

Commercial Sexual Exploitation and Abuse of Children in tourism and Online

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Preface

Commercial Sexual Exploitation of Children (CSEC) is believed to have surfaced in Nepal in the recent decades. However, the issue of CSEC in travel and tourism sectors is still a new and perhaps unbelievable phenomenon for Nepal. There are some cultural aspects based on which Nepali people including policy makers take for granted that sexual abuses and exploitation do not involve in tourism. There is a popular saying in Sanskrit language - 'Atithi Devo Bhaba', meaning a visitor is the God. And, another common folklore has it that a guest, (even a stranger visiting one's home), who seeks for shelter in the evening approaching one's home should be treated as the God. Hence, generally, it is believed a visitor may not engage in an act that harms children. This conception is generalized by the fact that Nepal has never been a destination for sex tourism.

Contrary to such beliefs, reports on CSEC have been public. The Global Study Report on Sexual Exploitation of Children in Travel and Tourism portrayed that the cheaper travel and easy access to internet has resulted in increasing risks among children to fall victim of sexual exploitation globally. This is indicative of the possibility that many children have been victimized and many more are at high risks of being victimized.

The Constitution of Nepal explicitly articulates the protection of a child from sexual abuse and exploitation. However, it is surprising that the State has not recognized the issue of sexual exploitation of Children as being a problem requiring serious State attention as yet. Also, the first exclusive legislation introduced with the aim to protecting rights of the child - the Children Act, 1992 has not considered the vulnerability of a child to sexual abuse. Applicable legal provisions against this crime are the Chapter on Rape in General Code, 2063 and the Human Trafficking and Transportation (Control)

Act, 2007. However, the objectives of these laws have wider application than the mere protection of children from CSEC and neither of the laws consist any specific provisions on this issue.

The availability of cheap cell phones and internet services through cheap service providers has eased in children's access to materials that harm them, if not victimizing. The ordinary Nepalese including children, regardless of their socio economic status, have easy access to internet and social media therefore increasing the possibility of victimization. The media coverage on such possibilities and incidents shed some lights only on the tip of the iceberg whereas the submerged aspects have never been explored by policy makers. Such a situation has now compelled the Nepalese to be aware about the fact that their children are always at risk of being victimized by perpetrators.

This research was conducted to assess the status of CSEC in Nepal and available state mechanisms and legal safeguards in the cases of CSEC. Hence, in this study report, the existing situation, the efforts made by various stakeholders, the available protection mechanisms and their effectiveness, among other aspects, vis-a-vis CSEC are discussed.

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ABBREVIATION

| | | |
|-----------|---|---|
| AAN | : | Awaj Abhiyan Nepal |
| AATWIN | : | Alliance against Trafficking of Women in Nepal |
| BBC | : | British Broadcasting Corporation |
| CAP Nepal | : | Centre for Awareness Promotion |
| CCWB | : | Central Child Welfare Board |
| CeLRRd | : | Center for Legal Research and Resource Development |
| CEOP | : | Child Exploitation and Online Protection Centre |
| CIB | : | Central Investigation Bureau |
| CRC | : | Convention on the Right of the Child |
| CSEC | : | Commercial Sexual Exploitation of Children |
| CST | : | Child Sex Tourists |
| CWIN | : | Child Workers in Nepal |
| DIG | : | Deputy Inspector General of Police |
| ECPAT | : | End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes |
| EU | : | European Union |
| FIR | : | First Information Report |
| GC | : | General Comment |
| GMSP | : | Gramin Mahila Srijanshil Pariwar |
| IACIS | : | International Association of Computer Investigative Specialists |
| ICT | : | Information and Communication Technologies |
| ILO | : | International Labour Organisation |

| | | |
|---------|---|---|
| IPEC | : | International Programme on the Elimination of Child Labour |
| JJCC | : | Juvenile Justice Coordination Committee |
| KSL | : | Kathmandu School of Law |
| MoWCSW | : | Ministry of Women Children and Social Welfare |
| NKP | : | Nepal Kaanun Patrika |
| NGO | : | Non-Governmental Organization |
| NHRC | : | Notational Human Rights Commission |
| NHTRC | : | National Human Trafficking Resource Center |
| NPR | : | Nepalese Rupees |
| NSPCC | : | National Society for the Prevention of Cruelty to Children |
| OCSE | : | Office of Child Support Enforcement |
| OSRT | : | Office of the Special Rapporteur on Trafficking in Women and Children |
| SIRF | : | Social Inclusion Research Fund |
| TdH-NL | : | Terre des Hommes Netherlands |
| UK | : | United Kingdom |
| UN | : | United Nation |
| UNICEF | : | United Nations Children's Fund |
| UNWTO | : | United Nation World Trade Organization |
| US | : | United States |
| USA | : | United States of America |
| WCSD | : | Women and Children Service Directorate |
| WCTE | : | World Committee on Tourism Ethics |
| WoFoWoN | : | Women Forum for Women in Nepal |
| WTO | : | World Trade Organization |

List of Statutes

| S.No. | Statutes |
|-------|--|
| 1 | The Constitution of the Kingdom of Nepal, 1990 |
| 2 | Interim Constitution of Nepal, 2007 |
| 3 | The Constitution of Nepal, 2015 |
| 4 | The General Code (MulukiAin) 1963 |
| 5 | Children Act, 1992 |
| 6 | Human Trafficking and Transportation (Control) Act, 2007 |
| 7 | Child Labor (Prohibition and Regulation) Act, 2000 |
| 8 | The Electronic Transaction Act, 2008 |
| 9 | The Children's Rules, 1995 |
| 10 | Child Labour (Prohibition and Regulation) Rules, 2006 |

List of Cases

| S.N | Cases |
|-----|--|
| 1 | Molhuysen Hendrik Otto v Nepal Government, N.K.P 2069, Vol 7, Dec. no. 8860, p 1096 |
| 2 | The Government of Nepal v. Sabuddin Miya, N.K.P 2072, Vol 5, dec no. 9399, p 827. |
| 3 | Nepal Government Vs. Ernest Fenwick MacIntosh, Lalitpur District court decision on 2071/11/17 |
| 4 | Government of Nepal Vs. SahadevBhujel, Kavrepalanchowk District Court, D.N. 152, J.D. 17.03.2013 |
| 5 | The Government of Nepal v. Alexander Overgaard, Kathmandu District Court |
| 6 | The Government of Nepal Vs. Claude Herve Denis Ozoux, Kathmandu District Court |
| 7 | The Government of Nepal Vs. Bhabri Saleh Mohammed, Kathmandu District Court |
| 8 | Government of Nepal Vs. Andrieu Yves, Kathmandu District Court |

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Chapter 1

Preliminary

1.1. Introduction

Until recent decades, the issue of commercial sexual exploitation of children (CSEC) was not properly recognized as a big problem neither was it paid any attention in Nepal. The Nepali legal system still doesn't recognize CSEC as a distinct crime. Applicable legal provisions against this crime are the Chapter on Rape in General Code, 2063¹ and the Human Trafficking and Transportation (Control) Act, 2007. However, the objectives of these laws have wider application than the merely protection of children from CSEC and neither of the laws consist any specific provisions on this issue.

The Constitution of Nepal 1990 didn't consider necessary to safeguard child rights under its fundamental rights chapter and the safeguarding provisions were stipulated only under the State policies.² The Interim Constitution, 2007 protected the rights of the child under Fundamental Rights chapter stating that "every child shall have the right against physical, mental or any other form of exploitation."³ The phrase 'any other form' in the stipulation may be interpreted as protecting child from sexual exploitation.

Current Constitution of Nepal explicitly articulates the protection of a child from sexual abuse and exploitation.⁴ However, it is surprising that the State has not recognized the issue of sexual exploitation of Children as being a problem requiring serious State attention as yet. Also, the first exclusive legislation introduced with

the aim to protecting rights of the child - the Children Act, 1992 didn't consider the vulnerability of a child to sexual abuse.

Despite the fact that the problem of CSEC had surfaced in Nepal for more than a decade, the issue in travel and tourism sectors is still new and perhaps unbelievable phenomena for the ordinary Nepalis. There are some cultural aspects that Nepali people including policy makers do not want to look into tourism linking also to sex tourism. There is a popular saying in Sanskrit language - 'Atithi Devo Bhaba', meaning a visitor is the God. And, another common folklore has it that 'a guest (even a stranger visiting one's home) who seeks for shelter in the evening approaching your home should be treated as the God.' Hence, generally, it is believed that a visitor may not engage in such things that harm their children. This conception was generalized by the fact that Nepal has never been a destination for sex tourism, which is a new issue for the Nepalis.

A recent global report, has acknowledged that South Asian countries have not historically been a major destination for foreign child sex offenders, with the exception of Sri Lanka.⁵ The other part of the coin is the culture of tolerance whereby the offence of sexual abuse of a child is not considered as more serious than the common incidents of rape. This fact could be justified by the study of the governing law, which put the sexual offence against children, though not mentioning the term 'sexual abuse or exploitation', under the crime of rape.⁶ Other possible factors for not paying proper attention on CSEC could be the traditional practice of child marriage, which has been facing a serious condemnation in the recent decades, might have been perceived mistakenly as a norm so sidelining the issue of CSEC. Similarly, the cultural forms of prostitution among *Badi* and *Denki* communities, which still prevail in some parts of the country⁷ as a socially accepted means of survival, might have caused policy makers take the issue for granted. The other possible reason could be the wrong belief Nepalis have that male child could never be abused sexually by another male perpetrator. Given these legal and socio-cultural backgrounds, perpetrators have been abusing children in Nepal in the recent days.

The online access to potential victim children and the abuse and harassment have different stories. Availability of cheap cell phone devices and internet through cheap service providers has been making it possible even for the ordinary Nepali children, regardless of their socio economic status, to easily access internet and social media. A society with a meager and sluggish economic development that has resulted in also school dropouts and youth unemployment rate very high⁸ besides having negative effects on the other facets of livelihood, should not suppose to encounter such a technology that may induce hazards on children. However, Nepali people's including their children's access to the digital technology, in contrast to the awareness level in majority of population, is soaring at amazing degree. Such a disproportionately developed situation has pushed the Nepali children and adolescents to a very unbalanced and incongruous condition.

The most worrying side is easy access for children to shockingly obscene and pornographic images, and its use to harass or to solicit other children to engage in such activities. The development of such internet technology that ensures easy access of the Nepali children to obscene materials lead them to vulnerability of being accessed by local as well as foreign predators. Some activists opine that street children are the most vulnerable from the point of view of forging relations online.⁹ Recently, news of foreign pedophiles arrested or sentenced in Nepal has alarmingly surfaced.¹⁰ The media coverage on such incidents and sporadic cases in Nepali courts shed some lights only on the tip of the iceberg whereas the submerged aspects have never been explored by policy makers. Such a situation has now compelled the Nepalis to be aware about the fact that their children are no more safe therefore are always in vulnerable to these criminals.¹¹

A recent global report portrayed that the cheaper travel and easy access to internet has resulted in increasing risks of children to fall victim of sexual exploitation globally.¹² It is now clear that Nepali children are already victimized and many more are at high risks.

This research has assessed the existing situation, the effort made by various stakeholders, available protection mechanisms and their

effectiveness, and other relevant issues including law and policies vis-a-vis CSEC. The second chapter of this report has provided definitions for major terms used. The findings of this research on the existing efforts made including the available data and its analysis is discussed on the third chapter. Chapter Four discusses the Nepal's international obligation and the efforts made gearing towards fulfilling these obligations. The efforts could be reflected in the national legal frameworks and the state policies. The Fifth Chapter assesses the current situation of CSEC in travel and tourism including exploitation of children by pedophiles. A brief analysis is there on State response against the existing situation in Chapter Six. In doing so, existing systems followed by law enforcement agencies and progress made by responsible institutions are scrutinized. Judicial response has been discussed in the same chapter. The final chapter has concluded the research reports with some recommendations.

1.2. Rationale

As mentioned earlier, there are indications that many Nepali children have been the victims of CSEC including pedophilia, projecting Nepal as a new destination for sex tourism. While reviewing existing literatures, reports, media coverage and other data, what is clear is that the problem exists and situation is deteriorating over time. However, available resources on this issue doesn't categorically mirror the intensity of the problem,¹³ the category of children at high risk,¹⁴ the emerging trend and the available State mechanisms and their effectiveness in protecting children. Even the authorities have acknowledged to have faced hardship in answering questions relating to the number of children affected. For example, the Executive Director of Central Child Welfare Board (CCWB) in a programme in May 2016, revealed that one-third of some 11 to 13 thousand female engaged in entertainment business including dance bars, cabin restaurants, teashops and Dohori Sanjha (Folk duets) are the children.¹⁵ As a result of this revelation, the Director was asked whether his data was based on certain research. The answer, however, was 'no', it was just based on secondary resources.¹⁶

Referring to anecdotal evidences, the earlier mentioned global report said that sexual exploitation of children in travel and tourism has

moved beyond traditional locations and become apparent in other South Asian countries, especially in India and Nepal.¹⁷ A much earlier report identified that the growth of sex-tourism for child sex abusers, including pedophiles, has been increasingly noted in Sri Lanka, India, and Nepal, catering primarily to demand from foreign tourists.¹⁸

Given smart phones and the internet facilities have become general need of daily life and are easily available not in urban areas but also in the far remote villages to the easy access of common children, it is not that difficult to sense the fact that they are exposing themselves to the danger of being sexually abused and exploited by a distance abuser or pedophiles whom they never physically have met before, or would have otherwise met. In an empirical research in 2005, CWIN revealed that many children reported having been exposed to pornographic material via internet. It further cautioned to regulate such means and consider the consequences of growing internet access for children and young people.¹⁹ Eleven years has passed since the report was made public, however no sincere attention has been paid towards that warning. As a result, that nightmare now has turned explicit with a number of consequences in the society.

Facts have recurrently indicated that the problem of sexual exploitation of children in travel, tourism and online has increased. However, clear research gap between the perceived problem and available information is found here requiring a thorough and comprehensive research including quantitative data collection, which could be instrumental in reforming the existing laws and policies by bringing all stakeholders onboard.

1.3. Limitations

Initially, this research was designed just to conduct a kind of desk review that could accumulate information on the patterns of sexual abuse of children in travel, tourism and online in Nepal. However, upon reviewing the available reports and the literatures it gave general perception to go beyond desk review including the collection of first hand information and other data. Due to various constraints including budgetary and human resources as well as to time limitations, this research project could not be expanded to the range

that could dig out all the answers demanded by the findings of initial desk review. Therefore, this research has simply outlined the major patterns of the problem opening up avenues for further studies in the field in future.

1.4. Objectives

Objectives of this research were to:

- (1) collect information made available by various researches on CSEC
- (2) outline and analyze the trend of sexual exploitation of child in travel, tourism and online;
- (3) critically analyze the existing law and policies on CSEC
- (4) critically analyze the existing protection mechanism and its effectiveness; and
- (5) provide recommendations for future initiatives

1.5. Methodology:

In the research, varied approaches were applied so that the effort did not let any space for issues to remain unnoticed. In other words, strategy was designed in such a way that every area affected or concerned was properly observed.

It was hypothesized that the problem of commercial sexual exploitation of children in travel, tourism and online exists in an increasing trend in Nepal. With this hypothesis in mind, this research was accomplished with following modes of methodology:

- (1) collection of information from available reports;
- (2) interaction with NGOs working in this field,
- (3) listening to victim children,
- (4) collection of authentic data from State mechanisms,
- (5) analyzing existing laws and policies
- (6) examination of the activities and effectiveness of various mechanisms

Chapter 2

Definition

2.1 A Child

Under Nepali legal system, “Child” means a minor not having completed the age of sixteen years.²⁰ However, the Human Trafficking and Transportation (Control) Act, 2064 (2007) states that a Child refers to person who has not reached the age of eighteen years.²¹ For the purpose of this research, a human person under the age of eighteen years was considered as a child. This is determined in reference to the Convention on the Rights of the Child.²² This is also in line with the provision regarding marriage in the General Code, 2020. As per this Code, no one can engage into a marriage until both parties have completed the age of eighteen years even consented by the guardian.²³ It is especially significant to mention here also because the Nepali legal system regards the act of marriage involving a candidate below 18 years of age as a child marriage and is punishable by law.²⁴

2.2 Commercial sexual exploitation of a child; in travel and tourism; and online

As per UN Committee on the Rights of the Child, sexual abuse and exploitation includes:

- (a) The inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity;
- (b) The use of children in commercial sexual exploitation;
- (c) The use of children in audio or visual images of child sexual abuse;

- (d) Child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and sale of children for sexual purposes and forced marriage. Many children experience sexual victimization which is not accompanied by physical force or restraint but which is nonetheless psychologically intrusive, exploitive and traumatic.²⁵

(a) Commercial sexual exploitation of child: The Stockholm Declaration, 1996 states that the term commercial sexual exploitation of a child comprises sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons. The child is treated as a sexual object and as a commercial object.²⁶ It further declares that the commercial sexual exploitation of children constitutes a form of coercion and violence against children, and amounts to forced labour and a contemporary form of slavery, and is a fundamental violation of children's rights. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, obliges each State Party to fully cover the act of sexual exploitation of the child under its criminal or penal law, whether such offences are committed domestically or transnational or on an individual or organized basis.²⁷

Similarly, under the ILO definition, Commercial sexual exploitation of children is the exploitation by an adult with respect to a child or an adolescent – female or male – under 18 years old; accompanied by a payment in money or in kind to the child or adolescent (male or female) or to one or more third parties. The ILO further elaborates the content included in the term as 'the use of girls and boys in sexual activities remunerated in cash or in kind (commonly known as child prostitution) in the streets or indoors, in such places as brothels, discotheques, massage parlours, bars, hotels, restaurants, etc.; the trafficking of girls and boys and adolescents for the sex trade; child sex tourism; the production, promotion and distribution of pornography involving children; and the use of children in sex shows (public or private).'²⁸ Under US law, commercial sexual exploitation of children occurs when individuals buy, trade, or sell sexual acts with a child. It regards the act of commercial sexual exploitation of children a crime of sex trafficking in which a

commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age.²⁹

There is another term ‘sexual abuse’ apparently similar but giving different sense in comparison to the term ‘sexual exploitation’. In 2001, UNICEF tried to identify the differences between these two terms: “Child sexual abuse becomes sexual exploitation when a second party benefits through a profit or through a quid pro quo through sexual activity involving a child. This may include prostitution, brothel and street-based sexual exploitation, trafficking for sexual purposes and child pornography”.³⁰ It further explains that, ‘child sexual abuse’ is understood as taking place both within and outside the family and includes both physical contact and non-contact. In contrast, ‘commercial sexual exploitation’ of children is understood as involving a transaction, through a ‘quid pro quo’ and/or a perceived ‘quid pro quo’. These differences, whoever, have not been used in many other subsequent studies including in the recent ECPAT global report.³¹ This research will use both of these terms in general sense only.

(b) Commercial sexual exploitation of a child in travel and tourism: EU Directive’s definition of sexual exploitation on child sex tourism appears to be authentic and persuasive in this context. As per the directives “Child sex tourism should be understood as the sexual exploitation of children by a person or persons who travel from their usual environment to a destination abroad where they have sexual contact with children.”³² A full definition was also provided by ECPAT International in 2008 stating that, child sex tourism is the sexual exploitation of children by a person or persons who travel from their home district, home geographical region, or home country in order to have sexual contact with children. Child sex tourists [CST] can be domestic travelers or they can be international tourists. CST often involves the use of accommodation, transportation and other tourism-related services that facilitate contact with children and enable the perpetrator to remain fairly inconspicuous in the surrounding population and environment.³³

(c) Online sexual exploitation of children:

Experts on this issue have tried to characterize the act of sexual exploitation of children through online. As per the International Association of Computer Investigative Specialists (IACIS), “the online sexual solicitation of children involves sexually-oriented interactions over the internet; the production, collection, and distribution of child pornography; unwanted exposure of children to pornography; and child-sex tourism and prostitution.”³⁴ It further specifies that each type of online exploitation directly or indirectly results in sexual contact between adults and children.

As per one leading charity organization fighting to end child abuse in the UK, online abuse is any type of abuse that happens on the web, whether through social networks, playing online games or using mobile phones. Children and young people may experience cyber-bullying, grooming, sexual abuse, sexual exploitation or emotional abuse.³⁵ Children can be at risk of online abuse from people they know, as well as from strangers.

Mare Ainsaar and Lars Loof have defined as following:³⁶

Online (cyber) child sexual abuse is the engagement of a child in sexual activities via Internet facilities (1) with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities; and (2) engaging in sexual activities with a child where—

- a. abuse is made of coercion, force or threats; or
- b. abuse is made of a recognized position of trust, authority or influence over the child, including within the family; or
- c. abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.

They provide that “Online harassment involves threats or other offensive behaviour, sent online to the youth or posted online about the youth for others to see. Online harassment occurs when someone uses Internet to express aggression towards another person. This can take the form of inflammatory e-mails or instant messages, or

damaging pictures or text posted on a profile.”³⁷ The online abuse is normally now considered more as ‘online grooming’. It is further clarified by a UK based organization CEOP (Child Exploitation and Online Protection Centre) stating that: OCSE includes the much broader threat from online communication between an adult and a child for the purposes of sexual exploitation. Such conduct is sometimes referred to by the generic term of online ‘grooming’... the term ‘grooming’ also suggests a course of conduct evolving over a period of time while the offender subtly gains the trust of his victim. Whilst slow-time grooming of a single victim still occurs... the period of time between initial engagement with a child and an offending outcome is often extremely short [today].³⁸

These definitions and the meaning of the relevant terms are taken as the definition for the purpose of this research.

Chapter 3

Review of Various Secondary Sources

This chapter basically reviews information available in researches and writings conducted by various authors. The initial paragraphs are contributed by some data that tell about the situation, as they found, of CSEC including sexual abuse by pedophiles. Then some efforts will be given to check the identified root causes. The final paragraph has contributed, as per the findings, to the conceptual clarity and situation analysis about the online sexual abuse.

3.1 CSEC in Travel and Tourism

In 2001, UNICEF published a report about child prostitution spreading all over the country, especially along the highways and estimated that around 800 girls are engaged as sex workers in the Kathmandu valley alone.³⁹ The same report provides that 5,000 to 10,000 girls and women from Nepal are trafficked to India per year. The report does not mention ‘child girl’ but uses counterpart term ‘women’ indicating the meaning of girl including child girls. The report however does not talk about the use of male child for commercial sex purpose in Nepal. Though the report does not link the above data to travel and tourism, it was stated that “the growth of sex-tourism for child sex abusers, including pedophiles has been increasingly noted in Sri Lanka, India, and Nepal, catering primarily to demand from foreign tourists.”⁴⁰

In 2009, the Government of Nepal informed that, “A situation analysis of child sex tourism revealed that between 1995 and 2001

at least eight foreign pedophiles had been arrested in Nepal.”⁴¹ Although submitted in 2009, the report was totally silent on the situation from 2001 to 2009. The UN found, within the same period that “the majority of child sex abusers are non-pedophiles, but are often regular users of commercial sex workers who buy children for sex as part of the mainstream sex trade.”⁴² While as per the government report, foreign pedophiles use various means to access young children such as running so-called ‘orphanages’ and ‘street shelters’ for poor and neglected children. They usually gain trust of the children by providing financial or material support such as food, clothes, shelter and medical assistance. In return, they demand sexual favours.⁴³ The inconsistencies of information between these two authentic reports indicate toward the fact that a proper research on the problem is seriously lacking.

As discussed in the introductory part, until some years back, the commercial sexual exploitation in travel and tourism was not properly perceived to be taking place in Nepal. This assumption is further substantiated by the conclusion of another report that states “more than any other region, Asia, particularly Southeast Asia and [only] certain countries in South Asia, has long been the target of child sex tourists.”⁴⁴

The ILO in 2003 estimated that some 12,000 Nepalese children, mainly girls, are trafficked for sexual commercial exploitation each year within Nepal or to brothels in India and other countries.⁴⁵ And, ECPAT confirms that there are several reported cases indicating Nepal as an emerging destination for sex tourists from other South Asian countries, especially India and Bangladesh.⁴⁶ In the same line, a widely cited handbook apparently having a wider coverage, which was edited by John Frederick et al⁴⁷ discusses the common misconception that all sex tourists (as well as pedophiles) are Westerners however strong indications are that Nepal is developing as a sex tourism destination for Indians as well as Bangladeshis.⁴⁸

Submitting country report to the UN body the Government of Nepal referred a study conducted by Ministry of Women Children and Social Welfare (MoWCSW) in 2006 (2063 BS), that *estimated*

[emphasis added] 40,000 female workers aged between 12–30 years employed in a total of 1,200 Cabin and Dance Restaurants and Massage Parlours in Kathmandu valley.⁴⁹ The John Frederick handbook concluded that as many as one third of approximately 11,000 to 13,000 girls working in entertainment sector in the Kathmandu Valley are under the age of 18. The source of this conclusion however was a general report of a local NGO,⁵⁰ and therefore this figure as well is not based on genuine comprehensive baseline research. The UNICEF report estimated that 800 girls are engaged as sex workers in the Kathmandu valley alone.⁵¹

The National Human Rights Commission (NHRC) citing other sources⁵² gave a contrasting figure about the existence of dance and cabin restaurants, stating that “according to Nepal Youth Survey Team, there were over 25,000 dance and cabin restaurants across the country while Karki’s (2013) study showed that there were around 600 cabin restaurants in Kathmandu valley.” The asymmetrical part of these revelation is that the Kathmandu Valley (that already includes the most populated three districts) if consists just 600 cabin restaurants then it is very difficult to rely on the report that give 25,000 cabin restaurants even in the whole country. Because it is hard to believe that there are more than 24,000 cabin and dance restaurants beyond Kathmandu valley as claimed by the first report. Furthermore, the estimation that a total of 600 cabin restaurants were there in the Kathmandu valley alone was only the half of the estimation made by the government report. The government report had revealed there were about 1200 cabin restaurants. As per the NHRC concluding information, at least 40 percent of female workers in these restaurants are below 18 years of age.⁵³

The Government of Nepal referring to an ILO study estimated that about 5,000 girls aged less than 16 years are involved in commercial sex work in Nepal.⁵⁴ The Government however, didn’t do any authentic revelation on its own. Just recently, in May 2016, the Executive Director of the CCWB in a programme stated that one-third of some 11 to 13 thousand females engaged in entertainment business including dance bars, cabin restaurants, teashops and

Dohori Sanjha (Folk duets) are children.⁵⁵ Referring to a data produced by an NGO in 2008, he mentioned that among the figure provided 33 percent of them were under the age of 18 years of which 93 percent reported to have encountered sexual harassment. He further disclosed that around 2,000 children in Kathmandu are engaged in sex work. However, he didn't clarify if those 93 percent of children working in entertainment business are included in this data.⁵⁶ As per this revelation, the Director was asked whether his data was based on certain research. The answer was 'no', it was just based on secondary resources.⁵⁷

Quoting some local NGOs' studies, ECPAT International in its regional report stated that there are significant growths in child sex tourism in districts bordering India. The report further reveals that child sex tourism in Nepal is closely interrelated to commercial sex work, child sex abuse, online abuse and child pornography. There is also a direct link with pedophilia, although the problem of CST should be attributed mainly to the occasional tourist, rather than to organized international pedophiles.⁵⁸ The report based on another local NGO study further reads: sex tourists demanding sex with women and children are said to be primarily from India, but also from Austria, Eastern Europe, Germany and Russia. Cases of travelling sex offenders from Denmark, France, the Netherlands, Norway, the UK and USA have also been reported. In 2010 US State Department reported Nepal as a destination country for growing foreign child sex tourists, which is perhaps as a result of efforts to effectively confront this problem in traditional Southeast Asian destinations.⁵⁹

To conclude, it appears that the available data regarding the involvement of Nepali Children in commercial sexual work is not uniform. The only reason behind such differences could be attributed to the lack of comprehensive firsthand research on this issue by institutions producing these reports. Even the most recent and apparently authentic study conducted by ECPAT in association with one leading local NGO is based on estimation of generally cited local reports and still far from providing comprehensive data.⁶⁰

3. 2 Root Causes

A decade-long armed conflict⁶¹ is perhaps to blame as the most compelling reason for Nepali rural girl child to end up in urban dance bar and cabin restaurants subsequently accepting commercial sexual exploitation that heralded new phenomena of child sex tourism in Nepal. Almost all studies in this issue didn't say anything about existence of such kind of unacceptable behavior occurred in Nepali society throughout the modern history except for in the name of tradition.⁶² A case study presents that 71 percent of female sex workers who stated the number of girls and women joining the sex trade had increased due to ongoing conflict, with conflict related threats, displacement and the girls' lack of education and technical skills as major cause leading to push into the sex trade.⁶³ In 2001, UNICEF declared that the problem of child prostitution is believed to be spreading all over the country, predominantly in urban areas and along highways.⁶⁴ The root causes of this problem however haven't been taken into account here.

The Government referring to certain studies stated that many children and adults engaged in sex work are those who are migrated from rural to urban areas in search of employment opportunities.⁶⁵ The Government reveals that female workers working in cabin and dance restaurants and massage parlours in Kathmandu valley are vulnerable to trafficking.⁶⁶ However, the UN Child Right Committee expressed its concerns about the lack of a comprehensive data collection system to enable the recording, referral and follow-up of all cases covered by the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and to analyze and assess progress in the implementation of the Protocol.⁶⁷

Two-thirds of the married girls and women involved in the sex trade in Nepal are mothers and many of them have cited providing for children in the absence of a supporting husband as the main reason for entering the entertainment industry.⁶⁸ More than 90% of young brides in Nepal, when asked to suggest measures to prevent child marriage, responded that provision of education and awareness against such a marriage could work gradually.⁶⁹

The Government of Nepal concluded several root causes have played roles in trafficking in persons: (a) illiteracy/ignorance and lack of awareness (within the family and victimized persons); (b) family dysfunctionality, gender discrimination, child/forced marriage, and violence against girl child and women as well as low social status accorded to women and children; (c) wide-spread poverty and unemployment as well as lack of job opportunities in rural areas; (d) insufficient food security in remote districts particularly in mountain regions; (e) growing urbanization and consumerism; (f) armed conflict, internal displacement and migration; (g) traditional, cultural and religious malpractices that discriminate girl child and women; and (h) open and uncontrolled border with India compounded with inadequate trans-border and regional intervention⁷⁰ Still the government didn't provide any root causes of internal commercial sexual exploitation of children despite the fact that it acknowledged the existence of the problem.

The other widely cited report provides some active cause of trafficking and exploitation of children: family dysfunction including alcoholism, absence of mothers or fathers, polygamy, divorce, re-marriage and domestic violence etc. severe poverty or familial economic crisis; separation from the family for several reasons; violence; humanitarian crisis including natural disasters; worst forms of child labour; children and women with special needs; child/forced marriage; and greed including desire for money, land, houses being some of the causes⁷¹

The UN Committee on Convention on the Rights of the Child expresses its concern over the numerous cases of children being sexually exploited by foreign pedophiles in Nepal and the particular vulnerability of children in street situations and children from slum areas to this form of sexual abuse and exploitation.⁷²

Looking at the contemporary studies available on this issue, of course, it is understandable that several reasons exist that creates for a child a circumstance to face commercial sexual exploitation. They however, don't provide concrete information as to which category/es of children are the most vulnerable to sex abusers and pedophiles. Therefore, a fresh starting of a comprehensive research on this appeared to be the major demand of the time.

3.3 Online Sexual Abuse

Researchers have shown that online sexual exploitation of children facilitated by the development of internet has been a big problem over the past decades. And, no country in this planet is immune to this epidemic, and the components that facilitate a perpetrator to engage in such offence are almost identical across the globe. For example a Canadian report reads: with great ease, youths are continuously expanding their social relations world online, while parents are struggling to keep up with the latest technological trends. Offenders, who target youths, take advantage of both this gap in knowledge between parents and their teens and reluctance from youth to tell their parents if they've gotten themselves into trouble online fearing the punishment of having their Internet or cell phone privileges taken away.⁷³

This assertion reflects also the real situation in Nepal. Another recent report provides that the online sexual exploitation of children continues to pose a grave challenge to nations around the world. Since the inception of the Global Alliance, technological advances have emboldened offenders to an unprecedented degree. Cloud storage, for example, enables offenders to easily and cheaply store tens of thousands of images or videos outside of a residence or place of business, and access those files from anywhere in the world.⁷⁴

The UN body has recognized this problem and through comprehensive interpretation of the provision in the Convention on the Rights of the Child, the State Parties are cautioned about their obligation to protect children from the act of online sexual abuse. The Committee on the Rights of the Child through the General Comment 13 provides that child protection risks in relation to information and communication technologies (ICT) comprise range of areas including sexual abuse of children to produce both visual and audio child abuse images facilitated by the Internet and other ICTs; the process of taking, making, permitting to take, distributing, showing, possessing or advertising indecent photographs or pseudo-photographs ("morphing") and videos of children and those making a mockery of an individual child or categories of

children. And, the children in contact with others through ICT, children may be bullied, harassed or stalked (child “luring”) and/or coerced, tricked or persuaded into meeting strangers off-line, being “groomed” for involvement in sexual activities and/or providing personal information.⁷⁵ The Committee further elaborates the situation, “Information technologies such as the Internet and mobile phones have great potential as positive tools to help keep children safe and as a way to report suspected or actual violence or maltreatment. A protective environment needs to be created through regulation and monitoring of information technologies including empowering children to safely use these technologies.”⁷⁶

Research has shown that no comprehensive quantitative research regarding situation of online sexual abuse of child in Nepal exist except for some estimations. Among the most widely referred research is a 2009 survey conducted by CWIN among 1,430 children aged 12 to 18, some from private and public schools and the others from out of schools. This was further complemented by focus groups in which 106 children participated and found that on average, 74-82 percent of girls and 91 percent of boys used the Internet and tended to spend one to four hours per week online. Among them, 63 per cent were using Internet cafes, while 51 per cent also had access at home. 91.5% were found to have heard of or had some bad experiences on the internet. Of these, 75.2% admitted seeing shocking images like nudity and pornography, 67% encountered abusive language, 67.8% experienced bullying and harassment and 62.2% reported other improper behavior on the internet.⁷⁷ Almost at the same time another research conducted by different NGO found that children living in the streets of Kathmandu are subjected to various physical and psychological abuses, including exposure to child pornography.⁷⁸

Despite the revelation of some facts in these reports the reality could have taken totally different turn to the direction of more vulnerability, the environment of using Internet facilities are now changed. The availability of affordable cell phones with 3G Internet service to the access of almost all individual regardless of their social and geographical status and age poses serious risk especially

on the children to online abuse. It is a common perception now that the situation is worsening further demanding for a thorough research and interventions. This is, however, a global phenomena rather than just an isolated problem of Nepal. UNICEF's finding on this is equally relevant here that reads: as many activities previously undertaken via computers in fixed locations are now being done on mobile phones with Internet connectivity. When children have access to such phones, parents are less able to monitor their children's activities, introduce filtering or blocking mechanisms or control the degree of access to the Internet.⁷⁹

Perhaps this reality is realized in a recent ECPAT International reports that reads: although quantitative analysis is grossly lacking, existing evidence suggests that increased Internet usage across the region [South Asia] is heightening children's exposure to a number of online threats, including production of abusive images, sexting and grooming.⁸⁰ Same is true regarding a recent preliminary report produced by CWIN.⁸¹ The report read, "the police records also have cases where photographs of women have been morphed and their faces pasted on nude bodies. But there has been no incidence in their knowledge where children under 18 have been used for such purposes."⁸² In another words, the report has it that problem exists, but due to the lack of proper investigation or research it cannot tell confidently that it is there.

Chapter 4

International Obligation, Legal Frameworks and State Policies

This chapter discusses the international obligations that Nepal as a State party has to fulfill. The obligations discussed are only in relation to the protection of rights of the child under relevant international law and subsequent interpretation and observations. The action taken toward this direction by State will be observed in the second part, which is basically about the initiatives reflected in the national laws. The final part will check the policies and plan of actions framed to materialized the vision.

4.1 International Obligation

(a) *The UN Convention on the Rights of the Child, 1989 (Nepal is state party to this Convention)*

Under Article 19, States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

The Article 34 reads: States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, State Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:(a) The

inducement or coercion of a child to engage in any unlawful sexual activity;(b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.

(b) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000⁸³

Each State Party shall ensure that the act of offering, delivering or accepting, by whatever means, a child for the purpose of sexual exploitation is fully covered under its criminal or penal law, whether such offences are committed domestically or trans-nationally or on an individual or organized basis.⁸⁴

(c) General Comment 13 on Article 19 of CRC⁸⁵

In the context of this research, the explanations provided in this GC could be considered from two corresponding points. First, if there is any obligation of state and other actors under international law; and second, if yes, whether Nepal has to fulfill that obligation.

The Committee on the Rights of the Child confirmed that States parties have a positive and active obligation to support and assist parents and other caregivers to secure, within their abilities and financial capacities and with respect for the evolving capacities of the child, the living conditions necessary for the child's optimal development, no matter whether violence takes place or not. States parties have to ensure that all persons who, within the context of their work, are responsible for the prevention of, protection from, and reaction to violence and in the justice systems are addressing the needs and respecting the rights of children.⁸⁶

The Committee further provides that State Party has obligation to protect children from online sexual abuse, since the term 'all form of' included in Article 19 of the Convention also includes online sexual exploitation through information and communication technologies (ICT) including Internet.⁸⁷ And, the lacking by state on the effective means of implementation of obligations under the Convention including failure to adopt or revise legislation and other

provisions, inadequate implementation of laws and other regulations and insufficient provision of material, technical and human resources and capacities to identify, prevent and react to violence against children amounts to the institutional and system violations of child rights.⁸⁸ Therefore, Nepal has an international obligation to protect children from online sexual exploitation.

(d) Concluding Observations of UN body⁸⁹

In consideration of the report submitted by Nepal as a state party to the Optional Protocol, the Committee asked Nepal to establish and implement an effective regulatory framework and take all necessary legislative, administrative, social and other measures to prevent and eliminate child sex tourism. The committee further encouraged to strengthen its international cooperation by multilateral, regional and bilateral agreements, and to strengthen its advocacy with the tourism industry on the harmful effects of child sex tourism.

(e) ILO, Worst Forms of Child Labour Convention, 1999 (No. 182)

Article 1 of the Convention calls on ratifying member States to undertake immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. As per Article 3, the worst forms of child labour comprises the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances, and also kind of work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

(f) Global Code of Ethics for Tourism⁹⁰

Not legally binding though, the Code features a voluntary implementation mechanism through its recognition of the role of the World Committee on Tourism Ethics (WCTE), to which stakeholders may refer matters concerning the application and interpretation of the document.⁹¹ The Code encourages all the state concerned that: tourism activities should respect the equality of men and women; they should promote human rights and, more

particularly, the individual rights of the most vulnerable groups, notably children, the elderly, the handicapped, ethnic minorities and indigenous peoples. The Code further read: the exploitation of human beings in any form, particularly sexual, especially when applied to children, conflicts with the fundamental aims of tourism and is the negation of tourism; as such, in accordance with international law, it should be energetically combated with the cooperation of all the States concerned and penalized without concession by the national legislation of both the countries visited and the countries of the perpetrators of these acts, even when they are carried out abroad.⁹²

UN Committee on Rights of the Child, encouraged Nepal to strengthen its advocacy with the tourism industry on the harmful effects of child sex tourism, widely disseminate the WTO Global Code of Ethics for Tourism among travel agents and tourism agencies.⁹³ The Committee further encourages Nepal to encourage travel agents and tourism agencies to sign up for the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism.⁹⁴

(g) The Stockholm Agenda for Action⁹⁵

Through the Agenda for Action, the Governments of 119 countries represented in the World Congress expressed their commitment *inter alia* that they will criminalise the commercial sexual exploitation of children, as well as other forms of sexual exploitation of children, and condemn and penalise all those offenders involved, whether local or foreign; that they will review and revise, where appropriate, laws, policies, programmes and practices to eliminate the commercial sexual exploitation of children; and also that they enforce laws, policies and programmes to protect children from commercial sexual exploitation and strengthen communication and cooperation between law enforcement authorities.⁹⁶ The Congress set the agenda of action *inter alia* that, the representing countries will develop or strengthen, implement and publicise relevant laws, policies and programmes, to prevent the commercial sexual exploitation of children; that they will review laws, policies, programmes and practices which lead to or facilitate the commercial sexual

exploitation of children and adopt effective reforms; and also that they will mobilise the business sector, including the tourism industry, against the use of its networks and establishments for the commercial sexual exploitation of children.

The Committee urged Nepal to take into account of this Agenda for Action while incorporating provisions of the Optional Protocol in National Plan of Action for Children.⁹⁷

4.2 National Legal Frameworks

(a) The Constitution of Nepal, 2015

The Constitution recognized the Right of the Child as a fundamental right which is enshrined under Article 39. The Constitution guarantees that no child shall be subjected to child marriage, transported illegally, abducted/kidnapped or taken in hostage, and no child shall be subjected, in the name of cultural or religious traditions, to abuse, exclusion or physical, mental, sexual or other form of exploitation or improper use by any means or in any manner.

By virtue of the Article 46, any violation of these rights from the state shall be subjected to constitutional remedies from the Supreme Court of Nepal. As per Article 47, the State must implement these rights within three years of the commencement of the Constitution.

(b) The General Code (Muluki Ain)

Chapter on Rape in this Code reads: If a person enters into sexual intercourse with a woman without her consent or enters into sexual intercourse with a girl below the age of 16 years with or without her consent shall be deemed to be an offence of rape.⁹⁸ A person who commits or incite to commit sodomy (any kinds of unnatural sexual intercourse) with a minor, it shall be considered to be an offence of rape and the offender shall be liable to an additional punishment of imprisonment.⁹⁹

There are three points to consider on these provisions: first, the Code considers rape if it is committed on a girl below the age of 16

years even with her consent; the second point is the Code also tends to protect children from sexual abuse in the name of ‘unnatural sexual intercourse’; third the Code doesn’t define the term ‘minor’ in this chapter, however referring to other provisions in the same Code the term is used to refer a person below the age of sixteen.¹⁰⁰ Therefore, the Code doesn’t protect a person below 18 years of age but above 16, which is clearly a minor or a child under our definition for the purpose this research. Also, the Code doesn’t protect children victimized by online sexual abuses.

(c) Children Act, 1992

The act defines “Child” as a minor not having completed the age of sixteen years; prohibits any act of cruel treatment against a child; prohibits the use of a child in immoral profession; prohibits any photography of a Child and publication, distribution or exhibition of such photographs for the purpose of engaging a Child in immoral profession or tarnishing the character of such Child; and prohibits the act of engaging a child in the sale or distribution or smuggling of intoxicating substances, narcotic drugs or any other drugs.¹⁰¹ These provisions could be interpreted as protecting child from sexual exploitation or abuse, the Act still does not expressly prohibit sexual exploitation of a child including online abuse and pornography. This is the reason why in many cases victims or police cannot invoke this act while bringing the culprit to justice.

(d) Human Trafficking and Transportation (Control) Act, 2007

This comparatively new legislation defines a child as a person who has not reached the age of eighteen years. It further defines the term “Exploitation” as an act of keeping human being as a slave and bonded. While defining act of human trafficking and transportation, the legislation considers any act of engaging someone into prostitution as a crime of human trafficking.¹⁰² This legislation is too general from the point of view of protecting children from sexual exploitation in Nepal. It doesn’t talk about sexual exploitation of a child nor talks about online grooming. The only relevant part is the definition of act of human trafficking that involves the act of

engaging someone in prostitution. Due to the lack of proper legislation, public prosecutors in Nepal have been basically invoking this provision in the sexual exploitation of a child, in combination with the provision of the Chapter of Rape in General Code.

(e) Child Labor (Prohibition and Regulation) Act, 2000

This legislation as well defines child as being a person under the age of 16 years. The legislation contains the provision relating to the safety and health of a child, which is further elaborated in the Child Labour (Prohibition and Regulation) Rules, 2006. Both the instruments, however, are silent on the issue of sexual exploitation and abuse of a child in the workplace. The Section 3(2) states that no child shall be engaged in any risky business or work. The term ‘risky business or works’ as elaborated at Schedule - 1 of the Act, *inter alia* includes tourism related businesses including residence, motel, hotel, casino, restaurant, bar, pub, resort, skiing, guiding, water rafting, cable car complex, Pony trekking, mountaineering, hot air ballooning, parasailing, golf course, polo, horse-riding and so on. However, it is not clear if an act of sexual exploitation or abuse implicitly comes under the coverage of the term ‘risk’. And, no legal action regarding sexual exploitation of child has been seen to have approached, as per this law, before a Court.

(f) The Children’s Rules, 1995

This Rule may not introduce new protection area and mechanism as the main purpose of framing this rule is to implement the provision of mother Act, the Children Act, 1992. However, it still could have further elaborated the protection provision enshrined in the Act, for example ‘immoral profession’ etc. but it didn’t do that. Instead, it is more about the operation of the bodies created by the Act, though it talks about the protection of rights, interests and physical and mental development of children.

(g) Child Labour (Prohibition and Regulation) Rules, 2006

This Rule talks about the provision to be followed for the Health and Security of the Child in Rule 25. It, however, doesn’t provide

any protection for a child from sexual exploitation and abuse even at workplaces.

(h) The Electronic Transaction Act, 2008

Section 47 of the Act reads: If any person publishes or displays any material in the electronic media including computer, internet which are prohibited to publish or display by the prevailing law or which may be contrary to the public morality or decent behavior or any types of materials which may spread hate or jealousy against anyone or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes and communities shall be liable to the punishment.

This legislation does not directly protect children from online sexual abuse of child and child pornography. In fact, this legislation is more about controlling internet related crimes in general than providing protection for children. However, the term “contrary to the public morality or decent behaviour” contained in that section could be interpreted as covering this issue.

4.3 State Policies

Generally, state policies could be seen in the legislations adopted by parliament or the rules developed by the government. Under this heading, the national plans developed with specific target from time to time by the Government of Nepal are reviewed.

(a) Periodic plans of Nepal

(i) Tenth Five-Year Plan 2002/03–2006/07 - The strategies and policies included in this plan *inter alia* wereto bring about improvements in legislation; create child-friendly environment in all sectors related to children; eliminate worst forms of child labour; reduce activities being carried out against child rights such as child labour, sexual exploitation, sexual abuse and sale by taking protective, promotional and rehabilitative measures.

(ii) Three-Year Interim Plan 2007/08–2009/10 - The Three-Year Interim Plan aimed at promoting a child-friendly environment that was conducive for children's physical, emotional, mental and intellectual development and the protection of child rights, and to bring an end to all forms exploitation, abuse, violence, risks and discrimination.

(iii) The Three-Year Plan 2010/11–2012/13 has the objective of creating a child-friendly environment appropriate to and conducive for the overall development of children and for protecting and promoting their fundamental rights.

(b) National Plan of Action for Children, Nepal 2004/05–2014/15

The NPA was introduced with the objectives of ending all forms of exploitation, abuse and discrimination of children. It followed the policy to protect from abuse, exploitation and violence in particular the elimination of sale, sexual exploitation and abuse of children. Also, to protect children from all forms of sexual exploitation and abuse, sale and abduction, through reform and reinforcement of existing laws and the generation of greater public awareness.¹⁰³

(c) National Policy for Children, 2012

The Government of Nepal introduced this policy with the primary goal of fulfilling Nepal's commitment toward the international community, and to address the problem relating to children. Within the major objectives of the policy, 'protecting children from all forms of physical and psychological violence, harm or abuses, neglect, abandonment, exploitation or sexual abuse' stipulated a first point.¹⁰⁴ The policy to implement these objectives provides that 'an act of sexual exploitation and sexual abuse of a child will be considered as grave crime'. Those providing cyber related service including Internet, E-mail and mobile phone shall manage service in such a way that any transmission of information will not cause child sexual abuse. In the 19th strategies the Policy talks about building awareness against the child sexual exploitation and physical and psychological abuses of children through Government bodies,

social organization, schools, child organization or media. The Policy also talks about educating children on sexual exploitation, sexual abuse and sex education incorporating this subject in school curriculum.¹⁰⁵

The Policy, however, is silent on the issue of pedophile and sexual abuse of child in travel and tourism - the major problem that has been covertly grabbing the nation in a slow but persistent manner.

Despite the introduction of aforementioned various laws and policies, Nepal still doesn't have specific and concrete laws and policies that are directly oriented against the commercial sexual exploitation of child in travel and tourism, and online. The major problem is not only about absence of appropriate laws and policies but more about sincerity of the state to perceive sex tourism and online grooming targeted against Nepali children, as a problem for this nation. The next Chapter has explored the situation and response from the State mechanism regarding this matter.

Chapter 5

Current Situation

Figuring out the actual current scenario on CSEC appeared to be the most challenging part of this research. It was focused that raw information from non-governmental organizations (NGO), original story from the victim children, and authentic data from state mechanism were collected.

In this course, 12 NGOs were randomly selected on the basis of their working background.¹⁰⁶ The researchers then tried to approach these NGOs with two objectives in mind: to observe their accomplishments and achievements regarding CSEC and second to further access to the victim children through the organizations that rescued them. Since it was not possible to approach directly a child victimized by this problem, approaching an NGO working on this field appeared to be the most reliable strategy to access to them and get original information. As the scale and area of work focused by these organizations varied, not all organizations appeared being directly relevant to this research and focus was concentrated on the most relevant organizations only. As an effort of collecting fresh data from state mechanism, the researchers approached the Nepal Police, the Office of Attorney General, the archives of some district courts in the valley and also the office of the Central Child Welfare Board (CCWB).

In this Chapter, there has been an effort to gauge the existing situation regarding commercial sexual exploitation of children from

sex abusers and pedophiles from various available information, observation and reflections. While presenting the findings, available data in various reports produced by authentic bodies have been taken into reference for verification.

5.1 Commercial sexual exploitation of Children

Among NGOs working in this field, works conducted by some were very pertinent and helpful for the purpose of completing this research. One of our researchers approached the organization - *Chhori* and found that this NGO has established a “shelter” for the victim of CSEC in Kathmandu. As informed by the organization, there were 65 women and girl-victims of CSEC including 35 child victims who were below the age of 18 years. Most of the victims were rescued from cabin and bar restaurants and some were from different situations but similar in nature of the victimization. Among the victim children, many were sexually exploited and some had traumatic experience of sexual abuse.

The WoFoWoN, an NGO, informed that it established a shelter or emergency safe house for CSEC victims. They named the shelter as MUSKAN. In visiting the shelter, 3 children below the age of 18 years were presented there. They were recently rescued from dance bars and were under the process of registering in the shelter.

When approached to Biswas Nepal, another NGO, researchers witnessed around 10 girls were found to have engaged in some skill training. Among the girls, some were still working in entertainment sector including Dance Bars, folk duets, Cabin Restaurants and small hotels, while others were rescued after being a victim of CSE. The researchers were allowed to speak with four girls among whom only one was above the age of 18 years. As informed by the head of the organization, other two victims were at drop-in center for basic health check-up, legal counseling and for socio-familial integration and other services.

As the organization informed, 10-12 service seekers visited center every day. More than 30 percent of children below the age of 18 were women working in the entertainment sectors and were from

out of Kathmandu valley basically from poor or broken families who wanted to earn for their survival living in city areas. The children, knowingly and unknowingly, were found to have become the victim of CSE through direct and continuous interaction with customers.¹⁰⁷

Stories of girls: Four girls who were befriended had come from distinct geographical origins - Nuwakot, Solukhumbu, Udayapur and Ilam. In search of jobs, they ended up at dance bars and restaurants in the course of managing source for livelihood. During interview, they expressed very frustrating attitude of their owner towards them at the working places. The major instruction given to them was to satisfy the customers so that the latter would visit again. The occurrence of groping them in sensitive organs by customers was common. They informed that many local costumers as well as foreigners, majority of them from India, took to hotels. One of them shared the experience that she was taken to Malaysia by an Indian customer whereas she was still below the age of 18 at that time. She said, she pretended to be aged 20 years. She did some work there in dance restaurant for some months and returned to Nepal being dissatisfied with the work she was engaged in.

Recent Story:

Although comprehensive data and analysis are not available, the above-told story of four girls suggests that Nepal is becoming a destination for sex tourism, and that assumption is further substantiated by another very recent story:

In the first week of August 2016, Metropolitan Police Circle Sorhakhutte, Kathmandu received a phone call from 17 years old girl who said that she was trapped at hotel room in Thamel. When the police reached the hotel, the girl was locked in the room from outside. Upon investigation, police found out that the room was registered in the name of a male tourist, a Sudanese national, who was out of the hotel at the time police approached there. Inquired, the girl said she was deceitfully invited to the hotel by an acquainted person, a hotel staff, and was locked inside the room for the purpose of engaging her in sexual intercourse. The hotel staff, who invited

the girl, said that the guest asked him to provide him a young girl for that night and he called that particular girl because she had that profession. The Sudanese national was arrested and taken under police detention. Legal action was filed against him in the Kathmandu District Court in Kathmandu invoking the provision of Human Trafficking and Transportation (Control) Act, 2064 (2007).¹⁰⁸

The abovementioned story about the child sex tourism tells the fact that commercial sexual exploitation of child exists at greater scale in Nepal. However, research conducted in this scale has its own limitation and almost impossible to come up with actual scenario. For this, researches at larger scale with comprehensive data survey may require, which doesn't appear to have taken place in Nepal. This conclusion is based also on the fact that various reports produced by different institutions do not seem reliable enough as they sometime come up with inconsistent figures.¹⁰⁹ For example:

In its National Report, NHRC states that, "The Free the Slave revealed that there were about 12,000 cabin, dance restaurants and massage parlors in Kathmandu valley and an estimated 50,000 girls/women were working in this sector in 2009. Nearly half of these workers were reported to have been forced to go out with customers or have sex with them at work."¹¹⁰ The Free the Slave, in its report provides the same figure taking the reference of NHRC Report, "Although the entertainment sector in the region has almost entirely shut down since the earthquake, it is still important to note its previous state. A 2012 report estimated 11,000 to 13,000 girls and women were working in this industry [massage parlors, dance bars, and cabin restaurants], and a 2014 report estimated 50,000."¹¹¹

Interestingly, the Free The Slave came into the conclusion of increasing number by more than fourth time in two years, just because the NHRC provided that figure in its report which was again based on the figure originally provided by the Free The Slave. There is another contrasting figure from the Government which is not based on the data collected in systematic manner but on the mere estimation of Ministry. That read:

A study conducted by MoWCSW in 2006, estimated 40,000 female workers aged between 12–30 years were employed in 1,200 Cabin and Dance restaurants.

It is a matter of great inconsistency that the government estimates as 40,000 female workers working in the entertainment business, and after 10 years there was assertion from another state institution revealing that such figure being 11,000 to 13,000.¹¹² Such inconsistencies provide ample premises to reach conclusion that a comprehensive research is an urgency for ensuring consistent data on the CSEC in Nepal.

5.2 CSE by Pedophile

In early 2001, UNICEF came up with a report stating that, “the growth of sex-tourism for child sex abusers, including pedophiles have been increasingly noted in Sri Lanka, India, and Nepal, catering primarily to demand from foreign tourists.”¹¹³

While submitting initial report, as State Party to the Optional Protocol, to the Committee on the Right of the Child, the Government presented an old data stating that a situation analysis of child sex tourism revealed that between 1995 and 2001 at least eight foreign pedophiles had been arrested in Nepal.”¹¹⁴ Although, this report was submitted in 2009, it was not realistic about the situation on CSEC between 2001 and 2009.

For this research purpose active cooperation of Saathi, a NGO in the field of supporting abused children, was crucial especially to observe the situation of sexual exploitation of child by pedophiles. Saathi stated that it rescued at least 25 children between 2013 and 2016. The details of the rescued children are as follows.¹¹⁵

(a) The major characteristics of victim children(Box 1)

| | |
|-------------------------|--|
| Age: | 7 years = 2, 9 years = 3, 10 years = 3, 11 years = 5, 12 years = 1, 13 years = 1, 14 years = 7, 15 years = 2, 16 years = 1 |
| Gender: Education | female child = 0, male child = 25 Literate = 2, Nursery = 1, Class 1 = 6, Class 2 = 4, Class 3 = 4, Class 4 = 3, Class 7 = 1, Class 8 = 2, Class 9 = 1, Class 10 = 1, |
| Financial background | very poor = 9, poor and dysfunctional family * = 3, orphan = 1, street child = 7, beggar = 2, average lower = 2 well-off = 1 |

** highly disturbed family for example alcoholic parents*

(b) Major characteristics of pedophiles(Box 2)

| | |
|------------------------------|---|
| Nationality and age | Nepali = 3 (33, 35, 40 years), Canadian = 1 (73 years), Dennis = 1 (50 years), French = 3 (48 years, 66 years, 73 years,)German = 1 (60 years), Indian 1 (16 years), Arabian = 1 (63 years) |
| Number of Child exploited | Nepali = 4 children (2 nd predator abused 2 children) Canadian = 2 children, Danish = 2 children French(1)= 11 children, French(2) = 1 child, French(3) = 1child; Germay = 2 children; Arabian = 2 children, Indian = 1 child |
| Occupation or Profession | Nepali(1) =labour; Nepali(2) = taxi driver; Nepali(3) = self-employed Canadian = Director in Spice Journal Dennis = unknown, staying illegally in Nepal French(1) = social worker; French(2) = tourist; French(3) = tourist, Germany = tourist, Arabian = tourist Indian =labour |

Duration of stay in Nepal (foreigners only)

Canadian = 25 years; Danish = 9 years;
French(1) = 10 years French(2) = 3 month;
French(3) = 25 years;
Germany = 11 years; Arabian = 6 years;
Indian = 4 years

(c) The tactics used by the pedophiles to approach and seduce the children: (Box 3)

| | | |
|----|---------------------|--|
| 1 | Child 1 | financial support and commitment to take to Canada - Canadian |
| 2 | Child 2 | food and money (Canadian) |
| 3 | Child 3 | financial and educational support to the victim and his family –Danish |
| 4 | Child 4 | food and money - Danish |
| 5 | Child 5 to Child 14 | schooling support, some child fun activities (swimming, games, clothes, and outing), good rapport built with family - French(1) |
| 6 | Child 15 | Provided food and money - French(2) |
| 7 | Child 16& Child 17 | schooling support, some child fun activities (gifts , and outing), good rapport built with family - German |
| 8 | Child 18 | food and money (NRs 150.00) and drugs provided - French (3) |
| 9 | Child 19 | provided food and assured of money - Arabian |
| 10 | Child 20 | Provided food – Arabian |
| 11 | Child 21& Child 22 | They were neighbor, the propitiator provided food - Nepali(1) |
| 12 | Child 23 | The propitiator was father - Nepali(2) |
| 13 | Child 24 | The propitiator was neighbor, he groomed the victim giving gift, food, and took for outing - Nepali(3) |
| 14 | Child 25 | The propitiator was living nearby, he groomed the victim boy by playing with, giving him food and small gifts like candy and toys - Indian boy |

(d) Analysis

The children, who were from economically backward family, were uneducated and separated from family were more vulnerable to the sexual abuse. The box-3 above shows that the pedophiles successfully misused the vulnerability of the children to achieve their goal. It can be understood from the above table that any age group could be at risk but the children aged between 10 and 15 years appeared to be most vulnerable from the CSE point of view. Tellingly, male children were found targeted by pedophile therefore they appeared to be more vulnerable than the female children.

There are similarities between the Government report¹¹⁶ and this data that the foreign pedophiles are continuing to engage in Nepal for sexual abuse of children. The foreign pedophiles come to Nepal in different pretexts - initially as a tourist and when they observe the environment being favorable to serve their purpose, they frequent Nepal or enter with philanthropic appearance of serving street or other poor children with education or other care services. The data in Box 2 shows that foreigners who entered Nepal as social workers were able to abuse more children than those entered as tourists.

The other fact requiring close attention is age factor of the predator. All those foreign pedophiles were above the age of 60 except for one who was at his late 40s. The significance of this categorization is that there are some misconceptions among Nepali people that the aged persons are less aggressive toward sexual activities and pose lesser risk on victims than younger persons do. The above data proved that opposite is true. Nepali children are more at risk when aged person approach them.

Story of Ramesh (name changed)

Heartbreaking story of a boy who was sexually abused by Canadian born pedophile Ernest Fennwick Mackintosh is worth mentioning here. Two members of this research met the boy for interview in a drop-in centre secretly maintained by one NGO in the 4th floor of an old house situated at a narrow street of overcrowded. Thamel area.

The boy was in his early sixteen with one of his arms lost. Lean and slender, he nervously responded our queries. The researchers introduced themselves to him and provided the reason for seeing him. Later on, he opened up with the team and explained the story.

‘I had been living with friends in a hostel run by an NGO. I was worried about my future because I had to leave the hostel soon. One day, it was the time of Dashain festival, as I was just strolling outside the premises of my hostel, an old and friendly foreigner came close by and asked my name and the place I was had been living. I told him my name and showed my hostel. He also exchanged his name and the place of his stay in Nepal. The next day he came to my hostel and introduced himself to the in-charge of our hostel and upon the latter’s permission he took me to a nearby café in Jawlakhel, Lalitpur.

In the cafe, he ordered food and snacks for us, and he spent around one and half hours with me asking about my family, education and interests. When I went to the rest room in the cafe, he followed me and stood by me as I was peeing. I was really surprised by his activities in the rest room. Then he put five hundred rupees into my pocket and left the toilet. I denied taking the money and followed him but, he insisted to take and told me to buy things I like. I couldn’t deny and kept the money with me.

After four days, he again visited my hostel. This time he assured me that he would manage a prosthetic arm for me. ‘You will be highly benefitted by it and it works like a natural hand’, he said.

Several days passed by then, now he invited me to his room on one Saturday. I accepted the invitation because I thought he was a good man and would help for my further education. When I reached his room, he welcomed me warmly and provided some snacks. As I was eating, he came closer to me

and started groping his fingers all over my body. I was really scared and shocked when he entered his hand inside my trousers and started arousing me by prodding my penis. I tried to resist myself. Since, he was strong and holding me strongly with one hand and licking my penis until he was fully satisfied. Afterwards, he assured me that he would take me to Pokhara and implant a prosthetic arm for me, which never happened.

Later on, I came to know that he had molested one of my seniors, who used to live in the same hostel I was living. He also had assured of his higher education and visit to Canada. He was also sexually exploited and even forced to stay one night with him.”¹¹⁷

The victim’s story is about the predicament of a child who is in most vulnerable situation to be attacked by pedophiles. It also insinuates at the fact that by the time the victims case was brought to public attention, the perpetrator might have abused a number of other children.

Recent Incident

Nepal Police (Central Investigation Bureau - CIB) arrested Kenneth Joseph Coombs, a US citizen and rescued five children from a Hotel in Kathmandu. Coombs had been frequenting Nepal regularly - as many as five times. Studied Chemistry at Southern Illinois University, Edwardsville, he is recorded as sexual offender in the Sex Offender Archive Record, a database of sexual offenders in the US.

Two years ago, Coombs met with a 21-year old Nepali boy, Buddha Patawar - who was also arrested together with him - and continued his contact with Patawar for the purpose of collecting children for abusing sexually. Patawar even followed him to India and the former bought a goat for Patawar in his village.

Police suspect that Coombs might have preyed on dozens of Nepali children brought to him by Patawar from different places. Patawar had been supplying the children aged between 12 to 16 years to Coombs, who would sexually abuse the children and force them into having “oral sex”.

According to the Nepal Police, Patawar was the culprit, who contacted apparently poverty stricken children, lured them with certain gifts such as biscuits or packets of noodles and in return took photographs and videos. He, as police suspect, further makes these photographs or videos available

for international network of pedophiles group. Also, he sometimes placed them in Viber, WhatsApp, and other means of internet chatting. Both Coombs and Putawar have posted the photographs with many young boys on their Facebook accounts. Police further suspect that Putawar might have facilitated other pedophiles including Singaporean and French to access to the children and more than 50 children might have been victimized just because of him.

This particular incident turned out to be shocking even for the police organization. There have been the incidents of arrests of pedophiles but this particular arrest is different than those in the past. Being based on this incident, Police even suspected that the international network of pedophiles could have been placed its networks actively in Nepal. This possibility is different from what ECPAT found in 2014 that, "There is also a direct link with pedophilia, although the problem of CST should be attributed mainly to the occasional tourist, rather than to organized international pedophiles."¹¹⁸

After investigation, a legal action was filed in Kathmandu District Court invoking Section 4(2)(b) of Human Trafficking and Transportation (Control) Act 2007, number 1 and 9(A) of Chapter of Rape in General Code, 2063, and Coombs was then sent to judicial custody in October, 2016).¹¹⁹

This story tells about the reality of the situation. It not only tells about the situation of sexual exploitation of children in travel and tourism but also about the online sexual grooming and abuses. After dealing with this incident, Nepal police has realized that Nepal has been an easy destination for the foreign pedophiles on many accounts. The types of children perpetrators have been looking for are easily available in Nepal. Children, especially those from a poor, marginalized and backward family background are easily attracted by money dreaming of higher level living standard. They even appoint local agents and engage them to procure the types of children. Agents convince the children's parents and guardians putting forth job opportunity, money and clothes. Finally, the agents counsel children, groom them paying attention to their cleanliness including provision of fancy haircut, clothes and money before supplying to the pedophiles.¹²⁰ Due to the lack of comprehensive research and data collection, however, one can only imagine the intensity of this crime.

5.3 Collecting authentic data from State mechanisms:

As an effort towards collecting fresh data from the state mechanisms, the researchers approached Nepal Police, the Office of Attorney General, archive section of some district courts in the valley, and also the office of Central Child Welfare Board (CCWB). Data keeping system of Nepal police as well as of the Office of the AG appeared that their system do not recognize the incident of CSEC as being a distinct category of crime. Therefore, no relevant data was obtained. Looking at the court cases from the archive section of District courts in the Kathmandu valley, very few but fairly new judgments were found. In the meeting with CCWB officials, they acknowledged the existence of the CSEC in the country, but again no authentic data was made available. Therefore, efforts on collecting authentic data from State mechanisms were unsuccessful. However, this situation (of not keeping proper data by state mechanism) still became helpful to analyze the existing scenario which will be discussed more in the next Chapter.

Chapter 6

Response from the State

The UN body pinpointed that ‘while noting with appreciation the data contained in the State party’s report and noting the collection of relevant data by the Nepal Police, the Office of the General Attorney and the Supreme Court, the Committee is however concerned about the lack of a comprehensive data collection system to enable the recording, referral and follow-up of all cases covered by the Optional Protocol.’¹²¹ In this regard, researchers also approached different government bodies that are responsible for addressing the crime of CSEC.

6.1 Data Keeping System of Nepal Police

The research strategy, as explained in the introductory part, was designed keeping in mind an assumption that data could be easily obtained from Nepal police. And, with that strategy researchers were able to arrange meetings with the responsible officers at Women and Children Service Directorate (WCSD) of Nepal Police at its Headquarters. And, this was the ever first step towards the journey of this whole research. The WCSD was cooperative and provided data available from the system. The categorization was as follows:

Topic: Crimes Related to Women and Children of between 19 years¹²²

This data was provided in Nepali calendar Fiscal year 2053/054 to 2071/072 (1996 to 2015) under the category of (1) Rape, (2)

Attempt to rape, (3) Trafficking, (4) Abortion, (5) Polygamy, (6) Child marriage, (7) Domestic Violence, and (8) Witchcraft

There was another recent data relating to women and children:

Topic: Data on Women and Children in Fiscal Year 2072/2073(2015/2016) by Months

This data categorized the crimes as: (1) Rape, (2) Attempt to rape, (3) Trafficking, (4) Abortion, (5) Polygamy, (6) Child marriage, (7) Domestic Violence, (8) Witchcraft, (9) Unnatural sexual intercourse or sodomy, and (10) Untouchability.

Neither of the provided data had a categorization on sexual abuse or exploitation of children. The data on the first topic above were definitely not helpful for this research purpose. Despite the fact that CSEC and Pedophilia exist in the country, and the government itself has acknowledged it in a report that Nepal police has a realization that CSEC related crimes exist¹²³ and also that researches have shown Nepali children have been victimized by such crimes, the state mechanism still didn't recognize this problem as a crime. The one-year data (2072/2073) however added 'unnatural sexual intercourse or sodomy' and 'untouchability' as two new categories. And, under the category of 'unnatural sexual intercourse' 15 incidents were recorded.¹²⁴ As there is no specific law addressing CSEC, this category of crime, at least some of the incidents, might have been recorded under unnatural sexual intercourse. Regrettably, neither of the data made available by WCSD appeared to be helpful to serve the purpose this research.

As an alternative to WCSD, a meeting was conducted with the Director of Central Investigation Bureau (CIB) of Nepal Police. From the perspective of obtaining data the meeting in CIB as well didn't turn out to be of much help. Researchers were informed that the nature of job CIB had been undertaking was different and what the researchers were looking for falls under the jurisdiction of WCSD. And, there was a final meeting with the head of WCSD, the Deputy Inspector General of Police (DIG).

The DIG acknowledged that their data system missed the category of crime corresponding to the sexual exploitation and abuse of children. However, upon special request, the DIG became ready to cooperate by providing manual data from across the nation using the nationwide police network through organizational chain of command system. For the convenience of potential police officer to be deployed for this job, data answering two questions only – the number of FIR registered on sexual abuse of children during last three years and the types of perpetrators were requested. However, Police could not provide with such data even the said three weeks were elapsed.

6.2 Office of Attorney General

After police investigation in a particular incident is over, the Government Attorney is responsible, as a matter of procedure, for deciding if the charge is actionable at court of law, and if yes, for preparing Charge Sheets. Therefore, researchers considered that the record maintained at the offices of the Government Attorney could be helpful to obtain certain level of data on offences of child sex abuse.

Based on the lessons learned from the police office, it was natural to expect that they too may not have any data system contributing to the children and CSEC in particular. However, data published in the Annual Report 2071/72 BS of the office was made available and was apparently pertinent to this research. The report was found to have categorized crimes by women and children under 8 columns.

Topic: The Detail of the Cases where Women or Children were Victim or Respondent.¹²⁵

The data was found to have categorized crimes as: (1) homicide/attempt to murder, (2) rape/attempt to rape, (3) human trafficking, (4) theft, (5) kidnapping (6) narcotic drug, and (7) Other.

Although the designated categories of cases were the ones filed in District Courts of all 75 districts of Nepal, it didn't reveal anything about sexual abuse of children. Again, it appeared that the Office

of the Attorney General was totally ignorant about this grave crime, which is believed to have been increasing at an alarming rate in Nepal.

6.3 Meeting with Central Child Welfare Board (CCWB)

The Central Child Welfare Board (CCWB) is a statutory body created by the Children's Act 2048 BS (1992). It is charged with the overall responsibility to ensure realization of the rights of the children of Nepal by the state collaborating with civil society as well as national and international development organizations. It works for the protection of child rights as per the Child Rights Convention (CRC) standard.¹²⁶ Given the objective of establishing CCWB, this institution considered to be the most reliable source to obtain data for the purpose of this research. This assumption was further corroborated by some facts revealed by Executive Director of CCWB.¹²⁷

The researchers arranged a meeting and approached the CCWB looking for the authentic information, reports and data about CSEC including sources of his recent speech. There was a good and cooperative response from the officers including ED and the researchers were benefited by the oral information provided. However, no comprehensive research data was available as sought for by researchers.

Looking at the official website of CCWB, especially at the resources and publications part, only two materials were found relevant to this research. One was a book on child abuse in Nepali language and the second was a study report published in 2015 on street children. The book contained a topic on 'Sexual Abuse of Children' however it did not contain any data or situation analysis on this subject. The book seemed to be more suitable for children for their awareness. The Report provided certain data revealing the situation of street children, but did not deal with any information on sexual abuse occurring against children.¹²⁸ It was quite frustrating to observe that a statutory entity created for the protection of children was not well equipped with information and plan of action on the protection of children from the crime of CSEC.

6.4 Juvenile Justice Coordination Committee (JJCC)

In order to strengthen the juvenile justice system in Nepal, JJCC was established by Juvenile Justice (Procedure) Rules, 2006, in 2006. As per the Rule, a judge from the Supreme Court of Nepal as designated by the Chief Justice chairs the Committee.

The JJCC has published a report on the current situation of juvenile justice in Nepal.¹²⁹ The report provides data of nine years on the juvenile cases. The data was categorized under 27 headings that also included 'rape combined with sodomy (unnatural sexual intercourse).' However, the data was not about the crime committed against the children by adult but by juvenile delinquents. The very objective of the said report is to provide the data about juvenile delinquency, the number of cases filed in courts, the nature of the cases filed, the detail of the juvenile involved and so on.¹³⁰ This is the exclusive area of work, which JJCC considers it was established for.

The JJCC also published a collection of judgments relating to juveniles by District Courts. The first volume was found to have comprised 35 judgments¹³¹ while the second volume was with 59 judgments in total. The volumes are with a number of judgments on accusation of crimes related to rape and unnatural sexual intercourse. However, all these judgments are about the cases where a minor is defendant.¹³² And, neither volume contains any case dealing with the sexual exploitation of a child by child sex abusers or pedophiles. It is strange to see that JJCC has totally ignored the cases where victim is a juvenile but accused is an adult. JJCC was established for coordinating with stakeholders concerning juveniles.¹³³ Major objective of the JJCC is not just protecting a child from another child but to give overall protection for children. JJCC is established to fulfill the objective of the mother legislation in the area of juvenile justice that ensures justice under a broader framework. The asymmetry in the publications is further apparent in another JJCC publication, the collection of juvenile related judgments by Supreme Court of Nepal.¹³⁴ If the JJCC only publishes the judgments whereby another juvenile is a defendant then it may

give readers an impression that there are perhaps no cases where children were the victims of CSEC by child sex abusers or pedophiles.

Therefore, it is fair enough to say that JJCC might have mistakenly ignored the judgments in the cases where child sex offenders victimized children, which is far more serious than the case where a child is the defendant. This observation suggests that it is equally important for JJCC to also give attention to the situation of juveniles who are victimized and further traumatized under CSE.

6.5 Role of Judiciary

The judiciary is the ultimate place for an aggrieved person to seek justice. Therefore, it is important to check as to what kind of victims, relating to CSEC, are approaching the courts of law and to what extent. A quick observation in this area could be of great significance specially to check the trend of the legal actions brought before a court. In this regards, those ongoing cases or judgments are selected here which have direct link to the scope of this research. In doing so, the judgments handed down particularly by district courts (trial court) are in priority while still giving place to exceptionally relevant judgments from the Supreme Court of Nepal.

(a) Molhuysen Hendrik Otto v The Government of Nepal¹³⁵

Molhuysen Hendrik Otto, a Dutch national was working as a director of Jeewan Samrakshyan Bal Griha, a childcare home in Samakhusi, Kathmandu, until he was arrested on the accusation of sexual abuse he had allegedly committed to the children who were living under his care. On 1 March 2007, a legal action was brought before the Kathmandu District Court claiming that the alleged pedophile enticed the children and sexually abused them in the same childcare home, which amounted to crime of sodomy and rape under Chapter on Rape in General Code. The defendant denied the charge.

Giving the verdict, the court held that defendant Hendrik Otto committed the offense under Number 9 A of Chapter on Rape in General Code, hence was liable for sentencing to 8 years in jail as per Number 3(2) of the same Number and additional 1 year imprisonment as per Number 9A. Furthermore, the defendant was decided to compensate each victim with NPR 25000. Patan Appellate Court upheld the judgment, which was further challenged in the Supreme Court of Nepal through a review petition. Giving the final verdict on the case on 11 July 2012, the Supreme Court of Nepal upheld the lower court judgments.

After the completion of eight years imprisonment, the Dutch National, 69, was deported to Netherlands imposing ban from reentering Nepal for the next five years, on 19 February 2016.

The significance of this judgment: the Number 9A of Chapter on Rape only uses the term 'minor' and does not specify whether male child or the female child. In this case, court acknowledges that, male young child could be the victim of CSE.

(b) The Government of Nepal Vs. E. Fenwick MacIntosh¹³⁶

A serial pedophile Ernest Fenwick MacIntosh, 61, Canadian national was arrested by police and initiated legal action against him with the charge of committing crime of sodomy (unnatural sexual intercourse) against a minor under Number 9A of Chapter on Rape at Lalitpur District Court. The victim child, 15, was disabled male student living under the care of St. Xaviers Care Service Center. The victim also informed the Court about other sexual abuses by the same offender to street children in Thamel. The defendant denied the charge.

The Court found him guilty under Number 1 and 9A under Chapter on Rape and sentenced to 7 years in jail awarding the victim with compensation of NPR 1,000,000.

The verdict regarding imprisonment was upheld by the Appellate Court Patan but altered the compensation by NPR 300,000 in Feb 2016.

(c) The Government of Nepal v. Alexander Overgaard

Alexander Overgaard, 48, a Danish national was arrested in Nagarjuna Municipality at the outskirts of Kathmandu City. He was accused of engaging in sodomy with a 14 years old child, in March 2015. After investigation a charge sheet invoking Number 9A of General Code was filed in Kathmandu District Court. The defendant denied the accusation.

Taking available evidences into account, the Court decided that he committed the offense as described by 9A in Chapter on Rape. Accordingly, the Court sentenced to 9 years in imprisonment and victim was awarded NPR 100,000 in compensation. The judgment was handed down on 25 August, 2015.

(d) The Government of Nepal Vs. Claude Herve Denis Ozoux

Accused of enticement and sexual abuse of a 14-year old child, Claude Herve Denis Ozoux, a 70 years old French businessman was arrested from Basantapur area of Kathmandu. Police investigation revealed that the plaintiff, a street child, was abused as many as 14 times. Whenever the informer (victim) was taken to his hotel, he used to show him pornographic movies and thereby forcing him to do as was done in the movies he was shown.

A legal action was filed against the defendant in Kathmandu District Court under the provision of crime of rape and unnatural sexual intercourse with a minor as provided in Chapter of Rape in General Code, on 25 January 2015.

The defendants denied the accusation. As of this writing the case was subjudice in the court.

(e) The Government of Nepal Vs. BhabriSaleh Mohammed

BhabriSaleh Mohammed, 63, an Arabian national was arrested from hotel on 2 June 2016 accusing him of committing sexual abuse to a 14-year old child. The arrest became possible after an FIR was filed by the victim with the help of rights activists who had been observing the unusual gathering and other activities of children with Bahari. Police investigation revealed that on 3 May 2015 the defendant had met the plaintiff, a street child (informer) and offered snacks. And, when she accepted the offer the defendant took her to his hotel in Kathmandu and gave some juices and banana. The defendant requested the informer to take bath and be comfortable in his bed. Afterwards he started to grope the informer's genitals and when she denied he promised her NPR 1000 for consent. The defendant abused her the whole night and even in the morning. After that defendant took the informer back to the same place from where she was picked, gave only NPR 200 but requesting her to visit him again. Medical report proved that the informer was raped.

After the investigation, a legal action was filed against him at Kathmandu District Court on 27th of June 2016. As of this writing, the case was subjudice in the Court.

(f) Nepal Government Vs. SahadevBhujel¹³⁷

SahadevBhujel, 23, a teacher of a local school was accused of sexually abusing his own 5 minor students. During investigation, it was found that he groomed the students by showing pornographic photographs and videos, and engaged in oral and anal sexual intercourse including molestation. A charge-sheet was filed against him in Kavrepalanchowk District Court accusing him of committing crime of rape combined with sodomy under Number 2A of Chapter on Rape. The defendant denied the charge.

Giving the verdict the Court held that with all the fact and evidence it was found that Sabadev Bhujel committed offences as per section 9A of the chapter on Rape. And, considering the age of the victims, the perpetrator was sentenced to 11 years in imprisonment.

(g) Government of Nepal Vs. Andrieu Yves

With the help of child right activists, a 14-year old street child (informer) filed an FIR stating that a 63-year old French citizen Andrew Yves sexually abused him. After investigation, a charge sheet was filed claiming that the defendant committed a crime of sodomy (unnatural sexual intercourse) with a child under Number 9A of the Chapter on Rape in General Code, and demanded punishment and compensation as per the law.

Interestingly, the defendant revealed that he was awarded a punishment of 7 years in prison against the crime of pedophile he committed in France, but was released after 3 years for the good conduct he had displayed. He further confessed that he used to give food and money to the street children in Kathmandu and in that particular case as well he gave some money to the informant boy. He further added he molested the boy and the boy did the same for him. What he denied was, he never tried to do anal sex with the boy as claimed, and claimed that he molested the boy and allowed him to do so only after the boy informed him that he was above the age of 18.

The witnesses did not confirm that they noticed the unnatural sexual intercourse perpetrated by the defendant, but confirmed that he attempted to do so. As per the report from Central Police Forensic Science Laboratory, no semen was detected. The Forensic Medical Department confirmed the age of the informant being between 13 to 14 years.

Verdict came on 5th of September 2016 and the Court considering the fact and evidences produced held that the informer and accused molested each other but the accused didn't inflict unnatural sexual intercourse upon the informer boy, hence the claim did not sustain and the defendant was acquitted.

(h) The Government of Nepal v. SabuddinMiya¹³⁸

Upon an FIR filed by relative of victim E, SabudinMiya, 73, was arrested in August 2008. After investigation, a charge sheet was filed in Kathmandu District Court, accusing him of committing crime of rape, involving 5 children, A aged 13, B aged 11, C aged 14, D aged 12, and E aged 15(all female), as defined by Number 1 of Chapter of Rape in Civil Code and demanding punishment as designated by Section 3(2) and 3(3) of the same Chapter and sought compensation for victims as per Number 10.

During investigation, A mentioned that when the accused tried to rape her, she screamed and the perpetrator failed in his attempt. The father of B and C separately filed FIRs against the same accused stating that both of her daughters were raped, which was also confirmed by D. Victims D and E separately mentioned that they were raped by the accused. The accused confessed that he raped all B, C, D, and E and confirmed the attempt to rape A. In the case of B and C the accused said that he sexually abused the children by penetrating, and through oral sex and molestations if couldn't penetrate.

Strangely, the Maternity Hospital Thapathali came up with the report that hymens of A, B, C and D were ruptured except for of E.

In its verdict, the District Court found the accused of committing crime of rape against C and D, and handed down the punishment as per the law. The court acquitted accused in the case of A and B but didn't talk anything about E. The public prosecutor challenged this judgment at Patan Appellate Court.

The appellate court, confirmed the verdict except for in the case of E about whom the appellate court further stated that the defendant also committed crime of rape against and awarded the punishment as per the law. Dissatisfied with this judgment the public prosecutor again approached the Supreme Court, which confirmed the judgment of appellate court.

In weighing against the gravity of the crime, the judicial response in this case appeared to be far slighter than a reasonable person consider appropriate. For instance:

- The court didn't consider that A and B were sexually abused by the defendant and attempted to rape them which was confessed by himself. As per Number 5 of Chapter on Rape the defendant must have been liable for punishment against the crime of attempt to rape. Sadly enough, the courts simply acquitted the culprit in the case of A and B.*
- The courts even didn't consider the reports produced by the Maternity Hospital confirming that hymen of B, not of E, was ruptured.*
- While delivering the judgment, the courts didn't consider the situation of these innocent children that worsened as a result of the crime committed against them by the defendant including social stigma and trauma they had to undergo throughout their life.*
- The court, at least the Supreme Court, didn't consider as to how dangerous the culprit could turn out. Also, probably it was not only the informers but also other persons might have been victimized by him.*
- The courts including the Supreme Court of Nepal proved that they are oriented more towards accused ones than towards protecting victimized children.*
- The Supreme Court of Nepal tried to draw the attention of the government attorney on the procedural part stating that the legal action should not have been lodged in a holistic way taking the incidents of the girls as a single incident; rather there should have been separate charge sheets in their cases. However the court didn't talk about what different outcomes it yielded as a result of that procedural flaws. Furthermore, the verdict left a question unanswered whether or not there should be variation in the degree of punishment based on the number of incidents committed and the number of victims harmed by that criminal.*

6. 6 Analysis

From the discussion above it can be concluded that State's role in protecting Children from CSEC doesn't appear to be that sincere in Nepal. For example, given the gravity of the problem the data keeping system followed by various state institutions don't reflect their existence at all. The data system of Nepal police and the office of the Attorney General do not tell anything about the situation of children victimized by the crime of CSEC. It is especially because there is no such data keeping system that reveals the situation of children abused by child sex abusers including pedophiles. Instead of dealing the heinous crime such as CSEC in sensible manner, the state was found to have generalized it by blending the crime committed purely against a child with a crime committed against women. Crime of rape against women and against child are two different issues by nature and in consequences. This research shows that State has failed to recognize these differences while drafting the law and creating the system for law enforcement agencies.¹⁹ This research also discloses a gruesome picture about the existence of CSEC including pedophilia in Nepal, however if looked at the data maintained by Nepal Police and by the office of Attorney General, no crime as such exist in Nepal.

Other statutory institutions such as CCWB were found to have given attention to check the crime of CSEC by organizing certain awareness programmes, doing some study and helping NGO initiated works. Nevertheless, one can easily observe that such institutions haven't conducted any concrete activities including comprehensive data collection, analysis, and action plan that may provide some results. The JJCC, on the other hand, seemed to have concentrated its focus totally on the delinquencies committed by juvenile delinquents, and it was found out that judicial system in Nepal exclusively deals with child delinquents and not with the cases related to child sex abusers including pedophiles.

For Nepali judiciary, not having specific law on sexual abuse of child including CSEC appears to be the biggest obstacle. The main law introduced to protect the rights of a child, Children's Act 1992,

doesn't protect Nepali children from the crime of CSEC. As a result, all sexual exploitation related cases comes under the purview of either Chapter on Rape of General Code or Human Trafficking and Transportation Control Act, while the objective of both of these legislations are wider than protecting a child from an offence of sexual exploitation and abuse. The obvious consequence is, no matter whatever type of or how many number of victims related to sexual abuse come in the court, the Nepali judiciary has to necessarily link the crime as being rape or sodomy or human trafficking. Further consequence of such compulsion is that the court system has to focus more on punishing criminals under rape or sodomy or human trafficking offences rather than protecting children from child sex abusers or pedophiles. This is clearly seen in the judgment of *the Government of Nepal Vs. Andrieu Yves* and *the Government of Nepal v. Sabuddin Miya*. In the first case, the court acquitted accused even though he confessed of sexually abusing street children of Kathmandu. And his history suggested that he was a serial pedophile and was sentenced in the country of his origin as well. The court acquitted him simply because the informer (victim) failed to prove that the accused penetrated his penis into informer's anus. This reality poses question whether or not the accused have any legal liability for sexually abusing children and posing risk (by his history) to Nepalese children. Our judiciary said 'No'.

In the second judgment, even the Supreme Court didn't bother to considering the sexual abuse and the attempt of penetration made against 11 and 13 years old girls by 73 years old perpetrator amounting to the crime of attempt to rape. Courts also did not bother to pay serious attention toward the fact that 5 children were victimized including three being raped. All courts, from the bottom to top, came into same conclusion that the punishment would be 8 years in prison and NPR 10,000 as compensation for each no matter how many children were victimized (including behind the scene). It was, hence, obvious picture was produced by such the trend as if protection and justice for children is not a focus and priority for Nepali judiciary, which is compelled to provide justice under badly shaped legal provisions and system.

Chapter 7

Conclusion and Recommendations

7. 1 Conclusion

Studies have shown that the sex abusers and pedophiles became visible in Nepal particularly during armed insurgency. This was the period when thousands of people including children fled their home villages to the city area especially in Kathmandu and other major cities. It was kind of internal displacement compelled by the very weak and virtually non-presence of the state at villages for the security of life and property of the public. Therefore, many put blame on armed conflict as being the most compelling reason for Nepali rural girl children to end up in urban dance bars and cabin restaurants subsequently being prone to commercial sexual exploitation. It could be understood as being the starting point of a new phenomenon of child sex tourism in Nepal. Question may be raised on why the flow of children from villages to city areas still increasin given after the armed conflict was over? The only possible answer is because the trend has never stopped even after the conflict came to an end because now they are accustomed to easily flee village homes to city areas in search of job or other better opportunities.

Sex tourism is a new phenomenon and has never been recorded in Nepal's judicial and administrative mechanism throughout the history. Now, all the research and studies have shown that CSEC in travel and tourism exists in Nepal and has trended over

years. Although, the incident related to CSEC frequently appears in news media, the research studies conducted so far do not seem to reveal the actual situation of sex tourism in terms of its intensity. It is especially because no one appears to be engaging in such a comprehensive research and neither have they bothered to accumulate genuine data backed by authentic analyses.

It is fair to say that all the reports produced as of now including those produced by the government of Nepal are not based on comprehensive data collection and genuine analysis of the situation. The data provided by most of the reports are based on the data produced by someone else and if checked the originality of that main data, they are either based on estimation or other easy methods including stakeholder discussion, or interview with focused group or certain case studies or workshops. Neither any genuine researcher nor policy makers nor any students can depend on such data, which do not represent the actual situation. This reality applies in the case of recording and making availability of data on CSEC.

As a result of lack of comprehensive and genuine data, many questions remained unanswered. For example, all researchers agree that sex tourism is growing in Nepal as a destination country. However, various patterns of this problem are far from identification. Looking at existing reports, it is almost impossible to tell the proportion of child sex tourism within general term of sex tourism. Similarly, image between sexual exploitation by common child sex abusers and by pedophile is also unclear. When it comes to predator, the proportion of genuine tourists who naturally engage in CSEC and those who come in Nepal in the pretext of tourism but main objective is CSEC, is still unknown. Among those serial abusers, proportion between those comes under apparently in tourism and those under the pretext of philanthropic work is not clear. If looked on the side of victims of CSEC, what is the actual figure of child victimized? Among them what is the proportion of consensual and forced exploitation? Who (age group or gender) is the target of perpetrator of certain attitude including pedophile or common sex abusers or occasional tourists? On the part of online abuse, what is the tentative percentage of victims abused as a result of online

access? These general questions are yet to be answered. These concerns may have serious consequences including in reforming state laws and policies, if not answered properly and in time.

The parliament of Nepal doesn't seem to have perceived this problem as serious so no attention has been paid towards this end. Despite the fact that the Constitution of Nepal guarantees the protection of a child from sexual abuse and exploitation, the attitude of parliament is still too conservative and the old attitude continues to prevail in various legislations. These several legislations do talk about children but don't protect them from CSEC recognizing it as being a distinct crime. In fact, the conventional understanding and mindset that rape law protects children is the major obstacle in reforming laws in Nepal. As discussed in the earlier Chapters, Nepal has introduced various policies and plan of actions regarding children, however they neither talk about the problem of CSEC nor introduce any plan to protect Nepali children from possible abusers. Briefly, Nepal still doesn't have specific or concrete laws and policies directly targeted against the crime of commercial sexual exploitation of children in travel, tourism and online. Yet, the major problem is not only about not having proper law and policy but also about the lack of State's sincerity on perceiving sex tourism and online grooming targeted against Nepali children has posed serious problems.

Looking at the Nepal's report submitted to UN body, it is understandable that the report seriously lacks the genuine data. It is clear from the information it produced at the very report that the provided data was from 1995 to 2001 however the report was silent about the situation from 2001 to 2009, whereas the report was submitted in 2009. In the same report, it contributed hardly four-line paragraph on much burning issue of 'child sex tourism'. The question here arises: why is the State so reluctant to furnish proper information in a problem so prevalent in that country? This research found some answers on this that the problem of CSEC has not been considered as a problem by the State. It is very clear from the fact that it is not mobilizing State-run systems to keep proper data. For example, the data system of Nepal police and the office of

Attorney General don't tell anything about the situation of CSEC nor do they seriously perceive the data on child sex tourism. The system suggests as if Nepal doesn't have any problem on this matter. Had the system recognized the problem, the State should not have been scratching own head while providing information to an authentic body such as CRC Committee. The failure of state to keep proper information also affecting the work and functioning of other statutory institutions such as CCWB whose source of information has been not state mechanism but NGOs' work. And, this could be a reason why JJCC on the other hand doesn't seem aware about the justice mechanisms that must have been in place for protecting children from CSEC.

For Nepali judiciary, not having specific laws on sexual abuse of children including on CSEC appears to be the biggest obstacle to do a justice for victims. The judiciary is compelled to necessarily link all sexual related crimes including perpetrated by child sex abusers or pedophile to common crime of rape or sodomy or human trafficking. The major consequence of such linking is, the focus would be more about punishing criminal under rape or sodomy or human trafficking then protecting children from abusers. Further consequence of this diversion is, judges don't care about the gravity of crime thereby long term consequences may result in. This is clearly seen in early-cited two judgments -*the Government of Nepal Vs. Andrieu Yves* and *the Government of Nepal v. Sabuddin Miya*. Due to the first case, this research raised a question: doesn't the accused have any legal liability for sexually abused children and posing risk (by predator's history) to Nepalese children? Our judiciary answered 'No'.

Finally, the problem regarding sexual exploitation of children in travel, tourism and online in Nepal is well perceived. However, due to the lack of comprehensive data and genuine research analyses neither government nor any other institution nor person can confidently declare the actual situation and gravity of the problem. Still the final question would be: what are the main elements facilitating sex tourism including CSEC by child abusers or pedophile to grow in Nepal? In response, various reports have pointed different

answers such as armed conflict, movement of children to urban area, poverty, illiteracy, unemployment, disturbance in family, trafficking of child etc. in common. This research, however, came up with different suggestions. It is not the 'situation of victims' that deserves the whole blame. In fact, this type of conventional conclusion only helps to distract ones' focus from main contributing factors. It is tantamount to say: you cannot protect your children from this crime because nobody can stop children from moving to urban area nor can eradicate poverty or illiteracy. The most compelling answer is State must take the matter of *sexual exploitation of children in travel tourism and online* as being a serious issue requiring full state attention including introduction of effective measures by reforming laws, policies and changing the old attitude of state mechanism. It is the new law that recognizes CSEC as being distinct category of crime, and state policy that introduces vigilant plan of action may restrict foreign as well as local sex abusers and pedophile from approaching innocent children who deserve full protection against all abuses including child sex tourism.

7.2 Recommendations

The conclusion of this research tells that State response against the crime of CSEC is inadequate, as a result, the commercial sexual exploitation of children in travel, tourism and online is increasing in Nepal. The recommendations below are concentrated basically on law, policy and state mechanisms:

(a) Reforming laws and policies

- (i) Children Act, 1992 must be replaced by new legislation. The new legislation must include sexual abuse against a child as a grave offence with harsh punishment.
- (ii) The General Code (Mulukin Ain), 1963 must be amended and sexual exploitation of child must be distinguished from the crime of rape.

- (iii) Laws governing entertainment sector must be amended to impose genuine restriction for a person below the age of 18 years to engage in the entertainment business.
 - (iv) Law and policy related to immigration must introduce new provisions allowing visa issuing officer to check the crime history regarding child sex abuse of tourist or other foreigners who try to enter Nepal for non-tourism purpose.
 - (v) The government must collaborate with Internet service provider including Nepal Telecom Corporation to form proper policy including introduction of filtering devices on the Internet that deny access to pornographic sites when a mobile phone is issued for a child.
- (b) Regarding state mechanisms:
- (i) The Ministry of Women Children and Social Welfare, must do detailed study of any NGO or INGO and its leaders before approving their application to engage in work relating to children.
 - (ii) Nepal police must consider crime related to sexual abuse against child as a distinct offence and maintain separate data. Existing data keeping system that mixes up the offence against children with offence against women must be changed.
 - (iii) The data keeping system of the Office of Attorney General must be changed to keep crime of child sex abuse under distinct category.
 - (iv) CCWB, must engage in genuine research to fulfill the research gaps including comprehensive data collection. In so doing, it can collaborate with some university or law schools and can utilize their expertise.
 - (v) JJCC must consider the issue of justice mechanism related to CSEC as being under its area of work and act accordingly.

ENDNOTES

¹ Known as *Muluki Ain*, 2020 BS

² Article 26, of *The Constitution of the Kingdom of Nepal, 1990* under 'State Policies' it reads - *The State shall make necessary arrangements to safeguard the rights and interests of children and shall ensure that they are not exploited...*

³*Interim Constitution of Nepal, 2007, Article 22 (3).*

⁴Article 39 (6) reads: *No child shall be recruited or used in army, police or any armed group, or be subjected, in the name of cultural or religious traditions, to abuse, exclusion or physical, mental, sexual or other form of exploitation or improper use by any means or in any manner.*

⁵ECPAT International, *The Global Study Report on Sexual Exploitation of Children in Travel and Tourism*, by Angela Hawke and Alison Raphael. Bangkok, May 2016, p.40.

⁶See Generally, *Chapter on Rape, General Code, 1963 (Nepal).*

⁷UNICEF, *Commercial sexual exploitation and sexual abuse of children in South Asia*(Kathmandu: Format Printing Press, 2001) p. 13

⁸In 2014, the International Labour Organisation (ILO) revealed that out-of-school youth represent 40 per cent of the total youth population of which one-third (29.5 per cent) of youth dropped out of education for economic reasons. One-fifth (20.5 per cent) dropped out to get married. Similarly Nepali youth unemployment rate among university graduates is at 26.1 per cent, while youth unemployment rate is at 19.2 per cent. Majority (92.2 per cent) of young people who work are engaged in informal employment with no entitlements like basic wage. Available at: http://www.ilo.org/wcmsp5/groups/public/-dgreports/-dcomm/documents/publication/wcms_244617.pdf (accessed on 2 October 2016)

⁹For example, Monica Cavis who worked for five years in Nepal for an NGO 'CHILD Street to School', expressed that the street children having cell phones could be easily connected to Facebook, which in a way is positive for social workers but as well the abusers and child traffickers use it to connect with children to take them out of the country, like many children disappeared from the shelter and appeared again. She further observed that the Facebook is also used to lure children into illegal shelters, hotels within the city. (based on discussion with Monika on 30 July 2016)

¹⁰ Latest being: KPDhungana for Kantipur Daily (Nepali version), Organized Gang in Pedophilia, Published on 11 September 2016. The story also tells how the foreign pedophiles and local agents collaborate and use internet service to exploit Nepali children.

¹¹For example see: The Economist, 'Tourism in Nepal: from treks to sex' available at: <http://www.economist.com/node/10566777> (accessed: July 30, 2016); Leisure Tourism, Nepal: from trekking to sex tourism?, available at: <http://www.cabi.org/leisuretourism/news/17734> (accessed: July 30, 2016); The Glob and Mail, Canadian pedophile jailed in Nepal for child molestation, available at : <http://www.theglobeandmail.com/news/national/canadian-sentenced-to-seven-years-in-nepal-jail-for-child-molestation-report/article23238460/> (accessed on : July 30, 2016)

¹²ECPAT International, *The Global Study Report on Sexual Exploitation of Children in Travel and Tourism*, by Angela Hawke and Alison Raphael.Bankok, May 2016

¹³Please see generally, the Chapter-Three below.

¹⁴ Though street children are obvious category for many, others appeared to be focusing more on child girls in entertainment sector business, and sometime confusion in between. And the question is if any third or fourth category is there for example child at work as porters or so on.

¹⁵RatoPati (digital news - Nepali), 'Two Thousand Children are in Sex Business', May 24, 2016, available at: <http://www.ratopati.com/aakhabar/52214/> (accessed on: Aug 2, 2016)

¹⁶Setopati (digital news - Nepali), 'The Data About Using Children in Sex Business Itself is Based in Assumption', May 25, 2016, available at: <http://setopati.com/samaj/47282/> (accessed on: Aug 2, 2016)

¹⁷ECPAT International, *The Global Study Report on Sexual Exploitation of Children in Travel and Tourism*, by Angela Hawke and Alison Raphael.Bankok, May 2016, p.40.

¹⁸ UNICEF, *Commercial sexual exploitation and sexual abuse of children in South Asia*(Kathmandu: Format Printing Press, 2001) p. 13

¹⁹CWIN, *CWIN Campaign on Protecting Children Online in Nepal*, available at: <http://www.cwin.org.np/index.php/programme-of-actions/cwin-campaign-on-protecting-children-online-in-nepal> (accessed on Aug 2, 2016).

²⁰Sec.2(a) of *Children's Act, 1992*; Sec 2(a) of *Child Labor (Prohibition and Regulation) Act, 2000*(Nepal).

²¹Section 2 (d), of *Human Trafficking and Transportation (Control) Act, 2007* (Nepal).

²²Article 1, *Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990*

²³ No 2, *Chapter on Marriage, General Code (MulukiAin)*,

²⁴ Ibid, No 2(3) that states: If a female above the age of fourteen years but below the age of Eighteen years is married or caused to be married, punishment of imprisonment for a term not exceeding Six months or a fine of a maximum of Ten Thousand Rupees or both shall be imposed.

²⁵*Committee on the Rights of the Child, The right of the child to freedom from all forms of violence, General comment No. 13 (2011) CRC/C/GC/13, para. 25.*

²⁶The First World Congress against the Commercial Sexual Exploitation of Children in Stockholm was organized by ECPAT in partnership with UNICEF and the Rights of the Child and hosted by Swedish government in 1996

²⁷ *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, UN General Assembly resolution 54/263 of 25 May 2000. Article 3.

²⁸ILO, *International Programme on the Elimination of Child Labour (IPEC)*, Commercial sexual exploitation of children, available at: <http://www.ilo.org/ipec/areas/CSEC/lang=en/index.htm> (accessed on Oct 2, 2016)

²⁹*Victims of Trafficking and Violence Protection Act of 2000 [United States of America].Public Law 106-386 [H.R. 3244]. 28 October 2000. Section 103(3)(8)(9). as cited in Commercial Sexual Exploitation of Children: A Fact Sheet by the National Human Trafficking Resource Center (NHTRC) available at: http://www.missingkids.com/en_US/documents/CCSE_Fact_Sheet.pdf*

³⁰ UNICEF, *Commercial Sexual Exploitation and Sexual Abuse of Children*

IN SOUTH ASIA, a report published by Regional Officer for South Asia (Format Printing Press, Kathmandu, 2001), p. 9.

³¹ECPAT International, *The Global Study Report on Sexual Exploitation of Children in Travel and Tourism*, by Angela Hawke and Alison Raphael.Bangkok, May 2016

³² Preamble, Directive 2011/92/EU of the European Parliament and of the Council,13 December 2011.

³³ECPAT International, “Combating Child Sex Tourism: Questions and Answers”, Bangkok (2008), p.6. http://ecpat.net/sites/default/files/cst_faq_eng.pdf(accessed on Aug25, 2016)

³⁴ Robert J. O’Leary & Robert D’Ovidio, *Online Sexual Exploitation of Children*, for National Governors Association (UAS: 2005) available at: <http://www.nga.org/files/live/sites/NGA/files/pdf/0703ONLINECHILD.PDF> (accessed on Sept 2, 20106)

³⁵NSPCC (the National Society for the Prevention of Cruelty to Children) available at: <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/online-abuse/what-is-online-abuse> (accessed on Aug 30, 2016).

³⁶ Mare Ainsaar, Lars Loof ,*Onlinebehaviour related to child sexual abuse: Literature Report* (European Union: Robert). p. 11. available at: http://www.childcentre.info/robert/public/Online_behaviour_related_to_sexual_abuse.pdf (accessed on Sept 20, 2016), p. 10

³⁷Mare Ainsaar, Lars Loof ,*Onlinebehaviour related to child sexual abuse: Literature Report* (European Union: Robert). p. 11. available at: http://www.childcentre.info/robert/public/Online_behaviour_related_to_sexual_abuse.pdf (accessed on Sept 20, 2016), p. 11

³⁸CEOP Centre, *Threat Assessment of Child Sexual Exploitation and Abuse*, June 2013, p. 13

³⁹ UNICEF, *Commercial Sexual Exploitation and Sexual Abuse of Children IN SOUTH ASIA*, a report published by Regional Officer for South Asia (Format Printing Press, Kathmandu, 2001), p 12.

⁴⁰*Ibid*, p13.

⁴¹Government of Nepal, *Initial Report on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*,12 April 2009. CRC/C/OPSC/NPL/1, para. 78

⁴² UNICEF, *Commercial Sexual Exploitation and Sexual Abuse of Children IN SOUTH ASIA*, a report published by Regional Officer for South Asia (Format Printing Press, Kathmandu, 2001), p 13.

⁴³ Government of Nepal, *Initial Report on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, 12 May 2009. CRC/C/OPSC/NPL/1, para. 78

⁴⁴ ECPAT International, *Combating Child Sex Tourism: QUESTIONS & ANSWERS*, (Bangkok, Saladaeng Printing Co.Ltd., 2008), p 10.

⁴⁵ IPEC, *FACTS ON Commercial sexual exploitation of children*, March 2003, available at: http://www.ilo.org/public/english/standards/ipeclpubl/download/factsheets/fs_sexualexploit_0303.pdf (Accessed on: Sept 1, 2016)

⁴⁶ ECPAT International, *The Commercial Sexual Exploitation of Children in South Asia*, (Bangkok, Saladaeng Printing Co.Ltd., 2014), p 36

⁴⁷ J. Frederick, M. Basnyat & J.L. Aguetant, *Trafficking and Exploitation in the Entertainment and Sex Industries in Nepal: A Handbook for Decision-Makers*, (Kathmandu: Terre des homes Foundation, 2010), p. 36.

⁴⁸ *Ibid.* p. 42.

⁴⁹ Government of Nepal, *Initial Report on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, 12 May 2009. CRC/C/OPSC/NPL/1, para. 77

⁵⁰ As cited by the J. Frederick et al, the percentage of females under 18 in the entertainment sector is stated as 33% by the Shakti Samuha 2008 study, and 16% by NHRC 2004 study.

⁵¹ UNICEF, *Commercial Sexual Exploitation and Sexual Abuse of Children IN SOUTH ASIA*, (Kathmandu: Format Printing Press, 2001) p. 12

⁵² Pabitra Karki Report, 'Exploitation of the Women in Cabin-Restaurant (A case study of Kathmandu Metropolitan City)' was the main source of this information. The report appeared to be based on case study and analysis but not on the comprehensive baseline survey or data analysis.

⁵³ NHRC, *Trafficking in Persons Especially on Women and Children in Nepal: National Report 2012-2013* (Kathmandu: National Printing Service, 2014) p. iv.

⁵⁴*Government of Nepal, Initial Report on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, April 2008. CRC/C/OPSC/NPL/1, para. 76*

⁵⁵*RatoPati (digital news - Nepali), 'Two Thousand Children are in Sex Business', May 24, 2016, available at: <http://www.ratopati.com/aakhabar/52214/> (accessed on: Aug 2, 2016)*

⁵⁶*Working Paper of Executive Director of CCWB presented in a seminar 'Commercial Sexual Exploitation of Children in Nepal and Role of Media' May 25, 2016.*

⁵⁷*Setopati (digital news - Nepali), 'The Data About Using Children in Sex Business Itself is Based in Assumption', May 25, 2016, available at: <http://setopati.com/samaj/47282/> (accessed on: Aug 2, 2016)*

⁵⁸*ECPAT International, The Commercial Sexual Exploitation of Children in South Asia: Developments, progress, challenges and recommended strategies for civil society (Bangkok: 2014), p. 35. This was based on 2009 CIWIN report, Situation Analysis of Working Children in Nepalgunj Municipality and Surrounding VDCs with Urban Characteristics.*

⁵⁹ *US State Department, 2010, <http://www.state.gov/documents/organization/143188.pdf>*

⁶⁰*CWIN&ECPAT, Preparatory Study for Situational Analysis of Commercial Sexual Exploitation of Children in Nepal: A Preliminary Report January 2015, p. 10*

⁶¹*Nepal was hit by decade long armed conflict that claimed the life of 13,000 people, a insurgency initiated by Maoist group, which was started in 1996 and came at end in 2006.*

⁶²*For example exploitation of Girl Child in the name of Devki. See generally: Liz Kelly, Rachel Wingfield, Sheila Burton and Linda Regan, Splintered Lives: Sexual exploitation of children in the context of children's rights and child protection, Child and Woman Abuse Studies, Unit University of North London, 1995*

⁶³*PabitraKarki, Exploitation of the Women in Cabin-Restaurant (A case study of Kathmandu Metropolitan City) a case study conducted for Social Inclusion Research Fund (SIRF), 2013.*

⁶⁴ *UNICEF, Commercial Sexual Exploitation and Sexual Abuse of Children*

IN SOUTH ASIA, (Kathmandu: Format Printing Press, 2001) p. 12

⁶⁵*Government of Nepal, Initial Report on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, April 2008. CRC/C/OPSC/NPL/1, para. 76*

⁶⁶*Ibid, para. 77*

⁶⁷*Concluding observations of Committee on the Rights on Consideration of reports submitted by States parties 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, 2012. para. 7.*

⁶⁸*ECPAT International, The Commercial Sexual Exploitation of Children in South Asia, (Bangkok, Saladaeng Printing Co. Ltd., 2014), p. 19.*

⁶⁹ *Ibid,*

⁷⁰*Government of Nepal, Initial Report on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, May 2011, CRC/C/OPSC/NPL/1, para. 67*

⁷¹*J. Frederick, M. Basnyat & J.L. Aguetant, Trafficking and Exploitation in the Entertainment and Sex Industries in Nepal: A Handbook for Decision-Makers, (Kathmandu: Terre des homes Foundation, 2010), p. 13.*

⁷² *Concluding observations of Committee on the Rights on Consideration of reports submitted by States parties 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, 2012. para. 25.*

⁷³ *Experience of Canada, see generally, A10 Year review of Canada's Tipline for reporting The online sexual exploitation of Children, available at: https://protectchildren.ca/pdfs/CTIP_10YearReport_en.pdf (accessed on Sept 12, 2016).*

⁷⁴*Global Alliance Against Child Sexual Abuse Online, Conclusion of 2015 Report. available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/global-alliance-against-child-abuse/docs/global_alliance_2015_report_en.pdf*

(accessed on Sept 15, 2016).

⁷⁵ *See generally, para 31 of the General Comment 13.*

⁷⁶*Ibid*, clarification.

⁷⁷CWIN Nepal, 'Protecting Children in Cyberspace', Kathmandu, 2009, available at: www.nta.gov.np/articleimages/le/Protecting%20Children%20in%20Cyberspace%20WTIS.pdf, accessed

21 August 2016.

⁷⁸A report published by Voice of Children and Child Protection Centers and Services, in 2008 as cited by ECPAT International, *Status of Action Against Commercial Sexual Exploitation of Children: NEPAL*, p. 12, available at: http://www.ecpat.org/wp-content/uploads/legacy/A4A_V2_SA_NEPAL.pdf (accessed on Sept 3, 2016).

⁷⁹UNICEF Innocenti Research Centre, *Child Safety Online, Global challenges and strategies: Technical Report* (Florence: 2012) p. 23 available at: https://www.unicef-irc.org/publications/pdf/ict_techreport3_eng.pdf (accessed on Sept 15, 2016).

⁸⁰ECPAT International, *The Commercial Sexual Exploitation*

Of Children In South Asia: Developments, progress, challenges and recommended strategies for civil society, (Bangkok, 2014) p. 17

⁸¹CWIN&ECPAT Luxembourg, *Preparatory Study for Situational Analysis of Commercial Sexual Exploitation of Children in Nepal: A Preliminary Report*, January 2015.

⁸²*Ibid*.

⁸³Adopted by General Assembly resolution A/RES/54/263 of 25 May 2000, entered into force on 18 January 2002

⁸⁴*Ibid*, Article 3,

⁸⁵Committee on the Rights of the Child, *The right of the child to freedom from all forms of violence*, General comment No. 13 (2011) CRC/C/GC/13,

⁸⁶*Ibid*, para 5.

⁸⁷Generally see, part IV. *Legal Analysis of Article 19*, and particularly para.31 of the *General Comment 13*

⁸⁸*Ibid*. para 32

⁸⁹Concluding observations of Committee on the Rights of the Child, *Consideration of reports submitted by States parties 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, 2012.

⁹⁰*Adopted in 1999 by the General Assembly of the World Tourism Organization, its acknowledgement by the United Nations two years later expressly encouraged UNWTO to promote the effective follow-up of its provisions.*

⁹¹*Introductory website of UNWTO, available at: <http://ethics.unwto.org/en/content/global-code-ethics-tourism> (accessed on Oct 2, 2016).*

⁹²*Global Code of Ethics for Tourism - Article 2, paras. 2 & 3*

⁹³*Concluding observations of Committee on the Rights of the Child, CRC/C/OPSC/NPL/CO/1, 2012. para. 26.*

⁹⁴*Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism, available at http://www.unicef.org/lac/code_of_conduct.pdf (accessed on Oct. 2, 2016).*

⁹⁵*At the First World Congress, the Stockholm Agenda for Action against Commercial Exploitation of Children was adopted by 122 governments and reaffirmed by 159 governments at the Second World Congress in Yokohama, Japan, in 2001.*

Adopted in 1999 by the General Assembly of the World Tourism Organization, its acknowledgement by the United Nations two years later expressly encouraged UNWTO to promote the effective follow-up of its provisions.

⁹⁶*Article 12, The Stockholm Declaration and Agenda for Action, adopted at: First World Congress against Commercial Sexual Exploitation of Children, Stockholm, Sweden, 27-31 August 1996*

⁹⁷*Concluding observations of Committee on the Rights of the Child, CRC/C/OPSC/NPL/CO/1, 2012. para. 12 (a).*

⁹⁸*Number 1 of Chapter on Rape, General Code, 1963 (Nepal).*

⁹⁹*Ibid, Number 9A.*

¹⁰⁰*For example: Number 1 of Chapter on Human Trafficking provides that “No person shall separate or lure to separate a minor below the age of 16 years or even a major who is mentally unsound....” It is therefore the term ‘major’ is by inference used here as a person above age of sixteen.*

¹⁰¹*Sections 2, 7 and 16 of Children Act, 1992 (Nepal).*

¹⁰² Sections 2 & 4 of Human Trafficking and Transportation (Control) Act, 2007(Nepal)

¹⁰³ The NPA was approved by the Council of Ministers, Government of Nepal, on 3 September 2012 and implemented.

¹⁰⁴ Para. 7, the National Policy for Children, 2012.

¹⁰⁵ See generally paras. 8 and 9 of the Policy.

¹⁰⁶The NGOs visited were: WOFOWON (Women Forum for Women in Nepal); Shakti Samuha; AATWIN (Alliance against Trafficking of Women in Nepal); Chhori; GMSP (GraminMahilaSrijanshilParivar); Biswas Nepal; AAN (AwajAbhiyan Nepal); Change Nepal; Shaathi; SathSath; CAP Nepal (Centre for Awareness Promotion); and CWIN (Child Workers in Nepal). The data or information are based on the researchers' interaction, interview and observation with the organizations teams.

¹⁰⁷ Based on the conversation with the Chairperson of Biswas Nepal, 28 June 2016.

¹⁰⁸ Source: Kathmandu District Government Attorney's Office, Babarmahal, Kathmandu.

¹⁰⁹Some parts are also discussed in Chapter Three of this report.

¹¹⁰National Human Rights Commission (NHRC), Trafficking In-Persons Especially on Women and Children in Nepal, National Report 2012-2013 (Office of the Special Rapporteur on Trafficking in Women and Children (OSRT) 2014) p. in.

¹¹¹ Free the Slave, Sex Trafficking in Kathmandu's Entertainment Sector:

Summary of Literature Review – December 2015. available at: <https://www.freetheslaves.net/wp-content/uploads/2016/02/Kathmandu-Entertainment-Lit-Review-Dec-2015-PUBLIC.pdf> (accessed on Oct 3, 2016).

¹¹² See also figure revealed by the Executive Director of CCWB as discussed earlier in this report.

¹¹³Ibid, p13.

¹¹⁴Government of Nepal, Initial Report on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 12 April 2009. CRC/C/OPSC/NPL/1, para. 78

¹¹⁵Source: Saathi, based on the record provided to researcher.

¹¹⁶The 2009 report submitted to UN Committee on Rights of the Child.

¹¹⁷ The boy was rescued by an NGO and after police investigation, the seventy-one years old pedophile was found guilty by the Lalitpur District Court and was sentenced to imprisonment for seven years.

¹¹⁸ECPAT International, *The Commercial Sexual Exploitation of Children in South Asia: Developments, progress, challenges and recommended strategies for civil society* (Bangkok: 2014), p. 35. This was based on 2009 CIWIN report, *Situation Analysis of Working Children in Nepalgunj Municipality and Surrounding VDCs with Urban Characteristics*.

¹¹⁹ Source: Kathmandu District Government Attorney's Office, Babarmahal, Kathmandu. Also see: Keshav P Koirala for *The Himalayan Times*, *American held from Thamel for paedophilia; 5 kids rescued*, posted on 11 September 2016 available at: <https://thehimalayantimes.com/kathmandu/american-man-held-kathmandu-paedophilia-charge/> (accessed on Oct 2, 2016); *The Kathmandu Post*, *Paedophilia case: American man arrested, five children rescued*, posted on 12 September 2016, available at: <http://kathmandupost.ekantipur.com/news/2016-09-12/american-man-arrested-five-children-rescued.html> (accessed on Oct 2, 2016); KPDhungana for *Kantipur Daily* (Nepali version), *Organized Gang in Pedophilia*, Published on 11 September 2016.

¹²⁰ Expressed by DIGPNawarajSilwal, the Director of Central Investigation Bureau (CIB), in an interview taken by BBC Nepal Radio on 13th September, 2016. available at: http://www.bbc.com/nepali/bbc_nepali_radio/p046zlx3 (accessed on 15 October 2016).

¹²¹Concluding observations of Committee on the Rights on Consideration of reports submitted by States parties 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, 2012. para. 7.

¹²² Source: Nepal Police, Women and Children Service Directorate (WCSD).

¹²³ See previous Chapter.

¹²⁴Nepal Police, *Monthly Data Related to Women and Children in Fiscal Year 2072/2073* (2015/2016).

¹²⁵Office of the Attorney General, *Annual Report from Attorney General 2071/072* (2014/2015), Schedule 37, p. 232