

ECPAT International - UPR submission – Nepal – July 2010

Comments on the status of children’s right to protection against sexual exploitation in NEPAL

1. Preamble

The government of Nepal is party to the Convention on the Rights of the Child, since its ratification in 1990 and as such is committed to promoting and protecting, children’s rights under its jurisdiction. This commitment to uphold the rights of children has been bolstered with the ratification of other international legal standards including the *Optional Protocol on the sale of Children, Child prostitution and Child Pornography*. The 2007 Interim Constitution reflects these commitments to the rights of children, including the right to protection from all forms of exploitation which are guaranteed as fundamental rights. Special policies and laws specifically tailored to protect children from specific violations of their rights, such as sexual exploitation, have also been established to be implemented at national and local level by specific institutions. Despite these achievements, the normative framework to protect children from sexual exploitation is not yet fully aligned with the provisions of relevant international legal standards. Furthermore, activities undertaken by institutions in charge of the implementation and enforcement of the normative framework require articulation, coordination and monitoring for effective impact delivery of their mandate and to bring positive impact on children’s lives. Delivery of child rights is also undermined by factors such as political instability and a climate of impunity, at the same time that there is no independent and autonomous constitutional institution specifically dedicated to monitor and report on the situation of children’s rights in Nepal, nor specifically designated under the National Human Rights Commission, which would be mandated to handle individual complaints lodged by children whose rights have been violated.

2. Current normative and institutional framework for the promotion and protection of children against sexual exploitation

2.1 Normative framework

Policies: The government is implementing the *10-Year National Plan of Action for Children (2005-2015)* in conjunction with the *three-year Interim Plan (2008-2010)*, which incorporates separate sections on children and youth. The government, in consultation with other related child rights organizations, is currently developing a *National Protection Policy for Children* and a *National Framework for Child Participation*. The Ministry of Women, Children, and Social Welfare adopted in 1998 a *National Plan of Action against Trafficking of Women and Children for Commercial Sexual Exploitation* which is currently being reviewed.

Legislation: At international level, Nepal has ratified major international legal standards which provide children with protection against commercial sexual exploitation. However, Nepal has not yet signed nor ratified the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime*. At regional level, Nepal has ratified South Asian Association for Regional Cooperation (SAARC) conventions on trafficking and on child welfare. At national level, the Nepal Interim Constitution 2007 incorporates the rights of the child, and especially the right to protection against exploitation, among fundamental rights and Nepalese authorities have taken steps forward by enacting laws focusing on the protection of children children’s rights, such as the *Children’s Act*.

2.2 Institutional framework

The Government developed an institutional framework for coordinating efforts against CSEC, namely through the Ministry of Women, Children and Social Welfare, the Central Child Welfare Board (CCWB), the District Child Welfare Boards, the Women and Children Service Centres within the police, the National Task Force on Trafficking. Besides this, a National Coordination Committee (NCC) has been formed under the leadership of the Minister of Women, Children and Social Welfare for the overall coordination and execution of responsibilities of the implementation of the NPA against Trafficking of Women and Children. In addition, to protect and monitor the situation of human rights in Nepal, an independent and autonomous constitutional body, which complies with the minimum standards set out in the “Paris Principles”, the National Human Rights Commission (NHRC) of Nepal was established in 2000. Under the NHRC, a National Rapporteur on Trafficking in Women and Children was established in 2004.

3. Implementation and efficiency of the normative and institutional framework for the promotion and protection of children against sexual exploitation

3.1 Implementation and efficiency of the normative framework

Policies: Nepalese national policies do not address comprehensively the issue of commercial sexual exploitation of children (CSEC) as they are mainly focused on trafficking in human beings and do not contain activities aiming at preventing and combating other forms of CSEC such as child sex tourism and child pornography. In addition, the lack of measures for articulation between the different plans of action to protect children’s rights as well a weak implementation of these plans of action result in plans with negligible concrete impact on the lives of children . The main weaknesses are the lack of coordination among the implementing agencies, resulting in lack of defined mandate and responsibility, duplication and/or delay of several programmes. The lack of committed financial resources to ensure implementation of relevant policies is also a major limitation while monitoring of the implementation of these policies is also weak.

Legislation: The domestic legal framework does not provide comprehensive protection of children against all forms of commercial sexual exploitation. None of the provisions relating to the definition and criminalization of child trafficking, child prostitution, child pornography and child sex tourism are in line with the relevant international legal standards. In addition, implementation of existing laws protecting children against CSEC shows to be weak and inconsistent in delivery of justice for children.

3.2 Implementation and efficiency of the institutional framework

As mentioned above, there is a lack of relevant data on child protection which would improve the accuracy of specific policies and laws. In addition the lack of coordination among the institutions in charge of the preparation, the implementation and the monitoring of children’s rights policies and the enforcement of relevant laws compromises their full delivery. Although reporting mechanisms, such as helplines, have been established by the government in collaboration with NGOs, these services do not meet the specific needs of children victims of CSEC. Furthermore, although there is an independent and autonomous constitutional body to monitor the implementation of human rights at local level (the National Human Rights Commission), there is no such institution specifically dedicated to monitor and report on the

situation of children which would handle complaints on breaches of children's rights and action against the violations.

4. Cooperation with regard to implementation measures

Cooperation between the Nepalese government and NGOs is well established and very instrumental with regard to child protection. In relation to the implementation of anti-CSEC activities, this cooperation is heavily focused on child trafficking. Many international and local NGOs run, in partnership with governmental agencies, programmes that aim to rehabilitating and repatriating children victims of trafficking. In addition to the fact that these programmes are not able to provide systematic quality support for children victims of trafficking, very few other initiatives are implemented to prevent and combat other forms of CSEC. At regional level, Nepal is also actively involved through associations and forums such as the South Asian Association for Regional Cooperation (SAARC), or the South Asian Initiative to End Violence Against Children, where it has taken leadership as host country to the ministerial initiative which is coordinated with NGO and UN agency support.

5. Best practices which have emerged

An innovative Youth Participation Programme led by child survivors of sexual exploitation has opened channels for government institutions and bodies to engage substantively and hear the observations and recommendations of affected children on action needed to combat sexual crimes against them. Such initiatives need to be extended with government support. Similarly, children's clubs, networks, organizations have provided a channel for mobilization of children throughout the country.

6. Recommendations

- Reform the national coordination mechanisms and ensure coherence and consistency among provisions of existing and new policies designating financial resources and defining mandates for their implementation and monitoring of effectiveness and impact.
- Establish an independent and autonomous constitutional institution in charge of monitoring the situation of children's rights in the country which has the mandate to independently investigate and act on complaints on violations against children.
- Sign and ratify the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime*.
- Review and amend existing legislation to define and criminalise child prostitution, child trafficking, child pornography/child abuse materials in line with the provisions of the OPSC
- Amend extraterritorial legislation in order to make it be applicable to Nepalese citizen who commit any CSEC related offenses in a foreign country.
- Strengthen capacities of law enforcers in the field of child rights and CSEC issues to bring effective enforcement of the law to protect children.
- Promote, establish and enforce quality standards in the institutional care system of the Central Child Welfare Board, including training of caregivers on child protection measures, as a priority.
- Access to adequate care, recovery and reintegration services should be provided for child victims throughout the country.
- Support participation of children in efforts against trafficking and CSEC with resources for child clubs and Peer Support Programmes in schools and in high risk communities.