



NEPAL

ECPAT

COUNTRY OVERVIEW

*A report on the scale, scope and context of
the sexual exploitation of children*

JANUARY, 2020



International

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Recent years have seen unprecedented progress towards embedding the child's right to protection from sexual exploitation more deeply into the global agenda, no more so than the global mandate to eliminate the sexual exploitation of children (SEC) enshrined in the Sustainable Development Goals (SDGs) adopted by world leaders in 2015.

ECPAT Country Overviews on SEC provide an effective tool for advocacy at all levels as well as for monitoring, including on government commitments made in the SDGs to end violence against children in all its different forms by 2030.

ECPAT Country Overviews are first and foremost, a desk review exercise that gather and present all the existing publicly available information into a comprehensive summary of all forms of SEC in a country. They do not contain any new primary data. They also provide an assessment of achievements and challenges in implementing counteractions - including the participation of children themselves - to eliminate SEC.

ECPAT Country Overviews also suggest concrete priority actions urgently needed to proactively advance the national fight against SEC and enable the monitoring of the implementation of international instruments on child rights related to sexual exploitation that have been ratified by the State. Furthermore, the ECPAT Country Overviews provide well-organised information and research, which can be used in preparing Alternative Reports and Additional Submissions to the Committee on the Rights of the Child and the Human Rights Council.

During the process, drafts are shared with ECPAT members, relevant local organisations, and experts working on the ground who review the content and supplement the information with other local sources and analysis. ECPAT International greatly relies on the contributions of all those involved in producing these reports and would like to express its profound appreciation for their invaluable inputs.

At the glance

Nepal is a South Asian country with a population of 28,096,000 of which 10,483,000 are children. The prolonged civil war (1996 – 2006), two consecutive earthquakes in 2015, and economic sanctions by India in 2015 had very disruptive impacts on the lives of Nepal's children. On the positive side, Nepal has made significant changes in recent years to its laws and administrative policies, both at the national and regional level.

In recent years, there has been an increased number of entertainment establishments in the bigger cities, including Kathmandu. As of April 2019, the proportion of minors working in this sector was estimated to be 17%. As the number of Nepalese Internet users increases, more children are at risk of online sexual exploitation. Research indicates that parental understanding of risks and monitoring on children's mobile and Internet use is limited.

Human traffickers have been identified exploiting domestic and foreign victims in Nepal as well as Nepalese victims abroad. Children are victims of both internal and external trafficking. The risk of sexual exploitation in travel and tourism is a grave concern as some travellers and tourists involved in voluntourism have reportedly exploited children in these settings. The child marriage rate in Nepal is also high- for both boys and girls- despite the minimum age of marriage being set at 20 years of age.

The country has ratified legal instruments to combat sexual exploitation of children (SEC), including the Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. Nepal has not yet ratified the Protocol to Prevent,

Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol). Nepal is also a part of a number of international and regional commitments addressing SEC such as the Sustainable Development Goals and the South Asian Initiative to End Violence against Children (SAIEVAC) as part of South Asian Association for Regional Cooperation (SAARC). However, loopholes persist in national legislation, especially with regards to the alignment of the definitions of SEC crimes to international standards.

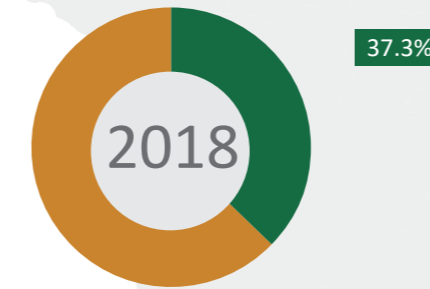
Nepal is in the process of developing a National Action Plan on Child Sexual Abuse and Exploitation and Online Safety based on SAIEVAC Regional Action Plan to End Child Sexual Abuse and Exploitation including Online Exploitation. However, this plan has not been finalized yet. Currently, some aspects of SEC are addressed within national strategies and policies mainly directed by the Ministry of Women, Children and Senior Citizen (MoWCSC). The trafficking of children has been prioritised in the National Plan of Action against Trafficking in Persons Especially Women and Children (2012-2022) and ending child marriage has been prioritised in the National Strategy on Ending Child Marriage (2015 – 2030).

Although there have been some efforts regarding access to justice, recovery and reintegration, there is a strong need for concrete steps to involve children in the design and implementation of policies and plans affecting them.

POPULATION

SOURCE: UNICEF State of the World's Children Report 2018

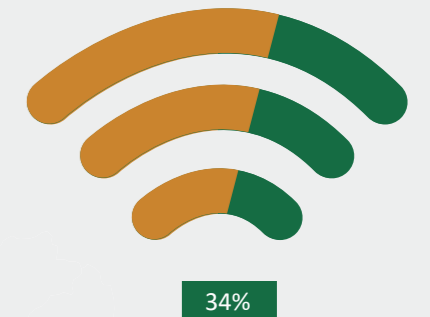
Children under 18 years



INTERNET ACCESS

SOURCE: ITU Statistics 2018: Nepal

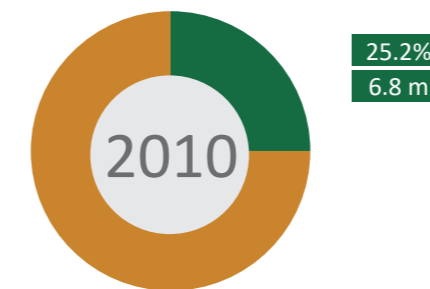
Have Internet access



POVERTY RATE

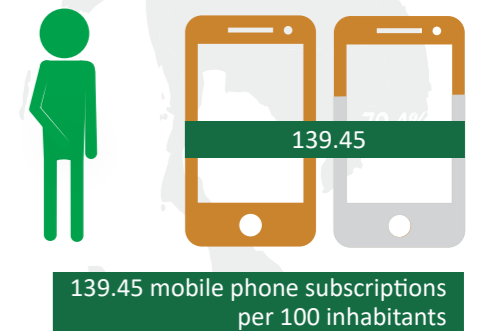
SOURCE: Poverty & Equity Data Portal: World Bank

Living under the national poverty line



MOBILE PHONE USERS

SOURCE: ITU Statistics 2018: Nepal



CHILDREN'S RIGHTS UNDER THE LAW

	Girls	Boys
Age of consent for sex	18	-
Minimum age for marriage	20	20
Legal working age	14	14
Compulsory age of schooling	4-12	4-12

COUNTRY OVERVIEW AND SPECIFIC VULNERABILITIES LEADING TO THE SEXUAL EXPLOITATION OF CHILDREN

The Federal Democratic Republic of Nepal is a landlocked country surrounded by India and China.¹ 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.² The democratic elections conducted in 2017 based on the constitution showed 753 local governments, 7 provincial governments (subdivided into 77 districts) and 1 federal/central government.³ The 2015 Constitution provided these authorities with greater political, fiscal and administrative powers, concurrently with the federal government.⁴ The new distribution of powers, for the first time in the history of Nepal, has allowed for a larger participation at the local level.⁵

The Constitution states that Nepali is the official language⁶ but also recognises the diversity of the country and has a provision to allow the provinces to choose one or more national languages⁷ spoken by a majority of the province as per the provincial law to be an additional official language.⁸

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%).⁹ The major religions followed are Hinduism, Buddhism, Islam, Kirat and Christianity.¹⁰ The total population of Nepal in the year 2018 was 28,096,000 of which 10,483,000 were children amounting to nearly 37% of the total population.¹¹

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.

The civil war led to internal displacement of many Nepalese people and has had disruptive impacts on girls and women.¹² The disappearance of boys and men during the war left the burden of household income on girls and women. This has led many to migrate from rural to urban locations in search of employment opportunities.¹³ One result has been girls and women taking up jobs in the entertainment sector¹⁴ such as in massage parlours or cabin restaurants.¹⁵ These environments have proven to be highly conducive for sexual exploitation of children.¹⁶

The country was hit by two major earthquakes in April and May 2015 which further affected development. Between 700,000 and 1 million Nepalese people were pushed into poverty during the fiscal years 2015 and 2016.¹⁷ Disruption of cross-border trade with India in September 2015 caused economic strains that halted the overall distribution of fuel, raw materials and supplies across the country.¹⁸ The economic blockade sanctioned by India in 2015 increased the prices of commodities, disrupted businesses and industries, which resulted in the lowest economic growth in 14 years (up until 2015).¹⁹

The annual gross domestic product growth of Nepal in 2018 was 6.7 percent, placing it amongst the top 20 countries with highest growth rates in that year.²⁰ The growth is mainly attributed to the results from the agriculture sector, boost in the hotels and restaurant industry owing to the upsurge in tourist arrivals and lastly, remittance-fuelled private consumption.²¹ To encourage more tourism, the government initiated the 'Visit Nepal

2020' with the target to increase international tourist arrivals to 2 million.²²

Natural disasters like earthquakes can be a magnifier for sexual violence, including trafficking and sexual exploitation of children.²³ After the 2015 earthquakes, Nepal's government (in collaboration with international and national organisations) made proactive efforts to ensure that children were prevented from getting trafficked and being illegally put in child care homes. Efforts included establishing checkpoints and police centres in earthquake affected districts, as well as interception points along the borders and banning children to travel within the country without guardians.²⁴

UNICEF raised a concern that the earthquake could possibly increase the susceptibility of children to child marriages in the country.²⁵ In its 2016 concluding observations, the Committee on the Rights of the Child also recommended the government to initiate an assessment study on girls' vulnerability to child marriage after the earthquake.²⁶ It should be noted that Nepal has one of the highest rates of child marriage in the world, for both boys and girls,²⁷ despite the recent changes in the law wherein the minimum age is set at 20.²⁸ This was due to the high levels of displacement and marriage was sometimes seen as an effective method of tackling the economic burden faced by families.²⁹ Child marriage are shown in increase in times of humanitarian crisis³⁰ as families facing economic difficulties can see them as a coping mechanism (either accepting bride price or by reducing the number of children

1 Nepal Tourism Board. (n.d.). *Geography of Nepal*.
 2 *Constitution of Nepal 2015*, Article 56.
 3 Bhattarai, P. (2019, April 23). *The new federal structure in Nepal: Challenges and opportunities for quality governance*. Research Network External Democracy Promotion.
 4 *Ibid.*
 5 *Ibid.*
 6 *Constitution of Nepal 2015*, Article 7(1).
 7 According to the Constitution, Article 6 states that national languages are "All languages spoken as the mother tongues in Nepal are the languages of the nation."
 8 *Constitution of Nepal 2015*, Article 7(2).
 9 National Planning Commission Secretariat, Central Bureau of Statistics. (2014, February). *National Population and Housing Census 2011*.
 10 National Planning Commission Secretariat, Central Bureau of Statistics. (2012, November). *National report on national population and housing census 2011*.
 11 UNICEF. (2019, October). *The State of the World's Children*. New York: UNICEF.

12 Mishra, S. (2017, July). *Armed conflict and human trafficking in Nepal*. *Journal of Humanities and Social Science*, Volume 22. 76.
 13 *Ibid.*, 76.
 14 The Freedom Fund (2019, April). *Prevalence of minors in Kathmandu's adult entertainment sector*.
 15 *Ibid.*, 1; Thapa, P. (2015, Dec 16). *Human trafficking in Nepal: changing dimensions*. 452.
 16 The Freedom Fund (2019, April). *Prevalence of minors in Kathmandu's adult entertainment sector*. 16.
 17 The World Bank. (2017, May). *Climbing higher: toward a middle-income Nepal*.
 18 *Ibid.*, 2.
 19 *Ibid.*
 20 The World Bank. (2019). *GDP growth by countries*.
 21 The World Bank. (2019, June). *Investing in people to close to human capital gap*. 1.
 22 Ministry of Culture, Tourism and Civil Aviation. (2019, August). *We are visit Nepal 2020.2*.
 23 UNICEF. (2018, September). *Promoting recovery and resilience among earthquake affected countries*. 3.
 24 UNICEF. (2015, June). *Nepal earthquakes: UNICEF speeds up response to prevent child trafficking*. [Press Release].
 25 UNFPA and UNICEF. (2017, June). *Ending child marriage in Nepal.2*.
 26 OHCHR. (2016, July 8). *Concluding observations on the combined third to fifth periodic reports of Nepal*. 10.
 27 UNFPA and UNICEF. (2017, June). *Ending child marriage in Nepal.2*; UNICEF. (2019, October). *State of the World's Children 2019*.
 28 *The National Penal Code 2017*. Section 173.
 29 Batha, E. (2015, May 19). *Child marriages, trafficking will soar after Nepal quake-charity*; Girls Not Brides. (2018, August). *Thematic brief: Child marriage in humanitarian settings*. 2.
 30 ECPAT International, Plan International. (2015, October). *Thematic Paper: Unrecognised sexual abuse and exploitation of children in CEFM*. 31.

needing shelter).³¹ There was also a distinct pattern that could be observed wherein boys were often at risk of hazardous forms of labour and girls on the other hand were more prone to be trafficked for sexual exploitation, and also forced into child marriages.³²

Gender discrimination and social norms combined with poverty are the key reasons for child marriage in Nepal.³³ Social norms such as dowry de-value girls and women, or consider them only as a 'burden' on the family; this in turn perpetuates gender discrimination.³⁴ The perception that the role of sons is to bear the economic burdens of the family and the role of girls is for taking care of the rest of family needs- creates barriers to girls in accessing basic needs for survival.³⁵ Similarly,

girls and women from Dalit, Tharu and other indigenous groups often face financial pressure due to poverty. The combination of discrimination based on their caste and gender coupled with poverty makes them highly vulnerable to sexual exploitation.³⁶ Harmful traditions and practices contribute to this. An example being the generational prostitution³⁷ among the Badi community, wherein girls and women from this community inherit the responsibility of getting into prostitution. Thus, they engage in prostitution for their daily survival,³⁸ which further increases the vulnerability of Badi girls and women to sexual exploitation.

31 Girls Not Brides. (2018, August). *Thematic brief: Child marriage in humanitarian settings*. 2.

32 Plan International, Save the Children, Terre des Homes, UNICEF and World Vision International. (2016, April). *Children's voices, children's rights: one year after the Nepal earthquake*. ; Girls Not Brides. (2018, August). *Child marriage in humanitarian settings*.3.

33 Human Rights Watch. (September, 2016). "Our time to sing and play" *Child marriage in Nepal*. 6.

34 *Ibid.*, 6.

35 *Ibid.*, 6.

36 *Ibid.*

37 Castes may traditionally define profession through generations, including sex work for Badi women.

38 Mishra, V. (2015). *Combatting Human Trafficking: Gaps in Policy and Law*. 60.



EXPLOITATION OF CHILDREN IN PROSTITUTION³⁹

Article 2 (b) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) defines 'child prostitution' as "the use of a child in sexual activities for remuneration or any other form of consideration".⁴⁰

Prostitution in Nepal is illegal.⁴¹ Exploitation of children in prostitution primarily is visible in Nepal's entertainment venues, such as dance bars, massage bars, snack bars, and cabin-style restaurants comprising of private compartments.⁴² Not all of these venues are always associated with the sex industry and the ones that are involved employ a mix of consensual, exploited and forced workers.⁴³ A 2019 study showed that among the 600 survey participants, who were working in the entertainment sector at the time of data collection and were aged 21 and below,⁴⁴ 45% were under 18.⁴⁵ However, this study sample did not include exploitation of children in street-based prostitution and in informal (private) settings.⁴⁶ Among the

39 ECPAT prefers the term 'exploitation of children in prostitution' instead of 'child prostitution' in line with the recently widely adopted Terminology Guidelines. Interagency Working Group on Sexual Exploitation of Children. (2016, January 28). *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*. 30. Bangkok: ECPAT International.

40 UN General Assembly. (2000, May 25). *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. (A/RES/54/263). Art. 2(b).

41 *Human Trafficking and Transportation (Control) Act 2007*. Section 4(d).

42 Rafferty, Y. (2016, February). *Challenges to the rapid identification of children who have been trafficked for commercial sexual exploitation*. *Child Abuse & Neglect*. 158-168.

43 The Freedom Fund. (2018, August). *Pathways for children to exit commercial sexual exploitation in Kathmandu*.

44 The Freedom Fund. (2019, April). *Prevalence of minors in Kathmandu's adult entertainment sector*.

45 *Ibid.*, 7.

46 *Ibid.*, 2.

47 *Ibid.*, 9.

48 *Ibid.*

total survey participants, 28% worked in snack bars followed by 25% in the entertainment restaurants (with dance and traditional folk songs), and the rest worked in other venues including cabin restaurants, dance bars and guest houses. Only 2% of the participants worked in massage parlours.⁴⁷ As explained in the study, a partial explanation to this lower percentage of young and minors being employed in massage parlours may be because of increase in police raids of these venues at the time of data collection.⁴⁸

600 SURVEY PARTICIPANTS WORKING IN THE ENTERTAINMENT SECTOR



45% UNDER 18

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.⁴⁹ A study of the Kathmandu valley (Kathmandu, Bhaktapur and Lalitpur), showed that the population of minors engaged in the entertainment industry was approximately 1,650 as of April 2019.⁵⁰ This report also estimates roughly that 17% of those working in the entertainment sector are minors.⁵¹ Among the 600 workers surveyed in the study - 62% began their work before the age of 18.⁵²

The entertainment sectors' growth is more visible in bigger cities of Kathmandu valley, Pokhara, Narayanghat and Itahari.⁵³ 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.⁵⁴ This practice has been noted as hampering police efforts to gather full evidence on the sexual exploitation of children.⁵⁵ These circumstances probably are also contributing to the lack of cases filed in the district courts under prostitution in the year 2016-2017.⁵⁶

Girls and women from poor families who are in search of opportunities are attracted into working in the entertainment sector.⁵⁷ A 2015 study from CWIN and ECPAT Luxemburg revealed that gender impacts the types of work done in the entertainment sector, where females work as dancers, singers and waiters, while males work in bars and as bouncers.⁵⁸ Further, the common

prevalence of violence and access to alcohol, and the common practice of 'flirting' to entice more consumption, can lead to prostitution and subject children, who work as waiters, dancers, entertainers and massage providers, to sexual exploitation.⁵⁹ Age was also found to be a determining factor in the recruitment process for girls as mentioned in the primary data collection of the study from CWIN and ECPAT Luxembourg.⁶⁰ Indeed, interviewees reported that the younger the girls were, the higher their demand.⁶¹

While entertainment venues are not always intended for providing sexual services, their environment can be conducive to child sexual exploitation. Regular exposure to sexual activities may lead to exploitation in prostitution.⁶² The 2019 Freedom Fund report shows that 9% of the 600 respondents were male and the rest female.⁶³ It was found that over 60% of the workers aged 17 and under (270 out of 600) experienced flirting, groping, performing sexual massages and engaging in sexual acts whereas 6% were exposed to severe forms of sexual exploitation such as being forced to watch pornography and performing sexual intercourse.⁶⁴ 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.⁶⁵ Additional studies and closer attention is needed to generate evidential research on sexual exploitation of both girls and boys beyond just Kathmandu, including other cities with entertainment venues.

It is not just the entertainment sector, which propagates prostitution. It also stems from traditional practices rooted in discrimination against a certain community. The Badi practice of bonded prostitution is still prevalent in the western parts of Nepal, where Badi women have been exploited through prostitution for generations.⁶⁶ The challenge is ascertaining whether minor girls in particular are exploited can be attributed to the lack of data and research in recent years on the issue.

ONLINE CHILD SEXUAL EXPLOITATION (OCSE)

Online child sexual exploitation (OCSE) can include child sexual abuse/exploitation material (CSAM/CSEM),⁶⁷ live streaming of child sexual abuse, online grooming of children for sexual purposes, sexual extortion of children and various CSAM/CSEM-related conducts (production, distribution, downloading).⁶⁸ Article 2 (c) of the OPSC defines 'child pornography' as "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes".⁶⁹

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%.⁷⁰ According to the latest data available from the International Telecommunications Union, in 2018 there were approximately 139.45% mobile cell phone subscriptions per 100 inhabitants in the country.⁷¹ There is no data on the difference of mobile and Internet penetration between rural and urban Nepal. However, the Internet usage is highest in urban areas and big cities

with increasing Internet and Communications Technologies penetration in Kathmandu Valley (Kathmandu, Lalitpur, Bhaktapur) and Kaski.⁷² There is no reliable data indicating the usage of mobile phones and Internet by children under 18 in the country.

As Nepal is becoming a more connected country, there is an urgent need to develop cyber security measures simultaneously. At present, it scores only 0.26 and ranks on the 109th position out of 193 (with Algeria and Seychelles positioned 108th and 110th respectively) in the 2018 Global Cybersecurity Index.⁷³ The Index is an initiative of the International Telecommunication Union to measure cybersecurity commitment among the countries and to raise awareness on cybersecurity issues.⁷⁴ 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).⁷⁵ 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 2019.⁷⁶ The majority of complainants were girls and women.⁷⁷

17 INCIDENTS OF ONLINE ABUSE AND EXPLOITATION WERE REPORTED TO THE CHILD TOLL FREE HELPLINE



49 National Human Rights Commission. (2018, September). *National report on trafficking in persons in Nepal*. 16.

50 The Freedom Fund. (2019, April). *Prevalence of minors in Kathmandu's adult entertainment sector*. 8.

51 *Ibid.*, 8.

52 *Ibid.*, 11.

53 National Human Rights Commission. (2018, September). *National report on trafficking in persons in Nepal*. 35.

54 Rafferty, Y. (2016, February). *Challenges to the rapid identification of children who have been trafficked for commercial sexual exploitation*. *Child Abuse & Neglect*. 158-168.

55 *Ibid.*

56 National Human Rights Commission. (2018, September). *National report on trafficking in persons in Nepal*. 136.

57 *Ibid.*, 35.

58 CWIN, ECPAT Luxembourg. (2015, January). *Preparatory study for situational analysis of commercial sexual exploitation of children in Nepal*. 79.

59 The Freedom Fund. (2018, August). *Pathways for children to exit commercial sexual exploitation in Kathmandu*. 4.

60 CWIN, ECPAT Luxembourg. (2015, January). *Preparatory study for situational analysis of commercial sexual exploitation of children in Nepal*. 59.

61 *Ibid.*

62 The Freedom Fund. (2018, August). *Pathways for children to exit commercial sexual exploitation in Kathmandu*. 4.

63 The Freedom Fund (2019, April). *Prevalence of minors in Kathmandu's adult entertainment sector*. 7.

64 *Ibid.*

65 Josenhans, V., Kavenagh, M., Smith, S., & Wekerle, C. (2019). *Gender, rights and responsibilities: The need for a global analysis of the sexual exploitation of boys*. *Child Abuse & Neglect*.

66 The Himalayan Times. (2019, February). *Badi community threatens protest*. [Media Article]; Mishra, V., (2015). *Combating Human Trafficking: Gaps in Policy and Law*. 60.

67 ECPAT prefers the terms 'child sexual exploitation material' or 'child sexual abuse material', but in a legal context still uses 'child pornography' in line with the recently widely adopted Terminology Guidelines, 40.

68 ECPAT. (n.d.). *Issues we work on*. Bangkok: ECPAT International.

69 OPSC, Article 2(c).

70 Ministry of Communication and Information Technology, Frost & Sullivan. (2019). *2019 Digital Nepal framework*.

71 International Telecommunications Union (ITU). (2019, December). *Mobile-cellular subscriptions*.

72 Pandey, Regmi. (2018, January). *Changing connectivities and renewed priorities: Status and challenges facing Nepali Internet*.

73 International Telecommunication Union. (2018). *Global cybersecurity index 2018*.

74 *Ibid.*

75 Ministry of Women, Children and Senior Citizens, National Child Rights Council. (2017). *State of children in Nepal*.

76 The Himalayan Times. (2019, August 27). *Cyber bureau receives 320 complaints in three months*. [Media Article].

77 *Ibid.*

However, there is no publicly available report from the cyber bureau, which disaggregates complaints based on their typology, including forms of online child sexual exploitation.

In a Knowledge, Attitude, and Practice survey conducted in 2017 by ECPAT Luxemburg and Voice of Nepal with 452 children (212 girls and 240 boys) aged 5- 12 years in Kathmandu, 75% of the children did not have the information to protect themselves from possible online sexual exploitation.⁷⁸ The majority of children who took part in the survey used Internet either on their mobile phones or laptops and a few used Internet in cybercafés or at friends' homes, with 80% of those who had used Internet in cyber cafes were boys.⁷⁹ Nearly, 15% of children in the survey reported being abused online and 47% of those who reported were boys.⁸⁰ The online abuses specified in the study included receiving text messages and being tagged in vulgar photos and videos from unknown people.⁸¹ Nearly 8% of the interviewed children reported their case to the police,⁸² highlighting how underreported OCSE is. During the meeting with parents, the study revealed that parents were unequipped in using the parent control tools and software that can monitor children's activities online.⁸³ The lack of their own digital skills also results in low parental monitoring of children's Internet usage.⁸⁴



78 7 ECPAT Luxemburg and Voice of Children. (2017). *Assessing and understanding the risk: sexual exploitation of children online in Nepal*.

79 *Ibid.*

80 *Ibid.*, 28.

81 *Ibid.*, 45.

82 *Ibid.*, 28.

83 *Ibid.*, 31.

84 *Ibid.*, 34.

85 UN General Assembly. (2000, November 15). *United Nations Convention against Transnational Organized Crime, Annex 2: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol)*. Res. 55/25 of 15. Art. 3 (a).

86 *Ibid.*, Article 3 (c).

87 OPSC, Article 2 (b).

SALE AND TRAFFICKING OF CHILDREN FOR SEXUAL PURPOSES

The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), defines 'trafficking in persons' as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".⁸⁵

In case of child victims, Article 3 (c) of the Protocol specifies that "the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if it does not involve any of the means stipulated in Article 3 (a)".⁸⁶ In other words, the Protocol recognises that children can never be willing participants to their own exploitation.

For its part, the OPSC deals with the 'sale of children', defined as "any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration".⁸⁷

Both concepts are often used in conjunction and without any clear distinction. However, despite a certain overlap, 'sale of children' is not identical to 'trafficking'. The 'sale of children' always involves some form of commercial transaction, which trafficking in children does not require, but does not necessarily include the purpose of exploiting a child (e.g. sale of children for illegal adoption). Therefore, 'sale of children' is not necessarily related to sexual abuse and sexual or other forms of exploitation. Lastly, the 'sale of children' can take place without physically moving the child out of his/her social environment, whereas trafficking inherently depends on the movement of the child.⁸⁸

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 2018.⁸⁹ 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.⁹⁰ The above reports used the definition of human trafficking from the Human Trafficking and Transportation (Control) Act 2007, which separates 'human trafficking' and 'human transportation' as two different phenomena,⁹¹ as described in the legal section of this report. However, due to the hidden nature of this crime, it is probable that a number of trafficking of children for sexual purposes cases go underreported.

The US Department of State's Trafficking in Persons report has placed the country on Tier 2 and acknowledges the significant efforts taken to eliminate human trafficking compared to the previous reporting period. However, Nepal does not fully meet the minimum standards for the elimination of trafficking in the following key areas.⁹² The focus still remains on female victims despite the efforts made in identifying male victims of trafficking in previous years, moreover the laws do not fully prohibit all forms of forced labour and trafficking for sexual purposes.⁹³ The US Department of State's Trafficking in Persons report also indicates that some authorities seem to have actively encouraged exploited migrant workers to file a complaint as 'fraudulent recruitment' under the 2007 Foreign Employment Act, 2007 instead of referring the cases to the police for investigating under labour trafficking cases.⁹⁴ The report goes on to also note that instances have been reported of government authorities even being complicit in offences or deprioritizing investigation.⁹⁵ Published evidence of such instances were not found in research for this overview.

Nepal is a source country for cross-border trafficking to India and China, transnational trafficking to Afghanistan, Australia, Canada, Kenya, Syria, South Africa, Iraq, Libya, Oman and Tajikistan, and destination continents of America and Europe.⁹⁶ The Peace Agreement signed by Nepal and India in 1950, allows citizens of the two countries to travel without visas or any identification documents.⁹⁷ Girls and women are trafficked to India for sexual purposes, orchestra dance, circus performances and marriages.⁹⁸ It has been estimated that annually 5000-15000 Nepalese women and girls are trafficked to India for sexual purposes.⁹⁹ According to media reports, between 2013 and 2018, 7,029 women and children were rescued

88 ECPAT International. (2016, January 28). *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*. 58. Bangkok: ECPAT International.

89 National Human Rights Commission. (2019, August). *National report on trafficking in persons*. [Translated from Nepali].

90 *Ibid.*, 95 – 96.

91 *Human Trafficking and Transportation (Control) Act 2007*, Section 4(1), 4(2).

92 U.S. Department of State. (2019, June). *Trafficking in persons report*.

93 *Ibid.*

94 *Ibid.*

95 *Ibid.*

96 National Human Rights Commission. (2019, August). *National report on trafficking in persons in Nepal*. [Translated from Nepali].

97 *Ibid.*, 36.

98 National Human Rights Commission. (2018, September). *National report on trafficking in persons in Nepal*. XIV.

99 Thapa, P. (2015, December 16). *Human trafficking in Nepal: Changing dimensions*. *Asian Journal of Women's Studies*. 21 (4), 452.

from various border points of India and China, of which 3,896 were under 18 years of age.¹⁰⁰ Young girls get tricked into moving to Gulf countries under the pretext of foreign employment¹⁰¹ with document forgery and falsification of their age in the identity papers by some government officials.¹⁰²

Children are trafficked for sexual purposes both inside and outside of Nepal.¹⁰³ Within the country, children work in brick kilns, stone-making industry, domestic work, and entertainment industries and are often also exposed to sexual exploitation as a result of human trafficking.¹⁰⁴ Internal trafficking for sexual purposes within Nepal mostly takes place in the entertainment sector.¹⁰⁵ Young children migrate to the cities in search of better work opportunities. In understood practices, customers buy overpriced food and drinks and girls and women are obliged to allow them to watch, touch and talk with them, often including sexual harassment and abuse.¹⁰⁶ Respondents from the 2018 Freedom Fund study already cited indicated that workers received an average of \$159 per month with additional tips from customers, which further pressures them into meeting demands.¹⁰⁷ 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.¹⁰⁸



SEXUAL EXPLOITATION OF CHILDREN IN TRAVEL AND TOURISM (SECTT)

The sexual exploitation of children in travel and tourism (SECTT) is defined as any “acts of sexual exploitation embedded in a context of travel, tourism, or both”.¹⁰⁹ The UNWTO Framework Convention on Tourism Ethics recognises that the exploitation of children conflicts with the fundamental aims of tourism and should be strongly combated with the cooperation of all the States concerned.¹¹⁰

Though tourism is one of the main sources of income to the Nepal economy,¹¹¹ 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, witnessing the highest figure in its history.¹¹² With a 25% increase in the tourist arrivals compared to 2017, the majority of nationals arriving to Nepal come from India, China, USA, Sri Lanka and the UK.¹¹³

SECTT has become visible in emerging tourism destinations including Nepal and India.¹¹⁴ 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.¹¹⁵ Cases of child abuse perpetuated by volunteers have been reported in several countries, including Nepal.¹¹⁶

Most registered orphanages and children homes are situated in the five main tourist districts of Kathmandu, Lalitpur, Bhaktapur, Kaski and Chitwan, where foreign tourists are most likely to spend time.¹¹⁷ 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.¹¹⁸

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,¹¹⁹ however, prominent cases by foreign tourists have been observed as well.¹²⁰ Cases of child sex offenders who travelled from America and Canada to victimise children in orphanages in Nepal have been reported.¹²¹ No official sources quantifying cases of SECTT in Nepal are available. However, the local news sources report that in the span of

two years, the Central Investigation Bureau has arrested and filed cases against nine foreigners on charges related to sexual abuse.¹²² These cases may just be the tip of an iceberg on SECTT, as many cases are unreported.

CHILD, EARLY AND FORCED MARRIAGE (CEFM)

The Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse (Luxembourg Guidelines) define ‘child marriage’ as “a marriage in which at least one of the parties is a child. It also refers to the act of marrying off children, usually young girls, with or without their consent”.¹²³ Some forms of child marriage are related to commercial sexual exploitation of children, in cases where child marriage is linked to forced child labour, slavery and bondage, servitude or payment of a dowry.¹²⁴

Child marriage in Nepal is perpetuated by a web of factors, including poverty and gender discrimination.¹²⁵ 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.¹²⁶ CEFM is common among low caste communities such as the Dalit, Madhesi and indigenous groups,¹²⁷ who face discrimination based on their caste and gender by

100 Rastriya Samachar Samiti. (2018, November 18). *Nepal police rescue 7,029 women and children from traffickers in last 5 years*. The Kathmandu Post.

101 Pradhan, G., Tuladhar, I., & Thakauri, S. (2015, April). *A situational analysis of child rights in Nepal*. 26.

102 U.S. Department of State. (2019, June). *Trafficking in persons report*.

103 National Human Rights Commission. (2018, September). *National report on trafficking in persons in Nepal*.

104 U.S. Department of Labour, Bureau of International Labour Affairs. (2018). *Findings on the worst forms of child labour: Nepal*. 2.

105 National Human Rights Commission. (2018, September). *National report on trafficking in persons in Nepal*. 16.

106 ECPAT International. (2014, November). *The commercial sexual exploitation of children in South Asia*.

107 The Freedom Fund. (2018, August). *Pathways for children to exit commercial sexual exploitation in Kathmandu*.

108 National Human Rights Commission. (2018, September). *National report on trafficking in persons in Nepal*.

109 ECPAT International, Defence for Children, Ministry of Foreign Affairs of the Netherlands. (2016, May). *Offenders on the Move: Global Study on Sexual Exploitation of Children in Travel and Tourism* (hereinafter Global study on SECTT). Bangkok: ECPAT International.

110 UNWTO. (2019). *UNWTO Framework Convention on Tourism Ethics*. UN Doc. A/RES/707(XVII). Art. 5 (3).

111 Dhakal, B. (2016). *Analyzing Nepal’s foreign exchange earnings from tourism using co-integration and causality analysis*. American Journal of Mathematics and Statistics, Vol. 6; Ministry of Foreign Affairs. (n.d.). *Tourism in Nepal*. The World Bank. (2019, December). *Nepal Development Update: Envisioning a future data ecosystem in federal Nepal*.

112 Ministry of Culture, Tourism & Civil Aviation. (2019, May). *Nepal Tourism Statistics 2018*. 3.

113 *Ibid*.

114 ECPAT international, Defence for Children, ministry of Foreign Affairs of the Netherlands. (2016, May). *Offenders on the Move: Global Study on Sexual Exploitation of Children in Travel and Tourism*. Bangkok: ECPAT International.

115 ECPAT International. (2019, June). *Thematic Paper: Sexual exploitation of children and voluntourism*. 1.

116 ECPAT International. (2016). *Voluntourism Brief*. Bangkok: ECPAT International.; Sapkota, J. (2019, November 15). *Under the guise of humanitarian aid, high-profile paedophiles are abusing Nepali children*. The Kathmandu Post.

117 Next Generation Nepal. (2014). *The Paradox of Orphanage Volunteering*.

118 ECPAT International, Defence for Children- ECPAT Netherlands. (2016, June). *Regional report on SECTT South Asia*, 31; ECPAT International. (2019, June). *Thematic Paper: Sexual exploitation of children and voluntourism*. 1.

119 ECPAT International, Defence for Children- ECPAT Netherlands. (2016, June). *Regional report on SECTT South Asia*.

120 *Ibid*.

121 ECPAT international, Defence for Children, Ministry of Foreign Affairs of the Netherlands. (2016, May). *Offenders on the Move: Global Study on Sexual Exploitation of Children in Travel and Tourism*. Bangkok: ECPAT International.

122 The Kathmandu Post. (2019, January 21). *CIB arrests British man over paedophile case*. [Media Report]

123 *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*. 63. Bangkok: ECPAT International.

124 ECPAT International and Plan International. (2015) *Thematic Report. Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage*. Bangkok: ECPAT International.

125 Human Rights Watch. (September, 2016). *“Our time to sing and play” Child marriage in Nepal*.

126 *Ibid*.

127 Human Rights Council. (2019, June 19). *Report on Special Rapporteur on violence against women, its causes and consequences*. 10.

both state and non-state actors.¹²⁸ Coming from the low caste, these groups are politically, social, economically and culturally marginalised, making them highly susceptible to various forms of sexual violence, including sexual exploitation.¹²⁹

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 girls¹³⁰—with 40% female and 10% male aged 20 – 24 years married by the age of 18.¹³¹ The Women, Children and Senior Citizens Directorate recorded 86 cases of reported child marriage in 2019, which increased from the 59 cases recorded in the previous year.¹³² Though there has been research data post 2016 conducted by the Informal Sector Service Centre, gender disaggregation of data in 2017 was not available, identifying 26 cases as the total number of victims for child marriage in that year.¹³³ The disaggregated data in 2016 revealed 16 cases of girls and 0 cases of boys, who were victims of child marriage.¹³⁴ However, due to the national legal age of marriage, it is not clear if this data refers to child marriage cases of spouses who were below 20 and above 18 years of age. Boys also often marry young in Nepal, although the rate is lower than girls.¹³⁵ However, UNICEF reported in 2019 that Nepal ranks tenth highest in the world for child marriage prevalence among boys.¹³⁶

The National Human Rights Committee also revealed that in 2015/2016, 1200 Nepalese girls (unspecified if they are underage) migrated to Korea due to marriage with Korean men, however, cases reveal fraud and deception in the process.¹³⁷ In 2016/17, 5 cases were reported to the Nepal Police where traffickers pretending to tour and visit relatives were in fact trafficking girls and women.¹³⁸

NEPAL HAS 17TH HIGHEST PREVALENCE RATE OF CHILD MARRIAGES IN THE WORLD - FOR BOTH BOYS AND GIRLS



128 Human Rights Watch. (September, 2016). "Our time to sing and play" Child marriage in Nepal.

129 *Ibid.*, 5.

130 UNFPA and UNICEF. (2017, June). *Ending child marriage in Nepal.2*. Girls Not Brides. (n.d.). Nepal.

131 UNICEF. (2019, October). *State of the World's Children 2019*.

132 Crime Investigation Department. (n.d.). *Women, Children and Senior Citizens Directorate (Statistics)*.

133 National Human Rights Commission. (2018, September). *National report on trafficking in persons in Nepal*. 19.

134 *Ibid.* 19.

135 Human Rights Watch. (2018, October). *Human Rights Watch submission to the CEDAW committee on Nepal's periodic report for the 71st session*.

136 UNICEF. (2019, June 7). *Nepal among top 10 countries for prevalence of child marriage among boys*. [Press Release]; UNFPA and UNICEF. (2017, June). *Ending child marriage in Nepal.2*.

137 National Human Rights Commission. (2018, September). *National report on trafficking in persons in Nepal*. 40.

138 *Ibid.* 15.

International, Regional and National Commitments and Legislation on the Sexual Exploitation of Children

Status of ratification of relevant international and regional instruments, reporting to human rights bodies and engagement with the special procedures of the Human Rights Council

International Instruments		Date of ratification/accession
Convention on the Rights of the Child - 1989		22 October 2003
Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography - 2000		22 February 2008
Optional Protocol on a Communications Procedure - 2014		Not signed
ILO Convention on the Worst Forms of Child Labour - 1999 (No. 182)		3 January 2002
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children- 2000 (Palermo Protocol- Supplementing the UN Convention against Transnational Organised Crime)		Not ratified
Regional Instruments		Date of ratification/accession
SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002		15 November 2005
SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, 2002		15 November 2005
Human Rights Bodies	Date of latest submitted report	Comments
Committee on the Rights of the Child (CRC review)	2016	Key concluding observations related to SEC: <ul style="list-style-type: none"> • "Amend its legislation to ensure commensurate penalties for rape and align the penalties for marital rape with penalties for rape outside of marriage"; • "Abolish the six-month statute of limitation for rape and establish mechanisms, procedures and guidelines to ensure mandatory reporting of cases of child sexual abuse and exploitation";

Human Rights Bodies	Date of latest submitted report	Comments
		<ul style="list-style-type: none"> “The Committee urges the State party to ensure that the minimum age of marriage set in the Constitution is applied.” “Review allegedly contradictory legal provisions in the draft Penal and Civil codes to ensure that child marriages can be rendered void if it is in the best interests of the child or children concerned.”¹³⁹
Committee on the Rights of the Child (OPSC review)	2012	<p>Key concluding observations:</p> <ul style="list-style-type: none"> “Take all necessary measures to ensure the full incorporation of the Optional Protocol in its domestic legal system. Speed up the revision process of the Children’s Act and ensure that this act and all child-related laws protect all children under the age of 18. Consider incorporating the various plans of action into a single National Plan of Action for Children covering all provisions of the Optional Protocol and establishing clear targets and indicators.”¹⁴⁰
Human Rights Council- Working Group on the Universal Periodic review	2015	<p>Key recommendations relevant to SEC:</p> <ul style="list-style-type: none"> Consider ratifying the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. Finalise the revision of child act in order to set up coordination mechanism related to cases of child victims trafficking.¹⁴¹ <p>Nepal will be under review for the third cycle during the 37th session (November 2020)</p>

139 UNCR. (2016, July 8). *Concluding observations on the combined third to fifth periodic reports of Nepal. (CRC/NPL/CO/3-5).*
140 UNCR. (2012, July 18). *Concluding observation on the report submitted by Nepal under article 12 paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. (CRC/C/OPSC/NPL/CO/1).*
141 Human Rights Council. (2015, November 4). *Report of the Working Group on the Universal Periodic Review. Nepal. (A/HRC/31/9).*

INTERNATIONAL AND REGIONAL COMMITMENTS

International commitments	
Commitment	Start date
Sustainable Development Goals	2016
Regional commitments	
Commitment	Start date
South Asian Initiative to End Violence against Children (SAIEVAC)	2011 National Action Plan (2015 – 2018)

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.¹⁴² The policies and targets of Nepal’s 14th periodic development plan (2016/17 – 2018/19) also align with the Sustainable Development Goals.¹⁴³ 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 United Nations High-Level Political Forum in July 2017.¹⁴⁴ Among the 17 SDGs, the report prioritised only SDGs 1, 2,3,5,9 and 17.¹⁴⁵ 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.

At the regional level, Nepal is a member of SAIEVAC,¹⁴⁶ which is a SAARC Apex body, and an intergovernmental body functional at regional and national level in eight SAARC countries, including Nepal.¹⁴⁷ SAIEVAC works in five key thematic areas such as child marriage, child abuse and exploitation, child labour, corporal punishment and trafficking. 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.¹⁴⁸

NATIONAL LEGISLATION

Nepal has adopted numerous laws regarding domestic violence, child sexual exploitation and human trafficking to align with its international commitments. The introduction of legislation dedicated to the protection of the rights of children is a welcome step. ‘The Act relating to Children 2018’¹⁴⁹ (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. However, there are certain shortcomings identified in the Act, which have been dealt with in detail in the relevant sections below.

The primary legislation of Nepal is the Constitution, amended in 2015.¹⁵⁰ Article 39 recognised the rights of the children as a constitutional right.¹⁵¹ 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.¹⁵²

142 UN Department of Social and Economic Affairs, Division for Sustainable Development. (2017). *VNRs: Compilation of executive summaries.* 89.

143 *Ibid.*, 89.

144 National Planning Commission. (2017). *National review of sustainable development goals.*

145 *Ibid.*

146 Formerly known as South Asian Forum for Ending Violence Against Children (SAF)

147 SAARC SAIEVAC. (n.d.). *SAIEVAC history.*

148 SAARC SAIEVAC. (n.d.). *SAIEVAC NACG.*

149 *The Act Relating to Children 2018.*

150 *Constitution of Nepal 2015.*

151 *Constitution of Nepal 2015.* Article 39.

152 *The National Penal Code 2017.*

Children are considered to be persons who haven't attained the age of 18.¹⁵³ The age of sexual consent is set at 18 specifically for females.¹⁵⁴ Meaning that female children under the age of 18 cannot consent to sexual activity, which is considered in any case as statutory rape. No such age of sexual consent is provided in the Penal Code for males, hampering the protection of boys from rape. Having said that, the Penal Code¹⁵⁵ and the Child Act 2018¹⁵⁶ are gender neutral when it comes to punishment for child sexual abuse and child sexual exploitation of both boys and girls.

The punishments for statutory rape have been distinguished based on the age of the victim with the maximum being sixteen to twenty years jail for victims below the age of ten.¹⁵⁷

Exploitation of children in prostitution

The main legislation relating to the criminalisation of prostitution is the Human Trafficking and Transportation (Control) Act 2007 (hereinafter HTTCA).¹⁵⁸ It criminalises both a person engaging in prostitution¹⁵⁹ and the using of someone in prostitution with or without any benefit.¹⁶⁰ The penalty is five to ten years imprisonment and a fine of fifty thousand to one hundred thousand rupees (436 USD to 872 USD as of January 2020) for forcing into prostitution, with or without financial benefit.¹⁶¹ For a person engaged in

prostitution, the penalty is two thousand to five thousand rupees (17 USD to 44 USD as of January 2020) and one to three months of imprisonment.¹⁶² 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.

Likewise, the Penal Code does not refer to children specifically when criminalising solicitation¹⁶³ or when providing of a house or/and a land to be used for prostitution or sexual intercourse with a prostitute.¹⁶⁴

The Child Act 2018 prohibits the exploitation of children in prostitution or other sexual work and deems it an act of child sexual abuse.¹⁶⁵ In lieu of that, it criminalises an act to "use or cause to use, children with the intent of providing sexual services."¹⁶⁶ The above acts are considered acts of child sexual abuse and the punishment is imprisonment up to fifteen years and a fine up to one hundred fifty thousand rupees (1,308 USD as of January 2020).¹⁶⁷ Further, to engage in or cause to engage in child sexual exploitation¹⁶⁸ or sexual abuse¹⁶⁹ is a criminal offence. The offence of child sexual exploitation warrants a punishment like that of rape.¹⁷⁰ The act of sexual abuse doesn't have a distinct punishment as per the Child Act 2018. There is no definition of what 'sexual exploitation' is in the Act while child sexual abuse is considered

as all the acts as per Section 66(3) of the Act.¹⁷¹

There is also no mention of acts of recruiting, inducing, profiting from exploitation of children in prostitution as an offence. Section 72(3)(4) states that a person who incites others, attempts or abets to commit these offences shall be punished with half the fine and imprisonment imposed to the principal offender.¹⁷²

It is evident that the current legislation on exploitation of children in prostitution in Nepal is not in compliance with the OPSC. The lack of definitions of 'prostitution', 'child sexual exploitation' creates an issue of overlapping provisions and inconsistency in the punishments for the crimes. It is also important to note that there is no distinction between adult prostitution and the exploitation of prostitution of children in the HTTCA Act and the Penal Code.

Online child sexual exploitation (OCSE)

Pornography is illegal and banned in Nepal.¹⁷³ Indeed, the Penal Code prohibits the "producing or selling obscene books, pamphlets" and includes "circulating through electronic media which is lascivious or appeals to the prurient interest or makes characterless."¹⁷⁴ It further criminalises the exporting, or importing or holding such obscene item with intent to sell, distribute it.¹⁷⁵ The punishment is a sentence not exceeding a

year of imprisonment or a fine not exceeding ten thousand rupees (87 USD as of January 2020) or both.¹⁷⁶ The Penal Code also considers the showing of any pornographic material without the consent of the person viewing it as sexual harassment.¹⁷⁷ Although not specifically targeting children, this provision can protect children from being exposed to sexual content. The punishment is a sentence of imprisonment for a term not exceeding three years and a fine not exceeding thirty thousand rupees (262 USD as of January 2020).¹⁷⁸ There is no specific reference to child abuse material in the above provisions.

While the Penal Code doesn't distinctly apply to children, the Child Act 2018 does have provisions covering aspects of online child sexual exploitation. In fact, the Child Act 2018 defines 'child pornography' as "taking or reproducing moving or still photograph(s) of children that exhibit their sexual organs or by engaging them in fictitious sexual activities, displaying, or causing to display, children's obscene pictures by means of newspapers, posters, print media, motion pictures or other communications media, and the said term also refers to production, sale and distribution, import or export, collection or dissemination of such materials".¹⁷⁹ This definition falls just short of the international standards as it doesn't include audio materials. Section 66(2)(c) also criminalises 'showing' to children, material, both motion pictures and audio-visual material classified as adult-only as an act of violence against the child.¹⁸⁰

153 *The Act Relating to children 2018*. Section 2(j).

154 *The National Penal Code 2017*. Section 219.

155 *Ibid.*, Section 225.

156 *The Act Relating to children 2018*

157 *The National Penal Code 2017*. Section 219(3).

158 *Human Trafficking and Transportation (Control) Act. 2007*.

159 *Ibid.*, Section 4(d).

160 *Ibid.*, Section 4(b).

161 *Ibid.*, Section 15(1) (b).

162 *Ibid.*, Section 15(1) (d).

163 *The National Penal Code 2017*, Section 119.

164 *Ibid.*, Section 120.

165 *The Act Relating to children 2018*. Section 66(3) (k).

166 *Ibid.*, Section 66(3) (i).

167 *Ibid.*, Section 72(h).

168 *Ibid.*, Section 66(3) (h).

169 *Ibid.*, Section 66(3) (j).

170 *Ibid.*, Section 72(3) (g).

171 If any person engages in any of the acts stated below against a child, she/he shall be deemed to have committed an act of child sexual abuse:

- (a) Show, or cause to show, obscene pictures, audio-visual recordings or other such materials or display, or cause to display, expressions or gestures that reflect obscene or sexual conduct or behaviour or display, or cause to display, child pornography,
- (b) Distribute, store or use actual or fictitious obscene pictures or audio-visual materials of children,
- (c) Propose, entice, coerce or threaten for sexual activities,
- (d) Use children in production of obscene acts and materials,
- (e) Touch, kiss, hold sensitive parts of body, embrace with sexual intent or cause them to touch or hold sensitive parts of own body or body of another person or render them unconscious with sexual intent or display, or cause them to display, sexual organs,
- (f) Use, or cause to use, children for stimulating sexual urge or sexual excitement,
- (g) Use, or cause to use, children for the purpose of sexual gratification,
- (h) Engage in, or cause to engage in, child sexual exploitation,
- (i) Use, or cause to use, children with the intent of providing sexual services,
- (j) Use, or cause to use, children with the intent of engaging in sexual abuse,
- (k) Use children in prostitution or other sexual work,

172 *The Act Relating to children 2018*. Section 72(3) (4).

173 *The National Penal Code 2017.*, Section 121; Paudel, N. (2018, September 24). *Government bans raunchy content*. Kathmandu: The Kathmandu Post [Media Article].

174 *The National Penal Code 2017*. Section 121.

175 *Ibid.*, Section 121(1) (d).

176 *Ibid.*, Section 121(2).

177 *Ibid.*, Section 224(1).

178 *Ibid.*, Section 224(2).

179 *The Act Relating to children 2018*. Section 2(m).

180 *Ibid.*, Section 66(2) (c).

It warrants a punishment of imprisonment not exceeding a year and a fine up to fifty thousand rupees (433 USD as of January 2020).¹⁸¹

Section 66(3)(a) considers “show or cause to show, obscene pictures, audio-visual recordings or other such materials or display, or cause to display, expressions or gestures that reflect obscene or sexual conduct or behaviour or display, or cause to display, child pornography” as an act of child sexual abuse.¹⁸² Section 66(3)(b) further criminalises the distribution, storage or use of such material, including when fictitious”.¹⁸³ These acts effect a punishment of imprisonment of up to three years and a fine of up to seventy five thousand rupees (654 USD as of January 2020).¹⁸⁴ Section 66(3)(d) prohibits the “use of children in production of obscene acts and materials”,¹⁸⁵ and provides for punishment with a fine of up to eighty thousand rupees (697 USD as of January 2020) and imprisonment of up to three years.¹⁸⁶ It is pertinent to note that the word ‘store’ in Section 66(2) (c) may include mere possession of CSAM with no intent of distributing/using as an offence.¹⁸⁷ Attempt, coercion, abetment are all recognised as offences with a penalty of half of what the principal offender is issued.¹⁸⁸

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.¹⁸⁹ Indeed, it considers persons above the age of 16 as adults,¹⁹⁰ which is in contradiction with the Child Act 2018 as mentioned above. This might pose risks for children between 16-18 of exposure to sexual content.

Nepal should consider a wider ambit when it comes to the criminalisation of online child sexual exploitation. With the fast pace at which

technology is changing and being used for exploitation, online live streaming of abuses and online grooming should be considered as offences.¹⁹¹ 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 guardians¹⁹² to report on CSAM should be increased.

Following the amendment of the Penal Code in 2017, in a 2018 press release, the Ministry of Communication and Information Technology makes reference to a government directive’s banning digital pornographic content and highlights the importance of inter-governmental and multi-stakeholders collaboration in blocking and taking down these materials,¹⁹³ which would also include CSAM. Media report that Internet service providers have been complying with the Government’s order although raising concerns on the feasibility of blocking all concerned websites.¹⁹⁴

Although the above-mentioned directive is a welcome step in ensuring their accountability, Nepal should introduce a specific legal obligation for Internet service providers to report child sexual abuse material to competent authorities.

Sale and trafficking of children for sexual purposes

Nepal enacted the Human Trafficking and Transportation (Control) Act (HTTCA) in 2007.¹⁹⁵ Section 4 enumerates the acts considered as a crime of human trafficking.¹⁹⁶ 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.¹⁹⁷ There is a separate punishment given to the person engaged in provocation, conspiracy and attempt of an offence of human trafficking.¹⁹⁸ Further, if a person commits the offence of human trafficking while holding a public post, the penalty is increased by 25%.¹⁹⁹ There is no mention of the consequences for a person if he/she uses fraudulent methods or deception to convince a person to engage in human trafficking. Abduction of a person for the purpose of human trafficking has been dealt with as a separate offence of ‘transportation’.²⁰⁰

Section 4(2) of the HTTCA criminalises the act of taking a person out of the country for the purpose of buying and selling as a crime of ‘human transportation’.²⁰¹ It also criminalises the act of taking anyone from his/her home, place of residence or from a person by any means²⁰² 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.²⁰³ Exploitation is defined as ‘the means of an act of keeping human beings as a slave and bonded and this word also includes to remove human organ except otherwise prevailed by the law.’

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.²⁰⁴

In Part 4, the Act provides for an increased penalty when the victim is a child.²⁰⁵ When a child is taken out of the country, then the punishment is between fifteen to twenty years with a fine of hundred thousand rupees to two hundred thousand rupees (872 to 1744 USD as of January 2020) while it is ten to twelve years and a fine of one hundred thousand rupees (872 USD as of January 2020) for transportation within the country.²⁰⁶ The Act is therefore 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.

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 (SECTT)

There is no legislation in Nepal which criminalises the organisation of travel arrangements or transportations that are explicitly or implicitly meant to create or facilitate opportunities for engaging in sexual activities with children. However, the fact that the HTTCA applies to foreigners,²⁰⁷ and criminalises the transportation of children within or outside the country as an offence with distinct punishments as described above,²⁰⁸ may partially protect children from SECTT.

181 *Ibid.*, Section 72(3) (a).

182 *Ibid.*, Section 66(3) (a).

183 *Ibid.*, Section 66(3) (b).

184 *Ibid.*, Section 72(3) (b).

185 *Ibid.*, Section 66(3) (c).

186 *Ibid.*, Section 72(3) (d).

187 *Ibid.*, Section 66(3) (b).

188 *Ibid.*, Section 72(4).

189 *The Motion Picture (Production, Exhibition and Distribution) Act, 2026(1969)*

190 *Ibid.*, Section 8(1) (c).

191 *Lanzarote Convention*.

192 According to Section 126 of the Civil Code, parental authorities have the obligation to protect children from obscene matters, but is limited to maternal and parental authority.

193 Ministry of Communication and Information Technology. (2018, September 21). *Information related to ban on pornography in Nepal*. [Press Release]. [Translated from Nepali].

194 Gurubacharya, B. (2018, October 14). *Nepal says it has blocked 25,000 websites in pornography ban*. AP News.; Kayastha, S. (2018, October 1). *The problem with Nepal’s porn ban*. The Record.

195 *Human Trafficking and Transportation (Control) Act, 2007*.

196 *Ibid.*, Section 4.

197 *Human Trafficking and Transportation (Control) Act, 2007*. Section 4(1).

198 *Ibid.*, Section 15(1) (h).

199 *Ibid.*, Section 3.

200 *Ibid.*, Section 4(2).

201 *Ibid.*, Section 4(2).

202 Such as enticement, inducement, misinformation, forgery, tricks, coercion, abduction, hostage, allurement, influence, threat, abuse of power.

203 *Human Trafficking and Transportation (Control) Act, 2007*. Section 4(2).

204 IOM. (n.d.). *Family members are involved in nearly half of the trafficking cases*.

205 *Human Trafficking and Transportation (Control) Act, 2007*. Section 15(1) and (2).

206 *Ibid.*, Section 15(1) and (2).

207 *Ibid.*, Section 1(3).

208 *Ibid.*, Section 15(3)(1) and Section 15(3)(2).

There is no legislation so far which creates an obligation or holds the travel and tourism companies when it comes to sexual exploitation of children in travel and tourism.

Child, early and forced marriages (CEFM)

One of the most important changes in the latest amendments in the national laws of Nepal is the invalidity of any practices based on cultural or traditional practices which are in conflict with the law.²⁰⁹ As mentioned earlier, the reasons behind child marriages are complex, but the role of culture and traditions cannot be ignored.²¹⁰ The legal system in theory, through legislation protects children from child marriages, but in reality the practice is still pervasive. 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 practices.²¹¹

The Constitution further guarantees the protection of children from child marriage²¹² and recognises it as a punishable offence and enables the victims for a compensation.²¹³ According to the Penal Code, the minimum legal age of marriage is 20.²¹⁴ It states that if the persons are below this age, consent is not valid.²¹⁵ A marriage contravening this is considered to be void. The offence of child marriage warrants an imprisonment not exceeding three years and a fine not exceeding thirty thousand rupees (262 USD as of January 2020).²¹⁶ The Penal Code in 2017 replaced the idea proposed in the 2014 Bill of Civil Code which allowed for marriage of persons above the age of 18 with

parental consent.²¹⁷ Section 66(2)(o) deems it an offence to fix marriages of children or marry, or cause to marry children.²¹⁸ It is to be noted that 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. Further, there is an explicit prohibition of dowry in the criminal law.²¹⁹ The statute of limitation is set at three months,²²⁰ which, when combined with delayed disclosure of abuse, may reduce child victims' access to justice of victims.²²¹ 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.²²²

The Civil Code in Section 74 sets out instances wherein marriage is deemed to be concluded if a child is born from sexual intercourse.²²³ The exception to this is when the woman is raped.²²⁴ In instances where a minor girl ends up pregnant with or without her consent during sexual intercourse (consent is irrelevant when the girl is a minor), then she is not considered to be married to the man automatically as per Section 74 of the Civil Code. The above exception indirectly protects girls from forced child marriage. Further, in the Civil Code, a marriage is considered to be voidable if the marriageable age is not met,²²⁵ 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.

In conclusion, the alignment of the provisions of the Civil Code, Penal Code and the Child Act 2018 will eliminate the disconnect in the law which might be used to invalidate the cases in court.

Extraterritorial jurisdiction and extradition law

Extraterritoriality is the power of the State to make, apply and enforce rules of conduct in respect of persons, property or events beyond its territory.²²⁶ The extraterritorial jurisdiction of the Nepal courts is enshrined in the Penal Code.²²⁷ Section 2 of the Penal Code includes an extensive list of crimes including rape (against girls) and CEFM, which can be considered for universal extraterritorial jurisdiction.²²⁸

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.²²⁹ The HTTCA extends jurisdiction to foreigners who commit offences as per the Act against Nepalese citizens.²³⁰

The Extradition Act was enacted in 1988.²³¹ 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.²³² 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.²³³

209 *Constitution of Nepal 2015*. Article 29.

210 Human Rights Watch. (2016, September 6). "Our time to sing and play" *Child marriage in Nepal*.

211 *Constitution of Nepal 2015*. Article 39(6).

212 *Ibid.*, Article 39(5).

213 *Ibid.*, Article 39(10).

214 *The National Penal Code 2017*. Section 173.

215 *Ibid.*, Section 171.

216 *Ibid.*, Section 173(3).

217 Bill on Civil Code, 2071 (2014), sec. 70(1)(d) (Nepal); Bill on Penal Code, 2071 (2014), sec. 171(2) (Nepal); Personal communication, ECPAT Luxembourg.

218 *The Act Relating to Children 2018*.

219 *The National Penal Code 2017*. Section 174.

220 *Ibid.*, Section 176.

221 ECPAT International. (2017, February). *Through the eyes of the child: Barriers to access to justice*.58.

222 *The National Civil Code*. Section 82.

223 *Ibid.*, Section 74.

224 *Ibid.*, Section 74(2)(a).

225 *Ibid.*, Section 73.

226 Oxford Public International Law. (2012, November). *Extraterritoriality*.

227 *The National Penal Code 2017*. Section 2.

228 *Ibid.*, Section 2(3).

229 *Ibid.*, Section 2(3).

230 *Human Trafficking and Transportation (Control) Act, 2007*. Section 1(3).

231 *Extradition Act 1988*.

232 *Ibid.*

233 *Ibid.*, Section 12.

National Response to the Sexual Exploitation of Children

COORDINATION AND COOPERATION

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 and the National Master Plan of Child Labour by the Ministry of Labour, Employment and Social Security. 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. At the time of this report there has been no efforts to simultaneously revise the relevant policies to align with the most recent legislations. This gap can be noted in the following section.

The 2012 National Child Policy paved the way for the Child Protection Information Management System as a comprehensive software for data collection and evaluation.²³⁴ This focused on recording information on child sexual, physical

and psychological abuse, trafficking and domestic labour. The information was to be collected through networking with various organisations including the Nepal Police.²³⁵ At the time of writing, the system is operational under the website of Ministry of Women, Children and Senior Citizen and has information on 'disability identity card related' and 'elder citizen identity card' however, the website does not include data on SEC.²³⁶

The main coordinating and monitoring body to address SEC in Nepal is the Ministry of Women, Children and Senior Citizens.^{237,238} 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 1992.²³⁹ 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.²⁴⁰ The Government of Nepal and Ministry of Women, Children and Senior Citizen chair the National Child Rights Council 'to safeguard and promote children's rights and interests'.²⁴¹

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.²⁴² While the National Child Rights 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.²⁴³ This lack of information gives an unclear picture of the efficiency and effectiveness of the state and local child rights committees.

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.²⁴⁴ 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.²⁴⁵ These service centres as of 18 June 2019 have been integrated into the service directorate.²⁴⁶ 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.²⁴⁷ This causes disparity in ascertaining the status of the obligations these institutions have to the welfare of the child.

The Ministry of Women, Children and Senior Citizens is in charge of developing national plan of actions relevant to children. Currently, the Government of Nepal 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 the 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

2019,²⁴⁸ no information is publicly available regarding the launch of the final report. However, there are a number of other national plans of action covering elements of SEC as detailed below.

The 'National Plan of Action against Trafficking and Transportation especially Women and Children' (2012 – 2022)²⁴⁹ focuses on the five priority areas: prevention; protection; prosecution; capacity building; collaboration and cooperation.^{250,251} This plan puts emphasis on prevention of sexual abuse and exploitation of women and children in the entertainment sector and includes a code of conduct for tour operators, businessmen, workers, and house owners, among others.²⁵² As per the National Trafficking in Persons report in 2018, it has been reported that the National Committee for Controlling Human Trafficking conducted a mid-term evaluation of the 'National Plan of Action against Trafficking and Transportation especially Women and Children' (2012 – 2022).²⁵³ This showed that only 51.5% of the 163 activities were fully or partially implemented.²⁵⁴ The summary of the evaluation given in the trafficking in persons report 2018 doesn't specify the evaluation of activities targeting children.

To implement the HTTCA and the National Plan of Action, the Government of Nepal formed the 'National Committee for Controlling Human Trafficking', which is an inter-ministerial body created as per Section 23 of the HTTCA.²⁵⁵ It formulates and submits plans, policies and programmes to the Ministry of Women Children and Senior Citizens for approval and helps in facilitating the implementation.²⁵⁶ In February

234 Juvenile Justice Coordination Committee. (2012). *National Child Policy 2012*. [Translated from Nepali].

235 *Ibid.*

236 Ministry of Women, Children and Senior Citizens. (n.d.). *Information Management System*.

237 Formerly known as Ministry of Women, Children and Social Welfare.

238 OHCHR. (2012, July 18). *Concluding observation on the report submitted by Nepal under article 12 paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. (CRC/C/OPSC/NPL/CO/1)*.

239 Earlier known as Central Child Welfare Board which has been replaced by the amendment of the Child Act in 2018.

240 *The Act Relating to children 2018*. Section 60.

241 *Ibid.*, Section 59(1).

242 *Ibid.*, Section 60(2).

243 National Child Rights Council. (2019). *The state of the children*.

244 Crime Investigation Bureau. (n.d.). *Women, children and senior citizens service directorate*.

245 Operations and Crime Investigation Department. (2019). *CID annual publication*. 28.

246 *Ibid.*, 28.

247 *Ibid.*, 28.

248 Ministry of Women, Children and Senior Citizen, SAIEVAC. (2019, February). *Summary Report of the Expert Review Meeting and Review on National Plan*.

249 National Plan of Action against Trafficking and Transportation especially Women and Children. 2068. [Translated from Nepali]. 6.

250 *Ibid.*

251 Ministry of Women, Children and Senior Citizens. (2001). *National Plan of Action against Trafficking in Children and Women for Sexual and Labour Exploitation*; There was previously a National Plan of Action against Trafficking in Children and Women for Sexual and Labour Exploitation, which was adopted in 1998 and revised in 2001.

252 National Plan of Action against Trafficking and Transportation especially Women and Children. (2012) [Translated from Nepali].

253 National Human Rights Commission. (2018, September). *National report on trafficking in persons in Nepal*. 145.

254 *Ibid.*, 145.

255 Human Trafficking and Transportation (Control) 2007. Section 23.

256 National Human Rights Commission. (2018, September). *National report on trafficking in persons in Nepal*.

2018, the Minister of Women Children and Senior Citizens reiterated the ministry's commitment to the CRC by creating various policies including public awareness programmes across the country on gender-based violence, rape and child marriage and reforming the child care home standards.²⁵⁷

After the 2015 Constitutional amendment and the administrative restructuring, the District Committees were replaced with just the local level committees for the regional levels.²⁵⁸ The National Committee on Combating Human Trafficking is reportedly redrafting the Human Trafficking and Transportation Control Act in compliance to international standards.²⁵⁹ No updates are available at the time of drafting of this report. These structural changes have resulted in overlapping of responsibilities and inconsistencies with recording and evaluating the plans among the different committees.

The Office of the Special Rapporteur on Trafficking under the National Human Rights Commission, a monitoring and protection mechanism in Nepal, coordinates with civil society organisations in reporting the status of trafficking in persons in Nepal and publishes the national report on trafficking in persons annually.²⁶⁰ Nepal is the only country that has established such an institution among all the South Asian countries.²⁶¹ However, the US Department of State's Trafficking in Persons report revealed that the Special Rapporteur position is currently vacant.²⁶² As of the time of writing of this report, there is still no Special Rapporteur, appointed for the Office of the Special Rapporteur on Trafficking in Persons in Nepal.²⁶³

The monitoring of incidents of human rights violations (including children) at the national level rests with the National Human Rights Commission. This Commission is mandated through the 2012 National Human Rights Commission Act that is based on the Interim Constitution of Nepal 2007.²⁶⁴ The 2015 'Child Protection Mapping

and Assessment Summary Report 2015' noted the existence of a 'Children's Desk' for informal monitoring on child rights violations. The revision of the Constitution in 2015 replaced the foundation on which the National Human Rights Commission was set up. However, there is no reliable data on the functioning of the Children's Desk.

The last National Plan of Action for Children was in place between 2005 and 2015, and addressed the elimination of various forms of child exploitation, abuse and trafficking in Nepal.²⁶⁵ The report 'Final Evaluation of the National Plan of Action for Children 2005-2015', released in April 2016, found that the plan lacked any monitoring data and was not implemented as a national action plan.²⁶⁶

The evaluation report found that none of the governance bodies envisioned by the National Plan of Action for Children materialised, which severely affected the coordination of efforts for the protection of children. One particular example was the non-establishment of the National Steering Committee, which was supposed to be a multi-stakeholder platform co-chaired by the Ministry of Women, Children and Senior Citizens and the National Planning Commission to implement and monitor the National Plan of Action for Children. Further, it was observed an overall duplication of activities and lack of funds to meet the estimate of the National Plan of Action for Children, which resulted in inaction. Finally, when the 2015 plan expired, there were no further efforts to enact a new one. The government is reportedly preparing a new National Plan of Action for Children,²⁶⁷ but at the time of writing, no information about this process was noted.

The Ministry of Labour, Employment and Social Security addresses issues of child trafficking, child labour and sexual exploitation of children in entertainment venues, and child labour in hotel and restaurant industry in the National Master

Plan on Child Labour (2018 – 2028).²⁶⁸ This master plan prioritises ending the worst forms of child labour by 2023 and all forms of child labour by 2025.²⁶⁹ The Government of Nepal is currently implementing the activities in the plan by engaging stakeholders in capacity building and enforcing child labour laws through the Child Labour Elimination Project.²⁷⁰ 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',²⁷¹ but there is no information on its functionality.^{272,273}

Concerning CEFM, Nepal introduced a National Strategy on Ending Child Marriage (2015 – 2030) in 2016 under the auspices of the Ministry of Women, Children and Senior Citizens.²⁷⁴ The strategy contains six strategic directions, namely: empowering girls, providing quality education for girls, engaging men and boys, mobilising families and communities, strengthening and providing services, and implementing laws and policies.²⁷⁵ In consonance to the above strategy, the Ministry of Women, Children and Senior Citizens and Girls Not Brides have collaborated to develop a National Implementation Plan.²⁷⁶ There is so far no information available on the plan.

In conclusion, the efforts taken in Nepal are 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.

Prevention measures, awareness-raising and education

The inclusion of the rights of the child in the 2007 Nepal Constitution led to the drafting of the National Child Policy 2012, a first of its kind, exclusively for the protection of the interests of the child. Its primary objective was to protect children from all forms of abuse, violence and exploitation. The focus of this policy was to initiate awareness programmes related to SEC specifically targeting reforms in the educational systems.²⁷⁷ Further, it has to be noted that the National Action Plan 2005-2015 influenced this National Child Policy.²⁷⁸ However, the final evaluation report in 2016 noted that there was no actual implementation since its adoption.²⁷⁹

The Nepal Police in coordination with civil society organisations regularly conducts various prevention activities and programmes on manifestations of SEC.²⁸⁰

The Government of Nepal has taken some efforts in terms of protection, prosecution and prevention of trafficking in persons. For instance, the Ministry of Women Children and Senior Citizens through the Women and Children Department and National Human Rights Council implements various prevention programmes for issues relating to the trafficking of children.²⁸¹ The four coordinating bodies which address human trafficking cases in Nepal: National Committee to Combatting Human Trafficking, Anti-Trafficking in Persons Bureau, Central Investigation Bureau and Women, Children and Senior Citizen Service Directorate.²⁸²

257 *Ibid.*, 82.

258 Earlier there was both the district and local committees but since 2018 only local committees are in place.

259 U.S. Department of State. (2019, June). *Trafficking in persons report*.

260 Ministry of Women, Children and Senior Citizens. (2015, September). Child protection mapping and summary report. 27, 46; National Human Rights Commission. (2018, September). *National report on trafficking in persons in Nepal*.

261 ECPAT International. (2017). *Regional overview: combatting the sexual exploitation of children in South Asia. Evolving trends, existing responses and future priorities*. 120.

262 U.S. Department of State. (2019, June). *Trafficking in persons report*.

263 ECPAT Luxembourg. (2019, November). Personal Communications.

264 *National Human Rights Commission Act 2012*.

265 Ministry of Women, Children and Senior Citizens, National Child Rights Council. (2004). *National Plan of Action for Children*.

266 Cabran, M., Joshi, D. (2016, April 11). *Final evaluation of the national plan of action for children 2004 - 15*.

267 Ministry of Women, Children and Senior Citizens, National Child Rights Council. (2017). *State of children in Nepal*.

268 Ministry of Labour, Employment and Social Security. (2018, October 10). *National Master Plan on Child Labour* [Translated from Nepali].

269 *Ibid.*

270 ILO. (2019). *The ILO in Nepal*.

271 ECPAT prefers the term 'Sexual Exploitation of Children in Travel and Tourism' instead of 'child sex tourism' in line with the recently widely adopted Terminology Guidelines. Interagency Working Group on Sexual Exploitation of Children. (2016, January 28). *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*. 30. Bangkok: ECPAT International.

272 ECPAT international, Defence for Children, ministry of Foreign Affairs of the Netherlands. (2016, May). *Offenders on the Move: Global Study on Sexual Exploitation of Children in Travel and Tourism*. Bangkok: ECPAT International.

273 Shakti Samuha. (2019, October). Personal Communication.

274 Ministry of Women, Children and Senior Citizens. (2016). *National strategy on ending child marriage*. [Translated from Nepali].

275 *Ibid.*

276 Girls Not Brides. (n.d.). *National partnerships: Nepal*.

277 Juvenile Justice Coordination Committee. (2012). *National Child Policy 2012*. [Translated from Nepali].

278 Cabran, M., Joshi, D. (2016, April 11). *Final evaluation of the national plan of action for children 2004 - 15*. 40

279 *Ibid.*

280 ECPAT Luxembourg. (2019, December). Personal Communication.

281 National Human Rights Commission. (2018, September). *National report on trafficking in persons in Nepal*. 81 – 83.

282 Operations and Crime Investigation Department. (2019). *CID annual publication*.

To address issues of forced labour and trafficking for sexual purposes, an Anti-Trafficking-in-Persons Bureau (Anti-TIP-Bureau) mandated by the Human Trafficking and Transportation Control Act was established in 2018 with the purpose of investigating and preventing the human trafficking crimes in Nepal.²⁸³ Standard Operating Procedures were developed and training was conducted to public prosecutors on victim-centred investigations, and law enforcement and civil society on trafficking trends and emergency victim protection.²⁸⁴ However, the trainings given were reportedly not translated in reality posing challenges in the prosecution efforts.²⁸⁵ Following, in June 2018, Nepal established the Cybercrime Control Bureau under the Police Headquarters to investigate on cybercrime issues.²⁸⁶ 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.²⁸⁷

Safer Internet Day 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.²⁸⁸ The event was organised by Child Safe Net, a non-governmental organisation protecting the rights of children online.²⁸⁹ 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.^{290,291} The forum focused on key issues such as the impact of social media, online child safeguarding and protection, freedom of expression and others.²⁹² 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.²⁹³ At the time of writing, the 2019 Nepal Internet Governance Forum report has not been released yet.

With regards to SECTT, as of November 2019, there are 17 international companies with operations in Nepal and 4 private companies based in the country – Beyond Borders Ethical Adventures, Eagles Eye Treks and Expedition, GAP Nepal and Trekking Team Group – that are members of The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism (The Code).²⁹⁴ The Code is a multi-stakeholder initiative, which provides awareness, tools and support to the tourism industry to prevent child sexual exploitation.²⁹⁵

CHILD PROTECTION, ACCESS TO JUSTICE AND RIGHT TO REMEDIES FOR CHILD VICTIMS OF SEXUAL EXPLOITATION

National complaint mechanisms

The Constitution of Nepal in Article 39(8) provides for child friendly justice which includes provisions for both child offenders and child victims.²⁹⁶ According to the Criminal Procedure Code of Nepal, a complaint on behalf of a child should be made by the legal successor or guardian, and has a detailed procedure to be followed.²⁹⁷ The statute of limitation as per the Child Act 2018 says that for offences against children including SEC, the case

can be filed for a year after the child victim attains the age of eighteen.²⁹⁸

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.²⁹⁹ The Child Welfare Authority³⁰⁰ according to the Child Act 2018 is the body which receives complaints of offences against the child from the relevant police stations. There is a legal obligation on a person including parents, guardians or any person who is aware of any incident of sexual violence or sexual abuse against a child according to the Child Act 2018 to report it to the closest police station.³⁰¹ The police station has to then forward this information to the child welfare authority for necessary support.³⁰² The identity of the complainant will be kept confidential if the person desires that.^{303,304}

A person who hasn't attained the age of 10 isn't competent to make a civil claim and lacks the full legal capacity.³⁰⁵ Persons between the age of 10 and 18 are considered to have 'quasi-competence' which means that in exercising the right, one has to get the consent of the legal guardian or exercise it through the guardian.³⁰⁶ According to the Child Act 2018, every child victim has the right to participate or be involved in each and every stage of investigation, prosecution and judicial proceeding.³⁰⁷ This right, when read in conjunction with the provisions of the Civil Code, could be not fully enjoyed by child victims, for example in cases where the guardian or parent is complicit or denies child sexual abuse because of lack of awareness. While empowering the children with a right to

participate, there should be further policy guidelines adopted to efficiently enforce this right.

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

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.³⁰⁸ It provides for the child to have the information to be provided in a language understandable by him/her.³⁰⁹ It gives them the right to participate in all the above processes.³¹⁰ It provides for confidentiality of the victim.³¹¹ The Child Act 2018 and the Constitution guarantees the right to compensation from the perpetrator.³¹² The Child Act 2018 further enables them to receive free legal aid and psychosocial counselling services or get a legal practitioner appointed if need be.³¹³ The Child Act 2018 provides for a closed bench hearing³¹⁴ 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, this legislation provides for in camera proceeding in cases of human trafficking and human transportation.³¹⁵ The Child Act 2018 further allows for police protection of the victim,³¹⁶ but there is no mention of an NGO or social workers assisting or supporting them. Considering that the amendment has been recently adopted,

283 *Ibid.*

284 U.S. Department of State. (2019, June). *Trafficking in persons report*.

285 *Ibid.*

286 Operations and Crime Investigation Department. (2019). *CID annual publication*.

287 *Ibid.*

288 ChildSafeNet. (2019, February 6). *Safer internet day celebrated in Nepal for the first time*. [Press Release].

289 *Ibid.*

290 ChildSafeNet. (n.d.). *ChildSafeNet at Nepal internet governance forum 2019*.

291 Nepal IGF 2019. (n.d.). *Nepal internet governance forum (Nepal IGF) 2019*.

292 Internet Governance Institute. (2019, October 31). *Nepal IGF 2019 completed successfully*.

293 Internet Governance Forum. (2018). *IGF 2018 report*. 4.

294 The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism. (n.d.). *Signatories*.

295 *Ibid.*

296 Article 39(8) of the Constitution of Nepal; ECPAT International. (2017, February). *Through the eyes of the child: Barriers to access to justice*. 43.

297 *Criminal Procedure Code of Nepal*. Section 53.

298 *The Act Relating to Children 2018*. Section 74(2).

299 *Ibid.*, Section 59.

300 *Ibid.*, Section 61.

301 *Ibid.*, Section 68.

302 *Ibid.*, Section 68(2).

303 *The Act Relating to children 2018*. Section 68(4).

304 *The Human Trafficking and Transportation (Control) Act, 2007*. Section 20.

305 *The National Civil Code*. Section 33.

306 *Ibid.*, Section 34.

307 *The Act Relating to children 2018*. Section 25(b).

308 *Ibid.*, Section 25.

309 *Ibid.*, Section 25(a).

310 *Ibid.*, Section 25(b).

311 *Ibid.*, Section 25(c).

312 *Ibid.*, Section 25(d); *The Constitution of Nepal 2015*, Article 39(10).

313 *Ibid.*, Section 25(e).

314 *Ibid.*, Section 25 (i).

315 *The Human Trafficking and Transportation (Control) Act, 2007*. Section 27.

316 *The Act Relating to children 2018*. Section 25(h).

there is no data to evaluate its efficiency in practice.

While Section 25 is specifically meant for child victims during the investigation, prosecution and judicial stages, Section 26 of the Child Act 2018 focuses on the rights of all children including child offenders during a hearing process.³¹⁷

While this research pre-dates the new Child Act, ECPAT's 2017 Barriers to Access to Justice study, which was conducted in three countries including Nepal, stated that none of the study countries had comprehensively operationalised the 'best interest of the child' principle during a SEC case.³¹⁸ In Nepal, the report noted that victim-centred approaches were not prioritised in practice.³¹⁹ Appointing free legal counsel for the child victims of sexual exploitation is necessary to support children during the criminal cases. However, the report has no record on access to free legal aid and other support services in Nepal.³²⁰ While this situation has the potential to improve with the new provisions detailed by the Child Act 2018, currently, it is understood that limited funding continues to deem these concepts non-functional.³²¹ The lack of support services reflect that the law has not yet been implemented in court proceedings successfully.

The right to the participation of child victims and survivors in the cases against their offenders is not fully recognised in Nepal. One of the cross-cutting themes identified in the 2017 ECPAT's Barriers to Access to Justice report revealed that SEC survivors had less opportunities to be involved in decisions to file complain, selecting child-friendly procedures and putting a victim impact statement, limiting their right to freedom to express their opinions.³²² In Nepal, victims do not have the right to be heard and informed during the judicial proceedings in

courts.³²³ The primary data collected from the justice officials in Nepal indicated that the criminal justice system failed to address the rights of child victims and little attention was given to their opinions.³²⁴ There is a need for a child-friendly and a victim-centered approach in Nepal, which addresses the full and meaningful participation of child victims and survivors during the court cases.

Access to recovery and reintegration

The HTTCA enacted the 'rehabilitation fund' for the victims of human trafficking and human transportation.³²⁵ According to this law, a rehabilitation fund was established by the Government of Nepal in 2008.³²⁶ Later it adopted the Guideline for the Operation of the Rehabilitation Fund in 2011.³²⁷ The rehabilitation fund is under the ambit of the Ministry of Women, Children and Senior Citizens with an annual allocated budget of 1 million rupees (8,721 USD as of January 2020) every year.³²⁸ It is funded partially by the government budget and partially from the fines collected from the convicted perpetrators of trafficking.³²⁹ 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.³³⁰ The fund is also used for the operation of rehabilitation centres for victims of trafficking in Nepal (as of 2018, there were centres in 10 districts with one long term centre in Kathmandu).³³¹ To extend the services to Nepalese victims outside of Nepal, there is one centre in Kolkata, India.³³² There was no allocation of budget for male victims of trafficking in rehabilitation centres, which are primarily run by NGOs with the support of the

Ministry of Women, Children and Senior Citizens.³³³

There are various child protection programmes in Nepal, which focus on access to recovery and reintegration to address SEC and its manifestations. The Government of Nepal 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.³³⁴ 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.³³⁵ The Government is reportedly updating the standards document.³³⁶ At the time of writing of this report, no updates are publicly available in this regard.

The Government of 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 2017.³³⁷ 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 2011.³³⁸ Until 2018, there were 10 rehabilitation centres across Nepal with one long-term centre.³³⁹ 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.³⁴⁰ However, these centres only cater to women and girls. There was no allocation of

budget by the Ministry of Women, Children and Senior Citizens for the protection of male victims of trafficking.³⁴¹ The method of distribution of fund in the Rehabilitation Fund³⁴² further limits the opportunities of male victims including boys exploited through trafficking. Since, this fund is under the Ministry of Women, Children and Senior Citizens, there seems to be a lack of focus on the inclusion of boys who are victims of trafficking to access these rehabilitation services.

Other child protection structures, which provide access to rehabilitation services to victims of sexual exploitation in Nepal are Women and Children Service Centres (in 77 districts) tasked by Women and Children Service Directorate, District Child Protection Committee and child helplines.³⁴³ The Ministry of Women, Children and Senior Citizens has initiated the operation of helpline through toll free child helpline (1098),³⁴⁴ and enacted the Child Helpline Operation Procedures 2007.³⁴⁵ In 12 districts, the helpline is run by local NGOs providing services, which include rescues, relief and support, psychological counselling and rehabilitation.³⁴⁶ 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 - 2019.³⁴⁷ 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

The right to compensation for child victims of crime is a constitutional right under Article 39(10) of the Constitution.³⁴⁸ It is also enshrined in Section 25(d) of the Child Act 2018.³⁴⁹

317 *Ibid.*, Section 26.

318 ECPAT International. (2017, February). *Through the eyes of the child: Barriers to access to justice*. 113.

319 *Ibid.*

320 *Ibid.*

321 ECPAT Luxembourg. (2019, November). Personal Communication.

322 ECPAT International. (2017, February). *Through the eyes of the child: barriers to access to justice and remedies for child victims of sexual exploitation*.

323 *Ibid.*, 117.

324 *Ibid.*, 115.

325 *Human Trafficking and Transportation (Control) Act, 2007*. Section 17(3).

326 National Human Rights Commission. (2018, September). *National report on trafficking in persons in Nepal*.

327 *Ibid.*, 80.

328 *Ibid.*, 158.

329 *Ibid.*, 98.

330 *Ibid.*, 101.

331 *Ibid.*, 101.

332 Ministry of Women, Children and Senior Citizen. (2018, August). *In the response of the Government of Nepal to the list of issues and questions in relation to the 6th periodic report of Nepal for CEDAW*. 14 - 15.

333 U.S. Department of State. (2019, June). *Trafficking in persons report*.

334 Ministry of Women, Children and Senior Citizens. (2011). *National Minimum Standard for the Care and Protection of the Victims of Human Trafficking and Transportation*. [Translated from Nepali].

335 National Human Rights Commission. (2018, September). *National report on trafficking in persons in Nepal*.

336 ECPAT Luxembourg. (2019, December). Personal Communication.

337 National Human Rights Commission. (2018, September). *National report on trafficking in persons in Nepal*. 89.

338 Ministry of Women, Children and Senior Citizens. (2011). *Shelter Home Operating Procedure (SOP) for care and protection of trafficking survivors*.

339 National Human Rights Commission. (2018, September). *National report on trafficking in persons in Nepal*. 88.

340 OHCHR. (2015). *Responses to the questionnaire to the study of care and recovery of child victims: Nepal*.

341 US Department of State. (2019, June 20). *Trafficking in persons report*.

342 It is a state fund utilised for various anti-trafficking activities in Nepal (More in section 4.3.4)

343 OHCHR. (2015). *Responses to the questionnaire to the study of care and recovery of child victims: Nepal*. 2.

344 Ministry of Women, Children and Senior Citizens. *Child related major activities*.

345 National Human Rights Commission. (2018, September). *National report on trafficking in persons in Nepal*. 89.

346 Ministry of Women, Children and Senior Citizens. (2019). *State of children in Nepal*. 12. [Translated from Nepali].

347 *Ibid.*

348 *Constitution of Nepal*. Article 39(10).

349 *The Act Relating to children 2018*. Section 25(d).

The Child Act 2018 ensures that the children who are victims of an offence under the Child Act and other prevailing law get compensation.³⁵⁰ It ensures that if 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 of the Act.³⁵¹ There is also a provision for interim compensation in case the child is in need of immediate medical treatment.³⁵² It is important to acknowledge that the Child Act 2018 considers the compensation for all offences against the child and not limited to specific laws laid out in it.³⁵³ This is for compensation and interim compensation.³⁵⁴

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.

The Human Trafficking and Transportation (Control) Act 2007 ensures that children who don't have parents, will still receive compensation, but will be accrued in a rehabilitation fund.³⁵⁵ 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.³⁵⁶

ECPAT's 2017 study on the barriers to accessing justice reported that children who are sexually exploited find it challenging to secure compensation.³⁵⁷ Interviews with SEC survivors in Nepal revealed that often SEC victims were unaware of their right to seek compensation and the overall process of how to receive it.³⁵⁸ Another interview from a prosecutor in Nepal revealed that the cost of filing a case and expenses attached to it (travel cost, medical examination and miscellaneous cost) exceeded the compensation awarded from the perpetrators, who often come from low economic background.³⁵⁹



Child participation in Nepal is encouraged nationally through child rights protection and promotion programmes. At the federal/central level, the Women and Children Department and National Child Rights Council are mainly responsible for the implementation of these programmes.³⁶⁰

The National Child Policy 2012 promotes child participation by providing various opportunities for children to contribute on issues that affect them.³⁶¹ The national periodic development planning process encourages child participation as well. The Child Act 2018 also mentions that "every child is capable of forming opinion of her/his own shall have the right to participate in decision-making to be taken by her/his family, community, school or other public agency or institution that concerns her/him."³⁶²

Various child related programmes promote child participation in Nepal. The National Child Rights Council manages the Child Clubs and has a Child Participation Guideline 2005, where they carry out programmes on key issues such as child labour, child marriage and child participation. In 2017, there were 23,000 child clubs in Nepal across the country. Similarly, Nepal practices child friendly local governance, which was initiated in 2007 by the Ministry of Local Development with technical support from UNICEF.³⁶³ Child friendly local governance promotes children's right to protection, survival, development and participation at the local level.³⁶⁴ The direct participation of children in decision-making processes through child assemblies, promotion of child clubs and supporting child-led actions are some of the contributions by child friendly local governance.³⁶⁵ The last reported numbers show that more than 80,000 children directly participated in the local development planning process in 2014 alone.³⁶⁶ However, despite the efforts of the government, no specific participation mechanisms for child victims and survivors of SEC have been found to be in place.

350 *Ibid.*, Section 73.

351 *Ibid.*, Section 73(2).

352 *Ibid.*, Section 73(4).

353 *Ibid.*, Section 73(1).

354 *Ibid.*, Section 73(4).

355 *Human Trafficking and Transportation (Control) Act, 2007*. Section 17(3).

356 ECPAT Luxembourg. (2019, December). Personal Communication.

357 ECPAT International. (2017, February). *Through the eyes of the child: Barriers to access to justice and remedies for child victims of sexual exploitation*. 140.

358 *Ibid.*

359 *Ibid.*, 144.

360 *Ibid.*

361 Juvenile Justice Coordination Committee. (2012). *National Child Policy 2012*. [Translated from Nepali].

362 *The Act Relating to Children, 2075 (2018)*. Section 8.

363 MIREST Nepal, UNICEF. (2016, April). *Triggering factors child friendly local governance*.

364 Dharel, M., Bibhu, S., (2018). *Child friendly local governance in Nepal: practices, learning and opportunities*.

365 *Ibid.*, 16.

366 *Ibid.*, 16.

Recommendations for Action

INTERNATIONAL AND REGIONAL LEGISLATION, COMMITMENTS AND COORDINATION TO ENDING SEC

- Ratify the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure;
- 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;
- Ratify the UNWTO Framework Convention on Tourism Ethics;
- 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;
- Develop extraterritoriality and extradition regulations applicable among the SAARC countries.

NATIONAL RESPONSE TO SEC MANIFESTATIONS

- Amend the Motion and Picture Censorship Act to align with the definition of a child as per the Child Act 2018;
- Amend the Penal Code to include male victims in the provision related to statutory rape;

- 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;
- Enact policy or legislation, which will create legal obligations on preventing SECTT amongst relevant stakeholders in the travel and tourism sector;
- Remove the three-month statute of limitation for cases of child, early and forced marriages;
- Revise the existing National Plan of Action on Children 2005-2015 to address sexual exploitation of children in all its manifestations;
- Improve awareness campaigns specifically targeting sexual exploitation of children in prostitution, online child exploitation and sexual exploitation of children in travel and tourism.

ACCESS TO JUSTICE AND RIGHT TO REMEDIES FOR CHILD VICTIMS OF SEXUAL EXPLOITATION

- Ensure that male victims of sexual exploitation have equal access to compensation, justice and rehabilitation services;
- 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;

- Clarify the scope of the child courts and guarantee adequate budget for their functioning.

CHILD, VICTIM AND SURVIVOR PARTICIPATION

- Engage children, including child victims in the drafting and implementation process of various national action plans that affect children and youth;
- Increase the participation of children by creating more forums and optimising the use of existing platforms such as the child clubs;
- Design different strategies inclusive of child victims and survivors in programmes related to sexual exploitation of children.

RESEARCH NEEDS AND AGENDA

- Compile all the data collected by different agencies in a single database and appoint a single overarching authority to monitor;
- Conduct evidentiary research on the scope and scale of sexual exploitation of children online and in the travel and tourism context.

Acronyms

CEFM	Child, early and forced marriage
CRC	Convention on the Rights of the Child
CSAM	Child sexual abuse material
CSEM	Child sexual exploitation material
CSO	Civil society organisation
HTTCA	Human Trafficking and Transportation (Control) Act, 2007
INTERPOL	International Criminal Police Organisation
ISP	Internet Service Provider
OCSE	Online child sexual exploitation
OPSC	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
NGO	Non-governmental organisation
MoWCSC	Ministry of Women Children and Senior Citizen
SAARC	South Asian Association for Regional Cooperation
SAIEVAC	South Asian Initiative to End Violence against Children
SEC	Sexual exploitation of children
SECTT	Sexual exploitation of children in travel and tourism



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