



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Swiss Agency for Development and Cooperation SDC
स्वीस सरकार विकास सहयोग एसडीसी



NEPAL'S GENDER-BASED VIOLENCE AND GENDER EQUALITY-RELATED FUNDS: THE PATH TO EFFECTIVE IMPLEMENTATION

A Study on the Operational Modality of
Various Funds within Federal Governance

August 2021

Himal Innovative Development and Research Pvt. Ltd. (HIDR)
Buddhanagar, Kathmandu
and
Forum for Women, Law and Development (FWLD)
Thapathali, Kathmandu



HIDR NEPAL

Himal Innovative Development & Research Pvt. Ltd.



Working for Non-discrimination and Equality

This publication is supported by the Swiss Agency for Development and Cooperation and UN Women.

The views expressed in this publication are those of the author(s) and do not necessarily represent the views of the Swiss Agency for Development and Cooperation and UN Women, the United Nations or any of its affiliated organizations.



Government of Nepal
MINISTRY OF WOMEN, CHILDREN & SENIOR CITIZEN



Singhadarbar, Kathmandu, Nepal
Tel. : 00977-1- 4200164 / 4200168
4200082 / 4200413 / 4200408
Fax : 4200116
E-mail : mail@mowcsw.gov.np
Website : www.mowcsw.gov.np



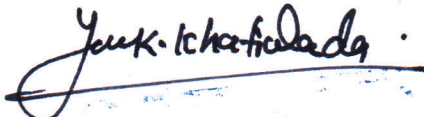
Foreword

Gender-based violence is a violation of human rights. The issue of GBV is not only devastating for survivors of violence, but also raises a serious question on the status of women in the society. Decreasing GBV requires a strong commitment with multiple stakeholders.

Nepal has taken multiple approaches through the national and international normative framework to ensure equality and to address the issue GBV. The Constitution of Nepal guarantees equal rights for men and women. The government of Nepal is committed towards eliminated all forms of violence and discrimination against women.

As pointed in this report, GBV and gender equality fund and establishment of their proper operation modality is essential for number of reason; mainly to guarantee the fundamental rights of victims. This study on "**A Study on Effective Operational Modality of Various Funds Response to Gender Based Violence and Gender Equality and Within Federal Governance**" by HIDR and FWLD for Swiss Agency for Development and Cooperation and UN Women is an important document to address the existing challenges in operationalization of fund and response mechanism. I am hopeful that recommendations of the study for the amendment of existing legislation will also pave the way for formulation of more effective regulation.

I would like to thank everyone involved in this study and publication.


Yam Kumari Khatiwada
Secretary

8 October 2021

FOREWORD

The COVID-19 pandemic has demonstrated the crucial importance of effective laws, policies and systems that protect women and girls from gender-based violence (GBV) and guarantee the availability and access to quality essential services and relief to recover from violence when it occurs. In times of crises, women and girls are often disproportionately affected, particularly those who face multiple and intersecting forms of discrimination.

This study, carried out by Forum for Women, Law and Development (FWLD) and Himal Innovative Development and Research (HIDR) in 2019-2020, is therefore crucial and very timely. It studies Nepal's legislative and institutional framework in detail, and provides concrete recommendations for the effective implementation of national, provincial and local fund mechanisms for responding to GBV and promoting gender equality within Nepal's federal context.

The study highlights the critical obstacles women and girls face in accessing essential relief and response services through Nepal's GBV funds and other funds that serve to advance gender equality. The Government of Nepal's establishment of a wide range of these funds over the past decade has been a significant accomplishment. However, there are serious challenges to the funds' ability to function. In the context of COVID-19 in particular, where cases of GBV have been rapidly rising, the effective operationalization of these funds is of paramount importance. They are essential tools for responding to GBV and protecting women's rights and fundamental freedoms. Continued and persistent efforts, including better alignment of the funds' legislative frameworks with Nepal's federal context, are required to ensure their effective implementation and guarantee the rights of victims and survivors of GBV.

UN Women and the Swiss Agency for Development and Cooperation (SDC) are both committed to advancing gender equality, protecting the rights of women and girls, and ensuring that women and girls are able to live a life free from violence. These efforts are at the heart of achieving the *2030 Agenda for Sustainable Development* and the principle of *Leaving No One Behind*.

We hope the recommendations identified in this study will guide local, provincial and national stakeholders in their efforts to promote and protect the rights of women and girls. We stand ready to continue to extend our support to these efforts.



Silvana Hogg
Head of Cooperation

Swiss Agency for Development and Cooperation



Navanita Sinha
Head of Office a.i.

UN Women Nepal Country Office

CONTENTS

Acknowledgements	3
Acronyms	4
Working Definitions for the Purpose of the Study	5
Executive Summary	6

Section 1: Introduction

1.1 Overview of Legal and Policy Framework	10
1.2 The GBV and Gender Equality-Related Funds	11
1.3 Methodology	12
1.4 Limitations of the Study	14
1.5 Research Ethics	14

Section 2: Findings and Analysis

2.1 Overview of the Funds	15
2.2 GBV Funds	16
2.3 Overlap among the GBV Funds	27
2.4 Non-Inclusivity of the GBV Funds	29
2.5 Gender Equality-Related Funds	29

Section 3: Conclusion and Moving Forward

3.1 Conclusion	32
3.2 Moving Forward	34

LIST OF CHARTS

Figure 1:	GBV and Gender Equality-Related Funds Covered by the Study	13
Figure 2:	Amended Structure and Implementation Status of the GBV Elimination Fund	17
Figure 3:	Structure and Implementation Status of the Child Fund	20
Figure 4:	Structure and Implementation Status of the Rehabilitation Fund	22
Figure 5:	Structure and Implementation Status of the Service Fund	23
Figure 6:	Structure and Implementation Status of the Victim Relief Fund	25
Figure 7:	Overlapping of the Funds (as per their legal provisions)	27
Figure 8:	Structure and Implementation Status of the Single Women Protection Fund	30

LIST OF TABLES

Table 1:	Legal Sources of the Funds	15
Table 2:	Short-Term Recommendations	34
Table 3:	Medium-Term Recommendations	35

CASE STUDIES, IMPACT ON SURVIVORS

Box 1:	Government of Nepal on behalf of "Gha" Kumari vs. Sagar Bhatta and Amar Raj Awasthi	19
Box 2:	Even with NGO Help, Survivors Struggle Due to Dysfunctional Government Relief Centers	24

ACKNOWLEDGMENTS

HIDR and FWLD would like to acknowledge the *Swiss Agency for Development and Cooperation and UN Women* for the financial support and substantive input they contributed towards this study. HIDR and FWLD would also like to thank, in particular, Ms. Petra Sigrist, Ms. Sarita Moktan, Dr. Chandra Kanta Gyawali, Dr. Som Lal Subedi, Ms. Navanita Sinha, Mr. Akseli Lamminmaki, Ms. Lee Waldorf and Ms. Subha Ghale for their valuable support and contributions in finalizing this study.

We extend our gratitude to participants of the key informant interviews (KIIs), group meetings, and group consultations that were conducted at the federal and provincial level, in Province 1, Province 2, Bagmati Province, Gandaki Province, Province 5, Karnali Province, and Sudurpaschim Province. We also thank the local coordinators and enumerators for their support during the field visits conducted for the study.

Furthermore, we would like to acknowledge both HIDR and FWLD's project teams' hard work in preparing this study: Ms. Indu Tuladhar (Team Leader), Ms. Roshani Poudyal (Team Member), Mr. Saraj Raj Thapa (Team Member), Mr. Kritagya Shah (Research Coordinator), Mr. John Jha (Team Member); Ms. Aashna Sharma, Ms. Alka Shrestha, Ms. Pranita Tuladhar from HIDR, and Adv. Sabin Shrestha (Team Leader), Ms. Meera Dhungana (Research Expert), and Ms. Neha Gurung (Project Coordinator) from FWLD; and the four district enumerators: Adv. Lalita Shrestha, Adv. Madhavi Pandey, Adv. Nagendra Bashyal, and Adv. Gita Koirala.

HIDR and FWLD are grateful to every individual, group, and organization that supported our team, directly and indirectly, during the research period.

ACRONYMS

AATWIN	-	Alliance Against Trafficking in Women and Children in Nepal
CBO	-	Community Based Organization
CDO	-	Chief District Officer
CSO	-	Civil Society Organization
CWIN	-	Child Workers in Nepal
CZOPP	-	Children as Zones of Peace National Campaign
FGD	-	Focus Group Discussion
GBV	-	Gender-Based Violence
GESI	-	Gender Equality and Social Inclusion
GRB	-	Gender Responsive Budgeting
HIDR	-	Himal Innovative Development and Research Pvt. Ltd
KII	-	Key Informant Interview
LDO	-	Local Development Officer
MoLJPA	-	Ministry of Law, Justice and Parliamentary Affairs
MoWCSC	-	Ministry of Women, Children and Senior Citizens
NCP	-	Nepal Communist Party
NCP	-	Nepali Congress Party
NCPA	-	National Child Protection Alliance
NCRC	-	National Child Rights Council
NDHS	-	Nepal Demographic and Health Survey
NGO	-	Non-Governmental Organization
NHRC	-	National Human Rights Commission
NNAGT	-	National Network Against Girls' Trafficking
NWC	-	National Women Commission
OCMC	-	One Stop Crisis Management Centre
PAF	-	Poverty Alleviation Fund
PWUP	-	President Women Upliftment Program
SC	-	Supreme Court
SDC	-	Swiss Agency for Development and Cooperation
SDG	-	Sustainable Development Goals
UN	-	United Nations
UN Women	-	UN Entity for Gender Equality and the Empowerment of Women
UNDP	-	United Nations Development Programme
UNFPA	-	United Nations Population Fund
UNICEF	-	United Nations International Children's Emergency Fund
VAW/G	-	Violence Against Women and Girls

WORKING DEFINITIONS FOR THE PURPOSE OF THE STUDY

Gender-Based Violence (GBV)	<p>Gender-based violence is any act committed on the basis of one's gender, including socially deplorable acts and sexual harassment in the workplace.¹</p> <p>GBV is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.²</p> <p>Violence that is "directed against a woman because she is a woman or that affects women disproportionately", and, as such, is a violation of their human rights.³</p>
Survivor/ Victim of GBV	<p>The terms 'survivor' and 'victim' are sometimes used interchangeably. The term 'victim' is commonly used in legal and medical fields, whereas the term 'survivor' is preferred in the psychological and social support fields because it implies resiliency. This study uses the term 'survivor' to refer to people who have experienced violence on the basis of their gender.</p>
GBV Funds	<p>GBV Funds refer to funds introduced by the Government of Nepal (GoN) that support the protection of the rights of GBV survivors, among others. For this study, GBV funds include the Gender-Based Violence Elimination Fund (GBV Elimination Fund), the Service Fund, the Victim Relief Fund, the Child Fund, and the Rehabilitation Fund.</p>
Gender Equality-Related Funds	<p>Gender Equality-Related Funds (GE Related Funds) refer to funds introduced by the GoN that directly or indirectly support the achievement of gender equality through inclusive economic empowerment and infrastructure development. Some of these funds are exclusively concerned with advancing gender equality, while others have a broader scope, but have significant implications for gender equality. This study considers six gender equality-related funds: the Single Women Protection Fund, the Local Consolidated Fund, the Contributory Social Security Fund, the Town Development Fund, the Poverty Alleviation Fund and the Women Entrepreneurship Development Fund.</p>
Fund Mechanism	<p>A fund mechanism is the means by which a fund is put into operation – in terms of allocating financial resources to federal, provincial and local governments, supporting programmes to address GBV and gender inequality.</p>
Response Mechanism	<p>Response mechanisms are institutional arrangements to provide response services and support to GBV survivors, which help ensure that Nepal's specialized and generalized laws protect their basic human rights. These services may include, but are not limited to: health and medical care, mental health and psychological support, legal assistance, case management, and education and vocational training opportunities. The mechanism may include government agencies, such as police, hospitals or shelter homes, whereby their working terms and conditions are defined to provide response services to survivors. Fund mechanisms provide the resourcing needed for response systems to function.</p>
Relief Services	<p>Relief services are one of the response services provided by response mechanisms, and may include immediate and interim response to GBV survivors in accordance with prevailing laws.</p>

¹ Government of Nepal (2010). *Gender Based Violence Elimination Fund Regulation (2010), Rule No. 2(f)*.

² Office of the United Nations High Commissioner for Human Rights [OHCHR] (1992). *General Recommendations Adopted by the Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 19*.

³ OHCHR, (2017). *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, pp. 2*. Retrieved on Feb 22, 2020 from https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf

EXECUTIVE SUMMARY

Gender-based violence (GBV) is a phenomenon deeply rooted in gender inequality, and it continues to be one of the most notable human rights violations in Nepali society. Women in Nepal are affected by GBV and gender inequality regardless of age group, marital status, geographical differences, employment or economic status. The pervasiveness of the problem is evident in the increasing number of reported cases of GBV in the country, and Nepal's ranking as 110th out of 162 countries in terms of gender inequality.⁴ For these reasons, ending GBV and gender inequality and promoting women's economic empowerment have become priorities for the Government of Nepal (GoN). This commitment is reflected in the Constitution, legislative frameworks and action plans, as well as in legal provisions intended to establish funds to resource the necessary response mechanisms.

Government-established funds and response mechanisms are essential tools for advancing gender equality. They are the primary means of ensuring, for example, that survivors of GBV crimes receive compensation, and that services such as shelters, legal aid and psychological counselling are made available to them. Legislation introduced in Nepal, both before and after the promulgation of the new Constitution in 2015, has provided for a wide variety of these funds. They include the Service Fund, the Rehabilitation Fund, the GBV Elimination Fund, the Victim Relief Fund, the Child Fund, the Judicial Fund, the Single Women Protection Fund, the Contributory Social Security Fund, the Poverty Alleviation Fund, the Town Development Fund, the Women Entrepreneurship Development Fund, and the Local Consolidated Fund. However, despite the government's recognition that these funds are needed in order to provide resources to response mechanisms, progress towards their functional operation is far from achieved.

The findings of this study reveal a problematic situation that is in urgent need of attention. A serious gap has emerged between the rights and entitlements that are formally guaranteed to women in Nepal's legal system,

and their ability to actually experience any benefit from these laws. Only a few of the GBV and GE related funds are currently operational in any form. Those that are functioning to a degree – such as the GBV Elimination Fund and the Rehabilitation Fund – exist at the federal level and not at the provincial or local level, which has the effect of restricting women's access to these funds. The operational modality of many of the funds is ambiguous, action to implement them has been lacking, and many are not properly designed to function within Nepal's federal system. With the onset of the COVID-19 pandemic, a number of studies have documented the intensification of GBV, particularly domestic violence. The pandemic has added even greater urgency to the need to make funds available and ensure that women have access to essential services.

The introduction of federalism to Nepal through the adoption of the new constitution added an extra level of complexity to the process of bringing the GBV and GE related funds into existence. However, this challenge has not been adequately met. This study reviews the difficulties posed by the legal methods employed in efforts to federalize the funds so far. The GoN's amendments of acts and regulations may not have envisioned and encompassed all of the functional implications of federalism.

This study also notes that a number of funds already faced operational challenges prior to federalism. In addition, the new decision-makers – newly elected representatives or civil servants assigned to new federal structures – may not have been adequately informed about these funds and processes. The provincial and local governments would have required new or additional capacities to understand their own roles and responsibilities regarding the full operationalization of these funds, and find mechanisms to engage, coordinate and collaborate among the state, judicial and non-state actors including women's rights groups.

⁴ UNDP (2020), *Gender Inequality Index*. <http://hdr.undp.org/en/content/gender-inequality-index-gii>

This study aims to support the efforts of the GoN to protect and advance the rights of GBV survivors and promote gender equality in Nepal, by reviewing and analysing the legal status, institutional mechanisms, and scope of various funds related to GBV and gender equality. It also assesses the existing implementation status and identifies challenges in the operationalization of the concerned funds within Nepal's federal system of governance. Furthermore, this study provides proposals for the harmonization of a number of the funds to address the issue of overlapping scope.

This study is intended as a resource for all concerned stakeholders. Its goal is to help them understand the present status of the funds related to GBV and gender equality, and to provide options that could be pursued to achieve their effective operationalization.

It recommends short-term efforts to raise awareness and improve understanding of the funds, bolster support for advocacy and capacity building among government officials, enhance coordination between different stakeholders, and repeal inconsistent provisions in certain regulations. In the medium-term, the study recommends that important procedural guidelines and fund flow mechanisms be put in place, which would enable the funds to operate effectively in a federal context.

In addition, this study identifies significant overlaps between the Rehabilitation Fund, the Service Fund, the GBV Elimination Fund, and the Victim Relief Fund. These overlaps occur in the funds' scopes and services, which could result in duplication and an inefficient use of resources. It also increases the likelihood that some target groups will benefit to the exclusion of others. The study proposes fund consolidation as a long-term recommendation, given the scale of the work involved.

This study also makes more specific, targeted recommendations for each fund.

The Gender-Based Violence Elimination Fund (GBV Elimination Fund)

The GBV Elimination Fund was created by a regulation in 2010, which was enacted through an executive order; the regulation was later amended in April 2020 to take federalization into account. According to the regulation, the fund is supposed to operate at all three levels of government under the authority of each level's laws and through the management of each level's resources. In 2019, the federal government introduced standards and criteria to facilitate the provision of grants to provincial and local governments and help establish the funds at these levels. The Ministry of Women, Children and Senior Citizens (MoWCSC) has plans, in line with the standards and criteria, to establish the GBV Elimination Fund at every local level in the country, and provide grants at both the local and provincial levels.

Status: The GBV Elimination Fund currently exists at the federal level, but its budget has steadily declined and it has become inaccessible and underutilized. While no laws have yet been passed at the provincial and local levels, a number of municipalities have established GBV Elimination Funds through executive decisions.

Short-Term Recommendation 1.A: The MoWCSC to support provincial and local governments by providing information on processes to requisition the funds from the federal GBV Elimination Fund.

Short-Term Recommendation 1.B: Provincial and local governments to work with service providers to help GBV survivors come forward to seek services and to facilitate their access to the GBV Elimination Fund.

Short-Term Recommendation 1.C: Local governments to requisition funds from the federal GBV Elimination Fund to support GBV survivors.

Short-Term Recommendation 1.D: Local community-based organizations (CBOs), women's rights activists and service providers should be informed about the GBV Elimination Fund regulation, how to access the fund at the local level, and their role in advocating on behalf of survivors.

Short-Term Recommendation 2: The MoWCSC to conduct a self-review to repeal substantive aspects of the federal regulation and then merge the regulation's procedural aspects with the standards and criteria that were introduced in 2019.

The Rehabilitation Fund

The Rehabilitation Fund was established under the federal Human Trafficking and Transportation (Control) Act, 2008, but the fund's budget has declined over the years. In 2018, the Act was amended to provide provincial and local governments the option of establishing their own funds by enacting their own legislation in line with the federal Act. However, the Act's accompanying regulation has not been amended.

Status: The Rehabilitation Fund is dormant at the federal level. To date, no laws have been adopted at the provincial or local levels and no funds exist at those levels.

Short-Term Recommendation: The federal government to ensure adequate allocations to the Rehabilitation Fund, which will help ensure that the rehabilitation centres (both state and civil society managed) are functioning.

Medium-Term Recommendation: Amend⁵ the Human Trafficking and Transportation (Control) Act and introduce regulations to enable provincial and local governments to establish funds without having to enact their own legislation and provide resourcing and oversight for these funds.

The Service Fund

The Domestic Violence (Offence and Punishment) Act of 2009 authorized the creation of a Service Fund at the federal level. It also gave the provincial and local governments the option of establishing their own Service Funds by enacting laws in line with the federal Act. The Service Fund is intended to provide resources to centers that assist survivors of domestic violence. The regulation accompanying the federal Act has yet to be amended.

Status: The Service Fund has not been established yet at the federal level. At the provincial and local levels no laws have been adopted and no funds exist.

Medium-Term Recommendation: Amend the Domestic Violence (Offence and Punishment) Act and introduce regulations to enable provincial and local governments to establish funds without having to enact their own legislation and provide resourcing and oversight for these funds.

The Victim Relief Fund

The Victim Relief Fund is a gender-neutral fund that focuses on all crime victims, including GBV survivors. In 2020, several regulations were passed directing the Supreme Court to establish this fund and provide standard operating guidelines for it within the unitary structure.

Status: The Victim Relief Fund was established in June 2020 under the unitary structure instead of the federal structure under the leadership of the judiciary.

Medium-Term Recommendation: Amend the Crime Victim Protection Act and the Criminal Offences (Sentencing and Execution) Act in the federal structure and introduce regulations to enable provincial and local governments to establish the funds without having to enact their own legislation and provide resourcing and oversight for these funds.

The Judicial Fund

The Judicial Fund was intended to strengthen the financial independence of the judiciary. However, the legal process to create the fund was stalled after 1986, and the final step required to set up the fund (publishing its Act in the Nepal Gazette) was never taken. Once established, the fund could support the judiciary in developing Gender Equality and Social Inclusion (GESI)-responsive infrastructure in the courts, including gender desks and child and survivor-friendly facilities.

Status: The Judicial Fund does not exist.

⁵ In the case of amendments to Acts, these will be proposed by the relevant line ministry, reviewed by MoLJPA, and then tabled in the parliament. The same procedure applies to all recommendations regarding amendments to Acts in this study. Other ministries, including MoFAGA, may be engaged in information sharing and communication on these processes.

Short-Term Recommendation: Civil society organizations and members of the judiciary should advocate to enact the Judicial Fund Act with the necessary amendments.

The Child Fund

According to legislation that was passed in 2018 to create the Child Fund, the fund is supposed to operate at all three levels of government – the federal, provincial and local – under the authority of each level’s laws. It is to be resourced through a contribution-based system in which resources from the provincial and local levels are to be deposited at the federal fund and then transferred back to the provincial and local levels to set up the fund. However, no regulation has been passed to clarify the fund’s operating procedures.

Status: The Child Fund has not been established at any level of government.

Medium-Term Recommendation: Amend the Act Relating to Children and introduce regulations to enable provincial and local governments to establish the funds without having to enact their own legislation and provide resources and oversight for these funds.

The Single Women Protection Fund

The Single Women Protection Fund was established through a regulation that was passed by an executive decision. Amendments to this regulation, which were in the final phases of endorsement at the time of the study, specify that provincial and local governments must use their own resources to manage the fund.

Status: The Single Women Protection Fund exists at the federal level, but is not fully operational. No laws have been adopted at the provincial and local levels and no funds exist at those levels.

Short-Term Recommendation: The MoWCSC to review and revise substantive provisions in the proposed regulation.

The study also looked at five additional funds that have implications for gender equality. It notes that the necessary legislation has been adopted for the Local Consolidated Fund and that funds have been established at all the local levels visited by the study team. At the time of the study, government discussions were underway to adjust the Women Entrepreneurship Fund and the Poverty Alleviation Fund in the federal context. No steps have yet been taken to adjust the Town Development Fund and the Contributory Social Security Fund and this study recommends that a process to amend their respective Acts should be undertaken soon.

The Way Forward to Operationalize the Funds

The study recommends awareness raising, coordination, capacity building, and policy dialogue as important next steps in operationalizing the funds. It is vital to clarify the roles and responsibilities of personnel in the relevant federal, provincial, and local government departments who will be operating these funds. It is also imperative to share this study’s findings with civil society organizations, women’s rights groups and local activists, and to discuss their roles in engaging the government to help make the funds operational.

Once there is a clear understanding about these issues among all the key stakeholders, it will be possible to begin the critical work of reviewing and amending various aspects of the laws and regulations identified in the study. At the same time, it is important to ensure that currently functional funds continue to operate effectively and that they keep providing support to women and girls until the needed reforms are made. For the GoN, this will be particularly important given its strong commitment to gender responsive budgeting (GRB) and the steps it has taken so far to ensure budget allocations for gender equality. This will also contribute towards the achievement of Goal 5 of the Sustainable Development Goals.

SECTION 1

INTRODUCTION

1.1 Overview of Legal and Policy Framework

Gender inequality is highly prevalent in Nepal as indicated by the Gender Inequality Index, 2020 (0.452) which ranks Nepal 110th out of 162 countries.⁶ According to the Nepal Demographic and Health Survey (NDHS) 2016, nearly one-third of all married women in Nepal have experienced violence perpetrated by their partners at least once in their lifetimes; the most common violence being physical and emotional.⁷ For example, in the year 2017/18 alone, 1,480 rape cases were reported in Nepal.⁸ Survivors are further stigmatized and subjected to family pressures when they come forward to report violence.⁹ Similarly, in 2017, 149 people were killed as a result of GBV in Nepal. Of these victims, 140 were female, 75 of whom were killed because of domestic violence.¹⁰

Women in Nepal are disproportionately affected by GBV and gender inequality regardless of age group, geographical differences, employment status, economic status, number of children, marital status, and ecological zones. Similarly, 22 percent of women aged 15-49 have experienced physical violence since the age of 15, and seven percent have experienced sexual violence. Among ever-married women, 26 percent have experienced physical, sexual or emotional violence from a spouse, with 34 percent of survivors sustaining injuries.¹¹ Other forms of GBV and harmful practices – such as menstrual restrictions

like *Chhaupadi*, child marriage, untouchability (related to caste-based discrimination), dowry, and accusations of witchcraft – continue unabated in most parts of the country.¹² With the onset of the COVID-19 pandemic, a number of studies have documented the intensification of GBV in Nepal, particularly domestic violence.

Ending GBV and gender inequality in order to guarantee women's rights is a priority for the GoN. This priority is demonstrated through the government's commitment to adopting constitutional and legislative frameworks, along with action plans. The Constitution of Nepal, which was adopted in 2015, contains provisions establishing: a) the principle of equality and non-discrimination with positive discrimination; b) social protections related to victims' rights; c) national human rights institutions, including the National Women Commission (NWC); and d) various fundamental rights to individuals and groups.

Nepal's constitution guarantees different fundamental rights that address gender inequality. These provisions are enshrined under Article 18, Right to Equality, and Article 38, Rights of Women. Furthermore, Article 38 (5) includes provisions for positive discrimination towards women and ensures special opportunities for women in education, health, employment and social security, which also cater to the needs of GBV survivors (these are outlined in Article 39 (9), Rights of the Child; Article 42 (5),

⁶ UNDP (2020). *Gender Inequality Index*. <http://hdr.undp.org/en/content/gender-inequality-index-gii>

⁷ GoN, (2016). *Nepal Demographic and Health Survey 2016*. Retrieved on May 22, 2020 from <https://www.dhsprogram.com/pubs/pdf/fr336/fr336.pdf>

⁸ Republica, (2018). *1,480 rape cases last year, 4 every day!* Retrieved on May 20, 2020 from <https://myrepublica.nagariknetwork.com/news/1-480-rape-cases-last-year-4-every-day/>

⁹ Waldorf, D. (2017). *A helpline for GBV Survivors in Nepal: Transmit Hope and Support*. The World Bank, Retrieved on May 21, 2020 from <https://www.worldbank.org/en/news/feature/2017/12/05/a-helpline-for-gbv-survivors-in-nepal>.

¹⁰ Collective Campaign for Peace [COCAP], (2017). *Gender Equality and Social Inclusion Trends of Gender Based Violence and Discrimination against Women and Dalits*. Retrieved on May 22, 2020 from www.nepalmonitor.org/blog/wp-content/uploads/2018/04/CM-GESI-Monitoring-Report-2017-Eng.pdf

¹¹ GoN, (2016). *Nepal Demographic and Health Survey 2016*. Retrieved on May 22, 2020 from <https://www.dhsprogram.com/pubs/pdf/fr336/fr336.pdf>

¹² UNFPA (2020). *Literature Review on Harmful Practices in Nepal*.

¹³ GoN (2015). *The Constitution of Nepal*.

¹⁴ GoN. (2015). *The Constitution of Nepal*.

Right to Social Justice; and Article 51 (j) (2), Policies of the State).¹³ Notably, Article 38 (3) ensures the protection of women from physical, mental, sexual, psychological or other forms of violence or exploitation on religious, social, cultural or traditional grounds, or on other grounds.¹⁴

The constitution also contains numerous provisions that guarantee the rights of GBV survivors, with most of these rights enshrined as fundamental. Article 21 of the constitution explicitly ensures the rights of crime victims, and this category encompasses GBV survivors.¹⁵ Likewise, several other provisions of the constitution provide survivors with rights to compensation, among other rights,¹⁶ even during the state of emergency.¹⁷

Responding to constitutional mandates and beyond, the GoN has enacted several laws that respond to GBV and gender inequality. Certain laws were enacted prior to the promulgation of the present constitution. However, after the promulgation of the constitution in 2015, a series of significant laws were introduced, including the Muluki Criminal Code, 2017; the Act Relating to Children, 2018; and the Crime Victim Protection Act, 2018. The Crime Victim Protection Act, 2018 is considered a milestone with regard to expanding the rights of crime victims and serving as an umbrella legislation, particularly in relation to the right to information, participation and compensation to the victims, and provisions to arrange relief services for victims. In addition, a National Gender Equality Policy has recently been adopted.

It is also important to note that the 2015 constitution introduced federalism to Nepal. Nepal had previously been a unitary state whose powers, including legislative authority, were concentrated at the national level. Under the new constitutionally mandated federal regime, many of these powers were either transferred to provincial and local levels of government, or are now to be exercised through cooperative and coordinated processes across the different levels of government.

1.2 The GBV and Gender Equality-Related Funds

In line with this overarching legislative and policy framework, the GoN has created funds that channel and ensure services to GBV survivors and strive for gender equality. These funds include: the Victim Relief Fund, the Judicial Fund, the Child Fund, the Service Fund, the Rehabilitation Fund, the GBV Elimination Fund, the Single Women Protection Fund, the Contributory Social Security Fund, the Poverty Alleviation Fund, the Town Development Fund, the Judicial Fund, the Women Entrepreneurship Development Fund, and the Local Consolidated Fund. These funds are envisioned/ established under the rules and procedures framed under the Good Governance (Management and Operation) Act, 2008 and Administrative Procedure Regulation Act, 1956, along with related administrative executive decisions. These laws also make clear the institutional and operational modalities for response services.

The laws that introduce different funds are instrumental tools to address gender inequality and respond to the needs of GBV survivors. GBV and GE related funds that have proper operational modalities are essential for several reasons. For instance, they:

- a. Allow local and provincial governments to establish effective infrastructure and mechanisms that deliver services to GBV survivors and address gender inequality. These provisions can entail measures like establishing shelter homes and ensuring victim/survivor-friendly environments, providing legal aid services and psychological counselling, ensuring the safety of survivors, and supporting rehabilitation efforts.
- b. Empower survivors to support themselves and restore their lives post-violence through vocational training and/or entrepreneurial support, including through seed capital.

¹⁵ Article 21 (1): *A victim of crime shall have the right to get information about the investigation and proceeding of a case in which he or she is the victim. (2). A victim of crime shall have the right to justice including social rehabilitation and compensation in accordance with law.*

¹⁶ Articles 22 (2), Right against Torture; Article 24 (5), Right against Untouchability and Discrimination; Article 29 (5), Right against Exploitation; Article 30 (2), Right to Clean Environment; Article 38 (3) Rights of Women; Article 39 (10), Rights of the Child; Article 249 (3) (d), Functions, Duties and Powers of National Human Rights Commission; and Article 273 (12).

¹⁷ Article 273 (10): *At the time of making a declaration or order of a state of emergency in accordance with clause (1), the fundamental right as provided in Part -3 may be suspended until the deceleration or order is in operation. Considering Article 16 (c) and Article 17 (2)(d), Article 21, 38 and 39 and Article 45, the right to constitutional remedy in relation to such Articles pursuant to Article 46 and the right to seek the remedy of habeas corpus shall not be suspended.*

- c. Provide immediate and even long-term medical treatment and support to GBV survivors who have sustained injuries.
- d. Provide compensation as interim relief to survivors in cases where the perpetrator/convict is unable to pay.

These funds are intended to respond to the needs of the GBV survivors, promote the economic empowerment of women, and guarantee the fundamental rights and entitlements of survivors. Their effectiveness depends, however, on how the funds actually operate. Unfortunately, ambiguity and lack of clarity in the design of their functional modalities have prevented the funds from operating properly, and many of the funds are not currently operating at all. Nepal's recent transition to federalism has added an extra level of complexity to the process of operationalizing the funds, and many of them have not been structured in compliance with federalism's requirements. In some cases, legislation authorizing the establishment of the funds was passed at the federal level when it should have been passed at the provincial and/or local levels. In other cases, arrangements to establish the cooperation, collaboration and consultation relating to the funds' establishment which are required under federalism were not undertaken. As a result, a serious gap has emerged between the rights formally guaranteed to women in Nepal by law and their actual ability to access justice, compensation and assistance. With many of these funds failing to function as intended, much of the support and services promised to the women of Nepal have simply not materialized.

It is imperative to achieve clarity about the challenges that are preventing these funds from functioning, and to identify the concrete measures that can be taken to remedy the situation. This study is intended to help all stakeholders develop a better understanding of the current state of these funds and response services, and help clarify the roles of the different government levels in relation to the funds within a federal context. It provides a comprehensive assessment of their implementation status and the critical gaps that have emerged, and presents recommendations for improving their operation.

1.3 Methodology

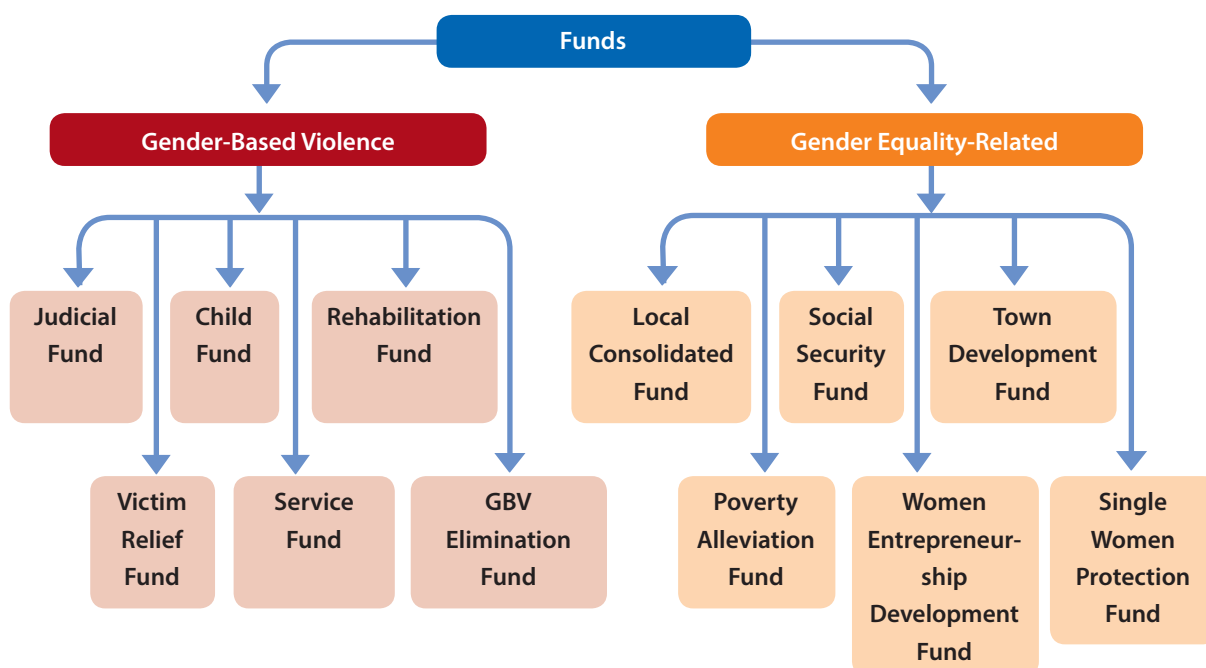
The overall objective of this study is to support efforts of the government, and also those of civil society organizations and women's rights activists, to promote gender equality and the rights of GBV survivors in Nepal. In particular, this study was undertaken to:

- a. Analyse the legal and implementation status, institutional mechanism, and scope of various funds;
- b. Identify the challenges for operationalizing the funds in the federal context;
- c. Explore the operational modality for funds envisioned by existing laws related to GBV and gender inequality in the federal context;
- d. Provide recommendations to all three levels of government for the monitoring and harmonization of legal provisions related to the funds for effective utilization of the funds, thereby also avoiding any overlaps or duplication;
- e. Explore advocacy strategies for policy dialogues.

This study examined laws that contain provisions related to the operational modalities of funds concerning the rights of GBV survivors, women's economic empowerment, and gender responsive development. Twelve Acts, regulations, rules and guidelines were reviewed for the GBV funds, and nine Acts, regulations, rules, by-laws, and procedural guidelines were reviewed for the GE related funds, as well as the Constitution of Nepal, 2015.

A review of relevant literature was conducted to identify and analyse the existing gaps in legal provisions that prevent funds from being established and response services from being implemented. In addition, research reports and journal articles related to Nepal's federal structure, federal laws, provincial and local-level policies and guidelines, and other relevant literature were also reviewed.

This study considers all of the funds to address GBV that have been established by law and executive order, and also reviews six additional funds from a gender equality perspective given their more extensive scope.

FIGURE 1: GBV AND GENDER EQUALITY-RELATED FUNDS COVERED BY THE STUDY

As demanded by the nature of the subject matter, a qualitative method of inquiry was adopted. The qualitative study method helped the research team better understand the underlying reasons and challenges behind the lack of implementation. This methodology also helped the researchers draw conclusions and provide recommendations for necessary legal reforms that could operationalize the funds and make the response mechanisms more effective and inclusive at all levels. The following approaches were utilized:

- A desk review of relevant laws against GBV and gender inequality
- Focus group discussions (FGDs) and consultations with governmental and non-governmental stakeholders
- Key informant interviews (KIIs)
- Case studies

The FGDs and consultations were organized with government stakeholders and non-governmental service providers to better understand:

- a. The implementation status of the funds and response mechanisms at the local, district, provincial and federal levels;
- b. The challenges of implementing such funds;
- c. Awareness among stakeholders about the funds;
- d. The availability of these funds and a survivor's access to them;
- e. A way forward to effectively utilize these funds.

The discussions and consultations were conducted in all seven provinces of Nepal. Those selected as research participants included government officials responsible for operating the funds, civil society organizations (CSOs) working in the area covered by the funds, or survivors of the offence under the scope of the funds.

Interactions with government stakeholders were conducted at all three levels of government, as well as at the district level since some of the fund mechanisms previously existed there.¹⁸ A total of 14 FGDs at the local level, seven consultations at the provincial level, and

¹⁸ District-level government units – despite their dissolution and/or incorporation into the local level government units – were considered one of the stakeholders. This is because they held major powers over operating the GBV funds and response mechanisms before the introduction of federalism.

two national validation consultations were organized. For each province, two FGDs were conducted. One FGD brought representatives from a local government unit, which was also the local government of the district headquarters where district-level stakeholders were also invited. In the next FGD, the invitees at the local level were either from an adjacent local government or from a rural municipality. At the provincial consultations, province-level stakeholders were invited, such as CSO representatives, political party representatives, justice actors, gender advocates, representatives of GBV networks and groups, Members of Parliament (MPs), and survivors/recipients of support services.

In order to triangulate the findings from other sources, a total of 195 KIIs were conducted at the federal, provincial, and local levels (including the district level). The KIIs were helpful in understanding stakeholders' perspectives on the implementation status and scope of the funds, the actual effectiveness of the GBV funds and response mechanisms at different levels, and ways to make services more accessible to GBV survivors.

The research team also interviewed GBV survivors, and analysed cases filed and decided by the district courts from all seven provinces to generate case studies to support this study's findings. A total of 16 case studies were collected and then analysed to supplement the research findings.

Finally, subsequent to the preparation of the draft study, two national validation consultations were held at the federal level. The purpose of these consultations was to verify and validate the findings of the study and to gain further feedback on the draft study.

The first national validation consultation was held with government stakeholders, which included representatives from the National Planning Commission, the Office of Prime Minister and Council of Ministers, the Contribution-Based Social Security Fund Secretariat, the MoWCSC, the NWC, the Supreme Court, the Nepal Bar Association, and the Ministry of Law and Justice and Parliamentary Affairs. The second national validation consultation was held with

CSOs, non-governmental organisations (NGOs), activists and independent researchers working in the area of GBV and women's empowerment. Before the field research, a national stakeholder dialogue was also conducted to collect feedback from concerned stakeholders.

1.4 Limitations of the Study

This study covers twelve funds related to GBV and gender equality. The research team consulted with stakeholders, officials, and civil society in 14 municipalities and seven provinces, as well as at the federal level. Thus, the findings of this study may be limited to the experiences and perspective of participants in these locations and may not reflect or represent all administrative divisions of Nepal. Furthermore, this study is limited to an analysis of the laws, policies and implementation challenges related to funds and response services that address GBV and gender inequality. It does not concern other aspects of GBV and gender inequality, such as mechanisms related to complaint, investigation, mitigation, and prevention, which are equally important in the quest to eliminate GBV and gender inequality. Further, this study was initiated before the global COVID-19 pandemic started and does not analyse GBV and GE related funds and response mechanisms under the lens of the pandemic.

1.5 Research Ethics

The study team ensured that all the sampled and selected respondents were pre-informed about the purpose of the study. The study team adhered to the principles of inclusion, human rights and women's rights and the principle of "do no harm" during the entire study. To ensure these principles, the study team sought out informed consent from all the participants and ensured their anonymity, privacy and confidentiality during and after the KIIs, FGDs, consultations and case studies. Furthermore, consent was sought from the participants to take their pictures, interviews, and hold discussions before the reporting took place.

SECTION 2

FINDINGS AND ANALYSIS

2.1 Overview of the Funds

Of the twelve funds reviewed by this study, nine have been established by legislation, and three were created by the executive decisions and regulations. The following table depicts the legal source of the funds:

Table 1: Legal Sources of the Funds	
Name of the Funds	Legal Sources
GBV Funds	
Victim Relief Fund	Crime Victim Protection Act, 2075 (2018); Criminal Offences (Sentencing and Execution) Act, 2074 (2017); and Victim Relief Fund Regulations, 2020
Judicial Fund	Judicial Fund Act, 2043 (1986)
Child Fund	Act Relating to Children, 2075 (2018)
GBV Elimination Fund	Administrative Procedural (Regulation) Act, 2013 (1956) and Gender Based Violence Elimination Fund Regulations, 2067 (2010)
Rehabilitation Fund	Human Trafficking and Transportation (Control) Act, 2064 (2007) and Rules 2065 (2008) and Rehabilitation Fund Operating Guideline, 2068 (2011)
Service Fund	Domestic Violence (Crime and Punishment) Act, 2066 (2009) and Rules 2067 (2010)
Gender Equality-Related Funds	
Town Development Fund	Town Development Fund Act, 2053, (1997) and Rules 2054 (1997) and Financial By-laws 2071 (2014).
Poverty Alleviation Fund	Poverty Alleviation Fund Act, 2063 (2006)
Social Security Fund	Contributory Social Security Act, 2074 (2017), and Social Security Fund (Management and Operational) Regulation, 2011.
Single Women Protection Fund	Single Women Security Fund (Operation) Regulations, 2070 (2013)
Local Consolidated Fund	The Constitution of Nepal, and Local Government Operation Act, 2074 (2017)
Women Entrepreneurship Development Fund	Women Entrepreneurship Development Fund Procedural, 2065 (2008)

These funds can be further divided into two categories: funds that have a unitary structure and funds that have a federal structure.

Those with a unitary structure have been established by federal legislation, and operate either through the central authority or through more local, decentralized mechanisms (such as branch offices of the federal government, or powers conferred on provincial or local governments to operate the funds). The federal

government remains the source of authority, however, and while it may coordinate and collaborate with provincial and local governments, it is not specifically mandated to do so.

In contrast, funds with a federal structure are founded on shared power among the federal, provincial, and local governments. As a result, coordination and collaboration between the three tiers of government is an essential requirement in the administration of these types of funds.

2.2 GBV Funds

There are six funds that have been established to address the rights of GBV survivors, and the rights of crimes victims more generally. Among these, the GBV Elimination Fund, the Child Fund, the Rehabilitation Fund and the Service Fund have a federal structure, and the Victim Relief Fund and the Judicial Fund have a unitary structure.

The GBV Elimination Fund

Overview

The GBV Elimination Fund is a specialized fund that is intended to provide resources for services to meet the urgent needs of GBV survivors. These services include emergency relief, legal aid, psychological support, and seed money to enable the pursuit of economic activities. The Fund also plays a role in the provision of compensation to survivors of GBV under court orders, in cases where the perpetrator does not have property.

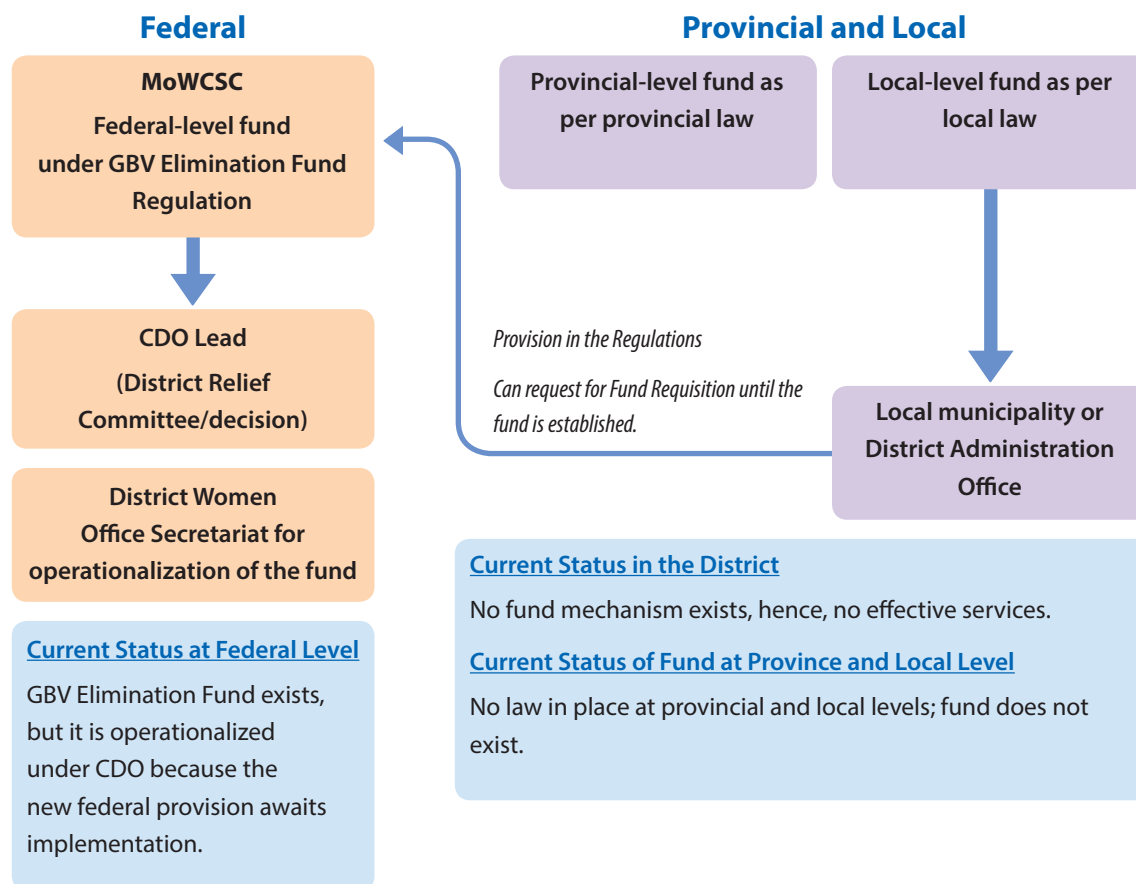
The GBV Elimination Fund was created by a regulation in 2010, which was enacted through an executive order; the regulation was later amended in 2019 to take federalization into account. According to the regulation, the fund is supposed to operate at all three levels of government under the authority of each level's laws and through the management of each level's resources. In 2020, the federal government also introduced standards and criteria to facilitate the provision of grants to provincial and local governments and help establish the funds at these levels. The MoWCSC has plans, in line with these standards and criteria, to establish the GBV Elimination Fund at every local level in the country, and provide grants at both the local and provincial levels.

The legal framework used to establish these funds is problematic, though, as it creates confusion about the powers, duties, and responsibilities between the three levels of government. There are inconsistencies between the GBV Elimination Fund regulation and the standards and criteria being applied by the MoWCSC. For example, the GBV Elimination Fund regulation stipulates that the funds will be operationalized through provincial and local legislation and resources; however, the standards and criteria now establish the funds through federal financing. Furthermore, the federal regulation that created the GBV Elimination Fund was not backed by legislation, and regulations by themselves cannot create powers, duties, and responsibilities for provincial and local governments.

The GBV Elimination Fund currently exists at the federal level, but its budget has steadily declined and it has become inaccessible and underutilized. While no laws have yet been passed at the provincial and local levels, a number of municipalities have established GBV Elimination Funds through executive decisions.

Analysis

The GBV Elimination Fund was established by a regulation enacted by an executive order. This regulation was first amended in 2019 and amended again in 2020, to incorporate changes due to federalization and to provide immediate relief to GBV survivors. The amended regulation was published in *Nepal Gazette* on 23 April 2020. The regulation mandates the establishment of the GBV Elimination Fund independently at all three levels of government, but only through the formulation of their own respective laws and the provision of their own resources. The following figure details this process:

FIGURE 2: AMENDED STRUCTURE AND IMPLEMENTATION STATUS OF THE GBV ELIMINATION FUND

In 2019, the federal government also introduced two separate criteria and standards, namely "Criteria/Standards Relating to the Expenditure of Conditional Grant Amount for Establishment and Extension of Provincial Gender Based Violence Elimination Fund" and "Criteria/Standard Relating to the Expenditure of Conditional Grant Amount for Establishment and Extension of Local Gender Based Violence Elimination Fund."¹⁹ These criteria/standards

were formulated with the aim of providing grant amounts to local and provincial governments to enable them to establish and extend the fund at their own levels. In line with these standards, the MoWCSC is planning to set up GBV Elimination Funds at all 753 local levels across the country and provide a grant of NPR 50,000 to the provincial level and NPR 10,000 to the local level in the FY 2019-20.

¹⁹ The criteria is formulated within the President's Women Upliftment Program for two purposes:

- To provide grant amounts to all seven provinces and 753 municipalities to establish the GBV Elimination Fund;
- To set the criteria/standards for utilization of funds and resources by the provincial and local GBV Elimination Funds.

The grant amount at the provincial level is made available to the Provincial Social Development Ministry (SDM), and at the local level, it is made available to the Municipalities (Rural) through the MoWCSC. It includes, in total, NPR 350,000 for the provinces, of which each province is allotted NPR 50,000 and 7,530,000 for the local levels, and each local level is allotted NPR 10,000 to establish and extend the GBV Elimination Fund in its own government unit. This grant is provided as per the budget of the current FY 2019-20 and is subjected to changes in the next year's budget plan. Further, as it is a revolving fund, the local or provincial governments are free to use the same budget the next FY. This means that the provincial and local government units can utilize the grant amount on their own terms, as per their requirement to operationalize the fund at their own level (which may include but is not limited to establishing the funds or providing relief services to the survivors). These criteria and standards are prepared by the federal government as part of its power to form guidelines for provincial and local-level governments to follow. Nevertheless, while the federal government provides the grant, the provincial and local level governments are also responsible for devising their own laws to establish the GBV Elimination Fund at their own levels. Also, as the fund amount is very limited and the resources needed to address GBV may vary between each level of government, these criteria enable the local and provincial governments to mobilize their own resources to operationalize the fund to meet their own needs.

However, the criteria and standards were introduced under the President Women Upliftment Program (PWUP), rather than under the GBV Elimination Fund Regulation, and there are contradictions between the procedures set out in GBV Elimination Fund Regulation and the criteria/standards under the PWUP. The regulation demands that the provincial and local governments operate the fund according to their respective laws, whereas standards set under PWUP offer resources from the federal government to establish and operate GBV Elimination Funds at the provincial and local levels. Furthermore, according to the regulation, local governments can request the release of fund amounts from the federal GBV Elimination Fund if the funds are not established at the respective level of the government. This has created confusion at the provincial and local levels about whether they should establish or operate their own funds under the GBV Elimination Regulation or the PWUP. This shows a lack of clarity at the federal level about how to institutionalize the GBV Elimination Fund, and it could lead to conditions in which coordination among agencies at the same level of government are severely compromised.

The approach taken to establishing the fund also raises a serious legal question, regarding the capacity of regulations to confer power to local and provincial governments without being backed up by legislative foundation or substantive legislative provisions. From a legal perspective, regulations by themselves *cannot* create substantive powers, duties, roles and responsibilities for provincial and local governments. As a result, the specific measures set out in the regulation would not be backed by law and would have no capacity to be enforced.

To allow the fund to operate at the local level, and overcome the current operational vacuum in the short-term, Rule 10 (2) of the amended regulation could be

employed. The rule allows the district administration office or local municipalities to file for a requisition from the federal fund if funds have not been established in their municipalities. However, this is a very recent amendment, and this option has not yet been undertaken at any of the local levels reviewed in this study.

Another important consideration is that the budget allocation by the MoWCSC for the GBV Elimination Fund has declined over the years. In FY 2017/18, the total budget was NPR 10 million. That amount declined to NPR 7.5 million in FY 2018/19, and it further declined to NPR 6 million in FY 2019/20. During our consultations, the participants attributed reductions in the budget to the following reasons: a) due to the unitary/centralized mechanism, many survivors may not have had access to the fund; and b) the fund was becoming underutilized because of a decline in budget allocation in each FY from 2017/18 to 2019/20.

The fund currently remains dormant, mainly due to Nepal's continued transition to federalism. The funds were previously utilized through district level channels that are not functional anymore, and at the local levels, survivors have not been able to access the funds in most cases. At the local levels, especially in areas where women rights activists were proactive, some resources from municipalities have been managed from the fund. Tripura Municipality in Province 1 and Malangwa Municipality in Province 2, for instance, have continued to operate safe houses. However, in the absence of laws to support this arrangement, operating these safe houses depends heavily on the motivation and mindset of local representatives and activists, and should be considered only a temporary measure. In areas where such initiatives are not present, safe houses have shut down due to a lack of resources.

BOX 1: IMPACT ON SURVIVORS

Government of Nepal on behalf of "Gha" Kumari vs. Sagar Bhatta and Amar Raj Awasthi

This case is known as “the Puja Bohara rape case,” which occurred on 12 March, 2012 in a far-western hilly district of Nepal. Two people, Sagar Bhatta and Amar Raj Awasthi, raped a young woman named “Puja” during her SLC exam period. The Baitadi district court sentenced each perpetrator to 13 years in prison (eight years for committing rape and five years for gang rape) and ordered them to pay Puja compensation of NPR 50,000. However, the Mahendranagar Appellate Court later overturned the district court ruling, citing a lack of evidence. Later, on November 18, 2019, the Supreme Court sentenced the perpetrators each to 11 years and six months in prison on rape charges. Although the perpetrators were eventually convicted and sentenced, during the court proceedings (which took a total of eight years), Puja did not receive any government-supported services, such as shelter and psychological counselling. She also did not receive any relief compensation, which is provisioned as a survivor’s right under the GBV Elimination Fund Regulation.

Lila Dangi, who hails from Dang district but lives in New York, supported Puja’s college education and accommodation in Kathmandu. Initially, Raksha Nepal, an NGO that helps survivors of sexual violence, provided Puja with shelter services as well. But she still had to wait until the court’s final decision to claim government compensation, which was further complicated by a legal procedure in which survivors have to file an application with the Judgement Execution Directorate to receive the compensation ordered by the Court.

The full text on this decision was only made available in June 2020, at which time the Supreme Court ordered the government to immediately appoint a Parole Officer (in accordance with the existing law) to give compensation to the survivor. The court also ordered the police to list the details of the perpetrator’s property.

Puja Bohara has now received the compensation amount determined by the court. But this case highlights the vulnerable situation of GBV survivors. Despite positive provisions in the existing GBV laws, survivors are forced to wait for relief and services until courts issue final decision in their cases. Even though the obligation to protect and ensure survivors’ rights falls upon the GoN, charities, CSOs and NGOs have been filling in the gap and providing immediate services to GBV survivors.

Recommendations

The following measures could be adopted in the short-term to help ensure the fund’s operation:

- The MoWCSC to support provincial and local governments by providing information on processes to requisition the funds from the federal GBV Elimination Fund, and their roles in requisitioning funds. These efforts should target the Executive Committee, Social Unit, Ward Chairs and Judicial Committee. Capacities to requisition funds should also be built.
- Provincial and local governments to work with service providers to help GBV survivors come forward to seek services and to facilitate their access to the GBV Elimination Fund.
- Local governments to requisition funds from the federal GBV Elimination Fund to support GBV survivors.
- Local CBOs, and women’s rights activists and service providers should be informed about the GBV Elimination Fund regulation, how to access the fund at the local level, and their role in advocating on behalf of survivors.
- The MoWCSC to conduct a self-review to repeal inconsistent aspects of the federal regulation, and then harmonize the regulation’s procedural aspects with the standards and criteria that were introduced in 2019.

The Child Fund

Overview

The Child Fund is intended to provide resources for services to rescue and rehabilitate children in emergency situations, as well as provide resources to manage relevant programmes.

According to legislation that was passed in 2018 to create the Child Fund, the fund is supposed to operate at all three levels of government – the federal, provincial and local – under the authority of each level’s laws. It is to be financed through a contribution-based system in which resources from the provincial and local levels are to be deposited at the federal fund and then transferred back to the provincial and local levels to set up the fund. However, no regulation has been passed to clarify the fund’s operating procedures, and the Child Fund has not been established at any level of government.

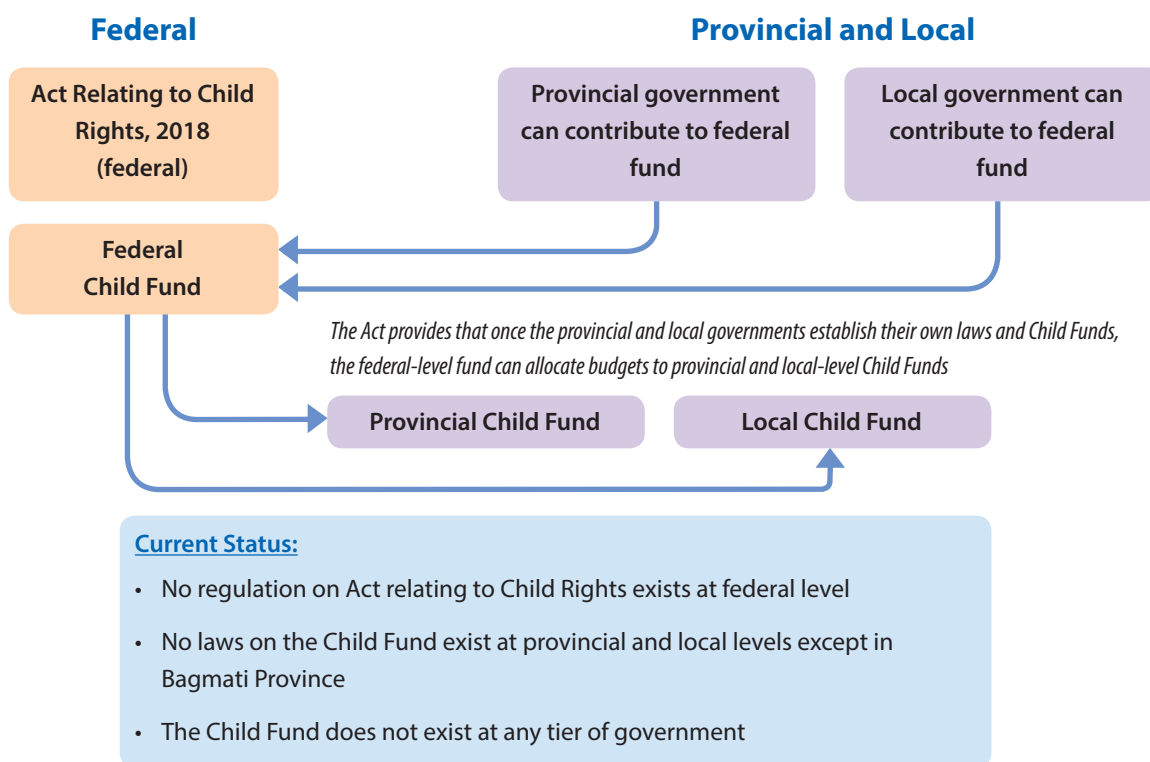
Analysis

The Act Relating to Child Rights, 2018 establishes the Child Fund independently at all three levels of the government through their respective laws and the management of their own resources. As for the sources of this fund and the fund flow mechanism, the current legal provisions mandate that local and provincial governments contribute an amount to the Child Fund at the federal level.²⁰ The federal government will then allocate budgets to the provincial and local governments for the Child

Funds once they are established at the respective levels, according to their own laws. The regulation to this Act has not yet been devised, and as a result, it is still unclear how the Act will be applied in practice, especially with regard to the operational modality and cost-sharing between/ among the different tiers of government.

This arrangement is challenging because it requires the provincial and local governments to contribute amounts to the federal fund, which would then allocate budgets back to them. Furthermore, it requires the provincial and local governments to establish their own funds and pass their own laws in order to be eligible to receive the budget. This could result in ‘non-uniformity’ among the funds at the provincial and local levels. For instance, a provincial government contributing to the federal fund could be prevented from receiving the budget for its own fund if it fails to devise the required legislation. In any event, the model provisioned by the Act cannot be currently implemented because the procedural aspect to operate the fund has not yet been defined by the regulations.

FIGURE 3: STRUCTURE AND IMPLEMENTATION STATUS OF THE CHILD FUND



²⁰ The Act relating to Children, Section 63(2): The fund referred to in sub-section (1) shall consist of the following amounts: (a) Amounts received from the Government of Nepal, Provincial Government and Local Level.

Recommendations

The federal government may wish to consider undertaking the following medium-term measures to operationalize the fund:

- Amend the Act Relating to Children and introduce regulations, to enable provincial and local governments to establish the funds without having to enact their own legislation.
- Provide resources and oversight to provincial and local governments for these funds.

The Rehabilitation Fund

Overview

The Rehabilitation Fund is intended to resource the provision of relief and rehabilitation services to survivors of trafficking related to prostitution. The fund finances the operation of rehabilitation centers to provide trafficking survivors with assistance such as immediate security, shelter, legal aid, medical treatment, psychosocial counselling, psychiatric services and economic support.

The Rehabilitation Fund was established under the federal Human Trafficking and Transportation (Control) Act, 2008, but the fund's budget has declined over the years. In 2018, the Act was amended to provide provincial and local governments with the option to establish their own funds by enacting their own legislation in line with the federal

Act. However, the Act's accompanying regulation has not been amended. The Rehabilitation Fund is currently dormant at the federal level. To date, no laws have been adopted at the provincial or local levels and no funds exist at those levels.

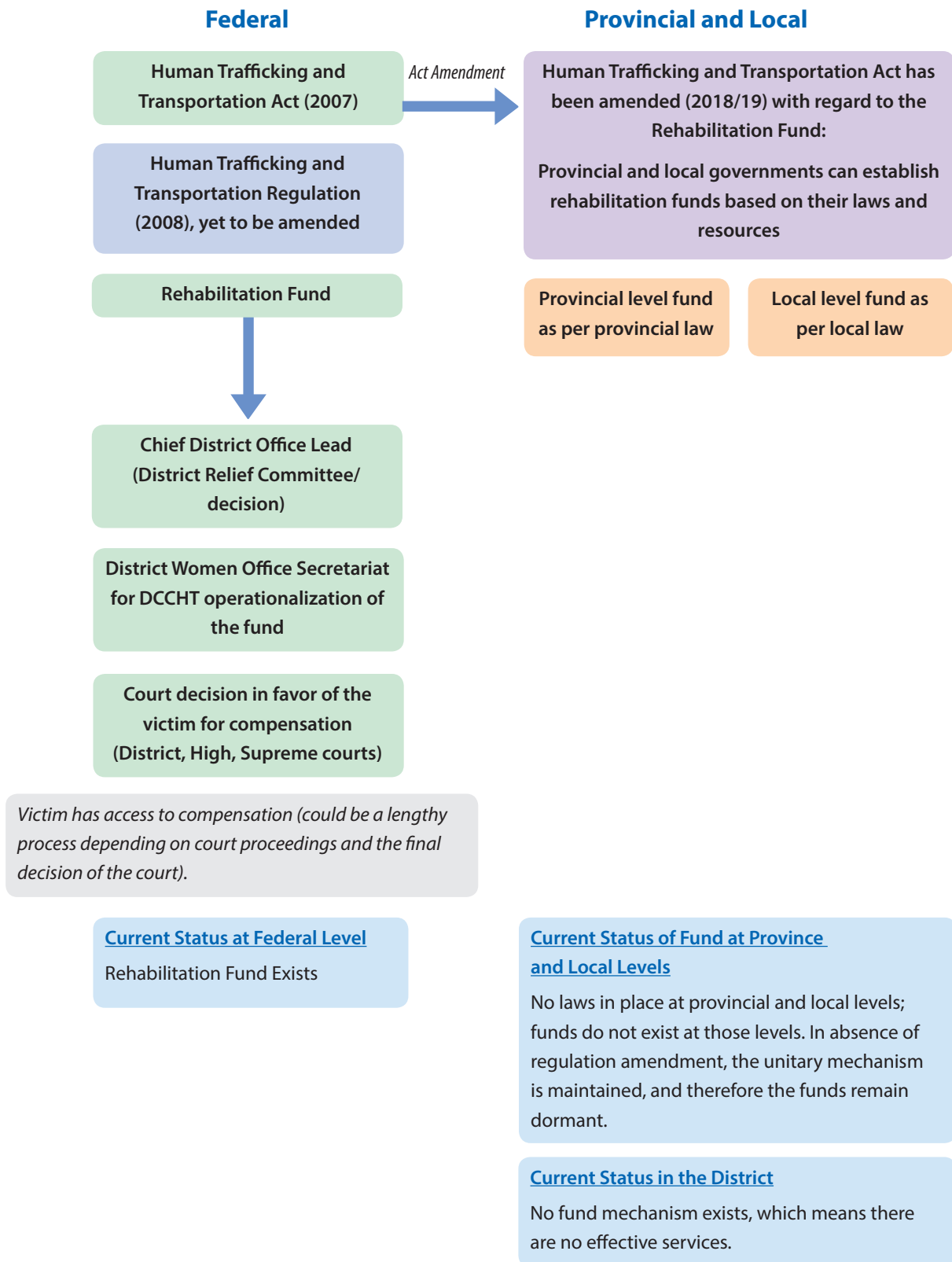
Analysis

The Rehabilitation Fund was established under the Human Trafficking and Transportation (Control and Punishment) Act, 2007 during the unitary structure of governance. The budget expenditure of the Rehabilitation Fund has declined over the years – from NPR 7.9 million in FY 2017/18), to NPR 2.6 million in FY 2018/19, to zero expenditure in FY 2019/20.²¹ This was because the fund flow mechanism had to transition from a unitary to a federal structure. It was also due to a merger of the District Women Office with the local government. During the transition fiscal year (i.e. FY 2019/20), the rehabilitation fund remained dormant. As a result, many rehabilitation centers have suffered serious problems in terms of resources and their ability to provide services.

The federal government (MoWCSC) amended the Act in 2018 to provide both provincial and local governments with the option to establish their own funds by enacting their own legislation in line with federal laws. However, the regulation has yet to be amended and still maintains unitary in nature. The resulting impact is shown in Figure 4 below:

²¹ Source: MoWCSC

FIGURE 4: STRUCTURE AND IMPLEMENTATION STATUS OF THE REHABILITATION FUND



Recommendations

In the short term, the federal government may wish to consider the following measures:

- Providing adequate allocations to the fund, which will help ensure that the rehabilitation centers (managed by both the state and civil society) are able to function.
- Informing members of the Executive Committee, Women and Social Unit, Judicial Committee, Ward Chairs and elected ward members of the municipalities about the Rehabilitation Fund, and their roles in accessing resources from the fund.

In the medium term, the federal government may wish to consider the following measures:

- Amending the Human Trafficking and Transportation (Control) Act, and introducing regulations to enable provincial and local governments to establish funds without having to enact their own legislation.
- Providing resources and oversight for these provincial and local funds.

The Service Fund

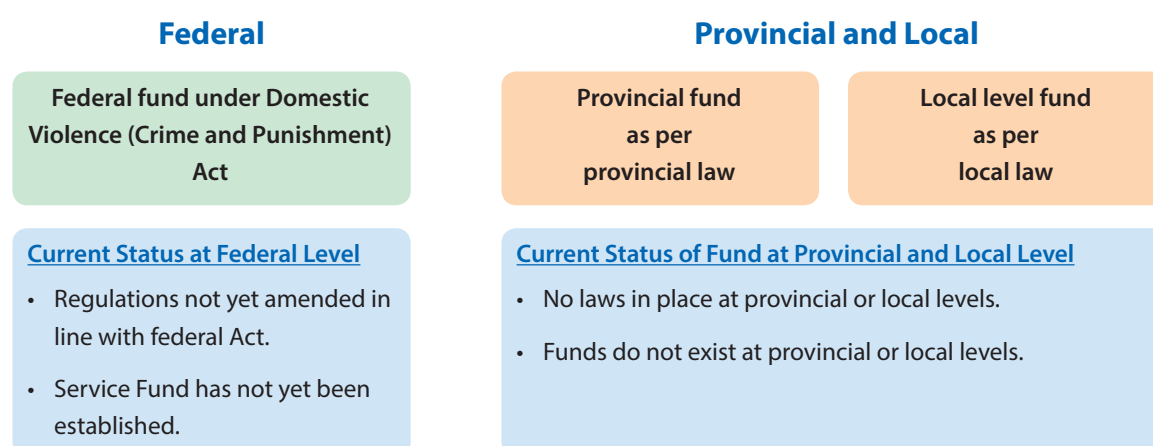
Overview

The Service Fund is intended to resource service centres that provide security, legal aid, medical treatment, psychosocial support and other rehabilitative services to domestic violence survivors. The Domestic Violence (Offence and Punishment) Act of 2009 authorized the creation of a Service Fund at the federal level. It also gave the provincial and local governments the option of establishing their own Service Funds by enacting laws in line with the federal Act. The regulation accompanying the federal Act has yet to be amended. The Service Fund has not been established at the federal level, and at the provincial and local levels, no laws have been adopted and no funds have been established.

Analysis

The Domestic Violence (Offence and Punishment) Act, 2009 provides provincial and local governments with the option to establish a Service Fund by enacting their own laws in line with federal laws. *The Rehabilitation Fund and the Domestic Violence (Offence and Punishment) Rules, 2010* have yet to be amended and still maintain unitary regulations. Figure 5 below highlights the status and limitations of the existing modality.

FIGURE 5: STRUCTURE AND IMPLEMENTATION STATUS OF THE SERVICE FUND



BOX 2: IMPACT ON SURVIVORS

Even with NGO Help, Survivors Struggle due to Dysfunctional Government Relief Centers

Rama (pseudonym) got married to Bhuwan (pseudonym) while she was still studying in high school. Fierce-natured, Bhuwan did not allow Rama to talk to any men within or outside the family after their marriage. When their son was six months old, Bhuwan enrolled in the Indian Army. While away, he married another woman without discussing it with Rama. Rama only came to know about Bhuwan's second marriage after he had one son and one daughter with his second wife. During this period, Rama never received any financial support from Bhuwan.

Rama was later forced to leave the house with her children. She moved into her neighbour's house and started tailoring to earn a living with a sewing machine she bought through a loan. When Rama received news that her husband was now returning home with a retirement pension, she took her two children and went to Banaras (India) to register as a wife of Bhuwan. Once there, Bhuwan severely beat her. He broke three of her teeth and six of her ribs and fractured her shoulder. She might not have survived if it weren't for some neighbours who stopped Bhuwan and took Rama to a hospital for treatment. Since her husband threatened to kill her and their children if he found them, they sneaked back to Surkhet through Gorakhpur.

Bhuwan filed a divorce case in court. Rama sought out a female lawyer who helped her receive financial support from an NGO. Eventually, Rama succeeded in halting her husband's pension and claiming her and her children's rights to food and shelter.

Rama is now receiving legal aid support from an NGO and is engaged in its Victims' Network where she participates in discussions with other women who have suffered domestic violence.

This case highlights that the survivor had to seek legal help from an NGO due to the lack of the Service Fund, which was established under the Domestic Violence (Crime and Punishment) Act, 2009. While there are many domestic violence cases in which the survivor barely survives even with NGO support, many others continue to suffer from abuse due to lack of awareness or access. It's likely that these continued impediments to protecting domestic violence survivors wouldn't exist if the legal provisions of the Service Fund had been properly implemented when they were introduced 11 years ago.

Recommendations

In the medium term, the federal government may wish to consider the following measures:

- Amending the Domestic Violence (Offence and Punishment) Act, and introducing regulations to enable provincial and local governments to establish funds without having to enact their own legislation.
- Providing resources and oversight for these funds.

The Victim Relief Fund

Overview

The Victim Relief Fund is a gender-neutral fund that focuses on all crime victims, including GBV survivors, and is intended to provide compensation and immediate relief. In 2020, several regulations were passed directing the Supreme Court to establish this fund and provide standard operating guidelines for it within the unitary structure. The Victim Relief Fund was established in June 2020 under the unitary structure, instead of the federal structure under the leadership of the judiciary.

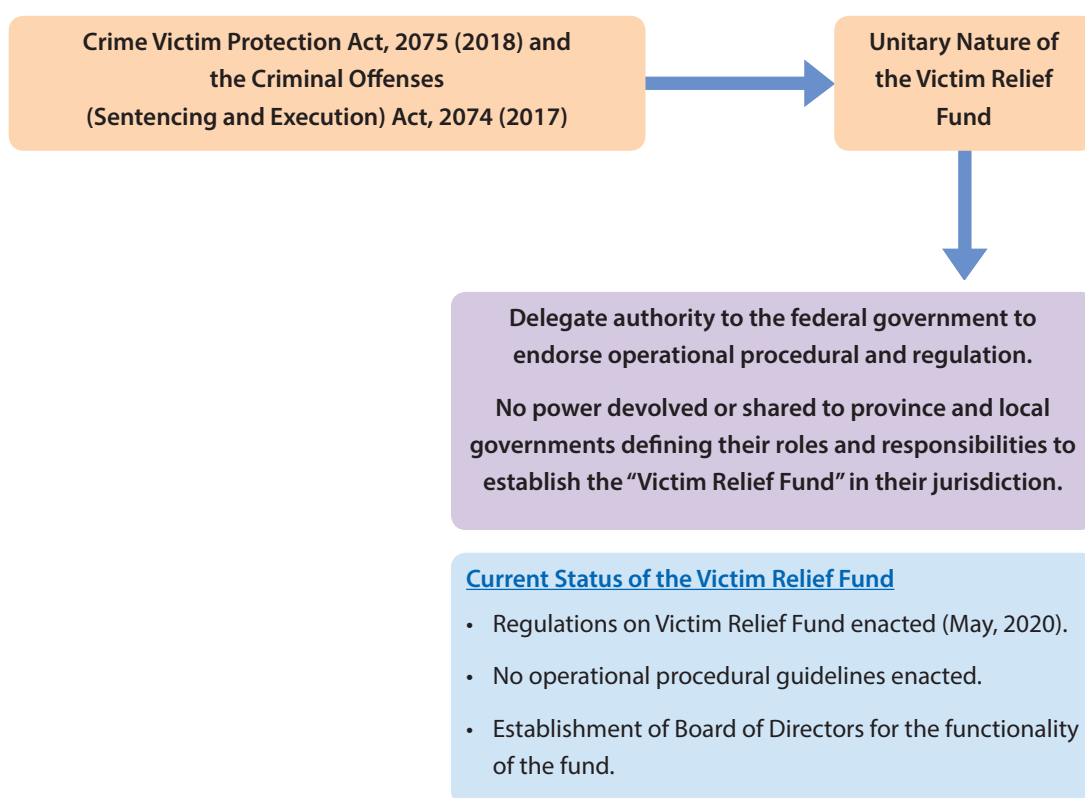
Analysis

The Crime Victim Protection Act, 2018 and the Criminal Offences (Sentencing and Execution) Act, 2017 (also known as Sentencing Act) both provision for the Victim Relief Fund.²² Section 2(d) of the Crime Victim Protection Act refers to the ‘fund’ as the Victim Relief Fund established in accordance to the existing law. The Sentencing Act further specifies the source²³ of the fund. The Act also delegates rights to the executive branch of the federal government to devise the operational procedure for the

Victim Relief Fund²⁴ covering the following five key areas:

- The procedural aspect of the operation.
- The classification of victims.
- The basis of the relief amount that the fund provides to victims.
- The maximum compensation amount.
- The fund release procedure.

FIGURE 6: STRUCTURE AND IMPLEMENTATION STATUS OF THE VICTIM RELIEF FUND



²² Section 2(d) of the Crime Victim Protection Act, 2018 and Section 48(1) of the Criminal Offences (Sentencing and Execution) Act, 2017.

²³ Sec 48 (2) and (3) Government of Nepal shall credit into the fund established pursuant to sub-section (1) fifty percent of the amount recovered for a fine under the court or of the amount paid by an offender sentenced to imprisonment as a fine in lieu of such imprisonment, in accordance with the Penal Code. (3) In addition to the amount to be credited pursuant to sub-section (2), any amount as so provided by law or received from the Government of Nepal or any other source shall be credited into the fund under sub-section (1).

²⁴ Sec 48 (4) of the Criminal Offences (Sentencing and Execution Act, 2017.

The Act mentions that the three tiers of government can develop joint plans and programs to render services to crime victims based on available resources,²⁵ but does not define coordination mechanisms for the governments to collaborate. The Act on “Management of Inter-relationship among Federal, Province and Local Level, 2020” currently passed in federal parliament (through coordination between federal, provincial, and local governments) has been managed in several ways that can be effectively utilized by respective governments and their agencies. However, it is not specific about the Victim Relief Fund.

Neither of the federal laws related to the Victim Relief Fund provide provincial and local governments with any information about establishing, managing, and operating the fund, especially with regard to power or responsibility (for instance who should be held accountable for resource sharing and oversight roles). However, the “Thematic Committee” of the National Coordination Council is expected to clarify the inter-governmental coordination mechanism. These laws also do not provide any substantive roles and responsibilities to the provincial and local governments. Furthermore, the executive authority of the federal government does not have any legal basis to define the roles and responsibilities of the provincial and local governments on how they must implement and operate the funds (even through the enactment of regulations and operational guidelines).

In June 2020, the Ministry of Law, Justice and Parliamentary Affairs (MoLJPA) issued the Victim Relief Fund Regulation. In line with the provisions of the Sentencing Act and Crime Victim Protection Act, this regulation is of a purely unitary nature – it directs the Supreme Court to establish the Victim Relief Fund. While the regulation mentions that the fund will be released to the District Court from the central committee, it does not incorporate the High Court. Even in the case of the District Court, the regulation only mentions that a separate account should be maintained by the court, rather than established as a separate fund. According to the new regulation, the victims can access

the fund, including the interim relief or compensation, only upon the court ordering the provisions of the regulation. Therefore, it does not ensure the rights of victims to receive immediate relief support before their court process. Moreover, the fund is gender-neutral; these laws do not consider gender norms and unequal power relations that impact diverse groups of women victims²⁶ and their ability to access these funds. In addition, Rule 17 of the regulation defines the amount of compensation and relief to the victim under various titles, which is contradictory to Sec. 31 of the Crime Victim Protection Act, 2018, as this provision provides the court with broader scope to determine compensation. Nonetheless, Sec 48 (4) of the Criminal Offense (Sentencing and Execution) Act, 2017 delegates rights to the executive branch of Nepal’s federal government to define the maximum amount of compensation under the operational procedure for the Victim Relief Fund, which makes the provisions contradictory to each other.

Recommendations

The federal government may wish to consider undertaking the following actions to operationalize the fund:

Short-term:

- Amend the existing regulations, and address gaps and introduce standard operating procedures to facilitate the fund’s operation.

Medium-term:

- Amend the Crime Victim Protection Act and the Criminal Offences (Sentencing and Execution) Act to federalize the fund.
- Introduce regulations to enable provincial and local governments to establish the funds without having to enact their own legislation.
- Provide resourcing and oversight to provincial and local governments for these funds.

²⁵ Section 19(2) of the Crime Victim Protection Act, 2018.

²⁶ Marginalized groups recognized by the government, which include women, Dalits, ethnic minorities, intersectional minorities, people from economically backward and geographically backward regions, and those suppressed by caste, class and societal constraints.

The Judicial Fund

Overview

The Judicial Fund is intended to strengthen the financial independence of the judiciary. It was designed to provide resources for rewards under court orders, refunds of court fees, fines and bails deposits, construction and conservation of court buildings, and other matters. However, the legal process to create the fund was stalled after 1986 and the final step required to set up the fund (publishing its Act in the *Nepal Gazette*) was never taken. Once established, the fund could support the judiciary in developing GESI-responsive infrastructure in the courts, including gender desks and child and survivor-friendly facilities. The Judicial Fund does not currently exist.

Analysis

The Judicial Fund established under the Judicial Fund Act, 1986 suffers from non-establishment and dormancy; the notice required for enacting it has not yet been published in the *Nepal Gazette*.²⁷ This dormancy can be attributed to inactivity on the part of the federal agencies. Execution of the Act is very important for the financial independence of the judiciary; however, the current practice of depositing the collected revenue from the courts to the national treasury has limited the financial independence of the judicial sector. The government has not moved forward

in executing the Act. Further, the judiciary has not been proactively attending to this issue, and stakeholders involved in this process have not initiated any efforts to change it.

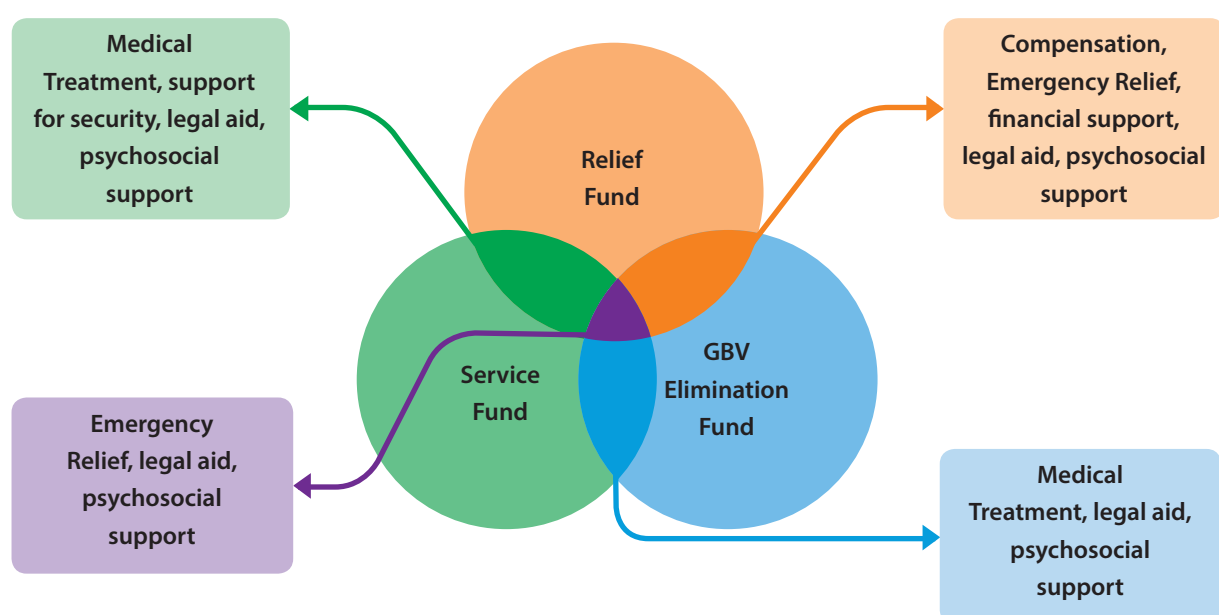
Recommendation

- Civil society and members of the judiciary should advocate for the enactment of the Judicial Fund Act, with the necessary amendments.

2.3 Overlap among the GBV Funds

As this study has outlined, Nepal has developed a wide range of different legislative frameworks and corresponding funds and response mechanisms to assist survivors of GBV, as well as crime victims more generally. However, there are many overlaps among these funds that produce complexities and ambiguities, and also raise concern about a possible duplication of services. For instance, while the Service Fund is limited to domestic violence survivors, the Rehabilitation Fund is limited to survivors of trafficking, and the Child Fund is limited to child survivors, the nature of their services overlap in multiple ways with those of the GBV Elimination Fund and the Victim Relief Fund, which both have broader scopes.

FIGURE 7: FUND SERVICE OVERLAP (AS PER THEIR LEGAL PROVISIONS)



²⁷ Section 3, Judicial Fund Act, 2043 (1986).

It is also important to recognize that establishing multiple mechanisms for multiple funds at the local level requires financial and human resources, along with legal and technical capacities, that local governments may not possess. As stated by one official of Ratuamai Municipality in Province 1, establishing multiple funds is simply beyond the capacity of local governments, especially during Nepal's continued transition to federalism.

One long-term solution could be to replace some of the existing funds with a single "consolidated fund," which would seek to address the current overlaps and reduce the possibility of duplicating services. There are challenges involved in this approach, but on balance the benefits of fund consolidation would outweigh them.

Challenges:

- A consolidation process to establish a single GBV Fund at all three tiers of government would consume extensive time and resources, which could discourage the federal government from initiating the process.
- The MoWCSC, other ministries and CSOs would all need to come together to work towards consolidation. However, conflicts of interest could be perceived between different governmental bodies, and between different thematic civil society organizations (working on specific issues such as anti-human trafficking, domestic violence or child rights). For example, an anti-trafficking organization that was already receiving funds from the Rehabilitation Fund could see consolidation as a potential threat to the continuity or level of its funding. Concerns of this nature could make it difficult to achieve the cooperation and coordination needed for the fund consolidation process.
- At present there is limited knowledge about the existing funds and the nature of services they support. There is also a failure among all tiers of government and stakeholders to give priority to GBV-related issues. These factors could impede recognition of the importance of fund consolidation, and delay the process of establishing a consolidated mechanism.

Benefits:

- A consolidated fund to address the funding requirements of all forms of GBV – supported by strong and clear governance mechanisms, service delivery protocols, and adequate funding (the pooling of currently scattered resources) – could contribute toward addressing provincial and local governments' limited capacity to mobilize their own resources and expertise.
- In the federal context, the creation of a one-door system (one consolidated fund) would promote cooperation and shared responsibility among the three levels of government, thus paving a path for collaboration and coordination in addressing the fundamental rights of survivors, while also ensuring accountability.
- Consolidating the funds could also benefit the federal government by resolving the duplication of relief services and merging multiple institutions, which would optimize human resources. The consolidated fund would also streamline scattered resources into one place.
- Similarly, a consolidated fund could provide centralized data that could lead to stronger and transparent evidence-based policies, as well as better planning, service delivery, and shared resources among different tiers of government.
- A consolidated fund would allow space for engaging both the executive branch of authority and the parliamentary process by amending multiple laws and regulations at the federal level.

Recommendation

The federal government may wish to consider the consolidation of these funds as a long-term measure, to help reduce overall costs, time and administrative burden, prevent a scattering of resources, and improve survivors' access to services. However, in the short- and medium-term, the specific recommendations provided above for each individual fund should be implemented.

2.4 Non-Inclusivity of the GBV Funds

Services for GBV survivors other than women and children are lacking in both law and practice in Nepal. Even though the current laws, such as the Domestic Violence Act, 2009, Human Trafficking and Transportation Act, 2007 and the Crime Victim Protection Act, 2018 are gender-neutral, this has not translated into inclusive service provision. The service mechanisms established under these laws only focus on women, which reinforces the notion that only women and girls are victims of human trafficking, domestic violence, and other forms of GBV. They neglect other genders and identity groups that face similar violence, i.e. men and LGBTIQ+ persons. Some laws, such as the GBV Elimination Fund Regulation, specifically mention only women as victims. Other laws mention 'victims' in general, but the failure to specifically mention other genders has a definite tendency to make the GBV laws non-inclusive. The laws and service mechanisms have overlooked the impact of harmful gendered social norms, patriarchy, and intersectional discrimination on survivors. Overall, the policy overlooks intersectionality, which could result in officials misinterpreting the laws or intentionally excluding certain marginalized communities from services. Inclusivity is a matter that should definitely be addressed when the long-term consolidation of the GBV funds is being considered. At the consolidation stage, the specific focus on and references to women and girls should be maintained, but other genders and identities should also be explicitly included.

2.5 Gender Equality-Related Funds

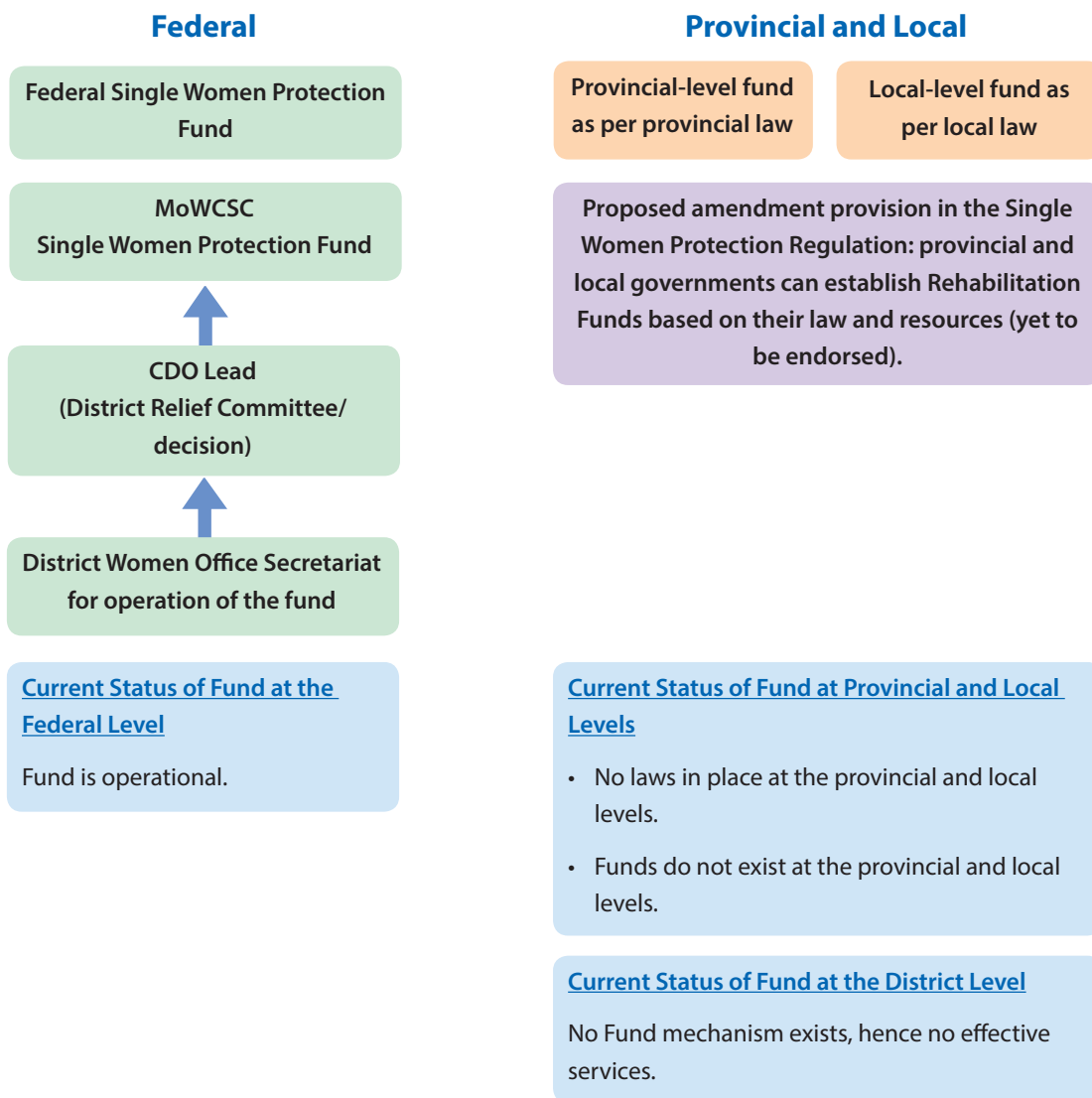
The study has also analysed six funds related to gender equality from an implementation perspective: the Single Women Protection Fund, the Town Development Fund, the Poverty Alleviation Fund, the Social Security Fund, the Local Consolidated Fund, and the Women Entrepreneurship Fund. With the exception of the Local Consolidated Fund and Single Women Protection Fund, the remaining four funds have not yet amended their governance structure to fit into the federal context.

The Single Women Protection Fund

The Single Women Protection Fund is intended to resource the provision of awareness programmes, education, skill development and self-employment training for unmarried, divorced and widowed women.

The fund was established through a regulation that was passed by an executive decision. Amendments to this regulation, which were in the final phases of endorsement at the time of the study, specify that provincial and local governments must use their own resources to manage the fund. It should be noted that – as with the GBV Elimination Fund – there has been an attempt to create substantive powers through regulations alone, which is legally problematic. In the absence of an Act, the provincial and local governments are not required to establish and operationalize their own funds. If the current amendments to the regulation pass, they will be vulnerable to legal challenge. The Single Women Protection Fund currently exists at the federal level, but is not fully operational. No laws have been adopted at the provincial and local levels and no funds exist at those levels.

FIGURE 8: STRUCTURE AND IMPLEMENTATION STATUS OF THE SINGLE WOMEN PROTECTION FUND



Short-Term Recommendation

- The MoWCSC to review and revise substantive provisions in the proposed regulation.

The *Poverty Alleviation Fund* is intended to resource services to uplift the economic and social status of low-income individuals, families and communities. The fund’s board is currently defunct and there are no plans to establish a new board. As a result, the fund’s services have stopped. In interviews conducted with the Office of the Prime Minister and Cabinet of Ministers (OPMCM), officials stated that informal talks were being carried out about amending the Poverty Alleviation Fund in the federal context. According to an officer from the secretariat of the Poverty Alleviation Fund, the Prime Minister’s office has recently decided to form a study team to reform the

Act relating to the fund in the federal context. The GoN, according to the officials at OPMCM, is also considering merging and bringing various programs and activities related to poverty alleviation under the scope of the Poverty Alleviation Fund. Their belief is that this would help integrate and mainstream the federal government’s interventions through a one-door policy, which has been done with the Karnali Development Project, the Prime Minister’s Employment Program, and so forth.

The *Contributory Social Security Fund* is intended to resource policies and plans to support employer and employee contribution-based social security protection schemes, and includes special provisions relating to maternity. The *Town Development Fund* is intended to support municipal improvement initiatives.

Legislation to establish both of these funds defines their respective scopes under the concurrent powers of the federal, provincial and local governments. No developments towards amending these laws in the federal context have been made, and hence these funds continue to exist in a unitary structure. An official at the Ministry of Labour, Employment and Social Security said that the Ministry has had a strong opinion about maintaining the unitary structure of the Contributory Social Security Fund ever since it was introduced and established under the Contributions-Based Social Security Fund Act, 2017. However, they are planning to establish their branch offices at the provincial levels.

The *Women Entrepreneurship Development Fund* is intended to support the provision of services to facilitate women's entrepreneurship, including grants and loans for developing cottage, domestic and small industries. In interviews conducted with the OPMCM, officials stated that informal talks were being carried out to amend the fund in the federal context.

In the case of the *Local Consolidated Fund*, all the local governments the study team visited in Province 1, Province 2, and Sudurpaschim Province have established both the fund and the local legislation/regulation to mobilize the matching fund.

Recommendations

The federal government may wish to consider taking the following steps:

- Amending the Town Development Fund Act, Poverty Alleviation Fund Act, and Contributory Social Security Act in accordance with the federal structure, which will help establish funds at all tiers of government.
- Amending the Procedural Guidelines for the Women Entrepreneurship Development Fund to facilitate access at the local level.

SECTION 3:

CONCLUSION AND MOVING FORWARD

3.1 Conclusion

Nepal's federal government has introduced a wide range of funds intended to resource essential services for GBV survivors and promote gender equality through economic empowerment. Critical evidence collected in this study suggests that there are multiple impediments to the effective operation of these funds. While some can be attributed to the government's recent transition to federalism, the central government was already not prioritizing the implementation of these funds prior to the change in government structure. The lack of political will and prioritization is the most significant barrier and it continues to be an implacable one even after the transition. For example, even though the Service Fund under the Domestic Violence Act, 2009 was provisioned before the introduction of Nepal's new constitution (which introduced federalism), it never became functional. Furthermore, legislation that was enacted before the promulgation of the constitution in 2017 did not feature guidelines for establishing the funds and their operational modality. An example is the Child Fund, which remains in a state of non-actionable standing (the fund has not been established yet). A majority of the GBV funds this study examined – four out of six – remain in limbo.

The funds that *were* established – the GBV Elimination Fund and the Rehabilitation Fund – only exist at the federal level and do not have operational guidelines for establishing them at the provincial and local levels. This suggests that the government does not consider GBV-related issues a top priority. These funds are also not fully functional at the federal level and not accessible to the groups they target; the intended beneficiaries know very little about these funds and geographical remoteness has compounded the challenge. Attempts to enact these funds at the provincial and local levels through recent amendments are also legally ambiguous, and questions of legitimacy hover over the process.

The federal government has expressed excitement about

some funds, while neglecting others. One example discussed in the study are the funds under PWUP and the Judicial Fund, which have not been established even 33 years after they were drafted. A pattern has emerged: funds that were mandated by statutes were neglected for implementation and operation, but the funds established under executive decisions of the government (such as GBV Elimination Fund) were implemented. This is the case despite the fact that the funds established under constitutional/statutory mandates are more permanent than those established through the executive decisions.

The recent amendments to the Domestic Violence (Crime and Punishment) Act, 2009 and the Human Trafficking and Transportation (Control and Punishment) Act, 2007 give powers to provincial and local governments to establish the Service Fund and the Rehabilitation Fund at their respective levels. The regulations for these two laws, however, have not yet been amended in line with changes made to their parenting laws. These amendments also require provincial and local governments to enact their own laws and manage their own resources in order to establish the funds. However, there are challenges to making provincial and local laws compatible with the principles of federalism envisioned in the constitution: namely, coordination, cooperation, and co-existence among the three tiers of government. The recently amended provisions, on the other hand, lack these principles. Since Nepal's federalism is still nascent, the federal government is expected to provide provincial and local governments with resources for the funds, technical support and oversight functions to help build their capacity.

This study found that overlap among the funds greatly contributes to ambiguity among duty-bearers and right-holders alike. The Rehabilitation Fund and the Service Fund, for example, have overlapping sections of applicability with the GBV Elimination Fund and the Victim Relief Fund. Because there are multiple funds with overlapping scopes and services, there is a heightened chance of duplications and a strong possibility that

certain target groups will benefit from funds, while other groups will be excluded.

At the provincial and local levels, many government officials and other stakeholders exhibit a poor understanding of the scope and operation of the funds. Recent amendments to some of the funds' parenting Acts open up the possibility of enacting local and provincial laws, but limited resources and technical capacity – coupled with a poor understanding of the funds at the provincial and local levels – may prevent the fund mechanisms from being established. Our field visit uncovered that little discussion has taken place at the federal, provincial, district and local levels about establishing these funds within the federal structure. Nevertheless, most participants at the provincial and local levels resolutely endorsed the need for establishing GBV funds at the local level, emphasizing that GBV survivors live in the community. Since many female survivors face significant barriers in accessing justice and services (restricted mobility, a lack of services at the local level, geographic proximity, etc.), establishing these funds at the local level would enable local governments to most effectively mobilize the funds, share responsibility, and properly address the needs of GBV survivors.

The failure to establish these funds at the provincial and local levels has deprived GBV survivors of their fundamental rights to compensation and social rehabilitation. Not having access to the services these funds provide can increase re-victimization and vulnerability, and contribute to more social stigma. At present, the vacuum is partly filled by CSOs that advocate for the welfare and wellbeing of GBV survivors, but the long-term sustainability of this arrangement is questionable. Also, CSO services are not available to all survivors, and survivors are often unaware of their right to acquire legally provisioned services from the government. A much preferable mechanism would be one driven by the government.

Consolidating these funds could also help minimize duplication, improve survivors' access, and contribute towards more effective resource management. However, bureaucratic, legislative, and political hurdles would greatly impact the process of consolidating these

funds. Consolidating them would require the federal government to enact and amend several laws. Multiple issues would also need to be addressed under this process to ensure the effective operation of the funds, including: structure, source, fund flow, the responsible institution/ authority, target groups, procedures to access, and oversight mechanisms. There would need to be strong political will and bureaucratic leadership to initiate this process. Consolidation could begin by redirecting the resources of all GBV funds into the Victim Relief Fund since it has the widest scope of all the funds.

At present, GE related funds only exist at the federal level. With the exception of the Single Women Protection Fund, there are no legal reforms in development to operate them at the provincial and local levels. The Single Women Fund also lacks the legitimacy needed for it to operate, due to the absence of a parenting Act. Legislation related to the Town Development Fund and the Poverty Alleviation Fund is gender-neutral. Although, the respective ministries²⁸ are making some progress in reviewing these laws in the federal context, the stakeholders at the provincial and local levels are unaware of the existence of the funds. They are also unaware that progress has been made at the federal level to adapt these funds to the federal structure.

The non-devolution of the GE related funds in the federal context prevents them from functioning and being accessible to their target groups. This is, however, not the only issue that prevents these funds from being established at the federal, provincial and local levels. As discussed, there are other contributing factors: a lack of knowledge about the funds and their processes; limited capacity of provincial and local governments; weak advocacy from interest groups; and little coordination and collaboration among state, judicial, and non-state actors.

As this study has underlined, the human cost of the funds' dysfunction is painfully high. So many essential services and forms of support intended to respond to GBV and advance gender equality have been effectively stalled because the funding cannot flow. Despite the rights that have been clearly enshrined in Nepal's constitution and legislation, women and girls continue to be deprived of

²⁸ Ministry of Urban Development for the Town Development Fund and the Office of the Prime Minister and Council of Ministers for the Poverty Alleviation Fund.

access to shelters, safety from violent situations, financial compensation for crimes committed against them, legal assistance, psychological and physical rehabilitation and economic support to re-establish their lives. Bringing the funds into full operation must be considered a matter of great urgency, and given the highest priority.

3.2 Moving Forward

In light of the complex challenges involved in making these funds operational, the study team has envisioned

different levels of engagement in the short-term, medium-term and long-term. The specific recommendations this study has made for each of the individual funds in Section 2 are brought together here, to provide a roadmap of what the operationalization process will involve over time.

The short-term strategies primarily focus on generating greater awareness about the funds on the part of all stakeholders, building capacity and knowledge (especially regarding roles and responsibilities at the three levels of government), and undertaking advocacy to stimulate reform efforts.

Table 2: Short-Term Recommendations

GBV Elimination Fund Rehabilitation Fund Single Women Protection Fund	Federal and local governments	<p>The MoWCSC and the respective local and federal levels of the government to raise awareness on the availability of the funds and how survivors can access the funds. These efforts should target the Executive Committee, Social Unit and Judicial Committee, and vulnerable groups and survivors.</p> <p>The MoWCSC to provide the provincial and local governments with information on how to requisition funds from the federal GBV Elimination Fund.</p> <p>The MoWCSC to conduct a self-review to repeal legally inconsistent provisions in the regulations of the GBV Elimination Fund and the Single Women Protection Fund.</p> <p>The federal government to ensure adequate resource allocations to the Rehabilitation Fund, which will help ensure that the rehabilitation centres (both state and civil society managed) are functioning.</p>
	Provincial and local governments	<p>Both of these government levels to work with service providers to help GBV survivors come forward to seek services and access the GBV Elimination Fund.</p> <p>Local governments to requisition funds from the federal GBV Elimination Fund to support survivors of GBV.</p>
	Civil society and interest groups	<p>CSOs that are working against GBV and for gender equality should raise awareness among civil society and interest groups. This will help enhance their capacity to engage with the MoWCSC to repeal inconsistent provisions in the regulations. Additionally, at the federal level, engagement with the Ministry of Finance and the GRB Committee will be important.</p> <p>Advocacy with MoWCSC to support the review and repeal of inconsistent provisions in the regulations.</p> <p>CSOs that are working against GBV and for gender equality should raise awareness on the availability of the funds and how survivors can access them. These efforts should target the Executive Committee, Social Unit and Judicial Committee, and vulnerable groups and survivors.</p> <p>Advocacy with the NWC to monitor the implementation of these funds in line with international and national commitments on gender equality.</p>

The medium-term strategies involve amending the laws and regulations that govern six of the funds, in order to establish procedural guidelines and fund flow mechanisms in the federal context. The current provisions for the Child Fund, the Rehabilitation Fund, and the Service Fund make the provincial and local governments responsible for managing financial resources for the funds at their respective levels. However, the local and provincial tiers do not have the capacity to generate resources for the fund, nor do they possess the technical capacity needed to enact their own laws and legislations for each fund. Therefore, the federal government needs to amend the current laws and regulations related to

establishing the funds at the provincial and local levels. This would ensure that services are consistent across different provincial and local governments and that victims are able to access their rights from the closest tier of government to them. The Act and regulation related to the Victim Relief Fund are of a unitary nature and also need to be amended in accordance with the federal structure. The Poverty Alleviation Fund and the Town Development Fund currently exist at the federal level, but are waiting to be devolved to all levels of the government in the federal context. This process will require legislative and regulatory amendment.

Table 3: Medium-Term Recommendations

Child Fund	MoLJPA, Law Commission, and relevant line ministries	The relevant line ministries to review the respective legislation and prepare the amendment bill.
Rehabilitation Fund		The MoLJPA to review the amendment bill and then submit it to Parliament.
Service Fund	Civil society and interest groups	Civil society and interest groups should advocate for the amendment of the existing laws and regulations.
Victim Relief Fund		With technical support from experts, CSOs working against GBV and for gender equality should support the MoLJPA and other line ministries (such as MoWCSC) in drafting the bills and regulations.
Women Entrepreneurship Fund	Federal Government	Amend procedural guidelines to facilitate access at the local level.
Town Development Fund	Federal Government	Amend these funds' respective Acts in accordance with the federal structure, to help establish the funds at all levels of government.
Poverty Alleviation Fund		
Contributory Social Security Fund		

Over the long-term, consolidation of the overlapping GBV funds could be pursued to prevent duplication of services and ensure that resources are being utilized most effectively. In the consolidation process, the Victim Relief Fund could serve as the overarching fund into which the GBV Fund, the Rehabilitation Fund, the Service Fund and the Child Fund are merged. However, fund consolidation would be a complex, time-consuming and resource-intensive process. Given the pressing need to significantly improve the delivery of services, consolidation should only be considered as a long-term measure, to be undertaken after the implementation of the short and medium-term measures outlined in this study. Furthermore, it is absolutely essential to ensure that the funds that are currently functional continue to

operate effectively, and that they keep providing support while necessary reforms are pursued.

Resolute and dedicated action is needed to bring all of the GBV and GE related funds into full operation, and to ensure the continued operation of functioning funds. This dedication will be particularly important for the GoN, given its strong commitment to GRB and the steps taken thus far to capture and track budget allocations for gender equality. It will also make a substantial contribution towards achieving Goal 5 of the Sustainable Development Goals and, perhaps most crucially, to fulfilling constitutional and international human rights obligations to the women and girls of Nepal.



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Swiss Agency for Development and Cooperation SDC
स्वीस सरकार विकास सहयोग एसडीसी



HIDR NEPAL

Himal Innovative Development & Research Pvt. Ltd.



Working for Non-discrimination and Equality