

FIELD BULLETIN

Violence against Women: a study on underlying causes and survivor's challenges to justice in Udaypur district

Introduction

Every year millions of women and girls worldwide suffer from violence or other forms of abuse. This violence is not confined to a specific culture, region or country, or to particular groups of women within a society, including in Nepal.¹ The 2011 Demographic and Health Survey shows that one in three women aged 15-49 have experienced physical violence since age 15 and nine percent of these women have experienced physical violence within the past 12 months.²

In December 2012, an incident involving a female migrant worker returning home marked the starting point of the Occupy Baluwatar campaign: a homegrown social movement in response to the way authorities handled this case, in particular, and the continuance of violence against women in Nepal, in general. The incident, one among many that month, occurred during Nepal's commemoration of the global event of '16 days of activism against gender based violence'. At the same time an incident in India involving a violent attack on two students (one of whom was a young woman who did not survive her injuries) became a high-profile case internationally and was closely followed in Nepal as well. Ever since, Nepal's national media has been drawing increased attention toward incidences of violence against women across the country. On February 14, coinciding with the fiftieth day of the Occupy Baluwatar movement, a large number of Nepali people joined nearly 200 countries worldwide to rise up and speak out against violence against women during the event of 'One Billion Rising'.

Since the end of the conflict the Government of Nepal has made several commitments to address violence against women. In the 2006 Comprehensive Peace Agreement both parties agreed on "the need to specially protect the rights of women and children and the need to stop all forms of sexual exploitation and other forms of misbehavior on women and child labor and other violent acts against children [...]"³ The 2007 Interim Constitution states that "no physical, mental or other form of violence shall be inflicted on any woman, and such an act shall be punishable by law".⁴ Nonetheless, a recent government study on gender-based violence (of which violence against women is a sub-category) revealed that almost two-thirds of women interviewed were unaware of any existing legislation related

¹ UN website, Resources for Speakers on Global Issues: Ending Violence against Women and Girls. Available at: <http://www.un.org/en/globalissues/briefingpapers/endviol/index.shtml>.

² The Nepal Demographic and Health Survey 2011. Report of the Population Division of the Ministry of Health and Population. Available at: <http://www.mohp.gov.np/english/publication/NDHS%20-%202011%20Preliminary%20Report.pdf>.

³ Please refer to article 7.6.1 of the Comprehensive Peace Agreement. Available at: <http://www.satp.org/satporgtp/countries/nepal/document/papers/peaceagreement.htm>.

⁴ Nepal's Interim Constitution 2007, Article 20, Rights of Women. Available at: <http://www.nic.gov.np/english.php>.

to violence against women and only a one in four women was aware of any government services available for survivors of violence or abuse.⁵

This Field Bulletin attempts to explore the prevalence of violence against women in Nepal from the perspective of Udaypur district in the Eastern Development Region.⁶ The findings are based on interactions with (women's) human rights defenders, government and security officials, civil society organizations and the public during January and February 2013. It highlights some of the main underlying causes perpetuating violence against women in the district and looks at some of the national and district policies and responsive mechanisms in place to prevent or address these. Furthermore, the Field Bulletin examines the challenges survivors face in accessing justice in the district and concludes with some suggestions for mitigating these from local level actors.

Background

A government study in six rural districts found that almost half of the interviewed women aged 15-59 had experienced violence at some time in their lives and nearly one third had experienced violence in the last 12 months.⁷ There is a growing consensus that “the violence that women face both in the private and public spheres are consequences of [...] unequal power relationship as constructed within Nepal’s social structure”. Nepal’s male-dominated values and social and cultural norms result in Nepali women having secondary status and relying heavily on husbands or other male family members for their livelihood. Lack of education and employment opportunities, low level awareness of rights as well as discriminatory legal provisions, such as citizenship laws that do not recognize women as independent individuals (and identity is derived from the father), further exacerbate their plight, according to the study.

The impact of the decade-long conflict on the prevalence of violence against women has not been studied in detail, though it is “thought to have contributed to gender-based-violence”⁸ and observations in the press reiterate that “there has been a further breakdown in social cohesion and law and order and [...] violence [against women] has become more prevalent and severe”.⁹ Historical records of reported crimes show a significant increase in the number of reported cases of rape, attempted rape, domestic violence and child marriage since the end of the conflict.¹⁰ Whether this indicates an actual rise in violence against women or merely an increase in the number of reported cases remains unclear due to limited availability of data.

The Nepal government has adopted a number of national level policy instruments to combat violence against women, such as the Human Trafficking and Transportation (Control) Act 2007, the Domestic Violence (Crime and Punishment) Act 2009 and the National Strategy and Plan of Action on Gender Empowerment and Ending Gender-based Violence 2012-2017, among others. Nepal is party to a number

⁵ Office of the Prime Minister and Council of Ministers, November 2012. A study on Gender-Based Violence conducted in Selected Rural Districts of Nepal. Available at: <http://asiafoundation.org/resources/pdfs/OPMCMGECUGBVRResearchFinal.pdf>.

⁶ This Field Bulletin follows the definition of violence against women as defined by the 1993 United Nations declaration on Violence against Women. For more information please refer to article 1, UN Declaration on Violence against Women 1993, UN General Assembly Resolution 48/104 of December 1993. Available at: <http://www.un.org/documents/ga/res/48/a48r104.htm>.

⁷ A study on Gender-Based Violence conducted in Selected Rural Districts of Nepal. Office of the Prime Minister and Council of Ministers, November 2012. The study carried out a household quantitative survey of 900 women aged 15-59 years in six districts of Nepal. Available at: <http://asiafoundation.org/resources/pdfs/OPMCMGECUGBVRResearchFinal.pdf>.

⁸ *Ibid.*

⁹ Jagannath Lamichhane, The Kathmandu Post, February 1, 2013; Justice on the mind. Available at: <http://ekantipur.com/2013/02/01/oped/justice-on-the-mind/366426/>.

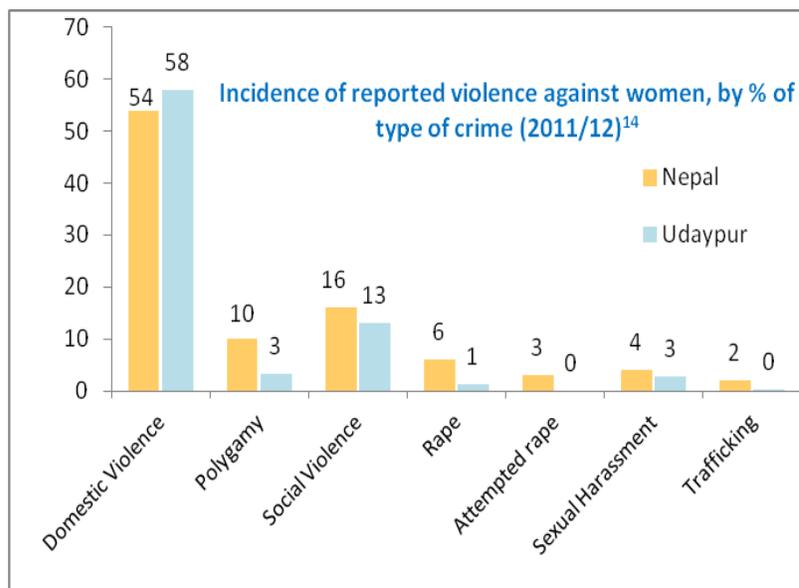
¹⁰ More information available on the Nepal Police website. Available at: <http://www.nepalpolice.gov.np/1.html>.

of international treaties related to violence against women as well, most notably the Convention on Elimination of all Forms of Discrimination against Women 1979.¹¹ In December 2010, the government established a Gender Empowerment and Coordination Unit based at the Office of the Prime Minister and Council of Ministers to oversee and coordinate its efforts to address gender-related challenges and, more recently, a special monitoring committee was formed to study five recent high-level cases of violence against women¹² and analyze all related government legislation in place.¹³

Prevalence of violence against women in Udaypur district

Data from the Women’s Rehabilitation Center (WOREC) and the district Women and Children Office show that the majority of reported cases relates to domestic violence, social violence (i.e. allegation of witchcraft or gender-based-discrimination) and sexual assault and roughly correlates with national figures (see chart).¹⁴

WOREC’s 2012 report also shows that the largest number of cases of violence against women in Udaypur district was reported by women from the Hill-ethnic communities as compared to women of other communities, such as Chhetri or Dalits.¹⁵ This may partly be explained by their proportionally larger share of the district population, though “women from Hill-ethnic communities are generally more vocal and therefore more likely to report on incidences of violence against them”, explained a women’s human rights defender.



The District Court’s statistics revealed a significant increase in the number of registered cases of rape in the district: one registered case during 2010/11 against 14 in the currently ongoing period of 2012/13. According to the district coordinator for Advocacy Forum mostly young girls and single women are survivors of rape in the district. “A majority of the cases of domestic violence are reportedly perpetrated by the spouse of the survivor” noted a staff member of the Women and Children Office, “while in rape cases, half of the time the perpetrator was reportedly a family member or close relative of the survivor”.

¹¹ For instance, the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, the Convention on the Rights of the Child 1989 and the International Covenant on Civil and Political Rights 1996.

¹² The five cases analyzed by the Committee are: Sita Rai, Chori Maiya Maharjan, Saraswoti Subedi, Shiwa Hashmi and Bindu Thakur. Reportedly, the Committee has already submitted its study report on the five cases to the Prime Minister’s Office.

¹³ Interview with a Commissioner of the National Women Commission, on 13 February. It is expected that the Committee submit its analytical report to the PMOCM around April, 2013. For more information please refer to: <http://www.undp.org.np/2010/12/10/news-updates/16-days-of-activism-campaign-against-gender-based-violence/1298/>.

¹⁴ WOREC Yearbook 2012 and Women and Children Office Udaypur (Jan-Nov 2012). Categories are per *General Code 2020*, Part-4, Chapter 13. Not all types of crime are shown. Domestic violence includes physical assault, mental violence, sexual violence, property related violence, and divorce related violence perpetrated by the family. Sexual harassment includes indecent and unwanted sexual touching, unwanted exposure to pornography, and kidnapping with intent to rape. The total number of registered crimes for Nepal was 1,581 and for Udaypur 313.

¹⁵ For more information please refer to the ‘Aanbeshi 2069’ or WOREC’s year book for 2012.

Main underlying causes

Members of the women’s human rights network informed that besides the general structural causes associated with Nepal’s male-dominated society, there are other more district-specific reasons that contribute to violence against women. In the case of Udaypur these are partly caused by internal and external migration processes of people in search of employment opportunities. According to the 2011 census report, more than a quarter of all households in Udaypur district have at least one or more family members working and living outside of the district. These absentee family members are mostly male (90 percent).¹⁶

In order to sustain family life women are taking over responsibilities that were otherwise carried out by husbands or other male family members, such as dealings with financial transactions. These activities require more frequent travel outside the house, ward or village boundaries to main bazaar areas or the district headquarters. “Sometimes, when a woman travels frequently outside of the house, members of her family or community accuse her of having an extramarital affair” said a women’s human rights defender. In the Nepali context these are very serious allegations and can have grave consequences, such as forced divorce, and exert considerable pressure on the women facing these kinds of accusations.

The process of migration to the district’s urban centers was also indicated as a factor adding to violence against women. The process contributes to the fragmentation of traditional communities and as a consequence weakens women’s existing social networks that offer a certain degree of safety and security. “Prevalence of violence against women, particularly verbal abuse, assault or rape, is reportedly higher in main bazaar areas or urban centers than in other parts of the district”, said a member of the Federation of Nepali Journalists.

District level policies and response mechanisms

There is a significant presence of women’s human rights defenders that advocate on behalf of and support survivors of violence in the district.¹⁷ “Their awareness and intervention campaigns have contributed to an increase in reporting on cases of violence against women by local media”, said a local police officer. Also Para Legal Committees that provide legal support to survivors of violence are present in all VDCs of the district.¹⁸ However, despite increased awareness and attention, it appears that a significant number of cases of violence against women still go unreported, particularly in the more remote areas of the district.



Human Rights Defenders demonstrating in Udaypur district

¹⁶ For more information please refer to Nepal’s Population and Housing census 2011.

¹⁷ There are 32 organizations currently affiliated with the human rights defenders network and 25 are affiliated with the women’s human rights defenders network in Udaypur district.

¹⁸ Para Legal Committees are currently operating in 59 districts of Nepal. Their mandate is to protect women and children, particularly from the poor and socially excluded groups, from gender-based violence, abuse, exploitation and discrimination. More information available at: <http://www.dwd.gov.np/uploaded/guideline%20final%20lettest.pdf>.

A district police report revealed that out of all *thado ujuri* (first-hand complaint application) only about 20 percent had been registered as a first incident report (FIR) for criminal cases during 2011-2012. The remainder of cases, most commonly related to domestic violence, was apparently solved by police through local mediation. A local journalist shared that “sometimes we receive pressure from political parties to informally solve the issue at the local level”. This negligence of the due legal processes may result in perpetrators being able to evade legal persecution and contribute to impunity in the district.

With the objective to increase access to justice for women and children, the Nepal Police, in 1996, established Women and Children Service Centers in its district police offices around the country. However women’s human rights defenders informed that currently the service center in the district lacks resources to function effectively. For instance, the junior female police constable assigned as focal person for the service center has no separate working space within the police office, which is not conducive to maintaining confidentiality in the investigation of gender-based violence cases.

Survivor’s challenges to access justice

Despite a strong presence and collaboration between the various human rights organizations and institutions working on issues related to violence against women in the district, it seems that survivors continue to face considerable hurdles on the road to justice.

Various district interlocutors reported that relevant laws are not adequately implemented and legal provisions are limited in their ability to address issues of violence against women. For instance, Nepal’s ‘*Muluki Ain*’ or Civil Code of 1963 has provisions to imprison offenders of sexual offence against women for a term ranging from six to fifteen years (based on the age of the survivor). However, the 35 day statute of limitation, or time limit within which cases have to be reported to the Nepal Police, complicates the legal process for survivors of sexual violence.¹⁹ Women’s rights activists claimed that lengthy and expensive legal processes also discourage survivors from reporting their case with Nepal Police or the District Court. Moreover, a number of women refrain from reporting their case due to the social stigma attached to female survivors of violence, in particular survivors of rape, which may lead to survivors being ostracized by their community. Sometimes, a real or perceived threat from the side of the perpetrator may be sufficient to deter survivors from reporting the crime.²⁰

This is the story of a young woman who was recently raped by a member of her husband’s family. Her husband works as a laborer in a country in the Middle East.

In the days following the incident she didn’t dare share her story with anyone, as the perpetrator continued to threaten and, on one occasion, assaulted her. While already contemplating suicide she remembered attending a class on violence against women one year back and went to look for the contact details of the NGO working on these issues. The NGO supported her in registering the First Incident Report in the district headquarters.

When the Nepal Police arrested the perpetrator, local leaders started pressuring the NGO to informally resolve the case. In addition she faced difficulties to start the legal process due to lack of any witness or strong evidence.

The woman was staying at the district’s Safehouse and was unsure if she could return to her village.

There is a perception that district level police and legal practitioners occasionally fail to address sincerely cases of violence against women. “District level Police has sometimes downplayed cases of violence against women, in particular when the alleged perpetrator was powerful or with political linkage or

¹⁹ The National Legal Code, chapter 14 mentions that if a suit is not filed within 35 days after the date on which the matter became public, the suit shall not be entertained. CEDAW’s 49th session concluding comment no. 19 has shown its concern on the statute of limitations on the registration of sexual violence cases and comment no. 20 has urged the state party to take immediate measures to abolish the limitations to ensure women’s effective access to courts for the crime of rape and other sexual offences (CEDAW/C/NPL/CO/4-5).

²⁰ Interview with a representative of Advocacy Forum, on 25 January.

influence” informed a women’s human rights defender. “Even in case of rape, offenders are usually released on bail and many cases remain pending in the court” said a staff member of the district’s Safehouse.²¹ Nepal’s Domestic Violence (Crime and Punishment) Act 2009 has a provision that Nepal Police should register a FIR even if a complaint of domestic violence is received in verbal form only. However, a district level police officer noted that they do not encourage survivors, in particular of domestic violence, to file a FIR without sufficient evidence. Moreover, when a female officer is not present female survivors are reluctant to share gender sensitive information with a male officer. “Male officers are less sensitive to female issues especially with cases related to domestic violence”, said the Chairperson of a Para Legal Committee.

Few cases related to violence against women registered with the District Court since July 2012²² received a final verdict and for some cases court hearings have not even started. “The District Court has [only] one judge who [due to the backlog of cases] is unable to address all registered cases in a timely manner”, informed a District Court official. In addition, cases of violence against women fall under government plaintiff, which means that the government provides the defense on behalf of the survivors. However, as each district typically has only two or three attorneys, they too are faced with a considerable backlog of cases. “Even cases that were put forward with support of women’s human rights defenders, or reported on in the media, lack proper follow up once they are registered with the Nepal Police or District Court”, said a local interlocutor. “NGOs believe it is the responsibility of the government to ensure that survivors receive proper redress and therefore stop supporting the survivors once the case has been registered” according to a member of WOREC. A district level representative of FNJ admitted that media also does not follow up on cases it had earlier reported on.

Conclusions

The situation of violence against women in Udaypur district is neither unique nor does it differ significantly from the national level scenario. The recent spark in attention towards the issue has undoubtedly contributed to a rise in the number of ‘reported’ cases, though whether this reflects an actual increase in violence against women in the country remains a conundrum.

The fact is that those survivors who seek justice are confronted with numerous obstacles. These range from intense pressure from family or community members to drop or informally mediate cases or prolonged delays in the hearing of registered cases in the District Court. Survivors may be without support from family or relatives or, due to the social stigma, not able to return to their homes or community. The legal hurdles, a lack of support or pressure on survivors (which may compel survivors to settle their case informally) and limited capacity of district level legal mechanisms to punish the guilty in effect exacerbate impunity and may lead to a further increase of violence against women in the district. There is therefore a need for enhanced support to survivors, not only to ensure access to justice and proper redress, but also in the form of psychological counseling.

Most importantly though is to prevent violence against women from occurring in the first place. It is pertinent that both government and non-government actors continue to facilitate or actively participate in events related to violence against women, such as international women’s day celebrated most recently, in order to maintain momentum and further enhance awareness. Violence against women goes beyond the mere physical or psychological act and impacts society as a whole. In the recent words

²¹The district’s Safehouse is a residential facility for survivors of violence against women for a certain period of time. It is managed jointly by the District Development Committee and WOREC, since July 2012, and has the capacity to accommodate 12 people at a time. It mostly remains occupied. During the time of this research, there were eight survivors mainly of rape, trafficking and domestic violence living in the Safehouse.

²² Start of the Nepali fiscal year, which runs from July 2012-2013.

of a high-level UN representative “Violence against women is [...] a threat to democracy, a barrier to lasting peace, a burden on national economies, and an appalling human-rights violation. Governments must continue to advance women’s rights through legislation, while civil society must promote a cultural shift that rejects women’s marginalization or mistreatment. Only by enabling women to realize their potential can countries ensure economic and social progress”.²³

Disclaimer: This field bulletin is prepared following a brief field study and also uses secondary data. The information presented in this field bulletin does not imply official endorsement or acceptance by the United Nations. Although the RCHCO aims to confirm all information independently, occasional factual inaccuracies can occur.

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