



Public Defender Society of Nepal
सार्वजनिक प्रतिरक्षक समाज नेपाल
Defending the poor, ensuring justice
गरीबलाई प्रतिरक्षा, न्यायमा सुनिश्चितता

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Critical Insights on the State of Juvenile Justice in Nepal

Case Notes and Survey Data from 2021

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Table of Contents

| | |
|---|----------|
| Introduction | 3 |
| Case Notes & Survey Data | 4 |
| 1. The Criminalization of Poverty: Debtors Prisons for Children | 4 |
| 2. Petty Offenses, Grave Consequences: Imprisoning Children for Petty Offenses | 7 |
| 3. Violating the Rights of Juveniles: Injustice Caused by Misapplication of Law | 10 |
| Observations from Survey of Juvenile Correctional Facilities | 12 |
| Expanding Access to Justice for Juveniles through Partnership | 13 |

Introduction:

Throughout the COVID-19 pandemic, as lawyers from the Public Defender Society of Nepal (PDS-Nepal) remained on the frontlines of efforts to ensure children were released from dangerous detention facilities across the country, they observed a number of serious and systemic violations of the rights of children in conflict with the law. As outlined in these case notes – which describe PDS-Nepal’s efforts to litigate violations of their clients’ rights in the courts, and with reference to data obtained from a 2021 survey of 917 children in each of the eight juvenile correctional facilities across Nepal, there are three critical areas of concern:

- (1) the incarceration of children for failure to pay fines;
- (2) the incarceration of children for petty misdemeanor offenses; and
- (3) the failure of courts to properly uphold the rights of children in conflict with the law.

PDS-Nepal would like to thank the International Legal Foundation (ILF) and its International Fellows who have so generously lent their time and expertise to training and mentoring PDS-Nepal’s advocates who litigated the cases outlined in these cases notes, and for assisting with the survey of juvenile correctional homes. PDS-Nepal is also grateful to the Alliance for Social Development, the Open Society Policy Center, and Open Society Justice Initiative whose generous support of PDS-Nepal has enabled us to do this work.

These case notes were edited by Alexis McNally of the ILF and Ajay Shankar Jha “Rupesh” of PDS-Nepal.

Case Notes & Survey Data

The names of the clients in each of the case notes have been changed for privacy.

I. The Criminalization of Poverty: Debtors Prisons for Children

Editor's note: *The following cases highlight the strategic litigation engaged in by PDS-Nepal to free juveniles who were imprisoned for failure to pay fines. In Nepal, certain crimes are punishable by both a prison sentence and a fee. Those who are unable to pay their fines must serve additional prison time until they satisfy the fine, at a rate of Rs. 300 per day. In the following case notes, the ILF describes cases in which it found juveniles held in juvenile detention centers for nothing more than failure to pay a fine associated with their crime, pursuant to section 46 of the Criminal Code. The practice of jailing people who cannot pay fines creates a tiered justice system that discriminates against the poor, because an indigent person's personal liberties are withheld while those who can afford to pay their fines are able to walk free. The overarching objective in tackling this injustice is to contribute to the decriminalization of poverty.*

Chitwan District: Kabir

Kabir was 15 years old when he was arrested and charged on August 3, 2019, for theft of a motorcycle under § 241 of the Criminal Code. Unfortunately, Kabir could not afford bail, and the Chitwan District Court sent him to the juvenile correctional facility in Hetauda until his trial. On October 8, 2020, Kabir was tried and convicted. He was sentenced to one year and six months of imprisonment and fined Rs. 45000; the court also ordered him to deposit an additional Rs.1800 into the Victim Relief Fund. Despite serving his initial prison sentence, Kabir was sentenced to additional time on January 30, 2021, as he was unable to pay the fine and make a deposit into the Fund.

PDS-Nepal filed a petition for a writ of habeas corpus on Kabir's behalf on June 8, 2021, asserting that his imprisonment for failure to pay the fine violated the Act Relating to Children, 2018 (Children's Act) and constitutional protections granted to juveniles for "child friendly justice."¹ PDS-Nepal cited the holding from the Supreme Court of Nepal in *Uday Shankar Mandal vs. Surkhet District Court*:

"From the point of view of the best interests of the children, it does not seem appropriate to keep them in jail for not being able to pay the fine. Children with good financial status who receive family protection and assistance do not have to be imprisoned for fines. However, for the helpless, weak and destitute children who do not get such opportunity, the fine will eventually be converted into imprisonment. From a social and equitable point of view, it is not appropriate to maintain such a situation. This is likely to create a situation of unfair discrimination. Therefore, it would be necessary to seriously review the system of keeping children in prison for fines."²

While PDS-Nepal was not successful in getting the court to find the law on imprisonment for failure to pay fines unconstitutional, it did get Kabir released by advocating that his excessive sentence was unlawful. On June 18, 2021, the Supreme Court granted the writ of habeas corpus and Kabir was released from the juvenile correctional facility. The Court agreed that given his age, Kabir was only liable to pay half of the amount of the fine, pursuant to § 46(3)(c) of the Criminal Code. "[I]n

¹ Nepal Constitution Article 39(8).

² Nepal Law Journal 2076 Vol. I Decision # 9930 page 78.

determining the sentence of imprisonment . . . to be imposed on a person who is above fourteen but below eighteen years of age, the term of imprisonment shall be so determined as not to exceed one half of the sentence of imprisonment imposable on a person above eighteen years of age.” Thus, Kabir was liable for only Rs. 22,500. After converting the amount of compensation into imprisonment at the rate of three hundred rupees per day as required by law, Kabir should have spent no more than 3.5 additional months in prison and should have been released on March 15, 2021.

Rukum District: Nisha

Seventeen year old Nisha was arrested on June 1, 2019, for stealing Rs. 70,240 from a distant relative who boarded her for the night. The relative filed a report against Nisha with the police, and the prosecution filed charge-sheets against her in Rukum District Court for burglary, under § 243(1-2) of the Criminal Code. On June 17, 2019, the District Court ordered Nisha to a juvenile correctional facility pending trial. On July 2, 2020, Nisha was tried and convicted for burglary and sentenced to two years of imprisonment and a fine of Rs. 20,000, a reduction from three years of imprisonment and a fine of Rs. 30,000, due to her age in accordance with § 45 of the Criminal Code and § 36(4) of the Children’s Act.³ She completed her term on May 31, 2021; however, because she was unable to pay the fine, she was forced to remain in the juvenile correctional facility.

An officer at the Bhaktapur correctional facility referred Nisha’s case to PDS-Nepal. On June 7, 2021, PDS-Nepal filed a petition for a writ of habeas corpus with the Supreme Court. The petition raised several grounds for Nisha’s release, incorporating arguments discussed in the previous case note. PDS-Nepal asserted that Nisha’s prolonged incarceration for failure to pay the fine was contrary to the constitutional and statutory rights afforded to children and equal protection and thereby illegal; and that Nisha should be released in accordance with the holding of *Uday Shankar Mandal vs. Surkhet District Court*. PDS-Nepal further contended (1) that Nisha was just 16 at the time the crime was committed and as such was only liable for two-thirds of the punishment in accordance with § 45(4) of the Criminal Code; and (2) that juveniles by nature are dependent on others and that to inflict financial penalties on them is inherently at odds with § 16 of the Children’s Act, which mandates that priority be given to the best interests of children and calls for officials to adopt child friendly processes.

PDS-Nepal raised issues concerning the far-reaching consequences of incarcerating children for failure to pay fines, including a de facto state policy of criminalizing poverty and irreparable harm to familial dynamics, as children may become resentful if their family does not pay for their release. PDS-Nepal asserted that since the Nepal juvenile justice system is operated on the *parens patriae* doctrine, meaning that the state serves as de facto guardian of children, and as such, poor helpless children should not be further imprisoned merely because they are unable to pay fines. Rather, the state should absorb the fine or pay it on behalf of the child. PDS-Nepal averred that some children

³ Criminal Code, § 45(4). Punishment imposable on children: “Where a person who is sixteen years of age or above sixteen but below eighteen years of age commits any offence punishable by imprisonment, such person shall be liable to two thirds of the punishment imposable by law on a person who has attained majority.” Children’s Act § 36(4): “If a child of sixteen years of age or above but below eighteen years of age commits an offence, the child shall be punished with two-thirds of the punishment that is imposable on the person of legal age pursuant to the prevailing law.”

come into conflict with the law because they lack maturity and the ability to make good decisions, and that § 41 of the Children's Act is cognizant of this fact and operates to shield children who have committed crimes to ensure better outcomes in adulthood. The purpose of this provision is to ensure that children in conflict with the law are able to live with dignity after reaching adulthood.

On June 21, 2021, the Supreme Court dismissed the petition for the writ of habeas corpus and instead granted a writ of mandamus, ordering the re-issuance of Nisha's warrant with an amendment to the fine amount. The Court concluded that Nisha's detention was legal. The Court found that pursuant to § 46(3) of the Criminal Code, concerning imprisonment for failure to pay a fine, a person who has attained the age of 14 years but is under 18 years of age is liable for half the fine as the person who has attained 18 years of age. The Court evaluated the length of imprisonment Nisha would face if she did not pay the fine and ordered a reduction of the fine to Rs. 15,000, or 50 days of imprisonment.

Based on a survey it conducted of juvenile detention facilities in 2021, PDS-Nepal believes that there are at least 62 juveniles being detained only because they cannot afford to pay a fine.

Table 1: Juveniles in Correctional Facilities With no Capacity to Pay Fines⁴

| Age Group ⁵ | Boys | Girls | Total |
|------------------------|------|-------|-------|
| 11-14 | 14 | 0 | 14 |
| 15-16 | 28 | 1 | 29 |
| 17-18 | 19 | 0 | 19 |
| Total | 61 | 1 | 62 |

⁴ Recent data collected by PDS-Nepal surveying 917 children in each of the eight juvenile correctional facilities across Nepal including: Biratnagar in Morang district, Bhaktapur in Kathmandu Valley, Pokhara Sarangkot in Kaski district, Nepalgunj in Banke district, Bhairahawa in Rupandehi, Doti in Doti district, Birgunj in Parsa, and Hetauda in Makawanpur district.

⁵ Juvenile's age at the time of incident.

II. Petty Offenses, Grave Consequences: Imprisoning children for petty offenses

Editor's Note: Many children in Nepal under the age of 16 who commit minor crimes or misdemeanors are unlawfully detained for prolonged periods of time.⁶ Their incarceration is in direct contravention of the Children's Act which prohibits the detention of children 16 years of age or younger unless they have committed a grave, heinous or repeated offense. PDS-Nepal has been working tirelessly to free children who have been incarcerated for committing petty offenses. One of PDS-Nepal's many strategies has been to get courts to interpret a definition for minor offenses which would trigger the protections of § 36 of the Children's Act. PDS-Nepal's efforts ensure that children's lives are not irreparably harmed by prolonged exposure to the punitive justice system. Through exemplary strategic litigation, PDS-Nepal is changing outcomes for children and outlooks of justice sector actors in various districts throughout Nepal.

Kaski District: Neel

Neel is the only son in his family. He has three sisters, a father who works in housing construction and a mother who filters sand at the local river. Neel stopped attending school in 7th grade due to his family's poor economic conditions. He was just under 16 years old when he was arrested and charged with theft of four scooters on January 11, 2020. Neel lives near the beautiful city of Pokhara where he frequently sees others riding motorcycles and scooters. He approached a parked scooter, and once he got it to start, he rode it until it ran out of fuel, then parked it and did the same with three other scooters. Four complainants filed reports against him, and the prosecutor filed four charge-sheets against him in Kaski District Court. He was detained in police custody for 18 days until he was released to his parents prior to trial. On September 15, 2020, Neel was tried and convicted of four counts of theft on September 15, 2020, and sentenced to four one-year sentences of imprisonment to be served concurrently and fined Rs. 41,600. Neel's father submitted a written statement declaring his inability to pay the fine, and on December 6, 2020, his father surrendered Neel and filed an application opposing the decision. The District Court reduced Neel's sentence by eighteen days, the length of time he was detained by police, and scheduled his release date from the Kaski Juvenile Correctional Home for November 18, 2021, averring that failure to pay the fine by November 18, 2021, would extend his incarceration through April 4, 2023. Neel constantly begged to be returned to his family. He became severely distraught and even tried to commit suicide multiple times at the juvenile correctional facility.

PDS-Nepal Executive Director Mr. Ajay Shankar Jha called the Pokhara correction home and requested a list of juveniles in custody. He then interviewed the counselor, Ms. Jyoti Gurung, and inquired about juveniles in need of immediate attention, and she referred Neel. PDS-Nepal then contracted Neel's case and filed a petition for a writ of habeas corpus asserting that (1) the government violated Neel's rights when it imprisoned him as he committed a petty offense and is under the age of 16; (2) imposing a fine on minors disproportionately harms the poor and violates the constitutional right to equal protection under the law; and (3) the unsafe condition of the juvenile correctional facilities endangers Neel's life and violates § 16 of the Children's Act.

⁶ The definition of a minor crime is not defined in the Children's Act or the Criminal Code. Section 34(a-c) of the Nepal Code of Criminal Procedure defines a minor crime in a limited context as (a) an offence related to pickpocketing involving the claimed amount of less than one thousand rupees, committed for the first time, (b) an offence of begging committed for the first time, or (c) any other offence punishable by a sentence of a fine not exceeding three thousand rupees or of imprisonment for a term not exceeding one month or both the sentences, committed for the first time.

There is an inherent tension between § 36(7) and § 41(1) of the Children's Act concerning juvenile repeat offenders. Under § 36(7), children under the age of 16 should not be subject to imprisonment unless they have "committed a heinous offence, grave offence or repeated the offence." Meanwhile, § 41(1) stipulates that children "shall not be subjected to additional punishment on the basis of repetition of the commission of the offence." To navigate this conflict, PDS-Nepal embraces the spirit of the Children's Act which was drafted to protect juveniles. PDS-Nepal analyzed § 3 of the Criminal Code which states that "grave offence" means an offence punishable by a sentence of imprisonment for a term of more than three but less than ten years and that "heinous offence" means an offence punishable by imprisonment for life or for a term of more than ten years. PDS-Nepal concluded that certain crimes with imprisonment terms for three years or less should thus be considered minor offences (misdemeanors). Furthermore, § 41 indicates that Neel's multiple scooter thefts should not be used to subject him to additional punishment. Therefore, the government violated Neel's rights when it imprisoned him as he committed a minor offense and is under the age of 16.

Judges impose fines on minors under vicarious liability, assuming a fallacy that all parents would be able to pay for their children's transgressions. In reality, rich parents can afford to pay the fine and deposit on behalf of their children, however, children from poor families, like Neel, remain imprisoned. This practice directly contradicts the right to equal protection of law enshrined in Article 18 of the Constitution.

Section 16(1) of the Children's Act mandates that officials of every organization and institution that carry out activities related to children adopt necessary child friendly processes by giving priority to the best interests of children. Section 16(2) states that it is the responsibility of everyone to instantly help children whose lives are at risk. Juvenile correctional facilities are drastically overcrowded. The capacity of juvenile correctional facilities is 50, yet there are currently 83 juveniles housed in these facilities. These conditions are unsafe and unhealthy, and contribute to the spread of COVID-19 and other diseases. PDS-Nepal asserted that detaining Neel was not only illegal since he committed a petty offense and was under the age of 16, it was also dangerous: as a juvenile, he is entitled to special protection from the state and his detention in a crowded facility unable to adhere to proper social distancing violated his rights.

On May 16, 2021, the Supreme Court denied the writ of habeas corpus and found that Neel's detention was not illegal. Nevertheless, the Court issued a writ of mandamus and ordered Neel's release to his parents for the remainder of his sentence after finding that there were 83 children in a facility with an overall capacity of 50. The correctional facility's reply also confirmed that Neel suffered from mental illness and that he had repeatedly tried to commit suicide. In light of these findings and standards requiring the best interests of the child to be considered, the Court opted to release Neel to his parents.

Dhading District: Dev

Dev was 12 years old when he was arrested for stealing a cell phone and charged with theft. The victim filed a police report and the prosecution filed a charge sheet against him in the Dhading District Court on December 23, 2020. On April 18, 2021, Dev was convicted and sentenced to six

month of imprisonment in a juvenile correctional facility. PDS-Nepal contracted Dev's case while he was incarcerated in the juvenile correctional facility and filed a petition for a writ of habeas corpus on May 2, 2021, asserting that Dev was illegally detained because he committed a petty offense. As aforementioned, according to § 3(f) of the Criminal Code, "grave offence" means an offence punishable by a sentence of imprisonment for a term of more than three but less than ten years and under § 3(g), "heinous offence" means an offence punishable by imprisonment for life or for a term of more than ten years. Section 36(7) of the Children's Act states that no punishment of imprisonment shall be imposed on a child 16 years of age or younger except in cases where he or she has committed a heinous offence, grave offence or repeated the offence. Here, Dev was 12 years old when he committed the offense and was sentenced to six months of imprisonment. He was charged with theft under the § 241 of the Criminal Code which carries a maximum sentence of three years, and is thereby not a grave or heinous offense. PDS-Nepal asserted that Dev's imprisonment is unlawful because he is a juvenile under the age of sixteen who committed a minor offense. PDS-Nepal contends that the Dhading District Court erred when it applied § 36(2) of the Children's Act. Section 36(2) states that "[i]f a child of ten years of age or above but below fourteen years of age commits an offence that is punishable by a fine, the child shall be released after counseling him or her and if such a child commits an offence that is punishable by imprisonment, the child shall be punished with imprisonment for upto six months or be sent to the child reform home for a period not exceeding one year without subjecting him or her to imprisonment." Section 36(2) must be read in conjunction with § 36(7) and with the Criminal Code. As such, a child under the age of 14 can only be imprisoned if he commits a grave or heinous offense or repeated offenses.

Remarkably, on May 23, 2021, the Supreme Court granted Dev a writ of habeas corpus and he was released from the correctional facility. The Supreme Court found that the offences leveled against Dev were "petty offences rather than 'grave' and 'heinous' offences under § 3(f) and § 3(g) of the Criminal Code. According to § 45(5) of the Criminal Code and § 36(7) of the Children's Act, minors cannot be imprisoned for committing simple offences, only involvement in repeated crimes or crimes of a 'grave' or 'heinous' nature. The charge sheet attached to this case file and the written reply of the Dhading District Court did not mention that the petitioner had repeatedly committed the crime, hence the decision of the Dhading District Court on April 19, 2021, to keep the petitioner in a juvenile correctional facility for six months seems to be flawed at first sight as it appears that § 36(7) of the Children's Act is applicable rather than § 36(2) in this case."

Based on a survey conducted of juvenile detention facilities in 2021, PDS-Nepal believes there are currently at least 34 children unlawfully detained for committing minor offenses.

Table 2: Juveniles in Correctional Facilities Accused of Minor Offenses⁷

| Age Group | Boys | Girls | Total |
|-----------|------|-------|-------|
| 11-14 | 5 | 0 | 5 |

⁷ Recent data collected by PDS-Nepal surveying 917 children in eight juvenile correctional facilities across Nepal including: Biratnagar in Morang district, Bhaktapur in Kathmandu Valley, Pokhara in Kaski district, Nepalgunj in Banke district, Bhairahawa in Rupandehi, Doti in Doti district, Parsa in Parsa district, Makwanpur in Makawanpur district.

| | | | |
|-------|----|----|----|
| | | | |
| 15-16 | 12 | 1* | 13 |
| 17-18 | 16 | 0 | 16 |
| Total | 33 | 1 | 34 |

III. Violating the Rights of Juveniles: Injustice caused by misapplication of law

Editor's Note: *The Children's Act provides numerous protections to juveniles designed to shield them from the punitive justice system and encourage better life outcomes for children in conflict with the law. Unfortunately, lack of awareness and training on the Act causes many justice sector stakeholders, such as judges, police and prosecutors, to violate these protections afforded to juveniles. The result is unlawful detention and lengthy sentences which contribute to overcrowding in the juvenile correctional facilities and poor outcomes for minors. The following case notes illustrate instances when district courts issued verdicts that violated juvenile rights through misapplication of the law. PDS-Nepal filed petitions for writs of habeas corpus to the Nepal Supreme Court exercising the rights of detained juveniles.*

Rolpa District: Roshan

On October 28, 2020, 10 year old Roshan was arrested and charged with murder under § 177 of the Criminal Code, alongside three other juveniles aged 15, 16, and 17. He was detained for eight months without ever receiving a trial, two months beyond the length of his highest possible sentence of six months. Roshan petitioned the Rolpa District Court for his immediate release. However, on July 12, 2021, the District Court issued an order denying Roshan's petition.

On July 14, 2021, PDS-Nepal filed a petition for a writ of habeas corpus with the Supreme Court, requesting Roshan's immediate release pursuant to section 36(2) of the Children's Act and contending that he had already been detained beyond the his maximum prison sentence. PDS-Nepal further contended that § 37 of the Children's Act capped Roshan's pretrial detention at four months: "Notwithstanding anything contained in the prevailing laws, the Juvenile Court shall generally dispose of a case within one hundred twenty days from the date of filing of the case and the proceeding and adjudication of such a case shall be made on the basis of continuous hearing."

The Supreme Court found that the District Court's Order denying Client's release was contrary to sections 24(2)(b) and 36(2) of the Children's Act. Section 24(2)(b) does not permit children to be detained pending trial if they are accused of an offence punishable by imprisonment for three years or less. As Roshan is 10, under § 36(2), the maximum sentence for his offence is six months; thus, he should have been released until his trial date. The Supreme Court issued a writ of habeas corpus, granting Roshan's immediate release and ordering his case to be settled in accordance with the law.

Bhaktapur District: Kamal

On September 23, 2019, Kamal was arrested and charged with attempted rape and detained in a correctional home pending trial. He was detained for six months before being released into parental custody as part of COVID-19 preventative measures. On November 10, 2020, Kamal was convicted and sentenced to 8 months of imprisonment and a fine of Rs. 6667, which he paid. The Bhaktapur District Court deducted the amount of time Kamal had already served in pretrial detention from his total sentence, and ordered Kamal to serve an additional month and 24 days in the correctional facility.

PDS-Nepal then contracted the case and filed a petition for a writ of habeas corpus on March 13, 2021, asserting that Kamal's detention was illegal as he had already served the remainder of his sentence while in parental custody. The Supreme Court found that the period Kamal spent in parental custody should be considered the same as having been spent in the juvenile correctional facility. The Court granted Kamal a writ of habeas corpus and ordered his immediate release.

Siraha District: Ferika

On July 12, 2019, 17 year old Ferika and three adult men were arrested and charged with the attempted rape of a 15 year old girl. The prosecution filed a single charge sheet for Ferika and the three adult men. At a hearing held by a judge in a general court alongside the three men, Ferika's lawyer did not request bail, and she was detained for more than two years awaiting trial.

On July 27, 2021, PDS-Nepal contracted Ferika's case and filed a petition for a writ of habeas corpus with the Supreme Court, asserting that Ferika's detention was unlawful as a single charge sheet was filed for her and the adult defendants, and her case was not being heard by the juvenile division at the Siraha District Court. Section 30(6) of the Children's Act stipulates that "if an adult person is involved, along with the child, in any offence, the matter shall be proceeded, tried and settled by the Juvenile Court in the case of the child, and the matter shall be proceeded, tried and settled pursuant to the prevailing laws in the case of the adult person by establishing a separate case file." Thus, Ferika's rights were violated when her case was heard with her adult co-defendants in general court.

On August 11, 2021, the Supreme Court issued a writ of habeas corpus, enumerating the jurisdictional divides between the general courts and juvenile courts, harmonizing constitutional principles related to fair trials and juvenile protections, and upholding § 37 of the Children's Act which requires a juvenile's case to be disposed of within 120 days. The Court held that "if a juvenile and adult have the same case, separate charge-sheets should be filed and that the court had to hold separate hearings for the case." The Court ordered Ferika's release and speedy resolution of her trial in juvenile court.

Kanchanpur District: Dhonu

In Kanchanpur, upon reaching the age of 18, a boy was transferred to an adult prison, an express violation of § 43(4) of the Children's Act: "If a child kept in a child reform home attains the age of eighteen years before completion of the period for which he or she has to remain in the child reform home, he or she shall be kept separately from the other children in the child reform home for the remaining period by considering, inter alia, the improvement seen in his or her behavior, continuity of skills and education gained." PDS-Nepal filed a petition for a writ of habeas corpus with the

Supreme Court, citing § 43(4) of the Children's Act. The Supreme Court issued a writ of mandamus and ordered the boy to be returned to the juvenile correction home.

Bajhang District Court: Harnoop

In the Bajhang District, Harnoop was 13 years old when he was charged with homicide and sentenced to 1 year of imprisonment in a child reform home. Harnoop had already served 10 months in custody before PDS-Nepal contracted his case. Because Harnoop was below the age of 14, pursuant to § 36(2) of the Children's Act, he could not be imprisoned for more than six months: "If a child of ten years of age or above but below fourteen years of age commits an offence that is punishable by a fine, the child shall be released after counseling him or her and if such a child commits an offence that is punishable by imprisonment, the child shall be punished with imprisonment for up to six months or be sent to the child reform home for a period not exceeding one year without subjecting him or her to imprisonment." However, § 36(f) of the Children's Act permits the Juvenile Court to "make the child stay in the child reform home for a period not exceeding that of the punishment imposed."

PDS-Nepal filed a petition for habeas corpus, seeking Harnoop's release and clarification to the tension between the two provisions. On October 4, 2021, the Supreme Court issued a writ of habeas corpus stating that the six months imprisonment term cannot be exceeded.

IV. Observations from Survey of Juvenile Correctional Facilities

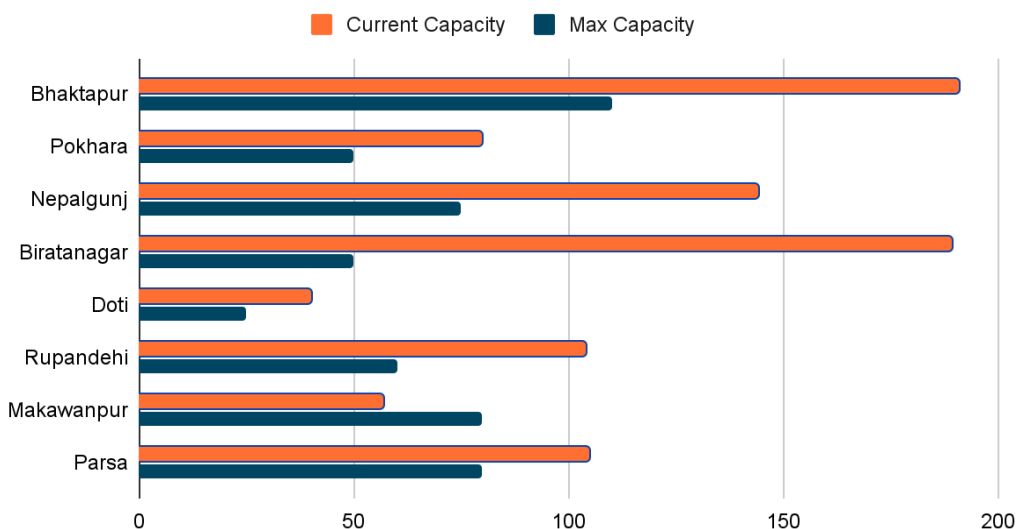
Children in correctional facilities have their rights violated on a daily basis. In 2021, PDS-Nepal surveyed 917 children in all eight of the juvenile correctional facilities across Nepal. Of the 917, only 38 were female. All of the girls surveyed were detained in the Bhaktapur correctional facility, the only facility for girls in the country. More than 60% of detained children were 16 years old or less at the time of arrest. More than 90% of incarceration sentences were for more than 2 years, including 130 children sentenced to 10+ year sentences. PDS-Nepal notes several fundamental rights violations:

- 86% of detained children were NOT informed of their right to counsel
- Nearly 40% of detained children were not represented by counsel
- 61% of detained children did not receive needed medicine in a timely manner
- 70% did not receive timely medical treatment

Additionally, the facilities are overcrowded and do not meet the minimum standards even for basic facilities. They lack safe drinking water, health facilities, and nutritious food. Seven out of the eight detention homes are over capacity, some by more than double. Additionally, there are few mechanisms in place to respond to the spread of COVID-19 or other diseases. Sick individuals are often not separated from healthy individuals, and overcrowding exacerbates the spread of disease. Seven juveniles in Rupandehi correction home contracted Tuberculosis. PDS-Nepal drafted petitions for each of them, requesting a change in the mode of custody based on § 44 of Children's Act, which allows for children suffering from serious or chronic illness to be shifted to another facility or an individual's custody. The Supreme Court has denied some of these petitions; others are still being processed.

In another case, in Siraha District, a boy became seriously ill and was admitted to the ICU. Notably, the correction home warden reached out to PDS-Nepal to provide legal assistance for the boy. PDS-Nepal filed a petition under § 44 of the Children’s Act to have him resentenced to home confinement. The very next day, the Siraha District Court ordered that the child be released into parental custody.

Detention Facility Capacities



V. Expanding Access to Justice for Juveniles through Partnership

PDS-Nepal is a national expert on juvenile justice, often counseling other lawyers around the country. For a juvenile case in the Gorkha District Court, a private defense lawyer sought guidance from PDS-Nepal with drafting compelling arguments in his pleadings after several unsuccessful attempts to petition the release of his juvenile client. PDS-Nepal assisted the lawyer with formulating his arguments, incorporating international precedents and the latest novel arguments PDS-Nepal has utilized in its own cases. Thanks to PDS-Nepal’s intervention, the Gorkha District Court finally agreed to release the private lawyer’s client into the custody of his parents pending trial.

In another case, two juveniles were convicted in the Terhathum District Court for stealing a mobile phone. The juveniles were sentenced to two years imprisonment and fined NRs. 33,325. They were initially sent to the Morang correction home but due to insufficient space they were transferred to the Parsa correction home, which is located in a much warmer climate than the juveniles were used to, and the juveniles became sick. The lawyer for the two juveniles had participated in a training provided by PDS-Nepal and contacted the organization for assistance with getting the boys released into the custody of their parents or postponing their sentence. PDS-Nepal assisted with drafting the boys’ petitions and submitting them to the Terhathum District Court. Their petitions were denied, and PDS-Nepal filed an interlocutory appeal to the Biratnagar High Court. Meanwhile, the boys’ health continued to deteriorate, and one became paralyzed. PDS-Nepal helped file another petition, seeking relief for the boys and treatment. PDS-Nepal made virtual arguments to the High Court from Kathmandu. Thanks to PDS-Nepal’s persistent advocacy and sophisticated arguments, the High Court finally ordered the release of the juveniles into parental custody and postponed their sentence.