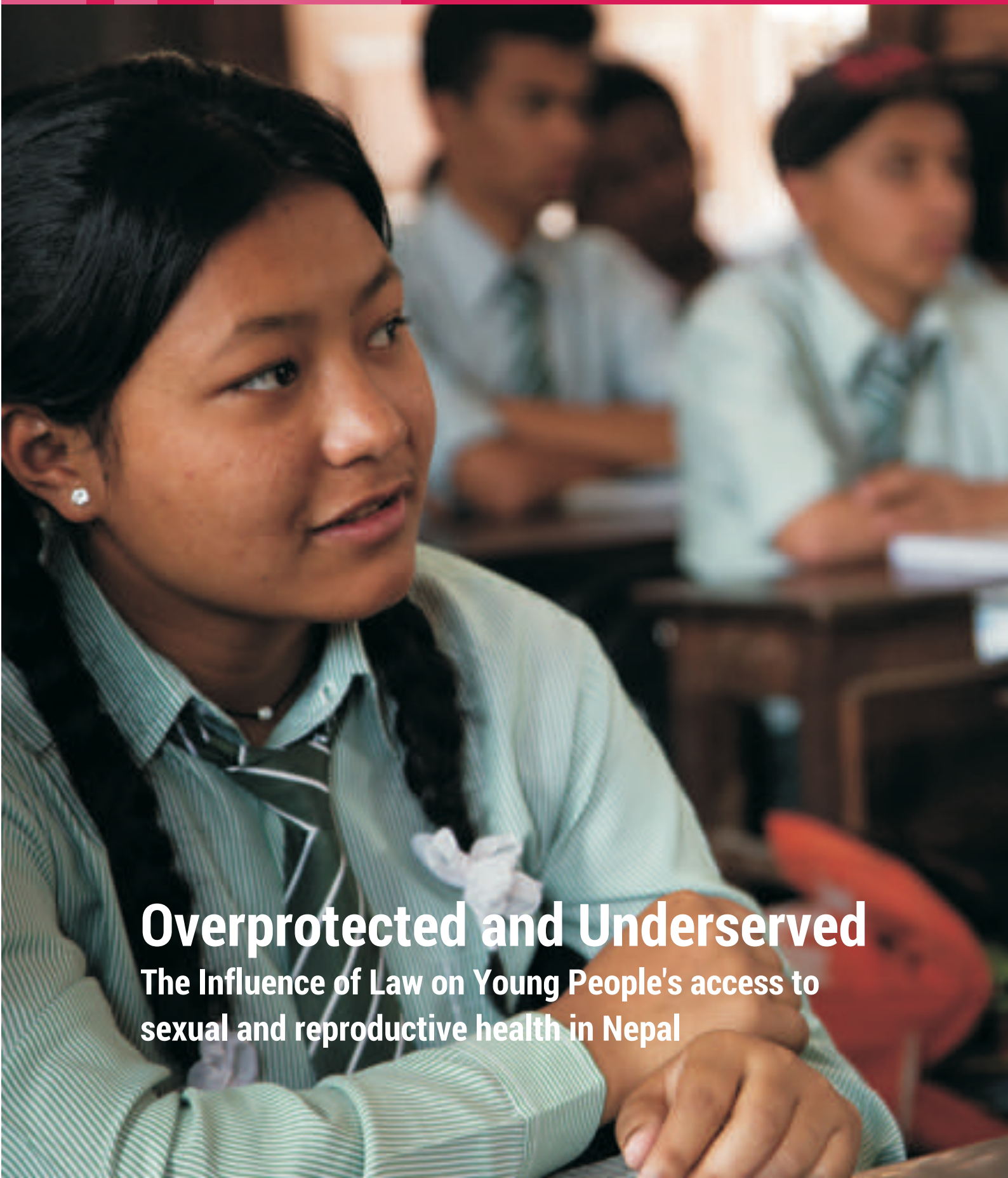
IPPF International Planned Parenthood Federation
South Asia Region

From choice, a world of possibilities



Overprotected and Underserved

The Influence of Law on Young People's access to sexual and reproductive health in Nepal

Who We Are

The International Planned Parenthood Federation (IPPF) is a global service provider and a leading advocate of sexual and reproductive health and rights for all. We are a worldwide movement of national organizations working with and for communities and individuals in more than 170 countries. IPPF works towards a world where women, men and young people everywhere have control over their own bodies, and therefore their destinies. A world where they are free to choose parenthood or not; free to decide how many children they will have and when; free to pursue healthy sexual lives without fear of unwanted pregnancies and sexually transmitted infections, including HIV. A world where gender or sexuality are no longer a source of inequality or stigma. We will not retreat from doing everything we can to safeguard these important choices and rights for current and future generations.

Our Mission

To lead a locally-owned, globally connected civil society movement that provides and enables services and champions sexual and reproductive health and rights for all, especially the underserved.

Our Vision

All people are free to make choices about their sexuality and well-being, in a world without discrimination.

Acknowledgement

IPPF SARO would like to thank the team at the Coram Children's Legal Centre (CCLC) for implementing the research and writing the report.

This field research and the report is written by a team comprising of Kat Watson, Elizabeth Yarrow, Kara Apland, Jorun Arndt and Maurice Dunaiski at Coram International at the Coram Children's Legal Centre. The methodology for this research draws and expands upon a pilot multi-country study conducted by Coram International and the International Planned Parenthood Federation in El Salvador, Senegal and the United Kingdom in 2012 - 2013.

IPPF SARO would also like to thank our Member Association in Nepal; the Family Planning Association of Nepal (FPAN) for their assistance and guidance throughout the study. In particular, we would like to thank Mr. Subhash Shrestha, Ms. Sumana Rana, Mr. Ranjit Gupta, Mr. Sharad Aryal and Mr. Laxman Prasad Dhakal at FPAN for their technical inputs and implementation of the survey tool and for providing information regarding specific legislation in Nepal relating to rights based sexual and reproductive health service provision.

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coram clc
Children's Legal Centre

FPAN
Family Planning Association of Nepal

Foreword

Asia is home to 850 million young people in the age range of 10-24 years. Although living in very diverse realities they all share similar challenges in the form of lack of information and meaningful participation in accessing services for their health and well-being.

Every country has specific laws that regulate access to SRH services for different age groups in different contexts. However, research on young people to date, covers their lived experience more often in the context of social, cultural and economic influences on their well-being. The influence of existing laws, it's absence and the gaps in its implementation have very rarely been explored.

In the recent past there have been a few seminal works relating to the study of country laws in the Asia – Pacific Region, the understanding of the law by young people and service providers and the law's everyday implementation. This includes the 'Overprotected and Underserved' series conducted in El Salvador, Senegal and the UK by IPPF in 2014.

These knowledge products detail existing legal principles and provisions. Pertinently, the mixed methods (reviews, quantitative and qualitative research) used in the studies above provide hitherto unexplored insights into the interplay between academic, legal, social and cultural beliefs and practices that together encourage or impede a young person's access to sexual and reproductive health services.

In line with these series in Europe, Africa and parts of the Asia Pacific, the International Planned Parenthood Federation – South Asia Regional Office (IPPF SARO) in partnership with UNFPA – Asia Pacific Regional Office (UNFPA APRO) embarked on creating an evidence base for countries in South Asia Region. IPPF SARO undertook these studies in India and Sri Lanka in 2015/2016 and in Nepal in 2016/2017.

Informed by the methodologies used previously, this report includes an introduction to current academic discourse on laws that regulate SRH service provision and the diverse lived experiences of young people and service providers. Young people living in rural and urban spaces, young adolescents from in-school and out-of-school settings, members from young key populations, young people living in post-conflict settings and service providers practicing in government and Member Association run service delivery points were interviewed and surveyed. Uniquely their knowledge, attitudes and practice on consent to medical treatment; privacy, confidentiality and reporting; age of sexual consent; criminalisation of same sex activity and gender based violence have been explored.

Overview of specific legal provisions pertaining to these thematic areas are provided below.

- In Nepal, law and policy concerning young people's access to sexual and reproductive health in is relatively permissive. It contains number of provisions which actually contradict with adolescent's independent access to contraceptives and other services without parental consent.
- National laws do not establish clear differences between the age of sexual consent, the age of marriage, and the age of consent to medical treatment, including consent to access SRH services. Due to lack of official guidance, the health service providers interpret the provisions according to their will which hugely impedes a young person's access to SRH services.
- Young people in Nepal are not confident and lack clarity regarding doctor-client confidentiality as their right whilst seeking a service. More worrisome is the fact that the country does not have a legal precedent for the same.

- Access to Comprehensive Sexuality Education has been an achievement in Nepal; through legal and policy provisions Comprehensive Sexuality Education has been made a part of the National Education System.
- In Nepal, abortion is relatively permissive in comparison to other countries in the region, nevertheless significant legal restrictions on access to abortion remain, and most women and girls in the country continue to rely on unsafe and unregulated methods of abortion.

The IPPF - UNFPA partnership in the South Asia Region aims to ensure continued investment by all stakeholders to better understand, train and implement services and programming for young people. Knowledge products such as the 'Overprotected and Underserved' series provide information that can be used to improve the versatility of a broad range of services such as Comprehensive Sexuality Education, Child Protection, Values Clarification and Attitude Transformation and Behaviour Change Communication. It provides a strong and current evidence base for advocacy and accountable collaboration among networks, organisations and individuals working with young people in the region.

Importantly, we are confident that these initiatives provide voice to young people and their collective wisdom in ensuring that they experience happy, healthy, safe and fulfilling sexual and reproductive health and wellbeing.

Varun Kumar Anand
Regional Director (Acting)
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1. Introduction

This report presents findings of a study exploring the influence of law on young people's access to sexual and reproductive health in Nepal. Whilst there is a wealth of global research on the social, cultural and economic dimensions of sexual and reproductive health, much less is known about the influence of law on access to rights and services. This is despite the fact that every state around the world, without exception, has developed legislation that is in some manner designed to regulate, enable, restrict and control sexual and reproductive health, for different groups of people, and in different situations and circumstances.

In recent years there has been a growing interest amongst advocates for sexual and reproductive rights in exploring the interplay between legal frameworks and access to protections and services. This research project contributes to efforts to build evidence and knowledge in this area, to guide future advocacy and programming work, with the ultimate aim of promoting and protecting young people's sexual and reproductive rights.

The research was funded by UNFPA - APRO and commissioned by the International Planned Parenthood Federation in South Asia (IPPF SARO). The research was designed and implemented by Coram International at Coram Children's Legal Centre, with field work collection and support by the Family Planning Association of Nepal (FPAN). Field work for the study took place in November and December 2016 and report completed in 2017.

2. Definition of key terms and concepts

For the purposes of this study a **young person** is defined as anyone between the ages of 10 and 24 years inclusive; meanwhile, a **child** is defined as anyone between the ages of 0-17 years inclusive, in accordance with Article 1 of the UN Convention on the Rights of the Child (UNCRC). The word 'child' is used in the report as this is a legal term, with clear and defined implications under the law. Sometimes, the word **'adolescent'** is used instead of child, to connote the social and biological stage of development that occurs between pre-pubescent childhood and adulthood, an adolescent may refer to anyone between the ages of 10-17 years.

Sexual and reproductive health (SRH) encompasses two related but distinct elements: health related to sexuality, and health related to reproduction. **Sexual health** implies that an individual has the freedom to have a pleasurable and safe sexual life, free of coercion, discrimination and violence. For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected and fulfilled.[1] **Reproductive health** implies that an individual has the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this is the right of men and women to be informed of and to have access to safe, effective, affordable and acceptable methods of fertility regulation of their choice, and the right of access to appropriate health care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant".[2] **Sexual and reproductive rights (SRH)** refers to an individual's right to have control over and make informed and free decisions on matters related to sexual and reproductive health, as well as their sexuality and sexual and reproductive life, free of coercion, discrimination and violence.[3]

Sexual and reproductive health (SRH) services: in line with these definitions (above) this study considered young people's access to services that are relevant to promoting and protecting sexual health and reproductive health. These will include, but are not limited to: education and counselling in relation to sexual and reproductive health, contraception, family planning, abortion, pre-natal and postnatal care, maternal and infant mortality, gender/sex reassignment services, and services related to the prevention and treatment of sexually transmitted infections (STIs) and sexual violence.

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[1] *World Health Organisation, "Defining Sexual Health", retrieved on 30 September 2015 from http://www.who.int/reproductivehealth/topics/sexual_health/sh_definitions/en/*

[2] *World Health Organisation, "Reproductive Health", retrieved on 30 September 2015 from http://www.who.int/topics/reproductive_health/en/.*

[3] *For more detail on the range of sexual and reproductive rights, see the International Planned Parenthood's 'Charter Guidelines on Sexual and Reproductive Rights', available at: http://www.ippf.org/sites/default/files/ippf_charter_on_sexual_and_reproductive_rights_guidlines.pdf*

3. Conceptual framework

Understanding the influence of law and legal rules on young people's access to SRH services in practice is a complex task. It involves understanding both what the law is, and how it is applied; as well as what young people and service providers know and understand about the law, and if and how such perceptions shape their choices, expectations and practices in relation to accessing or providing SRH services. Finally, it involves understanding how the law interacts with other key social, political, personal, economic (etc.) factors, which play a role in determining young people's access to services.

The research inquiry was structured with a mind to gathering evidence on three central, interrelated themes; namely:

- (What are) the legal rules that regulate young people's access to SRH services, and how they are applied?
- (What do) young people and health professionals' know about the law, and (how do) they perceive or interpret such laws as pertaining to themselves?
- (How does) law, and knowledge and perceptions of law, impact on young people's opportunities to seek out, and be provided, SRH services, and why?

In designing the methodology for the study, it was recognised that law may influence or impact on young people's access to SRH services in various ways: the law may act as a barrier to young people's access to services through both direct and indirect means. In other cases, the law may actively facilitate young people's access to services.

Direct legal barriers are understood to be laws which explicitly and purposefully restrict access to services either universally or for certain groups of young people in certain circumstances.

In order to examine and determine the direct legal barriers that impact on young people's access to SRH services in Nepal, researchers examined areas of law that regulate or restrict access to and capacity to provide consent for the following: medical treatment (in general); reproductive services (such as access to birth control, abortion and sterilisation); sexual health services (such as access to STI counselling treatment and services); access to 'gender affirmation' services for young people including surgical and hormonal interventions; and access to sexual and reproductive education, advice and counselling.

Indirect legal barriers are laws that do not directly impose restrictions on access to SRH services, but nonetheless may function this way in practice. For example, statutory rape laws - which establish a minimum legal age for consent to sexual activity, minimum age of marriage laws, and law establishing a minimum age for legal majority, may create indirect legal barriers to young people's access to services. Young people and service providers may interpret these rules as forbidding persons under these legal ages from accessing SRH services. Furthermore, these laws may have a normalising influence on existing social taboos associated with childhood and youth sexuality, particularly among unmarried girls.

In order to identify and explore potential indirect legal barriers to young people's access to SRH services, researchers examined areas of law relevant to regulating young people's gender and sexuality identities behaviours and relationships, including: laws that define and criminalise different forms of sexual violence (including statutory rape laws); laws that regulate marriage and divorce; laws that regulate the sale of sex; laws that impact on gender and sexual minorities (such as laws that criminalise same-sex sexual acts, or that prescribe and define binary gender categories) and laws that create barriers to gender/sex transition.

Finally, laws do not only function as barriers to accessing SRH services, they can also facilitate access to services, where they empower young people to make informed decisions about their sexual health, and create a framework where young people's rights to sexual and reproductive health are protected and promoted without discrimination. Confidentiality duties imposed on SRH service providers which mandate protection of young people's privacy and laws that enshrine or affirm a positive right for young people to access SRH services are examples of facilitative laws.

In order to identify and explore potential facilitative laws, researchers examined the following: laws that affirm the right to health in general, and sexual and reproductive health in particular (especially for adolescents); laws that protect individuals from forms of gender and sexuality based discrimination, and laws that protect and promote individuals right to free and confidential access to sexual and reproductive health services.

4. Methodology

The study employed a mixed methods design, combining both qualitative and quantitative approaches; to gather objective, comprehensive and measurable data, as well as evidence that was in-depth, and explanatory. A variety of different strategies and methods were employed to gather data to answer the research questions set out above.

4.1 Site selection

Selection of sites was practically limited to include those locations in and around Kathmandu, where the Family Planning Association of Nepal (FPAN) was able to facilitate access to communities according to their existing networks. Remote areas of Nepal were not included in the study given the resource limitations.

Three districts in central Nepal were included in the study: Kathmandu, Bhaktapur and Kavrepalanchok. Within Kathmandu, sites visited were classified as urban. Bhaktapur sites were classified as "peri-urban". Within Kavrepalanchok, both peri-urban and rural sites were visited.

4.2 Legal review

The project started with a desk-based review and analysis of laws and regulations in Nepal pertaining to young people's sexuality and access to SRH services. This legal review informed the design of primary data collection tools.

4.3 Collection of primary qualitative data

Individual interviews

Individual semi-structured interviews were carried out with young people, (SRH) service providers, and key informants to gather data on respondents' knowledge and perceptions of legal rules, as well as their experiences in relation to SRH service seeking, or provision of services. Interview guides were developed in order to provide a level of standardisation in the data collected; however, these tools were implemented flexibly to also allow for participant-directed interactions.

Participant selection for individual interviews was purposive, and drew on two types of qualitative sampling: key expert sampling, and critical case sampling. The 'critical case' sample involved the selection of young people who were likely to have significant and complex needs in relation to sexual and reproductive

health, to investigate the impact of law and legal barriers on their experiences of access to services. Critical case studies included:

- Interview with a young sex worker
- Interview with a teenage mother (who married against her mothers' wishes)
- Interview with a young trans individual
- Interview with a young gay male
- Interview with a female survivor of sexual and gender based violence

A total of **6 in-depth interviews** were carried out with young people, and **13 key informant interviews** were carried out with 'key experts' including SRH service providers, law and policy professionals, and advocates in the field of sexual and reproductive rights.

Focus groups

In addition, a number of focus group discussions were carried out with young people, to allow them to explore and share ideas in a relaxed and communal setting. "Topic guides" were developed to structure focus group discussions. The guides encouraged participants to explore general themes concerning the law and sexual health in a hypothetical and scenario-based format.

A total of **7 focus group discussions** were carried out with young people.

Transcription and analysis of data

All raw qualitative data was transcribed and uploaded into Nvivo software. It was then coded to identify key themes, patterns, relationships and explanations relevant to the research questions. Findings from the legal review were integrated into the analysis of primary data to help understand the relationships between legal rules, how they are interpreted, and how they function in practice.

4.4 Surveys

Given time and resource constraints it was not feasible to conduct a comprehensive, nationally representative survey. Nonetheless, two short survey tools were developed, one for young people and one for service providers, to collect some basic descriptive and standardised data on respondents' knowledge, understanding and perceptions of law, and experiences accessing or providing SRH services.

Researchers used a snowball sample method in order to access a range of different groups of young people and health professionals, with diverse SRH needs/services, and from a wide variety of socio-economic, ethnic, religious and geographical contexts. In addition, FPAN were encouraged to mobilise their contacts on the ground to enable access to particularly marginalised and vulnerable groups, such as young people engaged in sex work, MSM groups, transgender communities, and street children.

Enumerators were instructed to distribute the survey to groups of young people and service providers who had not participated in FPAN activities, or received unusual levels of sensitisation or education about the law, in order to avoid obtaining heavily biased results. After surveys had been completed, responses were entered into data entry sheets by local FPAN volunteers, who received training on data entry from the international researcher during the in-country visit.

All data was entered into an excel sheet which was subsequently loaded into Stata where the data was cleaned and statistical analysis performed to obtain: 1) a basic descriptive profile of the sample; 2) an inferential exploration of relationships between key demographic features of the sample, knowledge and perceptions of legal rules, and experiences in relation to the provision and access to SRH services.

4.4.1 Profile of young people's survey

Surveys for young people were distributed manually by FPAN staff within educational institutions and community centres in Kathmandu. In total, the young people survey included **190 respondents** (3 young people did not consent to participate and 12 did not fill out the survey questionnaire). Of the 190 young people surveyed, all identified as either female (98, 52%), or male (92, 48%). The mean age of the sample was 15 years, with the minimum reported age of respondents being 12 and the maximum being 19 years.

Of all 190 respondents included in the survey, around 38% indicated that they lived in an urban neighbourhood, 44% reported that they lived in a rural area, 2% reported that they lived in an urban slum, and 14% of young people indicated that they lived in a suburban area.

The vast majority (90%) of young people included in the survey indicated that their highest level of education was secondary school. 8% indicated that their highest level of education was university-level education, and 2% of respondents indicated that their highest level of education was completed primary education.

Roughly half (52%) of the sampled young people indicated that they did not work, while 31% indicated that they were employed in part-time jobs, and 10% indicated that they were working full-time. Around 3% of the surveyed young people indicated that they had previously engaged in sex work (4% preferred not to say whether they had previously sold sex).

4.4.2 Profile of service providers' survey

Surveys for service providers were distributed manually by FPAN staff in public and private clinics, school-based health centres, pharmacies and other facilities providing SRH services. Institutions were selected to represent some of the diversity amongst SRH service providing facilities in Nepal.

Researchers collected responses from a total of **44 service providers** (3 service providers did not consent to participate). Of the total 44 service providers surveyed for this study, 34 were female (77%) and 10 were male (22%). Around 23% of service providers worked in public health centres, 41% worked in private fee-paying clinics, 2% worked in school-based health centres, 14% worked in pharmacies, and 20% worked in 'other' unspecified facilities.

The overwhelming majority (80%) of service providers surveyed for the study worked in urban areas. 16% indicated that they worked in a sub-urban area, 2% worked in a rural area, and 2% worked in an urban slum. The mean age of surveyed health professionals was 27 years.

4.5 Limitations

While the desk review of the relevant legislation aimed to be comprehensive, given the broad focus on the enquiry, (particularly under the category of 'indirect barriers') it was not possible to conduct and exhaustive view of all laws that may have an impact on access to SRH services (for example, a detailed review of all marriage/ divorce laws, all laws that have implications for forms of gender based discrimination was outside the scope of the study). Researchers focused on exploring key rules within primary legislation and statutes that were deemed to be most pertinent and relevant to the research questions.

Further, not all potentially relevant materials (especially regulations and sub-national legislation) were available publicly and in English language. As a result, it is likely that at least some potentially relevant materials were not captured by the desk review. Whenever possible, researchers used officially translated English versions of the relevant legislation. However, in a few cases, researchers needed to revert to unofficially translated versions of legislation or regulations. These English translations were read and interpreted by researchers with the necessary amount of caution.

A particular limitation to the legal analysis was the team's inability to access the Gender Equality Act 2015, which amended a number of provisions in the *Muluki Ain*.

Whilst participants in focus groups were separated according to gender and also divided according to age groups, it is likely that power dynamics within each group biased the discussions (and findings) in favour of the more outspoken and assertive participants. Researchers took care to enable equitable discussions amongst participants; however, participants that were too shy or unhappy to answer were never singled out by researchers.

Translators were used throughout the qualitative interactions. While emphasis was placed on literal translation of every statement and simultaneous translation was avoided, it is likely that some nuances of the participant's responses were 'lost in translation'.

The data collected in the survey is not nationally representative. Due to time and resource constraints these sites were limited to urban and peri-urban sites in and around Kathmandu. The snowball sample methodology is likely to have excluded those populations with fewer pre-existing connections to the local IPPF member associations.

Lastly, due to time and resource constraints (but also in order to ensure the confidentiality of the respondents), the survey questionnaires were self-administered. While enumerators instructed survey respondents on how to fill out the survey, the self-administered survey format resulted in relatively large non-response biases, as respondents were either unsure how (or unwilling) to fill out all questions in the surveys. Non-response was particularly pronounced in the service provider survey, which may be due to the time constraints amongst health professionals.

4.6 Ethical protocol and tools

The research was carried out by trained and vetted consultants with extensive experience in conducting research with children and young people. Data collection was carried out in accordance with Coram International's Ethical Guidelines for Field Research. Procedures were developed for obtaining consent, ensuring anonymity, and protecting the safety and privacy of research participants at all times.

5. Nepal's legal framework

Nepal's history, including the history of its legal systems, is rooted in the Hindu religion. The first iteration of Nepal's *Muluki Ain* (known as the 'Country Code' or 'General Code'), which was promulgated in 1854, institutionalized caste and religious hierarchy. The revolution in 1951 led to the introduction of multiparty democracy and secular legal norms for the first time. The Code's final version was passed in 1963, thereby codifying all existing law, including civil, criminal, customary and religious. It remains one of the foundations of Nepal's legal system.

In September 2015, a new Constitution came into effect in Nepal; it bans all forms of discrimination and expresses a 'determination to create an egalitarian society on the basis of the principles of proportional inclusion and participation, to ensure equitable economy, prosperity and social justice.' The Constitution is the 'fundamental law' of Nepal, and any laws inconsistent with it are void.

Uncodified customary law still exists in Nepal but is subservient to constitutional law. The Constitution protects individual and community rights to use their own languages, participate in cultural life and preserve and promote their language, script, culture, civilization and heritage. However, in some indigenous communities, traditions and customs grant subordinate status to women, denying them inheritance and access to decision-making arenas.[4]

The Constitution of Nepal (2015) protects all citizens' right to health. Article 35 reads: '(1) Every citizen shall have the right to free basic health services from the State, and no one shall be deprived of emergency health services. (2) Every person shall have the right to get information about his or her medical treatment. (3) Every citizen shall have equal access to health services. (4) Every citizen shall have the right of access to clean drinking water and sanitation.' Further, Article 38 protects the rights of women, including their rights to reproductive health and safe motherhood. These Articles, read with the strong non-discrimination provisions in the Constitution, clearly protect the right of all citizens to access health care.

The *Muluki Ain* (Country Code) is another key document for sexual and reproductive health and rights in Nepal. It contains the country's abortion law, as well as criminal laws relating to sex work, sexual consent, rape and sex between people of the same sex.

Additionally, Nepal has demonstrated its commitment to sexual and reproductive rights through the promulgation of policies and strategies related to safe motherhood, reproductive health, safe abortion, HIV, sexually transmitted infections, gender equality recognition of gender identity, youth and trafficking, amongst other issues. A number of policies explicitly address the sexual and reproductive rights of adolescents. These are discussed in detail in section 8 below.

[4] *See for example National Indigenous Women's Federation (NIWF), Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) and Forest Peoples Programme (FPP) "The rights of indigenous women in Nepal" submission to Commission on the Status of Women (CSW) 56th Session 27 February - 9 March 2012. Available at: http://www.forestpeoples.org/sites/fpp/files/publication/2012/01/csw-fpp-niwf-lahurnip-2.pdf*

6. Youth, sexuality and marriage: socio-legal dimensions

The expression of youth sexuality in Nepal is heavily regulated by a set of complex, intersecting norms that delineate what is, and what is not, to be considered 'legitimate' sexual activity, and the context(s) in which it may, or may not, be expressed. In particular, 'legitimate' sexual activity occurs within a marital union; a union which itself is defined by a set of intersecting norms related to gender, age, sexuality and other important social and cultural dimensions, such as wealth, education, culture and religion (amongst others). These strict norms are kept in place by social control mechanisms that, at their most extreme, forbid fraternization between girls and boys and, more commonly, result in a denial of youth sexuality in all its diverse forms. This section explores the intersection of law and culture as they relate to youth sexuality.

When asked about whether sex before marriage occurs in Nepal, respondents of all ages consistently referenced the social 'rules' by which young people must abide. Whilst respondents could not point specifically to the basis of these norms, there was an almost universal acceptance of their existence. Their responses highlight the unacceptability of sex outside of marriage, whilst establishing sex within marriage as a 'social good.' The following extracts are illustrative of the power of these social norms:

> *Before marriage, [sex] is considered bad; after marriage, it is not a big thing...marriage is a license to have sex.*[5]
>
> *If [sex] is before marriage, it's bad; it's against the rule of our communities; after marriage, it is good.*[6]
>
> *What do you think that the biggest challenges are for young people in accessing SRH services?*
>
> *One of the biggest barrier[s] is culture in our society; it's a taboo…in our culture, most of things depend on the cultural values…it's not about their [young people's] wishes, it's about culture….We have to go forward according to society's rules and regulations….*[7]

Many respondents stated that they were not aware of sex before marriage happening amongst their peer group. Contradicting this, however, some agreed that young people engage secretly in premarital sex.

> *At what age do you think young people have sex?*
>
> *We don't talk about sex normally...19 maybe...people are also involved in sex below 16 but they are not open…Because of social taboos; sex before marriage is not acceptable; they want to make it secret; they don't tell about it.*[8]
>
> *At what age do young people in your community start having sex?*
>
> *No age - after marriage only. No exact age.*
>
> *Does everyone wait until marriage?*
>
> *No.*
>
> *So, those who don't…*
>
> *If a boy and girl want, they will have it.*[9]

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5 *Focus group discussion, young women aged 19 to 23, Bhaktapur, 15 November 2016.*

6 *Focus group discussion, young women aged 18 to 19, Bhaktapur, 15 November 2016.*

7 *Focus group discussion, parents and grandparents of adolescents, Bhaktapur, 19 November 2016.*

8 *Focus group discussion, young women aged 19 to 23, Bhaktapur, 15 November 2016.*

9 *Focus group discussion, young men aged 16 to 20, Kathmandu, 17 November 2016.*

The 2011 DHS data revealed significant gender disparities in reporting of pre-marital sex: with 22% of never-married young men aged 15-24 years reporting ever having sex compared to less than 1% of never-married young women.[10] Due to the power of social taboos surrounding pre-marital sex, these figures are likely to be affected by significant underreporting of sex, especially amongst unmarried women and girls. The same low rates of disclosure, and disparities between girls and boys[11] were observed in the survey data for this study. In this study, 2.1% of unmarried girls (ages 12-19 years) reported ever having sex, and a further 1% said that they 'preferred not to say'. Meanwhile 7.8% of unmarried boys (12-19 years) said that they had had sex, and a further 17.8% said that they preferred not to say. Just under three quarters, 74.4% of boys reported to have never had sex, compared to 96.9% of girls.

Whilst (as in many other parts of the world) evidence indicates that the average age of marriage is increasing for men and women in Nepal,[12] cultural norms related to premarital sex remain entrenched, and marriage is still seen as the only legitimate space within which (youth) sexuality is legitimately expressed or enjoyed. Young people are presented with a choice between adhering to norms and denying their sexuality, or risking ostracisation if they openly pursue sexual relationships before marriage.

6.1 Age of sexual consent

Whilst sex before marriage is prohibited by cultural norms, marriage has no bearing on the *legality* of sex between or with young people in Nepal. Rather, the age of sexual consent is established in Chapter 14 of the *Muluki Ain* (Country Code) by reference to statutory rape, stating: 'If a person enters into sexual intercourse with a woman without her consent or enters into *sexual* intercourse with a girl below the age of sixteen years with or without her consent shall be deemed to be an offence of rape.'[13] Given that mention is made only of sexual intercourse with a young women under 16 years of age, the age of sexual consent does not appear to apply to young men. However, Chapter 14 of the *Muluki Ain* also provides that 'sodomy (any kind of unnatural intercourse)' with a minor under 16 years is also rape. Therefore it would appear that the age of consent for same-sex acts amongst men/ boys is also established at 16 years. Meanwhile there is no law governing age of sexual consent for same sex acts amongst women/ girls. These rules reveal the gendered and heteronormative nature of legal norms, which differentiate between males and females, as well as the type/ orientation of the sexual activity, when considering capacity to consent to (legal) sex, and the appropriate content and boundaries of legal definitions of sexual violence.

Significantly findings from the quantitative data indicate that young people are not familiar with the law governing sexual consent, with only 5.3% of respondents correctly identifying the age of sexual consent for girls to be 16 years. Interestingly boys (8.7%) were more likely than girls (3.1%) to correctly identify the age of sexual consent as 16 years.

[10] *Khatiwada et al, Sexual and Reproductive Health of Adolescents and Youth in Nepal: Trends and Determinants (2013), Available at: https://dhsprogram.com/pubs/pdf/FA76/FA76.pdf (Last access 15 January 2017).*

[11] *Chi square, p<0.01.*

[12] *Greenspan A. 'Age at marriage is rising for Asian women and men, according to new data, Asia Pac Pop Policy. 1992 Sep;(22):1-4.*

[13] *Muluki Ain, Available at: http://www.lawcommission.gov.np/en/documents/2015/08/muluki-ain-general-code-2020.pdf (Last access 27 October 2016), Chapter 14 (Number 1): If a person enters into sexual intercourse with a woman without her consent or enters into sexual intercourse with a girl below the age of Sixteen years with or without her consent shall be deemed to be an offence of rape. Explanation: For the purposes of this Number: (a) A consent taken by using fear, coercion, undue influence, misrepresentation or use of force or kidnapping or hostage taking (abducting) shall not be considered to be consent. (b) A consent taken when she is not in a conscious condition shall not be considered to be consent. (c) Minor penetration of the penis into the vagina shall be considered to be a sexual intercourse for the purposes of this Number.*

6.1.1 Sexual consent and gender discrimination

The gendered character of legal rules mirrors that of social and cultural norms. Whilst respondents in this study generally considered the cultural norm prohibiting premarital sex to apply both to young men and women, the data indicates that enforcement of such norms is stricter for young women. This reflects the more general restrictions that young women in Nepal face in terms of opportunities, as compared to young men.

> *What are the 'rules' for men of your age?*
>
> *We have to go with the flow of society. We have social rules. We shouldn't drink and smoke. We have to learn good behaviours. We shouldn't gamble. No sex.*
>
> *Worse for boys or girls?*
>
> *Girls.*
>
> *What can you do that they can't do?*
>
> *They shouldn't walk at night. Boys can go out at night, but girls cannot. Roam at night. Girls are being strict at home by families.*
>
> *Do you agree?*
>
> *There shouldn't be different rules for girls and boys.*[14]
>
> *[I]n case of boys, there is no regulations, but for daughters there are so many boundaries in our society. Gender has also made us [women] go down. … [How do you feel about these boundaries that are placed on your daughters?] It's made by ourselves…[Laughter]…It is an old concept…Because females feel weak by themselves but so many rights are there for our daughters…Daughters don't know how to use the rights for themselves….If I want to do something, if I become straightforward, my husband will draw me back. That is the trend, that so many freedoms are given to sons and not daughters. That is our own trend…if a boy asks anything, we allow; if it's a female, we restrict them. Now it has changed, so many rights are going to the daughter…the discrimination is due to the culture….*[15]
>
> *As a woman, you are not supposed to go out. If you are married, in many rural frameworks, movement is very restricted; has to be with husband's permission. [There are] only for 3-4 reasons for going out of the house. There is some sense of that...her being the honor of honour. If she has sex with someone, they will be very angry with that.*[16]

It was clear from the qualitative research that in addition to being restricted generally compared with their male counterparts, young women bear a disproportionate burden within families for maintaining sexual purity and upholding the family's reputation. Young women and girls must, as many respondents explained, adhere to a narrow pathway that includes avoiding premarital sex and upholding family and individual honour by being perceived to be sexually pure until marriage. Respondents conveyed that women who are perceived to be crossing the boundaries of what is socially acceptable are 'tagged' and may find it hard to get married later on. This 'tagging' can occur even if a young woman is sexually abused or raped.

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[14] *Focus group discussion, young men age 16 to 20, Kathmandu, 17 November 2016.*

[15] *Focus group discussion, parents and grandparents of adolescents, Bhaktapur, 19 November 2016.*

[16] *Individual interview, key informant, youth participation and rights organisation, Kathmandu, 15 November 2016.*

> *In Nepal, there is a trend…if female has that sort of tag with other men, she may not get married… it is so difficult to get married with other guys.*[17]

> *It's more about attitudes within society, even talking about sex. In urban areas, people can hold hands; but in rural areas, if you have tea with a stranger guy as a female, you get a lot of stigma and outcry. Your families first, and they say you have to marry with that guy. Sexuality is very taboo...*[18]

> *Due to the societal obligations, our society does not want young people to access or have sex before marriage, especially females. They have to give married according to their parents' wishes.*[19]

All young unmarried women must negotiate a normative minefield related to sexuality, however, for unmarried pregnant women who are unable to 'hide the evidence' of their sexual transgression, things are even worse. When presented with a made-up scenario about a sister who becomes pregnant at the age of 15, young male respondents identified the few culturally-acceptable options for the young woman:

> *A couple of months later, your sister comes to tell you that she is pregnant: how would you feel about this?*

> *We'd feel bad; this is early years; early pregnancy is not good; I would advise to abort. If the parents knew, they may kick her from the house.* [Would she have to marry him?] *Yes, of course….[Will she be able to stay in school if she keeps the pregnancy?] No, she can't continue because of shyness; there is no rule; it is about honour and personal identity.*[20]

> *A couple of months later, your sister comes to tell you that she is pregnant: how would you feel about this?*

> *I will be blind [with anger] for a few minutes. Shocked. I would not feel good. I would feel bad. If I found that she's pregnant, I will tell the guy to get married to her.*[21]

The choices available to a young woman whose honour is perceived to be tarnished are limited, and usually include marriage at the soonest available opportunity. In addition to her marriage prospects diminishing, a young woman may lose the opportunity to pursue her education and be ostracized from her family.

6.2 Age of marriage

Whilst, as mentioned, the age of marriage for young people is rising in Nepal, rates of early marriage, especially amongst young women and girls remain high.[22] Taboos on pre-marital sex, and the stigma, particularly associated with sexuality amongst unmarried girls, are significant drivers of early marriage. On the one hand, marrying their daughters young is a coping strategy applied by families to avoid the stigma of having a daughter who is 'tagged'. On the other hand, in response to the normative context and restrictions placed on their sexual expression, young people, especially young girls, may seek to

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[17] *Focus group discussion, parents and grandparents of adolescents, Bhaktapur, 19 November 2016.*

[18] *Individual interview, key informant, youth participation and rights organisation, Kathmandu, 15 November 2016.*

[19] *Individual interview, service provider at public health clinic, Kavre, 16 November 2016.*

[20] *Focus group discussion, young men aged 14 to 16, Bhaktapur, 15 November 2016.*

[21] *Focus group discussion, young men aged 16 to 20, Kathmandu, 17 November 2016.*

[22] *Human Rights Watch (2016) 'Our Time to Sing and Play': Child marriage in Nepal. Available at: https://www.hrw.org/report/2016/09/07/our-time-sing-and-play/child-marriage-nepal (Last access 27 October 2016).*

legitimize their sexual relationships and desires, through choosing the option of 'love marriages' at a young age:

> *What is the age at which most young people get married in your community?*
>
> *It's usually 15 - 20, but some elope without their parents' consent. I fell in love, but it was against my parents' wishes. We went away...we eloped to get married.*[23]

Under Chapter 17 of the *Muluki Ain*, the age of marriage is 20 years without guardian consent and 18 with guardian consent for both males and females.[24] However, the latest (2011) DHS data found that 28.8% of young women and girls ages 15 to 19 were currently married. This is compared with just 6.9% of young men in the same age category.[25] This data was reflected in the qualitative research for this study: when asked the age at which young people marry, respondents consistently cited younger ages for women than for men.

> *At what age do young people get married?*
>
> *[G]irls around 20 and boys around 25.*[26]
>
> *At what age do young people get married?*
>
> *Mostly males are older than females; males are 24 - 30.*[27]

Findings from the quantitative data indicate that young people lack accurate knowledge of minimum age of marriage laws. Only 22.6% of respondents correctly identified the age of marriage of girls without parental consent to be 20 years, and only 19.5% knew this for boys. Rates of accurate knowledge of the law concerning marriage with parental consent were even lower.

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[23] *Individual interview, young mother, Kavre, 16 November 2016.*

[24] *Muluki Ain, Available at: http://www.lawcommission.gov.np/en/documents/2015/08/muluki-ain-general-code-2020.pdf (Last access 27 October 2016), Chapter 17, Number 2: While contracting a marriage, no one shall arrange to marry nor cause to be married where the male and the female have not completed the age of Eighteen years with the consent of the guardian and that of twenty years in case of absence of the consent of the guardian. The persons having attained majority, out of those who marry or cause to be married in violation of this provision, shall be punished as follows: If a female below the age of Ten years is married or caused to be married, punishment of imprisonment for a term from six months to Three years and with a fine of One Thousand Rupees to Ten Thousand Rupees shall be imposed --------1 If a female above the age of Ten years but below the age of Fourteen years is married or caused to be married, punishment of imprisonment for a term from Three months to One year and with a fine of a maximum of Five Thousand Rupees or both shall be imposed --------2 If a female above the age of fourteen years but below the age of Eighteen years is married or caused to be married, punishment of imprisonment for a term not exceeding Six months or a fine of a maximum of Ten Thousand Rupees or both shall be imposed.....3 If a male or female who has not completed the age of twenty years is married or cause to be married, punishment of imprisonment for a term not exceeding six months or a fine of a maximum of Ten Thousand Rupees or both shall be imposed ------4 If one marries or causes to be married lying that the marriage is allowed under the law, no punishment shall be imposed on the person who marries or causes to be married in ignorance--------5 Those persons who have attained majority, out of the priests, matchmakers and other abettors who knowingly perform acts of marriage in violation of the provisions contained in the above-mentioned numbers shall be punished with imprisonment for a term not exceeding One month or a fine of a maximum of One Thousand Rupees-------6 Notwithstanding anything contained in the above-mentioned Sections of this Number, if solemnization of marriage has not been completed but arrangement of marriage has been finalized in accordance with the rites, the main person finalizing such arrangement of marriage shall be punished with a fine of a maximum of seven hundred rupees and such finalized arrangement of marriage shall be set aside --------7 The amount of fine imposed under the above-mentioned Sections 1, 2, 3, and 4, if paid, shall be paid to that girl-child, woman or man. In default of payment of the fine so imposed, the property of the convicted person equal to the amount of fine shall be confiscated and the amount so realized shall be paid to such that girl-child, woman or man. In case the total amount of fine is not realized through such confiscation, the convicted person shall be imprisoned for a term not exceeding Three months for the fine not realized---------8 In case either a male or a female below the age of Eighteen years is married and no offspring has been born from the marriage, the male or female who is below the age of Eighteen years may get such a marriage http://www.lawcommission.gov.np 400 declared void if he or she does not agree with such a marriage upon having attained the age of Eighteen years.....9*

[25] *Khatiwada et al, Sexual and Reproductive Health of Adolescents and Youth in Nepal: Trends and Determinants (2013), Available at: https://dhsprogram.com/pubs/pdf/FA76/FA76.pdf (Last accessed 15 January 2017).*

[26] *Focus group discussion, young men aged 14 to 16, Bhaktapur, 15 November 2016.*

[27] *Focus group discussion, young women aged 18 to 19, Bhaktapur, 15 November 2016.*

A 2007 review of the marriage law identified a number of gaps in enforcement of minimum age of marriage laws, including inappropriately low punishments, discriminatory provisions that set different punishments depending upon age and sex, and a short three-month statute of limitations for bringing suit.[28] The report also noted that there is no legal requirement to provide assistance of any kind to victims of child marriage and weak enforcement of the existing law by police.[29] These legal shortcomings compound existing norms that dictate the socially-acceptable 'pathways' for girls, which tend to be much narrower than for boys and include marriage at an earlier age.

Meanwhile, whilst unmarried young women and girls are expected to abstain from sex, once married young women are expected to fulfil their husbands' sexual demands: for example, one key informant described the commonly-held belief that sex is a 'right' for men within marriage.

> *If you are married, people take it as your right to have sex with your wife. You are 'authorised' to have sex with your wife. This is general perception. How is it rape if you are already married? People were asking this after the [Supreme Court] decision.*[30]

These social norms are also reflected in legal rules which establish lesser penalties for rape of a women or girl by her husband in the context of marriage. In Nepal's *Muluki Ain* (Country Code). The punishment for rape (of someone who is above 20 years old) is up to seven years in prison; however, for husbands who commit rape against their wives, the punishment is imprisonment for three to six months.[31] These findings highlight how social and legal norms restrict young women's agency over their own sexuality both within and outside of the context of marriage.

6.2.1 Marriage and heteronormativity

Finally, it is important to note that marriage remains the preserve of binary, different-sexed couples, reflecting a heteronormative and gender-binary bias which permeates the legal framework despite the introduction of progressive legislation in recent years affording recognition and protection for sexual and gender minorities (discussed in more detail in section 9.1 below).

In December 2007, the Supreme Court called on the Government to appoint a committee to consider the possibility of legalising same-sex marriage.[32] In line with this ruling a committee of experts was appointed, and tasked with reviewing the treatment of the issue in different jurisdictions across the world. The committee issued a report in February 2015, recommending the legalisation of same-sex marriages.[33] According to the Joint Secretary of the Ministry of Women, Children and Social Welfare,

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[28] *Human Rights Watch (2016) 'Our Time to Sing and Play': Child marriage in Nepal. Available at: https://www.hrw.org/report/2016/09/07/our-time-sing-and-play/child-marriage-nepal (Last access 27 October 2016).*

[29] *Human Rights Watch (2016) 'Our Time to Sing and Play': Child marriage in Nepal. Available at: https://www.hrw.org/report/2016/09/07/our-time-sing-and-play/child-marriage-nepal (Last accessed 27 October 2016).*

[30] *Individual interview, youth activist, Kathmandu, 15 November 2016.*

[31] *Muluki Ain, Available at: http://www.lawcommission.gov.np/en/documents/2015/08/muluki-ain-general-code-2020.pdf (Last access 27 October 2016), Chapter 14 (Number 3): A person who commits rape shall be liable to the imprisonment as mentioned hereunder: Imprisonment for a term ranging from Ten years to Fifteen years if the minor girl is below the age of Ten years.....1 Imprisonment for a term ranging from Eight years to Twelve years if the minor girl is above Ten or more years of age but below Fourteen years of age.....2 Imprisonment for a term ranging from Six years to Ten years if the minor girl is of Fourteen years of age or above below Sixteen years of age.....3 Imprisonment for a term ranging from Five years to Eight years if the woman is of Sixteen years of age or above but below Twenty years of age.....4 Imprisonment for a term ranging from Five years to Seven years if the woman is of Twenty years of age or above . .....5 Notwithstanding anything contained in this Number, the husband who commits a rape with his wife shall be liable to imprisonment for a term ranging from Three months to Six months.*

[32] *Sunil Babu Pant and Others v Nepal Government (2007), NJA Law Journal 2008*

[33] *Washtell, Francesca 'Nepal set to become the first south Asian country to legalise same-sex marriage' 17 February 2015, The Independent. Available at: http://www.independent.co.uk/news/world/asia/nepal-set-to-become-the-first-south-asian-country-to-legalise-same-sex-marriage-10051940.html*

a Government task force is currently working to implement the committee's 2015 recommendation, although the progress of any future legislative reforms may be slow and remains unclear.[34]

The social power of the institution of marriage, and its heteronormative underpinning, has significant impact on gender and sexual minority youth. Gay and trans individuals may face pressure from their families to marry into heterosexual relationships, marriage being the overwhelming expectation imposed on individuals by their families and communities, especially for girls. Respondents in this study described having to make excuses to their families as to why they were 'delaying' marriage and the pressure and stress that this causes them. For example:

> *I still don't tell my family [about] my [sexual] identity. It is difficult for me because my family is forcing to get married; it is so difficult. Until now I have not revealed that I am gay. Most importantly, I have to be independent financially; I told them to wait for 3 years until I get married.*[35]
>
> *Did your family want you to marry?*
>
> *Yes. My family was forcing me to get married from 18 years. They are still putting pressure. Then I am procrastinating...Not now, I say.*[36]

[34] *Kandel, Kumari Yam 'Same-Sex Marriage Still Illegal in Nepal, Despite 2007 Supreme Court Ruling', Global Press Journal, 18 December 2016. Available at: https://globalpressjournal.com/asia/nepal/sex-marriage-still-illegal-nepal-despite-2007-supreme-court-ruling/*

[35] *Individual interview, young man who identifies as gay, Kathmandu, 18 November 2016.*

[36] *Interview, trans women who sell sex, Kathmandu, 18 November 2016.*

7. Access to comprehensive sexuality education

7.1 Law and policy on comprehensive sexuality education

The legal and policy framework in relation to CSE in Nepal is broadly facilitative; Ministry of Health and Ministry of Education policy documents clearly mandate the provision of a wide range of sexual and reproductive health topics, including positive sexuality.

The *National Youth Policy* (Ministry of Youth and Sport, 2010) mandates the provision of 'health information' starting from elementary school, and states that young people should be encouraged to have 'safe and positive' sexual experiences and be provided with education on 'sexual health safety' and 'freeing them from all kinds of sexual violence.'[37] Point 3(j) of the Policy stipulates that 'youths will be trained, in coordination with health institutions, on matters such as family planning, maternal child care, right to motherhood, and child delivery gap.'[38] The Policy does however not provide details of which ministry in Nepal is charged with implementing these policy provisions.

In addition, Nepal's National *Adolescent Health and Development Strategy* (Ministry of Health, 2000) contains a very detailed education package for adolescents that includes the following topics: human sexuality regarding puberty, marriage, reproductive process, sexual relationships, responsible parenthood, contraception emphasizing the prevention of early and/or unwanted pregnancies, prevention of unsafe abortions, complications from unsafe abortions, life skills, and prevention and management of STIs and HIV.[39] In addition, the Strategy makes clear that information on available counselling and services should be provided to adolescents.[40] The Strategy does not make clear who is responsible for the delivery of the curriculum or provision of counselling services, however, as will be discussed in the sections below, the curriculum does appear to be used in schools in practice.

Finally, Nepal's National Policy on HIV and STI states that 'information about HIV and AIDS shall be included in the formal and informal education curriculum in an organized way.'[41]

In addition to these facilitative policies, the government in Nepal appears to be supportive of improving young people's access to information about sexual and reproductive health outside of school. For instance, a service provider from the National Health Training Centre described a government initiative to provide young people with an SRH resource through mobile technology:

> *Nowadays our government is [developing] policy for the adolescent group… mobile apps for the queries on reproductive health. They are going to launch an app targeting youth. The concept has been developed by government information systems, but sponsored by partners and donors… UNFPA, maybe.*[42]

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[37] *Ministry of Youth and Sport, National Youth Policy (2010) Available at: http://www.youthpolicy.org/national/Nepal_2010_National_Youth_Policy.pdf, Section 7(3(a-m)).*

[38] *Ministry of Youth and Sport, National Youth Policy (2010) Available at: http://www.youthpolicy.org/national/Nepal_2010_National_Youth_Policy.pdf, Section 7(3(a-m)).*

[39] *Ministry of Health (2000) National Adolescent Health and Development Strategy. Available at: http://www.youth-policy.com/Policies/Nepal%20National%20Adolescent%20Health%20and%20Development%20Strategy.pdf (Last accessed 25 October 2016), p. 25.*

[40] *Ministry of Health (2000) National Adolescent Health and Development Strategy. Available at: http://www.youth-policy.com/Policies/Nepal%20National%20Adolescent%20Health%20and%20Development%20Strategy.pdf (Last accessed 25 October 2016), p. 25.*

[41] *Ministry of Health (2011) National Policy on HIV and STI. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_151409.pdf (Last accessed 26 October 2016), Section 8(B(5)).*

[42] *Individual interview, female service provider, National Health Training Centre, Urban, Kathmandu 17 November 2016.*

Whilst Nepalese legislation does not appear to contain any direct barriers to young people's access to comprehensive sexuality education, according to a legislative review commissioned by the World Health Organisation, however, laws regulating obscenity may provide grounds for limiting access to information related to sexuality and sexual health outside of school settings and the formal curricula.[43] For instance, the *Electronic Transaction Act* prohibits the publication or exhibition of electronic media that is against public morals or decency, whilst the *National Broadcasting Act* prohibits advertisements that contain 'obscene' materials. Finally, the Press and *Publication Act* bans the publication of material that offends good behaviour, morality and social dignity.[44] At the very least, such laws may create uncertainty regarding the legality of publishing materials promoting sexual health services and public information campaigns concerning sexual health. While the law does not appear to have been applied to the distribution of information on sexual and reproductive health in the vast majority of cases, the Nepal Telecommunications authority did block access to sfsi.org, a website run by San Francisco Sex Information, which provides young people with training to become sex educators and operates a free information and referral switchboard.[45]

7.2 Provision of comprehensive sexuality education in practice

Education about sexuality and reproduction does appear to be a standardised part of secondary school curriculum in Nepal. A report by the Youth Activists Leadership Council in Nepal explains that sexuality education is integrated into the 'Environment, Population and Health' module taken by those attending years 6 to 10 of secondary school. Sexual and reproductive health and rights modules are not introduced until years 9 and 10, however; during years 6-8, modules include information on HIV, male and female anatomy and STIs.[46] According to a recent UNESCO publication, teacher training programmes on sexuality education are in place in Nepal[47], however, few efforts have been taken to support the provision of sex education outside of schools.[48]

The vast majority (93.7%) of young people surveyed for the study, all of whom reported to be in secondary school, stated that they had received CSE at school. Interestingly respondents who reported that they had not received education in schools were found to be from significantly poorer backgrounds than those who did not.[49] This suggests that less privileged young people may have less access to CSE, perhaps due to the regularity with which they attend school or the nature of the CSE provided in schools in poorer areas.

When asked about where they learn about sexual and reproductive health, young people included in focus group discussions tended to identify school as a primary source of information:

> *Where do young people learn about SRH?*
>
> *In school; it's in the course book; through friends; through older sisters; different clubs; organisations; parents…*

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[43] *Kajal Bhardwaj and Vivek Divan (2011) Sexual Health and Human Rights - A legal and jurisprudential review of select countries in the SEARO region: Bangladesh, India, Indonesia, Nepal, Sri Lanka and Thailand. Available at: http://www.ichrp.org/files/papers/182/140_searo_divan_bhardwaj_2011.pdf (Last access 26 October 2016), p. 160.*

[44] *Kajal Bhardwaj and Vivek Divan (2011) Sexual Health and Human Rights - A legal and jurisprudential review of select countries in the SEARO region: Bangladesh, India, Indonesia, Nepal, Sri Lanka and Thailand. Available at: http://www.ichrp.org/files/papers/182/140_searo_divan_bhardwaj_2011.pdf (Last accessed 26 October 2016), p. 160.*

[45] *UNESCO (2013), Assessment of Media Development in Nepal, http://unesdoc.unesco.org/images/0022/002254/225486e.pdf (Last accessed 30 January 2017).*

[46] *Youth Activists Leadership Council (2012) Issue Brief on Sexuality Education in Nepal. Available at: http://www.yuwa.org.np/wp-content/uploads/2012/06/EPH-brief-on-youth-SRHR.pdf (Last accessed 26 October 2016), pp. 1-3.*

[47] *UNESCO (2012) Review of Policies and Strategies to Implement and Scale Up Sexuality Education in Asia and the Pacific. Available at: http://unesdoc.unesco.org/images/0021/002150/215091e.pdf (Last accessed 26 October 2016), p. 20.*

[48] *UNESCO (2012) Review of Policies and Strategies to Implement and Scale Up Sexuality Education in Asia and the Pacific. Available at: http://unesdoc.unesco.org/images/0021/002150/215091e.pdf (Last accessed 26 October 2016), p. 20.*

[49] *Two-tailed t-test, $p < 0.05$.*

What is included in the course book?

Contraceptive devices; menstruation; condoms; reproductive organs; it talks about 'safety period' when you can't get pregnant, pregnancy, how to maintain our health, nutrition, hygiene, family planning.

Do they say where to access family planning?

Health posts, they say, and hospitals.[50]

Young people explained that CSE is taught by both teachers and external organisations:

Where do most young people learn about SRH?

From books; training; teachers; experts; books; TV; health; and EPH books.

So you learn about it at school?

Yes - adolescent sex, reproductive health, contraceptive methods.

Do you learn from teachers?

Yes, the teachers; organisations are also coming in.[51]

It is important to note that given that respondents for the study were accessed primarily through the Family Planning Association of Nepal, their access to CSE and information about SRH more broadly, is likely to be particularly strong.

The availability of CSE in Nepal appears to be relatively recent; service providers and key stakeholders participating in the study explained that significant progress has been made regarding the provision of CSE in Nepal in recent years, in particular as a result of advocacy efforts by the Family Planning Association of Nepal. They described the political environment as progressive and favourable, but emphasised that, despite progress, certain barriers to the delivery of CSE remain:

Talking about CSE, Nepal is one of the first countries to include it in the curriculum. FPAN really fought for this. We did a lot of lobbying. Big campaigning for CSE because the previous government wanted to take it out. They had some health subjects, but it was just a description of the organs. But it was going to be taken it out because teachers were not teaching it easily. They aren't comfortable. So, FPAN with others advocated for those things and wanted it to be included in the 6 – 7 class. Some components are included, but we need more.[52]

As is demonstrated by the passage above, that teachers' discomfort delivering information on CSE constrains its provision in schools. One service provider succinctly explained: *"We can do our advocacy on CSE, but if teachers are not trained or too shy or don't have correct methodologies, it doesn't matter."*[53]

Several service providers included in the study exhibited restrictive views about the provision of CSE themselves. When asked if she provides young people with information about contraception, one service provider replied: *"We taught them how to conceive; through that they know how not to become pregnant."*[54]

In addition to citing resistance from teachers as a barrier to the provision of CSE, respondents also described limitations with the material that is covered in the CSE curriculum, describing it as overly narrow, and failing to confront prevalent myths or engage with important topics such as sexual and reproductive health rights, consent and the empowerment of women and girls:

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[50] *Focus group discussion, young women (19-23), peri-urban, Bhaktapur, 15 November 2016.*

[51] *Focus group discussion, young women (13 – 15), peri-urban, Bhaktapur, 15 November 2016.*

[52] *Individual interview, female service provider, FPAN, Kathmandu, 15 November 2016.*

[53] *Individual interview, female service provider, youth organisation, rural, Bhaktapur, 15 November 2016.*

[54] *Individual interview, female service provider, National Health Training Centre, urban, Kathmandu 17 November 2016.*

> *Are there topics that you think should be covered in the school curriculum?*
>
> *Not all components are involved in the curriculum; family planning methods, STIs, but only a few are mentioned.*
>
> *What do you think is missing?*
>
> *I feel STIs are missing. It has to be there how to prevent them. Women's right to choose, family planning methods. Some say that it's not women's choice after marriage. They tell that they will be infertile if they use contraceptives. Sometimes boys hesitate to use the condoms. Men do not want to use condoms. These all have to be in the course.*[55]

Regardless of whether the limitations of CSE in Nepalese schools reflect the curriculum, or its implementation, both young people and service providers **emphasised that they are in need of access to more comprehensive, relevant and in-depth advice and information:** *"If you could do one thing to improve young people's SRH, what would it be? I would strengthen adolescent reproductive health programmes in schools".*[56]

Not only does lack of access to CSE impede upon young people's sexual and reproductive health, and in particular their ability to make decisions about how to have a healthy and safe sexual life; lack of knowledge and information acts as an important barrier to young people's service seeking behaviour. Indeed, the research clearly evidenced that lack of CSE information is a significant barrier to accessing sex-related services.

Access to high quality and comprehensive sexuality education within schools and healthcare facilities is particularly important given the stigmas and taboos surrounding youth sexuality in Nepal. Respondents consistently explained that there are few opportunities for young people to discuss issues relating to sex, reproduction and SRH services, restricting their access to advice and information: *"There is still a gap. It is not so open country in Nepal to talk freely about sex and contraception."*[57] In particular, young people consistently told researchers that discussing SRH with parents is out of the question:

> *Where do you get info on SRHR? At school. School, FPAN. In secondary school, only we get it. Or from our older brothers.*
>
> *Parents?*
>
> *No parents.*
>
> *Why not?*
>
> *They don't talk about it. It is unethical for them.*
>
> *Do they talk to your sisters?*
>
> *After marriage.*[58]

The stigma attached to youth sexuality (discussed in more detail in section 6 above) also underlies teachers' reluctance to deliver CSE, or to do so thoroughly. This suggests a need not only to develop a strong CSE curriculum, but to train teachers in its delivery, building up their confidence and comfort levels. As one service provider suggested, *"I have my personal opinion… we have to build a training for teachers on a regular basis and community level. We have to train people so that we can provide the most information."*[59]

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[55] *Individual interview, female service provider, rural, Kavre, 16 November 2016.*

[56] *Individual interview, female sex worker, peri-urban, Kavre, 16 November 2016.*

[57] *Individual interview, male service provider, peri-urban, Bhaktapur, 18 November 2016.*

[58] *Focus group discussion, young men (16-20), urban, Kathmandu, 17 November 2016.*

[59] *Individual interview, female service provider, rural, Kavre, 16 November 2016.*

8. Access to services

This section sets out the current legal and policy provisions that impact on SRH services and analyses these in relation to how they shape and influence young people's access. Laws that regulate access to services for young people do so primarily by restricting access to specific services or by limiting young people's ability to make independent, private decisions about their health. These provisions, in conjunction with social norms, and other socio-economic factors, determine how favourable the environment is to young people's access to SRH services. This section focuses on three major areas of SRH service provision that are particularly important for young people: access to contraception, HIV and STIs, and abortion.

8.1 Law and policy: adolescents access to SRH

Nepal's legal and policy framework governing adolescents' access to sexual and reproductive health services is highly permissive. Several key policy documents address the right of adolescents to access comprehensive SRH information and services. The *National Medical Standards for Reproductive Health (NMSRH) Volume 1: Contraceptive Services (2010)* mentions the rights of unmarried adolescents to access contraception, as well as their right to privacy and confidentiality in the context of service provision.[60]

The *National Adolescent Health and Development Strategy*[61] (NAHDS) further makes explicit the full, comprehensive package of services that should be provided to adolescents. The NAHDS has, as one of its general objectives, to 'increase accessibility and utilisation of health and counselling services for adolescents.' One of the specific objectives is '[t]o increase access and utilisation of adolescent friendly health care services in order to reduce the incidence of early frequent and unwanted childbearing, STIs including HIV/AIDS, malnutrition and other medical problems including mental health issues.'[62] The activities falling beneath this specific objective relate to the establishment of youth-friendly services and the provision of an integrated package of services which, according to Annex I of the NAHDS, includes information on human sexuality, contraceptive services, safe motherhood services, management of unsafe abortion complications, and information on HIV and STIs, amongst others. The NAHDS was passed before the new abortion law came into effect in 2003; as a result, access to safe abortion services is not included in the service and education package for adolescents.

Finally, the *National Youth Policy*[63], passed in 2010, makes reproductive health a priority. The Policy contains a section on Health and Family Welfare, which provides that: 'special programs shall be launched in order to bring about improvement in the status of reproductive health of women, while establishing the right of women to reproductive health.'[64] However, the policy fails to mention the reproductive health of men and does not specifically mention what is needed in order to 'improve the status of reproductive health of women'.

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[60] *Ministry of Health and Population (2010) National Medical Standards for Reproductive Health, Volume 1: Contraceptive Services. Available at: http://nfhp.jsi.com/Res/Docs/NationalMedicalStandardVolIEnglish4thEdition2010.pdf (Last access 25 October 2016),*

[61] *Ministry of Health (2000) National Adolescent Health and Development Strategy. Available at: http://www.youth-policy.com/Policies/Nepal%20National%20Adolescent%20Health%20and%20Development%20Strategy.pdf (Last accessed 25 October 2016),*

[62] *Ministry of Health (2000) National Adolescent Health and Development Strategy. Available at: http://www.youth-policy.com/Policies/Nepal%20National%20Adolescent%20Health%20and%20Development%20Strategy.pdf (Last accessed 25 October 2016),*

[63] *Ministry of Youth and Sport, National Youth Policy (2010) Available at: http://www.youthpolicy.org/national/Nepal_2010_National_Youth_Policy.pdf*

[64] *Ministry of Youth and Sport, National Youth Policy (2010) Available at: http://www.youthpolicy.org/national/Nepal_2010_National_Youth_Policy.pdf*

8.2 Access to contraceptives

8.2.1 Knowledge and perceptions of law

The NMSRH contains an entire chapter on the provision of contraception to "adolescents" (defined as personas ages 10 to 19).[65] The NMSRH provides that married and unmarried adolescents should have access to confidential contraceptive counselling and services *without a requirement for parental involvement*.[66] During counselling, adolescents have the right to obtain information on all forms of contraception, including emergency contraception, abstinence and natural family planning methods. Importantly, the NMSRH emphasizes that counselling and services should be provided in non-judgmental ways that protect the privacy of adolescent clients and promotes the use of contraceptive methods for those who are sexually active.[67]

Evidence from the study indicates that neither service providers, nor young people, are aware of this policy. When asked about the law on young people's access to contraceptives, more than two thirds, 68.2%, of service providers believed that there are restrictions to young people's access to contraceptive services, based on age or marital status, and this was the case for over 93.7% of young people.

When young people were asked about the law in qualitative interviews and focus group discussions they generally said that there were not any law, or that they did not know about the law; indicating that their responses in the surveys may have been based on their 'best guess' about legal rules, rather than firm and fixed ideas about the existence of law, and what is says.

Young people, 63.68%, were most likely to answer that the law prohibits provision of contraceptives to unmarried people. This compares to only 15.9% of service providers who thought that contraceptives are only available to young people who are married. Girls (71.4%) were especially likely to answer that the law prohibits unmarried youth from access to contraceptive services, compared to boys (55.4% thought this),[68] however, no differences based on gender were observed in the service providers' survey.

Respondents in the survey were asked, both their opinions about when young people should be allowed to access contraceptives, and their understanding about what the law says on these matters. Some interesting patterns emerged. Service providers tended to hold attitudes that were more conservative than their perceptions of legal rules.[69] For young people this pattern was reversed, with young people believing the law to be more restrictive on access to contraceptives, than they themselves thought that it ought to be.[70] Given how permissive the policy framework actually is, these results indicate that whilst service providers do not possess accurate knowledge of details of policy rules, they do nonetheless, have some understanding of its generally permissive character. Young people, on the other hand, appear to have very limited information about their rights and entitlements to access contraceptives contained within national policy.

Perceptions of parental consent requirements

Furthermore, exactly half, 50%, of providers believed that parental consent is required in order to provide adolescents access to contraceptives, despite the fact that the NMSRH explicitly mandates provision of contraceptives to young people without parental involvement. Of those providers who believed that

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[65] *Ministry of Health and Population (2010) National Medical Standards for Reproductive Health, Volume 1: Contraceptive Services. Available at: http://nfhp.jsi.com/Res/Docs/NationalMedicalStandardVolIEnglish4thEdition2010.pdf (Last access 25 October 2016), Chapter 17.*

[66] *Ministry of Health (2000) National Adolescent Health and Development Strategy. Available at: http://www.youth-policy.com/Policies/Nepal%20National%20Adolescent%20Health%20and%20Development%20Strategy.pdf (Last accessed 25 October 2016), Chapter 17,*

[67] *Ministry of Health (2000) National Adolescent Health and Development Strategy. Available at: http://www.youth-policy.com/Policies/Nepal%20National%20Adolescent%20Health%20and%20Development%20Strategy.pdf (Last accessed 25 October 2016), Chapter 17,*

[68] *Chi square, $p<0.05$.*

[69] *This result was significant, two tailed paired sample t-test, $p<0.01$.*

[70] *This result was not significant, two tailed paired sample t-test, $p= 0.22$, one tailed -test, $p=0.11$.*

parental consent is required for access to contraceptives, 54.6% considered these requirements to be based on a young person's marital status (believing that unmarried youth require parental consent to access contraceptives), and the remainder, 45.5%, believed that consent requirements are based on a young person's age.

Significantly as many as 86.8% of young people in the survey believed that parental consent is required for adolescents to access contraceptives. Young people from poorer backgrounds were considerably more likely to think that parental consent is required for access than those from wealthier backgrounds.[71] Unlike for service providers, most young people believed that consent requirements are based on age, with the majority of young people who thought that there were parental consent requirements, considering that this is the case for adolescents under the age of 18 years. The basis for this belief is unclear; however, it appears to be related to legal norms concerning childhood, which typically define the age of majority as 18 years.

The fact that so many young people, and indeed service providers, believed there to be parental consent requirements for young people to access contraceptives is highly significant, given the findings from the qualitative research concerning the stigma and shame associated with being sexually active at a young age and prior to marriage. Young people interviewed during the qualitative research were clear that they would never be willing to seek out parental permission to access contraceptives, and indeed that they would not expect a positive answer if they were do so: *"if they ask their parents, they will say no, so they don't ask; they are too shy; the parents will scold them;"*[72] *"if [young people] ask their parents, their parents will reject them; [young people] will do it in secret"*.[73] Parents included in the qualitative research also confirmed these perceptions of how they would react to their adolescent children asking them for advice about accessing contraception: *"first, we wouldn't know [about that]. We won't accept [that] before marriage"*.[74]

It appears, therefore, that the only option is for young people to access contraceptive services privately and in secret. In this contexts, widely held perceptions that legal rules require parental consent for young people to access contraceptives, are likely to create significant barriers to access to contraceptives for young people in practice.

8.2.2 Practices and experiences

> *"If we talk about contraceptives, there are not legal barriers per se, but there is a lot of stigma and discrimination especially for young people. This goes for access to information too – because of the taboo around sexuality, people don't get information easily. [For] contraceptives it's law versus practice. It's more about attitudes within society"*.[75]

The data indicates that a range of contraceptive methods are readily available in Nepal. According to surveyed services providers, the most frequently provided contraceptive method is the oral contraceptive pill (97.7% of providers reported providing the Pill) followed by hormonal injections (reportedly provided by 86.4% of providers in the survey). The least available non-permanent method of contraception was found to be the IUD. Private health providers (94.4%) were found to be significantly more likely to provide IUDs than public providers.

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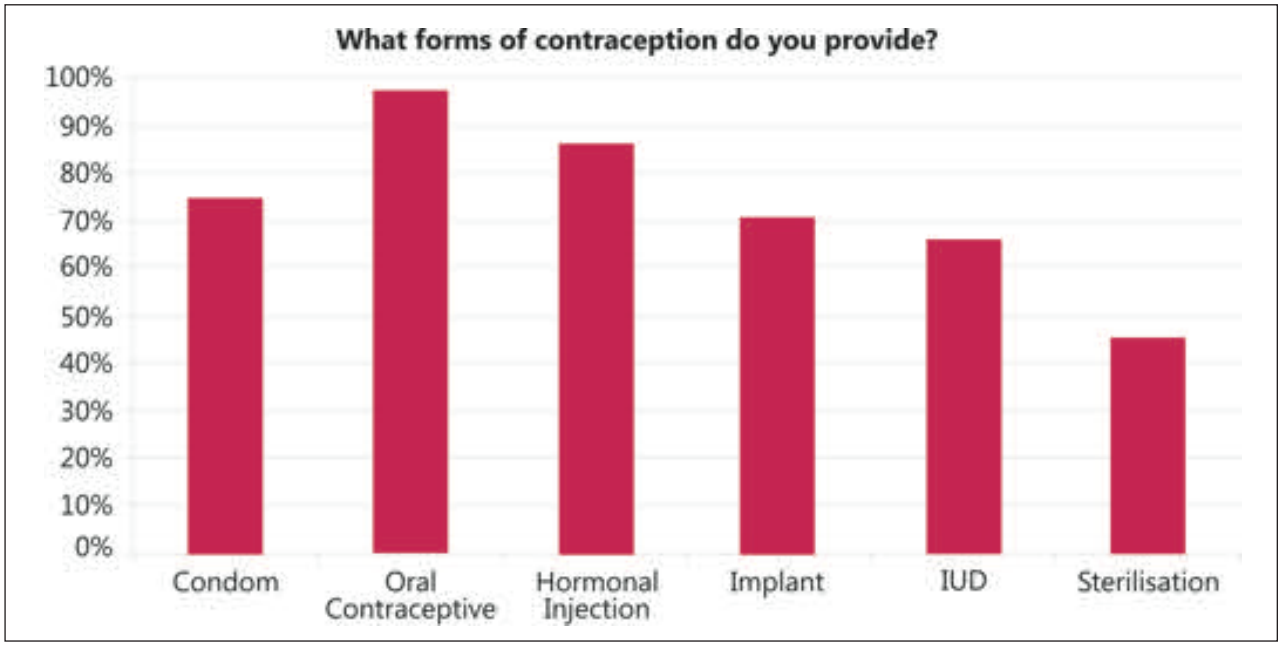
[71] *Linear regression, $p<0.05$.*

[72] *Focus group discussion, young women (13 – 15), peri-urban, Bhaktapur, 15 November 2016.*

[73] *Focus group discussion, young women (18 – 19), peri-urban, Bhaktapur, 15 November 2016.*

[74] *Focus group discussion, parents, Kavre, 16 November 2016.*

[75] *Individual interview, key informant, youth organisation, urban, Kathmandu, 15 November 2016.*



Although contraceptive services may be widely available in Nepal, this does not mean that they are readily available to young people. The data indicates that there are significant barriers to young people's access to contraceptive services, especially for those young people who are unmarried. Young people interviewed in the qualitative research were highly sceptical that a young sexually active unmarried couple would be able to access contraception:

> *Family planning is not accessible for young people, because of their young age.*
>
> *What about condoms?*
>
> *They are too young. Not accessible.*[76]

Participants spoke of the stigma associated with sex before marriage, and the judgemental attitudes of service providers as significant factors impeding young people's ability to access services; young people explained:

> *[Service providers] ask a lot of questions.[…] The way they see us will change.*
>
> *How?*
>
> *The reaction of their face. They become red. If you go to buy pharmacy, they will look like this [squinting and looking judgemental].*[77]
>
> *No - if they are small then no. If the younger age[d children] go to pharmacists – they ask more questions. They ask you why you need this. It depends on the individual pharmacist. Contraception is okay inside marriage. Before marriage, sex could be illegal. It's not actually illegal but it's unacceptable.*[78]
>
> *If they go directly to the shop or health post, the people there will ask them 'why do you need this'. I think it will be difficult [for them to access]. They will also feel uncomfortable and shy".*[79]

Young people also explained that this stigma would be especially likely to create barriers to access to contraceptive services for young women and girls; which fits with the findings that the shame associated

[76] *Focus group discussion, young men (14 – 16), peri-urban, Bhaktapur, 15 November 2016.*

[77] *Focus group discussion, young men (16 -20), urban, Kathmandu, 17 November 2016.*

[78] *Focus group discussion, young women (13 – 15), peri-urban, Bhaktapur, 15 November 2016.*

[79] *Focus group discussion, young women (18 – 19), peri-urban, Bhaktapur, 15 November 2016.*

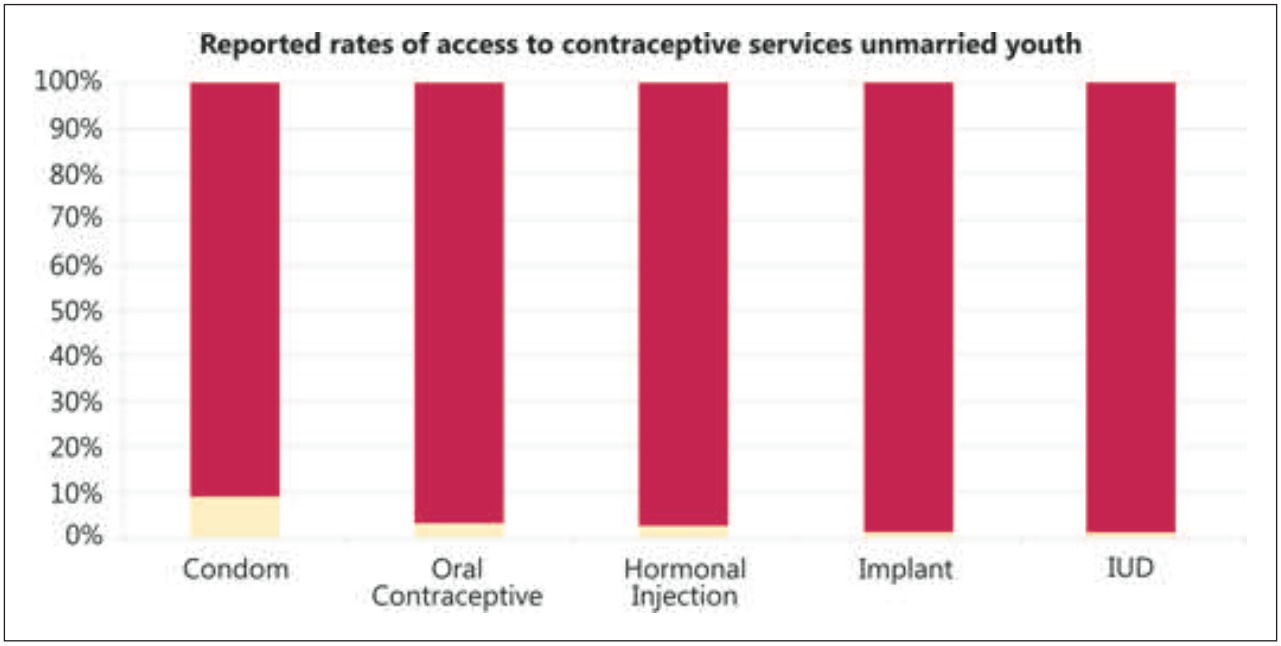
with sex before marriage is especially heightened for girls. Young people interviewed in the qualitative research were clear that unmarried girls would be even less likely to seek out contraceptives than boys:

> *Who would be more likely to access contraception?*
>
> *Boys. If a girl went to buy contraception, they will think negatively about her. [Boys] have some freedom about these things – more than girls.*[80]
>
> *"Boys are more comfortable to ask for [contraception]; girls come shyly."*[81]
>
> *"Girls will feel shy [to access contraception]. [A] boy will find it easier. According to the society, boys are prioritized over girls. If girls go [to the clinic], there will be talk.*[82]
>
> *Are pharmacists friendly to young people?*
>
> *Some are good, some are not. If she is a girl, they will never give [contraception] to her. There are some girls [who go]. [The pharmacists] ask a lot of questions.*[83]

These findings are clearly supported by evidence from the service survey data, whereby boys (19.6%) were significantly more likely to report ever accessing a contraceptive service than girls (2.1%).[84]

It is also of note that of the minority of young people in the survey who reported ever having accessed a contraceptive service, more than half, 60%, reported to have been denied access. Young people were especially likely to report being denied access to contraceptive service which require a prescription (e.g. contraceptive pills, injections, implants and IUDs), however, rates of reportedly being denied access to condoms were still found to be high, with 37.5%, of young people who ever tried to obtain a condom reporting having previously been denied.

Overall reported rates of access to contraceptive services by unmarried youth in the survey were found to be low. The most frequently accessed contraceptive method by young people was found to be condoms.



[80] *Focus group discussion: young men (16 -20), urban, Kathmandu, 17 November 2016.*

[81] *Focus group discussion, young women (19 -23), peri-urban, Bhaktapur, 15 November 2016.*

[82] *Focus group discussion, young women (13 – 15), peri-urban, Bhaktapur, 15 November 2016.*

[83] *Focus group discussion, young men (16 -20), urban, Kathmandu, 17 November 2016.*

[84] *Chi square, $p<0.001$.*

8.3 Access to HIV counselling testing and other STI related services

The *National Policy on HIV and STIs* has the following two objectives: 'a) To reduce rates of HIV infection by creating an environment appropriate for prevention, treatment and care, and b) to protect and promote the human right of the affected and high risk group people by abolishing the negative values, stigma and discrimination related to HIV/AIDS.'[85]

The *National Guidelines for HIV/AIDS Counselling and Testing* (VCT Guidelines) specify that those aged 18 or older may consent independently to voluntary counselling and testing (VCT) services. The general rule for under-18s is that parental or guardian consent is required.[86] For adolescents aged 14 to 17 years, VCT may be provided without parental or guardian consent on a 'case-by-case basis' if the counsellor deems that the person has sufficient maturity to understand the testing procedures and results. The best interests of the child are paramount in determining whether VCT should be provided and, if so, whether it can be done without parental or guardian consent.[87]

It is noteworthy that the VCT Guidelines Section D states that, in general, the 'legal age of consent is 18 years.' It is unclear to which other services, if any, this age restriction applies, but it may be considered to apply to STI services in general. This statement is in line with Chapter 12(2) of the Muluki Ain, which states that certain surgeries can only be carried out on minors (under 18) with the consent of the guardian. This section, which is entitled 'Medical Treatment,' does not mention consent for any other medical services.

Evidence from the survey indicates that service providers do not have accurate knowledge and information concerning law and policy regulating access to HIV testing and treatment. Only one service provider included in the study correctly identified that the policy requires parental consent for adolescents ages 14-18s years on the basis of a competency assessment; a further four service providers answered that parental consent is required for all under 18s; two answered that consent is required for under 16s; two that is required for under 14s, and three that is required for unmarried persons. The majority of service providers believed there to be no parental requirements for access to HIV testing and treatment. The results were very similar for perceptions of rules regulating young people's access to STI services.

It is highly interesting to note that whilst the policy framework that governs adolescents' access to contraceptive services specifically provides that they may do so without parental involvement, and the policy framework that governs access to HIV (and possibly other forms of STI testing) does require parental consent, service providers were significantly[88] more likely to consider there to be no consent requirements for HIV (68.8%) and other STI's (70.5%) than for contraceptive services (50%). These findings suggest that service providers' perceptions of legal rules are influenced by cultural and normative ideas, rather than accurate information about legal and policy frameworks.

Few young people in the survey reported ever having accessed an HIV (4.2%) or other STI (3.7%) test. Only one service provider reported ever having a denied a young persons' access to an STI test.

8.4 Access to SRH for young people for early-married youth

Whilst, taboos prohibiting sex before marriage create significant barriers to access to SRH services for unmarried youth, married youth also face a number of pressures and challenges in relation to SRH. Reduced access to SRH services, along with restrictive social norms in relation to youth sexuality are significant drivers of early marriage, particularly for young women and girls, meanwhile, the SRMH

[85] *Ministry of Health (2011) National Policy on HIV and STI. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_151409.pdf (Last accessed 26 October 2016).*

[86] *Ministry of Health (2003) National Guidelines for HIV/AIDS Counseling and Testing. Available at: http://www.ncasc.gov.np/ncasc/Operational%20guidelines/VCT-Guidelines.pdf (Last accessed 26 October 2016).*

[87] *Ministry of Health (2003) National Guidelines for HIV/AIDS Counseling and Testing. Available at: http://www.ncasc.gov.np/ncasc/Operational%20guidelines/VCT-Guidelines.pdf (Last accessed 26 October 2016), Section D.*

[88] *Paired samples t-test, $p<0.01$.*

consequences of early marriage can be severe. Research indicates that girls aged 15-19 years are twice as likely to die of complications during pregnancy and childbirth compared to women aged 20–24, and young mothers may less equipped to care for their new born babies, resulting in higher rates of neo-natal and infant loss.[89] Furthermore, multiple studies have evidenced that young brides are relatively less able to negotiate power within different facets of married and domestic life, including sexual relations, contraceptive use, childbearing and others.[90] They are likely to suffer an increased risk of domestic violence, sexually-transmitted infections, maltreatment and rape; and are more likely to internalize the idea that such treatment is acceptable and justified.[91]

A young mother (17) interviewed for this research explained how she had had difficulty negotiating the use of contraceptives with her husband after marriage: *"my husband doesn't know about these things. It [also] depends on his mood. When he's drunk, he doesn't want to use."*[92] She also explained that her husband was often violent to her and that they were struggling to cope financially; and she considered the fact that she had got married so young to be the root cause of many of her troubles: *"don't get married early; you will face problems: problems with the kids – disturbances; [your] husband will give you harassment. There's not enough money."*[93]

8.5 Access to Abortion

8.5.1 Legal framework on access to abortion

Abortion law in Nepal is partly restrictive, establishing direct legal barriers to access for women in their second and third trimester of pregnancy, as well as establishing restrictions for girls under the age of 16. The law was reformed significantly in 2002; formerly, abortion was equated with murder in Nepal and only available if the pregnant person's life was at risk. Prior to reform, according to a report by the Center for Research on Environment Health and Population Activities (CREHPA), up to twenty per-cent of women in the country's prisons were there on convictions of illegal abortion.[94]

The law in relation to abortion is set out in Number 28 of the *Muluki Ain,* which establishes that any person who commits abortion or causes abortion by doing any act with intention or knowingly or with sufficient reason to believe that such an act is likely to cause an abortion shall be punished with imprisonment for a term of one year when the foetus is up to twelve weeks old; imprisonment of three years in the case that the foetus is up to twenty five weeks old; and imprisonment for a term of five years in the case that the foetus is over twenty five weeks (Number 28).[95]

Number 28B sets out exceptions, where abortion may be legally provided. These include: if the foetus is under 12 weeks; if the foetus is under 18 weeks in cases of rape or incest; and, in a case where an expert provides advice that if the abortion is not carried out the life of the woman may be in danger, her physical or mental health may be deteriorated, or a disabled child may be born. In addition to falling into one of these three categories, an abortion must be 'carried out by a qualified and registered health worker, upon fulfilling the procedures as prescribed by the Government of Nepal', and with the consent of the pregnant woman.

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[89] *Hamilton et al. 'Analysis of Laws Related to Violence Against Children in ASEAN States', UNICEF 2015.*

[90] *Hamilton et al. 'Analysis of Laws Related to Violence Against Children in ASEAN States', UNICEF 2015.*

[91] *Hamilton et al. 'Analysis of Laws Related to Violence Against Children in ASEAN States', UNICEF 2015.*

[92] *Individual interview, young woman who is a mother, Kavre, 16 November 2016.*

[93] *Individual interview, young woman who is a mother, Kavre, 16 November 2016.*

[94] *Samandari et al (2012) Implementation of legal abortion in Nepal: a model for rapid scale-up of high quality care. Reproductive Health, 2012; 9: 7. Available at:https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3373381/#B13 (Last accessede 25 October 2016).*

[95] *Number 28A adds that 'No one shall cause abortion upon causing coercion, threat, lure or offer to a pregnant woman', and establishes that anyone who causes abortion in that manner shall be liable to the same punishment.*

The Muluki Ain also contains provisions on sex selective abortion. Number 28C establishes that a person who undergoes 'procedures undertaken to determine the sex of foetuses for the purposes of committing the offense of abortion' shall be liable to imprisonment for a term ranging from three months to six months (28C). Number 28D establishes that undertaking an abortion after having undergone such a procedure will carry a punishment of imprisonment for up to two years.

Additional regulation of abortion services

In 2003, after the reform of the law to legalise abortion (in some circumstances), the government issued a 'National Safe Abortion Policy,' which is largely progressive. The policy promises the provisions of 'safe, accessible and affordable' comprehensive abortion care services.[96] The policy promotes the accessibility of abortion services, establishing that service providers must be authorised, but that the authorisation process should be as simple as possible, and that referral networks should be put into place to ensure that women have access to authorised services.[97] While processes to ensure that abortion service for women are safe are extremely important, such provisions could function to limit the availability of services especially in rural or more remote areas where certain facilities may not be available of where there may be a lack of health professionals. As will be explored in the following section, over ten years after abortion was legalised in Nepal, lack of availability of services in rural areas is still a significant barrier to young women and girls' access to safe abortion.

The policy also establishes women's rights in relation to abortion, including that 'women have the right to continue or discontinue an unwanted pregnancy within the legal framework', and that they have the right to do so confidentially. According to the policy, 'the health institution and or/service provider providing CAC services must not disclose any personal information pertaining to the client and provide assurance to the client about maintained confidentiality'.[98]

Finally, the policy also mandates the provision of 'abortion information' and advocacy on the prevention of unwanted pregnancy, the danger of unsafe abortion and abortion stigma.[99]

Age-based restrictions to access to abortion

Importantly, the National Abortion Policy also provides that informed consent from a 'nearest relative'[100] is required in order for a woman under the age of 16 years or who is not mentally competent to access an abortion.[101] This provision creates a direct legal barrier for girls who are unwilling or unable to obtain the consent of a family member to access abortion.

Impact of legal reform

Evidence demonstrates that since the liberalisation of the Nepalese abortion law, fewer abortion complications have presented at public health facilities. The new law appears to have reduced unsafe abortion and its consequences. However, given that pregnant persons are only able to seek abortion within the first trimester (or up to 18 weeks gestation, if resulting from rape or incest), the law will not fully curb the incidence of unsafe abortion amongst persons wishing to terminate at later stages.[102]

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[96] *Ministry of Health, National Safe Abortion policy (2002), Available at: http://www.mohp.gov.np/images/pdf/policy/National%20abortion%20Policy.pdf (Last accessed 25 October 2016).*

[97] *Ministry of Health, National Abortion Policy (2002), Available at: http://www.mohp.gov.np/images/pdf/policy/National%20abortion%20Policy.pdf (Last accessed 25 October 2016).*

[98] *Ministry of Health, National Abortion Policy (2002), Available at: http://www.mohp.gov.np/images/pdf/policy/National%20abortion%20Policy.pdf (Last accessed 25 October 2016).*

[99] *Ministry of Health, National Abortion Policy (2002), Available at: http://www.mohp.gov.np/images/pdf/policy/National%20abortion%20Policy.pdf (Last accessed 25 October 2016).*

[100] *Nearest relative means any one of the following persons: husband, mother, father, mother in law, father in law, adult elder brother, younger brother, elder sister, young sister, son, daughter, cousins, uncle, aunt or the immediate guardian of the pregnant woman.*

[101] *Ministry of Health, National Abortion Policy (2002), Available at: http://www.mohp.gov.np/images/pdf/policy/National%20abortion%20Policy.pdf (Last accessed 25 October 2016).*

[102] *Henderson et al (2013) Effects of Abortion Legalization in Nepal, 2001–2010. PLoS One. 2013; 8(5): e64775. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3669364/ (Last accessed 25 October 2016).*

Furthermore, as is explored in the sections below, the legacy of the restrictive law may also serve as a barrier either due to misperceptions and understanding of the law on abortion, or stigma that is left from the previous legal barrier.

8.5.2 Knowledge and perceptions of abortion law – service providers

Evidence from the study suggests that service providers are largely aware of legal provisions regulating abortion. Of the 47 service providers surveyed, none thought that abortion was prohibited in Nepal without exception. Furthermore, the majority of service providers appear to understand the law correctly.

42% of service providers surveyed reported that abortion is always legally permitted, regardless of the circumstances (which it is, in the first trimester), and 51% reported that abortions are permitted if a woman meets certain criteria (which is the case in the second and third trimesters). Of those respondents who thought abortion is permitted depending on particular circumstances, 87% agreed that abortion was permitted in a case of rape or incest (which it is in the first 18 weeks), 92% agreed that abortion was permitted if a woman's health would deteriorate with continued pregnancy (which is the case), and 79% agreed that abortion was permitted if the child would be born with a disability (which is also the case).

Importantly, when asked specifically about the gestational periods set out in the law, 61% of service providers surveyed correctly answered that abortion services are only legally available to women in all cases within the first 12 weeks of pregnancy, but within the first 18 weeks in cases of rape or incest. 38% thought, incorrectly, that abortion services are only legally available to women within the first 12 weeks of pregnancy, regardless of whether they were victims of rape or incest – this is problematic as it suggests that some service providers believe the law to be more restrictive than it actually is. No service providers surveyed thought that there are no legal time restrictions on abortion.

Service providers included in the qualitative research also demonstrated an accurate understanding of the circumstances in which abortion may be legally provided:

> *If they are below 16, they must take parents' consent. They can't do abortion after 12 weeks; up to 18 weeks only if it's non-consensual [sexual relations]. If the foetus or mother's health is at risk abortion can be provided at any time. There is no sex selective abortion.*[103]

> *We provide medical and surgical abortion services. Below 16 they have to come with the guardian. The law states that we can provide abortion within 12 weeks. We only do it within the legal criteria. If a woman comes after 18 weeks, we won't do a referral. It can be for any reason within 12 weeks. After 12 weeks, we refer for cases of rape and incest. We have to refer these cases. We only do abortion up to 12 weeks (medical abortion). We refer to the government hospital for the second trimester.*[104]

The majority of service providers surveyed were aware that there are parental consent requirements in the law for minors. Problematically, 36% of service providers believed consent requirements to be more restrictive than they are in the National Safe Abortion Policy, reporting that the law requires them to obtain parental consent if a 17-year-old girl tried to access an abortion. 80% correctly stated that the law requires them to obtain parental consent for a 14 year old who tries to access an abortion and 12% believed that even for a 14-year-old, the law does not require parental consent.

The majority of service providers interviewed for the qualitative research were also familiar with, and correctly articulated, the consent requirements in the law:

[103] *Individual interview, female service provider, peri urban area, Bhaktapur, 18 November 2016.*

[104] *Individual interview, female service provider, FPAN, Kathmandu, 15 November 2016.*

Are there any age restrictions on abortion in Nepal?

There are no age restrictions. Below 16, if they come for abortion they need a guardian's consent by law. It could be uncle, brother, aunt or other family member. It is not compulsory to come with your father or mother.[105]

What is the law in providing abortion to young people?

If they are below 16, they must take the parent's consent…[106]

When asked about their views on the consent requirement, and in particular whether it may deter young women from accessing services, several service providers explained that they see it as important to obtain parental consent in order to protect themselves in case something were to go wrong during the procedure. As one key informant explained:

"If young people are below 16 or 18, she has to be accompanied by someone. Sometimes you need someone there. If they are 13, 15… if you do medical abortion, it is fine… but if you go for MVA, then you know a lot of complications can happen and you need to go to the government hospital. There, they will want to fill all the forms. The parents will have to go…. There are lots of cases where if something goes wrong with the patient, the parents will beat the doctors. It's good to have someone there".[107]

Service providers did acknowledge that consent requirements may impact on young people's willingness to seek abortion services, however:

Do you feel the parental consent requirement deters some young women from accessing abortion?

In many cases, in the case of someone less than 16 years, they lady will feel hesitant. In many cases, the parent brought their own daughter![108]

Given the stigma that exists in Nepal around young (and unmarried) women's sexual activity, consent requirements are likely to create barriers to young women and girls' access to abortion.

8.5.3 Knowledge and perceptions of abortion law – young people

Perhaps unsurprisingly, young people's knowledge of law and policy on abortion was less accurate than service providers' knowledge; 17% of young people surveyed reported that abortion is never permitted according to the law, and 8% reported that they did not know or preferred not to answer. 10% of young people surveyed reported that there are no legal restrictions on abortion, and the majority, 66%, reported that women can access abortion when they meet specific legal criteria. Of those who reported that certain criteria must be met in order for abortion to be legal, just over one third (36 %) stated that a woman can legally access abortion if she is a victim of rape or incest; three quarters (74%) stated that a woman can legally access abortion if her life is in danger; nearly two thirds (63%) reported to believe that a woman can legally access abortion to preserve her health; and, only a quarter (25%) believed that a woman can legally access abortion if her child would be disabled. These results are problematic as a high proportion of young people surveyed believe the law on abortion to be more restrictive than it actually is. Similarly, of the young people who believe abortion to be legal, nearly 40% reported that it is only legal in the first trimester, which is more restrictive than the law.

Indeed, in qualitative interactions young people demonstrated mixed knowledge of the law, with some correctly identifying the law, but many stating that they did not know about the law. A youth peer

[105] *Individual interview, female service provider, FPAN, Kathmandu, 14 November 2016.*

[106] *Individual interview, female service provider, peri urban, Bhaktapur, 18 November 2016.*

[107] *Individual interview, key informant, FPAN, Kathmandu, 15 November 2016.*

[108] *Individual interview, female service provider, peri urban, Bhaktapur, 18 November 2016.*

educator explained that, particularly in rural areas, young people do not know that abortion has been legalised, which may serve to reinforce stigma around access and lead to the use of illegal abortion: *"It's legalised in law. In practice, there's still stigma [...] Many don't know that it has been legalised."*[109]

Young people surveyed for the study also took an overly expansive view of legal requirements relating to parental consent: 65% reported that according to the law a 17 year old needs parental consent to access abortion; only 27% reported (correctly) that she does not. Young people participating in the qualitative research also tended to be aware that it is necessary for young people to obtain parental consent in order to access abortion, and, in some cases, expressed that this is in their own interest: "It is better if she gets permission; it's not law. It is better if she counsel with her parents. She is just 15 years old, she needs parental consent to get abortion services according to the law."[110]

Whilst it is perhaps not surprising that many young people included in the study lacked accurate knowledge of the law on abortion, that fact that their perceptions of the law tended to be more restrictive than the actual law is problematic, and appears to have implications for their access to safe and legal abortion services.

8.5.4 Access to legal and safe abortion

Survey data indicates that service providers do implement legal restrictions on abortion in practice; over half (52.5%) of the service providers surveyed who provide abortion services reported that they had denied a woman access to abortion because the she did not meet the necessary legal criteria. And whilst only four young people included in the survey reported having attempted to access an abortion (one attempted to access medical abortion, one attempted to access surgical abortion and two attempted to access both), only one of the four was able to successfully access medical abortion and one was able to successfully access surgical abortion. It is interesting to note that the majority of the young people who were denied access to abortion stated that this was (at least in part) because of their age.

In focus group discussions and interviews, young people consistently raised abortion as an option that is available to young women and girls. Indeed, many young people stated that they would encourage a friend to have an abortion were she to become pregnant out of wedlock:

> *What advice would you give to a friend who discovered she was pregnant after having sex with her boyfriend?*
>
> *Safe abortion (there is consensus from all participants).We advise her to talk to her parents. She would get safe abortion. She should talk to her parents, her elder friends or best friends.*[111]
>
> *If she doesn't want to have the baby, the result is abortion.*[112]
>
> *Yes, abortion is available, you go to the hospital.*[113]
>
> *Where could she get an abortion?*
>
> *Hospital. Health post. Hospital...if she tells (about her pregnancy) too late there is no abortion after 6 months or 5 months.*[114]

In fact, respondents tended to described abortion as an imperative for a young person who becomes pregnant outside of marriage, unless she was able to marry her sexual partner. A group of parents

[109] *Individual interview, youth organisation, Kathmandu, 15 November 2016.*

[110] *Focus group discussion, young women, 16 – 18, Bhaktapur, 5 November 2016.*

[111] *Focus group discussion, young women, 13-15, peri-urban, Bhaktapur, 15 November 2016.*

[112] *Focus group discussion, young women, 19 – 23, peri-urban, Bhaktapur, 15 November 2016.*

[113] *Focus group discussion, young men, 14 - 16, peri-urban, Bhaktapur, 15 November 2016.*

[114] *Focus group discussion, young men, 16-20, Kathmandu, 17 November 2016.*

succinctly summarised a pregnant girl's options: *"If she was mature enough to handle it, then I would hand her over to the guy. If he runs away, I would opt for abortion".*[115]

Interestingly, when asked to discuss their views on abortion, respondents did not appear to find abortion objectionable in and of itself. The stigma around abortion appears to be an extension of the intense stigma around the sexual activity of young, unmarried women:

> *If a girl has an abortion, what is the idea of her in the community?*
>
> *Slut. In a bad way. She will be called 'besya' (prostitute).*[116]
>
> *Would a girl's marital status affect her ability to get an abortion?*
>
> *Yes, it matters to the society, but at the hospital it is kept very confidential. From a societal viewpoint she may get many problems.*[117]

Interestingly, when asked about their opinions on whether abortion should be legal, girls were significantly more likely to think that abortion should always be prohibited than boys were.[118] This may reflect the fact that social norms which prohibit sexual activity for unmarried young people are more flexible for boys than they are for girls. These norms create significant barriers to accessing abortion services, as is demonstrated by the following exchange with a service provider:

> *Do young people face any legal barriers in accessing services?*
>
> *For the young people, if they get pregnant, it is very difficult to get an abortion.*
>
> *Why is it difficult for them to access abortion?*
>
> *There is fear of the society or family. It is so difficult also because they are unmarried.*
>
> *Is it the girls that do now want to go or is it the facility that rejects them?*
>
> *It is their own low self-esteem and fear of losing dignity: they don't go to get abortion. When they come to the health centre the providers are very nice to them.*[119]

Due in part to the high levels of stigma surrounding abortion, respondents explained that despite the fact that abortion has been legalised in Nepal, young people continue to access illegal and often unsafe abortion: *"The main problem is that the women doesn't go to the recognised [service provider]… women here don't like to go to a recognised abortion centre because they feel a loss of dignity. Who do they know in the centre? They go secretly to other private places, and we're not sure they are certified."*[120]

The continued occurrence of unsafe and illegal abortion in Nepal is also due to the fact that safe, registered abortion providers are not always easily accessible, particularly for women and girls living in rural areas: *"Geographical access has been a barrier to health services in many cases… If you talk about contraceptive and abortion services, people have to go to quack doctors; it's unsafe abortion."*[121]

Several service providers mentioned that medical abortions can be obtained through pharmacies in Nepal, a practice which does not appear to be consistent with the National Abortion Policy:

> *How many young people do you see for abortion per day?*

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[115] *Focus group discussion, parents, Kavre, 16 November 2016.*

[116] *Focus group discussion, young men, 16-20, Kathmandu, 17 November 2016.*

[117] *Focus group discussion, young women, 16-18, Kathmandu, 14 November 2016.*

[118] *Chi-square test, $p<0.05$.*

[119] *Individual interview, health provider, peri-urban, Kavre, 16 November 2016.*

[120] *Individual interview, male service provider, peri-urban, Bhaktapur, 18 November 2016.*

[121] *Individual interview, youth rganization, Kathmandu, 15 November 2016.*

> *There were more than 80 per month before there was medical abortion. There are also the rules; for medical abortion they have to go to the pharmacy. It's easy to do, so they don't need to come to the clinic…*[122]

Respondents explained that young women prefer to obtain a medical abortion in a pharmacy, given that it can be done anonymously and without parental consent:

> *Sex is not open in our society, so if the young woman gets pregnant she won't tell her parents. She will go to the pharmacy herself and get the pills without parental consent. If the parents know, they won't accept. They may reject their daughter, and for fear of this she goes secretly to the pharmacy to get the pills.*[123]

This also suggests that legal consent requirements applied to under 16s create barriers to young women's access to safe abortion services.

Finally, a number of young people held the misperception that abortion poses health risks, and can cause infertility:

> *Is it easy for a young person to get abortion?*
>
> *They will be asked too many questions. They will face too many problems. If they go for abortion there will be many health problems.*
>
> *What kind of health problems?*
>
> *Weakness. Physical weakness. For the future, they may get problems with future pregnancy from abortion. For the second time, they may not get pregnant.*[124]

Perceptions about health risks, which respondents described as being particularly severe for young women, likely relate to social norms according to which adolescent girls are not physically ready for child birth or sex.

[122] *Individual interview, male service provider, FPAN, Kathmandu, 14 November 2016.*

[123] *Individual interview, key informant, law and development, Kathmandu, 17 November 2016.*

[124] *Focus group discussion, young men 16-20, Kathmandu, 17 November 2016.*

9. Non-discrimination

9.2 Gender and sexual minorities (LGBT)

9.2.1 The legal framework

Nepal has relatively progressive legislation with regard to the recognition of gender and sexual minorities.

Criminalisation of 'unnatural offences'

Unlike other countries in the region and beyond, is noteworthy that 'sodomy' has never been criminalised in Nepal.[125] (Perhaps due to the fact that Nepal was never colonized by a European state, who were largely responsible for introducing such legislation in countries in the region, and beyond).

As discussed in section 6 of this report the age of sexual consent for boys who have sex with boys in Nepal, is the same as the legal age of sexual consent for different-sex couples: at 16 years of age (the law does not contemplate the situations of girls who have sex with girls). However, it is important to note that the language of the provision on 'sodomy' in the *Muluki Ain* reflects discriminatory attitudes related to same-sex sexual acts amongst males: the term 'unnatural sexual intercourse,' which appears in other parts of the Code, stigmatizes those for whom anal sex is a natural expression of their sexual desires and preferences.

Pant v. Nepal

In 2007 the Supreme Court decision in Pant v. Nepal called for the recognition of the human rights of sexual and gender minorities, and made Nepal one of just a few countries in the world that officially acknowledges a third gender category within law.[126] The judgment mandated the abolishment of all discriminatory legal provisions, and required the law to take account of a third gender:

> *If any legal provisions exist that restrict the people of third gender from enjoying fundamental rights and other human rights provided by Part III of the Constitution and international conventions relating to the human rights which Nepal has already ratified and applied as national laws, with their own identity, such provisions shall be considered as arbitrary, unreasonable and discriminatory. Similarly, the action of the state that enforces such laws shall also be considered as arbitrary, unreasonable and discriminatory.*[127]

In addition, the verdict established that persons of third gender should be able to identify as such on citizenship documents. The court stated:

> *Legal provisions should be made to provide for gender identity to the people of transgender or third gender, under which female third gender, male third gender and intersexual are grouped, as per the concerned person's self-feeling.*[128]

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[125] *US Agency for International Development, Being LGBT In Asia: Nepal Country Report. Available at: https://www.usaid.gov/sites/default/files/documents/1861/Being_LGBT_in_Asia_Nepal_Country_Report.pdf (Last access 26 October 2016), p. 29.*

[126] *Bocheneck and Knight (2012) Establishing a Third Gender in Nepal: Process and Prognosis, Emory International Law Review, Volume 26:1, p. 17. Available at: http://law.emory.edu/eilr/_documents/volumes/26/1/recent-developments/bochenek-knight.pdf (Last accessed 26 October 2016).*

[127] *Bocheneck and Knight (2012) Establishing a Third Gender in Nepal: Process and Prognosis, Emory International Law Review, Volume 26:1, p 11. Available at: http://law.emory.edu/eilr/_documents/volumes/26/1/recent-developments/bochenek-knight.pdf (Last accessed 26 October 2016).*

[128] *Bocheneck and Knight (2012) Establishing a Third Gender in Nepal: Process and Prognosis, Emory International Law Review, Volume 26:1, p 31. Available at: http://law.emory.edu/eilr/_documents/volumes/26/1/recent-developments/bochenek-knight.pdf (Last accessed 26 October 2016).*

Nevertheless, progress towards implementing the Pant v. Nepal verdict has been piecemeal and slow. There have been reports of obstructions and administrative hassles at the local level, and up until 2012, only a few individuals had registered as third gender on their citizenship identification cards.[129]

Access to legal change of sex

Although there is no statute in Nepal that sets out law in relation to a change of sex, in September 2012, the Cabinet office made the landmark decision to grant citizenship to a post-operative transsexual woman. The decision opened up new possibilities for legal recognition of individuals who changed their sex, including through medical and surgical interventions.

On September 3rd 2012, the Nepalese Government granted legal recognition and citizenship to the first Nepali, post-operative transsexual. In a meeting on 3rd September 2012 the Cabinet instructed the Nepal Medical Board (NMB) to find out: *"whether Panta had changed sex and if there were any feelings of apathy afterchanging sex,' and to assess Panta's mental state and behavioural changes".* A three-member committee formed at the Nepal Medical Board certified Panta as female, confirming the sex change.[130]

Protection under the Constitution

Further, in 2015, Nepal adopted a new Constitution that is inclusive of people identifying as third gender: Article 18, bans discrimination based on gender or sexual orientation, whilst also leaving room for future laws for the protection, empowerment or advancement of 'gender and sexual minorities.[131] Furthermore, Article 42 recognizes the right to social justice for 'gender and sexual minorities', including the right to participate in State bodies.[132] As one legal expert put it, legislation in Nepal is now some of the most inclusive in the world for gender and sexual minorities, and looks excellent 'on paper':

> *We are the first country in Asia to have written about sexual and gender minorities. We are first in the world issuing passport for those who identity as 'other.'*
>
> *What is it like in practice?*
>
> *In Nepal, everything looks good on paper… [But] there is no effort to mainstream LGBTI…*[133]

[129] *US Agency for International Development, Being LGBT In Asia: Nepal Country Report. Available at: https://www.usaid.gov/sites/default/files/documents/1861/Being_LGBT_in_Asia_Nepal_Country_Report.pdf (Last access 26 October 2016), p. 32.*

[130] *Anil Giri, "Govt Recognizes first Nepali, post operative Transsexual", The Kathmandu Post, September 28, 2014: http://www.ekantipur.com/the-kathmandu-post/2012/09/27/nation/govt-recognises-first-nepali-post-operative-transsexual/240135.html (Last accessed 31st January 2017).*

[131] *Constitution of Nepal (2015), Article 18: Right to equality: (1) All citizens shall be equal before law. No person shall be denied the equal protection of law. (2) No discrimination shall be made in the application of general laws on grounds of origin, religion, race, caste, tribe, sex, physical condition, condition of health, marital status, pregnancy, economic condition, language or region, ideology or on similar other grounds. (3) The State shall not discriminate citizens on grounds of origin, religion, race, caste, tribe, sex, economic condition, language, region, ideology or on similar other grounds. Provided that nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or development of the citizens including the socially or culturally backward women, Dalit, indigenous people, indigenous nationalities, Madhesi, Tharu, Muslim, oppressed class, Pichhada class, minorities, the marginalized, farmers, labours, youths, children, senior citizens, gender and sexual minorities, persons with disabilities, persons in pregnancy, incapacitated or helpless, backward region and indigent Khas Arya. Explanation: For the purposes of this Part and Part 4, "indigent" means a person who earns income less than that specified by the Federal law. (4) No discrimination shall be made on the ground of gender with regard to remuneration and social security for the same work. (5) All offspring shall have the equal right to the ancestral property without discrimination on the ground of gender.*

[132] *Constitution of Nepal (2015), Article 42: Right to social justice: (1) The socially backward women, Dalit, indigenous people, indigenous nationalities, Madhesi, Tharu, minorities, persons with disabilities, marginalized communities, Muslims, backward classes, gender and sexual minorities, youths, farmers, labourers, oppressed or citizens of backward regions and indigent Khas Arya shall have the right to participate in the State bodies on the basis of inclusive principle.*

[133] *Individual interview, legal expert, Kathmandu, 17 November 2016.*

As expressed by this provider, whilst legislation is progressive, this has not immediately translated into protection from discrimination in practice; as another respondent argued:

> *Nepal doesn't have many barriers in terms of legal issues. But of course, for marginalized young people, LGBT people, young girls who have experienced sexual violence, there is still discrimination based on who they are.*[134]

9.2.2 Discrimination in practice

Many respondents included in the study expressed tolerant attitudes towards gender and sexual minorities, as one participant noted: "Nepali people are very nice to [LGBT}. [We] don't discriminate against them. We can see that Nepalese society is a bit tolerant."[135] Others, however, had a different view: *"the community doesn't treat [trans people] well. They tease them; they tell them they are half-male and half-female."*[136] LGBT individuals spoke of the lingering stigma from communities, police harassment, and the pressure they face to conform to heteronormative roles:

> *I am not accepted – [by] my family, community. If I have to go [home], I change to a normal boy. It's so difficult. I feel so…. It's a very hard time for me. I know the family pressure and prestige. Just for the sake of my family I do that.*[137]

There was evidence that gender and sexuality minorities are liable to be objectified and sexualised; for example, one respondent explained: *"when [people] think about LGBT, the first [thing] that comes [to mind] is sex. That's their view. When I say to my friend that I am gay, they think about having sex with me".*[138] There was an assumption amongst several respondents that most, if not all, trans individuals are sex workers. Indeed, it seems that due to social exclusion, entering into the sex industry is one of the few 'pathways' available to many young trans people. A young trans sex worker interviewed in Kathmandu explained:

> *I wish there should be a law that the people shouldn't discriminate us and [we could] behave like normal people and work openly in the society. I want to join the Indian army. If I were not a transgender, I would have joined army…*[139]

Previous research has demonstrated that sexual minorities face barriers to entry into the workforce, due to discrimination during recruitment, and that, once within employment, they are especially liable to be harassed or dismissed on the grounds of their gender identity and/ or sexual orientation. Further, sexual and gender minorities are particularly liable to end up living on the streets, after eviction from their homes and communities by family members or other relatives. Landlords also reportedly discriminate against sexual and gender minorities, refusing them housing, or demanding higher rental payments, out of fear that they will engage in sex work, highlighting the cyclical and structural forms of exclusion and disadvantage that permeate their experiences.[140]

9.2.3 Impact of discrimination on access to general SRH services

The continued stigma associated with being gender variant appears to have considerable impact on access to SRH services for minority groups. Evidence from the research indicates that service providers

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[134] *Individual interview , youth activist, Kathmandu, 16 November 2016.*

[135] *Individual interview, legal expert, Kathmandu, 17 November 2016.*

[136] *Focus group discussion, young women who sell sex, Kavre, 16 November 2016.*

[137] *Interview, trans women who sell sex, Kathmandu, 18 November 2016.*

[138] *Individual interview, young man who identifies as gay, Kathmandu, 18 November 2016.*

[139] *Interview, trans women who sell sex, Kathmandu, 18 November 2016.*

[140] *UNICEF, UNDP, USAID, 'Being LGBT in Asia: Nepal country report, 2014. Available at: https://www.usaid.gov/sites/default/files/documents/1861/Being_LGBT_in_Asia_Nepal_Country_Report.pdf ; Singh et al, 'Human rights violations among sexual and gender minorities in Kathmandu, Nepal: a qualitative investigation', BMC International Health and Human Rights, 2012. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3495399/*

within 'mainstream' services are, at best, not well oriented in relation to health issues faced by the LGBT community, and at worst, liable to express discriminatory and superior attitudes. One young trans woman described her experience, with government clinics, and noted that it dissuaded her from seeking to access non-specialised services:

> *Have you ever tried accessing in the government health facilities?*
>
> *Yes.*
>
> *How did they treat you?*
>
> *They feel surprised to see me. They get surprised. They hear a male voice but get a feminine – they look at me strangely…I feel bad. I don't like to go there. [But] not all facilities are available in BDS [specialist service], so I have to go there. I feel so bad.*[141]

Previous research has found that stigma in healthcare settings is common: that gender and sexual minority persons often experience judgment from health professionals, and are liable to be denied access to adequate care on the grounds of their sexual orientation or gender identity. In a survey of the experiences of sexual and gender minorities conducted by the Williams Institute in 2014, 23.1% of respondents reported being denied access to healthcare services.[142] Access to healthcare was found to be particularly difficult for transgender respondents who defined as 'third gender'; this compared to much lower rates (2.7%) of lesbian/gay respondents reported denial of healthcare services.[143] Another study highlighted the challenges many young transwomen face in accessing sanitary products from pharmacies and retail outlets.[144]

Overall evidence suggests that the health needs of sexual and gender minorities are often overlooked within universal health services in Nepal, and there is limited understanding about their mental and psychological health. In particular, the sexual and reproductive health of trans women and lesbian women is rarely discussed.[145]

9.2.4 Access to specialised services for gender minority youth

There is a lack of law, policy and strategy in Nepal providing for access to hormonal replacement therapies (HRTs) and gender affirmation surgeries (GAS), and it appears from the data that these services are not readily available from public clinics in Nepal.

Hormonal replacement therapies

Whilst a doctor's prescription is legally required for access to HRTs, it appears that drugs are often bought 'over the counter' at pharmacies, and/ or exchanged amongst friends, who may have brought drugs overseas (e.g. in India or Thailand); placing individuals at significant risk of obtaining counterfeit drugs, and/ or administering the wrong doses. The following passages are illustrative:

> *Have you been able to access HRT?*
>
> *Yes.*

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[141] *Individual interview, young man who identifies as gay, Kathmandu, 18 November 2016.*

[142] *The Williams Institute, 'Surveying Nepal's Sexual and Gender Minorities: An Inclusive Approach', 2014. Available at: http://williamsinstitute.law.ucla.edu/wp-content/uploads/Nepal-Survey-Oct-2014.pdf*

[143] *The Williams Institute, 'Surveying Nepal's Sexual and Gender Minorities: An Inclusive Approach', 2014. Available at: http://williamsinstitute.law.ucla.edu/wp-content/uploads/Nepal-Survey-Oct-2014.pdf*

[144] *UNICEF, UNDP, USAID, 'Being LGBT in Asia: Nepal country report, 2014. Available at: https://www.usaid.gov/sites/default/files/documents/1861/Being_LGBT_in_Asia_Nepal_Country_Report.pdf ;*

[145] *UNICEF, UNDP, USAID, 'Being LGBT in Asia: Nepal country report, 2014. Available at: https://www.usaid.gov/sites/default/files/documents/1861/Being_LGBT_in_Asia_Nepal_Country_Report.pdf ;*

How do you get your drugs?

Through friends; they also used to take a hormone.[146]

"People are very aware of them. They are aware of how many pills [to take]. Some take by themselves, some are under supervision. [...] They interact with other people; go to Bangkok. It's not that difficult. It's not a small minority".[147]

Does the government provide HRT for young trans people?

Not from the government. What I heard is that it's not provided in Nepal; they go abroad. I heard there are some people who take these services.[148]

Previous research has also shown that many transgender people take hormone supplements, without receiving adequate information about side effects and health risks, with many experiencing dangerous side effects.

Furthermore, given that there is no public service provisions of HRTs, these drugs are typically expensive, creating barriers to access for those trans individuals from less advantaged backgrounds: as one service provider explained: *"It is legal to get HRT in Nepal. [But] It's not affordable to all. It's also expensive. Those who are can afford, they are taking."*[149]

Gender affirmation surgery

'Gender affirmation' surgery does not appear to be available in Nepal; access to medical surgeries involves international travel, and entails significant expenses:

Are transgender people in Nepal able to access Gender affirmation surgery?

Not in Nepal. [They go to] Thailand. I don't have money, but I plan to go there. The neighbour friend did silicone implant for breasts. I also want to go but don't have money. It was around $3,000 just to make the boobs besides transportation. Overall, transportation, plus everything - it's $3,000. I have never been to Thailand.[150]

9.3 Survivors of sexual and gender based violence

Cultural norms, in particular those that deny young women and girls agency over their sexuality, that dictate that young women remain 'pure' and virginal until marriage, and that demand adherence to heteronormative expressions of male and female identity create a veil of silence surrounding incidents of sexual violence in Nepal, including sexual violence committed against women and girls, men and boys, and trans and third gender individuals. A culture of impunity for perpetrators is upheld by these norms, which is in turn supported by an inactive and abused law enforcement (police) response, family members who value secrecy over justice, and laws that place unrealistic expectations and time limits for reporting on survivors. Together these factors combine to create significant barriers to access to justices, and SGBV-related health services for survivors of violence.

9.3.1 Survivors of family based violence

The legislative framework in relation to the protection of survivors of family based violence remains weak. Nepal passed family based violence legislation in 2008, which defines family violence as: 'any form of

[146] *Interview, trans women who sell sex, urban, Kathmandu, 18 November 2016.*

[147] *Individual interview, legal expert, Kathmandu 17 November 2016.*

[148] *Individual interview, female service provider, peri-urban, Kathmandu 14 November 2016.*

[149] *Individual interview, legal expert, Kathmandu 17 November 2016.*

[150] *Interview, trans women who sell sex, urban, Kathmandu 18 November 2016.*

physical, mental, sexual and economic abuse perpetrated by any person to the other person with whom he has a family relationship. The definition also implies to the acts of reprimand or emotional abuse.'[151] The Act sets out the procedures by which a person may bring a complaint against someone with whom she or he is in a 'family relationship.' However, the remedies are civil rather than criminal in nature, and, the statute of limitations - or the time limit within which a person has to make a complaint under the Act is set at 90 days from the commission of the act of domestic violence.

Further, although the law does contemplate marital rape. Discriminatory provisions under the *Muluki Ain* prescribe that the maximum penalty for husbands who are convicted of raping their wives is six months incarceration, which is inordinately low, and indeed the lowest level of penalty for any crime of rape in Nepalese Law.

In practice, survivors of family based violence face significant barriers to reporting and accessing services, due to a general lack of recognition of the severity of rape that occurs within marriage; which is reinforced by weak legal prohibition. In focus group discussions respondents were asked to consider a case of a husband who forces sex with his young wife; the following passage is illustrative of how participants responded:

> *Your friend tells you that she was raped by her husband and wants to go to the police. Is this an option?*
>
> *There will be a conflict in the relationship - for the small reason of sex [in] marriage, they shouldn't go to the police. A police case is not a wise decision; it can break trust between two families.*[152]

A female survivor of family based violence interviewed in the context of this research spoke of how she feared reporting the case to the police, due to the 'torture' that her husband and his family might inflict on her for 'the rest of her life'. Her experience with the justice system up to that point had not instilled her with faith in its ability to protect her from such 'torture'.[153] In her particular case, the perpetrator - her former husband - never received punishment for the abuse he inflicted.

Case study: female survivor of family based violence

I married at 22 years of age; it was arranged marriage. I met [my husband] before marriage. But, I never knew about his character. I was the most beautiful from the family; seeing my beauty, he got married to me.

After marriage, the guy started to show his character, he started beating me. I was very shocked because the marriage was arranged - and it was accepted by the community. I was so shocked. I hid it from the community. I didn't share it with my family; I just tolerated him and stayed with him.

The torture was given daily to me. I never went back to my maternal home. I never let them know what I was suffering. I had a fear of the community.

After 3 months, I ran away from the home and rode in a lorry. I came to my family's home normally. There is a ritual to come back home [to visit], so I didn't say anything. That guy – my husband never searched for me, but [due to my] fear of the culture, I went back to his home. I tolerated his torture and bad words.

[151] *Domestic Violence (Crime and Punishment) Act 2008, Available at: http://www.saathi.org.np/index.php?option=com_content&view=article&id=53&Itemid=83 (Last accessed 16 January 2017).*

[152] *Focus group discussion, young men aged 16 to 20, Kathmandu, 17 November 2016.*

[153] *Interview, survivor of SGBV, Bhaktapur, 19 November 2016.*

After 8-9 months I conceived a baby. I went alone to get my pregnancy check-ups. My family never supported me in that. I was alone. At 9 months of pregnancy, there was a big fight; I wasn't sure what would happen. At midnight, I left the home. I went to my sister's home at midnight at Chava Hill. I never returned back until after the delivery. My sister helped me.

The thing is I gave birth to a daughter; because of this, the family never came to see her face. Because I gave birth to a daughter, no one came; because of her gender.

It is a ritual that after birth I [should] go to my husband's house, so I took her. Somehow, I tolerated [him] for 1 month, but I was sick and not well. [My in-laws] didn't take care of me; [there was] no food for me. Then after 25 days, I returned to my maternal home. [But there] they [also] discriminate[d] against me because I gave birth to a daughter. They [my maternal family] never took me back. After 3 months, by the force of [my maternal] family, they took me [back] to my husband's house. Then again, my husband started quarrelling - daily he started giving torture to me.

When my baby was 3 years, at midnight my husband beat me so badly, and broke all the household crockery. I was so scared, and I was not sure what he would do to me and my baby. Again, I left at midnight. I had one friend - I went to her.

My husband came back to search for me, but that lady helped me a lot. She protected me. She gave me food. I didn't have a penny to myself. That friend gave me 100 rupees, and I went back to my maternal home.

I talked to my brother. My brother was the one who had arranged the marriage. But my brother insisted that I go back to my husband's home. It is a system – we have to go back.

I went back, and again the same torture started. There is a fear of culture and taboos. Through my brother's force, we lived together for 1 year.

My husband locked me in the house. He took the key. There was nothing for me to eat. He didn't come back for 1 month, then after that I decided I'd never go back with him. I can work so I can take care of my daughter on my own.

When I had a problem, no one stood up for me; no one gave me justice. [So] I never feel fear anymore. The community people were not supporting me, and I knew this. I became confident. I got a job at hospital as a field worker paying 3,000 rupees per month. I wanted to give an education to my daughter, and that was 600 rupees, and the remaining was enough for me. My daughter did well. Until now, my daughter never asked about her father.

I have been to many lawyers. I don't like lawyers or advocates. After 6 years, I went to the court, and I was hoping to get something for my daughter, but I dropped the case as nothing happened for 3 years. What do you expect? I am surviving, so I have no expectations. We dropped the case. I dropped it. I never get the justice.

This law never sees us. The weakest part of Nepal is the law, from my experience. For me, I didn't get any justice so I don't like this law.[154]

[154] *Individual interview, survivor of SGBV, Bhaktapur, 19 November 2016.*

According to the latest DHS data for Nepal, 28.8% of ever-married women had experienced physical or sexual violence at the hands of a partner or spouse.[155]

9.3.2 Female survivors of rape and sexual assault (outside of marriage)

Whilst SGBV committed within the context of marriage is kept quiet to avoid disrupting familial relationships and trust between families; SGBV committed outside of the context of marriage is concealed through the stigma attached to extra-marital sex. Young, unmarried women who are subject to rape and sexual assault are silenced by social rules dictating that they remain virginal until marriage; speaking out about their experience may jeopardize survivors' marriage prospects (as well as those of their young female relatives) and bring shame and dishonour to their family. Stakeholders explained:

> *In our society, if the women survivor comes for the complaint at a young age, there is a case of prestige. The family does not support this [speaking out]. If she is victimized, she cannot get married; so they want to keep it secret. It may destroy her future life. They will tag her…she was a survivor. They want to keep it very secret. They won't share with the authorities because of the fear of their daughter's life. The parents do not want to go to court. Her whole family [will be] affected. Her sister also won't get married. They are not getting justice - the young women.*[156]

In this context, female survivors of sexual violence are held responsible for their own victimisation and abuse; creating a culture where sexual violence committed against women and girls is tolerated, mitigated, and (even) justified:

> *Due to patriarchal society, the women [who] are being raped or violated - they blame them for [the man's] deed. The community blame them; even their family [blame's them]. Even though they are victims, they are punished as if they are criminals.*[157]

These findings highlight the relationship between discriminatory social and cultural attitudes concerning female sexuality and perpetration of sexual and gender based violence against young women and girls. Although legal definitions of rape within Nepal are sufficiently broad to criminalise all forms of non-consensual sex, significant barriers to implementation of protective legal rules remain; as one key expert contended: *"there have been so many laws from government. [Yet] people don't disclose the problem due to stigma and discrimination. They want to close that issue.*[158]

9.3.3 Rape of young men and boys

The law in Nepal addresses rape in the *Muluki Ain*. Previous to 2015, Chapter 14 of the Code defined rape in such way that excluded men from being victims; it was defined as *'sexual intercourse with a woman without her consent or enters into sexual intercourse with a girl below the age of sixteen years with or without her consent shall be deemed to be an offence of rape.'*[159] However, legal experts in Nepal provided information on the Gender Equality Act 2015, which amended the *Muluki Ain* to include vaginal and anal penetration by an object as well as a penis. Previously, the statute of limitations for rape was thirty-five days from the cause of action;[160] however, according to legal experts, the 2015 law amended and extended this to six months.[161]

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[155] *The DHS Program, Statcompiler, Available at: http://www.statcompiler.com/en/ (Last accessed 16 January 2017).*

[156] *Individual interview, legal expert, Kathmandu, 17 November 2016.*

[157] *Individual interview, female service provider, Bhaktapur, 18 November 2016.*

[158] *Individual interview, female service provider, Bhaktapur, 18 November 2016.*

[159] *Muluki Ain, Available at: http://www.lawcommission.gov.np/en/documents/2015/08/muluki-ain-general-code-2020.pdf (Last access 27 October 2016), Chapter 14 (Number 1).*

[160] *Muluki Ain, Available at: http://www.lawcommission.gov.np/en/documents/2015/08/muluki-ain-general-code-2020.pdf (Last access 27 October 2016), Chapter 14 (Number 11).*

[161] *The 2015 law that amended the Muluki Ain and was mentioned by the legal expert interviewed for this study could not be found online nor did the version of the Code provided on Nepal's Law Commission website did not contain the amendments. It is unclear whether the law has been translated into English.*

Trans victims/survivors of SGBV are often met with disbelief when reporting abuse, which may be facilitated by a lack of clarity on the newly-extended definition of rape in the *Muluki Ain* amongst police. The culture of impunity for all victims/survivors of SGBV is compounded for trans individuals due to the stigma they face as a result of their gender identity and because much of the abuse takes place in the context of sex work.

> *Do transgender sex workers experience sexual violence?*
>
> *Yes, there are. You know…once a friend was taken by an army man, raped and left in the jungle. Sometimes they beat me because they don't want to give me money. I've heard of rape, abduction and murder even.*[162]

Universally, respondents in this research spoke about the mishandling of sexual offense cases by the police. It was apparent that there is a deep mistrust of the police by victims/survivors of SGBV. Survivors spoke of being laughed at and taunted by police officers as well as being discouraged from reporting violence.

> *What about sexual violence [affecting the LGBT community]?*
>
> *Yes, there are so many cases of sexual violence by male friends, by police.*[163]
>
> *Would you be able to go to the police to tell them if you experienced sexual violence?*
>
> *I have not been, but my friend went there. No; they don't help. They just laugh at us. They ask 'you also have sexual violence?'*[164]

In the survey, 6.5% of boys answered 'yes' to the question: *"has anyone ever had sex with you or committed sexual acts with you through force or against your will?"* and a further 6.5% noted that they 'preferred not to say', choosing this over the option of 'no' (87%).

9.3.4 Impact of discrimination against survivors on access to SRH services

The stigmatization faced by SGBV victims/survivors, buttressed by the socio-legal norms discussed, act as barriers to SGBV services. At the same time, there are also supply-side barriers to the provision of these services. Less than a third, 29.55%, of providers in the survey provided SGBV related services and counselling. Evidence from the qualitative research indicated a lack of awareness amongst service providers of how prevalent SGBV is in Nepal, with several sharing that they had rarely, if ever, come across a case in their career.

> *Do you ever find that your clients have been victims of sexual violence?*
>
> *No, I haven't come across…oh yeah, there was one. She was cutting grass for livestock and she had been raped by an unknown person, and she had nowhere to go. She came here and took the services. She didn't want to report it, so we couldn't force her. She didn't know the rule.*[165]

Further, there did not appear to be a coordinated or widespread effort to address SGBV within the private health sector, whilst public health providers indicated that services for SGBV victims/survivors are not integrated fully with SRH service provision. This is a missed opportunity for providing both preventive information and services for victims/survivors, particularly for young clients.

> *Do you ever find that your clients have been victims of sexual violence?*

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[162] *Interview, trans women who sell sex, Kathmandu, 18 November 2016.*

[163] *Individual interview, young man who identifies as gay, Kathmandu, 18 November 2016.*

[164] *Interview 17, trans women who sell sex, Kathmandu, 18 November 2016.*

[165] *Individual interview, male service provider, Bhaktapur, 18 November 2016.*

> *Yes, there was one woman reporting her sexual abuse by her husband, who insisted on sex on her. She didn't want because she has prolapse and pain; the copper T was not soothing her. Her husband forced. Finally, she used implant.*
>
> *Do you provide any services for victims of sexual violence here?*
>
> *There is not a particular service, but people come complaining of violence. We do counselling. The husbands are drunkards. They don't want to come for counselling. It is quite difficult to do counselling for the men and women. They refer to a centre for women's violence.*[166]
>
> *Are services for victims of SGBV integrated into family planning?*
>
> *It comes under gender; it's a separate unit. A small component has been involved in the FP component, but not full information.*[167]

Those providers that spoke of handling cases of SGBV indicated that their specific clinics were not appropriate for handling them. Often, referrals had to be made to bigger hospitals for urgent medical cases or to women's organisations providing legal services.

> *Do you ever find that your clients have been victims of sexual violence?*
>
> *Yes, there are so many cases on sexual physical violence. The thing is, we are not able to protect them; we don't have provision. There is not a specific organization for this type of violence. They have to go back to the family, so they do not take any action. Some police stations are providing services, but other organisations have not come to protect them. I have felt the need.*[168]
>
> *My main role is to screen on GBV and sexual violence. If we find sexual abuse, we have to report. We do screening; if we find, we report to the authorities. We have to report to medical manager. We can refer to other services, too. I have not found any cases in my experience. There is no obligation on the medical manager to report the case; we just refer to the women's center. We will not do a police report.*[169]

4.7% of respondents in the survey reported having been subject to sexual violence, of these only one young person reported accessing rape counselling services.

9.4 People living with HIV

The *National Policy on HIV and STIs*[170] recognizes the rights of people living with HIV and, in a later section, calls for their meaningful involvement in plans and programs concerning HIV. People living with HIV in Nepal also enjoy constitutional protections against discrimination. Article 23 of the Constitution states that all citizens are equal before the law and that there shall be no discrimination in the application of general laws or by the State on the grounds of 'health conditions'. Whilst HIV is not specified within the Constitution as a protected factor, it can logically be assumed to fall within the 'health conditions' category.

Apart from the positive protections in law, a new amendment to the *Muluki Ain* brought forth a provision (Chapter 14, Number 3B) that adds an additional year of prison time for people living with HIV who are

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[166] *Individual interview, female service provider, Kavre, 16 November 2016.*

[167] *Individual interview, femalenational health provider trainer, Kathmandu, 17 November 2016.*

[168] *Individual interview, male service provider, Bhaktapur, 18 November 2016.*

[169] *Individual interview, female service provider, Kathmandu, 14 November 2016.*

[170] *Ministry of Health (2011) National Policy on HIV and STI. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_151409.pdf (Last access 26 October 2016).*

convicted of rape, if he knows that he is living with HIV. As of 2014, a version of the proposed new criminal law for Nepal contained a provision entitled 'Prohibition of HIV transmission,' which would criminalize those who are 'aware of knowledge of one's own positive HIV or Hepatitis B status, who purposefully or knowingly commit acts that would transmit Hepatitis B or HIV, give blood or coerce to give blood or come into sexual contact without precautionary measures in place, or cause entry of blood, semen, saliva, or other bodily fluids into the body of another.' It is unclear whether the provision persists in the most recent draft of the proposed law.

Evidence from the qualitative research indicates that discrimination may be rife in practices, having an STI and especially HIV, is often associated with deviant and 'promiscuous' sexual behaviour, being sexually active before or outside of marriage, engaging in sex work, and/ or being gay or transgendered:

> *[Health workers] discriminated against the HIV infected; they do some discrimination. They wear two or three pair of gloves when they do the blood drawing. That's a kind of discrimination.*[171]

> *Some LGBT people complained to me that doctors and workers don't behave properly and don't know how to treat LGBT, especially those who have HIV.*[172]

9.5 Young people who sell sex

Similar to several of its neighbours, Nepalese law does not criminalize adult sex work if it is conducted privately, by single workers and voluntarily. However, soliciting for sex, operating brothels and pimping or profiting from others who engage in sex work are illegal.[173] The *Human Trafficking and Transportation (Control) Act,* Section 15 penalizes 'engaging in prostitution' with imprisonment of up to three months and a fine of up to 5,000 rupees.[174] Offenders convicted of 'engaging in prostitution' are considered to have committed an act of human trafficking as per the Act.[175] The Act gives extensive powers to the police. It entitles police personnel to 'to enter premises, seize any property and gather evidence or arrest a person without warrant on the suspicion that an offence of human trafficking or transportation is being committed.'[176]

It is unclear by reading the wording of the Act whether 'engaging in prostitution' is intended to criminalize the seller, the buyer or both; however, lawyers from the Forum for Women, Law and Development in Nepal confirmed in a recent report commissioned by UN agencies in the Asia-Pacific region that the wording is meant to refer to those who buy sex - i.e. the clients.[177]

Although the act of selling sex in private is not illegal, sex workers may be prosecuted pursuant to other offenses, particularly those falling under the *Public Offences and Penalties Act 1970* for public order offenses such as 'participating in indecent and vulgar activities.'

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[171] *Individual interview, young man who identifies as gay, Kathmandu, 18 November 2016.*

[172] *Individual interview, young man who identifies as gay, Kathmandu, 18 November 2016.*

[173] *UNAIDS, UNDP, UNFPA (2012) Sex Work and the Law in Asia Pacific. Available at: http://www.undp.org/content/dam/undp/library/hivaids/English/HIV-2012-SexWorkAndLaw.pdf (Last access 27 October 2016), p. 42.*

[174] *Human Trafficking and Transportation (Control) Act (2007). Available at: https://www.hsph.harvard.edu/population/trafficking/nepal.trafficking.07.pdf (Last access 26 October 2016), Section 15(1): (1) Any person who commits an offence as prescribed under Section 3 shall be punished as follows:...One month to three months imprisonment and a fine of Two Thousand Rupees to Five Thousand Rupees for a person engaged in prostitution.*

[175] *Human Trafficking and Transportation (Control) Act (2007). Available at: https://www.hsph.harvard.edu/population/trafficking/nepal.trafficking.07.pdf (Last access 26 October 2016), Section 4(1): If anyone commits any of the following acts, that shall be deemed to have committed human trafficking: (a) To sell or purchase a person for any purpose, (b) To use someone into prostitution, with or without any benefit, (c) To extract human organ except otherwise determined by law, (d) To go for in prostitution.*

[176] *Kajal Bhardwaj and Vivek Divan (2011) Sexual Health and Human Rights - A legal and jurisprudential review of select countries in the SEARO region: Bangladesh, India, Indonesia, Nepal, Sri Lanka and Thailand. Available at: http://www.ichrp.org/files/papers/182/140_searo_divan_bhardwaj_2011.pdf (Last access 26 October 2016), p 179.*

[177] *UNAIDS, UNDP, UNFPA (2012) Sex Work and the Law in Asia Pacific. Available at: http://www.undp.org/content/dam/undp/library/hivaids/English/HIV-2012-SexWorkAndLaw.pdf (Last access 27 October 2016), p. 76.*

The findings from the study indicate that mistreatment and violence, including sexual violence, perpetrated by police officers is a common experience for young sex workers, including for both female and trans sex workers, and that restrictive laws relating to the sale of sex may be an influencing factor serving to influence and 'legitimise' such treatment. One young sex worker described her experience with the police, when she went to report abuse at the hands of a client:

> *They did some verbal harassment there. For an hour, they kept me in the police station and kept shouting. They said: 'at your age, why are you involved in this job?' And: 'why can't you earn money another way'. We felt so bad. We were so scared. They told us we were breaking the law – 'you are ruining our nation, our country. You were caught red-handed' – they said. They told us it is illegal and they would imprison us for a long time.*[178]

Legal restrictions on sex work, leave young people who sell sex vulnerable to violence and abuse by clients, and prevent them from seeking access to justice and redress. As a young trans sex worker explained:

> *You know…once a friend [of mine] was taken by an army man, raped and left in the jungle. Sometimes [clients] beat me because they don't want to give me money. I've heard of rape, abduction and murder even. [The] police don't help. They just laugh at us. They ask 'you [sex workers] also face sexual violence?'.*[179]

Until recently, such attitudes were condoned by provisions in Nepalese law which established lighter penalties for rape, if the victim was a sex worker; however, in 2002, this provision was ruled unconstitutional by the Supreme Court in *Sapana P. Malla for FWLD v. HMG/Nepal*. The Court additionally stated that 'prostitution is a profession or occupation irrespective of whether or not it is legal.'[180]

[178] *Focus group discussion, young women who sell sex, peri-urban, Kavre, 16 November 2016.*

[179] *Interview, trans women who sell sex, urban, Kathmandu, 18 November 2016.*

[180] *UNAIDS, UNDP, UNFPA (2012) Sex Work and the Law in Asia Pacific. Available at: http://www.undp.org/content/dam/undp/library/hivaids/English/HIV-2012-SexWorkAndLaw.pdf (Last access 27 October 2016), p. 76.*

10. Conclusions and recommendations

Law and policy concerning young people's access to sexual and reproductive health in Nepal is relatively permissive. The law contains a number of protections and provisions, promoting adolescents independent access to contraceptives and other services without parental consent, recognising the rights of sexual and gender minorities, permitting legal access to abortion (in limited circumstances), and protecting the rights of gender and sexual minorities. Nevertheless, the research findings indicate that young people in Nepal continue to face significant restrictions on access to sexual and reproductive health services in practice. Whilst there is need for additional reform of legal provisions to address a number of restrictions that still remain, there is also need for significant investment in education and sensitisation of services providers, as well as young people, on the content and provisions in law protecting young people's rights to access services. The research findings strongly indicate, that service providers and young people perceive the law to be currently considerably more restrictive than it is, and that these perceptions of legal rules, continue to intersect with social, cultural and economic factors, to create significant barriers to access to services in practices.

10.1 Recommendations

Age of sexual consent

- The laws on the age of sexual consent should treat all individuals equally, regardless of their gender, sexual orientation, or religion. The law should make clear that the age of sexual consent is the same for boys, girls, and 'third sex' individuals, as well as for same-sex sexual relations, including between two boys, and two girls.
- The law should take into account the fact that some young people commence sexual activity during their early adolescence, and should issue guidance on when prosecution under statutory rape laws should be considered in the 'public interest', including recommendations not to prosecute in cases where young people are close in age, and the activity appears to be 'factually consensual'.
- National laws should establish clear differences between the age of sexual consent, the age of marriage, and the age of consent to medical treatment, including consent to access SRH services. Official guidance should be developed for health service providers to clarify the implications of these provisions and how they should be interpreted together.

Age of marriage

- It is recommended that the government take forward plans to legalise same sex marriage at the earliest opportunity.

Access to comprehensive sexuality education

- Whilst the law in Nepal is broadly facilitative with regard to sexuality education, there is need to scale up efforts to guarantee the implementation of progressive legal provisions;
- The government should focus on promoting teacher training concerning CSE, to tackle conservative and resistant attitudes towards CSE in the teacher-body;
- Efforts to role of CSE teacher-training programs should focus on the poorer and relatively more deprived parts of the country;
- CSE should focus on skills in decision-making, communication, and respect for others, with a strong gender component, which avoids propagating dominant stereotypes about sex and gender, and go beyond a narrow focus on biological and reproductive aspects. This curriculum should also clearly explain the sexual and reproductive health services that are available for young people and the content and implications of relevant provisions in law.

Access to contraception and STI testing and treatment

- The study revealed the need for a significant education and sensitisation effort to make the population aware of legal provisions which guaranteed adolescents access to SRH services, including contraception.
- The law regulation access to STI testing and treatment should include a positive provision stating that young people should never be denied access to STI testing and treatment based on their age or lack of consent from a parent, guardian or spouse.

Access to abortion

- The law in Nepal in relation to abortion is relatively permissive in comparison to other states in the region, nevertheless significant legal restrictions on access to abortion remain, and most women and girls in Nepal continue to rely on unsafe and unregulated methods of abortion.
- Abortion services on request should be made free, safe, accessible and confidential for all women and girls.
- In addition provisions prohibiting discrimination against pregnant women in school, in the workplace and in access to services, should be developed.
- All policy interventions aimed at reducing rates of teenage pregnancy must be framed with respect for a young women's choice and autonomy (including her choice to become pregnant), need for services, and absolute right to live in freedom from discrimination. This is essential to avoid reinforcing harmful cultural narratives that expose young pregnant girls to stigmatization and discrimination, in ways that have a significant impact on SRH and access to services.

The sale of sex

- All laws criminalising or penalising the buying and selling of sex should be removed. These laws contribute to an environment where abuse and discrimination against sex workers is perceived as legitimate and officially sanctioned, which in turn has a restrictive impact on the service-seeking behaviour of sex workers.

Disclaimer:

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