

Sexual Exploitation of Children in Nepal

Submission

for the Universal Periodic Review of the Human Rights situation in Nepal

Submitted by

ECPAT Nepal

and

ECPAT International

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ECPAT Nepal is composed by three organisations member of the ECPAT Network: CWIN-Nepal, Maiti Nepal and Shakti Samuha.



ECPAT International

Special consultative status

Executive Director: Mr. Robbert van den Berg

Address: 328/1 Phayathai Road, Ratchathewi, Bangkok 10400, Thailand

Phone: +66 2 215 3388

Email: info@ecpat.org

Website: www.ecpat.org

ECPAT International is a global network of civil society organisations working for the eradication of all forms of sexual exploitation of children. For the past 30 years, ECPAT has acted as the international watchdog, monitoring States' response to sexual exploitation of children, and advocating for robust international measures to protect children from sexual exploitation. ECPAT International currently has 121 network members operating in 103 countries.

Justification for submission

1. The purpose of the present submission is two-fold: (1) to serve as an update on the progress that has been made by the Government of Nepal (GoN) to end the sexual exploitation of children (SEC) in the country, and (2) to assess the level of implementation of the UPR recommendations relating to SEC made in 2015.¹
2. During Nepal's previous UPR in 2015, the report of the Working Group contained 50 recommendations related to children's rights,² of which 12 are directly related to SEC.³ Five of these recommendations addressed SEC in general,⁴ one encouraged Nepal to ratify the Optional Protocol to the Convention on the Rights of the Child Communications Procedure (OPIC),⁵ one encouraged the ratification of the United Nations Convention against Transnational Organized Crime (Palermo Protocol),⁶ two targeted combatting trafficking⁷ and three specifically expressed the need to combat child marriage.⁸

Methodology and Scope

3. The content of this report is based on the recently published ECPAT Country Overview on Sexual Exploitation of Children in Nepal,⁹ summarising country work experience of ECPAT Nepal and desk research by ECPAT International.
4. The scope of this report is limited to SEC and its different manifestations, including exploitation of children in prostitution,¹⁰ online child sexual exploitation (OCSE), child sexual abuse materials (CSAM),¹¹ child trafficking for sexual purposes, sexual exploitation of children in the context of travel and tourism (SECTT)¹² and child, early and forced marriage (CEFM).

Current status and developments of sexual exploitation of children in Nepal

General overview of country conditions

5. The Federal Democratic Republic of Nepal is a landlocked country surrounded by India and China.¹³ In the last five years, Nepal has seen fundamental changes in the national administrative, legal and political set up. The Constitutional amendment of 2015 redefined the structure of the government in Nepal. As per the new Constitution, the government is divided into three tiers- at the local, provincial and federal level.¹⁴
6. According to the National Census of 2011, Nepal is home to 126 caste/ethnic groups with the highest proportions being the population of Chhetri (16.5%) followed by Brahmin-Hill (12.1%), Magar (7.1%), Tharu (6.5%), Tamang (5.8%), Newar (4.9%), Kami (4.7%), Musalman (4.3%), Yadav (3.9%) and Rai (2.3%).¹⁵
7. Nepal has had numerous political, social and economic challenges in recent years. Two major events, the 10-year long civil war (1996 to 2006) between the government and Maoist

insurgents, and the 2015 earthquakes, severely affected the country, including its children.

8. The civil war led to internal displacement of many Nepalese people and has had disruptive impacts on children.¹⁶ The disappearance of boys and men during the war left the burden of household income on girls and women. This has led many girls and women to migrate from rural to urban locations in search of employment opportunities.¹⁷ One result has been girls and women taking up jobs in the entertainment sector¹⁸ such as in jobs at massage parlours or cabin restaurants.¹⁹ These environments have proven to be highly conducive for the sexual exploitation of children.²⁰
9. Prostitution in Nepal is illegal.²¹ Exploitation of children in prostitution is primarily visible in Nepal's entertainment venues, such as dance bars, massage bars, snack bars, and cabin-style restaurants comprising of private compartments.²²
10. The risk of internal and external trafficking is high along the highway roads, major border points and airports, where fraudulent passports and tickets are used for trafficking purposes including exploitation of children in prostitution.²³
11. The entertainment sectors' growth is more visible in bigger cities of Kathmandu valley, Pokhara, Narayanghat and Itahari.²⁴ Since these establishments are registered as entertainment venues, they are not allowed to offer sexual services within their premises. This has encouraged the practice of euphemistic payments of a 'bar fine' or 'early work release' where customers pay a price in advance to take children away from the premises for sexual purposes.²⁵ This practice has been noted as hampering police efforts to gather full evidence on the sexual exploitation of children.²⁶
12. Despite the general statistics, there was no indication of sexual exploitation of boys. While there is more evidence highlighting the vulnerability of girls, there may be significant number of boys who are also victims of sexual exploitation. Gender norms and hegemonic masculinities may lead male victims of sexual exploitation to avoid reporting or seeking help.²⁷
13. With regards to OCSE, the increase in Internet usage also increases the risk of sexual exploitation of children. The 2019 Digital Nepal Framework mentions that Nepal has undergone rapid success in digital adoption, with mobile penetration exceeding 100% and Internet penetration reaching 63%.²⁸ There is no reliable data indicating the usage of mobile phones and Internet by children under 18 in the country.
14. In the fiscal year 2016/17, a total of 17 incidents of online abuse and exploitation were reported to the Child Toll Free Helpline (1098).²⁹ According to the media reports, many complaints related to social media (Facebook, YouTube and WhatsApp) are filed every day since the operation of the cyber bureau in May 2019.³⁰ The majority of complainants were girls and women.³¹ However,

there is no publicly available report from the cyber bureau, which disaggregates complaints based on their typology, including forms of OCSE.

15. Nepal is a source country for cross-border trafficking to India and China, transnational trafficking to other countries including destination continents of America and Europe.³² It has been estimated that annually 5000-15000 Nepalese women and girls are trafficked to India for sexual purposes.³³ According to media reports, between 2013 and 2018, 7,029 women and children were rescued from various border points of India and China, of which 3,896 were under 18 years of age.³⁴ Young girls get tricked into moving to Gulf countries under the pretext of foreign employment.³⁵
16. Young children migrate to the cities in search of better work opportunities. As a high-risk environment for sexual exploitation of children, the entertainment sector is also a source and a transit point for sexual exploitation through cross border trafficking.³⁶
17. The 2019 Trafficking in Persons Report written by the National Human Rights Commission of Nepal, reports that Nepal Police identified 180 children who were victims of child trafficking in 2018.³⁷ The statistics from the Nepal District Police Offices, collected at the district level, from March 2018 – March 2019 has two separate data; one being the statistics of human trafficking wherein 23 boys and 93 girls were identified; and the other being human trafficking and transportation where 281 boys and 471 girls were identified.³⁸
18. Though tourism is one of the main sources of income to the Nepal economy,³⁹ little data exists on children being exploited in the context of travel and tourism. The Ministry of Culture, Tourism and Civil Aviation recorded an estimated 1,173,072 international tourist arrivals in Nepal in the year 2018.⁴⁰
19. A new context of SECTT has evolved in Nepal, wherein orphanages and childcare homes have been used as avenues for child sexual exploitation. The idea of travel and help, ‘volun-tourism’ has been increasingly commercialised into a lucrative industry involving volunteer-tourists in activities with direct contact to children. While the majority of tourists are of course well-meaning, these practices have a range of harmful consequences on children, including the risk of sexual exploitation.⁴¹ Cases of child abuse perpetuated by volunteers have been reported in several countries, including Nepal.⁴² Often serving as teachers or volunteers in orphanages and children’s homes in Nepal, preferential child sex offenders exploit children by carrying out careful grooming processes.⁴³
20. There is no typical offender, SECTT involves not only tourists, ‘voluntourists’ intent on exploiting children, but also large numbers of regional and domestic travellers. There appears to be a number of Nepalese nationals involved in SECTT,⁴⁴ however, prominent cases by foreign tourists have been observed as well.⁴⁵

21. Child marriage in Nepal is perpetuated by a web of factors, including poverty and gender discrimination.⁴⁶ Limited access to education and family planning information, child labour, social pressure and harmful practices of which dowry and social beliefs on female menstruation and virginity, are the major drivers for the high prevalence for child marriage.⁴⁷
22. According to the 2019 edition of UNICEF State of the World's Children, Nepal has 17th highest prevalence rate of child marriages in the world - for both boys and girls⁴⁸ –with 40% female and 10% male aged 20 – 24 years married by the age of 18.⁴⁹ Boys also often marry young in Nepal, although the rate is lower than girls.⁵⁰ The disaggregated data in 2016 revealed 16 cases of girls and 0 cases of boys, who were victims of child marriage.⁵¹

Legislative framework on prohibition of sexual exploitation

23. The Act relating to Children 2018⁵² (hereinafter 'The Child Act 2018') is a comprehensive piece of legislation which takes into account the best interests of the child, and provides a legislative and institutional framework for the rights of the child.
24. The primary legislation of Nepal is the Constitution, amended in 2015.⁵³ Article 39 recognised the rights of the children as a constitutional right.⁵⁴
25. The National Penal Code (hereinafter Penal Code) was amended in 2017 and introduced amendments including the revision of the age of sexual consent and the definition of rape which are relevant to SEC for our consideration.⁵⁵

Exploitation of children in prostitution

26. The main legislation relating to the criminalisation of prostitution is the Human Trafficking and Transportation (Control) Act 2007 (hereinafter HTTCA).⁵⁶ It criminalises both a person engaging in prostitution⁵⁷ and the using of someone in prostitution with or without any benefit.⁵⁸
27. The above provisions do not specifically refer to the exploitation of children in prostitution. This poses as a problem for the protection of children exploited in prostitution, as they will also be considered as offenders and not as victims of exploitation.
28. Likewise, the Penal Code does not refer to children specifically when criminalising solicitation⁵⁹ or when providing of a house or/and a land to be used for prostitution or sexual intercourse with a prostitute.⁶⁰
29. The Child Act 2018 prohibits the exploitation of children in prostitution or other sexual work and deems it an act of child sexual abuse.⁶¹ In lieu of that, it criminalises an act to “use or cause to use, children with the intent of providing sexual services” as child sexual abuse.⁶² Further, to engage in or cause to engage in child sexual exploitation⁶³ or sexual abuse⁶⁴ is a criminal offence.

Online child sexual exploitation and child sexual abuse materials (CSAM)

30. Pornography is illegal and banned in Nepal.⁶⁵ The Penal Code prohibits “producing or selling obscene books, pamphlets” and includes “circulating through electronic media which is lascivious or appeals to the prurient interest or makes characterless.”⁶⁶ It further criminalises the exporting, or importing or holding such obscene item with intent to sell, distribute it.⁶⁷ There is no specific reference to CSAM, but still protects children.
31. While the Penal Code doesn’t distinctly apply to children, the Child Act 2018 does have provisions covering aspects of online child sexual exploitation.⁶⁸ It falls just short of the international standards as it doesn’t include audio materials.
32. The Motion and Censorship Act 1969 deviates from the general legislation on who a child is when identifying for which age group films can be censored. It considers persons above the age of 16 as adults, which is contradiction with the Child Act as mentioned above. This might pose risks for children 16-18 of exposure to sexual content.
33. With the fast pace at which technology is changing and being used for exploitation, live streaming of abuses and online grooming should be considered as offences.⁶⁹ There is an absence of provisions to cover instances of unwanted sexting or sexual extortion. To complement the legislative efforts, the obligation of related stakeholders like guardians⁷⁰ to report on CSAM should be increased.
34. In a 2018 press release, the Ministry of the Communication and Information Technology directs the banning of digital pornographic content and highlights the importance of inter-governmental and multi-stakeholders collaboration in blocking and taking down these materials,⁷¹ which would also include CSAM. Media reports that ISPs have been complying with the order although raising concerns on the feasibility of blocking down all concerned websites,⁷² but should introduce a specific legal obligation for ISPs to report CSAM.

Sale and trafficking of children for sexual purposes

35. Section 4 of the HTTCA 2007 enumerates the acts considered as a crime of human trafficking. It criminalises the act of going into prostitution, using someone in prostitution irrespective of benefits, selling or purchasing of a person for any purpose and extracting human organs as human trafficking.⁷³
36. Section 4(2) of the HTTCA 2007 criminalises the act of taking a person out of the country for the purpose of buying and selling as a crime of ‘human transportation’.⁷⁴ It also criminalises the act of taking anyone from his/her home, place of residence or from a person by any means⁷⁵ and by means of inducement, fear, threat, or coercion to the guardian or custodian and keep him/her into ones custody or take any place within Nepal or abroad or handover him/her to somebody

else for the purpose of prostitution and exploitation.⁷⁶

37. One of the most significant problems in this provision is the exclusion of voluntary involvement of the guardian or custodian. It does not include instances where the guardians voluntarily send the victims with the offenders to be transported for exploitation, and this negatively affects minors as the guardians play a crucial role in their lives. It also mandates the requirement of the means of inducement, fear, threat or coercion to be considered as a crime of transportation, which is not always the case as misrepresentation and partial information is often used to lure victims from their homes or from the protection of their family/guardian.⁷⁷
38. In Part 4, it provides for an increased penalty when the victim is a child. When a child is taken out of the country, then the punishment is between fifteen to twenty years with a fine of one hundred thousand rupees to two hundred thousand rupees (827 to 1653 USD as of July 2020) while it is ten to twelve years and a fine of one hundred thousand rupees (827 USD as of July 2020) for transportation within the country. This is not in accordance with the Palermo Protocol, as it does not take into account the specificities of child trafficking, and particularly the fact that children can never consent to their own exploitation. Also, it is pertinent to note that other elements of human trafficking, such as prostitution or selling and purchasing of persons haven't been addressed for child victims while discussing penalties.
39. In addition, the distinction made between the definition of human trafficking and human transportation leads to the discrepancy in human trafficking statistics recorded at the national level, which obscures the reality of the problem in the country.

Sexual exploitation of children in travel and tourism

40. There is no legislation which criminalises the organisation of travel arrangements or transportation that are explicitly or implicitly meant to create or facilitate opportunities for engaging in sexual activities with children.
41. However, the fact that the Human Trafficking Act applies to foreigners,⁷⁸ and criminalises the transportation of children within or outside the country as an offence with distinct punishments as described above,⁷⁹ may partially protect children from SECTT.

Child, early and forced marriage

42. One of the most important changes in the latest amendments is the invalidity of any practices based on cultural or traditional practices which are in conflict with the law.⁸⁰ The Constitution explicitly protects children from being subjected to being used immorally, or abused physically, mentally or sexually, or exploited through any means, in the name of religious or cultural practices⁸¹ and further guarantees the protection from child marriage.⁸²

43. According to the Penal Code, the minimum legal age of marriage is 20.⁸³ It states that if the persons are below this age, consent is not valid.⁸⁴ A marriage contravening this is considered to be void.
44. Section 66(2)(o) deems it an offence to fix marriages of children or marry, or cause to marry children.⁸⁵ The Act criminalises the act of a person fixing a marriage or marrying a child themselves while there is no mention of coercion or attempt being required for it to be an offence.
45. The statute of limitation is set at three months,⁸⁶ which, when combined with delayed disclosure of abuse, may reduce child victims' access to justice.⁸⁷ An increase in the time period could possibly facilitate accessibility to the courts. A matrimonial relationship is deemed to be terminated if the marriageable age has not been met.⁸⁸
46. In the Civil Code, a marriage is considered to be voidable if the marriageable age is not met,⁸⁹ whereas in the Penal Code, it is deemed immediately void. This discord could be a potential problem as the Civil Code provides for situations where a marriage can become valid even if the marriageable age is not met while the Penal Code deems it strictly illegal.

Extraterritorial jurisdiction and extradition

47. The extraterritorial jurisdiction of the Nepal courts is enshrined in the Penal Code. Section 2 includes an extensive list of crimes including rape (against girls) and CEFM, which can be considered for universal extraterritorial jurisdiction.⁹⁰
48. According to this provision, any person who has committed listed offences outside of Nepal can be punished according to the Nepali legislation. Beyond the crimes listed under Section 2, the Nepali courts also have jurisdiction if the victim and the offender are both Nepalese but the incident happened abroad.⁹¹ The HTTCA extends jurisdiction to foreigners who commit offences as per the Act against Nepalese citizens.⁹²
49. The Extradition Act was enacted in 1988.⁹³ This Nepali law allows for a written submission for the extradition of the person in question and Nepal has the right to punish or extradite the person.⁹⁴ There is no clarity whether it applies double criminality principle, but does have circumstances where there is a restriction on extradition, such as in case of political crimes.⁹⁵

Recommendations to the GoN

1. Ratify the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure;
2. Ratify the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational

- Organized Crime (Palermo Protocol) and amend relevant national legislations to align with it;
3. Amend the Motion and Picture Censorship Act to align with the definition of a child as per the Child Act 2018;
 4. Amend the Penal Code to include male victims in the provision related to statutory rape;
 5. Harmonise all national legislations to include SEC, including the Human Trafficking and Transportation (Control) 2007, Penal Code, Civil Code, Child Act to include specific provisions protecting children from exploitation;
 6. Enact policy or legislation, which will create legal obligations on preventing SECTT amongst relevant stakeholders in the travel and tourism sector;
 7. Remove the three-month statute of limitation for cases of child, early and forced marriages.

Implementation

50. There are different documents through which various ministries and government agencies have addressed SEC in Nepal. These include relevant national action plans, the National Child Policy by the Ministry of Women, Children and Senior Citizens (MoWCSC) and the National Master Plan of Child Labour by the Ministry of Labour, Employment and Social Security.
51. The challenge is striking an optimal balance between specific needs for children and the larger goals of that specific entity when it comes to resources allocation. Some of them are established through a legislative policy while others are part of a mandate from the relevant ministry and this causes confusion when attributing accountability. A further complication is the revision of different legislative pieces like the Constitution in 2015 and the Child Act in 2018 and the lack of efforts to simultaneously revise the relevant policies to align with the amendments.
52. The 2012 National Child Policy paved the way for the Child Protection Information Management System as a comprehensive software to for data collection and evaluation.⁹⁶ The system is operational under the website of MOWCSC and has information on ‘disability identity card related’ and ‘elder citizen identity card’ however, the website does not include data on SEC.⁹⁷
53. The main coordinating and monitoring body to address SEC in Nepal is the MoWCSC.^{98,99} One of the primary supporting bodies protecting the rights of the child is the National Child Rights Council, first established as per the Child Act 1992.¹⁰⁰ Since then, the amendment of the Child Act in 2018 led to the reforming of the sub-divisions of the National Child Rights Council, wherein the District Child Rights Council was reassigned to the Local Child Right’s Committee.¹⁰¹ The GoN and MoWCSC the National Child Rights Council ‘to safeguard and promote children’s rights and interests’.¹⁰²
54. Currently, at the regional level, it is the State and Local Child Right’s Committees’ responsibility to oversee the matters of children at the local level.¹⁰³ While the National Council has an ‘Annual State of Children in Nepal’ report, to update on its activities, there is no such information reviewing the work of the local bodies.¹⁰⁴ This lack of information gives an unclear picture of the efficiency and effectiveness of the state and local child rights committees.

55. The Women, Children and Senior Citizen Service Directorate under the Crime Investigation department of the Nepal police is bestowed with the responsibility to address gender-based violence and gender mainstreaming in policy and organisational plans.¹⁰⁵ Until the 2018-2019 fiscal year, the directorate had a sub-division of service centres, which was established to conduct research on women and child issues.¹⁰⁶ These service centres as of 18 June 2019 have been integrated into the service directorate.¹⁰⁷ In the 2019 annual Crime Investigation Department report states the achievements of the directorate in the year 2018-2019 includes the setting up of new service centres in 14 districts.¹⁰⁸ This causes disparity in ascertaining the status of the obligations these institutions have to the welfare of the child.
56. The MoWCSC is in charge of developing national plan of actions relevant to children. Currently, the GoN is leading a process along with the National Action and Coordination Group to develop a National Action Plan on Child Sexual Abuse and Exploitation and Online Safety based on SAIEVAC Regional Action Plan to End Child Sexual Abuse and Exploitation including Online Exploitation. Although an expert review meeting to review the draft of this plan took place in February 2019,¹⁰⁹ no information is publicly available regarding the launch of the final report.
57. There are sporadic efforts taken by the Government of Nepal to protect children from being sexually exploited in the context of travel and tourism. It has established an inter-ministerial committee to address 'child sex tourism',¹¹⁰ but there is no information on its functionality.^{111,112}
58. In conclusion, the efforts taken in Nepal is very fragmented, which makes it challenging to evaluate the results and also trace the responsibilities and role of each of the stakeholder. Although the government is proactive in addressing SEC, it doesn't have specific policies or an overarching authority to address the challenges of effective implementation.

International Cooperation

59. Since the adoption of the 2030 Agenda for Sustainable Development in 2015, Nepal's government has formed three high-level committees – steering committee, coordination committee and nine thematic committees chaired by National Planning Commission – to implement the SDG goals.¹¹³ The policies and targets of Nepal's 14th periodic development plan (2016/17 – 2018/19) also align with the SDGs.¹¹⁴
60. The government presented the 'SDG Voluntary National Review (VNR): Eradicating Poverty and Promoting Prosperity in Nepal' on the status of implementation of SDG during the UN High-Level Political Forum in July 2017.¹¹⁵ Among the 17 SDGs, the report prioritised only SDGs 1, 2,3,5,9 and 17.¹¹⁶ Although targets 5.2 of the Agenda 2030 calls for the elimination of all forms of violence, abuse and exploitation of children, the VNR does not explicitly address SEC or any of its manifestations.

61. At the regional level, Nepal is a member of SAIEVAC,¹¹⁷ which is a SAARC Apex body, and an intergovernmental body functional at regional and national level in eight SAARC countries, including Nepal. SAIEVAC works in five key thematic areas such as child marriage, child abuse and exploitation, child labour, corporal punishment and trafficking.¹¹⁸ A National Action and Coordinating Group to End Violence against Women and Children was established in all SAARC countries to strengthen the networking of various agencies to end violence against children.¹¹⁹

Recommendations to the GoN

8. Produce a separate national action plan on the issue of child protection, including comprehensive goals on how to prevent, raise awareness and combat the sexual exploitation and abuse of children;
9. Strengthen existing international police and judicial cooperation through multilateral, regional and bilateral arrangements to improve prevention, investigation, prosecution and punishment of sexual exploitation of children.

Prevention, awareness and education

62. The inclusion of the rights of the child in the 2007 Nepal Constitution led to the drafting of the National Child Policy 2012, exclusively for the protection of the interests of the child. The focus of this policy was to initiate awareness programmes related to SEC specifically targeting reforms in the educational systems.¹²⁰ Further, it has to also be noted that the National Action Plan 2005-2015 influenced this National Child Policy.¹²¹ However, the final evaluation report in 2016 noted that there was no actual implementation since its adoption.¹²²

63. The Nepal Police in coordination with civil society organisations regularly conducts various prevention activities and programmes on manifestations of SEC.¹²³

64. To address issues of forced labour and trafficking for sexual purposes, an Anti-Trafficking-in-Persons Bureau (Anti-TIP-Bureau) was established in 2018 with the purpose of investigating and preventing the human trafficking crimes in Nepal.¹²⁴ However, the trainings given were reportedly not translated in reality posing challenges in the prosecution efforts.¹²⁵

65. In June 2018, Nepal established the Cybercrime Control Bureau under the Police Headquarters to investigate on cybercrime issues.¹²⁶ As of the reports of 22 March 2019, 214 cases of cybercrime cases were investigated in the bureau, however, the data did not disaggregate the cases in a way to be able to determine if any of these related to children or online child sexual abuse.¹²⁷

66. Safer Internet Day, a yearly event was celebrated for the first time in Nepal on 5th February 2019 to raise public awareness of risks online and ways to use the Internet safely.¹²⁸ The event was

organised by Child Safe Net, a NGO protecting the rights of children online.¹²⁹

67. Internet Society Nepal, Internet Governance Institute in collaboration with governmental and non-governmental organisations also organised the third edition of the Nepal Internet Governance Forum on 27th and 28th of September 2019. This event was an initiative to bring the focus of role of different stakeholders (such as relevant ministries, IT experts, legal experts and others) in the online protection of children and young people.^{130,131}
68. The organisers of the forum release a detailed report every year. For example, the 2018 report brought focus to safer access of Internet to children and young people and the importance of awareness campaign to educate parents and children on online security issues.¹³² At the time of writing, the 2019 Nepal Internet Governance Forum report has not been released yet.

Recommendations to the GoN

10. Improve awareness campaigns specifically targeting sexual exploitation of children in prostitution, online child exploitation and sexual exploitation of children in travel and tourism;
11. Revise the existing National Plan of Action on Children 2005-2015 to address sexual exploitation of children in all its manifestations.

Protection

Measures adopted by the GoN to protect the rights and interests of child victims

National complaint mechanisms

69. The institutional system in place for child protection, to safeguard and promote children's rights and interest is vested with the National Child Rights Council which comes under the auspices of the Chairpersonship of Government of Nepal and Ministry of Women, Children and Senior citizens.¹³³
70. The Child Welfare Authority¹³⁴ according to the Child Act is the body which receives complaints of offences against the child from the relevant police stations. There is a legal obligation on all persons to report it to the closest police station.¹³⁵ The police station has to then forward this information to the child welfare authority for necessary support.¹³⁶ The identity of the complainant will be kept confidential if the person desires that.^{137,138}
71. Unfortunately, as Nepal has not yet ratified the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, children have no recourse to bring complaints for the violations faced by them to the Committee on the Rights of the Child.

Child sensitive justice

72. Child- sensitive justice measures were strengthened in the Child Act 2018. Chapter four extensively discusses the various measures for protecting the rights of child victims in an investigation, prosecutorial and judicial process.¹³⁹
73. It provides for the child to have the information to be provided in a language understandable by him/her.¹⁴⁰ It gives them the right to participate in all the above processes.¹⁴¹ It provides for confidentiality of the victim.¹⁴²
74. The Child Act further enables them to receive free legal aid and psychosocial counselling services or get a legal practitioner appointed if need be.¹⁴³ The Child Act provides for a closed bench hearing¹⁴⁴ but there is no mention of *in camera* proceedings wherein the victim can be present through a video platform. However, should cases be brought under the HTTCA Act, this legislation provides for *in camera* proceeding in cases of human trafficking and human transportation.¹⁴⁵

Access to recovery and reintegration

75. The HTTCA enacted the 'rehabilitation fund' for the victims of human trafficking and human transportation.¹⁴⁶ According to this law, a rehabilitation fund was established by the GoN in 2008¹⁴⁷ and adopted the operation guideline in 2011.¹⁴⁸
76. The fund is utilised at the central and district levels for various activities such as anti-human trafficking related programmes and campaigns, supporting victims in the operation of rescue, repatriation and rehabilitation, psychosocial counselling and others.¹⁴⁹
77. The fund is also used for the operation of rehabilitation centres for victims of trafficking in Nepal (in 2016-17, there were centres in 12 districts). To extend the services to Nepalese victims outside of Nepal, there is one centre in Kolkata, India. All of the activities exclude male victims.
78. The GoN launched the National Minimum Standard for the Care and Protection of the Victims of Human Trafficking and Transportation in 2011, which determines the mental health and psychosocial services that must be provided to victims of trafficking.¹⁵⁰
79. However, the national report on trafficking in persons 2018 indicates that the National and District Committee on Combatting Human Trafficking have done no monitoring of activities on National Minimum Standards for the care and protection of trafficking survivors.¹⁵¹
80. Nepal adopted the Standard for Operation and Management of Residential Child Care Homes in 2012. Child care homes operate in 44 out of 77 districts, 16,537 children were residing in 567

registered child care homes in 2017.¹⁵² Secondly, the government has established rehabilitation centres for victims of trafficking and financially supports the centres, which are run by NGOs in Nepal under the Guideline for the Operation of Rehabilitation Centre 2011.¹⁵³ Until 2018, there were 10 rehabilitation centres across Nepal with one long-term centre.¹⁵⁴

81. These centres provide services such as social rehabilitation, family reintegration, physical and emotional health services and consultations, are provided as per the need of trafficking victims residing in these centres.¹⁵⁵
82. The Ministry of Women, Children and Senior Citizens has initiated the operation of helpline through free toll child helpline (1098),¹⁵⁶ and enacted the Child Helpline Operation Procedures 2007.¹⁵⁷ A total of 7,806 children, of which 3,805 boys and 4,001 girls were provided relief and psycho-social support in the fiscal year 2018-2019.¹⁵⁸ However, the data does not clarify the issues these children faced, though a proportion are expected to have experienced SEC related issues.

Access to compensation

83. The right to compensation for child victims of crime is a constitutional right under Article 39(10) of the Constitution.¹⁵⁹ It is also enshrined in Section 25(d) of the Child Act.¹⁶⁰
84. The Child Act ensures that in any circumstance there is inadequacy in the amount of compensation then the Child Court shall pass an order for payment from the Children's fund which is dealt with in Section 63.¹⁶¹ There is also a provision for interim compensation in case the child is in need of immediate medical treatment.¹⁶² It is important to acknowledge that the Child Act considers the compensation for all offences against the child and not limited to specific laws laid out in the Child Act.¹⁶³
85. With regards to the Civil Code there is no system for compensation of the victims of SEC, making a claim through the criminal court the only route for the victims. No public data was available about whether these provisions have ever been enacted.
86. The HTTCA ensures that children who don't have parents, will still receive compensation, but will be accrued in a rehabilitation fund.¹⁶⁴ The 'rehabilitation fund' has a wide ambit of activities and responsibilities which includes compensation. It is reported that the rehabilitation fund is currently not function due to the lack of funds.¹⁶⁵

Recommendations to the GoN

12. Ensure that male victims of sexual exploitation have equal access to compensation, justice and rehabilitation services;
13. Create capacity to support access to free legal aid to child victims of sexual exploitation, establish an office of Child Commissioner and appoint the Special Rapporteur at the Office of

the Special Rapporteur on Trafficking under the National Human Rights Commission;
14. Clarify the scope of the child courts and guarantee adequate budget for its functioning.

¹ Human Rights Council. (2015). [Report of the Working Group on the Universal Periodic Review: Nepal](#) A/HRC/31/9, 23 December 2015.

² See Human Rights Council. (2015). [UPR of Nepal – Second Cycle – Thematic List of Recommendations](#).

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