



Nepal Country Case Study

Effective law and policy
on gender equality and
protection from sexual
and gender-based
violence in disasters

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Acronyms and Abbreviations

CDO	Chief District Officer	NRA	National Reconstruction Authority
CNDRC	Central Natural Disaster Relief Committee	NRCS	Nepal Red Cross Society
CSO	Civil Society Organization	NSDRMN	National Strategy for Disaster Risk Management in Nepal
NGO	Non-Governmental Organization	OCMC	One Stop Crisis Management
DDRC	District Disaster Relief Committee	PDNA	Post-Disaster Needs Assessment
DRM	Disaster Risk Management	PDRF	Post-Disaster Recovery Framework
DWC	Department of Women and Children	RFL	Restoring Family Link
FFS	Female-Friendly Space	SGBV	Sexual and Gender-based Violence
FGD	Focus Group Discussion	UNCT	United Nations Country Team
FNCCI	Federation of Nepalese Chambers of Commerce and Industry	VDC	Village Development Committee
FWLD	Forum for Women, Law and Development	WCSD	Women and Children Service Directorate
GBV	Gender-based Violence	WCO	Women and Children Office
GESI	Gender Equality and Social Inclusion	WFDM	Women Friendly Disaster Management
HIV	Human Immunodeficiency Virus	WOREC	Women's Rehabilitation Center
HTTCA	Human Trafficking and Transportation (Control) Act	WHO	World Health Organization
ID	Identity Card	UNFPA	United Nations Population Fund
IDRL	International Disaster Response Laws, Rules and Principles	UNHCR	United Nations Refugee Agency
IFRC	International Federation of Red Cross and Red Crescent Societies	UNICEF	United Nations Children's Fund
LAD	Legal Assistance Desk	UN OCHA	United Nations Office for the Coordination of Humanitarian Affairs
MoHA	Ministry of Home Affairs	UN Women	United Nations Entity for gender equality and the empowerment of women
MoHP	Ministry of Health and Population		
MoWCSW	Ministry of Women, Children and Social Welfare		
NDRC	National Disaster Risk Reduction Center		
NEOC	National Election Observation Committee		
NHRC	National Human Rights Commission		
NHSSP	Nepal Health Sector Support Program		

Executive Summary

Nepal witnessed a devastating earthquake on 25th April 2015 that claimed the lives of more than 8,000 people. Hundreds of thousands of people were left homeless and amongst them were high numbers of women, children and older persons, people with disabilities and minorities. Some organizations working in the earthquake response began to identify women and girls affected by the disaster who had suffered, or were vulnerable to, sexual and gender-based violence (SGBV) in the post-disaster period. This included forms of SGBV to which they were not as vulnerable in normal times, and for which there appeared to be insufficient preparedness to provide protection.

This report is an analysis of Nepal's existing laws and policies related to gender equality and SGBV protection during normal times and during disasters. This brief study did not seek to address all forms of social inclusion in the disaster risk management (DRM) system, a particularly complex issue in Nepal. It focuses on women and girls, as the majority of those affected by both SGBV and gender discrimination, while recognizing that men and boys are also affected by SGBV and some forms of gender discrimination. In this regard, it examines current laws on SGBV protection, such as laws against domestic violence, human trafficking, rape, marital rape, sexual harassment, witchcraft allegations, dowry, child marriage, and polygamy. The report then looks at gender equality, inclusion of women, and mechanisms for SGBV protection in the laws and policies governing the DRM system.

The report finds that, while there are extensive laws in place for protection and response to SGBV in normal times (outside the disaster context), these already encounter implementation challenges due to lack of awareness of them by SGBV survivors, and a range of social and economic factors that lead to low reporting levels and limited access to the justice system for many SGBV survivors.

The report notes that no special measures are in place to ensure the disaster resilience of SGBV protection frameworks, such as ensuring continuity of services for SGBV victims/survivors, or creating surge capacity to support displaced populations. One issue identified is that there is an added burden of work on the police during disasters, due to their involvement in rescue, emergency settlement and distribution of supplies, which means that police are unable to play their regular role in SGBV protection, as the first point of legal complaint. Nevertheless, there are positive aspects of the framework for SGBV protection in normal times, which have the potential to be better utilized during disasters. The first is that the Women and Children Services Directorate been established by the Nepal Police to provide accessibility to justice for women and children in SGBV incidents, and extends its services to all 75 districts through 240 Women and Children Service Centers. The second is that the Ministry of Health and Population has set up around eighteen hospital-based One Stop Crisis Management Centers to help female victims of SGBV access medical and other support services, including shelter,

psychological counselling, help with rehabilitation or negotiation with the family, and legal advice. These are intended to operate in normal times, and also in disasters. Finally, there is a government SGBV Relief Fund to support delivery of relief services to the survivors of SGBV.

A positive operational response during the 2015 earthquake response and recovery period that can be replicated in future disasters was the important role played by the Protection Cluster, which was co-led by the Ministry of Women, Children and Social Welfare, and by UNFPA/UNHCR/UNICEF and activated following the earthquake. Then, in October 2015, UN Women supported the establishment of an Inter-Cluster Gender Working Group, which was instrumental in mainstreaming gender in all the clusters.

With regard to the disaster management system, the Natural Calamity Relief Act 1982 is silent on questions of gender and SGBV. The National Strategy on Disaster Risk Management, which is the policy basis for the current disaster management system, incorporates gender and diversity in terms of meeting the needs of different populations, without special mention of SGBV, but does not make provision for specific representation of women or their inclusion in decision-making roles. A new bill on disaster risk management, tabled in parliament just before the 2015 earthquake, was withdrawn in August of that year for further revisions. It also did not include provisions for representation and participation of women or disadvantaged groups, nor any mandate concerning SGBV protection in disasters. The further revised bill was registered in the parliament in September 2017. At the time this report was published, news was received that the bill had been approved by the Parliament of Nepal. However, the newly approved law has not been analysed for this report, and the recommendations are based on the legal framework and draft bill that existed at the time of research, in April 2017.

This report identifies a number of examples of gender discrimination in access to government relief, including women not being able to register for relief without a male head of household, and lack of planning for SGBV protection in situations where women were sharing tents with men from outside their families. Women also reported a lack of access to normal support and complaints services relating to SGBV, even while locally collected statistics indicated that cases of SGBV crimes of rape, trafficking and domestic violence increased post-disaster, with domestic violence being reported as the most reported crime. Based on these findings, it appears that a stronger legislative mandate and policy base for gender and diversity issues in public administration concerning disaster relief, recovery and reconstruction, is needed. If not, these processes may contribute to the vulnerability of women and girls, or exacerbate existing inequalities that present obstacles in accessing services and resources following disasters. Hence, this report recommends the inclusion of such provisions in a revised bill.

The recovery and reconstruction period since 2015 has seen mixed responses to the issues of gender inequality and SGBV. The enabling law of the National Reconstruction Authority currently lacks any focus on gender and diversity issues in reconstruction, and the Authority has an extraordinarily low level

of representation of women. However, the June 2015 Post Disaster Needs Assessment, led by Nepal's National Planning Commission, recognizes that women and girls are among the most vulnerable of those affected by Nepal's earthquake. The Post-Disaster Recovery Framework also includes a strong chapter on Gender Equality and Social Inclusion. Led by the Ministry of Women, it drew on the needs assessment key recommendations, lessons derived from an Inter-Cluster Gender Working Group, and consultations with the Government and CSO stakeholders.

The report concludes that both the disaster management system and the normal SGBV protection frameworks need to have a specific focus on prevention and response to SGBV during disaster situations. This will require strengthening the legislative and institutional mandates underpinning each of these frameworks, including requirements for systematic representation of women in disaster management institutions, as well as training both policy developers and operational personnel in gender and SGBV awareness. Importantly there is also a need to gather specific data on gender differences and SGBV in future disasters, as the basis for improved policy approaches, and to establish formal and operational linkages between the SGBV protection institutions and the disaster management system. A series of detailed recommendations on these issues are made in the final part of the report, including legislative mandates, operational responses, advocacy and awareness-raising, addressed to both government and other stakeholders, including the IFRC, Nepal Red Cross Society and civil society.

Part 1

Introduction and Background

1.1 The project

a. Global project and case study

This Country Case Study was conducted on behalf of the IFRC, as part of a global initiative on “Effective law and policy for addressing gender in disaster risk management (DRM) and sexual and gender-based violence in disasters” in collaboration with Nepal Red Cross Society (NRCS). The country case study was undertaken with the purposes of:

- i. contributing to the effective implementation of Resolution 3 of the International Conference of the Red Cross and Red Crescent on ‘Sexual and gender-based violence: Joint action on prevention and response’ (32IC/15/3), specifically the issue of how sexual and gender-based violence in the context of disasters is addressed within Nepal’s legal and policy frameworks; and
- ii. continuing IFRC’s prior work on the inclusion of gender equality in DRM system laws, policies and their implementation.

The case study is an analysis of the completeness and effectiveness of Nepal’s current system of law and policy in providing SGBV protection during disasters, and in supporting gender equality in DRM, with an emphasis on prevention and response to SGBV. It focuses on women and girls, as the majority of those affected by both SGBV and gender discrimination, while recognizing that men and boys are also affected by SGBV and some forms of gender discrimination. In this regard, it examines current laws on SGBV protection, such as laws against domestic violence, human trafficking, rape, marital rape, sexual harassment, witchcraft allegations, dowry, child marriage, and polygamy. The report then looks at gender equality, inclusion of women, and mechanisms for SGBV protection in the laws and policies governing the DRM system. This brief study did not seek to address all forms of social inclusion in the DRM system, a particularly complex issue in Nepal, and the report focuses on the gender dimension. The concept of gender refers to socially constructed roles and does not equate directly with biological sex; it is also more inclusive in the sense that it also recognizes lesbian, gay, bisexual, transgender and intergender identities (LGBTI). However, in the Nepal context, the term ‘gender’ is largely equated with biological sex, and for the most part the legal framework uses definitions that relate to men or women, boys or girls, rather than the concept of gender.

The case study, undertaken in March 2017, focuses on the response and recovery from the April 2015 Nepal earthquake, as the source of practical experience on questions of implementation and effectiveness. It concludes

with practical recommendations for the Government and the Legislature of Nepal, the IFRC and NRCS, and other humanitarian actors.

The case study was undertaken in partnership with the NRCS, which provided staff and logistical support and arranged the community visits. The NRCS is a key actor in both general disaster response, in its role as an auxiliary to government, and in the area of gender and diversity. NRCS reached more than 3.5 million people with emergency assistance immediately after the earthquake,¹ fully supporting many thousands. For example, it: provided emergency shelter with water and sanitation in Latipur district for 3 months; supplied 3,160 infants and mothers with warm clothes for winter; supported 7 childbirth centers with birthing equipment in addition to 6 field hospitals (with the support of IFRC and other National Societies of Red Cross and Red Crescent); provided 2,969 pregnant women with mosquito nets; and distributed 6000 menstruation kits in 3 earthquakes affected districts and operated 12 child-friendly spaces.² NRCS has implemented structured gender equality and social inclusion programs in its own operations and is committed to gender and social inclusion as an essential element of its planning and programming. During the earthquake response and recovery, NRCS also distributed information in its temporary shelters to support the safety of women and girls from SGBV in the aftermath of the earthquake.

b. Methodology of the study

The study used four interrelated methods for investigation and conclusion:

Data collection: Data was collected from various relevant offices including the Disaster Management Division, Ministry of Home Affairs and Women and Children Service Directorate, and Nepal Police. Secondary sources such as reports, publications, and studies of different organization were also consulted. This brief study did not involve SGBV-related primary data collection other than focus group discussions, as such research with SGBV survivors and their communities is complex and requires a longer-term engagement, due to the need for psycho-social support, confidentiality, and both quantitative and qualitative approaches.

Literature Review: An extensive literature review was done. This included laws relating to SGBV, laws relating to disaster, and relevant reports/publications of government agencies, the Red Cross and Red Crescent Movement, and civil society organizations.

Key Informant Interviews: Thirteen key informants from Kathmandu and Sindhupalchowk district were interviewed to gauge different perspectives from various stakeholders. (See Annex 1 for the List of Key Informants). Interviews were collected from government officials and representatives of NRCS, the UN agencies, and the civil society organizations. Conclusions were also drawn from the recommendations given by key informants.

Focus Group Discussion (FGD): Two focus group discussions were conducted at Sindhupalchowk district (one with a mixed group of men and women, and

1 Nepal Red Cross Society, Nepal Red Cross Society Earthquake Recovery Update, available at: <http://www.nrsc.org/sites/default/files/resources/NRCS%204x25.pdf> (accessed on 31 March 2017).

2 *ibid.*

the second with women only). These included a total of 39 local participants as well as 3 staff from NRCS and the consultants.

1.2 Country background

a. Major types of disaster risk in Nepal

Natural hazards are so prevalent in every Nepalese geographical area that there is a constantly risk of disaster. It is a great challenge to protect people's lives, health and livelihoods, infrastructure and property from frequent disasters induced by hazards such as earthquakes, landslides, avalanches, floods, fires and epidemics. Natural and human-induced disasters regularly lead to the loss of thousands of human lives and destruction of physical property worth billions of rupees.³ The four main hazards are:

- Floods, Landslides and Debris Flow
- Windstorm, Thunderbolt and Hailstorm
- Avalanche and Snowstorm
- Earthquake

Earthquakes pose a threat throughout the country, including the recent devastating 7.6 magnitude Gorkha earthquake of 25th April 2015. This occurred in a geological collision zone, with the epicenter near the Barpak Village of Gorkha district, 81 km northwest of Kathmandu. This devastating earthquake killed 8,970 people, seriously injured 22,303 people and rendered millions homeless. A further 195 people were reported missing. More than six hundred thousand houses were destroyed, and around three hundred thousand damaged. The earthquake severely affected 14 districts - Gorkha, Dhading, Rasuwa, Nuwakot, Kathmandu, Lalitpur, Bhaktapur, Kavrepalanchowk, Sindhupalchowk, Dolakha, Sindhuli, Makwanpur, Ramechhap and Okhaldhunga - and another 31 districts were affected to varying degrees.⁴

Government data shows that 5,024 were women out of 8,970 killed during earthquake, meaning that 56% of deaths were women.⁵ However, apart from death toll, there is no gender-disaggregated data available on the different types of disaster impacts, or on access to government disaster benefits.

b. Incidence and types of SGBV in Nepal

Sexual and gender based violence (SGBV) is a broad concept that does not correspond directly to most statistical collection, which is generally done on the basis of types of criminal violence, and on the biological sex of the perpetrators and survivors. For example, most UN system research on the subject is based around the concept of violence against women and girls, including the UN's Nepal Country Team Gender Theme Group's 2016 report, which states that violence against women and girls is "one of the most systemic and widespread human rights violations in the world" which

3 Ministry of Home Affairs, Nepal, Disaster Report (Kathmandu: 2015), p. 5.

4 *ibid.*, p. 15.

5 Nepal police, Disaster Management Division, 2016.

“affects women and girls in every country, regardless of their age, ethnicity, socio-economic status, physical ability, sexual orientation or gender identity”.⁶

According to a 2012 study on gender-based violence commissioned by Nepal’s Office of the Prime Minister, surveying 900 women in six selected rural districts, almost half the women surveyed (48%) reported that they had experienced violence at some time in their lives, and 28% had experienced violence in the past 12 months. For women who reported experiencing violence, almost three quarters of the perpetrators were intimate partners (including husbands). Other commonly mentioned perpetrators included family members (35.2%) and neighbors (22%).⁷

A 2014 UNFPA report indicated there was a high percentage of young women (74%) who reported having experienced sexual violence in Nepal. It notes that domestic violence, marital rape, dowry-related violence, child marriage, polygamy, female infanticide and trafficking of women and girls for sexual exploitation are particular problems of SGBV in Nepal.⁸

A selection of relevant incidents reported by the Women and Children Services Directorate (WCSD) of the Nepal Police are shown in the following statistics:

Fiscal Year	Rape	Attempt to Rape	Trafficking	Child Marriage	Domestic Violence
1996/1997	112	34	117	5	337
1997/1998	181	34	130	3	228
1998/1999	141	18	110	1	432
1999/2000	186	33	120	5	711
2000/2001	122	35	92	1	449
2001/2002	129	21	40	-	410
2002/2003	157	18	55	2	569
2003/2004	154	19	56	3	922
2004/2005	188	25	72	1	730
2005/2006	195	38	97	1	939
2006/2007	317	70	112	7	1100
2007/2008	309	73	123	4	881
2008/2009	391	75	139	2	968
2009/2010	376	101	161	7	983
2010/2011	481	151	183	3	1355
2011/2012	555	156	118	12	2250
2012/2013	677	245	144	19	1800
2013/2014	912	414	185	17	6835
2014/2015	981	562	181	23	8268
2015/2016	1089	452	212	20	9398

Source: <https://cid.nepalpolice.gov.np/index.php/cid-wings/women-children-service-directorate>

6 UNCT Gender Theme Group, Position Paper on Ending Violence Against Women and Girls in Nepal (2016), available at http://www.un.org.np/sites/default/files/20160907_position_paper.pdf (accessed on 8 April 2017). P.2.
 7 Office of the Prime Minister and Council of Ministers, A Study on Gender-Based Violence Conducted in Selected Rural Districts of Nepal (Kathmandu: 2012), pg.8. (The study carried out a household-level quantitative survey of 900 women aged 15-59 years in Dadeldhura, Nawalparasi, Makwanpur, Siraha, Sindhupalchowk and Sankhuwashava districts by using multistage, stratified cluster sampling approach.)
 8 Ibid. p.3. citing UNFPA. 2014. “Engaging Men and Boys, Communities and Parents to End Violence against Women, Child Marriage and Other Harmful Practices in Nepal”. Nepal.

These statistics are an invaluable baseline for considering this issue in Nepal with regard to disaster preparedness and response. The reported cases have clearly increased in recent years, especially since 2013, regarding rape, attempted rape and domestic violence. However, such national figures are not sufficiently disaggregated to know how much of the increase is related to population growth (whereas reporting on the number of offences per 100,000 population would be informative), or whether it is attributed to increased confidence to report, and whether there were increases in SGBV in regions affected by the 2015 earthquake or other disasters. It will be important for future policy-making on SGBV protection in disasters, to have access to more localized and time-specific data on reported cases of SGBV, as well as using social research methods to document other cases that are managed by health and welfare agencies and legal support services, where the survivor chooses not to report to the police, or not to proceed with the case. It should be noted that increases in the number of incidents reported is often a positive sign of a functional and trusted reporting system, not necessarily of increased incidents in the community.

Part 2

Law, policy and institutions on SGBV protection

2.1 Laws on SGBV

The Constitution of Nepal acknowledges the right not to be subject to SGBV, as one of its fundamental rights of women.⁹ The Country Code of Nepal defines gender-based violence as an act committed on the basis of gender that may inflict physical, sexual or psychological harm to the victim.¹⁰ Nepal has also made a determined effort to combat SGBV by passing specific legislation on different aspects of SGBV, including: the Domestic Violence (Offense and Punishment) Act 2009; the Human Trafficking and Transportation (Control) Act 2007; The Sexual Harassment at the Workplace (Elimination) Act, 2015; the Witchcraft Allegation (Offense and Punishment) Act 2016; the Social Practices (Reform) Act 1976; the GBV Relief Fund Regulation; and the different chapters of the Country Code 1963 that set out the law on rape, trafficking in persons, and marriage. These key laws are described briefly below, in order to define the legal frameworks for SGBV protection in Nepal in normal times, before considering issues in their implementation. The following chapter then looks at how disaster-resilient this framework was shown to be after the 2015 earthquake.

a. Law against domestic violence

“Domestic Violence” is defined as any form of physical, mental, sexual or economic harm perpetrated by one person to a person with whom he/she has a domestic relationship and includes any acts of reprimand or emotional harm.¹¹

The Domestic Violence (Offense and Punishment) Act 2009 bestows the right to file claims with the Police Office, National Women’s Commission or local bodies (such as municipalities and village executive), by any person who has reason to believe that an act of domestic violence has been, is being, or is likely to be, committed.¹² A person who commits an act of domestic violence shall be punished with a fine of three thousand rupees up to twenty five thousand rupees or six months of imprisonment, or both.¹³ The Act provides that the proceedings of such cases shall be in-camera.¹⁴ It also provides for compensation to be granted to the victim of domestic violence, depending on the nature of the act of domestic violence and degree of pain suffered by

9 Constitution of Nepal 2015, Art. 38 (3) “No woman shall be subjected to physical, mental, sexual, psychological or other form of violence or exploitation on grounds of religion, social, cultural tradition, practice or on any other grounds. Such act shall be punishable by law, and the victim shall have the right to obtain compensation in accordance with law.”

10 Country Code 1963, Chapter on Court Management, Number 10, Para. 4 (b).

11 Sec. 2(a).

12 Sec. 4(1).

13 Sec. 13.

14 Sec. 7.

the victim.¹⁵ The offense of domestic violence must be reported within 90 days of the commission of the crime.¹⁶

b. Law against human trafficking

The Human Trafficking and Transportation (Control) Act 2007 (HTTCA) defines activities that are deemed to be human trafficking and human transportation.¹⁷ The reporting of cases related to human trafficking are made to the nearest police office.¹⁸ The Act states that any person who commits an offence of buying or selling a human being, shall be punished with twenty years imprisonment and fined two hundred thousand rupees.¹⁹ The Act also provides for a translator and interpreter, if the working language used by the concerned court is not understandable by the victim.²⁰ According to the Act, the compensation to the victims of trafficking shall not be less than half of the fine levied as punishment to the offender.²¹ The Act also decrees the maintenance of confidentiality of the name and address of the informant.²² The Government of Nepal is the plaintiff in all cases filed under this Act²³ and the proceeding of the cases are captured in camera.²⁴

c. Law against rape

The Chapter on Rape, clause 1 of the Country Code, defines the crime of rape as non-consensual intercourse with an adult woman or any intercourse with a girl under 16 (thereby defining rape as committed only by men against women and girls).²⁵ Clause 3 (A) of the chapter stipulates the punishment for the offender, ranging from 5 to 15 years' imprisonment.²⁶ Clause 3 (B) adds an additional penalty of one year imprisonment if any person commits the crime of rape knowing that he has been infected by HIV. The law also includes a "Right to Retaliation", a unique right that enables an intended rape victim to resist and take action to defend herself by all means possible. If the assailant dies while the victim is trying to protect herself from rape, she is exempted from the criminal liability of murder. Clause 28 (B) allows for the abortion of the fetus up to eighteen weeks if caused by rape or incest, where it must be carried out with the consent of the pregnant woman. Whereas Clause 10 (B) directs that the hearing of such case shall be made in-camera. Clause 11 states that the crime of rape should be reported within 6 months of the incident.

15 Sec. 10.

16 Sec. 14.

17 Human Trafficking and Transportation (Control) Act 2007, Sec. 4 (1) and (2).

18 *ibid*, Sec. 5.

19 *ibid*, Sec 15.

20 *ibid*, Sec 11.

21 *ibid*, Sec 17 (1).

22 *Ibid*, Sec 20.

23 *ibid*, Sec 28.

24 *ibid*, Sec 27.

25 Country Code 1963, Chapter on Rape, Clause 1; "If a person enters into sexual intercourse with a woman, without her consent or enters into sexual intercourse with a girl below the age of 16 years with her consent shall be deemed to be an offense of Rape."

26 *Ibid*, Clause 3 (A); "In case of a girl child of or below the age of 10 years, from 10-15 years of imprisonment. In case of a girl child of or above the age of 10 years but less than the age of 14 years, from 8-12 years of imprisonment. In case of a girl child of or above the age of 14 years but less than the age of 16 years, from 6-10 Years of imprisonment. In case of a girl child of or above the age of 16 years but below the age of 20 years, from 5-8 years of imprisonment. In case of a woman of 20 years or more, from 5-7 years of imprisonment."

d. Law against marital rape

Sexual intercourse by a husband with his wife without her consent is defined as marital rape, as per clause 3 of the Country Code, Chapter on Rape. According to this clause, any husband who commits marital rape shall be punished with imprisonment ranging from 3-5 years. Clause 1(2) of the Country Code also provides that marital rape could be one of the grounds for divorce.

Amendments made to the country code, chapter on rape, further provide, in Clause 9 (B), that a wife who has filed a claim of marital rape shall be provided with special security until the case is decided by the court. While doing so, the court could render the below mentioned orders:

1. To treat the wife humanely, providing her with all her maintenance and basic needs.
2. To provide her with necessary cost of health services.
3. If the situation persists, where the husband and wife could not stay together, to manage the place to live separately where the husband shall bear all the unnecessary costs of the wife.
4. To fulfill all the necessary duties and responsibilities towards the wife regarding her security.

e. Laws against sexual harassment

Sexual Harassment at the Workplace (Elimination) Act, 2015 defines sexual harassment at the workplace as physical touch with sexual intent, demonstrating sexual objects, audio-visual objects or other seductive materials at the workplace.²⁷ Clause 1 of the Chapter of the Country Code has laid down the elements/components of sexual harassment.²⁸ The Public Offenses and Punishment Act, 1970 also states that harassing women in public by touching their private areas is an illegal act.²⁹

f. Law against accusation and torture as a witch

The Witchcraft Allegation (Offense and Punishment) Act 2016 defines an offence of making a witchcraft allegation as the act of alleging any person practices witchcraft, and it is also an offence for an accuser to attempt to punish such a person.³⁰ It provides for victim protection and compensation.³¹

27 Sexual Harassment at Workplace (Elimination) Act 2015, Sec. 4. The limitation regarding the filing of the case shall be 90 days from the date of the incident, Sec. 7 (1). Any person found guilty of committing sexual harassment as per the Act shall be subject to 6 months' imprisonment or Rs.50, 000 fine or both, Sec. 12.

28 Country Code 1963, Chapter on Intention of Sex, Clause 1; "If a person, without the consent of a woman, touches or attempts to touch her sensitive organ, takes her to an unusually lonely place, shows her obscene pictures or teases or harasses her for the purpose of sexual intercourse, he shall be deemed to have committed sexual harassment."

29 *ibid*, Sec 2 (g) and Sec 2 (c).

30 *ibid*, Sec 2 (c).

31 Witchcraft Allegation (Offense and Punishment) Act 2016, Sec 6, Sec. 7, Sec. 12, and Sec. 17.

g. Law against dowry

Dowry-related domestic violence against women, and extortion from the bride's family under threat of harm to her, led to the Social Practices (Reform) Act, 1976. Although this law extensively restricts the practice of 'dowry' or 'tilak' (in Nepali), it is still practiced by a large proportion of the population. Under this practice, a bridegroom and his family is provided with expensive gifts and property from a bride's family. Section 3 of the Act states that no tilak shall be accepted and given in connection with marriage.³² The Act prohibits the Bridegroom's side from compelling the bride's side to give cash, goods, *Daijo*, donation, gift, or farewell gift for the bride or bride groom, and also prohibits any agreement between the families to do this as a condition for the husband to accept the wife.³³

h. Law against child marriage

The Country Code, Chapter on Marriage provides that both parties must be 20 years of age for solemnizing a marriage. It states that early marriage, marriage before attaining the age of 20 years, is a punishable offense. The jurisdiction to hear such cases lies with the District Court.³⁴ Any person involved in solemnizing a child marriage shall be punished, with more severe sentencing and fines the younger the child (e.g. 6 months to 3 years imprisonment and a fine of one thousand to ten thousand rupees if the child is below ten years).³⁵ The limitation period to file a claim related to child marriage is only 3 months from the date of the marriage,³⁶ which is a very short period, especially if a child forced to marry is very young, is uneducated, or in a remote area. They may not know at the time of the marriage that it was unlawful, and may not have access to legal support.

2.2 Implementation of SGBV protection in normal times

a. Some challenges for implementation

In terms of the legal framework, the above analysis of SGBV protection laws shows that they are relatively comprehensive in addressing SGBV issues in normal times, as criminal matters, and from the victim's perspective. Notably, in addition to criminalizing rape, child marriage, polygamy, and human trafficking, these laws recognize rape in marriage as a crime, as well as both public and workplace sexual harassment. The law on rape also includes an unusual provision on the "right to retaliation," which provides that self-defence against rape can be a complete defence for a woman who might otherwise face criminal penalties if she injures her attacker, even if in the process of defending herself she causes the attacker to die. Procedurally these laws also include clauses regarding compensation and in-camera

32 Social Practice (Reform) Act 1976, Sec. 3 (1).

33 *ibid.* Sec. 5 (1) and (2). An offender shall be liable for 1 year of imprisonment and a fine up to twenty-five thousand rupees for committing offence under Social Practices (Reform) Act.

34 Country Code 1963, Chapter on Marriage.

35 *ibid.* If the child is between 10-14 years, penalty is 3 months to 1 year imprisonment and a fine up to 5,000 rupees; if a child is between 14-18 years, penalty is 6 months' imprisonment or 10,000 rupees fine or both; and if the child has not reached the age of 20 years, the penalty is 6 months' imprisonment or 10,000 rupees fine or both.

36 *ibid.*

hearing of the cases relating to the special groups, namely women and children. However, there remain some gaps, and also some challenges in implementation.

One of the gaps is that the rape law does not recognize rape of men or boys, or third gender persons. One of the challenges, in terms of access to justice, is that the statutory limitation periods are very short (90 days) to make claims of either domestic violence or child marriage.

Another challenge in implementation concerns women's knowledge of the laws. The 2012 study conducted by Office of the Prime Minister indicated that a majority of women (61.3%) were unaware of any laws that address GBV. And only 13% were aware of the specific law against domestic violence. Only about one quarter of women (24.8%) were aware of services available to the survivors of GBV. A very small percentage (5.6%) of women knew of shelter homes (women's refuges) at the district level, and the same percentage of women (6.1%) knew of the desk at the District Development Committee dedicated to handling GBV cases. Five percent were aware of the women's and children's center at the district police office. Only seven women were aware that there is a GBV-focused District Resource Group led by the Chief District Officer (CDO).³⁷ The importance of continued public education on this issue, including the legal protection mechanisms, cannot be over-emphasized.

The complexity of the legal proceedings can be a barrier for women who do not have high levels of education,³⁸ and/or who do not have access to legal aid. Long delays in court proceedings mean it is a time-consuming and long-term commitment for a woman to pursue a claim, which can impinge on livelihood and/or family commitments and responsibilities, and could be deciding factors for survivors' willingness to proceed. The complaints process is complex, involving the police for investigating the facts relating to a crime, Government Attorneys for prosecuting the case legally, and the Court as a neutral body to adjudicate the case. It requires registration of a First Information Report (FIR) with the police; police taking a statement from the accused; government attorney evaluation of the evidence collected by the police, and possible direction to them to obtain more evidence; framing of a charge sheet by the government attorney and filing in court, with the supporting evidence. The court then records the statement of the accused, hears pleadings from the lawyers on whether the accused is bailed or held on remand, and then moves to a hearing, including witnesses. After completion of its due process, the court delivers a verdict (with provision for appeal in the higher court).

The problems associated with the adjudication system are largely procedural in nature.³⁹ Poor investigation and hurried prosecutions result in a lack of evidence and significant problems for effective prosecutions. Trial delay has also become commonplace in the Nepalese judicial practice despite court rules,⁴⁰ and timely execution of judgments is another challenge in

37 Office of the Prime Minister and Council of Ministers, A Study on Gender-Based Violence Conducted in Selected Rural Districts of Nepal (Kathmandu: 2012). Pp. 8-9

38 Although literacy rates in Nepal are increasing steadily, and the gender gap is closing amongst youth, in 2015 approximately 50% of adult women were literate, compared with approximately 75% of adult men. UNESCO Institute of Statistics. 2012. Adult and Youth Literacy, 1990-2015: Analysis of data for 41 selected countries. P.57 (Figure 39.) Available at <http://bit.ly/2pYovPg>

39 Interviews with KII.

40 Country Code 1963, Chapter on Court management.

SGBV cases. However, Rule 23 (c) of the District Court Regulations, 2014 also provides for continuous and fast track hearing of criminal cases relating to rape, sexual violence, abusive relations, and divorce cases, which are also tried in camera.

b. Key actors in SGBV survivor support and access to justice in Nepal

In terms of practical support and services for SGBV survivors, even before they seek access to justice, the most important innovation of the Government of Nepal has been to establish the One Stop Crisis Management Centers to help female survivors of SGBV. The Ministry of Health and Population (MoHP) has set up eighteen hospital-based OCMCs.⁴¹ Within the OCMCs, “trained staff provide all the care needed in one place, including treatment of injuries, shelter, psychological counselling, help with rehabilitation or negotiation with the family, legal advice and protection.”⁴²

There is also a mechanism called the GBV Relief Fund Regulation, 2010, which is one of the positive attempts in respect of delivery of relief services to the survivors of SGBV. The GBV Relief Fund is administered by the Ministry of Women, Children and Social Welfare (MoWCSW), and is distributed through district Women and Children Offices (WCOs). The Regulation provides for the utilization of the fund for rehabilitation of the victim, including the emergency health check-up and to rescue the victims of SGBV.⁴³ Rule 6.1 of the GBV Relief Fund Regulations requires that the fund shall not be used for any other purposes except those mentioned in Rule 5 of the Regulations. Though this fund is available for survivors of SGBV during both normal and disaster situation, there is no specific or additional support during disasters.

Nepal Police has established the specific structure of the Women and Children Services Directorate at police headquarters, and Women and Children Service Centers (WCS - commonly known as women’s cells) at district police offices. These are places where women and children can register SGBV complaints to initiate a police investigation. In a United States government, human rights study on Nepal in 2015, the Nepal Women’s Rehabilitation Center (WOREC) is reported as stating that in 2015 domestic violence cases were increasingly handled by Nepal Police through the WCS, and that in these instances the police were more responsive and treated the victims well. The Nepal Police had women’s cells in each of the country’s 75 districts in 2015, although not all were yet fully functional. Although police guidelines call on officers to treat domestic violence as a criminal offense, NGOs consulted stated that, despite improvements, this was difficult to implement outside of the women’s cells due to entrenched discriminatory attitudes. District women and children offices also offered public education and psychosocial services, and operated hotlines and shelters in 35 districts to address all forms of gender-based violence.⁴⁴

41 Nepal Health Sector Support Programme, Pulse Update you on Health Development 2012. Number 1: One-stop Crisis Management Centres; May 2012. [http://www.nhssp.org.np/pulse/One%20Stop%20Crisis%20Management%20\(OCMC\)%20Pulse%20Update%201.pdf](http://www.nhssp.org.np/pulse/One%20Stop%20Crisis%20Management%20(OCMC)%20Pulse%20Update%201.pdf) (accessed on 4/6/2017)

42 Nepal Health Sector Support Programme website: http://nhssp.org.np/what_works.html (accessed August 2017)

43 Gender Based Violence Relief Fund Regulations 2010, Rule 5.

44 United States Department of State. 2015. Nepal 2015 Human Rights Report. Country Reports on Human Rights Practices for 2015. Bureau of Democracy, Human Rights and Labor, DoS, USA. P. 27

In 2010, the Government of Nepal declared a Year against GBV and created a high level GBV unit at the Office of the Prime Minister and Council of Ministries, to oversee the functions of various government agencies in combating gender-based violence.

The Ministry of Law, Justice and Parliamentary Affairs has constituted a Legal Aid Committees Center that provides legal aid at all the 75 districts of Nepal, through District Legal Aid Committees. Though the Committee does not specifically target legal aid to SGBV survivors, they are eligible to use it. The Nepal Bar Association has also established legal aid service units on SGBV Issues through its district Bar chapters.

There are also numerous NGOs working to protect and support SGBV survivors such as: WOREC, Forum for Women Law and Development (FWLD), Legal Aid and Consultancy Center (LACC), Shakti Samuha, Peoples' Forum, SAATHI, Forum for Protection of People's Right Nepal (PPR), and the Centre for Legal Research and Resource Development (CeLLRd).

UN agencies such as UN Women, UNFPA, UNICEF, and UNHCR have been actively engaged in protecting SGBV survivors by providing financial and technical support to government agencies and non-government agencies. Other international organizations, such as The Asia Foundation, Care Nepal, Plan Nepal, Oxfam, UK Department for International Development (DFID), Voluntary Service Overseas, the ICRC and IFRC, are identified as effective organizations working for various policy and programmatic interventions for the safety of SGBV survivors.

NRCS includes gender equality and social inclusion in its strategic disaster management framework and guiding principles, and targets the most vulnerable populations with community-based interventions to build safe and resilient communities.⁴⁵ NRCS commits to include all social, ethnic groups, and genders in its planning and implementation, and endeavors to maintain equal contributions from all geographical locations and different groups of people (women, men, boys, girls, various ethnic groups and people with different abilities).⁴⁶ The most relevant areas of focus within NRCS relating to SGBV are: inclusion and violence prevention, child protection, and the empowerment of women, people with disabilities, minorities by gender and ethnic group, and violence survivors (gender based, physical, sexual, physiological and domestic violence). NRCS has implemented structured gender equality and social inclusion programs in 27 districts, and through these has facilitated the restoration of rights of women survivors of domestic violence by linking them with the local women's right activists and law enforcement agencies.⁴⁷

45 Nepal Red Cross Society, Disaster Management Strategic Framework (Kathmandu: 2010), PP. 8 and 14.

46 *ibid.*

47 *ibid.*

Part 3

Disaster resilience of the SGBV protection framework

This part discusses the extent to which the SGBV protection frameworks outlined were able to continue effectively in the aftermath of the earthquake. The following parts of the report then turn to the DRM system itself, and look at the broader question of both SGBV protection and gender equality, in the law and policy, as well as in the experience of the earthquake response and recovery.

Although an extensive legal framework regarding SGBV exists in Nepal, these laws, policies and procedures do not make special provisions for SGBV protection during disasters. Even the SGBV Laws that should continue to apply and be operational in the post-disaster period appear to have become less functional during the 2015 earthquake response.

The 2015 earthquake not only took lives and injured people, but left hundreds of thousands of people homeless, making them economically and socially vulnerable.⁴⁸ After the earthquake, the number of cases of violence against women appears to have increased in one affected district where statistics are available. In Sindhupalchowk, a total of 112 cases were registered in the District Police Office in 2016 following the April 2015 earthquake, an increase of 10 cases, or 10% on the previous year.⁴⁹ The majority of reported cases were related to domestic violence (94), followed by rape (6) and attempt to rape (6), polygamy (4) and trafficking (2).⁵⁰

After the April 25 earthquake, government action to prevent and respond to gender-based violence in the areas impacted, included: WCS / women's cell officers monitored displaced person camps, and authorities in cooperation with NGOs set up "safe spaces" for women in the camps. However, civil society remained concerned about increased vulnerability of women and girls in the affected communities and WOREC reported an increase in incidents of violence against women and girls "as displaced individuals moved from open spaces under tents to enclosed sheds, huts, and other private shelters."⁵¹

In a focus group conducted for this study, with a group of women in Sindhupalchowk district, they stated that women in the community faced increased domestic violence after the earthquake, as some men started misusing the relief funds to buy alcohol, and inflicting violence on the women after consuming alcohol. They expressed the view that it is difficult to know the true number of SGBV incidents, due to low reporting by both SGBV survivors and law enforcement agencies.⁵² They also relayed reported

49 UN Women, Sindhupalchowk Gender Profile (Kathmandu: August 2016) p.8

50 Ibid.

51 Ibid. P. 27

52 FGD women's group.

cases of children and adolescents being trafficked from the earthquake affected areas, saying that sixty-eight children from Sindhupalchowk district were rescued at Barabise and Koteshwor checkpoints. Some girls from Sindhupalchowk were also rescued from Delhi Airport and repatriated to Nepal.⁵³

A number of informants expressed the view that crimes relating to SGBV are likely to be significantly under-reported in the context of Nepal, due to the stigma attached to it, and due to commonly reported perceptions that recourse to legal action will not prevent repetition of the act or generate protection for the complainant. However, the table below shows the ratio of the SGBV crimes before and after the 2015 earthquake, from the national data of WCSD, Nepal Police. This shows that the reported incidence of SGBV crimes of rape, trafficking and domestic violence increased from pre-to post disaster. The far greatest reported crime relating to SGBV, as well as the greatest reported increase after the disaster was domestic violence, but there was also a significant increase in reported cases of rape, although there were fewer reports of attempted rape and trafficking.

Table: Comparative Reporting Pattern of SGBV Pre-and Post-Earthquake 2015

Type of SGBV reported	2014/15	2015/16
Rape	981	1089
Attempt to rape	562	452
Trafficking	181	121
Child marriage	23	22
Domestic violence	8268	9398

Data source: Women and Children Service Directorate, Nepal Police, March 2017.

Common challenges facing by people displaced from their homes included insufficient shelter, water and sanitation, food, and emotional stress. Additionally, women faced “privacy and security problems, including access to safe toilets, bathing and changing areas, family sleeping arrangements, and difficulties dealing with menstruation and pregnancy, as well as elevated vulnerability to trafficking.”⁵⁴

Early marriage was also perceived to be on the rise due to the lack of proper guardianship, although national police data of reported cases showed a decrease in early marriage after the earthquake. It was also observed by one informant that many women and girls tolerated violence inflicted upon them by the men because they did not want to face further trauma such as social stigma after going through the hardships of the earthquake.⁵⁵ Furthermore, perpetrators who were the breadwinners of the family, the majority of them men, sometimes threatened to abandon the family if a complaint was made.⁵⁶

53 *ibid.*
 54 *Ibid.* P.16.
 55 Interview with Key Informant.
 56 *ibid.*

CASE STUDY 1

SGBV survivor faced difficulties accessing justice during disaster

A woman aged 26 (case name omitted), originally from Udayapur district, was living in Kathmandu. The destructive earthquake of April 25, 2015 destroyed her residence and so she moved to a temporary shelter in Tudikhel (Open Ground) from 28th April, 2015. She shared her tent with an acquaintance named KT.

On the night of June 5th, 2015, the accused came to the tent requesting shelter for that night. He mentioned that he was also a victim of the earthquake and his rented room was destroyed. They agreed to share the tent with him. KT was sleeping in an open corner; the victim was sleeping in the middle and the accused was sleeping in the other corner of the tent. The victim was in deep sleep after an entire day's hard work.

At 1:00 AM that night, when the victim was asleep, the accused grabbed her hand with one hand and with the other he gagged the victim's mouth. She was helpless and the accused raped her. As a wife and mother of 2 children, the fear of social disgrace and threat kept her from reporting the incident at first. A week after the incident, the victim told her husband and went to file the case against the perpetrator with her husband. The police arrested the perpetrator on 13th June 2015, and a formally written complaint was filed on 14th June, 2015. The charge sheet was filed in Kathmandu District Court on 1st July, 2015. However, as she had lost her citizenship card during the disaster, taking the victim's statement was a problem.

The court issued notice to the victim to record her statement four times, but each time the court officials refused to accept her statement because she could not present her identity card. The victim then received support from the FWLD's Legal Assistance Desk, and their lawyer requested the court to record the victim's statement on their guarantee. Then the court finally agreed and allowed her to record her victim statement on 30th July, 2015. The court's final decision was given on September 12th, 2015. The accused was convicted, and punished by the court according to clause 5 of rape chapter of the Country Code, with 5 years of imprisonment and Rs. 20,000 of compensation according to clause 10 of the same chapter.

Source: LAD Kathmandu, FWLD, 2016.

The above-mentioned example and discussions in the focus groups suggest that laws, policies and institutions concerned with SGBV protection may need to focus more on special arrangements to address the many contingencies that arise during disasters. In particular, a number of key informants and the focus groups expressed the view that: (a) the safety and security of some women was endangered in post-disaster shelters where there was no privacy or separate sleeping quarters for women; (b) there were not always sufficient guardianship arrangements in place for orphans and separated girls, to prevent child marriage and trafficking; and (c) that a common occurrence such as loss of documents due to a disaster could become a barrier to access to justice for an SGBV survivor, when there were no contingency arrangements in place for courts to accept other forms of identity verification, or no alternative system for issuing temporary ID documents. These are some examples of where prior planning and contingency arrangements of the normal SGBV protection systems could help to prevent SGBV and support survivors in disaster contexts. However, it is also recognized that government institutions and their personnel will often be affected by a disaster, and that their resources will usually be over-stretched in any major disaster.

As noted above, not all WCS / women's cells in District Police Offices were fully functional at the time of the 2015 earthquake, as they were still being established. Key informants also reported that the existing WCS faced implementation challenges during the disaster and recovery. These related mainly to lack of human resources and lack of time post-earthquake, as police were in multiple roles, including rescue and relief distribution, in addition to normal law enforcement functions.

The NRCS and some other local and international organizations were able to provide additional support for SGBV prevention in shelters, as well as legal and psychosocial support to SGBV survivors. These included:

- NRCS disseminated information on issues related to gender and SGBV in its temporary shelters to support the safety of women and girls in the aftermath of the earthquake.
- UN Women, UNFPA and the DWC supported district WCOs and women-led NGOs in establishing women-friendly spaces to improve the safety of women during the disaster. UNFPA supported the establishment of 14 Female Friendly Spaces (FFSs) in the 14 districts hardest hit by the earthquake, including Rasuwa. Only three of the districts previously had facilities providing SGBV services, and over the year following the earthquake, UNFPA reports that these 14 facilities reached more than 108,000 women.⁵⁷ A total of 97 FFS were set up by different partners in the immediate aftermath of the quake. While some of these closed as health facilities re-opened, UNFPA reports that the success of these programmes has increased the government's commitment to building additional facilities that provide GBV-related services across the nation. Three such government facilities were opened in the first year after the earthquake and, based on the experience with the FFSs, the Government issued guidelines for women's groups in about how to provide this type of support.⁵⁸
- FWLD installed Legal Assistance Desks (LAD) at the 14 most affected districts of earthquake and provided both legal counseling and facilitation to the survivors of SGBV post-earthquake.
- Organizations like TPO Nepal, and CIVIT were involved in psychosocial counseling during the disaster.

The role of the NRCS, NGOs and international support organizations appears to have been important in SGBV prevention in shelters, and in maintaining a level of service for SGBV survivors when government resources and personnel were over-extended in the emergency response. This model of cooperation to provide the necessary surge capacity for SGBV support during disasters could be formalized as part of the disaster contingency plans for health, welfare and police services regarding SGBV, as well as being integrated into DRM system planning for post-disaster shelter.

57 UNFPA. 22 April 2016. News. 'How the response to Nepal's earthquake strengthened resources for the nation's most vulnerable women.' UNFPA website: <http://www.unfpa.org/news/how-response-nepal%E2%80%99s-earthquake-strengthened-resources-nation%E2%80%99s-most-vulnerable-women> (accessed 19 August 2017)

58 Ibid.

Part 4

Legal and policy basis of the disaster management system

So far, this report has focused on outlining the legal frameworks for SGBV protection in normal (non-disaster) times, and on how these operated during the 2015 earthquake response and recovery. However, the national and local disaster management system is also a key structure for ensuring both gender equality and SGBV protection during disasters. Accordingly, the report now turns to the law and policy framework that underpins the DRM system, and addresses the broader question of gender equality in DRM, including SGBV protection. This part outlines the DRM law and policy framework, and the following part considers implementation in general, as well as during the 2015 earthquake response and recovery. The reader should note that this report considers the legal framework that existed at the time of research, including the draft DRM bill, as of April 2017. At the time this report was published, news was received that the draft bill had subsequently been approved by the Parliament of Nepal. However, the newly approved law has not been analysed for this report, and the recommendations are based on the legal framework and draft bill that existed at the time of research.

4.1 Law and policy framework

a. Natural Calamity Relief Act 1982 and bill on disaster management

Nepal's DRM system is currently underpinned by the Natural Calamity Relief Act, 1982, which is essentially focused on preparedness and emergency response. It is widely recognized that this Act requires updating, and various versions of a disaster management bill have been in circulation for almost a decade. In practice, the operation of the system itself has now moved beyond the Act, being largely governed by the Government's National Strategy for Disaster Risk Management in Nepal (NSDRMN).

The Disaster Management Bill (the Bill) was submitted in the Parliament in April 2015 just a few days before the massive earthquake. After the 2015 earthquake, the Government withdrew the Bill from the Parliament in August 2015, and at the time of writing the Bill was with the Ministry of Home affairs for the further reworking. The further revised bill was registered in the parliament in September 2017, at the point this report was going to press, and has not been analysed as part of this report. However, the previous version of the bill mainly provides for the organizational structure of the national and sub-national disaster management institutions. This bill proposes:

- A National Council for Disaster Management under the chairpersonship

of the Prime Minister as an apex policy-making body for effectively carrying out the functions of disaster management.

- An Executive Committee under the chairpersonship of the Home Affairs Minister for carrying out the functions concerning disaster management. Secretaries of various ministries are the proposed members of this body and representatives of the Army, Police, Armed police, Nepal Red Cross Society, Federation of Nepal Chambers of Commerce and Industry, and the Nepal Scouts.
- A National Disaster Management Center as the main executive organ to carry out the functions of disaster management at all stages.
- Disaster management committees at regional and local levels.
- A national Disaster Risk Mitigation Committee under the chairpersonship of the Minister of Local Development. Its major tasks would include approving integrated plans and sectoral policies on disaster risk reduction under the framework of long-term development plans and programs.
- Disaster recovery (rehabilitation, reconstruction and sustainable development) committees under the chairpersonship of the Urban Development Minister. This committee would have the task of making an integrated and sectoral plan concerning disaster recovery (post disaster rehabilitation, reconstruction and sustainable development) and to implement them.

The bill envisages gender and social inclusion as a major cross-cutting issue, along with protection of vulnerable groups and making special arrangements for them. One of the major tasks of the executive body is to formulate and implement special action plans for rescue and relief of women, children, senior citizens, and incapacitated persons. In this sense, the bill has envisaged the special needs of these communities during disasters. However, although the bill proposes nomination of persons from socially excluded groups in the Committees, it does not specify the representation of women in terms of gender balance or decision-making roles. That is, it does not make any requirement to ensure a minimum representation of women in the national, regional, district and local disaster management committees. Nor does it provide for representation of national women's organizations or the MoWCSW at national level. Similarly, the bill does not provide a specific mandate to address the problems of SGBV during disasters, nor the special health related problems that women and girls often face during disasters, especially reproductive health and sanitation.

b. National Strategy for Disaster Risk Management in Nepal (NSDRMN)

The National Strategy for Disaster Risk Management (the National Strategy) was formulated in 2009 with the objective of mainstreaming disaster risk reduction in development activities. Making Nepal a disaster-resilient community is the long-term vision of this Strategy. It is also the main current foundation of the current institutional arrangements for disaster

management in Nepal.

The priority actions mentioned by the National Strategy are:⁵⁹

Priority Action 1: Ensure that disaster risk reduction is a national and local priority with a strong institutional basis for implementation

Priority Action 2: Identify, assess and monitor disaster risks and enhance early warning

Priority Action 3: Better knowledge management for building a culture of safety

Priority Action 4: Reducing the underlying risk factors

Priority Action 5: Enhance preparedness for effective response

The National Strategy also provides that the issues of gender and social inclusion are to be mainstreamed in all steps of DRM. This requires implementers to: recognize and analyze the needs of vulnerable groups as priority issues before, during and after disasters; to provide proper information to women, children, elderly people, minorities and persons with disabilities regarding rescue and relief; to conduct activities and training to strengthen their self-confidence and awareness regarding exercise of rights, opportunity and knowledge necessary to deal with disasters; to pre-recognize the families at risk, especially families with women, children, single women, persons with disabilities, and the sick; and to conduct targeted rescue, relief and rehabilitation programs for them. These are very positive elements for SGBV protection and gender equality in relief. However, as with the bill, the NSDRMN does not consider the question of empowerment of women, gender balance in participation, or the importance of women having decision-making roles.

4.2 Disaster response operational framework

The committee structure from the NSDRMN has been largely adopted in practice. The Government has established committees for disaster management at national, regional, district and local level, including sub-committees. These include:

- The Central Natural Disaster Relief Committee (CNDRC), the apex body in the disaster response framework.
- A disaster management division in the Ministry of Home Affairs (MoHA)
- A National Emergency Operations Center (NEOC)/Local Emergency Management Authorities (LEMAs). This is brought into operation when mandated by the CNDRC. The NEOC/LEMA functions are based on four phases: normal phase (preparedness); alert phase (keeping agencies and

authorities alert for an imminent emergency); response phase (leads coordination and communication for response); and recovery phase (coordinate early recovery efforts).

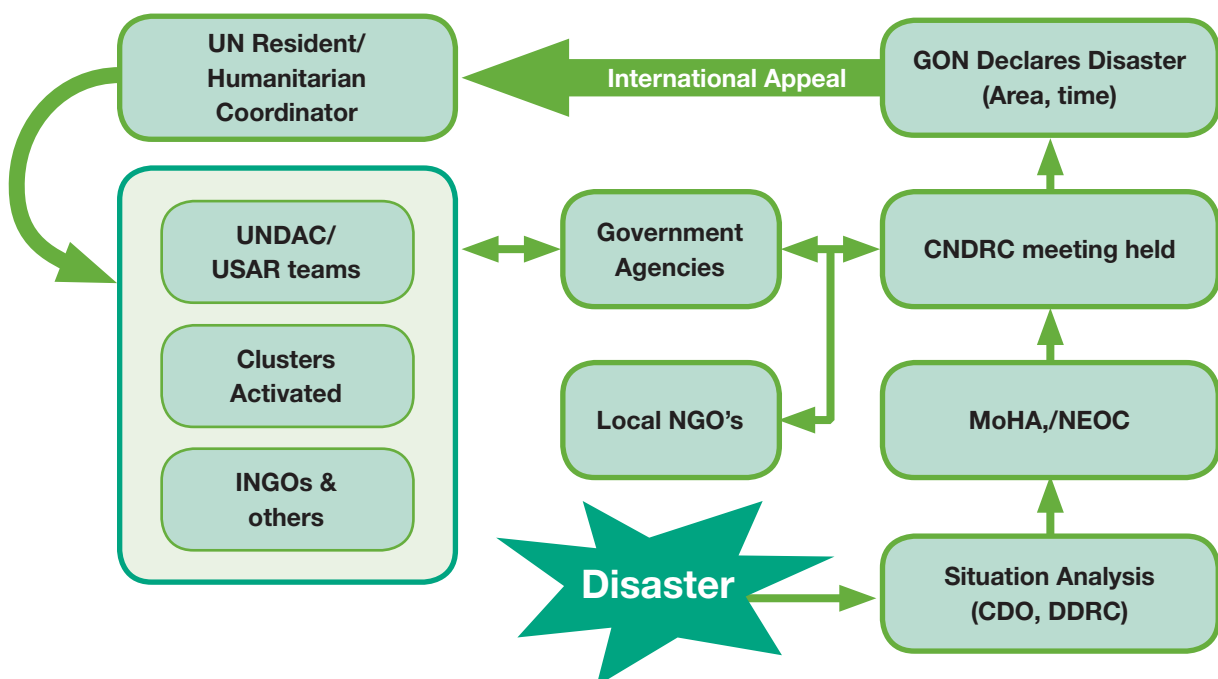
- District Disaster Relief Committees (DDRC). In practice, these operate as standing bodies, not just triggered by a disaster. They also engage in disaster preparedness and risk reduction. (Local and community-based relief committees do not have this ongoing role.)
- A Central Natural Calamity Relief Fund and also a Prime Minister's Disaster Relief Fund

As soon as any disaster occurs, the relevant DDRC collaborates with MoHA and the NEOC. Depending on the magnitude of a disaster, a meeting of the relevant committee, from DDRC to the CNDRC level, is conducted. A CNDRC recommendation is instrumental in the official declaration of a disaster by the Government, then in activating the NEOC and LEMAs.

The Government can make an international appeal to the United Nations through the UN Resident/Humanitarian Coordinator, and can also call on NRCS as auxiliary to public authorities for humanitarian support.

The United Nations Disaster Assessment and Coordination (UNDAC)/ USAR teams also help the Government in activating the international sectoral Clusters that include UN agencies and INGOs, and work with Government agencies and local NGOs. Eleven such coordinated Clusters of concerned government agencies with international agencies were created in 2015 after the earthquake. The diagram below shows the current disaster response framework in Nepal.

Disaster response system in Nepal



Source: Disaster Management Division, Ministry of Home Affairs

In addition to the international humanitarian clusters initiated in the event of a major disaster, Nepal also has its own 11 national clusters which have become standing bodies, and are under the Ministry of Home Affairs. Relevant government agencies are provided with the responsibility to deal with different kinds of disasters. The Council of Ministers and the CNDRC had responsibility for dealing with the response to the April 2015 earthquake.

In summary, the major government agency focusing on the DRM system in Nepal is the CNDRC, chaired by the Minister of Home Affairs. Its secretariats the Disaster Management Division of the Ministry of Home Affairs. There are also district committees, the DRRC, each chaired by the relevant Chief District Officer of MoHA, with a role to prepare for and manage disasters under the guidance of CNDRC, as well as to undertake risk reduction.

CNDRC also provides the mandate to the National Emergency Operations Centre (NEOC) / Local Emergency Management Authority (LEMA) to take emergency action during a disaster. Subsequently, NEOC/LEMA manages the Multi-National Military Coordination Center (MNMCC) and the On-Site Operations Coordination Center (OSOCC).

All of these mechanisms are mandated to manage disaster, but not specifically mandated to handle SGBV cases in disasters or to ensure gender equality in disaster response and recovery. The important and current National Strategy on Disaster Risk Management does provide that the issues of gender and social inclusion are to be mainstreamed in all steps of DRM, but also does not make provision for gender balance in participation.

In the interests of promoting greater support for SGBV protection, gender equality in relief, and empowerment of women within the disaster management system, it is desirable to include relevant legislative mandates in this system in the future. Specifically, these could address participation of women and other marginalized groups in disaster management and disaster risk reduction, as well as preparing for a response that meets their different needs.

Protection from SGBV has surely emerged as a specific need in disasters, which particularly affects women. According to the Protection Thematic Report (30 July 2015), women's representation was also lacking in relief, coordination and decision-making committees at the community and site level.⁶⁰ If a new National Council on Disaster Management is formed as envisaged in the bill, this would include 5 members appointed on the basis of inclusive representation as well as expertise in the field of disaster management, and these criteria could be used to ensure at least some representation of women, especially based around skills and knowledge on SGBV protection and gender equality. Both of these issues could also be supported by a legislative mandate requiring a minimum percentage of women's representation, such as a minimum of 33% membership of women in the DRM institutions at all levels. There are precedents for such minimum representation in district development groups, for example, in the Sindhupalchowk District, under the District Development Committee, user groups must have 33% minimum women to conduct district programs.⁶¹

60 UN OCHA Nepal Earthquake Assessment Unit.

61 UN Women, Sindhupalchowk Gender Profile (Kathmandu: August 2016) p.6.

4.3 Post-2015 National Reconstruction Authority law

The National Reconstruction Authority (NRA) was established in January 2016 to oversee the overall reconstruction and rehabilitation work following the 2015 earthquakes in Nepal. It is based on *An Act Made to Provide for Reconstruction of the Earthquake Affected Structures 2015*, which establishes the NRA, and was issued to speed up reconstruction and rehabilitation works in the earthquake-hit areas. The NRA has a mandate to promptly complete the construction works of the structures damaged by the devastating earthquake and subsequent aftershocks. It is required to ensure reconstruction is done in a sustainable, resilient and planned manner, and to promote national interests and provide social justice through resettlement or relocation of persons and families permanently displaced by the earthquake.⁶²

The NRA has a five-year mandate, under the chairpersonship of the Prime Minister. It has three central components:

- The National Reconstruction Advisory Council, which the Act provides has a minimum of thirty members, mainly government agencies (ministers – but not the women’s minister – heads of government departments, political party leaders and district parliamentarians, police, and army), but also provides for ‘five persons, including at least two women ... from amongst the experts of universities, non-governmental organizations, civil society or private sector’.⁶³
- a smaller Steering Committee, of around 12 persons from the same types of agencies as the Council.⁶⁴ and
- an Executive committee of 6-8 persons including a chief executive officer.⁶⁵

The Steering Committee and the Executive Committee provide for the inclusion of three persons ‘nominated by the government of Nepal, on the basis of inclusive principle’, but does not provide for representation of women or even of the NRCS or civil society. Furthermore, these nominees must be technical experts with a minimum of 10 years’ experience and a professional master’s degree, in areas such as engineering and project management. This, along with the key functions of the NRA under the Act, sends the message that reconstruction is just a matter of getting buildings on the ground, not a public policy matter that needs to be concerned with gender equality or addressing disadvantage. These types of criteria may not deliberately exclude women, but in reality, the high levels of education and types of technical skills required would eliminate most Nepali women from consideration, and also most people from minority and disadvantaged backgrounds.

In fact, there is no representation of women in either the NRA Steering Committee (out of 10 members) or the NRA Executive Committee (out of 6

62 Act Made to Provide for Reconstruction of the Earthquake Affected Structures 2015, Sec. 3.

63 *ibid.* Secs. 5 and 5, especially sec. 5 (2)(o)

64 *ibid.* Secs. 7 and 8.

65 *ibid.* Secs. 9, 10.

members)⁶⁶, and only two women representatives (the statutory minimum) have been appointed as members of what has become a 96-member Advisory Council.⁶⁷ This is an extremely low level of representation of women and women's organizations in the NRA, especially given the issues noted in this report concerning gender-based barriers to being recognized as property-owners and obtaining reconstruction benefits. Given that these two committees have the operational roles, and that the NRA is given such sweeping powers, this narrow conception of reconstruction as simply a physical building process, along with the lack of representation of women's organizations and disadvantaged groups, is of very real concern. This has been recognized in a set of recommendations from a series of workshops on 'building back better and safer for gender equality' in mid 2016.⁶⁸

One of the functions of the NRA is to coordinate and cooperate with the private sector and civil society, and it is through this mechanism that the private sector, non-governmental and international agencies may be involved in the overall reconstruction and rehabilitation activities.⁶⁹

Importantly, the Act also includes a clause that ousts the applicability of the existing laws concerning land acquisition, procurement and environmental impact assessment and allows special procedures approved by the government applicable for prompt and efficient reconstruction work.⁷⁰ This innovation is intended to clear 'red tape' in reconstruction, but also needs careful monitoring to ensure local communities are involved in local decisions, and that individual rights are not violated, especially the land and property rights of women in earthquake recovery, given the challenges they already face.

66 <http://nra.gov.np/staff>

67 Ibid.

68 UN Women Nepal, Australian Government and Sancharika Samuha Nepal. 13 July 2016. Recommendations to the National Reconstruction Authority on Building Back Better and Safer for Gender Equality.

69 Act Made to Provide for Reconstruction of the Earthquake Affected Structures 2015, Sec. 4(m).

70 Ibid. Sec. 4(2).

Part 5

Gender equality and SGBV protection in the DRM system

Although the law and policy that establishes the current DRM system is not specifically tailored to SGBV protection and gender equality in disaster situations, there are other actors and mechanisms that work in these areas and link with the system at an operational level during disasters. These were important in the 2015 earthquake response and recovery, and continue to be so in the reconstruction period, but their roles could also be enhanced by law and policy reform in the DRM system.

5.1 Implementation of gender equality and SGBV protection in the DRM system

a. Engaging government women's structures on gender and SGBV protection in disasters

The Ministry of Women, Children and Social Welfare has a mandate to oversee all issues concerning women in the country. It hosts the Department of Women and Children (DWC) and extends its services in all the 75 districts through the Women and Children Offices. At the district level, the WCOs are the focal agency for addressing issues of women, children, senior citizens and persons with disabilities.

Although there is no representation of MoWCSW in the CNDRC, district WCOs are included in district level DDRCs in all earthquake affected districts. MoWCSW has an obligation to monitor violence against women during rescue and relief operations, and to make proper arrangements for the protection of women and other vulnerable groups. Similarly, the WCO is responsible for managing a favorable environment for women and controlling gender based violence in the disaster-affected area. The Women and Children Department is made responsible for devising plans for protection of women, and to control SGBV. It would be logical to ensure in the future that MoWCSW is also represented on the CNDRC, as a way to bring a greater awareness of gender issues in disaster risk reduction, disaster management planning and response operations at the national level.

As noted above, the NRA has only the statutory minimum of two women on the 96-member Council and no women in either the Steering Committee or the Executive Committee. As a key step in increasing gender-sensitive reconstruction, it would also be logical to include MoWCSW as a key Ministry in the NRA Council, Steering Committee and Executive Committee, along with representation for women's organizations at both the national and local levels in the NRA and its Council.

b. Operational responses during the 2015 earthquake disaster

Despite gaps in the gender and diversity focus in the legal and policy framework for DRM, some operational initiatives addressed gender perspectives in the response and recovery from the 2015 earthquake, although challenges were also experienced.

Among the eleven UN-Government clusters activated post-earthquake, the Protection Cluster was led by the MoWCSW and co-led by the UN focal points on protection, UNFPA/UNHCR/UNICEF. The Government handed responsibility to the Protection Cluster to deal with issues of SGBV in times of disaster. The Protection Cluster did much to oversee the condition of women and SGBV during the earthquake disaster. An important structure for this was the Interagency Gender Working Group (GWG), co-chaired by UN Women, UNOCHA and the Government of Nepal.⁷¹

The role of the Interagency Gender Working Group (GWG) under the Protection Cluster in any disaster situation is, “to mainstream and integrate gender equality and the empowerment of women in the humanitarian response for humanitarian effectiveness and accountability.”⁷² The GWG was formed in October 2015 with the support of UN Women.⁷³ This Group was instrumental in mainstreaming gender in all the clusters.

In 2015 clusters were not only formed at central level but also activated at district level where district WCOs led district protection clusters. Post-2015, all the clusters were asked to develop strategic action plans for their cluster. The Protection Cluster, led by MoWCSW, was the first cluster to develop a National Strategic Action Plan for the Protection Cluster, 2016 which is now under consideration at the Council of Ministers for the adoption.⁷⁴

The National Human Right Commission (NHRC) constituted a monitoring committee that comprised District Bar Association’s representative, District Journalist Association’s representative and staff of NHRC to monitor the situation of human rights during the disaster, including SGBV.

As noted earlier, the WCS / women’s cells in District Police Offices faced the challenge of continued operation in registering and investigating SGBV cases, as police personnel and resources were thinly spread over the multiple roles of rescue and relief distribution, displacement management, temporary shelter construction and public security. But to an extent others were able to help fill the gap, specifically on SGBV: the initiatives of UN Women and UNFPA with the DWC to provide female friendly spaces; the legal support and advocacy services provided by the FWLD Legal Advisory Desk; and the psychosocial support provided by organizations like TPO Nepal, and CIVIT.

More broadly on gender equality and social inclusion, NRCS includes these issues in its disaster management framework.⁷⁵ In addition to disseminating

71 The UN Humanitarian Country Team (UN-HCT) can activate the inter-cluster Gender Working Group (GWG) and request Cluster Leads and Co-leads to nominate Cluster Gender Focal Points to join the GWG. It can establish a multi-stakeholder forum (UN, NGOs, INGOs, DPs, etc) and also district level GWGs.

72 UN-HCT Emergency Response Preparedness plan for floods/landslides.

73 Interview with Key informant.

74 Interview with key informant.

75 Nepal Red Cross Society, Disaster Management Strategic Framework (Kathmandu: 2010), pg. 8.

information on issues related to gender and SGBV in its temporary shelters to support the safety of women and girls in the aftermath of the earthquake, its ongoing work in communities that addresses these issues gave it a strong base for supporting them during the earthquake response. NRCS had implemented structured gender equality and social inclusion programs in 27 districts which has helped increase women's participation in the NRCS community level support in those areas. NRCS women's groups had also been active amongst local groups, in income-generation activities such as personal savings schemes, credit and loan disbursements, as well as group farming and selling of products.⁷⁶ Apart from work at the grassroots level, NRCS also engages in advocacy with government at all levels, to persuade authorities to incorporate the issues of gender, diversity and social inclusion in disaster management.⁷⁷ They have continued this advocacy and community-based work in support of gender equality and SGBV protection during the earthquake response, recovery and reconstruction, in addition to providing material emergency relief, with support from IFRC and other Red Cross or Red Crescent National Societies.

Nepal's Post Disaster Needs Assessment (PDNA), was completed in June 2015 under the leadership of Nepal's National Planning Commission,⁷⁸ assessed the impact of the earthquake and formulated a recovery strategy covering restoration of livelihoods, economy and services, and the reconstruction of housing and infrastructure. The PDNA recognizes that women are among the most vulnerable of those affected by Nepal's earthquake.⁷⁹

Under the leadership of MoWCSW, the Gender Equality and Social Inclusion (GESI) chapter for the Post-Disaster Recovery Framework (PDRF) was drafted. Based on the PDNA key recommendations, from lessons derived from the Inter-Cluster Gender Working Group, and from PDRF consultations with the Government and CSO stakeholders on 25 March 2016, key recommendation on gender equality and social inclusion were included in the PDRF in the areas of coordination, participation, representation and economic empowerment.

5.3 Experiences of women and girls after the 2015 earthquake

In addition to the incidents of SGBV described earlier, women also faced direct gender discrimination, economic and other forms of exploitation, as well as problems relating to reproductive health and sanitation during the 2015 earthquake disaster response.

Following any sort of disaster, the gender and social inclusion aspects tend to be pushed into the background. Due to the intensity of the situation created in a disaster, response operational management occurs in a rush, focusing on what responders see as urgent, but they may lack awareness of the importance of equality and inclusion as fundamental aspects of humanitarian relief. From the focus groups and case studies used for this report, it is clear that in reconstruction and rehabilitation activities, women,

76 Nepal Red Cross Society, 7th Development Plan (2016-2020), pg. 9.

77 *ibid*, P. 13.

78 Government of Nepal: National Planning Commission, "Post Disaster Needs Assessment" (Kathmandu: 2015), See: http://icnr2015.mof.gov.np/page/post_disaster_needs_assessment

79 *ibid*, P. 61.

children and other marginalized groups are often left out of decision-making, information-sharing and planning processes, and sometimes are discriminated against very directly.⁸⁰ A lack of gender-sensitivity in these processes perpetuates the existing disadvantage of women, and reduces their economic capacity to recover.

The research for this report has identified a number of reported incidents where women were denied their rightful claims to disaster assistance after the 2015 earthquakes due to gender bias. These cases draw on the focus group discussions, but also extensively on the work of the Forum for Women, Law and Development (FWLD), which established a Legal Assistance Desk (LAD) that provided support services for earthquake-affected women and girls.

Many divorced women encountered a serious challenge accessing the relief materials; they were denied assistance by the government relief providers for not being registered as a member of their ex-husband's family, and yet were no longer accepted as a member of their maternal family once they had married.⁸¹

The following case studies show some gender-insensitive practices that led to women being denied their rights or facing direct discrimination during the disaster, due to difficulties establishing their identities without a male relative or head of household.

CASE STUDY 2

Challenges for women establishing their identities to receive relief

These cases came to the attention of the FWLD Legal Advisory Desk (FWLD-LAD), during the earthquake recovery.⁸²

Ms. D. A. is a divorced woman who was not counted as a member from either side of the family (neither her ex-husband's family nor her birth family), due to which she could not obtain the Earthquake Victim ID card. After LAD facilitation, she received the ID card.⁸³

Ms. A.T., resident of Nikosera - Bhaktapur had never had a Citizenship Certificate, as she was unaware of the legal process and she had no one to help her. She was a widow. The District Administration Office refused to provide a citizenship certificate to her, as there was no male member in her family to identify her as a Nepali citizen. Bhaktapur LAD was able to help her obtain a citizenship certificate after continuous follow-up. Based on the citizenship certificate, she was then able to apply for disaster relief.⁸⁴

Ms. G.B., aged 65, of Sindhuli District is single woman with four daughters who was not provided with a Victim ID card despite the fact that her home was completely destroyed. Initially during communication with the Village Development Committee Secretary, he informed her that he could not provide her with a card, as a neighbor had complained about her receiving relief. After repeated follow up by LAD, she was able to get the Victim ID card, as well as the relief amount.⁸⁵

80 Forum for Women, Law and Development, Gender Equality and Social Inclusion in Post-Earthquake Reconstruction Process (Kathmandu: 2017), pg. 27

81 Interview with key informant

82 FWLD, Report on Strengthening Disaster Management and Prevention from Right based Framework (Kathmandu: 2016), pg. 8.

83 Ibid. pg. 8.

84 Ibid, pg.9.

85 Ibid, pg. 11.

Another married woman claimed that she was not counted in her husband's family on the grounds that she abandoned her husband after the earthquake and went to live with her parents, when in fact they had asked her to move to her maternal home for a while, with her child, since her maternal home seemed safer than her in-laws' residence.⁸⁶ This is one of the examples of how some in-laws exploited the disaster situation to abandon female family members and reduce their capacity to recover.

Single women, and female-headed households, often had difficulty being recognized for government relief, as the government authorities often insisted on family registration through a male head of household.

CASE STUDY 3

Single Woman denied reconstruction instalment

Ms. G. T., aged 70, of Dolakha district was married at the age of 16 but did not register her marriage as she did not know about such a procedure. She has a daughter and is now a widow. After the death of her husband, she was neglected by her in-laws. After years of fighting for her rights, she was able to claim her husband's property from them - the very house that was then destroyed during the earthquake. After the earthquake, she lived temporarily in old home made by her parents years ago. After some time, she came to know that her in-laws had claimed and registered her share of the land, and also of the damaged house, to the assessment team, to get the reconstruction installment. When she went to the Village Development Committee, she was asked for the land documents, which she did not have. Her in-laws had already received the first installment, and she was left with nothing except pain.⁸⁷

The problem of gender inequality was also visible in some cases where the husband deprived the share of property to his wife and children, and instead distributed it to others whom he preferred. This kind of attitude clearly portrayed the culture of male domination towards the women in the use of family resources.⁸⁸ In other cases, rural women with little or no formal education found it difficult to understand the system and access their rights.

CASE STUDY 4

Lack of information on services and procedures

Ms. M. T.M., 55 of Sindhupalchowk district, is a widow without education. Her house was destroyed during the earthquake and in the meantime her husband died a natural death. She has a son who lives in Kathmandu but she does not know the exact location. As the land on which her house was built was in the name of her late husband, she was not listed as the earthquake-affected beneficiary, and was not able to receive the housing reconstruction grant. Although she has filed a grievance with the National Reconstruction Authority (NRA) she does not know who will address her grievance, or when.⁸⁹

In a focus group conducted in Sindhupalchowk district with a group of women, when they were asked about who was given priority while distributing relief materials, they stated that no special relief materials were provided to nursing mothers, and no priority was given to them, which had a negative impact on their reproductive health.

86 Interview with key informant

87 FWLD, Report on Strengthening Disaster Management and Prevention from Right based Framework (Kathmandu: 2016), pg. 21.

88 *ibid.*

89 National Election Observation Committee, Improving the Reconstruction Process in Nepal: Monitoring Report (Phase II: July – December 2016) (Lalitpur: 2016), pg. 20.

CASE STUDY 5

No special support for post-partum mother

Ms. R. A., 30 of Nuwakot delivered her second baby just a few days before the earthquake. She and her family narrowly escaped being killed. However, she was emotionally disturbed and frightened and could neither eat nor sleep properly. She was in post-partum stage and did not receive any special relief from the government. However, when the team of an organization supported her she was very happy. Later she was also provided psychosocial counseling to cope with her trauma.⁹⁰

While talking about the control of the relief amount provided by the government, the women in the focus group said that in most cases the male members of the family were in charge of the amount. They stated that women in the community faced more domestic violence after the earthquake, as some of the men started misusing the cash to buy alcohol, and started inflicting violence on the women after consuming alcohol.

Single women were in principle able to receive the relief amount, due to lack of male members in the family, as long as they had identity documents. However, the group also stated that the concerned authorities themselves usually insisted that a male member of the family was present to issue the relief amount, and would ask the women to bring a male family member. In one case the relief ID card was issued in the name of the 18-year-old grandson, even though the household was headed by his 54-year-old grandmother.⁹¹ Also, women whose husbands were out of the country for foreign employment had difficulties in receiving the relief amount, as when registering their names in the beneficiary list, the authority would ask for a male family member to be present.⁹²

CASE STUDY 6

Women not Considered as Head of Household

Ms. E. M., resident of Khokana, was living with her grandmother and sisters after her mother died and her father stopped supporting them. After the earthquake, she was denied a relief package offered by the government, as the officials argued she was not the head of the family, and they sought a male head in the family.⁹³

These cases highlight a range of challenges faced by women in accessing both disaster relief benefits and reconstruction benefits. They demonstrate cases of direct gender discrimination, such as not being recognized as head of households, and also the compounding effects of past gender inequality, such as not being listed on property titles and being reliant on the goodwill of their husbands' families.

⁹⁰ Ibid pg. 41.

⁹¹ Justice For All, State of Gender and Social Inclusion in Post-Earthquake Reconstruction: Findings from Dolakha, Sindhupalchowk and Kathmandu (Kathmandu: 2016), pg. 10.

⁹² Focus Group Discussion conducted with group of women on 24th March, 2017 in Sindhupalchowk District.

⁹³ Friendly Disaster Management (WFDM) Core Group, Position Paper on Gender Responsive Disaster Preparedness and Risk Reduction in Nepal, (Kathmandu: 2016), pg. 39.

Part 6

Findings, gaps and challenges

6.1 Overview of findings

This report has indicated that, while there are extensive laws in place for protection and response to SGBV in normal times, these already encounter implementation problems due to lack of awareness of them by SGBV survivors. This gap is exacerbated during disasters, when government institutions and their personnel may be affected, and when resources are thinly spread in the overall emergency response. Nevertheless, there were some good operational practices created during the 2015 earthquake response, which are highlighted below.

The fact that issues of gender equality and SGBV are not part of the Natural Calamity and Relief Act 1982, and are also not a significant part of the DRM law bill considered for this report in terms of representation and participation, is very important. It is likely that, without a strong mandate for gender and diversity in public administration concerning disaster relief, recovery and reconstruction, these processes may contribute to the vulnerability of women, and increase their disadvantage following disasters.

Both the disaster management system and the normal SGBV protection frameworks need to have a specific focus on prevention and response to SGBV in disasters. This will likely require strengthening within each of these frameworks, training both policy developers and operational personnel in gender and SGBV awareness, establishing systematic representation of women in DRM institutions, and increasing the links between the SGBV protection institutions and the DRM system. The experience of the 2015 earthquake response also suggests that the role of the NRCS, national NGOs and international organizations is likely to remain central in future major disaster response, especially in providing surge capacity for SGBV protection.

6.3 Good practice/models

Key models and good practices noted in the report are:

a. Extensive SGBV Laws

Nepal's SGBV protection laws are relatively comprehensive in addressing SGBV issues in normal times. In addition to criminalizing rape, child marriage, polygamy, and human trafficking, these laws recognize rape in marriage as a crime, provide the self-defence "right to retaliation" of a woman against an attacker, and also make sexual harassment an offence (both in public and in the workplace). Procedurally these laws also provide for compensation, and in-camera hearing of cases relating to women and children. However,

there remain some gaps, and also some challenges in implementation and community-level awareness of these laws.

b. Gender inclusive National Strategy on DRM

The National Strategy, which is the policy basis for the current DRM system, takes a strong approach on gender and equity, and gender mainstreaming.

c. Practical support for SGBV survivors

In terms of practical support and services for SGBV survivors, and their access to justice, three important innovations of the Government of Nepal and a number of NRCS and NGO services have been:

- The Government One Stop Crisis Management Centers to help female victims of SGBV access medical and other support services. The Ministry of Health and Population has set up around eighteen hospital-based OCMCs. These are permanent centers and are intended to operate in normal times, and also in disasters.
- A Government GBV Relief Fund to support delivery of relief services to the survivors of SGBV. The GBV Relief Fund Regulation, 2010, provides for the utilization of the fund for rehabilitation of the victim, including the emergency health check-up and rescuing victims of SGBV.
- The Nepal Police structure of the Women and Children Services Directorate at police headquarters, and the Women and Children Service Centers (WCS / women's cells) at district police offices. These are permanent centers and are intended to operate in normal times, and also in disasters, as the first point for complaints of SGBV.
- The supporting roles of the NRCS and national NGOs in SGBV protection during the disaster period, including SGBV prevention education in shelters, the FWLD Legal Advisory Desk, and the psychosocial support provided by organizations like TPO Nepal, and CIVIT.

d. Female-friendly spaces (FFS) use and continuation

UN Women, UNFPA and the Department of Women and Children supported district Women and Children Offices and women-led NGOs to establish women-friendly spaces, with a total of 97 FFS set up by different partners in the immediate aftermath of the earthquake. The success of these programmes has increased the government's commitment to building additional facilities that provide GBV-related services across the nation. Three such government facilities were opened in the first year after the earthquake and, based on the experience with the FFSs, the Government issued guidelines for women's groups on how to provide this type of support.⁹⁴

e. Protection Cluster and Inter-Cluster Gender Working Group

The operational role of the Protection Cluster (led by MoWCSW and co-led

94 Ibid.

by UNFPA/UNHCR/UNICEF), following the earthquake was important in monitoring violence against women during rescue and relief operations, and making arrangements for the protection of women and other vulnerable groups.

- Clusters were not only formed at central level but also activated at district level where district WCOs led district protection clusters.
- UN Women supported the establishment of an Inter-Cluster Gender Working Group in October 2015, which was instrumental in mainstreaming gender in all the clusters.
- Post-2015, the Protection Cluster has also been the first cluster to develop a National Strategic Action Plan 2016, now under consideration at the Council of Ministries.

f. Gender inclusive national DRM policy and recovery framework

- The National Strategy, which is the policy basis for the current DRM system, takes a strong approach on gender and equity, and gender mainstreaming.
- Nepal's National Planning Commission led the Post Disaster Needs Assessment (PDNA) completed in June 2015. Its recovery strategy covering restoration of livelihoods, economy and services, and the reconstruction of housing and infrastructure, recognizes that women are among the most vulnerable of those affected by Nepal's earthquake.
- MoWCSW led the drafting of a chapter on Gender Equality and Social Inclusion, in the Post-Disaster Recovery Framework (PDRF). This drew on the PDNA key recommendations, on lessons derived from the Inter-Cluster Gender Working Group, and from PDRF consultations with the Government and CSO stakeholders on 25 March 2016. It includes key recommendation on gender equality and social inclusion in the areas of coordination, participation, representation and economic empowerment.

6.4 Gaps and Challenges

The key gaps noted in the report are:

a. Gaps & challenges in SGBV laws

One gap in the SGBV legal frameworks is that the rape law does not recognize rape of men or boys, or third gender persons, so they have no legal remedy against sexual violence, either in normal times or during disasters.

Four of the challenges relating to access to justice under SGBV laws in normal times are also likely to be exacerbated during a disaster. These are:

- The statutory limitation periods are very short (90 days) to make claims of either domestic violence or child marriage;

- Women have low awareness of the SGBV protection laws or how to access justice under these laws, with a majority of women unaware of any laws that address SGBV;
- The complexity of the legal proceedings can be a barrier for women who do not have high levels of education, and/or who do not have access to legal aid; and
- The long delays in court proceedings and execution of judgments delay access to justice and complainants tend to give up.

b. Lack of disaster resilience in normal SGBV protection framework

It appears that the health and welfare services, police and courts, do not on the whole have sufficient resources or contingency arrangements in place to overcome the disruptions and extra demands of a major disaster. Although specific mechanisms are in place for SGBV support and complaints in normal times, such as the hospital-based OCMCs and the Nepal Police WCS/women's cells at district police stations, during the earthquake response and recovery period, they were affected by the disaster and their resources were over-stretched. This was noted particularly in relation to police, whose additional roles during disasters include rescue, emergency settlement and distribution of supplies, making them less available to play their regular role in SGBV protection.

c. Lack of data on SGBV in disaster settings

Due to the breakdown in the normal support and reporting frameworks, in particular the reassignment of police to disaster response roles, there are gaps in the data concerning SGBV during the disaster.

d. Disaster Management Law requires updating

The Natural Calamity and Relief Act 1982 is confined to rescue and relief, but does not deal with preparedness, recovery and reconstruction. The Act is silent on catering for the special needs of women and girls during disasters, and is not based on a rights perspective, but rather a "welfare" role for government.

The draft DRM bill does not currently provide for the participation of women in the DRM system, and does not address the problems of sexual and gender based violence during disasters. The proposed bill has also not addressed the special health related problems of women and girls, especially reproductive health and sanitation during disasters. (Note: A further revised DRM bill was introduced to the parliament in September 2017, during the time that this report was being published. News was subsequently received that the bill had been approved by the Parliament of Nepal. However, the newly approved law has not been analysed for this report, and the recommendations are based on the legal framework and draft bill that existed at the time of research, in April 2017).

e. Non-inclusiveness of National Reconstruction Authority

The enabling law of the National Reconstruction Authority currently lacks any focus on gender and diversity issues in reconstruction, (characterizing it more as a logistical process of physical construction), and has an extraordinarily low level of representation of women, with only 2 women members of the 96-person Advisory Council (the minimum provided in the Act), and no women on either the Steering Committee or the Executive Committee.

f. Lack of SGBV awareness in disaster operations

The case study examples highlight three main gaps in SGBV awareness in the Nepal earthquake government disaster operations:

- the safety and security of women was endangered in some post-disaster shelters (mainly tents) where there was no privacy or separate sleeping quarters for women;
- there were not sufficient guardianship arrangements in place for orphans and separated girls, to prevent child marriage and trafficking; and
- loss of documents due to the disaster, as well as lack of documents prior to the earthquake, was a barrier to access to justice and disaster relief services for some SGBV survivors, where local government and courts did not have procedures in place to accept other forms of identity verification.

g. Gender discrimination in access to relief

The case study examples highlight instances of gender discrimination (by officials, communities and families) in women's access to relief, reconstruction funds, and property rights. The four main gaps or challenges for women to have equality of access during the Nepal earthquake disaster operations were:

- Women reported that the government relief services did not make any provision for the special health service needs of pregnant, post-partum and lactating women, nor for sanitary wear, contraception and other personal hygiene needs of women.
- Many officials required families to register for disaster relief through a male head-of-household, refusing single women, divorced women, and women who were the heads of households (instead recognizing even very young male householders).
- One of the reported effects of giving the relief amount to the men was that they then controlled the money and sometimes chose not to use it for family needs, but to give it to others or use it to buy alcohol (thus increasing levels of domestic violence).

- Few women were listed as owners or joint owners of their homes or land, or they did not have title documents, making it difficult to register for reconstruction relief, and leading to a number of widows and divorced women either not being able to access reconstruction funds, or being defrauded of their property rights by their former husbands' families

h. Need for permanent institutional links to provide continued support for SGBV survivors during disasters

At present, there are no formal linkages for coordination between the DRM institutions and the agencies that normally provide support services and access to justice for SGBV survivors, to ensure continuity of support and services in times of disaster.

Part 7

Recommendations

7.1 Recommendations for government and the legislature

a. For the new disaster risk management law:

As noted earlier in this report, news was received at the time of publication that a new DRM bill had been approved by the Parliament of Nepal. However, the recommendations for this report are based on the legal framework and draft bill that existed at the time of research. Based on the findings of this report, including a lack of representation of women in the current system, and a lack of gender sensitivity or SGBV awareness in government disaster operations, it was suggested that any revisions to the new DRM bill include the recommendations below. Although a new bill has since been approved by Parliament, these recommendations should still be considered in any analysis or further strengthening of the bill, as gaps may still remain and require further attention. The recommendations are as follows:

1. Mandatory representation of women and civil society in DRM system institutions, as follows:
 - Mandatory minimum percentage levels of representation of women on all national, provincial and local committees and DRM centers (including advisory councils, executive and technical committees, and user groups) established as part of a national DRM system. A minimum percentage of one third (33%) women is proposed.
 - Inclusion of MoWCSW and key national women's organizations on national level bodies in the DRM system, as well as WCOs and local women's organizations in provincial and local committees.
 - In addition to the inclusion of NRCS, greater representation of civil society in the DRM system institutions, including NGOs working on women's equality and SGBV protection, with a target of one third civil society representation overall.
2. Specific objectives and definitions to support gender equality and SGBV protection, including:
 - Principles and objectives supporting gender equality in all DRM policies, plans and operations
 - A mandate to meet the different needs of all those affected by disasters, including women, children, person with disabilities, older persons and other marginalized groups
 - A target of gender-balanced assessment/distribution teams (or a minimum of 33% women in such teams)

- A mandate for gender-sensitive risk and needs assessments to ensure the specific needs of women for health care (especially during pregnancy, birth and breastfeeding), as well as different needs for disaster relief goods, methods of distribution, and emergency shelter, are met;
- Recognition of female-headed households and single women in any definitions of ‘family’ or ‘household’ for the purpose of access to relief, and mechanisms for reconstruction benefits that take account of the prior disadvantage of many women, (e.g. the fact that women in Nepal are often co-owners of the damaged property, even though they are not listed on property titles);
- A specific focus on SGBV as a major issue of safety and security during disasters, and the importance of ensuring that government relief distribution methods and emergency shelter provision does not worsen the danger of SGBV.
- Mechanisms within the DRM law to make formal links and coordinate during disasters with the health and social welfare services, police and legal aid services that normally provide support and access to justice for SGBV survivors, to ensure as much continuity as possible in such support.

b. Disaster resilience as part of SGBV laws

1. The laws, institutional mandates and resources relating to SGBV protection should be reviewed with a view to ensuring that they are able to operate effectively, and scale up as required, during disasters. Such a review could be led by MoWCSW, in cooperation with the Protection Cluster, NRCS and key actors engaged in SGBV protection in normal times and during disasters. It could include:
 - Developing disaster contingency planning in cooperation with the DRM system institutions, to ensure continued access for SGBV survivors to health and welfare services, police, legal aid and the courts. In particular, there is a need to ensure SGBV complaints are possible, even when police resources are diverted to emergency response during disasters;
 - Including mechanisms for cooperation on SGBV protection with the DRM system institutions and key international actors during disaster response and recovery operations, and also during the reconstruction phase to ensure greater attention to safety and SGBV prevention as part of “building back better/safer”; and
 - Formally recognizing and clarifying the supporting role of NRCS, national NGOs and international organizations in SGBV protection during disasters.
2. As there is a Penal Code bill currently under consideration by the Parliament, this could also include additional penalties for those involved in SGBV during times of disaster.

c. Potential policy and operational changes

Based on the report findings, it is also recommended that the Government consider the following policy and operational actions:

1. Strengthen and mobilize the Women and Children Service Centers of the Nepal Police to reduce the risks of gender based discrimination and SGBV, and to ensure continued access to police complaints services during disasters. (E.g. mobile units could be established at emergency shelter level, and such units could collaborate with relevant government agencies, NGOs and international organizations to form an informal network and referral mechanism during disaster and recovery periods.)
2. Strengthen the capacity of the hospital-based One Stop Crisis Management Centers (OSCMC) through training of personnel on meeting the needs of SGBV survivors during disasters (E.g. including knowledge of SGBV laws and any specific support or referral mechanisms during disasters).
3. Include gender equality and SGBV protection mechanisms in disaster operations through:
 - The routine establishment of an “Inter-Cluster Gender Working Group” in order to effectively work on cross-cutting issue of gender amongst sectoral clusters;
 - Gender-responsive resource allocation for disaster preparedness, response and recovery, with gender auditing as part of monitoring and evaluation;
 - Use of gender information officers by all DRM committees from central to local level, to disseminate timely information to people at all levels during a disaster. (E.g. Such information should be gender-sensitive and socially inclusive, and specifically target women and girls in situations where they are more vulnerable and at risk of violence and exploitation during times of disaster.)
 - Ensuring that all disaster related facilities and services are equally accessible to women and girls and also cater for their specific safety and health needs during disasters.

d. Preparedness – data systems and human capacity

1. The DRM system should establish a data management system to:
 - Update national and local disaster data to include sex, age and disability disaggregation;
 - Initiate data collection on SGBV incidence during disasters, including improved ways to ensure SGBV complaints to police during emergencies are documented, even while police resources are diverted to emergency response; and
 - Collect data during relief interventions to identify who the services reach, and to identify gaps for future consideration (e.g. geographical,

or by gender or other status of recipients).

2. Government, particularly MoWCSW should be responsible for capacity building by:
 - Developing women's and girls' leadership capacity and to enable communities and local levels to voice their opinions in disaster related policy-making processes.
 - Developing women's resilience to deal with the aftermath of disasters by providing them with necessary livelihood skills and knowledge.
 - Educating women and girls on DRM and coping strategies.
 - Building the capacity building of women and girls in managing their own security and protection measures.

7.2 Recommendations for NRCS, IFRC and civil society

a. Non-governmental operational responses on gender and disaster

NRCS and civil society organizations should consider:

- Conducting gender analysis of disaster risks, developing and updating gender responsive indicators, and monitoring their progress regarding the inclusiveness of resilience-building of communities.
- Developing gender checklists to guide their project teams in their respective organizations for mainstreaming gender in all disaster project activities.
- Having a clear strategy to work towards gender balanced representation in their organizations, from volunteer teams to senior management levels.

b. Advocacy and awareness-raising for women's representation and gender policy

1. NRCS and civil society organizations should continuously advocate for gender equality and SGBV protection in DRM by:
 - utilizing gender-disaggregated data to support government in the formulation of gender responsive policies and regulations.
 - advocating to ensure significant leadership and participation of women in disaster-related structures and meetings.
 - offering and providing technical support to government to ensure proper institutional arrangements and programmatic intervention to implement legal provisions related to gender equality in disasters.
2. Regular communication and capacity building support for government officials responsible for ensuring the implementation of DRM law and policy, regarding legal obligations and awareness of gender equality

issues in disasters.

3. Awareness-raising on gender equality and SGBV. This could include preparation and dissemination of materials to multiple stakeholders as well as the general public, (e.g. this could include awareness campaigns to make individuals aware about disaster and rights, through use of electronic and print media including radio and TV programs. During such awareness campaigns, women's groups could be mobilized for the dissemination of the information especially to women and girls in communities).
4. Support communities to raise their concerns and include gender equality and SGBV-awareness in community programmes, (e.g. this could include organizing public hearings for dialogue between service providers and women beneficiaries, and act as a bridge between them in order to balance needs and capacity to supply services).

Annexes

Annex 1: List of organizations interviewed

National Level Key Informants

Ministry of Women, Children and Social Welfare
Nepal Police, Women and Children Service Directorate
United Nations Population Fund
UN Women
Shakti Samuha organization
Legal Assistance Desk for earth quake affected people, Forum for Women,
Law and Development
Women Friendly Disaster Management Core group
Blue Diamond Society
Nepal Red Cross Society

Local Level Key Informants

Women and Children Office, Sindhupalchowk
District Police Office, Sindhupalchowk
District Disaster Rescue Committee, Sindhupalchowk
TUKI Association, Sunkoshi, Sindhupalchowk

Annex 2: Focus Group Discussions

Two focus groups were held in Sindhupalchowk District, one with women only and the other with a mixed gender group. These included a total of 39 local participants as well as 3 staff from NRCS and the consultants.

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The Fundamental Principles of the International Red Cross and Red Crescent Movement

Humanity / The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

Impartiality / It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

Neutrality / In order to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

Independence / The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

Voluntary service / It is a voluntary relief movement not prompted in any manner by desire for gain.

Unity / There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

Universality / The International Red Cross and Red Crescent Movement, in which all societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.



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