

# RESEARCH ON FUNCTIONING OF JUVENILE BENCH IN NEPAL



**National Judicial Academy, Nepal**  
Hariharbhawan, Lalitpur



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The Children's Act and the Juvenile Justice (Procedure) Rule draw out the departure of juvenile justice system from the criminal justice system. These are the legislations that require an establishment of institution, such as, special police unit, Juvenile Bench or court, child correction center, accredited service provider and a requirement of specialized human resource such as child psychologists and social worker. All these features of juvenile justice system are not found in an ordinary criminal justice system. A short research on juvenile justice area would not be sufficient to examine all the aspects of Juvenile Justice System. Hence, this research has focused on examination of the status of implementation of juvenile justice stand set by the Children's Act, the Juvenile Justice (Procedure) Rule and a couple of precedents propounded by the supreme court with reference to functioning of Juvenile Bench. This is a good research attempt to bring out perspectives on providing better judicial service to child victims of crimes as well.

The study would not have been completed without the support from various individuals and organizations. I would like to thank all of them, specially the professors, judges, judicial officers, government attorneys, police officers, court staff, social workers, child psychologist and lawyers for their valuable inputs made available to the research team.

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I am hopeful this research will be helpful for future policy considerations and shall prove to be a milestone in formulating plan of actions to improve functioning of the Juvenile Bench. The research also provides a sizeable amount of quantitative information for students and researchers who are interested in children justice issues.

Raghab Lal Vaidya  
Executive Director  
National Judicial Academy  
2012

## Executive Summary

The main aim of the study was to find out how far the national standards on children justice are understood and implemented by the Juvenile Bench, which includes judges, social workers, child psychologists and court staffs. The study attempted to capture the use of infrastructure created for children in conflict with law and the use of such infrastructure for child victims, considering that child victims require equal protection from the State as well. The study methods used were primarily interviews with judges, court officers, child psychologists and social workers working on the Juvenile Bench and observation of infrastructure related with the Juvenile Bench and record keeping system. The research team visited 20 out of the 26 Benches where the pilot program had been implemented.

The study only looked at the implementation of the 36 national standards prescribed primarily by the Children's Act, 1992 and the Juvenile Justice (Procedure) Rules, 2007. In the absence of any statutory law on the maintenance of right to privacy of children in conflict with law and child victims, implementing practices of the Supreme Court's judgment in *Sapana Pradhan Malla v. Government of Nepal*<sup>1</sup> was referred to. The study report has given a brief account of standards on children justice by the UN Convention on Rights of the Child, 1989 and has referred to other international standards.

Judges' understanding on national and international juvenile justice standards was found to be moderately high. Their willingness to consider social workers' and child psychologists' opinions while making final decisions was universal. Likewise social workers' and child psychologists' willingness to take part in the case of child in conflict with law from the pretrial stage was also unanimous. Coordination mechanisms were set up in districts with the courts taking charge of steering the mechanism. Approximately half of the judges were found applying innovation in using suspension of sentence and helping children avoid re-victimization.

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<sup>1</sup> *Sapana Pradhan Malla v. Government of Nepal*, Decision of 25 December 2007

The research found out that adequate proactive measures were not taken by Juvenile Benches to ensure child friendliness of the court. The courts neither used their discretionary power to make the court environment suitable to children by encouraging family members, guardians, social workers, and child psychologists to be part of each stage of hearing nor extended services available to children in conflict with law to child victims. Though the trainings organized for stakeholders of Juvenile Bench by NJA and others were found to be significantly helpful, with refresher trainings also being demanded, there were gaps in implementing the learning of the training. The infrastructures created at the court did not meet the standard prescribed by JJCC nor was the existing infrastructure utilized well.

In modern human rights law, right to privacy is considered a basic right to be respected and protected. The Supreme Court has issued judicial guidelines on the matter but the required practical measures to ensure implementation was not fully implemented by the Juvenile Bench. The Juvenile Bench was not found to be effectively monitoring constitutional guarantees of criminal justice rights by controlling police discretion. The research uncovered some other systematic violations as well, such as absence of lawyers during children's trial, high number of cases not having family or guardian present, children in conflict with law not participating in the majority of the court cases, cases not being decided within statutory time limit, and final decisions not being delivered to the child in all cases.

Moreover, in the districts where social workers and child psychologists were available, they were not found participating in the hearing. The existing legislative framework for defining the role of social workers and child psychologists was found to be demotivating and ambiguous in terms of addressing their status on the bench, their role in preparing social inquiry reports and in participation in hearings. The statutory provisions are not explicit to ensure children's and their families' or guardians' participation in court proceedings.

The study has made a number of recommendations. Primarily, the study recommends implementation of the current legal standards that ensure several rights of children and their families. To elucidate, ensure children,

their families or guardians' or lawyers' participation in the hearing; ensure child-friendly behavior; require a judge to proactively monitor protection of children's special rights in due process including right not to disclose personal identification information. Secondly, it advised to have a serious reconstruction in policy in view of the rights of child victims. Secondly, clarify the role of social workers and child psychologists in each stages of trial (from apprehension to rehabilitation) and make a detailed protocol. Thirdly, the research recommends to NJA to conduct a needs assessment before planning any training for Juvenile Bench stakeholders to ensure utility and relevance of the trainings. Fourthly, more regulatory and budgetary authority should be provided to Juvenile Benches to develop partnership with existing service providers to pilot and institutionalize reform agendas. This should include preparing social inquiry report and providing other referral services. Last but not the least, incorporate a principle that institutional measures are applied to children only as the last resort and for the shortest time possible.

## List of Abbreviations

AC	Appellate Court
AD	Ano Domini
BS	Bikram Sambat
CFR	Child-friendly Room
CC	Coordination Committee
CA	The Children's Act, 1992
CRH	Child Reform Home
CCWB	Central Children Welfare Board
CRC	Convention on the Rights of the Child 1989
CCTV	Close Circuit Television
DC	District Court
DJJCC	District Juvenile Justice Coordination Committee
GCA	The Government Case Act, 1992
ICON	The Interim Constitution of Nepal, 2007
JB	Juvenile Bench
JJCC	Juvenile Justice Coordination Committee
JJ	Juvenile Justice
JJPR	Juvenile Justice (Procedure) Rules, 2007
NC	National Code, 1962
NGO's	Non-Governmental Organizations
NJA	National Judicial Academy
NLR	Nepal Law Reporter
SC	Supreme Court
Sec	Section
SPSS	Statistical Package for Social Science
TCA	Tuture Compensation Act, 1996
TOR	Terms of Reference
UDHR	Universal Declaration of Human Rights, 1948
UNICEF	United Nations Children's Fund

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# Chapter - One

## Introduction

### **1. International/UN Standard on Justice for Children (Juvenile Justice) and its relevance to Nepal**

Nepal, as a Member State of the UN, has shown its commitment to abide by the principles and provisions of most of the international human rights instruments including the Convention on the Rights of the Child 1989 (CRC), which is considered as one of the most important and widely accepted instrument in the international human rights regime. The convention was adopted by the General Assembly on 20 November 1989 and entered into force from 2 September 1990. Nepal became State Party to the Convention on 14 September 1990.

The CRC provides a solid basis for addressing the rights and needs of children. The CRC has as its overall objective to ensure the ‘survival and development’ of all the children and young persons in the globe. To achieve this objective, the CRC has prescribed three general principles: the best interests of the child, non-discrimination and participation.

Regarding the children in conflict with the law, Article 40 of the CRC has laid down some important standards such as:

1. Principles of Justice for Children, in addition to the general principles of CRC expressed in Art. 2, 3, 6 and 12:
  - a. Treatment that is consistent with the child’s sense of dignity and worth (Art. 40 (1))
  - b. Treatment that reinforces the child’s respect for the human rights and freedoms of others (Art. 40 (1))
  - c. Treatment that takes into account the child’s age and promotes the child’s reintegration and the child’s assuming a constructive role in society (Art. 40 (1))
  - d. Respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented. (Gen Rec. 10)
  - e. Disposition order shall be available to ensure that children are

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dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence. (Art. 40 (4))

### **2. Every child in conflict with law has been guaranteed with a fair trial:**

Art. 40 (2))

- (i) No retroactive application of law
- (ii) Presumption of innocence;
- (iii) Right to be heard:
  - ▶ Prompt and direct information of the charges;
  - ▶ Legal representation or other appropriate assistance for defense;
  - ▶ To have effective participation in the proceedings;
- (iv) To be heard by competent authority and without delay
- (v) To have parents/guardians present during the trial by a competent, independent and impartial authority;
- (vi) Freedom from compulsory self-incrimination;
- (vii) Presence and examination of witnesses;
- (viii) Right to appeal;
- (ix) To have the free assistance of an interpreter; and
- (x) Full respect of privacy

### **3. States Parties, are under an obligation to take following measures:**

- a. Seek to promote the establishment of special laws, procedures, authorities and institutions for children (Art. 40 (3))
- b. Establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law; and promote measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. (Art. 40 (3))
- c. Promote a variety of dispositions to be adopted, such as:
  - i. Care, guidance and supervision orders;
  - ii. Counseling;
  - iii. Probation;
  - iv. Foster care;
  - v. Education and vocational training programs and

vi. Other alternatives to institutional care

The above mentioned guarantees for children in conflict with law should be read together with the guarantees that are made for the all children under Art. 37, which reads as follows:

- a. No child shall be subjected to torture or other cruel, inhuman or degrading treatment
- b. No capital punishment nor life imprisonment shall be given to children;
- c. No child shall be deprived of his or her liberty unlawfully or arbitrarily;
- d. The deprivation of liberty shall be used only as a measure of last resort and for the shortest appropriate period of time;
- e. Every child deprived of liberty shall be/have:
  - ▶ Treated with humanity and respect for the inherent dignity
  - ▶ Right not to be incarcerated with adult inmates;
  - ▶ Right to maintain contact with his or her family;
  - ▶ Right to prompt access to legal and other appropriate assistance;
  - ▶ Right to appeal

The Committee on the Rights of the Child issued its General Comment no. 10 on Children's Rights in Juvenile Justice. In its general comment, the Committee has enlisted Prevention of Juvenile delinquency and Diversion without resorting to the formal process and within the formal process as two core elements besides standards of fair trials. There are several UN Standards on Juvenile Justice and several others are directly relevant to Justice for Children. The core instruments adopted by the General Assembly are:

- a) The United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (the "Beijing Rules"),
- b) The United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 (the "Havana Rules"),
- c) The United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 (the "Riyadh Guidelines"); and
- d) The United Nations Standard Minimum Rules for Non-custodial Measures 1990 (The Tokyo Rules).

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The Guidelines on Action for Children in the Criminal Justice System, 1997 adopted by Economic, Social and Cultural Council under the United Nations system is also very relevant.

Becoming a State Party of an international human rights instrument is not sufficient for the promotion and protection of human rights in the country. Article 26 of the Vienna Convention on the Law of Treaties 1969 provides the principle of “Pacta sunt servanda”. It is one of the basic principles of international law and means that every treaty in force is binding on the state parties and the state parties must fully and in good faith perform those obligations and duties conferred by the treaty.

Section 9(2) of the Nepal Treaty Act, 1990 provides that any law inconsistent with the international treaties or conventions ratified by Nepal will be void to the extent of such inconsistency. In such circumstances, the provision of the treaty or convention prevails. Through these provisions, Nepal’s internationally declared commitments to the human rights of the people have been directly incorporated into the Nepalese legal system and are considered as a part of national law.

UN Common Approach to Justice for Children set the goal of the justice for children. It has to ensure that children, defined by the Convention on the Rights of the Child as all persons under the age of eighteen, are better served and protected by justice systems, including the security and social welfare sectors. It specifically aims at ensuring full application of international norms and standards for all children who come into contact with justice and related systems as victims, witnesses and alleged offenders; or for other reasons where judicial, state administrative or non-state adjudicatory intervention is needed, for example regarding their care, custody or protection. (page-3)

### **I. National Standard on Justice for Children**

The Interim Constitution of Nepal, 2007 guarantees fundamental rights of every citizen. Most of these rights are unequivocally available to children. This research only examines the implementation of Nepali legislative standards that is applicable to children in conflict with law. The research did not look at the legal standards applicable to child victim and witness. However the

research has attempted to document whether or not the services for children in conflict with law mandated by legislative standards could be extended to child victim and witnesses.

Following rights are very relevant to children in conflict with law and sets the legislative standard:

- a) Right to freedom (Art. 12)
- b) Right to equality and non-discrimination (Art. 13 and 14)
- c) Right to basic health services (Art. 16)
- d) Right to free secondary education (Art. 17)
- e) Right to criminal justice (Art. 24 and 25)
  - ▶ Right to be informed of the grounds of arrest
  - ▶ Right to consult and defended by a legal practitioner of his/her choice
  - ▶ Right to be produced before a judicial authority within a period of twenty-four hours
  - ▶ No retroactive application of incriminating law. o Presumption of innocence until proven guilty o Freedom from double jeopardy.
  - ▶ Freedom from compulsory self-incrimination
  - ▶ Right to be informed about the proceedings of the trial
  - ▶ Right to a fair trial by a competent authority.
  - ▶ Right to free legal aid in accordance with law.
- f) Right of children (Art. 22), most particularly,
  - ▶ Every child shall have the right to get nurtured, basic health and social security.
  - ▶ Every child shall have the right against physical, mental or any other form of exploitation.
- g) Right against exploitation (Art. 29)

Apart from constitutional guarantees there are general Acts, such as the Civil Rights Act, 1955, the Country Code, 1963, the State Cases Act 1993, and the Administration of Justice Act, 1992 to have fair trial rights of a citizen guaranteed. However for children, Children's Act, 1992 was the first legislation, which brought departure for Justice for Children system from the regular criminal justice system. It has four succinct impacts:

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- a) Acknowledgement of the rights of children
- b) Introducing different judicial process for children,
- c) Introducing separate facilities for children who are in conflict with law or who are convicted for an offence, and
- d) Separate policy in sentencing.

Based on the aspirations expressed by the Children's Act, 1992, the Juvenile Justice (Procedure) Rules (hereinafter referred as 'JJ Rules') were brought in 2007, which has introduced several changes in Justice for Children in Nepal:

- a. Specialized police investigation unit: (rule 3)
- b. Additional rights of children in trial (rules 7, 19)
- c. Non violable duties imposed to investigating and adjudicatory agencies (rules 4, 5, 7, 12, 14, 15, 16, 17 (some non-mandatory standards are enumerated in 13, 12, 7, and 5)
- d. Coordination mechanisms (rules 20, 22, 23)
- e. Role of civil society organizations (rule 21)

The JJ standards with special reference to Juvenile Benches that has been covered by the research are examined in detail in the next chapter.

### **II. Objectives of the Study:**

In view of above-mentioned international and national standard on Justice for Children system, a focused study was designed to look at:

- ▶ The status of implementation of national juvenile justice standard (set by the Children's Act, the Juvenile Justice (Procedure) Rules and a couple of precedents given by the Supreme Court).
- ▶ Whether the facilities created in the Juvenile Benches are used for child victims.

### **III. Rationale of the Study**

After the enactment of the JJ Rules, the National Judicial Academy, Central Child Welfare Board, International Development Agencies including UNICEF and civil society organizations working in the area of children are providing series of capacity building programs to judges, judicial officers, court staffs, child social workers and psychologists, public prosecutors,

lawyers and police officers. The main aim of the capacity building programs was to increase the competence of these stakeholders to implement national standards of children justice administration set by the JJ Rules, the Children's Act 1992, and other prevailing national legislation as mentioned earlier.

These efforts to strengthen the child justice system has yielded some results as positive judicial decisions have started coming out from the district courts<sup>2</sup> which liberally constructed and read provisions in international instruments as a part of national legislation. However, there is a need to see how far the standards prescribed by the laws are being applied at a process level. If the standards are not being applied, what are the reasons behind it? The study was carried out in order to find out the recommendations for future policy consideration.

The study was felt necessary mainly to capture opinions and perspectives of court personnel on Justice for Children including the possibility of extension of services to child victims from the day of admission of the cases to the disposition.

### **IV. Methodology**

#### **a) Methods:**

The study included both document review of the Children's Act 1992, the Juvenile Justice (Procedure) Rules, 2007 and other relevant national and international legal documents and precedents, as well as field research during which 20 District Courts (list of the courts is attached in Annex-IV) were visited. The following methods were applied to collect primary data:

#### **(i) Interview:**

The research team interviewed judges, social workers, child psychologists and court staffs. The research had three sets of interview schedule (attached Annexes - I, II and III). The Interview Schedule-1 was developed to capture the opinion of court staffs (judges and other staffs), which were grouped

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2 See Compilation of Judgement related to Child Rights and Child Justice 2011, published by the Juvenile Justice Coordination Committee, NJA.

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into six sections. The Interview Schedule-2 and 3 were designed for receiving the perspectives of social workers and psychologists and has three sections.

### **(ii) Group Discussion:**

In some of the courts, more than one judge participated in the discussion. The research team felt that even if only one judge (as per the rule) was assigned to Juvenile Bench, however, additional judges have also knowledge and experiences of presiding over the Juvenile Bench in other courts before they got transferred in the court where interviews took place.

Though the research plan had initially identified interviews as the desired methodology for data collection, group discussion format was later chosen in view of the comfort level of the judges and was carried out in majority (18 districts) of the districts. The participants of group discussions varied from place to place. In some places, court staffs, social workers and psychologist joined the group discussions; however, in others only judges participated.

### **(iii) Observation:**

Some of the questions (questions- A (1-3)) were designed to record the conditions and availability of infrastructure and facilities and case record system of the court, hence in each district, research team observed the actual situation and records.

### **b) Size:**

The Children's Act, 1992 and the Juvenile Justice (Procedure) Rules 2007 universally apply to all the courts of Nepal. Ideally before the day of enactment of the Act, the government (together with judiciary) should have capacitated all the district courts of Nepal to set up Juvenile Bench. Unfortunately, it has not been the case. In the initiation of Juvenile Justice Coordination Committee and Central Child Welfare Board, only 26 district courts were assisted with to improve their physical facilities and capacitate human resources to work in Juvenile Bench. Hence, the universe for this study was only 26

out of 75 district courts in Nepal. Though the research attempted to cover the whole universe, it only could cover 20 courts (77 percent of the universe).

**c)Time:**

The research started in June 2012 and ended in December 2012.

**d) Data Interpretation:**

The Data Analysis Software - Stastical Package for Social Science (SPSS)- was used to interpret the data. As most of the questions required non-quantitative answers, the team of researchers further interpreted the outcomes of SPSS.

**V. Limitations**

The study was carried out in 20 districts and was largely designed around recording opinions of judges, registrars, social workers and child psychologists (except for the observation of the court rooms and court records). The study did not further cross check and triangulate the information provided by the court personnel with the case dockets.

In terms of monitoring Justice for Children standards, the research looked at the national standards prescribed by Children's Act and JJ Rules and a couple of standards prescribed by the National Code (Muluki Ain) that is applicable in juvenile justice administration from the day of admission of a case to a juvenile court/bench to the day of final decision. It did not take into account the standards prescribed under international law. In terms of monitoring the situation of confidentiality it only looked Supreme Court order given in Sapana Pradhan Malla's Case.

The research generally collected the opinions of the judges, registrars, social workers and child psychologists on the effectiveness of the trainings but did not investigate the impact of trainings in detail. Further the research captures the perspective of front line court staffs who participate in the group discussion and deal with children in conflict with law and who has to ensure their rights are respected.



# **Chapter - Two**

## **Findings of the Research**

This chapter presents and elaborates upon the findings of the research. The information contained in this chapter has been drawn from interviews, group discussions and observations by the research team. The chapter provides the analysis and findings of the study on following grounds:

### **1. Human Resource Development**

#### **1A. Effectiveness and future need of training for judges:**

Rule 6(2) of JJ Rules mentions that in a district court where there is more than one district judge, the judge designated by the Chief Justice of Supreme Court shall serve as a judge for the Juvenile Bench. Through the circular issued by Chief Justice of the Supreme Court on 5th January 2007, the senior most judge of the district court was assigned as Juvenile Bench judge in 26 pilot Juvenile Benches. Although there can only be seventy-five Juvenile Bench judges in the seventy-five district courts, the training on Justice for Children was provided to all the district court judges appointed prior to the day the training was organized. In total, 250 judges from the District Courts were trained on Justice for Children. The training was 3 day long and supported by UNICEF and the Central Child Welfare Board. There is no national legislative requirement for obtaining training on Justice for Children before presiding on the Juvenile Bench. In this backdrop, the research inquired how far the training was useful for the judges who are presiding over the Juvenile Bench. The research also inquired as to whether such training would be necessary in future and if so what the possible content should be. All the questions were open ended.

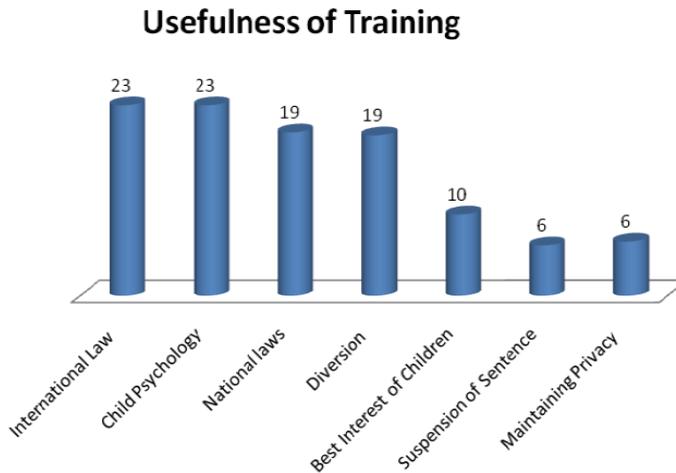
#### **Findings:**

##### **a) Effectiveness of Training**

- ▶ All of the respondent judges had received 3 day training conducted by NJA with two of the judges having also received additional training conducted by other organizations.
- ▶ Almost all judges mentioned that the training had been useful in

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their work. The judges were also asked an open-ended question as to which subjects in the training had been most useful. The study team then clustered the responses later. The following chart presents the percentage of each subject clusters out of the total number of subjects listed in the responses.



*Chart No 1: Usefulness of the content of the training*

### b) The need of the future training.

All the judges highlighted the need of the training and similarly responded to the subjects in which they desire more training on. The following pie chart summarizes the results.



*Chart No 2: Content for future training*

There was not much difference found between the subjects judges found relevant for their work and those that they deemed necessary for further training. The only addition was the content on confidentiality.

### **1B. Training of Social worker and Child Psychologist:**

National Standard: the social worker, child psychologist or child expert should be trained. Rule 6 of JJ Rules provides that a Juvenile Bench shall be formed comprising of a social worker, child psychologist or child expert in addition to a district judge. As per the rule 8 (a) of the JJ Rules, the social worker, child psychologist or child expert should be trained on child rights or child welfare or child psychology.

CCWB conducted 6 months long training for 52 Child Psychologist and 2 months long training for 52 Social Workers who are listed in 26 pilot Juvenile Benches.

### **Findings:**

#### **a) Social worker**

- ▶ All of the social workers interviewed mentioned that the training had been useful to them in their work as members of the Juvenile Bench. But the common feeling was that they could not fully utilize the skill and knowledge they acquired from the training due to lack of significant number of such cases in their respective districts. Topics dealing with children, interview skill, communication skill, child-friendly behavior, report writing skills, national and international legal provisions on Justice for Children were found to be most useful in the training.
- ▶ Most of them mentioned that they need regular refresher and advanced trainings to enhance their skill and knowledge in the subject.
- ▶ Social workers felt the need of further training on diversion, child psychology, practical aspects of Justice for Children, report writing skills (for Juvenile Bench), and practice sharing among Juvenile Bench members.

#### **b) Child Psychologist/Child Expert**

- ▶ All the child psychologists mentioned that the training had been useful for their work as members of Juvenile Bench. According to them,

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communication skills, child-friendly behavior, deviant behavior of a child, early childhood development, visit to the court and child reform home, report writing skill, legal provisions on Justice for Children were the most useful contents of the training.

- ▶ All of the child psychologists felt a need of regular refresher and advanced trainings to enhance their skills and knowledge in the subject of Justice for Children. They mentioned they needed advanced training on psychosocial counseling, practical aspects writing report for Juvenile Bench, other writing skills, diversion and restorative justice practices.

## 2. Components of Juvenile Bench

### 2A. Use of current infrastructure and alternative for future

**Standard 1: Each District Court should have a Juvenile Bench with four components -**

- a Trial room,
- b Child-friendly room,
- c CCTV and
- d Computer attached thereto.

Sub-section 1 of Section 55 of the Children's Act, 1992 states that the long-term intention of the legislature is to establish the Children's Court. But even after 20 years of enactment of the Act, that vision has not been realized. The Government of Nepal had also issued a notification in a gazette, dated 31 March 2003 A.D. (B.S.2056/12/18), to establish a Juvenile Bench in each District Court. The circular issued by Chief Justice on 5th January 2007(B.S.2063/09/21) further complemented the gazette notification by designating the senior most judge of each district court as the presiding judge in Juvenile Bench.

The Juvenile Justice Pilot Project implemented by Juvenile Justice Coordination Committee (JJCC) has expanded the scope of rule 12 (4) of JJ Rules and issued a guideline stating that the Juvenile Bench should have the following infrastructure:

- a) A dedicated trial room
- b) A dedicated child-friendly room (waiting and interview facilities for juvenile): the walls of a child-friendly room should be brightly

- painted and supplied with child friendly toys, posters, story books; equipped with water facilities and should be carpeted.
- c) The trial room and child-friendly room should be connected with CCTV and screen to maintain the confidentiality of the child, to not intimidate the child with the discomfort of the court environment and to protect the child from uncontrolled cross-examination.
  - d) A computer in each district for recording the testimony of the child: The purpose of recording child's testimony in the computer was not to re-victimize child by producing him/her repeatedly in the court including in appellate proceedings.

The research also sought suggestions for alternative arrangement of infrastructure to ensure confidentiality and better access to justice of juveniles. The opportunity was provided to the judges to reflect on their experiences and come up with concrete suggestions that can be forwarded by NJA for policy considerations. Further, the question was asked with the presumption that the equipment had not been used by the courts due to unavailability of electricity and lack of mainstreaming Information Technology system in the court system of Nepal.

### Findings:

- ▶ 80 percent of Juvenile Benches stated that they had arranged for two rooms for the purposes of the Juvenile Bench. One was dedicated for trial purposes and the other served as a child-friendly room. In Saptari, it was observed that the chamber of district judge itself was used as child-friendly room. The remaining 20 percent of the courts studied had no dedicated space for Juvenile Bench due to unavailability of space inside the court premises. In Morang district, the passageway to the Judge's chamber is used as a child-friendly room. In few other districts, child-friendly room was used to keep the records of other cases.
- ▶ Only 80 percent of the courts were found having CCTV installed in the child-friendly rooms. These courts explained that lack of space, absence of technical knowhow were the primary two reasons of non-installation. Two of the courts explained that the CCTVs were out of order and they

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have put it in the storage. Only two Juvenile Benches had used CCTV to record the statement of the child.

- ▶ The study team found out that only 60 percent of child-friendly rooms was brightly painted. 50 percent of child-friendly rooms had child-friendly posters, books, and facility of drinking water and were carpeted as well. The remaining 50 percent of the child-friendly rooms were not maintained against the indicators mentioned in the circular. A judge expressed that the supplies (toys) put in child-friendly room were to be replaced as they were not appropriate for juveniles aged between 10-16.
- ▶ All the courts confirmed that the computers were in working conditions but only 40 percent of the courts (8 courts) were using it. Among those eight courts, only two (2) were found using it for recording the testimony of the child, with the remaining using them for other administrative purposes.
- ▶ The judges could not suggest any alternatives to existing systems. The JJ system itself was new and the judges had not begun thinking critically on the existing practices. The answers came around improving the current infrastructure, viz., computers, child-friendly room, CCTV, furniture, by providing timely and continual support.

### **2B. Availability of Social Workers and Child Psychologists:**

**Standard 2: Each of the Juvenile Benches is required to have a psychologist/child expert and a social worker in the bench in addition to a judge.**

Section 55(5) of Children's Act and Rule 6.1 of JJ Rules clearly states that a Juvenile Bench consists of three persons mentioned above but has not dealt with further terms and conditions. The JJCC has made a provision of paying per case two thousand rupees each to a social worker and a child psychologist as transportation cost for their participation in the disposal of the case irrespective of how many times they need to come to the court and how much effort they put in the case. Primarily the social workers and child psychologists are considered volunteers to the Justice for Children system.

The research attempted to document the practices of keeping social workers and child psychologists connected to the Juvenile Bench.

### Findings:

- ▶ All of the 20 districts had maintained rosters of child psychologists and social workers.
- ▶ 16 Juvenile Benches had sitting arrangements made for the social workers and psychologists. 14 of these Benches had arranged three dedicated seats each one for a judge, a social worker and a psychologist. The court staff explained that the judge was supposed to sit in the middle and two experts on each side. The chairs were placed on equal footing and also looked similar. The remaining two Juvenile Benches had sofa arrangements for social workers and child psychologist. In these courts, the judges explained that the law had not laid out clear procedures for the seating arrangements and for the roles and responsibilities of child psychologists and social workers.

### 3. Juvenile Bench's initial contact with a child in conflict with law

Police personnel make the initial contact with a child in conflict with law. When the police personnel find a reasonable ground to arrest a child for investigating a crime, such police personnel can only keep such child under custody for 24 hours. If it is deemed that the investigation has to be continued by keeping a child in police custody, then the investigating police personnel shall produce the child before the court and obtain the permission of the Juvenile Bench to take the child into custody (Sec. 15 (2), Government Cases Act, 1992). Besides the above-mentioned duties, Rule 3, 4 and 5 of the JJ Rules has elaborated the additional duties of investigating officer while dealing with children in conflict with law.

Juvenile Bench, thus, deals with the case of a child in conflict with the law when the child is produced before the court for extending his/her custody for investigation and for remand order. In cases where the police personnel has reasonable grounds to believe that remand is not required, the child may also be produced before the Juvenile Bench for bailment order. In both of these two occasions, the Juvenile Bench is required to abide by several requirements.

### **Standard 3: Child-friendly Environment should be maintained in the Juvenile Bench.**

Rule 12 (1) has guaranteed that hearing proceedings of Juvenile Bench should be conducted in a child-friendly environment. Rule 12 (2) has prescribed that the language used by the court should be understandable by the child and be suitable for his/her age as well as physical and mental development. The 'child-friendly court environment' is not defined anywhere by the Rules, hence the research attempted to know: Who takes interview of a child? Whether the court staffs are skilled in interviewing a child? Where a child is placed when s/he first comes to the court in order to record his/her testimony? Where is such a child interviewed? The questions were asked in the background that the Juvenile Bench pilot court have two dedicated place for children i.e. child-friendly room and a trial room or Juvenile Bench. Realizing the importance of skills for interviewing a child in conflict with law, JJCC had designated at least two staffs per district courts to be focal persons for handling cases of children in conflict with law and had trained them on justice for children issue through NJA and CCWB, inter alia, on communication skills as well.

Observation as well as interview methods were applied to produce the following findings.

#### **Findings:**

- ▶ 30 percent of the courts stated that children were taken to the child-friendly room, where they waited and were interviewed. Another 30 percent stated that they were kept in the 'case section' (*muddha shakha*). The case section is the place where the staffs responsible for ongoing cases were placed together with records of cases. This place is often crowded with clients. Nowadays, in some of the courts (such as Kathmandu), clients are not permitted to get inside the courtroom but dealt through the windows. The remaining 40 percent courts stated that the accused children were kept 'here and there'. This means there is no definite place for children in conflict with law. Sometimes they were asked to take seats in the offices of court staffs and sometime they were asked to wait in the lobby or other areas.

## Awaiting for an Interview

■ Child friendly Room ■ Case section ■ Here and there

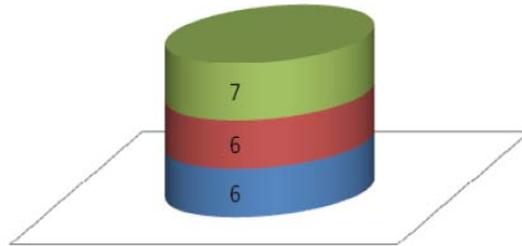


Chart No. 3: The place where a child waits until his/her trial begins

- ▶ 95 percent of courts stated that registration section staffs were responsible for making first contact with the accused children. The maining one court had the case section staffs make the first contact.
- ▶ 60 percent courts stated that children in conflict with law were interviewed in child-friendly room whereas 35 percent courts stated that the interview was taken in Juvenile Bench. The remaining 5 percent courts (one court) stated that the interview was taken place in the case section.
- ▶ 80 percent of the courts had interviews of children in conflict with law taken by the staffs of registration section. Bench assistants took the interviews in 10 percent of the cases with the staff of the case section taking the interviews in the remaining cases. The majority of the staffs assigned as the focal persons for handling cases of children in conflict with law and subsequently trained by NJA and JJCC were from the case sections.

### Standard 4: Use of handcuffs for children is prohibited.

Use of handcuffs for children is prohibited by the Children’s Act (sec. 15). In the case of *Balkrishna Mainali v. Government of Nepal*<sup>3</sup>, the Supreme Court reiterated that use of handcuffs for children is not permissible. The research

3. *Balkrishna Mainali v. Government of Nepal*, Decision Date: 2058.4.23.3

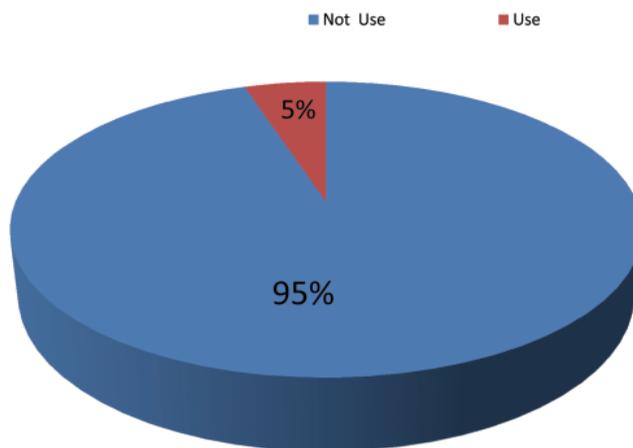
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attempted to know whether a child is handcuffed when brought in front of the court.

### Findings:

- ▶ 95 percent of the courts stated that children in conflict with law were not handcuffed but 5 percent (only Kathmandu District court) stated that in a few times accused children were also handcuffed when they were brought into the court premises along with other adults. The court staffs explained that the security personnel always quoted security reasons for handcuffing a child.

### Use of Handcuff



*Chart No .4: Practice of putting handcuffs to children when brought to the court premises*

### **Standard 5: Police staffs were required to wear plain clothes when they deal with children in conflict with law.**

Rule 4 (a) of JJ Rules prescribes police to use plain clothes while dealing with a child in conflict with law. The research inquired whether the accompanying police wore uniform or plain clothes.

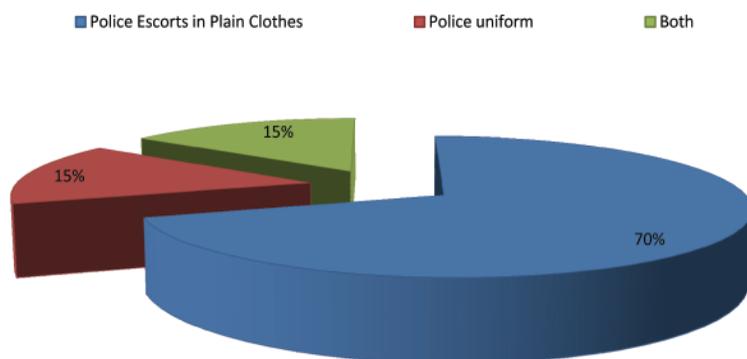
### Findings:

- ▶ 70 percent of the courts stated that accompanying police were in plain clothes but 15 percent of the courts stated that accompanying police

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came to the courts in police uniform. The remaining 15 percent respondent stated that among the accompanying police, some were in plain clothes and some were in uniform. The respondents explained that the reason for having police in uniforms could have been the presence of adult offenders together with children during the trial.

### Plain Clothes Police



*Chart No. 5: Police's wear while accompanying a child in court premises*

### **Standard 6: A woman police should accompany a girl child in conflict with law when brought to the court.**

This is not required in the JJ Rules but the general law (Government Cases Act section 14(4)) requires a woman police to escort an accused woman or a girl child in conflict with law.

Section 14 (4) of the Government Cases Act states that only a woman police is supposed to arrest a woman accused as far as possible. This has not been further elaborated in Juvenile Justice (Procedure) Rule or elsewhere but there is a practice of accompanying a female accused by a policewoman. The research attempted to record the existing practice.

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### Findings:

- ▶ 80 percent of the courts found woman police accompanying girl child in conflict with law whereas the remaining 20 percent report not seeing women police accompanying the girl child in conflict with law.

### **Standard 7: Presence of lawyer is a must and presence of parents or guardian is desirable at the time of interview.**

Section 19 (1) of the Children's Act, 1992 clearly states that the court shall not entertain or decide a criminal charge brought against a child without the presence of a legal practitioner to defend such child. Sub-section (2) has further prescribed that the concerned court shall make available the service of court appointed lawyer or any other legal practitioner willing to provide such service. The section has made the presence of lawyer mandatory at every stage of trial.

No. 24 of the chapter on Court Management of the National Code states that if a person under the age of sixteen has to sign a paper, his or her guardian or heir needs to be present while obtaining such signature.

Section 50 (1) of the Children's Act has assumed that parents, relatives or guardian would be present during the trial, however, the Act does not require that the court to be under obligation to inform the parents of a child regarding court proceedings.

Rule 12 (6) of JJ Rules has stated that father, mother, guardian or lawyer of a child may be present in the court proceedings but has not provided an obligation to the Juvenile Bench to inform them. Nonetheless, JJ Rules has prescribed that police personnel has to inform both parents and if not possible at least a parent (Rule 4 (9d) and 5 (2)).

The research attempted to know the extent to which parents, guardians or lawyers were present during the initial stages of trials.

### Findings:

- ▶ 70 percent of the courts stated parent, guardian or lawyers were not found to be present during interviews of children in conflict with law.

30 percent of the courts stated that parents, guardians or lawyers were present during the interview. (Note: for the courts, guardian means the person with whom the child was living irrespective of whether such persons or agency has got the legal guardianship under the prevailing law.) Two of the courts reported that they had started inviting social organizations to be present during the interview.

### **Standard 8: Presence of social workers and child psychologists is required at the time of interview.**

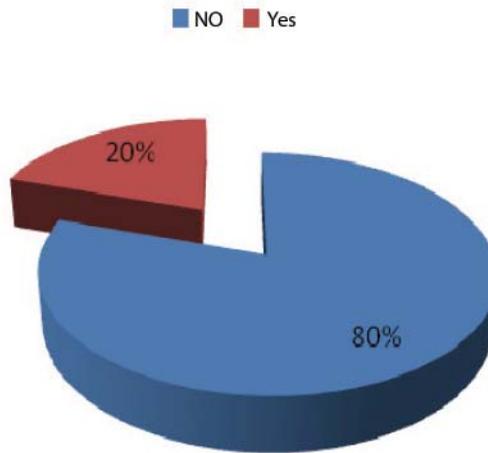
The provision of collective hearing (rule 11(1)) requires the presence of a social worker and a child psychologist at each stage of the hearing. However the explanatory clause of rule 11 (1) does create ambiguity by validating the work of judges in absence of social workers and child psychologists and the language of the law suggests that social worker and child psychologist are only required to submit their opinion to the bench before final decision.

The research inquired whether there was a practice of informing social workers and child psychologist. The research also inquired into how they were informed and how many of them actually attended the children's interviews.

### **Findings:**

- ▶ Only 20 percent of the courts stated that they informed social workers and child psychologists about the date of interview of the child. The communication was done through telephone and written notices were given when they arrived at the court for the interview. The remaining 80 percent of the courts did not have the practice of informing social workers and child psychologists to attend the interviews of children in conflict with law.
- ▶ The courts stated that whenever social workers and child psychologists were informed, they attended the interviews of children. This meant only in twenty percent of the children's interviews were attended by social workers and child psychologists.

### Presence of Social workers or Child psychologist at the time of Interview



*Chart No .6: Presence of social workers or child psychologists at the time of interview*

In one of the districts, it was observed that a social worker had been involved in hearings of 12 juvenile cases whereas in 4 of the districts social workers had not participated in hearings of any case. This was due to non-registration of the case in the juvenile courts.

As in the case of social workers, it was found that in one district a child psychologist had dealt with 10 juvenile cases whereas in four districts no cases had come before the Juvenile Bench.

This research also inquired about the existing mechanisms of communication between courts and child psychologists and social workers. The primary response received was that the courts inform the child psychologists and social workers only at the very last moment through telephone and then deliver the written notifications to them. Child psychologists and social workers explained that they could not attend some of the cases due to the last minute notification. On the other hand, the court respondents claim that responses from some child psychologists and social workers had not been encouraging and that they had not participated in some of the cases even after being

informed. The research study found out that there was a serious problem of coordination between the Juvenile Bench and the trained human resources.

**Standard 9: Interview should take place in a child-friendly environment.**

The Court is under obligation to create child-friendly environment (rule 12 (1)) but what such environment consist of is not defined by the legislation.

The research attempted to know the judges' understanding of child-friendly environment. Further the research also attempted to document whether the standards prescribed to investigating officers under rule 5 of the JJ Rules was taken into consideration by the courts. Rule 5 prescribes that the environment should be comfortable (not intimidating), that interviews should not be done during night and should not be longer than an hour at a time. The researchers further inquired whether children were provided with drinking water and whether they were given toilet breaks so as to understand the behavior of the courts towards children in conflict with the law.

**Findings:**

- ▶ The explanations given by the courts of their understanding of child-friendly treatment included the following: talking or dealing with children in loving and compassionate way, providing facilities (including those mentioned in JJ Rules) to children, providing good advice, letting them stay with parents whenever possible, not putting them in detention, etc.
- ▶ Half of the courts studied reported that interviews with children usually took around an hour. The remaining half reported interviews taking between one to two hours depending upon the case.
- ▶ 65 percent of the courts proactively provide breaks to children in conflict with law during interviews, whereas 35 percent courts only provide if the child asked for such break.
- ▶ 75 percent of the courts stated that drinking water was easily available to everyone, including the children as well as other parties of the case. 20 percent of the courts stated that water was provided to children only when they themselves asked for it. Remaining five percent of the courts stated that drinking water was not available in the court for anyone and that the staffs brought their own water bottles.

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- ▶ 80 percent court stated that use of rest room was allowed during interview where as 20 percent court did not respond in this regard.

**Standard 10: The children’s testimony is to be compulsorily read out to the child in front of the parents, guardian or lawyer or whoever is present and is to be signed by the child.**

No. 24 of the chapter on Court Management of the National Code states that in case of obtaining written statement from a child under 16 his/her guardian or heir should be present. The research also inquired into whether the testimony was read out and explained to the child and whether the child’s signature was taken in front of everyone.

### **Findings:**

- ▶ 90 percent of the courts stated that testimonies of the children were compulsorily read out to them after completion while in the remaining cases testimonies were not read out.
- ▶ 95 percent of respondents stated that testimonies of children were signed after the completion.
- ▶ The testimony was signed in front of everyone whoever present during the interview. If parents, guardian or lawyer were present during the interview, the signatures of children were taken in front of them.

## **4. Maintaining Confidentiality**

**Standard 11: Confidentiality of introductory information (or identity) of child in conflict with law should be maintained.**

In child justice process, law prescribes a stringent standard for keeping the record of children. Sec. 49 (1) of the Children's Act has provided that during the trial of any case involving any child, the legal practitioner, parents, relatives or guardian of the child can be present. Even a person or representative of an organization that works for welfare and protection of the child needs permission from the court to be present. Sec. 49 (2) of the Children’s Act restricts disclosure of the information of children in conflict with law to media. Section 52 (1), which doesn’t apply to the courts, has prescribed the police officers to keep the statistics of children apprehended on the charge of any offence in a confidential manner.

In the case of *Sapana Pradhan Malla*,<sup>4</sup> the Supreme Court issued a guideline to protect privacy of parties in the proceedings of special type of cases that include a child in conflict with law. The judicial guideline requires personal introductory information not to be disclosed at any stage of the investigation, trial and implementation of the order and in any documents written during this time. The person who receives any information that discloses the identity of the persons is also under obligation to maintain confidentiality. (Clause. 3 of the guideline).

In order to document the implementation of these confidentiality rules, the research inquired into the following:

- ▶ The status of training of the staffs on skills and procedure of maintaining confidentiality
- ▶ The measures or process adopted to ensure the confidentiality of the identity of children in conflict with law.
- ▶ The period for which the confidentiality is/to be maintained.

### Findings:

- ▶ 60 percent of the courts claimed that they maintained confidentiality of the introductory information of a child in conflict with law and remaining 40 percent disclosed that they did not abide by the rules until the time of interview. The courts' claims do not match with the findings of the JJCC research, which has revealed that only 22.5 percent of the court have maintained the confidentiality of introductory information (p. 80)
- ▶ 65 percent of the courts stated that responsible staffs (from case section) were trained. The remaining 35 percent courts stated that no staffs were trained on this matter.
- ▶ In total, four measures were adopted by the courts to ensure confidentiality of the identity of a child in conflict with law:
  - ◆ Providing code name,
  - ◆ Keeping the document which has name of a child (e.g. charge-sheet) sealed,
  - ◆ Prohibiting the flowing of document/information (the case file or

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4. In *Sapana Pradhan Malla v. Government of Nepal*, Decision of 25 December 2007.

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other documents were not shown) to any unrelated party, and

- ◆ Not allowing copying of the document to any unrelated party.

However, all four measures were not adopted universally. It was found that 55 percent of courts apply 'code name'; 50 percent of the courts apply 'sealing the documents'; 60 percent 'control disclosure' of information to unrelated person; and 50 percent prohibit the 'copying of court's documents'. On average, only around half of the courts studied were found applying all four measures.

- ▶ 70 percent of the courts stated that they maintain the confidentiality permanently, whereas 25 percent of the court stated that privacy was maintained only until the verdict was implemented. The remaining 5 percent stated that such confidentiality was maintained until the case was finally disposed from all tiers of the court.

### 5. Remand Hearing

A police officer who needs to keep a child in conflict with law for more than 24 hours needs to get an approval from an adjudicating officer to continue keeping him/her in police custody. The law has prescribed this procedural standard to safeguard individual liberty.

#### **Standard 12: The police officer shall produce a child to the court with adequate information/reason for keeping in remand.**

Section 15 (2) of the Government Cases Act 1992 requires the investigating police personnel to produce the child in conflict with law before the court together with an application specifying the charges against the child with the grounds and reasons for which the investigation needs to be continued by keeping such child on remand, and also the details of the statement, if any statement by the child has been recorded. Section 15 (4) has prescribed an obligation to the adjudicating officer to evaluate whether the investigation is being conducted in a satisfactory manner. Only upon the judge's satisfaction can the child be kept in police custody. The judge has discretionary power to decide whether to release a child immediately, or send him/her into remand for 'x' number of days, the maximum being 25 days.

**Findings:**

- ▶ 85 percent of the courts responded that police generally specify the reasons for keeping the child in remand while the remaining 15 percent stated that police don't give any reasons. The court further mentioned that usually the police provided the court with the list of the tasks that needed to be done while requesting the extension of remand.
- ▶ 15 percent of the courts did not seriously reflect upon whether the investigation was carried out satisfactorily. As long as the remand request was within the 25 days limit, the judges felt that it was under the 'power' given to the police. However 85 percent judges categorically stated that they looked into what police did during the time of arrest or earlier remand time and also looked into whether the grounds of request were satisfactory or not.

**Standard 13: Health checkup of the child in conflict with law is required and torture of a child is not permitted at any cost.**

Section 15 (3) of the Government Cases Act, 1992 has given an opportunity to the arrested person to apply to the court for physical examination when s/he is produced for remand decision. Rule 4 (e) of the JJ Rules, however, has required that a child in conflict with law should be taken to the nearest government hospital or the physician for physical and mental examination. 39 Likewise Sec. 3 of the Torture Compensation Act (TCA) denies torture to any person at any stage of investigation and trial. Section 3(2) of TCA has provision of compulsory health checkup while detaining a person and releasing him/her.

The research inquired whether the court has seen such health checkup report attached to the application made for permission of remand.

**Findings:**

- ▶ All the courts responded that irrespective of the cases of children or adult there was the uniform practices of attaching the health checkup report by investigating police personnel. If not, the court summoned the police to submit such report before any remand decision was made.

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- ▶ The courts also shared that they have not seen any torture incidents in the cases of children brought before their court.

### **Standard 14: Age of a child has to be determined in the beginning of a trial.**

Determining the age of an accused child in the beginning of a trial is absolutely necessary for a court in view of Sec. 10 of the Children's Act, which prescribes criminal responsibility on the basis of age. JJ Rules also prescribes the priority to be followed in determining the age of a child in conflict with law in case there is a dispute (rule 15). Rule 15d of JJ Rules has prescribed the examination of a child by hospital for the determination of age as a last resort. The research inquired how far they have used the hospital's certification.

### **Findings:**

- ▶ The courts shared that in the beginning of the trial, the court inquires the child in conflict with law or his/her guardian or lawyer whether there is a dispute in age or not.
- ▶ In case of dispute on age of a child, 50 percent courts stated that they take any of the evidences prescribed under rule 15 of the JJ Rules on equal basis. However 50 percent stated that they prefer birth certificate issued by the hospital to any other evidences.
- ▶ 80 percent of the courts stated that they have used the hospital's certification and found them useful. In cases where the hospital's certification did not provide the exact date, the judges were required to look at other evidences to determine the exact age of the child. The remaining 20 percent courts had not referred to hospitals' certification for any child for age verification.

## **6. Bail Hearing**

Bail hearing is the day when it is decided by the court whether a child is to be remanded in the judicial custody until the trial takes place or to be released with or without conditions. No. 118 of the Chapter on Court Management of the National Code provides general legal grounds in relation to bail hearing. However for a child in conflict with law, Sec. 50 (1) of the Children's Act

provides a separate standard. It states that if the adjudicating officer deems appropriate not to keep a child in detention according to the prevailing law having considered the physical condition, age, circumstances during the time of commission of the offence and the place of imprisonment, he may issue an order to handover such child to - a) the custody of his father, mother, relatives or guardian, or b) the any social organization engaged in protection of rights and interests of the child, or c) Juvenile Reform Home on the condition to present him as and when required and to continue investigation or proceedings of the case. During bail hearing, the court is supposed to monitor several legal standards prescribed by the law whether they exist in the case or not. The research attempted to look at the implementation status of those standards.

**Standard 15: The participation of social worker and psychologists in bail hearing is desirable.**

Considering the role that a social worker and a child psychologist may play by providing information to the judge about a child's background, his/her physical and psychological conditions, family and social condition, and about social organization who can take care of such child, and also considering the provisions of Children's Act and JJ Rules which prescribe the hearing of the case to be in collaborative way, the research inquired about the existing practice of participation and the role that they get to play during bail hearings.

**Findings:**

- ▶ 60 percent of the courts claimed that they informed social workers and child psychologists to be present in the court for bail hearings, while in the remaining 40 percent no notices were sent.
- ▶ The courts could not provide quantitative data on the participation of social workers and child psychologists. The findings of the JJCC research revealed that social workers were found to be present in bail hearing only in 16 percent of cases whereas the participation of childpsychologist was higher than social workers and amounted to 24 percent of cases.
- ▶ Regarding the role of social workers and child psychologists, 65

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percent of the total respondents stated that they did not play any role but to witness the process whereas 35 percent stated that they provided their assessment report to the court. The research could not investigate fully the nature of the report but found that the report was not a full-fledged 'social inquiry report' as outlined in the JJ Rules. It was a preliminary assessment report made by social workers and child psychologists.

### **Standard 16 - As far as possible, children should not be put into detention**

As in the international standards, both the Children's Act and the JJ Rules affirm that children may be detained only as a last resort. Sec. 50 (1) of the Children's Act has introduced noncustodial measures only if the investigating officer thinks that it is not appropriate to keep a child in detention having considered his/her physical condition, age, circumstances under which the crime took place and the place of detention. Looking at the trends of district court decisions, the court has upheld the rule that placement of a child in detention is done as a last resort. The research inquired into the existing practice of the judges of Juvenile Benches.

### **Findings:**

- ▶ 65 percent of the courts responded that children were ordered to be sent to child reform home established under the provision of section 42 of the Children's Act. Remaining 35 percent stated that children were handed over to the custody of parent or any other family member in line with Sec. 50 (1) of the Children's Act. The court shared that social organizations working for children denied to take children with them in spite of the courts' willingness to hand over the children to them. The lack of facilities to keep the children in their organizations was cited as the major reason for this.

## **7. Witness Examination**

The Children's Act and JJ Rules have provisions that guide witness examinations. However the majority of witness examinations procedures are

guided by the National Code 1962. The research examined the practices of following standards that are considered minimum in witness examination.

**Standard 17: The presence of lawyer is mandatory while witnesses of the parties to the case are examined.**

The Interim Constitution has provided a person with a right to have a lawyer from the time of his/her arrest (Art. 24 (2)). The Children's Act 1992 declares that no court shall proceed or decide a case of a child in conflict with law unless there is a lawyer present to defend the Child. The court is obligated to appoint a lawyer for a child in conflict with law if the child is unable to appoint his/her lawyer for whatsoever reason (Sec. 19). The research examined the understanding among courts on the standards prescribed by the Constitution and Sec. 19 of the Children's Act and on the extent to which the courts have adopted practices to appoint a lawyer for the child who doesn't have his/her lawyer.

**Findings:**

- ▶ All of the courts were aware that each child in conflict with law has a constitutional and legal right to have a legal representative of his or her choice in the court.
- ▶ All of the judges stated that if they found that there was no lawyer in the case of a child, they provided a lawyer either through a social organization or other legal aid program or assigned the court appointed lawyer (baitanik) for such child.

**Standard 18: Presence of child in conflict with law is required on the day of witness examination.**

Sec. 49 (2) of the Evidence Act 1974 states that witnesses shall be examined in the presence of all parties to the case. An exception has been made to this section, which further states that a witness may be examined in the presence of the parties who are present on the date and time appointed by the court for the examination of the witness. The JJ Rules has not further dealt with witness examination. The only duty prescribed to the court by the JJ Rules is to inform the child about the allegation and witness and evidences against

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him/her (rule (12(3)) in child-friendly language (rule (12(2))). The research attempted to document the practice of presence of children in conflict with law in courtrooms, and if present whether the court read out the witness testimony to the children in conflict with law.

### **Findings:**

- ▶ The courts outside of Kathmandu Valley shared that for cases where children were ordered to be placed in the child reform home in Bhaktapur (the child reform home at Pokhara started its operation during the time of research), children didn't participate in any stage of their trial, including witness examination, after bail hearing.
- ▶ In cases where children were released in bail or in recognizance, or released into the custody of parents or any other organization, 65 percent of the courts stated that children participated in the witness examinations and the remaining 35 percent observed that children remained absent in witness examinations.
- ▶ 85 percent of the courts stated that the testimony of witness of a child in conflict with law is read out to him/her but 15 percent courts stated that there was no such practice. The courts where there was no practice of reading out the testimony to a child explained that there was no such need to read out the testimony to a child as his/her/their lawyer was present throughout the witness examination.

### **8. Final decision, its implementation and other associated procedure**

There are a number of procedural standards prescribed by JJ Rules and other prevailing Nepalese laws to be complied with during the final day of hearing and afterwards.

#### **Standard 19: Child in conflict with law should be notified of the final hearing date.**

No. 53 of the chapter on Court Management of the National Code 1962 has a provision that a notification of the major procedural steps and every hearing of the case should be given to the parties of the dispute. No. 54 to 62 of the

chapter on Court Management gives high importance to the presence of parties in the hearing of the case and has prescribed the grounds of the considerations for rescheduling the hearing dates. No. 64 however validates the work of the court in case the party is absent after being provided with a date to be present in the court.

JJ Rules has not made any prescription as to whether a child in conflict with law needs to be informed and present in the courtroom during his/her final hearing. The research attempted to document the prevailing practices on those two aspects.

### Findings:

- ▶ All the courts claimed that they send notification to the child about the date of hearing.
- ▶ In final hearing, those children who were living in the child reform home at Bhaktapur and whose cases were being tried in the courts of Kathmandu valley get an opportunity to be present in the final hearing. Unfortunately those children whose cases were being tried outside of the courts of Kathmandu valley could not participate.
- ▶ The research team also discussed how the systematic exclusion of the children living in child reform home from participating in court proceedings could be addressed. The courts re that the judiciary can adopt following options : i. running juvenile court in the premises of child reform homes ; ii. developing child reform home in access to the nearest Juvenile Bench and iii. installing modern technology (video conferencing) to ensure that a child can participate in bench proceedings from the child reform home.

### **Standard 20: Court is under obligation to use the language that is understandable by the child in conflict with law**

Understanding the language being used in the court is very important for a child to know what is happening in his/her case and also to defend his/her case. Rule 12 (2) prescribes that the court should use child-friendly language, which is appropriate to the child's age and mental and physical development.

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Rule 24 further states that the court may also provide an interpreter to a child if the court feels that s/he may require so. The research attempted to know how far such standards were practiced.

### **Findings:**

- ▶ 20 percent of the courts believed that the language of court proceedings was understandable by the child but the remaining 80 percent courts expressed doubts that the children understood the language of court proceedings.
- ▶ All the courts claimed that there was a practice of arranging for interpreters to simplify the language used in the court to make it intelligible to the children. The courts highlighted that there were no designated interpreters in the court and mostly informal arrangements were made for the child. In most of the instances court staff interpreted or simplified the language to the child.

### **Standard 21: The child's case has to be decided within 120 days from the day of registration of the case in the Juvenile Bench/court.**

The JJ Rules require that a case of a child in conflict with law should be disposed within 120 days from the day of registration of the case in the Juvenile Bench (rule 16). Timely decision of the case is one of the important aspects of access to justice and of protecting the best interest of the child. The research tried to document whether decisions were passed in a timely fashion and also tried to identify the reasons behind not being able to dispose the case within statutory deadline.

### **Findings:**

- ▶ 70 percent of the courts in the study were unable to pass the decision within 120 days. However 30 percent courts claimed that they successfully disposed the cases within statutory deadline.
- ▶ 70 percent of the courts in the study stated that the lengthiness of the existing procedures themselves was the major cause for the delay in deciding the cases within the stipulated time frame. Some examples of the procedures cited include the process for waiting for the parties to

the case if they don't appear on given date, process for witness and evidence examination, duration for age verification etc. The remaining 30 percent maintained that the postponement of hearing by lawyers is the main cause of inability to comply with 120 days' time limit.

### **Standard 22: The opinions of the social worker and child psychologist should be considered before making the final decision.**

The Children's Act and JJ Rules has ensured collective hearing between a Judge, a social worker and the child expert or child psychologist (Sec. 55 and rule 11). JJ Rules has made it mandatory that the child expert or psychologist or the social worker should submit their opinion to the judge (rule 11.2) and the judge can only decide the case after receiving such opinion (rule 11.3 and rule 17.c). However, the law has also clearly stated that the judge's work would not be invalid for the reason that neither social worker nor the child psychologists were present in the case (Proviso of rule 11.1).

### **Findings:**

- ▶ All the courts clearly explained that they gave due consideration to the opinions of social workers and child psychologists whenever they were submitted to the courts. 85 percent of the courts had received and duly considered such opinions but remaining 15 percent had not received such expert opinions.

### **Standard 23: The verdict of Juvenile Bench has to be read out to the child or be provided with a copy.**

No. 193 of the chapter on the Court Management of the National Code 1962 requires that the court should read out the final judgment to the parties who are present on the day of the final hearing and if a party is not present, a notice shall be issued to the litigant not later than three days after the judgment has been passed, stating the nature of the punishment that has been imposed on him/her. This legal provision equally applies to the children who are present or absent on the day of final hearing. Further the JJ Rules prescribes that the copy of decision should be provided to the child without any fee (rule 19). The copy of the final decision is often not ready on the same

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day of the judgment; hence, these two provisions separately apply to children's case.

### **Findings:**

- ▶ All the courts stated that the decisions were read out to the children if they were present in the court.
- ▶ As explained in the earlier section, children in conflict with law were absent in majority of the situation due to their placement in child reform home. The courts claimed that they had sent notices regarding the final decision and the nature of punishment to the child reform home or at the given home address for those children who could not attend the bench on the final decision.

### **Standard 24: The District Court has to monitor the implementation of the final decision of Juvenile Bench.**

The District Court Rule, 1996 has made provisions of implementation of the judgment by at least two officers of the court besides the Judge. The Regulation has also prescribed a committee to facilitate the implementation of judgments. (Rules 4b, 7, 8 and Chapter III)

### **Findings:**

- ▶ The study found that only 35 percent of the courts studied had a general practice of monitoring the implementation of courts' decisions.

### **Standard 25: The Children's Act provides discretionary power to judges to suspend the sentence of a child when proven guilty.**

The Children's Act states that if a judge thinks that it is not appropriate to impose a sentence of imprisonment to a child convicted of an offence with regard to his physical condition, age, circumstances in which the offence was committed and recidivism; s/he may suspend the sentence. The impact of the suspension is that the child is immune from undergoing the prescribed sentence until s/he is found committing the same or any other offence within a period of one year. In such a situation, the suspended sentence would be clubbed with the later sentence. (Sec. 50.2)

### Findings:

- ▶ The study found that 14 out of 20 courts studied had delivered the order of suspension of the sentence in the past.
- ▶ Three Juvenile Benches were found to have asked for periodic report from families about the conduct of children whose sentences were suspended. According to these courts, the periodic reports proved to be an effective tool to monitor the punishment.

## 9. Coordination Mechanisms

The JJ Rules has prescribed the coordination mechanism at central level but has not spoken anything on the district level. The JJCC has facilitated district level coordination and taken gestures for promotion of Justice for Children efforts in supervision of the Juvenile Bench. The research inquired how far the coordination mechanism prescribed by the JJCC committee is working in the district and whether there was a relationship between juvenile reform home and the Juvenile Bench. Though the national legislation has not provided adequate guideline in this area, the international standards have desired an effective coordination and collaboration between judicial bodies, state funded welfare organizations and other nongovernmental social organizations.

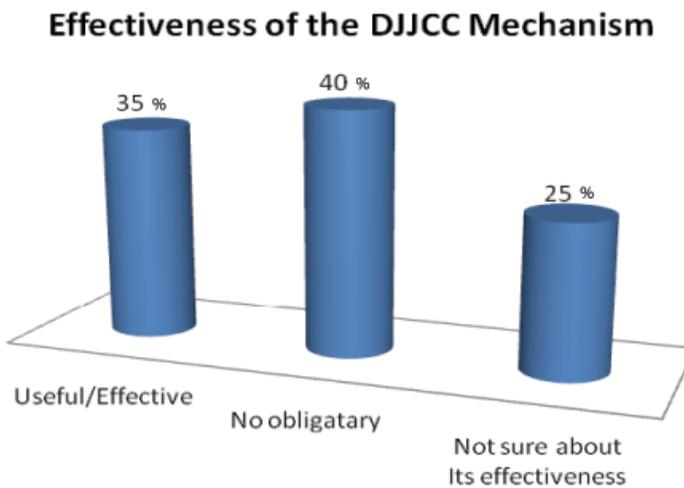
### **Standard 26: An effective coordination among stakeholders of Justice for Children (juvenile justice) at district level is to be done by the DJJCC.**

JJCC circular had advised the registrar of the district court to organize a quarterly coordination meeting with the member of DJJCC. Objectives of setting up DJJCC mechanism was to bring efficiency in the functioning of state's Justice for Children mechanisms and to form collaborations with nongovernmental organizations that may provide services for children in conflict with law, such as institutional care, legal aid, or psycho-social counseling. The research inquired into whether DJJCC mechanisms were set up in the districts and the extent to which they were effective in bringing about results of problem solving, linking and promoting services for children in conflict with law. The research also looked at whether services for children in conflict with law were available at the district.

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### Findings:

- ▶ All the courts have formed DJJCC. 70 percent of the courts were found to be conducting meetings of DJJCC. The remaining 30 percent courts had not held meeting of DJJCC in the past one year.
- ▶ 35 percent of the courts opined that the DJJCC mechanism was useful and effective. The other 40 percent opined that DJJCC mechanism could be effective only if the decisions taken during the meetings were implemented. These respondents felt that the decisions taken in the DJJCC meetings could not be implemented due to very limited capacity of the district level agencies and lack of resources. Remaining 25 percent expressed that they were not sure about its effectiveness.



*Chart No. 7: Effectiveness of DJJCC mechanism*

- ▶ In most of the districts, the JJCC meetings did not take place every quarter. Judges and registrars shared that quarterly meeting did not have prominent agendas to be convened for. The respondent courts felt that quarterly requirement of DJJCC meetings was too frequent. The court suggested that it was appropriate to have a meeting twice in a year and whenever any of the members requested with a prominent agenda.
- ▶ 35 percent of the courts reported having working relationship with child reform homes whereas 65 percent courts had not maintained any relationship and cooperation with child reform homes. The

working relationship is defined as having professional contact with Child Reform Home through the cases, knowing whom to contact if they required information from Child Reform Home and having visited the reform home as well. Most of the judges expressed that there is a need to have provision that allows courts to supervise and monitor the progress and services offered to the children in Child Reform Home.

**Standard 27: JJ Rules prescribe that State should promote and enlist services given by NGOs.**

JJ Rules has prescribed that each District Child Welfare Board (DCWB) is under an obligation to make a list of services available at the districts for children in conflict with law (Rule 21 (1)). The DCWB is under an obligation to provide such list to Juvenile Bench or Court. (Rule 21(7)) The research inquired whether the Court is aware of such enlisting provision of the Rules and how far such services were available.

**Findings**

- ▶ All the courts shared that they were aware of such provision. 60 percent of courts shared that their districts had no particular services for children in conflict with law. Remaining 40 percent stated that they had access to services such as legal aid, reform home, psychosocial counseling and temporary placement of children.

**10. Rights of child victims**

**10A. Juvenile Bench and Child Victims.**

The Children’s Act specifically mentions that the Juvenile Court or Bench shall have the powers to first initiate and decide cases in which a child is either a plaintiff or defendant (sec. 55.2). However for the violation of the rights recognized under chapter two of the Children’s Act, the Act has provided jurisdiction to the District Court (sec. 20). The chapter on Rape, Assault and Molestation under the National Code, has provided jurisdiction to the District Court for the offence of violence against women and children.

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**Standard 28: It is desirable that the services available for children in conflict with law to be extended to child victims and child witnesses.**

As a special legislation on children, the jurisdiction prescribed by Sec. 55 (2) of Children's Act, 1992 has not stopped Juvenile Bench to handle the cases of child victim as well. After the enactment of the JJ Rules, the possibility of hearing the cases of child victim by the Juvenile Bench was completely dropped. Hence, the researchers concluded that in terms of judicial and legal proceedings, rights of children in conflict with law have been better protected than the rights of child victims. In line with this analysis, the courts were asked as to how they felt about utilizing the court infrastructure that was made for children in conflict with law for child victims. Keeping in mind that the law has not recognized any rights of child victims and witnesses in relation to the court facilities, the courts were also asked whether they felt it was appropriate to extend facilities available to children in conflict with law to child victims and witnesses.

### **Findings:**

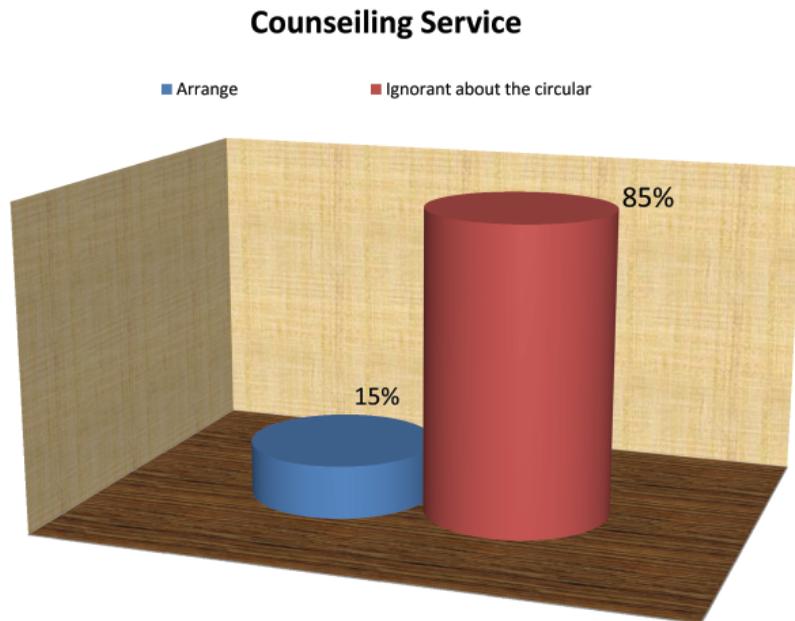
- ▶ All the courts stated that the services available to children in conflict with law should be made available to child victims and child witnesses. 55 percent of the courts studied shared that they had begun making child-friendly room available to child victims. The remaining 45 percent let the child victim use the Juvenile Bench for hearing the case. Only 5 percent of the courts studied had begun using CCTV for recording testimony of child victim.
- ▶ In terms of whether laws should be changed to extend such services or not, 30 percent courts believed that the law change is not required for a court to extend available services to child victims or witnesses. These courts felt that the courts had authority to make it available without change of laws. However remaining 70 percent felt that law change was desirable for universally making services available to child witnesses and victims.

**Standard 29: The court should make counseling services available to child victims.**

The existing law doesn't require that district court to provide psychosocial counseling service to child victim. The circular issued by JJCC dated October 2011 directs 26 District Courts and 26 District Police Offices that counseling services to be provided to child victims children through enlisted child psychologists of Juvenile Bench. The research attempted to record implementation of this circular.

### Findings:

- ▶ Until the day of research interview, 15 percent courts had arranged counseling service to child victim but remaining 85 percent courts were ignorant about the existence of the circular.



*Chart No. 8: Availability of counseling services to child victims*

### 10B. Basic standards on protection of Child Victims

Though the research was primarily focused on recording how the legal standards on Justice for Children are being implemented, it also tried to capture how the district courts/Juvenile Benches viewed the rights of child victims and if and how they put it in practice.

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**Standard 30: The court should make an arrangement for the child victim to avoid the confronting offender.**

The installation of CCTV has provided an opportunity to children in conflict with law to avoid seeing victim of offence or lawyer or any other parties. (Rule 12(4)) JJ Rules have dealt with children with much sensitivity by keeping him/her in child-friendly room and controlling the direct communication with a child in conflict with law. The research sought opinions and tried to record practices by asking what arrangements were made for child victim to avoid confronting with offender and to be safeguarded from being asked insensitive questions by a lawyer of the adverse party.

### **Findings:**

- ▶ 80 percent of the courts responded that the statements of child victims and witnesses were taken in front of the accused and his lawyer because of the Sec. 49 and 50 of the Evidence Act. However, 20 percent courts opined that the protection could be offered to child victims by asking offenders to leave the room or taking child victim to child-friendly room and using CCTV camera.
- ▶ However, all of the judges were of the opinion that the victim usually got frightened or could not speak up in front of the offenders in the court environment.

**Standard 31: Confidentiality of the personal introductory information of the child victim to be maintained by the court.**

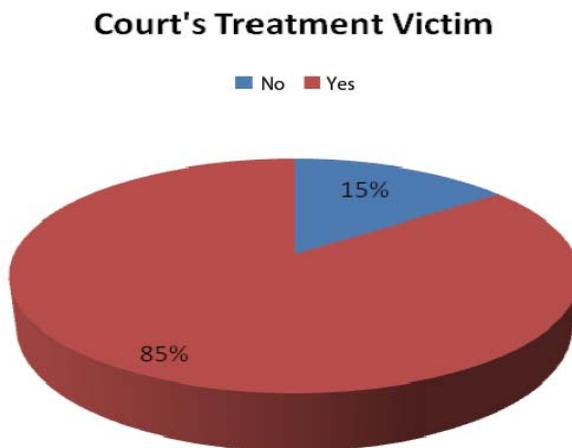
As per the decision of the Supreme Court<sup>5</sup>, confidentiality of all criminal cases that require protection of privacy on the basis of the nature of the case and the impact that they can leave on victims should be maintained (for example those including women as victims and including rape, abortion, sexual abuse, transactions in human beings, trafficking in human beings, incest and violence against women).

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5. *Sapana Pradhan Malla v. Nepal Government and others*, Decision of 25th December, 2007 (10 Poush, 2064)

### Findings

- ▶ All the courts were aware that the rule of confidentiality should be maintained for child victims. In practice, 85 percent of the courts stated that the identity of victim child was kept confidential whereas 15 percent courts stated that the identity of the child victim was disclosed. The research did not inquire into the procedures for maintaining confidentiality.



*Chart No. 9: Status of maintenance of Confidentiality of Child Victims'Introductory information.*

### **Standard 32: It is desirable that the record-file of child victim should be kept separately by the District Court.**

Rule 5 (1) of the Procedural Guidelines for Protecting the Privacy of the Parties in the Proceedings of Special Type of Cases 2007 issued by the Supreme Court states that the personal introductory information kept in accordance with Section 3 must be recorded on a separate page and sealed in an envelope, and that a separate introductory name or number or indication mark must be given to mark the information to be kept private and must be certified by the concerned authority. Rule 5 (3) further states that for the sake of protection the privacy of the information kept secret, the concerned court or office must make arrangements for creating a separate roster of such case files, giving indication marks and preserving the records. Though the guideline doesn't specifically require the record of child victim to be kept separately

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from adult, it is desirable to keep it separately so that it can be better safeguarded.

### **Findings:**

- ▶ The research found that the cases of the child victim were not kept separately in almost all of the courts studied. The courts explained that the law did not prescribe such arrangement.

### **Standard 33: Notices to child victims should be sent about the status of their case.**

The chapter on court proceedings in the Country Code requires that the parties to the case should be given notices of each hearing of the case and also requires presence during the final hearing. Victims of violence, whose cases are taken up by the public prosecutor, are deemed not to be a party to the case and lose their rights to be informed by the court. However the court has discretion to inform a victim to be present on the hearing of the case. The research tried to document whether there was a practice of sending notification to a child victim by the court regarding the status or progress of their case.

### **Findings:**

- ▶ All the courts stated that there was no such practice or rule to inform the child victim about the progress of their case. Only in the time of witness examination, child victims were called on to the court to record their testimony.

### **Standard 34: No child victim should be re-victimized by the judicial process.**

The research tried to document the understanding of the courts on re-victimization of victim and asked an open question to the courts for sharing what measures were taken to protect to child victim from being re-victimized.

### Findings:

- ▶ The respondent courts all believed that re-victimization should not happen. However, 40 percent of the courts said that they did not have a specific idea of measures to be taken to avoid re-victimization. The remaining 60 percent stated that courts and the state should provide multiple supports for preventing child victim from re-victimization. In terms of services, 32 percent of the courts suggested that the victims needed to be provided with legal aid, psychological counseling, medical services and safe homes; 16 percent stated that victims needed to be provided with financial support; 10 percent mentioned that they should be ensured with personal safety; and 5 percent stated that confidentiality should be maintained.



*Chart No. 9: Judge's understanding of measures to avoid re-victimization*

## 11. Role of Social Worker and Child Psychologist in the Juvenile Bench

Social workers and child psychologists play an important role in Juvenile Bench. Their role makes the trial of a child in conflict with law distinct from the regular criminal procedure. The Children's Act and JJ Rules has given two primary roles in the adjudication process. The research inquired about the practice of these two standards.

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**Standard 35: A social worker and a child psychologist should present his/her 'opinion in writing' to the court.**

Rule 11 of JJ Rules provides for a collective hearing by the judge, social worker and child psychologist or child expert. Reading of rule 9 (6) clearly suggests that the role of social workers and child psychologists is required not only for the final hearing but from the beginning of the trial. According to Rule 11(2) of the JJ Rules, the social worker and child psychologist have to present their opinions in writing to the judge. After receiving such opinion, the judge decides the case (Rule. 11(3)).

### **Findings:**

- ▶ 75 percent of the social workers and 77 percent of child psychologists interviewed stated that they had submitted an opinion to the judge in every case they had participated in. Remaining 25 percent social workers and 23 percent child psychologists had not participated in the Juvenile Bench proceedings.

**Standard 36: Each case should be enclosed with a social inquiry report.**

Rule 4 (g) of JJ Rules requires that the investigating officers should request the enlisted social organization to prepare a social inquiry report. JJ Rules has enclosed the format of the social inquiry report in annex. The nature of the social inquiry report requires the social worker to be competent and trained in filling up of the report. The research asked social workers whether they were fulfilling such role and whether they felt such responsibility was theirs.

### **Findings:**

- ▶ All of the social workers felt that filling up social inquiry report is the duty of trained social workers. In terms of whether it was their role or not, they were not sure as per the current rule. According to Rule 4(g) and 13 of JJ Rules, social workers felt that it was not explicit whether the social inquiry report is to be prepared by the social workers who participate in the bench hearing or by a separate one.
- ▶ 50 percent of the social workers felt that the role of filling up the social

inquiry report should be their duty but that they should be informed in the beginning of the case to give them ample time in their hand to prepare the report. The remaining 50 percent of the social workers felt that their role was only to evaluate the social inquiry report submitted by other social workers but not to participate in the Bench.

## **12. Effectiveness and motivation of social worker and child psychologist in Juvenile Bench**

The research asked open questions to social workers and child psychologists as to what would make their role more effective and what would motivate them to improve their performance in the Juvenile Bench.

### **Findings**

- ▶ Unanimously all the social workers and child psychologists mentioned that their involvement in the case from the time of initial police investigation would make their role more effective, as they would get better chances to collect information on child and his/her background.
- ▶ Furthermore, all of the social workers and child psychologists interviewed were of the opinion that preparation of the social inquiry report would make their role more effective.
- ▶ All of the social workers were of the opinion that they required better compensation for their work at the Juvenile Bench as the work was demanding and challenging.



# **Chapter - Three**

## **Conclusion and Recommendation**

### **1. Human Resource Development**

#### **Conclusion:**

- ▶ All of the judges, social workers and psychologists universally accepted that trainings had been useful for them. Judges summarized their training need on the following areas: international practices, child psychology, diversion, national laws, best interest of the child and suspension of sentence. The social workers and child psychologists similarly summarized their need on the following areas: dealing with children, interview skills, communication skills, child -friendly behavior, report writing skills, national and international legal provisions on JJ.

#### **Recommendations:**

- ▶ A need assessment has to be carried out before conducting any training to judges, social workers and child psychologists.
- ▶ There should be more than one social workers and child psychologists trained in each district and their name should be registered in the roster.

### **2. Infrastructure**

#### **Conclusions:**

- ▶ All the district courts were observed to have limited physical space to adequately provide space for the Juvenile Bench. In most of the courts, the bench has been adjusted according to the availability of resources in the particular district court. It was found that even in the new court building of Banke district, the facilities for Juvenile Bench was not properly provided for at all. With alternative planning, the same amount of space could have been properly managed. In other words, the idea of Juvenile Bench is not yet mainstreamed in judicial thought. There is a clear lack of commitment to set up a separate Juvenile Bench by proper planning of resources.
- ▶ The use of technology has not been mainstreamed in the court system. There is neither properly trained human resources nor motivation in the staff to use such technology even when available. The situation of power

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cut/ load shedding has further demotivated staffs to the use of technology. There was no practice of digital recording of child testimony. For some, it was not known that the computer could be used to digitally record testimony of a child. The CCTV was the least used technology.

### **Recommendation:**

- ▶ Give the current status of electricity supply and the court's general lack of ability to handle technologies, expansion of the use of technology such as computer based recording and CCTV in the Juvenile Bench needs to be reconsidered. A thorough exploration of alternatives should be conducted before expanding such technology-based courts.

### **3. Child-friendly Behavior**

#### **Conclusions:**

- ▶ Child-friendly behavior is not well defined by the legislation, nor has any working definition been developed by the JJCC. The judicial understanding of child-friendly behavior is largely positive and liberal enough to accommodate any standard in this area. However there is a big gap between its understanding and its application in terms of the services catered to children in conflict with law.
- ▶ Almost all of the children who had come to the courts were not able to avoid crowded environments. Most of the children (60 percent) were not placed in child-friendly rooms while awaiting the trial or for interviewing. In majority of instances (90 percent), the children were also not interviewed by trained staffs. Instances of the use of handcuffs by police (in 5 percent cases), children being still accompanied by police in uniform (in 30 percent cases), and girl child being brought to the court by male police (in 20 percent of cases) were also observed. These findings demonstrate that police administration is not acting up to the mandatory standard of JJ Rules and the orders of the Supreme Court. The courts have not developed a system of appointing or designating professional interpreters. Still 20 percent of the courts believed that the language used in the courts was understandable by a child even when children were found produced in the court without presence of guardian or parent or any other social organization in 70 percent of the cases. The courts still do not,

in most cases, proactively inform the children that they can avail of water facilities and toilet breaks.

### **Recommendations:**

- ▶ JJCC should have a dialogue with the Supreme Court and ensure that Juvenile Bench is mainstreamed in all the new buildings of the courts that are under/going to be constructed. The courts should build their infrastructure and train their human resources to enforce child-friendly standards. The court should clearly state what the rights, privileges and obligation of a child in the court are.
- ▶ Other proactive measures should include ensuring that
  - ◆ legal guardian or social organization are represented in court proceedings,
  - ◆ trained staff take interview of children in child-friendly facilities,
  - ◆ the testimony is read out to child in an understandable language and/or with explanation.
- ▶ Furthermore, the police system should proactively enforce the standards such as not handcuffing a child, using only plain clothes while dealing with child and providing policewoman to accompany a girl child.

### **4. Maintaining Confidentiality:**

#### **Conclusion:**

- ▶ The courts in the study were aware of and committed to their obligation to maintain confidentiality of the personal introductory information of children in conflict with law as directed by the Supreme Court but lacked skills and methods to implement it. The research revealed that only 60 percent of the courts were found to be maintaining confidentiality of children. The training of the staffs on maintaining confidentiality was also limited (65 percent). The research found out that huge confusion still remained in the courts as to how to maintain confidentiality and for how long, when and how the code name is to be given, how to administer copying facilities to the parties and lawyers, and also regarding the procedure of in-camera trial.

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### Recommendation:

- ▶ A detailed guideline on the uniform procedural steps to maintain confidentiality needs to be issued. Secondly, capacity building of the staffs responsible for managing the information (such as providing code name, identifying documents that need to be sealed, storage of such documents and the events when such document is to be opened or reproduced) should be carried out. Further, a statutory law should be enacted to implement punitive measures against breach of confidentiality and improper or complete implementation of the procedural steps to maintain such.

## 5. Participation of Social Workers and Psychologists in trial

### Conclusions:

- ▶ In terms of training, the universal demand from social workers and psychologists was to reorganize refresher courses. It was also shared that the knowledge they gained was not fully utilized due to lack of cases.
- ▶ A positive finding from the study was that all the courts opined that they gave due recognition to the expert opinion provided by the social workers and child psychologists. Social workers and child psychologist were willing to be involved in cases from the very outset and were willing to prepare social inquiry reports. Their demand was to be informed by the police station and the courts in a timely manner.
- ▶ Due to inadequate statutory and procedural guidelines on the rights, responsibilities and obligations of social workers and psychologists, great amount of confusion has evolved regarding their status on the Juvenile Bench and the expected role in administration of justice. Most of the judges viewed the role of social workers and psychologists being to provide opinions to courts as any other expert, whereas the social workers and psychologists saw a collaborative role for themselves in the bench at par with the judges. The majority of the judges valued the important function social workers and psychologists provide in the case but were not ready to accept their status at par with them
- ▶ There were different understandings amongst judges as to whether social workers and child psychologists needed to be invited from the very beginning of the trial or only during the final hearing. Forty percent of the

courts studied had invited social workers and/or child psychologists for bail hearing procedures, with the remaining sixty percent only inviting them for the final hearing.

- ▶ The role of social workers and child psychologists are not yet institutionalized and is largely dependent on the personal dynamic of presiding judge of the Juvenile Bench and the flexibility shown by social workers and child psychologists. Some social workers were observed to be more engaged than others with the court due to their background as lawyers, other interpersonal reasons, or their commitment to the cause.
- ▶ Due to legal ambiguities on their ToR, time pressure to produce report to the court, nominal financial benefit, social workers and psychologists do not feel encouraged to participate in the judicial proceedings. The social workers and psychologists don't seem motivated to be part of Juvenile Bench under existing legal scope. At large, social workers and child psychologists don't see any other linkages than the invitation by the court to participate in the trial. If the courts don't invite them, they don't find means to engage in the case. This could be the reason behind 20 percent of courts not having child psychologists and social workers participated in the bench.

### **Recommendations:**

- ▶ The existing law should be changed or a detailed guideline should be issued to regulate the role of social workers and psychologists in each stage of the trial (such as each step in police investigation, each stage of court trial and each stage of rehabilitation). Social workers and child psychologists should be contacted whenever a case of a child in conflict with law is registered with the bench. It is advisable to have an agreement with social workers and child psychologists on a case-to-case basis to make them more accountable. The courts need to inform the enlisted social workers and child psychologists in a timely manner and have an agreement with them when the investigating police officers have reasonable grounds of suspicion against a child.
- ▶ The communication between enlisted social workers, child psychologists and the court should be strengthened and facilitated to ensure the presence of all three while deciding all cases related to children in conflict with law.

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If they are found unwilling to attend the case, their name should be erased from the list in accordance with rule 8 of JJ Rules.

- ▶ An adequate pecuniary compensation should be provided to the experts. ToR should be crafted between the courts and concerned social workers/child psychologists or their agencies with reporting contacts and detail of responsibilities to keep their motivation intact.
- ▶ Moreover it is not likely that accredited social workers and child psychologists would fulfill all the expected role of social workers and psychologist in the absence of related government department. There is a need to have appointments of social workers/psychologists in concerned government offices or courts that can be fully mobilized to provide familial, social and health services to children in conflict with law. In the absence of such state appointed office, it is also desirable to provide authority and resources to each police unit or court to enter into agreement with professional organizations to acquire services of social workers and psychologists.

### **6. The use of remand, reasons for keeping in remand, health checkup and torture**

#### **Conclusions:**

- ▶ In a large number of cases (65 percent), the court still resorted to institutional measures of placement (i.e., child reform center). However, the percentage of non-institutional measures (35 percent) was still significant in view of lack of national legislative guidelines to not use institutions.
- ▶ In a small percentage (15 percent) of the cases, the police didn't provide the underlying reasons for keeping children in remand and the courts also found to be overlooking whether legislative requirement were being met and simply endorsing the requests for remand.
- ▶ In all of the cases produced before the courts, health checkup reports were produced and none of the reports proved the existence of torture.

#### **Recommendations:**

- ▶ In the upcoming law, there should be a clear provision that the court only adopts institutional measures as the last resort and for the shortest time

possible. Such guideline should provide details on non-institutional measures.

- ▶ The Juvenile Bench should adopt stringent measures to monitor whether the child was apprehended for more than 24 hours, and whether all safeguard standards prescribed by the legislation are complied with. It was encouraging to see that judges were increasingly handing over children in conflict with law to their family members and such best practices need to be encouraged.

### **7. Presence of lawyer in child's trial**

#### **Conclusion:**

- ▶ The courts did not require the presence of lawyer at each stage of a trial, which was against the letter of law. Nevertheless in the final hearing the courts required the presence of a lawyer.

#### **Recommendation:**

- ▶ The court has to immediately ensure that a lawyer is present during each stage of trial. In the long run, new legislation should provide guidelines on what stage a lawyer is required and whether a lawyer's presence is required in each stage of pre-trial, and under trial including diversion decisions.

### **8. Child's presence in his/her case, specifically on witness examination and final hearing**

#### **Conclusions:**

- ▶ Children whose cases were being tried in the courts outside the Kathmandu valley and who were kept in child reform center in Bhaktapur (now expanded to Pokhara) had not gotten chance to participate in any hearings after their placement.
- ▶ Among the children who were released to the custody of family, guardian, social organization or under recognizance, only 65 percent participated in witness hearings.
- ▶ All of the courts stated that they compulsorily sent notification to child about their final hearing. Only 85 percent of courts read out the witness examinations or final judgments to child.

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### **Recommendation:**

- ▶ It is essential for a state to respect a child's right to participate in judicial trial that affects his/her rights and obligations except when otherwise stated by such child. The options shared by the judges were as follows:
  - ◆ Running juvenile court in the premises of child reform homes,
  - ◆ Developing child reform home with access to the nearest Juvenile Bench,
  - ◆ Installing modern technology (video conferencing).
- ▶ A practice has to be established by the court that after reaching a judgment, taking a witness examination or recording a child's testimony, the court has to proactively inform the child about the procedure and its impact and read out the document to the child and entertains any questions/he may have. For children who are living in child reform center and are not able to attend the trial, the court should ensure that the center should read out the judgment to such child.

### **9. Time line to decide cases**

#### **Conclusion:**

- ▶ The JJ Rules clearly prescribes maximum of 120 days period for the court to decide their cases involving children in conflict with law. Unfortunately majority of the courts (70 percent) were unable to decide the case within the time limit. Moreover these courts argue that '120 days' time-limit is not adequate in view of existing legal procedure (70 percent) and also in view of facilities given to a lawyer to postpone the trial (30 percent).

#### **Recommendation:**

- ▶ A detail procedural guideline should be prescribed for the cases of children in conflict with law (or may be even for victim child) in line with the National Code and District Court Rule. Government attorneys and private attorneys should be reminded that in the children's case the postponement of the hearing is not desirable.

## 10. Implementation of the Judgment

### Conclusion:

- ▶ Only 35 percent of the courts stated that they monitored the implementation of the final judgment on cases involving children in conflict with law.

### Recommendation:

- ▶ The presiding judge of Juvenile Bench should monitor the implementation of their judgment taking support of the mechanisms prescribed under the District Court Rule.

## 11. Practice of suspending sentence

### Conclusion:

- ▶ Though a large proportion (70 percent) of courts in the study claimed to have used suspension of sentence, the findings of JJCC research suggest a more limited use (21.4 percent) of suspension.

### Recommendation:

The judges of Juvenile Bench should be shared with the existing practices of suspension. Furthermore, a follow up study to be carried out on whether suspension resulted in good conduct or not, with the result of such study shared with judges.

## 12. Coordination, Collaboration and Availability of services

### Conclusions:

- ▶ The majority of districts (70 percent) were found to be conducting meeting of DJJCC twice a year but they felt the meeting did not have adequate pressing agendas. The opinion of the courts was that the existing institutional capacity did not allow for solving the problems that were identified in the DJJCC meetings. Only a small percentage (35 percent) thought that DJJCC was an effective mechanism.
- ▶ The collaboration of the Juvenile Bench with service providing NGOs/agencies and the reform center was very limited (40 percent). The collaborations resulted in placement of children in some of the instances but a longer-term strategy has not been developed.

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- ▶ The availability of social services, including preparing social inquiry report and other referral, for children in conflict with law were found very limited and offered only under NGO's cooperation.

### **Recommendations:**

- ▶ The DJJCC, which is the only coordination mechanisms between Justice for Children stakeholders at Districts, should be strengthened and mechanisms should be established to bring about the issues that cannot be solved at district level to the central level. Such agendas should be given spaces at JJCC meeting that is held periodically at the Supreme Court.
- ▶ More regulatory and budgetary authority should be provided to Juvenile Bench to develop partnership with existing service providers to pilot and institutionalize reform agendas. This should include preparing social inquiry report and providing other referral services.

## **13. Services available to victim and witness children**

### **Conclusions:**

- ▶ A child in conflict with the law has been provided with higher level of legal facilities than a child victim. Though all the courts opined that the services created for children in conflict with law should be extended to witness and victim child. But in practice only 55 percent of the courts shared that they had begun making child-friendly room available to child victims with the remaining 45 percent letting the child victim use the Juvenile Bench for hearing the case. Only 5 percent of the courts studied had begun using CCTV for recording testimonies of child victim.
- ▶ Unfortunately majority of the courts studied (80 percent) could not avoid confrontation of the child victims with the offender. Likewise 15 percent of the courts still had not maintained confidentiality of personal introductory information of victim. The circular of JJCC about arranging counseling services to child victim was known to only 15 percent of the courts.
- ▶ Almost all of the courts stated that there was no such practice or rule to inform the child victim about the progress of their case. Child victims were called on to the court to record their testimony only during witness examinations.

**Recommendations:**

- ▶ Serious reconstruction in legal provisions affecting child victim needs to be done. Rights to maintain confidentiality of each child victim should be enforced in each stage of legal proceedings. Child victims need to be treated in child-friendly manner and should be proactively provided opportunities to avail all child-friendly services, safeguarded from direct interrogation by the lawyers of the other party, have a lawyer, family member and psychosocial help during questioning etc.
- ▶ 20 percent of the respondents revealed the practice of providing protection to child victims either by taking him/her to child-friendly room or by asking offenders to leave trial room, which is a good point to start from.

**14. Measures to avoid re-victimization**

**Conclusion:**

- ▶ Despite universal awareness among judges on avoiding re-victimization of children, 40 percent of the courts were unaware of measures that courts were required to apply to avoid re-victimization.

**Recommendation:**

- ▶ The state should have facilities such as safety, multiple support, maintaining confidentiality, legal aid, psychosocial counseling and medical support to avoid re-victimization of victim as a mandatory provision in law.

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## Annex - I

### Study on Judicial Practice concerning Juvenile Justice in Nepal Questionnaire for Court Officials

#### Introductory Details

1. Position:
2. Sex:
3. District:
4. Period of work in the current district (mention the date of commencement):
5. Whether participated in any training on juvenile justice:
  - a. Participated
  - b. Not participated
6. If participated, duration of training
  - a. One day
  - b. 2 days
  - c. 3 days
  - d. Mention days if more than three:
7. Training providing organization:
8. If participated, please provide the following information:
  - a. Whether learning from training has been used, and which subjects have been most useful?
  - b. If additional training is necessary.
  - c. If additional training is necessary, in which subject?

#### Subjective Question

How many cases concerning children were filed within the past three fiscal years?

##### a. Physical Infrastructure

1. When was Juvenile Bench formed in this district?
  2. What is the condition of physical infrastructure of Juvenile Bench at present?
    - (a) Is there a separate Juvenile Bench?      Yes:                  No:
    - (b) If not, what are the reasons for not having it?
    - (c) If yes, please elaborate about the following situation (Observe)
- (1) If CCTV has been arranged; and if yes, is it in working condition?

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(2) Have arrangements for a social worker and a child psychologist to sit together with the Judge made?

(d) Whether a separate child-friendly room is available; and if yes, is it in working condition?

(1) Are the walls brightly painted?

(2) Are there child-friendly posters, rack, drinking water filter, carpet, etc?

(e) Does it have a computer in usable condition? Are the records documented in the computer? If yes, are the records used in practice?

3. Do you have any suggestion for alternative or improvement of the physical infrastructure?

(a) Juvenile Bench Chamber

(b) Child-friendly Chamber

(c) Computer, etc.

(d) Any other:

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### **b. Entry of Children in Court**

4. When accused children are brought to the court:

(a) Where do they sit during waiting time or where are they kept?

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(b) Who contacts them at first?

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(c) Are they handcuffed?

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(d) Are the police in uniform or civil clothes, when they bring the children to the court?

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(e) Does a police woman escort in the case of a girl child?

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**c. Interrogation of children**

5. Where are the children interrogated?

- (a) Section
- (b) Child-friendly room
- (c) Juvenile Bench

6. Who interrogates?

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7. Are the following individuals requested to be present during the interrogation?

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	requested for presence	Not Requested for presence
Parents or Guardian		
Legal professional		
Social organization		
Child psychologist		
Social worker		
Judge		

8. Is the testimony of the child read out after interrogation and signed by the child under the witness of the present individuals?

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9. In what matters are the children treated differently than the adults accused of offences?

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Tag questions:

- (a) How long the interrogation does take place?
- (b) Are breaks offered during the interrogation?
- (c) Who is kept along with the child in the course of interrogation?
- (d) Is water available to drink?
- (e) Is permission to visit rest room provided?

### **d. Concerning Documentation**

10. Who is responsible to keep the records of the cases concerning children?

- (a) Trained section staff
- (b) Other employee

- 11. What measures have been adopted to maintain confidentiality of identity?
  - (a) Providing code name
  - (b) Keep the document sealed
  - (c) Prohibiting flowing of information to unrelated persons
  - (d) Prohibition of copying the document
 (Observe for the last two questions)
- 12. How long is the confidentiality of the document maintained?
  - (a) Until verdict is passed
  - (b) Until verdict is implemented
  - (c) For ever

**e. Arrest**

- 13. Who are presented at the Bench in carrying out court proceeding concerning bail hearing?
  - (a) Social Worker
  - (b) Child Psychologist
  - (c) Judge only
  - (d) All of the above
- 14. What are the roles of the Social Worker and Child Psychologist during bail hearing?
- 15. Where is the child placed for investigation while an order for arrest is issued?
  - (a) Child reform home
  - (b) Prison
  - (c) In care of parents/guardian
  - (d) Other

16. Do the police mention the reasons for extending custody while bringing the child for extension of custody period?

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17. If not mentioned, does the court ask to provide reason thereof?

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18. Is the health check-up report attached while request for extension of period is submitted? If not, does the court issue order for submission of a health check-up report?

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19. Does the court ask for the age of the child?

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20. What evidence is regarded the base to ascertain the age concerning dispute on age?

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21. Witness Verification

(a) Is a lawyer present in the court while verifying the evidence of a child?

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(b) Does the court appoint a paid advocate or a representative of a social organization if there is no legal professional of the child?

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(c) Does the court mandatorily present the accused child before it while taking testimony statement?

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(d) Does the testimony statement read out to child?

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22. Hearing and Verdict

(a) Is the child informed on the date of the case hearing and is s/he presented at the court?

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(b) Is the language of the court proceeding understandable by the child? If not, is a facility of an interpreter provided?

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23. Does the court pass verdict within 120 days? If not, what are the problems for not passing verdict within 120 days?

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24. Are opinions of the experts (social worker and child psychologist) taken?

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25. Is the verdict read out to the child after it is taken?

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26. How is the implementation of verdict monitored?

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27. Is order for postponement of the punishment issued while passing verdict? If yes, what measures are adopted to monitor it?

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### **Coordination**

28. Is the meeting of Juvenile Justice Coordination Committee held? And is the provision of the Committee effective?

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29. Are service providers available when the court needs? For example, reformatory, institutional guardianship/provisional care, legal assistance, psycho-social service, reform service, etc.

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30. Is there relationship and cooperation between District Court and Child Reform Home?

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**Extension of Court**

31. Does the Juvenile Court or Bench needs extension for coveting the victim and witness children?

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**When Children arrive as Victims and Witness**

32. How they are treated?

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33. Are they provided with the facility of child-friendly room?

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34. Are their personal identity kept confidential?

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35. Do they need to be provided with the facilities of Juvenile Bench and child-friendly room?

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36. Are the victim children provided with the facility of psycho-social counseling service?

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37. Are the statements of victim or witness children taken in front of the accused?

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38. Who else are present then?

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39. Are there any other issues?

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# Annex II

## Questionnaire for Social Worker

### Introductory

1. Name:
2. Sex:
3. Working district:
4. Starting date of working as a Social Worker or Child Psychologist:
5. In how many cases have you been involved?
6. In what types (natures) of cases have you participated?

### a. Training

1. How useful have the training you participated been? And which subject did you find the most useful?

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2. Is there a need for additional training?

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3. What is your recommendation for adding any topic or method in the training?

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## \* \* Research on Functioning of Juvenile Bench in Nepal

### **b. Participation in Investigation and Hearing**

1. How do you know that you should or should not be present in the case of a child?

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2. Are there any examples of initiations taken by you without information from court?

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3. Have you ever prepared a social inquiry report about cases of children?

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4. Does the court mention/cite to your opinion while issuing an order or taking a decision?

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5. What should be done to make your role effective in cases of children?

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6. Is it necessary to have collaboration for the effective operation of juvenile court or bench? If yes, how should it be done?

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7. How is the co-ordination and collaboration with Police, JJCC and Judge?

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## Annex III

### Questionnaire for Child Psychologist

#### Introductory

1. Name:
2. Sex:
3. Working district:
4. Starting date of working as a Social Worker or Child Psychologist:
5. In how many cases have you been involved till date?
6. In what types (natures) of cases have you participated?

#### a. Training

1. How useful have the training you participated been? And which subject did you find the most useful?

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2. Is there a need for additional training?

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3. What is your recommendation for adding any topic or method in the training?

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**b. Participation in Investigation and Hearing**

1. How do you know that you should or should not be present in the case of a child?

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2. Are there any examples of initiations taken by you without information from court?

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**Study Report**

3. Have you ever prepared a social inquiry report about cases of children?

**Recommendation**

4. Have you prepared and provided any opinion during hearing of a case?

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5. Does the court mention your opinion while issuing an order or taking a decision?

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## ✖ ✖ Research on Functioning of Juvenile Bench in Nepal

6. What needs to be done to make your role effective in cases of children?

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7. How is the coordination and collaboration with police, juvenile justice coordination committee and judge?

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## **Annex - IV**

### **List of Visited Districts**

1. Lalitpur
2. Kathmandu
3. Bhaktapur
4. Banke
5. Dang
6. Surkhet
7. Saptari
8. Dhanusa
9. Parsa
10. Makwanpur
11. Rupandehi
12. Palpa
13. Kaski
14. Tanahun
15. Jhapa
16. Ilam
17. Sunsari
18. Morang
19. Kailali
20. Kanchanpur





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