, Bunu has a two-year old son (an outcome of the rape)”.

“In one case where an 11-year old child had been raped, the mother wanted to marry her off to the perpetrator, afraid that her daughter would be considered unfit for marriage in the future. On hearing this, the survivor started crying more and refused to eat. She only ate after we talked with her and made her understand that this was not going to happen.”

Sivacharan Chaudhary, Maiti Nepal, Kailali

“In one case where an 11-year old child had been raped, the mother wanted to marry her off with the perpetrator afraid that her daughter would be considered unfit for marriage in the future. On hearing this, the survivor started crying more and refused to eat. She only ate after we talked with her and made her understand that this was not going to happen.”

-Sivacharan Chaudhary, Maiti Nepal, Kailali

4.3.4 Suicide due to rape: honour-saving

The deep-rooted caste-based discrimination and feudal structures of the remote Far-West region reflect in the tightly-knit society where women’s silence is seemingly unbreakable. This silence is assisted by the difficult topography of the region which makes parts of the districts unreachable and are removed from the rest of Nepal. In such a scenario, the cultures, traditions and rites of these places are overly oppressive and the women are burdened with silence.

Since honour of women is so associated with virginity or *kumaritwa*, the general mindset is to take rape as a robbery after which the women are left with nothing. This only brings about desperation amongst the survivors, who then have no other alternative but to take their own lives in the name of salvaging their “lost” honour. Especially within a feudal structure of caste hierarchy, the culture of silence is pervasive. This is evident in Darchula where there are numerous cases where women have taken their lives by jumping in the river Mahakali which flows through various parts of the district. Suicide has become such a normative alternative that one of the rape survivors (a *Chhetri* woman whose husband conspired to get her raped by a *Dalit* man) alluded to attempting to commit suicide, as many other women had done before her, if she did not receive due justice.

If my perpetrators are not punished...

My mother died when I was young and I never had the time to study. I got married at 16. It was an arranged marriage but my husband had liked me. Things were good for 2 years. After

that, I learnt that my husband was having an affair with a girl from his class. My husband, my mother- and sister-in-law started to beat me and started conspiring against me so that I would leave. They wanted him to marry this other girl that he liked. One day, he sent a Dalit boy who used to work in our home into my room to rape me. I was ill at the time and could not protect myself. This boy told me that my husband had promised that I would be handed to him after this rape. When I went to my parental home unable to bear such things, my husband would come to me and ask for forgiveness and took me back. When my husband again sent the Dalit boy for the second time, I could not bear to stay there anymore. But soon the husband came to my parental home and said he would take me to Mahendranagar and take proper care of me.

My father pushed me to go with him arguing that a married woman's place is her husband's house not her father's. Since I had no faith in him at this point, I took my brother with me. When I reached home, the Dalit boy and my husband started to beat me. He then locked me in with the Dalit and went to fetch the police. His plan was to accuse me of having an extra-marital affair. He wanted me to get married to this boy. I did not want to live with such a person. My life has been stained now. If he had just asked me to separate from him, I would not have to undergo such misery. What do I do now? Where do I go? Who do I tell? I have no honour in society. What is the use of living now? To save my honour I would rather jump in Mahakali than go with that "Kami"(lower caste). If the perpetrators of this crime are not punished, then there is really no point in my living. I will do the same as many other women did - jumped into the Mahakali (a big river) and saved the honour. (A recent case, after the survivor was interviewed, the perpetrators were arrested).

4.3.5 Stigmatisation

Another aspect is the stigmatization, ostracism and shame attached to rape. INSEC's yearbook contains two cases of women who were gang raped and then committed suicide immediately after the incident. A possible logic could be that a woman is usually considered a man's property and a violation by another man may be to some extent tolerable, but rape by many men would make her completely 'impure'. For various reasons, the vast majority of rape victims never report the crime to the police, or even share it with family or close friends. With many years of conditioning, they have been made to believe that opening up to anyone else about such a "private matter" is shameful. It is also not uncommon to see a rape victim's shame translate into blaming oneself for being raped. So these victims suffer in silence, without the realization that they have been wronged while the perpetrators remain free and roam around proudly.

The stigma actually starts with sex and women's sexuality. Sex has always been looked upon as a behind-closed-doors issue. Therefore, it is difficult for Nepali women to report such crimes because that would first mean breaking the many taboos associated with sex in society. An even greater taboo exists with regard to women talking of sex. By bringing the incident out in the open, the victim of rape risks being labelled as a *characterless woman*. That tag carries with it many repercussions, not just for the victim herself but also for the family whose prestige and honour are closely associated with her.

"If something happens in the village, the men stay quiet whereas the women begin to gossip. This just leads to additional shame to the person revealing their story. So it is better to stay quiet than to share anything in the village." FGD, Kavre

"Even if someone speaks in your favour, chances are that no one else will back them up. So, even the person who would have been bold enough to speak the first time is forced into silence." FGD, Dailekh

4.3.6 Mental/psychological consequences

Among the 55 interviewed survivors, 83.64% suffered from at least some mental/psychological effect with long-lasting repercussions.

Both the survivor and her family have to undergo a lot of mental and psychological stress due to various factors. Though the incident itself is bound to leave a mark, the society's reactions to the incident and to the survivor amplifies this effect. Society tends to blame the survivor herself for the incident. On one hand, society puts pressure on the survivor's family to mediate supposedly in order to maintain social order. On the other hand, the survivor is repeatedly threatened by the perpetrator's side during and after the incident, leaving mental scars. Not only is her life at stake, she is threatened that her whole family would be in danger, if she tells anybody about the rape. Thus the survivor suffers from a mental struggle with regard to disclosing the crime. Even if the perpetrator is sentenced to a few years in prison through the court, he continues to threaten the survivor that he would take revenge by destroying the whole family as soon as he gets out of jail. Survivors often suffer from mental imbalance as a result of rape. Their mental wellbeing is under attack and sometimes completely destroyed.

The major mental related consequences include; depression, suicidal tendency, mental imbalance, phobia of males, fear of perpetrator's return, constant anger, worrying and trembling, increased vulnerability, anxiety and fear, continuous feeling of threat and easily startled. They fear sex, develop sexual dysfunction, sleeplessness and bad dreams, guilt and inferiority complex. Most of them develop solitary tendencies and decreased social interaction, develop a tendency to stare, inability to focus and concentrate and have increased loss of temper. They tend to break down, lose appetite, self-worth and prestige. They also fear being alone, get troubled by possible reactions from family or society, are always afraid of and uncomfortable in crowds and often hesitate to go out of the house.

“I was threatened saying that my mother and I would be murdered.”-A survivor in Kathmandu

*“I used to be afraid, thinking what would happen to me now. I used to believe that the same teacher would come back again.”*A minor survivor in Dhanusha who was raped by her teacher

The mental trauma is even more when there is a large age gap between the survivor and the perpetrator. A survivor who was raped by a perpetrator, her son’s age admitted that this caused her mental stress. Even if the perpetrators were arrested or sent to jail, the survivors suffered mentally from the notion that the perpetrator may return anytime and repeat the incident. The most common psychological effects of rape were trauma and depression. This may even manifest itself as a suicidal tendency. In school-going survivors, a lack of concentration in studies was commonly found. Constant fear, insomnia, loss of appetite, trembling and bad dreams were other psychological impacts that rape survivors mentioned in their interviews. Another noticeable phenomenon was that the survivor cried a lot, did not talk much and preferred solitude. A few survivors claimed that they were really afraid of their future, thinking the rape may have left them pregnant.

Guilt was a common denominator in almost all interviews with the survivors. In cases of mediation, where the survivor or their families had chosen to take the financial incentive and dropped the legal allegations, the guilt got magnified due to the knowledge that the offenders were not behind bars. Given the nature of present society, survivors who settled for mediation were given degrading names and were constantly humiliated and looked down upon, contributing to more shame. Only a handful of the survivors felt empowered to overcome this overall sense of guilt.

Most of the survivors felt vulnerable after the incident. If they had been raped in their own homes, they were afraid of staying there alone. The survivors who had been raped in the jungle did not want to visit the

same place. Since collecting firewood and cutting grass constituted a large part of their daily chores, their livelihoods were immediately affected. Many also developed various phobias. It was also found that the survivors tended to be more open with a community that told her that it was not her fault. If they blamed her instead, the survivor withdrew from society and did not speak to anybody.

“I could not live at home because of stigma. I had to break my study and my family was also in so much pain. Therefore, I left home. My brother and their family abused me verbally several times. There are also threats and abuses from the community. These are the reasons I am not going back home. Though I cannot go back, I am worried about my mother who I think has suffered the most after me.” A survivor.

Since rape as a crime has hardly been demystified, the survivor tends to feel that she has lost everything and that she is now good for nothing. Her sense of value is already compromised in a patriarchal society rampant with preference for a son. It further lessens because she has not been able to protect her one true “property” i.e. virginity. Rape is thus looked upon as a way to *ruin* women.

“Every member of the society knew about the incident and I felt very shy to face them. So I thought it’s better to die than to stay alive.” -A survivor in Dhanusha

The survivors and their families also felt that they were regarded with contempt regardless of whether or not they mediated with the perpetrator. Either way, people assumed that they were living off the sum given by the perpetrator through mediation. Besides name-calling, the women were also blamed for giving their family and their village a bad name. In one incident, the survivor stated that her whole community felt dishonoured because of the incident becoming public. Sometimes, when a married woman is raped, people do not hesitate to say that the person’s wife is corrupted because she slept with another man.

“The bitch gets pregnant and frequents organizations for money”. Survivor.

“My husband told me that he can’t let me live with him, children refused to live in the same house because the villagers used to laugh at them and make jokes about the incident.”
Survivor

The brunt of social disapproval is experienced by unmarried women who became pregnant as a consequence of the rape. The institution of marriage is integral to the patriarchal structure and sex is sanctioned only within marital relations. This leads to added humiliation of unmarried survivors. Survivors are married off to the perpetrator as a means to post-facto grant sanction to the rape. There is a compelling need for demystification of sex and establishment of rape as a crime committed by the perpetrator rather than a social stigma for the survivor.

4.3.7 Gynaecological consequences

Forty percent (40%) of the survivors suffered gynaecological complications. This number may not be wholly representative since many of the survivors interviewed were either minors or women who were not completely aware as to what constituted gynaecological effects. The most common gynaecological symptoms that the survivors suffered from were lower abdominal pain, vaginal wounds, vaginal bleeding, abnormal vaginal discharge, hymen rupture, vaginal tear and swelling and urinary tract infection. Almost all survivors complained about white or yellow vaginal discharges for many days after the incident. In more serious cases, there had also been disorder in reproductive organs, prolapsed uterus, uterus infection, irregular menstrual cycle, unwanted pregnancy and urinary and rectal fistulae

4.3.8 Economic and livelihood consequences

One of the most common consequences related to rape was the economic and livelihood (81.82%) welfare of survivors. This was due

to the mental and psychological trauma which made them unable to go about their daily work normally, most especially wage labourers. School going survivors had to stay out of school and discontinue their education. In several cases, they also had to change schools because they could not face their friends and teachers who would mock, jeer or blame them.

“I was not able to go to my school for 2-3 months. My friends were asking me why I was not coming to school and I lied that I had joined another school.” A school-going survivor

Those survivors who were abandoned by their families and left without any means of livelihood expressed primary concerns about raising their children and taking care of their education.

The situation was more complex for survivors who were also disabled, because their dependence shifted from their family to an organization. The incident seemed to have increased their sense of vulnerability as they seemed uncertain of both their further education and livelihood because of the reliance on an organization.

“There are many problems after being thrown out of the house. I have problems because I have to take care of my two children and myself. Right now, I have to stay at my parents’ house as an inferior being.” A survivor of incest by father-in-law.

Some survivors were also affected by the widely prevalent trend of mediation. The survivors and their families were given a lot of money if they agreed to stay silent and not approach legal structures of redress. While in some cases, families and survivors admitted to receiving this money which had helped to make them more financially secure, many also expressed guilt or regret for having to settle for monetary justice.

“The incident occurs because the perpetrator knows that the survivor is weak and can be trampled upon. Perpetrators are confident that these survivors cannot do anything or even

...speak against him. They take advantage of the survivor's weak economic status and try to influence them by giving them a little sum of money in return for silence.” A woman from Dolakha, community FGD

Among the documented cases, many were cases of forced entry into the house culminating into both gang-rape and looting thus leaving the survivors financially bereft. These incidents occurred especially when women were by themselves in their homes.

4.3.9 Impact on the family

The impact of rape is not only felt by the survivor but also their families. Since most survivors first report the incident to the family, their reaction becomes critical in determining the alleviation of the consequences of rape on the survivor.

The first reaction of a rape survivor's family is usually aggression. This aggression is sometimes directed wrongly at the survivor herself or rightly towards the perpetrator. If the survivor sought legal justice, the family often demonstrated anguish because their internal affairs had been brought out in the open. The one constant fear seemed to be that the prestige of the family would be compromised. In supporting the survivor, the family also has to undergo a lot of mental stress.

“Family members are planning to migrate to another place so that I could be married off.” An unmarried survivor

Since the family is usually at the receiving end of threats from perpetrators, this results in psychological/mental stress as they have to live in constant fear. Society also pressurizes the family to suppress the incident and remain silent. Social stigmatization following the incident affects the family too, leading to reduced social interaction and/or being shunned by relatives or neighbours. The combined impact can

sometimes result in the migration of the family or the expulsion of the survivor from the house in order to maintain privacy and prestige.

Other ways that the family is affected is through constant worrying about the survivor's future. Taking a stand to support the survivor also resulted in increased family expenses in some cases. In one case, where both the parents worked in a foreign country, they returned home immediately on hearing of the incident, affecting the family finances. In yet another incident, a mother who stood by her minor daughter and managed to send the perpetrator to jail was constantly threatened by rich neighbours. She also had to change and take a different route when doing her job (carrying sugar).

The younger family members too are affected by rape in several ways. In one case where the mother was raped, her two sons would not go to school for some time because they did not want their mother to be beaten by their drunken father. Later, they took turns in taking guard and protecting her. In other cases, where the survivor themselves were minors, the incident had an impact not just upon their education but also their siblings' who together discontinued school.

“The survivor’s mother was suspended from her work. Her husband used to beat her because he actually supported the perpetrator. The mother of the survivor experienced all kind of threats. All these things led the mother to live separately from her husband. The sister of the survivor also suffered psychosocial problems such as lack of trust and constant fear and needed counselling. (The present case was documented by an institution and demonstrates the composite effects of rape on the survivor and their families.)

4.4 Conclusion

Rape affects both the survivors and their families in many ways. The impact was generally not mitigated in any way due to the absence of proper mechanisms of support. The survivors and families were forced to either hide or move on with their lives without proper redress. The physical impact was mostly addressed through medical treatment. The fact that most survivors experienced psychological/mental trauma after the incident, points to both the need and the absence of a trained counselling body at the grass-root level. The delayed compensation mechanism added to the financial strain felt by survivors after the incident. Social impact resulted mostly from a narrow victim-blaming mindset and has been addressed to some extent by the active women groups who are putting in their best efforts to reintegrate the survivor into society. The analysis of the data with regard to the impact of rape points to the need for a centre equipped to identify the different dimensions of the traumatic effects and offer holistic support services to survivors and families leading to proper healing, restoration and reintegration into society.

5

Chapter Five MEDIATION AS A COMMUNITY JUSTICE SYSTEM

MEDIATION AS A COMMUNITY JUSTICE SYSTEM

5.1 Mediation as an Option

Mediation is understood as the non-legal process for settling ‘small’ disputes without taking them to the legal enforcement mechanisms i.e. police, court, etc. This implies that mediation is done through negotiations at community level and with the notion of a win-win situation for both parties. But in practice, as identified during the field interviews, documented cases and media review, mediation has been a common phenomenon even for violence and criminal offences including rape. In the case of rape, most community people claim that mediation is the result of weak investigation, weak implementation of law, ineffective and corrupt judiciary system and a way to avoid the arduous legal process. Hence, many people hold the view that mediation is the best way to provide justice to survivors at community level rather than going through the long legal process.

In about 50% of the interviewed cases mediation was attempted or done, but without consulting the rape survivor. The pressure to mediate may come from within the victim’s own family, community, and political party leaders. In cases where the perpetrator is powerful or influential, mediation was even found to be initiated through the involvement of police personnel, paralegal committees, community groups including *Ama Samuhas* (Mother’s Groups) as well as local NGOs.

A possible reasoning for mediation may be that the community sides with the perpetrator as it lacks the survivor’s perspective of the situation. Pressure is then exerted – first on the family and then on the survivor. Mediation attempts to keep the cases out of legal reach and within the communities where the incidents occurred. Mediation could occur in various ways through threats, by giving social punishment, the offer of money by perpetrators, etc. This could occur at various stages ranging from immediately after the occurrence or even after the case has already reached the court.

5.2 Forms of Mediation

The forms of mediation discussed below are based on the reviewed documented cases and interviews.

5.2.1 Mediation through social punishment

Some communities actively mediate the cases by giving nominal social punishment to the perpetrator without ascertaining the condition of the survivor or her wishes. Some examples of this form of mediation are highlighted below:

- After the incident, all the villagers called both the perpetrator and the survivor to one place to discuss. The perpetrator was then made to hold his ears, do 100 *uth-bas* (sit ups) and made to apologize holding the girl's feet. They further decided that on repeating the act, he would be punished and fined. (Case of attempted rape of a 12-year-old)
- The villagers met after the incident and made the perpetrator wear a shoe garland, smeared his face with black and took him around the village. (Case of attempted rape of a 5-year old girl).
- The community decided to punish the perpetrator by making him dig a local school field.
- The *Samaj* held a discussion with both the perpetrator and the survivor, where the brother-in-law (perpetrator) admitted to his mistake and was forgiven.

5.2.2 Mediation within police premises

Surprisingly, whereas the police institution is one of the places where legal procedures should be upheld, during interviews with survivors, it was observed that instead, police officers encouraged mediation of rape cases. The fact that such an illegal procedure is allowed to be

concluded within the Police premises and witnessed by police officers is an indication of how women's rights are marginalised and how sexual crimes are not prioritised in the justice related institutions. Some examples of the cases are highlighted below;

- Mediation was done in the police station with Rs. 60,000. The mediation sum was decided upon after negotiations between my husband and the perpetrator. Since then, I am labelled as a woman of Rs 60,000 in the community. They keep humiliating me by saying 'she will again entice other men to have sexual relations and earn money by claiming that she was raped. (Survivor, Kailali)
- In Lahan, perpetrators consented in writing that they would pay Rs. 1051, but repetition of the crime in the future would result in a fine of Rs. 51,000. This was at the police station. (Source: case documented by WOREC)
- The perpetrator was arrested by the police and released the same day without action. Under the supervision of the inspector and the Young Communist League (YCL), mediation was facilitated by giving the victim Rs. 150,000. (Source: INSEC yearbook 2007)
- Mediation was done by the villagers in the Area Police Office, Birtamod where they had a discussion and decided to set the perpetrator free by giving the victim's side Rs. 11,000. (Source: INSEC yearbook 2007)
- Because the police pressurized the two sides to settle for mediation, no action was taken against the perpetrator.
- The case was mediated in the police station one day after the incident occurred and the perpetrator was arrested.
- The perpetrator was made to ask for forgiveness and no further law proceedings were made thereafter

5.2.3 Mediation in presence of community development practitioners

Evidence shows that representatives of local NGOs, Village Development Committee (VDC) and Paralegal Committee (PC) members also become instruments for mediation. This is done with a perception that a girl's image can be saved through mediation to avoid facing difficulties in getting married because of the incident. This is amply illustrated by the cases below;

- When the police refused to listen to the victim, the Village Development Committee (VDC), political parties and Paralegal Committee members gathered in a public spot. They then made the offender apologize by putting his head on the girl's feet and paying her an amount of Rs. 40,000.
- Mediation was done through *Panchayat* (community meeting) where they made the perpetrator apologize and let him go.
- The leaders in the village gathered during the night of the rape incident. They fixed the amount of Rs. 1.5 lakhs that the perpetrator would have to pay the victim within 35 days. At the end of the 35 days, when he still had not paid the money, he was given an extension of 10 days.
- If the perpetrator is a family member, the incident is in most cases suppressed rather than reported to the police. Even the presence of a support organization is not of much help. In a case where the survivor was supported by an organization, the issue always ends up in a stalemate.

“We came to know and tried to help to get legal justice but the family did not want to bring the case out because the perpetrator was a family member. Because of this intervention, the victim could not get legal justice” (A case shared by CWIN)

“Local NGO and community people tried to settle the case by mediation rather than going in for legal justice but as there were two perpetrators, they could not reach an agreement about who she should get married to. (A survivor’s case in Morang)

5.2.4 Mediation by marriage

Marriage was found to be one of the strongest options to settle a case. Society in general and the family in particular believes that they can save their image by marrying the victim off to the perpetrator. But in most of these cases, it was found that the victim suffers a lot of trauma.

“We have a trend here that we hand over the girl to the perpetrator after an incident of rape. I think this trend is good because there is more social shame if one goes through the legal process. Thus, it is better to just marry off the victim with the perpetrator.” FGD, Dailekh

5.2.5 Mediation after the case reached court

Evidence also shows that some of the mediations have been done even after the cases had already reached the court. The victims/survivors were motivated or put under pressure in many ways resulting either in non-appearance in court, changed statements or dropping of the case altogether. The problem of hostile victims and witnesses cited by legal enforcement officials is undoubtedly aided by mediation. Some illustrations from documented cases include:

- The victim’s family was lured with money resulting in the victim changing her statement so that the prosecution case could not be sustained. The perpetrator went scot free without any legal punishment being imposed on him.

5.3 Is mediation Really a Choice of the Survivors?

In most cases, the survivors are not consulted when mediation is initiated by the family or by the perpetrator's side. The survivor remains on the receiving end and her concerns and feelings are not catered for. Her voice and choice are denied which affirms that mediation is not a choice for survivors.

This form of community justice system merely benefits the perpetrators, families and communities. It is used as a means to generate labour for community work and money; to save a family's prestige, to salvage a community's fame and to maintain relationships (in incest cases).

In cases where compensation involved monetary payments, many survivors and their families complain about not receiving the promised sum. This shows that there is a big loophole in the system where the mediation initiators cannot ensure that the decided amount of money is given within a set time. Many survivors are also burdened by a sense of guilt because they feel that they have given the perpetrator a second chance to repeat the act.

Here are some survivor testimonies attesting to dissatisfaction with the process of mediation:

"They reconciled between themselves. I did not get anything out of it. My husband took all the money."

"I could not get social and legal justice."

"I am not fully satisfied but have attained relative peace."

"Not satisfied but I had to agree to whatever my husband told me. I think he should have been sent to jail and publicly humiliated."

“I am not satisfied. The police drank and had a party. And they made my father pay Rs. 8,000.”

“The villagers said it is better to settle the case so I took the money thinking of her future. I thought why I get cursed by the ‘lower caste’. There was no guarantee of compensation in legal process.”

5.4. Why is Mediation Preferred?

5.4.1 Legal reasons

i) Complex and lengthy legal process

Many people cite lengthy and complicated justice system as the reason to choose mediation. Especially when an incident occurs to a person of a poor family, the chances of their registering or fighting the case are pitted against the immediate financial gains offered by the perpetrator’s side. They are further dissuaded with reasons such as financial hassles, time constraints and social defaming. Compared to the un-guaranteed legal justice, victims thus choose to settle for immediate and assured gratification in the form of mediation.

The victim is also less aware about her rights in these cases. She is further convinced that mediation is the best possible option for her given the circumstances. This situation is abetted by legal enforcement officials such as the police taking the initiative to mediate. When a mechanism that should work for legal justice, itself advocates the ‘alternative’, the survivors and their families are hardly left with any option. There is also the fear of the event becoming public and this is used and manipulated to bargain with and blackmail survivors and family. Thus, instead of getting justice by going through the legal process, the survivors are re-victimized by being defamed and made to suffer.

“If I go to the court everybody will come to know. So instead of getting justice I would be humiliated and questioned unnecessarily.” A Survivor, Dhanusha

“The decision of today’s incident may be so delayed that my daughter could be married and have started a new life by then. I would worry that the verdict of the case would then remind her of the case and affect her new life.” Community women FGD, Dolakha

ii) Lack of legal support and protection for survivor and their family

Even if the survivor and their families refuse the option of mediation, they hardly get the necessary support and protection for going through the legal process. Instead, this process seems to increase their risk to threats and harm. The following statements gathered through interviews with stakeholder and FGD reiterate the same.

“They prefer to go into mediation because they do not have to go through the hassles of a legal process to be easily re-integrated into the society.”

“The cases where relatives are involved are usually mediated. It is difficult for them to go through the legal process because in many cases, they do not receive any support when they go to report their cases.” Maya Lohani, WDO, Kavre

5.4.2 Social reasons

The association of rape with sexuality and marriage is a big social factor leading to mediation. Sexuality is a big issue within the patriarchal structure. Since the women are considered to be violated after mediation, the family usually wants them to be married off with the perpetrator. This is fuelled by the fear that the survivor’s prospects of marriage are forever ruined due to the incident. Thus, one outcome of mediation is to have the perpetrator agree to marry the survivor and this is deemed as punishment enough without any consideration or understanding of the situation of the woman after such a marriage. In a society where the daughter is seen as a burden until she can be married

off, mediation opens an outlet of hope to reduce this burden and thus is preferred by the family. The following were the major points that the respondents cited as to why they prefer mediation:

- Woman as an instrument of saving prestige – culture of silence
- Patriarchal mindset – attack on a woman’s body is normal. Due to the patriarchal mindset in the leaders, attacks on women’s bodies are treated as norm and the outlook that mediation benefits both parties is prevalent.
- Fear of losing property because they think that going through the legal process is costly
- Fear of loss of chastity
- Fear of social stigma because rather than punishing the perpetrators, the women themselves are blamed as the wrongdoers.
- Social leaders sometimes push for mediation so that most of the cases are mediated at community level.
- Lack of attitude and awareness that criminals should be legally punished.

5.5 Justice Denied through Mediation

Some critics do claim that mediation is a viable option as long as the two parties have an equal standing and identical bargaining powers. But in a society where the perpetrator’s side is mostly the stronger side, this logic is inapplicable. The community focuses on mediating criminal cases by giving nominal social punishment to perpetrator and hardly cares for the condition of the affected persons, their necessary support and a dignified life free from stigma.

CASE: *My daughter who could not get justice*

My 23-year-old daughter cannot speak. She was gang raped by three men. She told me of the whole incident in sign language but I could not reveal this in the community because of the

fear that she would be blamed instead. My daughter herself went to the police, told them of the crime using sign language and asked them to arrest the perpetrators. But later the people in the community told us that it is difficult to fight a case and that we should settle for mediation. They stressed that we should take the money from mediation because we might not even get that by going through the legal system. Even the government attorney told us that our possibility of winning the case was low. So rather than fight the case and be left with nothing, I changed my statement and those perpetrators were released from police custody. I told a lie in court because my daughter would at least have some financial support in the future but I neither got the money, nor did my daughter get her justice. Narrated by the mother of a disabled victim

Justice is not only denied to the survivor but also to society when they choose to settle for mediation. If an accused never becomes a criminal in the eyes of the law, his head will always be held high in society. The confidence of the offender increases; having once committed such a crime and getting away without being punished for it. Thus, without the deterrent effect of legal punishment, the chances of repetition of the offence increases.

5.6 Survivors' Reasons for Non-reporting

Many of these women have admitted that they found the courage to speak out only because of the support provided by NGOs or Women Human Rights Defenders. However, on reporting, they usually face negative consequences such as repeated harassment and humiliation at the hands of perpetrators and their allies - society and the authorities who play a crucial role in the justice system. Even after speaking out, the claims of survivors for social justice and reparation are rarely met. Rather, they are re-victimized at every step of the legal process.

“There are very few cases that are determined to get legal justice. When they go to the police, they too encourage them to settle for mediation so that the case is never even registered in court. The cases that do come to court are usually of women who have come out in an act of boldness. The case can weaken ever after registration.” Shanta Sedhai, Private Lawyer and Central Member of Nepal Bar Association

In most of the interviews conducted, the various stakeholders were in mutual agreement that rape cases are rarely reported.

“What we are talking about here are merely tips of an iceberg. These concern the cases where there has been violence that amounted to a degree, were reported and then became public. Many things do not come out of the household because of the social and cultural stigma.” Gauri Pradhan, Member of the National Human Rights Commission

*“There are not many incidents of rape that come to us. There have only been 2-3 incidents that have come since my being here and [the accused] are in custody now. But I have heard of a lot of incidents in the community.”*D.S.P. Rajendra Khadka, Dailekh

Despite wanting justice, many women believe that it is beyond their reach because they have been born and brought up in an environment in which every part of their private and public life is governed by others. Not only does the justice system demand many years of resilience from victims, but also resources beyond their means as the women do not hold the purse-strings in the house. Thus, many stories of rape never see the light of day and the victims are instead pushed into a long journey of darkness and oblivion.

The findings show that the family usually discourages the victim to be open about the incident because of stigma and the issue of chastity. Opening up may mean that the victim is looked down upon along with

her family. Nepali women are told that their sexuality and virginity are precious. Any violation of these, notwithstanding the lack of consent of the victim, results in a constant stigmatization of the woman for she is no longer considered “chaste”.

Upon finally finding the courage to report the incident to the police, the victims face further obstacles. Nepal’s topography itself can become a hindering factor in accessing justice. The headquarters of many of the hilly and mountainous districts’ headquarters may be three or four days walk from the place of occurrence. It is then not uncommon that the evidence that should be preserved with meticulous precision is lost by the time the survivors reach the first legal reporting mechanism. Even after reporting, it is the experience of many a survivor that the police promote reconciliation rather than taking the required steps to get legal justice, which the police claim to be “too complex”. A further problem is the lack of qualified/trained investigators and scientific questioning by the police. In addition the system is not friendly to the affected person, namely, the rape survivor.

The information from most of the interviews illustrates that the medical test done in most districts is not up at par with qualified forensic examination required in such sensitive cases. Assessment and treatment of victim’s problems are usually not included in the mandate of the examiner. Most women do not know about the medical test and the conditions under which it can help prove their case. There is hardly any awareness about what is considered to be the most important evidence in court.

There is also no provision for victim and witness protection, if the woman does push for prosecution. Victims and their families usually receive physical threats of murder, encroachment on property and of tarnishing the family’s reputation. Such threats add to the mental torture of both the victim and the family.

The following statements/testimonies from In-Depth Interviews attest to why most rape cases do not come out or are not registered with the police:

- Did not register the case because nobody would believe and only face ostracism for being transgender
- Her family status is low, the perpetrator was a married man and he threatened her that he would kill himself and her as well.
- Mediation was done, so did not register the case (answer for two cases)
- It was attempted rape so did not go for the legal process
- Police refused to register the case saying why did you want to trap your own father. Only later was the police convinced to register the case.
- The D.S.P refused to register the case the first time
- The police on duty refused to register the case. I had to call the D.I.G.
- The victim had lost consciousness then that the period was full of chaos and confusion.
- Did not go for legal process, as it was felt there will be more tension by going through that process
- Was not aware about the case registration process

Similarly, the following reasons for not reporting cases were shared:

- Fear of the armed group
- The perpetrator was a policeman and internal disciplinary action was taken because the perpetrator was in the police (two cases)
- The incident was taken up by the Maoist party who decided on the perpetrators' punishment in their parallel system of justice – (three cases).
- Mediation was done by the community before the case could be registered with the police (three cases)
- Mediation was done in the police station.

- Police refused to register the case saying the perpetrator was from another district (Dhanusha)
- The police first refused to register the case and later cited lack of evidence.
- The survivor tried to report the incident to the police but they apparently showed no interest.

5.6.1 Reiterated Facts

The following are some of the statements repeated by survivors, community women and, WHRD and other stakeholders relating to rape and accessing justice for survivors.

i) In relation to the rape

- Most cases of rape are hidden inside families and never come out.
- Most cases are mediated in the community.
- Most cases are settled with exchange of money.
- The male leaders of a community are mostly responsible for mediation at community level.
- Many survivors have been intimidated and had to hide their cases because the perpetrator was stronger.

ii) In relation to the police

- Only a few of the cases reach the police.
- The reporting process is complicated and cumbersome.
- They give a lot of trouble to the survivors and their families.
- The police themselves initiate or pressurize for mediation.
- The rape survivor is completely neglected by the system and instead they pay more attention to the perpetrator.

iii) In relation to political parties and leaders

- The political leaders themselves support and protect criminals.
- They abuse power to unduly influence the survivors to settle for mediation.
- They pressurize relevant legal enforcement officials to decide the case in favour of the perpetrator.
- They threaten the survivor's side.

iv) In relation to media

- Most of the cases written about in the media had been reported to the police, showing a major gap of lack of investigative journalism and basing their news largely on secondary sources.
- Media professionals complained about lack of necessary resources and no prioritization of such news related to women.
- Only a few reports have actually documented and revealed the qualitative side to the incidents.
- Only few cases had complete information.
- Many of the reports were found to be contradictory to the rights of the victim/survivor. Their rights had not been properly considered or respected in the process of collecting and reporting the information.
- Most media persons in the districts indicated that although they send reports from the local level, the national dailies give less priority to the issues of women.

5.7 Conclusion

Almost all survivors were not consulted when mediations took place. Hence, justice for survivors is denied at the community level too. Instead, the perpetrators' voices are heard and they are saved from legal prosecution. Only in three cases documented by organizations there was any reference to the issue of satisfaction of the survivors with the mediation done for rape. All evidence indicates no satisfaction as the survivors were not consulted as to their wishes. Mediation has thus been a tool to institutionalize violence and block women's access to justice.

6

Chapter Six EXISTING RESPONSE MECHANISMS: CONSTRAINTS AND CHALLENGES

EXISTING RESPONSE MECHANISMS: CONSTRAINTS AND CHALLENGES

“The State gives the criminal his food, a roof and training and the taxes paid by the victim/survivors are also associated with that. But victims of crime are neither given medication nor a roof that does not leak; neither food to eat when they become hungry nor clothes to cover themselves with. Should the State not take responsibility for these?” Dr. Shankar Shrestha, Victimologist (Ex. Government Judge)

6.1 Introduction

This section describes the existing provisions, programmes and formal and informal response mechanisms at different levels that support recovery, rehabilitation, reintegration and the pursuit of justice. These response mechanisms are divided into at three levels for the purposes of a detailed analysis: family, community and government. This section also highlights the gaps, constraints and challenges of these existing response mechanisms as perceived by the survivors. This mapping exercise is the basis of the recommendations provided at the end of the report.

6.2 Family Level

The family is the first unit to respond to the incident and provide necessary support to survivors. Thus the family’s response becomes crucial in determining the path of restoration and justice for survivors and whether they can lead a normal life.

On interviewing survivors and analyzing the general trend both in the media and documented cases, two distinctly different paths of family responses were observed. In some cases, the family responds positively, reports the case to the police, files an FIR on behalf of (mostly minor or disabled) survivors, refuses to settle for mediation and provides

necessary support and protection to the survivor. In some cases the family seeks assistance of groups/networks and NGOs for getting immediate support: psycho-social, economic and legal support for accessing justice.

However, in many families the first instinct is to hide the case. The awareness of the lack of personal security of rural women as they go about their daily chores such as cutting grass, collecting firewood and working in the fields, contributes to general restrictions on women's mobility. Restricting a rape survivor's mobility is a step in the process of trying to hide the incident, and resume the normal rhythm of family life, even at the cost of tremendous suffering to the survivor. Many families also settle for mediation but without consulting the survivor. In several districts, yet another trend of marrying the survivor with the perpetrator is prevalent, more so in the *Terai* region.

“First I did not inform anyone at home because I was scared of the family reaction. After three-four months, when my menstrual cycle stopped, family members knew about the incident and we went to the police station. Police caught the perpetrator and they got me married with him and I went to his home. The next day he ran away from home and my father found another boy for me and now I am with him”. – A survivor from Udayapur

In other cases, the survivors are ostracized from the family and sometimes expelled from their homes, increasing their physical and emotional vulnerability.

After seeing it himself, the husband pushed me down from a tree resulting in a broken arm and other serious injuries. I went to my brother's home where I was verbally abused and they went as far as to plot a conspiracy to kill me. I then went to my sister where I was spit upon and turned away. – A Survivor from Dailekh

Challenges

The family as a unit has many constraints and challenges in terms of dealing with survivors. The impact faced by family members range from physical, financial, psychological/mental and to a great extent social. The family is usually under extreme pressure to mediate cases in order to maintain social order. The culture of impunity translates into their receiving constant threats from the perpetrator of murder, harm to family members and to defame the family. The family too becomes the target of social gossip and exclusion. The three factors of threat, fear of social boycott and stigma largely mould the family's behaviour towards victim/survivors' needs.

“They say if you go through the legal process, you will just suffer a lot. Whatever little money you have now will be finished and your prestige in the village will be tarnished. Instead they tell us that we can mediate the case among us so that we can reach the best solution.” Community woman in Focus Group Discussion, Dolakha district

Yet another common trend is blaming survivors for the incident. People, and sometimes family members, may hint that the dress worn or the behaviour of the survivor may have “provoked” the perpetrator into raping them. This assumption is then followed by questioning or defaming the survivor, instead of providing support and healing for the pain and trauma.

“Nobody believed me, instead they called me a characterless lady for saying something grave against own father-in-law. I contacted the judge directly by myself”. – Survivor from Dailekh

The decisive factor disadvantageous to women is the issue of chastity. Nepali culture values virginity above all else in unmarried women. A woman is ‘given away’ by the father to the husband during the wedding in a ritual named *Kanyadan*, symbolic of being treated as a man's property, even after marriage. In a nation so mired in poverty, where

objectification of women is customary, it is not so incomprehensible that the family agrees not to report the case to the police when perpetrators offer a financial motivation.

The family responses in most cases have a negative impact on the survivor because the mechanisms are judgmental, restrictive, controlling and humiliating. The roots of these attitudes hinge on the issue of sexuality in Nepali culture.

6.3 Community Level

There are various response mechanisms at the community level. For instance, women's groups have been mobilized in different communities. Similarly, paralegal committees have been supported by the UN and international organizations and promoted by the government and some national organizations to mediate domestic violence cases in the community setting. The Women Human Rights (Defenders) Network's has been set up with the specific agenda of dealing with VAW cases. Numerous Non-Governmental Organizations are working in various parts of the country and some of these also address violence against women.

Mediation is generally encouraged in the community (even in rape cases) and carried out through various community mechanisms. Mediation occurs through the involvement of community leaders, political leaders, and community groups. Many survivors do not actually prefer mediation but are compelled to settle for it because of the fear of loss of chastity, threats from perpetrator, lengthy legal procedures, financial insecurity and pressure from family. The process of mapping pointed to the absence of government and State mechanisms which could work in co-ordination with interventions at the community level.

6.3.1 Organized women's groups/networks/federations

In many districts, women groups have been formed in communities for various programmes. Mostly they are facilitated by NGOs and

supported by funding agencies. Some groups are federal in structure and work autonomously to specifically address violence against women. These organized groups/networks and federations working against VAW play a pro-active role within the community in both punishing the perpetrator through the legal process, and in empowering and helping the survivors of rape and their families in accessing justice. One of their primary roles is to inform the police and to catch and hand over perpetrators to the police. Thus, the various women's groups in the community try to help the survivor in various ways and are action-oriented; resulting in a significant reduction in the number of cases.

Additionally, in communities where women's groups/federations are more organized and active, very few rape incidents were found. The federation/networks have been successful in bringing the perpetrators into the legal process and ensuring punishment. The adverse impact of rape on survivors who were members of or had support of such groups was significant as compared to those who lacked such support.

“Since we are a Federation representing various women's groups, the incidents of violence against women has decreased in our communities. Within five years, two rape incidents occurred in this VDC and we have been able to punish the perpetrator; whereas there used be several cases before the formation of groups and federation”. Women Federation, Aamgachhi, Morang

The survivors of these two cases were more comfortable in sharing their stories and were determined to live normally in the community. This amply illustrates how the organized community structure is effective for addressing VAW in three ways – preventing VAW, protecting the person affected by the violence and helping the survivors to access justice.

Challenges

Although the organized groups are motivated and efficient in addressing VAW, they have a presence in only a few districts. Moreover, these organized groups too face several challenges. Groups like the aforementioned federation in Morang and other active *Ama Samuhas* in some other districts are under constant political pressure to mediate and/or withdraw the cases. They also have to face threats and receive social blame from perpetrators and their allies. The vulnerability to threat, physical assault and political pressure are higher for the more organized and active group/networks compared to the less active groups.

As all women groups are not equally strong and some may lack understanding of VAW issues, they are sometimes unable to resist the pressures and end up going for mediation.

“The local women’s group brought me to VDC and got me married with the perpetrator on the suggestion of community people.” - A case documented by an organization

6.3.2 Paralegal committee

UNICEF initially created the community-based Village Paralegal Committee Programme in 1999 as an anti-trafficking effort. Over the years, the village committees have expanded to become community networks that provide women a social outlet as well as monetary loans at a discounted rate of interest. The committees typically comprise 13 to 15 women volunteers supported by lawyers and social activists, who help the women if it becomes necessary to take legal action.¹

The primary role of a paralegal committee is to mediate cases of domestic violence and family/community disputes, such as polygamy, beating, restriction of mobility, untouchability (even inside the home), discrimination, domestic dispute among daughters- and mothers-in-

1 http://www.unicef.org/infobycountry/nepal_40459.html

law, etc. Their role sometimes also extends to help register cases, catch the perpetrators and hand them over to the police. They also provide some support to the survivors, such as legal counselling, registering the case and facilitating the process. Although they have a counselling role, it is rare to find any trained/qualified professional within the group/committee which is primarily composed of local women. However, they are performing as women human rights defenders in the community.

“After the formation of the paralegal committee, small cases have not gone to the police station. Its work is to mediate such small cases. We settle small domestic disputes.” Paralegal Committee, Kailali

This programme, supported basically by UN, international and some national organization agencies, has received a lot of government attention and has become one of its primary agendas. The government has slowly been taking the ownership of the programme and has plans to expand it in all 75 districts. Paralegal committees were formed and are now being mobilized in many districts in order to assist the reporting mechanisms by acting as linkages between survivor/family and supporting organizations and government offices. Most of the committees are newly formed i.e. they have been working since one year. But some members in these district committees are experienced and have been previously trained by other projects of UN supported non-governmental agencies.

Challenges

Paralegal committees do have a more established space due to their semi-legally recognized status in the community. However, many women, especially in traditional societies, who are active members in paralegal committees are jeered at by the community for being over-smart and are often blamed as case-spoilers by those within legal mechanisms. They are also targeted for threats by perpetrators who may either be unhappy or are trying to exercise undue influence. The committee members may also face non-cooperation from family and the community.

“We are not supported by our family in our work. They say that you have lots of house work why are you going outside. We have to work in fear at every moment.” Member of Paralegal Committee, Morang

“They threaten us constantly. Nobody listens to us because we are in a woman’s group. When we go to mediate disputes, they say the prostitutes have come. When we tell these things to our husbands, they ask us why we even have to do this work.” Member of Paralegal Committee, Malakheti

“A woman was scolded by her drunken husband when she gave birth to her fourth daughter. When I went there on behalf of Ama Samuha and Paralegal Committee and tried to counsel him, he instead shouted back that I should not talk unless if I could come and give him a son. When I told him that [the determination of gender] was of his cause, he actually tried to attack me.” Paralegal Committee Member and community health volunteer

“There were forms for mediation then. The police and VDC would also refer cases to us. It is no longer that organized. There are no records of incidents. It is much more difficult to work now without the co-ordination with the VDC and the police. The cases are now mediated by people of the relevant party and we are not even informed.” Paralegal Committee Member, Kailali

Paralegal committees sometimes become instruments of mediation because of the political and financial influence exercised by the perpetrators. Due to the common understanding that paralegal committee’s main role is to mediate, there is pressure from all sides to settle rape cases the same way.

“Although we are aware that rape cases cannot be mediated, the pressure from every corner of the community including political party officials and with the consent of the survivor’s family, we are compelled to mediate the rape case”.

Chairperson-Paralegal Committee, Udayapur

The mediation initiated by Paralegal Committees raises a vital issue: has the mediation been helpful in addressing domestic violence, sexual and other forms of violence against women or has it only reinforced the stereotypical role of women and encouraged the violent role of men?. This question becomes especially relevant in the absence of a proper mechanism for the protection and social security of women. During discussions, many examples emerged where through mediation, the voices of women against violence had been suppressed (reflected in statements like ‘the mother has to tolerate’) and women’s traditional image of accepting violence and letting men go without any punishment had been reinforced.

Though paralegal committees in most districts are aware that criminal cases like rape are not supposed to be mediated, but they sometimes tend to do it under pressure from the perpetrator’s family and their allies. The main focus of these mediations is compensation rather than punishment. As a negative outcome, the paralegal committee could simply become a vehicle for reinforcing and institutionalizing the violence in the background of a patriarchal mindset and behaviour (illustrated by testimonies about the role of PLC) by normalizing the violence against women within the private sphere. This phenomenon calls for further study.

6.3.3 Women Human Rights Defenders (WHRD)

Although the United Nations General Assembly passed a Declaration on Human Rights Defenders in 1998 recognizing their work in preserving and promoting human rights, the declaration did not have specific provisions regarding women who face added risk and danger. The realizations of the need for unity among the defenders of women’s rights led to the launch of a global movement in 2004.

The WHRD network in Nepal was informally established in 2004 itself. Though these defenders had been working within their own small networks and groups before, this network brought them under the same umbrella and helped to build their capacity and organize themselves into a platform to work for women's rights. This network has now been extended to 72 districts. So far, 2674 WHRD are affiliated to this network (WOREC, 2009).

The WHRD network has been a strong community mechanism to address violence against women. They are immediate response mechanisms that take up cases, proactively, thus helping the survivors to access justice. The WHRD network engages in various activities so as to become an organized force to work for justice for the survivors of various human rights violations of women. The network consists of women from diverse backgrounds and professions; all united with the motto "Whose issue, their leadership".

6.3.3.1 Role in addressing women's human rights violations

a. Awareness raising: They make women aware about their rights by holding workshops/discussions and trainings at the local level, thus taking the first step to empower women. In each district where the WHRD network is present, they advocate and work for women's rights albeit in different ways.

b. Responding to cases: On first getting any information about a case either directly from a survivor or through the phone, WHRDs go on a fact-finding mission. After the necessary immediate relief efforts, they hold a discussion within their network to find out the views of the survivor regarding the appropriate form of justice. Their help can manifest itself in various forms. WHRD network supports the survivor in every possible way from filing an FIR with the police to, if required, or offering shelter in their own houses.

c. Advocating for justice to the survivors: WHRDs co-ordinate with various organizations to raise voices for the survivors, and to register the case with the police. In various cases in the past, the WHRD have actively engaged in pressurizing concerned stakeholders. The network utilizes various channels while advocating for justice for survivors. Especially in cases where the survivor may not be getting justice, the network holds peaceful demonstrations to bring the case to the attention of relevant legal enforcement authorities.

Challenges

Society and its blame game further inhibit the work of the WHRD. Even in a case of a nine-year-old survivor, society still blames her saying that she is raising the case just to get money from the perpetrator. This creates a guilt trap into which the survivors fall, so that their cases hardly ever come out in the open. Despite being a unified force, not all WHRDs have an equal understanding of women's issues. At times there is a divide amongst themselves over specific cases. This divide is further deepened by opposing political loyalty.

Incidents of violence against women are usually dismissed as petty cases by society and different stakeholders. In conclusion, the varying levels of understanding within the WHRDs, and in the various strata in society, result in the complete devaluation of the work done by WHRDs network, thus creating a chain effect of physical, mental and psychological threats.

a) Level of understanding

Women in this society usually do not have the same opportunities as men to learn and grow. Thus, the level of self-confidence in women is really low which inhibits them from moving ahead with their cases. This same reason combined with the societal understanding that a person is pure if he can pay monetary compensation is responsible for the survivor's willingness to settle for monetary mediation. Even the cases that the WHRDs painstakingly take to the police station

are sometimes mediated without their knowledge and it is the police officers that inform and deride them for their supposed ignorance.

“We have lost cases because we were not fully aware of the procedures to collect evidence. So, [we] women should be trained on this aspect.” A WHRD, Kavre

b) Non-cooperation

The WHRD network is an emerging force to challenge existing structures that discriminate against women, exploit them and violate their human rights. The presence of WHRDs makes the power holders feel threatened and challenged and they seek ways in which to undermine the network. As a result, WHRD have to face non-cooperation from both the State and the society.

i) By the state and its various actors

In the absence of proper identity and the lack of security mechanisms, the WHRDs struggle to navigate the various channels of justice on behalf of the survivors. Although the State says that men and women are both equal, WHRDs feel that the access of women to government and legal structures is very limited.

The experience of WHRDs has been that contrary to the legal duty assigned, the police usually speak on behalf of the perpetrator. The police are usually disrespectful and ignore WHRDs. If the WHRD gives them information to catch a perpetrator, the police at times says that it is difficult for them to go. Instead, they suggest that the WHRDs themselves go and catch the perpetrator. In a similar vein, the lawyers and judges mistreat the WHRDs saying that they unnecessarily intervene in cases.

“This is a case found by the police patrol in a public place three years ago. There were some monetary transactions and the case was registered saying there was consent involved and

that the victim was 17 years old. When the WHRD network here [Baglung] tried to raise the case, we had to undergo various difficulties. This case involved a girl who was working in a local hotel. It was also helped by NHRC, Pokhara and the local branch of Advocacy Forum but the writ given by them were also ignored. The victim had been staying with me. The DSP refused to register the case and was violent towards me. The FIR was only taken when it was written by the Women Development Officer on behalf of Child Welfare. But the victim was not consulted when they did this. Because of all the confusion, the case could only be registered in 20 days and so no evidence remained. A doctor in Kathmandu had tested the victim and found that she had completed 13 years but the truth has still not been established. The DSP was made to apologize after a delegation of about 50-60 people went to the CDO to complain. But he was later promoted. We were not afraid because we were working for justice.” Gyanu Thapa, WHRD Vice-president, Baglung

In the present societal framework, a woman would hardly come out in the public domain and allege rape, unless it was true. However, the court still does not consider only the survivor’s words as proof. A medical report has much more weight in the legal system and this can sometimes work against the WHRD because of topography and other factors.

“The survivor’s words themselves hardly have any weight in the legal system which runs behind proofs. The proofs lay in the hands of other people.” WHRD in Udayapur

ii) By the society

In the present patriarchal structure, society usually characterizes WHRDs as ‘characterless women,’ ‘bitches’ and ‘prostitutes’ because of the nature of their work. They are defamed even for educating women about menstruation and reproductive health. Families sometimes follow the lead of society and expel WHRDs from their own homes.

Even if they have not been expelled, many of their own families have turned against them resulting in much psychological tension.

Since the perpetrators are far more powerful, the WHRDs are constantly under fear that they may be raped. Besides directly threatening them, the offenders also make it a point to use their husbands by telling them things and turning them against their wives.

Most WHRDs with children face additional problems. Many of them are not financially sound but still engage in this voluntary network because they feel the desire to support others who are in difficult circumstances. They are then blamed by their family members for ignoring important household work and leaving the house unattended. Even their husbands question the work that they do, saying it has an indirect impact and is a danger even to themselves.

“Where are we supposed to keep the victims? Women with such problems are not even allowed to stay in hotels. We take them home but the villagers start to gossip that we have brought such a woman home.” WHRD Darchula talking about the lack of safe houses

c) Financial constraints

The WHRDs network consists of volunteers across the nation. Since the source of funding for WHRDs is not consistent, they depend on various governmental and non-governmental channels for resources. Many a time, due to lack of finances, the WHRDs contribute personally to help the survivors. The WHRDs in almost all districts said that this economic dependence has hindered their work. Since none of the WHRDs get paid for their work they, are subjected to family frustrations due to their dependence on other members of the family. Lack of money is most acutely felt when faced with financially and politically powerful offenders.

“The perpetrator is usually financially powerful, which is why everyone including the legal mechanisms and the Home Ministry is behind him. The perpetrator has enough money to bribe the doctor to alter the medical report and to change all evidence in his favour. In many cases, we have been affected by the financial factor. Firstly, the case itself comes to us late. In many situations, the rape occurs in a remote part of Kailali but it takes the survivor three days just to come to Dhangadi for medical checkup. In that case, the doctor pronounces that nothing has happened. We do not have money to reach that place on time. So how do you expect the victim to get justice?”
WHRD, Kailali

d) Physical threats and lack of security

The greatest concern of WHRDs across Nepal, while fighting for the rights of survivors of rape and other human right violations, is their own security. WHRDs have had to face various threats from both political and non-political actors and are sometimes even physically battered. A worker of Aawaz (an NGO) was threatened with murder because they were engaged in advocacy for the survivor in a rape case. Similarly, when the WHRDs try to help victims of polygamy in their institutional capacity, villagers threatened to cut off their heads. Knowing that the survivor is supported by the WHRDs network, the perpetrator might turn on them and threaten to kill them, once he gets out of jail. Despite many such threats in various cases, there is no legal mechanism yet in place to address the security concerns of the WHRDs.

“I have even received a death threat because I chose to speak. I have been followed by a motorcycle carrying guns while returning from a case but it is God’s grace that we have survived so far.” Maya Wade, Chairperson, WHRD network Kavre

The efforts of WHRDs have been undermined by various factions of society. Cases of domestic violence and incestuous rape are especially

tricky since the family feels that they are intruding in a private sphere. In one case, the empowered women in a community in Kailali who started a monthly newspaper on domestic violence had to retreat because of continual threats. WHRDs are sometimes beaten in public spaces. But the impunity is such that the WHRDs are instead asked for money for having been beaten by the very perpetrators of the crime. Instances like the murder of Januka Nepali working as a WHRD, has only aggravated their anxiety.²

In cases where the survivors have been provided safe shelter by the WHRDs, the perpetrator's side has gone to the house and threatened them. This has led to a deterioration of many of the family connections over the years and some WHRDs have had to leave their homes and migrate elsewhere. The families of the WHRDs are also brought into the equation when they receive threats. They are frequently warned that their days are over and that a plot has been hatched to kill them. In a State where even a child sleeping in a cot is prone to such heinous crimes as rape, it is natural for the WHRD to feel insecure. There has been virtually no effort made to minimize the many dangers and WHRDs are forced to tread risky paths without any guarantees of safety.

e) Political threats

Many WHRDs receive threats from people with political affiliation when trying to secure justice for rape survivors. There is usually non-co-operation from political leaders who characterize them as destroyers of the social fabric since WHRD usually refuse to settle for mediation. Political party leaders deploy various means to threaten and pressurize WHRDs. These range from surrounding the house, repeatedly harassing them and threatening to enact rules to punish them. Such is the culture of political criminalization that to suppress

2 Januka was a WHRD who worked as a campaigner in Feminist Dalit organization (FEDO) in Udaypur district. She was murdered for speaking against sexual abuse and labour exploitation of a young girl in the same district where she worked.

the case, the political leaders sometimes apologize on behalf of the perpetrators, saying that the act will not be repeated. In return, they offer the WHRDs favours in the future.

Even if the case does reach the police station, these leaders attempt to further suppress the case. A political leader in Dailekh district even claimed that he would dissolve Awaaz (an NGO) and Security Pressure Group because they were “bad influences” on other women. The need for political awareness among these leaders was pointed out as a necessity by WHRDs across the country. Many prominent people in the district whose relatives may be involved in violence against women allege that the WHRDs are raising the issue because of political reasons. This delays proceedings and despite efforts by the concerned stakeholders does not yield the desired outcome.

f) Psychological and mental threats

If an NGO takes up a case, people usually look down upon both the survivor and the WHRDs saying that they sold their pain for dollars. The police administration too looks at them differently, saying that their sole intention is to find small issues to destroy people’s homes. Since the WHRDs have to constantly frequent the police station for different cases, a policeman in Udayapur district is known to have insisted on an attendance register, both mocking and dismissing their presence in the station. Society usually labels them as the “destroyers of homes” sometimes going to the extreme of smearing their faces with black paint and calling them *Bhalu* (bears, - slang for prostitutes).

“These are loose women who only carry other loose women with them”. WHRD Dailekh

Families become instruments with which WHRDs are mentally and psychologically tortured. They are verbally abused at home for coming back late and jeered at by calling them “leader”. Even the neighbours mock them by asking if they do not have any household work.

6.3.3.2 Coping strategies and solutions

The WHRD network has various mechanisms to cope with the aforementioned difficulties and challenges. Firstly, if any of the defenders is faced with a challenge, they share it with other members who try to help. WHRDs claim that the sharing itself lessens the burden and becomes a source of continued encouragement. The assistance received from other human rights activists or organizations and the occasional co-operation from the Police and District Administration also helps in the situation. Some WHRD felt that the State is slowly becoming positive towards cases raised by the network whereas others felt that the State needs to be more responsive.

On receiving continual threats, the WHRDs have sometimes gone to another district or to Kathmandu in search of protection. Though the threats may continue, some WHRDs have not stopped their work. They have simply chosen to ignore such threats and continue on the path for justice for the survivors. In some districts, WHRDs face more problems and pressure from every quarter while dealing with cases of domestic violence or polygamy, than they do in cases of rape. Since rape is considered an offence and has to be registered as a criminal case, the police have to co-operate with the WHRDs.

6.3.3.3 WHRDs capacity needs

The main demands of the WHRDs were recognition, overall support and co-ordination from the Nepali government. WHRDs in almost all districts spoke about the need for a legal mechanism for their security and protection, better access to justice for others and themselves. Many WHRDs from the network felt that their role would be strengthened if there was at least legal recognition for their work. Another suggestion made was that the State take responsibility for their protection and provide them with life insurance.

“Similar to the responsibilities assigned to the paralegal committee, we should also be given the legal right to speak about and work on cases of women human right violations.”

WHRD Kavre

Though the WHRD network is efficient in terms of providing a platform to share and benefit, they still feel the need for capacity building through trainings and information sessions on the law. It was also felt that the cases dealt with need to be better documented. In their opinion, more women in policy-making positions combined with greater sensitization of police personnel would contribute substantially in curbing cases of women human rights violations.

One of the recurring problems for all WHRDs was unnecessary political intervention and the need was expressed to find ways to lessen it. A greater understanding from the political leaders about such cases and their mentoring lower level activists would help in better combating VAW. Internally, the WHRDs saw the importance of unity and not being divided along political lines. By doing so, they could significantly strengthen the survivor’s side.

Since the network is self-operated and voluntary, they have had to bear the economic brunt of helping survivors of various violations, conducting trainings and workshops and running the day-to-day activities of the network. The reliance on other organizations for support gives the arrangement a temporary air. Thus, for a network that is ever-expanding its reach from district to VDC level, the emphasis by WHRDs was on financial support from the State so that they become more capable of fighting violence against women.

“These cases need to go through the Women Development Office. It is an organization that was created to work for women but they have not done anything yet. They just submit a report of the work we do. Even the District Administration Office has not done its work.” WHRD Dailekh

The WHRDs felt the need for drafting of laws and policies which actually empower women along with amendments on the present ones. It was also felt that incidents of VAW need to go through the Women Development Office for more effective handling.

6.3.3.4 Conclusion

The WHRDs network could arguably be the best mechanism at the community level to address violence against women but they are facing various difficulties, violence and challenges while defending women's rights in general and more so in rape cases. Being women, in the existing societal structure and environment, they face more challenges as compared with male human right defenders. The role of WHRDs in addressing VAW needs to be recognized and adequate protection provided to them by the State.

6.4 NGOs/Civil Society

The Non-Governmental Organizations are active agents of change in society. They conduct various advocacy activities and raise awareness on several issues including discriminatory practices against women such as witchcraft, veil system, dowry etc. They mobilize resources to document human rights violations. Their other primary role as watchdogs is to maintain constant vigilance of government activities and alert its various agencies.

In cases of violence against women and specifically rape, NGOs provide various kinds of support to survivors and their families. These include legal support in filing cases and pressurizing the authorities, safe houses, medical treatment and counselling services, financial help, skill-based trainings and income generating activities. They also provide other help like education for the survivors and their children. Overall, survivors have found NGOs to be more accessible than government mechanisms designated to do the same tasks. Though there is no consistency among the organizations for documenting and providing support to the rape survivors, Table 9 below presents the

number of cases for three years from 2007 to 2009 where care and/or support was provided by organizations. Except PHECT and LACC, all the organizations listed below provide safe houses and shelters with embedded services of counselling, legal aid, economic (in some cases) and other services to the survivors.

Table 9: Number of rape cases documented and or supported by different organizations

Organization	Number of cases year-wise				Remarks/source of data
	2007	2008	2009	Total	
WOREC Nepal	43	79	160	282	WOREC Documentation (these all are documented cases but all may not have received direct support)
PHECT	87	43	72	202	Documentation of identified cases during screening
CWISH	27	22	17	66	CWISH documentation
Maiti Nepal	22	23	42	87	Cases handled by legal section of Maiti Nepal
LACC Nepal	35	15	24	74	LACC documentation Women's Rights Helpline
AAWAAJ	14	18	20	52	AAWAJ Documentation
CWIN	5	13	18	36	CWIN Child Helpline
SAATHI	11	15	5	31	Cases dealt by and sheltered at SAATHI
ABC Nepal	8	10	13	31	ABC documentation
Shakti Samuha	-	-	6	6	Shakti Samuha Documentation
Total	252	238	377	867	For all Organizations. Note ¹

Challenges/Constraints

There are various problems needing redress within and among NGOs. Though there are several hundreds of NGOs working in different locations across the country, many of them have less or zero coverage

in remote districts like Darchula. They also lack necessary resources, structure, skills and capacity to fully support the survivors.

One of the greatest challenges to NGOs in recent times has been threats from perpetrators and political parties. It is not only the survivors or their families that have had to bear the brunt of the growing criminalization of politics and the consequent impunity. One of the NGO workers related that the taking up of the case of a domestic worker who had been repeatedly raped by the homeowner, led to a protest by more than 100 persons from the perpetrator's side at the office and they had to be removed using police force.

Conflict and lack of co-ordination between NGOs is another problem that results in re-victimisation of the survivors.

“The fight among NGOs for credit can sometimes obstruct justice for survivors.”-Meera Dhungana, NGO Lawyer, FWLD

An extension of this problem is also seen in the lack of healthy co-operation between government agencies and NGOs resulting in overlaps that need to be stream-lined.

6.5 Government Level

After becoming a republic, the government has made some positive steps to address violence against women. Although it has not been implemented, the first address of the Prime Minister on January 25, 2009 explicitly mentioned establishing of centres to tackle violence against women in every Village Development Committee (VDC). Similarly, on November 25th, 2009, the Prime Minister declared the national campaign against gender-based violence (GBV) and constituted an intra-ministerial coordination committee. He launched the National Plan of Action for observing 2010 as the year against

gender-based violence.

The government has set up various other mechanisms to execute its constitutional and treaty obligations towards women. There are various institutional setups within the government structures that address and deal with issues of violence against women, and specifically, sexual violence and rape. These include the Ministry for Women, Children and Social Welfare, Women Development Office and the Women and Children Service Centre. Beside these institutional setups, there are national human rights institutions such as National Human Rights Commission and National Women's Commission that have been designated the role of monitoring, investigating and intervening in human rights violations.

6.5.1 Gender Based Violence (GBV) Unit at office of Prime Minister

The Prime Minister's Office launched the National Plan of Action declaring 2010 as the Year Against Gender-Based Violence primarily focusing on prosecution, protection, prevention and response to GBV. It also highlighted the need of a special commission to investigate violence against women. A hotline service (1111) has been started within the unit to operate as a complaint hearing mechanism. The Prime Minister's Office (PMO) is also in the process of establishing a national database on violence against women. A steering committee consisting of inter-ministerial representatives has been formed. It monitors duplication and overlap and ensures utilization of resources and reviews the implementation of earlier decisions. It has also established short-term support service centres in 15 districts for survivors of gender-based violence and is planning to expand to other districts.

Challenges

Despite the progress, implementation challenges are hampering the success. The PMO should come up with a plan to make its initial steps against gender-based violence more sustainable. The hotline service

established in the PMO has yet to receive any rape cases showing the need for more publicity and immediate response thus making it more accessible to victims/survivors. The short-term service centres in the 15 districts are ill-equipped to provide holistic support, especially for victims of such heinous crimes as rape. The need of the hour is a more long-term service centre incorporating the best practices from the NGOs and other countries and learning from the operation of the present short-term service centres.

“The PMO gave a statement that if any incident occurs, there is a mechanism to directly record complaints. What happens the day after it is recorded? What is the priority given to the case the day after it is recorded? And why are no cases recorded there despite so many cases occurring all over the country? How many prompt actions are taken by the unit in the investigation and justice-seeking process? It is important for these things to come forward too. Sometimes, political profile does have importance but if it is not converted into a system and is not process-oriented, it is of no use.” A high level government stakeholder on the GBV Unit

6.5.2 Ministry for Women, Children and Social Welfare (MOWCSW)

Ministry of Women and Social Welfare was established in September 1995 immediately after the Beijing Conference. The ministry was renamed the Ministry of Women, Children and Social Welfare (MOWCSW) in October 2000. MOWCSW is a focal ministry for the policy, planning, programming of overall development and coordination of all activities related to women, children and social welfare including senior citizens, orphans, helpless women, disabled and handicapped people.

MOWCSW also has a Department of Women Development and Women Development Offices in 75 districts with 748 staff. MOWCSW has outreach for development activities at district level through Women

Development offices and District Child Welfare Committees. It is involved in the inter-ministerial co-ordination concerning programs for women. Thus, The Ministry for Women, Children and Social Welfare (MOWCSW) is the focal ministry that formulates policy and oversees the implementation of programmes for women and children.

Presently, the MOWCSW is establishing a fund and acting on its vision of support centres based on the Domestic Violence Act. There is also a regulation that will bring all national and international funding to one comprehensive fund from where it can be spent. Also on the anvil is a legislation to tackle sexual violence at the workplace.

Challenges

Despite being the focal ministry, there is no specific programme for addressing violence against women (VAW). They have funds under 34 different heads and it remains a challenge to comprehensively take matters forward, while guarding against overlaps. The establishment of the GBV unit in the PMO is a first step but the challenge to MoWCSW would be to find a long-term space for the programme. Its ground-level presence needs to be enhanced through the WDO which cannot limit itself only to economic empowerment programmes.

6.5.3 Women Development Office (WDO)

The Women Development Office, which was established in 2038 B.S. (1981 AD), can be considered the focal government mechanism for women at district level. The office which is in-charge of Women Development Offices in all 75 districts are directly responsible for the monthly, quarterly, bi-annual and annual reporting to MOWCSW. This mechanism mainly conducts economic empowerment programmes for women. It works directly with community women groups supporting ventures such as co-operatives and providing income-generating trainings. WDOs were only recently given the role of conducting training and orienting community people to Gender Based Violence (GBV). The short-term support service centres are run under the

supervision and co-ordination of WDO. They have also been assigned the role of expanding the Paralegal Committees at the VDC level. The provision of an emergency fund under MOWCSW has been approved by the cabinet and is likely to be executed through the WDO in the near future.

Challenges

The media review revealed that none of the cases were reported to the Women Development Office. The non-reporting of cases to the WDO is cause for alarm as it is the district level government organization that is designated to work for women. The fact of non-reporting is substantiated by cases documented by organizations which also show that information about only a few cases reached the WDOs. Though primarily a government mechanism for women, their responsibilities now include people with disabilities and children. This has stretched both the resources and the capacity of the offices. They also lack both human and financial resources.

“There are cases that come to us but since the temporary support centre has only recently been established, there is provision to give shelter to a survivor of VAW only for 16 days. Where do we send the survivor after that?” - Maya Lohani, Women Development Officer, Kavre

They are yet to be given a mandate to execute some of the functions of its parent mechanism (MoWCSW) at district level. Many survivors of rape choose to either approach the police directly or go through other mechanisms to get support and secure justice. Therefore, only a very few rape cases in the districts reach the WDO. These few survivors too cannot be holistically supported as per their needs due to lack of support structures within the WDO.

“We do not work on the issues of sexual violence such as rape though we have heard of it. WDO office only works directly with its organizations on other issues and not GBV. We only

refer cases of rape if any woman comes to seek help. We write a referral letter to various organizations like ABC, Women's Cell, WOREC Nepal. We try to provide counselling when we can. We know about the PMO's GBV year 2010 and a district level GBV committee has been formed of which the office of the WDO is a member too. There is a work plan too but we do not know about HOTLINE service.” Manju Lohani, Supervisor of Women Development Office

The above testimony highlights the lack of awareness even within the government about official initiatives that directly involve the WDO in addressing violence against women. Their understanding has been primarily shaped by their initial role of being the agents of economic empowerment. The interviews highlight the difference in competence amongst WDOs. Thus, in some districts WDOs have been active in addressing VAW even when their mandate was narrower than at present. The WDOs themselves referred to the problem of the current structure of the office where the only responsible post is the Women Development Officer. They went on to cite the distinct need for legal and societal structure officers to complete the multidimensional roles assigned to the WDO.

6.5.4 Village Development Committee

The Village Development Committee consists of elected local (decentralized) government representatives. Their roles can be many and their strategic position in the community enhances their potential to address many issues. A part of the budget provided to the VDC has been specifically allocated to women's issues. There is also an emergency relief fund in 35 districts that can be utilized to help women and children. The VDC also provides training for women to raise awareness about their rights. Though they do not work directly for justice for the victims, they co-ordinate with related mechanisms and provide necessary encouragement. Though in some districts, the VDC has played an active role in helping the survivors by referring them to the police or by providing needed legal help, this is not common or systematic.

Challenges

The absence of an elected body at the local level has meant that the work of the whole Committee has to be undertaken by the VDC Secretary resulting in overburdening and reduced efficiency. The current political deadlock has only made matters worse. Though 25% of the VDC budget is allocated under the heading of social development, there is no clear policy as to how this money can be spent. Thus, most of the budget is not being spent for victims/survivors of violence but instead channelled into various development projects that may not specifically benefit women. One of the VDC Secretaries interviewed claimed that there is also an emergency relief fund for women and children which could even be used for legal procedures by a rape survivor. But most stakeholders, survivors and/or those running response mechanisms seemed unaware about such a fund. Overall, the VDC is mostly unaware about the kind of support it could offer to the survivors and their families.

“Such cases come to the VDC only when they have not been able to settle it at the community level. By the time it comes here, the perpetrator has mostly already fled. We then submit the victim’s application to the women’s cell and the legal process goes forward.” Padam Shankar Gautam, VDC Secretary, Kavre (Mahadevtar and Katunjabesi)

6.5.5 The police

Police is an arm of the government that is the starting point of the legal process and a crucial institution for the survivor. The police is responsible for filing the First Information Report (FIR), interrogating and investigating the offence. To supplement its role in controlling and addressing crimes against women and children.

The Women and Children Service Centre (Women Cell) has been established under the Ministry of Home within the District Police Office in 42 districts to document and deal with cases of women and

children. They are involved in the questioning of victims (both women and children) of gender-based violence and other crimes followed by investigation which is then passed to the legal section (*mudda faat*). They also offer counselling to the victims wherever possible and refer the victim to safe shelter houses provided by NGOs such as WOREC Nepal, ABC Nepal, Maiti Nepal, Saathi, Aawaj, CWIN Nepal or CWISH.

Challenges

Many of the incidents do not even reach the police and thus perpetrators escape punishment since the information about the offence is kept secret. If it does reach the police, chances are that the information comes late and by then the evidence is either lost or destroyed. The lack of clarity in medical reports poses a big problem for the police as it investigates rape cases. In many cases, the evidence has to be sent to Kathmandu to be tested and is not completed within the prescribed time limit.

“There are not many incidents of rape that come to us. There have only been two or three incidents that have come since my being here and [the accused] are in custody now. But I have heard of a lot of incidents in the community.” D.S.P. Rajendra Khadka, Dailekh

In terms of investigation, the deadline of 25 days given to the police is insufficient if the investigation has to be thorough and extensive. The lack of proper equipment to gather evidence means that the investigation is necessarily limited. In addition, many district police offices need a vehicle to go to the crime scene. If a vehicle is unavailable, the local area police has to be assigned the responsibility. This may also reduce the quality of investigation as the local area police may not be adequately trained. Though procedures have been standardized within the police, there is inconsistency in implementation.

“We do not have financial help from anywhere to help the survivor. But if the case is really complicated, we do refer the survivor somewhere after co-ordination with the Chief District Officer (CDO) or an NGO.” -D.S.P. Rabindra Bahadur Dhanuk, Kavre

“First when a rape victim comes to us, we console them. Sometimes we spend Rs. 500 or Rs. 1000 from our own pockets but policy wise there is no structural mechanism to support them.” S.P. Manoj Kumar Yadav, Udayapur

The police too face pressures from various sources in society. The pressure can be in any form from physical threat to financial motivation for either manipulating or completely dropping cases. As the first legal mechanism approached by the survivor, the police sometimes abuse this position and encourage the survivor to settle for mediation. Even if the police do want to help the survivor, there are no resources within their mechanism assigned for this purpose as illustrated by the statement above.

“The police cannot do anything for the victims of the incidents hidden in a community and not reported to the police. When the victims settle for money even in cases that have been sent to the court, it feels like a slap across our face. For instance, a case from Katari was prosecuted on the basis of the victim’s statement though it did not have much evidential support. We just wanted the victim to get due justice. When the victim chose to settle for money outside the court, I felt that I myself had been slapped.” S.P. Manoj Kumar Yadav, Udayapur

Mediation outside the legal structures is yet another challenge to police. This hinders the legal process and renders their efforts useless. The knowledge of the perpetrators going free without punishment can sometimes be detrimental to the police personnel’s morale.

The police operate within a criminal justice system that is not victim-friendly and the support mechanisms are not embedded within. The police offices rarely have a separate space in which to deal with victims.

In many districts, the women's cells are not functional. The officials in charge of the women's cells in areas where they exist, are not involved in investigation of cases of violence against women and children. They are not assigned as much responsibility as male colleagues to question VAW victims. They are merely reduced to documenting cases, which adds to the trauma of the victims, especially in sexual violence cases. Further constraints and challenges faced by the police are discussed in detail in the legal environment section.

6.6 National Human Rights Organizations

6.6.1 National Human Rights Commission (NHRC)

The National Human Rights Commission (NHRC) is an independent constitutional body whose mandate it is to monitor and investigate cases of human rights violations and provide procedural recommendations and directives to the government. It also recommends the prosecution of cases for human rights violations and co-ordinates with civil society to raise awareness of human rights. In addition, it is mandated to review and give directives for amending the national laws and analyse international treaties to ascertain whether Nepal has reasons to be party to any of them. Furthermore, it publicizes the names of government officials who fail to follow the procedural recommendations given by the Commission.

Challenges

Its main challenge is the financial and human resource constraint.

“...we have internal constraints such as lack of human resources. The Commission has its own tale of sufferings. We are now forced to make do with 1/3 of our available positions.”

We have 309 positions but there are only 100 staff at the moment. Resource constraints, human resource constraints and capacity constraints affect our work.” Gauri Pradhan, Member of NHRC

Its regional structure reduces its accessibility because of which it is unable to fully deal with cases of human rights violation (including rape) that occur at a more micro level. The lack of recognition of rape as a human rights violation has meant that survivors do not directly approach this mechanism and rape cases are usually not reported through the hotline service.

There is very little co-ordination with other government and non-government bodies which either narrows or at times negates its given mandate. The lack of a system to share the best practices acquired by the Commission with other relevant stakeholders like the police or the court is an overall loss to the legal system, and most importantly to the victim.

“NHRC’s investigation is very good compared to the investigation procedures of the police in terms of it being human-rights friendly and women-rights friendly and in terms of the protection of the victim and the witness. But how much of this has been shared by NHRC with the state level police? How much influence has NHRC exercised to change those procedures? I think NHRC should do it and can do it but has done very little. I realize this.” Gauri Pradhan, Member, National Human Rights Commission

Despite being a constitutional body, the NHRC also claims that its recommendations are not seriously taken and implemented. NHRC expects civil society to act as a watchdog and help in this process, so that amendments to make it more effective can be duly made.

6.6.2 National Women Commission (NWC)

The National Women Commission was established by Nepal government on the eve of the 92nd International Women's Day 23 *Falgun* 2058 BS (7th March 2002) for the protection, prevention and promotion of women's rights. Its principal role is monitoring the effective implementation of the laws and policies drafted by the State concerning women along with suggesting amendments to laws regarding domestic violence and citizenship. It investigates and monitors violations of women rights and also receives and acts upon petitions with regard to VAW. NWC realised that in absence of standard guideline, investigation of rape cases is very weak. Due to limited reporting time, many cases are pushed under the carpet thus survivors do not access justice. NWC is currently working on guidelines for investigation of rape cases and towards increasing the 35-day reporting deadline.

Considering the limits to the efficient working of the Commission because of having only one office in Kathmandu, Women Rights Monitoring National Network comprised of various women rights organizations has been formed to cover the whole country. Currently 26 organizations have extended their support and become part of the network.

In the year 2065-66 BS (2009), 153 cases were filed in the commission. Most of the cases were related to the physical and mental torture in domestic violence and economic exploitation. Besides these, there were cases of legal complexities caused by the comparatively new phenomena in Nepali society of couples living together without marriage. The cases were either settled by consensus of the parties or kept pending. In some of the cases, besides legal aid, legal counselling and financial assistance too was provided. The National Women Commission contributed to the recent Universal Periodic Report (UPR) in co-ordination with National Human Rights Commission and National Dalit Commission.

Challenges

Unlike the NHRC, the NWC has less constitutional rights which to some extent undermines its authority to give directives to the government. It has a more macro-level presence which is concentrated in Kathmandu. Similar to other government response mechanisms, it too is a victim of resource constraint. Though its mandate encompasses all women rights violation cases, its focus till date has been more on domestic violence cases. The fact that only 153 cases were registered within a year as compared to 1594 cases that came to WOREC³ goes to show its scope and efficiency as a national body for rights of women. This body has no formal mechanism at regional and district level to collect the complaints and for immediate response to the cases. Due to limited scope and capacity of NWC, it receives a very low number of cases and sometimes cannot respond even for reported cases in a timely manner.

6.7 International Organizations

Many International Organizations including the UN and its subsidiary agencies have been supporting the elimination of violence against women through providing funds and necessary technical support. These organizations either work directly or partner with other national or grassroots based organization with a local presence.

UN-WOMEN supports both the government and civil society organizations in initiatives of drafting relevant acts, laws and policies to ensure and promote gender equality and gender justice. At the grassroots level, its work has been to build the capacity of women to bring women's issues into the public domain. UNFPA supports the Government of Nepal in carrying out population and reproductive health related activities. It has also been working on VAW under which it assists in the collection of gender sensitive data, consolidating efforts to fight gender-based violence, promoting gender equality and women's empowerment, and strengthening women's capacity to

3 ANBESHI, 2010: A year book, WOREC

participate in decision making processes at various levels. UNICEF has been working to promote the human rights of both women and children. In an effort to empower and build the capacity of women and minorities at grassroots level, it provides training to the paralegal committee members through which many VAW cases are dealt and settled at community level. UNDP has been working since long. In recent years, it has launched a project for enhancing access to justice and for consolidation of peace in Nepal (A2J). The project is engaged in providing free legal aid to communities in different parts of the country and is working in areas such as fast-tracking courts which could improve access to justice in Nepal, especially in VAW cases.

OHCHR has had a presence in Nepal since the people's movement and has played a significant role in monitoring various human rights violations. Though OHCHR does not directly deal with rape cases, it works with other national and international organizations in advocating for justice. For instance, its 'Peace through Justice' Project is being implemented to support the transitional justice mechanisms and processes in Nepal and may be important in addressing issues of transitional justice to rape survivors of conflict. In addition to these, other bilateral organizations such as DFID, USAID and DANIDA provide funding to the government, the UN, the international and national NGOs to address VAW, promote women's right and to support minority groups. There are other many international non-governmental organizations (INGOs) such as Save the Children, Plan, CARE and Action Aid that continue to design and implement programs with regard to VAW and empowerment of women and minority groups through and/ or together with national and local partners.

Challenges

Although a large amount of effort is being spent in the name of combating violence against women, this funding is scattered without prioritizing issues within the VAW agenda. Most of these organizations have presence at central level (i.e. within the Kathmandu valley) and

have not been fully effective in reaching the needy groups. Most of their funding also goes towards facilitating access to justice without ensuring the equally important support mechanisms needed for the survivors of such violence. There is also a lack of alignment between these organizations and their funded programmes due to the token funding provided. Though a good start has been made through funding the OPM Gender-Based Violence unit, it is still grappling with issues of sustainability.

6.8 Conclusion

Evidence shows that community structures work, be it organized women's groups or the WHRD network. However, each of these structures is plagued by patriarchal structures, culture of impunity, criminalization of politics and the scarcity of resources. Paralegal Committees in particular are known for their role in mediation but several cases have demonstrated how it is knowingly or unknowingly helping to first normalize, and subsequently to institutionalize violence. The presence of women's groups and WHRDs may have helped in bringing the cases to the police or getting legal help, but where there are no organizations working in parallel, the survivors do not get psychological counselling or other types of needed support. Better co-ordination between the non-governmental and governmental structures may produce a more holistic and comprehensive support structure for survivors. The government needs to play a more proactive role by increasing its presence at community level, providing not only support to survivors but co-ordinating with other community mechanisms.

In recent years, there have been some positive steps taken, but the largest lacuna in the response mechanism is the lack of healing and caring for the well-being and rights of the survivor. Restoration as a concept is completely overwhelmed by the prevalent retributive

perspective, resulting in traumatized survivors who then try to return to their normal lives without going through any processes which tries to address their trauma. The survivors of sexual violence and rape have received some assistance at various levels but are yet to be supported holistically. Inter-linkage between the various levels may help to ensure that the help is available and at hand for all survivors.

7

Chapter Seven LEGAL FRAMEWORK AND ENVIRONMENT

LEGAL FRAMEWORK AND ENVIRONMENT

7.1 Introduction

This chapter discusses the overall legal environment, which includes the existing legal provisions and policies, the law enforcement situation, the policy and implementation gaps and the lacunae in the existing legal system and procedures from the point of view of access to justice by rape survivors.

7.2 Existing Legal Provisions

7.2.1 Provisions under the Civil Code (*Muluki Ain*)

The Civil Code, 2020 (1963) consists of three Chapters (13, 14 and 15) addressing intention to rape, rape (single and gang) and incest.

Chapter 13 elaborates on the intention to rape (*asaya karani*) where any male can be punished if he looks at, touches/grabs any organs with malafide intention to commit the act of rape. The offenders of this crime are punishable by up to 3 months in prison.

Chapter 14 defines rape (*jabarjasti karani*), liable punishment and compensation for rape crimes. Women - unmarried, married or widowed if forced into the sexual act (of penile-vaginal penetration) with or without consent in case of minors (under 16 years of age) and without consent in the case of any woman above the age of 16 has been defined as rape by Chapter 14 Number 1 of the Civil Code. This same provision also specifies the ways that force can be executed such as through physical coercion, mental threats or undue influence.

Chapter 14 Number 2 states that if a family member is raped, the punishment for incest is added to the punishment given in case of any type of rape. Number 3 of the same Chapter states the punishment as follows: 10 to 15 years of imprisonment for raping any girl under

the age of 10, 7 to 10 years of imprisonment for raping a girl between the age 10 to 16 and 5 to 7 years if the survivor (woman) is above the age of 16. Thus, the punishment to any perpetrator committing rape has been classified on the basis of the age of the victim. The same provision also designates an additional five years of jail to be added to the aforementioned imprisonment in cases of gang rape, or rape of disabled and pregnant women.

Chapter 14 Number 4 states that anybody who assists in a rape knowing the nature of the crime to be committed or molests the victim is to be awarded three years imprisonment. This punishment is doubled in the case of a girl under the age of 16. If the act of rape has been initiated but yet to be penetrated, it has been defined as attempt to rape in Number 5 of this same Chapter. This provision also states that the perpetrator of such a crime be given half the punishment of that awarded for rape. Furthermore, Number 6 deals with any person who orders someone else to commit the act. Whether the act of rape is completed or remains only an attempt, this person is liable to half the punishment given to the particular offender of the act. Number 7 has been suspended as per the 11th Amendment 2058 BS (2001) of the Civil Code. As result of lobbying and advocacy by women rights activists and civil society, the 11th Amendment of the Civil Code was made and some discriminatory laws were repealed.

Number 8 addresses the survivor's right to self-defence and allows for the killing of the offender by the survivor by using any weapon within an hour of the crime, after having exhausted other options such as calling for help, etc. This is also permitted before rape is actually committed provided there is a physical struggle and a proven intention/attempt to rape. But if the killing of the offender takes place after an hour from the time of the crime, then the survivor may either be fined up to NPR 5,000 or up to 10 years of imprisonment.

Number 9 states that if any person commits or orders somebody else to commit rape on a woman to get her property, the person is then

disallowed to claim such property. 9 Ka recognizes any unnatural sexual act performed on/forced on any minor and designates a punishment of an additional year added to the punishments specified in the Number 3 provision. Assessing the traumatic effect on a minor, the court can also provide appropriate compensation to the survivor.

Number 10 Ka states that female police personnel (women social workers can be substituted in case of unavailability of women police) have to be present during the survivor's statement. 10 Kha states that relevant law practitioners, survivor and her guardians, accused and any other person permitted by the judge can be present during court proceedings. Number 11 is the provision of limitation which states that such information has to be given to the police within 35 days, in case of failure to do so within the prescribed time period, the case cannot be prosecuted in court.

The law recognizes and calls for punishment in cases of marital rape though the degree of punishment in law for marital rape crime is nominal. In this context, the Supreme Court of Nepal has issued a directive to the government of Nepal to reconsider the provision with a view to increase the degree of punishment.

Chapter 15 is about incest (*hadnata karani*) or rape within family relations (up to seven generations). In terms of incest, the punishment varies based on the nature of family relationships. Chapter 15 Number 1 states that a person raping his own mother is liable to life imprisonment and a person raping his sister or daughter is liable to 10 years in prison. Three to six years of prison term has been assigned for any person raping his step-mother, daughter-in-law, mother-in-law, niece, and maternal-aunt amongst other relations. If a person rapes anybody within seven generations but excluding those mentioned in number 1 and 2 he is liable for up to two years imprisonment. Number 4 of Chapter 15 further prohibits sexual relations between a man and his sister-in-law resulting in a three to six year prison term if the brothers are from the same mother and up to a year as the proximity of relation decreases.

Number 5 states that if a son and daughter borne by the same mother with different fathers engage in a sexual act, the son can be punished by imprisonment of up to a year. Number 6 has the provision with regard to adopted relations punishing any sexual act within them by up to a year of imprisonment.

Number 9 states that repeated rape even after going through a prison term for incest is punishable first by fining the offender NPR 50 and if continued, three months jail term for each time thereafter. If the woman participates or consents in any of the possible relations aforementioned in Chapter 15, she is liable to a quarter of the punishment given to the male (offender). But this punishment can in no condition exceed three years as mentioned in Number 10. But all provisions in Chapter 15 are annulled by any ethnic or religious practice in any community within the country. This case can be filed at any time as long as the offender is alive.

Number 10 of the Chapter 14 has the legal provision for compensation in rape crimes. In accordance with this provision, the court can order to provide compensation on the basis of the physical and mental injury to the victim. In case of death of the victim due to the injuries, the impact on and loss to the children is the basis for the determination of compensation. This provision has provided discretionary power to the court for determining the amount of compensation on the basis of the injury and loss to the victim and her children. The court can freeze the property of the accused after the case has been filed in court, disallowing transactions such as partition or liquidation of any property except for compensation purposes. This is to ensure that the survivor gets her due compensation in a timely manner. There are no uniform standards for the amount of compensation. Though the injury and loss are the factors computed, these standards are applied in different way by each judge and this has left space for the exercise of undue influence and other irregularities in practice. Minimum standards should be laid down for determining the compensation in order to properly implement this provision so that justice can be provided to the survivor and impunity can be eliminated.

The Civil Code is further aided by other legal provisions and court orders.

7.2.2 Other legal provisions

Besides the Civil Code, there are several other Acts that are relevant to the context of rape and protect/ensure the rights of women and marginalized sections. The Prosecution Act 2049 BS (1992) and Regulations defines and prescribes how to investigate criminal cases that are mentioned in Schedule 1. The Amended Act to Maintain Gender Equality 2063 (2006) addressed overall discriminatory laws and amended them. Human Trafficking (Control) Act 2064 (2007) and Regulations 2065 (2008) prescribe human trafficking as a serious crime and assign punishment. The Domestic Violence (Offence and Punishment) Act 2066 (2009) and Regulations 2067 (2010) settle any disputes originating from domestic reason/cause and prescribe nominal punishment. In cases where State actors such as the police or the army are themselves the offenders, the Police Act, Armed Police Act, Military Act and other service regulating acts prescribe a code of conduct for these personnel and allows for internal investigation and disciplinary action in cases w2q` of breach of the code.

7.2.3 Case study of court verdicts

Several Mandamus orders and directive orders have been issued by the Supreme Court to increase the 35-day reporting deadline for rape, increase the punishment for marital rape and to set up a Fast-Track Court explained below:

1. In the case of Jyoti Poudel vs. the Government of Nepal, the court has issued a directive order to amend the Domestic Violence (Offence and Punishment) Act 2066 (2009) in order to incorporate the serious crimes in Schedule 1 of the Prosecution Act 2049 (1992) and to establish a fast-track court for trying these cases

2. In the case of Sapana Pradhan Malla vs. the Government of Nepal, the Supreme Court issued an order to the Government of Nepal to increase the present 35 day limitation to file a complaint of the crime of rape (Chapter 14 Number 11). The process to amend the law to increase the time period of limitation is in progress
3. In the case of Sharmila Parajuli vs. the Government of Nepal, the Supreme Court of Nepal has issued an order to table a Bill for the enactment of a law against sexual harassment in the workplace. The Bill has been drafted by the Law Commission to address the issue and to follow the directive orders of the Supreme Court. This Bill has been registered in the Parliament but has not yet been enacted as a law
4. In the case of the Sapana Pradhan Malla vs. the Government of Nepal, the SC of Nepal has issued the directive order to increase the degree of punishment for marital rape
5. In the case of Sapana Pradhan Malla vs. the Government of Nepal, the SC of Nepal has issued directives order for the privacy and protection of the victim in certain cases, including rape
6. In the case of Jyoti Poudel vs. the Government of Nepal, the SC of Nepal has issued a directive order to establish an investigation within three years and to specifically assign jobs for investigation. The directive also called to issue an investigation manual for serious crimes, including those against women
7. Most recently, in the case of Suntali Dhimi vs. the Government of Nepal, the Supreme Court of Nepal delivered the verdict that the extra-ordinary jurisdiction of the Supreme Court under Article 107 of the Interim Constitution cannot be obstructed or limited by the provision of Article 135, which provides professional immunity and discretionary power to the Attorney General for prosecuting or not prosecuting in the court of justice. The Supreme Court can

now review any cases on the basis of malafide and arbitrary exercise of this power where either some of the perpetrators have not been prosecuted or the case itself has been dropped due to subjective reasons. Thus, the Supreme Court of Nepal can review the decision of the Attorney General or its subordinates on the aforementioned grounds. This is a new dimension of jurisprudence in the Nepali criminal justice system.

7.3 Law Enforcement Process and Situation

Law enforcement prescribes a systematic process from the police to the government attorney and finally to the court of law. In the following sections, each part is discussed in detail including lacunae in relation to the First Information Report and case registration at the stage of the police, case preparation (charge sheet) and filing by the Government Attorney and then the court process.

The legal process starts when the police receive any information about the commission of the crime of rape. The police initiates its investigation on the basis of the information received or the FIR itself. They first arrest the perpetrator and cordon off the site of the incident. This is done to both protect and collect the evidence. The evidence related with the forensic examination is collected for testing, the survivor's statement is taken in order to draw more information. The existing provisions allow for exceptions deferring the immediate taking down of the statement of the survivor, in cases where the survivor is highly traumatized or unable to give a statement. Both the victim and the accused (if arrested) are then taken to the hospital immediately for a medical test which can only be conducted in select hospitals. The medical report becomes one of the most crucial evidences for prosecution.

This is followed by taking the statement from any witnesses (since it is difficult to get a witness in rape crime, the law allows for any person who saw/heard about the incident and a person who was directly informed of the incident by the survivor). While these statements are

being taken, the collected forensic evidence i.e. perpetrator's semen, nails, hair, etc are sent to the lab for testing.

While awaiting the lab report, the statement of the accused, if he has been arrested, is taken under the supervision of the Government Attorney. The accused has to be sent to the court for remand within 24 hours of arrest. The Government Attorney then prepares the charge sheet which has to be filed in court within 25 days from the date of the arrest. The present 35 day limitation is for both the survivor to file a FIR and to prepare a charge sheet.

In the absence of evidence, the government attorney can decide - based on the Prosecution Act of Nepal 2049 (1992) - not to proceed with the case in the court. This process is completely objective. Even in case of not proceeding to court, a report has to be submitted to a higher authority. The whole process from case registration with the police to filing the case is circumscribed by a limitation of 35 days, at the end of which the case goes for a hearing in court. The prosecutor has to file the charge-sheet in court within 25 days of the date of arrest. At this stage, the statement of the accused is taken and the hearing is conducted to decide the question of release of the accused on bail or imprisonment on the basis of the evidence collected up to this stage. The judge decides whether or not there is a prima facie case against the accused on the basis of the collected evidence. If there is a prima facie case, the judge decides to retain him in custody for trial. Otherwise, the accused is released on bail. There may also be cases where depending on the nature of evidence the accused is released without having to post bail. However, the accused has to report to the court within a specified timeframe, failure to do so results in loss of the right to present evidence and be represented by a lawyer in court.

The perpetrator's property is frozen as soon as the charge-sheet is registered so that the survivor, in principle can receive due compensation. After hearing the arguments of both the government attorney and the defendant's lawyer, the judge gives a verdict determining the

innocence or guilt of the perpetrator based on evidence. Judges have the discretionary power to fix the jail term and determine compensation on the basis of the injury and loss of the victim. The discretionary power is meant to be exercised objectively and is limited to the range of punishment and the quantum of compensation provided by law. If the accused is found guilty, the judge decides the length of the imprisonment and the amount of compensation to be given to the survivor on the basis of the injury and loss to the survivor.

If the prosecutor or the accused is dissatisfied with the verdict, they can appeal to the Appellate Court. In case of concurrent findings by the District and Appellate Court, a special procedure has to be followed for the case to be registered in the Supreme Court. The verdict of the Supreme Court is final.

7.4 Analysis of the Gaps and Challenges of Existing Laws

7.4.1 Defining rape: flaws in the Civil Code (*Muluki Ain*)

Rape is not only a crime against humanity but also an extreme violation of the right to bodily integrity. Despite being party to international instruments, conventions, and treaties such as CEDAW, Nepal's legal system operates by a law that is still in many ways discriminatory to the many forms of sexual crimes and most importantly, rape. The definition of all aspects of rape in the Nepali law is narrow in scope and limited in understanding, as is explained in the following paragraphs:

Chapter 14 of the Civil Code defines the nature of and punishment for rape and attempt to rape. The lawmakers took a step in the right direction by amending the definition of rape in the Civil Code in 2020 BS (1963) to lay down that if the penis has only partially entered vagina, it would still be considered rape. However, it is a moot point as to the extent that this amendment has actually impacted the trial of rape cases in courts.

By focusing on penile-vaginal penetration, the law completely ignores oral or anal rape, the insertion of other bodily parts such as fingers and the use of objects. Thus, if someone forces a woman into anal sex (sodomy), the punishment for the offender is far less because at most, it would be considered an attempt to rape the punishment for which is half of that for rape. The lawmakers seem unaware that the impact of these other acts of sexual assault may be similar to, if not more traumatic than penile-vaginal penetration.¹

Addressing this is also important so that rape of young boys, men and transgender persons gets recognition. The definition focuses on girls or women, with a brief mention of boys in the context of forced “unnatural sexual acts”. By confining the offence to acts involving minors, the law ignores other forms of rape, especially among the sexual minorities. The fact that a number of acts which fall under the category of “unnatural sex” in law is considered natural by not only the Gay, Bisexual and Transgender community but even in heterosexual relationships, serves to highlight the narrowness of the law. The lawmakers need to understand that forced oral and anal sex could be much more unsafe and equally traumatic as penile-vaginal penetration and needs to be included in the definition of rape.

The section contains a special provision regarding gang rape, rape of pregnant, physically weak or disabled women whereby the offender is sentenced to an additional five years of imprisonment. This special provision is laudable for recognizing the more vulnerable amongst adult women. However, no provision has been made for women with speaking disabilities or those who are mentally challenged where

1 For instance, in *Motiram vs. His Majesty’s Government, 2040* where the offender was brought to law for raping a minor girl, the offender did admit that he had inserted his penis into her vagina, did not ejaculate naturally so used his hands and left her because she was crying. The medical test done immediately showed a recent vaginal wound. The medical report said that the hymen was still intact and had not ruptured. The court gave the verdict that it was an attempt to rape (*Shrestha, G.B. 2060 BS*). This case illustrates the wide gap between the written and practiced law.

getting a statement itself is a complex problem. Also the allies in any form of rape, including gang rape, are only given half the punishment.

The civil code uses *jabarjasti karani* (forced sexual intercourse) throughout the section, but it does not use Nepali word *balatkar* for rape. The word *Karani* limits the act of rape to penile-vaginal intercourse whereas using *balatkar* would be more inclusive of the range of acts that fall into rape. The issue is not just of the language used, but that the usage establishes a lens through which the signs of use of force and consequently the signs of struggle by the victim have to be identified and established. Focusing on physical struggle as a sign of resistance by the victims has resulted in many cases where the absence of these signs is seen as consent, and therefore not rape.

A person sending/hiring another man to rape a woman is only considered as an ally in the act and his punishment is half of the actual perpetrator. The rape victim of a recent case said, *“My husband conspired and sent a “low caste” man to rape me so that he could later accuse me of having illicit relations with that rapist. He did this so he could marry another girl. Both the rapist and my husband are criminals and should get equal punishment.”*

Thus, in this case, the survivor feels that both the persons involved are offenders and should receive equal punishment. But the law only looks upon the instrument rather than the person operating the instrument when it decides a case so that an offender who abuses his power escapes due punishment with ease.

There is also a controversial provision within Chapter 14 for women who in an act of self-defence, kills the perpetrator. She is permitted to do so without punishment if the offender dies within an hour from the incident and if there is no alternate way to protect her virginity. But if the same is done without physical struggle or if the offender dies after an hour of the rape, the woman can be fined up to NPR 5,000 or sentenced up to 10 years of imprisonment. Though this may look like

a respite for the survivor, its conditional nature can actually victimize the survivor even more.

Chapter 15 of the Code deals with incest where a son raping his mother can be sentenced to life imprisonment while if a woman gets raped by her father-in-law, the offender can be sentenced only up to three years of prison. A father raping his daughter is more severely punished than if the same is done by the grandfather. These are only some examples among the many in the variation of punishment for incest. In addition, the quantum of punishment (three to six months) for marital rape renders the recognition of rape within marriage ineffectual. The act of rape itself is a heinous crime and a violation of human rights. The need to set the amount of punishment based on the nature of relationship can only be seen as a tool with which to exercise body politics thus normalizing rape within some relationships.

A victim of incest is already scarred by the act and living in terror due to the lack of legal provisions of victim protection. The law further makes the victim vulnerable by stating that if the perpetrator has already once been sentenced by the court and repeats the act, he can only be fined NPR 50. If after paying this sum, the perpetrator continues to rape the victim, he can be sentenced up to three months in prison for every act of rape. Thus, the perpetrator's threats are strengthened by such loopholes in the law whereby the victim is pushed into an environment of easy re-victimization.

Rape is handled under the criminal justice system in Nepal and from the lens of retributive justice. It is assumed that the best way to help the victims is to punish the accused or the criminals/offenders and thus the case is considered to be successful if the perpetrator can be convicted and punished. However, the law on rape does not talk about victims' right to protection, reparation, compassion and respect for their dignity.

7.4.2 Other law and policy gaps

Besides the flaws in existing provision in rape laws, there are other policy gaps. For instance, although Article 13, Clause 3 of the Interim Constitution states that laws can be enacted for the empowerment of women and marginalized sections of society, the government has yet to enact suitable and victim-friendly legislations that concentrate on the protection and promotion of victims' rights leading to a more substantial empowerment. Along the same lines, the following are the policy gaps in relation to victim/survivors' access to justice.

7.4.2.1 Victim and witness protection

Although the Supreme Court issued a directive for the privacy and protection of the victim (as aforementioned), the need for a Victim's Rights Act compatible with the international instruments for the protection of victim's rights is an urgent need. The absence of policies in relation to victim and witness protection, contributes to add to the general climate of impunity, resulting in repeated threats from perpetrators to survivors and their families.

“The absence of a comprehensive witness protection mechanism in Nepal contributes to the general climate of impunity which prevails for past and present human rights violations in the country. NGOs, UN expert mechanisms and some governments have regularly expressed concerns regarding this lacuna. They have recommended a number of measures be taken by the Nepali government to assist the process of justice delivery and guarantee accountability for both past and present human rights violations.”²

Survivors and families shared their experiences of being threatened or pressurised, as contributing factors for their absence from court

2 Human Rights Council, Fifteenth session, Agenda Item 4, General Debate submitted by the Asian Legal Resource Centre (ALRC)

hearings. In such cases, both the survivors and the witnesses were at an additional risk especially if the perpetrator was in a powerful leadership or financial position in society.

7.4.2.2 Mechanisms to support survivors

CEDAW and other International human rights standards regulating State responsibility for victims of gender based violence calls on states to provide appropriate support services to promote the safety as well as the physical and psychological rehabilitation of victims. This includes available, accessible and acceptable services of appropriate quality in order to assist the victim with the necessary material, medical, psychological and social assistance. These rights should be guaranteed regardless of whether the perpetrator is prosecuted and convicted, and regardless of the relationship between the perpetrator and the victim (Amnesty International, 2010).

There is a strongly felt absence of legal provisions/mechanisms to support survivors in their recovery, rehabilitation and integration. The absence of any provisions for the mental, social and economical rehabilitation of the victims means that many rape survivors have had to deal with their trauma on their own or seek help from their families. The only move that the State has made in regard to this is the 15 short-term service centres. The centres are for survivors of VAW in general, and lack special recovery services a rape survivor may need.

Under the existing law, there is no legal provision for a compensation fund. Whereas the law provides for the freezing of the accused person's assets as soon as a case is registered in court, however, many survivors shared their experiences with regard to the complexities of liquidation, resulting in delays in compensation

7.4.2.3 Reparation

A basic principle in international human rights law is that the State is responsible for providing reparation to victims of human rights

violations. Since there is no legal provision under the existing law for any form of reparation, in most cases the survivors have not been able to receive any compensation. In addition, the State has no mechanism to gauge the loss suffered by the survivor and her family to be able to fix the quantum of compensation as reparation. There is need for the State to set up a rehabilitation fund for survivors.

7.4.2.4 Investigation and protection of evidence

The nature of proof in relation to rape is unlike other general crimes, requiring special care and urgency for the investigation and protection of evidence. However, Nepal does not have proper legal and administrative provisions and mechanisms for the effective investigation of rape. Though the draft of the Investigation Guidelines on Rape prepared by lawyers Tanka Dulal and Jyoti Poudel with the technical support of Action Aid Nepal has recently been handed over to the National Women Commission, it is yet to be adopted and issued by the Government of Nepal. Many survivors have been denied justice, either due to the refusal of the police to prosecute the case, or a court acquitting the perpetrator because of lack of evidence. If the Investigation Guidelines on Rape are issued and implemented without delay, this would result in an overhaul of the justice system towards better access to justice for survivors.

The best practices from other States should be adopted with suitable changes to suit the specific needs of survivors in Nepal. The policy in the United States of America to immediately administer the rape kit to protect the evidence collected from the survivor or the policy of inter-linked reporting between the hospital and the police as is the practice in some African states like Uganda are cases in point.

Such a law/policy is especially relevant in the case of Nepal which follows an adversarial judicial system like in India, USA and UK among others. In contrast to the inquisitorial system (as in France and Germany) where the judicial police conducts the investigation, the

police and government attorney in Nepal are separate and work only in superficial co-ordination for the preparation of cases. Thus the policy for protection of evidence becomes crucial because it is not already inbuilt in the legal system.

Table 10: Number of registered versus prosecuted cases of the year 2065/66 (2008/09)

Number of registered cases at police office	Number of prosecuted cases	Remarks
504	409	95 cases were not prosecuted, reason unidentified

Source: Crime Investigation Department of Police and Annual Report 2065/66, Office of Attorney General

Table 10 from the Annual Report 2065/66 (2008/09) of the Office of the Attorney General shows that out of the 504 cases that were registered in the police offices all over the country, only 409 were prosecuted. About 19% of the reported rape cases never reached the court. There is no way to identify the reasons for these 95 cases not reaching court illustrating a major gap in the legal system. However, possible reasons could be dropping of prosecution by the government attorney due to weak evidence, pre-court or during court-mediation, or undue pressure. The lack of follow-up may also be another reason because the prevalent mindset is that registering a case amounts to getting justice. This points to the lack of awareness among survivors about legal procedures. Effective implementation of policies for protection of evidence, have to necessarily include raising awareness of citizens, especially women, about legal procedures.

7.4.2.5 Undue Influence

There is a lack of legal provisions to punish persons who unduly influence survivors of rape or their families not to complain to the police or other legal authorities, to take back the case or to turn hostile at the trial. Pre-court and during court-mediation is yet another

dimension of undue influence. Numerous mediated rape cases were cited during Focus Group Discussions and Key Informant Interviews, all resulting either from family or societal pressure or threats from perpetrators. Since a case dropped cannot be re-prosecuted unless the survivors themselves complain to the police, mediation has indeed become a societal evil that undermines legal order. Also, the system of releasing an accused on bail on the ground of present available evidence contributes to the threats/pressure received by the survivors and their families. It increases the trauma especially in the absence of a victim protection system. By not recognizing mediation or undue influence as a punishable offence in such serious criminal cases, law has thus turned a blind eye to the existing impunity and the environment of corruption which greatly affects the survivors and their families.

7.5 Gaps in Implementation

The research findings indicate gaps throughout the implementation process at every stage. Ineffective and delayed FIRs, weak evidence, bargaining, problems with the medical test, harassment of survivors within police stations especially while giving statements, lack of confidentiality to protect survivor's privacy, insensitive questioning at various stages, political and societal pressure on the survivor/their families/witnesses to change statements or drop cases constitute one category of problems in the legal system. Ineffective implementation of laws, criminalization and political instability, the silence of law on the State's responsibilities towards the survivors and most importantly the absence of victim-oriented justice are the other major problems within the criminal justice system.

7.5.1 In relation to police

The experience of the police is that survivors want to be protected from risks and strong punishment to the perpetrator so that it becomes a lesson to others. The police claim that mediation does not take place within their premises. However, both In-Depth Interviews and institutional

data reveal several incidents where mediation occurred within police station premises or with police involvement. The mindset reflected in the following statement of a senior police officer aptly illustrates the need for sensitization: “*I do not think an able man can actually rape a fully able woman.*”

The police too are sometimes put in a difficult position when mediation takes place through negotiation between the victim’s family and the perpetrator. The delayed reporting also poses problems for the police due to lost and destroyed evidence. Most police also emphasize that the existing mechanisms are not effective and that survivors cannot get justice through this system. This study found that the main problems are with the processes of reporting/registration, interrogation and investigation. Yet another problem with the police process is the lack of capacity building of the police personnel. The police says that it is ready to provide protection, but there is neither a policy nor the requisite knowledge and skills to deal with the needs of the victim/survivor.

7.5.1.1 Reporting/registration

“...it must be reiterated that no causative factor or barrier stands by itself. Each is intricately linked to the others. For instance, although police apathy to registering cases of violence is categorized as an institutional barrier, it is also political and ideological. It is ideological, for it speaks of the underlying attitude of devaluing women’s experiences or looking upon women’s experiences as not being important or significant enough to merit attention. It is also a political barrier, particularly if the woman belongs to a minority community, for there is an inherent discriminatory attitude when dealing with the ‘other’, which is determined by a perception of what the ‘other’ stands for or what can be obtained from the ‘other’”
(Goswami, Sreekala, & Goswami, 2006).

The police process first starts with the First Information Report (FIR). Though the victim is allowed to first give a *Thado* or *Maukhik jaheri* (oral report), this cannot become the basis of investigation or prosecution. The police requires the presence of the victim during the writing of the FIR (*jaheri*). This requirement does not take into account the victim's trauma, which is fuelled by the 35-day deadline to report such cases, thus allowing no time for victims to even begin a process of healing. Police personnel have also been known to refuse or show apathy in registering cases. Though there is an institutional provision for the victim to approach the Chief District Officer in such cases, many survivors are unaware about this avenue. In many cases, the lack of legal expertise and awareness leads to compromising of the victim/survivor's quest for justice at this stage. Inefficient preparation of case reports (*Jaheri*) with incomplete information weakens the case.

The refusal of police officers to register the case was also cited by some survivors as a reason for not getting justice. One survivor of incest faced this difficulty when she tried to register a case against her father. The police blatantly refused to believe her and accused her of being disrespectful and inconsiderate. It was only later that they realized the gravity of the situation and were "convinced" to register her case. The situation was especially dire for transgender survivors who were either humiliated with comments such as "rape between men is not possible" or were further raped by the police themselves. Many cases documented by institutions showed that there is either a delay or a flat refusal to register the case when the police personnel are themselves the perpetrators. A common pattern in these cases was blaming the survivor for not registering the case on time. This is exemplified by the case of Suntali Dhami, who is herself a police personnel and a gang-rape survivor. Since her colleagues were the offenders in this case, she had to seek mechanisms outside of the general reporting hierarchy. Thus, in these cases the first mechanism intended to formally receive complaint became the mechanism deprived access and outrightly deny the right to justice.

There is ample room for manipulation even after the case has been registered. Often, the police claimed to receive pressure from various political parties to drop the cases without further investigation.

“A police service commission needs to be set up. Only then can the police work neutrally without any pressures. Some can work despite the pressures but there are those too who succumb to the pressure. The situation for those who continue their work is that they have to face additional risks and danger.” -D.S.P. Rabindra Bahadur Dhanuk, Kavre

7.5.1.2 Interrogation

In the context of interrogation of the survivor, there is no trauma or psychosocial counselling service available. At best, the police recommend the survivor to an NGO that may or may not be able to provide this specific service. Regardless of the presence or absence of a women cell, the problem of unavailability of trained women police personnel remains in many districts throughout Nepal. This results in the interrogation being conducted by male police personnel, further adding to the trauma of the survivor. There is a lack of capacity building of the staff members of the police especially in counselling and there is need for orientation on how to navigate cases through the legal process.

The study finds that there is no separate room designated for questioning and counselling of the survivor and even if the questioning is done by female police personnel, male personnel of the crime department are present in most cases. There is a lack of sensitized questioning. Though the practice of changing the rape victim's name on paper has been started to maintain confidentiality, the process continues to have loopholes due to lack of proper sensitization of the concerned personnel.

7.5.1.3 Investigation

The main problem cited by many legal stakeholders was the lack of a separate investigation department within the police. This no-

specialization policy means that the same police are deployed both to control a ruckus and to investigate a crime as sensitive as rape.

On receiving the information, the police go to the site of the incident to collect evidence which in these cases could be condom, sperm, the victim's nails, skin, etc. These are then sent to the police laboratory for tests. Subsequently, the victim and the accused are both sent for medical test.

When it comes to investigation, the police does not have proper coordination with the government attorney. In plenty of cases, the perpetrators manage to flee before police arresting them showing a lack of speed and effectiveness on the part of the police. This fleeing of the perpetrators then had a domino effect as that became the reason for many pending court cases. Not only does this result in delayed justice, it also means that the survivor has to live in constant agony and can never be assured of her security as long as the perpetrator(s) are at large.

There is a lack of trained personnel/experts and proper equipment for investigation, which results in diminished and compromised evidence. Forensic technology is only used in high-profile or highly controversial cases citing financial reasons. Even then, police sometimes fail to forward the case within the time limit citing delay in receiving forensic or medical report when the samples have been sent to the capital.

There is a blanket approach without consideration of geographical and topographical situation or community structures. For instance, many parts of Darchula can only be reached on foot in three days from district headquarter. If a victim were to come to report the crime to the District Police Office, the standard evidence would be lost, either through ignorance or through the rigours of travel. As for the community structure, Darchula boasts of fiercely guarded family values which have proved to be oppressive to women who take to jumping in the nearby *Mahakali River* rather than revealing the incident to others,

let alone asking for justice. The uniform approach does not take into consideration intricate community characteristics.

The medical test too is rife with procedural problems. The questions given by the police to the medical professionals is solely quantitative (with yes or no questions) rather than qualitative questions that allow for more elaboration. There are discrepancies in the medical report because of the lack of a standard format of questionnaire sent to hospitals. This also leaves room for manipulation and corruption even in this scientific process. The report at times focuses on the presence or absence of physical struggles and/or hymen ruptures. The law states that partial penile penetration into the vagina is to be considered rape, but there is hardly any technology to detect and support the prosecution in cases of partial penetration. Medical professionals claim that vaginal swabs taken after 24 hours result in reports that either say ‘undetermined’ or ‘no incident of rape’, thus putting the victim at a severe disadvantage.

“There are many problems and weaknesses in the medical report too. Even when the woman’s body is completely broken and has blue marks all over, the report still claims that she is physically and mentally sound. The perpetrator’s lawyer uses this same report as his first argument and tries to prove the woman wrong.” -Mohna Ansari, Commissioner, National Women Commission

Most private lawyers interviewed as part of this study focused on issues relating to the medical report and it became fairly clear the central focus of the defence arguments on behalf of the accused- perpetrator would be the medical report. Medical test and its loopholes have thus become a bane for the survivor.

The police shared the case of a 13-year-old girl who was taken to hospital for a check-up after being raped. She was later taken to Lucknow for treatment for incessant bleeding. However, it transpired that her parents had compromised with the perpetrator after money exchanged hands.

This case illustrates the need for a **one-stop centre** so that medical personnel can directly report the case to the authorities.

7.5.2 In relation to the Government Attorney's Office

The Government Attorney is bestowed with discretionary authority for prosecuting or rejecting a case. The process to decide prosecution or rejection is not standardized and leaves room for corruption. There is a need for checks and balances as there is no mechanism to review the reasons and justification for not prosecuting a case. Unlike other countries where the government attorneys do their own field research and investigation, the government attorneys in Nepal depend solely on police investigation. Poor co-ordination with the police during the investigation process further adds to this deficient process.

The discretionary authority vested also poses a problem for the government attorney by leaving room for creating pressure by the perpetrator and the politicians to drop the case. The government attorney could become a target of undue and illegal influence.

“There may be some informal pressure i.e. a phone call asking [me] to drop the case or else anything could happen but this is rare. Sometimes there are calls claiming that the perpetrator has merely been conspired against by Non-Governmental Organizations and that I should try and save him. There is also some political pressure from time to time.”

-Punya Prasad Sapkota, Government Attorney, Udayapur

It was the experience of many government attorneys that after the case was registered, the victims themselves came and claimed that the perpetrator was innocent. The reasons for this have their roots in social structure and an established patriarchal mindset. The survivors change their statements due to the fear of being ostracized by society. The perpetrator goes to jail but the survivor has to re-integrate within the same society. Thus, societal pressure plays a big role in the changing of the statement. The survivors are denied justice when the parents

are lured into negotiations with money. Lawyers admitted that it was usually the mothers who came to register the FIR but changed their statements over a period of time. Also, institutionalized corruption within the legal system imply that the male lawyers usually defend the cases on behalf of the perpetrators. If the survivor and other prosecution witnesses turn hostile, it completely destroys the case and renders the government attorney helpless.

Judges themselves admit that it is difficult to be a witness for the prosecution in Nepal. The system is unbalanced and does not follow the international practice of the public defender system where the State provides the lawyers for both the victim and the perpetrator. The political State of affairs and fear instilled by the various organized criminal groups has meant that people fear becoming a public witness. Due to these factors, even if someone agrees to become a prosecution witness, there are high chances of turning hostile at the trial.

Witnesses are in danger in every country but there are provisions in other countries for the police to provide full protection to both the victim and the witnesses. This may include keeping them in a safe place at the cost of the State. The State then takes their security to be its own responsibility. The same system needs to be implemented in Nepal especially in VAW cases.

The lawyers' mindset also determines the level of support received by the survivor. Many male lawyers have a tendency to generalize cases citing examples of exceptional cases and trying to uncover women's 'misdeeds' and cover men's crimes. The lack of review of the quality and the performance of government attorneys has encouraged the tendency to look at it merely as a job. This means that the survivor is neither dealt with properly, nor does the case receive the individual effort that it deserves.

“If the survivor’s statement would be the basis of court cases, then all males would be in [prison].”- A District court Judge

7.5.3 In relation to court proceedings

The court proceedings in Nepal look rosy on paper but are poorly implemented. The survivors are at no point consulted as to what they want. The statements above illustrate that the survivors do not figure much in the minds of judges at the time of deciding a case and pronouncing the verdict.

“We do not have a standard that decides whether the punishment should be 15 years or 2 years. There is an absence of such a standard based on the gravity of the crime. If we do not have any mechanism to measure the pain of the victim, how can we support and fulfil their loss?” - Pushpa Raj Koirala, Deputy Attorney General

The law is that the victim's statement to the police has to be reiterated in court. The statement to the police is not considered evidence. In certain exceptional circumstances statements given outside court can be considered as evidence, however, it is hardly used as a basis of judgment. The requirement of reiteration of the statements of the victim and witnesses in court seems to provide space for manipulation by perpetrators. By using threat, pressure, coercion or by offering money, the perpetrators manage to arrange for the 'non-showing up' or absence of the survivors and witnesses in court. In-depth interviews of survivors and cases documented by institutions show that the absence of the survivor and witnesses from court has led to the prosecution losing the case.

The judges and registrar interviewed claimed that there is a provision for in-camera trial (*banda ijlaas*) but this was not corroborated by the experience of survivors. The provision is merely on paper and yet to be put in practice in many districts. In many courts, there is no separate bench assigned for such confidential hearings. Although the law states that only necessary persons or those permitted by the judge may be present, at times the people from the perpetrator's side are there within the same confines, increasing the victim's anxiety. The process of video-

conferencing, where the victim's statement is recorded through a video device or a victim is allowed to give testimony from a separate room without actually having to face the perpetrator, is hardly in practice.

“The other day a woman coming from Surkhet told me that there is a provision for closed hearing but the windows of the court do not even have glasses. How do you give a statement when there is a person standing right outside? In such a situation there are various pressures on both the survivor and the government attorney. When whatever you speak in such circumstances can clearly be heard outside, how can you still claim that it is a closed hearing? When the court conducts closed hearings, it should have provisions to suit the purpose accordingly. The lawyers and the survivors should be assured that their voices will not go outside. But we do not have such a structure.” - Shanta Sedhai, Private Lawyer and Central Member of Nepal Bar Association

The law gives the judge discretionary power to decide cases and determine the amount of compensation for the victim, which in some cases could be arbitrary. A senior government attorney mentioned that there are no standards to decide cases. That the chances of the prosecution winning the case are dependent on the sensitivity of the judge. Lack of consistency in usage of this discretionary power and the room for corruption, may at times ruin the chances of justice for the survivor. Many judges still consider medical reports as the sole evidence to decided cases resulting in a large number of acquittals. However, there are judges who look at circumstantial evidence and make efforts to see that the survivor gets justice. The following case is an example of how the judges can use their discretionary powers for justice and where the medical report was not the only basis for judgment.

Case: *“This is a case of a 12-year-old domestic worker here in Dhanusha. The homeowner had been sexually abusing her but she only told her sister about this when she simply could*

not bear it any more. Her sister worked at a boarding school and she immediately approached women activists and a case was filed. The district court acquitted the perpetrator on the basis of a medical report that said there were no injuries. When the case came to me, I decided to look at it differently. This child was 12 years old. She had recorded a consistent statement in the police and in court saying in detail all that had happened. I decided to make this the basis for my verdict. She is a child and I saw no reason why she would be trying to defame the very person under whose protection she had been living. The homeowner would get aroused and make her do sexual acts when nobody was around. My grounds were that she had only become a domestic worker because of a financial need. To me, her prestige was no less than a grown woman's and so I sentenced him to five years in prison.”³

The due process of law also takes a long time and in some cases the final verdict is not handed out for years. The Annual Report of the Office of the Attorney General 2065/66 (2008/09) (Table 11) illustrates this important loophole in the system – failure to deliver timely justice. One way of measuring justice may be the conviction rate but the rate of decision in rape cases points to an alarming trend. As per the data, 66% of rape cases are undecided on an average. The high percentage clearly shows the need to implement the various court orders to expedite justice to survivors of violence against women and to set up fast-track courts to try these cases. The percentage of persons convicted from amongst the decided cases can give a lopsided picture. For instance, if out of 50 cases two were to be decided within a year, with one resulting in conviction, then the report would show a 50% conviction rate for the year. This would be misleading and it would also not reflect the fact of denial of justice in a large number of cases.

3 This case was shared by Mihir Thakur who is an Appellate Court Judge in Dhanusha district during an interview

Table 11: Number of rape cases prosecuted and decided

Fiscal Years	# of Rape cases	% of Undecided	% of convicted from decided
2063/64 (2006/07)	167	73.7	29.5
2064/65 (2007/08)	172	64.5	42.6
2065/66 (2008/09)	177	60.5	45.7
Total	516	66.1	40.6

Source: Annual Report 2065/66 (2008/09), Office of Attorney General

A further analysis of this table in relation to ‘attempt to rape’ cases reveals an even more startling phenomenon where 95% cases were undecided in 2063/64 (Table 12). Though this number has slightly decreased, it is still dismal and reflects the apathetic stance that the law presently takes in women’s cases.

Table 12: In relation to attempt to rape cases

Fiscal Years	# of Rape cases	% of Undecided	% of convicted from decided	Remarks
2063/64 (2006/07)	41	95.1	50.0	only 2 cases were decided in 2063/64 (2006/07) and only one case was convicted
2064/65 (2007/08)	43	81.4	25.0	
2065/66 (2008/09)	40	85.0	33.3	
Total	124	87.1	31.3	

Source: Annual Report 2065/66 (2008/09), Office of Attorney General

If the survivor is reintegrated into the society at the time of the delayed verdict, there is a possibility of continuation of the cycle of ostracism and re-victimization.

Table 13 shows the situation of legal response to the survivors. A total of 55 rape survivors were accessed purposively for In-Depth Interviews. Most of them were contacted through NGOs and WHRDs. Out of the 55, 41 (74.5%) survivors informed the police about the incident of rape. Even after being in contact with and receiving support from organizations, 15% cases failed to get registered even though police had been informed of the incident. 60% of those who registered the cases experienced threats and pressure from perpetrators and their allies during or after registration of the case. 37% perpetrators were on the run after the police had been informed of the incident. Among the cases that were reported as registered, at least 19 perpetrators were either on the run or not arrested by the police demonstrating their inaction. Out of total registered cases 67% were filed in the court and 33% cases were not prosecuted. Less than half of the cases (46%) were decided by the court and less than one third (27%) survivors were given a verdict including compensation. Even in these cases, most survivors had yet to receive the compensation. The experience of the survivors is a testimony to the complex nature of the process and that they cannot afford to end up spending large amounts of money to receive lesser amount in the name of compensation. If we look at the total number of survivors, only 5% got discretionary compensation and the amount was nominal in most cases.

Table 13: Situation of legal response to rape survivors (finding from in-depth interviews)

Description	Response		Total	Remarks
	Yes =N (%)	No=N (%)		
Case informed to police	41 (74.5)	14 (25.5)	55	
Case registered from case informed to police	35 (85)	6 (15)	41	Out of informed cases
Any threats experienced	21 (60)		35	Out of registered cases, during and or after case registration
Perpetrator arrested	26 (63)	15 (37)	41	Out of informed cases to police
Case filed in the court	24 (67)	11 (33)	35	Out of those registered in Police
Case decided	11 (46)	13 (54)	24	Out of filed cases in court
Compensation provided	3 (27.3)		11	Out of decided cases

Note: The figures in parenthesis indicate the percentage.

This is the reality of survivors attempting to get legal justice even where most of the cases were supported by organizations. One can imagine the situation of the survivor who is alone and surrounded by perpetrators. How can her right to justice be ensured given these circumstances?

7.6 Other Legal Related Concerns

The stakeholders constantly reiterated that only a few of the total number of cases reach the authorities and the stage of prosecution. The fear of

social denunciation and exclusion of the survivor becomes a factor of not informing the police about the incident of rape. Even after a FIR (First Information Report) is filed, the legal process suffers due to weak investigation and prosecution. Often, the undue influence and pressure exercised by the accused on both the victim and the witness makes them turn hostile during trial. The reactions of the survivors illustrate the gaps in the system and the need for amendments and changes in the legal system to strengthen the mechanisms for legal redress.

The survivors who refuse to stay silent or settle for mediation are subjected to repeated victimization at every stage of the legal process. The questioning and re-questioning, the process of medical examination, the absence of trained women police officers and women lawyers contribute to the victimization of the survivor. The biggest source of injustice arises from the system itself which is neither victim-friendly nor victim-oriented. In the name of legal enforcement and minimization of crime, the survivor is reduced to being a link for the legal system to reach the perpetrator.

There was a marked difference between the perspective of male and female private lawyers. The female lawyers are more sensitive towards protecting the rights of the survivor. On the other hand, the male lawyers focused mostly on evidence and hardly talked about the survivor's status, wellbeing and the possibility of re-victimization. It can be safely concluded that re-victimization does occur through constant probing by it by family and society, media and NGOs and in the courts.

Most of the stakeholders interviewed focused on the existing system and mechanisms but failed to address the issue of the victim/survivor's need. The perspective of most stakeholders was not victim/survivor-oriented instead focusing on the perpetrator and ignoring the victim/survivor. This clearly illustrates how Nepal's justice system becomes a medium of continuous re-victimization for the survivor seeking justice. At present all survivors have been grouped together and an analysis done without any special consideration for their background,

origin, socio-cultural traits or special circumstances. Many judges emphasized that if the current legal system were to be enforced strictly, it would provide better access to justice. However, the judges see the need for legal aid and survivor support programmes.

The medical report was emphasized in most cases, confirming that it is still considered the only way to prove the offence of rape by many legal enforcement officials, and that other evidence carries less weight. Most lawyers and police suggested that the victim should immediately inform them of the incident so that medical tests can be conducted and requisite evidence saved. Informing the authorities of the incident on time and protecting the evidence seemed to be at the centre of the legal discussion. The legal system is oriented to the criminal justice system. Therefore, the victim's perspective becomes secondary and is never the centre of the legal discussion.

The present Nepali legal system seemed to be more regressive as the former civil code was in one sense more catering to the survivor's needs. According to an Appellate Court Judge in the earlier civil code there was a board to supervise the investigation which was jointly conducted by the government attorney and the police. The police was under the authority of the board and the judge had the right to order reinvestigation if the investigation was not up to the satisfaction. This ensured a system of checks and balances.

The Evidence Act 2031 BS (1974) totally converted the Nepali judicial system into the adversarial system, which only helped to increase the pressure on the police. The court was left the task of taking a decision based on material presented before it, but had no say in the investigation and collection of evidence. The intention was to make the legal system as neutral as possible through this division and decentralization of power. However, analyzed against the backdrop of the increasing trend of hostile victims and witnesses the move has provided a loophole for the accused and proved to be regressive in terms of the rights of the victim.

These observations also raise the question of whether the lawyers are trained enough to handle diverse categories of victim/survivors such as women, children, sexual minorities. Most of the interviews with legal enforcement authorities show the lack of proper understanding from the perspective of the victim/survivor. A blanket approach without any special consideration for the victim's needs is the norm. There is also a lack of understanding to interpret and modify law and policies according to the local situation.

7.6 Conclusion

There is a need for an overhaul of the justice system of Nepal. It could be through amendments in law/policy, change in police/court procedures or in provisions for support mechanisms for survivors. There is also a need for a parallel process of increasing the expertise of legal enforcement personnel with advanced technology/equipment, capacity building and gender sensitization. The judiciary needs to be more vigilant of the needs of the survivors and their families so that they can better address it in their overall treatment of the survivor and through their orders and decisions. Only when the legal system is re-worked in this manner, will a rape survivor truly be able to access justice in Nepal.

8

Chapter Eight

CONCLUSION AND RECOMMENDATIONS

CONCLUSION AND RECOMMENDATIONS

8.1 Introduction

This chapter presents the conclusion of the research findings and recommendations. The recommendations are based on suggestions provided by rape survivors, stakeholders, study findings and observation of the research team.

8.2 Conclusion

In Nepal, the incidence of rape is increasing, but only a few cases come into the public domain. Rape cuts across all social, cultural, economic, geographic, and religious boundaries; it knows no class, caste, ethnic, cultural, educational or age barriers. Minor girls, students and unmarried women and women residing in *Terai/madhes* were found to be the most vulnerable group and most affected by rape. However, these categories are closely interrelated. The prevalence of rape within marital relationship is widespread, but has not yet got highlighted as an issue. It is difficult to identify and document cases of marital rape. Rape within intimate relationships remains an unrecognized area. A large number of cases of rape committed by both State and non-State actors during conflict are still shrouded in secrecy and have not surfaced in the open. There are no laws, policies, or mechanisms to address such violence and create an environment for survivors to feel secure.

The right to justice remains un-realized for most survivors of rape, regardless of the disclosure or non-disclosure of the incident of rape. Lack of government and other mechanisms to respond to and support survivors of violence against women in general, and rape in particular, has left them without access to justice. The main reasons for women's limited access to justice are inadequate laws, ineffective implementation, lack of support system, prevalent mindset in all State structures, and the control exercised on women. The present legal

system and processes, political criminalization, militarization, cultural and gender essentialism and mediation practices have contributed to institutionalize violence and maintain the state of impunity.

In recent years, some voices have been raised, few positive gestures have been shown and steps taken regarding rape. But the largest lacuna in the response mechanism to an incident of rape is the lack of healing and attending to the wellbeing of the survivor. Restoration is overwhelmed by the prevalent retributive perspective resulting in traumatized survivors who then try to return to their normal lives without any redress. In absence of structures at community level to respond to the survivors of violence, the rape results in various kinds of impact on both the survivors and their families. They are forced to either hide or move on with their lives without proper redress. The impact has been acutely felt mostly due to a narrow and victim-blaming mindset. The lack of support systems has also contributed to the mounting culture of silence and re-victimization of survivors in several ways.

Some survivors of sexual violence and rape whose cases have come into the open with the assistance of non-governmental organization, have received help at various levels but are yet to be supported holistically as per their needs. Survivors living in destitute situations in remote areas, particularly the Hill and High Hills of the mid Western and far Western regions remain totally isolated and ignored, with no access to any support systems.

In absence of mechanisms to support the survivors of violence, community structures such as WHRD network and women federations/functional groups could arguably be the best mechanism at community level to address violence against women and to support the survivors of violence. Where WHRD and women's groups are active, they have played a proactive role in bringing the perpetrator to law and supporting the survivors in their own ways. There is also a distinct difference in the impact upon survivors who are affiliated to

any organization/women's groups or have been empowered in some manner. However, these groups are also plagued by the patriarchal structure, culture of impunity and criminalization of politics. In addition, they face various difficulties, violence and challenges while defending women's rights to justice. The presence of women's groups and WHRDs has helped in the reporting of cases to the police and by offering legal help. But where there are no organizations working in parallel, the survivors do not get psychosocial counselling or other types of needed support.

Mediation has been taken as an alternate means to justice in communities. Paralegal Committees in particular are known for their role in mediation. Several cases have demonstrated how they are unknowingly or knowingly helping to first normalize, and subsequently to institutionalize the violence. Sometimes, mediation is initiated for rape cases too. There is a definite need for deeper study into the process of mediation. Rape has been used as an instrument to encroach upon the bodily integrity of women and at times mediation too may reinforce the dynamics at play. In a similar vein, women's bodies have been used to express anger, avenge, manifest masculine power and supremacy, conduct politics, generate money, get community work done, defame family and community and other purposes.

The law on rape is discriminatory in many ways. The definition and the provisions with regard to all the aspects of rape are narrow in scope and limited in understanding. Going through the legal process the experiences of respondents suggests that there is a need for revamping the justice system of Nepal from the perspective of survivors. The concept of restoration of survivors, their empowerment and wellbeing has so far been completely ignored by law. The lack of perspective in the judiciary about the present needs of the survivors and their families is clearly reflected in their overall treatment of the survivors as well as in the orders and decisions.

8.3 Recommendations

8.3.1 On legal provisions and mechanisms

- i) There should be a concerted effort to review and reform the criminal justice system. Discriminatory laws and provisions incompatible with the promotion and protection of women's rights should be repealed, reviewed and amended. The law should be compatible with human rights standards of no-discrimination, equality and universality.
- ii) There is an urgent need of a high level mechanism to investigate and to establish provisions for a special court to hear violence against women in post conflict (transitional phase) Nepal. These should include cases of female combatants in the People's Liberation Army and government should show political will to prosecute the perpetrators.
- iii) Establish sexual offence legislation and implement the policies.
- iv) Redefine rape to ensure its compatibility with international standards. Instead of *karani*, *balatkar* should be used in the law so that it recognizes the various acts that fall under the law.
- v) Establish victim and witness protection law, including putting in place legislation for the institution of a victim/survivor support fund to support survivors in rebuilding their lives beyond the legal justice process.

8.3.2 On justice delivery procedures

- i) Implement the decisions of the Supreme Court to establish a fast-track system to address gender based violence, and to increase 35 days time limitation for case registration.

- ii) Establish thorough and impartial investigation guidelines to collect and protect evidence.
- iii) Develop a witness and victim protection and reintegration system.
- iv) Make Government attorneys accountable for failure to pursue any case using their discretionary power.
- v) Establish an effective mechanism to punish the persons who unduly influence the justice delivery system and procedures.

8.3.3 On service delivery, awareness creation and capacity building

- i) Review the existing mechanism, which addresses Violence against Women with a view to establish a high level oversight body to improve service delivery.
- ii) Establish and operationalise an integrated mechanism that can both work as a reporting and immediate support mechanism for survivors (One-Stop Centre) at the community level. This centre should be equipped for addressing survivors' health needs, counselling, safe shelter, financial and legal help.
- iii) Urgently establish psychosocial treatment centres to address the massive psychological post conflict problems of the population and specifically sexual violence among women.
- iv) Government should draw up a multi-sectoral and multi-disciplinary post-conflict recovery policy and programme to support especially women in uplifting their livelihood status.
- v) Special women's desks at police stations and women police cells in all districts should be well resourced with skilled and ample number of staff, technology and facilities to support survivors of sexual violence.

- vi) Specialised and free medical assistance for survivors of sexual violence and their families should be established within close proximity for easy access in the communities. The service should be able to handle abortion where required, counselling to overcome trauma, ARVs, PEP kits and other HIV/AIDS and STD related infections.
- vii) Strengthen a legal aid scheme for the poor and vulnerable, and ensure the provision of substantial support to organizations that provide legal aid services to women so as to equitably access and utilize the legal system in relation to sexual and gender based violence.
- viii) Undertake a deliberate effort to increase the number of women in the policing and legal profession.
- ix) Enhance the capacity of National Human Rights Commissions by allotting enough financial and skilled human resources.
- x) The NWC should be made fully constitutional and its structures be established at district levels to deal with the cases of violence against women. In addition, its hiring system should be made democratic and transparent so that experienced advocates of the feminist movement can become a part of it.
- xi) Skills development and training on gender and restorative justice should be provided for law enforcement agencies, including judges, lawyers, prosecutors, police, prison authorities, local courts and paralegal committees with a focus on rights-based approach to legislation.
- xii) There should be training and sensitization programmes for government, judiciary, local leaders, policy makers, police, religious leaders and health workers on the effect of sexual violence and any form of women's rights violations and how it deters development.

- xiii) Urgently provide, specialized and professional training for police, prosecutorial and judicial staff on investigation and collection of evidence (including forensic evidence) with respect to sexual violence related offences.
- xiv) A systematic, uniform and coordinated procedure for documenting cases of sexual violence should be developed and popularised among all parties engaged in documentation.
- xv) Carry out a coordinated and well-funded mass campaign to raise awareness on sexuality, sexual violence, sexual rights, and violence against women.
- xvi) Undertake campaigns and programmes to engage men to combat violence against women.
- xvii) The media should do investigative and carry out continuous follow-up reporting on the cases of violence against women and should highlight the cases where the perpetrator has been penalized for committing crimes; highlight the perpetrator rather highlighting the survivors.
- xviii) Review the school curriculum to incorporate sexuality and sex education, peace education and the prevention of SGBV to enable girls, boys, women and men to grow up in a more informed environment.
- xix) Functional education and vocational training programs should be popularized as a means of imparting skills especially to women and girls.

8.3.4 On WHRDs and other community networks

- i) The State must recognize the role of WHRD network in addressing VAW and be accountable for their protection.
- ii) Design and implement capacity building programmes in view of WHRDs' understanding and difficulties/challenges faced by them.
- iii) Other related mechanisms at community level should also be strengthened so that they can advocate for the victims/survivor' rights.

8.3.5 On the areas of further research

- a) An in-depth study of the work of paralegal committees with focus on initiatives of the mediation should be carried out to analyse the result and impact of mediation.
- b) There is a need for further investigation of rape cases during conflict so that they can be properly addressed.
- c) An in-depth study on violence against women based on the variations of geography, community, class, caste, ethnicity and sexual orientations, etc.

REFERENCES

1. AAWAAJ. (nd.). *Best Practices on Community Based Initiative against Gender and Conflict Based Violence in Rural Midwestern Region of Nepal*. Kathmandu
2. Advocacy Forum and Human Rights Watch. (2008). *Waiting for Justice: Unpunished Crimes from Nepal's Armed Conflict*. Kathmandu.
3. Advocacy Forum and UNFPA. (2010). *Sankramankalin Nyaya Ra Mahila* (Transitional Period Justice and Women). Kathmandu: Advocacy Forum.
4. Amnesty International. (2010). *Case Closed: Rape and Human Rights in the Nordic Countries*. London: Amnesty International.
5. Asia Pacific Forum on Women, Law and Development. (2007). *Claiming Rights, Claiming Justice: A Guidebook on Women Human Rights Defenders*. Thailand: APFWLD.
6. "Armed Conflict and its Impact on Gender." *Asian Exchange*, Special Issue, Vol. 19 No. 2 – Vol. 20 No. 1, 133-155, 2005.
7. Bhasin, Kamala and Khan, Nighat Said. (2000). *Some Questions on Feminism and its Relevance in South Asia*. New Delhi: Kali for Women.
8. Blue Diamond Society and European Union. (2066 BS). *Yaunik Tatha Laingik Alpasankhyak Sambandhi Kehi Jankari* (Basic Information on Sexual and Gender Minorities). Kathmandu: Blue Diamond Society.
9. Centre for Legal Research and Resource Development. (nd.). *Baseline Survey on Criminal Justice System of Nepal*. Kathmandu: Centre for Legal Research and Resource Development.
10. Central Bureau of Statistics/Government of Nepal. (2002). *Statistical Pocket Book Nepal*. Kathmandu: CBS.

11. Central Bureau of Statistics/UNFPA. (2002). *Population Census 2001: National Report*. Kathmandu: CBS.
12. Chapagain, Bidya and Prakash Gnyawali. (2008). Nepal: Vacuum at the Top. In Padman, Padmaja et al. (eds.). *ANNI 2008 Report on the Performance and Establishment of National Human Rights Institutions in Asia* (pp.123-31). Bangkok: FORUM-ASIA.
13. Chenoy, Anuradha. (2002). *Militarism and Women in South Asia*. New Delhi: Kali for Women.
14. Chhetri, Anju, Thapa, Manju and Gyawali, Kulmani. (2007). *Women, Peace and Restructuring: Defining Public Agenda and Strengthening Constituencies for Peace and Reform in Nepal*. Kathmandu: ASMITA.
15. *Compilation of International Human Rights Instruments*. Publication No. 156. Kathmandu: Janadhvani Prakashan, 2010.
16. *Exploring Masculinity*. New Delhi: Women Unlimited, an associate of Kali for Women, 2004.
17. FWLD. (2066 BS). *Yauniktako Adhikar Ra Nepali Kanun* (Right to Sexuality and Nepali Law). Publication No. 148. Kathmandu
18. FWLD (nd.). *Compilation of Decisions on Women's Rights of International Treaty Bodies*. Publication No. 155. Kathmandu.
19. Gautam, Bindu; et al. (2004). *Status and Dimensions of Trafficking within Nepali Context*. Kathmandu: Institute for Integrated Development Studies and United Nations Development Fund for Women.
20. Gautam, Shova. (2007). *Sexual Violence in the People's War: The Impact of Armed Conflict on Women and Girls in Nepal*. Kathmandu: Institution of Human Rights Communication Nepal.
21. Gautam, Simon. (2010). *Female Identity and Androgyny in the Novels of Virginia Woolf and Parijat: A Comparative Study. Dissertation*. Kathmandu: Tribhuvan University. Unpublished.

22. Goetz, Anne Marie. (2008/2009). *Who Answers to Women: Gender and Accountability*. New York: UNIFEM.
23. Goswami, R., Sreekala, MG., & Goswami, M. (2006). *Women in armed conflict situations (a study by north east network)*. India: North East Network.
24. Government of Nepal. (2006). *Comprehensive Peace Accord (CPA)*, November 21, 2006. <en.wikipedia.org>. November 2010.
25. Government of Nepal. (2007). *Interim Constitution 2063*. Kathmandu, Nepal.
26. Hans, Asha and Annie Patri. (2003). *Women, Disability and Identity*. New Delhi: Sage Publications.
27. Hesse-Biber, Sharlene Nagy and Patricia Lina Leavy. (2007). *Feminist Research Practice: A Primer*. New Delhi: Sage Publications.
28. Informal Sector Service Centre (2001, 2002, 2003, 2004, and 2005) *Human Rights Year Book*, Kathmandu: INSEC
29. Informal Sector Service Centre (2006). *Human Rights Year Book*, Kathmandu: INSEC
30. Informal Sector Service Centre (2007). *Human Rights Year Book*, Kathmandu: INSEC
31. Informal Sector Service Centre (2008). *Human Rights Year Book*, Kathmandu: INSEC
32. Informal Sector Service Centre (2009). *Human Rights Year Book*, Kathmandu: INSEC
33. Informal Sector Service Centre (2010). *Human Rights Year Book*, Kathmandu: INSEC
34. Informal Sector Service Centre (2010). *Report of Non-Governmental Organization on Universal Periodic Review*. Kathmandu: ISSC.

35. Isis-WICCE, WANEP/WIPNET and Ministry of Gender and Development. (2008). *A Situation Analysis of the Women Survivors of the 1989-2003 Armed Conflict in Liberia*. Kampala: Isis-WICCE.
36. Isis-WICCE. (2010). *Making UNSCR1325 A Reality: Isis-WICCE's Contribution in 2009-March 2010*. Kampala, Uganda.
37. Isis-WICCE (2008). *Transforming Conflict and Mobilizing for Justice in Armed and Post Conflict Situations: Women's Reflections the 2007/8 Institute*. Kampala, Uganda.
38. Isis International-Manila.(nd.). Monograph Series on Gender, Governance and Democracy. Philippines: Isis International-Manila
39. Jaggar, Alison M. and Rothenberg, Paula S. (1993). *Feminist Frameworks: Alternative Theoretical Accounts of the Relations between Women and Men*. New York: McGraw-Hill, Inc.
40. Kapur, Ratna. (2005). *Erotic Justice: Law and the New Politics of Postcolonialism*. Delhi: Permanent Black.
41. Lawoti, Mahendra and Pahari, Anup K. (Eds.) (2010). *The Maoist Insurgency in Nepal*. London and New York: Routledge.
42. Lawoti, Mahendra. (2010). Bullets, Ballots and Bounty. In Mahendra Lawoti and Anup K. Pahari (Eds.). *The Maoist Insurgency in Nepal* (pp. 287-303). London and New York: Routledge.
43. Madhurima. (1996). *Violence Against Women: Dynamics of Conjugal Relations*. New Delhi: Gyan Publishing House.
44. *Mahilako Arthik Ra Kanuni Adhikar: Bidyaman Kanunma Sudharko Abasyakta Ra Auchitya* (Women's Economic and Legal Rights: The Need and Appropriateness of Redefinition of the Existing Laws). Kathmandu: FWLD, 2061 BS.
45. Malla, Sapana Pradhan et al. (2007). *Discriminatory Laws Against Women: An Updated Study*. Kathmandu: Forum for Women, Law and Development and The Ford Foundation.

46. Ministry of Health and Population/GoN, New ERA and Macro International Inc. (2007). *Nepal Demographic and Health Survey 2006*. Kathmandu.
47. Mishra, Yamini et al. (2006). *Negotiating Culture: Intersections of Culture and Violence Against Women in Asia Pacific*. Thailand: Asia Pacific Forum on Women, Law and Development.
48. Ministry of Women, Children and Social Welfare/GoN. (2060 BS). *National Plan of Action on Convention on the Elimination of all Forms of Discrimination against Women*. Kathmandu: Government of Nepal.
49. Ministry of Law and Justice/GoN. (2066 B.S.). *Muluki Ain (Civil Code)*. Kathmandu: Government of Nepal
50. National Judicial Academy and UNIFEM. (2066 BS). *Band Ijalas Sambandhi Abadharana Ra Yasko Karyanwayan Bidhi*. Kathmandu: National Judicial Academy and UNIFEM.
51. National Human Rights Commission. (2008). *Trafficking in Persons Especially on Women and Children in Nepal: National Report 2006-07*. Kathmandu: NHRC.
52. National Human Right Commission (2066 BS). *Barsik Pratibedan 2065-2006 BS (Annual Report 2008/09)*. Kathmandu.
53. Nyong'o, Zawadi. (2010). *"When I dare to be powerful...": On the Road to a Sexual Rights Movement in East Africa*. Nairobi: Akina Mama wa Afrika (AMwA).
54. Office of the Attorney General of Nepal. (2065/2066 BS). *Annual Report of Attorney General*. Kathmandu: Office of the Attorney General of Nepal.
55. Office of the Prime Minister and the Council of Ministers. 2010. *Laingik Hinsabiruddha Rastriya Karyayogana (National Plan of Action against Gender Based Violence)*. Kathmandu.
56. Pallattao, Josefina. (2008). *Political Economy of Violence against Women in Asia Pacific*. Manila: Asia Pacific Forum on Women, Law and Development.

57. Pradhan-Malla, Sapana et al. (2000). *Discriminatory Laws in Nepal and their Impact on Women: A Review of the Current Situation and Proposals for Change*. Kathmandu: FWLD.
58. Price, Lisa S. (2009). *Feminist Frameworks: Building Theory on Violence against Women*. Delhi: Aakar Books.
59. Protection International and Protection Desk-Nepal. (2008). *Final Report: Regional Consultations on Protection Mechanisms for Human Rights Defenders in Nepal*. Kathmandu: Protection International and Protection Desk-Nepal.
60. Pyakuryal, Kailash, March, Kathryn and Adhikari, Bipin. (eds.). (2007). *Nepal in Conflict*. Kathmandu: Sociological/Anthropological Society of Nepal.
61. Rajbhandari, Renu; et al. (2010). *Hamro Sharir Hamrai Ho: Hamro Sharir Ra Hamro Adhikar (Our Bodies Ourselves: Our Bodies and Our Rights)*. Part 4. Kathmandu: WOREC Nepal.
62. Rajbhandari, Retika (2006). *Violence against Women in Nepal: A Complex and Invisible Reality*. Kathmandu: WOREC Nepal.
63. Real, Mary Jane N. (2005). *International Consultation on Women Human Rights Defenders: Evaluation Report*. Amnesty International et al.
64. Rehn, Elisabeth and Sirleaf, Ellen Johnson. (2002). *Women, War, Peace: The Independent Experts' Assessment of the Impact of Armed Conflict on Women and Women's Role in Peace-Building*. Vo. 1. New York" UNIFEM and UNFPA.
65. Sathi, The Asia Foundation and DFID. (2010). *Nepal: Preliminary Mapping of Gender Based Violence*. Kathmandu: Sathi, The Asia Foundation and DFID.
66. SARI/Equity. (nd.). *Regional Victim/Witness Protection Protocol to Combat Trafficking, Commercial Exploitation and Sexual Abuse of Women and Children in South Asia*. New Delhi: Regional Action Forum on Improving the Implementation of Laws Protecting Women and Children.

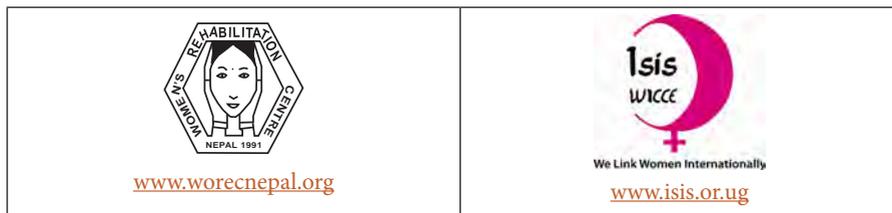
67. Shakti Samuha. (2009). *Annual Report*. Kathmandu: Shakti Samuha.
68. Shrestha, Shankar Kumar. (2001). *A Step Towards Victim Justice System: Nepali Perspective*. Kathmandu: Pairavi Prakashan.
69. Sidhu, Gretchen. (nd.). *A Life Free of Violence is our Right: The UN Trust Fund to End Violence Against Women: 10 Years of Investment*. UNIFEM.
70. Six-Point Checklist on Justice for Violence Against Women. London: Amnesty International, 2010.
71. Supreme Court (2065 BS). *Nepal Kanoon Patrika-Masik, bhag 50, Anka 11* (Nepal Law Magazine-fortnightly, part 50, No. 11), Kathmandu: Sarbochha Adalat (Supreme Court) (Nepal).
72. Thapa, Smriti. (2008). *What Happens When Women Take Actions?* Kathmandu: Isis-WICCE and WOREC Nepal.
73. The Asian Legal Resource Centre (August 23, 2010). ["ASIA: Effective witness protection lacking in Indonesia and Nepal"](#). Press Release. Retrieved 2010-11-23.
74. Tiwari, Biswa Nath. An Assessment of the Causes of Conflict in Nepal. In Mahendra Lawati and Anup K. Pahari (Eds.). *The Maoist Insurgency in Nepal* (241-62). London and New York: Routledge.
75. United Nations. (nd.). *National Institutions for the Promotion and Protection of Human Rights*. Fact Sheet No. 19. Geneva: Centre for Human Rights.
76. UNICEF Regional Office for South Asia. (1999). *Working with Youth against Gender Violence*. Report No. 36. Kathmandu. ROSA
77. UNIFEM. (2010). *Annual Report 2009-2010*. New York.
78. UNHCR (nd.). *Human Rights Defenders: Protecting the Right to Defend Human Rights*. Fact Sheet No. 29. Geneva: UNHCR.

79. Upreti, Bishnu Raj. (2004). *The Price of Neglect: From Resource Conflict to Maoist Insurgency in the Himalayan Kingdom*. Kathmandu: Bhrikuti Academic Publications.
80. Violent Conflict and Change. In Mahendra Lawoti and Anup K. Pahari (Eds.) *The Maoist Insurgency in Nepal* (pp.304-26). London and New York: Routledge, 2010.
81. Wood, Julia T. (2009). *Gendered Lives: Communication, Gender, and Culture*. USA: Wadsworth.
82. WOREC and Isis-WICCE. (2008). *WHRDs in Nepal: Constraints and Strategy Mechanisms*. Uganda.
83. WOREC (2008). *Hamro Sharir Hamrai Ho: Yaunikta* (Our Bodies Ourselves: Sexuality). Part 3. Kathmandu, Nepal.
84. WOREC and Isis-WICCE (2009). *WHRDs in Nepal 2009*. Kathmandu, Nepal
85. WOREC (2010). *Women Human Rights Defenders: My Story, My Reality*. Kathmandu, Nepal
86. WOREC (2008). *Anweshi: A Year Book on Violence Against Women*. Kathmandu: WOREC Nepal.
87. WOREC (2009). *Anweshi: A Year Book on Violence Against Women*. Kathmandu: WOREC Nepal.
88. WOREC (2010). *Anweshi: A Year Book on Violence Against Women*. Kathmandu.
89. WOREC (2009). *Case Documentation of Women Human Rights Defenders*. Kathmandu: WOREC Nepal
90. WOREC (nd) *Collective Voices of Women from Nepal: Asserting Our Rights*. Kathmandu. Nepal
91. Yami, Hisila. (2007). *People's War and Women's Liberation in Nepal*. Kathmandu: Janadhwani Prakashan.

Websites:

1. http://www.thaindian.com/newsportal/world-news/attacks-against-women-grow-in-nepals-zero-violence-year_100329623.html
2. <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>
3. <http://hdrstats.undp.org/en/countries/profiles/NPL.html>> Nov. 2010.
4. <http://www.amnesty.org/en/library/asset/ASA31/054/>
5. http://www.langtang.com/nepal/information_about_nepal/Nepal_info.php, 10/4/2010.
6. http://www.nepal.travel/Culture_and_Custom.html, 10/4/2010.
7. <http://www.gewgraphia.com/nepal/>, 10/4/2010.
8. <http://www.visit-nepal.com/introduction.htm>, 10/4/2010.
9. http://www.International_Criminal_Court#Reparation_for_victims
10. <http://www.healthyplace.com/abuse/escaping-hades/escaping-hades-sitemap/menu-id-828/>
11. <http://subicrapecase.wordpress.com/rape-is-a-crime/myths-vs-truths-about-rape/>
12. <http://www.medicinenet.com/script/main/art.asp?articlekey=46850>
13. www.globalsecurity.org/military/library/news/2006/10/mil-061027_irino4.htm 8/9/2011.

APPENDIX I QUESTIONNAIRE



“Access to Justice for Rape Survivors in Nepal”

District: **VDC/Municipality:**

Name of Interviewer(s):

Starting time: **Ending time:**

Code No. **Class:**

A. Survivor’s profile

A1.1 First name:

A1.2 Last Name:

A2. Completed age.....

A3. Gender

Women 1

Transgender 2

Address:

Permanent Address

A4.1 District

A4.2 VDC

A4.3 Ward no.

A 4.4 Country

Present Address

A4.5 District

A4.6 VDC

A4.7 Ward no.

A5. Nationality:

Nepali 1

Indian 2

Other (specify) 3.....

A6. Ethnicity

Brahmin/ Chhetri (Terai)	1
Brahmin/ Chhetri (Hill)	2
Hill/Himal Janjati	3
Terai Janjati	4
Hill/Himal Dalit	5
Terai Dalit	6
OBC (Terai)	7
Muslim	8
Other (specify)	9
.....	

A7. Religion

Hindu	1
Buddhist	2
Muslim	3
Christian	4
Other (specify)	5
.....	

A8. Marital status

Unmarried	1→ go to A11
Married	2
Divorced	3
Separated	4
Widowed	5
Single mother	6→ go to A10
Other (specify)	7
.....	

A9. If married, age at marriage

A10. No of children

No of children alive Male Female

No of children dead Male Female

A11. Education:

Illiterate	1
Can read write only	2
Below primary	3
Primary	4
Secondary	5
Higher secondary	6
Bachelor's	7.1
Master's	7.2
PhD	7.3
Technical/Vocational education	8

A12. Occupation:

Agriculture	1
Business	2
Labour	3
Cottage industry	4
Government Service	5
NGO Service	6
Private Office	7
Political work	8
Student	9
Other (specify)	10

A13. Family description:

Nuclear	1
Joint	2
Extended	3

A.14. Family economic source (Multiple responses):

Yes = 1

No = 2

No.	Economic Source	Answer as applicable
A14.1	Agriculture	
A14.2	Business	
A14.3	Labor	
A14.4	Cottage industry	
A14.5	Government Service	
A14.6	Non-government service	
A14.7	Private Office	
A14.8	Political work	
A14.9	Remittance	
A14.10	Pension	
A 14.11	Other (specify).....	

Additional notes on the survivor:

.....
.....
.....
.....
.....

B. Violation of women's rights

B1. Violations faced due to being a woman

Yes = 1

No = 2

Types of Violence	Answer as applicable
Forced marriage	
Sexual violence	
Rape	
Domestic violence	
Marital rape	
Violation of right to property	
Violation of right to education	
Prohibition from social contact	
Others (specify)	

B2. What do you think are the reasons for increasing violation of women's rights in Nepal?

.....
.....
.....
.....

C. Event

C1. Type of rape

Attempted rape	1
Rape (single)	2
Gang rape	3
Rape and murder	4
Gang rape and murder	5
Rape and attempted murder	6

C2.1 Date (BS) : (Day.....Month.....Year.....)

C2.2 Time

Morning	1
Daytime	2
Evening	3
Night	4

C3. Location of event

C3.1 Country.....

C3.2 District

C3.3 VDC

C3.4 Ward no.

C3.5 Does not know

C4. Place of event

Home (Own)	1
Offender's home	2
Neighborhood	3
Outside home (Jungle, farm etc.)	4
Work place/office	5
Custody	6
Other (e.g. hospital, school, safe shelter)	7
.....	

C5. Number of perpetrators

C6.1. Survivor knows perpetrator
 1=Know 2= Do not Know→ go to B6.3

C6.2. Survivor's relationship with perpetrator

Family member:	
Husband	1.1
Own blood relation(Father, uncle, brother)	1.2
In-laws (brother)	1.3
In-laws (parent)	1.4
Other family relationship	2
Neighbour	3
Employer	4
Homeowner	5
Colleague	6
Friend	7
Lover/Fiancée	8
No relationship	9
Other (specify)	10
.....	

C6.3. If she does not know the perpetrator, can they identify them on sight?

Yes =1 No =0

C7.1 Was there anybody around when this happened?

Yes = 1, No = 0, Don't Know=3

C7.2 If yes, who? (Description)

.....

.....

C8. Was the event informed to any one? (Multiple response)

Yes = 1 No = 0

No.	Person informed	Tick	If yes, specify particular person
C8.1	Family		
C8.2	Community		
C8.3	Paralegal committee/ lawyer		
C8.4	WHRDs		
C8.5	Women groups		
C8.6	NGO		
C8.7	Political Party leader		
C8.8	Government office CDO		
C8.9	Government office WDO		
C8.10	Government office Police		
C8.11	Government office VDC		
C8.12	Government office DDC		
C8.13	Others (specify)		

C9. What happened after you informed?

C9.1. At family level

.....

C 9.2. At organizational level

Is/was the case taken care of or supported by any group (e.g. WHRD/ NGO/ human rights organization)?

Yes = 1 No = 0→C12

C10. If yes, name of organization/group.....

No.	Type of Service	Tick where applicable	Time frame (in months)	Description of support
C10.1	Safe house			
C10.2	Counseling			
C10.3	Medical support			
C10.4	Legal support			
C10.5	Financial support			
C10.6	Mediation			
C10.7	Other support (specify).....			

C11. If yes, name of organization/group.....

No.	Type of Service	Tick where applicable	Time frame (in months)	Description of support
C11.1	Safe house			
C11.2	Counseling			
C11.3	Medical support			
C11.4	Legal support			
C11.5	Financial support			
C11.6	Other support (specify).....			

If the survivor has received medical services, please ask the following questions:

C12. Did you have any medical checkup?
Yes =1 No=0

C13. Who initiated the medical test?
.....
.....

C14.1. Where was the test done?
.....
.....

C14.2. What was seen in the medical report?
.....
.....
.....

C15. What other support was provided/facilitated for and by whom?
.....
.....

C16.1. If mediation was done, where and by whom?
.....
.....
.....

C16.2 Did the mediation help you? Were you satisfied? Why or why not?
.....
.....
.....

C17. Was the survivor reintegrated in society after initial help?
Yes = 1 No = 0

C18. What type of help was received during reintegration?
.....
.....
.....

Effect/Impact to the victim (descriptions) (Multiple response)

C19. How did this incident affect you?

C19.1.1 Physical
Yes =1 No = 0

C19.1.2 Description (overall health condition, physical injuries)
.....
.....
.....
.....

C19.2.1 Mental
Yes = 1 No = 0

C19.2.2 Description (mental disorders, depression, psychiatric problems)
.....
.....
.....
.....

C19.3.1 Psychological Yes =1 No=0

C19.3.2 Description (fear, psychological feeling of threat, dreams)
.....
.....
.....
.....

C19.4.1 Gynaecological
Yes =1 No=0

C19.4.2 Description (abnormal vaginal discharge, urinary fistula, rectal fistulae, prolapsed of uterus, STI, HIV and AIDs, Unwanted pregnancy, inability to have children, vaginal tear)
.....
.....
.....
.....

C19.5.1 Livelihood/economic
Yes =1 No=0

C19.5.2 Description (unable to work, thrown out of job etc.)
.....
.....
.....
.....

C19.6.1 Social
Yes =1 No=0

C19.6.2 Description (stigmatization, ostracism, made to feel inferior etc.)
.....
.....
.....
.....

C20. Effect to Survivor's Family

Yes = 1 No = 0

		Physical	Mental	Psycho logical	Livelihood/ Economic	Social	Nutrition	Education
	Family member							
a.	Father							
b.	Mother							
c.	Sister							
d.	Brother							
e.	Husband							
f.	Daughter							
g.	Son							
H,	Other (specify)							

C21. Effect description (overall description)

.....

.....

.....

.....

.....

Additional notes on the event:

.....

.....

.....

.....

.....

D. Offender(s)/Perpetrator(s)

[For coding: Serial number of perpetrator]

D1.1 First name:

D1.2 Last Name:

D2. Completed age.....

D3. Gender

- Women 1
- Transgender 2

Address:

Permanent Address

- D4.1 District
- D4.2 VDC
- D4.3 Ward no.
- D4.4 Country

Present Address

- D4.5 District
- D4.6 VDC
- D4.7 Ward no.

D5. Nationality:

- Nepali 1
- Indian 2
- Other (specify) 3.....

D6. Ethnicity

Brahmin/ Chhetri (Terai)	1
Brahmin/ Chhetri (Hill)	2
Hill/Himal Janjati	3
Terai Janjati	4
Hill/Himal Dalit	5
Terai Dalit	6
OBC (Terai)	7
Muslim	8
Other (specify).....	9

D7. Religion

Hindu	1
Buddhist	2
Muslim	3
Christian	4
Other (specify)	5

D8. Marital status

Unmarried	1 → go to D10
Married	2
Divorced	3
Separated	4
Widowed	5
Single father	6 → go to D10
Other (specify)	7

D9. If married, age at marriage

D10. Education:

Illiterate	1
Can read write only	2
Below primary	3
Primary	4
Secondary	5
Higher secondary	6
Bachelor's	7.1
Master's	7.2
PhD	7.3
Technical/Vocational education	8

D12. Occupation:

Agriculture	1
Business	2
Labour	3
Cottage industry	4
Government Service	5
NGO Service	6
Private Office	7
Political work	8
Student	9
Other (specify)	10

Additional notes on the perpetrator:

.....
.....
.....
.....

E. Legal aspect of the case

E1. Is/was the event reported to police?

Yes = 1 No=0

E2. Is/was the case registered at the Police?

Yes = 1 No=0

E3. If yes, when was the case registered? (in how many days/date)

.....
.....

E3.1 Who accompanied and helped you to register the case?

.....
.....

E3.2 Who was present when you gave the statement at the police station?

No.	Persons present	Tick if applicable
E3.2.1	Police	
E3.2.2	Social worker	
E3.2.3	Witness	
E3.2.4	Relative/Friend	
E3.2.5	Other (specify).....	

E4. If the case was not registered, what were the reasons for non-registration?

No.	Reasons for non registration	Tick where applicable
E4.1	Time limit/ time frame (35 days)	
E4.2	Threat	
E4.3	Social stigma	
E4.4	Political pressure	
E4.5	Issue of chastity	
E4.6	Police ignored/refused	
E4.7	Other (specify)	

Additional description for non-registration (if needed):

.....

.....

.....

E5. Did you receive any threat from anyone after reporting the case to the police and other justice mechanisms?

Yes = 1

No = 0

E6. If yes, whom did the survivor/you receive the threat from?

No.	Survivor threatened by	Tick where applicable
E6.1	Perpetrator	
E6.2	Perpetrator's family	
E6.3	Community	
E6.4	Political party	

E7. Was/were the perpetrator(s) arrested?
 Yes = 1 No = 0

E8. If yes, number of perpetrators arrested (if gang raped)

E9. Is/was the case filed in court?
 Yes = 1 No = 0

E10. If not filed in court, why?

E11. What were the supporting evidences for the case in the courts of law?
 Yes = 1 No = 0

Evidence/Proof	Tick where applicable
Witnesses	
Medical report	
Forensic report	
Photo	
Other (Specify)	

E11.1. Detailed description of the evidence/proof:

.....
.....
.....

E12. Number of witnesses present during hearing:

.....

E13. What was the process of case hearing?

Camera hearing/closed hearing	1
In front of other persons/lawyers	2
Others	3

E14. Who was present when you gave the statement of the case?

Yes = 1 No = 0

No.	Persons present	Tick where applicable
E14.1	Judge	
E14.2	Lawyer	
E14.3	Police	
E14.4	Perpetrator	
E14.5	Other specify.....	

E15. Did the persons present support in the case?

Yes = 1 No = 0

E16. If yes, how did they support you?

.....
.....
.....

E17. Is the case pending in court or decided?

Decided = 1 Pending = 0

E18. If the case is still pending, what are the reasons behind the delayed verdict?

.....
.....
.....

E19. Where was the case finally decided?

District Court =1

Appellate Court =2

Supreme Court =3

E20. If decided, how long did it take to decide the case?
(.....YearsMonths)

E21. What was the court verdict?

Offender Convicted =1

Offender Acquitted = 0

E22. If convicted, what was the punishment given to the perpetrator?

.....
.....

E23. If acquitted, what were the reasons? (Please describe)

.....
.....

E24. Was any other decision made in support of the victim/survivor?

Compensation Yes = 1

No = 0

E25. Was any other support given?

Yes = 1

No = 0

If yes, what kind of support?

.....
.....

E26. What do the survivors want?

E26.1. To better their own lives

.....
.....

E26.2. To put at end to rape in Nepal

.....
.....

E27. Any comments about the present legal justice system?

.....
.....

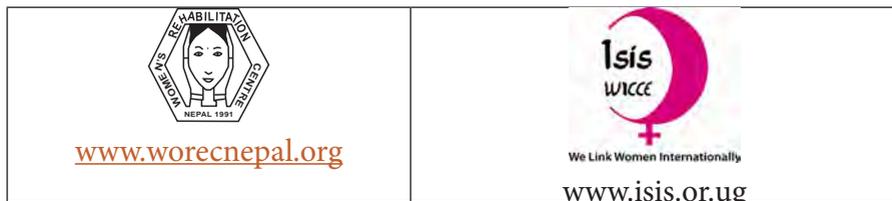
E28. Any questions/queries from the survivors?

.....
.....

Thank you for your valuable time and information.

APPENDIX II

KEY INFORMANT INTERVIEW GUIDE



“Documenting Realities: Access to Justice for Rape Survivors in Nepal, 2007-2010”

Note: The following are only the guiding semi-structured questions to collect information related to the subject matter. In such case, probing is very necessary and important to go deeper and dig out the answer. So, the interviewer should keep on probing based on the respondents’ responses.

Name: **Female/Male**

Designation **Period of Service**

A. Police Authority

1. To what extent is rape reported to police? (Number reported in a month, if low, what stops women survivors from reporting rape cases?)
2. In your experience, what may be the major reasons behind rape?
3. What are the procedures in place? (probe: Who is in charge of receiving and registering complaints of the victims -- male or female police? After registration, where are the rape cases referred to?)
4. Other than registration, what other support is provided by police?
5. What is the investigation procedure and timeframe? (probe for protection mechanisms, family cooperation, procedures of arrest)
6. What challenges does police face during the investigation process and in handling rape cases in general?

7. What should be put in place;
 - a) To encourage victims and survivors to report?
 - b) To ease the police investigation and operations

B. Government Attorneys

1. What are the underlying reasons why rape and sexual violence have remained a pandemic in this country?
2. How many cases of rape do you receive in a month?
3. What are the existing laws on which judgments for rape cases presented are based?
4. What are the procedures for presenting the cases to the courts of law?
5. What challenges do you face in defending rape cases?
6. Other than convicting/acquitting perpetrators, is there any other mechanism in place to help the perpetrators reform?
7. Within the procedures, what would you like to see change to expedite the proceedings?
8. What would you recommend to improve the justice system to address rape and sexual violence cases?

C. Court Judges

1. What are the existing laws you use to preside over rape cases?
2. In your opinion, what may be the underlying causes for the high prevalence of rape?
3. What should be done to support you in expediting the rape cases before the courts of law?

D. NGOs

1. What issues does your organization focus on?
2. What are the nature of rape and sexual violence cases that your organization has handled/supported?
3. What effects and impacts of sexual violence (rape) have you observed among the survivors you deal with? How has this impacted on the family and community?
4. In your experience, what may be the major reasons behind rape?

5. What form of justice is available to women survivors of rape?
6. What is the preferred form of justice that rape survivors always call for? (Probe; if mediation, why? If legal, why?)
7. What hinders women from accessing justice?
8. What role have you played in ensuring that survivors access justice that they require?
9. What has worked and not worked? (probe; what are the reasons for the mechanisms not working?)
10. What should be done to;
 - a) Support survivors of rape
 - b) Address the scourge of rape in Nepal

E. Village Development Committee (VDC) Secretary

1. What are the trends and types of violence against women in this VDC? (Probe: What about rape cases? What are the major reasons behind rape cases?)
2. How are issues of rape and sexual violence handled in this village (probe on mechanisms of reporting, investigation, arrest, going to court, mediation) What has worked and not worked?
3. What specific role do you play with regard addressing rape/sexual violence cases in your community? (Probe: kind of support, referral and reporting, mediation)
4. What challenges do you face while doing this work?
5. In your opinion, what should be done ;
 - a) To combat violence against women in general
 - b) Support victims/survivors of rape and sexual violence
 - c) Strengthen the mandate of the VDC

F. Women Development Officer (WDO)

1. What are the common women human rights violations in your community? (probe on rape as an issue, major causes behind rape)
2. What role do you play in addressing these violations? What types of support mechanisms do WDOs provide rape victims/survivors? (Probe: If not why? What are the limitations?)

3. Which other stakeholders have you co-coordinated with in responding to cases of rape/sexual violence? (Probe: referral process, where and why?)
4. Being a WDO, have you or other WDOs you know ever experienced violence while defending any women's issues in the community? What kind of violations do you face? How did you cope/deal with this situation? (probe about support)
5. It has been observed that due to various circumstances, mediation has been utilized as a mechanism to resolve cases of rape. From your perspective;
 - a) how is mediation done in the community?
 - b) Do rape victims get ample justice through mediation? (Probe: direct and indirect involvement of WDOs-how?)
6. What hinders women from accessing legal justice?
7. What should be done (probe at community/district level);
 - a) To ensure that victims access justice
 - b) Mandate of the WDO is strengthened

G. Chief District Officer (CDO)

1. From your perspective, why has violence against women and particularly sexual violence/rape remained a problem in this country? (Probe on trends of rape in the District, major reasons for rape, vulnerable groups).
2. How are issues of rape and sexual violence handled in the District? (probe on mechanisms of reporting, investigation, arrest, going to court, mediation)? What has worked and not worked?
3. What specific role do you play with regard addressing rape/sexual violence cases in your community? (Probe: kind of support, referral and reporting, mediation)
4. Have you had any direct or indirect experience with mediation in rape cases? (Probe: How? What were the outcomes? Does mediation offer justice to women).
5. In terms of justice, are victims/survivors of rape in Nepal accessing quality justice? (probe: strengths and gaps in the legal system, what hinders women from accessing legal justice)

6. What do you think are the community support systems and mechanisms that enhance the protection of survivors and access to justice for survivors?
7. Does the district have specific legislations/by laws on vaw/sexual violence/rape? Explain
8. What challenges do you face while doing this work?
9. In your opinion, what should be done ;
 - d) To combat violence against women in general
 - e) Support victims/survivors of rape and sexual violence
 - f) Strengthen the mandate of the CDO

H. Ministry of Women, Children and Social Welfare (MOWCSW)

1. From your perspective, why has violence against women and particularly sexual violence/rape remained a pandemic in this country?
2. What are the roles and responsibilities of MOWCSW with regard to addressing VAW and especially rape?
3. How do you link with the National Women's Commission, National Human Rights Commission (NHRC) and other ministries to collectively address the issues of violence against women and specifically rape cases?
4. In terms of justice, are survivors of rape in Nepal accessing quality justice? (Probe: strengths & gaps in legal system, issues of mediation, etc)?
5. What are the existing state policies/legal provisions/mechanisms that enhance women's right to access legal justice?
6. What do you think should be done;
 - a) To support survivors of rape access justice
 - b) Address the scourge of rape in Nepal (probe for one stop service center, etc)
 - c) To strengthen the mandate of MOWCSW
7. What are the future plans of MOWCSW to address VAW?

I. National Women's Commission (NWC)

1. From your perspective, why has violence against women and

particularly sexual violence/rape remained a pandemic in this country?

2. What is NWC's role in addressing issues of rape and violence against women in the country? Probe:
 - i) protocols regarding reporting and documentation procedures
 - ii) availability of response and accountability mechanisms to rape cases like Suntali Dhami); iii) policies/provision on rape/sexual violence in the formulation process
 - iv) access to justice
3. How do you link with the National Human Rights Commission (NHRC) and other ministries to collectively address the issues of violence against women and specifically rape cases?
4. In terms of justice, are survivors of rape in Nepal accessing quality justice? (Probe: strengths & gaps in legal system, issues of mediation, etc)?
5. What do you think should be done;
 - a) To support survivors of rape access justice
 - b) Address the scourge of rape in Nepal (probe for one stop service center, etc)
 - c) To strengthen the mandate of NWC
6. Any other suggestion with respect to this issue

J. National Human Rights Commission (NHRC)

1. From your perspective, why has violence against women and particularly sexual violence/rape remained a pandemic in this country?
2. What is NHRC's role in addressing issues of rape and violence against women in the country? (probe: i) protocols regarding reporting and documentation procedures ii) availability of response and accountability mechanisms to rape cases iii) any policies/provision on rape/sexual violence in the formulation process iv) ensuring access to justice
3. How do you link with the National Women's Commission (NWC) and other ministries to collectively address the issues of violence against women and specifically rape cases?

4. In terms of justice, are survivors of rape in Nepal accessing quality justice? (Probe: strengths & gaps in legal system, issues of mediation, etc)?
5. What do you think should be done;
 - a) To support survivors of rape access justice
 - b) Address the scourge of rape in Nepal (probe for one stop service center, etc)
 - c) To strengthen the mandate of NHRC
6. Any other suggestion with respect to this issue

K. Media Personnel

1. From your perspective, why has violence against women and particularly sexual violence/rape remained a pandemic in this country?
2. What role has the media played in highlighting rape cases? (Probe: sources and basis of reporting, nature of reporting, techniques used to get information, challenges, successes, do they follow up a case to its conclusion)
3. To what extent are issues of violence against women prioritized in the news room? (Probe; why it is not a priority)
4. Beyond the print and electronic media, how else have you utilized your role as media personnel to highlight cases of rape/sexual violence in your community? (probe: engagement as a pressure mechanism, referral of cases, successes, challenges)?
5. In your opinion, is there justice for victims/survivors of rape? (probe: what works and does not work, attitude/role of mediation).
6. What should be done;
 - a) To support and encourage the media to priorities VAW/Sexual violence/rape as news?
 - b) To encourage victims and survivors to report
 - c) Strengthen access to justice for victims and survivors
7. Any other advice to the women's movement in Nepal

L. Political Leader

1. From your perspective, why is violence against women and

- particularly sexual violence/rape a problem in this country? (probe for underlying causes of rape, trends – increase or decrease).
2. What role have you played (including other political leaders) in ensuring that rape/sexual violence becomes a political issue on the national agenda? (probe; what has worked and not worked)
 3. In terms of justice, are survivors of rape in Nepal accessing quality justice? (Probe: gaps in legal system, issues of mediation, etc)?
 4. What do you think should be done (probe: at community, national and in party structures and systems)
 - a) To support survivors of rape
 - b) Address the scourge of rape in Nepal
 5. Any additional suggestions?

M. Religious Leader

1. What are the underlying reasons? why has VAW/Sexual violence/rape remained a problem in this country?
2. How has this impacted on the well being of women and men in the community?
3. As a religious leader, what role have you played in response to this problem? (probe; role in supporting survivors access justice, mediation)
4. What do you think should be done (probe: from social & legal perspective at community, national and in religious institutions)
 - a) To support survivors of rape.
 - b) For perpetrators
 - c) Address the scourge of rape in Nepal
5. Any additional suggestions you want to make on this matter?

N. Mediators

1. What makes survivors of rape prefer mediation over legal justice?
2. Who presides over mediation? Where is it always carried out?
3. What recommendation would you give to improve on the mediation mechanism?

Thank you for your valuable time and information.

APPENDIX III

DEMYSTIFICATION: CHALLENGING MYTHS RELATING TO RAPE

Myth: Most rapes are done by strangers.

Fact: 54% (media), 80% (organization) and 87% (IDI) of the survivors knew their rapists/perpetrators. Survivors were found to know their perpetrators either through blood relationship, kin relationship, working relationship, as neighbours and in other ways.

Myth: Home is safe; restricting the mobility of girls/women and keeping them at home can protect them from sexual violence.

Fact: 34.3% (media), 35.7% (organization), and 21.8% (IDI) of the rape incidents were found to occur in their own homes.

Myth: Rape does not happen within family relationships.

Fact: 27.3% (IDI), 11.3 % (Organization), 11% (Media) of the rapes were within family relationships.

Myth: Most rapes happen at night, so daughters should reach home before night falls.

Fact: 62% (IDI) 49% (organization) and 41% (media) of the rapes happen at other times.

Myth: Rape only happens to a certain group of women: attractive or outgoing women who are provocatively dressed up.

Fact: Anyone can be raped, at anytime. Age, social/economic class and ethnic group have hardly any bearing on who a rapist chooses to attack. Research data clearly proves that a way a woman dresses and/or acts does not influence the rapists' choice of victims. Rapists' decision to rape is based on how easily the target can be used to exercise power. Rapists look for favourable and vulnerable targets. For example, a majority of rape survivors are below the age of 16. Research shows women's bodies are used for many malicious purposes (for revenge, to defame, punish, suppress the voice of the woman/family/community etc.). So the focus

should clearly not be on the victims' character.

Myth: Men/boys cannot be raped.

Fact: Many rape cases are reported where the survivors are boys and men. Rape can happen to persons of any sex/gender and of different sexual orientations.

This research has also re-demystified the following myths as referred from different sources:⁴

Myth: Rape is a crime of passion.

Fact: Rape is an act of VIOLENCE, not passion. It is an attempt to hurt and humiliate, using sex as the tool/weapon.

Myth: Women incite men to be raped.

Fact: Research has found that the majority of rapes are planned. Women/children of every age, class, caste/ethnic, sexual orientation, physical type and demeanour can be raped.

Myth: A woman cannot be raped against her will. Anyone can stop rape if they really want to stop it.

Fact: Rape is any time someone forces and conducts sexual activity. Victims of rape can face threats of force and fear or threat of harm to her family. Regardless of the situation, sex against someone's will is rape. Also, it is not only the physical attributes of the perpetrator that define this heinous act. Coercion does not always have to be physical. Even the law recognizes that undue pressure is a tool that can be used by perpetrators to rape.

⁴ <http://subicrapecase.wordpress.com/rape-is-a-crime/myths-vs-truths-about-rape/> and Centers for Disease Control and Prevention (www.cdc.gov) in <http://www.medicinenet.com/script/main/art.asp>

