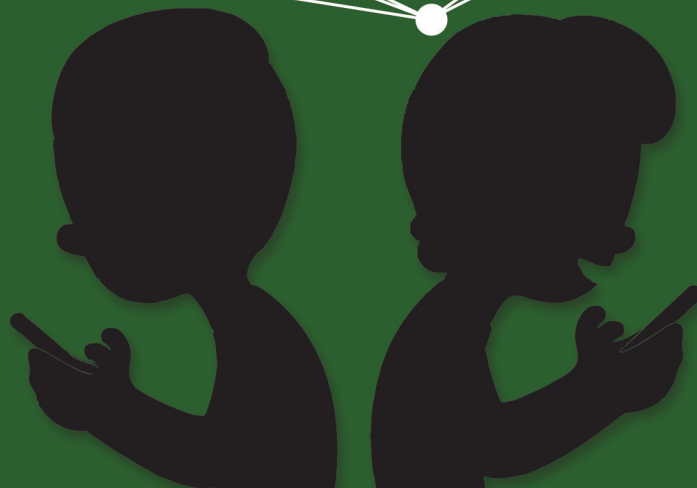


Assessing and Understanding the Risk: *Sexual Exploitation of Children Online in Nepal* 2017



Assessing and Understanding the Risk: Sexual Exploitation of Children Online in Nepal



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Foreword

It has been over two and half decades that the Government of Nepal put its concerted efforts heading towards ensuring the rights of children in line with United Nations Convention on the Rights of the Child, 1989. In this connection, the Constitution of Nepal 2015 has guaranteed the rights of children under fundamental rights by including different aspects of child rights including child participation, and incorporated the principle of the 'best interest of children' under state policy. Besides, there are many laws, policies and national plan of action to address the issues of children.

The Government conducts census and national surveys that produce wide ranged information. Likewise, some other national studies are also conducted by sectoral ministries and agencies. All these national surveys include certain indicators regarding children. Among others, the Government conducts Nepal Multiple Indicator Cluster Survey focusing on women and children. In addition, many development partners are also carrying out child rights related studies. Some studies cover the situation of children mainly in education and health sectors while some focuses on child labour and other child protection issues. There are only few studies on "online protection and children" as an emerging issue.

We are happy to have this report on "Assessing and Understanding the Risk: Sexual Exploitation of Children Online in Nepal, 2017" conducted by Voice of children and ECPAT that has rightly explored extensively untold stories experienced by teenagers in Nepal. In the pace of development, internet has become 'necessity' and, it has been widely accessible as well. It makes us very easy to find all kinds of information from each and every corner of the globe. But on the other side, there are many harmful contents. Children are more vulnerable, and the negative impact on them is highly dangerous to society as a whole, so it is essential to protect children from online harm, and facilitate them to use it more safely.

Every institution and person related to children are expected to benefit from the findings of this report especially in course of formulating policies, and designing child related programs and their implementation to address the issues of online exploitation and abuse of children and adolescents. I would like to take this opportunity to thank VOC and ECPAT for commissioning the study.

Tarak Dhital
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FOREWORD

The rapid development of new technology and the changing landscape of the online world has changed the way we work and, for many, where we do our work from. With the quick expansion of information technology the vulnerability of children to sexual abuse and online exploitation has offered new and increasingly harmful methods for the violation of children's rights, such commercial sexual exploitation, harassment, cyber bullying, exposure to child sexual abuse materials.

There is no doubt that the internet offers to children various opportunities in terms of enhancing educational performance or inclusion in the social media. However, it also exposes them to risks beyond the limits of age or geographical boundaries which, in the real world, are quite clearly defined. A practice commonly used by child sex abusers is the publication of photographs of the abuse onto the web to be viewed by the public, including child's peer and family. The consequence is that the child will know for the rest of his or her life that someone is looking at his or her picture on the internet. The threat of publication of these photos alone is frequently a form of blackmail used by child sex offenders. It has allowed them the opportunity to continue their abuse long term.

About two decade working experience of voice of children regarding to protect children from sexual abuse encourage us to focus on online sexual exploitation in Nepal. Knowing the fact that huge number of children is affected directly or indirectly by social site such as facebook, twitter, viber, imo etc but due to lack of supportive mechanism and lack of excess they are slowly trapped and moving to the way of being victim of sexual abuse. We also realized that there is huge gaps of information regarding status of online sexual abuse, knowledge to stake holders about it, legal provision etc. VOC has decided to conduct base line survey on the issues.

The research has drawn upon the knowledge attitude and practice experience of more than 400 children and young people; informants, actors, stakeholders and duty-bearers all adding to the strength of its findings, conclusions and recommendations. It is anticipated that the activities following from the research and its report will engage large numbers of the population in the elimination of the exploitation of children online.

Voice of children is grateful to ECPAT Luxembourg for their financial and technical support for this study, I also would like to thank to Mr. Kapil Aryal team leader of the research, Kriti Bhattarai team member and Uttam Dhakal Admin finance manager for their tireless work. The cooperation we got from Cyber Crime Department, Nepal Telecommunication Authority (NTA) and ISPs is a proof of their contribution for the nation is highly appreciable to protect children from online sexual abuse and expecting similar cooperation and joint effort in the future too.

The research undertaken will provide useful knowledge and enhance the understanding of this form of child sexual exploitation in Nepal.

Voice of Children

Krishna Kumar Thapa, Director

FOREWORD

For many children, the Internet and mobile phones are familiar objects, almost constants in their lives and they are able to move with ease and fluidity between the real and the virtual world, sometimes making little distinction between the two. Indeed, many children today are ‘digital natives’ who would probably have difficulty imagining a world without a social media profile and exchanges of messages, photographs or videos online. Moreover, children’s knowledge of new technologies and the ease with which they access and use such technologies often exceed the knowledge and capacity of their parents.

As information and communication technology (ICT) becomes an increasingly important part of our everyday lives as well as that of children, there is also a growing concern regarding the risks and the emergence of new frontiers with respect to sexual exploitation. The traditional understanding of exploitation requiring the physical presence of a perpetrator is no longer the case. Exploitation can take place in or be facilitated by the virtual world. When protection mechanisms are not in place, one cannot rule out the fact that children using the internet anywhere in the world are directly at risk of sexual abuse or exploitation.

The sexual abuse and exploitation of children involving the use of ICT is not an issue that industrial countries alone have to confront. In fact, the Internet is now becoming readily and rapidly accessible in developing countries such as Nepal, along with the expansion of high speed Internet and the proliferation of mobile / smart phones. The risks of sexual exploitation of children online in Nepal were identified as a ‘clear and present danger’ in a Situational Assessment of Commercial Sexual Exploitation of Children in Nepal, a study conducted by ECPAT Luxembourg and CWIN in 2015.

As you will read, it will become clear to you that Nepal’s response to the sexual exploitation of children online is still at an early stage and at best, inadequate. The sexual exploitation of children online presents new challenges for law enforcement, prosecutors, judges, and victim service providers. Much needs to be done - whether it is developing effective policies, strengthening legal frameworks or raising the awareness of children and parents. As one of the first international organizations supporting responses to online child sexual exploitation in Nepal, ECPAT Luxembourg will continue to work closely with the government of Nepal and with other key stakeholders to ensure that children remain safe online as ICT becomes accessible throughout Nepal. ECPAT Luxembourg currently has an exciting three-year partnership with Voice of Children to combat the sexual exploitation of children online. This partnership aims to raise the awareness of children and key stakeholders, to strengthen the capacity of front line child protection workers and to advocate for improvements in the legal framework as well as to carry out and publish research.

ECPAT Luxembourg would like to thank VOC, Mr. Kapil Aryal and everyone who was involved in developing this important report.

We hope this report will provide some useful insights to all of us working to combat the sexual exploitation of children online in Nepal and elsewhere.

ECPAT Luxembourg

Thomas Kauffmann, Executive Director

Ashish Sinha, Country Representative, Nepal

EXECUTIVE SUMMARY

There is no exact data on the numbers of sexual exploitation of children online (SECO) cases in Nepal, however, crimes related to social networking sites, email threats, hacking, obscene websites, Short Message Service (SMS) threats and bullying, have been recorded. With the growing numbers of mobile and internet subscribers, growing access to smart phones and similar other devices as well as children's access to these technologies, there is risk of SECO in coming days.

Nepal's laws have yet to meet internationally recognized standards for combating Commercial Sexual Exploitation of Children (CSEC). Nepal needs to harmonize its legal framework to respond to recent trends in the production and dissemination of child sexual abuse materials (CSAMs) and to address the dimension of cybercrime.

There is no specific law that criminalizes:

- Creating pedophile sites, assisting pedophiles, networking
- Viewing, possessing, downloading, creating, uploading disseminating child abuse materials and child pornography (including virtual)
- Depiction of a person appearing to be minor engaged in explicit sexual conduct
- Realistic images of children in explicit sexual conduct where no actual child is involved
- “Grooming” or solicitation of children for sexual purposes
- Sexting
- Sextortion
- Online child sex abuse streaming
- Sex tourism

There is no systematic reporting mechanism developed in the country so far for the reporting of SECO, except for going to the police station and filing complaint as in regular criminal cases. There is no victim and witness protection system. Compensation from the government is not available.

Further, the Internet Service Providers (ISPs), at the moment, do not preserve content of their service users. They neither have capacity to store all contents of their customers. None of the Nepalese laws make them liable to store content. ISPs do not have control over the contents that their clients access. Neither do they have powers to monitor, block or filter the content. The Nepal Telecom Authority (NTA), which is the principal telecommunication regulatory body in Nepal, has authority to manage and regularize telecommunications service, and in case, any complaint is received, after necessary assessment, may order for taking down the website that is hosted from Nepal. However, there is absence of law for NTA to order ISPs to block websites. Further, none of the Nepalese legislations prescribe any responsibility to the ISPs for content filtering, monitoring or for preserving content.

Nepal government's response to cyber-crime is inadequate. The Criminal Investigation Bureau (CIB) is struggling to investigate cyber related crimes with available laws and technologies. In the absence of laws, criminals are charged under Some Public Crime and Punishment Act, 1970 or under the Slander Act, 1959. Sufficient training to address cyber-crime has not been provided to investigators, prosecutors, adjudicators as well as court officials. Police investigators, prosecutors, adjudicators, court officials all are working with available laws which do not adequately address SECO issues. Parents, guardians, teachers, peers and civil society workers, as the study found out, are also not well aware

and trained to monitor children's internet habits and to protect them from possible exploitation. If any exploitation happened against children, they would have to fight on their own for victim's justice. There is no adequate support system.

Given the large scale internet usage among children and young people, their potential exposure to exploitation is heightened, yet many are unaware of this. Findings from the Knowledge, Attitude, and Practice (KAP) survey conducted among 452 children in Kathmandu valley showed that two thirds (75%) of children didn't have information to secure themselves from possible online sexual exploitation. Also, an overwhelming majority (72%) of the respondents did not know what they should do or the services available in case they encountered sexually abusive situations online. Importantly, around 15% of children admitted in the survey that they were abused online. Gender wise, 47% of those who reported being abused online were boys. The KAP survey showed that nearly 40% of the survey respondents informed that they sometimes shared pictures with unknown persons in the internet and 3% said that they frequently shared pictures with unknown persons.

Further, nearly two thirds (72.1%) of children in the survey said they had a Facebook account. Findings from the focus group sessions showed that children as young as 11 had Facebook accounts with fake age verification or from parent's email ID. Out of total respondents in the KAP survey, 52% of children informed that they had more than one Facebook account. The survey also identified that though a majority of the children did not share their Facebook password, nearly a quarter (21%) of children had a history of sharing password with others.

Not all parents, as the study found out, monitored their child's internet usage as many of them have lesser computer skills than their children. Some parents as the study found out also seemed to underestimate their child's negative experiences of the internet.

New Information and Communication Technologies have opened avenues for opportunities as well as put children at the risk of exploitation and harm. Modern technologies have made it easier for the offenders to access the children and difficult for the children victim to get their needed recovery. So in the present situation, it is difficult if not impossible to have an upper hand on the perpetrators in the digital world as the imagery can stay on the internet for an indefinite period whereby the abuse may keep reoccurring.

ABBREVIATIONS

CCAT	-	Central Committee against Trafficking
CCC	-	Child Correction Center
CCWB	-	Central Child Welfare Board
CDO	-	Chief District Officer
CEDAW	-	Convention on the Elimination of all forms of Discrimination against Women
CRC	-	The Convention on the Rights of the Child
CSA	-	Child Sexual Abuse
CSAMs	-	Child Sexual Abuse Materials
CSEC	-	Commercial Sexual Exploitation of Children
CWIN	-	Child Workers in Nepal
DCWB	-	District Child Welfare Boards
FGD	-	Focus Group Discussion
GC	-	General Comment
GoN	-	Government of Nepal
HRDS	-	Human Rights Defender System
IACIS	-	International Association of Computer Investigative Specialists
ICT	-	Information and Communication Technology
INGO	-	International Non-Governmental Organization
ISPs	-	Internet Service Providers
MNR	-	Model National Response
MoES	-	Ministry of Education and Sports
MoFA	-	Ministry of Foreign Affairs
MoHA	-	Ministry of Home Affairs
MoHP	-	Ministry of Health and Populations
MoLD	-	Ministry of Local Development
MoLJPA	-	Ministry of Law, Justice and Parliamentary Affairs
MoLTM	-	Ministry of Labour and Transport Management
MoWCSW	-	The Ministry of Women, Children and Social Welfare
NGOs	-	Non-Governmental Organization
NHRC	-	National Human Rights Commission
NTA	-	Nepal Telecom Authority
NWC	-	National Women's Commission
OPSC	-	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
SAARC	-	South Asian Association for Regional Cooperation
SAIEVAC	-	South Asia Initiative to End Violence against Children
SECO	-	Sexual Exploitation of Children Online
SWC	-	Social Welfare Council
UN	-	United Nation
UNODC	-	United Nations Office on Drugs and Crime
UPR	-	Universal Periodic Review
WCSC	-	Women and Children Service
WDO	-	Women's Development Offices

TABLE OF CONTENT

FOREWORD	III
EXECUTIVE SUMMARY	VI
ABBREVIATION	VIII
TABLE OF CONTENT	IX
CHAPTER I	1
1. INTRODUCTION	1
1.1 Background	1
1.2 Objectives of the Study	2
1.3 Rationale of the Study	2
1.4 Method of the Study	3
1.5 Limitations	3
CHAPTER II	4
2. SEXUAL EXPLOITATION OF CHILDREN ONLINE: CONCEPT AND DEFINITIONS	4
2.1 Online Aspect of Children’s Exploitation	4
2.2 Protection v. Participation: Benefits and Risks of Internet for Children	8
CHAPTER III	10
3. OVERVIEW OF INTERNATIONAL STANDARDS, NEPALESE LAWS, POLICIES AND MECHANISMS RELATED TO SEXUAL EXPLOITATION OF CHILDREN ONLINE	10
3.1. Nepal’s Legal System on Application of International Treaties	10
3.2. Substantive Laws Criminalizing Sexual Exploitation of Children Online (SECO)	14
3.3. Use of evidence on Sexual Exploitation of Children Online	16
3.4. Process	18
3.5. Commercial and Industry Regulation Legislations, ISPs Policies and Regulation	19
3.6. Laws on Victim Protection, Recovery and Redress on SECO	19
3.7. Plans and Mechanisms, Access to Justice and Gap Analysis Plans	20
CHAPTER IV	22
4. PRIVATE SECTOR AND ICT INDUSTRY IN NEPAL: INTERNET, MOBILE ACCESS AND USE	22
4.1 Service Providers and the Service	22
4.2 Beneficiaries	22
4.3 Role of ICT Sectors against SECO	23
4.4 ICT Sectors: Assessment of Current Strength and Practice	23

TABLE OF CONTENT (continued)

CHAPTER V	25
5. SEXUAL EXPLOITATION OF CHILDREN IN NEPAL: KNOWLEDGE, ATTITUDE AND PRACTICE AMONG CHILDREN	25
CHAPTER VI	31
6. SITUATION AND VULNERABILITIES	31
6.1 Situation	31
6.2 Vulnerabilities	31
CHAPTER VII	33
7. CONCLUSION, ANALYSIS AND RECOMMENDATIONS	33
7.1 Conclusion and Analysis	33
7.2 Recommendations	35
BIBLIOGRAPHY	37
ANNEX 1	31
ANNEX 2	40
ANNEX 3	41
ANNEX 4	42

CHAPTER I

1. INTRODUCTION

1.1 Background

All human beings have their rights to live a dignified life in a violence-free environment. Children, being physically and mentally immature, require special rights to be cared for and be protected.¹ However, they often are subjected to neglect, abuse, violence, and exploitation when they are not provided or denied the care and protection they need. The negative consequence of globalization, modernization, and misuse of technology has caused several complexities in societies. Such complexities have ignited various forms of violence, such as, economic, physical, sexual, intellectual and emotional abuse. In all of this, children are one of the vulnerable groups.

The Internet has revolutionized the computer and communications world like nothing before.² Development in the sector of Information Communication Technology (ICT) has made spreading of knowledge much faster and convenient. Internet technologies and modern devices are now gradually being accessible to the world-wide population. With this increased opportunities and benefits, the world has also started noticing negative connotations of these technologies. Although youths and adults are major beneficiaries of these technologies, children have also started getting access to it. Increased accessibility and affordability of internet technologies and devices have also added vulnerability to children from possible abuse and exploitation.

Although the exploitation of children is not a new phenomenon, the digital age has aggravated the problem and created more vulnerabilities to children. This is reflected through a recent report portraying that the easy access to the Internet has resulted in increasing risks of children to sexual exploitation globally.³

The widespread convenience in the use of information and communication technology (ICT) has transformed societies around the world. For instance, in Nepal till the end of 2010-2011 (2066-67 BS), the telecommunication and Internet facility was respectively accessible in 97% and 38% of Nepal's geographical area respectively.⁴

Under such circumstances children in particular have unprecedented access to computers and mobile technologies, resulting in ICTs becoming painstakingly implanted in their lives and such accessibility, affordability, and anonymity of the technological facilitations have been a primary contributory in the online exploitation of children.⁵

The rapid accessibility of ICTs has facilitated opportunities for the misuse of ICTs to abuse and exploit children as they often do not fully understand threats associated with the use of ICTs and get easily engaged with strangers. For illustration, applications (apps), and online games are readily available and accessible to children via different portable devices like smartphones. This facilitates the offender-victim communication whereby the offenders are anonymously able to reach hundreds of children at a single time, with minimal effort.⁶ Studies also show that currently there are instances of perpetrators

1 The Convention on the Rights of the Child, Article 19.

2 <http://www.internetsociety.org/internet/what-internet/history-internet/brief-history-internet#Origins> last accessed on January 3, 2017.

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

4 Broadband Policy 2015 (2071 B.S.) Ministry of Information and Communication, Nepal.

5 Donald Maxim, Stephanie Orlando and et al., 'Online Child Exploitation Material - Trends and Emerging Issues', Research Report of the Australian National University Cybercrime Observatory with the input of the Office of the Children's eSafety Commissioner (Canberra, 2016). Available at SSRN: <https://ssrn.com/abstract=2861644> Page 8

6 Ibid, P 24

requesting child sexual abuse ‘on-demand’ through the Internet and with the increase of global high speed internet coverage, this will likely result in growth of live streaming activities as well as easier access towards the victims.⁷

Potential offenders are able to gain enhanced access to victims and to child sexual abuse material through the use of ICTs, effectively enabling users to cover/hide their true identities, which increase their connection with the victims. It helps in furtherance of activities like child sex tourists using chat rooms, message boards, peer-to-peer file-sharing servers, news groups and specialized websites to obtain information on potential victims and destinations, share stories, trade child sexual abuse material, and plan travels.⁸

Nepal may not be the exception to the misuse of ICTs to exploit children, however, there has not been any study to reveal and reflect the situation of sexual exploitation of children online (SECO). This study analyzes Nepal’s legislative framework and mechanisms seeking their adequacy to deal with the probable exploitations and also seeks to understand the knowledge, attitude and practice of children on safer use of the Internet.

1.2 Objectives of the Study

The objectives of this research are:

- a) To find out the prevalence and current state of sexual exploitation of children online in Nepal;
- b) To assess whether the Nepalese legal provisions and policies adequately address sexual exploitation of children online in Nepal;
- c) To identify knowledge, attitude and practice of children about sexual exploitation of children online and their practice of internet use;
- d) To trace out available services for the victims of sexual exploitation online and impact of those services in Nepal;
- e) To evaluate monitoring and regulation mechanism of telecommunication and Internet Service Providers to ensure protection of children from online sexual abuse and exploitation;
- f) To find out whether the service providers and other key stakeholders are well prepared to tackle sexual exploitation of children online in Nepal;
- g) To identify the challenges to service providers and key stakeholders to combat sexual exploitation of children online in Nepal;
- h) To identify problems and risks faced by children and adolescents while being online.

1.3 Rationale of the Study

Although there have been some research in the sectors of abuse and exploitation of children and their protection, sexual exploitation of children online is a new area of study for the majority of societies. In December of 2014, representatives from 47 countries, 2 international organizations, 10 civil society organizations and 20 leading companies gathered for the “WeProtect” Summit called to address the changing face of international child protection and signed the Statement of Action.⁹

The Special Representative of the UN Secretary General on Violence against Children, Marta Santos Pais, named sexual exploitation of children as a key area for her office to address.¹⁰ This shows the dire need of prioritizing working against SECO.

7 Ibid P 18

8 Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children, UNODC, p. 16

9 WeProtect Summit 2014, Tackling Online Child Sexual Exploitation, available at [www.techuk.org/ component/.../3482?file...WePROTECT_Summit_2014](http://www.techuk.org/component/.../3482?file...WePROTECT_Summit_2014) last accessed on February 28, 2017.

10 <http://srsg.violenceagainstchildren.org/search/node/Report%2015> last accessed on February 28, 2017.

There has not been a single baseline survey on this subject matter in Nepal. All concerned with child protection are aware that Nepal is not untouched with growing access of technologies and emerging threats associated with it. However, at the moment, in absence of study in this area, it is difficult to say whether SECO is a problem in Nepal, or whether Nepal is in position to prevent, respond and document this crime at current stage. This study may be useful to the concerned ministries, departments, officials, law enforcement officials, parents, guardians, practitioners as well as all interested to learn about situation of SECO in Nepal.

1.4 Methodology of the Study

This study is exploratory as well as analytical in nature as it explores the current state and prevalence of sexual exploitation of children online (SECO) in Nepal. This study explores knowledge, attitude and practice of children regarding SECO. Further, the study also assesses available services for the victims of sexual exploitation online and impact of those services, stakeholders' preparedness to tackle sexual exploitation of children online, challenges to the service providers and key stakeholders to combat SECO, and problems and risks faced by children and adolescents while being online.

This study assesses the Nepalese legal provisions and policies seeking their adequately in addressing SECO. This study also analyzes monitoring and regulation mechanisms of telecommunication and Internet Service Providers to ensure the protection of children from online sexual abuse and exploitation in Nepal.

The Lalitpur district was selected as sample district for the KAP survey as this is the working district of Voice of Children, the implementing partner of ECPAT Luxembourg funded SECO project. Assuming that there are more than 50,000 school going and out of school children in Lalitpur, with confidence level of 95 percent and margin error of 5 percent, at least 382 children were to be selected as sample. Considering invalid and unusable responses, all together 452 children in Kathmandu valley were consulted to know their knowledge, attitude and practice on internet use and possible abuse of children while being online. Out of the total respondents, 212 (47%) were girls and 240 (53%) were boys. The sample respondents were selected from both from the government schools and private and boarding schools. Such schools were selected from both the urban and peripheral areas of Lalitpur. Of the total, 83 children were from the age category 5-7; children from age category 8-10 were 316 were selected and 51 children were from the age category 11-12. Two children's age couldn't be ascertained.

This study is based on both quantitative as well as qualitative data. Data collected from field survey, government sources, and other organizations have also been presented. Sources of data for this study are key informant interviews, interviews with beneficiaries, review of published reports, media news, legislative and policy analysis, and analysis of the empirical data from the field study.

Relevant stakeholders as well as members of beneficiary groups have been interviewed and discussed in groups. This include government officials, law enforcement officials, investigators, prosecutors, adjudicators, defense lawyers, parents, school teachers, ICT industry representatives, cyber café owners, representatives from NGOs, and children. Key informant interviews, focused group discussion, were also major tools applied for data collection.

1.5 Limitations of the Study

The field study was carried out within the Kathmandu Valley. Only a few representatives from each category of stakeholders, including government officials, law enforcement officials, investigators, prosecutors, adjudicators, defense lawyers, parents, school teachers, ICT industry representatives, cyber café owners, representatives from NGOs, and children as well, and key informants were consulted.

CHAPTER II

2. SEXUAL EXPLOITATION OF CHILDREN ONLINE: CONCEPT AND DEFINITIONS

2.1 Online Aspect of Children's Exploitation

There is no agreed international definition of SECO, and no one has proposed any clear formula for defining the boundaries between offline and online exploitations. The offline and online forms of exploitation may interchange as whatever is done offline may be brought to the online world and exploitation committed online may be brought to public in printed or in digital format.¹¹ Furthermore, child sexual exploitation is not clearly distinguished from child sexual abuse in the *Convention on the Rights of the Child (CRC) 1989*, the *Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography 2000*, or in the *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse 2007* (hereafter *Lanzarote Convention*).

Who is a 'child' in the context of Nepal?

The Nepalese legislations prescribe different age bars for sexual consent, marriage, to be enrolled as labour, voting, signing a contract, and for prescribing criminal liability. The *Muluki Ain* is the general code of Nepal which prescribes punishment for rape if anyone indulges in sexual intercourse with a girl below the age of 16 even if there is consent of the girl.¹² Here, the age of 16 years and above is considered a matured person. However, the same Code prescribes the age for marriage as "eighteen" for both girls and boys.¹³ Similarly, Nepali citizens of 18 years and above can exercise their voting rights¹⁴ but individuals of 16 years and above are eligible for signing legal contracts, and buying and selling property. The *Contract Act, 2000* recognizes the age of 16 as capable to enter into a contract.

The specific law for children, the *Children's Act, 1992* and *Child Labor (Prohibition and Regulation) Act, 2000* defines 'child' as a person below the age of 16.

The *Civil Rights Act, 1955*,¹⁵ *Tea Garden Labor Regulation, 1933*,¹⁶ and *Labor Act, 1992* allows a person who has attained the age of 14 years to work. The *Smallpox Control Act, 1964* defines child as a person who has not attained the age of 12. *Some Nepal Law (Amendment) Act, 2007* has amended *Registration of Marriage Act, 1971* prescribing the minimum age for marriage as 20 years for both a girl and a boy.

Similarly, every eligible person above the age of 16 can get citizenship certificate but they can vote only after the age of 18 and criminal liability starts from the age of 10. The *Human Trafficking and Transportation (Control) Act, 2007* mentions a person below 18 as a child.¹⁷

Various Nepalese laws are inconsistent within themselves in defining the age of children and their maturity. Allowing to work at the age of 14 and criminal liability at the age of 10 are contradictory with the recognition of the age of maturity.

11 In Kasur, a village in Lahore in Pakistan between 2006-2014, there were recorded sexual abuse of a number of boys (estimated 280 and 300) by a gang for the purposes of sexual exploitation and extortion. The incident came in public as a major political scandal in 2015 where rape of these boys were videotaped and was brought to market. Human Rights Commission of Pakistan demanded action against the perpetrators. Available at <http://hrqp-web.org/hrqpweb/child-abuse-in-kasur-hrcp-demands-thorough-probe-prosecution/> Last retrieved on March 12, 2017

12 Muluki Ain Chapter on Rape.

13 Muluki Ain, Chapter on Marriage.

14 Election Act 2017

15 Section 14, *Civil Rights Act, 1955*

16 Rule 3(1), *Tea Garden Labor Regulation 1933*.

17 Human Trafficking and Transportation Control Act 2007 Section 2(d).

The *National Child Policy, 2012*, *Human Trafficking and Transportation Control Act, 2007* and the proposed Children's Act have mentioned a person below 18 years of age as a child. Although the *Human Trafficking and Transportation Control Act, 2007* considers every person below the age of 18 as a child, it is not able to protect a person below the age of 18 and above the age of 16 from sexual exploitation, including child prostitution.

Abuse and Exploitation

The terms “sexual abuse” and “exploitation of children” are used interchangeably by many. However, even without watertight distinctions, they are not the same. A child is sexually abused when they are forced or persuaded to take part in sexual activities. This doesn't have to be physical contact and it can happen online. Sometimes a child won't understand that what is happening to them is abuse. They may not even understand that whatever going on them is wrong.

Sexual abuse may be by contact or without contacting children. These are called contact abuse and non-contact abuse.

Contact abuse involves touching activities where an abuser makes physical contact with a child, including penetration. It may include, but not limited to:¹⁸

- Sexual touching of any part of the body whether the child is wearing clothes or not,
- Rape or penetration by putting an object or body part inside a child's body part,
- Forcing or encouraging a child to take part in sexual activity, or
- Making a child take their clothes off, touch someone else's body part.

Non-contact abuse involves non-touching activities, such as grooming, exploitation, persuading children to perform sexual acts over the internet, and flashing. It may include, but not limited to:¹⁹

- Encouraging a child to watch or hear sexual acts,
- Not taking proper measures to prevent a child being exposed to sexual activities by others,
- Meeting a child following sexual grooming with the intent of abusing them,
- Online abuse including making, viewing or distributing child abuse images,
- Allowing someone else to make, view or distribute child abuse images,
- Showing pornography to a child, or
- Sexually exploiting a child for money, power or status (child exploitation).²⁰

“Exploitation” is the abuse of a child where some form of remuneration is involved or whereby the perpetrators benefit in some manner - monetarily, socially, politically, etc. Exploitation constitutes a form of coercion and violence, detrimental to the child's physical and mental health, development, and education.²¹ Sexual exploitation includes allowing the child to engage in prostitution or in the production of child pornography.²²

18 <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/child-sexual-abuse/> last accessed on March 4, 2017.

19 Ibid.

20 <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/child-sexual-abuse/>

21 Critical Issues: Abuse and Exploitation, Action for the Rights of Children, available at <http://www.unhcr.org/3bb81aea4.pdf>

22 <https://www.childwelfare.gov/pubPDFs/define.pdf>

The UN Committee on the Rights of the Child mentions sexual abuse and exploitation as:

- The inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity;
- The use of children in commercial sexual exploitation;
- The use of children in audio or visual images of child sexual abuse;
- Child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and sale of children for sexual purposes and forced marriage. Many children experience sexual victimization which is not accompanied by physical force or restraint but which is nonetheless psychologically intrusive, exploitive and traumatic.²³

Child Sexual Abuse Online

While defining the nature of the crime, people and organizations have used the terminologies “child sexual abuse” and “sexual exploitation of children online” interchangeably. Online element makes the traditional nature of child sexual abuse and exploitation a little different than what was going in the societies. Actually, it is not a unique type of crime but whatever was going on in the real world came online was brought to the cyber world.

Researchers and writers have tried to define child sexual abuse as following:²⁴

Online child sexual abuse is the engagement of a child in sexual activities via internet facilities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities; and engaging in sexual activities with a child where:

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

When sexual exploitation of children happens online, they may be persuaded, or forced, to:

- Send or post sexually explicit images of themselves,
- Take part in sexual activities via a webcam or smartphone, or
- Have sexual conversations by text or online.

Abusers may threaten to send images, video or copies of conversations to the children’s friends and family unless they take part in other sexual activity. Images or videos may continue to be shared long after the sexual abuse has stopped²⁵.

“Cyber enticement,” “solicitation,” and “online grooming”

Similarly, as per International Association of Computer Investigative Specialists (IACIS), “The online sexual solicitation of children involves sexually-oriented interactions over the Internet; the production, collection, and distribution of child pornography; unwanted exposure of children to pornography; and child-sex tourism and prostitution.”²⁶

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

24 Mare Ainsaar; Lars Lööf, *Online Behaviour Related to Child Sexual Abuse: Literature Report* (European Union: Robert). p. 11. available at: http://www.childcentre.info/robert/public/Online_behaviour_related_to_sexual_abuse.pdf (accessed on 20 Sept, 2016), p. 10

25 <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/child-sexual-exploitation/>

26 Robert J. O’Leary & Robert D’Ovidio, *Online Sexual Exploitation of Children*, for National Governors Association (UAS: 2005) available at: <http://www.nga.org/files/live/sites/NGA/files/>

Child Pornography / Child Sex Abuse Materials

“Pornography” is a vague term and may differ in understanding as per social, religious and cultural context. Thus, academicians, practitioners and professionals prefer to use the term “Child Abuse Materials” instead of “Child Pornography.”

This study uses the definition contained in the Budapest Convention (2001), as this Convention deals specifically with online abuse, and this Convention is taken as an international benchmark while dealing with SECO in most countries.²⁷

This Convention defines child pornography as:

“...pornographic material that visually depicts: a) a minor engaged in sexually explicit conduct²⁸; b) a person appearing to be a minor engaged in sexually explicit conduct; c) realistic images representing a minor engaged in sexually explicit conduct...”²⁹

From the observation of the above mentioned definitions, the main forms of ICT-facilitated child abuse and exploitation can be identified as child sexual abuse material (child pornography), commercial sexual exploitation of children, cyber enticement, solicitation and grooming, cyber bullying, cyber harassment, cyber stalking, and exposure to harmful contents.³⁰ A brief picture of the threats faced by children while being online is presented below:³¹ Child sexual abuse material comes in many forms and consists of a recording, usually in still or video, which depicts a child engaged in sexually explicit activity.

Therefore, as the Internet access flourishes and grows to be increasingly accessible and affordable, it gets convenient for the offenders to sexually abuse and exploit children.

Unwanted Sexting (Peer to Peer or Adult to Child)³²

Sexting refers to the exchange of sexual messages or images, and is a form of self-generated sexual content involving children which is often consensual and happens within relationships and is not inherently exploitative. However, sexting becomes exploitative when it is unwanted, because the sender of the sexualized materials is forcing the recipient to view something they do not wish to, and thereby abusing their power. For example, a peer or an adult may send sexualized photos or videos to a child who does not wish to receive them, thereby potentially exposing them to harmful content, which may cause further distress if the recipient does not know how to block unwanted messages.

pdf/0703ONLINECHILD.PDF (accessed on Sept 2, 2016)

27 Sri Lanka has acceded to the Budapest Convention, Bangladesh mentions it in their cybercrime policy, and law enforcement stakeholders in the Maldives explained that they were also hoping to meet the standards required to be invited to ratify the Convention. Note to draft: I will probably include this in a different section and refer to that paragraph in this section.

28 ‘Sexually explicit conduct’ covers at least real or simulated: a) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, between minors, or between an adult and a minor, of the same or opposite sex; b) bestiality; c) masturbation; d) sadistic or masochistic abuse in a sexual context; or e) lascivious exhibition of the genitals or the public area of a minor. It is not relevant whether the conduct depicted is real or simulated.’, Explanatory Report to Budapest Convention, Para. 100.

29 Budapest Convention, Article 9(2).

30 Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children, UNODC., New York, 2015, p. ix.

31 Ibid.

32 Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, Adopted by the Inter-agency Working Group in Luxembourg, 28 Jan. 2016. F. 4 v.

Sexual Extortion of Children (Sextortion)³³

The sexual extortion of children is defined by the draft Terminology Guidelines as “*the blackmailing of a person with the help of self-generated images of that person in order to extort sexual favours, money, or other benefits from him/her under threat of sharing the material beyond the consent of the depicted person* (e.g. posting images on social media).”³⁴ Anecdotal evidence found during a study indicates that the sexual extortion of children in South Asia seems to overwhelmingly be perpetrated by boys and men against girls.³⁵ This is because social norms related to the value of the girl’s virginity and the “honour” of the family put boys and men in a position of power over girls due to the extreme social consequences for the girl if her sexualized photos are distributed online.³⁶

Corruption of Children

Corruption of children is a crime when children are intentionally caused to witness sexual abuse or sexual activities, even without having to participate.³⁷ Generally this is an unaddressed nature of crime in the majority of national legislations. The Lanzarote Convention (2007) requires state parties to take the necessary legislative or other measures to criminalize the offence.³⁸

Solicitation of Children for Sexual Purposes

The Lanzarote Convention mentions the “solicitation of children for sexual purposes” as: “intentional proposal, through information and communication technologies, of an adult to meet a child ... for the purpose of committing any of the offences established ... against him or her, where this proposal has been followed by material acts leading to such a meeting”³⁹

2.2 Protection vs. Participation: Benefits and Risks of the Internet for Children

Information and Communication Technology (ICT), has become a part and parcel of daily life. Smartphones and internet facilities are being easily accessible to children not just in the urban cities but also in the far remote villages. These information technologies such as the internet and mobile phones have great potential as constructive tools to help keep children safe and to learn things. However, a protective environment needs to be created through regulation and monitoring of information technologies including empowering children to use these technologies safely. Otherwise it is not that difficult to sense that the children are exposing themselves to the danger of being abused and exploited by a distance abuser that they never physically have met before, or would have otherwise met.

A Canadian report reads: with great ease, youth are continuously expanding their social world online, while parents are struggling to keep up with the latest technological trends. The offenders who target the youth take advantage of both this gap in knowledge between parents and their teens and reluctance from youth to tell their parents if they’ve gotten themselves into trouble online—fearing the punishment of having their Internet or cell phone privileges taken away.⁴⁰ This report is equally relevant in Nepal as it is candid from an empirical research conducted by CWIN in 2005 where it

33 Ibid.

34 Ibid. H.4. III

35 UNICEF, Victims are Not Virtual: Situation Assessment of Online child Sexual Exploitation in South Asia, 2016.

36 Ibid.

37 Lanzarote Convention, Article 22

38 Ibid.

39 Lanzarote Convention, Article 23.

40 Experience of Canada, see generally, A10 Year review of Canada’s Tip line for reporting the online sexual exploitation of Children, available at: https://protectchildren.ca/pdfs/CTIP_10YearReport_en.pdf (accessed on 12 September 2016).

reported that many children are exposed to pornographic material via Internet whereby it further cautioned to stand still and consider the consequences of growing Internet access for children and young people.⁴¹

The interviewees for this research expressed that Internet have become essential tool for carrying out assignments in many schools. Children may learn many things from the Internet, good or bad, but there is a huge gap between parents and new generation on knowledge and use of new technologies and devices. Many parents are unable to monitor and guide their children on using the Internet. Some parents even do not know what their children do on computers and other devices. Despite their illiteracy on ICT, parents viewed that children must have access to the Internet and should have sufficient knowledge of new technologies to survive and establish in the globalized world.

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

CHAPTER III

3. OVERVIEW OF INTERNATIONAL STANDARDS, NEPALESE LAWS, POLICIES AND MECHANISMS RELATED TO SEXUAL EXPLOITATION OF CHILDREN ONLINE

3.1. Nepal's Legal System on Application of International Treaties

The Constitution of Nepal mentions that the Constitution is the fundamental law of Nepal and any law inconsistent with the Constitution shall, to the extent of such inconsistency, be void.⁴² Article 279 of the Constitution has provisions regarding ratification of, accession to, acceptance of, or approval of, treaties or agreements. Article 279(1) mentions that “the ratification of, accession to, acceptance of, or approval of, treaties or agreements to which Nepal or the Government of Nepal is to become a party shall be as provided for in the Federal law.” While this report is being written (March 2017), such Federal law has not yet been enacted. The Constitution is silent about the status of ratified treaties in Nepal. This also does not mention anything about the consequence if the Constitution itself contradicted the ratified treaty.

The *Treaty Act, 1990* is a piece of legislation which prescribes about the consequence of treaty ratification and the status of the ratified treaty thereafter. Section 9 (1) of the Act provides: “In case of the provisions of a treaty, to which Nepal or Government of Nepal is a party upon its ratification accession, acceptance or approval by the Parliament, inconsistent with the provisions of prevailing laws, the inconsistent provision of the law shall be void for the purpose of that treaty, and the provisions of the treaty shall be enforceable as good as Nepalese laws.”⁴³

Section 9 (2) of the same Act obligates to the Nepal government to initiate action as soon as possible to enact laws for the enforcement of the ratified or acceded treaty when such treaty imposes any additional obligation or burden upon Nepal, or the Government of Nepal when any legal arrangements are needed to be made.⁴⁴

The provisions of the *Treaty Act, 1990* suggest that ratified international treaties or conventions are not automatically enforceable in Nepal. It merely points out the obligation of the state to “rationalize the laws in accordance with the international treaties and conventions ratified or acceded [to]. The provisions of the Act are silent on the consequence when Nepal ratifies a convention or accedes to it but required to enact legislation to give effect to the ratified treaty. However, there have been numerous court decisions as well as the Supreme Court directives declaring null and void the Nepalese legal provisions inconsistent with ratified treaties.

The contemporary body of international literature and guidance on child sexual exploitation began with the UN Convention on the Rights of the Child (CRC) in 1989, and was substantially updated in 2000 through the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC). The CRC was the first internationally binding agreement to address child sexual abuse materials (CSAMs) and to require State Parties to prevent exploitation of children through pornographic performances and materials.⁴⁵ Further, the CRC provides for the right to rehabilitation of child victim.⁴⁶ The OPSC extends the definitions for various forms of child sexual exploitation to include: the sale of children, child prostitution and child

42 Article 1 of the *Constitution of Nepal*.

43 Treaty Act, Section 9(1).

44 Ibid, Section 9(2).

45 Article 34: “The inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of children in prostitution or other unlawful sexual practices; and the exploitative use of children in pornographic performances and materials.”

46 Article 39 requires State Parties to take all appropriate measures to promote physical and psychological recovery and reintegration of a child victim of any form of exploitation or abuse, in an environment which fosters the health, self-respect, and dignity of the child.

pornography. The OPSC also requires that States Parties provide for the extradition of offenders; encourage international cooperation between States in pursuing offenders; and provide support to child survivors of sexual exploitation including throughout the legal process. However, both the CRC and OPSC fail to criminalize the mere possession of illicit material, intentional access of child pornography through ICTs, online real-time viewing of child pornography, grooming, or the receipt of payment.

Nepal is abided by various international and regional human rights treaties and commitments concerning combating commercial sexual exploitation of children, namely, the *CRC*, *CRC OPSC*, *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, *SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution*, *SAARC Convention on Child Welfare*, and *Declaration and Agenda for Action against Commercial Sexual Exploitation of Children (Stockholm Agenda for Action -1996)*,⁴⁷ and the *Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents*, 2008. The *Slavery Convention 1953*, *Supplementary Convention on the Abolition of Slavery 1956*, *Slave Trade and Institution and Practices similar to Slavery 1956*, *Convention on the Suppression of Immoral Trafficking 1949*, and *Forced Labor Convention 1930 and Abolition of Forced Labour Convention 1957* are other important instruments to which Nepal is a party, and relevant to discussing CSEC in Nepal. Nepal has ratified the *Convention against Transnational Organised Crime* but has not yet ratified the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially, Women and Children*.⁴⁸

After the ratification of the CRC by Nepal on September 14, 1990, the Optional Protocol to the CRC on the *Sale of Children, Child Prostitution and Child Pornography* on January 20, 2006, and the *Optional Protocol to the CRC on the Involvement of Children in Armed Conflict* on January 3, 2007, the provisions of these treaties obtained legal status above the domestic laws in the legal system of Nepal.⁴⁹ These instruments have given clear guidelines to Nepal on its obligation in protecting children from all forms of abuse and exploitation.

Article 19 of the CRC states that States Parties are obliged to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.⁵⁰ Similarly as per Article 34, States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

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

47 Nepal adopted the *Stockholm Declaration and Agenda for Action* in 1996 and reaffirmed its commitment at Yokohama in 2001.

48 Parliament ratified the two UN Conventions (*UN Convention on Suppression of Terrorism Financing* and *UN Convention against Transnational Organized Crime*) with a simple majority when Deputy Prime Minister and Finance Minister Bharat Mohan Adhikari tabled the proposals, on 24th June, 2011. <http://www.nepalrus.com/2011/06/25/nepal-ratifies-un-convention-against-money-laundering/> last visited on July 29, 2011

49 Available at <http://indicators.ohchr.org/> (last accessed on February 2, 2017)

50 Article 19 of the Convention on the Rights of the Child. Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

Furthermore Article 34 is equally important as it ensures protection of the child against all other forms of exploitation prejudicial to any aspects of the child's welfare. Also, important is Article 39, which requires States to provide physical and psychological recovery and reintegration in an environment that fosters the health, self-respect and dignity of child victims of sexual exploitation.

The General Comment 13 on Article 19 of the CRC⁵¹ aims to promote a holistic approach to implementing Article 19 based on the Convention's overall perspective on securing children's rights to survival, dignity, wellbeing, health, development, participation and non-discrimination—the fulfillment of which are threatened by violence. In addition, it has provided the legal analysis of Article 19 of CRC where it has identified children as users of ICT:

- (i) *As recipients of information, children may be exposed to actually or potentially harmful advertisements, spam, sponsorship, personal information, and content which is aggressive, violent, hateful, biased, racist, pornographic, unwelcome, and/or misleading;*
- (ii) *As children in contact with others through ICT, children may be bullied, harassed or stalked (child "luring") and/or coerced, tricked or persuaded into meeting strangers off-line, being "groomed" for involvement in sexual activities and/or providing personal information;*
- (iii) *As actors, children may become involved in bullying or harassing others, playing games that negatively influence their psychological development, creating and uploading inappropriate sexual material, providing misleading information or advice, and/or illegal downloading, hacking, gambling, financial scams and/or terrorism.¹*

In addition it has identified the areas in relation to the ICT related child protection risks as:

- (a) Sexual abuse of children to produce both visual and audio child abuse images facilitated by the Internet and other ICT;
- (b) The process of taking, making, permitting to take, distributing, showing, possessing or advertising indecent photographs or pseudo-photographs ("morphing") and videos of children and those making a mockery of an individual child or categories of children;

The Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography focuses exclusively on addressing child sexual abuse and exploitation. It requires States Parties to adopt and implement legislation criminalizing and adequately punishing at least such acts related to child sexual abuse and exploitation. Also, general principles for transnational cooperation are outlined.⁵²

Nepal submitted the third, fourth and fifth combined periodic reports on the implementation of *the Convention on the Rights of the Child* (CRC) to the Committee on the Rights of the Child in April 2012.⁵³ The Committee came up with Concluding Observations and numbers of recommendations pointing on measures to be carried out by Nepal to ensure protection of the rights of children.⁵⁴

There have been some instrumental developments in Europe to address new forms of abuse and exploitation. The Council of Europe's (COE) Budapest Convention on Cybercrime 2001 (Budapest Convention), is one of the earliest international conventions to specifically target online child sexual exploitation. This convention provides a broad definition of "child pornography," and requires States

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

52 'Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children', UNODC, p. 37.

53 Ibid.

54 General Assembly Resolution A/RES/54/263/ of 25 May 2000, entry into force on 12 Feb. 2002. Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx>

to provide criminal provisions and support for law enforcement specifically in the case of ICTs used for child sexual exploitation. This Convention was significantly reinforced in 2012 by the Council of Europe's Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), which is the only international treaty to prescribe criminal penalties for: those who recruit children into prostitution and those who have recourse to them; the production, supply, distribution and possession of child pornography and online access to it; soliciting children in chat rooms or online game sites for sexual purposes; and causing a child to witness sexual abuse or sexual activities for sexual purposes. The Lanzarote and Budapest Conventions, read together with the OPSC, are widely accepted as representing a comprehensive set of international benchmarks to protect children from child sexual abuse online.⁵⁵

These Conventions being European Regional Instruments, are not binding to the Nepalese Courts and may not be invoked before the Nepalese courts of laws for their enforcement, however, these courts may refer to these European standards while pronouncing judgments on CSA and SECO cases.

While discussing about standards, mechanisms and initiatives against sexual exploitation of children online, the We Protect Summit held in 2014 is a milestone. It has provided a new draft Model National Response (MNR) outlining a potential structure for integrated child protection systems.⁵⁶ The MNR acknowledges that due to the nature of the crime, preventing and tackling this cannot be addressed in isolation and a wider set of capabilities are required to be in place to ensure a complete national response.⁵⁷ This MNR can be an important guideline for Nepal to deal with the crime of CSA and SECO.

The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002 and the SAARC Convention on Regional Arrangement for the Promotion of Child Welfare in South Asia are adopted but these Conventions do not have enforcement mechanism. These Conventions also do not cover wide range of definition and explanations required for the protection of children.

The South Asia Initiative to End Violence against Children (SAIEVAC), SAARC's apex children's welfare group, has been proactive in promoting the adoption of laws prohibiting all forms of sexual abuse, exploitation and harassment, and a Code of Conduct for telecommunication services.⁵⁸ SAIEVAC emphasizes that commercial sexual exploitation of children continues to be one of the most pervasive violations of children's rights in South Asia. This includes child abuse through child prostitution, sex tourism, child pornography, internet pornography and trafficking. SAIEVAC encouraged all States to take the necessary steps to end sexual abuse and exploitation against children by adopting comprehensive legislation, ratifying all relevant international and regional instruments and enforcing a Code of Conduct for telecommunications services (i.e. internet providers, mobile phone companies, internet cafes) and travel and tour outlets to prevent sexual abuse and exploitation by the year 2015⁵⁹. Despite these initiatives by SAIVAC, there is not such tangible outcome on instrumental or on child protection mechanism in Nepal.

Other standards and initiatives developed so far may in SAARC and other regional level as well as treaties not ratified by Nepal remains to be persuasive for the courts of Nepal. United Nations Convention against Transnational Organized Crime may be taken as one of such international instruments. Although this treaty does not relate specifically to child exploitation, "benefit" in context

55 International Centre for Missing and Exploited Children, available at <http://www.icmec.org/child-pornography-model-legislation/>

56 <http://www.weprotect.org/the-model-national-response/> last accessed on Feb 3, 2017.

57 Ibid.

58 ECPAT International, *The Commercial Sexual Exploitation of Children in South Asia*, Bangkok 2014, p. 52.

59 South Asia Initiative to End Violence against Children, 2016.

of the definition of “organized criminal group” includes “sexual gratification”. Accordingly the trading of Child Exploitation Material by child grooming rings or the trading of children by child sex offender rings is punishable in the absence of economic benefit.⁶⁰

Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime is another soft law developed by the United Nations Office of Drugs and Crime sets forth “good practices based on the consensus of contemporary knowledge and relevant international and regional norms, standards and principles. It intends to provide governments and policy makers, civil society and practitioners, especially the judiciary, with practical frameworks for implementing effective legislation, policies, and practices to ensure that the rights of child victims and crime witnesses are respected.”⁶¹ While developing laws, policies, programs and mechanisms, Nepal may consult this guideline.

The Stockholm Agenda for Action pointed out that every child is entitled to full protection from all forms of sexual exploitation and sexual abuse. This is reaffirmed by the Convention on the Rights of the Child, an international legal instrument of universal significance (of which there are 187 States Parties). States are required to protect the child from sexual exploitation and sexual abuse and promote physical and psychological recovery and social reintegration of the child victim.⁶²

3.2. Substantive Laws Criminalizing Sexual Exploitation of Children Online (SECO)

The rights of the child and provisions for the welfare of children are scattered in many Acts, Rules and Regulations in Nepal, including the Constitution of Nepal. *Some Public Crime and Punishment Act 1970, Child Labour (Prohibition and Regulation) Act 2000, Electronic Transaction Act 2008, Foreign Employment Act 2007, General Code (Muluki Ain) 1963, Human Trafficking and Transportation (Control) Act 2007, and the Children Act 1992* are all relevant to combating commercial sexual exploitation of children. However, not all these Acts explicitly address SECO.

Section 16 of the *Children's Act, 1992* provides that no one should indulge children in immoral activities. Section 16(2) prohibits taking photos with the intention to use for immoral profession and to distribute or exhibit such and 16(3) prohibit printing and publishing such materials.

Section 2 of *Some Public Offences (Crime and Punishment) Act, 1971* provides about the acts that ought not to be performed. Among them, Section 2(c) prohibits disturbing peace through voice, language, sign, and symbol or to expose vulgarity in public places and (c1) prohibits in publishing vulgar language or words those signify vulgarity or printing or publishing vulgar pictures or exhibiting of such materials in public.

Section 47 of Electronic Transition Act 2008 states that if any person publishes or displays any material in the electronic media which are legally/morally prohibited or against the decent behavior, shall be liable to the punishment with the fine not exceeding One Hundred Thousand Rupees or with the imprisonment not exceeding five years or with both. In case the offence is committed time to time he/she shall be liable to the punishment for each time with one and one half percent of the punishment of the previous punishment. Similarly, a person who attempts to commit or abets or is involved in the conspiracy to commit an offence relating to computer shall be liable to the punishment with a fine not exceeding fifty thousand Rupees or with imprisonment not exceeding six months or with both, depending on the degree of the offence.⁶³

60 Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children, UNODC, p. 37.

61 Ibid. p. 38

62 Article 3, *The Stockholm Declaration and Agenda for Action*, adopted at: First World Congress against Commercial Sexual Exploitation of Children, Stockholm, Sweden, 27-31 August 1996.

63 Section 53 of Electronic Transition Act 2008.

Similarly, *Section 55 of Electronic Transition Act 2008* has also envisioned for the punishment in an offence committed outside Nepal i.e. even though the offence is committed while residing outside Nepal, a case may be filed against such a person and shall be punished accordingly. A case deemed to be an offence under this Act shall be initiated by Government of Nepal as plaintiff and such a case shall be deemed have been included in Schedule 1 of the Government Cases Act, 1992 (2049) whereby the police have to take assistance of the Controller or other concerned expert while conducting investigation.⁶⁴ And, any loss or damage caused to any person by the reason of offence committed under this Act shall be recovered from the offender.⁶⁵

Section 47 of *Telecommunication Act, 1997* prescribes a person abusing; threatening or causing unnecessary harassment through the telecommunications service is liable to fine up to Twenty Five Thousand Rupees. The authority may also stop the services provided to the concerned person after giving a proper opportunity of his clarification.

General Code (Muluki Ain), 1963 in Chapter on Rape Number 1 prescribes that “if a person enters into sexual intercourse with a woman without her consent or enters into sexual intercourse with a girl below the age of sixteen years with or without her consent shall be deemed to be an offence of rape”. Definition of “rape” is narrow and penetration of human organ or object in mouth or at anus is unaddressed. This definition also does not address similar offences committed against men and boys. Recent amendment⁶⁶ to the Number 9(a) on the Chapter on Rape addressed this legal vacuum and prescribed that if any person indulges or entices other to indulge in unnatural sex, such act shall be deemed “rape.”

General Code (Muluki Ain) Chapter on Intention of Sex in Number 1 reads “If a person, without the consent of a woman, touches or attempts to touch her sensitive organ, puts off her inner clothes (under garments), takes her to an unusually lonely place, makes her touch or catch (hold) his sexual organ or uses vulgar or other similar words or indications or shows her such drawing or picture or teases or harasses her for the purpose of sexual intercourse, or treats her with any unusual behavior or holds her with intention of having sexual intercourse, he shall be deemed to have done sexual harassment, and the person who commits such an offence shall be liable to the punishment of imprisonment for a term not exceeding One year and a fine of up to Ten Thousand Rupees. The victim of such an offence shall be entitled to a reasonable compensation from the offender.”

Besides these Acts and Regulations, there are some policies that has link with protection of children online. Such policies include, Broadband Policy, 2015, Industrial Policy, 2011, Information and Communication Technology Policy, 2016, Long term Policy of Information and Communication Sector, 2003 and National Policy Relating to Children, 2012, Telecommunication Policy, 2004.

Despite these legal provisions, none of them mention about SECO explicitly. None of these legal provisions mention about the nature, gravity and punishment for the crime committed offline and brought to the online world.

64 Section 75 of Electronic Transition Act, 2008.

65 Ibid. Section 76.

66 Amendment to Muluki Ain Published in Nepal Gazette on October 1, 2015.

None of the Nepalese laws define the following acts explicitly as crime and prescribes punishment as per the nature and gravity as crime:

- Creating pedophile sites, assisting pedophiles, networking
- Viewing, possessing, downloading, creating, uploading disseminating child abuse materials and child pornography (including virtual)
- Depiction of a person appearing to be minor engaged in explicit sexual conduct
- Realistic images of children in explicit sexual conduct where no actual child is involved (by the use of computer)

The above mentioned activities are directly linked to online aspect of exploitation of children.

There is urgent need of amendment in laws that define:

- Child Sexual Abuse and Commercial Sexual Exploitation of Children
- Child prostitution or ‘children who are prostituted’
- Child pornography or ‘child abuse materials’
- Corruption of children
- “Grooming” or solicitation of children for sexual purposes
- Sexting
- Sextortion
- Online child sex abuse streaming
- Sex tourism

3.3. Use of evidence on Sexual Exploitation of Children Online

Although quantitative analysis is grossly lacking on SECO in Nepal, existing evidences suggest that increased internet usage across South Asia is heightening children’s exposure to a number of online threats, including production of abusive images, sexting and grooming.⁶⁷

One the one hand, increased affordability and availability of smartphones and internet on these devices have pulled many children, regardless of their socio-economic status, to social media and online world. On the other hand, ICT technology offers a sense of anonymity to perpetrators, and can present some challenges to offender identification. ICT technologies have offered opportunities as well as challenges for law enforcement investigations, including through the generation of clear evidence trails. There is the need of use of image analysis and image databases, digital forensics, automated search, data mining and analytics, and undercover operations in the investigation of ICT-facilitated child abuse and exploitation.⁶⁸

Digital forensics is the branch of forensic science concerned with the recovery and investigation of such material found in digital and computer systems. Computer data and electronic communications potentially relevant to a criminal act may include large volumes of photographs, videos, emails, chat logs and system data. Varying types of hardware, software and operating systems each present their own challenges associated with retrieving information.⁶⁹

67 ECPAT International, *The Commercial Sexual Exploitation of Children In South Asia: Developments, progress, challenges and recommended strategies for civil society*, (Bangkok, 2014) p. 17

68 Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children, UNODC, p. 45.

69 Study on the Effects of New Information Technologies on the Abuse and Exploitation of

Automated searches enable forensic investigators to easily and quickly find sites and content displaying child sexual abuse relating to Internet content which are tagged with commonly used keywords, including potential misspellings. These ICT-facilitated searches can yield a valuable basis for further “manual” investigation, which in turn might serve as a starting-point for further ICT searches.⁷⁰

Data mining and analytics; the massive amount of data available on the Internet can be used in the fight against child sexual abuse and exploitation through the use of software that can quickly search and analyze thousands of distinct databases, financial records, DNA samples, sound samples, video clips, maps, floor plans and human intelligence reports and weave together relevant data into an accurate, coherent and useful trajectory to locate the suspect more quickly.⁷¹

Clandestine nature of crime, stigma associated to socio-cultural and religious traits as well as advanced development on ICT make tracking SECO difficult. In absence of advanced technology and trained human resource, tracking of crime, identifying victims of CSA and SECO, collection and preservation of evidence is difficult.

The Evidence Act, 1974 (2031 BS) provides basis to the Nepalese courts in using evidence both in criminal and civil cases. It deals with facts in which evidences may be examined, facts not required to examine evidences, facts to be taken into judicial notice by the court, facts that the courts shall presume, [and] other issues that the courts presume.⁷²

Facts stated by the witness before the court,⁷³ any fact expressed by the party to a case,⁷⁴ expressions made by (i) the person who had done that act or who had directly seen or known the act, incident or condition/situation, (ii) The victim of the act, incident or condition/situation on any fact, immediately or immediate before or after, regarding any act, incident or condition/situation may be taken as evidence.⁷⁵ Facts mentioned in the data (facts and figure), detail out index, particulars or articles, regularly published for the consumption of the specific professions may be taken as evidence.⁷⁶

Facts stated by the witness in other cases,⁷⁷ document prepared in the course of inquiry or examination,⁷⁸ a note or certificate⁷⁹ and report prepared by an authorized person may also be taken as evidence.⁸⁰ The Act mentions that any material or object related to the case and identified by the witness before the court may be taken as evidence.⁸¹ The Act also mentions that if the court has to reach to a conclusion of any opinion, regarding law of a foreign country, science, art, signature or finger impression, opinion of the expert may be taken as evidence.⁸²

Nepal's *Evidence Act* 2031 BS is silent on the use value, use and procedure on applying digital evidence in the Nepalese courts. Practices in the courts and experiences of professionals suggest that digital evidence may be considered by the courts. Specific tools ought to be employed for detection and investigation of SECO, such as the use of digital forensic techniques, automated search, image analysis and image databases, data mining and analytics. However there are no detail and explicit legal

Children, UNODC, p. 46.

70 Ibid. p. 47

71 Ibid.

72 Evidence Act 1974, Section 3, 4, 5, 6, 7. Available at <http://www.lawcommission.gov.np/en/documents/2015/08/evidence-act-2031-1974.pdf> accessed on Dec 24, 2015

73 Ibid. Section 8.

74 Ibid. Section 9 (1)

75 Ibid. Section 10(1)

76 Ibid. Section 16

77 Ibid. Section 17,

78 Ibid. Section 18,

79 Ibid. Section 19

80 Ibid. Section 20

81 Ibid. Section 22

82 Ibid. Section 23

provisions set in Nepal, nevertheless Section 55 of *Electronic Transition Act 2063 BS* provisions that any computer, computer system, floppy, compact disks, tape drivers, software or any other accessory devices used to commit any act deemed to be an offence relating to computer under this Act shall be liable to confiscation.

3.4. Process

In general, criminal proceedings in Nepal are largely based on the Chapter on Court Management in the *Muluki Ain (General Code) 1963*, *Government Cases Act, 1992* and its *Regulations, 1999*. There are also other Acts and Regulations those provide a procedural basis for criminal proceedings.

Government Cases Act, 1992, in its Schedule 1 provides a list of cases in which Government shall prosecute as a party to a case. The Act also prescribes that “if any Police personnel receives information about a crime stipulated in Schedule-1 committed or being committed or going to be committed, then s/he as soon as possible shall try to make an arrangement to prevent the crime, not to let any evidence relating to the crime disappear or destroy, and not to let the criminal escape or flee.”⁸³ The Act also prescribes duties to the Police to conduct investigation and collect evidence of cases reported to them.⁸⁴

The Act does not provide duty of *suo motto* initiation as a plaintiff on cases of CSA and SECO but they need someone as informant of the incident to proceed further. Section 28 of *Electronic Transition Act, 2063 BS* provisions the Controller to have the access to computers and data if there is a reasonable ground to suspect that provision of this Act and Rules framed has been violated. Under such circumstances the controller may issue directives to any computer system, apparatus, devices, data, information system or any other materials connected with such system or any other responsible person to provide technical or other cooperation.

Section 60 of the *Electronic Transition Act, 2063 BS* mentions that the Government of Nepal shall, in order to initiate the proceedings and adjudicate the offences concerning computer, constitute a three member Information Technology Tribunal consisting of one member each of law, information technology and commerce by notification in the Nepal Gazette from amongst the persons who are qualified.

Likewise, Section 75 of the Act has set that a case deemed to be an offence under this Act shall be initiated by the Government of Nepal as plaintiff; the Police has to take assistance of the Controller or other concerned expert while conducting investigation. However, the first information report in regard to such a violation or an offence shall have to be filed within thirty five days of the information on which such a violation has occurred or an offence has been committed.⁸⁵

Incidents of CSA and SECO can be informed to the Nepal Police at phone number 100 or at the nearest Police station or office. However, there has to be a person to file complaint in these types of cases. Excluding rape, other incidents of CSA or SECO are private party criminal offences. So, until the plaintiff lodges the case, the Police may not formally initiate the case.

If any person is charged and the case is formally registered, the Nepal investigates the case and submits investigation report to the District Attorney’s Office. A Government prosecutor then files the charge sheet before the District Court. Cyber Crime related offences are prosecuted in the Kathmandu District Court.

83 Government Cases Act 1992, Section 4 (1)

84 Ibid. Section 7

85 Section 74 of Electronic Transition Act, 2008(2063).

3.5. Commercial and Industry Regulation Legislations, ISPs Policies and Regulations

The *Communication Corporation Act 1972 (2028 BS)* has been enacted by the Government of Nepal with an objective of making necessary legal provisions on communication corporations in order to provide communication services through various means to the general public in a simple, easily accessible and cost effective manner.

The *Broadband Policy, 2015 (2071 BS)*, *Information and Communication Technology Policy, 2016 (2072 BS)*, *Long Term Policy of Information and Communication Sector 2003 (2059 BS)*, *Telecommunication Act, 1997 (2053 BS)*, *Telecommunication Rules, 1997 (2054 BS)* and *Telecommunication Policy, 2004 (2060 BS)* have been enacted. The *Cyber Security Policy* has also being drafted. However, none of these instruments make liable to the ISPs, mobile operators and telecom service provides to track and refer the cases of SECO.

3.6. Laws on Victim Protection, Recovery and Redress on SECO

There are constitutional, legislative, policy frameworks and mechanisms for child protection in Nepal. *The Constitution of Nepal, 2015* under Article 39 has guaranteed that no child shall be subjected to any to form of exploitation or improper use by any means or in any manner.⁸⁶ In case of any violation of the given fundamental rights, Article 46 has also set forth the constitutional remedies.

There is not such specific and comprehensive victim protection law or laws for their recovery and redressal. Punishment for the offenders and compensation to the victims are scattered in many Acts as per the nature of crime.

Children's Act, 1990 Section 51 mentions that in case a suit or complaint is to be filed or a case has to be defended in any matter involving rights of a child, his or her father, mother or guardian may file a suit, complaint or defend the case. In case the child has no father, mother or guardian, the claimant of the child shall be entitled to the right.⁸⁷ Likewise, the section further reads that the case relating to an offence punishable under this Act may be initiated on the complaint by any person or by the Government of Nepal.⁸⁸

The Nepalese laws provide that no one should engage children in “immoral” activities.⁸⁹ Taking photos with the intention of using them for immoral purposes, or distributing or exhibiting them,⁹⁰ and printing and publishing such materials is also prohibited.⁹¹ If these offences are committed or abetted others to commit such offence or attempts to do so, he shall be liable to a punishment with a fine up to ten thousand rupees or with imprisonment for a term which may extend to one year or both. Likewise, the photographs taken with an aim to engage the child in an immoral profession and all the publications printed with an aim to publish may be seized by the order of the Court.⁹²

86 The Constitution guarantee that no child shall be subjected to child marriage, transported illegally, abducted/ kidnapped or taken in hostage, and no child shall be subjected, in the name of cultural or religious traditions, to abuse, exclusion or physical, mental, sexual or other form of exploitation or improper use by any means or in any manner.

87 Children's Act Section 51 (1).

88 Ibid Section 51(2).

89 Children Act 1992, Section 16.

90 Ibid Section 16(2).

91 Ibid. Section 16(3).

92 Ibid, Section 53(4).

Muluki Ain, Chapter on Rape, Number 9(a) prescribes any type of unnatural sex with a minor as an offence of rape and the offender shall be liable to an additional punishment of imprisonment for a term not exceeding one year as referred in Number 3 of this Chapter. Additionally, it mentions that the court shall make an order to provide appropriate compensation to such a minor from the offender, upon considering the age and grievance suffered by the minor. Punishment for the offence of rape may be imposition of imprisonment ranging from 6 years to 15 years depending on the age of the victim.

Muluki Ain, Chapter on Intention of Sex, Number 5 reads: “If a person lures a woman to have illegal sexual intercourse with himself or with any other person or contacts and manages for prostitution, the person shall be liable to the punishment of imprisonment for a term ranging from Six months to Two years or a fine of Five Hundred Rupees to Six Thousand Rupees or with both.”

As there is no separate or specific law on SECO, no law prescribes specific punishment for such offences. *Emergency Child Mitigation Fund (Operation) Rules, 2010 (2067 BS)* under Section 3 has provisioned for the establishment of Emergency Child Mitigation Fund for the purpose of the function of immediate relief, mitigation and rehabilitation of the children in emergency situation (children suffering from sexual exploitation, sexual abuse, sale or trafficking, come under the classification of children in Emergency Situation).⁹³

Rule 5 of *Emergency Child Mitigation Fund (Operation) Rules, 2010* has provided the basis for the use of the Fund for the purpose of rescuing, mitigating and rehabilitating the children remaining in emergency situation. Nepal neither does have a victim and witness protection system and mechanism on SECO cases, nor does it have any legal guarantee on reparation for such cases.

3.7. Plans and Mechanisms, Access to Justice and Gap Analysis Plans:

Some Periodic plans were lunched in Nepal for the protection and welfare of children.

- (i) Tenth Five-Year Plan 2002/03–2006/07: It aimed to create child-friendly environment in all sectors related to children; reduce activities being carried out against child rights such as child labor, sexual exploitation, sexual abuse and sale by taking protective, promotional and rehabilitative measures.
- (ii) Three-Year Interim Plan 2007/08–2009/10: It aimed at promoting a child-friendly environment that was conducive for children’s physical, emotional, mental and intellectual development and the protection of child rights, and to bring an end to all forms exploitation, abuse, violence, risks and discrimination.
- (iii) The Three-Year Plan 2010/11–2012/13: has the objective of creating a child-friendly environment appropriate to and conducive for the overall development of children and for protecting and promoting their fundamental rights.

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

The *National Plan of Action for Children* (NPA) was introduced with the objectives, inter alia, to end all forms of exploitation, abuse and discrimination of children. It followed the policy to protect from abuse, exploitation and violence in particular the elimination of sale, sexual exploitation and abuse of children. Also, to protect children from all forms of sexual exploitation and abuse, and sale and abduction, through reform and reinforcement of existing laws and the generation of greater public awareness.⁹⁴ Any impact assessment of these plans is not available.

93 Rule 2(b(7)) of Emergency Child Mitigation Fund (Operation) Rules, 2067.

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

Additionally, a *National Policy relating to Children, 2012* has been formulated for the first time in Nepal in order to fulfill Nepal's international commitments of protecting children from all forms of physical and mental violence or abuse, abandonment, neglect, exploitation and sexual abuses. It also mentions that sexual exploitations and abuses against children shall be treated as a grave crime. Electronic service providers of internet email and mobile shall disseminate information that does not promote child sexual abuse.⁹⁵

Mechanisms

Government reports prepared on various occasions⁹⁶ mention that ministries, departments and bodies at the central, regional and local level have the power to deal with child protection issues; including the sale of children, child prostitution and child pornography. This includes the Ministry of Women, Children and Social Welfare (MoWCSW) as the focal ministry with responsibility to deal with these problems at the central level. The report mentions two Divisions and eight Sections at the Ministry level to deal with the issues of women and children. Some of the other bodies include the Central Committee, District Committees and District Task Forces at various levels. The report also mentions seven other ministries whose area of responsibility touches on issues concerning women and children in some way.⁹⁷

The report further refers to the Central Child Welfare Board (CCWB), Social Welfare Council (SWC), National Women's Commission (NWC), National Human Rights Commission (NHRC), Central Committee against Trafficking (CCAT), Child Correction Center (CCC), Women and Children Service Center (WCSC), and various departments at the national and district levels.

There are Women and Children Development Offices (WDO) in 75 districts, District Child Welfare Boards (DCWB), four Child Care Centers and various government authorities at sub-national levels engaged in protection and promotion activities.

Civil society organizations have themselves established a community surveillance system against trafficking, Human Rights Defender System (HRDS), Local Women's Groups, Mother's Groups and other initiatives to combat trafficking in persons.

Despite a number of different institutions, offices, centers, and initiatives, there is lack of coordination between them. There are often overlap of the responsibilities of these government institutions and offices. The CDO is the Chair and the Women and Children Development Officer is the Member-Secretary of many Committees. They are overloaded with responsibilities.

The programmes being run by non-governmental and civil society organisations are mostly donor-based and short-term. Because of lack of adequate financial support, these programmes are not being implemented throughout the country. Thus, results are not as expected. Since most of the programs are for a limited period of time, they have short-term and limited objectives and goals.

Most policies and programmes of the Nepal Government and activities of the civil society organizations are focused on human trafficking. There is no specific government program, or initiative, to combat other forms of child sexual exploitation. Very few civil society organizations have started programmes to combat child pornography and SECO in Nepal.

95 Section 8.3 National Policy relating to Children, 2012.

96 The initial state report on Sale of Children, Child Prostitution and Child Pornography, 2011

97 The ministries involved are Ministry of Home Affairs (MoHA), Ministry of Education and Sports (MoES), Ministry of Health and Populations (MoHP), Ministry of Law, Justice and Parliamentary Affairs (MoLJPA), Ministry of Labour and Transport Management (MoLTM), Ministry of Foreign Affairs (MoFA), and Ministry of Local Development (MoLD).

CHAPTER IV

4. PRIVATE SECTOR AND ICT INDUSTRY IN NEPAL: INTERNET, MOBILE ACCESS AND USE

4.1 Service Providers and the Service

Private companies get registered and work in Nepal under the Company Act (BS 2063) of Nepal. Foreign Investment and Technology Transfer Act also provides opportunities for the foreign individual or company to invest in Nepal. Beside this, there are telecommunication related Acts, Regulations, Policies and directives. Lists of these legislations have been provided in *Annex: 1*.

Internet Service Providers Association of Nepal (ISPAN) provides a list of 43 registered ISPs in Nepal.⁹⁸ List of these registered ISPs is provided in *Annex 2*. Major ISPs seem to be WorldLink Communication Pvt. Ltd, Infocom Pvt. Ltd, Vianet Communication, Communication and Communication, Mercantile Communication, Subisu Cable Network, Broadlink Networks and Communication Pvt. Ltd, Himalayan Online Service Pvt. Ltd, Websurfer Nepal Pvt. Ltd, Net Max Technology Pvt. Ltd, East Link Technology Pvt. Ltd., and Otel.

Some ISPs are specifically providing internet service in rural areas. These are: Pratidhwani Media Pvt. Ltd., Samajik Nyayaka Lagi Sanchar Abhiyan, Mandavi Bahu-Udhyesiya Samaj Bikas Kendra, RTC Technology Nepal Pvt. Ltd., Nepal Wireless, and CIS Net Sanchar Pvt. Ltd.

There are nine VSAT service providers registered in NTA. Details of these service providers are provided in *Annex 3*.

Nepal Telecom Authority has provided a list of licensee service providers in Nepal as below.⁹⁹

S.No.	Type of Service	Total Licensee
1	Network Service Provider	13
2	GSM Cellular Mobile	2
3	VSAT User	10
4	Pre-Paid Calling Card Service	1
5	Basic Telecommunications Services	2
6	GMPCS	2
7	Rural Telecommunication Service	1
8	International Trunk Telephone	3
9	Limited Mobility	7
10	Rural VSAT User	9
11	Basic Telephone Service	2
12	Rural ISP	6
13	Internet with Email	65

4.2 Beneficiaries

With these increased numbers of service providers, including in the rural areas, there is increased numbers of subscribers. Below table illustrates that subscribers for broadband, mobile telephone as well as internet have tremendously increased in Nepal.¹⁰⁰

98 <http://ispan.net.np/registered-internet-service-providers/> last accessed on March 10, 2017.

99 <http://nta.gov.np/en/licensee-list-en> last accessed on March 10, 2017.

100 ITU.

Year	Subscription	Fixed-broadband subscriptions	Mobile-cellular telephone subscriptions	Fixed-telephone subscriptions	Internet Subscription	
2014	Total Subscribers	250,602	23,021,340	837,266	Percentage of Individuals using the Internet	15.44
	Per 100 inhabitants	0.89	81.87	2.98		
2015	Total Subscribers	302,705	27,516,055	846,940	Percentage of Individuals using the Internet	17.58

4.3 Role of ICT Sectors against SECO

The Nepal Telecom Authority (NTA), which is the principal government agency, has authority to manage and regularize telecommunications service. Section 13 provides detail lists of duties and authorities of NTA which includes but not limited to provide suggestions to GoN on the policy, plan and program to be adopted by the GoN for the development of telecommunication services. NTA also has powers to make rules and bylaws.

At the current moment, ISPs do not preserve content of their service users, neither they have capacity to store all contents that their users. None of Nepalese laws make them liable to store content, too. So, ISPs just provide internet service and clients use internet on whatever way they like. ISPs do not have control over the contents that their clients access. They also do not have powers to monitor, block or filter the content. NTA, however, in case received complaint, after necessary assessment, may order to take down the website that is hosted from Nepal. However, there is still the absence of law for NTA to order ISPs to block the website.

NTA is currently developing framework for online child protection. Civil societies working in the sector of child protection were also consulted while developing this framework. Likewise, National Cyber Security Policy has also been drafted. This draft is supposed to be passed by the Cabinet and NTA is waiting for this. NTA has provided consumer information on cyber-security and “to Dos and Don’ts” in its website. Including many, it also suggests the customers to monitor their children’s internet using habits and not to reveal or provide personal information during online chat.

4.4 ICT Sectors: Assessment of Current Strength and Practice

Law enforcement agencies around the world have collaborated with ISPs to use a set of layered warning mechanisms to deter curiosity-driven child sexual abuse possibilities. For instance blocking access to child sexual abuse material URLs is a form of ISP self-regulation because by using a list of illegal content, ISPs are able to compare content requested by Internet users and block offending materials. Also, sophisticated software tools can enable ISPs to more effectively block materials, including material accessed through peer-to-peer file sharing programs, where such communications are carried by the ISP. However, in Nepal Internet Service Providers (ISPs) have no legal responsibility to track whether their clients are viewing child pornography.

Sexual abuse through the internet may occur in many forms including, distributing abusive images of children, grooming a child for later abuse through the use of teen chat rooms, online communities where the abuser befriends the child to gain trust, engaging children in cyber-sex scenarios, selling children online for live sexual abuse online, etc. The ample technique of online sexual abuse of children makes it difficult to ascertain the actual

number of children affected by exploitative practices through the internet. Moreover, the problem is further escalated as the children are reluctant to report the abuse out of fear or shame or the abuse continues undetected by authorities.

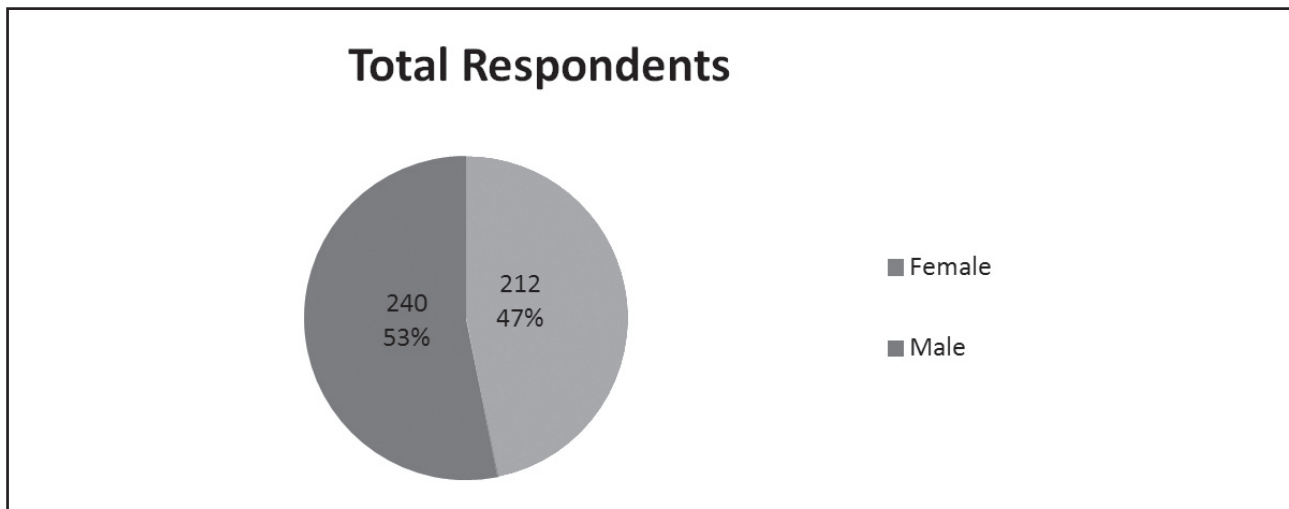
Therefore, as the “gatekeepers” to the Internet, ISPs have a responsibility to implement reporting requirements and mechanisms, or at least codes of conduct, concerning the Internet content and acceptable use. The Government policies ought to be explicitly clear on such matter, which is not in a stout condition under Nepalese legislation.

1. Whatever the policies relating to ICTs and corporate sectors developed so far, there is no integration of child rights considerations.
2. There has not been any development of standard processes to handle child sexual abuse material in case encountered by the users.
3. There is no system for creating a safer and age-appropriate online environment. Whatever is available on the Internet, all can access them without any filter of the content.
4. There is lack of systematic and widespread education to children, parents and teachers about children’s safety and their responsible use of ICTs
5. Digital technology has been growing nation-wide, however, promoting digital technology as a model for increasing civic engagement has not been considered as much as it was required. Promotion of digital technology is more being taken as a lucrative future career than means of civic engagement.

CHAPTER V

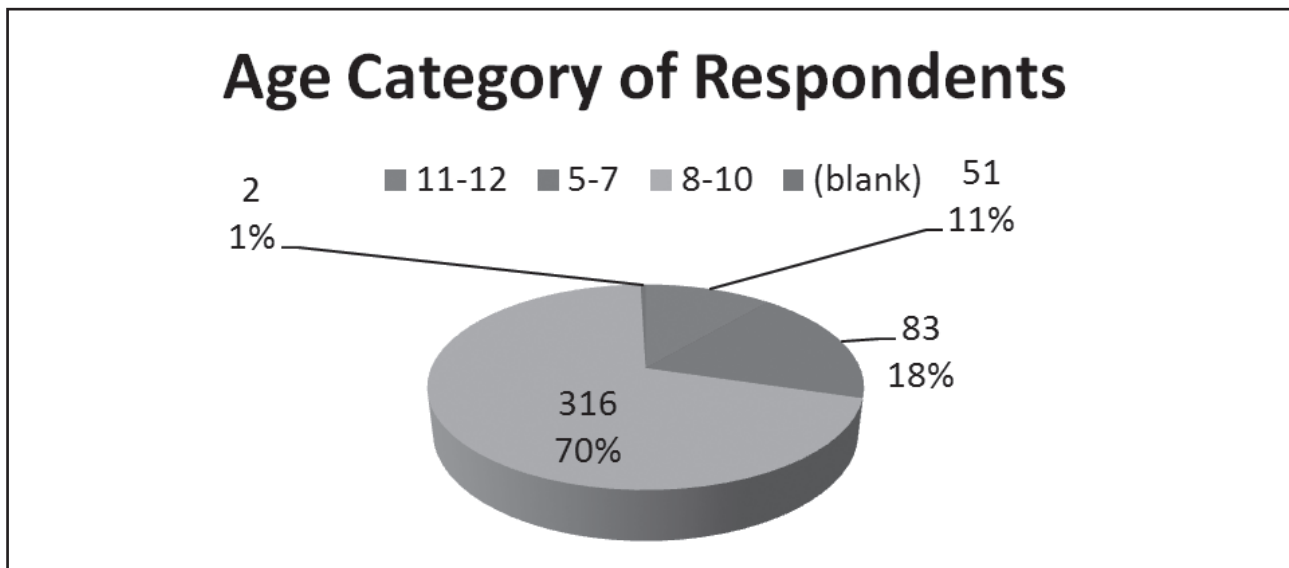
5. SEXUAL EXPLOITATION OF CHILDREN IN NEPAL: KNOWLEDGE, ATTITUDE AND PRACTICE AMONG CHILDREN

All together 452 children in Kathmandu valley were surveyed to understand their knowledge, attitude and practice on internet use and possible abuse of children while being online. A total of 212 (47%) respondents were girls and 240 (53%) were boys.

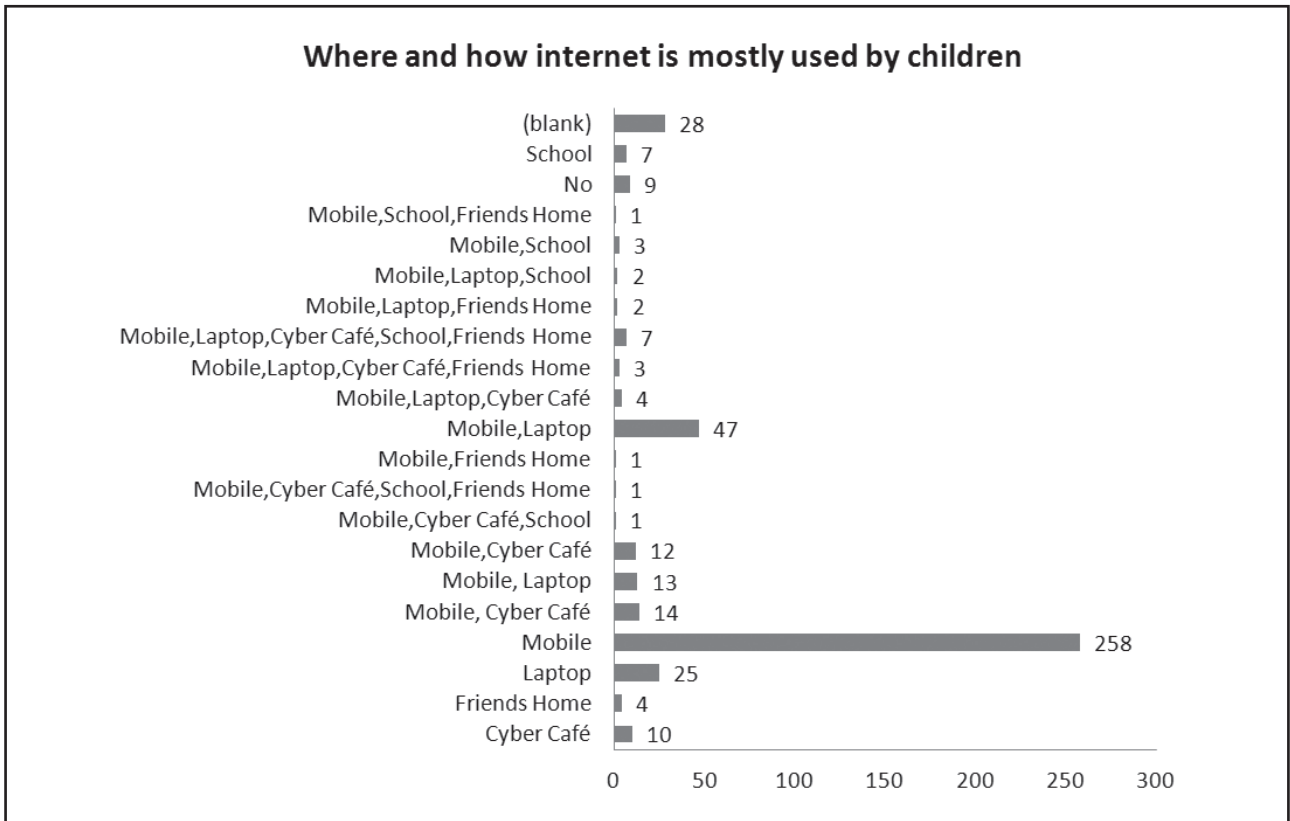


Age category of children

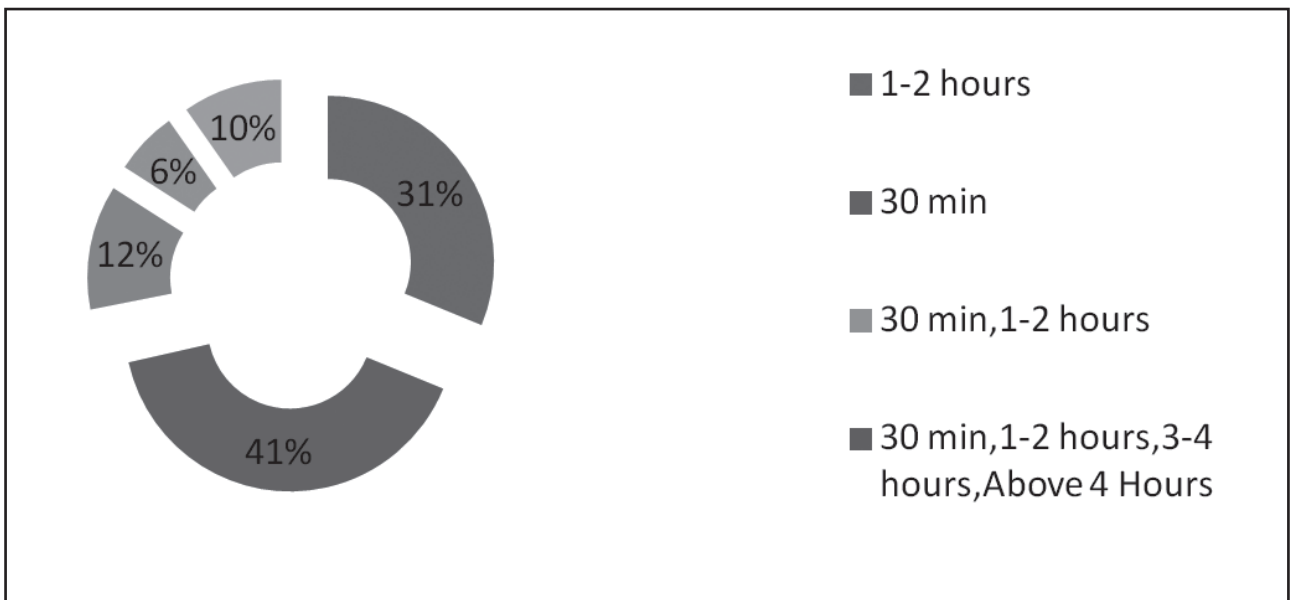
Out of 452 respondents, 51 (11%) respondents were between 11-12 years old, 83(18%) respondents were between 5-7 years, 316(70%) were between 8-10 age group and 2 (1%) respondents did not mention their age group.



Most of the respondents informed that they use internet in mobile phones or in laptops. The research also showed that few children use internet in cyber cafés or at friends' home or at school computer. Around 80 percent of those who had used internet in cyber cafés were boys. Also, 9 respondents reported that they did not use internet at all.

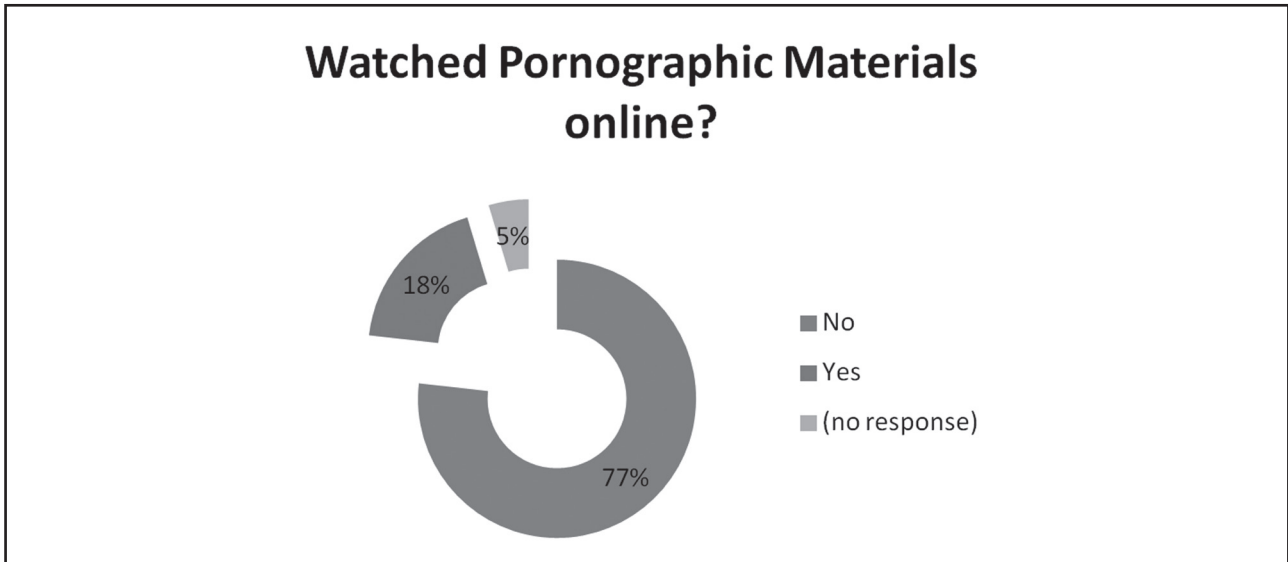


The survey showed that 41% of the respondents informed that they use internet for around 30 minutes in a day and 31 % used it around 1 to 2 hours a day. Six percent of the respondents reported that they use internet more than 4 hours in a day. 12 % use internet around 3 to 4 hours in day. Nearly two thirds (73%) of those using the internet for 3-4 hours were boys. The survey identified that children

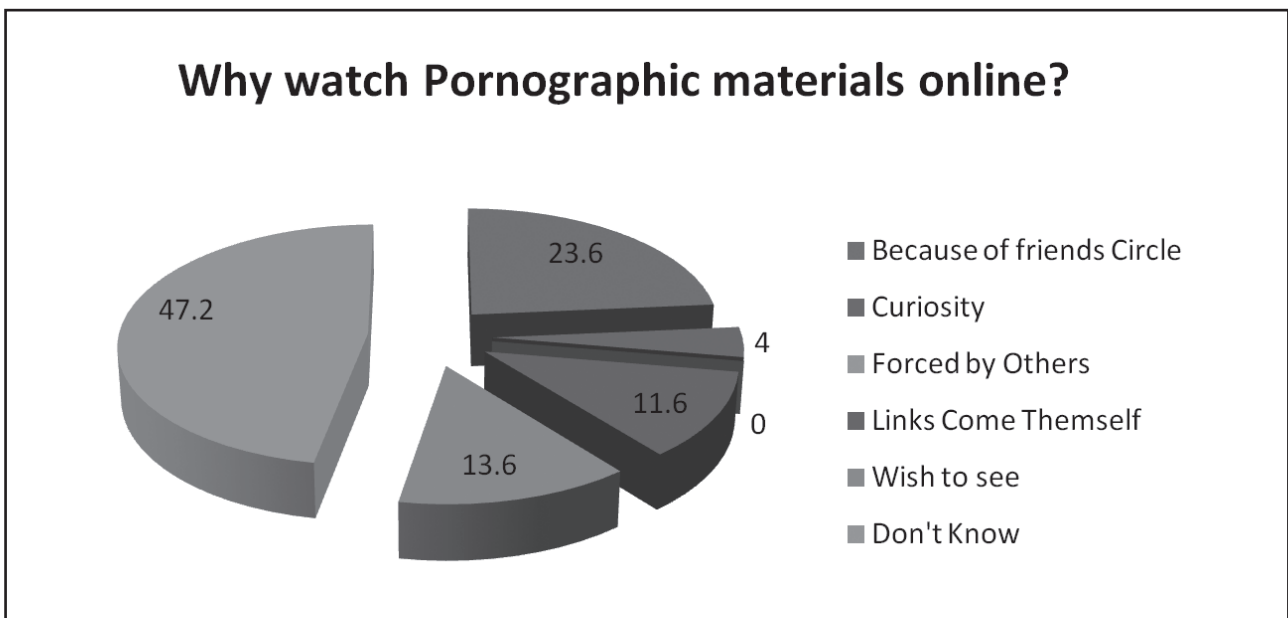


use internet to complete their homework, to chat, to use Facebook, to play online games, to use Viber, to listen to the music, including other purposes. Some of the respondents also admitted that they use internet to watch sexual abuse materials or pornography.

The survey revealed that nearly 20% of the respondents have watched pornography at least once in their life time. Five percent of respondents did not provide answer to the question while 77% (347 respondents) said they have never watched pornography. Of those who said they watched pornography, nearly 20% were girls.



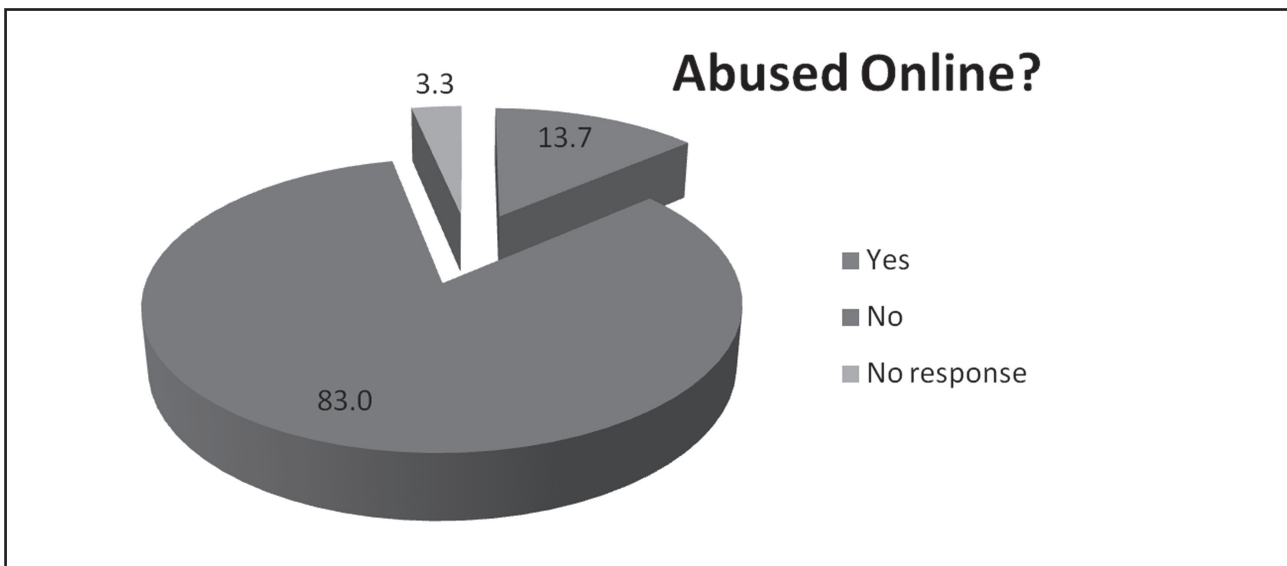
Despite a significant number of children having watched sexual abuse material (pornography), nearly 50% said that they 'don't know' why they watched such materials. Nearly a quarter (23.6%) of children attributed their viewing to their friends circle. Nearly 20% said they wanted to watch such materials, or were curious. A serious information this survey found out was that around 12% of the respondents reported that such abusive materials just popped up while they used internet for various purposes, including studying.



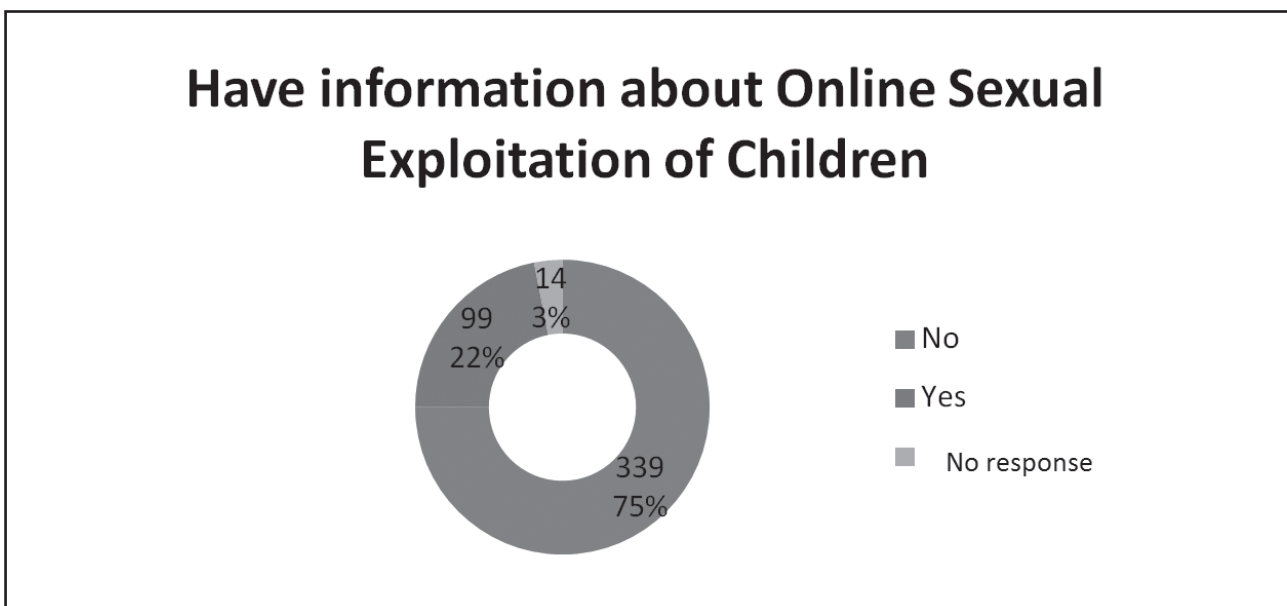
The alarming fact showed by this survey was that an overwhelming majority (72%) of the respondents did not know what they should do or the services available in case they encountered sexually abusive situations online.

Any idea of services available in case one is sexually exploited online	Response
Yes	27.9
No	72.1

Out of the total respondents nearly 15 % of the children responded that they were abused online. Gender wise, 47% of those who reported being abused online were boys. Children who were abused online said they felt shamed, angry, astonished and low in self-esteem. In response to any online abuse, nearly a quarter (21%) of these children said they blocked such persons, followed by 11% who said they told their close friend about the incident. Around 8% of children said they reported the case to the police.

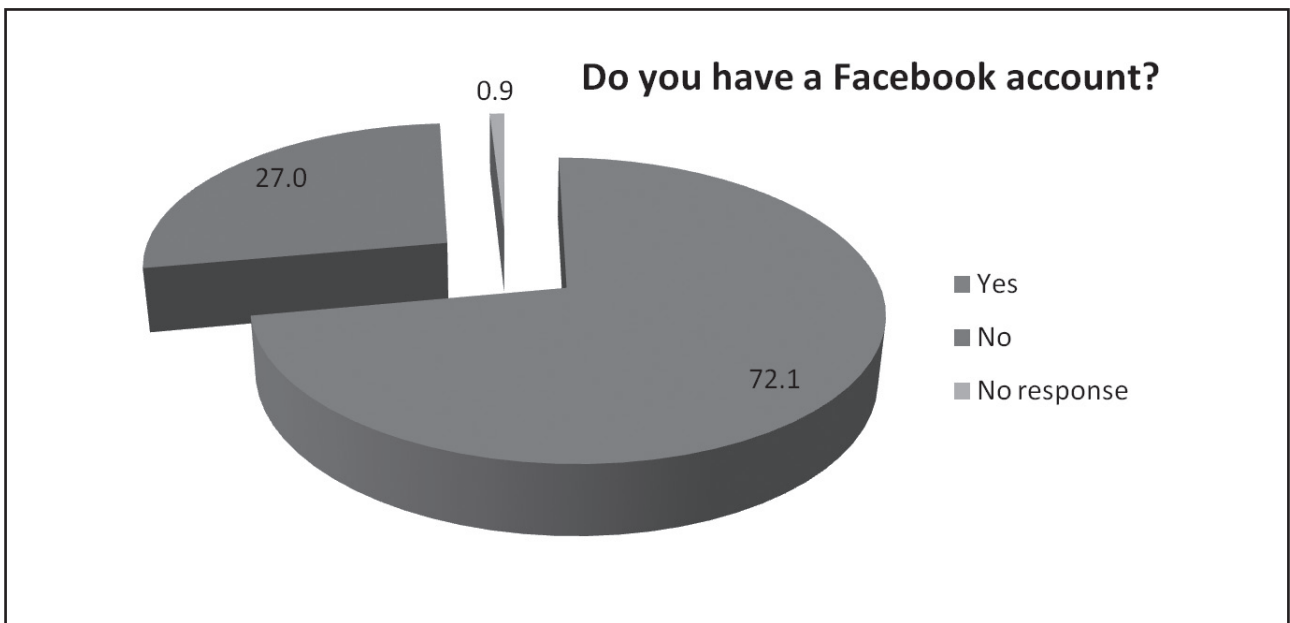


Further, the survey showed that around two thirds of children didn't have information to secure themselves from possible online sexual exploitation. Only 22% said they were aware of such information.

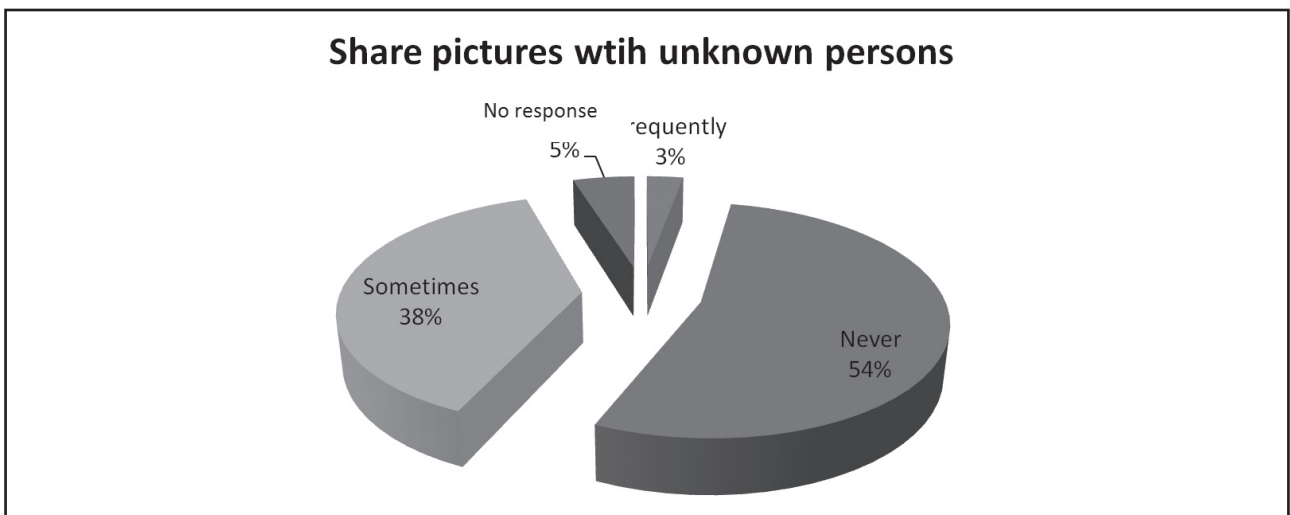


Nearly two thirds (72.1%) of children in the survey said they had a Facebook account. Some children, who did not have their personal Facebook account, reported using Facebook from accounts of their mother or father or friends. Out of total respondents 52.4% children informed that they have more than one Facebook account. Nearly 80% of respondents informed that they use Facebook to chat with others. Other reasons children like to use Facebook are to post and upload photos and videos.

Most children who use Facebook reported during consultation that they get friend requests from anyone and they accept such requests. Children mentioned that it was kind of a competition among themselves on the number of friends in their Facebook. So, they just send friend requests to anyone or accept friend requests of anyone. Despite this competition of making as many friends as possible, the study through consultations also identified that significant numbers of children accepted friend requests only from known persons.



Children’s online behavior and online safety issues were assessed by asking them whether they share their personal details and photos with others. Nearly 40% of the respondents informed that they sometimes share pictures with unknown persons and 3% said that they frequently share pictures with unknown persons.



The survey also identified that although the majority of the children do not share their Facebook password, nearly a quarter (21%) of children had a history of sharing password with others. This shows that a significant proportion of children in the online world are playing a risky game.

The respondents suggested launching television and radio programs to raise awareness among children to protect them from online exploitation. They also suggested using child magazine and social media for awareness generation. Another important suggestion the children made was the subject matters of SECO and ways for safe use of the Internet should be added in school curriculum.

CHAPTER VI

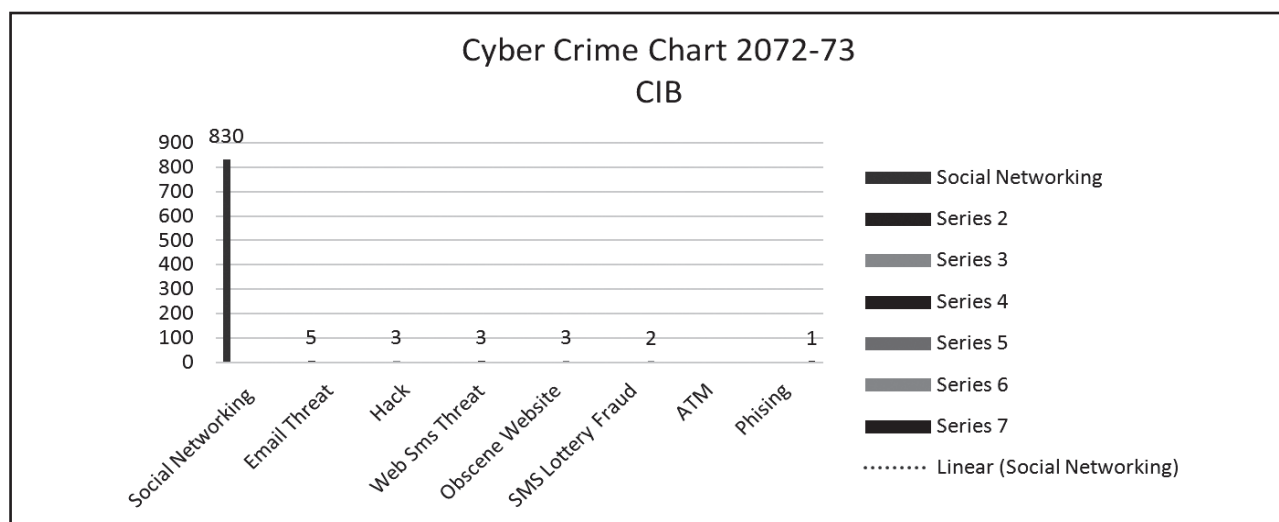
6. SITUATION AND VULNERABILITIES

6.1 Situation

With an increased access to cyberspace of the Nepalese, the possibility of misuse of the internet has increased too. Viewing and downloading pornographic images and materials, the sharing of personal details including personal images, online fraud, exposure to inappropriate materials, to potentially dangerous contacts, ‘cyber bullying’, file sharing, and downloading which violates copyright law, are some of the dangers and of unfettered internet use.

Many Nepalese parents are ignorant of internet misuse than their children. Children can take advantage of parents who are either illiterate or ignorant of computer technology¹⁰¹ and some parents accepted their children might have been misusing mobile and internet which they do not know about.

As of the record of CIB in the year 2072-73, Cyber Crime Chart provides that there were 830 cases related to social networking, 5 cases of email threat, 3 cases related to hacking, 3 cases related to obscene website, 3 cases of web threat, 2 cases related to SMS lottery fraud, one case related to ATM and one case of phishing.



However, the available data does not provide picture whether there were also the case of children within those cases. CIB also provided the most recent data as of February 2017 that three cases related to misuse of ICT were registered. One was of sextortion; another was of cyber bullying. In this case bullying was conducted one to one by using mobile phone. Another case of related to posting of unwanted material in social networking site and was charged under as public offence. Children were not involved or victimized in all of these three cases.

6.2 Vulnerabilities

In urban sectors, both the parents are busy and unable to give proper time to their children. There are no open places and parks for children to play safely. So, they think better to give mobile to their children to play. However, majority of the parents do not know parental control tools in internet contents.¹⁰² Focus group meeting also showed that children as young as 11 have Facebook accounts

101 Alternative Report (2011) on Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000), p. 24.

102 Information obtained from consultation meeting with parents and children.

with fake age verification or from parent's email ID. The children have competition among themselves on making biggest numbers of friend in FB, so they accept friend request or they request for friend to everyone, known or unknown. This may increase vulnerability of children from being exploited online.¹⁰³ The study showed that children as young as 13-14 have their personal mobile. The children have full control over the use of the device with parent's guidance and access.

The research also revealed that free night packages for chat and Facebook also encourage children to chat and use Facebook even when they do not require it. They just use it simply because it is free. Unguided and unmonitored use of these sites and apps by children may bring risks to them from exploiters.

The children consulted for this research also revealed that they are fascinated with the pop-ups appear while playing online games which may mislead them in the names of the games. Habit of using unhindered access to Internet has become an addiction for some; staying up till late night hanging around in chats, playing games, and going through Facebook. The negative part of being online without parental guidance is that whatever happens to the children online is not shared to parents and guardians, even if someone is bullying or threatening them.

There also is a practice among children going to cyber cafés to play online games or to use Facebook. The children provided an interesting fact that when they use Facebook or online games in cyber café, and if they are at the end of the time they have purchased, they just close the page without logging off. This practice is considered extremely risky as others may have access to this user's account. The next user when open the page gets access to the previous user's account and content. If that person misused that account, it may be difficult to identify the person misusing the account. The children expressed that if any case something bad like misuse of account happened, they do not share this with parents or seniors as they have a kind of thinking that they would be blamed for going to cyber cafes and using internet. Many children consulted in the study had opened FB account with a fake name, age and /or photos.¹⁰⁴

103 Ibid.

104 Information obtained from Children in a consultation meeting.

CHAPTER VII

7. CONCLUSION, ANALYSIS AND RECOMMENDATION

7.1 Conclusion and Analysis

Prevalence and current state of sexual exploitation of children online in Nepal

There is no exact data on the numbers of SECO cases in Nepal, however, crimes related to social networking sites, email threats, hacking, obscene websites, SMS threats and bullying, have been recorded. Live streaming exploitation has not been officially recorded till now. With the growing numbers of mobile and internet subscribers, growing access to smart phones and similar other devices as well as children's access to these technologies, there is risk of SECO in coming days. The practice of unhindered, unguided and unmonitored full access to the Internet by the Nepalese children has increased their vulnerability of being exploited online.

Nepalese legal provisions and policies on sexual exploitation of children online in Nepal

Nepal's laws do not meet internationally recognized standards for combating CSEC. Nepal needs to harmonize its legal framework to respond to recent trends in the production and dissemination of pornography and to address the transnational dimension of cybercrime.

There is no specific law that criminalizes:

- Creating pedophile sites, assisting pedophiles, networking
- Viewing, possessing, downloading, creating, uploading disseminating child abuse materials and child pornography (including virtual)
- Depiction of a person appearing to be minor engaged in explicit sexual conduct
- Realistic images of children in explicit sexual conduct where no actual child is involved (by the use of computer)

Nepalese legislation do not define:

- Child Sexual Abuse and Commercial Sexual Exploitation of Children
- Child prostitution or “children who are prostituted”
- Child pornography or “child abuse materials”
- Corruption of children
- “Grooming” or solicitation of children for sexual purposes
- Sexting
- Sextortion
- Online child sex abuse streaming
- Sex tourism

Available services for the victims of sexual exploitation online and impact of those services in Nepal

The child victims of online exploitation can go to the Police and report the case. The NGOs working in the sector of child rights may provide support to such children. Besides this, there is no systematic reporting mechanism developed so far. There is no victim and witness protection system available. There is no compensation from the government available. The victim or his/her family has to pay for legal services, psycho-social counseling and medication.

Monitoring and regulation mechanism of telecommunication and Internet Service Providers to ensure protection of children from online sexual abuse and exploitation

Currently, the ISPs do not preserve content of their service users. They neither have capacity to store all contents of their customers. None of Nepalese laws make them liable to store content too. The ISPs do not have control over the contents that their clients access. Neither they have powers to monitor, block or filter the content. The Nepal Telecom Authority (NTA), however, in case any complaint is received, after necessary assessment, may order for taking down the website that is hosted from Nepal. However, there is an absence of law for NTA to order ISPs to block such website.

Preparedness of service providers and key stakeholders to tackle sexual exploitation of children online in Nepal

The Nepal government's response to cyber-crime has not been very effective. CIB is struggling to investigate cyber related crimes with available laws and technologies. In absence of laws, criminals are charged under the *Some Public Offence Act* or the *Defamation Act*. Sufficient training has not been provided to investigators, prosecutors, adjudicators as well as court officials.

The government's priority in enacting necessary laws or amendment on existing ones is absent. SECO is not regarded as a priority issue for the concerned ministry, too. Any preparedness from the side of any service provider or stakeholder is not seen.

Challenges to service providers and key stakeholders to combat sexual exploitation of children online in Nepal

The Police investigators, prosecutors, adjudicators, court officials, telecommunication service and Internet service providers are mainly concerned with combating SECO. The officials in concerned ministries and government offices, parents, guardians, teacher, peers and civil society workers are key stakeholders to combat SECO.

Majority of Internet service providers do not have capacity to monitor and filter the content as they are mainly concentrated to provide internet service. Contents in the internet world just come to all customers without any age verification filtering. These service providers also do not have capacity to store the content that their customers access. They also don't have power to block the website on their own. None of Nepalese legislations prescribe any responsibility to the ISPs for content filtering, monitoring or for preserving content.

Police investigators, prosecutors, adjudicators, court officials all are working with available laws which do not adequately address SECO issues. Parents, guardians, teachers, peers and civil society workers are not well aware and trained to monitor children's internet habits and to protect them from possible exploitation. If any exploitation happened against children, they have to fight on their own for victim's justice. There is no adequate support system.

Problems and risks faced by children and adolescents while being online: Knowledge, attitude and practice

The problem of exposure to pornographic materials, images, and movies in early ages is increasing. Internet available on mobile phones, numbers of cyber shops, the widespread availability of porn movies, affordable and easy access to internet at home have had both a positive as well as negative impact on Nepalese children.

Given the large scale internet usage among children and young people, their potential exposure to exploitation is heightened yet many are unaware of this. Parents can feel inadequate in monitoring their child's internet usage as they can have less computer skills than their children. Parents as one study found out would also underestimate their child's negative experiences of the internet.¹⁰⁵

New Information and Communication Technologies have put children at the risk of exploitation and harm. It has been an abode to abuse and exploit children and the implications attached to it has

105 Child Abuse through the Internet, Information Sheet, Barnados, p. 2.

made the monitoring and regulating of exploitative practices more difficult. Modern technologies have made it easier for the offenders to access the children and difficult for the children victim to get their needed recovery. So in the present situation, it is difficult if not impossible to have an upper hand on the perpetrators in the digital world as the imagery can stay on the internet for an indefinite period whereby the abuse may keep reoccurring.

7.2 Recommendations

To the Ministry of Home Affairs and Nepal Police:

- Develop system of reporting, complaint handling, and protection system for victims and witness of sexual exploitation online.
- Develop/prepare a Standard Operating Procedure for the Police for complaint handling, referral services and for protection of victims and witnesses.
- Immediately initiate discussions with the service providers to identify problems and challenges to track and identify the cases of SECO in Nepal.
- Educate children on the safe use of the Internet. Also educate parents and teachers to monitor children's safe use of internet through effective mediums

To Nepal Police and Attorney General's Office:

- Develop a national database that provides accurate information with disaggregated data of children exploited online and the perpetrators prosecuted.

To Nepal Police Academy, Attorney General's Office, National Judicial Academy, Nepal Bar Association and NTA:

- Provide trainings to investigators, prosecutors, judges, lawyers, ISPs and relevant government officials to prepare them to tackle sexual exploitation of children online in Nepal.
- Prepare training manual to better understand the issues of SECO and to protect the rights of children exploited online.

To the legislators:

- Enact a separate cybercrime Act and define crimes committed against children while using the Internet. Specifically, criminalize those creating pedophile sites, assisting and networking with the pedophiles. Also criminalize viewing, possessing, downloading, creating, uploading and disseminating child abuse materials and child pornography (including virtual). Make necessary arrangements in the substantive, procedural and evidence laws to ensure criminalization of online child sex abuse streaming and its successful investigation and prosecution.
- Amend the *Electronic Transaction Act* providing monitoring and regulation mechanism of telecommunication and the Internet Service Providers to ensure the protection of children from online sexual abuse and exploitation.

To Nepal Telecom Authority:

- Make sure that the corporate policies and management processes do not violate children's rights to participate, rights against exploitation, opinion and expression.
- Develop standard processes to handle child sexual abuse material to make sure that such materials are not hosted, uploaded or disseminated and are immediately taken down.
- Create a safer and age-appropriate online environment for children.
- Educate children, parents and teachers about children's safety and their responsible use of ICTs.
- Promote digital technology as a mode for increasing civic engagement in nation building initiatives and discourse.

To Child Rights Organizations and Educational Institutions:

- Educate children, parents and teachers on the benefits and safe use of the Internet.
- Educate parents and teachers about parental control systems in their mobile, laptops, computer and other similar devices.
- Introduce child friendly, confidential complaint handling system in schools to report in case of abuse occurred against children online.
- Collaborate with keys stakeholders to develop and push for an effective advocacy agenda to ensure strengthened policy environment and stronger legal frameworks to effectively address SECO in Nepal.
- Advocate and cooperate with the Internet Service Providers to limit circulation of sexting content online and advocate with mobile operators to implement appropriate measures for authorities when required.
- Advocate for better resources for law enforcement to tackle the issues of online sexual abuse.
- Educate governmental and non-governmental child protection entities on online sexual exploitation of children
- Make sure that the organizations have and enforce communications policies that protect children. Teachers, instructors, and other front line workers should not be communicating privately with children. Instead, they should use group texts, messages, or other communications, and include parents.

BIBLIOGRAPHY

Alternative Report (2011) on Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)

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

Critical Issues: Abuse and Exploitation, Action for the Rights of Children, <<http://www.unhcr.org/3bb81aea4.pdf>>

CWIN, *CWIN Campaign on Protecting Children Online in Nepal*, <<http://www.cwin.org.np/index.php/programme-of-actions/cwin-campaign-on-protecting-children-online-in-nepal>>

Donald Maxim, Stephanie Orlando and et. al., *'Online Child Exploitation Material – Trends and Emerging Issues'*

ECPAT International, *'The Commercial Sexual Exploitation of Children in South Asia'*, Bangkok 2014 Mare Ainsaar, Lars Lööf, *Online behaviour related to child sexual abuse: Literature Report*

Robert J. O'Leary & Robert D'Ovidio, *Online Sexual Exploitation of Children*, for National Governors Association (UAS: 2005)

Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children, UNODC, Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, Adopted by the Inter-agency Working Group in Luxembourg, 28 Jan. 2016. F. 4 v.

UNICEF, *Victims are Not Virtual: Situation Assessment of Online child Sexual Exploitation in South Asia*, 2016.

Websites accessed:

<http://ispan.net.np/registered-internet-service-providers/>

<http://nta.gov.np/en/licensee-list-en>

<http://srsg.violenceagainstchildren.org/search/node/Report%2015>

<http://www.internetsociety.org/internet/what-internet/history-internet/brief-history-internet#Origins><http://www.weprotect.org/the-model-national-response/>

<http://www.nepalrus.com/2011/06/25/nepal-ratifies-un-convention-against-money-laundering/>

<https://www.childwelfare.gov/pubPDFs/define.pdf>

<https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/child-sexual-abuse/>

<https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/child-sexual-abuse/>

<https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/child-sexual-exploitation/>

https://www.techuk.org/component/.../3482?file...WePROTECT_Summit_2014

ANNEX 1**Acts related to Telecommunication Sectors**

S. No.	Name
1.	Telecommunication Act 1997 A. D.
2.	Radio Act 1957 A.D.
3.	National Broadcasting Act 1993 A. D.
4.	Consumer Protection Act 1998 A. D.

Regulation

S. No.	Name
1.	Radio Communication (License) Regulation 1992 A.D
2.	National Broadcasting Regulation 1995 A. D.
3.	Telecommunication Regulation 1997 A. D.
4.	Consumer Protection Regulation 1999 A. D.
5.	Notice Published on Gazette 2012 AD
6.	नेपाल दुरसंचार प्राधिकरणको बैठक संचालन सम्बन्धमा परेको बाधा अड्काउ फुकाउने आदेश (राजपत्रमा प्रकाशित) 2013 A.D.

Policies

S. No.	Name
1.	Telecommunication Policy 2004 A. D.
2.	Long Term Policy of Information and Communication Sector, 2002 A.D.
3.	IT Policy 2010
4.	Spectrum Policy 2013 A.D.
5.	Broadband Policy 2015 A. D.
6.	ICT Policy 2015 A.D
7.	Spectrum Policy Amendment-2016 A.D

Bylaws Related to Nepal Telecommunication Authority

S. No.	Name
1.	Nepal Telecommunication Authority Financial Management bylaw, 2010
2.	NTA Cases Procedure bylaw 2011 A. D.
3.	RTDF Bylaw 2012 A. D.
4.	Monitoring Working Procedure Bylaws Final 2012 A. D.
5.	NTA work performance bylaw 2068
6.	NTA Employee Bylaws 2017

Guidelines issued by the NTA as per the Telecommunication Act 1997

S. No.	Name
1.	Guideline for tariff approval for Telecommunications Services
2.	Interconnection Guidelines 2008 A. D.
3.	General Licensing Guideline
4.	Internet with Email guidelines
5.	Network Service Guideline
6.	VSAT User Guideline Amendment
7.	Video Conferencing Guideline
8.	Special Guidelines for Prepaid Calling Card
9.	Infrastructure Sharing Guidelines

Directives:

S. No.	Name
1.	Directives for laying and maintaining Optical Fibre Network 2012 A. D.
2.	Interim Directives for the Implementation of National Equipment Identity Registry (NEIR)-2016 A.D.
3.	Infrastructure Sharing Guidelines 2016

ANNEX 2

List of all registered ISPs

- Mercantile Communications Private Limited
- Net Max Technologies Pvt. Ltd.
- Worldlink Communications Private Limited
- Global Internet Services Private Limited
- Eastern Networks Pvt. Ltd.
- Himalayan Online Services Private Limited
- Logic Information Business Pvt. Ltd
- I Plus Pvt. Ltd.
- Everest Net Private Limited
- Infocom Private Limited
- Nepal Doorsanchar Company Limited
- Via Net Communications Private Limited
- Access Net Communication Pvt. Ltd.
- Websurfer Nepal Communications Private Limited
- Himal Technologies Private Limited
- Subisu Cablenet Private Limited
- Japan Nepal Information communication Technology Private Limited
- Netplus Technology Private Limited
- Health Net Nepal Private Limited
- Buddha Net Private Limited
- Namche Networks Private Limited
- Spice Nepal Private Limited
- Broadlink Network and Communications Private Limited
- Radius Communications Private Limited
- Nepal Net Sanchar Private Limited
- Mitra Network Private Limited
- Sustainable Network Private Limited
- Hotlink Nepal Private Limited
- Classic Tech Pvt. Ltd.
- Integrated Business Solution (IBSYS) Nepal Pvt. Ltd.
- STM Telecom Sanchar Pvt. Ltd

- Allied Netlink Technologies Pvt. Ltd.
- United Telecom Limited
- Satelink Nepal Pvt. Ltd.
- Zentech Pvt. Ltd
- Namaste Asia Link P. Ltd .
- Fiber Online P. Ltd .
- Surf In P. Ltd
- Pokhara Internet Pvt. Ltd.
- Telenet Pvt. Ltd.
- Cherry World Communication Pvt. Ltd.
- Betal Networks Pvt. Ltd.
- Aastha Network Pvt. Ltd.

ANNEX 3

Registered VSAT Service Providers:

- Communications and Communicate Nepal Pvt. Ltd.
- I MAX Pvt. Ltd.
- Infocom Pvt. Ltd.
- Mercantile Communications Pvt. Ltd.
- Namche Networks Pvt. Ltd.
- Square Network Pvt. Ltd.
- Unlimited Numedia Pvt. Ltd.
- Websurfer Nepal Communication System Pvt. Ltd.
- WorldLink Communications Pvt. Ltd.

ANNEX 4. KAP Questionnaire

अनुसन्धानको लागि स्वीकृती फारम

नमस्ते ! मेरो नाम हो । म भ्वाईस अफ चिल्ड्रेन भन्ने संस्थाबाट आएको हु । यस संस्थाले विगत १६ बर्षदेखि सडक बालबालिकाकालागि उद्धार, पुनर्स्थापना, पारिवारिक तथा सामाजिक पुनर्मिलन, बालयौन शोषण र दुर्व्यवहारमा परेका बालबालिकाको संरक्षणमा केन्द्रित रही कार्य गर्दै आएको छ ।

यसै सन्दर्भमा हामी ईन्टरनेटको माध्यमबाट हुने बालयौन दुर्व्यवहार बारेमा कुराकानी गर्न आएका हौ । यदि तपाईंको अनुमती भयो भने म तपाईंले गर्ने ईन्टरनेटको प्रयोग र ईन्टरनेटको माध्यमबाट हुने बाल यौन दुर्व्यवहारको बारेमा तपाईंको विचार तथा अनुभवको बारेमा केही प्रश्नहरू सोध्ने छौ । म तपाईंलाई विश्वस्त गराउन चाहन्छु कि तपाईं र मेरो बिच भएको कुराकानी गोप्य रहनेछ । हामी बिच भएको कुराकानी कुनै पत्रपत्रिका वा सञ्चार माध्यममा प्रसारीत हुने छैन । यस छलफलमा भएको आवश्यक जानकारी नछुटोस भन्ने उद्देश्यले हामी तपाईंले भनेका कुराहरू लेख्नेछौ । हाम्रो कुराकानी संवेदनशिल विषयसँग सम्बन्धित भएको हुनाले कुराकानीको क्रममा तपाईंलाई केही असजिलो महशुस हुन सक्नेछ । र यदि तपाईं लाई कुराकानीको क्रममा असजिलो महशुस भयो भने तपाईं कुनै पनि बेला छलफल वा कुराकानी रोक्न सक्नुहुनेछ ।

यस कुराकानी गरे वापत तपाईंलाई ब्यक्तिगत रूपमा फाइदा नपुग्ने तर तपाईंहरूबाट पाएको जानकारीबाट ईन्टरनेटको माध्यमबाट हुने बालयौन दुर्व्यवहारमा परेका अरु बालबालिकालाई सहयोग पुग्न सक्छ ।

हाम्रो सम्पर्क ठेगाना :

भ्वाईस अफ चिल्ड्रेन

सानेपा, ललितपुर

फोन नं. : ०१ – ५५४६३९०

यस सर्वेक्षणको बारेमा मलाई बताइयो र म यस अर्न्तवार्तामा सहभागी हुन इच्छुक छु ।

हुन्छ

हुदैन

मिति :
स्थान :

अर्न्तवार्ता लिने व्यक्ति
नाम :
हस्ताक्षर :
मिति :
स्थान :

१. तपाईंको अहिले उमेर कति हो ?

उमेर:

२. लिङ्ग

पुरुष		१
महिला		२

३. कक्षा

५-७		१
८-१०		२
११-१२		३

४. तपाईंले इन्टरनेट चलाउने गरेको छ ?
छैन ? छ भने के मा चलाउनु हुन्छ ?

मोबाइल		१
ल्यापटप		२
साइबर क्याफे		३
स्कूल		४
साथिको घरमा गएर		५

५. दिनमा तपाईं कति समय इन्टरनेट
चलाउनु हुन्छ ?

३० मिनेट		१
१-२ घण्टा		२
३-४ घण्टा		३
सो भन्दा बढि		४

६. तपाईं/ तपाईंको साथीहरूले इन्टरनेटमा
के के हेर्छन् ?

गीतहरू हेर्छन्		१
पढ्ने		२
होमवर्क हरु गर्ने		३
गेम		४
च्याट गर्ने		५
फेसबुक चलाउने		६
भाइवर चलाउने		७
छाडा तथा अश्लिल भिडियो		८
माथि उल्लेख भएको सबै		९
अन्य.....		१०

७. के तपाईंका साथीहरूले छाडा/अश्लिल
गीत, भिडियो हेरेको देखेका वा सुनेका
छ ?

छ छ भने प्रश्न ८ मा जानुहोस्		१
छैन		२

८. के कारण उनीहरूले यस्ता कुरा हेरेका होलान् ?

साथीहरूको लैलैमा लागेर		१
कौतुहलता भएर		२
अरूले जबरजस्ती हेर्न लगाएर		३
इन्टरनेट चलाउदा आफै यस्ता भिडियो/वेब लिङ्क हरू आएर		४
हेर्न मन लागेर		५
थाहा भएन		६

९. तपाईंले फेसबुक खोल्नु भएको छ ?

छ		१
छैन		२

१०. तपाईं / तपाईंको साथीले कसको नामबाट फेसबुक खोल्नु भएको छ ?

आफ्नै		१
साथीको		२
ममी		३
ड्याडि		४
अन्य		५

११. तपाईं/तपाईंको साथीको एक भन्दा बढि फेसबुक अकाउन्ट छ ?

छ		१
छैन		२

१२. तपाईं/तपाईंको साथीहरूलाई कसको फ्रेन्ड रिक्वेस्ट बढि आउँछ ?

चिनेको केटा साथी		१
चिनेको केटी साथी		२
नचिनेको केटा		३
नचिनेको केटी		४
जो कोहि		५

१३. तपाईं/तपाईंको साथीहरू फेसबुक चलाउँदा के के गर्नुहुन्छ ?

च्याट		१
आफ्नो फोटो/भिडियो अपलोड		२
अरूको प्रोफाइल हेर्ने		३
अन्य		४

१४. तपाईं/तपाईंको साथीहरूले नचिनेको मान्छेसँग पनि फोटो शेयर/च्याट गर्छन् ?

कहिले गरेको छैन		१
कहिले काहि		२
प्राय		३

१५. तपाईं/तपाईंको साथीहरूले अरूसंग पासवर्ड शेयर गर्ने गरेको छ ?

छ		१
छैन		२
थाहा भएन		३

१६. तपाईंलाई इन्टरनेट बाट बालबलिकालाई हुने यौन दुर्ब्यबहारबारे थाहा छ ?

छ		
छ भने के के थाहा छ ? उल्लेख गर्नुहोस्		१
छैन		२

१७. तपाईं/तपाईंको साथीलाई नचिनेका मान्छेले म्यासेज पठाएर, नराम्रा छाडा फोटो/भिडियो हालेर ट्याग गरेर दुख दिएका छन् ?

छ		
छ भने प्रश्न १८ र १९ मा जानुहोस्		१
छैन		२

१८. तपाईं/तपाईंको साथीलाई नचिनेको मान्छेले म्यासेज पठाएर, नराम्रा छाडा फोटो/भिडियो हालेर ट्याग गर्दा कस्तो महशुस भयो ?

अचम्म लाग्नु			१
लाज/घृणा लाग्नु			२
डर / चिन्ता लाग्नु			३
रिस उठ्नु			४
आफुलाई हानी पुऱ्याउनु			५

१९. छ भने त्यस्तो बेलामा तपाईं/तपाईंको साथीले के गर्नु भयो ?

वस्ता नगर्ने			१
ब्लक गर्ने			२
फेसबुक बन्द गर्ने			३
कसैलाई नभन्ने			४
मिल्ने साथीलाई भन्ने			५
अभिभावकलाई भन्ने			६
संस्थाको मान्छेलाई भन्ने			७
पुलिसमा रिपोर्ट गर्ने			८

२०. इन्टरनेट बाट बालबलिकालाई हुने यौन दुर्ब्यबहारबाट सुरक्षित राख्न कुन माध्यबाट सूचना दिन सकिन्छ ?

टि.भी.			१
रेडियो			२
पत्र पत्रिका /बाल पत्रिका			३
सामाजिक संजाल - फेसबुक, यु-टयुब आदि)			४
पाठ्यक्रममा यो विषय राखेर			५
थाहा भएन			६

२१. यौन दुर्व्यबहारमा परेका बालबलिकालाई दिइने सेवा सुबिधाबारे तपाईंलाई जानकारी छ ?

छ		१
छैन		२
थाहा भएन		३

२२. माथि सोध्न छुटेको तर तपाईंलाई भन्न मन लागेको केहि कुरा छन् ?

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यस सर्वेक्षणमा सहभागी हुनु भएकोमा एकचोटि फेरि धन्यवाद । तपाईंको गोपनियतालाई ध्यानमा राख्दै यस अनुसन्धानबाट आएका सम्पूर्ण सूचनाहरूलाई एकिकृत गरिन्छ । जो सरोकारवालाहरूले यस्तै किसिमको काम गरिरहेका छन् उनिहरू माझ यो खोजबाट आएका कुराहरू आदानप्रदान गरिन्छ ।

ECPAT Luxembourg

ECPAT Luxembourg ECPAT Luxembourg is a non-profit association founded in 1995 and recognized by the Luxembourg Ministry of Foreign Affairs as a non-governmental organization for development. It is a member of the global ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) a global network comprising more than 95 members in over 86 countries worldwide and the internationally recognized authority on combating the commercial sexual exploitation of children.

ECPAT Luxembourg supports countries in the South with prevention, rehabilitation and reintegration projects for children who are vulnerable to and/or victims of sexual exploitation. In the Grand Duchy of Luxembourg, ECPAT Luxembourg carries out awareness-raising and informational efforts among the general public and actors concerned with the problem of commercial sexual exploitation of children.

ECPAT Luxembourg also supports research-action projects intended to improve our understanding of the latest evolutions in the sexual and commercial exploitation of children and the new geographic areas affected.

Voice of Children

Established in 2000, Voice of children (VOC) is a non-government organization advocating the cause of street and sexually abused children of Nepal. VOC aims to prevent further increase in the number of street children by working at the very root cause; we work with marginalized families living in slums, low rented and in rural areas to empower communities to be able to protect their children from any kind of abuse as well as from the separation from the family. VOC works with children living in the street by rescuing, rehabilitating and reintegrating them in to their family/community by improving their life and capacity for their sustainability. VOC has developed a methodology working with children living without parental care focusing on reintegration with family/community which impacted with 96% success rate of reintegration. It is a great honor of VOC as this methodology is recognized by Nepal government and produced as guideline working for street children management.

Another major focus area of VOC is to protect children from any form of sexual abuse; from the beginning VOC focused on protecting boys, rescuing victim and legal action against foreign pedophilia, awareness raising, capacity building of service provider and now focusing on sexual exploitation of children from online. VOC values and believes in working together and hence is a member of various national international alliances like founder of NAOSC, founder of NCPA, member of ER network. VOC represents Nepal as a member of Family for every child, which is a member led international alliance based in UK, promoting family based service for children in 27 countries.



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