

# Chapter - One

## 1.1 Background

Children are considered as the cornerstone of the social and economic development of the country. They need special care and safeguards including appropriate protection and promotion of their rights because of their physical and mental immaturity. In this context, various effort has been put forth for the protection of children and promotion of their rights. Realizing the distinct physical, emotional and psychological need of the children and the states responsibility for the betterment of the child, the concept of child rights has been initiated. The concept of child rights is gradually gaining importance in both national as well as international level.

Juvenile Justice System consists of the laws, policies, guidelines, customary norms, systems, professionals, institutions and treatment specifically applicable to children involved with the justice system.<sup>1</sup> Children may come in contact with the Juvenile Justice System when he or she is a victim, witness or when he or she is “alleged as, accused of or recognized as having infringed the penal law or when they are considered to be in danger by virtue of their behavior or the environment in which they live.”<sup>2</sup>

The Convention on the Rights of the Child, 1989 (hereafter referred as CRC) has been considered as core international legal instrument dedicated to ensure the rights of the child across the world and in local context Children’s Act 1992 can be said as a milestone for laying foundation for separate Juvenile Justice System in Nepal. Likewise, the Juvenile Justice (Procedure) Rule, 2063 contained more specific provisions in relation to juvenile justice administration. However, the new Children Act, 2075 has replaced the Children's Act, 2048 and the 2063's Rule has been replaced by the Child Justice Administration (Procedure) Rule, 2076. It incorporates a comprehensive provision for the child justice administration and introduced noble concept like diversion and restorative justice in Nepal. The new Act has incorporated the four basic principles that CRC has included relating to children’s rights viz. non-discrimination, best interest of the child, survival and

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<sup>1</sup> UNODC and UNICEF, Manual for Measurement of Juvenile Justice Indicators, New York, 2006, p. 54.

<sup>2</sup> The Convention on the Rights of the Child, 1989, Article 40 (1).

development and participation. Furthermore, the Act has extended the age of the Children from 16 to 18 years of age.

Formation of District Child Justice Committee, drafting of the new Children's Act 2075, drafting of Child Justice Administration (Procedure) Rule, 2076, coordination with various stakeholders, organizing capacity building programs like- training, orientation, discussion programs, workshops, proper guidance in the direction to establish pilot juvenile benches, mobilization of child psychologist and social worker are some activities, for which Central Child Justice Committee has been obtaining high appreciation. In this connection, the workshop on **Justice for Children** has been organized by Central Child Justice Committee for sharing the experience of various stakeholders, challenges they have faced and the possibility of future cooperation for strengthening child justice system in Nepal.

The workshop provides a great opportunity to bring participants from diverse backgrounds and organizations on a common understanding for the betterment of the children (specially, the one who are in contact with law). This report will provide an overview of the workshop and summary of the presentation, discussion and suggestion for future.

## **1.2 Objectives:**

The main objective of the workshop is to bring all the participants from different sectors and organizations to share their experiences, to learn from one another and discuss about the recent practice and challenges relating to justice for children and to suggest for improvement and discuss the prospect of future collaboration. The objectives of the workshop are:

- ❖ Refreshing participants about the recent trend, challenges, future priorities and activities relating to child justice.
- ❖ To discuss about the challenges faced by various stakeholders working in the field of child justice.
- ❖ To explore the area of reform and discuss about the possibility of co-operation and collaboration among various stakeholders for strengthening child justice system in Nepal.
- ❖ To identify the short term, mid-term and long term recommendations.

### **1.3 Methodology**

- The program was conducted in a workshop style.
- Methods used includes: Presentations through power point, plenary discussions and individual feedback collection.
- Participants were given the meta card and asked to write about the long term, midterm and short-term problems and their solution relating to child justice in Nepal.
- Child right activists, government attorney, defense lawyers, child psychologists, social workers, civil society organizations etc. were asked to share their experiences.

### **1.4 Organizer/ Sponsor**

The program was organized by Central Child Justice Committee and financially supported by UNICEF.

### **1.5 Theme**

Main theme of the workshop - **Justice for Children.**

### **1.6 Venue, Date and Time**

The workshop was conducted at hotel Yak & Yeti, Kathmandu, in 18 October, 2019.

### **1.7 Participants**

The workshop gathered 80 participants from various field and allow them to share their practical experiences and theoretical insights during the program in different role. Detail of participants is attached as **annex 1.**

### **1.8 Program Schedule**

Detail of program schedule is attached as **annex 2.**

## Chapter -Two

### 2. Overview of the Workshop

The workshop was divided into three sessions. The opening ceremony was followed by the presentation and discussion and finally the program was concluded with the closing session.

#### 2.1. Opening Session:

The workshop formally commenced with the inauguration ceremony which was chaired by Honorable Justice of the Supreme Court of Nepal and the Chairperson of CCJC, Dr. Ananda Mohan Bhattarai. Right Honorable Chief Justice of Supreme Court of Nepal Mr. Cholendra Shamsher J.B.R. was the Chief Guest, whereas, Honorable Minister Tham Maya Thapa, Ministry of Women, Children and Senior Citizen, Attorney General Mr. Agni Prasad Kharel and UNICEF Representative for Nepal Ms. Elke Wish were the Special Guests of the opening ceremony. Similarly, all the Honorable Justice of the Supreme Court of Nepal, Executive Director of the National Judicial Academy, Chief Judge of Patan High Court, Chief Registrar of Supreme Court, members of the Central Child Justice Committee, Registrars of Supreme Court, representatives from Nepal Police, representatives from Office of Attorney General, District Court Judges etc. were present as the Guest of the opening ceremony.

1.	Chief Guest	<i>Mr. Cholendra Shamsher J.B.R.</i> , Right Honorable Chief Justice of Supreme Court of Nepal.
2.	Chairperson	<i>Dr. Ananda Mohan Bhattarai</i> , Honorable Justice of the Supreme Court of Nepal and Chairperson of CCJC
3.	Special Guest	<i>Mrs. Tham Maya Thapa</i> , Honorable Minister, Ministry of Women, children and Senior Citizen, <i>Mr. Agni Prasad Kharel</i> , Attorney General of Nepal, <i>Ms. Elke Wish</i> , UNICEF Representative for Nepal

The opening session was hosted by under secretary of Supreme Court and Chief of Secretariat of Central Child Justice Committee Ms. Anupama Panta. All the dignitaries were requested to take their respective seat. After the inauguration of the program from the Chief Guest, Right Honorable Chief Justice of Supreme Court of Nepal by lighting the *Panas* (lamp) welcome speech was delivered by Member Secretary of Central Child Justice Committee and Registrar of the Supreme Court of Nepal Mr. Narayan Prasad Panthee. Mr. Panthee highlighted the objective of the workshop program and extended a warm welcome to all the dignitaries and the participants of the program. It was followed with the series of remarks from the special guests, chief guest and the opening session was formally ended with the concluding remarks from the chairperson.

**2.1.1. Welcome remark by Member Secretary of Central Child Justice Committee and Registrar of Supreme Court of Nepal *Mr. Narayan Prasad Panthee***

*Mr. Narayan Prasad Panthee*, Member Secretary of Central Child Justice Committee and Registrar of Supreme Court welcomed all the guests and participants on behalf of the CCJC. Mr. Panthee emphasized that the main focus should be given to the best interest of the child. He stated that the Constitution itself has guaranteed right against exploitation and right to compensation. Similarly, he stated that Nepal has enacted Children's Act in order to fulfill the obligation created by the International treaties. Likewise, in his speech he expressed his concern about the existing situation of child reform homes which are overcrowded with low facilities for the children and faces numerous problems.

Mr. Panthee stressed on the need for reforming the child justice system in Nepal, specially, by promoting the best interest of the child, ensuring child friendly investigation, prosecution and adjudication of the cases in which children are involved, improving the situation of child reform homes etc. Furthermore, he highlighted that the main objective of the workshop is to strengthen child justice system in Nepal by increasing cooperation and coordination among various stakeholders. He extended his sincere thanks to Chairperson, Chief Guest, Special Guests and other Guests and Participants of the program for their valuable presence and welcomed them. He also thanked UNICEF Nepal for its support in organizing the workshop program. Finally, he stated that the experiences of participants in their respected field will be fruitful for the workshop.

### **2.1.2. Remark by UNICEF Representative for Nepal, Ms. Elke Wisch**

Ms. *Elke Wisch*, expressed her gratitude towards CCJC for providing the opportunity to share her views with the respective dignitaries and the participants of the workshop program. She acknowledged the graceful presence of the Chief Justice of Nepal, Honorable Justice of the Supreme Court, Honorable Minister, Attorney General and all the guests and participants. Ms. Wisch stated that being a child protection professional, justice for children is the topic that is close to her heart. She believed that, Nepal has made the progress in the field of justice for children, this shows the commitment of Nepal to protect and promote the rights of the children.

Ms. Wisch highlighted three policy issues related to justice for children, viz., minimum age of criminal responsibility, child correction homes and laws on rape in Nepal. She explained that the minimum age of criminal responsibility in Nepal is 10 years which is too low. So, she hoped that the workshop will make consensus to raise the minimum age of criminal responsibility for children. In Nepal discussions around children in conflict with law mostly focuses on management of the child correction homes not on non-custodial measures like diversion and community services. However, evidence from all over the world shows that the non-custodial measures promote restorative justice and helps to reduce recidivism. It is the best opportunity for young offender to reintegrate into the society and become law abiding productive citizen. She was hopeful that the workshop would focus on how to implement the non-custodial measures for the rehabilitation of the children in conflict with law.

She also addressed the very serious issue of rape. The rape committed by children and rape committed by the adult are viewed in a similar intensity. Most of the rape committed in Nepal are cases of consensus and non-exploitative sexual activities between adolescent of similar age and the boys are facing criminal charges but it should not be criminalized. On the other hand, the adult offenders go unpunished. She stated that cases of child marriage in Nepal is very high. So, as per the Nepalese law every case of child marriage should be considered as statutory rape and should be penalized.

She believes that these particular issues, namely, increasing the age of minimum age of criminal responsibility, focusing on non-custodial measures (diversion and community

service) and amending the laws relating to rape and to de-criminalize consensual and non-exploitative sexual activities between adolescent of similar age and take strong legal action against the adult offender on child marriage through the legislation of rape would be discussed in the workshop.

She also praised CCJC as most successful and active institution which is working for protection and promotion of children's right. Finally, she concluded her speech by thanking Central Child Justice Committee and all the participants and encouraged everyone to continue to work on the area of child justice.

### **2.1.3 Remarks by Attorney General of Nepal, *Mr. Agni Prasad Kharel***

Attorney General of Nepal Mr. Agni Prasad Kharel pointed out the need for proper implementation of the Children's Act. He also highlighted that the number of reform homes and the available infrastructure are not sufficient. Reform homes are overcrowded and the children in conflict with law are not receiving proper care and attention. The main focus should be given to the reintegration of the children. Similarly, the establishment of the Children's Court is utmost important. Mr. Kharel emphasized that the awareness program should be conducted and the real causes of commission of crime by the children should be find out. He focused on the necessity of implementation of juvenile justice system to investigate and prosecute the cases of children in conflict with law in child friendly settings. He explained that the best interest of the children should be given primary consideration during the investigation and prosecution of the cases of children in conflict with law. Mr. Kharel emphasized that everyone should be sensitive while considering the case where children are involved. He also informed that the women and children units has been established in almost every office of district attorney. Awareness about the crime should be done in both formal and informal education system. Priority should be given in providing guidelines to all the offices to implement and promote the right to privacy in children related case. He stated that the Office of Attorney General is committed to implement the final outcome of the workshop. Finally, he wished for the success of the workshop.

**2.1.4. Remarks by Minister of Women, children and Senior Citizen, Ms. Tham Maya Thapa**

Honorable Minister Tham Maya Thapa stated that the Children's Act has already been enacted and now the Regulation is being drafted. The age of the majority has been increased to 18 years which was previously 16 years. The child reform homes are not sufficient and lacks proper infrastructure and services. In this scenario, she expressed the commitment of her Ministry to support CCJC to pursue its aim of increasing the number of child reform home, by establishing new child reform home. She stated that lots of concentrated and coordinated efforts are required to promote and protect the right of children and believed this workshop will serve this purpose and build synergy in strengthening child justice in Nepal. Finally, she extended her wishes for the successful completion of the workshop program.

**2.1.5. Speech by the Chief Guest of the Program, Right Honorable Chief Justice of Supreme Court, Mr. Cholendra Shamsher J.B.R.**

Right Honorable Chief Justice stated that Nepal has been party to various International treaties and conventions and the Children's Act has been enacted in order to fulfill the obligation of the International Treaty. And in accordance with the provisions of the Children's Act Rules on the procedure of Child Justice has also been formulated to make child justice administration more systematic and effective. He urged that for the practical implementation of the laws, policies and programs relating to children, the commitment and competence of all the relevant bodies is essential. He explained that one of the facet of the Child Right is child Justice. Nepal has taken positive steps towards the protection and promotion of child Right. National Judicial Academy has been active in providing training relating to children's right. Decision of Supreme Court has developed new jurisprudence on Child Right.

He emphasized that it is the responsibility of every nation to ensure strong and effective child justice administration through legal and structural management as per the concept of child justice based on the principle of guardianship of the children and the best interests of the child. He also stated that in the present context, it is not pleasant to discuss about the inadequacy of the child reform homes and its physical condition which is the minimum infrastructure for the administration of child justice.



He also expressed his sincere thanks to the organizers for organizing such an important event in the presence and participation of the concerned officials and stakeholders of the child Justice Administration. Similarly, he stressed that only through the coordination and cooperation among all concerned bodies could help to achieve the objectives of strengthening child justice system in Nepal. And the Act envisages the Central Child Justice Committee as a central body to conduct such co-operation and coordination.

Finally, Chief Justice concluded his speech with the belief that the paper presented and discussions made in the one-day workshop will be successful in exploring the possibilities of mutual cooperation in identifying and addressing issues and challenges of child justice administration.

#### **2.1.6. Speech and Concluding Remark by the chairperson of the Program, Honorable Justice of Supreme Court of Nepal, *Dr. Ananda Mohan Bhattarai***

Opening ceremony of the workshop was concluded with the remarkable speech of Honorable Justice of the Supreme Court of Nepal and chairperson of the program **Dr. Ananda Mohan Bhattarai**. He welcomed all the guest, participants and the organizers. He pointed out the situation of child rights and justice for children in context of Nepal. Similarly, he accentuated that the work done among the various agency and institutions on the rights of the child are overlapping causing misuse of resource and time. So, he focused on the coordination and cooperation among those institutions and agencies for which CCJC has been established. He emphasized that unless working jointly, cooperatively and harmoniously only a good law alone can't bring good results. The workshop would be platform for all the stakeholders working in the field of Child Justice to know each other and believed that the workshop would support to identify the way out for ensuring strong coordination amongst the participants in future. With explaining the core values of Juvenile Justice system, he shed light on the objective of the program and expected that the workshop will be fruitful for all the participants.

He expressed his hope that the experience of participants from different sector on child rights will be helpful for the success of the workshop and to achieve its objective. He also wished for the success of the workshop. Lastly, he concluded the Opening Ceremony by thanking the distinguished chief guest, special guests, other guests, supporting organization UNICEF, Secretariat of CCJC and all the participants.

## **2.2. Second Session**

During the second session six papers were presented on various topics followed by the discussions. Each session was chaired by different dignitaries. Each speaker were allotted 25-minute time for their presentation and 15 minutes was allocated for discussion with the participants.

The first presentation was conducted by Secretary of women, Children and Senior Citizen Ministry, Mr. *Chandra Kumar Ghimire* which was facilitated by Honorable Justice of Supreme Court Dr. *Ananda Mohan Bhattarai*.

Second presentation was conducted by Mr. *Padma Prasad Pandey*, Deputy Attorney, which was facilitate by Deputy Attorney Mr. *Khagaraj Poudel*.

Third Presentation was conducted by Honorable Judge of District Court Mr. *Sudarshan Raj Pandey* which was facilitated by Honorable Judge of High Court Mr. *Kishwor Kumar Silwal*.

The Fourth Presentation was conducted by legal officer of Child Reform Home, *Bhaktapur*, Mr. *Rameswor Neupane* and the session was facilitated by Executive Director of Karuna Foundation Mr. Dipak Raj Sapkota.

The fifth presentation was conducted by Honorable Judge of High Court Mr. *Kishwor Kumar Silwal* and the session was facilitated by Honorable Justice of Supreme Court of Nepal, Mr. *Ishwor Prasad Khatiwada*.

Finally, the last presentation was conducted by Advocate *Shiva Prasad Poudel* and the session was facilitated by Chief Registrar of Supreme Court of Nepal, Mr. *Nirpadhoj Niraula*.

All the presentation is attached as Annex 3.

### **2.2.1 Presentation: Steps under taken by the Government sector in the area of protection of the interest of the child, challenges and future priorities**

Mr. Chandra Kumar Ghimire, Secretary of women, children and senior Citizen Ministry explained about the statistics of children in Nepal, International Instruments and Commitment made by Nepal, provisions of Children's Act 2075, works carried out by the government sectors, structures relating to children within the Ministry of Woman,

Children, and Senior Citizen, The role played by National Child Rights Council relating to children, Comparative evaluation of pre and post ratification of Child Rights Convention, 1989, comparative status of few indicators relating to children during fiscal year 2048/39 and 2074/75, Finally, he concluded his presentation by explaining about the problem, challenges and future priorities about the rights of the child.

### **2.2.2 Presentation: Crime Committed by children and their Investigation and Prosecution**

Mr. *Padma Prasad Pandey*, Deputy Attorney explained about the UN instruments, as well as domestic instrument relating to Child Rights. He highlighted about the basic principles of Juvenile Justice, types of Juvenile delinquencies, National provisions relating to investigation and prosecution of juvenile cases, Court approaches. He also explained about the provisions relating Rights of the child guaranteed by the constitution and Children's Act, 2075. Furthermore, he discussed about the diversion, observation unit and stated the role of investigators and the prosecutors. Finally he concluded his presentation by stating the existing problem in relation to investigation and prosecution of the cases in which children are involved and the possible solution.

### **2.2.3. Presentation: New Trends relating to Justice for Children in Nepal.**

Mr. *Sudarshan Raj Pandey*, Honorable Judge of District Court of Nepal explained about the overview of the Child Justice System, establishment of Juvenile Court, Concept and Practices of Diversion, Concept and Practices of Restorative Justice, Recent problems and challenges and finally he concluded the presentation by pointing out the future priorities and possibilities.

### **2.2.4. Presentation: Situation of Child Reform Homes and rooms for Improvement**

Mr. *Rameshwor Neupane*, legal officer of Child Reform Home, *Bhaktapur*, highlighted the situation of all the Reform homes that are established in Nepal. He focusses on the *Bhaktapur* Reform Home. He discussed about the area, capacity and the recent number of children staying in the reform Homes. He also explained about the legal provisions on this matter. He discussed about the socialization and reintegration of the children who are in conflict with law. Finally, he highlighted about the problem, challenges and the possibilities.

### **2.2.5. Presentation: Steps taken for the protection of the victim and Witness**

Mr. *Kishwor Kumar Silwal*, Honorable Judge of High Court, explained about the laws relating to protection of the victim and witness. He discussed about the provision incorporated by the Protection of Crime Victim Act. He discussed about the provision on Victims right guaranteed by the constitution. He discussed about the right of the child during hearing of the case. He focused on the establishment of the reintegration Centre, compensation to the victim, and the American approach on the issue. Finally, he concluded his presentation by highlighting the problems and challenges faced by the victims and the witness as well as the achievements and future priorities.

### **2.2.6. Presentation: Application of the Principle of the “Best Interest of the child” in context of Children in need of special protection.”**

Mr. *Shiva Prasad Poudel*, Lawyer & Policy Analyst, AIN, explained about the evolution of the Principle on Best Interest of the child, National Legal System, International Legal System, UNCRC and the best interest principle. He also highlighted the provision and rights Guaranteed by the Constitution and provision incorporated under the Children’s Act 2075. He explained about the Children in Need of Special Protection. He discussed about the governmental and non-governmental interventions in the field of child justice. Similarly, he explained about the opportunities of collaboration with the non-governmental sectors.

## **2.3 Discussion on the Presentation**

After each presentation, the floor was opened for discussion, with the objective to share the participant's experiences, difficulties and challenges faced during their working period and some other queries relevant to the topic.

### **➤ Mr. Hemanta Rawal, Judge, District Court:**

- Since the enactment of the Children’s Act 2048, the concept of child reform home was elevated but till now only 8 reform homes has been established. And the available reform homes are not sufficient lacking minimum facilities whereas the main problem is overcrowded of children in reform

homes. In this regard, what are the periodic plan of Nepal Government? It is utmost necessary to establish reform homes in all 77 districts of Nepal and the coordination of local government is also necessary.

- Another problem in this regard is determining the age of child during the proceeding of the case. In some Instances, when the court holds that the delinquent is a minor, she/he has already been detained for over a year. So, it will be helpful if the police, during the initial investigation determine the age of the delinquent child. Similarly, Juvenile bench should be properly managed and child friendly environment should be adopted.

➤ **Mrs. Meera Dhungana, President, FWLD:**

- Lack of effective monitoring by the government in Child Reform Homes, girl child is being more affected due to mischief behavior of boys as they are kept in same compound. Monitoring of reform homes is necessary in order to find out whether the girl and boy child are kept together or not and whether they have been provided with minimum facilities. So, it is necessary to make the action plan in this regard. Involvement of the concerned stakeholder working in the field can be beneficial. Even after being released from the reform home, children are not found to be effectively reformed.
- The main problem in our context is Child marriage as they are not registered. Due to which it has created a problem to collect the data regarding occurrence of child marriage. Juvenile bench hears the cases involving the juvenile delinquencies, and the cases where the children are victims comes under the jurisdiction of general courts, would it not be effective if the latter would be heard by the Juvenile Bench.

➤ **Mr. Shiva Poudel, Advocate:**

- He focused on the challenges of the recent Children's Act, 2075 (2018). One is appointment of the child welfare officer and probation officer. Another who is responsible for monitoring the implementation of reform order. Standard Operation Procedure has already been drafted. So, the cases where children are involved should not be analyzed with the criminal Justice system. Consideration of the principle of the Child friendly Justice is necessary. Likewise, review of the procedure of investigation and

Prosecution is necessary. What kind of modality should be followed while establishing the Juvenile Court. (e.g. Informal hearing sitting in round table can be done). Treatment to children in conflict with laws by the police is not in line with principles of juvenile justice. He also emphasized that the optimum use of available resources is necessary.

➤ **Mr. Ajay Shankar Jha, Director, PDS-Nepal:**

Section 22 of the Children's Act 2075 has provision relating to observation unit and Section 42 has stated that child should not be kept in solitary confinement. These two provisions of the Act seem to be contradictory. There should be guideline so as to ascertain in which types of case, delinquents should be kept in observation unit. He identified various areas that can be intervened as review in investigation procedure, application of child friendly environment, inadequate reform home, establishment of Juvenile Court etc. In the cases relating to children, the service of legal representation should be provided as soon as possible and the victims and witness who are not able to be physically present at the courts, is it possible for the court to intervene outside the court.

➤ **Advocate Rabindra Bhattarai:** Child Reform Home can run more efficiently if they are kept under the Ministry of Women, Children and Senior Citizen alone. Similarly, effective monitoring of the Child Reform Home should be conducted by the said ministry. Is it necessary to determine the biological age of child in contrast with the mental age of the child? It is better to determine the age of the child in conflict with law before initiating any proceeding by the police itself. The Constitution of Nepal has guaranteed the right to representation, does the same apply in case of child.

➤ **Mrs. Shova Kc:** Need to expand the Child Reform Homes. Similarly, girl and boy delinquents should be kept in different buildings as well as separate compound.

➤ **Mr. Uttam Raj Subedi, SSP, Nepal Police:** He emphasized on the recent data which shows that 64% of the victims in rape cases were girls below the age of 16 years. Similarly, within the last 6 months 8 children in between 9-12 years have committed suicide and the data shows that they used to play PUBG. This shows the misuse of Information and Technology as well as high education pressure from parents. So, it is the responsibilities of the family as well as school to maintain not

just the physical but also psychological wellbeing of the children preventing them from being delinquent.

- ***Participants from Himali Nabin Samaj***: Children are being trafficked in the name of education, employment and career development. These issues are not raised in the workshop. There is uncertainty in the law regarding this issue. Similarly, how can we address the issue of citizenship of the child who do not have guardians? How can we develop the referral mechanism for children?
- ***Mr. Rameshwar Neupane, Legal officer, Child Reform Home***: In the cases where children are involved, right to privacy and confidentiality of the child should be maintained. Police should maintain the child friendly environment from the time of taking the child under control, during investigation and prosecution. The office of attorney general seems to go for appeal in almost every case involving government of Nepal, in this scenario, will it not be more sensible if the same was done only in serious cases relating to children. Appropriate to make the guidelines in this regard.
- ***Mr. Rajan K.c, Program Manager, NJA.***: Nepal has various legal framework regarding children's Right. There is Universal Periodic Report (UPR). CRC Committee has included various issues relating to the child rights like prevention, prosecution, capacity building etc. Nepal being the member state has it disseminated the UPR? Is it necessary to disseminate the UPR? And it is also necessary to ensure whether the dissemination has been properly done or not.
- ***Mr. Pitambhar Adhikari, DIG, Nepal Police***: It is utmost necessary to establish help desk and juvenile court. Is it appropriate to impose imprisonment instead of fine? Diversion has not been implemented as per the prevailing law. Nepal police has followed the principles relating to child right as far as possible. It is necessary that all the institutions involved should work in coordination and support each other instead of blaming each other.
- ***Mr. Ritendra Thapa, Juudge, District Court***: It is difficult to administer the case where both the child and the adult are involved. Should it be heard by the juvenile bench or by the general courts? It is very difficult to assimilate the provision of juvenile bench in many district courts of Nepal. So, the top priority in today's context is to establish the Child Court. Similarly, is child reform home considered as the prison or it is the alternate to prison system?

- **Mrs. Neeta Gurung, TDH:** Focus is still given to the children in conflict with law ignoring the victim child as well as dependent child whose parents are in prison. Similarly, it is also necessary to analyze the social factors leading the child to commit the legally prohibited act. (viz. family background, care taker behavior, social setting etc.). Sociologist and psychologist should be appointed by the police. Even in the commission of minor offences, is it necessary to refer them to the Child Reform Homes?
- **Mrs. Bina Dahal, :** Policies, discourses, workshops have been conducted which are limited to higher level. However, focus should be given to the problems at ground level, as children will get chances to reform only if they are treated well by the police from the time of taking them under their custody. The workshop was more concentrated on the orphan, street children and children in conflict with law, it is equally necessary to focus on the children's who are abused in the name of labor (physical and sexual)
- **Ms. Sushma Pokharel,** Children are facing inhuman behavior, how can we address those inhuman behavior?
- **Participant from AJAR Nepal,** Social Inquiry Report are submitted to the police. But the main problem is that, the letter to submit the report is received at last hour and it will be difficult for us to submit report in time. Another problem is children are sent to custody of their parent, but in some cases, it will be difficult to contact the guardians.
- **Mr. Kishwor Silwal, Judge, High Court:** The recent Children's Act has provided the provision regarding Diversion. It's been one year since the Act has come to force, during this period how many cases are sent for diversion?
- **Mr. Diwakar Bhatta, Judge, Faculty Member, NJA:** Traditional way of Investigation and Prosecution should be reviewed and changed. Should find out appropriate way for the application of diversion. There is problem in instrumentality and functionalism. Need of training for the Judges.
- **Mr. Dilli Ratna Shrestha, Judge, District Court:** Emphasized on enhancing the health facilities of the child who are kept in the reform homes.



**Some other Issues that was raised during the workshop are stated below:**

- In the present context, instead of adding more reform home, it is necessary to make the available reform home well equipped and effective.
- Proper and effective education facilities should be provided to the child in conflict with law.
- Proper health facilities to the children kept in reform homes.
- Should work in coordinated way. (Coordination from government and ministry level is necessary).
- Effective Law but poor Implementation.
- Need of effective intervention from government.
- Need of Adequate budget.

**2.4. Meta Card work**

During the presentation session, each of participants were given 3 Meta cards of 3 different colors which was Pink, Yellow and Green.

- i) Pink color Meta Cards were given to write the short-term recommendation
- ii) Yellow color Meta Cards were given to write mid-term recommendation
- iii) Green color Meta Cards were given to write long term recommendation

In each Meta Card, they would have to write the short-term, mid-term and long- term steps that need to be taken for the protection and promotion of the right of child and to ensure justice for children respectively according to their color. All the Meta Cards were collected and the views that were written in Meta Card has been stated below:

**a) Possible Short Term Strategy**

- Community outreach program to sensitize children, parents and guardians.
- Immediately establish counseling and other support services in all police offices.
- Address the issue of consensual and non-exploitative sexual relation (including statutory rape) involving children in order to decriminalize minors in their tender age.
- Standard operating procedure (SOP) for police investigation, prosecutorial service and child correction services.
- Minimum standard for child correction homes should be maintained and steps taken for its improvement.

- Case management process and steps to be incorporated in each case at local level.
- Linkage of Child Correction Facilities with Government Hospitals.
- Attempt to increase the budget and receive it in timely manner.
- Orientation to police investigators/prosecutors/defense lawyers about laws and recent development of child justice system in all provinces.
- Dissemination of information related to child justice.
- Plan infrastructure and child friendly room in courts. (Separate room adjacent to the bench should be managed with books and other reading materials)
- Best Interest of the victim as well as delinquent child must be considered.
- Focus on reintegration of the children in conflict with law in their families.
- Appoint the Child Welfare Officer in order to practice the Restorative Justice.
- Appointment of Child psychologist and sociologist in Juvenile Bench.
- Separate unit and trained officers in the field of child justice should be allotted to handle the cases relating to children.
- Capacity Building program and training for the Judges, child psychologist, social workers and other officers involved in the administration of child justice.
- Constant cooperation and coordination among the relevant stakeholders.
- Ensure the implementation of the provision of interim relief and compensation to the victims in heinous or serious cases.
- Information of the victim should also be incorporated in Social and Psychological Inquiry Report.
- Psychiatric facilities should be made available in the Child Reform Homes.
- Involvement of the victim's family members during the proceeding of the case.
- Enhancing the facilities of social workers and psychologist working in the juvenile bench.
- The reports of the Child Psychologist and social workers should be included in the case file.
- Plan for effective implementation of Diversion process.
- Improvement in the process of Investigation and Prosecution.
- Appointment of Probation officer in earliest possible time.
- Special Incentives for the Judges of Juvenile Bench.
- Enactment of the Children's Regulation as soon as possible.

#### **b) Mid Term Recommendations**

- 1) Establishment of Child Reform Home in every District.
- 2) Establishment of model Child Court in each province.
- 3) Establishment and operation of help desk for victim in both police offices, Attorney offices and courts and enhancement of victim support and protection unit.

- 4) Child friendly environment should be at top priority. (civil dress by police, Separate vehicle, Child friendly room).
- 5) High Level Training for the stakeholders working for the rights of Children.
- 6) Develop and specialize police units to deal with protection as well as investigation of children who come in contact with conflict with the law.
- 7) Production of qualified and dedicated Human resource in the field of child justice.
- 8) Child Friendly Infrastructure at all level.
- 9) Develop the mechanism for effective implementation of the policies and laws.
- 10) Training to psychologist and social workers.
- 11) Not only in Central level but such discussion program (workshop) should also be conducted at District level.
- 12) Coordination among concerned stakeholders and establish strong referral mechanism.
- 13) Develop Integrated Service Centre (one stop child justice center)
- 14) Provide adequate facilities to reform children in conflict with the law. (increase the number of child reform home and ensure quality in the services catered by CRH.)
- 15) Prepare and implement operating procedures for probation, parole, community services etc.
- 16) Prepare Integrated Data Management and confidentiality Guidelines
- 17) Provide services relating to mental health to the children in correction home.
- 18) Effective monitoring of the Reform home.
- 19) Children in conflict with laws should be kept separately according to their age.
- 20) Increment in the participation of the province government and other non-governmental actors for the protection of child.
- 21) Formation of the strategic plan and its proper implementation.
- 22) Emergency child fund should be established.
- 23) Arrangement of Basic salary for the child psychologist and social workers.
- 24) Amendment of the Act in order to maintain uniformity and avoid contradiction.
- 25) Taking appropriate action against the Reform homes which haven't followed the basic minimum standard.
- 26) Arrangement for the compensation and restoration of the child victim.

**c) Long Term Recommendations**

- 1) Pay attention to the best interests of children.
- 2) Establishment of Child Court.
- 3) There is a need for execution of the punishment, monetary and other fines after the judgment. Without this, the victim cannot get justice while the offender is likely to be even more encouraged
- 4) There must be a counselor and a social worker in the district courts.

- 5) Child reform home should be managed in all the provinces and upgrading of the existing child reform home should be done.
- 6) Inspect the reform home from time to time and take appropriate action
- 7) Identify the resources needed for wellbeing of the children.
- 8) Well established BSG/JCH with Juvenile bench
- 9) Child friendly court within each JCH which address the need of the children.
- 10) Separate Block as per age group of the children.
- 11) There should be full phase budget to work for the protection and rehabilitation of children.
- 12) Uniformity in the Child reform homes.
- 13) Measures should be taken to prevent children from commission of crime.
- 14) Finding out the main reason for the children to commit crime with the coordination of the various institutions working in the field of child justice.
- 15) Convert Juvenile bench to Child Court.
- 16) Management of education and health facilities to the children.
- 17) Strategic plan on juvenile justice and child justice.
- 18) Enhancement of the institution and process relating to diversion.

### **3. Closing session**

The closing session of the workshop was chaired by chairperson of Central Child Justice Committee and Honorable Justice of the Supreme Court of Nepal Dr. *Ananda Mohan Bhattarai*. Board member Advocate Ashish Adhikari and Member Secretary of the Board as well as the registrar of the Supreme court Mr. Narayan Prasad Panthee delivered their remarks and the workshop was formally ended with the closing remarks of the Chairperson.

#### **3.1. Remark by Member Secretary Central Child Justice Committee and Registrar of Supreme Court of Nepal Mr. *Narayan Prasad Panthee***

Mr. *Narayan Prasad Panthee*, Registrar of Supreme Court and Member Secretary Central Child Justice Committee thanked all the guests and participants on behalf of the Secretariat of CCJC. He also extended his sincere thanks to UNICEF Nepal for supporting CCJC. Finally, he believed that the presentations made by the resource person as well as experiences shared by the participants in the workshop will be prolific and all the stakeholders are motivated to work together for the protection and promotion of right of child and strengthen child justice in Nepal.

#### **3.2. Remark by Advocate *Mr. Ashish Adhikari*:**

Mr. Adhikari reviewed and summarized about the workshop. He recapped about the significant achievement of the workshop and praised all participants for their hard work, patience, dedication and for raising genuine issues relating to child rights. He explained that working in this field of child rights is not very easy, it needs strong efforts and dedication. Many efforts have been made by the concerned organization in the field of child right. We should not only expect from government, everyone should work hard to protect and promote the right of child. Similarly, the district child justice committee should be active as it has been provided with wide mandate. Finally, he extended thanks to all distinguished dignitaries, guests and participants.

### **3.3. Concluding Remark and Speech by Dr. Ananda Mohan Bhattarai**

Dr. *Ananda Mohan Bhattarai*, Honorable Justice of the Supreme Court of Nepal and Chairperson of Central Child Justice Committee stated that in context of Nepal, the protection of children's rights and interests and practice of Juvenile Justice has recently attracted some attention. Dr. Bhattarai emphasized that the objective of the Central Child Justice Committee as well as the workshop is to coordinate with all organizations which are working in the field of child justice. The workshop can be considered as the brain storming for all the concerned person who are present at the workshop. It need swift and expertize efforts. He further emphasized that the new Children's Act is progressive and ambitious. He hoped for active and supportive role to be played by the Ministry of Women, Children and Senior Citizen and all the concerned stakeholders for the realization and actual implementation of the provisions of the Act. Furthermore, he committed to make the work plan or future strategy to strengthen the child justice system in Nepal by including the suggestion received from the workshop. He stated that there is constraint of resources, even though, we have to make maximum utilization of the available resources. Lastly, he thanked *UNICEF* for their support and all guest and invitees for active participation and all the official and staffs of Secretariat of Central Child Justice Committee for successfully completing the program and concluded the program.