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Justice mechanisms and conflict dynamics in Nepal

Local perceptions and impacts



May 2016



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Acronyms

APF	Armed Police Force
CMC	Community Mediation Centre
CICU	Community Initiatives for Common Understanding
CMM	Conflict Mitigation and Management
DAO	District Administration Office
DPO	District Police Office
DWCO	District Women and Children's Office
FGD	Focus group discussion
INGO	International non-governmental organisation
KII	Key Informant Interview
LPC	Local Peace Committee
LDO	Local Development Officer
NGO	Non-governmental organisation
SGBV	Sexual and gender-based violence
UNDP	United Nations Development Program
VDC	Village Development Committee

Executive summary

AS AN ETHNICALLY AND GEOGRAPHICALLY DIVERSE NATION, people in Nepal rely on a wide range of formal and informal justice systems to resolve their disputes. Informal justice mechanisms – in their varying forms – often pre-date formal mechanisms by hundreds of years and remain the preferred method of dispute resolution for the majority of Nepalis. This is largely due to their accessibility within communities and propensity for promoting and maintaining social harmony. Another significant factor for their continued prevalence is the formal justice vacuum which emerged in the wake of the decade long armed conflict which ended in 2006, and led many communities to turn to, or rely further on informal justice actors.

While efforts have been made by the government to improve access to the formal justice system, including outreach programmes and an increase in resources to provide free legal support and make fees more affordable, implementation has been poor. Consequently, issues of capacity and accountability remain and are compounded by the persistent challenges of accessibility for remote, poorer or marginalised communities and individuals.

As part of a wider Saferworld project – ‘Community Initiatives for Common Understanding’ (CICU), which aims to foster mutual understanding among groups in conflict to seek common solutions – a research project was carried out to map justice provision in the five CICU districts in Nepal. This report presents the findings of the research project which explores community-level perceptions of formal and informal justice mechanisms, the current situation of access to justice among different community/ethnic groups, and the linkage between access to justice issues and local conflict dynamics.

In all districts a lack of legal awareness, gender, caste, socio-economic status, geography, and language as well as extreme delays were reported as issues associated with accessing formal justice. Weak institutions lack transparency and accountability and allow for persistent political and economic interference which is greatly reducing the effectiveness of formal justice systems in every district. Although perceptions of informal justice systems vary, there is an overarching preference for them over given their cost effectiveness, geographical proximity, swift decision making, and predilection for maintaining social cohesion. However, many lack knowledge of, or guidance on, Nepali law and human rights standards and have been reported as resolving criminal cases including rape and murder.

Deep-rooted patriarchal norms are severely impeding women’s access to justice in all five districts. Traditional attitudes and a lack of gender sensitivity among all justice actors, as well as a lack of gender responsive services, were reported as major barriers to many community members attaining formal and informal justice. Nevertheless,

where the recently established donor-funded Community Mediation Centres have been set up, security and all justice actors are generally collaborating well and trust has been built among users who have confidence in the impartiality of mediators and the decisions reached.

As Nepal continues its transition to peace, ensuring access to justice for all is vital to ensuring non-recurrence of violent conflict, and a sustainable peace. Instrumental to achieving this is working to change attitudes, behaviours, and harmful cultural practices that repress large parts of Nepali society and prevent them from enjoying their rights. Therefore, training on gender sensitivity for justice providers, and on Nepali law and human rights standards for informal justice actors; improved transparency and monitoring; a zero tolerance policy towards economic and political interference; and improved citizen awareness of their rights and how to vindicate them will be central to enhancing access to justice for all and positively impacting on local conflict dynamics.

Introduction

GOVERNANCE STRUCTURES IN NEPAL have always been highly centralised with the capital, Kathmandu, existing very separately to the rest of the country. Poor infrastructure and extreme geography make many districts in Nepal isolated and detached from central functions and institutions in Kathmandu. Consequently the majority of people in Nepal, particularly in rural areas, still rely upon informal justice mechanisms¹ to access justice as they have done for many centuries. Nestled between India and the Tibet Autonomous Region of China, Nepal has over 120 ethnic groups with over 90 different languages,² sharing a diverse range of cultural, religious, and social practices. In such rich diversity, however, much inequality has arisen, with a dominant elite emerging and the establishment of a hierarchical and patriarchal Hindu caste system. In most aspects of Nepali society women, young people, and lower caste groups are marginalised with little opportunity for meaningful participation as men, community elders, and higher caste groups hold the majority of decision making positions – conditions which produced fertile ground for the Maoist insurgency in 1996.

During the decade-long civil conflict, in many areas of Nepal, both formal and informal justice actors (including the police, courts, community and religious elders, and leaders linked to traditional dispute resolution mechanisms) were replaced by the Maoist ‘People’s Courts’ and the Royal Nepal Army who emerged as de facto actors of security and justice. Since the signing of the Comprehensive Peace Agreement in 2006 which marked the end of the armed conflict, a security and justice vacuum at the local level continues to exist in some regions and state capacity to provide effective and accountable security and justice through the formal system (police, courts, and judiciary) is weak. This vacuum has slowly begun to be filled by a number of different actors establishing new or re-instating old informal justice mechanisms that offer quicker, cheaper, and more accessible justice than through the formal sector. In addition, the impacts of donor-funded programmes, such as the Community Mediation Centres (CMCs) aiming to fill the gaps and address the communities’ immediate need for resolving disputes and seeking justice, are starting to be observed.³

Saferworld’s Community Initiatives for Common Understanding (CICU) project in Nepal aims to foster mutual understanding and cooperation among youth and other groups in conflict. It offers a safe space to seek common solutions and collaborate on development and peacebuilding efforts in their communities. Funded by the United States Agency for International Development (USAID)’s Conflict Mitigation and Management (CMM) mechanism, the project uses a ‘people-to-people’ approach to break down barriers for peaceful dialogue, and builds on positive relationships to

¹ Informal justice refers to all non-state justice structures and processes.

² Government of Nepal Ministry of Health and Population Division, 2011, *Nepal Population Report* www.nhssp.org.np/monitoring/Nepal%20Population%20Report%202011.pdf

³ Saferworld, 2010. *Security and Justice in Nepal – District Assessment Findings*.

identify and collaborate together on community development activities. CICU is simultaneously contributing towards raising district and national level actors' awareness of conflict-sensitive development and conducting rehabilitation programming.

As a part of the CICU project, a research study has been carried out mapping informal and formal justice actors in the five target districts to explore the following:

- community-level perceptions of formal and informal justice mechanisms, including traditional dispute resolution mechanisms and donor-funded informal provisions
- the current situation of access to justice (formal and informal) among different community/ethnic groups
- the linkage between access to justice (formal and informal) issues and local conflict dynamics

Key findings

This report is a compilation of the responses gathered from participants in each of the five CICU districts. It looks at the types of issues related to justice individuals and communities encounter, their perceptions of formal and informal justice systems, to what extent these systems are considered effective, and who the justice actors are. It also considers why people access and engage with different justice mechanisms and whether there are any linkages between access to justice and local conflict dynamics.

In all districts many of the same issues were identified as major barriers to accessing formal justice. A lack of legal awareness, gender, caste, socio-economic status, geography, and language as well as extreme delays were all common problems. While perceptions of informal justice systems varied, there was an overarching preference for them over formal justice actors given their cost effectiveness, geographical proximity, swift decision making, and predilection for maintaining social harmony.

Entrenched patriarchal norms and societal values, preventing women's participation in social, political, and economic life, are severely impeding women's access to justice in all five districts. In addition, there are the pressures of gendered expectations on young men and the frustrations that arise trying to live up to them. Traditional attitudes and a lack of gender sensitivity among justice actors, as well as a lack of gender responsive services, were reported as major barriers to many community members attaining formal and informal justice.

In four of the project districts, CMCs have been set up as part of large scale efforts by international donors to enhance access to justice through offering free mediation services. Trained mediators offer impartial facilitation to seek resolution for non-criminal community disputes as well as the rebuilding of relationships. Where CMCs have been established, and communities are aware of their function and services, they have been generally well received and are thought to coordinate well with other justice actors such as NGOs and the police. However, despite easing overburdened police offices, animosity has been reported towards CMCs from security sector actors in several districts for taking work off them and thus reducing their status and ability to procure funds from dealing with cases.

Weak institutions lacking transparency and accountability mean that persistent political interference is greatly reducing the effectiveness of formal justice systems in every district. Also, there is lack of implementation of any decisions reached by formal and informal systems. Distrust and a lack of confidence in formal justice has resulted in serious criminal cases, such as rape, being heard by informal justice actors who do not apply Nepali law, human rights standards, or gender sensitivity.

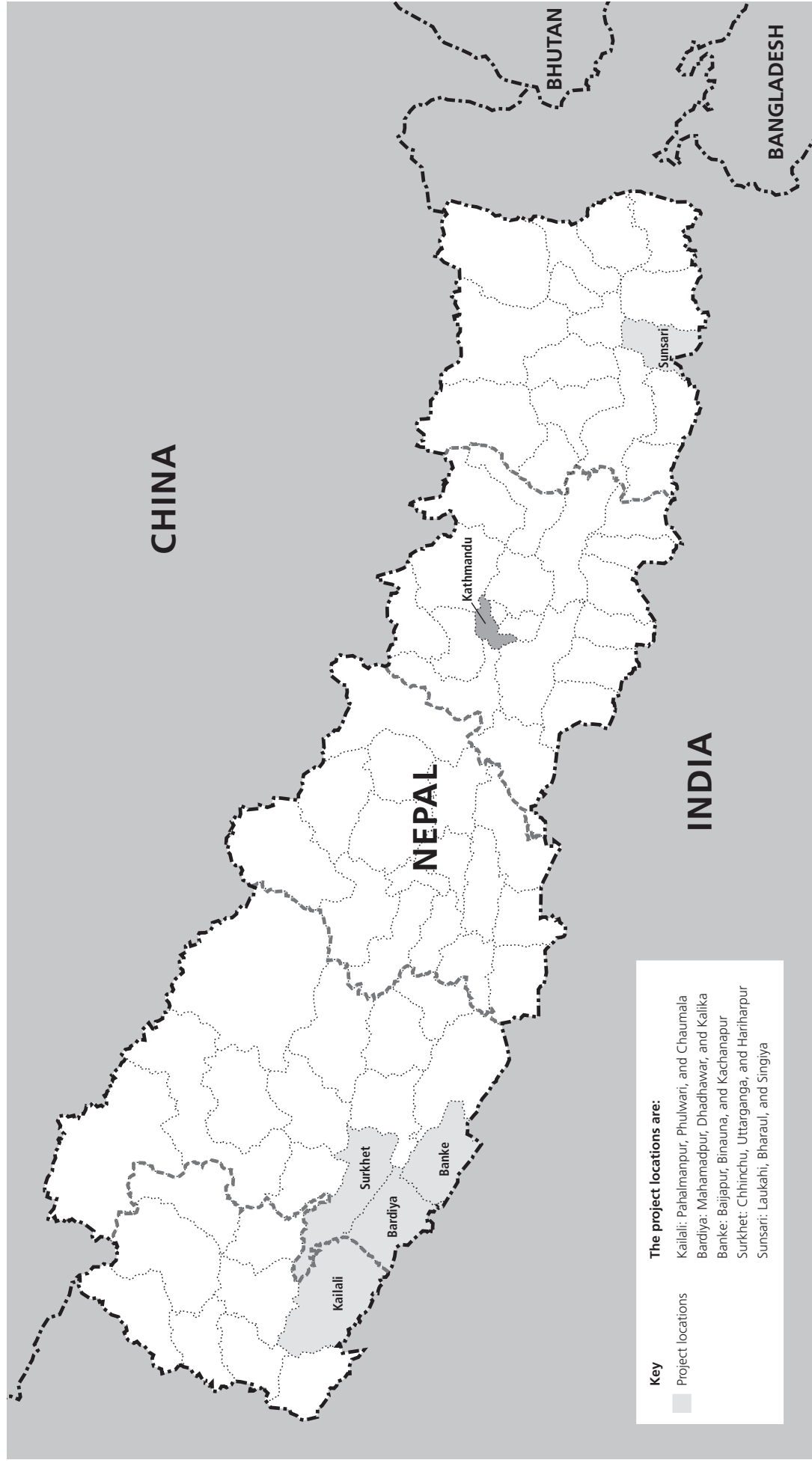
Where justice has not been considered appropriate or proportionate, tensions have remained among victims of reported land disputes, sexual and gender-based violence

(SGBV), and theft (to name but a few), resulting in suicide, divorce, and murder. This has serious implications within many communities, giving rise to strained relations with the potential for conflict never far away.

Methodology

The research has been conducted in all five CICU districts – Banke, Bardiya, Kailali, Surkhet, and Sunsari – using focus group discussions (FGDs) and key informant interviews (KIIs) to collect data. Four FGDs were held in each district with between six and eight participants from the district and Village Development Committees (VDCs) selected based on gender, caste, and ethnicity. FGDs were supplemented with at least 10 KIIs with different stakeholders at national, district, and local level. A total of 51 KIIs (17 female and 34 male) and 20 FGDs (5 female, 5 male and 10 mixed gender composition) were conducted in order to collect primary data.

Nepal



Banke

1.1 Understanding of justice issues

VIOLENCE AGAINST WOMEN, child marriage, polygamy, and disputes over dowry were the most frequently reported cases in Banke.⁴ Dowry-related cases are most prevalent in the Madeshi community;⁵ however, these are still under-reported due to the discriminatory attitudes of justice providers towards women, women's economic dependency on male family members, and a lack of legal awareness and education.⁶ One consequence of child marriage has been an increase in the school dropout rate.⁷ SGBV, drug and substance abuse, land disputes, human trafficking, migration and kidnapping are all commonly reported as also requiring justice provision.⁸ The shared border with India has an inherent impact on justice issues with individuals who have engaged in violence in India hiding over the border.⁹ There are also cases of families taking female family members to India to get married, later seeking divorce in Banke. Such practices of forced and cross-border marriage have created new justice issues for women through difficulties in claiming property rights following divorce.¹⁰ While most of the respondents highlighted the injustices suffered by women, a few respondents pointed out the growing trend of violence against men and the increasing trend of suicide as men struggle to live up to gendered stereotypes. Respondents understood this to be as a result of entrenched gender norms which prevent men from expressing their emotions¹¹ and accessing the justice they are entitled to due to shame or the sense of losing pride.

1.2 Actors involved

If a case is of a minor nature then there is still a preference for first approaching respected community members through a *Badghar*¹² or political party members for resolution.¹³ However, an increasing awareness and knowledge of CMCs means that increasingly people are beginning to use them instead.¹⁴ Local NGOs and several INGOs are still providing legal assistance to many justice seekers, including legal aid and counselling, filing cases, and paralegal services.¹⁵ Criminal cases should be dealt

⁴ KII with government authority, male, Banke, 08/08/2015; KII with civil society members, female, Banke, 10/08/2015; FGD with community female users, Banke, 08/08/2015; FGD with community informal justice actors, men and women, Banke, 08/08/2015; KII with journalist, male, Banke, 10/08/2015; FGD with community male users, Banke, 10/08/2015; FGD with district informal justice actors, male and female, Banke 11/08/2015

⁵ KII with journalist, female, Banke 11/08/2015

⁶ KII with journalist, female, Banke 11/08/2015; KII with lawyer, male, Banke 10/08/2015

⁷ KII with civil society members, female, Banke, 10/08/2015

⁸ KII with civil society members, male, Banke, 10/08/2015; FGD with community male users, Banke, 10/08/2015; FGD with community informal justice actors, male and female, Banke, 08/08/2015; KII with journalist, male, Banke, 10/08/2015

⁹ KII with journalist, female, Banke 11/08/2015

¹⁰ District informal justice actors, male and female, Banke, 11/08/2015

¹¹ FGD with community female users, Banke, 08/08/2015

¹² *Badghar* is a traditional Tharu system of community governance

¹³ FGD with community male users, Banke, 10/08/2015; KII with traditional leader, male, Banke, 10/08/2015; KII with journalist, male, Banke, 10/08/2015; FGD with community informal justice actors, male and female, Banke, 08/08/2015

¹⁴ FGD with VDC level informal justice providers, Banke, 08/08/2015

¹⁵ FGD with female justice users, Banke, 08/08/2015

with by the police; however, it was reported that to keep costs down police in Banke have been known to advise people to resolve such disputes among themselves.¹⁶ This, along with the long delays in the court system, has led to reluctance among community members to report criminal cases to the police, and instead they prefer to approach NGOs.¹⁷ There is good collaboration and networking taking place between local organisations and the VDC, with none of them working in isolation, thus ensuring all information is exchanged and shared in order to deal with cases effectively.¹⁸ In Banke the police and other government bodies are recommending CMCs to community members where appropriate according to the nature of the case.¹⁹

1.3 Perceptions and effectiveness

CMCs are gaining popularity among justice seekers as they are seen to be unbiased, confidential, and look for win-win solutions for both disputing parties.²⁰ Formal justice would only be sought if an agreement was unable to be reached through mediation. Informal justice actors were found to have a clear understanding of the types of cases they could mediate, and communities have greater trust of the CMCs given their dispensation of appropriate justice for the communities they serve, the quick and efficient nature of the process, and being free of charge.²¹ There is widespread belief that formal justice mechanisms are corrupt and that economic and political power play too significant a role in their functioning.²²

CMCs are seen as effective for several reasons: disputants are more inclined to tell the truth due to mediators being from their community, their privacy is respected, and decisions are reached expediently. Their establishment has also seen language playing an important role, with the use of different terminology to convey the unbiased nature of proceedings. Previously differing terms were used for the different disputing parties, whereas now they are all referred to as *bibadit pakshya* (contesting parties). Consequently communities are appreciating and supporting their work.²³

In contrast, lengthy processes in formal justice mechanisms are discouraging. As many cases are connected with issues of gender, an absence of gender-responsive service provision also contributes to a lack of confidence in their capabilities.²⁴ The increasing number of divorce cases being filed has resulted in many being filed without demanding property as this can take a minimum of three or four years to reach a verdict, and even then is perceived as unlikely to be implemented.²⁵ Evidence and witness statements often required by the court are not always easy or even possible to collect, thus greatly affecting a victim's ability to seek formal justice.²⁶ For example, in cases of rape, a medical report can easily be influenced by those with money who want a 'no' verdict, thus preventing the court from dispensing justice.²⁷ Incidences of district court verdicts being changed after appeals have gone through the Appellate and Supreme Court have also discouraged communities from seeking formal justice, who prefer to resolve their issues at the community level.²⁸

¹⁶ FGD with VDC level informal justice providers, Banke, 08/08/2015

¹⁷ KII with VDC Secretary staff, Banke, 10/08/2015,

¹⁸ FGD with community male users, Banke, 10/08/2015

¹⁹ FGD with VDC level informal justice providers, Banke, 08/08/2015

²⁰ FGD with community informal justice actors, male and female, Banke, 08/08/2015

²¹ FGD with community informal justice actors, male and female, Banke, 08/08/2015; FGD with community female users, Banke, 08/08/2015; KII with civil society, female, Banke, 10/08/2015B4; FGD with community male users, Banke, 10/08/2015

²² FGD with community informal justice actors, male and female, Banke, 08/08/2015; KII with journalist, female, Banke, 11/08/2015

²³ FGD with district level informal justice providers, Banke 11/08/2015

²⁴ KII with journalist, male, Banke, 10/08/2015; KII with lawyer, male, Banke, 10/08/2015; KII with lawyer, male, Banke, 10/08/2015; FGD with district informal justice actors, male and female, Banke, 11/08/2015; FGD with community male users, Banke, 10/08/2015

²⁵ KII with lawyer, male, Banke, 10/08/2015

²⁶ FGD with community informal justice actors, male and female, Banke, 08/08/2015

²⁷ KII with lawyer, male, Banke, 10/08/2015; KII with lawyer, male, Banke 10/08/2015

²⁸ FGD with community informal justice actors, male and female, Banke, 08/08/2015

1.4 Challenges in accessing justice

Gender, caste, ethnicity, socio-economic status, and geography all pose challenges for community members needing to access justice. Although women face far greater challenges than men, the same patriarchal norms and notions of masculinity that discriminate against women were also reported to prevent male victims of violence accessing justice in order to protect their honour and pride.²⁹ Barriers for women start in their own homes where they are discouraged from seeking justice and compelled to tolerate abuse.³⁰ Discriminatory societal norms and values and a lack of understanding of the need to create enabling environments for women too frequently dictate the outcomes of injustices committed against women. In a case of gang rape referred to by a lawyer, the victim did not want to register the case because she thought she would face more social stigma, so instead she filed a case of attempted rape.³¹

Economic status and political power unfortunately still hold strong influence over formal justice proceedings, greatly impacting marginalised communities. The example of a poor labourer with little education being coerced into settling his case outside of any justice mechanism in exchange for a bottle of alcohol highlights how unattainable justice can be for those without money or status. In another case, a 70 year old man who raped a seven year old girl was released after he bribed the authorities, and later organised a party to celebrate his freedom.³² It is therefore unsurprising that poor and lower caste people such as Dalits, Janajatis, and Madhesi have no confidence to seek formal justice, considering it unattainable.³³

1.5 Access to justice and local conflict dynamics

One FGD reported that the introduction of CMCs and the increased number of police stations in villages had reduced the number of disputes. Nevertheless, a close link can be seen between conflict within Banke communities and access to justice as a tense atmosphere rises when perpetrators are not brought to justice through formal or informal mechanisms, entrenching a culture of impunity, and contributing toward fuelling long-term conflict in the community.³⁴ In an interview with a journalist, it was stated that there is an improved understanding that rights and duties are very important for an individual to understand in order to establish better justice systems; however, people have forgotten their duties and are only demanding their rights, leading to tension within communities.³⁵

²⁹ KII with journalist, female, Banke 11/08/2015

³⁰ KII with government authority, male, Banke, 08/08/2015

³¹ KII with male NGO advocate, Banke, 10/08/2015

³² KII with journalist, male, Banke 10/08/2015

³³ FGD with community informal justice actors, male and female, Banke, 08/08/2015; FGD with district informal justice actors, male and female, Banke, 11/08/2015

³⁴ KII with journalist, male, Banke, 10/08/2015

³⁵ KII with journalist, female, Banke, 11/08/2015

Bardiya

2.1 Understanding of justice issues

COMMUNITIES IDENTIFIED NON-CRIMINAL CASES as ranging from money lending, property issues, land boundary disputes, verbal abuse, and small disputes between neighbours. Criminal cases included fraud, theft, murder, drug smuggling, human trafficking, and road traffic deaths.³⁶ Police records show that violence against women remains a serious issue with domestic violence, rape, and sexual violence cases (taking place on public transportation and between married couples) increasing, along with child marriage, polygamy, and allegations of witchcraft also being reported. A member of the district Nepal Bar Association reported that Bardiya now has the second highest suicide rate in Nepal, with numbers especially high among Tharu and Madhesi communities.³⁷ Bardiya's geographical location means that wildlife smuggling of items such as animal skins, rhino horns, and deer meat is also an issue. As a former Maoist stronghold the district has a high number of conflict victims with 499 murder cases and 278 cases of disappearances recorded by the government.³⁸

2.2 Actors involved

At the community level there are lots of groups and individuals working as informal justice actors, including the CMCs, local NGOs, women's groups, and social organisations for conflict victims and marginalised groups, such as Dalits and disabled people, with some level of coordination between them. Independent journalists and civil society members are also facilitating means for enhancing access to justice for their communities.³⁹ Political parties, social leaders and village intellectuals serve as informal justice actors while Tharu communities resolve disputes through their traditional system of *Badghar*. The Nepal Police, local police post, and district court are the formal justice providers and the District Administration Office looks at public offences.⁴⁰ Quasi-legal bodies also exist such as the District Forest Office, Survey Department, and Bardiya National Park, which have their own laws and security mechanisms; if there are problems in the national park for example, the Nepal Army will take action.⁴¹

The Police Superintendent has previously stressed that criminal cases should not be resolved by CMCs but that non-criminal cases can be. The police and informal actors including CMCs, NGOs, village leaders, and intellectuals maintain good relationships and are well coordinated in Bardiya, informing each other of relevant and appropriate cases whenever necessary. For example, CMCs send criminal cases to the police and

³⁶ KII with male district police officer, Bardiya, 08/08/2015, KII with male lawyer, Bardiya, 07/08/2015

³⁷ FGD with district level informal justice actors, Bardiya, 08/08/2015

³⁸ KII with male NGO president, Bardiya, 07/08/2015

³⁹ KII with male lawyer, Bardiya, 07/08/2015, FGD with district level informal justice actors, Bardiya, 08/08/2015

⁴⁰ KII with male NGO district representative, Bardiya, 07/08/2015, KII with male vice president of Nepal Bar Association, Bardiya, 09/08/2015, KII with male public prosecutor, Bardiya, 09/08/2015

⁴¹ KII with male NGO district representative, Bardiya, 07/08/2015, KII with male vice president of Nepal Bar Association, Bardiya, 09/08/2015, FGD with female justice users, Bardiya, 08/08/2015

smaller non-criminal cases requiring mediation or facilitation are sent by police to CMCs. CMCs also organise meetings every three months between political parties and local police to forge and promote good relations.⁴² However, tensions do exist between local police and CMCs as although the police praise CMCs for reducing the pressure on them in public, they are reportedly displeased internally at no longer being able to collect money from victims or perpetrators in non-criminal case dealings.⁴³ At the district level there is a committee for justice and security for which the Chief District Officer is chairperson, and members include individuals from United Nations Development Programme (UNDP), Local Development Office (LDO), Nepal police, Armed Police Force (APF), District Court, Nepal Bar, media, and civil society.

2.3 Perceptions and effectiveness

Before approaching justice providers, community members will often first go to political party members or village leaders if they have a problem as they not only lack confidence to go alone but also think it will make their case stronger.⁴⁴ People are satisfied with the CMC approach as mediators are well trained, gender sensitive, protocols are followed, centres are easy to access, and services are free of charge.⁴⁵ While radio programmes have raised some awareness of legal processes and there has been an increase in cases being registered with legal authorities, there is still a persistent lack of information and understanding and a negative perception of courts and formal justice actors,⁴⁶ as well as a lack of trust in the police to treat cases fairly. Lengthy delays and high costs mean it is mainly people of a higher socio-economic status that use the courts, leading other community members to think non-criminal and community-based disputes should be resolved informally.⁴⁷ There is also a cultural preference for informal mechanisms due to their predilection for preserving social harmony and community relations. Consequently taking a case outside of this context and to court has a negative effect on community relations.⁴⁸

CMCs are seen to be effective informal mechanisms to replace the VDC's responsibilities⁴⁹ for hearing non-criminal cases as the process is systematic, confidentiality is maintained, and there is no influence from outsiders. A number of NGOs are very active on access to justice in Bardiya, providing assistance with transport costs, writing and submitting case applications, and supporting issues related to conflict victims, caste-based discrimination, human trafficking, and SGBV.⁵⁰

The Supreme Court is running a five-year strategic plan, "Fast justice, justice for all (*Chito chariot naya, sabai ko lagi naya*)", which prioritises free legal support, simplifying procedures, affordable court fees for all, establishing court mediation centres, information dissemination, and an outreach programme in communities. A government media campaign has sensitised some people to legal information and processes and two outreach programmes have been carried out.⁵¹ However, aside from these there has been a lack of implementation of the strategy.⁵² Nevertheless the strategic plan has resulted in the district court currently having sufficient resources, case decisions aiming to be made within a year, and the court mediation centre mediating cases where reconciliation is a possibility. The Legal Support Centre also offers a legal support programme which has been taken up largely by women and poorer people.

⁴² FGD with district level informal justice actors, Bardiya, 08/08/2015

⁴³ KII with male lawyer, Bardiya, 07/08/2015

⁴⁴ KII with male vice president of Nepal Bar Association, Bardiya, 09/08/2015

⁴⁵ KII with female CMC user, Bardiya, 10/08/2015

⁴⁶ FGD with district level informal justice actors, Bardiya, 08/08/2015

⁴⁷ KII with male lawyer, Bardiya, 07/08/2015, KII with section officer of District Court, Bardiya, 07/08/2015

⁴⁸ KII with male VDC secretary, Bardiya, 08/08/2015, KII with section officer of District Court, Bardiya, 07/08/2015

⁴⁹ VDCs can serve as quasi-judicial bodies according to the Local Self-governance Act – 2055, which allows local authorities to look into 14 types of non-criminal cases.

⁵⁰ FGD with district level informal justice actors, Bardiya, 08/08/2015

⁵¹ KII with section officer of District Court, Bardiya, 07/08/2015

⁵² KII with male VDC secretary, Bardiya, 08/08/2015, KII with section officer of District Court, Bardiya, 07/08/2015

2.4 Challenges in accessing justice

Political instability has had a serious effect on implementing the rule of law in Bardiya. As in much of Nepal, it has led to a culture of impunity allowing perpetrators to bribe victims, effectively blocking their access to justice, and ingraining financial influence. An interview with a lawyer also raised the issue of police officers requesting money for maintenance from those seeking its services,⁵³ and nepotism and political interference are reported as rife. It is particularly difficult to register conflict-era cases as now that the commissions⁵⁴ have been set up (although not yet fully operational) the government insists that all cases go through them, creating bureaucratic impediments to cases being registered anywhere else. Threats from Maoists and a lack of community support cause testimonies to be lost and conflict victims unable to rely on community members to establish the truth.⁵⁵ As not all cases are registered yet, perpetrators remain free and impunity prevails.

It is very difficult for women to gain access to justice, particularly in cases of domestic violence as it is only the victim that can register a case, preventing others doing so on her behalf.⁵⁶ A lack protection and alternative place to stay in the absence of owning property, an unwillingness to leave children, and societal pressure to preserve a family's reputation prevent women from accessing justice for domestic violence and GBV. Formal justice actors frequently uphold traditional patriarchal values and if a woman does try to register a case, she is not taken seriously or she herself is blamed.⁵⁷ Women suffer added discrimination as they do not receive compensation if they remarried after the death or disappearance of their husband during the conflict. This is in stark contrast to men who can have remarried several times yet lost wives during the conflict and who then still receive compensation for their deceased wives.⁵⁸ A lack of awareness about legal services and procedures still pervades among marginalised groups. When they do seek justice from formal actors they frequently encounter barriers. Female justice users reported that language is a barrier for Tharu individuals who are not listened to because they don't speak Nepali fluently; Dalits are treated differently after disclosing their full names; and poorer or less educated people are responded to negatively in comparison to upper caste educated people who are also more informed of their rights and the services available to them.⁵⁹

CMCs currently face significant challenges in implementing their decisions as well as guaranteeing the attendance of alleged perpetrators at facilitated discussions. The high level of engagement with CMCs and positive response from users have caused discontent among political party and village leaders who consider CMCs to be detracting power from them.⁶⁰ At the district level, challenges remain for NGOs and journalists who take on cases that become long and drawn out causing victims to withdraw cases or justice actors to succumb to bribes and threats. Similarly threats from alleged perpetrators are an issue for formal justice systems, often causing victims to change their statements and therefore cases becoming difficult to investigate.⁶¹ Challenges also arise through delays in reporting crimes to the police, evidence missing incident scenes, and a general lack of resources. Any evidence that is gathered has to be sent to the one forensic lab in Kathmandu and takes between 20 and 30 days to process results, which frequently impinges upon the 25 day limit for police to take an alleged perpetrator to court.⁶²

⁵³ KII with male lawyer, Bardiya, 07/08/2015

⁵⁴ Truth and Reconciliation Commission, and the Commission of Investigation on Enforced Disappeared Persons

⁵⁵ KII with male NGO president, Bardiya, 07/08/2015

⁵⁶ KII with male NGO district representative, Bardiya, 07/08/2015

⁵⁷ FGD with female justice users, Bardiya, 08/08/2015, FGD with district level informal justice actors, Bardiya, 08/08/2015

⁵⁸ KII with male NGO president, Bardiya, 07/08/2015

⁵⁹ FGD with female justice users, Bardiya, 08/08/2015

⁶⁰ FGD with district level informal justice actors, Bardiya, 08/08/2015, KII with male lawyer, Bardiya, 07/08/2015

⁶¹ KII with male vice president of Nepal Bar Association, Bardiya, 09/08/2015

⁶² KII with male district police officer, Bardiya, 08/08/2015

2.5 Access to justice and local conflict dynamics

Political instability is seen as the main cause of local conflict, and this greatly impacts on unemployment rates. This in turn is causing a rise in drug addiction among young people and domestic violence. Family tensions, alcoholism, property distribution, and land disputes are also common issues.⁶³ Land disputes are a significant cause of local conflict as is evident from the disputes between the community forest users group, as well as the larger conflict between the *Kamayas*⁶⁴ and landless people. The Kamayas were given ownership of land by the government that landless people have been occupying for many years. As local conflicts increase in Bardiya, informal and formal justice actors become overburdened with cases. An officer at the district court urged efforts to be made by local bodies, political parties, and civil society to minimise conflict.⁶⁵

⁶³ KII with section officer of District Court, Bardiya, 07/08/2015

⁶⁴ The kamaiya system was a form of bonded labour particularly prevalent in Western Nepal and Tharu communities.

⁶⁵ KII with section officer of District Court, Bardiya, 07/08/2015

Kailali

3.1 Understanding of justice issues

COMMON ISSUES REQUIRING JUSTICE MECHANISMS include theft, land disputes, polygamy, murder, GBV, and rape. According to a journalist interviewed, human trafficking cases have increased due to Kailali's proximity to the Indian border, and therefore being a transit point for traffickers.⁶⁶ Increases in interpersonal issues, such as money-lending, and multi-stakeholder issues, including those related to community forests, marriage, and cattle grazing, have also been reported. Domestic violence cases are also on the rise, attributed in part to gradually changing societal norms, and there is an increase in divorce cases due to a new policy allowing women to be given a share of the husband's matrimonial property before a divorce is granted. According to the district court, theft, murder, human trafficking, and property claims made by wives are the most frequently reported issues in Kailali. Within the large Tharu community, there are also accusations of witchcraft.

3.2 Actors involved

There are a number of informal justice actors enabling access to justice at the community level. CMCs hear non-criminal cases concerning land disputes, money, and domestic violence.⁶⁷ In Tharu communities, the community *Bhalmansa*⁶⁸ hears non-criminal cases for small disputes. Social workers, community leaders, and political party members also serve as facilitators of justice processes as and when people come first to them to report cases.⁶⁹ At the district level a range of NGOs and social organisations are enhancing access to justice through providing legal aid, monitoring cases registered in the court, documenting human rights violations with referrals to the relevant authority, lobbying and coordinating with formal justice actors, and building the capacity of local mediators. Journalists are also supporting access to justice by highlighting cases and lobbying the authorities concerned.⁷⁰ Formal justice actors are made up of the District Court, District Administration Office (DAO), and the District Police Office (including the local police post), and the Area Police Office. Criminal and governmental cases are referred directly to the police and District Court.⁷¹ The VDC also continues to deal with several non-criminal cases in line with its authority under the Local Self-governance Act – 2055.⁷²

⁶⁶ KII with female journalist, Bardiya, 03/08/2015. News reports show trafficking cases to have increased each year since 2013 in Kailali. See www.myrepublica.com/portal/index.php?action=news_details&news_id=78679 <http://admin.myrepublica.com/society/story/22583/police-reinforce-border-posts-to-check-traffickers.html>

⁶⁷ KII with male VDC secretary, Kailali, 05/08/2015, FGD with female users, Kailali, 04/08/2015, FGD with male users, Kailali, 04/08/2015

⁶⁸ Tharu community leader

⁶⁹ FGD with female users, Kailali, 04/08/2015, KII with female NGO President, Kailali, 06/08/2015, KII with female participant, Kailali, 03/08/2015

⁷⁰ KII with male NGO General Secretary, Kailali, 05/08/2015

⁷¹ KII with male NGO General Secretary, Kailali, 05/08/2015, FGD with female users, Kailali, 04/08/2015

⁷² FGD with district level informal justice actors, Kailali, 06/08/2015

There is a significant amount of coordination between formal and informal justice actors in the district. Police sometimes refer cases to the CMCs – as do VDCs – and CMCs refer cases to relevant authorities; and Bhalmansa, who were reported to initially be unhappy with the establishment of CMCs, also now refer cases to them and have a good relationship.⁷³ The District Court judge also monitors the CMC's work at the local level and consequently there have been discussions about formalising a relationship between CMCs and the court.⁷⁴ A Justice Facilitation Committee has been set up at the district level made up of police, the DAO, District Court, district public prosecutor, district bar, Women and Children Service Centre⁷⁵ and Women and Children Development Office representatives, human rights defenders, and informal justice actors including journalists. The committee supports dialogue between police and communities, strengthening links and understanding between formal and informal justice actors.

3.3 Perceptions and effectiveness

CMCs are considered to be positively contributing toward enhancing access to justice. Their existence is widely known among communities and as a result people are actively seeking dispute resolution through the CMCs, which is free of charge and allows disputants to choose their mediator, greatly reducing the burden on the overloaded court system.⁷⁶ In Tharu communities, the Bhalmansa continues to dispense justice, mediating cases and only charging a fee to the perpetrator. There are currently discussions and lobbying taking place for the Bhalmansa to be given a legal mandate. While this can provide prompt resolution in a familiar environment and maintain social harmony within the community, due to a lack of guidance and knowledge of Nepali law and human rights principles, more serious cases such as rape are sometimes resolved in the communities, raising concern about the legal mandate being given by the local authority figure.⁷⁷ People also approach social workers and NGOs and, due to the large number of NGOs working on access to justice, there is a consequent common misconception in Kailali that provision of services is their responsibility rather than that of the government.⁷⁸

While improvements to formal justice have been made including the establishment of a Women and Children Service Centre and court mediation centre inside the court, fast track hearings, free legal services for women and poor people, and a mandate to reach decisions within one year,⁷⁹ community members are still reluctant to access formal mechanisms. The unfamiliar environment can be intimidating and difficult for them to physically access even before the addition of expensive legal fees. Communities also feel that there is no guarantee of attaining justice due to lengthy delays, inappropriately short sentences, and the influence that money can buy.⁸⁰ Differing levels of access are also evident through ethnic divisions, which are compounded by the prohibitive nature of cost.⁸¹ One interviewee stressed the significance of national structures being dominated by Brahmins, and the implications of this for access to justice for other ethnic or caste groups, such as Tharus, who are economically disadvantaged by comparison.⁸²

The Bhalmansa remains an important recourse for dispute resolution among Tharu communities given its local nature and democratic structure, although there is an

⁷³ FGD with male users, Kailali, 04/08/2015

⁷⁴ KII with male district court official, Kailali, 06/08/2015, FGD with male users, Kailali, 04/08/2015, FGD with district informal justice actors, Kailali, 05/08/2015

⁷⁵ A service provided specifically for women and children through a separate section at district police offices and staffed by female officers, previously called 'Women Cell'.

⁷⁶ KII with male district court official, Kailali, 06/08/2015

⁷⁷ KII with female NGO President, Kailali, 06/08/2015, KII with female participant, Kailali, 03/08/2015, FGD with female users, Kailali, 04/08/2015

⁷⁸ FGD with district level informal justice actors, Kailali, 06/08/2015

⁷⁹ KII with female participant, Kailali, 03/08/2015, KII with monitoring committee member of court mediation, Kailali, 06/08/2015

⁸⁰ FGD with district level informal justice actors, Kailali, 06/08/2015

⁸¹ KII with male NGO General Secretary, Kailali, 05/08/2015, KII with female NGO President, Kailali, 05/08/2015

⁸² KII with female NGO President, Kailali, 05/08/2015

increasing trend of Tharu communities using CMCs. CMCs provide access to justice mainly for poorer community members, approximately 50 per cent of middle class community members, and only a few upper class people (the rest of whom are distrusting of the CMCs).⁸³ The CMCs are considered to be adopting good practices, providing mediators to facilitate sessions, and find solutions or alternative resolutions through collective discussion.⁸⁴

Police play an important role in initiating reconciliation, as well as implementing court decisions and outreach programmes proposed by the district court, and have increased community awareness of legal processes. However, despite better training for staff and the adoption of an online system for formal justice actors, such as the police and courts, which holds information on cases or legal issues, there is still a shared sense of uncertainty among community members that cases will actually get resolved by formal justice actors and that they will not succumb to long delays.⁸⁵

3.4 Challenges in accessing justice

There are many obstacles to accessing justice, but a common challenge that persists is the imbalance of power between victims and perpetrators. Most victims are disproportionately from economically weak and marginalised groups who stand little chance against wealthier perpetrators of higher status, particularly if they belong to political parties or security forces, and as a result political interference is also a major challenge. As in other districts, marginalised groups encounter language barriers, with all procedures being conducted in Nepali and not the local languages.⁸⁶ In addition, it is difficult to have witnesses come forward due to a lack of protection afforded to them, as well as long drawn out processes, increasing costs, and victims being compelled to drop their cases.

Deep-rooted patriarchal norms and societal values make accessing justice very difficult for women. Lacking security or their own property to move away to, women in Kailali, as in so many other districts, are often unable to bring cases against male family members. Families often consider domestic violence or rape damaging to their standing in a community and therefore women are threatened or further abused if they disclose incidents.⁸⁷ If they seek justice elsewhere, their behaviour is considered underhand or deviant. A lack of gender sensitivity among formal justice actors also prevents many women from accessing justice.

Questions also remain over reconciliation carried out at the local level by CMCs and the Bhalmansa as neither have the mandate to implement decisions. Consequently when decisions are not respected by perpetrators, some victims – unwilling to raise their case again – turn to extreme measures such as suicide.⁸⁸ A regional NGO Director reported that formal justice actors equally face challenges, particularly the police, who deal with: hostility from witnesses and victims due to threats from perpetrators; political pressure when perpetrators are directly linked to political parties; and offers of bribes to withdraw cases.⁸⁹

3.5 Access to justice and local conflict dynamics

Kailali is a site of significant local conflict. Caste-based discrimination, religious tension between Hindus and Christians, and land disputes related to community forest resources and borders are all common examples. Unemployment has created drug and alcohol addictions among youth, leading to an increase in domestic violence,

⁸³ FGD with district level informal justice actors, Kailali, 06/08/2015

⁸⁴ KII with male VDC secretary, Kailali, 05/08/2015

⁸⁵ KII with male VDC secretary, Kailali, 05/08/2015

⁸⁶ KII with female participant, Kailali, 03/08/2015, KII with female NGO President, Kailali, 05/08/2015, KII with monitoring committee member of court mediation, Kailali, 06/08/2015

⁸⁷ KII with KII with female participant, Kailali, 03/08/2015

⁸⁸ FGD with district level informal justice actors, Kailali, 06/08/2015

⁸⁹ KII with female NGO Regional Director, Kailali, 05/06/2015

while a lack of education, male-dominated social structures, and negative perceptions of women and ex-combatants continue to fuel conflict.⁹⁰ Political tensions are clearly visible between the Undivided Far-West and the Tharuhat too. In 2012, at the time of the end of the first Constituent Assembly, large protests concerned with the federal structure took place. In 2013, 200 bicycles belonging to members of the Tharu community were burned, and because of the ethnicity of the victims, the authorities did not take the crimes seriously. Ethnic-based federalism has led to a deep fear among people.⁹¹ Discriminatory attitudes and procedures preventing equal access to justice and the opportunity for resolution are compounding the effects of local conflict and contributing towards their escalation.

⁹⁰ FGD with district level informal justice actors, Kailali, 06/08/2015, FGD with male users, Kailali, 04/08/2015

⁹¹ FGD with district level informal justice actors, Kailali, 06/08/2015, FGD with male users, Kailali, 04/08/2015

Sunsari

4.1 Understanding of justice issues

A KII WITH A MALE NGO PRESIDENT and Local Peace Committee member asserted that Sunsari should be considered in two parts: the northern part and the part south of the highway where grievances from the first Madhesi movement⁹² remain unresolved and are now playing out again through the issues surrounding federalism and conflict between Madhesi and *Pahadis*.⁹³

A chronic lack of education among Madhesi communities means that issues related to justice often go unidentified as there is little understanding of justice issues and no awareness of the services and facilities available to them.⁹⁴ As with the other districts, participants reported issues including polygamy, SGBV, child marriage, disputes between husband and wives, and land disputes as common causes for seeking justice. Male community justice users also stated that due to the open border with India, Sunsari had seen a rise in drug use, particularly among young people.⁹⁵

4.2 Actors involved

People usually go to village elders, particularly for domestic disputes; if the case is not resolved, then they will they go to the area or district police office and if necessary to the DAO. There are also paralegal committees in some VDCs as well as the women's welfare co-operatives promoted by the District Women and Children's Office (DWCO), and watch groups in several wards where many civil cases, especially of GBV, come from.⁹⁶ One participant reported that non-criminal cases were previously dealt with by the VDC; however, this has decreased over the last ten years, and as there is now no longer a VDC representative, the VDC has not resolved any community cases for several years.⁹⁷ The District Court also has mediation centres, which disputants are encouraged to use but only for non-criminal cases. Communities do seek justice from the police, although many individuals require support to do this due to a lack of knowledge and social awareness. Often, politically active actors from the village provide support to community members either through mediation within the community or

⁹² Systemic marginalisation of Tharu communities has created a division between many Tharu communities and others resulting in a lack of engagement and trust. Rising discontent came to the surface in 2007 when it became evident to Terai communities that the People's Movement of 2006, which had brought an end to the civil conflict, and the Interim Constitution promulgated shortly afterwards, were not going to address their concerns (principally over federal structures and electoral under-representation) and the first ethnic tensions became visible during 21 days of protests and strikes. Tensions over the same issues erupted again following the fast-tracking and promulgation of the 2015 constitution in September 2015 leading to five months of strikes and a blockade of the Indian border.

⁹³ Pahadis are people from the hilly region of Nepal, generally considered the dominant groups of Nepali society and mainly high-caste Hindus. Many began moving to the Terai in the 1950s under schemes aimed at relieving land pressures in the hills and compensating flood-affected areas in the Terai. Many minority and marginalised groups already living in the Terai could not compete with the wealth nor power of the new migrants and were forced to migrate themselves or work on deeply unfavourable terms.

⁹⁴ KII with male district public prosecutor, Sunsari, 06/08/2015

⁹⁵ FGD with male users, Sunsari, 04/08/2015

⁹⁶ KII with female Office Chief at District Women and Children Office, Sunsari, 07/08/2015

⁹⁷ FGD with male users, Sunsari, 04/08/2015

facilitating cases being brought to formal justice mechanisms.⁹⁸ Community disputes are also commonly resolved in Sunsari through the *Panchayati* system. Panchayat is a traditional mechanism involving community elders, and for this reason is often male-dominated. Although the Panchayati system is a widely used justice mechanism due to its community-owned nature, it is only seen as effective for less serious inter-personal and family disputes, or disputes between neighbours.

When issues cannot be resolved within the communities they are sent to the area police who bring disputants together to discuss the issue. Problems arise when victims go directly to formal mechanisms without informing the Panchayat, who in these circumstances will then later refuse to give testimonies or support the victim.⁹⁹ Panchayat therefore plays a dominant role as a first place of information and consultation for justice seekers for both criminal and non-criminal cases. More generally, there are 38 cooperative organisations and a number of NGOs and INGOs who coordinate well between each other, and many women have benefitted from their programmes, although coordination with government organisations could be improved.¹⁰⁰

4.3 Perceptions and effectiveness

A male justice user stated that “wherever there is power, justice bends towards it.”¹⁰¹ There is a propensity to resolve cases within the community to maintain social harmony and good cooperation among members and for this reason mediation and reconciliation are generally considered appropriate in Sunsari, as well as use of the Panchayat. However, it is important that people fully understand that not all non-criminal cases can be resolved using these mechanisms, as pointed out by a district police officer. Although they are relevant for many, reconciliation in the case of domestic violence for example is not appropriate. There were reports of a rape case being heard by a Panchayat which caused the victim more suffering.¹⁰² It was proposed by a local NGO founder that there should be penalties for Panchayats when they handle serious crimes, to serve as a deterrent for doing so.¹⁰³ There is the strong perception among the local community that in terms of formal justice, the better the relationship with the administration the better a person’s access to justice, as community members consider the police to have a feudal mindset and to be corrupt.

The District Court has been conducting programmes to raise awareness and teach communities about legal processes, and there has also been a Nepal Police campaign, “Muskaan sahit ko prahari” (“Police with a smile”), which people have responded positively to, enabling questioning of police attitudes as well as behaviour.¹⁰⁴ Efficiency of the District Court has also been enhanced by the implementation of ‘continuous hearings’, a provision designed by the Supreme Court to ensure serious cases such as rape continue to be heard until a decision is reached and justice for victims is reached. The DWCO, which facilitates cases related to women, is always busy as its officials also provide food and shelter for up to 45 days. They have seen an increase in cases from 112 in 2014 to 227 in 2015 as women are starting to report cases more. There is also a GBV elimination fund; however, the DWCO Chief reported that it is under-used due to it not being widely known about.¹⁰⁵ The One-stop Crisis Management Centre at the district hospital also refers women to essential health and legal services that they may require in the event of suffering violence.

Of serious concern was the report that in some villages intermediaries have appeared that prevent people from accessing local justice mechanisms, convincing people to go

⁹⁸ KII with male UCPN District Vice Chairperson, Sunsari, 07/08/2015

⁹⁹ FGD with female users, Sunsari, 04/08/2015

¹⁰⁰ KII with female NGO founder, Sunsari, 07/08/2015

¹⁰¹ FGD with male users, Sunsari, 04/08/2015

¹⁰² KII with female NGO founder, Sunsari, 07/08/2015

¹⁰³ KII with female NGO founder, Sunsari, 07/08/2015

¹⁰⁴ KII with male district public prosecutor, Sunsari, 06/08/2015

¹⁰⁵ KII with female Office Chief at District Women and Children Office, Sunsari, 07/08/2015

to the police and demanding fees for their assistance.¹⁰⁶ In some incidences a *bichaulya* (broker) is the only option people have for registering a case with the police as phone calls are made ahead of their arrival instructing cases not to be registered. Often the *bichaulya* are from political backgrounds with easy access to the police administration.¹⁰⁷ Pervasive collusion is preventing representation of diverse community members in local administrative and judicial bodies. It is also having an adverse effect on access to justice as community members have to seek higher-level bodies for justice, as well as a lack of implementation of decisions.

In Sunsari, rural communities rely heavily on informal justice mechanisms, such as Panchayat, due to a combination of cultural practices, influence, and social values that the Panchayat has long held. Despite a strong state presence and its apparatus in the formal justice sector, rural people still do not fully utilise these mechanisms because of low levels of awareness as many received limited educational opportunities, a lack of proper information, and because many feel powerless to deal with the length, cost, and the corruption of the formal justice system. However, formal justice actors such as police, district judges, and Chief District Offices in many instances cautiously admit that the Panchayat as an informal justice actor supports their work of maintaining law and order, which is under immense pressure due to a lack of resources.

4.4 Challenges in accessing justice

There are many issues requiring consideration when an individual seeks justice. For example, a woman in Sunsari was hospitalised after her husband broke her leg; however, a district police officer came under pressure from her family not to file the case as there would be no one to pay for her treatment if the husband was arrested.¹⁰⁸ As in the other districts, women suffer disproportionate barriers to accessing justice compared to male community members. Through the combination of a lack of training on gender sensitivity and there being very few female police officers, it was noted that male police officers at times refuse to register cases, often blaming the women, in particular for cases of rape.¹⁰⁹ Another female participant reported that they faced questioning and monetary charges from police for speaking out and supporting a woman who was being abused by her in-laws, who had submitted their names and complaints against them to the police.¹¹⁰ A lack of human and physical resources remains a challenge for formal actors such as the police; respondents reported instances of victims having to provide petrol in order for police to attend incidents.¹¹¹ Court fees also prohibit many from accessing formal justice; if faced with the choice, families would rather spend NRs. 2000 sending their child to school than giving it to a lawyer.¹¹² In this way, as opposed to being a right, justice becomes a financial choice with its own opportunity cost. While mediation promotes reconciliation with a view to maintaining social harmony and thus is preferable for many communities, it frequently results in women having to settle for unjust decisions. There are also many occasions when it is unsuccessful and familial ties have broken down. In these cases there are no alternatives, such as orientation or counseling for perpetrators, to try and change attitudes and reform behaviours.¹¹³

As international economic migration continues to rise, with men in particular working outside of the country for very long periods, new issues are surfacing such as women eloping with other men, taking with them the remittances sent by their husbands. While women still suffer disproportionately – as the case of a woman that ran away in these circumstances and was pushed off a hill and killed as a result demonstrates –

¹⁰⁶ KII with male local peace committee member, Sunsari, 06/08/2015

¹⁰⁷ KII with male local peace committee member, Sunsari, 06/08/2015

¹⁰⁸ KII with male district police officer, Sunsari, 06/08/2015

¹⁰⁹ FGD with female users, Sunsari, 04/08/2015

¹¹⁰ FGD with female users, Sunsari, 04/08/2015

¹¹¹ KII with male local peace committee member, Sunsari, 06/08/2015

¹¹² KII with male district public prosecutor, Sunsari, 06/08/2015

¹¹³ FGD with district level stakeholders, Sunsari, 05/08/2015

changing gender roles also need to start being considered, and the challenges they pose for access to justice.¹¹⁴ Social justice needs to be improved in order to increase access to legal justice as an environment still does not exist for women (especially those who are poor and/or single-heading households), Dalits, Janjatis, and even men who are victimised, to speak or raise concerns freely.¹¹⁵

4.5 Access to justice and local conflict dynamics

Despite the plethora of organisations, institutions, and formal and informal justice actors in Sunsari, an interview with a member of the Local Peace Committee asserted that it is still specific individuals and their families who are controlling and manipulating the system, particularly the Panchayat system, where it is always the same individuals making decisions.¹¹⁶ Consequently, there is no willingness to change traditional approaches, or learn new ways of doing things, as existing practices currently serve the interests of the powerful. The effects of these pervasive and entrenched discriminatory attitudes are now being played out in the current unrest as witnessed in several towns across Sunsari at the end of 2015.¹¹⁷ Elite captured socio-economic and political space glorifies bichauliya and some justice actors personally benefit from them, which hinders equitable access to justice. As access to justice is largely dominated by those wielding power, and it can be feudal in its nature, corrupt in practice, and lengthy in process, it does not reflect the actual socio-economic conditions of the district where the general population is struggling with poverty and has low levels of awareness about justice provision.

¹¹⁴ FGD with district level stakeholders, Sunsari, 05/08/2015,

¹¹⁵ FGD with district level stakeholders, Sunsari, 05/08/2015

¹¹⁶ KII with male Local Peace Committee member, Sunsari, 07/08/2015

¹¹⁷ See www.nepalitimes.com/blogs/thebrief/2015/09/11/army-deployed-in-sunsari/ or <http://atimes.com/2015/11/anti-constitution-strikes-in-southern-nepal-turn-violent/>

Surkhet

5.1 Understanding of justice issues

A LAWYER INTERVIEWED IN SURKHET described the formal justice system as “state-orientated rather than victim-orientated”, stating that a lot of compensation paid out by perpetrators goes to the state, rather than victims.¹¹⁸ Child marriage and polygamy have increased substantially in recent years although reporting is still minimal given its acceptance in society. A respondent stated that there are 18 year old girls in the communities who already have two or three children.¹¹⁹ Both child marriage and polygamy are now leading to an increase in domestic violence and divorce. Although underreporting is still an issue, disputes between husbands and wives, suicides, poisoning, SGBV, land disputes, alcohol consumption, caste-based discrimination, and the social implications of migration have all been increasing in the district. The lack of compensation for conflict victims is also still a significant issue.

5.2 Actors involved

As in other districts, individuals often go to respected or well-educated community members first, such as teachers, political leaders or CMCs for non-criminal cases, and NGOs, many of which provide free legal services, specifically for women. Journalists are sometimes approached when formal justice providers such as the police have failed to provide justice to victims.¹²⁰ In addition to the CMCs there are women’s groups, and the Ward Citizen Forum, which can mediate disputes.¹²¹ An NGO advocate reported that they did not think many people had the courage to go to the police directly and of these some even thought the CMCs were biased.¹²²

An interviewee from the DWCO reported a good working relationship with the police, who have responded positively to them.¹²³ While the CMCs and police refer cases to each other and the police have acknowledged that CMCs have eased their workload, animosity was reported between the two for this reason as the police can earn more money from dealing with cases.¹²⁴ It was also reported that cases can be passed back and forth between VDCs and CMCs, thus hindering justice provision.¹²⁵

¹¹⁸ KII with male lawyer, Surkhet, 06/08/2015

¹¹⁹ KII with male lawyer and coordinator of the legal support centre, Surkhet, 06/08/2015

¹²⁰ KII with male journalist, Surkhet, 06/08/2015

¹²¹ FGD with women user groups, Surkhet, 04/08/2015

¹²² KII with female NGO advocate, Surkhet, 06/08/2015

¹²³ KII with female child welfare coordinator from Women and Children Office, Surkhet, 06/08/2015

¹²⁴ FGD with informal service providers, Surkhet, August 2015

¹²⁵ FGD with male users, Surkhet, 04/08/2015

5.3 Perceptions and effectiveness

The CMC is the first preference for the community as it is accessible to all and many believe that they provide appropriate justice in a short period of time.¹²⁶ In contrast formal justice mechanisms are geographically difficult to access, are not perceived to listen to the voices of women, poor, or marginalised community members, and require lengthy, complex, and expensive procedures.¹²⁷ A female justice seeker stated that she finally received justice after nine years fighting in court. Despite her ex-husband being keen to settle the case as soon as possible when she filed for divorce,¹²⁸ the property claim led to an excessive delay. VDCs and police are thought to be under considerable pressure not to take up cases. For example, to file a case a recommendation letter is usually required from the VDC which they are often reluctant to issue. Many feel that they are unlikely to receive justice through formal mechanisms. As a result serious cases, including rape, are being heard by informal mechanisms with reconciliation the tool for resolution.¹²⁹

Many respondents stated that police are reluctant to register cases as they often believe both parties can settle cases in their community. There is much political pressure on police, restricting their ability to perform in an unbiased manner.¹³⁰ They will look into the backgrounds of victims and alleged perpetrators and if they find the perpetrator to be economically or politically powerful then they try to avoid registering the case.¹³¹ Formal justice relies on witnesses and evidence, which is not always easy to collect and even if it is, witnesses are frequently manipulated and changed in favour of the alleged perpetrators.¹³² Some consider it equally difficult to get justice through informal mechanisms as it is only ever the “powerful people with loud voices that will be heard,”¹³³; marginalised communities maintain that the laws are not made for them and they do not trust justice systems.¹³⁴ As with most districts in Nepal, political interference and the politicisation of cases – often leading cases to become hostile – severely impacts the effectiveness of justice systems.

Many respondents stated that the community lacks information about the free services different organisations provide, such as legal services and shelter homes, which limits the number of people seeking justice.¹³⁵ One example is of a government scheme to provide free legal services and counselling to poor and marginalised community members whose annual income is less than NRs. 40,000 per year through the district legal assistant committees. The project has been running in 10 districts of Nepal with plans to expand to all districts;¹³⁶ however, there is a lack of awareness of its existence in Surkhet. Efforts have been made to improve justice provisions, including establishing different management committees for expediting justice delivery; committing to providing verdicts within 12 to 18 months depending upon the sensitivity and complexity of the case; and developing a citizen charter to enable day-to-day court activities to be made known as part of the court system reform to make it more accessible and trustworthy.¹³⁷ However, in reality, the formal justice system continues to be dictated by the same rules and regulations as before.¹³⁸

CMCs are generally well thought of and accessible as there is no cost, encouraging more people to seek justice. People consider them to listen to both parties before providing any resolution, without inquiring about evidence like the police. They are

¹²⁶ FGD with women user groups, Surkhet, 04/08/2015

¹²⁷ KII with male lawyer at Legal Support Centre, Surkhet, 06/08/2015, KII with male journalist, Surkhet, 06/08/2015, KII with female NGO executive director, Surkhet, 06/08/2015, FGD with informal service providers, Surkhet, August 2015

¹²⁸ KII with male ward secretary, Surkhet, 07/08/2015

¹²⁹ KII with female NGO advocate, Surkhet, 06/08/2015

¹³⁰ FGDCUA, KII with female NGO advocate, Surkhet, 06/08/2015, KII with male journalist, Surkhet, 06/08/2015

¹³¹ FGD with women user groups, Surkhet, 04/08/2015

¹³² FGD with women user groups, Surkhet, 04/08/2015, KII with male lawyer and coordinator of legal support centre, Surkhet, 06/08/2015

¹³³ FGD with VDC level informal justice providers, Surkhet

¹³⁴ FGD with informal service providers, Surkhet, August 2015

¹³⁵ KII with male lawyer and coordinator of legal support centre, Surkhet, 06/08/2015, KII with female NGO executive director, Surkhet, 06/08/2015, FGD with informal justice providers, Surkhet

¹³⁶ KII with male lawyer and coordinator of legal support centre, Surkhet, 06/08/2015

¹³⁷ KII with male district attorney, Surkhet, 06/08/2015

¹³⁸ KII with male lawyer and coordinator of legal support centre, Surkhet, 06/08/2015

perceived to have a good understanding that they are only empowered to hear civil cases and to encourage victims to seek justice from the police if the case is criminal.¹³⁹ Threats and perceived threats to informal actors, however, continue to affect their ability to provide free and fair justice to victims.¹⁴⁰

5.4 Challenges in accessing justice

Resources, status and political influence continue to determine an individual's ability to access justice. Women and marginalised communities are recognised as relatively powerless members of society, with women's suffering magnified through a lack of support mechanisms at home and in the community, thus inhibiting their ability to approach justice actors. An absence of vital registration documents, economic dependency, a lack of legal knowledge and awareness of their rights, cultural practices, and social norms exacerbate women's victimisation and barriers to accessing justice.¹⁴¹ Again, the traditional and patriarchal attitudes of formal justice actors mean that women are not taken seriously when registering cases, and in the event that they do manage to register a case the likelihood of evidence being tampered with or it succumbing to political or economic influences is high. Women are vulnerable to increased threats after filing cases, particularly in cases of SGBV and domestic violence due to social stigma, subjecting them to re-victimisation rather than achieving justice.¹⁴²

Dalits, poorer people, and single women are the most vulnerable members of society, and are unable to challenge perpetrators. For example, only poor, widowed, and marginalised women are accused of witchcraft in Surkhet, emphasising how social perceptions are determined by an individual's socio-economic status and caste or ethnic group.¹⁴³ These populations do not have faith in the formal justice mechanisms and, therefore, do not want to approach formal justice actors.¹⁴⁴

A lack of legal awareness among community members not only of justice provisions but of actions they can take on behalf of others¹⁴⁵ and geographical challenges persist as factors impacting on an individual's ability to get justice.¹⁴⁶ Organisations in several VDCs reported they hadn't received a single case.¹⁴⁷ Victims who live in remote areas and are unable to attend all court appearances have the option of power of attorney for proceedings to take place in their absence. However, this can increase perpetrators' influence over the case through enabling them to build a relationship with the appointed individual.¹⁴⁸

Long-drawn-out processes for filing and registering cases are also hindering access to justice. An NGO Executive Director gave the example of a rape occurring in Chhinchu VDC in Surkhet. In order to file the case, first a woman has to go to the District Headquarters for a medical test, then return to Chhinchu police station to file the case, and then go to Surkhet District Police Office, and finally court. The process is too long and complex and discourages victims, who often do not have the support or money to travel alone.¹⁴⁹ Similarly the system for taking statements (*bayan*) needs to be reformed as justice seekers currently have to go through the same procedure three times, first at the police station, secondly with a government lawyer, and finally in court.¹⁵⁰

¹³⁹ FGD with VDC level informal justice providers, Surkhet

¹⁴⁰ KII with male lawyer at the legal support centre, Surkhet, 06/08/2015

¹⁴¹ KII with female child welfare coordinator, Surkhet, 06/08/2015

¹⁴² KII with female child welfare coordinator, Surkhet, 06/08/2015, KII with female NGO executive director, Surkhet, 06/08/2015, FGD with women user groups, Surkhet, 04/08/2015

¹⁴³ FGD with informal justice providers, Surkhet, FGD with VDC level informal justice providers, Surkhet

¹⁴⁴ KII with female child welfare coordinator, Surkhet, 06/08/2015, FGD with VDC level informal justice providers, Surkhet

¹⁴⁵ FGD with informal justice providers, Surkhet

¹⁴⁶ KII with male lawyer and coordinator of legal support centre, Surkhet, 06/08/2015, KII with male district attorney, Surkhet, 06/08/2015, KII with female NGO executive director, Surkhet, 06/08/2015, KII with female NGO advocate, Surkhet, 06/08/2015, FGD with VDC level informal justice providers, Surkhet, FGD with male users, Surkhet, 04/08/2015

¹⁴⁷ KII with lawyer from legal support centre, Surkhet, 06/08/2015

¹⁴⁸ KII with female NGO executive director, Surkhet, 06/08/2015

¹⁴⁹ KII with female NGO executive director, Surkhet, 06/08/2015

¹⁵⁰ KII with female NGO executive director, Surkhet, 06/08/2015

5.5 Access to justice and local conflict dynamics

The ability of all parties to equally access justice is vital, as unresolved issues can severely affect community harmony.¹⁵¹ Without sufficient access to justice for marginalised groups, those stigmatised for abuses suffered, such as SGBV survivors or those unfairly accused of acts such as witchcraft, unresolved tensions can erupt into sudden and violent conflict.

151 FGD with VDC level informal justice providers, Surkhet

Conclusion

WHILE EFFORTS HAVE BEEN MADE BY THE GOVERNMENT to improve access to formal justice in Nepal, reforms are evidently falling very short with reports from all five districts covered in this research showing that significant barriers still exist. Cost, geography, language, complex and long bureaucratic procedures, and a persistent lack of legal awareness and education continue to prevent many marginalised individuals and groups from seeking and accessing justice. Should these barriers be overcome, justice is still likely to remain elusive for so many due the patriarchal structure and caste system within Nepali society. Participants overwhelmingly reported that deep-rooted cultural norms surrounding gender and socio-economic status mean that justice is only available to those with power, wealth, and status. Consequently, political and financial interference results in power imbalances that favour perpetrators and the state above the needs and rights of victims. Too often justice is for sale, resulting in damaging cycles of impunity that undermine state-society relations.

Informal justice mechanisms, whose main focus is to provide restorative justice to maintain social harmony within communities, are therefore preferred by many because of their local roots and swift decisions, and, crucially, because they are free. However traditional attitudes and unequal social structures still influence informal justice systems, and their emphasis on reconciliation twinned with a lack of will and capacity to implement decisions often means that victims suffer from repeated abuse or injustices.

As Nepal continues its slow transition from conflict to peace, ensuring access to justice for all is vital to ensuring non-recurrence of the violence of the civil conflict, and a sustainable peace. Instrumental to achieving this is working to change attitudes, behaviours, and harmful cultural practices that repress large parts of Nepali society and prevent them from enjoying their rights. When justice is perceived as elusive or unattainable, issues remain unaddressed, divisions can widen and tensions can erupt into violent conflict – as the recent unrest in the Terai has shown.

The following recommendations for enhancing equal access to justice for all are drawn from participants' responses and findings from the five districts covered by the research:

Recommendations

Justice and security actors

- Training on gender sensitivity and providing gender-responsive services should be given to all justice and security providers to create a more enabling environment, particularly for women, to report cases or air grievances and to encourage wider participation of women in the security sector.
- Set up monitoring bodies to follow up and ensure implementation of decisions made by formal and informal justice providers and improve accountability.

Formal justice actors

- Streamline the procedures for filing complaints, registering cases and taking statements, enabling victims to provide all information in one place at the same time, ideally at the nearest police office to the victim, particularly in locations where such services are not locally available.
- Allocate more resources including financial, human, and physical to reduce fees and charges for victims. This would also allow for more resources in local languages including interpreters and translators.
- Adopt a 'zero tolerance' policy toward attempts made to manipulate cases through economic and political influence.
- Increase transparency through regular reporting and making information available to the public to increase accountability of formal justice actors. This will also facilitate zero tolerance on interference and improve perceptions, reducing fear of police and other formal justice actors.
- Improved protection for victims and witnesses including safe houses, particularly for women in cases of domestic violence, and contributions towards transport and other costs.

Informal Justice Actors

- CMCs, mediators, and informal justice actors should be given legal training on principles of justice and human rights standards, as well as procedures for referring criminal cases to formal justice actors.
- Introduce penalties for informal actors hearing serious criminal cases, such as rape.

Civil society

- Create a large scale awareness-raising programme, including legal literacy classes and media campaign to inform communities about their rights, legal procedures, the services available, and how to access them, all of which should be in local languages as well as Nepali. These programmes and campaigns should also encourage women, young people, and marginalised groups to take up positions within informal and formal justice mechanisms.
- Work collaboratively through building networks between the numerous organisations working on access to justice, creating oversight mechanisms or joint advocacy to counter political interference in formal justice provision.
- Incorporate education on human rights standards, including gender equality and minority groups' rights, and legal education in the school curricula.

Saferworld is an independent international organisation working to prevent violent conflict and build safer lives. We work with local people affected by conflict to improve their safety and sense of security, and conduct wider research and analysis. We use this evidence and learning to improve local, national and international policies and practices that can help build lasting peace. Our priority is people – we believe in a world where everyone can lead peaceful, fulfilling lives, free from fear and insecurity.

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COVER PHOTO: Community members in Kailali district attend a meeting to share their safety and security concerns. © SAFERWORLD/ANUP THAPA



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