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# Nepal's Gender-Based Violence and Gender Equality Funds: The Path to Effective Implementation

## POLICY BRIEF



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Working for Non-discrimination and Equality

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## 1. INTRODUCTION AND BACKGROUND

Over the past decade, the Government of Nepal (GoN) has adopted important legislation and institutional arrangements to advance women's human rights. Funds related to gender-based violence (GBV) and gender equality (GE) are a central component of this effort. They are the country's primary mechanisms for ensuring, for example, that survivors<sup>1</sup> of GBV receive compensation, and that services such as shelters, legal aid, and psychological counselling are accessible. A number of the funds also promote women's economic empowerment.

The adoption of a new Constitution in 2015 initiated a fundamental change to the country's governing structures. Nepal began transitioning from a unitary state to a federal state – a process in which many powers and functions that had once been the preserve of the federal government were transferred to the provincial and local levels. This shift had substantial implications for a wide range of existing laws and government programmes, and the GBV and GE funds were no exception. In order for these funds to be operational, they need to be adjusted to Nepal's new federal governance structure.

In 2019-2020, Himal Innovative Development and Research (HIDR) and the Forum for Women, Law and Development (FWLD) conducted a study to assess the current status of 12 funds with mandates to respond to GBV and advance GE in Nepal. The aim of the study was to determine the extent to which these funds have been operational in the new federal context, identify obstacles that prevent them from functioning as intended, and formulate proposals to make them fully operational.

With the onset of the COVID-19 pandemic, a number of studies show an intensification of GBV, and particularly domestic violence.<sup>2</sup> In this context, there is an urgent need to make funds available and ensure that women have access to essential services, including GBV services.

## 2. OVERVIEW OF THE STUDY'S FINDINGS

The study reveals a problematic situation that is in need of attention. Only a few of the GBV and GE funds are currently operational in any form. Those that are functioning to a degree – such as the GBV Elimination Fund and the Rehabilitation Fund – exist at the federal level and not at the provincial or

local level, which restricts women's access to these funds. A serious gap has emerged between the rights and entitlements that are formally guaranteed to women under law in Nepal, and their ability to actually experience any benefit from these laws.

The study recognizes that the introduction of federalism has added an extra level of complexity to the process of making the GBV and GE funds operational. However, this challenge has not been adequately met. The study reviews, in considerable detail, the difficulties that legal methods pose in federalizing the funds. The Government's amendments of acts and regulations may not have envisioned and encompassed all of the functional implications of federalism.

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

To improve the situation, the study makes specific, targeted recommendations for each fund (detailed below). The study suggests short-term efforts to raise awareness about and improve understanding of the funds, bolster support for advocacy and capacity building among government officials, enhance coordination between different stakeholders, and revise the relevant federal laws and regulations. In the medium-term, the study recommends that important procedural guidelines and fund flow mechanisms need to be put in place, which would enable the funds to operate effectively in a federal context.

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

1. The terms 'victim' and 'survivor' are sometimes used interchangeably. Commonly, the term 'victim' is used in the legal and medical fields whereas the term 'survivor' is preferred in the psychological and social support fields as it implies resiliency (UNFPA, *Managing Gender-based Violence Programmes in Emergencies: E-Learning Companion Guide*, 2012, p. 8). For the sake of clarity and consistency, the policy brief uses the term 'survivor' to refer to persons who have experienced violence on the basis of their gender.
2. Data from various sources, including helplines, show a significant increase in the number of women reporting abuse. For details, see MoWCSC, Care Nepal & Save the Children (2020). *Rapid Gender Analysis Report on COVID-19 Nepal, 2020*. Available here: <https://mowcsc.gov.np/uploads/uploads/wGPprhPMiqNqMg8QdKbvKxwXjmTGcooUVMu0z2aO.pdf>. Accessed on: 23 February 2021.

### 3. RECOMMENDATIONS FOR THE FUNDS

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

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

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

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

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

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

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

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

#### The Rehabilitation Fund

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

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

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

**Medium-Term Recommendation:** Amend<sup>3</sup> the Human Trafficking and Transportation (Control) Act and introduce regulations to enable provincial and local governments to establish funds without having to enact their own legislation and provide resourcing and oversight for these funds.

#### The Service Fund

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

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

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

#### The Victim Relief Fund

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

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

**Medium-Term Recommendation:** Amend the Crime Victim Protection Act and the Criminal Offences (Sentencing

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

and Execution) Act in the federal structure and introduce regulations to enable provincial and local governments to establish the funds without having to enact their own legislation and provide resourcing and oversight for these funds.

## The Judicial Fund

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

**Status:** The Judicial Fund does not exist.

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

## The Child Fund

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

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

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

## The Single Women Protection Fund

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

It should be noted that – as with the GBV Elimination Fund – there has been an attempt to create substantive powers through regulations alone, which is legally problematic. In the absence of an Act, the provincial and local governments are not required to establish and operationalize their own funds. If the current amendments to the regulation pass, they will be vulnerable to legal challenge.

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

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

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

## Long-Term Recommendation for the Victim Relief Fund, the GBV Elimination Fund, the Service Fund, and the Child Fund

These funds have overlapping scope and services and address the same target groups to a certain degree. This creates a heightened possibility of duplication, and a heightened possibility that certain target groups will benefit more from the funds while other groups will be excluded. Furthermore, the study found that the overlap among the funds greatly contributes to a lack of clarity among duty-bearers and rights-holders alike. To address these challenges, consideration should be given to merging some of the funds in the long run, wherever relevant. This will reduce costs, time, and human resource mobilization, prevent a scattering of funds and resources, and enable survivors' better access to services.

## 4. WAY FORWARD TO OPERATIONALIZE THE FUNDS

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

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

The table below highlights priority actions for the different funds:

Fund	Key Actors	Activity
<b>Short Term Recommendations</b>		
GBV Elimination Fund, Rehabilitation Fund, Single Women Protection Fund	Federal and local governments	<p>The MoWCSC and the respective local and federal levels of the government to raise awareness on the availability of the funds and how survivors can access the funds. These efforts should target the Executive Committee, Social Unit and Judicial Committee, and vulnerable groups and survivors.</p> <p>The MoWCSC to provide the provincial and local governments with information on how to requisition funds from the federal GBV Elimination Fund.</p> <p>The MoWCSC to conduct a self-review to repeal legally inconsistent provisions in the regulations of the GBV Elimination Fund and the Single Women Protection Fund.</p> <p>The federal government to ensure adequate resource allocations to the Rehabilitation Fund, which will help ensure that the rehabilitation centres (both state and civil society managed) are functioning.</p>
	Provincial and local governments	<p>Both of these government levels to work with service providers to help GBV survivors come forward to seek services and access the GBV Elimination Fund.</p> <p>Local governments to requisition funds from the federal GBV Elimination Fund to support survivors of GBV.</p>
	Civil society and interest groups	<p>Civil society organizations that are working against GBV and for gender equality should raise awareness among civil society and interest groups. This will help enhance their capacity to engage with the MoWCSC to repeal inconsistent provisions in the regulations. Additionally, at the federal level, engagement with the Ministry of Finance and the GRB Committee will be important.</p> <p>Advocacy with MoWCSC to support the review and repeal of inconsistent provisions in the regulations.</p> <p>Civil society organizations that are working against GBV and for gender equality should raise awareness on the availability of the funds and how survivors can access the funds. These efforts should target the Executive Committee, Social Unit and Judicial Committee, and vulnerable groups and survivors.</p> <p>Advocacy with the National Women Commission (NWC) to monitor the implementation of these funds in line with international and national commitments on GE.</p>
<b>Medium Term Recommendations</b>		
Child Fund, Rehabilitation Fund, Service Fund, Victim Relief Fund	MoLJPA, Law Commission, and relevant line ministries	<p>The relevant line ministries to review the respective legislation and prepare the amendment bill.</p> <p>The MoLJPA to review the amendment bill and then submit it to Parliament.</p>
	Civil society and interest groups	<p>Civil society and interest groups should advocate to amend the existing laws and regulations.</p> <p>With technical support from experts, civil society organizations working against GBV and for gender equality should support the MoLJPA and other line ministries (such as MoWCSC) in drafting the bills and regulations.</p>
<b>Long Term Recommendations</b>		
GBV Elimination Fund, Rehabilitation Fund, Service Fund, Child Fund, Victim Relief Fund	Civil society and interest groups	<p>Civil society and interest groups should raise awareness and mobilize to consolidate the funds.</p> <p>Network building and strengthening.</p> <p>To further support fund consolidation, they should also lobby at federal level and engage with the Law Commission, MoLJPA, MoWCSC, and Parliament.</p>
	Women and Social Committee, Human Rights and Law Committee of the House of Representatives, Legislation Management Committee	<p>The Legislation Management Committee, along with other committees, to ensure parliamentary oversight in order to:</p> <ol style="list-style-type: none"> <li>1. Direct the MoWCSC to submit the status of the funds to Parliament, identify existing issues in the operation of multiple overlapping funds, as well as legal gaps, and internally identify the need for federal consolidation of funds.</li> <li>2. Organize committee meetings to discuss issues related to operating the funds and request the GoN to propose concrete steps to revise the relevant laws to consolidate some of the funds</li> </ol>
	MoWCSC, Law Commission, MoLJPA	<p>The relevant line ministry to review the respective legislation and prepare the amendment bill.</p> <p>The MoLJPA to review the amendment bill and then submit it to Parliament.</p>