MAPPING OF ACCESS TO JUSTICE FOR WOMEN IN NEPAL

Bridging the gap between formal and informal systems through women’s empowerment
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FOR WOMEN IN NEPAL
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1 Introduction

Women’s access to justice is not only central to protect, realize and promote women’s human rights in line with Nepal’s Constitution of 2015; it is also crucial to implementing the 2030 Agenda for Sustainable Development, in particular Sustainable Development Goals (SGDs) 5 and 16, and to the SDGs’ overall commitment to “leaving no one behind.”

With successful completion of local, provincial and federal elections in 2017, Nepal shifted its governance structure from a unitary to a federal system, with a division of power between the federal, provincial and local levels. To bring justice closer to the people, in particular for marginalized and vulnerable groups, 753 Judicial Committees were established at the local level, one in each municipality/rural municipality, with mandates for adjudication and mediation in line with the Constitution and the Local Government Operation Act, 2017. It is crucial to ensure that this new mechanism at the local level is well functioning and integrated within Nepal’s broader justice system, bridging the gap between local demand for justice and governmental institutions.

Since 2015, the country has also seen the initiation of a vast legal reform, including with the revision of the Civil Code and Penal Code that entered into force in August 2018. These restructuring and reforms are also guided by the recent Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW Committee), and the recommendations of the Special Rapporteur on violence against women, its causes and consequences (Special Rapporteur on violence against women) made during her visit in 2018. In this context, there is now a historic opportunity to ensure that women, in particular from excluded and vulnerable groups, are empowered as rights holders and that the emancipatory and transformative potential of law is optimized.

Since June 2018, UN Women, the International Commission of Jurists and the Office of the United Nations High Commissioner for Human Rights have been jointly implementing a five-year programme entitled Enhancing Access to Justice for Women in Asia and the Pacific: Bridging the gap between formal and informal systems through women’s empowerment. The project will be implemented at the regional level, with initial focus on Indonesia, Philippines, Nepal, Sri-Lanka, Timor-Leste and activities in the Pacific. The project aims to enhance access to justice for women in formal and informal systems by: (a) ensuring that laws and court decisions are consistent with international standards and human rights mechanisms, including CEDAW; (b) combatting gender-discriminatory attitudes in the justice system; and (c) empowering grassroots women’s organizations to better document and monitor cases, and to liaise with justice providers in their communities.

UN Women Asia Pacific, in close consultation and collaboration with the Government of Nepal and civil society, has conducted a mapping
of women’s access to justice. The findings are based on the desk review of available documentation, as well as key informant interviews and focus group discussions (FGDs) with government stakeholders, frontline justice actors, civil society, women’s cooperatives, women’s advocates, development partners and UN agencies in Kathmandu, Provinces 6, 3 and 2. After assessing the trends of women in accessing justice, the report identifies the possible barriers at different steps that prevent women from seeking remedy of their rights. It recognizes governmental and non-governmental efforts to enhance women’s access to justice and identifies some areas that could be entry points for the new project by UN Women Nepal. This mapping thus ensures that the new programme is tailored to the needs in the new federal context and normative framework, and in line with work by other stakeholders on access to justice for women in Nepal.

The activities developed on the basis of the findings will be aligned with the Constitution, Nepal’s Fourteenth Plan (2073/74-2075/76 [2017-2020]), the priorities emphasized in the development process of Nepal’s Fifteenth Plan (2076/77-2080/81 [2020-2023], the United Nations Development Assistant Framework 2018-2022, the 2018 CEDAW Concluding Observations, and the vision of the Ministry of Law, Justice and Parliamentary Affairs, the Supreme Court and its Access to Justice Commission, the Office of the Attorney General, the National Judicial Academy, the Nepal Bar Association, and civil society efforts.
2 Context analysis and trends on women’s access to justice

2.1 Context analysis

2.1.1 Nepal’s shift to federalism

The vision of Nepal as a secular, inclusive and federal democratic republic is enshrined in the Constitution of 2015, which calls for “ending discriminations relating to class, caste, region, language, religion and gender” and to “create an egalitarian society on the basis of the principles of proportional inclusion and participation, to ensure equitable economy, prosperity and social justice.” The Constitution has broken the ground and led the country in its largest reform since 1990. It enabled the transition of the country from a unitary to a federalist system of governance with seven provinces and 753 municipalities. The power of the state is now shared by the governments at the federal, provincial and local levels. Aspiring to bring government structures closer to the people, the unprecedented reform also led to a profound shift in the justice system with the creation of Judicial Committees in all the 753 local governments to increase access to justice and bridge the formal-informal justice divide. The Judicial Committee is a three-member committee headed by the Deputy Mayor/Vice-Chair in the capacity of a coordinator. The two other members in the Judicial Committee are elected by the members of the Village Assembly or the Municipal Assembly from amongst themselves. The mandate of the Judicial Committee is twofold for matters within its jurisdiction: Depending on the nature and matter of the case, it has power to adjudicate certain cases directly and to refer other cases to mediation (Section 47 of the Local Government Operation Act), with priority given to reconciliation through mediation at each procedure. For cases beyond its mandate, the Judicial Committee has to refer to the District Court. The Judicial Committees are a key mechanism aimed at bringing justice closer to the people. The elections of 2017 resulted in a historic number of women entering public office across the three levels of government. Currently 93 percent of deputy mayors or vice-chairs are women, in other words 700 out of 753 Judicial Committees are women-led, creating an opportunity to enhance women’s access to justice, particularly in rural areas where access to courts have been limited.
2.1.2 Enactment of Civil Code and Penal Code

The new Penal Code and Civil Code, which were adopted in August 2017 and entered into force in August 2018, profoundly reformed Nepal’s legal system by bringing major changes to the laws and proceedings. It introduced key provisions further protecting women’s rights, including: (a) extended statutory limitations; (b) a modified definition of rape to encompass victims under the age of 18 with or without consent; (c) increased sentences for murder after torture or rape and rape convictions; (d) the addition of marital rape as a basis for legal divorce; (e) the provision of equal ancestral property rights to a married daughter; (f) the reinforcement of virtual and in-camera hearings systems; and (e) the criminalization of enforced disappearance, torture and discrimination, particularly caste-based and gender-based discrimination. The criminalization of discriminatory practices, including the preference for sons over daughters, accusations of witchcraft, chhaupadi (a discriminatory and harmful practice against menstruating women and girls), child marriage and caste-based discrimination constitutes a landmark towards the elimination of norms and practices that are discriminatory towards women, girls and marginalized groups. Despite these progress, there are concerns in relation to the statute of limitations for registering cases of rape and other sexual violence, discriminatory provisions that restrict women’s right to marital property upon divorce, and the low level of awareness amongst women and girls on their rights and available mechanisms to access justice.

2.1.3 Amendment of gender discriminatory provisions

In line with the provisions on women’s rights and gender equality in the Constitution, the Government of Nepal has carried out a profound reform of its normative framework to repeal or amend any gender discriminatory provisions and adopt new laws and policies. In 2015, the Government identified the need to amend 315 laws and enact 110 new federal laws, 22 provincial laws and six local-level laws, to fully implement the provisions of the Constitution. As per Article 47 of the Constitution, 16 acts on the implementation of fundamental rights were adopted in September 2018. Despite some progress, there are still gaps and delays in the implementation of the constitutional provisions. In this regard, the CEDAW Committee raised concerns on the delayed adoption of a specific legislation on special opportunities in the fields of health, education, employment, housing, clean water, sanitation and social security. Numerous gender-responsive laws and policies have been introduced, including Act to Amend Some Nepal Acts for Maintaining Gender Equality and Ending Gender Based Violence (2015), Sexual Harassment at the Workplace (Elimination) Act (2015), and Rights of Persons with Disability Act (2017). In 2018, the Special Rapporteur on violence against women highlighted the current gaps in the effective implementation, monitoring and evaluation of policies and programmes for eliminating gender-based violence against women, and reiterated the priority to ensure that laws and policies on the rights of women and violence against women are properly interpreted and fully implemented at the federal, provincial and local levels.
2.1.4 Transitional justice

Measures taken for transitional justice include the establishment of the Truth and Reconciliation Commission and the Commission on Investigation of Enforced Disappeared Persons, and the adoption of the National Action Plan (NAP) on United Nations Security Council Resolutions (UNSCRs) 1325 and 1820. Review of the first phase of the NAP and its implementation have highlighted major gaps which includes the issues of conflict-affected women and girls, particularly of victims/survivors of conflict-related sexual violence, that were not addressed. Recognising these gaps, the second phase of the NAP is currently being developed by the Ministry of Home Affairs, with an explicit focus on conflict-related sexual violence. However, measures related to the two transitional justice commissions have not yet adequately addressed women’s human rights violations related to the decade-long conflict (1996-2006). Till date only a low percentage of conflict-related sexual violence cases have been registered at the transitional justice mechanisms established from 2015 (the Truth and Reconciliation Commission and the Commission on Enforced Disappeared Persons), revealing the practical barriers and unfriendly environment for women victims to raise their voice, claim reparations, and access justice for conflict-era violations. The current Draft Bill to Amend the 2014 Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act initiated in July 2018 introduces numerous changes to the law. Notwithstanding some positive changes, there are still serious concerns from human rights organizations and conflict victims on the shortcoming of the bill in line with the international human right laws and standards. This bill could contribute to a more comprehensive and victim-centric process, and strengthen gender responsiveness of the above-mentioned Commissions, provided the Concluding Observations of the CEDAW Committee on women, peace and security are implemented, and the concerns of civil society, victim’s groups and international human rights organisations are addressed.

2.2 Trends of women’s access to justice

2.2.1 Types of cases commonly reported

Together with the vast legal reform that the Government initiated in 2015, the entry into force of the new Civil and Penal Codes in August 2018, and the revision of the transitional justice framework, there is now a historic opportunity to create an environment enabling all women to access justice in a well-informed and stigma-free manner.

2.2.2 Help-seeking behaviours

The 2015 National Judicial Academy study and the interviews conducted as part of the mapping identified the types of cases most commonly brought by women to justice actors in Nepal, namely: violence (domestic violence, non-intimate physical and sexual violence, sexual harassment, threats, and conflict-related violence); marriage (including polygamy, forced marriage, marriage by deception); divorce; the sharing of marital and parental property; harmful practices (in particular chhaupadi, child marriage, accusation of witchcraft); human trafficking; alimony; and caste-based discrimination, including untouchability.

Most violations of women’s rights go unreported in Nepal, due to the social stigma attached to help-seeking behaviours, as well as to practical obstacles. According to a 2015 study only 27.6 percent of women whose rights had been violated had lodged complaints. The National Human Rights Commission reported that only 227 cases of human trafficking were registered with the police in the fiscal year 2016/2017, and 305 cases for the fiscal year 2017/2018. The 2017 Nepal Demographic Health Survey 2017 also shows a similar trend for cases of violence against women. It found that 22 percent of women aged 15-49 have experienced physical violence, 7 percent have experienced sexual violence, and 26 percent of ever-married women have experienced emotional, physical or sexual violence; however, 66 percent of victims have never sought help nor told anyone, and only 22 percent of victims have sought help to stop the violence.
This low level of help-seeking, including towards family and friends, stems from the fear of stigma or exclusion, as well as the normalization of violence whereby violence becomes seen as part of a woman’s life. Among women who do seek help, victims approach their own family (59 percent of victims who sought help), their neighbours (37 percent), friends (29 percent), the police (10 percent), the husband’s family (4.3 percent), social work organizations (3.5 percent), religious leaders (1 percent), and lawyers (1 percent). Victims may approach several sources of help. Although the Sexual Harassment at the Workplace (Elimination) Act was enacted three years ago, no case has so far been registered under its provisions.

Furthermore, the time between experiencing an incident and seeking legal support is usually longer for women than for men, according to one unpublished study. Women were less likely to seek immediate support, and usually waited at least six months. This delay was related to the time taken to decide to seek help, and the attempts to solve the issue within the family. More importantly, women usually decided to bring their case forward not after a single incident, but rather after a series of events that caused an escalation, made the situation untenable, or brought more significant complications to their lives and those of their children.

2.2.3 Source of legal support and influencing factors

A woman’s choice on seeking help is influenced by factors including: the justice actors’ presence in and trust by the community; the identity of the woman; the local community; and the strength and reputation of local women’s groups, cooperatives or grassroots organizations.

In general, people in Nepal consider the police as the first actor to seek help from after a crime occurred. Discussions with women’s cooperatives and local NGOs have however revealed that this may not always be the case for women victims of violence. Particularly in rural areas, where some women prefer to go to the community leaders or local women’s groups over police due to high fear and risk of social stigma, marginalization and threats from the community for reporting to the police.

Women’s cooperatives, grassroots women’s organizations, non-governmental organizations (NGOs), and other groups present at the community level may also be the first source of help women seek, but this cannot be generalized as the presence of such civil society organizations is not consistent throughout Nepal. In localities where such support and organizations are available and well-known, women often reach out to them before the community leaders.

Sources of help outside the police and formal mechanisms have shown different ways of handling a case. Most commonly, traditional leaders attempt to solve the issue themselves, outside of the formal or institutionalized mediation system. Women’s groups first assess whether the claim is genuine, and then refer to the adequate authority. Members of women’s cooperatives reported that they also try to directly solve the issue at the community level for minor disputes, again outside of any institutionalized mechanisms.

Women also access mediation available at the community level for resolving disputes. Prior to Nepal’s shift to federalism that also made way for the formation of judicial committees, women, often referred by NGOs and women’s groups, were accessing community mediators for resolving disputes. In some parts of the country, local bodies (Village Development Committees at that time) had taken ownership of community mediation centres, that provided mediation services through trained mediator, formed through support of various INGOs, NGOs and development partners. The Mediation Act, 2011, and the Mediation Regulation, 2014, provide the regulatory framework to guide community mediation.
3 Barriers to women’s access to justice

There is a common perception among women that they cannot access justice without facing challenges. According to the 2015 study by the National Judicial Academy, out of 1,497 women respondents who had lodged a claim, 34.7 percent said they had felt difficulties in accessing justice because they are women. The study further identified the main reasons for women not to lodge a complaint, namely: distance from providing center; complex and lengthy procedures; financial constraints; lack of knowledge about where to seek support; fear of additional violence; and fear of stigma or marginalization by the family and community.

More recently, the Special Rapporteur on violence against women recognized the overall efforts being made to improve access to justice for women, while highlighting several significant factors impeding these efforts, including: the lack of training for the police and judiciary to enable them to adopt a gender-sensitive approach when investigating cases; the social stigma associated with reporting; the general lack of awareness among women of their rights; the weakness of preventive measures and measures to ensure the compensation, rehabilitation and protection of victims; and the low level of implementation of court judgments, including judgments to grant compensation.34

The root causes of preventing women’s access to justice are the deeply entrenched patriarchal and gender-discriminatory behaviours and stereotypes, together with the marginalization of women from public spheres and the unequal power dynamics. Even after they do speak out, women’s claims for social justice and reparations are rarely met. They are re-victimized at every step of the legal process.35

3.1 Barriers inherent to the claimant herself:

The 2015 National Judicial Academy study highlighted the link between the educational status of women and their access to justice, whereby more women with lower educational status felt they faced obstacles in accessing justice. Women tend to lack awareness and knowledge about gender equality, women’s rights, legal provisions and procedures, as well as about justice systems available to them. As a result, women are not able to take necessary action and seek
justice from the relevant justice actors when their rights are violated. The deep-rooted patriarchal and stereotyped mindset has led to the normalization of violence, whereby women themselves often do not recognize violence against them as a crime. According to the Nepal Demographic and Health Survey, 28.5 percent of women consider wife-beating justified. The Special Rapporteur on violence against women also highlights the economic dependence of women on their husbands and in-laws as a significant barrier.

Due to social stigma, and lack of trust towards justice providers, women are also ‘unwilling’ to seek legal support. In the words of one respondent, “they don’t want to be labelled as victims.”

"Access to justice depends on the power of the victim. If the victim is powerful, she goes to the administration. If she is not, she has to tolerate." FGD participant, Kavre District, Province 3

Sometimes, a woman who brings her case forward is accused of disrupting her family and community. If the case results in conviction for the perpetrator, the victim may then feel guilty or shameful. Such experiences of lack of awareness and sense of guilt were expressed in the FGDs:

"A girl was repeatedly raped by her father after her mother died. Every day she would go to sleep at her friends’ house after work. Therefore, people around her started to ask questions and learnt about the incidents. Now the father is in jail. The daughter feels really sad about it and wishes the community had never known.”
FGD participant, Kavre District, Province 3

3.2 Barriers linked to environment of the victim:

The family is the victim’s immediate environment, whether it is her birth or marital family, and plays a key role in supporting or impeding women’s access to justice throughout the process. The family may put pressure on the woman not to register her case due to honour and fear of humiliation. In view of the dependency of a woman upon her family, there is little chance for a woman to reach out to a justice service provider if she is not supported, or worse, is threatened, by her family. Additionally, examples were given whereby the family does not respect the compromise reached or the reparation ordered by the justice actor. In many cases of violence that were settled through compromise, the husband and/or the in-laws promise to change their violent behaviour. However, the husband and in-laws of the victim continue to perpetuate the violence as soon as the woman comes back home. In cases involving the separation of property, such as land, the family either does not give the property as ordered, or else deliberately provides property that could not be used, such as a piece of land where nothing could be grown.

"A woman was working in a hotel. She filed a case against her husband because he was beating her. After that she went to a shelter home. Following the incident, the husband came to the police and promised he would change. However, when the woman went back home, the husband started beating her again." FGD participant, Kavre District, Province 3

"A woman was raped by a relative of her husband. She went to the police to lodge her complaint, soon joined by her husband. Claiming he would accept her even if she had been raped, he however could not face the humiliation of it, and ordered her not to register the claim. He grabbed and tore apart the First Information Report while saying “the rapist or me.” Since it was the second marriage for both, the woman feared that no other
The community may also be an obstacle preventing or deterring women from accessing justice. In some instances, women who bring their case forward are blamed, excluded and marginalized by the community. This is more common where the perpetrator is economically and socially strong, and the victim suffers from pre-existing discrimination.

“A Dalit woman and her daughter were beaten by higher-caste women on their way to get water. They succeeded in having their case registered at the police only with the support of a Women Human Rights Defender. When they left the hospital, they learnt that the perpetrators had been freed as they had paid the bail. When they came back to the village, the Dalit woman and her daughter were blamed for having gone to the police, the whole village boycotted them, the shop owners refused to sell them anything. The woman tried to kill herself. That’s why women usually prefer to keep their issues low.” NGO worker, Kathmandu District, Province 3

“The community surrounds the victim and forces her to drop her complaint. A victim never withdraws a case of her own free will.” FGD participant, Kavre District, Province 3

3.3 Barriers linked to the alleged perpetrator

Pressure and threats are a common practice by the defendant, their family, lawyer or community leader taking the defendant’s side, in particular if the defendant has economic, social or political power. This aim to prevent women from reaching out to justice providers, from registering her case, or processing the case with the necessary statements and hearings. They take the form of defamation, threats to the claimant and/or her family, repeated harassment and humiliation, promise of financial gains, pressure or bribery.

“For some perpetrators, it is almost a game. They will compel the victims or the police to drop the case and will show who has the most power.” FGD participant, Kavre District, Province 3
3.4 Barriers linked to justice systems and actors:
Due to traditional norms, stereotyped behaviours, personal bias, practical constraints or other factors, women face challenges in obtaining full support from the judicial authorities throughout the entire process.

3.4.1 Community leaders
In Nepal, community leaders vary depending the specific local context, but generally include traditional or religious leaders, as well as community members with a higher social and economic status. Community leaders often prefer to settle cases through mediation in line with their role of maintaining social order without disruption. However, due to lack of sensitivity to gender issues and women’s rights, as well as personal and political bias, the agreement is most of the times reached with limited consultation with the woman, and is usually not commensurate with the gravity of the violation. In cases of land disputes for example, the woman may be provided land, but the portion is often small or inappropriate for growing crops. In cases of violence, if the perpetrator is external to the family of the woman, he may be punished by public blaming, made to apologize, or be required to provide financial or in-kind compensation to the family or in-laws of the claimant. Sometimes, cases of rape are resolved by the perpetrator marrying the survivor.

3.4.2 Traditional justice mechanisms
There is a long custom of traditional justice mechanisms in Nepal for resolving disputes in the communities. They continue to play a significant role in settling family or community disputes in various parts of the country. Various ethnic groups in Nepal have their own traditional justice mechanisms that are shaped by their customary laws and traditional values. Indigenous ethnic groups, such as Thakalis, Magars, Tharus and Sherpas, have traditional dispute-resolution mechanisms, such as Mukhiya system, Badghar system, Khata Yanzii, and Maulabi. Informal justice mechanisms are more accessible to local communities than formal mechanisms, cost-effective, and operate in local languages that are understood by local communities. However, these traditional justice mechanisms also face a range of challenges. The setbacks for women inherent in these mechanisms are similar to those displayed by community leaders, namely a limited knowledge and sensitivity to women’s rights and gender equality issues, the preferred use of mediation even when cases should be referred to the court, and the resolution of disputes centred around preserving the harmony of the community rather than on the rights of women to obtain justice. Similarly, traditional mechanisms, mostly led by men, follow patriarchal customs and traditional documents to settle disputes rather than the principles of human rights principles and gender equality or formal legal procedures. Traditional mechanisms also demonstrate little knowledge of the difference between civil and criminal cases. Traditional mechanisms may be politically affiliated or subject to pressure from political parties.

3.4.3 Community mediation
Community mediation is a well-accepted form of alternative dispute resolution mechanism in Nepal. The Mediation Act, 2011, and the Mediation Regulation, 2014, provide the regulatory framework to guide community mediation. In view of the inaccessibility and unaffordability of formal justice mechanisms, particularly for women and marginalized groups, community mediation has allowed many women to have their cases decided, including in cases of domestic violence as stipulated in the law. Many female community mediators got elected as deputy mayors or as members of the Judicial Committees due to their contribution in the community. Prior to Nepal’s shift to federalism that also made way for the formation of judicial committees, women, often referred by NGOs and women’s groups, were accessing community mediators for resolving disputes. In some parts of the country, local bodies (Village Development Committees at that time) had taken ownership of community mediation centers, that provided mediation ser-
vices through trained mediators, formed through support of various INGOs, NGOs and development partners. Although the Local Government Operation Act, 2017, has provisions for mediation to be carried out by mediators enlisted by Judicial Committees\(^41\) and Judicial Committees have the option to set up mediation centers at the Ward level\(^42\), mediation centers are yet to be established in many parts of the country\(^43\). As a result, some of the Judicial Committees are still having to rely on the trained community mediators that were already available in some Wards. Despite trainings on community mediation, limited knowledge about gender equality issues and personal bias have prevented many community mediators from carrying out gender-sensitive mediation. Cases of rape and other types of gender-based violence that should be referred to the formal court continue to be dealt with through mediation, leading to impunity and further injustice to victims. Furthermore, procedures followed by community mediation centers are not harmonized throughout Nepal.

"Community mediation has been instrumental in empowering women, we can see that in our projects. Initially women had little voice, but then they became political leaders."

NGO, Kathmandu District, Province 3

3.4.4 Judicial Committees

The creation of judicial committees at the local level, 93 percent of which are led by women, represents a historic opportunity to facilitate access to justice, in particular for women and marginalized groups. Yet judicial committees face challenges in fulfilling their judicial role in an independent manner in line with the commitment of inclusion and equality enshrined in the Constitution. The Special Rapporteur on violence against women has expressed concerns on some setbacks for judicial committees, including the lack of legal expertise and knowledge of gender-sensitive investigation procedures among committee members, as well as the unclear relationship between the committees and court procedures, the limited financial resources, the insufficient coordination between federal, provincial and local structures and the quasi-judicial and political nature of the committees\(^44\).

"In the changed scenario, the local level can do so much for women’s access to justice. The establishment of the Judicial Committee is a good approach. Deputy Mayors are now a judicial authority and can examine cases. However, they lack the expertise, infrastructure and support that would give them credibility."

Representative, National Women Commission, Kathmandu

"The members of Judicial Committees lack the necessary knowledge to meet their Terms of Reference. There are some good examples, but these are mainly when the members of the Committee were previously engaged in civil work, when the mayor and deputy mayor are from the same political party, or when the deputy mayor has a good education or experience in community mediation. In some cases, the mayor does not recognize the rights of the deputy mayor, even when the deputy mayor is a man. Some mayors only know how to exercise political power."

NGO representative, Kathmandu District, Province 3

A considerable number of the deputy mayors or vice-chairs and other members of the Judicial Committee were previously working in the political or social spheres – as a political party worker, mediators, or as women human rights defenders\(^45\). However, on the whole, the people in those positions generally have limited necessary legal knowledge and experience of administrative, managerial and legal processes. This is particularly an issue as the Judicial Committee must directly quote the law when adjudicating. In many cases, members of the Committee have no knowledge or sensitivity regarding women’s rights, gender issues and gender-sensitive processes.
“Women don’t like the Judicial Committees because they don’t listen to them. If they listen, they don’t understand the issue. At the end, victims come back to us.”
Representative of a women’s cooperative, Kavre district, Province 3

“We have received many trainings on theory, now we want more practical trainings. The training should not only be for us, but for the whole Committee.”
A woman deputy mayor, FGD participant, Surkhet District, Province 6

Although the federal government has provided model law and procedures to execute the Local Government Operation Act, the guidelines developed at the local level remain unclear, leading to lack of clarity and understanding regarding the roles and responsibilities, functions, and procedures of Judicial Committees among them. There is yet no quality control and decision implementation mechanism to sustain high-quality dispute resolution at the local level.46

In some instances, dismissive attitudes and behaviour from judges towards the Judicial Committees prevent potential peer learning and cooperation between the justice actors at the district and local level.

“The role of the deputy mayor is the same as the police. They exist at the community level to refer the cases to us.”
A judge, Surkhet District, Province 6

There is a substantial lack of mediators, preventing a considerable number of Judicial Committees from setting up their mediation center and leading to a lack of mediation service for cases that have to be settled through mediation by the committees.

Many of the Judicial Committees are not equipped with the necessary infrastructure to function properly. The lack of a separate room prevents deputy mayors or vice chairs from meeting victims individually and with confidentiality, which are particularly important for cases of gender-based violence, including domestic violence.

This lack of infrastructure contributed to concerns on the lack of privacy and confidentiality in hearing the cases. In a few cases, the discussions between the deputy mayors/vice chairs and the claimant, and later during the mediation itself, were led in the office of the deputy mayors/vice-chairs, shared with the mayor. In other cases, people were able to listen from outside and intervene in the process, leading to constant interruptions and lack of the privacy and confidentiality that are crucial in cases of violence.

Deputy mayors/vice-chairs have reported facing interference or pressure from mayors, their own family and the local population, leading to little independence in coordinating the Committee, and in the most extreme cases to the mayor ruling on cases himself/herself.

“We went to meet with a woman deputy mayor to discuss her role in the Judicial Committee. There were many people in the room, no one seemed to speak Nepali, including the deputy mayor herself. Then she asked us whether her husband could come in the room to interpret. After the meeting, we heard her speaking perfect Nepali over the phone.”47
NGO representative, Kathmandu District, Province 3

Reasons such as: pressure from the parties to the case, together with a possible confusion over roles and responsibilities of the Judicial Committee, and attitude of the deputy mayor to consider him or herself a “judge”, lead to cases being directly adjudicated or mediated, even when cases are supposed to be referred to the District Court as per the provision under Section 47 of the Local Government Operation Act.

“Some deputy mayors mediate rape cases. Due to the lack of legal knowledge and...”
external pressure, the referral system to the District Court does not work.”
NGO representative, Kathmandu District, Province 3

“In a few municipalities, Judicial Committees have directly decided cases that should have been mediated. They are not following the steps in line with the law. They want to do everything on their own.” NGO representative, Kavre District, Province 2

Some deputy mayors/vice-chairs reported harassment, threats or violence from family members and the community due to the increased leadership role they assumed in the capacity of elected representative. This has led to fear of retaliation or revenge among the deputy mayors/vice-chairs after registering and handling a case, in particular if the case has been directly adjudicated.

The lack of knowledge and awareness by the local population regarding the division of responsibilities and the role of elected women in the Judicial Committees also led to claimants approaching the Mayor to register their case and share their grievances or approaching the court.

The overlapping administrative, policy, financial and adjudicative functions of deputy-mayors/vice-chairs, together with the political appointment of the deputy mayors/vice-chairs lead to a high risk of political bias in the registering and handling of cases. In the same vein, some deputy mayors only handle cases through mediation. This is because mediation creates a win-win situation for both parties, ensuring that the deputy mayor remains in a favourable position for future re-elections. Lastly, in some instances deputy mayors showed little interest in taking forward their role as the coordinator of the Judicial Committee as it prevented them from focusing on other areas of work that would contribute towards their popularity for re-election.

“Some deputy mayors see the Judicial Committees as additional burden. They are not concerned with their judicial role, and they only focus on development work, such as road construction, because they want to be popular among the community and be re-elected in three years.” NGO representative, Rautahat District, Province 2

“Some deputy mayors are not willing to decide any case. They think that the risk for the present and future re-election is too high, because in each decision one party to a case wins and the other one loses. We now see local level justice motivated by politics.” NGO representative, Kathmandu District, Province 3

“Not in every case, but often if the Deputy Mayor is from the same party as the victim, she will tell her not to go to the court, even in cases of rape and violence. She will say that she will be provided money. Poor women will take the money.”
FGD participant, Kavre District, Province 3

Personal bias and stereotypical attitudes perpetuating patriarchal norms and the normalization of violence from the elected women have had negative impacts on women’s cases. Some deputy mayors/vice-chairs have refused to register cases or compelled victims to withdraw their case as they considered the situation to be justified and a part of a woman’s life.

The Local Government Operation Act, 2017 Section 51 provides the right to appeal, whereby the decision taken by a judicial committee may be appealed to the concerned district court within ninety days of the date of the decision. However, in view of the obstacles faced by women to access courts, it is unlikely that women, in particular from marginalized groups, will be able to challenge a decision by the Judicial Committee if they are unsatisfied.

3.4.5 Police
Concerns have been raised by respondents over the barriers that women, particularly from mar-
ginalized groups, face when going to the police to seek support. These are particularly related to intimidating and judgmental behaviour from police personnel, starting as early as when a woman enters in the station and is confronted by the guards. In many instances, the police ask inappropriate questions or delegitimize the victim, compelling her not to register her complaint. The CEDAW Committee raised concerns that officers, especially at the local level, prevent the registration of sexual and gender-based violence, and do not comply with rulings of higher courts.48 Cases have been reported where the police mediated cases themselves instead of investigating it and taking it to the appropriate authority, such as the Attorney General Office. If the case is properly registered, gender-blind and inadequate investigation and interrogation procedures lead to poor collection of evidence, preventing effective prosecution by the Attorney General. The Special Rapporteur on violence against women raised concerns on the limited capacity of the police to guarantee full and effective investigations of cases, in particular those related to sexual violence, and on the high number of cases that resulted in impunity for the perpetrator.49 During the Universal Periodic Review of Nepal in 2015, emphasis was put on the need to prosecute and punish the perpetrators, as well as on the need to facilitate complaints from victims of gender-based violence and their access to justice.50 In his report of 2018, the Special Rapporteur on Human Rights of Migrants highlighted the limited involvement of the police in investigating cases of deceptive recruitments and forced labour, as it severely limits migrant workers’ access to justice.51

“Women don’t trust the police. When they go to the police, they are not 100-percent sure that they will get justice. There are a lot of cases where women went to the police and nothing happened.” A women’s cooperative member, Kavre District, Province 3

“The police do not take due care with cases related to violence. They call the victim at 4:00 or 4:30 pm, leaving no time to deal with it properly before they go off-duty at 5pm.”
A women’s cooperative member, Kavre District, Province 3

“If there were more women personnel, it would be easier for women to share stories. Now, even the gate keeper discourages women to go and register their case.”
FGD participant, Surkhet District, Province 6

3.4.6 Lawyers

Concerns were raised by respondents of interviews and discussions over the quality of legal representation of some lawyers, for both the woman and the opposing party, particularly regarding their conduct and ethics. The respondents further mentioned that the lawyer of the opposing party sometimes puts pressure on the lawyer of the claimant to drop the case, or on the claimant herself, through threats or bribes. In addition, the lawyer may ask for excessive fees that cannot be paid by the claimant, may disrespect his or her code of ethics by sharing the confidential information received, or may disappoint her claimant with generally insensitive behaviour and handling of the case. Moreover, lawyers offering services pro bono are often junior and have little experience. This has consequence particularly in cases related to women’s issues that require expertise. The respondents further noted that only few senior lawyers offer their services pro bono.

3.4.7 Courts

Financial constraints, lengthy procedures, distance to the court, use of language not understood by the claimant, discriminatory decision-making,52 and poor enforcement of decisions are among the factors that prevent women from lodging a complaint to the court or from being provided fair remedy for the violation of their rights.

“There is a clear financial burden for victims. Sometimes women even sell their jewellery to go to court.”
FGD participant, Kavre District, Province 3
“In many property cases, the court provides useless property, such as a field on which no crops can be cultivated. Else the family will refuse to give the property ordered. The court provides justice only on paper.” FGD participant, Kavre District, Province 3

The Rule of Law Index of 2019 ranked Nepal 59th out of 126 countries in relation to corruption, with an index of 0.43 for corruption in the judiciary, and 0.46 for effective enforcement, where 0 is complete corruption, and 1 is none.53

3.5 Challenges faced by support systems for women:

3.5.1 National Women Commission

The National Women Commission acts on women’s cases in two ways. In the first scenario, when a complaint is directly lodged by a woman, the Commission refers the case to an NGO responsible for providing legal support. In the second scenario, the Commission receives the case from an activist who has already gathered all the necessary documents and information on a case that has not yet been registered or handled properly.

The Commission then sends a letter to the responsible authority requiring them to take the necessary actions. If no action is taken, the responsible authority must give the reasons to the Commission. The CEDAW Committee raised concerns on: a) the absence of a Commission on Women’s Rights; b) the insufficient allocation of resources for the functioning of the Commission; and c) its limited mandate. All this prevents the Commission from receiving complaints and from issuing ruling that are legally binding.54 Article 253 (f) of the Constitution on Functions, Duties and Powers of the National Women Commission mentions the possibility for the Commission to forward a recommendation to the concerned authority to lodge a petition in the court, in matters related with gender-based violence and women deprived of their rights. There is a need to ensure that the overseeing bodies of the police and courts closely collaborate with the Commission to take these cases forward.

3.5.2 Women’s cooperatives and watch groups

Under the Government of Nepal’s Integrated Women Development Programme,55 and programmes by local civil society organizations, women’s cooperatives and gender-based violence watch groups have been mobilized. Their main objectives are to: raise community awareness on the prevention of violence; ensure early identification and intervention; provide immediate protection of victims; as well as facilitate referral to service providers, including law enforcement and justice actors. With their increasing popularity and capacities, these groups are a key player in bridging the community and the Judicial Committees, police, and courts.

“When a woman comes to us, we determine what type of case it is. If she needs to go to the police, we will go with her; if the case is minor, we will try to solve it in the community. Women here really feel that the cooperative will give them justice.” A women’s cooperative member, Kavre District, Province 3

However, women’s cooperatives and watch groups reported lacking legal knowledge, preventing them from referring victims to justice providers in accordance with the law. An additional reported challenge was the lack of the infrastructure necessary for watch groups to have a dedicated location and provide a safe space for women to share their situation.

“We have no training nor education. Our only role now is to go to the police with the victims. We are afraid to take any decision. With federalism, we know the justice system has changed, but we don’t know what has changed.” A women’s cooperative member, Kavre District, Province 3
“When the group was created, we had no place to gather. To build a place, we each raised some of our own money but it was not enough. We repeatedly asked the Village Development Committee to provide us the money, and they kept refusing. One day we locked the members of the Committee inside their office. The next day they approved the money and we then built everything with our own hands.” Representative, Women’s watch group, Rautahat District, Province 2

3.5.3 Non-governmental organizations

Local NGOs are involved in providing legal aid throughout the entire process, including: documentation; registration of cases with police; financial support; support in keeping the necessary documentation; and appearing in court. However, this legal aid is provided on the basis of projects, that only last a few years and then phase out. As the entire legal process is lengthy, NGOs are often compelled to interrupt their services and support before the case is fully decided, creating an issue of sustainability regarding legal aid and affecting justice outcomes for victims.

“I am a very poor woman. I have no knowledge. The people of this NGO are the people who helped me. They were very good, they gave me a lot of advice.” A victim, Rautahat District, Province 2.

“We have been supporting this victim from May 2018. The project on legal aid we were implementing then phased out in July 2018. We convinced her lawyer to continue her case for free, but we are now paying the court fees with the NGO’s own money.” NGO representative, Rautahat District, Province 2

3.5.4 Women Human Rights Defenders

Women Human Rights Defenders (WHRDs) play a key role in providing support to victims. Trained as investigators in fact-finding, WHRDs support a claimant in documenting the case, registering the case with the relevant judicial authority, ensuring the victim’s safety and providing other necessary support. If the authority refused or does not genuinely act upon the case, the WHRDs will start a campaign all over Nepal. However, WHRDs face challenges, including high level of threats and pressure on them and their family, including online harassment, defamation, humiliation and violence. As they come from different backgrounds and social status, WHRDs face different levels and types of threats and risks depending on their status as Dalit women, LGBTIQ, person with disability, or other personal identity characteristics. They are continuously stigmatized, criticized and underestimated due to their work for the protection of women and minorities. Additionally, they face restrictions on their freedoms of expression, movement and assembly, as well as on their ability to access funding for their work, imposing great challenges on their ability to carry on their work. Discussions and interviews have also identified the fact that some WHRDs have discriminatory behaviours in carrying out their work, for example in not raising public cases of women from marginalized groups.

“There are many cases from Dalit women, but if the victim is Dalit, the case is not raised. The case of Nirmala Panta was raised by a Women Human Rights Defender in July 2018. There was another similar case at the same time but no attention was given to it because the girl was Dalit.” NGO representative, Kathmandu

“In Kalikot, a ward member [elected woman representative] was killed by people from higher social status. However, the case was not registered at the police for many days. No one really talked about it because she was a Dalit.” NGO representative, Kathmandu
4 Governmental and non-governmental efforts in enhancing women’s access to justice

The Government of Nepal, development partners and civil society organizations in Nepal have established mechanisms and are currently working towards improving access to justice, in particular for women, and excluded and vulnerable groups.

4.1 Ministry of Law, Justice and Parliamentary Affairs

The Government of Nepal is in the process of drafting a new National Integrated Free Legal Aid Policy. The previous Policy, dated 1997, is aligned with the former judicial system and is therefore not applicable to the local level and to Judicial Committees. The new policy aims at establishing a dedicated inter-ministerial committee, strengthening the cooperation and coordination between the different actors, including the Judicial Committees, establishing robust monitoring systems and ensuring that legal aid is accessible to all.
The National Integrated Free Legal Aid Policy also aims at providing legal aid to groups that are not eligible under the current policy, such as victims of conflict-related sexual violence and victims of domestic violence. The implementation of the policy will be supported by the project Enhancing Access to Justice through Institutional Reform (2018-2020), which is further detailed below.

To ensure awareness on the recently adopted normative framework of Nepal, the Ministry of Law, Justice and Parliamentary Affairs is currently drafting a summarized and simplified version of the 16 Acts on Fundamental Rights adopted in September 2018 and of the Civil and Penal Codes, which entered into force in August 2018. The dissemination will be ensured with the cooperation of provincial governments and the district courts.

The Ministry of Law, Justice and Parliamentary Affairs has started to conduct capacity enhancement trainings on legal knowledge and skills, as well as on legal procedures to Judicial Committees. These trainings will complement the trainings currently conducted by the Ministry of Federal Affairs and General Administration on gender equality and social inclusion issues.

In December 2017, the National Women Commission launched a 24-hour helpline in the Kathmandu Valley, to allow victims of gender-based violence or social discrimination to register their complaints. Additionally, the Ministry of Law, Justice and Parliamentary Affairs is currently developing an app to increase awareness on rights, legal rules, procedures and provincial laws.

As part of the President Women Upliftment Programme, a programme related to gender-based violence and discrimination was organized for local level representatives to enhance knowledge and launch their own public-awareness programmes to reduce gender-based violence and discrimination in villages.

4.2 Judiciary in Nepal

The Supreme Court has been instrumental in advancing access to justice for women. Its rulings have allowed the repeal and amendment of provisions that prevented women from seeking remedy. These include recognizing marital rape as a criminal offence,59 and striking down the clause that gave the Truth and Reconciliation Commission and the Commission for the Investigation of Enforced Disappeared Persons the power to recommend amnesties for serious human rights violations committed during the 1996-2006 decade-long armed conflict.60 The specific procedures laid down in the new Civil and Penal Codes, and their attached codes, 61 envisioned to speed up access to justice for women or victims of violence (including the continuous hearing62 and fast-track courts63 for cases related to gender-based violence) were initially introduced by the Supreme Court.

Trainings to members of Judicial Committees, particularly for deputy mayors, on legal knowledge and skills have been conducted, including
by the Nepal Bar Association, NGOs or the Mediation Council. In 2018, the Access to Justice Commission organised trainings for 197 members of Judicial Committees in 20 districts. The National Judicial Academy (NJA), established in 2006, has been providing and organizing trainings, seminars, orientation and interactions to enhance the capacity and skills of professionals involved in the administration of justice, including judges, government attorneys, court officers, legal professional, Judicial Committees and officers of quasi-judicial bodies. In addition to undertaking studies, research and bringing out publications on relevant issues of law and justice, the NJA has also developed training manuals and other resource materials to enhance the capacity of justice actors, including on gender-sensitive procedures.

Legal units have been established in each of the 77 district courts, 10 High Courts and the Supreme Court of Nepal. In addition, free legal services are provided in each court by one duty lawyer or a lawyer employed by the court. The Supreme Court provides two paid lawyers for such work, out of whom one is a woman. Legal aid is also provided by the district bar associations.

Socio-Legal Aid Centres and Information Desks were established through the project Strengthening the Rule of Law and Human Rights Protection System carried out by the UN Development Programme (UNDP) in Nepal between April 2013 - December 2017, with services targeted towards vulnerable and disadvantaged people, including women, socially excluded people and detainees. Additionally, public access to the courts was enhanced via the establishment of information desks that assist court users to complete updated court forms.

The Offices of the Attorney General throughout Nepal are responsible for prosecuting cases on behalf of the victims and may step in to order police to register a case in a scenario where the police have declined to do so when asked by a victim. Giving periodic training to government attorneys for cases related to women, the Office of the Attorney General is planning to provide additional trainings on the new Criminal Procedure Act and the recently adopted Protection of Victims of Crime Act, and to analyse the possible impact of the new laws on crime trends in Nepal. The Office of the Attorney General is enhancing coordination and investigation between the relevant actors through a coordination committee, composed of the Ministry of Law, Justice and Parliamentary Affairs, the Ministry of Home Affairs, the Police, and other relevant stakeholders. Fifty-four out of 97 offices across Nepal have dedicated victims’ rooms. The Office of the Attorney General is currently piloting a new initiative to create experts on specific fields (constitutional issues, remedy, organized crime, financial crime and women and children) with a role to safeguarding the prosecution process. Additionally, the Programme Attorney General in Communities aims at increasing legal knowledge and skills for cases related to gender-based violence and women’s rights through the diffusion of public service announcements, messages broadcast on television, and information boards in each District Attorney Office.

The cooperation between justice actors has been advanced by the creation of the Justice Sector Coordination Committees, functioning under the leadership of the district courts. Composed of district judges, members of the bar association, lawyers, NGOs and other relevant actors, they are mandated to discuss problematic cases (including those that haven’t been able to reach the court) and find an agreed solution to ensure a case is moved forward. There is now an opportunity to strengthen these Coordination Committees to establish a network between courts and Judicial Committees and enhance shared learnings and mentorship. The Access to Justice Commission has also organized two interaction programmes to advance the coordination and support between concerned justice stakeholders.

Additionally, advocacy and knowledge material has been developed. The Access to Justice Commission has developed information booklets on court and justice procedures, on the rights of
marginalized groups, and on the rights of women in civil and criminal cases.

4.3 UN agencies

From April 2013 to December 2017, UNDP and UN Women jointly implemented the programme *Strengthening the Rule of Law and Human Rights Protection System in Nepal*, focusing on the coordination in justice actors’ service delivery at national and sub-national levels, strengthening the capacity of justice institutions to uphold and promote human rights, and providing legal aid through Socio-Legal Aid Centres and Information Desks. This programme has been commend- ed for, among others, its valuable role in bringing government institutions together, its focus on strengthening the quality of justice services provided to citizens, in particular vulnerable and excluded groups, the simplified access to information for court users through information desks and judicial outreach programmes, the provision of services to almost 75,000 persons and legal assistance to over 18,000 persons, and the enhanced capacity of over 12,000 justice sector actors and stakeholders.64

The project *Enhancing Access to Justice through Institutional Reform* (2018-2020) was launched in July 2018 by the Ministry of Law, Justice and Parliamentary Affairs and UNDP to be implemented jointly with the Office of the Attorney General and Nepal Bar Association. The project aims at supporting the implementation of the Integrated Legal Aid Policy, strengthening the law making and law review processes, strengthening the judicial committees, and promoting interface between law and economic growth. The initiative includes the following elements:

- The National Integrated Legal Aid Policy was adopted on 30 December 2019, hence support will be provided to ensure its implementation, such as the development of rules, regulations and procedures to ensure its effective implementation. The Legal Aid Act will need further amendments, and a code of conduct and guidelines will be developed.

- Support will be provided to strengthen the law making and law review processes, in line with the Constitution. In particular, technical support and knowledge products will be provided to provincial and local levels.

- Support will also be provided to strengthen the Judicial Committees to ensure they deliver gender-sensitive justice, through the development of a code of conduct and trainings on mediation.

- The interface between law and economic growth will be promoted.

4.4 Civil society

Numerous NGOs, INGOs and civil society networks are working on improving women’s access to justice. NGOs, INGOs and civil society networks have been working on enhancing the capacity of justice actors, including judges, community mediators, lawyers, and members of the Judicial Committees, to eliminate gender discriminatory attitudes and stereotyped behaviours towards women. These trainings commonly focus on making justice actors aware of the root causes of discrimination, and how to address them to follow judicial procedures and give decisions that are free of discrimination and further protect women’s rights. For instance, with the aim of strengthening the role of judiciary in Asia and Pacific to protect human rights, particularly women’s human rights, judicial dialogues are being organised by the International Commission of Jurists (ICJ) in the region to encourage judges to use the Bangkok General Guidance for Judges in Applying a Gender Perspective, developed in 2016 by the ICJ and UN Women.65 Networks between justice actors have also been enhanced, including through the creation of the community mediation alliance, focusing on providing easier access for women to female mediators.

As an important component of enhancing access to justice for women, NGOs have been providing legal aid to victims which simplify the entire legal process for victims. This legal aid extends from
initial advice to accompanying women until the final decision. Depending on the nature and gravity of the case, legal aid may be provided together with shelter as well as financial and psycho-social support.

The Forum for Women Law and Development in 2017 launched the app *Mero Adhikar* (For Your Legal Rights), aimed at disseminating national and international human rights instruments and make legal knowledge accessible to people. Legal campaigns, outreach programmes, awareness events, including at schools, dialogues, mass awareness though the use of media, training for community people, public information and education initiatives and the development of advocacy materials have raised women’s awareness on the rights, services and procedures available to them, and increased their demands for justice. Concerns have been raised during discussions and interviews that these activities, however, often focus on urban or semi-urban areas and have faced challenges in reaching women in remote areas. Additionally, the means used succeeded in conveying a first message but did not substantially build women’s knowledge of their rights.

NGOs, INGOs and civil society networks in Nepal, such as the International Center for Transitional Justice, Equal Access, the International Commission of Jurists and the Conflict Victim Common Platform, have worked on transitional justice to ensure accountability and reparations for the crimes committed during the decade-long armed conflict. This includes support to transitional justice mechanisms responsible for investigating conflict-era violations, policy advocacy, research on the impact of the conflict and the needs of victims, facilitation of victims’ participation in the transitional justice mechanisms, support to victims to ensure their voices are heard, and awareness-raising programmes to encourage victims to break the silence. Through its programme *Protecting the Right to Remedy and Reparation during the Transitional Period in Nepal 2012-2016* and *Combating Impunity through the Promotion of the Rights of Victims to truth, justice and reparation in Nepal* (2017-2018), the ICJ provided trainings to lawyers and judges, in particular the judges of High Courts, to enhance their capacity to hold perpetrators to account and to deliver prompt and effective justice and redress to victims of human rights violations and abuses during the conflict. The litigation efforts supported by the ICJ have contributed to advance justice for individual victims and legal and legislative reform. Human rights violations committed during the conflict, in particular those committed against women and girls, including sexual violence, have been maintained in public discussion through policy-level advocacy. This has been possible through meetings and consultations with political party leaders, civil society actors, and other concerned stakeholders, including the international community and through the publication of briefing papers. The ICJ has published several briefing papers on human rights, transitional justice and constitutional issues, focusing on the level of compliance with international law and standards and best practices. Lastly, awareness-raising initiatives among victims and other stakeholders were conducted to encourage them to use national and international protection systems to challenge impunity, as well as demand respect for their rights to truth, justice and reparation.

4.5 Gaps identified

The efforts by various stakeholders to enhance women’s knowledge of their rights are a key component of increasing access to justice for women. These efforts include the publication of simplified versions of the new normative framework, as well as legal-awareness activities. However, this knowledge enhancement needs to be accompanied by empowerment of women and the community to use that knowledge and the legal mechanisms available to them. Enhancing confidence and ensuring an enabling environment is necessary to break the culture of silence that is preventing women from coming forward with their cases, and that contributes to the impunity of perpetrators. This also includes

Mapping of access to justice for women in Nepal
enhancing the accountability of service providers and ensuring that mechanisms in place are applied when there is enough ground to believe that the justice provider has failed to facilitate access to justice in accordance with his or her mandate, in line with the guidance provided in CEDAW General Recommendation No. 33.66

The provision of legal aid by various stakeholders has raised concerns on its sustainability on the long-term and on the fact that legal aid is not harmonized throughout Nepal. Due to the phasing out of the projects, local NGOs who provide legal aid on a project basis have been compelled to: interrupt legal support to women before the settlement of their dispute; count on lawyers who agreed to voluntarily provide their services; or use the personal financial resources of its members. It is thus necessary to gradually institutionalize the legal aid provided by NGOs and local organizations into local governmental mechanisms.

Furthermore, there is no mechanism in place to assess the quality of the legal aid provided and the level of satisfaction of women who have been provided legal aid, regardless of the service provider. This can be done through the systematic surveying of women once the legal support provided to them has ceased.

Additional shortcomings of efforts carried out to enhance access to justice have raised issues on sustainability, and include: a) failure to reach out to the remote areas by concentrating in urban or surrounding areas; b) short-term nature of activities conducted; c) lack of coordination with government services; d) limited scope of capacity building where the role of community leaders and traditional mechanisms in settling disputes is not considered; and e) the failure to recognize that some of the barriers faced by the members of the Judicial Committee arise from the lack of support by the family members and the community, leading in extreme cases to harassment, threats, violence and marginalisation. The work on Judicial Committee therefore needs to involve family members and the broader community as key actors to create an enabling environment and to ensure members of the Committees are positioned to safely exercise their mandate.

"Whenever NGOs come with programmes on access to justice, they invite the same participants. We need to reach out to those left behind." FGD participant, Kavre District, Province 3

"The issue with the trainings done so far is that the woman who is trained will come back to her house and there is no support from her family. We need to include families and the broader community in these programmes." FGD participant, Kavre District, Province 3
5  Focus areas of interventions

5.1  Priority locations
Province 2 and Sudurpashchim Province have been identified as priority locations for UN Women Nepal, due to the high prevalence of discriminatory social norms, harmful practices, violence and low level of education and of access to media. According to the Nepal Demographic Health Survey 2017, 34.3 percent of women in Province 7 and 32.6 percent of women in Province 2 consider wife-beating justified (compared with a national average of 28.5).\(^6^7\) Additionally, they correspond to locations of past and current UN Women programming, and are aligned with priorities of the United Nations Development Assistance Framework 2018-2022.

5.2  Programmatic entry points
The following programmatic entry points have been identified to address the gaps and opportunities arising from the analysis above:

- **Support Judicial Committees and their Mediation Centres to provide gender-sensitive and independent decisions** based on their mandate under the Constitution and the Local Government Operation Act. This will be done through capacity building focused on increasing capacity regarding legal knowledge and procedures that are particularly relevant to women’s rights. Capacity on gender-based violence will be further enhanced in line with the Essential Services Package for Women and Girls Subject to Violence.\(^6^8\) Additional possible entry points include: resource materials on the recent legal reform and provisions relevant to women’s rights, including on the Civil and Penal Codes; the appointment of dedicated persons from legal background to serve as legal advisors; and strengthening of networks between municipalities.

- **Increase women’s knowledge of their rights and the new legal framework**, in particular regarding the provisions of the Civil and Penal Codes, the Fundamental Rights Acts, the new Legal Aid Policy and the new Transitional Justice Bill once they are adopted, as well as on the different legal supports available to them and on the roles and responsibilities of each justice authority, with a focus on marginalized women and women living in remote areas.

- **Support women’s cooperatives, grassroots women’s organizations, watch groups and other relevant organizations** in enhancing their capacity to act as a bridge between the community and the judicial authorities and to provide adequate and gender-sensitive legal aid throughout the entire legal process.

- **Support WHRDs** to ensure they are safely and effectively positioned to document, monitor, liaise and facilitate interactions with justice actors, and to act as an effective mechanism to ensure accountability of justice actors towards the community and higher-level authorities, including through trainings, meetings with the local population, protection mechanisms and mass national media campaigns.
MINISTRY OF LAW, JUSTICE AND PARLIAMENTARY AFFAIRS

Vision
To ensure that legal mechanisms are in line with the aspiration of people, that justice management is owned by the people, and that the necessary laws are formulated to contribute to the development of the nation.

Mission
Ensure the rule of law through effective implementation of laws, increased effectiveness of legal aid, protection and promotion of fundamental rights as provided by the Constitution and universally accepted human rights.

Strategies
1. Guide the formulation of laws, ordinances, rules and directives
2. Draft and review laws
3. Support the Government of Nepal in resolving national and international legal disputes
4. Research and review the improvements of national and international laws, justice systems and justice administration.

SUPREME COURT
Strategic Plan 2014-2019

Vision
To ensure access to justice for all and protection of the rule of law and civil rights and liberties through the establishment of an independent, competent and effective judiciary.

Mission
To deliver fair and impartial justice in line with the Constitution and based on the laws and valued principles of justice.

Values
1. Allegiance to the Constitution and laws
2. Independence and autonomy
3. Fairness, equality and impartiality
4. Accountability
5. High ethical standards
6. Representation and inclusiveness
7. Ownership

Goals
1. To expedite justice delivery
2. To ensure access to justice
3. To ensure parties to a case are fully informed regarding the judicial procedures
4. To increase the trust and confidence in the judiciary

ACCESS TO JUSTICE COMMISSION
Work plan 2018-2019

Strategies
1. Identify and address the barriers preventing access to justice
2. Increase access to justice of targeted groups (women, marginalized and vulnerable groups) through empowerment
3. Develop an effective legal aid system to guarantee access to justice
4. Coordinate and facilitate collaboration between the concerned institutions and organizations

NATIONAL WOMEN COMMISSION

Vision
To establish an equal society where every woman can freely and fully exercise and benefit from her human rights, social justice, independent identity, deference and integrity.
Mission
1. To ensure equal rights, equal opportunities, equitable representation and access to justice and security for all women
2. To establish sustainable and efficient development processes based on gender equality and equity

Goals
To ensure access, implementation of national and international legal instruments, meaningful representation and participation of women in all bodies of Nepal for the elimination of all forms of discrimination and violence against women.

Strategies
a. SUPPORT TO LEGAL REFORM
b. AWARENESS RAISING
   • Develop and implement programmes to increase awareness and knowledge to promote and ensure women’s empowerment
   • Develop and implement effective programmes for the elimination of harmful practices and beliefs that are the root causes of discrimination and violence against women
c. MONITORING AND EVALUATION
   • Monitor the implementation of gender-responsive laws
   • Monitor the implementation of international instruments ratified by Nepal
   • Monitor and assess governmental, non-governmental and private-sector actors
   • Evaluate policies and programmes adopted to mainstream gender equality into development priorities
d. LEGAL AID
e. STUDY AND RESEARCH
   • Assess and analyse policies and programmes from a gender perspective
   • Research the level of gender equality and of women’s empowerment
   • Assess the inclusion of a gender perspective in the structure and procedures of different governmental authorities
f. COORDINATION AND COLLABORATION
   • Coordinate with international and national stakeholders working for gender equality and the elimination of gender-based violence
   • Coordinate with various local-level institutions

NATIONAL JUDICIAL ACADEMY

Mission
To enhance the knowledge, skills and capacity of judicial human resources and bring positive attitudinal change among them through continuing judicial education, research and dissemination of judicial information for promoting a fair, accountable, trustworthy and accessible judicial system.

Vision
To become a center of Excellence for judicial education focused on enhancing capacity and professional efficiency of judicial human resources through training, research and dissemination of judicial information aimed at promoting an equitable, just and efficient judicial system.

Objectives
1. To conduct training, conferences, workshops, seminars, symposia and interaction programmes for the enhancement of knowledge and
professional skills of judges, judicial officers, government attorneys and private law practitioners, and bring about attitudinal change that enhances their professional efficiency.

2. To undertake research in the field of law and justice and to provide scholarly and practical legal literature to judges, judicial officers, government attorneys and others who are involved in judicial administration.

3. To help promote a competitive, professionally competent, service-oriented and effective private bar.

OFFICE OF THE ATTORNEY GENERAL
Strategic Plan 2016/17- 2021/22

Vision
To promote the rule of law.

Mission
To develop an institution that plays a leading role in investigations, ensure that prosecutions are fair and effective, and to strengthen the defence system and the provision of professional legal opinions.

Values
1. Fair hearing
2. Rule of law
3. Principles of law and justice
4. Respect, protection and promotion of human rights and individual liberties
5. Protection of public welfares
6. Victim-friendliness and access to justice
7. Professional autonomy and privilege
8. Accountability and responsibility
9. Continuous improvement and learning
10. High ethical standards
11. Gender-responsiveness
12. Inclusiveness

Goals
1. To ensure the effective prosecution of government cases
2. To ensure effective representation of the State in cases
3. To institutionalize the function of government attorney
4. To strengthen the Office of the Attorney General and the Offices of the Government Attorney

Strategies
a. EFFECTIVE PROSECUTION OF GOVERNMENT CASES
   • Increase the effective role of government attorneys in line with fair hearing
   • Protect the basic rights of suspects
   • Institutionalize the leading role of government attorneys in investigation of cases.
   • Protect victims and witnesses for increased access to justice
   • Effectively monitor prosecution

b. EFFECTIVE REPRESENTATION OF THE STATE
   • Ensure the effective presentation of witnesses, evidence and examinations
   • Update the file of cases
   • Inform on the possibility of appeal for autonomous decision

c. INSTITUTIONALIZATION OF GOVERNMENT ATTORNEY
   • Formulate laws on recruitment, services, terms and conditions of government attorneys and other employees and their effective enforcement
   • Protect and promote the independence and privileges of government attorneys
   • Provide specialized government attorneys on thematic issues
   • Enhance the capacity of the employees of government attorney’s offices
   • Enhance the capacity of the institution to provide legal opinion
   • Follow the continuous learning methods

d. STRENGTHENED OFFICES
   • Review the organizational structure of the Office of Attorney General and the offices under its jurisdiction
• Develop the physical infrastructure of the Office of Attorney General and the offices under its own jurisdiction
• Develop effective mechanisms for coordination with concerned stakeholders
• Ensure the quality of services delivered by the Office of the Attorney General and the offices under its own jurisdiction
• Create and develop libraries in the Office of the Attorney General and the offices under its own jurisdiction
• Manage human resources and development
• Develop prosecution training centres and a criminology research centre
• Manage the security of offices of the government attorney.

NEPAL POLICE

Vision
Fair and specialized services are widely available to women and children.

Mission
To ensure access to justice for women and children in an enabling environment.

Strategies
1. Ensure the documentation of criminal cases related to women and children to be incorporated into a database
2. Enhance the capacity of police personnel, in particular regarding cases of sexual and gender-based violence
3. Analyse the patterns of crimes related to women and children
4. Produce and publish Information Education and communication materials
5. Strengthen and broaden the scope of Women and Children Service Centers. These Centers have been established in the Nepal Police in all 75 districts with separate police personnel accountable for handling GBV cases.
6. 246 Women and Children Service Centers (WCSCs) have been established in the Nepal Police in all 75 districts with separate police personnel accountable for handling GBV cases.
7. Raise public awareness
8. Coordinate and establish networks with concerned stakeholders
Case 1

“I was badly hurt by my husband one day, it almost killed me. I spent days unconscious at the hospital. My husband went to the police to confess his crime. The police did not collect the required evidence, the hospital published the medical report as an unintentional accident. With the support of political leaders and the police, the statement of my husband was changed, and now says that it was an accident. The police registered a false victim’s statement that was actually given by someone else, the thumb print was not mine. My family-in-law prevents me from seeing my sons. They saw what happened to me, but are afraid to disclose it to the court because they are threatened. I asked my son “Don’t you remember what happened to me?” He said “I remember but I cannot say.” My family-in-law belongs to a political party. I don’t like my lawyer. He told me that even if I win the case I will not get anything, that my sons will get the property. When I met him for the first time, he said he will help me for free. Now I have to pay. He is so loud and dominating. The lawyer of my husband is denying everything. I had to tell my story again and again. I am tired now.”

A victim, Province 3
Case 2
“A woman was a victim of domestic violence. She went to the police, who did nothing. The members of the women’s cooperative found her and went with her to the police to get her case registered. The family pressured the police, they tried to convince the victim to go back to the house. The court decided to give joint property to the husband and the woman. Now she is elected as a ward member.”
FGD participant, Kavre District, Province 3

Case 3
“Right after the incident, we were taken to the hospital and the police came, they did not help and said ‘It is not a big issue, you can settle it on your own.’ We approached this NGO with the help of the lawyer. The NGO supported us to have the case registered at the police. The attacker put pressure on us, they attacked us again one evening while we were walking home. They would throw garbage in front of our shop. I had to go to the court many times. We did not have the economic condition to pay for the lawyer, all this was only possible with the help of the organization. They helped us with everything. Now whatever happens will happen in the court.”
A victim, Province 2
The CEDAW Committee expressed concerns on the low level of awareness by women and girls on their rights and on mechanisms available for gaining access justice and seeking remedies, the lack of targeted financial support and legal aid in commonly spoken languages for women facing intersecting forms of discrimination, and on the statute of limitations and recommended (a) to reinforce targeted outreach activities to disseminate information on the legal framework and the available mechanisms for gaining access justice and legal aid schemes, and promote a culture and a social environment in which justice-seeking by women is viewed as both legitimate and acceptable; (b) provide targeted financial support and legal aid in commonly spoken languages for women facing intersecting and multiple forms of discrimination, such as Dalit women, indigenous women, including Madhesi and Tharu women, women belonging to religious minority groups, women with disabilities, women living in remote areas, lesbian, bisexual and transgender women, intersex persons and displaced and migrant women; (c) repeal the statute of limitations on the registration of cases of sexual violence in all contexts; and (d) provide mandatory training through the National Judicial Academy to all judicial committees and law enforcement officers on women’s rights, as well as on gender-sensitive investigation and interrogation procedures in cases of gender-based violence against women, CEDAW Committee (2018), Concluding Observations on the Sixth Periodic Report of Nepal, CEDAW/C/NPL/CO/6.

CEDAW Committee (2015), General Recommendation 33 on women’s access to justice, para 2.

UN Women conducted interviews and group discussions with more than 100 people in Kathmandu and Provinces 3, 2 and 6 between October and November 2018.


The 753 local units include 6 metropolises, 11 sub metropolises, 276 urban municipalities, 460 rural municipalities, and 6743 wards.

Article 127 (2) of the Constitution provides the basis for the creation of judicial committees by stating that “judicial bodies may be formed at the local level to try cases under law or other bodies as required may be formed to pursue alternative dispute settlement methods.” In line with this, the Local Government Operation Act (2017) provides the statutory framework for the Judicial Committee.


The terms ‘Mayor’ and ‘Deputy Mayor’ are used in urban municipalities while the terms ‘Chair’ and ‘Vice Chair’ are used in rural municipalities. For the purpose of easy reference, the terms ‘Mayor’ and ‘Deputy Mayor’ will be used throughout this report.

According to Article 47 of the Local Government Operation Act, the Judicial Committees have the mandate to directly adjudicate 13 types of cases: (a) border/boundary of land, dams, ditches or distribution and use of water; (b) damage to crops of other people; (c) pasture land, green fodder, fuel wood; (d) unpaid wages; (e) Lost or found of domestic animals and birds; (f) not caring and looking after elderly citizens; (g) not providing decent food and clothing or education to minor children or spouses; (h) house rent and house rent facility with amount up to twenty-five hundred thousand annually; (i) planting of trees to affect other people’s house, land or property; (j) throwing water from one’s house or veranda to others house, land or public road; (k) not leaving the area of land to be left as per the law while constructing a house with a window towards the land of the immediate neighbour; (l) not allowing to use or causing obstruction to a road being used publicly since ancient times even though it is under the right or ownership of any individual, way out for cattle, pasture for grazing cattle, drain, canal, pond, rest place, cremation site, religious site or any other public location; (m) other disputes designated by the federal or provincial law to be resolved by the local level.
According to Article 47 of the Local Government Operation Act, the Judicial Committees have the mandate to send to mediation 11 types of cases: (a) a land other than government, public or community land owned by one is encroached by other; (b) construction of house or any structure in a land other than government, public or community land, noting belonging to the person but of others; (c) divorce between wife and husband; (d) physical assault that could be liable to a maximum of one years imprisonment; other than those leading to dismemberment; (e) defamation; (f) looting and assault; (g) leaving cattle stray or affecting others due to negligence in course of keeping animals and birds; (h) unauthorised entry to other’s residence; (i) cultivating or possessing land that is in other’s possession; (j) affecting neighbour through sound pollution or throwing solid waste; (k) other civil disputes filed by an individual as claimant which could be mediated as per prevalent law and criminal disputes that could lead to up to one year’s imprisonment. The first amendment of the Local Government Operation Act has specified that cases of divorce between husband and wife can only be mediated to not go for divorce, but divorce cannot be done through mediation.

Article 49 (2), Local Government Operation Act, 2017

Article 38 (4) of the Constitution states that women shall have the right to participate in all state structures based on the principle of proportional inclusion. In line with this, the Local Election Act, 2017 made provision for every ward in all the 753 municipalities to reserve two seats for women, one of which was to be held by a Dalit woman. In total, 13,360 posts of ward members have been guaranteed for women by the law (6,680 each from Dalit and Non-Dalit women). Likewise, the Local Election Act also makes mandatory to have at least one woman at the executive positions at the local level, i.e. between Mayor and Deputy Mayor (in the urban municipalities) and Chair and Vice-chair (in the rural municipalities).

Chhaupadi is a practice where girls/women are not allowed to enter inside the house and touch water and milk for four to seven days during their menstruation period, as they are considered impure. They must live, sleep and stay in a hut outside identified as a chhaupadi goth. The practice is widespread in parts of Karnali Province and Surdarpaschim Province in Nepal

Son preference, accusation of witchcraft, Chhaupadi, child marriage and caste-based discrimination are all criminalised with a sanction from three to five-year imprisonment and/or a fine from NPR 3,000 (about USD 26) to NPR 50,000 (about USD 441) depending on the crime.


The CEDAW Committee raised concerns on the Bill to amend the Truth and Reconciliation Commission Act, and recommended that the Act is brought in line with international, in particular in relation to the statute of limitation for filing cases related to conflict-related sexual violence, CEDAW Committee (2018), Concluding Observations on the Sixth Periodic Report of Nepal, CEDAW/C/NPL/CO/6, at para 22 and 23.


National Judicial Academy (2015), Study Report on Women’s Access to Justice, Unofficial translation, supported by UN Women at page 22.


As of November 2018, the following sixteen acts have been adopted: (1) Right to Safe Motherhood and Reproductive Health Act; (2) Compulsory and Free Education Bill; (3) Right to Employment Bill; (4) Right to Food and Food Security Bill; (5) Right to Housing Bill; (6) Public Health Service Bill; (7) Protection of Victims of Crime Bill; (8) Individual Privacy Bill; (9) Disability Rights Act amendment Bill; (10) Children Act amendment Bill; (11) Land Act amendment Bill; (12) Environment Protection Act amendment Bill; (13) Consumer Protection Act amendment Bill; (14) Public Security Act amendment Bill; (15) Social Security Bill; and (16) Caste Based Discrimination and Untouchability Act amendment Bill. Ensuring that communities at the local level are aware of these new acts and their provisions will ensure effective implementation and contribute to accountability of relevant stakeholders. The Right to Safe Motherhood and Reproductive Health Act, Compulsory and Free Education Act, Right to Employment Bill; Protection of Victims of Crime Bill, Land act amendment Bill; Environment Protection Act amendment Bill; and Caste Based Discrimination and Untouchability Act amendment Bill.
The caste system is a social stratification system based on ritual impurity. Caste is hierarchical, persistent, hereditary, rooted in concepts of ritual pollution and impurity, and it segregates society by putting restrictions, such as on occupation and who one can marry. The caste system affects everyday life for Nepalis in a variety of ways. The term caste-based discrimination is used to describe discrimination perpetuated by high caste groups on lower caste groups on the basis of caste, which leads to oppression and exploitation.

Dalits comprise around 13.6 percent of the total population. As a caste group, Dalits were placed at the bottom of the Hindu caste hierarchy. Although caste-based discrimination was abolished in 1963 and law has made caste-based discrimination a punishable offence, discrimination against Dalits remains widespread and entrenched in the society. Due to their caste, Dalits are still considered ‘untouchables’ and subjected to inhuman treatment and violence. ‘Untouchability’ prevents Dalits from accessing water sources, entering temples, or being able to marry someone from the so-called higher castes, or participating in a society. These barriers and entrenched inequality affect their access to education, health care, employment, water and the ability to enjoy an adequate standard of living.


32 The police are the first resort for most people in cases of crime, domestic violence or debt, and traditional justice mechanisms are however preferred for land issues, Asia Foundation (2017), A Survey of the Nepali People, at page 32.

33 While community mediation includes other local and traditional forms of mediation in communities, this one is particularly referring to community mediation supported through development organizations.


35 WOREC (2010), Unveiling Justice: Rape Survivors Speak Out, at page 104.

52 National Judicial Academy (2015), Study Report on Women’s Access to Justice, Unofficial translation, supported by UN Women at


55 Ministry of Women, Children and Senior Citizen and Department of Women and Children, “Integrated Women Cooperative Development Programme for the Elimination of Gender-based Violence.” Under this programme, as of end of 2017, a total of 1.15 million women members have been organised in cooperative groups under 2,200 registered Women Cooperatives across the country with a total of 11,596 GBV Watch Groups formed within the cooperative structures.

56 The Village Development Committee was the lowest branch of the Ministry of Federal Affairs and Local Development, now dissolved with the new federal structure.


58 Nirmala Panta is a 13-year-old female who was raped and murdered in Kanchapur District, Nepal in July 2018. The case was raised to national attention by a Women Human Rights Defender following alleged negligence from the police while investigating.


62 Supreme Court (2013), NKP Falgun Volume 11.

63 Supreme Court (2015), NKP Jestha Volume 2.

64 UNDP (2017), Final Evaluation Strengthening the Rule of Law and Human Rights Protection System in Nepal Programme.


66 While the CEDAW Committee acknowledges the necessity for differentiated application of the essential components of justice (justiciability, availability, accessibility, good-quality, accountability of justice systems, and the provision of remedies for victims), these are to be applied universally and immediately. The basic element of accountability refers to the monitoring of the functioning of justice systems and of the actions of justice system professionals to guarantee their respect of the other components, and to their legal responsibility in cases in which they violate the law. CEDAW (2015), General Recommendation on Women’s Access to Justice, CEDAW/C/GC/33, at para 14, available at: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf


68 In 2015–2016 the United Nations Joint Global Programme on Essential Services for Women and Girls Subject to Violence, established in partnership with UN Women, UNFPA, WHO, UNDP and UNODC, launched the Essential Services Package for Women and Girls Subject to Violence (hereinafter referred to as the “Essential Service Package”). This initiative seeks to offer comprehensive and collaborative technical guidance for strengthened capacity of service providers and improved/effective coordination, aiming at greater access to a coordinated set of essential and quality multi-sectoral services for all women and girls who have experienced GBV. The programme, constituting an “Essential services package”, comprises five modules covering health, social services, police and justice actors, coordination of services and governance of coordination processes. This will allow to build up on the three-day workshop on Multi-Sectoral Services to Respond to Gender-Based Violence in Nepal organised in September 2018.
ENHANCING ACCESS TO JUSTICE
FOR WOMEN IN ASIA AND THE PACIFIC

Bridging the gap between formal and informal systems through women’s empowerment

http://asiapacific.unwomen.org/en/focus-areas/governance/womens-access-to-justice