

INTEGRATED OR ISOLATED?

How state and non-state justice systems work for justice in Nepal

District assessment report

May 2012



International Alert.



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Legal Aid and Consultancy Centre (LACC) established in 1986, is an independent NGO with the aim of promoting and protecting the rights and interests of women and children in Nepal. At the policy level LACC lobbies government and policy bodies for legislative changes; at the macro and micro levels it provides free legal aid and services for women and children and conducts rights awareness and gender-sensitisation programmes. LACC has networks in 12 districts across Nepal, providing paralegal advice and legal aid to women and conflict victims, which include local lawyers, civil society activists and political parties. LACC is working in close coordination with the Nepal Bar Association at the central and district level to provide legal services for marginalised women and conflict victims. For more information, visit www.laccnepal.org.

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DISTRICT ASSESSMENT REPORT

Acknowledgements

This report presents primary research and an analysis of district assessments carried out in Nepal in the summer of 2011. These assessments were conducted by the Forum for Women Law and Development (FWLD), the Legal Aid and Consultancy Centre (LACC), and International Alert. Research was carried out by Lok Hari Bashyal, Gita Shah, Bhim Kasinger, Shyam Sundar P. Shah of FWLD; Shashi Adhikari, Sharda Subba, Sadhana Shrestha, Chhabi Banskota, Janaki Tuladhar and Ram Babu Ghimire of LACC; and Man Bahadur Bhandari and Rabina Shrestha of International Alert.

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Acronyms

CA	Constituent Assembly
CAM	Court Annexed Mediation
CDO	Chief District Officer
CeLRRd	Centre for Legal Research and Resource Development
CPA	Comprehensive Peace Agreement
CPSC	Community Police Service Centre
CPN (UML)	Communist Party of Nepal (Unified Marxist Leninist)
DAO	District Administration Office
DDC	District Development Committee
DfID	Department for International Development
DPO	District Police Office
DRG	District Resource Group
FGD	Focus Group Discussion
FWLD	Forum for Women, Law and Development
FY	Fiscal Year
GBV	Gender-based violence
Hrplcs	Human Rights and Legal Protection Service Centre
IJM	Informal Justice Mechanisms
JICA	Japan International Cooperation Agency
JSCC	Justice Sector Coordination Committee
KII	Key Informant Interview
LACC	Legal Aid and Consultancy Centre
NGO	Non-governmental Organisation
PLC	Paralegal Committee
RUDUK	Rural Women's Development and Unity Centre
SGBV	Sexual and Gender-based Violence
SP	Superintendent of Police
TAF	The Asia Foundation
UCPN(M)	Unified Communist Party of Nepal (Maoist)
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
VDC	Village Development Committee
WCDO	Women and Children's Development Office
WCSC	Women and Children's Service Centre

Glossary of Terms

Access to justice

The ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards¹.

Arbitration

Arbitration occurs when a third party to a dispute is granted formal or informal authority to resolve the dispute and decide the resolution on behalf of the disputants.

Badhagar / Bhalmansa

A person selected by an assembly of local villagers in the Tharu community who is trustworthy, knowledgeable and of good moral integrity in order to lead the village and settle disputes. \

Pancheti

The Pancheti system is mainly practiced within the Yadav and Tharu community. A *Pancheti* is simply a gathering of villagers to solve a problem.

Maulabi and Hazi

Muslim religious leaders who facilitate for settling disputes of the Muslim community that is in line with Islamic law.

Informal justice mechanisms

Informal justice mechanisms (IJMs) are any non-state controlled process through which people provide justice, resolve grievances and disputes and in some cases promote peace. They include community-based informal systems of justice which have their roots in the cultural traditions of Nepal, as well as development organisation-supported dispute-resolution mechanisms which derive their structure and operation from international standards for the provision of informal justice.

Maijan

Maijan is a system of caste-based traditional dispute resolution in Madhesi communities in Mahottari and neighbouring districts.

Mediation

A dispute resolution system whereby a third party (usually a group of mediators) helps disputants reach a resolution on their own without enforcing, coercing, compelling, or pressuring them. The ultimate resolution is reached by the disputants themselves and not suggested or put forward by a third party. “Mediation” means a process to be followed to settle a dispute or case with the assistance of a mediator².

Paralegal committee

Community protection mechanisms established to initially address gender inequality at the grassroots level. The scope of paralegal committees has expanded to dealing with different disputes which generally involve mainly women and children, and gender-based violence issues. Now, paralegal committees have been expanded to all 75 districts of Nepal. This programme is largely supported by UNICEF, with necessary support from local organisations like FWLD.

1 UNDP (2005). *Programming for Justice: Access for All*. New York, p.5.

2 Nepal Law Commission (2011). 'Mediation Act, 2011', accessed 7th November 2011. Available at <http://www.lawcommission.gov.np/en/component/search/?searchword=mediation+act+2011&ordering=&searchphrase=all>

Party

Party means party of a dispute and this term also includes plaintiff and defendant of a case³.

Traditional informal justice mechanisms

Traditional IJMs are community-based informal systems of justice which have their roots in the cultural traditions of Nepal. Whether they are long standing or were recently established, they are similar in that they are embedded within specific ethnic and/or caste cultural traditions and histories, and formed out of a shared set of communal values.

Quasi-judicial Bodies

Quasi-judicial bodies are those administrative bodies which are empowered with some judicial power. It is an authority or discretion vested in a public officer whose acts or duties partake of a judicial character. A quasi-judicial body is created and charged with the supervision and regulation of a particular area of government concern.⁴

Village Development Committee

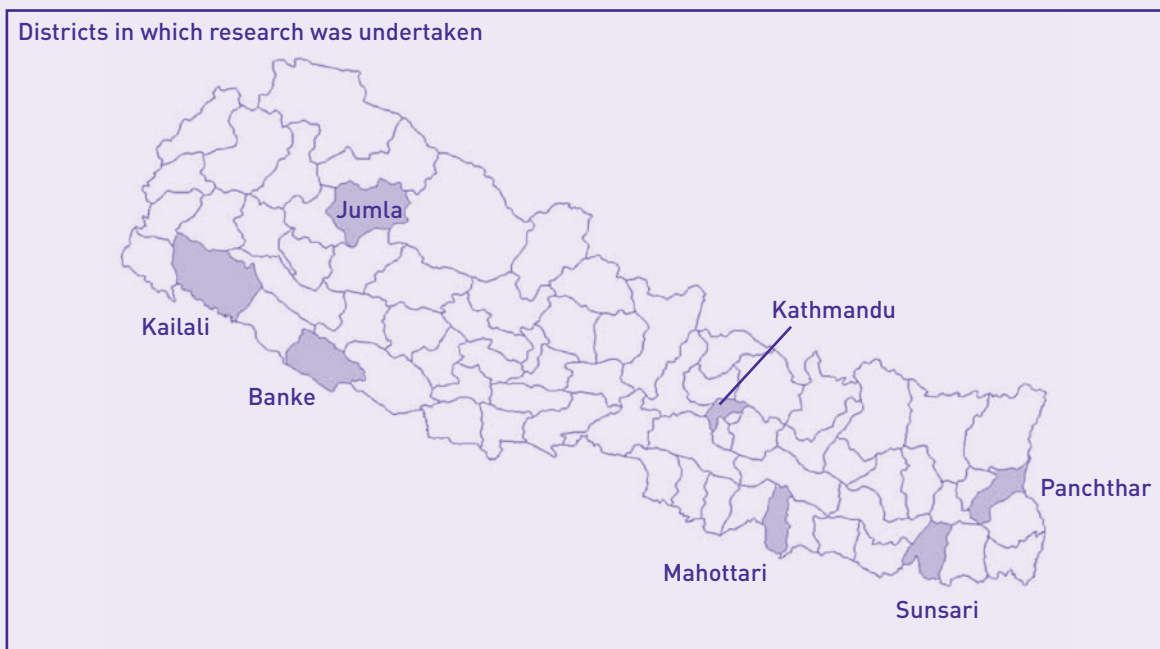
Village Development Committees (VDCs) took over from *panchayats* in the 1990s and are the lower administrative part of the local development ministry. Each district has several VDCs, which are similar to municipalities but with greater public-government interaction and administration. The VDCs are further divided into wards, the number of which depends on the population of the district.

3 *Ibid.*

4 H. W. R. Wade and C. F. Forsyth (2004). *Administrative Law, (9th edition)*. Oxford Clarendon Press: Oxford, p.41.

Executive Summary

In the context of transition from conflict to peace in Nepal, and the associated urgent need for the state to be seen to enforce rule of law and ensure access to justice for all, this report documents research which examines the relationship between state and non-state justice mechanisms. The purpose of this research is to begin to identify opportunities for strengthening coordination between state and non-state justice providers, with the aim of improving access to justice. Its intended audience is state security and justice providers, and those involved in supporting non-state justice mechanisms such as paralegal committees and community mediation programmes. Research was undertaken in Banke, Jumla, Kailali, Mahottari, Panchthar and Sunsari districts from June to August 2011.



Key findings

Coordination: driven by individuals, sometimes by need but never by the system. There is little or no evidence to suggest that systematic coordination between formal and informal justice mechanisms is either a priority or a reality. There are, however, some ad hoc efforts to cooperate between some justice bodies. These are most evident in cases relating to women, but are perhaps a response on the part of state justice and security providers to a lack of capacity, rather than a concerted or systematic effort to coordinate.

Justice sought through the non-legal executive. There is an increasing preference among the public to register “petty” cases (ranging from public offences, citizenship, land encroachment, assault to narcotics) with what are seen as more accessible civil bodies. This raises the concern that such bodies lack legally trained personnel and that decisions are often based on the discretion or experience of staff members. Furthermore, there appears to be a propensity of outside interference in these bodies, particularly from political parties.

No justice mechanism – informal or formal – is immune to party political interference. Party political interference and manipulation of justice are endemic across all districts. Even traditional mechanisms report party political pressure as being an important contributory factor to why the community is losing respect in their decisions. The research also reveals an alarming level of party political interference in cases brought by women, although reasons for this are less apparent.

Where is the state? Women’s groups and mediation groups facilitate justice for women. Women overwhelmingly prefer to use non-state (donor-funded) mechanisms, particularly for cases related to SGBV. Women from almost all communities tend to resist using both traditional justice mechanisms and formal bodies such as the police and court systems, citing financial and time burdens, as well as gender-insensitive structures, systems and attitudes. Many traditional mechanisms exclude women altogether.

Paralegal committees: the more established, the more vulnerable to violence and interference. In districts where paralegal committees have been long established and have a strong and active presence, the greater obstacles to carrying out their role have been reported. Such obstacles include increased political interference in their operations, direct threats to committee members, as well as being targeted (including direct violence) by disgruntled community members. Committees across several districts reported incidences of both verbal and physical abuse against members occurring in their homes as a result of the conflict between their often heavy paralegal (unpaid) responsibilities and their family duties.

Somen ethnic traditional justice mechanisms are squeezed to the margins by informal justice groups and increasingly disrespected by youth. Evidence suggests that traditional bodies are on the decline in many districts due to the rise of other non-state justice providers and a reluctance on the part of youth to respect the decisions of traditional leaders. The exception to this is Muslim traditional justice bodies, which appear to be more resilient.

Geographic remoteness and lack of physical infrastructure increases the use of informal mechanisms in mountain and upper hill districts. Although all districts repeatedly stressed the link between physical remoteness and the ability to access formal justice, in districts such as Jumla and Panchthar state justice mechanisms are used for only the most serious criminal cases.

Court referred mediation: non-functional or too early to say? On paper, court-referred mediation looks like a perfect solution to an overburdened court system and a poorly regulated mediation sector. However, concerns over corruption, low success rates and time delays (if the mediation fails the parties have to go back to court) deter many from using this service.

Legal aid: state mechanisms are struggling to improve the accessibility of formal justice to the economically marginalised. Legal aid services in most districts were found to be extremely limited and at times barely operative. In addition, the referral mechanism for legal aid is unattractive and time consuming, and there is no compelling evidence that informal bodies, such as paralegal committees, have been able to systematically support service users in accessing or understanding state legal aid provisions.

1. Introduction

Following ten years of conflict, Nepal is now on the road to consolidating democracy and sustainable peace. One of the major current challenges to this process is the need for the state to be seen to enforce the rule of law and to ensure access to justice for all. State provision of justice is currently weak: cost, geographic obstacles, corruption, social stigma, and lengthy and complex processes all comprise significant obstacles to the average Nepali citizen in accessing state justice services. Women, the poor and those belonging to marginalised groups experience extremely limited access to state justice mechanisms, and there is a general sense that state justice and security mechanisms are only for those who are economically “strong” or politically connected. Instead, many turn to a growing number of non-state justice providers, which dispense cheaper and more immediate justice.

The non-state justice sector comprises traditional and indigenous mechanisms for dispute resolution, donor-funded initiatives such as paralegal or community mediation committees, and numerous “others” which are also involved in the dispensation of justice outside of the state, such as political parties. The donor-funded non-state justice sector in particular is vibrant and growing and plays an essential role in providing access to justice for the poor and marginalised, and in relieving the overburdened state justice sector. However, in the absence of a strong state justice sector to counterbalance and oversee the non-state sector, there are concerns of non-state mechanisms going beyond their mandates and mediating criminal cases, thereby superseding the criminal justice system of the state. Some traditional non-state mechanisms also deliver verdicts and punishments which do not take human rights and gender equality norms into account.

This report documents the findings of district research which looked at the presence of state and non-state justice providers in six different districts, their different mechanisms and the purpose for which they are used. The research also aimed to understand ways in which state and non-state justice actors currently interact and coordinate, and to identify opportunities for developing a more integrated approach to justice provision. The intended audience for this report are those involved in supporting the non-state justice sector (particularly the donor community), and state justice and security providers. The report is not intended to provide “answers” in terms of strengthening justice provision or state/non-state coordination; it is, rather, a first assessment, one which will inform and be built upon during subsequent work on this issue.

The research was conducted from June to August 2011, and covered Banke, Jumla, Kailali, Mahottari, Panchthar and Sunsari districts. The methodology consisted of 30 Focus Group Discussions (FGDs) and 76 key informant interviews (KIIs). One FGD and 3 KIIs were held in Kavre district to pilot the FGD methodology and research questions. FGD participants included members of non-state justice mechanisms, such as paralegal committees or mediation committees, local community members, womens groups and political parties. KII respondents included government officials, such as the Chief District Officer (CDO); judges and police officials; civil society leaders. Information from KIIs and FGDs has been supplemented with data from security and justice providers and from secondary sources. Analysis of the findings was carried out jointly by a partner team in Kathmandu and verified with district stakeholders during return trips to each district. For more information on the research methodology used, please refer to Annex 1: District Assessment Methodology.

2. Banke District

2.1. District Context

Banke district is located in Bheri zone, in the mid-western region of Nepal. The district headquarters is Nepalganj, a major commercial hub for the region. Banke shares a border with Bardiya to the west, Dang to the east and north, Salyan to the north and India to the south. Around 50 percent of land in Banke is covered by forest, whereas 25 percent is cultivable land.

According to the 2001 census, the population of Banke district is 385,840. Of this, 78.49 percent of the population is Hindu, 18.99 percent Muslim and 2.02 percent Buddhist.⁵ Due to a high number of people migrating from hill and mountain regions to Banke, the population and diversity is expected to be increasing. The average literacy rate is 57.8 percent (the male literacy rate is 66.06 percent and female literacy rate is 49.20 percent). Banke consists of 1 municipality and 46 Village Development Committees (VDC). Among them, nine VDCs are considered 'less developed' VDCs.⁶

Economically, Banke is growing as a commercial and administrative hub for the mid-western region of Nepal, with increasing road networks, hotels, trade market and educational institutions. The district capital, Nepalgunj, is connected with the border town of Uttar Pradesh in India; it takes only fifteen minutes to reach Indian markets from the city. The economy in Banke is largely agriculturally based, particularly on grain and vegetables.⁷

There are four electoral constituencies in Banke District. In the Constituent Assembly election of 2008, the CPN-Maoist was elected in three electoral constituencies and the Madhesi Janadhikar Forum was elected in one electoral constituency.⁸

2.2 Overview of Judicial Mechanisms in Banke

In Banke, most administrative and judicial agencies are located in the district headquarters. Institutions including the Appellate Court, District Court, Zonal Police Office, District Police Office, Office of Armed Police Force, and the Regional Office of the National Human Rights Commission are located in Nepalganj. The Nepal Police has eleven Area Police Offices and thirteen Police Posts in Banke. The District Court is presided over by four judges. Fifty staff are employed in the District Court. Of these, eight are female and forty two are male.

Box 1: Banke at a glance

Area: 2,337 sq km
Population: 385,840
Major caste/religious groups:
 Muslim 21%
 Tharu 16.42%
 Chhetri 12.30%
 Brahmin 5.94%
VDCs: 46
Municipalities: 1
Electoral Constituencies: 4

Source: Banke Statistic Office (2005).
Banke District Profile 2005/06. Banke.

5 Branch Statistic Office Banke (2005). District Profile 2005 Central Bureau of Statistics, Nepal.

6 District Development Committee (2011). *Banke District Development Plan.* Banke.

7 *Ibid.* 83.3 percent of the population of Banke population have an agriculturally based occupation..

8 Nepal Election Commission (2008). 'CA Election Report', accessed 2nd February 2012. Available at <http://www.election.gov.np/reports/CAResults/reportBody.php>

In terms of informal justice mechanisms, there are Paralegal Committees in sixteen VDCs⁹ and Mediation Committees in nine VDCs and one municipality.¹⁰ The community-based mediation committees were formed in two VDCs and the municipality in 2003 by CeLLRD, and was later extended to seven more VDCs. Human Rights and Legal Protection Service Centres (HRPLCS) have been established in ten VDCs with the support of UNDP in 2009. UNDP has since handed over this programme to UNICEF in 2011. With support from UNICEF, the Women and Children's Development Office has also formed paralegal committees in six VDCs.¹¹ There are now paralegal committees in sixteen VDCs in total.

Tharu communities in the district have *Badghar* and Muslim communities have *Maulavi* and *Hazi* traditional dispute resolution mechanisms.

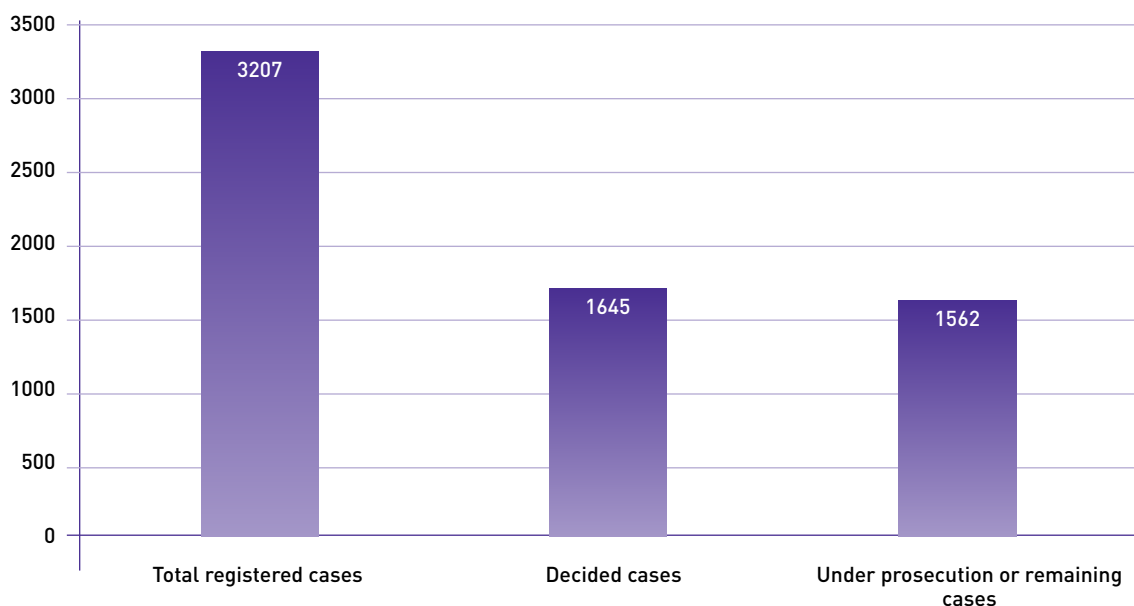
2.3 Formal Justice: How is it working in Banke?

The following section outlines the status of formal justice mechanisms in Banke, in terms of numbers and types of cases pending, and their perceived effectiveness as a provider of justice.

2.3.1 District Court

Cases relating to partition, divorce, breach of contract, revocation of deed agreements, cases related to tenant's rights, and the establishment of rights are the main types of civil cases registered in Banke District Court. The most common criminal cases registered in the court are those relating to assault, rape, robbery, theft, murder, narcotics, road accidents, attempted murder, kidnapping and human trafficking. In FY 2010/11, the total number of cases registered in Banke district was 3,207. Among these cases, 1,645 cases were decided and the remaining cases are still pending.¹²

Diagram 1: Number and Status of Cases in Banke District Court



9 Shamsjung VDC, Rajena VDC, Bankatuwa VDC, Kamdi VDC, Titihiriya VDC, Sitapur VDC, Udharapur VDC, Belvar VDC, Paraspur VDC, Bankatti VDC, Binauna VDC, Phatepur VDC, Raniyapur VDC, Ganapur VDC, Indrapur VDC and Baijapur VDC.

10 Bageshori VDC, Rajena VDC, Khohalpur VDC, Manikaur VDC, Paraspur VDC, Chisapani VDC, Shamsjung VDC, Kharurakurd VDC, Purauni VDC, Nepalgunj Municipality.

11 Kamdi VDC, Belvar VDC, Paraspur VDC, Bankatti VDC, Raniyapur VDC and Ganapur VDC.

12 Statistics provided by Banke District Court, July 2011.

2.3.2 Court Annexed Mediation Centre

In FY 2010/11, only 18 cases were resolved through the Court Annexed Mediation Centre of 98 cases referred by the court.¹³ Nevertheless, representatives of the police and judiciary maintained that Court Annexed Mediation was a good initiative.¹⁴ Research respondents concluded that the lack of adequate counselling regarding mediation, the skill, behaviour and neutrality of mediators, and the referral of complex cases rather than cases appropriate for mediation were the reasons behind the low success rate of the Centre.¹⁵

2.3.3 Appellate Court

There is one Appellate Court in Banke district. Both civil and criminal cases are registered in the court. Civil cases include cases relating to transaction, land disputes, revocation of deeds, revocation of registration, and revocation of tenancy rights. Criminal cases consist mainly of those relating to murder, rape, narcotics, human trafficking, fraud, and kidnapping. Court officials reported that on average it took between one and one-and-a-half years for a case to be settled.¹⁶ The total number of cases registered in the Appellate Court in 2010/11 was 944, of which 501 (54 percent) were civil cases and 433 (46 percent) criminal cases. 640 of these cases have been settled and 304 cases are still ongoing.

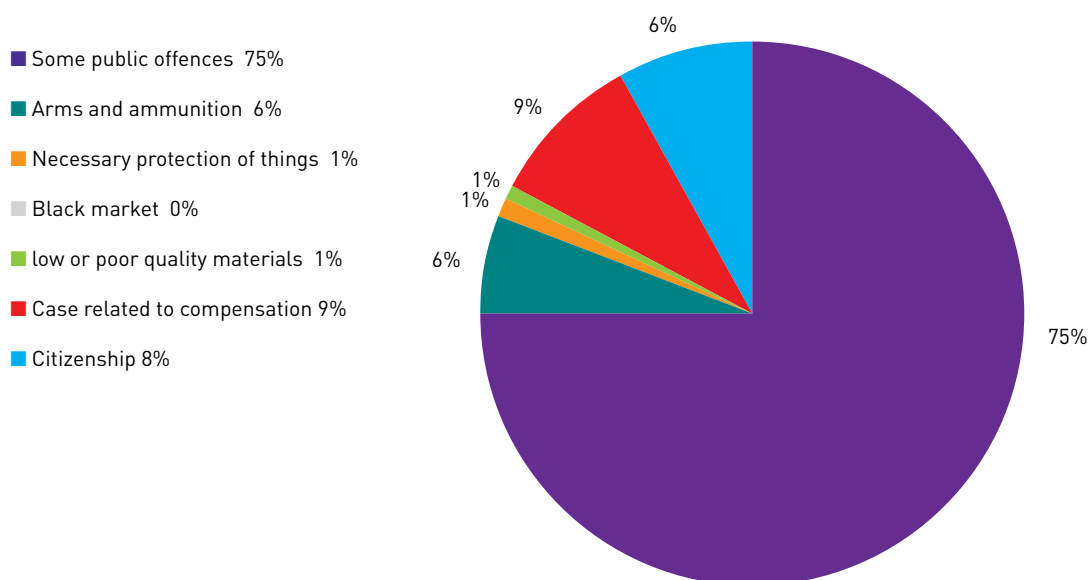
Table 1: Cases registered at Banke Appellate Court

S. No.	Types of Cases	Registered	Approved	Disposed	Partially Revoked	Others	Total	Ongoing
1	Civil	501	238	29	12	56	335	166
2	Criminal	443	189	53	15	48	305	138
Total		944	427	82	27	104	640	304

2.3.4 District Administration Office

A large number of cases related to public offences are registered in Banke District Administration Office (DAO).

Diagram 2: Dases related to public offences are registered in Banke DAO



¹³ *Ibid.*

¹⁴ FGD with law-enforcement official, Banke, 29th July 2011.

¹⁵ *Ibid.*

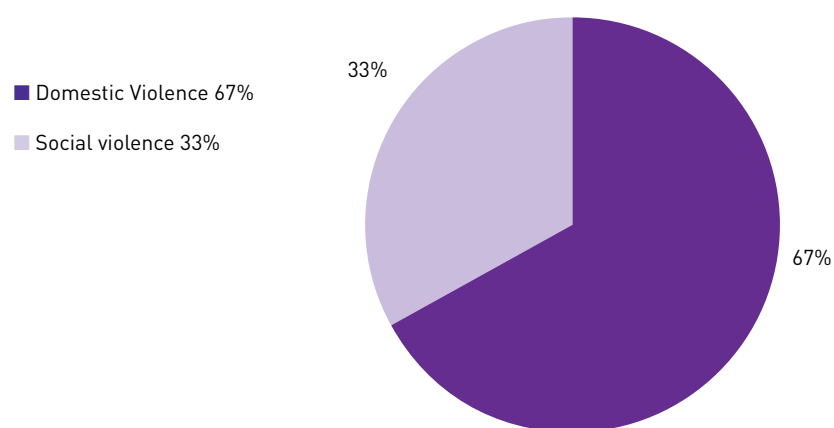
¹⁶ Information provided by Banke Appellate Court, July 2011.

Cases relating to citizenship, public disorder and disturbance of the peace, arms and ammunition, essential goods protection, black market profiteering, and the provision of low-quality goods are also registered in this office. Approximately 400 such cases have been registered at the DAO in 2011. The DAO reports that many of the cases registered at the office are resolved within two to three months. Conflicting parties are summoned to the DAO with the support of the police and their statements are recorded. In cases relating to property, the DAO has the right to seize property, return to the rightful owner or handover to the VDC or Municipality and issue an order for the aggrieved party to go to court for the final disposition of ownership on the disputed property. In cases relating to peace and security, the CDO may issue an order to prohibit someone to carry out any act (such as a large gathering in a public place), and may impose a fine of up to five hundred rupees¹⁷ and/or imprisonment of up to one month for a person found to be violating peace and security in the district.¹⁸

2.3.5 District Police Office

Statistics provided by the District Police Office in Banke show that cases relating to murder, public offence, death by road accident, suicide, disappearances, accidental homicide, human trafficking, rape, kidnapping, theft and narcotics are registered there. In total, 66 cases were registered from 15th July to 15th August 2011 in Banke District Police Office.

Diagram 3: Case study in the women police cell (Banke)



Data provided by the DPO also showed that 21 cases relating to social conflict and domestic violence were registered in the Women and Children's Service Centre between July and October 2011.

Women and Children Service Centre

The Women and Children Service Centre, run by the District Police Office, is staffed by one female Assistant Sub-Inspector and one Constable. The Centre handles the primary testimony of victims and then refers cases on to the Case Section within the DPO. The centre lacks adequate infrastructure, being limited to a single room, a cupboard and a single chair for victims. There is no separate room for consultation with victims or for interviewing the accused. If more than one victim is at the Centre at one time, privacy cannot be maintained. The staff of the centre are not provided with the training necessary to deal with the caseload they bear.

Victims are placed in the Women Protection Service Centre if deemed necessary, where they are provided with psychological support, legal aid and counselling. The Women and Children Development Office has been providing financial support for food and accommodation for women

¹⁷ Approximate EUR0.75 as of May 2012.

¹⁸ Nepal Law Commission (2011). 'Local Administration Act, 2028 [1971]', accessed 7th November 2011. Available at [http://www.lawcommission.gov.np/en/documents/Prevailing-Laws/Statutes---Acts/English/Local-Administration-Act-2028-\[1971/](http://www.lawcommission.gov.np/en/documents/Prevailing-Laws/Statutes---Acts/English/Local-Administration-Act-2028-[1971/)

housed in the Centre. Victims of human trafficking stay for a longer period at the Centre, some for up to one-and-a-half years. Banke District Bar Association has arranged female lawyers to provide legal services to women pursuing cases through the system.

2.3.6 National Human Rights Commission, Regional Office

The Nepalgunj-based mid-western regional office of the National Human Rights Commission now registers between 50 to 60 complaints of human rights violations per annum. Eighty percent of the complaints filed in the Commission are related to the violation of civil and political rights whereas the remaining twenty percent are related to economic, social and cultural rights, child rights and rights against torture.¹⁹

The procedure for filing complaints at the National Human Rights Commission is very simple. Victims can register complaints over the telephone and organisations can also make complaints. When the Commission receives complaints outside their jurisdiction (such as serious criminal cases of murder, rape, etc., which need to be registered with the police or court for further action), these cases are referred to the relevant agencies. There are approximately 600 complaints relating to conflict-era disappearances of persons registered in the mid-western region.

2.4 Informal Justice: How is it working?

The following section outlines the status of informal justice mechanisms in Banke, in terms of the process of receiving and dealing with cases, the types of cases received, and their perceived effectiveness as a provider or facilitator of justice.

2.4.1 Community-based Paralegal Committees and Community Mediation Centres

In Banke district, community-based paralegal committees have been formed in ten VDCs²⁰ with support from UNDP in 2009. Similarly, the WCDO has also formed paralegal committees in six VDCs. The UNDP-funded paralegal committees were handed over to UNICEF in December 2011 and are now under supervision and support of the WCDO. Community-based Mediation Centres are present in nine VDCs and one municipality with support from various non-governmental organisations (NGOs) such as CeLLRd.

Discussions regarding the types and number of cases brought to informal justice mechanisms revealed that generally 2 to 4 disputes were brought before the mediators of Bankatuwa VDC per month and those disputes were usually resolved within 2 to 4 days. In Belbar VDC, the paralegal committee has been functioning for the last six years and receives 10 to 12 cases per month. In Parashpur VDC, 2-3 cases relating to child marriage, domestic violence, and general disputes are brought before the paralegal committee each month. The paralegal committees of Kohalpur and Sitapur VDC receive approximately 4 to 5 cases per month.²¹

Cases relating to domestic violence (minor husband and wife disputes, non-grievous assault) dowry-related violence (minor disputes and physical and psychosocial violence), road access, crop damage, assault and general community disputes are brought to community mediation and paralegal committees.²² Serious criminal cases such as rape and the trafficking of women or girls are also brought to these mechanisms. In such instances members of these mechanisms reported that they referred these cases to the relevant state agencies.²³

19 Interview with representatives from the Regional Human Rights Commission Office, Banke, 29th July 2011.

20 Bageshori VDC, Rajena VDC, Kohalpur VDC, Manikaur VDC, Paraspur VDC, Chisapani VDC, Shamsrjung VDC, Kharurakurd VDC, Purauni VDC, Nepalgunj Municipality.

21 FGD with paralegal committees and community mediation committee, Nepalgunj, 31st July 2011.

22 Perpetrators of domestic violence are generally not prosecuted under the criminal justice system. The National Code (Muluki Ain) does not require the state to prosecute the crime of assault. Accordingly, cases of assault are usually left to private prosecution. The state does prosecute some assault cases which disturb public peace as a violation of a lesser ancillary law.

23 FGD with Paralegal committee and Women's group, Bankatuwa VDC, Banke, 30th-31st July 2011.

Members of paralegal committees and mediators have received training on legal issues and follow a code of conduct prepared with support from organisations including UNICEF, UNDP and The Asia Foundation. However, whilst settling disputes they use their own discretion to a large extent as there is a lack of clear guidelines or procedures to follow. For conciliation, mediators generally produce a deed of settlement wherein they record the signatures of disputing parties,²⁴ and refer cases with which they cannot deal (such as serious criminal cases) to the relevant state agencies. It was reported that in a few instances paralegal committees and mediators had also resolved cases relating to land disputes which had been previously settled by the court yet the verdict had not been implemented.

Case Study 1: Legal Aid to a Victim of Gender-based Violence

A woman from Utharapur Village Development Committee filed a complaint to Utharapur Paralegal Committee after sustaining frequent beatings by her husband. The paralegal committee called both husband and wife and facilitated a reconciliation. However, not only did the beating continue following this process, but the husband also expelled his wife from their home. The woman, on the advice of paralegal committee and with the support of the District Bar Association, Women Legal Practitioners Centre, filed a case of divorce along with partition of property in the District Court. The case is currently ongoing. According to the woman, she had to come to the court seeking justice and the roles of the paralegal committee and Women Legal Practitioners Centre of the District Bar Association, as they provided free legal aid. Therefore, they played an essential role in the process.

2.4.2 Traditional Justice Mechanisms: Badghar and Maulabi

Badghar

In Tharu communities in Banke, disputes are generally settled by the *Badghar*, a traditional justice mechanism of the Tharu community. In addition to general disputes, the *Badghar* hears and reconciles cases relating to violence against women, domestic violence, child marriage, and polygamy. The *Badghar* brings disputing parties together, facilitates a discussion between them and settles the dispute by delivering a verdict. However, with the passage of time, it is reported that community respect towards *Badghars*, as well as their effectiveness, has decreased.²⁵ This is, in part, attributed to the fact that young people do not recognise the decisions made by such mechanisms. In addition, *Badghars* are often politically affiliated and do not follow clear values and principles of justice in the dispute settlement process. Increasing effectiveness and presence of paralegals and mediators means that fewer and fewer people turn to *Badghars*.

Maulabi

Respondents from the Muslim community reported that community members generally do not bring cases to the formal justice mechanism. Instead, traditional community leaders, *Maulabis* and *Hazis*, settle disputes such as quarrels, beatings or other minor issues. Participants in a focus group discussion accepted that the problem of domestic violence against women was particularly high and, due to the religious belief that women should stay at home, they were being deprived of the basic rights of education, health and justice. *Maulabis* report that they follow the Quran to settle disputes rather than the gender and human rights principles and legal procedures established by the modern state. Paralegal committees are operating in muslim-majority Paraspur, Raniyapur, and Udarapur VDCs. These committees have female muslim members, but report difficulties in intervening in domestic violence and other SGBV cases.

²⁴ FGD with paralegal and mediation committee Nepalgunj, 31st July 2011.

²⁵ KII with Badghar leader, Banke, 30th July 2011.

2.5 Analysis: Access to Justice in Banke

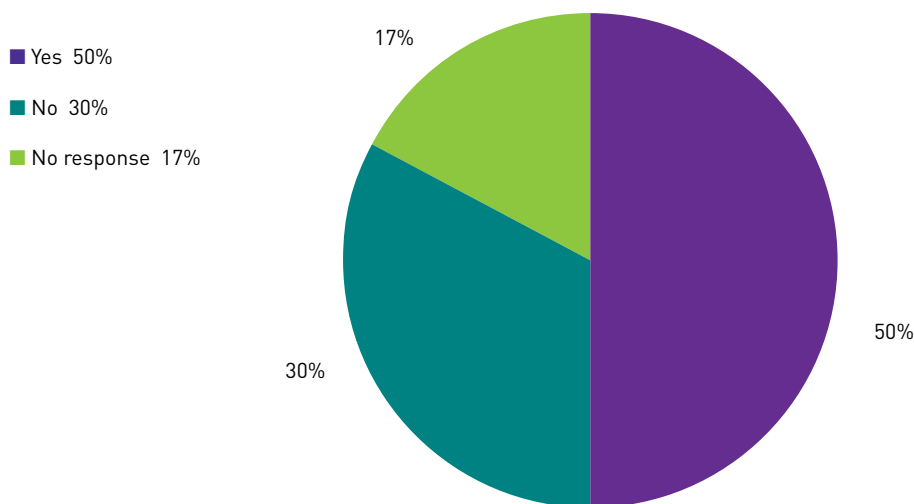
Who is able to access justice?

In theory there is no discrimination in justice delivery and other services delivered by the state based on the economic, social and cultural background of citizens. However, these factors have affected access to justice for people in Banke. In Muslim communities, all except the most serious disputes to be settled by traditional male leaders. Patriarchal customs and the following of traditional law above the laws of the modern state mean that women in particular lack effective access to impartial justice.²⁶ Illiterate people and those who are economically poor generally do not approach formal justice mechanisms²⁷ and women from marginalised and illiterate communities do not go to the police or court for justice even after enduring prolonged domestic violence.

Many respondents cited the reasons for this as a lack of knowledge about the process and procedures to be followed and the agencies to be approached to seek justice.²⁸ Moreover, even with this knowledge, many cannot bear the cost and the time it takes to pursue a case through the formal justice system.

The reasons for the preference of informal justice mechanisms over the state justice system include the prompt settlement of disputes, minimal costs, the availability of justice “on one’s doorstep”, and the ability of disputing parties to nominate mediators of their choice, among others. Female victims in domestic violence cases prefer informal mechanisms in particular as they find it easier to tell their stories before female members of paralegal committees and mediation groups. State agencies such as the police and court, on the other hand, lack female personnel. Individuals associated with formal justice mechanisms believe that the settlement of small disputes by informal justice mechanisms paves the way for formal justice mechanisms to concentrate on disputes of a complex nature, thereby easing their workload.²⁹

Diagram 4: Are Service Seekers Able to Get Justice From Existing Formal Justice Mechanisms?



In response to the question of whether citizens could access the existing state justice system, 50 percent of respondents responded in the affirmative, 33 percent negatively and the remaining 17 percent did not want to respond. Thus, a significant proportion of respondents still perceive state justice provision to be inaccessible to the general public.

²⁶ FGD with Muslim Community, Jaispur VDC., 28th July 2011.

²⁷ FGD with Political parties, Nepalgunj, 29th July 2011.

²⁸ *Ibid.*

²⁹ KII with Legal Aid Lawyer, Nepalgunj, 29th July 2011.

During discussions it was reported that parties to disputes who took their cases to state justice mechanisms were often taken advantage of by local middlemen, who took money from both parties, promising them an outcome in their favour.

One state justice sector official raised a concern regarding the lack of legal representation for both parties during dispute resolution performed by informal agencies and the lack of legal counselling to victims outside the court.³⁰

2.6 Links Between Formal and Informal Mechanisms: Opportunities for Strengthening

The provision for a Justice Sector Coordination Committee (JSCC) exists in each district, established in 2010 under Court Rule. The purpose of this Committee is to coordinate with district stakeholders and civil society to enhance access to justice. Likewise, a District Resource Group (DRG) has also been established in each district through a directive of the Office of the Prime Minister, implemented through the WCDO. The purpose of the DRG is to build networks and coordination between relevant government agencies and civil society to address GBV. During this research, very few respondents, even from government offices such as the DAO, were aware of the existence of the JSCC. More respondents were aware of the presence of the DRG, however neither committee was considered particularly active.

During interviews and FGDs, members of paralegal committees and community mediators reported that they coordinated and cooperated with state justice providers, including the police, the Women and Children Service Centre and the WCDO. In addition, paralegal committee members and community mediators also cited working relationships with the District Bar Association Legal Aid Committee and other organisations for legal and other support to victims, as well as coordination between paralegal committees in different VDCs.

Additionally, members of paralegal committees said that the District Administration Office and Police requested their support to resolve cases such as domestic violence, neighbourhood disputes, and social violence (allegation of witchcraft, etc.). However, there is no direct coordination and cooperation between informal justice mechanisms and the District Court. The majority of respondents in this research cited the necessity of more formal coordination, consultation and cooperation between the state and non-state justice sectors; the institutionalisation of informal justice mechanisms by providing legal recognition; support to build the capacity of traditional mechanisms to be able to follow gender and human rights norms.³¹ It was felt that, for this to happen, the creation of the appropriate legal and policy framework was necessary.³²

30 FGD with law-enforcement official, Nepalgunj, 29th July 2011

31 Field research in Banke district, 28th July-31st July 2011.

32 *Ibid.*

3. Jumla District

3.1 District Context

Jumla district is the zonal headquarters of Karnali Zone of the mid-western development region. It shares borders with Dolpa to the east, Kalikot to the west, Mugu to the north and Jajarkot to the south. The total territorial area covers 2,531 square kilometres³³.

The population of Jumla is 89,427, of which 43,579 are male and 45,848 are female. The majority are Hindu (76 percent) followed by Buddhists, Christians, Jains, Muslims and Bahais. There are forty-eight ethnic and caste groups in this district and, according to the 2001 Census, the largest group is Chhetri comprising 49 percent of the district, followed by Brahmin (7 percent) and Sarki (5 percent).³⁴

The economy of Jumla is sustained by fruit and vegetable cultivation, animal husbandry and the collection and trade of herbal products, such as *yarchagumba*³⁵. Apple cultivation is the dominant crop, but access to markets beyond Jumla is poor due to the district's relative remoteness. Jumla was connected to road networks in 2007 with the construction of the Karnali Highway, which connects Jumla with Birendranagar of Surkhet via Dailekh and Kalikot districts. However, the condition of the road is very poor³⁶.

Jumla is divided into 30 VDCs.³⁷ All government offices are located in the district headquarters of Khalanga. Jumla is also the zonal headquarters of the Karnali Zone; therefore, zonal level state mechanisms are located in Khalanga. Much of the government infrastructure in Khalanga was destroyed in two large Maoist attacks during the period of armed conflict, although most buildings have now been rebuilt. There was also substantial seizure of land by Maoists during the conflict³⁸.

There is one electoral constituency in Jumla district. In the Constituent Assembly election of 2008, this electoral seat was won by the United Communist Party of Nepal (Maoist)³⁹. In the previous parliamentary election of 1999, the Nepal Communist Party UML was elected from Jumla⁴⁰.

3.2 Overview of justice bodies and mechanisms in Jumla

Jumla is the Headquarters of the Karnali Zone and zonal level state mechanisms such as the Zonal Police Office, 24th Brigade of Army and Appellate Court are located in Jumla. In addition there is

Box 2: Jumla at a glance

Area: 2,531 sq km
Population: 89,427
Major caste/religious groups:
 Chhetri 49%
 Brahmin 7%
 Sarki 84%
 Hindu 76%

VDCs: 30
Municipalities: 0
Electoral Constituencies: 1

Source: Branch Statistic Office (2005).
Jumla District Profile 2062 Jumla.

33 Branch Statistic Office (2005). *District Profile Jumla 2062*. Jumla.

34 *Ibid.*

35 *Ibid.*

36 FGD with representatives of law-enforcement bodies, Jumla, 17th June 2011.

37 Branch Statistic Office (2001). *District Profile Jumla 2062*. Jumla.

38 FGD with representatives of law-enforcement bodies, Jumla, 17th June 2011.

39 Nepal Election Commission (2008). 'CA Election Report', accessed 6th February 2012. Available at <http://www.election.gov.np/reports/CAResults/reportBody.php>

40 Nepal Election Commission (1999). 'Finalised Constituencies With Top Two Candidates', accessed 6th February 2012. Available at <http://www.election.gov.np/EN/toptwo.html>

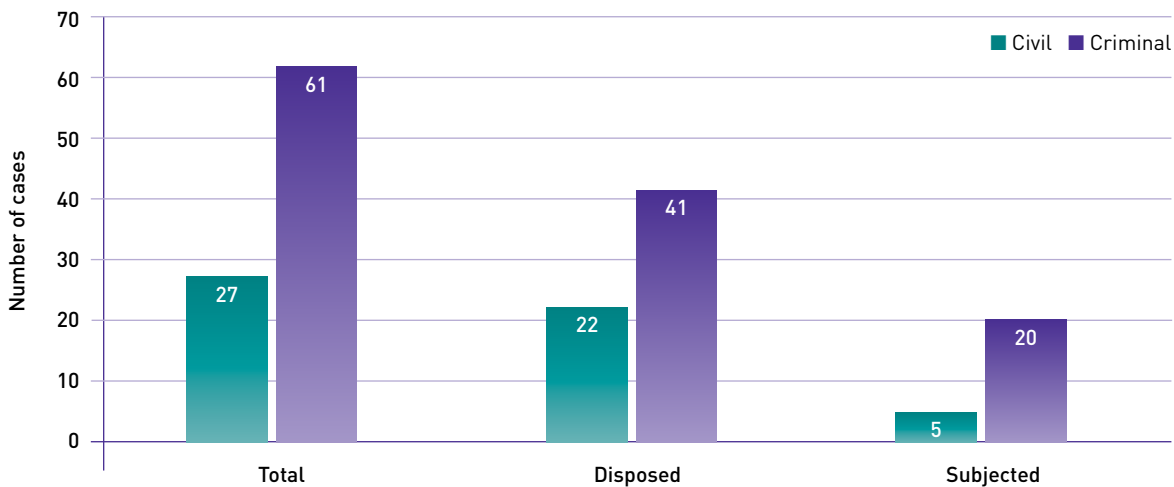
a District Court, District Administration Office, Land Reform Office, District Police Office and nine Area Police Offices. Without extensive road infrastructure people from remote VDCs must walk eight to ten hours to reach most state services.

At the informal level, paralegal committees have been formed in fifteen of Jumla’s thirty VDCs. Traditional mechanisms are also in use in most villages.

3.3 Formal justice: How is it working in Jumla?

3.3.1 Appellate Court

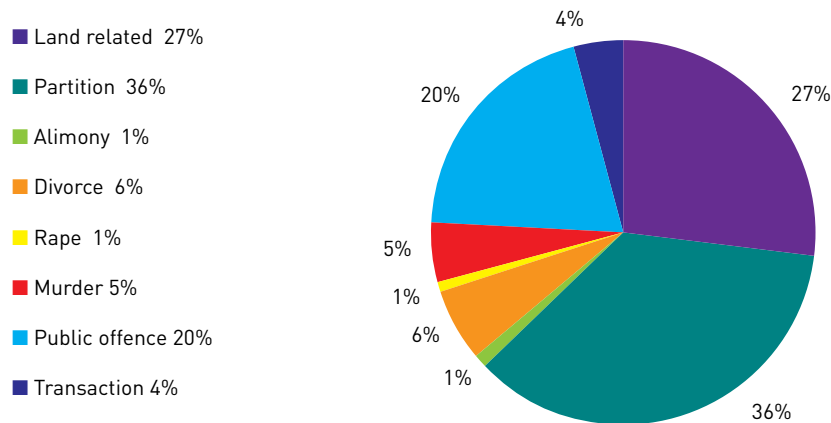
Diagram 5: Status of cases in Appellate Court, Jumla



The Appellate Court in Jumla receives both civil and criminal cases. 69 percent of cases registered during 2007/8 are criminal cases, including cases relating to murder, rape, physical assault and fraud. Civil cases relate to land and monetary transactions, land disputes, cancellation of registration deeds and revocation of decisions. During the same financial year, a total of 88 cases were registered, of which 63 cases were settled and 25 cases remained pending. Generally, Appellate Court cases are settled in one to two years.⁴¹

3.3.2 District Court

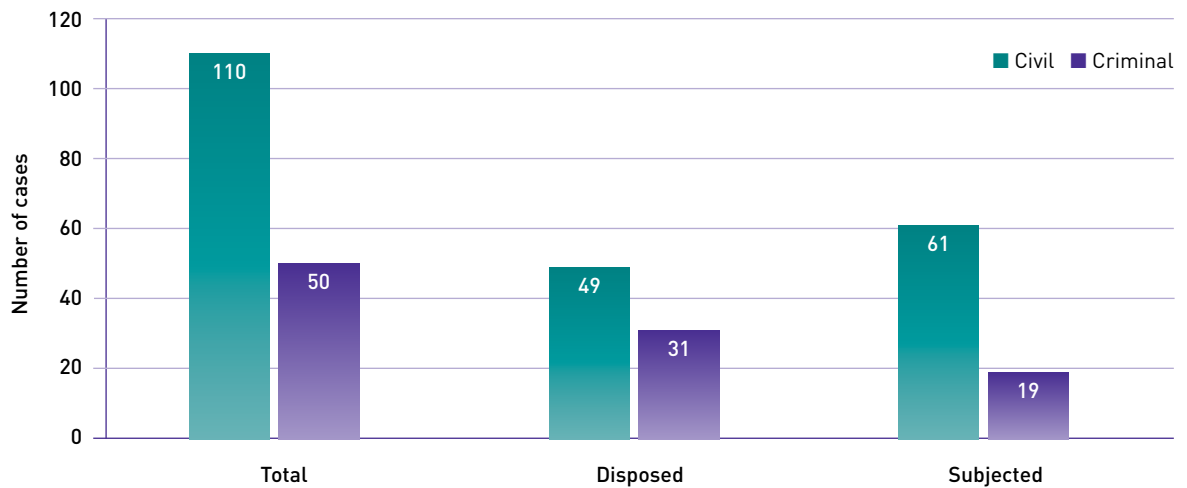
Diagram 6: Types of cases registered in District Court Jumla



41 Data provided by Appellate Court Jumla, 17th June 2011.

Unlike the Appellate Court, Jumla District Court mostly sees civil cases: 68 percent of registered cases in FY 20011/12 were civil cases. These related to partition of property (36 percent); land related disputes (27 percent); alimony (1 percent). In total, 160 cases were registered. Of those cases, 80 cases were solved and the remaining 80 are ongoing. As in the Appellate Court, District Court cases are settled in one to two years.⁴² Officially, free legal aid should be provided by the Bar Association District Chapter; however, it is reportedly rarely used due to lack of widespread knowledge of this provision.

Diagram 7: Status of cases in District Court Jumla



It was reported that timely delivery of justice is affected by the fact that the Jumla District Court judge is also assigned to Banke District Court. Therefore, he is unable to be present full time in Jumla District Court. The irregular presence of the district court judge has led some cases, including cases relating to assault and looting, to be registered in the DAO.⁴³ The government deploys a judge to Jumla on a part-time basis citing the low number of cases. However, Bar Association representatives claim that the numbers of cases are low due to the irregular presence of the judge in the court, meaning that cases are dealt with through the DAO, or informally.⁴⁴

3.3.2.1 Court-annexed Mediation (District Court)

According to the District Court, in the fiscal year 2011-12 the District Court of Jumla has referred five cases to Court Annexed Mediation (CAM). However, none of these cases had been settled at the time of research and all were still in the process of mediation⁴⁵. It was reported that disputing parties were loath to opt for CAM services as the regular absence of judges from the Court means that the referral process will lengthen and slow the resolution of their case.⁴⁶ The Bar Association of Jumla were of the opinion that the CAM service could be an effective means for resolving disputes, if parties were aware of its presence and if adequate resources and trainings were provided to the centre and its mediators.

3.3.3 District Administration Office

According to the Bar Association, the District Administration Office has also been playing a role in delivering justice. Cases such as beating and looting have been registered directly with the DAO and are settled there.⁴⁷ In FY 2011-12, three cases relating to public offences and ten alcohol-related cases were settled by the DAO.

⁴² FGD with representatives of law-enforcement bodies, Jumla, 17th June 2011.

⁴³ *Ibid.*

⁴⁴ KII with representative of Nepal Bar Association, Jumla, 16th June 2011.

⁴⁵ Data provided by Jumla District Court.

⁴⁶ KII with Representative of Bar Association, Jumla, 16th June 2011; FGD with representatives of law-enforcement bodies, Jumla, 17th June 2011.

⁴⁷ *Ibid.*

3.3.4 District Police Office

The District Police Office Jumla reports receiving complaints relating to murder, attempted murder, suicide, road accident, theft, public offences, polygamy, rape and disappearance.⁴⁸ There are over 200 police personnel at the District Police Office and of them 25 are female police personnel.⁴⁹ In FY 2011-12, sixteen cases were registered with the District Police Office. Among them, eight were related to accidents, three related with public offences, one to a road accident death, one to suicide by hanging, two to attempted murder and one to disappearance.⁵⁰

3.3.4.1 Women and Children's Service Centre (District Police Office)

The research found that the service users of the Women and Children's Service Centre in Jumla received slow and limited service due to the small, congested premises, limited staff and heavy workload. Only one woman police officer is assigned to the Service Centre. The office has limited, basic furnishing consisting of a cupboard, table and chair. 10-15 cases are registered at the Centre per month and it was reported that the police had to feed many people coming to the Centre because of their extreme poverty. According to the WCSC representative, in the past the police have had to provide shelter to service users in their private homes.⁵¹

3.3.5 Service Centre (Women and Children Office)

In comparison to Women and Children's Service Centre of the DPO, the Service Centre of the Women and Children's Office has four rooms and one training room. Since its establishment in November 2009, the Centre has provided services to 64 women. If a woman has experienced domestic violence, the Centre will summon the accused with a view to making a settlement through mediation or reconciliation. Since the Centre serves women affected by violence, it provides psychosocial and legal counseling. It was reported that, on average, service-users stayed at the centre between 7 to 15 days, although there had been cases where service users had stayed for up to six weeks. At the time of research, there were no service users staying in the Centre. Service users who have left the Centre are contacted frequently to monitor their progress.⁵² Furthermore, it is reported that the Centre lacked financial and human resources for dealing with its caseload.⁵³

3.4 Informal justice: How is it working in Jumla?

In Jumla, there are paralegal groups and traditional groups functioning as informal justice providers. Both VDC-level Paralegal Committees and community-level traditional mechanisms are very active.

3.4.1 Paralegal Committees

In Jumla, fifteen VDC-level paralegal committees have been formed. Paralegal committees hear and receive reports of disputes relating to domestic violence, alcohol-related violence, familial disputes, untouchability, polygamy, and rape. Criminal cases are reportedly referred to the Police.⁵⁴ The Paralegal Committee of Chandaanath VDC has settled thirty-four disputes in the past year, in which most were related to intra-family disputes, particularly between mother-in-law and daughter-in-law. In Talium VDC, the Paralegal Committee was formed in 2007 and has settled sixty-four disputes to date. Once a dispute is registered, like the Service Centre, the paralegal group calls the disputing party to discuss and negotiate, or in some cases disputes are settled by visiting the home of the victim for mediation. The committee takes complaints in writing and settles disputes within three or four days.

48 Information provided by District Police Office, Jumla, 17th Jun 2011.

49 *Ibid.*

50 Data provided by District Police Office, Jumla.

51 KII with WCSC representative, Jumla, 17th June 2011.

52 Observation of Women and Children Service Centre in Women and Children Office, Jumla; KII with Service Centre representative, Jumla, 17th June 2011.

53 *Ibid.*

54 FGD with representatives of Paralegal Committee, Jumla, 15th June 2011.

The research revealed that Committee Members have at times received threats and intimidation while settling disputes. Generally, disputes settled by paralegal committees are not brought to formal justice mechanisms.

3.4.2 Women's Rights Forum

Women's Rights Forum is a local NGO run by local women. It was established in early 2011. This Forum has its office in the district headquarters and facilitates disputing parties to resolve cases relating to women, such as domestic violence, alcohol-related violence and familial disputes through mediation. The service provided by this NGO is similar to that provided by paralegal committees. The NGO reports to have settled twenty-four disputes in 2011.⁵⁵

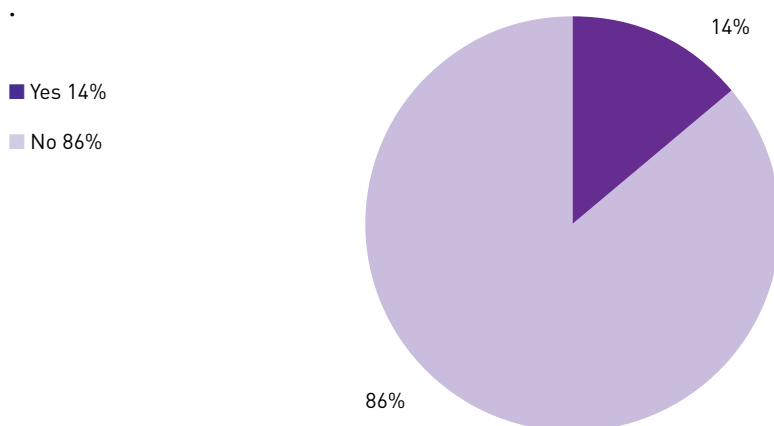
3.4.3 Respected Community leaders⁵⁶

Discussion was conducted with community leaders involved in traditional dispute resolution mechanisms. Common community disputes include land encroachment, alcohol-related incidents, disputes over resources such as forest and irrigation, polygamy, child marriage and untouchability. Such disputes are settled by community leaders and traditional dispute-settlers (usually male village elders). On average, four or five disputes are settled annually by each individual. According to those involved in settling disputes in Talium, Kartik Swami, Lamra and Mahat VDCs, with the exception of cases relating to murder, all cases are settled at the village level by these traditional mechanisms. Criminal cases such as rape, polygamy, theft and physical assault are brought for settlement and, only if no agreement is reached, are criminal cases referred to the police. It was reported that respected community leaders were sometimes called by the police in order to facilitate the settlement of disputes relating to community members.

3.5 Analysis: Access to Justice in Jumla

In Jumla district, it is difficult to get justice through the headquarter-centred formal justice system for the majority of people who are illiterate, have weak economic status, and reside in geographically remote places. In Jumla, few disputes and cases get registered in the District Court and police offices. People prefer informal bodies to formal as state bodies follow lengthier, complex and more costly formal procedures to resolve disputes. Indeed, the vast majority in Jumla (86 percent of those asked) reported that they were unable to receive adequate service from the formal system.

Diagram 8: Have general services users been able to receive necessary services from the existing justice system?



⁵⁵ KII with representative of Women Rights Forum, Jumla 15th June 2011.

⁵⁶ FGD with Community leader who is involved in settling disputes in traditional manner, Jumla, 17th June 2011.

Similar to other researched districts, there is a strong perception that wealthier classes approach the formal court system, whereas poor and marginalised people gravitate towards informal bodies, despite the evidence that this is not always the case, as both poor and rich can be seen to use formal and informal mechanisms.⁵⁷ However, some continue to be particularly marginalised from formal justice such as members of the *dalit* community who, living relatively near to the district headquarters, know little about state services.⁵⁸ Small disputes (as well as criminal cases) are mostly settled locally within the community. People continue to approach informal bodies to settle disputes for a number of reasons, including prompt and timely settlement by familiar people, the cost, and the belief that such a body provides fair judgment. The free legal aid service is greatly underutilised due to a lack of awareness and knowledge about its availability.

Gender-based crimes in Jumla suffer the same systematic blockages as elsewhere in Nepal. Women who faced domestic violence expressed a clear preference for informal mechanisms because they felt more comfortable talking to female paralegal committee members, if they were to report at all. The reasons behind the women's desire not to go to court included a lack of economic means and access to political networks, and a lack of witnesses and victim protection. As such, the victims of crimes such as rape are unwilling to come forward to report the crime, leaving victims open to monetary settlement processes between conflicting parties.⁵⁹ Polygamy is also a significant problem in Jumla, amongst government officials as well as the general public.⁶⁰ However, only a very small number of polygamy cases are registered in the courts.⁶¹

The slow trend towards the adherence to principles of human rights and gender sensitivity by the formal justice bodies is promising. Formal justice staff in Jumla reported trying to follow gender sensitivity in cases related with women and maintaining privacy in sensitive cases⁶². For example, woman police personnel are using civil dress instead of police uniform in order to create a victim-friendly environment and victims are provided psychological services and counseling in separate rooms.⁶³ However, this is yet to be felt by the general public (women in particular), who still perceive the police and courts as insensitive to their particular gendered needs. Furthermore, there is still concern that the new confidentiality, gender-sensitive and human rights principles are not being implemented effectively due to limited institutional capacity and poor staff training within the courts and police.⁶⁴

3.6 Linkages Between Formal and Informal Justice: Opportunities for Strengthening

Those consulted during the research expressed the clear opinion that there was a lack of formal coordination and linkage between formal and informal judicial bodies in Jumla. However, there is in fact informal and ad hoc coordination between paralegal committees, respected community leaders and the police office. There was evidence that paralegal committees and respected community leaders refer criminal cases such as murder and rape, or unsettled or complex cases to the police.⁶⁵ In addition, the police office also invites members of paralegal committees and traditional leaders to attend discussions whilst conducting mediation efforts with disputing parties⁶⁶.

57 FGD with representatives of law-enforcement bodies Jumla, 17th June 2011; FGD with representatives of Paralegal Committee, Jumla, 15th June 2011.

58 FGDs with Women Group, Mahat VDC and *Dalit* Group, Talium VDC, 16th June 2011.

59 KII with WCSC representative, Jumla, 17th June 2011.

60 FGDs with different groups of people during Jumla Assessment, Jumla, 15th June to 18th June 2011.

61 Data provided by the District Court.

62 *Ibid.*

63 KII with WCSC representative, Jumla, 17th June 2011.

64 FGD with representatives of law-enforcement bodies, Jumla, 17th June 2011.

65 KIIs with different stakeholders during Jumla Assessment, Jumla, 15th June to 18th June 2011.

66 FGD with representatives of law-enforcement bodies, Jumla, 17th June 2011; FGD with representatives of Paralegal Committee, Jumla, 15th June 2011.

In spite of the lack of formal coordination mechanisms, there appears to be an interest in seeing improved coordination between the two systems. People spoken to during the research tended to see improved linkages between the formal and informal systems as necessary. Many saw better harmonisation to support those working within informal bodies to update their knowledge on prevailing laws, and to have clarity on their jurisdiction in order to decide which cases they could hear and which they should refer to the police or court⁶⁷. An improved coherent system, it was thought, should develop a referral system enabling a more navigable, integrated justice environment which would help in achieving the state's objective of maintaining peace and order.⁶⁸

⁶⁷ KIs and FGDs with different stakeholders during Jumla Assessment, Jumla, 15th June to 18th June 2011.

⁶⁸ KIs with different stakeholders during Jumla Assessment, Jumla, 15th June to 18th June 2011; FGD with representatives of law-enforcement bodies, Jumla, 17th June 2011; FGD with representatives of Paralegal Committee, Jumla, 15th June 2011.

4. Kailali District

4.1 District context

Kailali district is located in the Seti Zone, in the far western region of Nepal. Its administrative headquarter is Dhangadi. It shares a border with Bardiya and Surkhet districts to the east side, Kanchanpur and Dadeldhura districts to the west, and India to the south. 40.3 percent of the district is hilly terrain and 59.7 percent plains. The DDC divides the district into four parts on the basis of land use: forest area, agricultural area, pasture land and others⁶⁹.

According to the 2001 census, the total population of the district is 616,697, of which 312,311 were male and 394,386 were female. The literacy rate is 52.06 percent and the major languages spoken in the district are Tharu and Nepali. It is the second largest district in the region, comprising of 42 VDCs, and was highly affected by Maoist activity during the conflict. It is a largely rural district with a majority Tharu population (43.7 percent⁷⁰), many of whom were forced to live as bonded labourers (*Kamaiya*) until the system was outlawed in 2000. Large tracts of land are still owned by a few landlords (mostly non-resident landlords originally from hill areas) and substantial inequalities continue to prevail in Kailali as many groups remain landless and poverty stricken.

Economically, Dhangadi is a commercial and administrative hub for the far western region of Nepal. The district capital, Dhangadhi, is 4km from Gaurifanta, the Indian border, and trade is largely with Indian markets as it takes about half the amount of time (about 6-7 hours) to reach Delhi compared to Kathmandu (12-14 hours). As is the case in many districts in Nepal, the economy in Kailali is largely agriculturally based⁷¹, particularly grain products. Due to political uncertainty and insecurity throughout the conflict, and since the signing of the CPA, there has been little investment by businesses and underemployment is high.⁷² In search of work, unskilled labourers travel across the border in both directions.

Kailali was, until the CA elections, officially “represented” in the country’s parliament by Nepali Congress members. The elections of April 2008 saw the CPN-Maoist sweep to victory. A campaign based on ‘making people sovereign, uplifting the downtrodden and putting an end to feudalism and expansionism’⁷³ produced victories in all 6 constituencies in the district.⁷⁴

Box 3: Kailali at a glance

Area: 3,235sq km
Population: 616,697
Major caste/religious groups:
 Tharu 43.7%
 Chhetri 17.4%
 Brahmin 10.7%
VDCs: 42
Municipalities: 2
Electoral Constituencies: 6

Source: Branch Statistic Office (2006).
Kailali District Profile 2005/06. Kailali.

69 District Development Committee (2006). *Kailali District Profile 2005/2006*. Kailali.

70 Branch Statistic Office (2006). *Kailali District Profile 2005/06*. Kailali.

71 District Development Committee (2006). *Kailali District Profile 2005/2006*. Kailali. 78.8 percent of the population of Kailali have an agriculturally based occupation. Only 20.1% have a non-agriculturally based occupation.

72 According to the ILO, only one-sixth of Nepal’s 11 million strong workforce is in paid employment. Fifty percent of the workforce are young men and women between 15 and 29 years of age. The Labour Force Survey of 2008 estimates that 30 percent of the workforce of the west *Terai* in rural areas and 43 percent in urban areas are “underutilised”, either because they do not work full time, have inadequate earnings, the wrong skills or are unemployed. The national “underutilisation” average is 30%.

73 See *The Rising Nepal, CA poll gains momentum in Kailali*, 25 February 2008, reporting on campaigning by CPN-Maoist’s district leader Utsav

74 Two of the six elected representatives are women.

4.2 Overview of Judicial Mechanisms in Kailali

Like other districts of Nepal, Kailali district is home to a District Court, an Office of the Public Prosecutor, a District Police Office, and a District Administration Office. The District Court is presided over by a single judge. Under the District Police Office, there are 34 Area Police Offices, 3 Police Stations, 9 temporary police posts and one Community Police Service Centre.

As a zonal headquarters Kailali also hosts the regional office of the National Human Rights Commission, a Zonal Police Office, an Office of the Armed Police Force, and a Land Revenue Office as formal judicial bodies. All government offices are based in Dhanghadi.

Paralegal committees began to be established in the district in 2009, and are now operating in 10 VDCs. Mediation committees began to work in Kailali from 2005 onwards, and are now present in 3 VDCs and in Dhangadhi Municipality.

Other traditional informal mechanisms for dispute settlement and decision making also exist in Kailali, such as the *Badghar and Bhalmansa* mechanisms of the indigenous Tharu community.

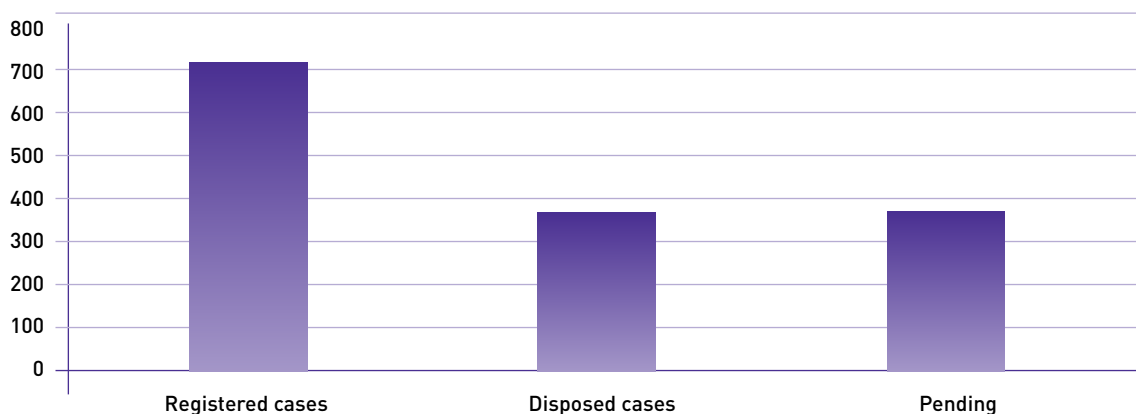
4.3 Formal Justice: How is it Working in Kailali?

The following section outlines the status of formal justice mechanisms in Kailali, in terms of numbers and types of cases pending, and their perceived effectiveness as a provider of justice.

4.3.1 District Court

Both civil and criminal cases are registered in the Kailali District Court. Civil cases include divorce, land and property partition, and cases relating to tenants' rights. Criminal cases include those pertaining to assault, rape, murder, attempted murder, theft, human trafficking, kidnapping, fraud, road accidents, narcotics, arms and ammunition. During Fiscal Year BS 2010/11, a total number of 720 cases were registered in the District Court. Among these cases, 412 cases are criminal cases and 308 cases civil cases. Of these cases, 361 cases were settled.

Diagram 9: Status of cases filed in Kailali District Court⁷⁵



There are 35 staff and officials in the District Court, including two female staff. The court has the provision of a stipendiary lawyer, a paid lawyer appointed by the court for the defence of clients who cannot pay lawyers' fees. However, there is a lack of awareness about, and therefore use of, this provision amongst the general court users, especially amongst the poor, women and other marginalised groups.

⁷⁵ Disposed cases are cases that have been heard and decided upon by the court. Pending cases are yet to be heard and/or settled.

4.3.2 Court Annexed Mediation Centre

The Court Annexed Mediation Centre has been in existence in Kailali since 2009. There are 31 mediators, only two of which are female. In order to use this service, an application for mediation of a case has to be submitted to the court. Then the officer of court explains the mediation procedure to the parties and takes that application to the judge for approval. Once the application is approved by the judge, the case is forwarded to the Mediation Centre. The parties will be shown the list of mediators and are asked to choose the mediator. If they do not want to choose, then the court itself will allocate the mediator. In fiscal year 2010/11, 8 cases were referred for Court Annexed Mediation. However, no cases were settled through this mechanism. Considering these statistics, it appears that the implementation of the court annexed mediation has not been effective. According to a mediator of the Court Annexed Mediation Centre, this could be down to a number of reasons, including conflicting parties' ignorance to the advantages of the court annexed mediation provision, or the low confidence of conflicting parties toward the skills and ability of mediators.⁷⁶

4.3.3 Office of Public Prosecutor (Government Attorney)

There are eight officials in the Kailali Office of Public Prosecutor, of which six are male and two are female. The majority of cases registered by this office pertain to forest use, public offence, road accidents, murder and rape (see Table 2 below).

Table 2: Cases Registered by the Office of the Public Prosecutor⁷⁷

S.N	Cases	No of Cases during FY 2010-11	Pending
1	Kidnapping	8	5
2	Assault	1	1
3	Arson	5	3
4	Forceful Donation	1	1
5	Fraud	4	2
6	Rape	31	19
7	Attempted Rape	5	0
8	Theft	4	2
9	Burglary	7	6
10	Robbery	1	0
11	<i>Dacoity</i> ¹	12	5
12	Murder	33	11
13	Attempt to Murder	20	11
14	Forgery	1	1
15	Theft/ Extortion	3	2
16	Adulteration of Foodstuffs	15	7
17	Transportation Damages	5	5
18	Electronic Transaction	1	1
19	Copyright Infringement	4	1
20	Death from Road Accident	48	8
21	Accident	1	1
22	Citizenship	0	0
23	Human Trafficking	6	4
24	Public Offence	104	38
25	Narcotics	7	4
26	Forest Use	180	144
27	Polygamy	5	2
28	General Offence	0	0
29	Arms and Ammunition	11	10
30	Total	523	294

⁷⁶ Interview with mediator, Dhangadi, 3rd July 2011.

⁷⁷ Banditry.

4.3.4 District Police Office

In Kailali District Police Office, cases such as rape, polygamy, assault, domestic violence, murder, disputes between husband and wife, suicide, offences relating to counterfeiting, narcotics, *dacoity*, black market profiteering, and kidnapping or abduction have been registered. The most common cases reported to the police in Kailali are assault, rape, human trafficking, polygamy and violence against women. Although respondents reported, by and large, that cases were registered by the police, it was also reported that victims and their relatives often faced political pressure to drop cases.

There is WCSC within the District Police Office. This centre is staffed by three female police personnel (1 Head Constable and 2 Constables) The WCSC provides frontline support to women and children in accessing security and justice. In Kailali, the WCSC mainly deals with GBV cases. However, this unit is not adequately equipped in terms of human and infrastructure resources, having only one small room and three personnel. The WCSC is not able to operate outside of the district headquarters.⁷⁸

There is a Community Police Service Centre (CPSC) is based in the district headquarters. The CPSC is staffed by 4 male and 1 female police personnel. Respondents perceived the CPSC to be largely ineffective. This was attributed to a lack of funds, and the programme was believed to be on the verge of collapse. It was also reported that the members of the committee lacked skills in mediation and counselling.⁷⁹

4.3.6 District Administration Office

Complaints related to citizenship, public offence, the adulteration of foodstuffs and arms and ammunition are registered in the District Administration Office.⁸⁰ In most of the cases registered in the District Administration Office, the defendant appoints a lawyer for trial and the decision is given only after witness testimony from both the plaintiff and defendant. The Chief District Officer of the District Administration Office has a large workload of cases, but due to the lack of a legal officer and assistant, the service rendered by the District Administration Office is reported to be slow and ineffective.

Box 4: Nepal Police Kailali Overview

Total police personnel: 675
 Female personnel: 26 (3.85%)
 Police personnel per capita: 1 to 913
 Female police per female capita: 1 to 15,168
 Cases registered in 2010/11: 502
 Cases settled: 214
 Cases pending: 288

Information provided by District Police Office Kailali, July 2011.

Table 3: Types of cases registered in the District Administration Office during FY BS 2067/068

S.N.	Types of cases	F/Y 066/067	F/Y 067/068		
			Cases registered in the current year	Disposed	Pending
		Cases registered during last year	Cases registered in the current year		
1	Public Offence	38	65	65	38
2	Arms and Ammunition	6	6	2	10
3	Adulterated foodstuffs	5	10	7	8
	Total	49	81	74	56

⁷⁸ Observation visit in WCSC, Dhangadi, 4th July 2011.

⁷⁹ FGD with paralegal committee members and mediators, Dhangadi, 3rd July 2011.

⁸⁰ The Local Administration Act 1971, Public Offence Crime and Punishment Act 1970, Public Security Act 1998, and Arms and Ammunitions Act 1962 have given the mandate to the DAO to handle cases related to citizenship, public offences, the adulteration of foodstuffs and arms and ammunition.

4.4 Informal Justice: How is it Working in Kailali?

The following section outlines the status of informal justice mechanisms in Kailali, in terms of the process of receiving and dealing with cases, the types of cases received, and their perceived effectiveness as a provider or facilitator of justice.

4.4.1 Community-based Paralegal Committees

Paralegal committees were formed in 10 VDCs (Godawari, Sahajpur, Malakheti, Chaumala, Masuriya, Chuha, Baliya, Dhanisinghpur, Narayanpur, Dhodhara) of Kailali District with the support of UNDP in 2009. UNDP handed over this programme to UNICEF in 2011. UNICEF now supports the Government of Nepal's Women and Children's Development Office to run the paralegal committees.

The paralegal committee is comprised of 13 to 15 members and has an advisory committee of 5 to 7 members. Paralegal committees settle civil disputes which are minor in nature and refer victims to the relevant government and non-government organisations for the necessary legal, medical, psychological and rehabilitation support.

When the paralegal committee receives a case, it summons both parties to discuss the issue in question. During the discussion, the paralegal committee provides information about related laws to both parties. If possible, the dispute is mediated and settled with the mutual consent of both parties through discussion by the committee. The cases that cannot be resolved within the paralegal committee are referred to the Women and Children's Development Office which refers such cases to the District Resource Group⁸¹ for legal aid and from there the case enters the formal judicial system, either through the District Police Office, or by directly filing the case in the District Court. The Bar Association may also be approached for legal aid, and the Women and Children's Service Centre may be involved if shelter needs to be provided in GBV cases.

In criminal, or serious civil cases, the paralegal committee provides legal advice to the victim and refers the case on to the Police and Court. The paralegal committee may also assist in providing a lawyer with the help of the District Resource Group. Cases including disputes between husband and wife, money lending, divorce, maintenance and alimony, land and property partition, domestic violence, polygamy, assault, theft, and disputes relating to discriminatory social practices such as untouchability and allegations of witchcraft have been filed in the paralegal committee. In many instances, female victims of criminal offences such as rape and the trafficking of girls and women have used the paralegal committee as a first point of contact.⁸²

4.4.2. Community-based Mediation Centres

A community-based mediation centre programme was established in Kailali in 2005 by the Rural Women Development and Unity Centre (RUDUK) with financial support from The Asia Foundation and is operating in 3 VDCs (Geta, Beladevipur, and Shreepur) and in Dhangadhi Municipality.⁸³ Since 2009, CeLRRd, with financial support from UNDP, has established 9 community mediation centres in Tikapur, Patharaiya, Dhugauli, Shadepani, Pahalmanpur, Chuha, Masuriya, Chaumala and Malakheti VDCs.

According to the RUDUK report, from 2005 to September 2011, 340 cases were filed in the 4 community mediation centres. Of these, 290 cases were reported as being settled successfully. Of these, 90 cases were brought by men and 200 cases were brought by women.

81 The District Resource Group is a district-based group of 10–12 lawyers and social activists who provide training, technical support, and monitoring to all PLCs in their district.

82 FGD with community women and paralegal committee members, Dhangadi, 3rd July 2011.

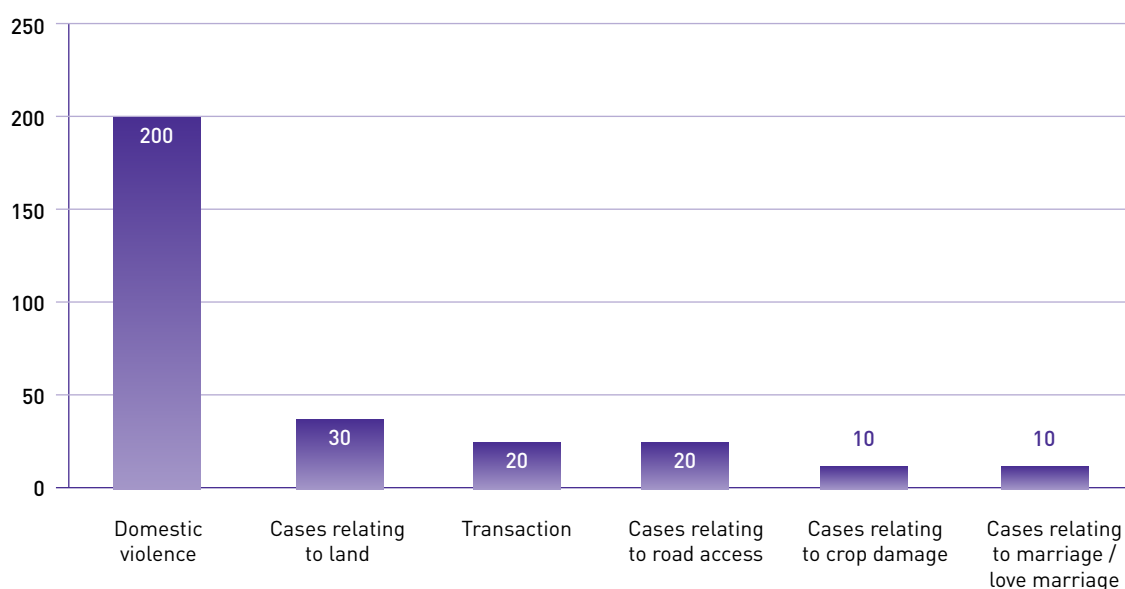
83 The community mediation centre in Dhangadi Municipality is also partly funded by the municipality.

Table 4 gives the breakdown of the types of cases settled by the RUDUK community mediation centres.

Table 4: Types of Cases Settled by Community-based Mediation Centres⁸⁴

Type of case	Number
Domestic violence	200
Cases relating to land	30
Transaction	20
Cases relating to road access	20
Cases relating to crop damage	10
Cases relating to marriage / love marriage	10

Diagram 10: Number of Cases Settled by Community-based Mediation Centres



Cases are referred from the District Police Office, Ward Police Office, Community Police, Municipality, Women and Children’s Development Office, NGOs such as Maiti Nepal and the Court to the community-based mediation centre. Although the paralegal and community mediator are trained on legal issues and have their own code of conduct, they use their own discretion when delivering justice.⁸⁵ Generally, mediation is done by producing a “conciliation deed” in writing to be signed by both parties. Cases which should not be heard by the centre (such as criminal cases) are referred to the relevant bodies, such as the district police office, WCSC, and district court.

4.4.3 Traditional Justice Mechanisms

Traditionally, the indigenous *Badaghar*, *Bhalmansa*, and *Pancheti* systems are used for dispute settlement and community decision making in Kailali District. In the Rana Tharu community, disputes are settled through community decision. Members of the community hear the case, pass the decision and help the aggrieved party to obtain compensation. Such mechanisms generally settle cases relating to land, money lending, assault, domestic violence, and sexual violence. Those practicing these systems demonstrated little or no knowledge of the difference between civil and criminal cases, or whether it was appropriate to attempt to resolve all cases through traditional

⁸⁴ Interview with RUDUK, Dhangadi, 3rd July 2011.

⁸⁵ FGD with paralegal mediator, Dhangadi, 3rd July 2011.

mediation mechanisms. According to a *Bhalmansa* interviewed in Belapur VDC, political parties often exert pressure and attempt to influence the decision of the *Bhalmansa*⁸⁶. *Bhalmansa* or *Bhadghars* may also hold positions within local political parties.⁸⁷

According to a former VDC chairperson, the *Bhalmansa* was very democratic in the past. All local disputes were brought to the *Bhalmansa* as a first point of call and all the elders of the village were called to deliver justice with the mutual consent of both parties to the dispute. In the past, even political parties used to refer disputes to the *Bhalmansa*. However, in recent times it was reported that *Bhalmansa* have not been able to settle disputes independently due to political pressure and interference.

4.5 Analysis: Access to Justice in Kailali

Who is able to access justice?

The research in Kailali district shows that people's economic, social and cultural background plays an important role in obtaining justice from both formal and informal mechanisms. It is found that, in many cases, economically secure and educated people are more likely to approach both formal and informal judicial bodies for justice.

Kailali district is ethnically very diverse. The majority Tharu community continue to approach indigenous traditional mechanisms and leaders such as the *Bhalmansa* as a first point of call for all but the most serious crime or dispute. However, the continued politicisation of the system (many *Bhalmansa* hold political positions) as undermined public confidence in it. Nevertheless, Tharus were found to be less likely to use the court system than traditionally higher-caste communities.

In all communities, victims of GBV, women, the socio-economically marginalized and illiterate or semi-illiterate were found to be less likely to use the formal justice system. This is due to a lack of awareness about what exists and how to access it, but also due to financial constraints and the fear of social stigma (e.g. in GBV cases). Rather, these groups are more likely to use the paralegal committees or mediation committees, in particular women and female victims of GBV.

Despite the provision of a stipendiary lawyer to provide free legal representation for those who cannot afford it in *sub judice* cases, and the provision of lawyers under the legal aid committee run by the Nepal Bar Association and funded by the Government of Nepal, a lack of awareness about these services means that they are not accessed by the most marginalised.

How is justice being done?

The formal justice system is slow. Of 720 cases registered at the District Court last year, 362 are still pending. The major reason for the delay in settling cases is the fact that there is only one judge assigned to the court.

When asked about external interference in the judicial process, representatives of almost all formal or informal bodies affirmed that political or other interference in the system was prevalent. A common example given was the occurrence of incidents wherein political organisations visited the relevant body or mechanism to exert pressure on cases relating to women. As women generally lack economic and political power, it was reported that perpetrators and/or their relatives often attempt to have such cases dismissed through political power.⁸⁸

86 Interview with *Bhalmansa*, Belapur VDC, 3rd July 2011.

87 Interview with *Bhalmansa*, Dhangadi Municipality, 7th June 2011.

88 FGD with law-enforcement official, Dhangadi, 4th July 2011.

Participants identified the following challenges as obstacles to better public access to formal judicial bodies:

- A lack of information on laws and court procedures;
- Long, expensive and complicated court processes;
- A lack of information on, and trust in, the organisations providing legal aid and stipendiary lawyers;
- A lack of information on the Women Lawyers Committee established to provide free legal aid to needy women;
- Limited effectiveness of WCSCs due to the lack of authority of responsible personnel within the District Police Office;
- Political interference within the judicial sector.

Research respondents reported that informal justice mechanisms were, in general, trusted by local people because it was villagers rather than outsiders who sat together in order to settle or refer the dispute, and as the process was swift.⁸⁹ Likewise, during a discussion on the effectiveness of informal justice mechanisms with representatives of the formal justice sector, they agreed that their caseload had significantly decreased due to the operation of such informal bodies, and that the public are now able to access swifter justice. However, representatives of the formal sector were also quick to point out various drawbacks of the informal justice sector, such as the lack of proper documentation systems, failure to follow the law (such as mediating criminal cases), inadequate training for those delivering informal justice, political influence on informal justice mechanisms, and non-compliance of human rights principles. One respondent cited a case whereby the police “mediated” a rape case which the paralegal committee had referred to them due to political pressure.⁹⁰

4.6 Links between Formal and Informal Mechanisms: Opportunities for Strengthening

Respondents from both the formal and informal justice sectors reported that there was no *formal* mechanism for ensuring coordination and cooperation between formal and informal justice providers. When responding the question of whether there was *any* coordination between formal and informal bodies, 40 percent of respondents responded in the affirmative whilst 60 percent responded negatively.

Since 2011, paralegal committees have been supported by WCDO, a formal government body. This step follows the recognition of paralegal committees in the National Plan of Action to End Gender-based Violence. In theory, this means that paralegal committees are subject to government oversight and are connected in to a government structure, thereby making referrals easier. However, it is too early to tell whether this is working in practice.

It was reported that coordination between formal and informal bodies had been largely based on either personal relationships or necessity. The research found that paralegal committees and community based mediators located in the district headquarters have been coordinating and cooperating with the Police, WCSC and other organisations in order to provide necessary legal and other support to victims whilst settling disputes. Informal mechanisms have been referring criminal cases to the relevant formal bodies, and the police and DAO have also invited paralegal committee members and mediators to help mediate small civil cases. Respondents also reported cases whereby the police had referred cases of domestic violence to paralegal and community mediation mechanisms to be mediated. However, it was reported that, due to the lack of explicit

⁸⁹ FGD with Paralegal Committee and Mediators, Dhangadi, 3rd July 2011.

⁹⁰ *Ibid.*

legal provisions, there was no direct coordination or cooperation between the court and informal judicial bodies.

It was also found that VDCs in which paralegal committees have been operating have included the *Bhalamansa* in the Paralegal committee. Paralegal committee members also reported that the local police post and WCSC have coordinated and cooperated with the VDC-level paralegal committee, mediators and other NGOs, particularly while settling gender-based and other social violence and disputes.

5. Mahottari District

5.1 District Context

Mahottari is one of six districts located in Janakapur Zone of the central development region and covers 1,002 square kilometres. It shares borders with Danusha to the east, Sarlahi to the west, Sindhuli to the north and India to the south. The district is divided into two by the East-West Highway.

The total population of Mahottari district is 553,481, of which 287,905 are male and 265,576 are female. Of these, only 3.98 percent (22,046) people live in urban areas (Jaleswor Municipality) and the remaining 96.02 percent live in rural areas⁹¹. The majority of those living and working in Mahottari (84 percent) practice Hinduism, 13.5 percent practice Islam and rest are Buddhist, Kirant, Jain, Sikh and Bahai. There are 92 ethnic groups: Yadav (15.33 percent), Muslim (13.51 percent) and *Terai* Brahmin (6.55 percent) are the majority.⁹²

Agriculture provides the primary livelihood for the majority. Although there numerous development opportunities such as productive agricultural land, electricity, geographical accessibility, forest, rivers and the open border with India, Mahottari is considered one of least economically developed districts of the *Terai* region.

The district consists of Jaleswor municipality and 77 VDCs.⁹³ Most governmental, judicial and administrative bodies are located in the district headquarters of Jaleswor. However, some government bodies such as the District Forest Office, District Water Supply Office, Land Conservation Office and Traffic Police Offices have recently established regional offices in Bardibas. The remaining governmental offices, including the District Administration Office, District Court, District Development Committee Office and District Police Office are located in Jaleswor. Most VDC secretaries are also based in the district headquarters, citing security reasons. There are numerous NGOs registered in the district, the majority of which are located and function in the district headquarters.

There are six electoral constituencies in Mahottari district. In the Constituent Assembly election of 2008, the Madhesi People's Rights Forum Nepal was elected in three electoral constituencies, Tarai Madhes Loktantrik Party was elected in two constituencies and Janamorcha Nepal was elected in one⁹⁴. In the previous parliamentary election of 1999, the Nepali Congress was elected in all of the electoral constituencies⁹⁵.

Box 4: Mahottari at a glance

Area: 1,002 sq km
Population: 553,481
Major caste/religious groups:
 Yadav 15.33%
 Muslim 13.51%
 Terai Brahmin 6.55%
 Hindu 84%

VDCs: 77
Municipalities: 1
Electoral Constituencies: 6

Source: Branch Statistic Office (2008). *Mahottari District Profile 2065*. Mahottari.

91 Branch Statistic Office (2008). *Description of Mahottari District 2065*. Mahottari

92 *Ibid.*

93 *Ibid.*

94 Nepal Election Commission (2008). 'CA Election Report, accessed 2nd February 2012. Available at <http://www.election.gov.np/reports/CAResults/reportBody.php>

95 Nepal Election Commission (1999). 'Finalised Constituencies With Top Two Candidates', accessed 2nd February 2012. Available at <http://www.election.gov.np/EN/toptwo.html>

5.2 Overview of justice bodies and mechanisms in Mahottari

In Mahottari, district judicial bodies and mechanisms (formal and quasi⁹⁶) include the District Court, District Administration Office, District Police Office including WCSC, Office of the District Government Attorney, District Forest Office, District Land Revenue Office and Land Reform Office. Area Police Offices have been established in Gaushala, Bardibas and Loharpatti, whereas in other places there are only police posts. In addition, Armed Police Force Offices have also been established in Maisthan and Parsa Pataili VDCs.

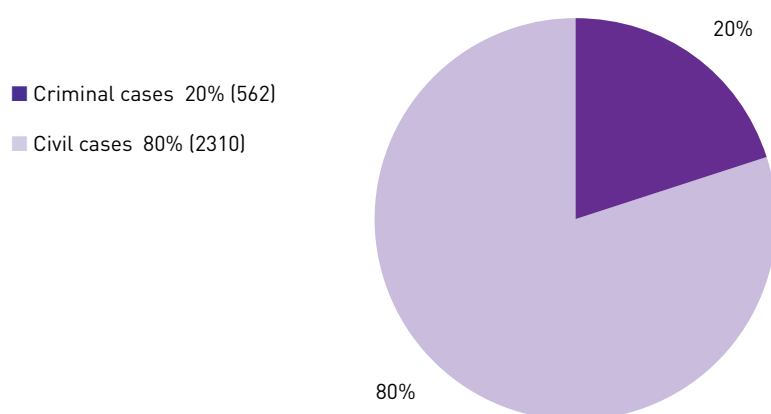
In Mahottari, Community-based Mediation Committees exist in 25 VDCs.⁹⁷ Recently, paralegal committees operating under the Women Development Office have been formed in 6 VDCs.⁹⁸ The Muslim Community has its own dispute settlement mechanism called *Maulabi* or *Maulana*. Many other communities also have their own traditional bodies to settle disputes. In villages, small disputes such as disputes between husband and wife, disputes between neighbours over, *inter alia*, cattle, crops, children and water, etc., are often settled by village elders.

5.3 Formal justice: How is it working in Mahottari⁹⁹?

5.3.1 District Court

Mahottari District Court has a heavy caseload with most cases being civil in nature. In the financial year 2010/2011, 3,021 cases were registered and pending, with 80 percent of those consisting of pending civil cases and only 20 percent criminal. 1,079 civil cases were settled and 1,231 were *sub judice*. 132 of 410 personal criminal cases were settled and 278 cases were pending. 47 of 152 state criminal cases were settled and 105 were pending. 35 percent of total civil cases were related to money lending. Court records did not show any cases relating to domestic violence. At the time of the research, there were three judges regularly hearing the cases in the District Court.¹⁰⁰ Generally, cases are settled within 1-1.5 years by the court¹⁰¹, whereas it takes only 3-4 days to settle disputes through informal bodies.¹⁰²

Diagram 11: Cases in District Court Mahottari



⁹⁶ Quasi-judicial bodies are those administrative bodies which are empowered with some judicial power by the state.

⁹⁷ DfID/ESP-supported Community-based Mediation Committees exist in the following VDCs: Bardibas, Pashupatinagar, Aurahi, Sonamaithan, Meghnath, Gorhana, Shreepur, Ram Opalpur, Sadha, Ikdarabela, Ankar, Damhimadi, Sugabhawanipatti, Matihani and Pipra. Interview with a representative of Madhesh Community Mediation Project, Madhesh, 30th March 2011; JICA-supported Community-based Mediation Committees exist in the following VDCs: Mahottari, Belgachhi, Gauribas, Ratauli, Mahadaiya, Tapanapur, Gausala, Kisannagar, Maisthan and Laxminiya. Research findings validation meeting, Jaleswor, 28th March 2012.

⁹⁸ Paralegal Committees exist in the following VDCs: Sanauli, Simaradahi, Haripur, Harinmari, Khayarwanni and Raghunathpur. Discussion with Mediation and Paralegal Group, Mahottari, 30th March 2011.

⁹⁹ In this research we have just studied these five bodies in detail as they are the main judicial bodies in the district.

¹⁰⁰ KII with District Court Representative, Mahottari, 12th July 2011.

¹⁰¹ *Ibid.*

¹⁰² FGD with representative of Paralegal Committee and Community Based Mediation Centre, Mahottari, 14th July 2011.

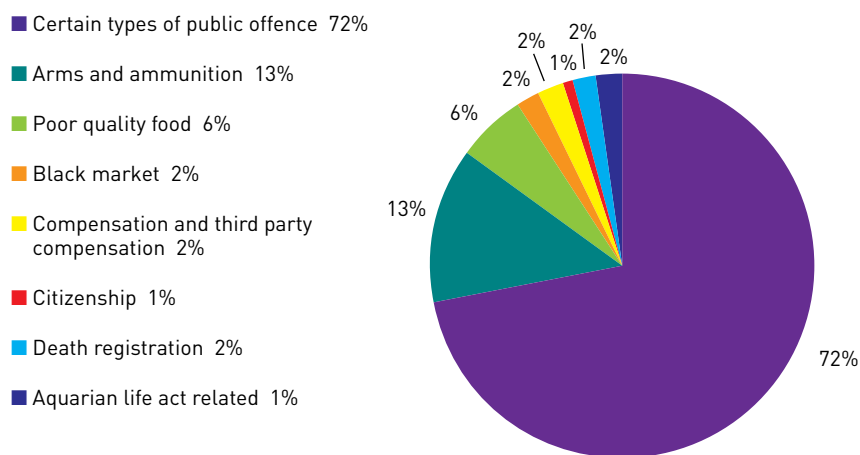
5.3.2 Court Annexed Mediation

The Court Annexed Mediation Centre was established in Mahottari on 23rd March 2011. Since its establishment until 15th July 2011, 19 cases of property partition were registered there. 3 of those cases were settled, 8 cases were returned to the District Court, and 8 cases were transferred to the new financial year 2011/2012 for mediation.¹⁰³

5.3.3 District Administration Office

The DAO reported the registration of approximately 200 cases per year and noted that most of the cases were settled within the same fiscal year. At the time of research, the DAO mostly received cases relating to public offences such as the destruction of public property, threat to life, noise pollution in public places such as markets, hospitals and schools (72 percent), arms and ammunition cases (13 percent) and cases relating to sub-quality goods (6 percent)¹⁰⁴.

Diagram 12: Types of Cases in the DAO Mahottari



They also reported receiving cases of black marketing and violence against women. Most of the disputes are registered as complaints in the DAO rather than with the police. However, although disputes were generally seen to be settled swiftly by the DAO, serious concern was noted as to the compliance of the DAO to the principles of justice.¹⁰⁵

5.3.4 District Police Office Mahottari

In Mahottari District Police Office (DPO) cases such as arms and ammunition, dacoity, murder, assault, domestic violence, murder, disputes between husband and wife, suicide, offences relating to kidnapping or abduction are registered. At the time of research, there was a total of 551 police personnel working in Mahottari district. 15 of them were female.¹⁰⁶

During the research, a DPO representative highlighted that the DPO had established a free service where all victims were able to write and register petition letters so that they could take investigative action on the case. Despite this service, it was repeatedly found that, due to threatening of victims by the perpetrators as well as by political parties, many were reluctant to come to the DPO to report cases.¹⁰⁷

¹⁰³ Information provided by Court Annexed Mediation Mahottari.

¹⁰⁴ Information provided by DAO, Mahottari, 14th July 2011.

¹⁰⁵ FGD with representatives of law-enforcement bodies, Jaleshor, 14th July 2011

¹⁰⁶ KII with representative of the District Police Office, Mahottari, 12th July 2011.

¹⁰⁷ FGD with representatives of law-enforcement bodies, Jaleshor, 14th July 2011.

5.3.5 Women and Children Service Centre Mahottari

The district's WCSC was established in 2003, hears and settles approximately fifty-five to sixty cases relating to domestic violence per annum, and personnel facilitate the process of reconciliation between disputing parties.¹⁰⁸ The WCSC receives testimonies from victims but it does not have right to proceed with any legal action, so all cases must be referred to the Case Section in the main police office. There are two low-ranking female police officers assigned to the service centre working in a small room with a table, a chair, one bench and two cupboards, on top of which all case files are stacked.

Cases relating to violence against women, particularly cases of domestic violence, generally get settled through mediation and reconciliation within three or four days. WCSC produces a deed of settlement while reconciling disputing parties. In 2010, seven complaints relating to rape were registered in the Centre¹⁰⁹ and all seven cases were reported as being *sub judice* in the District Court.¹¹⁰

5.4 Informal justice: How is it Working in Mahottari?

5.4.1 Community-level Mediation Centre

In Mahottari, Mediation Groups have been formed in 25 VDCs. Mediation Groups have been formed in 15 VDCs under the Madheshi Community Mediation Project, supported by DfID/ESP¹¹¹, and in 10 VDCs under the Community Reconciliation for Peace and Harmonised Society Programme, supported by JICA Nepal¹¹². Dispute settlement is carried out by those trained in mediation rather than law, and lawyers are not present. The majority of cases brought before the groups are related to land encroachment, beating, non-repayment of loans, violence against women, family disputes (for example, between mother-in-law and daughter-in-law), partition, crops, pasture land, and libel and slander. Mediation groups report that disputes are generally settled within 3 or 4 days. It was reported that victims tend to approach the groups promptly following the emergence of a dispute. A written application is completed and mediation is facilitated using dialogue between both parties.¹¹³ In some cases, when settlement cannot be agreed, the mediator delivers the decision to the disputing parties. Disputes settled through community mediation tend not to be brought to the district court. Mediators reported that the same disputes were not brought again before the group by disputing parties¹¹⁴.

They report to be working actively, efficiently and effectively in the settlement of disputes.¹¹⁵ For example, over an 18 month period, in Damahi VDC, half of the 36 complaints brought before the mediation group were settled; in Sarpalo, 88 percent were settled in the same period; in Pripa VDC, 80 percent of the 125 complaints were settled; in Sadha VDC, 62.5 percent of the 40 complaints brought before Mediation Group were settled; finally, in Meghnath Garuda VDC, of the 64 complaints brought before Mediation Group, 40 disputes (62.5 percent) were settled.

5.4.2 Paralegal Committees

At the time of the research, Paralegal Committees in Mahottari District had recently been formed but they had not heard or settled many disputes¹¹⁶. The aim was to form Paralegal Committees in six VDCs (Simardahi, Sanaul, Khayarbanni, Raghunathpar, Harinamari and Haripur) and, at the time of writing, five had been established. Awareness-raising programmes related to Paralegal

108 KII with representative of WCSC, Mahottari, 14th July 2011.

109 *Ibid.*

110 KII with representative of WCSC, Mahottari, 14th July 2011.

111 KII with representative of Madhesh Community Mediation Project, Jaleshwor, 14th July 2011.

112 Research findings validation meeting, Jaleshwor, 28th March 2012.

113 KII with representative of Madhesh Community Mediation Project, Jaleshwor, 14th July 2011.

114 *Ibid.*

115 FGD with representative of Paralegal Committee and Community Based Mediation Centre, Jaleshwor, 14th July 2011.

116 *Ibid.*

Committees and their work are ongoing. It is understood that that Paralegal Committees aim to settle small disputes and refer criminal cases to the police or Court.¹¹⁷

5.4.3 Justice Systems in the Muslim Community

Mahottari district has a significant Muslim community at just over thirteen percent of the total population. Mahottari Muslims have a distinct system for settling disputes which is in line with Islamic law. Members of this community tend to take a case to a community leaders' meeting at first and, if an agreement is not reached, the case is brought to the religious leader, the *Maulabi*.¹¹⁸ Cases relating to quarrels, beating, and divorce are brought before the *Maulabi* or *Hazi*.

Service users report being able to access such mechanisms easily and according to the *Maulabi* they believe their decision ensures justice in the community.¹¹⁹ Muslim women, however, revealed fear of being re-victimised if they took a case of domestic violence to the *Maulabi* or *Hazi*.¹²⁰

The research found that a few Muslim leaders were of the view that courts should recognise the verdict of *Maulabi* in decisions, such as those relating to divorce.¹²¹ However, despite the recognised procedure in Muslim law in relation to divorce, it seems that some within the Muslim community are misinterpreting such procedures for their own benefit, such as absent husbands requesting divorce via the telephone.¹²²

Case Study 2: The Quest for Justice in Mahottari

Nasarullah (not her real name), a Muslim woman, filed a case in Mahottari district court asking the court to declare a deed of partition void. In her community, most of disputes are settled at the local level with Maulabi religious leaders with court being the final resort.

Nasarullah's husband had gone to India for work, but he returned back after six months HIV/AIDS positive. Her family influenced her husband and made the partition of parental property. Although her family has lots of parental properties to be shared among coparceners, her husband inherited only 2 katha of land, which was too little. Her family members argued that they had spent all other properties on his medical treatment.

When Nasarullah said that she had approached the Muslim Maulabi a number of times in this regard, her family members had agreed to reconcile with her on those occasions, but they never acted. So, as per the suggestion of the Maulabi, she brought her case to the court. Nasarullah reported receiving good support from the court.

5.4.4 Respected Community Leaders

In Mahottari District, community leaders of various ethnic groups are responsible for delivering justice. In the *dalit* Community, small disputes are settled by local community elders. These elders also settle cases relating to polygamy and accusation of witchcraft within a community. In a discussion held in a *dalit* village of Suga Bhawanipatti VDC, it was found that disputes relating to dowry, domestic violence and untouchability are common in the *dalit* community, that such disputes are settled by the community leaders (*Maijan*) and that written decisions are prepared.¹²³

117 *Ibid.*

118 KII with Muslim Religious leader, Jaleswor, 14th July 2011.

119 *Ibid.*

120 FGD with Muslim Women, Koluwabagiya VDC, 13th July 2011.

121 KII with Muslim Religious leader, Jaleswor, 14th July 2011.

122 FGD with Youth Group, Jaleswor, 13th July 2011.

123 FGD with dalit women group, Suga Bhawanipatti VDC, 13th July 2011.

Disputes were reported to be settled within two to three days. If a settlement is not agreed, such cases are referred to the court either by the leader or by the disputing parties themselves.

At the time of writing there were no female Community Leaders and women were reported as being excluded from community-level justice processes. Women highlighted that during cases relating to women, the husband of the victim was allowed to attend the meeting but not the victim herself and that martial hearings excluded the wife from the procedure. Women stated that coercion and threats against disputing parties had been used to arrive at an agreement. In some instances, domestic violence reoccurs following a settlement by Community Leaders and they will go on to re-hear such a case using the same procedures.¹²⁴

5.5 Analysis: Access to Justice in Mahottari

In Mahottari it is the general perception that state judicial bodies do not discriminate on the basis of class or caste. However, given that formal bodies including Court and District Administrative Office are located in the district headquarters, it is difficult for poor people living in remote areas to seek justice.¹²⁵ When asked if they felt they had received adequate service from the justice system, 60 percent of surveyed service users felt they did compared to 40 percent who did not.

Although the settlement of small disputes through informal mechanisms ensures justice to some extent and has eased the process for people who do not need to go court for small disputes, access to the justice system in Mahottari is broadly mediated by illiteracy, gender, ignorance of the law and justice system itself; ignorance of rights and responsibilities; poverty; complexity and the time consuming nature of formal judicial processes.¹²⁶ As in many districts, it is perceived that well-educated, economically wealthy and middle-class people access the courts, whereas those with little political influence, who are economically marginalised, illiterate and in rural areas access informal mechanisms.¹²⁷

Efforts to make the formal court system more accessible to economically marginalised populations do not appear to have been particularly successful. Despite the formal existence of a Legal Aid Project in the district it is not possible to establish how many cases have been represented by it. Some reported that legal aid lawyers only represented six or seven cases in the first half of 2011.¹²⁸ Although free legal aid should be provided through the Legal Aid Committee to those with an annual income of below NPR40,000^{129,130} it has been extremely difficult to identify the poor and economically marginalised.¹³¹ In addition, there remains a serious lack of awareness about the availability of such legal aid amongst general service users.¹³²

Lastly, domestic violence against women was reported as one of the biggest security and justice problems in Mahottari. In spite of this apparently prevalent problem, female victims were repeatedly reporting an inability to file complaints due to many reasons. Female victims are discouraged by household, family and other social pressures,¹³³ and are themselves discouraged by having to report their intimate cases to male police and judicial officials.¹³⁴ Indeed, all of those

124 *Ibid.*

125 FGD with Youth Group, Jaleswor, 12th July 2011.

126 FGD with various groups and KII with various individuals, Mahottari, 12th-15th July 2011.

127 *Ibid.*

128 KII with Legal Aid Lawyer, Jaleswor, 14th July 2011.

129 Approximately EUR350 as of May 2012.

130 FGD with representatives of law-enforcement bodies, Jaleswor, 14th July 2011.

131 During validation meeting (28th March 2012) with current chair of the Bar Association Mahottari it was reported that if service seekers approached them without a VDC recommendation letter they would now provide free legal aid.

132 FGD with representatives of law-enforcement bodies, Jaleswor, 14th July 2011.

133 FGD with Youth Group, Jaleswor, 12th July 2011.

134 FGD with *dalit* women group, Suga Bhawanipatti VDC, 13th July 2011.

interviewed said that they had never been to the court.¹³⁵ Insufficient equipment, lack of staff and limited staff capacity in the police were some of the reasons cited as to why violence against women was not being addressed effectively by the state. In addition, women's voices are often ignored when settling disputes traditionally at the community level.¹³⁶ This is particularly the case within the Muslim community, where women expressed their fear of re-victimisation if they reported GBV to male community leaders.¹³⁷

5.6 Linkages between Formal and Informal justice: Opportunities for Strengthening

In Mahottari district, respondents from both formal and informal justice sectors reported that there was no formal mechanism for ensuring coordination and cooperation between formal and informal justice providers. However, there appears to be some ad hoc coordination and linkages between formal and informal justice mechanisms. For example, when any case is referred to court annexed mediation, those relating to the case, such as community leaders and *Maulabi/Hazi*, are invited for consultation.¹³⁸ Another example of attempted coordination was found in the Madhesh Community Mediation Project, supported by DfID/ESP, whereby sharing workshops are held with formal judicial bodies and their representatives including Judges, the Chief District Officer (CDO), representatives from the DPO and District Development Office, District Women and Children Development Officers, and community mediators¹³⁹.

Besides these two examples there was little evidence to suggest that systematic coordination was either a priority or a reality. In spite of this, many respondents highlighted the need for regular dialogue and cooperation between formal and informal judicial bodies in relation to judicial processes and the justice system.¹⁴⁰ It was repeatedly stressed that working across the formal and informal systems was more likely to help informal bodies to keep abreast of laws and new legal information so that they could reduce the volume of cases in formal bodies, and to strengthen and improve referral mechanisms. In particular, *Maulabis* expressed interest in being trained on existing laws and the legal system.¹⁴¹

135 FGD with Muslim Women, Koluwabagiya VDC, 13th July 2011.

136 FGD with *dalit* women group, Suga Bhawanipatti VDC, 13th July 2011; FGD with Muslim Women, Koluwabagiya VDC, 13th July 2011.

137 FGD with Muslim Women, Koluwabagiya VDC, 13th July 2011.

138 KII with representative of District Court Mahottari, 12th July 2011.

139 KII with representative of Madhesh Community Mediation Project, Jaleshwor, 14th July 2011.

140 KII and Discussion with law-implementation bodies, 14th July 2011.

141 *Ibid.*

6. Panchthar District

6.1 District Context

Panchthar is located in the eastern development region. The district shares its border to the east with India (Sikkim and Darjeeling), Terathum and Dhankuta districts to the west, Taplejung district to the north and Ilam and Morang districts to the south. The district is large, with an area of 1,241 square kilometres.

According to the Population Census of 2011, the population totals 198,362, of which 104,475 are female and 93,884 are male. The majority population are Limbu (40.33 percent), followed by Rai (13.94 percent), Brahmin (12.52 percent), Chhetri (10.65 percent), Tamang (6.82 percent) and Dalit (5.53 percent). The district headquarters, Phidim, is currently claimed as the historical and religious centre of the Limbuwan people. It is their belief that Phidim has long been the place where Limbuwans assembled and took important decisions. There is reportedly regilious harmony in the district amongst the Kirant (53.5 percent), Hindus (34.2 percent) and Buddhists (11.33 percent).

Youth migration is widespread in the district. Mostly, young men migrate to India, Saudi Arabia, Malaysia, South Korea, Bahrain, Kuwait, Hong Kong, Qatar, United Arab Emirates and Japan for foreign employment. Agriculture is the mainstay of the district economy, with about 87.5 percent of its population depending on it. Panchthar boasts 135 community forests and is recognised as having successful community forest programming.

Herbs such as *Chiraito*, *Bojo*, *Amliso*, *Alaichi*, *Malingo*,¹⁴² tea and *Loktha* are produced in the district for export. Phidim has been developing as a commercial centre for the mountainous region and is a contact point for many mountainous districts.

Panchthar comprises of forty-one VDCs¹⁴³. There are thirty-three High Schools, sixty-five Secondary Schools, eighty-three Lower Secondary Schools and 322 Primary Schools, including both private and government schools. The literacy rate in Panchthar currently stands at 51.24 percent.¹⁴⁴

Panchthar is divided into two electoral constituent areas, with the Nepali Congress winning in one constituency and the UML winning in the other in April 2008¹⁴⁵. In the previous parliamentary election of 1999, Nepal Communist Party UML was elected in both electoral constituencies of Panchthar¹⁴⁶.

Box 5: Panchtar at a glance

Area: 1241sq km
Population: 198,362
 (104,475 Male & 93,884 female)
Major caste/religious groups:
 Limbu 40.33%
 Rai 13.94.%
 Brahmin 12.52%
 Chhetri 10.65%
VDCs: 41
Electoral Constituencies: 2

Source: Branch Statistic Office (2006).
Panchthar District Profile 2005/06.
 Panchthar.

¹⁴² Local herbs grown in Nepal.

¹⁴³ The Government of Nepal has declared Phidim a municipality, however this decision has not been implemented by the time of writing this report.

¹⁴⁴ Branch Statistic Office (2011). *Panchtar District Profile 2005*. Panchtar.

¹⁴⁵ Nepal Election Commission (2008). 'CA Election Report', accessed 6th February 2012. Available from <http://www.election.gov.np/reports/CAResults/reportBody.php>

¹⁴⁶ Nepal Election Commission (1998). 'Finalised Constituencies With Top Two Candidates', accessed 6th February 2012. Available from <http://www.election.gov.np/EN/toptwo.html>

6.2 Overview of Justice Bodies and Mechanisms in Panchthar

All district-level governmental offices including the District Court, Office of the Government Attorney, District Police Office, District Administrative Office, Armed Police Force Office and Office of Land Revenue are located in the district headquarters.

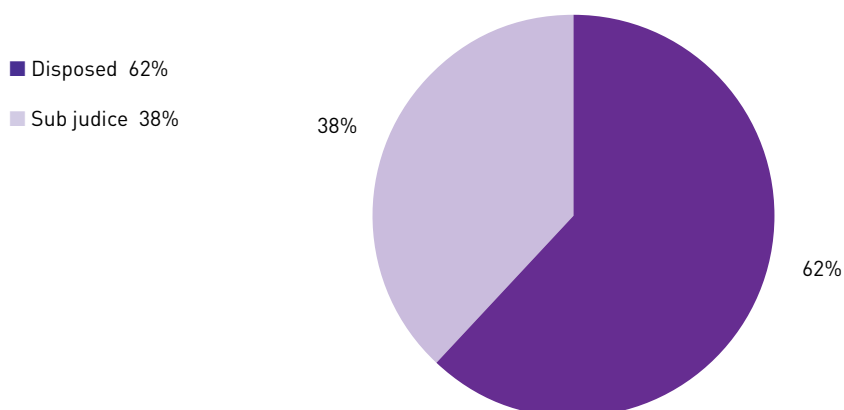
Regarding informal mechanisms, Paralegal Services began to be rolled out in 2003 and are now available in all 41 VDCs. There is also an NGO called the Community Mediation Service Centre in the district; however, it was not functioning at the time of writing. Although there is a tradition of settling disputes by the Elders Assembly in the Limbu Community, the *Chumlung* and *Pancha Bhaladmi* mechanisms were reported as no longer functioning.

6.3 Formal justice: How is it Working in Panchthar?

6.3.1 District Court

In Panchthar District Court all types of cases are registered, including murder, assault, rape, polygamy, divorce, child marriage, arms and ammunition offences, trafficking, theft, drugs and alcohol. A total number of 403 cases (both civil and criminal) were registered in the FY 2010/011. Of these, 248 (62 percent) were settled whereas 155 (38 percent) remain *sub judice*.¹⁴⁷ Systematic proceedings were reported to be followed from registration through out the process.¹⁴⁸ Priority is reported to be given to cases relating to women, children and senior citizens¹⁴⁹.

Diagram 13: Status of Cases in Panchthar District Court in FY 2010/11



6.3.2 Court-annexed Mediation Centre

Panchthar District Court referred some civil cases to its Mediation Centre, as well as a small number of criminal cases, such as ones related to assault and looting. In FY 2009/2010, Panchthar District Court referred nine cases to the Mediation Centre and all cases were settled. However, in FY 2010/2011, at the time of writing, ten cases had been referred but none had been settled.¹⁵⁰ Nine Mediation Centre personnel have received basic mediation training, of which two are female and seven are male. The research found that the Panchthar district Mediation Centre was lacking in trained personnel and that, in addition, the public was reportedly unaware of the function of the Centre.¹⁵¹

¹⁴⁷ Information provided by District Court Panchthar, 11th June 2011.

¹⁴⁸ KII with district court registrar, Panchthar, 11th June 2011.

¹⁴⁹ KII with Justice of Panchthar District Court, Panchthar, 11th June 2011.

¹⁵⁰ Information provided by Court-annexed Mediation Centre, Phidim, 15th June 2011.

¹⁵¹ FGD with Women group and Paralegals, Panchthar, 11th June 2011.

6.3.3 District Administrative Office

Cases relating to public offences, illegal arms and ammunition, money lending, and citizenship are currently under consideration in the DAO. It was found that lawyers are generally not appointed to registered cases in the DAO and that they are rarely consulted in the process. At the same time, political pressure and influence is perceived to be high.¹⁵² It was suggested by one interviewee that the delivery of justice by DAO can be more easily influenced due to the absence of legal representation in DAO case resolution.

6.3.4 District Police Office

Across Panchthar, serving a population of 198,362, there are thirty police offices under the District Police Office. Of these, six are Area Police Offices, fifteen are Police Posts, seven are temporary police posts, and there is one Traffic police unit. Eleven out of 41 VDCs do not have a Police Unit. Approximately 334 police personnel are deployed in Panchthar district to maintain peace and security. Of these, eight are female police officers, who rank from constable to head constable. Around 87 police are deployed in the District Police Office in Phidim and remaining forces are deployed across 29 different Police units.¹⁵³

A wide variety of complaints including those relating to beating, kidnapping, fraud, arson, looting, human trafficking, murder, polygamy, cow slaughter, narcotics, citizenship, and abortion are registered in Panchthar District Police Office (DPO). Political pressure is reported as being common.¹⁵⁴ In addition, human rights norms are not followed, as witnessed during an observation visit by researchers, where police personnel used physical violence against an accused person.¹⁵⁵

Box 6: Nepal Police in Panchthar District Overview

Total Police Personnel: 334
Female Personnel: 8 (2%)
Police personnel per capita: 1 to 594
Female police per female capita: 1 to 13,059
Cases Registered in 2010/2011: 92

Information provided by Panchthar District Police Office, June 2011

Case study 3: Political Interference in Justice Mechanisms in Panchthar

Subash Limbu, a resident of Panchthar, married Dhan Kumari Limbu in 2005. They remained childless for a few years. Without medical examinations of either Dhan Kumari or Subash Limbu, Subash Limbu married another woman citing the inability of Dhan Kumari to bear children.

Dhan Kumari subsequently registered a complaint against her husband and his new wife and the police arrested both of them. However, Dhan Kumari reported that she was forced to withdraw the complaint under political pressure. Reconciliation was made on the condition that Subash provided a citizenship certificate and share of property to Dhan Kumari. After withdrawing the case, Dhan Kumari received neither citizenship certificate nor compensation. Moreover, she could not take action against her husband as political pressure prevented her from filing another complaint with the police.¹⁵⁶

6.3.5 Women and Children Service Centre, District Police Office

The WCSC operates out of the DPO in Phidim. Like other districts, the Centre has jurisdiction to hear cases relating to violence against women and issues relating to children; however, case proceedings are dealt with by the Case Section of the Police Office. It aims to mediate between

¹⁵² *Ibid.*

¹⁵³ Information provided by District Police Office, Phidim, 10th June 2011.

¹⁵⁴ KII with representative of DPO, Panchthar, 10th June 2011.

¹⁵⁵ Observation of District Police Office, Phidim, 10th June 2011.

¹⁵⁶ KII with service seeker, Panchthar, 12th June 2011.

conflicting parties. The WCSC is run by two female police personnel, a police sub-inspector and a police constable, who reported not to have received any kind of specialist training to undertake their role.¹⁵⁷ They also noted that they had minimal knowledge of the Domestic Violence Service Centre that is operated by WCDO. In addition, the Centre has no private room for complaint registration, victim consultations or testimonials.¹⁵⁸ The WCSC has not been able to effectively provide an adequate service to victims of domestic violence due to limited budget, infrastructure, human resources and skills.

6.3.6 Domestic Violence Service Centre, Women Development Office

The Service Centre was established in 2010 in Panchthar District and it acts as short-term shelter for female victims of domestic violence and sexual abuse. Thirty two complaints were registered during FY 2010/11, of which twenty seven (84 percent) were settled through reconciliation with the Police and five (16 percent) in the court through court-annexed mediation.¹⁵⁹ In FY 2011/12 ten complaints were registered, of which three cases were settled by the court; in one case the accused is facing trial and is in judicial custody; two cases were settled through reconciliation. The remaining three cases have been settled through counselling by the Service Centre. At the time of research, the Service Centre reported that it was struggling to effectively implement its programmes with its allocated annual budget of NPR1,200,000¹⁶⁰, which was dispersed only at the end of the fiscal year.¹⁶¹ Following the late dispersal of funds, Panchthar Centre was forced to divide the twelve lakhs across six area-level service centres in the district in order to spend the budget before the end of the year.

6.3.7 Community Police Service Centre

Panchthar district Community Police Service Centre (CPSC) is run by a single police officer, along with a seventeen-member community committee. The Service Centre relies on citizen leadership; however, at the time of writing, the Panchthar Centre reported that it had not handled a single case. This was perceived to be due to low levels of funding.¹⁶² In addition to requiring more financial resources, its representative believed that the Centre would be able to engage on more effectively on community safety issues if mediation and counselling training were to be provided to CPSC committee members.

6.4 Informal justice: How is it Working in Panchthar?

6.4.1 Paralegal Committees

All-female Paralegal Committees are active in Panchthar across all VDCs. Paralegals hear and settle a range of disputes such as domestic violence, dowry-related violence, road access, crop disputes and physical assault free of cost.

Committee members receive twenty-two days of training in three phases. This has been increased from eighteen days. Members reported coordinating with other organisations, such as District Bar Association and Service Centre, in order to obtain legal aid and shelter for victims. It was also noted that criminal cases such as rape and trafficking were passed to the state justice system for action. Committee members recognised that Panchthar paralegals did not have the jurisdiction to deal with such cases.¹⁶³

157 KII with representative of WCSC, Panchthar, 10th June 2011.

158 *Ibid.*

159 Information provided by Service Centre Phidim Panchthar, June 2011.

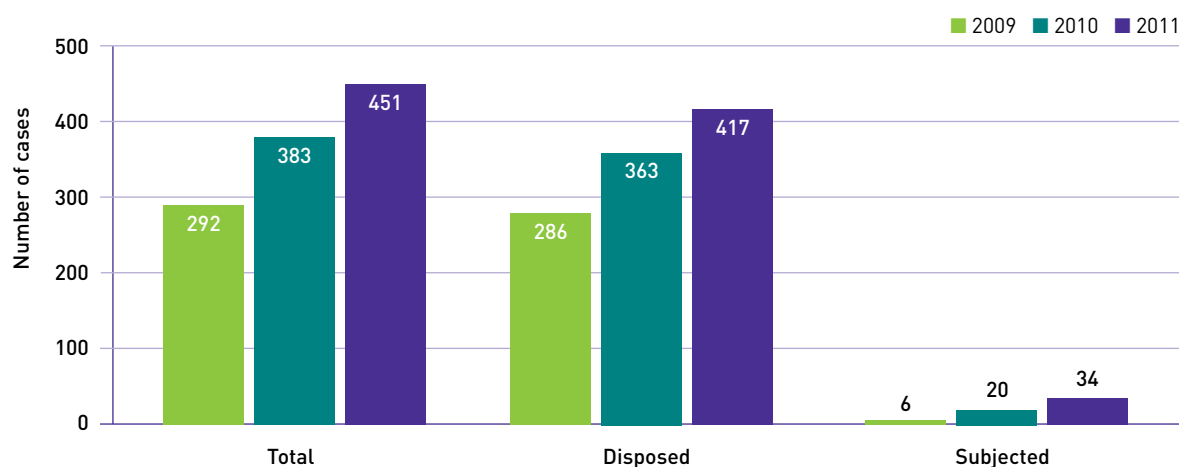
160 Approximately EUR1800 as of May 2012.

161 KII with Women and Children Development Officer, Panchthar, 11th June 2011.

162 KII with CPSC member, Panchthar, 11th June 2011.

163 FGD with Women Group and Paralegal Group, Panchthar, 10th June 2011

Diagram 14: Settled and Referred Disputes from 2009 to 2011 by Panchthar Paralegal Committees (PLCs)¹⁶⁴



The above data shows the total number and status of case registrations in Panchthar PLCs over three years. The high proportion of settled cases show that PLCs have been actively working to resolve disputes with 87 percent reported as settled in 2009, 94 percent in 2010 and 92 percent in 2011. PLCs have also been facilitating victims to access justice from formal justice mechanisms such as the court and police by referring cases to these institutions when necessary.

6.4.2 Traditional Dispute Mechanisms (Limbu Community)

According to various formal and informal justice providers, community people and women's groups, traditional justice mechanisms such as *Chumlung* and *Pancha Bhaladmi* are now not in practice. However, there is still the practice of consultation among villagers if disputes occur within their community.¹⁶⁵ During discussions with political parties, participants reported a weakening of traditional dispute settlement practices in the Limbu community. Reasons cited were due to the increasing use of paralegal committees, the involvement of women's groups for dispute settlement, the influence of local peace groups and political parties, as well as the growing ethnic diversity of the population.¹⁶⁶

6.5 Analysis: Access to Justice in Panchthar

Despite the fact that Panchthar is remote and mountainous, and that all formal judicial bodies are located in the district headquarters, the number of complaints registered with formal bodies is relatively high. However, evidence shows that access to the formal system is limited by extremely lengthy procedures, especially in the District Court. The public reported that formal justice delivery was time consuming and costly. This perception is supported by the percentage of *sub judice* cases in the District Court (38 percent) which exposes the court's inability to ensure justice delivery within a reasonable time frame.

Although many in Panchthar accept the DAO as an effective and swift state dispute resolution body¹⁶⁷, the provision which allows the DAO to settle cases without consulting a lawyer is undermining due legal process and opens up space for case interference by different parties. In

¹⁶⁴ Information provided by Registrar office, District Court, Panchthar, 22nd March 2011.

¹⁶⁵ FGD with Political Parties, Panchthar, 10th June 2011.

¹⁶⁶ *Ibid.*

¹⁶⁷ FGD with Law enforcement official, Panchthar, 12th June 2011.

addition, DAO case section staff have received little training and do not appear to be familiar with the principles of human rights. DAO office assistants were reported to be helping provide citizenship certificates despite this being beyond their remit and authority. This and the lack of legal representation for cases registered in the DAO means that service users face significant problems when seeking justice.

According to the District Government Attorney, cases in district court are registered mostly by the rich and middle classes, and those people residing near the district headquarters. Except for cases of a criminal nature, it was also reported that very few serious cases were brought to the court by poor and marginalised people.¹⁶⁸ This is mainly due to lack of awareness, poverty and headquarter-centered mechanisms versus geographical remoteness. Although roads and transportation facilities are gradually improving, those living in remote villages such as Limba and Chyangathapu (a two-day walk from Phidim) rarely approach state mechanisms unless the case is deemed very serious.¹⁶⁹

Legal aid provision in Panchthar is barely operative. As per the Legal Aid Act (1997), there should be a legal aid committee in Panchthar responsible for compiling a list of legal aid lawyers and deciding who will receive legal aid. The district committee is also responsible for providing remuneration to legal aid lawyers for their services. However, the government appears to have not provided a sufficient budget to the committee, and Panchthar's appointed Legal Aid lawyer has not received remuneration since 2009/10.¹⁷⁰ Although some lawyers, as members of the District Resource Group, have been providing legal aid on PLC recommendations, there are no NGOs providing free legal aid in Panchthar. In addition, communities lack knowledge and awareness of the state provision of free legal representation, and victims are unwilling to consult lawyers due to the charges.¹⁷¹

Financial and time costs were the reasons given by service users, who reported their preference for informal bodies, which are considered a better option for those living rurally. Formal justice representatives agreed that the public was able to more promptly and cheaply access justice with informal entities at the local level. Service users noted that access to justice for the general public, particularly women, had improved as paralegals hear both disputing parties, were reportedly more sensitive about disputes relating to women and tended to follow human rights principles. The fact that there are paralegals in each of Panchthar's VCDs made it much easier for disputing parties to seek justice. Furthermore, the paralegal mechanisms in Panchthar were reported to be reducing the workload of formal bodies;¹⁷² however, as yet there is little data to support this claim.

Although the research found that the public appreciated the work done by such Paralegal Committees in Panchthar, there were mixed feelings as to their sustainability, efficacy and consistency across the district. Key concerns were lack of adequate funding; lack of guidelines for informal bodies; variation in committee member qualifications.¹⁷³ The research noted that the working style of paralegals did not differ hugely from that of traditional dispute resolution mechanisms, as committee members only had basic knowledge about human rights principles and mediation skills. Additionally, some of the women on committees noted that they had not received adequate support and, at times, had encountered resistance from their husbands and families. This familial pressure, along with their lack of remuneration, appears to be negatively affecting the function of paralegal committees in Panchthar.¹⁷⁴

168 KII with District Government Attorney, Panchthar, 9th June 2011.

169 KII with District Government Attorney, Panchthar, 9th June 2011.

170 KII with president of District Bar Association (member of district legal aid committee), Panchthar, 12th June 2011.

171 *Ibid.*

172 FGD with law-enforcement official, 12th June 2011.

173 KII with PLC member, Panchthar, 9th June 2011.

174 *Ibid.*

6.6 Coordination and Cooperation between Formal and Informal Judicial Bodies

Overall, there is little interaction and coordination between state level judicial mechanisms and PLCs. Among both state and non-state justice providers there is a lack of awareness about the mandate, work and services provided by the other. One interviewee said that, as a result of a lack of coordination, there was a lack of trust between the sectors and respect for each other's roles.¹⁷⁵

There are some examples of limited cooperation. The Justice Sector Coordination Committee (JSCC)¹⁷⁶ Panchthar holds a monthly meeting. This year, the committee has selected a PLC member from Panchthar as the civil society representative on the committee. However, the JSCC is not explicitly mandated to strengthen coordination between informal and formal justice mechanisms to enhance access to justice. There is also evidence that the police have organised ad hoc discussions with paralegals,¹⁷⁷ yet such meetings are not official policy and are instead guided by individual interest. PLCs also organise meetings with formal bodies in the course of delivering their duties.¹⁷⁸

However, the Service Centre (Domestic Violence) was noted as being very isolated by a local women's group engaged in an FGD and in interviews with the WCSC of the Nepal Police. Respondents reported that the Service Centre neither coordinated with NGOs working in the field of domestic violence, nor did NGOs find it necessary to coordinate with it.¹⁷⁹ It was proposed that such coordination might help to strengthen services for those living in Panchthar, given unreliable financial resources. During a follow-up visit to verify the findings of this research, the WCDO reported that coordination was being increased.

¹⁷⁵ FGD with law-enforcement official, Panchthar, 12th June 2011.

¹⁷⁶ Justice Sector Coordination committee was formed by the District Court Rule to deliver justice effectively and meaningfully.

¹⁷⁷ FGD with law-enforcement official, 9th June 2011.

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*

7. Sunsari District

7.1 District Context

Sunsari district is situated in the Koshi Zone in the eastern region of Nepal. It shares a border with Bihar State of India to the south, Morang to the east, Udayapur and Saptari to the west and Dhankuta to the north. The district covers 1,257 square kilometres¹⁸⁰ and is divided in northern and southern sections by the East-West Highway.

The population of Sunsari district is 625,633 of which 315,530 are male and 310,103 are female.¹⁸¹ The majority of people in Sunsari are Hindu (77.09 percent), 11.06 percent are Muslim and 6.73 percent are Kirant. There are smaller numbers of Buddhists, Christians, Jains, Shikhs and other religions in the district. According to the 2001 census, there are 98 various cast/ethnic groups present in Sunsari. The main ethnic groups of Sunsari are Tharu (14 percent), Muslims (11.06 percent), Chhetri (8.38 percent) and Brahmin (7.93 percent)¹⁸².

The major source of livelihood in Sunsari is agriculture. The main crops of Sunsari are rice, wheat, maize, sugarcane and jute.¹⁸³ An industrial corridor runs from Duhabi in the south of the district to Dharan in the north. The main industries here are jute; cooking oil; snack foods; soap; plastic; construction materials.

On 18th August 2008 the Koshi dam was breached and the ensuing flood affected 10 VDCs, displacing 70,000 people from their houses. These people stayed more than six months in displaced persons camps¹⁸⁴. The flood also destroyed infrastructure such as the East-West Highway, schools and health posts. Much of this infrastructure has yet to be reconstructed.

Sunsari district has 3 municipalities (Inaruwa, Itahari and Dharan) and 49 VDCs. All of the government offices are located in the district headquarters of Inaruwa.

There are six electoral constituencies. In the Constituent Assembly election of 2008, the Madhesi People's Rights Forum Nepal was elected in three electoral constituencies; Nepal Communist Party UML was elected in two electoral constituencies; United Communist Party of Nepal Maoists was elected in one electoral constituency¹⁸⁵. In the previous parliamentary election of 1999, Nepal Communist Party UML was elected in one electoral constituency and Nepali Congress was elected in all other electoral constituencies.¹⁸⁶

Box 7: Sunsari at a glance

Area: 1,257 sq km
Population: 625,633
Major caste/religious groups:
 Tharu 14%
 Muslim 11.06%
 Chhetri 8.38%
 Brahmin 7.93%
 Hindu 77.09%
 Kirant 6.73%

VDCs: 49
Municipalities: 3
Electoral Constituencies: 6

Source: Branch Statistic Office Inaruwa (2005). *District Profile Sunsari 2062*. Sunsari.

180 Branch Statistic Office Inaruwa (2005). *District Profile Sunsari 2062*. Sunsari.

181 *Ibid.*

182 *Ibid.*

183 *Ibid.*

184 UN OCHA (2008). 'Koshi River Floods in Sunsari and Saptari: OCHA Situation Report No. 4', accessed 15th November 2011. Available at http://www.searo.who.int/LinkFiles/Sunsari_Flooding_ReportNo4.pdf

185 Nepal Election Commission (2008). 'CA Election Report', accessed 2nd February 2012. Available from <http://www.election.gov.np/reports/CAResults/reportBody.php>

186 Nepal Election Commission (1998). 'Finalised Constituencies With Top Two Candidates', accessed 2nd February 2012. Available from <http://www.election.gov.np/EN/toptwo.html>

7.2 Overview of justice bodies and mechanisms in Sunsari

All government offices are located in the district headquarters of Inaruwa, including the District Court, the Office of the Government Attorney, District Police Office, District Administration Office, Office of the Armed Police Force, Women and Children Office and Land Revenue Office. Under the District Police Office, there are 11 Area Police Offices, 2 Ward Police Offices, 2 Border Police Posts, 15 Police Posts and 20 temporary Police Posts. There is also a Community Police Office with 7 police personnel and 6 WCSCs. Each Centre has 6 female police personnel.¹⁸⁷ There is also 1 Regional Prison and 1 Armed Police Force Camp in the district. The District Court is presided over by 3 judges.

Various paralegal committees have been formed and are running in Sunsari. CeLRRd has initiated paralegal programmes in 15 VDCs in Sunsari in 1999. The programme was extended to 13 more districts in 2005. In 2007 PLCs were established with the support of UNICEF/DfID and are in operation in 35 VDCs and all 3 municipalities. 14 VDCs in Sunsari are yet to initiate paralegal programmes.¹⁸⁸ In Muslim communities, *Maulanas* (religious leaders) settle disputes. In other communities, respected community leaders are also involved in settling local disputes.¹⁸⁹

7.3 Formal justice: How is it Working in Sunsari?

The following section outlines the status of formal justice mechanisms in Sunsari, in terms of numbers and types of cases pending, and their perceived effectiveness as a provider of justice.

7.3.1. District Court

The district court of Sunsari has its own building. The Bar Association and Mediation Centre are located in a separate building within the same compound. There is the provision of a Legal Aid Committee, a Women's Section in the Bar Association for female lawyers, and a stipendiary lawyer in the court. There is a Juvenile Bench and a child-friendly section within the District Court, as well as the provision of child psychologists. It was found that cases to be heard *in camera* were indeed heard *in camera*. There are three benches in the court, with separate sections assigned for all benches. The cases are disposed by the prescribed bench and there are separate rooms for separate sections.¹⁹⁰

Cases including divorce, alimony, disputes relating to land, partition of property, assault, looting, rape, narcotics, *dacoity*, theft, murder, attempt to murder, domestic violence, irregularities in academic examinations, human trafficking, and deaths from road accidents have been filed in the District Court of Sunsari¹⁹¹.

In FY 2010/11 there were 1,902 civil cases in process, of which 1,138 cases were registered during FY 2010/11 and 768 were pending from the previous year. Amongst these cases, 1,002 cases were settled and 900 cases are still *sub judice*¹⁹².

1,155 criminal cases were registered in the district court in FY 2010/11 and 494 cases were carried over from the previous year, making a total number of criminal cases of 1,649. Among those cases, 920 cases were settled by the court and 729 cases are still *sub judice*. Additionally, 2 petitions relating to *habeas corpus* were registered and subsequently settled. 20 injunction petitions were registered. Of these, 5 petitions were settled and 15 petitions *sub judice* in FY 2010/11.¹⁹³

¹⁸⁷ Data provided from District Police Office, Sunsari, 19th-23rd August 2011.

¹⁸⁸ KII with representative of Sunsari PLC, Mahendra Nagar VDC, 21st August 2011.

¹⁸⁹ Results of field research, Sunsari, 19th-23rd August 2011.

¹⁹⁰ Observation of District Court by field researchers, Sunsari, 22nd August 2011.

¹⁹¹ KII with representative of Sunsari district court, Inaruwa, 22nd August 2011.

¹⁹² Data provided by Sunsari District Court, 22nd August 2011.

¹⁹³ *Ibid.*

7.3.2. Court-annexed Mediation Centre

The Court-annexed Mediation Centre is housed in the building of the Sunsari District Bar Association, on the premises of the District Court. This centre settles cases referred by the court through mediation by prescribed mediators. The centre then refers cases back to the court if they cannot be settled through mediation¹⁹⁴. In Sunsari, 24 persons have received training on mediation and are working for the court-annexed mediation centre. This includes 14 lawyers, 6 social workers and 4 government officials.

Representatives reported that the need for mediation training and legal literacy programmes for police personnel, government officials, district-level leaders of political parties, VDC Secretaries, staff of the WCSC within the police, and staff of organisations and agencies responsible for hearing cases relating to domestic violence was high. During FY 2009/10, 39 cases were referred for mediation. Of these, 13 cases were settled through mediation¹⁹⁵.

7.3.3. District Administration Office

The DAO prosecutes cases relating to public offences. Complaints on cases relating to citizenship, financial transactions, domestic violence, assault, looting, encroachment of land, and narcotics are filed in the DAO. The DAO receives approximately 8 to 10 of such cases weekly.¹⁹⁶ Representatives of the DAO reported that there was an adequate number of administrative officials to deal with cases, but a lack of staff with legal knowledge¹⁹⁷. Without legal backgrounds, DAO officials settle cases on the basis of experience¹⁹⁸. Despite this, it is reported that verdicts rendered by the District Administration Office have not been taken to appeal¹⁹⁹.

7.3.4 District Police Office

The police office reports receiving complaints relating to *dacoity*, murder, attempt to murder, abortion, bovine slaughter, suicide, arson, arms and ammunition, accidental death, theft, fraud, counterfeiting and forgery, narcotics, black market profiteering, copyright infringements, forced donations, public offences, citizenship, assault, human trafficking, polygamy, rape, abduction, irregularities in examination, and allegations of witchcraft²⁰⁰.

There are 770 police personnel at the District Police Office and a small number of personnel also serving there on temporary assignment.²⁰¹ During FY 2010/11, 770 cases were registered in the District Police Office including cases of suicide and accidents.²⁰²

Community Police Service Centre

The Community Police Service Centre, which is based on people's participation in public security, is staffed by 7 police personnel.²⁰³

Women and Children's Service Centre

Six WCSCs have been established in Sunsari. These are located in 5 Area Police Posts and the District Police Office. Each of these centres can staff 6 women police personnel. However, in most of the WCSCs, all six posts are not filled. These centres receive cases relating to violence against women and children.

The WCSC under the District Police Office reports receiving a majority of complaints relating to GBV and domestic violence. However, it is the Case Section of the police office which is responsible

194 KII with representative of CAMC Sunsari, Inaruwa, 22nd August 2011.

195 *Ibid.*

196 KII with a representative of Sunsari DAO, Inaruwa, 23rd August 2011.

197 *Ibid.*

198 *Ibid.*

199 *Ibid.*

200 Information provided by District Police Office, Sunsari, 22nd August 2011.

201 Data provided by District Police Office, Sunsari, 22nd August 2011.

202 *Ibid.*

203 *Ibid.*

for initiating proceedings if deemed necessary. Civil society respondents in this research reported that the lack of trained female police personnel in the Case Section meant that cases were often not given priority and were not pursued. There are five low-ranking female police personnel (one Assistant Sub-Inspector, two head-constables and two constables), assigned to the district-level WCSC. Although there is a separate room for the WCSC, it lacks physical infrastructure. The room is congested because police, female prisoners, and guards need to stay in the same room for proceedings.²⁰⁴

Officers reported that criminal cases, for instance cases relating to beating, rape, human trafficking, polygamy and other cases in which the victims are women, are often dropped because of political threats and intimidation²⁰⁵.

7.4 Informal justice: How is it Working in Sunsari?

The following section outlines the status of informal justice mechanisms in Sunsari, in terms of the process of receiving and dealing with cases, the types of cases received, and their perceived effectiveness as a provider or facilitator of justice.

7.4.1 Paralegal Committees

Currently, PLCs are in operation in 35 VDCs and 3 Municipalities (Dharan, Itahari and Inaruwa) of Sunsari district. Members of PLCs settle small civil disputes registered with the committee through mediation. They have received 18 days paralegal training, which covers basic legal understanding and mediation skills. While settling disputes, the paralegal committee coordinates with experts, respected elders, the WCSC of Nepal Police and political leaders as required. However, due to political pressure often the process is lengthened and the disputing parties have to face additional problems (*see Case Study 4*).

Case Study 4: Political Pressure Blocks Access to Justice

Nirmala (name changed to protect identity), a resident of Sunsari District, has been living separately from her husband, along with her two daughters. Nirmala's husband is a Headteacher at a local government school in Taplejung district. Nirmala got married seven years ago and is the second wife of her husband. At the time of Nirmala's marriage she was informed that her husband and first wife had divorced and were living separately. Nirmala and her husband lived together and had a good relationship for two years after they got married. After two years, when Nirmala gave birth to a daughter, she began to be subjected to physical abuse by her mother-in-law and husband. The abuse increased when Nirmala gave birth to a second daughter. Then, two years ago, Nirmala's husband threw her and her children out of their home and sent them to a separate house. Since then she has received no support, financial or otherwise, from her husband for herself or her children. At the same time her husband and his first wife reunited and started living together again. Nirmala filed a complaint with the PLC, however, it could not resolve her case. The PLC then convened a discussion with local leaders, a local women's group, and representatives of various political parties to try to get justice for Nirmala. However the case became politicised as Nirmala's husband was associated with one political party, which took his side, and then representatives of the other political parties sided with Nirmala. When this process did not work, Nirmala submitted numerous complaints to the WCSC, the District Administration Office and the District Police Office in order to summon her husband. However, due to pressure from the political party with which Nirmala's husband was affiliated, none of these agencies were able to bring him for questioning. The case continues to date.²⁰⁶

204 KII with representative of WCSC, Sunsari, 23rd August 2011.

205 KII with representative of WCSC, Sunsari, 23rd August 2011.

206 Interview with female service user, Bhadgaun Sinuwari VDC, 20th August 2011.

Most cases registered with the paralegal committee are related to domestic violence, property disputes, divorce, polygamy, child marriage, maintenance and alimony, rape, assault, human trafficking, allegation of witchcraft, and *Talak*²⁰⁷ (in Muslim communities).

To support PLCs in Sunsari there is a District Resource Group (DRG), comprised of 13 members, including 4 women. Of the total members, 4 members are respected social leaders, 8 members are lawyers and one member is from the WCDO. The four respected social leaders include one woman from the *dalit* community, one woman from the Madhesi community, and one member is the district chairperson of paralegal committees. The DRG facilitates training for the PLC members and provides them with legal advice.

Case Study 5: Paralegal Committee Members Face Security Threats

PLC members are facing various challenges to undertaking their role in Sunsari district. In many places, members of PLCs have been attacked by angry defendants and community members. Members also report being threatened and told not to take part in the committee by family and community members. Five years ago, in one village in Sunsari, all of the members of a PLC were beaten for filing a complaint to the Police against rampant gambling in the village. Police informed the wider community about the complaint made by the PLC and its members were assaulted by villagers.⁴

7.4.2. Traditional Justice Mechanisms

In Muslim communities in the district religious leaders, namely *Maulabi* and *Maulana*, settle disputes and deliver decisions. Such religious leaders often settle disputes on the basis of Islamic law²⁰⁸. Religious leaders decide upon disputes relating to divorce, domestic violence, money lending, and assault; require the guilty party to pay damages; facilitate reconciliation²⁰⁹. These leaders generally do not have knowledge of the state's legal provisions regarding the issues with which they are dealing.²¹⁰ Due to the patriarchal nature of these communities, women are rarely involved in dispute resolution or decision-making processes. However, female community members hesitate to use court instead of religious leaders due to the fear of familial and societal stigma.²¹¹

In addition to these mechanisms in Muslim communities, there are also practices of justice being delivered by respected community leaders or local political leaders in many VDCs and communities in Sunsari. These leaders are often a first point of call for parties to a case. In many instances, if the case is minor and civil in nature, community leaders bring both parties together to try to discuss and solve the issue amicably.²¹² If the case is complex and/or criminal in nature then community leaders reported that they referred parties to the police or formal justice mechanisms.²¹³ Cases brought by women, such as domestic violence, are normally referred to the local PLC, where one exists.²¹⁴

207 Divorce, as per Islamic religious law.

208 KII with religious leader, Sunsari, 23rd August 2011.

209 *Ibid.*

210 *Ibid.*

211 FGD with Paralegal committee members, Jalpapur VDC, 19th August 2011.

212 FGD with Paralegal committee members, Jalpapur VDC, 19th August 2011; FGD with mixed group, Jhumka Bhadgaun Sinuwari VDC, 20th August 2011; FGD with indigenous community, Dharan, 20th August 2011; FGD with mixed community, Barakshetra VDC, 21st August 2011.

213 *Ibid.*

214 *Ibid.*

7.5 Analysis: Access to Justice in Sunsari

Who is able to access justice?

Sunsari district is highly diverse in terms of caste, ethnicity and religious communities, as well as in terms of economic background.²¹⁵ Due to the high costs associated with using the formal state justice system, the poor, illiterate and those from highly marginalised groups tend to use informal mechanisms to resolve all but the most serious cases. Wealthier and less marginalised sections of society also use these mechanisms, but often as a first resort.²¹⁶ Those who use informal mechanisms do so believing that the dispute will be settled faster and with less cost and complications than through formal state justice mechanisms.²¹⁷ Respondents reported that those with wealth and power, in particular those with political access and connections, used state justice mechanisms, believing that, with the use of power, money and access, they could influence decisions in their favour.²¹⁸

In many cases of a criminal nature, the plaintiff and witnesses receive threats from the defendant, their family or a political party. In such cases the plaintiff or a witness can often be forced to change their evidence, thereby weakening the case and causing it to be withdrawn.²¹⁹

It was found that most poor, illiterate and low-caste people do not use the court, even when they endure injustice. Moreover, women subjected to domestic violence were also found not to be using the court.²²⁰ In many cases, members of the public do not know whether or not to bring the dispute to court and, even when they do know, they do not want to incur the expense and time required for court processes.²²¹ Many women use PLCs, feeling more comfortable to bring issues such as domestic violence to an all-women committee, and because the services are local, fast and free.

In terms of state justice provision, many are restricted from accessing services due to economic reasons, a lack of awareness of which services exist and how to use them, and geographical remoteness, amongst other reasons. Sunsari stretches from the geographically remote mountains to the plains of the *Terai*, bordering with India. The district headquarters, Inaruwa, is in the south of the district which restricts access for those living in the north of Sunsari. In order to address economic obstacles to accessing justice, there is the provision of a stipendiary lawyer in the court and the Bar Association provides free legal aid to those who need it.²²² However, many people, particularly those belonging to highly marginalised ethnic groups, have no knowledge of these services.²²³

There are common complaints from respondents that cases brought before quasi-judicial bodies such as District Administration Office are not heard before a bench and are not represented by lawyers, therefore leading to failures to follow due process, corruption and interference in the process.

How justice is done

State justice provision is slow. In both civil and criminal cases, summons do not get delivered for months in some instances because of procedural complexity or delay. Many respondents believed that justice delivery was affected by a disputing party's influence on judicial bodies, particularly

215 Branch Statistic Office Inaruwa (2005). District Profile Sunsari 2062. Sunsari.

216 FGD with PLCmembers, Jalpapur VDC, 19th August 2011; FGD with mixed group, Jhumka Bhadgaun Sinuwari VDC, 20th August 2011; FGD with indigenous community, Dharan, 20th August 2011; FGD with mixed community, Barakshetra VDC, 21st August 2011.

217 *Ibid.*

218 *Ibid.*

219 Case No. 3192, Rape Case, Sunsari, November 23rd 2011.

220 *Ibid.*

221 FGD with representative of law-enforcement bodies, Inaruwa, 22nd August 2011.

222 FGD with representative of law-enforcement bodies, Inaruwa, 22nd August 2011.

223 *Ibid.*

in cases dealt with by quasi-judicial mechanisms, such as the DAO. In some instances, cases are not settled even after years of proceedings. The delay in providing justice is attributed to a lack of skilled staff and personnel, geographical remoteness of offices in relation to some service users,²²⁴ and procedures of issuing summons.²²⁵

Although informal mechanisms are often the only recourse for the poor and marginalised, many respondents also harboured scepticism about the effectiveness of informal mechanisms, as they are believed to come under heavy political and societal influence (*see case studies 4 and 5*).²²⁶ That said, women of various ethnic backgrounds and economic statuses approach PLCs for justice and dispute resolution. Some PLCs have been accused of destroying families and upsetting community harmony by empowering women to claim their rights. Members of PLCs share experiences of being verbally and even physically abused by community members for their work. In addition, PLC members work as volunteers, which creates an additional burden and can cause disputes, including violence, within the household.

7.6 Linkages between Formal and Informal Justice: Opportunities for Strengthening

There is no legal provision which facilitates coordination and cooperation between formal and informal justice mechanisms. However, PLCs in Sunsari district have been coordinating and cooperating with PLCs of other VDCs, the police, the WCSC, and other organisations in the field of dispute settlement. However, they have not been able to confer or coordinate with formal judicial bodies such as the district court in the course of their work.²²⁷

Most participants in group discussions called for the need for proper laws and procedures governing the operation of non-state justice mechanisms. Such laws should recognise the important role played by such mechanisms in ensuring access to justice at the local level.²²⁸ While responding to the question as to whether there had been coordination and cooperation between formal and informal justice mechanisms, many respondents said that the WCSC of the police and the Area Police Office occasionally called on PLCs, civil society and local leaders of political parties to discuss disputes, but there had been no coordination and cooperation with the district court.²²⁹

While the Nepal Police is not mandated to see and register any other cases than those listed in the State Cases Act, more than 50 percent of their work goes into solving petty cases of a civil nature (neighbourhood fights regarding cattle grazing on another's crops, access to canals, family feuds, etc.). Such cases should not come directly to the police as they are civil in nature. However, because the Nepal Police Act has put the Nepal Police under the CDO, such minor disputes go to the CDO and the CDO then refers the case to the police. The police then spend a considerable amount of time bringing the two parties together to mediate the dispute.²³⁰ This has increased so much in recent years that the police have now established a separate complaints investigation unit, where civil cases are separated from criminal ones for mediation. In the words of one senior official in the Sunsari Police Office, 'the Nepal Police is the state agency which does everything that others do not do, either because they cannot, or because they don't want to.'²³¹

224 KII with representative of Sunsari district court, Inaruwa, 22nd August 2011.

225 FGD with representative of law-enforcement bodies, Inaruwa, 22nd August 2011.

226 *Ibid.*

227 KII with representative of Sunsari PLC, Mahendra Nagar VDC, 21st August 2011.

228 FGD with PLC members, Jalpapur VDC, 19th August 2011; FGD with mixed group, Jhumka Bhadgaun Sinuwari VDC, 20th August 2011; FGD with indigenous community, Dharan, 20th August 2011; FGD with mixed group, Barakshetra VDC, 21st August 2011.

229 *Ibid.*

230 KII with representative of Sunsari District Police Office, Inaruwa, 27th February 2012.

231 *Ibid.*

The Nepal Police is referring cases to other formal and informal agencies depending upon the nature of the case. Whenever a case between two women comes, regardless of the issue or nature of the dispute, they refer to the WCDO for support. Any minor fight between husband and wife is also referred to the WCDO²³². The WCDO also refers cases which involve violence within families, between husband and wife, and in communities on the issue of women (e.g. accusations of witchcraft) to the WCSC, CDO and the DPO of Sunsari, where the case is then taken forward. However, the WCO remarked that the effectiveness of this coordination is very dependent upon senior personnel in the Nepal Police. If the Superintendent of Police (SP) is progressive and understands these issues, s/he makes sure women's cases are dealt with seriously.²³³

The police and WCDO both refer cases to the court if they are criminal in nature. However, there are no examples of the court referring cases to paralegals or other mediators, other than the court-annexed mediation centres (within the court premises). The practice of court-annexed mediation is reported to be growing in Sunsari.²³⁴

Case Study 6: Seeking Justice for Rape

Saraswoti (name changed to protect identity), aged 18, a resident of Barahchhetra, Sunsari district, married at early age due to the poor economic condition of her household. However, her married life was not happy. She learned only after her marriage that her husband was a married man, his first wife having left him. She started asking her husband why she was deceived, but her questions resulted only in beatings from her husband and by other family members. Saraswoti was thrown out of her house within a year of her marriage. Then one day she was kidnapped and taken to Kathmandu, where she was raped and left by the side of a road. She reported the incident of rape to Gaushala Police Office of Kathmandu and went back to her village.

Saraswoti could not identify her assailant because his face was covered by a mask. However, as she was called to a meeting with a relative of her husband before she was kidnapped, she presumed the involvement of her husband in her kidnapping and rape. She filed a complaint against her husband. Local community elders, paralegal committee members, political party, and police held a community discussion and tried to settle the case locally. Within this forum, Saraswoti's husband promised that he would not cause any further problems to Saraswoti; he would help her to get citizenship; he would provide her share of their property. However, the promised action did not materialise. Due to the husband's political affiliation, such a grave case could neither be registered with the police nor the court and her assailant was not brought to justice.²³⁵

232 *Ibid.*

233 KII with representative of Sunsari WCDO, Inaruwa, 27th February 2012.

234 *Ibid.*

235 Interview with female justice seeker, Barahachhetra VDC, 21st August 2011.

8. Overall Analysis: Points of Interest

This following section highlights nine points of ongoing interest from the informal and formal justice assessment carried out in the districts of Banke, Jumla, Kailali, Mahottari, Panchthar and Sunsari. The assessment forms part of a three-year programme and, as such, the following analysis acts as a starting point for further project interventions and research.

Of particular concern to this district assessment are the mechanisms, or lack thereof, of coordination and cooperation between the different formal and informal justice delivery bodies aimed at improving justice delivery. Where possible, this is highlighted across all nine points of significance.

- **Coordination: driven by individuals, sometimes by need but never by the system**

There is little or no evidence to suggest that coordination between formal and informal justice mechanisms is systematic. Some ad hoc efforts to cooperate and link between justice bodies exists, however, this is mostly personality driven. For example, the SP of Nepal Police in Sunsari facilitated easy access for PLC members to his office and was keen to support their work. Such high-level support allows for higher rate of registration of cases relating to SGBV with the formal system, the police. Where there is no coordination interest, SGBV case registration levels fall due to procedural and other obstacles. There is some evidence that systematic coordination occurs between the WCSCs, PLCs and women's groups dealing with domestic violence cases. It is becoming apparent that these referral systems for GBV cases may well be a coping mechanism employed by WCSCs to counter the problem of serious overburdened personnel and a lack of female officers to handle such cases. However, the research was clear in revealing that district courts and informal bodies also fail to coordinate systematically, except in some cases where strong traditional mechanisms exist. For example, within Muslim communities, court-annexed mediators have been recorded as cooperating with *Malaubi* when a case from the Muslim community is referred.

At the time of research, there was not a single female judge, head of police, CDO or public prosecutor in any of the six districts. In Panchthar, the number of female police per general female population ratio currently stands at 1 to 13,059. It is much documented that formal justice bodies, particularly court offices and the police face overwhelming capacity problems due to limited economic resources, inadequate infrastructure and few trained and gender-sensitive personnel. Indeed, such visible gender inequity in the police force is only one example why state bodies struggle to deal with gender-based cases and why they may increasingly rely on informal justice bodies and women's groups for support in dealing with such cases.

- **Justice sought through the non-legal executive**

In all districts, quasi-judicial bodies such as the DAO deal with a large number of cases, civil and criminal. There is an increasing preference among the public to register "petty" cases (ranging from public offences, citizenship, land encroachment, assault, and narcotics) with what are seen as more accessible civil bodies, although the police continue to receive the highest number of case registrations. The increasing caseload of quasi-judicial bodies is raising the concern that such bodies lack legally trained personnel and decisions are often based on the discretion or experience of administrative staff members. Furthermore, there appears to be a propensity of outside interference in these bodies, particularly from political parties. Such vulnerabilities are worrying and the DAO could be made more robust not only through legal training of staff but also through improved, systematic coordination with other formal bodies. The district Justice Sector Coordination Committee (JSCC) could provide a potential space where quasi-judicial

bodies, police and the judiciary strengthen capacity gaps, refine referral mechanisms, monitor mandates and ensure legal protocols are followed.

- **No justice mechanism – informal or formal – is immune to party political influence or interference**

Across all districts, all justice mechanisms reported interference or external pressures as an obstacle to their facilitating justice. In particular, party political interference and manipulation of justice is endemic across all districts. Formal mechanisms, including quasi-judicial bodies such as the DAO have long been noted for their susceptibility to interference; however, traditional mechanisms like the Tharu *Bhalamansa* and *Badaghars* in Banke and Kailali report party political pressure as being an important contributory factor as to why the community is losing respect for their decisions. Paralegal committees consistently noted party political pressure as being a major impediment. Indeed, the research reveals an alarming level of party political interference in cases brought by women. There is not enough evidence to assert whether this is simply because women are less-well politically connected than men, and therefore these cases are more easily manipulated by male defendants or whether this is some form of backlash to the success of the all-female paralegals which are beginning to fundamentally shift community power relations and the way justice is delivered for women.

- **Where is the state? Women’s groups and mediation groups facilitate justice for women**

Women overwhelmingly prefer to use informal (donor-funded) mechanisms. The high use of bodies such as the all-female PLCs and community mediation centres was reported by women from all districts, particularly for cases related to SGBV, such as domestic violence, dowry-related violence and rape. Most striking is the proportion of cases registered with the Kailali Community Mediation Centres between 2005 and 2011: of the 290 cases, 200 (69 percent) were filed by women, all of which were related to domestic violence. This leaning appears to be directly attributed to four key concerns: lower cost, speed of “justice” delivery, reduced stigma, and the presence of all-female bodies committees makes the process more accessible than going through costly, complex and majority-male formal mechanisms.

Across all districts, women from almost all communities tend to resist using both traditional justice mechanisms and formal bodies such as the police and court system. Besides the financial and time burdens of using formal justice bodies, both systems remain unattractive to women due to their male-dominated, gender-insensitive structures, systems and attitudes. In the case of traditional justice mechanisms, in many districts (Mahottari, Kailali, Banke) such bodies are seen to exclude women altogether from justice-seeking processes. The most extreme case of this is in Mahottari, where *dalit* women are represented by men in cases related to directly to them.

- **Paralegal committees: the more established, the more vulnerable to violence and interference**

In districts where paralegal committees have been long established (i.e. Sunsari) and have a strong and active presence as part of civil society, committees have reported greater obstacles when carrying out their duties and supporting informal delivery of justice. Such obstacles include increased political interference in their operation with direct threats to committee members, as well as being targeted (including the use of violence) by disgruntled community members over the PLC pursuing a particular (usually SGBV-related) case.

Furthermore, committees across several districts reported incidences of both verbal and physical domestic abuse against some of their members as a result of the conflict between their often heavy paralegal (unpaid) responsibilities and their family duties. For some, paralegals are raising their risk of suffering domestic violence. Such a backlash to shifting gender roles and its impact on household and community gender relations is worrying, even if it is only a short-term response to longer-term positive shifts in power. Such vulnerabilities will need to be

monitored and addressed; however, it is unlikely that an already overburdened state will be able to adequately tackle these undesired effects of broadly positive informal justice interventions.

- **Some ethnic traditional justice mechanisms are being squeezed to the margins by informal justice groups and are increasingly disrespected by youth**

Evidence suggests that traditional bodies are on the decline in some districts. In Panchthar, traditional Limbu mechanisms are reported as being less popular in the face of increasing paralegal, women's group and political party activity. Likewise, in Banke, young people's respect towards *Badghars*, a Tharu traditional justice body, is decreasing both due to perceived political affiliation of the bodies, as well as the relative effectiveness of all-female paralegals committees and mediation groups. Unlike many of the ethnic traditional justice bodies, however, Muslim traditional justice bodies appear to be more resilient with justice procedures which follow Muslim law and the Quran. Research was unable to reflect the current changing dynamics of the country in terms of ethnicity-based federalism, which has been known to be fostering ethnic-based groups which are keen to deliver justice for their own communities. This was, however, evident in Sunsari in the form of Khumbuwan and Limbuwan youth groups jostling to deal with community tensions.

- **Geographic remoteness and lack of physical infrastructure increases use of informal mechanisms in mountain and upper hill districts**

In Jumla and Panchthar, the geographic remoteness of state justice mechanisms from most communities results in high use of the informal sector. Although all districts repeatedly stressed the link between physical remoteness and the ability to access formal justice, some districts experienced particular problems. For example, respondents in Jumla reported that only murder cases went to court, with almost all other reported cases remaining within the informal system, including criminal cases. The Government of Nepal, donors and this project will need to consider the very specific obstacles which such district contexts present for state-non state coordination and monitoring. This project is acutely aware that responses will need to be tailored accordingly.

- **Court-annexed mediation: non-functional or too early to say?**

On paper, court-annexed mediation looks like a perfect solution to an overburdened court system and a poorly regulated mediation sector. Here, the court refers small civil cases to a state mediation mechanism with state-trained and registered mediators (lawyers, teachers social activists) In theory, the state has a considerable level of oversight of this process. However, in practice, the mechanism does not appear to stand up to closer scrutiny. For example, mediators are paid NPR500²³⁶ per session they attend. There is therefore little incentive for the mediators to resolve cases quickly and efficiently. Furthermore, lawyers listed as mediators at CAMCs hardly recommend parties for settlement in the centre due to conflicts of interest (for example, they would lose fees). Judges who are aware of these problems may also be reluctant to refer cases to these mechanisms, knowing that they are unlikely to be settled. Indeed, three CAMCs in the six districts had a 0 percent success rate. Sunsari had the highest resolution rate of only 33 percent. Senior judicial officials at the central level strongly viewed court-annexed mediation as ineffective, pointing to evidence that the number of out-of-court settlements had increased after the introduction of court-annexed mediation. Although there are clear problems, the Mediation Act 2010 is only two years old; therefore, there is not enough evidence to be conclusive at this stage.

- **Legal aid: state mechanisms struggling to improve accessibility of formal justice to the economically marginalised**

Efforts to make the formal court system more accessible to economically marginalised populations do not appear to be especially successful. The Legal Aid Act (1995) provides that legal aid committees in every district are responsible for compiling a list of lawyers, providing them with remuneration and deciding who is eligible for aid. However, legal aid services are

236 Approximately EUR4.50 as of May 2012.

found to be extremely limited and, at times, barely operative. In Panchthar, for example, the government appears not to have allocated sufficient funds to the committee, and lawyers have not been paid since 2009. In addition, the referral mechanism for legal aid is unattractive and time consuming, including the requirement of confirmation letters from the VDC of annual income.

The state system is ad hoc and unfathomable, and there is no compelling evidence that informal bodies, such as PLCs, have been able to systematically support service users in accessing or understanding state legal aid provisions. There are national NGOs providing some legal aid support (Advocacy Forum, LACC, CeLLRD & FWLD), however, most are located in district headquarters, making it difficult for rural communities to access them. The chronic lack of awareness about the availability of state-provided free representation leaves those unable to afford a private lawyer unwilling to go to court at all.

9. Conclusion and next steps

The information generated by this study forms an important foundation for future work, both through this initiative and others. Two key findings in particular stand out, and require deeper investigation and analysis.

Firstly, the finding that coordination between state and non-state justice mechanisms exists, but is ad hoc and driven by individuals rather than the system. This finding validates an early assumption by project partners that coordination is lacking; responses from research participants also indicate that greater coordination between these actors would support better access to justice.

The project needs to add to this baseline information over the coming years by building a more nuanced picture of state/non-state coordination in the justice sector in the districts, as well as in Kathmandu. It also needs to understand the implications of a federal structure in this respect. In addition, an understanding of what level and modalities of coordination are needed in the justice sector must be developed, drawing upon lessons learned from good practice elsewhere and in other sectors. Ongoing dialogue between state and non-state justice actors under this project will aim to create the space to discuss these crucial issues, and move towards the development and implementation of workable solutions.

Secondly, the research has highlighted political interference as the primary obstacle to ensuring accessible and accountable justice for all across all project districts. This is no surprise. Previous research by International Alert and other organisations has raised the same issue.²³⁷ However, what this research also indicates is that all justice mechanisms, both state and non-state, are prone to interference.

Despite widespread recognition of political interference as a problem, greater understanding is needed of how interference occurs, by whom, and in what types of cases and mechanisms. In 2012 International Alert will undertake research aimed at exploring these questions. Under this project, dialogue space will be created to discuss this issue and possible solutions at district and central levels. Identified solutions will be built into ongoing advocacy by project partners.

²³⁷ For example, see R. Crozier and Z. Candan (2010). *Participation and Obstruction: Justice and security sector reform in Nepal*. IfP: Brussels; Antenna Foundation Nepal et al (2010). *Security and Justice in Nepal: District assessment findings*. International Alert: Kathmandu; C. Onslow (2010). *Breaking Patterns of Sexual and Gender-Based Violence: Security and justice provision in post-conflict Nepal*. IfP: Brussels.

Annex 1: District Assessment Methodology

Objectives

Assessments were undertaken in six districts with the aim of:

- Understanding what mechanisms for state and non-state justice provision exist in the district, and which socio-economic categories and groups use which mechanisms and for what purpose;
- Identifying opportunities for and challenges to developing a more integrated approach to justice provision;
- Undertaking a training needs assessment of non-state justice actors to inform training activities in later stages of the project;
- Forming a baseline and identifying indicators against which to measure project impact.

Guiding Research Questions

- How is justice perceived and understood? Does this differ for different groups? How?
- What are the key justice needs at the local level? How do these differ for different groups?
- What are the existing formal and informal justice mechanisms that are accessible to people in the district? How effective are they at providing justice? What are considered to be the key challenges to improving effectiveness?
- What links or coordination currently exist between formal and informal justice mechanisms?
- What are the opportunities (if any) for strengthening these links or coordination mechanisms?
- Which socio-economic categories and groups use which mechanisms and for what purpose? Is this different for different communities (e.g. do justice providers treat people differently according to their age, gender, ethnicity, economic background, etc.?).
- What are seen as the key challenges to improving the effectiveness of the formal justice system?
- Are people more likely to go to state actors (e.g. the police, court) or informal mechanisms (like paralegals, community based mediation, *Kachahari*, *Badghar*, *Pachayti*) as a first resort? And why?
- Where they exist, what is the current awareness about and role of community-based paralegals, mediation, traditional justice mechanisms in addressing justice issues? What about the role of other government mechanisms in the provision of justice and awareness of their existence (e.g. VDCs, the police, court)?

Methodology

The research process employed the following methodologies:

Literature Review: during the methodology design phase, existing research and studies on the topic of access to justice were reviewed to ensure non-repetition as well as further expansion of existing studies. Documents reviewed included NGO and donor reports, sectoral reviews, donor evaluations and programme documents.

Key Informant Interviews: Judicial and quasi-judicial bodies, the police, District Administration Offices, Bar Associations, Women Development Offices, political parties, informal justice mechanisms, representatives of women groups and civil society leaders were interviewed for the research. A total of 76 KIIs were conducted in six districts (between 12 and 16 KIIs in each

district). In Kathmandu, representatives of the National Human Rights Commission, Supreme Court, Ministry of Law and Justice, Law Commission, Office of the Attorney General, National Women's Commission and National *Dalit* Commission were interviewed.

Focus Group Discussion: A total of 30 focus group discussions – five in each district – were conducted. Participants included groups from among formal and informal justice providers including women's groups, paralegal committees, community mediators, traditional and religious leaders, local peace committees, political parties and conflict victims. Focus group discussions were aimed at generating an understanding of peoples' perception regarding access to justice and the roles of state and non-state justice providers. Particular effort was made to engage women and marginalised communities through FGDs which exclusively targeted these groups.

Observation visits: Observation visits were made to Courts, District Police Offices, Women and Children's Service Centres, and Service Centres established by the Women's Development Office in every district. During this process, public access to these agencies, procedures and gender sensitivity was observed. A detailed observation form was used for that purpose.

Every care was taken to ensure **gender and conflict-sensitivity**, and researchers agreed to abide by a set of conflict-sensitive research guidelines during the methodology design process. Separate FGDs were held for women and marginalised groups to ensure safe space for discussion of sensitive issues. Every care was taken to ensure that research participants fully understood the purpose of the research and the eventual use of the information they were providing. Unless speaking in an official capacity, respondents were kept anonymous in the analysis and write-up of this report.

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